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## PHILIPPINE LAND REFORM: THE JUST COMPENSATION ISSUE

*Those who make peaceful revolution impossible, make violent revolution inevitable.\**

John F. Kennedy, 1961

Strife and social instability characterize the Philippines' recent history. One need not look far for the roots of this problem. In the Philippines' large agricultural sector, sixty percent of the people cultivate land they do not own.<sup>1</sup> For years, these agricultural laborers and tenant farmers have provided the grass-root support for Philippine guerilla movements.<sup>2</sup> Without a comprehensive land reform program, revolution in the Philippines may be inevitable.<sup>3</sup>

The high proportion of landlessness among Philippine farmers has also resulted in poor agricultural productivity. Philippine rice yields are much lower than the yields attained by Asian nations where most

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\* M. JACKMAN, CROWN'S BOOK OF POLITICAL QUOTATIONS 213 (1982).

1. U.N. FOOD & AGRIC. ORG., 1970 WORLD CENSUS OF AGRICULTURE: ANALYSIS AND INTERNATIONAL COMPARISON OF RESULTS; REPORT ON THE 1970 WORLD CENSUS OF AGRICULTURE, RESULTS BY COUNTRIES, CENSUS BULLETINS, NOS. 1-27 (1973-1980). The figures from these publications were used in conjunction with the demographic data in the 1977 U.N. COMPENDIUM OF SOCIAL STATISTICS, table II.12 (1977); and U.N. FOOD & AGRIC. ORG., 1983 FOOD & AGRIC. ORG. PRODUCTION YEARBOOK, vol. 37, table 3. The landless agriculturalists, roughly 2.5 million households, make up a quarter or more of the country's population and are divided almost equally between tenant farmers and agricultural laborers. *Id.* During this century, many other countries with similar proportions of landless families have undergone upheavals in which the landless provided rank-and-file support for revolutionary forces. Currently, the Philippines is one of only seven remaining countries in which the agricultural landless make up a quarter or more of the population that have not experienced either revolution or a widespread government-sponsored land reform. R. PROSTERMAN & J. RIEDINGER, LAND REFORM AND DEMOCRATIC DEVELOPMENT 25-29 (1987). In sharp contrast, countries such as Taiwan and South Korea have found nonviolent solutions to peasant grievances through large-scale, government sponsored land reforms. *Id.* For a discussion of land reform in Taiwan, see M. YANG, SOCIO-ECONOMIC RESULTS OF LAND REFORM IN TAIWAN (1970). For a discussion of land reform in South Korea, see C. Mitchell, *Land Reform in South Korea*, in READINGS IN LAND REFORM 343 (S. Lin ed. 1970).

2. The communist Hukbalahap movement in the 1950's and 1960's derived support from the peasant tenants. Domingo, *Agrarian Reform: Issues and Problems*, in 2 THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: DRAFT PROPOSAL OF THE 1986 U.P. LAW CONSTITUTION PROJECT, POSITION PAPERS AND BIBLIOGRAPHY 8 (1986). The present communist insurgency movement, the New People's Army, also derives its support from tenant farmers and agricultural laborers. Lohr, *Inside the Philippine Insurgency*, N.Y. Times, Nov. 3, 1985, (Magazine), at 46. For a discussion of the interdependence of land reform and the insurgency problem, see Saulo, *Land Reform and Insurgency*, SOLIDARITY, Nos. 106 & 107, at 59 (1986).

3. Jose Maria Sison, founder of the Communist Party in the Philippines, has said, "If the Aquino government can solve the land problem, I think the [insurgents] would have to consider the fact that there is no need for armed struggle." N.Y. Times, Mar. 4, 1987, at 4, col. 1.

rice farmers have acquired ownership of the land they cultivate through land reform.<sup>4</sup> Experts have pointed to the land tenure situation as the most basic cause of the poor agricultural productivity.<sup>5</sup>

In an attempt to solve these problems, the 1986 Philippine Constitution contains unprecedented (in the Philippines) provisions mandating that the Philippine government implement a land reform program.<sup>6</sup> Specifically, the constitution provides that "the State shall encourage and undertake the just distribution of all agricultural lands . . . subject to the payment of just compensation."<sup>7</sup> The success of any land reform program<sup>8</sup> rests largely upon the interpretation of "just compensation." To a large extent, this interpretation will determine the required cost of the program. A substantial cost may be beyond the government's ability to finance the program.

This Comment analyzes current Philippine land reform efforts, focusing on the constitutional definition of just compensation.<sup>9</sup> First, the Comment discusses past Philippine land reform efforts. Second, the Comment analyzes legal arguments relating to a fair market value interpretation of just compensation. The Comment concludes that just compensation does not need to be interpreted as fair market value. In fact, such an interpretation may effectively abort any land reform effort in the Philippines, and perpetuate the structure of land ownership which the constitution seeks to remedy. Finally, this Comment

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4. Rice yields, in unmilled tons per hectare, for crop year 1985-1986 are: China, 5.37; Japan, 6.22; Philippines, 2.55; South Korea, 6.35; Taiwan, 4.98. UNITED STATES DEPARTMENT OF AGRICULTURE, GRAINS: WORLD GRAIN SITUATION AND OUTLOOK (Aug. 1986). Although in China the state still retains technical ownership of the land, the farmer's relationship to the land is owner-like. The state guarantees that the farmer may use the land for at least 15 years, the use rights to the land are inheritable, and the farmer is allowed compensation for capital improvements if the state reclaims use of the land. For a discussion of decollectivization in China, see Jan, *The Responsibility System and Its Economic Impact on Rural China*, ASIAN PROFILE, Aug. 1986, at 391.

5. R. PROSTERMAN & J. RIEDINGER, *supra* note 1, at 35-71.

6. See *infra* notes 24-28 and accompanying text.

7. PHIL. CONST. art. XIII, § 4 (1987).

8. The author recognizes that land reform is a complex process involving not only the initial step of land redistribution, but the implementation of supplemental credit, agricultural input, and marketing support programs to maximize the farmers' potential. The scope of this Comment is limited to the land redistribution portion, and the cost estimates include compensation for land redistribution only.

9. Interpretation of the Philippine Constitution is ultimately the task of the judiciary. The judiciary, as in the United States, is one of the three branches of government. PHIL. CONST. art. VIII, § 5. Nonetheless, what constitutes just compensation may initially be determined by an administrative body, with review available in the courts. In the past, statutes have guided judicial or administrative compensation determination in individual cases. The guidelines set by statute must, to the courts' satisfaction, allow for the specific compensation level to fall within the constitutional meaning of just compensation.

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proposes an alternative interpretation for land reform valuation that meets the just compensation language.

### I. BACKGROUND

#### A. *History of Philippine Land Reform Programs*

Observers have long recognized the need for land reform in the Philippines.<sup>10</sup> Nevertheless, the recent history of Philippine land reform policy is a story of repeated initiatives from the center of government which have failed to accomplish their promised change in the countryside. The first land reform program enacted in modern Philippine history was the Land Reform Act of 1955.<sup>11</sup> This Act was replete with defects which severely limited its scope.<sup>12</sup> These defects, along with determined efforts by high government officials to block implementation, caused the program to wither and die.<sup>13</sup>

In 1963, President Macapagal introduced and Congress passed the Agricultural Land Reform Code of 1963.<sup>14</sup> Like the 1955 Act, the 1963 Code was limited in scope. It was limited even further by lack of implementation.<sup>15</sup> The Code was amended in 1971 under President

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10. See S. Lin, *Political Importance of Land Reform in Southeast Asia*, in INTERNATIONAL SEMINAR ON LAND TAXATION, LAND TENURE, AND LAND REFORM IN DEVELOPING COUNTRIES 379, 402-03 (1966). See also F. MARCOS, NOTES ON THE NEW SOCIETY OF THE PHILIPPINES 112 (1973); *Agrarian Reform Now!*, SOLIDARITY Nos. 106 & 107, at 3 (1986).

11. Land Reform Act of 1955, Republic Act No. 1400 ("R.A. 1400"), X Laws and Resolutions 383.

12. The Act affected only parcels of land over 300 hectares, R.A. 1400, § 6, while successful Asian land reform programs have had retention limits ranging from zero hectares to 2.9 hectares. R. PROSTERMAN & J. RIEDINGER, *supra* note 1, at 182-83 (one hectare = 2.47 acres). Presently, there are approximately 2.5 cropped hectares per agricultural family in the Philippines. The large retention limit, and a provision limiting expropriation to areas of "justified agrarian unrest" made the Act applicable to a very small percentage of the agricultural land. Other defects in the Act included: first, negotiated, not compulsory sale between owners and the government; second, cash payments to owners; and, third, sales to tenants at cost plus 6 percent interest with 25 year repayment period. The terms and amount of compensation to be paid to the owners were beyond the capability of the government to pay. In turn, the requirement forcing tenants to pay the full fair market price to owners (even though on deferred terms) was too expensive for the tenants. Murray, *Land Reform in the Philippines: An Overview*, 20 PHIL. SOC. REV. 151, 158 (1972). In addition, the 1955 Act, like later Acts passed in 1963 and 1971, did not affect holdings farmed by salaried agricultural laborers.

