



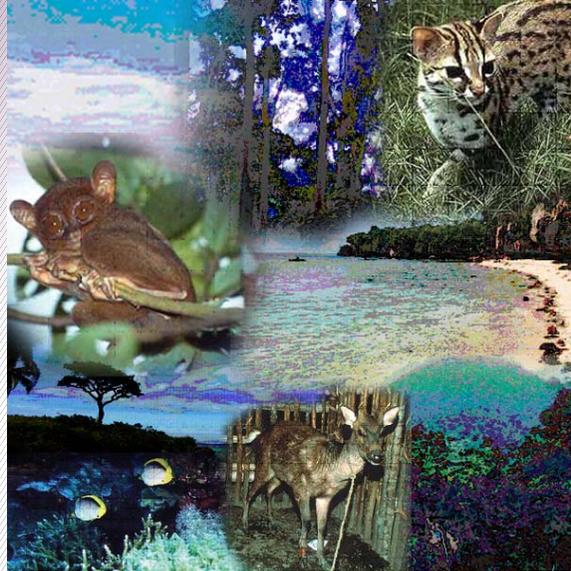
PHILJA



APRIL - JUNE 2004 VOL. 6, ISSUE NO. 20

JUDICIAL JOURNAL

Judges' Forum on
Environmental Protection:
Philippine Environmental Law,
Practice, and the Role of Courts





PHILJA



APRIL-JUNE 2004 VOL. 6, ISSUE NO. 20

JUDICIAL
JOURNAL



JUDGES' FORUM ON ENVIRONMENTAL PROTECTION: PHILIPPINE ENVIRONMENTAL LAW, PRACTICE, AND THE ROLE OF COURTS

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ARRANGEMENTS

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AND CITIZEN SUITS

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LAW AND PHILIPPINE COMMITMENTS

VIII. ROLE OF COURTS IN
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The PHILJA Judicial Journal.

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Working in Harmony with Nature and Humanity*

*Justice Ameurfina A. Melencio Herrera (ret.)***

The Philippine Judicial Academy (PHILJA) is pleased to welcome you all to this second judicial education activity on the environment. We held the first one almost exactly two (2) years ago in Puerto Princesa City, Palawan, a place known as the last frontier of biodiversity in the Philippines, and at the forefront of an ongoing war of nature against man.

We deeply thank the Asian Development Bank (ADB) through Ms. Yue Lang Feng, its Senior Environment Specialist, who unfortunately could not be with us today, for its partnership and support.

* Opening Remarks and Statement of Purpose delivered at the *Judges' Forum on Environmental Protection: Philippine Environmental Law, Practice, and the Role of Courts*, on August 13, 2003, at the PHILJA Development Center, Tagaytay City.

** Justice Ameurfina A. Melencio Herrera (ret.) has been the indomitable Chancellor of the Philippine Judicial Academy (PHILJA), the education arm of the Supreme Court of the Philippines, since March 1996. She was Associate Justice of the Supreme Court from 1979 to 1992, where she chaired the Second Division from 1988, and Associate Justice of the Court of Appeals, chairing the Eighth Division from 1973 to 1979. At the Academy, she also holds the following positions: Chairperson of the Academic Council, Presiding Officer of the Judicial Reforms Office, and Member of the Board of

The role of the Judiciary in the conservation of our natural resources and environment cannot be overlooked nor overemphasized. Even international environmental instruments recognize that an effective Judiciary is essential for environmental protection.

I recall that in our first seminar on the environment, held in collaboration with *Tanggol Kalikasan*, a former prosecutor complained, of course with due respect, of the lack of technical knowledge and preparation of a judge in the actual trial of a case involving an environmental issue, and appealed for technical, substantial, and procedural preparation before trying the case on the merits.

For the next three (3) days, therefore, let us work together for a Judiciary that is effective in environmental matters by lifting the level of our consciousness of environmental concerns and institutional structures.

Let us realize that the Philippines is considered a biodiversity hotspot. Let us understand the socio-economic factors that impinge on the survival of that biodiversity. Let us acquaint ourselves with the destructive results of dynamite fishing, *muro-ami*, and poor waste management. Unregulated development and waste dumping have assaulted our natural

Trustees. She graduated *Valedictorian* and *Cum Laude* at the University of the Philippines College of Law, where she obtained her Bachelor of Laws degree. She was Bar Topnotcher when she took her Bar Examinations, ranking first with a score of 93.85%. She is also currently Deputy President for Australasia at the International Organization for Judicial Training (IOJT), an international organization of academies specializing in judicial education and training, formed in March 2002, in Jerusalem, Israel.

habitat. The treasures of our rainforests are vanishing. We miss the scent of pines as we ascend the Pine City. We miss the winking glow of fireflies in summer evenings, of butterflies that are free and not caged in artificial nettings.

We are faced with many environmental challenges - from cleaning the Pasig River and Manila Bay, to protecting the forests and purifying the air, to being alert to destructive infrastructure and energy projects, and to confronting laws that exacerbate the garbage crisis. There is an urgent need to balance economic and ecological concerns. Genetically modified crops, aimed at fighting poverty, are now being considered as risks to the environment. Water shortage has become a worrisome problem for the new millennium and has to be addressed through proper planning and management of water resources. Our marine environment is suffering from pollution from industries, resorts, and fishponds.

We have to be ready to make difficult choices. We should keep attuned to the emerging globalization of Environmental Law. There has to be a continuing partnership between government, communities, advocates, and the courts, in fact, with all of mankind to maintain the balance between animals on land, birds in the air, water, air and land, and an awareness of the indiscriminate action of people that disturb this balance.

Courts can definitely assist in the environmental litigations that come before them. They can do so by balancing judiciously conflicting interests between the “god of gold and the god of nature,” as uniquely termed by Justice Reynato Puno; by understanding the economic imbalance between plaintiffs who can be large corporations, and defendants who can be farmers, indigenous peoples, or small communities in the interpretation of Environmental Law; by properly appreciating the causes of action in environmental torts; by a proper understanding of

“standing to sue;” by realizing the new directions in the still slightly known “citizen’s suit” provisions in environmental statutes, as well as the concept of SLAPP, or Strategic Lawsuit Against Public Participation.

Through judicious decisions, courts can help protect our marine resources and forests; prevent illegal fishing and poaching vis-à-vis plea bargaining; curb illegal cutting, gathering, and collecting of timber or other forest products; and be more prudent in ordering the release of seized products that may be used as evidence. Experience has been that significant penalties imposed on violators relate to a lower level of destruction.

We have need for progressive judges and prosecutors, creative remedies, new precedents, and important legal principles because of the novelty and complexity of environmental disputes. There is no stemming the tide of more environmental cases eventually finding their way in court dockets with the passage of various environmental laws and regulations.

And speaking of innovativeness that courts can adopt, Chief Justice Davide has again charted a new course in reconnecting the ties between man and nature through his Administrative Circular No. 17-2003, issued on March 12, 2003, which orders the planting of trees in DENR-designated areas by persons under probation.

As you resolve environmental disputes, I will also ask you to open to ADR processes and court-referred mediation as proactive alternatives to resolving conflicts. We now have mandatory pre-trial in civil and criminal cases, and mandatory referral to mediation. These provide windows of opportunity in resolving conflicts in a non-adversary manner and make for speedier settlement.

All these, of course, are in compliance with the commitment in our Constitution, as stated in Section 16, Article II –

The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

and other constitutional provisions on the protection of our environment. It is time that we earnestly work in harmony with nature and humanity.

Allow me then to enlist your wholehearted cooperation in providing a distinctive learning environment in this three-day seminar-workshop. Affected would be our right to life, to breathe clean air, to eat healthy food, to drink safe water, and to be provided with proper shelter.

Let us enjoy every minute of what is within our capability to produce – a fruitful Environmental Justice Forum.

Philippine Environmental Law Practice and the Role of the Courts*

*Justice Reynato S. Puno***
Supreme Court

Let me begin by thanking Madam Justice Ameurfina A. Melencio Herrera, Chancellor of the Philippine Judicial Academy (PHILJA), for this invitation. I also greet the representatives of our generous donors, the officials of the different government agencies and non-governmental organizations, my fellow judges, and fellow friends of the environment.

* Message 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 Reynato S. Puno was appointed Associate Justice of the Supreme Court in 1993, later becoming the Chairman of its First Division. He also chairs the Court Systems Journal and the Committee on Revision of the Rules of Court. He obtained his Bachelor of Science Degree in Jurisprudence and Bachelor of Laws Degree from the University of the Philippines (U.P.); Master of Comparative Laws from the Southern Methodist University in Dallas, Texas, as a full scholar at the Academy of American Law; Master of Laws from the University of California, Berkeley, as a scholar of the Walter Perry Johnson Foundation; and Doctor of Juridical Science Degree from the University of Illinois, Urbana-Champaign, USA. In 1994, he was conferred the Doctor of Humanities degree, *honoris causa*, by the Philippine Wesleyan University. Other prestigious awards

This is the second time that PHILJA has invited me to discuss the role of the courts in environmental protection. The first time was on July 23, 2001 in scenic Puerto Princesa where I emphasized the responsibility of the judiciary in resolving the duel of rights and duties in environmental disputes. I urged the judges to equip themselves with a commanding armor of the emerging substantive body of Environmental Law, especially considering the depth and breadth of contemporary environmental issues. I nudged them to be creative and to shed their fears even when they find themselves in some unfenced spaces of our environmental law.

I am reiterating the same clarion call to my fellow judges, but today, allow me to underscore the historical and philosophical backdrop of our environmental policies. I promise to keep my speech short. To cast a sleeping spell on stewards of the environment would be the last thing I will do. Our world needs you wide awake.

The 1987 Constitution spells out our national policy on the protection of our environment. In a lot of ways, the present provisions in our fundamental law are more forward-looking than our 1973 and 1935 Constitutions. As guardians of the Constitution, it is our duty to grasp the spirit of these provisions for it is jurisprudence that will endow them their final flesh and blood.

he received are: Ten Outstanding Young Men Award (TOYM); *Araw ng Maynila* Award as Outstanding Jurist; U.P.'s Most Outstanding Law Alumnus; Grand Cross of Rizal from the Order of Knights of Rizal; Grand Lodge Gold Medal from the Grand Lodge of Free and Accepted Masons of the Philippines; and Centennial Awardee in the Field of Law by the United Methodist Church on the occasion of its 100th anniversary.

Our task is not going to be a cake walk. Environmental Law is still at its cradle years in our country. Although the embryo of environmentalism has long been implanted into our consciousness by our indigenous customs and traditions, it has not, until recently, been translated into a body of coherent national policies and legal principles. The glacial growth of environmental law in the country may be attributed to the fact that for most part of our existence as a nation, activities inimical to the environment were minimal. To be sure, many of their destructive effects on the environment manifest only after the lapse of a long length of time.

Oftentimes, exhaustive and costly scientific studies have to be undertaken to determine potential injury to the environment of a particular developmental activity. Absent the clear and imminent injury, the enactment of measures protecting the environment was not placed in our shortlist of national needs. The onslaught of industrialization to fast track our economic development, however, punished us for our lack of foresight in caring for our environment. The lack of legal arsenal in our fight to preserve and protect our environment resulted in widespread deforestation, contamination of our air and water resources, displacement of cultural minorities, and the rapid extinction of various species of our flora and fauna.

For some time, we were beguiled by the theory that proven risks to the environment are necessary, if not indispensable, trade-offs of economic development. To some of our policy makers, Gross National Product (GNP) is the defining factor of development, and not the quality of air we breathe, or the purity of water we drink. In their cost-benefit analysis, the factors to be considered were weighed and measured by their economic value. The policy thrust was the immediate maximization of economic

gain, hence, the long-term benefits accruing from a healthy environment were invisible in the equation.

But this is not all. Even in instances where the adverse effects of developmental activities to a sound environment were measurable and manifest, political realities set in. Consider the devastating floods that bedevil the lives and livelihood of our countrymen in some of our provinces. These catastrophes will continue to knock at our doorstep for we are located along the typhoon belt in Asia. Nonetheless, our forest resources in these typhoon ravaged provinces continue to be depleted by so called developmental programs, some of which are state-sponsored. In her book, *Power from the Forest*, Marites Dañguilan Vitug of the Philippine Center for Investigative Journalism exposed the link between ugly politics and deforestation in the Philippines. Similar studies reveal that people who stalk the corridors of power also control the country's mining industry. Some of them are stockholders of the country's major real estate developers charged with tampering the integrity of our environment.

The good news is that the new wave of environmentalism in the international community in the 1960's compelled a radical paradigm shift. The philosophy of economic utilitarianism and its one dimensional approach failed to deliver its promises and alternative methods of managing our resources had to be developed. The critical question is which path we take given the fork of the road. To answer this query, I respectfully submit that we have to retake a hard look on the relationship of man and his environment.

There are divergent views on the issue and all of them are intellectually enticing. Indeed, scholars worldwide are split into two main groups: those who view humans at the apex of the world, and those who believe that all creatures were created equal.

To the first category belong the *conservationists* who champion the anthropocentric (human-centered) ethic of the utilitarian tradition. To the second category belong the *preservationists* who take a biocentric (life-centered) approach to our environmental problems.

In a nutshell, the conservationists peddle the proposition that only human beings possess moral value. The natural environment has no intrinsic value of its own apart from its instrumental value to men. Since plants and animals do not have moral value, they cannot be the subjects of rights. Air and water pollution, toxic waste, and abuse of pesticides are seen as problems because they cause harm to humans. That these problems affect the environment *per se* is merely incidental. Their end goal in advocating the efficient management of our natural resources is to “serve the greatest good of the greatest number for the longest time.”

Although the conservationist movement follows the basic ethical foundation of the economic utilitarian tradition pervading in the 1960's, it is nonetheless a step forward. Its adherents argue that our natural resources are being wasted when they are left undeveloped. But these resources should benefit all citizens, not just the wealthy few who privately own vast amounts of property. They advocate government policies that prevent waste, limit monopolistic control, provide economic opportunity for the many, and keep prices low. They push for the use of experts, especially social scientists who can calculate measure, compare, predict, and influence the consequences of different policy programs.

In contrast, the preservationists seek to protect the environment from any human activity that would disrupt or degrade it. Their goal is to preserve the wilderness in its natural, unspoiled state for two reasons. *First*, undeveloped wilderness

has instrumental value since it is a source of religious inspiration, refuge from modern life, location for aesthetic experience, and so forth. *Second*, wilderness has its own intrinsic value apart from its use to humans.

Deriving inspiration from the natural law tradition, the preservationists assume that the natural ecosystems are well-ordered and harmonious. All parts of the ecosystem, and especially all its biotic members, have a distinctive place in the overall scheme. Each one contributes to the natural order in its own way. Thus, nature undisturbed is goodness preserved. Ecological problems arise when man interferes with the natural order and treat other natural objects as having value only insofar as they serve human purposes.

Although the natural law tradition of Aristotle allows for a moral hierarchy with humans “higher” than animals and animals “higher” than plants, it nevertheless recognized that living things have a good of their own. Some preservationists interpret this as granting moral standing to animals and plants. They argue that plants and animals are not only objects, but are holders of rights as well.

There is an emerging third view, espousing the Christian view of creation as basis for analyzing policies concerning the environment. The Christian view adopts a *theocentric* ethics that centers on the analysis of man’s relationship with the environment in the context of the *divine plan*. The Christian view, which is shared by some non-Christian but theistic societies, holds that all creatures are created and owned by God. Human beings are only stewards of nature. Consequently, while humans could use the natural resources for their own good, they also have the responsibility to take care of the environment for the characteristic activity of all natural objects results from God’s

plan and purpose. Of course, Buddhism preached the ethics of living in harmony with the earth. It has been said that Buddha was born, attained enlightenment, and died under a tree. In his collected sermons, he called for due care and living kindness to all sentient creatures, (birds and animals) and all life forms.

Although differing in their approaches, the three views share common threads. All of them acknowledge that environmental degradation affects the quality of life of human beings, and that future generations are objects of our moral responsibilities. These points of convergence remain, until today, the fabric that binds environmentalists worldwide. These points also made it possible for State leaders, despite their ideological differences, to take a united stand for the protection of the environment during the 1972 Stockholm Conference on the Human Environment, now considered as the chrysalis of international environmental law.

To recall, the discussions during the conference centered on the clashing demands of the economy and ecology. On one end of the spectrum was the view that environmental degradation is the biggest threat facing the planet and, hence, measures should be undertaken to immediately arrest the declining state of our natural environment. On the other end was the opinion that poverty and alleviation of misery remain the real problem. Its proponents believe that the greater development leading to material prosperity far outweighs any damage to environment. They express resentment over the fact that the developed countries – whose drive toward wealth had consumed a great part of the earth's resources and had led to devastating pollution – are now asking them to remain poor and to pay for the clean-up, restoration, and conservation of the earth.

In the end, this ideological divide was resolved by way of compromise. The Stockholm Declaration held that economic

development is not necessarily incompatible with environmental protection, and that development could proceed provided it avoids damaging the environment. Several principles in the Declaration undoubtedly are the sources of our environmental policies in Presidential Decree No. 1151.

Principle I lays the foundation for the current trend resolving environmental issues in light of the person's right to life. Along with Principles 2 and 5, it affirms the present generation's responsibilities to future generations. Principles 2, 3, 4 and 5 identify areas of concern that need special protection:

- a. Natural resources of the earth, including the air, water, land, flora and fauna, and special representative samples of natural ecosystems;
- b. Capacity of the earth to produce vital renewable resources;
- c. Heritage of wildlife and its habitat; and
- d. Non-renewable resources of the earth.

Principles 21 and 22 emphasize the international character of environmental problems and stress the responsibility of the States to refrain from causing damage to the environment of other States, and the importance of developing international law regarding liability and compensation of victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas that transcend their jurisdiction.

The principles outlined in the Stockholm Conference started the rapid development of International Environmental Law, including important global, regional, and multilateral agreements involving such far-ranging subjects as the preservation of flora and fauna, protection of the marine environment, defining third party liability in the field of nuclear energy, the control of

transboundary movement of hazardous waste, and the protection of world cultural and natural heritage.

The 1987 Constitution cemented the Philippine's commitment to strike a delicate balance between the demands of economics and the needs of the environment. But it offers more.

For the first time, the right of the person to a balanced and healthful ecology was recognized not only as an abstract policy statement, but an enforceable legal right under Section I6, Article II. This is clear from the discussion of the members of the Constitutional Commission that drafted the 1987 Constitution. Our Supreme Court affirmed the enforceability of this legal right in the seminal case of *Oposa v. Factoran*.

Forming the matrix of this right is the recognition that human beings are an integral part of a complex ecological community. Although constantly changing, the preservation of this ecological community involves a balancing of interdependencies. Nothing less than the survival of the human species hangs on this delicate balance. Section 4, Article XII, thus, enjoins the State to protect our endangered forest and watershed areas, while Section 7, Article XIII calls upon the State to protect, develop, and conserve communal marine and fishing resources. In pushing the frontiers of industrialization, the State is cautioned to make "full and efficient use of human and natural resources" (Section I, Article XII).

The 1987 Constitution also takes due account of the high impact of developmental activities to the distinct welfare of our indigenous peoples. Thus, it mandates the State to give due regard to the rights of the indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being (Section 5, Article XII). It also emphasizes in Section

4, Article XIII the duty of the government to undertake the just distribution of all agricultural lands, taking into account ecological, developmental, and other equity considerations.

To make sure that these constitutional commitments do not become mere gems of oratorical pieces, the legislature has enacted laws to enhance and safeguard the integrity of our environment. Among the most significant of these statutes are the Clean Air Act, the Ecological Solid Waste Management Act, the NIPAS Act, and others.

We, in the Judiciary, can do no less. To be sure, efforts to save the environment would be a monumental task. The debate between economists and ecologies should be no more. I urge all to ponder the fact that the words “economy” and “ecology” both came from the Greek word *oikos*, which means “home.” A home is not a house where division can be allowed. To my fellow judges, to all of you, I leave as food for thought the words of the nature poet, William Wordsworth, who wrote, “Nature never did betray, the heart that loved her.”

A pleasant evening to all of you.

The Role of Courts in Environmental Protection*

*Chief Justice Hilario G. Davide, Jr.***

Our exceptionally energetic and
tireless Chancellor, Justice Herrera;
My fellow workers in the vineyard of Justice;
Atty. Oposa; Dean Candelaria;
Atty. Paul Violette; John Boyd;
Lisa Lumbao; and guests:

I will mince no words: our planet is dying.

Once, the Earth could sustain billions of people, but now, that remains to be seen. Now, our fields are increasingly barren; fertile lands are turning into deserts due to unsustainable agricultural practices. Expanding human populations are pushing urban landscapes into ecological sanctuaries, in the process destroying biodiversity, threatening the culture of native tribes,

* Inspirational Message delivered at the *Judges' Forum on Environmental Protection: Philippine Environmental Law, Practice, and the Role of Courts*, on August 15, 2003, at the PHILJA Development Center, Tagaytay City.

** Chief Justice Hilario G. Davide, Jr. assumed stewardship of the Judiciary on November 30, 1998. His distinguished career include serving as: Chairman of The Fact-Finding Commission created pursuant to R.A. No. 6832; Chairman of the Commission on Elections (COMELEC) and the principal sponsor of its Rules of Procedure; Commissioner of the Constitutional Commission (CONCOM) of 1986 which drafted the 1987 Constitution; Assemblyman, Interim Batasang

and unleashing lethal diseases without any known cure. Over petty differences, wars are waged with weapons that burn fertile fields and leave toxic residues that linger for generations. We poison the air and water with our industries, our modes of transportation, our habits, and our lifestyles. Our worship of commercialism encourages the over-utilization and wasteful consumption of the planet's natural resources. This is the legacy we are building for our children, and the inheritance that they will leave to our grandchildren. But I believe this seeming inevitability can yet be defied.

Pambansa representing Region VII, its first Minority Floor Leader; and Delegate, Constitutional Convention (CONCON) representing the 4th District of Cebu. As CONCOM Commissioner, he was the principal author and sponsor of the Article on the Legislative Department of the 1987 Constitution of the Philippines. He authored innumerable amendments to the draft of the Constitution and submitted the most number of resolutions. He was among the three delegates of the CONCON who introduced the most number of reform proposals. As Assemblyman, he filed the most number of bills of national significance and resolutions to lift Martial Law. He sought legislative investigations, especially of cases involving graft and corruption and irregularities in the government, as well as violations of human rights. He authored bills that were subsequently enacted into law, such as those increasing the penalties for white slavery, for corruption of minors, and limiting the periods of preventive detention and restraining orders; bills to repeal oppressive and unjust decrees such as Presidential Decree Nos. 1735, 1834, 1835, 1836, and 1877. He authored major substantial amendments to the 1984 Election Law to provide safeguards for the election process and preserve the sanctity of the ballot, and various amendments to the Dangerous Drugs Act.

At their core, environmental concerns are about the just apportionment of limited resources. Such apportionment of rights is precisely the function of courts. Courts, therefore, have a very significant role to play in the protection of the environment.

Essentially, environmental issues ask us which party should have the right to a given resource, whether to use it or preserve it. A variety of other issues arise from this question. For instance, do the parties have standing? Did any of the parties, by their inability to use or preserve a given resource, suffer damage? If so, how should compensation be computed? How can recompense be had, especially in cases where damage was suffered by the environment and not any of the parties directly?

Many of the questions that courts will encounter in environmental cases will refuse to be confined to any category of issue that we have been accustomed to. You will recall the case of *Oposa v. Factoran*, which is hailed as one of the triumphs of environmentalists before the Supreme Court. That case asked the Supreme Court whether a certain group of children had standing to sue for the benefit of future generations, to preserve the latter's right to a balanced and healthful ecology in accord with the rhythm and harmony of nature. That case enunciated the famous principle of intergenerational justice, now otherwise known in the Philippines as the *Oposa* doctrine. This *Oposa* is, of course, Atty. Tony Oposa.

More recently, in the case of *Bangus Fry Fisherfolk Diwata Magbuhos v. Lanzanas* (G.R. No. 131422, 10 July 2003), a group of fisher-folk from Minolo, San Isidro in Puerto Galera asked the Supreme Court ultimately to cancel the environmental clearance certificate of the National Power Corporation to construct a temporary mooring facility in Minolo Cove. The

fisherfolk named as co-petitioners the “*bangus, bangus fry*, and other marine life of Minolo Cove.”

The Court, however, had to dismiss the petition due to the petitioners’ failure to exhaust their administrative remedies. We were, thus, unable to discuss the consequences of the inclusion of the marine life of Minolo Cove as co-petitioners in the case. Perhaps a similar issue, or another yet more novel issue, will confront the Court in the future.

The point I wish to stress is that all courts will very likely have to address such novel concerns, especially with the enactment of new laws favoring the environment, such as the Clean Air Act. We cannot afford to be caught unaware and, thus, impose an injustice upon claimants of environmental protection or restitution.

In the area of environmental law, extraordinary expertise is required of all judges. This field will challenge judges to decide cases on genetics, clean air standards, pollution, and its environmental effects across local and even national borders, among many other concerns.

We may be forced to discuss issues on food security, resource-based conflicts, and even international trade. We will be required to gain mastery in treaties and other international agreements. More often than not, we will be confronted with unique issues that will necessitate an imaginative or resourceful response that nevertheless complies with the legal framework.

If we are to render environmental justice, we must, therefore, keep our knowledge on environmental laws, issues, and concerns up to date. This is the boon that we gain from the Philippine Judicial Academy (PHILJA). By affording us these training opportunities, we keep pace with developments that will help us deliver quality environmental justice.

There are various approaches to the enhancement of environmental expertise. One of them is the conduct of fora such as this one, where judges cannot only learn about recent legal developments, but also where they can share their unique experiences in the field of environmental law. These experiences will help each one of us evolve common responses to common predicaments.

Environmental cases are usually novel and unique, with no precedent that we can rely on for guidance. We should, therefore, welcome every opportunity where we can discuss the innovations on environmental law implemented or theorized by our fellow judges.

When dealing with environmental cases, we are all required to think outside the box, so to speak, and yet to decide in accordance with law. This is a challenge that I want to meet, especially since I am an environmentalist at heart. This is perhaps why I prefer gardening over golf for my leisure hours.

Our competence in dealing with environmental issues will be our lasting contribution to the protection of the environment. Although we can only render environmental justice within our own jurisdictional limits, the impact of our actions will be felt across the country as bases for other decisions, or even cause the evolution of new laws. Your decisions on environmental cases can initiate a wave of support for environmental causes.

“Think globally, act locally” has long been the slogan of environmental groups. These words recognize another tenet observed by environmentalists, which is that all things are connected. Thus, the little things we accomplish in our courts cause ever growing ripples that impact tremendously on the national scale. When we apply environmental justice in the confines

of our courts, we, in fact, contribute to global justice. This is a grand ideal, and it is fortunate that all of us have this opportunity to fulfill such a lofty objective.

All things are connected, and environmental concerns are connected not just across space, but through time as well. The environmental justice that we render effectively in our courts will endure across generations, and will benefit our children and grandchildren and their grandchildren.

By our efforts in our courts, we will succeed in arresting our planet's unwritten fate. We will yet resuscitate this dying Earth, through the power of justice. Let us leave for our children and our children's children a planet worth living in and worth living for. We all long for a better world; let that world begin with us, here, today. Let us take ourselves to task and render environmental justice to the best of our abilities.

Before I close, let me recognize the invaluable support and assistance of the Asian Development Bank (ADB). The ADB has been one of the Court's strongest allies in attaining judicial reforms. Once again, it has proved its undying commitment to that cause. I welcome this partnership and look forward to the strengthening of the relationship between the Court and the ADB.

Thank you for your time and your active participation throughout this forum. Let us return to our courts and make a difference. God bless us all.

The Philippine Biodiversity Crisis: A Time Bomb Waiting to Explode*

*Dr. Perry S. Ong, PhD***

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* Delivered at the *Judges' Forum on Environmental Protection: Philippine Environmental Law, Practice, and the Role of Courts*, on August 13, 2003, at the PHILJA Development Center, Tagaytay City.

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I. INTRODUCTION

Amidst the ongoing political, socio-economic, and military crises besetting the country, there is another equally, if not more important, crisis that we are currently experiencing: biodiversity crisis.

And because of the recent failed *coup d'état* in Makati, the escape of Al-Ghouzi, invasion of Iraq, SARS pandemic, bombings in Indonesia and Mindanao, kidnappings, the grinding poverty that hovers over more than 40% of Filipinos, and other emerging economic, political, and military issues, the biodiversity crisis has been shunted aside and marginalized. Unless our political and economic leaders realize sooner than later that this crisis needs to be addressed now, then the predictions of environmental collapse and species extinction spasm will come true, and our existence as a people will be jeopardized as well.

II. ENVIRONMENTAL COLLAPSE AND SPECIES EXTINCTION SPASM

Environmental collapse occurs when the environment stops performing its normal ecological functions, such as cleansing the air and providing freshwater. While it is true that there are technical solutions to these problems, these are often expensive, unsustainable, and are mere palliatives. More often than not, the solution entails shifting the problem from one ecosystem to another.

To illustrate, to solve the water crisis in Metro Manila, plans are underway to convert Laguna Lake as a source of water. By doing so, the problem caused by the destruction of forests, which has led to watershed degradation, which in turn has led to the loss of water supply, is now being passed on to the lake ecosystem.

The garbage crisis and recurrent water shortages are but symptoms of a greater environmental problem, and unless viewed as part of this greater environmental problem (the biodiversity crisis), solutions that are developed will remain palliatives and, therefore, are unsustainable.

Species extinction spasm occurs when not only a single species disappears one at a time, but groups of ecologically interrelated species disappear all at the same time. One example of this is the relationship between fruit bats and plants that are dependent on bat pollination for their reproduction. When the fruit bats become extinct, the plants dependent on the bats will follow them into extinction. Following the bats, other species dependent on the plants will also become extinct, until not one species is left, including us humans.

Most people will say, “So what if a species goes extinct? So what if the Philippine Eagle or the *Tamaraw* goes extinct? *Malayo yan sa bituka.*”

There are two arguments why we should bother. One, the Philippine Eagle or the *Tamaraw* and other species that are currently threatened with extinction are as Filipino as you and I. Because more than 50% of Philippine biodiversity are found nowhere else in the world, they form part of our biological heritage and the global patrimony as well.

The second argument is best illustrated by the metaphor of an airplane. Airplanes are machines essentially made up of sheets of metal held together by rivets and nuts and bolts. A system of redundancy is put in place to ensure that once a rivet pops out or a nut or bolt loosens and falls off, the airplane will continue to fly and land safely. However, if all the rivets, nuts and bolts pop out at the same time, the plane will surely crash. Now, the airplane

represents the biosphere and we are the passengers inside the plane. The rivets, nuts and bolts are the species that hold life together and keep it functioning.

Sadly, the Philippines is predicted to be among the first countries in the world to experience this twin doomsday scenario – environmental collapse and species extinction spasm – unless we do something now.

III. STATE OF PHILIPPINE BIODIVERSITY

The Philippines is an archipelago of more than 7,100 islands. Its complex geological history and long periods of isolation from the rest of the world are primary reasons for its high levels of biological diversity and endemism. In fact, it contains within its boundaries several centers of diversity and endemism. Lawrence Heaney and Jack Regalado, from the Field Museum of Natural History in Chicago, have described the Philippines as the **Galapagos times ten**. Thus, the Philippines is considered as one of the seventeen (17) megadiversity countries, which between themselves contain 70% to 80% of global biodiversity.

Unfortunately, we have lost more than 93% of our original forest cover. If we juxtapose historical events associated with this loss, we would realize that the extent of forests we lost in the last fifty (50) years of the 20th century is equal to what we lost in the previous 450 years! Put in another way, we lost more forest (more than 14 million hectares) under fifty (50) years of Filipino rule than during the combined 450 years of colonial rule under Spain and the United States (12 million hectares)! This makes President Manuel L. Quezon's famous quote, during his campaign for Philippine Independence, almost prescient: "I'd rather see the Philippines run like hell by Filipinos than like heaven by Americans!" This is the hell we had given ourselves!

Yet, despite this destruction, more new species are still being discovered on these islands than in other areas on Earth in recent times. Of the more than 1,130 terrestrial wildlife species so far recorded in the Philippines, more than half are found nowhere else in the world.

Table I. Diversity, Endemism, and Conservation Status of the Philippine Wildlife

	No of Species	No of Endemic Species	Endemic Species	No of Threatened Species	No of Threatened Endemic Species
Amphibians	101+	79+	78%	24	24
Reptiles	254+	170+	66%	8	4
Birds	576 ¹	195+ ²	34%	74	59
Mammals	204+ ^{1,2}	111+	54%	51	41
Total	1139+	555+*	49%	157	128

Legend: + Includes new species (38 species of amphibians, 35 species of reptiles, 15 species of mammals)

¹ Includes rediscovered species

² 22 species of dolphins, whales, and *dugong*

The floral diversity is equally extraordinary, with between 10,000 to 13,000 species of plants and more than half are endemic (found only in a specific area and nowhere else) to the Philippines.

The country's marine biodiversity is equally exceptional. With a coastline of 22,450 km and an estimated 27,000 km² of coral reefs, the Philippines has nearly 500 coral species of the more than 700 known coral species worldwide. It also contains more than 2,000 species of fish and 40 species of mangrove, making the country host to one of the richest concentrations of marine life in the world. Unfortunately, mangroves and seagrass beds have

been reduced to 120,000 ha. from 500,000 ha., while only 5% of coral reefs remain in excellent condition.

The Philippines' remaining biodiversity and the ecosystems that support it are under tremendous threats. Extractive industries, such as logging and mining, have destroyed most of the forests. High human population density and growth rate ($\sim 2.3\%$) further put enormous pressure. In turn, rainforests have been converted to agricultural land and plantations to augment land needed to support a growing population. In addition, cyanide and dynamite fishing, along with rapid development in coastal areas, continue to destroy coral reefs and mangroves.

Conservative land and resources-use trend projections indicate that profound degradation of the country's biogeographic regions will occur in approximately ten (10) to fifteen (15) years. Because of the dire condition of Philippine biodiversity, Eugene Linden, an environmental journalist and John Terborgh, a plant ecologist, have written off the country as being damaged beyond repair. However, I strongly disagree with their conclusions and believe that there is still a small window of opportunity that we have to take before we reach the point of no return.

On its own, the environment has a resiliency that allows it to recover from the stresses it has encountered, as long as it is given time to recover. The metaphor of a rubber band comes in handy to illustrate this point. The rubber band can be stretched to a limit, but there is a breaking point when it would snap. The big logging and mining operations in the past have stretched the Philippine rubber band, leaving it in a stretched state afterward. The stress applied to the rubber band has remained long after they have left. And there are still pressures being applied to stretch the rubber band even further. The point of no return is not

when the rubber band snaps, but when the rubber band loses its capacity to return to its original state even after the stress is removed.

This resiliency has been demonstrated in Samar and Palawan. When both regions declared island-wide moratoriums on logging after centuries of continued exploitation, the forests were able to recover in less than ten (10) years because they were left alone. For an untrained eye visiting Samar and Palawan, the regenerated forests appear as virgin forests. Unfortunately, these two cases are the exceptions rather than the rule.

IV. PROSPECTS UNDER THE ARROYO REGIME

The past three (3) years of the Arroyo regime and the appointment of then DENR Secretary Heherson Alvarez is a welcome respite to the gloom and doom that surrounded the controversial Department of Environment and Natural Resources (DENR) under the Estrada regime.

However, if the time it took to appoint Secretary Alvarez is a measure of the importance that the Arroyo regime placed on the environment, then we, in the Environment NGO community, have a lot to worry about. Does this reflect the low importance the government is giving to the environment, or is this the result of too much political horse-trading? Furthermore, the speed by which Secretary Alvarez was removed seems to be a greater testament to the low regard accorded the environment by the Arroyo government.

The Arroyo government's closeness to the Church is another area of concern since one of the ultimate causes of biodiversity loss is the rapidly expanding population, which needs to be addressed now. While it is good that the population issue has re-

entered the political debate, this debate is now being hijacked by people who are positioning themselves for their own political ends by aligning themselves with the Church.

Poverty is another ultimate cause of biodiversity loss. Again, the Arroyo regime's desire to jumpstart a floundering economy at all costs is an area of concern as this might be at the expense of the environment in general. Centuries of economic domination by a few elites (foreign and local) remain a stumbling block to real economic development for our people, and the environment has paid dearly for this. Only when an economic program is tempered with an encompassing consideration of the environment will it become sustainable and address the issue of poverty in a comprehensive manner.

The maxim, "Think Globally and Act Locally," is best exemplified by the success of community-based actions that have been implemented in the last twenty (20) years. However, these successes are not commensurate to responding to complex environmental problems and eradicating poverty. Top-down and bottom-up approaches should be undertaken simultaneously to expedite poverty eradication and ensure environmental protection. And these are not "either-or" options.

Empowering communities to address poverty should be accompanied by concomitant initiatives by the business community to address poverty as well. This should be further attended by changes in the attitudes and lifestyle of the rich. These are two sides of the same coin. If these twin-pronged changes from the top and at the bottom (and any strata in between) of our society do not materialize at the same time, any gains made by either would be negated. By including biodiversity conservation into the equation, poverty eradication is ensured to be sustainable. Sustainable development anchored on biodiversity

conservation then would be the foundation on which our survival as a people will be ensured.

A movement towards building a national constituency for biodiversity conservation should be initiated to ensure that lessons learned from the successes of community-based activities are replicated and sustained all over the country. Otherwise, we might end up tending to the garden while a raging fire is consuming our house.

We are now at the end of the Arroyo Regime and her past three (3) State of the Nation Address (SONAs) did not even mention anything about the environment. With less than eighteen (18) months to go, the newly appointed DENR Secretary, Elisea Gozun, is in a very difficult situation to effect any substantial change before her own term is completed.

Given this scenario, what should we do? What can we do? Will we, as a people, measure up to these challenges? We are running out of time, as well as options. The answer lies in our hands:

*In the struggle to save Philippine Biodiversity,
every species,
every hectares,
every second,
everything counts!*

The State of the Philippine Environment: Biodiversity Crisis and the Role of the Judiciary*

*Dr. Perry S. Ong, PhD***

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I. STATE OF THE PHILIPPINE ENVIRONMENT

About a year ago, a headline in the Manila Standard, dated June 26, 2002, caught my attention. It said, “Earth Can’t Meet Human Demand for Resources.” I bet not many people noticed this announcement. According to this article:

Scientists said humanity’s demand for resources had soared during the past forty (40) years to a level where it would take the planet one (1) to two (2) years to regenerate what people remove each year.

The impact by humans on the environment had inched higher since 1961 when public demand was 70 % of the planet’s regenerative capacity. xxx

To illustrate, in 1961, if you had Php100 to spend for daily living, you can still save Php30, which you can accumulate through the years. However, by the year 2003, you are spending Php120 of your Php100 budget. How is that possible? Either you are tipping into your savings or you are borrowing from your future. And we all know that, eventually, this would not be sustainable.

Now, how did the study measure this? To get the impact of the population and its economic activities on the environment, the study measured the “ecological footprint” of human activities,

such as marine fishing, harvesting timber, building infrastructure, and fossil fuel burning. In 1999, the global average for each person is 2.3 hectares of consumption, which is much lower than the average for industrialized countries, such as the U.S. at 9.6 hectares and the United Kingdom at 5.3 hectares of consumption per person. The full article is posted at www.rprogress.org and www.pnas.org.

A. High Level of Population

How do we translate this? It is clearly linked to the level of population in a particular area and the whole world in general. A high growth of population has the following impact on the urban environment and the rural or forested environment: urban concentration, which leads to intensified farming to produce food for this urban concentration, which also means increased fertilizer, water use, pesticides, and livestock waste, and, therefore, concentration of pollutants and changes in the water cycle and the aquatic ecosystems. On the other hand, in the rural or forested area, there is habitat loss and fragmentation, and spreading of invasive species.

In Negros, for instance, the levels of population and forest cover in 1600 were quite stable. However, when the sugar *haciendas* came in, forest cover dropped down by around 4%. At the same time, the population suddenly increased because of economic activities. From 1949 to 1970, there was still 80% to 90% forest cover, going down to 6% in 1987, and 4% in 2000.

B. Environmental Crises

There are so many environmental crises that we are facing today—water crisis, air pollution crisis, food crisis, garbage crisis, and biodiversity crisis, or marine and forest crises. Yet, these were all

put aside because of more pressing crises: military crisis, socio-economic crisis, and political crisis. Interestingly, the common denominator of all these crises is that they are all caused by humans. Therefore, this means that we can also solve them.

I. Water Crisis

We are experiencing continuous destruction of watersheds, depletion of groundwater due to over extraction of water, and saltwater intrusion. The amount of water that we are getting is dwindling. Then, we also have to look at the issues of quality. Is it clean and safe to drink our water? Usually, the problems confronting us are pollution of the chemical or biological kind, like bacterial contamination. There is also thermal pollution of waters: for instance, the power plants suck in water from the environment to cool the turbines, then bring it back to the environment at a higher temperature, making the water lethal to biological lives in it.

If I told you thirty (30) years ago that you have to buy water, most of you would laugh at me and say, "Why should I buy water from you? I can get it easily from the tap." But now, we do not question it. We buy bottled water because it is now part of our daily lives to drink only mineral or distilled water. And that is a good indication of our water crisis.

2. Air Pollution Crisis

We must consider the source, quantity, and quality of our air pollution crisis, including motor vehicles, industrial, and even agricultural air pollution. If you look at the problem of global warming at the local level, it appears that cows are also culprits. The gas that they pass from their rumination increases the greenhouse gases, so to speak. We have to look also at the quantity

of air pollutants and their quality, or the suspended particles and chemicals in these pollutants, such as lead, carbon monoxide, carbon dioxide, and sulphur.

3. Food Crisis

We have a problem with the water that we drink, the air that we breathe, and the food that we eat. Personally, I think the problem of food crisis is generally a problem of distribution. The European Union and the United States are subsidizing or paying their farmers not to plant because all sorts of economic problems would arise. If that is the situation, then maybe food production is not the problem, but food distribution. Dole and Del Monte, in their plantations in Mindanao, are known to dump pineapples and bananas into rivers because if they sell them, there would be a drop in prices. Thus, they would rather throw it away than give it to people who need food.

The quality of the food that we eat is also a problem. There is foot and mouth disease in pork, mad cow disease in beef, bird flu in chicken, heavy metal contamination in fish, formalin in vegetables, and genetically-modified organisms (GMOs). Is there anything safe to eat?

4. Waste Crisis

After eating, we still have a problem. Where do we throw the waste that we have generated? Consider the domestic household. A household that produces five (5) bags of garbage a week can reduce it to one (1) bag per week by simply practicing segregation. A lot of things that we throw out can be recycled or put back in the soil. They say segregation in urban areas is difficult because of the lack of dumpsite. However, there are ways to do segregation and the Zero Recycling Movement has offered several methods.

We also have the problem of industrial waste, agricultural waste, and even medical waste. Where do we put the toxic materials generated from hospitals? How much garbage are we producing? Can we reduce it? Is the waste biodegradable or non-biodegradable? Is it toxic or non-toxic? Have you heard of the “NIMBY Syndrome?” NIMBY means “Not In My Backyard.” We can throw anything anywhere in the world, but not in our own backyard.

Perhaps the solution is to put it in our backyard so that we will finally have the incentive to segregate. Without incentive to segregate, the tendency is to throw as much garbage as we can and let the garbage collector worry about where to dump it. The problem with dumping is that we do not even care where it goes. If there is a law which says that garbage should not go out of a community, then people will start thinking about reducing the amount of garbage that they produce.

II. PHILIPPINE BIODIVERSITY

A. Biodiversity as Biological Capital

The current and more expanded definition of biodiversity encompasses the following:

1. Extent and rate of change of ecosystems of forests, marine and fresh waters;
2. Population of species, including trends of threatened species and habitat availability;
3. Genetic variability or differences between or among species; and
4. Cultural diversity or indigenous peoples and cultures.

The question is, of the crises that I have discussed so far, why focus on biodiversity preservation? Why not focus on the air crisis or the water crisis because these seem to be more fundamental? This is because some environmental issues have technical solutions that are often not sustainable. To illustrate, if we run out of water, we can pump all the marine water or seawater in our archipelago. We can put up a desalination plant in every *barangay* and have fresh water. However, that would be very expensive and, therefore, simply unsustainable. Indeed, some countries in the Middle East already convert salt water into fresh water, but at a tremendous cost.

If we have all the money in the world, we can also put anti-air pollution devices in the industry. We can even give oxygen tanks to people, but this would still not be sustainable. Simpler alternatives exist. For instance, let us protect our forests. For as long as our forests are in good condition, these will protect our water, clean the air, and produce oxygen. Therefore, biodiversity, once lost, is gone forever. Extinction is forever; we cannot recreate life.

One big challenge is how to translate an esoteric term like biodiversity, which is so important, but very hard to explain and difficult to understand. So we came up with the term **“Biological Capital.”** When we start a business, we need a capital to run it. Moreover, we need to maintain our capital or expand it; otherwise, we will lose profit, even our capital, and go bankrupt. The same thing goes with biodiversity, which is our biological capital. If we use it all up, we will go bankrupt in the very near future. Moreover, it is part of our cultural heritage, of our being Filipino. The Philippine Tamaraw, the Philippine Eagle, and about 50% of life forms in our country are endemic or found nowhere else in the world. They are only found here in the Philippines.

