



THE LEGAL DEFECTS OF THE LUSITA COMPROMISE AGREEMENT

This paper seeks to show the legal infirmities of the agreement entered into by Hacienda Luisita Incorporated and the supposed farmers' representatives. It will examine one by one the terms and conditions of the agreement and show why it is invalid. The words in bold fonts refer to the agreement while the italicized words are the critique thereto.

COMPROMISE AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This Compromise Agreement entered into by and between:

HACIENDA LUISITA INCORPORATED, a corporation organized and existing under Philippine laws, with office address at JCS Building, 119 dela Rosa cor Palanca Streets, Makati City, duly represented herein by its Corporate Secretary, **ATTY. EUFROCINIO C. DELA MERCED JR.**, and hereinafter referred to as "**HLP**";

ALYANSA NG MGA MANGAGAGAWANG BUKID NG HACIENDA LUISITA, duly represented herein by its President, **NOEL MALLARI**, and hereinafter referred to as "**AMBALA**";

UNITED LUISITA WORKERS UNION, duly represented herein by its Vice-President, **ELDIFONSO PINGOL**, and hereinafter referred to as "**ULWU**";

SUPERVISORY GROUP OF HACIENDA LUISITA, INC., duly represented herein by **JULIO SUNIGA** and **WINDSOR ANDAYA**, and hereinafter referred to as "**SUPERVISORY GROUP**"

The supposed farmers' representatives are without authority to bind the farm workers.

Noel Mallari, who claims to be the president of Alyansa ng mga Manggagawang Bukid sa Asyenda Luisita (Ambala), has never been president of Ambala and he had long been ousted from the organization for acts inimical to the farm workers.

Noel Mallari was the Vice-President of Ambala when its more than 6,000 members filed the petition to revoke the Stock Distribution Option (SDO) before the Department of Agrarian Reform (DAR) in 2004. When the case was pending with the DAR, however, Mallari was kicked out of Ambala as he secretly negotiated with the Luisita management without authority from the farm workers. Thus, even before the Hacienda Luisita massacre happened, Mallari is not anymore a member or officer of Ambala. After the massacre, Mallari reappeared and represented himself as President of FARM Luisita. In the case, before the Supreme Court, it was only Ambala as represented by its President Rene Galang, and the Supervisory Group of Hacienda Luisita, Inc. that were impleaded as private respondents. But Mallari, through FARM Luisita filed a petition-in-intervention for and in behalf of FARM Luisita. It was only then that he became party to the case.

Mallari has no personality to represent the 6,000 strong members of Ambala because he never was the president of Ambala but of FARM Luisita. But, like Ambala, it appears that FARM Luisita is also not amenable to the deal entered into by Mallari.

At present the president of Ambala is Felix Nacpil.

Edilberto Pingol was the Vice-President of United Luisita Workers' Union (ULWU) but he has no authority to represent the union as he was not conferred such authority. The president of the union is Rene Galang who now stays in Australia and sought political asylum therein because of the threats to his life because of his active involvement in the petition to revoke the SDO. As he is not here in the country, ULWU appointed Lito Bais, the Vice Chari of of Ambala to be the acting president of ULWU.

According to a report of Bulatlat¹ Ildefonso Pingol, supposedly representing ULWU had been a member of the Cojuangco-Aquinos' "yellow army" and a bodyguard of Jose "Peping" Cojuangco each time President Aquino's uncle visited the hacienda.

Jose Julio Zuniga and Windsor Andaya, were the clients of SENTRA in the case before the Supreme Court. They represented the Supervisory Group

¹ <http://www.bulatlat.com/main/2010/08/07/a-look-back-hacienda-luisita-the-sdo-and-the-farmers-struggle-for-land/>

of Hacienda Luisita, which is composed of more or less 200 persons. However, after the Supreme Court issued the Temporary Restraining Order (TRO) that prevented the DAR to revoke the SDO and distribute the land to the farmers, they no longer communicated with SENTRA. SENTRA learned that they were given vast tract of land by Luisita management to cultivate and planted with sugar cane. Thus, while the farm workers were struggling daily to make a living, they lived affluent lives courtesy of the Luisita management. Even then, SENTRA already learned that they were co-opted by the Luisita management. However, in signing the agreement, there was no indication that they were given the green light by the rest of the members of the Supervisory Group.

WITNESSETH: That

WHEREAS, on May 11, 1989, a tri-party Memorandum of Agreement (“MOA”, for brevity) was executed by Tarlac Development Corporation (“TDC” for brevity), HLI, and Ninety-Two point Nine percent (92.9%) of the farmworkers, wherein said parties opted to avail of the stock distribution, instead of the land distribution option, as their mode of compliance with the Comprehensive Agrarian Reform Program law (“CARP” for brevity).

As claimed by the farm workers, during the 1989 referendum, the Cojuancos used force, intimidation, threat, and harassment so that they can manufacture farm workers' consent to the SDO.

WHEREAS, on November 21, 1989, the Presidential Agrarian Reform Council (“PARC”, for brevity) unanimously approved the MOA;

WHEREAS, pursuant to term number 3 of said MOA, HLI distributed 118,377,755 shares of its stocks to the farmworkers for free, equivalent to 33.296% of HLI's outstanding capital stock;

The stocks were not given for free but were based on onerous condition.

Contrary to the claim of HLI, the farm workers have to work for them to earn their shares in the company because the distribution of the shares is based on their mandays.

Under the 1989 MOA, the basis for the distribution of the share of stock is on the mandays earned per year by the farm workers. The mandays refer to the number of hours a farm worker work in a year. Thus, if the farm workers had no mandays for one reason or another, he could not earn or

be issued a share of stock. In which case, the share of stocks is not really for free but is to earned and paid by the labor of the farm workers.

The argument therefore, that stocks were given to the farm workers for free is a big and monumental lie and a grand misrepresentation by HLI management.

