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CARP institutional assessment in a post-2008 transition scenario: Reforms for the agrarian justice system

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CARP Institutional Assessment in a Post-2008 Transition Scenario: Reforms for the Agrarian Justice System

Marvic M.V.F. Leonen

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CARP Institutional Assessment in a Post-2008 Transition Scenario: Reforms for the Agrarian Justice System*

Abstract

The study focused on the implications of a post 2008 CARP transition scenario for the agrarian law and justice system. It addressed the conflicts after the award of certificates of land ownership awards (CLOA) or emancipation patents (EP). There are six types of conflicts within the agrarian sector: 1) dispute between landowners and the farmer beneficiary; 2) conflict between landowner and the state; 3) conflict between the farmer beneficiary and the state; 4) conflict between farmer beneficiaries; 5) disputes between putative landowners that delay or affect the implementation of any part of the agrarian reform program; and 6) disputes involving participants in the agrarian reform program and third parties. Some of the recommendations are: (a) the principal mode to settle disputes between landowners and farmer beneficiaries should be through compulsory arbitration; (b) the DARAB and the BALA should be restructured to allow compulsory arbitration; (c) the still applicable provisions of the Agricultural Land Reform Code, the relationship of agrarian reform with the Public Land Act and the Property Registration Decree should be included in the statute that will extend the CARP; and (d) the continued training programs for all adjudicators, arbitrators and agrarian reform lawyers and paralegals should be provided to include alternative dispute processing methodologies.

Keywords: land reform; land; property law/ agricultural policy

JEL classifications: Q15, Q24, Q18, K11

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CARP Institutional Assessment in a Post-2008 Transition Scenario: Reforms for the Agrarian Justice System

EXECUTIVE SUMMARY

Effective agrarian justice systems take into consideration the unique historical, social and cultural contexts in the relations of those that hold title to the land and those who cultivate it; of those who relate to the land and those who regulate it; of those who market the products of the land and those who hold on to the asset for significant cultural purposes.

The tenant is not only a participant in a consensual relationship called a contract. S/he is part of a household that has a relationship of subordination to the holder of the land. The farmworker is not only one against whom a degree of control is exercised by the agricultural enterprise's managers; s/he is likewise a member of a society of workers that associate in different ways while at the same time part of a rural community that depends on the same agricultural business enterprise for social security.

Further, land to indigenous peoples may retain (and evolve) cultural meanings different from a factor of production. Administrators of land tenure reform programs may have different goals and objectives from the landlord, her tenant, or the farming community.

In the Philippines, agrarian reform has primarily been understood as a measure of social justice and only secondarily as a means to improve agricultural productivity or as a means to efficiently allocate resources in the context of an imagined market. It has been designed to reach distributive outcomes by altering legal entitlements, presumptions, burdens of proof and dispute processing mechanisms. In other words it seeks to redefine relationships. It was not designed to ensure that there be significant welfare gains in a pareto optimal sense.

This paper starts from the premise that altering relationships of exchange can, in a sense, lay foundations for improving productivity of farm households and farmworkers. The identification of the requirements to achieve this are beyond the scope of this paper. However, when the conditions are such that increase in productivity does not happen, then changes in entitlement will be more detrimental for the lives of those that become its beneficiaries or a reversion to the original relationship takes place. This has given rise to conflicts after the award of certificates of land ownership awards (CLOA) or emancipation patents (EP). The State

should continue to assist the farmer beneficiary after the award is completed only to assure parity in their bargaining position and to ensure that the beneficiaries get the best deal in cases of lease back or contract growing arrangements. Furthermore, more regulation is necessary in cases where areas already awarded to farmer beneficiaries are again made the subject of expropriation for other public purposes.

Conflicts within the agrarian sector fall into six types. Type One conflicts involve disputes between the landowners and the farmer beneficiary. Type Two conflicts involve conflicts between the landowner and the State. Type Three conflicts involve those between the farmer beneficiary and the State. Type Four conflicts involve conflicts between farmer beneficiaries. Type Five conflicts are disputes between putative landowners that delay or affect the implementation of any part of the agrarian reform program. Type Six conflicts cover disputes involving participants in the agrarian reform program and third parties.

