G.R. No. 171101 – ***Hacienda Luisita, Incorporated (petitioner); Luisita Industrial Park Corporation and Rizal Commercial Banking Corporation (petitioners-in-intervention) versus Presidential Agrarian Reform Council; Secretary Nasser Pangandaman of the Department of Agrarian Reform; Alyansa ng mga Manggagawang Bukid ng Hacienda Luisita, Rene Galang, Noel Mallari and Julio Suniga and his Supervisory Group of the Hacienda Luisita, Inc. and Windsor Andaya.***

Promulgated: July 5, 2011

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D I S S E N T I N G   O P I N I O N

CORONA, ***C.J.*****:**

MR. OPLE. xxxx **But when the Constitution directs Congress to the effect that the State shall encourage and undertake distribution of all agricultural lands**, subject to limitations put by law especially on retention limits, **does this contemplate** — this question I address to the Committee and particularly to Commissioner Tadeo — **a blanket approach to all agricultural lands so that we do not distinguish between, let us say, the owners of Hacienda Luisita, the biggest plantation in Luzon with 6,000 hectares**[,] and this chap in Laguna or Quezon who has only 10 hectares of coconut plantation? **Sa inyo bang masid at wari ay masasagasaan ng land distribution ang dalawang ito**: ang may-ari ng pinakamalaking hasyenda dito sa Luzon at isang hindi naman mayaman, ni hindi mariwasa, pangkaraniwang tao lamang na nagmamay-ari ng isang sukat ng lupang tinatamnan ng niyog na hindi hihigit sa sampung ektarya?

MR. TADEO. **Pareho**.

x x x   x x x   x x x

MR. OPLE. xxxx With respect to just a few enormous landed estates, I have already given examples: **Hacienda Luisita, the biggest in Luzon, with 6,000 hectares of rice and corn land and sugar land and with 6,000 tenants and workers**; the Canlubang Sugar Estate, just across the city in Laguna; and in the West Visayas alone with about 30,000 sugar planters or hacenderos — the aggregate for the nation escapes me for the moment. **In the ultimate stage of the land reform program as now envisioned, will all of these estates be redistributed to their tenants**, and if they have no tenants to whom will they be redistributed?

MR. TADEO. **The principle is agrarian land for the tillers and land for the landless**. x x x[1]

Agrarian reform is an essential element of social justice under the 1987 Constitution. It "mandates that farmers and farmworkers have the right to own the lands they till, individually or collectively, through cooperatives or similar organizations."[2] It aims to liberate farmers and farmworkers from bondage to the soil, to ensure that they do not remain slaves of the land but stewards thereof.

The decision of the Court in this case today should promote the constitutional intent of social justice through genuine and meaningful agrarian reform. This is imperative because the framers of the 1987 Constitution themselves recognized the importance of Hacienda Luisita in the implementation of agrarian reform in the Philippines. Thus, this case is of transcendental importance as it is a test of the Court's fidelity to agrarian reform, social justice and the Constitution.

HISTORY OF AGRARIAN REFORM

IN THE PHILIPPINES

Agrarian reform has been envisioned to be liberating for a major but marginalized sector of Philippine society, the landless farmers and farmworkers. History, too, has been said to be liberating. A quick review of the long and tortuous story "of the toiling masses to till the land as freemen and not as slaves chained in bondage to a feudalistic system of land ownership"[3] should enlighten us better on the significance of the Court's decision in this case.

By Royal Decree of November 7, 1751 the King of Spain acknowledged that the revolts which broke out among peasants in the provinces of Cavite, Bulacan, Laguna and Morong (now, Rizal) stemmed from "injuries which the [Filipinos] received from the managers of the estates which are owned by the religious of St. Dominic and those of St. Augustine – usurping the lands of the [Filipinos], without leaving them the freedom of the rivers for their fishing, or allowing them to cut woods for their necessary use, or even collect the wild fruits xxx."[4] The King approved the pacification measures adopted by Don Pedro Calderon Enriquez of the Royal *Audiencia* who "demanded from the aforesaid religious the titles of ownership of the lands which they possessed; and notwithstanding the resistance that they made to him xxx distributed to the villages the lands which the [religious] orders had usurped, and all which they held without legitimate cause [he] declared to be crown lands."[5]

It has been two centuries and three scores since the first recorded attempt at compulsory land redistribution in the Philippines.

It proved to be ineffectual though for by the end of the Spanish period and the beginning of the American era the same religious orders still controlled vast tracts of land commonly known as "friar lands."[6] In his Special Reports to the U.S. President in 1908, Governor General William Howard Taft placed friar landholdings at 171,991 hectares tilled by about 70,000 landless tenants.[7]Noting that such situation was "[a] most potential source of disorder in the islands," Taft negotiated with Rome for the purchase of the friar lands for $7 Million with sinking funds.[8] The "lands were to be disposed of to the tenants as rapidly as the public interest will permit"[9] even at a net pecuniary loss to the colonial government.[10]

However, in a sudden shift of policy, the U.S. sold friar lands on terms most advantageous to it[11] – large tracts[12] were sold for close to $7 Million to corporate and individual investors.[13] Most tenants

in possession were said to have been disinterested to purchase the lands.[14] They were extended assistance though in the form of better sharing and credit arrangements to ameliorate agrarian relations.[15]