Furthermore, biodiversity is not simply about plants and animals. It includes the people and their interactions. It is something that cannot be recreated in life. Let us relate it to our country. The first thing that was taught to us when we entered the educational system is that the Philippines is an archipelago comprising 7,107 islands. The problem is that we take it for granted, its impact on our history, economy, politics, and culture.

Do you know that during the Spanish colonial rule, there were no more than 20,000 Spaniards all over the country? Not more than 20,000 at any one time, yet they were able to control the country for more than 400 years! Magellan arrived in Visayas in 1521. Do you know how many years passed when the next expedition arrived in Manila? Fifty (50) years. It was only in 1571 when Miguel Lopez de Legaspi arrived. Now, we do not take any meaning from that, but it clearly shows how diverse or how far countries were at that particular time. How did the Spaniards manage to control the country if there were so few of them? By following the principle of divide and rule, or divide and conquer.

For instance, if there was a problem in Mindanao, they would get people from Luzon to fight the people in Mindanao. If there was a problem in Visayas, they would get people from Mindanao to fight the people in Visayas. That is how the Spaniards conquered our country, and unfortunately, this divide and rule attitude is persistent up to this day. For example, there are now almost three (3) million Filipinos in the United States, but there are around four (4) million Filipino organizations.

When the Spaniards first came to the Philippine Islands in 1500, about 90% of the country was forested, which should

mean that only about 10 % was settled. At the time, we were still at the early age of societal development. And that is another reason why we were easily conquered.

We also keep forgetting that we are part of the Pacific ring of fire. Unless Pinatubo, Mayon, Taal, Hibuk-Hibuk, or Kanlaon erupts, time and again, we forget that we are part of the Pacific ring of fire. Many Filipinos live on flat land and assume that the whole country, therefore, is flat, not realizing that 70% of the country is hilly or mountainous. Moreover, even if we know that we are archipelagic, we, especially the politicians, behave as if we are a big continent. The first thing that they will do is build roads instead of improving the piers, ports, ferries, and fishing vessels.

B. Megadiversity Country

I. Galapagos Times Ten

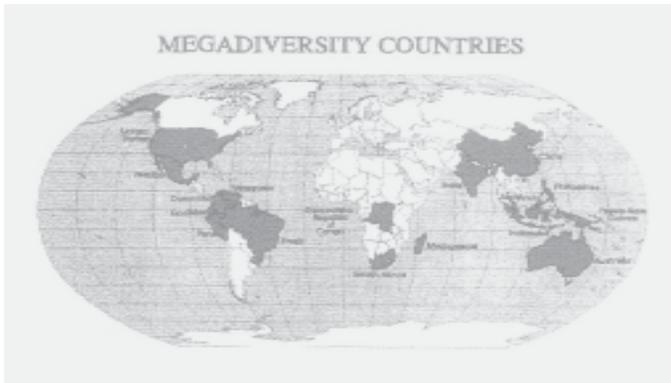
The best description given to the Philippines is “**Galapagos Times Ten.**” The term “Galapagos” is used because it is popular and associated with Charles Darwin, and we know that Galapagos Island is the place where Darwin made his discoveries. If only Darwin were able to reach the Philippines, he would have probably stayed here because we are ten (10) times more diverse and ten (10) times more interesting than Galapagos! We are very rich in biodiversity.

For instance, most people, will only see a dead piece of log inside our mountain and mossy forests. Yet, one of our botanist experts looked at a piece of dead log and found eighteen (18) different species of life in it, most of which are endemic, or can be found not only in this country, but only in that particular area or mountain. That is how rich we are – eighteen (18) endemic species would be higher than the total endemic species of any country in Europe.

2. Global Standing

At the global level, we are considered as one of the seventeen (17) megadiversity countries. Only seventeen (17) countries in the world collectively claim within their borders more than two-thirds ($2/3$) of the Earth's biological resources. These countries, home to a major portion of the planet's cultural diversity, are the following:

- | | |
|---------------------------------|----------------------|
| 1. Australia | 10. Malaysia |
| 2. Brazil | 11. Mexico |
| 3. China | 12. Papua New Guinea |
| 4. Colombia | 13. Peru |
| 5. Democratic Republic of Congo | 14. Philippines |
| 6. Ecuador | 15. South Africa |
| 7. India | 16. United States |
| 8. Indonesia | 17. Venezuela |
| 9. Madagascar | |



This means that if you invest in these seventeen (17) countries, then you will be able to save at least 70% of global biodiversity. This is because as much as 80% of the world's most endangered biodiversity, in terms of plant and animal species at the brink of extinction, is found within these megadiversity countries.

Our country is small and yet we are packed with diversity. Just to compare how rich we are in terms of wildlife or biodiversity, the following chart shows that our land area is much smaller than that of Brazil and Spain, but we have the highest percentage of endemic species: 49% of our total number of species (555 out of 1,139) is endemic, compared to 25% endemic species of Brazil (788 out of 3,131), and 6% endemic species of Spain (25 out of 135). Our country is small, but packed with diversity.

COMPARISON OF PHILIPPINE BIODIVERSITY WITH OTHER COUNTRIES

COUNTRY	TOTAL SPECIES	ENDEMIC SPECIES	% ENDEMIC	LAND AREA (KM ²)
Philippines	1,139	555	49%	300,780
Spain	435	25	6%	451,171
Brazil	3,131	788	25%	8,511,965

3. *Endemic Species*

Here are several species endemic to the Philippines:



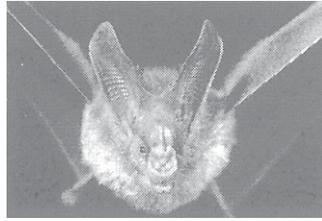
- a. The **tarsier** and the **flying lemur** are only found in Bohol, Samar, and Mindanao.



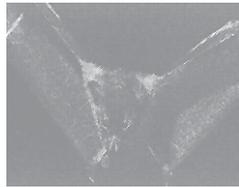
- b. The **leopard cat** is only found in Negros, Panay, and Palawan. It is a wild cat related to lions and tigers.



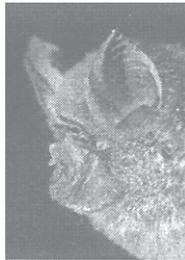
- c. The **Mt. Isarog shrew rat** from Bicol is better than an anteater; it only eats earthworms. Let me share a short story. Somebody from the Field Museum of Chicago found a specimen of the Mt. Isarog shrew rat in their drawer. He wanted a living specimen so he went on an expedition in the 1980's to Mt. Isarog, Bicol. His group kept it alive so that they could study it more. They gave it meat, bread, everything. They gave the regular stuff given to animals in captivity, but it would not eat until somebody suggested feeding it with earthworms. True enough, it picked up the earthworm and ate it like spaghetti. That is how it was discovered that it only eats earthworms. Later on, we realized that earthworms are abundant in Philippine Forests.
- d. The **Palawan tree shrew** is found in Palawan, and is related to the ancient mammals.



- e. **Insect-eating bats** look ugly, but they perform a very important function. Without them, agricultural production would be devastated because they keep insect population down.



- f. Many farmers think, due to lack of knowledge, that **fruit bats** are pests because they eat the fruits. They do not know that fruit bats provide an important function: they help pollinate fruits and disperse the seed, and what they eat are usually rotten already.



- g. **Tube-nosed bats** have tube-like noses. An interesting fact about them is how they nurse their young for fifty (50) weeks of the year, and how they try to get pregnant for the remaining two (2) weeks of the year.



- h. When I was young I thought that **kingfishers** are only found in the U.S. and Africa. To my surprise, we have more than twenty (20) species of kingfishers, and thus, we are considered to be the center of kingfisher diversity in the whole world.



- i. The **frogmouth** may look like an owl, but if you look carefully at the beak, it is flattened sideways.



- j. Most people know that the **Philippine Eagle** is found in Mount Apo and its nearby mountains in Mindanao. However, it is also found in Samar, Leyte, and Sierra Madre in Luzon. The first Philippine Eagle specimen was discovered only in 1896, late into the Spanish rule, and in Samar, not in Mindanao. Unfortunately, the specimen got burned on its way to the British Museum. That is why we got to learn more about it only in the past few years.



- k. We have different kinds of **frogs**, but we are more familiar with the **marine toad**. It was introduced from Hawaii in the 1930's to solve the infestation problem caused by sugar beetles in the sugar plantations. In Hawaii, marine toads ate beetles, so the Philippines imported these frogs, and the rest is history.



- l. We have 257 species of **reptiles**, such as **iguanas** and **chameleons**.



- m. Our country has 1,000 different species of **orchids**, 800 of which are endemic. The **vandas**, which are famous from Thailand, actually originated from the Philippines. Yet the **vanda sanderiana**, first found in Mt. Apo, is now extinct in the wild. It is no longer found in its natural environment, but in orchards.



- n. We have twelve (12) species of the **pitcher plant**, half of which are endemic to the Philippines.



- o. The **rafflesia** is the biggest flower in the world, and the biggest of all is found in Borneo. I thought we had only two (2) species of Rafflesia, but so far I have already found four (4) species. It is a parasitic plant whose host plant is from the family of grapes. It cannot be seen because it has neither roots nor body. It is buried deep inside the host plant and emerges only when it is time for it to flower.

4. Geological History

We are so rich in biodiversity and one reason for this is our geological history. We got this data from the Southeast Asia Research Group of London University, led by Robert Hall. In 1995, they were doing oil exploration in Southeast Asia for an oil company and found a data on the history of the Philippines fifty (50) million years ago. At that time, there was no “Philippines” yet; the only parts or places present were Mindoro, Palawan, Zamboanga Peninsula, Bicol, Samar, half of Leyte, and

part of Eastern Mindanao. Fifty (50) million years ago, these places were just geological rock units, and not shaped like they are now.

Five (5) million years thereafter or forty-five (45) million years ago, the island of Luzon emerged. So, literally, Mindoro, Palawan, Zamboanga Peninsula, etc., as mentioned above, are older than Luzon. The rest of Visayas and Central Mindanao came next. It was only five (5) to six (6) million years ago that the last bits of the Philippines emerged, including Western Mindanao.

Now, we were told in our primary school years that the Philippines was connected to mainland Asia by land bridges. At that time, it was the most correct information, but now we know that it is no longer true. The only part connected to mainland Asia for a short period of time was Palawan. And the last time that Palawan was connected to Borneo was about 180,000 years ago. That partly explains why Palawan shares about 40% of its biodiversity with Borneo. The rest of the Philippines, volcanic in origin, emerged literally from the ocean floor.

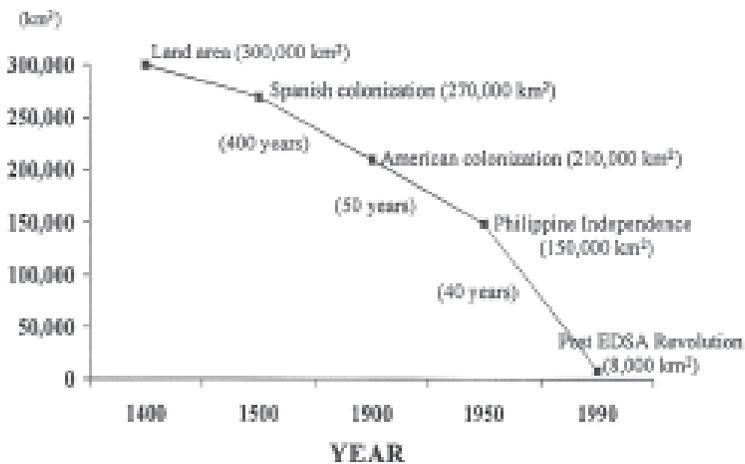
During the last ice age, we did not experience ice, and Palawan was no longer connected to Borneo. When the water evaporated from the sea, it was dumped at the northern latitudes as ice. As the sea water evaporated, many of its parts became dry land. So one could literally walk from Botswana or the Calamanes to Malaba because there was no water separating them. The water that separated them evaporated. Here, in the Philippines, one could literally walk from Ilocos to Catanduanes because of the dry lands that were exposed. You could walk from Bataan to Cavite since there was no Manila Bay at the time. This also partly explains why the tarsier and flying lemur are only found in Bohol, Leyte, and Samar. At that time, these provinces were connected by land. It also explains why Cebu, despite being very near to Bohol and the rest of the Visayan Region, does not have a

tarsier: the channel dividing Bohol and Cebu was so big, and the tarsier could not swim.

Another reason for our rich diversity is the elevation, climate, and rainfall in our mountainous regions. Declining temperatures and increasing rainfall in mountainous regions give rise to three (3) major types of rainforest – mossy forest, mountain forest, and lowland forest – each with a unique set of plants and animals.

C. Biodiversity Crisis

We are very rich in biodiversity, but what is happening to our forests? By the time the Spaniards came, we were down to 90% forest cover. Then we lost around 6 million hectares over 400 years. By the time we got our independence, we lost another 6 million hectares. Thus, in 50 years, we lost the equivalent of 400 years. At the turn of the 20th century, when the Americans started to rule in our country, we had about 70% forest cover, with only about 3% patches. But by the end of the 20th century, our forest cover was down to about 18.8%, and almost all our forests are wiped-out already. This is particularly true of the Visayan region, with the exception of Samar.



Extent of Original Forest Cover in the Philippines

And it is because of industrialization. From Philippine independence to the first Edsa Revolution, we lost 14.2 million hectares of forest cover. We lost more forests during Filipino rule than the combined Spanish and American colonial rules! President Manuel L. Quezon remarked, when he campaigned for Philippine Independence, that he would rather see the Philippines run like hell by Filipinos than like heaven by Americans. This is, indeed, the hell that we have brought to ourselves.

Now, if we go to another level of analysis in terms of destruction, there are twenty-seven (27) biodiversity hotspots, in the world:

- | | |
|-------------------|----------------------|
| 1. Belize | 15. Madagascar |
| 2. Bolivia | 16. Mexico |
| 3. Botswana | 17. New Caledonia |
| 4. Brazil | 18. Panama |
| 5. Colombia | 19. Papua New Guinea |
| 6. Costa Rica | 20. Peru |
| 7. Côte d' Ivoire | 21. Philippines |
| 8. Ecuador | 22. Solomon Islands |
| 9. Fiji | 23. South Africa |
| 10. Ghana | 24. Suriname |
| 11. Guatemala | 25. United Kingdom |
| 12. Guyana | 26. United States |
| 13. Indonesia | 27. Venezuela |
| 14. Japan | |

We qualify as a biodiversity spot because most of our forest cover is degrading. Moreover, of the ten (10) global marine biodiversity hotspots identified, we are number one! This is such a big loss because we are known to have 500 of the 800 species of coral reefs in the world. Thus, although we are the top megadiversity country on a per unit area basis, we are also the hottest of the hotspots on a per unit area basis!

We have a total of 1,139 species of amphibians, reptiles, birds, and mammals. As I have mentioned earlier, almost half of these, or 555 (49%), are endemic or found only in the Philippines. Now, 128 of the 555 (23%) endemic species are threatened with extinction. You might think that 23% is low, but the scary part is that this comprises species endemic to the Philippines.

Diversity, Endemism and Conservation Status of Philippine Wildlife

Ma or Ta a	No of Species	No of Endemic Species	Endemic Species	No of Threatened Species	No of Threatened Endemic Species
Amphibians	101+	79+	78%	24	24
Reptiles	258+	170+	66%	8	4
Birds	576+ ¹	195+ ¹	34%	74	59
Mammals	204+ ^{1,2}	111+ ^{1,2}	54%	51	41
Total	1,139+ ^{1,2}	555+ ^{1,2}	49%	157	128

Legend: + Includes new species: 38 amphibians, 35 reptiles, 3 birds, and 16 mammals

¹ Includes rediscovered species

² 22 species of dolphins, whales, and *dugong*

However, a very interesting fact is that we are still discovering new species. These discoveries have been made only in the last fifteen (15) years when interest in biodiversity began again. The point is that despite the destruction, we are still finding new species. Imagine what we could have discovered before this destruction came about. These discoveries include: thirty-eight (38) new species for amphibians, thirty-five (35) for reptiles, three (3) for birds, and sixteen (16) for mammals. Do you now that with just one new discovery for the whole world per year and the scientist

would be already very happy? That is why scientists all over the world are eager to come to the Philippines. The chance of finding new species here is very high, despite the destruction of forests and increasing number of endemic species threatened with extinction.

As for our marine ecosystem, only 5% of our coral reefs remain in excellent condition. We lost 80% of our mangroves in the past seventy-five (75) years and 50% of our sea grass beds in the last fifty (50) years. But then, these are data way back in 1980 or twenty-three (23) years ago. At that time, there were enough funds to do the research, unlike these days.

III. PREDICTIONS

Because we are the hottest of the hotspots, the following are predicted:

A. Environmental Collapse

We are going to be the first country in the world that will experience environmental collapse. Environmental collapse happens when the environment stops providing services that it normally gives, the most important of which are cleansing the air and providing fresh water. Some people say that it is just a prediction and will not happen. But just a year ago, Cebu fought with Bohol for water. Cebu wanted to pipe water from Bohol. Is this not an evidence already of environmental collapse? Cebu, which was self-sufficient in water twenty (20) to thirty (30) years ago, now needs water from a nearby province. If you shut down both South Luzon expressway and North Luzon expressway, then turn off Angat Dam, guess what will happen to Metro Manila within three (3) days? Everyone will stink.

B. Extinction Spasms

We are also going to be the first country in the world that will experience extinction spasms. Extinction spasms happen when not only single species disappear, but groups of species that are interdependent on each other. Some people say that it is alright to lose the Philippine Eagle. After all, it is just one specie. However, in extinction spasms, all other species that are dependent on the Philippine Eagle will also disappear.

An analogy is the airplane. The airplane is made up of metals held together by nuts and bolts that are welded together. If one of the nuts pops out while the plane is flying, what will happen? The plane will still be able to land because the engineers followed a principle from nature – the system of redundancy. For every bolt, there are two (2) or three (3) bolts welded behind it. What happens when all the nuts and bolts pop out at the same time? The plane will crash.

C. Linden's and Terborg's 2050 Predictions

Two publications – Eugene Linden's *The Future in Plain Sight: Nine Clues to the Coming Instability* (1998) and John Terborg's *Requiem for Nature* (1999) – made the conclusion that the Philippines is damaged beyond the point of no return. Of course, we have to disagree because we still have a small window of opportunity before we reach the point of no return. However, we have to agree that their analysis is correct, but again, not their conclusion. In the year 2050 or forty-seven (47) years from now, the authors predicted the following for the Philippines:

- I. Most of the remaining forests will be cut down, and as few as 30% of plant and animal species will survive.

2. Mudslides flowing over denuded fields and silt washing into rivers and lagoons will destroy fisheries. Actually, this is already happening.
3. There will be longer and more vigorous typhoon season, which will play havoc with rice crops. Again, this is already happening and the Department of Agriculture usually blames El Niño and La Niña, which is partly correct, but not entirely so. Think about this, how come twenty (20) to thirty (30) years ago, we did not care about El Niño and La Niña when these are natural phenomena? It is because they have been occurring since then, but it was only in the last fifteen (15) years that we have felt their impact. Why is this so? We have lost our forests. Forests protect us. Not only do they hold the water, but they also serve as a blanket and an umbrella that protect us from elements like El Niño and La Niña. So, next time, if somebody blames El Niño and La Niña, please correct them. What we need to do is improve our forest cover to reduce the impact of El Niño and La Niña.
4. Guerilla warfare, disease, and hunger will eventually drive down the birthrate so that by 2050, the population will sink to 55 million, 25% lower than it is now. Right now our population is around 82 million. Then, by 2035, we will double up to 150 million. Many people will die – not at the same time, but because of starvation. Life will be very difficult. The scary part about this is that it is happening now. We do not have to wait for fifty (50) years.

Again, we disagree with Linden's and Terborgh's conclusion. It is a dangerous proposition that may lead to write-offs. In the international community, there are groups advising others to not

give money to the Philippines because it is going to self-destruct anyway. We must remember that new species are still being discovered, and species thought to be extinct are being rediscovered. So we have to campaign and firmly assert to the international community that there is still hope in the Philippines because we still have this small window of opportunity before we reach the point of no return!

IV. PHILIPPINE BIODIVERSITY CONSERVATION PRIORITY-SETTING PROGRAM (PBCPP)

A. Priority Areas

How do we deal with our biodiversity crisis? We started with the setting of priorities. In our project, the Philippine Biodiversity Conservation Priority-Setting Program (PBCPP), we identified 206 priority areas, 170 of which are terrestrial and 36 marine. 106 of these areas are extremely high priorities, 72 very high, and 13 high priorities. PBCPP, in particular, consists of Area-Based Conservation Program and Species Extinction Prevention Program. We are losing our biodiversity and factors, both direct and indirect, as well as socio-economic and political pressures, impinge on it.

B. Partnerships and Alliances

The next critical step we did was form alliances and work with a lot of organizations and a broad spectrum of strategic stakeholders sharing common conservation goals. I think this is also where the Judiciary can come in. We worked with 300 individuals from 100 local and international institutions in the government, civil society, the academe, and the private sector, such as:

- I. Asian Development Bank (ADB)

2. ASEAN Regional Center for Biodiversity Conservation (ARCBC)
3. Center for Applied Biodiversity Science (CABS)
4. Conservation International Philippines (CIP)
5. Critical Ecosystem Partnership Fund (CEPF)
6. Department of Environment and Natural Resources Protected Areas and Wildlife Bureau (DENR-PAWB)
7. Environmental Science for Social Change, Inc. (ESSC)
8. First Philippine Conservation, Inc. (FPCI)
9. First Philippine Holdings Corporation (FPHC)
10. Foundation for the Philippine Environment (FPE)
11. Haribon Foundation
12. Intel
13. Philippine Council for Agriculture, Forestry and Natural Resources Research and Development
14. Philippine Council for Aquatic and Marine Research and Development (PCAMRD)
15. Philippine National Museum (PNM)
16. Siemens
17. United Nations Development Program (UNDP)
18. University of the Philippines Center for Integrative and Development Studies (UP-CIDS)
19. United States Agency for International Development (USAID)
20. Wildlife Conservation Society of the Philippines (WCSP)

C. Roadshow to Promote PBCPP

Another step that we have undertaken is a roadshow to promote the results of the PBCPP by raising awareness through lecturers and attendance at the:

- a. 50th Anniversary of the Philippine Wood Producers' Association;
- b. Senate Committee on the Environment and Natural Resources;
- c. National Protected Areas Congress;
- d. Regional Meeting of the Asia Pacific Federation of Environmental Journalists;
- e. National and Regional Assemblies of the Foundation of the Philippine Environment's Partners and Regional Advisory Council;
- f. National Convention of the Biology Teachers' Association;
- g. National and Regional Meetings of the Philippine Council for Global Peace and Education; and
- h. Meeting with the Supreme Court *En Banc*.

We intend to continue the roadshow on the promotion of PBCPP's results. We will also conduct trainings on how to use PBCPP's results

D. Other Strategic Actions

- a. Harmonize research with conservation needs;
- b. Strengthen the Protected Areas System;
- c. Institutionalize innovative, but appropriate, biodiversity conservation approaches;

- d. Institutionalize monitoring and evaluation systems of biodiversity projects;
- e. Develop a national constituency for biodiversity conservation in the country.

E. Important Facts to Consider in Biodiversity Conservation Priority-Setting

- a. Most of the remaining 18+% (or 5.5 million hectares) of our forests cover is mostly montane and mossy forests (6% to 7%) and secondary forests (11% to 12%);
- b. Lowland forests have disappeared in most parts of the country and are the most threatened;
- c. Each island needs at least 40% forest cover to sustain ecological functions, and Cebu has less than 1% forest cover, Negros less than 4%, and Panay less than 6%;
- d. Smaller islands, such as Camiguin, are more prone to extinction than larger islands, such as Luzon.

F. Challenges

- a. Look for protection at the landscape/regional level;
- b. Strengthen alliances and partnerships;
- c. Be more assertive in engaging other stakeholders in a dialogue;
- d. Utilize all tools available;
- e. Make actions necessary and sufficient (commensurate to the scale of the problem);
- f. Remember that local successes are not enough.

If our adversaries are ruthless in destroying our biodiversity, we should be equally as grim and determined to defend it. And this is where the Judiciary can be an ally.

V. CONCLUSION

If we do not do anything, our forest cover will be down to about 6.6% in ten (10) years. And if we do something now, it does not mean that there will be regeneration right away. There will be a lagtime like ten (10) years before we see regeneration. Our situation is like standing in front of a boulder rolling down Kennon Road. We cannot just push it back because we lack the strength to do so. Therefore, it is the momentum that we must try to stop. However, once we have gained enough strength, then we can push it back.

For the Judiciary, this is my final message: If the Church has a preferential option for the poor, then the Judiciary should have a preferential option for the environment. When rendering judgment and there is reasonable doubt, then give the benefit of the doubt to the environment.

No single individual or organization can make the campaign to save the Philippine biodiversity hotspots successful! Nobody said that saving the hottest of the hotspots is going to be easy. In our fight to save Philippine biodiversity, everything counts: every species, every hectare, every second.

The Healing of Mother Earth*

*Professor Antonio A. Oposa, Jr.***

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* Delivered at the *Judges' Forum on Environmental Protection: Philippine Environmental Law, Practice, and the Role of Courts*, on August 13, 2003, at the PHILJA Development Center, Tagaytay City.

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I. INTRODUCTION

Let me begin with a little story.

Once upon a time in faraway land, there lived a King. In the kingdom, the land was rich and life in the rivers and the seas was plentiful. Wildlife and farm animals – horses, cows and carabaos – were in great abundance and the people were happy.

The King liked to roam his kingdom. But when he traveled, his feet would hurt with the sticks and stones that littered the roads. He struck upon an idea. He ordered his subjects to slaughter all the cattle in the land and use the hide to line the roads.

His subjects dutifully obeyed the royal decree. But after killing many of their horses, cows and carabaos, the subjects began to see the flies swarm over the rotting meat, and the waters of the rivers and the streams became spoiled with the leachate, and even the air became fouled.

They began to realize that if they would kill all their cattle just for the hide, time would come when they would not have the animals to help them in their farming chores. They began to complain to the King and were almost up in arms. They said that at the rate it was going, there

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would be no cattle left for them and for their children to eat and to farm with.

It is said that necessity is the mother of invention; if so, then crisis must be the father. Upon seeing the citizenry in near revolt, the Kingdom was in a crisis of governance. As we know, the Chinese character for crisis depicts two characters: danger and opportunity. Seeing the danger, the King also saw the opportunity. He then stood up from his throne, went to the street, pulled out his knife and cut a swath of leather. With it, he wrapped his feet.

That, my friends, is said to be the story of the first shoe. It may well also be the story of natural resources conservation. We should not use up everything today because there is tomorrow and our children to think about.

II. THE SPECIES *HOMO SAPIENS SAPIENS*

Before I proceed, may I ask you these questions:

What is the most intelligent animal?

Which animal has cleaner sanitary habits, a pig or a man?

The question may appear to be rhetorical at first sight and the answers may be quite obvious. To the first question you have answered – Man. To the second question, you have answered – of course, Man.

But if we proceed to ask the next question as to who says so, the answer would also be Man. Is our claim to intelligence and cleanliness, therefore, not self-serving?

As you may know, our species is no longer simply called *Homo Sapiens*, but *Homo Sapiens Sapiens* (“*sapiens*” being the Latin

word for “wise”). Our ancestor, the species that walked this earth some 200,000 to 500,000 years ago, was known as the *Homo Sapiens*. It had a brain with an average weight of 1,200 cubic



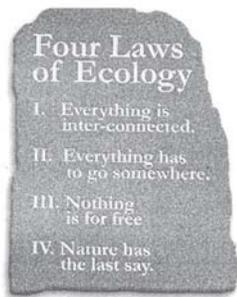
centimeters (cc). Since 200,000 years ago to the present, the species has evolved into what now has an average brain weight of 1,350cc, a presumably more intelligent and doubly-wise creature called the *Homo Sapiens Sapiens*. After reading this, you yourselves will have to answer the question of whether we are, in fact, a wise animal.

III. THE FOUR LAWS OF NATURE

To provide a backdrop of the discussion, allow me to share with you a few basic laws, not laws passed by man, but the unchangeable Laws of Nature.

The water cycle illustrates these laws all too clearly. Water, for example, interconnects everything and anything that lives.

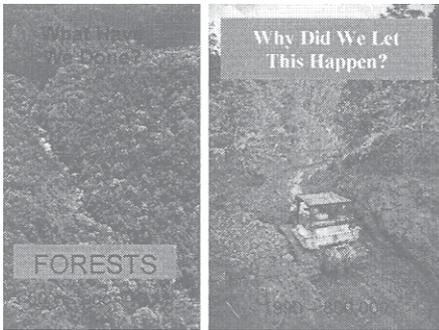
From the clouds to the rain, to the waters in the rivers and the aquifers, the waters that flow all the way to the sea, and back again to the clouds, water permeates all life.



Water has to go somewhere. If it is not absorbed by the roots of the trees, it will loosen up the soil and carry the soil as erosion to the rivers,

overflow as flood, and with the mud known as silt, cover and kill the coral reefs and other marine lives in the coastal areas.

We have cut down our forests and abused nature for so long and thought we could get away with it. But nothing is for free. At one time or the other, we will have to pay and the longer we wait, the higher will be the price. In Cebu, we have deforested our mountains to the ZERO forest cover it is now, and thought there was no price to pay. But only to find out that our water tables are falling and salt water is intruding into the aquifers. Let us take this example: the chloride (salt) content in water allowable for intake into the human body is only 200 milligrams (mg) per liter. The underground water in Fuente Osmeña, a small park in the uptown of the city some 2.5 kilometers away from the coast, contains an astounding 500 mg per liter!



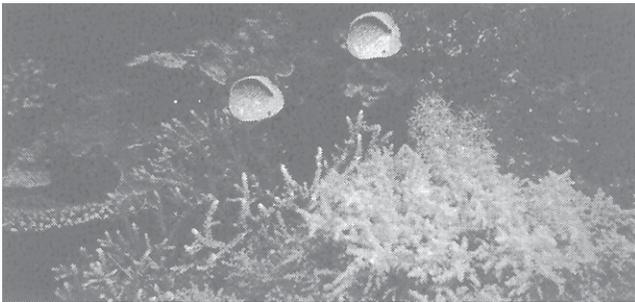
Nature will have the last say. In the early 1990s, we were shocked to see thousands of bodies litter the streets and the beaches of Ormoc because of a flashflood that lasted for only twenty (20)

minutes. I was there forty-eight (48) hours after the incident and saw all those bodies and thought that there was nothing ruthless, nothing malicious and nothing brutal in all these deaths and bloated bodies. It was perhaps only Nature's way of making herself heard.

IV. THE WEALTH OF THE PHILIPPINES

We have all heard how rich our country was, I repeat, “WAS.” Let us review some of our wealth:

- There are 201 mammals, 116 of which are endemic or unique to the Philippines and, therefore, found nowhere else in the world.
- Of the 500 known species of corals in the world, the Philippines have 488 of them, 240 of which are likewise endemic and scattered. We are part of the incredibly wealthy Sulu-Celebes Marine Triangle. In fact, in terms of marine wealth, we are known to have the richest coral reefs **in the world!**
- In the mid-1900s, it was estimated that we had about 2.7 to 3.0 million hectares of coral reefs in the country.



- Our seas have six (6) of the seven (7) known varieties of marine turtles.
- We have a coastline of some 18,000 kilometers, longer than that of the United States.
- At the turn of the century, we had about 500,000 hectares of mangrove forests. As you know, mangroves are the breeding grounds and nursery of much of aquatic life.

- Our tropical forests were once home to the second largest eagle in the world, the Philippine Eagle, a bird with a habitat range of some 5,000 hectares. What is interesting about this animal is that it is monogamous (a trait better than some of the highest public officials of this country).
- Our forests teem with plant and animal life. In one study conducted on the wealth of our forests, it was revealed that the forest of Mt. Makiling National Park alone, an area of only 4,000 hectares, contains more species of wooded plants than the entire continent of North America.
- In the 1600's, it was estimated that our land area of 30 million hectares contained as much as 27.5 million hectares of forests. As late as 50 years ago, we had about 16 million hectares of tropical virgin forests left. Our country was also world famous for the Philippine mahogany.

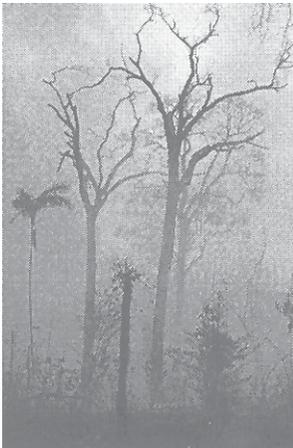


- We have about 10,000 kinds of plants and about 50% of them are endemic. As you may also know, more than 50% of medicines now sold in the market are derived from plants.
- We are home to some 556 species of birds, 183 of which are endemic.
- Of the 77 known migratory birds in the world, 48 of them stop by Cebu's Olango Island on their way to the south from China and Siberia during winter to "refuel" for food.

V. WHY DID WE LET THIS HAPPEN?

Having seen our wealth, let us now examine what we have done to these wondrous gifts of Nature:

- Of the three (3) million hectares of coral reefs in our seas two generations ago, a study conducted in 1990 revealed that only 5% remains in excellent condition, and the rest are in various state of degradation – caused by dynamite fishing and other destructive fishing methods.
- Some 16 million hectares of our forests covered more than half of the land area of the country barely 50 years ago. In 1988, with the use of satellite photography, it was determined that only 800,000 hectares remained of the country's old-growth forests, or less than 3% of our land area.
- This tragedy is reflected in the decline of the population of our national bird, our flagship species, the Philippine Eagle. From a population of some 10,000 or so at the turn of the century, we only have about 30 pairs left in the wild and about 26 individuals in captivity.



- Our mangroves are in no better shape either. Of the 500,000 hectares we had at the turn of the century, it is now down to only 100,000 hectares, and with only about 20,000 of its old growth.
- Our fish productivity has been reduced by as much as 80% to 90% because of the abuse we have heaped on our coastal resources. Since everything has a price, and

ecology and economics link up too closely, this comes back to us in the form of more expensive fish.

- Our wasteful ways is such that the inhabitants of Metro Manila alone discharge about 7,000 to 8,000 tons of solid wastes everyday. Only about 4,000 tons is collected and the rest . . . well, since everything has to go somewhere, they end up in the *esteros*, rivers and all over the streets of the Metropolis. But this is not all.



- Metro Manila discharges and dumps into Manila Bay a total of five (5) million gallons of raw and untreated sewage every single day, and yet we get our food from the sea, and some from Manila Bay.

After seeing this, which animal has cleaner sanitary habits: a man or a pig? I have yet to see a pig pooh in the source of its food.

Let us ask ourselves this simple question: If we are so intelligent and have become doubly wise, in fact, the animal who claims to be the most dominant specie on Earth – why did we let this happen? And in a mere wink of the eyelashes of time?

VI. A CRISIS OF CONCERNS: WHAT CAN YOU DO?

Those of you who like to hike up mountains know only too well the anguish of seeing denuded lands and deforested mountains.

Those of you who scuba dive or who go fishing know the meaning of marine resource depletion and the pain of seeing dynamited coral reefs that have become underwater deserts.

Those of you who are plain citizens see the dirt that we throw away into the streets, the dead rivers, the polluted seas, and the polluted air we breathe.

The passage of laws is not the answer. We have more than 100 laws in the statute books relating to the environment. And yet, Congress still continues to pass laws, if only to justify its existence. Who was it who said that if “pro” is the opposite of “con,” then progress is the opposite of Congress?

Neither is government the answer. Government can take the lead, but the answer lies in each and every one of us. When we do not throw things away from the windows of our cars, we make a contribution to cleanliness. When we report leaking faucets and toilets in the hospital or hotels where we work or stay, we help conserve water. When we have our diesel vehicles tuned up regularly so they do not belch smoke in the streets, we help clean up the air or at least prevent it from being polluted. When we bring our own plastic bags to the supermarket, we help reduce the number of trash that must be thrown away. When we take time to write to our local leaders to express our concern and urge action on environmental causes, we help mobilize political will.

There are a thousand more things than can be done measured only by the level of common sense. The long and the short of it is that if man is the problem, then man must also be the solution. Otherwise, man will himself disprove the very quality which he claims to set him apart from the other animals – that of being wise.

VII. SHALL WE BE KING?

As we started with a story, allow me to end with another little story:

Once upon a time in a faraway land, there lived a King. As he was growing old, the King decided to hand the kingdom over to the Prince, but wanted to make sure that the Prince was ready to assume the throne.

To prepare him, the King directed the Prince to live in the forest for six (6) months so that he may learn the lessons of wise governance. The brash young Prince, of course, found the order ridiculous, but since it was the order of the King, his father, he had to do it anyway. After six (6) months, the Prince returned and the King asked him what he had learned from the forest.

The Prince said: “Well, I saw nothing but the trees, suffered the long nights of cold and loneliness, and could hardly sleep with the noise of the hooting of the owls at night. In the day, I could hear nothing but the noise of birds, and all throughout, I had to endure the stench of rotting leaves on the forest floor.”

The King was disappointed that his son had learned nothing. So he ordered the Prince to live again in the forest for one more year. Grudgingly, the son angrily mounted his horse and sped off to the forest once more.

One day, after almost one year of solitude and in the depth of his quietude, the Prince lied down beside a stream and looked at the sky. Watching a shaft of sunlight through the canopy of the forest, the Prince suddenly stood up, quickly mounted his horse and galloped back to the Palace. There, at the King’s feet, the Prince humbly knelt and said, “Father, I have learned.”

Father, I have learned from the
sight of the wind
As it caressed the branches and the leaves
And enveloped me with its embrace.

I have listened and watched the
flight of the leaves
As they glided down their way
to the forest floor;
There to stay, and in death and decay,
Become the rich soil that nourishes the plants,
That in turn nourishes us.

I have danced with the birds
And joined them as they chased one another
In the great drama of flirtation,
of birth and of life.

I was never lonely even at night,
The owl and the crickets always
kept me company
With their nocturnal symphony.

The birds, lizards, the deers, and the boars
Have all become my friends;
I have fed them from my hand
In the supreme gesture of oneness.

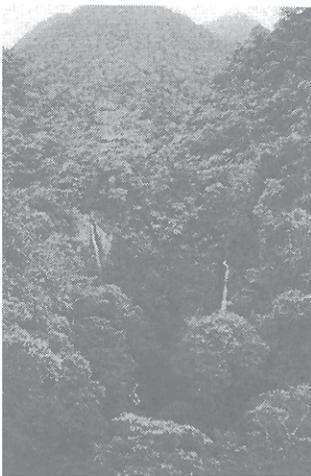
Once, I even saw a young monkey fall
and hurt himself;
I picked him up, took care of him, nursed him
back to health,
And thereafter returned him to his mother.
Since then, both have become my friends
and frequent companions.
Father, these and more I have learned
from the forest.

Pleased with the achievement of his son, the King
pulled out his writing quill and, on a parchment paper,
wrote a royal proclamation. With the stroke of a pen, he

decreed that the forest shall forever be protected, and that forever, the animals and the plants shall be declared as friends of the citizenry, and that the forest be kept in its original state as monument to his son – the new King.

VII. HEALERS, HEAL THY MOTHER

For all of humanity's pretensions to wisdom, the physical evidence shown this past century reveals otherwise. Like the prince at our story, we do not yet appear to be ready to assume the throne of the most dominant species on Earth. Given the power of our minds, we have done nothing but misuse and abuse the very resources that make our life possible. Our great Father – He who created the Earth and the Universe – has made us His Trustees and Stewards. But what have we done? The unquestionable physical evidence clearly proves that we have violated that trust and have criminally misappropriated the things entrusted to us.



It will only be when we have learned to lie still beside the stream and listen to the gurgle of its waters, to look at the wind and feel the pleasures of its embrace, to respect the Earth and learn, as Ralph Waldo Emerson said, that “[w]e are but a part and parcel of all things,” that we can begin to take our rightful place in the world of plants and animals. It will only be when we are able to delight at the sight of a bird in flight, to watch the heavens and humbly realize that we are but a puny and

insignificant part of Creation, then and only then will we be ready to participate in, and partake of, the great extravagance of life. Then and only then will we be truly deserving to be called *Homo Sapiens Sapiens*. Then and only then can we, lawyers, become more relevant to human society at large, and with Law as a thinking profession, make our little contribution to humanity's role as the thinking part of Nature.

Maraming salamat po at mabuhay po kayong lahat.

Department of Environment and Natural Resources (DENR)*

*Undersecretary Renato A. de Rueda***

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* Delivered at the *Judges' Forum on Environmental Protection: Philippine Environmental Law, Practice, and the Role of Courts*, on August 13, 2003, at the PHILJA Development Center, Tagaytay City.

** Undersecretary Renato A. de Rueda was appointed as DENR's Undersecretary for Field Operations on February 10, 2003. His exposure to Forestry Laws started in 1979 with his appointment as District Forester at the Bureau of Forestry/ Bureau of Forest Development. He is a member of the Society of Filipino Foresters, Society of American Foresters, International Society of Tropical Foresters, Haribon Foundation for the Conservation of Natural Resources, and the Asian Wetland Bureau. He received the Outstanding Professional of the Year in the Field of Forestry award from the Professional Regulations Commission in 2003, and the Most Outstanding Alumnus in Government Service from the University of the Philippines in 1990. He obtained his Masteral degree in Public Management, with Honors, and his Bachelor of Science degree in Forestry at the University of the Philippines.

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 - b. Public Affairs Office
 - c. Special Concerns Office
 - d. Pollution Adjudication Board (PAB)
 - e. Mines Adjudication Board (MAB)
2. Offices of the Undersecretaries
 - a. Management and Technical Services
 - b. Field Operations
 - c. Planning and Policy Office
 - d. Land Management Office
3. Offices of the Assistant Secretaries
 - a. Muslim Affairs Office
 - b. Legislative Liaison and Administrative Legal Services
 - c. General Legal Services
 - d. Foreign-Assisted and Special Projects Office

B. Bureaus

- I. Staff Bureaus
 - a. Forest Management Bureau
 - b. Land Management Bureau
 - c. Protected Areas and Wildlife Bureau
 - d. Ecosystems Research and Development Bureau
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 - a. Mines and Geosciences Bureau (MGB)
 - b. Environmental Management Bureau (EMB)

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1. P.D. No. 705, Forestry Reform Code of the Philippines, As Amended	
2. P.D. No. 953, Requiring the Planting of Trees in Certain Places and Penalizing Unauthorized Cutting, Destruction, Damaging and Injuring of Certain Trees, Plants and Vegetation	

3. R.A. No. 7161, An Act Incorporating Certain Sections of the National Internal Revenue Code of 1977, As amended, to P.D. 705, As Amended and Providing Amendments Thereto by Increasing the Forest Charges on Timber and Other Forest Products
4. E.O. No. 277, Amending Section 68 of P.D. 705

B. Lands

1. C.A. No. 141, Public Land Act
2. R.A. No. 9176, An Act Extending the Period Until December 31, 2020 for the Filing of Applications for Administrative Legalization (Free Patent) and Judicial Confirmation of Imperfect and Incomplete Titles to Alienable and Disposable Lands of the Public Domain, Amending for this Purpose C.A. No. 141 As Amended, Otherwise known as the Public Land Act.

C. Mines

1. R.A. No. 7076, People's Small-Scale Mining Act
2. R.A. No. 7942, Philippine Mining Act

D. Protected Areas and Wildlife

1. R.A. No. 7586, National Integrated Protected Areas System (NIPAS) Act

E. Environment

1. P.D. No. 984, Pollution Control Law
2. P.D. No. 1151, Philippine Environmental Policy
3. P.D. No. 1152, Philippine Environmental Code
4. P.D. No. 1586, Establishment of the Environmental Impact Statement (EIS) System
5. R.A. No. 6969, Toxic Substances and Hazardous and Nuclear Wastes Control Act
6. R.A. No. 8749, Philippine Clean Air Act
7. R.A. No. 9003, Ecological Solid Waste Management Act

F. Related Laws

1. R.A. No. 8371, Indigenous Peoples' Rights Act
2. R.A. No. 8550, Philippine Fisheries Code
3. R.A. No. 6657, Comprehensive Agrarian Reform Law

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I. INTRODUCTION

Greetings! When I was invited to be one of the discussants in this forum, I immediately accepted because this gives me an opportunity to present the Department of Environment and Natural Resources or the DENR, and the realities we encounter in carrying out our mandate. Likewise, we consider activities such as this as a chance to campaign for more support in our efforts to protect the environment and conserve our resources.

I anticipate an interesting exchange of ideas and hope that we, in the Executive branch, and you, in the Judiciary, learn the basic roles that each of us play in environmental protection.

