

# Assessment of the Implications of the CARP Law as A Reform Strategy

RIC TAN LEGADA\*

*This paper argues that the Comprehensive Agrarian Reform Program (CARP) law contains some provisions that are contrary to the letter and spirit of the 1987 Constitution. It has provisions that tend to favor the multinational (or more accurately, transnational) corporations and corporate farms which were not even mentioned in the Constitution as groups to be given preferential attention. On the other hand, there are sectors that are mentioned in the Constitution that were not given preferential attention in the CARP law particularly the cultural communities. The Torrens system which is contrary to the customs and traditions of some of the cultural communities was made to prevail over the rights of the tribal groups to their ancestral lands. Given this situation, there is a need to pass amendatory legislations to remove some of the defects of the 1988 CARP law.*

## Introduction

One of the innovations contained in the 1987 Constitution is the adoption of the Comprehensive Agrarian Reform Program (CARP) which involves the distribution of all agricultural lands. The Constitution provides that "The State shall promote comprehensive rural development and agrarian reform"<sup>1</sup> It also provides that "The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farm-workers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits, as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing."<sup>2</sup>

The framers of the 1987 Constitution consider a comprehensive agrarian reform as one of the reform strategy designed to solve the problems of poverty and insurgency, promote industrializations and strengthen democracy by giving opportunity to the majority of the Filipino people who are poor to actively participate in the political process.

---

\* Researcher, Institute of Judicial Administration, University of the Philippines. This paper was earlier submitted as a report to the Agrarian Reform Institute (ARI) of the University of the Philippines at Los Baños.

Proclamation No. 131 and Executive Order (E.O.) No. 229, dated July 22, 1987 instituted the Comprehensive Agrarian Reform Program and provided the mechanism for its implementation. Congress also approved Republic Act No. (R.A.) 6657 dated June 10, 1988 entitled, "An Act Instituting a Comprehensive Agrarian Reform Program to Promote Social Justice and Industrialization, Providing the Mechanism for its Implementation and for Other Purposes."

The law on CARP and related issuances will be assessed particularly as to its comprehensiveness, effectiveness and soundness as a reform strategy in relation to the constitutional mandate and the intent of the framers of the Constitution.

### **Analysis of the Comprehensiveness of the CARP as A Reform Strategy**

#### *Scope of the CARP*

The 1987 Constitution provides that the State shall promote a comprehensive agrarian reform program and undertake the just distribution of all agricultural lands.<sup>3</sup> Proclamation No. 131 dated July 22, 1987 provides that the CARP shall cover "regardless of tenurial arrangement and commodity produced, all public and private agricultural lands as provided in the Constitution, including whenever applicable in accordance with law, other lands of the public domain suitable to agriculture."<sup>4</sup> Republic Act 6657, dated June 10, 1988 provides that the "CARP Law of 1988 shall cover, regardless of tenurial arrangement and commodity produced, all public and private agricultural lands as provided in Proclamation No. 131 and Executive Order 229 including other lands of the public domain suitable for agriculture."<sup>5</sup> The lands referred to are the following: (1) All alienable and disposable lands of the public domain devoted to or suitable for agriculture; (2) All lands of the public domain in excess of the specific limits as determined by Congress in the preceding paragraph; (3) All other lands owned by the government devoted to or suitable for agriculture; and (4) All private lands devoted to or suitable for agriculture regardless of the agricultural products raised or that can be raised thereon.

#### *Limitations of the CARP*

The Constitution and the implementing legislations adopted a comprehensive agrarian reform program covering all public and private agricultural lands regardless of tenurial arrangement and commodity produced but subject to certain limitations.

The limitations provided in the Constitution are: (1) Priorities prescribed by Congress; (2) Reasonable retention limits prescribed by

Congress; (3) Ecological, developmental or equity consideration; (4) Payment of just compensation; and (5) Ancestral lands.

It should be noted that the word used with respect to priorities, reasonable retention limits and payment of just compensation is "subject" indicating that they are mandatory requirements. Congress may use the above-mentioned factors or criteria in limiting the comprehensiveness of the CARP. On the other hand the word used with respect to ecological, developmental or equity consideration is "taking into account" indicating that it is merely directory and not a mandatory requirement. The ecological, development or equity considerations cannot be used by Congress as basis in limiting the comprehensiveness of the CARP.

The ancestral lands are covered by specific provisions of the Constitution and it should be considered as another limitation on the power of Congress to distribute all agricultural lands.

The limitations contained in the implementing legislations are: (1) Retention limits; (2) Priorities; (3) Production and Income Sharing (in Multinational Corporations and Commercial Farms); (4) Ancestral Lands; (5) Exemptions and Exclusions and; (6) Payment of just compensations.

The implementing legislations broadened and provided more limitations on the CARP than what is provided in the Constitution particularly the provisions on exemptions and exclusions as well as the provisions on production sharing and income sharing.

The Constitution does not provide for exemptions and exclusions but the implementing legislation enumerated several types of lands to be exempted and excluded from the CARP.

The Constitution adopted the principle of land to the tiller with respect to the "farmers" and "regular farmworkers" and "just share of the fruits" with respect to "other farmworkers."

However, R.A. 6657 modified the concept adopted by the framers of the 1987 Constitution. Under R.A. 6657 the principle of "land to the tiller" and the principle of "just share of the fruits" was made an alternative mode of agrarian reform without regard to the types of beneficiaries.

The Constitution used as basis the types of beneficiaries in determining the nature of the benefits to be granted while R.A. 6657 uses the types of crops in determining the rights of the beneficiaries.