Soon after the Philippines was plunged into a series of peasant uprisings led by the *Sakdalista* in the 1930's and the*Hukbalahap* in the 1950's. Appeasement came in the form of RA 1199 (Agricultural Tenancy Act of 1954) and RA 1400 (Land Reform Act of 1955). RA 1199 allowed tenants to become leaseholders while RA 1400 mandated compulsory land redistribution. However, RA 1400 set unreasonable retention limits at 300 hectares for private rice lands and 600 hectares for corporate lands.[16]

As peasant unrest continued to fester, RA 3844 (Land Reform Code of 1963) was enacted instituting the "operation land transfer" program but allowing a maximum retention area of 75 hectares.[17] This was followed in 1971 by RAs 6389 and 6390 (Code of Agrarian Reforms) which created the Department of Agrarian Reform, reinforced the position of farmers[18] and expanded the scope of agrarian reform by reducing the retention limit to 24 hectares.[19] In 1972, President Ferdinand E. Marcos issued PD 2 proclaiming the entire Philippines as a land reform area. However, PD 27 subsequently restricted the scope of land reform to thecompulsory redistribution of tenanted rice and corn lands exceeding seven hectares.

Thus, more than two and a half centuries after compulsory land redistribution was first attempted in the Philippines, there remained so much unfinished business. It is this which the social justice provisions of the 1987 Constitution were intended to finish. Section 4, Article XIII thereof commands:

Section 4. **The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers 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. (Emphasis supplied)

By its plain language, it requires that the law implementing the agrarian reform program envisioned by the Constitution should employ a **land redistribution** mechanism. Subject only to retention limits as may be prescribed by Congress and to payment of just compensation, ownership of all agricultural lands are to be distributed and transferred to the farmers and farmworkers who till the land.

There is absolutely no doubt in my mind that the Constitution has ordained land redistribution as the mechanism of agrarian reform. First, it recognizes the **right** of farmers and regular farmworkers who are landless **to own directly or collectively the lands they till**. Second, it affirms the **primacy**[20] **of this right** which is enshrined as the centerpiece of agrarian reform, thereby guaranteeing its enforcement. Third, in the same breath, it directs that, to such end, the State shall undertake the **just distribution of all agricultural lands**,[21] subject only to retention limits and just compensation.

Pursuant to the mandate of Section 4, Article XIII of the Constitution, Congress enacted RA 6657 (Comprehensive Agrarian Reform Law of 1988). It was supposed to be a revolutionary law, introducing innovative approaches to agrarian reform. Among its novel provisions (and relevant to this case) is Section 31 which provides:

SEC. 31. *Corporate Landowners.* - Corporate landowners may voluntarily transfer ownership over their agricultural landholdings to the Republic of the Philippines pursuant to Section 20 hereof or to qualified beneficiaries, under such terms and conditions consistent with this Act, as they may agree upon, subject to confirmation by the DAR.

Upon certification by the DAR, **corporations owning agricultural lands may give their qualified beneficiaries the right to purchase such proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets, under such terms and conditions as may be agreed upon by them**. In no case shall the compensation received by the workers at the time the shares of stocks are distributed be reduced. The same principle shall be applied to associations, with respect to their equity or participation.

Corporations or associations which voluntarily divest a proportion of their capital stock, equity or participation in favor of their workers or other qualified beneficiaries under this section shall be deemed to have complied with the provisions of this Act: Provided, That the following conditions are complied with:

a) In order to safeguard the right of beneficiaries who own shares of stocks to dividends and other financial benefits, the books of the corporation or association shall be subject to periodic audit by certified public accountants chosen by the beneficiaries;

b) Irrespective of the value of their equity in the corporation or association, the beneficiaries shall be assured of at least one (1) representative in the board of directors, or in a management or executive committee, if one exists, of the corporation or association;

c) Any shares acquired by such workers and beneficiaries shall have the same rights and features as all other shares; and

d) Any transfer of shares of stocks by the original beneficiaries shall be void ab initio unless said transaction is in favor of a qualified and registered beneficiary within the same corporation.

If within two (2) years from the approval of this Act, the land or stock transfer envisioned above is not made or realized or the plan for such stock distribution approved by the PARC within the same period, the agricultural land of the corporate owners or corporation shall be subject to the compulsory coverage of this Act.

Section 31 of RA 6657 grants corporate landowners like petitioner Hacienda Luisita, Inc. (HLI) the option to give qualified agrarian reform beneficiaries the right to purchase capital stock of the corporation proportionate to how much the agricultural land actually devoted to agricultural activities bears in relation to the company's total assets, under such terms and conditions as may be agreed upon

by them. Such voluntary divestment of a portion of the corporate landowner's capital stock to qualified agrarian reform beneficiaries is considered compliance with the agrarian reform law (RA 6657), subject to certain conditions.

THE FUNDAMENTAL ISSUE

Section 31 of RA 6657 is at the center of this controversy as it is the basis of the assailed stock distribution plan executed by petitioner HLI with farmworker-beneficiaries.

ON THE CONSTITUTIONALITY

OF SECTION 31 OF RA 6657

The Constitution has vested this Court with the power and duty to determine and declare whether the scales of constitutionality have been kept in balance or unduly tipped, whether an official action is constitutional or not. As the fundamental and supreme law of the land, the Constitution also serves as the counterweight against which the validity of all actions of the government is weighed. With it, the Court ascertains whether the action of a department, agency or public officer preserves the constitutional equilibrium or disturbs it.