II. ROOTS

The Department of Environment and Natural Resources (DENR) had its beginnings in the old Department of Agriculture and Natural Resources (DANR). On May 17, 1974, the DANR was split into two departments through Presidential Decree (P.D.) No. 461 in recognition that natural resources and agriculture were broad and diversified concerns.

The Department of Natural Resources (DNR) was mandated to ensure the conservation, optimal utilization, and programmed exploitation of the country's natural wealth. With the shift to a parliamentary form of government in 1978, the DNR became the Ministry of Natural Resources (MNR).

On June 30, 1984, by virtue of Executive Order (E.O.) No. 967, the management of the fisheries sector, through the Bureau of Fisheries and Aquatic Resources (BFAR), was transferred from the MNR to the Ministry of Agriculture.

The radical change brought about by events in February 1986 altered the character of the MNR. Then President Corazon Aquino issued on January 30, 1987, Executive Order No. 131, creating the Department of Environment, Energy and Natural Resources (DEENR). E.O. 131 was subsequently suspended until a clear policy on energy was reached.

III. REORGANIZATION ACT

It was on June 10, 1987 that the DEENR was reorganized pursuant to Executive Order No. 192, and renamed as the Department of Environment and Natural Resources (DENR). That is the reason why we celebrate DENR Day every June 10.

A. Mandate

DENR Memorandum Circular No. 03, Series of 1989, or the Adoption of the Revised DENR Mandate and Mission, provides:

The DENR is the primary government agency responsible for the *sustainable development* of the country's natural resources and ecosystems.

Sustainable development is a process of change to meet the needs of the people without decreasing the potential for meeting their future needs, the needs of other societies, and those of future generations.

B. Mission

DENR's mission is to promote the well-being of the Filipino people through:

1. Sustainable development of forest resources;
2. Optimal utilization of lands and minerals;
3. Social equity and efficiency in resource use; and
4. Effective environmental management.

C. Objectives

1. Sustainable development of ecologically critical uplands;
2. Protection of the remaining natural forests;
3. Rehabilitation of denuded and marginal areas;
4. Determination and management of optimal land uses;
5. Intensification of mineral exploration and development, including offshore areas;
6. Establishment of community-based forestry;
7. Survey, allocation, and disposition of alienable or disposable (A or D) lands for the Comprehensive Agrarian Reform Program (CARP);
8. Rationalization of the disposition of public lands;
9. Delineation and management of mining areas;

10. Promotion of efficiency in natural resource-based industries;
11. Preservation of biological diversity;
12. Improvement of air and water quality; and
13. Generation of data and technologies for the proper understanding and management of natural ecosystems and their interactions.

D. General Functions

1. Formulate and implement the Department's policies, plans, and programs for sustainable development;
2. Support natural resource-based industries to promote countryside development;
3. Provide raw materials to meet increasing demands, and at the same time, keep adequate reserves for environmental stability;
4. Encourage and enhance the participation of local communities/government units and NGOs in the planning, development, and management of the environment and natural resources;
5. Regulate the exploration, disposition, and utilization of the country's environment and natural resources;
6. Conduct inventory, survey, and assessment of the country's environment and natural resources;
7. Provide a holistic approach to the control of environmental pollution by implementing reasonable and acceptable standards of environmental quality;

8. Establish an Integrated Protected Areas System; and
9. Create alternative energy sources of fuel wood.

IV. STRUCTURAL ORGANIZATION

Section 6 of Executive Order No. 192 prescribed the structural organization of the DENR, which consists of the Department proper, the staff offices, the staff bureaus, and the field offices.

On January 13, 1988, DENR Administrative Order (DAO) No. 01 further defined the structure of the DENR. The Chief Executive Officer of the DENR is the Secretary who has the authority and responsibility to carry out the mandates of the Department, discharge its powers, authorities, and functions, and accomplish its objectives. The Secretary shall be assisted by five (5) Undersecretaries and seven (7) Assistant Secretaries, and other officers in the discharge of his/her functions.

The DENR has undergone various organizational changes in its sixteen (16) years of existence, most of which accompanied changes in administration. Some changes were also promulgated by law. As part of the DENR's ongoing program to return to the prescribed structure per DAO No. 01, Series of 1988, Secretary Elisea G. Gozun issued DAO No. 31-2003, which officially institutes the present organization of the Department Proper.

The present set-up of the DENR Proper, also called the Central Office, consists of the following:

A. Offices

I. Offices of the Secretary

- a. Head Executive Assistant

- b. Public Affairs Office
- c. Special Concerns Office
- d. **Pollution Adjudication Board (PAB)**, which is composed of the:
 - i. Secretary as Chairman;
 - ii. Two (2) Undersecretaries designated by the Secretary;
 - iii. Director of the Environmental Management Bureau (EMB); and
 - iv. Three (3) others designated by the Secretary.

The PAB assumed the powers and functions of the Commissioners of the former National Pollution Control Commission, with respect to the adjudication of pollution cases. The EMB serves as Secretariat of the Board.

- e. **Mines Adjudication Board (MAB)**, which is composed of three members:
 - i. Secretary as Chairman;
 - ii. Undersecretary for Field Operations; and
 - iii. Director of the Mines Geosciences Bureau (MGB).

The MAB promulgates rules and regulations governing litigation and disposition of mining cases, and administration and disposition of appealed cases before the Board. The MGB acts as Secretariat of the Board.

2. Offices of the Undersecretaries

- a. Management and Technical Services
- b. Field Operations

- c. Planning and Policy Office
- d. Land Management Office

3. Offices of the Assistant Secretaries

- a. Muslim Affairs Office
- b. Legislative Liaison and Administrative Legal Services
- c. General Legal Services
- d. Foreign-Assisted and Special Projects Office

B. Bureaus

I. Staff Bureaus

- a. Forest Management Bureau
- b. Land Management Bureau
- c. Protected Areas and Wildlife Bureau
- d. Ecosystems Research and Development Bureau

2. Line Bureaus

These were formerly staff bureaus pursuant to E.O. No. 192, but have become line bureaus with the subsequent issuance of enabling laws.

- a. **Mines and Geosciences Bureau (MGB)** was transformed into a line bureau pursuant to Section 100, Chapter XVIII of Republic Act No. 7942, otherwise known as the Philippine Mining Act of 1995.

It consists of a Central Office and several Regional Offices. The Act provides for district and other offices,

but at present, we only have regional offices. The staff bureau created under E.O. 192 became the Central Office of the MGB, while the Mines and Geosciences Development Services created pursuant to DAO No. 41, Series of 1990, became the Regional Offices. The Regional MGB is headed by a Regional Director.

- b. **Environmental Management Bureau (EMB).** Through Chapter IV, Section 34 of R.A. No. 8749, otherwise known as the Clean Air Act of 1999, EMB was converted into a line bureau for a period of no more than two (2) years, unless a separate and comprehensive environmental management agency is created.

C. Field Offices

1. Regional Offices

Sixteen (16) Regional Offices were established in identified regional capitals, headed by a Regional Executive Director and assisted by four (4) Regional Technical Directors for each service.

2. Provincial Environment and Natural Resources Offices (PENROs)

A total of 74 PENROs were established in all provinces.

3. Community Environment and Natural Resources Offices (CENROs)

A total of 174 CENROs were established in strategically-located municipalities or cities based on necessity and the area that will be served.

Region	PENROs	CENROs
CAR	6	14
I	4	8
2	5	16
3	7	16
4A	5	10
4B	5	15
5	6	10
6	6	11
7	4	8
8	6	10
9	3	10
10	5	11
11	4	14
12	4	8
Caraga	4	13

D. Attached Agencies

The following agencies are attached to or are under the direct supervision of the Secretary:

- I. National Mapping and Resource Information Authority (NAMRIA)** provides the DENR and the government with map-making services. It is the country's central mapping agency, serving information and research needs. The NAMRIA Board of Governors consists of five (5) officials with rank of at least Undersecretary:

Chair: DENR

Members: Department of Agriculture (DA)

Department of Public Works and Highways
(DPWH)

Department of National Defense (DND)

Department of Transportation and
Communication (DOTC)

2. National Resources Development Corporation (NRDC), which is primarily responsible for promoting natural resources development and conservation through:

- a. Direct involvement in pioneering potentially viable product use, and marketing ventures or projects using new/innovative technologies and systems. Provided, however, that activities which compete with the private sector will be avoided, except in specific cases where the revenues of NRDC are earmarked for a specific local developmental or social service;
- b. Financing natural resources development projects undertaken by the private sector to improve their efficiency and competitiveness. To discharge these functions effectively, it is authorized to generate funds through debt instruments from various sources, and using innovative income-generating strategies.

The NRDC shall promote the enhancement of forest renewal rate, including the provision of incidental services, such as extension of assistance on equity/capital, credit line/facilities, marketing and management.

3. Laguna Lake Development Authority (LLDA) is primarily responsible for providing environmental management and promoting the development of the Laguna de Bay region.

4. **Other DENR offices** created through administrative authorizations in response to current thrusts are:
 - a. Coastal and Marine Management Office
 - b. Community-Based Forest Management Office

V. FUNCTIONS

A. Regional Offices

1. Implement laws, policies, plans, programs, rules and regulations of the DENR;
2. Provide efficient service and effective delivery of services;
3. Coordinate with Regional Offices of other departments, offices, agencies at the region, and local government units in the enforcement of conservation laws and regulations on natural resources, and in the formulation/implementation of programs and projects on natural resources;
4. Recommend and, upon approval, implement programs and projects on forestry, minerals, and land management and disposition;
5. Conduct a comprehensive inventory of natural resources in the region, and formulate regional short-term and long-term development plans for the conservation, utilization, and replacement of natural resources;
6. Evolve respective regional budgets in conformity with priorities established by the Regional Development Councils;

7. Supervise the processing of natural resource products, grade and inspect lumber and other wood-processed products, and monitor the movement of these products;
8. Conduct field researches for appropriate technologies recommended for various projects; and
9. Other functions as may be assigned by the Secretary.

B. PENROs/CENROs

1. Perform the functions of the defunct district offices (forestry, lands).

C. Forestry

1. Conduct reforestation and rehabilitation of poorly/inadequately stocked, open and denuded, logged-over areas/forest lands and watersheds, including improvement of grazing lands;
2. Implement community-based forest management activities;
3. Encourage establishment of economic-sized and forest-based processing plants;
4. Encourage and assist private landowners in the establishment of private forest plantations to augment supply of raw materials of wood-based industries and to enhance environmental protection; and
5. Promote the development of labor intensive and employment-generating reforestation, agroforestry, industrial tree plantations, tree-farms, and similar enterprises.

D. Lands

1. Survey, manage, and dispose alienable or disposable (A or D) lands of the public domain and other lands not under government agencies;
2. Reconstitute missing surveys and public land records, and verify and approve surveys submitted by other agencies and practitioners;
3. Establish land information systems needed for planning and general information; and
4. Formulate and implement a comprehensive land-use management plan.

E. Protected Areas and Wildlife

1. Establish, manage, and rehabilitate Integrated Protected Areas; and
2. Promote the conservation and preservation of genetic resources and biological diversities.

F. Research and Development

1. Undertake researches on natural resources, environmental quality, and ecosystems; and
2. Disseminate technology and information on the development, conservation, regulation, and proper use of the country's natural resources.

G. Mines and Geosciences Bureau (MGB)

The MGB is primarily responsible for the implementation of the Philippine Mining Act, pursuant to Section 100 thereof. It is authorized to:

1. Have direct charge in the administration and disposition of mineral lands and mineral resources;
2. Undertake geological, mining, metallurgical, chemical, and other researches, as well as mineral exploration surveys;
3. Confiscate, after due process, surety, performance and guaranty bonds after notice of violation;
4. Recommend to the DENR Secretary the granting of Mineral Agreements, and to monitor compliance by the contractor with the terms and conditions thereof;
5. Cancel or recommend cancellation, after due process, of mining rights, applications, and claims for non-compliance with pertinent laws, rules and regulations;
6. Deputize, when necessary, any member or unit of the Philippine National Police (PNP), *barangay*, duly registered and Department-accredited NGO, or any qualified person to police all mining activities;
7. Assist the EMB, under the DENR Central or Regional Offices, in the processing or conduct of Environmental Impact Statement (EIS) of mining projects; and
8. Exercise such authority vested by the Act.

VI. BASIC LAWS IMPLEMENTED BY THE DENR

To effectively carry out the Department's mandate and functions, we, in the DENR, are guided by national laws, the most basic of which are the following:

A. Forestry

I. Presidential Decree No. 705, Forestry Reform Code of the Philippines, As Amended (May 19, 1975)

- a. P.D. 705 adopts the following policies:
 - i. Multiple uses of forest lands shall be oriented to the development and progress requirements of the country, the advancement of science and technology, and the public welfare;
 - ii. Land classification and survey shall be systematized and hastened;
 - iii. Establishment of wood-processing plants shall be encouraged and rationalized; and
 - iv. Protection and rehabilitation of forest lands shall be emphasized so as to ensure their continuity in productive condition.

- b. Chapter IV of P.D. 705 lists and defines criminal offenses and penalties, some of which are:
 - i. Cutting, gathering, and/or collecting timber or other wood products (Section 68, amended by E.O. No. 277);
 - ii. Unlawful occupation or destruction of forest lands;
 - iii. Pasturing livestock;
 - iv. Illegal occupation of national parks system and recreation areas, and vandalism therein;
 - v. Destruction of wildlife resources;

- vi. Misclassification and survey by government official or employee;
- vii. Coercion and influence over public official or employee;
- viii. Unlawful possession of implements and devices used by forest officers;
- ix. Failure to pay, collect, and remit forest charges;

2. Presidential Decree No. 953, Amendments to P. D. 705 and Requiring the Planting of Trees in Certain Places and Penalizing Unauthorized Cutting, Destruction, Damaging and Injuring of Certain Trees, Plants and Vegetation (July 6, 1976)

Planting of trees on lands adjoining the edge of rivers and creeks for beautification and reforestation, and along roads and areas intended for the common use of owners of lots in subdivisions to provide shade and healthful environment therein.

3. Republic Act No. 7161, Forest Charges, (October 10, 1991)

An Act incorporating certain sections of the National Internal Revenue Code of 1977, as amended, to P.D. 705, as amended, otherwise known as the the Revised Forestry Code of the Philippines, and providing amendments thereto by increasing the forest charges on timber and other forest products.

4. Executive Order No. 277, Amending Section 68 of P.D. 705 (July 25, 1987)

Section 68, as amended, cutting, gathering and/or collecting timber or other forest products without license:

Any person who shall cut, gather, collect, [remove] timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with penalties imposed under Articles 309 and 310 of the Revised Penal Code. xxx The Court shall further order the confiscation, in favor of the government, of the timber or any forest products cut, gathered, collected, removed, or possessed, as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found.

B. Lands

I. Commonwealth Act No. 141, The Public Land Act (November 7, 1936)

- a. Applies to lands of the public domain, but timber and mineral lands shall be governed by special laws and nothing in the Act shall be understood or construed to change or modify the administration and disposition of the lands commonly called friar lands and those which, being privately owned, have reverted to or become the property of the State, administration and disposition of which shall be governed by laws presently in force or which may hereafter be enacted;
- b. Penalizes, among others, false statements in support of any petition, claim, or objection respecting lands of the public domain;

- c. prevents or hinders presentation of any application for public land under the Act or acquisition of public lands through deceit or fraud.

2. Republic Act No. 9176 (November 13, 2002)

An Act extending the period until December 31, 2020 for the filing of applications for administrative legalization (Free Patent) and Judicial Confirmation of Imperfect and Incomplete Titles to alienable and disposable lands of the Public Domain, amending for this purpose Commonwealth Act No. 141, as amended Otherwise known as the Public Land Act.

C. Mines

1. Republic Act No. 7076, People's Small-Scale Mining Act (June 27, 1991)

Promotes, develops, protects, and rationalizes viable small-scale mining activities in order to generate more employment opportunities and provide equitable sharing of the nation's wealth and natural resources, giving due regard to existing rights as thereby provided.

2. Republic Act No. 7942, Philippine Mining Act (March 3, 1995)

- a. Declares that all mineral resources in public and private lands within the territory and exclusive economic zone of the Philippines are owned by the State;
- b. Promotes the rational exploration, development, utilization, and conservation of mineral resources through the combined efforts of government and the private

sector in order to enhance national growth in a way that effectively safeguards the environment and protect the rights of affected communities;

- c. Penalizes:
 - i. False statements relating to mines,
 - ii. Mining operations or mineral agreements;
 - iii. Illegal exploration;
 - iv. Theft of minerals;
 - v. Destruction of mining structures;
 - vi. Mines arson;
 - vii. Illegal obstruction to permittees/contractors or government officials;
 - viii. Violation of the terms and conditions of the Environmental Compliance Certificate (ECC); and
 - ix. Other violations of the Act.

D. Protected Areas and Wildlife

I. Republic Act No. 7586, National Integrated Protected Areas System (NIPAS) Act (June 1, 1992)

- a. Secures the perpetual existence of all native plants and animals through the establishment of a comprehensive system of integrated protected areas within the classification of national parks as provided for in the Constitution;
- b. Recognizes that these areas possess common ecological values that may be incorporated into a holistic plan representative of our natural heritage;

- c. Recognizes that effective administration of these protected areas is possible only through cooperation among national and local governments, and concerned private organizations;
- d. Recognizes that the use and enjoyment of these protected areas must be consistent with the principles of biological diversity and sustainable development;
- e. Encompasses outstanding remarkable areas and biologically important public lands that are habitats of rare and endangered species of plants and animals, as well as biogeographic zones and related ecosystems.

E. Environment

1. Presidential Decree No. 984, Pollution Control Law (August 18, 1976)

Modifying the organizational structure of the National Pollution Control Commission and strengthening it for the prevention and control of environmental pollution.

2. Presidential Decree No. 1151, Philippine Environmental Policy (June 6, 1977)

Created because of an urgent need to formulate an intensive program of environmental protection through a requirement of environmental impact assessment and statements.

3. Presidential Decree No. 1152, Philippine Environmental Code (June 6, 1977)

For the establishment of specific environment management policies and environment quality standards.

4. Presidential Decree No. 1586, Establishment of Environmental Impact Statement (EIS) System (June 11, 1978)

To institutionalize a system so that socio-economic undertakings can meet the requirements of environmental quality.

5. Republic Act No. 6969, Toxic Substances and Hazardous and Nuclear Wastes Control Act (October 26, 1990)

To control and define penalties for violations on the use of toxic substance and hazardous nuclear wastes.

6. Republic Act No. 8749, Philippine Clean Air Act (June 23, 1999)

Defines policies to pursue a balance in development and environmental protection through an effective air pollution management program.

7. Republic Act No. 9003, Ecological Solid Waste Management Act (January 26, 2001)

Sets guidelines for the Ecological Solid Waste Management Program and utilization of valuable resources through conservation and recovery.

It is also basic for every government agency to adhere and implement the following laws pertaining to administrative matters:

- I. Republic Act No. 3019, Anti-Graft and Corrupt Practices Act (August 17, 1960)

2. Republic Act No. 6713, Code of Conduct and Ethical Standards for Public Officials and Employees (February 20, 1989)

F. Related Laws

1. Republic Act No. 8371, Indigenous Peoples' Rights Act (October 29, 1997)

Recognizes and promotes the rights of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) to their ancestral domain, in order to preserve their cultures, traditions, and institutions.

2. Republic Act No. 8550, Philippine Fisheries Code (February 25, 1998)

Provides for the development, management, and conservation of fisheries and aquatic resources, integrating all laws pertinent thereto.

3. Republic Act No. 6657, Comprehensive Agrarian Reform Law (June 10, 1988)

Equitable distribution of land to give assistance to landless farmers and farmworkers.

G. Pertinent International Laws/Conventions

1. Convention for the Protection of the World Cultural and Natural Heritage (November 16, 1972, Paris)
2. Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (December 19, 1972, London)

3. Convention on the International Trade in Endangered Species of Wild Flora and Fauna (March 3, 1973, Washington)
4. Convention on the Conservation of Migratory Species of Wild Animals (June 23, 1979, Bonn)
5. United Nations Convention on the Law of the Sea (December 10, 1982, Montego Bay)
6. Protocol on Substances that Deplete the Ozone Layer (September 16, 1987, Montreal)
7. Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (March 22, 1989, Basel)
8. Food and Agriculture Organization (FAO) Code of Conduct on the Distribution and Use of Pesticides, As Amended (1990)
9. United Nations Framework Convention on Climate Change (May 9, 1992, New York)
10. Convention on Biological Diversity (June 5, 1992, Rio de Janeiro)
- II. United Nations Conference on Environment and Development Declaration on Environment and Development (June 16, 1992, Rio de Janeiro)

VII. INSTITUTIONAL LINKAGES

The DENR has forged several partnerships or agreements with various government agencies, the private sector, the public, including individuals, in order to strengthen the implementation

of environmental laws, especially in terms of enforcement and monitoring.

The DENR is actively involved in inter-agency projects dealing with planning and program implementation for sustainable development of the environment and natural resources, peace and order and law enforcement, and policy formulation, among others. It has a seat in the Board of Directors of several government-owned and controlled corporations (GOCCs), such as the National Power Corporation (NPC), Philippine Economic Zone Authority (PEZA), and the Philippine Ports Authority (PPA). It has also initiated agreements with the private sector to further broaden its information and education campaign. Its other linkages include:

I. Multi-Sectoral Forest Protection Committee (MFPC)

- a. Recognizes the vital role of the citizenry and other government agencies in sustainable forest resource management;
- b. Institutionalized nationwide through a Presidential Memorandum Order, dated July 13, 1994;
- c. Institutionalized within the DENR system through DAO No. 39, dated December 16, 1996;
- d. Composed of representatives from various sectors of the community who joined forces to be partners in the government's forest protection efforts.

2. Multi-Partite Monitoring Team (MMT)

A community-based multi-sectoral team organized for the purpose of monitoring the proponent's compliance with the

conditions of the Environmental Compliance Certificate (ECC), the Environmental Management Plan (EMP), and applicable laws, rules and regulations institutionalized in the Philippine Environmental Impact Statement System.

3. Deputation of Environment and Natural Resources Officers (DENROs)

- a. DENR A.O. No. 41, dated August 20, 1991, directly involves the citizenry in the protection and conservation of the country's environment and natural resources;
- b. A DENRO or Deputy Environment and Natural Resources Officer, is an individual or entity duly deputized by the DENR for a period of one (1) year or longer, over a specific area of jurisdiction;
- c. Special DENROs are persons or entities deputized by the DENR to act on a specific case or cases within a limited period not to exceed three (3) months and through a special deputation order. SDENROs have certain expertise on the enforcement of particular environment/natural resources laws;
- d. Assists in the enforcement of laws, rules and regulations governing environment, forest lands, mineral lands, national parks, and other lands of the public domain under the jurisdiction of the DENR;
- e. Assists in the conduct of surveillance and monitoring of compliance with environment and natural resources laws;
- f. Other functions pursuant to DAO 41-91.

4. National Law Enforcement Coordinating Committee (NALECC)

- a. Serves as a forum for dialogue and coordination with government agencies/entities engaged in the enforcement of general and special laws;
- b. Tackles and resolves issues ranging from firearms to issuance of mission orders, economic zones, land transportation, environment and natural resources, local and overseas employment and postal matters;
- c. Included the DENR as a regular member, per Resolution No. 09, dated October 25, 2002. The DENR chairs the Sub-Committee on Environment and Natural Resources (SCENR), which is composed of twenty-six (26) government agencies.

5. DENR-Department of Interior and Local Government (DILG) Partnership through Joint DENR-DILG Memorandum Circular No. 01-2003, Strengthening and Institutionalizing the DENR DILG-Local Government Commission (LGC) Partnership on Devolved and Other Forest Management Functions;

Recognizes the need for the involvement of LGUs in managing forest and land resources in line with existing laws;

6. Coordination with the **Bureau of Customs** in the monitoring/transport of chemical substances, forest products, and wildlife.

7. **Memorandum of Agreement (MOA)** with telecommunication companies, **SMART and GLOBE**, in the establishment of the Text DENR Project.
8. **Memorandum of Agreement (MOA)** with fast-food establishments, *i.e.*, McDonalds, in the preparation of Information, Education and Communication (IEC) materials public dissemination.

VIII. RECOMMENDATIONS

We need to improve our operations, especially monitoring and enforcement. Some of the recommendations we have made are:

1. Increase financial and human resources of the DENR to acquire scientific field and office equipments, hire technical experts/specialists and more field personnel;
2. Prioritize and legislate pending bills that reorganize government agencies in order to be more efficient in the delivery of public services, *i.e.*, NEMA Bill, Land Administration Authority;
3. Harmonize the IPRA Law with other environment and natural resources laws;
4. Resolve conflicts between national laws, *i.e.*, ARMM Law, Fisheries Code, etc. and environmental laws.

IX. CONCLUSION

The DENR alone cannot safeguard our country's environment and natural resources. Inter-agency coordination, public and private sector participation, and a genuine desire to conserve and protect our environment and natural resources are all essential to attaining our vision. We, in the DENR, look forward to a closer collaboration with the Judiciary, especially in the speedy disposition or resolution of pending and new cases.

Thank you very much.

Environmental Management Bureau (EMB)*

*Attorney Fernandino Y. Concepcion***

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I. INTRODUCTION

Let me start with a simple and short story.

A housewife invited ten of her friends to have dinner in her family home. She cooked food and placed them all in the dinner table. She and her husband have three children. The wife went out for a while, but failed to tell her family that ten friends are coming over for dinner. So the rest of the family decided to have dinner, and because the food was so delicious and enjoyable, they consumed all the food and left nothing for the incoming visitors.

House Committee on Ecology that are preparing the bill that will create a new and independent environmental agency. He obtained his law degree from the Ateneo Law School in 1990, and placed 9th in the Bar examination given that year, with a rating of 87.20 %.

That simple story is all about environmental protection, or for the more sophisticated ones, sustainable development – leaving something for those who are coming after us. You will find out later that the Supreme Court, no less, has recognized the rights of those who are coming to dinner.

II. THE ENVIRONMENTAL MANAGEMENT BUREAU (EMB)

How many of you have heard about the EMB or the Environmental Management Bureau? Not many and I do not blame you because before I joined the government in 1999, I did not know about the EMB also. I only found out about it when the EMB sent a notice to my employer for having no ECC or Environmental Compliance Certificate.

As Undersecretary de Rueda said, EMB is one of the line bureaus of the DENR, *i.e.*, it is a bureau under the DENR among other bureaus. It is in charge of what is called the “brown environment sector” – industrial pollution or any pollution coming from industrial establishments.

A. Functions

The functions of EMB are:

- a Advise the DENR Secretary on matters relating to environmental management, conservation, and pollution control;
- b Formulate and implement comprehensive plans, policies, projects, and activities for the prevention and control of pollution, and the protection of the environment;

- c. Establish and enforce environmental quality standards for water, air, land, and noise for the protection and sustainable use of natural resources, consistent with national environmental goals, and enforceable at the local government units;
- d. Enforce the Environmental Impact Statement (EIS) System;
- e. Issue permits and clearances under Presidential Decree No. 984 (Pollution Control Law) and Republic Act No. 6969 (Toxic Substances and Hazardous and Nuclear Wastes Control Act), and monitor compliance to said laws including Environmental Compliance Certificate (ECC) conditions;
- f. Conduct public hearings on pollution cases and strengthen the prosecution of violators;
- g. Conduct special response and monitoring during pollution emergencies and catastrophes;
- h. Develop and implement a Research and Development Program in support of the formulation of environmental criteria and standards, environmental quality and compliance monitoring, and study of existing and potential environmental policies and issues; and
- i. Promote public information and education to encourage participation of an informed citizenry in environmental planning and monitoring.

B. Organizational Structure

The EMB has sixteen (16) Regional Offices. We divided Region IV to A and B: A – CALABARZON mainland area and B – MIMAROPA islands. We are in charge of leading the implementation, with other government agencies, such as the

DOTC, which also implements environmental laws like the Smoke Belching Law.

The Central Office, where I am Deputy, is in charge of policy formulation and supervision of the Regional Offices. The Regional Offices monitor and inspect the establishments. We also act as advisers to the DENR Secretary and Congress as part of the Technical Working Group that drafts environmental laws, such as the Clean Water Act.

The Office of the Regional Director is divided into the following divisions and sections:

1. Environmental Quality Division
 - a. Air Quality Management Section
 - b. Water Quality Management Section
 - c. Toxic Substances and Hazardous Waste Management Section
 - d. Solid Waste Management Section
 - e. Laboratory Services Section
2. Environmental Impact Statement (EIS) Division
 - a. Review Assessment and Monitoring Section

3. Environmental Education and Information Division

We have tie-ups with the Department of Education and several academic organizations for the development of a curriculum on environmental protection in our elementary, high school, and even higher education.

4. Administrative and Finance Division

These divisions and sections are ideal areas of responsibilities, but unfortunately, we suffer from lack of personnel.

The EMB also acts as Technical Secretariat to the Pollution Adjudication Board (PAB). It provides support to the PAB in the adjudication of industrial pollution cases; undertakes technical evaluation of supporting documentation for pollution cases; and conducts site inspection and monitoring.

III. AIR AND WATER QUALITY MANAGEMENT

The EMB is mainly responsible for the implementation and enforcement of R.A. 8749 or the Clean Air Act and P.D. 984 or the Pollution Control Law for air and water quality management.

For air quality management through R.A. 8749, EMB's primary goal is to come up with a comprehensive national program to achieve and maintain air quality that meets the national Ambient Air Quality Guidelines for Criteria Pollutants and their emission standards. Its implementing rules and regulations contain specific requirements that prohibit vehicular and industrial sources from emitting pollutants in amounts that cause significant deterioration of air quality.

Our responsibility comprises factories or establishments or what we call "stationary sources." The Department of Transportation and Communication (DOTC) and the Land Transportation Office (LTO) are in charge of vehicles or mobile sources.

For water quality management through P.D. 984, the EMB undertakes water quality surveillance and monitoring, and conducts water pollution discharge inventory of point and non-point sources. It likewise undertakes special response and

monitoring during water pollution emergencies and catastrophes, and oversees river classification activities.

P.D. 984 sets safety standards of industrial waste in waters. Industries' discharge into water bodies have to pass safety standards, *i.e.*, the waste waters have to be treated.

A. Administrative Enforcement

The PAB shall have jurisdiction over all cases of actual exceedance of any pollution or air quality standards under the Clean Air Act and DAO 2000-81. The PAB shall impose a fine of not more than Php100,000.00 for every day of violation against the owner or operator of a stationary source, until such time that the standards have been complied with.

Likewise, the maximum penalty for exceedance of water quality standards under P.D. 984 is Php5,000.00 per day of violation.

B. Criminal Enforcement

Section 47 of R.A. 8749 declares, *inter alia*, that:

[F]or violations of all other provisions provided in this Act and of the rules and regulations thereof, a fine of not less than Ten thousand pesos (Php10,000.00), but not more than One hundred thousand pesos (Php100,000.00), or six (6) months to six (6) years imprisonment, or both, shall be imposed.

Section 48, R.A. 8749 states:

Gross Violations. In case of gross violation of this Act or its implementing rules and regulations, the PAB shall recommend to the proper government agencies to file the appropriate criminal charges against the violators. The PAB

shall assist the public prosecutor in the litigation of the case. Gross violation shall mean (a) three or more specific offenses within a period of one year; (b) three or more specific offenses within three consecutive years; (c) blatant disregard of the orders of the PAB, such as, but not limited to, the breaking of seal, padlocks, and other similar devices, or operating despite the existence of an order for closure, discontinuance or cessation of the operation; and (d) irreparable or grave damage to the environment as a consequence of any violation or omission of the provisions of the Act.

Offenders shall be punished with imprisonment of not less than six (6) years, but not more than ten (10) years, at the discretion of the court. If the offender is a juridical person, the president, manager, directors, trustees, the pollution control officer, or the officials directly in charge of the operations shall suffer the penalty herein provided.

This is a unique feature of the Clean Air Act: What begins with an administrative violation could now be converted into a criminal violation. And a gross violation could definitely be a criminal violation.

C. Other Prohibited Acts

Certain prohibited acts are now considered to be criminal in nature:

- I. Open Burning of:
 - a. Municipal wastes;
 - b. Hazardous substances and wastes;
 - c. Bio-medical waste.

Penalty: Imprisonment of two (2) years and one (1) day to six (6) years. No specific provision for fines. (Sec. 3, Rule LVI, Part XIII, DAO 2000-81)

Many of us think that burning of waste or “*basura*” is a good thing for the environment. However, this is farthest from the truth because burning waste merely converts the waste into more toxic and poisonous gases. Thus, between these two evils, I prefer to see the “*basura*.” At least, I can see it and avoid it, but plastics and styrofoam burned and converted into gas, I cannot see and, therefore, cannot avoid. Therefore, burning of garbage is one habit that Filipinos should change.

2. Smoking in Public Places

Penalty: Fine of Php10,000.00 or six (6) months and one (1) day to one (1) year, four (4) years and one (1) day to six (6) years. (Sec. 5, Rule LVI, Part XIII, DAO 2000-81)

3. Manufacture, importation, sale, offer for sale, introduction into commerce, conveyance, or other disposition of:

- a. Leaded gasoline;
- b. Engines and/or engine components requiring leaded gasoline.

4. Manufacture, importation, sale, offer for sale, dispensation, transportation, or introduction into commerce of unleaded gasoline fuel, automotive diesel fuel, and industrial diesel fuel, which do not meet the fuel specifications.

Penalty: Fine of not less than Php10,000.00, but not more than Php100,000.00, and two (2) years and one (1) day to four (4) years.

D. Citizens' Suits

Section 4I, R.A. 8749 states that:

Citizen Suits. – For purposes of enforcing the provisions of this Act or its implementing rules and regulations, any citizen may file an appropriate civil, criminal or administrative action in the proper courts against:

- a. Any person who violates or fails to comply with the provisions of this Act or its implementing rules and regulations; or
- b. The Department or other implementing agencies with respect to orders, rules and regulations issued inconsistent with this Act; and/or
- c. Any public officer who willfully or grossly neglects the performance of an act specifically enjoined as a duty by this Act or its implementing rules and regulations; or abuses his authority in the performance of his duty; or, in any manner, improperly performs his duties under this Act or its implementing rules and regulations: Provided, however, That no suit can be filed until after the thirty-day (30) notice has been given to the public officer and the alleged violator concerned, and no appropriate action has been taken thereon.

IV. TOXIC CHEMICALS AND HAZARDOUS WASTE MANAGEMENT

The EMB spearheads the implementation of R.A. 6969 or the Toxic Substances and Hazardous and Nuclear Wastes Control Act. Many chemicals, before they are brought to the country, must have clearance from the EMB. All the laws and regulations that EMB implements, as well as the list of chemicals for clearance

are in EMB's website – www.emb.gov.ph. Hazardous waste cannot be just dumped in our country.

A. Administrative Violations

1. All acts and omissions mentioned under Section 13 (a to c) of R.A. 6969;
2. Failure or refusal to notify the DENR with the type and quantity of hazardous waste generated, and to provide quarterly report of waste generation, as provided under Section 26 of R.A. 6969;
3. Failure or refusal to secure permit or authorization from the DENR prior to transport, storage, or disposal of hazardous wastes, as provided for in Sections 27, 28, and 30 of R.A. 6969.

B. Criminal Offenses

1. Knowingly use a chemical substance or mixture, which is imported, manufactured, processed, or distributed in violation of R.A. 6969;
2. Failure or refusal to submit reports, notices or other information, access to records as required by this Act, or permit inspection of establishment where chemicals are manufactured, processed, stored, or otherwise held;
3. Failure or refusal to comply with the pre-manufacture and pre-importation requirements;

Penalty: Fine ranging from Php600.00 to Php4,000.00 and imprisonment of six (6) months and one (1) day to six (6) years and one (1) day. (Sec. 14 (a) (I), R.A. 6969, Sec. 44, DAO 29, S. 1992)

4. Cause, aid, or facilitate, directly or indirectly in the storage, importation, or bringing into the Philippine territory, including its maritime economic zones, even in transit, either by means of land, air, or sea transportation, or otherwise keeping in storage any amount of hazardous and nuclear wastes in any part of the Philippines.

Penalty: Twelve (12) years and one (1) day to twenty (20) years imprisonment. No specific provision for fines.

V. ENVIRONMENTAL IMPACT STATEMENT (EIS) SYSTEM

The EMB is responsible for the implementation of P.D. 1586 or the Establishment of the Philippine Environmental Impact Statement (EIS) System.

P.D. 1586 requires that there should be an Environmental Compliance Certificate (ECC) before any project could proceed. Therefore, golf courses, power plants, cement plants, mining projects, and infrastructure projects like expressways and dams must submit an environmental impact statement or study on how they would initiate or avoid the negative environmental impact of their project before any development or construction is done.

A. Administrative Enforcement

Section 4 of P.D. 1586 states:

Presidential Proclamation of Environmentally Critical Areas and Projects. – The President of the Philippines may, on his own initiative or upon recommendation of the National Environmental Protection Council, by proclamation, declare certain projects, undertakings, or areas in the country as environmentally critical. No person, partnership, or

corporation shall undertake or operate any such declared environmentally critical project or area without first securing an Environmental Compliance Certificate issued by the President or his duly authorized representative. For the proper management of said critical project or area, the President may, by his proclamation, reorganize such government offices, agencies, institutions, corporations or instrumentalities, including the re-alignment of government personnel, and their specific functions and responsibilities.

For the same purpose as above, the Ministry of Human Settlements shall:

- a. Prepare the proper land or water use pattern for said critical project/s or area/s;
- b. Establish ambient environmental quality standards;
- c. Develop a program of environmental enhancement or protective measures against calamitous factors, such as earthquake, floods, water erosion, and others; and
- d. Perform such other functions as may be directed by the President from time to time.

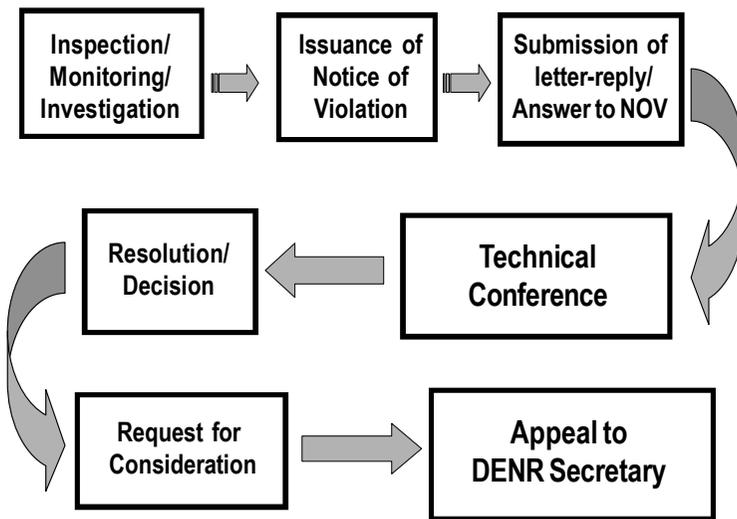
The penalty for violation is expressed in Section 9:

Penalty for Violation. – Any person, corporation, or partnership found violating Section 4 of this Decree, or the terms and conditions in the issuance of the Environmental Compliance Certificate, or of the standards, rules and regulations issued by the National Environmental Protection Council pursuant to this Decree, shall be punished by the suspension or cancellation of his/its certificate and/or a fine in an amount not to exceed Php50,000.00 for every violation thereof, at the discretion of the National Environmental Protection Council.

The penalty for not having an ECC is a maximum fine of Php50,000 for every violation. This is a gray area because in cases

of gross violation, it is interpreted to mean Php50,000/day of violation. Some argued that there is only one violation and, therefore, there cannot be a penalty per day. After all, it is not specified in the law. However, we still fined the developer of the skyway with Php50,000 per day of violation for gross violation and for disregarding our Cease and Desist Order (CDO). So this is debatable, and the case is still pending, and I hope you will support us, especially the Supreme Court when this case reaches them.

Procedural Flowchart for Administrative Violations of R.A. 6969 and P.D. 1586



In violations of P.D. 1586 (as well as R.A. 6969), we usually have an inspection monitoring team, or we investigate if there is a complaint. Then we send a notice of violation, submit a reply or answer, hold a technical conference, and decide. The parties may appeal to the DENR Secretary.

B. Examples of Administrative Violations

1. Undertaking project development activities without an ECC;
2. Violation of ECC condition.

VI. SOLID WASTE MANAGEMENT

The EMB houses the National Solid Waste Management Commission Secretariat created by virtue of R.A. 9003 or the Ecological Solid Waste Management Act. As Secretariat, the EMB is the lead agency tasked to prepare the National Solid Waste Management Framework that will serve as a guide to the Local Government Solid Waste Management Plans, or the local government units, which are really the ones in charge of solid waste management.

A. Administrative Sanctions

1. Littering, throwing, dumping of waste matters in public places;
2. Government officials who fail to comply with and enforce rules and regulations promulgated relative to R.A. 9003. They shall be charged administratively, in accordance with R.A. 7160, or the Local Government Code, and other existing laws, rules and regulations.

Penalty: Depending upon the gravity of the offense, as enumerated in Sec. 48. Increase in amount of fines every three (3) years to compensate for inflation and to maintain the deterrent function of the fines.

B. Criminal Offenses

1. Undertaking activities or operating, collecting or transporting equipment in violation of sanitation operation and other

requirements, or permits set forth in or established pursuant to the Act;

2. Open burning of solid waste;

Penalty: Fine of not less than Php300.00, but not more than Php1,000.00, or imprisonment of not less than one (1) day to not more than fifteen (15) days, or both. (Sec. 49 (b), R.A. 9003, Sec. 3, Rule XVIII, Part V, IRR)

3. Causing or permitting the collection of non-segregated or unsorted waste;
4. Squatting in open dumps and landfills;
5. Open dumping, burying of biodegradable or non-biodegradable materials in flood-prone areas;
6. Unauthorized removal of recyclable material intended for collection by authorized persons;

Penalty: Fine of not less than Php1,000.00, but not more than Php3,000.00, or imprisonment of not less than fifteen (15) days, but not more than six (6) months, or both. (Sec. 49 (c), R.A. 9003, Sec. 3, Rule XVIII, Part V, IRR)

7. Establishment or operation of open dumps as enjoined in this Act, or closure of said dumps in violation of Sec. 37 (Prohibition Against the Use of Open Dumps for Solid Waste);

8. The manufacture, distribution, or use of non-environmentally acceptable packaging materials;

Penalty: For first offense, fine of of Php500,000.00 plus an amount not less than 5%, but not more than 10%, of his net annual income during the previous year, and additional penalty of imprisonment of a minimum period of one (1)

year, but not to exceed three (3) years at the discretion of the court, shall be imposed for second or subsequent violations. (Sec. 49 (d), R.A. 9003, Sec. 3, Rule XVIII, Part V, IRR)

9. Importation of toxic wastes misrepresented as “recyclable” or “with recyclable content;”
10. Transport and dumping in bulk of collected domestic, industrial, commercial, and institutional wastes in areas other than centers or facilities prescribed under this Act.

Penalty: Fine of not less than Php10,000.00, but not more than Php200,000.00, or imprisonment of not less than thirty (30) days, but not more than three (3) years, or both. (Sec. 49 (e), R.A. 9003, Sec. 3, Rule XVIII, Part V, IRR).

C. Citizens’ Suits

There is a provision on citizen’s suit in R.A. 9003, expressed in Sec. 52:

Citizen Suits. – For purposes of enforcing the provisions of this Act or its implementing rules and regulations, any citizen may file an appropriate civil, criminal, or administrative action in the proper courts/bodies against:

- a. Any person who violates or fails to comply with the provisions of this Act or its implementing rules and regulations; or
- b. The Department or other implementing agencies with respect to orders, rules and regulations issued inconsistent with this Act; and/or
- c. Any public officer who willfully or grossly neglects the performance of an act specifically enjoined as a

duty by this Act or its implementing rules and regulations; or abuses his authority in the performance of his duty; or, in any manner, improperly performs his duties under this Act or its implementing rules and regulations: Provided, however, That no suit can be filed until after thirty-day (30) notice has been given to the public officer and the alleged violator concerned, and no appropriate action has been taken thereon.

D. SLAPP Suits

There is also a provision on the protection of concerned citizens and government officials from harassment and malicious complaints:

SEC. 53. Suits and Strategic Legal Action Against Public Participation (SLAPP) and the Enforcement of this Act.

– Where a suit is brought against a person who filed an action as provided in Sec. 52 of this Act, or against any person, institution or government agency that implements this Act, it shall be the duty of the investigating prosecutor or the court, as the case may be, to immediately make a determination not exceeding thirty (30) days, whether said legal action has been filed to harass, vex, exert undue pressure, or stifle such legal recourses of the person complaining of or enforcing the provisions of this Act. Upon determination thereof, evidence warranting the same, the court shall dismiss the case and award attorney's fees and double damages.

This provision shall also apply and benefit public officers who are sued for acts committed in their official capacity, there being no grave abuse of authority, and done in the course of enforcing this Act.