R.A. 6657 also added the concept of the "seasonal farmworkers"<sup>6</sup> who are not classified either as "regular farmworkers" nor part of "other farmworkers".

R.A. 6657 defined agrarian reforms as "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 of 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."<sup>7</sup>

*Retention Limit.* The landowner may retain an area not exceeding five (5) hectares. Each child of the landowner is entitled to three (3) hectares provided that he/she is at least fifteen (15) years of age; and is actually tilling the land or directly managing it.

The landowner whose lands have been covered by P.D. 27 is allowed to keep the area originally retained by them thereunder and original homestead grantees or their direct compulsory heirs who still own the original homestead at the time of the approval of R.A. 6657 are also allowed to retain the same areas as long as they continue to cultivate said homestead.<sup>8</sup>

*Priorities.* The acquisition and distribution of all agricultural lands is scheduled to be completed within a period of ten (10) years divided into three (3) phases:

**Phase I** - To be completed within a period of not more than three (3) years: (1) Rice and corn lands under P.D. 27; (2) All idle or abandoned lands; (3) All private lands voluntarily offered by the owners for agrarian reform; (4) All lands foreclosed by government financial institutions; (5) All lands acquired by PCGG; and (6) All other lands owned by the government devoted to or suitable for agriculture.

**Phase II** - To be completed within a period of not more than four (4) years: (1) All alienable and disposable public agricultural lands; (2) All arable public agricultural lands under agro - forest, pasture and agricultural leases already cultivated and planted to crops in accordance with Sec. 6 Art. XIII of the Constitution; (3) All public agricultural lands which are to be opened for development and resettlement; and (4) All private agricultural lands in excess of fifty (50) hectares.

**Phase III** - To be completed within a period of 3-4 years: All other private agricultural lands commencing with large landholdings and proceeding to medium and small landholdings under the following schedules: (a) Landholdings above 24 has. to 50 has. to begin on the 4th year and to be completed within 3 years; and (b) Landholding from retention limit to 24 has., to begin on the 6th year and to be completed within a period of 4 years.<sup>9</sup>

*Production Sharing and Income Sharing.* The CARP Law of 1988 deferred or did not provide for the immediate transfer of lands to the beneficiaries with respect to multinational corporation and commercial farming. Instead, it provided for production sharing and income sharing pending the transfer of the lands to the beneficiaries.<sup>10</sup>

It provided for a longer time frame for the distribution of lands and adopted the approach of "sharing in the fruits" with respect to the immediate benefits to the beneficiaries.

*Schedule of Implementation for Multinational and Government Corporations.* (1) All lands of the public domain held or possessed by multinational corporations, and land owned by government corporations are scheduled to be completed within three (3) years.<sup>11</sup>; (2) Lands leased, held or possessed by multinational corporations, owned by private individuals and private non-governmental corporations is subject to immediate compulsory acquisition and distribution upon the expiration of the lease, management, grower or service contracts or upon its termination, whichever comes sooner but not later than ten (10) years from the effectivity of R.A. 6657.<sup>12</sup>

*Schedule of Implementation for Commercial Farming.* Commercial farming covering private agricultural lands devoted to (1) commercial livestock; (2) poultry and swine raising; (3) aquaculture, including saltbeds, fishponds and prawn ponds; (4) fruit farms; (5) orchard; (6) vegetable and cut-flower farms; (7) cacao plantation; (8) coffee plantation; and (8) rubber plantations is scheduled to be distributed only after ten (10) years.<sup>13</sup>

The multinational corporations and the big landlords have succeeded in postponing the implementation of the CARP for ten (10) years. The above-mentioned lands covers a sizeable portion of agricultural land and it greatly diminished the comprehensiveness and effectiveness of the CARP as a reform strategy.

The ten (10) year period could be justified as setting of priorities mentioned in the Constitution. The question that has to be resolved is whether after or before the lapse of ten (10) years, if Congress could extend the period. It is submitted that Congress cannot do so since it would violate the intent of the CARP as provided in the Constitution. Congress may determine priorities. However, once determined, Congress is bound by it in the sense that it cannot be extended. Otherwise, the CARP can be defeated by simply extending the period everytime it is about to expire.

The danger of the ten (10) year period is that it will give time for the multinational corporations and the big landlords to lobby not only for the

extension of the period but also for the amendment of the Constitution limiting the coverage of the CARP.

If the ten (10) year period can be extended everytime it is about to expire it would be tantamount to an exemption of their lands which is inconsistent with the Constitution.

Furthermore, the beneficiaries has already acquired a right to acquire the lands which will become a vested right after the lapse of ten (10) years. Those vested right to acquire the lands is a form of property right which cannot be taken away by subsequent legislation. The subsequent laws may only improve or increase the vested rights of the beneficiaries but cannot diminish or extinguish the rights without violating their Constitutional rights against deprivation of property without due process of law.

*Benefits Under Production Sharing and Income Sharing.* In lieu of the immediate distribution of lands, multinational corporations and commercial farms are required only to adopt a production sharing and income sharing plan within the period of ten (10) years.<sup>14</sup>

Under the production sharing scheme, the multinational corporations and corporate farmers whose gross income exceed P 5 Million are required to set aside 3% of the gross sales to be distributed to the farmworkers or farmers organizations, if any, within sixty (60) days at the end of the fiscal year. In case the corporation or enterprise realize a profit, an additional 10 % of the net profit after tax is required to be distributed to said regular and other farmworkers within ninety (90) days at the end of the fiscal year.