In this case, respondents argue that Section 31 of RA 6657 has been weighed and found wanting.[22] In particular, its constitutionality is assailed insofar as it provides petitioner HLI the choice to resort to stock distribution in order to comply with the agrarian reform program. Respondents assert that the stock distribution arrangement is fundamentally infirm as it impairs the right of farmers and farmworkers under Section 4, Article XIII of the Constitution to own the land they till.[23]

For its part, petitioner HLI points out that the constitutional issue has been raised collaterally and is therefore proscribed.

The ponencia opines that the challenge on the constitutionality of Section 31 of RA 6657 and its counterpart provision in EO 229 must fail because such issue is not the *lis mota* of the case.[24] Moreover, it has become moot and academic.[25]

I strongly disagree.

While the sword of judicial review must be unsheathed with restraint, the Court must not hesitate to wield it to strike down laws that unduly impair basic rights and constitutional values.

Moreover, jurisprudence dictates:

It is a well-established rule that a court should not pass upon a constitutional question and decide a law to be unconstitutional or invalid **unless such question is raised by the parties** and that when it is raised, if the record also presents some other ground upon which the court may raise its judgment, that course will be adopted and the constitutional question will be left for consideration until **such question will be unavoidable**.[26]

In this case, the question of constitutionality has been raised by the parties-in-interest to the case.[27] In addition, any discussion of petitioner HLI's stock distribution plan necessarily and inescapably involves a discussion of its legal basis, Section 31 of RA 6657. More importantly, public interest and a grave constitutional violation render the issue of the constitutionality of Section 31 of RA 6657 unavoidable. Agrarian reform is historically imbued with public interest and, as the records of the Constitutional Commission show, **Hacienda Luisita has always been viewed as a litmus test of genuine agrarian reform**. Furthermore, the framers emphasized the primacy of the right of farmers and farmworkers to directly or collectively own the lands they till. The dilution of this right not only weakens the right but also debases the constitutional intent thereby presenting a serious assault on the Constitution.

It is also noteworthy that while the ponencia **evades** the issue of constitutionality, it adverts to the doctrine of operative facts in its attempt to come up with what it deems to be a just and equitable resolution of this case. This is significant. The ponencia itself declares that the doctrine of operative facts is applied in order to avoid undue harshness and resulting unfairness when a law or executive action is **declared null and void**,[28] therefore unconstitutional. As the Court explained the doctrine:

Under the operative fact doctrine, the law is recognized as unconstitutional but the effects of the unconstitutional law, prior to its declaration of nullity, may be left undisturbed as a matter of equity and fair play. In fact, **the invocation of the operative fact doctrine is an admission that the law is unconstitutional**.[29]

Assuming for the sake of argument that the constitutionality of Section 31 of RA 6657 has been superseded and rendered moot by Section 5 of RA 9700 vis-a-vis stock distribution as a form of compliance with agrarian reform, the issue does not thereby become totally untouchable. Courts will still decide cases, otherwise moot and academic, if:

xxx first, there is a grave violation of the Constitution; second, the exceptional character of the situation and the paramount public interest is involved; third, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and fourth, the case is capable of repetition yet evading review...[30]

In this case, all the above-mentioned requisites are present:

First, a grave violation of the Constitution exists. Section 31 of RA 6657 runs roughshod over the language and spirit of Section 4, Article XIII of the Constitution.

The first sentence of Section 4 is plain and unmistakeable. It grounds the mandate for agrarian reform on the right of farmers and regular farmworkers, who are landless, **to own** directly or collectively the **land** they till. The express language of the provision is clear and unequivocal – agrarian reform means that farmers and regular farmworkers who are landless should be given direct or collective ownership of the land they till. That is their right.

Unless there is land distribution, there can be no agrarian reform. Any program that gives farmers or farmworkers anything less than ownership of land fails to conform to the mandate of the Constitution.

In other words, a program that gives qualified beneficiaries stock certificates instead of land is not agrarian reform.

Actual land distribution is the essential characteristic of a constitutional agrarian reform program. The polar star, when we speak of land reform, is that **the farmer has a right to the land he tills**.[31] Indeed, a reading of the framers' intent clearly shows that the philosophy behind agrarian reform is the distribution of land to farmers, nothing less.

MR. NOLLEDO. And when we talk of the phrase "to own directly," we mean the principle of **direct ownership by the tiller**?

MR. MONSOD. Yes.

MR. NOLLEDO. And when we talk of "collectively," we mean communal ownership, stewardship or State ownership?

MS. NIEVA. In this section, we conceive of cooperatives; that is farmers' cooperatives **owning the land**, not the State.

MR. NOLLEDO. And when we talk of "collectively," referring to farmers' cooperatives, do the farmers own specific areas of land where they only unite in their efforts?

MS. NIEVA. That is one way.

MR. NOLLEDO. Because I understand that there are two basic systems involved: the "moshave" type of agriculture and the "kibbutz." So are both contemplated in the report?