Under the current set up, all these conflicts are generally resolved through adjudication. This quasi-adjudicatory process also suffers from the same problems as the purely judicial process. That is, the requirement for the appearance of lawyers, delays in the presentation of evidence, crowded dockets and the potential for abuse and corruption. The Alternative Dispute Resolution Law of 2004 however and the current openness of the Supreme Court for alternative modes of dispute processing should provide some creative solutions for agrarian reform conflicts.

Some of the conflicts can be processed through arbitration such as Type One, Four and Five conflicts. This will remove some of the cases from DARAB's docket, address the problem of delay, reduce the possibility for corruption and will allow better internalization of costs of the dispute on the parties.

Type Two conflicts are usually issues relating to coverage, retention limits and valuation of covered agricultural land. The first two issues should remain within the DARAB's jurisdiction.

Ambiguity in law invites more disputes and thus should also be addressed. In agrarian reform, the Comprehensive Agrarian Reform Law (Rep. Act No. 6657) governs alongside some provisions in the Agricultural Land Reform Code (Rep. Act No. 3844), the Public Land Act (Com. Act No. 141) and the Property Registration Decree (Pres. Dec. 1529). The amount of conflict therefore going through the quasi-judicial as well as court processes can be reduced with better crafted legislation.

The same rationale also applies to other controversial issues such as conversion of classification and conversion into other land uses. Clarifications should be made regarding the relationships of local government units, the Department of Agriculture and the DAR for purposes of conversion into non-agricultural uses. It will also make sense to have a central body to examine competing land uses. Being an inter-agency body, the Presidential Agrarian Reform Council would be best able to discharge this function.

In the same manner, concerns on indigenous peoples issues vary significantly from other agricultural areas. Ancestral domain in fact involves conflicts not strictly between landowner and tenant farmer but those with respect to time immemorial possessors of ancestral territories and encroachers. Predominantly, these conflicts are very different and do not involve any office within the Department of Agrarian Reform.

Based on these considerations, this paper recommends the following:

- The principal mode to settle disputes between landowners and farmer beneficiaries should be through compulsory arbitration.
- The DARAB and the BALA should be restructured to allow compulsory arbitration. Hence, the statute that will extend the CARP should allow for a one-year transition period to capacitate its personnel.
- Arbitration will cover issues relating to tenancy, terms and conditions of work, leasehold contracts within areas, exercise of pre-emption and redemption rights of tenants, correction and cancellation of Certificates of Land Ownership Awards.

- Arbitration, rather than adjudication, should also be the principal means for settling conflicts among farmers and/or farmer beneficiaries. Arbitration should also be the principal means of settlement between putative or conflicting agricultural land owners where such conflict delays implementation of the agrarian reform program.
- For conflicts relating to just compensation, i.e. fair market value of the land, the Department should cease to have preliminary jurisdiction in contested cases.
- The statute that will extend the comprehensive agrarian reform program should specifically provide that in all cases of ejectment filed where a claim of tenancy is raised in responsive pleadings, courts must preliminarily determine whether there is prima facie tenancy involved.
- Questions relating to coverage and the exercise of retention rights will remain within the jurisdiction of the DARAB appealable only to the Court of Appeals through Petitions for Review by Certiorari.

- Ancestral lands and domains being excluded from the coverage of agrarian reform, the National Commission for Indigenous Peoples (NCIP) should not be within the administrative supervision of the DAR.
- Legislation to extend the CARP should clarify the conditions under which agricultural land can be mortgaged taking into consideration the primary duty of government to provide financial and other assistance to farmer beneficiaries.
- The procedure for encumbrances should also apply to leases and contract growing arrangements entered into by the farmer beneficiary. The DAR should be given the authority to inquire into the viability of the consideration for a lease back or contract growing arrangement with the former owner of the agricultural land.
- The holding of agricultural land should be dependent on whether it can be made productive. Hence the agrarian reform program should immediately cover private idle and abandoned land unless they can be converted to other uses within a limited span of one year.
- The basis and procedure for conversion of agricultural land to other agricultural uses should be included in the statute to extend agrarian reform. This will ensure that the discretion of administrative agencies be reduced and that the guidelines be fully debated within Congress.
- The still applicable provisions of the Agricultural Land Reform Code (Rep. Act No. 3844), the relationship of agrarian reform with the Public Land Act (Com. Act No. 141) and the Property Registration Decree (Pres. Dec. 1529) should be included in the statute that will extend the CARP so as to reduce ambiguity in the provisions that apply in the agrarian sector.
- While exempted from coverage from land transfers, agricultural lands of the public domain persons awarded land by virtue of homestead or free patents should nonetheless be subject to the same benefits as other agrarian reform beneficiaries.
- The statute should provide for an automatic review every five (5) years.
- Continued training programs for all adjudicators, arbitrators and agrarian reform lawyers and paralegals should be provided. This training should also include alternative dispute processing methodologies.

