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The Practice of Public Interest Lawyering in the Phillipines

Legal Aid, Alternative Lawyering and Farmers' Land Issues

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法律出版社
www.lawpress.com.cn

法律门 Access To Law www.falvm.com.cn

图书在版编目(CIP)数据

菲律宾的公益法实践:法律援助、非传统法律服务及农民土地问题:汉英对照 / 杨睿,(菲)梅迪纳(Medina,C. P.)主编. —北京:法律出版社,2010.6
ISBN 978-7-5118-0676-5

Ⅰ.①菲… Ⅱ.①杨…②梅… Ⅲ.①法律援助—研究—菲律宾—汉、英 Ⅳ.①D934.16

中国版本图书馆 CIP 数据核字(2010)第 104736 号

菲律宾的公益法实践	杨睿 主编	责任编辑 田会文 钱小红 装帧设计 李 瞻

开本 A5　　**印张** 16.5　**字数** 424 千
版本 2010 年 7 月第 1 版　　**印次** 2010 年 7 月第 1 次印刷
出版 法律出版社　　**编辑统筹** 学术·对外出版分社
总发行 中国法律图书有限公司　　**经销** 新华书店
印刷 北京北苑印刷有限责任公司　　**责任印制** 陶 松

法律出版社/北京市丰台区莲花池西里 7 号(100073)
电子邮件/info@lawpress.com.cn　　销售热线/010-63939792/9779
网址/www.lawpress.com.cn　　咨询电话/010-63939796

中国法律图书有限公司/北京市丰台区莲花池西里 7 号(100073)
全国各地中法图分、子公司电话:
第一法律书店/010-63939781/9782　　西安分公司/029-85388843
重庆公司/023-65382816/2908　　上海公司/021-62071010/1636
北京分公司/010-62534456　　深圳公司/0755-83072995

书号:ISBN 978-7-5118-0676-5　　**定价**:40.00 元

感谢美国乔治·华盛顿大学法学院
感谢菲律宾阿特尼奥人权中心

With special thanks to
The George Washington University School of Law
Ateneo Human Rights Center (the Philippines)

序言　迈向正义的多条道路

杨　睿

一、本书缘起

本书是一次实地考察的结果，也是一个中国农村法治发展项目的成果。从2003年起，我所任职的机构，北京中律原咨询公司（以下简称“中律原”），开始关注中国农村法律问题，并持续赞助和支持一系列推动中国农村法治建设的项目，其中较为重要的有：农村法律援助学生志愿者项目[1]和农民权利法律诊所[2]项目。五年来，我们先后与国内五所知名法学院合作过，[3]参与其中的老师和学生一同深入农村社区，帮助当地农民解决具体的法律问题，其间有收获也有不足。我们一直在探讨如何改进项目活动、提高为农民服务的质量，同时也在反思中国的法律制度、司法环境和法学教育中存在的问题。

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〔1〕 农村法律援助学生志愿者项目始于2004年，意在利用法学院学生资源满足农村地区居民的法律需求。项目每年与2～3所法学院合作，每校选派36名研究生二年级学生作为志愿者分3批轮流在指定的乡镇居住3个月，一期共9个月，为当地农民提供法律咨询、普法宣传、代写法律文书以及诉讼支持等免费的法律服务。

〔2〕 农民权利法律诊所项目始于2005年，这是一门法学院的实务技巧课程，包括课堂教学和课外实践两部分，学生在学习过程中要下到农村社区探访农民，提供法律咨询并代理涉农案件。本项目旨在提高法学院学生律师技能技巧，同时培养其关注农村、农民以及社会公正问题的意识。

〔3〕 这五所法学院分别是：清华大学法学院、华中师范大学政法学院、西南政法大学、中南财经政法大学和西北政法大学。

当向内探索达到一定程度时,[4]向外学习就逐渐成为必须。我们开始计划考察其他国家在农村法律援助方面的制度和实践以及该国公益法[5]领域的整体情况。经过一番观察比较,我们选定了临国菲律宾作为考察对象,主要是基于以下考虑:

1. 菲律宾与中国同为亚洲国家,在地缘文化上具有相似性;

2. 菲律宾是以农业为主的发展中国家,在农村农民问题上更有借鉴意义;

3. 菲律宾的公益慈善事业发展很快,在国际上享有较高声誉;

4. 菲律宾当代政治法律体系建立于美国殖民统治时期,大量移植了美国法律,法律制度较为完善;

5. 目前中国法学界对菲律宾的研究很少,亟须通过考察全面了解其立法和司法的实际情况。

二、菲律宾考察杂感

2007 年 11 月,中律原组织国内共同开展农村项目的专家学者一行八人,前往菲律宾进行考察。在 11 天的时间里,我们马不停蹄地走访交流,先后奔赴马尼拉、奎松省(Province of Quezon)、西内格罗

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〔4〕 截至 2009 年,该项目已正式结集出版四本著作,即齐文远:《新农村建设中的法治建构》,湖北人民出版社 2007 年版;王晨光主编:《农村法制现状——来自清华学生的视角》,社会科学文献出版社 2006 年版;唐鸣:《农村法律和社会问题探究》,法律出版社 2008 年版;唐鸣、陈荣卓著:《农村法律服务:行动与表达》,法律出版社 2009 年版。

〔5〕 公益法(public interest law)这一概念产生于 20 世纪 50 ~ 60 年代的美国,是与当时美国的民权运动相伴而生的,目的在于寻求社会公正并力图使法律成为社会变革的工具。公益法不是一个单独的法律部门,而是指一系列关注公共利益和弱势群体利益的法律和行动。它们通过多样的、以法律为基础的、广泛参与的方式追寻公共利益,包括法律援助、公益诉讼、法律宣传、立法倡导、法律诊所、公民行动等活动,涉及环保、公民权利、消费者权利、妇女权利、农民权利等领域。详见 Public Interest Law Insititute: *Pursuing the Public Interest: A Handbook for Legal Professionals and Activitists*,下载地址:http://www.pili.org/index.php? option = com_content&view = article&id = 344:pursuing - the - public - interest&catid = 122:featured&Itemid = 53,徐卉:《通向社会正义之路:公益诉讼理论研究》,法律出版社 2009 年版。

(Bacolod, Negros Occidental)和八打雁(Batangas)四地,对各类法学院、政府机构、非政府组织[6](以下简称为NGO)和农民团体共17个机构进行考察和座谈。其简要行程如下:

	时间	考察机构	地点	机构类型
1	11月19日	1. 阿特尼奥大学(Ateneo University School of Law)	马尼拉	大学
2	11月20日	2. 阿特尼奥人权中心(Ateneo Human Rigths Center)	马尼拉	NGO
3	11月21日	3. 安塔尼奥法律服务中心 4. 菲律宾大学(University of the Philippines)法律援助办公室	马尼拉	法律诊所
4	11月22日	5. 凯撒汗－农村发展与农业改革团结会(KAISAHAN) 6. 萨利干－非传统法律服务中心(SALIGAN) 7. 非传统法律协会(Alternative Law Groups, ALG)	马尼拉	NGO
5	11月23日	8. 椰农组织及当地准律师(paralegal)	奎松省	农民组织
6	11月24日	9. 马哈拉农民维权机构(MAHALA) 10. 大马农工土改受益者协会(Dama Farm－Workers Agrarain Reform Denficiaries Association)	西内罗格	NGO、农民组织
7	11月25日	11. 蔗农合作社 12. 制糖工厂	西内罗格	农民组织、工厂

〔6〕 非政府组织,英文全称为Non－governmental Organization,学界亦常用"非营利组织"(Non－profit Organization,NPO)。两词意思相近,均指独立与政府和企业之外,不以营利为目的,旨在促进某一领域社会公益事业的发展,或者为特定弱势群体提供免费或低价服务的机构。

续表

	时间	考察机构	地点	机构类型
8	11月26日	13. 菲律宾公职律师办公室(Public Attorney's Office)	马尼拉	政府机构
9	11月27日	14. 稻农组织及当地准律师	八打雁	农民组织
10	11月28日	15. 菲律宾人权委员会(Commission on Human Rights of the Philippines) 16. 菲律宾农业改革部农业法律援助局(Department of Agrarian Reform, DAR)	马尼拉	政府机构
11	11月29日	17. 菲律宾律师协会及其法律援助委员会(Integrated Bar of the Philippines)	马尼拉	行业协会
12	11月30日	18. 自由活动(菲律宾民族英雄波尼菲首纪念日, Andres Bonifacio)	马尼拉	

尽管只是短短11天的访问,在每个机构逗留的时间平均不过三四个小时,但我们却收获了丰富的第一手资料并有幸见证了当时正在进行的几件重大公共事件,菲律宾也给考察团所有成员都留下了独特而深刻的印象。

(一) 拉丁化的民族性格

菲律宾与中国有着不解之缘:早期菲律宾群岛北部与台湾岛由大陆桥(land bridge)连接,菲律宾最早的国际贸易是在公元10世纪与中国宋朝展开的,当代菲律宾的商业巨子多为华人后裔(Chinoys)。[7]然而,2007年11月,我们所亲历的菲律宾,却与中国乃至其他传统亚洲国家有着许多迥异之处,无怪乎被称为"亚洲的另

〔7〕 Discovery Channel (2006). Insight Guides: Philippines, page 23, 56.

类儿"(Asia's Maverick)。[8]

热情、乐观、有创意,这是考察结束后,我们全体团员对菲律宾得出的一致印象。菲律宾的人民和这里的天气一样热情,甚至比天气还要热情:台风会不时打破天空的热情,[9]笑容却永远扎根在菲律宾人的心中。关于热情,最直接的证据来自于饮食。在菲期间,我们享用到了平生最密集丰富的茶点:每天上午 11 点和下午 4 点,无论是在政府办公室还是农民的自发组织,人手一份的茶歇都会准时奉上,这份贴心让人感动。菲律宾人的乐观和有创意的例子也比比皆是。我们所走访过的村庄,经济都非常落后,农民还在为填饱肚子而奋斗,但人们的精神状态却一点都不贫弱。他们为了维护权利、发展经济,自发结成合作社或村民组织,与权贵阶层斗智斗勇;他们没有足够的土地种植各类经济作物,却不忘在自家门前种上鲜艳的兰花,日日洒扫厅堂;他们没有多余的钱财装饰圣诞树,就用小塑料袋灌上彩色墨水悬满枇杷树梢,虔诚迎接圣诞。我们是在 11 月中旬到达菲律宾,距离圣诞节还有一个多月,却惊奇地发现,马尼拉街头树干上已缀满了星星灯,铺天盖地的月白光辉。当地人告诉我们,早在 10 月初已是这样。由此可见,其宗教感情之深厚。菲律宾创造的一项世界纪录就是——最长的圣诞节——法定假期从 12 月 16 日到次年 1 月的第一个星期日。[10]

说起宗教,不得不提菲律宾的殖民历史。从 16 世纪初开始,菲律宾被西班牙占据了三个多世纪,随后又被美国统治了 48 年,直到 1946 年第二次世界大战结束,菲律宾才彻底取得民族独立。"在修

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〔8〕 Discovery Channel (2006). Insight Guides: Philippines, page 15.

〔9〕 2007 年 11 月 27 日,考察团在八打雁与当地稻农和当地准律师座谈时,突遇台风来袭。在匆忙赶回的路上,一段乡村道路被折断的树干阻断,多亏当地村民协力将大树移开,车子才得以顺利通过。在此对帮助过我们的村民表示感谢。另,本文写作之时(2009 年 11 月),菲律宾首都所在地马尼拉岛遭遇了强台风"银河"袭击,死伤惨重,在此亦对死难者致以沉痛哀悼。

〔10〕 Discovery Channel (2006). Insight Guides: Philippines, page 81.

道院住三个世纪,再到好莱坞待五十年"[11]这句话,形象地描述了菲律宾在文化上所受到的殖民影响。西班牙文化和美国文化的混血,共同打造了这个充满"拉丁风情"的"亚洲另类儿"。关于这一点,菲律宾人并不避讳。在与一位菲律宾朋友闲谈时,我问到西班牙和美国各自的"遗产",他的回答是:"西班牙人留下了天主教、字母文字、大学和建筑;美国人留下了政治制度、英语、吉普尼(Jeepney)[12]和篮球。"

此话机智幽默,一语中的。在诸多"遗产"中,宗教,作为精神生活的规范;政治,作为世俗生活的规范,显得尤为重要。

(二)民主的细节

美国对菲律宾的殖民统治始于1898年。在对西班牙的战争中,美国获胜,取得了菲律宾、波多黎各和关岛三地的殖民统治权。第二次世界大战结束后,元气大伤的美国亟待休养生息,再加上菲律宾坚持不懈的独立斗争,美国终于在1946年宣布菲律宾独立,并将美国独立日7月4日"赠与"菲律宾,作为其独立日。[13]在美国将近50年的殖民统治期内,菲律宾仿照美国建立了全套政治制度,包括多党制、三权分立和选举制等。尽管这个国家的民主制度还不够成熟,又经历了马科斯总统时期二十多年(1965~1986年)的独裁统治,社会

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〔11〕 Discovery Channel (2006). Insight Guides: Philippines, page 15. 原文为:"Three Centuries in a convent followed by 50 years in Hollywood." goes an old saying。

〔12〕 吉普尼:Jeepney一词由Jeep与Jitney两词合成,Jitney即美国旧式廉价公共汽车。菲律宾的吉普尼是街头最常见的公共交通工具,类似于用吉普车改造的中巴,价格低廉,设施简陋,路线灵活。吉普尼通常外观鲜艳奇特,涂满各类创意手绘,已成为菲律宾街头一景。本书第四章中提到的苏米老(Sumilao)农民,在为争取土地而长距离游行时,也有支持者捐献吉普尼运送粮食等物资,详见本书相关章节。

〔13〕 美国将7月4日定为菲律宾独立日,这又引起日后一段公案:菲律宾第六任总统马卡帕加尔(Diosdado Macapagal)在任期间(1961~1965年),通过法令宣告国家独立日由7月4日变更为6月12日,这是为了纪念1899年民族英雄艾古尼纳多(Emilio Aguninaldo)宣布结束西班牙殖民统治,迈向独立;而7月4日则变更为菲律宾—美国友谊日。Discovery Channel (2006). Insight Guides: Philippines, page 31, 33.

也存在政府腐败、家族政治、政局动荡,[14]贫富差距扩大,[15]司法不公等问题,但作为东南亚最早实行民主共和制的国家之一,菲律宾在民主的细节上颇有彰显。我们在考察中也有幸捕捉到值得回味的几幕。

贫民窟是绝大多数发展中国家在城市化进程中所不可避免的现象,菲律宾也不例外。在菲律宾考察期间,我们见过两处贫民窟。第一处贫民窟在老马尼拉城唐人街的华人公幕附近。公墓、贫民窟,当这两个词同时出现,时常会被联想到同一端:贫民的墓地或是公墓丛中的贫民窟。然而,这里的景象恰恰是相反的两极:富有的华人长眠于半山腰上豪华的别墅式公墓,贫穷的流浪汉露宿在山脚下铁道旁用废品搭建的窝棚。站在山上,左右环顾,最深切的体会到天堂与地狱只有一线之隔,更何况是死者入天堂,生者坠地狱。第二处贫民窟就在大马尼拉市奎松区,司法部的院墙之外,一些做小买卖的穷人私自搭建了房屋和摊铺。这一次倒没有强烈的视觉冲击,因为司法部的大楼也不过是略显破旧的小楼,但庄严的司法权威与脏乱的"违章建筑"仅一墙之隔,还是让我们惊叹不已。急忙问随行的菲律宾律师:"他们怎么敢在这里搭房子?政府怎么没有强制拆迁?"律师对我们过度惊讶的表情也很不解,轻描淡写地答道:"这片地是公共土地,他们有权占有使用,政府也不能剥夺他们的权利。"这个答案让我沉默了很久,因为太不可思议。这又让我想起另一个故事,某发展中国

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〔14〕关于政局动荡,我们考察期间也亲历了一场小的军事政变。2007 年 11 月 28 日,就在我们遭遇台风后的第二天,又遇到了一拨退伍军人武力占领马尼拉市区某五星级宾馆,利用电台发布反对阿罗约总统的声明。被占据的宾馆离我们居住的宾馆仅有 200 多米远。当天晚上至次日凌晨,首都马尼拉地区进入戒严状态,我们的宾馆也挨个打电话通知在此期间不要外出。幸好没有发生流血事件,第二天,这个小的政变就被成功地"镇压"了。菲律宾的朋友们谈起这个事件,语气非常平常,好像家常便饭一般。

〔15〕菲律宾的贫富差距比当前中国的状况还要明显。根据世界银行《世界发展报告 2006 年》提供的 127 个国家的指标,基尼系数低于中国的国家有 94 个;高于中国的国家只有 29 个,其中 27 个是拉丁美洲和非洲国家,亚洲只有马来西亚和菲律宾两个国家高于中国。

家领导人出访巴西，看到首都街边的贫民窟，于是说道："在我的国家没有贫民窟。"巴西领导人摇头答道："我们不能剥夺穷人在城市居住的权利。"可见，贫民窟并不可怕，真正可怕的是贫民无家可归又无窟可住，更可怕的是每一处公共土地都先天烙上公权力的印迹，这才可能造就真正的人间地狱。

另一个见闻是在菲律宾农业改革部。菲律宾的农民问题主要集中在土地问题，实施多年的《农业改革法》很难真正实现农民对土地的私有产权，所以农民因土地问题而发起的斗争连绵不绝，农业改革部也成为众矢之的。我们前去拜访农业改革部那天，还没看见大门，就先注意到栅栏外五颜六色、横七竖八的标语条幅——这些都是各地前来游行示威的农民留下的"礼物"。正式座谈开始后，进入问答环节，我们的团员抛出一个尖锐的问题：菲律宾农业改革进行了这么多年，农业改革部自身面临的最大障碍是什么？第一个回答的官员讲了一些套话，无外乎法律不完善、政策不清晰、执法不到位之类。第二个回答的官员则非常坦诚，掷地有声地说道："最大的障碍可能就是我们所处的尴尬地位。我想你们也看到了，门外挂有很多农民抗议的横幅，这说明农民对我们的工作不满意；但同时，大地主也在反对我们，因为《农业改革法》的宗旨是要通过政府强制购买，从地主手里获取土地，再重新分配给农民……我们也很无奈，目前我们能为农民做的不过是任由他们表达抗议，并用这些来提醒自己而已。"

在菲律宾期间，我们也确实看到了各式各样的农民表达抗议的方式：他们为了土地不惜集体绝食以死抗争；她们敢于怀抱吃奶的孩子顶在拆迁的推土机前；他们一路前行、漂洋过海去游行。他们之所以有勇气、有能力这样去做，除了从政府口中透露出的民主的细节，还有更多的从民间涌入的公民社会的力量。

（三）公民社会的力量

菲律宾的公民社会可以算是亚洲发展中国家的典范，其主要表现在三个方面，除了上面提到的政府理性克制地与公民对话、普通民

众积极参与政治生活，还有一个重要方面就是 NGO 的活跃发达。政府、公民和 NGO 共同构成驱动公民社会的三驾马车，其中 NGO 还起着沟通两端、更好地传达民意的作用。

据我观察，菲律宾人对政治以外的日常公共生活的参与度也比较高。我们在菲律宾期间还赶上了 2007 年 11 月 30 日菲律宾民族英雄波尼菲首（Andres Bonifacio）的纪念日。每年这个日子，马尼拉的群众都会自发组织大规模游行，从首都各处汇集到老城中心的瑞蔵公园（Rizal Park），[16] 在此举行演讲、文艺表演等各类纪念活动。我想要做一次生活化观察，于是独自搭乘地铁到瑞蔵公园，可惜到时天色已晚，没有群情激昂的集会，只有一所中学在广场上举办类似颁奖仪式的活动。顺便说一句，这次坐地铁，我碰巧坐上了“女士车厢”，这是菲律宾地铁专为女性预留的一节车厢，男士不得进入。这类设计在台湾也有，主要目的在于防止车厢内性骚扰。这又从侧面体现了菲律宾较高的社会性别意识（gender awareness），[17] 也可视为公民社会发达的一个旁证。

在菲律宾期间，我们除了偶遇台风、军事政变、民族英雄纪念日以外，还有一个更大的惊喜，亲眼见到苏米老（Sumilao）农民“为了土地，为了正义而跋涉”的长途游行。2007 年 11 月 23 日，在前往奎松

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〔16〕 瑞蔵（Jose Rizal）是菲律宾的另一位民族英雄，瑞蔵公园就是为了纪念他而建的，象征着菲律宾的民族独立精神。在对抗西班牙殖民统治期间，瑞蔵领导了推动菲律宾人平等地位的宣传运动，他也是一位著名的作家、诗人。波尼菲首（Andres Bonifacio）组建了一个名为 Katipunan 的地下团体，倡导武力反抗。有趣的是，我们所拜访过的菲律宾两所最好的大学，安塔尼奥大学和菲律宾大学，分别崇拜这两个风格不同的民族英雄，并且有点儿一争高下的味道。安塔尼奥大学是私立大学，学生通常出身富有家庭，政治上相对保守，故而欣赏非暴力抗争的瑞蔵；菲律宾大学是公立大学，学生相对激进，故而推崇武力斗争的波尼菲首。

〔17〕 社会性别（gender）是与生理性别（sex）相对的一个概念，意为由社会和文化所建构的对男女性别差异的理解，这些差异包括思维差异、感受差异、表达差异、行为差异等各个方面。社会性别理论认为，两性差异并非完全由先天生理因素决定，更多是由后天养育模式、社会环境、文化传统等外部因素所塑造的。正基于此，社会性别理论力图打破传统的对两性角色和行为模式的刻板印象，建构更为平等、多元的性别意识。

省的路上,我们遇到了50名为了144公顷土地坚持抗争10年的农民,并与他们短暂交流。关于苏米老农民的故事,本书第四章前两篇文章有详细介绍,我在此只简单提一下公民社会在其中发挥的作用。在这次苏米老农民为期两个月、平均每天徒步10小时以上的游行活动中,菲律宾全国共有大大小小超过100家NGO参与其中为农民提供各类支持:有帮助募集资金和物资的、有设计制作T恤衫、标语版等宣传工具的、有负责撰写新闻稿件联络媒体的、有提供随队医疗服务的,还有提供法律援助、诉讼支持的。我们所考察过的4家NGO和两所法学院法律援助中心也都积极参与其中。在这次行动中,菲律宾NGO所体现出的专业水平、联合行动能力和敬业精神都很值得中国同行学习。除了NGO以外,地方政府、教会和大学生也对苏米老农民提供了各类帮助。例如,我们遇到游行队伍那天,他们当晚就在途经地市政府办公大楼内休息,这是因为地方政府官员个人很同情这些农民,与其政治立场无关。这再次体现了公民社会中政府和民间的良性互动。

为什么相比其他发展中国家,菲律宾的NGO能够取得如此迅速的发展,并在社会中发挥较大作用?我认为,这与其文化传统和政治体制有密切关系。

首先,天主教传统营造了慈善公益的基本氛围。菲律宾人口的95%以上都信仰天主教,宗教教义中的平等、奉献、爱人、助人等观念都有助于NGO的发展。例如,考察期间,我曾问陪同我们的一位菲律宾年轻律师,为何毕业于名校却要选择到NGO工作?他的答案是:To serve the people, to serve the God(为人民服务,为上帝服务)。他还补充说,在菲律宾,最聪明的年轻人大部分会愿意到NGO工作。关于这一点,还有待证实,但至少我们所考察的几家NGO,人员素质普遍比较高。

其次,民主政治体制促进了开放多元的社会环境。如前所述,菲律宾的民主体制尚不完善,但从细节处可以看到,民主观念已经渗透普通百姓的日常生活和政府机构的工作态度,良好的民主意识与

NGO 的发展可以相互促进。此外，菲律宾的法律政策对 NGO 的成立、筹款、运行等活动没有严格限制，这就给了 NGO 一个自由生长的空间。

最后，英语无障碍交流吸引了大量国际合作机会。一直以来，发展中国家 NGO 的主要资金都来自欧美发达国家。在国际合作项目中，语言交流能力也是影响合作质量和数量的一个不容忽视的因素。菲律宾在美国殖民统治期间打下了良好的英语基础，再加上宗教传统和民主制度，使得菲律宾成为很多国际基金会的重点援助对象。在马科斯独裁统治期间，大量国际资金涌入菲律宾资助其人权和法律运动。1986 年马科斯被推翻之后，这类国际资金正在逐渐撤离，这也成为我们考察过的几家法律类 NGO 所面临的新的挑战。

三、本书内容简介

如您已了解到的，我们在菲律宾的 11 天考察是紧凑务实、行动导向的。我们力求在最短的时间内获得最多的实际有效、可借鉴、可操作的经验和信息，避免空谈理念，也没有纯学术性的交流。作为考察成果的这本书，也保持了同样的风格。

本书包括中英文对照的两部分内容，以方便读者查阅原文，进一步学习，并减少翻译中的遗漏所造成的错误影响。本书绝大部分篇章都是向菲律宾专家约稿而成，然后由中国对外翻译出版公司的职业译者翻译成英文，再由清华大学法学院研究生做翻译校对。所以，从王婆卖瓜的角度来讲，本书一定程度上做到了“中英文全球同步首发”。

英文部分的文章有两种来源：

一是已在菲律宾发表的对中国有借鉴意义的优秀文章。考察之前，我们就请菲律宾专家向我们推荐了一批文章作为背景材料预先学习，考察之后我们又选择了几个主题，请菲方进一步推荐专题文章。收入本书的都是经过我们认真阅读比较之后，筛选出的最适合中国读者的关注点、最有参考意义的篇章。

二是专为本书中国读者写作的约稿文章。考察结束后，我们一致认为菲律宾的经验非常有价值，应当让更多的人知道。于是利用考察节省下来的资金，聘请安塔尼奥大学人权中心的教授和律师面向中国读者撰写几篇实用的介绍性文章，也就是“中英文同步首发”的部分。我们和菲方作者在写作过程中曾多次交流，提出写作和修改意见，力图使这部分文章是针对中国读者而写，能够简明清晰地介绍菲律宾的相关概念、组织机构、操作方式、典型案例等具体内容，从而使中国读者和同行可以迅速获得具体实用的经验。

中文部分除了翻译全部11篇英文以外，还有3篇是由考察团成员撰写的专题报告，包括农民法律援助、法律诊所和学生法律援助以及农村土地法律问题3个题目。这部分出于实际考虑，只有中文，没有翻译成英文。

本书在章节划分上，主要依照公益法活动的主体，也就是法律服务的提供者这一逻辑顺序，大致分为政府、法学院和非政府组织三类：[18]

第一章是政府法律援助，重点介绍菲律宾公职律师办公室。这与中国的司法部法律援助中心类似，是一个专门为贫弱者提供法律援助的政府机构；与中国不同的是，菲律宾的公职律师办公室在财政和人事上都是独立于司法部的，在受案范围、工作方式、工作方法等方面也有其独特之处。需要指出的是，在菲律宾还有其他一些政府机构，也有下设部门肩负特定的法律援助职能，例如，农业改革部为涉及农业改革的案件提供法律援助，海外就业管理局为海外务工人员提供法律援助，人权委员会为某些特定的人权案件提供法律援助。因为篇幅所限，本书没有对这些机构一一介绍，仅关注专门负责法律援助的公职律师办公室。

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〔18〕 实际上，在菲律宾提供法律援助的机构大致可分为五类，除了本书重点介绍的三类以外，还有律师协会和私人律师事务所。这两类因为数量较少，不是我们考察的重点，故而本书没有专文介绍。

第二章是法学院与法律援助，介绍了由法学院学生和教师主导的各类法律援助项目，主要包括法律诊所和 NGO 实习项目。菲律宾的法学院在参与法律援助方面非常积极，在法学院的主动申请下，菲律宾最高法院于 1981 年修改了法院规则，在“法学院学生实习规则”第 138 - A 条中规定，法学院三年级以上的学生可以在中级法院和准司法机关代理贫困当事人，条件是他们接受过合格的法律诊所教育，并在出庭时由一位执业律师现场监督和指导。本章第二篇文章专门介绍了安塔尼奥人权中心的实习生项目，该项目旨在让法学院学生利用接触社会弱势群体，通过让学生到法律类 NGO 实习的方式，培养学生的公益心和实践能力。类似的项目在中国也逐渐开展起来，2009 年夏天，由福特基金会和美国公益法研究所共同赞助，中国诊所法律教育委员会主持实施了“公益法律服务志愿者项目”。目前 26 名法学院毕业生正在 6 省 13 个公益法律机构进行为时两年的工作。[19]

第三章是非政府组织与公益法，集中介绍菲律宾由 NGO 主导的各类公益法律服务，是本书中篇幅较多的一章。菲律宾的 NGO 和农民组织在法律维权和公民行动中发挥着重要的作用，这一点给我们留下了深刻的印象，也是我们非常希望与中国读者分享的内容。本章重点介绍的一个概念是非传统法律服务（Alternative Lawyering），这是菲律宾人自创的一个词，也是该国民间公益法活动的核心理念。最初翻译 Alternative Lawyering 这个词时，我们很是头疼，试翻为“另类法律服务”、“替代性法律服务”等常见译法，但都词不达意。经过与菲律宾朋友讨论，最终确定翻译为“非传统法律服务”。这是因为，Alternative Lawyering 是为了解决传统法律服务存在的问题而于 20 世纪 70 年代兴起的，它有明确的目标和问题导向，致力于形成全新

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〔19〕 关于公益法律服务志愿者项目的信息，可参见中国诊所法律教育委员会网站：http://www.cliniclaw.cn/article_list.asp?menunum=_2&menuid=2009877734521&menuname=公益法律服务志愿者项目。

的为贫弱者提供法律服务的模式，所以它是非传统的。与“非传统”经常一同出现的关键词还有赋权、发展、结构性等，它们共同指向接受法律服务的弱势群体——在非传统法律服务中，弱势群体不仅被动地接受帮助，也主动地参与到维权过程中，他们与律师一同战斗，并在这个过程中学习成长。关于这个词的丰富含义，还请参看本章选编的几篇文章。另外要提一下，在目录中，前面两章的名称用的是“法律援助”一词，第三章却用了“公益法”，这也是为了突出 NGO 作为法律服务的主体与传统的政府和法学院主体有所不同，其理念和方法都超越了单纯针对个体的、短期性的个案法律援助，在实践中主要采取的方法包括：游行示威、媒体宣传、立法倡导、诉讼、替代性纠纷解决方法等。这也是本篇序言的标题——“迈向正义的多条道路”——所要表达的主要含义。

第四章是农民土地问题——公益法实践的焦点。正如本章标题所示，之所以不惜打破前面几章的分类逻辑，把农民土地问题单独拿出来说，是因为这个问题太重要了，是菲律宾公益法实践的焦点问题，也是我们考察过程中几乎每天都会听到或看到的问题。在菲律宾这样的农业国家，农村和农民问题自然是焦点，而农民问题的核心自然是土地问题。菲律宾的土地问题可以追溯到西班牙殖民统治时期，大庄园制的影响一直存在，土地长期集中于少数大地主手中。为了解决这一问题，菲律宾历届政府都试图改革，希望能从地主手中获取土地，重新分配给农民，但都收效甚微。这主要是因为地主在议会中占据很大势力，农民组织过于分散以及改革配套措施不完善等。本章主要是围绕 1998 年开始实施的《综合农业改革方案》展开，其中第 3 篇《综合农业改革和税收制度（以及合作社）教材》是从 Hector S. De Leon 教授撰写的教材中选译的两章，内容很丰富，但篇幅较长，还请读者稍加耐心。

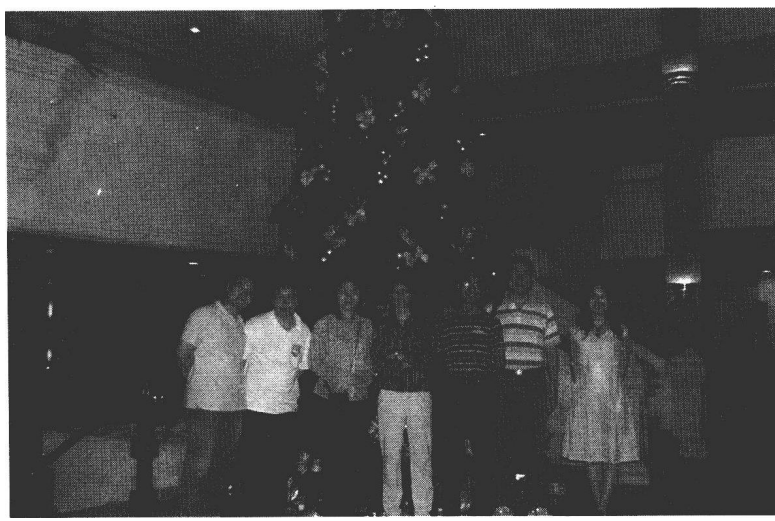
此外，为了方便读者理解关键术语的翻译，我们在全书最后附上一份“术语对照表”（Glossary）。因为很多词组我们都是到菲律宾之后才第一次听说，翻译为汉语也是第一次，所以误译之处在所难免，

还请读者海涵，也期待您的批评指正。

对菲律宾的考察早在两年前已经结束，作为考察成果的这本书也终于成形。而这一切都只是起点，在迈向正义的多条道路上，我们还有很多需要学习。

感谢您的阅读，希望这本书会让您觉得有一点点收获。

2010 年 1 月
北京



中律原考察团成员合影

左起依次为：陈凤、孔焰、曹海晶、张乐伦、薛少锋、杨一介、杨睿。

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第一章　政府法律援助

公职律师办公室简介

Anna Rosario Elicaño*
阿特尼奥人权中心

一、历史

公职律师办公室(Public Attorney's Office)的历史可以追溯到20世纪50年代,当时菲律宾农村的改革刚刚起步。拥有大片领地或庄园的土地所有者们大都反对重新分配土地,而农业工人则对那些根据现行法律应属于他们的土地提出了权利主张。因此,这两个群体之间必然发生冲突。为解决这些问题,菲律宾成立了农业租赁委员会(the Agricultural Tenancy Commission)。后来,农业租赁委员会更名为租赁调解委员会(Tenancy Mediation Commission),随后又更名为农业咨询办公室(Office of the Agrarian Counsel)。

考虑到农业事务包括诸如农业工人负担不起法律服务费用这样一些问题,农业咨询办公室于1972年10月转变为一个提供法律援助的机构,业务扩展到处理民事、行政、刑事和劳工等案件。于是农业咨询办公室就被称作公民法律援助办公室(以下简称CLAO),其任务是向贫困人群提供法律援助。司法部、劳工部和土地改革部签

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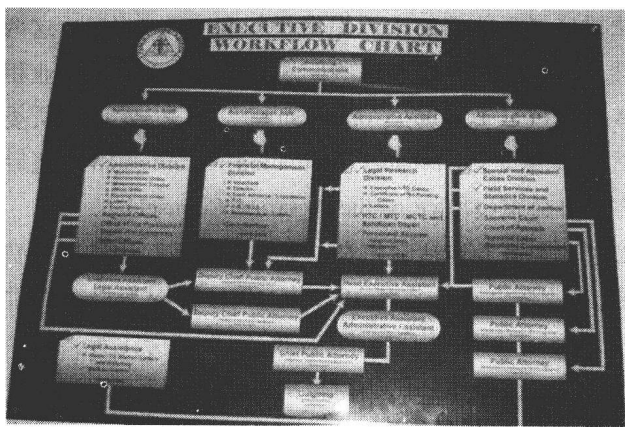
* 作者为阿特尼奥人权中心工作人员。

署了一份协议，授权公民法律援助办公室为土地和劳工案件提供法律援助。根据1987年的新的行政法典，公民法律援助办公室更名为“公职律师办公室”，但该机构的职能和权力并没有改变。

2007年4月，阿罗约总统签署了第9406号共和国法案，即著名的《公职律师办公室法》。这样，公职律师办公室成为一个独立、自治的办公室，尽管依然隶属于司法部，但只进行政策和计划方面的协调工作。

二、组织结构

在公职律师办公室还被称作公民法律援助办公室的时候，它拥有94名律师，在10个司法管辖区和26个选区设有办事处。现在，公职律师办公室的律师人数已经增长至1048名，他们负责处理在全国2255个法庭中审理的刑事及民事案件，约有25名律师负责处理上诉法院和最高法院审理的上诉案件。当前，公职律师办公室在全国范围内拥有16家司法管辖区办事处、257家选区和分选区办事处。这些办事处多数位于法庭和其他司法管理部门办公室之内。公职律师办公室在菲律宾群岛各选区内均设有选区办事处，目的是让散布在各地区的贫困人群都可享受到这些服务。



国家公职律师办公室部门分工表

三、权限

公职律师办公室不仅名称发生了变化，其性质也发生了变化。公职律师办公室的使命是“通过提供法律援助，帮助贫困的诉讼当事人自由地向法院和司法、准司法机构提起申诉。这与菲律宾宪法要求的不得以贫困原因拒绝任何人自由地向法院提起申诉的权利相一致”。[1]此外，公职律师办公室还提出要“在能力突出、一流的、发展为本的、国家主义领导人的带领下，成为以上帝旨意为中心的充满活力的组织机构，满足贫困人群不断扩大的法律需求”。[2]

获得公职律师办公室服务的人必须是穷人，也就是没有收入或者收入不足以雇用私人律师的人。

《反对针对妇女的暴力法案》（第9262号共和国法案）授权公职律师办公室向受到暴力侵害的妇女及其子女提供免费法律援助。根据《青少年司法和福利系统法案》（第9344号共和国法案），公职律师办公室还肩负着向狱中青少年罪犯，特别是向那些在被起诉时不超过15岁的嫌犯提供法律援助的任务。

公职律师办公室还被要求与其他政府机构合作。例如，公职律师办公室与解决劳动争端的准司法机构国家劳动关系委员会之间进行的协调。为尽快使提起上诉的劳工及时获得公正的对待，公职律师办公室在奎松城国家劳动关系委员会办公室设立了一个分支机构。公职律师办公室报告称，在2007年，2681名当事人曾接受其法律援助。

四、项目和计划

为履行其使命，公职律师办公室发起了一些项目和计划。这些

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〔1〕 参见“关于司法部：附属机构”，网址：http://www.doj.gov.ph/agencies/pao.html。最后访问时间：2007年12月20日。

〔2〕 参见“关于司法部：附属机构”，网址：http://www.doj.gov.ph/agencies/pao.html。最后访问时间：2007年12月20日。

项目和计划不仅关注于提供免费的法律援助，而且还寻求改善贫穷人群的福利待遇。以下是公职律师办公室在2007年主动发起的一些行动。

1. 监狱探视和监狱减压计划

由于有太多狱囚负担不起诉讼费用，菲律宾大多数市镇的监狱都人满为患。菲律宾监狱收容的狱囚数量比政府收容能力多出四百多倍。[3] 在此种情况下，公职律师办公室与监狱管理局协调，向贫穷罪犯提供免费法律咨询，从而加快了案件的处理。首席公职律师Presida Acosta说，公职律师办公室下属的261个选区办事处，每个办事处由一名选区公职律师领导，担负着每月至少访问一次其司法管辖范围内的监狱的任务。在这些调查过程中，公职律师办公室会提供免费法律意见，以确定谁业已为其受到指控的罪行接受了最低或最高限度的强制处罚。结果在2007年，仅刑事犯罪一项，公职律师办公室就一共获得145个结果为释放狱囚的判决。

首席公职律师还要求马尼拉和奎松市市长修建更大和更人性化的监狱，并制定谋生计划，以重新安置那些狱囚。

2. 工作手册

为使公职律师办公室的办公程序更易于理解，公职律师办公室在2007年出版了两本工作手册，即《根据第9262号共和国法案及其他相关法律向遭受暴力侵害的妇女及其子女提供法律援助的标准办公程序》和《根据第9344号共和国法案及其他相关法律向触犯法律的儿童提供法律援助的标准办公程序》。这些手册除了向全国范围内的公职律师办公室分发外，还在一份国家级报纸上刊发。

3. 培训

公职律师办公室还一直在举办关于妇女和儿童的研讨会和培训，甚至在公职律师办公室被授权向受虐待妇女及其子女提供免费

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[3] Rueda - Acosta, Presida V., Legal Counseling and Healing Behind Bars, *Manila Bulletin*, p. 11, 2007 - 11 - 11.

法律援助，以及被授权推动释放未成年罪犯之前，就已经主动开展了这些行动。公职律师办公室的培训还扩大到其他相关领域，如物证技术学（forensic science）以及对当代法律的更新。

4. 与媒体的联系

公职律师办公室在媒体上开展的工作，除为公众提供法律建议外，还旨在提高公众对公职律师办公室服务的认识以及教育公众。因此，公职律师办公室的律师通过六个广播站提供法律咨询；在电视领域，他们在菲律宾最大的两个电视网络上出现；在印刷媒体方面，公职律师办公室每周一、三、五都在一份广受欢迎的全国性报纸上发表专栏意见。

五、公职律师办公室面临的挑战

公职律师办公室的权限及其工作计划的性质决定了其职员主要由律师构成。法律职业有可能是菲律宾最为赚钱的职业之一，但是公职律师办公室像许多政府办公室一样，在向职员提供薪水、补助和津贴方面，无法与私人律师事务所或公司相比。同样，公职律师办公室律师的流动性也很大。这些职员通常辞职从事私人法律业务，调到司法部门或者调到其他工作轻松的政府机构，例如国家检察机关。

2007 年公职律师办公室在工作报告中就提到繁重的工作量背后的原因。一个检察官通常只被分配负责一个法庭的工作，而一个典型的公职律师办公室律师则被分配负责二到四个法庭的工作。除了处理刑事和民事案件外，公职律师办公室律师还必须处理其他所有案件，例如：（1）对公诉人办公室审理的案件进行初步调查；（2）国家劳工关系委员会审理的劳工案件；（3）涉及海关署、保险委员会、土地改革部、行业管理委员会、菲律宾选举委员会、教育部和人民法律执行委员会等机构的行政案件。

公职律师办公室人员不足是因资金不足造成的。菲律宾 2007 年出现的经济问题使问题更加恶化，导致公职律师办公室无法购得电脑和打字机，而这些“对于准备向法庭及其他机构递交起诉状却是

非常必要的”。[4]

六、结束语

作为肩负着向贫穷人群提供法律援助的首要政府机构，公职律师办公室被太多的案件所包围。公职律师办公室提供司法援助还可能会受制于资金的缺乏及其职员所必须应付的大量案件。尽管面临这些挑战，公职律师办公室在2007年的工作仍然得到了好评。首席公职律师因倡导社会公正和人权法律，获得了2007年“顾氏和平奖”(GUSI Peace Prize Award)。此外，公职律师办公室在政府机构年度预算听证会上被列入2007年前十名。

公职律师办公室取得的成就表明，如果得到更多支持和资源，公职律师办公室还可取得更大成就。公职律师办公室现在正在引入一些改革。根据《公职律师办公室法案》，为鼓励律师继续任职，将会提供更多退休待遇。公职律师办公室还将努力“增加每个司法管辖区和选区办公室的律师和保障人员的数量，以提供更为有效的服务”列为其2008年的工作目标之一。[5] 但愿随着向公职律师办公室和其他提供免费法律援助的私人及非政府组织提供更多的支持，更多贫困的菲律宾人能够更好地获得司法公正。

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〔4〕 参见“公职律师办公室：2007年工作报告”。

〔5〕 参见“公职律师办公室：2007年工作报告”。

公职律师办公室的工作*

公职律师办公室是为了应对政府机构在促进和保护社会弱势群体的法律权利——这些权利包含在菲律宾宪法当中——过程中所遇到的挑战而成立的。

一、使命

为了充分发挥其作用，公职律师办公室将其使命定为：通过提供法律援助，帮助贫困的诉讼人自由地向司法和准司法的法院提起申诉。这一点与菲律宾宪法的规定相一致。菲律宾宪法要求，“不得以贫困的原因拒绝任何人自由地向法院提起申诉的权利”。（《1987 年菲律宾宪法》第 3 条第 11 款）

二、愿景

公职律师办公室的愿景是在能力突出、世界一流、发展为本的国家主义领导人的带领下，成为以上帝旨意为中心的充满活力的组织机构，满足贫困人群不断扩大的法律需求。

为了完成并实现其任务和愿景，公职律师办公室坚持以下工作目标和重心：

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* 本文摘自菲律宾公职律师办公室提供的《第二届全国公职律师大会》（2003 年 8 月）会议资料。

(1)为贫困客户提供免费的法律服务;

(2)在需要的时候,为低收入和贫困人群提供咨询;

(3)实施宪法性保障,包括自由地向法院提起申诉、法律的正当程序和平等保护,以及因犯罪而接受调查的人的一系列权利。

三、服务和特别项目

(1)在司法和准司法案件中作为贫困人群的代表,以下人群属于贫困人群范畴:

①居住在大马尼拉地区,家庭月收入不超过1.4万比索;

②居住在其他城市,家庭月收入不超过1.3万比索;

③居住在其他任何地方,家庭月收入不超过1.2万比索。

(2)提供非司法服务,如调解、劝慰、咨询、执行宣誓就职和材料整理服务,以满足贫困人群的法律援助需要。

(3)开展法律拓展活动,例如:

①*监管审讯和审问调查*。在嫌疑犯没有指定律师的情况下,分派律师到特定的主要警察部门为嫌疑犯提供法律咨询。

②*监狱探视*。各选区的公职律师必须确保每月至少对其管辖范围内的监狱进行一次探视。

③*乡镇(Barangay,注:菲律宾最小行政区划)拓展计划*。这个计划的主要内容是为居住在全国各社区的贫困的菲律宾人提供更加便捷的免费法律服务。

④*媒体联系*。开展信息传播,与印刷和广播媒体开展在线法律咨询,扩展公民的法律知识。

⑤*格洛丽亚·马卡帕加尔·阿罗约(Gloria Macapagal - Arroyo)总统的KALAHI计划*。公职律师办公室派遣公共律师和职员与政府部门或机构一起在大马尼拉地区和全国其他地方的落后区域中提供法律援助。这是阿罗约政府在帮助贫困人群方面所采取的主要措施。

法律援助的提供依靠于与其他政府部门签署的协议、司法部的

指示和特别法律的规定。以下情况属于公职律师办公室的服务范畴：

（1）因其与工作职责有关的行为而处于刑事和行政控诉之下的农业改革部律师（Department of Agrarian Reform lawyers）；

（2）从《农业改革法》中受益的农民：

①待法院裁决的与农业相关的民事或刑事案件；

②待法院或耕地改革部判决会议（简称 DARAB）裁决的针对受益者的案件，且该等案件中的一方业已由农业改革部律师代理；

（3）有价值的劳动案件中的贫困劳动者；

（4）贫困的外侨；

（5）涉及菲律宾海外就业管理局（简称 POEA）原初和专属管辖权限范围之内的各项案件中适格的海外合同劳工；

（6）社区卫生工人；

（7）因儿童被抛弃或未加照看而提起申诉的社会福利和发展部。

第二章　法学院与法律援助

赴菲律宾学术考察总结报告

——以法学院和非传统法律服务为重点

薛少峰*

2007年11月18日至2007年12月1日，在中律原咨询（北京）有限公司总裁张乐伦女士的带队下，我们一行八人在菲律宾进行了为期12天的学术考察活动。根据计划，本次考察活动的主要内容包括：菲律宾的司法体制、法律援助体制、法学教育、非传统律师业务以及菲律宾农村的法律问题。菲方由ATENEO法学院人权中心接待。本次考察活动计划详尽、组织严密，实现了预定目标。以下对本次活动进行总结：

一、概述

（一）考察对象

本次考察的对象有：（1）法学院，包括阿特尼奥（Ateneo）法学院和菲律宾大学（UP）法学院；（2）非政府组织（NGO），包括Kaisahan（Ateneo法学院人权中心的合作伙伴，非传统法律服务组织成员之

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一,成立15年,专门为农民提供法院援助)、萨理甘非传统法律协会(SALIGAN,成立于1987年11月,为妇女、劳工、农民、城市弱势群体提供法律援助)、非传统法律协会(Alternative Law Groups,简称ALG)由遍布全国的19个NGO组成,为边缘群体提供法律援助、Task Force Mapaland[主要为农工(Farmer Workers)提供法律援助的组织];(3)政府或官方组织,包括菲律宾公职律师办公室(菲律宾政府设立的法律援助机构)、菲律宾人权委员会(根据1987年《宪法》设立的保护人权的独立的政府机构)、农业改革部农业法律援助局、菲律宾律师协会;(4)农村村民在NGO支持下成立的维权组织或团体,如MAHALA(成立于1986年)、大马农工土改受益者协会(Dama Farm-Workers Agrarain Reform Benificiaries Association,1997年11月成立,是在劳动就业部注册的工会组织)以及部分农村地区的基层法律工作者(Paralegal,准律师)。除上述考察对象之外,我们还与三个地区的椰农、稻农、蔗农等进行了直接交流。

(二)考察内容

本次考察所收获的内容,因考察对象而异。主要包括以下几方面:法学院学生为社会弱势群体提供法律援助、开展社会实践活动的情况,NGO提供法律援助的方法和内容,政府或官方组织提供法律援助的情况,菲律宾农村的法律问题,等等。基于从事诊所式法律教育工作的立场,笔者注意到了法学院运用各种方式,组织学生深入自然条件、生活条件非常艰苦的地区,对弱势群体的生存状况、法律权利保护状况等进行研究,并为弱势群体提供法律援助;注意到了NGO广泛采用的以非传统的方式提供法律援助。所以,本报告将主要围绕这两个方面的问题进行总结。

二、以培养学生实践技能、社会责任感为核心的法学院

(一)阿特尼奥法学院

1. 法律援助

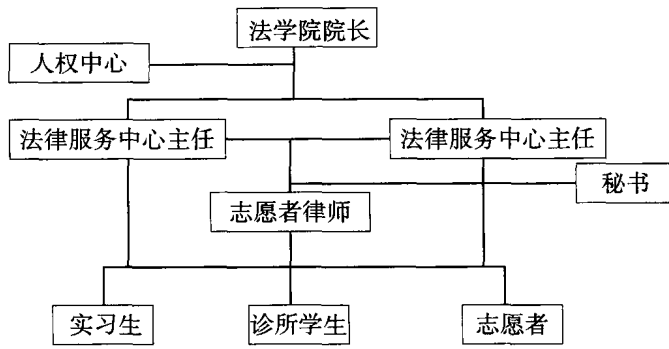
阿特尼奥法学院的人权中心和法律援助中心分别向特定群体提供法律援助。最初,阿特尼奥法学院的学生自己建立了一个组织——阿特尼奥法律援助协会,采取传统方法为社会提供法律援助。后来这个学生组织成为人权中心的诉讼部,受人权中心领导,学生成为人权中心的志愿者。但随着法律服务范围的扩大,法学院的其他部门也在以不同方式提供法律援助,而且法律援助的方式也由传统型向非传统型发展,诉讼部从人权中心分离出来,法律服务中心成立了。有关人权的案件由人权中心的学生志愿者在律师的指导下处理,其他类型的案件则由法律服务中心的学生志愿者、律师采用非传统法律服务的方式处理。

阿特尼奥人权中心(以下简称 AHRC)于 1986 年成立,其宗旨为:培养人权律师和人权倡导者,援助人权受害者,监督、观察政府是否遵守人权公约,对公众提供人权法律教育。该中心曾经和正在进行的项目包括:儿童项目、原住民项目、妇女和移民权利保护项目以及东盟人权机制工作小组(秘书处设在该中心)。中心的日常工作由律师(兼职教授)、学生志愿者、实习生和工作人员共同进行。主要活动包括研究出版、教育培养、政策制定、课程设置与发展等。人权中心通过招募学生志愿者和接纳实习生,在培养学生实践技能和社会责任感方面发挥着自己的作用。

阿特尼奥法律服务中心(以下简称 ALSC):鉴于学生团体参加法律援助的热情和需要明显增长(一方面可以通过实战经验提高诉讼技巧,另一方面也可以为社会作出一份贡献),2004 年 3 月,阿特尼奥法律服务中心成立。中心的学生志愿者主要来源于选修诊所式法

律教育课程的学生，诊所学生除了在法院出庭外，[1]每周需要在中心工作两个小时，方式有会见、代书等。学生到中心做志愿者并非强制，但每学期可以得到120学时，两个学期就可以满足法学院所要求的240学时的实习要求。中心的学生志愿者、实习生在律师志愿者的指导下开展法律援助活动。

以下是法律服务中心组织机构图：



中心的管理制度主要包括：

(1)对中心事务由两个主任协商决定，重大决定需事先向院长汇报。

(2)案件的选择。选择案件主要考虑的因素有：案件的影响；案件发生地及管辖法援(就近)；可学习性、可指导性；案件的法律依据、事实根据是否充分；对案件有利的法律依据和事实因素；中心当时的案件工作量。

(3)案件流程。客户(预约来访或直接来访)——登记(值班学生填写相应表格)——会见(如果必要，而且有律师可供选择时，会见

[1] 根据菲律宾最高法院1983年《法庭规则》第138条的规定，完成三年法学院学习或者经最高法院核准的法律诊所学生，可以在一名律师的监督、指导下，在大城市或市级初审法院、地方初审法院出庭。1997年6月13日重申了前述内容，理由在于：避免学生因无经验而可能导致对当事人的不利；避免学生因能力不足而受到当事人的指责或承担责任；确保法律原则的一致性(因法律规定，没有律师执照的人不能出庭)。

团队中应当有律师参加;会见结束时告诉当事人三天后可来电询问)——方案(学生填写反映案件基本情况的表格;进行法律和事实分析;提出建议)——中心主任开会作出拒绝或接受代理的决定——告知当事人——对接受的案件联系志愿者律师、组建办案小组——建立案件档案——召开工作会议——庭前准备——学生在律师的带领下开庭。

2. 其他项目、活动

旨在培养学生实践能力、增强学生社会责任感的其他项目、活动有:

(1)诊所式法律教育(简称 CLED):一门选修课程。学生每周参加两个小时的课堂学习,主要内容为如何会见客户,如何起草法律意见书、各种动议和诉状,如何进行直接询问和盘问等方法。ALSC 成立后,诊所学生每周要在 ALSC 值班两个小时,这期间可以会见客户,起草诉状、动议、意见书,等等。诊所项目的学生是 ALSC 学生志愿者的主要来源。为吸引学生参加诊所,完成诊所学习的学生可以获得 120 学分。

(2)实习生项目:菲律宾最高法院确定的法学院科目中,并没有将实习作为一门课程,但有一半的法学院将实习作为一门课程。将实习作为一门课程的法学院中,有的对学生在何处实习不做要求,有的要求到 NGO 实习,这种法学院一般有人权倾向。该项目的目的在于让学生认识、接触穷人的情况,为社会弱势群体提供法律援助。阿特尼奥法学院的实习分为短期实习(两个星期)、暑期实习(一般在 4~6 月份进行,每期 15 名学生左右,吸收其他法学院的学生参加)和毕业后的继续实习。具体安排为:四天的基本训练,主要形式为和律师交流,进行技能、技巧的培训;七天的渗透训练,主要形式为 10 人组成两个小组在两位老师(中心执行主任和实践部主任)的陪同下与弱势群体一起生活(此前教师先去征求意见,并预先告知当地驻军或牧师,也告知当地基础政府官员不要搞特殊接待);六个星期的实习,到 NGO 或愿意接受实习生的政府机构实习,了解和掌握非传统法律

服务。

(3)司法学徒项目:学生参加初审法院的工作和程序。该项目由最高法院管理,各法学院可以申请参加。

(4)监狱减压项目:阿特尼奥人权中心与 Makati 地方初审法院的执行法官办公室、公职律师办公室和监狱管理局共同管理的项目,目的在于在犯人中培训律师助手,让他们协助公职律师办公室检测和整理那些将被释放的犯人的案子。

(5)国家税务局的税收诉讼:阿特尼奥法学院与菲律宾国家税务局签订协议,支持政府起诉逃税人的逃税案件,学生志愿者加入国家税务局诉讼团队,协助税务诉讼。

(6)其他吸收学生志愿者的项目还有很多,如联合国难民高级事务专员、土著人工作组。

(二)菲律宾大学法学院

菲律宾大学法学院学生实践项目从 1971 年左右即开始,最初是做两个星期的法官助理。1974 年法学院建立法律援助办公室。1980 年菲律宾最高法院颁布关于法学院学生实习的规则,规定了实习和诊所式法律教育的内容,引发了诊所式法律教育的推广。1983 年前,法学院的实践课程只有法律技巧 1 和法律技巧 2 两门课程,各为四个单元,每周两个学时。1987 年后,诊所式法律教育的课程得到进一步完善。

菲律宾大学法学院法律援助中心也是培养学生实践能力和社会责任感的平台。中心同时也是学生的实习基地之一。学生实习从 6 月份开始,持续八个星期,每星期八个小时。实习期间,学生应在中心值班 60 个小时,工作内容包括出庭听证、会见当事人以及其他外出事务。

菲律宾大学法律援助中心受理案件的标准是:家庭月收入低于 8000 菲律宾比索,且案件有潜在的教育价值。中心对穷人提供法律援助不收取代理费,但办理案件支出的交通、打印等费用由当事人承

担。对不符合上述收入标准的非穷人案件，当事人需承担 550～1400 菲律宾比索的费用，其中包括翻译费用、抄写费用和按天计算的收费，每天 362 菲律宾比索。

三、非传统法律服务

传统法律援助着眼于个案、为个体提供免费法律服务。从深层次讲，这种法律援助方式的前提为：所有的法律都是公平的、正义的，能够平等地保护每个人的利益。但由于 20 世纪六七十年代菲律宾历史上有过专制和腐败的政治统治，所以部分 NGO 和学者开始审视传统法律援助方式，并认为，除为个体提供法律援助外，有必要改变法律现状，影响政策制定和立法；他们同时还认为，少数律师的法律援助并不能从根本上改善弱势群体权利保护不力的状况，必须借助这些弱势群体自我改变的力量，变被动为主动，自我维权。在此基础上，随着马科斯时代的结束，20 世纪 80 年代初期，在引进、借鉴印度“赤脚律师”观念的基础上，NGO 开始了“准律师”的培训。如今，经过多年的探索已经形成颇具特色的非传统法律服务模式。

非传统法律服务的活动内容主要有：准律师培训、宣传教育、诉讼支持、政策倡导（影响立法和政策制定）、研究出版。其中最具特色和经常性的活动为准律师培训。

准律师是指从弱势群体中选拔出来，由专业律师传授给一定的法律知识和处理法律事务（如诉讼、调解）的基本技能，作为专业律师的助手或者合作伙伴，在弱势群体聚居区提供法律服务的人。菲律宾最高法院掌握准律师名单，在没有律师的地区法院，允许准律师出庭。准律师提供法律服务不得向当事人收费，由其所属的 NGO 支付工资。

准律师培训的宗旨为：改变社会、慈善（奉献社会）、发展性项目、解放。其基本做法为：

（1）培养对象的选定。NGO 根据自身援助对象的特点，选拔一定数量的对象。如 KAISAHAN 每期选拔 10～20 人，拟用三年时间

在农村培训1万~2万人的农民准律师队伍。选拔标准为:识字,愿意花时间不断受训,愿意受训后参加活动、投入精力,在本地有一定的社会威望。

(2)培训。培训由NGO的律师承担,但在偏远地区,则由NGO聘请当地律师培训。培训分为基本培训、高级培训和专题性培训。

(3)第二梯队的培训。由于人口的流动性,以前培训的准律师因各种原因离开原居住地,有的地区出现空白,同时考虑到工作的连续性,NGO根据各地的不同特点,持续进行第二梯队的培训。

四、思考与启示

菲律宾有其特定的政治、历史环境,NGO在该国的兴盛并非偶然;菲国法学教育受英美法传统的影响也显而易见,但其中的一些做法、措施对我们的法学教育不是不能借鉴。择其要者,试归纳如下:

(1)法律诊所课外实践活动应建立长效机制,保证提供法律援助的连续性、及时性。诊所教育的一个主要活动为法律援助,但由于每期诊所的周期仅为一个学期,往往案件没有结案,承办学生即结业。尽管诊所要求其继续办结或转下期诊所,但由于承办学生结业后投入其他课程的学习或接手学生对情况的不熟悉及经验的欠缺,导致法律援助工作缺乏连续性、持久性,影响了援助的质量,这既不利于学生的培养,也不利于当事人权益的维护。所以,可以考虑在法律诊所教育项目下设立一个法律援助机构,招募部分学生志愿者,参与到每期诊所援助的案件中,以保证援助的连续性;援助的案件统一纳入该机构,由其确定承办学生和指导教师。

(2)法律诊所法律援助中,可适当考虑借鉴非传统法律服务中"准律师"培训的方式,以提高农村人口依法维权的"造血功能"。诊所法律援助中,不能局限于个案的援助和简单的法律宣传,可以考虑有针对性地选择有兴趣、有一定的文化基础和社会责任感的农民,与学生建立较紧密的联系,系统全面地共同学习农村常用法律知识,同时掌握初步的法律技能,如法律文书的起草,增加农民自我维权的意

识和能力。

(3)激发法学院学生服务弱势群体的责任感和热情,改变流于形式的毕业实习。"统招统分"时期,法学院学生实习由学校统一组织、管理,有强烈的"官方色彩",即学生主要在公检法机关实习。该时期结束后,毕业实习逐步变为学生自己实习,但由于时间安排在最后一学期,学生迫于就业的压力,自我实习实际上流于形式。法学是一门实践性极强的学科,法律执业对从业者的专业知识、业务技能和执业道德的要求很高。如果在法学院期间只掌握书本知识,缺乏一定的实践经验,没有掌握初步的从业技能,没有养成职业道德的基本意识,如此的毕业生显然是不合格的。所以有必要审视、改变毕业实习这一传统的实践教学环节。

菲律宾法学院的实习生项目可以作为借鉴的对象。初步的设想是:三、四年级的学生,可以选择两种方式实习。一为参加法律诊所的学习;二为作为法律诊所法律援助机构的学生志愿者。由于法律诊所及其法律援助机构均以服务于社会弱势群体为宗旨,所以在此期间,学生可以亲身感知弱势群体的生存状况和维权的艰难,在自觉不自觉间培养起社会责任感;在此过程中,有利于教师的指导、监督,也有利于其执业技能和职业道德的养成。

当然,实现设想的这个现实困难是明显的:(1)诊所教师的数量毕竟有限,既要从事诊所教学,又要指导学生,工作压力极大。对此可以考虑招募律师志愿者的渠道。(2)经费负担。法律诊所的现有经费可以勉强支撑三十人左右诊所的运行,如果增加上述实习生项目,则将难以承受。对此,如果学校将学生的专门实习经费,按实际在诊所实习的学生人数拨付过来,就可以弥补一些。但由于涉及部门利益,实现起来问题将会复杂化。(3)办公条件。法律诊所现尚无专门提供给学生办案的场所,学生接待当事人不管酷暑寒冬,总是在校园的道路旁、石凳边,其他如小组会议、准备资料等只能随遇而安了。如此条件严重影响了工作效果,也影响学生的身体健康。尽管有时学生可以找到空闲场所,但由于无经费简单改造和添置基本的

办公设施，也只好作罢。

总之，通过本次考察，笔者对菲律宾的法学教育和法律援助有了较为全面的了解。尽管还谈不上深入，但已经触动了自己。总结中谈到的对今后法律诊所教学活动的设想，就是触动的初步收获。

法学院与法律援助:菲律宾的经验

Carlos P. Medina*

一、前言

菲律宾法学院所进行的法律援助正在非传统法律服务的诸原则的推动下不断地向前发展。在这篇短文中,作者将试图对此发展作一概述。文章开始先讨论了菲律宾法律援助方案的政治与法律背景,以及法学院与法律援助;然后描述了阿特尼奥法律服务中心、阿特尼奥人权中心以及对它们的法律援助方案进行指导的非传统法律服务的理念;文章结尾评论了法律援助面临的挑战,以及让所有的利益相关者(包括作为当事人的受益人,client-beneficiaries)都参与法律援助工作的必要性。

二、菲律宾有关法律援助的政治与法律框架

菲律宾的政治与法律框架是其殖民地历史的产物。它有约四百年的时间受到西班牙的统治,有近五十年的时间受到美利坚合众国的统治。尽管这个国家仍然保留了西班牙民法的某些方面,但其政府的形式为总统制,遵循了华盛顿模式的权力分立原则。作为一个

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发展中国家,它的宪法着重强调对社会正义的需求,特别是要使贫苦人士获得公正对待。权利法案规定:"不得因贫困而剥夺任何人自由地获得法院以及准司法机构公正审判和获得充分法律援助的权利。"尤其是,宪法要求最高法院制定一项制度"向弱势人群提供法律援助"。

由于宪法关于获得正义和法律援助的这一要求,议会通过了法律,使贫困人士可以更多地获得法院的公正审判和律师的帮助。政府还在全国范围内建立并加强了公职律师办公室(Public Attorney's Office)。许多致力于向社会贫困及边缘人群提供基本服务和执行相关方案的政府机构已制订了其自身的法律援助方案。

通过在全国范围内规范法律实施并颁布法院规则和诉讼程序,最高法院要求律师在特定情况下接受贫困当事人的代理委托,以"确保公正目的的实现"。而对于法学院和法学教育具有深远意义的是,最高法院鼓励法学院及法律专业学生向贫困人士提供法律援助。这一点最近更多地体现在最高法院的司法改革行动方案(Supreme Court's Action Program for Judicial Reforms)中,该方案肯定了法学院在确保边缘人群获得正义中发挥的作用。

作为对政府所有这些努力的补充,各个民间社会团体也制订了各自的法律援助方案。这些团体包括教会组织、全国律师协会、律师事务所以及着眼于向妇女、儿童、土著民族、难民、农民和工人等特定人群提供法律服务的非政府性质的小型法律服务组织。

三、法学院与法律援助

菲律宾大约有 107 所法学院。阿特尼奥人权中心在 2004 年进行的有 90 所法学院参与的一项调查显示,大约有 28 所法学院,即 31% 的法学院业已制订了法律援助方案。其中有 23 所法学院,即 26% 的法学院声称开设了诊所法律教育课程(注:此处的诊所法律教育课是指任何将学术与理论教学与诊所或实际应用相结合的课程)。开设了诊所法律教育课程的法学院中,多数都位于国家首府区域内

(马尼拉市)。

1986 年,为了加强全国的诊所法律教育方案,最高法院出台了《法律专业学生实习规则》(Law Student Practice Rule)。该规则允许法律专业高年级学生——他们都参与了最高法院所认可的一所法学院的诊所式法律教育方案——不收取报酬地代表贫困当事人在审判法庭、审判委员会面前代理各类民事、刑事、行政案件。

法律专业学生出庭必须在一名经法学院诊所正式认可的律师的监督和指导下进行。在民事与刑事案件中,这意味着指导律师必须亲自出席在地方审判法院进行的每一次庭审,所有提交给法院的文件必须由指导律师代表法律诊所签字。如果指导律师未能依据该规则提供充分的监督,则可能会面临纪律查处。

然而,如果是在初级法院(即低于地方审判法院),其案件、争端及程序相对不是很复杂,则法律专业的学生可以在指导律师不出席的情况下出庭并签署诉讼文件。

代理人与其当事人之间沟通保密的特权规则,同样适用于法律专业学生与其当事人之间的沟通。约束律师的职业行为准则同样适用于法律专业的学生。

法律专业的学生的实习规则使得诊所式法律教育方案的数量自 1986 年以来出现了增长。

四、阿特尼奥法学院诊所式法律教育方案

马尼拉阿特尼奥大学法学院是一个天主教机构,拥有大约六百名学生,以培养为他人服务的律师作为其目标。它是菲律宾历史最悠久和最顶尖的法学院之一。它的诊所式法律教育方案由阿特尼奥法律服务中心(简称 ALSC)负责。

ALSC 致力于通过以下方式使阿特尼奥法学院为菲律宾社会作出更多的贡献:

(1)扩大阿特尼奥法学专业学生参与法学院向贫困当事人提供法律援助及其他相关服务的机会,提高学生提供非传统法律服务的

意识；

(2)通过高质量的法律代理使社会边缘人群获得正义；

(3)为本校毕业的律师提供一个途径，实现其向贫困人士提供法律援助及服务的愿望。

作为一个提供法律援助的单位，ALSC 基于以下标准接受案件：

(1)法律方面贫困——申请人必须在经济上无法负担聘请律师为其提供服务的费用。

(2)指导价值——案件必须能够提高并促进学生的办案能力。

(3)案件的性质——是否是一个试验案件或是有影响的案件。案件除了可以使牵涉其中的当事人获得特定利益以外，还应具有长远的意义。倾向于选择涉及侵犯人权和那些影响某一基本领域、团体或人群的案件。

(4)诉讼地点———一般规则是仅接受国家首府地区的案件，在例外情况下可以接受国家首府地区以外的具有重大影响的案件。

(5)对案件有利的法律依据和事实(Merits of the case)。

(6)相关事务的工作量。

(7)伦理方面的因素。

(8)其他：安全方面的因素、申请人的决定。

学生在进行初次会见并与指导律师商议后对案件进行筛选。一旦申请被接受，案件将被指派给一名由一组学生协助的指导律师，志愿者律师也会提供帮助。参加该方案的学生可以取得学分。

ALSC 的工作在很大程度上受到阿特尼奥人权中心的影响和指导。

五、阿特尼奥人权中心

ALSC 是从阿特尼奥人权中心(简称 AHRC)的方案发展而来的，后者也是以法学院作为基础。这两个机构合作密切，特别是自 ALSC 由 AHRC 的诉讼方案发展起来以后。

作为一个人权组织，AHRC 致力于：(1)培养人权律师及辩护人；

(2)使侵犯人权行为的受害者获得正义;(3)监督政府遵守人权法律文件;(4)对公众进行法律和人权教育。

这些目标的实现需要借助以下方案:(1)实习;(2)法律援助;(3)研究与教育;(4)法律改革和倡导。所有的方案集中于对以下人群产生影响的案件和争端:儿童、妇女、海外务工人员和原住民。

以上制度中最重要的是实习制度。参加过实习的法律专业学生为 AHRC 的大部分方案和活动提供了人力资源。通过实习方案,AHRC 也帮助其他的法学院成立了它们自己的人权中心或法律援助单位。

法律援助方案最终成为阿特尼奥法律服务中心的基础。在目前的 AHRC 与 ALSC 的协调制度下,影响儿童、妇女、移民工人和土著民族的法律援助案件受 AHRC 的律师监督。作为法律援助的一部分,AHRC 还有一个监狱减压计划(Jail Decongestion Program)。

在研究与教育方案中,AHRC 主要是为了支持其法律援助案件及辩护工作而进行研究。教育与培训活动并不只是面向边缘群体和民间社会组织,也面向政府人员,包括军人、警察、检察官和法官。

六、法律援助的理念:非传统法律服务

指导 ALSC 和 AHRC 开展工作的法律援助和法律服务的理念被称为非传统法律服务或发展型法律援助。这一理念所强调的社会现实是,在菲律宾,大多数人在社会上、政治上和经济上是属于贫困和弱势的,因此法律援助方案必须赋予他们以权利。

传统的法律援助方案,尽管不可否认其是有益的,但其仅仅关注向个人提供帮助,提供临时救助,而且局限于借助司法制度来申诉冤屈,在程序上缺乏参与性,当事人完全依赖于律师。因此,该制度倾向于增强当事人对律师的依赖,而不是鼓励边缘群体进行自我法律救助。

与此不同,非传统法律服务或发展型法律援助针对的是社会或结构问题。当事人主要是群体或团体,而不是个人。由于它偏重于

面向贫困和弱势群体，因此发展型法律援助的实施者就必须去了解他们，从而才能赋予他们权利。赋权工作反过来能改善这些群体的政治、社会和经济状况。

在非传统法律服务中，律师们首先寻求的是正义。律师们知道，实现正义的途径有许多，并不是只有通过法院才能实现。正义可以在其他的场所、由其他的主体包括当事人自己来寻求。因此，在案件的操作过程中，非诉讼律师必须确保当事人的参与，因为他们在追求正义的过程中也扮演着重要的角色。

因为实现正义的途径有很多，在非传统法律服务中，律师投身于各式各样的活动：准律师（paralegal）培训和草根民众教育、法律改革倡导、社会法律研究、监督、替代性争议解决办法以及最后的选择——诉讼。这些也正是律师和学生们在阿特尼奥法学院通过ALSC 和 AHRC 所从事的活动。

目前，非传统法律服务的实施者们组成了一个名叫非传统法律协会（Alternative Law Groups）的联合会，旨在将他们的工作纳入法律职业的主流当中。他们中的许多人同全国各个法学院的法律援助方案建立了合作关系，以向法律专业学生和未来律师传播非传统法律服务为原则。这样的关系实现了双赢的目的：非诉讼性法律团体从法学院得到了更多人力支持；同时，法学院及其学生获得了非诉讼性法律团体提供的指导和专业技能。最终，整个法律行业将有望焕然一新。

七、挑战与应对

菲律宾的法学院开展法律援助工作所面临的主要挑战是可持续性问题，特别是在资金方面和人力方面。

在阿特尼奥法学院，资金方面的限制主要是通过筹款活动、出资者的赠与、捐赠以及与其他团体的合作来解决的，偶尔也会承接营利性的案件和活动。

另一方面，人力方面的限制通过向参与 ALSC 和 AHRC 活动的

学生给予学分的规定来解决。AHRC 也有实习方案,参与过该方案的学生最终也会帮助 AHRC 完成其他方案,该方案中的部分内容致力于在将来挑选的国内法学院中同样进行这些实习活动。

与当事人团体和组织的对应安排也有助于解决资金与人力问题。当事人帮助保存证据、寻找证人、进行研究或者承担费用(例如,文件和交通)。这一制度使他们可以参与案件的处理。

八、结论

对于解决使贫困人士获得公正这一持续的挑战,法学院、法律专业学生及当事人或受益人可以发挥非常重要的作用。法学院通过法律援助工作,可以鼓励学生选择为弱势群体提供服务的职业。如果行之有效的话,这将引导法律行业的改革和国家司法制度的改革。另外,可以将法律教育和培训扩及大众,这样人们特别是弱势群体就可以用法律来武装自己,提高自行解决问题的能力。这不仅有助于其获得公正,而且最终将有助于其在社会上、政治上和经济上的发展。

阿特尼奥人权中心简史及其实习项目

Lovely-Ann C. Carlos*

1986年的人民力量革命结束了君主专制，推翻了肆意侵犯人权的政府，自此，人权倡导事业方兴未艾。在这样的历史背景下，阿特尼奥人权中心（Ateneo Human Rights Center，简称AHRC）于1986年成立了。它依托于大学，致力于推动和平、发展与人权事业，是菲律宾国内最早出现的此类机构之一。

在福特基金的资助下，AHRC启动了它的第一个项目：夏季实习项目。它仿照了哥伦比亚大学法学院的实习项目模式——将学员分派到美国境外不同的人权机构，使学员有机会亲历人权工作和人权倡导事业。

时至今日，为实现其既定目标，AHRC已开展了多个项目，着重从律师、法学学生以及草根领袖中持续培养人权倡导者，这些项目包括：(1)法律援助；(2)调研与出版；(3)法律及政策改革支持；(4)教育与培训；(5)机构设立；(6)法学院课程改革。

自1986年成立以来，AHRC启动的新项目大多与实习活动相关

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联或源自实习活动。项目领域可分为五类:法律援助(现正与阿特尼奥法律服务中心合作)、Adhikan Para sa Karapatang Pambata(儿童权利)、Urduja(妇女权利)、Katutubo 组织(原住民)以及特别项目组。AHRC 同时也是东盟人权机构工作组的秘书处。在过去几年里,AHRC 对许多弱势群体给予了充分关注,这些群体包括:儿童、海外务工人员、难民、妇女、城市贫民、劳工、农民、渔民、原住民及避难者。

实习项目

实习项目的设计旨在使法学学生亲身体验社会中弱势及边缘群体的困苦,并提供人权倡导及非传统律师服务方面的培训。作为一种初级项目,它也为学员今后以 AHRC 实习生的身份从事更为广泛的法律工作做好了准备。

长久以来,AHRC 及其实习生一直将此实习项目视为一种培养型项目。它不仅限于教授课程,也不同于普通的学徒培训,而是充分考虑到学员的个人成长以及他们作为人权倡导者的发展前景。实习项目是一个持续的过程,对于很多人而言,它始于正式实习期,但却影响到整个法学院学习阶段,甚至当学生最终迈入律师行业之后,它的影响亦将继续存在。

最初,AHRC 仅开设了包括两部分内容的夏季实习项目,即国内项目和国际项目。在国内项目中,实习生被分派到菲律宾国内的各种人权机构,而国际项目的实习生则被派往国外。后来,为了更好地开展规模不断扩大的国内项目,国际实习项目便告一段落。

AHRC 自那时起便不断扩大实习项目的规模。除夏季项目外,AHRC 如今已开设了多个分项目,以此来满足学员及律师的特殊需求:

(1)短假期浸透式项目(Semester-break immersion):历时两周,于学校短假期时进行,专为因个人或家庭原因无法参加历时 8 周的夏季项目的学生开设;

(2)复制项目:旨在使各省法学院学生加入夏季实习项目,并帮

助他们在自己的学院设立类似的人权项目；

(3)交流项目：由 AHRC 集中安排外国人权活动家、律师、学生与中心共同开展人权工作，并使之了解菲律宾国内的人权现状。

夏季实习项目

夏季实习项目(Summer Internship Program，简称 SIP)是 AHRC 最早设立的项目，持续时间最长，在所有实习项目中，它的综合性最强，其他项目均由其衍生而来。

SIP 确立了五点目标：(1)向学员介绍人权现状、人权倡导事业以及致力于人权促进的人物；(2)学习、应用法律及基础程序；(3)为学员提供在社会基层生活的亲身经历；(4)协助东道主机构开展夏季项目；(5)强化法学学生对人权中心及其所提供的服务的认识。

该项目通常历时两个月，在暑假期间进行。由于 AHRC 仅能为每一批次学习项目安排数量有限的学员，申请加入的学生须参加遴选程序。AHRC 所寻求的学员应开放、真诚，并有意愿去体会作为一名非传统律师及/或参与非传统律师服务的感受。申请人的身体状况及既往病史也是需要考察的条件之一，因为在该项目中，学员往往需要徒步穿越深山去访问原住民。当然，申请人还需征得父母或监护人的同意，因为被录取学员一旦前往其他省市，则将整整一个夏天远离家乡。能够坚持服务于他人是十分重要的，因为被录取的学员所承担的义务并不会在两个月的实习期结束后终结。即使从法学院毕业之后，实习生也应协助 AHRC 开展活动、策划方案、实施项目、倡导人权。遴选委员会由 AHRC 执行主任、AHRC 实习项目主任以及曾于前一年参加过该项目的实习生助理组成。

SIP 主要包括四部分：(1)基础预备会(Basic Orientation Seminar，简称 BOS)；(2)浸透阶段(Immersion)；(3)正式实习期(the internship proper)；(4)评估与计划。

基础预备会。BOS 是为期 4 天的研讨会，实习生将以此对非传统律师服务有初步的了解。由于学员的分配情况尚未确定，BOS 将

注意采取整体性方法，内容涉及不同的领域及问题。该研讨会将深入探讨非传统律师服务、国际人权现状、菲律宾人权体系以及不同领域内的不同问题，同时也将为学员提供准律师技能的培训。被邀请的讲师或资深人士通常来自备选的接待实习生的人权机构。

浸透阶段。所有 AHRC 实习生均要经历浸透阶段，因此这一阶段是将所有实习生紧密联系起来的纽带。在基础预备会之后，学员们将两人一组，被分派到农民、渔民、城市贫民或部落群体那里，与之共同生活，以便能亲身感受社会底层民众的贫寒困顿，并对影响弱势群体的诸多问题有一定了解。

基层的浸透阶段将持续一周，在此过程中，实习生应与其所前往地区的民众同吃同住同行，并使自己彻底融入当地环境。远离舒适生活，来到贫穷的社区，又无从获得最基本的生活设施，实习生们将真切地体会社会边缘群体日常的生存状态，感受他们的艰辛。

AHRC 希望以这种直接融入的方式进一步加深实习生在以下方面的理解，使他们知道：对于受法律保护并可能从中受益的民众而言，法律是怎样发挥作用的，又是怎样徒劳无功的。

正式实习期。在整整一周的浸透期结束之后，实习生们将汇集到一起，分享彼此的故事、经历和心得体会，随后将被分配任务，前往不同的人权机构。在实习期间，实习生将被派往非政府组织，在那里，他们将以实习生或职员的身份工作五至六周。

在早些年，人权倡导事业所关注的只是对人民政治权利的侵犯，因而那时 AHRC 的夏季实习项目仅将实习生分派到菲律宾人权委员会（Commission on Human Rights，简称 CHR）的中央及地区办事处以及非政府性人权机构。然而，当人权倡导事业延伸到发展领域中，并且越来越多的非政府组织在发展领域或非传统律师服务中发挥积极作用时，夏季实习项目的接待机构便主要由非政府组织来担当了。

从过去到现在，对接待机构的选择须遵循三条标准：该机构应对人权或非传统/发展法律有所涉及，并在这些领域中积极开展项目，而且在该机构的工作地域内实习生的人身安全能够得到保障。鉴于

目前作为接待方的非政府组织的重要地位,此标准可作下述阐释:

(1)该非政府组织须以法律为其主要业务。此中原因有二,且相互关联。AHRC 实习项目可依照马尼拉阿特尼奥法学院(Ateneo de Manila School of Law, 简称 ALS)实习课程要求记入学分,也就是说,学生可由此获得学分。ALS 要求学生在毕业之前参加 240 个学时的实习项目或实习课程。如学生加入 AHRC 的夏季实习项目,则该生将获得 240 个学时的全部学分。这是因为夏季实习项目同时也是一个"服务项目",因而参与的学生不仅能够获得学分,也可以获得服务方面的实践积累。除此之外,该非政府组织应配备一名律师以指导实习生的工作,这也是 ALS 实习要求的一部分。

(2)该非政府组织应积极开展项目。这是为了确保进入该机构的实习生能够从事实质性的工作。在分派学员之前,AHRC 会前往该非政府组织考察,以确保实习生能够参与到法律工作或人权倡导工作中去。

(3)在该非政府组织所在地域内,实习生的人身安全应得到保障。在实习项目设立的最初几年,学员的安全问题一直令人担忧,因为在那时,侵犯人权的现象十分猖獗,并且那些非政府组织所在地大多为军事区,或正遭受动乱困扰。如今,军事区的数量已大大减少,实习项目范围业已扩展到公民权利与政治权利之外,直接涉及其他的人权倡导领域,因此实习生可被分派到能够保障其安全的非政府组织中去。

由于 AHRC 是非传统法律协会(Alternative Law Groups, 简称 ALG)的成员,也是多个在不同领域发挥倡导作用的人权机构组成的联盟,因而大多 AHRC 实习生将被派往 ALG 成员机构参加实习工作。实习生将在各自的非政府组织中工作,这将为其提供实践性培训,使之亲历人权倡导事业,从而最终学会处理案件,并对该组织的人权倡导工作有更多的了解。实习生将能够对此类工作有所体会,并将获得参与非传统律师服务的感受。

借助于 ALG 的网络平台,AHRC 已能够将实习生派遣至全国各

地从事非传统律师业工作。向某一机构派遣实习生有多方面的含义:它意味着实习生要参与该非政府组织当前的项目,要整理数据库或客户档案、进行采访和案件调查、进行准律师培训、准备诉状,并要参观拜访合作者"社区"——这可能是一所监狱,一家有劳资纠纷的工厂,一片满是流浪儿童的城区、避难所,诸如此类。AHRC 实习生还将接受派遣以参与非政府组织如下方面的工作:国际人权、环境、海外务工人员、妇女、儿童、劳工、监狱减压、农民、渔民、原住民、艾滋病毒感染者、地方政府、城市贫民以及避难者。

评估、计划、舞会(简称 RnR)。在非政府组织工作五至六周后,所有实习生将再次会合,进行为期四天的活动。他们将"反思有关人权问题的体会,制定来年的活动计划,然后在这个漫长的夏季行将结束时放松一下身心"。

短假期实习项目

短假期实习项目(Semestral Break Internship Program,简称 SBIP)与夏季实习项目极其相似,因为两者都同样包含基础预备会、浸透阶段及评估阶段。唯一的不同在于,短假期实习项目不包含夏季实习项目中的"正式实习期"部分,即不包含将学员派遣至人权机构参与工作的那个阶段。

短假期实习项目仅历时两周,在学期之间的假期内进行,通常是在 10 月或 11 月间。与夏季实习项目一样,AHRC 仅可为每一批次实习项目安排数量有限的学员,因此,申请人应同样经历遴选程序。由于短假期实习项目的期间大大短于夏季实习项目,因此,将对递交申请的学生进行严格筛选,以将那些仅出于利益和荣誉的考虑而渴望加入该机构的学生排除在外。

短假期实习项目专为那些具有奉献精神、有意愿加入 AHRC 并为之工作,但却因来自其父母或时间上的限制而无法参加夏季实习项目的学生而设立。

Ateneo 暑期实习生在向中国考察团讲述活动经历

复制项目

复制项目(Replication Program)。AHRC 实习项目最初是为马尼拉阿特尼奥法学院的学生而设立的。但在 1991 年,AHRC 开始有选择地邀请某些法学院向 AHRC 夏季实习项目派送一名或两名学生(复制项目实习生)。这个被称为"复制项目"的新举措是在夏季实习项目实习生们作出一些积极反馈之后应运而生的,这些反馈意见认为,其他法学院应仿照设立此类实习项目,从而使那里的学生也有机会获得同样的经历。帮助优秀的法学院培养出对非传统律师服务有所认识并立志于此的法律人才,这正是创建此项目的动机所在。

由于非传统律师服务实习项目也是一种投资,AHRC 须与具有律师培养能力的法律院校进行合作。因此,在对受邀法学院进行选择的问题上,AHRC 将仅选择律师业绩排前十名的法学院,并确保 Luzon、Visayas、Mindanao 等地区均有实习生代表。因为复制项目的目标是要使各法学院最终能够开设类似的实习项目,所以那些抵制或拒绝开设类似项目的学院将被其他立项意愿更强的学院所

代替。

参加 AHRC 夏季实习项目的邀请函通过各法学院院长递送。使院长参与其中的目的是要使各法学院在其体系之内切实建立起人权中心或开设人权项目,而不仅仅将活动限于学生组织。AHRC 负责向复制项目实习生教授在其各自学院开设、运作及维持项目的技能。至于回馈,AHRC 期望实习生能够为自己的学院设立类似的中心及实习项目贡献一份力量。

正如 AHRC 所期许的那样,在实习期间,复制项目实习生能够直接接触到 AHRC 项目,并对中心的日常运作有一定了解。当返回各自学院时,大部分学员已成功获得了学院院长的立项批准以及后续的资金支持。而在大约十六年之后,该复制项目将被公认为 AHRC 实习项目的一个非凡成就。

马尼拉阿特尼奥法学院的毕业生们最终将发现其身处要职,无论他们是处于政府的三个分支机构、学术界、民间团体还是商业领域中。在大多时候,这些法学院学生接触社会边缘群体的机会是有限的,因为他们大多来自于生活富裕的家庭。学生们能否真正了解最终将为其提供服务、给予保护或与之合作的民众,这一点显得尤为重要,而这也正是本实习项目所致力解决的问题。

第三章　非政府法律援助

菲律宾农民权益保障的考察报告

曹海晶*

2007年11月18日至2007年12月1日，我们应菲律宾阿特尼奥人权中心（ATENEO）的邀请，在中律原咨询（北京）有限公司的组织和安排下，赴菲律宾进行农村法律制度考察。本次考察活动的主要内容包括：菲律宾的司法体制、法律援助体制、法学教育、非传统法律服务以及菲律宾农村和农民的法律问题。

菲律宾共和国位于亚洲东南部，北隔巴士海峡与中国台湾省遥遥相对。菲律宾在地理位置上靠近中国，有着亚洲文化的背景，是一个农业大国且属于发展中国家，因而对菲律宾农村法律制度的考察对我们研究农村法律问题具有比较研究的特殊价值。在考察中，菲律宾的农村和农民的现状给我们留下了深刻的印象，也引发了我们对该国农民的权益及其保障的法律问题进行思考和分析。

一、菲律宾的农村、农业和农民

菲律宾的人口有8846.8万（据2006年7月官方资料统计，但座谈中我们得知的数字是已达到9100万），分布于全国七千一百多个

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岛屿组成的群岛上，70%的人口在农村。农业在该国经济中占有十分重要的地位，三分之二的农村人口靠农业维持生计。农业是菲律宾的主要经济部门，其产值占国内生产总值的22%，粮食作物和经济作物分别占农产品产值的53%和47%；农业就业人口占就业总人口的45.1%；农业提供给国民食物来源，并为其他产业提供原料。菲律宾的主要粮食作物有水稻和玉米，粮食基本自给，但由于多年来种子技术和生产技术水平较低，加上人口增长过快，菲律宾的粮食负担不断加重，稍遇灾害便需要进口。菲律宾的主要经济作物有椰子和甘蔗。其中，椰子的产量约占世界总产量的一半。菲律宾的渔业面临着倒退的前景，其原因主要是破坏性的捕捞方式、资金缺乏、政府资助不够等。为了更好地解决菲律宾的粮食安全问题，阿罗约政府近几年加强了与中国的农业合作，积极向中国推介菲律宾的农业资源，并邀请中国企业投资菲律宾的农业，扩大菲律宾热带水果出口到中国的份额。2007年年初，温家宝总理出访菲律宾。在会谈中，温家宝总理与阿罗约就发展双边关系达成了十项共识，其中就有涉及中方支持菲律宾农业现代化建设的内容。阿罗约表示，菲方欢迎更多的中国企业到菲律宾投资兴业，特别是参与农业、渔业和基础设施建设。

菲律宾国家经济发展署（简称NEDA）近期公布的数据显示，菲律宾农民日均收入仅为44比索（约1.1美元），年均收入为16,650比索（约406美元），农民收入的44%用于食物消费。目前，菲律宾70%的贫困人口生活在农村。由于农业生产无利可图，不少农民放弃耕种，背井离乡，到城市里寻找生路。不过，在菲律宾并没有“农民工”这一概念，在法律上得到承认的是“农村—城市迁移就业者”这一概念。农民工进城后只能从事体力劳动，他们可以谋求到的工作也只能是报酬极低的重体力活，一般是建筑工、搬运工、三轮车夫或清洁工等差使。在菲律宾首都马尼拉市郊奎松区，有一个世界上著名的贫民窟，它是一个大垃圾场，占地超过20公顷。每天，1000万马尼拉居民会将不少于700吨的生活垃圾主要倾倒于此。由于这个巨

型的垃圾堆高达十几米，且不时因局部燃烧而冒着烟雾，人们形象地称为“冒烟山”，又叫“大垃圾山”。尽管恶臭扑鼻，卫生条件极差，大垃圾山上仍居住着不少贫民家庭，其中大多是到城市谋生的农民工。他们没有别的生活来源，整日靠捡垃圾为生，他们的简易住处是由随意捡来的木板、铁皮、硬纸壳、塑料袋等搭起来的，“屋顶”用旧轮胎压着。

此次考察，我们实地走访了菲律宾农村，在奎松（Quezon）、西内格罗（Negros Occidental）、八打雁（Batangas）分别与耶农、蔗农、稻农进行了交谈，当地呈现给我们的景象便是农村的落后和农民的贫困。农民的房屋很多是由竹制篱笆墙构筑的，再加上铁皮或茅草制作的屋顶，四面透风，在这里，我们很少能见到砖瓦房。在奎松省农村，我们在村卫生室和十几个村民座谈当地农民的生活状况。这里所谓的卫生室实际上只有一个小小的木柜，里边放着少量的药品。当地村民每户年收入大约为3万比索（折合人民币不到5000元），除了村卫生室是砖瓦房外，周围农民的住宅都是竹制篱笆墙的茅草屋。我们在一户村民家访谈时，看到该村民家中的摆设异常简陋，这里几乎没有一件像样的家具，小小的两间屋各放置了一张竹子制作的床，床上的铺盖十分破旧，床边有一个没有油漆的方桌，户主的两个小女儿坐在桌边对着我们几个陌生的客人微笑，在她们的家里我们没有看见一件家用电器。在西内格罗省，我们访问了当地的蔗农，他们衣着脏旧，房舍简陋。当谈论到土地问题时，他们滔滔不绝。他们讲到，他们为土地权向政府申诉，但未得到当地政府的重视，当地的地主势力强大，想方设法阻碍农民争取土地的行动。地主利用司法程序告农民侵占地主的土地，还通过行政程序告土地改革部门实施的分地行为没有法律依据，地方法院的判决支持了地主的诉求，判决认定农民要求分配的土地不属于土改的范围。农民不服判决上诉到地区法院，结果地区法院维持原判，农民只有继续到上诉法院申诉，上诉法院还是没有支持农民的诉求。在非政府组织的帮助下，农民到马尼拉要求土地改革部门落实农民的土地权益。土改部门开始对他们的

土地请求不予理睬，农民只有组织起来用绝食的办法进行抗议。有一位农民妇女，给我们讲述了她参加绝食行动的29天的过程。绝食期间他们有过绝望，因为地主的势力太强大。农民在当地市民、非政府组织和媒体的支持下，艰难地坚持绝食行动。绝食行动持续到第29天时，土地改革部长才来到绝食的农民中来，答复保证农民行使土地的权利。即便是这样，大地主仍然阻挠农民占有土地，他们雇用流氓对农民进行威胁，还雇人杀害了两个参加绝食的农民，这引起了更加激烈的矛盾和冲突。从当地蔗农争取土地权属的斗争过程来看，尽管宪法和土地改革的法令规定了农民的土地权益，但农民要真正获得土地权利并实际受到法律的保护仍然是一个十分艰难的过程。

