

The Duty of the Courts in Environmental Protection*

*Justice Portia Alino-Hormachuelos***
Court of Appeals

I.	INTRODUCTION.....	334
II.	CONCEPT OF LAW.....	334
III.	OUR GLOBAL VILLAGE	334
IV.	SURVIVAL AND THE GOOD LIFE.....	336
V.	LIVE AND LET LIVE	337
VI.	THE BIG PICTURE.....	338
VII.	THE DUTY OF THE COURTS TOWARDS OUR COMMON SURVIVAL	338

* Delivered at the *Judges' Forum on Environmental Protection: Philippine Environmental Law, Practice and the Role of Courts*, on August 14, 2003, at the PHILJA Development Center, Tagaytay City.

** Justice Portia Alino-Hormachuelos was appointed to the Court of Appeals in August 1995. She served in all pillars of the justice system as Trial Judge, Prosecutor, Probation Officer, Agrarian Trial Attorney, and Registrar of the Commission on Elections. She is a recipient of many awards, such as the 2003 Asian Mother-Achiever for Law and Judiciary, Asia-Pacific Excellence Awards; 1999 Who's Who Awardee for Law and Judiciary, *Parangal ng Bayan Awards*; 1999 *Gintong Ina* Awardee for Law and Judiciary; Plaque of Distinguished Service, Career Executive Service, Civil Service Commission, 1999; Top Five RTC Judges of Cebu, 1993; 1992 Cayetano

I. INTRODUCTION

Our stated “Objectives of the Program” points to the role of the courts:

1. As guardians of the Rule of Law (in torts, and criminal and administrative proceedings) to the end that they shall:
2. Act as instruments –
 - a. In protecting society’s interests;
 - b. In safeguarding human health; and
 - c. In protecting the natural environment for present and future generations.

II. CONCEPT OF LAW

The traditional view of the law has been that of a regulator of the affairs of men for the peaceful enjoyment of communal living, and the role of the courts, to make the law relevant to society.

III. OUR GLOBAL VILLAGE

But our world has grown so complex that this concept has become somewhat simplistic and one-dimensional. It implies that mankind is the only creature that has the capacity to think, and, therefore, to make laws, concerned only with harmonious living among fellow human beings. The truth is that there are so many denizens of our planet Earth with which we all interrelate, interact, and are

Arellano Award for Judicial Excellence as Outstanding RTC Judge in the Philippines; and one of the Top Ten Participants at the National Prosecution Service Seminar (NAPROSS) VI, Ministry of Justice, 1982. She obtained her law degree, *Magna Cum Laude*, from the University of the Visayas.

interdependent on. This is because our world is a system, and like all systems, what happens to a part will affect the rest. For instance, the eruption of our Mt. Pinatubo reverberated around the world because of the impact of the eruption in the ozone layer. In Washington, D.C., half-way around the planet, a special booth was put up by the Smithsonian Institution with slides and recordings to explain the Pinatubo phenomenon and its effects on our Mother Earth.

When the great polar glaciers melt due to global warming, it would affect not only the Eskimos, but also us Filipinos here in our tropical land. The awesome fires now fanning across Europe, such as in Portugal, Spain, and France, are not in isolation. Similar fires are occurring in Vancouver, Canada and the United States. Some days ago, my daughter, who is based in Yakima Valley in Washington, called up to say that a forest fire near them was generated by the ashes that flew from the lighted cigarette of a motorist, landing on tinder-dry vegetation. As a result, trees and forest animals died; human habitats are destroyed.

Not too long ago, we were witness to the awesome flooding in Mississippi, China, Italy, and our own country, though we have become so used to our floods that we have developed a standard response to it – it rains hard in the evening and all through the next morning, and hallelujah! We can take the rest of the day off! There is water everywhere, but the inhabitants of the African region have been suffering from drought and lack of potable water for years.

We, as judges, cannot close our eyes to what is happening in our planet. The availability of cable TV, the internet, our cellular phones, *i.e.*, the explosion of information technology has made highly improbable, if not irresponsible, not to be involved with what is going on in our global village.