It also provides that at least 1 % of the gross sales shall be distributed to the managerial, supervisory and technical group during the ten (10) year transition period.

*Corporate Landowners.* Corporate landowners are given two (2) options which must be exercised within two (2) years as alternative to land distribution, namely: Voluntary Land Transfer<sup>15</sup>; and (2) Voluntary Stock Transfer.<sup>16</sup> Voluntary Land Transfer and Voluntary Transfer of the Shares of Stocks of the corporations are considered as alternative ways of compliance to the CARP law.

*Voluntary Land Transfer.* Landowner is given an option to enter into a voluntary arrangement for direct transfer of their lands to qualified beneficiaries. Notice for voluntary land transfer is required to be submitted within the first year of implementation of the CARP. Negotiations that remains unresolved after one (1) year is not recognized and the land involved is subject to compulsory acquisition and distribution.

*Voluntary Transfer of the Shares of Stocks of the Corporations.* Corporate landowners are also given an option to voluntarily transfer the shares of stocks to beneficiaries or the right to purchase such proportion of the capital stock of the corporation that the land, actually devoted to agricultural activities, bears in relation to the company's total assets.

The beneficiaries is assured of at least one (1) representative in the Board of Directors, or in management or executive committee, if one exist, of the corporation or the association.

Sec. 31 of the CARP law in effect adopted the "stock ownership" in lieu of the land distribution approach which is contrary to the Constitution.

The main objective of agrarian reform is to transfer not only the ownership but also the control over the means of production which in this case control over the use of the land. It contemplates a transfer of the control over the means of production from the land owner to the beneficiaries.

Voluntary stock transfer provides for the transfer of ownership of certain number of shares but does not ensure or guarantee effective control of the corporation or enterprise by the beneficiaries. In order to make the control by the beneficiaries effective, at least 2/3 of the stocks must be transferred or controlled by the beneficiaries.

Under the implementing legislation the beneficiaries is only allowed to own the stock in proportion to the land actually devoted to agricultural activities. The other assets of the corporation could be given a higher valuation to maintain the control of the corporation by the landowners.

*Ancestral Lands.* The ancestral lands of each indigenous cultural community include, but not to be limited to, lands in the actual, continuous and open possession and occupation of the community and its members. There is a proviso, however, that the Torrens system shall be respected.

The Presidential Agrarian Reform Council may suspend the implementation of the CARP with respect to ancestral lands for the purpose of identifying and delineating such lands.

The general rule adopted in the CARP Law is that in case of conflict between the claim of the cultural communities and the private person or entity holding a torrens system over the ancestral lands, the latter shall prevail. This is in conflict with the intent of the Constitution that the right of the cultural communities over the ancestral lands shall prevail over the rights granted by existing laws to private persons or entities holding torrens title covering the ancestral lands.

The Senate version of the CARP Law is more in line with the provisions of the Constitution. The Senate version provides that the DAR shall expropriate and convey to the cultural communities ancestral lands that have been titled.

*Exemptions and Exclusions.* R.A. 6657 exempted and excluded around fifteen (15) types of lands from the coverage of the CARP. These are: (a) Parks; (b) Wildlife; (c) Forest Reserves; (d) Reforestation; (e) Fish Sanctuaries and Breeding Grounds; (f) Watersheds and Mangroves; (g) National Defense; (h) School sites and campuses including experimental farm stations operated by public or private schools for educational purposes; (i) Seeds and seedling research and pilot production centers; (j) Church sites and convents appurtenant thereat; (k) Mosque sites and Islamic centers appurtenant thereat; (l) Communal burial grounds and cemeteries; (m) Penal colonies and penal farms actually tilled by the inmates; (n) Government and private research and quarantine centers; and (o) All lands with 18% slope and over except those already developed.

**Table 1: Land/Areas Exempted From CARP**

<i>Residence/ Commercial Areas</i>	<i>Forest Lands</i>	<i>Water Areas</i>	<i>Ancestral Lands</i>	<i>Recreational Areas</i>
1. National Defense	1. Forest reserves	1. Fish sanctuaries and Breeding Grounds	1. Communal Burial Grounds	1. Parks
2. School sites/ campuses	2. Reforestation			2. Wildlife
3. Church sites/ convents	3. Watersheds and mangroves			
4. Mosque sites and Islamic Centers	4. Lands with 18% slopes			
5. Penal colonies and penal farms	5. Wildlife			
6. Cemeteries				



The inclusion of provisions enumerating the areas exempted from the CARP is contrary to the Constitution. The exemptions tends to dilute or modify the intent of the framers of the Constitution. The Constitution does not provide for exemptions. The word "exemptions" was proposed as an amendment during the 1986 Constitutional Commission but it was rejected by the framers of the Constitution indicating the Constitutional intent to make it truly a comprehensive agrarian reform.

Once exemption is accepted, the list of exempted areas tend to increase. If we adopt the principle that the legislature can provide exemptions from CARP, what will prevent Congress from enlarging or increasing the list of areas exempted from CARP?

A closer look on the list of the areas exempted and excluded from the coverage of the CARP shows that most of them are not really exemptions but belong to other categories of land. There is no need to exempt these areas because they are not part of agricultural land. Only agricultural land are covered by the CARP.

Out of the fifteen (15) areas exempted and excluded, thirteen (13) of these areas are not agricultural lands as defined in previous agrarian laws and as used in the Constitution. These areas could be classified either as residential areas, forest lands, water areas/resources, ancestral lands and recreational areas.

The areas as indicated in Table 1 are clearly not agricultural lands as it is defined/used in earlier agrarian laws and in the Constitution and therefore there is no need for an exemption.