MR. TADEO. Ang dalawa kasing pamamaraan ng pagpapatupad ng tunay na reporma sa lupa ay ang pagmamay-ari ng lupa na hahatiin sa individual na pagmamay-ari – directly – at ang tinatawag na sama-samang gagawin ng mga magbubukid. Tulad sa Negros, ang gusto ng mga magbubukid ay gawin nila itong "cooperative or collective farm." Ang ibig sabihin ay sama-sama nilang sasakahin.

MR. BENNAGEN. Madam President, nais ko lang dagdagan iyong sagot ni Ginoong Tadeo. xxxx

Kasi, doon sa "collective ownership," kasali din iyong "communal ownership" ng mga minorya. Halimbawa sa Tanay, noong gumawa kami ng isang pananaliksik doon, nagtaka sila kung bakit kailangan pang magkaroon ng "land reform" na kung saan ay bibigyan sila ng tig-iisang titulo. At sila nga ay nagpunta sa Ministry of Agrarian Reform at sinabi nila na hindi ito ang gusto nila; kasi sila naman ay magkakamag-anak. **Ang gusto nila ay lupa** at hindi na kailangan ang tig-iisang titulo. Maraming ganitong kaso mula sa Cordillera hanggang Zambales, Mindoro at Mindanao, kayat kasali ito sa konsepto ng "collective ownership."

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MR. VILLACORTA. xxx Section 5[32] gives the **opportunity for tillers of the soil to own the land that they till**; xxx

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MR. TADEO. xxx **Ang dahilan ng kahirapan natin sa Pilipinas ngayon ay ang pagtitipon-tipon ng vast tracts of land sa kamay ng iilan**. Lupa ang nagbibigay ng buhay sa magbubukid at sa iba pang manggagawa sa bukid. Kapag inalis sa kanila ang lupa, parang inalisan na rin sila ng buhay. Kaya **kinakailangan talagang magkaroon ng tinatawag na just distribution**. xxx

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MR. TADEO. Kasi ganito iyan. **Dapat muna nating makita ang prinsipyo ng agrarian reform, iyong maging may-ari siya ng lupa na kaniyang binubungkal. Iyon ang kauna-unahang prinsipyo nito**. xxx

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MR. TINGSON. xxx When we speak here of "to own directly or collectively the lands they till," is this land for the tillers rather than land for the landless? Before, we used to hear

"land for the landless," but now the slogan is "land for the tillers." Is that right?

MR. TADEO. Ang prinsipyong umiiral dito ay iyong **land for the tillers**. Ang ibig sabihin ng "directly" ay tulad sa implementasyon sa rice and corn lands kung saan**inaari na ng mga magsasaka ang lupang binubungkal nila**. Ang ibig sabihin naman ng "collectively" ay **sama-samang paggawa sa isang lupain o isang bukid**, katulad ng sitwasyon sa Negros.

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MR. BENNAGEN. Maaari kayang magdagdag sa pagpapaliwanag ng "primacy"? Kasi may cultural background ito. Dahil agrarian society pa ang lipunang Pilipino, maigting talaga ang ugnayan ng mga magsasaka sa kanilang lupa. Halimbawa, sinasabi nila na ang lupa ay pinagbuhusan na ng dugo, pawis at luha. So land acquires a symbolic content that is not simply negated by growth, by productivity, etc. The primacy should be seen in relation to an agrarian program that leads to a later stage of social development which at some point in time may already negate this kind of attachment. The assumption is that there are already certain options available to the farmers. Marahil **ang primacy ay ang pagkilala sa pangangailangan ng magsasaka – ang pag-aari ng lupa**. Ang assumption ay **ang pag-aari mismo ng lupa becomes the basis for the farmers to enjoy the benefits, the fruits of labor**. xxx (678)

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MR. TADEO. xxx Kung sinasabi nating si Kristo ay liberating dahil ang api ay lalaya at ang mga bihag ay mangaliligtas, sinabi rin ni Commissioner Felicitas Aquino na kung ang history ay liberating, dapat ding maging liberating ang Saligang Batas. Ang magpapalaya sa atin ay ang agrarian and natural resources reform.

The primary, foremost and paramount principles and objectives are contained [i]n lines 19 to 22: "primacy of the rights and of farmers and farmworkers to own directly or collectively the lands they till."

Ito ang kauna-unahan at pinakamahalagang prinsipyo at layunin ng isang tunay na reporma sa lupa – na ang nagbubungkal ng lupa ay maging may-ari nito. xxx (695-696)

The essential thrust of agrarian reform is land-to-the-tiller. Thus, to satisfy the mandate of the constitution, any implementation of agrarian reform should always preserve the control over the land in the hands of its tiller or tillers, whether individually or collectively.

Consequently, any law that goes against this constitutional mandate of the actual grant of land to farmers and regular farmworkers must be nullified. If the Constitution, as it is now worded and as it was intended by the framers envisaged an alternative to actual land distribution (*e.g.*, stock distribution) such option could have been easily and explicitly provided for in its text or even conceptualized in the intent of the framers. Absolutely no such alternative was provided for. Section 4, Article XIII on agrarian reform, in no uncertain terms, speaks of **land** to be owned directly or collectively by farmers and regular farm workers.

