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Agrarian Reform's Constraints on Land Acquisition and Development for Non-Agricultural Use in the Philippines

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Agrarian Reform's Constraints on Land Acquisition and Development for Non-agricultural Use in the Philippines

Janeth San Pedro*

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I. INTRODUCTION

After World War II, most developing countries that attained independence attempted to reduce widespread poverty among landless peasants and income inequality between the landed and the landless in the rural sector.¹ To achieve this goal, the developing countries implemented a redistributive land reform program which was widely believed as a panacea for the eradication of rural poverty and inequality.² The “transfer of land to the tillers” was considered a prerequisite to attain equality and raise agricultural productivity.³ The Philippines was among the newly independent nations eager to initiate such a land reform program.

In 1988, an ambitious ten year Comprehensive Agrarian Reform Program (CARP) was launched.⁴ At first glance, CARP appeared to be a break from the traditional pattern of Philippine land reform legislation.⁵ CARP veered from a limited coverage of rice and corn lands to a comprehensive land reform covering both private and agricultural lands irrespective of crops produced and tenurial arrangements.⁶ Recently however, both landowners and land developers have found ways to evade CARP and to acquire land to the detriment of the intended farmer-

1. See YUJIRO HAYAMI ET. AL., *TOWARD AN ALTERNATIVE LAND REFORM PARADIGM*, 1 (1990) (explaining that the reduction of poverty and inequality would ensure social and political stability and serve as the basis for economic progress and agricultural productivity); see also JEFFREY M. RIEDINGER, *AGRARIAN REFORM IN THE PHILIPPINES, DEMOCRATIC TRANSITIONS AND REDISTRIBUTIVE REFORM*, 75 (1995) (defining “landless” as referring to “all cultivating relationships in which the cultivators work land without having ownership or owner like rights in that land”).

2. See HAYAMI, *supra* note 1, at 1; see also *Land Reform Yields Higher Incomes*, BUSINESS DAILY, Oct. 16, 1996, available in 1996 WL 12716459. According to a survey conducted by the Institute of Agrarian Studies, crop yields and household incomes of land reform beneficiaries increased. The study found an increase of 1.6 % per annum in rice yields per hectare, with the average rice yield among the farmer beneficiaries higher than the national average. *Id.* The survey also found an increase in the gross household income from 52,470 Philippine peso in 1989 to 63,407 Philippine peso in 1993-94. *Id.*

3. See HAYAMI, *supra* note 1, at 1 (citing to the work of Wolf Ladejinsky to elaborate the view held by governments of developing nations that land reform can lead to equality).

4. See *infra* notes 70-72 and accompanying text (providing a general discussion of CARP); see also HAYAMI, *supra* note 1, at 76 (predicting that although the target of CARP in comparison with previous land reform legislation is “quite ambitious,” the implementing laws will likely limit the scope of the affected land).

5. See HAYAMI, *supra* note 1, at 76.

6. See *infra* notes 72-83 and accompanying text (discussing the scope and coverage of CARP).

beneficiaries.⁷ This problem has now escalated into a conflict between the farmers' interests in owning and tilling the land and the government's industrialization efforts favoring industrial and real estate development as a means to attract foreign investors.⁸ This comment will examine CARP's constraints on land acquisition and land development for non-agricultural purposes. Part II reviews the history of the country's past land reform programs in comparison with CARP.⁹ Part III discusses the scope and coverage of CARP including exemptions to actual land distribution.¹⁰ Part IV outlines the Philippine's economic climate and foreign investment laws.¹¹ Finally, part V demonstrates the conflicting interests between land distribution to agrarian reform beneficiaries and land development for nonagricultural use specifically in the context of land use and land conversion.¹²

II. BACKGROUND

A. *Land Reform or Agrarian Reform?*

What is actually meant by agrarian reform? There is a debate among scholars, international aid agencies and politicians over the definition and extent of such a reform.¹³ Some argue that land reform applies only to the redistribution of land ownership to the landless tenants and workers who till the soil.¹⁴ On the other hand, agrarian reform focuses only on the technical aspects related to the productivity of farming without reference to land ownership rights.¹⁵ Nevertheless, the term agrarian reform has increasingly replaced the term land reform.¹⁶ Ironically, two

7. See Patricia F. de Leon, *Economic Indicator: Land*, BUSINESSWORLD (MANILA), Nov. 10, 1997, available in LEXIS, World Library, Allwld File.

8. See *id.*

9. See *infra* notes 22-69 and accompanying text (analyzing the land reform programs of past administrations, including the Land Act of 1955, the Agrarian Reform Code of 1963, Presidential Decree No. 27, and CARP).

10. See *infra* notes 70-189 and accompanying text (reviewing CARP's provisions for its implementation).

11. See *infra* notes 190-205 and accompanying text (discussing the Foreign Investment Act of 1991 and its potential impact on foreign investment in the country).

12. See *infra* notes 206-70 and accompanying text (illustrating the continuing and pervasive tension between land distribution and land development).

13. See JAMES PUTZEL, *A CAPTIVE LAND: THE POLITICS OF AGRARIAN REFORM IN THE PHILIPPINES*, 1 (1992) (stating that the debate over the definitions of agrarian reform is a reflection of the opposing views and interests in an agricultural society of widespread landlessness and a high degree of landownership concentration).

14. See MAMERTO CANLASET, AL., *LAND, POVERTY AND POLITICS IN THE PHILIPPINES*, 48 (1988) (providing examples of tenurial or ownership status of the land such as sharecropping, rent tenancy or owner-cultivator farming).

15. See *id.* (discussing some examples of the technical aspects of farming such as cultivation methods, seed varieties, irrigation, and mechanization); see also HAYAMI, *supra* note 1, at 5 (defining land reform as a redistribution of the bundle of property rights on land while agrarian reform refers to both the redistribution of property rights and a reform of agrarian institutions, such as credit and market institutions).

16. See PUTZEL, *supra* note 13, at 3 (discussing the reasons for the shift in terminology).

dichotomous views gave rise to the shift in terminology.¹⁷ Policy makers opposed to redistributive reform chose the term agrarian reform over land reform in order to take the emphasis off land redistribution and to focus on land settlement and productivity programs.¹⁸ On the other side, advocates of redistributive reform also used the term agrarian reform because of their desire to place reform in the realm of human relations and their recognition that any reform program must include more than redistribution of property rights.¹⁹ Hence, agrarian reform implies not only the physical redistribution of land, but also a transformation in rural relations.²⁰ Yet, the question of land ownership, which has always been the primary source of political and economic power in a predominantly agricultural society, still remains.²¹

B. Past Agrarian Reforms

Due to persistent problems of land inequality combined with the threat of agrarian unrest,²² land reform has consistently been on the political agenda.²³ Moreover, the continuing importance of the agricultural sector to the Philippine economy and the need for political stability have made land reform legislation a critical part of past and present administrations.²⁴

1. Land Reform Act of 1955

The Land Reform Act of 1955 was the first land reform program enacted in modern Philippine history.²⁵ It created the Land Tenure Administration to acquire

17. *See id.* (explaining how two opposing sides reached the same result of choosing agrarian reform over land reform).

18. *Id.*

19. *See id.* (noting that advocates of the redistributive reform recognize the need for other changes in the agricultural production structure in addition to land redistribution; examples include the introduction of credit programs, the provision of extension services, or the reform of farm input and produce markets that will allow the beneficiaries to profitably engage in farming).

20. *Id.*; *see also* CANLAS, *supra* note 14, at 48 (explaining that a sharp decline in the amount of land available for cultivation coupled with a rapid increase in population and introduction of new farming methods gave rise to a recognition that "agrarian reform must be a package").

21. *See* CANLAS, *supra* note 14, at 49 (noting that agrarian reform must be viewed as a call for a transfer of ownership of land which also implies a transfer of political and economic power from the landed to the landless tenants and workers).

22. *See* JAMES PUTZEL & JOHN CUNNINGTON, *GAINING GROUND: AGRARIAN REFORM IN THE PHILIPPINES* 56-60 (1989) (discussing the history of the peasant movement and the struggles for access to land from the colonial period through World War II, the Marcos era, and the Aquino administration).

23. *See* PUTZEL, *supra* note 13, at 33 (observing that landownership inequality is much more pronounced than the given estimates because of the problems in determining the extent of landlessness due to a limited land registration program and a lack of concerted effort to collect ownership data).

24. *See id.*

25. *See* Timothy Hanstad, Comment, *Philippine Land Reform: The Just Compensation Issue*, 63 WASH.L.REV. 417, 419 (1988).

large tenant-occupied rice and corn estates and resell the lands to the tenants.²⁶ After a much heated debate and charges of communist influence, Congress amended the Act.²⁷ Now, only parcels of land in excess of three-hundred hectares²⁸ of contiguous areas if owned by individuals and six-hundred hectares if owned by corporations are affected.²⁹ Because only a few landowners held three-hundred hectares of contiguous land, the law turned out to be generally ineffective.³⁰

In addition, the law was hampered by defects that severely limited its scope.³¹ For example, not only did the Act provide for a high landowners' retention limit of three-hundred hectares, but it also limited the expropriation to areas of "justified agrarian unrest" making the Act applicable to a very small percentage of the agricultural land.³² The land could only be appropriated "when a majority of tenants therein petition for such purchase;" however a tenant would have to be "irrational to make such demands given the economic and political power of the landlord."³³ Moreover, the law provided for a negotiated sale between the landowners and the government,³⁴ mandating cash payment and sales to the tenants at the full fair market value plus six percent interest with a twenty-five-year repayment period which made it too expensive for the tenant farmers.³⁵

The inability of the tenant farmers to acquire the land was further curbed by what seemed to be government support for the big landowners to acquire more land. One such glaring example was President Magsaysay's facilitation of the purchase of a private 6,400 hectares sugar estate from the Spanish corporation, Tabacalera, for the elite Cojuangco family at a time when the government was supposedly promoting land distribution.³⁶ Because of resistance from landed interests,

26. See PUTZEL, *supra* note 13, at 91; see also JOSE N. NOLLEDO, PRINCIPLES OF AGRARIAN REFORMS, COOPERATIVES AND TAXATION 14 (1995) (stating that the Land Tenure Administration was established to act as a machinery for the acquisition and redistribution of private agricultural lands).

27. See PUTZEL, *supra* note 13, at 91-92 (noting that the Act drew the fire of landed representatives and lobby groups such as the National Rice Producers Association whose spokesman echoed the sentiments that the land reform "has all the earmarks of the Chinese Communist land reform system under the guise of democracy").

28. See Hanstad, *supra* note 25, at 419 n.12 (One hectare = 2.47 acres).

29. See PUTZEL, *supra* note 13, at 92 (discussing the ineffectiveness of the law and concluding that the reform "did not even bring about minimal changes").

30. See *id.*

31. See Hanstad, *supra* note 25, at 419 n.12 (outlining the defects in the 1955 Act).

32. See *id.* (observing that the retention limit was high in comparison with other successful Asian land reform programs that had retention limits ranging from zero hectares to 2.9 hectares)

33. See PUTZEL, *supra* note 13, at 92 (quoting political economist Ronald Herring's argument to explain the difficulty that tenant-farmers would encounter in such a provision).