二、菲律宾农民权益保障的相关立法和制度

近几年来，菲律宾农民与政府的矛盾和冲突时常发生。据《中国日报》报道，2005年7月就有过农民组织为保护自己权益而进行的示威运动，大约五百名来自左翼农民组织的示威者冲击了位于马尼拉北郊农业部的大门。他们打出了“确保农民福利”的横幅。目击者称，示威者砸碎了办公楼玻璃，并使用砖块袭击守卫，同时还高喊“结束阿罗约统治”的口号。农业部内战战兢兢的工作人员匆忙地锁上了他们各自的房间门。农业部诊所的一名医生说，有三人在事件中受伤，其中包括一名卫兵和一名示威者。菲律宾媒体报道说，示威者与六名大楼保安发生冲突，并在当地时间15日早上10点45分进入农业部，占领了农业部的四个楼层，并一直待到了中午12点15分。后来农业部官员出面调停，并向示威者保证“和平离开就不会受到指控”。示威者在最终离开之前，还在农业部外进行了一次30分钟的示威。一个菲律宾农村组织联盟在一份声明中称，那些农民前往农业部是为了批评菲律宾的农业政策。他们指责菲律宾进口价格低廉的农业产品而损害了本国农民利益。示威者还要求阿罗约兑现再就业、贷款以及土地开放问题上的承诺。农民权益的突出问题集中表现在土地问题上。

菲律宾政府也在想方设法以缓和与农民的矛盾和冲突，从而维持政治秩序和社会稳定。因此，菲律宾的立法和制度中不乏保障农民权益的内容。

（一）菲律宾农民权益保障的相关立法

在《菲律宾宪法》的规定中，我们既可以看到农民权益保障的原则性规定，也可以找到具体的条文规定，在土地问题上则规定地更为明确。

《菲律宾宪法》第二章是关于原则和国家政策的宣告，其中第21条明确规定，国家促进农村的综合发展和土地改革。该条规定为菲律宾土地改革提供了宪法依据，农民争取其土地权益也就有了国家根本法的保障。第三章是关于人民的权利，其中第11条规定，不得以贫穷为理由拒绝任何人自由向法院和准司法机关提起诉讼，或拒绝向其提供正当的法律帮助。

如何使农民获得土地呢？《菲律宾宪法》在第十三章中作出了进一步的具体规定，设置了土地改革的基本框架，即国家应通过立法实行旨在使无地农民或固定农业工人有权直接或集体地获得所耕种的土地，并使其他农业工人有权获得收获的合理份额的土地改革计划。为此，国家鼓励并实行依照国会规定的优先权和合理的保留限额制度，考虑生态、开发或公平等因素，在给予合理补偿后，合理分配一切农田。在确定保留限额时，国家应尊重小地主的权利，应进一步采取措施鼓励自愿分田。同时，国家承认农民、农业工人、地主合作社和其他农民组织享有参加土地改革的计划、组织及管理的权利。国家还积极采取配套措施，即通过提供适当的技术和科研以及充分的财政、生产、销售和其他服务支持农业。只要符合法律规定，国家得根据土改或经营的原则，处理和利用其他自然资源，包括已出租的或已授予特许权的公有农田，但应尊重小规模开垦者的优先权和定居权，以及当地居民对祖传土地的权利。国家得利用公有农田，安抚无地农民和农业工人并按法律规定将公有农田分配给他们耕种。

菲律宾土地改革的最重要的法律基础是由阿基诺签署的综合土地改革法(Comprehensive Agrarian Reform Law)。这个法案试图通过综合土地改革计划促进菲律宾的社会公正和工业化。这个综合土地改革计划的主要内容包括:(1)进一步促进土地的分配;(2)综合土地改革不仅仅是土地的分配,而且还包括农场和市场之间的道路、桥梁以及灌溉设施、收割设备、农村电气化、抽水机、教学楼、贷款服务、培训等方面的改善和建设;(3)建立和完善土地纠纷司法制度,高效解决积压案件,培训准律师、大学毕业生和成功律师为农民提供免费法律援助。根据综合土地改革法案,政府授权土地改革部行使土地改革案件的初审管辖权,为因土地改革案件受到影响的农民提供法律援助。根据此法案,在司法案件和准司法案件中,由土地改革部律师和土地改革部仲裁局代理农民出庭。另外,土地改革部在土地纠纷案件中利用更具效率的非诉讼纠纷解决机制来缓减当事人之间的冲突。从《宪法》和《综合土地改革法》的内容来看,菲律宾土地改革的主要措施和方式是限制地主的土地面积,将农用地重新分配给无地的农民和农工,并为其提供必要的生产资料,实现耕者有其田,保障无地农民和农工占有土地,促进社会平等,有效改善土地改革受益者的经济和社会地位。

在菲律宾农村,原住民是一类特殊的群体,他们主要生活在菲律宾南部群岛,如棉兰老岛。由于原住民时常因战争、采矿、武装冲突、开发土地等问题而受到遣送,其合法权益的保障得到了国家和政府的重视。《1987 年菲律宾宪法》有关于原住民问题的规定,他们的财产权、文化权以及传统习惯都得到了法律保护。根据最高法院的判决,原住民的祖居地得到承认,原住民可以要回大部分这样的土地。菲律宾同时也成立了有关原住民的国家委员会,该机构可以办理原住民祖居地的房产证,通过登记使原住民的土地所有权得到确认。1996 年菲律宾通过了《原住民权利法》,该法为保障原住民的权益提供了重要保障,它还为原住民居住地区的遗传资源和传统知识的保护奠定了法律基础。根据不同的权利主体,菲律宾在法律上将遗传

资源和传统知识分为国家主权、国家所有权和传统社区权。其中的传统社区权细化为控制权、事先知情同意权、利益分享权、参与决策权、自由交换权等,这使得原住民社区获得了关于植物及其药用性质的传统知识的所有权,大大丰富了有关植物遗传资源知识产权保护的方式和途径。虽然"传统社区权"在知识产权框架内的权利属性还有待进一步探讨,但原住民的智慧财产权得到了维护,原住民可以从法律的保护中获得利益。

菲律宾政府还非常重视保护农业和促进农业经济发展的立法。1977 年 6 月,菲律宾政府颁布了《农业投资奖励法》,立法目的是鼓励国内外投资者开发农业。对于投资农业的国内外公司,政府给予优惠的待遇,凡在政府投资委员会登记注册的农业公司均能得到更优惠的税率奖励。1978 年 9 月,菲律宾颁布了《农作物保险法》,并依法于 1980 年 6 月成立了菲律宾农作物保险公司,1981 年该公司正式办理农作物保险业务。该法明文规定,对从银行获得贷款的农民必须实行强制性保险,保险费由政府、贷款机构和农民三方分担,无贷款的农民自愿投保。政府负责保费补贴和保险公司的业务费用补贴(占费用补贴的 75%),政府金融机构通过贷款资金进行支持,将保险与金融机构贷款相结合。保险的对象主要是农作物品种,如水稻、玉米。对发展中国家的菲律宾而言,农作物保险除了具有落实农村金融政策的目的之外,还是农业发展政策的重要组成部分 ,虽然增进农民福利的目的是其次的,但该项立法对于保证农业生产经营的稳定性和推进农业经济发展的积极作用则在一定程度上保护了农民的利益。1997 年菲律宾颁布了《农业与渔业现代化法》,同时还制定了 1998 年至 2004 年六年期的《菲律宾农渔业机械化长期计划》,其目的是通过创造一个积极有利的环境来改善农村机械化辅助性服务的设施,通过提高能源利用率来促进农渔业机械化水平的提高,通过提高和优化农业投入的效率来增加农民和渔民的收入。

(二)法律援助制度

在菲律宾,法律援助的法律依据是宪法提供的,要求向所有弱势群体提供司法公正和法律援助。律师提供法律援助的责任被写入律师职业守则中。贫穷而没有辩护律师的当事人出庭时,法官可以指定当天在场的任何律师向他们施以援手。而菲律宾贫困人口中的多数是农民和农业工人,他们可以从中得到一些援助。律师只有在其不能胜任工作或有利益冲突时才能拒绝援助贫穷的当事人。

在提供法律援助的组织中,菲律宾公职律师办公室(Public Attorney's Office,简称 PAO)是由政府资助的法律援助机构,它隶属于司法部,具体由司法部提供支持,其年度预算为 5 亿菲律宾比索。PAO 雇用了 1048 名律师和 852 名支持人员,由他们为贫穷的当事人提供法律援助,处理刑事、民事和行政案件。为穷人提供法律援助的还有一个非常重要的组织,即菲律宾律师联合会(简称 IBP),它是一个全国性的律师协会。法律援助委员会是 IBP 诸多委员会之一,在马尼拉设有全国办公室,在地方分会也有地方委员会,我们在那里进行了参观和座谈。该组织为符合条件的当事人提供无偿法律援助,其中有半数的援助对象是农民或农业工人。除了传统的法律援助外,IBP 还资助一些支持妇女权利的发展性法律援助项目。IBP 与包括非传统法律协会(Alternative Law Groups,ALG)成员在内的非政府组织密切合作,并提供关于立法改革的咨询。IBP 还向律师助手、村级官员、警察和地方非政府组织成员提供培训,以提高他们的法律意识,发展技能。特别的是,IBP 还与联合国儿童基金会合作,提供关于妇女和儿童权利的培训。

除上述两类组织外,非政府组织包括我们这次重点考察的 ALG 的成员、大学的法学院法律诊所教育项目的学生以及律师事务所也为贫困者(主要是农民)提供专门的无偿公益法律援助。

三、菲律宾农民权益保障的社会支持

(一)非政府组织的支持和帮助

近几十年来,菲律宾的非政府组织(Non-Governmental Organization,简称NGO)的发展比较迅速,他们在农民权益保障方面扮演着重要的角色。《1987年菲律宾宪法》确认了NGO在国家中的社会地位,该宪法第8条规定:"国家尊重独立的人民团体的作用,鼓励公民以民主的方式通过和平合作手段追求和保护其合法利益以及理想。不得剥夺公民及人民团体在一定程度上有效参与各级社会、政治和经济决策的权利。"1988年菲律宾国家计委颁发了一个法律文件,对NGO参加社会发展活动作了具体规定,明确了NGO与政府的合作原则。菲律宾的许多法律都有鼓励NGO发挥作用的条款,有的法律还有NGO承担政府部分职能的规定。由于农村的落后和农民的贫困是菲律宾政治与经济问题的主要根源,NGO非常关心农村的发展和农民的权益保障问题,包括土地改革、农民的教育、生活以及农村基层的自治权利问题。

在ATENEO人权中心,Carlos Medina主任向我们介绍了ALG的工作情况以及他们为穷人所做的贡献。非传统法律服务组织坚持可持续发展的理念,主张法律倡导、法律教化、法律应用。非传统法律服务最初起始于激进律师捍卫民事和政治权利、反抗戒严法(martial law)的压制,戒严法终止后,很多律师和非政府组织转向保护经济、社会和文化权利。非传统法律服务是一个寻求社会正义、涵盖了各种方式和行动者的项目,它在贫困和体制不公正的情况下起作用。除诉讼外,非传统法律服务的内容还包括宣传法律和政策的变化,配合媒体、替代性争端解决方案、社区组织甚至是集会和游行。非传统法律服务不同于传统上专注于个别客户从而形成依赖关系的法律服务,非传统法律服务强调增强社区能力和促进社区发展。ALG于1990年建立,现有19个成员组织。ALG成员主要关注弱势人

群如妇女、儿童、农民、渔民、被拘留者、土著人民、城市贫民和移民工人(菲律宾出国务工人员)的相关问题以及环境和地方发展的问题。

在 ATENEO 人权中心的教师陪同下,我们参观了 ALG 在阿特尼奥大学奎松城校区设置的秘书处。秘书处的工作人员(包括全国协调员、法律调查员、媒体官员、财务和行政官员)负责组织和协调媒体及其他宣传活动,为研究和一些策略性诉讼提供支持。当然,ALG 的工作受《替代性法律服务条约》(Covenant on Alternative Lawyering)和《道德守则》(Code of Ethics)的限制。

ALG 最大的优势在于其成员的活动能力。我们这次赴菲律宾,考察了 KALIKASAN、SALIGAN 和凯撒汗 KAISAHAN 等非政府组织成员。

KAISAHAN 是一个主要致力于农村土地改革和农村发展并且为农民提供法律帮助的非官方法律服务组织,已经成立了 16 年。我们与该组织的成员进行了半天的座谈。Teena 是这个机构的女律师,长期工作在棉兰老岛等外省。她向我们介绍,KAISAHAN 主要按地域负责项目管理,她和她的同事的一个重要活动是在 KAISAHAN 所有工作的领域建立准律师队伍。在她们以及其他近二百个非政府组织的支持和帮助下,一个村的 54 个农民从 2007 年 10 月 10 日起,由棉兰老岛出发步行到马尼拉,到我们与 KAISAHAN 工作人员座谈的那天,农民已经步行了 60 天到了 Quenzon 省,我们第二天去 Quenzon 时遇到了这些步行的农民并与他们进行了简短的交谈。农民这 1600 公里的行走是为了土地——涉及 135 个家庭的 144 英亩土地,农民要求返还他们的土地。据 KAISAHAN 成员介绍,1995 年国家土地部门给农民发放了关于这些土地的土地权属证书,但当地政府却认可地主继续拥有这些土地,推翻了土地证书的效力,并同意在 5 年内将这些土地开发成工业用地用于建医院、服务场所等。农民认为当地政府的行为侵犯了宪法和土地法给予他们的土地权益,要求地主返还。在当地,农民是弱势群体,若没有 KAISAHAN 这类非政府组织提供的支持和帮助,农民很难组织起来徒步到马尼拉向中央政府请

求土地权益的保障。

SALIGAN 是在 1987 年由两位律师和一个法学院学生建立的，现在已成为菲律宾最大的民间公益法机构，共有 36 人，其中 24 人有律师执业资格。SALIGAN 在菲语中是最基础的意思，该组织为与处在最边缘、最基层的弱势群体打交道的非政府组织。它们最初的重点在于劳工法，后来逐渐介入土地改革过程。他们的工作方式主要是进行法律宣传教育、提供法律援助、提出政策和立法的建议、接收法学院的实习生、研究法律问题和出版法律读本等。SALIGAN 也参与了对准律师的培训，促进了对地方社区的法律教育和宣传工作。该组织的一个工作人员告诉我们，他做学生时就在该组织实习，为农民提供法律帮助，现在是组织的正式成员。

在 Quenzon 省的一个椰农社区，我们和农民准律师进行了交谈，大多数准律师都是 Quenzon 农民协会的成员，通过地方组织，他们进行招聘并进行培训。他们设法解决的主要是法律问题。在培训过后，准律师定期开会，讨论出现的法律问题以及他们如何为农民提供帮助，如对椰子树不分青红皂白地砍伐。他们还不定期地举行研讨会，讨论一些主要问题，包括有关妇女和儿童遭受暴力行为的新法律。除了法律重点领域的培训之外，准律师还强调组织技能培训和宣传、领导力及地方治理培训的必要性。许多律师认为，准律师的培训给他们树立了发挥地方政治职能的信心和信念，准律师的服务都是志愿性的。

（二）法学院学生志愿者的法律援助

以法学院为基础的法律援助活动是由最高法院于 1981 年通过的第 138 号法案《法学院学生实践规则》（Law Students Practice Rule）（第 138 - A 条，法院规则）所支持的，该法案允许大学法学院学生在律师的指导下从事法律援助服务。

《法学院学生实践规则》规定了学生代理贫穷的当事人出庭的条件：（1）完成三年的法学教育；（2）学生所在学校获准开设诊所教育

课程;(3)不能得到任何报酬,并且必须由一位 IBP 成员直接指导和管理,该成员还需由法学院认证,并且拥有指导律师签署的所有相关法律文件;(4)在高等法院出庭时,指导律师必须亲自到场,确保当事人得到法律规定应有的公正的帮助(视为律师服务),避免学生由于知识不足等原因造成的被谴责和风险;但在较低级别的法院出庭时,法学院学生可以在没有指导律师作为一方当事人的代理或朋友出席的情况下到庭。法学院学生可以受理刑事案件、民事案件和行政案件。

阿特尼奥人权中心是阿特尼奥法学院的法律援助单位,并且集中开展基于项目的诊所法律教育活动,包括诉讼监护人项目和监狱减压项目。阿特尼奥人权中心同时也致力于法律和政策的改革工作,包括促进东南亚国家联盟的人权机制的区域性活动。他们所关注的问题包括儿童权利、土著居民和外地务工人员的权利。该中心项目规划的核心是各种有组织的学生实习,其中包括向当事人社区特别是农村原住民提供短期的有关敏感问题的法律服务。我们在与阿特尼奥法学院的学生座谈时得知,就在前不久,他们徒步十余公里到渔村,与那里贫困的渔民同吃同住,为其提供法律帮助。

我们还参观访问了菲律宾大学的法学院,参观了他们的法律援助中心,并和其中心的志愿者进行交流,听了他们的志愿服务感受。该法学院拥有菲律宾历史最长的法律援助项目。法律援助项目与法律诊所教育紧密结合,菲律宾大学法学院于 1974 年 7 月建立了法律诊所办公室。起初,法律诊所的老师主要教授学生在法庭上的审判技巧。随着时间的推移,法律诊所现已发展成为提供法律服务和教育实践的机构。现在,该法学院要求法律诊所的学生一年之内至少要提供 120 小时的法律援助服务。作为最高法院管理的一个认证项目,该法学院的学生可以依照《法学院学生实践规则》中第 138 条的规定出庭。虽然受理案件的基本条件是当事人必须为贫穷人口,但是中心主任也有权受理一些受到公众广泛关注或者具有教学意义的案件。法学院学生以小组为单位处理案件,同时还有 11 位合格律师对这些学生进行指导。

菲律宾的私人和非政府法律援助

GILBERT V. SEMBRANO*

一、简介

菲律宾是东南亚最早施行民主共和制的国家之一。它是一个由七千一百多个岛屿所组成的群岛国家，拥有近八千万人口。人口的大多数为日均支出低于一美元的贫困人口，他们大多为农业人口，以种植和打鱼为生。如同中国的农业人口一样，菲律宾农村的贫困人口对于法律服务的需求需要我们的密切关注及更多的资源投入。除了困扰于菲律宾法律援助体系的一般问题外，远离权力中心也使得他们加倍地疏离于司法体系，从而成为侵犯人权的牺牲品。

二、法律援助与贫困人口的司法参与

1987 年《菲律宾共和国宪法》承认贫困是困扰这个国家的主要问题之一，并进一步承认贫困阻碍了贫困人口的司法参与及法律赋权（legal empowerment）。因此，“每个人都不应因为贫困而得不到法

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律代理”上升为一个国家政策。宪法第8条第5节加强了这一原则，根据该条，最高法院应该：

“制定所有法院中与宪法权利的保护与实施、诉讼、实践及程序相关的制度，并制定与法律的实施、律师协会、贫困人口法律援助相关的制度”。

根据此条，法律行业的《职业责任守则》[1]要求律师不得拒绝作为指定代理律师（counsel de officio）[2]的指派，也不得拒绝菲律宾全国律师协会或其任何分会的提供免费法律援助的要求。

还有许多因素使得菲律宾的贫困人口不能实现司法参与，这些因素包括：让人难以承受的诉讼成本（例如，昂贵的律师费用和诉讼费）、案件推进或处理的速度太慢、腐败、公共法律援助系统的超负荷运转及政府财力投入不足、缺乏私人的或非政府的法律援助提供者及政府对这些组织的支持力度不够及菲律宾人偏爱诉讼的天性。毫无疑问，国家法律援助体系无法满足如此庞大的免费法律服务及代理的需求。

三、法律援助的提供者

在菲律宾有许多不同的机构提供法律援助，包括政府提供的法律援助、法律指定的法律援助和私人或非政府组织提供的免费法律援助。有一点很明显，即它们共同的特点是当事人须是非常贫困以至于无法自行承担律师服务费的人士。各个法律援助提供者对于贫困人士的定义略有不同。在接受提供免费法律援助及代理的申请时，还需要考虑诉讼地点、对案件有利的事实和法律依据、可用资源及案件的性质等其他因素。

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〔1〕 参见《职业责任守则》14.02 & 14.03。

〔2〕 指定代理律师指由法院或政府的准司法机关指定进行代理的公益律师。

(一)公共或政府法律援助

公职律师办公室是负责向贫困的诉讼当事人提供免费法律援助的政府机关,不仅针对刑事诉讼案件,也针对一些行政诉讼案件。可是,如前所述,对于免费法律援助的需求太过巨大。在许多情况下,由于要超负荷地处理大量案件,公职律师不得不牺牲法律代理的质量。与此无益的是,公职律师尽管超负荷工作,但却收入甚微。

有许多政府部门向其职权范围内的案件提供免费的法律援助和代理。例如,农业改革部向农村改革案件中的贫困农民提供免费法律支持;对于侵犯人权的案件,人权委员会在特定情形下向受害人及其家属提供免费法律帮助。

通常,这些政府机构所运用的法律援助的方式是传统的,以区别于发展性法律援助。后文将对这两个概念做一比较。

(二)法律指定的组织

法律指定由菲律宾全国律师协会提供一项法律援助计划。该协会是由菲律宾的律师组成,为了保持良好的职业规范,法律要求每一位律师都必须是该协会的会员。菲律宾全国律师协会设有一个国家法律援助办公室,在全国有几个分部,每一个分部都设有自己的地方法律援助计划。首要的标准是收入水平和案件的地点(案件的诉讼地点或审理地点)。同政府机关的法律援助一样,它的手段通常是传统的,而不是发展性的。

(三)私人的及非政府组织的法律援助提供者

如前所述,政府或公共的法律援助无法满足对于免费法律援助及代理的需求。因此,需求者们转向了其他可以满足他们需要的组织。菲律宾存在不同的私人及非政府组织提供的法律援助,包括:(1)私人律师事务所的法律援助项目;(2)以法学院为基础的法律援助项目;(3)非政府组织。非政府组织又可进一步划分为提供传统法

律援助的非政府组织及提供发展性法律援助的非传统法律协会(Alternative Law Groups)。

1. 私人律师事务所

一些律师事务所,特别是大型及中型的律师事务所,向贫困的当事人提供公益性的或免费的法律帮助,不过,一些这样的律师事务所主要是向其雇员的亲属,包括其律师的亲属提供免费法律援助。他们也提供传统的法律援助,但不提供发展性的法律援助。这两个概念将在本文稍后解释。

2. 以法学院为基础的法律援助项目

许多法学院向菲律宾最高法院提出申请,希望获得法律援助提供者的资格认证(accreditation)。最高法院允许已完成三年法学院课程学习的法学专业学生在中级审判法院和准司法机关代理贫困当事人,条件是他们应由一位执业律师在出庭时进行现场监督和指导,且他们应无偿参加经过认证的诊所式法律教育计划。[3] 这是对普遍且严格适用的只有执业律师才能进行法律执业的原则的例外规定。必须注意的是,在市级审判法院、市级巡回审判法庭和首府审判法院这样最低级别的审判法院中,诉讼当事人可能会由其代理律师或由所谓的"当事人的亲友"(friend of the litigant)[4]进行代理,这些人可能是也可能不是律师。允许非律师人员在这些法院进行代理是因为法律假定这些法院所审理的案子的类型非常简单,即使没有受过严格法学培训的人也可以胜任法律代理。因此,法学院学生可以在这些法院中代理案件。

《法学院学生实习规则》也认识到免费法律援助的需求量是巨大的,而允许法学院的学生进行一定限度内的实习将有助于缓解这一巨大需求。有的以法学院为基础的法律援助项目运用发展性法律援

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〔3〕 参见《职业责任守则》138 - A,《法学院学生实习规则》,《菲律宾法院规则》(修订版)。

〔4〕 参见《菲律宾法院规则》(修订版)第34条规则138,还可参见《律师协会会刊》第730期,1997年6月10日。

助的原则——特别是那些与同一地域内的提供非传统法律服务的非政府组织合作的项目。这一点将在本文的*准律师制度*部分进行进一步说明。尽管如此,大多数法学院仍然以传统模式提供法律援助。

3. 非政府组织:与非传统的法律援助相对立的传统法律援助

大致有两类提供公益性的或免费的法律援助的非政府组织。一种提供救济性的法律援助,当事人不可避免地依赖律师。另一种是试图赋予当事人权力的非政府组织。前者通常被称作是传统律师服务,后者被称作是非传统或发展性律师服务。

四、发展性法律援助对比于传统的法律援助[5]

发展性法律援助以发展性法律服务或非传统法律服务为原则。它也常被称作是发展性法律辩护,因为它是从整体上对法律问题进行分析。它被描述为:

"律师为贫困人口及受压迫人群辩护,与他们并肩战斗的现象。"[6]

它也被描述为西方所熟悉的公益法律服务。尽管如此,发展性的法律倡导(advocacy)并不限于公益诉讼。发展性法律援助具有如下特点:

(1)整体性(Holistic)

法律援助看待法律问题的传统方式是只着重于所处理的法律问题本身,是孤立地看待问题的。而发展性法律援助是以整体的方式来看待法律问题,特别是分析潜在的体系原因。例如,对于贩卖人口的犯罪,并非只将其作为一个简单的违法行为来看待,而是从行为和社会的角度去看待,将其作为整体性贫困的产物。

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〔5〕 Johannes Ignacio:《非传统法律:作为推动者的律师》,菲律宾大学法学院"非传统法律研讨会"论文,1995 年 6 月 16 日;参见 Jefferson Plantilla:《菲律法律援助制度:面对挑战》。

〔6〕 Johannes Ignacio:《非传统法律:作为推动者的律师》,菲律宾大学法学院"非传统法律研讨会"论文,1995 年 6 月 16 日。

(2)以当事人为中心,参与性和赋权性

传统的律师业和法律援助是以律师为中心的,即律师受理案件,大致告知当事人怎样对其最有利。因此,这是指示性和指导性的,而不是参与性的。这助长了当事人对于律师的依赖,使得律师在整个法律程序中成为普遍不可缺少的部分。律师传达给当事人的信息是他或她将操作整个案件,当事人对于案件的参与很少,因此,在委托事项行将结束时,当事人对于法律程序知之甚少。

非传统或发展性的法律服务和法律援助以当事人为中心,具有参与性。当事人被看作是合作伙伴。律师所扮演的角色更多的是帮助当事人,向其解释各种选择及它们的后果。无论如何,最后的决定由当事人自己做出。这样一来,案件及每一次行动都是合作的结果。律师和当事人共同承担责任,找出解决问题的适当方式。作为合作者的当事人知晓整个法律程序,法律不再神秘。

(3)具有创造性的委托关系

至于策略和方法,传统方式集中于诉讼。然而,非传统方式运用诉讼和其他创造性的并具适当性的策略方式,诸如倡导、培训与教育、政策与法律改革、研究、非诉讼纠纷解决机制(Alternative Dispute Resolution,简称 ADR)和法律之外的救济措施(meta-legal remedies)。所有这些策略都是在利益相关者的合作中完成的。不再强调只有诉讼才是解决法律问题的方式,而是强调实现正义有许多途径。非传统律师运用法律时试图突破法律的局限性,法律问题并不仅仅是法律问题,还有社会和其他方面的维度,因此,它的解决方式并不应只局限于运用法律手段而不去试图改变法律本身。

(4)问题导向及部门导向

提供律师服务及法律援助的传统方式是以个别的法律需要作为导向。发展性法律援助的倡导者们(development legal advocates)整体地把握法律问题——认为它并不仅是一个与法律相关的问题,而是多方面的,常常与结构性和体制性的社会问题相关联。因此很自然地,发展性法律援助是问题导向的和部门导向的。整个社区或部

门都参与进来以试图解决其成员所面临的法律问题。这并不意味着发展性法律援助的原则不能被调整以指导个别的法律需求。

例如,如果是关于农村土地权利的纠纷,合作社区得到的法律教育和培训并不仅仅与涉及土地改革及耕地的法律相关,而是与涉及的所有法律及程序相联系。通常许多社区的领导者经过培训后,自己成了培训者和"应急律师"(first aid lawyers)。他们通常被称作是"准律师",特别是在律师及法院难以到达的偏远农村起着重要的作用。这有助于缓解提供免费法律服务的律师缺乏问题。中国的武汉大学法学院也正在通过"公益与发展法律研究中心"开展类似的项目,这一年轻的机构在如此短的时间内成绩显著。

(5)准律师制度

如前所述,准律师是发展性法律服务和法律援助实践的一个重要组成部分。他们不是律师,但受过严格的法律培训。他们可能是普通的渔民、农民或劳动者,有的甚至是法律专业学生(在该社区有法学院的情况下)。立足于社区,他们成为向普通人提供通向法律和司法制度之路的重要且快速的途径。他们对于部门和社区的重要性怎么强调也不过分,特别是在偏远的农村地区。

通常,提供非传统法律服务的非政府组织与社区或部门的成员合作处理特定事项,例如,农业改革、渔业权利、环境。他们从社区或部门成员中选择许多志愿者,将他们培养成为准律师。准律师们受到一系列相关法律的培训,从人权的基本概念、宪法到与他们密切相关的特定法律,例如,适用于农民的《综合农业改革法》,适用于渔民的《渔业法案》,适用于劳动者的《劳动法案》。此外,他们还接受法律程序的培训(例如,刑事诉讼程序、民事诉讼程序及行政诉讼程序),接受辩护及调查技巧的培训。最终,准律师就担当起了如下功能:①在相关机构的规定允许时,作为辩护律师或代理人,向行政机关代表部门或社区内的某个成员;②在律师到来之前担任"应急律师";③担当社区的教育者,通过向社会成员传授可掌控自身生活的知识来向其赋权;④担当社区的组织者;⑤在他们各自的市或地方担

当政策与法律改革的宣传者(例如,为通过禁止非法采伐或地方环境保护预算分配的地方法令进行宣传);[7]⑥担当事实的调查者。

菲律宾也有与法学院合作的当地非传统法律团体或法律服务组织。他们对法学院学生志愿者进行发展性法律援助理念的培训,让他们融入社区生活,直至最终将他们培养成为社区或部门的"应急律师"。这些法学院学生运用发展性法律援助理念完成他们各自法学院的法律援助项目。许多时候,他们处理的案件和与他们合作的非政府组织的支持密切相关。由于他们出庭时必须有来自菲律宾全国律师协会的成员在场,因此来自非政府组织的律师就会担任他们的指导律师。在一些法学院,法律援助办公室的主任是非传统法律团体以前的律师,或者是由与非传统法律的非政府组织合作的法学院实习制度培养出来的。

由以上论述可知,非传统法律服务中准律师与西方国家所理解的在司法领域中的准律师是不同的。关于准律师的发展性法律概念更为广泛,而且实际上与律师所起的作用同样重要。

五、示例

在菲律宾有许多非政府组织从事非传统或发展性律师业务。不过,迄今为止,菲律宾仅有一家从事法律服务的非政府组织的联合机构(umbrella organization),即非传统法律协会(ALG)。它由 19 家从事发展性法律援助或非传统法律服务的非政府组织组成,这些组织分布于全国各地,它们向不同的部门提供服务,其中有许多致力服务于儿童权利、农场主或农民团体及原住民,有的致力于妇女问题,还有少数专注于海外务工人员。劳动部门、渔民、环境及艾滋病人或艾滋病病毒携带者也是它们服务的对象。其中有许多组织致力于多个领域。例如,阿特尼奥人权中心,一个基于大学的非传统法律团体,

〔7〕 参见 Michael Vincent Gaddi 和 Joan Mosatalla 编:《关于暴力对待女性问题的准律师手册》,2005 年版,第 20 页。

处理与妇女、儿童、海外务工人员和原住民相关的事项；萨理甘非传统法律服务中心（SALIGAN）设有一个妇女部门、一个农民部门和一个劳工部门。

这不是说所有从事非传统法律服务的非政府组织都是非传统法律协会的成员，有许多并不是这一联合机构的正式成员，只是关注某些特定领域的不同网络系统的一部分。

很明显，由以上叙述可知，讨论发展性法律援助离不开发展性或非传统法律服务。它们是不可分割的，本文几乎将它们相互替代使用，提及其中一个时也提及了另外一个。非传统法律服务和发展性法律援助的基础是向当事人赋权。非传统法律服务的从业者运用法律向当事人赋权，而不受法律内在限制的约束；发展性法律援助的从业者利用现有法律的力量，推动法律中的漏洞或不公平条款的改革。

非传统法律服务的优点在于使人们认识到诉讼仅是通往正义的道路之一，通过其他创造性的法律参与和法律实施，同样可以到达正义的终点。

本文概述了菲律宾法律援助体系，侧重于私人和非政府组织所提供的免费法律援助。对免费法律援助的需求如此巨大，改进公共法律援助体系及加大投入非常重要，其他非传统的法律援助也同样重要，这不仅有助于满足需要，而且也有利于向当事人赋权。由于非律师人员（例如社区准律师）及其向当事人提供的教育起着非常重要的作用，因此在考虑改进国家的法律援助体系的策略时有必要将他们考虑在内。

通过非传统法律服务帮助穷人

Carlos P. Medina, Jr. *

简介

法律职业是一个神圣的职业,因为它致力于服务正义这一目标。因此律师在社会中起着重要的作用。但律师怎样才能发挥这样的作用呢?答案取决于律师所处的环境。本篇短文着眼于传统法律援助,并将其与所谓的"非传统法律服务"进行比较,后者是一种不同的提供法律服务的概念或模式,以回应贫困和剥削(deprivation)的环境,而发展中国家的律师正处于这样的环境之中。文章最后倡导将非传统法律服务作为在发展中国家提供法律服务的主要模式。

贫困是法律服务的背景

律师的工作是由其所处的环境来界定的。在全世界,特别是在亚洲地区,这一环境的特点一方面是经济的发展,另一方面是贫困和剥削的现象。这也体现于不同社会等级的冲突及统治存在的问题之中。这些现象已给社会中的许多人带来了伤害,特别是贫困人口,它加剧了贫困人口的脆弱性和边缘化程度。

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全球化影响着各地的人们，正处于发展中的亚洲地区更是如此。在全球化现象中，贫富差距拉大，许多人陷入贫困和不发达之中。在经济的发展给许多人带来好处的同时，它也使得更多的人变得贫困和边缘化。许多人仍然是文盲，或缺乏基本的教育，许多人遭受着饥饿、营养不良及健康问题。他们没有充足的食物、衣服以及房屋。他们失业，即使就业，工资也很低。据说世界上至少有 13 亿人口在每天 1 美元的水平线下苦苦挣扎，这些人基本的生活需要都无法得到满足，他们几乎无法生存。

在有冲突的地区，最遭殃的是穷人。冲突造成死亡、流离失所以及无法言语的伤害。当人们由于冲突而迁移、与所爱的人分离、离开通常生活和工作的地方时，其中的穷人由于资源的缺乏很难应对这种情况。

当统治出现问题时，穷人也是最大的受害者。例如，政府的腐败导致本来就稀有的政府资源分配不公，或者使穷人无法得到政府的服务。穷人对腐败的影响感受最为强烈，他们没有关系或资源以应对政府中掌权者的腐败行为。

穷人持续的受剥削和苦难的状态使他们变得更加弱势。他们在社会中容易受到歧视，并变得边缘化，在面对这些歧视和不公时，他们经常感到无能为力和绝望。

当无法获得公正时，他们的情况会变得更糟。当一个穷人遭受不公，而不得不走上法庭时，他或她必须仔细考虑是否要在法院中寻求救济，特别是当对方是一个有权势或有影响的人或组织时。穷人可能无法在附近轻易地找到律师，即使可以找到律师，请一个律师也是不容易的，因为会有昂贵的律师费，好的律师会更贵。如果他可以找到一个律师在法庭中帮他，案子可能会持续多年，其工作和经济状况在这段时间会恶化。并不是只有请律师才要花钱，还包括请证人出庭的差旅费。此外，如果存在司法腐败，法律对穷人有利，他们也未必就一定能得到有利的判决。由于上述困难，许多穷人宁愿忍受不公，也不愿走上法庭，寻求公正。

应对贫困的传统法律援助

如果人口的大多数为贫困人口，并且这些人口在社会中遭受着各种形式的歧视、边缘化和不公正，此种情形下，律师的作用是什么呢？根据其职业，律师宣誓要帮助那些寻求正义的人们。因此，一个快速而合理的回答应是律师向贫困人口提供免费的法律援助。

免费法律援助是对穷人的一项重要和必需的服务。有了免费法律援助，穷人能够在法庭上保护自己，或向那些侵犯其权利的人主张正义。这些服务通常由政府部门和非政府机构提供，例如律师协会、法学院、私人法律团体。

在一个典型的免费法律援助案件中，需要援助的穷人必须向提供服务的机构提出申请，他必须证明因贫困而有资格得到服务；然后案件会被评估；如果案件被法律援助机构接受，案件将被指派给一个律师；此后，穷人不得不依赖于指定的律师，以进行案件的辩护或起诉。

当律师出庭，贫穷的当事人通常会陪同律师到法院。在法庭上，贫穷的当事人通常会发现很难理解和跟上案件的程序。他或她只能简单地信任律师良好的判断和专业水平，完全依靠律师以获得与案件相关的信息和建议。

另外，律师可能会或不会向当事人全面解释案件的进展情况以及案件所适用的法律和程序。通常，解释会是表面上的且并不充分，不能使贫穷的当事人全面参与关于案件诉讼的决定。实际上，许多法律援助律师宁愿自己独立办案，也不要当事人“干涉”案件。

这种典型的法律援助案件中存在的律师与贫困当事人之间的关系对贫困客户是不利的。这使得贫困的当事人完全依赖于办案的律师。如果将来发生同样的不公正情况，尽管有以前案件的经验，但由于缺乏对适用的法律和程序的了解，以及在先前的案件中没有在法庭上参与辩护或起诉的经验，当事人未必知道要如何操作。这一不利的情形要求向穷人提供一种不一样的法律援助。

非传统法律服务:法律援助的不同观念

为了回应发展中国家的穷人所处的环境,律师有必要建立一种新的法律援助的观念。这种法律援助必须面对这样的现实,即在发展中国家,大多数的人口为贫困人口,在社会上、政治上和经济上是无力的。因此,法律援助必须试图使他们变得更有能力。

而现有的或传统的法律援助计划并没有充分考虑到这一现实。它们主要关注向个人提供法律援助,而不是针对团体或社区。它们的援助是暂时性的,因为它们并不寻求解决造成穷人的不公正待遇的根本原因,而只注重其表面现象。它们主要局限于在司法体系内寻求救济和补偿。

在传统的法律援助框架内,律师起着主要的作用,而在法律程序中当事人是被动的旁观者。这种形式的法律援助通常无法使贫困的当事人参与案件的辩护或起诉。结果是,没有促进当事人法律上的自立,而是助长了当事人对律师的依赖。这一提供法律援助的方式,没有使穷人更有能力,而是阻碍了其作为人的发展,阻碍了其成为对社会有用的成员。

之所以向穷人提供法律援助的新观念被称为"非传统法律服务"或"发展性的法律服务",之所以它是"非传统的"和"发展性的",是因为它致力于解决社会或结构性的问题。受益的当事人主要是团体或社区,并不只是个人,这是因为它的目标是社会正义,并不仅是个人的正义。

由于穷人在案件的辩护或起诉中协助律师,这一过程是参与性的。它不只是为了穷人的法律服务,而是与穷人在一起的法律服务。这种援助过程确保了穷人能了解适用的法律和程序,并且掌握必要的法律技巧。在这样的法律援助过程中,穷人当中的带头人在其权利再次受到侵犯且无法立即找到律师时,将会知道该如何做。他们就像是"应急律师"(first aid lawyers)。

因此,在非传统法律服务中,法律并不是神秘的,它变得让穷人

更能理解与接近。穷人逐渐意识到法律的本意是促进和保护每个人的权利,而并不是只保护富人和有权势的人。因此,他们也可以将法律用作实现正义目标的工具。他们对法律认识的这一改变,将不可避免地使他们更有能力。他们的能力或权利的增强(empowerment)会反过来促进他们在政治上、社会上和经济上的发展。

在非传统法律服务中,律师首先被认为是正义的寻求者。在这一方面,虽然法律常被等同于促进正义,但是有一些法律未必带来正义。相反,它们带来的是不正义,特别是对社会中的贫困和边缘化的人群。有些法律是歧视穷人的,在这样的情况下,律师必须努力去更改法律。

更为重要的是,在非传统法律服务中,正义的目标被认为可以通过许多途径实现。法院是一个重要途径,但肯定不是唯一的途径。正义还可以通过其他途径实现,例如法律改革倡导、媒体报道、立法游说、合法抗议行动和建立共识。因为有许多途径通往正义,所以也有许多行动者与公共平台。当公共平台是法院时,律师可能知道得最多,但在寻求正义的其他途径中,贫困的当事人能够起到重要的作用。例如,他们可以率先通过媒体主动揭示他们的困境。事实上,由于许多发展中国家司法系统的特点是拖延与强势利益的干扰,所以在非传统法律服务中,当事人对于选择法院作为获得救济的主要平台并没有特别偏好。

考虑到有许多途径可以获得正义以及在寻求正义的过程中有许多参与者,非传统法律服务中的律师,与他们的贫困当事人一道,除了法庭诉讼以外还有许多事情可以做。这些事情包括法律改革倡导、社会法律研究、监督社会各阶层的公平情况、替代性争议解决方式、建立关系网络和联盟、公共法律宣传教育以及培训和塑造草根阶层中的准律师或"应急律师"。

非传统法律服务的受益对象正如社会中的边缘群体和弱势群体一样是多种多样的,这包括工人、农民、渔民、儿童、妇女、原住民、海外务工人员、城市贫困人口、被拘留的犯人、难民等。关注的问题涉

及对人权的侵犯，特别是社会、经济和文化权利，环境以及对穷人有负面影响的许多其他方面的问题。

很明显，这种法律服务之所以是非传统的，也是因为其所关注的问题并不是法律实践的惯常领域，采取的策略不具有主流法律服务的特点，当事人群体也不是传统律师的常见客户。

非传统法律服务：未来的主流趋势

非传统法律服务，作为一项新的不同形式的法律服务，寻求给穷人带来社会正义并在这个过程中赋予他们以权力。社会中的许多穷人经常认为法律只是对有钱人和有权人有用的工具，通常是不利于穷人和弱者的。穷人对法律有一定的恐惧。对于他们中的许多人来说，法律就像是一张专捉穷人的蜘蛛网。非传统法律服务致力于填补这一缺口，消除法律的神秘感，使其与人民更接近，特别是穷人。它的目的是改变穷人的法律观念，换言之，法律是个工具，它也可以被穷人用于自身的发展。既然穷人是发展中国家人口中的主体，而非传统法律服务的目的是通过使他们增强能力给他们带来正义，那么非传统法律服务应最终成为发展中国家法律服务的主要模式。因此，从这个角度看来，非传统法律服务将是未来的主流趋势。

和穷人在一起的法律服务

Marlon J. Manuel*

为充分理解非传统法律协会(Alternative Law Groups，简称ALG)作为有关法律资源的非政府组织的联合的性质和工作，首先应当了解"非传统法律服务"(alternative lawyering)的概念。但是，这就如同为了回答一个困难的问题而试图解释一个更复杂的问题一样。试图通过理论概念解释非传统法律服务，就如同不下水却教游泳课一样。但是，弄清楚一些概念对于消除误解和减轻疑虑可能会有所帮助，尤其是可以鼓励人们深入探究。

本文是回答非传统法律服务的基本问题的一种尝试，其目的不是真的教授游泳，而是为了鼓励深入水中。

1. 为什么是"法律服务"?

非传统法律服务之所以成为法律服务有多种原因，其中一些原因可以在此说明。第一，它使用法律知识和法律技能；第二，它自始

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至终都通过法律体系和法律程序工作;第三,它将法律作为一个工具来使用。

2. 为什么是"非传统的"?

非传统法律服务是非传统的表现在很多方面。它是非传统的,因为它所解决的问题不是典型的律师业通常关注的问题。事实上,这些问题不是法律执业的流行领域。与此相关的是,有一批不同的当事人群体(同样也不是流行的类型)。它是非传统的还表现在,它使用创造性策略,而一般的法律执业不具有这样的特征。非传统法律服务的"非传统"性质还可以从其对法律体系自身和法律职业的批判观点中看出来。非传统法律服务是法律体系的一部分,它在体系内发生作用,并且还在试图改变法律体系。但是,在讨论更深刻的内容之前,可以确定其他的"非传统"的方面。那些希望从事非传统法律服务的人们往往过着一种非传统的生活方式,这一方面因为他们与当事人打成一片,另一方面因为他们基于"非传统"的报酬方式(compensation scheme)而必须这么做。

3. 它是法律援助吗?

这个问题的答案是肯定也是否定的。它是法律援助,因为它向需要法律服务的人提供这些服务。但是它又不是法律援助,因为它不仅仅关注于向需要的人提供法律服务。提供法律服务只是一个更宏大的策略的一部分,实际上,该策略的一个主要部分就是降低对律师的"法律服务"的需求。

4. 它是公益法律服务吗?

同样,这个问题的答案是肯定也是否定的。非传统法律服务是公益法律服务,因为它包括为公共利益服务。非传统法律服务又不是公益法律服务,因为公益法律服务通常将诉讼作为主要的策略,而非传统法律服务对诉讼没有偏好。而且,尽管非传统法律服务解决

的问题涉及公共利益，但是它关注的是穷人和边缘人的问题，而不是任何具有公益性质的问题。

5. 它是人权法律服务吗？

答案必须再次被界定。如果将人权法律服务理解为有限的和传统的概念，即人权法律服务为政治犯和国家侵害公民的民事权利和政治权利的受害者而工作，那么非传统法律服务可能不能作为人权法律服务。非传统法律服务维护人权，但是，它关注的是经济、社会和文化权利而不是民事和政治权利。

6. 它到底是什么？

对于这个问题，有三个联系紧密的主张。

第一，非传统法律服务是追求社会正义的法律服务，它致力于社会问题和社会关系。它介入司法体系并不是仅仅为各方之间简单的争议寻求简单的解决方案，它的主要目的是纠正或消除根深蒂固的不公平的社会结构和社会关系。

第二，非传统法律服务是追求社会变革的法律服务，它试图通过法律这个工具实现社会的变革。但是具有讽刺意味的是，从非传统法律服务的观点来看，法律本身成了需要变革的对象。原因非常简单。在我们的社会，或者任何与此相关的社会中，法律也成了导致不公平的工具。因此，除非发生变革，否则法律将被视为引起和维持不公平的工具。

第三，非传统法律服务是追求社会进步的法律服务。它的最终目标是在一个更公平、更和平和更仁慈的社会中，实现人和群体整体的、可持续的发展。

7. 非传统法律服务只是帮助穷人的法律服务吗？

完全错误。非传统法律服务是与穷人在一起的法律服务。从事非传统法律服务的人不是为了穷人工作，他们不是穷人的代表，更不

是穷人的解放者。他们与穷人就像斗争中的同伴那样一起努力。他们与穷人一起努力,同心同德;他们与穷人一起努力,并肩前进。

最后,非传统法律服务不是律师或法律团体的工作。当不具有律师的专业知识和训练的穷人和边缘人——他们疏离于法律和法律体系——自己成为律师,并按照法律最初的和高贵的意义践行法律时,非传统法律服务的最高境界就实现了。当穷人和边缘人被赋予力量成为律师,当他们按照法律应然的状态看待和使用法律——作为推进正义的工具和社会变革的催化剂——只有这时,非传统法律服务才可以真正实现其目标。

8. 非传统法律服务组织的职责是什么?

现在,回到最初的问题。非传统法律服务组织是一群逆流搏击的弄潮儿。他们测试水的情况,他们潜入水中,他们在水中游泳。游泳时,他们还召唤其他人加入他们,即使是那些不会游泳的人,或者说,特别是那些不会游泳的人。他们持续地游着,他们持续地召唤他人,他们热切地希望(梦想)着如果有足够的游泳者,他们就可以改变潮流。

如果这些讨论使您更加迷惑了,并且使您对非传统法律服务产生了更多的疑问,那么讨论的目的就达到了。如本文开始时所言,讨论的目的其实不是真的为了教授游泳,而仅仅是鼓励深入水中。

准律师制度介绍

GILBERT V. SEMBRANO*

一、引言

诉讼、法律援助和贫困人口获得司法公正的机会(access to justice)。

人们一般认为获得司法公正的机会即是有能力将案件提交至法院,简而言之,即诉讼。但是,将司法参与等同于诉讼将会引发许多问题。第一,诉讼不是所有法律问题的解决之道。第二,诉讼及所涉及的技术性程序会削弱诉讼当事人的权利。第三,在诉讼中,需要熟悉这些程序的人员提供法律帮助,即需要律师。第四,社会历史显示,律师与当事人的关系大体上是律师依赖当事人。第五,但是,聘请法律顾问的高昂费用让人望而却步。第六,由于法院受理案件众多,案件的处理非常缓慢。法院工作人员(包括法官)的短缺更是雪上加霜。第七,菲律宾人民的好诉天性让情况更进一步恶化。第八,诉讼中大量存在的腐败现象阻碍了案件公正及快速地解决。第九,法律援助对律师的需求巨大。第十,也是最后一点,大量的此类需求来自于负担不起诉讼费及聘请法律顾问费用的普通民众。

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上述几点影响的是贫困人口，特别是农村的贫困人口。这主要是因为菲律宾近八千万人口中的大多数为贫困人口，这些大多数人口生活在菲律宾七千一百多个岛屿上的农村。

二、菲律宾的法律援助制度

政府通过公职律师办公室（Public Attorney's Office）提供免费法律援助。公职律师办公室是司法部的一个附属机构，主要是向刑事诉讼案件（在某些情况下也包括一些行政案件）中的当事人提供免费法律援助。还有一些政府机关在其职权范围内，向贫困人士提供免费法律援助。例如，农业改革部，即《综合农业改革法》（Comprehensive Agrarian Reform Law）[1]的实施机关，在农民作为其所耕种土地的受益人而提出权利主张的案件中，向无力支付顾问费的当事人提供免费的法律援助。免费法律援助的需求量非常巨大，政府的免费法律援助远远不够。每个公职律师要处理数百个案件，这严重影响了他们的办案效率，也引起公众对其能力的怀疑。应该指出的是，这些只是公众的感觉，也许并不是所有公职律师的真实情况。

实际上，菲律宾有很多律师，但是大多数律师都在私人律所或公司内工作。他们或者不提供免费法律援助，或者因为参与政府服务而被禁止从事私人执业。遗憾的是，除了法院指定的公设辩护人（counsel de officio）外，目前尚无一个强制性的制度，要求专职法律从业人员提供免费的法律援助。[2]

正是因为意识到菲律宾的大多数人口为贫困人口，而诉讼费与律师费非常高昂，因此，《1987 年菲律宾宪法》授权最高法院制定特

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〔1〕 农业改革法是一个有关土地分配的计划，目的是使农民取得自己所耕种的土地的所有权。这一法律是根据 1987 年宪法中有关社会公平的规定制定的，该规定旨在使贫困人口和边缘人群有机会摆脱困境。

〔2〕 参见法律专业人员的《职业责任守则》规则 14.02 和 14.03。

别是向穷困人口提供法律援助的相关规定。[3] 据此,“法院规则”中有了几个专门解决免费法律援助需求的条款。这样就有了《贫民诉讼规则》、[4]《法学院学生实习规则》[5]及《诉讼人之友规则》。[6]

但是,尽管存在这些制度,政府仍无法应对数量庞大的免费法律援助需求。这样,就有了私人部门、法律指定的组织及非政府组织提供的其他计划。例如,菲律宾全国律师协会(Integrated Bar of the Philippines)(所有从事法律职业的人员都必须加入)设有全国性的及地方分会性的法律援助办公室;此外,有许多律师事务所也提供免费法律援助,但其中大多数是涉及其事务所的律师和其他雇员的亲属的案件;也有基于法学院的法律援助;最后,有一些非政府组织也提供法律援助。

菲律宾全国律师协会、律师事务所和大多数法学院提供的是传统形式的法律援助。事实上,也有一些非政府组织是提供传统形式的法律援助的。但有许多法律服务性非政府组织提供发展性法律服务(developmental legal advocacy),即为人们所熟知的非传统法律服务或发展性法律援助。

三、传统法律服务与非传统法律服务[7]

什么是与法律服务的发展性方式相对的传统方式?这与我们开始所提到的,将诉讼视作司法参与的主要方式(如果不是唯一的话)的问题有什么关系?这些是我们这一部分要解决的问题。

正如本文一开始所阐述的,诉讼本身无法回应法律需求及司法

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〔3〕 参见《1987 年菲律宾宪法》第七条第 5 款第 5 项。

〔4〕 参见《菲律宾法院规则(修订版)》规则 4 第 21 节。

〔5〕 参见《菲律宾法院规则(修订版)》规则 138 - A,也可参见《律师协会会刊》,第 730 期,1997 年 6 月 10 日。

〔6〕 参见《菲律宾法院规则(修订版)》规则 138 第 34 节。

〔7〕 参见 Johannes Ignacio,《非传统法律:作为成就者的律师(The Lawyer As Achiever)》,菲律宾大学法学院“发展性法律论坛”论文,1995 年 6 月 16 日;也可参见 Jefferson Plantilla:《菲律宾法律援助制度:面对挑战》。

参与的需求,对贫困人口尤其如此。过多关注诉讼及律师所引发的种种争议、担忧及问题,要求我们在看待司法实现和司法参与方面转变方式。这一转变意味着,我们要寻求主张人人应得的权利的替代方式,实现正义的途径有很多。解决司法参与问题及满足人们的法律援助需求的一个替代性方法是发展性的方法,这一点确实被大家认识到了——虽然比较缓慢。这种方式以不同的角度来看待法律的实施、律师的作用、当事人——特别是作为穷人及边缘人的当事人——的作用。

传统法律服务是救济式的(dole - out type)法律援助,整个法律程序以律师为中心,这使得当事人依赖于律师。通常是由律师来决定什么是对当事人有利的,双方的关系具有指导性和指令性,当事人只是简单地将其命运交到律师手上,当事人感受不到其案件的许多压力,也许都感觉不到自己是利益相关者。所得到的法律解决方案是短期的,并且多数都局限于眼前的法律问题。如果问题涉及法律的不公平,传统律师只局限于适用法律,而不会致力于撤销或修正法律。在委托事项行将结束的时候,当事人只能被迫地接受案件的结果,而别无选择。当遇到新的案件时,当事人再次重复同样的循环过程:救济式援助、以律师为中心、削弱当事人的权力(client disempowerment)及狭隘的问题解决方式。

这些缺陷是非传统法律服务所力图避免的。发展性法律服务(发展性法律援助是其中的一部分)从整体的角度看待法律问题,它是以当事人为中心的,它通过教育和责任分担来赋予当事人权力。非传统的律师或者发展性的律师向当事人提供各种不同的选择方案,并向其解释每种方案的后果。但是,要由当事人最终自行选择其认为最能接受的方案。这样当事人就有了参与性,并有望减轻对于律师的依赖。由此,当事人学会为自己的行为及生活承担责任。

这等同于其他国家的公益法律服务,但概念并不完全相同。诉讼仅是非传统律师采用的策略之一,他们已开始利用教育、研究与出版、政策和法律改革、非诉讼争端解决机制和超法律救济(meta-legal

remedies)(法律既未提供也未禁止的行动)的力量。尽管非传统律师在方式和策略上各不相同,但他们对于法律的观点可大体归纳如下:[8]

(1)合法的并不必然是公正的;

(2)法律并不是中立的,它无法脱离其实施的社会环境;

(3)无论是从价值承载(value laden)还是价值形成(value forming)的意义上来说,法律是规范性的;

(4)在解决社会问题方面,法律的作用是有限的,但可以并应该被用于推动变革。

由此可知,发展性法律服务是以问题(issue)为导向的,并以部门或社区为导向的。这源于对法律问题的全面分析。因此,非传统律师通常承接的是涉及某一部门或社区的案件,在这些部门或社区中,成员之间可以对于各自的需要提供相互的帮助。[9]

例如,菲律宾的农村农场主或农民通常面临的问题是,土地所有者违反《土地改革法》,拒绝放弃对土地的持有。其中许多人会找出规避法律的途径和方式。为了解决这一问题,非传统律师及其团队并不只是简单将违反法律的土地主告上法庭。他们将社区成员组织起来,开展社区教育计划——而这通常是行动的开始。利益相关者被告知他们依法应享有的权利和选择,以及在法律之外,社区还可以作出的选择。

这种参与是持续性的。为了巩固效果,会选出一批社区志愿者来完成通常由律师完成的某些工作。这些志愿者通常会接受一系列理论上及实际操作上的培训。这些接受过培训的志愿者被称为是准律师,他们在社区中的存在可以赋予个人及社区以权力,此外,还可

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〔8〕 参见 Johannes Ignacio,《非传统法律:作为成就者的律师(The Lawyer As Achiever)》,菲律宾大学法学院"发展性法律论坛"论文,1995 年 6 月 16 日;也可参见 Jefferson Plantilla:《菲律宾法律援助制度:面对挑战》。

〔9〕 但这一点并没有排除在个案中运用或调整发展性法律服务的原则及方式(例如,当事件并没有直接影响到整个部门或社区时)。

以缓解贫困人口特别是农村地区贫困人口对于律师的需求的压力。

四、准律师制度

1. 谁是准律师?

正如前面所阐述的,准律师是非传统法律服务或发展性法律服务的一个重要组成部分。准律师并不是真正的律师,但其具有法律知识和法律技能。[10] 他或她通常是各自所服务的社区或部门的成员,可以是普通的渔民、农民、体力劳动者,甚至可以是法学院学生(如果该社区有法学院的话)。他们立足于社区,是普通人与法律及司法系统之间快捷的联系纽带。

2. 为什么需要准律师制度?

作为非传统法律实施不可或缺的一部分,准律师存在的理由及其重要作用与发展性法律援助出现的理由是一致的。特别是,以下的社会职责构成了准律师制度的基础:[11]

(1)各基础部门缺少保护其利益的能力;

(2)没有足够的律师可以满足部门的总的需要;

(3)只有富人才有钱聘请律师维护其利益;

(4)大多数律师在现有的不公平制度的框架下工作,并对这一框架起着支持性作用;

(5)当事人依赖律师关系所提供的救济是暂时的;

(6)大多数人在依赖律师维护其权利;

(7)有必要了解和运用法律去改变当前不公平的社会制度;

(8)只有从低层开始——从社会基础部分的人或社区开始,才能

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〔10〕 Michael Vincent Gaddi & Joan Mosatalla 编:《暴力对待女性问题的准律师手册》,2005 年版,第 20 页。

〔11〕 Michael Vincent Gaddi & Joan Mosatalla 编:《暴力对待女性问题的准律师手册》,2005 年版,第 20 页。

实现真正的改变。

3. 准律师的作用是什么？

准律师在社区中有许多重要的作用，而且是实现变革和参与司法的推动者。最常见的作用如下：

（1）在行政机构的规则允许时，作为“法律顾问”或辩护人，在行政机关面前代表部门内的某个成员或整个社区。与此相伴随的是进行与诉讼相关的案件跟踪（following-up of cases）、[12]起草书面陈述（有时，甚至是动议申请及诉状）、寻找和准备证人。

（2）在律师到来之前担任“应急律师（first aid lawyers）”。

（3）担当社区的教育者，作为赋予社会成员权力的催化剂，使其能够控制自身命运。

（4）担当社区的组织者。

（5）在他们各自的市或地方担当政策与法律改革的宣传者（例如，支持通过禁止非法采伐或分配地方环境保护预算的当地法令）。

（6）担当事实的调查者。

在上述职责中，大部分准律师的工作是社区或部门教育。这样，他们不仅要了解法律，还要了解向基础部门传授法律的技能。

4. 谁可以担当准律师？

准律师的资质要求因所涉及的社区或部门的需要或情况的不同而不同。但无论如何，还有一些最低的要求。“奉献精神”是首要因素，因为准律师的工作大部分是志愿性的。在由非传统法律协会（提供支持和运用发展性法律咨询的非传统法律服务的非政府组织）提供服务的一些社区，有一个总的准律师协调员。他或她有时会是由这一非政府组织雇佣的全职人员。在大多数情况下，准律师协调员

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〔12〕 Michael Vincent Gaddi & Joan Mosatalla 编：《暴力对待女性问题的准律师手册》，2005 年版，第 20 页。

是由准律师无偿地担任的。

还有重要的一点,准律师必须是其所服务的社区或部门的成员。至少,他们之间应该有某种联系。这一点之所以重要是因为他们可以充当该社区赋权的典范(models of empowerment),他们作为准律师的成就会激发社区或部门的其他成员赋予其自身以权力。他们与社区或部门的共同利益也是让他们全力以赴的因素。

另一个重要的资质要求是能够掌握法律概念并传播给其他人。一些非政府组织为了保证这一点而对准律师有一个最低教育水平的要求。可是,这不应是一个硬性要求,因为这会将没有高中毕业或大学毕业却可能成为优秀准律师的人排除在外。

5. 培养准律师的范例

要成为一个准律师志愿者有许多途径。最常见的两种是成为草根民众的准律师和成为以法学院为基础的准律师。这两种途径并不相互排斥。虽然最通常的途径是成为其所在的社区或部门的准律师,因为他们是那些实际的利益相关者;但是在存在法学院的社区,有志于为贫困人口和边缘人群服务的法学院学生通常会通过非政府组织贡献他们的时间、精力、知识和技能,帮助这些社区或部门。他们在法学院中会成立准律师志愿者组织或团体,通常会有来自非传统法律、非政府组织或协会的律师对他们进行指导。在许多情况下,法学院和提供法律服务的非政府组织会签署正式的合作备忘录。不考虑途径因素,他们所经历的过程大体上都与下文中所概括的相同。

在村庄教堂与准律师和村民座谈

6. 社区需求评估

第一步当然是要为社区或部门做一些准备。通常，提供发展性法律服务的非政府组织都有各自所服务的社区或部门，他们组织该社区或部门的成员，引入致力于改变或提高知识、技能和态度的教育计划。最初的一系列社区培训旨在帮助人们更好地意识到那些影响他们的问题。一项“社会调查”包括对教育和培训需求的评估。社会调查在于评估社区的需要、研究人们的需要、评估法律及非法律问题、了解目前为满足需要所作的努力、问询他们有哪些能够满足他们需要的可能行动，等等。

7. 为整个社区设计的教育和培训

经过对教育和培训需求评估（简称 ETNA）的收集和分析，一个教育计划就开始形成了。在讨论该社区或部门所关心的特定法律问题（例如，农民社区需要全面了解《综合农业改革法》，渔民社区需要掌握《渔业法案》）之前，应首先介绍基本的人权概念。然后介绍宪

法中有关人权以及边缘人群和基础部门权利的条款。这些是更好地理解和评价与他们的部门或社区问题或事务相关的特定法律的基础。在介绍完基础知识后,再介绍与他们直接相关的一些法律,其主要的目的通常是唤起社区的意识或提高认识。

8. 进行社区培训

教育计划不必在一次或一天完成,可以根据参加者的情况分几次进行。甚至可以是一系列的 2 ~ 3 小时的课程。应当采用通俗的、具有参与性的方式,而不是讲座式的。通俗的教育所采用的技巧是使用适合参与者水平的概念。这样,所举的例子应与他们的日常生活有关,这通常是使用参与性的培训技巧来实现的。如果所使用的方法利用不同感官(视觉、听觉、触觉等),人们则可以学到更多的东西;如果有机会运用所学的知识,人们可以理解得更深刻。

9. 选择准律师

通常,可以通过许多途径选择准律师。可以从参加一般意识培训(general awareness training)的人员中选择,这样做的好处在于选择委员会有机会在培训中对参与者进行观察;也可以在所述的培训中发出普遍的邀请,邀请大家申请成为准律师。如果委员会认为某人可以成为一个优秀的准律师,在其没有提出申请时,也可以向其发出个人邀请。

另一个途径是事先向公众或社区发出需要准律师志愿者的通知。通知应包括所要求的资格并提供申请表格。然后,申请者将被邀请参加一般的社区教育或培训课程,委员会能够观察他们的行为举止和其他相关的素质。

还有一条途径是征集准律师志愿者,经过评估和筛选,对他们进行单独培训。

10. 准律师培训、完成及后续活动

在对有志于成为准律师的申请者进行选拔后，可以向他们介绍什么是发展性法律服务及准律师在社区及社会转型中所起的作用。如果他们参加了上面所述的基本教育或培训，接下来的培训应集中于以下三个方面：

(1)知识——涉及他们和社区的更具体的法律(例如，逮捕、搜查和扣押、刑法、程序法、家庭法)。因为他们将成为社区的“急救律师”，熟悉这些是非常重要的。

(2)技能——有关大众教育技能及具有参与性的方法，因为他们的重要作用包括充当社区的教育者。调查、会见当事人、起草法律文件的技能和庭上技巧也是教育设计的一部分。

(3)态度——因为赋权是整个非传统法律实践的基石，所以他们的态度和价值观应同样得到训练，这一点非常重要。涉及的主题可以是性别敏感性、儿童敏感性、贫困和司法参与。

包括这些主题的强化培训应是一系列的，不一定非要是长达几个小时的一些课程，可以是更频繁的一些短小课程。在这些正式课程间隙，可以进行实践操作培训(on - the - job - training)，如参加社区中的法律诊所，接受来自提供法律服务的非政府组织的律师的指导。在培训期间或之后，可以以诊所的形式进行跟踪培训，即所有准律师在一年每一个季度的某一固定时间聚集在一起，讨论他们所经历的案件，彼此分享或讨论他们所采取的或需要采取的行动；也可以安排有关新通过的法律的跟踪课程。

11. 准律师的督导

准律师们通常处于非传统律师们的督导之下，他们经常地或定期地互相取得联系，以解答问题同时处理有关督导的其他事务。另一种督导的办法是定期举行的准律师聚会，他们可以进行法律诊所式的相互问询，他们交流各自遇到的案件和问题，并从同事那里征求

意见。

在我所在的机构协助培养草根准律师的众多地区中，有一个确实成立了由准律师们组成的松散组织，就像一个俱乐部一样。它有办公人员，可能还有一些准则和议事规则。这样，他们就能很容易地帮助那些出现差错的成员。我认为这一组织结构与增强能力是相一致的。

培训者（如那些非传统律师们）也能与准律师们共同制定办理案件的指导规则，甚至制定约束每个人的培训礼节，他们也可以举行年度的研讨会来评估他们的工作。反馈在任何一个准律师项目中都是非常重要的组成部分，准律师们应当有机会接受反馈。他们也应当被告知这一点，即他们会被评估而且他们应当虚心接受反馈的意见以不断提高自身，并有助于社区的利益。

五、结语

从以上讨论可知，准律师是发展性法律援助或非传统律师业务的一个非常重要的方面。因此，现在很明显不能也不应将从事非传统法律服务的人员限定于律师协会的执业律师。利益相关者自身——作为业已被赋予权力的公民——也可以成为非传统律师。

第四章　农民土地问题

——公益法实践的焦点

菲律宾土地改革:理想和现实

杨一介*

2007 年 11 月,应阿特尼奥大学法学院人权中心(Ateneo Human Rights Center)的邀请,我随中律原咨询公司组织的中国法律专家代表团赴菲律宾对当地农村法制进行了为期两周的考察。在此期间,给我印象较深的是菲律宾土地改革给农村社会造成的震荡。

一、菲律宾土地改革的沿革

菲律宾土地改革已经历了一个较长的过程。

(1)奎松(Manuel L. Quezon)时期(1935 ~ 1944 年)。在此期间,第一部关于分成租的法律即稻田租佃法得到通过。这部法律规定,地主和佃农之间实行五五分成制。不过,这一制度安排的生效时间较为短暂,而且这一制度安排还成为地主拒签合同的工具。

(2)罗哈斯(Elpidio A. Roxas)时期(1946 ~ 1953 年)。菲律宾共和国第 34 号法令在此期间实施。这部法律在佃农和地主之间做了三七分成的制度安排。

(3)蒙格麦赛赛(Ramon Magsaysay)时期(1953 ~ 1957 年)。从

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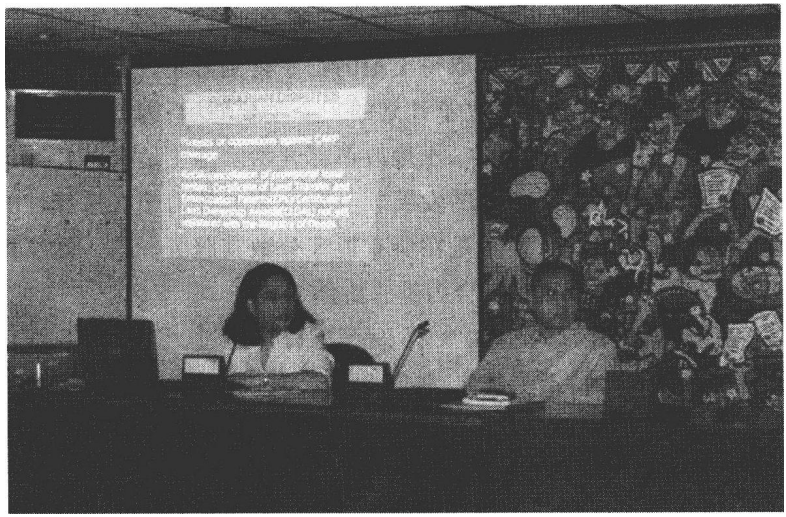
严格意义上讲,第一部土地改革法应当是1954年的农业租佃法即第1199号法令。这个法令规定了土地使用关系的所有形式。这部法令还试图在灌溉、信用和农民合作等方面为农民提供基础性的法律支持。在此期间,还通过了第1166号法令,建立了国家安置重建部,以将公共农用地无偿分配给无地佃农和农工。

(4)马卡帕加尔(Diosdado Macapagal)时期(1961～1965年)。在此期间,第3844号法令即农地改革法获得通过。这个法案废除了分成租,试图通过农地改革法的实施实现耕者有其田,建设作为菲律宾农业基础的家庭农场,引导地主的投资从农业向工业发展转变。虽然这部法律强调法律实施的优先地位,但未规定时间表;同时,虽然这部法律被视为菲律宾土地改革的一个里程碑,但国会未为其提供基金支持。

(5)马科斯(Ferdinand Marcos)时期(1965～1986年)。马科斯于1965年任总统。他宣布到1970年将有350,750个农民从分成制过渡到租赁制。在其执政的头几年,他主要致力于使许多农业生产者受益的绿色革命计划。1971年,农民组织和学生团体形成联合力量向政府和国会施压,要求当局成立独立的行政机构来负责土地改革。作为回应,根据第6389号法令,上述第3844号法令得到修正,土地改革部成立。同时,马科斯宣布分成租为非法,全国成为土地改革区。根据第6389号法令,分成租下的稻田和玉米田归佃农所有,租用超过7公顷以上土地的佃农,可以购买他们耕种的土地,而耕种土地不到7公顷的佃农可以成为承租人。

(6)阿基诺(Corazon Aquino)时期(1986～1992年)。阿基诺也宣布土地改革是政府的主要任务。1987年的菲律宾宪法包含了许多实施土地改革计划的条款。阿基诺成立了针对土地改革的内阁行动委员会,由此机构负责起草必要的法令。



拜访农业改革部(DAR)

在此期间,这个机构起草了以下法令:①第 131 号布告,强调综合土地改革是政府的主要任务。据此布告,政府提供了总数为 500 亿比索的土地改革基金,用于支持 1987 年到 1997 年的土地改革。②第 299 号行政命令,确立了土地改革实施机制,明确了协调和监督实施土地改革的政府机构的组成和功能。③第 129 - A 号行政命令,明确土地改革部是负责综合土地改革计划的领导机关。④第 228 号行政命令,对尚未估价的稻田和玉米田进行估价,并且决定了向地主补偿的方式。⑤第 405 号行政命令,授权菲律宾土地银行承担土地估价的主要职责。⑥第 406 号行政命令,强调综合土地改革计划是政府加快农业发展的中心工作。⑦第 407 号行政命令,将农用地统一置于土地改革部管辖之下。

对菲律宾土地改革影响深远的综合土地改革法即第 6657 号法令在阿基诺执政期间得到通过。这个法令是不同利益集团辩论、示威、陷入僵局而不得不妥协后的结果。它由阿基诺总统于 1988 年 6 月 10 日签署,1988 年 6 月 15 日生效。

(7)诺马斯(Fidel V. Ramos)时期(1992 ~ 1998 年)。诺马斯宣

称,政府将会更公平、更快、更有实效地实施土地改革。

在诺马斯执政的早期,取得土地的程序得到修正。原来的地价计算方式是地主对抗土地改革计划的一个主要原因,因此计算地价方式也得到了修正。1993 年,土地改革部开始实施土地改革社区计划,以谋求土地改革受益者的发展。土地改革部致力于在选择性的地区提供支持性服务,而不是在所有地区分散其服务。这一做法提高了农业生产率,促进了社会力量的整合。

在此期间,第 7881 号法令于 1995 年获得通过。这个法令修正了第 6657 号法令的某些条款,并且将水产业用地排除在综合土地改革计划之外。同时,加强综合土地改革计划实施的第 7905 号改革法令和弥补土地用途转变法律漏洞的第 8435 号改革法令即农业和渔业现代化法案得到通过。在此期间,对土地改革具有十分积极影响的土地改革基金法案也得以通过。据此法案,政府额外提供 500 亿比索用于综合土地改革计划,并且将土地改革计划续展 10 年。

(8)**埃斯特拉达(J. Estrada)时期**(1998 ~ 2000 年)。在此期间,根据第 151 号行政命令,小型农场可以自愿联合加入可获得长期信贷资金的中介和大型联合企业。

(9)**阿罗约(Gloria Macapagal – Arroyo)时期**。目前,阿罗约政府正在进一步推行综合土地改革计划。

土地改革部呼吁国会通过法律,允许农民以土地所有权证作抵押向银行贷款,使农民从高利贷的盘剥中解脱出来。农民以简易方式获得贷款,可以鼓励其提高生产力,参与全球性的竞争。另外,土地改革部还在全国范围内以投标方式支持农民获得贷款,以帮助其增加收入,防止其出售或抵押农地。

二、菲律宾土地改革的成就

菲律宾土地改革的实质是将农用地重新分配给无地的农民和农工,并为其提供必要的生产资料,实现耕者有其田,保障无地农民和农工占有土地,促进社会平等,有效改善土地改革受益者的经济和社

会地位。菲律宾政府综合土地改革计划的实施,导致了土地分配、农业服务体系建设、地权保障的司法制度等方面的变化。

到目前为止,菲律宾土地改革的最重要的法律基础是上述由阿基诺签署的综合土地改革法(Comprehensive Agrarian Reform Law)。这个法案试图通过综合土地改革计划促进菲律宾的社会公正和工业化。这个综合土地改革计划的主要内容包括:(1)进一步促进土地的分配;(2)综合土地改革不仅仅是土地的分配,而且还包括农场和市场之间的道路、桥梁以及灌溉设施、收割设备、农村电气化、抽水机、教学楼、贷款服务、培训等方面的改善和建设;(3)建立和完善土地纠纷司法制度,高效解决积压案件,培训准律师、大学毕业生和成功律师,来为农民提供免费法律援助。根据综合土地改革法案,政府授权土地改革部行使土地改革案件的初审管辖权,为因土地改革案件受到影响的农民提供法律援助。根据此法案,在司法案件和准司法案件中,由土地改革部律师和土地改革部仲裁局代理农民出庭。另外,土地改革部在土地纠纷案件中利用更具效率的非诉讼纠纷解决机制来缓减当事人之间的冲突。

土地改革部于1993年采纳了发展土地改革社区的建议,以此提高土地改革受益者的生活水平。这是土地改革部的一个关键策略,它可以促进土地改革社区的经济发展。从那时起,土地改革部发展了1784个土地改革社区,涵盖了包括棉兰老自治区在内的6511个巴兰盖(barangay,相当于村一级的农民基层组织)。鉴于土地改革社区的规模有限以及土地改革受益者的数量不断增加,土地改革部通过土地改革区扩展其服务范围。根据KALAHI土地改革区计划,属于土地改革社区的巴兰盖和不属于土地改革社区的巴兰盖都应得到相应的支持和帮助。

菲律宾综合土地改革的成就在相关研究中得到了印证。

研究表明,自1988年综合土地改革法颁行以来,土地改革部在实施综合土地改革方面始终沿着正确的轨道进行。综合土地改革法的实施具有明显的效果,为实现耕者有其田奠定了基础,分成租比例

下降。

菲律宾发展研究院任命的一家负责评估土地改革社区计划的影响的机构在其研究报告中称，土地改革社区计划的实施使农民的收入增长了20.1%，即从37,080比索增加到58,550比索。具体体现为：(1)水稻产量平均增加了36%；(2)运输成本减少了34%；(3)路途时间减少了58%；(4)可用自来水的时间提高了152%。同时，研究报告还指出农民合作程度增加了36%，农民采纳了变化的农作方式和其他与他们的需要和技能相适应的生计改善项目。

另外，研究表明，日本国际合作银行资助的土地改革系统支持计划提高了农业生产率和土地改革社区农户的收入。粮农组织、亚洲开发银行、联合国开发署、欧洲委员会和土地改革部的合作研究也证明，综合土地改革对菲律宾农村经济和社会福利都产生了积极影响。

三、菲律宾土地改革引发的农村地权冲突

菲律宾土地改革部声称，土地改革社区内巴兰盖的土地分配基本完成。问题的另一方面是，虽然综合土地改革致力于减缓贫困、改善土地改革社区农民的生计，但由于菲律宾农村积弊甚多，与政府高歌猛进的土地改革相伴随的是严重的农村地权冲突。我们在访问期间遇到的菲律宾农村地权冲突的案例包括原住民祖遗地被侵占、利益集团的抵制以及土地制度本身的缺陷导致农民的地权不能得到制度保障等几种情况。

(一)原住民祖遗地

我们在考察途中遇到了为主张地权而从棉兰老岛徒步行进到马尼拉请愿的苏米老农民游行队伍(Sumilao farmers)。

苏米老农民主张其对144公顷祖遗地的权利。他们认为，位于棉兰老岛布克得纳省(Bukidnon)苏米老地区、现在由San Miguel食品公司占有的土地不应当转为非农用地。原因在于，这宗地原为祖遗地，而且毫无疑问是农用地，将其转为非农用地是非法的。同时，

这宗地政府已经于1990年将它纳入综合土地改革计划的范围。

这起案件的由来可追溯到20世纪40年代。那时,这宗地被强行变为牧场,20世纪70年代又转移给了奎苏姆宾(Quisumbing),而原住民却成为曾经属于他们自己所有的土地上的农业工人。

事情的恶化发端于涉案土地用途的变更。1993年奎苏姆宾申请将涉案土地转变为工业用地。当时的土地改革部部长嘎力老(Garilao)否决了这个申请。为此,当时的省长福梯其(Fortich)致信总统办公室,严厉谴责这个决定。总统办公室的行政秘书托利斯(Torres)置非法转用于不顾,签发了农用地转用令。他声称,将涉案土地转为工业用地,将会增加就业机会,促进这个地区的经济发展。

1997年10月,苏米老农民进行了持续28天的绝食运动。他们的非暴力抗议引起了国内外的关注,得到了一些著名人士的公开支持。地方政府和国家众议院通过了解决此问题的措施。迫于公众的压力,诺马斯总统签发了被称为"双赢方案"的命令,即将100公顷土地归还农民,而剩余的44公顷土地仍然属于奎苏姆宾。然而,苏米老农民的胜利是短暂的。奎苏姆宾拒绝执行此命令,并且向最高法院上诉。最高法院的判决支持了奎苏姆宾,这一结果出乎人们的意料。最高法院判决的理由之一是上诉已过法定期限。最高法院在判决中拒绝回答其合宪性问题,还宣称土地改革部未按时处理托利斯转用令,判决诺马斯总统的双赢方案无效,支持将涉案的144公顷土地转为非农用地,而不顾这种转用违背了法律和行政法规。最高法院认为,在双赢方案签署前,那个转用令已经是终局的了。更为糟糕的是,最高法院否定了本案中苏米老农民的法律地位,认为他们对涉案土地没有实际利益,甚至还声称他们从来不是涉案土地的佃农,也不是涉案土地的耕作者。

上述最高法院的判决在某种程度上使人们对菲律宾的土地改革产生了失望情绪。它在农地转用政策、土改受益者的法律地位等方面引起了很大混乱。判决所导致的更为严重的后果是地主利用它干扰综合土地改革的实施。这是1999年的事。几年过去了,这片地仍

处于闲置中,增加就业、增加收入等许诺不过是空中楼阁。苏米老农民认为,由于涉案土地转用令违反了一系列法律,取消这个命令是正当的。

苏米老农民认为,他们的法律地位不容置疑。从他们记忆时起,他们的祖先就在这片土地上耕作,即使后来地主把他们从他们自己的土地上赶走,他们仍然是农场的劳工。事实上,1995 年他们取得了土地所有权证后,他们就是这片土地的主人。如果不是总统办公室给这片土地办理了非法转用手续,他们仍然是这片土地的绝对所有者。最高法院判决的主要理由仅仅是基于他们没有及时向最高法院上诉以及他们不具有相应的法律地位,于情于理都说不过去。进一步说,最高法院的判决并未影响到苏米老农民的法律地位。取消转用令将会恢复属于综合土地改革计划的涉案土地的农用用途。根据综合土地改革法,苏米老农民是涉案土地的最终受益者。

苏米老农民认为,根据综合土地改革法,在综合土地改革计划项下的土地将尽可能分配给同一巴兰盖上的无地居民,而当同一巴兰盖上无无地居民时,则将土地分给同一市镇的无地居民。适格受益者按以下顺位确定:(1)承租人和分成佃农;(2)长期农工;(3)季节农工;(4)其他农工;(5)公地的实际耕种者或占有者;(6)上述受益人所在的集体或合作组织;(7)其他直接在土地上耕种的人。但是,在符合土地改革法的情况下,地主的子女享有优先的顺位。无地居民指的是所拥有的土地不超过 3 公顷居民。在此个案中,当地一般农民所拥有的土地在 0.45 ~ 0.9 公顷之间,而且还有 90 个农民没有一寸土地。因此,他们主张对涉案土地的权利应当得到支持。

土地改革部对农民的请求享有排他的管辖权。根据土地改革法的规定,土地改革部享有所有涉及土地改革实施的排他的初审管辖权;同时,土地改革部享有出于正当理由并经适当的调查后推翻转用令的职权。

继 10 年前的绝食请愿后,苏米老农民又开始了他们的徒步请愿。现在苏米老农民的徒步请愿应该已经结束,但问题最终将会如

何解决尚未揭晓。

Sumilao 农民徒步游行时,运送物资的吉普(jeepnie)上的标语

(二)大地主所有制遗留的问题

我们到内格罗斯省(Negros Occidenta)访问蔗农。我们在那里了解到,内格罗斯省的农场直接从西班牙殖民者那里继承了大农场所有制。那里经济上实行集权,不到 10% 的人享有土地的所有权。1900 年左右,美国殖民者将大面积的农村土地转移给了一些大公司和个人来发展甘蔗种植。在此过程中逐步形成了能够影响政治的垄断,糖业大王曾一度拥有决定总统人选的权力。随着时间的推移,通过继承等方式,由一个公司或家族控制上千公顷土地的情形已不存在,现在拥有 150 公顷土地的地主已经算是大地主了。到目前为止,这个省是全国实施土地改革最不理想的省份。其中一个原因是当地大地主和企业家对菲律宾政治和政策的影响较大,他们出于自身利益的考虑,常常使用解聘、勒令佃农或农工退回承租房、暴力威胁甚至杀害等不正当手段使得农民不敢申请土地所有权。这里被称为最

霸道的大地主的基地。当地为农民提供法律援助的人说,大地主对土地改革的阻挠对国家和政府都是严峻的考验。

土地改革所引发的冲突主要是地主和农民之间的冲突。我们到这个省的一个叫达马(Dama)的巴兰盖去访问。目前,达马的蔗农已经成立了农工土地改革受益者协会,由协会负责属于他们共同所有的土地的生产和经营。达马农工土地改革受益者协会的成立是那里的蔗农与地主长期斗争的结果。在斗争中,他们曾遭遇到了支持斗争的地方驻军的威胁。土地改革推行这么久,他们取得土地所有权证不过是两年多前的事。

我们到这个省的另一个巴兰盖去访问蔗农。在和蔗农的交流中得知,这里的地主和蔗农曾发生过激烈的冲突。一个大地主知道他雇的农工正在申请土地登记后,便解雇了这些农工。地主还向市法院起诉,通过行政程序请求法院确认他所有的土地不属于土地改革的范围。受案法院以涉案土地不属于土地改革的范围为由,支持了地主的诉讼请求。败诉的蔗农不服此判决,向地区法院上诉,地区法院驳回了蔗农的上诉。后来,这些蔗农在法律援助机构的帮助下,向国家土地改革部申请土地所有权。经过土地改革部和它在地方的分支机构的努力,蔗农取得了土地所有权证。122 名土地改革受益者开始行使对土地的占有权。此后,这名地主又向地区法院起诉,请求注销土地所有权证,地区法院支持了地主的请求。为此,受益的蔗农向最高法院上诉,最高法院以地方法院对注销土地所有权证案件无管辖权为由撤销了地区法院的判决。不料,这名地主又以蔗农非法侵入其土地为由提起刑事诉讼。地主还雇用私人武装阻挠蔗农进入土地。在此情况下,当时的土地改革部部长到现场,宣布蔗农对土地的所有权;与此同时,政府还派军队去支持蔗农。政府派遣的军队撤走后,地主的私人武装又开始阻挠蔗农行使权利,而且还杀害了两名蔗农。这一事件引起了社会各界的极大愤慨,一些宗教领袖、地方政府官员纷纷支持蔗农行使其正当权利。在社会各界施加压力后,这件事算是有了一个初步的结果。最终有 104 名蔗农取得了这个地主

478 公顷土地中的 114 公顷的所有权,地主的私人武装也撤退,但地主起诉蔗农非法侵入土地的刑事案件目前还未结案。

(三)土地立法本身的缺陷

在考察中我们还了解到综合土地改革计划本身在制度安排上的漏洞也会引发地权冲突。我们走访巴坦加斯省(Batangas)内名叫巴哈(Baha)和塔里巴尤(Talibayog)这两个巴兰盖的稻农时得知,土地用途划分不清和土地登记制度的缺陷是引发他们和地主之间的冲突的主要原因。根据综合土地改革法的规定,分配给农民的土地只限于农业用地而不包括林地和矿业用地。政府在这两个巴兰盖进行土地改革时,有个地主主张他所有的土地是矿业用地而不是农业用地。他的另一个理由是,根据有关立法所规定的农业用途的土地指的仅仅是种植水稻、玉米并真正用于农耕的土地。这起诉案一直到了最高法院。最高法院以农民擅自改变种植品种、虽然关于农作物品种的新的法律已颁行但农作物品种的认定应当依据当时的条件而不是新的法律、涉案土地用于矿业为由判决农民败诉。在同一件事中,还发生了一物二卖。政府将这个地主 800 公顷土地中的 500 公顷划为土地改革的范围,并且就这 500 公顷土地给农民颁发了土地所有权证。现在的问题是,地主本来持有 800 公顷土地的土地所有权证即大证(Mother Title),政府在给农民颁发 500 公顷土地的所有权证时并未撤销大证,地主凭这个大证将地卖给了第三人,而且第三人具有很强的宗族背景,农民根本无法对抗。虽然现在这里的稻农还在涉案土地上耕作,但问题仍然远远没有得到解决。

四、菲律宾土地改革面临的困境

菲律宾土地改革的主要任务是将土地改革范围内的土地分配给无地农民,并提供相应的信贷支持。与此同时,它还致力于以下几项工作:加强土地改革社区的发展,组织和强化农民合作组织以提高这些组织的参与和集体行动能力;整合综合土地改革实施机构、地方政

府、私人企业的力量,在土地改革社区优先提供支持性服务,以实现改革效果的最大化;实施土地租赁计划,保障农民对地主保留地和已在综合土地改革范围内、尚未分配的土地的使用权。

据官方统计,从 1972 年到 2005 年 12 月,土地改革部对 3,701,037 公顷的农用地进行了分配,2130 万无地农民成为土地所有者。这一数量占了这个时期整个土地改革计划的 84%。自 1964 年以来,共有 1,604,364 公顷土地以租赁的方式供农民使用,1,157,309 名农民从中受益。问题的另一方面是,这里所说的数据包括了已进行了土地登记但实际上并没有转移给佃农的那部分土地面积,而且还存在重复计算的情况,如将个人和其所在集体的共同共有的土地进行重复计算。一些土地所有权证书持有人实际上并未占有土地。还有,一些已分配的土地最终又被收回。

更为严重的是,政府于 1988 年最初确定进行土改的土地为 1030 万公顷,到了 1996 年削减到 810 万亩,以应付大面积的豁免和转用。到 1996 年为止,政府直接豁免了 530 多万公顷的土地而不将其列入综合土地改革的范围。目前,还有 1020 万处于边缘地位的农民、佃农和农工。虽然综合土地改革已接近尾声,他们中的 70% 仍然没有土地。这给政府和国会带来的压力是,截止于 2008 年到期的土地改革是否要延期,以实现菲律宾宪法明确规定的实施土地改革、将土地分配给无地农民的要求。

要求土地改革延期的呼声日益高涨。一般认为,土地改革需要延期的原因主要是:(1)政府向地主赎买土地而需支付的补偿金已到清偿期,但资金不足而需要政府继续拨款。(2)立法本身需要修订,如法院对土地改革案件无管辖权而受理时如何应对,名义上已经进行了土地改革而实际上还没有转移给农民时该如何处理。(3)法律的实施需要进一步加强。

困扰菲律宾土地改革的另一个核心问题是土地利用政策的缺陷。这种缺陷导致了土地争端,进而影响了综合土地改革的实施。农民抱怨他们的土地被转为工业用地,而土地开发商和地主则坚持

这些土地已经不适于农业生产。除非制定科学、可行的土地使用政策,农用地的大量转用仍将继续。还有,许多地方政府不能系统地提供土地所有权、土地坐落、土地边界、实际用途和地价等方面的资料,这些基础性的文件的缺乏给地权冲突留下了隐患。

另外,政出多门也削弱了土地改革的效力。目前,涉及土地管理的共有 15 个部门,而这些部门却未能很好地配合和进行信息整合,机构职责方面存在大量的重叠。一些主要的土地管理法规已经过期,但实际上还在适用,从而导致了法规之间的冲突。

菲律宾政府现在正面临着综合土地改革是否需要延期的决断。延期或不延期对他们来说都是二难选择。问题的复杂性在于,在强势利益集团的左右下,政府何去何从。

为土地权利而斗争

Anna Rosario A. Elicaño*

"今天,我们为了土地开始前进,重新为了正义而前进。我们绝不会停止,直至归还我们的土地。我们将一往无前,直至得到正义。"

摘自 Sumilao 农民宣言, 2008 年 1 月 18 日

西班牙殖民时期,菲律宾土地所有制为封建制。西班牙王室将土地或庄园以及在此居住的人赏赐给其中意的人管理,这些人通常是维护西班牙利益的西班牙人或当地商人。西班牙殖民者或庄园的所有者,有权向居住在其地域内的所有人征收税赋和索取劳役。这一封建制度根深蒂固,甚至一直持续到 1898 年菲律宾宣布从西班牙独立之后。当时,庄园仍由国内的西班牙籍菲律宾人家族持有,或被卖给富有的菲律宾人。菲律宾政府曾经尝试为了穷人的利益去打破这一庄园制度,这包括 1998 年的综合农业改革计划(Comprehensive Agrarian Reform Program),但收效不大。

这并不是说,没有人呼唤社会公平并要求将少数人集中持有的土地进行重新分配。本文回顾了三个主要的与土地改革有关的抗议

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运动以及触发它们的事件。

一、Luisita 庄园：Tarlac 的糖厂工人罢工（2004～2005 年）

（一）背景

现在所知的 Luisita 庄园曾经是位于 Tarlac 省的农田。在西班牙殖民统治时期，由菲律宾人世世代代占有和耕种。1957 年，其中的 15,000 公顷被 Don Jose Cojuanco Sr. 从一家西班牙公司购得，Don Jose Cojuanco Sr. 在菲律宾的社会和经济领域是一个重要人物。这桩买卖的条件是，10 年以后，Cojuangco 家族必须将土地分配给居住在区域内 10 个村（barangays，菲律宾最小的行政区划单位）的农民。然而，土地的重新分配从未发生。1985 年，马尼拉地区法院命令Cojuangco 家族履行承诺。在这一判决被执行之前，Corazon Cojuanco Aquino 总统的政府制定了综合农业改革计划。根据综合农业改革计划，土地所有人可以选择通过一个股权分配计划，来分配向受益人发行的股份，以替代对庄园进行分割，这会将小块的土地分配给佃农或小农。Luisita 庄园被转变成了一个公司，许多人认为这是逃避土地转换的一种方式。现在它成了 Luisita 庄园公司（简称 HLI），其不动产成了 Tarlac 开发公司（简称 TADECO）的一部分。1989 年 5 月 11 日，Tarlac 开发公司和农场工人签署了协议备忘录，给予他们 Luisita 庄园公司的股份，他们在技术上成了 Luisita 庄园的“股东”或“共有人”。Luisita 庄园公司被指定为协议中的乙方，Tarlac 开发公司向其转让了 Luisita 庄园的农业部分和与农场有关的财产。

至今，被转变为股东的农场和磨坊工人只领到过一次年终分红。此外，由于规定土地的分配只适用于庄园中的农业部分，庄园的一些部分被作为非农业部分隔离开来。这就减少了受综合农业改革计划影响的土地面积。有一半的土地（在未与农场和面粉厂的工人协商的情况下）已被转变为综合商场、高尔夫球场、旅馆和一个工业园区。

剩余的部分被留出来建一条主要的政府道路——Subic-Clark-Tarlac高速公路项目。

(二)警戒线中的暴力

在综合农业改革计划启动之后,直至后来发生媒体所称的"Luisita庄园大屠杀"的这段时间内,不仅是Luisita庄园,全国范围内的农民和农场工人,对于不公平压迫的不满情绪都在持续增长。

在庄园制糖中心的23名工人被解雇后,他们的愤怒达到了顶点。2004年11月2日,由种植园的工人与磨坊工人组成的两个工会举行了罢工。他们要求增加工资、将解雇的工人复职,更为广泛的是,要求在全国范围内向农场和种植园的工人重新分配土地。劳动和就业部(Department of Labor and Employment)后于11月10日作出决定要求停止罢工。但是在2004年11月6日和7日,当地警察使用水枪与催泪瓦斯试图驱散罢工人群。上述尝试失败后,2004年11月15日,菲律宾武装部队介入。第二天,1000名士兵和警察对封锁人群发动了猛烈袭击。他们开了枪,7名平民和2名儿童死亡,另有100人严重受伤。抗议者和目击者指责警察和军队向有6000人的人群开枪,但警察和军队都声称罢工是由来自新人民军队(the New People's Army)的叛乱者煽动的,并且是抗议者先开的枪。

(三)枪杀事件后的抗议

随着来自各界的同情者的加入,在枪杀事件两天后,抗议者们恢复了在CAT大门前的活动。就在警戒线旁边,罢工工人亲自为死难者守丧数天。晚间电视节目也赞颂了那些为了土地权利而进行斗争的人们。2004年11月21日,当其中3位死难者下葬时,约有1万人参加了葬礼游行,从Luisita庄园的门口开始,行进了6公里,到达公墓。

这次罢工持续了13个月,2005年12月22日,农业改革部决定将争议土地分配给约5000名农场工人。但是,2006年6月14日最

高法院发布了一项有利于 Cojuangco 家族的临时禁令(Temprory Restraing Order),使这一进程被推迟。不同于其他有失效日期的临时禁令,这一禁止农业改革部向 4915 名农场工人分配土地的命令的效力将一直持续,直至法院发布新的命令时止。

Luisita 庄园公司试图在法庭外与农场工人达成和解,它愿意分配 1366 公顷的土地,向农场工人支付 1.3 亿比索,并提供免费住宅用地。这被农场工人拒绝了,他们声称此举将破坏土地分配。农业改革部部长 Nasser Pangandaman 称他的部门完全没有介入上述谈判,并声称他自己也未介入。

到本文写作时为止,Cojuanco 家族仍控制着 Luisita 庄园。同时,农场工人仍在庄园的 10 个村的大约 3000 公顷的土地上耕种。Mapalacsiao 村的农场工人合作社的主席 Jorge Gatus 在提到他们希望有朝一日可以合法拥有土地时说:"农业改革部暂时受到临时禁令的控制,但农业耕种并没有。"

(四)各方面的支持

由 Luisita 庄园的农业工人领导的抗议得到了全国各团体的支持。许多教会组织,例如,教会人员反响促进会(the Promotion of Church People's Response),向罢工者提供了直接的援助,并支持他们恰当地完成法律程序和协议。进步党派团体的代表 Anakpawis,菲律宾议会的 Bayan Muna 和 Gabriela 视察了屠杀现场,以示支持。国内的社会团体与 Luisita 庄园的农场和磨坊的工人团结一致,在全国范围内同时举行抗议活动。抗议活动甚至在网络上大量展开,许多进步团体在他们的网站上和博客上对屠杀行为进行谴责。

二、La Castellana:一个成功的故事(2002~2007 年)

为了菲律宾的土地而进行的斗争也许是长期而沉闷的,但农业工人有着坚强的毅力,特别是在受到成功事迹鼓舞以后。其中一个胜利的例子涉及 La Castellana 的农场工人。

Velez - Malaga 庄园的面积有 446 公顷，位于 Negros Occidental 的 La Castellana。1996 年，该庄园被纳入综合农业改革计划，签发的土地所有权证书事实上将 146 公顷的甘蔗园移交给农民受益者，这些农民组成了 Velez Malaga 庄园“土地改革受益人组织”(Havemarbo)。原所有人 Roberto Cuenca 反对此举，并提起民事诉讼要求撤销(将其土地)纳入综合农业改革计划的决定，但由于地方法院对土地问题没有管辖权，农业改革部裁定继续进行土地移交过程。这一决定稍后于 2004 年得到最高法院的支持。

Cuenca 继续反对安置 Havemarbo 农民受益人，并赞成安置一些支持他的属于对立团体的农民受益人。2002 年 4 月，Havemarbo 农民受益人获得了他们的土地所有权证书，但由于撤销诉讼尚未判决，他们无法占有已被授权使用的土地。6 个月后，他们宣布对土地拥有权利，并占有了授予他们的 114 公顷中的 10 公顷土地。Cuenca 控告他们非法侵入，但案件于 2006 年 8 月被上诉法院驳回，并于 2007 年 6 月被最高法院驳回。

尽管有法院的裁定和农业改革部的命令，Havemarbo 农民受益人进入其土地的进程还是被进一步推迟。当农民受益人试图占有争议土地时，暴力冲突发生了。农民受益人的领导人之一，Pepito Santillan，于 2007 年 1 月 25 日在家中被谋杀。

2007 年 2 月，Havemarbo 农民受益人前往农业改革部位于马尼拉的中心办公室，举行绝食抗议，反对延迟对他们的安置。在此期间，他们其中有 17 人由于脱水而住院，当其中 5 名绝食抗议者由于担心时日不多而写下遗嘱将其微薄的财产留给家人时，他们的行动引起了进一步的关注。29 天以后，农业改革部部长宣布，102 名 Havemarbo 农民受益人中的 57 名将被最终安置于 Velez Malaga 庄园。

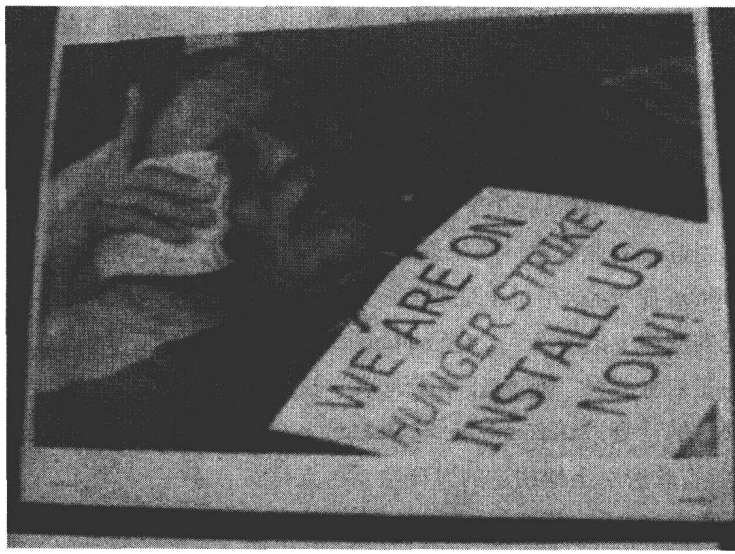
然而，这 57 名被安置的农民被阻止进入他们的土地，理由是必须首先进行分界勘测。在测量结束后，他们又一次被阻止进入，因为与 Cuenca 就青苗补偿所进行的谈判以及与支持 Cuenca 的农民受益

人所进行的土地交换谈判还未完成。依据法律,政府必须向土地所有人就分给农民受益人的土地进行补偿。为了表示抗议,2007 年 6 月,一些 Havemarbo 农民受益人进入了他们的土地,庄园的保安在农民耕作时向他们开枪射击,造成 2 人死亡,6 人受伤。

这引发了另一波的抗议浪潮。农业改革部作出的反应是采取一项计划以(使农民能够)进入和耕种这 53 公顷土地,包括派驻足够的警察保护农民受益人。但是,由于与 Cuenca 的谈判未完成,计划仍然无法实施。他们想寻求一个解决土地争议的双赢方案。

2007 年 9 月中旬,双方达成一项协议备忘录(Memorandum of Agreement)——Cuenca 向 Havemarbo 农民受益人就 43.71 公顷土地的耕种给予补偿,这些土地在技术上属于 Havemarbo 农民受益人,但事实上被给予了对立团体;作为交换,Havemarbo 的成员取得另一块大小相同的土地;所有与土地争议有关的民事诉讼就此终止。

这一长达 11 年的争议结束了。到当月月底,Havemarbo 农民受益人已能够主张权利,占有并耕种他们的土地。



"我们在绝食,现在就给我们土地!"