By allowing the distribution of capital stock, not land, as "compliance" with agrarian reform, Section 31 of RA 6657 directly and explicitly contravenes Section 4, Article XIII of the Constitution. The corporate landowner remains to be the owner of the agricultural land. Qualified beneficiaries are given ownership only of shares of stock, not the lands they till. Landless farmers and farmworkers become **landless stockholders** but still tilling the land of the corporate owner, thereby perpetuating their status as landless farmers and farmworkers.

Second, this case is of exceptional character and involves paramount public interest. In *La Bugal-B'Laan Tribal Association, Inc.*,[33] the Court reminded itself of the need to recognize the extraordinary character of the situation and the overriding public interest involved in a case. Here, there is a necessity for a categorical ruling to end the uncertainties plaguing agrarian reform caused by serious constitutional doubts on Section 31 of RA 6657. While the ponencia would have the doubts linger, strong reasons of fundamental public policy demand that the issue of constitutionality be resolved now, [34] before the stormy cloud of doubt can cause a social cataclysm.

At the risk of being repetitive, agrarian reform is fundamentally imbued with public interest and the implementation of agrarian reform at Hacienda Luisita has always been of paramount interest. Indeed, **it was specifically and unequivocally targeted when agrarian reform was being discussed in the Constitutional Commission**. Moreover, the Court should take judicial cognizance of the violent incidents that intermittently occur at Hacienda Luisita, solely because of the agrarian problem there. Indeed, Hacienda Luisita proves that, for landless farmers and farmworkers, the land they till is their life.

The Constitution does not only bestow the landless farmers and farmworkers the right to own the land they till but also concedes that right to them and makes it a duty of the State to respect that right through genuine and authentic agrarian reform. To subvert this right through a mechanism that allows stock distribution in lieu of land distribution as mandated by the Constitution strikes at the very heart of social justice. As a grave injustice, it must be struck down through the invalidation of the statutory provision that permits it.

To leave this issue unresolved is to allow the further creation of laws, rules or orders that permit policies creating, unintentionally or otherwise, means to avoid compliance with the foremost objective of agrarian reform – to give the humble farmer and farmworker the right to own the land he tills. To leave this matter unsettled is to encourage future subversion or frustration of agrarian reform, social justice and the Constitution.

Third, the constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public.[35] Fundamental principles of agrarian reform must be established in order that its aim may be truly attained.

One such principle that must be etched in stone is that no law, rule or policy can subvert the ultimate goal of agrarian reform, the actual distribution of land to farmers and farmworkers who are landless. Agrarian reform requires that such landless farmers and farmworkers be given direct or collective ownership of the land they till, subject only to the retention limits and the payment of just compensation. There is no valid substitute to actual distribution of land because the right of landless farmers and farmworkers expressly and specifically refers to a **right to own the land they till**.

Fourth, this case is capable of repetition, yet evading review. As previously mentioned, if the subject provision is not struck down today as unconstitutional, the possibility of passing future laws providing for a similar option is ominously present. Indeed, what will stop our legislators from providing artificial alternatives to actual land distribution if this Court, in the face of an opportunity to do so, does not declare that such alternatives are completely against the Constitution?

We would be woefully remiss in our duty of safeguarding the Constitution and the constitutionally guaranteed right of a historically marginalized sector if we allowed a substantial deviation from its language and intent.

The following findings of the Special Task Force as stated in its Terminal Report[36] are worth reiterating:

... sugar-coated assurances were more than enough to make them fall for the SDO as they made them feel rich as “stock holder” of a rich and famous corporation despite the dirt in their hands and the tatters they use; given the feeling of security of tenure in their work when there is none; expectation to receive dividends when the corporation has already suspended operations allegedly due to losses; and a stable sugar production by maintaining the agricultural lands when a substantial portion thereof, of almost 1/8 of the total areas, has already been converted to non-agricultural uses.

Truly, the pitiful consequences of a convoluted agrarian reform policy, such as those reported above, can be avoided if laws were made to truly fulfill the aim of the constitutional provisions on agrarian reform. As the Constitution sought to make the farmers and farmworkers masters of their own land, the Court should not hesitate to state, without mincing word, that qualified agrarian reform beneficiaries deserve no less than ownership of land.

The river cannot rise higher than its source. An unconstitutional provision cannot be the basis of a constitutional act. As the stock distribution plan of petitioner HLI is based on Section 31 of RA 6657 which is unconstitutional, the stock distribution plan must perforce also be unconstitutional.

ON PETITIONER'S LONG DUE OBLIGATION

TO DISTRIBUTE HACIENDA LUISITA TO FARMERS

Another compelling reason exists for ordering petitioner HLI to distribute the lands of Hacienda Luisita to farmworker beneficiaries -- the National Government, in 1957, aided petitioner HLI's predecessor-in-interest in acquiring Hacienda Luisita with the condition that the acquisition of Hacienda Luisita should be made "with a view to distributing this hacienda to small farmers in line with the [government][37]'s social justice program."[38] The distribution of land to the farmers should have been made within ten years. That was a *sine qua non* condition. It could have not been done away with for mere expediency. Petitioner HLI is bound by that condition.[39]

Indeed, the National Government sought to enforce the condition when it filed a case on May 7, 1980 against Tarlac Development Corporation (TADECO), petitioner HLI's predecessor-in-interest, in the Regional Trial Court of Manila, Branch 43.[40]The case, docketed as Civil Case No. 131654 entitled "Republic of the Philippines vs. TADECO," sought the surrender by TADECO of Hacienda Luisita to the Ministry of Agrarian Reform for distribution to qualified farmworker-beneficiaries.[41] In a decision dated December 2, 1985, the trial court upheld the position of the National Government and ordered TADECO to transfer control of Hacienda Luisita to the Ministry of Agrarian Reform, which will distribute the land to small farmers after paying TADECO P3.988 Million.[42]

The trial court's decision was appealed to the Court of Appeals where it was docketed as CA-G.R. CV No. 08364. The appellate court, in a resolution dated May 18, 1988, dismissed the appeal without prejudice:

WHEREFORE, the present case on appeal is hereby **dismissed without prejudice**, and should be **revived if any of the conditions as above set forth is not duly complied with by TADECO**.

