An Agricultural Law Research Article

Choosing a Mechanism for Land Redistribution in the Philippines

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Originally published in PACIFIC RIM LAW & POLICY JOURNAL
9 PAC. RIM L. POL'Y J. 681 (2000)

CHOOSING A MECHANISM FOR LAND REDISTRIBUTION IN THE PHILIPPINES

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Abstract: The Philippines' Comprehensive Agrarian Reform Program needs changes because it is not efficiently achieving social justice for the rural poor in the present, nor is it establishing a framework for equitable economic growth in the future. A land reform program in the Philippines can accomplish its objectives only to the extent that it redistributes land. Market assisted land reform, the recently developed land reform model being championed by the World Bank, provides little hope for the quick and extensive redistribution of land needed in the Philippines. The best way for the Philippine government to modify its land reform program is to refocus on expediting land redistribution under the mandatory redistribution model that is currently in place. Greater political will, created by firm resolve and collaboration among and between government officials and grassroots peasant organizations, will be required. This Comment recommends several additional policy modifications to better meet the land reform objectives in the context of an expedited land redistribution.

I. INTRODUCTION

Severe poverty is widespread in the Philippines, particularly among Filipinos who derive their income from agriculture.[1] This poverty is perpetuated, in part, by gross inequalities in land ownership.[2] Over the past 100 years, several Philippine regimes have promised to address rural poverty issues by redistributing agrarian land to Philippine peasants.[3] The Philippine government has failed to deliver on these promises, and the peasants' cries for social justice through genuine agrarian reform continue.[4]

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[1] Over 40% of Filipinos live in poverty according to official government estimates. Solita Collas-Monsod & Toby C. Monsod, *Int'l and Intranat'l Comparisons of Philippine Poverty*, *in* GROWTH, POVERTY, AND INCOME INEQUALITY IN THE PHILIPPINES 47-48, tbl.1 (Arsenio M. Balisacan & Shigeaki Fujisaki eds., 1998). In this estimate, poverty is defined as having insufficient income to satisfy a minimum amount of food and other basic needs. *Id.* at 49. Two thirds of all rural households live in poverty, the vast majority of which are dependent on agriculture for income, and agriculture is also the most common income-generating activity for impoverished urban households. *Id.*

[2] Arsenio M. Balisacan, *What Do We Really Know—or Don't Know—About Economic Inequality and Poverty in the Philippines?*, *in* GROWTH, POVERTY, AND INCOME INEQUALITY IN THE PHILIPPINES, *supra* note 1, at 1, 41.

[3] JAMES PUTZEL, A CAPTIVE LAND: THE POLITICS OF AGRARIAN REFORM IN THE PHILIPPINES 2-3 (1992).

[4] JOHN BATARA, THE COMPREHENSIVE AGRARIAN REFORM PROGRAM: MORE MISERY FOR THE PHILIPPINE PEASANTRY 84 (1996).

The Comprehensive Agrarian Reform Program ("CARP") was enacted in 1988, purportedly to remedy land ownership inequalities.[5] While CARP is the most intensive agrarian land reform measure enacted by the Philippine legislature, it has proven to be a disappointment after twelve years of implementation.[6] CARP targeted both private and public agricultural land for redistribution to previously landless peasants.[7] However, very little progress has been made redistributing land from the private landowners. This lack of progress can be traced to reluctant, politically powerful landowners, a business community that fears CARP will hinder foreign investment in agriculture, and the Philippine government's failure to provide enough resources to implement CARP.

As a result of CARP's ineffectiveness, the Philippine government is considering replacing the mandatory redistribution mechanism of CARP with a redistribution strategy known as market-assisted land reform.[8] Market assisted land reform is based on willing land transfers between landowners and beneficiaries, whereas mandatory redistribution is based on legislative expropriation of private land.[9] This Comment argues against the implementation of this new land redistribution model and in favor of a recommitment to the CARP mandatory acquisition and distribution model. It also describes why market-assisted land reform, the strategy currently being proposed by the World Bank, offers little hope for successful realization of the primary goals of agrarian reform, namely social justice through equitable distribution of the profits and power associated with land ownership.

However, this Comment also argues that in light of the unsatisfactory results of CARP to this point, new regulatory measures should be introduced to improve its implementation. Specifically, this Comment makes the case that the Philippine government must invest more budget resources in land acquisition and beneficiary support services to expedite the reform process.

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[5] Comprehensive Agrarian Reform Law (Republic Act No. 6657) (Phil.) sec. 2 (1988), *available in* Chan Robles Virtual Law Library (visited Feb. 2, 2000) <http://www.chanrobles.com/legal4agrarian law.htm> [hereinafter RA 6657].

[6] *See* Philippine Peasant Institute, *CARP Land Acquisition and Distribution Accomplishment as of December 1998* (visited Mar. 20, 2000) <http://www.ppi.org.ph/programs/research/farm_charts/chart_main.htm> [hereinafter *PPI Webpage*].

[7] SATURNINO M. BORRAS, THE BIBINGKA STRATEGY IN LAND REFORM IMPLEMENTATION 141 tbl.4 (1998).

[8] *DAR Considering 'Market Assisted' Land Distribution*, BUS. WORLD (Philippines), Mar. 29, 1999, *available in* 1999 WL 5616513 [hereinafter Feasibility Study].

[9] Klaus Deininger, *Making Negotiated Land Reform Work: Initial Experience from Colombia, Brazil, and South Africa*, *available in* The World Bank Group Rural Development Working Papers (visited June 15, 2000) <http://www.worldbank.org/html/dec/Publications/Workpapers/wps2000series/wps2040/wps2040.pdf> [hereinafter *Initial Experience*].

Part II of this Comment outlines the basic theory of land reform programs. Part III traces the history of Philippine land reform efforts before 1988 and examines the legislation that introduced CARP in 1988. Part IV describes the implementation of CARP from 1988 to the present. Part V identifies and describes the two different mechanisms for land redistribution available to complete CARP: (1) the traditional land reform model and (2) market-assisted land reform. Part VI compares the potential effectiveness of both mechanisms for the land reform and determines that the traditional land reform model will be more effective. Part VII lists recommendations for changes to assist with an expedited completion of CARP.

II. OVERVIEW OF REDISTRIBUTIVE LAND REFORM: ALLEVIATING POVERTY IN THE RURAL AREAS OF DEVELOPING COUNTRIES

Land reform refers to any government-sponsored program that seeks to remedy inequality in land ownership by redistributing property to the landless.[10] Land reform is one category of government-sponsored programs that falls under the umbrella of "agrarian reform."[11] Agrarian reform programs attempt to address a variety of social, economic, and political problems often found in the rural areas of developing countries.[12] Agrarian reform programs include education programs, efforts to extend credit to residents of rural areas, as well as redistributive land reform programs.[13] Thus, an important objective of agrarian reform is effecting social justice.[14] Land reform helps achieve social justice for impoverished, rural households by ensuring broader access to land ownership, which in turn improves agricultural efficiency and provides a secure source of income.[15]

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[10] PUTZEL, *supra* note 3, at 3.

[11] *Id.*

[12] *Id.* at 2.

[13] LOURDES SAULO-ADRIANO, A GENERAL ASSESSMENT OF THE COMPREHENSIVE AGRARIAN REFORM PROGRAM 2 n.1 (Philippine Institute for Development Studies Working Paper Series No. 91-13, 1991).

[14] *See* Klaus Deininger & Hans Binswanger, *The Evolution of the World Bank's Land Policy* 5-6, Jun. 24, 1998, *available in* The World Bank Group Land Policy Papers and Materials (visited Aug. 14, 2000) < http://www.worldbank.org/search.htm>. One Philippine expert on agrarian reform has written that "the function of agrarian reform is to achieve equity rather than productivity." *Exceptions to Free Market Principle*, MANILA STANDARD, Sept. 9, 1999, *available in* 1999 WL 27425841.

[15] Irma Adelman & Sherman Robinson, *Income Distribution and Development*, *in* 2 HANDBOOK OF DEVELOPMENT ECONOMICS 949, 990-91 (1988).

A. *Land Ownership Inequality in Developing Countries*

In developing countries landowners often wield great economic power over large populations of landless peasants that live in rural areas.[16] Farm laborers in developing countries work for low wages and have little job security because unemployment rates are high and workforces are predominantly unskilled.[17] Tenancy arrangements generally carry little more security, often leaving the tenant's household in a dangerous financial position in the case of a crop failure, as tenants are often forced to pay a large portion of crops to the landlord under sharecropping agreements.[18] Moreover, in these countries the economic power associated with land ownership is often accompanied by social and political power at both the local and national levels.[19]

B. *Land Reform Defined*

Although the terms "land reform" and "agrarian reform" have become almost synonymous, strictly speaking, land reform refers only to one aspect of a broader agrarian reform plan.[20] Land reform is an intentional alteration of the distribution of agricultural property rights.[21] In many developing countries, rural land property rights are concentrated in the hands of a small percentage of the population.[22] Land reforms attempt to transfer property rights from landowners to landless citizens, either directly or indirectly.[23] Examples of land reform strategies are direct redistributions of land ownership, changes to the regulations that govern land exchanges, and changes to the land tenure regulations.[24] Many scholars believe that redistributive land reform, a method of agrarian reform, which directly redistributes land to landless citizens, is indispensable to achieving social

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[16] REHMAN SOBHAN, RURAL POVERTY AND AGRARIAN REFORM IN THE PHILIPPINES 26 (United Nations FAO In Depth Study Series No. 2, 1983).

[17] ROY PROSTERMAN & TIM HANSTAD, LAND REFORM: NEGLECTED, YET ESSENTIAL 1 (Rural Development Institute Reports on Foreign Aid and Development No. 87, 1995).

[18] SOBHAN, *supra* note 16, at 70.

[19] PROSTERMAN & HANSTAD, *supra* note 17, at 3.

[20] PUTZEL, *supra* note 3, at 3. Recently, lawmakers opposed to redistributive reform have begun to replace the term 'land reform' with 'agrarian reform' to shift the focus from redistribution of land ownership to productivity and land market reform. *Id.*

[21] *Id.*

[22] *Land Policy*, *supra* note 14, at 25.

[23] MICHAEL P. TODARO, ECONOMIC DEVELOPMENT IN THE THIRD WORLD 322 (1989).

[24] PUTZEL, *supra* note 3, at 3.

justice in a predominantly agricultural society with unequal distribution of land ownership.[25]

C. *Redistributive Land Reform Helps Alleviate Poverty in the Rural Areas of Developing Countries*

Redistributive land reform alleviates rural poverty and helps achieve social justice in several ways. Such land reform (1) grants financial security and an improved standard of living to the land recipient, (2) politically empowers the land recipient, (3) generates economic activity in rural areas, and (4) provides a framework for equitable economic growth.

1. *Grants Financial Security and Improved Standards of Living to Land Recipients*

Most farm labor contracts and tenancy agreements in developing countries are tenuous at best.[26] Thus the ownership rights to arable land that farm laborers receive under land redistributions provide them with valuable income security.[27] Although most land reform programs require beneficiaries to pay back at least some portion of the value of the land, the payments are lower than the rents paid under former tenancy arrangements.[28] They are also generally fixed payments so that the profits from increased production accrue entirely to the land recipient.[29] Additionally, ownership

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[25] PUTZEL, *supra* note 3, at 4; *see also* TODARO, *supra* note 23, at 322. Because of the significant economic, social, and political value associated with land ownership, providing small farmers with secure property rights is widely seen "as a necessary first condition for agricultural development in many LDC's [less developed countries]." Abhijit V. Banerjee, *Land Reforms: Prospects and Strategies* (1999), *available in* The World Bank Group Land Policy Papers and Materials (visited June 15, 2000) <http://www.worldbank.org/search.htm>; *see also* PROSTERMAN & HANSTAD, *supra* note 17, at 2-3. When tenants with little security or agricultural laborers work the land for a landlord, they have little incentive to make investments or improvements that might increase the land's productivity. However, farmers who own their land have an expectation of future return and are, therefore, more likely to make investments in capital, such as equipment purchases and "sweat-equity," or labor-intensive improvements to their land. The expectation of realizing all of the profits from their land is likely to prompt owner-operators to use higher quality seeds, fertilizers, and other tools than tenant-cultivators. Improvements, such as terracing, land leveling, irrigation or drainage improvements, and tree planting can ensure environmental sustainability and improve future productivity. JEFFREY M. RIEDINGER, AGRARIAN REFORM IN THE PHILIPPINES: DEMOCRATIC TRANSITIONS AND REDISTRIBUTIVE REFORM 79 (1995); *see generally* ROY L. PROSTERMAN & JEFFREY M. RIEDINGER, LAND REFORM AND DEMOCRATIC DEVELOPMENT 35-71 (1987).

