G.R. No. 179334 – SECRETARY OF THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS and DISTRICT ENGINEER CELESTINO R. CONTRERAS *v.* SPOUSES HERACLEO and RAMONA TECSON.

Promulgated:

April 21, 2015

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SEPARATE CONCURRING OPINION

BRION, *J.*:

I write this Separate Concurring Opinion to reflect my former Dissent (to the circulated Opinion of Justice Marvic Leonen) and to express my position and concurrence with the *ponencia's* position.

In the deliberations of the Court, the original *ponencia* of Justice Peralta – on the motion for reconsideration *(Motion)*[1] filed by the respondents Spouses Heracleo and Ramona Tecson *(respondents)* from the Court's **July 1, 2013** decision – was not resolved but for some reason Justice Leonen circulated an Opinion (*Leonen Opinion*) that was intended to be a *ponencia* to which I dissented.

The Leonen Opinion proposed to resolve the respondents' Motion by using economic principles and financial data that Justice Leonen gathered. Specifically, he proposed to award the respondents compounded interests, on the property's 1940 fair market value, at the rate of **8.328%** per annum (based on the actual and assumed annual rate of return on treasury bills) counted from 1940 until 2013. He justified this approach under the **economic concept of present value** which he earlier proposed in his dissent to the July 1, 2013 decision.

My dissent to the Leonen Opinion was largely on the reason that economic concepts and theories cannot apply in the determination of just compensation, specifically in the computation of interests, when the law itself, by regulation, provides for the imposable interest rates.

In the subsequent deliberations, Justice Peralta reclaimed the role of Member-in-Charge and reported to the Court his proposed resolution of the respondent's Motion.

Based on these developments, I file this Separate Concurring Opinion to the *ponencia* of Justice Peralta ***(ponencia)*** to register what I believe is the proper approach in fixing the just compensation for expropriated property,

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[1] *Rollo*, pp. 255-259.

that is fair and equitable to the respondents, as owners, and to the public, as the ultimate expropriator. This approach is proper as it is grounded on the law, the rules and on established jurisprudence, and is guided and influenced by reason and equity in resolving the gaps not fully covered by the applicable law, rules and jurisprudence.

The Case

For proper perspective, I reiterate briefly the key facts and events of the case.

The respondents filed a motion for reconsideration from the July 1, 2013 Decision of this Court, that resolved the July 31, 2007 decision[2] of the Court of Appeals *(CA)* in CA-G.R. CV No. 77997.

In this July 1, 2013 Decision, the Court partially granted the petition and ***reduced to ₱0.70, from ₱1,500, per square meter the valuation*** that the CA fixed for the respondents' property. The Court also imposed a ***straight 6% interest per annum on the just compensation due counted from 1940 until actual payment.***

The Court reasoned out that the just compensation, which must be "the fair market value of the property between one who receives and one who desires to sell," should be "fixed at the time of the actual taking by the government." "Taking," the Court explained, occurs when the expropriator enters private property permanently (*i.e.*, not only for a momentary period), or for the purpose of devoting the property to public use in a manner indicative of the intent to oust and deprive its owner all beneficial enjoyment thereof.[3]

The Court pointed out in this regard that the Department of Public Works and Highways (*DPWH*) entered and took the respondents' property for the construction of the MacArthur Highway in 1940. At the time of taking, the property's fair market value was ₱0.70 per square meter. Thus, the just compensation for the property should be fixed with this 1940 value as the base.

While recognizing the disparity between these two valuations and the seeming inequity that results against the respondents' favor, the Court quickly pointed out that the concept of "just compensation" applies equally to the public who must ultimately bear the cost of the expropriation. The respondents, after all, had been equally remiss in guarding against the effects of the belated claim.

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[2] Penned by Associate Justice Lucas P. Bersamin (now a Supreme Court Associate Justice), and concurred in by Associate Justices Portia Aliño-Hormachuelos and Estela M. Perlas-Bernabe (now a Supreme Court Associate Justice), *rollo*, pp. 124-137.

[3] Citing *Manila International Airport Authority v. Rodriguez*, 518 Phil. 750, 757 (2006).