Agricultural lands has been defined as "land devoted to any growth, including but not limited to crop lands, salt beds, fishponds, idle lands and abandoned lands."<sup>17</sup> Land intended for residential lands does not come within the definition of agricultural land.

The use of the word "exclusion" would have been more proper since it implies that the areas excluded are not part of agricultural land while the word "exemption" implies that the areas are by nature part agricultural but are exempted by law.

The heading of Section 10 reads "Exemptions and Exclusions" but the body of the section only used the word exemption.

In the enumeration of exempted areas, only two (2) are really part of agricultural land and therefore should not have been exempted nor excluded. These are: (1) seeds and seedling research and pilot production areas and (2) government research and quarantine centers.

Both areas are essentially research areas. However, research can be undertaken even if the person or entity conducting the research is not the owner of the land or the research area. The land can be leased from the farmer beneficiaries. There is no good reason why research areas should be exempted from the CARP.

It should be pointed out that while the lands used for national defense, school sites, church sites and penal colonies are not part of agricultural lands, especially the lands where the buildings are constructed, there are areas in these residential/commercial lands that could be considered as agricultural lands and therefore should be covered by the CARP.

Military camps, school sites, church sites and penal colonies have vast tracts of lands that are devoted to agriculture and are planted to crops. These areas should be covered by CARP. This is the reason why Sec. 10 of R.A. 6657 used the phrase "lands actually, directly and exclusively used and found necessary for parks..... shall be exempt from the coverage of this Act." It means that the agricultural lands of the military camps, school sites, church sites and penal colonies are covered by the CARP. The provision should have been worded in that way rather than exempt lands which are really residential/commercial lands.

*Improvement of Tenurial and Labor Relations.* There are two measures adopted under CARP Law of 1988 designed to improve the tenurial and labor relations: Determination of Lease Rentals and Production Sharing.

*Determination of Lease Rentals.* The DAR is mandated to determine and fix the lease rentals in accordance with Section 34 of R.A. 3844 and to 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 farmers, tenants or lessee.<sup>18</sup>

*Production Sharing Plan.* Multinational corporations and those engaged in commercial farming and any enterprise adopting the production sharing scheme is required to execute within ninety (90) days a production sharing plan.<sup>19</sup>

### **Analysis of the Effectiveness of the CARP as A Reform Strategy**

The effectiveness of the CARP as a Reform Strategy will be assessed by analyzing the organizational structure, the procedure for the acquisition and distribution of lands and the administrative and judicial adjudication machinery.

*Organizational Structure and Management of the CARP*

The organizational structure for the planning and implementation of the CARP consists of the following: (1) Presidential Agrarian Reform Council (PARC); (2) Executive Committee of PARC; (3) Secretariat of PARC; (4) Provisional Agrarian Reform Coordinating Committee (PARCOM); (5) Barangay Agrarian Reform Committee (BARC).

*Presidential Agrarian Reform Council (PARC).* The PARC is mandated by E.O. 229 to "formulate and/or implement the policies, rules and regulations necessary to implement each component of the CARP."<sup>20</sup>

The PARC is composed of twenty one (21) members consisting of the President of the Philippines, as chairman; ten (10) department secretaries, [i.e., Department of Agrarian Reforms (DAR), Department of Agriculture (DA), Department of Environment and Natural Resources (DENR), Department of Budget and Management (DBM), Department of Local Governments (DLG), Department of Public Works and Highways (DPWH), Department of Trade and Industries (DTI), Department of Finance (DOF), Department of Labor and Employment (DOLE), National Economic and Development Authority (NEDA), two other government agencies, Land Bank (LB) and National Irrigation Administration (NIA), three representatives of landowners from Luzon, Visayas and Mindanao, and six representatives of the beneficiaries from Luzon, Visayas and Mindanao and one of them from the cultural communities.

The composition of the PARC under E.O. 229 was modified by R.A. 6657, since three (3) department secretaries were deleted. These are the Executive Secretary, the secretaries of the Justice and Transportation. The Presidential Commission on Good Government (PCGG) was also deleted as member.

*Executive Committee.* Under E.O. 229 the Executive Committee is composed of seven (7) members, i.e., DAR, the Executive Secretary, DA, DENR, DOF, DPWH, LBP.<sup>21</sup> This was amended by R.A. 6657 which provides that "The Executive Committee of PARC shall be composed of the Secretary of DAR, as Chairman, and such other member as the President may designate....." The Executive Committee is authorized to "wait and decide on any and all matters in between meetings of the PARC; provided, however, that its decisions must be reported to the PARC immediately and not later than the next meeting."<sup>22</sup>

*Secretariat of PARC.* The Secretariat of PARC is headed by the Secretary of Agrarian Reform assisted by an Undersecretary and supported by the staff. It is mandated "to provide general support and coordinated services, such as, inter-agency linkages; program and project appraisal and evaluation and general operations monitoring for the PARC."<sup>23</sup>

*Provisional Agrarian Reform Coordinating Committee (PARCOM).* The PARCOM is composed of 13-14 members headed by a chairman, appointed by the President upon the recommendation of the Executive Committee. It is composed of the following members: (a) Chairman; (b) Provincial Agrarian Reform Officer; (c) Representative of DA; (d) Representative of the DENR; (e) Representative of LB; (f) Representative of existing farmers organization; (g) Representative of non-governmental organizations (NGOs); (h) Two representatives of the landowners; (i) Two representatives of farmers and farmworker beneficiaries; and (j) Representative of cultural communities.