[26] PROSTERMAN & HANSTAD, *supra* note 17, at 1.

[27] *Id.* at 2.

[28] PROSTERMAN & RIEDINGER, *supra* note 25, at 200-01.

[29] *Id.*

of land enables beneficiary families to access credit markets for investments in education and health care.[30]

2. *Politically Empowers Land Recipients*

Redistribution of land politically empowers the land recipients. When peasants acquire land through redistribution, their status and dignity in society increases, thus empowering them to participate in the political process on a local and national level.[31] Given the traditional political power associated with land ownership, rural peasant interests may have a stronger voice in the legislative process when their numbers include landowning farmers.[32]

3. *Generates Economic Activity in Rural Areas*

As the beneficiaries of land redistribution establish their small farms, they will be able to use their land as collateral to access credit.[33] With this credit, they will be able to purchase new equipment and make structural improvements to their land.[34] These small farmers are more likely to invest and consume locally than their former landlords who mostly consume in distant urban centers.[35] Thus, redistributive land reform will lead to increased markets for locally produced items, stimulating the non-agricultural sectors of the rural economy.[36] New job possibilities in the rural areas will keep landless families, who would otherwise be forced to migrate to urban areas in search of income, in their communities.[37]

4. *Provides a Framework for Equitable Economic Growth*

The benefits of government investments in agricultural productivity accrue mostly to current landowners, and thus propagate existing

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[30] Banerjee, *supra* note 25, at 14. Access to credit markets may enable beneficiary families to provide better health care and education for their children, which in turn could have a positive effect on future production. *Id.*

[31] PROSTERMAN & HANSTAD, *supra* note 17, at 3.

[32] SOBHAN, *supra* note 16, at 64-67.

[33] *Land Policy*, *supra* note 14, at 4.

[34] *Id.*

[35] PROSTERMAN & HANSTAD, *supra* note 17, at 3.

[36] *Id.*

[37] *Id.* at 3-4.

inequities.[38] Therefore, a benefit of redistributing agricultural land before implementing intensive programs to increase agricultural productivity is that peasant land recipients will derive greater benefit from those productivity investments.[39] This promotes efficiency and equity as rural assets are more broadly distributed among a country's population.[40]

In summary, redistributive land reform helps achieve social justice by reallocating valuable property to peasants.[41] This helps alleviate rural poverty by granting financial security and improved living standards to land recipients, politically empowering land recipients, generating economic activity in rural areas, and providing a framework for equitable economic growth. Redistributive land reform thereby plays "a vital role in empowerment, democratization, and the growth of civil society."[42]

III. HISTORY OF LAND REFORM PROGRAMS IN THE PHILIPPINES

Land reform has historically been important to Philippine peasants because so many of them have depended on tenant farming or plantation labor for a living.[43] Philippine peasants have consistently called for redistribution of agricultural lands since the Spanish colonial period of the 19th century.[44] Control of political, economic, and social structures within the Philippines has traditionally rested with a minority group of wealthy landowners.[45] Until 1935, colonial authorities responded to calls for land reform by crafting programs filled with opportunities for evasion and landowner resistance.[46] The Filipino landowning elite that gained power after the colonial authorities, and who hold power to this day, have

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[38] *See* James Riddell, *Contemporary Thinking on Land Reform, available in* SUSTAINABLE DEVELOPMENT DEPARTMENT, FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (visited Mar. 24, 2000) <http://www.fao.org/WAICENT/FAOINFO/SUSTDEV/LTdirect/LTan0037.htm>.

[39] Adelman & Robinson, *supra* note 15, at 984.

[40] *Id.* at 991.

[41] *See* Banerjee, *supra* note 25, at 34.

[42] Tim Hanstad, *Introduction to Rural Land Law Reform, in* LEGAL IMPEDIMENTS TO EFFECTIVE RURAL LAND RELATIONS IN EASTERN EUROPE AND CENTRAL ASIA 5 (Roy Prosterman & Tim Hanstad eds., World Bank Working Paper No. 436, 1999) [hereinafter World Bank Working Paper No. 436].

[43] While the agricultural sector does not dominate the national economy as it once did (agriculture makes up only 20% of the Gross Domestic Product), nearly 40% of Filipinos are still employed in the agricultural sector. CIA—The World Factbook 1999—Philippines (visited June 15, 2000) <http://www.odci.gov/cia/publications/factbook/rp.html>.

[44] PUTZEL, *supra* note 3, at 61; *see generally* Philippine Peasant Institute, *100 Years of Peasant Struggle* (visited Jan. 27, 2000) <http://www.ppi.org.ph/history/hist_main.htm>.

[45] PUTZEL, *supra* note 3, at 49.

[46] *See* SAULO-ADRIANO, *supra* note 13, at 2-4.

continued to produce land reform programs full of opportunities for abuse by landowners.[47]

A. Brief Overview of Land Ownership in the Philippines

Before the Spanish established authority in 1571, there was very little notion of private property in land in the Philippines.[48] Under the Spanish colonial state, the Catholic Church acquired much of the best agricultural land and developed a significant presence in the rural areas.[49] The Spanish language became a tool by which local people from each region were shut out of elite commerce and culture.[50] Both Church lands and private agricultural plantations encroached on the lands of indigenous people despite an agrarian revolt in 1745.[51] When Church lands were leased out to farmers in long-term leasehold arrangements, they were generally divided into large pieces, effectively excluding local buyers.[52] The extent of agricultural policy of the Spanish authorities was to encourage production of export crops such as tobacco on large plantations.[53] The 1896 Revolution, which overthrew the Spanish colonial authority, was a product of the combined efforts of peasants and an emerging Filipino elite.[54] When the First Philippine Republic was established in 1898, the Filipino elite quickly gained control, enforcing the old land tenure system at the expense of peasants.[55] Similarly, after the Philippine-American War in which the United States established colonial control, the Filipino elites united to form an alliance with the American authorities, thereby further entrenching their positions of power.[56]

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47 *Id.*
48 PUTZEL, *supra* note 3, at 44.
49 *Id.* at 44-45.
50 *Id.*
51 *Id.* at 45.
52 *Id.* at 48-49.
53 *Id.* at 47-48.
54 *Id.* at 49-50.
55 *Id.*
56 *Id.* at 51-53.

B. *Land Reform Programs Implemented Before CARP Failed to Successfully Redistribute Land*

Between 1898 and 1946, under the U.S. Colonial authority[57] and the Commonwealth government,[58] control of the large and productive agricultural lands in the Philippines gradually fell into the hands of an elite minority of wealthy Filipinos.[59] While policy-makers were apparently interested in implementing some programs to encourage more secure tenure for peasants, their intentions were derailed in each case by actions taken by local elites or poor legislative drafting.[60]

When the Japanese occupied the Philippines[61] during World War II, the Philippine peasants began to actively resist the landlords, most of whom had allied with the Japanese.[62] In an uprising known as the Huk Rebellion,[63] peasant groups succeeded in controlling and temporarily redistributing substantial portions of Central Luzon, a Philippine province with a prosperous agricultural sector.[64] The momentum of the Huk Rebellion led to the election of Ramon Magsaysay as President in 1953 on promises of more liberal land reform legislation.[65] However, he significantly diluted his

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[57] For a description of U.S. Colonial authority see Philippine Peasant Institute, *100 Years of Peasant Struggle (Page 3)* (visited Jan. 27, 2000) *available in* <http://www.ppi.org.ph/history/hist_3.htm>; Philippine Peasant Institute *100 Years of Peasant Struggle (Page 4)* (visited Jan. 27, 2000) *available in* <http://www.ppi.org.ph/history/ hist_4.htm>.

[58] For a description of the Commonwealth government see Philippine Peasant Institute, *100 Years of Peasant Struggle (Page 5)* (visited Jan. 27, 2000) *available in* <http://www.ppi.org.ph/history/hist_5.htm>; Philippine Peasant Institute, *100 Years of Peasant Struggle (Page 6)* (visited Jan. 27, 2000) *available in* <http://www.ppi.org.ph/history/hist_6.htm>; Philippine Peasant Institute, *100 Years of Peasant Struggle (Page 7)* (visited Jan. 27, 2000) *available in* <http://www.ppi.org.ph/history/hist_7.htm>.

[59] PUTZEL, *supra* note 3, at 51-58.

[60] *Id.* To pacify peasants opposed to U.S. rule, the colonial government enacted the Friar Lands Act of 1904 to distribute lands previously held by the Catholic Church. However, few tenants could afford the price offered by the government so the local elite or U.S. corporations finally purchased much of the land. *Id.* at 53. Later, the Rice Share Tenancy Act of 1933 was passed in an attempt to regulate the increasingly widespread tenancy arrangements in the agricultural sector. However, it granted control over the law's implementation to local municipal council elites, many of who had previously profited from one-sided tenancy agreements. *Id.* at 58-59.

[61] *Id.* at 59-60. Between early 1942 and late 1944 the Japanese occupied and controlled the Philippines. *Id.* at 59, 83.

[62] *Id.* at 59-60.

[63] RIEDINGER, *supra* note 25, at 48-55. The Hukbalahap (People's Anti-Japanese Army), known simply as the Huks, was formed in March 1942 and fought to establish local peasant governments during and after the war. The Huks' army grew to 10,000 soldiers at the height of their rebellion in the late 1940's. When American forces retook the country, they repressed the Huks because of their affiliation with the communist party by arresting Huk soldiers and supporting private armies retained by landlords who had come back to retake their lands. With prospects for non-violent struggle improving in the early 1950's, support for the militant group waned and the Huk commander surrendered in 1954. *Id.*

[64] PUTZEL, *supra* note 3 at 60.

[65] RIEDINGER, *supra* note 25, at 88.

proposals after the election.[66] As a result, the Land Reform Act of 1955[67] contained severe internal limitations on land redistribution, including a high retention limit,[68] a requirement that tenants on every redistributed farm petition for expropriation,[69] and insufficient funds to adequately acquire land.[70] In short, Magsaysay's land reform proved disappointing, redistributing less than four-tenths of one percent of Philippine farmland in six years.[71]

In 1972, President Ferdinand Marcos issued Presidential Decree No. 27 ("PD 27").[72] Under PD 27, any tenant living on a rice or corn farm whose landlord had more than seven hectares of land was eligible to purchase a piece of the land he had previously tilled.[73] Despite the clear redistributive theme of PD 27, actual land transfers were few and far between during the Marcos years.[74] In fact, "reverse" land reform occurred both when government policies allowed large plantations to overtake lands of small food-crop farmers,[75] ostensibly to increase national export-crop production, and when landlords evicted tenants to evade redistribution under PD 27.[76] Landlords and multinational agribusiness corporations also profited at the expense of tenants and laborers from other Marcos programs

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[66] *Id.*

[67] Land Reform Act (Republic Act No. 1400) (Phil.) (1955).

[68] RIEDINGER, *supra* note 25, at 90. As originally drafted, lands in excess of 144 hectares would be subject to reform, but the Act was amended to allow lands up to 300 hectares for private lands growing rice, 600 hectares for corporate farms growing rice, and 1024 hectares for farms growing crops other than rice. These amended retention limits meant that only two percent of agricultural land would be subject to redistribution. *Id.*

[69] The government could only expropriate land upon petition from a majority of the tenants working that land. *Id.* at 91.