Lastly, the Court considered as illegal the DPWH's act of taking the respondents' property without prior expropriation proceedings and prior payment of just compensation. Hence, it awarded the respondents, as actual or compensatory damages, 6% interest per annum on the property's value fixed at the time of the taking in 1940 until full payment.

The Dissents to the July 1, 2013 Decision

1. Justice Velasco

In his Dissenting and Concurring Opinion, Justice Velasco voted to deny the petition and affirm the CA decision that fixed the just compensation at ₱1,500, per square meter.

Justice Velasco submitted that the circumstances surrounding the case and the attendant inequity and prejudice to the respondents resulting from the illegal taking of their property warrants and justifies a deviation from the general rule in reckoning the just compensation on the property's time-of-taking valuation.

He reasoned that the DPWH violated the respondents' constitutional right to due process as well as their property rights when it took their property without first instituting condemnation proceedings and paying just compensation. This taking, too, that is illegal for violation of the respondents' constitutional rights, was made more than fifty-five years before the respondents were finally forced to institute the court action to vindicate their rights. Finally, the ₱0.70 per square meter is highly unjust and inequitable given that the property's valuation in 2001 was already ₱10,000.00 per square meter; hence, the ₱1,500 per square meter valuation is reasonable and just under the circumstances.

2. Justice Leonen

In his Separate Opinion, Justice Leonen voted to grant the petition. He agreed with the Court that the property's 1940 fair market value should be used as basis for fixing the just compensation.

Nevertheless, he submitted, in the way that Justice Velasco did, that the amount the Court fixed as just compensation for the respondents' property is very low and is consequently inequitable.

Justice Leonen proposed the use of the **economic concept of present value**, *i.e.*, that money that should have been paid in the past has a different value today. He reasoned that money earns more money throughout time, and had the government paid the respondents the just compensation due for the property immediately at the time of its taking

in 1940, the latter would have invested this money in some guaranteed-return investments that would, in turn, have earned them more money.

Thus, he proposed the use of the formula ***PVt = V*(1+r)t*** in computing for the present value of the respondents' property. Under this formula, the interests due and earned shall be compounded annually to arrive at what he believed as the **happy middle ground** that meets the need for the doctrinal precision urged in the decision, and the substantial justice that J. Velasco advocated in his Opinion.

The Motion for Reconsideration

The respondents argue that using the property's 1940 value of ₱0.70 per square meter is "arbitrary and confiscatory" and is equivalent to the condonation of the acts of the DPWH in disregarding their property and due-process-of-the-law rights.

They add, reiterating Justice Leonen's suggestion in his Separate Opinion that gross injustice will result if the amount to be awarded will simply be based on the property's 1940 value; hence, they seek the "happy middle ground" that Justice Leonen advocated.

The respondents specifically raise the following grounds:

> A. The Honorable Court may look into the "justness" of the miserable amount of compensation being awarded to the herein respondents; and
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> B. The Honorable Court may settle for a happy middle ground in the name of doctrinal precision and substantial justice.[4]

Petitioners Secretary of the DPWH and District Engineer Celestino R. Contreras dispute these arguments in favor of the established rule that the amount of just compensation should be the fair market value of the property at the time of its taking in 1940, *i.e.*, ₱0.70 per square meter, and not its present value as the respondents' tax declarations *(TDs)* indicate.

The Issues

The case presents to the Court the question of whether it can fairly adjust the just compensation fixed in its July 1, 2013 decision without violating the established rule that just compensation in expropriation cases should be computed at the time of taking.

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4 *Rollo*, p. 256.

My Position

The power of the State to take private property: power of eminent domain

The taking of private property for public use – the power of eminent domain - is inherent to the State. It exists as a necessity and as a power the State cannot do without in the course of ensuring its existence.

As an inherent power, it does not need to be expressly provided for or reserved in the Constitution. If at all mentioned, the purpose is to limit what would otherwise be a limitless State power. The limitations to the State's exercise of its eminent domain power are found in the Bill of Rights (Article III) – the provisions that aim at the protection of individuals against the State's exercise of its powers.