13. Murray, *supra* note 12, at 158. Only 50,000 hectares were acquired under the 1955 Reform Law. H. TAI, LAND REFORM AND POLITICS 537 (1974).

14. Code of Agrarian Reforms, Republic Act No. 3844 ("R.A. 3844"), XVIII Laws and Resolutions 739 (1963).

15. Under the 1963 Law only 12 estates totaling 3,739 hectares were expropriated from 1963 until 1968. H. TAI, *supra* note 13, at 537. The provisions of the 1963 law were not put into effect with any intensity until 1970, and then mainly through a pilot project in Nueva Ecija, a small province on Luzon. Murray, *supra* note 12, at 162.

Ferdinand Marcos and renamed the Code of Agrarian Reforms.<sup>16</sup> Among the changes were a lowering of the land retention limit,<sup>17</sup> and a modification of the criteria to be considered by the court in setting the ex-landlord's compensation.<sup>18</sup>

In 1972, shortly after declaring martial law, President Marcos issued Presidential Decree No. 27 ("P.D. 27"), a land reform decree covering tenanted rice and corn lands.<sup>19</sup> In principle, P.D. 27 was a great improvement over previous land reform legislation.<sup>20</sup> Again, however, the program suffered both from substantive defects<sup>21</sup> and slow implementation.<sup>22</sup>

In February, 1986, the "People Power Revolution" forced Marcos to flee from the Philippines and installed a new government headed by President Corazon Aquino. The young government immediately began the process of creating a new constitution. The completed constitution, drafted by a constitutional commission in the latter half of 1986 and ratified by a plebiscite in February, 1987,<sup>23</sup> contains four detailed sections on agrarian reform.<sup>24</sup> The constitution mandates that "[t]he State shall, by law, undertake an agrarian reform program . . . ."<sup>25</sup> The sections dedicated to agrarian reform specify the

16. Code of Agrarian Reforms, Republic Act No. 6389 ("R.A. 6389"), XVIII Laws and Resolutions 739 (1963).

17. The land retention limit was lowered from 75 to 24 hectares. *Id.* § 51(1)(b).

18. See *infra* notes 39-40 and accompanying text.

19. Presidential Decree No. 27, 68 Official Gazette 8482-8 [hereinafter P.D. 27], para. 5.

20. All rice and corn tenants whose landlords owned more than seven hectares were to be sold the land they tilled at a price equal to two and one-half times the annual production value, instead of a negotiated price. The tenants were also given 15 years to pay the Land Bank at six percent interest. During this period tenants would possess a "Certificate of Land Transfer" (CLT) identifying the cultivated areas and promising them the right to purchase the land. When tenants paid the full price they were to receive a title transferable exclusively to their heirs. D. Wurfel, *The Development of Post-War Philippine Land Reform: Political and Sociological Explanations*, in SECOND VIEW FROM THE PADDY 8 (1983).

21. Presidential Decree No. 27 affected only tenanted rice and corn lands, leaving the majority of agricultural lands outside the scope of the program. Only 1.7 million hectares out of the approximately ten million hectares under cultivation in the Philippines at that time were tenanted rice and corn land. G. HICKEY & J. WILKINSON, *AGRARIAN REFORM IN THE PHILIPPINES* 38 (1978). Further, the seven hectare retention limit reduced the number of corn and rice tenants eligible to receive title from 914,000 to 520,000. *Id.* In addition, agricultural laborers were not included in the reform.

22. G. HICKEY & J. WILKINSON, *supra* note 21, at 2. See also Memorandum from Roy Prosterman and Jeff Riedinger to Ramon Mitra (Mar. 1986) (copy on file with *Washington Law Review*).

23. The constitution was approved by approximately 76% of the Philippine voters. N.Y. Times, Feb. 8, 1987, at 5, col. 1.

24. PHIL. CONST. arts. IV, V, VI, VIII.

25. PHIL. CONST. art. XIII, § 4.

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form the program should take.<sup>26</sup> The 1987 constitution devotes more attention to and, in general, envisions a much broader scope for land reform than previous Philippine Constitutions.<sup>27</sup> Moreover, the 1987

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26. The relevant sections of article XIII, Social Justice and Human Rights, are as follows:

Sec. 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the rights of small landowners. The State shall further provide incentives for voluntary land-sharing.

Sec. 5. The State shall recognize the right of farmers, farmworkers, and landowners, as well as cooperatives, and other independent farmers' organizations to participate in the planning, organization, and management of the program, and shall provide support to agriculture through appropriate technology and research, and adequate financial, production, marketing, and other support services.

Sec. 6. The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain under lease or concession suitable to agriculture, subject to prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands. The State may resettle landless farmers and farmworkers in its own agricultural estates which shall be distributed to them in the manner provided by law.

Sec. 8. The State shall provide incentives to landowners to invest the proceeds of the agrarian reform program to promote industrialization, employment creation, and privatization of public sector enterprises. Financial instruments used as payment for their lands shall be honored as equity in enterprises of their choice.

PHIL. CONST. art. XIII, §§ 4-6, 8.

These four sections are also supplemented by three other sections in separate articles which directly refer to agrarian reform.

Sec. 21. The State shall promote comprehensive rural development and agrarian reform.

PHIL. CONST. art. II, § 21.

Sec. 21. The Congress shall provide efficacious procedures and adequate remedies for the reversion to the State of all lands of the public domain and real rights connected therewith which were acquired in violation of the Constitution or the public land laws, or through corrupt practices. No transfer or disposition of such lands or real rights shall be allowed until after the lapse of one year from the ratification of this Constitution.

Sec. 22. At the earliest possible time, the Government shall expropriate idle or abandoned agricultural lands as may be defined by law, for distribution to the beneficiaries of the agrarian reform program.

PHIL. CONST. art. XVIII, §§ 21-22.

27. Alternative authority for land reform probably exists even without the specific mention of land reform in the constitution. This authority may be found under the state's power of eminent domain. But the specific mention of land reform in the constitution enforces both the legitimacy and importance of land reform. Even without a specific constitutional reference to land reform, the taking of land for redistribution to private parties under appropriate conditions of social need has been held to be a valid exercise of the power of eminent domain in the United States. *See Hawaii Hous. Auth. v. Midkiff*, 464 U.S. 932 (1984).

constitution contains a number of new innovations which emphasize the priority of agrarian reform.<sup>28</sup>

### B. *Key Ambiguity: Just Compensation*

The proposed provisions on agrarian reform appear to be very progressive in scope. But the success of this program may hinge upon the manner in which the legislature and the judiciary interpret certain ambiguities in these provisions. The issue of defining just compensation in article XIII, section 4 is the threshold ambiguity.<sup>29</sup>

Just compensation has a history of differing legal interpretations in the Philippines. Traditionally, courts have construed just compensation as fair market value,<sup>30</sup> defined as "the price which [land] will bring when it is offered for sale by one who desires, but is not obliged to sell it, and is bought by one who is under no necessity of having it."<sup>31</sup> A number of past land reform programs in the Philippines incorporated this fair market value standard. The negotiated sale provisions of the Land Reform Act of 1955<sup>32</sup> tacitly incorporated the fair market value approach to arrive at a compensation figure, by requiring

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28. Compared to the 1973 constitution, the proposed 1987 constitution contains the following innovations: First, the explicit assertion of the landless farmers' rights to own directly or collectively the lands that they till; second, the inclusion of farmworkers, as distinguished from tenants, among the beneficiaries of land transfer; third, the coverage of all agricultural lands in the land transfer program of agrarian reform; fourth, the recognition of farmworkers' rights to receive a just share of the fruits of the lands they till; fifth, the assertion that the State shall include incentives for voluntary land-sharing; sixth, a mandate for the State to respect the rights of small landowners in setting retention limits; seventh, the recognition of the rights of farmers, farmworkers and landowners as well as their organizations to participate in the planning, organization, and management of the agrarian reform program; eighth, a mandate for the State to provide support for agriculture through appropriate technology and research, and adequate financial, production, marketing, and other support services; ninth, a mandate for the State to apply the principles of agrarian reform or stewardship in the disposition or utilization of other natural resources; and finally, a provision expropriating idle or abandoned agricultural lands for distribution under the agrarian reform program. J. Montemayor, *Observations on the Social Justice, Agrarian and Labor Provisions of the Proposed 1986 Constitution* (n.d.) (unpublished manuscript) (copy on file with the *Washington Law Review*).

The fact that these innovations were stated in constitutional text for the first time highlights the priority given to the agrarian reform program. *Id.*

29. See *supra* note 26. A key government land reform advisor believes that the words "just compensation" are the two most important words in the new constitution. Clad, *Rhetoric and Reality*, FAR E. ECON. REV., Mar. 5, 1987, at 33.