34. See Hanstad, *supra* note 25, at 419 n.12.

35. See *id.* (noting that a full fair market value was too costly for the tenants).

36. See PUTZEL, *supra* note 13, at 93 (suggesting that the motive behind President Magsaysay's assistance in the Cojuangco acquisition of the sugar estate is to prevent more land acquisition by another powerful family). The loan application for seven million Philippine peso to the Government Service Insurance System (GSIS) indicated that 4,000 hectares of the estate would be divided into four equal tracts to be distributed to bonafide sugar planters while the remaining 2,453 hectares would be divided and distributed to barrio residents who would pay on an installment plan. *Id.* Moreover, in order to secure foreign financing for the required partial payment in dollars,

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inefficient administration, and inadequate financial backing, the total area distributed by the Land Tenancy Administration during the first six years after its establishment was less than twenty-thousand hectares.³⁷ As a result, little land was distributed to the tenant farmers while the elite families continued to hold the lion's share of the agricultural land.³⁸

2. The Agricultural Land Reform Code of 1963

The subsequent Agricultural Land Reform Code, enacted in 1963 (1963 Code) under President Macapagal, represented a shift in agrarian reform legislation in line with the objective of increasing agricultural productivity.³⁹ Share tenancy was abolished and leasehold tenancy was adopted in preparation for owner-cultivatorship.⁴⁰ The stated goal was to "establish owner-cultivator and economic family-size farm . . . to make the small farmers more independent, self-reliant and responsible citizens."⁴¹ Achievement of owner-cultivatorship in rice and corn lands involved Operation Leasehold which converted share tenancy to leasehold tenancy with rent determined at twenty-five percent of the average harvest in the preceding three years before reform.⁴² Operation Land Transfer shifted ownership of lands to tenants while providing a retention limit of seventy-five hectares for the landowners.⁴³ The Code also reflected the interests of urban commerce and industry in the stipulation that one of the reform goals was to "divert landlord capital to industrial development."⁴⁴

the Monetary Board inserted a clause into the contract stipulating that the Cojuangcos were purchasing the estate with the goal of distributing the property to small farmers within ten years. *Id.* at 94. Oddly, when the Cojuangcos inquired whether there were tenants on the land, their lawyer told them that there were none. *Id.* Subsequently, the GSIS Board passed a new resolution that altered the condition for land distribution after receiving a letter from a Cojuangco family member making such a request. *Id.* The resolution stated that the estate "shall be sold at cost to the tenants, *should there be any . . .*" *Id.* This amendment gave the Cojuangcos a basis to argue against distribution by stating that there were no tenants on the land. *Id.* However, the Monetary Board's stipulation requiring distribution within ten years to small farmers with no mention of tenants remained in force. *Id.*

37. See HAYAMI, *supra* note 1, at 56.

38. See PUTZEL, *supra* note 13, at 93.

39. See HAYAMI, *supra* note 1, at 56.

40. See NOLLEDO, *supra* note 26, at 14 (quoting President Macapagal's State of the Nation address to Congress that "the time has come to abolish tenancy in our farms").

41. Republic Act No. 3844 §2 (1), §2 (6) (1963), *reprinted in* HAYAMI, *supra* note 1, at 168 [hereinafter RA 3844].

42. See HAYAMI, *supra* note 1, at 57.

43. See *id.* (explaining that landowners' compensation include ten percent of the land value in cash and the remaining balance in interest free redeemable Land Bank bonds). The purchasing tenants have a 25 year period of annual amortization payments. *Id.*

44. See RA 3844 §2 (1), *reprinted in* HAYAMI, *supra* note 1, at 168. See generally HAYAMI, *supra* note 1, at 56.

However, the 1963 Code, like the 1955 Act, was also limited in scope.⁴⁵ For example, land redistribution was restricted to rice and corn lands, and the landowner's retention limit was increased from the initial proposal of twenty-five hectares to seventy-five hectares.⁴⁶ Although initial versions of the 1963 Code contained provisions for a progressive land tax that would have provided both a disincentive to maintain large landholdings and a significant source of funds to carry out the reform program, they were excised from the final version.⁴⁷ Moreover, Congress allotted less than one million Philippine peso against an estimated cost of two-hundred million Philippine peso for the first year and three-hundred million Philippine peso for the next three years.⁴⁸

The 1963 Code was also impaired by lack of implementation since the proposed new agencies⁴⁹ were not created until a year after the passage of the law.⁵⁰ Furthermore, the law stipulated that the National Land Reform Council should proclaim all government agencies dealing with land reform fully operative in a region before implementation could begin, resulting in more delays in the implementation.⁵¹ Hence, the 1963 Code turned out to be no more successful than the prior reform program.⁵²

3. Presidential Decree No. 27

The 1963 Code was amended by President Ferdinand Marcos in 1971 which lowered the retention limit from seventy-five to twenty-four hectares, making more lands available for the agrarian program.⁵³ Nearing the end of his presidency, Marcos declared martial law and shortly thereafter issued Presidential Decree No.

45. See PUTZEL, *supra* note 9, at 116-17 (noting that the reform remained within the limits of the conservative approach); see also HAYAMI, *supra* note 1, at 57 (relating that land reform operations were primarily constricted to pilot areas in certain parts of the country).

46. See PUTZEL, *supra* note 9, at 116; see also HAYAMI, *supra* note 1, at 57 (specifying that lands devoted to sugar, coconut and other fruits and crops were excluded from the reform's coverage).

47. See PUTZEL, *supra* note 13, at 117; see also HAYAMI, *supra* note 1, at 57.

48. See PUTZEL, *supra* note 13, at 117.

49. See *id.* at 116 (explaining that the draft proposed a restructuring of state institutions to implement the reform program). The established agencies include the National Land Reform Council, the Land Authority and the Land Bank. *Id.*

50. See *id.* at 117 (noting that the head of the Land Authority was not appointed until 1964).

51. See RA 3844 §128-130, reprinted in HAYAMI, *supra* note 1, at 168 (outlining the responsibility of the NLRC to formulate guidelines, plans and policies to implement the 1963 Code); see also HAYAMI, *supra* note 1, at 57 (observing the added delay in implementation caused by the required proclamation).

52. See PUTZEL, *supra* note 13, at 116 (explaining that the Code was subjected to over 200 amendments and was watered down under a concerted effort by landowner spokesmen, as well as the elite nationalist bloc). As a result, only three estates were purchased in 1963, covering some 540 hectares, and just one estate of 1,058 hectares was acquired during the 1964-65 period. *Id.* at 117; see also HAYAMI, *supra* note 1, at 57 (noting that despite the more comprehensive nature of the 1963 Code, actual implementation was in reality more discouraging than the 1955 Act).

53. See Hanstad, *supra* note 25, at 419-420 (noting that the Code was renamed the Code of Agrarian Reform).

27 (PD 27), a land reform decree for the “emancipation of the tiller from the bondage of the soil.”⁵⁴ PD 27 entitled tenants in rice and corn areas exceeding seven hectares to purchase the lands at a price two and a half times the value of average annual production, payable to the Land Bank at six percent interest within fifteen years.⁵⁵ Each farmer-beneficiary could purchase a portion of the land constituting a “family-sized farm, a maximum of three hectares of irrigated land, and five hectares of unirrigated land.”⁵⁶ When the tenant completed the amortization payments, he would receive title to the land, called an Emancipation Patent, transferrable exclusively to his heirs or to the government.⁵⁷ In the meantime, the eligible tenant received a Certificate of Land Transfer (CLT) identifying his cultivated area and promising him the right to purchase it.⁵⁸

Although PD 27 was a major improvement over previous land reform laws, the program still contained substantive defects and slow implementation.⁵⁹ Some of the significant improvements include the provision requiring tenants to join cooperatives as a precondition to receiving land and the lower retention limit for landowners.⁶⁰ However, the landowners often evaded the retention limit by subdividing the land and registering excess holdings in the names of relatives and friends.⁶¹ In addition, the reform affected only tenant-occupied rice and corn lands but did not apply to land under the direct administration of landlords, or to land used for cash crops such as sugar.⁶² As a result, it became a widespread practice among the landlords to extend areas under their direct management by evicting tenants under a pretext that tenants voluntarily submitted land to the landowners.⁶³ The landowners also attempted to convert the land to other crops or to a non-agricultural use as a means of evading land reform.⁶⁴

54. Presidential Decree No. 27 (1972) (Phil.), reprinted in HAYAMI, *supra* note 1, at 173 [hereinafter PD 27].

55. *See id.* (specifying that landowners can retain seven hectares whether or not the landowners are cultivating such area); *see also* PUTZEL, *supra* note 13, at 124 (stating that the government guaranteed landowners payment through stocks in government-owned corporations). A month later, President Marcos specified that payment may consist of government lands, cash, or annuities. *Id.* at 158 n.58. A year later, Presidential Decree No. 251 reiterated that cash payment would comprise only ten percent of landowners' compensation with the remaining balance coming in 25 year Land Bank bonds bearing six percent interest. *Id.*

56. *See* PD 27, *supra* note 54.

57. *See* PUTZEL, *supra* note 13, at 125.

58. *See id.* (noting that after a land survey, CLTs must be properly registered with the appropriate government offices before they can be distributed to the beneficiaries); *see also* HAYAMI, *supra* note 1, at 61.

59. *See* PUTZEL, *supra* note 13, at 124 (outlining the contents of the reform program, such as the formula for land valuation and compensation which was similar to the one employed in the successful Taiwan reform).

60. *See id.* *But see* RIEDINGER, *supra* note 1, at 93 (comparing the retention limit to that of other successful Asian land reform programs where the retention limit ranged from zero to three hectares).

61. *See* HAYAMI, *supra* note 1, at 69.

62. *See id.* at 190 n.12 (noting that although President Marcos extended Operation Leasehold to cover lands devoted to commercial crops under President Decree No. 1038, no progress occurred in implementation).

63. *See id.* at 69 (specifying a survey conducted in two villages which indicated that 20-30 percent of landless agricultural laborers were evicted tenants with another 20 -30 percent who were believed to be so).

64. *See id.* (citing as an example the planting of sugar in rice paddy lands).

Furthermore, implementation was slow because the implementing agencies began with holdings over one-hundred hectares despite the provision in the 1963 Code that implementation would begin with land greater than twenty-four hectares.⁶⁵ In fact, it was not until two years later that implementation on holdings was down to the seven hectare retention limit.⁶⁶ Moreover, the amortization payments as well as the costs of agricultural inputs such as fertilizers were too costly, resulting in a heavy debt for the farmer-beneficiaries who were forced to forfeit their CLTs either to moneylenders, bankers, or the landlords themselves.⁶⁷

When PD 27 was launched, about 759,000 hectares of land were to be transferred to 394,000 tenants.⁶⁸ At the end of Marcos' rule, some fourteen years later, the number of beneficiaries increased to 427,000 while the land they were to receive decreased to 717,000 hectares.⁶⁹

III. THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP)

In February 1986, after twenty-two years of being in power, Marcos was forced to flee from the Philippines and a new government headed by President Corazon Aquino was installed. The newly installed government developed a new constitution which mandated that the "State shall, by law, undertake an agrarian reform program . . ." ⁷⁰ The constitution directed the passage of the 1988 Republic Act No. 6657, which now serves as the legal foundation of the present Comprehensive Agrarian Reform Program (CARP).⁷¹

A. *Scope and Coverage in General*

CARP defines agrarian reform as the redistribution of lands, regardless of crops or fruits produced, to farmers and regular farm workers who are landless, irrespective of tenurial arrangement, to include the totality of factors and support services designed to lift the economic status of the beneficiaries and all other arrangements alternative to the physical redistribution

65. See PUTZEL, *supra* note 13, at 124-127.

66. See *id.* at 125.

67. See CANLAS, *supra* note 14, at 52 (arguing that the failure of the Marcos program stemmed from the high retention limit, as compared to other successful reforms in Japan and Taiwan, the evasive activities of the landlords, the high amortization payments and the dependence of tenant-farmers and workers on local landowners for support).

68. See PUTZEL, *supra* note 13, at 125.

69. See *id.*

70. PHIL. CONST. art. XIII §4, reprinted in HAYAMI, *supra* note 1, at 174-175.

71. See Republic Act No. 6657 §2 (1988) (Phil.) (Jose N. Nolleto ed., 1995) [hereinafter RA 6657] (declaring that it is the "policy of the State to pursue a Comprehensive Agrarian Reform Program" to promote social justice, rural development, and industrialization"); see also Proclamation No. 131 (instituting CARP), reprinted in NOLLEDO, *supra* note 26, at 649; see also Executive Order No. 229 (enumerating the mechanisms for implementing CARP), reprinted in NOLLEDO, *supra* note 26, at 652.

of lands, such as production or profit-sharing, labor administration, and the distribution of shares of stock . . .⁷²

This agrarian program, unlike past programs, covers both public and private agricultural lands,⁷³ whether titled or untitled,⁷⁴ regardless of crops produced or the tenurial status of the tiller.⁷⁵ Moreover, CARP recognizes both agricultural tenants and agricultural workers as qualified beneficiaries provided they are landless and willing to till the soil.⁷⁶ An agricultural tenant is one who cultivates the land belonging to or possessed by another who consents for purposes of production, sharing the produce, or for a price ascertainable in produce or in money.⁷⁷ However, one whose “presence on the land is merely tolerated and without the benefit of a contract, one who enters the land by force or deceit, or one whose possession is under litigation” is not an agricultural tenant.⁷⁸ On the other hand, an agricultural worker is “an agricultural wage, salary or piece worker.”⁷⁹

72. RA 6657 *supra* note 71, §3 (a).

73. *See id.* §3 (c) (defining agricultural land as “land devoted to agricultural activity and not classified as mineral, forest, residential, commercial or industrial land.”); *see also* §3 (b) (defining agricultural activity as the “cultivation of soil, planting of crops, growing of fruit trees, including the harvesting of such farm products, and other farm activities and practices performed by a farmer in conjunction with such farming operations done by persons whether natural or juridical.”).