This is shown by the 1989 MOA which provides provides:

“Section 3: At the end of each fiscal year, for a period of thirty (30) years, the SECOND PARTY shall arrange with the FIRST PARTY the acquisition and distribution to the THIRD PARTY on the basis of number of days worked and at no cost to them of one-thirtieth (1/30) of 118, 391,976.85 shares of the capital stock of the SECOND PARTY that are presently owned and held by the FIRST PARTY, until such time as the entire block of 118,391,976.85 shares shall have been completely acquired and distributed to the THIRD PARTY” (underscoring supplied).

It must be noted that since the distribution of stocks is made to depend on the number of days worked, a.k.a. mandays, by the farmworkers, they will not have any share of stock if they cannot perform any mandays. This means that the distribution is not based on per capita. The underlined words in the quoted stipulation in the MOA simply means, in what is but a different expression of the same thing, NO WORK, NO STOCKS!

This conditionality speaks for itself as to eloquently belie the claim of HLI management that the distribution of shares to farmworkers is “for free”. The farm workers may not be paying the HLI stocks with a sum of money but they are certainly paying them with their labor. **It is therefore not free, it is even onerous.**

Since the MOA was prepared by TADECO as to fall under the category of contract of adhesion, such a stipulation comes across as a fine print which might have been acceded to by the farm workers without really being well-informed about its implications, especially since the stipulation was made when the mandays of farm workers were not yet diminished.

In addition section 2 of the 1989 MOA provides:

“The qualified beneficiaries of the stock distribution plan shall be the farmworkers who appear in the annual payroll, inclusive of the permanent and seasonal employees, who are regularly or periodically employed by the first party.”

Again, this provision of the MOA had clearly placed the farm workers in a disadvantageous situation. First, the matter of who shall be employed rests solely on the discretion of TADECO. Second, the number of stockholders could bloat as the management may hire as many seasonal employees who will be qualified to own shares of stock that will prejudice the original farm workers in the Hacienda. In fact, according to the HLI management in the PARC hearing of 22 November 2005, there are approximately eleven thousand (11,000) shareholders.

This condition and the provision of sections 2 and 3 of the MOA had created the following share distortions or inequality in the distribution of the 33 % share of the farm workers:

- a. A farm worker who has performed lesser number of man-days will have lesser shares of stocks.
- b. A farm worker who has performed more number of man days will have more shares of stocks.
- c. In corollary to the “no man-days, no share of stocks” rule, a farm worker who is separated, terminated or dismissed earlier from the HLI for any reason will no longer receive any share of stocks.
- d. Monthly salaried workers such as office personnel, supervisors, and foremen, will have ensured greater number of man-days. Be it noted that because of the “man-days” requirement, the SDO in HLI is actually giving more shares to those sections of its employees who need the least helping from the scheme. The worst socially-situated farm workers who need the most helping from the scheme, such as the seasonal tapaseros and cargadors, whose man-days are allocated according to available work, are receiving the least shares. It is on this sense that there is a share distortion or inequality in distribution of the SDO in HLI. It is on this sense that the SDO in HLI is a travesty of social justice.

On the matter of “NO WORK, NO STOCK”, Task Force Luisita created by PARC, in its terminal report stated:

“FGD/OCI finding shows that the number of shares of stocks to be received by the FARM WORKERSs, depends on their designation (i.e., permanent, causal, or seasonal) and on the number of **man days. Retired** and **retrenched workers** are not given shares of stocks and cease as share holders. Indisputedly, the setup under the MOA is one- sided in favor HLI. The work schedule, upon which the extent of entitlement to be granted shares of stock is wholly within the prerogative and discretion of HLI management that a FARM WORKERS can still be denied thereof by the simple expediency of not giving him any working hours/days. And this is made possible by the fact that there are more farmer/farmworkers in its employ than what is, according to HLI, necessary to make it operational.”

“The matter of issuance/distribution of share of stocks in lieu of actual distribution of the agricultural land involved, was made totally dependent on the discretion/caprice of HLI. Under the setup the agreement is grossly onerous to the FARM WORKERSs as their man days of work cannot depart from whatever management of HLI unilaterally directs.”
(paragraph 2, page 18, Terminal Report)

WHEREAS, pursuant to term number 6 of said MOA, HLI subdivided and distributed allocated residential home lots of 240 sq.m. to each of the families of farmworkers with an aggregate value of One Billion Six Million Eight Hundred Seventy-Seven Thousand Five Hundred Forty Pesos (PHP1,006,877,540.00);

WHEREAS, pursuant to term number 4 of said MOA, HLI distributed to all farmworkers an amount equivalent to three percent (3%) of the total gross sales from the production of the agricultural land;

It must be noted that the provisions on home lots and the profit sharing scheme could be deleted from the 1989 MOA and these would still be in place in HLI. This is so because these features of the MOA derived their life-force from Sections 30 and 32 of R. A. 6657. These should not be considered part or added benefits of the SDO in HLI because these exist independently of the SDO by provision of law. Because these benefits are provided by separate provisions of R. A. 6657, the farm workers could have them even without the SDO.

After almost sixteen (16) years of implementation, it is but fair for the farm workers of HLI to expect a little improvement in their lives. After all, that was what was told them when HLI management herded them to assemblies in 1989 in order to one-sidedly convince them into voting

favorably for the SDO scheme. To a farm worker laboring in the field, sixteen (16) years means the brood has probably grown from one (1) or two (2) to six (6) or more children. It means added mouths to feed, clothe and be given shelter and education. It means the transition of a little child into a high school student or an elementary student into a college student. All this means added expenses and added strain on the meagre family income.

Has the SDO helped to ease that strain even just a little bit? The answer is simply NO because up to this moment, since that ominous day on May 11, 1989, the SDO in HLI has not given even just a single cent of a dividend to the farm workers. Whatever "added benefits" the farm workers received from HLI, such as the 3 % share from gross production and home lots, are in fact not due from SDO but from other provisions of R.A. 6657. And even with the said provision of the MOA, the lives of FARM WORKERSs in HLI did not improve.

The DAR is a bare witness to this stark reality. Thus, in its Terminal Report, it recommended the revocation of the SDO. Imagine a family of four or six yielding a net income of nine pesos (P9.00) a day. How could that amount feed the hungry mouths of a family of four (4) persons?

