LAND REFORM LAW AND POLICY IN THE PHILIPPINES: DEVELOPMENT TOWARD A POST-COLONIAL FRAMEWORK OF LAND TENURE RIGHTS

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After nearly four centuries of colonial rule, the Philippines inherited a land tenure system which benefitted mainly the landed oligarchy and subjected the rural population to virtual serfdom through the sharecropping system and other forms of tenant farming. After Philippine independence in 1946, successive governments introduced a variety of laws and regulations to improve the lot of the tenant farmers and small landholders.

With the development of the chaotic situation in the 1960s which led to the imposition of martial law in 1972, a new sense of urgency was added to heighten the need for serious reforms of land tenure law. As a result, sweeping decrees were pronounced by the government of President Ferdinand Marcos. This article will attempt to review and analyze the legal and policy developments in this area which is vital to the economic and social stability of the Philippines.

Colonial Era Land Tenure

The present land tenure system in the Philippines is mainly the result of several centuries of Spanish colonial rule which displaced or discouraged small native landholders and concentrated land ownership in the hands of a relatively small number of wealthy Spanish and Filipino individuals, families and associations. The displaced native landowners became largely sharecroppers or hired labor on the lands acquired by the Spanish, *mestizo* and Filipino elites.[1]

Unrest among the rural population, resulting from Spanish colonial abuses was one of the central causes of the Filipino revolution in 1896. However, the expectations of the landless peasants and their leaders were subverted when, soon after the Spanish had been expelled, the landowning Filipino aristocracy took control of the national leadership. This co-optation of the revolution delayed attempts at meaningful land reform legislation for several decades longer.[2]

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1 *See* BAUZON, PHILIPPINE AGRARIAN REFORM, 1880-1975, Occasional Paper No. 31, Institute of Southeast Asian Studies (June 1975), at 1-11.

2 *Id.* at 10-11.

In the post-Hispanic era, the Homestead Act of 1902, enacted by the Philippines Commission on the model of the earlier legislation passed in the United States, served as the basis of attempts at agrarian reform. The American policy was to encourage settlers to develop and cultivate public land by offering plots not exceeding 24 hectares to individuals who succeeded in cultivating one-fifth of the land within five years. The American program for distributing vacant public land to the landless was apparently not too successful because it proved to be culturally and socially ill-adapted to the needs and capabilities of the small farmer or rural peasant.[3]

During the transitory Commonwealth period and continuing through the 1950s, very little progress was made in the direction of agrarian reform. The Filipino elite which had assumed control of the government after disengagement of the Americans consisted mainly of large landholders and their allies, with a vested interest in blocking serious reforms. The government of Manuel Quezon enacted legislation for use in expropriating large *hacienda* landholdings for distribution to rural sharecroppers and peasants, but the authority to expropriate was never effectively exercised.[4]

Post-Independence Era Developments

In 1963, the first comprehensive legislative program for agrarian reform was passed by the Congress of the Republic of the Philippines.[5] The Land Reform Code declared for the first time that the sharecrop system of tenancy was counter to public policy and that it "shall be abolished".[6] However, even this seemingly unequivocal statement of policy was qualified by important exceptions. Existing sharecrop arrangements were allowed to continue, subject to the provisions of the Agricultural Tenancy Act of 1954, as amended.[7]

The other important exception to the Land Reform Code's application was the exemption of lands devoted to crops covered by marketing allotments for international trade. Under this provision, lands cultivated for important crops like sugar and coconuts were not affected. A separate "proclamation" was to be issued to cover land reform for these types of agricultural land.

The Land Reform Code, though riddled with important exceptions, was the first real attempt to create a comprehensive legislative basis for agrarian reform in the Philippines. In the regions where it applied, an organized "agricultural leasehold system" was created, establishing definite

[3] *Id.* at 12.
[4] *See* PINPIN, ED., PHILIPPINE LAWS ON AGRARIAN REFORM (1973).
[5] Rep. Act No. 3844 (1963) ["Land Reform Code"]. This Act is commonly known as the Land Reform Code of 1963.
[6] LAND REFORM CODE, sec. 4.
[7] Rep. Act No. 1199 (1954) ["Tenancy Act"]. This law sets the maximum rental payable by a sharecrop tenant at 30% of the crop and, as amended in 1959, allows the tenant to convert unilaterally to a leasehold tenancy.

rights and duties for lessee and lessor. A "Bill of Rights" for agricultural laborers was also included in the Land Reform Code. Centralized administrative machinery set up by the Code included a Land Authority, Land Bank, Agricultural Credit Administration, Courts of Agrarian Relations, Office of Agrarian Counsel and the National Land Reform Council to coordinate these and other agencies involved in land reform.