[70] *Id.* Payment was to be in cash and the funds allocated for the project were much lower than had been initially proposed. *Id.*

[71] Approximately 20,000 hectares were acquired and redistributed. *Id.*

[72] SAULO-ADRIANO, *supra* note 13, at 7-8. Presidential Decree No. 27 implemented Operation Land Transfer and Operation Leasehold which are both land redistribution programs originally designed under the 1963 Agricultural Land Reform Code ("RA 3844"). These programs, although riddled with loopholes and pro-landowner amendments, planned for the transition of tenants to leaseholder and from leaseholders to landowners. RA 3844 was limited to rice and corn farms and was also limited by the requirement that regional administrative bodies be set up prior to its implementation. *See* Presidential Decree No. 27 (1972) [hereinafter PD 27].

[73] PD 27, *supra* note 72

[74] RIEDINGER, *supra* note 25, at 97. Less than four percent of the country's cultivated lands were redistributed by the early 1980's under the Marcos government; *see also* DAVID WURFEL, FILIPINO POLITICS: DEVELOPMENT AND DECAY 174 (1988) (suggesting that by 1980 those deprived of land by reverse land reform might have outnumbered beneficiaries that had received final title documents to land under PD 27).

[75] RIEDINGER, *supra* note 25, at 100.

[76] YUJIRO HAYAMI, TOWARD AN ALTERNATIVE LAND REFORM PARADIGM 7 (1990). Some landlords planted crops other than rice and corn, at the expense both of labor-intensive jobs and productivity, in order to avoid land reform. *Id.*

that were designed to attract investment and increase agricultural exports.[77] The ineffectiveness of PD 27 can be attributed to flawed drafting,[78] a lack of political will to improve the conditions of peasants,[79] and a failure to account for the differences between the social and political conditions of the Philippines and other Asian countries that had experienced more successful land reforms.[80]

Many peasants became angry at the ineffectiveness of PD 27 and expressed their anger in what has become known as the People Power Revolution, which brought President Corazon Aquino to power in 1986.[81] A more effective agrarian reform was chief among her promises to the Filipino peasants.[82] Peasant organizations offered agrarian reform proposals that were grudgingly accepted in principle by landowners, at least officially.[83] However, Aquino decided not to use the legislative authority that she held temporarily before the 1988 elections to introduce sweeping land reforms.[84] Instead, she decided to defer responsibility for agrarian reform to the elite-dominated Congress, ostensibly in affirmation of the democratic process.[85]

In 1988, Congress passed the much-anticipated agrarian reform legislation that implemented CARP.[86] Congress introduced the CARP legislation with the intent to redistribute over ten million hectares of

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[77] *See generally* BATARA, *supra* note 4, at 11-16.

[78] RIEDINGER, *supra* note 25, at 92-101. Design flaws in the 1972 program were numerous: (1) excessive bureaucracy was required to process the different land surveys, claims, and ownership documents; (2) peasants had to be members of community organizations that did not exist at the time the law was written; (3) some observers criticized the retention limit as being too high and having too many loopholes compared to other successful Asian land reforms such as Japan (zero retention), Taiwan (3) hectares retention) and South Korea (zero retention); (4) the actual fact of ownership of land was in dispute during the time that papers were processed, and thus peasants were forced to pay rent to landowners and property taxes as landowners at the same time; and (5) landlords were free to bargain with tenants for the price of the land and frequently overstated the compensation, effectively draining the already limited land acquisition budget. *Id.*

[79] *Id.* at 94. Evidence suggests that where President Marcos had political enemies, expropriation of land was much more efficient. *Id.* Regional inconsistencies in implementing the reform program are attributable to Marcos' primary agenda in adopting land reform: to punish wealthy landlords and to suppress rural unrest. KEIJIRO OTSUKA, DETERMINANTS AND CONSEQUENCES OF LAND REFORM IMPLEMENTATION IN THE PHILIPPINES 349-50 (1991).

[80] HAYAMI, *supra* note 76, at 2-3. Crisis situations and effective administrations created conditions under which Japanese, South Korean and Taiwanese landlords were more willing to submit to land reform. *See also* PROSTERMAN & HANSTAD, *supra* note 17, at 4-5. Land reform programs are more achievable when certain conditions exist, including unified peasant support collaborating with strong governmental authority, to create "windows of opportunity" in which landowners will be more willing to submit. *Id.*

[81] RIEDINGER, *supra* note 25, at 105-06.

[82] *Id.*

[83] *Id.* at 128. Landowners were fearful to speak out against the concept of land reform but based their opposition on the specifics of the various proposals.

[84] *Id.* at 176.

[85] *Id.*

[86] RA 6657, *supra* note 5.

Philippine agricultural land to tenants by 1998.[87] Although CARP has effected the most land redistribution in the country's history, it has neither achieved its original objectives nor satisfied the hopes of the peasants.[88]

C. *CARP's Ambitious Goals and Purposes are Limited By Legislative Provisions*

CARP's stated purpose was to promote social justice, and its scope, in terms of both hectares of land and numbers of beneficiaries, was much greater than its predecessor, PD 27.[89] According to the CARP legislation, all land redistribution was to be completed by 1998.[90] Nevertheless, peasant groups criticized the Aquino administration for including provisions in the legislation that allowed landowners, particularly owners of plantations and large commercial farms, to temporarily or permanently evade redistribution.[91]

1. *The Main Purpose of CARP*

According to Section 2 of the CARP legislation, the main purpose of an agrarian reform implementing program such as CARP is "to promote social justice" for landless farmers and farm workers and to prepare the Philippines for future growth.[92] In its Declaration of Principles and Policies, the CARP legislation focuses on land ownership as an important social determinant in the Philippines.[93] CARP's purposes are to be achieved by "a more equitable distribution" of all agricultural lands, subject to allowances for some retention of land by current landowners, and the payment of just compensation.[94] However, in Section 3 of the legislation, the definition of agrarian reform provides that either redistribution of land or profit-sharing programs[95] on larger farms will fulfill the requirements of CARP.[96] This

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[87] RIEDINGER, *supra* note 25, at 156; RA 6657, *supra* note 5, § 5.

[88] BATARA, *supra* note 4, at 84.

[89] SAULO-ADRIANO, *supra* note 13, at 13-17.

[90] RA 6657, *supra* note 5, § 5.

[91] SAULO-ADRIANO, *supra* note 13, at 27.

[92] RA 6657, *supra* note 5, § 2.

[93] *Id.*

[94] *Id.*

[95] Under profit sharing programs, instead of physically dividing up their land to their farm laborers, commercial farms or large plantations were allowed to fulfill their requirements under CARP by giving corporate shares to the workers. *Id.* § 31. Although the ownership of stock is certainly an asset to the farm laborers, it is less valuable for gaining access to credit and long-term income security than physical ownership of land. *Id.*

[96] *Id.* § 3(a).

definition has drawn criticism because it seems to contradict the guiding principles found in Section 2, which call exclusively for changes in land ownership under CARP.[97]

2. *The Scope of CARP Limits its Effectiveness*

The scope of the planned redistribution under CARP includes substantial public lands and all private lands that are suitable for agricultural use.[98] However, CARP's retention limit provision allows landowners to keep five hectares of land and to give three hectares to each of his or her children.[99] All owners of agricultural land had to register their property with the Department of Agrarian Reform ("DAR") so that the DAR could make a determination of which lands were subject to redistribution.[100] The initial target for land redistribution under CARP was 10.3 million hectares, including 3.8 million hectares to be redistributed by the DAR and 6.5 million hectares by the Department of Environment and Natural Resources ("DENR").[101] The total target was later reduced to 7.8 million hectares as a result of various legislative, executive, administrative and judicial rulings that amended or further limited CARP.[102]

Textual weaknesses in defining the scope of CARP reduce its capacity to meet its stated purpose of affecting social justice through extensive land redistribution, particularly in the private sector.[103] First, the area covered by CARP excludes a large portion of lands because they are used partially for specific public purposes or are lands subject to retention limits and agribusiness exceptions.[104] Second, provisions permitting retention limits and gifts to children allow certain owners of targeted lands to continue to hold large farms.[105] Third, provisions favoring agribusinesses allow a ten-year deferral of redistribution of commercial farms and stock distribution

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[97] PUTZEL, *supra* note 3, at 272-73.

[98] RA 6657, *supra* note 5, § 4.

[99] *Id.* § 6.

[100] *Id.* § 14.

[101] BATARA, *supra* note 4, at 25.

[102] *Id.* at 25, tbl.1.

[103] *See* SAULO-ADRIANO, *supra* note 13, at 19-23.

[104] *Id.* at 19-21. The absolute bar on redistribution of lands used for non-profit purposes has allowed some landowners to circumvent CARP by converting part of their property to public uses. For example, TADECO, one of the largest banana plantations in the Philippines, is exempted from CARP because 4000 hectares of its lands are leased to the government for use as a prison. *Id.* at 19.

[105] *Id.* at 22.

plans to substitute for physical redistribution of plantations, thereby permitting agribusinesses to retain the vast majority of their land holdings.[106]

3. *The Mechanics of Land Acquisition Under CARP Limit its Effectiveness*

The Philippine government acquires private land under CARP when a landowner receives formal notice from the DAR informing the landowner that their land is subject to CARP redistribution.[107] This notice includes an offer to purchase the land for a stated price.[108] If the landowner refuses the offer, administrative proceedings are instigated by the DAR to determine just compensation.[109] The courts have authority to subjectively consider ten factors when determining just compensation.[110] Critics of CARP note that although both the original purchase price of the land and tax valuations are among the factors noted in CARP's valuation formula, landowners are not required to submit documentation regarding these factors.[111] The complex land valuation formula and the legal appeals allowed on the just compensation issue allow landowners to delay redistribution by filling the courts with excessive litigation.[112] Landowners have a right to appeal compensation determinations to the Supreme Court, potentially creating long delays in redistribution.[113]

Upon assent by the landowner or a determination of just compensation, the government pays the landowner and takes ownership of the land.[114] The landowner has the option to be paid in cash for at least twenty-five percent of the purchase price of the land transferred.[115] The

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[106] *See* RA 6657 *supra* note 5, §§ 8, 11, 13; PUTZEL, *supra* note 3, at 274-75; SAULO-ADRIANO, *supra* note 13, at 22-23.

[107] RA 6657, *supra* note 5, § 16(a).

[108] *Id.*

[109] *Id.* § 16(d).

[110] *Id.* § 17.

[111] PUTZEL, *supra* note 3, at 273.

[112] *See id.* at 26-27. Before the CARP legislation was passed, scholars were proposing more simple compensation formulas that would have provided fewer opportunities for lengthy arguments about compensation levels for individual pieces of land. *See* Tim Hanstad, *Philippine Land Reform: The Just Compensation Issue*, 63 WASH. L. REV. 417, 441-42 (1988).

[113] RA 6657, *supra* note 5, §§ 16(f), 60; PUTZEL, *supra* note 3, at 273; Jeffrey M. Riedinger, *Revising CARP, Risking Reform? in* THE MARKET-ASSISTED LAND REFORM (MALR) APPROACH: WHAT'S IN IT FOR CARP? 3 (FARMS Harvest: Philippine Development Assistance Program 1999) [hereinafter *Risking Reform*].

[114] RA 6657, *supra* note 5, § 16(e).

[115] RA 6657, *supra* note 5, § 18.

remainder of the compensation is paid in the form of Land Bank of the Philippines ("Landbank") bonds.[116]

In summary, the Filipino peasant sector was bitterly disappointed at the apparent concessions granted to the landowning class through the textual weaknesses in the CARP legislation.[117] One commentator stated, "[h]ow CARP will sow social justice with a token scope is beyond anybody's guess."[118] However, even more disappointing than the legislative text of CARP was its implementation by the Aquino, Ramos, and Estrada administrations.