74. *See* Department of Justice Opinion No. 176, Series of 1992, *reprinted in* NOLLEDO, *supra* note 26, at 1072 (employing the doctrine that no distinction in the application of law should be used where none is indicated and according the general words and phrases in a statute their natural and general significance to construe section 4 of RA 6657).

75. *See* RA 6657, *supra* note 71, §4. *See generally* Ernesto D. Garilao, *Imperatives of the Comprehensive Agrarian Reform*, Department of Agrarian Reform Home Page (visited Oct. 8, 1998) <<http://www.skyinet.net/~depagref>> (enumerating the significant provisions of CARP).

76. *See* RA 6657, *supra* note 71, §22 (stating the order of priority for distribution with the agricultural lessees and share tenants first, followed by regular farmworkers, seasonal farmworkers, other farmworkers, actual tillers or occupants of public lands, collective or cooperatives of the latter and finally to others directly working the land). A farmworker is defined as a “natural person who renders service for value as an employee or laborer in an agricultural enterprise” regardless of the type of compensation received. *Id.* §3 (g). The term also encompasses an individual who has not obtained a comparable farm employment for discontinued work which was a consequence of, or in association with, pending agrarian dispute. *Id.* A regular farmworker is one employed as a permanent or a non permanent laborer on a recurring, periodic, or intermittent basis. *Id.* §3 (i). Moreover, the basic qualifications of a beneficiary include the “willingness, aptitude, and ability to cultivate and make the land as productive as possible.” *Id.* §22; *see also* Garilao, *supra* note 75 .

77. *See* MILAGROS A. GERMAN, RULINGS FROM THE SCRA IN AGRARIAN CASES, FROM NOVEMBER 14, 1988 TO JUNE 29, 1992 WITH COMMENTARIES 24-25 (1993) (deriving the definition of an agricultural tenant from the case of *Matienzo v. Servidad*, 107 SCRA 276. Furthermore, under the cases of *Miguel Carag v. CA*, et al., 151 SCRA 44, and *Zamoras v. Su, Jr.*, 184 SCRA 248, agricultural tenancy is defined as “the physical possession by a person of land devoted to agriculture, belonging to or legally possessed by another for the purpose of production through the labor of the former and of the members of his immediate farm household in consideration of which the former agrees to share the harvest with the latter or to pay a price certain or ascertainable, whether in production, money or both”).

78. *See id.* at 25 (stating the holding of *Guzman v. Court of Appeals*, 177 SCRA 604-605).

79. *See id.* at 25-26 (citing *Hernandez v. Intermediate Appellate Court*, 189 SCRA 758, for the definition of an agricultural worker. An example of an agricultural worker is a person who performs jobs on a plantation “like applying fertilizer, removing weeds and cutting sugarcanes” as in the case of *Jalandoni, Jr. v. Arsenal*, 189 SCRA

A CARP beneficiary forfeits the right to remain a beneficiary if found “guilty of negligence or misuse of the land or any support extended.”⁸⁰ Beneficiaries under PD 27 who have culpably sold, disposed or abandoned their land are also disqualified to become beneficiaries under CARP.⁸¹ Misuse of land is defined as any actions resulting in substantial and unreasonable damage on the land.⁸² Neglect of land refers to a willful failure to cultivate the land for crop production or the intentional and continuous non economic use of the land for two years.⁸³

1. Schedule of Implementation

The program’s coverage include land transfers of some 7.8 million hectares of private and public agricultural lands.⁸⁴ Agricultural lands will be acquired and distributed through a period of ten years in three phases.⁸⁵ Phase One includes distribution of rice and corn lands under PD 27, idle and abandoned lands,⁸⁶ lands foreclosed by government financial institutions,⁸⁷ lands acquired by the Presidential Commission on Good Government, and private lands voluntarily offered.⁸⁸ Phase Two includes distribution of public agricultural lands and private lands in holdings greater than fifty hectares.⁸⁹ Distribution under phase one and two is effective immediately with implementation to be completed within a period of not more than four years.⁹⁰

56).

80. See RA 6657, *supra* note 71, §22.

81. See *id.*

82. See Administrative Order No. 02, Series of 1994, reprinted in NOLLEDO, *supra* note 26, at 1104 (enumerating the grounds for correcting or canceling registered and unregistered Emancipation Patents and Certificate of Land Ownership Awards due to the beneficiaries’ unlawful acts, omissions, or breach). Damage to land includes the deterioration and depletion of soil fertility and land improvement and intentional cultivation of any plant that is the source of a dangerous drug. *Id.*

83. *Id.*

84. See *The Comprehensive Agrarian Reform Program*, Department of Agrarian Reform Home Page (visited Oct. 5, 1998) <http://www.skyinet.net/~depagref/carp_primer.htm>.

85. See PUTZEL, *supra* note 13, at 274. But see RIEDINGER, *supra* note 1, at 157 (noting that the successful land reforms of other Asian countries were all carried out in much shorter time frames, in no instance was implementation less than four years).

86. See RA 6657, *supra* note 71, §3(e) (defining idle or abandoned lands as any “agricultural land not cultivated, tilled, or developed to produce any crop nor devoted to any specific economic purpose continuously for a period of three years immediately prior to the receipt of notice of acquisition by the government . . . but does not include land that has become permanently or regularly devoted to non-agricultural purposes, land which has become unproductive by reason of force majeure or any other fortuitous event provided that prior to such event, the land was previously used for agricultural or other economic purposes”).

87. See PUTZEL, *supra* note 13, at 274 (stating that foreclosed lands under Phase One do not include those held by private banks).

88. See RA 6657, *supra* note 71, §7.

89. See *id.*

90. See *id.*; but see PUTZEL & CUNNINGTON, *supra* note 22, at 70 (posing the argument that while it appears that Phase One and Two will bring a large proportion of land under immediate distribution, closer scrutiny proves just the opposite).

Phase Three covers private lands between twenty-four to fifty hectares with distribution to begin on the fourth year from the time RA 6657 takes effect and to be completed within three years.⁹¹ Distribution of private lands below twenty-four hectares begins on the sixth year and is to be completed within four years.⁹² However, in preparing the implementing rules that are in accordance with the stated order of priority, the preference to distribute land at the earliest possible date, the need to improve agricultural productivity and the availability of funds and resources to administer and assist the program must be taken into consideration.⁹³

2. Retention Limits and Award Ceiling

Under CARP, a landowner may not retain more than five hectares plus three hectares of agricultural land for each heir at least fifteen years of age who is "actually tilling the land or directly managing the farm."⁹⁴ Observers note that this provision creates a powerful incentive for landlords to evict tenants on lands because by doing so, the landowners can claim that their heirs are "tilling the land and managing the farm directly."⁹⁵ On the other hand, landowners who, prior to CARP, complied with the registration requirement of PD 27 are allowed the seven hectare retention limit under PD 27.⁹⁶ While CARP guarantees the landowners the seven hectares received under PD 27, it does not, however, specify whether these landowners will be able to claim additional land for their children.⁹⁷ Meanwhile, landowners who did not exercise their retention rights under PD 27 are entitled to the retention limit of five hectares under CARP.⁹⁸ The landowners have the

91. See RA 6657, *supra* note 71, §7.

92. See *id.*

93. See *id.* (giving the Presidential Agrarian Reform Council the authority and the discretion in devising the rules of implementation by taking into consideration the stated factors).

94. *Id.* §6 (setting the retention limits for landowners of private and public agricultural lands). See generally Administrative Order No. 11, Series of 1990, reprinted in NOLLEDO, *supra* note 26, at 966 (providing the rules and procedures that govern the exercise of retention rights by landowners under RA 6657 §6); see also PUTZEL, *supra* note 13, at 273 (estimating that the retention limit would be between 11 and 14 hectares); see also RIEDINGER, *supra* note 1, at 167 (predicting that even without evasive landowner behavior, only 13 to 16 percent of land in private farms nationwide will be available for distribution because of an estimated retention limit of 8 to 11 hectares per landowning family). The estimate rests on the assumption that on average, one to two heirs per landowning family will receive the maximum retention rights. *Id.*

95. See RIEDINGER, *supra* note 1, at 295 n.69.

96. See RA 6657, *supra* note 71, §6; see also Memorandum Circular No. 12, Series of 1998, Department of Agrarian Reform Home Page (last visited January 4, 1999) <<http://www.dar.gov.ph/MC12-98.html>> (citing the holding of Association of Small Landowners in the Philippines, Inc. et al. v. The Honorable Secretary of Agrarian Reform, G.R. No. 78742, July 1989).

97. See PUTZEL & CUNNINGTON, *supra* note 22 at 71 (predicting that, given the relatively large amount of rice and corn lands as yet to be distributed, it is almost certain that landowners will attempt to claim additional land for their children).

98. See *id.*

discretion to assert which land area they want to retain.⁹⁹ The tenants in the area selected for retention by the landowners have the option of choosing, within one year from the time the landowner announces his choice of the area for retention, whether to remain as a leaseholder or be a beneficiary in the same or another agricultural land with similar or equivalent features.¹⁰⁰

On the other hand, a qualified farmer-beneficiary may not own more than three hectares which can cover either a contiguous tract of land or several parcels of land amounting to the prescribed award limit.¹⁰¹ The beneficiary has a thirty year repayment period, with annual amortization payments not to exceed the value of 5 percent of gross production during the first five years and ten percent after that time.¹⁰² If the beneficiary missed three annual amortization payments, the lands may be foreclosed and given to other qualified beneficiaries.¹⁰³ A beneficiary whose land is foreclosed is permanently barred from becoming a beneficiary under CARP.¹⁰⁴ In addition, CARP provides for the delivery of support services to the beneficiaries.¹⁰⁵ These services include land surveys and titling, liberalized credit and loan terms, marketing and management assistance, and access to infrastructure.¹⁰⁶

B. Exemptions to Actual Land Distribution

Despite a broader coverage, CARP provides exceptions that landowners, multinational corporations, and agribusinesses can exercise to avoid parceling and distributing the agricultural lands to the farmer-beneficiaries. Arrangements, such as corporate stock distribution and lease back arrangements with farmer cooperatives, are available to ensure tenurial security of farmers and farmworkers in cases where land distribution is not practicable.¹⁰⁷

99. See RA 6657, *supra* note 71, §6 (providing that the landowner can choose for retention either a compact or contiguous area of land).