The PARCOM is mandated to coordinate and monitor the implementation of the CARP in the province, provide information on the provision of the CARP and guidelines issued by the PARC and on the progress of the CARP in the province.<sup>24</sup>

*Barangay Agrarian Reform Committee (BARC).* The BARC is composed of eleven (11) members: (a) Representative (s) of farmer and farmworker beneficiaries; (b) Representative (s) of farmer, farmworker, non beneficiaries; (c) Representative (s) of agricultural cooperatives; (d) Representative (s) of other farmers organizations; (e) Representative (s) of barangay council; (f) Representative (s) of NGOs; (g) Representative (s) of landowners; (h) DA official assigned to the barangay; (i) DENR official assigned to the area; (j) DAR agrarian reform technologist assigned to the area who shall act as the secretary; and (k) Land Bank of the Philippines representative.<sup>25</sup>

The BARC performs the following functions: (a) Mediate and conciliate between parties involved in an agrarian dispute including matters related to tenurial and financial arrangement; (b) Assist in the identification of qualified beneficiaries and landowners within the barangay; (c) Attest to the accuracy of the initial parcellary mapping of the beneficiaries tillage; (d) Assist qualified beneficiaries in obtaining credit from lending institutions; (e) Assist in the initial determination of the value of the land; (f) Assist the DAR representatives in the preparation of periodic reports in the CARP implementation for submission to the DAR; (g) Coordinate the delivery of support services to beneficiaries; and (h) Perform such other function as may be assigned to him by the DAR.

The BARC is required to mediate, conciliate and settle agrarian disputes lodged before it within thirty (30) days and if it is unable to settle the disputes, it shall issue a certification of its proceedings within seven (7) days after the expiration of the thirty (30) day period.<sup>26</sup>

*Analysis of the Organizational Structure and Management of CARP*

Among the weaknesses of the organizational structure and management of the CARP are: (a) The composition of the PARC consisting of 21 members is quite big and it might become unwieldy; (b) The PARC perform both the planning and implementing functions. Its implementing functions might overlap or duplicate that of its member agencies. The PARC should have been confined to policy making and rule making; (c) The powers of the Executive Committee to "decide on any and all matters in between meetings of the PARC" is very broad. This is aggravated by the fact that its members can be changed anytime by the President. The decision of the Executive Committee is not subject to review nor confirmation by the Board. The only requirement is for the decision to be reported to the PARC; (d) The composition of the PARCOM consisting of 13-14 members and the BARC consisting of 11 members are big and might become unwieldy; (e) Most of the decision making in the field are performed by the regional directors of the line agencies and the representatives of DA, DENR and LB in the province might not be in a position to commit its agency or would require the approval of higher officials; (f) The power of the PARCOM is confined to coordination and monitoring which might render it more of a debating body. It does not have authority over the field officers of the line agencies; (g) The BARC has so many substantive functions without corresponding resources; (h) The BARC has so many members that it might be difficult to convene it; and (i) The DA, DENR, DAR and LBP may not have a personnel in every barangay to attend to the BARC.

*Acquisition of Private Lands*

*Procedure.* The DAR notify the landowners to acquire the land containing the offer to pay. If the offer is accepted, the Land Bank of the Philippines (LBP) will pay the landowner within thirty (30) days after he executes and delivers a deed of transfer in favor of the government.

In case of rejection or failure to reply, the DAR conducts summary administrative proceedings to determine the compensation for the land.

Upon receipt of payment or deposit with an accessible bank, the DAR take immediate possession and request the proper Register of Deeds to issue a TCT in favor of the government, and the DAR will distribute the land to qualified beneficiaries. Any party may appeal to the Special Agrarian Court for final determination of just compensation.<sup>27</sup>

*Compensation.* Among the factors to be considered in the determination of the just compensation are: (1) cost of acquisition of the land; (2) current value of like properties; (3) nature, actual use and income; (4) sworn valuation of the owner; (5) tax declaration; (6) assessment made by government assessors; (7) social and economic benefits; and (8) non-payment of taxes or loan

secured from any government financing institution.<sup>28</sup>

The landowner may choose from any of the following four (4) modes of compensation:

(a) Cash Payment- (1) above 50 hectares - 25% cash; (2) above 50 hectares to 50 hectares - 30% cash; (3) 24 hectares and less - 35 % cash.

The balance shall be payable in government financial instruments negotiable at any time.<sup>29</sup>

Landowners who voluntarily offer their lands for sale is entitled to an additional 5% cash payment.

(b) 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.

(c) Tax credit which can be used against any tax liability.

(d) LBP bonds with the following features:

(1) Market interest rates aligned with 91-day treasury bill rates, 10% maturity every year until the 10th year.

(2) Transferable and negotiable for any of the following: (a) Acquisition of land or other real properties of the government; (b) Acquisition of shares of stock of government corporations or stocks owned by government in private corporations; (c) Substitution for surety or bail bonds or performance bonds; (d) Security for loans; (e) Payment for taxes and fees to government; (f) Payment for tuition fees of the immediate family of the original bond holders in government schools; (g) Payment for fees of the immediate family of original bond holder in government hospitals; and (h) Other uses allowed by PARC.

*Financing.* Executive Order 229 provided for an initial Agrarian Reform Fund of P 50 Billion.<sup>30</sup> The sources of funds under R.A. 6657 include the following: (a) Proceeds of sales of the Assets Privatization Trust (APT); (b) Assets recovered and from sales of ill- gotten wealth recovered by PCGG; (c) Proceeds of the disposition of the properties of the government in foreign countries; (d) Portions of amounts accruing to the Philippines from all sources of official foreign aid grants and concessional financing from all countries, to be used for the specific purposes of financing production credits, infrastructures, and other supports services.