IV. THE IMPLEMENTATION OF CARP

A. Implementation Under the Aquino Administration (1988—1992)

The pace of redistribution and the number of exemptions granted to corporate agribusiness were the primary failings of CARP under Aquino. Implementation was slowed by scandals that forced several leadership changes in the DAR.[119] Many plantation owners followed the lead of President Aquino's family, who maintained control of their lands by electing to distribute stock to their tenants instead of physically redistributing the land.[120] The DAR was not prepared to, and in fact did not, make any significant acquisitions of private lands.[121] According to one DAR secretary who held office during the Aquino administration, not one hectare of private land had been expropriated after three years of CARP.[122]

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[116] RA 6657, *supra* note 5, § 18.

[117] RIEDINGER, *supra* note 25, at 176.

[118] BATARA, *supra* note 4, at 26.

[119] BORRAS, *supra* note 7, at 45-47. Four different Secretaries worked at CARP implementation between 1988 and 1992. Fraudulent real estate transactions within the Voluntary Sale portion of the CARP forced the first resignation. Congress did not confirm the second Secretary because of political controversies between parties. Congress did not confirm the third Secretary, a liberal reformer, because of a pro-peasant stance he took on a land-use conversion petition. Many pro-reform DAR staff resigned after this incident leaving a conservative agency for the remaining two years of the Aquino administration. *Id.*

[120] SAULO-ADRIANO, *supra* note 13, at 53. Hacienda Luista, the sugar plantation owned by President Aquino's family was the first corporation to be officially permitted to avoid redistribution of their lands by taking advantage of CARP's stock distribution option. At the time, Hacienda Luista covered about 4200 hectares and employed approximately 6300 farm laborers. *Id.*

[121] *See* BORRAS, *supra* note 7, at 47.

[122] *Id.* at 45 n.29.

B. Implementation Under the Ramos Administration (1992–1998)

The Ramos regime efficiently redistributed public lands and started the process of expropriating private lands.[123] Specifically, the Ramos administration distributed more public land in five years (2.7 million hectares) than had been distributed in the previous twenty years (1.9 million hectares).[124] Table 1 summarizes land redistribution efforts between 1972 and 1998.

Table 1. Total Land Redistribution under PD 27 and CARP

Land Type	Hectares Redistributed: 1972-1986	Hectares Redistributed: 1986-1998	Redistribution Goal (Hectares)[125]	Percent Redistributed
PD 27 - DAR[126]	113,328	380,021	579,520	85
CARP - DAR[127]		2,318,489	3,751,571	62
CARP - DENR[128]		1,971,915	3,771,411	52
Total	113,328	4,670,425	8,102,502	58

The Ramos government also succeeded in collaborating with other governmental and non-governmental agencies in administering CARP. For example, DAR Secretary Ernesto Garilao succeeded in establishing and stabilizing connections between the DAR and the President's Office, and between the DAR and peasant organizations.[129] Moreover, the Ramos administration successfully renewed the CARP legislative mandate for ten additional years. At the close of his term, Secretary Garilao worked with peasant organizations to pass Republic Act No. 8532 (1998) ("RA 8532"), which extended CARP through 2008.[130] Although the money allocated by

[123] *See id.* at 49.

[124] *Id.*

[125] *Id.* at 141-43. The original scope of CARP was 10,295,600 hectares. *Id.* at 141, tbl.4.

[126] Numbers in this row are compiled from SAULO-ADRIANO, *supra* note 13, at 49 tbl.10, and BORRAS, *supra* note 7, at 142, tbl.5. Both authors denote land redistribution statistics under PD 27 by the phrase "[t]enanted rice and corn lands." Additionally, both authors cite DAR reports as being their original source.

[127] Because the DAR is responsible for redistributing lands under PD 27, (i.e. tenanted rice and corn lands) as well as newly targeted lands under CARP, the amount of new land to be redistributed under CARP has been calculated by taking the total accomplishment and scope figures recorded in Philippine Peasant Institute, *supra* note 6, and subtracting the accomplishment and scope figures determined for PD 27.

[128] Philippine Peasant Institute, *supra* note 6.

[129] BORRAS, *supra* note 7, at 48-49.

[130] *Id.* at 69.

RA 8532 was insufficient to fund the remaining land acquisition,[131] the ten-year extension was a victory for reformists who battled to save CARP.[132]

The most obvious failure of the Ramos administration was its inability to redistribute a significant amount of the private land that was subject to compulsory acquisition under CARP.[133] Most of the lands redistributed under Ramos were not private lands.[134] Only about 126,000 hectares, or two percent of private lands targeted for compulsory acquisition were expropriated.[135] These statistics led to skepticism among foreign and domestic observers about the Philippine government's ability to accomplish any significant land reform.[136]

Further, the Agrarian Reform Community ("ARC") Program, introduced by the Ramos administration, has harmed CARP beneficiaries by diverting already limited resources away from land redistribution efforts. In 1993, the DAR introduced the ARC Program, which was intended to complement the land reform efforts of CARP.[137] An ARC is a group of farms where CARP beneficiaries are awaiting the full implementation of land reform. ARCs receive government money for building support services and infrastructure necessary for increases in productivity.[138] The DAR has touted the Program as a decentralized approach to implementation of an integrated agrarian reform program.[139] However, ARCs use government resources for agricultural support services that benefit established landowners, when those resources could be used to directly benefit peasants through land acquisition. Critics accused the government of showcasing a few successful agrarian reform models to leverage foreign investment in the agricultural sector at the expense of the rest of the rural areas.[140]

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[131] *Id.* at 70. The 50 billion Philippine peso allocation, part of which is in doubt because of unreliable sources of funds, does not come close to meeting the need estimated at 75 to 111 billion Philippine pesos. *Id.*

[132] *Id.* at 71.

[133] *Id.* at 142. As opposed to compulsory acquisition, approximately 400,000 hectares of private land were targeted for voluntary redistribution. That is, landowners would voluntarily submit to CARP land acquisition procedures. More than seventy-five percent of this target was achieved by 1997. The remaining private lands targeted by CARP were to be acquired by compulsory acquisition (approximately three million hectares). *Id.*

[134] *Id.* at 23.

[135] *Id.*

[136] *See generally* BATARA, *supra* note 4, at 84; HAYAMI, *supra* note 80, at 4.

[137] BORRAS, *supra* note 7, at 66.

[138] Horacio Morales, Land Bank and DAR: A Partnership for Growth with Equity, Speech delivered during the National Planning Workshop of the Land Bank of the Philippine (Nov. 21, 1998) *available in* <http://www.skyinet.net/~depagref/hrm-lbp.htm> [hereinafter *Land Bank Speech*].

[139] Horacio Morales, *Afterword*, *in* BORRAS, *supra* note 7, at 196.

[140] Noel Valencia, *Preliminary Assessment of CARP*, *in* VOICES FROM THE GRASSROOTS: REPORT OF THE NATIONAL CONFERENCE ON LAND USE CONVERSION AND AGRARIAN REFORM 52 (1994).

C. *Implementation Under the Estrada Administration (1998–present)*

The current administration, particularly through DAR Secretary Horacio Morales,[141] has indicated its dedication to continue the momentum built by the limited land reform successes of the Ramos administration. The administration under President Joseph Estrada announced ambitious goals for land redistribution[142] and began preparing for the anticipated administrative difficulties of redistributing the remaining CARP lands.[143] However, the administration's recent commitment to increasing foreign investment in agriculture has created concern among some land reform advocates.[144] Further obstacles to swift and extensive land redistribution include continuing landowner resistance to redistribution, a lack of collaboration between peasant groups, judicial action taken to reverse prior CARP land allocations, and global trends towards neoliberalism.

1. Landowner Resistance to Redistribution

In 1999, President Estrada committed to completing the remaining CARP land reform by 2004 by transferring an average of 250,000 hectares of private land through the DAR each year.[145] The approximately 1.43 million hectares still to be acquired and redistributed by the DAR[146] are almost entirely private lands subject to compulsory acquisition.[147] One main obstacle to achieving this goal is continued landlord resistance to

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[141] Horacio Morales was once an economist for the Marcos administration before quitting his job to join the grassroots communist movement. He was later imprisoned and tortured for his revolutionary activities. Antonio Lopez Manila, *Watch Out, Landowners; An Ex-communist Is Taking On Agrarian Reform*, NATIONS, July 17, 1998, at 26.

[142] *See Philippines to Step Up Land Reform Effort*, AFX News, Apr. 15, 1999, *available in* 1999 WL 14938640 [hereinafter *Philippines to Step Up Land Reform Effort*].

[143] *Senate Body OK's Agrarian Reform Bill*, BUS. WORLD (Manila), July 6, 1999, *available in* 1999 WL 17717599 [hereinafter *Senate Bill*].

[144] Frasisco Pascual, Jr., *Current Trends in the Agrarian Front*, *in* VOICES FROM THE GRASSROOTS: REPORT OF THE NATIONAL CONFERENCE ON LAND USE CONVERSION AND AGRARIAN REFORM 18-22 (1994).

[145] *Philippines to Step Up Land Reform Effort*, *supra* note 142. The president set a target of budgeting 9 billion Philippine pesos annually to agrarian reform over the next five years. The Philippine government claims that 3.2 million hectares remain to be redistributed between 1998 and 2004, which equals about 530,000 hectares per year. In the first 10 years of CARP, approximately 400,000 hectares per year were redistributed. *Philippine Leader Asks Congress to Finance Completion of Land Reform*, AGENCE FRANCE-PRESSE, June 15, 1999, *available in* Global News Bank <http://infoweb9.newsbank.com>.

[146] *See supra* Part IV.B., tbl.1.

[147] BORRAS, *supra* note 7, at 142. As of June 1997, 1.34 million hectares of private land subject to compulsory acquisition remained. *Id.*

redistribution.[148] Although many of the CARP lands had been targeted for expropriation under previous administrations,[149] little progress has been made in actually transferring ownership of these estates to beneficiaries.[150] Landowners have slowed the land transfers in several ways. First, physical harassment of potential beneficiaries of expropriated commercial farms by former landowners has interfered with CARP implementation in some areas.[151] Second, the widespread practice of land use conversions by landowners, often with the assistance of local DAR officials, has interfered with redistribution.[152] Since CARP applies only to agricultural lands, an incentive exists for agricultural landowners to convert their land to industrial or commercial uses.[153] Land use conversion has occurred legally through the DAR[154] and illegally through bribery or coercion of local government officials.[155] Particularly in Regional Industrial Centers ("RICs"),[156] both legal and illegal conversions are rampant as landlords use their formerly

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[148] Susan Berfield, *Promised Land*, ASIAWEEK, Oct. 23, 1998, at 39. Opponents of land reform have gone so far as to threaten the families of government officials. Secretary Morales' seventeen-year-old daughter was kidnapped in 1998 and was subsequently returned with a warning to stop giving valuable land away to poor farmers. *Id.*

[149] *See* BORRAS, *supra* note 7, at 42. CARP implementation was organized into three phases. Phase I, to be implemented between 1988 and 1992 was to complete Operation Land Transfer, distribute idle and abandoned lands, and lands voluntarily offered for sale. Phase II, also to be implemented between 1988 and 1992, was to redistribute public lands and all private lands larger than 50 hectares. Phase IIIA, to be implemented between 1992 and 1995, was to implement private lands between 24 and 50 hectares. Phase IIIB, to be implemented between 1994 and 1998, was to cover private lands smaller than 24 hectares. *Id.* For details of the precise number of hectares and beneficiaries to be assisted in each implementation phase, see Riedinger, *supra* note 25, at 156.

[150] BORRAS, *supra* note 7, at 142, noting that only nine percent of private lands subject to compulsory acquisition was distributed.