In addition, during the entire years of implementation of the SDO in Hacienda Luisita, the farm workers were prevented from planting other crops to augment the needs of their families. They relied mainly on the "work" supplied by the management but said work averages merely two (2) or three (3) days a week with a net pay of nine pesos (P9.00) per day because of the so many deductions in their wages.

This is the reason why despite the provision on the 3% profit sharing scheme, the lives of the farm workers did not improve. Again, let it be noted that the 3% share of individual farm workers is computed on the basis of the mandays. Thus, considering that majority of the farm workers work for only two (2) or three (3) days a week, they received measly shares from the production of the agricultural land.

WHEREAS, on 2004, AMBALA, United Luisita Workers Union and SUPERVISORY GROUP separately filed a complaint before the Department of Agrarian Reform ("DAR", for brevity) praying for the revocation of the existing MOA, and asking for the distribution of agricultural lands in accordance with CARP law;

On September 28, 2003 elections for farm workers' and supervisors' representatives to the HLI Board of Directors only 15.26% of the shares

voted thereof. Around 95% of the farm workers boycotted the elections as a protest to the SDO and because the four board seats were useless against seven management seats. They likewise expressed dismay with past farmer board members for siding with management.

On October 14, 2003, the Supervisory Group of Hacienda Luisita, Inc. filed petition before the DAR to revoke SDO, saying the HLI was not giving them dividends, their one percent (1%) share in gross sales and thirty percent (33%) share in the proceeds from the conversion of 500 hectares of land. They likewise cited other violations by the HLI of the MOA and that their lives have not improved contrary to the promise and the rationale for the adoption of the SDO.

On the otherhand, on October 7, 2003, more than a thousand farmworkers under AMBALA, during the opening of the milling season, protested the SDO, land-use conversion and joblessness in the hacienda.

On December 4, 2003, around 80% of the farmworkers at the hacienda through their organization, AMBALA, filed a petition to DAR to nullify and rescind the SDO and to stop land-use conversion at the hacienda. Attached to the petition are the signatures of the 5,339 farmworkers that were submitted to the DAR on the said day. The petition cited similar violations as that of the supervisory group especially on the fact that instead of improving their lives, the SDO and MOA pushed them deeper into the quagmire of poverty.

WHEREAS, on December 22, 2005, PARC issued Resolution No. 2005-32-02 recalling/revoking the stock distribution agreement contained in the above-mentioned MOA;

The PARC Resolution No. 2005-32-01 provides:

“NOW, THEREFORE, on motion duly seconded, **RESOLVED,** as it is **RESOLVED,** to approve and confirm the recommendation of the PARC executive committee adopting in toto the report of the PARC ExCom Validation Committee affirming the recommendation of the DAR to recall/revoke the SDO plan of Tarlac Development Corporation/Hacienda Luisita Incorporated.

RESOLVED, further, that the lands subject of the recalled/revoked TDC/HLI SDO plan be forthwith placed under the compulsory coverage or mandated land acquisition scheme of the Comprehensive Agrarian Reform Program.

APPROVED.”

The basis for the recall or revocation of the SDO in Hacienda Luisita is provided in the terminal report of the DAR that conducted an on-site investigation of the matter. Portion of the terminal report provides:

VI. FINDINGS, ANALYSIS AND RECOMMENDATION:

1. Providing for quintessence and spirit of agrarian reform program, Republic Act No. 6657 explicitly provides.

“SECTION 2. Declaration of Principles and Policies. – it is the policy of the state to pursue a Comprehensive Agrarian Reform Program (CARP). The welfare of the landless farmers and farmworkers will receive highest consideration to promote social justice and to move the nation toward sound rural development and industrialization, and the establishment of owner cultivatorship of economic size farms as the basis of Philippine agriculture.

To this end, a more equitable distribution and ownership of land, with due regard to the rights of landowners to just compensation and to ecological needs of the nation, shall be undertaken to provide farmers and farmworkers with the opportunity to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands” (underscoring added).

Within the context of the foregoing policy/objective, the farmer/farmworker beneficiaries (FARM WORKERSs) in agricultural land owned and operated by corporations may be granted option by latter, with the intervention and prior certification of DAR, “xxx the right to purchase such proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total asset xxx” (Sec. 31, Rep. Act No. 6657). Toward this end, DAR issued administrative Order No. 10, series of 1998, copy of which is attached as **Annex “K”** and made an integral part hereof, which requires that the stock distribution option (SDO) shall meet the following criteria, reading, inter alia:

“a. that the continued operation of the corporation its agricultural land intact and

unfragmented is viable with potential for growth and increased profitability;

“b. that the plan for stock distribution to qualified beneficiaries would result in increased income and greater benefits to them, than if the lands were divided and distributed to them individually;

And to ensure, effective and fair implementation of the contemplated Stock Distribution Plan (SDP), the said AO also provides:

“SEC. 12. Revocation of certificate of Compliance Non-compliance with any of the requirements of Sec. 31 of RA 6657, as implemented by these Implementing Guidelines shall be grounds for the revocation of the Certificate of Compliance issued to the corporate land owner-applicant.

“SEC. 13. Reservation Clause- Nothing herein shall be construed as precluding the PARC from making its own independent evaluation and assessment of the stock distribution plan of the corporate landowner-applicant and from prescribing other requirements”

Herein, however, there is yet no Certificate of Compliance issued.

The reason is simple. Despite the lapse of sixteen (16) years, from the time the SDP was approved in November 1989, by resolution of CARP, i.e., the acquisition and distribution (herein under the Stock Distribution Plan, only the shares of stocks) is yet to be fully completed; the FARM WORKERSs, instead of the promised/envisioned better life under the CARP (herein, as corporate owner), do still live in want, in abject poverty, highlighted by the resulting loss of lives in their vain/futile attempt to be financially restored at least to where they were before the CARP (SDP) was implemented. While they were then able to make both ends meet, with the SDP, their lives became miserable.