多方的支持

La Castanella 的农业工人同样得到了支持。他们属于一个全国性的农民联盟,这一联盟在全国范围内重复他们的抗议活动。在绝食抗议的高潮时期,教会领导的团体还在主要报纸上刊登广告。在此期间,社会福利部的部长给农业工人们送去了水、香皂、餐巾纸、毛巾、毯子、枕头和旧衣物。公民社会方面,一些关心此事的艺术家们到绝食地点进行素描、绘画和雕塑,以期唤起对抗议运动的更多关注。

三、Sumilao 的农民:为了土地和正义而前进(1995 ~ 2008 年)

Sumilao 农民事件是菲律宾发生的最强有力的示威之一。经过长时间的斗争,Sumilao 的农民最终成功地取得了他们为之奋斗的土地。

位于南部省份 Bukidnon 的 Sumilao 是当地农民(也被称为 Higaonons 或 Lumads)的祖遗地。在 1930 年之前,他们已占有这片土地。1937 年,Angeles 家族声称其拥有该土地的所有权,将农民们驱逐出去,并将其改建为一块牧场。在 20 世纪 70 年代,这片祖遗地在两个所有者之间进行了分割:99.885 公顷归 Salvador Carlos,另外的 144 公顷,即农民们斗争的目标,被转让给了 Norberto Quisumbing。

当综合农业改革计划生效并将该土地纳入其范围时,农民(都为 Higaonon 血统)获得了土地所有权证书,他们成了有争议的 144 公顷土地的法律上的所有人。Quisumbing 家族申请将土地从农业性质转变为工农业性质。他们公布了建造学校、体育场馆、旅馆、餐厅和住宅项目的计划。Quisumbing 与 Bukidnon 的省政府合作提出了这些计划,省政府对土地用途的转变给予了支持。

然而,农业改革部部长驳回了申请,因为这些计划要对最好的农田进行用途转变。1995 年,在省长的调解下,总统办公室通过决议批准了土地用途转变。

为了表示抗议，Sumilao 的农民在 Cagayan de Oro 市和首都的农业改革部办公室前进行了长达 28 天的绝食抗议。抗议得到了教会领导人、政治家和公众的支持。总统办公室修改了决议，将 100 公顷的土地分给农民，另外的 44 公顷分给 Quisumbing。Quisumbing 向最高法院起诉，最高法院判决修改后的决议无效。农民举行了“愤怒抗议”，但最初的决议还是被恢复了。

2002 年，争议土地被 Quisumbing 卖给 San Miguel 食品公司（简称 SMFI），后者想在此建养猪场。这违反了土地转换规定。

2004 年，农民要求农业改革部取消土地用途转变令，并分配土地。2005 年，在进行视察后，农业改革部的地方领导报告说 Quisumbing 在进行土地用途转变申请时所提出的基础设施建设并没有进行。但是，农业改革部还是驳回了农民的请求，声称是总统办公室，而不是农业改革部，作出了有争议的转变命令或决议。2007 年，总统办公室也驳回了该请求，声称农民没有对该决议提出异议的法律地位。

为了表示抗议，50 名农民在他们斗争十周年纪念日，即 2007 年 10 月 10 日，开始了“为土地而游行”。他们从 Sumilao 出发，徒步行走，直至 12 月 10 日（人权日）到达马尼拉。这一游行受到了全国的关注。在各地，人们向他们表示致敬，并提供食物和水，一起呐喊示威。在两个月的行走中，农民们寄宿在沿途的教堂里。

到达马尼拉后，农民们得到了总统和农业改革部官员的接见。2007 年 12 月 18 日，总统办公室撤回了 144 公顷土地的用途转变令，将土地重新纳入综合农业改革计划的范围。Sumilao 农民宣布他们 1700 公里的行走结束并回到家中。新闻部长 Ignacio Bunye 承诺在总统办公室作出命令的当天就将其提交给农业改革部，但实际上它于 2007 年 12 月 28 日才送达农业改革部。2008 年 1 月 2 日本应是 San Miguel 食品公司提出复议动议的最后期限，但他们声称到这一天才接到命令。由于担心总统命令被延误执行，农民们在农业改革部的 Cagayan de Oro 市地方办公室外面露宿以等待结果，而 San Miguel 食品公司却继续在争议土地上建造养猪场。

由于政府似乎无意迅速将土地还给他们，45 名 Sumilao 农民回到马尼拉，重新开始他们的抗议活动，以使政府信守承诺。他们在许多大学和教区参加论坛、聚会晚宴、音乐会、祈祷守夜和弥撒。

最终有了解决方案，并不是通过政府的干涉，而是由 San Miguel 食品公司和农民通过教会领袖的仲裁自己达成的。2008 年 3 月 30 日，食品公司与农民签署了一份协议，约定由前者捐出争议财产中的 50 公顷给农民，剩余的 94 公顷由其他位于争议区域附近的土地代替。该协议的签署标志着农民为了土地而进行的斗争的结束，同时用农民领导人 Rene Peñas 的话说，是“和平拥有并耕种土地”的开始。

多方的支持

曾经在全国徒步游行的农民们能够亲自目睹和经历来自各方的支持。在整个抗议行程中，各地都有教区的天主教会，他们向农民们提供住宿和食物的支持。当地政府的官员也给他们鼓励，并加入其选民的行列，在路边为行进的农民们欢呼，或向他们提供物质帮助。

Sumilao 徒步请愿的队伍，已行进 1700 公里到达 Quezon

有一个城市,Naga,甚至通过一项决议,宣布团结一致支持这些农民。全国各个学校邀请这些农民去和学生分享他们的经历,使学生可以更深入地了解这个国家的农业问题。学生们负责组织非传统形式的支持行动,如为农民举办募捐会和唤起民众意识的音乐会。最后,不同的法律团体向农民提供了免费的法律援助和代理。

四、结论

菲律宾的土地改革运动,正像这 3 个例子所显示的,经常是一个漫长且沉闷的过程。综合农业改革计划将于 2008 年年中到期,但将土地分配给农业工人的目标尚未达到。土地改革实施的延迟与其说是因为效率低下,不如说是由于土地所有者们对官僚或在议会中实际占有席位的人们的影响。很明显,政府的努力不足以启动真正的土地改革。因此,有组织的抗议活动起着重要的作用,因为它们扩大了人们对于农民的关注。尽管这些常常只取得了暂时性的解决方案,但重要的是土地改革受到越来越多的关注,在近几年势头越来越大。这一以前只有农民和有关的非政府组织提出的主张,已得到各界的广泛关注。公众对土地改革支持的增长能够起到引导作用以加快政府实施土地改革的步伐。各界还可以从 Luisita 庄园、La Castellana 和 Sumilao 农业工人的例子中总结经验,以帮助其他需要帮助的农民团体。看起来,在为菲律宾真正的土地改革而奋斗的过程中,每一个人都可以尽一份力量。

综合农业改革和税收制度(以及合作社)教材(节选)[1]

(2005 年版)

Hector S. De Leon

第一章　农业改革简介

一、概念

1. 土地改革的含义

改革意味着存在不足,有缺陷或扭曲,不能适应现实状况。

从广义上来说,土地改革是指为了改善或补救与土地权利相关的人群内部关系(如耕作者和土地所有者之间,农场的雇主和雇工之间)中存在的缺陷,而可能或应当采取的全部措施。

这一术语也被定义为,为了排除农业结构出现缺陷时对经济和社会进步带来的障碍而采取的整套措施。因此,土地改革也包括"农

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〔1〕 Hector S. De Leon 的这本教材是菲律宾土地法方面较为权威的教材。——编者注

本文依据 2005 年最新版本翻译,摘录了第一章和第二章,较为全面地介绍了关于菲律宾农业改革和土地法的情况。

业结构的调整"或有时被称为"结构改革"。

"土地改革"通常会与"农业改革"互换使用,但实际上后者的含义比前者广泛得多。

2. 农业结构的含义

在上述情形中,"*农业结构*"是指在农业领域中地权结构、生产结构以及支持性服务结构之间一系列复杂的关系。如果综合性的土地改革计划未能全部纳入上述三个结构的改革,则绝非完整的计划。

实际上,这三种结构无法完全区别开,它们彼此相互依赖,但为了便于清晰地展示,这三个结构被当做不同的概念来研究。

3. 地权结构(Land Tenure Structure)的含义

*地权结构*是指规范土地所有权、控制权和使用权以及与权利相伴生的义务的一种或多种土地占有制度。

农地租赁,作为持有农业用地的一种方式,仅是土地保留或土地权利的几种形式之一。它涉及的是采用分益佃农制(share tenancy)还是采用租业佃农制(leasehold tenancy)。

(1)如果采用分益佃农的方式,在土地上劳作的耕作者属于有权获得土地收益分成的分益佃农(sharecropper)。

(2)菲律宾的农业结构最主要的缺陷之一就是,分益佃农所占的比例太高。因此,《农业改革法典》自动将分益佃农转化成农地租户(lessees)。下一步就是将农地租户转化成分期付款的土地所有者(amortizing owner),并最终转变成为自耕农(owner - cultivator)。根据第 27 号总统令,租种别人土地的农民将被视为其耕种的稻田和/或玉米地的分期付款所有人。

4. 地权改革措施示例

地权改革措施将包括:

(1)私有土地的重新分配(通过征收或购买);

(2)分配公共领域的土地,有时也称为重新安置(resettlement)或定居(colonization);

(3)规范土地租用(例如,如果不当驱逐佃农将被罚款,禁止佃农将土地转租,等等);

(4)规范农业劳动力合同和工资;以及

(5)取消不在地主的土地所有权(absentee landlordism),把土地所有权转移给实际耕作者。

5. 生产结构(Production Structure)的含义

*生产结构*是一个与生产或农场经营的性质、类型和做法以及实际过程有关的概念。

它也与生产单元或持有土地的规模、位置和形状直接相关,该土地可以单独操作也可借助来自他方的支持。上述生产单元或持有土地包括个人租用农地、家庭农地、合作或集体农地和公司农地或借助雇佣劳力以进行生产的种植园等。

6. 生产改革措施示例

以下各项属于生产改革措施:

(1)将小块的、不经济的持有土地合并,保证土地的最优化使用;

(2)对不经济的持有土地的面积设定最低限制,在该限制之下不得对土地进行再细分(也属于地权改革措施);

(3)鼓励收益标准以下的(submarginal)农民进行合作耕作或集约耕作(compact farming);

(4)对不从事耕种的土地所有者设定土地持有(也属于地权改革的措施)的最高限制;和

(5)制定稻田轮作制度。

7. 地权结构和生产结构的区别

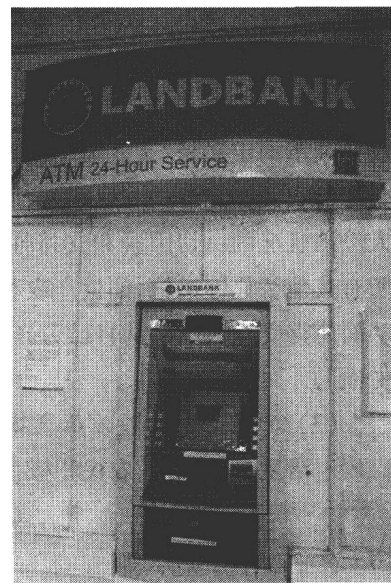
地权结构必须要和生产结构区别开,因为我们有必要区别"土地

权利"(指所有权、租用权等)的概念和"土地的生产和使用"的概念。这从根本上说明了*在所有权下持有土地*(ownership holding)和*运作中持有土地*(operation holding)明显是两回事。

前者是指对土地的权利,不管是完全的所有权还是受法律限制的所有权,也无论是持有的方式是实际持有或只是管理持有;后者是对持有的土地进行实际管理,或指对土地的耕作方式或运作方式,而无论是否拥有土地所有权。

8. 支持性服务结构(Structure of Supporting Services)的含义

*支持性服务结构*的概念包含了借贷、营销、农业必需品(如种子、化肥和杀虫剂等)的供应、加工、存储等事项,也包括其他一些技术协助以及一些与地权和生产结构改革有直接影响的其他服务事项。



土地银行

这些事项主要由土地改革部、土地银行、农业发展局(隶属农业部)等机构提供,以确保作为租户、分期付款的自耕农(amortizing owner - cultivator)或自耕农在取得新的地权后能够成功耕作。它们将使租户取得土地所有权,并协助自耕农更有效地使用土地,从而增加其收入。

9. 农业改革的含义

农业改革是比土地改革更为广泛的概念。

(1)"农业改革"一词不仅包含土地改革(即地权、生产、支持性

服务结构的改革),也包括配套的组织框架的改革和发展,如中央政府的行政机构、农村、教育和社会福利机构、合作社等各单位的改革,并且不仅仅局限于解决农民和土地的关系问题。

①农业改革包括对围绕着农业生活的一切机构进行改善的所有方案,以及为了租户、农业工人和自耕农的成功耕作而采取的必要配套措施。

②农业改革意味着,不仅要弥补土地分配和土地使用方面的缺陷,而且尤其是要改善有关土地的人类关系,包括经济、社会和政治等多方面的关系。

③农业改革不仅涉及农民及其耕作的土地,也与农民所生活的环境相关。

(2)在1988年颁布的《农业综合改革法》(R. A. No. 6657)中,农业改革的定义是"无论是生产稻米还是生产水果的土地,把它重新分配给农民和无地的农业工人,而不管地权安排,包括旨在提升受益人经济状况的一切因素和支持性服务,也包括进行土地重新分配的所有其他替代性措施,如生产或利润共享、劳动力管理、股本的分配,从而使得受益人能够从自己劳作的土地所产出的成果中获得适当的份额"。

(3)简单说来,农业改革意味着解决农业问题,从而提高农村人口的生活质量,并促使农民积极参加当地的经济、社会和政治事务。

10. 农业改革措施示例

农业改革因此也包括:

(1)公共卫生计划;

(2)生育控制;

(3)使劳动法能够适用于农业工人;

(4)农业改革机构的重组;

(5)基础设施的建设,如专用道路、灌溉系统等,以及农村电网的建立;

(6)组织各种类型的志愿者团体(如农民协会、合作社、青年组织),从而作为确保改革获取大众支持或克服反对意见的一种方式;

(7)为农村未充分就业人员或剩余劳动力提供就业机会(如开发农舍及中小型产业等);

(8)具有社区发展性质的其他活动。

二、农业改革面面观

1. 农业改革的经济方面

(1)*农业在国民经济中具有至关重要的地位*——"二战"之后,经济发展成为绝大多数国家的工作重心。从根本上讲,菲律宾(及其他诸多亚洲国家)长期经济发展的成败在于农业部门。

①农业是菲律宾的主要产业,劳动人口中很大一部分受雇于农业部门,国民生产总值的一大部分也来自于农业。农产品及其衍生产品的出口是大量外汇的主要来源。因此,农业可以称为菲律宾经济结构的重中之重。

②农业在国民经济中的战略地位强化了提高农业生产力的紧迫需求,从而加速经济的整体发展。农业部门效率的提高意味着将会有更多更好的食物满足快速增长的人口需求,也意味着更大量的本国原材料供应给不断扩大的制造业,更多的外汇供给发展,并将农村剩余劳动力转移到生产商品和提供服务的行业,从而提高生活水平,增加农村家庭的收入,使这些家庭拥有必要的购买力来获取足够的消费品、农田供应品和设备。

(2)*农业生产力的障碍*——农业生产力并不能通过偶然机会得以提高,必须很好地规划。

欠发达国家的农业生产力低下是由多种因素共同作用造成的,例如,农田面积较小、资金缺乏,从而引起落后的生产技术、原始的生产方式、缺乏经济意识、最大限度地限制经济变革动力的价值体系和社会结构、不充分的营销体系以及创业精神的匮乏等。

显而易见，必须通过改革消除提高农业生产力的障碍，使农业对全面的进步和经济发展发挥其最大的作用。

(3)*农业改革：提高农业生产力的一种手段*——菲律宾农业改革的经济原因在于其提高农业生产力的巨大潜力。

①菲律宾是众多农业生产力很低的发展中国家之一。因此，该国的发展受到阻碍。只有有能力的人才是富于生产力的，不过，仅有能力却不充分利用将会使人们一无所获。因此，需要激励措施。

②促使农民提高产出的一个方法是使他们能够拥有自己耕作的土地，从而不再受到地主的束缚，同时也不必脱离土地。农业改革通常都是为了向农民提供激励措施。农业改革寻求创造一种经济环境，鼓励农民生产更多产品、销售更多产品，在最短的时间内提高农业人口的生活水平，并因此加快国家发展的步伐。

2. 农业改革的社会文化方面

(1)*农业改革：多方面的方案*——对全世界诸多地方的人们来说，农业改革带来了多方面的意义。

①由于问题的性质和范围以及考虑问题的意识形态导向，农业改革具有政治意义、社会意义和经济意义。

②农业改革，从广义上来说，以及从作为政府资助的方案来讲，意味着社会文化方面的转型。除此之外，无论农业改革能否达到预期的目标，只要实施了，它都会毫无疑问地对所涉及的人群的生活带来深远影响。

(2)*关于菲国佃农的假定*——当《共和国第3844号法案》即《农业土地改革法典》于1963年颁布时，仍然存在很多假定来论证法典内容的构成。

仅就相关内容来说，包括：

①佃农问题根植于前西班牙殖民地和西班牙殖民地时期，因此，这是一个由来已久的问题；

②鉴于其深厚的历史背景，佃农制度培育出了非常传统且依赖

性极强的佃农群体;

③地主仅有三种类型:像佃农的家长一般的乐善好施型,恶毒压迫型以及上述两种类型的综合。不管从哪方面来说,地主都对佃农拥有强大的影响力和/或权力,并利用这些权力保证其在社会中的地位和特权。

(3)*农业改革的社会文化变革*——根据成功实施农业改革方案的那些国家(尤其是中国台湾地区和日本)的普遍经验,农业改革带来了如下有利的社会文化变革:

①从自足的观念到有所剩余,农民们开始将所有的精力投入田地中去;

②农村的社会秩序更加井然有序。农民们越发意识到维护社区安宁和稳定的必要性,因为这可以使农民持续地从农田中获得更多的利益;

③农民积极参与领导角色的主动性得到了提高。之前,这些角色为土地所有者阶层独占;土地改革后,农民开始成立社团,在社会集会和团体聚会中与以前的地主们拥有平等地位。农民们也开始积极地参与地方和国家的选举;

④随着土地改革提高农业生产力并随之带来家庭收入的净增长,农民有能力把子女送进学校接受教育。通过更频繁地进入市场和其他地区,或通过购置通讯设备(如收音机和电视),农民将接触到更加广阔的外部世界。

上述这些都推动了农村中宽广的世界观的发展,如对现代计划生育方案的接受,对城市和工业部门中其他经济选择的逐渐认识——由此导致的农业部门中半熟练劳动力的转移将缓解这些部门中劳动力过剩和人口密度过高的问题。

3. 农业改革的宗教方面

(1)*圣经背景*——圣经中的基本教义是,上帝是土地的主人,他做这一切全是为他的孩子。

①粮食不是为少数人生产的。所有人都拥有上帝赋予的权利，使用并享受地上的果实以使他们的生命延续。这些在《创世纪》中均有记载。由此可知上帝并不是即刻创造出人类的，他首先确保了人类有足够的资源养活自己。

因此，如果上帝为其所有孩子提供享受并使他们臻于完善的土地只由一小部分人掌握和控制，这将是与上帝的意愿相悖的。

②当以色列人在巴勒斯坦定居时，土地还是均等分配的。以色列人的社会理想是，“人人都要坐在自己的葡萄树和无花果树下”。家庭规模的农场因此成为定规，摩西的律法也作出了严格规定，禁止任何人改变土地的疆界。摩西律法中“耕者有其田”（land-to-the-tillers）的原则对于以色列这样的农业国家来说是非常重要的。如果土地及其产品仅被少数精英控制和占有，那么一个主要依赖土地产出为生的民族将迅速变穷。

③基督希望，他的子民之间没有不公和压迫。上帝是匮乏和剥削的敌人，上帝的训诫一直是“饿了给你吃，渴了给你喝”。

（2）*罗马教皇的教义*——梵蒂冈第二次大公会议训令“论现代社会的教会”中说：“人应当将其正当占有的外部事物不仅视为是自己的，而且也是共有的。应当认识到，它们不仅能使自己受益而且也应当对他人有益。从另一方面说，每个人都有权享有一份足够其个人和家庭享用的土地产出品。”

St. Ambrose 在《教皇通谕》“论人类的发展”中也说道：“你并不是将你的财产作为礼物赠与贫穷者，你只是将属于他的交还给他。对于给予所有人共同使用的，你却霸为己有。这世界属于所有人，而不只是富人。”

（3）*教会的地产*——一直以来，大部分贫穷的菲律宾人都希望占有土地。在饱尝了穷困带来的痛苦之后，他们渴望获得往往与所有权相伴的自由、美好的生活。这些愿望是如此强烈，以至于有几次爆发了起义和革命。然而，遗憾的是，在对土地的渴望中，人们几乎得不到教会领导者的支持和理解。相反，有的起义还直接牵涉到了等

级森严的教会所拥有的土地。无论是 Dagohoy 或 Diego Silang、Malong、Palaris、Bonifacio 还是 Sakdalistas,教会通常被视为改革的敌人。

振奋人心的是,在现代社会,越来越多的牧师和主教们正在参与穷人争取土地所有权的运动。教会是神圣的人类场所,既然是由普通人组成的机构,犯错也在所难免。其中一个错误就是与土地相关的。

4. 农业改革的道德方面

哲学上总是强调农业改革对国家是如何重要。不仅是《圣经》而且人类理性都认识到将土地公平分配给人民的必要性。农业改革在很多方面都是符合道德律要求的。

(1)原因之一是国家的*安定和内部稳定*。旧时代的思想家们早就指出,如果土地得不到适当的分配,社会就不会太平,到处动荡不安,人们情绪激动。这一点,不仅可以从历史中得到很好的证明,在现代社会也是确定无疑的,现代的无数革命都起源于土地问题。

(2)农业改革的另一个原因是,*土地所有者获得的补偿远远超出*了他对土地的投入,而为地主创造利益的佃农却仍然饱受贫穷之苦。如果某一土地所有者对 1 公顷土地的投入为 10,000 比索,则若干年后或几十年后,土地所有者收到的回报是数不胜数的。

(3)地主所有制也存在着不公正。立法者们认为,分益佃农制是一套不公正的体系,因此一定会被农业改革的新的法律所取代。因此,土地改革者们要求,在土地征用时对地主的补偿应仅限制在最低程度,因为他们认为,佃农所付出的比土地所有者在每一次收获中给予他们的要多得多。

(4)另一个考虑因素是*每个人都有拥有土地的先天意愿*。人类的本性要求他耕种的土地应当为他所有。土地上凝结着耕作者的劳动、悲喜和希望,因此土地也是耕作者的一部分。

(5)最后一个因素是经济。土地的征用及其在人群中公平的再

度分配是国家进步的表现。如果土地为农民自己所有，所有的收入属于农民，农民因此有多余的钱财购买工业产品。工业进步是以农业改革为基础的。

5. 农业改革的法律方面

(1)*两个有利点*——农业改革的法律方面可以从两个有利点来考虑。第一点严格说来，是法律层面的；另一点是社会学方面的。

①曾经有一个时期，法律的疆界仅限于个人之间行为的规范，因此，当时它是孤立而独特的规则，与其他学科例如经济、社会、医药、工程以及农业毫不相干。

②然而，社会、经济和政治发展的复杂性使得修订上述观点成为必要。人们逐渐使用法律作为达到社会经济以及政治目标的手段。尤其是劳动法的颁布，并不仅仅是为了"规制经济成果之间的关系，这些经济成果是由自然资源、科学技术以及有关社会事务的公司组织提供的"。

从更普遍的角度来说，农业改革立法就是劳动法。它并不是出于规范佃农和地主之间的关系这样一个狭隘的目标而制定的，而是致力于达到更远大的社会目标(比如工业化、消除农村的贫困、创造就业机会，等等)，从而使我们的国家中与地权制度长期相伴随的病态统统消失。

(2)*农业改革立法须与宪法相符合*——在菲律宾这样的共和国里，如果不通过合宪性审查，任何一部法律都不可能得到制定通过并付诸实施。也就是说，任何法律法规都必须符合宪法明确的条文、意旨和精神。国家规制社会生活的权力源自宪法，有关财产的人类行为的范围因此应受到限制。在法律中，财产不仅包括有形资产，也包括权利。

不过，所有法律都被推定为有效且合宪，除非法庭作出相反的宣告。

(3)*宪法要求*——如果以菲律宾对农业改革的法律作为具体参

考,可以看出,这些法律,和其他法律一样都起源于宪法。宪法明确规定国家有义务促进社会公正,对财产及其收益的取得、所有、使用、处分进行管控,对劳动者提供完全的保护,促进完全的就业和平等的工作机会,实施农业改革计划,同时为无家可归的公民实施房屋计划。

宪法对农业改革的规定包括了相关要点,这些规定赋予了国家充分的权力以大力推进广泛和深入的改革方案,从而对经济、社会和政治制度带来深刻变革。在对于农业改革法律方面的任何讨论中,都必须记住宪法、法律以及法院(尤其是最高法院)所作的相关判决中的规定和目标。

(4)*农业改革的政策发展*——自 20 世纪初以来,菲律宾政府在不同的政治制度下(美属自治政府、自由联邦和现在的共和国)都考虑了下列问题:

第一,改进菲律宾的地权状况,特别是生产力水平和耕作者的生活条件,即耕作者的土地占有情况和他从耕种中所获得的收益;

第二,将土地分配给耕作者。

过去 80 年的立法都是围绕着这两个基本方面进行的。

(5)*政策重心的变化*——回顾从最初到现在,我们注意到,农业改革公共政策的重心确实发生了变化。之前,立法制度主要围绕着如何改进耕作者的耕种条件,即耕作者获得的回报和土地租期的稳定;而现在,在耕者有其田的计划下,将土地分配给耕作者的进程正在加快。

①这一变化的顶点是第 27 号总统令的颁布,它规定将租种的稻田和玉米地转移给耕作者。也就是说,因法律的执行和效力,耕作者们将被视为是这些稻田和玉米地的所有者。

②几年之后,第 131 号公告启动了一项"综合农业改革方案"(简称 CARP),该方案覆盖了所有的公共和私人农业用地。实施这一计划所需的机制,尤其是土地的取得和分配,均详细地规定在第 229 号行政命令当中。虽然当时并没有立法机构,但根据临时宪法赋予总

统的立法权力,总统颁布了这两项法令。

③这一计划目前正根据 1988 年的《综合农业改革法》(简称 CARL)进行实施(R. A. No. 6657)。

6. 农业改革的政治方面

(1)*农业改革:政府的首要目标*——直至今日,这一观点仍然是毋庸置疑的,即农业改革继续是政府规划的首要任务。

①1972 年 9 月 26 日,也就是根据第 1081 号公告宣布戒严法后的第五天,总统签发了第 2 号总统令,宣布整个国家成为土地改革区。随后,在 1972 年 10 月 21 日,第 27 号总统令规定,将佃农耕种的稻田和玉米地的所有权转移给佃农,从而将佃农从原有的束缚中解放出来。这一大胆且具有革命性的措施缩短了佃农成为其耕作土地的所有者的过程,同时也消除了土地分配的一个制约因素——土地融资方面。这一举动大大加速了农业改革的步伐,而此前改革的缓慢步伐已经让农村人口大为不满。

②随着第 131 号公告的签发及相应措施的实施,以及 1987 年 7 月 22 日(也就是根据新宪法召集的第一次国会的四天前)颁布的第 229 号行政命令,政府建立起了实施"综合农业改革计划"所需的机制,"因为这个国家既承担不起失败,也承担不起贫困"。但是,计划的实施必须"符合国会根据宪法确立的优先顺序和合理的保留限制"。

③该计划的实施目前受到 1988 年《综合农业改革法》的规范(R. A. No. 6657),它规定了计划的实施范围、日程表、优先顺序和保留限制等内容。

(2)*作为政治进程的农业改革*——首先也是最重要的,农业改革最终还是深思熟虑的政治决策的产物。对历史进行简要的回顾就会发现,菲律宾的农业问题以及过去解决这个问题的尝试都清楚地验证了这一事实。

地权结构的变化,带来的不仅是收入和财富的重新分配,还包括

对现有社会各阶层地位的改变,因此结果是对于权利的重新分配。由于所有权和涉及土地租用的法律关系的变化,农民可以自食其力,意即农民从此独立于之前的土地所有者。在我们灵活的宪政和政治框架内,农业改革的"伟大实验"正在向前推进,政府为适应变化也引入了新的机制,提高了政府信用。

三、农业改革的实施

1. 农业结构的改变方式

在实践中,农业结构的变革可以通过革命、威权政体或经由民主进程的渐进方式实现。

(1)在革命情形下,农业结构的变革是政治、经济及行政权力移转到因这些变革而直接受益的某个阶级的结果。因此,改革实现起来相对较容易。

(2)也可以通过已经掌握国家权力的集权政体来推行农业结构改革,将其作为拓展其政治基础并取得良好的经济、社会变革的一种方式。

在上述两种情况下,有关土地改革的政策决定的实施在必要时须中止正常的法律程序,来自既得利益的地主或是行政机构内部的反对意见因此比较容易克服。第 27 号总统令和第 229 号行政命令就采取了这样的方式,当然后者的实施不得不受通常的法律和宪法的约束。

(3)然而,在民主政治框架内实施土地改革仍然会存在问题。与革命和威权政体国家不同,政治权力的分散(即政府的行政、立法和司法机关三权分立),使克服既得利益集团的反对,或重组或改变阻碍改革的现有体制变得非常困难,因此土地改革的实施并不是纯粹的行政过程,也不可能独立于政治、经济或社会结构来研究农业结构,因为它恰恰是上述结构的一部分。

诚然,有利的政治环境是有效改革及其实施的前提条件。原因

是,任何要将一个集团的财产和特权转移到另一个集团的改革措施都不可能被适当地启动或得到实施,除非国家中具有控制地位的政治力量愿意支持该革命性的变革,并且愿意用所有的政治手段来达到目标。

2. 农业改革成功实施的要求

过去40年间,亚洲和远东的许多国家都已就农业改革进行立法。然而,立法设定的目标和实现情况之间还存在着巨大差距。失败的原因主要归咎于土地改革实施的特殊性质和要求。

(1)农业改革是一个复杂且充满争议的计划,常常会遇到来自不同既得利益集团的反对。因此,*负责实施农业改革的组织必须确保从中央到地方政令一致*,以保证政策的实施能够得到来自各个层级的支持。

(2)考虑到农业改革一旦推行,地主通常会撤回所有的支持(如农业信贷),因此*必须向受益人提供必要的支持性服务*。

(3)由于现行的政治、经济、社会和行政体制通常不利于将来的受益人(例如,行政人员通常会来自地主阶层或城市中产阶级),因此,*负责执行授予新的权利的行政机关、行政程序以及司法体制必须相应进行重组*,从而保证农业改革方案能达到预期的目标。

(4)最后,由于现有的行政人员常常没有得到良好的引导,或对改革并不抱有同情态度,而且改革会受到来自各个层面既得利益集团的反对,因此*最好能将改革的受益人纳入改革的实施中*。

四、农业改革方案的比较

1. 农业改革方案的分类

农业改革有着久远的历史,因此可被分为若干方案模式。任何农业改革方案都可以归为以下方案之一:

(1)*租佃关系的重置*。这一方式使所有者能够保留土地上的所

有私人财产,尽管采取了一些措施来界定租佃关系的条款和条件。这一类型方案的普遍特征就是保障佃农对土地的占有,只有在违反特定的法律规定时佃农才会被驱逐。

(2)*土地重新分配给农民,途径有:*

①*将公共领域的土地分配给农民,有时也指安置或定居*。这种方式作为农业改革的一种方案,在历史上取得的成功表明,如果有政府的支持和帮助,这种方案就会成功。然而,定居和重新安置的成本非常高昂。

在如今的菲律宾,要将一个家庭成功地安置在未开发的公共领地上,保守估计需要 10 万比索。除此之外,这些重新被安置的家庭能否维持稳定的农业生活也没有得到百分之百的保证。目前的资料表明,从 1947 年到 1970 年大概有 3 万个家庭曾被重新安置,但其中的 70% 又重新成了佃农。

②*将私有土地及土地上的不动产打包后分配给佃农,政府同时还推行广泛的技术和经济支持计划*。这种概念是为原先的所有人保留一定的土地(有最高额限制),将剩余的土地或不动产打包成较小的"家庭型"农场,然后拨付给合格的农民。这是目前广泛采用的一种方式。

③*统一化*。按照这种替代性的方案,国家将土地重新划分成统一的小块,并将这些小块土地分配给相关的耕作者,以保证有效地管理土地,提高产量。如果对相应的土地权利或所有权进行调整,则应给予恰当的补偿。

④*私有土地充公*。——在社会主义国家,如中国、苏联和以色列,所有的土地都属于国家。国家将土地划成更小的单位,然后租给个体农民、合作农场或通过采取雇用农业劳动力体制——国营农场来进行经营。因此,这些地方从来不会受到此类问题的困扰,例如,原先的土地所有者保留土地的最高限度,转让给佃农的土地的估价,对土地所有者的支付方式,等等。

2. 不同国家的农业改革方案

许多国家都采取了各式各样的农业改革方案，尽管目标基本相同，但具体措施各异。当土地的重新分配成为一国农业改革方案之根本时，下列几点也非常重要：

（1）*保留土地的最高限度(Retention Ceiling)*——不同国家允许地主保留的土地上限各不相同。几乎所有的社会主义国家允许地主保留的土地都为零，但委内瑞拉却允许保留 26,000 英亩。在菲律宾，根据《佃农解放法令》(第 27 号总统令，第一章 E)，允许地主保留的土地上限为 7 公顷，且必须是稻田和玉米种植地。

根据 1988 年的《综合农业改革法》(简称 CARL)(R. A. No. 6657)，土地所有者保留的土地不得超过 5 公顷，除非法律另有规定。土地所有者的每个孩子都可享有 3 公顷土地，但须满足一定的条件。

（2）*再分配方案的接受者或受益人*——总体来说，世界上几乎所有的国家都会使无地农民成为土地充公的受益人。值得注意的例外情形发生在部分社会主义国家，如中国和前苏联。在以色列，农业改革措施的接受者可能是被组织成 *moshav* 或 *kibbutz* 的一群人。这两个群体(*mashav* 和 *kibbutz*)的基本特征是联合接管农场并劳作，而不是个人接管农场，按照传统的一农一地的方式进行耕作。

（3）*估价*——当然，在很多社会主义国家，这个问题没有什么影响。但在私有财产权利被给予高度重视的国家中，对充公财产的估价就成了很大的问题。若干年来，各个国家先后制定了无数的公式。在菲律宾，对于《佃农解放法令》所涵盖的稻田和玉米地来说，土地的估价是 3 年正常年收入的平均数的 2.5 倍，分 15 年均等分期支付，利率为 6%。

根据第 229 号行政命令，政府将对土地所有者进行补偿，补偿的计算应当以地主提出的目前的公平市场价格为基础，但需要进行一定的控制以防止索价过高。

按照 1988 年的《综合农业改革法》(简称 CARL)，菲律宾的土地

银行(Land Bank of the Philippines)应当向土地所有者支付补偿款项,款项的金额由该土地所有者与农业改革署(目前被称为土地改革署)以及土地银行协商确定,或由法院最终确定,作为对地主土地的公平补偿(见本文第18节)。

(4)*付款方式*——国家采取的任何充公措施如果均用现金付款将会牵涉巨额的经费支出,因此还没有政府这么做过。可采取综合方式,如现金、债券或政府公司的股票等,菲律宾就是这样。根据1988年的《综合农业改革法》(简称CARL),土地所有者可以选择补偿方式(*同上*)。

(5)*新土地所有者的还款*——在民主国家,这是一个引发根本问题的农业改革决策。如果农业改革方案的一个基本预设是农民是贫穷的,那么他们如何能够得到土地并成功地向充公财产的原主人还款呢?

就还款政策而言,通常采用两种方式:

①农民直接就土地按分期偿还方式付款给原土地所有者,政府干预最少。

②在大多数民主国家和发展中国家,先由政府从土地私有业主处购买或征用财产,再由新的土地所有者向政府还款。在菲律宾,在自愿土地转让的情况下,由受益人直接向原土地所有者还款或是由土地银行还款;如果由土地银行还款,银行有权从受益人处按30年的期间收取分期付款,年利率为6%。

(6)*政府支持*——采取农业改革措施的国家都同意,政府在具体的财务和技术上的支持是非常必要的。这种支持采取的形式包括:为大量的技术协助提供宽松的贷款条件,价格优惠,实施改革的政府机制,营销措施,等等。

(7)*新土地所有者的义务*——如果农业改革要得到有效推行,那么就不能使一切轻易地退回到原点。出于这个原因,政府对分得征收土地的受益人施加了诸多限制,包括:

①禁止将分配的土地再分成小块,以防止土地的再次细分失去

其经济价值；

②只有加入合作社后才可以作为土地的接收人；

③土地不可被转让，但作为遗产被转让除外；

④被征用土地的接收人必须亲自耕种土地，至多可以雇用农业劳动力。通常是不允许转租的。

五、农业改革和均衡发展

1. 农业改革和工业化

(1)*农业改革是工业化的前提条件*。历史上，如果一个国家没有首先实现农产品的自给自足，几乎不可能实现工业化。因此，正如我们再三强调的，工业革命的前提是先前的或至少是同时代的农业革命。

①这两者之间的关系在南亚尤其明显。劳动力中的很大一部分正在并将继续集中在农业部门，因此，在农业生产力和收入都较低的情况下，要拓展大众对工业产品的需求或促使人们拿出积蓄来消费是非常困难的。

②而且，这些地区的工业和出口贸易都依赖于农业原材料。

③最后，也是最重要的，如果粮食急缺，所有的发展工作都将受到挫败，不仅仅是那些注重发展农业的工作。

(2)*工农业之间的关系*——菲律宾体现在法律中的农业改革方案，是通过建立土地所有者的资本和企业从农业到工业的转换机制来促进工业发展。

像菲律宾这样的国家，如果不推行农业改革及农业发展，不可能完成工业化，而没有工业化，农业改革也不可能成功。

工业化需要从农业改革以及发达的农业体系中获得：

①富余的农产品作为原料；

②农民大量的购买力；

③通过农业改革从未充分利用的土地中释放出来的资本和

技术;

④来自农村地区的劳动力。

另一方面,农业改革和农业发展需要从发展良好的工业中获得:

①销售富余农产品的市场;

②农业机械、化学品和研究;

③富余劳动力的就业;

④工业创造的资本。

由于工业农业彼此支持,菲律宾必须从农业改革和农业及本地原材料的加工开始,找到一种工农结合的方案。因此,工业化方案需要农业改革。农业改革本身并不是一项需求,它只是听命于工业化的需求。

(3)*工业化的重要条件*。为实现工业化,下列条件是必不可少的:

①有一批用非常廉价的食物几乎就能填饱肚子的劳动力。如果粮食便宜且充足,那么就工业领域而言,菲律宾的劳动力将会非常具有竞争力,因为每天只需支付较低工资就可以维持其生活,这样国内外的投资商就可以获得巨大的利润空间;

②必须建立起剩余收入不断增加的农业部门,并不是所有产品都能够出口;

③必须促进国内的消费。除非农民有能力购买工业产品,否则国内的消费需求就无从谈起。

2. 农业改革和城市化

(1)*城市化的要求*——一个城市从较低水平转型至较高水平需要发展的投入,以加速转型。这些投入的绝大部分不是来自城市本身,而是来自邻近区域甚或来自边远地区,如农村或农业部门。

(2)*来自农业部门的发展投入*——作为地理区域的城市,其特征是较高的人口密度,通常是从事制造、加工和装配工作的工厂及服务的聚集地。随着贸易的扩展,也引入了贸易活动的额外程序,如仓

储、运输、再包装等。

这些额外的程序也需要额外的人力,因此,城市人口的增长远比农村要快。在城市里这些扩展活动的开展过程中,大量的原材料仍来自农业地区,即农业部门。

(3)*城市与农村的互相依存*——可以这么说,在很多方面,城市或城区的发展依赖于相应农村地区的增长和发展,尤其是为工厂提供原材料的农民以及那些为城市提供粮食的农民的发展。

很显然,城市中越来越多的就业机会是减轻农业人口压力的一种方式,因此,城市化和工业化作为一方面,农村的发展作为另一方面,具有同等的重要性。

3. 农业改革和社区发展

(1)*社区发展的含义*——这一名词已经得到了国际化的应用,含义就是"通过联合政府权力机构和人们自身的力量,改进社区的经济、社会和文化环境,将社区融入国家生活,并使社区为国家发展全力贡献力量的一种过程"。

(2)*两个基本要素*——上述概念说明社区发展有两个基本要素:

①人们积极参与,并尽可能多地依赖自己的积极性和资源提高生活水平;

②政府在必要的时候提供技术和材料支持,以鼓励人们的积极性、自助与互助。

(3)*人们本身的参与*——如果没有人们自身的有效参与,要达到农业改革的基本目标是非常困难的。

①让传统的农民获得自主决定的经历,有助于其独立和自立精神的形成,这正是传统农民缺乏的一种品质,因为他们在大包大揽的传统家长制下习惯了顺从权威而且不会质疑权威。

②在这种情况下,即使人们的参与没有服务于任何经济需求而且最终会衰减,但它对地方农民社区的自我完善还是起到了重要作用,从而为真正民主社会的发展奠定了更广泛、更坚定的基础。

(4)*农业改革的支持性组织*——在鼓励广泛参与发展项目的同时,应强化和建立相应的地方组织,以保持或实施这种参与。为了保证当地的农业改革获得持久的热情和自发的行动,必须:

①扩大组织的基础以囊括当地社区所有的利益团体;

②在最初为新的组织配备足够的外部财力、技术和政治支持;

③使这些组织持续地接受与它们的需求有关的新知识和新科技。

这就是国家为什么要制定促进地方社团(*Samahang Nayon*)和合作社(*Kilusang Bayan*)——作为农业改革的支持性机构——的建立与发展的政策的理论基础,不仅仅是因为人们的集体行动能够更好地实现其共同利益,而且还是因为农业改革的受益人组成这些组织将是其获得所需服务和设施的最好渠道。

4. 农业改革和合作社

(1)*合作社支持农业改革方案*。实施农业改革方案目前的计划需要建立以草根阶层为基础的合作社组织。

农业改革方案中,合作社的重要性是毫无疑问的,这体现在:只有作为合作社成员的佃农才能够取得土地的所有权。为了使这一要求更具意义,合作社将保证原土地所有者获得每年的分期付款。为了使合作社有能力这样做,必须有强大的基础以及保障和资源体系。

(2)*合作社是有益农民的*。合作社也在农民中推广,使农民通过有组织的合作长期享受农业改革的成果。

①合作社将向农民展示,通过参加组织,他们将会更强大,将使自己更好地确保自身利益。合作社将使农民有机会对主要问题进行系统的鉴别和讨论,并采取坚决的措施解决问题,还能使农民了解拥有土地后的义务。

②合作社将帮助农民确保获得提高生产力和收入所需的服务和产品、有效的管理、信贷、生产必需品、技术、市场渠道、运输设施等。

③从更经济的角度来说,合作社将集中农民微薄的个体力量,从

而使他们可以在平等的基础上和大型商业企业进行交易。

(3)*有关合作社的国家政策*。菲律宾的《合作社法典》指出,国家的政策是"促进合作社的建立和发展,使其作为增强群众自立能力和管理群众能力的一种措施,以追求经济发展和社会正义的目标"。

①国家应鼓励私营部门参与到合作社的建立和组织中,并创造有助于这些合作社成长和发展的氛围。

②为了实现这个目标,政府及其分支机构、部门、分派机关和代理机构必须确保提供技术指导、财力援助和其他服务,以保证合作社发展成为自给自足且拥有灵活应对能力的经济企业,从而形成强大的合作力量,而不会受到可能违反合作社自主权或组织一体化的条件的限制。

③除此之外,国家认可*辅助性原则*,按照这个原则,合作社将在自身范围内发起并规范宣传和组织活动,培训和研究、审核和支持活动,必要时政府可提供支持。

第二章 综合性农业改革方案

一、初步考虑

1. 简介

1986 年 2 月 25 日的和平革命之后仅一个月,即 1986 年 3 月 25 日,总统签发了第 3 号公告,"凭借人民赋予我的权力"公布了临时宪法。作为临时政府首脑,总统行使立法权(即制定法律的权力),"直至根据新宪法选举产生立法机关为止"。(第 3 号公告第 2 条第 1 款)

(1)*第131号公告和第229号行政命令*。1987 年 7 月 22 日,即新国会召开前 5 天,总统行使新宪法(第 18 条)所承认的立法权,签署了第 131 号公告,开始实施"综合性农业改革方案"(简称 CARP),并且签署了第 229 号行政命令,此行政命令为实施上述方案初步提供

了所需的机制。

(2)*第6657号共和国法令*。随着总统于1988年6月10日签发了"第6657号共和国法案"(另一个名称是《1988年综合农业改革法》(简称CARL),以下简称"本法"),与农业改革方案实施有关的一切事宜都受到该法律的规范。

①*补充性法律*。现有的农业改革的立法,如"第3844号共和国法案"修订案(即《农业改革法典》),第27号总统令修订案(即《佃农解放法令》),第266号(规定了第27号总统令中土地权利或所有权登记制度),第228号行政命令(宣布根据第27号总统令,合格的农民受益人将拥有完全的土地所有权)和第229号行政命令(为第131号公告的实施初步提供了所需机制),以及其他与《综合农业改革法》不冲突的法律法规,都仅具有补充效力(见本法第75节)。也就是说,这些法律法规仅适用于《综合农业改革法》未涉及的事项。

②*被废除或修订的法律*。第35节(其他类型土地租赁的例外),第316号总统令(在颁布实施第27号总统令的法规条例之前,禁止从耕种的土地上驱逐佃农),第946号总统令第12节最后两段的规定以及第1038号总统令(加强佃农对非稻米或谷物生产的私有农业用地的占有)以及所有其他与《综合农业改革法》相抵触的法律、总统令、行政命令、法规条例、公告或部分公告,均相应地废止或进行修订(见本法第76节)。

(3)*1987年宪法*。1987年2月2日批准的宪法包括直接涉及农业改革的几个条款。

2. 综合性农业改革方案所需

第131号公告的若干"鉴于"(whereas)条款,强调根据菲律宾目前面临的危机以及实现宪法设定的国家经济目标,迫切需要综合的、务实的和灵活的农业改革方案。同时,公告的第6条到第13条阐述了农业改革方案的要求,并号召全体菲律宾人民、所有政府机构(尤其是国会)和私人机构对该方案给予支持,使方案得以顺利实施。

这些“鉴于”条款如下：

“鉴于，我们已经宣布，要恢复和发展菲律宾农业的最大潜力，使之成为我国新民主制度中需要解决的首要经济问题，并为国家的工业化奠定坚实基础。

鉴于，我们只有提高农业部门的生产力，并增加农民、常规农业工人（regular farm - workers）和其他农业从业者的收入水平，才能体现我国新民主制度的重要意义。

鉴于，在任何的农业复兴和发展政策中，最关键的因素是综合的、务实的农业改革方案。

鉴于，上述农业改革方案将促使资本从土地向工业转移。

鉴于，为了实现上述迫切的目标，在1986年总统竞选中，总统宣布她将推行农业改革方案。

鉴于，全体人民都需要以团结、合作和理解的精神来实施农业改革方案，这种精神将贯穿改革过程中，无论是自愿的还是非自愿的，因为国家面临的问题和挑战需要全国人民齐心协力来应对。

鉴于，农业改革不可缺少地需要全体人民的参与，参与到改革方案的规划、组织和管理过程中。

鉴于，全体菲律宾人民、所有的政府机构和私人组织，都必须重视、支持且全力合作，使该方案得到有效实施。

鉴于，该方案必须务实、灵活才能取得成功，且要考虑到不同地点不同社区的不同情况，因此如果整个改革采取“一刀切”的做法，将是不公平也是不明智的，必须考虑各地的特殊情况和具体条件，且要在国家目前和可预见的将来的能力范围内进行。

鉴于，该方案还需要可利用的资金，这些资金在来源和使用期间方面都应当是确定的。

鉴于，对农民、常规农业工人或其他农业从业者，就其新角色和新任务来说，进行教育、再引导和激励，以及采取确保该方案实施的措施，可以提高受益人的生产力和收入水平；也确实有此需求。

鉴于，所有这些及其他的基础设施都必须由其他立法或措施给

予规定。

鉴于,总统承认,菲律宾国会,作为政府的另一分支,是这一持续性任务的合作者。国会的参议院是在广泛选举的基础上产生的,因此代表了国家的要求,而国会的众议院明确表达了不同选区和部门中的需求和存在的问题。

鉴于,从最终的分析来看,毫无疑问,需要进行变革,而实施农业改革方案已经刻不容缓,因此我们别无选择,只有立即采取可行的、资金充裕的、最重要的是旨在成功的方案,因为国家已经再也经受不起失败或贫困了。

鉴于,历史的潮流、宪法、时代的紧迫要求,菲律宾人民目前的能力和长久以来的愿望,都要求实施这样一个农业改革方案。"

3. 原则和政策声明

1988 年的《综合农业改革法》宣布,实施综合性农业改革方案(简称 CARP)是一项基本国策。

(1)无地的农民和农业工人的福利将受到最大限度的关注,以促进社会正义,使国家朝着健全的农业发展和工业化前进,并建立起规模经济的农田上的自耕农制度,使之作为菲律宾农业的基础。为了实现这一目标,必须对土地和土地所有权进行更公平的分配,同时充分考虑到土地所有者的权利,对其进行公平补偿,并符合国家的生态要求,从而通过提高农业土地生产力,为农民和农业工人提供实现个人尊严及提高生活质量的机会。

(2)通过适当的激励措施,国家鼓励个体受益人和小农场主成立并维持规模经济的家庭农场。

(3)国家必须遵循土地具有社会功能和土地所有权附有社会责任的原则。农业土地所有者有义务直接耕种其拥有的土地,或通过雇用劳动力进行耕种,使土地具有生产力。

(4)国家可以将公共领域内未开发的土地租给合格的实体,以开发资本密集型农场,发展传统的和示范性的农作物,特别是那些出口

型的农作物。当然这要受到该法中受益人优先权条款的限制。

1988 年的《农业综合改革法》在其第 3 节中采纳了宪法中关于“农业和自然资源改革”的所有条文。

4. 改革方案的关键目标

综合性农业改革方案把占农业人口绝大多数的农民置于发展的中心。他们不再是被动接受政府帮助的对象,而是发展自身的积极的参与者。

综合性农业改革方案有三个关键目标:

(1)公平。通过使大部分人口能够民主化地控制国家的土地,并使他们直接参与国家建设,从而建立公平。

(2)能力。通过提供所需的支持性服务,培养农民受益人有效管理土地的能力。

(3)可持续性。通过在土地使用和管理中采用生态系统和利益相关方的方法,促进农业可持续发展。

为了实现这些关键目标,农业改革部将土地分配、地权状况改善与受益人发展紧密结合,以实施综合性农业改革方案。基本方法是,通过提供针对性的支持服务,并促进农业部门的私人投资,最大限度地发挥农民和被改革土地的生产力,从而确保土地在转让之后,新的所有者能够在自由市场经济中具有充分的竞争力。

全国超过 40% 的人口在从事农业、渔业和林业生产,而菲律宾贫困人口中的 60% 都来自于农村地区,约 330 万家庭或 44% 的农村人口都生活在贫困线以下。综合性农业改革方案是政府实现粮食安全和根除贫困的主要手段。

5. 术语的定义

就该法案而言,除非上下文另有说明,词语和短语应具有下列含义。

(1)农业改革是指无论是生产农作物还是水果的土地,把它重新

分配给农民和无地的农业工人,而不管地权安排,包括旨在提升受益人经济状况的一切因素和支持性服务,也包括进行土地重新分配的所有其他替代性措施,如产品或利润共享、劳动力管理、股本的分配,它们都将使受益人能够从自己劳作的土地产出的成果中获得适当的份额。

(2)*农业、农业企业或农业活动*是指耕作土壤、播种农作物、栽培果树和对这些农产品进行收获,以及与人们(自然人或法人)农业作业有关的其他农业活动或行为。

(3)*农业用地*是指专门用于农业活动的土地,而不是开矿、造林、居住、商用或工业用地。

(4)*土地纠纷*是指与农业用地的地权安排(如土地租赁协议、作业关系等)相关的争议,包括农业工人团体或代表人物就地权安排的条件和条款进行协商、确定、保持、变更或进行安排中产生的争议。

土地纠纷包括与依照法案规定获得土地补偿有关的任何争议、因土地所有权从所有人转让给农业工人、佃农和其他农业改革受益人的条件和条款所产生的争议,而无论争议是由农田耕作者还是改革受益人、是土地所有者还是佃农、是出租人还是承租人首先提出的。

(5)*闲置或废弃土地*是指在收到政府征收通知前,连续 3 年没有耕种、种植或开发生产任何作物,也没有用于任何特定经济用途的农业土地。

不包括那些永久性或经常性地用于非农业目的的土地,也不包括由于不可抗力或其他偶然事件而丧失生产力的土地,而在这些事件发生之前,这些土地是用于农业或其他经济用途的。

(6)*农民*是指主要以土地耕种为生或从事农作物生产的自然人,可以是自己,也可以是在其直系农场家庭成员的协助下进行耕作和生产,无论他是拥有该土地所有权的人,还是通过与土地所有者签订租赁或分益佃农协议或安排的其他人。

(7)*农业工人*是指作为农业企业或农场里的被雇用人或劳动力

而提供服务获取价值的自然人，其报酬支付方式可以按天、周、月进行，还可以按“pakyaw”方式进行。

这一术语包括因土地纠纷未决而导致其农业活动停止的个人，也包括没有实质性获得相应的或常规的农业雇用的个人。

(8)*常规农业工人*是指由农业企业或农场长期雇用的自然人。

(9)*季节性农业工人*是指农业企业或农场周期性地、定期地或间歇性地雇用的自然人，无论是长期劳动力还是非长期劳动力，如“*dumaan*”，“*sacada*”等。

(10)*其他农业工人*是指不符合农业工人定义，也不符合常规农业工人定义或季节性农业工人定义的农业工人。

(11)*合作社*是指主要由小型农业生产者、农民、农业工人或其他农业改革受益人自愿组成的组织，目的是集中土地、人力、技术、财力或其他经济资源，该组织按照一人一票的原则运作。

法人也可以是合作社成员，与自然人拥有相同的权利和责任。

二、范围

1. 方案的范围

(1) *总体上*，无论地权安排和出产的作物为何，1998 年的《综合农业改革法》涵盖了所有的公共和私人农业用地，也包括适合耕种的其他公共领域土地。虽然仅限于为无地者提供土地，但综合性农业改革方案在获取和分配土地的同时，也为农民的利益提供各种支持性设施和制度。

根据宪法，农业改革方案涉及包括公共用地在内的各种农业用地。农业用地是指主要供种植如大米、甘蔗、烟草、椰子等作物的土地或是用作牧场、乳品制作、内陆养鱼、制盐或其他农业用途的土地。

(2) *具体范围上*，综合性农业改革方案更具体地包括以下各种土地：

①所有用于或适合农业的可转让与可处置的公共领域土地；

②所有公共领域土地,除非在国会因生态发展及平衡需要而制定的具体限制之内的土地(包括在法案通过后被重新归入农业用地的森林或矿产地);

③所有其他以农业生产为目的或适用于农业生产的政府所有地;

④所有以农业生产为目的或适用于农业生产的私人用地,无论生产何种或可生产何种作物。(见本法第4节)

养虾场和鱼塘不在此范围内。

(3)*实施日程表上*,法案规定的所有土地的分配需立即执行,并应在法案生效之日起10年内完成。

2. 保留限制(Retention Limits)

(1)*一般规则*:某人可以间接或直接地拥有或保留的公共或私人农业用地各不相同,依照影响家庭规模农场大小的各种因素而定,比如,由总统农业改革委员会确定的产出物、地形、基础设施和土地的肥力。

《综合农业改革法》认识到,不同的作物要求不同的投入和得到不同的回报,因此,保留限制必须灵活运用。

但是无论如何,土地所有者不能超过5公顷的土地保留限制。

如符合以下条件,土地所有者的每个子女都可获得3公顷的土地:

①他(子女)至少达15岁;

②他正从事土地的耕种或直接管理农田。

(2)*例外情形*:

①其土地受第27号总统令规范的土地所有者,可继续保留他们原先按照总统令可以保留的区域;

②原先的田产受让人或他们的直接继承人,如在法律通过时仍拥有原田产的,只要他们继续耕种这些田产,就可继续保留该田产。

3. 土地所有者保留权利行使规则

以下规则和程序适用于按照第 27 号总统令和《综合农业改革法》第 6 节提出的所有保留申请。

(1) 政策说明。土地所有者行使保留权利应遵照以下政策:

①土地所有者有权选择保留的土地范围,这些土地必须是紧密相连的,同时对全部土地占有者和大多数农民的损害应控制在最低限度内;

②若土地所有者要行使保留权,则应在收到覆盖通知[1]后 60 天内明示其保留意愿。如未如前述行事,则构成对土地保留权的自动放弃;

③土地所有者在作出土地保留的意愿后,应在表示日期后 30 天内说明土地确切位置。如在 30 天期限内土地所有者未作出该说明的,市级农业改革官员(简称 MARO)有权为其作出选择;

④土地所有者有义务直接或通过管理劳动力来耕作该土地,并以此使他所保留的土地具有生产力;

⑤在任何情形下,佃农以前按照第 27 号总统令获得的一切权利,以及农民或农业工人在第 6657 号共和国法案通过之前获得的对土地的占有,应得到尊重。而且,实际的佃农不应从其所在的土地上被驱逐;

⑥若原土地所有者违反第 6657 号共和国法案,对私有土地进行售卖、处置、租赁或转让的,交易无效。在第 6657 号共和国法案施行之前进行的交易,只有根据第 6657 号共和国法案第 6 节的规定,于 1988 年 7 月 15 日后 3 个月内在地契登记处进行登记的,方为有效。

(2) 可申请保留的人员:

①拥有农业用地总面积超过 5 公顷的任何自然人或法人可申请土地保留。但是,已行使第 27 号总统令下保留权的土地所有者不得

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[1] 覆盖通知即其土地受到《综合农业改革法》规范的通知。——编者注

再行使第 6657 号共和国法案下规定的同样的权利。如果该土地所有者选择保留其他 5 公顷的农业用地,则其原先保留的 7 公顷土地应置于综合性农业改革方案的处理范围之内;

②若土地所有者拥有 5 公顷或更少的土地,且此类土地不在第 6657 号共和国法案第 7 节的执行计划规定的范围内,则该土地所有者同样可以提出土地保留的申请,并获得保留证明书(Certificate of Retention);

③已故土地所有者的土地保留权可由其继承人行使,但该继承人须首先出示证据,证明已故土地所有者生前(同时须在 1990 年 8 月 23 日前,这一日期的确定是根据最高法院在"菲律宾小土地所有者协会诉农业改革秘书处"一案中的最终裁决)曾表达过要求行使保留权的意愿。

(3) *按照第6657 号共和国法案行使保留权的期限*:

①土地所有者可在收到覆盖通知之前的任何时候行使其保留权;

②根据强制收购计划,土地所有者应在收到覆盖通知之日起 60 天内行使其土地保留权;

③根据*自愿要约出售计划*以及*自愿土地转让或直接付款计划*的规定,土地所有者应在提出销售或转让要约的同时行使其土地保留权。

(4)*提出申请的地点*。应在地区主管办公室或省级农业改革办公室(简称 PARO)提出正式完整的保留权申请。收到申请的办公室应在分配相应的案卷号后,将申请转给对该土地享有管辖权的市级农业改革办公室(简称 MARO)。

(5)*对保留权的放弃*。土地所有者如行使以下行为,或有如下疏忽,可视为放弃其保留权:

①土地所有者在收到综合农业改革方案的覆盖通知之日起 60 日内,没有表达其行使保留权的意愿;

②土地所有者在提出要约出售或根据*自愿土地转让或直接付款*

*计划*提出申请时，没有说明其保留的意愿；

③对任何明确表明土地所有者放弃其保留权的文件的执行。市级农业改革办公室或省级农业改革办公室或地区主管应对该文件的执行进行证明；

④执行关于标的财产的《土地所有者—承租人生产协议及农民承包》（简称 LTPA－FU）或《购买申请及农民承包》（简称 APFU）；

⑤已签订*自愿土地转让计划*，*直接付款计划*或*自愿要约出售计划*，但在提出申请*自愿土地转让计划*、*直接付款计划*或*自愿要约出售计划*时没有表达行使土地保留权的意愿；

⑥执行或提交任何说明土地所有者同意综合性农业改革方案（简称 CARP）对其全部持有的土地进行覆盖的文件；

⑦因疏忽而构成禁止反言的任何行为，即土地所有者在一段较长直至不合理的时间内未履行，或因疏忽而未履行其若适当勤勉即已履行的责任，则推定其放弃权利或拒绝行使其权利。

（6）判予保留土地的标准或要求。土地所有者要获得保留土地，必须符合以下标准或要求：

①该土地是私有农业用地；

②选择保留的相关土地必须是紧密相连的，同时该土地对全部的土地所有者和大多数农民带来的损害应控制在最低限度；

③土地所有者必须就其在整个菲律宾占有的土地总面积签署一份宣誓书；

④土地所有者必须提交一份子女名单，这些子女在 1988 年 6 月 15 日时年龄达到 15 岁或 15 岁以上，并且自 1988 年 6 月 15 日以来对土地进行实际的耕种或直接管理。该名单可确定受益人并作为相应的证据；

⑤土地所有者必须签署一份宣誓书，说明所有农民、农业租户及分益佃农、常规农业工人、季节性农业工人或其他种类农业工人、实际耕作者或占有者或在该土地上直接工作的其他人员的姓名；如果不存在以上人员，土地所有者必须出具誓词证明这一事实。

(7)*保留范围*。土地所有者可以保留的土地范围如下:

①第27号总统令规定的土地所有者有权保留7公顷土地,但按照经*营土地转让方案*,其全部出租稻田及玉米田被收购并分配者除外。已出租的稻田及玉米田的所有者在下列情形中不能保留这些土地:

A. 该土地所有者截至1972年10月21日,拥有超过24公顷的已出租的稻田及玉米田;

B. 根据第474号指示书(Letter of Instruction),土地所有者截至1972年10月21日,拥有少于24公顷的已出租的稻田及玉米田,但额外拥有以下财产:

a. 其他超过7公顷的农业用地,无论是否出租,是否耕种,以及无论由此获取的收入;

b. 用作居住、商业、工业或其他城市相关目的的土地,土地所有者从中获得足够的收入,可以满足他和家人的生活开支。

②受第27号总统令影响的、在1985年8月27日(该截止日期由农业改革部在1985年1号行政令中规定)之前提出保留申请的土地所有者,可保留不超过7公顷的土地,无论他们是否符合第41、45和52号指示书的要求。

③在1985年8月27日之后提交申请,但符合第41、45及52号指示书要求的土地所有者,也有权保留第27号总统令规定的7公顷土地。根据这些指示书的规定,提交的宣誓声明必须包含以下内容:

A. 土地所有者在全国各地拥有的农业用地清单,说明每一块用地的区域以及具体位置;

B. 每块农业用地上种植的主要农作物。对于那些主要种植稻子或玉米的农业用地,则土地所有者应当说明:

a. 租户实际耕种的部分;

b. 每个佃农的名字;

c. 截至1972年10月21日每个佃农耕种的面积。

C. 1972 年 10 月 21 日之前的 3 个耕作年度里每个佃农(在每块稻田或玉米田上)的平均总收成;

D. 土地留置权或抵押权(如有)的数量,以及截至 1972 年 10 月 21 日对相关不动产有留置权或抵押权的各方的名字和住址。

④1985 年 8 月 27 日后才提交申请,且不依照第 41、45 及 52 号指示书的规定的土地所有者最多仅可保留 5 公顷的土地。

⑤未按照第 27 号总统令提出土地保留申请,且没有在 1985 年 8 月 27 日之前提出申请的土地所有者,根据第 6657 号共和国法案,可以最多保留 5 公顷的土地。根据第 27 号总统令的规定没有资格保留土地者除外:

A. 如果土地所有者截至 1972 年 10 月 21 日,拥有超过 24 公顷的已出租的稻田和玉米田;

B. 根据第 474 号指示书,截至 1972 年 10 月 21 日,土地所有者拥有少于 24 公顷的已出租的稻田和玉米田,但同时额外拥有以下资产:

a. 其他超过 7 公顷的农业用地,无论是否出租,是否耕种及不论其产出收益。

b. 用作居住、商业、工业或其他城市相关目的的土地,土地所有者从中获得足够的收入,以满足他和其家人生活开支。

⑥土地所有者的土地若被综合性农业改革方案(简称 CARP)所覆盖,可以保留不超过 5 公顷的土地。除此之外,该土地所有者的每一个子女(婚生、非婚生或是合法收养的)都可以作为受益人获得面积不超过 3 公顷的土地。但他们应满足以下条件:在 1988 年 6 月 15 日之前已达 15 岁或 15 岁以上,并且自 1988 年 6 月 15 日起至提交保留申请时或按综合性农业改革方案规定收购其土地时,对土地进行实际的耕种或直接管理。

⑦在第 6657 号共和国法案通过时仍拥有原田产的受让人或他们的直接继承人,只要他们继续耕种原田产就可以继续保留该田产。

⑧对于新民法典规定的婚姻,在没有达成法律上的财产分割协议的情况下,仅拥有夫妻共同财产的配偶可以保留总数不超过5公顷的土地。但是,如果其中一人或双方在各自分别所有的财产(资金和/或妻子的私有财产)中享有土地所有权,他们可各自获得不超过5公顷的土地。但是,在任何情况下,夫妻保留的土地总面积不应超过10公顷。

⑨如果一对夫妻在结婚之前已经执行了法律上的财产分割程序,那么根据1988年8月3日生效的《家庭法典》的规定,拥有资本财产的丈夫和拥有私有财产的妻子每人可以保留不超过5公顷的土地;如果没有订立财产分割协议,所有财产(固定资产、妻子私有和夫妻共有财产)都应被视为绝对的一体,即所有者关系是一个,因此,他们只能获得总共5公顷的土地。

(8)保留的土地业已出租的情况:

①若土地所有者选择的土地或是农业改革部依保留申请判予的土地已被出租,租户可选择是否继续租用或者作为具有相似或相近特征的土地的受益人。

②如果承租人拒绝租用并且没有其他可调换的土地,或有可调换的土地,但承租人仍然拒绝租用,那么,他可选择由土地所有者支付干扰赔偿金(disturbance compensation),双方可根据土地改良的状况就赔偿金额达成一致。但是,根据第3844号共和国法案第36节(修改自第6389号共和国法案第7节),赔偿金额数量不应少于过去5年其土地平均收成的5倍。

如果双方不能就干扰赔偿金达成一致意见,其中一方可向相关的省级农业裁定处(简称PARAD)提出确定赔偿金的申请。在不能达成一致意见的情况下,提出申请者必须证明在提出申请前,双方已尽最大努力确定赔偿金额,但不能达成一致意见。承租人不应被剥夺或被拒绝对土地的占有,除非承租人已获干扰赔偿金,且相关证据业已提交至市级农业改革办公室(简称MARO)。

③承租人必须自以下时点起一年内[2]行使其选择权:土地所有者表明其愿意保留土地之时,或市级农业改革办公室(简称 MARO)为土地所有者选择保留的土地之时,或授予保留土地的命令发布之时。

④如果租户选择继续留在保留的土地上,他应被视为承租人,且根据综合农业改革方案(简称 CARP)将失去成为农业改革受益人的权利。在这种情况下,所需的租赁协议应根据发布的相关文件加以执行。

⑤经修订的第 3844 号共和国法案关于优先购买和赎买政策的规定,应适用于租赁情况。

(9) *市级农业改革办公室(简称MARO)的职责*。在保留权申请过程中,市级农业改革办公室(简称 MARO)应承担以下职责:

①在适用情况下,裁定原田产受让人或他们的直接继承人是否仍拥有原田产,以及是否实际耕种原田产。

②联合土地所有者或其授权代表开展土地认证和调查工作,以决定以下事项:

A. 土地所有者与其保留权申请相关的土地占有情况;

B. 申请人及作为其直接继承人的子女的申请资格;

C. 所涉土地上的承租人、农业工人和/或土地实际占有者;

D. 其他与保留权相关的申请因素。

③将上述与保留权申请相关的会议或对话安排,通知承租人、农业工人和土地实际占有人。

④确认和协助承租人进行必要的土地转让。这些承租人选择成为原土地所有者的具有相似或相近特征的土地的受益人。

⑤确认选择继续租赁的承租人身份,并协助相应的租赁合同的执行。

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〔2〕 原文为 within one (10) year,疑似有误,故翻译时改为"一年内"。——编者注

⑥如果租户或受益人选择接受土地所有者支付干扰赔偿费,市级农业改革办公室(简称 MARO)应主持租户或受益人之间关于干扰赔偿费的协商。

⑦在环境与自然资源部(简称 DENR)的协调下,拟订一份土地所有者保留土地的计划草案。

⑧准备一份保留权文件夹(Retention Folder)并提交至省级农业改革办公室(简称 PARO),其中应包括其裁决以及建议。

⑨对于放弃保留地选择权或放弃行使土地保留权的土地所有者,利用以下因素确定他们所拥有的主要农业用地:

A. 所生产的作物;

B. 地形;

C. 可利用的基础设施;

D. 土壤肥沃程度。

⑩若土地所有者未能在这些条例规定的时效内行使他的保留权,那么该部门将通过带回执证明的个人送达,或者通过带回执卡的挂号信,通知土地所有者该部门为其选择的保留地范围。

(10)*省级农业改革办公室(简称PARO)的职责*。省级农业改革办公室(简称 PARO)应承担以下职责:

①审查和评估市级农业改革办公室(简称 MARO)提交的报告和建议。

②若保留权文件夹符合要求,应将其连同裁定和建议转发至地区主管处,作适当处理;否则,应将上述文件发回市级农业改革办公室(简称 MARO)作适当处理。省级农业改革办公室(简称 PARO)也可以展开土地调查及相关会议或对话。

③省级农业改革办公室(简称 PARO)在收到*地区主管*发送的保留权文件夹及批准令后,应与*环境与自然资源部*(简称 DENR)协调,以分割相应的保留土地。*环境与自然资源部*(简称 DENR)应该为地区主管提供四份文件副本,分别发给省级农业改革办公室(简称 PARO)、市级农业改革办公室(简称 MARO)、地契登记处、土地所有

者及其他相关当事人。

④开展相关土地的最后调查并起草保留权证明书。

⑤根据土地所有者的产权证书、经批准的土地分割计划以及技术说明各文件副本,要求地契登记处准备两份所有权证明:

A. 强制收购、自愿要约出售或自愿土地转让和直接付款计划所包括的土地所有者的所有权,视具体情况而定;

B. 土地所有者对保留土地的所有权证明。

要求*地契登记处*以菲律宾共和国的名义准备另一份土地所有权证明,证明该土地在强制收购以及自愿出售范围内。

(11)*地区主管的责任*。地区主管应负有以下职责:

①审查及评估由省级农业改革办公室(简称 PARO)提交的文件。如果该文件符合要求,该部门应发布保留地计划草案的批准令,该批准令应规定省级农业改革办公室(简称 PARO)可对保留土地开展最终调查;否则,发布回绝令。

②视具体情况,地区主管应转发批准令或回绝令至省级农业改革办公室(简称 PARO),供其向相关各方发送。

③转发所有批准令或回绝令副本至土地收购和分配管理局(简称 BLAD),以便建立关于所有保留地及已行使保留权的土地所有者的数据库。土地收购和分配管理局(简称 BLAD)应当根据其记录定期监察在菲律宾全国范围内是否有人在国家其他地区超过一次以上申请或获得保留权。

④发出保留权证明书。

(12)地区主管的裁定。地区主管对保留权申请的裁定,无论是批准还是回绝,都应当在当事人收到裁定回执 15 天后发生最终效力,除非当事人根据农业法执行程序规则(简称 ALI)上诉至农业改革部秘书处。

4. 土地交易的有效性

《综合农业改革法》(简称 CARL)生效后,原土地所有者违反该

法执行的私有土地的出售、转让、出租、管理合同或占有、转让,均为无效。在《综合农业改革法》(简称 CARL)生效前已被执行的行为,仅当自该法生效后 3 个月内向地契登记处进行登记注册的,方为有效。此 3 个月后,对于所有超过 5 公顷的农业用地交易,所有的地契登记处都应在交易后 30 天内通知*农业改革部*(*同上*,最后一段)。

(1)*有效交易*。以下交易应被视为有效:

①原土地所有者实施的有利于*农业改革部*(简称 DAR)批准的有资格的受益人的交易。

②有利于政府、农业改革部或者菲律宾土地银行(简称 LBP)的交易。

③由土地所有者按照《综合农业改革法》第 6 节保留的土地,并经指定的农业改革部省级农业改革办公室(简称 PARO)正式核准作为保留区域,在涉及该保留土地的交易中,受让人持有的土地总数(包括待收购的土地)不超过 5 公顷;但是,根据《土地改革法典》第 11 节和第 12 节(经修订的第 3844 号共和国法案),承租人或租户对此项交易有优先购买权或赎买权者除外。

保留地区域,指的是土地所有者在其持有的土地被政府征收或由综合农业改革方案覆盖并移转给受益人之后,由其完全占有并控制的一部分土地,所有者对保留土地的权利通过省级农业改革办公室(简称 PARO)签发的保留权证明书证明。

④由受益人执行的,有利于政府、农业改革部(简称 DAR)、菲律宾土地银行(简称 LBP)或者农业改革部(简称 DAR)批准的其他受益人的交易。

⑤在签发和登记《解放专有权人》或《土地所有权证明书》10 年后执行的交易。

⑥如果受益人尚未完全支付土地费用,经农业改革部事先批准,该土地的所有权可转移或转让给受益人的任何继承人或者任何受益人,只要该受益人亲自耕种这块土地。

如果受益人不符合以上条件,那么,该土地应被移交给菲律宾土

地银行，该银行应向土地所在地的社区农业改革委员会（简称BARC）发出可利用土地的正式通知。BARC 在收到通知后，应马上转告省级农业改革统筹委员会（简称 PARCCOM）。

若土地被移交给菲律宾土地银行，银行应当一次性支付受益人其已付款金额以及受益人改良土地产生的价值。

（2）无效交易。以下交易无效：

①原土地所有者在 1988 年 6 月 15 日之前签订的私有土地的出售、转让、出租、管理合同或占有、转让，该交易没有在 1988 年 9 月 13 日当天或之前登记，或在 1988 年 6 月 15 日之后执行，并且违反《综合农业改革法》（简称 CARL），即超过了 5 公顷的保留限制；

②自签发和登记土地所有权证明或解放专有权人之日起 10 年内进行的交易，包括受益人根据《综合农业改革法》（简称 CARL）购买的土地；

③以没有资格按照《综合农业改革法》（简称 CARL）购买土地者为受益人的交易；

④于《综合农业改革法》（简称 CARL）生效之日（1988 年 6 月 15 日）后对城市中心和市界外的部分或全部土地的出售、转移、转让或属性的改变，农业改革部（简称 DAR）1988 系列第 15 号行政令规定作出规定者除外；

⑤为规避法律，受益人利用其受益人身份对土地的使用权及用益权进行出售、转移或转让。

（3）*无须事先批准的可登记交易*。下列交易不被禁止，可在地契登记处登记而无须农业改革部（简称 DAR）的事先批准：

①1988 年 6 月 15 日之前已故者拥有的法院职权范围外的财产分割契约；

②1988 年 6 月 15 日之前签订的由共同所有者拥有的财产分割契约；

③所有权不变的产权再划分；

④由原土地所有者或受益人签署的不动产抵押契约。

5. 批准发出程序

土地交易登记批文的发出应依照下列程序:

(1) 申请人应向对目标土地享有管辖权的市级农业改革办公室官员(简称 MARO)提出书面请求,并附上以下文件:

①待注册的契约或法律文书;

②若土地没有产权证书,产权转让证(简称 OCT 或 TCT)或纳税申报证明;

③证明受让人及其配偶拥有总共不超过 5 公顷的土地的宣誓书。宣誓书的副本应随送达证明发至社区农业改革委员会,同时附上发给地契登记处的宣誓书副本;

④转让者的宣誓书,其中说明契约的目标地属于保留地或是保留地的一部分。

(2)市级农业改革办公室(简称 MARO)应该裁定法律文书或契约和宣誓书的准确性及真实性,同时:

①开展土地查证,以确定目标土地是否被非受让人租赁;

②确定目标土地是否为卖家或转让人的保留地或是保留地的一部分;

③根据转让契约,确定受让人及其配偶所拥有的全部土地是否超过土地所有者可拥有的最大限额。

(3)市级农业改革办公室(简称 MARO)应转发他们的请求和所有附带文件以及意见和建议至省级农业改革办公室(简称 PARO)。请求及相关附件副本应留下由市级农业改革办公室(简称 MARO)存档备案。

(4)省级农业改革办公室(简称 PARO)应检查请求和所有附带文件。若全都符合要求,省级农业改革办公室应发出对目标契约的登记批准。

(5)对于涉及超过 5 公顷农业用地的交易,地契登记处应在交易期后 30 天内通知农业改革部。

6. 选择保留地的权利

(1)*一般规则*——保留地应是紧密相连的,选择保留地的权利属于土地所有者。

(2) *例外*——若土地所有者申请保留的土地业已出租,承租人应当有权选择是否留在该地或是成为具有相似或相近特征的另一块农业用地的受益人。

①若承租人选择留在保留的土地上,他应被视为租赁人,同时根据法案,他将失去作为受益人的权利;

②若承租人选择成为另一块农业用地的受益人,他将失去作为保留地租赁人的权利。承租人必须在土地所有者作出选择保留地表示后一年内行使选择权。

在任何情况下,保留土地上的农民或农业工人在法案通过前取得的对土地的占有,应受到尊重。

7. 优先权次序

立即在全国范围内实行农业改革是不现实的,国家没有足够的资金一下子覆盖全国的改革。分阶段实行方案是比较理性与可行的。因此,根据法典,农业改革部(简称 DAR)应在总统农业改革委员会(简称 PARC)的协调下,从法案生效之日起 10 年内,规划所有农业用地的收购和分配。收购和分配土地应按照以下步骤进行:

(1)*步骤一*——应包括以下土地:

①第 27 号总统令规定的稻田和玉米田;

②所有的闲置或废弃土地;

③土地所有者为农业改革自愿提供的所有私人土地;

④被政府金融机构取消赎回权的(foreclosed)所有土地;

⑤良善政府总统委员会(简称 PCGG)取得的所有土地;

⑥政府所有的用以或适宜用于农业生产的所有土地,在法案生效后可立即被占有和分配。

以上步骤应在不超过4年的时间里完成。

(2)*步骤二*——应包括以下土地:

①所有可转让及可处理的公共农业用地;

②农用森林、牧场及农业租约中的所有可耕种的公共农业用地,根据宪法第13条第6款,该用地之上已种有农作物;

③所有用作新型发展用途和用于重新安置的公共农业用地;

④超过50公顷的所有私人农业用地,就其超过的公顷数而言,无地农民和无地常规农业工人可直接或集体拥有他们耕种的土地,以实施他们的权利,该土地应在该法案生效后立刻被分配。

以上步骤应在4年内完成。

(3)*步骤三*——所有其他私有农业用地通过下列流程从大型用地转换成中型和小型用地:

①24公顷以上、50公顷以下的土地,从法案生效后第四年开始,在3年内完成;

②保留土地面积最高额以上、24公顷以下的土地,从法案生效后第六年开始,在4年内完成;主要为了实现无地的农民及正式农业工人的权利,使他们能直接或集体拥有他们耕种的土地。

8. 须遵守的规则和指导方针

(1)*规则*。方案所包括的所有农业用地的收购和重新分配计划都应遵照以上的优先次序,总统农业改革委员会(简称PARC)制定的执行法规应包括该计划,并考虑以下因素:

①在最短的可操作时间内将土地分配给耕作者的必要性;

②提高农业生产率的必要性;

③执行和支持该方案的资金及资源的可利用性。

(2)*优先土地改革区域*。在任何情况下,总统农业改革委员会在省级农业改革统筹委员会(简称PARCCOM)的建议下,可宣布某些省或地区为优先土地改革区域,在这些地区,对私有农业用地的占有和分配可以在以上方案实施之前进行。

(3)*租赁地*。为达到转让目的,租赁地应得到优先对待。

(4)*指导方针*。总统农业改革委员会应该制定指导方针,用以执行以上优先次序及分配计划,包括确定合格的受益人。同时作为耕作者的土地所有者,可以成为非归其所有但实际由其耕作的土地的受益人,该土地面积为受益人所拥有的土地面积和按规定判予的最大土地面积(3 公顷)之间的差额。

9. 由跨国公司持有的土地及其他类型土地

(1)*3 年内完成执行*——由跨国公司或组织租借、掌控或占有的所有公共领域的土地,以及由政府或政府拥有或控制的公司、组织、机构或实体所有,并由跨国公司和组织用于现行农业企业或农工企业的土地,都应在法案生效之日即 1988 年 6 月 15 日起,立即被列入收购和分配计划,该执行方案应在 3 年内完成。

上述租赁、管理、种植或服务合同及类似合同中涉及的土地应按下列方式处理:

①上述租赁、管理、种植或服务合同中涉及的土地的总面积在 1000 公顷以上的,以及由外国人个人租赁或持有的土地面积超过 500 公顷的,根据宪法第 12 条第 3 款的规定,应变更以符合相应的面积限额(即 500 公顷);

②对于上述公司和组织,总面积不超过 1000 公顷土地的合同,以及对于上述个人不超过 500 公顷的合同,都应按原条款在 1992 年 8 月 29 日之前或在有效的合同期满日(以较早者为准)之前继续生效,在此之后,协议需得到政府相关部门认证后方可继续生效。

上述合同即使在土地被转让至相关受益人或受让人后仍继续生效,且该转让应立即开始执行,并在上述的 3 年时间内完成;

③在任何情况下,现在执行的以上租借条款或其他协议在 1992 年 8 月 29 日后均不得继续生效,其中涉及的土地应完全分配给有资格的受益人或受让人。以上协议只有在新的合同框架下才能继续生效,且该新合同应由政府或有资格的受益人或受让人作为一方,由上

述企业为另一方。

(2)*不迟于10 年执行*——由跨国公司租借、持有或占有的土地,由私人和私营非政府企业、组织、机构或实体以及菲律宾市民所有的土地,应在该等租赁、管理、种植或服务合同于1987 年8 月29 日失效后,或在其有效地终止(以较早者为准)后被强制收购和分配,但应在法案生效后的10 年内完成。

但是,在上述生效期内,政府应采取措施收购并准备此后立即分配上述土地。

(3)*分配——工人合作组织或工人协会的形成*——一般情况下,土地应直接分配给作为受益人的工人个人。但如果分割土地在经济上是不可行或不明智的,工人们应该组成一个工人合作组织或工人协会,为了所有正当的目标,与公司或其他商业组织或任何其他适当的团体订立租赁或种植协议。

在工人合作组织或工人协会同公司或其他商业组织或任何其他适当的团体签订新协议之前,法案生效时由上述机构与前土地所有者签订的协议都应得到工人合作组织或工人协会同公司、商业协会或其他适当团体的尊重。

但是,在任何情况下,法案生效时,其执行和应用不应导致作为受益人的工人的既得利益或权利受到任何减损。

(4)*生产与收入共享*——法案关于生产与收入共享的第32 节规定适用于由跨国企业经营的农场。

(5)*生产的现代技术*——在过渡期,新的土地所有者应接受技术帮助,努力学习有关生产的现代技术。在可行的情况下,任何出于善意而自愿传授先进技术的企业,将会在可能的情况下获得优惠待遇。

在任何情况下,外国公司、组织、实体或个人不得享受优越于国内公司、组织、实体或个人的权利和特权。

10. 商业农耕

商业性农用地指的是用做盐床、水果农场、果园、蔬菜以及切花,

或可可豆、咖啡和橡胶种植园的私人农业用地(见经修订的第7881号共和国法案)。

(1)*自10年期开始*:

①法案生效10年后,上述土地应立即被强制收购和分配。

②对于新农场,10年期应从农业改革部确定的商业生产和经营的第一年开始起算。

(2)*启动收购土地的措施*——在这10年期内,政府应该启动必要的措施,通过给付适当赔偿和土地改良费用,以收购这些土地;对于今后会为工人受益人管理上述土地的合作社或协会,政府应给予优惠。

如果农业改革部确定,10年暂缓期的原因对某些土地不复存在(如个别农产地不再有商业价值),那么该土地应立即被自动收购并分配给受益人。

(3)*生产及收入共享*——有关生产及收入共享(见下文第32节G)的条款应适用于商业性农用地。

11. 对延缓处理的商业性农用地的收购、估价、补偿和分配

根据《综合农业改革法》第11节和第49节,并考虑到对商业性农用地的10年暂缓期将于1998年6月15日结束,特颁布以下规则和规定,以管理这些土地的收购、评估、补偿及分配:

(1)*政策声明*。对于延缓处理的商业性农用地的收购、评估、补偿、分配、运营以及管理,应依照下列政策进行:

①所有延缓期在1998年6月15日到期的商业性农用地,应根据综合性农业改革方案(简称CARP)立刻被收购和分配;而延缓期尚未到期的商业性农用地,将在由农业改革部(简称DAR)原来规定的延缓期分别到期后被收购和分配,或者如果DAR裁定其延缓的原因不复存在并撤销其延缓期,那么可以更早地被收购和分配。

②根据第6657号共和国法案第22节规定的优先权顺序,已被收购的商业性农用地应被分配给有资格的受益人,这是一般规则。

在土地上工作时间最长的受益人应得到优待。

③根据第6657号共和国法案第6节,土地所有者,无论是个人还是组织,都有权保留土地。

④所有基础设施和改良设施,包括永久附着在土地上的建筑、道路、机器、储藏室或各种农具等,根据农业改革部规定,如这些附属物对于农田操作来说都是必需和有帮助的,则应该根据农业改革受益人的建议进行收购。

⑤通常来说,土地应直接分配到作为受益人的工人手中。但是,若对土地的分割在经济上不可行或不合理,那么应为所有的工人受益人共有,这些受益人形成工人合作组织或协会,以便与公司或商业协会进行交易。