[151] Asian NGO Coalition for Agrarian Reform & Rural Development, *Agrarian Reform in the Philippines*, 1997, *available in* Sustainable Development Department, Food and Agriculture Organization of the United Nations Website (visited June 15, 2000) <http://www.fao.org/sd/ltdirect/ltan0021.htm> [hereinafter ANGOC]. In one example, after farmers had been issued certificates of land ownership, a sugar plantation's owners hired a private army, with the permission of the town's mayor, to prevent farmers from harvesting their crops. The farmers also claim to have been harassed and threatened personally. *Id.*

[152] Valencia, *supra* note 140, at 37. Peasant farmers have held public demonstrations to display their anger over land use conversions. *Rice Planted on Golf Course in Protest*, SEATTLE P-I, Jun. 11, 1998, *available in* University of Washington Libraries, Washington State Newsstand <http://proquest.umi.com/pqdweb>.

[153] SAULO-ADRIANO, *supra* note 13, at 57.

[154] BATARA, *supra* note 4, at 64. According to the Philippine Peasant Institute, 160,247 hectares of agricultural land were converted or targeted for conversion by application to the DAR between 1988 and 1994. In addition to this land, large pieces of agricultural land near cities and towns was allowed to be reclassified as non-agricultural in a unilateral decision by local governments under The Local Government Code of 1991. Antonio Ma Nieva, *Land Scam: Agrarian 'Reform,' Ramos Style*, MULTINAT'L MONITOR, Jan-Feb, 1994, *available in* University of Washington Expanded Academic Index (visited Aug. 21, 2000) <http://web7.infotrac.galegroup.com/itw/infomark>.

[155] Valencia, *supra* note 140, at 38.

[156] Pascual, Jr., *supra* note 144, at 19. RICs are areas where government money will be targeted to assist industrialization through infrastructure and industrial facilities. *Id.*

agricultural land to embark on industrial enterprises in order to take advantage of government investment in industrial support services.[157] Third, landowners with lands subject to CARP are demanding higher compensation rates to increase their personal profit from CARP transactions[158] although on average, CARP compensation rates exceed estimated market prices.[159] Finally, the DAR has worked against redistribution by canceling or confiscating many previously granted temporary ownership documents.[160]

DAR Secretary Horacio Morales has admitted that redistributing lands less than twenty-four hectares will prove even more difficult than the redistribution of larger lands.[161] First, because of the smaller size of the farms, the DAR must deal with more landowners for each block of land than it has in the past, increasing the potential for administrative delays.[162] Second, many of these landlords live in areas where they are able to exert negative political pressure on local DAR officials.[163] Third, there is less societal agreement that redistributing these smaller farms is necessary for the agricultural productivity increases normally associated with land redistribution.[164]

For these reasons, Morales has spearheaded an effort to reduce the current backlog of CARP cases by reforming the body responsible for adjudicating land reform disputes.[165] Additionally, President Estrada has asked the Philippine Congress for increased budget allocations to fund increased administrative support and land acquisition.[166]

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[157] *Id.* at 16.

[158] Court Valuation Standards to Help Facilitate Agrarian Reform Program, BUS. WORLD (Manila), July 6, 1999, *available in* 1999 WL 17717602.

[159] *See generally* RIEDINGER *supra* note 25, at 179 n.7.

[160] *See* BATARA, *supra* note 4, at 62.

[161] Horacio R. Morales, *Opening Policy Knowledge to Social Participation: Agrarian Reform in the Philippines*, Paper delivered at Global Development Network conference (Dec. 5-8, 1999) <http://orion.forumone.com/gdnet/files.fcgi/327_Morales.PDF>.

[162] *Land Bank Speech, supra* note 138.

[163] *See* BORRAS, *supra* note 7, at 86-87. In the Southern Luzon region of Bicol, a local government official has publicly claimed that there are no more lands to redistribute in his region, even though less than 40% of targeted CARP lands have in fact been redistributed in Bicol. The example of one landlord and his attempts to evade redistribution under CARP demonstrates that landlords can coerce local officials to rule unjustly in their favor in adjudicating peasant complaints. *Id.*; Lopez, *supra* note 141.

[164] *Weekender: A Time for Rethinking (Agrarian Reform)*, BUS. WORLD, June 11, 1999, *available in* 1999 WL 17716166 (since many of the owners of lands under 24 hectares are local professionals, and often invest in technology for their farms, the Philippine government should exempt lands below 24 hectares from CARP and begin to focus on other social issues).

[165] *Senate Bill, supra* note 143.

[166] *See generally Philippine Leader Asks Congress to Finance Completion of Land Reform, supra* note 145.

2. *Battling the National Budget: The Lack of Collaboration Between Peasant Groups has Eroded Support for CARP Funding*

Instead of increasing allocations for land reform, the latest national budget allocations by the Philippine Congress dispensed a "crippling blow" to CARP land acquisition and redistribution.[167] DAR Secretary Horacio Morales stated that the cuts could mean the "complete cessation of the major land acquisition and distribution activities of the DAR."[168] Landbank[169] officials threatened that the recent budget cuts could force the suspension of new land transfers in order to service existing bonds, and could also cause the Philippines to default on World Bank loans.[170]

The recent budget cuts may be evidence that the political forces in favor of extensive land redistribution have weakened. Scholars have linked the success of land reform programs to active political advocacy.[171] The active "pro-CARP" collaborations that existed in the early 1990s between grassroots peasant organizations eroded in the late 1990s.[172] Thus, the lack of collaboration among peasant organizations could pose a serious threat to future redistribution efforts.[173]

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[167] *DAR Budget Cut To Cripple Agrarian Reform—Morales*, BUS. WORLD (Manila), Dec. 15, 1999. *available in* 1999 WL 29170500 [hereinafter *Budget Cuts*]. The DAR's most recent budget proposal of 12.6 billion Philippine pesos was cut by 4.6 billion. Most notably, 1.2 billion Philippine pesos was cut from the 1.8 billion originally targeted for the Agrarian Reform Fund, which covers landowner compensation through the Landbank. Even the 12.6 billion Philippine pesos proposed was substantially under the budget requirements published by the DAR. Philippine Peasant Institute, *Summary of CARP Budgetary Requirements for 1999 to 2004 for All Agencies Involved* (visited Mar. 20, 2000) <http://www.ppi.org.ph/programs/research/farm_charts/chart_3.htm>.

[168] *Budget Cuts, supra* note 167.

[169] The Landbank of the Philippines provides mortgages to land recipients, and issues bonds as compensation, to landowners whose land has been redistributed. SAULO-ADRIANO, *supra* note 13, at 18.

[170] Reena J. Villamor, *Landbank Risks Defaulting on World Bank Debts*, BUS. WORLD (Manila), Jan. 10, 1999, *available in* 2000 WL 4647077.

[171] HAYAMI et al., *supra* note 76, at 4. "...[T]he success of the new land reform program in the Philippines (and in any other country) will depend on whether or not it has been designed with the political market reality in the country in mind." *Id.*

[172] E-mail correspondence from Jeffrey M. Riedinger, Professor, Michigan State University, to Andre Sawchenko, Comment Author, *Pacific Rim Law and Policy Journal* (May 21, 2000) (on file with the author). Peasant organizations are currently not as united as they were several years ago as a result of a disagreement about how much involvement each organization should have with the Estrada Administration. *Id.*

[173] PUTZEL, *supra* note 3, at 363. United involvement of grassroots organizations will be necessary for future successes in land reform. *Id.*

3. *The Estrada Administration's Commitment to Foreign Investment in Agriculture is an Obstacle to CARP Redistribution*

The Estrada administration recently cast doubt on the sincerity of its commitment to extensive land redistribution by announcing plans to increase foreign investment in agriculture.[174] The administration intends to achieve the dual objectives of increased investment in agriculture and redistributive land reform through a program entitled Convergence Strategy for Sustainable Rural Development.[175] This program involves increased collaboration between the DAR, the Department of Agriculture ("DA"), and the DENR in specified "convergence zones."[176] The administration hopes to attract private investment in the model agribusinesses within these convergence zones.[177] To the displeasure of peasant organizations, a large portion of CARP funds have already been spent on other similar investment-inducing projects, such as the ARCs, to encourage foreign investment in agribusiness, and the production of non-traditional crops.[178] Recent demonstrations by farmers have sent the message that peasants are concerned about the increase in production of cash crops and the increase in foreign ownership of land.[179] In short, peasant organizations fear that the programs currently in place to attract foreign investment will perpetuate power imbalances in the rural areas and will thereby work against the DAR's commitment to swiftly expropriate private lands under CARP.[180]

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[174] *Land Bank Speech, supra* note 138. Some peasants feel that the government is overlooking current abuses of CARP by large corporations in order to attract more foreign investment. Attempts at striking, organized by Dole corporation workers to increase the bargaining power of CARP-created worker cooperatives, were crushed by armed forces, killing several workers. The Philippine government took no action against the company. David Bacon, *Banana War in the Philippines—Dole Strike Highlights Impact of Corporate Globalization,* Institute for Food and Development Backgrounder, Summer 1998, *available in* Food First Website (visited May 9, 2000) <http://www.foodfirst.org/pubs/backgrdrs/1998/s98v5n2.html>.

[175] *Land Bank Speech, supra* note 138.

[176] Horacio Morales, Serving the Countryside Better, Speech delivered Jan. 26, 1999, *available in* <http://www.skyinet.net/~depagref/hrm-jmc.htm>. Convergence zones are geographic areas that showcase economically viable agribusinesses that are assisted by the coordinated efforts of various government branches. *Id.*

[177] *Id.*

[178] BATARA, *supra* note 4, at 72.

[179] Teddy Casino, *Fast Forward: Farmers' Turn to Rally*, BUS.WORLD (Manila) Oct. 22, 1999, *available in* 1999 WL 29167682.

[180] *See* PASCUAL JR., *supra* note 144, at 19. For example, some worry that the Medium-Term Philippine Development Plan, which was implemented to industrialize the Philippines, will simply maintain current power imbalances. *See id.*

4. Judicial Action has Impeded Effective Redistribution under CARP

The Philippine judiciary has earned an anti-reform reputation through a series of decisions that provide ways for landowners to evade CARP.[181] Specifically, the judiciary has consistently construed the provisions defining the scope of CARP narrowly while construing rights of landowners vis-à-vis peasants broadly. In *Luz Farms v. Secretary of Agrarian Reform*,[182] the Philippine Supreme Court declared unconstitutional the provision in the CARP legislation that included livestock production lands in CARP redistribution. In *Central Mindanao University v. Department of Agrarian Reform Adjudication Board*,[183] the Court construed broadly a provision in the legislation that excludes lands being used for certain public purposes. In short, the Philippine Supreme Court has invalidated and narrowly construed the land acquisition provisions, while broadly defining the exceptions to land redistribution.[184]

5. Neoliberalism in the Philippines is an Obstacle to Redistribution Under CARP

The "neoliberalist" economic reforms urged by foreign scholars and influential international organizations[185] would hinder equitable land redistribution to Philippine peasants. Neoliberalist theory suggests that freeing international and domestic markets from over-regulation will eventually achieve the greatest economic benefit to citizens of all countries by increasing overall economic activity.[186] Further, neoliberalists suggest that social and political transitions within a country should occur by a process of "elite-pacting" whereby groups currently in power maintain a large degree of control over social and political institutions and private

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[181] Valencia, *supra* note 140, at 40-44. For example, in Association of Small Landowners in the Philippines v. DAR, 175 Philippine Supreme Court Reports, Annotated 343 (1989), the Supreme Court held that the government gains title to CARP lands only after landowners have been fully compensated, which allows landowners time to use illegal means to dissuade beneficiaries from taking possession of the land. *Id.*

[182] 192 Philippine Supreme Court Reports, Annotated 51 (1990), *cited in* Valencia, *supra* note 140, at 41.

[183] 215 Philippine Supreme Court Reports, Annotated 86 (1992), *cited in* Valencia, *supra* note 140, at 42.

[184] *See generally* Valencia, *supra* note 140, at 40-44.

[185] BORRAS, *supra* note 7, at 3-5; PASCUAL, JR., *supra* note 144.

[186] *See* Riddell, *supra* note 38, at 3.

property.[187] The influence of neoliberalism can be seen in many current administrative and legislative policies in the Philippines.[188] Neoliberalism poses a threat to extensive land redistribution under traditional land reforms like CARP because of its emphasis on unrestricted markets and the protection of established property ownership.[189] In other words, if the Philippine government continues to embrace neoliberalism, its resolve to redistribute land under CARP may eventually erode.