Funds appropriated for CARP is considered a continuing appropriation during the period of its implementation. The LBP serves as the financial intermediary for the CARP.

#### *Analysis of the Acquisition Process, Compensation and Funding*

The CARP law provides too many factors to be considered in determining the compensation for the land. The eight (8) factors to be considered could delay the determination of compensation and it only provide parties grounds to prolong the administrative and judicial adjudication of the compensation of the land.

The CARP law has provided many sources of funds and attractive compensation schemes.

What is not certain is whether the funds actually generated from the various sources would be enough to support the CARP.

#### *Conversion, Lease, Management, Grower or Service Contracts and Mortgages*

R.A. 6657 provides that the lease, management, grower or service contracts covering private lands may continue under their original terms and conditions until its expiration even if it has been transferred to qualified beneficiaries.<sup>31</sup>

This provision dilute or diminish the effectiveness of the CARP. Most lease or management agreement are covered by long term agreement ranging from 25 to 50 years. The beneficiaries would be deprived of the right to decide on what to do with the land if the lease agreement will be allowed to continue until it expired. The beneficiaries have been waiting for too long to acquire the land that it would be unfair to ask them to wait for another 20 or 30 years.

The provision in effect favored the "absentee" landowners who instead of directly cultivating the land, entered into a lease agreement. It would also favor multinational corporations who have lease and management agreement with landowners.

There is a need to undertake a survey as to the extent of lands covered and the number of beneficiaries affected by this provision.

#### *Distribution of Land*

*Types of Beneficiaries.* Beneficiaries are entitled to three (3) hectares to be distributed to the landless residents of the same barangay or municipality in the following order of priority: (1) Agricultural lessees and share tenants; (2) Regular farmworkers; (3) Seasonal farmworkers; (4) Other farmworkers;

(5) Actual tillers or occupants of public lands; (6) Collectives or cooperatives of the above beneficiaries; (7) Others directly working on the land.

The DAR is required to give to the beneficiaries a Certificate of Land Ownership within 180 days from the time the DAR takes actual possession of the land.

The beneficiaries may opt for collective ownership, such as co-ownership or farmers cooperatives or some other form of collective organization.<sup>32</sup>

Beneficiaries are required to pay the land to the LBP in 30 annual amortization at 6% interest per annum. The payment for the first 3 years may be reduced by PARC but in no case shall the first 5 annual payment exceed 5% of the value of the annual gross production as established by DAR.<sup>33</sup>

The LBP may reduced the interest rate or the principal obligation to make the repayment affordable in case the schedule annual payments after the 5th year exceed 10% of the annual gross production and the failure to produce is not the fault of the beneficiary.

The LBP has a lien by way of mortgage and it may foreclose the land for non payment of an aggregate of the three (3) annual amortizations.<sup>34</sup>

Lands acquired under CARP cannot be sold, transfered or conveyed except through hereditary succession or to the government or to the LBP, or to other qualified beneficiaries for a period of 10 years. The children or the spouse has the right to repurchase from the government or the LBP within a period of 2 years.<sup>35</sup>

The landowner has the right to retain his share of any standing crops unharvested and has the right to harvest the crops within a reasonable time.<sup>36</sup>

*Corporate Farms.* The general rule on corporate farms is that it shall be distributed directly to individual worker beneficiaries. In case it is not economically feasible to divide the land, then it shall be owned collectively by the workers beneficiaries who shall form workers cooperatives or associations which will deal with the corporation.

Agreement existing at the time of the approval of the CARP are allowed to continue until a new agreement is entered between the corporate farm and workers association.<sup>37</sup>

The beneficiaries in the corporate farms are entitled to homelots and small farmlots for their family use.<sup>38</sup>



*Analysis of the Benefits Granted to the Beneficiaries*

The beneficiaries should be subsidized rather than require them to pay the cost of the land. They should be required to pay only a certain portion of the acquisition cost, say 50-75% of the cost. Since the just compensation is appealable to the court and there are 8 factors to be considered in determining the cost of the land, it is possible that the cost would be very high for the beneficiaries to amortize. The interest should be waived and it should form part of the government subsidy to reduce the annual amortization.

The provision on corporate farms and the corporate landowners giving them option to comply through voluntary stock transfer<sup>39</sup> is contrary to the letter and spirit of their CARP. The CARP law classified the beneficiaries based on the structure of ownership of the land, whether it is owned by individuals or by corporations. The Constitution did not adopt such classification. The benefits are given based on the types of beneficiaries (farmer, regular farmworker and other farmworkers) and not based on the structure of ownership (individual or corporation) of the land.

There is a need to get empirical data on the extent of lands owned by corporations and the number of beneficiaries that will be affected.

The provision on corporate farms tends to discriminate against the individual landowners since the corporate landowners are given options that are not available to individual landowners. This is contrary to the social justice objective of equitable distribution of wealth. Corporate landowners are given the chance to continue their control over their corporate farms through voluntary stock transfer thereby defeating the CARP objective of wealth dispersal.