⑥对商业性农用地的公平补偿决定不仅应考虑土地本身,还应考虑土地所有者引进的设施和对土地的改良;同时,种植的商业作物的类型(如香蕉、菠萝、橡胶)及其他相关因素,在符合农业法律法规的情况下,也应加以考虑。

⑦农业改革受益人应遵照第6657号共和国法案第26节以及其他执行性规则中关于购买能力的规定(affordability provisions)为通过强制收购或自愿要约出售获得和分配的土地付款。

⑧当农业改革部获得土地所有权时,土地所有者应当保留其对未收割的农作物的权利,并且被给予合理的时间收割作物;

⑨被分配以商业性农用地的受益人有绝对的自由来选择农业投资类型以保证该用地的生产力和经济效益;可自由推广他们的产品或制定相关的推广活动;可自由利用个人、协会或非政府组织提供的服务——他们将帮助受益人争取最优的农业投资安排、企业发展计划及能力建设。

(2)受益人资格。商业性农用地的农业改革受益人必须满足以下条件:

①他们在申请成为农业改革受益人时必须至少已满18岁;

②他们必须有耕种土地的意愿、天分和能力,并能使土地多产;

③在1988年6月15日到1998年6月15日这段时间内,或在延缓期到期或终止前,他们必须受雇在商业性农用地上工作,此外,在土地上连续工作时间最长的农业工人将享有优先权。

(3)*取消资格的原因*。以下将构成商业性农用地潜在受益人失去资格的原因:

①已强制退休;

②选择退休或辞职,只要对于这类退休或辞职,农业工人没有提起申诉,或潜在受益人没有提出质疑;

③根据劳动法,经终审判决被解雇的人员;

④放弃或拒绝成为受益人;

⑤相关审判庭或法律机构通过合法程序最终裁决其违反土地改革法律法规的人员。

(4)*收购模式*。延缓期已到期的商业性农用地可通过自愿要约出售、强制收购或直接付款计划而获得。

①*自愿要约出售或强制收购*。通过自愿要约出售获取延缓处理的商业性农用地,出售要约必须在延缓期到期之前提出,否则,该地将通过强制收购处理。

②*直接付款计划*。

A. 若土地所有者与大部分有资格的农业改革受益人相互间的协议得到农业改革部的批准,那么对于综合性农业改革方案(简称CARP)范围内的商业性农用地的直接付款计划就可以实现。

B. 转让给受益人的土地面积不应少于政府通过强制收购和自愿要约出售获得的用以重新分配的土地面积。

C. 直接付款计划的条款,应包括为维护受益人的利益立即转让土地所有权和占有权的条件。土地所有权授予证书(简称CLOAs)应发给农业改革受益人本人或他们的合作组织或协会,如需要,应附上注释。

(5)*确定公平补偿额*。

①作为一般规则,农业改革部1998系列第5号行政令适用于确

定对于暂缓商业性农用地的补偿。该行政令被称为"根据第6657号共和国法案对通过自愿出售或强制收购的土地进行评估管理的修订规则与法规"。

②通过直接付款计划购置的土地价格应由双方同意决定,但不应高于现行的市场价格。

(6)*评估责任*。评估过程必须涉及的参与方包括,农业改革受益人以及他们的组织、社区农业改革委员会、相关土地所有者、农业改革部以及菲律宾土地银行。

(7)*付款方式*。

①*自愿要约出售或强制收购*。

A. 根据第6657号共和国法案第17、18节协商确定的补偿额,或根据法院就土地、设施及改良措施作出的最终公正补偿决定,菲律宾土地银行对土地所有者进行补偿。

B. 补偿金应通过第6657号共和国法案第18节中规定的任何一种方式给付。根据第6657号共和国法案第19节之规定,对于自愿出售的土地,银行同金融机构之外的土地所有者可获额外5%的激励金。

②*直接付款计划*。

A. 若土地属于直接付款计划范畴的,农业改革的受益人可按照双方同意的条款,通过现金或实物方式偿付土地所有者。该条款须记载在得到农业改革部正式批准的协议备忘录(DPS - DCF第4号表格)中。

B. 在农业改革部批准下,转让契约书(DPS - DCF第6号表格)应包括协议备忘录,且该契约书应由土地所有者以有利于农业改革受益人的方式执行。

C. 对于通过直接付款计划获得的土地,协议备忘录在转让契约书由地契登记处注册后,对双方立刻产生约束力,之后制作的土地所有权证明书(简称CLOAs)应当有利于农业改革受益人。

D. 根据第7905号共和国法案,农业改革受益人可以通过银行

通常的放款业务，向土地银行借取总额相当于土地收购价格85%的贷款，余下的价款应由农业改革受益人直接付给土地所有者。农业改革部、土地银行联合政策委员会应该针对此等贷款制定必要的指导方针。

E. 其他直接付款计划下的支付方式，无论是现金支付或以货代款，在本法令的批准与监督条款的范围内，将受到鼓励。

(8)*分配方式*。商业性农用地可分配给个人或集体。符合条件的受益人每人可获得最多3公顷的土地，或在土地不足的情况下，最少1公顷的土地。

为了加速收购进度，商业性农用地应首先分配给集体，或者通过共同所有的方式分配。

若受益人希望分割土地，农业改革部（简称DAR）应在农业部和其他相关部门的协调下，首先决定分割土地在经济上是否可行及合理；然后，受益人通过投票，可以由多数人决定是否进行土地分割；若受益人决定进行土地分割，受益人应在农业改革部（简称DAR）代表在场的情况下，通过抽签的方式将土地分配给个人。

(9)*农业企业的投资类型*。在分配商业性农用地时，有资格的受益人及其合作组织或协会可建立（并不限于）以下农业企业投资安排：

①*合资安排*。这是由投资者与农业改革受益人通过其合作组织或协会组建并共同拥有一个公司的一种农业企业。投资者可提供管理和推广技巧、基础设施以及资本，而受益人的贡献应包括劳动力、对土地的用益权以及资本注入（若有的话）。

②*租赁安排*。这是一种农业企业计划，农业改革受益人以此通过他们的合作组织或农业工人协会与土地所有者或投资者签订租赁合同。承租人在不超过10年的约定时间内对用地有控制权和操作权，并可通过双方同意延长租赁期间。根据农业改革部1998系列第6号行政令以及其他相关法律法规，租金不应少于受益人分期还给菲律宾土地银行的贷款款项。

③*合同种植或种植权安排*。在此类农业企业安排中,农业改革受益人享有土地的所有权,并且承诺以个人或集体(通过组织或协会)的方式,为投资者或农业企业生产某种农作物,农作物的价格通过事先签订的合同加以确定。

④*管理合同*。在此类农业企业安排中,农业改革受益人或其合作组织以支付固定工资或佣金的方式雇请土地所有者或投资者为其管理和经营农地。

⑤*建立、运营、转让计划*。该类型要求根据已修订的第6957号共和国法案的规定订立合同,合同规定:项目发起人应在协定的时间内负责土地建设,包括既定基础设施的融资、经营及维护,协定的时间可得到延长但不应超过25年。

有资格的农业改革受益人或其合作社或协会可从上述计划中选择两个或两个以上共同实施,亦可与拟定的投资者共同选择其他运行或管理计划,但是租赁类安排最不应受鼓励。

12. 祖遗地(Ancestral Lands)

每个具有原住民文化的社区的祖遗地,包括但并不限于由该社区及其成员实际不间断地并公开取得和占有的土地。

(1)*对原住民文化社区的保护*。这些社区对其祖遗地的权利应得到保护,以确保他们在经济、社会和文化方面的福利。根据自决和自治原则,这些地区关于土地所有、土地使用和土地争端解决模式的各种机制都应得到承认和受到尊重。但是,托伦斯体制[3]也应受到尊重。

(2)*暂停执行*。尽管有某些相反的法律规定,对于祖遗地,省级农业改革委员会可暂停执行这些法律规定,目的是确定及测绘这些土地的轮廓。

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〔3〕 指财产(主要指不动产)转让采取登记和发给证书的办法,而不订立出让契约的制度。——编者注

(3) *制定地区法律*。在自治地区,相应的立法机关可在宪法规定和该法案及其他全国性法律的原则范围内,制定关于祖遗地的地方性法律。

13. 豁免及免责

(1)根据本法第 10 节,以下土地应被排除在本法覆盖的范围之外:

①土地实际地、直接地并专门用于以下方面,并被认为是必需的:

A. 公园、野生动物及森林保护区和重新造林区;

B. 鱼类保护和养殖地;

C. 水流域及红树林。

②实际地、直接地并专门用于养虾及鱼塘的私有地。

③土地实际地、直接地并专门用于以下方面,并被认为是必需的:

A. 国防;

B. 学校地址和校园,包括由公立或私立学校经营的、以教育为目的的实验性农业站,以及树种、树苗、研究和示范生产中心;

C. 教堂及附属的女修道院、清真寺及附属的伊斯兰中心;

D. 公共墓地及墓所;

E. 罪犯的流放地或由罪犯实际耕作的劳改农场;

F. 政府及私人研究和检疫中心。

④除了那些已被开发的土地,具有 18% 或以上斜坡的所有土地(见第 7881 号共和国法案第 10 节)。

所有其他农业用地均受该方案的涵盖。

(2)*该法案第3(c)节*即第 6657 号共和国法案第 3(c)节将"农业用地"定义为"用于本法案规定的农业活动的土地,且不属于矿产地、森林、居住、商业或工业用地"。

司法部 1990 系列第 44 号意见、娜塔莉亚起诉农业改革部一案

[1993 年 8 月 12 日,最高法院案例汇编(附注释)第 225 页到第 278 页]均认为,对于第 6657 号共和国法案规定的农业用地转换为非农业用地,农业改革部批准转换的权力从法案生效之日即 1988 年 6 月 15 日起行使。因此,所有在 1988 年 6 月 15 日前被归为商业、工业或住宅地的土地,不需要任何转换批准。

但是,将农业用地重新归类为非农用地这一行为不应该剥夺租赁农户在 1988 年 6 月 15 日前业已获得的土地权利,这些权利受到第 27 号总统令的保护。

为了实现上述法律规定的意图和目标,农业改革部(简称 DAR)通过 2003 系列第 4 号行政令发布了以下指导方针:

① *干扰赔偿金*。

A. 申请人应该支付农民、租赁人、分益佃农、农业工人以及所涉土地的实际耕作人(根据第 6657 号共和国法案第 22 节规定的优先权顺序)干扰赔偿金,可通过现金支付或以货代款或两者混用。金额及条款均由双方共同协商确定。

B. 根据第 3844 号共和国法案第 36 节规定(经第 6389 号共和国法案第 7 节修订),干扰赔偿金金额应不少于过去 5 个历年内所涉土地上的平均年收成的 5 倍。

C. 通过以货代款方式支付的赔偿金可通过部分或全部住房、家庭式耕地、就业或其他利益的方式,或混合的方式进行。农业改革部(简称 DAR)应该批准干扰赔偿金的任何协议条款,并监督其执行情况。

D. 当对干扰赔偿金数额的确定或该权利的享有出现争议时,地区主管应该将争议交给裁判官(Adjudicator)处理。裁判官对争议案件负有责任并应解决争议,尽管他对于所涉土地是否在综合性农业改革方案(简称 CARP)规定范围内这一问题不能作出最终结论。

E. 批准机关(Approving Authority)可颁布有条件的豁免令(conditional exemption order),尽管申请人或土地所有者尚未支付干扰赔偿金或尚在等待权利的确定,但申请人或土地所有者应支付保

证金，其金额由裁判官决定。即使已交付保证金，被申请豁免令的财产不应为非农业目的进行开发，而且农民、租赁人、分益佃农、农业工人以及实际耕作人也不能被驱逐出土地，直至豁免令发出为止。

②*批准部门*。

A. 对于面积小于或等于5公顷的不动产，批准部门应该是地区主管，其执行的是*土地使用政策规划与实施地区中心*（简称RCLUPPI）的建议。

B. 对于面积大于5公顷的不动产，批准部门应该是秘书处，其执行的是*土地使用政策规划与实施中心*—2（简称CLUPPI－2）的建议。

C. 若申请人（或代表土地所有者）在同一社区内或在两个或以上的相邻社区内拥有两处或以上的土地，且上述土地总面积超过5公顷，批准该土地申请的部门应该是秘书处，秘书处执行的是*土地使用政策规划与实施中心*—2（简称CLUPPI－2）的建议。

D. 若任何申请人或反对者基于批准部门对法定面积计算错误的理由对批准部门的管辖权提出异议，更高一级的有关部门应该接管此争议，原批准部门应立即暂停该申请的审批，等待高一级的有关部门对法定面积作出最终的裁决。

③*前综合性农业改革方案规定范围的有效性*。

当为了回应综合性农业改革方案的覆盖通知而提交豁免申请时，若土地所有者在收到覆盖通知60天后才提出该申请，那么地区行政部门应拒绝启动审批该申请的正式程序。

④*抗议*。

A. *抗议人资格*。在要求条件公告张贴后30天内或目测后15天内（以较晚者为准），任何人都可提出对申请的书面抗议。

B. *抗议地点*。抗议人可在对相关土地具有管辖权的*省级农业改革办公室*（简称PARO）或*土地使用政策规划与实施地区中心*（简称RCLUPPI）或*在土地使用政策规划与实施中心*—2（简称CLUPPI－2）提出对豁免申请的抗议。

⑤*对豁免批准的撤销或撤回*。若发现有严重违反农业法或农业改革部规定的事实,或秘书处认为有任何其他合理的实质理由,任何个人或土地所有者,可在发现构成撤销或撤回理由的事实后 90 天内,提出对豁免批准的撤销或撤回,但该撤销或撤回申请不应迟于豁免批准发出后一年。

三、地权与劳动关系的改善

1. 农业租赁以及租赁金额的确定

为了保护和改善农民在保留限制范围内的租赁土地以及未根据该法收购的土地上的占有状况和经济状况,农业改革部被授权根据修订过的第 3844 号共和国法案第 34 节的规定,立刻决定并确定租金的数额。

农业改革部应立即和定期审查及调整不同地区不同作物的租金结构,包括稻米和玉米,为的是逐步改善农民、佃农或租户的境况。

租赁法律的历史是一个循序渐进的过程,从最初有选择的和有限的运作,到后来成为一种强迫性和综合性的应用。根据 1954 年 8 月 30 日开始实施的第 1199 号共和国法案第 14 节的规定,租赁人有权选择租赁方式。

1963 年 8 月 8 日生效的第 3844 条共和国法案宣布,农业分益佃农制与公共政策相违背,所以被废除了。

第 6389 号共和国法案第 4 节在全国范围内自动将农业分益佃农制改为农业租赁制。但是,该法案并没有废除第 3844 号共和国法案第 35 节的内容,这部分条款豁免了某些种类的土地(如鱼塘、盐地、主要种植柑橘类、椰子、可可、咖啡、榴莲以及其他类似永久性植物的土地)。

《综合农业改革法》(简称 CARL)或 1988 年 6 月 15 日生效的第 6657 号共和国法案,明确废除了第 3844 号共和国法案第 35 节的内容。这项法律包含如下重要的进步意义:

(1)分益佃农制的废除现在已经无一例外地覆盖了所有的农业用地;

(2)租赁制(leasehold tenancy)不再仅仅是一项通过法律运作而存在的选择权;

(3)农业租赁制是迈向土地所有制的第一步。因此,不管是否已经签署了租赁协议,从1998年6月15日开始,所有分享产品的佃农(all share - crop tenants)都自动变为农业租户。

与这些法律发展情况相一致,第6657号共和国法案第12节授权农业改革部(简称DAR)在保留区域以及那些在农业改革中按照第3844号共和国法案第34节的规定没有收购的土地区域内,决定并确定租赁土地的租金。

2. 生产分享计划(Production - Sharing Plan)

任何一个采用《综合农业改革法》第32节规定的计划(见下文的"八、支持服务")的企业,或者任何一个按照生产合伙、租赁、管理合同或其他类似安排经营的企业,以及由《综合农业改革法》第8节(同上,跨国公司持有的土地等)和第11节(同上,商用农地)规定的任何一个农场,被授权在法案生效后90天内,按照相应的政府机构制定的指导方针,执行生产分享计划。

但是,在任何情况下,这些方案的采用都不应导致按照现行法律、协议和企业自愿的做法,给予员工和受益人的任何利益的减少,这些利益包括工资、红利、假期和工作条件,也不应阻止企业与员工和受益人订立对后者条件更加有利的任何协议。

四、登记注册

1. 土地所有者登记注册

(1)*注册者宣誓陈述的内容*。自法案生效日起的180天内,所有拥有或者声称拥有农业土地的自然人和法人(包括政府实体在内),

不管他们是用自己的名字登记注册或者是以其他人的名义登记注册,都必须以农业改革部规定的形式,在适当的审核员办公室里提交一份宣誓陈述表,陈述如下内容:

①财产的面积及其描述;

②最近3年内土地的平均总收入;

③土地上所有佃农以及农业工人的名字;

④土地上种植的农作物,以及截至1987年6月1日种植的每一种农作物所占土地的面积;

⑤截至1987年6月1日继续有效的抵押、租赁以及管理合同的条款;

⑥省级或者市级的估价员确定的最新土地市场价值;

拥有多份土地的土地所有者必须在土地所在的市或者市区登记其名下的每一块土地的相关信息。

(2)*共同拥有的土地、抵押的土地以及扣押的土地*。在土地共同拥有或者集体拥有的情况下,其中一个合伙人就可以代表其他所有的合伙人进行登记。这个人必须记录下所有合伙人的名字以及各自拥有的土地份额。但是,其中那些还另外拥有其他农业土地的合伙人(包括那个代表其他合伙人的人士)还必须单独登记其他农业土地的相关信息。

至于丧失了抵押品赎回权的(foreclosed)土地,那些买卖契约对其有利的买主或是抵押权人应当登记相关信息;否则,土地所有者或者抵押人应登记相关信息。在良善政府总统委员会(简称PCGG)托管下的扣押土地应当由该委员会进行登记;但是,由良善政府总统委员会扣押但并未被任何法庭确定为通过不正当手段获得的土地,应当由土地所有者进行登记。

对于民间保留的文化社区,负责这些保留区域的政府机构或者部落的头领应代表这些社区登记相关的信息。

(3)*出于补偿目的的财产估算*。如果土地所有者未能在指定的期限内登记注册,那么就土地所有者的补偿而言,政府将以市级或者

省级审核员的估价作为土地价值的基础。总体来说,市级或者省级审核员的估价比公平市价要低得多。

从登记注册后的那个季度开始,应付的不动产税应以上述所有者就当前公平市值的声明为基础。

(4)*登记注册的好处*。强制实行的土地所有者登记注册系统可以提供必要的信息,使得农业改革方案得以顺利执行,特别是在确定有资格的受益人和补偿土地所有者方面。

由此建立的原始资料数据库将用来监控和调节农业土地的所有权与控制权。在国会设定优先顺序和保留限制之后,这些原始资料将有助于确定综合性农业改革方案所覆盖的土地。

如果土地所有者的土地须进行农业改革的话,那么通过财产的登记注册,他也有机会陈述他希望获得的公平市场价格。

(5)*免于登记的人*。可以免于登记注册的是那些已经根据第229号行政法令进行了登记且有权享受总统农业改革委员会(简称PARC)规定的激励措施的土地所有者,另外还有那些根据第27号总统令的规定,解放专有权人(Emancipation Patents)和土地转让证书的受让人以及公共农业土地的租赁人。

2. 受益人的登记

(1)*须登记的资料*。在社区土地改革委员会(简称BARC)的协调下,农业改革部应该登记那些根据综合性农业改革方案的规定,有资格成为受益人的农业承租人、佃农以及农业工人。

这些在社区土地改革委员会和农业改革部的帮助下有可能成为受益人的人士应该提供如下资料:

①农业家庭直接成员的名字;

②土地所有者与土地的管理人员,土地使用权的期限;

③他们耕作的土地的地理位置以及面积大小;

④种植的农作物的种类;

⑤他们对收成享有的份额,各自应支付的租金或得到的工资额。

(2)*登记簿或名单的公告*。社区中综合性农业改革方案所有潜在的受益人登记簿或名单的副本应在社区礼堂、学校或者社区中的其他公共建筑中公告。这些公共建筑应该是在所有适当的时间内都可以向公众开放的。

(3)*登记注册的目的*。相关土地法律的目的是,建立综合性农业改革方案潜在的、有资格的受益人数据库,从而有效地实施该方案。

(4)*免于登记的受益人*。免于登记的是第27号总统令中规定的受益人,他们恶意出售、处置或者荒废他们的土地;还有按照法令已经拥有或者被授予最少3公顷土地的土地所有者或者受益人。

3. 租赁者的土地赎回权利以及优先购买权利

(1)如果土地所有者或者出租人决定出售他们被租赁的土地,那么首先必须向佃农或承租人发出要约,这些承租人根据农业改革法第11节(经修订的第3844号共和国法案)有权按照合理的条件优先购买这些土地。

(2)如果土地在佃农或承租人不知情的情况下卖给了第三方,那么前者有权根据农业改革法第12节的规定以合理的价钱和对价赎回上述土地。

(3)如果受益人将按照《综合农业改革法》获得的土地销售或者转让给政府、菲律宾土地银行或者农业改革部,那么受益人的子女或配偶有权在两年内从政府、农业改革部或者菲律宾土地银行处将该土地重新购回。

五、土地的收购与重新分配

1. 强制性收购私人土地

在农村地区,没有土地是公认的核心问题,也是引起农村动荡局面的根本原因。

为了加速该方案的执行,农业改革部已把强制性收购土地当做

收购土地的优先方式。为了同样的目的,法律通过行政诉讼代替司法诉讼来为收购私人土地提供法律措施。如果符合通知以及听证的正当程序的要求,就可以执行以上收购程序。

*强制性收购*可定义为强制性收购农业土地包括农业生产所需的适当设备和改进设施,在支付公正赔偿后这些土地及设备应分配给有资格的受益人。

按照土地类型来分,该方案的分配构成包括私人农业用地、政府所有的土地、居住地、土地上的不动产以及稻米地和玉米田。

覆盖通知(Notice of Coverage)启动了强制收购综合性农业改革方案(简称 CARP)所覆盖的私人农业土地。在综合性农业改革方案的各个阶段,由于土地所有者(简称 LO)的抵制,方案的进程延缓。这些土地所有者中的大部分人借口未得到通知或未遵守正当程序,来抨击方案的进程。

2. 有资格的受益人

(1)综合性农业改革方案所包括的土地应该尽可能多地分配给同一个社区里无地的居民,或者如果社区里没有无地农民,则按照以下优先顺序分配给同一个市区范围内无地的居民:

①农业承租人和分益佃农;

②常规农业工人;

③季节性农业工人;

④其他的农业工人;

⑤实际耕作者或者公共土地占有者;

⑥以上各种受益人的集体或合作社;

⑦直接在田地上劳作的其他人。

(2)在分配土地所有者的土地时,那些够资格的子女们应被给予优先权。

(3)实际的租户耕作者不应从耕种的土地上被驱逐。

(4)按照第 27 号总统令规定的受益人,如果恶意地出售、处置或

者荒废他们的土地的,则其丧失成为这个方案的受益人的资格。

(5)受益人最基本的资格是,他具有耕作并尽最大可能地使土地多产的意愿、天分和能力。农业改革部应采用监控每个受益人的记录和表现的系统,使任何一个因疏忽、滥用耕地或提供的支持的受益人,丧失继续成为这种受益人的权利。农业改革部应定期向总统农业改革委员会提交受益人的表现报告。

(6)如果因为土地所有者的土地保留权或者因为承租人、佃农或耕地上劳作的工人数量较多,导致没有充足的耕地提供给他们中的任何人或一部分人,那么根据受益人的选择,可以给予他们按照该法案可供分配的其他土地。

(7)原来土地上的农民和未获私有土地分配的人士,在公共领域土地分配中,将享有优先权。

(8)合格的受益人不能拥有3公顷以上的农业用地。

3. 受益人的回报

(1)受益人的权利与责任应从农业改革部授予其土地时开始享有和履行,该授予应自农业改革部实际取得土地后180天内完成。

(2)受益人的土地所有权应由土地所有权授予证书给予证明,该证书应包括该法案规定的相应限制和条件,并应在相关的地契登记处进行记录,同时在产权证上给予注解。

4. 授予受益人土地面积的最高限额

(1)受益人被授予的土地面积不能超过3公顷,这些土地可以是相邻的,也可以是累积起来不超过所规定的授予限额的几块土地。就本法案而言,无地的受益人是指拥有不足3公顷农业用地的人。

(2)受益人可选择集体所有权,比如,共同所有或者农民合作社以及一些其他形式的集体组织。但是,授予受益人土地的总面积不能超过共同所有人或合作社或集体组织的总人数乘以上述规定的授予限额的乘积,总统农业改革委员会规定的值得嘉奖的情形除外。

(3)财产所有权应以共同所有人、合作社或集体组织的名义颁发,视情况而定。

5. 综合性农业改革方案受益人证书的发放

(1)证书发放的时间。共和国第6657号法案第24节规定,受益人的权利与义务自农业改革部授予其土地时开始,该授予应在农业改革部实际占有土地后180天内完成。受益人的土地所有权应由解放专有权人(简称EP)或者土地所有权授予证书给予证明,该证书应包括法律规定的限制和条件,并应在相关的地契登记处进行记录,同时在产权证上给予注解。

但是,在几种情况下,在满足特定的法律要求和行政要求之前,不能立即发放解放专有权人(简称EP)或者土地所有权授予证书(简称CLOA)。例子如下:

①在"菲律宾小土地所有者协会诉农业改革秘书处"的案例中(G.R. No. 76742,1989年7月14日),最高法院裁定,仅当向他们各自的土地所有者全部支付完补偿金后,所有被征用的财产的所有权方才移转至国家;

②为确定通过解放专有权人或者土地所有权授予证书授予的具体土地而进行的细分调查(subdivision surveys);

③有关丧失赎回权的土地诉讼中的合并权,该等土地是通过1991系列第448号执行令修订的1990系列第407号执行令(简称E.O.)而收购和分配的。

因此,在符合上述要求之前,已经确定的受益人可能已占有了土地,但仍没有得到相应的解放专有权人或者土地所有权授予证书。所以,农业改革部应首先发放综合性农业改革方案受益人证书(简称CBC),为即将成为受益人的人提供一份暂时的文件,证明他们已经被确定为且有资格成为综合性农业改革方案的受益人。而且,除了证明已确定的受益人被授予全部或者部分土地的初步权利外,所发放的综合性农业改革方案受益人证书将使受让人享有获得综合性农

业改革方案中规定的支持性服务的权利。

(2)*覆盖范围*。综合性农业改革方案受益人证书应该颁发给那些已经过适当确认的农民或农场工人,他们有资格成为综合性农业改革方案的受益人,并且已经执行了所需的"购买申请——农民承包书"(简称 APFU)或"土地估价概述——农民承包书"(简称 LVSFU)。再者,这些受益人都必须实际占有授予他们的土地,要么是因为这些受益人作为承租人已经在劳动力管理系统下在该土地上进行劳作,要么是因为土地所有者不反对农业改革部和受益人接收他们的土地。

(3)*综合性农业改革方案受益人证书的撤销和无效*。地区主管颁发的综合性农业改革方案受益人证书可能会因为以下原因而被撤销、认定无效或者是被撤回:

①后经查证接受人没有资格成为综合性农业改革方案的受益人;

②根据综合性农业改革方案合理地确定,综合性农业改革方案受益人所获土地是不可转让的;

③收到已确定的受益人的书面通知,表示其不再愿意担任受益人,或者放弃被授予的土地的权利。这样的做法就会使其永远不能再成为综合性农业改革方案的受益人。

现行法律所禁止的、可以使受益人丧失资格或土地权利的行为,应在其规则中补充适用。在任何情况下,按照《废除令》(Order of Cancellation)的要求,综合性农业改革方案受益人证书的接收者都应向地区主管交出其证书。

6. 集体与个人所有制

(1)对于有多个受益人的土地,整个土地的所有权可以根据受益人的选择,集体地或单个地转让给农场受益人。

(2)在集体所有制中,每一个受益人应在共同持有的土地中拥有一份等同于自己利益的专有土地份额。

(3)受益人可集体确定,是否把土地当做一个整体来继续经营,或者再细分为单个的地块,并确定实施这种细分的方式。(见第229号执行令第14节)

土地集体所有制计划是根据宪法第13条第4节的内容制定的,它依法要求国家根据无地农民"直接或集体拥有他们所耕作的土地"的权利,实施农业改革方案。它设法保留现有的安排,是因为该方案有利于新的土地所有者,而不至于中断经营。但是,受益人不一定就要因此而继续保留土地的集体所有制。

如果一项农业改革方案较少地关注个人土地所有制,而是力图通过以社区为基础的农民合作关系并在政府的激励与帮助下着重提高生产力,那么,这一改革方案必将使生产力得到提高,同时给受益人带来更多的收入。

7. 受益人支付的款项

(1)遵照法案规定授予受益人的土地,应由受益人在30年内以每年6%的利息分期向菲律宾土地银行偿还土地价款,该偿还程序须遵从以下规则:

①受益人接收土地后3年内应付的金额,可以根据总统农业改革委员会的决定减少。

②最初5年每年应交的金额不能超过由农业改革部确定的年收成的5%。

③如果第5年后每年按计划应付的金额超过年收成的10%,并且生产不力不能归咎于受益人,那么菲律宾土地银行可能会通过降低利率或者减少受益人主要的债务的方式,使受益人能够偿还相应的款项。

(2)通过抵押的方式,菲律宾土地银行将获得对于受益人土地的留置权(如优先权),如果受益人累计3年未向菲律宾土地银行分期付款,那么银行就可行使该项抵押权,取消受益人赎回土地的权利。菲律宾土地银行应该就这种情况向农业改革部提出诉讼程序建议,

农业改革部应将没收的土地重新分配给其他合格的受益人。根据法案规定,被取消抵押品赎回权的受益人将永远不再有资格成为受益人。

8. 农业改革部定居点及田产的分配与所有权

(1)*法律基础*。第6657号共和国法案第2节规定:"国家应该适用农业改革或管理的原则,无论何时,只要与处置或利用其他自然资源的法律规定相一致,包括公共领域×××的土地。"同样,根据该法案第49节规定,无论从实质上来讲还是从程序上来讲,总统农业改革委员会(简称PARC)与农业改革部被授权颁布相关的规则和规定,来贯彻该法案的目标与目的。

为了加强这一授权,加速向农业改革部管理的农业地产的合格受益人发放土地所有权授予证书(这些田产未被包括在先前农业改革部针对方案受益人所颁布的"买卖契约"里),相关部门已经采用了一系列政策和规则。

(2)*政策*。包括:

①土地具有社会功能,因此土地所有制附随着社会责任,所以,土地应该分配给实际的耕作者或占有者。

②根据第6657号共和国法案第22节的规定,所有的空地,不管是废弃的还是未被分配的,都应分配给那些有资格的受益人。

③除了土地购买价格以及第五段列举的费用之外,其他费用(包括调查初始土地的费用)都不得向受益人收取。

④根据第6657号共和国法案的规定,授予受益人的土地最高限额不能超过3公顷。但是,那些在1988年6月15日之前按照当时的法律已经占有耕作土地并确立其既得权利的合格受益人,应该依照上述法律被授予合法的土地面积。文件的处理应与这个修订的程序相一致。若是家庭耕地,被授予的面积限额为1000平方米。

⑤总体而言,土地所有权授予证书应立即颁发给有资格的受益人(包括那些买卖契约仍在农业改革部进行处理的受益人),但被授

予人的所有未付账目应在发给他的土地所有权授予证书的背面进行注释,并在地契登记处进行正式登记。

在受益人或受分配者各自产权证书背面注释的分期偿还款项和未付租金,不超过1000比索的,从产权登记之日开始算起,应在3年的时间内偿还相同金额。那些债务超过1000比索的受益人、受分配者,从上述产权登记之日开始算起,应在5年的时间内偿还相同的金额。

未支付上述债务,就会导致上述受益人、受分配者的土地被没收,这样政府将把土地重新分配给有资格的受益人、受分配者。

(3)*成为受益人的资格条件*。如下:

①没有田产的人;

②菲律宾公民;

③实际的占有者或耕作者,在提交申请时,年龄至少为15岁,或者是家庭的主人;

④有意愿、能力和才能来耕种土地并使土地多产的人。

(4)*相关术语的定义*。就1990系列第3号行政令而言,适用以下定义:

①*地产*(Landed Estates),指的是原先属于私人或者公司的庄园或土地,政府按照不同的法律规定加以收购,再将土地重新分配或者销售给适当的承租人和无地的农民。

②*授予命令*(简称OA),是颁发给土地受让人的一项文件,这些受分配者在文件发布时按照现行的法律、规则和规定,被认为是有资格获得土地的人。

③*土地转让证书*(简称CLT),是农业改革部依照1973年10月24日的1973系列第24号农业改革部备忘通知颁布的文件。

④*缺席的授予命令或土地转让证书持有者*,是这样一种被授予人或土地转让证书的接收人:他们在市级农业改革办公室(简称MARO)对其实际盘点之前,就已经离开或者放弃被授予的土地,时间长达6个月以上。

⑤土地所有权授予证书(简称 CLOA),是一份可以证明农业改革部批准或者授予受益人土地的文件,这份文件包括第 6657 号共和国法案规定的限制条款及条件,以及其他适用的法律内容。

⑥*无地人员*,根据共和国第 6657 号法案第 25 节的规定,指的是拥有的农业用地面积少于 3 公顷的人。

9. 被授予土地的可转让性

(1)法案规定受益人对于所获土地在 10 年内不得进行销售、转让或者转移,除非发生继承或转让给政府、菲律宾土地银行、其他合格的受益人。但是,让与人的子女和配偶有权在两年的期限内从政府或者菲律宾土地银行处重新购回转让出去的土地。

土地可用性的正式通知应由菲律宾土地银行向社区农业改革委员会(简称 BARC)发出,告知土地所在的社区。然后再由社区农业改革委员会向省农业改革统筹委员会(简称 PARCCOM)发出正式的通知。

(2)如果受益人还没有完全支付土地价款,那么在农业改革部事先批准的情况下,他们的土地所有权可转让或者转移给受益人自己的继承人或者是其他受益人,只要这些受益人将亲自耕种被转让的土地。

(3)如果没有遵从相关的规定,那么土地所有权应转让给菲律宾土地银行,该银行应按照 1 号文件中规定的方式发出土地可用性的正式通知。在转让给菲律宾土地银行的情况下,银行应就受益人已经支付的款项以及受益人对土地的改良所发生的费用给予一次性补偿。

10. 非土地转让计划

这些计划或活动并不决定原受益人的实际土地的分配或转让,但被视为保护农民和农场工人土地占有权的重要手段。它们包括:

(1)*租赁经营*(简称 LO)。把土地所有者保留区域内的土地或

者是尚未分配出去的土地进行租赁，以确保农民占有其所耕种的土地，并且在等待土地最终分配结果的同时，享有率先取得土地转移的权利。

(2)*产品利润分享*(简称 PPS)。这个计划是农业实体拥有或者经营的土地在等待综合性农业改革方案覆盖之前的一种中间措施。这些实体大部分都是经营橡胶、香蕉和菠萝等商业性产品的公司。

(3)*股份分配选择权*(简称 SDO)。在这样的安排下，农民有资格获得股息以及其他种类的财产收益，也确保了农民在董事会、管理委员会或者执行委员会中最少有一名代表来保护股东的权利和利益。

(4)*商业型农场的延缓计划*(简称 SFD)。这个计划让新近建立的商业化种植园的法人有足够的时间在综合性农业改革方案覆盖这些农业用地之前收回投资。这个延缓期限直到 1998 年。然而，在最终的土地转让完成之前，这些公司应在它们的农场中执行生产和利润分享计划。

由农业改革部地方办事处监督的非土地转让活动没有得到更多的优先权，因为在实现他们的土地获得与分配目标方面存在更大的压力。

六、补偿

1. 公正补偿金的确定

(1) 在确定公正补偿金时，应考虑下列因素：

①土地收购的成本；

②类似财产的现有价值；

③土地的性质；

④实际使用及收入；

⑤所有者宣誓声明的价值；

⑥纳税申报；

⑦政府审查员所做的评估。

(2)在做价值评估时,应额外考虑农民、农业工人和政府为财产提供的社会经济利益,以及政府金融机构对该土地的免税或贷款提供。

(3)菲律宾土地银行应以土地所有者和农业改革部及菲律宾土地银行所议定的金额补偿土地所有者,或根据法院最终的土地公正补偿金额补偿土地所有者。

2. 补偿方式

补偿金可以根据土地所有者的选择以如下任一方式进行支付:

(1)现金支付,根据以下条款和条件进行支付:

①就所超的公顷数而言,超过 50 公顷的土地,支付 25% 的现金,其余数额以可随时议付的政府金融工具支付。

②超过 24 公顷而不到 50 公顷的土地,支付 30% 的现金,其余数额以可随时议付的政府金融工具支付。

③24 公顷及以下的土地,支付 35% 的现金,其余数额以可随时议付的政府金融工具支付。

(2)政府所有或政府控制的企业股份、菲律宾土地银行的优先股、有形资产及其他与总统农业改革委员会指导原则一致的合法投资。

(3)针对任何纳税义务而使用的税收抵免(tax credits)。

(4)菲律宾土地银行债券。

在恶性通货膨胀的情况下,总统农业改革委员会应采取恰当的措施来保护经济。(第 18 节)

以上方式改善了第 299 号执行令、修订后的共和国第 3844 号法案及第 273 号指示书中提到的补偿方式。

全数支付现金给所有的土地所有者将会向市场上注入大量的现金,这将会导致通货膨胀。而且,此种补偿计划将会增加综合性农业改革方案预先的融资需求,而这是政府目前无法承受的。然而,这些

补偿方式已被认为能充分促进资金从农业转移到工业。在任何情况下,目标都应是使土地所有者更能接受这个方案,但应适当考虑资金限制。

3. 菲律宾土地银行的债券特征

(1)*市场利率*——此债券与91天短期国库券的利率挂钩。自发行之日起直至第十年,每年都应有10%的债券票面价值到期。如果土地所有者拒绝现金部分的补偿,不管是全部还是部分现金,他都应相应地得到菲律宾土地银行的债券补偿。

(2)*可流通性和可转让性*—— 此种菲律宾土地银行债券可供土地所有者及其利益继承人和受让人,按照其票面价值,在以下情形下使用:

①土地及其他的政府不动产的收购,包括资产私有化方案下的资产,以及此债券所补偿的土地所在省或地区的政府金融机构没收的其他资产;

②政府所有或控制的公司股份的收购,或私有企业中国家持有的股份的收购;

③作为被告获得临时释放的履约保证或保释保证书的替代,或者取代履约保证金;

④作为任何政府金融机构的贷款抵押品,但贷款的收入应投资在经济企业中,最好是支付此债券的土地所在省或地区的中小型工业企业;

⑤用以支付政府的各种税收及费用。因这些目的而使用债券,其金融工具的未付余额将被限制在一定的百分比上,而且总统农业改革委员会将确定上面提到的百分比;

⑥供原债券持有人的直系亲属支付公立大学、学院、专业学校或其他机构的学费;

⑦供原债券持有人的直系亲属支付在公立医院看病的费用;

⑧总统农业改革委员会可能随时同意的其他用途。

4. 利息支付

(1)*利率*——10 年的土地银行利率基于 91 天国库券而定,代表土地银行利率制定日期之前的拍卖交易。银行利率制定日为每年的 2 月 28 日、5 月 31 日、8 月 31 日及 11 月 30 日。

(2)日期——对于 25 年债券转换而发行的债券,土地银行在每年的 2 月 18 日和 8 月 18 日支付利息。对于根据综合性农业改革方案(简称 CARP)在 1987 年 8 月 18 日之后发行的债券,利息可在发行日后 6 个月支付,此后每 6 个月支付一次。

5. 自愿土地转让

(1)*指导方针*。按照该法案进行收购的农业用地所有者,可订立自愿协议,依照以下指导方针将土地直接转让给合格的受益人:

①在执行综合性农业改革方案的第一年里,所有的自愿土地转让通知必须上交给农业改革部。土地所有者与合格受益人之间关于自愿土地转让的协商,如一年后仍无结果,则此转让不予承认,且此土地将由政府收购并根据该法案进行转让;

②该转让给予受让人的条款和条件应不亚于政府从土地所有者处购买土地再转卖给受益人的长期要约的条款和条件,如果业已作出了此种要约并且双方都清楚的话;

③自愿协议应包括对任何一方违约的制裁,该等条款应由农业改革部加以忠实地记录,并由其监督实施情况。

为使转让有效,必须遵照所有这三个一般的指导方针。

(2)*受益人支付补偿金*。农民受益人按照双方同意且对双方都具约束力的条款,在农业改革部注册并经其批准后,以现金或以货代款的方式直接支付补偿金给土地所有者。除非农民受益人在登记后的 30 天内接到不批准的通知,否则上述批准应被认为已经作出。

如果买卖双方在土地价格上不能达成一致,则应适用强制收购程序。(见第 16 节"E"部分的规定)出于收购土地的考虑,菲律宾土

地银行可为受益人提供资金。

6. 自愿要约出售

政府应该收购所有其认为多产、适合农耕并由土地所有者自愿出售的农田,然后根据综合性农业改革方案进行再分配。此种交易应免除资本利得税(capital gains tax)及其他税费(第229号执行令第9节)。如第17、18节所述,土地所有者在其自愿要约中陈述的土地价值应遵照既定程序来决定土地补偿额。

以上涉及政府和土地所有者之间的交易,后者以有利于前者的方式,自愿出售其土地。在自愿土地转让中,交易只涉及土地所有者和受益人。自愿土地转让也涉及激励问题。按照第299号执行令,自愿要约出售方案免除税收及其他费用,但在自愿土地转让中,土地所有者不享有此种优惠。根据1988年的综合性农业改革方案,自愿出售其土地的土地所有者有权享有15%的额外现金补偿,但是银行或其他金融机构不享有此种待遇。

公司土地所有者可以按照上文第20节,自愿转移其土地所有权给政府。(《综合农业改革法》第31节)

根据综合性农业改革方案的宗旨,在此方案生效后四年内,即自1988年6月15日至1992年6月15日期间,所有土地所有者可以主动将其土地出售给政府。但是,至于政府强制实行收购的土地,接到通知的土地所有者不能再主动出售土地。

所有自愿出售土地给政府的要约,皆不得收回,且根据综合性农业改革方案第7节,应立即实行步骤1,进行收购。

所有在1988年6月15日,即综合性农业改革方案生效之日前提交的自愿要约出售,应遵照第229号执行令规定的程序进行听证和处理。

七、公司农场

1. 由公司或其他商业组织拥有或经营的农场

此种情况下,总统农业改革委员会应遵守以下规则:

(1)总的来说,土地应直接分配给单个的工人受益人;

(2)如果土地分割不经济或不合理,那么就应该由所有工人受益人集体拥有土地。这些工人受益人应组成一个合作组织或协会,以与公司或商业组织交涉。工人合作社或工人协会与公司或商业组织签订新的协议之前,在综合性农业改革方案生效时,工人合作社或工人协会与前任土地所有者签订的协议,应当得到工人合作社或工人协会与公司或商业组织的尊重。

公司农场需要大量的融资、广泛的研究开发、大范围的市场营销网络。

2. 合作社成员的家用土地及农田

上述合作社或公司应提供家用土地及小块农田供其成员使用。这些土地应是合作社或公司拥有的土地的一部分。

3. 公司土地所有者

(1)*自愿转移所有权*——在符合法案的情况下,公司土地所有者可以依照第20节(见上文)自愿转让其农业土地所有权给政府,或按照双方协商一致经农业改革部确认的条款条件,转让给其他合格的受益人。

(2)*授予合格受益人购买股票的权利*——经农业改革部证明,拥有农田的公司可根据双方达成一致的条款条件,授权其合格受益人购买公司部分股票的权利,这部分股票相当于农田(切实用于农业活动)在公司总财产中所占的份额。

因此,如果土地价值是公司总资产的10%,受益人可购买10%

的股本。任何情况下,在分配股票时,工人所收到的补偿不应减少。此原则同样适用于协会的股权或股份。

4. 认定企业符合土地分配要求的条件

为其工人或其他受益人的利益而自愿除去部分股本、股权或股份的公司或协会,应被视为遵照该法案条款行事。然而,必须遵守下列条件:

(1)为保护持有可获得股息及其他经济收益股票的受益人的权利,公司或协会的账簿应接受受益人指定的注册会计师的定期审计。

(2)不管其在公司或协会中的股权价值怎样,受益人应确保在公司或协会的董事会、管理委员会或执行委员会(如果有的话)中至少有一个代表。

(3)工人和受益人得到的任何股份都应享有和其他股份一样的权利和特征。

(4)原受益人的任何股票转让行为自始无效,除非此项交易是为了同一个公司中的合格注册受益人的利益。

在该法案通过后两年内,如上述土地或股份转让计划没有进行,或经总统农业改革委员会同意的股票分配计划仍未实现,则公司所有者或公司的农用土地将被划入该法案强制收购的范围之内。(同上,第3、4段)

5. 农业工人或其组织的产品共享计划

(1)*产品共享数量*。在最终土地转让完成之前,按照租赁合同或管理合同拥有或经营农业用地的个人或实体,必须对其农业工人和农业工人组织(如果有的话)执行一项产品和利润的共享计划。在会计年度末的60天内,将这些土地3%的农产品年总销售额补偿给此农场的正式农业工人和其他农业工人,以超出他们目前收到的补偿数额。

如要进行产品共享,这些个人或实体必须每年实现超过

5,000,000比索的总销售额,除非经过适当的申请,农业改革部确定了较低的下限。

(2)*利润共享数量*。在个人或实体实现利润的情况下,税后净盈利的10%应在会计年度末的90天内分配给所述常规农业工人和其他农业工人。

(3)*过渡期*。为防止转交给上述农场受益人的土地的正常经营出现中断,将确立一个过渡期,时间长短由农业改革部决定。

在这段过渡期内,经农业改革部同意,遵照农业工人受益人和管理、监督、技术团体(在法案生效时,这些团体即已存在)可能达成的协议,至少1%的实体总销售额应分配给管理、监督和技术团体,作为对其发挥的这种过渡性管理和技术职能的补偿。

(4)*雇主范围*。在最终土地或公司股票转让前,遵照第6657号共和国法案,下列雇主应实行产品和利润共享:

①在租赁合同、管理合同、产品风险合同或其他类似协议下,拥有或经营农业用地的任何企业;

②参与农业活动的跨国公司;

③从事养殖商用牲畜、家禽、养猪,水产业包括盐床、鱼塘、养虾池、果园、蔬菜和切花农场及椰子、咖啡、橡胶园的商业农场。

进行商业经营而不是从事农业经营的个人或实体,只有参与农业活动的部门、群体或单位才应进行产品、利润共享计划。

(5)*员工范围*。所有农业工人,除负责管理和监督的员工外,不论是常规性、季节性、技工还是其他类型的农业工人,都有权参与产品共享和利润共享。然而,在农业改革总统委员会未规定特定的授予限制的情况下,任何提供服务的农业工人(不管服务期限长短),只要他拥有不超过3公顷的农业用地,均可以在所包括的时间内享有这些权益。

(6)*支付方式*。工人的产品或利润共享应以现金方式支付。这些额外补偿应该记录在单独的工资单上,且应包括以下信息:雇主的总销售额和净利润、工人产品或利润共享的分配总额、每个工人该年

份的付薪天数、每个工人的产品或利润共享份额。

6. 合作社或协会的股金交付

农民受益人或工人受益人所得的合作社或协会的股票，应按照与第34节确定的价值相对应的金额给予全部支付。

土地所有者和菲律宾土地银行应提供金融信贷，以帮助农民受益人或工人受益人支付所述股金。

7. 土地的估价

(1)考虑到第17节列举的因素(公平补偿的确定，见"F")以及刺激合作社发展和促进工人受益人负责地参与创造财富的目标需要，土地评估计划应由总统农业改革委员会制定。

(2)在确定一个公正的价格时，总统农业改革委员会应咨询土地所有者和工人受益人，以达到对个人和社会两方面的公正。

(3)在出现意见分歧时，如果工人受益人接受总统农业改革委员会决定的价格，那么在不妨碍土地所有者向特殊农业法庭请求解决估价问题的情况下，此价格应得以执行。

八、支持服务

1. 支持服务办公室的功能

农业改革部下的"支持服务办公室"是依照1988年的《综合农业改革法》设立的。办公室负责人为副部长，该办公室为综合性农业改革方案的实施提供一般的支持服务和协调服务，尤其是向农民受益人和受到影响的土地所有者提供以下服务：

(1)灌溉设施，尤其是在第二季农作物和干旱季节里的灌溉工具；

(2)农业改革开展区域及定居点内所需的基建开发和公共工程项目，以及为了这个目的，对上述定居点制定实际的开发计划，提供

合适的社区场所、饮用水、电力、灌溉系统,种子和秧苗地、采收后的设施和其他执行合理的农业发展计划的设施等;

(3)为灌溉设施提供政府补贴;

(4)对所有农产品的价格予以支持和保障;

(5)在社会担保,如农民组织的担保基础上,为实现农业产业化而向小土地所有者、农民和农民组织提供必要的银行贷款,如优惠贷款和无担保贷款;

(6)对农业改革区域里的中小型企业提供和开发资金援助;

(7)为农民组织分配充足的农业推广人员;

(8)就以下方面开展研究、开发并发布相关信息:最适宜耕种和营销的农业改革植物与作物、低成本和生态合理的农业投入、可减少对昂贵和进口农产品的依赖的技术;

(9)通过深入培训,开发合作管理技能;

(10) 协助确定农产品现有的市场,对营销的各个方面进行培训;

(11)执行、经营、管理和资助支持服务计划与项目,包括由农业改革部开发的与农业改革相关的示范项目和模型。(经第7905号共和国法案修订的第35节)

为了提供支持服务所需的费用和成本,至少25%的农业改革拨款将被立即划拨并用于支持性服务。另外,农业改革部有权提出"一揽子"建议,接受赠与、支援和其他形式的资金援助来源。

2. 对受益人的支持服务

土地分配不是唯一提高生产和农村收入的方法。经验表明,如缺乏必要的支持服务,土地就不会有高产。

总统农业改革委员会保证向农民受益人提供支持服务,例如:

(1)土地调查和所有权界定;

(2)对信用工具或生产贷款实行比较宽松的条件;

(3)种植、收割、生产和在收获之后的技术转让等推广服务,此外

还有营销与管理援助,以及对合作社和农民组织的支持;

(4)基建设施,如道路轨道、小型水坝、公共设施、营销和储藏设施;

(5)研究、生产和使用有机肥料以及农耕必需的当地材料。

总统农业改革委员会受委托制定政策,以确保在土地改革的所有阶段,向农民受益人提供必要的支持服务。

滥用或挪用上述财政资助或支持服务的,应对承担罪责的受益人给予制裁,包括没收转让给他的土地,总统农业改革委员会可对其处以较轻的制裁,但不妨碍对其进行刑事追诉。

3. 对土地所有者的支持服务

(1)总统农业改革委员会在它可以管理的其他政府机构和部门的协助下,向受到综合性农业改革方案和原农业改革方案影响的土地所有者提供下列服务:

①投资信息、财政和咨询协助;

②提供债券转换或交换的工具、计划和方案。这些债券或股票是由国家政府、中央银行或其他政府机构和部门发行的,用来支付土地价款;

③交易菲律宾土地银行的债券,并提高上述债券在传统或非传统的金融市场和证券交易所中的适销性(marketability);

④为有效利用这些土地的销售收入,实现农村产业化而设定的其他服务。

上述第②项不涉及现金支出。它符合政府的私有化方案,并促进工业化的发展。对土地所有者提供的协助将促进债券向有利的和高度优先发展的产业或项目进行再投资。

(2)对农村地区产业进行投资的土地所有者,将有权享有1987年《综合投资法案》规定的试点或优先领域的注册企业享有的优惠政策,或享受总统农业改革委员会、菲律宾土地银行或其他政府金融机构提供的优惠政策。

(3)菲律宾土地银行应以票面价值赎回土地所有者持有的菲律宾土地银行债券,但该债券收益(至少为债券票面价值的30%,菲律宾土地银行可对这一额度作出调整)应投资在综合投资法案规定的注册公司中,或该土地所有者原投资地区的任何农业企业或农工企业中。

4. 农业改革的综合方法

政府的综合性农业改革方案是解决农业生产力低下和农民贫困问题的综合行动计划,其最基本的目的是将耕作者转变成为其耕种土地的所有者,使小型农场主能够有尊严地生存,并在国家建设中成为负责的合作者。

为了保证1988年《综合农业改革法》中农业改革目标的实现,该方案得以制定,同时以此向受益人提供必要的支持性措施、制度和服务。该综合方法主要包括以下五个因素:

(1)*改善地权*。其目的在于,使每个租户耕作者拥有其耕种的土地。这包括土地估价和土地耕作。当租户农民收到土地证书时,该方案还没有完成,还需要继续向农民受益人提供"一揽子"的服务,其中包括监督信贷、免费法律援助、教育和培训、推广服务、基建设施和其他支持措施等,以帮助租户提高其产出和收入,从而保证租户作为土地所有者的新角色能够取得成功。

(2)*机构建设*。这包括设立适当的农村机构,最终使耕作者从"有害的制度约束和做法"中解放出来,尤其是在农田融资、营销和农用投入品采购等方面。包括下列活动项目:地方行政区域协会、地区营销合作社和农民合作银行等。

为了确保农民(现在其新的地位是土地所有者)拥有更加有利的环境和氛围来提高其农业收入,应当建立和发展地方机构,来服务和保护作为生产者、经营者和消费者的农民的利益。

(3)*农业发展*。目的在于提高被解放的租户每公顷土地的产量,从而改善其生活水平。所包括的活动有:合作务农、集约务农、土地

合并、土壤分析、谷物生产、家畜和家禽饲养、渔业、营养品和食品加工等。

①*合作务农*，是指在平等地分配生产要素的条件下（如土地、劳动力和原料资源）尤其是平等分配土地的情况下，由成员共同劳作。

②*集约务农*（compact farming），是指将相邻地域内的人力和土地资源集中起来，从而获得更高的效率和更大的经济规模。这是由农业改革部和菲律宾土地银行联手开展的。这一计划通过按照农民自己拟定的计划和预算来监督和指导耕种、收割与营销，从而降低农业生产成本。生产的成本和产出将根据集约务农成员各自农田规模的比例进行分配，而且可以确保从菲律宾土地银行或农村银行获得较高额的信贷。信贷的风险也较低，因为成员们要对彼此的债务承担连带责任。

为了调整实际布局，最大限度地利用小型农场的投入和基建设施，农业改革部进行了土地合并（land consolidation），作为农业改革发展的更高阶段。土地合并方案促进了土地持有的平等分配，为农业提供所需的基建设施，并保护土壤的肥力，防止受到侵蚀。植树造林是流域保护的关键要求，也是需要长期实施的计划，同样包括在该部分内容中。

（4）*实际发展*。它包括对农业改革提供支持性的基建设施，如灌溉系统、从农场到市场的道路、港口、桥梁、学校建筑、医疗中心和其他社会基础设施如农村电气化等。“如果农村缺乏实际发展，则只能减缓农业生产力的提高，导致农业产量的降低”。因此，基建设施成为促进“作为农场生产者和所有者的农民业已得到强化的生产力”的主要因素。

（5）*农业改革社区的发展*。农业改革部与其他综合性农业改革方案实施机构协调进行的工作特别表现在农业改革社区（简称ARCs）中。农业改革社区发展战略是一种以区域为重心的综合方法，农业改革部双管齐下，一方面实施地权改善，另一方面提供有效的支持性服务，重点关注贫困社区或一连串贫困社区，以增加农业生

产、提高家庭收入、促进可持续性发展。

恰恰是农业改革社区显示了农业改革是有效的,农业改革作为一个整体方案提高了生活质量,赋予了人民以权利,同时促进了农业和工业的可持续发展。

农业改革社区是接受"一揽子"服务的土地改革村落的集合。这些服务包括农村基础设施,如灌溉设施、农场到市场的道路、融资、产品加工、营销协助等,除此之外,还有基本的社会服务,如教育、保健和卫生等。

(6)*人员培训和支持者发展*。农业改革的持续性教育计划由农业改革信息和教育局实施,包括两个指导性的现场人员培训和支持者发展:

首先,为实施该方案的政策目标而设立的政府机构的人员提供了解农业改革政策、方案和计划的知识,并对实地操作方法论进行广泛的培训。

其次,涉及非政府部门,包括若干个活动,如社区教育和信息交流活动,使农业改革方案为更多人所知晓和接受;对农民进行教育,使他们熟悉该方案,并指导他们开发个人能力和适用于农场生活的技能,重点在于更好地使用土地、规划农场,更好地使用信贷、规划生活,并学习如何对土地所有者进行引导,以获得其合作和支持,从而成功地实施该项目。通过实施农业改革部的"投资和营销协助计划",农民们可以获得更准确的信息和资料。

5. 农业改革地区的联合经济实体

(1)*联合经济实体*,通常是指受益人和投资者之间在农业改革地区组建农业经济实体的合作伙伴关系或安排,可采取如下形式:

①*合伙企业*,一方面,受益人据此投入使用各自或共同持有的土地以及设施和设施的改进(若有);另一方面,投资者需要投入资本和技术,以进行农产品的生产、加工和营销,或建设、修复、升级和经营农业资产、基础设施和设备等。该合伙企业具有独立且不同于其组

成部分的人格；

②*生产、加工和营销协议*，受益人据此从事农产品生产和加工，并直接将产品出售给提供贷款和技术的投资者；

③*建设、运营、转让计划*，投资者据此自费引进、修复或升级资产、基建设施、服务和用于农产品的生产、加工和营销的设备，且在协议期内进行经营，期满后，其集体所有权与拥有设施改进和设施所在地土地的所有者权利合并；

④*管理合同*，受益人据此从承包方处获得服务，承包方可以是个人、合伙或公司，以协助农场的管理和经营，获取固定的报酬或佣金；

⑤*服务合同*，受益人据此支付承包商的服务，从而进行机械化的土地准备、耕种、收割、加工、收割后经营和其他农业活动；

⑥*租赁合同*，受益人据此约束自己，给予投资者以特定的价格、在特定的时间内享用或使用其土地的权利；

⑦上述计划的结合；

⑧将促进农业改革地区土地的生产力，并符合现行法律法规的其他农业企业协议或计划。

(2)*框架*。农业改革不仅仅是将土地重新分配给农民或无地的农业工人，而且包括提高受益人经济状况的全部因素和支持服务。为了确保足够的支持服务，在农业改革地区的发展中，须有私营部门、民间力量和投资者的广泛参与。可以通过农业企业合伙关系或协议，或受益人和投资者之间的“合作经济实体”来实现。

涉及已分配土地的这些合伙关系或协议，应根据受益人的选择而定。它们的可用性并不意味着政府将停止提供农业支持服务。它们只是受益人可以考虑用来持续经营被分配的农场或使他们的土地多产，从而使他们享受到农业改革全部利益的选择方法之一。

(3)*基本特征*。合作经济实体中的当事人是受益人和投资者，其构成主要出于下列目的：

①农产品的生产、加工和营销；

②引进、维护、修复或升级农业资产、基础设施、设备或服务；

③提供可使被分配的土地多产的专门知识、技术、设备和其他服务。

受益人仍然是土地的所有人,只有土地的使用权可在必要的时候转让给企业。双方的对价和其他经济利益将根据农业企业的性质和各方参与的相应价值决定。

各方当事人应协商经营期限,并使土地产权证书(简称 EP 或 CLOA)上的协议注释恰当。

(4)*谁可利用*。按照农业改革方案被分配到农业土地的受益人,可以参与此处规定的任何一个联合经济企业。这些受益人包括解放专有权(Emancipation Patents)证书持有人或土地所有权授予证书(简称 CLOAs)持有人。

农业改革方案中进行分配的农业用地的合格受益人也可利用这些农业企业,但土地要在农业经济协议签署之前分配给受益人。

小的土地所有者可参与涉及其保留土地的联合经济企业。

(5)*受益人同意*。受益人完全拥有是否与投资者组成联合经济企业的自由。然而,如果是商业性农用地,依照农业改革部 1998 系列第 9 号行政令第 30(a)(3)节规定,土地所有人或经营人可以拥有优先权。

当个人受益人是合同当事人时,必须由受益人本人或其授权代表签署协议。

当合同当事人是合作社或协会时,董事会或管理机构必须被授权签署该协议,成员必须根据其章程或议事规则批准该协议。签署协议的官员应确保在签署协议之前得到董事会的书面授权。

6. 农业改革社区发展框架

(1)*背景和基本原理*。获得土地是保证农业增长将为农村贫困人口带来持续利益的根本,它有利于实现菲律宾宪法规定的公平公正的目标。六十多年来,农业改革一直是菲律宾矛盾的焦点,谁能够控制这一生产要素,谁能从中得到最大利益,已经成为国家发展方向

面对的主要问题。

如今,贫困人口的数量已经创下菲律宾的最高历史纪录。由于收入分配不均,每 10 个菲律宾人就有 6 个仍然生活在贫困线以下。全国超过一半的财富掌握在最富裕的 20% 的人手中,而占总人口一半的底层人口只占有 1/5 的财富。1997 年,44.4% 的农村家庭仍然生活在贫困线以下,最多的集中于稻米、甘蔗、椰子和玉米种植的农民和农业工人。

(2)*指导方针和哲学*。菲律宾的贫困现象主要是在农村,72% 的贫困人口是以农业、渔业、林业或与农业相关的产业来就业和获得收入的。收入、资产和机会的不平等制约着公平分享经济增长带来的好处。据称,财富和资源的集中导致保护宗派利益的政策出台,并妨碍社会其他人员的发展,这也助长了社会不满心理,因此,增加了社会政治的不稳定,并导致投资减少。

对土地进行更平等的分配将减少贫穷,促进生产力的发展。因此,农业改革被认为有助于纠正这些不平等。通过农业改革,国家可以对经济进行干预,从而更公平地分配生产资源(土地、人力和基建设施)。农业改革通过加强菲律宾农民的能力,使其成为更加有效的生产者,使经济发展变得均衡。这样一来,国家将受益于农村劳动力的使用和农村收入的提高。农业改革促使农村贫困人口参与到自由市场经济的主流中,并直接促使了国内对本国服务和产品需求的增长。最终,农业改革提高了农业和工业在世界市场上进行更有效竞争的能力。

农业改革部实施的农业改革社区发展计划旨在使贫困人群成为具有生产力的公民,从而对国家经济增长作出贡献。该计划使农村经济重新获得生机,并为具备全球竞争力奠定了基础。最终,针对历史上数百万无地菲律宾农民没有拥有自己耕作的土地的现象,该计划通过纠正土地所有权而为农村带来了公平。

(3)*关键参与者的伙伴关系*。要实施以地区为基础、以人为中心的改革方案,是一项非常艰难的任务,它需要关键参与者如政府、企

业和公民社会之间极其重要的和有原则的合作。

①*政府*。政府是政体领域的关键因素,其中的核心问题和过程是参与式的民主治理以及制定保护所有公民人权(包括公正和平等)政策。考虑到国家资源的限制,仅仅靠农业改革部和综合性农业改革方案执行机构是不能成功推行农业改革社区发展计划的。

②*企业*。这是经济领域的主要参与者,其中基本的考虑和过程是互利的产品与服务生产和分配,以满足人民的实际需要。随着财政危机对政府和全球化趋势的影响,来自市场力量的巨大压力(如自由化)目前正在加大。

目前,商业部门并不仅仅活跃在经济领域,而且也活跃在社会服务供应领域。和政府一样,将以人为中心的发展责任单独转交给商业部门也是存在风险的,因为商业部门有其局限和不完善之处。

③公民社会。这是文化领域的主要参与者,其基本的考虑和过程是人类社会能力的发展,以获得更多的知识,实现明确和一致的价值观,并推进公众利益。

公民社会被宽泛地定义为"自我组织的社会部分,包括拥有广泛群众基础的自愿性组织(如非政府组织、人民组织、以特定事业为目的的团体、学术群体、媒体、教会等)和私有公司部门"。它的主要作用是,通过采用可以被纳入主流从而使整个社会受益的非传统发展战略和模式,使政府和商业部门实现民主化。公民社会致力于提出可以在公共政策中被采用的以人为本的议题。

(4)*关键要素*。主要有:

①*地权改进(简称LTI)*。这一要素致力于给予直接生产者控制自然资源基础的能力,并关注第二代的问题和忧虑。为了实现农民对生产过程的控制、农民的自我发展并从根本上确保农民参与全球化经济,这是关键的一步。

"无佃农"的农村还可以纠正土地市场中的扭曲现象,吸引所需的信贷和投资,以促进国家进步。

②*社会基础设施和地方能力建设*。这一要素的基本要点是,帮

助边缘人群共同发展其使用和管理具有生产力的土地和其他社区资源的能力,实现基本需求特别是粮食的自足,并提高地区发展管理能力。

从根本上来说,这包括农民组织、合作社和区域性联合体的建立和强化。

③*可持续的、以地区为基础的农村企业发展*。这一要素涉及农业生产的粮食安全和基本需求的充足,以增加生产和收入,改善农业改革社区家庭的生活质量。为了达到这个目标,必须要为农业社区提供获取资本、适当的技术、信息、基建设施和市场的途径。

④*基本社会体系的发展*。基本上,这一要素将促进以社区为基础的社会服务体系的建立和发展,如基本医疗、饮用水供应系统、社区娱乐活动、灾害管理和大众化教育,等等。可以与其他政府机构、非政府组织和捐赠机构联合进行发展。

九、方案的执行

1. 执行与协调机制

执行与协调机制的内容如下:

(1)*农业改革部*(简称 DAR),是实施综合性农业改革方案的领导机构(见第四章),被赋予了准司法权,可裁决和决定与农业改革有关的事项。

与一般的法院不同,农业改革部是一个行政机构,它不受司法程序中的技术性规则和证据规则的约束,并且只关注农业问题,具有专业技能。主要任务是促进方案的执行,保证农民受益人支出最少的花费,并以最快的速度完成相关司法程序;

(2)*总统农业改革委员会*(简称 PARC),是有关农业问题所有事宜的最高农业改革政策制定及协调机构,其任务是协调方案的执行,以及保证及时有效地提供必要的支持服务;

(3)*省级农业改革协调委员会*(简称 PARCCOM)负责综合性农

业改革方案在每个省的实施情况;

(4)社区农业改革委员会(简称 BARC)负责在社区一级的农业改革事宜。

2. 总统农业改革委员会

(1)*构成*。总统农业改革委员会由总统担任委员会主席,农业改革部部长担任副主席。

以下是总统农业改革委员会的成员:农业部部长、环境与自然资源部长、预算管理部部长、内政与地方政府部部长、公共工程和高速公路部部长、贸易与工业部部长、财政部部长、劳动与就业部部长、国家经济与发展部总干事、菲律宾土地银行行长、国家农业灌溉行政局局长、各自代表 Luzon, Visayas 和 Mindanao 岛上的土地所有者的三名代表、六个农业改革受益人的代表(其中来自 Luzon 岛、Visayas 岛和 Mindanao 岛的各两名,但是其中一名应来自文化社区)。

以上提及的代表应由总统任命。

(2)*执行委员会*。总统农业改革委员会下属的执行委员会(简称 EXCOM)由农业改革部部长担任主席,其他委员由总统任命。除非总统农业改革委员会另有规定,执行委员会可以召开会议并决定总统农业改革委员会休会期间的任何事宜。

执行委员会必须在不迟于下一届会议召开时立即向总统农业改革委员会报告其决定。

(3)*秘书处*。总统农业改革委员会的秘书处提供一般支持与协调服务,如机构间的沟通联系、方案与项目评估以及对总统农业改革委员会的一般运行监督。秘书处由农业改革部部长领导,农业改革部部长得到副部长协助,并由总统农业改革委员会执行委员会指定的工作人员提供支持。

秘书处的所有官员和雇员均由农业改革部部长委任。

(4)*职能*。由总统领导的总统农业改革委员会被视为保证综合性农业改革方案(简称 CARP)适当执行与协调的合适机构。总统农

业改革委员会的主要职能是，制定和执行实施综合性农业改革方案每一部分所必需的相关政策、规则和法规。该委员会可授权其成员制定在其职权范围内有关农业改革的相关规则和法规。这些政策、规则和法规应涉及以下内容：

①被推荐的小型农场经济区，应用于种植特定的作物，并建立在全面的技术研究和评估基础之上。

②具体的农业改革地区的土地收购和重新分配时间表，但该收购只有在满足所有要求的条件下才能被执行，包括向相关的土地所有者的首次付款；

③估价控制机制，用根据第 4 节规定的评估土地所有者对目前公平市场价的申报，以建立起第 6 节规定的政府补偿价格，它应将当地现行的土地交易、土地所有者的土地年收入以及其他因素都考虑在内。

总统农业改革委员会须制定综合性农业改革方案在各省执行的指导方针。

3. 省级农业改革协调委员会（PARCCOM）

（1）*构成*。省级农业改革协调委员会的主席由总统根据执行委员会的推荐任命。省级农业改革官员作为执行官，由农业部、环境和自然资源部以及菲律宾土地银行各派一名代表，由省内现存的农民组织、农业合作社以及非政府组织各派一名代表，土地所有者中选出两名代表，其中至少一人应是省内主要农作物的生产者，农民以及农业工人或受益人中选出两名代表作为委员，其中至少一人是种植该省主要农作物的农民或农业工人。

在有文化社区的地区，同样应从中选出一名代表（第 44 节），该代表经北方文化社区办公室（简称 ONCC）、南方文化社区办公室（简称 OSCC）或穆斯林事务办公室（简称 OMA）（视情况而定）选出并正式核准。因此，省级农业改革协调委员会共有 13 名成员组成。

(2)*职能*。如下:

①协调和监督综合性农业改革方案在省内的执行情况;

②提供综合性农业改革方案(和其他适用的土地改革法)条款的信息、由总统农业改革委员会发出的指导方针的信息以及综合性农业改革方案在省内的实施进度信息(同上);

③对于各省公有和私有土地的10年分配方案,每年都需要根据总统农业改革委员会先前制定的经营水平进行调整,以保证相关人员可得到支持服务,或在实际分配完成之前该服务已规划好。

根据1997年农业改革部第1号行政令,省级农业改革协调委员会应该向总统农业改革委员会推荐具有优先权的农业改革地域,对这里涉及的私有农业用地的收购和分配可先于第7节(见"B"优先令)以及上述第45节规定的时间表执行,同时应向农业改革部地区主管提供一份推荐书的副本。

4. 社区农业改革委员会

(1)*构成*。社区农业改革委员会是在自助模式上运行的,由以下主体的代表组成:农民和农业工人受益人及非受益人、农业合作社、其他农民组织、社区委员会、非政府组织(简称NGOs)、土地所有者以及菲律宾土地银行(简称LBP),还包括以下人员:被指派至社区的农业部官员、环境与自然资源部(简称DENR)官员、农业改革部(DAR)农业改革技术人员,其在该地区担任秘书一职。

法律保证,当方案在基层执行时,该方案下所有受到影响的实体以及个人应得到恰当的代表(第29号执行令第19节)。因此,社区农业改革委员会共有11名成员组成。

(2)*职能*。根据第229号执行令,该委员会有如下功能:

①参与并支持农业改革方案的执行;

②对提交的农业冲突和争端进行调停、和解或仲裁;

③完成总统农业改革委员会及其执行委员会或农业改革部秘书不时委托执行的其他任务;(同上)

除了上述职能,1988 年的《综合农业改革法》(简称 CARL)赋予社区农业改革委员会以下职能:

①调停或和解双方的土地争端,包括与租赁地财政安排相关的事宜;

②帮助确认社区内的有资格的受益人和土地所有者;

③证实受益人耕地初始分割的精确性;

④帮助有资格的受益人从贷款机构获得信贷;

⑤帮助初步确定土地的价值;

⑥帮助农业改革部代表制作综合性农业改革方案执行情况的定期报告,以供提交给农业改革部;

⑦协调向受益人提供的支持服务;

⑧执行农业改革部规定的其他职能。

(3)*土地争议的解决*。社区农业改革委员会应在其接管土地争议后 30 天内,努力调解、和解以及解决该土地争议。若 30 天限期后,社区农业改革委员会不能解决该争议,应在 30 天的有效期过后 7 天内(同上),发出诉讼程序证明书,并提供该证明书副本至诉讼双方手中。

社区农业改革委员会作出的所有裁定都是终局并可执行的,除非任何一方在收到判决通知书之日起 10 天内向省级农业改革办公室提出上诉。省级农业改革办公室应在收到案件卷宗后 15 天内作出关于此上诉的裁决。

(4)*法律援助*。社区农业改革委员会或其成员,在执行其职能期间的任何必要的时候,可向农业改革部和省级、地市级政府寻求法律援助。

5. 规则与法规

总统农业改革委员会以及农业改革部有权发布实质性或程序性的规则与法规,以实现该法案的目标和目的。上述规则应在广泛发行的两份全国性报纸上发布 10 天后生效。

十、行政裁定

1. 农业改革部的准司法权

农业改革部,通过它的裁判委员会(简称 DARAB)被授予确定和裁定农业改革相关事宜的主要管辖权。

(1)农业改革部对于涉及农业改革执行情况的一切事宜拥有专属的初审管辖权,专属农业部(简称 DA)以及环境和自然资源部管辖的除外。

(2)它具有以下权力:

①召唤证人、监誓和提取证言;

②要求提交报告;

③强制出示账簿和文件、质询书的应答,以及发出传票及强制性传票;

④通过行政司法长官或其他被正式代表的官员执行令状(或其他);

⑤直接或间接惩罚藐视法庭的行为,并按照法庭法规执行惩罚。

2. 不需严格遵守程序法和证据的部门

与一般的法院不同,农业改革部是一个行政机构,它不受司法程序中的技术性规则和证据规则的约束,并且只关注农业问题,具有专业技能。主要任务是促进方案的执行,并保证农民受益人支出最少的花费,并以最快的速度完成相关司法程序。

农业改革部有权利用所有合理的方法,依照公正、公平原则以及案件的真实情况,查清每宗案例的事实。为达到上述目的,农业改革部应当采用统一的诉讼程序,实现对每一个诉讼公正、迅速、有效的裁决。

3. 代理权

担负责任的农民领导有权在农业改革部的任何诉讼中代表自己、他们的农民同伴或他们的组织出庭。但是,对于个人或群体,当有两个或两个以上的代理人时,代理人应从他们中间选择一人,在农业改革部的任何诉讼中作为此人或群体的代表。

4. 社区农业改革委员会的证明书

农业改革部不能够审理任何农业纠纷或争端,除非社区农业改革委员会发出证明书证实,提交给它调解及和解的纠纷处理失败。但是,如果在问题提交给社区农业改革委员会后 30 天内,该委员会没有出具证明书,该案例或纠纷争端可以提交至总统农业改革委员会处理。

5. 农业改革部的裁定或命令

①终局性。农业改革部应在任何案例或争议被提交后 30 天内作出裁决。只允许提出一次复审申请。任何命令、决定或裁决自收到副本起 15 天后应被视为是终局的。(见本法第 51 节)

②滥诉。为了防止地方级或省级地域出现滥诉或有意拖延的上诉,农业改革部应作出合理惩罚,包括但并不限于对过错方施以罚款或谴责。(见本法第 52 节)

③执行。即使当事人上诉至上诉法院,农业改革部的裁决也应立即执行。

6. 农业法执行案例

对涉及农业法的案件的裁判,农业改革部已经颁布了相关的管理规则,该规则被称为“2003 年针对农业法执行案例的程序规则”。以下是其中的具体条款:

(1)农业法执行规则(简称 ALI)案例——该规则应管辖由以下

事宜产生或涉及以下事实的所有案例:

①农业改革方案涉及的土地所有权的分类和确认以及土地所有权授予证明书(简称 CLOAs)和解放专有权人(简称 EPs)的首次发出——包括由此产生的抗议或反对,以及解除法案覆盖的申请;

②对潜在或实际的农民受益人的分类、确认、纳入、排除、资格证明或资格取消;

③根据综合性农业改革方案(简称 CARP)对土地进行的分割测量;

④在不属于第 816 号总统令范围的土地案例中,对于临时租金、土地转让证明(简称 CLTs)以及综合性农业改革方案的受益人证明(简称 CBCs)和撤销或取消,包括对未在地契登记处登记的土地所有权授予证明书(简称 CLOAs)和解放专有权人(简称 EPs)的发出、撤销或取消;

⑤土地所有者保留权的行使;

⑥对第 6657 号共和国法案第 10 节覆盖范围提出的豁免申请;

⑦根据司法部第 44 号意见(1990 年)提出的豁免申请;

⑧从综合性农业改革方案用于牲畜、猪、家禽饲养的农业用地的有效范围中排除的案例;

⑨根据第 7881 号共和国法案的规定,从综合性农业改革方案(CARP)覆盖范围内豁免和排除的有关鱼塘、养虾场的案例;

⑩对不适用于农业目的,通过自愿要约出售和强制收购的土地的豁免证的发放;

⑪申请将农用土地转换为居住、商业、工业或其他非农业用途和目的的土地,包括由此产生的抗议或反对;

⑫农业改革受益人对于家庭式耕地的权利的裁定;

⑬对承租人或农民受益人土地所有超过部分的处理;

⑭增加承租人或农民受益人的耕种面积;

⑮由农业改革部及其前任部门管理的土地所产生的请求权冲突;

⑯农业改革部秘书提交的其他土地案例、争议或相关事宜。

(2)*农业改革部裁判委员会(简称DARAB)管辖的案件*——对于农业改革部裁判委员会以及地区或省级土改裁定处(简称RARAD或PARAD)享有专属初审管辖权的案例,这些规则不适用,该类案例包括:

①自然人或法人的权利与义务,该权利和义务涉及对第6657号共和国法案以及其他相关农业法律所规定的所有农业用地的管理、耕种和使用;

②对于根据第27号总统令以及综合性农业改革方案(CARP)收购的土地的合理公正赔偿的初步行政决议;

③根据农业改革部或菲律宾土地银行(简称LBP)的行政管理和处理办法作出的对租赁合同或销售契约书及其修订文书的废除或取消;

④那些涉及驱逐承租人或剥夺其租赁权的案例;

⑤那些在《综合农业改革法》(简称CARL)或其他农业法覆盖范围内的土地的出售、转让、优先购买或者赎买的案例;

⑥涉及土地所有权授予证明书(简称CLOAs)以及解放专有权人(简称EPs)的修订、分割、取消、或再发、续发的案例,上述文件已在土地登记处登记;

⑦涉及对租金进行审核的案例;

⑧涉及土地分期付款费用收取的案例,这些土地是根据以下法律文件授予的:第27号总统令(经修订)、第3844号共和国法案(经修订)以及第6657号共和国法案(经修订)和其他相关法律、法令、命令、指示、规则和法规;涉及用以购买农业改革部管理及处理办法规定的定居点和重新安置区内的居住、商业和工业用地的款项的案例;

⑨涉及租赁合同以及买卖契约撤销或废除的案例;涉及取消和修订由农业改革部和菲律宾土地银行管理及处理办法规定的农业用地所有权的案例;根据第266号总统令、田产专利法、自由专利法以及其他销售专利法,向农业改革部管理及处理办法规定的定居点和

重新安置区定居者发放解放专有权人的案例;

⑩涉及农业改革部和菲律宾土地银行管理及处理办法规定的农业用地边界争端的案例,上述用地被转让、分配或出售给承租受益人,并受销售契约、专利以及产权证明书的保障;

⑪涉及农业用地产权裁定的案例,在该农业用地上引起的由双方或第三方提起的争议,其目的是保留承租人或实际租赁农民或农民受益人对土地的占有,并驱逐土地的入侵者或破坏者;

⑫根据第946号总统令第12节,原属于已不存在的农业关系法庭(CAR)初审和专有管辖权范围的案例,由适当法庭或其他准司法机构管辖的案例除外;

⑬其他由农业改革部秘书提交的农业案例、争议及相关事宜。

(3)对于农业法执行案例的管辖权:

①*一般管辖权*——地区主管应当对所有农业法执行情况行使主要的管辖权,除非有独立的特别法将裁判权赋予农业改革部中的另一个部门。

②*对请求解除覆盖(petition to lift coverage)的案件的管辖权*——针对综合性农业改革方案覆盖范围的抗议或解除覆盖通知的请求,地区主管应行使主要的管辖权。如果该解除覆盖的抗议或请求的理由是根据综合性农业改革方案规定范围享有豁免权或排除权,那么地区主管若有管辖权可自行解决;若秘书有管辖权,应将该案转交给秘书处审理。

③*关于土地使用转换以及从综合性农业改革方案土地范围中豁免或排除的土地管辖权*——管辖土地使用转换以及土地豁免或排除申请的特别法,应对推荐和批准机构的管辖权进行说明。

④*上诉管辖权*——秘书处应当对所有农业法执行案例行使上诉管辖权,也可以授权任何副秘书裁决上诉案例。

⑤*对于"闪点"(flashpoint)案件的管辖权*——根据农业改革部第13号[1997]备忘通知的标准和程序宣布为"闪点"案例的证明,不应剥夺农业改革部官员解决该案的权力。"闪点"案例的证明书仅表

明,对于上述案例的解决,将给予最大的优先权。

(4)*上诉至秘书处*——任何上诉都不应进入正式程序,除非地区主管的裁决是终局的,是根据案件的具体情况以及仅基于以下原因处理的:

①在事实认定或法律结论上存在严重错误,有可能引起上诉人严重及不可挽回的损害或伤害;

②在判决发布的过程中,胁迫、欺诈或明显的渎职和腐败。

(5)*司法审查*——如果上诉人选择直接上诉至法庭,那么管辖的程序必须由法庭规则规定,除非法院以当事人尚未用尽行政救济为由拒绝审理该上诉案件。

十一、司法审查

1. 对农业改革部判决或命令的上诉

农业改革部对任何土地纠纷或任何与1988年《综合农业改革法》和其他农业改革相关的法律的应用、实施、执行或解释相关的事宜作出的决定、命令、裁决或裁定,当事人可以在接收到这些决定的副本之日起15天内通过调审令(certiorari)向上诉法院提起上诉。

通过调审令,上诉法院只审查法律问题(即法律的应用和法律解释),不审查事实问题(即对事实或证据的检查)。农业改革部在有充足证据或有合理依据的基础上对事实作出的决定,是最终的和决定性的。诉讼各方仍可以就上诉法院作出的判决,向最高法院提起上诉。

2. 禁止作出限制令(restraining order)

针对总统农业改革委员会或其正式授权或指定的代理机构在处理《综合农业改革法》或农业改革的其他相关法律在适用、实施、执行或解释方面引起的案例、纠纷或争议,禁止法院发布限制令或临时禁止令(injunction)。其目的是避免方案实施中发生不必要的阻碍或

迟延。

3. 专门的农业法院

(1)*指定*—— 在每个省中,最高法院应至少指定一个地区初审法院的分支作为专门的农业法院。最高法院可以根据需要,在每个省指定更多的法院分支组成额外的专门农业法院,以处理农业案例。指定时,最高法院应优先考虑那些曾被指派处理农业案例的地区初审法院,或那些主审曾在已撤销的农业关系法院中担任过法官的法院。

(2)*权力和特权*——专门的农业法院具有固有的和从属于地区初审法院的权力和特权。

(3)*管辖权*——被指派到上述法院的地区初审法院的法官必须在行使各自法院一般管辖权的同时行使上述特殊管辖权。对于土地所有者要求获得公正赔偿的案件,以及按照该法案对所有的罪行进行起诉的案件,专门的农业法院享有初审管辖权和专属管辖权。

法院的规则应适用于专门农业法院受理的一切诉讼中,除非该法案进行了更改。自案件提交供裁定起 30 天内,它们应对自己专门管辖下的所有合适的案件作出裁定。

(4)*专员的任命*——法院可以主动地或经任何当事人的要求,委派一名或多名专员对争议的相关事实包括财产估价等进行检验、调查和确认,并且向法院提交一份书面报告。

4. 针对专门农业法院判决的上诉

(1)*如何上诉*——可以在收到判决通知后 15 天内针对专门农业法院的判决,向上诉法院提起审查请求,否则,该判决将被视为最终判决。对上诉法院的判决或农业改革部的任何命令、裁定或判决提出上诉的,视具体情况而定,应在收到上诉决定书之日起 15 天内(不得延长)向最高法院提交审查请求。

(2)*审查程序*——上诉法院或最高法院(视情况而定)的审查

受法院规则的规范。然而,上诉法院可以要求当事人在接到通知后15天内提交同步的协议备忘录,在此之后该案例将被视为已提交裁决。

对法院审理的任何问题作出的命令(非判决),只有在听审终止后并且案件是凭实情作出判断的,才可以提交上诉法院。

5. 法院的优先关注

菲律宾的所有法院,包括初审法院和上诉法院,应对由《综合农业改革法》的实施引起的或相关的案例给予优先关注。

在该法10年的执行限期届满之后,由该法的实施引起的或相关的待决案件应得到继续审理、审判和进行最终的裁决。

十二、其他规定

1. 特别关注的领域

作为综合性农业改革方案不可分割的一部分,在这些特别关注的领域中应遵循以下原则:

(1)*自给性捕鱼*——对于小产量渔民,包括水草农民,应保障其对水资源进行更充分的综合利用。

(2)*伐木和采矿特许经营*——根据生态平衡和保护水资源的要求,在环境与自然资源部(简称DENR)的认可下,对于适宜伐木、采矿以及放牧的地区,应向农业居民区开放,这些地区的受益人应采用再造林以及保护性的生产方法。

根据现行法律、规则和法规,当地居民和部落成员享有开发和享用森林产品的权利,但伐木特许范围内的木材除外。

(3)*人口稀少的公共农业用地*——对于该类土地,应根据有组织的方案对其进行调查、公示以及开发,作为合格的无地者的农业定居点,以保证及时而有序地对其进行发展。

①农业用地的分配应根据总统农业改革委员会制定的理想的家

庭规模农场标准进行。拓荒者和其他居民在各方面都应享有相同的待遇。

②公共领域未开垦的土地应以土地租赁的方式,对相关及符合条件的对象开放,但要受到受益人先前享有的权利的限制。发展资本密集型、传统或试验作物生产的人士,将享有优先权。

③租期的期限(总共不超过50年)应根据租用者的投资金额和生产目标按比例进行确定,应建立相关的评价和审计体系。

(4)*闲置、废弃、丧失赎取权以及被没收的土地*——对于这些土地,应进行规划并将其作为家庭用地和家庭规模的农用地分配给土地的实际占有者。如果土地面积允许,其他无地家庭也可在其上安置。

(5)*农村妇女*——保证所有合格的女性农业生产劳动力,在占有土地、农场产品分配,以及咨询或适当的决策机构中,与男性享有同等的权利和地位。

(6)*退役军人和退休人员*——根据宪法第7节第14条的规定,曾参与战争或战役的无地退伍军人及其配偶和孤儿、菲律宾武装部队(简称AFP)或菲律宾国家警察(简称PNP)的退休人员、归国人员、引渡人员以及类似的受益人,在农业用地和公共领域土地的分配中,应给予必要的考虑。

(7)*农艺专业毕业生*——没有土地的农学院毕业生,应由政府通过农业改革部给予协助,实现其获取并耕种农业用地的愿望。

2. 家庭用地的取得及分配

作为农场整体中的重要部分以及农场经营中不可分割的一个因素,农业改革受益人(简称ARB)可依照综合性农业改革方案规定的土地权转移程序获得并被分配家庭用地[第6839号共和国法案第16节,第6657号共和国法案第30节、40(4)节,第705号Letter of Instruction]。

在这种情况下,应遵循以下指导方针:

(1)家庭用地(homelot)指在农业用地中,农业改革受益人用作其永久居住地以及蔬菜种植,家禽、生猪或其他动物饲养或小型工业用地的土地总称。家庭用地最大面积不超过1000平方米。

(2)当农业改革受益人实际占用的土地属于综合性农业改革方案分配的土地时,作为家庭用地,他可被授予该地,但上述土地应不属于土地所有者的保留区域。

(3)当佃农受益人获得农场用地,但其家庭用地在土地所有者的保留区域内时,佃农受益人可把居所移到其农场用地内或双方同意指定的其他地点。在这种情况下,佃农受益人因移居所产生的费用以及其他改进设施的费用,由土地所有者负担。

(4)一般来说,农业工人受益人应在其获得的农业用地中规划家庭用地。当其现有的家庭用地在土地所有者的保留区域内时,该土地所有者可要求农业工人受益人将其居所及其他设施迁出保留区域,迁移所涉及的费用应由农业工人受益人负担。土地所有者为了自己的使用利益,可以选择不要求农业工人受益人将居所及其他设施迁出土地所有者的保留区域。在这种情况下,土地所有者应支付使用农业工人受益人的居所或其他设施的费用。

(5)一般情况下,家庭用地的价值应以转让给农业改革收益人的农业用地的价值为基础来进行计算。

如果佃农受益人的家庭用地在其获得的农业用地之外,则其价值应以其家庭用地所在地的农场价值为基础进行计算,但该农场应在综合性农业改革方案的范围内。

农场用地的取得和分配的程序(1990系列第9、10号行政令)同样适用于家庭用地的取得和分配,但可进行必要的修订,以符合上述的政策说明。

3. 资金来源

(1)*农业改革资金*——在该法案通过后的10年,执行该法案所需的起始资金应从农业改革基金(该基金根据第229号执行令第20、

21 节的规定创立,在 1987 年至 1992 年间提供约 500 亿菲律宾比索,作为综合性农业改革方案的起始资金)中支出。

(2)*追加拨款*——该法案亦规定,为了使其条例能够完全实施,政府将追加额外拨款,以补充农业改革基金。

该项拨款包括以下资金来源:

①出卖私有化信托资产所得收益;

②所有追回的资产以及由良善政府总统委员会(简称 PCGG)追回的非法资产;

③政府在境外处理资产的收益;

④菲律宾获得所有的海外官方援助赠与和特许融资的增值部分,作特殊用途的生产信用融资、基础设施和该法案规定的其他支持服务;

⑤其他未另设拨款方案的政府基金。

所有条例实施所需的拨款在条例实施期间持续有效。

(3)*补充基金*——综合性农业改革方案计划于 1998 年完成。而第 8532 号共和国法案(该法案旨在通过补充基金,从而加强综合性农业改革方案的执行力度,根据第 6657 号共和国法案第 63 节《综合农业改革法》进行修订)的颁布则延长了该方案的时效。第 8532 号共和国法案使这个方案的时效另外延长了 10 年至 2008 年,并额外提供了 500 亿菲律宾比索的资金。

(4)*海外基金支持*——面对土地分配后为农村发展提供支持服务这一挑战,农业改革部在其支持服务办公室内设立了海外支持方案办公室(简称 FAPSO),旨在为农业改革部的所有境外支持项目提供"一站式"服务。

农业改革部向农民受益人或农业改革社区提供支持服务的境外合作伙伴包括:亚洲开发银行(简称 ADB)、欧盟(简称 EU)、日本海外经济合作基金(简称 OECF - 日本)、联合国发展计划署(简称 UNDP)、世界银行(简称 WB)、加拿大国际发展署(简称 CIDA)、瑞典国际发展合作署(简称 SIDA)、国际农业发展基金(简称 FAD)、比

利时政府、日本政府、意大利政府、德意志联邦共和国和荷兰皇家政府。农业改革部将和这些机构一起,动员更多的海外合作伙伴加入到这个方案中来。

4. 私人农业用地向非农业用地的转变

下列是对私人农业用地向非农业用地转变的相关规定:

(1)*政策声明*—— 私人农业用地向非农业用地转变应遵循下列政策:

①国家应该保留主要的农业用地,从而保证粮食安全;

②国家应该保证,所有的经济部门和地区通过合理及可持续地使用每个地区特有的资源,获取最佳的发展机会,从而将农业生产力最大化,促进效率和公平,推进国家农业和渔业部门的现代化;

③应当严格规范农业用地向非农业用地的转变。仅当条件符合第 6657 号共和国法案或第 8435 号共和国法案的时候,国家才应该批准实施转变。

(2)*涉及范围*——规则应适用于下列农业用地:

①将转变为住宅用地、商业用地、工业用地、机构用地和其他非农业用地的农用地;

②将专门用于其他类型的农业活动的土地,如饲养牲畜、家禽和养鱼,转变的效果是使上述土地免受综合性农业改革方案的管辖;

③除了之前授权批准的,其他要转变成为非农业用地的土地;

④在 1988 年 6 月 15 日第 6657 号共和国法案生效之后,按照第 7160 号共和国法案第 20 节以及其他相关法规和规章,经过重新分类被归为住宅用地、商业用地、工业用地,或其他非农业用途的土地。然而,在 1988 年 6 月 15 日之前重新分类的土地,则适用于豁免手续的规定。

(3)绝对不可转变的地区——下列土地不能进行转变:

①在国家综合保护区制度(简称 NIPAS)指定的保护区域内的土地,包括苔藓森林、原始森林、河边和沼泽森林,或者由环境与自然资

源部(简称 DENR)定义的沼泽地。

②所有经农业部(简称 DA)或国家灌溉管理局划定的灌溉土地,该部分土地拥有水源灌溉稻米和其他粮食作物;缺乏灌溉水源但在政府恢复灌溉计划地区内的土地。

③在农业部或国家灌溉管理局划分下,所有拥有充足资金承诺纳入灌溉项目的灌溉土地。

④所有拥有灌溉设施的耕地。

(4)严格限制转变的地区—— 下列被列为严格限制用途转变的地区:

①没有被拥有充足资金承诺的灌溉项目所包括的可灌溉土地。

②农工耕地或种植工业原料作物的土地。该部分耕地拥有经济可行性,支持现有的农业基础设施和以农业为基础的企业。

③高地或者海拔 500 米或 500 米以上的地区,并有种植半温带高价值作物潜力的地区。

④被出具土地估价和收购通知的土地,或者在综合农业改革计划的指导下,通过自愿土地转让或直接支付计划(简称 VLT 或 DPS),在土地所有者和受益人之间达成确定协议的土地。