In summary, the DAR has publicly committed to accelerating redistribution for the remaining CARP lands.[190] However, in light of the limited success redistributing private lands under the Aquino and Ramos administrations, the DAR's new goals seem implausible. Thus, DAR officials are currently evaluating proposals to revise the land redistribution mechanism of CARP.[191] The DAR has commissioned a study assessing the feasibility of market-assisted land redistribution as a potential alternative to the present, mandatory mode of land redistribution.[192] Part V of this Comment discusses potential land redistribution options and Part VI argues in favor of mandatory redistribution.

V. MARKET-ASSISTED AND MANDATORY LAND REDISTRIBUTION: TWO POTENTIAL ALLOCATION MECHANISMS FOR CARP

The appropriate mechanism by which land should be redistributed in the Philippines is in dispute among land reform scholars.[193] Two main mechanisms of redistribution exist: mandatory redistribution and market-assisted redistribution.[194] Mandatory redistribution is based on government expropriation of private land, and is the mechanism that has traditionally been used in land reforms throughout the world.[195] Both PD 27 and CARP

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[187] Richard Levin & Daniel Weiner, *The Politics of Land Reform in South Africa after Apartheid: Perspectives, Problems, Prospects*, *in* THE AGRARIAN QUESTION IN SOUTH AFRICA 94 (Henry Bernstein ed., 1996).

[188] *See* PASCUAL, JR., *supra* note 144, at 19. For example, the Medium-Term Philippine Development Plan promises significant government resources to assist with increased production of export crops and investments in industrialization. These government investments solidify the past inequalities between the elite sector and the peasant sector since the government and foreign investment in these projects are targeted to larger corporations. *Id.*

[189] BORRAS, *supra* note 7, at 2.

[190] *Philippines to Step Up Land Reform Effort*, *supra* note 142.

[191] Feasibility Study, *supra* note 8; *WB, Taiwan Institute Assisting in Philippine Land Reform*, ASIA PULSE, Feb. 10, 1999, *available in* 1999 WL 5084589 [hereinafter *WB, Taiwan Institute Assisting*]

[192] *See Feasibility Study*, *supra* note 8.

[193] *Risking Reform*, *supra* note 113.

[194] Riddell, *supra* note 38.

[195] *Id.*

have attempted to use the mandatory redistribution mechanism of the "traditional land reform model" to acquire private land and subsequently distribute it to landless Filipinos.[196] With market-assisted redistribution, land transfers occur through negotiated sales between landowners and recipients.[197]

A. Mandatory Redistribution: The Traditional Land Reform Model

Based on past successful land reform efforts,[198] scholars have noted several essential elements of traditional land reform programs: (1) mandatory acquisition of private lands for redistribution cannot be replaced with voluntary sale or resettlement strategies;[199] (2) retention limits for landowners should be zero or very low, particularly where the land is inhabited by tenants or is densely populated;[200] (3) reasonable compensation must be provided to landowners to maintain political stability;[201] (4) the land allocated to beneficiaries should be large enough to allow all (or nearly all) potential beneficiaries to receive a share of the land, but it should not be too large to be intensely farmed by a family;[202] (5) the government should provide only a minimum amount of additional services to land recipients in order to focus resources on land acquisition;[203] (6) land recipients should not be forced to repay the full cost of the land acquisition;[204] (7) the government must ensure that administration of the redistribution program is relatively simple in order to maximize resources;[205] and (8) land recipients must have significant representation in the local land distributing authority.[206]

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[196] PD 27, *supra* note 72; RA 6657, *supra* note 5.

[197] World Bank Group, *The Theory Behind Market-Assisted Land Reform* (visited May 11, 2000) <http://worldbank.org/search.htm> [hereinafter *World Bank Theory*].

[198] HAYAMI, *supra* note 76, at 1-3. Although used extensively throughout the world over the past 50 years, mandatory redistribution was most successfully applied in the land reforms of Japan, Taiwan, and South Korea shortly after World War II. *Id.*

[199] PROSTERMAN & HANSTAD, *supra* note 17, at 7.

[200] *Id.* at 7-8.

[201] *Id.* at 8. Compensation need not be full market value and may be substantially less, so long as the payment provides cash flow is at least substantially comparable to that produced formerly by the land. *Id.*

[202] *Id.* One acceptable form of ensuring maximum benefit of the land reform effort is to divide the amount of land available by the number of landless families. *Id.*

[203] *Id.*

[204] Banerjee, *supra* note 25, at 26-27. Efficiency and living standard gains are likely to be limited to the extent that beneficiaries' financial positions change. If large amortization payments are required, beneficiaries will have had little accession to financial freedom from their previous position in most cases. *Id.*

[205] PROSTERMAN & RIEDINGER, *supra* note 25, at 179-89.

[206] *Id.*

Other issues that must be considered when distributing land with a mandatory redistribution mechanism include how to regulate resale of redistributed lands, how to regulate land rental and evictions, how to target the land to be redistributed, and whether to exempt certain types of farms.[207]

B. Market-Assisted Redistribution

1. Rationale for Introducing Market-Assisted Redistribution

The most successful land reforms have been traditional programs that used a mandatory redistribution mechanism, and they often occurred during periods of political instability.[208] In these situations, authoritarian governments have been able to forcibly remove property from wealthy landowners.[209] Based on this history, some scholars question the feasibility of mandatory redistribution in a full democracy. In particular, scholars have begun to question the contemporary applicability of the traditional land reform model in many developing countries where governments cannot afford expensive social programs, and where peace, industrialization, and foreign investment are seen as more important than shifting the power balances within the country.[210]

The high cost of administering a mandatory land reform program, in addition to compensating former landowners for expropriated land, has made nation-wide, compulsory land reforms difficult in many countries.[211] Further, according to some scholars and government officials, broad expropriations combined with regulatory measures outlawing non-agricultural land use have had a negative effect on land markets, foreign investment in agriculture, and agricultural sector performance.[212] Finally,

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[207] *See* Banerjee, *supra* note 25, at 19-26.

[208] Riddell, *supra* note 38, at 5-6.

[209] HAYAMI, *supra* note 76, at 2-3.

[210] *See World Bank Theory, supra* note 197; BORRAS, *supra* note 7, at 1-5; *Initial Experience, supra* note 9, at 3-7.

[211] *Initial Experience, supra* note 9, at 7. Although compensating landlords can have the effect of reducing resistance by the powerful elite class to the land reform effort, the costs can reduce the effectiveness and scope of programs. Banerjee, *supra* note 30, at 26-27. The costs of traditional land reform programs become particularly prohibitive when targeting large plantations, such as those in the Philippines. HAYAMI, *supra* note 76, at 167.

[212] Deininger et al., *Implementing 'Market-friendly' Land Redistribution in South Africa: Lessons from the First Five Years*, at 13, *available in* Global Development Network, GDN99 Conference Papers (visited June 20, 2000) <http://orion.forumone.com/gdnet/files.fcgi/224_zafpapv9.PDF> [hereinafter Deininger South Africa].

the land recipient selection process[213] used in some of the countries that have a traditional land reform program has reduced access to land for farm laborers.[214]

Because of these perceived deficiencies in the traditional land reform model, a new model of redistributive land reform was sought that would keep the land market intact for landless laborers, corporate investors, and industrialists.[215] Some scholars, including those at the World Bank, propose market-assisted land redistribution to address these concerns.[216]

2. *The Basic Theory of Market-Assisted Land Redistribution*

The fundamental premise of market-assisted land redistribution is that landowners and landless peasants enter into willing-buyer, willing-seller agreements to transfer land.[217] Purchases by peasants are subsidized by grants given from funds raised from both public and private sources.[218] The government, non-governmental organizations ("NGOs"),[219] and land recipients all have specific roles in market assisted land redistribution. The government's role is to establish policies that will encourage a more active land sales market, to develop model farm projects, and to provide land purchase grants to land recipients.[220] The basic role of the NGOs is to work

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[213] Under CARP, priority in the selection of CARP land recipients is given to local landless residents (as opposed to landless residents from other regions) and to tenants of the land over farm workers. RA 6657, *supra* note 5.

[214] Deininger et al., *Agrarian Reform in the Philippines: Past Impact and Future Challenges, available in* Global Development Network, GDN99 Conference Papers, at 24 (visited June 20, 2000) <http://orion.forumone.com/gdnet/files.fcgi/189_final4.PDF> [hereinafter Deininger Philippines].

[215] *Initial Experience, supra* note 9, at 2-3.

[216] *World Bank Theory, supra* note 197. A Manual for Monitoring and Evaluation of Market Assisted Land Reform is currently being developed by World Bank scholars. *Id.*

[217] *Id.*

[218] *Id.*

[219] In the Philippines, NGOs that could work with the DAR in implementing land reform are local non-profit organizations formed to benefit peasants in one or more specific ways. For example, an NGO might provide entrepreneurial training to beneficiaries and evaluate the agricultural efficiency of CARP beneficiaries. *See Land Policy, supra* note 14, at 27.

[220] *Id.* at 26-27. Pre-conditions to market-assisted land reform include eliminating policy distortions and administrative restrictions on land sales and rental markets. Model farm projects include information on finding employment for all family members, crop selection, and the creation of family-sized garden plots. *See* Coralie Bryant, *Property Rights for the Rural Poor: The Challenge of the Landless*, J.INT'L AFFAIRS, Fall 1998, at 198-204. To prepare for market-assisted land reform, the government must ensure the following institutional conditions: (1) an open titling and registration process, (2) transparency and open price competition; (3) credit, collateral and debt collection institutions; (4) freedom to contract and contract enforceability; (5) dispute adjudication institutions; and (6) financing and extension for low income cultivators. *Id.*

at the local level to evaluate the potential demand and supply of land.[221] If the land supply in a given area does not substantially exceed the demand, land purchase grants will not be offered in that area.[222] Potential land recipients are responsible for grant proposals and for using the government grant to secure land and other assets.[223] Variations on this basic model exist and have been applied with limited success in Colombia, Brazil, and South Africa.

3. *Market-Assisted Land Redistribution in Colombia, Brazil, and South Africa*

In 1994, Colombia implemented a market-assisted approach to land redistribution in an attempt to reign in the ballooning cost of administering its traditional land reform program.[224] The market-assisted approach initially delivered disappointing results.[225] Government officials have now shifted the goal of the market-assisted program from redistributing a specified amount of land to ensuring the viability of businesses established on previous land transfers.[226] There has not been an adequate opportunity to determine whether the changes have improved the effectiveness of Colombia's market-assisted land reform.[227]

The Brazilian government has authorized pilot market-assisted land reform programs in northeastern Brazil in an attempt to provide more efficient and cost-effective land reform.[228] Over the past thirty years, Brazil's land reform programs have proven expensive and inefficient.[229] State governments are currently experimenting with decentralized, market-

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[221] *Land Policy, supra* note 14, at 27. To evaluate the demand for land, local organizations must raise awareness among potential beneficiaries, quantify the number and need of the beneficiary population, and work to develop a transparent process of dealing with potential beneficiaries. To evaluate the supply of land, NGOs determine which land, reasonably priced and suitable for cultivation as a small farm, will likely be offered for sale in the near future. *Id.*

[222] *Id.* at 27 n.14. If the supply of land does not exceed demand in a local area, the sellers will have the bargaining advantage and prices will not be competitive, making market-assisted land reform impracticable in that area. *Id.*

[223] *Id.* at 27.

[224] *Initial Experience, supra* note 9, at 8-9.

[225] *Id.* at 9.

[226] *Id.* at 10. Several substantive changes were made to apply this new focus. First, administering the land reform was further decentralized. Second, additional technical support was provided for beneficiaries. *Id.*

[227] *See id.* at 28.