CARP Institutional Assessment in a Post-2008 Transition Scenario: Reforms for the Agrarian Justice System

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I. The Comprehensive Agrarian Reform Law in Context

A. Substantive Context

1. Our laws should ensure that land, or any other resource, should be allocated to where it becomes most productive. Productivity may be understood as the value added that human intervention can contribute to land. Among competing uses, our law should make certain that land produces the most value added. Land therefore should end up where it is valued most. Given its scarcity, no other premise would make good economic sense.

2. Our measures of productivity however do not exist in a vacuum. What we consider as part of value added depends a lot on our definition of the relevant market and who we want to reap the benefits within that market.

3. The infusion of capital from foreign agribusiness changes the configuration of the possible and competing uses of agricultural land. But, within an indigenous community alienated from the rest of society by impassible roads, the competing uses are very local. The real market therefore defines productivity. In the Philippines, these two types of markets still exist side by side. The economy among the B'laan in Sitio Salnaong, Tampakan, Sultan Kudarat is radically different from the agricultural plains of Bulacan.

4. Value also depends on whose standpoint we privilege. Certainly, when we consider the global economy, the productivity of a parcel of agricultural land is very close to the profit margins of the agricultural product it sells. But, from the point of view of a single poor farmer household, any measure of value may also consider which competing use might be able to give them more control over their destiny. This may be in the form of assured revenues or even clear participation in the decision-making processes relating to what uses their land is to be allocated. The possibility of whether agricultural activity of any kind encourages local industries that produce its inputs or uses its products may also be another standpoint in determining which use is more valuable.

5. Productivity also is not *a priori*. Existing capability of the participants in agricultural production also determines value. Also, institutional mechanisms determine capability, enhance or limit market conditions and define initial entitlements to resources. Law participates by providing a framework to define relations, create institutions and provide remedies for breaches of its provisions.

6. Agrarian Reform Law is premised on the belief that the initial entitlements to land in the Philippines, and the mechanisms to ensure entitlements, do not assure productivity. The narratives embedded in our jurisprudence either assume that changing the ownership of land will necessarily unleash the capabilities of the owner cultivator (or farmworker) or they assume that the objective of these laws have nothing to do with economics but is solely to achieve the amorphous objective of "social justice." Social justice however has not been fully defined in legally operational terms.

7. These narratives must be reexamined. Changing the holding of ownership rights does not guarantee either productivity or more freedoms in all cases. Like all generalizations, they are bound to be successful in a few cases but not in all. Agrarian reform law should acknowledge that it will have multiple objectives. It must trace the nuances of productivity and the dynamic dialectic between the creation of value, standpoint and institutional mechanisms.

8. Justice as understood in this paper means ensuring that our agrarian reform law is efficient and that other laws do not serve to defeat the objectives of the agrarian reform law.

9. Efficiency, in agrarian justice means, that the remedies ensure an outcome that is harmonious to the objectives of agrarian reform. This means that the procedures must always be based on the current political and economic contexts of the parties who may be its plaintiffs and defendants. It should also consider the current capabilities of existing government offices tasked to implement these procedures.

10. Reduced to a heuristic equation:

$$S = f(p, D) - c \text{ ; never } f(p,D) < c$$

Where

S: success in litigation

P: probability of going on to the next stage of the process (as a result of the stature of client, reputation of lawyer, vulnerabilities of the judge, accountability of the system)

C: financial resources expended

D: amount of damages or penalties provided or the value of the title or use of the land

11. A farmer or landowner will sue when the projected costs of the process that it bears are outweighed by the benefits that s/he can gain. The costs increase with the complexity of the claim since lawyers become necessary and more of their expertise will be required. Costs also increase as the forum for settling conflicts becomes farther. Thus, the higher the court, the more the parties will spend.