⑤在环境关键领域(简称 ECA)内的土地,或者涉及环境关键项目(简称 ECP)建设的土地。在这种情况下,除了要达到标准要求,转变申请还应要求有符合环保要求(简称 ECC)的证明,为此申请人必须从环境与自然资源部获取。

(5)优先发展区—— 按照 1993 系列第 124 号执行令、2000 系列第 258 号执行令和第 7916 号共和国法案,下列土地应该优先进行土地用途转变:

①贸易及工业部和农业部确定的区域农业产业化中心或区域工业中心(简称 RAICs 或 RICs)中的具体地点;

②旅游部(简称 DOT)确定的旅游开发区(简称 TDAs);

③有意参加菲律宾经济区管理局根据第 7916 号共和国法案批准的 EcoZone 项目的农业区域;

④经过相关政府机关证明转变有利于国家利益的政府拥有的耕地；

⑤经农业部核准，拟发展成农业产品加工厂的农业土地；

⑥经过国家电信委员会批准，打算建设电信设施的地点。

住房项目在土地转变中将优先得到考虑，方案将遵循 2001 系列第 45 号执行令中规定的快速跟踪（fast - tracking）计划。

（6）*在战略型农业及渔业开发区（简称 SAFDZs）内的土地*——根据第 8435 号共和国法案第 9 节的规定，战略农渔业开发区内的土地转变应受到下列条例的规范：

①所有纳入有充足资金承诺的灌溉项目的灌溉土地和可浇灌土地；位于战略农渔业开发区，表现出或拥有生产高价值作物的土地，从 1998 年 2 月 10 日到 2003 年 2 月 9 日，在 5 年内应会受到转变暂停的影响。

②在转变暂停的影响下，根据现有的法律、规则和法规，战略农渔业开发区内仅有 5% 的土地转变可获得批准。

③根据 1998 系列农业部第 6 号行政令第 9.5.2 条或第 8435 号共和国法案的实施细则的规定，在区域和国家的战略型农业及渔业开发区委员会的建议之后，经农业部和农业改革部的共同决定，总面积中最多 5% 的土地可以获得非农业用途转变。

④根据现有的关于土地用途转变的法律、法规和规则，在转变暂停期结束后，对于土地用途转变，将进行个案审批。

（7）*转变标准*——以下标准为转变申请的决定提供了指导：

①若申请转变的目标地不在第 4 节规定的那些绝对不能转变的土地之列，那么转变应被允许。

②根据第 6657 号共和国法案第 65 节的规定，当土地作为农业用地而在经济上不可行或不合适时，或其地域已被城市化，且若其作为居住地、商业或工业用地或其他非农业用地能体现更大利润价值的，那么，该土地转变应被允许。

③根据 1998 系列农业部第 6 号行政法的规定，战略型农业及渔

业开发区(简称 SAFDZ)范围的土地的转变应该考虑以下因素:

A. 根据已批准的自然框架以及土地使用计划,土地使用的转变同地市级土地面积的自然扩张相一致;

B. 被转变的正在使用中的土地,并不是该社区唯一仅有的食品生产地域;

C. 该土地用途的转变不应该影响到附近农田的灌溉;

D. 低产出的土地会被赋予更高的土地用途转变优先权;

E. 根据现行法律法规,饲养的牲畜受到土地转变负面影响的农户应获赔足够的干扰赔偿金(disturbance compensation)。

④若申请转变的农业用地是根据第 6657 号共和国法案获得的土地,那么只有在申请人是该土地的农业改革受益人并且他根据第 6657 号共和国法案第 65 节的规定完全履行了其相关责任的情况下,该土地转变才能进行。

(8)*转变申请人资格*——以下人员有资格申请土地转变:

①私有农业用地所有者或其他被土地所有者正式授权的人员;

②自发出土地所有权授予证明(简称 CLOA)之日起 5 年后的农业改革方案的受益人,该受益人已经完全完成了应负的责任,并符合相关规则;或是由受益人正式授权的人员;

③政府机构包括政府所有或控制的公司,以及将自己的土地作为祖传财产的地方政府单位(简称 LGUs)。

(9)*干扰赔偿金*:

①申请人或土地所有者或开发者应该支付受转变影响的农民、租赁人、租户、分益佃农、农业工人以及实际耕作者或占有者干扰赔偿金,可通过现金支付或以货代款或两者齐用的方式。金额及条款均由双方共同协商确定。

②根据依照第 6389 号共和国法案第 7 节的规定修订的第 3844 号共和国法案第 36 节,干扰赔偿金金额应不少于过去 5 个历年内目标土地上的平均总收成价值的 5 倍。

③通过以货代款方式支付的赔偿金由住房、家庭用地、就业或其

他利益的部分或全部或混合组成。农业改革部应批准关于支付赔偿金的任何协议条款,并监督其执行情况。遵守该条款的期限不应超过自转变申请批准之日起60天。

④如果双方不能就干扰赔偿金金额达成一致意见,或对租赁关系或其他引起争议的事项提出质疑,且该事项可使不支付干扰赔偿金变得正当化,那么,一方或双方可将争议提交给省级农业裁定处进行裁决。在案件待决期间,土地所有者或申请人不可驱逐上述农民租户、分益佃农、农业工人、实际耕作者或占有者,直到该案由上述机关作出终局裁决。

⑤申请者应当在收到款项之日起5天内,向*土地使用政策规划与实施地区中心*(简称RCLUPPI)或*土地使用政策规划与实施中心*(简称CLUPPI)提供支付干扰赔偿金的证据。

(10) 转变至家庭用地——在下列情况下,土地可转变为家庭用地:申请人拥有拟转变的土地;申请人有意于上述土地上建立居住地以供自己居住;该地不超过500平方米;该土地应由农业用地转变成纯住宅地。

5. 税费减免

(1)*土地转让*——法案规定的土地所有权交易中,无论是自然人或是法人,皆可免予支付资本收益税、注册费以及其他交易或转让中涉及的税收或费用。但是,所有不动产税的滞纳金(不附带罚金或利息)须从所有人有权获得的补偿金中扣除。

(2)*专利证书、所有权证书及文件*——所有契约登记处在登记实行综合性农业改革方案所需的专利证书、所有权证书和其他文件时,不得收取任何费用。

6. 其他政府机构和实体

(1)豁免——初级法院不得对农业改革部、农业部、环境与自然资源部以及司法部在实行该方案时发出任何强制令、禁止令、禁制令

或执行令等。

(2)*协助*——为了行使其职权,特此授权总统农业改革委员会向其他政府部门、办事处或办公室,包括政府所有或控制的企业寻求帮助和支持。

7. 私人农用土地处置权

处置私人农用土地须遵守以下规则:

(1)根据《综合农业改革法》第6657号共和国法案(见二、范围)第6节的规定,土地所有者对其保留的农业用地的销售或处置有效,只要受让人拥有的所有土地(包括将购入的土地)不超过该法案规定的土地持有面积最高额。

(2)《综合农业改革法》生效后,所有与《综合农业改革法》相悖的对农用土地的销售和处置行为无效。

(3)农用土地受让者须进行契约登记,并且在社区农业改革委员宣誓证明,其所有的土地,在上述的土地移转之后,没有超出所允许的土地面积的最高限额。农用土地转让中,如不向社区农业改革委员会提交服务证明复印件和宣誓证明,地契登记处将不予登记。

8. 租赁、抵押中的土地

(1)*银行抵押*—— 银行或其他金融机构,经法律许可对农用土地享有抵押权或担保权以保证其贷款安全及其他借款人义务的,可获得这些抵押财产(不论其位置)的所有权,但应受到现行法律关于强制转移没收资产的规定的限制,具体可参见本法案第16节(五、土地的收购与重新分配)。

以下这些土地类型可作为抵押或留置标的物,作为贷款义务及安全的保证:

①在《综合农业改革法》的规定下,农业改革部尚未获得的土地;

②土地所有者作为其保留区的土地;

③已授予或分配给受益人的土地。

(2)*租赁、管理、种植或服务合同,抵押以及其他主张*——本法案管辖范围内的租赁、管理、种植或服务等此类合同下的土地,应做以下处理:

①涉及私人土地的租赁、管理、种植或服务合同,可继续按照原来的条款和条件执行,直至合同到期,即使在合同履行期间内该土地所有权已经转移至符合条件的受益人;

②已向地契登记处登记的抵押或其他主张,将以与本法案规定的土地所有者的补偿金额相当的数额,由政府承担。

9. 被禁止的行为及疏忽

以下各种行为被禁止:

(1)任何自然人或法人(农民受益人采取集体所有制的除外),以回避第6657号共和国法案为目的,拥有或占有超出总保留限制或授予上限的农用土地;

(2)第6657号共和国法案认定不符合受益人条件而享有受益人在农业改革方案中的权利和权益却非法侵入或非法留置的人士;

(3)土地所有者为规避第6657号共和国法案,把佃农从所耕种的土地上驱逐出去,将其农用土地转为任何种类非农用土地的行为;

(4)任何个人、组织或实体蓄意阻止或妨碍农业改革方案实行的;

(5)第6657号共和国法案生效后,对市中心或市区范围外的土地进行买卖、产权转移、转让或改变土地属性的。在契约登记中对耕作的土地进行转让时登记的日期,以及向土地受让人就未登记的土地出具的纳税申报证明的日期,视具体情况而定,就第6657号共和国法案的目的而言,是具有结论性的;

(6)以规避第6657号共和国法案为目的,受益人对其作为受益人所取得的土地使用权或其他用益权进行买卖、转移或转让的。

10. 处罚

任何人明知或蓄意违反本法案规定的,将被法院酌情判处不少于一个月、不超过3年的有期徒刑或不少于1000菲律宾比索、不超过15,000菲律宾比索的罚款,或并处徒刑与罚金。

若违反本法案者属企业或组织,则其负责人将对此负刑事责任。

关于综合农业改革项目的评议

——以《综合农业改革和税收制度(以及合作社)教材》为基础

Anna Asuncion Angeles – Patajo*

1998年,第6657号共和国法案将综合农业改革项目(Comprehensive Agrarian Reform Program)制定为法律,即《综合农业改革法》(Comprehensive Agrarian Reform Law)。综合农业改革项目下的农业改革不仅涉及土地改革,还囊括旨在改革与农场生活相关的所有机构和采取必要的配套措施来帮助佃农、农业工人和自耕农(owner-cultivator)取得成功的所有项目。[1] 同样,农业改革也被定义为不仅涉及土地改革还包含旨在改善土地所有者和耕农、雇主和雇员、公司管理层和股东、合作社和成员以及其他农民组织之间关系的全部措施,这其中也包括他们与集体和政府之间的经济、社会和政治关系。[2]

在《综合农业改革和税收制度(以及合作社)教材》(2005年)一

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〔1〕 De Leon, Hector S:《综合农业改革和税收制度(以及合作社)教材》,Rex书店1994年版。

〔2〕 Barte, Recaredo P:《农业改革法》,Rex书店1991年版。

书中,Hector S. De Leon 描述了菲律宾土地改革和农业改革的概况以及对于提高国家农业生产力的迫切需求。农业由于是菲律宾的主导产业而成为国家的经济命脉,大部分工作人口受雇于农业,并且国内生产总值的很大比例来自于农业。[3] 提高农业生产力的迫切需求是建立在加速国家普遍经济发展的目标之上的。因此,长期以来,农业改革便被视为提高农业生产力的手段。

De Leon(2005 年)称,农业改革是激发农民们(farmers)提高产量的一个方法,因为,在综合农业改革项目下,农民能够耕种自己的土地并免予地主的束缚。[4] 农业改革试图创造一种旨在鼓励农民生产并且销售出更多的产品的经济环境。最终,这将作为改善农村人口生活水平并加速国家发展步伐的手段。

De Leon(2005 年)强调了在菲律宾的环境下实施农业改革的必要性,因为据估计,有 2/3 的菲律宾贫困人口居住在农村,其中的大部分人口从事农业。[5] 通过考察农业改革的相关文献,De Leon(2005 年)的论点得到了进一步的证实。根据国家土地改革理事会(National Land Reform Council)的数据,农业人口占到菲律宾全部人力资源的 65%,有 61% 的劳动力从事农业。[6]

为强调农业改革在国家发展中的重要意义,De Leon(2005 年)从经济、社会文化、宗教、道德、法律和政治等多方面讨论了农业改革。特别是,农业改革的立法必须通过合宪性的检验并须与宪法的明确规定、精神或意图相符合。

数年来,农业改革的政策发展始终关注于两大要素:(1) 菲律宾土地所有制(land tenure)的进步,特别是生产力水平和耕农的境

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〔3〕 De Leon, Hector S:《综合农业改革和税收制度(以及合作社)教材》,Rex 书店 1994 年版。

〔4〕 De Leon, Hector S:《综合农业改革和税收制度(以及合作社)教材》,Rex 书店 1994 年版。

〔5〕 De Leon, Hector S:《综合农业改革和税收制度(以及合作社)教材》,Rex 书店 1994 年版。

〔6〕 国家土地改革理事会:《菲律宾土地改革项目:国家概况》,1966 年版。

况——关于土地耕种期以及从耕地中获得的收入——的改善;(2)对于自耕农的土地分配。[7] 据 De Leon(2005 年)报告,对农业改革的立法努力的考察显示,在"耕者有其田"的项目(land-to-the-tiller program)下,国家正朝着使自耕农获得土地分配的目标加速发展。第 27 号总统令宣布将自耕农租种的稻田和玉米地转让给自耕农,从而使得他们通过法律的生效和执行成为其所耕种的稻田和玉米地的所有者。[8] 在第 27 号总统令之下,所有权流转的主要策略是将田租转换成分期付款。[9] 然而需要注意的是,尽管上述总统令对于农业改革有重大影响,但它仅适用于稻田和玉米地。总统令排除了甘蔗地、椰子地、柑橘地、鱼塘、盐层和主要用于种植可可树、咖啡树、榴莲树的土地以及第 3844 号共和国法案第 35 节或 1963 年农业土地改革法案所提及的其他耐久树种(permanent trees)用地。[10]

在第 27 号总统令之后,菲律宾颁布了第 131 号公告,公告发起了涵盖全部公有和私有农业土地在内(而不论土地占有期限和产出作物)的综合农业改革项目。[11] 它包含宪法中规定的所有土地和其他适用于农业的公有土地,并提供 500 亿菲律宾比索作为实施该项目的特殊农业改革基金,后将该笔资金用于第 6657 号共和国法案之下的综合农业改革项目。[12] 菲律宾在第 131 号公告之后发布了一系列相关行政法令。例如,第 228 号行政法令宣布向第 27 号总统令

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〔7〕 De Leon, Hector S:《综合农业改革和税收制度(以及合作社)教材》,Rex 书店 1994 年版。

〔8〕 De Leon, Hector S:《综合农业改革和税收制度(以及合作社)教材》,Rex 书店 1994 年版。

〔9〕 Medina, Jr., Jose:《自 1972 年以来的菲律宾土地改革经验:概论》,纽约:亚洲社团——东南亚发展顾问小组(SEADAG)。最初发表于在菲律宾碧瑶市 Pines Hotel 召开的关于"菲律宾土地改革"的农村发展小组研讨会上(1975 年 4 月 24 ~ 28 日)。

〔10〕 Barte, Recaredo P:《农业改革法》,Rex 书店 1991 年版。

〔11〕 De Leon, Hector S:《综合农业改革和税收制度(以及合作社)教材》,Rex 书店 1994 年版。

〔12〕 Barte, Recaredo P:《农业改革法》,Rex 书店 1991 年版。

涵盖的有资格的受益人授予完全的土地所有权,并确定了剩余尚未估价的稻田和玉米地的价值;还规定了农民受益者的付款方式和向土地所有者给予补偿的模式。第229号行政法令组建了总统农业改革理事会(Presidential Agrarian Reform Council,PARC),作为最高决策机构,由它制定当前执行综合农业改革项目各部分所必需的所有政策、规则和法规。

后来,第229号行政法令中几乎所有关于总统农业改革理事会的规定都在第6657号共和国法案中获得通过,该法案又名《综合农业改革法》,它现在是关于农业改革的主要法律。《综合农业改革法》涵盖所有农业土地,而不论其产出的农作物或水果。这一法律的颁布是为了确保向所有无土地的农民和农业工人以及受益人平等分配土地的最高目标。该法律是根据1987年菲律宾宪法[13]中所规定的一项国家政策而制定的,即促进平等的土地所有权,同时赋予农业改革受益人以权力。这是立法者通过发展该国农业改革项目以促进社会正义这一宪法性要求的尝试。出于这一目的,为实施综合农业改革项目,菲律宾根据第229号行政法令第20、21节创建了农业改革基金。项目实施的原定时间框架为10年,从1988年该法律通过之日起计算。[14]

根据《综合农业改革法》,除非法律有其他规定,土地所有者所保有的土地不应超过5公顷(除非法律另有规定),并应服从于某些限制条件,除此之外,依据法律另外向土地所有者的每位子女授予3公顷土地。[15] 根据第229号行政法令,土地所有者获得由政府制定的补偿金,金额基于所有者申报的当前公允市值,同时为防止标价过高此公允市值会受到一定控制。菲律宾土地银行(the Land Bank of Philippines)是担负向土地所有者提供补偿金这一任务的代理机构,

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〔13〕 1987年菲律宾宪法第13条第4款。

〔14〕 第6657号共和国法案第4条。

〔15〕 第6657号共和国法案第6条。

所补偿的金额需要由土地所有者和土地改革部(Department of Land Reform)(当时的农业改革部)就价格问题达成一致。[16] 如果土地所有者和土地改革部之间就公平补偿金额发生分歧,则土地所有者有权将其提交法院,以等待作出最终的判决。[17]

《综合农业改革法》之下的付款模式使得土地所有者可以选择以现金、债券或者政府公司的股票来交换在该项目之下被征收的土地。De Leon(2005 年)进一步引述了两种新的所有者偿款的方法:(1)采取政府干涉最少的分期付款方式,由农民直接向原土地所有者付款购买其土地;(2)对于已由政府从私人所有者征收或征用的土地,新的所有者先向政府付款。[18] 在菲律宾,自愿转让土地的土地所有者由受益人直接付款[19]或者通过土地银行付款,在通过土地银行付款的情况下,银行有权从受益人处以每年 6% 的利息分 30 年收还贷款。[20]

在衡量综合农业改革项目是否成功的问题上,De Leon(2005 年)提供了促成菲律宾农业结构改变的建议性措施。作者指出,农业结构的改变可以通过三种手段达到:(1)通过革命手段;(2)通过集权政体;(3)通过贯穿民主进程的渐进方式。[21] 在革命的情况下,可以通过将政治、经济和行政权力转移到一个直接从改革中受益的阶级的方式实现农业结构的改变;另一种情况,当通过集权政体实现改革时,土地改革的政策决定可以通过中止正常的法律程序而得以强制执行(如果需要的话)。第 27 号总统令和第 229 号行政法令由当

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〔16〕 De Leon, Hector S:《综合农业改革和税收制度(以及合作社)教材》,Rex 书店 1994 年版。

〔17〕 第 6657 号共和国法案第 18 条。

〔18〕 1972 年地方政府和社区发展部(Department of Local Government and Community Development)编写的《培训人和田野工作者的指导手册》。

〔19〕 第 6657 号共和国法案第 21 条。

〔20〕 第 6657 号共和国法案第 26 条。

〔21〕 De Leon, Hector S:《综合农业改革和税收制度(以及合作社)教材》,Rex 书店 1994 年版。

时的总统费迪南德·马科斯(Ferdinand Marcos)通过并变成法律,便属于这种情况。

在目前这种情况下,《综合农业改革法》或者说第6657号共和国法案已被最高法院描述为"革命性的",[22]但这并不能将其解释为是通过革命手段来制定法律。《综合农业改革法》通过之时,在当时的总统科拉松·阿基诺(Corazon Aquino)的政府管理下,新成立的民主政体制定了一项农业改革立法,以期执行《自由宪法》中的农业改革规定。[23] 毕竟,《综合农业改革法》的首要因素之一便是通过向土地所有者提供公正的补偿以换取其私有的农业土地。在这种情况下,最高法院阐明:根据法律的目的,国家征收权(eminent domain)的行使是必要的而且是符合宪法的。在小土地主联合会诉农业改革部长[24]案件中,最高法院作出裁定:《综合农业改革法》包含一种革命性的征收(土地),它并不仅仅是传统意义上的国家征收权的行使。因而,综合农业改革项目的"革命性"是指它不涉及普通的征收,而不是说农业改革法是通过革命手段或者是在革命环境下制定的。上述法律是在民主程序下通过渐进的手段制定的,它致力于实施宪法中关于农业改革和社会正义的那些规定。[25]

De Leon(2005年)指出,在民主政治的框架中实施土地改革可能会有颇多问题,因为与革命和集权政体不同,政治上民主的政体——像菲律宾今天的这种政体——涉及通过在政府行政、立法和司法部门之间的三权分立而实现的政治权力的分散。这使得它更加难以克服既得利益的反对,或者改变阻碍改革的现存制度。[26]

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〔22〕 小土地主联合会诉农业改革部长, G.R. No. 78742 (1980年7月14日)。

〔23〕 Bernas, Joaquin, G:《1987年菲律宾共和国宪法:注释》,Rex书店2003年版,第76页。

〔24〕 G.R. No. 78742(1980年7月14日).

〔25〕 De Leon, Hector S:《综合农业改革和税收制度(以及合作社)教材》,Rex书店1994年版。

〔26〕 De Leon, Hector S:《综合农业改革和税收制度(以及合作社)教材》,Rex书店1994年版。

因而 De Leon(2005 年)提出了成功实施农业改革的要求:(1)在实施农业改革的组织任务方面,需要从中央到底层的政令畅通;(2)需要向受益者提供必要的支持服务;(3)需要重新调整行政组织、程序和司法体系,据此使新授予的权利能够得以行使;(4)需要将受益人纳入项目实施过程中。

除了列举成功实施农业改革的要求之外,De Leon(2005 年)还进一步提供了农业改革项目的分类和各国农业改革项目的对比。根据作者的分类,综合农业改革项目下实施的农业改革项目的类型属于*通过分配公共领域中的土地而对农民实行土地再分配*。它还被称作定居(settlement)或殖民(colonization)。[27] 作者还进一步指出,在其研究之时,在公共领域的未开垦地中以较大成功几率安置一个单户家庭的成本,保守估计达到 10 万菲律宾比索。这还不能完全保证那些重新定居的家庭能够成功地维持稳定的农业生活。[28] 在 De Leon(2005 年)调研之时,从 1947 年到 1970 年间重新定居的 3 万户家庭中已经有 70% 重新倒退回佃农的状态。[29] 综合农业改革项目的相关文献进一步表明,项目的远大目标并未完全实现,事实上还陷入某些问题的纠缠之中。整个项目的土地区域发展目标涉及对于 806 万公顷土地的分配,其中的 429 万公顷分给了土地改革部(简称 DLR)(根据 2005 年第 456 号行政法令,现在再次更名为农业改革部),其余的 377 万公顷分配给了环境和自然资源部(Department of Environment and Natural Resources)。[30] 埃斯特拉达(Estrada)政府特地担负起继续实施综合农业改革项目的使命,甚至使该项目延长,

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〔27〕 De Leon, Hector S:《综合农业改革和税收制度(以及合作社)教材》,Rex 书店 1994 年版。

〔28〕 De Leon, Hector S:《综合农业改革和税收制度(以及合作社)教材》,Rex 书店 1994 年版。

〔29〕 Mandanas, Azucena I:《农业生产力》, Unitas,第 4 期第 47 卷,圣托马斯大学出版社 1974 年版。

〔30〕 Lim, Jr., Ernesto G. :"埃斯特拉达政府下前两年的综合农业改革项目",载《菲律宾农村地区人力资源开发合作关系》(PhilDHRRA)。

超出了原定的截止于1998年的10年期限。前总统约瑟夫·埃斯特拉达(Joseph Estrada)任职当年,综合农业改革项目的目标仅完成了58%。该项目还剩余近340万公顷的土地——其中的150万公顷分给了农业改革部进行分配,190万公顷分配给了环境和自然资源部。[31]

De Leon(2005年)在书中概述了农业改革的若干反对意见,以及在现实中这些反对意见如何对综合农业改革项目的成功实施构成挑战的实际问题。第一,作者讨论了有关农田产业碎片化(fragmentation)的问题。人们总是容易产生一种印象,即农业改革便意味着单位农田规模的急剧减少。在De Leon(2005年)调研期间,大部分单位农田都比家庭规模要小(水田为3公顷,非水田为5公顷)。土地改革的目的是将这些农田扩大为经济的家庭规模的农场,并且,在单位农田较大如土地庄园的情况下,农业改革便要求将这些土地庄园分割为家庭规模的若干农场。但需要强调的是,综合农业改革项目禁止进一步地分割家庭规模的农场或是将土地再次兼并到非耕农的手中。[32]

第二,De Leon(2005年)指出已经有人声称小型农场并不经济。家庭规模的农场至少在一开始不会多产或经济,除非以较大规模运营。然而作者提出,事实并不一定如此,特别是在劳动密集型的种植稻谷、玉米和其他作物的农场中。他进一步断言,小规模的所有权可以通过生产合作社结合起来进行大规模经营。[33]

De Leon(2005年)所探讨的针对农业改革的第三个反对意见是为什么综合农业改革项目的范围包含小型农场主(small landholdings)。

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〔31〕 Lim, Jr., Ernesto G.:"埃斯特拉达政府下前两年的综合农业改革项目",载《菲律宾农村地区人力资源开发合作关系》(PhilDHRRA)。

〔32〕 Lim, Jr., Ernesto G.:"埃斯特拉达政府下前两年的综合农业改革项目",载《菲律宾农村地区人力资源开发合作关系》(PhilDHRRA)。

〔33〕 Lim, Jr., Ernesto G.:"埃斯特拉达政府下前两年的综合农业改革项目",载《菲律宾农村地区人力资源开发合作关系》(PhilDHRRA)。

作者指出,大部分小型土地所有者都是专业人士或者是除土地收入外还拥有其他收入来源的人。在许多情况下,他们从土地中获得的收入是用于补充主要收入来源以满足其超出家庭基本需求(如食品、住房和家用品)的其他需求。综合农业改革项目声称,这些应通过其他一些措施或机制来满足,而不是来自于不断地剥削佃农。该项目坚持认为在复杂和现代化的社会中,社会服务必须负责满足社会需求,而农业改革正是政府无力提供这些急需的社会服务的回应。[34]

De Leon(2005 年)所讨论的第四个也是最后一个反对意见,便是对于以往农业改革失败的批判。过去获得土地的农民要么已将土地出售,要么就是无力偿付分配给他们的土地。事实上,过去的农业改革措施已经导致了农业生产力的下降。[35]

但 De Leon 指出,尽管过去的农业改革项目有很多都存在缺陷,但通常说来它们仍然能够改善从这些项目中获益的农民的生活。他对于以往农业改革项目失败的原因进行了总结:(1)项目进行到土地再分配便停止了,未能提供取得成功所必需的其他配套措施;(2)农民并未准备好承担分配给他们的责任,因为他们缺乏组织,并且缺乏承担这类任务所需的适当定位;(3)启动项目的政府官员在规划当中存在随意性的情况。[36]

作者强调了解这些失败原因以及从以前的农业改革措施所犯的错误中吸取教训的必要性。De Leon(2005 年)指出,农业改革应至少包含两个重要的组成部分:(1)土地分配;(2)配套措施。对于后者,De Leon(2005 年)主张,仅仅让佃农成为其耕种土地的所有者还

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〔34〕 Lim, Jr., Ernesto G. :"埃斯特拉达政府下前两年的综合农业改革项目",载《菲律宾农村地区人力资源开发合作关系》(PhilDHRRA)。

〔35〕 Lim, Jr., Ernesto G. :"埃斯特拉达政府下前两年的综合农业改革项目",载《菲律宾农村地区人力资源开发合作关系》(PhilDHRRA)。

〔36〕 Lim, Jr., Ernesto G. :"埃斯特拉达政府下前两年的综合农业改革项目",载《菲律宾农村地区人力资源开发合作关系》(PhilDHRRA)。

不够,还必须让他们成为成功的土地所有者。在适当的土地再分配和将所有权转移到土地使用者手中之后,便产生了为了新的所有者以及社会的利益而增进土地效用并使之最大化和现代化的需求。因此便有了发展某些社会机构的要求,这些社会机构能够有效执行农业改革的其他配套措施,因为农民需要获得必要的技术和知识来提高其将拥有的土地的生产力。同样,De Leon(2005 年)还提供了一份土地分配配套措施的清单:(1)信贷;(2)现代化的更好的生产办法;(3)营销设施、公平定价、基础设施;(4)合作社。[37]

《综合农业改革法》或者说第 6657 号共和国法案的制定执行了宪法中有关农业改革的规定,并尝试着——至少在纸面上——规定了 De Leon(2005 年)提出的配套措施。实际上,综合农业改革项目包含了 De Leon 所述的土地改革的两个基本组成部分:土地分配和配套措施。农业改革部的综合农业改革项目议程大体上分为三个主要目标:(1)(通过土地所有权改善实现)土地分配;(2)(通过项目受益者发展策略)提供支持性服务;(3)农业司法的实行。[38]

第 6657 号共和国法案明确规定了创建综合农业改革项目受益人的支持服务办公室,[39]并且,为了与法律规定保持一致,农业改革部还致力于通过(主要在社区组织和企业发展中协助农业改革社区)"项目受益人发展战略"确保向受益人提供支持服务。[40] 对于农业改革部所采取的和《综合农业改革法》之下规定的这些措施的全面推行都是为了增强农民在农业改革中的地位。De Leon(2005 年)强

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〔37〕 Lim, Jr., Ernesto G. :"埃斯特拉达政府下前两年的综合农业改革项目",载《菲律宾农村地区人力资源开发合作关系》(PhilDHRRA)。

〔38〕 Ponce, Jose Mari B:《农业改革的趋势和发展(ARC 和 ODA 经验)》,2003 年。凯撒汗战略评估和规划研讨会,2003 年 7 月 9 日于菲律宾安蒂波罗市 Celestial Inn Resort 召开。

〔39〕 第 6657 号共和国法案,第 35 条。

〔40〕 Ponce, Jose Mari B:《农业改革的趋势和发展(ARC 和 ODA 经验)》,2003 年。凯撒汗战略评估和规划研讨会,2003 年 7 月 9 日于菲律宾安蒂波罗市 Celestial Inn Resort 召开。

调,尽管政府在农业改革中的角色是必不可少的,但农民自身的作用甚至更为重要,因为后者既是最终目标,又是农业改革的主要执行者。[41]

〔41〕 De Leon, Hector S:《综合农业改革和税收制度(以及合作社)教材》,Rex 书店 1994 年版。

Chapter 1 Governmental Legal Aid

The Public Attorney's Office

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History

The Public Attorney's Office (PAO) has its roots in the 1950s, when reforms in the Philippine countryside were first being carried out. Land owners of vast estates or haciendas usually challenged the redistribution of land and agrarian workers asserted their rights over what is now theirs by law. It was inevitable that there were clashes between these two groups. The Agricultural Tenancy Commission was created to address these concerns. This was later renamed Tenancy Mediation Commission (TMC) and, subsequently, the Office of the Agrarian Counsel (OTAC).

Considering that agrarian concerns include issues like agrarian workers not being able to afford legal services, the OTAC in October 1972 evolved into a unit which offered legal aid and expanded to handle civil, administrative, criminal and labor cases. It was then called the Citizen's Legal Assistance Office (CLAO). Its directive was to provide legal aid to indigent persons. The Department of Justice, Department of

Labor, and the Department of Agrarian Reform entered an agreement whereby CLAO was mandated to extend legal assistance in agrarian and labor cases. CLAO was renamed into the "Public Attorney's Office" under the new Administrative Code in 1987. Its functions and powers, however, remained unchanged.

In April 2007, Republic Act No. 9406, also known as the PAO Law, was signed by President Gloria Macapagal Arroyo. PAO became an independent and autonomous office, although attached to the Department of Justice but only for policy and program coordination.

Structure

When the PAO was still know as the CLAO, it was staffed with 94 lawyers and was comprised of 10 regional and 26 district offices. The staff has now grown to 1048 lawyers who handle criminal and civil cases before 2255 courts nationwide and about 25 lawyers who work on appealed cases before the Court of Appeals and the Supreme Court. Currently, the PAO has 16 regional offices and 257 district and sub – district offices nationwide, mostly situated inside courts and other offices that deal with the administration of justice. The introduction of district offices in various regions throughout the Philippine archipelago was aimed at making the services of the PAO more accessible to indigents despite geographic fragmentation.

Mandate

The PAO has not only evolved in name but by nature as well. Its mission is to "provide indigent litigants free access to courts, judicial and quasi – judicial agencies by rendering legal assistance in consonance with the constitutional mandate that free access to courts shall not be

denied by reason of poverty".[1] Moreover, it envisions "to be a God-centered and dynamic bureaucracy that is responsive to the ever-growing legal needs of the indigents, led by highly competent, world-class development-oriented and nationalistic leaders".[2]

A person must be an indigent, i. e., without income or whose income is insufficient for the purpose of hiring a private lawyer, to avail of PAO services.

Under the Anti Violence Against Women Law (Republic Act No. 9262), the PAO is mandated to render free legal assistance to women and their children who are victims of violence. PAO is also tasked with, under the Juvenile Justice and Welfare System Act (Republic Act No. 9344), giving legal assistance to youth offenders in prison, especially those who were 15 years old or younger at the time of the alleged commission of the crime.

The PAO is also called to work in conjunction with other government agencies. For instance, the PAO coordinates with the National Labor Relations Commission (NLRC), which is a quasi-judicial body which resolves labor disputes. In order to dispense speedy justice to complaining laborers, the PAO has a sub-station at the NLRC office in Quezon City. PAO reports that 2681 clients were given legal assistance in 2007.

Projects and Programs

To fulfill its mandate, the PAO has initiated projects and programs that are not only focused on rendering free legal aid but seeks the

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[1] See "*About the Department of Justice: Attached Agencies*", available at: http://www.doj.gov.ph/agencies/pao.html, last visit time: 2007 - 12 - 20.

[2] See "*About the Department of Justice: Attached Agencies*", available at: http://www.doj.gov.ph/agencies/pao.html, last visit time: 2007 - 12 - 20.

improvement of the welfare of indigents. The following are initiatives that the PAO has conducted in 2007.

Jail Visitation and Decongestion

Most municipal and city jails in the Philippines are congested because there are many inmates who could not afford to pay for legal fees. Jails in the Philippines take in 400 times more prisoners than the official capacity.[3] As such, the PAO coordinates with the Bureau of Jail Management and Penology (BJMP in offering free legal counseling to indigent inmates to speed up the resolution of their cases. Chief Public Attorney Presida Acosta says that the PAO's 261 district offices, each headed by a district public attorney, are tasked to ensure that the jails in their jurisdiction are visited at least once a month. During these visits, free legal advice is given to determine who have served the minimum or maximum imposable penalty for the offense charged. As a result, in 2007, a total of 145 decisions releasing inmates were obtained by the PAO for criminal cases alone.

The Chief Public Attorney has also asked the mayors of the cities of Manila and Quezon to build bigger and more humane jails and the creation of livelihood programs to rehabilitate the inmates.

Manuals

To make PAO procedures more accessible, PAO published two manuals in 2007, namely the *Standard Office Procedures in Extending Legal Assistance to Women and Their Children Subjected to Violence Under Republic Act No.* 9262 *and Other Related Laws and the Standard*

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[3] *Rueda-Acosta, Presida V.*, *Legal Counseling and Healing Behind Bars*, Manila Bulletin, p. 11, November 11, 2007.

Office Procedures in Extending Legal Assistance to Children in Conflict with the Law Under Republic Act No 9344 *and Other Related Laws* Aside from being distributed in PAO offices nationwide, the manuals were also published in a national newspaper.

Training

The PAO has also been conducting seminars and trainings concerning women and children. These were initiated even before the PAO was mandated to give free legal assistance to abused women and their children or to facilitate the release of minor offenders from jail Its trainings have also branched out into related fields such as forensic science and updates on contemporary laws

Media linkages

The PAO's work in media, aside from dispensing legal advice, aims to raise awareness for its services and to educate the public. Hence, PAO lawyers have provided legal counseling through six radio stations On television, they have appeared in two of the Philippines' largest networks. On print, the PAO has an advice column in a very popular national tabloid every Monday, Wednesday, and Friday.

Challenges facing the PAO

Due to its mandate and the nature of its programs, the PAO is mostly staffed by lawyers. The legal profession is arguably one of the most lucrative in the Philippines but the PAO, like many government offices, is unable to match the pay, allowances, and benefits provided by private law firms or companies to their personnel As such, there is a high turnover rate of PAO lawyers. These personnel often resign to engage in private law practice, transfer to the judiciary, or transfer to

other government agencies with a less demanding workload, such as the National Prosecution Service.

The PAO's accomplishment report for 2007 cites the reasons behind the heavy workload. While a prosecutor is assigned to only one court, a typical PAO lawyer is assigned to two to four courts. Aside from handling criminal and civil cases, PAO lawyers must also handle a gamut of cases such as: (1) the preliminary investigation of cases before the Office of the Public Prosecutor; (2) labor cases before the National Labor Relations Commission; and (3) administrative cases before bodies like the Bureau of Customs, Insurance Commission, Department of Agrarian Reform, Professional Regulation Commission, Philippine Commission on Elections, Department of Education, People's Law Enforcement Board, etc.

The understaffing at the PAO is due to the unavailability of funds. The Philippines' economic problems in 2007 aggravated this problem, leading to the PAO's inability to get computers and typewriters which are "necessary in the immediate preparation and submission of pleadings with the courts and other judicial bodies".[4]

Concluding statement

Being the primary government agency tasked with providing legal assistance to indigents, the PAO is besieged with many cases. Its delivery of justice may also be hampered by the lack of funding and the overwhelming number of cases its staff must handle. Despite these challenges, the PAO has been well-recognized for its work in 2007. The Chief Public Attorney received the 2007 GUSI Peace Prize Award for

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[4] See "*The Public Attorney's Office: Accomplishment Report for the Year* 2007".

advocacies in social justice and humanitarian law. In addition, the PAO was named, during the annual budget hearing of government agencies, as among the top ten for 2007.

The accomplishments of the PAO highlights what it can achieve with bigger support and resources. Some reforms are also being introduced. Under the PAO Law, better retirement benefits are now given to encourage lawyers to stay. The PAO also lists, as one of its objectives for 2008, to work towards an "increase in the number of lawyers and support staff assigned in each of the Regional and District Offices for a more effective and efficient delivery of services".[5] Hopefully, with further support for the PAO and other private and non-governmental organizations which offer free legal aid, more underprivileged Filipinos will be able to have better access to justice.

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[5] See "*The Public Attorney's Office: Accomplishment Report for the Year* 2007".

The Job of Public Attorney's Office (PAO)

The PAO came into being in response to the challenge for a government agency for the advancement and protection of legal rights of the less privileged sector of our society as enshrined in the Philippine Constitution.

MISSION

In order to focus its functions, the PAO set its sight on this Mission: to provide the indigent litigants free access to courts, judicial and quasi-judicial, by rendering legal assistance. This is in consonance with the Philippine Constitution which mandates that "free access to courts shall not be denied to any person by reason of poverty (Sec. 11, Art. 3, 1987 Philippine Constitution)".

VISION

Its Vision is to be God-centered and be a dynamic organization that is responsive to the ever-growing legal needs of the indigents led by highly competent, world-class, development oriented and nationalistic leaders.

In support of its Mission and Vision, the PAD adheres to the

following objectives and thrust:

(1) To Provide the indigent clients with free legal services;

(2) To Provide the low-income and indigent sector access to counsel at the time of need; and

(3) To implement the constitutional guarantee of free access to courts, due process and equal protection of the law and rights of a person under investigation for the commission of an offense.

SERVICES AND SPECAL PROJECTS OFFERED

1. Representation of indigents in judicial and quasi-judicial cases. The following are considered indigent:

a) Those residing in Metro Manila, whose family income does not exceed P14000 a month;

b) Those residing in other cities whose family income does not exceed P13,000 a month; and

c) Those residing in all other places whose family income does not exceed P12,000 a month.

2. Rendition of non-judicial services like mediation, conciliation, counseling, administration of oaths and documentation services to meet the legal aid needs of indigent persons.

3. Conduct of legal outreach activities such as:

a) Custodial interrogation and Inquest Investigation. Lawyers are assigned to specific major police precincts to provide suspects access to counsel if they do not have a lawyer of their own choice.

b) Jail Visitation. Every District Public Attorney should ensure that jails within their territorial jurisdiction are visited at least once a month.

c) Barangay Outreach Program. The main thrust of this program is to provide a more accessible free legal representation to the poverty-stricken. Filipinos residing in barangays nationwide.

d) Media Linkage. Information dissemination campaigns in coordination with the print and broadcast media for legal counseling on the air and to improve the legal literacy of the citizenry

e) KALAHI Program of President Gloria Macapagal-Arroyo. The PAO sends Public Attorneys and staff to provide legal assistance in the depressed areas in Metro Manila and other places nationwide together with other departments/agencies of the government. This is the Arroyo Administration's main thrust in helping the poor of the country.

Legal assistance is extended by virtue of agreements entered into with other government offices, directives from the Department of Justice, and special laws The following are qualified for the services of the PAO:

1. Department of Agrarian Reform (DAR) lawyers against whom criminal and administrative complaints have been filed for acts committed in connection with the performance of their duties;

2. Farmer-beneficiaries of the Agrarian Reform Law:

a) in agrarian-related civil of criminal cases pending before the courts, and

b) in cases pending before the court or the DARAB against fellow beneficiaries where one of the parties is already represented by a lawyer from the Department of Agrarian Reform;

3. Indigent laborers in meritorious labor cases;

4. Indigent aliens;

5. Qualified overseas contract workers in all cases within the original and exclusive jurisdiction of the POEA;

6. Barangay health workers; and

7. The Department of Social Welfare and Development (DSWD) in the filing of petitions for the declaration that a child is abandoned or neglected.

Chapter 2 Law school and Legal Aid

Law Schools and Legal Aid: The Philippine Experience

By Carlos P. Medina
Executive Director, Ateneo Human Rights Center
Ateneo de Manila University School of Law

Introduction

Legal aid in Philippine law schools is increasingly being driven by the principles of alternative lawyering. In this paper, the author will attempt to give an overview of this development. The paper begins with a discussion of the political and legal context of legal aid programs in the country, and of law schools and legal aid This is followed by a description of the programs of the Ateneo Legal Services Center, the Ateneo Human Rights Center, and the concept of alternative lawyering which guides their programs. The paper ends with some comments on challenges and the need to involve and engage all stakeholders, including client-beneficiaries, in legal aid efforts.

Philippine Political and Legal Framework on Legal Aid

The political and legal framework in the Philippines is the product

of its colonial past. The country was under Spain for about 400 years and under the United States of America for close to 50 years. While the country still retains aspects of Spanish civil law, its form of government is presidential, following the doctrine of separation of powers under the Washington model. As a developing country, its constitution is strong in addressing the demand for social justice, particularly in the area of access to justice by the poor. The bill of rights provides, among others, that: "Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty." More particularly, the constitution mandates the Supreme Court to provide a system for "legal assistance to the underprivileged".

By reason of this constitutional mandate on access to justice and legal aid, congress has passed laws which give the poor greater access to courts and lawyers. The government has also established and strengthened the Public Attorney's Office all around the country. Many government agencies concerned with delivering basic services and implementing programs for poor and marginalized sectors of society have set up their own legal aid programs.

On the part of the Supreme Court, through its power to regulate the practice of law in the country and to promulgate rules and procedures in courts, it has required lawyers in certain situations to accept the representation of indigent clients when "necessary to secure the ends of justice". And significantly for law schools and legal education, it has encouraged law schools and law students to be involved in providing legal assistance to the poor. This is reflected more recently in the Supreme Court's Action Program for Judicial Reforms which recognizes the role law schools can play in ensuring access to justice of marginalized groups.

All these government efforts are complemented by various civil

society groups which have their own legal aid programs. These include church-based organizations, the national bar association, law firms, and small legal services non-government organizations which focus on providing assistance to specific sectors like women, children, indigenous peoples, refugees, farmers and workers.

Law Schools and Legal Aid

There are around 107 law schools in the Philippines. In a 2004 survey (conducted by the Ateneo Human Rights Center) where 90 law schools participated, around 28 schools or 31% have legal aid programs in place. Of this number, 23 schools or 26% reported having clinical legal education courses (Note: a clinical legal education subject is operationally defined here as any course offering which integrate an academic and theoretical course with clinical or practical applications). Many of these law schools with clinical legal education programs are located in the National Capital Region (Metropolitan Manila).

In 1986, the Supreme Court strengthened clinical legal education programs around the country by adopting the Law Student Practice Rule. The Rule allows senior law students, who are enrolled in a law school's clinical legal education program which is recognized by the Supreme Court, to appear without compensation in any civil, criminal or administrative case before any trial court, board or officer, to represent indigent clients.

The appearance of law students in courts must be under the direct supervision and control of a lawyer duly accredited by the law school clinic. In civil and criminal cases, this means that the supervising lawyer must be physically present during each hearing before a Regional Trial Court, and all court submissions must be signed by the supervising lawyer in behalf of the legal clinic. The failure of a supervising lawyer

to provide adequate supervision under the Rule may be a ground for disciplinary action against the lawyer.

However, in cases before inferior courts (i. e., lower than a Regional Trial Court), where the cases, issues and procedures are less complicated, law students may appear and sign pleadings without the presence of a supervising lawyer.

The rules on privileged communications between and attorney and his or her client apply to communications between the law student and the client. Standards of professional conduct governing lawyers also apply to the students.

As a result of the Law Student Practice Rule, since 1986 the number of clinical legal education programs in law schools has increased.

The Ateneo Law School Clinical Legal Education Program

The Ateneo de Manila University Law School is a Catholic institution of around 600 students with a declared mission of producing lawyers for others. It is one of the oldest and top law schools in the country. Its Clinical Legal Education Program is run by the Ateneo Legal Services Center (ALSC).

The ALSC aims to make the Ateneo Law School more relevant towards service to Philippine society by:

1. Expanding the opportunity of Ateneo law students to participate in the legal aid and related programs of the law school which render service to indigent clients, and to heighten student awareness of the possibilities of alternative lawyering;

2. Making justice accessible to the marginalized members of society through quality legal representation; and

3. Offering alumni lawyers a vehicle by which to pursue their

desire to provide legal assistance and be of service to the poor.

As a legal aid unit, the ALSC accepts cases based on the following criteria:

1. Legal indigency—the applicant must be financially unable to hire and pay for the services of a lawyer.

2. Instructional value—the case must contribute to the enhancement and development of case-handling skills of students.

3. Nature of the case— i. e. , whether it is a test case or impact case. The case should lead to long-term benefits beyond the particular interests of the parties involved. Cases involving human rights violations and those affecting a basic sector or community or group are preferred.

4. Venue of action—As a general rule, only cases within the National Capital Region are accepted. High impact cases outside the National Capital Region may be accepted under exceptional circumstances.

5. Merits of the case.

6. Office caseload.

7. Ethical considerations.

8. Others: security considerations; determination of applicant.

Cases are screened by students who conduct initial interviews and confer with a supervising lawyer. Once an application is accepted, the case is assigned to a supervising lawyer who is assisted by a team of students. Volunteer lawyers also provide assistance. Students participating in the program get academic credits.

The work of the ALSC is heavily influenced and guided by the work of the Ateneo Human Rights Center.

The Ateneo Human Rights Center

The Ateneo Legal Services Center (ALSC) developed out of the

programs of the Ateneo Human Rights Center (AHRC) which is also based in the law school. The two institutions work closely together, particularly since ALSC developed out of the litigation program of AHRC.

As a human rights organization, AHRC seeks to: (a) form human rights lawyers and advocates; (b) make justice accessible to victims of human rights violations; (c) monitor government compliance with human rights instruments; (d) educate the public on laws and human rights.

These objectives are sought to be achieved through the following programs: (a) Internship; (b) Legal Aid; (c) Research and Education; and (d) Law Reform and Advocacy. All the programs focus on cases and issues affecting the following sectors: children, women, migrant workers, and indigenous peoples.

The flagship program is the Internship Program. Law students who have undergone the Internship Program provide personnel resources for most of the programs and activities of AHRC. Through the Internship Program, AHRC also helps other law schools develop their own human rights centers or legal aid units.

The Legal Aid Program eventually became the basis of the Ateneo Legal Services Center. Under the present system of coordination between AHRC and ALSC, legal aid cases affecting children, women, migrant workers and indigenous peoples are supervised by lawyers of AHRC. As part of legal aid, AHRC also has a jail decongestion program.

Under the Research and Education Program, AHRC conducts research primarily in support of its legal aid cases and advocacy efforts. Education and training activities are conducted not just for marginalized groups and civil society organizations, but also for government

personnel, including the military, police, prosecutors and judges.

Concept of Legal Aid: Alternative Lawyering

The concept of legal aid and legal services which guides the work of both the ALSC and AHRC is known as "alternative lawyering" or developmental legal aid. The concept seeks to address the social reality that in the Philippines, the majority of the people are poor and powerless socially, politically and economically. The legal aid program must therefore seek to empower them.

Traditional legal aid programs, although undeniably beneficial, focus merely on providing assistance to individuals, provide temporary relief and are limited to the judicial system in redressing grievances. The procedures are not participative. Clients rely solely on the lawyer. Hence, the system tends to promote client dependency on the lawyer instead of encouraging legal self-reliance on the part of marginalized groups.

Alternative lawyering or developmental legal aid, on the other hand, is directed at social or structural problems. Clients are primarily groups or communities, rather than individuals. As it is biased towards the poor and vulnerable groups, practitioners of developmental legal aid must know them, since the aim is to empower them. Empowerment could in turn lead to their development politically, socially and economically.

In alternative lawyering, lawyers are first and foremost seekers of justice. Lawyers recognize that there are many roads to justice, not only through the courts. Justice can also be pursued in other forums and by other actors, including the clients themselves. In the handling of a case, therefore, alternative lawyers must ensure participation by clients, since they play an important role in the process of achieving justice, too.

Because there are many roads to justice, in alternative lawyering, lawyers engage in a variety of activities: paralegal training and grassroots education, law reform advocacy, socio-legal research, monitoring, alternative dispute resolution and, as a last course of action, litigation. These are the same activities which lawyers and students engage in at the Ateneo Law School through both the ALSC and AHRC.

At present, practitioners of alternative lawyering have formed a coalition called Alternative Law Groups with the aim of mainstreaming their activities in the legal profession. Many of them have entered into partnership arrangements with the legal aid programs of law schools around the country for the purpose of propagating the principles of alternative lawyering among law students and future lawyers. The relationship is mutually beneficial: the alternative law groups get additional personnel support from the law schools, while the law schools and law students benefit from the guidance and expertise provided by the alternative law groups. Ultimately, the entire legal profession will hopefully be reformed.

Addressing Challenges

The main challenge to legal aid work in law schools in the Philippines is sustainability, particularly in terms of financial and personnel resources.

At the Ateneo Law School, financial constraints are addressed through fundraising activities, grants from funders, donations and joint projects with other groups. Occasionally, income-generating cases and activities are undertaken.

On the other hand, personnel constraints are addressed by the provision of academic credits for students who participate in the activities

of both ALSC and AHRC. AHRC also has the Internship Program. Students who have undergone the Program eventually help implement other programs of AHRC. The Program has a component which seeks to replicate internship activities in selected law schools around the country.

Counterpart arrangements with client groups and organizations also help address financial and personnel constraints. As counterpart, clients help secure evidence, find witnesses, conduct research or cover expenses (e. g. , documentation and transportation). This system allows them to participate in the handling of cases.

Concluding Statements

Law schools, law students and client-beneficiaries can play important roles in addressing the continuing challenge of improving access to justice of the poor. Law schools, through legal aid work, can encourage students to pursue careers of service to vulnerable groups. If done effectively, this can lead to reforms in the legal profession and in the system of administering justice in the country. On the other hand, legal education and training can be extended to the general public so people, especially vulnerable groups, can become legally-self reliant and empowered. This will not only improve their access to justice but also ultimately contribute to their social, political and economic development.

Brief History of the AHRC and Its Internship Program

By Lovely-Ann C. Carlos
AHRC Internship Director

In 1986, the EDSA Revolution unseated a tyrannical leader and toppled a government where human rights violations were rampant. And much work had to be done in the field of human rights advocacy. It was in this context that the Ateneo Human Rights Center (AHRC) was founded in 1986. It was one of the first university-based institutions engaged in the promotion of peace, development and human rights in the Philippines.

With a grant from the Ford Foundation, the AHRC started with one program: the summer internship. It patterned its program after the internship program of the law school of Columbia University, which sends its students to different human rights groups outside the United States to provide students with exposure to human rights work and advocacy.

To date, the AHRC pursues its mandate through programs which

focus on the continuing formation of human rights advocates among lawyers, law students and grassroots leaders such as: a) legal assistance; b) research and publication; c) law and policy reform advocacy; d) education and training; e) institution building; and f) law school curriculum development.

Since its creation in 1986, the AHRC has launched new programs, many related to or derived from the internship activities. The program areas, however, are five: legal aid (now with the Ateneo Legal Services Center), Adhikan Para sa Karapatang Pambata (Children's rights), Urduja (Women's rights), the Katutubo Desk (Indigenous Peoples), and the special projects desk. The AHRC is also the secretariat of the Working Group for an ASEAN Human Rights Mechanism. Over the years, the AHRC has focused on a number of disadvantaged sectors: children, migrant workers, refugees, women, urban poor, labor, farmers, fishers, IP and asylum seekers.

The Internship Program

The Internship Program is designed to expose law students to the plight of vulnerable and marginalized sectors of society; and to provide training on human rights advocacy and alternative lawyering. It is also a preliminary program to prepare the student for more extensive legal work as an intern of the AHRC.

The AHRC and the interns have long viewed the internship as a formation program. The program is not limited to teaching, nor is it an ordinary apprenticeship or training. Instead, it is concerned with the personal growth of the interns as well as their development as human rights advocates. It is also a continuing process that to many, begins with the formal internship, but lasts through law school and even after being accepted into the Bar.

Originally, the AHRC only had the summer internship program, with two components: domestic and international. Under the domestic program, interns were sent to different human rights groups throughout the Philippines. Under the international program, interns were sent to human rights groups abroad. The foreign internship program was subsequently stopped in favor of an expanded domestic program.

The AHRC has since expanded the internship program. In addition to the summer program, the AHRC now has several sub-programs, which were designed to meet the particular needs of students and lawyers:

- Semester-break ("sembreak") immersion, a two-week program during the semester break, was created for students who could not join the 8-week summer program due to personal or family reasons;
- Replication program was intended to bring students from provincial law schools into the summer internship program and to help them set up a similar human rights program in their own school;
- Exchange program involved hosting by the AHRC of foreign human rights activists, lawyers and students to do human rights work with the Center and learn about the human rights situation in the Philippines.

The Summer Internship Program

The summer internship program (SIP) is the first and longest-running activity of the AHRC. It is the most comprehensive of all the internship programs as the other programs are only derivatives of the SIP.

The SIP has five objectives: "(1) to introduce students to the

human rights situation and advocacy, and to people committed to the promotion of human rights; (2) to learn and apply the law and basic procedures; (3) to provide the students with concrete experience of living with the basic sectors of society; (4) to assist host agencies in their programs and projects during summer; and (5) to intensify law students' awareness of the Human Rights Center and the services it offers."

The program generally runs for two months and is held during the summer break. Because the AHRC can only accommodate a few students per batch, student-applicants undergo a selection process. The AHRC looks for student-applicants who are open, sincere and willing to experience how it is to be an alternative lawyer and/or how it is to be engaged in alternative lawyering. An applicant's physical and medical background is also looked into as the program generally includes a rigorous hike up a number of mountains to visit indigenous peoples. Of course, the parents' or guardian's permission is needed since accepted applicants may spend the entire summer away from home if they get assigned to other provinces or cities.

A strong commitment to serve others is important because an accepted applicant's obligations do not end after the two-month SIP. The intern shall be expected to assist the AHRC in its activities, programs, projects and advocacies even well after they graduate from law school. The selection committee is composed of the Executive Director and Internship Director of the AHRC and the facilitator interns who were interns who have undergone the same program the year before.

The SIP has four main components: 1) Basic Orientation Seminar (BOS); 2) the Immersion; 3) the Internship proper; and 4) Evaluation & Planning.

Basic Orientation Seminar (BOS). The BOS is a four day live-in seminar where the interns are given a peek into the world of alternative lawyering. The BOS' approach is intentionally holistic and covers different sectors and issues as the interns' assignments are not known yet. The seminar includes extensive discussions on alternative lawyering, international human rights, the Philippine human rights system, the different issues of the different sectors and training in paralegal skills. The invited speakers or resource persons usually come from potential host human rights organizations.

Immersion. Since all AHRC interns go through the immersion, it is the common thread that binds all interns together. After the BOS, the interns are paired up and assigned to live with farmers, fisher folk, urban poor or tribal communities in order for them to directly experience grassroots poverty and to learn about the issues affecting vulnerable groups.

The immersion with the basic sectors lasts for one week where the interns are expected to live, eat, act and assimilate themselves into the community they are assigned to. By going out of their comfort zones and living with the communities without access to basic utilities, the interns experience firsthand how the marginalized sectors of society go about their daily lives in the midst of hardships and oppression.

With this exposure, the AHRC hopes that the interns' experience would further deepening the students' understanding of how the law works and fail to work for the very people it seeks to protect and supposedly benefit.

Internship proper. After spending an entire week immersing themselves with marginalized communities, the interns will all gather to share their stories, experiences and lessons learned; and for them to be given their work assignments with human rights organizations. During

the internship proper, the intern is sent to non-governmental organizations (NGOs) where they will be spending five to six weeks working as an intern or staff.

In the early years when the focus of human rights advocates had been abuses against people's political rights, the AHRC-SIP fielded interns to the central office and regional/field offices of the Philippine Commission on Human Rights (CHR) and non-government human rights groups. However, as human rights advocacy branched out into the development arena and as more and more NGOs have become active in development or alternative lawyering, the host organizations of the summer interns became primarily NGOs.

Then as now, the choice of a host organization has been guided by three criteria: the organization is involved in human rights or alternative/development law, it has an active program in these fields, and it operates in an area where the interns will be safe. With the current focus on host-NGOs, the criteria may be interpreted as follows:

- *The NGO must be a legal-oriented NGO.* This is because of two interrelated things. The AHRC internship can also be credited as a practicum requirement in the Ateneo de Manila School of Law (ALS), that is, students get credit. The ALS requires 240 hours of internship/practicum before graduation. If a student joins the AHRC SIP, that student will get the full credit of 240 hours. This is because the SIP is also a "service program", so that students sign up for the SIP not just for the academic credits but also for the service aspect. Moreover, the NGO must have a lawyer, who could supervise the work of the interns, which is part of the ALS internship requirement.
- *The NGO must have active programs.* This ensures that the interns will have something substantive to do when they join the

host-NGO. AHRC visits the NGO before the fielding of the interns to be sure that the interns will be involved in legal work or advocacy.

- *The NGO must be in an area where the interns would be safe.* During the early years of the internship program, security of the students was always a concern as Human Rights violations were rampant at that time and most areas where the NGOs worked in were militarized areas or those with a reported significant rebel presence. Now that the number of militarized areas has dwindled significantly, coupled with the fact that the program has expanded beyond civil and political rights into exposure to the other human rights advocacies, the interns now get fielded to NGOs where they are assured to be safe.

Since the AHRC is a member of the Alternative Law Groups (ALG), a coalition of human rights organizations with different advocacies, most of the AHRC interns are sent to have their internship with ALG member organizations. Working for their respective NGOs provides interns with practical training and exposure to human rights advocacy where the interns get to actually handle cases and learn more about the advocacies of the organization. The interns will be able to experience the work and how it is to be engaged in alternative lawyering.

With the ALG network, the AHRC has been able to send interns all over the country to engage in alternative lawyering work. An assignment to an organization means a number of things. It means working on current projects of the NGO, organizing data bases or client files, conducting interviews and case research, running paralegal training, preparing pleadings, and visiting partner "communities". The community may be a jail, a factory with labor problems, a section of

the city with street children, shelters, and the like. Some of the advocacies of the NGOs where the AHRC interns are sent to cover: international human rights, the environment, migrant workers, women, children, the labor sector, jail decongestion, peasants, fisher folk, indigenous peoples, persons living with HIV-AIDS, local government, urban poor and asylum seekers.

Evaluation, Planning and RnR. After five to six weeks with their NGOs, the interns all come back together for a 4-day activity where the participants reflect on their human rights experience, plan their activities for the coming year and unwind after a long summer.

The Semestral Break Internship Program

The Semestral Break Internship Program (SBIP) is very similar to the Summer Internship Program as they have exactly the same BOS, Immersion and Evaluation components. The only difference is that the SBIP does not have the "internship proper" part of the SIP, where the student is sent to work with human rights organizations.

The SBIP generally runs for only two weeks and is held during the semestral break which is usually during the months of October or November. Like in the SIP, the AHRC can only accommodate a few students per batch, thus student-applicants likewise undergo a selection process. Because the SBIP is significantly shorter than the SIP, the student-applicants are screened well in order to weed out students who only wish to join the organization because of the benefits and the prestige.

The SBIP was created in order to cater to students who are dedicated and willing to join and work in the AHRC, but are unable to join the summer internship because of parental or time restrictions.

The Replication Program

Replication Program. The internship program was originally designed for students of the Ateneo de Manila School of Law. But in 1991, the AHRC began inviting selected law schools to send one or two students (replicate interns) to the AHRC's summer internship program. The replication program, as this new endeavor was called, was inspired by the positive feedback from SIP interns who thought that law students from other law schools should be able to have the same exposure through the replication of the program in other schools. It was motivated by the desire to help good law schools to produce lawyers who are aware of/ committed to do alternative lawyering.

Because the internship program in alternative lawyering is an investment, the AHRC had to work with law schools that have the capacity to produce lawyers. Thus, in choosing which law school to invite, the AHRC selects law schools with a top - 10 bar performance ranking, making sure that the Luzon, Visayas, and Mindanao regions are represented. Since the replication program expects the law school to eventually set up a similar internship program, schools that have resisted or refused to set up similar programs have been replaced by others more willing.

Invitations to the AHRC-SIP were coursed through the dean of the law schools. By involving the dean, AHRC sought to build the commitment of the law school to establish an institutional human rights center or program, not just a law students' student organization. AHRC took on the task of teaching the replicate interns how to set up, run and sustain their own program in their respective schools. In return, AHRC expected the interns to help set up a similar center and internship program in their school.

As promised, during their internship, the replicate interns were exposed to the AHRC programs and how the Center is run. Upon their return to their respective schools, quite a number had been successful in securing the approval—and subsequent financial support—of their school or college deans. Some 16 years later, the replication program is considered by many as a great accomplishment of the AHRC's internship program.

Because graduates from the Ateneo de Manila School of Law eventually find themselves in positions of influence whether in the government's three branches, the academe, in civil society or in business. More often than not, these law students have limited exposure on the marginalized sectors of society as most of the students come from affluent families. It is important for the students to understand the constituents they would eventually serve, protect or work with. And this is what the internship program seeks to address.

Chapter 3 Non-governmental Lawyering

Private and Non-governmental Legal Aid Programs in the Philippines

By GILBERT V. SEMBRANO*

I. Introduction

The Philippines is one of the first democratic republics in Southeast Asia. It is an archipelago consisting of more than 7100 islands and populated by approximately 80 million people. The majority of its people is poor living below $1USD a day. Most live in the rural areas and are engaged in agriculture and fishing. Just like the rural folks in China, the legal services needs of the rural poor in the Philippines demand closer attention and require more resources. In addition to the common woes that beset the Philippine legal aid system, their remoteness from the center of power renders accessing the justice system

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doubly difficult making them victims of violations of human rights.

Ⅱ. Legal Aid and Access to Justice of the Poor

The 1987 Constitution of the Republic of the Philippines recognizes that poverty is one of the primary problems that plague the country. It further recognizes that poverty could be a hindrance to access to justice and legal empowerment of the poor. Thus, it is a state policy that no person shall be denied legal representation on grounds of poverty. This is reinforced by paragraph 5, Article Ⅷ of the same Constitution that provides that the Supreme Court shall:

"*...promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged.*"[1]

Pursuant to this, the Code of Professional Responsibility[2] of the legal profession mandates that a lawyer shall neither decline an appointment as counsel *de officio*[3] nor a request from the Integrated Bar of the Philippines or any of its chapters for rendition of free legal aid.

There are also a number of factors that hinder the access to justice of the poor in the country, namely, prohibitive cost of litigation (e.g., expensive lawyers' fees, filing fees, etc.), slow movement/disposition of cases, corruption, overburdened public legal aid system compounded by lack of adequate government funding to it, lack of private or non-government (NGO) legal aid provider, as well as the lack of

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[1] *Id.*, *emphasis supplied.*

[2] Rules 14.02 & 14.03.

[3] A counsel *de officio refers to a pro bono* counsel usually appointed by the court or quasi-judicial agencies of the government.

government support to these organizations, and the litigious nature of the Filipino people. It is no wonder therefore, that the demand for free legal assistance and representation is so huge that the legal aid system in the country can hardly cope.

Ⅲ. Legal Aid Providers

There are a number of legal aid providers in the Philippines. They can be classified into government-provided, law-mandated legal aid, and private/non-governmental organization (NGO) free legal assistance. Needless to state, the common denominator is that, a prospective client has to be an indigent client that is, the client has to be so poor that he/she cannot afford to obtain the services of counsel on his/her own. The definition of who an "indigent" is slightly varies per legal aid provider. The venue of action, the merit of the case, the resources available, and the nature of the case are additional factors that need to be considered in accepting the application for free legal assistance and representation.

A. Public or government legal aid

The Public Attorneys Office (PAO) is the government agency responsible for providing free legal assistance to indigent litigants not only in criminal cases but also in some administrative cases. However, as previously stated, the demand for free legal aid is so overwhelming. In a number of instances, the quality of legal representation has been sacrificed due to the sheer volume of cases that the over-burdened Public Attorneys handle. It does not help that they receive meager salary notwithstanding their workload.

There are a number of government agencies that provide free legal assistance and representation so long as the cases fall within the ambit of

their competence. For instance, in agrarian reform cases, the Department of Agrarian Reform (DAR) provides free legal support to indigent farmers. In cases of human rights violations, the Commission on Human Rights extends free legal aid to victims and their families in exceptional circumstances.

As a rule, these government institutions use the traditional approach to legal aid as oppose to developmental legal aid. These two concepts will be compared and contrasted below.

B. Law-mandated institution

The Integrated Bar of the Philippines (IBP) is mandated by the law to carry out a legal aid program. The IBP is association of lawyers in the country. In order to maintain in good professional standing, the law requires every lawyer to be a member of said organization. The IBP has a National Legal Aid Office. In addition, the whole country is divided into several Chapters. Each Chapter has its own Legal Aid Program. The primary criteria are the level of income and venue of the case (where the case is going to be filed or where it is pending). Just like government institutions' legal aid programs the approach is generally traditional and not developmental.

C. Private and NGO legal aid providers

As stated previously, the government or public legal aid cannot possibly satisfy the demand for free legal assistance and representation. Thus, those who need them look to other entities to respond to their legal needs. There are different private and non-government organizations that provide legal aid, namely: (a) private law firms' legal aid program; (b) law school-based legal aid program; and (c) non-government organizations. The latter can be further classified

into NGOs that practice traditional legal aid and alternative law groups that espouse developmental legal aid.

a. Private law firms

Some law firms, particularly large and medium-sized ones, offer pro bono or free legal assistance to indigent clients. However, a number of them provide legal aid mostly to relatives of their employees including relatives of their lawyers. They also practice traditional legal aid as oppose to developmental legal aid. These two concepts will be explained later in this article.

b. Law school-based legal aid

A number of law schools have applied to the Supreme Court of the Philippines for accreditation as legal aid providers. The Supreme Court allows law students who have finished three years of law schooling to represent indigent clients before intermediate trial courts and quasi-judicial bodies provided that they are physically supervised in court by a licensed lawyer and that they appear under an accredited Clinical Legal Education Program without compensation.[4] This is an exception to the general and strict rule that only licensed lawyers are allowed to practice law in the country. It must be noted though that before Municipal Trial Courts, Municipal Circuit Trial Courts, and Metropolitan Trial Courts, which are the lowest level courts, a litigant may be represented by his/her agent or by what is known as the "friend of the litigant"[5] who may or may not be a lawyer. Non-lawyers are allowed to appear before these courts because the law assumes that the types of cases pending before them are rather simple ones that can be competently handled even

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[4] Rule 138-A, The Law Student Practice Rule, The Revised Rules of Court of the Philippines.

[5] Sec. 34, Rule 138, The Revised Rules of Court of the Philippines; See also Bar Matter No. 730, June 10, 1997.

by those not trained in the rigors of the law. Therefore, law students maybe allowed to appear before these courts.

The Law Student Practice Rule also recognizes that there is a huge demand for free legal aid and allowing law students to have limited practice will help respond to this great demand. There are law school-based legal aid programs that apply developmental legal aid principles especially those that enter into cooperative efforts with NGOs that practice alternative lawyering within the same geographical areas. This will be further elaborated under the topic on *paralegalism.* However, the majority of the law school programs still apply the traditional mode of providing legal assistance.

c. Non-governmental Organization (NGOs): Traditional versus Developmental Legal Aid

There are generally two categories of NGOs that offer *pro bono* or free legal assistance. On the one hand, there are those that practice the dole-out type of legal aid where clients inevitably become dependent on lawyers. On the other hand, there are NGOs that seek to empower their clients. The former is commonly known as traditional lawyering while the latter is known as alternative lawyering or developmental lawyering.

IV. Developmental Legal Aid (DLA) versus Traditional Legal Aid[6]

Developmental legal aid is based on the principles of developmental lawyering or often called alternative lawyering. It is also often referred to as developmental legal advocacy as it is a holistic approach in looking

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[6] Johannes Ignacio, *Alternative Law: The Lawyer As Achiever*, a paper presented at the "Forum on Developmental Law", University of the Philippines College of law, June 16, 1995; See also Jefferson Plantilla, *Philippine Legal Aid System: Facing The Challenge.*

at a legal issue. It is has been described as:

"*...the phenomenon of lawyers taking up the cause of the poor and the oppressed, and finding common cause with them.*"[7]

It can also be characterized as lawyering for the public interest as known in the West. However, developmental legal advocacy goes beyond just public interest litigation.

Holistic

The traditional approach to legal aid looks at a legal problem by addressing the legal issue at hand by and of itself that is, it is viewed in isolation. Whereas developmental legal aid looks at a legal problem from a holistic perspective especially the underlying systemic causes. For example, it views the crime of trafficking in persons not just as a simple transgression of the law but also as having a behavioral and social dimension and as a product of systemic poverty.

Client-centered, participatory and empowering

Traditional lawyering and legal aid is lawyer-centered, that is, the counsel takes on the case and generally tells the client what is best for him/her. Thus, it is directive and instructive rather than participatory. This promotes lawyer-dependency and therefore makes the lawyer an ubiquitous indispensable entity in the whole legal proceeding. The lawyer conveys to the client that he/she will take care of the case. The latter's participation is minimal and therefore often leaving him/her uninformed about much of the legal processes at the end of the engagement.

Alternative or developmental lawyering and legal aid however, is

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[7] *Ignacio, at* 1.

client-centered. It is participatory. The client is viewed as a partner. The lawyer largely acts as a facilitator who explains to the client-partner the options and their consequences. However, the final decision rests in the client-partner. Thus, the case and every action taken are a product of partnership. The lawyer and the client share the burden of finding the appropriate solution to the problem before them. The client-partner becomes well-informed about the entire legal process and the law is demystified.

Creative engagement

In terms of strategy and methodology, the traditional approach focuses on litigation. However, the alternative approach uses litigation and other creative but appropriate strategies such as advocacy, training and education, policy and law reform, research, alternative dispute resolution (ADR) and meta-legal remedies. All these strategies are done in partnership with the stakeholders. De-emphasizing the "litigation alone" as an approach to solving legal problems stresses that there are many roads to achieving justice. Alternative lawyers use the law but they try not to be constrained by the limitations of and in the law. Since a legal problem is strictly not just a legal problem but has social and other dimensions, then, the approach to solving it should not be limited by terms of the law but without violating the law itself.

Issue oriented and sector oriented

The traditional approach to lawyering and legal aid is oriented towards responding to individual legal needs. However, since developmental legal advocates (DLA) view a legal problem from a holistic perspective that is, it is not just a problem relating to the law but has many dimensions and oftentimes tied to structural and systemic

societal problems, then and expectedly, DLA is issue oriented and sector oriented. The entire community or sector is involved in trying to address the legal problem that faces its members. This does not mean however, that the principles of DLA cannot be adapted and directed to individual legal needs.

For example, if the problem is about dispute in agrarian land claims, the partner community is educated and trained not only on the laws that relate to agrarian reform or land but all related laws and procedure on the matter. Oftentimes a number of community leaders are trained to become trainers themselves and to become " first aid lawyers". They are commonly referred to as "paralegals" and play very important roles especially in remote rural areas where physical access to lawyers and the courts is difficult. Somehow this helps alleviate the problem of lack of available lawyers who render free legal services. A somewhat similar program is being developed by Wuhan Law School in China through the Public Interest Law and Development Institute (PIDLI) a very young institution that has accomplished so much in so little a time.

Paralegalism

As mentioned in the preceding section, paralegals are an essential component of the practice of developmental lawyering and legal aid. They are not lawyers but are trained in the rigors of the law. They are usually your common fisherfolk or farmer or laborer or even law students (in cases where law school exists in the community). Being based in the community, they serve as the common people's important and immediate access points to the law and the justice system. Their importance to the sector and the community cannot be overemphasized most especially in far flung rural areas.

Usually an NGO that practices alternative lawyering works with the members of the community or sector on specific issues (e. g. , agrarian reform, fishery rights, environment etc.). They choose from among the members of the community/sector a number of volunteers to be trained as paralegals. They undergo a series of training in relevant laws starting from basic concepts of human rights, constitutional law and down to the particularly law most relevant to them such as the Comprehensive Agrarian Reform Law for farmers, or the Fisheries Act for fisherfolks, or the Labor Code for laborers. They are also trained on procedures in law (e. g. , criminal procedure, civil procedure, and administrative procedure.). They are exposed to advocacy and investigation skills as well. In the end a paralegal performs several functions, namely: (1) as "legal counsel" or advocate to represent a member of the sector or community before administrative bodies if and when allowed by the rules of said agencies; (2) as "first aid lawyers" while waiting for the lawyer to arrive; (3) as community educator to empower their members with knowledge that will allow them to take control of their lives; (4) as community organizers; (5)[8] as advocates for policy and law reform within their respective municipalities or localities (e. g. , for passage of a local ordinance to stop illegal logging or allocation of local budget for environmental protection etc.); and (6) as fact finding investigators.

There are alternative law groups or legal service organizations that partner with law schools that exist in their localities. They train law student-volunteers about the principles of DLA and immerse them into the community life until they eventually become the "first aid lawyers"

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[8] Michael Vincent Gaddi & Joan Mosatalla (eds.), PARALEGAL MANUAL ON VIOLENCE AGAINST WOMEN (2nd Ed.) (May 2005), at 20.

of the community or sector. These law students run their respective schools' legal aid programs using the DLA principles. A lot of times, the cases that they handle are tied-in with the advocacies of their partner NGOs. And since they cannot appear in court without the physical presence of a member of the Philippine bar, the lawyers from the NGOs act as their supervisors. In some law schools, the Directors of their legal aid offices are either former lawyers from the alternative law groups or are products of the internship programs of the law school conducted in cooperation with the alternative legal NGO.

As can be gleaned from the foregoing discussions, the paralegal envisioned and formed in the practice of alternative lawyering is so different from the Western understanding of the role of a paralegal in the justice system. The developmental legal concept of a paralegal is much broader and in fact gives it a role which is of equal importance as lawyers.

V. Case in point

There are a number of legal service non-governmental organizations in the Philippines that practice alternative or developmental lawyering. However, there is so far only one umbrella organization of legal service NGOs in the Philippines that exists. It is called the Alternative Law Groups, Inc. (ALG). It is a formal network of nineteen NGOs that practice developmental legal advocacy or alternative lawyering. They are spread all over the country. The sectors that they service vary. A good number of them focus on children's rights, farmers or peasant groups and indigenous peoples. There are those who focus on women's issues. There are a few who cater to migrant workers. The labor sector, fisher folks, the environment, and persons living with HIV-AIDS, are among the other sectors that they service. A number of them though work with

more than one sector. For instance the Ateneo Human Rights Center, a university-based ALG, carries issues affecting women, children, migrant workers and indigenous peoples. Sentrong Alternatibong Lingap Panligal (SALIGAN) has a women's unit, a peasant unit, and a labor unit.

This is not to say that all legal service NGOs that practice alternative lawyering are members of ALG, Inc. Indeed, quite a number of them are not official members of the umbrella organization but are part of the different networks that cater to their specific sectors or advocacies.

From the foregoing presentations, it is quite obvious that one cannot talk of developmental legal aid apart from developmental or alternative lawyering. They are inseparable so much so that this article almost always interchangeably uses them as one referring to the other. The bottomline of alternative lawyering and developmental legal aid is the empowerment of the client. Alternative law practitioners use the law as a tool to empower their clients-partners without, however, being restricted by limitations inherent in laws. Developmental legal aid practitioners harness the strength of existing laws and work for the reform of their loopholes or unjust provisions.

The advantage of alternative law practice lies in the recognition that litigation is just one of the many roads to justice. The ends of justice may be equally served and achieved through other creative use and engagement of the law and the practice of law.

This article gave an overview of the legal aid system in the Philippines focusing on the private and NGO-provided free legal assistance. The demand for free legal aid is just so overwhelming. Indeed it's important to improve on the public legal aid system and put in more resources. However, it is important also to consider other

alternatives that not only help to address the demand side but are empowering, as well. The role of non-lawyers such as community-paralegals and the education of clients are thus important matters that need to be taken into consideration in coming up with a national strategy to improve the country's legal aid system.

Helping the Poor through Alternative Lawyering

By Carlos P. Medina, Jr.

Introduction

The legal profession is a noble one because it seeks to serve the ends of justice. The lawyer therefore plays an important role in society. But how is the lawyer to play such a role? The answer is determined by the environment within which the lawyer finds himself or herself. This brief article looks at traditional legal aid and compares it with a different concept or mode of providing legal services known as " alternative lawyering" in response to the environment of poverty and deprivation within which the lawyer in a developing country is situated. The paper concludes with a call for alternative lawyering to become the primary mode of providing legal services in developing countries.

Poverty as the Context of Lawyering

The work of a lawyer is defined by his or her environment. Around the world, and in the Asian region in particular, this environment is

characterized by economic progress on one hand, and poverty and deprivation on the other. It is also marked by conflict in many levels of society and problems in governance. These have brought suffering to many in society, most particularly the poor, and have increased the poor's vulnerability and marginalization.

Globalization is affecting people everywhere. This is particularly the case in the Asian region where many countries are developing. In the midst of the globalization phenomenon, the gap between the rich and the poor is widening and many people are mired in poverty and underdevelopment. While economic progress has brought benefits to a large number of people, it has also led to many more getting poor and marginalized. Many remain illiterate or lack basic education. Many suffer from hunger, malnutrition and health problems. They do not enjoy adequate food, clothing and shelter. They are unemployed or, if employed, have low wages. It is said that at least 1.3 billion people in this world struggle to live on less than $1 a day. These people are not able to provide for their basic needs. They barely survive.

In areas where there is conflict, it is the poor that suffer most. Conflict causes death, displacement, and untold suffering to people. When people get displaced because of conflict and get separated not only from their loved ones but also from their ordinary workplace and livelihood, it is the poor among them who are not easily able to cope with the situation for lack of resources.

The poor are also hardest hit when there are problems in governance. Corruption in government, for instance, results in the misallocation of scarce government resources or the denial of access to government services. The impact of corruption is felt most by the poor who do not have the connections or the resources to deal with the corrupt practices of those in positions of power and influence in government.

The constant state of deprivation and suffering of the poor make them vulnerable. They are easily discriminated against and marginalized in society, and they often feel powerless and hopeless in the face of such discrimination and injustice.

Their situation is worsened when justice itself becomes inaccessible. When an injustice strikes a poor individual and he has to go to court, he or she will have to think hard whether or not to pursue remedies in court, particularly if the other party is a powerful or influential person or organization. A lawyer may not be easily available in the immediate area. Even if lawyers are available, getting one will not be easy because it will entail large expenses, and good lawyers are usually more expensive. If he or she is able to find a lawyer who could provide assistance in court, the case could take years during which his or her work and finances will suffer. Money will have to be spent not only for the lawyer but also for the trips of witnesses to court. Moreover, having the law on the side of the poor does not guarantee a favorable ruling if the justice system is prone to corruption. Because of these difficulties, many among the poor would rather bear an injustice than go to court to seek justice.

Traditional Legal Aid as a Response to Poverty

What is the role of the lawyer in a situation where the majority of the people are poor and are suffering from various forms of discrimination, marginalization and injustice in society? By his or her profession, a lawyer is sworn to help those who seek justice. Hence, an immediate and reasonable response would be for the lawyer to provide free legal assistance to the poor.

Free legal aid is an important and necessary service to the poor. With free legal aid, the poor are able to defend themselves in court or

seek justice against those who violate their rights. These services are often offered by government agencies and non-government institutions like bar associations, law schools, or private legal groups.

In a typical free legal aid case, a poor person in need of assistance will have to approach an institution which offers the service and apply for it. He or she will have to show indigence to qualify for the service. The case will then be evaluated. If it is accepted by the legal aid institution, the case will be assigned to a lawyer and from that time on the poor person will have to rely on the designated lawyer for the defense or prosecution of the case.

When the lawyer goes to court for the hearings, the poor client will most likely accompany the lawyer to court. In court, the poor client will normally find it difficult to understand and follow the proceedings. He or she will have to simply trust the good judgment and expertise of the lawyer and completely depend on the lawyer for information and advice concerning the case.

On the other hand, the lawyer may or may not fully explain to the client what is happening to the case, and the laws and procedures which are applicable to the case. Oftentimes, the explanations will be superficial and insufficient to allow the poor client to fully participate in decisions concerning the litigation of the case. In fact, many legal aid lawyers would rather have their clients leave them alone to do the work and not to "interfere" in the case.

This relationship between the lawyer and the poor client in a typical legal aid case is not good for the poor client. It makes the poor client completely dependent on the lawyer handling the case. If the same situation of injustice arises in the future, the client will not necessarily know what to do with it despite the experience of the earlier case due to his or her lack of knowledge of applicable laws and procedures and his

or her lack of participation in the defense or prosecution of the earlier case in court. This unfortunate situation calls for a different kind of legal aid to the poor.

Alternative Lawyering: A Different Concept of Legal Aid

A different concept of legal aid is necessary for the lawyer to adequately respond to the situation of the poor in developing countries. This kind of legal aid must address the reality that in developing countries the majority of the people are poor and powerless socially, politically and economically. Hence, legal aid must seek to empower them.

Existing or traditional legal aid programs, however, do not sufficiently address this reality. They are focused mainly on providing legal aid to individuals, and not to groups of individuals or to communities. They provide temporary relief because they do not seek to address the root causes of injustice to the poor, only their symptoms. And they are limited mainly to seeking remedies within the judicial system.

In the traditional legal aid framework, the lawyer plays the primary role, while the client is a passive observer of the legal proceedings. Such form of legal aid does not ordinarily allow the poor client to participate in the defense or prosecution of the case. As a result, instead of promoting legal self-reliance, what is promoted is client dependency on the lawyer. Instead of empowering the poor, this mode of providing legal aid retards their development as human persons and as useful members of society.

The new concept of providing legal assistance to the poor is known as "alternative lawyering" or "developmental legal aid". It is "alternative" and "developmental" because it is directed at addressing

social or structural problems. The client beneficiaries are primarily groups or communities, and not just individuals, since social justice, and not merely individual justice, is the goal.

The process is participative, since the poor help the lawyer in the defense or prosecution of their cases. It is not just lawyering **for** the poor. It is lawyering **with** the poor. This is made possible because the process ensures that the poor learn the applicable laws and procedures and develop the necessary legal skills. In this kind of legal aid process, the leaders of the poor will know what to do when a violation of their rights is repeated and a lawyer is not immediately available. They will be like "first aid lawyers".

In alternative lawyering, therefore, the law is de-mystified. It is made more understandable and accessible to the poor. The poor come to realize that the law is intended to promote and protect the rights of everyone, and not just the rich and the powerful. They can therefore also use the law as an instrument to serve their goals of achieving justice. This change in their thinking about the law will inevitably lead to their empowerment. Their empowerment could in turn enhance their development politically, socially and economically.

In alternative lawyering, lawyers are considered first and foremost as seekers of justice. In this regard, while the law is often equated with promoting justice, there are laws which do not necessarily bring justice. Instead, they cause injustice, particularly to the poor and marginalized sectors of society. These are those laws which discriminate against the poor. In such situations, the lawyer must strive to change the law.

More importantly, in alternative lawyering, the goal of justice is considered as achievable through many ways. The court is one important way, but certainly not the only one. Justice can also be reached by other means like law reform, media publicity, lobbying, legitimate protest

actions, and consensus-building. Because there are many roads to justice, there are also many actors and forums. The lawyer may know best when the forum is the courtroom, but the poor clients can play significant roles in the other means of pursuing justice. They can, for instance, take the lead role in publicizing their plight through media. In fact, in alternative lawyering, there is no specific preference for the courtroom as the main forum for getting a remedy for grievances, since in many developing countries, the justice system is characterized by delay and meddling by powerful interests.

In view of the many roads to justice and the many actors in the justice-seeking process, alternative lawyers, together with their poor clients, therefore engage in a variety of activities aside from courtroom litigation. These include law reform advocacy, socio-legal research, monitoring of the justice situation of various sectors of society, alternative modes of dispute resolution, networking and coalition-building, public legal education, and the training and formation of grassroots paralegals or "first aid lawyers".

The target beneficiaries of alternative lawyering are as varied as there are marginalized sectors and vulnerable groups in society. These include workers, farmers, fisherfolk, children, women, indigenous peoples, migrant workers, urban poor, detention prisoners, refugees, and others. The issues of concern involve human rights violations, particularly social, economic and cultural rights, the environment, and many others which affect the poor in a negative way.

Clearly, this type of lawyering is alternative also because the issues of concern are not popular fields of legal practice, the strategies employed are not characteristic of mainstream lawyering, and the clientele are not the normal clients of traditional lawyers.

Alternative Lawyering: the Wave of the Future

Alternative lawyering, as a new and different mode of lawyering, seeks to bring social justice to the poor and in the process empower them. The law is often perceived by many among the poor in society as an instrument useful only to the rich and the powerful, and often employed against the poor and the vulnerable. The poor have a certain fear of the law. For many of them, the law is like a spider web where only the poor get caught. Alternative law seeks to bridge this gap, demystify the law and bring it closer to the people, particularly the poor. It aims to change the perception of the poor about the law (i. e., that law is an instrument which can also be used by the poor for their own development). Since it is the poor which constitute the great majority of the people in developing countries, and since the goal of alternative lawyering is to bring them justice in a way that empowers them, then alternative lawyering should ultimately be made the primary mode of lawyering in developing countries. In this sight, alternative lawyering is therefore the wave of the future.

Lawyering with the Poor

By Marlon J. Manuel*

To fully understand and appreciate the nature and work of the Alternative Law Groups (ALG) as a coalition of legal resource non-governmental organizations, it is essential to start with the concept of "alternative lawyering". But this is the same as answering a difficult question by attempting to explain a more complex problem. Attempting to explain alternative lawyering using theoretical concepts is like teaching swimming lessons out of water. Clarifying some concepts may be helpful, however, to dispel some misconceptions, to ease doubts and, more importantly, to encourage immersion.

This is an attempt to respond to some basic questions about alternative lawyering. The objective is not really to teach swimming, but to encourage dipping into the water.

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Why is it "lawyering"?

Alternative lawyering is "lawyering" because of a number of reasons. A few can be cited. First, it employs legal knowledge and legal skills. Second, it works its way through the legal system and through legal processes. Third, it employs the law as a tool.

Why is it "alternative"?

It is "alternative" in many ways. It is alternative because it works on issues that are not the common concerns of typical lawyering. In fact, the issues of concerns are not popular fields of legal practice. Related to this, there is also a different group of clientele (Again, the not so popular type). It is also alternative in the sense that it employs creative strategies that are not characteristic of ordinary law practice. The "alternative" nature of alternative lawyering can also be seen from its critical view of the legal system itself and of the legal profession. It is part of the system, it works within the system, and, yet, it seeks to change the system. But before the discussion goes to more profound things, other "alternative" aspects can be identified. Those who practice alternative lawyering tend to live an alternative lifestyle. Partly because they identify with their clients, and partly because they are forced to do so because of their "alternative" compensation scheme.

Is it legal aid?

The answer is yes and no. It is legal aid because it involves the provision of legal services to those who need such services. It is not legal aid, however, because it is not simply concerned with the provision of legal services to those who are needy. The provision of legal services is only part of a bigger strategy. In fact, one major

component of such strategy is to minimize the need for "legal aid" from lawyers.

Is it public interest lawyering?

Again, the answer should be yes and no. Yes, because alternative lawyering involves working for the public interest. No, because public interest lawyering usually focuses on litigation as a major strategy. Alternative lawyering has no such preference for litigation. Furthermore, while alternative lawyering works for issues involving the public interest, the work focuses on issues of the poor and marginalized, not simply any public interest concern.

Is it human rights lawyering?

The answer must again be qualified. If human rights lawyering is understood in its limited and traditional concept, which is working for political detainees and victims of the State's violation of civil and political rights of citizens, then alternative lawyering will probably not qualify as human rights lawyering. Alternative lawyering defends human rights. It is focused, however, on economic, social and cultural rights rather than civil and political rights.

What is it then?

Three closely interrelated propositions can be offered.

First, alternative lawyering is lawyering for social justice. It works on social issues and social relations. Its involvement in the justice system is not simply to look for simple resolutions to simple disputes between parties. Its main objective is to contribute to the correction or elimination of deeply rooted unjust social structures and relations.

Second, alternative lawyering is lawyering for social change. It seeks to effect societal change and, in doing this, uses the law as a tool

for change. The irony, however, is that, from the perspective of alternative lawyering, the law itself becomes a target for change. The explanation is simple. In our society, or in any society for that matter, the law is likewise used as a tool to cause injustice. The law is seen, therefore, as an instrument that can perpetrate and perpetuate injustices, unless changed.

Third, alternative lawyering is lawyering for social development. The final objective is to work for the holistic, sustainable development of persons and communities, in a society that is more just, more peaceful, and more humane.

Alternative lawyering is simply lawyering for the poor, right

Totally erroneous. Alternative lawyering is lawyering **WITH** the poor. Those who engage in alternative lawyering do not work **FOR** the poor. Not as their representatives, and, definitely, not as their liberators. Those who engage in alternative lawyering work **WITH** the poor as partners in a struggle. They work **WITH** the poor and in solidarity with them. They work **WITH** the poor and side by side with them.

In the ultimate analysis, alternative lawyering is not the work of lawyers or law groups. The highest form of alternative lawyering is realized when the poor and marginalized who are not lawyers by profession or training, and who are alienated by the law and the legal system, become lawyers themselves and engage in law practice in its original and noble sense. When the poor and marginalized are empowered to become lawyers, when they see the law and use it as it should be-as a tool to promote justice, as a catalyst for social transformation—only then can alternative lawyering truly achieve its objectives.

What is the role then of the Alternative Law Groups?

Now, back to the first question. The Alternative Law Groups is a group of swimmers, swimming against the tide. They test the water, they dip into the water, and they swim. And while swimming, they call others to join them, even those who cannot swim, or rather, especially those who cannot swim. They continue to swim, they continue to call others, and they fervently hope (dream) that, with enough swimmers in the water, they can turn the tide.

If this discussion further confuses, and raises additional questions about alternative lawyering, then, it has achieved its purpose. As stated in the beginning, the objective of this discussion is not really to teach swimming, but to simply encourage dipping into the water.

An Introduction to the Use of Paralegal

By Gilbert V. Sembrano

Introduction

Litigation, Legal Aid, and Access to Justice for the Poor

The usual notion about access to justice is being able to bring one's cause before the court system. Simply put it is about litigation. However, there are a number of problems that may arise if one equates access to justice with litigation. First, litigation is not the answer to all legal problems. Second, litigation and the technical processes involved can be disempowering to litigants. Third, litigation, therefore, would require legal assistance by someone who is familiar with these processes, that is, the presence of lawyers. Fourth, social history shows that, by and large, lawyer-client relationships are characterized by the dependence of the former to the latter. Fifth, however, the cost of hiring a legal counsel is prohibitive. Sixth, the court dockets are so clogged that the rate of disposition of cases is very slow. This is further compounded by the lack of court personnel, including judges. Seventh, this is aggravated by the litigious nature of the Filipino people. Eighth,

the perceived widespread corruption among the players in litigation hampers the just and speedy disposition of cases. Ninth, the demand for legal assistance, and therefore, for lawyers as well, is huge. Tenth and lastly, the large chunk of this demand comes from ordinary citizens who could not afford the prohibitive cost both of litigation and of hiring legal counsels.

The foregoing concerns affect the poor, particularly those in the rural areas more. This is because majority of the approximately 80 million citizens are poor. This is the majority of people who live in the rural areas of the Philippines' more than 7100 islands.

Legal Aid System in the Philippines

The government provides free legal aid through the Public Attorney's Office (PAO), which is an attached agency to the Department of Justice. The PAO provides free legal aid largely in criminal cases and, in some instances, in administrative cases. There are a few government agencies that provide free legal assistance to the poor whose cases fall within their mandate. For instance, the Department of Agrarian Reform, the agency that implements the Comprehensive Agrarian Reform Law (CARL),[1] provides free legal assistance to parties who cannot afford counsels in cases relating to their claims as beneficiaries of the land that they till. The demand for free legal assistance though is just too overwhelming that the government free legal aid cannot simply cope. The ratio of public attorney to cases handled reach by the hundreds. This takes a toll both in their efficiency

[1] The Comprehensive Agrarian Reform Law is a land distribution program aimed to allow farmers to own the land that they till. This law was passed pursuant to the social justice provision of the 1987 Constitution that hopes to give the poor and marginalized segments of society an opportunity to rise from poverty and marginalization.

and public perception of their competence. It must be added that these are public perceptions and may not be true to all public attorneys.