A necessary starting point in the eminent domain's limitations is Section 9 of Article III – the provision immediately and primarily affecting the power of eminent domain. Section 9 provides two limitations: (1) the taking of private property must be for **public use**; and (2) the payment to the owner of **just compensation**. Section 9, in turn, should be viewed together with the basic and most fundamental right under the Bill of Rights – the Due process clause under Section 1 – *"[n]o person shall be deprived of life, liberty or* ***property*** *without due process of law."*

As these provisions operate, the individual, whose power is puny compared to that of the State, is protected from an arbitrary confiscation of his property by the guarantee of: (1) the observance of the due process of law before his property is "taken;" (2) the public purpose of the taking, not private interests even of those charged with the task of exercising the power; and (3) the payment of "just compensation."

Just compensation as a limitation on the State's exercise of its eminent domain power

"Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain but the owner's loss. The word 'just' is used to stress the meaning of the word 'compensation,' and to convey the idea that the equivalent to be rendered for the property to be taken shall be **real, substantial, full and ample.**"[5]

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[5] *NPC v. Manubay Agro-Industrial Development Corp.*, G.R. No. 150936, 480 Phil. 470, 479 (2004), citing *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, G.R. No. 78742, July 14, 1989, 175 SCRA 343; *Apo Fruits Corporation and Hijo Plantation, Inc. v. Land Bank of the Philippines*, G.R. No. 164195, October 12, 2010, 632 SCRA 727, 744, Resolution.

The "just compensation" within the constitutional limitation is considered as the sum equivalent to the market value of the property. It is described as "the price fixed by the seller in the open market in the usual and ordinary course of legal action and competition or the fair value of the property as between one who receives, and one who desires to sell."[6]

Stated differently, this constitutional limitation guarantees to the owner the value of his property. This limitation ensures that the State balances the injury that the taking caused to the owner by a compensation that approximates ***value for value*** what has been taken.[7]

1. The time of taking as an element of just compensation

A necessary and vital component of the determination of just compensation is the determination of when the "taking" occurred. This determination is necessary as the owner is entitled to receive, and the State is obligated to pay, only the *full and fair equivalent* of what has been taken.

An unavoidable consequence of the "taking" is the change in the character of the property, its use, value and condition. The value of the property taken by the State may greatly appreciate overtime and its character largely changed due to the developments introduced on the property or in the surrounding area. In certain cases, the value of course may depreciate.

To approximate this *full and fair equivalent* of the property, the primary standard is to look into the status, nature and condition of the property at the time of "taking."[8] The changes in the property's character, use and value occur after the property is taken and therefore should not be factored in, in the determination of the compensation due. In other words, the "taking" serves as the reckoning event in giving the owner only the *value for value* of what has been taken.

Jurisprudence provides that there is "taking" when the expropriator enters private property for more than a momentary period, under color or warrant of authority, devoting the property for public use or otherwise informally appropriating or injuriously affecting it in such a way as to oust the owner and deprive him of all its beneficial enjoyment.[9]

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6 *Apo Fruits Corporation and Hijo Plantation, Inc. v. Land Bank of the Philippines, supra* note 5.

7 Id.

8 See *National Power Corp. v. Henson*, 360 Phil. 922, 929 (1998), citations omitted; and *NAPOCOR v. Spouses Igmedio,* 452 Phil. 649, 664 (2003).

9 See *Rep of the Philippines v. Vda. de Castelvi,* 157 Phil. 329, 344 (1974); and *Manila International Airport Authority v. Rodriguez, supra* note 3.

The undisputed facts show that the DPWH took the respondents' property (for the construction of the MacArthur Highway) in 1940. Accordingly, and as the July 1, 2013 decision previously resolved, the just compensation for the respondents' property should be determined as of its taking in 1940. Consequently, the property's 1940 value – ₱0.70 per square meter – should serve as basis for computing just compensation.