12. The benefits of the suit should not simply be understood as the amount of damages or the value of the title to the land granted after the procedure. There are real probabilities to every stage of a procedure. Hence even if the law grants ownership to an owner cultivator, if she is poor and unlettered and does not have access to information or a lawyer, without any intervention the probability that she will be able to gain title will be close to zero. Hence, the law guarantees nothing. She loses even before she starts. The same is true of a small landowner who may not have the same resources to litigate against a wrong valuation of land imposed by the Landbank.

13. Also, the chances of an outcome closer to the objectives of the law become lower when the costs of a litigation is improperly subsidized by government for a party to the suit. A regime of no docket fees or where the docket fees are the same for any litigant regardless of their capability to pay provides an improper subsidy to the richer party. This will therefore increase the probability of winning in favor of the richer party and lowers the probability of winning for the poorer litigant. Provision of legal services is also a form of subsidy.

B. Procedural Context

14. Rep. Act No. 6657 clarifies the jurisdiction of the Department of Agrarian Reform Adjudicatory Board (DARAB). Section 50 provides:

> 15. SECTION 50. Quasi-Judicial Powers of the DAR. — The DAR is hereby vested with primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the

Department of Environment and Natural Resources (DENR).

16. It shall not be bound by technical rules of procedure and evidence but shall proceed to hear and decide all cases, disputes or controversies in a most expeditious manner, employing all reasonable means to ascertain the facts of every case in accordance with 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.

17. It shall have the power to summon witnesses, administer oaths, take testimony, require submission of reports, compel the production of books and documents and answers to interrogatories and issue subpoena, and subpoena duces tecum, and enforce its writs through sheriffs or other duly deputized officers. It shall likewise have the power to punish direct and indirect contempts in the same manner and subject to the same penalties as provided in the Rules of Court.

18. Responsible farmer leaders shall be allowed to represent themselves, their fellow farmers, or their organizations in any proceedings before the DAR: Provided, however, That 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.

19. Notwithstanding an appeal to the Court of Appeals, the decision of the DAR shall be immediately executory.

20. The Department of Agrarian Reform, through its adjudicatory arm called the Department of Agrarian Reform Adjudicatory Board (DARAB) therefore has primary and exclusive jurisdiction over all matter that pertains to agrarian disputes or controversies. There are no distinctions with respect to types of conflicts and the mode for settling the controversy is quasi-judicial adjudication.

B.1. Adjudication

21. Adjudication requires the presence of a third party neutral adjudicator. Within the DAR's structure, there are layers of adjudication. There is the Provincial Agrarian Reform Adjudicator (PARAD), the Regional Agrarian Reform Adjudicator (RARAD) and the Deparment of Agrarian Reform Adjudicatory Board (DARAB). Their relationship is hierarchical. The DARAB acts as the terminal appellate body for administrative adjudication.

22. No agrarian dispute will go through adjudication unless there is some mediation that takes place within the local barangay. Hence the law provides:

> 23. SECTION 53. Certification of the BARC. — The DAR shall not take 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: Provided, however, That if no certification is issued by the BARC within thirty (30) days after a matter or issue is submitted to it for mediation or conciliation the case or dispute may be brought before the PARC.

24. Any matter that decided by the DARAB can immediately be enforced. This is further supported by a prohibition against any form of restraining order or preliminary injunction. Thus:

> 25. SECTION 55. No Restraining Order or Preliminary Injunction. — No court in the Philippines shall have jurisdiction 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 this Act and other pertinent laws on agrarian reform.

26. However, the law defines the modes of review through the judicial system. Thus,

> 27. SECTION 54. Certiorari. — Any decision, order, award or ruling of the DAR on any agrarian dispute or on any matter pertaining to the application, implementation, enforcement, or interpretation of this Act and other pertinent

laws on agrarian reform may be brought to the Court of Appeals by certiorari except as otherwise provided in this Act within fifteen (15) days from the receipt of a copy thereof.