100. *Id.*

101. See RA 6657, *supra* note 71, §25 (setting the award ceiling for beneficiaries).

102. See *id.* §26; see also PUTZEL, *supra* note 13, at 275 (emphasizing that the amortization value was gross, not net production, thereby applying only to produce without taking into account the cost of production). Given the high cost of farming, there is a great risk that beneficiaries would be unable to pay. *Id.*

103. See RA 6657, *supra* note 71, §26.

104. See *id.*

105. See *id.* §35 (creating an Office of Support Services to provide general support and coordinative services in the program's implementation). The following services include, but are not limited to, irrigation facilities, infrastructure development, government subsidies and price support, extension of credit, and development of cooperative management skills. *Id.*

106. See *id.* §37 (listing the support services available to the farmer beneficiaries).

107. See Garilao, *supra* note 75.

1. Corporate Stock Distribution

Corporate landowners have a choice between distributing their agricultural lands to either the government or to qualified beneficiaries, or giving the qualified beneficiaries the right to purchase a proportion of the corporation's capital stock that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets.¹⁰⁸ Corporations choosing this avenue are deemed to have complied with CARP if they meet the following conditions: (1) the corporation's books will be subject to periodic audit by certified public accountants chosen by the beneficiaries;¹⁰⁹ (2) the beneficiaries are ensured at least one representative in the board of directors, or in a management or executive committee, if there is one; (3) shares acquired by the beneficiaries are equivalent in rights and features as all other shares; and (4) the transfer of shares by the original beneficiaries must be in favor of a qualified and registered beneficiary within the same corporation.¹¹⁰ Stocks acquired by the beneficiary may be transferred only to other qualified beneficiaries.¹¹¹ However, if the stock distribution plan is not made or approved within two years from the time CARP takes effect, the agricultural land will be subject to compulsory acquisition.¹¹²

The law also allows an existing corporate farm to create a "spin-off" corporation for purposes of stock distribution.¹¹³ President Aquino's own family exercised the stock distribution option regarding the family's estate, Hacienda Luisita, as a means of complying with CARP.¹¹⁴ Just one month after CARP was passed, the Aquino family established Hacienda Luisita Inc. where only 4,914 hectares of the original 6,431 hectares were transferred to the new corporation.¹¹⁵ The lesser amount of transferred land to the new corporation was permissible since CARP only covers those lands actually devoted to agricultural activities.¹¹⁶ Since the agricultural land represented one-third of the corporation's total assets, the

108. See RA 6657, *supra* note 71, §31.

109. See *id.* (stating that this requirement is to protect the rights of the beneficiaries who own stock shares and other financial benefits). See generally Guidelines And Procedures For Corporate Landowners Desiring To Avail Themselves Of The Stock Distribution Plan Under Sec. 31 of R.A. 6657, reprinted in NOLLEDO, *supra* note 26, at 900 [hereinafter Guidelines for Stock Distribution] (providing that implementation will be strictly monitored to ensure compliance with the stock distribution plan and CARP).

110. See RA 6657, *supra* note 71, §31.

111. See Guidelines for Stock Distribution, *supra* note 109, at 901 (specifying a limit on transferability under section 8).

112. See RA 6657, *supra* note 71, §31; see also Guidelines for Stock Distribution, *supra* note 109, at 900 (providing that the plan is subject to PARC's approval under section 1b).

113. See Guidelines for Stock Distribution, *supra* note 109, at 900 (specifying that under section 1a, new corporations incorporated after RA 6657 takes effect may still avail of the stock distribution plan if they are subsidiaries or spin offs of mother corporations that are likewise qualified to apply).

114. See PUTZEL, *supra* note 13, at 332.

115. See PUTZEL, *supra* note 13, at 333.

116. See *id.*; see also RA 6657, *supra* note 71, §31.

Hacienda Luisita workers were entitled to one-third of the stock shares of the Hacienda Luisita Inc. but control remained in the hands of the family.¹¹⁷

Throughout Aquino's presidency, both landowners and peasants looked to her actions regarding Hacienda Luisita as a measure of her commitment to agrarian reform.¹¹⁸ Landowners contended that the President could not expect them to relinquish their farm holdings if she herself was unwilling to redistribute her own property.¹¹⁹ Meanwhile, peasant representatives also viewed her decision to exercise stock distribution instead of land distribution as further evidence of her lack of commitment to agrarian reform.¹²⁰

2. *Cooperatives and Lease Back Arrangements with Multinational Corporations and Agribusiness Ventures*

CARP mandates that awarded lands may not be sold, transferred, or conveyed for a period of ten years except through hereditary succession, to the government, to the Land Bank of the Philippines, or to the other qualified beneficiaries.¹²¹ However, the qualified beneficiaries can form cooperatives and lease the land.¹²² A cooperative refers to organizations voluntarily organized and "composed primarily of small agricultural producers, farmers, farmworkers, or other agrarian reform beneficiaries" for the purpose of combining "land, human, technological, financial or other economic resources."¹²³

117. See PUTZEL, *supra* note 13, at 333 (noting that the valuation of the non land assets was questionable because by inflating its value, any agribusiness corporation could ensure that the non land assets would be more than the land assets); see also RIEDINGER, *supra* note 1, at 180 (expressing the same concern about overvaluation of land assets and suggesting that the workers might be substantially better off if they were to purchase the land assets under CARP rather than accept the proposed "no cost" stock distribution).

118. See RIEDINGER, *supra* note 1, at 180.

119. See *id.* at 181.

120. See *id.*

121. See RA 6657, *supra* note 71, §27 (creating a limitation on the transferability of awarded land and also providing that lands transferred to the government or the Land Bank may be reacquired by the spouse or children of the transferor within two years).

122. See generally Al O. Labita, Jr., *Philippines: Move to Hasten Ekran's Development of Resort*, BUSINESS TIMES (MALAYSIA), June 13, 1994, available in LEXIS, Asiapc Library, Phil File (describing the development by foreign developers of the Samal island into an international resort through a lease arrangement with the farmer cooperatives).

123. See RA 6657, *supra* note 71, §3 (k) (noting that cooperatives operate "on the principle of one member, one vote"); see also Republic Act No. 6938 Art. 3, Cooperative Code of The Philippines, reprinted in NOLLEDO, *supra* note 26, at 54 (defining a cooperative as a "duly registered association of persons, with a common bond of interest, who have voluntarily joined together to achieve a lawful common social or economic end"). See generally Joint Administrative Order No. 01, reprinted in NOLLEDO, *supra* note 26, at 1003 (stating the procedural guidelines for the organization and registration of agrarian reform cooperatives composed of agrarian reform beneficiaries and marginal farmers). Purposes for which agrarian reform cooperatives can be organized include any or all of the following: to develop a system of land tenure, land development, land consolidation or land management; to coordinate and facilitate the dissemination of scientific methods of production and provide assistance in the marketing of farm products; to provide a built-in mechanism savings for members' emergency needs and financial facilities for production purposes; to arrange and facilitate the expeditious transfer of technology; to provide

One such example is the development by a Malaysian firm, Ekran, of a Philippine island, known as Samal, into a major international tourist destination.¹²⁴ The 303 farmers who owned land on the island formed a cooperative to acquire a twenty percent equity in the local holding company that will deal with the foreign developers.¹²⁵ The farmer-beneficiaries also leased 250 of their 744 hectare land to the government, which in turn subleased the property to Ekran.¹²⁶ According to the Tourism Secretary, the lease constitutes “an exemption from the ban on conveyance of properties” acquired under CARP.¹²⁷

Within three years after CARP took effect, public lands leased by multinational corporations and other government-owned lands devoted to agribusiness and operated by multinational corporations were to be distributed.¹²⁸ On the other hand, private lands leased by multinational corporations were subject to distribution only upon the expiration or valid termination of the applicable lease, whichever came sooner, but no later than ten years after CARP took effect.¹²⁹ However, in case it was not “economically feasible and sound to divide the land,”¹³⁰ the individual worker-beneficiaries were mandated to form a worker’s cooperative or association which would deal with the corporation for the purpose of entering into a lease.¹³¹ In the meantime, any agreement between the corporation and the previous landowner existing at the time CARP took effect would be respected.¹³²

One way then to comply with CARP is for the corporation to redistribute ownership of the land to the workers’ cooperatives who would then engage in a lease-back arrangement where the workers themselves would earn the rental income

benefits that promote the general welfare of the members such as social security, health, medical, social insurance, and vocational or technical training; to act as channels for external assistance and services to the members, to represent the members on matters affecting their common interest; and to undertake such other economic or social activities that are necessary or incidental in the pursuant of the above purposes. *Id.*

124. See Labita, *supra* note 122. But see Alecks Pabico, *Philippines: Land Reform Property Yields Luxury Resort*, INTER PRESS SERVICE, June 23, 1998, available in LEXIS, World Library, Allwld File (reporting that instead of traditional farm crops, such as coconut, bananas and corn, the farmer’s 250 hectares of land now have a 300-room luxury hotel). CARP should have prevented this development because 73% of Samal is devoted to farming but the site was declared a special economic zone. *Id.* As a result, “what was supposed to be a source of pride and everyday sustenance for former tenant farmers has now become yet another prime example of how CARP’s noble intentions have been subverted by its presumed champion: the government.” *Id.*

125. See Labita, *supra* note 122.

126. See *id.*; see also Pabico, *supra* note 124 (illustrating the discrepancy between what Ekran offered to pay for the entire 705 hectares, 10.8 million Philippine peso = \$263, 400, and what the government offered to pay the farmers, 47 million Philippine peso = \$1.1 million). The government justifies this gap in the value of the sublease by noting that Ekran has poured 1.3 billion Philippine pesos of investment into the project in terms of the resort infrastructure. *Id.*

127. See Labita, *supra* note 122.

128. See RA 6657, *supra* note 71, §8 (allowing such agreements to continue under a new contract between the government or qualified beneficiaries and said enterprises).

129. See *id.*

130. See *id.* (providing an exception to actual land distribution of private agricultural lands leased by multinational corporations and agribusinesses).

131. See *id.*

132. See *id.*

from the land.¹³³ Multinational corporations, like Dole and Del Monte, were encouraged to take this direction on their lease of the government-owned lands.¹³⁴ While CARP aimed to increase the rental fees paid by these corporations and redirect rental income to the workers, it was also designed to reassure the corporations that “they had a future in the country.”¹³⁵ CARP has no limit on the amount of lands that a foreign or domestic agribusiness corporation could lease from Filipino landowners.¹³⁶

Soon after the passage of CARP, farmers in Bukidnon launched a campaign to “Stop the Expansion and Exploitation by Del Monte” (SEED).¹³⁷ The controversy made national headlines when farmers stood in front of Del Monte bulldozers that were attempting to plough ninety-three hectares of land as part of an expansion plan for the corporation’s huge pineapple operations in the province.¹³⁸ Protesters alleged that Del Monte officials had stated in 1984 that the company would not expand beyond its present five-hundred hectare holding, and further charged that the new expansion drive was an attempt to circumvent agrarian reform.¹³⁹ By evicting the tenants who cultivate the land in order to plant more pineapples, the land could be exempted from CARP coverage through the ten year deferment provision for commercial crops.¹⁴⁰ As the landowners and agribusiness corporations sought to delay the implementation of CARP, they used its provisions on corporate stock-sharing, commercial crop exemptions, and lease-back arrangements to their own advantage.¹⁴¹

133. See PUTZEL, *supra* note 13, at 338.

134. See *id.* (observing that multinational corporations have long enjoyed a favored status in Philippine agriculture and were able to lease lands from the government at nominal rates).

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. See *id.*

140. See *id.* at 338-339; see also RA 6657, *supra* note 71, §11 (providing that commercial farms devoted to salt beds, fruit farms, orchards, vegetable and cut-flower farms, and cacao, coffee and rubber plantations are subject to acquisition and distribution ten years after RA 6657 takes effect).