The revolutionary approach to agrarian reform adopted by the Land Reform Code was thwarted in the end by inter-agency competition and political infighting during the turbulent 1960s.[8] The central reason for conflict was that, rather than stating outright which land areas in the country would be governed by its provisions, the Land Reform Code required that land reform areas be "proclaimed". A complicated procedure, involving cooperation among the several agencies concerned with agrarian reform, had to be followed before any proclamation could be effected. Lack of coordination and cooperation among the agencies resulted in a fragmentation of authority which immobilized the whole agrarian reform program.[9]

Recent Land Reform Law Developments

In September 1971, the Land Reform Code itself was reformed. The bureaucratic morass of competing agencies which had developed since 1963 resulted in increasing pressure for a more centralized administration of the government land reform program. On September 10, 1971, the "Code of Agrarian Reform of the Philippines"[10] was enacted to amend substantially the administrative apparatus created by the Land Reform Code. Under the new Agrarian Code, a central Department of Agrarian Reforms ("DAR") was established. The new law thereby eliminated the interagency conflict and complicated land reform proclamation process which had existed under the Land Reform Code.

The basic objective of converting sharecrop tenants into leasehold tenants, introduced in the Land Reform Code, was also adopted in the Agrarian Code. Additionally, Section 4 of the new Code provided for an "automatic" conversion of all sharecrop agreements to leaseholds by operation of law, for those types of land affected by the Code. The Agrarian Code, like the earlier Land Reform Code, still applied only to certain types of agricultural land. Those lands not covered, which are mainly those devoted to crops covered by marketing allotments, continue to be subject to the Tenancy Act.

The basic problem with the new Agrarian Code, as with the Land Reform Code, was one of supervision and enforcement. Ensuring that all

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[8] SEADAG, LAND REFORM IN THE PHILIPPINES, Rural Development Panel Seminar, Baguio, Philippines, April 24-26, 1975, at 11.

[9] *Id.*

[10] Rep. Act 6389 (1971) ["Agrarian Code"].

sharecrop tenancies are actually converted to leasehold tenancies has proved to be a very difficult task. Even if the legal status of agrarian land is formally converted, a recalcitrant landlord may be able to deny the farmer the full benefits intended. This gap between the pronouncements of formal legislation and the realities for the tenant appears to be the main reason why the legislative reforms introduced between 1963 and 1972 to bring about meaningful land reform achieved relatively little progress.

The Land Reform Program After Martial Law

Shortly after the declaration of martial law in the Philippines in September 1972, a series of Presidential Decrees on land reform were pronounced.[11] The first of these, Presidential Decree No. 2,[12] was issued to ensure equality of application of the land reform laws for all regions in the country. It declared the entire territory of the Philippines a land reform area. As a result, the types of agricultural land covered by the Agrarian Code in all the country's regions became subject to land reform.

In a significant departure from the earlier government land reform policy, Presidential Decree No. 27[13] was pronounced to convert small farmers who had been tenants into owners of the land they cultivated. Under Pres. Decree No. 27, eligible tenant farmers receive a Land Transfer Certificate, issued by the Secretary of Agrarian Reform, for the land they occupy and cultivate, up to a maximum three hectares if irrigated or five hectares if unirrigated land.

Though it goes further than the Agrarian Code in terms of property rights vested in the small farmer, Pres. Decree No. 27 remains subject to several important limitations. Chief among these is the fact that the new "owners" of the land must still pay for it. This aspect of Pres. Decree No. 27 creates a new creditor-debtor relationship in place of the previous landlord-tenant relationship. In addition, property taxes, *Samahang Nayon* (village cooperative) membership dues and a local guarantee fund must now be paid by the tenant-owner. Furthermore, Pres. Decree No. 27 applies only to those lands which are "primarily devoted to rice and corn" production under a landlord-tenant system of land tenancy. In practice, this requirement has been interpreted narrowly by the DAR to mean that land planted to other types of food crops and land under plantation management should be excluded from land reform under Pres. Decree No. 27.

Pres. Decree No. 27 provides that tenant farmers falling under its application are to be:

> . . . deemed owner of a portion [of land] constituting a family-size farm of five (5) hectares if not irrigated and three (3) hectares if irrigated.

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[11] AGRARIAN CODE, *supra*, note 10, remained in force except as modified by these Decrees and other executive orders.

[12] Pres. Decree No. 2 (September 26, 1972), ["P.D. No. 2"].

[13] Pres. Decree No. 27 (October 21, 1972) ["P.D. No. 27"].

No guidelines are provided in Pres. Decree No. 27 or any of its amendments for the determination of which three or five hectares plots are to be transferred in cases where the tenant is cultivating an area larger than the maximum. A general formula is provided, however, to assist in determining the price of any land to be expropriated, as follows:

> . . . the value of the land shall be equivalent to two and one-half (2½) times the average harvest of three normal years immediately preceding the promulgation of [P.D. No. 27].