*Administrative Adjudication*

The DAR has quasi-judicial power. It has the primary jurisdiction to determine and adjudicate agrarian reform matters and has exclusive original jurisdiction over all matters involving the implementation of agrarian reform except those falling under the exclusive jurisdiction of the DA and the DENR.<sup>40</sup>

The DAR is required to decide within 30 days after it is submitted for resolution. Only one (1) motion for reconsideration is allowed. Its order becomes final after the lapse of 15 days from receipt of copy thereof.<sup>41</sup>

It may impose reasonable penalties including fines or censures.<sup>42</sup>

A certification of the BARC that the dispute cannot be settled is required before the DAR can take cognizance of any agrarian dispute. The party may

A certification of the BARC that the dispute cannot be settled is required before the DAR can take cognizance of any agrarian dispute. The party may bring the case to PARC in case the BARC failed to issue the certification within 30 days from submission.<sup>43</sup>

### *Judicial Adjudication*

The decision of DAR maybe brought to the Court of Appeals by certiorari. In appeal by certiorari, the Court of Appeals has discretion whether or not to entertain the case. The findings of fact of the DAR is final and conclusive if based on substantial evidence.<sup>44</sup>

Court has no authority to issue restraining order or writ of preliminary injunction against the PARC or its authorized or designated agencies in any dispute involving the application, implementation, enforcement, or interpretation of CARP law.<sup>45</sup>

The Supreme Court is mandated to designate at least one (1) branch of the Regional Trial Court (RTC) within each province to act as a Special Agrarian Court. It may designate additional branches when necessary.<sup>46</sup>

The Special Agrarian Courts have original exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses. It is required to decide the case within thirty (30) days from submission.<sup>47</sup> It may appoint Commissioners to ascertain facts relevant to the issue including valuation of properties.<sup>48</sup>

The order of the Special Agrarian Courts (SAC) cannot be elevated to appellate courts until the hearing have been terminated and the case decided on the merits.<sup>49</sup> The decision of SAC is appealable to the Court of Appeal (CA) by filing a petition for review within fifteen (15) days from receipt of notice of the decision. The decision of the CA and DAR may be appealed to the Supreme Court by a petition for review within a non-extendable period of fifteen (15) days.<sup>50</sup>

### *Analysis of the Administrative and Judicial Adjudication*

The appeal from BARC to DAR and to PARC in case of failure to issue the certification is highly centralized. It will unduly delay the disposition of cases and it will make it more expensive. The appeal from BARC should be decentralized to lower levels to promote speedy disposition of cases. The appeal should all be directed to DAR or its field office and not to the PARC.

The Supreme Court was directed to establish Special Agrarian Courts but no corresponding resources were given to it. The Agrarian Reform Fund should shoulder the cost of the SAC since the judiciary does not have the necessary resources. If the original proposal to establish special courts were approved, the cost would have been charged to the agrarian reform funds. It is only proper that funds be allocated to the judiciary for the SAC.

### **Analysis of the Soundness of the CARP as A Reform Strategy**

#### *Political Soundness*

The CARP is politically sound as a reform strategy. It is in response to the centuries old problems of inequitable ownership of land in the Philippines. It is consistent with the principle of social justice contained in the 1987 Constitution. It is also a strategy to democratize wealth in the country.

However, the implementing legislations of the CARP contains provisions that tend to diminish the political soundness of the program particularly the following: (1) Exemption and exclusion of certain agricultural lands<sup>51</sup>; (2) Priorities providing for a 10 year period for the completion of the CARP<sup>52</sup>; (3) Alternative modes of agrarian reform in the form of production sharing and income sharing<sup>53</sup>; voluntary transfer of stocks<sup>54</sup> for multinational corporation, corporate farming and corporate landowners; and (4) Failure to recognize the ownership and rights of the cultural communities over their ancestral lands and ancestral domain.<sup>55</sup>

#### *Economic Soundness*

The CARP law failed to provide substantial subsidy to the beneficiaries with respect to the cost of the land to be amortized. The beneficiaries is not only required to amortize the acquisition cost but also to pay a 6% interest. Considering that the cost of the land will be determined by the courts, it is possible that the beneficiaries will be amortizing the market rates of the lands. High cost of land might result to massive default on the amortization.

The implementing legislation also failed to provide attractive incentives for the investment of the proceeds of the land by the landowners to promote rural industrialization and rural development. The government must formulate a viable rural industrialization program where the landowners can invest the proceeds of their lands.

#### *Social Soundness*

The adoption of the 10 year period for the complete coverage of the substantial land areas may lead to social unrest in the countryside. It might also provide the insurgents reason to agitate the people for a more radical form of land reform.

The landlord class seemed to have succeeded in deferring the effects of the CARP on corporate farms and multinational corporation, which is not conducive in promoting social harmony in the rural areas.

### Conclusion

The approach adopted in the Constitution with respect to the distribution of lands was not followed in the implementing legislation.

Under the Constitution, the distribution of lands and "just share in the fruits" or sharing in the benefits/profits was viewed from the point of view of the beneficiaries while the implementing legislations viewed it from the perspective of the landowners.

The Constitution adopted the approach of "land to the tillers" or "ownership of land approach" with respect to farmers and regular farmworkers and the approach of "just share in the fruits" or "profit sharing approach" with respect to other farmworkers. The two (2) approaches were adopted without regard to the structure of ownership or as to the types of crops.

The implementing legislation on the other hand, particularly the CARP law of 1988 (R.A. 6657), used as the main criteria the structure of ownership, that is, individual ownership and corporate ownership (multinational corporation, corporate farming and corporate landowners) as well as the types of crops in determining the benefits to be given to the beneficiaries.

The general rule or the main approach as adopted by the framers of the Constitution is "land to the tillers" or land distribution approach. The "profit sharing approach" was only adopted by way of an exception to the general rule of "land distribution approach."

