EQUITABLE LAND ACCESS
The Need for Congress to Clarify the Laws

The Constitution mandates that all sectors and all regions of the country shall be given optimum opportunity to develop. Embraced in this mandate is the provision of equitable land access for all sectors – the judicious allocation of lands to achieve well-balanced socio-economic development and growth that would ensure prosperity for the greatest number.

Pursuant to this mandate, Congress – the highest policy-making body of the land – has enacted various laws each of which specifies which lands may be used for which purposes, and at the same time identifies which government instrumentalities are conferred jurisdiction over which lands, to wit:

- RA 6657 specifies the lands which are to be used for agrarian reform purposes, and confers upon the DAR jurisdiction over the same;

- RA 8435 specifies the lands which are set aside for agricultural development, and confers jurisdiction upon the DA;

- RA 7279 and PD 399 specify the lands set aside for urban development, housing and human settlements. These are placed under the jurisdiction of housing agencies and local governments;

- RA 7916 specifies the areas set aside for industrialization purposes under the Ecozone program, and confers upon the President, through the PEZA, jurisdiction over the same;

- The Local Government Code confers upon the LGUs the primary authority and responsibility to determine land use in their respective localities, through their zoning power;

- The DENR charter gives this agency exclusive jurisdiction over public lands and endows it with authority to regulate land use towards environmental protection; and

- Certain laws designate certain specific lands or areas as subject of tourism development and confer upon the Department of Tourism jurisdiction over these lands.

All these notwithstanding, the polemic over the issue of equitable land access has continued to fester; the country's economy remains stunted, and millions of our people remain jobless, homeless and impoverished.

The major culprit is none other than the improper – nay, illegal – implementation of RA 6657, which has effectively blocked pursuit of the Constitutional mandates and noble goals of Congress in enacting all the other aforementioned laws.

Under the shield of executive fiats promulgated in clear contravention of the aforementioned laws, the DAR has exercised unlimited jurisdiction over virtually all of the country's lands as if these were all agricultural, locking them up in the CARP by indiscriminately and illegally issuing its various notices of CARP coverage.

This has effectively discouraged – if not completely blocked – investment in the non-agricultural activities prescribed and envisioned by Congress to create millions of jobs, generate billions worth of business opportunities, and earn for government billions more in revenues.

The situation is such that lands cannot be developed for their prescribed residential, commercial, industrial or other non-agricultural uses without the DAR's imprimatur, notwithstanding that these lands are clearly non-agricultural in status and thus CARP-exempt under RA 6657, by virtue of their having been reclassified or set aside for non-agricultural uses under the aforementioned laws.

However, trying to secure such imprimatur from the DAR's daunting bureaucratic structure takes years, if at all. Even worse, applying for a DAR clearance costs a landowner some P150 to P200 per square meter from extortionists and grafters in the DAR bureaucracy. This is on top of various fees, charges, cost of voluminous documentation requirements, and worst, exorbitant demands for "disturbance compensation" – outside of what is provided for by law – from alleged farmer-tenants who may not even be legitimately entitled thereto.

The issue of land access can thus be summed up as follows: While Congress has made land available to all sectors, under the DAR's rule no land may be developed or used for any purpose other than agriculture or agrarian reform. If and when the DAR allows non-agricultural development, the concomitant cost to the landowner is such that the price to the end-user – housing packages in the case of residential development, goods and services in the case of commercial/industrial development – a becomes inordinately expensive.

The DAR's stance – including the executive fiats sustaining such stance – is unquestionably contrary to Congressional intent as expressed in the letter of the aforementioned laws including RA 6657 itself. Nor does it find support in the Constitution as interpreted by the Supreme Court. Neither is it justified by considerations of equity and common weal.

Unceasing efforts to convince the Executive Branch to rectify the situation and provide relief via a clarificatory fiat have failed.

We therefore urge Congress – with the paramount consideration of "the greater good of the greater number" – to assert its rightful powers in rectifying this anomalous situation and finally setting to rest the aforementioned controversies, by clarifying and affirming its intent concerning land access under the various aforementioned laws.

The Bill creating the Department of Housing now pending before both Houses presents a golden opportunity to achieve this purpose, and we urge Congress to seize such opportunity by incorporating in said Bill the CREBA-proposed clarificatory/affirmatory provisions on land access *(Annex A)*.