28. The findings of fact of the DAR shall be final and conclusive if based on substantial evidence.

29. After appeal to the Court of Appeals is exhausted, there can also be an appeal or a special civil action to the Supreme Court.

30. All told, all types of agrarian disputes may undergo five (5) layers of dispute processing: one, using conciliation processes; two, administrative adjudicatory layers; and two, judicial appellate procedures. The costs to both parties, actual and in terms of opportunity costs, are obvious.

31. The adjudicators are more or less permanent and the parties have no choice. Except for government salaries and benefits, there is very little incentive for the adjudicators to improve on their ability to settle conflicts. In other words, the market, i.e. parties to the dispute, do not weigh in and provide no feedback with respect to the competence of the conciliators at the barangay level, the adjudicators at the quasi judicial level and the justices at the appellate level.

32. The government pays for the time of the adjudicators no matter how private the benefits of the conflict. Hence, conflicts among farmer beneficiaries and also among landowners claiming retention rights are equally subsidized by the state. Furthermore, these cases demand equal time together with cases where there is a public interest involved.

B.2. Arbitration

33. This paper argues that arbitration will be a way to address specific types of conflict in more appropriate means while at the same time increase the possibility that the costs will be born by the private parties when the benefits are purely private. Arbitration will also reduce the layers of dispute processing. It will also allow feedback and therefore incentive to the private arbitrators to improve.

34. Arbitration is an alternative dispute resolution process. In private contracts, it is encouraged by the Alternative Dispute Processing Law of 2004 or Republic Act 9285. Because of the provisions of Rep. Act No. 6657, it is not allowed for agrarian disputes.

35. In arbitration, the parties choose the neutral third parties. This may come from a pool of accredited private parties (lawyers, professors, farmer leaders). Ad hoc arbitration allows the parties to define how many arbitrators will be present. Many institutionally sponsored arbitral processes, including the UNCITRAL Model adopted by our ADR law, specify three arbitrators by default. Each party chooses one arbitrator. The two arbitrators chosen will select a third who will act as the chair of the arbitral panel. A challenge procedure for purposes of revealing bias or interest can be instituted. The costs are also borne by the parties although the law can provide

36. Unlike in adjudication, there is further incentive for arbitrators to hone their skills. Parties choose them. Theoretically, their reputation increases with every successful settlement of a conflict. Since arbitrators come from a pool and that most arbitrations require third parties, most of the individuals who become accredited will therefore be careful to be fair and not be perceived as being too biased in favor of farmers or landowners. Furthermore, since the costs can be borne by the parties (with state participation to ensure subsidies for those who are poor), the opportunity cost of the arbitrator's time is properly compensated. Besides, this will be a way of ensuring that the private benefits are not improperly subsidized by the state.

37. Depending also on the law, they can also have freedom of choice of language and procedure. The parties may submit their case for decision through mere documentary evidences or they may opt for informal hearings where testimony and documents can be produced. Since costs are borne by the parties, there will be assurances that the arbitral award will come sooner than ordinary adjudication. Arbitration may also accommodate situations where the parties agree to an amicable settlement rather than wait for an arbitral award.

38. Courts can come in to enforce arbitral awards and provisional remedies requested by the parties. Arbitral awards are final and may not be appealed. They may only be vacated should there be fundamental infirmities in the process, i.e. corruption or fraud.

39. Hence arbitration reduces the number of layers of dispute processing to three: one, arbitration; and two, judicial appeals (trial court and Supreme Court). It also narrows the grounds for going to courts. Incidentally, it will also reduce the docket for administrative adjudication.

B.3. Administrative Adjudication

40. Administrative adjudication cannot be completely eliminated. It is necessary where one of the parties is the State or in instances where the subject of the conflict is one of public interest. For this purpose, we can classify agrarian conflicts into six types.

41. Type One conflicts involve disputes between the landowners and the farmer beneficiary. Type Two conflicts involve conflicts between the landowner and the State. Type Three conflicts involve those between the farmer beneficiary and the State. Type Four conflicts involve conflicts between farmer beneficiaries. Type Five conflicts are disputes between putative landowners that delay or affect the implementation of any part of the agrarian reform program. Type Six conflicts cover disputes involving participants in the agrarian reform program and third parties.