30. *J.M. Tuason & Co., v. Land Tenure Admin.*, 31 Phil. Sup. Ct. Rep. Ann. 413, 431-32 (1970).

31. *Id.* at 432. See also *Manila R.R. Co. v. Alano*, 36 Phil. 500, 505 (1917). This standard lacks definite criteria for practical application. Compensation provisions in land reform legislation have provided the criteria for compensation-setting bodies to apply.

32. R.A. 1400, §§ 11-15.

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negotiated settlement between the landlord and the beneficiary.<sup>33</sup> This Act provided that the government could initiate expropriation proceedings only after all efforts to negotiate had been exhausted.<sup>34</sup> In expropriation proceedings, the court was expected to make a final determination of just compensation without statutory criteria.<sup>35</sup>

In contrast, some of the more recent land reform acts have adopted compensation provisions which require less than the traditional definition of fair market value. The Agricultural Land Reform Code of 1963 ("R.A. 3844") abandoned the negotiation method of the 1955 Act. Republic Act 3844 required that courts use a formula capitalizing the annual rent at six percent per year as a basis in determining just compensation for expropriated land.<sup>36</sup> Although this standard directed the court to apply a specific figure as a basis for compensation, it left the court some discretion.<sup>37</sup> The Philippine Supreme Court held that R.A. 3844, and specifically its compensation formula, was constitutional under the 1935 constitution.<sup>38</sup>

The compensation formula of R.A. 3844 was amended by Republic Act 6389 ("R.A. 6389") in 1971. The new compensation formula read: "In determining the just compensation of the land to be expropriated . . . , the Court shall consider as basis, the fair market value, without prejudice to considering the assessed value and other pertinent factors."<sup>39</sup> Accordingly, the amendment changed the guideline for

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33. Republic Act No. 1400 provides: "The Administration, acting for and on behalf of the Government, may negotiate to purchase any privately owned agricultural land when the majority of the tenants therein . . . petition for such purchase." R.A. 1400, § 11.

34. *Id.* § 16.

35. *Id.* § 19.

36. R.A. 3844, ch. III, art. 2, § 56. In simpler terms, the basis for compensation was the legal rent capitalized at six percent interest. The maximum legal rent allowed was 25% of annual productivity, *Id.*, chap. 1, § 34, so the maximum basis to be used in setting compensation was the annual productivity multiplied by 4.1 (25 percent x 100/6 = 4.1).

37. The provision directed that the court, in determining just compensation, "shall consider as a basis, *without prejudice to considering other factors also*, the annual lease rental income authorized by law capitalized at the rate of six per centum per annum." R.A. 3844, ch. III, art. 2, § 56 (emphasis added).

38. *Association of Rice and Corn Producers v. National Land Reform Council*, 113 Phil. Sup. Ct. Rep. Ann. 798 (1982). The 1935 constitution lacked a separate provision regarding land reform, but did provide in the Bill of Rights that "any taking of private land by the State be subject to just compensation." PHIL. CONST. OF 1935, art. IV, § 1. The court relied on the social justice provisions in the 1935 constitution in upholding R.A. 3844 as constitutional. The court asserted that because the measure's purpose was public safety, under these social justice provisions no constitutional objection to regulatory measures adversely affecting property rights would be heeded. *Association of Rice and Corn Producers*, 113 Phil. Sup. Ct. Rep. Ann. at 803.

39. Code of Agrarian Reforms, ch. III, art. II, § 56.



setting compensation from an exact productivity-based standard<sup>40</sup> to a more vague market value figure.

Presidential Decree No. 27 used a new and more definite compensation formula modeled after the compensation provision in the successful Taiwanese land reform. Presidential Decree No. 27 stated that:

For the purpose of determining the cost of the land to be transferred to the tenant-farmer pursuant to this Decree, the value of the land shall be equivalent to two and one-half (2½) times the average harvest of three normal crop years immediately preceding the promulgation of this Decree.<sup>41</sup>

The compensation provision in P.D. 27 differed from those of previous laws in two respects. First, unlike the 1955 and 1971 Acts which provided various criteria for setting valuation and the 1963 Act which highlighted one basis to be given primary importance in setting valuation, P.D. 27 set compensation at an exact figure.<sup>42</sup> Second, the compensation provision differed from those in previous acts in that it tied compensation directly to the land's productive value. This more definitive valuation formula of P.D. 27 was of particular significance because in theory it simplified the administrative task of determining valuation for the thousands of parcels to be transferred.<sup>43</sup>

In 1972, President Marcos issued Presidential Decree No. 76 ("P.D. 76") which simplified the task of setting valuation in government takings of land not governed by P.D. 27. Presidential Decree No. 76 required all property owners to file a sworn statement of the current fair market value of their property.<sup>44</sup> The owners' declarations were used for two purposes. First, real property taxes were to be based on

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40. See *supra* note 36 and accompanying text.

41. P.D. 27, *supra* note 19. The validity of P.D. 27 was assumed by the Philippine Supreme Court in *De Chavez v. Zobel*, 55 Phil. Sup. Ct. Rep. Ann. 2646 (1974), and specifically upheld in the later case of *Gonzales v. Estrella*, 91 Phil. Sup. Ct. Rep. Ann. 294 (1979).

42. The figure became exact only after a determination of the annual harvest for the last three normal crop years. See *supra* note 41 and accompanying text.

43. The burden on administrative (or judicial) machinery in determining valuation for a large number of parcels can be very heavy. This burden is reduced by a valuation formula that sets more definitive guidelines. But because the administrative determination may be appealed to the courts (see *supra* note 9 and accompanying text), which are concerned with due process rights and protecting their discretion in determining compensation (see *infra* note 49 and accompanying text), a formula setting an absolute figure in every case will not be acceptable.

A useful formula must accomplish several goals. First, it must make the process of valuation relatively simple. An effective formula must contain guidelines that do not complicate the procedure of setting valuation in each case, thus slowing the momentum of a land reform program. Second, the formula must allow the courts some flexibility. The formula must not be so absolute that significant, unique factors affecting valuation in a particular case cannot be considered.

44. Presidential Decree No. 76, 68 Official Gazette 9890 [hereinafter P.D. 76], § 1 (1972).

the declarations. Second, just compensation, in cases of private property acquired by the government for public use, was to be based on the value declared by the owner for taxation purposes, or the value determined by the government assessor, whichever was lower.

The Philippine Supreme Court recently ruled that P.D. 76 was unconstitutional in *Export Processing Zone Authority v. Honorable Ceferino E. Dulay*.<sup>45</sup> The court's decision has implications for land reform compensation. The issue raised in this case was whether the exclusive and mandatory mode of determining just compensation in P.D. 76 and three similar decrees was constitutional.<sup>46</sup> The plaintiff in *Export Processing Zone Authority* objected to a judge's order appointing commissioners to ascertain and report to the court the just compensation for the properties to be expropriated. The plaintiff asserted that Presidential Decree No. 1533 ("P.D. 1533"),<sup>47</sup> which also provided that compensation in eminent domain takings could not exceed the lower of the owner's declared value or the assessed value, did not allow for the ascertainment of just compensation through commissioners.<sup>48</sup> The court agreed with the plaintiff's argument and declared the compensation provisions of P.D. 76 and P.D. 1533 (and two related decrees) unconstitutional and void. Accordingly, the plaintiff's petition was dismissed for lack of merit. The court's principle concern was with the decree's encroachment on judicial prerogatives and its related intrusion on due process rights.<sup>49</sup> The formula not only allowed a government assessor to fix the amount of compensation given to landowners by assessing the land at a value lower than the owners' declared value, but it prohibited the court from examining

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45. Gen. Reg. No. 59603 (Phil. Sup. Ct. Apr. 29, 1987).

46. *Id.* at 4.

47. Presidential Decree No. 1533 [hereinafter P.D. 1533] is one of several decrees that, like P.D. 76, uses the owner's declared value and the government assessed value in determining compensation in expropriation proceedings. The court treated P.D. 76 and P.D. 1533 as having the exact same formula, but in fact they do not. The language in P.D. 76 differs from the language in P.D. 1533. Presidential Decree No. 76 states that the lower of the owner's declared value and the assessed value shall be the *basis* of compensation. Presidential Decree No. 1533 provides that the compensation *shall not exceed* the lower of the two figures. Although the court ignored this difference, it may be significant. Presidential Decree No. 1533 places a ceiling on compensation which definitely limits the discretion of a court in setting compensation. Presidential Decree No. 76 instructs the court to use the lower figure as a basis, apparently allowing the court to consider other factors. Nevertheless, the court assumed that both decrees (and two others, Presidential Decree No. 464 which used the basis method, and Presidential Decree No. 794 which used the ceiling method) relegated the court's role in setting valuation, in every case, to the meaningless task of selecting the lower amount. *Export Processing Zone Auth.*, Gen. Reg. No. 59603, slip. op. at 8.

48. *Id.* at 3.

