POSITION PAPER

On The Proposed

National Land Use Act

January 2011

The Situation Under Existing 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 principle 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:

1. RA 6657 as amended specifies the lands which are to be used for agrarian reform purposes, and confers upon the Department of Agrarian Reform (DAR) jurisdiction over the same;

2. RA 8435 specifies the lands which are set aside for agricultural development, and confers jurisdiction upon the Department of Agriculture (DA);

3. RA 7279 and PD 399 specify the lands set aside for urban development, housing and human settlements, and place these lands under the jurisdiction of housing agencies and local governments;

4. RA 7916 specifies the areas set aside for mixed development purposes under the Ecozone program, and confers upon the President, through the PEZA, jurisdiction over the same;

5. 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;

6. The charter of the Department of Environment and Natural Resources (DENR) and various laws confer upon this agency exclusive jurisdiction over lands of the public domain and endow it with authority to implement laws intended for environmental protection; and

7. Certain laws designate certain specific lands or areas for tourism development and confer upon the Department of Tourism jurisdiction over the same.

All these notwithstanding, the polemic over the issue of equitable land allocation has continued to fester. The courts are clogged with land conversion disputes. The country's economy remains stunted and heavily dependent on importation of basic commodities. Millions of our people remain jobless, homeless and impoverished; and thousands have died or suffered from some calamity caused by disregard of the environment.

For all these, Government's favorite scapegoat has always been the private land sector – in particular, the alleged indiscriminate use of agricultural land by landowners, developers and land investors to feed their greed without regard for society's food requirements and the need to maintain ecological balance.

This is unjust, to say the least, considering that to this day:

1. Most everyone – landowners, the private land sector, LGUs and government agencies alike – is locked in economically debilitating controversy with the DAR. This is because on the mere say so of a DAR functionary in a town or province, lands have been placed under CARP coverage, denied conversion, locked against reclassification by LGUs for non-agricultural use, and distributed to CARP beneficiaries whose entitlement in many cases are doubtful.

   The temptation is great to blame the DAR's indiscriminate implementation of the CARP for the disarray in the country's land allocation and land use structure, and the entire government for tolerating the same for the sake of political expediency.

2. The private land sector, however, realizes that the DAR is actually hampered in identifying exactly which parcels of land are to be subjected to CARP coverage, and which are exempted from its jurisdiction. This is because no government agency can pinpoint exactly where the boundaries of "prime agricultural lands" or "irrigable lands" or "lands suitable for agriculture" are, and exactly what parameters or criteria are to be observed in identifying these lands as such.

   If Government itself suffers from such limitations, much more so the private land sector whose land development and land use activities are, after all, impinged upon by government's own acts or omissions.

3. No government agency can pinpoint exactly where the marked boundaries of all forest or timber lands, mineral lands, natural parks, wildlife preserves, watersheds, waters of the public domain, ancestral domains, public lands, and environmentally critical areas are.

   The lack of accurate official land information to guide private land sector activities results in instances of development projects being found to encroach in areas that, after considerable sums have already been invested, are later determined by government to be needing preservation.

4. No government agency can pinpoint exactly where the territorial boundaries of each LGUs are, over which they may exercise their land regulatory powers and fulfill their various developmental mandates.

   To this day, many LGUs are locked in boundary disputes that throw private sector activities into disarray. Such aberrations result in, for instance, the private land sector being granted a development permit in one LGU, and later receiving a cease order from the neighboring LGU claiming the area as part of its territory.

In other words, the government has no land information system worthy of the name to serve as accurate guide by which the private land sector may strictly comply with laws. To each his own, and one agency's information is inconsistent with the rest. Consider:

1. The country's topographic maps under the custody of NAMRIA are outdated – prepared in the 1950s and 1960s – even as legal boundaries are not demarcated therein;

2. The SAFDZ maps prepared by the DA – delineating the so-called National Protected Areas for Agriculture and Agro-industrial Development (NPAAAD) and Strategic Agriculture and Fisheries Development Zones (SAFDZ) – are also outdated, having been prepared almost 20 years ago;

3. About 40% of the country has not yet been subjected to cadastral survey to determine legal boundaries and rights to land parcels;

4. Many LGUs have not complied with the mandate for Comprehensive Land Use Planning and updating – principally because of lack of funds, technical capability and assistance by the National Government; and

5. Many land titles and tenurial instruments churned out by the agencies concerned are inaccurate as to the covered lands – in many instances these cannot even be located on the ground.

   For instance, to this day, the DAR itself cannot even identify exactly which parcels of land throughout the country have already been issued CARP instruments, or which have been programmed for acquisition and redistribution.