Indeed, there are too many lawyers in the country. However, a majority of these lawyers either work in private firms or corporations. They do not render free legal aid or are involved in government service that prohibits them to do private practice. Unfortunately, there is no system of compulsory free legal assistance for members of the legal profession except when appointed by the Courts as counsel *de oficio*.[2]

Realizing the that majority of the population are poor and that the cost of litigation and lawyers are expensive, the framers of the 1987 Constitution put a provision that empowers the Supreme Court to promulgate rules concerning, among others, legal assistance to the underprivileged.[3] Pursuant to this, there are few provisions in the Rules of Court that seek to address the need for free legal aid. Thus, there is the pauper-litigant rule,[4] the law student practice rule,[5] and the friend of the litigant rule.[6]

However, in spite of all these mechanisms, the government still cannot cope with the demand for free legal aid. Thus, there are other programs that were put in place by the private sector, law-mandated organization, and the non-government organizations (NGOs). For instance, the Integrated Bar of the Philippines (IBP), whose membership is compulsory for all members of the legal profession, has

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[2] Rules 14.02 and 14.03, Code of Professional Responsibility for members of the legal profession.

[3] Section 5 (5), Article Ⅷ, 1987 Philippine Constitution.

[4] Section 21, Rule 4, The Revised Rules of Court of the Philippines.

[5] Rule 138-A, The Revised Rules of Court of the Philippines. See also Bar Matter No. 730, June 10, 1997.

[6] Section 34, Rule 138, The Revised Rules of Court of the Philippines.

its national and chapter legal aid offices. Additionally, there is a number of law firms that offer free legal aid. However, most of them handle cases involving relatives of the firms' lawyers and other employees. There are also law school-based legal aid. Lastly, there are also NGO-provided legal aid.

The IBP legal aid, law firm-offered legal aid, and majority of the law school-based legal aid practice the traditional approach to legal aid. In fact, there are non-government organizations that offer legal aid that also practice the traditional way of doing legal aid. However, there are a number of legal service NGOs that offer what is called developmental legal advocacy (DLA) or more popularly known as alternative lawyering or developmental legal aid.

Traditional Lawyering and Alternative Lawyering [7]

What is the traditional approach to lawyering as opposed to the developmental approach? How is this relevant to the issue raised at the outset regarding looking at litigation as the primary (if not the sole) means of accessing justice? These are the questions this section will address.

As stated at the beginning of this article litigation alone cannot respond to the legal needs and access to justice demands particularly of the poor. The enumerated issues, concerns and problems that arise with too much focus on litigation and therefore on lawyers, require a paradigm shift in looking at achieving and accessing justice. This shift means looking at alternative means of claiming what is justly due to each

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[7] See Johannes Ignacio, ALTERNATIVE LAW: THE LAWYER AS ACHIEVER, a paper presented at the Forum on Developmental Law, University of the Philippines College of law, June 16, 1995; See also Jefferson Plantilla, PHILIPPINE LEGAL AID SYSTEM: FACING THE CHALLENGE.

person. There are many roads to justice. An alternative approach to addressing access to justice issues and the legal aid needs of the population and is slowly but surely being recognized is the developmental approach. This is a different way of looking at the practice of law, the role of the lawyers, and the role of the clients especially the poor and marginalized.

Traditional Lawyering is the dole-out type of giving legal aid. The lawyer is the center of the legal process. This makes the client dependent on him/her. The lawyer usually decides what is good for the client. The relationship is largely instructive and directive. The client simply places his/her fate in the hands of the lawyer. The client does not feel much of the burden of his/her case and may feel less of a stakeholder. The legal solution that comes up is very fleeting and largely confined to the legal issue at hand. If the problem involves an unjust law, the traditional lawyer stops at the mere application of the law and does not work for its revocation or amendment. At the end of the legal engagement, the client is constrained to simply build his/her life on the outcome of the case without much alternatives. When a new case comes up, the client will go through the same cycle of dole-out, lawyer-centered, client disempowerment, and parochial solution to the problem.

These are the pitfalls that **alternative lawyering** is trying to avoid. Developmental lawyering, of which developmental legal aid is part of, looks at the legal problem from a holistic perspective. It is client-centered. It seeks to empower client through education and burden-sharing. Alternative lawyers or developmental lawyers provide the clients with the different options available to them and explaining the consequences of each. It is however, the clients who will eventually decide which of the available options they find most acceptable to them. Hence, it is participatory. It also

hopes to remove lawyer-dependency. Therefore, they learn to take responsibility for their own actions and their lives.

It is equivalent to public interest lawyering in other jurisdictions but the concept is not exactly the same. Litigation is just one of the many strategies being used by alternative lawyers. They embark on and harness the power of education, research and publication, policy and law reform, alternative dispute resolution and meta-legal remedies (actions that are neither provided for nor prohibited by the law). Although alternative lawyers vary in approaches and strategies, their views about the law can be largely summed as follows:[8]

1. *What is legal is no necessarily just*;

2. *Law is not neutral and it cannot be divorced from the social context in which it operates*;

3. *The law is normative, both in the sense of being value laden and being value forming*; *and*

4. *Law is limited, in terms of addressing social problems, but can and should be used to promote change.*

Because of all the foregoing, developmental legal advocacy is issue-oriented and sector-oriented/community-oriented. This is borne from a holistic approach to the legal problem. Thus, alternative lawyers usually take on cases involving the community or the sector where members can provide mutual support to each others needs.[9]

For instance, one common problem faced by the rural farmers/

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[8] See Johannes Ignacio, ALTERNATIVE LAW: THE LAWYER AS ACHIEVER, a paper presented at the Forum on Developmental Law, University of the Philippines College of law, June 16, 1995; See also Jefferson Plantilla, PHILIPPINE LEGAL AID SYSTEM: FACING THE CHALLENGE.

[9] This does not however, preclude the application or adaptation of the DLA principles and approaches to individual cases (i. e., where the issue does not directly affect the entire sector or community).

peasants in the Philippines is the refusal of landowners to give-up their land-holdings contravening the provisions of the Comprehensive Agrarian Reform Law. A lot of them would find means and ways to evade compliance with the law. In trying to approach the problem, alternative lawyers and their teams do not simply file cases against the landowners who violate the law. They begin by organizing the community. A community education program regarding the issue is usually the starting point of action. Stakeholders are educated about their rights and their options under the law, as well, as other options that the community may take outside of the legal arena.

This engagement is continuing. In order to sustain this, a number of community volunteers are selected to perform some tasks that lawyers usually perform. They usually undergo a series of trainings that are both theoretical and on-the-job. These trained volunteers are called ***paralegals.*** Their presence in the community serves as a vehicle towards individual and community empowerment. Additionally, their presence can help alleviate the dearth of lawyers catering to the needs of the poor especially in rural areas.

PARELEGALISM

Who is a paralegal?

As discussed above, paralegals are an important component of alternative lawyering/developmental legal advocacy. A paralegal is a person who is knowledgeable about the law and has legal skills but is not a lawyer.[10] He or she is usually a member of the community or sector

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[10] Michael Vincent Gaddi & Joan Mosatalla (eds.), *paralegal Manual on Violence Against Women* (2nd Ed.) (May 2005), at 20.

he/she is servicing. He/she could be your common fisherfolk or farmer or laborer or even law students (in instances where law schools exist in the community). Being communit-based, they serve as the common people's immediate and urgent access points to the law and the justice system.

Why paralegalism?

As integral part of the alternative practice of law, the justification for the paralegals' existence and the important role that they play flow from the same reasons why the practice of developmental legal aid emerged. More specifically, the following social responsibilities are the bases for paralegalism:[11]

9. *Lack of capacity of the different basic sectors to protect their interests*;

10. *Low number of lawyers cannot support the total needs of sectors*;

11. *Only the rich have the means to hire lawyers to protect their interests*;

12. *Most lawyers work within the framework of and supportive of the present system of inequality*;

13. *Remedy given by the client-lawyer relationship is only temporary*;

14. *Most people are dependent on the lawyer in the protection of their rights*;

15. *there is a need to know and use the law in order to change the present inequitable system of society*;

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[11] Michael Vincent Gaddi & Joan Mosatalla (eds.), *paralegal Manual on Violence Against Women*(2nd Ed.) (May 2005), at 20.

16. *Genuine change can only be realized if it springs from below, from people and communities belonging to the basic sectors of society.*

What are the functions of a paralegal?

A paralegal performs a number of important functions in the community and as agents of change and access to justice. The most common are as follows:

(1) as "legal counsel" or advocate to represent a member of the sector or the community as a whole before administrative bodies if and when allowed by the rules of said agencies. Along with this are the incidentals of litigation such as following-up of cases,[12] drafting affidavits (and sometimes, even motions and pleadings), and looking for and preparing witnesses.

(2) as "first aid lawyers" while waiting for the lawyer to arrive.

(3) as community educator as catalysts towards the empowerment of their members that will allow them to take control of their lives.

(4) as community organizers.

(5) as advocates for policy and law reform within their respective municipalities or localities (e. g., for passage of a local ordinance to stop illegal logging or allocation of local budget for environmental protection etc.). and

(6) as fact finding investigators.

Of the foregoing, a large chunk of paralegal work is community or sector education. Thus, they are trained not only to know the law but the skills to impart them to the basic sector.

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[12] Michael Vincent Gaddi & Joan Mosatalla (eds.), *Paralegal Manual on Violence Against Women*(2nd Ed.) (May 2005), at 20.

Who may qualify as paralegals?

The qualifications of a paralegal vary based on the needs and circumstances of the community or sector involved. However, there are minimum requirements. "Commitment" is the primordial consideration because the work of a paralegal is largely voluntary. In some communities being serviced by alternative law groups (non-governmental organizations providing legal services that espouse and practice DLA), one over-all paralegal coordinator is chosen. Sometimes he or she is hired as full time staff of the NGO. Most of the time, the service is rendered by the paralegal free of charge.

It is also important that the paralegals are members of the community or sector they intend to service. At the very least, there should be some ties with them. This is important because they serve as the community models of empowerment. Their achievements as paralegals is meant to inspire others community or sector-members toward their own empowerment. Their common interest with the community or sector also makes them to remain focus and motivated.

Another important qualification is the ability to grasp legal concepts and communicate them to others. Some NGOs require a minimum educational qualification to ensure this. However, this is not a requirement because it may automatically exclude potentially good paralegals simply because they are not high school or college graduates.

Examples of paralegal formation

There are a number of ways of starting the formation of paralegal volunteers. However, the two most common routes are through the formation of grass-roots paralegals and law school-based paralegals. They are not mutually exclusive processes. Although the most common

track taken is to form paralegals from the community or sector because they are the ones who are actual stakeholders. However, in communities where there are law schools, law students who have the heart for the poor and marginalized usually volunteer their time, energy, knowledge and skills to the NGOs assisting these communities or sectors. They form paralegal volunteer organizations or groups in their law schools. They are normally supervised by the lawyers from the alternative law NGOs/groups. In a number of instances, the law schools and the legal service NGOs enter into formal memoranda of cooperation. Regardless of the track, the type of formation that they undergo is largely the same as outlined below.

Community needs assessment

The first step of course is to prepare the community or sector. Usually, developmental legal service NGOs have communities or sectors that they service. They organize the community or sector members. They introduce education programs that target change in or improvement of knowledge, skills, and attitudes. The initial series of community trainings are meant to raise the awareness of the people on issues that affect them. A "social investigation" is done including educational and training needs assessment. Social investigation means assessing the needs of the community; looking into the needs of the people; evaluating the problems both legal and non-legal; understanding the current efforts to address their needs; and consulting them on the possible actions to address these needs, among others.

Education/Training Design for Entire Community

After ETNA has been gathered and analyzed, an education design is formulated. Before focusing on the specific legal topic that is of

specific concern to the community/sector (e. g., a farmer community needs to understand fully the Comprehensive Agrarian Reform Law or a fisherfolk community needs to grasp the Fisheries Code), the design will begin with basic concepts of human rights. Then, constitutional provisions that deal with human rights and the rights of the marginalized and the basic sectors will follow. These will serve as the foundation for better understanding and appreciation of the specific laws that relate to their sector or the problem or issue of the community. After the foundational topics, the design can then focus on a number of laws may be directly relevant to them. The main objective is usually community consciousness or awareness-raising.

Conduct of Community Training

The conduct of the educational design need not be done in just one sitting or one day session. It can spread out in a number of sessions depending on the availability of the participants. It can even be a series of 2 - 3 hour sessions. The methodology should be popular and participatory rather than lecture-type. Popular education technique uses methodologies that bring to the level of the participants the concepts that are being imparted. Thus, the examples used should relate to their common experience. This is usually achieved by using participatory training techniques. People learn more when the methodology applied use different senses of the body (sense of sight, hearing, touch etc.). People understand more when they are given the chance to apply what they learn.

Selection of Paralegals

Generally, the selection of paralegals can take a number of tracks. They can be selected from among the participants to the general

awareness training. The advantage of this process is that the selection committee would have an opportunity to observe the participants during the training. There can be a general invitation for application to become paralegals during the said training. Those that the committee feels would make a good paralegal can be invited personally in case he/she does not apply.

Another track is to make a public/community announcement beforehand that paralegal volunteers are needed. The announcement should state the qualifications and make the application forms available. Then, those who applied shall be invited to attend the general community education/training session so that committee will be able to observe their demeanor and other relevant qualifications.

Still another track is to just make a call for applications for paralegal volunteers. After evaluation and selection, a separate orientation and training can be conducted for them.

Paralegal training, formation proper, and follow-ups

After the paralegal aspirants shall have been selected, an orientation can be had explaining what Developmental Legal Advocacy (DLA) is and the role that a paralegal plays in the process of community and social transformation. If they attended the basic education/training session outlined above, then, the next series of training can focus on three areas:

(1) Knowledge-relating to more specific laws relevant to them and the community (e. g., arrests, searches and seizures; criminal law, laws relating to procedures, family law etc.). It is important that they get to become familiar with them since they will act as "first aid lawyers" to the community.

(2) Skills-relating to popular education techniques and participatory

methodology since one of their most important roles is as community educators. Skills on investigation, interviewing clients, drafting of legal documents and trial skills can be part of the education design, as well; and

(3) Attitudes - it is important that their attitudes and values be also targeted since empowerment is cornerstone of the entire alternative law practice. Examples of themes that can be covered would be gender sensitivity, child sensitivity, poverty and access to justice.

The intensive sessions that will cover these themes/topics are given in a series. It does not have to a few sessions of long hours. It can be short sessions but more frequent. In between formal training sessions they can do on-the-job training (OJT) such as doing legal clinics in the community by accompanying their supervising lawyers from the legal service NGOs that are giving them the training. In between and after, follow-up sessions can be had in the form of cliniquing, that is, all the paralegals can set a regular time each quarter of the year to come together and talk about the cases that they have come across and share with or consult one another regarding the actions they took or that need to be taken. Follow-up sessions on new laws passed can be scheduled as well.

Final Word

As can be gleaned from the discussions above, paralegals are an extremely important facet of developmental legal aid or alternative lawyering. Thus, it should be obvious by now that the practice of alternative lawyering is not and should not be limited to licensed members of the bar. The stakeholders themselves, as empowered citizens can be alternative lawyers.

Chapter 4 Rural Land Reform and Farmers' Initiatives

Rallying for the Right to Land

By Anna Rosario A. Elicaño
Ateneo Human Rights Center

"Today we begin the Walk for Land, and Walk for Justice again. We will not stop until our land is returned to us. We will continue walking until justice is ours."

—excerpt from the Sumilao Farmer's Manifesto, January 18th, 2008

When the Philippines was a colony of Spain, a feudal-like system of land ownership existed. The Spanish crown entrusted land estates or *haciendas* and the people who lived in them to those they favored, often Spanish or local traders who acted for the benefit of Spain. The *encomenderos*, or owners of the estates, had the right to demand taxes and labor from all those who dwelt in their territories. This feudal system took root and continued on even after 1898, when the Philippines declared its independence from Spain. By then, the *haciendas* remained in the possession of Spanish-Filipino families in the country or were sold to wealthy Filipinos. There were attempts to break up the hacienda system for the benefit of the poor – among these the Comprehensive

Agrarian Reform Program (CARP)—but the changes have been moderate.

This is not to say that there haven't been calls for social justice and the redistribution of land concentrated in the hands of a few. This paper recounts three major protest movements related to agrarian reform and the cases which triggered them.

Hacienda Luisita: The Sugar Strikers of Tarlac (2004 – 2005)

Background

What is today known as Hacienda Luisita used to be agricultural land located in the province of Tarlac. It was occupied and tilled by generations of Filipinos during the Spanish colonial rule. In 1957, 15,000 hectares of that farmland was bought from a Spanish company by Don Jose Cojuanco Sr., a leading figure in Philippine society and business. This was under the condition that, after 10 years, the Cojuangco family would have to distribute the land to the farmers who lived in the 10 *barangays* (the smallest units of government in the Philippines) within the property. However, the redistribution of land never took place. In 1985, the Regional Trial Court of Manila ordered the Cojuangcos to honor their commitment. Before this could be enforced, the government of President Corazon Cojuanco Aquino instituted the CARP. Under the CARP, landowners had the option to distribute shares of stocks to be issued to beneficiaries through a stock distribution plan, in lieu of subdividing haciendas and distributing small lots to tenants or small farmers. In what was seen by many as a form of evading land conversion, Hacienda Luisita was turned into a corporation. Now known as Hacienda Luisita, Incorporated (HLI), the estate became an arm of the Tarlac Development Corporation

(TADECO). On May 11th, 1989, TADECO and farm workers signed a Memorandum of Agreement, in which shares of HLI stock were given, technically making the farm workers "stockholders" or "co-owners" of the Hacienda Luisita. In turn, HLI was designated as the Second Party where TADECO transferred the agricultural portions and other farm-related properties of Hacienda Luisita.

To date, only one annual dividend has been paid to the farm and mill workers turned stockholders. In addition, since it was stipulated that the land distribution applied only to the agricultural portions of estates, some parts of the hacienda were set aside as non-agricultural. This reduced the size of the land that was affected by CARP. Half of the land has already been converted (without consultation with the farm and mill workers) for a shopping complex, a golf course, guest homes and an industrial park. The rest is to be set aside for the construction of a major government road, the Subic-Clark-Tarlac Expressway Project.

Violence in the picket lines

The period between the creation of CARP and what would later on be tagged by the media as the "Hacienda Luisita Massacre" saw an escalating feeling of injustice oppression, not only by those in Hacienda Luisita but by peasants and other farm workers nationwide.

After 23 laborers of the hacienda's sugar center were dismissed, the agitation reached fever pitch. Two labor unions comprised of plantation and mill workers went on strike on November 2th, 2004. They sought a pay rise, the reinstatement of those dismissed and more broadly, the redistribution of land nationwide to farm and plantation workers. The Department of Labor and Employment (DOLE) would eventually rule in favor of the dispersal of the strike on November 10th. However, local police had already used water cannons and tear gas to try to dispel the

strikers on November 6th and 7th, 2004. After unsuccessful attempts, they were joined by the Armed Forces of the Philippines (AFP) on November 15th, 2007. The following day, 1000 soldiers and policemen stormed the blockade. Guns were fired, leaving seven unarmed individuals along with two children dead and 100 others badly injured. Protesters and eye witnesses pointed to the police and the military for firing their guns into the crowd of 6000. But both the police and the military alleged that the strike was instigated by rebels from the New People's Army and that the initial burst of gunfire came from the protesters.

Protests after the shootings

Protesters, with sympathizers from various sectors joining their ranks, resumed their posts in front of the main gate of CAT two days after the shootings. The funeral wakes of the casualties were held in the picket line itself for several days. These were accompanied by nightly programs that paid tribute to the struggle for the right to land. When three of the deaths were laid to rest on November 21th, 2004, around 10,000 people joined the funeral march, walking the 6 kilometers distance between the gates of Hacienda Luisita to the public cemetery.

The strike would continue for 13 months. On December 22th, 2005, DAR decided that the disputed land should be distributed to some 5000 farm workers. However, the process stalled when the Supreme Court granted a temporary restraining order (TROs) in favor of the Cojuangco family on June 14th, 2006. Unlike other TROs which have an expiration date, the TRO that prohibited DAR from distributing 4915 is in effect until further orders from the court.

HLI tried for an out-of-court negotiation with farm workers wherein HLI will distribute 1366 hectares, pay P130 million to the

farm workers and offer free home lots. This was rejected by the farm workers, saying that the move would sabotage land distribution. DAR Secretary Nasser Pangandaman said his department is not in any way involved in the supposed negotiations. He also denied being involved in the negotiations.

As of this writing, the Cojuangco family still controls Hacienda Luisita. Meanwhile, the farm workers are cultivating almost 3000 hectares in the ten villages which comprise the Hacienda. "DAR is under a temporary restraining order but cultivation is not", Jorge Gatus, president of the farm workers' cooperative in Barangay Mapalacsiao, says of the land which they hope to someday rightfully claim as their own.

Multi-sectoral support

The protests led by the agricultural workers of Hacienda Luisita drew support from various groups across the country. Many church-related organizations, e. g. , the Promotion of Church People's Response (PCPR) provided direct aid to the strikers and advocated for the proper conclusion of legal processes and agreements. Representatives from progressive party-list groups Anakpawis, Bayan Muna and Gabriela from Philippine Congress visited the site of the massacre in a show of support. Civil society groups held simultaneous protests in solidarity with the Hacienda Luisita farm and mill workers nationwide. Protest initiatives even spilled over on the internet, with many progressive groups condemning the killings in their websites and blogs.

La Castellana: A Success Story (2002 – 2007)

The struggle for land in the Philippines may be long and tedious but agrarian workers persevere, especially in the light of success stories.

One such case which ended in victory involves the farm workers of La Castellana.

The 446-hectare Hacienda Velez-Malaga, located in La Castellana, Negros Occidental fell under CARP coverage in 1996. Certificates of land ownership (CLOA) were to be awarded, effectively turning over 146 hectares of the sugarcane estate to farmer beneficiaries who comprised the Hacienda Velez Malaga Agrarian Reform Beneficiaries Organization (Havemarbo). Landowner Roberto Cuenca opposed this move and filed a civil case to annul the CARP coverage, but because local courts do not have jurisdiction over agrarian matters, DAR ruled to proceed with the turnover of the land. This decision would later on be upheld by the Supreme Court in 2004.

Cuenca continued to oppose the installment of the Havemarbo farmer beneficiaries in favor of the installment of farmer beneficiaries belonging to a rival group which supported him. In April 2002, the Havemarbo farmer beneficiaries received their CLOAs but were not able to occupy in their awarded land because of a pending annulment case. Six months later, they asserted their right to the land and occupied ten of the 114 hectares awarded to them. Cuenca sued them for forcible entry but the case was dismissed by both the Court of Appeals in August 2006 and the Supreme Court in June 2007.

Despite the ruling of the courts and the DAR order, the entry of the Havemarbo farmer beneficiaries into their land was further postponed. Violence erupted when the farmer beneficiaries tried to occupy the disputed land. Pepito Santillan, one of the leaders of the farmer beneficiaries, was murdered in his house on January 25th, 2007.

The Havemarbo farmer beneficiaries traveled to the DAR central office in Manila in February 2007 to hold a hunger strike in protest of the delay in their installation. During that period, 17 of them were

hospitalized due to dehydration. Attention to their cause mounted when five of the hunger strikers, fearful that they wouldn't last much longer, wrote their last will leaving to their families, their meager possessions. After 29 days, the DAR secretary said that 57 of the 102 the Havemarbo farmer beneficiaries would be finally installed on Hacienda Velez Malaga.

However, the 57 installed were prevented from entering their land because a demarcation survey had to be conducted first. After this was completed, they were again prevented because of ongoing negotiations with Cuenca for payment of the standing crops and for land swap with pro-Cuenca farmer beneficiaries. By law, the government had to compensate landowners for land allocated to the farmer beneficiaries. In protest, some of the Havemarbo farmer beneficiaries entered their land in June 2007. Hacienda security guards shot them while cultivating the land. Two died while six others were injured.

This triggered another wave of protests. In response, DAR adopted a plan for entry and cultivation of the 53 hectares which included adequate police protection for the farmer beneficiaries. Still, implementation was put on hold pending negotiations with Cuenca. They sought a win-win solution to the land dispute.

In mid-September 2007, the parties entered into a memorandum of agreement (MOA) wherein Cuenca gave money to the Havemarbo farmer beneficiaries for the cultivation of 43.71 hectares that technically belonged to them but was given to the rival group. In exchange, Havemarbo members received an equivalent area in another lot. All the civil cases related to the land dispute were dropped.

The eleven year old dispute was over. By the end of the month, the Havemarbo farmer beneficiaries were able to claim, occupy, and cultivate their land.

Multi-sectoral support

The agricultural workers of La Castanella were also not without support. They belonged to a national federation of farmers which replicated their protests all over the country. Church-led groups posted ads in major newspapers during the height of the hunger strike. During this period, the Department of Social Welfare secretary sent gallons of water, soap, tissue paper, towels, blankets, pillows and used clothing for the agricultural workers. From the side of civil society, a group of concerned artists visited the hunger strike site to sketch, paint, and mold sculptures to draw more attention to the protest movement.

Sumilao Farmers: The Walk for Land and Justice (1995 – 2008)

The case of the Sumilao farmers is one of the most powerful demonstrations played out in the Philippines. After a long struggle, the Sumilao farmers eventually prevailed and occupied the land they had been fighting for.

Located in the southern province of Bukidnon, Sumilao is the ancestral land of the Sumilao farmers (also called Higaonons or Lumads). They have occupied the area since the year before 1930. In 1937, the Angeles family, which claimed ownership of the land, evicted the farmers from the land and converted it into a cattle ranch. The ancestral land was subsequently divided between two landowners in the 1970s: 99.885 hectares to Salvador Carlos while 144 hectares—the subject of the farmers' struggle—was transferred to Norberto Quisumbing.

When CARP came into force and placed the land under its coverage, CLOAs were issued to farmers, all of Higaonon lineage, making them the legal owners of the disputed 144 hectares. The

Quisumbings then applied to convert the land from agricultural to agro-industrial. They unveiled plans to build a school, a sports complex, a hotel, restaurant, and housing projects. Quisumbing partnered with the provincial government of Bukidnon for these proposals. The provincial government supported the conversion of the land.

However, the DAR Secretary denied the application since prime agricultural lands are subject to conversion. In 1995, the Office of the President, through the intercession of the governor of the province, approved the land conversion in a resolution.

In protest, the Sumilao famers held a hunger strike which lasted for 28 days in front of the DAR offices in Cagayan de Oro City and the nation's capital. The protest drew the support of Church leaders, politicians, and the public. The office of the president then modified its resolution wherein 100 hectares were to be given to the farmers while 44 hectares to Quisumbing. Quisumbing went to the Supreme Court, which nullified the modified resolution. The farmers held an "anger strike" but the resolution remained reinstated.

In 2002, the disputed land was sold by Quisumbing to San Miguel Foods, Inc. (SMFI) which intended to build facilities for a hog farm. This was in violation of the land conversion rules.

The farmers asked DAR in 2004 to cancel the land conversation order and the distribution of land. In 2005, the DAR regional head, after an ocular inspection, reported that none of the infrastructures proposed by Quisumbing for his land conversation application was built. DAR, however, rejected the petition since it was the office of the president, not DAR, which issued the questioned conversion order or resolution. In 2007, the Office of the President, in turn, denied the petition, claiming that the farmers have no legal standing to question the resolution.

In protest, 50 of the farmers began their "March for Land" on the 10th year anniversary of their struggle, October 10th, 2007. From Sumilao, they walked on foot until they reached Manila on December 10th (Human Rights Day). The march drew nationwide attention. In municipalities, locals greeted the farmers with food, water, and rally chants. During the two months march the farmers were housed in churches along the way.

Upon reaching Manila, the farmers met with the President and DAR officials. On December 18th, 2007, the Office of the President revoked the Conversion Order on 144 hectares of land and put the land back under the CARP. The Sumilao farmers declared their 1700-kilometer walk over and went home. Press Secretary Ignacio Bunye had promised to submit the order of the Office of the President to DAR the same day it was issued, but it would reach the DAR office on December 28th, 2007. January 2th, 2008 should have been the deadline of SMFI's Motion for Reconsideration but they claimed to have received the order only on this date. Wary of delay in the implementation of the President's order, they camped out in the DAR Regional Office in Cagayan de Oro City to wait. Meanwhile, SMFI continued to build its hog facilities in the disputed land.

Since it did not seem that the government intended to hasten the return of the land to them, 45 of the Sumilao farmers returned to Manila and renewed their campaign so the government would honor its commitment. They have attended forums, solidarity dinners, concerts, prayer vigils and masses in various universities and parishes.

A settlement was eventually reached, not through the intervention of the government, but by SMFI and the farmers themselves, through the arbitration of a Church leader. On March 30th, 2008, SMFI and the farmers signed an agreement wherein the will receive 50 hectares within

the contested property through a deed of donation by SMFI. The remaining 94 hectares will be taken from land outside but within the vicinity of the contested area. The signing of the agreement marked the end of the farmers' protest for land and the beginning of, in the words of farmer-leader Rene Peñas, "peaceful possession and cultivation of land".

Multi-sectoral support

Having marched throughout the country on foot, the farmers were able to witness and experience multi-sectoral support first hand. The Catholic Church, which has dioceses all over the country, was instrumental in providing shelter and sustenance to the farmers throughout the protest route. Local government officials rallied and would often join their constituents as they cheered the marching farmers in the roadside or offered supplies. One city, Naga, went as far a passing a resolution which declared solidarity and support to the farmers. Various schools nationwide invited the farmers to share their experiences with their students as to give them a deeper perspective of the agrarian problem in the country. Students have also been responsible for organizing non-traditional support initiatives, such as fund-raising and consciousness-building concerts for the farmers. Lastly, various legal groups provided free legal assistance and representation for the farmers.

Conclusion

Movements for agrarian reform in the Philippines, as illustrated by these three cases, are often tedious and drawn out. The CARP will expire in mid – 2008, yet the distribution of land to agrarian workers is still below target. The delay in implementing agrarian reform has less to do with inefficiency than it does with landowners influencing those in the bureaucracy or actually occupying seats in Congress. Clearly, efforts by

the government are inadequate in instituting genuine land reform. The role of organized protests therefore is important as they amplify the concerns of farmers. Although these are often met with temporary solutions, what is important is that attention to land reform has been growing and gaining momentum throughout the years. What used to be merely the advocacy of agrarian workers and concerned non-governmental organizations has now become a multi-sectoral concern. Such growth in public support for agrarian reform can be channeled into asking the government to implement land distribution at a faster pace. Various sectors can also draw out lessons from the cases of the agrarian workers of Hacienda Luisita, La Castellana, and Sumilao to aid other agrarian groups which may need assistance. It seems that, in the struggle for genuine land reform in the Philippines, everybody now has a role to play.

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Textbook on Agrarian Reform and Taxation (with Cooperatives) (Excerption)

By Hector S. De Leon

Chapter I AGRARIAN REFORM INTRODUCTION

A. CONCEPTS

Meaning of land reform

Reform implies the existence of a defect that something is deformed or malformed and does not suit existing conditions.[1]

In a broad sense, *land reform* refers to the full range of measures that may or should be taken to improve or remedy that defects in the relations among men (*e. g.*, between the tiller and owner of land,

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[1] DLGCD's (Department of Local Government and Community Development's) *Instructor's Manual for Trainors and Field Workers*, p. 56 (1972).

employee and employer in a farm) with respect to their rights in land.[2]

The term has also been defined as an integrated set of measures designed to eliminate obstacles to economic and social development arising out of defects in the agrarian structure. Land reform thus involves the "transformation of agrarian structure" or what are sometimes called "structural reforms".[3]

"Land reform" is often used interchangeably with "agrarian reform" but in actuality, the latter is much broader than the former (*infra*).

Meaning of agrarian structure

In the above context, *agrarian structure* is defined as a complex set of relationships within the agricultural sector among tenure structure, production structure, and the structure of supporting services. A comprehensive land reform program can never be complete without integrated reforms of all three structures.[4]

These types of structures cannot in reality be identified separately, each one being dependent on the others, but for clarity and convenience of presentation, they are discussed as distinct concepts.

Meaning of land tenure structure

Land tenure structure is a concept which refers to one or more types of land tenure systems regulating the rights to ownership and control and

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[2] See Raup, *The Contribution of Land Reforms to Agricultural Development*, p.1.

[3] See *Progress in Land Reform*, p.30 (1970), a UN publication.

[4] See *Progress in Land Reform*, p.31.

usage of land and the duties accompanying such rights.[5]

Agricultural tenancy,[6] as a manner of holding and agricultural lands, is only one of several forms of land tenure or rights in land. It involves the question of whether share tenancy or leasehold tenancy is adopted.

(1) Under share tenancy, tillers work on the land as sharecroppers entitled to share in the produce of the land (see Chap. Ⅱ.).

(2) One of the main defects of our agrarian structure was the high proportion of share tenancy in our country. In this regard, our Code of Agrarian Reforms automatically converts share tenants to lessees. (Sec. 4, *infra.*) The next stage is the conversion of the lessee to amortizing owner; and finally, to owner-cultivator. (Sec. 2[1], *infra.*) Pursuant to Presidential Decree No. 27, tenant-farmers were deemed amortizing owners of rice and/or corn lands they were tilling. (see Chap. Ⅰ-E.)

Examples of land tenure reform measures

Land tenure reform measures would include the following:

(1) redistribution of private lands (through expropriation or purchase);

(2) distribution of lands in the public domain, sometimes also referred to as resettlement or colonization;

(3) regulation of tenancy (*e. g.*, provision of penalties for wrongful eviction of tenants, prohibition of subletting by tenants, etc.);

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[5] See *Progress in Land Reform*, Chapter Ⅱ as to system allowed in the Philippines.

[6] The requirements set by law for the existence of a tenancy relationship are: (1) The parties are the landholder and tenant; (2) The subject is agricultural land; (3) The purpose is agricultural production; and (4) There is a consideration (Hilario vs. Intermediate Appellate Court, 148 SCRA 573, March 16, 1987).

(4) regulation of agricultural labor contracts and wages;[7] and

(5) elimination of absentee landlordism and transfer of land ownership to the actual tillers.

Meaning of production structure

Production structure is a concept which relates to the nature, type and *modus operandi* as well as the actual process of production or farm operation.

It is also directly related to the size, location and shape of the production unit or holding, which may be operated singly or with assistance from others. Such unit or holding includes individual tenant farms, family farms, cooperative or collective farms, and company farms or plantations managed with hired labor.[8]

Examples of production reform measures

The following would fall under production reform measures:

(1) consolidation of small, uneconomic holdings to insure optimum utilization;

(2) imposition of a floor on holdings of uneconomic size beyond which subdivision is to be prevented (also a tenure reform measure);

(3) promotion of cooperative or compact farming among submarginal farmers;

(4) imposition of a ceiling on holdings of non-cultivating owners (also a tenure reform measure); and

(5) organization of crop rotation system.

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[7] *Progress in Land Reform*, note 3 at p. 60.

[8] *Progress in Land Reform*, pp. 31, 86-87.

Land tenure and production structures distinguished

The land tenure structure must be distinguished from the production structure as it is necessary to make a distinction between the concept of "rights in land" (referring to ownership, lease, etc.) and the concept of "production and use of land". Essentially, this implies a clear distinction between the *ownership holding* and *the operation holding*.[9]

The first is a concept referring to the rights over land, whether in terms of full ownership or as circumscribed by law, irrespective of the manner in which the holding is operated or managed. The second is a concept referring to the actual management of holding or the manner in which the land is cultivated or operated irrespective of ownership.

Meaning of structure of supporting services

The *structure of supporting services* is a concept which involves matters like credit, marketing, the supplying of agricultural requisites (such as seeds, fertilizer and insecticides), processing, storage, etc., and other technical assistance and/or services in so far as they have some immediate bearing on reforms of tenure and production structures.[10]

These services are provided mainly by the Department of Agrarian Reform, the Land Bank, and the Bureau of Agricultural Extension (under the Department of Agriculture), and they are designed to insure the success of the farmer who has acquired a new tenure status as lessee, amortizing owner-cultivator, or owner-cultivator. (see Sec. 3[6], *infra.*) They prepare the lessee for landownership and assist the owner-

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[9] *Progress in Land Reform*, p. 32.

[10] *Progress in Land Reform*, pp. 31-32.

cultivator to use the land more productively and thus increase his income.

Meaning of agrarian reform

Agrarian reform is considered wider than land reform.[11]

(1) The term comprises not only land reform (*i. e.*, the reform of tenure, production, and supporting services structures) but also the reform and development of complementary institutional framework[12] such as the administrative agencies of the national government, rural, educational and social welfare institutions, cooperatives, etc., and not limited simply to the question of the relationships of the farmers to the land.

(a) It encompasses all programs designed to bring about improvement in all the institutions surrounding farm life,[13] as well as companion measures necessary to make the work of the tenant, farm-worker and owner-cultivator successful.

(b) It means remedying not only the defect in the distribution and use of land but also and especially, the accompanying human relations

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[11] Significantly, Republic Act No. 6389, approved on September 10, 1971, changed the title of Republic Act No. 3844 from "Agricultural Land Reform Code" to "Code of Agrarian Reforms of the Philippines" (see R. A. No. 6389, Sec. 1.) and the expanded land reform program was renamed "Agrarian Reform Program". The term "agrarian reform" is now the one commonly used in our jurisdiction.

By virtue of Proclamation No. 131 (dated July 22, 1987), a Comprehensive Agrarian Reform Program (CARP) has been instituted. A companion measure to the Proclamation is Executive Order No. 229 (same date) which provides the mechanisms for the implementation of the Program. The Program is now governed by the Comprehensive Agrarian Reform Law (CARL) of 1988 signed by the President as Republic Act No. 6657 on June 10, 1988.

[12] *Progress in Land Reform*, note 3 at p. 32.

[13] Agrarian structure should then comprehend the three structures as well as other related institutions, each constituting an integral part of the wider whole.

regarding land, including economic, social and political relations.

(c) It is concerned not only with the farmer and the land he tills but also with the community he lives in.

(2) In the Comprehensive Agrarian Reform Law of 1988 (R. A. No. 6657.), agrarian reform is defined to mean "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 of lands, such as production or profit-sharing, labor administration and the distribution of shares of stock, which will allow beneficiaries to receive a just share of the fruits of the lands they work". (Sec. 3[a] thereof.)

(3) In short, agrarian reform means solving the agrarian problem[14] (Chap. 1.) and thereby elevate the quality of life of the rural populace and make them active participants in the economic, social and political affairs of their locality.

Examples of agrarian reform measures

Agrarian reform would, therefore, also cover the following:

(1) public health programs;

(2) family planning;

(3) application of labor laws to agricultural workers;

(4) reorganization of agrarian reform agencies;

(5) application of labor laws to agricultural workers;

(6) construction of infrastructure facilities such as feeder roads, irrigation systems, etc., and the establishment of rural electrification;

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[14] *Instructor's Manual*, note 1 at p. 56.

(7) organization of various types of voluntary associations (*i. e.*, farmers' associations, cooperatives, youth organizations, etc.) as a means of insuring popular support or overcoming opposition to the reform);

(8) providing employment opportunities to underemployed or surplus rural labor (*e. g.*, through the development of cottage and small and medium-scale industries); and

(9) other services of a community development nature.

B. ASPECTS OF AGRARIAN REFORM

Economic aspect of agrarian reform

(1) *Vital position of agriculture in national economy.* —Economic development had been the concern of most nations ever since the termination of the second world war. Fundamentally, it is in the agricultural sector that the battle for long-term economic development in the Philippines (and in many other countries in Asia) will be won or lost.

(a) Agriculture forms the predominant industry in the Philippines. A large proportion of the total working population is employed in agriculture and a large percentage contribution to the gross domestic product comes from agriculture. Exports of agricultural products and their derivatives constitute a major source of valuable foreign exchange. Agriculture can thus claim priority as most important component of the economic structure.[15]

(b) The strategic position of agriculture in the national economy is

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[15] Nathaniel B. Tablante, *Agrarian Reform and Cooperatives*, In Unitas, Vol. 47, No. 4, published by UST, p. 544 (1974).

such as to stress the urgent need for increased agricultural productivity to accelerate general economic development. The achievement of increased efficiency in the agricultural sector will mean more and better food for the rapidly growing population, a greater supply of in indigenous raw materials for the expanded manufacturing industry, larger amounts of foreign exchange for development, release of excess manpower on the farms into industries producing goods and services that make for higher standard of living, and increased income of rural families that will provide the necessary purchasing power with which to acquire consumer goods and farm supplies and equipment.[16]

(2) *Obstacles to agricultural productivity.* —Agricultural productivity, however, does not occur by chance. It has to be worked out.[17]

Low agricultural productivity in less developed countries results from the interplay of many factors, including small size of farms and lack of capital; hence, poor technology and primitive methods of production, economic ignorance, a value system and social structure that minimize the incentives for economic change, inefficient marketing system, and lack of entrepreneurship.

It is clear that reforms are needed to remove the barriers to increased agricultural productivity so that agriculture can contribute its maximum share to overall growth and economic development.[18]

(3) *Agrarian reform, an instrument for increasing agricultural productivity.* —The economic reason for agrarian reform in the Philippines is its potentialities for raising agricultural productivity.

(a) The Philippines is one of those developing countries with a very

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[16] Nathaniel B. Tablante, *Agrarian Reform and Cooperatives*, In Unitas, Vol. 47, No. 4, published by UST, pp. 544 - 555.

[17] Azucena I. Mandanas, *Agricultural Productivity*, In Unitas, supra., p. 487.

[18] Nathaniel B. Tablante, *op. cit.*, note 15, pp. 548 - 549.

low level of agricultural productivity. As a result, development is being hampered. It is only man who possesses the powers to be productive. But having the powers alone without fully utilizing them would lead man nowhere. Therefore, incentives are called for.

(b) One method of motivating farmers to increase their output is to make them own the land they till to free them from the bondage of the landlords, not necessarily from the soil. Agrarian reform has always been undertaken to give incentives to the farmers.[19] It seeks to create an economic environment that will encourage farmers to produce more and market more of what they produce, to the end that an improvement of the level of living of the rural population can be achieved at the earliest possible time and thus help to hasten the pace of national development.[20]

Socio-cultural aspect of agrarian reform

(1) *Agrarian reform, a multifaceted program.* —To many people in many places all over the world, agrarian reform casts varying shades of meaning.

(a) It could be political, social or economic, depending upon the nature and the immensity of the problems posed and the ideological orientations with which these problems are concerned.

(b) Agrarian reform, taken in its broad sense (*supra.*) and as a government-sponsored program, implies socio-cultural transformation. Furthermore, regardless of whether agrarian reform attains its programmed objectives or not, so long as it is being undertaken, it

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[19] Azucena I. Mandamas, *op. cit.*, note 17 at pp. 487 - 488.

[20] Nathaniel B. Tablante, *op. cit.*, note 15 at p. 549.

would undoubted create far-reaching effects upon the life of the people concerned.[21]

(2) *Assumptions about Filipino tenant farmers.* —When Republic Act No. 3844, otherwise known as the Agricultural Land Reform Code, was enacted in 1963, there were a number of assumptions to justify the formulation of the contents of the Code.

To mention only the relevant ones, these are, namely:

(a) The tenancy problem has its roots in pre-Spanish and Spanish pasts. It is, therefore, a centuries-old problem;

(b) Deeply rooted in history, the tenancy system created a kind of tenants who are strongly traditional and highly dependent-minded; and

(c) There are only three kinds of landlords: the benevolent one who acts like a father to the tenant, the malevolent one who oppresses; and one with the combined characteristics of the first two. In any cast the landlord is considered to possess tremendous influence and/or power over the tenant, and uses these to preserve his prestige and status in the society.[22]

(3) *Socio-cultural changes from agrarian reform.* —According to the general experience in countries (particularly Japan) which have achieved success is their agrarian reform programs, agrarian reform had resulted to favorable socio-cultural changes which may be summarized as follows:

(a) A change from self-subsistent outlook to on of surplus. The

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[21] Rogelio M. Lopez, *Agrarian Reform: Its Socio-Cultural Implications in the Philippines*, in Seminar Papers on Agrarian Reform, published by the Agrarian Reform Institute, UP, p. 55.

[22] Rogelio M. Lopez, *Agrarian Reform: Its Socio-Cultural Implications in the Philippines*, in Seminar Papers on Agrarian Reform, published by the Agrarian Reform Institute, UP., p. 59.

farmers began putting all their energies in the farm.

(b) A sound social order in the farming villages was enhanced significantly. The farmers became more conscious of the need to maintain peace and stability in the community so that they could continuously enjoy the increased benefits in the farm.

(c) Farmers' initiative and active participation in leadership roles were promoted. Before, such roles were the monopoly of the landowning class. After land reform, farmers began forming associations and stood in equal footing with their erstwhile landlords in social gatherings and club meetings. They, too, began to take active participation in local and national elections; and

(d) As land reform enhanced agricultural productivity and consequently; increased net family incomes, the farmers were able to send their children to school. They widened their contacts with the outside world through frequent trips to market and other places or through communication facilities (radio, TV) which they acquired.

These promoted cosmopolitan outlook among farm villages which include receptiveness to, say, modern family planning programs and also awareness of the economic alternatives in the urban and industrial sectors. The resulting migration of semi-skilled labor from the farming sectors reduced the labor surplus and population density in these sectors.[23]

Religious aspect of agrarian reform

(1) *Biblical background.* —Basic in Biblical teaching is that God

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[23] Rogelio M. Lopez, *Agrarian Reform: Its Socio-Cultural Implications in the Philippines*, in Seminar Papers on Agrarian Reform, published by the Agrarian Reform Institute, UP, pp. 59 - 60, citing Brown and Lin, 1967; UN Report, 1966.

is the owner of the earth and that He made it all for His children.

(a) Food was not made for a few; all possess the God-given right to use and enjoy the fruits the earth for the advancement of their lives. This can already be seen from the book of Genesis. One sees in the account that God did not immediately create man. He first saw to it that man has an abundance of goods wherewith to feed himself.[24]

It would thus be contrary to God's will if the land He made to provide for the enjoyment and perfection of all His children should now be appropriated and controlled by a few.[25]

(b) When the Israelites settled in Palestine, the lands were equally divided among the people. The social ideal in Israel was that each man should live "under his vine and under his fig tree".[26] Family-size farms thus became the rule and strict regulations were written in the law of Moses prohibiting anyone to change or alter their boundaries. This land-to-the-tillers provision of the Law of Moses was important for an agricultural country like that of Israel. A person, whose existence depends principally from the produce of the land, would soon be poor, if lands and their products were controlled and possessed by only a few elite.[27]

(c) Christ's wish is that there is no injustice and oppression of His people. He is the enemy of want and deprivation. His command had

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[24] See *Gen.* 1, 27 - 30.

[25] Pedro Salgado, O. P., *Religious Aspect of Agrarian Reform*, In Unitas, *supra*, p. 512.

[26] Pedro Salgado, O. P., *Religious Aspect of Agrarian Reform*, In Unitas, *supra*, p. 513; citing Eccl. 29, 2 - 3.

[27] Pedro Salgado, O. P., *Religious Aspect of Agrarian Reform*, In Unitas, *supra*, p. 513; citing Eccl. 29, 2 - 3.

always been "Feed the hungry, give drink to the thirsty".[28]

(2) *Papal teachings.* —The Vatican II Decree "Pastoral on the Church in the Modern World" says: " × × × man should regard the external things that he legitimately possesses not only as his own but also as common in the sense that they should be able to benefit not only him but also others. On the other hand, the right to having a share of earthly goods sufficient for oneself and one's family belongs to everyone."[29]

Quoting St. Ambrose, the Papal Encyclical "On the Development of People", has this to say: "You are not making a gift of your possessions to the poor person. You are handing over to him what is his. For what has been given in common for the use of all, you have arrogated to yourself. The world is given to all, not only to the rich."[30]

(3) *Church estates.* —The masses of poor Filipinos have always longed for the possession of land. Immersed in the chains of poverty, they yearned for the freedom and well-being that often go with ownership. These desires were so strong that on several occasions, they erupted into revolts and revolutions. Sad to say, however, in these aspirations for land, the people rarely found help and understanding in the leaders of the church. On the contrary, some revolts directly involved lands owned by the hierarchical church. Whether it was Dagohoy's or Diego Silang's or Malong's or Palaris' or Bonifacio's or the Sakdalistas', the Church was generally considered an enemy of reform.

It is heartening to note, however, that in these modern times, more

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[28] Pedro Salgado, O. P., *Religious Aspect of Agrarian Reform*, In Unitas, *supra*, p. 513; citing Eccl. 29, 2-3, p. 518, citing Mt. 25, 31-46.

[29] Par. 69.

[30] Par. 23.

and more priests and bishops are involving themselves with the poor's aspirations for ownership. The church is a divine-human institution and in so far as it is a human institution, it is liable to commit mistakes. One such mistake, it has been opined, concerns the issue of land.[31]

Moral aspect of agrarian reform

The teaching of philosophy also shows how important is agrarian reform to a country. Not only the Bible but also human reason sees the need for a just distribution of lands to the people. Agrarian reform is demanded by the moral laws under so many titles.[32]

(1) One reason concerns the *peace and internal stability* of a country. Thinkers of old had already noted that without a good division of land, there will be no peace among the people. There will only be unrest and agitation. And this has been proven only too well not only in the past but in modern times as well. How many revolutions indeed have modern times seen due to the land problem.

(2) Another reason for agrarian reform is the fact that the *landowner has been more than compensated* for his investment on land, while the tenant who made the landlord's profits possible is still immersed in poverty. An owner's investment for a hectare of land may have been P10,000 but after years, or even decades, of possession, the landowner has received incalculable amount in return.

(3) There is also the *question of injustice* involved in landlordism. Share tenancy, legislators say, is an unjust system and consequently has to give way to new laws on agrarian reform. It is for this reason that

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[31] Pedro Salgado, *op. cit.*, note 25 at pp. 508 - 511.

[32] Pedro Salgado, O. P., *Religious Aspect of Agrarian Reform*, In Unitas, *supra*, p. 513; citing Eccl. 29, 2 - 3, *op. cit.*, p. 519.

land reformers demand expropriation of lands with minimum compensation to the landlord, because, they say, the tenants have more than paid for the amount from what the land owner has been getting every harvest.

(4) Another consideration concerns the *innate tendency of every man to own land.* Instinct tells him that the land he tills should be his. He has imparted on it his labors, his joys, his sorrows, his hopes so that in a way, the land becomes one with him.

(5) A final consideration concerns the *economy.* It is contended that the expropriation of lands and their equitable redistribution to the people are the clues to national progress. If the lands were owned by the farmers themselves, all the income goes to them, enabling them to have the extra money with which to buy the products of industry. Industrial progress has agrarian reform for foundation.[33]

Legal aspect of agrarian reform

(1) *Two vantage points.* —The legal aspects of agrarian reform may be considered from two vantage points. The first is strictly legal, and the second, sociological.[34]

(a) There was a time when the province of law was limited to the regulation of conduct between individuals. It was then a separate and distinct rule wholly unrelated to other disciplines, such as economics, sociology, medicine, engineering or agriculture.

(b) The complexities and complications of social, economic and political growth, however, required revision of this view. Law was

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[33] Pedro Salgado, O. P., *Religious Aspect of Agrarian Reform*, In Unitas, *supra*, p. 513; citing Eccl. 29, 2-3, op. cit., pp. 519-521.

[34] Guillermo S. Santos, *Legal Aspects of Agrarian Reform*, In Unitas, supra, p. 523.

gradually utilized as an instrument to achieve socio-economic political goals. Labor laws, particularly, are not enacted merely to regulate the relations between economic goods which the wealth and resources of nature, technical science and the corporate organization of social affairs can give.[35]

In the generic sense, agrarian reform legislations are labor laws.[36] They are not undertaken for the narrow purpose of regulating tenant-landlord relationship. They are directed towards the attainment of larger social goals (*e. g.*, industrialization, alleviation of rural poverty, creation of employment opportunities, etc.) to put an end to the ills long associated with land tenure in our country.

(2) *Agrarian reform legislations to conform with Constitution.* —In a republican state like ours, no law or statute may; be enacted and put into effect without passing the test of constitutionality, that is, the law or statute should be in conformity with the express provision spirit or intent of the Constitution. It is from the Constitution that the State derives its power to regulate are even limit the scope of human behavior vis-a-vis his property. And in law, property means not only tangible assets but also rights.[37]

Laws, however, are presumed valid and constitution until declared otherwise by the courts.

(3) *Constitutional mandates.* —With particular reference to our laws on agrarian reform, these statutes, like all other laws, draw life

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[35] Pedro Salgado, O. P., *Religious Aspect of Agrarian Reform*, In Unitas, *supra*, p. 513; citing Eccl. 29, 2-3, citing Cuadregisimo Anopers, 51-5, cited in A. Estrada, *A Philosophy of Law*, 1950 ed., pp. 104-105.

[36] Pedro Salgado, O. P., *Religious Aspect of Agrarian Reform*, In Unitas, *supra*, p. 513; citing Eccl. 29, 2-3.

[37] Pedro Salgado, O. P., *Religious Aspect of Agrarian Reform*, In Unitas, *supra*, p. 513; citing Eccl. 29, 2-3.

from the Constitution which expressly obliges the State to promote social justice,[38] regulate the acquisition, ownership, use and disposition of property and its increments,[39] to afford full protection to labor and promote full employment and equal work opportunities,[40] and to undertake an agrarian reform program as well as a housing program for homeless citizens.[41]

The provisions of the Constitution on agrarian reform including those relevant thereto (*infra.*) provide sufficiently broad authority for the State to vigorously pursue an intensive and extensive reform program which could drastically change our economic, social and political structures. In any discussion of the legal aspects of agrarian reform, it is, of course, essential to keep in mind, the norms and objectives embodied in our Constitution and our laws and the pertinent decisions promulgated by our courts, particularly the Supreme Court.[42]

(4) *Policy development concerning agrarian reform.* —Since the beginning of the century, the Philippine government under various regimes (American Autonomous Government, the Commonwealth and finally the Republic) has always been concerned:

First, with the improvement of land tenure in the Philippines, particularly the level of productivity and the condition of the tiller as regards his tenure and the income he gets from the tillage of the soil; and

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[38] Constitution, Art. Ⅱ, Sec. 10..

[39] Pedro Salgado, O. P., *Religious Aspect of Agrarian Reform*, In Unitas, *supra*, p. 513; citing Eccl. 29, 2-3, Art. XIII, Sec. 1.

[40] Pedro Salgado, O. P., *Religious Aspect of Agrarian Reform*, In Unitas, *supra*, p. 513; citing Eccl. 29, 2-3, Art. XIII, Secs. 2-3.

[41] Pedro Salgado, O. P., *Religious Aspect of Agrarian Reform*, In Unitas, *supra*, p. 513; citing Eccl. 29, 2-3, Art. XIII, Secs. 4-10.

[42] See Guillermo S. Santos, *op. cit.*, note 34 at p. 525.

Second, with the distribution of land to the tiller.

These are two basic aspects on which the legislation of the past eighty years have centered.

(5) *Change of emphasis in policy*. —When we consider the beginning up to the present, we notice a definite change of emphasis in public policy concerning agrarian reform. While formerly the legislature had been content with the amelioration of the terms and conditions under which the tiller operated in terms of reward and security of tenure, there has been an accelerated movement towards distribution of land to the tiller under the land-to-the-tiller program.

(a) The acme of this effort Presidential Decree No. 27 which decreed the transfer of rice and corn lands under tenancy to the tiller thereof, that is to say, that they were deemed owner of rice and corn lands by operation and force of law.[43]

(b) This was followed years later by Proclamation No. 131 which instituted a Comprehensive Agrarian Reform Program (CARP) covering all public and private agricultural lands. The mechanisms needed initially to implement the program, particularly the land acquisition and distribution aspect, are set forth in Executive Order No. 229. Both were promulgated by the President in the exercise of her legislative power under the Provisional Constitution, then in force, in the absence of a legislative body then.

(c) The program is now being implemented under the Comprehensive Agrarian Reform Law (CARL) of 1988 (R. A. No. 6657).

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[43] See Perfecto V. Fernandez, *Agrarian Reform Laws in the Philippines*, in Seminar Papers on Agrarian Reform, published by the Agrarian Reform Institute, U. P., p. 1.

Political aspect of agrarian reform

(1) *Agrarian reform, a top-priority goal of government.* —There is doubt about the view that up to this day, agrarian reform continues to be a priority of government programs.

(a) On September 26, 1972, five days after the institution of martial law by virtue of Proclamation No. 1081, the President issued Presidential Decree No. 2 declaring the entire country as a land reform area. This was followed, on October 21, 1972, by Presidential Decree No. 27, mandating the emancipation of the country's rice and corn tenant farmers from their bondage by transferring to them the ownership of the lands they till. This bold and revolutionary step shortened the period within which a tenant farmer may become the owner of the land he cultivates and removed an elusive constraint to land distribution —the land financing aspect.[44] It provided the impetus that greatly accelerated the heretofore slow implementation of land reform which had caused growing dissatisfaction among the rural population.

(b) With the signing of Proclamation No. 131 and its companion measure, Executive Order No. 229, on July 22, 1987, four days before the convening of the First Congress under the new Constitution, the government put up the mechanism to start the implementation of CARP, "for the nation can no more afford its failure than its lack". The implementation, however, is "subject to such priorities and reasonable retention limits as the Congress may under the Constitution prescribe".

(c) The implementation of the program is now governed by the CARL of 1988 (R. A. No. 6657). which prescribes, among others,

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[44] Jose David Lapuz, *The Political Aspects of Agrarian Reform: A Comparative Study*, In Unitas, *supra*, p. 501.

the scope of the program, schedule of implementation, priorities and retention limits.

(2) *Agrarian reform as a political process.* —First and foremost, agrarian reform is ultimately the product of the more deliberate political decisions. The brief historical survey that follows the agrarian problem in our country and past attempts in solving this problem clearly and confirm this fact.[45]

The changing of land tenure structure brings about not only a redistribution of income and wealth but also a basic modification in the position of the existing social strata and consequently, a redistribution of power. The peasant masses become of their own, that is, independent of the former owners of land as a consequence of the change in its ownership or in the legal relations concerning tenancy. It is to the good credit of our system of government that the introduction of the new structures for change has come about within the framework of our flexible constitutional, political institutions by the agency of which our "great experiment" in agrarian reform has been pushed.[46]

C. IMPLEMENTATION OF AGRARIAN REFORM

Ways of effecting changes in agrarian structure

Changes in the agrarian structure can be achieved in practice by revolutionary means, by an authoritarian regime or by evolutionary means through the democratic process.

(1) In *a revolutionary situation*, it is accomplished as a result of a shift of political, economic and administrative power to a class which

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[45] Instructor's Manual, note 1 at p. 80; see Chap. 1.

[46] Jose David Lapuz, *op. cit.*, note 42 at p. 502.

would benefit directly by the reforms. The reforms can, therefore, be carried out relatively easy.

(2) It can also be introduced by *an authoritarian regime* already in power as a means of broadening its political base and of accomplishing certain desired economic and social changes. In both of these cases, policy decisions on land reform are enforced by suspension of normal legal processes if necessary. Opposition either from vested landlords' interest or from within the administration itself can thus be easily overcome. This is true in the case of Presidential Decree No. 27 and Executive Order No. 229 except that the implementation of the latter has to observe the normal legal and constitutional restrictions.

(3) The implementation of land reform *within a politically democratic framework*, however, presents problems. Unlike countries with revolutionary and authoritarian forms of government, the diffusion of political power (by virtue of the separation of powers among the executive, legislative and judicial organs of the government) makes it difficult to overcome the opposition of vested interests or reorganize or change the existing institutions which impede the reform. The implementation of land reform is not, therefore, purely a function of the administrative process. Nor can it be studied in isolation of the political, economic and social structure of which the agrarian structure forms a part.[47]

To be sure, a favorable political climate is the precondition of a sound reform and its implementation. This is so because any reform that transfers property and privilege from one group to another can neither be properly initiated nor carried out unless the controlling political forces of a country are willing to support the revolutionary changes and ready to

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[47] *Instructor's Manual*, note 1 at p. 82.

use all instruments of government to attain their goals.[48]

Requirements for successful implementation of agrarian reform

Many countries in Asia and in the Far East have legislated for programs of agrarian reform during the last four decades. There has been however, a wide gap between the declared objectives of such legislation and the actual realization. This has been attributed to the failure to appreciate the peculiar nature and needs of land reform implementation.

(1) Agrarian reform is a complex and often controversial program which usually meets with opposition from vested interests, *It is, therefore, necessary that any organization for its implementation should provide for a line of command from the center to field levels* in order to insure that policy is enforced and supported at all levels;

(2) In view of the fact that all support (such as agricultural credit) is usually withdrawn by landlord on the introduction of the program, *it is essential that the beneficiaries are provided with the necessary supporting services*;

(3) Since the prevailing political, economic, social and administrative systems are usually weighed against the would-be beneficiaries (for example, administrators are usually recruited from the landlord or urban middle classes), *it is necessary that the administrative organization and procedures as well as the judicial system by which the newly conferred rights are to be enforced, are refashioned* in such a manner as to enable the attainment of the objectives of the program; and

(4) Lastly, since existing administrators are often not adequately oriented or sympathetic towards the reforms and such a program is often

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[48] See Arulprasagasam, *General Issues in Land Reform Implementation*, pp. 1 - 2 (pamphlet).

obstructed by vested interests at all levels, *it is desirable to involve the beneficiaries in the implementation of the program.*[49]

D. COMPARATIVE AGRARIAN REFORM PROGRAMS

Agrarian reform programs classified

The history of agrarian reform is a long one, and consequently, there have evolved several program models.[50] Any agrarian reform program will fall under either of the following:

(1) *Rearrangement of tenancy relations.* —This procedure allows for the retention of all private property in land though measures are adopted where the terms and conditions of the tenancy relations are defined. A common feature of this program is to provide security of tenure to the tenant. It is only upon the breach of certain provisions in the law that a tenant can be ejected;[51] or

(2) *Redistribution of land to the peasants by:*

(a) *Distribution of land in the public domain, sometimes also referred to as settlement or colonization.* —The historical evidence on the success of this method as a program of agrarian reform tends to indicate that, such method succeeds if there is an accompanying support extended by the government. Unfortunately, the cost of colonization and resettlement is very expensive.

In the Philippines today, a conservative estimate on the cost of

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[49] See Arulprasagasam, *General Issues in Land Reform Implementation*, pp. 2 - 3.

[50] Jose T. Domingo, *Comparative Agrarian Reforms*, in Seminar Papers in Agrarian Reform, published by the Agrarian Reform Institute, U. P., p. 105.

[51] Jose T. Domingo, *Comparative Agrarian Reforms*, in Seminar Papers in Agrarian Reform, published by the Agrarian Reform Institute, U. P., p. 106.

reseting a single family in virgin areas of the public domain with good chances of success is about P100, 000. Furthermore, there is no complete assurance that families who are resettled will succeed in maintaining a stable agricultural life. It may be stated at this point that out of the 30,000 families resettled from 1947 to 1970, 70% slipped back to tenancy.[52]

(b) *The distribution of private lands and landed estates and parcelling them to the tenants, accompanied by a massive program of technical and financial assistance by the government.* —The concept is to leave a certain ceiling to the original owner while the rest of the lands or estates are parcelled into smaller "family-size" farms and granted to qualified farmers. This is a measure which has universally been adopted.[53]

(c) *Consolidation.* —Under this alternative program, the state replots the lands into uniformsized farm lots and reparcels them to the tillers involved to attain efficient farm management and increased production. Just compensation is given for its readjustment of corresponding land rights and ownership.

(d) *Confiscation of private lands.* —In socialist countries like China, the former Soviet Union and Israel, all lands belong to the State. They are parcelled into smaller subdivisions and leased to individual farmers or to cooperative farms or operated under a system of hired agricultural labor and are called state farms.[54] Thus, they were never

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[52] Jose T. Domingo, *Comparative Agrarian Reforms*, in Seminar Papers in Agrarian Reform, published by the Agrarian Reform Institute, U. P., pp. 106 - 107.

[53] Jose T. Domingo, *Comparative Agrarian Reforms*, in Seminar Papers in Agrarian Reform, published by the Agrarian Reform Institute, U. P., p. 108.

[54] Jose T. Domingo, *Comparative Agrarian Reforms*, in Seminar Papers in Agrarian Reform, published by the Agrarian Reform Institute, U. P., pp. 106 - 108.

bothered by such questions as the retention ceiling that should be allowed the original landowners, the valuation of lands transferred to tenants and the mode of paying the landowners(*infra*).

Agrarian reform programs in various countries

The various agrarian reform programs in many countries, while basically the same in their objectives, vary in their specifics. Where redistribution of land is the principal prop of a State's agrarian reform program, the following points become cogent:

(1) *Retention ceiling.* —Countries vary on the retention ceiling that they allow landlords to retain. They range from 0 retention as in the case of almost all socialist countries to as much as 26,000 acres in the case of Venezuela. In the Philippines, a seven-hectare ceiling was decreed for landowners whose and was devoted to rice and corn lands[55] under the Tenants Emancipation Decree. (Pres. Decree No. 27, Chap. I-E).

Under the Comprehensive Agrarian Reform Law (CARL) of 1988 (R. A. No. 6657.), the retention of the landowner, unless otherwise provided by law, shall not exceed five hectares. Three hectares may be awarded to each child of the landowner, subject to certain qualifications (Sec. 6 thereof).

(2) *Recipients or beneficiaries of the redistribution program.* —On the whole, almost all countries of the world allow landless farmers to be beneficiaries of expropriated lands. Notable exceptions, however, are true to some socialist countries as in the case of China and the former Soviet Union. In Israel, recipients of agrarian reform measures may be a group of people organized either into a moshav or a kibbutz. Both

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[55] Jose T. Domingo, *Comparative Agrarian Reforms*, in Seminar Papers in Agrarian Reform, published by the Agrarian Reform Institute, U. P., pp. 108 - 109.

mashav and kibbutz are premised on the primacy of jointly undertaking the farm works in the settlement as contrasted to individual undertakings under the traditional concept of one-farmer-one-farm.[56]

(3) *Valuation.* —Again, in many of the socialist countries, this problem is of no consequence. In countries where private property rights are held in high esteem, the matter of valuation of expropriated property has become a great problem. Over the years, a number of formulas have been devised in different countries. In the Philippines, it is 2.5 times the average for three normal annual gross harvests payable within 15 years in equal installments at 6% interest[57] with respect to rice and corn lands covered by the Tenants Emancipation Decree.

Under Executive Order No. 229, the landowner shall be compensated in an amount to be established by the government which shall be based on the owner's declaration of current fair market value subject to certain controls to prevent overpricing.

Under the CARL of 1988, the Land Bank of the Philippines (LBP) shall compensate the landowner in such amount as may be agreed upon by the landowner and the Department of Agrarian Reform (DAR), now known as the *Department of Land Reform* (DLR), and LBP, or as may be finally determined by the court as the just compensation of the land (Sec. 18 thereof).

(4) *Mode of payment.* —Any expropriation measure undertaken by the state premised on cash payments involves a tremendous outlay and no government has ever done this. A combination of modes of payments may exist such as cash, bonds and shares of stocks in government

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[56] Jose T. Domingo, *Comparative Agrarian Reforms*, in Seminar Papers in Agrarian Reform, published by the Agrarian Reform Institute, U. P., p. 111.

[57] Jose T. Domingo, *Comparative Agrarian Reforms*, in Seminar Papers in Agrarian Reform, published by the Agrarian Reform Institute, U. P., p. 111.

corporations, as in the Philippines.[58] Under the CARL of 1988, the landowner shall be paid in any of the modes provided at his option. (*Ibid.*)

(5) *Repayment of new owners.* —In democratic countries, this is one of the decisions of agrarian reform that have raised fundamental questions. If one of the major assumptions of an agrarian reform program is that the farmers are poor, how can they be given land and succeed in paying back the original owners of the expropriated properties?

Two methods, as far as direction of repayment is concerned, have been adopted:

(a) The farmer directly pays for his land to the original landowner under a system of amortization with the least interference from the government; and

(b) In the majority of democratic and developing countries, the new owners pay the government who earlier has acquired or expropriated these properties from private owners.[59] In the Philippines, the landowners are paid directly by the beneficiaries under voluntary land transfer (Sec. 21, CARL of 1988.), or by the Land Bank, in which case, the Bank acquires the right to collect the payments from the beneficiaries in thirty annual amortizations at 6% interest per annum (Sec. 26, *Ibid*).

(6) *Government support.* —Countries which have undertaken agrarian reform measures are agreed that the role of the government in terms of concrete financial and technical support is necessary. Such

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[58] Jose T. Domingo, *Comparative Agrarian Reforms*, in Seminar Papers in Agrarian Reform, published by the Agrarian Reform Institute, U. P., p. 112.

[59] Jose T. Domingo, *Comparative Agrarian Reforms*, in Seminar Papers in Agrarian Reform, published by the Agrarian Reform Institute, U. P., p. 113.

assistance comes in the form of liberal credit terms provision for massive technical assistance, price support, governmental machinery to implement the program, marketing facilities and the like.[60]

(7) *Obligations of the new owners.* —If agrarian reform were to be made effective, it should not fall back so easily to where it all started. For this reason, conditions are imposed by governments on the recipients of expropriated land. These conditions, which are almost universal, are the following:

(a) Fragmentation of allocated land is almost always prohibited to prevent further subdivision of the land as to make it uneconomic;

(b) One cannot be a recipient of land unless he becomes a member of a cooperative;

(c) Land is not transferable except in cases of inheritance; and

(d) Recipients of expropriated lands must personally cultivate their lands and at best, they can only hire agricultural labor. Subletting is generally prohibited.[61]

E. AGRARIAN REFORM AND BALANCED DEVELOPMENT

Agrarian reform and industrialization

(1) *The first, a vehicle for the second.* —Historically, few countries have managed to industrialize without first becoming self-sufficient with respect to agricultural products; hence, the oft-cited generalization that an industrial revolution depends on prior, or at least, a concurrent agricultural revolution.

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[60] Jose T. Domingo, *Comparative Agrarian Reforms*, in Seminar Papers in Agrarian Reform, published by the Agrarian Reform Institute, U. P., pp. 114 - 115.

[61] Jose T. Domingo, *Comparative Agrarian Reforms*, in Seminar Papers in Agrarian Reform, published by the Agrarian Reform Institute, U. P., p. 115.

(a) This relationship is particularly significant in South Asia. So large a part of the labor force is and will continue to be concentrated in the agricultural sector that is very difficult to expand the demand for industrial goods and squeeze savings out of the population when agricultural productivity and incomes are very low.

(b) Also, much of the region's industry and export trade are dependent on agricultural materials.

(c) Finally, and most important, all development efforts, not only those focused on agriculture, will be frustrated if there is an acute shortage of food.[62]

(2) *Relationship between agriculture and industry.* —Our Agrarian Reform Program, as embodied in the law, also promotes industrial development by establishing a machinery for shifting landlord's capital and enterprise from agriculture to industry.

A country like the Philippines cannot industrialize without agrarian reform and agricultural development, and agrarian reform cannot succeed without industrialization.

Industrialization needs from agrarian reform and a developed agriculture, the following:

(a) surplus agricultural crops as raw materials;

(b) mass purchasing power of the peasant masses;

(c) capital and skill released from underutilized land by agrarian reform; and

(d) manpower from rural areas.

On the other hand, agrarian reform and agricultural development need from a well-developed industry, the following:

(a) market for surplus production;

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[62] Gummar Hydral, *Asia Drama*, Vol. Ⅱ, 1968, pp. 1249 - 1250.

(b) agricultural machinery, chemicals and research;

(c) employment for excess manpower; and

(d) capital generated by industry.

Since agriculture and industry need each other, the Philippines must pursue an agro-industrial program, starting with agrarian reform and the processing of agricultural and local materials.[63] Thus, the program for industrialization calls for agrarian reform. It is not a need itself; it is dictated by the need to industrialize.[64]

(3) *Important conditions for industrialization.* —To industrialize, the following conditions are imperative:

(a) We have a labor force that is more or less adequately fed on very cheap staples. If food in this country is very cheap and abundant, Philippine labor will be very competitive in so far as industry is concerned since it is possible to pay a worker a low wage a day and yet he will be able to eat. If this then be so, it would leave a tremendous margin for profits by foreign and local investors;

(b) We must develop an agricultural sector that is increasingly well off in terms of surplus income. Not all our products can be exported; and

(c) There must also be consumption within the country. This internal or domestic demand cannot be created unless the farming sector is able to afford the products of industry.[65]

Agrarian reform and urbanization

(1) *Requirementfor urbanization.* —Transforming a city from a

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[63] *Instructor's Manual*, note 1 at pp. 64 - 65.

[64] Perfecto V. Fernandez, *op. cit.*, note 43 at p. 4.

[65] Perfecto V. Fernandez, *op. cit.*, note 43 at p. 4.

lower to a higher state will definitely require inputs of development in order to accelerate this transformation. Most of these inputs do not come from the city itself but from its neighboring areas or even far-flung regions —the rural or agricultural sector.[66]

(2) *Development inputs from agricultural sector.* —Cities, as geographic areas, are characterized by a very high population density. They are usually the places where factories for manufacturing, processing, and assembly work and other services are put up. As trade expands, additional processes in the trade activity are introduced, such as storage, transport, repacking and so forth.

These additional processes required additional manpower to undertake them; hence, population growth in cities is much faster than in the rural areas. In the course of these expanding activities in the cities, the bulk of raw materials continues to come from the rural areas—the agricultural sector.[67]

(3) *Interdependence between the cities and farms.* —There is, therefore, that interdependence between the cities and the farms. It can safely be said that, in many ways, the development of a city or an urban area is dependent on the corresponding growth and development of the rural areas, particularly the farmers who produce the raw materials for the factories and the food supply of people in the cities.[68]

Clearly, wider employment opportunities in urban areas provide a means of reducing population pressure on the agriculture; hence,

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[66] Sec. C. F. Estrella, *The Meaning of Land Reform*, Solidaridad Publishing House, p. 14 (1974).

[67] Sec. C. F. Estrella, *The Meaning of Land Reform*, Solidaridad Publishing House, p. 15.

[68] Sec. C. F. Estrella, *The Meaning of Land Reform*, Solidaridad Publishing House, p. 15.

urbanization and industrialization, on the one hand, and agricultural development, on the other, assumes equal importance.[69]

Agrarian reform and community development

(1) *Meaning of community development.* —The term has come into international usage to connote "the process by which the efforts of the people themselves are united with those of governmental authorities to improve the economic, social and cultural conditions of communities, to integrate these communities into the life of the nation, and to enable them to contribute fully to national progress".[70]

(2) *Two basic elements.* —The above definition implies that community development has two basic elements:

(a) the active participation by the people themselves in efforts to improve their level of living with as much reliance as possible on their own initiative and resources; and

(b) the provision of technical and material assistance by the government wherever and whenever such assistance is necessary and in ways which will encourage initiative, self-help and mutual help.[71]

(3) *Participation of the people themselves.* —The achievement of the primary aims of agrarian reform is difficult without the effective

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[69] Sec. C. F. Estrella, *The Meaning of Land Reform*, Solidaridad Publishing House, p. 15.

[70] Nathaniel B. Tablante, *Agrarian Reform and Community Development*, in Seminar Papers on Agrarian Reform, published by the Agrarian Reform Institute, U. P., p. 72, citing UN Dept. of Economic and Social Affairs *Popular Participation in Development: Emergency Trends in Community Development*, pp. 6-7 (1971).

[71] Nathaniel B. Tablante, *Agrarian Reform and Community Development*, in Seminar Papers on Agrarian Reform, published by the Agrarian Reform Institute, U. P., p. 72, citing UN Dept. of Economic and Social Affairs *Popular Participation in Development: Emergency Trends in Community Development*, pp. 77-78.

participation of the people themselves.[72]

(a) By giving the traditional farmer experience in self-determination, it can also help him develop a spirit of independence and self-reliance, a characteristic that does not come naturally to people who have been reared in the traditionally all-embracing paternal or trivial system where submission to authority is voluntary and unquestioning.

(b) *Within this setting*—even if it serves no economic need and eventually withers away—it might have played an important role in the self-improvement of the local peasant community, establishing a much broader and firmer base for the development of a true democracy.[73]

(4) *Supporting institutions to agrarian reform.* —Complementary to the stimulation of popular participation in development projects, is the strengthening and building of local institutions through which such participation may be sustained or carried out. To ensure the continuity of the enthusiasm and spontaneous action generated in local agrarian reform efforts, it is necessary:

(a) to broaden the base of these institutions to include all interests in the local community;

(b) to provide new institutions initially with adequate external financial, technical and political support; and

(c) to continuously expose these institutions to new knowledge and

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[72] Nathaniel B. Tablante, *Agrarian Reform and Community Development*, in Seminar Papers on Agrarian Reform, published by the Agrarian Reform Institute, U. P., p. 72, citing UN Dept. of Economic and Social Affairs *Popular Participation in Development: Emergency Trends in Community Development*, p. 76.

[73] Nathaniel B. Tablante, *Agrarian Reform and Community Development*, in Seminar Papers on Agrarian Reform, published by the Agrarian Reform Institute, U. P., p. 72, citing UN Dept. of Economic and Social Affairs *Popular Participation in Development: Emergency Trends in Community Development*, citing Brannon and Smith, *Agricultural Cooperatives and Markets in Developing Countries*, pp. 208 - 209 (1969).

scientific advances relevant to their needs.

This is the rationale for the policy of the State to foster the creation and growth of *Samahang Nayon* (*barrio* associations) and *Kilusang Bayan* (cooperatives) as supporting institutions to agrarian reform[74] — not only because people acting together are better able to pursue their common interests but also because these organizations of the agrarian reform beneficiaries themselves provide the best channels for essential services and facilities needed by them.

Agrarian reform and cooperatives

(1) *Cooperatives support Agrarian Reform Program.* —The present scheme of implementation of the Agrarian Reform Program requires the organization of grass root-based cooperative organizations.

The importance of cooperatives to the Agrarian Reform Program is evident in the requirement making membership in a cooperative a requisite to ownership of land by the tenant-farmers. To give meaning to this requirement, the cooperative will guarantee payment of annual amortizations to the landowners. To enable the cooperative to do this, it must have a strong base and a system of guarantee and resource.[75]

(2) *Cooperatives benefit farmers.* —Cooperatives are also being promoted among the farmers so that they may enjoy, on a lasting basis, the benefits of agrarian reform through organized cooperation.

(a) Cooperatives will show them that by uniting in an organization,

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[74] Nathaniel B. Tablante, *Agrarian Reform and Community Development*, in Seminar Papers on Agrarian Reform, published by the Agrarian Reform Institute, U. P. , p. 72, citing UN Dept. of Economic and Social Affairs *Popular Participation in Development: Emergency Trends in Community Development*, p. 79.

[75] Clemente Terso, Jr. , *The Cooperative Development Program of DLGCD*, in Seminar Papers in Agrarian Reform, published by the Agrarian Reform Institute, U. R, p. 82.

they become stronger, and are, therefore, in a better position to secure certain benefits for themselves; provide them the opportunity to identify and discuss their major problems systematically, and then take definite steps to solve them; and acquaint them with the responsibilities of owning land.

(b) Cooperatives will help them secure with their own capital, the services and goods they need for increased productivity and income, efficient management, credit, production supplies, technology, marketing outlets, transport facilities and so on.

(c) In more economic terms, the cooperative will pool the meager resources of the farmers so that they can deal on an equal footing with other large business enterprise.[76]

(3) *Policy of the State with respect to cooperatives.* —The Cooperative Code of the Philippines[77] declares it the policy of the State "to foster the creation and growth of cooperatives as a practical vehicle for promoting self-reliance and harnessing people power towards the attachment of economic development and social justice.

(a) The State shall encourage the private sector to undertake the actual formation and organization of cooperatives and shall create an atmosphere that is conducive to the growth and development of these cooperatives.

(b) Towards this end, the government and all its branches, subdivisions, instrumentalities and agencies shall ensure the provision of technical guidance, financial assistance and other services to enable said cooperatives to develop into viable and responsive economic enterprises and thereby bring about a strong cooperative movement that is free from

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[76] *Instruction's Manual*, note 1 at p. 43.

[77] R. A. No. 6938, Sec. 1.

any conditions that might infringe upon the autonomy or organizational integrity of cooperatives.

(c) Further, the State recognizes the *principle of subidiarity* under which the cooperative sector will initiate and regulate within its own ranks, the promotion and organization, training and research, audit and support services relating to cooperatives with government assistance when necessary".

Chapter Ⅱ THE COMPREHENSIVE AGRARIAN REFORM PROGRAM

A. PRELIMINARY CONSIDERATION

Introduction

Barely a month after the February 25, 1986 peaceful revolution, or on March 25, 1986, the President issued Proclamation No. 3 promulgating a Provisional Constitution "by virtue of the powers vested in me by the sovereign mandate of the people". As head of the provisional government, the President exercised legislative power (*i. e.*, power to make laws) "until a legislature is elected and convened under a new Constitution". (Art. Ⅱ, Sec. 1, Proc. No. 3.)

(1) *Proclamation No.* 131 *and Executive Order No.* 229. —In the exercise of this legislative power which is recognized by the new Constitution (under Art. XⅧ, Sec. thereof.), the President signed on July 22, 1987 or five days before the opening of the new Congress, Proclamation No. 131 instituting a Comprehensive Agrarian Reform Program (CARP) and Executive Order No. 229 providing the

mechanisms needed initially to implement the program.[78]

(2) *R. A. No.* 6657. —With the enactment of Republic Act No. 6657, signed by the President on June 10, 1988,[79] otherwise known as the Comprehensive Agrarian Reform Law (CARL) of 1988, all matters involving the implementation of agrarian reform are now governed by the said Act.

(a) *Suppletory laws.* —Existing legislation on agrarian reform such as Republic Act No. 3844, as amended (Code of Agrarian Reforms), Presidential Decrees No. 27, as amended (Tenants Emancipation Decree), and No. 266 (providing for the mechanics of registration of ownership and/or title to land under Pres. Decree No. 27.), Executive Orders No. 228 (declaring full land ownership to qualified farmer beneficiaries covered by Pres. Decree No. 27.) and No. 229 (providing the mechanisms needed initially under Proclamation No. 131) and other laws not inconsistent with the Act shall have only suppletory effect. (Sec. 75.)[80] This means they are applicable only on matters not covered by the Act.

(b) *Repealed or amended laws.* —Section 35 (exemption from leasehold of other kinds of lands; see Chap. Ⅲ-A.), Presidential Decree No. 316 (prohibiting the ejectment of tenant-tillers from their

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[78] Executive Order No. 229 was signed by the President (together with Proclamation No. 131) on July 21, 1987. It took effect 15 days after publication in the Official Gazette or in a newspaper of general circulation in the Philippines. It was published in a newspaper of general circulation on July 23, 1987. Hence, it took effect on August 7, 1987. Proclamation No. 131 took effect immediately upon its approval (see Sec. 4 thereof).

[79] It took *effect immediately after publication in at least two newspapers of general circulation* (See Sec. 78 thereof.), or on June 15, 1988 (see DAR Adm. Order No. 7 [1989]).

[80] Unless otherwise indicated, all sections cited under this Chapter refer to CARL of 1988.

farmholdings pending the promulgation of the rules and regulations implementing Pres. Decree No. 27, the last two paragraphs of Section 12 of Presidential Decree No. 946, and Presidential Decree No. 1038 (strengthening the security of tenure of tenant-tillers to non-rice/corn-producing private agricultural lands),[81] and all other laws, Presidential Decrees, Executive Orders, rules and regulations, issuances or parts thereof inconsistent with the Act are repealed or amended accordingly (Sec. 76).

(3) *1987 Constitution.* —The Constitution which was ratified on February 2, 1987 contains several provisions directly dealing with agrarian reform (see Chap. I-C).

Need for CARP

The "whereas" clauses of Proclamation No. 131 stress the urgent need for a comprehensive, realistic and flexible agrarian reform program in the light of the present crisis facing our country and the goals of the national economy as mandated by the Constitution, while the 6th to 13th clauses state the requirements of the program and the imperative for the entire Filipino people, together with all government agencies, particularly Congress, and private organizations to support the program in order to implement it effectively.

The "whereas" clauses read:

"WHEREAS, we have proclaimed the revival and development of the full potential of Philippine agriculture to be an economic priority of

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[81] Both Presidential Decrees No. 946 (Sec. 12, last two parts, thereof.) and No. 1033 prohibit any court to take cognizance of any ejectment case or any other case designated to harass or remove a tenant of an agricultural land primarily devoted to rice and/or corn unless certified by the Secretary of Agrarian Reform as a proper case for trial or hearing.

our new democracy as to provide a firm foundation for the industrialization of our country;

WHEREAS, it is necessary to make our new democracy meaningful by increasing the productivity of the farming sector and increasing the incomes of farmers, regular farm-workers and other farmworkers;

WHEREAS, the essential element in any policy of Agricultural revival and development is a comprehensive and realistic agrarian reform program;

WHEREAS, such an agrarian reform program will encourage the shift of capital from land to industry;

WHEREAS, realizing these imperatives, the President declared in the 1986 Presidential campaign that she would undertake an agrarian reform program;

WHEREAS, there is a need for all to address agrarian reform in the spirit of cooperation, harmony and understanding, a spirit which must pervade the process as a whole, in its voluntary as well as non-voluntary aspects, for the country faces problems and challenges that require national unity;

WHEREAS, agrarian reform indispensably entails the participation of all concerned in the planning, organization and management of the program;

WHEREAS, the entire Filipino people, together with all government agencies and private organizations, must extend priority, support and full cooperation to implement this program effectively;

WHEREAS, there is a need for the program to be realistic and flexible in order to succeed, to take account of differences from place to place, from community to community, so that no single and rigid prescription would be unfairly and unwisely applied to all regardless of

special feature and circumstances, and to be within the present and foreseeable capabilities of the nation;

WHEREAS, the program further requires available funding that is definite as to source and timing;

WHEREAS, the education, reorientation and motivation of farmers, regular farmworkers and other farmworkers in their new role and responsibilities, along with steps to ensure that the program will result in increased productivity and better income for the beneficiaries, are also called for;

WHEREAS, all these and other infrastructure requirements must further be provided for by other legislation and measures;

WHEREAS, the President recognizes as a partner to this continuing undertaking the co-equal Branch of the Congress of the Philippines, whose Senate is elected at large and therefore speaks for the nation and whose House of Representatives articulates the needs and problems of the constituencies and sectors in the land;

WHEREAS, in the last analysis, the times undeniably call for change and the need to undertake the agrarian reform program can no longer wait, so that no alternative lies but to adopt a program that is workable, sufficiently funded and, above all, aimed to succeed, for the nation can no more afford its failure than its lack;

WHEREAS, the forces of history and the Constitution, the pressing needs of the times, the capabilities of the present, and the age-old aspirations of the Filipino people demand such an agrarian reform program."

Declaration of principles and policies

The CARL of 1988 declares that it is the policy of the State to pursue a Comprehensive Agrarian Reform Program (CARP).

(1) The welfare of the landless farmers and farmworkers will receive the highest consideration to promote social justice and to move the nation toward sound rural development and industrialization, and the establishment of owner cultivatorship of economic-sized farms as the basis of Philippine agriculture. To this end, a more equitable distribution and ownership of land, with due regard to the rights of landowners to just compensation and to the ecological needs of the nation, shall be undertaken to provide farmers and farmworkers with the opportunity to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands.

(2) By means of appropriate incentives, the State shall encourage the formation and maintenance of economic-sized family farms to be constituted by individual beneficiaries and small landowners.

(3) The State shall be guided by the principles that land has a social function and land ownership has a social responsibility. Owners of agricultural land have the obligation to cultivate, directly or through labor administration, the lands they own and thereby make the land productive.

(4) The State may lease undeveloped lands of the public domain to qualified entities for the development of capital-intensive farms and traditional and pioneering crops especially those for exports subject to the prior rights of the beneficiaries under the Act (Sec. 3).

The CARL of 1988 adopts in Section 3 thereof all the provisions of the Constitution on "agrarian and natural resources reform" (Art. XIII, Secs. 4 to 8 thereof; see Chap. I-C).

Key objectives of the Program

The Comprehensive Agrarian Reform Program puts the farmers, who make up the vast majority of the rural population, right at the

center of development.[82] No longer will they be passive recipients of government help, but active participants in their own development.

CARP has three key objectives:

(1) *Equity.* —It establishes equity by democratizing control over the country's lands to a large section of the population and enabling them to directly participate in nation-building;

(2) *Capability.* —It builds the capability of farmer-beneficiaries to manage reformed lands productively by giving them the support services they need; and

(3) *Sustainability.* —It promotes sustainability by incorporating the ecosystem and stakeholder approaches to land use and management.

To meet these key objectives, the DAR implements CARP by closely integrating land distribution and land tenure improvement (LTI) with program beneficiaries development (PBD). The basic approach is to maximize the productivity of farmers and reformed lands through targeted support services and the promotion of private investments in the agricultural sector, to ensure that land is transferred together with the means that will make its new owners competitive in a free market environment.

More than 40% of the total population are engaged in agricultural, fishery and forestry. About 60% of all poor Filipinos come from the rural areas. Some 3.3 million households or 44% of the total rural population live below poverty levels. The Comprehensive Agrarian Reform Program is the main instrument by which the government seeks to achieve food security and to eradicate poverty.

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[82] DAR Supplement, Manila Bulletin, on June 10, 1999, p. 21.

Definition of terms

For purposes of the Act, unless the context indicates otherwise, the words and phrases used in the Act shall be taken in the sense indicated below.

(1) *Agrarian reform* means the redistribution of lands, regardless of crops or fruits produced, to farmers and regular farmworkers 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 of lands, such as production or profit-sharing, labor administration, and the distribution of shares of stock, which will allow beneficiaries to receive a just share of the fruits of the lands they work.

(2) *Agriculture, agricultural enterprise or agricultural activity* means the cultivation of the 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 (as amended by R. A. No. 7881).

(3) *Agricultural land* refers to land devoted to agricultural activity and not classified as mineral, forest, residential, commercial or industrial land.

(4) *Agrarian dispute* refers to any controversy relating to tenurial arrangements, whether leasehold tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers' associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements.

It includes any controversy relating to compensation of lands acquired

under the Act and other terms and conditions of transfer of ownership from landowners to farm-workers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee.

(5) *Idle or abandoned land* refers to 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.

It does not include land that has become permanently or regularly devoted to non-agricultural purposes; nor land which has become unproductive by reason of *force majeure* or any other fortuitous event provided that prior to such event, such land was previously used for agricultural or other economic purposes.

(6) *Farmer* refers to a natural person whose primary livelihood is cultivation of land or the production of agricultural crops, either by himself, or primarily with the assistance of his immediate farm household, whether the land is owned by him, or by another person under a leasehold or share tenancy agreement or arrangement with the owner thereof.

(7) *Farmworker* is a natural person who renders service for value as an employee or laborer in an agricultural enterprise or farm regardless of whether his compensation is paid on a daily, weekly, monthly or "*pakyaw*" basis.

The term includes an individual whose work has ceased as a consequence of, or in connection with, a pending agrarian dispute and who has not obtained a substantially equivalent and regular farm employment.

(8) *Regular farmmorker* is a natural person who is employed on a

permanent basis by an agricultural enterprise or farm.

(9) *Seasonal farmworker* is a natural person who is employed on a recurrent, periodic or intermittent basis by an agricultural enterprise or farm, whether as a permanent or a non-permanent laborer, such as "*dumaan*", "*sacada*", and the like.

(10) *Other farmworker* is a farmworker who does not fall under the definition of farmworker, regular farmworker and seasonal farmworkers.

(11) *Cooperatives* refer to organizations composed primarily of small agricultural producers, farmers, farmworkers, or other agrarian reform beneficiaries who voluntarily organize themselves for the purpose of pooling land, human, technological, financial or other economic resources, and operated on the principle of one member, one vote.

A juridical person may be a member of a cooperative, with the same rights and duties as a natural person. (Sec. 3.)

B. COVERAGE

Scope of the program

(1) *In general.* —The CARL of 1988 covers, regardless of tenurial arrangement and commodity produced, all public and private agricultural lands including other lands of the public domain suitable to agriculture.[83] While it is limited to providing land for the landless, CARP not only acquires and distributes land but also provides support facilities and system for the benefit of the farmers.

As mandated in the Constitution, the agrarian reform program covers all agricultural lands including public lands. (Art. XIII, Sec. 4 thereof.) Agricultural lands are those devoted principally to the raising of crops

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[83] Presidential Decree No. 27 covers only tenanted rice and corn lands.

such as rice, sugarcane, tobacco, coconuts, etc., or to pasturing, dairying, inland fishery, salt-making and other agricultural uses.

(2) *In particular.* —More specifically, the following lands are covered by the CARP.

(a) All alienable and disposable lands of the public domain devoted to or suitable for agriculture;

(b) All lands of the public domain (including forest or mineral lands reclassified to agricultural lands after the approval of the Act) in excess of the specific limits as determined by Congress taking into account ecological development and equity considerations;

(c) All other lands owned by the Government devoted to or suitable for agriculture;[84] and

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[84] Executive Order No. 407 (June 14, 1990) provides:

"Section 1. All Government instrumentalities including but not limited to government agencies, government-owned and controlled corporations or financial institutions such as the Development Bank of the Philippines, Philippine National Bank, Republic Planters Bank, Asset Privatization Trust, Presidential Commission on Good Government, Department of National Defense, shall immediately execute Deeds of Transfer in favor of the Republic of the Philippines as represented by the Department of Agrarian Reform and surrender to the latter department all landholdings suitable for agriculture including all pertinent ownership documents in their custody such as the owner's duplicate copy of the certificates of title, tax declarations and other documents necessary to effect the transfer of ownership.