The conditions referred to are the following:

(a) should TADECO fail to obtain approval of the stock distribution plan for failure to comply with all the requirements for corporate landowners set forth in the guidelines issued by the PARC or

(b) if such stock distribution plan is approved by PARC, but TADECO fails to initially implement it.[43]

In this case, the stock distribution plan of petitioner HLI, TADECO's successor-in-interest, could not have been validly approved by the PARC as it was null and void for being contrary to law. Its essential terms, particularly the "man days" method for computing the number of shares to which a farmworker-beneficiary is entitled and the extended period for the complete distribution of shares to qualified farmworker-beneficiaries are against the letter and spirit of Section 31 of RA 6657, assuming that provision is valid, and DAO No. 10-1988.

Even assuming that the approval could have been validly made by the PARC, the subsequent revocation of such approval meant that there was no more approval to speak of, that the approval has already been withdrawn. Thus, in any case, the decision of the trial court should be revived, albeit on appeal. Such revival means that petitioner HLI cannot now evade its obligation which has long be overdue, Hacienda Luisita should be distributed to qualified farmworker-beneficiaries.

ON THE EQUITIES OF THE CASE

AND ITS QUALIFICATIONS

Agrarian reform's underlying principle is the recognition of the rights of farmers and farmworkers who are landless to own, directly or collectively, the lands they till. Actual land distribution to qualified agrarian reform beneficiaries is mandatory. Anything that promises something other than land must be struck down for being unconstitutional.

Be that as it may and regardless of the constitutionality of Section 31 of RA 6657, the lifting of the temporary restraining order in this case coupled with the affirmation of PARC Resolution No. 2005-32-01 dated December 22, 2005 removes all barriers to the compulsory acquisition of Hacienda Luisita for actual land distribution to qualified farmworker-beneficiaries. The said PARC resolution directed that Hacienda Luisita "be forthwith placed under compulsory coverage or mandated land acquisition scheme"[44]and, pursuant thereto, a notice of coverage[45] was issued. Hence, the overall effect of the lifting of the temporary restraining order in this case should be the implementation of the "compulsory coverage or mandatory acquisition scheme" on the lands of Hacienda Luisita.

This notwithstanding and despite the nullity of Section 31 of RA 6657 and its illegitimate offspring, petitioner HLI's stock distribution plan, I am willing to concede that the equities of the case might possibly call for the application of the doctrine of operative facts. The Court cannot with a single stroke of the pen undo everything that has transpired in Hacienda Luisita vis-à-vis the relations between petitioner HLI and the farmworker-beneficiaries resulting from the execution of the stock distribution plan more than two decades ago. A simplistic declaration that no legal effect whatsoever may be given to any action taken pursuant to the stock distribution plan by virtue of its nullification will only result in unreasonable and unfair consequences in view of previous benefits enjoyed and obligations incurred by the parties under the said stock distribution plan.

Let me emphasize, however, that this tenuous concession is not without significant qualifications.

First, while operative facts and considerations of fairness and equity might be considered in disposing of this case, the question of constitutionality of Section 31 of RA 6657 and, corollarily, of petitioner HLI's stock distribution plan, should be addressed squarely. As the said provision goes against both the letter and spirit of the Constitution, the Court must categorically say in no uncertain terms that it is null and void. The same principle applies to petitioner HLI's stock distribution plan.

Second, pursuant to both the express mandate and the intent of the Constitution, the qualified farmer-beneficiaries should be given ownership of the land they till. That is their right and entitlement, which is

subject only to the prescribed retention limits and the payment of just compensation, as already explained.

Due to considerations of fairness and equity, however, those who wish to waive their right to actually own land and instead decide to hold on to their shares of stock may opt to stay as stockholders of petitioner HLI. Nonetheless, **this scheme should apply in this case only**.

Third, the proper action on the instant petition should be to **dismiss** it. For how can we grant it when it invites us to rule against the constitutional right of landless farmworker-beneficiaries to actually own the land they till? How can we sustain petitioner HLI's claim that its stock distribution plan should be upheld when we are in fact declaring that it is violative of the law and of the Constitution? Indeed, to affirm the correctness of PARC Resolution No. 2005-32-01 dated December 22, 2005 revoking the stock distribution plan and directing the compulsory distribution of Hacienda Luisita lands to the farmworker-beneficiaries and, at the same time, grant petitioner HLI's prayer for the nullification of the said PARC Resolution is an exercise in self-contradiction.

To say that we are partially granting the petition is to say that there is rightness in petitioner HLI's position that it can validly frustrate the actual distribution of Hacienda Luisita to the farmworker-beneficiaries. That is fundamentally and morally wrong.