2. For the foregoing considerations, as further dramatized by the following violations/noncompliance with the guidelines prescribed, which are legally presumed as integrated in the agreements/accords/stipulations arrived at thereunder like the HLI SDP namely:

2.1. Noncompliance with Section 11 of Administrative Order No. 10, Series of 1988, which provides:

"The approved stock distribution plan shall be implemented within three (3) months from receipt by the corporate landowner-applicant of the approval thereof by the PARC and the transfer of the shares of stocks in the names of the qualified beneficiaries shall be recorded in the stock and transfer books and submitted to the Securities and Exchange Commission (SEC) within sixty (60) days from the said implementation plan."

The Stock Distribution Plan, however, submitted a 30-year implementation period in terms of the transfer of shares of stocks to the farmworkers beneficiaries (FARM WORKERSs). The MOA provides:

"At the end of each fiscal year, for a period of thirty (30) years, the SECOND PARTY shall arrange with the FIRST PARTY the acquisition and distribution to the THIRD PARTY on the basis of number of days worked and at no cost to them of one-thirtieth (1/30) of ..."

Plainly, pending the issuance of the corresponding shares of stocks, the FARM WORKERSs remain ordinary farmers and/or farmworkers and the land remain under the full ownership and control of the original owner, the HLI/TADECO.

To date, the issuance and transfer of the shares of stocks, together with the recording of the transfer, are yet to be complied with.

2.2. Noncompliance with the representations/warranties made under section 5 (a) and (b) of Administrative Order No.

As claimed by HLI itself, the corporate activity has already stopped that the contemplated profitability, increased income and greater benefits enumerated in the SDP have remained mere illusions.

2.3. The agricultural land involved was not maintained "unfragmented". At least 500 hundred hectares hereof have been carved out after the land use has been converted to non-agricultural uses. (page 13-17, Terminal Report)

In Council Resolution No. 2006-34-0140.1, PARC found out the following violations of the law, and rules, committed by HLI in the implementation of the SDO:

“Be that as it may, **this Committee**, is constrained to consider the lengthy disquisition of HLI (Motion, pp. 10-31, inclusive), on the merits as off-tangent and, accordingly, inconsequential. Threshed out therein were the alleged grounds of the separate petitions, as HLI assessed them. But while focusing thereon, HLI unwittingly failed to assail the grounds cited by PARC in the recall or revocation of its approval of the TDC/HLI SDP. At the expense of being repetitive, the bases therefore are the following, stated in pages 10 to 13 of the PARC ExCom Validation Committee Resolution dated 12 December 2005, to wit:

The implementation of the HLI/TDC Stock Distribution Plan and of the accompanying Memorandum of Agreement, as well as the Plain and MOA itself, failed to comply with and did not conform to the conditions and requirements of the law, rules, and public policy - -

First, HLPs implementation of the distribution of the mandatory minimum ratio of land-to-shares of stock to the ARBs was based on man days, within its policy of no-work no-shares of stock, and not to equal number of shares depending upon their rightful share, as required in the rules, and therefore practically divested the ARBs, as to their qualification/entitlement, as ARBs at HLI's whims, to their disadvantage and prejudice in the form of diminution in the minimum ratio of shares. Having increased to a great extent the number of workers (contractual), the equity share of each permanent employee, as of 1989, naturally had to be, as in fact, reduced,

Further and more importantly, HLI took upon itself, or usurped, the duty or mandate of DAR to qualify the recipient ARBs and imposed its own criteria and discretion in the allocation of the mandatory minimum ratio of land-to-shares of stock by basing the distribution on the number of days worked. Still worse, HLI made allocation to recipients who are not in the ARBs original masterlist as admittedly, it distributed to about 11,955 stockholders of record 59,362,611 shares representing the second half of the total number of shares earmarked for distribution, when in fact there were only 6,296 farm workers or less, at the time when the land was placed under CARP under the SDP/SDO scheme.

Second, the transfer of the mandatory minimum ratio of land-to-shares of stock was not done during the prescribed period ordained by the law and rules. HLI failed to effect on time the complete transfer of the mandated minimum ratio of land-to-shares of stock to the FWBs as required by law, which shares of stock refer to the proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the corporation's total assets (Sec. 31, par. 2, R.A. 6657 in relation to Sec. 3 of A.O. 10 s. 1988). This portion of the outstanding capital stock of the corporation, as identified, relates to the 33.2967, or 118,391,976.85 shares of stock, with par value of P1.00 each, of the minimum ratio of land-to-shares of stock of the total outstanding capital stock of HLI which the corporation should have transferred in full and at no cost to the FWBs, or the distribution thereof realized, within two (2) years from the approval of RA 6657 [Sec. 31 (d) 2nd par.], or should have been implemented within 3 months from receipt by the corporate landowner-applicant of the approval of the SDP by the PARC, and that the transfer of shares of stock in the names of the qualified beneficiaries should have been recorded in the stock transfer books and submitted to the Securities and Exchange Commission (SEC) within sixty (60) days from the implementation of SDP (Sec. 11, A.O. 10, s. 1988). What actually transpired was a deferment for thirty years before there is full stock distribution and till then, the ARBs remained farmworkers and not stockholders. And the attempt to distribute the balance after only 16 years, which however, was rejected for loss of interest as explained elsewhere, is more of an admission of the initial, but fatal error of TDC/HLFs SDP that was submitted and approved by PARC in 1989.

Third through more than a decade of purported implementation of the SDP-MOA. HLI could not fully account for, and failed to clearly delineate, its full and complete compliance with the following distinct obligations, it assumed, to the FWBs, to wit:

a. As per SDP and MOA - the guaranteed three percent (3) of gross sales every year, which benefit is supposed to be an additional corporate augmenting benefit.

b) Dividends from the retained earnings or profits of the corporation that the law requires to be payable to stockholders. The FWBs are stockholders or shareholders of the corporation, specifically with reference to the mandated land-to-shares of stock minimum ratio under the

SDO scheme. The beneficiaries are, and should have been entitled to, dividends and other financial benefits [Sec. 31 (a), *ibid*].

c. The production shares equivalent to 3 of the gross sales from the production of the lands and the profit shares equivalent to ten percent (10) of the net profit after tax, which are both statutory benefits and should have been distributed to the FWBs pending the completion of the transfer of the mandatory minimum ratio of land-to-shares of stock (analogous to land transfer under Sec. 32 of R.A. 6657 in conjunction, with. Sec. 13, *ibid*).