VII. INTER-AGENCY COMMITTEES/PROJECTS

A. Across Mandates

1. Philippine Association of Tertiary Level Educational Institutions in Environmental Protection and Management (PATLEPAM)***
2. Philippine Council for Sustainable Development Sub-Committee on Information and Education*

B. R.A. 8749 (Philippine Clean Air Act)

1. Inter-agency Committee on Climate Change (IACCC)***
2. Project Coordination and Monitoring Unit, TWG on the Metro Manila Air Quality Improvement Sector Development Programme (MMAQISDP) Project
3. Scientific Advisory Committee on Acid Deposition Monitoring Network in East Asia (EANET)**

C. P.D. 984 (Pollution Control Law)

1. National Coordinating Committee (NCC) for the implementation of the Regional Program, “Building Partnership for Environmental Protection and Management for the Seas of East Asia (PEMSEA)*
2. Manila Bay Project Coordinating Committee (MBPCC) for the implementation of the Manila Bay Environmental Management Project (MBEMP)*
3. National Inter-Agency Committee for UNEP’s “Formulation of a Transboundary Diagnostic Analysis

(TDA) and Preliminary Framework of a Strategic Action Programme (SAP) for the South China Sea” Project*

D. R.A. 6969 (Toxic Substances and Hazardous and Nuclear Wastes Control Act)

1. Inter-Agency Technical Advisory Council (IATAC) and TWG for Stockholm Convention on Persistent Organic Pollutants*
2. Montreal Protocol – ODS Phaseout Investment Project (World Bank-assisted), TA for Institutional Strengthening*
3. Chemical Review Committee and Hazardous Waste Management Committee of the Inter-Agency Technical Advisory Council (IATAC)*
4. Implementation of a Japan International Cooperation Agency (JICA)-assisted project for the Master Plan Study of Hazardous Waste Management in the country, which has significantly bolstered the registration process for waste generators.
5. Development of the Philippine Inventory of Chemicals and Chemical Substances, consisting of 38,000 chemical substances, and a Priority List of 28 toxic chemical substances

E. P.D. 1586 (Philippine Environmental Impact Statement System)

1. EIARC Secretariat for the implementation of the EIS System*

* Committees/projects headed by the author.

** Committees/projects of which the author is a Member.

*** Committees/projects of which the EMB is Secretariat.

2. PEZA MOA IRR EIA Streamlining and DPWH MOA EIA Streamlining*
3. DOF-LOGOFIND**

F. R.A. 9003 (Ecological Solid Waste Management Act)

1. Project Steering Committee and TWG for the implementation of the TA for the Metro Manila Solid Waste Management Project (ADB)*
2. Project Committee on the Pilot Study for the Formulation of the SWM Plan for selected LGUs*
3. Public-Private Partnership in Urban Environment for SWM Project (UNDP)*

Pollution Adjudication Board (PAB)*

*Attorney Fernandino Y. Concepcion***

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* Delivered at the *Judges' Forum on Environmental Protection: Philippine Environmental Law, Practice, and the Role of Courts*, on August 13, 2003, at the PHILJA Development Center, Tagaytay City.

** Attorney Fernandino Y. Concepcion is the Assistant Director of the Environmental Management Bureau (EMB) since 1999. As Assistant Director, he is second-in-command in the management of the EMB. He also sits as an alternate member of the DENR Pollution Adjudication Board (PAB), a quasi-judicial collegial body that hears and decides industrial air and water pollution cases. He usually attends Congressional Committee hearings, particularly those conducted by the Joint Congressional Oversight Committee on the Clean Air Act, the Senate Committee on Foreign Affairs that is currently

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I. THE POLLUTION ADJUDICATION BOARD (PAB)

A. Creation and Organization

The Pollution Adjudication Board (PAB) is a quasi-judicial body created under Section 19 of Executive Order No. 192 (10 June 1987) for the adjudication of pollution cases:

deliberating on the ratification of the Kyoto Protocol and Stockholm Convention, and the Senate Committee on Environment and House Committee on Ecology that are preparing the bill that will create a new and independent environmental agency. He obtained his law degree from the Ateneo Law School in 1990, and placed 9th in the Bar examination given that year, with a rating of 87.20 %.

SECTION 19. *Pollution Adjudication Board.* – There is hereby created a Pollution Adjudication Board under the Office of the Secretary [of the Department Environment and Natural Resources (DENR)]. The Board shall be composed of the Secretary as Chairman, two (2) Undersecretaries as may be designated by the Secretary, the Director of Environmental Management Bureau, and three (3) others to be designated by the Secretary as members. The Board shall assume the powers and functions of the Commission/Commissioners of the National Pollution Control Commission with respect to the adjudication of pollution cases under Republic Act 3931 and Presidential Decree 984, particularly with respect to Section 6, letters e, f, g, j, k, and p of P.D. 984. The Environmental Management Bureau shall serve as the Secretariat of the Board. These powers and functions may be delegated to the regional officers of the Department in accordance with rules and regulations to be promulgated by the Board.

B. Present Composition

The Board is presently composed of:

Chairman: *Secretary Elisea Gozun*
DENR Secretary

Members: *Undersecretary Demetrio L. Ignacio*
Planning and Policy, DENR

 Undersecretary Renato de Rueda
Environment and Natural Resources Operations,
DENR

Representatives from the private sector:

Attorney Leonardo U. Sawal, Trade Union Congress
Philippines (Labor)

Dr. Anthony Chui, De La Salle University (Academe)

Engineer Jeffrey Mijares, Pollution Control Association
of the Philippines (Industry)

Director Julian D. Amador, EMB (*ex officio*)

The alternate members of the Board are:

Attorney Ma. Teresa Oledan, Laguna Lake Development
Authority (for Secretary Gozun)

Assistant Director Fernandino Y. Concepcion (for
Director Amador)

Ms. Angelita T. Brabante, Board Secretary

Ms. Davina Cleofe Q. Gonzales, Assistant Board
Secretary and Coordinator

Atty. Roberto de la Fuente, Legal Counsel

II. PAB RESOLUTION I-C

A. Liberal Construction

The PAB formulated its own rules called the PAB Resolution I–C or the *Revised Rules of the Pollution Adjudication Board (PAB) on Pleading, Practice, and Procedure in Pollution Cases*, which took effect on October 6, 1997. We adopted a liberal construction of the Rules in order to promote public interest and to assist the parties in obtaining a just, speedy, and inexpensive disposition of pollution cases. Hence, the Rules are applicable to all cases as defined by P.D. No. 984 (Providing for the Revision

of Republic Act No. 3931, commonly known as the Pollution Control Law, and for Other Purposes) and its Implementing Rules and Regulations. It also provided that the PAB should have a speedy access to air quality standards for stationary sources.

B. Pollution Defined

Under the Clean Air Act, the PAB has jurisdiction over clear violation standards. P.D. 984 defines pollution as any alteration of the physical, chemical, or biological properties of any water, air and/or land resources of the Philippines, or any discharge thereto of any liquid, gaseous or solid wastes that is likely to create or to render such water, air, and land resources harmful, detrimental or injurious to public health, safety or welfare, or which will adversely affect their utilization for domestic, commercial, industrial, agricultural, recreational, or other legitimate purposes. That is why the case of waste-dumping could also be covered by P.D. 984.

C. Nature of the Proceedings

The nature of the proceedings is that the technical rules on evidence obtaining in courts of law shall not bind the Board and the Regional Offices. The Rules of Court shall not apply in proceedings before the Board, except in a suppletory character and only whenever applicable.

PAB cases may originate through a complaint that has ripened into a case. For instance, a violation found during the monitoring inspection could result into a PAB case. However, there is a grace period of eighteen (18) months under the Clean Air Act for non-complying industries. A notice of violation will be issued and a technical conference will be conducted and terminated within ninety (90) days if there is still no compliance after the grace period.

At the technical conference, the Pollution Control Officer of the non-complying company, who, preferably, is also the managing head, will be asked to attend and make decisions for his company. Naturally, the complaint would be contested and there could be another resampling and inspection. If found to be a minor thing, such as the enzymes just did not work in the lagoon, then the non-complying company will be just imposed with fines and the case will be terminated.

Now, if the company has still not complied, then the case will be docketed and elevated to the PAB proper. A cease and desist order (CDO) will be issued against the company. The PAB Regional Office will implement the CDO within seventy-two (72) hours, and report it to the PAB Head Office within forty-eight (48) hours. The private party or the respondent could file a motion to the Regional Office or PAB to lift the CDO. The Regional Office is then supposed to comment within fifteen (15) days and calendar it for hearing.

Assuming that the firm has complied with the requirements, it will be issued with a Temporary Lifting Order (TLO). Then the Regional Office will again conduct an inspection, monitoring and resampling, and submit the report to the PAB. If found that they have complied, they will be imposed with fines and upon payment, will be issued a Final Lifting Order (FLO). However, if they still have not complied, and there is a ground to extend the TLO, then the lifting of the CDO will be extended, and they will be checked if they are into compliance. The CDO will be reimposed, the bond will be forfeited, and they will still have to pay the fines.

D. Authority of the Regional Offices

PAB Regional Offices have the authority to investigate and hear pollution cases, provided that final decisions may be promulgated

only by the Board, giving due consideration to the recommendation of the Regional Office. Right now, they are in charge of the investigation and technical conferences. However, there are no hearings yet.

They also have the power to issue, renew, or deny issuance or renewal of permits to operate pollution control facilities, under such conditions as they may determine to be reasonable, for the prevention and abatement of pollution and for the discharge of sewage and industrial waste, or for the installation or operation of sewage works and industrial disposal systems, or parts thereof.

E. Technical Conference

The aims of the technical conference are:

1. To simplify the issues and stipulate facts;
2. To compute fines tentatively, which under the law could be a maximum of Php100,000 per day for air, and Php5,000 per day for water; and
3. To execute commitment from respondent to abate or mitigate the pollution complained of, including the implementation of remedial measures relative thereto.

Remedial measures are important so as not to compromise the environment. If there is a problem with their device or control facilities, they should submit to us a plan on remedial measures. The respondent's Pollution Control Officer, accredited under DENR Department Administrative Order (DAO) No. 26, Series of 1992, shall be required to attend the technical conference. Failure to do so is an admission that the respondent has no accredited Pollution Control Officer. The managing head should also attend the technical conference and the hearings of the PAB. The managing head could be the President, Managing Director,

Managing Partner, Chief Executive Officer, or higher executive officer of the respondent, if it be a corporation, partnership, or other juridical person.

Should the respondent fail to appear in the technical conference or file his position paper despite due notice, he shall be considered in default and the case shall be resolved on the basis of the evidence on record. In the technical conference, the respondent may opt to submit their commitment within a period to be agreed upon by the parties, but in no case to exceed ninety (90) days, and in the format prescribed by the Board, and signed by the respondent or its managing head.

F. Cease and Desist Order (CDO)

The Cease and Desist Order (CDO) directs the discontinuance of the emission or discharge of pollutants, or the temporary cessation of operations of the establishment or person generating such pollutants. It is immediately executory, to be implemented not later than seventy-two (72) hours from receipt thereof by the Regional Office, and to remain in full force and effect until the same is modified or lifted by the Board.

A CDO will be issued when the Board finds *prima facie* evidence that the emission or discharge of pollutants constitutes an immediate threat to life, public health, safety, welfare, or to animal or plant life, and exceeds the allowable DENR standards.

The Regional Executive Director issues an interim CDO on the same grounds for the issuance of a regular CDO. The duration should be five (5) days, endorsed to the Regional Executive Director within twenty-four (24) hours, with a recommendation that the Board should issue a regular CDO.

We generally coordinate with local government units (LGUs) in the implementation, monitoring, and inspection of our CDOs, except in the following circumstances:

- a. When there is direct or indirect involvement by local government officials in the business or undertaking causing the pollution due to conflict of interests;
- b. When there is manifestation of partiality in favor of the respondent; and
- c. When there is reluctance to enforce pollution control laws.

The authorized implementors of the CDOs of the PAB are the EMB Regional Offices and the Provincial or Community Environment and Natural Resources Office (PENRO or CENRO).

G. Temporary Lifting Order (TLO)

The CDO could be lifted for purposes of sampling and implementing pollution control programs. Suppose a firm has been issued a CDO, and they repaired their facility to have a normal operation. Before PAB can test the efficiency of the treatment facility, the firm would be allowed to operate for sampling purposes and for implementation of their pollution control program.

The requirements for the issuance of a Temporary Lifting Order (TLO) for the implementation of a pollution control program are:

- I. Comprehensive pollution control program, including plans and specifications of the firm's anti-pollution facility, budget, and Gantt chart of activities relative thereto;

2. Surety bond equivalent to 25% of the total cost of the pollution control program;
3. Detailed description of the interim remedial measure to be instituted to mitigate pollution, pending the completion of the pollution control program;
4. Proof of employment of a Pollution Control Officer duly accredited by the DENR, pursuant to DAO No. 26, Series of 1992;
5. Notarized undertaking, signed by the respondent or its duly empowered managing head, to comply with the conditions set by the Board; and
6. Such other conditions which the Board may deem appropriate under the circumstances.

The specific requirements for the issuance of a TLO for sampling purposes are:

1. Proof of employment of a Pollution Control Officer duly accredited by the DENR, pursuant to DAO No. 26, Series of 1992;
2. Notarized undertaking, signed by the respondent or his duly-empowered managing head, to comply with the conditions set by the Board; and
3. Such other conditions which the Board may deem appropriate under the circumstances.

Afterwards, during TLO effectivity, they are required to submit progress reports on the latest status of their effluent discharge, percentage of work being undertaken, and proposed date of sampling.

Now, the Board could also reimpose the CDO based on the following grounds:

1. Lapse of period specified in the TLO;
2. Violation of any of the conditions specified in the TLO;
and
3. Failure to file a motion after the period of the TLO expiration.

III. FUTURE DIRECTIONS

PAB's future plans are:

- a. More aggressive implementation of pollution control laws through the imposition and collection of fines, and initiation of appropriate legal action;
- b. Capacity-building for Regional Offices to improve the implementation of pollution control laws;
- c. Coordination with the private sector to craft guidelines on CDO imposition, *e.g.*, for piggeries. The case of piggeries is very hard because if we close them down, all the pigs will die. So what we do is ask them to submit a pig population plan. Piggeries have to decrease the population of their pigs because sometimes it is a question of capacity, *i.e.*, the water treatment facility could not cope up with a large piggery. So, if they have 5,000 heads, they have to decrease it to 1,000 heads. That is an innovation since if we close them down, there will be more adverse concerns. Pigs will die, there will be too many wastes, and we will not be doing the environment any good;

- d. Amendment of PAB Resolution I-C to harmonize with recent Department policies and directives;
- e. Annotation of PAB Resolution I-C to guide implementors in the regions since there are provisions not understood by them;
- f. Drafting of Resolution IO-B to clarify issues on the imposition of fines;
- g. Formulation of standards for land pollution;
- h. Completion of the ADB-assisted project on strengthening the PAB. Atty. Antonio Tria, Former DENR Undersecretary and former PAB Presiding Officer, is also ADB's Consultant on this project, which aims to introduce or recommend reforms to the PAB so that it could work more efficiently and solve its backlog of 600 cases. The initial recommendations for study are:
 - 1. Strengthen PAB's independence, which entails separating enforcement adjudication and guarding against political influences. Right now it appears that the PAB is the judge, the prosecutor, and the complainant all in one, so it has been proposed that EMB should be the complainant and the prosecutor, and the DENR should be the PAB. The decentralization would extend to the regions all throughout the country, so that the regional PAB would be composed of the DENR regional offices. The EMB would now be the prosecutor and its decisions would be applicable to the PAB proper;
 - 2. Strengthen PAB's institutional and human capacity since they lack lawyers for the adjudication process; and

3. Improve PAB's procedural framework for greater responsiveness and efficiency.

IV. CASE DIGESTS: SUPREME COURT RULINGS IN ENVIRONMENTAL PROTECTION CASES

Here are some cases decided by the Supreme Court with regard to environmental protection cases:

A. Technology Developers, Inc. v. Court of Appeals, G.R. No. 94759, 21 January 1991

Issue:

Whether or not the Municipal Mayor possesses authority to determine whether there is pollution and, therefore, order closure of firms.

Ruling:

The Supreme Court ruled in the affirmative. While it is true that the determination of pollution to the environment, requiring prohibition of a business, lies within the EMB of the DENR, the Mayor has the responsibility to protect its inhabitants. In the exercise of his police powers, he may deny the application for a permit to operate a business, or otherwise close the same.

Further, the issuance of a writ of preliminary injunction is addressed to the sound discretion of the court. The court that issued the same may recall or dissolve the writ as the circumstances warrant.

B. Pollution Adjudication Board v. Court of Appeals and Solar Textile Finishing Corporation, G.R. No. 93891, March 11, 1991

Issue:

Whether or not the *ex-parte order*, issued by the Pollution Adjudication Board, is permitted by law and regulations.

Ruling:

The Supreme Court answered in the affirmative and gave due course to the Petition for Review, and set aside the decision rendered by the Court of Appeals. It likewise reinstated the order of the Pollution Adjudication Board, without prejudice to the right of Solar Textile Finishing Corporation to contest the correctness of the basis of the Board's order and writ of execution.

C. Laguna Lake Development Authority v. Court of Appeals, G.R. No. 110120, March 16, 1994

Issue:

Does the Laguna Lake Development Authority (LLDA) have the power and authority to issue a Cease and Desist Order (CDO) under R.A. No. 4850, or the Act creating the Laguna Lake Development Authority, prescribing its powers, functions and duties, providing funds therefor, and for other purposes and its amendatory laws?

Ruling:

The Supreme Court answered in the affirmative. The issuance of a CDO is a proper exercise of LLDA's power and authority under its charter. The LLDA was not expressly conferred the power "to issue an *ex-parte* cease and desist order." However, it would be a mistake to draw therefrom the conclusion that there is a denial

of the power to issue the order in question when the power “to make, alter, or modify orders requiring the discontinuance of pollution” is expressly and clearly bestowed upon the LLDA by Executive Order No. 927, Series of 1983.

D. Republic of the Philippines v. Marcopper Mining Corporation, G.R. No. 137174, July 10, 2000

The Supreme Court affirmed the “polluters pay” principle, where the polluter must pay for the pollution that he has caused. This is a celebrated case in Marinduque.

E. Republic of the Philippines v. The City of Davao, G.R. No. 148622, September 12, 2002

Issue:

Whether or not Local Government Units (LGUs) are covered by the Environmental Impact Statement (EIS) System.

Ruling:

The Supreme Court ruled in the affirmative. Under Section 16 of the Local Government Code, it is the duty of the LGUs to promote the people’s right to a balanced ecology. Pursuant to this, an LGU, like the City of Davao, cannot claim exemption from the coverage of Section 4, P.D. 1586 (Establishment of the Philippine Environmental Impact Statement System), which states that:

No person, partnership, or corporation shall undertake or operate any such declared environmentally critical project or area without first securing an Environmental Compliance Certificate issued by the President or its duly authorized representative.

The State and its political subdivisions, *i.e.*, the local government units are juridical persons; hence, they are not excluded from the coverage of P.D. 1586.

F. Permex Producer and Exporter Corporation v. Court of Appeals

Issue:

The fine imposed by PAB was Php 1.94 million. The petitioner argued for a fine of Php 200,000.00.

Ruling:

The Supreme Court and the Court of Appeals agreed with PAB's fine. The findings of facts of the PAB should be accorded not only with respect, but even with finality, and are binding upon appellate courts unless there is grave abuse of discretion, or the decision was arrived at arbitrarily, or in disregard of the evidence of record.

G. Lopez Sugar Corporation v. Pollution Adjudication Board

Issue:

The PAB forfeited the bond because the corporation failed to comply with the conditions.

Ruling:

The Court of Appeals affirmed the decision of the PAB. They tried to go to the Supreme Court, but they withdrew because perhaps they thought they would lose. Hence, the Supreme Court did not have the chance to rule on the merit.

United States Environmental Protection Agency (USEPA)*

*Attorney Jane T. Nishida***

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* Delivered at the *Judges' Forum on Environmental Protection: Philippine Environmental Law, Practice, and the Role of Courts*, on August 13, 2003, at the PHILJA Development Center, Tagaytay City.

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I. OVERVIEW

The USEPA or United States Environmental Protection Agency was established by a Presidential Executive Order in 1970. The mission of the USEPA is to “protect human health and safeguard environmental resources – air, water, and land.” It has a Headquarters Office in Washington, D.C., and ten (10) Regional Offices throughout the U.S. USEPA’s Regional Offices are responsible for the implementation and enforcement of environmental laws, overseeing and working with State governments on delegated programs, and establishing regional priorities and programs.

The USEPA’s functions and responsibilities are:

- a. To develop national standards for air, water, and waste;
- b. To develop implementing rules and regulations;
- c. To enforce environmental laws and regulations;
- d. To offer financial assistance to State or local governments to meet the standards prescribed by USEPA, such as installing new technology to meet effluent standard;
- e. To perform environmental research, such as the research done on fuels developed to meet the Clean Air Act, with one particular fuel determined to contaminate ground water; and

Foundation, where she developed and advocated policy positions on water quality, land use, transportation planning, air quality, and other resource protection issues. She is an environmental attorney with significant experience in legislative drafting, having worked as a legislative drafter and legislative officer to the State of Maryland, focusing primarily on environmental law and policy.

- f. To promote public education and participation for the public to understand their relationship with pollution sources.

In terms of human and research capacities, as well as technical expertise, the USEPA employs 18,000 staff in its Headquarters Office and Regional Offices. It has research centers in all media offices – air, water, and waste, and research laboratories in all its Regional Offices. Its staff includes engineers, scientists, policy analysts, lawyers, and information technology, financial management and public affairs experts.

The organizational structure of USEPA is very similar to that of the DENR and EMB:

- a. Office of the Secretary
- b. Administrative and Resource Management
- c. Air and Radiation
- d. Chief Financial Officer
- e. Enforcement and Compliance Assurance
- f. Environmental Information
- g. General Counsel
- h. Inspector General
- i. International Affairs
- j. Prevention, Pesticides, and Toxic Substances
- k. Research and Development
- l. Solid Waste and Emergency Response
- m. Water

II. STATUTORY MANDATES

The following are the major environmental laws enforced by the USEPA:

a. Clean Air Act

In the United States, there are provisions under the Clean Air Act, which say that transportation plans must conform to the said Act, and which designate parts of the United States as to whether they are attainment or non-attainment areas. There are similar provisions, I believe, in your own Clean Air Act. The City of Atlanta, the site for the Olympics years ago, was a serious non-attainment area. Since there were major constructions for the Olympics, environmental groups went to the U.S. District Court in Atlanta and demanded that the Clean Air Act be strictly enforced, *i.e.*, all transportation projects for the Olympics must conform to the provisions of the Clean Air Act, especially because Atlanta is a non-attainment area. The District Court ruled for the plaintiffs and, thus, the City of Atlanta was compelled to establish a commission, which reviews transportation projects and other development projects within the City of Atlanta.

b. Clean Water Act

c. Emergency Response and Community Right to Know Act

d. National Environmental Policy Act

e. Oil Pollution Act

f. Resource Conservation and Recovery Act

g. Safe Drinking Water Act

- h. Superfund (CERCLA)
- i. Toxic Substances Control Act

III. KEY STAKEHOLDERS

Other key stakeholders in the protection of the U.S. environment include:

- a. State and Local Governments

Not only do we transfer a lot of our enforcement responsibilities to the Regional Offices of USEPA, but we also delegate to fifty (50) State and local governments. The USEPA delegates permitting, monitoring, and enforcement responsibilities to State governments. Standards for State delegation include demonstration of enforceable laws, adequate budget, and staffing. Also, States may adopt more stringent environmental protection. However, failure to properly enforce national standards can lead to withdrawal of State delegation.

- b. Industries and Small Businesses
- c. Natural Resource Users (e.g., fishermen, farmers)
- d. Environmental Organizations
- e. Community Associations
- f. General Public
- g. Media

The USEPA also interacts with other governmental entities, such as:

- a. President of the U.S.A. for administration priorities;
- b. Congress for unfunded mandates;
- c. Courts for citizens' suits; and
- d. Executive Branch Agencies with enforcement responsibilities and infrastructure projects.

In particular, the U.S. Congress provided for the establishment of the Independent Office of Inspector General. The Office of Inspector General:

- a. Conducts audits;
- b. Investigates agency programs and operations;
- c. Recommends actions to improve efficiency and effectiveness of the agency;
- d. Prevents fraud and abuse; and
- e. Issues reports to Congress and head of the agency.

The Maryland Department of Environment and Natural Resources, for instance, is delegated with primary enforcement and implementation of national environmental laws (including permitting, monitoring, inspection, etc.). It has five (5) Regional Offices throughout the State of Maryland, and employs 1,000 staff in both its Headquarters and Regional Offices.

Now, I have an interesting question. Washington, D.C. is the capital of the United States; to the North is the State of Maryland; to the South is the State of Virginia; and in between, like your Pasig River, is the Potomac River, which borders the States of Maryland, Pennsylvania, Virginia, and the District of Columbia, as well as the National Capital. Who do you think regulates the water quality of the Potomac River? Do you think

it is the USEPA? Or all the States? You will be surprised to know that the State of Maryland currently has exclusive jurisdiction in the regulation of the water quality of the Potomac River.

I brought that up to talk about the role of the courts. Maryland was granted this authority when the King came over in 1632, and it has been operating on that decree since then. Now, when I was Secretary of the Maryland Department of Environment, we denied one of the government entities in the State of Virginia the right to withdraw water from the Potomac River because they would be polluting the river and we believed that they could come up with another way. Do you know what happened next? The State of Virginia brought the State of Maryland to the U.S. Supreme Court to determine who should really regulate the water quality of the Potomac River. Indeed, it is a good example of the importance that State or local governments play, but also, the greater importance that courts play in determining the future of the environment.

IV. INSTITUTIONAL CHALLENGES

The institutional challenges that the USEPA is facing are:

- a. Balancing the roles of Headquarters, Regional Offices, and State governments;
- b. Balancing competing interests and expectations of key stakeholders;
- c. Meeting mandates and responsibilities with limited resources, *e.g.*, budget and staff.

The USEPA has a very difficult role. It is not only the steward of the environment, but also the ringmaster in terms of trying to balance the stakeholders' competing interests. You could say that

the stakeholders are all interested in protecting the environment, but their interpretation of how to do it could be very different. Any decision that the USEPA will make is probably going to be challenged by some other groups. Its biggest task is to come up with a process and a decision that best balances all those interests and still meets the requirements of the law.

The USEPA also interacts with very important stakeholders like the U.S. government. To some extent, the U.S. is in crisis stage in terms of priorities. President Bush's priority – homeland security – has made it more difficult for USEPA to bring up changes in water and air quality because it is competing with other administration priorities.

The USEPA also has competing responsibilities with other agencies like the Department of Agriculture, which regulates farmers. Sometimes, the Department of Agriculture takes a different and softer approach to regulation. How do you balance that when agriculture is a big source of pollution? Indeed, it is difficult for USEPA to balance competing interests, especially when a Federal Agency, like the U.S. Transportation Department, is actually the one to construct a project that will result in pollution.

The Role of the National Bureau of Investigation (NBI) in the Enforcement of Environmental Laws*

*Attorney Oscar L. Embido***

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 - B. *Letter of Instructions No. 20*
 - C. *Letter of Instructions No. 784*
 - D. *Special Deputation*

* Delivered at the *Judges' Forum on Environmental Protection: Philippine Environmental Law, Practice, and the Role of Courts*, on August 13, 2003, at the PHILJA Development Center, Tagaytay City.

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I. AUTHORITY OF THE NBI TO ENFORCE ENVIRONMENTAL LAWS

A. Republic Act No. 157

Under Republic Act No. 157, the law that created the National Bureau of Investigation (NBI), its principal functions are the following:

1. To undertake investigation of crimes and other offenses against the laws of the Philippines, upon its own initiative and as public interest may require;
2. To render assistance, whenever properly requested, in the investigation or detection of crimes and other offenses;

case, which led to the death of Lenny Villa; Pring Zarcal Kidnap for Ransom case; and the Multi-Agency Anti-Illegal Logging Campaign in Regions II to XII, otherwise known as Oplan Jericho. He obtained his degree in Criminology and Police Administration, *Cum Laude*, at the University of Manila; his law degree at the Manuel L. Quezon University; and his post-graduate Certificate in Criminal Justice and Police Management at Leicester University, England.

3. To act as a national clearing house of criminal and other information for the benefit and use of all prosecuting and law enforcement entities of the Philippines, identification of records, marks and characteristics, and ownership or possession of all firearms and test bullets fired thereafter;
4. To give technical aid to all prosecuting and law enforcement officers and entities of the government, as well as the courts that may request its services;
5. To extend its services, whenever properly requested, in the investigation of cases of administrative or civil nature, and in which the government is interested;
6. To establish and maintain an up-to-date scientific crime laboratory, and to conduct researches in furtherance of scientific knowledge in criminal investigation; and
7. To perform such other related functions as the Secretary of Justice may assign from time to time.

B. Letter of Instructions No. 20

Under the Letter of Instructions No. 20, dated December 20, 1972:

The National Bureau of Investigation shall, among others, be responsible for the efficient detection and investigation of crimes and other offenses against the laws of the Philippines, upon its own initiative and as public interest may require, rendering assistance whenever properly requested in the investigation or detection of crimes and other offenses, and coordinating with other national and local police agencies in the maintenance of peace and order.

C. Letter of Instructions No. 784

Under the Letter of Instructions No. 784, dated December 20, 1978:

The National Bureau of Investigation shall, in addition to the functions provided by law, be the investigation arm of the *Tanodbayan*, now [the] Ombudsman.

D. Special Deputation made by the DENR Secretary and Other Officials.

II. JURISDICTION OF THE NBI

A. Territorial Jurisdiction

The territorial jurisdiction of the Bureau is national in scope and its power to investigate cases extends to all municipalities, cities, and provinces of the entire Philippine archipelago.

B. Investigative Jurisdiction

The Bureau has an investigative jurisdiction over:

1. Criminal cases, upon its own initiative and as public interest may require;
2. Administrative and civil cases in which the government is interested, whenever properly requested.

III. PROCESS OF INVESTIGATION, RAID, AND APPREHENSION

NBI's principal objective is to maximize efficiency and effectiveness in the investigation of all forms of crimes and offenses, including appropriate civil and administrative cases, and

to upgrade the quality of the Bureau's information and intelligence on criminal and terroristic activities.

A. Investigation

The success of the prosecution in a criminal case depends primarily on the results of the investigation conducted by law enforcement agencies. No matter how brilliant the prosecutor handling the case, the conviction of the accused will surely fail if the investigation is not done properly. This principle applies not only to cases defined and penalized under the Revised Penal Code, but also to cases punishable by special laws like the Forestry Law.

In the investigation of cases, an investigator must have a legal basis in conducting the investigation because it will be the first question that will be expounded by the defense counsel during trial.

The basis of the investigation could be any of the following:

1. Complaint filed by a particular person (private person);
2. Request from other government agencies, such as the Department of Justice, Department of Environment and Natural Resources, Department of Tourism, etc.;
3. Request from government officials, such as a Senator, Congressman, Governor, etc.;
4. Order from the Office of the President;
5. Anonymous complaint by a concerned citizen;
6. Intelligence Report; and
7. Others.

Through the complaint or request, the investigator could determine the nature of the act complained of and, thus, determine the particular law that was violated. It is important to know the law involved. During the investigation, the elements of the crime will guide the investigator in gathering evidence.

In cases of violation of Forestry Laws, the particular law involved is Presidential Decree No. 705, otherwise known as the Revised Forestry Code of the Philippines, as amended by Executive Order No. 277. Section 68 of the said law provides that:

Any person who shall cut, gather, collect, or remove timber or other forest products from any forest land, or timber from alienable and disposable public land, or from private land without authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punishable with the penalties imposed under Art. 309 and Art. 310 of the Revised Penal Code; Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection, or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

The court shall further order the confiscation, in favor of the government, the timber or any forest products cut, gathered, collected, removed, or possessed, as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found.

Through the elements of the offense, the investigator will know the evidence needed to establish the guilt of the accused.

Based on the provision of the law, there are three (3) modes of committing the offense of illegal logging:

1. Cutting, gathering, collecting, removing, or transporting timber or other forest products from any forest land without authority;
2. Cutting, gathering, collecting, or removing timber from alienable and disposable public land, or from private land without authority; and
3. Possessing timber or other forest products without legal documents.

The elements of this offense are:

I. First Mode

- a. The accused cuts, gathers, collects, or removes timber or other forest products;
- b. The timber or other forest products are cut, gathered, collected, or removed from forest land; and
- c. The cutting, gathering, collecting, or removal of timber or other forest products is without authority of law.

2. Second Mode

- a. The accused cuts, gathers, collects, or removes timber;
- b. The timber is cut, gathered, collected, or removed from alienable or disposable public land, or private land; and
- c. The cutting, gathering, collecting, or removal of timber is without authority.

3. Third Mode

- a. The accused possesses timber or other forest products; and
- b. His possession of timber or other forest products is without legal documents as required by existing forest laws and regulations.

As an initial step in the investigation, the investigator determines the veracity of the complaint, information or subject of the request through surveillance, which is a form of investigation, consisting of keeping a person, place, or other target under observation for the purpose of obtaining evidence or information relative to the case. The types of surveillance are:

1. Fixed Surveillance (Stationary)
2. Mobile Surveillance
 - a. Land
 - b. Aerial
3. Undercover Work, which is a form of investigation activity where the investigator abandons his official identity, and by means of a cover story, adopts a new character that will enable him to associate with, and obtain information from, counter-intelligence targets.
4. Personal Interview, with emphasis on interrogating of witnesses through the five (5) W's, including "How":
 - a. What
 - b. When
 - c. Where

- d. Who
- e. Why
- f. How

Thus, the investigator must:

1. Determine the personalities involved (e.g., illegal loggers and protectors);
2. Determine the nature and volume of items involved (quantity and quality);
3. Determine the exact location of the items (warehouse, logpond, cutting area, etc.);
4. Determine the whereabouts of the target personalities (residence address, office, etc.); and
5. Locate and identify possible witnesses.

B. Search Warrant

After having established the veracity of the complaint, information, or subject matter of the request as a result of the initial investigation, an application for a search warrant, if necessary, is filed with the proper court.

The sworn application for search warrant must state the exact name and address of the person and premises to be searched, as well as the things to be seized.

It must also state the nature of the offense or the particular law violated, accompanied by affidavits of at least two (2) deponents who have personal knowledge of the subject matter. Sketch and photographs of the premises must also be attached.

C. Raid

A raid is a surprise attack to apprehend subjects in *flagrante delicto* or while in the act of committing an offense.

I. Things to be Considered in Planning a Raid

- a. Surveillance or Pre-Raid:
 - i. Determine the possible exits by subject/s during the raid;
 - ii. Determine the strategic place for the raiding team's positioning;
 - iii. Study the manner of approach of the raiding team;
 - iv. Establish the identity and number of persons inside the area to be raided;
 - v. Photograph the premises and vicinity of the area to be raided as a guide for the raiding team;
 - vi. Determine the most desirable or proper time to conduct the raid;
 - vii. Determine the weapons and arms of subject/s;
 - viii. Identify the means of transportation available to the subject/s, which could be used to escape during the raid;
 - ix. Determine if there are look-outs;
 - x. Determine the people in the neighborhood who are sympathetic to the subject/s;
- b. Proper coordination with the local police;
- c. Confidence in the ability of the raiding team;

- d. Expertise and experience of the members of the raiding team;
- e. Knowledge of the raid plan so that execution will be carried out smoothly.

2. Composition of the Raiding Team

- a. *Cover group*, which moves first into position to seal off possible escape route and to protect the entering group;
- b. *Assault group*, which enters the premises to neutralize the subject/s and take control of the area; and
- c. *Search group*, which conducts the search and inventory of seized articles (scaling) of seized logs and lumber, and seizure receipts.

3. Guidelines in the Execution of Raids

- a. Briefing or last minute instructions;
- b. Elements of surprise;
- c. Simplicity of action plan to avoid confusion;
- d. Teamwork for a coordinated execution of the plan;
- e. Debriefing to tresh-out problems encountered during the raid; and
- f. Return of search warrant.

D. Arrest

Arrest is the taking of a person into custody in order that he/she may be bound to answer for the commission of an offense. (Sec. I, Rule 113)

An arrest is made by an actual restraint of the person to be arrested, or by his submission to the custody of the person making the arrest. (Sec. 2, Rule 113)

No violence or unnecessary force shall be used in making an arrest, and the person arrested shall not be subject to any greater restraint than is necessary for his detention.

It shall be the duty of the officer executing the warrant to arrest the accused and deliver him to the nearest police station or jail without unnecessary delay. (Sec. 3, Rule 113)

A peace officer or a private person may, without a warrant, arrest a person:

1. When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
2. When an offense has, in fact, just been committed and he has personal knowledge of facts indicating that the person to be arrested has committed it; and
3. When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment, or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another. (Sec. 5, Rule 113)

E. Challenges

The following are some challenges faced by an investigator:

1. Reluctance of witnesses;
2. Uncooperative personnel of other agencies;
3. Logistics;

4. Political interference;
5. Corruption;
6. Technicality.

And examples of innovative mechanisms to meet these challenges are:

1. Creation of an inter-agency multi-sectoral task force;
2. Close coordination/cooperation with concerned agencies;
3. Continuous training and information campaign;
4. Creation of a monitoring committee.

Enforcement Procedure*

*Attorney Isagani M. Rabe***

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* Delivered at the *Judges' Forum on Environmental Protection: Philippine Environmental Law, Practice, and the Role of Courts*, on August 13, 2003, at the PHILJA Development Center, Tagaytay City.

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I. ENFORCEMENT OF FOREST LAWS

By mandate of Presidential Decree No. 705, the primary responsibility for the enforcement of forest laws, rules, and regulations is vested on the Department of Environment and Natural Resources (DENR). Section 80, P.D. 705 states:

SECTION 80. *Arrest; Institution of Criminal Actions.* – A forest officer or employee of the Bureau shall arrest even without warrant any person who has committed or is committing in his presence any of the offenses defined in this Chapter. He shall also seize and confiscate, in favor of the Government, the tools and equipment used in committing the offense, and the forest products cut, gathered or taken by the offender in the process of committing the offense. The arresting forest officer or employee shall thereafter deliver, within six (6) hours from the time of arrest and seizure, the offender and the confiscated forest products, tools and equipment to, and file the proper complaint with, the appropriate official designated by law to conduct preliminary investigations and file informations in court.

If the arrest and seizure are made in the forests, far from the authorities designated by law to conduct preliminary investigations, the delivery to and filing of the complaint with the latter shall be done within a reasonable time sufficient for ordinary travel from the place of arrest to the place of delivery. The seized products, materials and equipment shall be immediately disposed of in accordance with forestry administrative orders promulgated by the Department Head.

The Department Head may deputize any member or unit of the Philippine Constabulary, police agency, *barangay*

or barrio official, or any qualified person to protect the forest and exercise the power or authority provided for in the preceding paragraph.

Reports and complaints regarding the commission of any of the offenses defined in this Chapter, not committed in the presence of any forest officer or employee or any of the deputized officers or officials, shall immediately be investigated by the forest officer assigned in the area where the offense was allegedly committed, who shall thereupon receive the evidence supporting the report or complaint.

If there is *prima facie* evidence to support the complaint or report, the investigating forest officer shall file the necessary complaint with the appropriate official authorized by law to conduct a preliminary investigation of criminal cases and file an information in Court.

The forest officer is a fact-finding investigator like a police officer. He has the duty to gather and build on evidence, and bring the offender to the inquest officer. The inquest officer must first determine if the arrest of the detained respondent was made in accordance with the provision of the Rules on Criminal Procedure, as amended, which provides that:

SECTION 5. *Arrest without warrant; when lawful.* – A peace officer or a private person may, without a warrant, arrest a person:

- a. When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
- b. When an offense has just been committed and he has probable cause to believe, based on personal knowledge of facts or circumstances, that the person to be arrested has committed it; xxx

For this purpose, the inquest officer or fiscal may summarily examine the arresting officer on the circumstances surrounding the arrest and apprehensions of the detained respondent. Should the inquest officer find that the arrest was not effected in accordance with the law, he shall recommend the release of the person arrested or detained, note down the disposition on the referral document, prepare a brief memorandum indicating the reasons for the action taken, and forward the same together with the records of the case to the office of the city or provincial prosecutor for appropriate action.

If the arrest was found to have been properly made and effected, the respondent-detainee should be asked if he desires to avail himself of the preliminary investigation, and if he does, he shall be made to execute a waiver of the provision of Article 125 of the Revised Penal Code, as amended, with the assistance of a lawyer, and in case of non-availability of a lawyer, the responsible person of his choice. Thereafter, the records of the case shall be forwarded by the inquest officer to the city or provincial prosecutor for preliminary investigation, and shall be terminated within fifteen (15) days from its inception.

II. INQUEST PROPER

When the detainee does not opt for a preliminary investigation, or otherwise refuses to execute a required waiver, the inquest officer shall proceed with the inquest by examining the sworn statement or affidavit of the complainant and the witnesses, and other supporting documents submitted to him as evidence. If necessary, the inquest officer may require the presence of the complainant and witnesses, and subject them to an informal or summary investigation/examination to determine the presence or absence of *prima facie* evidence.

A. Presence of a Prima Facie Case

Prima facie case is present when the evidence submitted to the inquest officer shows that crime has been committed, and that the arrested or detained person is probably guilty thereof. Should the inquest officer or fiscal find a *prima facie* case exists, he shall prepare the corresponding complaint, with the recommendation that the same be filed in court. Thereafter, the records of the case together with the prepared complaint or information shall be forwarded to office of the city or provincial prosecutor for appropriate action. The complaint or information shall be filed by the inquest fiscal or any other prosecutor to whom the case may be assigned by the city or provincial prosecutor, and the same shall contain the certification by the filing officer that the filing of the same was in accordance with Section 7, Rule 112 of the Rules on Criminal Procedure.

B. Absence of a Prima Facie Case

In the absence of a *prima facie* case, the officer shall recommend the release of the arrested or detained respondent, note down his disposition on the referral document, prepare the brief memorandum indicating the reasons for the actions, and forward the records of the case to the office of the city or provincial prosecutor for appropriate action. If the recommendation for the release of the detainee was approved, the order for the release of the latter shall be served on the officer having custody of the respondent. Should the city or provincial prosecutor disapprove the recommendation of the release, the respondent shall remain under custody, and the corresponding complaint or information shall be filed by the city or provincial prosecutor, or by any assistant prosecutor to whom the case may be assigned.

III. PRELIMINARY INVESTIGATION

Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof and should be held for trial. The rules governing the conduct of preliminary investigation are prescribed under Rule 112 of the Rules on Criminal Procedure. The preliminary investigation is intended to secure the innocent against hasty, malicious, and oppressive prosecution, to protect him from open and public accusations of crime, and to protect the State from the conduct of a useless and expensive trial.

IV. PERSONAL NOTE

As a prosecutor in Bacolod, I handled all cases of illegal logging in Negros Occidental. I had cases against the mayor of Pinagdaan and the mayor of Don Salvador Benedicto. Almost about twenty-one (21) hectares were destroyed in the forests of Don Salvador Benedicto in Brgy. Bagong Silang. Who, do you think, destroyed these forests? I have not yet made my resolution. I am having a hard time appearing in court because there are so many charges against me. First, they administratively charged me for harassment, *i.e.*, that I arrogantly conducted the preliminary investigation, and filed against me a civil complaint for P2 million. I did this for the people of Negros. I also have a case against the mayor of Pinagdaan because he was in possession of lumbers. I was also able to prosecute one vendor of wildlife in Cartimar, and Chinese furniture traders who were convicted with ten (10) to twelve (12) years in prison.

Enforcement Challenges and Inter-Agency Coordination: U.S. Perspective*

*Attorney Jane T. Nishida***

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*C. Citizens' Suits**D. Innovative Enforcement Strategies*

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2. Watershed/Airshed-based
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I. ENFORCEMENT GOALS

There is a tight difficulty between environmental protection and economic development in the context of enforcement. I recently attended a workshop that dealt with the Regional Offices of DENR, their roles and enforcement and what happens when they take an enforcement action against a small or medium-sized enterprise, meaning the company would have to shut down, the loss of jobs, etc. I think it is important to go over the fundamental

governance. Prior to working with PADCO, she served as Secretary of the State of Maryland's Department of Environment. Her work covered all environmental media, including air and water quality, waste management, technical assistance, and emergency response and risk assessment. She was also Maryland Executive Director of the Chesapeake Bay Foundation, where she developed and advocated policy positions on water quality, land use, transportation planning, air quality, and other resource protection issues. She is an environmental attorney with significant experience in legislative drafting, having worked as a legislative drafter and legislative officer to the State of Maryland, focusing primarily on environmental law and policy.

principles of why we enforce, why we have statutes that have provisions for penalties, and why judges must ensure that the laws are complied with.

There are four enforcement goals:

1. Compliance, or to ensure adherence to environmental laws and regulations that were passed and designed to protect public health and natural resources;
2. Deterrence, or to deter and prevent present and future environmental pollution and violations of laws;
3. Punishment, or to impose sanctions for pollution and violations of laws, as well as send a message to others that there is going to be a consequence for not adhering to the laws; and
4. To recapture the economic benefit from those who violated environmental laws, *i.e.*, to level the playing field for those who comply with the laws, which is an interesting concept that is perhaps more familiar in the United States.