2. Prompt payment as a vital component of just compensation

Another indispensable requisite of just compensation is its prompt payment. Apart from being *fair and reasonable,* the compensation, to be "just" **must be made without delay**. Without prompt payment, the compensation cannot be considered "just" if the property is taken immediately as the owner suffers the immediate deprivation of both his land and its fruits or income.[10]

In cases where the property is taken before compensation is paid to the owner or, at the least, deposited in court having jurisdiction over the case, the final computation of the just compensation must include the income that the owner would have received from the property had it not been immediately taken. This income to be paid – in addition to the unpaid principal of the just value of the property – shall be in the nature of ***interest(s) to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court.***[11] In other words, *"between the taking of the property and the actual payment, legal interest(s) accrue in order to place the owner in a position as good as (but not better) than he was in before the taking occurred."*[12]

This requisite of prompt payment is at the core in resolving the present Motion. The respondents' property was taken in 1940; they had to wait for seventy-four (74) years after the taking of their property before they are finally paid for its just value. Worse or equally as bad, they had to go to court and file the necessary action to secure the compensation due them – an act that the State, as the expropriator, is duty bound to undertake in the first place. All the while, the State had made use of and had profited from the respondents' property. Under these circumstances, the State is indisputably in delay and must pay the respondents interests on the just compensation due them.

In sum, what the respondents have not received to date is the **just compensation** for their property **and** the **income, in terms of the**

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10 *Apo Fruits Corporation and Hijo Plantation, Inc. v. Land Bank of the Philippines, supra* note 5.

11 Id., citing *Republic v. CA,* 43 Phil. 106 (2002). See also *Sy v. Local Government of Quezon City,* G.R. No. 202690, June 5, 2013, 697 SCRA 621.

12 *Apo Fruits Corporation and Hijo Plantation, Inc. v. Land Bank of the Philippines, supra* note 5.

interest due on the unpaid principal, that they would have received had no uncompensated taking of their property been immediately made.

3. Interest award as forbearance of money on the part of the State

a. ***The Early Rulings***

In the early case of *National Power Corporation v. Angas*,[13] the Court awarded a 6% legal interest on the just compensation due for the expropriated property. The Court declared that the just compensation is not a loan or forbearance of money, but indemnity for damages for the delay in payment. As the interest involved was in the nature of damages, Article 2209 of the Civil Code of the Philippines *(Civil Code)*, which provides for a 6% legal interest, was applied.

In *Republic v. Court of Appeals*[14] (that followed in 2002), the Court overturned the *Angas* ruling. The Court recognized that the just compensation due to the landowners for their expropriated property amounted to an effective forbearance on the part of the State. The Court then applied its earlier ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*[15] where it awarded a 12% interest per annum on awards made by way of the actual or compensatory damages (in the context of the present case, on just compensation, computed from the time the property was taken until the full amount of just compensation is paid).

The *Eastern Shipping Lines* ruling provided for the following guidelines in the imposition of compensatory interest rates:

> I. When an obligation, regardless of its source, *i.e.*, law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.
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> II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
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> 1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% *per*

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13 G.R. Nos. 60225-26, May 8, 1992, 208 SCRA 542, 548.
14 *Supra* note 11.
15 G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95.

> *annum* to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
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> 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% *per annum*. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.
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> 3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% *per annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

The Court upheld the imposition of the 12% interest rate in just compensation cases, as ruled in *Republic,* in *Reyes v. National Housing Authority*,[16] *Land Bank of the Philippines v. Wycoco*,[17] *Republic v. Court of Appeals*,[18] *Land Bank of the Philippines v. Imperial*,[19] *Philippine Ports Authority v. Rosales-Bondoc*,[20] and *Curata v. Philippine Ports Authority*.[21]

b. ***The Recent and Governing Rulings***

In *Apo Fruits Corporation and Hijo Plantation, Inc. v. Land Bank of the Philippines*,[22] the Court established that the government's delay in the payment of the just compensation due to the owners of expropriated property is effectively a forbearance of money by the State.

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16 443 Phil. 603 (2003).
17 464 Phil. 83 (2004).
18 494 Phil. 494 (2005).
19 544 Phil. 378 (2007).
20 557 Phil. 737 (2007).
21 608 Phil. 9 (2009).
22 *Supra* note 5.

