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Comments on House Resolution No. 178, entitled: ***RESOLUTION CALLING FOR AN INVESTIGATION IN AID OF LEGISLATION BY THE APPROPRIATE OF THE HOUSE OF REPRESENTATIVES ON THE EXCLUSION OF AGRICULTURALLY VIABLE PARCELS OF LAND IN SARIAYA, QUEZON FROM IMPLEMENTATION OF COMPREHENSIVE AGRARIAN REFORM PROGRAM***, authored by Reps. David "Jay-Jay" C. Suarez and Anna Marie Villaraza-Suarez

Prepared by Marife M. Ballesteros[1]

26 July 2020

1. The abovementioned agrarian case between CARP farmer beneficiaries (Ugnayan ng Magsasaka sa Gitnang Quezon) and landowners (Ellice Agro Industrial Corporation) puts forward a key concern in the implementation of the land reform program in the country. The Comprehensive Land Reform Law or RA 6657 has expanded the coverage of land reform to all lands devoted to agricultural activity regardless of crops planted and including lands use for livestock, poultry and aquaculture. Prior to CARP, the previous land reform law or Presidential Decree 27 covers only rice and corn farms. During this period (1960s-1980s), the superiority of *haciendas* or plantation agriculture was debunked and several studies established the efficiency of small farms. These studies reported the inverse relationship between farm size and productivity (i.e., the smaller the farm, the higher the productivity). The explanation is that small farms can apply a higher intensity of family labor, which is more efficiently supervised than hired labor.

2. The expansion of the land reform program to all agriculture lands under CARL was partly motivated by these studies. Also, the comprehensive coverage was intended to stop the practice of some landowners to shift production from rice/corn to other crops to avoid coverage from the land reform law. However, recent literature also raises issues on whether the efficiency of small farm operation (or the inverse relationship) is applicable to all crops and across different agroecological zones. Some authors suggest that there could be a few crops that exhibit sufficiently strong economies of scale at the farm level. For instance, a study by the World Bank (2009) reported scale economies in the case of sugarcane production largely attributed to the size and cost of farm equipment, combined with timing and availability problems associated with the machine rental market, and the greater availability of working capital and know-how in larger farms. Other studies suggest that the inverse relationship is accurate for traditional agriculture but not for agriculture undergoing technological change (Chattopadhyay and Sengupta, 1997). Moreover, a recent impact study of CARP has shown that the fragmentation in the entire agriculture sector has had deleterious effects on productivity (Adamopoulos and Restuccia 2020). CARP has depressed agricultural

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productivity by reallocating land from large to existing small farms and by distorting occupational and technology choices.

3. The economic viability/feasibility of lands devoted to agriculture is also not static and therefore land uses are meant to change overtime. Thus, as the implementation of the program advanced, requests for exclusion and exemption as well as land conversion have increased. The amendments on coverage are contained in the following: (a) the permanent exclusions granted on private farms directly, permanently and exclusively used for prawn farming or fishponds and for commercial livestock and poultry raising (as amended in RA 7881); (b) exclusion from CARP coverage those lands use for agriculture purposes but were already considered "non-agriculture" based on local zoning ordinances prior to the effectivity of CARL (DOJ Opinion 44 s 1990). and (c) approval of land conversion for agriculture lands that cease to be "economically feasible and sound for agriculture purposes" and are in localities that has become urbanized where land will have a greater economic value for residential, commercial or industrial purposes.

4. The proposed legislative investigation to determine what is an agriculturally viable land is timely. In 1990, the 1986 Constitutional Commission confirmed that "'Agricultural lands" are only those lands which are 'arable and suitable for agriculture'. The DAR operationalize this as lands devoted to agriculture that is irrigated or irrigable. Section 65 of RA6657 states that "lands irrigated and irrigable shall not be subject to land use conversion". DA defines irrigable land as "land suitable for the conduct of agricultural activities which require irrigation and display physical features justifying the operation of an irrigation system" (DA AO 01 s 2017). Whether a landholding is irrigated/irrigable is confirmed by certifications from the NIA and from ocular inspections by DAR. However, there has been arbitrariness in determining the suitability of land for agriculture (DAR 2016). Aside from DA/NIA certification, the local government units through land use / reclassification ordinances are also involved in determining the suitability of land for agriculture.

5. To date, the arbitrariness in defining agriculture lands remains in the absence of clear guidelines on areas that should be protected for agriculture activities. While the DA has identified the Network of Protected Areas for Agricultural and Agro-Industrial Development (NPAAAD) and the Strategic Agriculture and Fisheries Development Zones (SAFDZ), lands in these areas have been subject to land conversion. In 2012, the NEDA Regional Development Staff reported that based on available GIS maps about 607,000 hectares of built up areas are in lands designated as NIPAS, NPAAAD or in critical and protected watersheds. These land conflicts, in a physical sense, are expected with urbanization as the increasing population will lead to encroachments in unutilized or underutilized lands.

6. Given the realities in land use and the trade-off between food security and urban expansion, the issue is not about defining agriculture lands but having an effective planning of the country's physical space. There is currently a pending bill in Congress on the National Land Use Act. We suggest that this legislative inquiry on determining agriculture lands be integrated with discussions at the Committee level of the proposed National Land Use Act. The enactment of a National Land Use Act could improve the process of land use planning in

the country and provide the legal basis to harmonize sector specific land use policies as well as strengthen land use planning at the national and local levels.

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The Resolution states as its purpose, "[t]hat the House of Representatives conduct an investigation in aid of legislation to determine whether non-agricultural lands which are agriculturally viable and are actually utilized for agricultural purposes be excluded from the implementation of CARP." RA 6657 or the Comprehensive Agrarian Reform Law covers all agricultural land, defined as land devoted to agricultural activity and is not classified as mineral, forest, residential, commercial, or industrial use (Section 3). The same law authorises Department of Agrarian Reform (DAR) to approve (or deny) conversion of land use from agricultural to other purposes.

On the other hand, RA 7160 (Local Government Code of 1991) empowers local governments to reclassify agricultural land to other uses. This authority however is limited by the restrictions stated in Section 20, including a clause that explicitly cites RA 6657 and disavows any re-classification in contravention of the latter. However, RA 6657 came to effect 15 June 1988. According to Department of Justice (DOJ) Opinion 44 (Series 1990), DAR has no jurisdiction over re-classification that was done prior to effectivity of RA 6657.

RA 7160 however seems to set up a basis for legal challenge against any Land Use Plans that fail to meet criteria of Section 20. In particular, there is a qualifier that "the requirements for food production, human settlements, and industrial expansion shall be taken into consideration in the preparation of such plans." It seems reasonable to object to any Land Use Plan that had classified land as non-agricultural before June 1988, but which had remained in agricultural use as of 2020, based on its non-compliance with this qualifier.

Furthermore, remedy through the Court will be better guided by a law from Congress, that explicitly bridges the lack of jurisdiction of DAR. A legal precedent can be found in RA 7160 itself, namely Section 198, which states a number of principles governing real property taxation. One of these is that "Real property shall be classified for assessment purposes on the basis of its **actual use** [underscoring supplied]."

Congress may simply **pass a law allowing DAR to take jurisdiction over conversion of agricultural land based on current land use, regardless of when the land was re-classified** by municipal or city ordinance. This remedies the gap in jurisdiction of DAR in relation to its powers under RA 6657. It will appear to be in the public interest as well: matters of resource allocation (e.g. land use) are best evaluated by examining actual use, relative to future economic opportunities, rather than based on provisions on paper written in an old local ordinance.

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