IV. SURVIVAL AND THE GOOD LIFE

In his essay on “The Role of Judges in a Changing Society,” Dean Burton Laub of the Dickinson School of Law in Pennsylvania State University posits that our principal role as judges in the face of these physical challenges is to adjust the application of the law to mankind’s aspirations: *first*, survival, and *second*, the good life, in that order of importance. We are all stakeholders in this planet; it is our only home. The question of ensuring its survival is addressed to all of us, more so to those who serve in the courts, being in a unique position to contribute to the preservation of our environment by interpreting and applying environmental laws in a bold and informed manner.

Two considerations apparently stand in our path towards this objective:

1. Our “passive” character in that we, in the courts, can only act on cases and issues brought before us; and
2. The fact that we are called upon to maintain the cold neutrality of an impartial judge in resolving the controversies before us, including those involving environmental laws and edicts.

While these are valid concerns, our country is fortunate to have a veritable arsenal of laws and regulations crafted to address environmental issues, without compromising our bounden duty to act within the limitations of the law. Our research is made easier by the book, *A Legal Arsenal for the Philippine Environment*, compiled by Mother Earth’s and our friend, Tony Oposa, who masterfully navigates through the principles, laws, jurisprudence, and administrative pronouncements to get us to where we want to go in protecting mankind’s common home. I hope you will all get a copy of the book for your courts, and get to use them, too.

V. LIVE AND LET LIVE

If the law is to have any meaning, it must be to first lean towards survival rather than to the establishment or maintenance of individual rights. Against the cries of the loggers and the slash-and-burn farmers who denude our mountains, to let them live – that is, to live and let live – the courts must firmly affirm that the right to enjoy life is subject always to the paramount right of mankind to survive. The plea for acquittal or exoneration of the indicttee who cuts down a tree to make and sell charcoal to feed his wife and children must be balanced against the need to arrest massive flooding that results from the extinction of our trees because there are no longer any roots to hold down the water. This means penalizing the fisherman who catches fish with dynamite or prohibited trawls curbs, restricting his right to earn a living, but allowing the rest of us to survive.

There are also problems brought about by companies who pollute our rivers with industrial wastes, and raise the defense that if their profits are going to be so diminished by stringent safety devices, they would be compelled to retrench or layoff their workers, or altogether forego their investments in the country. Indeed, we are threatened with the exacerbation of our unemployment problem if we strictly apply our laws for environmental protection.

And may I say that this is not an empty threat, as the experience of San Vicente, Palawan has demonstrated. The town of San Vicente was the center of operations of Pagdanan Timber, the town's largest employer. The town's businesses, resorts, restaurants, and stores serviced Pagdanan workers and were dependent on their buying power. In 1999, the DENR imposed a commercial logging ban in Palawan and Pagdanan Timber stopped operations. Forestry workers who were in charge of cutting trees were laid off; so were

the sawmill operators and so on. Such are the costs of environmental protection. Fortunately, with will and determination, Palawan has regained its vibrancy and has become one of the success stories where both the environment and its economy have prospered and continue to do so.

VI. THE BIG PICTURE

As in the case of San Vicente, Palawan, we, in the courts, are called upon to always have in mind the big picture: the common survival of our world, even as we try to strike a balance between conflicting interests, and to devise ingenious means to harmonize them.

With the depletion of our oil supply and increased air pollution from the vehicles, restrictions on the right to own and operate vehicles may happen, such as what is happening now in Singapore and Hongkong. Landfill programs we cannot do without, given the gargantuan *basura* generated by our overpopulated cities. The idea of these landfills has moved entire communities to go to the streets and the media to denounce the choice of their locations for landfill purposes. Courts and administrative agencies have to lean in favor of survival against the rights of the local citizens at the dump site to be free of health problems caused by the garbage.

VII. THE DUTY OF THE COURTS TOWARDS OUR COMMON SURVIVAL

As we conduct our work in the courts, the big question that faces us is whether we possess the resolve to practice selective discrimination by way of strict application of our environmental laws – and, thus, SURVIVE, or whether we shall kowtow to

private interests, out of a mistaken sense of mercy or accommodation, and die in the process, having carelessly allowed the depletion of the very resources on which we depend to live.

Humanity's unquenchable thirst for survival, peace, justice, and the good life will impress itself more and more on the Judiciary. By electing to survive, and thereby applying the law to that end, the courts fulfill their roles as protectors of our world for present and future generations.