49. *Id.* at 8.

other factors in reviewing the compensation. The court held that the valuation method in the decree may serve as a guiding principle or one of the factors in determining just compensation, but it may not be substituted for the court's own judgment as to what amount should be awarded.<sup>50</sup>

## II. ANALYSIS

The definition of just compensation adopted in land reform legislation and applied by administrative compensation-setting bodies and courts is an extremely important threshold issue for Philippine land reform. If just compensation is defined as fair market value, the cost of a widespread land reform may rise to such a high level that the government will not have sufficient resources to finance it.<sup>51</sup> On the

50. *Id.* at 11, 14.

51. The cost of land acquisition for a sweeping land reform, using fair market value compensation, could be over \$9.3 billion. On the other hand, land acquisition costs for a program of the same size could be reduced to less than \$3.5 billion using a compensation rate that pays less than fair market value, *see infra* notes 122-23 and accompanying text, but is still within the constitutional language. The following table contains cost figures for the land transfer portion of proposed land reform programs.

COMPENSATION RATE	JANUARY 1987 DRAFT (3,852,000 ha)	APRIL 1987 DRAFT (1,280,000 ha)
\$902/ha	\$3,476,160,400	\$1,155,110,400
\$1,220/ha	\$4,697,514,000	\$1,560,960,000
\$1,829/ha	\$7,046,271,000	\$2,341,440,000
\$2,439/ha	\$9,395,028,000	\$3,121,920,000

ha = hectare (2.47 acres)

The first column contains a list of various compensation rates that could be provided in a Philippine land reform. The figure at the top of the column (\$902 per hectare) is derived from this author's proposed compensation formula, *see infra* notes 122-23 and accompanying text, applying a factor of 3.3 multiplied by the average rice crop value in the Philippines. This compensation rate results in a less than fair market value figure. The second figure in the first column (\$1,220 per hectare) is the average fair market value assumed by the Philippines Inter-Agency Task Force in its early land reform program draft proposal. INTER-AGENCY TASK FORCE ON AGRARIAN REFORM, ACCELERATED LAND REFORM PROGRAM BRIEF 6 (Apr. 27, 1987) (Philippine pesos converted to U.S. dollars). The third and fourth figures represent the extremes of a range of fair market value figures used in a later revised calculation by a Technical Committee from the National Economic Development Authority (NEDA) in June, 1987. Memorandum from NEDA to Roy Prosterman (Answers to Roy Prosterman's Questions on the Draft E.O. of June 3, 1987) (copy on file with the *Washington Law Review*).

The second column contains the results calculated by applying the rates to a proposed wide-scale land reform program that emerged on January 23, 1987, from the cabinet level Inter-Agency Task Force on Agrarian Reform. These rates are applied to the portion of the program which would require new legislation, essentially that affecting noncorn, nonrice tenanted lands, and certain nontenanted lands. This portion of the proposed program, by far the largest, was

other hand, if the just compensation rates<sup>52</sup> are set at some lower, more affordable figure, the hope is kept alive for a widespread land reform that will help the Philippines reach economic and social stability.

To determine the interpretation of just compensation several rules of constitutional construction must be considered. In addition, a number of other factors bear on the proper interpretation of just compensation in the Philippine land reform setting. These factors include rules of statutory construction, political considerations concerning P.D. 27, the international law standard of just compensation, and the doctrine of estoppel as applied to landowners' declared values. A comprehensive study of these factors shows that a less than fair market value interpretation of just compensation for a Philippine land reform program is acceptable under the 1987 constitution.

### *A. Rules of Constitutional Construction*

Interpreting constitutional language necessarily involves the use of constitutional construction principles. The starting principle is that the primary source from which to ascertain constitutional intent or purpose is the constitution's language itself.<sup>53</sup> If a constitutional phrase is not self-defining, however, other constructional rules must be used. Just compensation is not self-defining, so the following pertinent principles should be applied in interpreting its meaning. First, when the constitution is unclear on its face, references to the proceedings of

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anticipated to cover 3,852,000 hectares in the January 23, 1987 draft. INTER-AGENCY TASK FORCE ON AGRARIAN REFORM, ACCELERATED LAND REFORM PROJECT 11 (Jan. 23, 1987).

The figures in the third column result from applying the compensation rates to a proposed program from the same Task Force issued three months later in which the scope of the program had been severely cut back. In this draft the Task Force scaled down that portion of the program needing new legislation from 3,852,000 hectares to 1,280,000 hectares. INTER-AGENCY TASK FORCE ON AGRARIAN REFORM, ACCELERATED LAND REFORM PROGRAM, PROGRAM BRIEF annex 2 (Apr. 27, 1987).

As this table illustrates, the adoption of a less than fair market value would allow a sweeping reform with a land acquisition cost that is only slightly above that of a much more limited program which requires a high fair market value compensation rate. Indeed, with the limited amount of resources available to the Philippine government, *see infra* note 80 and accompanying text, the scope of the program, and therefore its effectiveness in reshaping Philippine society, ultimately may depend on the amount of compensation given to present landowners.

52. This Comment focuses only on the amount of compensation given in land reform takings and not the form in which the compensation is given. The constitution authorizes the use of deferred compensation (for example, bonds) in article XIII, sec. 8. The portion of the compensation deferred and the terms of deferment are additional important issues for land reform compensation.

53. *J.M. Tuason & Co. v. Land Tenure Admin.*, Phil. Sup. Ct. Ann. 413, 422 (1970); *see also Gold Creek Mining Corp. v. Rodriguez*, 66 Phil. 259, 264 (1938).

the constitutional drafting commission must be made.<sup>54</sup> Although the proceedings are not to be used as the determinative guide, they are a factor yielding insight into the constitutional meaning.<sup>55</sup> A second construction rule provides that the constitution should be construed to the full extent of its substance and its terms, not by one term alone, but in conjunction with all other provisions.<sup>56</sup> A third principle states that like words in a constitution are presumed to have like meanings.<sup>57</sup> Finally, when a constitutional provision can be interpreted more than one way, the construction which leads to impossible or mischievous consequences must be rejected.<sup>58</sup>

### 1. *Constitutional Commission Proceedings*

Just compensation is not self-defining, so the proceedings of the Constitutional Commission of 1986 ("Commission") must be examined to aid in ascertaining the phrase's meaning. However, the proceedings are not to be used as the determinative guide, but as a factor which yields insight into the constitution's meaning.<sup>59</sup>

Records of the 1986 Constitutional Commission indicate that the Commission preferred the traditional fair market value definition of just compensation,<sup>60</sup> but with an added twist. The added twist was that, although the present landowners were to receive the traditional fair market value, the beneficiaries would only be required to pay what they could afford, and the government would pay the balance.<sup>61</sup>

Most of the Commissioners expressing views on the issue preferred to interpret just compensation as fair market value, often referring to the pre-P.D. 27 definition. These Commissioners' primary concern appeared to be that the present landowners receive maximum payment for their land. The opposing position representing the land reform beneficiaries was stated by Commissioner Jaime Tadeo. Tadeo repeatedly insisted that the beneficiaries' payments be minimized to remain within their capacity to pay. The compromise reached seemed to satisfy both sides. The land owners were to benefit from high market value payments. The beneficiaries would be required to pay only that

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54. *Philippine Constitution Ass'n, Inc. v. Mathay*, 18 Phil. Sup. Ct. Rep. Ann. 300 (1966).

55. *J.M. Tuason & Co.*, 31 Phil. Sup. Ct. Rep. Ann. at 423; *Vera v. Avelino*, 77 Phil. 192, 215 (1946).

56. *See Chiongbian v. De Leon*, 82 Phil. 771, 775 (1949); *see also* R. AGPALO, STATUTORY CONSTRUCTION 322-323 (1986).

57. R. AGPALO, *supra* note 56, at 315.

58. *Marcelino v. Cruz*, 121 Phil. Sup. Ct. Rep. Ann. 51 (1983).

59. *J.M. Tuason & Co.*, 31 Phil. Sup. Ct. Rep. Ann. at 423.

60. *See supra* notes 30-31 and accompanying text.

61. *See infra* note 63 and accompanying text.

## Philippine Land Reform

which they could reasonably afford. The government would shoulder the monetary difference.<sup>62</sup>

Three factors detract from the significance of the Commission's apparent approval of fair market value as the measure of just compensation for land reform. First, the discussions of the Constitutional Commission refer to a uniform interpretation of just compensation. A uniform interpretation does not exist.<sup>63</sup> The Philippine Supreme Court has accepted two different definitions of just compensation. One definition applies to nonland reform takings, and the second applies to land reform takings. The definition applied to nonland reform state takings had been the traditional interpretation of fair market value<sup>64</sup> until Marcos issued P.D. 76.<sup>65</sup> The definition applied to land reform by both the original formula of R.A. 3844 and the P.D. 27 formula differed from the definition applied to nonland reform takings. Republic Act 3844 originally used a compensation formula based on the annual rental income authorized by law capitalized at the rate of six percent per year; and P.D. 27 sets just compensation at the value of the land's annual productivity multiplied by a factor of 2.5.