A FINAL WORD

Our action here today is not simply about Hacienda Luisita or a particular stock distribution plan. Our recognition of the right under the Constitution of those who till the land to steward it is the Court's marching order to dismantle the feudal tenurial relations that for centuries have shackled them to the soil in exchange for a pitiful share in the fruits, and install them as the direct or collective masters of the domain of their labor. It is not legal, nor moral, to replace their shackles with mere stock certificates or any other superficial alternative.

We take action in these cases today to promote social justice, champion the cause of the poor and distribute wealth more equitably. By applying the agrarian reform provision of the Constitution, we seek to empower the farmers, enhance their dignity and improve their lives by freeing them from their bondage to the land they till and making them owner-stewards thereof. We express iron-clad fealty to Section 4, Article XIII of the Constitution to dismantle the concentration of land in the hands of the privileged few. Thus, we direct the implementation of a genuine agrarian reform as envisioned by the Constitution by ordering the just distribution of land for the democratization of productive resources.

History will be the unforgiving judge of this Court. We cannot correct a historical anomaly and prevent the eruption of a social volcano by fancy legal arguments and impressively crafted devices for corporate control.

WHEREFORE, I vote that the petition be **DISMISSED**. Section 31 of RA 6657 should be declared **NULL and VOID** for being**unconstitutional**. Consequently, the stock distribution plan of petitioner HLI should likewise be declared **NULL and VOID** for being**unconstitutional**.

Accordingly, PARC Resolution Nos. 2005-32-01 dated December 22, 2005 and 2006-34-01 dated May 3, 2006 should be**AFFIRMED** in so far as they direct the implementation of compulsory coverage or mandated land acquisition scheme in Hacienda Luisita with the **MODIFICATION** that, *pro hac vice* due to considerations of fairness and equity, qualified farmworker-beneficiaries may waive their right to actually own the lands they till and stay as stockholders of petitioner HLI.

RENATO C. CORONA

Chief Justice

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[1] Record of the Constitutional Commission, Vol. II, pp. 663-664. Emphasis supplied.

[2] Id., p. 607.

[3] Land Reform – Pillar of the Nation's Recovery, Commissioner Gregorio D. Tingson, Record of the Constitutional Commission, vol. III, p. 784.

[4] As translated to English in Blair, E.H. & Robertson, J.A.. 1911. The Philippine Islands, 1493-1803, Vol. 1, No. 48: 27-36. Arthur and Clarke Company, Cleveland. Accessed through http://quod.lib.umich.edu/p/philamer/ on 13 March 2011.

[5] Id.

[6] Saulo-Adriano, Lourdes, *A General Assessment of the Comprehensive Agrarian Reform Program*, pp. 5-11 (1991), Philippine Institute for Development Studies. Accessed through http://dirp4.pids.gov.ph.

[7] WM. H. Taft (Secretary of War January 23, 1908) and J. M. Dickinson (Secretary of War November 23, 1910), Special Reports on the Philippines to the President, Washington, D.C., January 23, 1908, p. 21. Found in *The United States and its Territories* of the University of Michigan Library Southeast Asia collection which contains the full text of monographs and government documents published in the United States, Spain, and the Philippines between 1870 and 1925 and accessed through http://quod.lib.umich.edu/p/philamer/ on March 13, 2011.

[8] Id. at p. 59.

[9] Id. at p. 85.

[10] Id.

[11] Taft explained that "[a]t the rate of interest the bonds draw, the cost of the lands would in 30 years, when the bonds mature, have represented more than treble the original cost. The Philippine

government needs its resources for internal improvements, and it would have been poor financiering to pay interest on the bonds and finally the principal and continue to hold these lands until they would be taken up by inhabitants of the islands, which would mean in the remote future." Id., p. 106.

[12] The Philippine Bill of 1902 set the ceilings on the hectarage of individual and corporate landholdings at 16 has. and 1,024 has., respectively.

[13] *Supra* note 7 at pp. 105-106.

[14] Id.

[15] See Public Act No. 4054 (1933).

[16] Sec. 6.

[17] Sec. 51.

[18] Among others, it provided for the automatic conversion of existing agricultural share tenancy to agricultural leasehold and strengthened the rights of pre-emption and redemption.

[19] Sec. 16, amending Sec. 51 of RA 3844.

[20] The original formulation of the present Section 4, article XIII was as follows:

SEC. 5. The State shall undertake a genuine agrarian reform program founded on the **primacy of the rights of farmers and farmworkers to own directly or collectively the lands they till**. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such retention limits as the National Assembly may prescribe and subject to a fair and progressive system of compensation. (Record of the Constitutional Commission, vol. II, p. 605.)