Subsequent to *Apo Fruits,* the Court reiterated the *Republic* ruling in *Land Bank of the Philippines v. Rivera,*[23] *Department of Agrarian Reform v. Goduco,*[24] and *Land Bank of the Philippines v. Santiago, Jr.*[25]

c. ***The Ponencia's Application of the Rulings***

In light of these established rulings, the Court cannot but consider the government's long delay in the payment of the just compensation due to the respondents in this case to be forbearance on money.

In computing for the interest award, the Court must, as the *ponencia* correctly and appropriately does, determine the applicable law or applicable Central Bank of the Philippines *(CB)*/BSP issuance prescribing the interest rates on loans and forbearance of money. In this regard, the Court must also consider the time of the taking of the property in 1940 that serves as the start, as well, of the computation of the interest award.

Summarized below are the various laws and CB/BSP issuances that the Court should consider, as the *ponencia* properly does, in this case in computing for the total amount that should be paid to the respondents as just compensation:

> Interests on loans or forbearance of money are primarily governed by **Act No. 2655**[26] which took effect on May 1, 1916. Section 1 of this Act provides that the *"rate of interest for the loan or forbearance of money of any money, x x x in the absence of express contract as to such rate of interest, shall be* ***six per centum per annum*** *x x x."* Section 1 likewise grants the Monetary Board of the Central Bank of the Philippines to set an interest rate different from the 6% interest rate.
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> On July 29, 1974, the CB Monetary Board *(MB),* pursuant to its granted authority under Section 1 of Act No. 2655, issued Resolution No. 1622. On even date, the CB issued **Circular No. 416**[27] implementing MB Resolution No. 1622. MB Resolution No. 1622 and CB Circular No. 416

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23 G.R. No. 182431, November 17, 2010, 635 SCRA 285.

24 G.R. No. 174007, June 27, 2012, 675 SCRA 187.

25 G.R. No. 182209, October 3, 2012, 682 SCRA 264.

26 An Act Fixing Rates of Interest on Loans Declaring the Effect of Receiving or Taking Usurious Rates and For Other Purposes. Enacted February 24, 1916.

27 The pertinent portion of CB Circular No. 416 reads:

> By virtue of the authority granted to it under Section 1 of Act No. 2655, as amended, otherwise known as the "Usury Law," the Monetary Board, in its Resolution No. 1622 dated July 29, 1974, has prescribed that ***the rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in its judgments, in the absence of express contract as to such rate of interest, shall be twelve per cent (12%) per annum.*** [Emphasis and italics supplied.]

increased to **12%** the rate of interest for loans and forbearance of money.

On December 10, 1982, the CB issued **Circular No. 905**[28] pursuant to MB Resolution No. 2224 dated December 3, 1982, maintaining the **12%** interest rate established in CB Circular No. 416. CB Circular No. 905 took effect on December 22, 1982.

On June 21, 2013, the BSP issued **Circular No. 799**,[29] pursuant to MB Resolution No. 796 dated May 16, 2013, reducing to **6%** the interest rate on loans and forbearance of money. CB Circular No. 799 took effect on July 1, 2013.

Finally, as the *ponencia* does, the Court should also take note of Article 2212 of the Civil Code. Article 2212 provides that *"interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point."*

Under these terms, I submit that the proper approach in computing the interest award should be as follows:

1. The just compensation due on the property shall earn **straight** legal interest from the time of taking in 1940 until March 16, 1995, the day before the respondents filed the case in court. Given this 55-year period, the Court must consider the law and CB issuances prevailing at the particular time/s, *i.e.,* Act No. 2655, CB Circular No. 416 and CB Circular No. 905;

2. The just compensation due with its accrued interests shall, beginning March 17, 1995 (when the respondents filed the court action) until June 30, 2013, earn **compounded** interests at the rate of 12% per annum, pursuant to CB Circular No. 416, as amended by CB Circular No. 905, and Article 2212 of the Civil Code;

3. The just compensation with all its accrued interests as of June 30, 2013 shall earn further interests at the rate of 6% **compounded** annually from July 1, 2013 until the finality of the Court's

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[28] CB Circular No. 905 pertinently provides:

> Sec. 2. The **rate of interest for the loan or forbearance of any money**, goods or credits and the rate allowed in judgments, in the absence of express contract as to such rate of interest, ***shall continue to be twelve per cent (12%) per annum.*** [Emphasis and italics supplied.]