42. Type One, Four, Five and Six conflicts should primarily be processed through arbitration. They are purely private cases. This will remove some of the cases from DARAB's docket, address the problem of delay, reduce the possibility for corruption and will allow better internalization of costs of the dispute on the parties (with special provisions for addressing capability to pay on the part of the farmer beneficiaries and some landowners).

43. Type Two conflicts are disputes between the landowner and the state. These are usually issues relating to coverage, retention limits and valuation of covered agricultural land. The first two issues should remain within the DARAB's jurisdiction.

44. The efficiency of solving contested valuation of agricultural land can be improved by removing the authority of the DARAB to preliminarily determine just compensation since, constitutionally, it is the regular courts that will determine its value. Immediately, this will remove two layers of decision making and thus address delays in the payment of landowners and also the transfer of titles to the farmer beneficiaries. The transfer of title to beneficiaries depends on the full payment of the land value to the landowner.

45. The filing of ejectment cases in courts against occupants, tenants or other farmer beneficiaries have recently become an irritant in the implementation of the agrarian reform program. Agrarian reform advocates have considered this as strategic lawsuits to prevent farmer beneficiary participation in the implementation of the agrarian reform program.

46. Current doctrine informs us that the landowner has the privilege of filing a civil complaint in the Municipal Trial court for ejectment if her/his pleading does not allege tenancy. The

respondent may allege tenancy in her/his answer. However, the civil complaint cannot be dismissed because of the current procedural rules on how a court can acquire jurisdiction. It is therefore necessary for legislation to provide that courts should make a preliminary determination of the issue of tenancy when it is alleged in a responsive pleading. If, prima facie, it can be shown that tenancy exists, then the case should be dismissed and immediately referred to agrarian arbitration as in all Type One cases.

47. Type Three cases involve conflicts between the farmer or farmer beneficiary and the State. These include issues relating to conversion orders, issuances and corrections of Certificate of Land Ownership Awards (CLOAs), and coverage of some parcels of land. Since this involves matters that are within the purview of the implementation of the agrarian reform program, it should remain within administrative adjudication. Besides, for obvious reasons it will be difficult to have arbitration with one of the parties being the State. It is the state that creates the pool of arbitrators and accredits them.

48. There is little that can be done with criminal cases that arise from the implementation of the agrarian reform program. The current law is already efficient in this regard, i.e. all these cases are immediately referred to our courts (after the proper preliminary investigation). An ordinary court is also designated as a special agrarian court. This ensures that the judge acquires, through training and experience, the proper set of knowledge, skills and attitudes to resolve cases arising from the agrarian context.

49. Special Agrarian Courts, which are basically Regional Trial Courts given special assignments, have jurisdiction over criminal actions arising from the implementation of the Comprehensive Agrarian Reform Law as well as just compensation cases. However in the latter, the Supreme Court has ruled that the DARAB may "preliminarily determine" the value and modality of payment to be given to the landowner.

50. The quasi-adjudicatory process also suffers from the same problems as the purely judicial process. That is, the requirement for the appearance of lawyers, delays in the presentation of evidence, crowded dockets and the potential for abuse and corruption. The Alternative Dispute Resolution Law of 2004 however and the current openness of the Supreme Court for alternative modes of dispute processing should provide some creative solutions for agrarian reform conflicts.

II. Agrarian Dispute Resolution Systems

51. Jurisdictional issues among agencies should be clarified. Conflicts in jurisdiction unnecessarily increase the costs of resolving the conflict. It can also encourage paralysis as a result of the confusion. Needless time and effort is also wasted among officials of the concerned agencies.

52. A future agrarian law should clarify that when the land is considered as covered under the agrarian reform program, other agencies should cede jurisdiction to the Department of Agrarian Reform. Hence, the DENR should cede jurisdiction over all lands considered to be of the public domain where agricultural activity exists. The Commission on the Settlement of Land Disputes (COSLAP) of the Department of Justice (DOJ) should not entertain complaints involving any controversy related to agrarian reform. The barangay should also not conduct its katarungang pambarangay processes when the area is already considered agricultural. On the other hand, increased coordination with these agencies and the DAR should be encouraged.