I would say that ninety-five percent (95%) of the companies in the Philippines, as in the United States, are law abiding and want to do the right thing, which means that there are five percent (5%) that are not. The companies who knowingly and intentionally violate the laws are getting an economic benefit from violating it, and not from installing the pollution control technologies to protect water, waste, etc. One purpose of enforcement is essentially to level the playing field for the ninety-five percent (95%) of companies that comply with the law, so that they do not get economically disadvantaged by those companies that habitually violate the law.

II. ENFORCEMENT PROCESS

A. Verification of the Complaint

When there is a complaint that comes to either the Department of Environment and Natural Resources (DENR) or the Pollution Adjudication Board (PAB), which are regulatory or enforcement agencies, there needs to be a verification of the complaint. How do you verify that complaint? There needs to be an inspection of the facilities of the site where the alleged pollution has occurred. This is usually done by the Environmental Management Bureau (EMB), or by the local government entities, while private citizens can provide evidence.

Then, the government should not only inspect the sites, but also monitor the natural resources. For instance, they should inspect not only the site where the alleged violation or discharge occurred, but also the segment of the water resource. It is important to not just inspect where the pollution itself occurred, but also to do an area of monitoring of the resources to ensure that the alleged pollution sources are coming from upstream and not just downstream.

It is also important to do sampling in terms of emission or discharge, and to make a documentation of these procedures. There is a need to establish a chain of custody with regard to the evidence. Timeliness is also an important issue with regard to the collection of evidence, particularly in parameters where things can change very rapidly.

B. Assessment of Penalty

The EMB has done the verification through collection of evidence. What then does an enforcement agency do? If it has determined that there is in fact a verified complaint and a violation of the statute, it will then issue a notice of violation to the company. It will bring the company to EMB and call a technical conference with the respondents – usually the company, LGU, or property owner. Then, it will assess the penalty based on the number of violations.

In the U.S., not only can they assess penalties, but they can actually impose the penalty on the company. In the Philippines, for the imposition of penalties, the case has to go to the Pollution Adjudication Board (PAB). That is the major distinction between the U.S. and the Philippines. In the Philippines, the DENR is authorized to prove the fact and issue temporary or permanent injunction, or cease and desist orders. They can also lift orders temporarily for the companies to comply. In the United States, the U.S. Environmental Protection Agency or USEPA is not allowed to issue injunction. They have to go to the courts to get that authority.

The factors to consider in assessing penalties are:

1. Seriousness of violation;
2. Degree of culpability;
3. History of prior violations;
4. Good and faithful efforts to comply;
5. Nature, extent, and degree of mitigation efforts;
6. Economic impact and benefit; and
7. Other matters as justice may require.

C. Assessment of Injury to the Environment

How should you assess the injury to the environment? There are two factors that you may consider:

1. *Public health.* Has the violation resulted in an injury to the public health? Is the plaintiff or the community suffering from any sort of sanitation issue that may result in indigestion or disease, or respiratory ailment due to air pollution from the power plants?
2. *Human use of the environment.* Three (3) categories of injury related to this factor are:
 - a. *Injury to property.* Has the damage caused injury to the house or business that you own?
 - b. *Recreational.* Has the damage resulted in an infringement of your enjoyment of a particular natural resource?
 - c. *Economic.* Has there been an impact on the economic use of your piece of property or business entity?

D. Imposition of Sanctions

In the United States, criminal sanction is not applied as frequently as in the Philippines. The standard in the U.S. is quite high to meet. You have to show that the respondent not only knowingly violated the statute, but also intentionally violated it. Thus, the standard of review and burden of proof to prove the criminal case is harder. In the U.S., the sanctions that are pursued frequently are civil judicial sanctions and civil administrative penalties. Judges have a very large caseload so they have authorized the USEPA to impose these sanctions and remedies.

III. OTHER U.S. BEST PRACTICES

A. Administrative Review Boards

The U.S. has Administrative Review Boards that are independent units of government. It can be within the agency that is taking the enforcement action, and here in the Philippines, it would be similar to the PAB, which is within the DENR. It can also be an independent unit of the government.

B. Administrative Law Judges

There are also Administrative Law Judges within the USEPA. However, not all procedures in the U.S. follow that. In the State of Maryland, for instance, they have determined that there is an appearance of conflict of interests if you have the administrative review function being held by the same agency that is holding enforcement. Therefore, to separate and make distinct the functions of enforcement and adjudication, as well as to assure that conflict of interests would not come into play, they created a separate government entity called the Administrative Law Judges, which would essentially take up the case that came from the agency, the Maryland Department of Environment. Administrative remedies must be exhausted before judicial appeal. And this is the same principle of exhaustion of administrative remedies established here in the Philippines.

C. Citizens' Suits

The U.S. Congress authorizes citizens' suits for "private" enforcement of environmental laws. Citizens' suits empower the citizens to take actions when they feel that public trust has been violated. Environmental organizations and citizens rely on citizen suits to ensure agency accountability.

In the Philippines, citizens' suits are allowed in the Clean Air Act, Clean Water Act, and other laws. Citizens are essentially using the courts to ensure agency accountability, and to check and determine environmental policy.

The point is that a judge's decision is not just for the plaintiff or the defendant. In many instances, judicial decisions will have far-reaching implications not only to the region, but nationally in terms of setting precedent, of how laws are going to be interpreted not only by the court, but by executive agencies like the DENR. Moreover, judicial decisions resulting from citizens' suits lead to major changes in environmental policy.

D. Innovative Enforcement Strategies

Recent innovative enforcement strategies in the U.S. are:

1. Sector-based

Enforcement means determining, based national priorities, the sectors that are going to be inspected and enforced, such as the chemical industry and concentrated animal feeding operations.

2. Watershed/Airshed-based

The sensitivity or the economic impact of Laguna de Bay, for instance, may require a particular enforcement strategy.

3. Incentive-based

Through the self-disclosure audit policy, we go to companies and inform them that we are going to give them the ability to audit themselves and to do the inspection. We will trust the company to do the inspection and if there is a violation, we want them to disclose it to us voluntarily. Then, we will work with these

companies to give them compliance assistance and to get them into compliance.

There are also supplemental environmental projects. If we were to assess \$500,000 penalty for a violation of an air pollution statute, we would tell these companies that their community has a project that is very important to them, such as protection of weapons nearby, and allow them to use part of the penalty amount for that project. These companies still have to pay a penalty to show deterrence of enforcement and they still have to comply, but we understand that their community may also have other projects from which they can benefit, so we are going to allow them to use some of their resources to go into those supplemental projects.

4. Voluntary Programs

Voluntary programs include environmental management systems and alternative dispute resolution. Many of the courts in the U.S. have established alternative dispute resolution within their courts. So when the case comes to them, they send it first to an independent arbiter. They have a list of arbitrators authorized by the court. Through arbitration, it is hoped that the parties would come up with a settlement or agreement that would be a “win-win solution” for both of them.

IV. AGENCY ENFORCEMENT CHALLENGES

Challenges to agency enforcement include:

1. Balance between enforcement and compliance;
2. Balance between environmental protection and economic development;

3. Adequacy of resources, particularly staff, to enforce laws and meet deadlines; and
4. Need for coordination with other agencies that have similar jurisdiction with regard to enforcement.

This is obviously germane in the U.S. and not necessarily applicable in the Philippines. When you see a tanker polluting Manila Bay, not only does the enforcement agency of the DENR has to bring an enforcement action, but they have to see what evidence the Coast Guard gathered when they were out cleaning up the site.

Environmental Tort: Cause of Action, Proof, and Causation*

*Professor Vivencio F. Abaño***

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I. THE LEGAL BASIS

The basic right to a healthy environment is recognized by many jurisdictions around the world. Our own 1987 Constitution mandates that “[t]he State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.”

This right, according to the Supreme Court, carries with it a correlative duty to refrain from impairing the environment.

II. ENVIRONMENTAL TORT

Environmental tort is the violation of the right to a healthful ecology, and in the event of damage or injury, gives rise to a cause of action against the violator. Unlike a typical tort, however, the nature of environmental tort is such that the damage or injury it causes is not suffered by a single individual alone.

Water and air pollution, forest denudation, indiscriminate mining, unregulated toxic and hazardous waste disposal, dynamite blasting of coral reefs, and other acts of degradation of the environment wreck a **general damage**, which every affected individual and community suffer, even unknowingly. They may affect even generations yet unborn.

That is why bringing an action to assert an environmental right or to seek damages for the violation thereof is generally in the form of a class action and seldom in a private individual capacity.

Whatever form the action against environmental tort may take, the plaintiff/s must prove the same elements as those of a typical tort:

1. The existence of an injury or damage to the plaintiff;
2. The act or omission of the defendant;
3. The causal connection between the act of the defendant and the resultant injury to the plaintiff.

III. ACCRUAL OF CAUSE OF ACTION

The wrongful violation of a legal right is not sufficient for a cause of action to arise, unless it also results in damage. There must be both violation and damage as elements of the tort.

A typical tort poses no problem in this light. Here, the act of the defendant immediately causes injury. If the defendant drives his car unreasonably fast and hits the plaintiff, the latter suffers injury immediately or manifests it soon after impact. Thus, the cause of action of the victim can be said to have accrued at the commission of the wrongful act.

This is not so in the case of environmental tort where there is usually a significant time interval between the commission of the wrongful act and the manifestation of the injury. It is true of forest denudation, which causes soil erosion and river siltation over the years, and only then results in floods that kill people and destroy properties. It is also usual in toxic substance exposures for the latent diseases to develop over a long period from the time of exposure to the toxic substances.

Thus, the accrual of a cause of action in environmental tort is a particularly critical problem. The statute of limitation for a typical tort action provides that the same must be instituted within four (4) years from the occurrence of the wrongful act. But when the latent disease due to the toxic substance exposure is finally discovered, the action for recovery of damages may already be prescribed or barred by the statute of limitation.

A correlative and not unrelated problem is when a toxic substance exposure causes more than one latent disease, with the subsequent disease occurring years later after the first disease. Having filed earlier an action for the first disease and recovered damages therefor, the plaintiff will be barred by *res judicata* from filing a second action to recover damages for the second disease.

Such a double harm toxic tort can happen in the case of the most litigated industrial material: *asbestos*. The substance has been found as the cause of three distinct latent diseases: *asbestosis*, which causes the growth of scar – like tissues in the lungs and reduces lung capacity; *mesothelioma*, a malignant tumor of the cells lining the chest wall; and *bronchogenic carcinoma* or lung cancer.

IV. THE DISCOVERY RULE

Determining the accrual of a cause of action at the time of the commission of the wrongful act, and reckoning the four-year prescriptive period therefrom, does not take into consideration the characteristic or peculiarity of environmental tort like toxic substances exposure. No injury is immediately apparent upon exposure to the hazardous substance, and hence the impossibility of maintaining an action for an injury that is inherently incapable of discovery within the limitation period.

The solution is to apply the Discovery Rule, a concept not entirely new in Philippine legal system.

For instance, under the New Civil Code (Article 1391), in an action to annul a deed of sale tainted by mistake or fraud, the period of prescription tolls from the discovery of the mistake or fraud. Under the Atomic Energy Regulatory and Liability Act (R.A. No. 5207), the action for recovery of compensation for nuclear damage must be brought within ten (10) years from the

date of the nuclear incident, and within three (3) years from the date the plaintiff had knowledge or should have had knowledge of the injury or damage. Also, under the Consumer Act of the Philippines (R.A. No. 7394), in case of hidden defects in a manufactured product, an action prescribes two (2) years from the discovery of the hidden defect. Indeed, in a number of cases, the Supreme Court has applied the concept of the Discovery Rule (*Sermonia v. Court of Appeals*, 233 SCRA 160; *Lim, Sr. v. Court of Appeals*, 190 SCRA 616; *Yap v. Court of Appeals*, 145 SCRA 223).

In the case of toxic tort or toxic substance exposure, given the nature of the latent disease caused, the application of the Discovery Rule makes possible an effective remedy in environmental tort litigation. After all, in the cases cited, the Supreme Court has held that when considerations of substantial justice and equity come in, it is better to resolve the issue on the basis of the merits of the case, instead of applying the rule on prescription (*Cristobal v. Melchor*, 78 SCRA 175; *Fernandez v. Grolier International*, 156 SCRA 830; *Aldovino v. Alunan*, 230 SCRA 825).

The New Civil Code provision (Article 1150) may be applied also: “The time of prescription for all kinds of action, when there is no special provision which ordains otherwise, shall be counted from the day they may be brought.” In toxic tort cases, when the latent disease has not yet arisen or manifested itself, and still to be discovered by the plaintiff, the cause of action could not possibly be brought to court.

The adoption of the Discovery Rule in toxic tort litigation would eliminate any time bar of latent disease claims. Of course, the plaintiff must still exercise reasonable diligence in detecting

an injury. He/she cannot benefit from an application of the rule if the non-discovery of an injury was due to his own negligence.

V. THE PROBLEM OF CAUSATION

In any cause of action for tort, an essential element is that there be a reasonable connection between the act or omission of the defendant and the injuries suffered by the plaintiff. This burden of proving causation becomes increasingly difficult in environmental tort litigation.

In toxic substance exposure, the chain of causation is even more difficult to establish. Conclusive evidence of long-term effects of toxic substances are not readily available. Even when the symptoms of the disease or injury are already manifest, medical science cannot sometimes demonstrate with certainty a cause and effect relationship between the injury and an act committed over the years or even decades in the past. Most scientific studies point to a likelihood of occurrence of injury as a result of toxic exposure rather than to definitive assertions of a causal link.

VI. PROOF OF CAUSATION

Due to the inherent difficulty in proving causation in latent disease cases, resort is made to special methods, such as *epidemiological studies*, *expert testimony*, and the *strict liability principle*.

A. *Epidemiology*

Epidemiological data are scientific evidence to prove a probability that the injury of the plaintiff was caused by the substance exposure. The evidence offers at least a circumstantial evidence of proximate cause.

A case in point involves the people who were displaced by the Mt. Pinatubo eruption and resettled in communities at the former American military bases in Angeles and Subic. In 1994, health problems were monitored in some of these communities, particularly those in the Clark Air Base Communications Center. The residents described their drinking water pumped from the underground as having a funny smell and an oily sheen. They also complained of skin irritation after bathing or washing, stomach bloating, unusual number of miscarriages and spontaneous abortion. In 1999, there were over eighty-eight (88) deaths recorded by community leaders, and sixty-three (63) illnesses, mostly cancer, leukemia, and skin problems. Suspected or identified culprits were the unidentified toxic wastes reportedly left by the Americans, which affected their drinking water, soil, and air.

A health survey was conducted on 761 households in thirteen (13) communities inside and around the former Clark Air Base. An internationally known consultant on the effects of toxic and nuclear wastes, Dr. Rosalie Bertell, made findings of “*conspicuously high and disparate levels of kidney, urinary, nervous, and female system health problems.*” The highest prevalence of these problems occurred in communities closest to or on highly contaminated sites in the military base. She was able to identify the link between the drinking water and dust and the residents’ illnesses. But there was an absence of proof of pollution of the water and soil by the hitherto unidentified toxic wastes.

Subsequently, however, some American *pro bono* lawyers filed a class suit in the United States against its Navy and Air Force authorities. It was filed under the “American Comprehensive Environmental Response, Compensation and Liability Act” or CERCLA, to compel the identification of the toxic wastes left

behind in the former military bases. With their identification, scientific and medical studies can then point to a likelihood or definite occurrence of injury as a result of exposure to the identified toxic wastes or substances.

Epidemiological data, as a tool for evidence, is a statistical measure of the probability or likelihood that the injury of the victim was caused by the substance exposure in question. The fact that the substances are capable of producing the injuries suffered by the plaintiff are proven through the use of such data.

B. Expert Testimony

Having proven that the defendant's action is responsible for the toxic exposure and that the toxic substances are capable of producing injuries of the type suffered by the plaintiff, the latter must also show, to a reasonable medical certainty, that his/her specific injury was proximately caused by the toxic substances.

The need for expert testimony has been recognized in toxic tort litigation. The testimony must involve a qualified expert testifying on the field or subject of his competency. His opinion is admissible under Section 149, Rule 130 when:

1. The expert testifies on a subject which requires special knowledge, skill, experience, or training; and
2. The expert possesses such knowledge, skill, experience, or training.

Here, the opinion of medical doctors are important. An expert opinion on an individual causation is primarily a medical diagnosis.

C. Strict Liability Principle

The New Civil Code provides for strict liability torts. Thus, Article 2187 on the liability of manufacturers or possessors of foodstuffs, drinks, toilets, and similar goods, or the death or injuries caused by noxious or harmful substances used. The provision is expanded in the Consumer Act of the Philippines (R.A. No. 7394), or the statute on product liability. Under this law, not only the manufacturer and producer, but also the importer and seller, under certain specified conditions, may be held liable for any defect in the product.

The strict liability principle imposes liability whether or not there is fault or negligence, malice or intent. It is utilized and made applicable in cases of environmental tort. For instance, the presence at the degraded site of a pollutive substance, which is similar to that in the possession or control of the polluter, would suffice to hold him or her liable.

VII. CONCLUSION

Tort law has undergone development in response to changes in society. Today, the changes affect the very environment on which our society depends for survival. The law must respond to the problems of environmental torts. It is the function of the courts to ensure that the wrongs and damages thereof are provided proper reliefs and remedies.

Court Policies on Standing to Sue in Environmental Cases*

*Attorney Brenda Jay Angeles-Mendoza***

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* 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.

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University of the Philippines Law Student Government Committee on Environment National Affairs in 1990. As a professional, she has acted in different capacities as: Independent Contractor, Resources, Environment, and Economics Center for Studies, Inc. for the implementation of the WB-DENR-EMB Project entitled, “Strengthening Environmental Enforcement and Compliance Capacity Technical Assistance” (2001-present); Consultant and Resource Person on “The Philippine Environmental Law and Policy” (2000); Senior Law Reform Specialist on “Human Rights and Environment Development Program” (1999); Consultant on the “Study on the Use of Environmental Guarantee Funds and Environmental Monitoring Funds as Economic Instruments” (1998); and Project Associate on “Assessing the Effectiveness of Current National Marine Pollution Legislation and Regulations, and Determining the Constraints to the Ratification and Implementation of International Conventions” (1997).

I. STANDING TO SUE

A. *Sample Cases*

Here are some environmental cases illustrative of issues concerning standing to sue:

1. Can an individual, a local resident, parish councilor, member of the executive committee of the association of local councils, member of various environmental organizations, or a candidate for local elections, file a case as a citizen to challenge the legality of a grant of conditional planning permission, which would in effect permit quarry or limestone extraction operations in the area, on the ground that it is bound to have significant impact on the national environment?
2. Do local residents have standing to sue a government agency in the matter of a plan construction of a power or grid station in their area, on the ground that the electromagnetic field caused by the presence of high voltage transmission lines at the grid station would pose serious health hazards to the residents of the area, particularly the children, the infirmed, and the families living in the immediate vicinity?
3. A group of environmental lawyers possessed of pertinent, bonafide and well-recognized attributes and purposes in the area of environment, and having a provable sincere, dedicated, and established status, is asking for judicial review of certain activities under a flag action plan undertaken with foreign assistance, on the ground of alleged environmental degradation, ecological imbalance, and violation of certain laws. Does this group of environmental lawyers have standing to sue?

4. Can a public interest law firm, dedicated to the protection of nature and the conservation of its riches, appropriately file a motion to quash an order of the government agency permitting a certain company “X” to possess and display thirty (30) species of mammals, reptiles, and birds at a private zoo?
5. Can an environmental non-government organization intervene on behalf of a certain number of children in a criminal case filed in court by the provincial council mandated to promote local sustainable development against foreign nationals for illegal fishing activities?

B. Basis of Standing to Sue

Standing to sue involves the issue of whether anyone is entitled to prosecute a particular legal claim in court. It is generally regarded as a first level access to courts in the sense that it provides the gauge for determining whether a party has a right or an interest to file a case in court.

In the Philippines, standing to sue finds basis in the 1997 Rules of Civil Procedure, particularly Section 2, Rule 3 on Parties to Civil Action, which requires that:

A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these rules, every action must be prosecuted or defended in the name of the real party in interest.

Standing has always been recognized in anyone who sustains a direct injury as a result of its enforcement. Interest within the meaning of the rule means material interest, an interest in the

issue and affected by the decree, as distinguished from interest in the question or a mere incidental interest.

C. Supreme Court Rulings on Standing to Sue in Environmental Cases

I. *Mead v. Argel*, G.R. No. L-41958, July 20, 1982

This case could have been the first attempt of citizens to protect the Philippine environment. When the court resolved the issue regarding the authority of the prosecutor to initiate a criminal case for violation of certain pollution control laws, it held that the existence of pollution, as defined by law, requires specialized knowledge of technical and scientific matters, which is not normally within the competence of prosecutors or those sitting in the courts of justice. The Supreme Court was humble enough to say that even justices or judges do not hold expertise with respect to determining technical and scientific matters concerning pollution. It said that where action is grounded on pollution as defined by law, and which law provides for an administrative body to inquire into the existence of that pollution, the lack of such determination is fatal to the cause of action.

2. *Lozada, et al., v. COMELEC*, G.R. No. L-59068, January 27, 1983

In the case of *Lozada v. Comelec* in 1983, the Supreme Court denied the petition to review the decision of the Commission on Elections (COMELEC), which refused to call an election to fill the vacancies in *Batasang Pambansa*. The Court, in that particular case, held that the petitioner's standing to sue may not be predicated upon an interest of the kind alleged, which is held

in common by all members of the public because of the necessarily abstract nature of the injury supposedly shared by all citizens.

Concrete injury, whether actual or threatened, is an indispensable element of a dispute, which serves in part to cast it in a form traditionally capable of judicial resolution. So when the asserted harm is a “generalized grievance,” shared in substantially equal measure by all or a large class of citizens, harm alone does not normally warrant exercise of jurisdiction by the courts. However, we would note that there is an avalanche of cases where the court adopted a liberal attitude with regard to standing. The proper party requirement is considered as merely procedural, while the court has ample discretion with regard to standing.

3. *Oposa v. Factoran*, G.R. No. 101083, July 30, 1993

The only environmental case that I think squarely dealt with the issue of standing to sue is the case of *Oposa v. Factoran*. It is a taxpayers’ class suit originally filed with the Regional Trial Court of Makati City by forty-one (41) minors represented and joined by their parents and the Philippine Environmental Network, a non-stock and non-profit organization organized for the purpose of concerted action for the protection of the environment and natural resources.

The minors stated that they filed the case for themselves and for others who are equally concerned about the preservation of natural resources. This action was in representation of their generation as well as generations yet unborn. The petitioners further claimed that they are entitled to the full benefit, use, and enjoyment of the natural resources, that is, the country’s virgin

tropical rainforests. Now, since the Department of Environment and Natural Resources (DENR) has been issuing timber license agreements to a lot of concessionaires, the petitioners pray that judgment be rendered, ordering then Secretary of DENR, Fulgencio Factoran, and his agents and representatives to cancel all existing timber license agreements in the country and, secondly, to cease and desist from receiving, accepting, processing, renewing, or approving new timber license agreements.

On motion of the defendant, the Regional Trial Court dismissed the petition on the ground that there was failure to allege a specific legal right. According to the RTC, the plaintiffs failed to state a cause of action in their complaint against the defendant. It also ruled that since the issue raised by the plaintiff is a political question, a matter within the ambit of the executive or legislative body, it is the legislature which the plaintiff should have approached.

Through a Special Civil Action for Certiorari, the petitioners brought the case to the Supreme Court. It must be noted that while the issue on standing to sue was not really raised in this case, the Supreme Court proceeded and discussed the same. The Court ruled that the petitioners' class suit was valid under Section 12, Rule 3 of the Revised Rules of Court. Moreover, the subject matter of the complaint was of common and general interest to all citizens, thus, the case has a special and novel element. The minors have standing to represent their own generations and the future generations under the doctrine of "**intergenerational responsibility**" insofar as the right to a balanced and healthful ecology is concerned. The petitioners had the right to sue on behalf of succeeding generations because every generation has a responsibility to preserve the rhythm and harmony of nature for the full enjoyment of a balance and healthful ecology.

From the decision in *Oposa v. Factoran*:

Their personality to sue in behalf of the succeeding generations can only be based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned. Such a right, as hereinafter expounded, considers the “rhythm and harmony of nature.” Nature means the created world in its entirety. Such rhythm and harmony indispensably include, *inter alia*, the judicious disposition, utilization, management, renewal and conservation of the country’s forest, mineral, land, waters, fisheries, wildlife, off-shore areas and other natural resources to the end that their exploration, development and utilization be equitably accessible to the present as well as future generations. Needless to say, every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology. Put a little differently, the minors’ assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come.

x x x

As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind. If they are now explicitly mentioned in the fundamental charter, it is because of the well-founded fear of its framers that unless the rights to a balanced and healthful ecology and to health are mandated as [S]tate policies by the Constitution itself, thereby highlighting their continuing importance and imposing upon the [S]tate a solemn obligation to preserve the first and protect and advance the second, the day would not be too far when all else would be lost not only for the present

generation, but also for those to come – generations which stand to inherit nothing but parched earth incapable of sustaining life.

4. Kapatiran ng mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc., et al., v. Tan, G.R. No. L-81311, June 30, 1988

The Supreme Court stated once more that objections to taxpayer's suit for lack of sufficient personality, standing or interest are, however, in the main procedural matters. Considering the importance of the public in the cases at bar, the Court brushed aside technicalities of procedure and has taken cognizance of the petition.

5. Association of Small Landowners in the Philippines, Inc., et al., v. Secretary of Agrarian Reform, G.R. No. 78742, July 14, 1989

In this case, certain provisions of the Agrarian Reform Law challenged the Constitution. The Supreme Court said:

With particular regard to the requirement of proper party as applied in the cases before the Court, it holds that the same is satisfied by the petitioners and intervenors because each of them has sustained or is in danger of sustaining an immediate injury as a result of the acts or measures complained of.

And the Court went on to say that:

Even if, strictly speaking, they are not covered by the definition, it is still within the wide discretion of the Court to waive the requirement and so remove the impediment to its addressing and resolving the serious constitutional questions raised.

**6. Laguna Lake Development Authority (LLDA)
v. Court of Appeals, et al., G.R. No. 110120,
March 16, 1994**

Many environmental cases deal with questions of jurisdiction of certain government agencies, such as whether a provincial prosecutor has the authority to initiate criminal prosecution for violation of pollution control, or whether the mayor has the power to close down a factory for pollution, or whether the Pollution Adjudication Board can legally issue *ex parte* a Cease and Desist Order (CDO) to stop the operations of industrial establishments, or whether the LLDA has the power to issue a CDO against the city government, which dumps tons of garbage everyday in a certain village, or whether the LLDA has the jurisdiction to issue permits for the use of surface waters for all activities, including operation of fish pens and fish enclosures.

**7. Kilosbayan, Inc., et al., v. Teofisto Guingona, Jr.,
et al., G.R. No. 113375, May 5, 1994**

The Supreme Court said that party standing is a procedural technicality, which the Court, in the exercise of its discretion, can set aside in view of the importance of the issues raised. Analyzing the issues on standing, the Court said that the technicalities of procedure may be brushed aside when the transcendental importance to the public of these cases demand that they be settled promptly and definitely.

A reading of all these cases reveal that the Lozada case, which adopted a strict interpretation of the standing to sue doctrine, was more of an exception rather than the rule. There has always been a consistent adherence to the rule that the importance of issues to be resolved will determine whether or not the Court will disregard the need to establish standing. The

Court has a liberal attitude, even going as far as disregarding the procedural requirement.

II. INTERGENERATIONAL RESPONSIBILITY

Various expressions of the concept of intergenerational responsibility may be found in several international instruments, which are also good source materials for decisions on environmental cases.

A. 1972 Stockholm Declaration

The 1972 Stockholm Declaration on human environment, which accordingly marks the beginning of ecological awareness, says that:

Man and woman bear a solemn responsibility to protect and improve the environment for present and future generations.

B. Framework Convention on Climate Change

The same principle is reaffirmed in Article 3.I of the Framework Convention on Climate Change, which declares that:

The parties should protect the climate system for the benefit of present and future generations of humankind.

C. Rio Declaration on Environment and Development

Principle 3 of the Rio Declaration on Environment and Development links the rights of future generations to the right to development. It states that:

The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

III. SIGNIFICANCE OF THE OPOSA CASE

The Oposa case was held worldwide as a victory for future generations and a decision that changed the way the world viewed environmental issues. More concretely:

1. For the first time, the Oposa case recognized the interconnectedness of the present and the future in legal terms.
2. It established the precedent that a class suit may be brought in the name of the present and future generations for the protection of the environment.
3. It is also a precedent for the proposition that the formulation and implementation of specific environmental policies are not exclusively within the ambit of the political branches of the government. While the respondents in that case alleged that it was a political question, the Supreme Court ruled that since a self-executory right was involved, then the courts may intervene when there is grave abuse of discretion in denying relief based on the assertion of the right to a balance and healthful ecology. So there is now no need to show that a citizen has to suffer any direct injury as a result of environmentally destructive acts.
4. Most importantly, the Oposa case profoundly influenced the direction and course of protection and management of environment in the country.

Indeed, this landmark case is often cited and referred to internationally for its implementation of international principles on the rights of future generations.

In the Philippines, the Oposa case heightened the ecological sensitivity of courts. To illustrate, the Supreme Court, in the case of *LLDA v. Court of Appeals* where the jurisdiction of the LLDA was put to issue, described the Laguna Lake as constituting one integrated and delicate natural system that needs to be protected with a uniform set of policies if we are serious in our aims of attaining sustainable development. The lake is an exhaustible natural resource, a very limited one, which requires judicious management and optimal use to ensure renewability and preserve its ecological integrity and balance.

Also, in the more recent case of *Cruz, et al., v. Secretary of Environment and Natural Resources, et al.* (G.R. No. 135385, December 6, 2000), where the constitutionality of the Indigenous Peoples' Rights Act (IPRA) was raised, the Supreme Court cited its recognition of the rights of the citizens to a balanced and healthful ecology and ruled that the petitioners in this case, as citizens, possessed the public right to ensure that national patrimony is not alienated and diminished in violation of the Constitution. Since the government, as the guardian of the national patrimony, holds it for the benefit of the Filipinos without distinction as to ethnicity, it follows that the citizen has sufficient interest to maintain a suit, to ensure that any grant of concession covering the national economy and patrimony strictly complies with constitutional requirements. Thus, the preservation of the integrity and inviolability of the national patrimony is a proper subject of a citizen suit.

The pronouncement of the Court in this case contributed indirectly to the inclusion of the provision on citizens' suits in the more recent environmental legislation, such as the Philippine Clean Air Act and the Solid Waste Management Act, which provide that any citizen may file an appropriate civil, criminal, or

administrative action in the proper courts against any person who violates or fails to comply with the provisions of the law, or against the DENR or other implementing agencies with respect to orders, rules, and regulations inconsistent with the Act. Any citizen may also file an action against any public officer, who willfully or grossly neglects the performance of an act specifically enjoined as a duty, or abuses his authority in the performance of duty, or in any manner, improperly performs his duties under the Act. The citizens are very much empowered these days because of the Oposa case and the subsequent legislation on the protection of the environment.

IV. STANDING TO SUE CASES IN OTHER COUNTRIES

A. United States of America (U.S.A.)

The U.S. Supreme Court's standing-to-sue decisions in the beginning of the modern environmental era were relatively accommodating to environmental interests. In the case of *Sierra Club v. Morton*, the Court ruled that the Sierra Club, one of the oldest nature conservation groups in the U.S., could establish standing through its special interest in conservation, and by alleging that its members made use of the recreational resources in the forest that would be affected by a proposed site development in the Mineral King Valley of California.

There are other cases after the Sierra Club case where the U.S. Supreme Court had been liberal in interpreting the standing to sue doctrine. However, over the last decade, it has issued a series of decisions restricting the standing requirements for plaintiffs who are contending that government agencies or private firms are acting illegally and harming the environment. The Court said that standing considerably depends upon whether the plaintiff

is himself an object of the action at issue. If he is, ordinarily, there is little question that the action or inaction has caused him injury. However, when a plaintiff asserted injury arising from the government's allegedly unlawful regulation of someone else, much more is needed. There is a different standard when another person is alleging that there is a violation or inaction in a government agency. The standard is also different when their economic interests are involved.

A Federation sought to establish the standing of its members to ascertain that opening the lands within their vicinity to development would interfere with the recreational aesthetic enjoyment of the lands by its members. The Court ruled that the members' assertion were inadequate to demonstrate that they were actually affected. Two years later, or in 1992, the Court even made the standard heavier or stricter when it said that defenders of wildlife lack standing to challenge a determination by the U.S. wildlife service, that the consultation requirement of the Endangered Species Act does not apply to federal government action. The Court concluded that the defenders for wildlife failed to establish the type of eminent injury necessary to satisfy the injury requirement for standing, *i.e.*, it was looking for injuries sustained by the complainant.

On the other hand, in one case where the ranchers in irrigation districts challenged the proposed modifications of a water project of the Bureau of Reclamation Operations, the Court recognized that the plaintiffs were not actual objects of regulation, but still expanded the theory and encompassed all economic interests that could potentially be injured by the implementation of environmental laws. The Court ruled that the members' assertions were adequate to demonstrate that they were actually affected. It ruled that the ranchers of irrigation districts have standing because

their interests were within the particular provisions of the zone of interest, which was defined as a potential economic impact of agency action under the Endangered Species Act.

The U.S. Supreme Court has promulgated a variety of decisions. It should be noted that it is the U.S. Supreme Court which liberalized the standing doctrine way back in the seventies. However, the current trend adopted by this Court is that of restricting the standing doctrine.

B. Sri Lanka

There was a case in Sri Lanka on whether a public interest law firm, dedicated to the protection of nature conservation, appropriately filed a motion to quash an order of the government agency permitting to display certain species of mammals. The Court there said that by virtue of the principle of knowing that the petitioners demonstrated a genuine interest in the matter complained of, then their standing could be given to them. If you notice, in the U.S., they look for the injury sustained by the complainant. However, countries like Sri Lanka only look for the complainant's genuine or sufficient interest.

C. Pakistan

In Pakistan, an agency questioned the planned construction of a grid station because the electromagnetic field caused by the presence of high voltage transmission lines in the grid station would pose serious health hazards to the residents of the area. The Court of Pakistan held:

Article 9 of the Constitution provides that no person shall be deprived of life and liberty, save in accordance with the law.

Even if the word “life” is not defined in Pakistan’s Constitution, the said provision does not mean vegetative or animal life or mere existence as opposed to death. “Life” includes amenities and facilities, which a person is entitled to enjoy legally and constitutionally. A person is entitled to the protection of the law from being exposed to electromagnetic field hazards that would result from the installation of a grid station. Such danger, as depicted, is bound to affect a large number of people who may suffer unknowingly for lack of awareness, information, and education. Many will suffer in silence.

Therefore, in granting standing, the Constitution can be invoked because a large number of citizens throughout the country cannot make such representations and may not likely make it due to ignorance, poverty, and disability. Only some conscientious citizens can make representations because they are aware of their rights and the possibility of danger coming their way. Thus, they are allowed to continue with their standing.

On the question of whether a group of environmental lawyers could file a case for violation of certain laws where they have standing, the Court would look for sufficient interest. What is sufficient interest to give standing to a member of the public would have to be determined by the Court in each individual case. It is not possible to lay down any hard and fast rule or formula for the purpose of defining or delimiting sufficient interest. The Court said that it should be left to the discretion of the courts. The judge must determine, in consonance with constitutional objectives, whether a member of the public has sufficient interest to initiate the action. In studying the facts of the case and the environmental law group, the court may discern whether the group is actually concerned with the protection of their countrymen from the ill effects of environmental hazard

and ecological imbalance. Therefore, there is genuine interest in seeing that the law is enforced.

VI. CONCLUSION

To conclude, standing to sue is generally regarded as the first level of access to courts, in the sense that it provides a gauge for determining whether the party has a claim, interest, or right to file a case in court. Let me now end with this statement: The true state of access to justice, through provisional standing to sue, must be gauged not only with our current progressive environmental legislation, but assessed with an eye on the jurisprudence of the courts. Therefore, the future now depends upon the courage and creativity of judges in deciding cases dealing with the environment and natural resources, as these decisions will not only shape jurisprudence and policy on environment, but also determine how we value and work towards a balanced and healthful ecology for all generations.

Setting the Sails of Citizens' Suits in the Philippines*

*Professor Antonio A. Oposa Jr.***

The best form of law enforcement
is when the law does not need to be enforced.
A hundred years of imprisonment
will not restore a tree cut back to life.

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of the Integrated Bar of the Philippines. Together with a group of volunteers, he established bird and maritime sanctuaries, and a youth camp at Bantayan Island, Cebu. He is the author of two internationally acclaimed books, *The Laws of Nature and Other Stories* and *A Legal Arsenal for the Philippine Environment*. For his trail-blazing efforts to advance Environmental Law enforcement, he received The Outstanding Young Man of the Philippines Award (the prestigious TOYM in the field of law) and the highest United Nations environmental award, the U.N. Environmental Programme Global 500 Roll of Honor. He obtained his law degree from the University of the Philippines and his Master of Laws degree in Environmental Enforcement from the Harvard Law School, where he was the commencement speaker of the 1997 graduating class. He teaches Environmental Law at the University of the Philippines and the Philippine Judicial Academy.

I. INTRODUCTION

- The numerous laws in the statute books have not prevented the continuing degradation of the state of environment of the Philippine Islands.¹
- The secret lies in three words: Implementation – Implementation – Implementation.
- As war is too important to be left to generals alone, so are the environmental resources of land, air and water too important to be left to government along.
- Government cannot be everywhere every time because of budgetary limitations. Its officials are sometimes inactive, unconcerned, or constrained by factors not altogether savory.

II. GOOD GOVERNANCE

- In H. D. Thoreau's words, "the government is best that governs the least." Good governance is when the interests of the government and the people converge and move in tandem.
- Bad governance is when the interests and actions of the government and its people diverge.
- Good governance, therefore, is when the citizens are afforded a public voice and allowed to participate in governmental affairs.
- However, when citizens do take the trouble to complain of an environmental violation, they are either ignored or taken for a bureaucratic ride.

I. Please see <oposa.com> for the table of contents of the compendium entitled, *A Legal Arsenal for the Philippine Environment*, Philippines, 2002.

- And the citizen is powerless to do anything more, is frustrated, and becomes indifferent.

III. CITIZEN'S SUIT

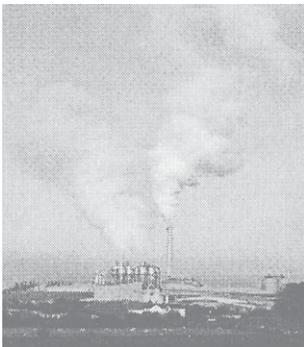
A. *What is a citizen's suit?*

A citizen's suit is a tool for legal empowerment.

It is a tool to empower the citizen to take stronger action in a court of law and seek redress (or prevent) an environment wrong.

B. *Who can file a citizen's suit?*

1. Any citizen, whether or not he or she is personally affected. (In law, the general rule is that one can file a lawsuit only if he or she was personally affected.)²
2. The citizen's suit is an exception created by law to legally empower ordinary citizens.
3. It allows, and even encourages, ordinary citizens to file a lawsuit against private entities and/or public officials to right an environmental wrong.



-
2. This is called one's "legal personality to sue," known in Latin as *locus standi*.

C. Against whom?

1. Private person/s in violation of an environmental law;
2. Public official/s who fail or refuse to properly implement the law.

D. What kinds of lawsuit may be filed?

Administrative, civil, and criminal cases, warranted by the circumstances.

E. How is it done?

1. **Demand Letter.** The person complaining (complainant) writes a demand letter to the alleged violator and to the concerned government agency to stop the violation of an Environmental Law (e.g., air pollution). The letter also has a legal significance. It is, in effect, also a "Notice to Sue" because it gives notice to the alleged polluter that if he does not stop the pollution, he will be sued in a court of law.
2. **Public Officials.** The same is true for the public official who fails or refuses to properly implement the Environmental Law.

F. Usefulness of a citizen's suit



1. **Cattle Prod.** Serves as a prod to public officials to implement the law more vigorously.
2. **Gorilla in the Closet.** A public official who faces external pressures from powerful political or business interests may

also use this citizen's suit provision as an excuse/shield. The public official can make these private interests understand that the law must be properly implemented, or else, they themselves would face possible lawsuits by concerned citizens. In the theory of environmental enforcement, this is called the theory of "a gorilla in the closet."

3. **Psychological Warfare.** The threat of a lawsuit is sometimes more powerful than the lawsuit itself. In the study of the human psyche, the mere knowledge by a polluter or a negligent government official that he may be sued anytime by an ordinary citizen creates a very powerful motive to do what is good and proper. Unnecessary legal entanglements are something all of us try to avoid.

G. History of Its Entry into Philippine Law

I. Jurisprudence

- *Minors v. Philippine Government.* A case that tickled the imagination of the environmental world is the case of forty (40) Filipino children who sued the Philippine government to protect the remaining virgin forests of the Philippines. The children – claiming to act on their own behalf and those of generations yet unborn – filed a class suit against the government to cancel all logging permits in the country. They relied solely on a new provision of the Philippine Constitution, which states that "[t]he State shall protect and advance **the right of the people** to a balanced and healthful ecology in accord with the rhythm and harmony of nature."
- The Philippine Supreme Court eventually ruled that the children on their own behalf and those of generations yet

unborn, even if they were not directly affected, nevertheless, had the necessary legal personality to file the class suit against their government. The Court said that this right is based on the concept of inter-generational responsibility, *i.e.*, the responsibility of the present generation to future generations.

- In the concurring opinion of an internationally-renowned legal scholar,³ it was suggested that the power of the citizens to bring legal action for an environmental wrong also meant that there was a need to legally craft the right to a healthful environment with greater particularity.
- In 1997, while in United States of America for studies, I wrote about the experience of the U.S. in the arena of citizens' suits. As an extra mile, I drafted the indicative outline of a proposed 'citizen's suit' provision for Philippine Law. Who knows, there might be a chance to incorporate that in our laws one day. Wishful thinking.
- Shortly after my return to the Philippines, the proposed Clean Air Act was under consideration. My opinion was requested, so I faxed the draft provision.
- Along the way, a few lines here and there found themselves as part of the law of the land. Yes, it is said that "those who eat sausages and respect the laws should not watch how both are being made."⁴

2. SLAPP Suits

To 'slap' is to deliver a smacking blow with an open hand to the face of a person. In any language and culture, it is the ultimate

3. Justice Florentino P. Feliciano, former Supreme Court Justice and later Member of the Appellate World Trade Organization.
4. Murphy's Law on Justice.

form of insult to a human being. The idea of a SLAPP suit is similar to that of a slap on the face. Experience shows that where citizens (or government officials) try to assist in enforcing the law against environmental offenders, sometimes they find themselves at the receiving end of a lawsuit. Harassment lawsuits for damages, criminal libel, defamation, and other nuisance cases are filed against the environmental advocate.

Now, being a defendant in a lawsuit is no fun, especially if you have to hire your own lawyer, waste time in hearings, travel, incur litigation costs, emotional aggravation, troubled sleep, etc. These harassment cases have a chilling effect on the citizens' desire to participate actively in the task of environmental governance.

And that is the meaning of SLAPP Suit – Strategic Legal Action Against Public Participation (SLAPP). It is a lawsuit strategically directed at the environmental advocate, often by the polluters themselves, to prevent the public from actively participating in matters of environmental governance.



You take enough concern to report this pollution incident to the authorities. To neutralize you, the polluter files a case against you for defamation and damages, and two counts of criminal libel. That is a SLAPP suit.

This is not just a story of legal fiction. In 1995, I helped a *pro bono* client, an old lady, write a complaint to the Department of Environment and Natural Resources (DENR) about her neighbor who was throwing away used oil into the sewers. To get back at the woman and to put his counsel off-balance, the person complained of or the alleged polluter filed

a lawsuit against my client and her lawyer (me!) for two counts of criminal libel and civil damages or for Php1 million pesos. Have you ever been sued? As a surgeon's worst fear is going under the knife himself, so too is a lawyer afraid of a lawsuit. It does not matter who you are and when you are sued. You cannot sleep, and if you do, you wake up suddenly, in the middle of the night, with very cold sweat. And this was in 1995 or 1996, just when I received news that I was admitted for studies abroad. The case was eventually dismissed shortly before I left. Talk about photo-finish; actually, it was more like cardiac finish.

I decided to put the experience to good use. When I was doing a paper on citizen's suit, I also took the extra mile to write about the SLAPP suit experiences in the U.S. jurisdiction. I also drafted a proposed provision for an anti-SLAPP suit provision. Who knows, it may be needed one day.