[29] Circular No. 799 reads in part:

> Section 1. The rate of interest **for the loan or forbearance of any money**, goods or credits and the rate allowed in judgments, in the absence of express contract as to such rate of interest, ***shall be six per cent (6%) per annum.*** [Emphasis and italics supplied.]

resolution on the Motion, pursuant to BSP Circular No. 799 and Article 2212 of the Civil Code; and

4. The total amount of just compensation shall earn a **straight** 6% interest per annum from finality of the Court's resolution until full payment, pursuant to BSP Circular No. 799.

These are the approaches that the *ponencia* used in this case in computing the final just compensation (the principal and the accrued interests) due to the respondents on account of the government's delay in its payment. Hence, I concur with the *ponencia.*

The use of economic concepts in the determination of just compensation is inappropriate as it contravenes the law and established jurisprudence: my dissent on Justice Leonen's Opinion

As I earlier mentioned, I expressed my objection to Justice Leonen's approach for being inappropriate and illegal: economic theories, particularly on the computation of interests, cannot be used when applicable rules on interests are in place. I reiterate my discussion on this point if only to emphasize that **the Court is a court of law**, not of equity, and should be aware of this role in adjudicating cases, and to stress as well the distinctions in the legal and equitable approaches in awarding interests in just compensation cases.

I objected to the Leonen Opinion as it deviated from the law and the established jurisprudence to the extent that it used what it called the **economic concept of present value,** an economic concept that is not found in the law, in the rules and regulations, or in jurisprudence.

1. The Leonen Opinion

To provide for a better understanding of my position against the Leonen Opinion, I recite below its key points.

Justice Leonen considered as too low the straight 6% interest per annum, on the ₱5,087.60 (₱0.70 per square meter) valuation for the property, (or a total interest rate of only ₱22,588.944), which the Court awarded in the July 1, 2013 decision as actual or compensatory damages counted from 1940 until actual payment. To him, the Court's use of this 6% legal interest rate, or even of a 12% legal interest rate, is arbitrary and without clear legal basis.

Hence, he proposed the use of historical data or the historical average of year-to-year interest rates. Based on this approach, he obtained the 8.328% interest rate by averaging the combined actual

(based on the official data of the BSP) and assumed (by him in the absence of available historical data) annual rate of return on treasury bills counted from 1940 up to 2013.

Justice Leonen explained that the CB (now the BSP) began offering one-year treasury bills with a 1.5% annual rate of return only in 1949. For lack of official historical rate of returns for the year 1940 up to and until the year the BSP issued the one-year treasury bills, he thus assumed that the 1.5% rate of return in 1949 was the same for the prior years.

For the years 1957-1965, he explained that no recorded data are available; hence, he used the savings deposit rates as substitute and assumed that these rates are the same.

Justice Leonen justified this approach under the **economic concept of present value**, *i.e.,* that money that should have been paid in the past has a different value today. He explained that under this concept of present value, what is simply considered are the historical interest rates recorded in the Philippines and the expropriated property's fair market value at the time of taking.

He emphasized that money earns more money throughout time, and had the government paid the respondents the just compensation due for the property immediately at the time of its taking in 1940, the latter would have invested this money in some guaranteed-return investments that would, in turn, have earned them more money.

To Justice Leonen, courts should consider these facts especially when a significant amount of time has elapsed between the time of taking and the time of actual payment. In his view, the use of present values merely enforces a method to determine intergenerational fairness.

2. My arguments against Justice Leonen's position: a reiteration with emphasis of the ponencia's position

a. The Court is a court of law, not of equity; the Court should exercise its equity jurisdiction only in the absence of, not in lieu of positive law

I submit that we, the Court, cannot and should not forget that **ours is a court of law**, where the guideposts and standards are the Constitution and its principles, the statutes, applicable rules and regulations, and jurisprudence from this Court which forms part of the law of the land.[30]

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[30] Article 8 of the Civil Code of the Philippines.