Fourth, HLI and TDC committed to keep, "the agricultural land intact and unfragmented, to maintain the viability of the sugar operation involving the farm as a single unit and thus warrant to the acknowledged farmworker-beneficiaries, hand-in-hand with their acquisitions of the shares of the capital stock of the corporation owning the land, a continuing and stable source of income."

Fifth, the FWBs lamented that their economic conditions become onerous and has miserably deteriorated. HLI avers that it has not been earning for the last several years. This is unfortunate because then the approved SDP undoubtedly failed to satisfy one of the essential criteria requisite to SDO acceptance - that the plan for stock distribution to qualified beneficiaries would result in increased income and greater benefits to them, than if the lands were divided and distributed to them individually or collectively.

WHEREAS, on February 1, 2006, HLI questioned aforesaid PARC resolution before the Supreme Court, under Case No. 171101, and the Court issued a Temporary Restraining Order pending resolution of the petition;

WHEREAS, the parties herein are the same parties in the afore-cited Supreme Court case;

WHEREAS, stock distribution was chosen over land distribution by the farmworkers as early as 1989, and it remains effective and valid until today;

Contrary to the assertion of HLI, the SDO in Luisita was already revoked by PARC. The implementation of the order to distribute the land to the farm workers was merely restrained by the Supreme Court when it issued a temporary restraining order (TRO) enjoining the implementation of PARC's order.

WHEREAS, the primordial concern of the parties herein is to uplift the lives of the people living in Hacienda Luisita, and an early resolution of the case, as well as all collateral issues, will definitely augur well to serve this purpose;

Contrary to this, this agreement was intended to muddle the issue and pre-empt the outcome of the case now pending with the Supreme Court. The HLI management very well knew that they will not win the battle in the Supreme Court. For one, PARC's resolution to revoke the SDO, as it did not improve the lives of the farm workers but made them more miserable, was unanimous. For another, HLI had violated several agrarian reform laws and the SDO scheme is clearly unconstitutional and unjust. Aside from violation of agrarian reform laws, the SDO scheme in Luisita and this agreement defeat social justice. It did not and will improve the lives of the farmworkers in hacienda Luisita.

WHEREAS, to achieve an early resolution of all pending issues surrounding Hacienda Luisita, all parties herein are willing to enter into a compromise agreement that would end all disputes;

NOW, THEREFORE, in view of the premises, the parties herein hereto agree on the following terms:

- 1. The parties shall respect the individual decisions of the farmworkers as to whether they would stay with the Stock Distribution contained in the MOA of 1989, or would proceed with land distribution.**
- 2. Farmworkers opting for land distribution shall return to TDC, being the original owners, all HLI shares given to them pursuant to the MOA. In lieu thereof, land shall be given to them FOR FREE AND CLEAN OF ANY AND ALL LIEN OR ENCUMBRANCES. Whatever is the total percentage shareholdings in HLI of the farmworkers opting for land distribution shall be the equivalent percentage of the size of the land to be given to them from the remaining HLI land actually devoted to agriculture, with a total area of 4,102 hectares, approximately. The MOA shall remain valid and effective as far as farmworkers who decide to stay with the Stock Distribution Option.**

The agreement is worst that the original SDO agreement of 1989.

The agreement stated that the farm workers have two options – to continue with the SDO scheme or to have the land actually distributed to them. In the event that the farm workers opt for actual land distribution, they will be given the equivalent percentage of the size of the land from the remaining HLI land actually devoted to agriculture, with a total area of 4,102 hectares, approximately. This means that the farm workers will

only be given 33% of the 4,102 hectares, which in effect, will total only to 1,400 hectares. This 1,400 will be divided to the farm workers who will opt for land distribution while the rest of the land will remain with HLI. But HLI has no right to retain the rest of the land because they should be covered by the existing agrarian reform program. So instead of the whole 4,102 hectares, they will get only 1,400 hectares.

On the otherhand, if the farm worker choose the remain under the SDO scheme, the problems they have experienced that led to the strike in 2003 and eventually to the infamous Luisita massacre in 2004 will persist. Again, they will be at the mercy of the HLI management. Hence, although they are so-called co-owners of the corporation, they will be subjected to the rule of majority, the rule of the Cojuancos. They will experience the same problems and woes as that they have experienced before they filed the petition to revoke the SDO in Luisita.

The reasons for the revocation of SDO in Hacienda Luisita still exists

The parcels of agricultural land in hacienda Luisita were already covered by the agrarian reform program. It was first placed under the SDO scheme. In 2005, PARC revoked the scheme and ordered the actual distribution of the lands to the farm workers. It found out that the SDO in Hacienda Luisita is contrary to public policy and violates the provision of RA 6657.

The reasons for the revocation are as follows:

1. The policy of no-work no-shares of stock is contrary to law and public policy.
2. The setup under the 1989 MOA is one-sided in favor HLI. The work schedule, upon which the extent of entitlement to be granted shares of stock is wholly within the prerogative and discretion of HLI management that a farm worker can still be denied thereof by the simple expediency of not giving him any working hours/days. And this is made possible by the fact that there are more farmer/farmworkers in its employ than what is, according to HLI, necessary to make it operational.”
3. The matter of issuance/distribution of share of stocks in lieu of actual distribution of the agricultural land involved, was made totally dependent on the discretion/caprice of HLI. Under the setup the agreement is grossly onerous to the

farm workers as their man days of work cannot depart from whatever management of HLI unilaterally directs.

4. Despite the lapse of sixteen (16) years, from the time the SDP was approved in November 1989, by resolution of CARP, i.e., the acquisition and distribution (herein under the Stock Distribution Plan, only the shares of stocks) is yet to be fully completed; the farm workers, instead of the promised/envisioned better life under the CARP (herein, as corporate owner), do still live in want, in abject poverty, highlighted by the resulting loss of lives in their vain/futile attempt to be financially restored at least to where they were before the CARP (SDP) was implemented. While they were then able to make both ends meet, with the SDP, their lives became miserable.