Second, the Commission did not recognize that a less than fair market value had been used before P.D. 27 was issued. During the proceedings, various Commissioners referred to P.D. 27 as the turning point from the fair market value standard used before to a less than fair market value interpretation.<sup>66</sup> These references are not totally inaccurate, but they show a lack of understanding as to the history of just compensation's interpretation. The move away from the traditional fair market value interpretation was first made by R.A. 3844 in 1963. Republic Act 3844, with its less than fair market value compen-

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62. JOURNAL OF CONSTITUTIONAL COMMISSION [hereinafter J. OF CONST. COMM'N], Aug. 7, 1986, at 42. *See also id.*, Aug. 2, 1986, at 26; *id.*, Aug. 5, 1986, at 25.

63. The idea of differing interpretations of just compensation was alluded to briefly in the Commission proceedings, but not developed. Commissioner Felicitas Aquino stated that the market value interpretation would be correct when the power of eminent domain for public use was concerned. But, if a dispute arose regarding the definition of just compensation for land reform, she believed that the constitutional interpretation should be resolved in favor of the farmers. J. OF CONST. COMM'N, Aug. 13, 1986, at 10. Other than these brief comments, the Commissioners appeared completely unaware of the differing interpretations of just compensation depending on the context of the taking and the statute or decree authorizing the taking.

64. *See supra* notes 30–31 and accompanying text.

65. Presidential Decree No. 76 was recently ruled unconstitutional. *See supra* notes 45–50 and accompanying text.

66. J. OF CONST. COMM'N, Aug. 13, 1986, at 8; *id.*, Aug. 5, 1986, at 25.

sation provision, was enacted nine years before Marcos issued P.D. 27.<sup>67</sup>

The final consideration detracting from the Commission proceedings' significance is the Commissioners' manifest failure, in their eagerness to compromise on an interpretation of just compensation, to recognize the contradictions of policy they were entertaining.<sup>68</sup> The compromised interpretation reached by the Commission evidenced an ingenuous assumption that the government could find adequate resources to fund a widespread land reform program with such a compensation provision.<sup>69</sup> Although the issue of the program's cost was raised briefly, it was never adequately addressed.<sup>70</sup> The Commissioners ignored difficult issues in assuming that the government would have adequate resources to implement a sweeping land reform program that required fair market value compensation. In doing so, the Commissioners failed to recognize that the costs required from their confused fair market value interpretation would likely preclude any substantial implementation of the constitutionally mandated land reform program.<sup>71</sup>

The foregoing considerations reduce the weight to be given the Commission's apparent fair market value interpretation of just compensation. Moreover, even if the Commissioners' interpretation clearly reflected a comprehensive approach to the issue, their interpretation would not necessarily be decisive.<sup>72</sup> In light of this principle and the problems encountered by the Commission, other methods of construction should also be applied.

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67. The original formula for determining valuation in R.A. 3844 implicitly set compensation at 4.1 times annual productivity which was less than fair market value. *See supra* note 36. In 1971, the provision was amended to provide fair market value compensation. A United Nations report on land reform recognized that the compensation provision of R.A. 3844 was a distinct move away from the traditional norm of fair market value. UNITED NATIONS, U.N. FOOD & AGRIC. ORG., AND THE INT'L LABOR ORG., PROGRESS IN LAND REFORM, FIFTH REPORT AT 313-14, U.N. Doc. ST/SOA/94, U.N. Sales No. E.70.IV.5 (1970).

68. *See supra* note 26 and accompanying text.

69. For a discussion on the potential costs of land transfer in a Philippine land reform program, see *supra* note 51.

70. On the potential cost of the land reform program, Commissioner Nieva mentioned that the Ministry of Agrarian Reform had been studying the matter, and no exact figures were yet available. J. OF CONST. COMM'N, Aug. 4, 1986, at 583. Commissioner Garcia commented later that a cost/benefit analysis was being undertaken. *Id.* at 584. But the Commission never made a further inquiry into the potential costs of the program or the government's ability to finance it.

71. For a discussion on the cost of a land reform program which requires fair market value compensation, see *supra* note 51 and accompanying text.

72. *See supra* note 60 and accompanying text.

## 2. *The Electorate Interpretation*

A fundamental principle of constitutional construction is to give effect not only to the intent of the framers, but to the intent of the people adopting the constitution.<sup>73</sup> The Philippines has the benefit of a random-sample survey questioning the intent of the Filipino electorate regarding the meaning of certain constitutional provisions. This survey<sup>74</sup> was conducted in November, 1986, by an independent and reputable Philippine social science organization. This survey included a question on the electorate's interpretation of land reform compensation. When asked whether ex-landowners should receive market value for their land in a land reform, fifty-nine percent of the respondents stated that just compensation meant less than fair market value.<sup>75</sup> This survey, although not decisive, could be used as a valuable constructional aid in interpreting just compensation as applied to land reform, and arguably is at least as important as the Constitutional Commission proceedings in construing the meaning of just compensation in article XIII.

## 3. *Interpreting Within Context of Surrounding Language*

Another construction rule requires that constitutional terms be construed in the general context of all other provisions.<sup>76</sup> Construing just compensation in the context of other constitutional provisions and the constitution as a whole points to an interpretation which the government can afford.

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73. *Gold Creek Mining Co. v. Rodriguez*, 66 Phil. 259, 264 (1938). The 1987 constitution was ratified by the Philippine electorate in a February, 1987 plebiscite. *See supra* note 23 and accompanying text.

The Constitutional Commissioners are regarded as direct representatives of the people whose role is to carry out the will of the people. The Constitutional Commission was created under article V of the Provisional Constitution of the Republic of the Philippines which was in effect from March 25, 1986 until the ratification of the present Constitution. Article V of the provisional constitution stated in part, "[t]he Commission shall . . . draft a document truly reflective of the ideals and aspirations of the Filipino people." Members of the Commission were required to take an oath stating in part, "I . . . do solemnly swear . . . that I shall faithfully and conscientiously fulfill my duties as Member of the Constitutional Commission . . . by drafting a fundamental law truly reflective of the ideals and aspirations of the Filipino people . . . ." Proclamation No. 9, § 6, April 23, 1986.

In addition, the constitution is ultimately enacted only when it is adopted by the people—in this case by a plebiscite. *See supra* note 23 and accompanying text.

74. Social Weather Stations, Summary of Survey Data on Voter Attitudes on the 1986 Constitution (1986) (copy on file with the *Washington Law Review*).

75. *Id.* at 3.

76. *See supra* note 56 and accompanying text.



The 1987 constitution mandates the state to "undertake the just distribution of *all* agricultural lands."<sup>77</sup> The sweeping scope of the mandated reform is further supported by a provision in article II, The Declaration of Principles and State Policies: "The State shall promote comprehensive rural development and agrarian reform."<sup>78</sup> The constitutional emphasis on agrarian reform highlights its priority. These provisions imply that the land reform program must be in a form that the state can implement. A fair market value standard for just compensation would cause a sweeping agrarian reform program to be extremely expensive,<sup>79</sup> making it highly doubtful that the Philippine government, already deeply in debt,<sup>80</sup> could implement it to any appreciable degree. In this manner, a market value interpretation would hinder a principle objective of the Constitution, and thus be inconsistent with the thrust of these constitutional provisions.

Just compensation also must be interpreted in the context of social justice goals. The 1987 constitution places a heavy emphasis on social justice.<sup>81</sup> The essence of social justice is assuring the effectiveness of the community's effort to assist the economically underprivileged.<sup>82</sup> A land reform program, encased within the principles of social justice, should not be made impotent by an interpretation of just compensation which aims to benefit the economically privileged at the expense of the economically underprivileged. The goal of reducing social and economic inequities by equitably diffusing wealth for the common good cannot be ignored.

Two provisions in article XII, entitled National Economy and Patrimony, further highlight the social justice emphasis in the constitution

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77. PHIL. CONST. art. XIII, § 4 (emphasis added).

78. PHIL. CONST. art. II, § 21.

79. See *supra* note 51.

80. The Philippines had a budget deficit of \$223,740,000 in 1985, with revenues totaling \$3,448,050,000. REPUBLIC OF THE PHILIPPINES NAT'L ECON. AND DEV. AUTH. 1986 PHILIPPINE STATISTICAL Y.B. 587 (1986). The Philippines also had a total external outstanding debt of \$20,043,600,000 in 1985. *Id.* at 608. Although some amount of foreign aid resources might be used to assist a Philippine land reform, it would hardly seem appropriate to interpret the constitution in such a way that one of its principle mandates is dependent on other countries' resources to finance the mandated undertaking.

81. In The Declaration of Principles and State Policies, the constitution states: "The State shall promote social justice in all phases of national development." PHIL. CONST. art. II, § 10.