The first recourse of courts in adjudication is to look up to applicable laws, rules and jurisprudence and to apply these to the dispute. Only when these legal instruments or standards are absent or lacking can the courts decide on the basis, among others, of equity or economic theories supporting an equitable disposition of the dispute at hand.

When we rule on the basis of equity, we rule in accordance with the natural rules of fairness and justice in the absence of positive laws governing the disputed issues.[31] We can do so only when no positive law would thereby be violated as equitable principles must remain subordinate to positive law and must not be allowed to subvert it; nor should these principles give to the courts authority to make it possible to allow the subversion of positive law.[32]

In *Chavez v. Bonto*,[33] the Court said:

> *We have ruled in Arsenal v. Intermediate Appellate Court x x x that it is a long standing principle that equity follows the law. Courts exercising equity jurisdiction are bound by rules of law and have no arbitrary discretion to disregard them. In Zabat, Jr. v. Court of Appeals x x x, this Court was more emphatic in upholding the rules of procedure. We said therein:*
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> > *As for equity, which has been aptly described as "justice outside legality," this is applied only in the absence of, and never against, statutory law or, as in this case, judicial rules of procedure. Aequetas nunquam contravenit legis. This pertinent positive rules being present here, they should preempt and prevail over all abstract arguments based only on equity.* [Italics supplied.]

See *Caltex v. Palomar,* 124 Phil. 763 (1966), where the Court held that *"judicial decisions assume the same authority as the statute itself and, until authoritatively abandoned, necessarily become, to the extent that they are applicable, the criteria which must control the actuations not only of those called upon to abide thereby but also of those in duty bound to enforce obedience thereto."*

In *Chavez v. Bonto,* 312 Phil. 88, 98 (1995), the Court declared that *"[o]ur courts are basically courts of law and not courts of equity."*

[31] *Willard Riano*, Civil Procedure (A Restatement for the Bar), 2007, p. 30.

[32] *J.B.L. Reyes*, The Trend towards Equity versus Positive Law in Philippine Jurisprudence, 58 Phil. L.J. 1,4.

See also *Agra v. PNB,* 368 Phil. 829 (1999).

In *Philippine Rabbit v. Arciaga,* 232 Phil. 400, 405 (1987), the Court declared that:

> *The rule is, 'equity follows the law' and as discussed in Pomeroy's Equity Jurisprudence Vol. 2 pp. 188-189 (as cited in Appellant's Brief p. 20), the meaning of the principle is stated as follows:*
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> > *There are instances, indeed, in which a court of equity gives a remedy, where the law gives none; but where a particular remedy is given by the law, and that remedy is bounded and circumscribed by particular rules, it would be very improper for the court to take it up where the law leaves it and to extend it further than the law allows.* [Italics supplied.]

[33] *Supra* note 30.

In my view, **Justice Leonen's use of the economic concept of present values** in order to approximate and return to the respondents the "fair equivalent" of their property, considering the 74-year time lapse, ***has no basis in law and jurisprudence and was an unnecessary and misplaced approach.***[34]

b. The Court would have exceeded its granted jurisdiction by venturing into economic policy-making and applying the concept of present values and the 8.328% interest rate

Significantly, this Court has traditionally been wary of ruling on matters involving economic policy-making. *Tanada v. Angara*[35] is one of the cases where we strongly implied this wariness by the thought that we would be sailing into ***"unchartered waters"*** when we venture into economics and economic policy-making – an area where we may not be able to competently rule.