Indeed, one day in 1998, it was needed for the Clean Air Act. It was included as an 'appendix' to the citizen's suit provision. Both provisions, citizen's suit and anti-SLAPP suit, are now contained in the Clean Air Act of 1999 and the Ecological Solid Waste Management Act of 2000. Yes, sometimes lady luck smiles on those who persevere.

IV. THE EXPERIENCE SO FAR

Since its passage into law, only one citizen's suit has been filed on the law on Solid Waste Management. The Clean Air Act was passed in 1999, but an important component – the emissions testing center – was not implemented until 2002. On October 23, 2002, a group of some thirty (30) lawyers filed a Notice to Sue against the Philippine government. By January 2003, the Philippine government began implementing the required emissions testing centers. What is even more notable is that some



of the top offenders (the “gross polluters”) in the list, the adversaries, turned into cooperators. Since then, they have been working closely with the government to clean up their buses. One bus company is reportedly even moving on to the use of Compressed Natural Gas (CNG) as a cleaner fuel.

We have recently strengthened our capability to file a citizen’s suit. With Ms. Glynda Bathan appointed recently as Deputy Chair for Air Quality of the Philippine Bar Association (PBA) and the Integrated Bar of the Philippines (IBP), we are beginning to see signs of hope. The environmental action team requested for and received from the DENR an updated list of the gross polluters (smoke-belching bus companies). The IBP will soon launch an honest-to-goodness campaign against smoke-belching vehicles.

In line with the non-adversarial nature and non-confrontational culture of Filipinos, a group of volunteer lawyers will pay personal visits to the garages of the top twenty (20) gross polluters. These lawyers, in cooperation with the concerned government agencies, will then “talk” to the owners of the bus companies. The idea is to co-opt them through the use of the ‘candies-and-needles’ approach in the art of legal marketing.

In this socio-culturally sensitive approach, the volunteer lawyers will give them an offer they may not be inclined to refuse:

- I. **Candies.** On the one hand, help will be offered for them to secure assistance to clean up and modernize their bus fleet, including converting to natural gas.

2. **Needles.** On the other hand, if they fail to heed our request, or deliberately refuse to cooperate and instead insist on polluting the air with their smoke belching, we will prepare the needles. We will commence the filing of a series of administrative and civil lawsuits, and where warranted, criminal cases.

Yes, "the absence of alternatives clears the mind marvelously."⁵

V. TAKING THE CITIZEN'S SUIT TO A HIGHER PLANE

A hundred lawsuits will not solve the crisis of air pollution. Law is not the answer. As long as people continue to burn matter as fuel (oil and coal), we are simply changing its form from liquid or solid to gas. It is a fundamental law of physics: matter cannot be destroyed. We can only change its form.

The laws and activities of man must follow the Laws of Nature. It is time to take the idea of a citizen's suit to a



higher plane. Let us file a citizen's suit against the government and car manufacturers to ban the use of cars. "Yes, sometimes, words have to be a little wild, because they are the assault of thoughts upon the unthinking."⁶

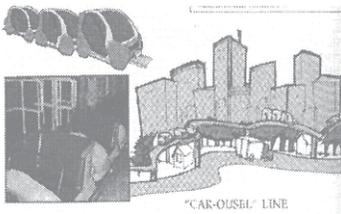
5. Quote from Henry Kissinger.

6. John M. Keynes.

This rather “wild” lawsuit will spark thinking. It will initially sow enough confusion to spark the molecules of thought and, hopefully, trigger the thinking process of the human mind. Confusion is the seed of wisdom. It will provide a formal forum where this proposition of policy may be debated in an orderly, logical, and dispassionate fashion. It will ventilate and carefully examine the issues and views *pro* and *contra*. And the obvious will finally become evident: If we must stop air pollution, we must stop the burning. The proponents of this proposition can submit the following pieces of evidence in court:

- a. **Air pollution.** 60% to 80% of air pollution is caused by mobile sources.
- b. **Car accidents.** Some three (3) million people die worldwide as a result of car accidents. An additional three (3) million die from air pollution.
- c. **Health cost.** In Metro Manila alone, the medical cost and lost man-hours as a result of air pollution amount to a staggering US\$400 million (around Php 20 billion) every year.
- d. **Cars are wasteful.** A car takes up so much metal, plastic, steel, rubber, and fuel for the very simple chore of transporting a person from one place to another. It also takes up so much space. Sitting, a person takes one-fourth of a square meter (0.25 sq.m.). An average car takes up twelve square meters (12 sq.m.) of space, in the road.
- e. **Unacceptable gaseous garbage.** The massive amount of carbon dioxide (CO₂) generated by motor vehicles and absorbed by the atmosphere is unacceptably beyond the carrying capacity of the Earth.

- f. **No open spaces.** The Philippines and other countries in Asia do not have much space to turn into concrete roads. Taking up 12 sq.m. to transport a 0.25 sq.m. person is not a wise way of using scarce space.
- g. **Greenbelts.** Asian cities need open spaces to turn into greenbelts, vegetation corridors, ponds and lagoons, tree parks, and natural bird sanctuaries. Man must be reconnected to his natural world.
- h. **Reclaiming concrete.** Turning soil into concrete only increases the hot temperature. Half of the concrete roads must be broken up and planted with fruits, trees, and vegetables.
- i. **Oxygen-Carbon Dioxide Exchange.** Besides, we also need the plants and the trees to provide us oxygen, and for them to absorb our carbon dioxide.
- j. **Smarter transport.** Like any debate, the proponents will also be able to present their proposition for alternative and smarter modes of locomotion and the benefits that will result.
- k. **Collective transport systems** are fun, safe, and cheap.
- l. **Challenge the foundation of thinking.** To ban cars is a most interesting debate. It challenges the very foundation of our concept of transportation and manner of locomotion for the last fifty (50) years. We will eventually understand that these



metallic carriages we use for individual transportation are altogether wasteful, wrong, and reckless.⁷ The lawsuit will trigger debate on the issue and initially cause a healthy amount of confusion. But this is good because confusion is the seed of wisdom. **Eventually, the obvious will become evident.**⁸

VI. CONCLUSION

The concept of a citizen's suit has a long way to go in the Philippines and also in Asia. In the first place, Asians are not confrontational by nature and would rather keep it quiet or seek alternative avenues of dispute resolution.

The mere existence of this provision, however, ensures that an ordinary citizen is given a chance for his/her voice to be heard in public. He or she is given a "public voice."

But then, the challenge is not so much as to whether a citizen has the power or not. With the citizen's suit provision as part of the Philippine Environmental Law, the power is now ready and primed for action.

What matters most is to ask what this power can do to achieve the common good, *i.e.*, the greatest good of the greatest number . . . for the longest time.

-
7. In its stead, let us have fun carousel-like mass-transport systems and non-motorized locomotion corridors.
 8. A word of caution: Do not expect a resolution from the Court. If at all, execution (or implementation) of the decision will be costly and too difficult for an ordinary citizen to accomplish.

Introducing the Indigenous Peoples’ Rights Act (IPRA)*

*Dean Sedfrey M. Candelaria***

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I. INTRODUCTION

Indigenous cultural communities (ICCs)¹ and indigenous peoples (IPs)² have long been one of the vulnerable, if not, neglected sectors in Philippine society. State policy towards them has evolved from that of segregation to assimilation and integration, and currently to that of recognition and preservation.³

It was to precisely address the marginalization of the ICCs/IPs that the 10th Congress of the Philippines passed and approved Republic Act No. 8371⁴ or the Indigenous Peoples' Rights Act of 1997 (IPRA). Deemed as one of President Ramos' social

1. The expression "ICCs" is an adaptation of the terminology used in the 1987 Philippine Constitution. They were, however, first referred to as "national cultural communities" in Section II, Article XV of the 1973 Constitution.
2. This conforms to the term used in contemporary international language. See, for example, International Labour Organization Convention No. 169, Convention Concerning Indigenous and Tribal Peoples in Independent Countries (June 27, 1989) and United Nations Draft Declaration on the Rights of Indigenous Peoples, U.N. Doc. E/CN.4/Sub.2/1994/Add.I (1994).
3. For a concise account of the legislative history in regard to Filipino indigenous peoples, see *Cruz v. Secretary*, 347 SCRA 128, 176-89 (2000) (Puno, J., separate opinion). See also Candelaria, *The Rights of Indigenous Communities in International Law: Some Implications Under Philippine Municipal Law*, 46 Ateneo L.J. 273, 300-06 (2001).
4. This Act is fully entitled, "An Act to Recognize, Protect, and Promote the Rights of Indigenous Cultural Communities/ Indigenous Peoples, Creating a National Commission on Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Funds Therefor, and for Other Purposes."

reform agenda, IPRA is a consolidation of two bills, Senate Bill No. 1728 and House Bill No. 9125.

IPRA, in synopsis, recognizes the existence of ICCs/IPs as a distinct sector in Philippine society. In doing so, IPRA provides for the respective civil, political, social, and cultural rights of ICCs or IPs; acknowledges a general concept of indigenous property right and their title thereto; and creates the National Commission on Indigenous Peoples (NCIP) as the independent implementing body of R.A.8371.

II. LAYING DOWN THE FRAMEWORK FOR IPRA

A. Indigenous Cultural Communities in a Historical Perspective

The characterization of the relationship between the indigenous peoples and the national government dates back to the colonial period, when the conquering European powers relentlessly pursued the principal goal of *reduccion*. To further this objective, the colonizers adopted the two-pronged approach of spreading Christianity and promoting trade, while at the same time, civilizing the native inhabitants of the other parts of the world, properly known as the *Indios*. All through the Spanish regime, for instance, it had been regarded by the Spanish Government as a sacred “duty to conscience and humanity” to civilize the less fortunate people living “in the obscurity of ignorance” and to accord them the “moral and material advantages” of community life and the “protection and vigilance afforded them by the same laws.”⁵

This need to impart civilization during the period of European conquest was most evident in the manner by which

5. *People v. Cayat*, 68 Phil. 12, 17 (1939) (citing the Decree of the Governor-General of the Philippines of January 14, 1887).

the colonizers related to the native inhabitants of the then Philippine Islands. The relationship between the indigenous peoples, on one hand, and the State, on the other hand, was thus primarily characterized as analogous to that between a guardian and a ward.

In *Rubi v. Provincial Board of Mindoro*,⁶ the *Manguianes* of the Province of Mindoro were the subject of Provincial Board Resolution No. 25 for the purpose of resettling them in a reservation.⁷ Alleging that the provincial officials illegally deprived them of their liberty, Rubi and the other *Manguianes* applied for the issuance of the writ of *habeas corpus* in their favor. The Court, speaking from the point of view of the State's exercise of police power, justified the resolution as a form of protection and

6. 39 Phil. 660 (1919).

7. Provincial Board Resolution No. 25, provided as follows:

Whereas several attempts and schemes have been made for the advancement of the non-Christian people of Mindoro, which were all a failure,

Whereas it has been found out and proved that unless some other measure is taken for the *Mangyan* work of this province, no successful result will be obtained toward educating these people,

Whereas it is deemed necessary to oblige them to live in one place in order to make a permanent settlement,

Whereas the provincial governor of any province in which non-Christian inhabitants are found is authorized, when such a course is deemed necessary in the interest of law and order, to direct such inhabitants to take up their habitation on sites on unoccupied public lands to be selected by him and approved by the Provincial Board,

introduction of civilized customs to the “non-Christian” *Manguianes*. Significantly, in tracing the concept of *reduccion* during the conquest period, Justice Malcolm explained that the meaning of the term “non-Christian” refers not to religious belief, but to a geographical area, as well as the people’s level of civilization. The Court then ruled that the methods followed by the Government of the Philippine Islands in its dealings with the non-Christian people were practically identical with that followed by the United States Government in its dealings with the Indian tribes. As was expressed:

From the beginning of the United States, and even before, the Indians have been treated as “in a state of pupilage.” The recognized relation between the Government of the United States and the Indians may be described as that of guardian and ward... These Indian tribes are the wards of the nation. They are communities dependent on the United States. Dependent largely for their daily food. Dependent for their political rights... from their very weakness and helplessness... there arise the duty of protection...⁸

In *People v. Cayat*,⁹ meanwhile, an ordinance was passed that prohibited the sale to and possession of highly intoxicating liquor by native inhabitants. Cayat, a native inhabitant of Benguet, was

Now, therefore, be it resolved, that under Section 2077 of the Administrative Code, 800 hectares of public land in the sitio of Tigbao on Naujan Lake be selected as a site for the permanent settlement of *Mangyans* in Mindoro, subject to the approval of the Honorable Secretary of the Interior.

8. *Rubi v. Provincial Board of Mindoro*, 39 Phil. 660, 694-97 (1919).
9. 68 Phil. 12 (1939).

then fined for having possessed one bottle of A-I-I gin other than the native wine the inhabitants were used to. The Court once more cited the policy of *reduccion* and justified the prohibition as not discriminatory under the equal protection clause, owing to the valid classification of the natives not based on accident of birth or parentage, but upon the degree of civilization and culture. Justice Moran reasoned:

The prohibition... is unquestionably designed to insure peace and order in and among the non-Christian tribes. It has been the sad experience of the past... that the free use of highly intoxicating liquors by the non-Christian tribes have often resulted in lawlessness and crimes, thereby hampering the efforts of the government to raise their standard of life and civilization... Act No. 1639... is designed to promote peace and order in the non-Christian tribes so as to remove all obstacles to their moral and intellectual growth and, eventually, to hasten their equalization and unification with the rest of their Christian brothers.¹⁰

The treatment of ICCs/IPs would later on progress toward increased constitutional protection in light of developments at the international level.

B. The Recognition of Indigenous Peoples in International Law

While the prevalent State policy emphasized a guardian-ward relationship and highlighted the subservience of the indigenous peoples, the international human rights movement toward the recognition of indigenous peoples, however, shifted this policy to one of upholding the indigenous peoples' right to self-

10. *Id.* at 19-20.

determination. In 1957, the International Labour Organization adopted Convention No. 107,¹¹ the first attempt to codify the rights of indigenous peoples in international law. The Convention concerned itself with the protection of the indigenous populations, their progressive integration into their respective national communities, and the improvement of their working and living conditions. ILO Convention 169¹² subsequently set the standard for preventing the utilization of indigenous labor in a context where discrimination and servitude of these peoples were prevalent.

Two other sets of international instruments significantly contribute to increased protection of ICCs and IPs. The United Nations Declaration on the Elimination of All Forms of Racial Discrimination¹³ and the International Covenant on the Elimination of All Forms of Racial Discrimination¹⁴ sought to eliminate racial discrimination and secure respect for the dignity of the human person. A United Nations Draft Declaration on the Rights of the Indigenous Peoples¹⁵ also came about for the purpose of consolidating the fundamental rights that indigenous peoples could enjoy at the domestic level.

11. ILO Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Population in Independent Countries, June 26, 1957, 328 U.N.T.S. 249.

12. Indigenous and Tribal Peoples Convention (ILO Convention No. 169), 72 ILO Off. Bull 59 (Ser A., No. 2) (September 1991) *reprinted in* 28 ILM 1348 (1989).

13. G.A. Res. 1904, (XVIII) (November 20, 1963).

14. 660 U.N.T.S. 195 (January 4, 1969).

15. U.N. Doc. E/CN.4/Sub.2/1994/Add.I (1994).

Not only were the indigenous peoples afforded protection, the international community also recognized that these communities enjoy collective rights as social groups on account of their distinct characteristics. Incorporated in the right to self-determination is the concomitant right of the indigenous peoples, *inter alia*, to determine their course of development, the type of education they want to pursue, and the extent of the land and domain they would utilize.

C. The Constitutional Basis

Constitutional policy vis-à-vis the rights of indigenous communities did not come about until the adoption of the 1973 Constitution. Section I I, Article XV therein provided that “[t]he State shall consider the customs, traditions, beliefs, and interests of national cultural communities in the formulation and implementation of [S]tate policies.”

In contrast to its predecessor, the 1987 Constitution introduced several provisions specifically recognizing, promoting, and protecting the rights of the indigenous peoples. The Constitution embodies the State policy that recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.¹⁶ Another provision in the Constitution states that Congress shall give the highest priority to the enactment of measures that protect and enhance the right of all people to human dignity, reduce social, economic and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.¹⁷

16. Phil. Const., Art. II, § 22.

17. *Id.* Art. XIII, § 1.

The State shall likewise protect the right of indigenous cultural communities to their ancestral lands and, in view of this, Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.¹⁸ Moreover, the State shall apply the principles of agrarian reform to the rights of indigenous cultural communities over ancestral lands.¹⁹ The State shall also consider the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions in the formulation of national plans and policies.²⁰

The Constitution further provided for autonomous regions, each in Muslim Mindanao and the Cordilleras,²¹ whose organic acts shall provide for legislative powers over certain areas of concern within these regions.²² Congress may also create a consultative body to advise the President on policies affecting indigenous cultural communities.²³ Majority of the members of this body shall come from such communities.²⁴

III. WHO ARE THE INDIGENOUS PEOPLES (IPs)?

Indigenous peoples in the country total around twelve (12) million and comprise about 16% to 17% of the total Filipino

18. *Id.* Art. XII, § 5.

19. *Id.* Art. XIII, § 6.

20. *Id.* Art. XIV, § 17.

21. *Id.* Art. X, §§ 1, 15.

22. *Id.* Art. X, § 20.

23. *Id.* Art. XVI, § 12.

24. *Id.*

population.²⁵ These peoples number to about 110 ethnic groups, and are represented according to seven (7) ethnographic regions.²⁶

The most widely accepted definition of indigenous peoples comes from UN Special Rapporteur Martinez Cobo:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sections of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sections of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.²⁷

Under the Philippine constitutional law, the term pertains to those groups of Filipinos who have retained a high degree of continuity from pre-conquest culture.²⁸

Indigenous peoples are comprehensively appreciated in three (3) contexts. *First* is on account of descent before conquest, which means that one may want to trace his roots to his elders

25. *Cruz*, 347 SCRA at 252 (2000) (Kapunan, J., separate opinion).

26. Response of Rep. Gregorio A. Andolana to the interpellation of Rep. John Henry R. Osmeña on House Bill No. 9125, Journal of the House of Representatives 20 (Aug. 20-21, 1997).

27. Jose Martinez Cobo, Study of the Problem of Discrimination Against Indigenous Population, U.N. Doc. E/CN.4/Sub.2/1986/7/Add.4, ¶ 379.

28. 4 Record of the Constitutional Commission 34 (1986).

who were already in the Philippines before the Spaniards came. *Second* is on account of the social, economic, and cultural conditions, *i.e.*, indigenous peoples are those who practice a way of life characteristically different from mainstream society. They continue to do so by living, speaking, dressing, and expressing themselves in such manner. *Third* is self-ascription, *i.e.*, one believes by himself or herself that he or she is an indigenous person, and to a certain extent manifests this belief in his or her relations with other people.

The definition of indigenous peoples under Chapter II, Section 3 (h) of R.A. 8371 is a combination of all the three factors abovementioned. Indigenous peoples pertain to:

a group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, become historically differentiated from the majority of Filipinos. ICCs/IPs shall likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains.²⁹

29. R.A. 8371, § 3 (h).

William Henry Scott, a noted scholar on indigenous peoples, views the definition of the indigenous peoples from the point of view of a majority-minority dichotomy. Centuries of colonialism and neocolonial domination have created a discernible chasm between the cultural majority and the group of cultural minorities.³⁰ This means that, ultimately, the present Philippine national culture is the culture of the majority while its indigenous roots had been replaced by foreign cultural elements that are decidedly pronounced and dominant.³¹

There is a predominant view among international legal scholars that the use of the term “people” within the context of ICCs is not synonymous to “people” in the international and political sense, which implies the right to secede. The Philippine Government is actually confronting this issue in Muslim Mindanao as regards revolutionary movements or even within the context of minority-majority and ethnic conflicts. Scholars, however, point out that this is currently more of a question of fact rather than law at this point.

IV. THE CONCEPT OF ANCESTRAL DOMAIN AND ANCESTRAL LAND

A. Definition and Scope Under Republic Act No. 8371

One of the more problematic areas in IPRA is the concept of ancestral domain, including ancestral land. Both became the

30. *Cruz*, 347 SCRA at 251 (Kapunan, J., separate opinion).

31. See Constantino, *The Philippines: A Past Revisited* 26-41 (1975); Agoncillo, *A History of the Filipino People* 5, 74-75 (8th ed.).

subject of the test case of *Cruz v. Secretary of Department of Environment and Natural Resources*.³²

As provided under Chapter II, Section 3 (a), ancestral domains refer to:

all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, *force majeure* or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned, whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs, but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators.

32. 347 SCRA 128. *See also Cruz v. Secretary of DENR*, Motion for Reconsideration, G.R. No. 135385 (September 18, 2001). The Court upheld the validity of R.A. 8371. Here, as the votes were equally divided (7 to 7) and the necessary majority was not obtained, the case was redeliberated upon. However, upon redeliberation, the voting remained the same. The Court then dismissed the petition assailing the constitutionality of IPRA, pursuant to Rule 56, Section 7 of the Revised Rules on Civil Procedure.

Ancestral land, meanwhile, as defined in a limited sense in Chapter II, Section 3 (b), pertain to land “occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial . . . including, but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms and tree lots.”

B. The Regalian Doctrine vis-à-vis Ancestral Domain and Ancestral Land

Under the concept of *jura regalia*, the State is deemed the owner of all natural resources within its territory.³³ Such concept³⁴ was deemed as a necessary starting point to secure recognition of the State’s power to control their disposition, exploitation, development, or utilization of its natural resources.³⁵

As embodied in the Regalian doctrine, the King, by fiction of law, was regarded as the original proprietor of all lands, the true and only source of title, and from whom all lands were held. As such, title to land must be traced to some express or implied grant from the Spanish Crown or its successors, the American colonial government, and thereafter, the Philippine Republic.³⁶

33. Phil. Const., Art. XII, § 2 provides:

exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms as may be provided by law. In case of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant. . .

34. 1973 Phil. Const., Art. XIII, § I.

35. Cruz, 347 SCRA at 171-72 (Puno, J., separate opinion).

36. *Id.* at 268 (Kapunan, J., separate opinion).

How the IPRA definition of ancestral domain, inclusive of ancestral land, relates to the constitutional definition of lands of public domain is resolved in the concept of native title. This was affirmed in the landmark case of *Cariño v. Insular Government*³⁷ where the Court recognized the concept of private land title that existed irrespective of any royal grant from the State.

In *Cariño*, Don Mateo Cariño, an *Ibaloi*, sought to register with the land registration court 146 hectares of land in Baguio. Prior to the Treaty of Paris, the applicant and his ancestors had held the land as owners for more than fifty (50) years, in accordance with *Igorot* custom. Cariño claimed ownership of the land and sought registration under the Philippine Commission Act No. 496 of 1902. His application was granted in 1904, but the Insular Government maintained that his failure to register his property, pursuant to a decree of June 25, 1880, converted his land to public land. Upon succession to the title of Spain by the United States, Insular authorities thereby contended that Cariño no longer had any rights that the Philippine Government was bound to respect.

Justice Oliver Wendell Holmes, in finding the applicant on appeal to the U.S. Supreme Court, stated:

It is true that Spain, in its earlier decrees, embodies the universal feudal theory that all lands were held from the Crown... [but] it does not follow that... [the] applicant had lost all rights and was a mere trespasser when the present government seized his land. The argument to that effect seems to amount to a denial of native titles... for the want of ceremonies which the Spaniards would not have permitted and have not the power to enforce.³⁸

37. 53 L. Ed. 594 (1909).

38. *Id.* at 596.

The Court further emphasized:

Every presumption is and ought to be against the government... It might, perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership. It will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land.³⁹

Thus, in Chapter II, Section 3 (1), native title has been defined as “pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands, and are thus indisputably presumed to have been held that way since before the Spanish conquest.”

C. The Concept of Ownership

The law makes a distinction between the civil law concept of ownership and indigenous ownership. On one hand, the civil law concept of ownership entails the attributes of the right to receive from the thing that which it produces (*jus utendi, jus fruendi*), the right to consume the thing by its use (*jus abutendi*), the right to alienate, encumber, transform and even destroy that which is owned (*jus disponendi*), and the right to exclude other persons from the possession of the thing owned (*jus vindicandi*).⁴⁰ On the other hand, Section 5 of the IPRA emphasizes that ancestral domains are the ICCs'/IPs' “private but community property which belongs to all generations.”

39. *Id.*

40. Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines 42 (1983); Civil Code, Arts. 427-428.

Furthermore, although the presumption of the law is such that areas within the ancestral domains are communally held, such is not in the concept of co-ownership under the New Civil Code.⁴¹ This important distinction emphasizes the fact that ancestral domains cannot be sold, disposed or destroyed because under the indigenous concept of ownership, ancestral domains and resources found therein serve as the material bases of the IPs' cultural integrity.⁴²

D. Vested Rights and Priority Rights

As regards rights existing prior to the passage of the law, IPRA provides for the rule on vested rights which respects existing property rights regime.⁴³ The remedy may be compensation for the displaced indigenous peoples and/or grant of lands of quality and legal status at least equal that of the land previously occupied as contemplated in Section 5(c) when a pre-existing title to the land could no longer be nullified.

The rule on utilization of natural resources within the domains provides ICCs/IPs with "priority rights" in the harvesting, extraction, development or exploitation, but a non-IP may be allowed to take part in the development and utilization for a period not exceeding twenty-five (25) years, renewable for another twenty-five (25) years. Application of this rule, however, is subject to a formal written agreement entered into with the IPs concerned or that the community, pursuant to its own decision-making process, has agreed to allow such operation.⁴⁴

41. R.A. 8371, § 55. See *Cruz v. Secretary of DENR*, 347 SCRA 128, 219-25 (2000) (Puno, J., separate opinion); 287 (Kapunan, J., separate opinion).

42. R.A. 8371, § 5.

43. *Id.* § 56.

44. *Id.* § 57.

E. Disposition of Ancestral Domain and Ancestral Land

As for sale or transfer, IPRA makes a distinction as to ancestral domain and ancestral land. By express provision, ancestral domains can never be sold.⁴⁵ However, ancestral lands may be transferred only to or among members of the same indigenous people, subject to customary laws and traditions of the community concerned. The ancestral lands may, however, be redeemed within fifteen (15) years from non-IPs on the ground of vitiated consent or unconscionable price received in exchange for the land.⁴⁶

F. Formal Recognition of Native Title

Native title, in accordance with the *Cariño* ruling, may be claimed by ICCs/IPs. Formal recognition of such native title, however, comes about through a process under the National Commission on Indigenous Peoples (NCIP), which is thereafter embodied in a Certificate of Ancestral Domain Title (CADT).⁴⁷ Individual members of cultural communities, with respect to individually-owned ancestral lands, who, by themselves or through their predecessors-in-interest, have been in continuous possession and occupation of the same in the concept of owner since time immemorial or for a period of not less than thirty (30) years immediately preceding the approval of IPRA and uncontested by the members of the same ICCs/IPs shall have the option, within twenty (20) years, to secure title to their ancestral lands under the provisions of Commonwealth Act 141, as amended, or the Land Registration Act 496.⁴⁸ The Act further provides

45. *Id.* § 5.

46. *Id.* § 8.

47. *Id.* § 11.

48. *Id.* § 12. The new land registration law is P.D. 1529.

that, for this purpose, individually-owned ancestral lands, which are agricultural in character and actually used for agricultural, residential, pasture, and tree farming purposes, including those with a slope of eighteen percent (18%) or more, are classified as alienable and disposable agricultural lands.

G. Tax Exemption

In regard to taxes, all lands certified to be ancestral domains are exempt from real property taxes, special levies, and other forms of exaction, except such portion as are actually used for large-scale agriculture, commercial forest plantation, residential purposes, and upon titling by another private person, provided that exactions from these non-exempt portions shall be used to facilitate the development and improvement of the ancestral domains.⁴⁹

H. Rights to Ancestral Domain and Ancestral Land

Chapter III, Section 7 of R.A. 8371 enumerates the rights of the indigenous peoples to their ancestral domains, to wit:

1. To claim ownership over lands, bodies of water, sacred places, hunting and fishing grounds;
2. To develop lands, manage and control natural resources, and benefit therefrom;
3. To stay in the territories;
4. To be resettled in case of displacement;
5. To regulate entry of migrant settlers;
6. To have access to integrated systems for the management of their inland waters and air space;

49. *Id.* § 60.

7. To claim parts of reservations, except those for public welfare and service; and
8. To resolve land conflicts using customary laws prior to any court action.

As for ancestral lands, as previously mentioned, ICCs/IPs have the right to transfer land or property rights to/among members of the same ICCs/IPs, subject to customary laws and traditions of the community concerned. They also have the right of redemption within fifteen (15) years in cases where it is shown that the transmission of land/property rights by virtue of any agreement or devise, to a non-member of the concerned ICCs/IPs, is tainted by the vitiated consent of the ICCs/IPs, or is characterized by an unconscionable consideration or price.⁵⁰

V. THE RIGHT TO SELF-GOVERNANCE AND EMPOWERMENT

In general, IPRA provisions on the right to self-governance apply to indigenous peoples not included in the autonomous regions of Muslim Mindanao and the Cordilleras. They may use the form and content of their way of life, as well as their distinct sense of the justice system so long as these are compatible with the national legal system and internationally recognized human rights.⁵¹ This means that ICCs/IPs are still subject to some fundamental standards outside their tradition, religion or culture. In contrast, pursuant to Article X, Section 20 of the Constitution, IPs in the autonomous regions are given legislative powers over:

1. Administrative organization;
2. Revenue creation;

50. *Id.* § 8.

51. *Id.* § 15.

3. Ancestral domain and natural resources;
4. Personal, family and property relations;
5. Urban and rural planning development;
6. Economic, social and tourism development;
7. Education;
8. Cultural matters; and
9. Other matters as may be authorized by law. It will be noted that criminal legislation is excluded from the mandate given to these autonomous regions. Likewise, the conduct of foreign affairs and national security are beyond their powers.

Governance and empowerment include the right of the indigenous peoples to participate at all levels of decision-making and development of indigenous political structures, including mandatory representation in policy-making bodies and other local legislative councils,⁵² and the right of the IPs to determine their own priorities for development.⁵³ Furthermore, ICCs/IPs living in contiguous areas or communities where they form the predominant population, but which are located in municipalities, provinces or cities where they do not constitute the majority of the population, may form or constitute a separate *barangay* in accordance with the Local Government Code on the creation of *tribal barangays*.⁵⁴

52. *Id.* § 16.

53. *Id.* § 17.

54. *Id.* § 18.

VI. SOCIAL JUSTICE AND HUMAN RIGHTS

The principle of non-discrimination and equal protection is the overarching principle of R.A. 8371.⁵⁵ This means that the State shall extend to ICCs/ IPs the same employment rights and opportunities,⁵⁶ basic services,⁵⁷ educational,⁵⁸ and other rights and privileges available to every member of the society. Women⁵⁹ and children⁶⁰ shall likewise be afforded special protection as regards their respective right to participation and development.

IPRA also provides that indigenous peoples have the right to special protection and security in periods of armed conflict in

55. *Id.* § 21.

56. *Id.* § 24, IPRA also specifically provides for unlawful acts pertaining to employment, which are:

- a. To discriminate against any ICC/IP with respect to the terms and conditions of employment on account of their descent. Equal remuneration shall be paid to ICC/ IP and non-ICC/IP for work of equal value; and
- b. To deny any ICC/IP employee any right or benefit ... provided for [by law] or to discharge them for the purpose of preventing them from enjoying any of the rights or benefits provided under [R.A. 8371] .

57. As enumerated in Section 25 of IPRA, basic services include, *inter alia*, water and electrical facilities, education, health and infrastructure.

58. Section 28, for instance, provides for a complete, adequate and integrated system of education, relevant to the needs of the children and young people of ICCs/IPs.

59. R.A. 8371, § 26.

60. *Id.* § 27.

observance of international humanitarian laws.⁶¹ ICCs/IPs shall not be recruited against their will into armed forces, and in particular, for the use against other ICCs/IPs; nor shall children of ICCs/IPs be recruited under any circumstance. Indigenous individuals shall also not be forced to abandon their lands, territories and means of subsistence, or relocated in special centers for military purposes under any discriminatory condition.

VII. CULTURAL INTEGRITY

IPRA provisions on cultural integrity are understood in a holistic sense. They cover and guarantee the rights to the preservation of indigenous culture,⁶² establishment of indigenous educational systems,⁶³ elimination of prejudice and promotion of tolerance in the recognition of cultural diversity,⁶⁴ restitution of cultural, intellectual and spiritual property,⁶⁵ preservation of archeological sites and practice of spiritual traditions,⁶⁶ and protection of indigenous knowledge systems, medicines, plants, animals, archeological sites, and sciences and technologies.⁶⁷

VIII. NCIP AND IPRA ENFORCEMENT

The National Commission on Indigenous Peoples (NCIP) is the primary government agency responsible for the formulation

61. *Id.* § 22.

62. *Id.* § 29.

63. *Id.* § 30.

64. *Id.* § 31.

65. *Id.* § 32.

66. *Id.* § 33.

67. *Id.* §§ 34-37.

and implementation of policies to promote and protect the rights and well-being of the ICCs/IPs, as well as for the recognition of their ancestral domains and their rights thereto.⁶⁸ It is composed of seven Commissioners belonging to ICCs/IPs, appointed specifically from each of the following ethnographic areas: Region I and the Cordilleras; Region II; the rest of Luzon; Island Groups including Mindoro, Palawan, Romblon, Panay and the rest of the Visayas; Northern and Western Mindanao; Southern and Eastern Mindanao; and Central Mindanao, with the additional proviso that at least two of the seven Commissioners shall be women.⁶⁹

The Commissioners must be natural born Filipino citizens, bona fide members of ICCs/IPs as certified by his/her tribe, experienced in ethnic affairs and have worked for at least ten (10) years with an ICC/IP community and/or any government agency involved in ICC/IP, at least thirty-five (35) years of age at the time of appointment, and must be of proven honesty and integrity.⁷⁰ They shall hold office for three years subject to re-appointment for another term only.⁷¹ They can be removed from office by the President or upon recommendation by any indigenous community.⁷²

Under Section 44 of the IPRA, two of the most crucial powers of the NCIP are the power to issue certificates of ancestral land/domain title⁷³ and the power to issue appropriate certification

68. *Id.* § 38.

69. *Id.* § 40.

70. *Id.* § 41.

71. *Id.*

72. *Id.* § 42.

73. *Id.* § 44 (e).

as a pre-condition to the grant of permit, lease, grant, or any other similar authority for the disposition, utilization, management and appropriation of any part or portion of the ancestral domain.⁷⁴

There are several offices within the NCIP that are responsible for the implementation of the policies provided by IPRA. They are as follows:

- a. Ancestral Domains Office
- b. Office on Policy, Planning and Research
- c. Office of Education, Culture and Health
- d. Office on Socio-Economic Services and Special Concerns
- e. Office of Empowerment and Human Rights
- f. Administrative Office
- g. Legal Affairs Office⁷⁵

The NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs, subject to the principle of exhaustion of remedies under customary law.⁷⁶ Decisions of the NCIP shall be appealable to the Court of Appeals by way of a petition for review.⁷⁷ No inferior court of the Philippines shall have jurisdiction to issue any restraining order or writ of preliminary injunction against the NCIP or any of its duly authorized or designated offices in any case, dispute or controversy arising from this Act and other pertinent laws relating to ICCs/IPs and ancestral domains.⁷⁸

74. *Id.* § 44 (m).

75. *Id.* § 46.

76. *Id.* § 66.

77. *Id.* § 67.

78. *Id.* § 70.

Penalties are specifically provided for unlawful intrusion on ancestral domain, violation of the principle of non-discrimination, and the exploration, excavation, defacing or removal of archeological sites and artifacts of great importance to the IPs.⁷⁹ The violators may be punished in accordance with the customary laws of the ICCs/IPs concerned, provided that the penalty is not cruel, degrading or inhuman, and that no death penalty or excessive fines shall be imposed.⁸⁰

It is to be noted though that there is a special provision for Baguio, which is still governed by its own Charter.

IX. THE DELINEATION PROCESS AND SOME CONCERNS

In the identification and delineation of ancestral domains, a petition for delineation is first filed with the NCIP through the Ancestral Domains Office (ADO).⁸¹ Then, in the delineation proper, the official delineation of ancestral domain boundaries, including census of all community members therein, is immediately undertaken by the ADO upon filing of the application by the ICCs/IPs concerned.⁸² The applicant establishes proof of ancestral domain claims through the submission of a number of documents.⁸³

79. *Id.* § 72.

80. *Id.*

81. *Id.* § 52 (b).

82. *Id.* § 52 (c).

83. *Id.* § 52 (d). It states:

Proof of Ancestral Domain Claims shall include the testimony of elders or community under oath, and other documents directly or indirectly attesting to the

On the basis of its investigation, the ADO shall prepare a perimeter map, complete with technical descriptions, and a description of the natural features and landmarks embraced therein.⁸⁴ A complete copy of the preliminary census and a report

possession or occupation of the area since time immemorial by such ICCs/IPs in the concept of owners, which shall be any one (I) of the following authentic documents:

1. Written accounts of the ICCs'/IPs' customs and traditions;
2. Written accounts of the ICCs'/IPs' political structure and institution;
3. Pictures showing long term occupation such as those of old improvements, burial grounds, sacred places, and old villages;
4. Historical accounts, including pacts and agreements concerning boundaries entered into by the ICCs/IPs concerned with other ICCs/IPs;
5. Survey plans and sketch maps;
6. Anthropological data;
7. Genealogical surveys;
8. Pictures and descriptive histories of traditional communal forests and hunting grounds;
9. Pictures and descriptive histories of traditional landmarks, such as mountains, rivers, creeks, ridges, hills, terraces and the like; and
10. Write-ups of names and places derived from the native dialect of the community.

84. *Id.* § 52 (e).

of investigation shall be prepared by the ADO,⁸⁵ subject to notice and publication requirements.⁸⁶ The ADO report on endorsement shall be made within fifteen (15) days from publication.⁸⁷ After a favorable endorsement report, the NCIP Chairperson shall thereafter certify that the area covered is an ancestral domain⁸⁸ and ICCs/IPs whose ancestral domains have been officially delineated and determined by the NCIP shall be issued a Certificate of Ancestral Domain Title (CADT) in the name of the community concerned.⁸⁹ The NCIP shall then register issued Certificates of Ancestral Domain Titles (CADTs) and Certificates of Ancestral Land Titles (CALTs) before the Register of Deeds in the place where the property is situated.⁹⁰

This delineation process, however, is not applicable to ancestral domains/lands already delineated according to DENR Administrative Order No. 2, Series of 1993, nor to ancestral lands and domains delineated under any other community/ancestral domain program prior to the enactment of IPRA.⁹¹

X. CONCLUSION

The passage of IPRA was a milestone both in Philippine legislative history and jurisprudence. However, the effective application of its provisions entails political will on the part of the government

85. *Id.* § 52 (f).

86. *Id.* § 52 (g).

87. *Id.* § 52 (h).

88. *Id.* § 52 (i).

89. *Id.* § 52 (j).

90. *Id.* § 52 (k).

91. *Id.* § 52 (a).

and policy-makers. New legal concepts introduced by the law have immediately generated debate among law practitioners. This implies a need to thoroughly understand and study the implications of IPRA, particularly in balancing the mandate to remedy the historical injustice suffered by ICCs/IPs and addressing a human right-centered development for the Filipino people as a whole.

Key Legal Issues in Illegal Logging Cases*

Attorney Arthur P. Castillo**

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I. INTRODUCTION

Atty. Antonio Oposa has capsulized in his concept paper the **core** legal issue in natural resources protection cases. He rightly observed that environment and natural resources cases are victimless crimes. There is no private offended party directly affected by the injury or damage inflicted on the resources. For which reason, these cases are given low priority by the enforcers themselves, by the prosecutorial arm of the government and even the courts. In many instances, these cases do not even reach the courts. They are dismissed in the preliminary investigation stage. Even dedicated enforcement personnel, who are committed to successful prosecution, are discouraged due to insufficient logistical support and lack of legal and moral assistance, rendering them highly vulnerable to political, social, and financial pressures. This observation was true some ten (10) years ago when regulation was weak and wanting, aggravated by the ineptness, if not apathy, of the regulatory government agencies to enforce and implement forestry policy.

II. KEY LEGAL ISSUES

A. Is Constructive Possession Sufficient as Cause to File a Case for Violation of Section 68, Presidential Decree (P.D.) No. 705, as Amended by Executive Order (E.O.) No. 277, and/or to Convict the Accused?

It is true that there has been a dramatic improvement on the part of the prosecutorial arm of the Department of Environment

schools in Ilocos Sur down to Tupi, Cotabato before he became a lawyer. He obtained his law degree from Manuel L. Quezon University and passed the Bar in 1973.

and Natural Resources (DENR) in filing cases and obtaining convictions of illegal logging cases against violators during the last ten (10) years. From 1989 to 1992, cases of illegal logging were dismissed even at the preliminary investigation stage. No conviction was attained resulting to a zero rating for the prosecution. However, between 1994 to 1996, more than 2,000 cases of illegal logging passed the preliminary investigation stage and were filed in courts as shown in the cumulative statistics of illegal logging cases obtained by the Operation Control Center (OCC) of the Office of the Undersecretary for Operations. Convictions of illegal loggers and smugglers began to land in newspapers.

Despite the above noticeable improvement, one issue has persisted for ten (10) years up to now: *Bakit ang mga nasasakdal at nahahatulan ay ang mga maliliit lamang, katulad ng mga driver, pahinante, mga helper, at yung mga pinaghihinalang may-ari o nag-utos ay nakakalusot at hindi napapatawan ng kaso at parusa?*

From the provision of Section 68 of P.D. 705,¹ as amended by E.O. 277, there are five (5) ways to commit the crime of illegal logging:

1. Cutting, and/or
2. Gathering, and/or
3. Collecting, and/or

I. Sec. 68, P.D. 705 states:

SEC. 68. *Cutting, Gathering and/or Collecting Timber or Other Forest Products Without License.* Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from any alienable or disposable public land, or from private land, without

4. Removing, and/or
5. Possession of forest products without proper authority.

Seldom can we file a case under the first four modes because these are done surreptitiously and while in the forest. The exception is in the case of concessionaires or permittees. The most probable and usual mode of commission easily detectable is the fifth mode – POSSESSION OF FOREST PRODUCTS WITHOUT AUTHORITY. The best example is when the forest products are being transported.

In most, if not all, incidents of apprehension of forest products under this mode, the suspected mastermind is not present. Thus, the apprehending officers find it extremely difficult to include him in the case, and if he is included, it is likely that the fiscal will drop him anyway. The convicted helper or driver, on the other hand, can easily evade the harsh penalty provided under P.D. 705 by utilizing to its fullest Section 2 of Rule 116 of the Rules of Court, wherein the convicted accused can plead guilty to a lower offense regardless of whether or not it is necessarily included in the crime charged, or is cognizable by a court of lesser jurisdiction than the trial court.

any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code; *Provided*, That in the case of partnership, associations, or corporation, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation. x x x

B. Disposition of Seized/Confiscated Forest Products Pending the Criminal Case for Violation of P.D. 705

Another issue that has lingered for ten (10) years is the observation that after the criminal case of illegal logging is terminated, or even before the termination of the said case, there are no more forest products to talk about. Either the forest products subject of the case were lost under mysterious causes, or the same have been consumed by nature. Many officials and personnel of the DENR and PNP or the Philippine National Police, who were courageous enough to be custodians of the forest products pending the criminal case, have been put into an intricate and perilous situation. Today, it is difficult to look for a custodian of confiscated forest products pending litigation.

C. Lack of Consistency, Endurance of Actions, and Sustainability of Policies

The popular fashion of our political leadership today is to resist whatever gains the past leadership has achieved and to refuse to take the longest possible view of the nation's prospects. The trend is such that every time there is a change of administration, either the project of the past administration is frozen or sent to oblivion. Continuity or consistency of action is now considered as poor strategy.

At the end of the 1980's, when the sitting Secretary of the DENR intensified the anti-illegal logging campaign, the DENR faced tremendous legal and technical loose ends, such as lack of litigation lawyers, inadequate policy issuances, ill-trained field investigators, scarcity of constituency in the environmental field, and the indifferent attitude of the law enforcers, public prosecutors, and even the Judiciary. At that time, apprehended

forest products were retrieved easily by the suspected smugglers and illegal loggers through the convenience of writ of *replevin*, which is likewise obtained easily from the courts. More often than not, cases of illegal logging were dismissed in the preliminary investigation stage. No conviction was attained, thereby resulting to a zero rating for the prosecution.

III. ACTIONS TAKEN

To meet the foregoing technical and legal obstruction, *Task Force Taga-Usig* (TAFTU) was created and designed to be a special DENR prosecutorial force. The first agenda of TAFTU was to make the Memorandum of Agreement (MOA) between the Department of Environment and Natural Resources (DENR) and the Department of Justice (DOJ) functional and workable, as well as secure the cooperation and coordination of other law enforcement agencies to have a multi-agency frontline against illegal logging.