The total price of the land expropriated for the benefit of tenants, as determined by the above formula, is to be paid by the individual tenant who acquires the land. Payment may be made over 15 years, in 15 equal annual amortization payments, including 6% interest per annum. Local farmers' cooperatives act as guarantors of the amortization payments, in case of a default by their member farmers. In addition, Pres. Decree No. 27 requires that "the government" guaranty the amortization payments "with shares of stock in government-owned and government-controlled corporations". In order to secure the land transfer transaction more adequately, the Land Bank of the of the Philippines, created by the Agrarian Code, has in practice compensated the landowner and acted as an interim owner of the land during the amortization period. The goals behind this policy are to minimize mortgage defaults, provide the landowner with substantial immediate payment and eliminate the pernicious dependent relationship between the tenant-owner and former landlord.[14]

Although the Land Bank acquires land reform acreage as interim owner, the former landowner still does not receive immediate full payment in cash. An option is provided for the landowner to elect immediate full payment of 10% of the land value in cash and 90% in Land Bank bonds rather than using the Pres. Decree No. 27 amortization formula. This lessens the effect of inflation, which would reduce the return to the landowner over a 15-year amortization period at the artificially low 6% interest rate set by Pres. Decree No. 27. Most landowners affected by Pres. Decree No. 27 have in fact chosen this immediate payment option, according to the DAR.

After the small farmer has completed his payments to the Land Bank under Pres. Decree No. 27, he has a perfected land title. However, title to the land may be transferred subsequently only to the government or one heir.[15] This rather paternalistic restriction is aimed at preventing the new owner from losing his title and becoming a tenant again or from splitting the land up among many heirs into uneconomically small units.

Although Pres. Decree No. 27 made enforcement of land reform potentially easier to institute and enforce, the actual economic benefit may

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[14] HARKIN, D., STRENGTHS AND WEAKNESSES OF THE PHILIPPINE LAND REFORM. SEADAG Papers on Problems of Development in S.E. Asia (May 1975), at 12-13.

[15] *Id.* at 2.

not be as great as would seem for all types of tenants. Former leasehold tenants, who gained significant rights under the Agrarian Code, would only benefit marginally if at all from Pres. Decree No. 27. This seems to be the case because as owners they would continue to make virtually the same payments during the 15-year amortization period which they had as lessees. Under the Pres. Decree No. 27 scheme the former leasehold tenants would also be faced with taxes and other charges, which would be payable in addition to their amortization payments. Thus, it is questionable whether the leasehold tenant should find the Pres. Decree No. 27 land ownership more favorable economically than his secured leasehold under the Agrarian Code. The Pres. Decree No. 27 land transfer formula apparently was developed to benefit mainly sharecrop tenants who did not have the security of land tenure afforded the leasehold tenant. However, in the process of improving the lot of the sharecrop tenant, the leasehold tenant's position was perhaps worsened.

Presidential Decree No. 27 contained other important ambiguities and gaps which needed rectification through supplemental rules and regulations. By November 1972 a reasonably complete set of draft regulations had been prepared by the DAR for use in implementing Pres. Decree No. 27.[16] Since no complete set of implementing regulations have been adopted under Pres. Decree No. 27 to date, the draft regulations have served as the only guidelines available for use by the DAR and its field offices.[17]

The draft regulations clarified several of the most basic potential problem areas inherent in Pres. Decree No. 27. The conflict between the right of the landowner who cultivates his land to retain up to seven hectares and the tenant's right to own the portion of the land cultivated by him, was resolved by a compromise solution. Under the draft regulations, the tenant may not be ejected from the landowner's retained seven hectares until other land is made available to him.[18] This solution, while maintaining the status quo, still fails to give the tenant the full benefit of owning the land he cultivates. Instead, the status quo is maintained while the tenant waits in uncertainty for relocation to a different, perhaps less desirable, plot of land.

Regarding the size of land tracts for purposes of transfer to tenants, the draft regulations provided that all land owned by several members of a family was in effect under joint ownership. Thus, any land owned by a family would be considered as a single unit for purposes of Pres. Decree No. 27, unless subdivision or transfer of parts of the land had been duly effected and registered before the issuance of Pres. Decree No. 27.[19]

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[16] *Id.* at 4 ["draft regulations"].

[17] *Id.* at 5. See also Presidential Memorandum of November 25, 1972 (instructing the DAR to postpone promulgation of the draft regulations).

[18] HARKIN, *supra*, note 14, at 5.

[19] *See* DAR Memorandum of January 9, 1973.