This Executive Order shall likewise apply to ownership of the following assets, as determined by the Department of Agrarian Reform in close coordination with the concerned government agency:

(a) Improvements, *e. g.*, irrigation systems, roads and bridges;

(b) Agriculture processing machineries, *e. g.*, post-harvest facilities;

(c) Buildings and other physical structures, warehouses, administration buildings, employees' housing facilities;

(d) Others, such as trucks and tractors, tools and agricultural supplies.

In the case of lands suitable to agriculture with pending adjudication on their ownership in court, the respective government instrumentalities shall, when legally feasible, immediately transfer and cede the physical possession and control of the same to the Department of Agrarian Reform for its subsequent transfer to the qualified beneficiaries. × × ×"

(d) All private lands devoted to or suitable for agriculture regardless of the agricultural products raised or that can be raised thereon. (Sec. 4.)

Prawn farms and fishponds are not covered.[85]

(3) *Schedule of implementation.* —The distribution of all lands covered by the Act shall be implemented immediately and completed within ten years from the effectivity thereof.[86] (Sec. 5.)

Retention limits

(1) *General rule.* —The size of any public or private agricultural land which a person may own or retain directly or indirectly shall vary according to factors governing a viable family-sized farm, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC).

The CARL recognizes that different crops require different inputs and yield different returns; hence, the retention limits have to be flexible.

In no case, however, shall retention by the landowner exceed five hectares.

Three hectares may be awarded to each child of the landowner, subject to the following qualifications:

(a) that he is at least fifteen years of age; and

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[85] They are subject to a profit-sharing scheme, with the owners maintaining their ownership and preserving their investments. (see R. A. No. 7881.)

[86] Only Taiwan, Japan and Korea succeeded in their agrarian reform programs while 30 other countries failed and went back to reconsolidation of the distributed lands. While the three countries limited their coverage to only 1.9 hectares for Japan, 600,000 hectares for Taiwan, and 400,000 hectares for Korea, the CARP is unlimited in coverage but the DAR has set an initial target of about 8.1 hectares.

(b) that he is actually tilling the land or directly managing the farm.[87]

(2) *Exceptions*:

(a) Landowners whose lands have been covered by Presidential Decree No. 27 shall be allowed to keep the area originally retained by them thereunder; and

(b) Original homestead grantees or their direct compulsory heirs who still own the original homestead at the time of the approval of the law shall retain the same areas as long as they continue to cultivate said homestead.[88] (Sec. 6, par. 1.)

Governing rules on exercise by landowner of retention rights

The following rules and procedure shall apply to all applications for retention under Presidential Decree No. 27 and Section 6 of CARL.

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[87] DAR Adm. Order No. 2, Series of 2003. It modifies or repeals DAR Adm. Order No. 4, Series of 1990, No. 4, Series of 1991, Adm. Order No. 5, Series of 2000 and all administrative issuances inconsistent therewith.

[88] Pursuant to Section 6, the following guidelines governing agricultural lands covered by homestead patents are prescribed: (1) A homestead shall not be subject of compulsory acquisition under the Comprehensive Agrarian Reform Program (CARP) if the following conditions are present: (a) The original homestead grantee or his direct compulsory heir(s) still owned the original homestead at the time of the effectivity of R. A. No. 6657 on June 15, 1989; and (b) The original homestead grantee or his direct compulsory heir(s) was cultivating the homestead as of June 15, 1988 and continues to cultivate the same.

The phrase "direct compulsory heir" is understood to mean the surviving spouse of the original homesteader or his children and descendants or illegitimate children who must prove their filliation in accordance with the provisions of the Family Code. In the absence of all the foregoing, the surviving parents of said original homestead grantee shall be considered.

Section 6 (also Sec. 22, par. 2.) of R. A. No. 6657 provides that in all cases, the security of tenure of farmers or farmworkers on the land prior to the effectivity of the Act shall be respected.

(1) *Statement of policies.* —The exercise of retention right by landowners shall be governed by the following policies:

(a) The landowner has the right to choose the area to be retained by him which shall be compact and contiguous, and which shall be least prejudicial to the entire landholding and the majority of the farmers therein;

(b) The landowner shall exercise the right to retain by signifying his intention to retain within sixty days from receipt of notice of coverage. Failure to do so within the period shall constitute a waiver of the right to retain any area;

(c) Upon manifestation of the landowner's intention to retain, he shall indicate the exact location thereof within 30 days from manifestation date. Failure to do so shall authorize the Municipal Agrarian Reform Officer (MARO) to choose said retention area;

(d) The landowner has the obligation to cultivate the land directly or through labor administration and thereby make the area he retains productive;

(e) In all cases, all rights previously acquired by the tenant farmers under Presidential Decree No. 27 and the security of tenure of the farmers or farmworkers on the land prior to the approval of R. A. No. 6657 shall be respected. Furthermore, actual tenant farmers in the landholdings shall not be ejected or removed therefrom; and

(f) The sale, disposition, lease or transfer of private lands by the original landowners in violation of R. A. No. 6657 shall be null and void. Transactions executed prior to R. A. No. 6657 shall be valid only when registered with the Register of Deeds within a period of three months after June 15, 1988 in accordance with Section 6 of R. A. No. 6657.

(2) *Who may apply for retention.* —

(a) Any person, natural or juridical, who owns agricultural lands with an aggregate area of more than five hectares may apply for retention area. However, a landowner who exercised his right of retention under P. D. No. 27 may no longer exercise the same right under R. A. No. 6657. Should he opt to retain five hectares in his other agricultural lands, the seven hectares previously retained by him shall be immediately placed under CARP coverage;

(b) A landowner who owns five hectares or less, of land which are not yet subject of coverage based on the schedule of implementation provided in Section 7 of R. A. No. 6657, may also file an application for retention and a Certification of Retention shall be issued in his favor; and

(c) The right of retention of a deceased landowner may be exercised by his heirs provided that the heirs must first show proof that the decedent landowner had manifested during his lifetime his intention to exercise his right of retention prior to August 23, 1990 (finality of the Supreme Court ruling in the case of *Association of Small Landowners in the Philippines Incorporated v. The Honorable Secretary of Agrarian Reform*).

(3) *Period to exercise right of retention under R. A. No.* 6657. —

(a) The landowner may exercise his right of retention at any time before receipt of notice of coverage.

(b) Under the Compulsory Acquisition (CA) scheme, the landowner shall exercise his right of retention within 60 days from receipt of notice of coverage.

(c) Under the Voluntary Offer to Sell (VOS) and the Voluntary Land Transfer (VLT)/Direct Payment Scheme (DPS), the landowner shall exercise his right of retention simultaneously at the time of offer for sale or transfer.

(4) *Where to file application.* —Any duly completed application for retention may be filed with the office of the Regional Director or the Provincial Agrarian Reform Officer (PARO). The receiving office shall forward the application to the MARO with jurisdiction over the landholding after assigning a docket number.

(5) *Waiver of the right of retention.* —The landowner waives his right to retain by committing any of the following acts or omissions:

(a) Failure to manifest an intention to exercise his right to retain within 60 calendar days from receipt of notice of CARP coverage.

(b) Failure to state such intention upon offer to sell or application under the VLT/DPS scheme.

(c) Execution of any document stating that he expressly waives his right to retain. The MARO and/or PARO and/or Regional Director shall attest to the due execution of such document.

(d) Execution of a Landowner Tenant Production Agreement and Farmer's Undertaking (LTPA-FU) or Application to Purchase and Farmer's Undertaking (APFU) covering subject property.

(e) Entering into a VLT/DPS or VOS but failing to manifest an intention to exercise his right to retain upon filing of the application for VLT/DPS or VOS.

(f) Execution and submission of any document indicating that he is consenting to the CARP coverage of his entire landholding.

(g) Performing any act constituting estoppel by laches which is the failure or neglect for an unreasonable length of time to do that which he may have done earlier by exercising due diligence, warranting a presumption that he abandoned his right or declined to assert it.

(6) *Criteria/requirements for award of retention.* —The following are the criteria in the grant of retention area to landowners:

(a) The land is private agricultural land;

(b) The area chosen for retention shall be compact and contiguous and shall be least prejudicial to the entire landholding and the majority of the farmers therein;

(c) The landowner must execute an affidavit as to the aggregate area of his landholding in the entire Philippines; and

(d) The landowner must submit a list of his children who are 15 years old or over as of June 15, 1988 and who have been actually cultivating or directly managing the farm since June 15, 1988 for identification as preferred beneficiaries, as well as evidence of such;

(e) The landowner must execute an affidavit stating the names of all farmers, agricultural lessees and share tenants, regular farmworkers, seasonal farmworkers, other farmworkers, actual tillers or occupants, and/or other persons directly working on the land; if there are no such persons, a sworn statement attesting to such fact.

(7) *Retention area.* —The area allowed to be retained by the landowner shall be as follows:

(a) Landowners covered by Presidential Decree No. 27 are entitled to retain seven hectares, except those whose entire tenanted rice and corn lands are subject of acquisition and distribution under Operation Land Transfer (OLT). An owner of tenanted rice and corn lands may not retain those lands under the following cases:

1) If he, as of October 21, 1972, owned more than 24 hectares of tenanted rice and corn lands; or

2) By virtue of Letter of Instruction (LOI) No. 474, if he, as of October 21, 1972, owned less than 24 hectares of tenanted rice and corn lands but additionally owned the following:

a) other agricultural lands of more than seven hectares, whether tenanted or not, whether cultivated or not, and regardless of the income derived therefrom; or

b) lands used for residential, commercial, industrial or other urban purposes from which he derives adequate income to support himself and his family.

(b) Landowners affected by the P. D. No. 27 who filed their applications for retention before August 27, 1985, the deadline set by the DAR AO No. 1, Series of 1985, may retain not more than seven hectares of their landholdings regardless of whether or not they complied with Letters of Instruction (LOI) Nos. 41, 45, and 52.

(c) Also entitled to such seven hectares retention area under P. D. No. 27 are landowners who filed their application after August 27, 1985 but complied with LOI Nos. 41, 45, and 52, which provide for the submission of sworn statements containing the following information:

1) List of agricultural lands owned by him throughout the country, indicating therein the area and location of each parcel;

2) Principal crops to which each parcel of land is devoted. For those areas devoted primarily to rice and/or corn, the landowners shall indicate:

a) the portions actually cultivated by tenants;

b) the names of such tenants; and

c) the area tilled by each tenant as of October 21, 1972.

3) The average gross harvest of each tenant (on a parcel of rice/corn land) during the three crop years immediately preceding October 21, 1972; and

4) Liens and/or encumbrances, if any, the amounts thereof, and the names and addresses of the parties who have liens and/or encumbrances over such properties as of October 21, 1972.

(d) Landowners who filed their applications after the August 27, 1985 deadline and did not comply with LOI Nos. 41, 45, and 52 shall be entitled only to a maximum of five hectares as retention area.

(e) Landowners who failed to apply for retention under P. D. No. 27, and who did not comply with the 27 August, 1985 deadline, shall be allowed to retain a maximum of five hectares in accordance with R. A. No. 6657 except those who under P. D. No. 27 are disqualified to retain:

1) If he, as of October 21, 1972, owned more than twenty-four hectares of tenanted rice and corn lands; or

2) By virtue of LOI No. 474, if he, as of October 21, 1972, owned less than twenty-four hectares of tenanted rice and corn lands but additionally owned the following:

a) Other agricultural lands of more than seven hectares, whether tenanted or not, whether cultivated or not, and regardless of the income derived therefrom; or

b) Lands used for residential, commercial, industrial or other urban purposes from which he derives adequate income to support himself and his family.

(f) A landowner whose landholdings are covered under CARP may retain an area of not more than five hectares thereof. In addition, each of his children, whether legitimate, illegitimate or legally adopted, may be awarded an area of not more than three hectares as preferred beneficiary, provided that the child is at least fifteen years old as of June 15, 1988 and that he is actually tilling the land or directly managing the farmholding from June 15, 1988 up to the filing of the application for retention and/or the time of the acquisition of the landholding under CARP.

(g) The original homestead grantees or their direct compulsory heirs who still own the original homestead at the time of the approval of R. A. No. 6657 may retain the same area as long as they continue to cultivate the said homestead.

(h) For marriages covered by the new Civil Code, in the absence of the agreement for the judicial separation of property, spouses who own only conjugal properties may retain a total of not more than five hectares of such properties. However, if either or both of them are landowners in their respective rights (capital and/or paraphernal), they may retain not more than five hectares of their respective landholdings. In no case, however, shall the total retention of such couple exceed 10 hectares.

(i) For marriages covered by the Family Code, which took effect on August 3, 1988, a husband owning capital property and/or wife owning a paraphernal property may retain not more than five hectares each, provided they executed a judicial separation of properties prior to entering into such marriage. In the absence of such an agreement, all properties (capital, paraphernal and conjugal) shall be considered to be held in absolute community, *i. e.*, the ownership relationship is one, and, therefore, only a total of five hectares may be retained.

(8) *When retained area is tenanted.* —

(a) In case the area selected by the landowner or awarded for retention by the DAR is tenanted, the tenant shall have the option to choose whether to remain therein as lessee or be a beneficiary in the same or another similar or comparable features.

(b) In case the tenant declines to enter into leasehold and there is no available land to transfer, or if there is, the tenant refuses the same, he may choose to be paid disturbance compensation by the landowner in such amount as may choose to be paid disturbance compensation by the landowner in such amount as may be agreed between the parties taking into consideration the improvements made on the land. However, in no case shall the agreed amount be less than five times the average gross harvest on their landholding during the last five preceding calendar years

pursuant to Section 36 of R. A. No. 3844, as amended by Section 7 of R. A. No. 6389.

If the parties fail to agree on the amount of disturbance compensation, either party may file a petition for fixing disturbance compensation with the appropriate Provincial Agrarian Adjudicator (PARAD). In the latter case, the petitioner must show proof that earnest efforts were exerted by the parties to fix the amount of disturbance compensation, which efforts proved unsuccessful, before the same was filed with the PARAD. The tenant shall not be dispossessed or ejected from the landholding, unless disturbance compensation is paid and proof thereof is submitted to the MARO.

(c) The tenant must exercise his option within one year from the time the landowner manifests his choice of the area for retention, or from the time the MARO has chosen the area to be retained by the landowner, or from the time an order is issued granting the retention.

(d) In case the tenant chooses to remain in the retained area, he shall be considered a leaseholder and shall lose his right to be an Agrarian Reform Beneficiary (ARB) under CARP. In this case, the required lease agreement shall be executed in accordance with relevant issuances on the matter.

(e) The provisions on preemption and redemption under R. A. No. 3844, as amended (see Chap. Ⅲ-B.), shall apply to the lease.

(9) *Responsibilities of the MARO.* —In the processing processing of applications for retention, the MARO shall have the following responsibilities:

(a) Determine whether or not the original homestead grantees or their direct compulsory heirs still own and actually cultivate the homestead land, when applicable.

(b) Conduct field verification and investigation, together with the

landowner or his authorized representative, to determine the following:

1) Landholding of the landowner in relation to his application for retention;

2) Qualifications of the applicant and their children as their compulsory heirs;

3) Tenants, farmworkers and/or actual occupants within subject landholding; and

4) Other factors relevant to the application for retention.

(c) Notify all tenants, farmworkers and/or actual occupants of the schedule of all conferences/dialogues regarding said application for retention.

(d) Identify and facilitate the necessary land transfer for tenants opting to be beneficiaries in another landholding of the same landowner with similar or comparable features.

(e) Identify the tenants opting to be leaseholders and facilitate the execution of the corresponding leasehold contracts.

(f) Preside over the negotiations between the tenant/beneficiaries in the determination of disturbance compensation should the tenants/beneficiaries opt to accept the same from the landowner.

(g) Prepare a sketch plan of the area to be retained by the landowner in coordination with the Department of Environment and Natural Resources (DENR).

(h) Prepare a Retention Folder indicating therein his findings and recommendations and submit the same to the PARO.

(i) Identify prime agricultural areas owned by landowners who waived their right to choose which area to retain or those who waived their right to exercise the right of retention using the following factors:

1) Commodity produced;

2) Terrain;

3) Infrastructure available; and

4) Soil Fertility.

(j) Notify the landowner, through personal service with proof of receipt or by registered mail with return card, the portion selected as his retention area upon failure of the landowner to exercise his right of retention within the period specified in these Rules.

(10) *Responsibilities of the PARO.* —The PARO, on the other hand, shall have the following responsibilities:

(a) Review and evaluate the report and recommendations submitted by the MARO.

(b) If the Retention Folder is in order, forward the same, together with his findings and recommendations, to the Regional Director for appropriate action. Otherwise, return the same to the MARO for appropriate action. The PARO may conduct his own field investigation and conferences/dialogues.

(c) Upon receipt of the Retention Folder and the Order of Approval from the Regional Director, the PARO shall segregate the appropriate retained area in coordination with the DENR. The DENR shall furnish the Regional Director four copies for distribution to the PARO, MARO, Register of Deeds, landowner and other concerned parties.

(d) Conduct the final survey of the area and draft a Certificate of Retention.

(e) On the basis of the owner's duplicate copy of title, approved segregation plan, and technical description, request the Register of Deeds to prepare two separate titles:

1) Landowner's title for the landholding covered by compulsory acquisition, voluntary offer to sell or voluntary land transfer/direct payment scheme, as the case may be; and

2) Landowner's title for the retained area.

And request the Register of Deeds to prepare another title in the name of the Republic of the Philippines for land covered by CA and VOS.

(11) *Responsibilities of the Regional Director.* —The Regional Director shall have the following responsibilities:

(a) Review and evaluate documents submitted by the PARO. If the documents are in order, issue an Order of Approval attacking the sketch plan of the retained area. The Order of Approval shall specify that the retained area is subject to a final survey to be conducted by the PARO. Otherwise, issue an Order of Denial.

(b) Forward Order of Approval or Denial, as the case may be to the PARO for distribution to the concerned parties.

(c) Forward copies of all orders of approvals or denials to the BLAD for the purpose of crating a database on all lands subject of retention and landowners who already exercised retention rights. The Bureau of Land Acquisition and Distribution (BLAD) shall also periodically monitor if any person had applied for or been granted retention more than once in any other given region in the Philippines based on its records.

(d) Issue a Certificate of Retention.

(12) *Decision of the regional director.* —The decision of the Regional Director approving or disapproving the application for retention shall become final after fifteen days from receipt of the decision, unless duly appealed to the DAR Secretary pursuant to the Rules of Procedure for Agrarian Law Implementation (ALI) cases.

Validity of land transactions

Upon effectivity of the Act (CARL) any sale, disposition, lease, management contract or transfer of possession of private lands executed

by the original landowner in violation of the Act shall be null and void. Those executed prior to the Act shall be valid only when registered with the Register of Deeds within a period of three months after the effectivity of the Act. Thereafter, all Registers of Deeds shall inform the DAR within 30 days of any transaction involving agricultural lands in excess of five hectares. (*Ibid.*, last par.)

(1) *Valid transactions.* —The following transactions are valid:

(a) Those executed by the original landowner in favor of a qualified beneficiary from among those certified by the Department of Agrarian Reform (DAR);

(b) Those in favor of the government, DAR or the Land Bank of the Philippines (LBP);

(c) Those covering lands retained by the landowner under Section 6 of CARL duly certified by the designated DAR Provincial Agrarian Reform Officer (PARO) as a retention area, executed in favor of transferees whose total landholdings inclusive of the land to be acquired do not exceed five hectares; subject, however, to the right of pre-emption and/or redemption of tenant/lessee under Sections 11 and 12 of the Code of Agrarian Reform. (R. A. No. 3844, as amended.)

Retention area refers to the parcel of land to retain under his full ownership and control after his landholding has been acquired by the government or covered by CARP and distributed to the beneficiaries as evidenced by a Certificate of Retention issued by the Provincial Agrarian Reform Officer (PARO);

(d) Those executed by beneficiaries covering lands acquired under any agrarian reform law in favor of the government, DAR, LBP or other qualified beneficiaries certified by DAR;

(e) Those executed after ten years from the issuance and registration of the Emancipation Patent or Certificate of Land Ownership

Award; and

(f) If the land had not yet been fully paid by the beneficiary, the right to the land may be transferred or conveyed, with prior approval of DAR, to any heir of the beneficiary or to any other beneficiary who, as a condition for such transfer or conveyance, shall cultivate the land himself.

If the beneficiary fails to comply with this condition, the land shall be transferred to the LBP which shall give due notice of the availability of the land to the Barangay Agrarian Reform Committee (BARC) where the land is situated. Upon receipt of the notice, the BARC shall in turn notify the Provincial Agrarian Reform Coordinating Committee (PARCCOM) of such notice of availability of land.

In the event of such transfer to the LBP, the latter shall compensate the beneficiary in one lump sum for the amounts the latter has already paid, together with the value of improvements he has made on the land.

(2) *Invalid transactions.* —The following transactions are not valid:

(a) Sale, disposition, lease management contract or transfer of possession of private lands executed by the original landowner prior to June 15, 1988 which are not registered on or before September 13, 1988, or executed after June 15, 1988, covering an area in excess of the 5-hectare retention limit in violation of CARL;

(b) Those covering lands acquired by the beneficiary under CARL within ten years from the issuance and registration of an Emancipation Patent or Certificate of Land Ownership Award;

(c) Those executed in favor of a person or persons not qualified to acquire land under CARL;

(d) Sale, transfer, conveyance or change of nature of lands outside of urban centers and city limits either in whole or in part after June 15,

1988, when CARL took effect, except as provided for under DAR Administrative Order No. 15, Series of 1988; and

(e) Sale, transfer or conveyance by a beneficiary of the right to use or any other usufructuary right over the land he acquired by virtue of being a beneficiary, in order to circumvent the law.

(3) *Registerable transactions without need of prior clearance.* — The following are not prohibited transactions and may be registered by the Register of Deeds without prior clearance from DAR:

(a) Deed of extrajudicial partition of the property of a deceased who died prior to June 15, 1988;

(b) Deed of partition of property owned in common by co-owners prior to June 15, 1988;

(c) Subdivision of title without change of ownership; and

(d) Deed of real estate mortgage executed by the original landowner or beneficiary.[89]

Procedure in the issuance of clearance

In the issuance of clearance for the registration of land transactions, the following procedures shall be followed:

(1) A written request shall be filed by the applicant with the

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[89] DAR Adm. Order No. 1, Series of 1989.

Administrative Order No. 15 above, was repealed by Administrative Order No. 18, Series of 1989 which governs conversion of private agricultural lands to non-agricultural uses. Conversion is now governed by Administrative Order No. 1, Series of 1499 which repealed Memorandum Order Circular No. 23, Series of 1997 and Administrative Order No. 7, Series of 1998, and all other issuances inconsistent thereof. DAR Memo. Cir. No. 2, Series of 2000 provides the guidelines on annulment of deeds of conveyance of lands covered by the CARP executed in violation of Sec. 6, par. 4 of R. A. No. 6657. It applies only to lands subject of compulsory acquisition under Adm. Order No. 2, Series of 1996. Administrative Order No. 4, Series of 2003 prescribes the rules on exemption of lands under CARP coverage under Section 3(c) of CARL.

Municipal Agrarian Reform Officer (MARO) having a territorial jurisdiction over the subject land, attaching thereto the following documents:

(a) Deed or instrument to be registered;

(b) OCT/TCT or Tax Declaration if the land is not covered by a Certificate of Title;

(c) Affidavit of transferee that he/she and spouse have a total landholding inclusive of the land to be acquired of not more than five hectares. Copy of the affidavit shall be furnished the BARC with proof of service indicated or attached to the copy for the Register of Deeds; and

(d) Affidavit of transferor stating that the land subject of Deed is a retention or portion of the retention area.

(2) The MARO shall determine the accuracy/truth of the instrument/deed and affidavits as well as to:

(a) Conduct field verification whether or not the subject land is tenanted by a person other than the transferee;

(b) Ascertain the subject land if the same is a retention or part of the retention area of the vendor/trans-feror; and

(c) Determine whether or not the total landholding of transferee and his spouse will, as a result of the deed, exceed landownership ceiling.

(3) The MARO shall forward their request together with all the attached documents to the Provincial Agrarian Reform Officer (PARO) with comments and recommendation. A copy of the request and other attachments thereof shall be retained for the MARO file.

(4) The PARO shall examine the request and all the attached documents. If in order, to issue a clearance for the registration of the subject deed; and

(5) The Register of Deeds shall inform the DAR within 30 days of

any transaction involving agricultural land in excess of five hectares.[90]

Right to choose area to be retained

(1) *General rule.* —The right to choose the area to be retained, which shall be compact or contiguous, shall pertain to the landowner.

(2) *Exception.* —In case the area selected for retention by the landowner is tenanted, the tenant shall have the option to choose whether to remain therein or be a beneficiary in the same or another agricultural land with similar or comparable features.

(a) In case the tenant chooses to remain in the retained area, he shall be considered a leaseholder and shall lose his right to be a beneficiary under the Act.

(b) In case the tenant chooses to be a beneficiary in another agricultural land, he loses his right as a leaseholder to the land retained by the landowner. The tenant must exercise this option within a period of one year from the time the landowner manifests his choice of the area for retention.

In all cases, the security of tenure of the farmers or farm-workers on the land prior to the approval of the Act shall be respected. (*Ibid.*,

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[90] DAR Adm. Order No. 1, Series of 1989.

Administrative Order No. 15 above, was repealed by Administrative Order No. 18, Series of 1989 which governs conversion of private agricultural lands to non-agricultural uses. Conversion is now governed by Administrative Order No. 1, Series of 1499 which repealed Memorandum Order Circular No. 23, Series of 1997 and Administrative Order No. 7, Series of 1998, and all other issuances inconsistent thereof. DAR Memo. Cir. No. 2, Series of 2000 provides the guidelines on annulment of deeds of conveyance of lands covered by the CARP executed in violation of Sec. 6, par. 4 of R. A. No. 6657. It applies only to lands subject of compulsory acquisition under Adm. Order No. 2, Series of 1996. Administrative Order No. 4, Series of 2003 prescribes the rules on exemption of lands under CARP coverage under Section 3(c) of CARL.

pars. 2, 3.)

Order of priority

It would be unrealistic to implement agrarian reform nationwide all at once. For one thing, there is simply not enough funds to cover the whole country in one full sweep. It makes more sense to implement the program in stages. Accordingly, under the Code, the Department of Agrarian Reform [91] (DAR), in coordination with the PARC, shall plan and program the acquisition and distribution of all agricultural lands through a period of 10 years from the effectivity of the Act. Lands shall be acquired and distributed as stated below.

(1) *Phase One.* —They cover the following lands:

(a) rice and corn lands under Presidential Decree No. 27;

(b) all idle or abandoned lands;[92]

(c) all private lands voluntarily offered by the owners for agrarian reform;

(d) all lands foreclosed by government financial institutions;

(e) all lands acquired by the Presidential Commission on Good Government (PCGG); and

(f) all other lands owned by the government de voted to or suitable for agriculture, which shall be acquired and distributed immediately upon the effectivity of the Act.

The implementation shall be completed within a period of not more than four years;

(2) *Phase Two.* —They cover the following lands:

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[91] Now, Department of Land Reform. (see Chap. Ⅳ.)

[92] For policy guidelines and operating procedure in the identification and acquisition of idle or abandoned lands. (see DAR Adm. Order No. 12, Series of 1990.)

(a) all alienable and disposable public agricultural lands;

(b) all arable public agricultural lands under agro-forest, pasture and agricultural leases already cultivated and planted to crops in accordance with Section 6, Article XIII of the Constitution (see Chap. I-C.);

(c) all public agricultural lands which are to be opened for new development and resettlement; and

(d) all private agricultural lands in excess of fifty hectares, so far as the excess hectarage is concerned, to implement principally the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till, which shall be distributed immediately upon the effectivity of the Act.

The implementation shall be completed within a period of not more than four years;

(3) *Phase Three.* —All other private agricultural lands commencing with large landholdings and proceeding to medium and small landholdings under the following schedule:

(a) Landholdings above 24 hectares up to 50 hectares, to begin on the fourth year from the effectivity of the Act and to be completed within three years; and

(b) Landholdings from the retention limit of up to 24 hectares, to begin on the sixth year from the effectivity of the Act and to be completed within four years; to implement principally the right of farmers and regular farmworkers who are landless, to own directly or collectively the lands they till. (Sec. 7, par. 1.)

Rules and guidelines to be observed

(1) *Rules.* —The schedule of acquisition and redistribution of all agricultural lands covered by the program shall be made in accordance

with the above order of priority, which shall be provided in the implementing rules to be prepared by the Presidential Agrarian Reform Council (PARC), taking into consideration the following:

(a) the need to distribute lands to the tillers at the earliest practicable time;

(b) the need to enhance agricultural productivity; and

(c) the availability of funds and resources to implement and support the program.

(2) *Priority land reform areas.* —In any case, the PARC, upon recommendation by the Provincial Agrarian Reform Coordinating Committee (PARCCOM), may declare certain provinces or regions as priority land reform areas, in which case the acquisition and distribution of private agricultural lands therein may be implemented ahead of the above schedules.

(3) *Tenanted lands.* —In effecting the transfer, priority must be given to lands that are tenanted.

(4) *Guidelines.* —The PARC shall establish guidelines to implement the above priorities and distribution scheme, including the determination of who are qualified beneficiaries. An owner-tiller may be a beneficiary of the land he does not own but is actually cultivating to the extent of the difference between the area of the land he owns and the award ceiling of three hectares. (*Ibid.*, pars. 2-5.)

Lands held by multinational corporations, and others

(1) *Implementation to be completed within three years.* —All lands of the public domain leased, held or possessed by multinational corporations or associations, and other lands owned by the government or by government-owned or controlled corporations, associations, institutions or entities, devoted to existing and operational agri-business

or agro-industrial enterprises, operated by multinational corporations [93] and associations, shall be programmed for acquisition and distribution immediately upon the effectivity of the Act on June 15, 1988, with the implementation to be completed within three years.

Lands covered above, under lease, management, grower or service contracts, and the like, shall be disposed of as follows:

(a) Lease, management, grower or service contracts covering such lands covering an aggregate area in excess of 1000 hectares, leased or held by foreign individuals in excess of 500 hectares are deemed amended to conform with the limits (*i. e.*, 500 hectares) set forth in Section 3 of Article XII of the Constitution;

(b) Contracts covering areas not in excess of 1000 hectares in the case of such corporations and associations, and 500 hectares, in the case of such individuals, shall be allowed to continue under their original terms and conditions but not beyond August 29, 1992, or their valid termination, whichever comes sooner, after which, such agreements shall continue only when confirmed by the appropriate government agency.

Such contracts shall likewise continue even after the land has been transferred to beneficiaries or awardees thereof, which transfer shall be immediately commenced and implemented, and completed within the

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[93] *Multinational corporation* (MNC) is an international or transnational corporation with headquarters in one country but has branch offices in a wide range of both developed and developing countries. *Agribusiness* is the sum total of all operations involved in the manufacture and distribution of farm supplies, production activities on the farm; and the storage, processing, and distribution of farm commodities and items made from them. It therefore, includes all activities involved in growing agricultural produce and making them readily usable by consumers. *Agro-industrial enterprises* cover enterprises that process farm products into final consumer goods such as food and clothing and into industrial raw materials. (See DAR Adm. Order No. 11 [1988].)

period of three years mentioned above; and

(c) In no case will such leases and other agreements now being implemented extend beyond August 29, 1992, when all lands subject here of shall have been distributed completely to qualified beneficiaries or awardees. Such agreements can continue thereafter only under a new contract between the government or qualified beneficiaries or awardees, on the one hand, and said enterprises, on the other.

(2) *Implementation not later than ten years.* —Lands leased, held or possessed by multinational corporations, owned by private individuals and private non-governmental corporations, associations, institutions and entities, and Filipino citizens shall be subject to immediate compulsory acquisition and distribution upon the expiration of the applicable lease, management, grower or service contract in effect as of August 29, 1987, or otherwise, upon its valid termination, whichever come sooner, but not later than after 10 years following the effectivity of the Act.

However, during the said period of effectivity, the government shall take steps to acquire those lands for immediate distribution thereafter.

(3) *Distribution; formation of workers' cooperative or association.* —In general, lands shall be distributed directly to the individual worker-beneficiaries. In case it is not economically feasible and sound to divide the land, then they shall form a workers' cooperative or association which will deal with the corporation or business association or any other proper party for the purpose of entering into a lease or growers agreement and for all other legitimate purposes.

Until a new agreement is entered into by and between the workers' cooperative or association and the corporation or business association or any other proper party, any agreement existing at the time the Act takes effect between the former and the previous landowner shall be respected

by both the workers' cooperative or association and the corporation, business association or such other proper party.

In no case, however, shall the implementation or application of the Act justify or result in the reduction of status or diminution of any benefits received or enjoyed by the worker-beneficiaries, or in which they may have a vested right, at the time the Act becomes effective.

(4) *Production and income-sharing.* —The provisions of Section 32 (see "G", *infra.*) of the Act, with regard to production and income sharing shall apply to farms operated by multinational corporations.

(5) *Modern technology in production.* —During the transition period, the new owners shall be assisted in their efforts to learn modern technology in production. Enterprises which show a willingness and commitment and good faith efforts to impart voluntarily such advanced technology will be given preferential treatment where feasible.

In no case shall a foreign corporation, association, entity or individual enjoy any rights or privileges better than those enjoyed by a domestic corporation, association, entity or individual. (Sec. 8.)

Commercial farming

Commercial farms are private agricultural lands devoted to saltbeds, fruit farms, orchards, vegetable and cut-flower farms, and cacao, coffee and rubber plantations.[94] (as amended by R. A. No. 7881.)

(1) *Commencement of ten-year period.* —

(a) They shall be subject to immediate compulsory acquisition and distribution after 10 years from the effectivity of the Act.

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[94] The definition excludes private agricultural lands devoted to commercial livestock, poultry and swine raising. Such lands are not covered by agrarian reform. (See *Luz Farms v. Secretary of DAR*, 192 SCRA 51.)

(b) In the case of new farms, the ten-year period shall begin from the first year of commercial production and operation, as determined by the DAR.[95]

(2) *Initiation steps to acquire lands.* —During the ten-year period, the Government shall initiate the steps necessary to acquire these lands upon payment of just compensation for the land and the improvements thereon, preferably in favor of organized cooperatives or associations, which shall thereafter manage the said lands for the worker-beneficiaries.

If the DAR determines that the purpose for which this deferment is granted no longer exist (*e. g.*, the particular farm area ceases to be commercially productive), such areas shall automatically be subject to immediate acquisition and distribution to beneficiaries.[96]

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[95] For commercial farms established before June 15, 1988 which are not yet in commercial production and operation, the ten-year deferment period shall begin from the first year of commercial production and operation or at the end of the gestation period for the crop or commodity. *Gestation period* is the period beginning from the time the crop/commodity is first planted or raised until the time the crops bear fruit or produce are harvested. (see DAR Adm. Order No. 16 [1988].)

Deferment period refers to the 10-years period counted from the start of commercial production and operation as provided in Section 11 of R. A. No. 6657 whereby the acquisition and distribution of commercial farms has been postponed.

[96] Since 1988 up to 1995, a total of 1551 applications for CARP covering 56,220 hectares were approved. Disapproved and immediately placed under CARP coverage were 2457 applications covering 107, 847 hectares. The total number of applications for Commercial Farms Deferment (CFD) exempted from CARP coverage reached 286 applications covering 27,726 hectares. (see CARP Supplement, Manila Bulletin, on June 13, 1996, p. 6.)

There seems to be no justification for the phase-out of large scale commercial farming system to be replaced by the so-called small farmlot agricultural production system. Under the economies of scale, the production of these farmlots will not be able to make up for the loss of income derived from the phased-out commercial farms. The government should promote large scale farming systems participated by farmers who not only receive wages but also share in the profits as equity owners.

(3) *Production and income sharing.* —The provisions with regard to production and income-sharing (Sec. 32; "G", *infra.*) shall apply to commercial farms. (Sec. 11.)

Acquisition, valuation, compensation and distribution of deferred commercial farms

Pursuant to Sections 11 and 49 of the Comprehensive Agrarian Reform Law, and in view of the expiration on June 15, 1998 of the 10-years deferment period for commercial farms, the following rules and regulations governing their acquisition, valuation, compensation and distribution have been promulgated.

(1) *Statement of policies.* —The acquisition, valuation, compensation, distribution, operation and management of deferred commercial farms shall be governed by the following policies:

(a) All commercial farms whose deferment expired as of June 15, 1998 shall be subject to immediate acquisition and distribution under the Comprehensive Agrarian Reform Program (CARP). Those whose deferments have yet to expire will be acquired and distributed only upon expiration of their respective deferment periods as originally determined by the Department of Agrarian Reform (DAR), or earlier if the DAR determines that the purpose for which it was deferred no longer exists and revokes its deferment;

(b) As a general rule, acquired commercial farms shall be distributed to qualified beneficiaries based on the order of priority prescribed under Section 22 of R. A. No. 6657. Those who have worked longest on the land shall be given preference;

(c) The landowner, whether individual or corporate, shall have the right to retention pursuant to Section 6 of R. A. No. 6657;

(d) All infrastructure facilities and improvements including

buildings, roads, machineries, receptacles, instruments or implements permanently attached to the land, which are necessary and beneficial to the operations of the farm as determined by the DAR, and shall be subject to acquisition upon the recommendation of the agrarian reform beneficiaries (ARBs);

(e) In general, lands shall be distributed directly to individual worker-beneficiaries. However, in case it is not economically feasible and sound to divide the land, then it shall be owned collectively by the worker-beneficiaries who shall form a workers' cooperative or association which will deal with the corporation or business association;

(f) Determination of just compensation for commercial farms shall include not only the land but also the facilities and improvements introduced by the landowner. It may take into account the type of commercial crops planted (*e. g.*, banana, pineapple, rubber) and such other relevant factors consistent with agrarian laws, rules and regulations;

(g) Lands acquired and distributed under compulsory acquisition or voluntary offer to sell shall be paid by the agrarian reform beneficiaries subject to the affordability provisions of Section 26 of R. A. No. 6657 and other implementing rules and regulations;

(h) The landowner shall retain his share of any standing crops unharvested at the time the DAR shall take possession of the land and who shall be given reasonable time to harvest the same; and

(i) Beneficiaries of distributed commercial farms shall have full freedom to choose the type of agri-business venture arrangement that will maintain the economic viability and productivity of the farm, the freedom to market their products or enter into appropriate marketing arrangements, and the freedom to avail of the services of individuals, associations or non-government organizations who will assist them in

negotiating for the most advantageous agri-business venture arrangement, enterprise development and capability building.

(2) *Qualifications of beneficiaries.* —Agrarian reform beneficiaries for acquired commercial farms must have the following qualifications:

(a) They must be at least 18 years old upon filing of application as agrarian reform beneficiary;

(b) They must have the willingness, aptitude and ability to cultivate and make the land productive; and

(c) They must have been employed in the commercial farm between June 15, 1988 and June 15, 1998 or upon expiration or termination of the deferment: *Provided* that farmworkers *who have worked longest on the land continuously shall be given priority.*

(3) *Grounds for disqualification.* —The following shall constitute as grounds for disqualification of potential beneficiaries of acquired commercial farms:

(a) Mandatory retirement;

(b) Optional retirement or resignation: *Provided* that there is no case filed by the farmworker or prospective beneficiary questioning such retirement or resignation;

(c) Dismissal for cause by final judgment as prescribed under labor laws;

(d) Waiver or refusal to be a beneficiary; or

(e) Violation of agrarian reform laws and regulations determined with finality after proper proceedings by appropriate tribunal or agency.

(4) *Mode of acquisition.* —Commercial farms with expired deferment period shall be acquired either through voluntary offer to sell (VOS), compulsory acquisition (CA) or direct payment scheme (DPS).

(a) *Voluntary offer to sell/compulsory acquisition.* — In order that

acquisition of deferred commercial farm through voluntary offer to sell may be allowed, the offer to sell must have been submitted before the expiration of the deferment period, otherwise, the property shall be placed under compulsory acquisition.

(b) *Direct payment scheme.* —

1) Upon mutual agreement of both the landowner and the majority of all qualified agrarian reform beneficiaries, and approved by the DAR, direct payment of deferred commercial farms placed under CARP coverage may be allowed.

2) The area of the land to be transferred to the beneficiaries shall not be less than the area which the government would otherwise acquire for redistribution through CA or VOS.

3) The terms and conditions of the DPS shall include the immediate transfer of possession and ownership of the land in favor of the identified beneficiaries. The Certificates of Land Ownership Award (CLOAs) shall be issued to the individual ARBs, or their cooperative or association, as may be appropriate, with proper annotations.

(5) *Determination of just compensation.* —

(a) As a general rule, DAR Administrative Order No. 5, Series of 1998 entitled "Revised Rules and Regulations Governing the Valuation of Lands Voluntarily Offered or Compulsorily Acquired Pursuant to Republic Act No. 6657", shall apply in the determination of just compensation for deferred commercial farms.

(b) In the case of DPS, the applicable purchase price for such land shall be mutually agreed upon by both parties, but in no case higher than the prevailing market value.

(6) *Responsibility for valuation.* —The process of valuation must involve agrarian reform beneficiaries and their organizations, the Barangay Agrarian Reform Committees, the landowner

concerned, the Department of Agrarian Reform and the Land Bank of the Philippines.

(7) *Manner of payment.* —

(a) *Voluntary offer to sell/compulsory acquisition.* —

1) The LBP shall compensate the landowner in such amount as may be agreed upon pursuant to Sections 17 and 18 of R. A. No. 6657, or as may be finally determined by the court as just compensation for the land, facilities and improvements.

2) The compensation shall be paid in any of the modes specified in Section 18 of R. A. No. 6657. For lands voluntarily offered, an additional incentive of 5% cash payment shall be paid to the landowner, other than banks and financial institutions, pursuant to Section 19 of R. A. No. 6657.

(b) *Direct payment scheme.* —

1) Payment under DPS for the land may be made by the ARB in cash or in kind to the landowner, under terms mutually agreed upon by them, and which shall be indicated in the Memorandum of Agreement (DPS-DCF Form No. 4.) duly approved by the DAR.

2) The MOA, upon approval of the DAR, shall form an integral part of the Deed of Transfer (DPS-DCF Form No. 6.) which shall be executed by the landowner in favor of the ARBs.

3) For landholdings acquired under DPS, the MOA shall be binding to the parties immediately upon registration of the DOT by the ROD, and the subsequent generation of CLOAs in favor of the ARBs.

4) Further, the ARBs shall be eligible to borrow from the Land Bank through its regular loan portfolio, an amount equal to eighty-five percent of the selling price of the land that they have acquired pursuant to R. A. No. 7905. The remaining cost of the land shall be paid directly to the LO by the ARBs. The Joint DAR-LBP Policy Committee shall

draw up the necessary guidelines for the availment of this loan.

5) Other alternative modes of payment under the DPS, in cash or in kind, shall be encouraged subject to the approval and monitoring provisions prescribed in this Order.

(8) *Mode of distribution.* —Commercial farms may be distributed collectively or individually. Qualified beneficiaries shall be awarded a maximum of three hectares or a minimum of one hectare each, in case the land is not sufficient to accommodate them.

To expedite the acquisition, the commercial farms shall be initially distributed collectively or under co-ownership.

In case the beneficiaries desire to partition the land, DAR shall first determine whether it is economically feasible and sound to divide the land, in coordination with the Department of Agriculture and other concerned agencies.

Thereafter, the beneficiaries may, by a majority vote, decide whether to proceed with the partition or not.

In the event the beneficiaries decide to partition, the land shall be allocated to the individual beneficiaries by drawing lots in the presence of DAR representatives.

(9) *Types of agri-business venture arrangements.* —The qualified ARBs or their cooperative/association in distributed commercial farms may enter into any, but not limited, to the following agri-business venture arrangements:

(a) *Joint Venture Arrangement.* —It is an agribusiness venture whereby a company is organized and co-owned by an investor and the agrarian reform beneficiaries through their cooperatives or associations. The investor may provide the management and marketing skills, technology infrastructure, and capital while the ARBs' contribution/ participation in the joint venture includes labor, the usufructuary rights

to the land, and capital infusion, if available.

(b) *Lease Arrangement.* —It is an agribusiness scheme whereby the ARBs', through their cooperative or farmworkers' association, enter into a contract of lease with the landowner/investor. The lessee shall have farm control and operations within an agreed period of time but not to exceed ten years, subject to extension upon mutual agreement of both parties. The lease rental shall not be less than the amortization to be paid by the ARBs to the Land Bank of the Philippines (LBP) pursuant to DAR Administrative Order No. 6, Series of 1998, and other pertinent laws, rules and regulation.

(c) *Contract Growing/Growership Arrangement.* —It is an agribusiness arrangement whereby the ARBs own the land and commit, either collectively through their cooperative or individually, to produce certain crops for an investor or agribusiness firm that contracts to buy the produce at pre-arranged terms.

(d) *Management Contract.* —It is an agribusiness arrangement whereby the ARBs, or their cooperative/organization, hire the services of the landowner or an investor to manage and operate the farm in exchange for fixed wages or commission.

(e) *Build-Operate-Transfer Scheme.* —It refers to a contractual arrangement entered into pursuant to R. A. No. 6957, as amended, whereby the project proponent undertakes the construction, including financing of a given infrastructure facility and the operation and maintenance thereof for an agreed period of time, but not to exceed 25 years, subject to extension.

The qualified ARBs or their cooperative/association may also opt for a combination of two or more of the above schemes, or any other operation and management schemes they may choose in collaboration with the proposed investor. However, lease arrangement shall be the

least preferred scheme.[97]

Ancestral lands

Ancestral lands of each indigenous cultural community include, but are not limited to lands in the actual, continuous and open possession and occupation of the community and its members:

(1) *Protection of rights of indigenous cultural communities.* —The right of these communities to their ancestral lands shall be protected to ensure their economic, social and cultural well-being. In line with the principles of self-determination and autonomy, the systems of land ownership, land use, and the modes of settling land disputes of all these communities must be recognized and respected. However, the Torrens System shall be respected.

(2) *Suspension of implementation.* —Any provision of law to the contrary notwithstanding, the PARC may suspend the implementation of the Act with respect to ancestral lands for the purpose of identifying and delineating such lands.

(3) *Enactment of regional laws.* —In the autonomous regions, the respective legislatures may enact their own laws on ancestral domain subject to the provisions of the Constitution and the principles enunciated in the Act and other national laws. (Sec. 9.)

Exemptions and exclusions

(1) *Under Section* 10 *of the Act.* —The following are exempt from

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[97] DAR Adm. Order No. 9, series of 1999, which also prescribes the procedures for the selection of quality beneficiaries, the acquisition of deferred commercial farms, and valuation of lands voluntarily offered or compulsory acquired, as well as the acquisition, valuation, compensation and distribution of facilities and improvements which are necessary and beneficial to the operators of the commercial farmers.

the coverage of the Act:

(a) Lands actually, directly and exclusively used and found to be necessary for:

1) parks, wildlife, forest reserves and reforestation;

2) fish sanctuaries and breeding grounds; and

3) watersheds and mangroves.

(b) Private lands actually, directly and exclusively used for prawn farms and fishponds;

(c) Lands actually, directly and exclusively used and found to be necessary for:

1) national defense;

2) school sites and campuses, including experimental farm stations operated by public or private schools, for educational purposes, and seeds and seedlings, research and pilot production centers;

3) church sites and convents appurtenant thereto, mosque sites and Islamic centers appurtenant thereto;

4) communal burial grounds and cemeteries;

5) penal colonies and penal farms actually worked by the inmates; and

6) government and private research and quarantine centers; and

(d) All lands with 18% slope and over, except those already developed. (Sec. 10, as amended by R. A. No. 7881.)

All other agricultural lands are not exempted from the coverage of the program.

(2) *Under Section 3(c) of the Act.* —Section 3(c) of R. A. No. 6657 defines "agricultural land" as referring to "land devoted to agricultural activity as defined in this Act and not classified as mineral, forest, residential, commercial or industrial land".

Department of Justice Opinion No. 44, Series of 1990, and the

case of *Natalia Realty v. Department of Agrarian Reform* (225 SCRA 278 [1993], August 12th, 1993) opine that with respect to the conversion of agricultural land covered by R. A. No. 6657 to non-agricultural uses, the authority of the DAR to approve such conversion may be exercised from the date of its effectivity, on June 15, 1988. Thus, all lands that are already classified as commercial, industrial or residential before June 15, 1988 no longer need any conversion clearance.

However, the reclassification of lands to non-agricultural uses shall not operate to divest tenant-farmers of their rights over lands covered by Presidential Decree No. 27, which have been vested prior to June 15, 1988.

In order to implement the intent and purpose of the provisions of the aforecited laws, the DAR has issued guidelines through Adm. Order No. 4, Series of 2003, among which, are the following:

(a) *Disturbance compensation.* —

1) The applicant shall pay disturbance compensation, in cash or kind or combination of cash and kind, to the farmers, agricultural lessees, share tenants, farmworkers and actual tiller (as defined and following the order of priority in Section 22 of R. A. No. 6657) found in the subject landholding, in such amount and under such terms which the parties may mutually agree upon among themselves.

2) The amount of disturbance compensation shall not be less than five times the average of gross harvests on the subject landholding during the last five preceding calendar years, pursuant to Section 36 of R. A. No. 3844, as amended by Section 7 of R. A. No. 6389.

3) Compensation in kind may consist of some or all or mixture of housing, homelots, employment and/or other benefits. The DAR shall approve the terms of any agreement for the payment of disturbance compensation and monitor compliance therewith.

4) Whenever there is a dispute on the fixing of disturbance compensation or entitlement to disturbance compensation, the Regional Director shall refer the matter to the Adjudicator who shall be bound to take cognizance of and resolve the case despite the non-finality of the issue on whether or not the subject land is exempt from CARP.

5) The Approving Authority may grant a conditional exemption order, despite non-payment of disturbance compensation or while awaiting determination of entitlement thereto, subject however to the condition that the applicant and/or landowner shall post a bond in an amount to be determined by the Adjudicator. Notwithstanding the posting of such bond, the property applied for exemption shall not be developed for non-agricultural purposes and the farmers, agricultural lessees, share tenants, farmworkers and actual tillers thereof cannot be ejected therefrom until the finality of the exemption order.

(b) *Approving authorities.* —

1) For properties with an area less than or equal to five hectares, the approving authority shall be the regional Director, acting upon the recommendation of the Regional Center for Land Use Policy Planning and Implementation (RCLUPPI).

2) For properties with an area larger than five hectares, the approving authority shall be the Secretary, acting upon the recommendation of the Center for Land Use Policy Planning and Implementation - 2 (CLUPPI - 2).

3) When the applicant owns (or represents the owner of) two or more parcels of land within the same *barangay* or within two or more *barangays* that are adjacent to each other, and the sum of the areas of said parcels of land exceeds five hectares, the approving authority for an application involving any of said parcels of land shall be the Secretary acting upon the recommendation of the CLUPPI - 2.

4) When the applicant or any oppositor challenges the jurisdiction of the approving authority on the ground of error in computation of jurisdictional area, and a higher authority takes cognizance of the dispute, the Approving Authority herein shall hold in abeyance the processing of the present application until said higher authority determines with finality the correct jurisdictional area.

(c) *Effect on pre-existing CARP coverage.* —

When the filing of an application for exemption clearance is in response to a notice of CARP coverage, the AR shall deny due course to the application if it was filed after 60 days from the date the landowner received a notice of CARP coverage.

(d) *Protests.* —

1) *Who may file.* — Any person may file a written protest against the application within thirty days from posting of the requisite billboard(s), or within fifteen days from conduct of ocular inspection, whichever is later.

2) *Where to file.* —Protests against applications for exemption may be filed in the office of the PARO or RCLUPPI having jurisdiction over the applied property or at the CLUPPI - 2.

(e) *Revocation of withdrawal of exemption clearance.* —Any person may file a petition to revoke, or the landowner may file a petition to withdraw, the Exemption Clearance, when there is a serious violation of agrarian laws or DAR rules, or on any other substantial ground which the Secretary may deem proper, within ninety days from discovery of the fact(s) constituting the ground(s) for cancellation or withdrawal, but not more than one year from issuance of the Exemption Clearance.

C. IMPROVEMENT OF TENURIAL AND LABOR RELATIONS

Agricultural leasehold and lease rental determination

In order to protect and improve the tenurial and economic status of the farmers in tenanted lands under the retention limit and lands not yet acquired under the Act, the DAR is mandated to determine and fix immediately the lease rentals thereof in accordance with Section 34 of R. A. No. 3844, as amended. (see Chap. Ⅲ, "C".)

The DAR shall immediately and periodically review and adjust the rental structure for different crops, including rice and corn, of different regions in order to improve progressively the conditions of the farmer, tenant or lessee. (Sec. 12.)

The history of the law on leasehold tenancy is a progression from one of election and limited operation to one of compulsion and comprehensive application. Under Section 14 of R. A. No. 1199, which became operative on August 30, 1954, tenants have the right to choose a leasehold tenancy arrangement.

R. A. No. 3844, which took effect on August 8, 1963, declared agricultural share tenancy as contrary to public policy and was thereby abolished.

Section 4 of R. A. No. 6389 automatically converted agricultural share tenancy throughout the country to agricultural leasehold. R. A. No. 6389, however, did not repeal Section 35 of R. A. No. 3844 which exempted certain landholdings (fishponds, saltbeds, and lands principally planted to citrus, coconuts, cacao, coffee, durian and other similar permanent trees).

The Comprehensive Agrarian Reform Law (CARL) or R. A. No.

6657, which took effect on June 15, 1988, expressly repealed Section 35 of R. A. No. 3844. The significant implications of this evolution of the law are as follows:

(1) The abolition of share tenancy now covers all agricultural landholdings without exceptions;

(2) Leasehold tenancy is no longer just an option which exists by operation of law; and

(3) Agricultural leasehold can be a preliminary step to land ownership. Hence, all share-crop tenants were automatically converted into agricultural lessees as of June 15, 1988, whether or not a leasehold agreement had been executed.

In accordance with these developments of the law, Section 12 of R. A. No. 6657 mandates the Department of Agrarian Reform (DAR) to determine and fix the lease rentals within retained areas and areas not yet acquired for agrarian reform in accordance with Section 34 of R. A. No. 3844.[98]

Production-sharing plan

Any enterprise adopting the scheme provided for in Section 32 (see "H", *infra.*) or operating under a production venture, lease, management contract or other similar arrangement and any farm covered by Section 8 (lands held by multinational corporations, etc., *supra.*) and Section 11 (Commercial farming, *supra.*) is mandated to execute within 90 days from the effectivity of the Act a production-sharing plan under guidelines prescribed by the appropriate government agency.

In no case, however, shall the adoption of such scheme result in

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[98] Prefatory Statement, DAR Adm. Order No. 6, Series of 2003. (see Chap. Ⅲ-D.)

the diminution of any benefits such as salaries, bonuses, leaves and working conditions granted to the employee-beneficiaries under existing laws, agreements and voluntary practice by the enterprise nor shall the enterprise and its employee-beneficiaries be prevented from entering into any agreement with terms more favorable to the latter. (Sec. 13.)

D. REGISTRATION

Registration of landowners

(1) *Contents of sworn statement of registrant.* —Within 180 days from the effectivity of the Act, all persons, natural or juridical, including government entities that own or claim to own agricultural lands, whether in their names or in the name of others, shall file a sworn statement in the proper assessor's office in the form to be prescribed by the Department of Agrarian Reform [99], stating the following information:

(a) the description and area of the property;

(b) the average gross income from the property for at least three years;

(c) the names of all tenants and farmworkers there in;

(d) the crops planted in the property and the area covered by each crop as of June 1, 1987;

(e) the terms of mortgages, leases and management contracts subsisting as of June 1, 1987; and

(f) the latest declared market value of the land as determined by the city or provincial assessor. (Sec. 14.)

A landowner with multiple landholdings shall register each

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[99] Now, Department of Land Reform. (see Chap. Ⅳ.)

landholding at the city or municipality where the farm is located.

(2) *Co-owned, mortgaged, and sequestered lands.* —In case of land owned jointly or collectively, only one coworker, in behalf of all the co-owners, shall register, indicating the names of all the co-owners and their respective shares in that land. However, all co-owners (including the co-owners filing in behalf of the others) who own other agricultural lands must register their landholdings separately.

With respect to foreclosed lands, the buyer or mortgagee in favor of whom deed of sale has been executed shall register. Otherwise the landowner/mortagor shall register. Sequestered lands under the trusteeship of the Presidential Commission on Good Government (PCGG) shall be registered by it. However, lands sequestered by the PCGG but which are not determined by any court to be a part of ill-gotten wealth shall also be registered by the landowners.

For cultural communities in civil reservations, the government agencies responsible for the reservation or the head of the tribe shall register in behalf of the community.

(3) *Valuation of property for compensation purposes.* — If the landowner fails to register within the prescribed period, the government shall base the valuation of his property for landowner compensation purposes on the City/Provincial Assessor's value which is generally very much below fair market value.

Beginning with the quarter immediately following his registration, the real property tax payable shall be based on the above-mentioned owner's declaration of current fair market value. (Sec. 4, Exec. Order No. 229.)

(4) *Benefits from registration.* —The compulsory landholder registration system will provide the information necessary to facilitate the smooth implementation of the program, particularly in the matter of determining the qualified beneficiaries and compensating the landowners.

The baseline data established will be used to monitor and regulate ownership and control of agricultural lands. This will facilitate identification of lands to be covered by CARP after Congress has set the priorities and retention limits.

By registering his property, the landowner also gets a chance to state the fair market value which he wishes to receive should his land becomes subject to agrarian reform.

(5) *Persons exempted.* —Exempted from registration are landowners who have already registered pursuant to Executive Order No. 229, being entitled to such incentives as may be provided by Presidential Agrarian Reform Council (PARC); those who are recipients of Emancipation Patents (EPs) and Certificates of Land Transfers (CLTs) under Presidential Decree No. 27; and lessees of public agricultural lands.

Registration of beneficiaries

(1) *Data required for registration.* —The DAR, in coordination with the Barangay Agrarian Reform Committee (BARC), shall register all agricultural lessees, tenants and farmworkers who are qualified to be beneficiaries of the CARP.

These potential beneficiaries with the assistance of the BARC and the DAR shall provide the following data:

(a) names and members of their immediate farm household;

(b) owners or administrators of the lands they work on and the length of tenurial relationship;

(c) location and area of the land they work;

(d) crops planted; and

(e) their share in the harvest or amount of rental paid or wages received.

(2) *Posting of registry or list.* —A copy of the registry or list of all

potential CARP beneficiaries in the *barangay* shall be posted in the *barangay hall, school or other public buildings in the barangay* where it shall be open to inspection by the public at all reasonable hours. (Sec. 15.)

(3) *Purpose of the registration.* —The purpose of the law is to develop a data bank of potential and qualified beneficiaries of the CARP for the effective implementation of the program.

(4) *Beneficiaries exempted.* —Excluded from registration are beneficiaries under Presidential Decree No. 27 (Chap. I-E.) who have culpably sold, disposed or abandoned their lands; and landowners or beneficiaries under said Decree who already own or have already been awarded at least three hectares of land under the Decree.[100]

Tenant's/lessee's right of redemption or pre-emption

(1) In case the landowner/lessor decides to sell his tenanted/leased land, he must first offer to sell it to the tenant or lessee therefor who has the preferential right to buy the same under reasonable terms and conditions as provided for under Section 11 of the Code of Agrarian Reform. (R. A. No. 3844, as amended.)

(2) If the land was sold to a third person without the knowledge of the tenant/lessee thereof, the latter shall have the right to redeem the same at reasonable price and consideration in the manner prescribed under Section 12 of said Code. (see Chap. Ⅲ-B.)

(3) Sale or transfer to the government, LBP or DAR, of lands acquired by the beneficiary under the CARL shall be subject to the right of the children or spouse of the beneficiary to repurchase the land from the government, DAR or LBP within a period of two years.[101] (Sec. 27, *infra.*)

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[100] DAR Adm. Order No. 10, Series of 1989.

[101] DAR Adm. Order No. 1, Series of 1989.

E. LAND ACQUISITION AND REDISTRIBUTION

Compulsory acquisition of private lands

Landlessness is acknowledged as the core problem in the rural areas and the root cause of peasant unrest.

In order to hasten the implementation of the program, the Department of Agrarian Reform [102] has made compulsory acquisition the priority mode of land acquisition.[103] To the same end, the law

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[102] Now, Department of Land Reform. (See Chap. IV.)

[103] For 1995, the DAR distributed a total of 289,324 hectares or 54% of the 540,000 hectares target. This accomplishment brought to 2,261,899 hectares the aggregate area distributed since 1972. Private agricultural lands acquired in 1995 stand at 122,345 hectares or 42% of total accomplishment. Following is the breakdown of lands distributed during the year: Private Agricultural Lands, 122,345 hectares; Government-Owned Lands, 59,126 hectares; Landed Estates, 10,682 hectares; and lands under Operation Land Transfer, 25,166 hectares.

On the other hand, the Department of Environment and Natural Resources (DENR) distributed a total of 128,722 Free Patents covering 108,489 hectares of public alienable and disposable lands to 128,722 farmer-beneficiaries in 1995. A total of 40,409 Certificates of Stewardship Contracts were also issued to farmer-beneficiaries covering 82,506 hectares of Integrated Social Forestry areas. (See CARP Supplement, Manila Bulletin, June 13, 1996, p.6.)

Since July 1987, the combined accomplishments of DAR and DENR under LAD, totalled to 4,587,960 hectares. (The ARMM accomplishment is excluded in the DAR Report.) Prior to the implementation of R. A. No. 6657, however, the DAR and DENR distributed 67,124 hectares and 271,373 hectares, respectively, which were part of their respective scope. Thus, the total land distribution accomplishment of 4,926,457 hectares, based on the adjusted scope, leaves a balance of 3,135,407 or 39% of the total scope of 8,061,864 hectares. Of the balance, DAR and DENR will have to distribute 46% and 54%, respectively, as their targets for the remaining years of the CARP. (See DAR-CARP 1998 Annual Report, p. 10.)

One of the reasons cited for slowing down performance is the strong resistance by affected landowners who argue that the valuation of their properties by the government is too low, and this has resulted to legal suits.

DAR Adm. Order No. 1, Series of 2000 provides the revised rules and regulations on the acquisition of agricultural lands subject of mortgage and foreclosure.

provides for the steps in acquiring private lands through administrative instead of judicial proceedings. This procedure is allowed provided the requirements of due process as to notice and hearing are complied with.

Compulsory acquisition may be defined as the mandatory acquisition of agricultural lands including facilities and improvements necessary for agricultural production, as may be appropriate, for distribution to qualified beneficiaries upon payment of just compensation.

By land type, the distribution component of the program embraces private agricultural lands, government-owned lands, settlement lands, landed estates and rice and corn lands.

The Notice of Coverage (NOC) commences the compulsory acquisition of private agricultural lands coverable under the Comprehensive Agrarian Reform Program (CARP). Along the various phases of the CARP proceedings, the process stalls because of Land Owner (LO) resistance, most of whom invoke the ground of lack of notice or non-observance of due process in attacking the proceedings.[104]

Qualified beneficiaries

(1) The lands covered by the CARP shall be distributed as much as possible to landless residents of the same barangay, or in the absence thereof, landless residents of the same municipality in the following order of priority:

(a) agricultural lessees and share tenants;

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[104] DAR Adm. Order No. 1, Series of 2003 prescribes the rules governing issuance of notice of coverage and acquisition of agricultural lands under CARL. It aims to plug common loopholes in the coverage process to safeguard and ensure completions of the acquisitive process.

(b) regular farmworkers;

(c) seasonal farmworkers;

(d) other farmworkers;

(e) actual tillers or occupants of public lands;

(f) collectives or cooperatives of the above beneficiaries; and

(g) others directly working on the land.

(2) The children of landowners who are qualified (Sec. 6, "B", supra.) shall be given preference in the distribution of the land of their parents.

(3) Actual tenant-tillers in the landholding shall not be ejected or removed therefrom.

(4) Beneficiaries under Presidential Decree No. 27 who have culpably sold, disposed of, or abandoned their lands are disqualified to become beneficiaries under the Program.

(5) A basic qualification of a beneficiary shall be his willingness, aptitude and ability to cultivate and make the land as productive as possible. The DAR shall adopt a system of monitoring the record or performance of each beneficiary, so that any beneficiary guilty of negligence or misuse of the land or any support extended to him shall forfeit his right to continue as such beneficiary. It shall submit periodic reports on the performance of the beneficiaries to the PARC.

(6) If, due to the landowner's retention rights or to the number of tenants, lessees or workers on the land, there is not enough land to accommodate any or some of them, they may be granted ownership of other lands available for distribution under the Act, at the option of the beneficiaries.

(7) Farmers already in place and those not accommodated in the distribution of privately-owned lands will be given preferential rights in the distribution of lands from the public domain. (Sec. 22.)

(8) No qualified beneficiary may own more than three hectares of agricultural land.[105] (Sec. 23.)

Award to beneficiaries

(1) The rights and responsibilities of the beneficiary shall commence from the time the DAR makes an award of the land to him, which award shall be completed within 180 days from the time the DAR takes actual possession of the land.

(2) Ownership of the beneficiary shall be evidenced by a Certificate of Land Ownership Award, which shall contain the restrictions and conditions provided for in the Act, and shall be recorded in the Register of Deeds concerned and annotated on the Certificate of Title. (Sec. 24.)

Award ceilings for beneficiaries

(1) Beneficiaries shall be awarded an area not exceeding three hectares,[106] which may cover a contiguous tract of land or several parcels of land cumulated up to the prescribed award limits. For purposes of the Act, a *landless beneficiary* is one who owns less than three hectares of agricultural land.

(2) The beneficiaries may opt for collective ownership, such as co-ownership or farmers' cooperative or some other form of collective organizations. However, the total area that may be awarded shall not

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[105] Since the lands covered by the CARP are not sufficient to enable all farmers to acquire economic family-size farms, it should develop idle public lands suitable for agriculture and make available agricultural lands of the public domain for distribution to qualified beneficiaries.

[106] Soil fertility or productivity should be considered in determining the area for allocation to beneficiaries.

exceed the total number of co-owners or members of the cooperative or collective organization multiplied by the award limit above prescribed, except in meritorious cases as determined by the PARC.

(3) Title to the property shall be issued in the name of the co-owners or the cooperative or collective organization, as the case may be. (Sec. 25.)

Issuance of CARP beneficiary certificates

(1) *When certificates issued.* —Section 24 of R. A. No. 6657 provides that the rights and responsibilities of the beneficiary shall commence from the time the DAR makes an award of the land to him, which award shall be completed within 180 days from the time the DAR takes actual possession of the land. Ownership of the land by the beneficiary shall be evidenced by an Emancipation Patent (EP) or a Certificate of Land Ownership Award (CLOA), which shall contain the restrictions, and conditions provided by law and which shall be recorded in the Register of Deeds concerned and annotated on the Certificate of Title.

In several instances, however, the EP or CLOA cannot be immediately issued pending the fulfillment of certain legal and administrative requirements. Examples of these are:

(a) The Supreme Court ruling in the case of "Association of Small Landowners in the Philippines, Inc. vs. Secretary of Agrarian Reform" (G. R. No. 76742, 14, July 1989.) that title to all expropriated properties shall be transferred to the State only upon full payment of compensation to their respective landowners;

(b) The conduct of subdivision surveys to define the specific parcel of land being awarded through the EP or CLOA; and

(c) The consolidation title in foreclosure proceedings for lands

acquired and distributed through Executive Order (E. O.) No. 407, Series of 1990, as amended by E. O. No. 448, Series of 1991.

Thus, pending the fulfillment of the said requirements, the identified beneficiaries may already be in possession of the land but still have no EP or CLOA therefor. For this reason, the DAR shall first issue a CARP Beneficiary Certificate (CBC) to provide the would-be beneficiaries, an intermediate document to evidence that they have been identified and have qualified as agrarian reform beneficiaries under the CARP. Moreover, aside from attesting to the inchoate right of the identified beneficiary to be awarded the land or portion thereof, the CBC issued shall entitle the recipient to receive support services under the CARP.

(2) *Coverage.* — CBCs shall be issued to farmers or farm-workers who have been properly identified and have qualified as beneficiaries of the CARP and have executed the required Application to Purchase-Farmer's Undertaking (APFU) or Land Valuation Summary-Farmers' Undertaking (LVSFU). Moreover, these qualified beneficiaries must be in actual possession of the land to be awarded to them, either because they are tenants, they are already working on the land under a system of labor administration, or the landowner does not object to the takeover by the DAR and the beneficiaries.

(3) *Cancellation or nullification of issued CBCs.* — CBCs issued by the Regional Director may be cancelled, nullified or withdrawn upon:

(a) Subsequent verification that the recipient is disqualified to be a beneficiary of the CARP;

(b) Proper determination that the land subject of the CBC is not transferrable under the CARP; and

(c) Receipt of written notice from the identified beneficiary that he

is no longer interested in becoming a beneficiary or he is waiving his right to the land award, which will forever bar the identified beneficiary from becoming an awardee of the CARP.

The prohibited acts under existing laws that would warrant the disqualification of the beneficiary or the forfeiture of his rights to the land shall apply in these rules in a suppletory character. In all cases, recipients of CBCs shall be required to surrender to the Regional Director the certificates subject of Orders of Cancellation.[107]

Collective or individual ownership.

(1) For lands with multiple beneficiaries, ownership of whole parcels or estates may be transferred to the farmer-beneficiaries collectively or individually, at the option of the beneficiaries.

(2) In collective ownership, each beneficiary shall have an undivided share of the land held in common equivalent to his interest.

(3) The beneficiaries may collectively decide on the continued operation of the parcel/estate as a whole or to subdivide the same into individual lots and determine the manner in which such subdivision is to be implemented. (see Sec. 14, Exec. Order No. 229.)

The collective ownership scheme is in line with Article XIII, Section 4 of the Constitution mandating the State to undertake, by law, an agrarian reform program founded on the right of farmers who are landless "to own directly or *collectively* the lands they till × × ×". It seeks to preserve existing arrangements when beneficial to the new

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[107] DAR Adm. Order No. 11, Series of 1991. DAR Adm. Order No. 7, Series of 2003 provides the guidelines on the identification, screening, and selection of, and distribution to, agrarian reform beneficiaries (ARB) of private agricultural lands under R. A. No. 6657 (CARL) who are qualified to receive the Certificates of Land Ownership Award (CLOA).

owners so as not to disrupt operations. The beneficiaries, however, are not bound to maintain the collective ownership.

An agrarian reform program that focuses less on individual land ownership but is centered on production through community-based cooperative partnership among farmers with government guidance and incentives will result in increased productivity and better income for the beneficiaries.

Payment by beneficiaries

(1) Lands awarded pursuant to the Act shall be paid for by the beneficiaries to the LBP in thirty annual amortizations at 6% interest *per annum* subject to the following rules:

(a) The payments for the first three years after the award may be at reduced amounts as established by the PARC.

(b) The first five annual payments may not be more than 5% of the value of the annual gross production as established by the DAR.

(c) Should the scheduled annual payments after the fifth year exceed 10% of the annual gross production and the failure to produce accordingly is not due to the beneficiary's fault, the LBP may reduce the interest rate or reduce the principal obligation to make the repayment affordable.

(2) The LBP shall have a lien (*i. e.*, prior right) by way of mortgage on the land awarded to the beneficiary; and this mortgage may be foreclosed by the LBP for non-payment of an aggregate of three annual amortizations. The LBP shall advise the DAR of such proceedings and the latter shall subsequently award the forfeited landholding to other qualified beneficiaries. A beneficiary whose land has been foreclosed shall thereafter be permanently disqualified from becoming a beneficiary under the Act. (Sec. 26.)

Titling and distribution of lots in DAR settlement and landed estates.

(1) *Legal bases.* —Section 2 of R. A. No. 6657 provides that "the State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law in the disposition or utilization of other natural resources, including lands of the public domain × × ×". Likewise, pursuant to Section 49 thereof, the Presidential Agrarian Reform Council (PARC) and the DAR are empowered to issue rules and regulations, whether substantive or procedural, to carry out the objects and purposes of the Act.

In furtherance of this authority and in order to accelerate the issuance of Certificates of Land Ownership Awards (CLOA) to qualified beneficiaries in agricultural landed estates administered by the DAR not previously covered by "Deeds of Sale" properly issued by the DAR to program beneficiaries, the following policies and rules have been adopted.

(2) *Policies.* —They are as follows:

(a) Land has a social function; hence, there is a concomitant social responsibility in its ownership and should, therefore, be distributed to the actual tillers/occupants.

(b) All vacant lots, whether abandoned or unallocated, shall be distributed to qualified beneficiaries, pursuant to Section 22 of R. A. No. 6657.

(c) Except for the purchase price of the land, and those enumerated under paragraph "E" hereof, no other costs, including survey fees (*re*: survey of original lots), shall be charged against the beneficiaries.

(d) Pursuant to R. A. No. 6657, the award limit shall not be more than three hectares. However, qualified beneficiaries who have occupied and cultivated the land, and established their vested rights prior to June

15, 1988, in accordance with the then existing laws, shall be awarded the legal limits as allowed by said laws. Processing of documents shall be in accordance with this revised procedure. In case of homelots, the award limit shall be 1000 square meters.

(e) In general, a Certificate of Land Ownership Award (CLOA), shall be immediately issued to the qualified beneficiary including those with Deeds of Sale still pending with the Department, provided that all outstanding accounts of an awardee shall be annotated at the back of the CLOA issued to him and duly registered with the Register of Deeds.

The beneficiaries/allocatees whose amortization payments and unpaid rentals, as annotated at the back of their respective titles, do not exceed P1000, have three years to pay the same, commencing from the registration of said titles. Beneficiaries/allocatees whose obligations exceed P1000 have five years to pay the same, also commencing from the registration of aforesaid titles.

Failure to pay the obligations as aforestated, will lead to the forfeiture of the lots of said beneficiaries/allocatees in favor of the government to be distributed to qualified beneficiaries/allocatees.

(3) *Qualifications of a beneficiary.* —They are as follows:

(a) Landless;

(b) Filipino citizen;

(c) Actual occupant/tiller who is at least 15 years of age or head of the family at the time of filing of application; and

(d) Has the willingness, ability and aptitude to cultivate and make the land productive.

(4) *Definition of terms.* — For purposes of Adm. Order No. 3, Series of 1990, the following definitions shall apply:

(a) *Landed estates* are former haciendas or landholdings of private individuals or corporations which have been acquired by the government

under different laws, for redistribution and resale to deserving tenants and landless farmers.

(b) *Order of Award* (OA) refers to the document issued to the allocatee of a lot in a landed estate who is found qualified to acquire said lot under existing laws, rules and regulations at the time of its issuance.

(c) *Certificate of Land Transfer* (CLT) is a document issued by DAR, pursuant to DAR Memorandum Circular No. 24, Series of 1973, dated October 24, 1973.

(d) *Absentee* OA/CLT *Holder is* an awardee or CLT recipient who left or abandoned the lot awarded to him for more than six months immediately prior to the physical inventory by the Municipal Agrarian Reform Officer (MARO).

(e) *Certificate of Land Ownership Award* (CLOA) is a document evidencing ownership of the land granted or awarded to the beneficiary by DAR, and containing the restrictions and conditions provided for in R. A. No. 6657 and other applicable laws.

(f) *Landless person* pursuant to Section 25, R. A. No. 6657 is one who owns less than three hectares of agricultural land.[108]

Transferability of awarded lands

(1) Lands acquired by beneficiaries under the Act may not be sold, transferred or conveyed except through hereditary succession, or to the government, or to the LBP, or to other qualified beneficiaries for a period of ten years. However, the children of the spouse of the transferor shall have a right to repurchase the land from the government

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[108] DAR Adm. Order No. 3, Series of 1990. See DAR Adm. Order No. 10 Series of 1990 which also prescribes rules and regulations in the distribution of agricultural lands to CARP beneficiaries.

or LBP within a period of two years.

Due notice of the availability of the land shall be given by the LBP to the Barangay Agrarian Reform Committee (BARC) of the *barangay* where the land is situated. The Provincial Agrarian Reform Coordinating Committee (PARCCOM) shall, in turn, be given the due notice thereof by the BARC.

(2) If the land has not yet been fully paid by the beneficiary, the rights to the land may be transferred or conveyed, with prior approval of the DAR, to any heir of the beneficiary or to any other beneficiary who, as a condition for such transfer or conveyance, shall cultivate the land himself.

(3) Failing compliance, the land shall be transferred to the LBP which shall give due notice of the availability of the land in the manner specified in No. 1. In the event of such transfer to the LBP, the latter shall compensate the beneficiary in one lump sum for the amounts the latter has already paid, together with the value of improvements he has made on the land. (Sec. 27.)

Non-land transfer schemes

These schemes or activities do not control the actual distribution or transfer of lands to former beneficiaries but are likewise considered as important instrument for protecting the tenurial rights of the farmers or farmworkers. They include:

(1) *Leasehold Operations* (*LO*). —Lands within the land owners' retained areas or lands not yet due for distribution are placed under leasehold to ensure farmers' security over the land they till and pre-empt their displacement while waiting for the eventual distribution of the land;

(2) *Production Profit Sharing* (*PPS*). —This scheme is an interim measure while the lands owned or operated by agricultural entities await

coverage under the CARP. These entities are companies mostly involved in the commercial production of rubber, banana, and pineapple;

(3) *Stock Distribution Option (SDO)*. —Under this arrangement, the farmers are entitled to dividends and other financial benefits and are also assured of at least a representative at the Board of Directors, management or executive committee to protect the rights and interests of shareholders; and

(4) *Commercial Farm Deferment (SFD)*. —This scheme provides corporate landowners of newly-established commercial plantations enough time to recover their investment before such agricultural lands are covered by CARP. The deferment period was up to 1998. Pending final land transfer, however, these corporations shall implement a production and profit-sharing scheme in their farms.

The monitoring of non-land transfer activities by the field offices of the DAR has not been given much priority, as there has been greater pressure for them to deliver their land acquisition and distribution (LAD) targets.[109]

F. COMPENSATION

Determination of just compensation

(1) In determining just compensation, the following shall be considered:

(a) the cost of acquisition of the land;

(b) the current value of like properties;

(c) its nature;

(d) actual use and income;

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[109] DAR CARD Annual Report, 1998, p. 13.

(e) the sworn valuation by the owner;

(f) the tax declarations; and

(g) the assessment made by government assessors.[110]

(2) The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation. (Sec. 17.)

(3) The LBP shall compensate the landowner in such amount as may be agreed upon by the landowner and the DAR and LBP or as may be finally determined by the court as the just compensation for the land.[111] (Sec. 18.)

Modes of compensation

The compensation shall be paid in one of the following modes, at the option of the landowner:

(1) Cash payment, under the following terms and conditions:

(a) For lands above fifty hectares, insofar as the excess hectarage is

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[110] For the rules and procedures governing valuation of lands subject of acquisition whether under voluntary offer to sell (VOS) or compulsory acquisition (CA), see DAR Adm. Order No. 5, Series of 1998 which supersedes Adm. Order No. 6, Series of 1992, as amended by Adm. Order No. 11, Series of 1994. Joint DAR-LBP Memorandum Circular No. 11, Series of 2003 provides the guidelines on the valuation of standing commercial trees that are considered as improvement on the land.

[111] Executive Order No. 405 (June 4, 1990) vests in the Land Bank of the Philippines (LBP), the primary responsibility to determine the land valuation and compensation. The DAR shall make use of such determination in the performance of its functions.

For the revised rules and regulations governing the valuation of lands voluntarily offered or compulsorily acquired pursuant to the CARL (R. A. No. 6657.), see DAR Adm. Order No. 5, Series of 1998.

concerned —25% cash, the balance to be paid in government financial instruments negotiable at any time.

(b) For lands above twenty-four hectares and up to fifty hectares — 30% cash, the balance to be paid in government financial instruments negotiable at any time.

(c) For lands twenty-four hectares and below —35% cash, the balance to be paid in government financial instruments negotiable at any time;

(2) Shares of stock in government-owned or controlled corporations, LBP preferred shares, physical assets or other qualified investments in accordance with guidelines set by the PARC;

(3) Tax credits which can be used against any tax liability; and

(4) LBP bonds.

In case of extraordinary inflation, the PARC shall take appropriate measures to protect the economy. (Sec. 18.)

The above modes improve those provided under Executive Order No. 299, R. A. No. 3844, as amended, and Letter of Instructions No. 273.

Payment of the full amount in cash to all landowners will infuse a large amount of money into the economy. This could result in inflation. Furthermore, such a compensation scheme will increase the up front funding requirement for CARP which the government can ill-afford at present. Nevertheless, the mode of compensation provided for is considered sufficient to facilitate the transfer of capital from agriculture to industry. In any case, the aims should be to make the program more acceptable to landowners but with due regard to financing limitations.

Features of LBP bonds

(1) *Market interest rates.* —They are aligned with 91-day treasury

bill rates. Ten percent of the face value of the bonds shall mature every year from the date of issuance until the tenth year. Should the landowner choose to forego the cash portion, whether in full or in part, he shall be paid correspondingly in LBP bonds; and

(2) *Transferability and negotiability.* —Such LBP bonds may be used by the landowner, his successors-in-interest or his assigns, up to the amount of their face value for any of the following:

(a) Acquisition of land or other real properties of the government, including assets under the Asset Privatization Program and other assets foreclosed by government financial institutions in the same province or region where the lands for which the bonds were paid are situated;

(b) Acquisition of shares of stock of government-owned or controlled corporations or shares of stock owned by the government in private corporations;

(c) Substitution for surety or bail bonds for the provisional release of accused persons, or for performance bonds;

(d) Security for loans with any government financial institution, provided the proceeds of the loans shall be invested in an economic enterprise, preferably in a small- and medium-scale industry, in the same province or region as the land for which the bonds are paid;

(e) Payment for various taxes and fees to the government. The use of those bonds for these purposes will be limited to a certain percentage of the outstanding balance of the financial instruments and the PARC shall determine the percentages mentioned above;

(f) Payment for tuition fees of the immediate family of the original bondholder in government universities, colleges, trade schools, and other institutions;

(g) Payment for fees of the immediate family of the original bondholder in government hospitals; and

(h) Such other uses as the PARC may, from time to time, allow. (Ibid.)

Interest payment

(1) *Rates.* —The interest rate on the 10-year Land Bank is based on the 91-day treasury bills, representing the transactions consummated in the auction sale immediately preceding Land Bank interest setting dates, as follows: February 28, May 31, August 31, and November 30 of every year.

(2) *Dates.* —For bonds issued as a result of the conversion of 25-year bonds, the Land Bank pays interest on February 18 and August 18 of every year. For those issued after August 18, 1987 under the Comprehensive Agrarian Reform Program (CARP), the interest is payable six months from date of issue and every six months thereafter.[112]

Voluntary land transfer

(1) *Guidelines.* — Landowners of agricultural lands subject to acquisition under the Act may enter into a voluntary arrangement for direct transfer of their lands to qualified beneficiaries subject to the following guidelines:

(a) All notices for voluntary land transfer must be submitted to the DAR[113] within the first year of the implementation of the CARP. Negotiations between the landowners and qualified beneficiaries covering any voluntary land transfer which remain unresolved after one year shall not be recognized and such land shall instead be acquired by the

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[112] Land Bank Advt., Manila Bulletin, April 27, 1988.

[113] Now, Department of Land Reform. (See Chap. IV.)

government and transferred pursuant to the Act;

(b) The terms and conditions of such transfer shall not be less favorable to the transferee than those of the government's standing offer to purchase from the landowner and to resell to the beneficiaries, if such offers have been made and are fully known to both parties; and

(c) The voluntary agreement shall include sanctions for non-compliance by either party and shall be duly recorded and its implementation monitored by the DAR. (Sec. 20.)

To be valid, the transfer must have complied with all the three general guidelines.

(2) *Payment of compensation by beneficiaries.* — Direct payment in cash or in kind may be made by the farmer-beneficiary to the landowner under terms to be mutually agreed upon by both parties, which shall be binding upon them, upon registration with and approval by the DAR. Said approval shall be considered given, unless notice of disapproval is received by the farmer-beneficiary within 30 days from the date of registration.

In the event they cannot agree on the price of land, the procedure for compulsory acquisition (as provided in Sec. 16; see "E".) shall apply. The LBP shall extend financing to the beneficiaries for purposes of acquiring the land. (Sec. 21.)

Voluntary offer to sell

The government shall purchase for redistribution under the CARP, all agricultural lands it deems productive and suitable to farmer cultivation voluntarily offered for sale. Such transactions shall be exempted from the payment of capital gains tax and other taxes and fees. (Sec. 9, Exec. Order No. 229.) The land value stated by the landowner in his voluntary offer shall be subject to the established

procedures for determining land compensation as prescribed under Sections 17 and 18. (*supra.*)

The above involves the transaction between the government and the landowners where the latter voluntarily offers his landholding for sale in favor of the former. In a voluntarily land transfer (*supra.*), the transaction is between the landowner and the beneficiary. There is also the matter of incentives. The scheme of voluntary offer to sell is exempt under Executive Order No. 299 from the payment of taxes and other fees, which exemption is not enjoyed by the landowner in a voluntary land transfer transaction. Under the CARL of 1988, landowners, other than banks and other financial institutions, who voluntarily offer their lands for sale shall be entitled to an additional 5% cash payment. (Sec. 19.)

Corporate landowners may voluntarily transfer ownership over their agricultural landholdings to the government pursuant to Section 20, *supra.* (Sec. 31.)

In the light of the new thrust in the implementation of the Comprehensive Agrarian Reform Program (CARP), all covered landowners have been given four years from the date of effectivity of the CARL on June 15, 1988, or until June 15, 1992 within which to voluntarily offer their lands for sale to the government. However, lands with respect to which notices of coverage for compulsory acquisition have already been sent by the government and received by the landowner, may no longer be voluntarily offered for sale.

All lands which are voluntarily offered for sale to the government may no longer be withdrawn and shall immediately fall under Phase One, as provided in the CARL, Section 7.

All VOS filed before June 15, 1988, the date of the effectivity of the CARL, shall be heard and processed in accordance with the

procedure provided for in Executive Order No. 229.[114]

G. CORPORATE FARMS

Farms owned or operated by corporations or other business organizations.

In the case of such farms, the following rules shall be observed by the PARC:

(1) In general, lands shall be distributed directly to the individual worker-beneficiaries; and

(2) In case it is not economically feasible and sound to divide the land, then it shall be owned collectively by the worker-beneficiaries who shall form a workers' cooperative or association which will deal with the

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[114] DAR Adm. Order No. 14, Series of 1989. It repealed Adm. Order No. 3, Series of 1989. DAR Order No. 19, Series of 1989 is practically the same as DAR Adm. Order No. 14. See amendments to Adm. Orders No. 12, 14, and 17 by Adm. Order No. 8, Series of 1990.

For rules and procedures governing Voluntary Land Transfer or Direct Payment Scheme (VLT-DPS), see DAR Adm. Order No. 13, Series of 1991. DAR Adm. Order No. 3, Series of 2000 amends DAR Adm. Order No. 9, Series of 1997 entitled "Revised Rules and Regulations on A. O. No. 3, Series of 1996, Re Reconveyance of properties turned over to DAR pursuant to E. O. No. 407, as amended, and lands voluntarily offered under Section 19 of R. A. No. 6557 but found to be outside the coverage of CARP". DAR Adm. Order No. 4, Series of 2000 revises Adm. Order No. 2, Series of 1996 entitled "Revised Rules and Procedures governing agricultural lands subject of voluntary offer to sell and compulsory acquisitions, as amended by Adm. Order No. 1, Series of 1998, DAR Adm. Order No. 8, Series of 2003 also lays down guidelines on the acquisition and distribution of compensable private agricultural lands subject of acquisition through VLT/DPS in order to provide effective means of implementing and monitoring the VLT/DPS mode of acquisition and distribution, by the Presidential Agrarian Reform Council (PARC) Secretariat through the Provincial Agrarian Reform Coordinating Committee (PARCCOM). It revokes or amends all orders, circulars, rules and regulations inconsistent therewith.

corporation or business association. Until a new agreement is entered into by and between the workers' cooperative or association and the corporation or business association, any agreement existing at the time the Act takes effect between the former and the previous landowner shall be respected by both the workers' cooperative or association and the corporation or business association. (Sec. 29.)

Corporate farms require large capital financing, extensive research and development and widespread marketing and distribution network.

Homelots and farmlots for members of cooperatives

The individual members of the cooperatives or corporations mentioned above shall be provided with homelots and small farmlots for their family use. They shall be taken from the land owned by the cooperative or corporation. (Sec. 30.)

Corporate landowners

(1) *Voluntary transfer of ownership.* —Corporate landowners may voluntarily transfer ownership over their agricultural landholdings to the government pursuant to Section 20 (supra.) or to qualified beneficiaries, under such terms and conditions, consistent with the Act, as they may agree upon, subject to confirmation by the DAR.

(2) *Grant of right to qualified beneficiaries to purchase shares of stocks.* —Upon certification by the DAR, corporations owning agricultural lands may give their qualified beneficiaries the right to purchase such proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets, under such terms and conditions as may be agreed upon by them.

Thus, if the value of the landholding is 10% of the corporation's

total assets, the beneficiaries may purchase 10% of its capital stock. In no case shall the compensation received by the workers at the time the shares of stock are distributed be reduced. The same principle applies to associations, with respect to their equity or participation.[115] (Sec. 31, pars. 1, 2.)

Conditions for deemed corporate compliance with land distribution requirements

Corporations or associations which voluntarily divest a proportion of their capital stock, equity or participation in favor of their workers or other qualified beneficiaries shall be deemed to have complied with the provisions of the Act. However, the following conditions must be complied with:

(1) In order to safeguard the rights of beneficiaries who own shares of stocks to dividends and other financial benefits, the books of the corporation of association shall be subject to periodic audit by certified public accountants chosen by the beneficiaries;

(2) Irrespective of the value of their equity in the corporation or association, the beneficiaries shall be assured of at least one representative in the board of directors, or in a management or executive committee, if one exists, of the corporation or association;

(3) Any shares acquired by such workers and beneficiaries shall have the same rights and features as all other shares; and

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[115] Through Stock Distribution Option (SDO), landowners may choose to distribute shares of stock equivalent to the value of the land instead of having their agricultural lands distributed to their farmworker-beneficiaries.

From 1988 - 1995, SDO proposals of 14 corporate landowners were approved. These cover an aggregate area of 8388 hectares, most of which are planted to sugarcane. Thirteen out of the 14 corporations have distributed some 28.70 million shares of stocks amounting to P32.60 million. (See CARP Supplement, Manila Bulletin, on June 13, 1996, p. 6.)

(4) Any transfer of shares of stock by the original beneficiaries shall be void *ab initio* unless said transaction is in favor of a qualified and registered beneficiary within the same corporation.

If within two years from the approval of the Act, the land or stock transfer envisioned above is not made or the plan for such stock distribution approved by the PARC within the same period is not realized, the agricultural land of the corporate owners or corporation shall be subject to the compulsory coverage of the Act.[116] (*Ibid.*, pars. 3, 4.)

Production-sharing plan with farmworkers or their organization

(1) *Amount of production share.* —Pending final land transfer, individuals or entities owning, or operating under lease or management contract, agricultural lands are mandated to execute a production and profit-sharing plan with their farmworkers or farmworkers' organization, if any, whereby 3% of the gross annual sales from the production of such lands are distributed within 60 days of the end of the fiscal year as a compensation to regular and other farmworkers in such lands over and above the compensation they currently receive.

It is necessary that these individuals or entities realize gross sales in excess of P5,000,000 *per annum* unless the DAR,[117] upon proper application, determines a lower ceiling.

(2) *Amount of profit share.* —In the event that the individual or entity realizes a profit, an additional 10% of the net profit after tax shall

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[116] The corporate landowner-applicant shall file the stock distribution plan and obtain approval within two years from the effectivity of R. A. No. 6657 (June 15, 1988) but prior to the DAR's notice of compulsory acquisition of said property under the law. (See DAR Adm. Order No. 10, Series of 1988.)

[117] Now, Department of Land Reform. (See Chap. IV.)

be distributed to said regular and other farmworkers within 90 days of the end of the fiscal year.

(3) *Transitory period.* —To forestall any disruption in the normal operation of lands to be turned over to the farm-worker-beneficiaries mentioned above, a transitory period, the length of which shall be determined by the DAR, will be established.

During this transitory period, at least 1% of the gross sales of the entity shall be distributed to the managerial, supervisory and technical group in place at the time of the effectivity of the Act, as compensation for such transitory managerial and technical functions as it will perform, pursuant to an agreement that the farmworker-beneficiaries and the managerial supervisory and technical group may conclude, subject to the approval of the DAR.[118] (Sec. 32.)

(4) *Employers covered.* —Pending final land or corporate stock transfer, the following employers are covered by the mandated production and profit sharing under R. A. No. 6657:

(a) Any enterprise owning or operating under lease, management contract, production venture or other similar arrangement, agricultural lands;

(b) Multinational corporations engaged in agricultural activities; and

(c) Commercial farms devoted to commercial livestock, poultry and swine raising, aquaculture including saltbeds, fishponds and prawn ponds, fruit farms, orchards, vegetable and cut-flower farms, and

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[118] This is a transitional arrangement pending final land transfer pursuant to Section 32 of R. A. No. 6657. In 1995, 15 corporations operating an aggregate area of 7523 hectares distributed P13,147,376 worth of production and profit shares to some 11,100 farmworker-beneficiaries. The accomplishment rate was a high 103%.

Since the start of the program, 55 companies have been complying with this scheme and about P391 million has already been distributed as production and profit shares to their farmworkers. (See CARP Supplement, Manila Bulletin, on June 13, 1996, p. 6.)

cacao, coffee and rubber plantations.

In the case of individuals or entities with business operations other than agricultural, only the divisions, groups or units involved in agricultural activities are included in the mandated production profit sharing.