Under the Constitution, the profit sharing approach is only allowed in case of "other farm workers" but not in case of farmers and regular farmworkers. The criteria used in determining the benefits or the rights and obligations of the parties is based on the classification of beneficiaries and not based on the structure of ownership of land nor based on the crops.

The adoption of voluntary transfer of stocks as an alternative mode or way of compliance with the CARP law with respect to corporate landowners may result in a situation where the farmers and regular farmworkers who are granted the right to own the land under the Constitution are only granted a share of stocks or share in the profits which is contrary to the intent and spirit of the Constitution.

It should be pointed out that at the time of the drafting of the Constitution, rice and corn lands were already covered by P.D. 27 which adopted the approach of land to the tiller. Thus, when the framers of the Constitution decided to adopt a comprehensive agrarian reform, they have in mind big landed estates to be covered, such as lands planted to sugar, coconut, rubber, coffee and fruit farms using the land to the tiller approach.

The CARP law contain some provisions that are contrary to the letter and spirit of the 1987 Constitution. It has provisions that tends to favor the multinational corporations and corporate farms which were not even mentioned in the Constitution as groups to be given preferential attention.

On the other hand, there are sectors that are mentioned in the Constitution that were not given preferential attention in the CARP law particularly the cultural communities. The torrens system which is contrary to the customs and traditions of some of the cultural communities was made to prevail over the rights of the tribal groups to their ancestral lands.

In these light, there is therefore a need to pass amendatory legislations to remove some of the defects of the 1988 CARP law.

**Table 2: Comparison of the Rights of the Beneficiaries  
Under the Constitution and R.A. 6657**

	<i>Farmers</i>	<i>Regular Farmworkers</i>	<i>Seasonal Farmworkers</i>	<i>Other Farmworkers</i>	<i>Benefits</i>
Constitution	Land Distribution  Land to the Tiller	same	no distinction	Just share of the fruits	Classification of benefits is based on the types of beneficiaries
R.A. 6657	Land distribution or other arrangements alternative to physi- cal distribution such as production or pro- fit sharing, labor ad- ministration and dis- tribution of shares of stocks.	same	Distinction made  Neither classified as regular farm - workers nor other farmworkers	Land distribution or other arrangements alternative to physi- cal distribution	Classification of benefits is based on the Structure of Ownership of Land (In dividual and Corporate ownership) such as Mul- tinationaI Corporation, Corporate Farming and Corporate Landowners, as well as types of crops

## Endnotes

<sup>1</sup>Constitution of the Republic of the Philippines, 1987, Article II, section 21.

<sup>2</sup>*Ibid.*, Article XIII, section 4.

<sup>3</sup>*Ibid.*

<sup>4</sup>Proclamation No. 131, section 1.

<sup>5</sup>Republic Act No. 6657, section 4.

<sup>6</sup>*Ibid.*, section 3, paragraph i.

<sup>7</sup>*Ibid.*, section 3, paragraph a.

<sup>8</sup>*Ibid.*, section 6.

<sup>9</sup>*Ibid.*, section 7.

<sup>10</sup>Constitution of the Republic of the Philippines, 1987, section 8 and 11.

<sup>11</sup>Republic Act No. 6657, section 8.

<sup>12</sup>*Ibid.*

<sup>13</sup>*Ibid.*, section 11.

<sup>14</sup>*Ibid.*, section 32.

<sup>15</sup>*Ibid.*, section 20.

<sup>16</sup>*Ibid.*, section 31.

<sup>17</sup>Code of Agrarian Reform, section 166.

<sup>18</sup>Republic Act No. 6657, section 12.

<sup>19</sup>*Ibid.*, section 13.

<sup>20</sup>*Ibid.*, section 18, paragraph 4.

<sup>21</sup>*Ibid.*

<sup>22</sup>*Ibid.*, section 42.

<sup>23</sup>*Ibid.*, section 43.

<sup>24</sup>*Ibid.*, section 44.

<sup>25</sup>Executive Order No. 229, section 19.

<sup>26</sup>Republic Act No. 6657, section 47.

<sup>27</sup>*Ibid.*, section 16.

<sup>28</sup>*Ibid.*, section 17.

<sup>29</sup>*Ibid.*, section 18.

<sup>30</sup>Executive Order No. 229, section 20.

<sup>31</sup>Republic Act No. 6657, section 72.

<sup>32</sup>*Ibid.*, section 25.

<sup>33</sup>*Ibid.*, section 26.

<sup>34</sup>*Ibid.*

<sup>35</sup>*Ibid.*, section 27.

<sup>36</sup>*Ibid.*, section 28.

<sup>37</sup>*Ibid.*, section 29.

<sup>38</sup>*Ibid.*, section 30.

<sup>39</sup>*Ibid.*, section 31.

<sup>40</sup>*Ibid.*, section 50.

<sup>41</sup>*Ibid.*, section 51.

<sup>42</sup>*Ibid.*, section 53.

<sup>43</sup>*Ibid.*

<sup>44</sup>*Ibid.*, section 54.

<sup>45</sup>*Ibid.*, section 55.

<sup>46</sup>*Ibid.*, section 56.

<sup>47</sup>*Ibid.*, section 57.

<sup>48</sup>*Ibid.*, section 58.

<sup>49</sup>*Ibid.*, section 59.

<sup>50</sup>*Ibid.*, section 60.

<sup>51</sup>*Ibid.*, section 10.

<sup>52</sup>*Ibid.*, section 7.

<sup>53</sup>*Ibid.*, section 32.

<sup>54</sup>*Ibid.*, section 31.

<sup>55</sup>*Ibid.*, section 9.