Within a short time thereafter, MOAs with the Office of the Solicitor General (OSG), National Bureau of Investigation (NBI), and the Department of Interior and Local Government (DILG) were successfully procured. We feel proud to say that these MOAs were not just wall decorations. The National Steering Committee, composed of the higher management of the DOJ and DENR, in partnership with non-governmental organizations (NGOs) and TAFTU, was established to monitor illegal logging activities, as well as provide directions and appropriate actions. Results are as follows:

- I. Apprehensions and seizures of illegal forest products, tools, and conveyances were more technically and legally secured.

This was attained through periodic hard training of the field officers in seminars and workshops.

2. The line of cooperation between DENR and the public prosecutors office was enhanced, resulting in the filing of criminal cases in courts. Between 1993 and 1995, more than 2,000 cases of illegal logging passed the preliminary investigation stage and were filed in courts as shown in the cumulative statistics of illegal logging cases obtained by the Operation Control Center (OCC) of the Office of the Undersecretary for Operations. Convictions of illegal loggers and smugglers began to land in newspapers.
3. Supreme Court Administrative Order No. 15-13-93 designating special courts for forestry violators, and DOJ Department Order No. 205 designating particular prosecutors in the Department and all over the region to handle preliminary investigation on illegal logging cases, resulted in speeding up the resolution of cases and a higher rating of conviction.
4. With the able assistance of the Office of the Solicitor General, in line with the DENR-OSG MOA, *replevin* became less of a problem as we began to secure from the higher courts favorable jurisprudence and pronouncements (*Paat v. Court of Appeals*, 266 SCRA 167; *Factoran, Jr. v. Court of Appeals*, 320 SCRA 530).
5. Realizing the need to upgrade the quality of apprehension and seizure by law enforcers, and to improve the system of gathering evidence for purposes of ensuring the success of prosecution, DAO 32-S (1997) was issued.

IV. CONCLUSION

Important gains have been achieved in the field of legal environmental management for the last ten (10) years. Environmental awareness has rapidly spread out in the legal circle, igniting activism among legal advocates. However, these gains are threatened by the proclivity of *ningas-kugon*, inept leadership, and inappropriate policy-making. *Task Force Taga-Usig*, which was supposed to have been institutionalized, was forced to take a vacation. The MOAs of the frontliners are now in deep slumber, including the National Steering Committee. *Task Force Katarungan* of the DOJ is buried among the rubbles. Illegal loggers and smugglers have resumed their nefarious activities.

Truly, there is a need to preserve the gains. The momentum has to be sustained. Otherwise, the vision of tomorrow will be shattered. There must be consistency, endurance of actions, and sustainability of policies.

Legal Issues in Forest Management*

*Attorney Roberto V. Oliva***

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I. THE FORESTRY SECTOR

The total land area of our country is thirty (30) million hectares, and about 15.88 million hectares or 53% of this total land area is composed of forest lands.¹

In 1917, our country still had sixteen (16) million hectares, or more than 50% of our country's total land area. Today, it is estimated that the total land area of our forests is only about five (5) million hectares, with only about 800,000 hectares as old growth or virgin forests.

In the 1960's and 1970's, the forestry sector was the major contributor to the country's economy in terms of export earnings. The Master Plan for Forestry Development of the Philippines (1991) indicated that for almost two (2) decades, agriculture, logging, mining, and fisheries contributed almost Php15 billion annually to the national economy.

Although this almost doubled in 1988 at Php25 billion, the share of forestry and logging dramatically plummeted from 12.5% in 1970 to only about 2.3% in 1988. In the 1999 Forestry Statistics, it was reported that the contribution of the forestry sector was only Php747 million, or Php1.8 billion at constant and current prices, respectively to the Gross National Product (GNP).

From being a major log and lumber exporter in the world, we have become a major log importer for the past fifteen (15) years, with 75% of our wood requirements coming from imports. Moreover, about eighteen (18) to twenty (20) million Filipinos in the uplands now live under abject poverty.

1. DENR, FMB, 1999 Forestry Statistics.

II. LEGAL OVERVIEW OF FOREST AND NATURAL RESOURCES MANAGEMENT

A. Major Classifications of Forest Lands

1. Protection Forests

These are the protected areas and the proclaimed watersheds. They are called “set-asides” or protection forests because they have been legislated or proclaimed for the public good. Their primary purpose is biodiversity conservation. They fall under the general category of National Parks under Section 3, Article XII, of the 1987 Constitution.

2. Production Forests

These forests are sustainably managed primarily for the utilization of the resources therein, such as timber and non-timber forest products. In the 1987 Constitution, they fall under the category of Forest or Timber Lands.

B. Regalian Doctrine

Section 2, Article XII of the Constitution states that:

All lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated.

Accordingly:

[T]he exploration, development, and utilization of natural resources shall be under the full control and supervision of

the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens or corporations or associations at least sixty per centum (60%) of whose capital is owned by such citizens.

C. Agencies Tasked with Natural Resources and Forest Management

The Department of Environment and Natural Resources (DENR) is the primary government agency responsible for the conservation, management, development, and proper use of the country's environment and natural resources. (E.O. 192, 1987)

On the other hand, under R.A. 7160 (Local Government Code or LGC of 1991), local government units (LGUs) share with the national government the responsibility in the management and maintenance of ecological balance within their territorial jurisdiction.

Moreover, Section 17 of the LGC bestows particular forest management functions to LGUs, such as enforcement of forestry laws in community-based forestry projects, integrated social forestry programs, and communal forests, subject to the supervision, control, and review of the DENR.

By virtue of other laws and Presidential Proclamations, other agencies are also given jurisdiction and management over certain forest areas, such as the University of the Philippines Los Baños (UPLB) with respect to *Mt. Makiling* (R.A. 6967, 1990) and the Philippine National Oil Corporation (PNOC) over Tiwi Geothermal, Tongonan, and Palimpinon watershed areas (P.D. 1515, 1978).

D. Major Forestry Laws

1. Presidential Decree (P.D.) No. 705 (1975)

This is the principal law governing forest management in the country. Otherwise known as the Forestry Code of the Philippines, it legislates certain basic forestry standards and practices, such as areas needed for forestry, forest utilization and management, and criminal offenses and penalties.

2. Amendments to P.D. No. 705

- a. P.D. No. 865 (December 29, 1975), amending Section 32 of P.D. 705 to allow temporarily limited and selective exportation of logs;
- b. P.D. No. 1559 (June 11, 1978), further amending P.D. 705 to make it more responsive to present realities and to the new thrust of government policies and programs on forest development and conservation;
- c. Batas Pambansa (B.P.) Blg. 83 (September 17, 1980), amending certain sections of the National Internal Revenue Code of 1977, as amended, governing the taxation of forest products;
- d. P.D. No. 1775 (January 14, 1981), amending Section 80 of P.D. 705, as amended, for the speedy criminal administration of justice against Forestry Law violators;
- e. B.P. Blg. 701 (April 5, 1984), amending Section 36 of P.D. 705, exempting from inventory requirement private landowners or tree farmers of fifty (50) hectares or below, who planted *Ipil-Ipil* and other fast-growing trees;
- f. Executive Order (E.O.) No. 277 (July 25, 1987), amending Section 68 of P.D. 705, penalizing possession

of timber or other forest products without the legal documents required by existing forest laws, authorizing the confiscation of illegally cut, gathered, removed, and possessed forest products, and granting rewards to informers of violations of forestry laws, rules and regulations; and

- g. Republic Act (R.A.) 7161 (October 10, 1991), incorporating certain sections of the National Internal Revenue Code of 1977, as amended, to P.D. 705, increasing forest charges on timber and other forest products.

3. Republic Act No. 7586 (1992)

R.A. No. 7586 or the National Integrated Protected Areas System (NIPAS) Act is the principal law governing set-asides or protected areas. The NIPAS Act encompasses remarkable areas and biologically important public lands that are habitats of rare and endangered species of plants and animals, bio-geographic zones, and related ecosystems, all of which are designated as protected areas. The protected areas include strict and nature reserves, natural monuments, wildlife sanctuaries, protected landscapes and seascapes, resource reserves, and natural biotic areas.

4. Republic Act No. 8371 (1997)

R.A. No. 8371 or the Indigenous Peoples' Rights Act (IPRA) will have great impact on forest management.

5. Republic Act No. 9072 (2001)

R.A. No. 9072 is the law on the management and protection of national caves and cave resources.

6. Republic Act No. 9147 (2001)

R.A. No. 9147 is the law on the conservation and protection of wildlife resources.

III. LEGAL ISSUES IN FOREST MANAGEMENT

A. Non-Demarcation of Forest Boundaries

Earlier, we have discussed the two major classifications of forest lands, or that of set-asides or protection forests and production forests. Knowing the classification and boundaries of forests is very important as management activities will depend on what kind of forest is being managed. In protection forests, the management is focused on sustainable development and biodiversity conservation. In production forests, the management is focused on sustainable production of timber and non-timber products.

Unfortunately, the metes and bounds of forests have not been delimited, despite Section 4, Article XII of the Constitution, which states that:

The Congress shall, as soon as possible, determine by law the specific limits of forest lands and national parks, marking clearly their boundaries on the ground. Thereafter, such forest lands and national parks shall be conserved and may not be increased nor diminished, except by law. The Congress shall provide, for such period as it may determine, measures to prohibit logging in endangered forests and watershed areas.

For the past several years, the DENR has launched several reforestation activities supported by foreign funding. It has encouraged the use of fast-growing species and promised communities the chance to harvest the same. Many of the trees

planted are now mature and the communities who planted them would like to harvest. However, the DENR will not allow such because, accordingly, the area is a critical watershed.

Because of this non-demarcation, another difficulty being encountered is prosecuting illegal logging cases under Section 68 of P.D. 705. Under the old Section 68, one of the elements in illegal logging is that the illegal timber was cut, gathered, collected or removed from a forest land without the necessary license or permit. As the metes and bounds of forests have not been established, proving the case of illegal logging beyond reasonable doubt has become difficult.

Section 68 of P.D. 705 is now amended by E.O. 277. Under this new law, mere possession of forest products without the necessary license or permit is now one of the modes of illegal logging, and there is no more need to show that the same were cut, gathered, or removed from a forest land.

B. No Working Definition of Proper Share of State

Prior to the 1987 Constitution, the modes of access to natural resources management was through a lease, license, or permit. In other words, the government just gives the permit, and in return, the licensee pays only fees and other charges, keeping for himself the enormous profits from the utilization of natural resources.

For example, for so many years, the forest charges for *almaciga*, *lauan*, *tangile* or premium hardwood harvested was only Php30.00 per cubic meter, while the concessionaires were to able sell the same for about Php2,000.00 to Php3,000.00 per cubic meter. It is no wonder indeed that timber concessionaires became so rich. Their goal was to cut more and export more, and all at the expense of our natural resources. It was only with the passage of R.A. 7161 (Forest Charges Law) that forest charges were increased.

Be that as it may, the Constitution moved wisely away from the lease, license, or permit system. Now, development and utilization of natural resources can only be done directly by the State, or through co-production, joint venture, or production-sharing agreements. The shift is obviously to ensure that the State is able to get a fair return on the utilization of natural resources. Unfortunately, there is no working definition yet on what should the share of the government be in joint venture, co-production, or production-sharing agreements in the utilization of forest products.

For example, under DENR DAO No. 96-29:

Community-Based Forest Management [CBFM] is a production-sharing agreement, which is designed to ensure that [the] participating community shall enjoy the benefits of sustainable utilization, management, and conservation of forest lands and natural resources therein. The government share in these benefits is in the form of increased natural resource protection and rehabilitation, forest charges, fees and/or taxes as determined and agreed upon.

However, under DENR DAO No. 99-53 or Section 21 of the Regulations Governing the Integrated Forest Management Agreement:

Profit Sharing. The sharing of profit arising from an Integrated Forest Management Agreement [IFMA] between the holder thereof and the government shall be negotiated between the said holder and the Department of Energy and Natural Resources [DENR] immediately following the approval of the Comprehensive Development and Management Plan [CDMP] and the grant of the Environmental Compliance Certificate [ECC], taking into consideration, among others, the following cost factors:

- [1] Plantation establishment, management, infrastructure, and harvesting costs, as well as mitigation measures;
- [2] Fixed assets, equipment, and machines directly related to plantation development and harvests;
- [3] Kind and volume of products that shall be harvested and prevailing fair market price thereof;
- [4] Variation in the rates of interest and foreign exchange for financial investments;
- [5] Expenses incurred in indirect activities, such as community development, etc.;
- [6] Forest charges and taxes paid; and
- [7] Reasonable margin for profit and risks.

Up to now, the share of the government is still being determined. During the national consultation on the draft Executive Order on Forest Policy, the need for guidelines on the sharing between the developer and the government was brought up. However, the terms and conditions of said agreement must still come from Congress because the Constitution says:

The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements x x x Such agreements may be for a period not exceeding twenty-five (25) years, renewable for not more than twenty-five (25) years, and under such terms and conditions as may be provided by law.

C. Non-Implementation of the LGC Provision on LGU Share in National Wealth

Aside from mandating LGUs to share with the national government the responsibility in the maintenance of ecological balance within their territorial jurisdiction, the LGC also gives to LGUs the right to share in the national wealth. Thus:

SEC. 289. *Share in the Proceeds from the Development and Utilization of National Wealth.* – Local government units shall have an equitable share in the proceeds derived from the utilization and development of the national wealth within their respective areas, including sharing the same with the inhabitants by way of direct benefits.

SEC. 290. *Amount of Share of Local Government Units.* – Local government units shall, in addition to the internal revenue allotment, have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from mining taxes, royalties, forestry and fishery charges, and other taxes, fees, or charges, including related surcharges, interests or fines, and from its share in any co-production, joint venture, or production-sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction.

In forestry, the LGUs' share in national wealth is limited to forest charges collected in the harvesting of timber. Although there are many LGUs who are committed to good environmental governance, many of them feel that natural resources management and protection are cost centers. Many are, therefore, reluctant to participate actively. Maybe it is time that a case on this provision be brought before the courts.

D. Non-Implementation of the Rewards to Informants Provision Under P.D. 705, As Amended by E.O. 277

The provision reads:

SEC. 68-B. *Rewards to Informants* – Any person who shall provide any information leading to the apprehension and conviction of any offender for any violation of this Code or other forest laws, rules and regulations, or confiscation of forest

products, shall be given a reward in the amount of twenty percentum (20%) of the proceeds of the confiscated forest products.

Perhaps, informers who have not been given their rewards should bring this matter before the courts.

E. Issuance of Tax Declarations Inside Forest Lands

As stated by the Constitution, with the exception of alienable and disposable lands, all natural resources cannot be alienated. Thus, in a long line of cases, titles issued inside forest lands are void from the beginning, as even long, adverse, and continuous possession of the same do not ripen into ownership. While this principle is quite clear, the reversion process is very slow.

Aside from anomalous titles obtaining in forest lands, another anomaly which hampers forest management and leads to conversion of forest lands into other uses is the practice of LGUs, particularly the Assessors Office, in issuing tax declarations inside forest lands – not for the forest lands, but for the growing crops therein. Although tax declarations are not evidence of ownership, possession of tax declarations, especially in the rural areas, are treated almost as evidence of ownership. If tax declarations involving growing trees/crops in forest lands are issued, transfers of the same are often made. Then, after a little while, the use for such becomes agricultural or residential. This happens even if we have Section 75 of P.D. 705, as amended, which reads:

SEC. 75. Tax Declaration on Real Property – Imprisonment for a period of not less than two (2) nor more than four (4) years, and perpetual disqualification from holding an elective or appointive office shall be imposed upon any public officer or employee who shall issue a tax declaration on real property without a certification from the Director

of Forest Development and the Director of Lands or their duly designated representatives, that the area declared for taxation is alienable and disposable lands, unless the property is titled or has been occupied and possessed by members of the national cultural minorities prior to July 4, 1955.

IV. REVIEW OF SOME DECIDED CASES AND RECENT DEVELOPMENTS

A. Paat v. Court of Appeals, G.R. No. 111107, January 10, 1997

Section 68 of P.D. 705, as amended, enumerates the three (3) modes of committing illegal logging as follows:

1. Cutting, gathering, collecting, or removing timber or other forest products from any forest lands without authority;
2. Cutting, gathering, collecting, or removing timber from alienable and disposable public land, or from private land without authority; and
3. Possessing timber or other forest products without legal documents.

In addition to the penalty imposed for said offense:

[T]he Court shall further order the confiscation, in favor of the government, of the timber or any forest products cut, gathered, collected, removed, or possessed, as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found.

Section 68-A of P.D. 705, as amended by E.O. 277, also gives the Secretary of DENR or his duly authorized representative administrative authority to order the confiscation

of any forest products illegally cut, gathered, removed, possessed or abandoned, and all conveyances used either by land, water, or air in the commission of the offense.

Before the Paat case, when illegal logs were confiscated along the highways and checkpoints, the transporter would usually file a case for replevin for the recovery of the conveyance, which the trial courts would normally grant. However, in Paat, the Supreme Court ruled that when administrative proceedings have been commenced by the DENR for the forfeiture of forest products, tools, equipment, and conveyances, the courts can no longer issue replevin until such time that the administrative proceedings are terminated.

B. Minors of the Philippines v. DENR, et al., G.R. No. 101083, July 30, 1993

All of us are already familiar with the above case, expertly litigated by our colleague, Atty. Antonio A. Oposa, Jr.

To reiterate, under the constitutional mandate of protecting and advancing the right of the people to a balanced ecology in accordance with the rhythm and harmony of nature, the Supreme Court ruled that Filipino children, representing themselves and generations yet unborn, have the right and legal personality to sue, in a court of law and by way of class suit, government officials and others who are depriving them of this right. According to the Supreme Court:

Their personality to sue in behalf of the succeeding generations can only be based on the concept of intergenerational responsibility. xxx Needless to say, every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced

and healthful ecology. Put a little differently, the minors' assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come.

Justice Feliciano, in his concurring opinion, noted that neither the petitioners in the case nor the Supreme Court identified the particular provision of the law that points to the specific legal right the petitioners are seeking to enforce. He noted that the decision, in effect, is saying that Sections 15 and 16 of Article II of the Constitution are self-executing and judicially enforceable even in their present form.

According to Justice Feliciano:

The implications of this doctrine will have to be explored in future cases [and] those implications are too large and far-reaching in nature, even to be hinted here.

Since 1993, no other case has been decided by the Supreme Court based on the same principle. Based on the above case and Justice Feliciano's concurring opinion, it now behooves practitioners of environmental law to test the principle further. Of particular interest would be the non-demarcation of forest boundaries and the lack of criteria, guidelines, and standards by the government in determining its share in joint venture, production-sharing, and co-production agreements for the development of forest lands and resources.

Even cases on the LGUs' share in national wealth, rewards to informants in illegal logging cases, and issuance of tax declarations inside forestlands may be litigated following the principle in *Minors v. DENR*.

C. Citizens' Suits Under the Clean Air Act and the Solid Waste Management Act

The citizens' suits under Section 4I of R.A. 8479 (Clear Air Act of 1991) and Section 52 of R.A. 9003 (Solid Waste Management Act of 2000) are very powerful arsenals in the drive to protect the environment.

As stated almost similarly in both sections, any citizen may file appropriate civil, criminal, or administrative action in the proper courts:

1. Against any person who violates or fails to comply with the said laws, or their implementing rules and regulations;
2. Against the DENR or other implementing agencies with respect to orders, rules and regulations inconsistent with this Act; and/or
3. Against any public officer who willfully or grossly neglects the performance of an act specifically enjoined as a duty of the Act, or its IRR.

The court shall exempt such action from the payment of filing fees and shall, likewise, upon *prima facie* showing of non-enforcement of violation complained of, exempt the plaintiff from the filing of an injunction bond for the issuance of a preliminary injunction.

V. CONCLUSION

The citizens' suits in the Clean Air Act and the Solid Waste Management Act, taken in conjunction with the doctrine laid down in *Minors v. DENR*, are very powerful tools for the

sustainable development of natural resources and the protection of the environment.

Forest lands have protection and production functions, and forest areas cover more than half of the country's total land area. The laws are in place to properly manage the protection forests. The challenge is how to make the production forest lands contribute to national development. Presently, its contribution is almost negligible.

In the field of environmental protection, the laws are also in place. What is important is to enforce them. Otherwise, these laws will be merely paper tigers. While resort to the courts of law should be the last resort, important legal issues may be brought before the Judiciary to settle controversies and lay down important principles.

National Integrated Protected Areas System (NIPAS) Act*

*Attorney Asis G. Perez***

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I. INTRODUCTION

The National Integrated Protected Areas System or (NIPAS) Act or Republic Act No. 7586 is a fairly recent legislation, so there is hardly any known precedent or jurisprudential authorities

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as of today. And being a science person, I happen to be a veterinarian, I intend to focus on the scientific side of the NIPAS Act, which was enacted to protect biological diversity. I will also touch on biological diversity as background on why the law was passed.

II. BIOLOGICAL DIVERSITY

The basic objective of the NIPAS Act is to protect and enhance biological diversity. Biological diversity refers to the variability among living organisms.

A. Three Levels of Biological Diversity

1. Species diversity
2. Genetic diversity
3. Ecosystem diversity, or the variability of ecosystems upon which different species live on.

These levels clearly show that there is diversity in the ecosystem and, therefore, diversity in the species. However, every minute, we lose about three (3) to four (4) species.

B. Legislations on the Preservation of Biological Diversity

As early as the 1900's, there have been efforts to preserve biological diversity. Back then, we had lost species already and the word "conservation" is yet to be coined. In 1916, we already had Act No. 2590 or The Act for the Protection of Game and Fish. The rule on the opening and closing of the season for hunting was born out of this law.

Sixteen (16) years later, the first law on protected areas was made, Act No. 3915, “The Act providing for the establishment of National Parks, declaring such parks as game refuges, and for other purposes,” which became the basis for the declaration of most public lands as protected areas and national parks in the country. At the time, the Governor-General is allowed to reserve and withdraw from settlement an occupancy or disposal under the laws of the Philippine Islands, any portion of the public domain which, because of its panoramic, historical, scientific or aesthetic value, should be dedicated and set apart as national park for the benefit and enjoyment of the people of the Philippine Islands. This was the basic legislation of the national park during that time.

The first legislated national park in the country is the Makiling National Park. The Act declared such national park as game refuge and fish sanctuary. It penalizes hunting, wounding, and killing, thereby preserving all wild animals inside the national park. Likewise, it prohibits occupation inside the national park. As a matter of fact, at the time, a national park was considered as a “no man’s land.” It was illegal to do anything inside.

Other legislations after 1932 followed, with the primary purpose of protecting biological diversity. There were the Fisheries Code or R.A. No. 8550 and the Forestry Code or P.D. 705. Unfortunately, though the Forestry Code penalizes certain acts of gathering wild animals, it somehow contributed to the sorry state of our natural resources for it also allowed massive utilization of natural resources which, in turn, resulted to loss of biological diversity. For no matter how many laws are there to protect these animals, if you destroy their habitat, these animals will surely die. To date, in a matter of forty (40) years, *i.e.*, from 1946 to 1986, we have already lost ten (10) million hectares of forests already,

which is roughly equivalent to one-third (1/3) of our forests' total land area.

In 1992, a convention on biological diversity was held in the country, with the Philippines being one of the signatories. This was ratified by the Senate in December 1992.

III. NIPAS ACT

The NIPAS Act is essentially a process legislation. It is not considered a complete legislation because it provides for identification, evaluation, demarcation, proclamation, management, and the final declaration of Congress to have specific protected areas, as provided for in Section 4, Article XII of the Constitution. It is only Congress that can delineate national parks and forests. So before we can have a protected area to be proclaimed under the NIPAS Act, you must have a declaration from the Congress. It is a process legislation in the sense that you need to identify the area, evaluate if it is suited for a national park, provide the result to the management, and then request Congress to legislate specific laws that will define the boundary of the protected area and, at the same time, provide specific guidelines on how to protect that particular area.

The NIPAS Act is one of the first legislations that answered the call of the Constitution to provide participatory process in policy-making. This is one law where you have a Protected Area Management Board (PAMB). The said Board is essentially composed of people from the locality. Major policies inside the protected area are not made by the DENR or Congress, but by the people within the protected area or adjacent to the protected area. Unlike former legislations, the NIPAS Act allows for flexibility in management. Under the old laws, no one is allowed

to do business inside a protected area. On the other hand, at present, the law is not anymore strict because they have acknowledged the fact that there were people inside the protected area long before the government was established. Therefore, it is unfair to penalize them simply because they live inside a protected area. Modern policy-makers also believe that human needs can be consistent with ecological conservation.

One unique characteristic of the NIPAS Act is that it is ever dynamic and flexible in the definition of offenses. It is possible for a particular offense to be a criminal act in one protected area, but to be not a criminal act in another protected area. This is possible because under the NIPAS Act, there are different categories of a protected area. If it is a strict national park, then occupation is not allowed. However, this rule does not apply to a protected landscape or seascape as in the case of Batanes.

Another instance of the flexibility of the NIPAS Act is the permission to change management plans in protected areas that have been divided into zones and designated with certain restrictions.

The final thing that I want to discuss is the imposition of a uniform penalty for all prohibitions. The fine may range from P5,000 to P50,000, or an imprisonment from one (1) year to six (6) years for all the violations. The Municipal Trial Courts have the jurisdiction to try and decide all environment cases and, most likely, only one court will be asked to decide on three (3) protected areas at the most. Such is the case of the Judge of the Municipal Trial Court of Sablayan who has jurisdiction over three (3) protected areas namely, Mt. Iglip Bako, the Apo Reef, and a birds' park.

Key Legal Issues in Palawan Fishery Cases*

*Attorney Grizelda Mayo-Anda***

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* 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.

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I. LEGAL ISSUES

Some of the key legal issues we have faced in our legal advocacy work on fishery cases for the last ten (10) years are as follows:

A. *Standing to Sue*

Despite a landmark case on standing of citizens in environmental litigation,¹ the expanse or limits of such jurisprudence with regard to fishery and mining-related criminal cases have yet to be determined. Test cases, therefore, need to be instituted.

We attempted to do this for the first time when a group of minors from Palawan, represented by their parents who were mostly affiliated with environmental non-government organizations (NGOs), filed an action to intervene in a case involving some

indigenous communities in Palawan, and the Puerto Princesa Mayor’s Award for her valuable contribution to sustainable development and environmental protection. She is also a Fellow to the United States-Asia Environmental Partnership (USAEP). She obtained her degree in Commerce, *Cum Laude*, from St. Theresa’s College (Cebu City), and her law degree from the University of San Jose Recoletos, (Cebu City).

I. *Oposa, et al. v. Factoran*, 224 SCRA 792 (1993), popularly known as the Children’s Case.

thirty-eight (38) Chinese poachers² who were caught some thirty-three (33) nautical miles northwest of El Nido, Northern Palawan.³ The court dismissed the motion on the ground, among others, that the Oposa doctrine which the intervenors mainly relied upon, did not apply in criminal cases. The court pointed out that there is no private offended party in environmental crimes.

Environmental NGOs decided to test this trailblazing jurisprudence in the light of the sad fate of almost all poaching cases in Palawan in the last few years. In 2002, various fishery cases filed against some 122 Chinese poachers, eight (8) of whom were repeat offenders, were compromised by the Department of Justice (DOJ) and its prosecutors, apparently at the behest of the national government. NGOs were hoping that by intervening in the cases of the new batch of poachers, they can actively participate in the prosecution of the thirty-eight (38) Chinese poachers and, consequently, ensure that appropriate penalties be imposed.

On several occasions, environmental NGO lawyers have invoked the Oposa doctrine in asserting their right to prosecute, but the courts in Palawan have generally opined that the doctrine in the Children's Case does not apply to criminal cases. Hence, at this point in time, efforts to convince the courts to take an "extra mile" to apply the Oposa doctrine have been rendered difficult.

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2. *Poachers* refer to foreign nationals fishing within the territorial waters of the Philippines. This is based on the crime of poaching punished under Section 87 of Republic Act No. 8550, otherwise known as the Philippine Fisheries Code of 1998.
 3. *People v. Tan Zi Xian, et al.*, and *People v. Qi Jia Run, et al.*, Criminal Case Nos. 17697 and 17718, and Criminal Case Nos. 17696 and 17717, respectively.

B. Interpretation of the Crime, the Applicable Law, and Appreciation of Evidence

Fishery crimes are usually dismissed for a range of reasons, the most common of which are strange or skewed interpretations of the law or blatant disregard to prosecution evidence.

A classic case in point is the dismissal by the Palawan prosecutor's office of an illegal fishing case we filed against a *Muro-Ami*⁴ fishing operator. The prosecutor chose to uphold the opinion of an officer from the Bureau of Fisheries and Aquatic Resources (BFAR) who cleared the operator merely on the basis of the existence of a license. The prosecutor's office did not give weight to the direct testimony of ten (10) fishworkers, one of whom was a minor, who actually escaped from their boat and lived to tell their experience. The BFAR officer merely alleged that the commercial fishing operator had a commercial fishing boat license to do the legally allowed *pa-aling* fishing, and this was considered sufficient *vis-à-vis* the detailed narration of a minor fishworker and his companions of the *Muro-Ami* fishing activity.

Another case⁵ involved fishing through the use of poisonous or noxious substances, which is punishable under Section 88 of Republic Act (R.A.) 8550, otherwise known as the Philippine Fisheries Code. It was dismissed because the court found out that the accused is a businessman engaged in buying and selling

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4. *Muro-Ami* is a prohibited fishing method in the Philippines due to its destructive practice of using divers to pound corals with weights to scare fish into waiting nets. *Muro-Ami* operators commonly employ minors as divers as they provide a cheap source of labor.
 5. *People v. Valenzuela*, Criminal Case No. 14337.

bananas with the use of a motor banca, and not a fisherman. It must be noted that Section 88 of R.A. 8550 does not make any distinction with regard to the persons caught doing illegal fishing with the use of cyanide, dynamite or electricity:

SEC. 88. Par. I. It shall be unlawful for any person to catch, take or gather or cause to be caught, taken or gathered, fish or any fishery species in Philippine waters with the use of electricity, explosives, noxious or poisonous substance such as sodium cyanide in the Philippine fishery areas, which will kill, stupefy, disable or render unconscious fish or fishery species: *Provided*, That the Department, subject to such safeguards and conditions deemed necessary and endorsement from the concerned LGUs, may allow, for research, educational or scientific purposes only, the use of electricity, poisonous or noxious substances to catch, take or gather fish or fishery species: *Provided, further*, That the use of poisonous or noxious substances to eradicate predators in fishponds in accordance with accepted scientific practices and without causing adverse environmental impact in neighboring waters and grounds shall not be construed as illegal fishing. xxx

Another case⁶ concerns the violation of Section 87 of R.A. 8550 (Poaching). The case was dismissed because the vessel used by foreign nationals is of Philippine Registry. However, Section 87 provides that:

It shall be unlawful for any foreign person, corporation or entity to fish or operate any fishing vessel in Philippine waters.

6. *People v. Chen Kung Cheng, et al.*, Criminal Case No. 16299, involving some seven (7) foreign fishers apprehended near North Island in Tubbataha Reef National Marine Park, Cagayancillo, Palawan.

The entry of any foreign fishing vessel in Philippine waters shall constitute a *prima facie* evidence that the vessel is engaged in fishing in Philippine waters. xxx

Still on the crime of poaching, navy and police personnel usually file two cases – one for illegal entry and another for poaching. They complain that the illegal entry case is usually dismissed by the prosecutor's office on the ground that the act of illegal entry is already absorbed in poaching. Enforcement agencies argue otherwise because these are two separate crimes governed by two special laws. This problem is exacerbated by the fact that the prosecution and the court, usually at the behest of national executive agencies such as the Department of Foreign Affairs (DFA) and the Department of Justice (DOJ), release the fishing vessels and the fishing paraphernalia confiscated.

Moreover, disputes in the coverage of the definition of certain resources have resulted in the dismissal of cases, thus:

- a. **Blasting cap** was not considered an explosive. Therefore, mere possession of blasting caps is not punishable, and the presence thereof in a fishing vessel (in the absence of dynamite or fish), supported by testimonial and other evidence, could not be basis for the filing of an illegal fishing case.
- b. **Marine turtles** were not considered as rare, threatened or endangered because Fishery Administrative Order (FAO) 208 issued by the Department of Agriculture (DA)-BFAR did not list sea turtles, despite the inclusion of marine turtles, in the list of threatened species under the Convention of International Trade of Endangered Species of Flora and Fauna (CITES).
- c. In the computation of the area of **municipal waters**, certain islands or islets were not considered. Hence, the entry

of commercial fishing vessels and the use of active fishing gears were not considered violations.

- d. In a case of **aquatic pollution**,⁷ samples of water taken for physical and chemical analysis were not admitted as they were taken by a private employee without request from the Community Environment and Natural Resources Officer (CENRO) or the Provincial Environment and Natural Resources Officer (PENRO) of the Department of Environment and Natural Resources (DENR).
- e. Vessel owners who transport **white sand, silica, and pebbles** contained in sacks without any quarry permit from the provincial government cannot be considered to have gathered, sold or exported such substances as they were not caught doing so. Likewise, there must be implementing guidelines as to what makes up a **marine habitat** in order to prevent the quarrying of such white sand and pebbles.⁸

In addition, there is also an issue as to the suppletory effect of the Subsidiary Penalty provision of the Revised Penal Code on poaching cases where no imprisonment is provided under the Fisheries Code. Jurisprudence has established that subsidiary imprisonment applies to special laws, unless provided otherwise. However, the court has the discretion on whether such subsidiary penalty is to be imposed.

7. Defined under Section 4, No. 4 of R.A. 8550 and punishable under Section 102, R.A. 8550.

8. Section 92 of R.A. 8550 prohibits the gathering, selling or exportation of white sand, silica, pebbles, and any other substances which make up any marine habitat.

C. Intervention or Compromise by Executive Agencies

It is important to highlight the fate of poaching cases in Palawan. For several years, we were witnesses to how the Philippine government, through the Department of Foreign Affairs (DFA) and Department of Justice (DOJ), consistently intervened in the prosecution of Chinese poachers and facilitated their eventual release. In some instances, these poaching cases got dismissed before the prosecutor's office. In instances where they reached the courts, the DFA and the DOJ intervened and caused the withdrawal of these complaints or the settlement of these cases (either before or after arraignment, or during trial) ostensibly in line with the government's foreign policy towards China. The usual reason given is that they want to maintain diplomatic relations with China and any lawsuit involving Chinese fishers might imperil current diplomatic ties. Indeed, some of these fishers have been more emboldened to enter our municipal waters and marine-protected areas and committed poaching and illegal gathering of marine turtles on several occasions.

Poaching is punishable with a fine of \$100,000 in addition to the confiscation of the fish catch, fishing equipment, and fishing vessel. Fishing or taking of rare, threatened or endangered species is punishable by imprisonment of twelve (12) to twenty (20) years and/or a fine of P120,000, forfeiture of the catch, and the cancellation of the fishing permit.

In 2002, some 136 nationals from the People's Republic of China, aboard six (6) fishing boats, were apprehended while conducting fishing operations in January, February, and May 2002. Out of the 136 caught, 122 poachers were detained and sued, while fourteen (14) minors were discharged. Four (4) fishing vessels were caught fishing within the Tubbataha Reef National

Marine Park and World Heritage Site on January 31 and February 1, 2002. The fifth vessel was caught within the municipal waters of Balabac on February 7, 2002. The sixth vessel was caught by a contingent group of law enforcers and local officials within the municipal waters of Cagayancillo on May 12, 2002.

In all these apprehensions, our law enforcers, local officials, the Tubbataha Marine Park Office, and the Palawan Council for Sustainable Development Staff (PCSOS) collected very strong evidence and filed the appropriate fishery and other related cases against these Chinese fishers. Those apprehended in the Tubbataha Marine Park and aboard four (4) fishing vessels were charged with poaching and gathering rare and endangered species (Section 97, R.A. 8550). Those caught in Balabac were sued for poaching and fishing with the use of explosives and poisonous substances (Section 88, R.A. 8550). Those on board the vessel caught in Cagayancillo were sued for poaching. The two cases filed against the last group of fishers were dismissed by the provincial prosecutor and were appealed.

An indication of weakness in our legal and justice system is how some of those apprehended are repeat offenders. One fishing vessel identified as Bow No. 02038 was apprehended on May 29, 2001 and September 23, 2001, prior to being apprehended again on February 7, 2002. Eight (8) of the detained 122 poachers are repeat offenders.

In addition, it is noteworthy to look into the status of most of these poachers' cases. A research done by the Palawan Council for Sustainable Development Staff (PCSOS) showed that between 1995 to 2002, the conviction rate of the poachers' cases in Palawan is estimated at 15% (comprising of some 39 cases). The rest of these cases are :

1. Dismissed by the prosecution for lack of evidence; or
2. Resolved by the Provincial Committee on Illegal Entrants (PCIE) without filing criminal charges; or
3. Have resulted in convictions to lesser offenses during plea bargaining, usually plea bargained to malicious mischief or other mischief.

The PCSDS study also showed that from 1995 to the present, we had some forty-four (44) apprehensions of poachers involving 637 persons and 436 (68%) of those apprehended were Chinese nationals.

From the perspective of law enforcement, the government's policy of conflict avoidance with China has compromised the implementation of established fishery laws and regulations. This, therefore, puts in question the primacy of law over executive department policies that are not necessarily addressed by comprehensive legal adjudication. When you see these commercial fishing boats containing dead or living marine turtles and other endangered marine wildlife, we cannot but realize how useless our current laws are.

D. Offended Party

The concept of an offended party has become a crucial factor in the prosecution of poaching cases in Palawan. In order to obviate the possibility of plea bargaining, apprehending officers (such as navy personnel) and concerned agencies (such as the PCSD⁹) have asserted their opposition to any plea bargaining. However,

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9. The Palawan Council for Sustainable Development (PCSD) is mandated to provide policy direction and govern the implementation of the Strategic Environmental Plan (SEP) for Palawan or R.A. 7611.

the court has not considered these apprehending officers and complainants as offended parties in the poaching cases.

The court has chosen to recognize only the DOJ and its prosecutors as representatives of the People of the Philippines. Hence, notwithstanding the protestations of the complainants and apprehending officers, plea bargaining has proceeded and consequently resulted in the release of the poachers.

E. Plea of Guilty to a Lesser Offense

Rule 116, Section 2 of the Revised Rules of Criminal Procedure (effective December 1, 2000) provides that “after arraignment, but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty.” The rules palpably state that any attempt by the accused to plead guilty to a lesser offense must be done before trial.

Unfortunately, in the case of the thirty-eight (38) Chinese poachers in Palawan, trial has already started because one witness was already presented. To the dismay of the apprehending officer and complainants, the provincial prosecutor was instructed by the DOJ to agree to a plea bargaining. The consent of the complainants and apprehending officer were not sought. The poachers’ plea of guilty to a lesser offense was allowed by the DOJ and the court.

F. Release of Seized Products, Items, Paraphernalia

Another concern is the custody of seized natural resources (e.g., fishes, corals, quarry materials), vehicle, vessel, equipment and other paraphernalia used in the commission of the environmental crime. Law enforcement personnel and environmental NGOs assert that these seized materials are considered in *custodia legis* and should not be released. Unfortunately, there were cases where

seized products, vessel, and paraphernalia were released by either the executive agency, prosecutor's office, or the court on the basis of an affidavit of undertaking executed by the accused. The release of such evidence generally frustrates law enforcement personnel who risk their lives and safety during patrols and enforcement operations.

From the enforcement perspective, releasing the fishing vessel and/or gear would send a wrong signal to violators as they would be encouraged to commit similar crimes. Thus, in not a few occasions, commercial fishing vessels caught in Puerto Princesa were caught again in other municipalities.

G. Harassment Suits (PO leaders, NGO advocates, lawyers, government personnel)

Complainants both from government and non-government advocates, who actively participate in law enforcement and institute legal actions, have been harassed with suits to weaken their will to prosecute and/or testify. Government personnel, such as members of citizens' watchdogs and The Fisheries and Aquatic and Resources Management Councils (FARMCs), have been sued in connection with their apprehension of illegal fishers. Now, harassment suits threaten their work and professional advancement. Their promotion had been stalled by these lawsuits, especially because these take a long time to resolve. One case we handled involved a composite team of the CENRO, Western Command personnel, and the Economic Intelligence and Investigation Bureau (EIIB), who apprehended a businessman's truckload of wood. The suit filed against them for injury under the Graft and Corrupt Practices Act took six (6) years. They were acquitted only early last year by the Regional Trial Court.

In a case where we got involved in demolishing an illegal fishpond following a DENR order, we were sued together with the DENR personnel and local officials before the Ombudsman. Where ordinary citizens were involved, they were also sued together with the government personnel. Harassment suits involve a variety of cases and include complaints, such as illegal or arbitrary arrest, graft and corruption, abuse of authority, contempt, robbery, illegal assembly, trespassing, and even administrative complaints before special bodies.

II. RESPONSES

Environmental litigation is a powerful tool in long-drawn fights to protect the environment. However, litigation is a means and not an end in itself. Owing to the problems that plague the legal and judicial system, environmental lawyers are continually challenged to come up with new and creative ways to address these problems.

A. Pursuing Comprehensive, Multi-Pronged Approaches

Addressing environmental problems necessitates a proper perspective. Every problem has different objectives. One objective may be to punish the violator and another may be to stop the destruction. Another may be to compel a creative settlement and force the government to do its job. Still another may be to force a company to observe environmental laws. Whatever the case, environmental litigation will not suffice. Environmental crimes cannot be stopped by a lawsuit.

The situation dictates that various approaches be crafted. For instance, if administrative remedies can be pursued and these would be faster, then we pursue this path. In fishery cases, we have sought the cancellation of fishery permits and licenses before

BFAR. In the *Muro-Ami* cases, we have lodged such complaints to complement our criminal actions which are currently pending appeal. We have also adopted other legal actions such as labor cases in the case of *Muro-Ami* fishing operators. In fact, we were victorious in our labor case against Abines' ASB Fishing and Development Corporation where damages were awarded to ten (10) fishworker-escapees, one of whom is a minor.

In our opposition to disastrous development projects, such as mining, we have done the following:

- a. Environmental investigative missions (EIMs) with community partners. In the case of the proposed Palawan Cement Project, the findings of the EIM provided convincing factual basis to support our legal arguments against the proposed project. To this day, the DENR has not issued an ECC on account of the legal issues we raised.
- b. Media campaigns
- c. Internet or cyberspace advocacy
- d. Public information and education efforts
- e. Research works and position papers

In advocating seizure and confiscation as an alternative enforcement mechanism, we have advocated for the passage of municipal and *barangay* ordinances.

As regards our personality to help prosecute environmental crimes, the lawyers of the Environmental Legal Assistance Center, Inc. (ELAC) have sought an appointment from the DOJ as special prosecutors and/or secured resolutions from several local *sanggunians*, deputizing ELAC as special counsel. We have been deputized by the DENR in the past, but a fresh mandate from the Department as special counsel has been demanded by the defense in some cases.

We also want to point out that community members, who have actively undertaken law enforcement efforts, have also sought settlement in cases where there is a clear benefit that would redound to the community. We have one case where superlight fishing boat owners have offered to give up their boats in lieu of their confiscated nets. An agreement was signed by a multi-sectoral team for this purpose. This is currently the subject of a complaint by one of the boat owners who signed the agreement.

B. Developing Strategies with Community Partners, Local Officials, Law Enforcement Agencies, NGOs

Since there is usually a range of parties or stakeholders who have an interest in resolving environmental problems, it is important that strategies be developed with them. Community partners and law enforcement personnel must be aware of the objectives of any legal or metalegal action adopted, the anticipated effects, and even the worst scenarios. Strategizing sessions with them prepares them for possible harassment suits. This develops a sense of partnership and enables them to assume responsibility for any environmental case being pursued.

III. CONCLUSION

Our experiences have made us realize that legal advocacy work has resulted in the following:

- a. Protection or restoration of the natural resources;
- b. Companies' compliance with the law and institution of remedial measures;
- c. Creative settlements;

- d. Forcing of government to do its job;
- e. Establishment of new precedents and important legal principles.

In achieving such gains, local communities have played a pivotal role in legal and metalegal actions. Such gains are also not permanent. Continued vigilance and monitoring are imperative.

As lawyers, we must continue to seek new and creative ways to make lawyering more meaningful and strategically impact on the overall goal of protecting the environment and asserting the rights of communities.

International Environmental Law*

*Attorney John A. Boyd ***

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I. INTRODUCTION

I am honored, humbled, and privileged to be here today. I am honored because I am speaking to the people who can do justice and protect the environment in its everyday struggle. I am humbled

technical assistance projects, and participated in nearly ninety (90) appraisal missions in nineteen (19) countries in Asia Pacific. He was also formerly Attorney-Adviser, Treaty Affairs Office, U.S. State Department; and worked in the Office of the Assistant Legal Adviser for Management, Security and Consular Affairs, and the Office of the Assistant Legal Adviser for Treaty Affairs. He was one of the two editors of ADB's *Law and Development Bulletin* (1995-1996); editor of the 1997 edition of the *Digest of U.S. Practice in International Law*; and a regular contributor to the *Yearbook of International Environmental Law* and the *American Journal of International Law*. He is a member of the Bar of the State of California and the District of Columbia.

to speak to you because the topic of International Environmental Law is a big one. I could not do justice to it in two (2) hours and I have only twenty (20) minutes to talk about it. I am privileged because I have been practicing International Law, in particular Treaty Law, for more than thirty (30) years.