53. Ambiguity in law invites more dispute. More dispute can create more litigation which translates to costs for the parties as well as delays in the administration of justice. Hence, every effort to clarify the content of the rules should not be spared when there are opportunities to craft new legislation.

54. In agrarian reform, the Comprehensive Agrarian Reform Law (Rep. Act No. 6657) governs alongside some provisions in the Agricultural Land Reform Code (Rep. Act No. 3844), the Public Land Act (Com. Act No. 141) and the Property Registration Decree (Pres. Dec. 1529). The amount of conflict therefore going through the quasi-judicial as well as court processes can be reduced with better crafted legislation. Hence the statute to extend agrarian reform should clearly specify which provisions in all these laws will be reenacted.

55. The same rationale also applies to other controversial issues such as conversion of classification and conversion into other land uses. Clarifications should be made regarding the relationships of local government units, the Department of Agriculture and the DAR for purposes of conversion into non-agricultural uses. It will also make sense for there to be a central body to examine competing land uses. Being an inter-agency body, the Presidential Agrarian Reform Council would be best able to discharge this function.

56. In Association of Small Landowners v Department of Agrarian Reform, the Supreme Court characterized coverage within the agrarian reform program for purpose of eventually transferring ownership over the property to farmer cultivators as an exercise of the state's power of eminent domain. The government expropriates land for the public use purposes. However, in two lines of decisions, the Supreme Court has announced that after land has been ceded to a farmer beneficiary can again be taken for another purpose. In Ardana v Reyes and again in Province of Camarines Sur v Court of Appeals, the same court declared that it can again be taken by a local government for tourism purposes. Then in the recent case of Didipio Earthsavers et al v DENR, the court intimated that even agrarian land could again be taken for purposes of allowing contractors to explore, develop or utilize mineral resources.

57. The criterion of what is considered "public use" is broad. It incorporates a lot of objectives. In recent times, the court has been deferential to political objectives of both local and national governments. Courts acknowledge that the power to expropriate is inherent in the State, however it has also reiterated that the power of national agencies and local governments to expropriate may be limited by the public purposes as defined in legislation. Future agrarian reform legislation should therefore take this into consideration. Perhaps, it could provide clearer criteria for evaluating whether a proposed public use trumps all welfare gains resulting from an award of land to a farmer beneficiary. Providing for this criteria in law also serves to settle ownership over agricultural land.

58. Through a Presidential Executive Order, the National Commission on Indigenous Peoples (NCIP) was put under the administrative supervision of the Department of Agrarian Reform. The provisions of the Indigenous Peoples Rights Act (IPRA, Rep Act No. 8371) requires that this office, concerning as it does ancestral lands and domains even those within the jurisdiction of the Department of Environment and Natural Resources, be put directly under the Office of the President. Ancestral Domain concerns indigenous peoples issues whose context vary significantly from other agricultural areas. Recognition of ancestral domain in fact involves conflicts not strictly between landowner and tenant farmer but those with respect to time immemorial possessors of ancestral territories and encroachers. Predominantly, these are conflicts are very different and do not involve any office within the Department of Agrarian Reform. The Secretary of this Department does not even sit in the commission and has no jurisdiction over appeals. Hence, it would make better sense that ancestral domain issues remain outside this department. Should there be an allegation that conflicts involve ancestral domains, future legislation should

provide that the case be immediately transferred to the National Commission on Indigenous Peoples (NCIP).

III. RECOMMENDATIONS

59. Based on these considerations, this paper recommends the following:

60. The principal mode to settle disputes between landowners and farmer beneficiaries should be through compulsory arbitration. Rather than permanent adjudicators, the DAR can maintain a pool of arbitrators specially trained in agrarian issues and coming from various constituencies (lawyers, academics, agrarian reform advocates, land specialists). Using the UNCITRAL model for adjudication mandated by the Alternative Dispute Resolution Law of 2004, the parties can therefore choose one arbitrator each. The arbitrators chosen shall choose a third arbitrator. Costs should be shared between the parties. Should the farmer or farmer beneficiary be a pauper litigant, the State should pay for her/his costs. Compulsory time periods can therefore be more likely met.