141. See PUTZEL, *supra* note 13, at 328 (noting that the conservative approach alliance within the government was also a reflection of the dominant position of landowning families and corporations in a society where the concentration of control over agricultural land were in the hands of a small portion of the population). *But see* Marie A. Surbano, *Biggest Banana Plantation Being Eyed For CARP*, BUS. DAILY, Feb. 13, 1998 available in 1998 WL 5444167 (reporting DAR’s plan to include under CARP a 5,102 hectare property, owned by the Davao Penal Colony and leased to the country’s biggest banana producer, for redistribution to some 567 tillers). But DAR acknowledges that subjecting the property to land reform would be inconsistent with presidential proclamations issued by the late President Marcos which mandated the exclusive use of the property by the Davao Penal Colony. *Id.*

C. Adjudication

Finally, CARP creates an adjudication body that will resolve agrarian disputes.¹⁴² Agrarian dispute refers to “any controversy relating to tenurial arrangements . . . over lands devoted to agriculture” which can include negotiation by the farmworkers’ association or representative to maintain or change the terms or conditions of the tenurial arrangements.¹⁴³ The Department of Agrarian Reform (DAR) is vested with primary jurisdiction to adjudicate reform matters.¹⁴⁴ DAR has “original, exclusive jurisdiction over agrarian disputes, except on the aspects of (a) just compensation; and (b) criminal jurisdiction over which regular courts have jurisdiction.”¹⁴⁵ Executive Order No. 129-A created the Department of Agrarian Reform Adjudication Board (DARAB) as a means of implementing DAR’s quasi-judicial power.¹⁴⁶ However, a Special Agrarian Court is designated in each province and is given the special jurisdiction of determining just compensation to landowners and prosecution of criminal offenses under RA 6657.¹⁴⁷

CARP also mandates DAR to decide disputes in a most expeditious manner by adopting a uniform rule of procedure and by not being bound by technical rules of procedure and evidence.¹⁴⁸ DARAB cannot hear a case unless there is a certification from the Barangay Agrarian Committee (BARC) of the town where the land in dispute is located.¹⁴⁹ The certification must state that the dispute was submitted to BARC for mediation without any success of settlement.¹⁵⁰ If there is no BARC in existence, then the Provincial Agrarian Reform Officer will conduct the mediation proceedings and issue the certification.¹⁵¹ However, lack of the required certification cannot be used as grounds for dismissal and the complainant is allowed every opportunity to secure the required certification.¹⁵² In the meantime, DARAB in

142. See Garilao, *supra* note 75.

143. See RA 6657, *supra* note 71, §3 (c) (specifying leasehold, tenancy, or stewardship as examples of tenurial arrangements).

144. See RA 6657, *supra* note 71, §50 (vesting DAR quasi-judicial power to determine and adjudicate agrarian reform matters).

145. See GERMAN, *supra* note 77, at 60 (1993) (citing the holding of *Vda. de Tagub v. Court of Appeals*, 191 SCRA 885).

146. See Executive Order No. 129-A §13, reprinted in NOLLEDO, *supra* note 26, at 660; see also GERMAN, *supra* note 77, at 63 (citing the ruling of *Dandoy v. Mirasol*, CA-G.R. No. 25317 to support DAR’s quasi-judicial power). DARAB is composed of six members who assumes the adjudication power but can delegate its powers and functions to the regional offices of DAR in accordance with the rules promulgated by DARAB. *Id.*

147. See RA 6657, *supra* note 71, §56.

148. See *id.*, *supra* note 71, §50.

149. See Department of Agrarian Reform Adjudication Board (DARAB) New Rules of Procedures, Rule III (1994), reprinted in NOLLEDO, *supra* note 26, at 1147,1151 [hereinafter DARAB New Rules of Procedures] (discussing the BARC certification requirement).

150. *Id.* at 1152 (stating that under rule III, section 4, BARC has a 30 day period to mediate, conciliate and settle agrarian disputes).

151. *Id.* at 1151 (Rule III, §1(b)).

152. *Id.* (Rule III, §1(c)).

appropriate cases, can resolve and dispose of preliminary motions incidental to the case, such as temporary restraining orders, preliminary injunctions, and other motions requiring immediate action.¹⁵³ Furthermore, DARAB provides exceptions to the certification requirement in cases where the issue involves determination of just compensation, where one party is a public or private business entity or a public officer or employee with the dispute relating to the performance of the person's official functions, where the matter merely involves the administrative implementation of agrarian reform law, rule, policy or guideline, and such other issues where the Secretary of Agrarian Reform may deem as beyond the reach of mediation, conciliation or compromise.¹⁵⁴ Any DAR decision may be brought to the Court of Appeals by certiorari, but the findings of DAR are final and conclusive if based on substantial evidence.¹⁵⁵ Subsequently, any DAR ruling is final fifteen days after receipt of a copy of the decision.¹⁵⁶

Given the highly contentious nature of distributing private agricultural holdings, legal disputes are expected to increase.¹⁵⁷ There are presently 12,000 cases pending in DAR.¹⁵⁸ DAR's goal is to deliver speedy agrarian justice and to resolve the twin issue of just compensation and illegal land conversion.¹⁵⁹

D. Present Status of RA 6657

On February 23, 1998, President Fidel Ramos signed a bill extending distribution of land under CARP to the year 2008, along with an increase in the sources of its financing.¹⁶⁰ Three presidencies later, CARP is still being implemented. The recently elected President Estrada has put countryside development as his administration's priority and has stated the twin goals of food security and poverty reduction.¹⁶¹ The administration's agrarian reform will address the plight of the rural poor and is seriously studying the possibility of completing

153. *Id.*

154. *Id.* (listing the exceptions under Rule III, §2 to the requirement of the BARC certification).

155. *See RA §54.*

156. *See id.*

157. *See* Horacio R. Morales, Jr., *Land Bank and DAR: A Partnership for Growth with Equity*, Department of Agrarian Reform Home Page (last visited January 4, 1999) <<http://www.skyinet.net/~depagref/hrm-lbp.htm>> (quoting from his own speech delivered during the National Planning Workshop of the Land Bank of the Philippines on November 21, 1998).

158. *See* Horacio R. Morales, Jr., *Estrada's Agrarian Reform Program: The New Conjuncture*, Department of Agrarian Reform Home Page (visited October 8, 1998) <http://www.skyinet.net/users/depagref/jee_arp.htm>.

159. *See id.*

160. *See* Republic Act No. 8532, (1998) (Phil.) "An Act Strengthening Further the Comprehensive Agrarian Reform Program, by Providing Augmentation Funds Therefor, Amending for the Purpose Section 63 of Republic Act No. 6657, Otherwise Known as the "...CARP Law of 1988," reprinted in Department of Agrarian Reform Home Page (last modified March 12, 1998) <<http://www.skyinet.net/~depagref/arfpassed.htm>>.

161. *See* Morales, *supra* note 157.

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land distribution in six years with the possibility of accomplishing the goal in four years.¹⁶²

In addition, the ten year deferment on commercial farms expired in 1998, making them subject to acquisition and distribution.¹⁶³ Under the recently signed Administrative Order No. 9, the farmer beneficiaries have the option of entering into collective farming schemes when distribution is nonviable in the case where "it is not economically feasible and sound to divide the land."¹⁶⁴ In order to maintain productivity, DAR encourages the continued involvement of the former owners in the operations of the commercial farms, in particular through a joint venture agribusiness arrangement between the former landowner and the cooperative of the farmer-beneficiaries.¹⁶⁵ A joint agreement is an example of an agribusiness venture where a company, co-owned by an investor and the agrarian reform beneficiaries through their cooperatives, is formed to administer the agreement.¹⁶⁶ The investor will provide the management and marketing skills, technology infrastructure, and capital, while the beneficiaries will provide the labor component and capital infusion, if available.¹⁶⁷ Furthermore, commercial farms may be acquired through voluntary offer to sell, compulsory acquisition, or direct payment scheme.¹⁶⁸ Among the three schemes, beneficiaries are encouraged to directly pay former landowners through a freely negotiated terms of payments.¹⁶⁹

162. See *id.*; see also *Palace Allows CARP Lands as Loan Collateral*, BUS. WORLD (PHIL.), Oct. 5, 1998, available in LEXIS, World Library, Allwld File (discussing the recently issued Executive Order No. 26 which mandated government and financial institutions to accept lands covered by a certificate of land ownership award (CLOA) as loan collateral). The goal is for CARP beneficiaries to become "more productive and independent entrepreneurs and to wean them from government subsidies." *Id.*

163. See RA 6657, *supra* note 71, §11 (providing for the ten year deferment of commercial farms from actual land distribution); see also *Year End Report: New Agrarian Reform Scheme Bodes Well After Relatively Slow Year*, BUSINESSWORLD (PHIL.), Jan. 5, 1999, available in LEXIS, World Library, Allwld File [hereinafter *Year End Report*] (noting that the deferment's purpose is to allow the commercial farms to recover their investments before distribution). Commercial farms in operation since June 15, 1988 count the deferment period as starting on that date and expiring on June 15, 1998. *Id.* For commercial farms established before June 15, 1988 but were not involved in commercial production and operation at the time, the deferment period began after the crops have been harvested. *Id.*

164. See *Gov't Sets Acquisition of Commercial Farms Beginning January Next Year*, BUSINESSWORLD (PHIL.), Dec. 28, 1998, available in LEXIS, World Library, Allwld File [hereinafter *Gov't Sets Acquisition of Commercial Farms*] (discussing some of the provisions under Administrative Order No. 09).

165. See *id.* (listing lease arrangement, contract growing or grower agreement, management contract and build to operate scheme as among the available agribusiness venture arrangements); see also *Year End Report*, *supra* note 163.

166. See *Gov't Sets Acquisition of Commercial Farms*, *supra* note 164 (stating that a planned agribusiness venture agreement must be submitted to DAR within five days after its signing and is effective upon receipt unless DAR disapprove within 30 days). See *DAR Sets Talks With Farmers, Owners of Commercial Farms*, BUSINESSWORLD (PHIL.), Jan. 5, 1999, available in LEXIS, World Library, Allwld File (discussing the consultation process to enable a smooth distribution of commercial farms).

167. See *Gov't Sets Acquisition of Commercial Farms*, *supra* note 164; see also *Year End Report*, *supra* note 163.

168. See *Gov't Sets Acquisition of Commercial Farms*, *supra* note 164; see also *Year End Report*, *supra* note 163.

169. See *Year End Report*, *supra* note 163.

In order to safeguard the beneficiaries, both the beneficiaries and the former landowner must sign a memorandum of agreement outlining the payment terms, which would then be reviewed by DAR before a direct payment scheme becomes effective.¹⁷⁰ Such joint venture schemes will hopefully reduce, if not eliminate, the adversarial relationship between the beneficiaries and the landowners.¹⁷¹ Furthermore, the government will be able to save financial resources because the scheme eliminates the required down payment to the landowner under the compulsory acquisition or voluntary offer to sell transaction.¹⁷² However, there is the concern that the farmer-beneficiaries have not reached a level of business sophistication that will enable them to earn more than their basic income requirement and derive profits to pay the landowner.¹⁷³ In addition, a direct payment scheme entails a "matter of leverage" where the government may not be able to intervene when landowners, having a superior bargaining power, value the land at a much higher price.¹⁷⁴ One suggestion is to allow the Land Bank to retain its role of issuing the down payment to the landowners while the payment balance can be negotiated between the beneficiaries and the landowner.¹⁷⁵

Present DAR Secretary Morales¹⁷⁶ acknowledges that although CARP is halfway through its mark, it has "had little impact on the rural landscape" because most of the lands distributed are public lands.¹⁷⁷ As of December 1998, the government has distributed roughly sixty percent of the program's scope.¹⁷⁸ Observers often note this next phase of CARP as the most contentious, yet the most important part of the program because it "involves private agricultural estates in areas where poverty is often more severe."¹⁷⁹ A World Bank report has recommended the use of a market-based approach in distributing private

170. See *id.* (citing the joint venture scheme forged between businessman Eduardo Cojuangco and the beneficiaries of his 4,3000 hectare property as an example). The beneficiaries, through their cooperative, will establish a joint venture firm through which Mr. Cojuangco will provide capital for the farm operations. *Id.* The farmers are also given access to the use of existing farm facilities, equipment, and technical expertise. *Id.*

171. See *id.*

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

176. See Antonio Lopez, *Watch Out, Landowners: An Ex-Communist is Taking on Agrarian Reform*, ASIAWEEK (PHIL.), July 17, 1998, available in LEXIS, World Library, Allwld File (reporting the appointment of Horacio "Boy" Morales, Jr. as the new secretary of the DAR).