The deliberations of the members of the Constitutional Commission also reveal the following:

MR. TADEO. Ang tunay na reporma sa lupa ay pangunahing nakabatay sa kapakinabangan ng mg biyaya nito sa nagbubungkal ng lupa at lumilikha ng yaman nito at sa nagmamay-ari ng lupa. (Id., p. 677)

x x x x x x x x x

MR. BENNAGEN. Maaari kayang magdagdag sa pagpapaliwanag ng "primacy"? Kasi may cultural background ito. Dahil agrarian society pa ang lipunang Pilipino, maigting talaga ang ugnayan ng mga magsasaka sa kanilang lupa. Halimbawa, sinasabi nila na ang lupa ay pinagbuhusan na ng dugo, pawis at luha. So land acquires a symbolic content that is not simply negated by growth, by productivity, etc. The primacy should be seen in relation to an agrarian program that leads to a later stage of social development which at some point in time may already negate this kind of attachment. The assumption is that there are already certain options available to the farmers. Marahil **ang primacy ay ang pagkilala**

sa pangangailangan ng magsasaka – ang pag-aari ng lupa. Ang assumption ay ang pag-aari mismo ng lupa becomes the basis for the farmers to enjoy the benefits, the fruits of labor. xxx (Id., p. 678)

MR. TADEO. xxx Kung sinasabi nating si Kristo ay liberating dahil ang api ay lalaya at ang mga bihag ay mangaliligtas, sinabi rin ni Commissioner Felicitas Aquino na kung ang history ay liberating, dapat ding maging liberating ang Saligang Batas. Ang magpapalaya sa atin ay ang agrarian and natural resources reform.

The primary, foremost and paramount principles and objectives are contained [i]n lines 19 to 22: "primacy of the rights and of farmers and farmworkers to own directly or collectively the lands they till." Ito ang kauna-unahan at pinakamahalagang prinsipyo at layunin ng isang tunay na reporma sa lupa – na ang nagbubungkal ng lupa ay maging may-ari nito. xxx (695-696)

MR. DAVIDE. xxx we did not delete the concept of the primacy of the rights of farmers and farm workers. In other words, this only confirms the existence of the right, as worded; it is confirmatory of that right. There is no need to emphasize that right because that right is conceded, and it now becomes the duty of the State to undertake these genuine and authentic land and agrarian reforms.

X x x x x xxxx

MR. TADEO. Maliwanag na nandito iyong primacy of the rights.

MR. DAVIDE. Certainly, it is inherent, it is conceded, and that is why we give it a mandate. We make it a duty on the part of the State to respect that particular right. (696-697)

[21] Former Chief Justice Hilario G. Davide, Jr., then a Commissioner in the Constitutional Commission, stated that considering the right of farmers and farmworkers to the lands that they till, "it now becomes the duty of the State to undertake these genuine and authentic land and agrarian reforms." Records, vol. II, p. 697.

[22] The expression comes from the Daniel 5:25: "*Mene, mene, thekel, upharsin*." It is loosely translated as "You have been weighed and found wanting; hence, you have been divided and handed to others."

[23] TSN, Aug. 24, 2010, p. 205.

[24] Ponencia, p. 42.
[25] Id. at 43.

[26] *Sotto v. Commission on Elections*, 76 Phil. 516, 522 (1946). (Emphasis supplied)

[27] Noel Mallari and Farmworkers Agrarian Reform Movement, Inc.

[28] Ponencia, p. 70.

[29] *League of Cities of the Philippines v. Commission on Elections*, G.R. No. 176951, 24 August 2010. (Emphasis supplied)

[30] *Quizon v. Commission on Elections*, G.R. No. 177927, 15 February 2008, 545 SCRA 635; *Mattel, Inc. v. Francisco*, G.R. No. 166886, 30 July 2008, 560 SCRA 506.

[31] Commissioner Felicitas S. Aquino of the Constitutional Commission made this remark during the deliberations on the provision on agrarian reform. According to her, while a farmer's right to the land he tills is not an immutable right as the claim of ownership does not automatically pertain or correspond to the same land that the farmer or farm worker is actually and physically tilling, it simply yields to the limitations and adjustments provided for in the second sentence of the first paragraph, specifically the retention limits. (Records of the Constitutional Commission, vol. III, p. 10)

[32] As stated earlier, the present Section 4 was numbered Section 5 in the first draft.

[33] *La Bugal-B'laan Tribal Association, Inc., et al. v. Victor O. Ramos, Secretary, Dept. Of Environment & Natural Resources, et al.*, G.R. No. 127882, December 1, 2004.

[34] *Gonzales v. COMELEC*, G.R. No. L-27833, 18 April 1969, 27 SCRA 836.

[35] This is in consonance with the Court's symbolic function of educating the members of the judiciary and of the legal profession as to the controlling principles and concepts on matters of great public importance. (See *David v. Arroyo*, G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489 & 171424, 03 May 2006, 489 SCRA 160.)

[36] *Rollo*, pp. 386-405.

[37] The term used was "Administration."

[38] Central Bank Monetary Board Resolution No. 1240 dated August 27, 1957 as quoted in Alyansa ng mga Manggagawag Bukid ng Hacienda Luisita's Petisyon (Para sa Pagpapawalang-Bisa sa Stock Distribution Option), Annex "K" of the petition. *Rollo*, pp. 175-183, 175.

[39] Contracts are obligatory and, as a rule, are binding to both parties, their heirs and assigns. See Articles 1308 and 1311, New Civil Code.

[40] Comment/Opposition of respondents Supervisory Group of Hacienda Luisita, Inc., p. 7. *Rollo*, pp. 530-641, p. 536.

[41] Id.

[42] Id.

[43] Court of Appeals resolution dated May 18, 1988 in CA-G.R. CV No. 08364.

[44] *Rollo*, p. 101.

[45] Id. at 103-106.