5. Noncompliance with Section 11 of Administrative Order No. 10, Series of 1988.

6. The farm workers remain ordinary farmers and/or farmworkers and the land remain under the full ownership and control of the original owner, the HLI/TADECO.

7. The contemplated profitability, increased income and greater benefits enumerated in the SDP have remained mere illusions.

8. The agricultural land involved was not maintained "unfragmented". At least 500 hundred hectares hereof have been carved out after the land use has been converted to non-agricultural uses.

9. HLI made allocation to recipients who are not in the ARBs original masterlist as admittedly, it distributed to about 11,955 stockholders of record 59,362,611 shares representing the second half of the total number of shares earmarked for distribution, when in fact there were only 6,296 farm workers or less, at the time when the land was placed under CARP under the SDP/SDO scheme.

10. What actually transpired was a deferment of giving the shares of stock to the farm workers for thirty years before there is full stock distribution and till then, the ARBs remained farmworkers and not stockholders. And the attempt to distribute the balance after only 16 years, which however, was rejected for loss of interest as explained elsewhere, is more of an admission of the initial, but fatal error of TDC/HLFs SDP that was submitted and approved by PARC

in 1989.

11. The HLI could not fully account for, and failed to clearly delineate, its full and complete compliance its obligation to:

a. give the farm workers the guaranteed three percent (3) of gross sales every year, which benefit is supposed to be an additional corporate augmenting benefit.

b) give dividends from the retained earnings or profits of the corporation that the law requires to be payable to stockholders and other financial benefits.

c. give the production shares equivalent to 3 of the gross sales from the production of the lands and the profit shares equivalent to ten percent (10) of the net profit after tax

12. The farm workers lamented that their economic conditions become onerous and has miserably deteriorated.

13. The approved SDP undoubtedly failed to satisfy one of the essential criteria requisite to SDO acceptance - that the plan for stock distribution to qualified beneficiaries would result in increased income and greater benefits to the farm workers, than if the lands were divided and distributed to them individually or collectively.

The option is a choice between the devil and the deep-blue sea

The grounds or reasons for the revocation of the SDO in hacienda Luisita were not yet addressed by HLI. They remained to date. If the farm worker will chose to remain under the SDO scheme, the predicament they are facing today will remain and will continue to persist. Again, they will be at the mercy of the HLI management. The repeat of the strike and the massacre will not be a remote possibility as the will suffer the same problems and woes they have experienced under the SDO.

Considering that nothing had change in the condition for the implementation of the SDO in Luisita, there is no basis for the continued operation of the said scheme. HLI management has, therefore, no option to make the farm workers choose between the SDO and 1,400 hectares land. HLI cannot assert that the farm workers may choose to remain under the former SDO agreement because the same was rendered null void for being contrary to existing law and it was against public policy. Moreover, the farm workers will continue to live under the miserable condition created by the SDO scheme in Luisita.

HLI could not also insist on giving the farmers only 1,400 hectares of land because the whole land is covered by the agrarian reform program.

Therefore, the farm workers have the right to the whole 4,102 hectares. The only thing that prevents the distribution of the lands to the farm workers is the TRO issued by the Supreme Court. Once the TRO is lifted and the case HLI filed with the Supreme Court is decided in favor of the farm workers, the whole of the agricultural lands of hacienda Luisita should be distributed to the farmers.

The agreement violates Republic Act 6657 as amended by Republic Act 9700

Section 4 of Republic Act 6657 as amended by Republic Act 9700 otherwise known as Comprehensive Agrarian Reform Program with Extension and Reform (CARPER) provides that agricultural land in excess of 5 hectares shall be distributed to the farmers while the landowner shall be given just compensation for the value of the land. The land owner has no option to retain the land except for the 5 hectares retention limit as provided by the said law. Thus, HLI or TADECO, the previous owner of the land before the SDO scheme was implemented in the hacienda, has no power, right or authority to maintain the parcel of land in excess of 1,400 hectares. They are only entitled to the payment of just compensation for the value of the land.

The agreement providing for the option to the farm workers whether to continue with the SDO scheme or to have the land actually distributed also do not conform to the existing law. There should only be one scheme is a single estate. It could only be actual land distribution or any of the alternative modes on non-land transfer allowed by CARPER. And a landowner could not dictate on what modality or scheme is to be implemented to the estate. But whatever will be the chosen modality, it is as always and should be in accordance with the law and the implementing rules and regulations.

HLI intends to pre-empt the decision of the Supreme Court on the constitutionality of SDO

Clearly, by this agreement, HLI is subverting or intends to subvert the law to maintain their control and ownership of hacienda Luisita. It also wanted to pre-empt the decision of the Supreme Court on the constitutionality of the provision of CARPER on SDO.

They attributed grave abuse of discretion on the part of PARC when it resolved to revoke the SDO. But, PARC's decision is based on valid and

substantial grounds. It had ample legal and factual basis as discussed above.

- 4. HLI/TDC shall also provide financial assistance to all farmworkers in the amount of One Hundred Fifty Million Pesos (PHP 150,000,000.00). The schedule of the release of the fund assistance shall be dependent on the Supreme Court's approval of this Compromise Agreement.**

This is also an act of deception and a machination to lure the farm workers to consent with this agreement. The amount is also rather small than that which is supposed to be received by the farm workers.

It must be noted that the farm workers are co-owners of the hacienda Luisita Incorporated for 33,296% of the total shares of stocks. On May 10, 1989, the outstanding capital stock of HLI is 400,000 at 1 peso per share.

In the event that the stock distribution option is finally revoked, HLI's assets shall be liquidated. All its assets minus liabilities will be distributed to the stock holders except the land that will be distributed to the farmers. These lands will be valued again and on the basis thereof, the compensation to the land owner shall be paid. Thus, after deducting the legitimate debts from the assets of the corporation, the remaining assets except the land shall be distributed to the stock holders in accordance with their respective shares.