177. See Morales, *supra* note 157.

178. See *Philippine Land Reform Posts Lower Result in 1998*, ASIA PULSE, Dec. 29, 1998, available in LEXIS, World Library, Allwld File (discussing the reasons for the slow distribution, such as the resistance of landowners, the lack of technical documents, and illegal conversions). See generally *Year End Report*, *supra* note 163 (stating that from January to November, DAR has distributed only 98,545 hectares which is 49 % of its set target of 201,594 hectares for the whole year). Government programs were delayed due to the presidential elections and the government transition. *Id.* For 1999, DAR is projecting distribution of 175,000 hectares, 90 % of which comprises private agricultural lands and the remaining consisting of commercial farms. *Id.*

179. See Morales, *supra* note 157 (noting that coconut and sugar lands, commercial farms, and private estates below 24 hectares are now the priorities of land acquisition and distribution).

agricultural lands to expedite the process and “pave the way for an increase in private investments.”¹⁸⁰ However, some parties have expressed concern in adopting the market-based approach in the distribution of agricultural lands below twenty-four hectares.¹⁸¹ The primary concern is that very little land will be available for redistribution, particularly in a country where “land is an important source of power, prestige and privilege.”¹⁸² This is because a land reform program based on a “willing buyer-willing seller” is only effective when there are very strong political wills such as in China, Japan, Taiwan and South Korea.¹⁸³ In addition, a market based approach would probably be more costly for the government in terms of actual disbursements.¹⁸⁴ Rather, compulsory acquisition should be employed to expedite completion of CARP.¹⁸⁵

Distribution of private agricultural lands is also often hampered and delayed by landowners who “seek administrative, quasi-judicial, and judicial remedies to contest and prevent land acquisition, distribution, and valuation.”¹⁸⁶ Not only do landowners seek legal means to prevent land distribution, but some have resorted to illegal means to demonstrate their opposition to land reform. One striking example was the recent abduction of the daughter of DAR Secretary Morales’ daughter who was released with a warning: “If Morales continues to give valuable land to poor farmers, his family will pay the price.”¹⁸⁷ This incident demonstrated once again how far some landowners are willing to go to maintain the status quo of a “feudal society that puts power in the hands of the fortunate few and poverty in

180. See Romulo T. Luib, *World Bank Wants RP to Speed Up Transfer of Lands to Farmers*, BUSINESSWORLD (MANILA), Dec. 19, 1996 available in 1996 WL 14370845; see also *WB, Taiwan Institute Assisting in Philippine Land Reform*, ASIA PULSE, Feb. 10, 1999, available in LEXIS, World Library, Allwld File (discussing the interest and assistance by World Bank experts and Taiwan’s Land Reform Training Institute executives in the agrarian reform’s implementation, particularly in market-based land reform strategies).

181. See *US Scholar To WB: Market Based CARP Not Fit For RP*, BUSINESS DAILY, July 30, 1997 in 1997 WL 12007020 [hereinafter *US Scholar to WB*] (discussing Professor Riedinger’s reaction paper to the World Bank’s recent recommendation of a market-based approach); see also *PPI Resists Agricom Land Reform Proposal*, BUSINESS DAILY, July 16, 1997 in 1997 WL 12006767 [hereinafter *PPI Resists*] (voicing the Philippine Peasant Institute’s opposition to a market assisted land reform for private agricultural lands below 24 hectares).

182. See *US Scholar to WB*, *supra* note 181 (noting that the reference to the successful use of a market based approach in Columbia is out of context in the Philippines); see also *PPI Resists*, *supra* note 181 (arguing that lands will “only end up sold or leased to large agribusiness interests, or converted into non-agricultural development” if farmer organizations are to competitively bid and negotiate with landowners on their own).

183. See *US Scholar to WB*, *supra* note 181.

184. *Id.*; (stating that the administrative efficiency of the market based model in reducing government involvement in land acquisition and distribution is likely to be paralleled by the absence of land registration); see also *PPI Resists*, *supra* note 181.

185. See *US Scholar to WB*, *supra* note 181 (observing that the “most notable land reform programs have been compulsory, either in the exercise of the power of eminent domain by authoritarian or democratic governments or confiscation of property by revolutionary governments”).

186. Morales, *supra* note 157.

187. *Inside Story Philippines: Promised Land*, ASIAWEEK, Oct. 23, 1998, available in 1998 WL 21736059.

the hands of the unfortunate many."¹⁸⁸ Nevertheless, DAR is committed to completing CARP in the next six years.¹⁸⁹

IV. FOREIGN INVESTMENT

The country's economy experienced a downturn in late 1989 due to inflation, high interest rates and fiscal trade imbalances that disrupted both consumer and investment spending.¹⁹⁰ Foreign investment laws were generally restrictive, limiting foreign ownership to no more than 40 percent of capital stock.¹⁹¹ However in 1989, the government began reviewing its foreign investment policies and consequently, enacted a new legislation known as the Foreign Investments Act of 1991 (1991 FIA).

A. *Prior to Reform*

Ownership of land was limited to Filipinos or corporations that were sixty percent owned and controlled by Filipino citizens.¹⁹² As a result, foreign nationals could not wholly own or lease public agricultural lands, although one-hundred percent equity was allowed in certain seventy percent export pioneer enterprises and those enterprises already registered with the Export Processing Zone Authority.¹⁹³ Despite this constraint in ownership and leasing of land, foreign-owned agribusiness entities were still operating in the Philippines.¹⁹⁴ The government-owned National Development Corporation facilitated these investments by acquiring land and leasing it to foreign firms.¹⁹⁵ The foreign entities also managed to avoid the lease restrictions on public agricultural lands through growership

188. *Id.*

189. *See id.* (reporting Morales' response of "even killing me won't stop reform."); *see also* Morales, *supra* note 157 (stating that President Estrada is insistent on completing CARP at the soonest possible time to eliminate the uncertainties that have arisen over land use management). President Estrada recently signed Executive Order No. 26 allowing farmers to offer their Certificates of Land Ownership Award as collateral to loans with the hope that farmers will be able to get better access to credit. *Id.*

190. *See Philippines: Economic Policy & Trade Practices*, MARKET REPORTS, Feb. 1991, available in LEXIS, Asiapc Library, Phil File (discussing the country's economic policy and trade practices). Per capita income in 1989 was \$740 and a mere three percent GNP growth was predicted for 1990. *Id.*

191. *Id.* (describing the general barriers to foreign investment).

192. *See* Jamie P. Horsley, *Philippines Enact a New Investment Code*, 13 E. ASIAN EXEC. REP. 79, July 1991, available in LEXIS, World Library, Allwld File; *see also* David G. Scalise & Patricia J. de Guzman, *Foreign Investment in the Philippines*, 29 GEO. WASH. J. INT'L L. & ECON. 145, 162 (1995).

193. *See* Horsley, *supra* note 192 (stating the two conditions were foreigners can invest without prior approval).

194. *See* Scalise & de Guzman, *supra* note 192, at 163.

195. *See id.* at 163 n.189 (explaining that the National Development Corporation is a government holding company responsible for administering the shares of state-owned businesses).

contracts with landowners, which were later modified to permit the foreign entities to cultivate land directly.¹⁹⁶

B. Reform and the Foreign Investments Act of 1991

The enactment of the 1991 FIA liberalized both entry rules and the previously restrictive and bureaucratic regulations on foreign investment.¹⁹⁷ Foreigners can now invest up to one-hundred percent of capital in an enterprise not covered by a negative list simply by registering with the Securities Exchange Commission.¹⁹⁸ The law clarified the limitations to foreign investments through the Negative List,¹⁹⁹ that explicitly delineates economic activities closed to unrestricted foreign investment.²⁰⁰ Further amendments to the 1991 FIA lengthened the land lease agreements by twenty-five years, permitting a possible one-time extension of twenty-five years to an initial fifty year lease.²⁰¹ The law also provided that natural-born Filipinos, who lost their citizenship, could become transferees of up to three hectares of private lands in rural areas.²⁰²

The law's provisions reflect the government's growing tolerance toward foreign investment and its expanding commitment to make the Philippines a more attractive locality for foreign investors.²⁰³ Foreign investment is necessary in order for the Philippines to provide jobs for its growing population, reduce its debt burden, and remain competitive with its Asian neighbors for foreign capital.²⁰⁴ According to the 1991 FIA, it is state policy "to attract, promote, and welcome productive investments . . . in activities which significantly contribute to national

196. See *id.* at 163.

197. See Republic Act No. 7042 §8, (1991) (PHIL.) reprinted in Chan Robles & Associates Home Page (visited Oct. 7, 1998) <<http://www.chanrobles.com/default8fia91.htm>> [hereinafter RA 7042].

198. See Horsley, *supra* note 192.

199. See RA 7042 §8, reprinted in Chan Robles & Associates Home Page <<http://www.chanrobles.com/default8fia91.htm>> (containing two lists: List A enumerates the economic areas reserved to Philippine nationals only as mandated by the Constitution while List B contain the economic areas regulated pursuant to law).

200. See John F. Pierce, *Philippine Foreign Investment Efforts: The Foreign Investments Act and The Local Government Code*, 1 PAC. RIM. L. & POL'Y J. 169, 183 (reasoning that the government aimed to reduce "bureaucratic discretion in approving investment applications," delays, and costs by making the restrictions on foreign investment explicit and specific).

201. See RA 7042, *supra* note 197, §5; see generally Anne Phelan, *Philippines: New Amendments to Foreign Investment Law Passed*, E.ASIAN EXECUTIVE REP. Mar. 15, 1996, available in LEXIS, Asiapc Library, Easian File (discussing the amendment provisions).

202. See Republic Act No. 8179 §5 (1996) (Phil.), reprinted in Chan Robles & Associates Home Page (visited Oct. 7, 1998) <<http://www.chanrobles.com/default2.htm>> [hereinafter RA 8179] (inserting a new section, designated as section 10 to RA 7042). See generally Phelan, *supra* note 152.

203. See Horsley, *supra* note 192 (noting that section 2 of the Act encourages, but does not mandate, as a matter of policy, measures that will gradually increase Filipino participation in the business). Earlier drafts of the bill contained a divestment requirement of foreign majority control within specified periods; but the fact that the final version did not contain the divestment provision indicates a rising tolerance toward foreign investment. *Id.*

204. See *id.*

industrialization and socioeconomic development."²⁰⁵ However, this goal appears to be in conflict with the nation's policy of land distribution to small farmers.

V. CONFLICT BETWEEN LAND DISTRIBUTION TO AGRARIAN REFORM
BENEFICIARIES AND LAND DEVELOPMENT BY LANDOWNERS,
INDUSTRIAL AND REAL ESTATE DEVELOPERS

As landowners and land developers try to evade CARP's coverage of their property, illegal conversion has now become rampant and in effect, has become an obstacle to CARP's implementation.²⁰⁶ Illegal conversion is defined as the "change or shift of the use of the land from agricultural to non agricultural purposes without the clearance of DAR."²⁰⁷ The following section articulates the rules and procedures governing land use conversion and cites case examples to illustrate the ongoing problem in the context of land conversion.

A. *Land Use Conversion*

Under the Administrative Order No. 7, Series of 1997, the guiding principle on land use conversion is to preserve prime agricultural lands for food production while at the same time recognizing the need of other sectors, such as housing, industry, and commerce.²⁰⁸ DAR is vested with the exclusive authority to approve or disapprove applications for conversion of agricultural lands to residential, commercial, industrial, and other uses.²⁰⁹ However certain areas are non-negotiable for conversions, such as all irrigated lands delineated by the Department of Agriculture (DA) or the National Irrigation Authority (NIA).²¹⁰ This is critical

205. RA 7042, *supra* note 197, §2 (declaring the law's objective to liberalize foreign investments).

206. See Joint Administrative Order No. 04, Series of 1993, *reprinted in* NOLLEDO, *supra* note 26, at 1025 [hereinafter Joint AO No. 04, 1993] (creating a national and a provincial task force to investigate and monitor illegal conversion cases as a response to the continued unauthorized conversions). Duties and responsibilities include, but are not limited to, investigating and monitoring all ongoing development and conversion projects and recommending and filing criminal cases against landowners and developers for illegal conversion. *Id.*

207. Administrative Order No. 02, Series of 1994, *reprinted in* NOLLEDO, *supra* note 26, at 1104; *see also* Joint AO No. 04, 1993, *supra* note 206 (defining illegal conversion as the "act of changing the current use of agricultural land into non-agricultural uses, without the required order of conversion from DAR"). *See generally* Department of Justice Opinion No. 60, Series of 1993, *reprinted in* NOLLEDO, *supra* note 26, at 1070 (stating that the subsequent approval by DAR of the conversion of an agricultural estate to non agricultural uses does not extinguish the criminal liability incurred for premature land use conversion).

208. *Administrative Order No. 07, Series of 1997*, Department of Agrarian Reform Home Page (visited Oct. 8, 1998) <<http://www.dar.gov.ph/A007-97.html>> [hereinafter AO No. 07, 1997].