Distilled to the quintessence, all the issues involving land use – i.e. equity, productivity, global competitiveness, socio-economic progress, and sustainability – revolve around a fundamental determination of exactly where the geographic and jurisdictional boundaries of the lands allocated by law for this or that purpose are, exactly what are the specific attributes of those lands that make them suitable for one purpose as against another, and exactly who owns or is entitled to which lands.

Absent such a prior definitive determination, land allocation and land regulation are left entirely to the discretion of administrative or regulatory bodies and become subject to partisan considerations, battle for turf and political whim.

The Proposed National Land Use Act (NLUA)

Against this backdrop, Congress now intends to come up with a National Land Use Act supposedly designed to "harmonize the reasonable claims of all those who hold interest in land" and provide for a "rational and just allocation of the country's land resources".

Such pronouncements, however, appear wanting in sincerity limned against the whole tenor of the proposed law which, in effect, neither harmonizes nor justly allocates the country's lands, but is so crafted to promote the interest of the peasantry – apparently at the expense of the rest of the nation.

For all its technical jargon, it is not a "national land use act" but rather, in our considered opinion, a well-disguised perpetuation of the Comprehensive Agrarian Reform Program.

Under the constitution, all lands not classified as timber, mineral or natural parks are generically termed "agricultural" lands. Thus, necessarily, lands to be used for residential, commercial, industrial and other on-agricultural purposes are carved out of the "agricultural" lands pie through reclassification by law (Congress) or local ordinance (LGUs).

Under the proposed NLUA, however, practically all lands lumped in the generic category of "agricultural land" are preserved for agriculture and agrarian reform purposes.

This is evident from the following provisions in the proposed law:

1. The Declaration of Policies mandates that land use and physical planning shall ensure protection of agricultural lands and "highest priority to the completion of the CARP".

The question arises: if the NLUA is truly intended to "justly allocate" lands based on a "harmonization of interests" of all sectors, why is CARP implementation singled out and accorded highest priority? What about social housing for the millions of homeless, investment generation to create more income opportunities for the millions of jobless, and so on?

The Constitution mandates that "all sectors and all regions of the country shall be given optimum opportunity to develop". Perhaps Congress needs to be reminded that out of the country's population of some 92 million, the peasant sector is comprised of only some 5.7 million are farmers and fisher folk,[1] as against some 23.8 million who live in slums[2] and 40 million subsisting below the poverty line.[3]

2. "Priority areas for agricultural development are the CARP, CARPable areas and the NPAAAD".

   Under the DAR's rules and procedures, practically all lands are CARPable, even as the NPAAAD covers virtually all lands, to wit: "all irrigated areas; all irrigable lands already covered by irrigation projects with firm funding commitments; all alluvial plains; land highly suitable for agriculture whether irrigated or not; agro-industrial croplands or lands planted to industrial crops that support the validity of existing agricultural infrastructure and agro-based enterprises; highlands or areas located at an elevation of five hundred (500) meters or above and have the potential for growing semi-temperate and high value crops; all agricultural lands that are ecologically fragile the conversion of which will result in serious environmental degradation; and all mangrove areas and fish sanctuaries".

   Considering that any land can be made suitable for agriculture with the application of technology, any land can simply be declared by the implementing agency as embraced by the NPAAAD; and thus, in effect, practically all of the country's lands other than timber lands, mineral lands or natural parks will be reserved for agricultural development and agrarian reform.

3. Agricultural lands may be reclassified by LGUs for non-agricultural uses "through the local planning and zoning process", but "subject to the requirements and procedures for conversion".

   The question arises: if the NLUA is truly meant to "harmonize" interests in land, why is the DAR – an administrative agency whose mandate is solely to promote the interest of the peasantry through the CARP – being made the final arbiter of land allocation and planning by LGUs which are, in contrast to the DAR, mandated to promote the interests of not just the peasantry but the entire local citizenry?

   If Congress intends to disregard the Constitutional mandates on local autonomy presumably from its perception that such a grave responsibility cannot be entrusted to LGUs, there are agencies other than the DAR – such as the NEDA for instance – which, not being associated with any particular sector, may be expected to be less parochial.

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[1] ACPC Monitor, Department of Agriculture, 02 June 2003

[2] UN Habitat Statistical Overview – Philippines, http://www.unhabitat.org/categories.asp?catid=61

[3] World Bank Data – Philippines, http://data.worldbank.org/country/philippines

4. In "spatial allocation for different land uses, the LGUs shall first exclude areas under protection land use, national parks, energy resource lands, and prime agricultural lands", the latter having the same definition as the NPAAAD.

   The question arises: if all these lands are to be excluded in land use allocation development planning by LGUs, what lands will remain available or allowed for residential, commercial, institutional, infrastructure and other non-agricultural development?

   As far as housing and residential use is concerned, the proposed law allocates merely those "agricultural lands as designated in the CLUP which are no longer economically feasible for agricultural use".