Article XIII, in which the land reform provisions are framed, is entitled "Social Justice and Human Rights," and is the centerpiece of the constitution's social justice provisions.

82. *Lopez Carillo v. Allied Workers Ass'n*, 24 Phil. Sup. Ct. Rep. Ann. 566, 573 (1968). The constitution provides: "The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good." PHIL. CONST. art. XIII, § 1.

and provide support for the state's encroachment on individual property rights when pursuing the common good. The first provision states that the goals of the national economy are a more equitable distribution of opportunities, income and wealth.<sup>83</sup> Fair market value compensation for land reform would defeat the purpose of a more equitable distribution of wealth. Instead of being a major social and economic reform, land reform would become only a mass real estate transaction.

A second provision in article XII states: "The use of property bears a social function, and all economic agents shall contribute to the common good."<sup>84</sup> This constitutional description of the function of property strongly indicates that individual property rights are not sacred.<sup>85</sup> The Japanese Supreme Court relied on a similar provision in the Japanese Constitution in holding less than fair market value compensation constitutional in a sweeping land reform initiated in Japan after World War II.<sup>86</sup> The Philippine Supreme Court could follow the example set by the Japanese in approving less than fair market value compensation in a social and economic land reform program. Striking a balance between the social function of property and the rights of property owners appears to require this interpretation.

#### 4. *Like Words Presumed To Have Like Meanings*

Another important rule of constitutional construction is that a word or phrase in one part of the constitution is to receive the same interpretation when used in every other part, unless it clearly appears from the context or otherwise that a different meaning should be applied.<sup>87</sup> The words "just compensation" are used several times in the Philippine Constitution. The two most relevant are in the Bill of Rights, and in the land reform provisions in article XIII.

Article III (Bill of Rights), section 9 states: "Private property shall not be taken for public use without just compensation." This provision, which also appeared in both the 1935 and 1973 constitutions, provides a limitation on the state's sovereign power of eminent domain and has been traditionally interpreted as requiring fair market value.

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83. PHIL. CONST. art. XII, § 1.

84. *Id.* § 6.

85. The constitutional recognition of property's social function is a contrast from the concept of property in the United States Constitution. The Philippines is an impoverished and densely populated country torn by peasant rebellion, a much different society than the one in which United States constitutional conceptions of property were drafted.

86. J. MAKI, COURT AND CONSTITUTION IN JAPAN 232 (1964).

87. *Lozada v. Commission on Elections*, 120 Phil. Sup. Ct. Rep. Ann. 337, 345 (1983).

Just compensation also appears in article XIII, Social Justice and Human Rights, in the context of a land reform program. The phrase in this context obviously does not relate to an occasional taking for public use as does the just compensation provision in the Bill of Rights. But the fact that the Constitutional Commission chose to use the exact language present in the Bill of Rights, which limits the state's sovereign power of eminent domain, cannot be ignored. Since just compensation in the Bill of Rights has a traditional interpretation of fair market value, the presumption is that just compensation relating to land reform has the same fair market value interpretation.

However, this presumption in favor of a fair market value interpretation can be rebutted. It does appear from the context of the phrase "just compensation" in article XIII, and other factors, that a different meaning should be applied.<sup>88</sup> The traditional concept of just compensation as fair market value may be suited generally to cases arising within the context of town planning legislation, but where compensation is in the framework of large-scale land reforms, the context is radically altered. Also, in the past, just compensation has been treated differently in the land reform setting. A study of Philippine land reform legislation and its treatment in the courts reveals that just compensation has had a different meaning for a land reform taking than for an occasional state taking for a public purpose. Because just compensation has been treated differently in various settings, alternate meanings could plausibly be applied to that phrase in different parts of the Constitution.

##### 5. *The Consequences of Alternative Constructions*

A final rule of constitutional construction requires consideration of the consequences following from alternative constructions of doubtful constitutional provisions.<sup>89</sup> Where a constitutional provision may be interpreted more than one way, the construction which leads to impossible or mischievous consequences must be rejected.<sup>90</sup> The success of a land reform program will depend upon the interpretation of just compensation. Fair market value compensation will raise the costs of land

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88. "A word or phrase used in one part of a Constitution is to receive the same interpretation when used in every other part, *unless it clearly appears, from the context or otherwise, that a different meaning should be applied.*" *Id.* (emphasis added). Furthermore, this rule of construction is often not regarded as rigid and peremptory as some other rules of construction. R. AGPALO, *supra* note 56, at 140.

89. Roman Catholic Apostolic Admin. of Davao, Inc. v. Land Registration Comm'n, 102 Phil. 596, 627-28 (1957).

90. Marcelino v. Cruz, 121 Phil. Sup. Ct. Rep. Ann. 51, 58 (1983).

reform to such a high level that it will probably be impossible for the government to finance it.<sup>91</sup> In contrast, a less than fair market value standard will reduce the program's cost, making a sweeping and fully implemented land reform program much more of a possibility. This alternative result certainly falls within the definition of the impossible or mischievous consequences and must be considered in construing the constitutional language.

### *B. Statutory Construction*

The interpretation of the constitution in the Philippines, as in the United States, is a function of the judiciary.<sup>92</sup> But, under Philippine practice, the legislature has initially determined the parameters of just compensation by providing the criteria for the compensation-setting bodies to use in setting compensation levels for particular pieces of land. For this reason, Philippine rules of statutory construction also must be analyzed to determine if the judiciary would uphold a legislative formulation setting just compensation at a rate less than fair market value.

Two principles of Philippine statutory construction make it extremely unlikely that the judiciary would invalidate a legislative provision that adopts a less than fair market value compensation rate for a land reform program. First, the Philippine judicial practice of deferring liberally to legislative discretion in the review of programs for economic development and social progress is well established.<sup>93</sup> In interpreting statutes enacted to implement the social justice provisions of the constitution, the courts are guided by more than just an inquiry into the letter of the law. They ultimately resolve any doubt in favor of the persons whom the law intended to benefit.<sup>94</sup> The Philippine Supreme Court has stated that only by giving such statutes a liberal construction will the constitutional mandate concerning the promotion of social justice be better realized.<sup>95</sup> In light of the increased emphasis on social justice in the 1987 constitution, this principle of statutory construction would appear particularly forceful. Guided by this principle and the realization that a fair market value interpretation would not be in the interests of persons intended to benefit from

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91. See *supra* notes 79–80 and accompanying text.

92. See *supra* note 9.

93. Fernando, *The Challenge of Social Justice*, 12 J. INTEGRATED B. PHIL. 41, 54 (1984); see also *Diga v. Adriano*, 133 Phil. Sup. Ct. Rep. Ann. 421, 425–26 (1984); *Heirs of Juancho Ardon v. Reyes*, 125 Phil. Sup. Ct. Rep. Ann. 220, 232 (1983).

94. *Hidalgo v. Hidalgo*, 33 Phil. Sup. Ct. Rep. Ann. 105, 120 (1970).

95. *Alfanta v. Noe*, 53 Phil. Sup. Ct. Rep. Ann. 76, 83 (1973).

land reform legislation, the courts could be expected to uphold a legislatively determined less than fair market value definition of just compensation.

Second, the Philippine courts are to resolve all reasonable doubts in favor of the constitutionality of a statute.<sup>96</sup> Philippine courts follow the principle that a law should not be set aside unless it is clearly unconstitutional.<sup>97</sup> This principle finds its origin in American judicial decisions, but the Philippine courts are inclined to take this principle more seriously.<sup>98</sup> Given its history of restraint and adherence to the presumption-of-validity principle, the court will likely uphold any reasonable legislative determination, including a less than fair market value compensation formula for land reform.

### C. *The Consequences for P.D. 27*

An interpretation of just compensation may affect current land reform programs as well as future ones. The 1987 constitution provides that "[a]ll existing laws, decrees, executive orders, proclamations, letters of instructions, and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed, or revoked."<sup>99</sup> By implication, it appears that existing laws and decrees inconsistent with the meaning of the 1987 constitution are inoperative.<sup>100</sup> If just compensation for land reform is deemed to mean fair market value, P.D. 27, which adopts less than fair market value compensation<sup>101</sup> and is only partially implemented,<sup>102</sup> could become unconstitutional and inoperative.

The Aquino administration has assumed the continuing validity of P.D. 27 requiring less than fair market value compensation. On July 22, 1987, President Aquino issued an executive order containing the

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96. *Paredes v. Executive Secretary to the President*, 128 Phil. Sup. Ct. Rep. Ann. 6, 10-11 (1984); *Ermita-Malate Hotel and Motel Operators Ass'n v. City Mayor of Manila*, 20 Phil. Sup. Ct. Rep. Ann. 849, 856-57 (1967). For a discussion of the presumption of constitutional validity in Philippine judicial review, see generally E. FERNANDO, *THE POWER OF JUDICIAL REVIEW* 110-12 (1967).

97. *Paredes*, 128 Phil. Sup. Ct. Rep. Ann. at 11.