Granting for the sake of argument that there are approximately 11,000 farm workers in the hacienda and they have equals number of shares (as stated above, the shares varies as it depends on mandays or hours worked by a farm worker in a year), then from the P150,000,000.00, each of the farm workers shall only be entitled to P13,600. 00 only.

- 5. All monetary and non-monetary benefits, such as homelots and production share, already received by the farmworkers shall remain and shall not be questioned, or refunded as a result of land distribution. At the same time, the parties hereby respect and will no longer question the validity of the conversion of lands to non-agricultural use.**

Off course, HLI could not anymore take back the homelots and the production share previously given, if there were any. As above-stated, they are benefits to the farmworkers independently provided by law and not because of the grace of HLI. Whatever scheme is implemented in a given agricultural land, a provision for homelots is specifically provided for the farmers aside from his farm lot. Moreover, since they were previously

given to the farm workers, they have already established ownership rights to the homelots. It could not be transferred back to the landowner.

In the same vein, production share or profit share is provided also if in case the landowner and the farmer engaged in a joint undertaking involving the land covered by the agrarian reform program. Production share or profit share are given not out of generosity but because the farmer labored to make the land productive for which reason he should rightly be compensated for his labor and share in the profit.

On this respect, it is very enlightening to quote DAR's terminal report on the matter profit and production sharing in Hacienda Luisita:

2.2.5. On the agreement that other benefits will be given other than those provided for in the MOA

It was stipulated that the SDO would provide the FARM WORKERSs other benefits that a less than a hectare-farm would not be able to provide, like the 3% of the gross production sales, to be shared with the FARM WORKERSs, on top of their regular compensation.

The FARM WORKERSs do not receive any other benefits under the MOA except the aforementioned [(viz.:shares of stocks (partial), 3% gross production sale (not all) and homelots (not all)]. (page 11-13, Terminal Report)

This stipulation in the agreement does not mean that the owners of hacienda Luisita are benevolent landlords. They are compelled, as they have no choice, to respect the right of the farm workers on the homelot and the production share. In fact, as found out by the DAR, not all the farmers received such benefits.

But here is the twist in the above-stated provision of the agreement. The farmers could not anymore question the conversion of the land to non-agricultural use. This means that HLI could do whatever it wants with the land. This will lead to the unhampered conversion of the land from agricultural to other uses. Eventually, when the land ceases to be agricultural in use, the farmers will be eased out of the corporation. For they are and will only be useful to the Cojuancos if the lands are still agricultural in use as there is the continuing operation of the agrarian reform program therein. Otherwise stated, when the land ceased to be agricultural in use, their right to the land ceases to exist.

The stipulation likewise merely shows that since then, HLI had no intention to give the farm workers what is rightly due them and to have the land covered by the agrarian reform program. The Cojuancos had no intention of letting go of the land and will do whatever is necessary, even if it is illegal, immoral, and unjust, to keep their continued possession and control of the land.

It appears, however, that in their intent to immediately conclude the deal with fake representatives of the farmer beneficiaries, they failed to consider the provision of the DAR Administrative Order No. 10, Series of 1989 as incorporated in the 1989 MOA that the agricultural land should remain intact and unfragmented, to maintain the viability of the sugar operation involving the farm as a single unit that would provide the farm workers-beneficiaries a continuing and stable source of income.

In effect, this agreement violates the very important principle and provision of the law that the land, during the operation of the SDO should remain intact and unfragmented just like what they previously did.

As in the previous implementation of the SDO in the hacienda, HLI will be converting these productive parcels of agricultural land so that it could do away with the farm workers and evade the agrarian reform program.

6. Farmworkers opting for land distribution, hereby waive all their rights or interests on the remaining assets of HLI. They also hereby give HLI or its assigns the right of first refusal, should they decide to lease, sell, transfer, encumber, convey, or enter into joint-venture or any other mode of business relations or transaction that would involve the land given to them, or any rights thereto, or any portion thereof. Should HLI or its assigns fail to match the best offer given to the farmworkers within three hundred sixty (360) days from the receipt of a written notice, then the farmworkers may proceed to deal with third parties.

This provision violates section 31-D of Republic Act 6657 as amended by Republic Act 9700 which provides:

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

The provision of the agreement will also lead to the reconcentration and control of the land to the hand of the Cojuancos. It also shows their intent to avoid the application of the agrarian reform program into the land.

- 6. To optimize land productivity and create job opportunities, the farmworkers herein hereby express support and/or interpose no objection to the further developments of HLI lands even for non-agricultural purposes. Said farmworkers who chose SDO, or their heirs, shall be given preference in employment.**

Like the provision under paragraph 4 of the agreement, this paragraph violates DAR Administrative Order No. 10, Series of 1989 as incorporated in the 1989 MOA that the agricultural land should remain intact and unfragmented. Land covered by agrarian reform program including SDO are non-negotiable for conversion.

- 7. Pursuant to this Compromise Agreement and the financial assistance given, the parties herein hereby waive and agree to withdraw any and all claims, including those arising from employer-employee relationship, complaints, petitions filed, or to be filed, with the DAR, PARC, administrative, quasi-judicial and/or judicial bodies, or any other matter arising from or incidental to the MOA, or any dispute between HLI and the farmworkers, and hereby release and hold harmless each other from any and all other liabilities or claims, of any form and kind, which one may have against the other and its officers, or which may arise now or in the future between HLI and the farmworkers, or as a result of or incidental to the implementation of the MOA.**

This provision effectively stripped the farm workers the right to question any criminal, illegal and unjust acts of HLI management. It deprives them the right to sue HLI for any violation of the agreement, past and future. They are deprived of the right to have the agreement revoked for violations of law or of the very terms and conditions thereof. They could not also petition for the revocation of the SDO scheme even when it was found and will be found out that it is contrary to law, public order, and public policy.

This provision makes the farm workers virtual slaves, as they were and are already regarded as such by the Cojuancos.