   This begs these questions: (a) exactly what are the parameters to be used in determining whether an agricultural land is no longer feasible for agricultural use; (b) given the population growth rate and demographic trends and needs, exactly how much lands can be released for the various needs and at what rate; and (c) what about non-residential use?

   Further, since under the proposed law it is the DAR that is solely authorized to approve LGU reclassification via the CLUP, the implication is that it is also the DAR that will determine economic feasibility or non-viability for agricultural use. Again, the question arises: why the DAR?

5. All NPAAAD lands and even those outside of NPAAAD are protected from conversion; irrigated and irrigable lands as well as lands with potential for high value crops are given full protection from conversion; and all lands subject to CARP are protected from conversion pending installation of agrarian reform beneficiaries, but thereafter may be converted subject to Section 65 of RA 6657 .

   In other words, practically all agricultural lands cannot be allowed for conversion or development for non-agricultural uses – including priority infrastructure projects – except when already in the hands of agrarian reform beneficiaries.

   The question arises: where is equity or justness in a provision that obviously favors the peasantry while denying the rest of the citizenry the right to the beneficial use of land?

6. A national mapping program shall be implemented through the creation of an Inter-Agency Technical Committee, with the completed maps integrated in the national framework for physical planning.

   This amounts to an admission that no such program exists to date. And yet, a blanket conversion ban or moratorium is to take effect upon effectivity of the law.

   The question arises: exactly how can a judicious, impartial and incontrovertible determination be made as to whether or not the conversion ban is applicable to a particular piece of land, when there is yet no credible land information system that identifies, locates, demarcates and accurately determines the attributes of all the lands which are supposed to be "protected from conversion"?

From the foregoing, the inordinate bias in favor of the peasant sector is patent. To our mind, therefore, the proposed law partakes of the nature of class legislation. Its enactment may court challenge under various provisions of our Constitution including its "due process" and "equal protection" clauses.

CREBA Recommendation

All the foregoing considered, CREBA will interpose no objection to the proposed NLUA, provided that the following provisions are incorporated:

1. Whether or not the land is tenanted, irrigated, irrigable or suitable for crops, the prior review, approval or any clearance by the DAR shall not be required in the reclassification or conversion or development of agricultural lands located

    a) Within all cities and all first-class municipalities;

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

    c) Within a strip of one thousand (1,000) meters along existing national highways and provincial roads; and

    d) Within areas identified by Provincial Land Use Councils for priority infrastructure development projects;

    provided, that in case the land to be developed is identified as environmentally critical, an Environmental Clearance Certificate shall be obtained from the DENR.

    Said lands are hereby reserved for settlements, urban development and infrastructure purposes under RA 7279 and other existing laws, and are excluded from all provisions of the Comprehensive Agrarian Reform Law as amended.

    Any CARP Notice of Coverage or Notice of Acquisition already issued by the DAR covering these lands are hereby revoked; *provided*, that in case a land to be developed for non-agricultural use is irrigated, the project proponent shall reimburse the government for the cost of the irrigation facility; *provided further*, that in case development of the land will result in displacement of legitimate agricultural tenants, the project proponent shall pay disturbance compensation equivalent to five (5) times the average of the gross harvests on the landholding during the last five (5) preceding calendar years; *provided finally*, that if the land is already covered by a duly issued emancipation patent or CLOA issued by the DAR prior to effectivity of this Act, development or conversion shall be subject to Section 65 of RA 6657 as amended.

    In all other municipalities, reclassification shall be subject to the provisions of RA 7160 and Section 9 of RA 8435.

2. Any conversion ban or moratorium shall take effect only when a centralized Geographic Information System with a comprehensive automated spatial database covering the entire country, to which all LGUs shall have access for land use planning and zoning purposes, shall have been established and declared fully operational by the NEDA.

There are only 122 cities in the country, and a total of 187 first-class municipalities out of the total 1,512. With an average town size of 27,000 hectares, the total land area to be excluded under the proposed amendment is only some 8.6 Million hectares – which already includes all the built-up areas within these localities.

In other words, out of the county's total land area of 30 Million hectares, only some 28.6% is being recommended to be categorically reserved for residential, commercial, industrial, institutional and all other non-agricultural uses.

Surely, the remaining agricultural lands of the country, with the application of appropriate technology to maximize agricultural productivity as in the case of miniscule Israel, would be more than sufficient to meet the requirements of food security for generations.

After 23 years of the CARP and billions invested in the program, the country is worse off in terms of food security, being dependent on agricultural imports and regularly suffering from rice and corn shortages.

To our mind, a National Land Use Act designed to perpetuate the CARP cannot result in anything better.

On the other hand, if a "rational, holistic, just allocation and utilization" of land resources is truly the intent, then there should no reason not to counterbalance the patently partisan provisions of the proposed law with the herein proposed amendment.