Otherwise, with all due respect we believe that without land on which to build homes, the proposed Department would simply exacerbate the homeless populace's disenchantment over failed expectations, for it would end up as nothing more than an extremely costly exercise in futility.

The idea behind the CREBA-proposed land access provisions is simply to make sure that lands already reclassified by law for non-agricultural uses will continue to be readily available, as the needs arise, for the equally vital projects for which they were intended – such as housing, commercial/industrial development, and other essential non-agricultural programs.

It is pointed out that the objective of food security will not be impaired by maintaining the legal status of reclassified lands and freeing them from any restriction against non-agricultural use, considering that

- These lands may still be used for agricultural production pending their actual non-agricultural development, and

- Experience worldwide has demonstrated that food security is attainable not through maximum land acreage but through application of modern technology. Indeed, while desert countries have become agriculturally self-sufficient, the Philippines has failed to attain such sufficiency despite the fact that, to date, only less than 1% of our land resources are being used for non-agricultural purposes.

As far as legitimate farmer-tenants are concerned, there is no way that they can be prejudiced by land reclassification, because in case of displacement they are amply awarded disturbance compensation which stand to make them instant millionaires.

Nor will government be prejudiced should irrigated lands be developed for non-agricultural purposes, because the cost of such irrigation is fully reimbursable under RA 8435.

In short, the proper application of all the aforementioned laws will result in a win-win situation for all.

Just as significant is the fact that of the country's population of some 80 million, only some 3 million are farmers – as against some 4.5 million homeless families, 6 million unemployed, and 30 million impoverished. The latter need land just as badly as the former.

It is therefore high time that Congress puts an end to this inequity that flows from a mockery of the laws and travesty of the Constitution.

Toward this end, the following is proposed for inclusion in the Department of Housing and Urban Development Bill:

1. No conversion clearance or CARP-exemption clearance from the Department of Agrarian Reform (DAR) shall be required for the development of the following lands for their designated purposes under the law, whether or not the land is tenanted, irrigated, irrigable or suitable for crops:

    a) All lands in all cities and first class municipalities;

    b) All lands in all areas reclassified and zoned by local government units prior to June 15, 1988 for non-agricultural uses;

    c) All lands within a strip of one thousand (1,000) meters along existing national highways, provincial roads and city/municipal roads; and

    d) All lands in all areas specifically identified and set aside for Ecozone development under RA 7916.

2. Any Notice of Coverage under the Comprehensive Agrarian Reform Program (CARP), Notice of Acquisition, Notice of Valuation or any similar instruments already issued by the DAR covering the lands enumerated in the preceding Section are hereby revoked; provided, that in case the land is subject of a valid voluntary offer to sell under the CARP, the same may be revoked upon application by the landowner.

3. Permits to develop the lands enumerated in Section 1 hereof shall be issued by the local government units concerned within thirty (30) days of submission by the project proponent of the development plans, subject to payment of disturbance compensation as provided under Republic Act 3844 as amended by Republic Act 6389 in case the land is covered by a legitimate agricultural tenancy agreement, subject further to provisions of existing laws in

case the land is located in identified environmentally critical areas, and to reimbursement of government investment in case the land is irrigated by publicly funded irrigation facilities.

4. Lands enumerated in Section 1 hereof may be used for short-gestating agricultural production activities in the interim period that they await actual development or use for non-agricultural purposes; provided, that any arrangement to this effect between the landowner and third parties shall not be subject to provisions of agrarian reform laws.

5. Within ninety (90) days from effectivity of this Act the Department of Housing and Urban Development, in coordination with the local government units concerned, shall undertake and complete the identification of Striplands within a 1,000-meter strip along existing national, provincial and city/municipal roads.

6. Within thirty (30) days from effectivity of this Act, the Department of Housing and Urban Development and the Philippine Ecozone Authority (PEZA), in coordination with other agencies concerned and in consultation with the dominant private sector organization/s involved, shall promulgate new rules and guidelines pursuant to and consistent with this Order.

7. Executive Order No. 72 (s1993), Executive Order No. 124 (s1993), Malacanang Administrative Order No. 20 (s1992), Malacanang Circular No. 54 (s1993), Presidential Administrative Order No. 363 (s1997), DAR Administrative Order Nos. 06 (s1998), 07 (s1998) and 01 (s1999), and other executive and administrative issuances, insofar as these are inconsistent with the provisions of this Act, are hereby repealed or modified accordingly.