Not only that, the provision effectively deprived the DAR and the proper courts to intervene and settle the dispute in the implementation of the SDO in the hacienda. Thus, the provision effectively insulates HLI from scrutiny on the way they implement SDO in the hacienda

- 8. All parties herein have entered into this agreement freely and voluntarily with full understanding of its contents, and hereby agree to cooperate with each other in good faith in carrying out the principles and objectives**

embodied in the provisions stated in this agreement, including the execution, signing, delivery and implementation of any and all documents necessary to achieve and/or implement the above purposes. This English version shall supersede any other translation in case of discrepancy.

IN WITNESS WHEREOF, the parties have hereunto set their hands and affix their signatures this August 6, 2010, at Tarlac City.

*The implementation of the HLI/TDC Stock Distribution Plan and of the accompanying Memorandum of Agreement, as well as the Plan and MOA itself including this present agreement, failed to comply with and did not conform to the conditions and requirements of the law, rules, and public policy. **Therefore, it is void ab initio***

It must be said that the contract between HLI and the farm workers is imbued with public interest. The highest consideration here is social justice. But this agreement will be a travesty of social justice.

The “referendum” conducted by the HLI management purportedly to make the farm workers choose whether they would continue under the SDO scheme or get a piece of HLI lands, is also illegal.

PARC’s decision to cover the HLI lands for agrarian reform still stands and unless this decision is reversed, the lands are effectively under the jurisdiction of DAR. The TRO issued by the Supreme Court merely restrained the implementation of the Presidential Agrarian Reforms Council’s (PARC) decision but the decision is valid as things stand. Only DAR had the authority to decide on what to do with the HLI lands as they are already placed under the agrarian reform program.

The “referendum” was not supervised by DAR. The act of HLI in conducting a “referendum” has all the badges of maliciously defying the Department.

HLI got the better end of the deal

It is not correct to say that the farm workers, in signing the agreement and in going through the “referendum” called by HLI, are in the same footing with the latter. Obviously, the terms and conditions of the agreement were not explained to the farm workers. They were not made aware that the terms and conditions thereof are worst than the 1989 SDO agreement.

The Supreme Court had already set this August 18 the oral argument on the HLI petition against the PARC’s decision. It was HLI who went to the

Supreme Court to question the validity of the PARC decision so that it ethically behooves of the HLI to wait for the Court to decide on the matter.

The Cojuangos-Aquinos are not only bad landlords, they are also bad drivers recklessly trying to beat the green light which is to come after the oral argument called by the Supreme Court. HLI is trying to pre-empt the Supreme Court whose intervention they themselves sought.

What the HLI is doing is a repeat of the manufactured referendum in 1989 which mothered the protracted strife that now bedevils the farm workers community in Hacienda Luisita. It appears that, given the bloodshed the strife had caused, the Cojuangcos-Aquinos have not really learned their lessons in 1989.

HLI's act makes up the third time that the Cojuangcos-Aquinos betrayed agrarian reform and the HLI farm workers. The first betrayal was in 1986, after Cory Aquino became president due to EDSA revolution, when her administration through the Solicitor General withdrawn the case filed by the government against the Cojuancos for the distribution of the land to the farm workers.

During the reign of Ferdinand Marcos, the government filed a case to compel the Cojuancos to give the land to the farm workers as it was the condition for the loan they obtained with the Government Service Insurance System (GSIS) and the Central Bank. The loan was used to purchase the sugar mill and the hacienda Luisita. The Regional Trial Court (RTC) of Manila then ordered the Cojuancos to fulfill the condition of the loan and to distribute the land to the farm workers. They appealed the decision, however, to the Court of Appeals. While pending appeal and Cory became president, her administration ordered the withdrawal of the case from the Court of Appeals.

The second act of betrayal was in 1989 when they chose to implement stock distribution option (SDO) in HLI instead of having the lands actually distributed to the farmers. This SDO is the root of all the misery and predicament of the farm workers. This SDO led to the hacienda luisita massacre and the farm workers already rejected this scheme.

HLI is muddling the issue to prevent the eventual defeat at the Supreme Court

This agreement was intended to muddle the issue and pre-empt the outcome of the case now pending with the Supreme Court. The HLI

management very well knew that they will not win the battle in the Supreme Court. For one, PARC's resolution to revoke the SDO, as it did not improve the lives of the farm workers but made them more miserable, was unanimous. For another, HLI had violated several agrarian reform laws and the SDO scheme is clearly unconstitutional and unjust and is contrary to public policy.

The very issue in the Supreme Court case is the validity of the SDO. Now, by the agreement, HLI is trying retain the SDO scheme despite the fact that it was already declared void by PARC. Eventually, however, when the Supreme Court will finally decide that the SDO in Lusita is invalid, this agreement will also be struck down for being contrary to law and public policy. That will be the natural consequence of the decision.

As stated above, in the present agreement, the farm workers will only get 1,400 hectares of the land out of the 4,900 hectares that was placed under the SDO. This will be divided to as many beneficiaries as there are and will choose for land distribution. If they will choose to continue with the SDO, eventually they will end up on the same condition that led them to petition for its revocation. They will also receive an average of 13,600 of the P150,000,000.00 financial incentives dangled to them by HLI although the total assets of the corporation amounted to billions of pesos already.

Moreover, the same condition prevails in the hacienda. The principal reason why they filed they filed the petition to revoke the SDO, i.e, their live did not improve and instead deteriorated, remains. Thus, they were deceived into signing the agreement which, as it stand, is worst that the original agreement.

HACIENDA LUISITA INCORPORATED

By: ATTY. EUFROCINIO C. DELA MERCED JR.

ALYANSA NG MGA MANGAGAGAWANG BUKID NG HACIENDA LUISITA

By: NOEL MALLARI

UNITED LUISITA WORKERS UNION

By: ELDIFONSO PINGOL

SUPERVISORY GROUP OF HACIENDA LUISITA, INC.

By: JULIO SUNIGA

By: WINDSOR ANDAYA

WITNESSED BY:

ATTY. VIGOR D. MENDOZA II

ATTY. ANTONIO A. LIGON

Brgy.Kap. PROTACIO N. NAVARRO JR.

Brgy.Kap. RENATO R. LUNA JR.

Brgy.Kap. FRANCISCO A. SIGUA

We Concur:

Tarlac Development Corporation (TDC)

By:_____