209. *See id.* (listing the legal mandates from which DAR's authority regarding land conversions originate); *see also* Executive Order 129-A §4 (j), §5 (l), *reprinted in* NOLLEDO, *supra* note 26, at 660 (listing the responsibilities, powers and functions of DAR); *see also* RA 6657, *supra* note 71, §65 (providing that DAR, upon application of the landowner or the beneficiary, may authorize the reclassification or conversion of the land when the land "ceases to be economically feasible and sound for agricultural purposes," or the area has become urbanized that land will have a greater economic value for residential, commercial or industrial purposes).

210. *See* AO No. 07, 1997, *supra* note 208.

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because reports of unabated illegal conversion of irrigated rice lands results in the displacement of many beneficiaries under CARP.²¹¹

President Estrada has recently announced a suspension of all land conversion projects and a moratorium on land conversion applications after receiving reports that the land deals have become an illegal source of money for local government officials.²¹² Not surprisingly, landowner groups have criticized the President's order, arguing that the suspension violates their property rights under the Constitution.²¹³ The landowners propose that the President "crack down on erring local officials" instead of ordering a suspension of land conversions.²¹⁴

1. Application and Requirements for Conversions

Among those eligible to apply for conversions are owners of private agricultural lands, farmer beneficiaries under CARP (after five years from award and full payment of their obligation), and government agencies.²¹⁵ In order to have the conversion application granted, evidence must be shown that the project to be established is viable and beneficial to the community.²¹⁶ Conversion is granted if the agricultural lands are classified as non-agricultural by the local government unit (LGU) and approved by the Housing and Land Use Regulatory Board (HLURB) prior to June 15, 1988.²¹⁷ Likewise, conversion is allowed if at the time of application, the lands are reclassified as non agricultural in the new or revised town plans adopted by the LGU and approved by HLURB or by the Sangguniang

211. See Interview with Senator Gregorio Honasan, Chairman of the Senate Committee on Agrarian Reform, Department of Agrarian Reform, (visited January 4, 1999) <<http://www.skyinet.net/~depagref/gringo.htm>> (discussing the proposed Senate Bill 1332 which would prohibit conversion of lands with existing irrigation facilities or whose irrigation facilities may be rehabilitated and those land having a funding commitment for an irrigation facility).

212. See Martin P. Marfil, *Massive Corruption: Erap Stops Land Conversions*, PHILIPPINE DAILY INQUIRER, January 4, 1999, Philippine Daily Inquirer Home Page, (visited February 4, 1999) <http://www.inquirer.net/issues/jan99/jan04/news_13.htm> (quoting President Estrada as saying that "land conversion is big money.").

213. See *Landowners Slam Conversion Suspension*, BUSINESSWORLD (PHIL.) Jan. 5, 1999, available in LEXIS, World Library, Allwld File (discussing the reaction of landowners to the planned issuance of a formal order to suspend all land conversion projects). In an interview, former Supreme Court justice Fernando Santiago, also the president of the Solidarity of Landowners, Inc., stated that the President's order raises both "constitutional complications" and issues under RA 6657, *supra* note 71, §65 which allows conversion of non-viable agricultural land into industrial use. *Id.*

214. See *id.* (noting that a formal executive order on suspension has yet to be issued).

215. See AO No. 07, 1997, *supra* note 208.

216. See *id.*, (listing that proof of financial and organizational capability to develop land, such as a profile of the developer, including details of past or present projects or financial statements certified by a public accountant, as one of the documentary requirements in an application for land conversion).

217. See Administrative Order No. 06, Series of 1994, reprinted in NOLLEDO, *supra* note 26, at 1144 [hereinafter AO No. 06, 1994] (providing the guidelines for the issuance of exemption clearances based on section 3 (c) of RA 6657 and the Department of Justice Opinion No. 44 Series of 1990).

Panlalawiga (SP) pursuant to Section 20 of RA 7160,²¹⁸ as implemented by Memorandum Circular No. 54 and Executive Order No. 72.²¹⁹ If the city or municipality does not have a comprehensive development or land use plan or a zoning ordinance that is duly approved by the HLURB or SP, DAR may look at the prevalent use of the areas surrounding the land in question in deciding denial or approval of the application.²²⁰ Conversion may be granted if the use is no longer agricultural or if the proposed use is similar to or compatible with the predominant use of the surrounding areas as determined by DAR.²²¹

In all cases, identified farmers or prospective beneficiaries of CARP that are affected by the land conversion to non-agricultural use are entitled to disturbance compensation.²²² Disturbance compensation is a relocation fee which may come in the form of a settlement package that may include land and employment offers for the vacating farmers.²²³ Owners and developers of land are encouraged to provide capital to enable the farmers to shift to another livelihood, skills training, and relocation sites.²²⁴

As of 1997, DAR has approved a total of 1,749 conversion applications covering 21,105 hectares. DAR notes that these lands now serve as alternative areas for industrial expansions.²²⁵ The industrialization program of the Ramos administration had defended the conversion of agricultural lands into non-agricultural uses as a means to attract foreign investment.²²⁶ As a result, available

218. See Administrative Order No. 20, Interim Guidelines on Agricultural Land Use Conversions, *reprinted in* NOLLEDO, *supra* note 26, at 1065 (referring to RA 7160 as the Local Government Code of 1992). Section 20 (a) of RA 7160 empowers local governmental units to reclassify agricultural lands in cases where the land ceases to be economically feasible and sound for agricultural purposes as determined by DAR and where the land will be substantially of greater economic value if used for residential, commercial or industrial purposes as determined by the sanggunian. *Id.* Moreover, section 20 (c) also mandates that the requirements for food production and industrial expansion be taken into consideration in designing plans for future use of land resource. *Id.*

219. See AO No. 07, 1997, *supra* note 208 (providing the general criteria to serve as the basis for the approval of applications for conversion).

220. *Id.*

221. *Id.*

222. See *id.*, see also Argee Guevarra, *Fast Forward: Field of Dreams*, BUSINESSWORLD (PHILIPPINES), Oct. 14, 1998, available in LEXIS, World Library, Allwld File (opining that farmers, either as landowners or mere tillers, are "caught in an unviable bind trying to choose whether to serve as food producers or to act as real estate agents). A land dispute between Fil-Estate Properties Inc., a real estate development firm, and a band of squatters was resolved with Fil-Estate paying 7 million Philippine peso in disturbance fees to the family occupying a portion of a property intended to be developed into a residential and golf club community. *Id.* However, another group of settlers from the other side of the estate has interpreted Fil-Estate's gesture as go-signal to demand a sum of 400 million Philippine peso from the company for them to vacate the land. *Id.*

223. See Guevarra, *supra* note 222 (noting the potential problem of extortion by the farmers by demanding large sums of money in exchange for vacating the land).

224. See AO No. 07, 1997, *supra* note 208.

225. See *New Administration Plans Review of Conversion Bids*, BUSINESSWORLD (PHIL.), June 9, 1998, available in LEXIS, World Library, Allwld File.

226. See *id.* (referring to the announcement of the incoming DAR administration to study unapproved conversion plans which observers note could slow down real estate development). During the Ramos administration land conversion application increased from 419 in 1990 to 1,209 in 1993. *Id.*; see also Ramon Isberto, *Asia-*

land for distribution under CARP has decreased. This situation has now given rise to a controversy between the farmers and workers' interests as beneficiaries of CARP and the government's industrialization efforts that favor big landowners and industrial and real estate development.²²⁷

2. Conversion of Agricultural Land to Non-agricultural Use Prior to CARP

In the absence of reliable land registration and classification system,²²⁸ CARP is further open to potential abuses as landowners alter their landownership records in an effort to avoid CARP.²²⁹ The controversial issue of conversion of agricultural land to non-agricultural use first emerged in 1990 when then DAR Secretary Florencio Abad attempted to block conversion of the 232 hectare government-owned Langkaan estate to non-agricultural use.²³⁰ The government's National Development Corporation (NDC) had leased this prime agricultural land to a Japanese corporation in a joint venture to develop an industrial estate on the land.²³¹ Back in 1980, HLURB reclassified the property as industrial.²³² During this controversy, Trade and Industry Secretary Jose Concepcion and Justice Secretary Franklin Drilon strongly supported the conversion.²³³ Accordingly, Drilon concluded in a later legal opinion that DAR had no jurisdiction over approved land conversions that predates the reform law²³⁴ because DAR's authority commenced

Development: Is Land Reform Passe?, INTER PRESS SERVICE, Nov. 29, 1993 available in 1993 WL 2532748 (discussing the views by some economists who agree that land reform is now a minority vision and no longer crucial to development); see also *Philippines: Poverty in the Philippines*, ECONOMIST, May 21, 1994, available in LEXIS, Asiapc Library, Phil file (noting that land reform is decreasingly relevant because the common view that the Philippines is still divided into a few huge estates, owned by an elite, is misleading). Although such estates do still exist, the typical landholdings are now small with an average of two hectares. *Id.* The key is to raise productivity rather than just redistributing scarce resources and industrialization must play a large role in remedying rural poverty. *Id.* But see John Madeley, *Land Reform Returning to Favour for Fighting Hunger*, FIN. TIMES (LON.), Dec. 28, 1995, available in LEXIS, World Library, Allwld File (discussing the importance of land reform to ensure food security in the face of mounting land scarcity and rural unemployment).

227. See de Leon, *supra* note 7.

228. See Tim Hanstad, *Designing Land Registration Systems for Developing Countries*, 13 AM. U. INT'L. REV. 647 (1998) for a general discussion on land registration systems from the perspective of a developing country, such as when a land registration should be created, what type of system is preferable, and how to establish and maintain such a system.

229. See RIEDINGER, *supra* note 1, at 181.

230. See *id.*

231. See *id.*

232. See *id.*

233. See *id.*

234. See *id.* at 181, 300 n.14 (noting that Drilon's argument misconstrued the plain meaning of key passages of several enactments, such as Section 5 (I) of Executive Order 129-A, which provides DAR the "exclusive authority to approve or disprove conversions of agricultural lands for residential, commercial, industrial and other uses as may be provided by law.") Drilon interpreted "as may be provided by law" as a modification of DAR's "exclusive authority." *Id.* Although conceding that under several prior laws, DAR had similar authority, he argued that this authority is not exclusive and that the earlier enactments merely affirmed whatever prior authority DAR had. *Id.* However, he failed to identify either the "original source of DAR's authority or the explicit abrogation of

when CARP became effective.²³⁵ Therefore lands already reclassified as non-agricultural prior to the effective date of RA 6657 in June 15, 1988 are no longer subject to agrarian reform.²³⁶ Despite the "shortcomings and tortured logic of Drilon's opinion," it has become dispositive on land conversion issues during the Aquino and Ramos administrations.²³⁷

B. Present Case Examples

The following section illustrates the inconsistent interpretation and application of the guidelines in a land use conversion situation. The inconsistency ensues from the competing interests of maintaining food security on the one hand and economic development on the other.

1. In Favor of Industrial and Real Estate Development

The Bukidnon land dispute is one of the most prominent cases involving the struggle between landowners and farmer-beneficiaries. When the 144-hectare land, owned by the Quisimbing family, was placed under CARP, the landowner appealed its case to DARAB and also requested a reclassification of land use after an approval was secured from the local municipal council.²³⁸ Although DARAB upheld the landowner's argument, the DAR central office overruled DARAB.²³⁹ Subsequently, in 1996, DAR Executive Secretary Torres overruled the DAR central office basing his decision on the resolution of the municipal council.²⁴⁰ Torres'

that authority." *Id.*

235. *See id.* at 300 n.13.