In this way, large landholders were prevented from utilizing the artifice of dividing their land among family members into parcels too small to be covered by Pres. Decree No. 27. Also, the draft regulations require a permit for changes in crops from rice or corn to some crops not covered by Pres. Decree No. 27. Thus, landowners may not circumvent the law by changing to sugarcane or coconuts, crops for which sharecrop tenancy is still allowed under the Tenancy Act. These changes effectively eliminated the possibilities for legitimate landowner circumvention of the law.

The actual implementation of Pres. Decree No. 27 has been relatively slow. Transfer of lands down to the seven hectare cut-off point was required in stages of 100, 50, 24 and, finally, seven hectare plot, respectively.[20] However, the final decision to extend land transfer down to the seven hectare limit was not announced until November 1974.[21] Statistics indicate that most of the potential tenant beneficiaries are located on plots of less than 24 hectares.[22] Thus, extension of land reform benefits to the largest number of tenants was not actually required until two years after the issuance of Pres. Decree No. 27.

Another practical difficulty which has arisen with Pres. Decree No. 27, concerns valuation of the land to be purchased by the tenant farmer. Apparently, the Pres. Decree No. 27 formula[23] for pricing land was never exactly applied, although the necessary data on crop values were collected by DAR field technicians.[24] For undisclosed reasons, but most likely due to landowner pressure, the DAR has issued an order instructing its field offices to fix the price of land by face-to-face bargaining between landowner and tenant. Reversing the Pres. Decree No. 27 formula, this bargained price was to be used to determine the value of average harvests from the land. After being multiplied by 2.5, as required by Pres. Decree No. 27, the harvest price would then yield the already fixed land purchase price. Obviously, this procedure is less favorable for the tenant and more favorable for the landowner because of the greater bargaining power of the latter. It also seems to be a curiously subjective application of the Pres. Decree No. 27 formula, which is aimed at achieving some objective determination of land values.

The two main shortcomings of Pres. Decree No. 27 and of the subsequent Presidential Decrees amending it,[25] lie in the failure to go beyond

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[20] See DAR Memorandum of January 2, 1973.

[21] HARKIN, *supra*, note 14, at 8. This decision was confirmed by the government in May 1975.

[22] *Id.* at 11.

[23] *See* p. 6, *supra*.

[24] HARKIN, *supra*, note 14, at 7. *See* Letter of Instruction No. 41 (November 27, 1972), which ordered the collection of the necessary data. *See also* Letters of Instructions Nos. 45, 46 and 52 (1972).

[25] The five Presidential Decree ("P.D.") amendments to P.D. No. 27 were:
— *Pres. Decree No. 57* (October 21, 1972) establishing commercial loans and other credit and guarantee facilities to finance tenant land purchases;
— *Pres. Decree No. 84* (December 22, 1972) authorizing the Secretary

reform of a small part of the agricultural land in the Philippines and the lack of adherence to policy objectives in the drafting of implementing regulations. The DAR has calculated that the full implementation of Pres. Decree No. 27, all the way down to land plots of seven hectares or more, would only benefit about 956,000 tenants occupying a land area of 1.5 million hectares.[26] This would represent only a fraction of the total agricultural land area of the Philippines. Furthermore, there is uncertainty even as to how far the already narrowed scope of Pres. Decree No. 27 will be pressed by the DAR. Letter of Instruction No. 143, in fact, proposed a list of exempt categories for certain types of landholdings between seven and 24 hectares.[27]

It should be noted that, even as drafted, Pres. Decree No. 27 encompasses less land area than the Agrarian Code, as amended. The basic problem for the government in the future will be how to continue extending the land reform law, on the model of Pres. Decree No. 27, to reach a larger number of tenant beneficiaries and ultimately to cover all types of agricultural land throughout the entire land area of the Philippines. A new agrarian reform code has been drafted by the DAR and is currently under consideration by the government.[28] It will be interesting to see whether the beginning made by Pres. Decree No. 27 will be consolidated and extended if and when the new code is enacted.

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of Agrarian Reforms to sign land transfer certificates for the President;
— *Pres. Decree No. 85* (December 24, 1972) creating the Agrarian Reform Fund, consisting of the government-owned stock and assets in certain public corporations;
— *Pres. Decree No. 152* (March 13, 1973) prohibiting use- of share tenants on lands covered by the Public Land Act;
— *Pres. Decree No. 266* (August 4, 1973) setting registration procedures for Land Transfer Certificates issued under Pres. Decree No. 27.

[26] HARKIN, *supra*, note 14, at 2.

[27] For example, possible types of exemptions suggested by Letter of Instruction No. 143 (1973), included those for resident owners, retired government employees and landowners deriving their entire income from land rentals. Uncertainty about whether the President will grant these exemptions has resulted in a DAR policy of postponing action on land plots smaller than 24 hectares.

[28] HARKIN, *supra*, note 14, at 6.