[228] *Id.* at 22

[229] *Id.*

assisted programs in the northeast.[230] Sufficient evidence of whether the pilot projects were successful has not yet been gathered.[231]

Land reform in South Africa was designed as a part of a broader plan to correct the injustices done to indigenous South Africans during their eighty years under the apartheid system of government.[232] Under the South African land reform program, rural households could receive a grant to aid in the purchases of land and capital in the regular markets.[233] However, during the first five years of implementation, the land reform program delivered disappointing results.[234]

4. The Philippine Market-Assisted Land Redistribution Proposal

Since 1997, foreign observers such as the World Bank have been proposing that the Philippines adopt a new model of land reform for the remaining CARP lands.[235] They propose that the new program include the basic elements of market-assisted land reform in addition to two unique elements that are particularly tailored to land reform in the Philippines.[236] First, their proposal suggests an elimination of the CARP restrictions on land rental arrangements to allow for basic access to land for those who cannot acquire their own land.[237] Second, it suggests that local land taxes should be more effectively collected.[238] In theory, effective tax collection would act as an incentive for owners to use their land productively.[239] The additional

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[230] *See* The World Bank Group, *World Bank Supports Pilot Land Reform in Brazil*, News Release No. 97/1321, Apr. 22, 1997, *available in* (visited Feb. 28, 2000) <http://www.worldbank.org/html/extdr/extme/1321.htm>. A $90 million external loan helped to fund these market-assisted projects. *Id.*

[231] *Initial Experience*, *supra* note 9, at 22. Early evidence suggests that very few Brazilian beneficiaries have been able to repay their land purchase credits and so they have not been able to receive final title. This has raised concerns about the ability of beneficiaries to access working capital without further grant funding. *Id.*

[232] Deininger South Africa, *supra* note 212, at 2-3. As a part of South Africa's Reconstruction and Development Program, market-assisted land reform was chosen as a compromise with the wealthy, white minority and foreign investors who wanted assurances that the New South Africa would respect private property rights. *Id.*

[233] *See id.* at 12-18.

[234] Between 1994 and 1999, only 0.6% of the targeted lands (about 200,000 out of 29.72 million hectares) were redistributed and only two percent of households demanding land (about 20,000 households) were served. *Id.* at 12.

[235] *U.S. Scholar to WB: Market Based CARP Not Fit for RP*, BUS. DAILY, July 30, 1997, *available in* 1997 WL 12007020.

[236] *See* Deininger Philippines, *supra* note 214, at 22-24.

[237] *Id.* at 22.

[238] *Id.* at 4.

[239] *Id.* at 23.

revenue generated would purportedly fund the market-assisted land reform program and provide grants to land recipients.[240]

Advocates of this new model have traveled to the Philippines to meet with DAR Secretary Morales to convince him of its benefits.[241] While the Philippine government initially rebuffed this proposal,[242] current DAR officials have commissioned a study to further investigate market-assisted land reform.[243]

VI. LAND REFORM IN THE PHILIPPINES SHOULD OCCUR BY MANDATORY REDISTRIBUTION

Mandatory redistribution is the best land reallocation mechanism for the Philippines because it is likely to provide the best opportunity for the redistribution of the most land to the most beneficiaries. A land redistribution mechanism should further the purposes of that country's overall agrarian reform program.[244] According to CARP, the primary purpose of agrarian reform in the Philippines is to effect social justice in the rural areas, including the establishment of a social and economic framework conducive to equitable economic growth.[245] Thus, the land redistribution mechanism of the traditional land reform model is preferable because it has the capacity to effect social justice by redistributing more land.[246]

A. Mandatory Redistribution is the Most Effective Land Reform Mechanism for Achieving Social Justice in the Philippines

Mandatory redistribution of land has already benefited, and will continue to benefit, rural Filipinos in two ways. First, government acquisition and redistribution of land is a very efficient redistribution method. Second, expedited land redistribution allows government investment in agriculture to accrue directly to land recipients rather than to current landowners, and therefore leads to a more equitable economic growth.

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[240] *Id.* at 5.

[241] *WB, Taiwan Institute Assisting*, *supra* note 191.

[242] William A. de Lange Jr., *DAR, Farmer-groups Criticize WB Report On Agrarian Reform Program*, BUS.WORLD (Manila), Jun. 12, 1997, *available in* 1997 WL 10165979.

[243] *Feasibility Study*, *supra* note 8.

[244] *See* PUTZEL, *supra* note 3, at 3.

[245] RA 6657, *supra* note 5, § 2.

[246] Rose Guzman, the research head of the IBON Foundation, a Philippine research group, has stated, "[m]arket-oriented land reform defeats social justice." *Feasibility Study*, *supra* note 8.

1. Mandatory Redistribution is an Efficient Method of Land Reallocation

The basic premise of mandatory redistribution carries several benefits in terms of efficiency in land redistribution. In a mandatory redistribution system, the government gives land directly to peasants rather than giving them money to buy land.[247] Government action to take and redistribute the land will increase the efficiency of redistribution by saving transaction costs.[248] These transaction costs may include the process of identifying land available for sale and negotiating a sale. Further, administrative action will allow more coordination in time and place of redistribution than the more random, market-driven redistribution.[249] Finally, some potential beneficiaries who might be discouraged by requirements of acquiring land through a negotiated sale system can still participate under the traditional model.[250]

The redistribution achieved under mandatory redistribution in the Philippines has improved standards of living. Recent empirical studies have shown that beneficiaries of both PD 27 and CARP have had higher incomes than non-beneficiaries.[251] Consequently, these households have been able to access significantly more education and health care services for their families.[252]

2. The Swift Land Redistribution of a Mandatory Mechanism will Lead to Future Equitable Economic Growth

An expedited redistribution under the traditional model could complete CARP's redistribution targets in several years. This would free up large pools of money in the government's budget, previously allocated to land redistribution, that could then be invested in agricultural support services. These investments in agricultural support services would accrue to a larger number of landowners than currently exist, resulting in greater equity.[253] Only when productive assets, particularly agricultural lands, are

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[247] *See supra* Part V.A.

[248] Banerjee, *supra* note 25, at 15. This argument assumes that redistributed land is not immediately saleable. *Id.* at 16.

[249] *Id.* at 23.

[250] Proponents of market-assisted land reform have pointed to this characteristic as an advantage of market-assisted land reform because it has the potential to eliminate inefficient beneficiary farmers who might reduce agricultural sector efficiency if they were given land. *See id.* at 30.

[251] Deininger Philippines, *supra* note 214, at 18, 32.

[252] *Id.* at 22.

[253] *See supra* Part II.C.4.

controlled equitably will growth in productivity benefit rural Filipinos.[254] History has shown that the "trickle-down effect"[255] has not worked for the poor in developing countries, where the distribution of assets was unequal before growth enhancement programs began.[256] As long as the distribution of rural assets remains unequal, Philippine government investment in agricultural support services will accrue mostly to current landowners, increasing their economic and political power, and thereby increasing resistance to future agrarian reforms.[257]

B. Market-Assisted Land Redistribution will not Effectively Achieve Equitable Reform

Market-assisted redistribution programs will not effectively achieve equitable land reform for several reasons: (1) it is dependant on the amount of land on the market at a given time; (2) land market imperfections often artificially increase land prices; (3) many landowners will choose not to sell their lands to beneficiaries due to various non-economic factors; and (4) the tax policy changes necessary for market-assisted land reform are difficult to implement.

1. Inadequate Land Supply on the Regular Market

Under the market-assisted land reform model, the number of targeted beneficiaries that acquire land through the land reform program is limited by the amount of land that is for sale on the market at any given time.[258] Advocates of market-assisted land reform have failed to address the limitations of using the land market to achieve swift redistribution of a large percentage of a nation's agricultural land.[259] Experts acknowledge that the quantity of land available for sale must exceed the land needed by potential

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[254] *Risking Reform, supra* note 113, at 2-3.

[255] The term "trickle-down effect" refers to the theoretical phenomenon by which sustained economic growth that may occur initially with a country's wealthy class will eventually spread to the entire economy. Adelman & Robinson, *supra* note 15, at 952.

[256] *See id.* at 984.

[257] *See supra* Part II.C.4.

[258] Banerjee, *supra* note 25, at 30.

[259] Jeffrey M. Riedinger, & Wan-Ying Yang, *Problems Plague Market-Based Land Reform: The Cases of Brazil, Colombia, the Philippines and South Africa*, Apr. 22, 1999 (unpublished manuscript, on file with author).

beneficiaries for successful redistribution under a market-assisted system.[260] This requirement is necessary to ensure a buyer's market for land that should keep land prices low and facilitate transactions between peasants and landlords.[261] However, the amount of land that is on the market at any given time in the Philippines is substantially less than would be required by the many landless peasants waiting to become landowners.[262] Although policies can be implemented to increase the amount of land for sale,[263] the percentage of land on the market is not likely to increase significantly enough to benefit the number of potential beneficiaries waiting for land.[264]

2. *Land Price Increases*

A second limitation to redistribution under market-assisted land redistribution programs is that land prices would likely increase as a result of the agrarian reform program that subsidizes land sales and invests in agricultural support services. Theoretically, market-assisted land reform includes the implementation of policies intended to reduce land market prices, facilitating greater accessibility of the land market by poor farmers.[265] However, at least two other components of the market-assisted model would likely work against these price-reducing strategies. First, given the high profile of CARP in the rural areas, land purchase negotiations would be conducted with the knowledge that other beneficiaries are waiting for approval to purchase land. This information would likely drive up land prices.[266] Second, investment in agricultural support services and infrastructure, important for ensuring the success of land reform beneficiaries, would also drive up agricultural land prices. The consequence of these likely land price increases is that government subsidies or buyers' reliance on credit would also have to increase.

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[260] *Land Policy, supra* note 14, at 27. In Colombia, *municipios* have to prove that land supply is three times greater than demand by potential beneficiaries before their area is approved for land reform funding. *Id.*

[261] *Id.*

[262] *See* Riddell, *supra* note 38, at 11-12.

[263] *See* Bryant, *supra* note 220.

[264] *See* Riddell, *supra* note 38, at 11-12; Interview with Professor Timothy Hanstad, *University of Washington School of Law* (May 2, 2000).

[265] Deininger South Africa, *supra* note 212, at 7.

[266] A limited price range could be imposed on buyers and sellers in market-assisted land reform transactions. However, attempts to reduce landlord compensation would likely invite more of the same landlord resistance that currently plagues CARP. *See supra* Part IV.C.I.

3. *Non-Economic Factors*

Market-assisted redistribution is also limited by non-economic factors. Specifically, landlords are unwilling to transfer their land because of its high social and political value in the rural areas.[267] Philippine land reform expert Professor Jeff Riedinger stated that "[t]he depth of landowner opposition to land redistribution suggests an attachment to land that transcends economic concerns."[268] For over 100 years land ownership has been associated with prestige and political power in the Philippines.[269] Therefore, as land redistribution will likely lead to a redistribution of political power, currently powerful elites will not likely be eager to hasten the process by voluntarily submitting their land for redistribution. For example, some landowners have demonstrated their unwillingness to submit to redistribution by breaking the law.[270] At the local level, politically powerful landlords resist redistribution through illegal land use conversions and physical threats to prospective beneficiaries.[271] At the national level, land redistribution under CARP faces landowner resistance in the form of political pressure put on legislators to reduce the DAR's land acquisition budget.[272] In short, landowners that have demonstrated unwillingness to submit to compulsory land reform are unlikely to voluntarily offer their lands for redistribution under a market-assisted land reform unless they are paid very high prices for land. Neither poor peasants nor the Philippine government through land purchase grants can afford to pay the high prices likely to be demanded by landowners under a market-assisted program.

4. *Tax Policy Changes Will Be Difficult to Implement*

The Philippine government will have great difficulty implementing the tax policy changes included in the World Bank's proposal.[273] Removing

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[267] *See* Banerjee, *supra* note 25, at 13.

[268] Riedinger & Yang, *supra* note 259.

[269] PUTZEL, *supra* note 3, at 60-61.

[270] *See generally* BORRAS, *supra* note 7, at 85-114.