98. E. FERNANDO, *supra* note 96, at 111.

99. PHIL. CONST. art. XVIII, § 3.

100. It is not clear if the entire law or decree would be inoperative, or if the doctrine of separability would prevail to make inoperative only the portion of the law or decree that is inconsistent with the 1987 Constitution.

101. The payment of P.D. 27 compensation rates results in compensation at about one-sixth the market price currently paid for typical rice land. J. Montemayor, *Charter's Compensation Terms Will Ruin Agrarian Reform* (n.d.) (unpublished manuscript) (copy on file with the *Washington Law Review*).

102. See *supra* note 22 and accompanying text.

broad outlines of a land reform program using her then existing legislative power.<sup>103</sup> A cabinet level Inter-Agency Task Force on Agrarian Reform spent months preparing a detailed draft program, but the issued order contained only a broad outline of a reform and left it to the legislature to fill in most of the substantive provisions. The legislature also has the power to amend or repeal the executive order. President Aquino's executive order incorporates a less than fair market value compensation rate in a portion of the planned reform, by assuming the validity and continued operation of P.D. 27.<sup>104</sup> The incorporation of P.D. 27 and its less than fair market value compensation in the executive order is a significant example of the government's reliance on a less than fair market value interpretation of just compensation.

Adherence to a fair market value definition of just compensation for a land reform program beyond P.D. 27, while less than fair market value compensation is paid for the completion of P.D. 27, is inconsistent. Although the government may contend that the two interpretations of just compensation for land reform are not inconsistent, because P.D. 27 is not subject to the 1987 constitution,<sup>105</sup> this reasoning involves a highly unpersuasive legal fiction.

The completion of P.D. 27 is subject to the 1987 constitution because ownership of the land was not actually transferred in 1972 when the decree was signed. Presidential Decree No. 27, on its face, transferred ownership to tenant-farmers on lands primarily devoted to rice and corn under share-crop or lease-tenancy systems.<sup>106</sup> But in reality, the tenants did not become owners upon the issuance of P.D. 27. In most cases, the owner continued collecting rents from the ten-

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103. Article XVIII, section 6 of the 1987 constitution (Transitory Provisions) provides: "The incumbent President shall continue to exercise legislative powers until the first Congress is convened."

104. Section 27 of Executive Order No. 229 states in part: "Presidential Decree No. 27 . . . shall continue to operate with respect to rice and corn lands, covered thereunder." See also Executive Order No. 228, 83 Official Gazette 3258-17 (which deals directly with the continuing implementation of P.D. 27).

For the remaining majority of the land reform Executive Order No. 229 provides that compensation to the landowner "shall be based on the owner's declaration of current fair market value as provided in Section 4 hereof, but subject to certain controls to be defined and promulgated by the Presidential Agrarian Reform Council . . ." Executive Order No. 229, § 6 (July 22, 1987). Section 4 of the order allows landowners to make a new sworn declaration of their property's current fair market value. *Id.* § 4. The effect of this order is to allow the landowner to set the amount of compensation he or she will receive for the land.

105. One Department of Agrarian Reform (DAR) official claimed that because P.D. 27 transferred ownership to the tenant farmers by its issuance in 1972, the debt was incurred in 1972 and thus not subject to the 1987 constitution. Interview with Salvador Pejo (Mar., 1987) (notes on file with the *Washington Law Review*).

106. P.D. 27, *supra* note 19, at para. 6.

ant along with exercising the other rights and duties of ownership.<sup>107</sup> Indeed, a number of administrative determinations had to be made before any tenant, owner, or the government itself would know if a specific tenant would ever be a beneficiary, and if so, on what piece of property.<sup>108</sup>

To achieve consistency in the interpretation of just compensation for land reform the legislature and courts have two alternatives. First, if they apply a fair market value definition for a land reform program beyond P.D. 27 they must consistently require market value compensation for the completion of the tenanted rice and corn land reform. The social and political consequences of this interpretation and the resulting amendments to P.D. 27 would be very damaging. Second, the government may allow less than market value compensation in the completion of P.D. 27 and apply a similar interpretation to article XIII. This alternative is the more logical choice. In either case, the effect of the interpretation of just compensation for land reform on the completion of P.D. 27, a land reform program promised by President Marcos more than fifteen years ago, should be an important consideration.

#### *D. International Law Standard of Just Compensation*

International law sets a standard for compensating aliens whose property has been expropriated by a foreign state; at the same time recognizing that it is the duty of each state to fix the amount of compensation and the procedure for expropriation of its own citizens' property.<sup>109</sup> Although an international law standard need not be complied with in expropriating a Filipino's land, it is an interesting measuring stick with which to compare the standard of compensation followed in Philippine land reform.

The standard for payment of compensation when foreign property is expropriated has aroused much debate. The majority rule is that in case of nationalization, the alien owner shall be paid "appropriate compensation."<sup>110</sup> "Appropriate compensation" is defined differently

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107. G. HICKEY & J. WILKINSON, *supra* note 21, at 9-10.

108. The government had to determine: if the land was primarily devoted to rice and corn, if it was under a system of share-crop or lease-tenancy, and if it was subject to the seven hectare retention limit and would be part of the retained area. P.D. 27, *supra* note 19

109. *Resolution 88 (XII) of the Trade and Development Board of United Nations Conference on Trade and Development (UNCTAD)*. 12 U.N. TDBOR Supplement 1 (Agenda Item 4) at 1. U.N. Doc. TD/B/423, U.N. Sales No. E.68.II.D.14 (1973).

110. *United Nations General Assembly Resolution on Permanent Sovereignty over Natural Resources*. G.A. Res. 1803, 17 U.N. GAOR C.2 (1194th plen. mtg.), U.N. Doc. A/PV.1194 (1962) (the full text of the resolution is reprinted in IX UNITED NATIONS RESOLUTIONS 107-08

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in differing situations, but generally takes into account the country's ability to finance land reform and has been consistently interpreted as encompassing a less than market value standard.<sup>111</sup>

The Restatement (Revised) of Foreign Relations Law § 712 refers only to "just compensation."<sup>112</sup> The Restatement (Revised) defines just compensation as equivalent to the value of the property taken, usually fair market value, "in the absence of exceptional circumstances."<sup>113</sup> The commentary suggests that land reform programs may constitute "exceptional circumstances."<sup>114</sup> A reporters' note adds: "If a requirement of compensation fully in accord with the [fair market value] standard . . . would prevent the [land reform] program, the obligation to compensate might be satisfied by a lower standard."<sup>115</sup>

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(D. Djonovich ed. 1974)). For the background of this resolution, see *The Protection of Private Property Invested Abroad*, A.B.A. SEC. ON INT'L AND COMP. L. 18 (1963). The requirement of "appropriate compensation" has received the support of many governments. Schachter, *Compensation for Expropriation*, 78 AM. J. INT'L L. 121, 127 (1984). "Appropriate compensation" has also been supported in two important international arbitration decisions. *Kuwait v. American Indep. Oil Co. (AMINOIL)*, 21 Int'l Legal Materials (Am. Soc. Int'l L.) 976, 1032-33 (1982); *Texas Overseas Petroleum Co. v. Government of the Libyan Arab Republic*, 17 Int'l Legal Materials (Am. Soc. Int'l L.) 1, 27 (1978), 53 I.L.R. 389, 485 (1979) (English translation). It has also been supported in an opinion of the Court of Appeals for the Second Circuit. See *Banco Nacional de Cuba v. Chase Manhattan Bank*, 658 F.2d 875, 890-91 (2d Cir. 1981)

111. The United States unilaterally interpreted "appropriate" to mean "prompt, adequate, and effective." This phrase was used by Secretary of State Hull in 1938 in his notes to the Mexican government claiming compensation for expropriated agrarian lands owned by U.S. nationals. L. HENKIN, R. PUGH, O. SCHACHTER & H. SMIT, *INTERNATIONAL LAW, CASES AND MATERIALS* 1113 (1987). This standard, referred to as the Hull formula, is not widely recognized. See Schwebel, *The Story of the U.N. Declaration on Permanent Sovereignty over Natural Resources*, 49 A.B.A. J. 463 (1963); see also Schachter, *Compensation for Expropriation*, 78 AM. J. INT'L LAW 121 (1984). The Restatement (Second) of Foreign Relations Law included the "prompt, adequate, and effective" requirements in the black letter text, but these terms were substantially qualified by reference to "what is reasonable in the circumstances." *RESTATEMENT (SECOND) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES* §§ 187-88 (1965). The comments and notes that followed the black-letter text recognized that many states consider that the requirements of international law may be satisfied by the payment of less than market value, *id.* § 188 reporters' note 1, and that "reasonable promptness" and "effectiveness" may vary with the circumstances. *Id.* comment a. Specific reference was made to land reform measures providing for payment over many years and in an amount that may be less than fair market value. *Id.* reporters' note 1.

112. *RESTATEMENT (REVISED) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES* § 712 (1985). The Hull formula was omitted from the black letter text when the Restatement was revised.