(5) *Employees covered.* —All farmworkers, whether classified as regular, seasonal, technical or other farmworkers but excluding managerial and supervisory employees, are included in the mandated production-sharing and profit-sharing. However, any farmworker who renders service, regardless of duration, within a covered period shall be entitled to this benefit provided that in the absence of any Presidential Agrarian Reform Council (PARC) determination on a specific award limit, the farmworker-beneficiary does not own more than three hectares of agricultural land.

(6) *Manner of payment.* —The production/profit shares of the workers shall be paid in cash. Such additional compensation shall be in separate payrolls in which shall contain information on: the employer's gross sales and net profit; the total amount for distribution as workers production/profit-shares; each worker's number of paid days for the year; and each worker's production/profit-share.[119]

Payment of shares of cooperative or association

Shares of a cooperative or association acquired by farmer-beneficiaries or worker-beneficiaries shall be fully paid for in an amount corresponding to the valuation as determined in Section 34. (*infra.*)

The landowner and the LBP shall assist the farmer-beneficiaries and worker-beneficiaries in the payment for said shares by providing credit

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[119] DAR Adm. Order No. 8, Series of 1988.

financing. (Sec. 33.)

Valuation of lands

(1) Valuation scheme for the land shall be formulated by the PARC, taking into account the factors enumerated in Section 17 (Determination of just compensation; see "F".), in addition to the need to stimulate the growth of cooperatives and the objectives of fostering responsible participation of the worker-beneficiaries in the creation of wealth.

(2) In the determination of a price that is just, not only to the individual but to society as well, the PARC shall consult closely with the landowner and the worker-beneficiaries.

(3) In case of disagreement, the price as determined by the PARC, if accepted by the worker-beneficiaries, shall be followed, without prejudice to the landowner's right to petition the Special Agrarian Court to resolve the issue of valuation. (Sec. 34.)

H. SUPPORT SERVICES

Functions of Support Services Office

The Office of Support Services Office under the DAR has been created by the CARL of 1988. Headed by an Undersecretary, the Office provides general support and coordinative services in the implementation of the CARP particularly in carrying out the provisions of the following services to farmer-beneficiaries and affected landowners:

(1) Irrigation facilities, especially second crop or dry season irrigation facilities;

(2) Infrastructure development and public works projects in areas and settlements that come under agrarian reform, and for this purpose,

the preparation of the physical development plan of such settlements providing suitable barangay sites, potable water and power resources, irrigation systems, seeds and seedling banks, post-harvest facilities, and other facilities for a sound agricultural development plan;

(3) Government subsidies for the use of irrigation facilities;

(4) Price support and guarantee for all agricultural produce;

(5) Extending to small landowners, farmers and farmers' organizations the necessary credit, like concessional and collateral-free loans, for agro-industrialization based on social collaterals like the guarantees of farmers' organizations;

(6) Promoting, developing and extending financial assistance to small and medium-scale industries in agrarian reform areas;

(7) Assigning sufficient numbers of agricultural extension workers to farmers' organizations;

(8) Undertake research, development and dissemination of information on agrarian reform plants and crops best suited for cultivation and marketing, and low-cost and ecologically sound farm inputs and technologies to minimize reliance on expensive and imported agricultural inputs;

(9) Development of cooperative management skills through intensive training;

(10) Assistance in the identification of ready markets for agricultural produce and training in other various aspects of marketing; and

(11) Administration, operation, management and funding of support services programs and projects including pilot projects and models related to agrarian reform as developed by the DAR.[120] (Sec. 35, as amended by R. A. No. 7905.)

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[120] Now, Department of Land Reform. (See Chap. IV.)

In order to cover the expenses and cost of support services, at least 25% of all appropriations for agrarian reform are immediately set aside and made available for this purpose. In addition, the DAR is authorized to package proposals and receive grants, aid and other forms of financial assistance from any source. (Sec. 36.)

Support services to the beneficiaries

Land distribution is not the sole remedy to boost productions and rural incomes in the countryside. Experience has shown that lands could not be productive in the absence of necessary support services.

The PARC ensures that support services to farmer-beneficiaries are provided, such as:

(1) Land surveys and titling;

(2) Liberalized terms on credit facilities and production loans;

(3) Extension services by way of planting, cropping, production and post-harvest technology transfer, as well as marketing and management assistance and support to cooperatives and farmers' organizations;

(4) Infrastructure such as access trails, mini-dams, public utilities, marketing and storage facilities; and

(5) Research, production and use of organic fertilizers and other local substances necessary to farming and cultivation.

The PARC is mandated to formulate policies to ensure that support services to farmer-beneficiaries shall be provided at all stages of land reform.

Misuse or diversion of the financial and support services above provided shall result in sanctions against the beneficiary guilty thereof, including the forfeiture of the land transferred to him or lesser sanctions

as may be provided by the PARC, without prejudice to criminal prosecution.[121] (Sec. 37.)

Support services to the landowners

(1) The PARC, with the assistance of such other government agencies and instrumentalities as it may direct, provides landowners affected by the CARP and prior agrarian reform programs with the following services:

(a) Investment information, financial and counseling assistance;

(b) Facilities, programs and schemes for the conversion or exchange of bonds issued for payment of the lands acquired with stocks and bonds issued by the National Government, the Central Bank and other government institutions and instrumentalities;

(c) Marketing of LBP bonds, as well as promoting the marketability of said bonds in traditional and non-traditional financial markets and stock exchanges; and

(d) Other services designed to utilize productively the proceeds of the sale of such lands for rural industrialization.

Letter (b) involves no cash outlay. It is in line with the privatization thrust of the government and promotes industrialization. The assistance extended to landowners will facilitate the reinvestment of the bonds to viable and high priority industries or projects.

(2) A landowner who invests in rural-based industries shall be entitled to the incentives granted to a registered enterprise engaged in a pioneer or preferred area of investment as provided for in the Omnibus

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[121] For guidelines and procedures governing the monitoring of violations or circumventions committed by the agrarian reform beneficiaries (ARBs), providing sanctions therefor, and filing of appropriate administrative, quasi-judicial and/or criminal actions, see DAR Memo. Circular No. 19, Series of 1996.

Investments Code of 1987, or to such other incentives as the PARC, the LBP or other government financial institutions may provide.

(3) The LBP shall redeem a landowner's LBP bonds at face value, provided that the proceeds thereof shall be invested in a BOI-registered company or in any agribusiness or agro-industrial enterprise in the region where the landowner has previously made investments, to the extent of 30% of the face value of said LBP bonds subject to guidelines issued by the LBP. (Sec. 38.)

Integrated approach to agrarian reform

The Comprehensive Agrarian Reform program of the government is an integrated plan of action in solving the problems of low productivity and poverty of our farmers, the primary aim of which is to make the tiller the owner of the land he cultivates in order to achieve a dignified existence for the small farmers and make them responsible partners in nation-building.

To insure the attainment of the objectives of Agrarian Reform as embodied in the CARL of 1988, the program has been designed whereby its beneficiaries are simultaneously provided with the necessary support facilities, institutions and services. The integrated program comprises five major components:

(1) *Land tenure improvement.* —This is aimed at making every tenant-tiller own the land he tills. This aspect covers land valuation and land tilling. The program does not end when the tenant-farmer receives his land certificate; it moves on by providing the farmer-beneficiaries with a "package of services", including supervised credit, free legal assistance, education and training, extension services, infrastructure facilities, and other support measures, to help the tenant increase his output and income and thus insure the success of the tenant in his new role as landowner.

(2) *Institutional development.* —This involves the development of the appropriate rural-based institutions that would eventually release the tillers from "pernicious institutional restraints and practices", especially in the aspect of farm financing, marketing and procurement of agricultural inputs. This includes the following activities: barrio associations, area marketing cooperatives and farmers' cooperative banks.

To ensure for the farmers (now under the new status as owners) a more conducive atmosphere and environment to increase their farm income, these local institutions shall be established and developed to serve and protect their interest as producers, businessmen, and also as consumers.

(3) *Agricultural development.* —This is aimed at increasing the per-hectare yield of the emancipated tenants, thereby improving their standard of living. Included are the following activities: cooperative farming [122] (see Chap. Ⅲ-A.), compact farming, land consolidation, soil analysis, crop production, livestock and poultry, fish production, nutrition and food processing.

(a) *Cooperative farming* is a type of farming that equitably distributes production factors (such as land, labor and material resources), especially land, to its members.

(b) *Compact farming* involves the pooling of human and land resources in contiguous areas to achieve higher efficiency and larger economies of scale. It is jointly undertaken by the Department of Agrarian Reform and the Land Bank of the Philippines. The scheme brings down the cost of farm production by requiring that the

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[122] There are two fully established cooperative settlements: the General Ricarte Multipurpose Agricultural Cooperative Settlement Project on Llanera, Nueva Ecija and the Magalang Cooperative Settlement Project in Magalang, Pampanga. These cooperative farms are being replicated in other regions of the country. (See Phil. Sunday Express, Oct. 21, 1979.)

cultivation, harvesting and marketing be supervised and directed under a plan and budget prepared by the farmers themselves. The costs and returns of production are prorated among the compact farm members in proportion to the size of their individual farmlots. The farm members are also assured of better credit from the Land Bank of the Philippines or rural banks. The credit risk is also less because the members are bound to guarantee each other's loan jointly and severally.

To restructure the physical layout and make possible the maximum use of inputs and infrastructure on small farms, the Department of Agrarian Reform has embarked on *land consolidation*,[123] as a higher stage of development in agrarian reform. Land consolidation projects promote equal distribution of landholdings, provide the needed infrastructure in agriculture and conserve soil fertility and prevent erosion. (Sec. 39.) Reforestation, a vital need for watershed preservation, is a long-range program included also under this component.

(4) *Physical development.* —This consists of providing the infrastructures supportive of agrarian reform, such as irrigation systems, farm-to-market roads, ports, bridges, school buildings, health centers and other social infrastructures, including rural electrification. "The absence of physical development in the farms could only result in slower agricultural productivity and less product yield." Thus, infrastructure becomes a major factor in enhancing "the already strengthened productive capabilities of the farmer as producer-owner of his farm".

(5) *Development of Agrarian Reform Communities.* — The joint effort exerted by DAR in coordination with other CARP implementing

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[123] A method of rearranging land boundaries, restructuring irregular farm lots, and constructing irrigation systems, drainage and farm-to-market roads for better farm management. Since 1974, land consolidation has been started on a pilot basis in the provinces of Nueva Ecija, Pampanga, Camarines Sur and Pangasinan.

agencies is manifested particularly in Agrarian Reform Communities (ARCs). The ARC development strategy is an integrated area-focused approach wherein DAR's twin operations of land tenure improvement and effective delivery of support services are focused in a poor *barangay* or a cluster of poor barangays to increase farm production, improve household income and promote sustainable development.

It is in ARCs where the program will showcase that agrarian reform works, that agrarian reform as a holistic development effort leads to improved quality of life, people empowerment and sustainable agro-industrial development.

An ARC is a cluster of land reformed villages which receives an integrated package of services. This may range from rural infractructure, such as irrigation facilities and farm-to-market roads, to financing, production processing and marketing assistance, in addition to basic social services, such as education, health and sanitation.[124]

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[124] The DAR launched a total of 605 ARCs during the period of 1993 – 1994. The land distribution scope in these ARCs cover an aggregate area of 625,571 hectares involving 243,411 farmer-beneficiaries. By the end of 1995, there were 115 ARCs with zero balances in land distribution. These currently cover about 444 barangays and serve 33,695 farmer-beneficiaries. (See CARP Supplement, Manila Bulletin, June 13, 1996, p. 6.)

Fifty-three of these ARCs were organized in 1998 bringing the total since 1993 to 969 ARCs.

The combined distributed lands in these ARCs stood at 701,197 hectares benefiting 331,544 FBs. Of these, 56,141 hectares were distributed in 1998.

The main strategy in the ARC development process is to organize farmers' teams. Farmers undergo various organizational building and strengthening activities in preparation for their role 4s catalysts of development in the area.

During the period, DAR organized 131 new farmers' organizations in ARCs with an FB membership of 12,413. These organizations generated capital amounting to P 282,131 million, of which P 90. 346 million was recorded during the year. (See CARP Supplement, Manila Bulletin, June 10, 1999, p. 20.)

To date, a total of 1016 ARCs have been launched nationwide. (DARCARP 1999, First Semester Accomplishment Report, p. 2.)

(6) *Personnel training and clientele development.* —The continuing education program for agrarian reform is being carried out by the Bureau of Agrarian Reform Information and Education. It covers two instructional fields personnel training and clientele development.

(a) The first is designed to provide the personnel of the agencies of the government created to carry out the policy-objectives of the program with a working knowledge of agrarian reform policies, plans, programs and a broad training on field implementation methodologies.

(b) The second, which involves the non-government sector, includes several activities such as community education and information activities designed to bring the agrarian reform program to greater public awareness and acceptance; education of the farmers to acquaint them about the program and guide them to the development of their individual abilities and skills applicable to farm life with emphasis on better land use, farm planning, better use of credit, livelihood, and orientation of landowners to gain their cooperation and support in the successful implementation of the program. Through the Investment and Marketing Assistance Program (IMAP) of DAR, farmers are provided with accurate information and referrals.

Joint economic enterprises in agrarian reform areas

(1) *Joint economic enterprises* generally refer to partnerships or arrangements between beneficiaries and investors to implement an agribusiness enterprise in agrarian reform areas. It may take any of the following forms:

(a) *Joint venture* whereby the beneficiaries contribute use of the land held individually or in common and the facilities and improvements if any. On the other hand, the investor furnishes capital and technology for production, processing and marketing of agricultural goods, or

construction, rehabilitation, upgrading and operation of agricultural capital assets, infrastructure and facilities. It has a personality separate and distinct from its components;

(b) *Production, processing and marketing agreement* whereby the beneficiaries engage in the production and processing of agricultural products and directly sell the same to the investor who provides loans and techo nology;

(c) *Build-operate-transfer scheme* whereby the investor introduces, rehabilitates or upgrades, at his own cost, capital assets, infrastructure, services and facilities applied to the production, processing and marketing of agricultural products at his own cost, and operates the same for an agreed period, upon expiration of which collective ownership thereof is consolidated with the beneficiaries who own the land where the improvements and facilities are located;

(d) *Management contract* whereby the beneficiaries hire the services of a contractor who may be an individual, partnership or corporation to assist in the management and operation of the farm in exchange for a fixed wage and/or commission;

(e) *Service contract* whereby the beneficiaries engage for a fee the services of contractor for mechanized land preparation, cultivation, harvesting, processing, post-harvest operations and other farm activities;

(f) *Lease contract* whereby the beneficiaries bind themselves to give to the investor the enjoyment or use of their land for a price certain and for a definite period;

(g) *Any combination* of the preceding schemes; or

(h) Such *other agribusiness arrangements or schemes* that will promote the productivity of agrarian reform areas consistent with existing laws and regulations.

(2) *Framework.* —*Agrarian reform* means not just the redistribution of lands to farmers and farmworkers who are landless, but includes the totality of factors and support services designed to lift the economic status of the beneficiaries. To ensure adequate support services, there is a need for greater private sector participation, both civil society and business, in the development of agrarian reform areas. This shall be facilitated through agribusiness partnerships or arrangements, otherwise known as "Joint Economic Enterprises", between beneficiaries and investors.

These partnerships or arrangements, which will involve distributed lands, shall be at the option of beneficiaries. Their availability does not mean government will cease to provide agrarian support services. They are merely alternatives that beneficiaries may consider to sustain the operations of distributed farms, or to make their lands productive, thus, enable them to enjoy the full benefits of agrarian reform.

(3) *General features.* — The parties in a joint economic enterprise are the beneficiaries and investors. It is formed for the following purposes:

(a) Production, processing and marketing of agricultural products; or

(b) Introduction, maintenance, rehabilitation or upgrading of agricultural capital assets, infrastructure, facilities or services; or

(c) Provision of expertise, technology, equipment and other services that will make distributed lands productive.

The beneficiaries remain as owners of the land. Only the use of the land may be conveyed where necessary to the enterprise. The consideration and other economic benefits of the parties will depend on the nature of the agribusiness enterprise and the relative value of their participation.

The parties shall agree on the period and cause the annotation of the agreement on the titles of the properties (EP/CLOA) as appropriate.

(4) *Who may avail.* —Beneficiaries of agricultural lands distributed under the agrarian reform program may engage in any of the joint economic enterprises provided herein. These include holders of Emancipation Patents (EPs) or Certificates of Land Ownership Awards (CLOAs).

Qualified beneficiaries of agricultural lands for distribution under the agrarian reform program may also avail thereof provided that the land is distributed to beneficiaries before an agribusiness agreement is executed.

Small landowners may engage in joint economic enterprises involving their retained areas.

(5) *Consent of beneficiaries.* —Beneficiaries shall have full freedom to engage in a joint economic enterprise with investors of their own choice. However, in case of commercial farms, the former landowner or operator shall be given priority pursuant to Sec. 30(a)(3) of DAR Administrative Order No. 9, Series of 1998.

Where individual beneficiaries are parties to the contract, the beneficiaries themselves or their duly authorized representative must execute the agreement.

If the contracting party is the cooperative or association, the board of directors or governing body must authorize the agreement, and the members must ratify the same, in accordance with its articles and by-laws. The officers who will sign the agreement shall secure an authority in writing from the board before executing the agreement.[125]

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[125] DAR Adm. Order No. 2, Series of 1999.

Agrarian reform community development framework.

(1) *Background and rationale.* —Access to land is essential to ensuring that rural growth will substantially benefit the rural poor, thereby, contributing to the attainment of equity goal as enshrined in the Philippine Constitution. For more than six decades now, land reform has been a constant battle cry in the Philippines. Who control this productive asset and who greatly benefits from it are major concerns confronting the development direction of the country.

At present, there are more poor people that at any time in Philippine history. There are 6 out of every 10 Filipinos who continue to live below the poverty line due to inequality in income distribution, among others. More than half of the nation's wealth is controlled by the richest 20% while the bottom half of the population gets only one-fifth. In 1997, 44.4% of the rural families were living below the poverty line. Farmers have the highest number of households below the poverty line especially the rice, sugarcane, coconut and corn farmers and farmworkers.[126]

(2) *Guiding vision and philosophy.* —Poverty in the Philippines is predominantly a rural phenomenon with 72% of the poor dependent on agriculture, fishery, forestry and agriculture-related industries for employment and income. Inequalities in income, assets and opportunities inhibit equitable sharing of the benefits of growth. It is argued that the concentration of wealth and resources leads to policies

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[126] Overall, from 1987 to present, DAR had distributed 3,408,118 hectares of agricultural lands against its total working scope of 4,290,453 hectares leaving 882,335 hectares (pending valuation) to be distributed over the next four years or up to 2008. DAR distributed 104,261 farmlands in 2001; 101,596 in 2002; and 126,612 in 2003. It aims to distribute 200,000 hectares in 2004.

that protect sectarian interests and obstruct growth for the rest of the society. It also fuels social discontent, thereby increasing socio-political instability and reduces investments.

A more egalitarian distribution of lands will reduce poverty and boosts productivity. It is in this context that agrarian reform is seen to contribute in correcting these inequalities. Through agrarian reform, the State intervenes in the economic system to bring about more equitable distribution of productive resources (land, human and infrastructures). Agrarian reform levels the economic playing fields by enhancing the capability of Filipino farmers to become efficient agricultural producers. In doing so, the country benefits from rural labor utilization and higher rural incomes. It facilitates the involvement of the rural poor in the mainstream of the free market economy, and directly encourages the expansion of domestic demand for local services and manufactured goods. In the end, it increases the ability of both agriculture and industry to compete more effectively in the world market.

The ARC development program as implemented by DAR aims to transform the poor into productive citizens capable of making a real contribution to national growth. It revitalizes rural economy and lay the building blocks for global competitiveness. Finally, it can bring justice to the countryside by correcting the historical injustices committed against millions of landless Filipino peasants who have been denied the right to own the land they till.

(3) *Key players' partnership.* —The implementation of an area-based and people-centered development initiatives is a formidable task where critical and principled partnership between and among key players: government, business and civil society is imperative.

(a) *Government.* — It is the key player in the realm of polity where the central concern and process is participatory, democratic

governance and policy making to protect the human rights of all citizens including justice and equity. Considering the constraints of state resources, the implementation of ARC development cannot be done solely by the DAR and the CARP implementing agencies.

(b) *Business.* —It is the key player in the realm of economy where the primordial concern and process is the mutually beneficial production and distribution of goods and services to meet the physical needs of the people. With the financial crisis affecting the government and the globalization trends, severe pressures from market forces are presently being advocated, e. g., liberalization.

At present, business sector is actively involved not only in the economic arena but also in social services delivery. Like the government, it is also risky to transfer the responsibility of a people-centered development to the business sector alone because of its limitations and imperfection.

(c) *Civil society.* —It is the key player in the realm of culture where the basic concern and process is the development of social capabilities of human beings to advance their knowledge, to achieve clarity and coherence of values and to advocate the public interest.

Civil society is broadly defined as "self-organized section of society involving voluntary organizations of popular sector (e. g., non-government organizations, people's organizations, cause-oriented groups, academe, media, church) and private corporate sector". Its major role is to democratize the government and the business sector by engaging in alternative development strategies and models that can be mainstreamed to benefit the whole society. It endeavors to present people-centered agenda that can be adopted in public policy.

(4) *Key components.* —They are the following:

(a) *Land tenure improvement (LTI).* —This component is focused

on giving direct producers control over the natural resources base and paying attention on second generation problems and concerns. This is a critical step towards gaining control over production process, farmers' own development, and providing them basic security to engage in a globalizing economy.

A "tenant-free" countryside will also correct distortions in the land market towards attracting needed credit and investments to help fuel national growth.

(b) *Social infrastructure and local capability building.* —The primary concern of this component is to help marginalized groups to collectively develop their capacity to use and manage productive lands and other community resources towards self-sufficiency on basic needs especially food, and competence in area development management.

Basically, it involves the creation and strengthening of farmers' organizations, cooperatives, and sectoral federations.

(c) *Sustainable, area-based rural enterprises development.* —This component is concerned with agricultural production for food security and basic needs sufficiency in order to increase production and income and improve quality of life of the ARC households. To achieve this goal, it is necessary to provide the agrarian communities access to capital, appropriate technology, information, physical infrastructures and market.

(d) *Basic social systems development.* —Basically, this component will promote the establishment of a community-based social services system like primary health care, potable water supply systems, community recreational activities, disaster management and popular education, among others. This will be operationalized in collaboration with other government agencies, non-government organizations and

donor agencies.[127]

I. PROGRAM IMPLEMENTATION

Implementing and coordinating mechanisms

They are the following:

(1) *The Department of Agrarian Reform*[128] (DAR), which is the lead agency in the CARP implementation (see Chap. IV.), is vested with quasi-judicial powers to determine and adjudicate agrarian reform matters (see "J", *infra.*).

Unlike the regular courts of justice, the DAR, as an administrative body, is not hampered by the technical rules of procedure and evidence observed in judicial proceedings and being concerned solely with agrarian matters, possesses expertise thereon. The aim is to facilitate the implementation of the program while at the same time ensuring speedy justice at the least cost particularly to the farmer-beneficiaries;

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[127] The DAR launched a total of 605 ARCs during the period 1993 - 1994 The land distribution scope in these ARCs covers an aggregate area of 625,571 hectares involving 243,411 farmer-beneficiaries. The DAR plans to increase the number of ARCs to a total of 1000 by 1998.

By the end of 1995, there were 115 ARCs with zero balances in land distribution. Land distribution neared completion in another 174 ARCs. Some 470,524 hectares have already been distributed in ARCs for the benefit of 239,926 farmers. Leasehold contracts executed covered an area of 50,311 hectares benefiting a total of 31,705 farmers.

In 1995, 53,024 ARC farmers collectively raised some P113. 4 million through internal resource mobilization. The funds were used to capitalize income generating projects.

A total of 98 ARCs now has adequate farm-to-market roads. Forty-five vital bridges were built in 133 ARCs. In terms of irrigation, 200 ARCs benefited from 1252 units or irrigation facilities. These currently cover about 444 *barangays* and serve 33,695 farmer beneficiaries. (See CARP Supplement, Manila Bulletin, June 13, 1996, p. 6.)

[128] Now, Department of Land Reform. (See Chap. IV.)

(2) *The Presidential Agrarian Reform Council* (PARC) which is the highest policy-making and coordinating body on all matters concerning agrarian reform charged with the task of coordinating the implementation of the program and insuring the timely and effective delivery of the necessary support services;

(3) The *Provincial Agrarian Reform Coordinating Committee* (PARCCOM) which is charged with the province-by-province implementation of the CARP; and

(4) The *Barangay Agrarian Reform Council* (BARC) which is charged with the task of acting on matters related to agrarian reform at the *barangay* level.[129]

The Presidential Agrarian Reform Council

(1) *Composition.* —The PARC is composed of the President as Chairman, with the Secretary of Agrarian Reform as Vice Chairman.

The following are its members: Secretaries of the Departments of Agriculture; Environment and Natural Resources; Budget and Management; Interior and Local Government; Public Works and Highways; Trade and Industry; Finance; and Labor and Employment; Director-General of the National Economic and Development Authority; President, Land Bank of the Philippines; Administrator, National Irrigation Administration; and three representatives of affected landowners to represent Luzon, Visayas, and Mindanao and six representatives of agrarian reform beneficiaries, two each from Luzon, Visayas and Mindanao, provided that one of them shall be from the

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[129] DAR Adm. Order No. 3, Series of 2003, is the "2003 Rules of Procedure for Agrarian Law Implementation Cases". It provides the rules governing the adjudication of cases involving ALI.

cultural communities. (Sec. 41.)

The representatives mentioned are appointed by the President.

(2) *Executive Committee.* —The PARC has an Executive Committee (EXCOM) composed of the Secretary of the DAR as Chairman, and such other members as the President may designate. Unless otherwise directed by the PARC, the EXCOM may meet and decide on any and all matters in between meetings of the PARC.

Its decisions must be reported to the PARC immediately and not later than the next meeting. (Sec. 42.)

(3) *Secretariat.* —The PARC has a secretariat to provide general support and coordinative services such as inter-agency linkages; program and project appraisal and evaluation, and general operations monitoring for the PARC. The Secretariat is headed by the Secretary of Agrarian Reform who is assisted by an Undersecretary and supported by a staff whose composition is determined by the PARC Executive Committee.

All officers and employees of the Secretariat are appointed by the Secretary of Agrarian Reform. (Sec. 43.)

(4) *Functions.* —The PARC headed by the President is deemed to be the appropriate body to ensure the proper coordination and implementation of the CARP. Its function is to formulate and/or implement the policies, rules and regulations necessary to implement each component of the CARP. It may authorize any of its members to formulate rules and regulations concerning aspects of concerning aspects of agrarian reform falling within their area of responsibility. These policies, rules and regulations shall include the following:

(a) Recommended small farm economy areas, which shall be specific by crop and based on thorough technical study and evaluation;

(b) The schedule of acquisition and redistribution of specific agrarian reform areas, provided that such acquisition shall not be

implemented until all the requirements are completed, including the first payment to the landowners concerned; and

(c) Control mechanisms for evaluating the owner's declaration of current fair market value as provided in Section 4 (*supra.*), in order to establish the government's compensation offer as provided in Section 6 (*supra.*), taking into account current land transactions in the locality, the landowner's annual income from his land, and other factors. (Sec. 18, Exec. Order No. 229.)

The PARC is mandated to provide the guidelines for a province-by-province implementation of the CARP. (Sec. 45.)

The Provincial Agrarian Reform Coordinating Committee

(1) *Composition.* —The PARCCOM is composed of a Chairman, who is appointed by the President upon the recommendation of the EXCOM; the Provincial Agrarian Reform Officer as Executive Officer; one representative each from the Department of Agriculture, Department of Environment and Natural Resources, and the LBP; one representative each from existing farmer's organizations agricultural cooperatives and non-governmental organizations (NGOs) in the province; two representatives from landowners at least one of whom shall be a producer representing the principal crop of the province; and two representatives from farmer and farmworker or beneficiaries at least one of whom shall be a farmer or farmworker representing the principal crop of the province, as members.[130]

In areas where there are cultural communities, the latter shall

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[130] For revised implementing guidelines in the formation, organization and operation of the Provincial Agrarian Reform Coordinating Committee, see DAR Adm. Order No. 1, Series of 1997, which amended Adm. Order No. 7, Series of 1994.

likewise have one representative (Sec. 44.) duly certified as elected by the Office of the Northern Cultural Communities (ONCC), Office of the Southern Cultural Communities (OSCC), or Office of Muslim Affairs (OMA) as the case may be. Thus, it is composed of 13 members.[131]

(2) *Functions.* —They are the following:

(a) Coordinating and monitoring the implementation of the CARP in the province;

(b) providing information on the provisions of the CARP (and other applicable agrarian reform laws), guidelines issued by the PARC,

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[131] DAR Adm. Order No. 5, Series of 1989. This Order contains the following definitions:

(1) *Farmers' organization is* a duly constituted organization/association of agrarian reform farmer-beneficiaries organized province-wide and registered/accredited with the Securities and Exchange Commission (SEC), Cooperative Development Authority (CDA), Bureau of Rural Workers (BRW), or any appropriate government entity.

(2) *Agricultural cooperative is* an organization composed primarily of small agricultural producers, farmers, farmworkers, or other agrarian reform beneficiaries who have voluntarily organized themselves for the purpose of pooling land, human, technological, financial or other economic resources, and which operates on the principle of one member, one vote. A juridical person may be a member of a cooperative, with the same rights and duties as a natural person.

(3) *Non-government organization* (NGO) is a civic, religious, non-sectarian organization or association organized primarily for rural development. The organization's network must be province-wide in so far as electing a member to a PARCCOM is concerned, and barangay-wide in the case of BARC.

(4) *Landowner is* a person who owns lands within the barangay and resides within the municipality where the barangay is located or in an adjacent municipality. If there is no landowner who can fulfill this residence requirement, any landowner who is willing and able to represent the landowners" group in the activities of the BARC shall qualify.

(5) *Cultural community* is a tribal grouping of ethnic Filipinos duly recognized and certified by the Office of the Northern Cultural Communities (ONCC), Office of the Southern Cultural Communities (OSCC), or Office of Muslim Affairs (OMA) as belonging to the cultural communities in the provinces.

and the progress of the CARP in the province (*Ibid.*); and

(c) adjusting from year to year the ten-year program of distribution of public and private lands in each province in accordance with the level of operations previously established by the PARC, in every case ensuring that support services are available or have been programmed before actual distribution is effected. (Sec. 45.)

Under DAR Administrative Order No. 1, 1997, the PARCCOM shall recommend to the PARC, copy furnished the DAR Regional Director, a priority land reform area, in which case the acquisition and distribution of private agricultural lands therein may be implemented ahead of schedule under Section 7 (see "B" Order of Priority) and Section 45 above.

The Barangay Agrarian Reform Committee

(1) *Composition.* —Operated on a self-help basis, the BARC is composed of representatives of farmer and farm-worker-beneficiaries and non-beneficiaries, agricultural cooperatives, other farmers' organizations, Barangay Council, non-government organizations (NGOs), landowners, and the LBP, and the following: the DA official assigned to the barangay, the DENR official assigned to the area, and the DAR Agrarian Reform Technologist assigned to the area, who shall act as the secretary.

The law sees to it that all the entities and persons affected by the program are properly represented in its execution at the grassroots level. (Sec. 19, Exec. Order No. 29.) Thus, it is composed of 11 members.[132]

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[132] For revised implementing guidelines in the formation, organization and operation of the BARC, see DAR Adm. Order No. 14, Series of 1990, which amended Adm. Order No. 5, Series of 1989.

(2) *Functions.* —Under Executive Order No. 229, they are the following:

(a) Participating and giving support to the implementation of the programs on agrarian reform;

(b) Mediating, conciliating or arbitrating agrarian conflicts and issues that are brought to it for resolution; and

(c) Performing such other functions that the PARC, its Executive Committee, or the DAR Secretary may delegate to it from time to time. (*Ibid.*)

In addition to those provided above, the CARL of 1988 has given the BARC the following functions:

(a) Mediating and conciliate between parties involved in an agrarian dispute including matters related to tenurial land financial arrangements;

(b) Assisting in the identification of qualified beneficiaries and landowners within the *barangay*;

(c) Attesting to the accuracy of the initial parcellary mapping of the beneficiary's tillage;

(d) Assisting qualified beneficiaries in obtaining credit from lending institutions;

(e) Assisting in the initial determination of the value of lands;

(f) Assisting the DAR representative in the preparation of periodic reports on the CARP implementation for submission to the DAR;

(g) Coordinating the delivery of support services to beneficiaries; and

(h) Performing such other functions as may be assigned by the DAR. (Sec. 47.)

(3) *Mediation, etc. of agrarian disputes.* —The BARC shall endeavor to mediate, conciliate and settle agrarian disputes lodged

before it within 30 days from its taking cognizance thereof. If after the lapse of the 30-days period, it is unable to settle the dispute, it shall issue a certification of its proceedings and shall furnish a copy thereof upon the parties within seven days after the expiration of the 30-days period. (*Ibid.*)

All decisions of the BARC shall be final and executory unless appealed to the Provincial Agrarian Reform Officer (PARO), within 10 days from receipt of the decision, by any party aggrieved thereby. The PARO, in turn, shall render his decision on the appeal within 15 days from receipt of the records of the case.[133]

(4) *Legal assistance.* —The BARC or any member thereof may, whenever necessary in the exercise of any of its functions, seek the legal assistance of the DAR and the provincial city, or municipal government. (Sec. 48.)

Rules and regulations

The PARC and the DAR have the power to issue rules and regulations whether substantive or procedural, to carry out the objects and purposes of this Act. Said rules shall take effect ten days after publication in two national newspapers of general circulation. (Sec. 49.)

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[133] For revised implementing guidelines in the formation, organization and operation of the BARC, see DAR Adm. Order No. 14, Series of 1990, which amended Adm. Order No. 5, Series of 1989.

J. ADMINISTRATIVE ADJUDICATION

Quasi-judicial powers of the Department of Agrarian Reform

The DAR,[134] through its DAR Adjudication Board (DARAB), is vested with primary jurisdiction to determine and adjudicate agrarian reform matters.

(1) It has exclusive original jurisdiction [135] over all matters involving the implementation of agrarian reform,[136] except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR). (Sec. 50, par. 7.)

(2) It has the power to:

(a) summon witnesses, administer oaths, and take testimony;

(b) require submission of reports;

(c) compel the production of books and documents and answers to interrogatories and issue subpoena, and subpoena *duces tecum*;

(d) enforce its writs (*i. e.*, others) through sheriffs or other duly deputized officers; and

(e) punish direct and indirect contempts in the same manner and subject to the same penalties as provided in the Rules of Court. (Sec.

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[134] Now, Department of Land Reform. (see Chap. IV.)

[135] *Jurisdiction* is the power and authority of a court or administrative body to hear and decide a case. It is *original* when it can hear and decide a case presented to it for the first time. It is *exclusive* when it can hear and decide a case which cannot be presented before any other court or body.

[136] DAR Adm. Order No. 1, Series of 2001, provides the guidelines governing the non-gender biased implementation of agrarian laws pursuant to R. A. No. 7192, otherwise known as "An Act Promoting the Integration of Women as Full and Equal Partners of Men in Development and Nation-Building and for Other Purposes".

50, par. 3.)

Department not bound to strictly observe rules of procedure and evidence

Unlike the regular courts of justice, the DAR, as an administrative body, is not hampered by the technical rules of procedure and evidence observed in judicial proceedings and being concerned solely with agrarian matters, possesses expertise thereon. The aim is to facilitate the implementation of the program while at the same time ensuring speedy justice at the least cost particularly to the farmer-beneficiaries.

The DAR is mandated to employ all reasonable means to ascertain the facts of every case in accordance with the justice and equity and the merits of the case. Toward this end, it shall adopt a uniform rule of procedure to achieve a just, expeditious and inexpensive determination of every action or proceeding before it. (*Ibid.*, par. 2.)

Right to representation

Responsible farmer leaders shall be allowed to represent themselves, their fellow farmers, or their organizations in any proceedings before the DAR. However, when there are two or more representatives for any individual or group, the representatives should choose only one among themselves to represent such party or group before any DAR proceedings. (Sec. 50, par. 4.)

Certification of BARC

The DAR is prohibited from taking cognizance of any agrarian dispute or controversy unless a certification from the BARC that the dispute has been submitted to it for mediation and conciliation without any success of settlement is presented. However, if no certification is

issued by the BARC within thirty days after a matter or issue is submitted to it for mediation or conciliation, the case or dispute may be brought before the PARC. (Sec. 53.)

Decisions or orders of the Department of Agrarian Reform

(1) *Finality.* —Any case or controversy before it shall be decided within thirty days after it is submitted for resolution. Only one motion for reconsideration is allowed. Any order, ruling or decision shall be final after the lapse of fifteen days from receipt of a copy thereof. (Sec. 51.)

(2) *Frivolous appeals.* —To discourage frivolous or dilatory appeals from the decisions or orders on the local or provincial levels, the DAR may impose reasonable penalties, including but not limited to fines or censures upon erring parties. (Sec. 52.)

(3) *Execution.* —Notwithstanding an appeal to the Court of Appeals, the decision of the DAR shall be immediately executory. (Sec. 50, last par.)

Agrarian law implementation cases

The DAR has issued rules governing the adjudication of cases involving Agrarian Law Implementation (ALI) known as the "2003 Rules of Procedure for ALI Cases". Among its provisions are the following:

(1) *ALI cases.* —The Rules shall govern all cases arising from or involving:

(a) Classification and identification of landholdings for coverage under the agrarian reform program and the initial issuance of Certificate of Land Ownership Awards (CLOAs) and Emancipation Patents (EPs), including protests or oppositions thereto and petitions for lifting

of such coverage;

(b) Classification, identification, inclusion, exclusion, qualification, or disqualification of potential/actual farmer-beneficiaries;

(c) Subdivision surveys of land under Comprehensive Agrarian Reform (CARP);

(d) Recall, or cancellation of provisional lease rentals, Certificate of Land Transfers (CLTs) and CARP Beneficiary Certificates (CBCs) in cases outside the purview of Presidential Decree No. 816, including the issuance, recall, or cancellation of Emancipation Patents (EPs) of Certificates of Land Ownership Awards (CLOAs) not yet registered with the Register of Deeds;

(e) Exercise of the right of retention by landowner;

(f) Application for exemption from coverage under Section 10 of R. A. No. 6657;

(g) Application for exemption pursuant to Department of Justice (DOJ) Opinion No. 44 (1990);

(h) Exclusion from CARP coverage of agricultural land used for livestock, swine, and poultry raising;

(i) Cases of exemption/exclusion of fishpond and prawn farms from the coverage of CARP pursuant to R. A. No. 7881;

(j) Issuance of Certificate of Exemption for land subject of Voluntary Offer to Sell (VOS) and Compulsory Acquisition (CA) found unsuitable for agricultural purposes;

(k) Application for conversion of agricultural land to residential, commercial, industrial, or other non-agricultural uses and purposes including protests or oppositions thereto;

(l) Determination of the rights of agrarian reform beneficiaries to homelots;

(m) Disposition of excess area of the tenant's/farmer-beneficiary's

landholdings;

(n) Increase in area of tillage of a tenant/farmer-beneficiary;

(o) Conflict of claims in landed estates administered by DAR and its predecessors; and

(p) Such other agrarian cases, disputes, matters or concerns referred to it by the Secretary of the DAR.

(2) *DARAB cases.* —The Rules shall not apply to cases falling within the exclusive original jurisdiction of the Department of Agrarian Reform Adjudication Board (DARAB) and its Regional or Provincial Agrarian Reform Adjudicators (RARAD or PARAD) which include:

(a) The rights and obligations of persons, whether natural or juridical, engaged in the management, cultivation and use of all agricultural lands covered by R. A. No. 6657 and other related agrarian laws;

(b) The preliminary administrative determination of reasonable and just compensation of lands acquired under Presidential Decree No. 27 and the CARP;

(c) The annulment or cancellation of lease contracts or deeds of sale or their amendments involving lands under the administration and disposition of the DAR or Land Bank of the Philippines (LBP);

(d) Those cases involving the ejectment and dispossession of tenants and/or leaseholds;

(e) Those cases involving the sale, alienation, pre-emption and redemption of agricultural lands under the coverage of the CARL or other agrarian laws;

(f) Those involving the correction, partition, cancellation, secondary and subsequent issuances of CLOAs and EPs which are registered with the Land Registration Authority;

(g) Those cases involving the review of leasehold rentals;

(h) Those cases involving the collection of amortizations on payments for lands awarded under P. D. No. 27 (as amended), R. A. No. 3844 (as amended), and R. A. No. 6657 (as amended) and other related laws, decrees, orders, instructions, rules and regulations, as well as payment for residential, commercial and industrial lots within the settlement and resettlement areas under the administration and disposition of the DAR;

(i) Those cases involving the annulment or rescission of lease contracts and deeds of sale, and the cancellation or amendment of titles pertaining to agricultural lands under the administration and disposition of the DAR and LBP; as well as EPs issued under P. D. No. 266, homestead Patents, Free Patents and miscellaneous sales patents to settlers in settlement and re-settlement areas under the administration and disposition of the DAR;

(j) Those cases involving boundary disputes over lands under the administration and disposition of the DAR and LBP, which are transferred, distributed and/or sold to tenant-beneficiaries and are covered deeds of sale, patents and certificates of title;

(k) Those cases involving the determination of title to agricultural lands where this issue is raised in an agrarian disputes by any of the parties or a third person in connection with the possession thereof for the purpose of preserving the tenure of the agricultural lessee or actual tenant-farmer or farmer-beneficiaries and effecting the ouster of the interloper or intruder in one and the same proceeding;

(l) Those cases previously falling under the original and exclusive jurisdiction of the defunct Court of Agrarian Relations under Section 12 of P. D. No. 946 except those cases falling under the proper courts or other quasi-judicial bodies; and

(m) Such other agrarian case, disputes, matters or concerns

referred to it by the Secretary of the DAR.

(3) *Jurisdiction over ALI cases.* —

(a) *General jurisdiction.* —The Regional Director shall exercise primary jurisdiction overall agrarian law implementation cases except when a separate special rule vests primary jurisdiction in a different DAR office.

(b) *Jurisdiction over protest or petition to lift coverage.* — The Regional Director shall exercise primary jurisdiction over protests against CARP coverage or petitions to lift notice of coverage. If the ground for the protest or petition to lift CARP coverage is exemption or exclusion of the subject land from CARP coverage, the Regional Director shall either resolve the same if he has jurisdiction, or refer the matter to the Secretary of jurisdiction over the case belongs to the latter.

(c) *Jurisdiction over land use conversions and exemptions/ exclusions from CARP coverage.* —Separate special rules governing applications for land use conversion and exemption/exclusion from CARP coverage shall delineate the jurisdiction of the recommending and approving authorities thereunder.

(d) *Appellate jurisdiction.* —The Secretary shall exercise appellate jurisdiction over all ALI cases, and may delegate the resolution of appeals to any Undersecretary.

(e) *Jurisdiction over flashpoint cases.* —Any certification declaring a case as "flashpoint" in accordance with the criteria and procedure in DAR Memorandum Circular (MC) No. 13 [1997] shall not divest any authority from the DAR official for resolving the case. A flashpoint certification merely serves to accord utmost priority to the resolution of the case subject thereof.

(4) *Appeals to the Secretary.* —No appeal shall be given due course unless the decision of the Regional Director is final, disposing of

the case on the merits, and only on the following grounds:

(a) Serious errors in the findings of fact or conclusion of law which may cause grave and irreparable damage or injury to the appellant; or

(b) Coercion, fraud, or clear graft and corruption in the issuance of a decision.

(5) *Judicial review.* —In cases where the appellant opts to elevate his appeal directly to a judicial forum, the governing procedure shall be the pertinent provisions of the Rules of Court, until and unless the judicial forum dismisses the appeal for failure to exhaust administrative remedies.[137]

K. JUDICIAL REVIEW

Appeal from decision or order of the Department of Agrarian Reform

Any decision, order, award or ruling of the DAR[138] on any agrarian dispute or on any matter pertaining to the application, implementation, enforcement, or interpretation of the CARL of 1988 and other pertinent laws on agrarian reform may be brought to the Court of Appeals by *certiorari* within 15 days from receipt of a copy thereof. (Sec. 54, par. 1.)

By *certiorari*, the Court of Appeals will review only *questions of law* (i. e., involving the application or interpretation of laws). It cannot review *questions of fact* (*i. e.*, involving the examination of facts or evidence). The findings of facts of the DAR shall be final and conclusive if based on substantial evidence (Sec. 54, par. 2.) or have a reasonable basis. From the decision of the Court of Appeals, the

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[137] DAR Administrative Order No. 3, Series of 2003.

[138] Now, Department of Land Reform. (See Chap. IV.)

aggrieved party may still appeal to the Supreme Court on questions of law.

Prohibition against restraining order

It is prohibited for any court to issue any restraining order or writ of preliminary injunction against the PARC or any of its duly authorized or designated agencies in any case, dispute or controversy arising from, necessary to or in connection with the application, implementation, enforcement or interpretation of the Act (CARL) and other pertinent laws on agrarian reform. (Sec. 55.)

The purpose is to avoid unnecessary obstruction or delay in the implementation of the program.

Special Agrarian Courts

(1) *Designation.* — The Supreme Court shall designate at least one branch of the Regional Trial Court (RTC) within each province to act as Special Agrarian Court. It may designate more branches to constitute such additional Special Agrarian Courts as may be necessary to cope with the number of agrarian cases in each province. In the designation, it shall give preference to the Regional Trial Courts which have been assigned to handle agrarian cases or whose presiding judges were former judges of the defunct Court of Agrarian Relations. (Sec. 56, pars. 1, 2.)

(2) *Powers and prerogatives.* — They have the powers and prerogatives inherent in or belonging to the RTC.

(3) *Jurisdiction.* — The RTC judges assigned to said courts shall exercise said special jurisdiction in addition to the regular jurisdiction of their respective courts. (Ibid., par. 3.) The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the

determination of just compensation to landowners, and the prosecution of all criminal offenses under the Act.

The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by the Act. They shall decide all appropriate cases under their special jurisdiction within 30 days from submission of the case for decision. (Sec. 57.)

(4) *Appointment of Commissioners.* —Upon their own initiative or at the instance of any of the parties, they may appoint one or more commissioners to examine, investigate and ascertain facts relevant to the dispute, including the valuation of properties, and to file a written report thereof with the court. (Sec. 58.)

Appeal from decision of Special Agrarian Courts

(1) *How made.* —An appeal may be taken from the decision of the Special Agrarian Courts by filing a petition for review with the Court of Appeals within 15 days from receipt of notice of the decision; otherwise, the decision shall become final. An appeal from the decision of the Court of Appeals, or from any order, ruling or decision of DAR, as the case may be, shall be by a petition for review with the Supreme Court, within a non-extendible period of 15 days from receipt of a copy of said decision. (Sec. 60.)

(2) *Procedure for review.* —Review by the Court of Appeals or the Supreme Court, as the case may be, is governed by the Rules of Court. The Court of Appeals, however, may require the parties to file simultaneous memoranda within a period of 15 days from notice, after which the case is deemed submitted for decision. (Sec. 61.)

Any order (not decision) of the court on any issue raised before it cannot be elevated to the appellate courts until the hearing shall have been terminated and the case decided on the merits.

Preferential attention in courts

All courts in the Philippines, both trial and appellate, are enjoined to give preferential attention to all cases arising from or in connection with the implementation of the provisions of this Act.

All cases pending in court arising from or in connection with the implementation of the Act shall continue to be heard, tried and decided into their finality, notwithstanding the expiration of the ten-year period of implementation. (Sec. 62; see Sec. 5, "B", *supra.*)

L. OTHER PROVISIONS

Special areas of concern

As an integral part of the CARP, the following principles in these special areas of concern shall be observed:

(1) *Subsistence fishing.* —Small fisherfolk, including seaweed farmers, shall be assured of greater access to the utilization of water resources.

(2) *Logging and mining concessions.* —Subject to the requirements of a balanced ecology and conservation of water resources, suitable areas, as determined by the Department of Environment and Natural Resources (DENR), in logging, mining and pasture areas, must be opened up for agrarian settlements whose beneficiaries will be required to undertake reforestation and conservation production methods.

Subject to existing laws, rules and regulations, settlers and members of tribal communities must be allowed to enjoy and exploit the products of the forests other than timber within the logging concessions.

(3) *Sparsely occupied public agricultural lands.* —They shall be surveyed, proclaimed and developed as farm settlements for qualified

landless people based on an organized program to ensure their orderly and early development.

(a) Agricultural land allocations shall be made for ideal family-sized farms as determined by the PARC. Pioneers and other settlers will be treated equally in every respect.

(b) Subject to the prior rights of qualified beneficiaries, uncultivated lands of the public domain shall be made available on a lease basis to interested and qualified parties. Parties who will engage in the development of capital-intensive, traditional or pioneering crops shall be given priority.

(c) The lease period, which shall not be more than a total of 50 years, shall be proportionate to the amount of investment and production goals of the lessee. A system of evaluation and audit shall be instituted.

(4) *Idle, abandoned, foreclosed and sequestered lands.* —They shall be planned for distribution as home lots and family-sized farm lots to actual occupants. If land area permits, other landless families shall be accommodated in these lands.

(5) *Rural women.* —All qualified women members of the agricultural labor force must be guaranteed and assured equal rights to ownership of the land, equal shares of the farm's produce, and representation in advisory or appropriate decision-making bodies.

(6) *Veterans and retirees.* —In accordance with Section 7 of Article XVI of the Constitution (see Chap. I, "C".), landless war veterans and veterans of military campaigns, their surviving spouses and orphans, retirees of the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP), returnees, surrenderees and similar beneficiaries shall be given due consideration in the disposition of

agricultural lands of the public domain.[139] and

(7) *Agriculture graduates.* —Graduates of agricultural schools who are landless shall be assisted by the government, through the DAR,[140] in their desire to own and till agricultural lands. (Sec. 40.)

Acquisition and distribution of homelots

The homelots (see Secs. 22[3], 26, R. A. No. 1199; Sec. 24, R. A. No. 3844; Sec. 16, R. A. No. 6839; Secs. 30, 40[4], R. A. No. 6657; LOI No. 705.), as an integral part of the farm and as an indispensable factor in farm operations, may be acquired and distributed to the agrarian reform beneficiary (ARB) in accordance with the land transfer process of CARP.

In this regard, the following guidelines have been prescribed for the guidance of all concerned:

(1) A homelot refers to a parcel of agricultural lands being used by the ARB as the site of his permanent dwelling including the area utilized for raising vegetables, poultry, pigs and other animals and engaging in minor industries. The area of the homelot may not exceed 1000 square meters;

(2) An ARB may be awarded the homelot he actually occupies if it is subject of land distribution under CARP, provided said homelot does not form part of the retained area of the landowner;

(3) A tenant-beneficiary who is awarded a farmlot but has his homelot within the retained area of the landowner may be made to transfer his dwelling in his farmlot or other area designated for his

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[139] DAR Administrative Order No. 3, Series of 1997, lays down the rules and regulations governing the award of lands of the public domain which are under the jurisdiction of the DAR to landless war veterans, etc.

[140] Now, Department of Land Reform. (See Chap. IV.)

homelot which shall be mutually agreed upon by both parties. In such case, the landowner shoulders the cost of the transfer of his dwelling and the agreed cost of other improvements introduced by the tenant-beneficiary on the said homelot;

(4) In general, a farmworker-beneficiary shall establish his homelot within the farmlot awarded to him. If his existing homelot is within the retained area of the landowner, said landowner may require the farmworker-beneficiary to transfer his dwelling and other improvements outside of the retained area. The cost of such transfer shall be shouldered by the said farmworker-beneficiary.

The landowner may opt to request the farmworker-beneficiary not to remove the dwelling or other improvements for the former's own use. In such case, the landowner shall pay for the value of the dwelling and other improvements he decides to make use of; and

(5) As a general rule, the value of the homelot shall be computed on the basis of the price of the farmlot transferred to the ARB.

If the homelot is outside the farmlot awarded to the tenant-beneficiary, the price shall be based on the value of the farmholding where said homelot is located, provided such farmholding is covered under the CARP.

The procedures in the acquisition and distribution of farmlots (Adm. Order Nos. 9 and 10, Series of 1990.) likewise apply in the acquisition and distribution of homelots subject to such modifications as may be necessary to pursue the policy statement above.[141]

Financing source

(1) *Agrarian Reform Fund.* —The initial amount needed to

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[141] DAR Adm. Order No. 12, Series of 1991.

implement the Act, for the period of ten years upon its approval, shall be funded from the Agrarian Reform Fund created under Sections 20 to 21 of Executive Order No. 229 which provides an initial amount of P50 billion to cover the cost of the CARP from 1987 to 1992.

(2) *Additional appropriation.* —Additional amounts are authorized by the Act to be appropriated as and when needed to augment the Agrarian Reform Fund in order to fully implement its provisions.

Sources of funding or appropriations shall include the following:

(a) Proceeds of the sales of the Asset Privatization Trust;

(b) All receipts from assets recovered and from sales of ill-gotten wealth recovered through the Presidential Commission on Good Government (PCGG);

(c) Proceeds of the disposition of the properties of the Government in foreign countries;

(d) Portion of amounts accruing to the Philippines from all sources of official foreign aid grants and con-cessional financing from all countries, to be used for the specific purpose of financing production credits, infrastructures and other support services required by the Act; and

(e) Other government funds not otherwise appropriated.[142]

All funds appropriated to implement the provisions of the Act are considered continuing appropriations during the period of its implementation. (Sec. 63.)

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[142] Much of the money used to build capabilities of CARP beneficiaries are sourced from abroad. At present, foreign partners of the DAR in CARP implementation are the following: Asian Development Bank, European Union, Overseas Economic Cooperation Fund, United Nations Development Programme, World Bank, Canadian International Development Agency, Swedish International Development Agency, International Fund for Agricultural Development, and the governments of Belgium, Japan, Italy, the Federal Republic of Germany and the Netherlands.

(3)*Augmentation fund.* —The CARP was supposed to have ended in 1998. The enactment into law of R. A. No. 8532 (An Act strenghtening further the CARP by providing augmentation fund therefor, amending for the purpose Section 63 of R. A. No. 6657 [CARL].) gave a new lease of life to the program. This law extended the implementation of the program for another 10 years up to 2008 and provided an additional fund of P50 billion.

(4) *Foreign funding support.* —Faced with the challenge of providing support services for countryside development after the lands are distributed, the DAR created within the Support Services Office, the Foreign-Assisted Projects Office (FAPSO) designed as a one-stop shop for all DAR foreign-assisted projects.[143]

The DAR's foreign-partners in the delivery of support services to FBs/ARCs include: Asian Development Bank (ADB), European Union (EU), Overseas Economic Cooperation Fund (OECF-Japan), United Nations Development Programme (UNDP), World Bank (WB), Canadian International Development Agency (CIDA), Swedish International Development Agency (SIDA), International Fund for Agricultural Development (FAD), Government of Belgium, Government of Japan, Government of Italy, the Federal Republic of Germany and the Royal Government of Netherlands. On top of these, the DAR continues to pursue its foreign resource mobilization to bring in more foreign-partners in this undertaking.

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[143] From 1992 to 1998 alone, the DAR generated over P 25 billion from various foreign sources for the delivery of support services and development of agrarian reform communities (ARCs). The DAR currently implements 13 projects with an aggregate cost of P 9.48 billion, in the different ARCs beneficiaries over 200,000 farmer-beneficiaries (FBs) nationwide. (See DAR-CARP 1998 Annual Report, pp. 21 - 22.)

Conversion of private agricultural lands to non-agricultural uses.

Below are the rules governing conversion of private agricultural lands to non-agricultural uses.[144]

(1) *Statement of policies.* —The conversion of agricultural lands to non-agricultural uses shall be governed by the following policies:

(a) The State shall preserve prime agricultural lands to ensure food security;

(b) The State shall ensure that all sectors of the economy and all regions of the country are given optimum opportunity to develop through the rational and sustainable use of resources peculiar to each area in order to maximize agricultural productivity, promote efficiency and equity, and to accelerate the modernization of the agriculture and fisheries sectors of the country; and

(c) Conversion of agricultural lands to non-agricultural uses shall be strictly regulated and may be allowed only when the conditions prescribed under R. A. No. 6657 and/or R. A. No. 8435 are present and complied with.

(2) *Coverage.* —The rules shall apply to the following agricultural lands:

(a) Those to be converted to residential, commercial, industrial, institutional and other non-agricultural purposes;

(b) Those to be devoted to other types of agricultural activities such as livestock, poultry, and fishpond, the effect of which is to exempt the land from CARP coverage;

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[144] DAR Adm. Order No. 1, Series of 2002 entitled "2002 Comprehensive Rules on Land Use Conversion". It amends or repeals all other DAR issuances inconsistent therewith.

(c) Those to be converted to non-agricultural use other than that previously authorized; and

(d) Those reclassified to residential, commercial, industrial, or other non-agricultural uses on or after the effectivity of R. A. No. 6657 on June 15, 1988 pursuant to Section 20 of R. A. No. 7160 and other pertinent laws and regulations, and are to be converted to such uses. However, for those reclassified prior to June 15, 1988, the guidelines on securing exemption clearance shall apply.

(3) *Areas non-negotiable for conversion.* —The following areas shall be subject to conversion:

(a) Lands within protected areas designated under the National Integrated Protected Areas System (NIPAS), including mossy and virgin forests, riverbanks, and swamp forests or marshlands as determined by the Department of Environment and Natural Resources (DENR);

(b) All irrigated lands, as delineated by the Department of Agriculture (DA) and/or the National Irrigation Administration (NIA), where water is available to support rice and other crop production, and all irrigated lands where water is not available for rice and other crop production but are within areas programmed for irrigation facility rehabilitation by the government;

(c) All irrigable lands already covered by irrigation projects with firm funding commitments, as delineated by DA and/or NIA; and

(d) All agricultural lands with irrigation facilities.

(4) *Areas highly restricted from conversion.* —The following areas shall be classified as highly restricted from conversion:

(a) Irrigable lands not covered by irrigation projects with firm funding commitment;

(b) Agro-industrial croplands, or lands presently planted to

industrial crops that support the economic viability of existing agricultural infrastructure and agro-based enterprises;

(c) Highlands or areas located in elevations of 500 meters or above and have the potential for growing semi-temperate and usually high-value crops;

(d) Lands issued with notice of land valuation and acquisition, or subject of a perfected agreement between the landowner and the beneficiaries under the voluntary land transfer/direct payment scheme (VLT/DPS), under the Comprehensive Agrarian Reform Program (CARP); and

(e) Lands within an Environmentally Critical Areas (ECA) or those involving the establishment of an Environmentally Critical Project (ECP). Applications for conversion under this paragraph shall require, apart from the standard requirements, an Environmental Compliance Certificate (ECC) which the applicant must secure from the DENR.

(5) *Priority development areas.* —In accordance with E. O. No. 124, Series of. 1993, E. O. No. 258, Series of. 2000 and R. A. No. 7916, the following are priority development areas for land conversion:

(a) Specific sites in Regional Agri-Industrial Centers/Regional Industrial Centers (RAICs/RICs) identified by the Department of Trade and Industry (DTI) and the DA;

(b) Tourism development areas (TDAs) identified by the Department of Tourism (DOT);

(c) Agricultural areas intended for EcoZone Projects endorsed by the Philippine Economic Zone Authority (PEZA) pursuant to R. A. No. 7916;

(d) Agricultural land, owned by the government, to be converted for projects of national interest, as certified by the proper government agency;

(e) Agricultural land proposed to be developed as sites for processing plants for agricultural products as certified by the DA; and

(f) Sites intended for telecommunication facilities endorsed by the National Telecommunications Commission.

Housing projects are priority development for land conversion. They shall follow the fast-tracking scheme prescribed under E. O. No. 45, Series of 2001.

(6) *Lands within Strategic Agricultural and Fisheries Development Zones* (*SAFDZs*). —In accordance with Section 9 of R. A. No. 8435, the following rules shall govern conversion of lands within SAFDZs:

(a) All irrigated lands, irrigable lands already convered by irrigation projects with firm funding commitments, and lands with existing or having the potential for growing high-value crops included within the SAFDZs shall be subject to a conversion moratorium for a period of five years from February 10, 1998 to February 9, 2003.

(b) During the effectivity of the moratorium, conversion may be allowed with respect to only 5% of said lands within SAFDZs upon compliance with existing laws, rules and regulations.

(c) The maximum of 5% equivalent to the total area of land eligible for conversion to non-agricultural use shall be jointly determined by the DA and the DAR, upon the recommendation of the Regional and National SAFDZ Committees pursuant to Rule 9. 5. 2 of DA Administrative Order No. 6, Series of 1998, or the implementing rules and regulations for R. A. No. 8435.

(d) After the expiration of the conversion moratorium, conversion may be allowed, if at all, on a case to case basis, subject to existing laws, rules and regulations on land use conversion.

(7) *Criteria for conversion.* —The following criteria shall guide the resolution of application for conversion:

(a) Conversion may be allowed if the land subject of application is not among those considered non-negotiable for conversion as provided in Section 4 hereof.

(b) Conversion may be allowed, in accordance with Section 65 of R. A. No. 6657, when the land has ceased to be economically feasible and sound for agricultural purposes or the locality has become urbanized and the land will have a greater economic value for residential, commercial, industrial or other non-agricultural purposes.

(c) Conversion of lands within SAFDZ, as provided in Rule 9.5 of DA-AO-6-1998, shall take into account the following factors:

1) The conversion of land use is consistent with the natural expansion of the municipality or locality, as contained in the approved physical framework and land use plan;

2) The area to be converted in use is not the only remaining food production area of the community;

3) The land use conversion shall not hamper the availability of irrigation to nearby farmlands;

4) The areas with low productivity will be accorded priority for land use conversion; and

5) Sufficient disturbance compensation shall be given to farmers whose livelihood are negatively affected by the land use conversion as provided for by existing laws and regulations.

(d) When the agricultural land which is the subject of the application for conversion has been acquired under R. A. No. 6657, its conversion shall be allowed only if the applicant is the agrarian reform beneficiary thereof, and after he has fully paid his obligation as required under Section 65 of R. A. No. 6657.

(8) *Who may apply for conversion.* —The following persons may apply for conversion:

(a) Owners of private agricultural lands or other persons duly authorized by the landowner;

(b) Beneficiaries of the agrarian reform program after the lapse of five years from award, reckoned from the date of the issuance of the Certificate of Landownership Award (CLOA), and who have fully paid their obligations and are qualified under these Rules, or persons duly authorized by them; and

(c) Government agencies, including government-owned or controlled corporations, and LGUs, which own agricultural lands as their patrimonial property.

(9) *Disturbance compensation*:

(a) The applicant and/or landowner and/or developer shall pay disturbance compensation in cash or kind or combination of cash and kind to the farmers, agricultural lessees, share tenants, farmworkers, actual tillers, and/or occupants affected by the conversion, in such amounts or under such terms as the parties may mutually agree upon.

(b) The amount of disturbance compensation shall not be less than five times the average of the gross harvests on the targets landholding during the last five preceding calendar years, pursuant to Section 36 of R. A. No. 3844, as amended by Section 7 of R. A. No. 6389.

(c) Compensation in kind may consist of some or all or mixture of housing, homelots, employment and/or other benefits. The DAR shall approve the terms of any agreement for the payment of disturbance compensation and monitor compliance therewith. In no case shall compliance with the terms and conditions thereof extend beyond 60 days from the date of approval of the application for conversion.

(d) If the parties fail to agree on the amount of disturbance compensation or raise an issue questioning the lease or tenancy relationship or any other prejudicial issue that tends to justify non-

payment of disturbance compensation, either or both parties may refer the issue to the Provincial Agrarian Reform Adjudicator (PARAD) for resolution. While the case is pending before the Adjudicator Authority, the landowner(s)/applicant(s) may not evict said farmers, agricultural lessees, share tenants, farmworkers, actual tillers, or occupants, until such time when the Adjudicating Authority resolves the prejudicial issue (s) with finality.

(e) The applicant shall furnish the RCLUPPI/CLUPPI with the proof of payment of disturbance compensation within five days from receipt of payment.

(10) *Conversion to homelot.* —Conversion to a homelot is allowable when: the applicant owns the lot that he proposes to convert; he intends to establish a dwelling place for himself on said lot; the lot has an area not exceeding 500 square meters; and the conversion shall be from agricultural to purely residential use.[145]

Exemptions from taxes and fees

(1) *Land transfers.* —Transactions under the Act involving a transfer of ownership, whether from natural or juridical persons, are exempted from the payment of capital gains tax, registration fees, and all other taxes and fees for the conveyance or transfer thereof. However, all arrearages in real property taxes, without penalty or interest, shall be deductible from the compensation to which the owner may be entitled. (Sec. 66.)

(2) *Patents, titles and documents.* —All Register of Deeds are

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[145] DAR Adm. Order No. 4, Series of 2003, provides the rules on exemption of lands from CARP coverage under Section 3 (c) of CARL and Department of Justice Opinion No. 44, Series of 1990.

directed to register, free from payment of all fees and other charges, patents, titles and documents required for the implementation of the CARP. (Sec. 67.)

Other government agencies and entities

(1) *Immunity.* —No injunction, restraining order, prohibition or *mandamus* shall be issued by the lower courts against the Department of Agrarian Reform (DAR), Department of Agriculture (DA), the Department of Environment and Natural Resources (DENR), and the Department of Justice (DOJ) in their implementation of the program. (Sec. 68.)

(2) *Assistance.* —The PARC, in the exercise of its functions, is hereby authorized to call upon the assistance and support of other government agencies, bureaus and offices, including government-owned or controlled corporations. (Sec. 69.)

Disposition of private agricultural lands

The following rules must be observed:

(1) The sale or disposition of agricultural lands retained by a landowner as a consequence of Section 6 of the Act (see "B"), shall be valid as long as the total landholdings that shall be owned by the transferee thereof, inclusive of the land to be acquired, shall not exceed the landholding ceilings provided for in the Act;

(2) Any sale or disposition of agricultural lands after the effectivity of the Act (CARL) found to be contrary to the provisions hereof shall be null and void; and

(3) Transferees of agricultural lands shall furnish the appropriate Register of Deeds and the BARC an affidavit attesting that his total landholdings as a result of the said acquisition do not exceed the

landholding ceiling. The Register of Deeds shall not register the transfer of any agricultural land without the submission of this sworn statement together with proof of service of a copy thereof to the BARC. (Sec. 70.)

Lands under mortgage, lease, etc

(1) *Bank mortgages.* —Banks and other financial institutions allowed by law to hold mortgage rights or security interests in agricultural lands to secure loans and other obligations of borrowers, may acquire title to these mortgaged properties, regardless of area, subject to existing laws on compulsory transfer of foreclosed assets and acquisition as prescribed under Section 16 (see "E", *supra.*) of the Act. (Sec. 71.)

The following lands may be subject-matter of mortgage or lien or encumbrance to guarantee any loan obligation secured to develop or improve the same, *viz.*:

(a) Lands not yet acquired by the DAR under CARL;

(b) Those lands chosen by the landowners as their retention areas; and

(c) Land already awarded/allocated to beneficiaries.[146]

(2) *Leases, management, grower or service contracts, mortgages and other claims.* —Lands covered by the Act under lease, management, grower or service contracts, and the like shall be disposed of as follows:

(a) Lease, management, grower or service contracts covering private lands may continue under their original terms and conditions until the expiration of the same even if such land has, in the meantime, been

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[146] DAR Adm. Order No. 1, Series of 1989.

transferred to qualified beneficiaries; and

(b) Mortgages and other claims registered with the Register of Deeds will be assumed by the government up to an amount equivalent to the landowner's compensation value as provided in the Act. (Sec. 72.)

Prohibited acts and omissions

The following are prohibited:

(1) The ownership or possession, for the purpose of circumventing the provisions of the Act, of agricultural lands in excess of the total retention limits or award ceilings by any person, natural or juridical, except those under collective ownership by farmer-beneficiaries;

(2) The forcible entry or illegal detainer by persons who are not qualified beneficiaries under the Act to avail themselves of the rights and benefits of the Agrarian Reform Program;

(3) The conversion by any landowner of his agricultural land into any non-agricultural use with intent to avoid the application of the Act to his landholdings and to dispossess his tenant farmers of the land tilled by them;

(4) The willful prevention or obstruction by any person, association or entity of the implementation of the CARP;

(5) The sale, transfer, conveyance or change of the nature of lands outside of urban centers and city limits either in whole or in part after the effectivity of the Act. The date of the registration of the deed of conveyance in the Register of Deeds with respect to titled lands and the date of the issuance of the tax declaration to the transferee of the property with respect to unregistered lands, as the case may be, shall be conclusive for the purpose of the Act; and

(6) The sale, transfer or conveyance by a beneficiary of the right to use or any other usufructuary right over the land he acquired by virtue of

being a beneficiary, in order to circumvent the provisions of the Act. (Sec. 73.)

Penalties

Any person who knowingly or willfully violates the provisions of the Act shall be punished by imprisonment of not less than one month to not more than three years or a fine of not less than P1000.00 and not more than P15,000.00 pesos, or both, at the discretion of the court.

If the offender is a corporation or association, the officer responsible therefore shall be criminally liable. (Sec. 74.)

Critique on the Comprehensive Agrarian Reform Program—Based on Textbook on Agrarian Reform and Taxation (with Cooperatives)

By Anna Asuncion Angeles-Patajo

The Comprehensive Agrarian Reform Program (CARP) was enacted into law by Republic Act No. 6657 in 1988, also known as the Comprehensive Agrarian Reform Law (CARL). Agrarian reform (AR) under the CARP comprises not only land reform but encompasses all programs designed to bring about improvement in all institutions surrounding farm life, as well as to take the auxiliary measures necessary to make the work of the tenant, farm-worker, and owner-cultivator successful.[1] Similarly, AR has also been defined as referring not only to land reform but also embracing a full range of measures designed to improve the relationship between landowner and tiller, employer and

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[1] De Leon, Hector S. (1994), *Textbook on Agrarian Reform and Taxation with Cooperatives*, Manila: Rex Bookstore.

employee, corporate management and stockholders, cooperative and members, and other farmers' organizations, including their economic, social and political relations with the community and the government.[2]

In his book, *Textbook on Agrarian Reform and Taxation with Cooperatives* (2005), Hector S. De Leon provides for an overview of land reform and agrarian reform in the Philippines, and the urgent need for improving agricultural productivity in the country. Agriculture occupies a vital position in the Philippines' national economy as it represents the predominant industry in the country, with a large portion of the total working population employed in agriculture and a large percentage contribution to the gross domestic product coming from agriculture.[3] The urgent need to enhance agricultural productivity is premised on the objective of accelerating general economic development for the country. As such, agrarian reform has long been regarded as an instrument for increasing agricultural productivity.

De Leon (2005) argues that AR is one method of motivating farmers to increase their output since, under the CARP, they can till their own land, free from the bondage of the landlords. AR seeks to create an economic environment that will serve to encourage farmers to produce more and market more of what they produce. Ultimately, this will serve as a means to improve the level of living of the rural population and can thus hasten the pace of national development.[4]

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[2] Barte, Recaredo P. (1991), *Law on Agrarian Reform*, Manila: Rex Bookstore.

[3] De Leon, Hector S. (1994), *Textbook on Agrarian Reform and Taxation with Cooperatives*, Manila: Rex Bookstore.

[4] De Leon, Hector S. (1994), *Textbook on Agrarian Reform and Taxation with Cooperatives*, Manila: Rex Bookstore.

Within the Philippine setting, De Leon (2005) emphasizes the necessity of AR, what with an estimated two-thirds of the Filipino poor living in rural areas, and majority of them engaging in agriculture.[5] De Leon's (2005) argument is further supported by a perusal of the related literature on AR. According to the National Land Reform Council, farm population accounts for 65% of the total human resources in the Philippines, with 61% of the total labor force engaged in agriculture.[6]

In emphasizing the significance of AR in national development, De Leon (2005) discusses the economic, socio-cultural, religious, moral, legal, and political aspects of AR. In particular, AR legislations must necessarily pass the test of constitutionality and must be in conformity with the express provision, spirit, or intent of the Constitution.

Throughout the years, policy development concerning AR has focused on two main elements: 1) the improvement of land tenure in the Philippines, particularly the level of productivity and the condition of the tiller as regards his tenure and the income he gets from the tillage of the soil; and 2) the distribution of land to the tiller.[7] According to De Leon (2005), an examination of the legislative efforts on AR has shown an accelerated movement towards distribution of land to the tiller under the land-to-the-tiller program. Presidential Decree No. 27 decreed the transfer of rice and corn lands under tenancy to the tiller, who were thus deemed the owners of the rice and corn lands they tilled, by

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[5] De Leon, Hector S. (1994), *Textbook on Agrarian Reform and Taxation with Cooperatives*, Manila: Rex Bookstore.

[6] National Land Reform Council. (1966), *The Philippine Land Reform Program: A Country Statement* (September 15 - 24, 1966).

[7] De Leon, Hector S. (1994), *Textbook on Agrarian Reform and Taxation with Cooperatives*, Manila: Rex Bookstore.

operation and force of law.[8] The conversion of lease rents into amortization payments became the main strategy for ownership transfer under P. D. No. 27.[9] However, it should be noted that although the said P. D. had important impact in AR, it only applied to lands devoted to rice and corn. The decree exempted sugarcane lands, coconut lands, citrus, fishponds, salt beds, and lands principally planted for cacao, coffee, durian, and other permanent trees mentioned in Section 35 of Republic Act No. 3844, or the Agricultural Land Reform Code of 1963.[10]

P. D. No. 27 was followed by Proclamation No. 131 which instituted a Comprehensive Agrarian reform Program (CARP) covering all public and private agricultural lands,[11] regardless of tenurial arrangement and commodity produced. It included all lands as provided in the Constitution and other lands of public domain suitable for agriculture. P50 billion was provided as a special AR fund to carry out the implementation of the program, and such amount was later used as funding for the CARP under R. A. No. 6657.[12] A succession of relevant executive orders followed Proclamation No. 131. Executive

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[8] De Leon, Hector S. (1994), *Textbook on Agrarian Reform and Taxation with Cooperatives*, Manila: Rex Bookstore.

[9] Medina, Jr., Jose C. (1975), *The Philippine Experience with Land Reform since* 1972: *An Overview*, New York: The Asia Society-Southeast Asia Development Advisory Group (SEADAG), Originally presented at the Rural Development Panel Seminar on "Land Reform in the Philippines" at Pines Hotel, Baguio City, Philippines (April 24 - 28, 1975).

[10] Barte, Recaredo P. (1991), *Law on Agrarian Reform*, Manila: Rex Bookstore.

[11] De Leon, Hector S. (1994), *Textbook on Agrarian Reform and Taxation with Cooperatives*, Manila: Rex Bookstore.

[12] Barte, Recaredo P. (1991), *Law on Agrarian Reform*, Manila: Rex Bookstore.

Order No. 228, for instance, declared full landownership to qualified beneficiaries covered by P. D. No. 27, and determined the value of remaining unvalued rice and corn lands. It also provided for the manner of payment by the farmer-beneficiaries and the mode of compensation to the landowners. Executive Order No. 229 then created the Presidential Agrarian Reform Council (PARC) which is the highest policy-making body that formulates all policies, rules, and regulations necessary to implement each component of the CARP today.

Almost all of the provisions of E. O. No. 229 on PARC were later adopted in R. A. No. 6657, otherwise known as the CARL, which is presently the primary law on agrarian reform. The CARL covered all agricultural lands regardless of crops or fruits produced. The said law was enacted with the lofty objective of ensuring the equitable distribution of land to all landless farmers and farm workers and beneficiaries. The said law was established pursuant to a state policy provided in the 1987 Philippine Constitution [13] to promote equitable land ownership with empowered agrarian reform beneficiaries. It was the legislators' attempt to pursue the promotion of the Constitutional mandate on social justice, through the development of the country's AR program. For this purpose, an Agrarian Reform Fund was created under Sections 20 and 21 of Executive Order No. 229 to allow for the implementation of the CARP. The original timeframe for implementation of the program was set for 10 years, starting from 1988 when the law was enacted.[14]

Under the CARL, the retention of the landowner, unless otherwise provided by law, shall not exceed five hectares, with three additional hectares awarded under the law to each child of the landowner, subject

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[13] The 1987 Philippine Constitution, art. XIII, § 4.

[14] Republic Act No. 6657, § 5.

to certain qualifications.[15] Under Executive Order No. 229, the landowner receives a compensation in an amount established by the government, based on the owner's declaration of current fair market value, subject to certain controls to prevent overpricing. The Land Bank of the Philippines (LBP) was the agency tasked with providing this compensation to the landowner, and the amount to be compensated requires an agreement between the landowner and the Department of Land Reform (DLR) (then the Department of Agrarian Reform) as to the price.[16] Any disagreements between the landowner and the DLR as to the amount of just compensation the landowner was entitled to will be finally determined by the court.[17]

The mode of payment under CARL involves a choice for the landowner among in cash, bonds, and shares of stocks in government corporations in exchange for the land expropriated under the program. De Leon (2005) further cites two methods of repayment of new owners: 1) where the farmer directly pays for his land to the original landowner under a system of amortization with the least interference from the government; and 2) the new owners pay the government who earlier has acquired or expropriated these properties from privates owners.[18] In the Philippines, the landowners are paid directly by the beneficiaries under voluntary land transfer,[19] or by the Land Bank, in which case, the Bank acquires the right to collect the payments from the

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[15] Republic Act No. 6657, § 6.

[16] De Leon, Hector S. (1994), *Textbook on Agrarian Reform and Taxation with Cooperatives*, Manila: Rex Bookstore.

[17] Republic Act No. 6657, § 18.

[18] Department of Local Government and Community Development's (DLGCD's) Instructor's Manual for Trainors and Field Workers (1972).

[19] Republic Act No. 6657, § 21.

beneficiaries in thirty annual amortizations at 6% interest per annum.[20]

In measuring the success of the CARP, De Leon (2005) provides for recommended measures in order to effect changes in the Philippines' agrarian structure. The author points out that changes in the agrarian structure can be achieved by three means: 1) by revolutionary means; 2) by an authoritarian regime; and 3) by evolutionary means through the democratic process.[21] In a revolutionary situation, changes in agrarian structure can be accomplished through a shift in the political, economic, and administrative power to a class which would benefit directly by the reforms. On the other hand, when change is introduced through an authoritarian regime, policy decisions on land reform are enforced by suspending normal legal processes, if necessary. This was the case when Presidential Decree No. 27 and Executive Order No. 229 were passed into law by then President Ferdinand Marcos.

In a case, the CARL, or R. A. No. 6657 has been described by the Supreme Court as "revolutionary",[22] but this does not translate to the enactment of the law by revolutionary means. At the time of the passage of CARL, under the government of then President Corazon Aquino, the newly democratic regime provided for an AR legislation which was intended to implement the AR provisions of the Freedom Constitution.[23] After all, one of the primary elements of CARL is that it provides for just compensation to landowners in exchange for

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[20] Republic Act No. 6657, § 26.

[21] De Leon, Hector S. (1994), *Textbook on Agrarian Reform and Taxation with Cooperatives*, Manila: Rex Bookstore.

[22] *Association of Small Landowners v. Secretary of Agrarian Reform*, G. R. No. 78742 (July 14, 1980).

[23] Bernas, Joaquin, G. (2003), *The* 1987 *Constitution of the Republic of the Philippines: A Commentary*, Manila: Rex Bookstores, at p. 76.

acquisiton of their private agricultural land. In a case, the Supreme Court clarified this exercise of the state's power of eminent domain as necessary and constitutional pursuant to the objectives of the law. In the case of *Association of Small Landowners v. Secretary of Agrarian Reform*,[24] the Supreme Court ruled that the CARL involves a revolutionary kind of expropriation, and not merely a tradition exercise of the power of eminent domain of the state. The "revolutionary" nature thus of CARP is that it does not involve ordinary expropriation, but does not signify that the AR law was enacted by revolutionary means or under revolutionary conditions. The said law was enacted by evolutionary means under a democratic process, and serves to implement the agrarian reform and social justice provisions of the Constitution.[25]

De Leon (2005) points out that implementation of land reform within a politically democratic framework may be problematic, because unlike revolutionary and authoritarian regimes, a politically democratic regime, such as the Philippines today, involves the diffusion of political powers by virtue of the separation of powers among the executive, legislative and judicial branches of government. This makes it more difficult to overcome the opposition of vested interests, or to change existing institutions which impede reform.[26]

De Leon (2005) thus provides for the requirements for successful implementation of AR: 1) the need for a line of command from the center to field levels with regard to the organization tasks with the implementation of AR; 2) the need to provide necessary supporting

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[24] G.R. No. 78742 (July 14, 1980).

[25] De Leon, Hector S. (1994), *Textbook on Agrarian Reform and Taxation with Cooperatives*, Manila: Rex Bookstore.

[26] De Leon, Hector S. (1994), *Textbook on Agrarian Reform and Taxation with Cooperatives*, Manila: Rex Bookstore.

services to beneficiaries; 3) the need to refashion the administrative organization, procedures, and judicial system by which newly conferred rights are to be enforced; and 4) the need to involve the beneficiaries in the implementation of the program.

In addition to the requirements for successful implementation of AR, De Leon (2005) further provides for a classification of AR programs and a comparison of AR programs in various countries. Based on the author's classification, the type of AR program implemented under CARP involves *redistribution of land to the peasants by distribution of land in the public domain.* This is also referred to as settlement or colonization.[27] The author further reports that at the time of his research, a conservative estimate on the cost of resettling a single family in virgin areas of the public domain with good chances of success will amount to an estimate of P100,000. There is also no complete assurance that families who are resettled will succeed in maintaining a stable agricultural life.[28] At the time of De Leon's (2005) research, 70% out of the 30,000 families resettled from 1947 to 1970 have slipped back to tenancy.[29] Related literature on the progress of CARP further show that its lofty objectives have not been entirely met and have, in practice, remained plagued with problems. Land area development (LAD) targets for the entire program involved the distribution of 8.06 million hectares, with 4.29 million hectares allotted to the Department of Land Reform (DLR) (now renamed as the Department of Agrarian

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[27] De Leon, Hector S. (1994), *Textbook on Agrarian Reform and Taxation with Cooperatives*, Manila: Rex Bookstore.

[28] De Leon, Hector S. (1994), *Textbook on Agrarian Reform and Taxation with Cooperatives*, Manila: Rex Bookstore.

[29] Mandanas, Azucena I. (1974), *Agricultural Productivity*, Manila: University of Santo Tomas Press, unitas, 47, No. 4.

Reform once again, pursuant to Executive Order No. 456 of 2005) and the remaining 3.77 million hectares allotted for the Department of Environment and Natural Resources (DENR).[30] The Estrada administration, in particular, was tasked with continuing the CARP even beyond the original prescribed 10-year period ending on 1998. When former President Joseph Estrada assumed office that year, the CARP targets were only 58% complete. The program had a remaining balance of almost 3.4 million hectares-with 1.5 million hectares allotted for DAR for distribution, and 1.9 million hectares for DENR.[31]

De Leon (2005), in his book, outlines the objections to AR, and how these objections may in reality translate to the real issues that challenge the successful implementation of CARP. First, the author discusses the issue regarding fragmentation of farm-holdings. There is an impression that AR means the wholesale reduction in the size of farm units. At the time of De Leon's (2005) research, the vast majority of farm units were less than family-size (3 hectares for irrigated lands and 5 hectares for non-irrigated lands). The purpose of land reform is to increase these farms to economic family-size farms, and that in some cases where the farm unit is big, such as in the case of landed estates, AR would then require the breaking down of these landed estates into family-size farms. It should be emphasized however that CARP prohibits further fragmentation of the family-size farms as well as the

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[30] Lim, Jr., Ernesto G. (2004), The First Two Years of CARP Under the Estrada Administration, *The Philippine Partnership for the Development of Human Resources in Rural Areas* (PhilDHRRA).

[31] Lim, Jr., Ernesto G. (2004), The First Two Years of CARP Under the Estrada Administration, *The Philippine Partnership for the Development of Human Resources in Rural Areas* (PhilDHRRA).

reaccumulation of land in the hands of non-tilling owners.[32]

Second, De Leon (2005) points out that it has been claimed that small farms are uneconomic. Family-size farms are, at least initially, small farm which may not be productive or economical unless operated on a bigger scale. The author points out however that this is not necessarily true, especially with regard to rice, corn and other crops which are labor-intensive. He further asserts that small-scale ownership can be combined with big scale operations through the organization of producers' cooperatives.[33]

The third objection to AR discussed by De Leon (2005) is the objection on why small landholdings are included under the coverage of CARP. The author points out that most small landowners are professionals or people who have other sources of income apart from the income they get from the land. In many cases, their income from the land is used to complement their main sources of income to provide the other needs of their families outside of the basic needs such as food, housing, and household needs. The CARP asserts that these needs be care for through some other device or mechanism, and not from the continued exploitation of tenant-farmers. The program insists that social services will have to answer for social needs in a complex and modernizing society, and that AR is precisely the answer to the

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[32] Lim, Jr., Ernesto G. (2004), The First Two Years of CARP Under the Estrada Administration, *The Philippine Partnership for the Development of Human Resources in Rural Areas* (PhilDHRRA).

[33] Lim, Jr., Ernesto G. (2004), The First Two Years of CARP Under the Estrada Administration, *The Philippine Partnership for the Development of Human Resources in Rural Areas* (PhilDHRRA).

government's inability to provide for these badly needed social services.[34]

The fourth and last objection discussed by De Leon (2005) is the criticism regarding the failure of agrarian reform measures in the past. Farmers who were given lands in the past have either sold their lands or have not been able to pay the lands given to them. Due to AR initiatives in the past, in fact, agricultural production has gone down.[35]

De Leon (2005), however, points out that although many of the past AR programs were defective, generally they were still able to improve the lives of the farmers who benefited from these programs. He provides a summary on why previous AR programs failed in the past: 1) the program stopped at land redistribution and failed to provide for other companion measures necessary for success; 2) the farmers were not prepared to take on the responsibilities given to them because they were not organized and did not have the proper orientation needed for such an undertaking; and 3) there was haphazard planning on the part of the government officials who were initiating the program.[36]

The author stresses the need to understand the reason for the failures, and to learn from past mistakes made with previous agrarian reform measures. De Leon (2005) points out that AR should at least have two important components: 1) land distribution; and

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[34] Lim, Jr., Ernesto G. (2004), The First Two Years of CARP Under the Estrada Administration, *The Philippine Partnership for the Development of Human Resources in Rural Areas* (PhilDHRRA).

[35] Lim, Jr., Ernesto G. (2004), The First Two Years of CARP Under the Estrada Administration, *The Philippine Partnership for the Development of Human Resources in Rural Areas* (PhilDHRRA).

[36] Lim, Jr., Ernesto G. (2004), The First Two Years of CARP Under the Estrada Administration, *The Philippine Partnership for the Development of Human Resources in Rural Areas* (PhilDHRRA).

2) companion measures. With regard to the latter, De Leon (2005) argues that it is not enough that the tillers become the owners of the land they till. They must also become successful owners of the land. After the proper redistribution of the land and after transferring ownership to the users of the and, there arises a need to maximize, increase, and modernize utilization of the land for the benefit of not only the new owner but that of society as well. There is thus a need for the development of social institutions that could effectively carry out the other companion measures of AR, since farmers need to be provided with the necessary skills and know-how to enhance the productivity of the land they have come to own. As such, De Leon (2005) provides for a list of companion measures to land distribution: 1) credit; 2) modern and better methods of production; 3) marketing facilities, equitable pricing, infrastructure; and 4) cooperatives.[37]

The enactment of CARL, or R. A. No. 6657, implements the AR provisions of the Constitution and, on paper, attempts to provide for the companion measures mentioned by De Leon (2005). In essence, CARP involves the two essential components to land reform as provided for by De Leon: land distribution and companion measures. DAR's CARP agenda can generally be divided into three primary objectives: 1) distribution of lands (through land tenure and improvement); 2) provision of support services (through program beneficiaries development); and 3) administration of agrarian justice.[38]

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[37] Lim, Jr., Ernesto G. (2004), The First Two Years of CARP Under the Estrada Administration, *The Philippine Partnership for the Development of Human Resources in Rural Areas* (PhilDHRRA).

[38] Ponce, Jose Mari B. (2003), *Trends and Developments in Agrarian Reform (The ARC and ODA Experience)*, KAISAHAN Strategic Assessment and Planning Seminar, at Celestial Inn Resort, Antipolo City, Philippines (July 9, 2003).

R. A. No. 6657 explicitly provides for the creation of a support services office for the beneficiaries of CARP,[39] and in keeping with the mandate of the law, DAR has committed to ensuring the delivery of support services to beneficiaries through the Program Beneficiaries Development Strategy which basically assists agrarian reform communities (ARC) in community organizing and enterprise development.[40] The overall thrust for these measures taken by DAR and as provided for under CARL are meant to strengthen the role of the farmer in agrarian reform. De Leon (2005) emphasizes that while the role of the government in AR is vital, the role of the farmer himself is even more important since the latter is both the ultimate object and principal agent of agrarian reform.[41]

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[39] Republic Act No. 6657, § 35.

[40] Ponce, Jose Mari B. (2003), *Trends and Developments in Agrarian Reform (The ARC and ODA Experience)*, KAISAHAN Strategic Assessment and Planning Seminar, at Celestial Inn Resort, Antipolo City, Philippines (July 9, 2003).

[41] De Leon, Hector S. (1994), *Textbook on Agrarian Reform and Taxation with Cooperatives*, Manila: Rex Bookstore.

Glossary
术语对照表

Agrarian reform 农业改革

Alternative Lawyering 非传统法律服务(发展性法律服务)

Alternative Law Groups(ALG) 非传统法律协会

Alternative dispute resolution (ADR) 非诉讼纠纷解决机制

Ateneo Human Rights Center (AHRC) 阿特尼奥人权中心

Client 当事人

Client-centered 以当事人为中心的

Comprehensive Agrarian Reform Program(CARP) 综合农业改革项目

Counsel de officio 指定代理律师

Department of Agrarian Reform (DAR) 农业改革部

Developmental legal aid (DLA) 发展性法律援助

Empower 赋权

Harassment case 通过起诉进行骚扰

Indigenous peoples 原住民

Integrated Bar of the Philippines (IBP) 菲律宾全国律师协会

Internship Program 法学实习生项目

Jail decongestion program 监狱减压项目

Merits of the cases 对案件有利的法律依据和事实

migrant workers 海外务工人员

paralegal 准律师

paralegalism 准律师制度（等于 the use of paralegals）

Participatory 参与式的

Public Attorney's Office(PAO) 公职律师办公室

Pro bono 律师无偿公益法律服务

SALIGAN 萨理甘非传统法律援助中心

致　谢

在序言中，我说道：这本书也许是个起点，我们正在学习如何迈向正义的多条道路。用“起点”这个词还是太大了，不如说是“铺路砖”，我们刚从邻国学来一点泥瓦手艺，回来就在自家门前铺块地砖试试。在这里，我要郑重感谢那些和我一同“造瓦铺砖”的人，感谢他们跨越国界的无私帮助。

首先要感谢我们的赞助方，美国乔治华盛顿大学法学院（George Washington University Law School），感谢他们的慷慨捐助和大力支持，我们才得以在中国开展系列农村法治项目，进而有了这次菲律宾考察和这本书。

感谢菲律宾阿特尼奥人权中心全体同事的热忱帮助。在这次考察和写作过程中，他们是最辛苦的人。从最初的联络、安排日程，到考察中的讲解、陪同，再到最后的写作出版，每一个环节都离不开他们的辛勤工作。在与他们合作的过程中，我们也学到了敬业、高效和注重细节等宝贵的品质。特别要感谢 Carlos P. Medina 主任，他的学识和人格都堪称榜样，本书收录了他的两篇文章即为明证。

感谢所有接待过我们的菲律宾朋友。无论是政府、学校、NGO，还是农民，每到一处我们都受到至高的礼遇，甚至有点愧不敢当。在与他们短暂相处的过程中，我们不仅收获了丰富的知识和信息，还感

受到了更多值得长久回味的东西。

感谢英国瑞慈人权合作中心（The Right Practice）的 Nicola Macbean 女士。她所任职的机构在 2005 年率先支持武汉大学弱者权利保护中心赴菲律宾考察，为我们带回了最初的信息和资料。同时感谢武汉大学的张万洪老师，他曾先后 3 次赴菲律宾考察，又对中国农村法治很有研究，本书序言中介绍的菲律宾法律框架就是受其启发。

感谢我们考察团的全体成员。在菲律宾共同奔波的 11 天，是我生命中最宝贵的记忆之一。尤其要感谢为本书写作考察报告的曹海晶、薛少锋、杨一介三位老师，他们从比较法的视角带给了我们更多有益的信息。

感谢我的同事张乐伦、张芳，学生助手曹志勋、冉章琴以及我的前同事刘海叶、张铮。没有他们的帮助和协作，就不可能有这次考察和这本书。特别要感谢我的领导，张乐伦女士，她在考察期间不辞辛劳担当翻译，考察之后又支持和鼓励我编写这本书，为我创造了最适宜的条件。

感谢我的硕士研究生导师，清华大学法学院的王晨光教授。是他最初引领和鼓励我走上公益法律的道路，才使得我有机会在工作后负责菲律宾考察，并最终主编了这本书。感谢我的师弟，清华大学宪法专业研究生李陶，他以专业的水平和敬业的态度在赴瑞典留学之前，加班加点完成了本书所有英文翻译的校对工作。

最后，感谢法律出版社学术·对外分社分社长朱宁女士和田会文编辑以及所有为这本书付出过辛勤劳动的工作人员。他们共同为这本书写上了关键的最后一笔。

本书所有的荣誉都应归功于以上这些帮助过我的师长和朋友们，感谢他们无私贡献的智慧和爱心，才使得这本书得以呈现在您的面前。在编写本书的过程中，我时常深感惭愧，有很多可以改进完善的地方，因为时间、精力等种种原因而没有做到。对于本书中出现的

错误和不足，我愿意承担全部责任，并真诚地期待您的批评和意见。我的电子邮箱是 yangr04@ gmail. com。

最后再次感谢您——本书的读者。您的阅读和关注，就是对我们正在从事的中国公益法律事业的莫大支持。

杨 睿

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