[271] *See* ANGOC, *supra* note 151.

[272] *See* BORRAS, *supra* note 7, at 22. While the national political barrier has recently been a significant obstacle to land reform, successes at the local level indicate that national level success may be possible. *Id.* In a speech made to European donors, Secretary Morales directly contradicted the commonly held belief that successful land reform cannot occur in a democratic context. *See DAR Chief Says Government Committed to Making Land Reform a Success*, BUS.WORLD Jun. 7, 1999 [hereinafter *Committed*]. If foreign donors join the collaborations between grassroots peasant organizations and the DAR, the national barriers could potentially be overcome.

[273] *See supra* Part V.B.4.

the tax breaks currently offered for investment in agricultural business is a prerequisite to their proposal because it theoretically frees up more land for sale on the land market and reduces land prices.[274] Landowners who use agricultural land as a tax shelter for other business interests would likely oppose such tax reforms at the local and national levels.[275] The World Bank proposal also suggests that revenue from better collection of local land taxes will supply a large portion of the funding for market-assisted land reform.[276] However, improved tax collection from wealthy landlords who have already demonstrated their opposition to further taxes under the Ramos administration would likely prove difficult.[277]

VII. RECOMMENDATIONS

Changes to CARP and the way it is implemented are necessary to swiftly and successfully redistribute the remaining CARP lands. Specifically, the valid criticisms of CARP[278] that have led to calls for a new redistribution strategy must be addressed. CARP should be changed so that it conforms to the basic elements of traditional land reform programs.[279] The Philippine government, NGOs, foreign governments, and other donors all have important roles in achieving social justice for rural Filipinos through land redistribution.

A. The Philippine Government Should Recommit to Social Justice

The Philippine government, beginning with the Estrada administration, must reaffirm that social justice is the primary purpose of Philippine agrarian reform. It should recognize that mandatory redistribution of lands, particularly private lands, is one of the primary tools

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[274] Riedinger & Yang, *supra* note 259.

[275] *Id.*

[276] *See supra* Part V.B.4.

[277] *Risking Reform*, *supra* note 113, at 2; *but see* Deininger Philippines, *supra* note 214, at 5 (the World Bank's proposal suggests that landowners may be more willing to pay local taxes if they are convinced that payment of taxes will exclude them from being subject to the threat of expropriative land reform). Proponents of market-assisted land reform may further argue that NGO-government collaborations that have produced some favorable results under CARP could be harnessed to advocate for these tax reforms. However, local grassroots organizations will likely not support these tax reforms if they are implemented to prepare for a shift to a market-assisted land reform program. Deininger Philippines, *supra* note 214, at 5.

[278] *See supra* Part V.B.1.

[279] *See supra* Part V.A; *see also* SAULO-ADRIANO, *supra* note 13, at 76. The key factors identified in the other successful Asian land reforms of Taiwan, Japan, and South Korea were organized peasants, foreign aid, and effective domestic administration. *Id.*

to that end. Peasants await government action in the form of budget allocations and actual land acquisitions rather than mere rhetoric.[280] Although it would be preferable to invest more money in both land acquisition and support services for beneficiaries, land acquisition funds should take first priority in the context of limited budgets.[281]

Several legislative or policy changes are needed to bring CARP implementation in line with the objective of achieving social justice for peasants. These changes include subsidizing the required beneficiary payments, implementing DAR employee incentives, deregulating tenancy and rental markets, simplifying and decentralizing CARP implementation, and developing a comprehensive land use policy.

1. The Government Should Subsidize Beneficiary Amortization Payments

The government should reduce the burden of beneficiary families by subsidizing a portion of the required payments. The land valuation processes of the DAR have set land values higher than market prices in many cases to appease disgruntled landowners.[282] These high land values undermine the value of land redistribution by placing large repayment demands on beneficiaries. Therefore, the government should subsidize beneficiary payments at least to the extent that the compensation rate exceeds the market price of the land.[283]

2. The Government Should Provide Performance Incentives to DAR Employees

The administration should introduce incentives to reward DAR employees who redistribute land effectively. Incentives could be linked to the number of hectares acquired, the number of beneficiaries helped, and the number of landowners compensated. The types of incentives offered could

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[280] *Risking Reform, supra* note 113, at 3.

[281] *See id.* at 2-3. Any government investment for support services that is made concurrently with mandatory expropriation of lands under CARP should be targeted to new beneficiaries. The current Philippine financial strain makes large budget allocations to the DAR more difficult to achieve politically. These limitations force the Philippine legislators to prioritize between mass redistribution and adequate investment in support services. Support services for new farmer-beneficiaries are important to achieving long-term social justice because if beneficiaries are unable to succeed as farmers they may be forced to abandon their lands and will not benefit from future economic growth initiatives. However, actual land redistribution is irreplaceable to achieving social justice for peasants under the assumption that equitable growth cannot occur while the significant factors of production are distributed unequally. *Id.*

[282] *Id.* at 3.

[283] *Risking Reform, supra* note 113, at 3.

include immediate pay increases and hiring preference in other government departments when CARP is completed.[284] Such a program would likely help reduce illegal payoffs to DAR employees from landowners seeking to avoid redistribution.

3. *The Government Should Eliminate Restrictions on Tenancy Agreements and the Land Rental Market*

The government should eliminate restrictions on tenancy agreements and the land rental market because these regulations are impractical to administer effectively and they exacerbate the problem of landlessness for those who have little chance of becoming CARP beneficiaries.[285] In programs such as CARP that give preference to former tenants as potential land recipients, non-tenant farm laborers have little opportunity to acquire land.[286] Further, the number of non-tenant farm laborers is high because current regulations on tenancy encourage landowners to avoid taking tenants. For example, to avoid the restrictions put on tenancy or rental agreements, landowners often resort to informal agreements that provide even less security for peasants.[287] To the extent that landowners refuse to rent out land because of the threat of administrative penalty, opportunities for landless peasants to access land are reduced.[288] Thus, the government should eliminate restrictions on tenancy in the Philippines to allow more farm laborers the opportunity to benefit from CARP.

4. *The Government Should Develop a Comprehensive Land Use Policy*

To address the problem of land use conversions as vehicles for landowners to simultaneously evade land reform and use prime agricultural lands for non-agricultural purposes, the government should implement a

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[284] *Id.* The DAR should also ensure that adequate monitoring systems exist to prevent corruption in new employee incentive programs.

[285] *Id.* at 2. Logic suggests that regulation of tenancy agreements and the land rental market would benefit peasants, preventing them from abusive relationships with landowners. In the Philippines, however, where the administrative and legal systems are underdeveloped, these regulations simply encourage landowners to make informal agreements with their tenants, allowing potentially even more abuse of the tenant. *Id.*

[286] Deininger Philippines, *supra* note 214, at 22. Between 1985 and 1998, the probability of a landless person accessing land in the Philippines decreased by 60%. It is estimated that CARP restrictions on rental and tenancy agreements have significantly contributed to this reduction. *Id.*

[287] *Land Policy, supra* note 14, at 24. In the Philippines, regulation of land rental markets has created widespread wage labor on farms, which is less efficient in terms of agricultural productivity than rental or tenancy arrangements. *Id.*

[288] Deininger Philippines, *supra* note 214, at 21-22.

national land use policy.[289] This policy should set priorities for the various possible uses of agricultural lands and should restore the authority to grant land use conversion applications on CARP lands to the DAR.[290] It should also set a framework for the creation of an "equity-sensitive" land market.[291] A well-enforced, comprehensive land use law would deter landowners from converting their agricultural land to non-agricultural uses outside the scope of CARP and would provide opportunities for tenant and farm laborers to begin to access the land market.

B. Philippine Peasant Organizations Should Seek More Collaborations

Peasant organizations in the rural areas must collaborate politically at the national and local levels.[292] Individual peasants must mobilize themselves in a coordinated effort to support national land reformers within Congress and the DAR. When peasant groups and DAR officials collaborate, land redistribution can occur even against the will of locally powerful elites.[293] In one particular example, tenants on a mango farm owned by a locally powerful landowner were fraudulently induced by the landowner to give up their tenancy rights, which would have allowed them rights to become CARP land recipients.[294] These tenants, with the support of a local NGO that had ties to regional and national activists, attracted national media attention to their plight.[295] After the tenants forced entry to the land, the landowner tried to discourage the tenants by tying them up in court.[296] However, in 1998, six years after securing the assistance of a local peasant organization, the DAR finally redistributed the eighteen hectares in dispute to the tenants.[297]

C. Foreign Governments and Other Donors Should Support Social Justice Efforts

DAR Secretary Horacio Morales has stated, ". . . donor support can be a political corrective to the dominance of the urban-based elite in a

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[289] *See Risking Reform, supra* note 113, at 1.
[290] *See id.* at 2.
[291] SAULO-ADRIANO, *supra* note 13, at 66-67.
[292] BORRAS, *supra* note 7, at 134-35.
[293] *See id.* at 85-114.
[294] *Id.* at 86-91.
[295] *Id.* at 87.
[296] *Id.* at 89.
[297] *Id.* at 90.

developing country such as ours."[298] Foreign donors from wealthier countries generally support efforts of third world countries to improve the welfare and empowerment of poor citizens, ensure peaceful resolution of civil conflict, and enhance economic efficiency.[299] Improved welfare of peasants,[300] defused civil conflict,[301] and increased agricultural efficiency[302] are the expected results of land reform under an enhanced mandatory redistribution program in the Philippines. Therefore, foreign donors should support CARP's compelled redistribution as an effective preparation for equitable economic growth.

VIII. CONCLUSION

Prior Philippine land reforms have not achieved equitable land redistribution for the poor because design flaws and opportunistic landowners limited them. Although more substantial than previous land reform attempts, CARP has also been ineffective in redistributing private lands. Redistribution under CARP must be completed before rural equity can be realized. However, forces from both inside and outside the Philippines oppose the swift and extensive redistribution of private lands. The DAR has two redistribution mechanisms to choose from for the completion of land redistribution under CARP: mandatory land redistribution and market-assisted land redistribution.

Mandatory redistribution of land is the only option that offers the hope of achieving the purpose of agrarian reform. As recognized by CARP, the primary objective of Philippine agrarian reform is social justice for rural

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[298] *Committed*, *supra* note 272.

[299] Hanstad, *supra* note 264.

[300] *See supra* Part VI.A.

[301] *See generally* BATARA, *supra* note 4, at 81-84. Peasant organizations have indicated that they will not receive market-assisted land reform as the genuine redistributive reform they have been calling for because they perceive it as an even greater concession of power to landlords and agribusiness. Peasants have been extremely critical of CARP since its inception, accusing policy-makers and administrators of selling out to the interests of wealthy landlords. Anger over perceived defects in CARP has spawned both violent and non-violent protest. Any land reform that fails to expedite the redistribution of the remaining CARP lands, particularly the contentious private lands, will arouse further anger. *Id.*

[302] *See generally Risking Reform*, *supra* note 113, at 3-4. More extensive redistribution under the traditional land reform model will theoretically lead to greater productivity since lands farmed by owner-operators are generally more efficient than larger farms. Previous CARP beneficiaries, farming a wide variety of crops, have increased the productivity of their land. The Philippine government should focus its resources on immediately redistributing the remaining CARP lands so that larger and less efficient estates will be dispersed and so that landless peasants will be in a position to take advantage of future investments in agriculture. An expedited redistribution will free up a large pool of resources in several years that can be invested in agricultural support services, which are likely to lead to further increases in agricultural productivity. *Id.*

Filipinos. Market-assisted reform cannot achieve this objective, because swift redistribution of such a large amount of land renders market-assisted land reform impracticable. The traditional land reform model, including mandatory redistribution of private lands, is best designed to effect social justice by redistributing the maximum amount of land.

Focused action and increased political will on the part of the DAR, grassroots organizations, and foreign donors can overcome the current barriers to land redistribution under CARP. Such an effort will be necessary to expedite the completion of CARP, which will increase economic stability and lay a framework for continued equitable rural economic growth in the Philippines.