236. *See* AO No. 06, 1994, *supra* note 217. *See generally* Gov't Ruling Exempts Hacienda Looc from CARP, BUSINESS DAILY, July 22, 1997, available in 1997 WL 12006794 (discussing the ongoing controversy between the real estate developers and alleged farmer-beneficiaries regarding the development of the 8,650 hectare estate into a tourism zone). The farmers have accused Fil-Estate of "landgrabbing," reasoning that DAR issued 25 collective Certificate of Land Ownership Awards to 1,478 farmer-beneficiaries for a total land area of 3,981 hectares. *Id.* Fil-Estate has responded that the land was reclassified as non-agricultural prior to CARP, which make the lands no longer subject to agrarian reform. *Id.* In addition, the land has not been agriculturally developed and that two presidential proclamations issued in the 1970s have clearly exempted the disputed land from CARP. *Id.*

237. *See* RIEDINGER, *supra* note 1, at 181; *see also* PUTZEL, *supra* note 13, at 326-327 (describing the ongoing political debate at the time of the controversy which eventually led to Abad's resignation as DAR secretary). Abad's resignation signaled the victory of the conservatives over the liberals within the government. *Id.*; *see generally* AO 06, 1994, *supra* note 217 (reiterating that lands already classified as non agricultural before June 15, 1988 no longer need any conversion clearance). However, lands awarded to farmer beneficiaries under PD 27 prior to June 15, 1988 cannot be divested by reclassifying the land to non-agricultural uses. *Id.*

238. *See* *Barangay Heads in Sumilao Contest Farmer's Claim to Disputed Land*, BUSINESSWORLD (PHIL.), June 8, 1998, available in LEXIS, World Library, Allwld File [hereinafter *Barangay Heads Contest Land Claim*]; *see also* AO No. 07, 1997, *supra* note 208 (stating that Lands reclassified as non-agricultural in the new town plans promulgated by the local government unit and approved by the HLURB, are permitted conversions at the time of application).

239. *See* *Barangay Heads Contest Land Claim*, *supra* note 238.

240. *See id.*

decision authorized 144 hectares of land originally owned by the Qusimbing family to be converted into an agro-industrial estate instead of being distributed to the farmer-beneficiaries under CARP.²⁴¹

A year after the decision, armed men evicted the farmers.²⁴² As a result, some fifteen farmers from Bukidnon staged a hunger strike in front of the DAR's office protesting on behalf of the 137 farmer-beneficiaries.²⁴³ The farmers also appealed to then President Ramos who issued a compromise mandating that one-hundred hectares be given to the farmers and forty-four hectares to the landowner.²⁴⁴ However, in April 1998, the Supreme Court ruled in favor of the landowners on procedural grounds, noting that the appeal to the President exceeded the 15-day time limitation to hear a motion for reconsideration of the ruling by the DAR Executive Secretary.²⁴⁵ The farmers returned once again to protest and the Office of the Solicitor-General (OSG), on DAR's behalf, filed a motion for reconsideration with the Supreme Court appealing its ruling.²⁴⁶ Although the recently elected President Estrada pledged his assistance to the farmers, he subsequently declared that there was nothing the Palace could do since the case was already with the Supreme Court.²⁴⁷ The disappointed farmers returned to their hometown and the OSG motion remains pending.²⁴⁸ This situation illustrates the continuing uncertainty faced by existing and potential agrarian reform beneficiaries because it appears that CARP provides no guarantee of land ownership security, thus exacerbating the continuing tension between the landed and the landless.

2. Limits on Industrial and Real Estate Development

Recently, DAR has vigorously pursued strict enforcement of CARP, particularly against illegal and premature conversion of agricultural land to other uses.²⁴⁹ Although DAR acknowledges that illegal land reclassification is difficult

241. *See id.*

242. *See id.*

243. *See id.* (accounting the personal plight of one of the Sumilao farmers), *see also* Arnold S. Tenorio, *A Question of the Law over the Land*, BUS. WORLD (MANILA), Oct. 17, 1997, available in LEXIS, World Library, Allwld File.

244. *See Barangay Heads Contest Land Claim*, *supra* note 238; *see also* Leotes Marie T. Lugo, *FVR Wants Torres Case Investigated*, BUSINESSWORLD (MANILA), Oct. 17, 1997 (discussing President Ramos' order to create a fact-finding body to prepare a report reviewing the proper land use of the disputed Qusimbing land estate and exploring the status of the prospective agrarian reform beneficiaries).

245. *See Barangay Heads Contest Land Claim*, *supra* note 238; *see also* RA 6657, *supra* note 71, §54 (providing that any DAR ruling is final fifteen days after receipt of a copy of the decision).

246. *See Year End Report*, *supra* note 163 (relating the Bukidnon farmers' ordeal).

247. *See id.*

248. *See id.*

249. *See DAR Decision Puts Pryce Iloilo Facility in Limbo*, BUSINESSWORLD (PHIL.), Feb. 12, 1999, available in LEXIS, World Library, Allwld File (reporting that DAR regional director Dominador Andres has instructed his provincial directors to file one illegal conversion case in every province); *see also* *Illegal Land Reclassification Hard to Prove, DAR Official Admits*, BUSINESSWORLD (PHIL.), Sept. 18, 1998, available in LEXIS, World Library,

to prove, DAR nevertheless vows to penalize errant real estate developers by other means.²⁵⁰ This renewed effort has led to a constant emergence of land conversion issues in major development projects in Iloilo City, one of the country's major cities.²⁵¹ Because most of the remaining open spaces surrounding the city are irrigated agricultural lands, conversion of the lands to non-agricultural use is strictly prohibited under Administrative order No. 7.²⁵²

A prime example of an endangered development project is the liquified petroleum and industrial gas refilling facility owned by Pryce Gases, Inc.²⁵³ Although the facility was built inside the regional agro-industrial center, DAR denied the application for conversion of the area where the facility is located on the grounds of premature conversion.²⁵⁴ Pryce Gases constructed the plant facility before it filed for a conversion application.²⁵⁵ The lack of the conversion approval has placed the facility in jeopardy.²⁵⁶ Other projects in a similar situation include the postponement of the development of a housing subdivision by the real estate firm, Communities, Inc. of C&P Homes, due to the denial of the application for conversion on the ground that the land is serviced by an irrigation system.²⁵⁷ Likewise in another case, the application for a similar reclassification of the land into an upscale residential and golf and country club estate by the Armed Forces of the Philippines- Retirement and Separation Benefits System (AFP-RSBS) remains undecided because of the existing irrigation system in the area.²⁵⁸ Another factor contributing to the delay of the various development projects is the uncompleted city land use plan which many attribute to the ongoing reclassification of

Hard to Prove, DAR Official Admits, BUSINESSWORLD (PHIL.), Sept. 18, 1998, available in LEXIS, World Library, Allwld File (stating that Andres' instruction was to show that DAR "means business").

250. See *Illegal Land Reclassification Hard to Prove*, supra note 249 (citing as an example a situation where DAR erected a huge billboard on a subdivision property to indicate to the public that the land was illegally converted).

251. See *id.*; see also *DAR Decision Puts Pryce Iloilo Facility in Limbo*, supra note 249.

252. See *Illegal Land Reclassification Hard To Prove*, supra note 249 (noting that the already congested urban center is surrounded by agricultural lands that are in the service areas of two irrigation systems operated by the National Irrigation Administration); see also Eduardo L. Jalbuna, *Land Conversion a Major Policy Dilemma For Development Planners*, BUSINESSWORLD (MANILA), Oct. 6, 1997, available in LEXIS, World Library, Allwld File (stating that Administrative Order No. 20, which prohibits conversion of irrigated land to non-agricultural use, is now considered by real estate brokers as a major obstacle to the city's development).

253. See *DAR Decision Puts Pryce Iloilo Facility In Limbo*, supra note 249 (observing that a Japanese trading company, Marubeni Corp., recently acquired a 15% stake in the company). Moreover, Pryce Gas' investment is now over 300 million Philippine peso. *Id.*

254. See *id.*

255. See *id.*

256. See *id.* (noting the need for a completed city land use plan).

257. See *id.*; see also *Illegal Land Reclassification Hard To Prove*, supra note 249.

258. See *id.*; see also *Illegal Land Reclassification Hard To Prove*, supra note 249; see also Jalbuna, supra note 252 (discussing the proposed development and stating that the AFP-RSBS secured a certification that claims that the irrigation system in the area will be unable to provide enough water to support rice and other crop production). In addition, some of the area intended for development has already been classified for residential and commercial use. *Id.* Other real estate firms, such as Uniwide, Santa Lucia, Fil-Estate, SM Prime Holdings and Megaworld, are also venturing into property development in Iloilo. *Id.*

agricultural lands that is mandated by CARP.²⁵⁹ Thus, the proscription on the conversion of irrigated lands to non-agricultural use, which is necessary to advance the policy of food security, competes with the city's need for industrial and housing development.²⁶⁰

Another illustration of a project put on hold is the construction by a joint venture partnership between two real estate development corporations of a 1,219 hectare resort town in Batangas.²⁶¹ It is estimated that this project has displaced approximately 1,475 farmers who were tilling portions of the estate.²⁶² As a result, DAR is looking into the possibility of distributing six-hundred hectares of a 7,087 hectare area owned by the Manila Southcoast Development Corp (MSDC).²⁶³ Although DAR lifted its cease and desist order on the project, DAR contested that the disputed areas are agricultural in nature and must be distributed to the affected farmers.²⁶⁴ However, portions of the estate found to be unfit for agricultural production can be reclaimed.²⁶⁵ The remaining parcels which were not turned over to MSDC are still undergoing geographical surveys by DAR personnel for possible inclusion under CARP's coverage.²⁶⁶ MSDC is now seeking total conversion of the 7,087 hectare of land.²⁶⁷ However, MSDC may be facing a tough challenge because agrarian laws are to be liberally construed in favor of the farmer beneficiary.²⁶⁸ Anyone who wishes to contest the rights of the farmer to land given to him by the government in accordance with the agrarian law has the burden of proving that the farmer does not deserve the government grant.²⁶⁹

In summation, the stability and certainty of completion of already existing development projects are also not ensured under CARP.²⁷⁰ Land developers continue to be vulnerable to challenges and attacks from the displaced farmers and

259. See *id.* (noting the need for a completed land use plan in Iloilo City to avoid putting in limbo the ongoing development projects); see also *Illegal Land Reclassification Hard To Prove*, *supra* note 249.

260. See Jalbuna, *supra* note 252 (discussing the competing interests of food security and economic development).

261. See *DAR Wants More Lands Under Land Reform*, BUSINESSWORLD (PHIL.), Apr. 2, 1998, available in LEXIS, World Library, Allwld File.

262. See *id.*

263. See *id.*

264. See *id.*

265. See *id.* (noting that the regional agrarian reform adjudication board has permitted the reconveyance of some 2,402 hectares of the 7,807 hectare area to the asset privatization trust).

266. See *id.* (explaining DAR's position that while the whole Hacienda Looc is a tourism area fit for resort projects, DAR still has to address the claims of the affected farmers tilling portions of the estate).

267. See *id.* (reporting that MSDC's legal counsel has filed for the cancellation of the titles DAR issued to farmer-beneficiaries).

268. See GERMAN, *supra* note 77, at 93 (citing the rule of *Torres v. Ventura*, 187 SCRA 96, July 21, 1990).

269. See *id.*

270. See *Nueva Ecija Farmers Want Department of Agriculture to Reclassify Farm Land*, BUSINESSWORLD (PHIL.), Sept. 11, 1998, available in LEXIS, World Library, Allwld File (discussing the farmers' petition to certify that the property is agricultural in nature despite the fact that construction for a golf course has already begun). The developing company asserts that it obtained all the necessary permits from the government agencies before starting development activities. *Id.*

workers on the land which subsequently leads to the delay, postponement, and even complete cessation and abandonment of ongoing industrial and real estate development.

VI. CONCLUSION

Foreign investors seem to be receiving mixed signals from the Philippine government. Although the government repeatedly urges new investors to come to the Philippines, at the same time new laws and policies appear to contradict the invitation. One such example is the land reform legislation CARP, which aims to distribute agricultural land to the small farmers and prevent land concentration, co-existing with the country's liberalized foreign investment policies, which aims to promote industrialization. What the Philippine government must do is to clarify existing rules and regulations concerning land use and land conversions in order to avoid disputes that have the potential of encouraging domestic unrest and discouraging foreign investment particularly in industrial and real estate development. Foreign investors need to know that the lands they acquire for development will not be subjected to later disputes, while farmer-beneficiaries need to be secure that they still obtain the land they are entitled to under CARP.