61. The DARAB and the BALA should be restructured to allow compulsory arbitration. Hence, the statute that will extend the CARP should allow for a one-year transition period to capacitate its personnel.

62. Arbitration will cover issues relating to tenancy, terms and conditions of work, leasehold contracts within areas, exercise of pre-emption and redemption rights of tenants, correction and cancellation of Certificates of Land Ownership Awards.

63. Arbitration, rather than adjudication, should also be the principal means for settling conflicts among farmers and/or farmer beneficiaries. Arbitration should also be the principal means of settlement between putative or conflicting agricultural land owners where such conflict delays implementation of the agrarian reform program.

64. For conflicts relating to just compensation, i.e. fair market value of the land, the Department should cease to have preliminary jurisdiction in contested cases. Special Agrarian Courts should immediately have jurisdiction over case of just compensation should the landowner and the DAR (together with the Land Bank of the Philippines) disagree with respect to the amount and mode of compensation. DAR should immediately file an action for expropriation under Rule 67 of the Revised Rules of Civil Procedure.

65. The statute that will extend the comprehensive agrarian reform program should specifically provide that in all cases of ejectment filed where a claim of tenancy is raised in responsive pleadings, courts must preliminarily determine whether there is prima facie tenancy involved. When this is the case, the case should immediately be referred to arbitration and the case dismissed. Arbitration awards can be reviewed by the court using grounds provided in the Alternative Dispute Resolution Law of 2004.

66. Questions relating to coverage and the exercise of retention rights will remain within the jurisdiction of the DARAB appealable only to the Court of Appeals through Petitions for Review by Certiorari.

67. Ancestral lands and domains being excluded from the coverage of agrarian reform, the National Commission for Indigenous Peoples (NCIP) should not be within the administrative supervision of the DAR. Ancestral domain issues typically also involve issues within the competence of the DENR, eg. mining claims. The implementation of the Indigenous Peoples Rights Act therefore should not burden.

68. The Presidential Agrarian Reform Council should provide guidelines for the approval of all encumbrances, alienation (or transfers), and expropriation of lands subjected to the agrarian reform program. Legislation to extend the CARP should clarify the conditions under which agricultural land can be mortgaged taking into consideration the primary duty of government to provide financial and other assistance to farmer beneficiaries. No encumbrance, alienation or expropriation may be done without the approval of the Department of Agrarian Reform based on specific guidelines provided by the PARC. In special cases, apart from the mortgage of agricultural land, guarantees may be provided by the government for loans incurred by the farmer beneficiary.

69. The procedure for encumbrances should also apply to leases and contract growing arrangements entered into by the farmer beneficiary. The DAR should be given the authority to inquire into the viability of the consideration for a lease back or contract growing arrangement with the former owner of the agricultural land.

70. The holding of agricultural land should be dependent on whether it can be made productive. Hence the agrarian reform program should immediately cover private idle and abandoned land unless they can be converted to other uses within a limited

span of one year. Irrigated and irrigable private lands should not however be the subject of conversion. Idle agricultural land awarded to a farmer beneficiary will revert back to the state only when it can be shown to the satisfaction of the Special Agrarian Court that significant efforts have already been done to assist the farmer effectively make the land productive.

71. The basis and procedure for conversion of agricultural land to other agricultural uses should be included in the statute to extend agrarian reform. This will ensure that the discretion of administrative agencies be reduced and that the guidelines be fully debated within Congress.

72. The still applicable provisions of the Agricultural Land Reform Code (Rep. Act No. 3844), the relationship of agrarian reform with the Public Land Act (Com. Act No. 141) and the Property Registration Decree (Pres. Dec. 1529) should be included in the statute that will extend the CARP so as to reduce ambiguity in the provisions that apply in the agrarian sector.

73. While exempted from coverage from land transfers, agricultural lands of the public domain persons awarded land by virtue of homestead or free patents should nonetheless be subject to the same benefits as other agrarian reform beneficiaries.

74. The statute should provide for an automatic review every five (5) years.

75. Continued training programs for all adjudicators, arbitrators and agrarian reform lawyers and paralegals should be provided. This training should also include alternative dispute processing methodologies.

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