Implied in this case, too, is the reality that in the presence of applicable laws, we may exceed our jurisdiction by ruling on the basis of economics and its policies. *Manila Memorial Park, Inc. v. Secretary of DPWH*[36] is another case where we expressed our misgivings by saying that *"the Court is not the proper forum to debate economic theories and realities."*

I was against Justice Leonen's approach for the following specific reasons:

First, in using the 8.328% annual rate of interest, Justice Leonen made several assumptions that were unwarranted and without clear legal and/or jurisprudential bases. These are the *"comprehensive assumptions*

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34 *Patricia Wald* (Chief Judge, United States Court of Appeals for the District of Columbia), *Limits on the Use of Economic Analysis in Judicial Decision Making* (Law and Contemporary Problems, Vol. 50, No. 4, 1988), had this to say:

> *The most troublesome limitation on judicial use of economic analysis is the limits of a judge's ability to analyze its techniques and ascertain the extent to which they incorporate assumptions that she is not ready to accept. It may not be easy, or even sensible, for judges to use economic analysis here and there--"on the margin," if you will-to the extent that analysis is fueled by controversial, powerful, and purposefully comprehensive assumptions about human beings, society, and courts.*
>
> *Because some of the economists' assumptions are neither intuitively persuasive, nor documented to any degree, I would find it premature to adopt them as tenets for a comprehensive jurisprudential philosophy.* [Italics supplied.]

Thus, although economic analysis/theories may be useful in decision-making, she concludes that the application of economic theories and/or analysis in jurisprudential philosophy is premature, partly because these economic theories are still consistently being debated.

See http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3928&context=lcp

35 328 Phil. 546 (1997).

36 G.R. No. 175356, December 3, 2013.

about human beings, society and the courts" that, as footnoted, Chief Judge Patricia Wald spoke of.

For one, in using this annual interest rate (obtained from the average of the actual and assumed annual rate of return on treasury bills counted from 1940 up to 2013), Justice Leonen assumed that, had the respondents been immediately paid the just compensation, they would have immediately, or soon thereafter, invested this money in secure monetary instruments like treasury bills.

This assumption presupposed, in turn, that the respondents, at least desired to invest, or would have definitely invested the money in some money-making venture, not necessarily limited to secure monetary instruments. It also further assumed that, had the respondents indeed invested their money, the investment would absolutely have earned them more money.

Second, Justice Leonen likewise assumed that the treasury bills were actively invested into, traded or were the preferred mode of investment at the time of the property's taking in 1940 or, at the least, several years or a decade afterwards.

Note, however, that the CB began offering treasury bills only **in 1949**. Even then, only commercial and investment banks, followed remotely by other private banks, largely participated in the treasury bills market; private companies and individuals comprised a very small percentage of the participation. It was also only **in 1966** that the treasury bills market began to fully grow and achieve a considerable share in the overall government securities market.[37]

In making these assumptions, Justice Leonen appeared to have conveniently disregarded the considerable probability that the respondents could have invested the money on a losing venture; simply kept the money to themselves; or used the money to purchase property that would have been destroyed during the ensuing war years.

Third, contrary to Justice Leonen's position, the Court's past use of the 6% or 12% legal interest rates in approximating an equitable award of "just compensation" when the government expropriates property without timely payment, has been anchored in law.

As I pointed out above, the award of a 6% legal interest, on the just compensation due, was based on Article 2209 of the Civil Code. In the cases where the Court applied this 6% interest rate, it considered the award in the nature of an indemnity for damages.

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[37] See The Treasury Bill Market by Mamerto C. Singson, Jr., http://pre.econ.upd.edu.ph/index.php/pre/article/viewFile/804/114

The award of a 12% legal interest, on the other hand, was based on CB Circular No. 416, as amended by CB Circular No. 905. In the cases where the Court applied this interest rate, it treated the government's delay and its obligation to pay as one of forbearance of money.

Regardless of the treatment, however, the purpose of the award is to address or eliminate the issue of the constant fluctuation and inflation of the currency's value over time. It also addresses the obligation on the part of the government to account for any incremental value on the just compensation that should have accrued to the owner had he or she been paid on time.

Conclusion

In sum, I fully agree with the *ponencia* that the compensation due for the respondents' property based on its 1940's value, as the Court determined in its July 1, 2013 Decision, is proper and should be upheld.

I believe, too, that the interest award, in the manner now determined by the *ponencia*, is proper in law and jurisprudence. More importantly, I believe that the total just compensation, with its accumulated interests, due to the respondents under the *ponencia*'s formulation approximates, in a very real sense, the fair and equitable compensation that the law requires and which the respondents properly deserve.

ARTURO D. BRION
Associate Justice