113. *Id.* § 712 subpara. 1 & comment d.

114. *Id.* § 712 comment d.

115. *Id.* § 712 reporters' note 3. Professor Oppenheim has also suggested that land reform is an exception to normal rules of full compensation. He has stated that an important qualification to the duty to compensate exists "in cases in which fundamental changes in the political system



These international law standards should be considered in defining constitutional "just compensation" in the Philippine land reform context. A constitution in a developing country like the Philippines, which has very limited resources and is in dire need of land reform, should not be interpreted as adopting a higher standard of land reform compensation than that of international law. This conclusion is especially evident if an otherwise constitutionally mandated land reform program would thereby be substantially thwarted by such an interpretation.

*E. Just Compensation Based on the Owner's Declared Value*

One criterion that has been used to determine land valuation, in the Philippines and elsewhere, is the landowner's declared value for tax purposes.<sup>116</sup> Declared values are generally lower than the common definition of fair market value.<sup>117</sup> This phenomenon results from the owner's attempt to evade higher land taxes.

Under the declared value approach to determining just compensation this attempt at tax evasion may come back to haunt the owner. When property owners undervalue their land and the government later takes the land pursuant to land reform legislation, the doctrine of estoppel<sup>118</sup> is applicable in determining the compensation afforded the owner. The owner's act of declaration was directed at the government, and the government has relied on the act of declaration in determining the owner's property taxes. If the government determines the owner's just compensation to be the amount which the owner has declared as the property's fair market value, the owner could be estopped from demanding a higher value. When an owner has under-

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and economic structure of the State or far-reaching social reforms entail interference, on a large scale, with private property." 1 L. OPPENHEIM, *INTERNATIONAL LAW* 352-54 (H. Lauterpacht 8th ed. 1955).

116. The method of using an owner's declared value to determine compensation in land reform has also been used in El Salvador, R. PROSTERMAN & J. RIEDINGER, *supra* note 1, at 156, and Columbia. *PROGRESS IN LAND REFORM: FOURTH REPORT* at 104-05, U.N. Doc. E/4020/Rev.1 ST/SOA/61, U.N. Sales No. 66.IV.1 (1966).

117. Presidential Decree No. 76 states that the owner's declared values were usually ten to twenty times lower than the market value. P.D. 76, *supra* note 44, at para. 3.

118. The doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith and justice. Its purpose is to forbid persons from speaking against their own acts, representations, or commitments to the injury of one to whom they were directed and who reasonably relied upon them. *Philippine Nat'l Bank v. Court of Appeals*, 94 Phil. Sup. Ct. Rep. Ann. 357, 368 (1979). The doctrine of estoppel springs from equitable principles and the equities in the case, and is designed to aid the law in the administration of justice where without its aid injustice might result. The doctrine has been applied by the Philippine Supreme Court wherever and whenever special circumstances of a case so demand. *Id.*

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valued the land, and profited from the underdeclaration, it is fair for the owner to “pay” for this benefit by receiving that declared value as just compensation. Landowners should not be allowed to have their cake and eat it too.

The doctrine of estoppel applies even if the land has changed hands since the last declaration, so that the declared value on record was not made by the current owner. One is estopped not only by his or her affirmative act, but also by their representations.<sup>119</sup> So, when new owners do not question the previous owner’s declaration, but adopt it as their own, they may be estopped from demanding greater compensation.<sup>120</sup>

If a property has appreciated in value since the owner’s last declaration, the owner may argue that the declared value cannot estop a demand for higher compensation because the declaration was made in the past and just compensation means the value of the property at the *time* of taking.<sup>121</sup> Under these circumstances it would be equitable to afford the owner some compensation for the appreciation. But an owner should not be completely free from being estopped by a previous underdeclaration because the property has appreciated. In such cases an independent appraiser should determine the proportionate appreciation from the time of the owner’s declaration to the time of the taking. The compensation could still be based on the owner’s declaration, and include an additional amount equal to the percentage by which the property appreciated multiplied by the owner’s declared value.

### III. PROPOSAL

A compensation formula is needed which complies with the constitutional language and results in an affordable land reform program. Two such formulas are proposed below.

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119. See *supra* note 118. In *Pamplona v. Moreto*, 96 Phil. Sup. Ct. Rep. Ann. 775 (1980), the plaintiffs were estopped from assailing the reality of the sale of conjugal estate made by their widowed father, even though they themselves had not participated in the sale, where for years they and the vendees had been neighbors each believing that the area occupied by vendees was the one sold and plaintiffs had not questioned the sale.

120. In a case where a new owner has had the land for a very short period of time it may be possible that the new owner has not effectively adopted the previous declaration and represented it as the fair market value to the government. This would be the case if the new owner had insufficient time to thoroughly search the declaration records. In such a case the compensation-setting body would have to consider other factors.

121. *J.M. Tuason & Co. v. Land Tenure Admin.*, 31 Phil. Sup. Ct. Rep. Ann. 413, 431 (1970).

First, it would be reasonable for the Philippine legislature to adopt the following determination of just compensation for a land reform program:

*The administrators, in making any determination of just compensation of the land, and the courts, in any review of such determination or any initial determination of just compensation of the land, shall consider as the governing principle the higher of: (1) the land's average crop value of the three previous crop years multiplied by a factor of 3.3;<sup>122</sup> or (2) the value of the land as declared by the landowner, or his predecessor in interest, as of December 31, 1986.<sup>123</sup>*

This proposal splits the difference of the annual productive value factors (4.1 and 2.5, respectively) used in the 1960's and the 1970's Philippine land reforms, both of which were recognized as constitutional.<sup>124</sup> In addition, it awards the landowners who have been honest in their declarations, and can be supported as coming within a fair market value definition of just compensation.

The proposal also avoids the problems of the P.D. 76 formula which worried the court in *Export Processing Zone Authority v. San Antonio Development Corp.*<sup>125</sup> First, instead of setting compensation at one of two fixed figures, this proposal allows the court, or compensation-setting body, to consider other significant and unique factors since the proposal sets only a governing principle from which they can deviate in special circumstances.<sup>126</sup> Second, the figure will either reflect the income the owner should be deriving from the land, if the productivity multiple is the higher figure, or the value which the owner himself has declared. Third, the proposal gives the owner the benefit of the doubt by granting the higher figure instead of the lower figure (in contrast to P.D. 76). Finally, the proposal avoids the problem, inherent in P.D.

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122. The multiple of 3.3 is based on crop value of rice. For some crops, such as sugar cane, a multiple of 3.3 will produce a compensation rate that is too high. Lower multiples will have to be computed and used for high-value crops such as sugar, but the multiple should result in compensation at less than fair market value approximately equivalent to the rate that the 3.3 multiple affords for rice.

123. A past declared value is essential. One of the flaws in President Aquino's Executive Order is that, while it uses landowner's declared value in determining compensation, it allows the landowner to redeclare. If landowners are allowed to redeclare the value of their land, with notice that this declaration will be used in determining just compensation for the land taken by a land reform program, he or she is essentially able to set the price at which the government must buy the land. In such a case an owner might declare a high value for the land likely to be subject to the land reform program (or land which he or she voluntarily offers to be subjected), and keep his or her previous underdeclaration for land which he or she is to retain.

124. See *supra* notes 38, 41 and accompanying text.

125. Gen. Reg. No. 59603 (Phil. Sup. Ct. Apr. 29, 1987).

126. The court in *Export Processing Zone Authority* stated that "valuation in the decree may serve as a guiding principle or one of the factors in determining just compensation . . ." *Id.* at 11.

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76, of allowing a government assessor to set the compensation level, which could be done by assessing the value at a figure below the owner's declared value.

An alternative proposal for the Philippine legislature is the following compensation provision:

*Just compensation for the land taken shall be the value of the land as declared by the landowner, or his predecessor in interest, as of December 31, 1986, unless it is determined that the doctrine of estoppel cannot be applied to the present landowner.*

This proposal can be upheld using the estoppel analysis, and does not remove the judiciary from the compensation-setting process. This formula may be more easily administered because it does not require gathering data for previous crop years.

## IV. CONCLUSION

The Philippines is heading down a path towards potential disaster with a growing communist insurgency and inadequate agricultural productivity. The prospect of a sweeping land reform offers real hope for the Philippines to reverse this trend. The effectiveness and scope of a Philippine land reform hinge on the interpretation of just compensation in the land reform provisions of the 1987 constitution.

Just compensation in the land reform provisions of the 1987 constitution must be interpreted as less than fair market value in order to achieve the goals of economic and social stability. Principles of constitutional construction and other factors bearing on the interpretation support this interpretation of less than fair market value. It is now up to the Philippine legislature and judiciary to enact and uphold, respectively, a compensation provision which adopts a less than fair market value. Taking the constitution seriously requires no less. In such manner, the government can implement a sweeping land reform program that is both fair and affordable. The future of the Philippines depends on it.

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