I brought with me a book published every year by the Treaty Office of the U.S. Department of State, which lists all the treaties of the U.S. government. It would be of interest to you to know that included is a list of all treaties or environmental cooperation between the U.S. and the Philippines.

Where do we start now? That is also the same question that I asked myself when I started this profession. Allow me to start with the historical Thomas Jefferson and share with you a quote I adopted from him:

The earth belongs in usufruct to the living.¹

This quotation refers to the right to use another's property for a time, without damaging or diminishing it, although the property might deteriorate naturally over time.² The whole debate today about sustainable development are in those eight words told by Thomas Jefferson.

II. INTERNATIONAL LAW

A. Definition

National Law governs the behavior of people within the territory of a country, including the set of rules governing the people, as

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1. *Land Economics*, November 1997, 73(4): 580.
 2. *Black's Law Dictionary*, 7th Edition, Bryan A. Garner, Editor-in-Chief, 1990.

well as dispute resolution systems.³ Now, International Law is the standard of conduct, at a given time, for States and other entities subject thereto. The keyword here is “entities,” which means corporations and even “me” and “you.” It comprises the rights, privileges, powers, and immunities of States, and entities invoking its provisions, as well as the correlative fundamental duties, absence of rights, liabilities, and disabilities.⁴ That definition dates back to 1963. I am sure that if we look at another definition today, it would be more focused on human rights, environmental rights, and the like.

There is also this quote from Mark Twain, which I really love:

Laws are sand, customs are rock. Laws can be evaded and punishment escaped, but an openly transgressed custom brings sure punishment.⁵

So if there is a custom in the community to bring gifts when attending a wedding, then you must definitely bring gifts to the wedding. Now, International Law usually focuses on treaties, but I must stress how important customs are.

B. Sources

I. Art. 38(1), International Court of Justice

The sources of International Law are described in Article 38(1) of the International Court of Justice:

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3. See Oposa, *The Laws of Nature and Other Stories*, page 443.
 4. Marjorie M. Whiteman, *Digest of International Law* (1963), Vol. I, page I.
 5. Mark Twain in *The Gorky Incident. Bartlett's Familiar Quotations*, 17th Edition, John Bartlett, Justin Kaplan, General Editor 2002, page 562.

The Court, whose function is to decide, in accordance with International Law, such disputes as are submitted to it, shall apply:

- a. International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;
- b. International custom, as evidence of a general practice accepted as law;
- c. The general principles of law recognized by civilized nations;
- d. Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law xxx

2. Treaties or Conventions

H.R.H. Ramses II, King of Egypt or a pharaoh during the time of Moses, entered into a treaty with H.R.H. King Silis, King of the Hittites, in 1269 B.C.E.,⁶ in what is now Israel. You will find the Hittites in the Book of Kings. So treaties had a prominent place more than 3,000 years ago. In the same manner, International Law is here today and will stay for a long time.

Treaties are defined as:

[C]onventional norms, which now number more than one thousand [1,000] in this field alone, although many agreements contain only a few provisions concerning the environment.⁷

6. <http://untreaty.un.org/English/treaty.asp>

7. Kiss and Shelton, *International Environmental Law*, 2nd Edition, 2000, page 32.

Now, international environmental treaties are unique because of these main features:

- a. Emphasis on national implementing measures being taken by the States Parties;
- b. Creation of international supervisory mechanisms to review compliance by States Parties;
- c. Simplified procedures to enable rapid modification of the treaties;
- d. Use of action plans for further measures;
- e. Creation of new institutions or the utilization of already existing ones to promote continuous cooperation;
- f. Use of framework agreements; and
- g. Inter-related or cross-reference of provisions from other environmental instruments.⁸

For more information on treaties and other aspects of International Law, check the website of the American Society for International Law, www.asil.org.

3. Customary Law

Customary Law is:

a general practice accepted as law.⁹

And a custom is one that everybody agrees with. So, for instance, there are 140 countries that agree, but if the United States or any other country does not agree, then that is not a custom.

8. *Id.* at 33.

9. *Id.* at 41.

An example is the “duty to cooperate,” announced by Principle 24 of the Stockholm Declaration of 1972.¹⁰ It is also found in Principle 27 of the U.N. Rio Declaration on Environment and Development of 1992, which states that:

States and people shall cooperate in good faith and in a spirit of partnership in the fulfillment of the principles embodied in this Declaration and in the further development of international law in the field of sustainable development.¹¹

4. General Principles of Law

General principles of law –

[seek] to identify those principles that are common to the major legal systems of the world, if not to all of them.¹²

An example of a general principle of International Law is Principle 15 of the Rio Declaration, which embodies the precautionary approach:¹³

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall

10. *Id.* at 43.

11. *Capacity Building for Environmental Law in the Asian and Pacific Region: Approaches and Resources*, Vol. 1, Edited by Donna G. Craig, Nicholas A. Robinson, and Kok Kheng-Lian, 2002, page 99.

12. Kiss and Shelton, *supra* note 7, at 43.

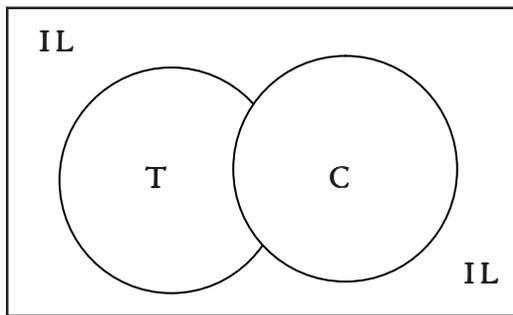
13. *Id.* at 45.

not be a reason for postponing cost-effective measures to prevent environmental degradation.¹⁴

C. Traditional vs. Latest Views

Now, let us look at International Law from two perspectives – the traditional view and the latest view.¹⁵

In the traditional view, International Law exists in a box and, basically, there are just two things to worry about – treaties and customs. The traditional view tells us that we cannot possibly write everything into a treaty since customs are bigger than treaties.



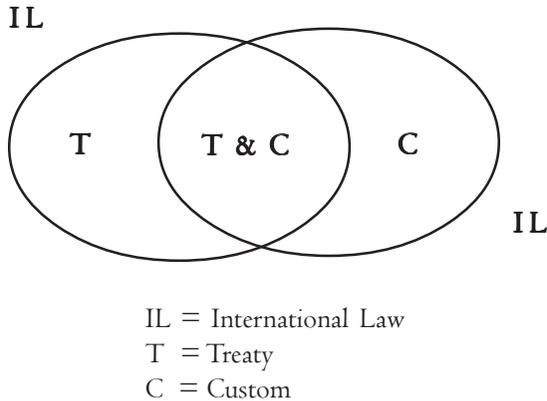
IL = International Law
T = Treaty
C = Custom

However, in the latest view of International Law, there is no box. International Law is everywhere. Treaties influence customs in the same way that customs influence treaties, and general

14. Capacity Building, *supra* note II, at 98.

15. John King Gamble, Jr., "The Treaty/Custom Dichotomy," *International Law: Classic and Contemporary Readings*, edited by Charlotte Ku and Paul F. Diehl, Lynne Rienner Publishers (Boulder London, 1998), page 86.

principles influence the two as well. It is a dynamic process, as illustrated below:



I think this is well illustrated in the Vienna Convention on the Law of Treaties (1969). The Preamble states that:

The States Parties to the present Convention –

Considering the fundamental role of treaties in the history of international relations,

Recognizing the ever-increasing importance of treaties as a source of international law and as a means of developing peaceful cooperation among nations x x x

Affirming that disputes concerning treaties, like other international disputes, should be settled by peaceful means and in conformity with the principles of justice and international law x x x

Affirming that the rules of customary international law will continue to govern questions not regulated by the provisions of the present Convention x x x

D. Principles

Here are several principles of Environmental Law:¹⁶

I. Right to Life

The right to life has two (2) aspects:

- a. The right to compensation in case damage results from the act or negligence of another; and
- b. The duty of the State to take positive steps to safeguard this right.¹⁷

2. Obligation Not to Cause Harm

There is a very famous case during World War I, the Corfu Channel Case, which exemplifies this principle. The International Court of Justice (ICJ) ruled as follows in this case:

The obligations of Albanian authorities consisted in notifying, for the benefit of shipping in general, the existence of a minefield in Albania's territorial waters. This obligation also consisted of warning the approaching British warships of the imminent danger, to which the minefields exposed them. Such obligations are based . . . on certain general and well-organized principles, namely, elementary considerations of humanity, even more exacting in peace

16. D. Zaelke, D. Hunter, and J. Salzman, *International Environmental Law and Policy*, 2002, pages 379-438.

17. Robin Churchill, "Environmental Rights in Existing Human Rights Treaties," *Human Rights Approaches to Environmental Protection*, edited by Alan E. Boyle and Michael R. Anderson (1966), as quoted by Oposa, *Laws of Nature*, page 446.

than in war; the principle of the freedom of maritime navigation; and of the principle that every State has the obligation not to knowingly allow its territory to be used for acts contrary to the rights of other States.¹⁸

3. State Responsibility

In the *Chorzow Factory* case, the Permanent Court of International Justice, the predecessor of the ICJ, said that:

It is a principle of international law . . . that any breach of an engagement involves an obligation to make reparation . . . The Court has already said that reparation is the indispensable complement of a failure to apply a convention, and there is no necessity for this to be stated in the convention itself.¹⁹

4. Sustainable Development

In 1987, Brundtland (a doctor and once a Prime Minister of Norway), in the Brundtland Commission, set forth his definition of sustainable development. He defined it as –

development that meets the needs of today without compromising the ability of those coming tomorrow to meet their own needs.²⁰

In *Hungary v. Slovakia*, decided by the International Court of Justice in 1997, Judge C.G. Weeramantry, then Vice-President of the ICJ, wrote in a separate opinion that sustainable

18. *United Kingdom v. Albania*, ICJ Rep. 4, 22-23 Judgment of April 9, 1949, as quoted by Oposa, *Laws of Nature*, page 448.

19. Oposa, *supra* note 3, 448.

20. *Id.* at 451.

development is a principle, *i.e.*, it is more than a concept. And this principle is part of modern International Law.²¹

5. Common Heritage of Humankind

We have the Convention on World Heritage, which protects the Great Wall of China and the Banaue Rice Terraces, among others. It declares that –

certain areas and sites are of such great cultural and natural significance that they must be preserved for all time as World Heritage Sites.²²

Indeed:

Such structures as the Angkor Wat of Cambodia, the pyramids of Egypt, [and the] Great Wall of China are some examples of man-made landmarks. The Tubbataha Marine Park, Banaue Rice Terraces, the Puerto Princesa Underground River (all found in the Philippines) and the Great Barrier Reef of Australia are other examples of the natural wonders of the world. Fortunately, they have also been declared as world heritage sites.²³

6. Global Commons

The concept of “global commons” was first enunciated in Stockholm and later found its way in the International Court of Justice (ICJ). Principle 2I of the Stockholm Declaration states that:

States have, in accordance with the Charter of the United Nations and the principles of international law, . . . the

21. *Id.*

22. *Id.* at 452.

23. *Id.*

responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States, or of areas beyond the limits of national jurisdiction.²⁴

The ICJ noted in its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons that:

The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or areas beyond national control is now part of the corpus of international law relating to the environment.²⁵

7. Inter-Generational Responsibility and Equity

This principle, in layman's term, only means fairness to future generations:

It is founded on the belief that decisions made today - - decisions that will affect their future - - must take into account the well being not only of our children, but also of the unborn.²⁶

For a landmark case giving judicial recognition to this principle of inter-generational equity, see *Oposa v. Factoran*, G.R. No. 101083, July 30, 1993.

24. Gunther Handl, *Multilateral Development Banking: Environmental Principles and Concepts Reflecting General International Law and Public Policy*, 2001, page 165.

25. *Id.*

26. Edith Brown Weiss, *In Fairness to Future Generations*, quoted in *Oposa*, page 455.

8. Other principles of Environmental Law are:

- a. Common, but Differentiated, Responsibilities
- b. Precautionary Principle
- c. Polluter/User-Pays Principle
- d. Duty of Prior Consultation
- e. Principle of Subsidiarity
- f. Duty to Assess Environmental Impact

III. ENVIRONMENTAL DAMAGE: FROM LOCAL TO GLOBAL

A. Ancient Local Damage

This is from an editorial that I read a few days ago. We were discussing Iraq, which was once known as Mesopotamia, or the land where cities and writing were invented. People are asking what happened: It is a bunch of sand out there today, and so, if Ur was an empire's capital and if Sumer was once a vast granary, why has the population dwindled to nothing? Why did the very soil lose its virtue?

The answer – the reason “the very soil lost its virtue” – is that heavy irrigation in a hot, dry climate leads to a gradual accumulation of salt in the soil. Rising salinity first forced the Sumerians to switch from wheat to barley, which can tolerate more salt. By about 1800 B.C.E., even barley could no longer be grown in southern Iraq, and Sumerian civilization collapsed. Later, “salinity crises” took place farther north. In the 19th century, when Europeans began to visit Iraq,

it probably had a population less than a tenth the size of the one in the age of Gilgamesh.²⁷

B. Modern Global Damage

Today, we have another problem – global problems:

Modern civilization's impact on the environment is, of course, far greater than anything the ancients could manage. We can do more damage in a decade than our ancestors could inflict in centuries. Salinization remains a big problem in today's world, but it is overshadowed by even more serious environmental threats. Moreover, the past environmental crises were local: agriculture might collapse in Sumer, but in Egypt, where the annual flooding of the Nile replenished the soil, civilization went on. Today, problems like the thinning of the ozone layer and the accumulation of greenhouse gases affect the planet as a whole. On the other hand, today we have the ability to understand environmental threats, and act to contain them.²⁸

IV. CONCLUSION

Our environmental concern is not anymore local, but is now international and global. This is the reason why International Environmental Law is important. Let me emphasize that International Environmental Law is not what the International Court of Justice says; it is what *Oposa v. Factoran* in the Supreme Court decision says. You, Judges, interpret International Environmental Law. Consider it in deciding cases before you.

27. Paul Krugman, "Salt of the Earth," *New York Times*, August 8, 2003, <http://www.nytimes.com/2003/08/08/opinion/08KRUG.html?th>.

28. *Id.*

Gilgamesh was the legendary king of the Sumerian City-State of Uruk in Southern Mesopotamia. He ruled during the first half of the third millennium B.C.E., or before 2000 B.C.E. Let us hope that when our descendants return to the Philippines 4,000 years from now, they will not find that “the soil has lost its virtue.” And that challenge is for you, Honorable Judges.

Thank you.

Application of International Environmental Law to the Philippines*

*Professor Herminio Harry L. Roque, Jr.***

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I. INTRODUCTION

Good afternoon to all of you. It is a pleasure to address the Honorable Judges of our Judiciary. I assure you, unlike other academics, I am first and foremost a litigator. The topic assigned to me focuses on the application of International Environmental Law to the Philippines. In the same manner that Atty. Boyd started his presentation with a definition of International Environmental Law before discussing its principles, it is indispensable that I discuss first, in general, the theoretical framework of the application of International Environmental Law to the Philippines, followed by the specific applications by our Supreme Court of the different International Environmental Law principles.

II. THEORETICAL FRAMEWORK

A. 1987 Constitution

The starting point is Section 2, Article II of the 1987 Constitution, or the so-called incorporation clause, whereby the Philippines “adopts the generally accepted principles of International Law as part of the laws of the land.”

Unlike the dualist system prevalent in parliamentary forms of government in countries like the United Kingdom and Australia, we belong to a monist tradition where International Law automatically forms part of the law of the land. Therefore, we do not need to promulgate an enabling domestic legislation before these principles are given automatic effect in our jurisdiction.

In the dualist system where the Parliament is deemed supreme, every obligation entered into must be enacted by the Parliament before it is given full force and effect. The only requirement that we found in the Constitution is Section 21, Article VII, which provides that no treaty will be valid and effective unless it is duly concurred in by a two-thirds (2/3) vote of the entire Senate.

B. International Environmental Commitments of the Philippines

A discussion of the international environmental commitments of the Philippines may be found in Chapter 8 of Atty. Oposa’s book, ***A Legal Arsenal for the Philippine Environment***. Here is a comprehensive list:

I. General Agreements

- a. United Nations General Assembly Resolution 1803 on Permanent Sovereignty Over Natural Resources (December 14, 1962)
- b. Stockholm Declaration of the United Nations Conference on the Human Environment (June 16, 1972)
- c. United Nations General Assembly Resolution 37/7 on a World Charter for Nature (October 28, 1982)
- d. United Nations Conference on Environment and Development Declaration on Environment and Development (June 16, 1992, Rio de Janeiro)
- e. Agenda 21, United Nations Conference on Environment and Development (June 16, 1992, Rio de Janeiro)

2. The Atmosphere

- a. Convention on the Protection of the Ozone Layer (March 22, 1985, Vienna)
- b. Protocol on Substances that Deplete the Ozone Layer (September 16, 1987, Montreal)
- c. United Nations Framework Convention on Climate Change (May 9, 1992, New York)
- d. The Kyoto Protocol to Global Climate Change Convention (December 11, 1997)
- e. Stockholm Convention on Persistent Organic Pollutants (POPs) (May 22, 2001, Stockholm, Sweden)

3. The Hydrosphere

- a. Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (December 19, 1972, London)
- b. United Nations Convention on the Law of the Sea (December 10, 1982, Montego Bay)

4. The Biosphere

- a. Convention for the Protection of the World Cultural and Natural Heritage (November 16, 1972, Paris)
- b. Convention on International Trade in Endangered Species of Wild Flora and Fauna (March 3, 1973, Washington)
- c. Convention on the Conservation of Migratory Species of Wild Animals (June 23, 1979, Bonn)
- d. ASEAN Agreement on the Conservation of Nature and Natural Resources (July 9, 1985, Kuala Lumpur)
- e. Convention on Biological Diversity (June 5, 1992, Rio de Janeiro)
- f. Principles for the Management, Conservation, and Sustainable Development of All Types of Forests (June 13, 1992, Rio de Janeiro)

5. Environmental Threats

- a. Convention on Civil Liability for Nuclear Damage (May 21, 1963, Vienna)
- b. Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Underwater (August 5, 1963, Moscow)

- c. Protocol I Addition to the General Convention of August 12, 1949 and Relating to the Protection of the Victims of Armed Conflict (June 8, 1977, Geneva)
- d. Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (March 22, 1989, Basel)
- e. World Bank's Operational Directive on Environmental Assessment (1989)
- f. International Atomic Energy Agency (IAEA) Code of Practice on the International Transboundary Movement of Radioactive Waste (June 27, 1990)
- g. Food and Agricultural Organization (FAO) Code of Conduct on the Distribution and Use of Pesticides, As Amended (1990)
- h. The Agreement Establishing the World Trade Organization (April 15, 1994, Marrackech)

III. JUDICIAL APPLICATIONS BY THE SUPREME COURT

Where the Philippines is a signatory to specific treaties, our Supreme Court has consistently ruled that pursuant to the incorporation clause, these treaty obligations are automatically given full force and effect in the entire territory of the Philippines without need of an enabling legislation.

A. Santos III v. Northwest Orient Airlines (G.R. No. 101538, June 23, 1992)

This case questioned the constitutionality of our membership in the Warsaw Convention. The Supreme Court ruled that a –

Convention, which is a Treaty commitment voluntarily assumed by the Philippine government, has the force and effect of law in this country.

B. Tañada v. Angara (G.R. No. 118295, May 2, 1997)

In the fairly recent case of *Tañada v. Angara*, the Supreme Court had the occasion to rule again on the effect of our treaty obligation. This case challenged the constitutionality of the country's membership to the World Trade Organization (WTO).

The Court reiterated that since our Constitution adopts the generally accepted principles of International Law, and compliance with treaty obligations in good faith is a generally accepted principle of International Law, the provisions of the WTO Treaty are, thus, automatically given full force and effect in our territory.

In the event that a treaty obligation conflicts with local legislation, the Court, citing *Salonga and Yap*, said that such a State is –

bound to make in its legislations such modifications as may be necessary to ensure the fulfillment of the obligations undertaken.

C. Yamashita v. Styer (G.R. No. L-129, December 19, 1945) and Kuroda v. Jalandoni (G.R. No. L-2662, March 26, 1949)

We have basically no problem as to how our Supreme Court has been applying treaty obligations. A more difficult question is how the Court has applied customary norm, which is also a source of International Law. As Atty. Boyd said, International Law is both treaty law and customary law. According to Article 38(I) of the Statute of the International Court of Justice, aside from

treaties, customs also constitute a source of International Law, as evidenced by State practice.

While the 1947 Nuremberg judgment and the 1969 case of the North Sea Continental Shelf Cases are cited in the field of International Law as precedents for the rule that a customary norm may be restated in treaty form, and thus, even non-signatory countries are bound thereto, two rulings of the Philippine Supreme Court are, in fact, the leading precedents on this issue – *Yamashita v. Styer* and *Kuroda v. Jalandoni*. Indeed, we should be proud of this fact.

At first, I also thought that the precedent on this issue was the judgment of the Nuremberg Tribunal or the war crime tribunal created in Europe to try the Nazis. Apparently, it was not the international precedent. The Supreme Court decision in the Yamashita case was promulgated in 1945, two (2) years before the promulgation of the Nuremberg judgment in 1947, and both cases involved identical issues. Both were war crime tribunals where high-ranking officials of the Japanese Imperial Army and the Nazis were held responsible for violations of the law and customs of warfare, acknowledged to have been in existence since time immemorial.

Yamashita and the Nazis alleged that they could be held criminally liable for their act, but they should be shown first the law defining these crimes. They said that it is elementary in criminal prosecution that there must be a criminal law defining the crimes violated. However, the Supreme Court of the Philippines debunked this defense of legality advanced by Yamashita, and ruled that individuals may be held criminally liable for acts violating the customary norms of Public International Law.

Indeed, now I know better! Nuremberg is not the very first precedent where individuals were held criminally liable for

violating customary norms of humanitarian law or the law on armed conflicts. It is actually the Yamashita decision of 1945 promulgated by our very own Philippine Supreme Court!

I discovered another precedent that should make us proud. Two (2) years later, a similar case was filed with the Supreme Court. Kuroda, like Yamashita, was a high-ranking officer in the Japanese Imperial Army accused of violating the rules and customs of war as restated in the Geneva Convention. In 1947, then President Garcia issued Executive Order No. 68, which authorized the formation of a Military Commission to try Kuroda and others for violations of the Geneva Convention.

Kuroda did not question whether or not he should be tried for violation of something that was not in written form, but found in customary law. Instead, he challenged the legality of the Military Commission on the basis that the Philippines was not yet a signatory to the Geneva Convention at the time the case was filed. Thus, any prosecution for violations of the said Convention had no legal basis.

Clearly, the Supreme Court had to address the issue of the effects a customary norm restated in the form of a treaty. As lawyers, we normally believe that since a treaty is somewhat akin to a contract, only those who affixed their signatures to the treaty should be bound to its provisions. And, precisely, this is the defense that Kuroda alleged.

Again, I thought that the international precedent in resolving this issue is the 1969 case of the North Sea Continental Shelf Cases, as in fact, any course in International Law worldwide begins with this case. It was ruled there that where a treaty merely restates the customary norm, then even non-signatory countries are bound by the terms of the treaties. However, twenty-two (22) years before

the North Sea Continental Shelf Cases, our Supreme Court already made the same pronouncement.

In its landmark decision, the Philippine Supreme Court declared that because of the incorporation clause, customary norms, when restated in treaty form, may bind even nations that are non-signatory to the treaty. Said the Court:

The rules and regulations of the Hague and the Geneva Conventions form part of and are wholly based on the generally accepted principles of International Law x x x Such rules and principles, therefore, form part of the law of our nation even if the Philippines was not a signatory to these conventions embodying them, for our Constitution (the incorporation clause) has been deliberately general and extensive in scope and is not confined x x x to treaties which our government may have been or shall be a signatory.

Thus, customary norms, when restated as treaty norms, have binding effect in the country even in the absence of an enabling legislation or even if the Philippines is not a signatory to the treaty.

However, there is a difficult issue here. The Supreme Court seems inconsistent on the issue of whether violations of specific treaty or customary obligations constitute a cause of action enforceable by our courts (self-executing), or whether the norm being violated constitutes mere declarations of policy, which would require an enabling legislation before it may be enforced by our courts.

D. Mejoff v. Director of Prisons (90 Phil. 70, 1953)

Mejoff was accused as a spy and, thus, was detained after World War II. In the first *habeas corpus* he filed, the Court automatically dismissed it saying that Mejoff is an alien suspected as a spy and

his detention is for violation of our immigration laws, which is not covered by *habeas corpus*. This is the traditional stand of the Court on issues involving the Director of Immigration and Deportation.

Two (2) years later, he was still in detention for being suspected as a spy. So he filed another *habeas corpus* and this time the Supreme Court took his side and considered the petition because he invoked the declaration of human rights, which provides the right to a relief from domestic tribunals and the right against arbitrary detention.

The Court ruled that by virtue of the incorporation clause, the rights provided in the Universal Declaration of Human Rights (UDHR), including the right to an effective remedy by competent national tribunals and the right against arbitrary arrest and detention, form part of the law of the land. The UDHR, according to the Court, was self-executory in that its provisions can be enforced even in the absence of a local enactment.

E. Simon, et al. v. Commission on Human Rights (CHR), et al. (G.R. No. 100150, January 5, 1994)

The Supreme Court overruled *Mejoff* when it declared, in the case of *Simon v. Commission on Human Rights (CHR)*, that socio-economic rights, such as the right to livelihood, although constituting a human right as provided in the UDHR and the International Covenant on Economic, Social and Cultural Rights, are not self-executory and would require an enabling legislation for it to be enforced by our courts.

This case involved vendor stands, which then Mayor Brigido R. Simon, Jr. of Quezon City wanted to demolish. The vendors went to court alleging their right to livelihood, which is also

provided in the UDHR. However, the Supreme Court made a 360-degree turn and ruled that socio-economic rights are not self-executory. Therefore, the vendors need a law before they can seek redress from the courts. And that is the prevailing jurisprudence.

Thus, it would seem, that our Court has shown hesitancy in the literal interpretation of the incorporation clause on matters involving modern human rights norms as embodied in fairly recent human rights instruments, while there is no such hesitancy in matters involving International Humanitarian Law or the laws and customs of armed conflicts. This judicial predicament is important because the principles of modern International Environmental Law were derived from both International Humanitarian Law and International Human Rights Law. By way of source of the norm protecting the environment, its earliest codification is in the Geneva Convention, or the norm that even in situations of armed conflict, the employment of means and methods of warfare, which are destructive to the environment, is prohibited.

On the other hand, the protection of the environment as a consequence of the right to life is of fairly recent vintage, as restated in the UDHR and the International Covenant on Civil and Political Rights. There is no such thing as protection of the environment as a consequence of the right to life in International Humanitarian Law because it does not inquire into the lawfulness of the use of the forests, and that is where Humanitarian Law and Human Rights Law differ.

It may, thus, be the case that if we were to apply the conflicting jurisprudence on the incorporation clause, principles of International Environmental Law, as components of International

Humanitarian Law, would be self-executory, while principles of International Environmental Law, as components of modern human rights, would not be self-executory.

F. Oposa v. Factoran (G.R. No. 101083, July 30, 1993)

Fortunately, we now have the case of *Oposa v. Factoran* to resolve the issue of whether modern International Environmental Law principles are self-executory or constitute mere declarations of principles. In this landmark case, the Supreme Court ruled that modern International Environmental Law principles were self-executory not merely as a component of International Humanitarian Law or International Human Rights Law, but on the basis that it belongs to an altogether different category of rights, which originated neither from International Humanitarian Law nor International Human Rights Law. Said the Court:

x x x the right to a balanced and healthful ecology x x x belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation x x x the advancement of which predate all governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind.

The import of the Court's ruling in the *Oposa* case is that both customary and treaty-based principles of International Environmental Law, such as the precautionary principle, principle of sustainable development, duty to assess through the Environmental Impact Statement, principle of subsidiarity, Polluters Pays Principle, obligation not to cause environmental damage, and the concept of intergenerational rights are self-executory and require neither an enabling law nor a treaty for these principles to be enforceable in our territory.

Justice Florentino Feliciano expressed concern on the issue of whether or not the petitioners were entitled to an actual judicial relief by merely citing the constitutional provision on the right of the people to a balanced and healthful ecology. Said the eminent jurist:

The implications [of the ruling in *Oposa*] are too large and far-reaching in nature even to be hinted at here. x x x It seems to me important that the legal right, which is an essential component of a cause of action, should be [a] specific, operable legal right, rather than a constitutional or statutory policy x x x The doctrines set out in the Court's decision issued today should, however, be subjected to closer examination.

Remember that this is a concurring opinion and the majority opinion is that the principles of International Environmental Law, insofar as there pertain to the right of the people to a balanced and healthful ecology, are self-executory in this jurisdiction. In fact, we had an actual case, involving the Katipunan trees, where we struggled on the same issue. The cause of action was:

- a. The right to a balanced and healthful ecology;
- b. Trees sustain life; and
- c. Trees promote norms, which is part of International Environmental Law to which we are a party.

Nonetheless, there was hesitancy on our part because in the first place, we could only seek relief from the Supreme Court, and the Metro Manila Development Authority (MMDA) claimed that the destruction was indispensable pursuant to a public infrastructure project. We do have a special law, which prohibits all other courts from issuing injunctive reliefs on infrastructure projects. So there was a danger that the Court would modify its

ruling in Oposa and apply instead the concurring opinion of Justice Feliciano.

Fortunately, MMDA Chairman Bayani Fernando got scared when the three Presidents of the universities involved instantly got an audience with the President herself. He has also accepted the proposal of the University of the Philippines to allow its national traffic engineering center to conduct a study on how to alleviate the traffic in Katipunan without destroying the trees.

Perhaps the apprehension of Justice Feliciano should somehow be assuaged in the fact that unlike other customary norms of Public International Law, such as International Humanitarian Law, principles of International Environmental Law, in large, have been embodied in domestic statutes, notably in Environmental Code and other special laws.

Admittedly, though, the recognition that minors have a standing to sue to restrain the further destruction of the country's forest reserves was a *carte blanche* application of the principle of intergenerational rights which, like Kuroda, should be recognized properly as another instance where Philippine jurisprudence is the worldwide precedent.

Apart from clarifying that the right to a balanced and healthful ecology was, by itself, an actionable right, requiring neither a constitutional nor statutory basis, the minors' case also illustrates how our domestic courts have applied the principle of intergenerational rights. Said the Court:

This case, however, has a special and novel element. Petitioner minors assert that they represent their generation, as well as generations yet unborn. We find no difficulty in ruling that they can, for themselves, for others of their generation, and for the succeeding generations, file a class suit. Their personality to sue x x x can only be based on the concept

of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned. x x x Needless to say, every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology x x x.

G. Laguna Lake Development Authority (LLDA) v. Court of Appeals (G.R. No. 120865-71, December 7, 1995)

At issue in this case was who had authority to issue fishing privileges in the Laguna Lake: the local government units pursuant to Section 149 of the Local Government Code, or the Laguna Lake Development Authority.

Section 149 of the Local Government Code (LGC) provides:

Municipalities shall have the exclusive authority to grant fishery privileges in municipal waters.

It was the contention of the Municipal Mayors that since the LGC is a later enactment to the law that created the LLDA, which is R.A. No. 7160, the provisions of the LGC should be deemed to have repealed the provisions of the LLDA Charter inconsistent with it.

The Supreme Court, ruling in favor of the LLDA, declared that the LGC, being a general law, cannot repeal the provisions of a special law, such as R.A. 7160. Beyond applying the principles of statutory construction, the Court also applied both the intergenerational right principle and the ecosystem approach in lake management, *i.e.*, Laguna Lake is one ecosystem and cannot be subjected to fragmented concepts of management policies:

Managing the lake resources would mean the implementation of a national policy geared towards the protection, conservation, balanced growth, and sustainable

development of the region, with due regard to the inter-generational use of its resources by the inhabitants in this part of the earth. x x x

Laguna de Bay, therefore, cannot be subjected to fragmented concepts of management policies where lakeshore local government units exercise exclusive dominion over specific portions of the lake water. The garbage thrown or sewage discharged into the lake, abstraction of water therefrom, or construction of fishpens by enclosing its certain area, affect not only that specific portion, but the entire 900 km² of lake water. The implementation of a cohesive and integrated lake water resource management policy, therefore, is necessary to conserve, protect, and sustainably develop Laguna de Bay.

H. Tano v. Socrates (G.R. No. 110249, August 21, 1997)

Here, the petitioners sought to nullify two ordinances. One was a City Ordinance, which prohibited the export of live fish from Puerto Princesa City, Palawan, and another is a Provincial Ordinance, which banned the catching of certain coral fishes for a period of five (5) years. The rationale for these ordinances is to prevent cyanide fishing where the fishermen mix cyanide with water, then put this mixture in the corals to force the fishes out. It was the contention of the petitioners that said ordinances were null and void because these would deprive them of livelihood as subsistence fishermen.

In dismissing the legal challenge to both ordinances, the Supreme Court ruled that both ordinances were pursuant to the constitutional mandate of protecting and advancing the right of the people to a balanced and healthful ecology. Applying the subsidiary principle, it also ruled that both ordinances were

pursuant to the general welfare clause of the LGC, which provides that:

Local government units, within their respective territorial jurisdiction, shall ensure and support the right of the people to a balanced and healthful ecology.

Furthermore, both ordinances were in accord with R.A. 7611 or the Strategic Environmental Plan (SEP) for Palawan Act, which adopts a comprehensive framework for the sustainable development of Palawan, compatible with protecting and enhancing the natural resources and endangered environment of the province.

The Court ended its judgment by congratulating Puerto Princesa City and the Province of Palawan for their political will to enact urgently needed legislation to protect and enhance the marine environment.

I. Pollution Adjudication Board v. Court of Appeals (G.R. No. 93891, March 11, 1991)

Now, you already know that the Pollution Adjudication Board (PAB) is the administrative agency of the DENR, which generally provides immediate legal remedies for polluters. In this instance, the PAB issued a Cease and Desist Order (CDO) against a textile factory found to be discharging untreated waste water into the Tejeros River in Malabon. The issue was the propriety of issuing the CDO *ex parte*.

The Supreme Court ruled that the PAB has the power to issue cease and desist orders, even without a hearing, where the subject matter of the order constitutes an immediate threat to life, public health, safety or welfare. In a passage which restates the Polluter Pays Principle, an International Environmental Law

principle that requires those who pollute to pay for cleaning-up, the Court held:

Industrial establishments are not constitutionally entitled to reduce their capital costs and operating expense, and to increase their profits by imposing upon the public threats and risks to safety, health, and general welfare and comfort, by disregarding the requirement of anti-pollution statutes and their implementing regulations.

IV. CONCLUSION

We can conclude that on the basis of jurisprudence, principles of International Environmental Law, whether treaty-based, customary-based, or as found in customary Public International Law, automatically form part of the laws of our land.

In like manner, rights provided by International Environmental Law, whether arising from either treaty or customary norms of International Law, are self-executory in this jurisdiction, and may, thus, be enforced by our courts even in the absence of an enabling legislation.

Perhaps it is best to end by restating the call of our Supreme Court to the local government units in *Tano v. Socrates*, and I have committed the liberty of rephrasing it as a plea to our judges: We hope that judges shall now be roused from their lethargy and adopt a more vigilant stand in the battle against the decimation of our legacy to future generations. At this time, the repercussion of any further delay in their response may prove disastrous, if not irreversible.

The Duty of the Courts in Environmental Protection*

*Justice Portia Alino-Hormachuelos***

Court of Appeals

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* 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.

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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

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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 indictee 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.

Judges and Environmental Protection*

*Attorney Isagani M. Rabe***

Honorable judges, friends, ladies, and gentlemen. The Undersecretary of Justice, Atty. Merceditas Gutierrez, assigned me to deliver this lecture before you, illustrious judges, who know more about environmental law.

We have to consider the urgency of environmental problems of the past and the future, like the incident that happened in Ormoc City and other catastrophes. Our children's children are losing their heritage in forests, air pollution is high especially in Metro Manila, and garbage and water pollution are becoming increasingly menacing.

* 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.

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It is a fact that environmental law is in its developing stage, hence, it is up to the Judiciary to interpret these laws. The Judiciary, therefore, holds an important role in the protection of the environment. But, unfortunately, we have very little jurisprudence to depend on. And yet, surprisingly, there are numerous environmental laws. Administrative enforcement of environmental laws is so weak that we need judicial support and reinforcement. There are administrative jurisdiction problems that remain unresolved because of overlapping functions with other administrative agencies. There is a necessity to define new terms and redefine old ones. Therefore, environmental cases call more for the talents and training of courts, just as those of administration.

There are some judicial issues in environmental law, such as the doctrine of exhaustion of administrative remedies, class suits filed by groups of people, and action brought by a local government. However, some cases filed by the local government are dismissed for failure to pay docketing fee, among others. My friends, resolution of environmental damages are not limited to the clean-up cause or the mere value of forest products. There are moral damages due to long-term negative effects. And let us not forget other problems, such as temporary stalls inside the public market without permit, and constructions of houses on public streets and waterways or squatting on public lands.

So, in conclusion, we call on the Judiciary and their careful interpretation of the laws to resolve the apparently conflicting interests of development and environment, and even between environment and human rights. A judge's decision will affect the lives and the future of the people beyond the span of his tenure, and even his own lifetime. A judge must keep his or her mind open about certain issues like the cigarettes being the littlest

product that may be legal in this country, yet known to be health hazardous. The judge should give environmental cases priority in the court's calendar. He should remain objective, cool, and sober, even when subjected to harassment charges before the Office of the Court Administrator. He or she should resolve doubt in favor of the environment and should resist all kinds of pressure from relatives, friends, and especially politicians. A judge should possess courage to be innovative or creative. Do not fear to do what no one has done before for the benefit of the present and future generations.

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I. ALTERNATIVE DISPUTE RESOLUTION (ADR)

Judge: The question is addressed to Atty. Nishida. You mentioned Alternative Dispute Resolution (ADR). How are we going to adopt a mechanism in ADR with respect to resolutions of violations of environmental laws when we have both administrative and criminal aspects of the case? Can the criminal aspect be settled or only the administrative aspect? In our law, an

administrative violation can even become a criminal violation. How can ADR be used in this situation?

Atty. Nishida: In the United States, most environmental cases are not criminal cases. They are administrative findings associated with civil penalties or just a relief. In these cases, it is very appropriate to apply ADR. As I have mentioned, many courts in the United States have established ADR as part of the judicial process. However, ADR may not be appropriate for criminal cases in terms of the burden of proof.

Justice Herrera: In reply to the question, I would like to confirm what Atty. Nishida said. When it comes to criminal cases, there can be no mediation or ADR. I would like to cite B.P. 22 cases as an example. In the beginning, we asked the Supreme Court to allow us to include B.P. 22 cases in our mediation pilot-testing, but it did not allow that. So we could not do anything with B.P. 22 cases, although our First Level Courts are suffering from thousands and thousands of such cases. In fact, about 30% of cases in First Level Courts are B.P. 22 cases. After a year, we asked the Supreme Court again, and it said that we could probably apply mediation, a form of ADR, with respect to the civil aspect of B.P. 22 cases because we all know that criminal cases cannot be compromised. Therefore, cases subject to mediation now include the civil aspect of B.P. 22.

II. BALANCING IMPARTIALITY AND ADVOCACY FOR THE PROTECTION OF THE ENVIRONMENT

Judge: This is the second day of the seminar and we have already learned so many things. All of us are now advocates of the environment. Now, I want to ask my colleagues if they have

been asked to inhibit themselves because they are biased in favor of the environment. There was even a time when a high-ranking official asked me to inhibit. I think the advocacy of protecting the environment and the principle of an impartial judge should be balanced. I have been asked by NGOs to lecture or participate in their activities, but I was too hesitant because my decisions might be perceived as biased.

Atty. Candelaria: That is really a challenge. It is one thing to be environmentally sensitive and protective, and another thing to judge the case on the basis of evidence before you. Of course, if you go beyond the evidence, issues will come in and bias will be used as a reason. But as former Judge and COMELEC Commissioner Flores said, if you are quite clear with your principles and you rule on the basis of evidence, then there should be no problem in balancing your advocacy for environmental protection and deciding on the case. Also, as suggested by Justice Hormachuelos, you can be innovative, but within the boundaries of the rules.

Atty. Rabe: Indeed, the judge should be innovative and creative, even if he or she has not done so, and especially if it is for the good of the people and in favor of the environment.

Justice Hormachuelos: A party can ask for the inhibition of a judge because of his/her reputation of favoring the environment. We really have to strike a balance. If, for example, the evidence adduced by the prosecution is so deficient that no conviction can be had, we have to rule on the evidence even if we had wanted a conviction. We must not go beyond our limitations as Judges. But all things being equal in the interpretation of evidence, we should lean in favor of the environment. I think that is the only way we can do it.

III. BURNING OF WASTE

Judge: If uprooted grass and fallen leaves are gathered together and burned, is the burning prohibited? After the grains are removed from *palay* stalks, the stalks are then burned in the ricefields. Is this also prohibited?

Usec. de Rueda: Yes, it is prohibited. Composting is better than burning.

Atty. Concepcion: In Republic Act No. 8749 passed in 1999, otherwise known as the Philippine Clean Air Act, there is a provision wherein *siga* and traditional food preparations are exempted. The *siga* part was limited to the backyard, which is very small scale and limited to fallen leaves, twigs, and hemp. However, in Republic Act No. 9003, the Ecological Solid Waste Management Act passed in 2001, the burning of waste is absolutely prohibited. So, now, even *siga* is prohibited.

IV. CITIZEN'S SUIT AND CLASS SUIT

Judge: I have heard the lectures and came to the conclusion that there seems to be a thin line dividing a citizen's suit from a class suit. In my perception of the lectures, it is a class suit if a group of persons is directly affected by the environmental violation, and it becomes a citizen's suit if they are indirectly affected by it. Would that be correct? I will give an illustration. Let us say that there is a *barangay* with a water association and they tried to put up a deep well pump in that *barangay* in order to get water and sell it to the *poblacion*, neighboring *barangay* or to the *barangay* itself. Now, the people around that deep well complained that their pump wells would become dry. Should they file a class suit or a citizen's suit?

Atty. Oposa: They should file a class suit because they are directly affected. The citizen's suit is only for certain provisions of the Clean Air Act and the Solid Waste Management Act. If there is a dumpsite near their wells and they are affected, it is converted into both citizen's suit and class suit. Firstly, they are directly affected by the contamination, and secondly, it is also provided that dumpsites are prohibited.

Judge: So the community affected or the persons injured by asbestos, which Atty. Abaño illustrated, should file a class suit. And a single person, who did not suffer any illness, should file a citizen's suit. Is that correct?

Atty. Abaño: Not really. The concept of citizen's suit is found only in those two laws – the Clean Air Act and the Solid Waste Management Act. If you follow the logical conclusion of the Oposa ruling, even if the person may not have been affected, but since he has the right to a healthy environment and he owes a duty to other persons to prevent the impairment of that healthy environment, then he could have a cause of action to file a case. The question as to whether he has to have an actual injury is not really a requirement.

Atty. Oposa: The pronouncement of the Supreme Court is that an ordinary citizen, even if he or she is not suffering from an injury or actual damage, has the right to a balanced ecology. He/she can sue the government not only for themselves, but for the generations not yet born.

V. CONSTRUCTIVE POSSESSION

Judge: This is a follow-up question to Atty. Castillo. You presented a legal issue on constructive possession. I am particularly interested in this because, in reality, judges have to acquit if this

element is not proven. I think we have to make a thorough research on constructive possession because the only way to secure a conviction is when the prosecution is able to establish not necessarily an actual possession, but a constructive possession. Also, even if a search warrant is invalid, but the prosecution has established constructive possession, then we could convict, right?

Atty. Castillo: First, I want to ask if there is constructive resignation because if that exists, then there must be constructive possession. Second, we wish you confusion, because it is the seat of wisdom. There is a classic story about a big fish sued for illegal logging, wherein the accused was already convicted, but filed for an appeal. Apparently, although there was a mistake in the appeal of the accused, the appellate court acquitted him and the other people involved in the case.

The story goes this way. The truck owned by the accused, at the time of the seizure, contained trees that were believed to be illegally cut. When this truck was captured by the police, the accused tried to intervene, but was not successful, because he was caught by the media. When the media interviewed him, he admitted that it was indeed his woods and that they had no legitimate permit. We immediately filed a case against him.

At first, the case was dismissed because he denied the accusations in court. And, at that time, we could not find the media who conducted the interview. It is also unfortunate that the tape, in which the interview was recorded, got lost and to make things worse, the two police officials who caught him were transferred to another station.

The only good thing that happened was that the judge, who handled the case, was a former member of an environmental organization. He was very sympathetic and pushed us to find

sufficient evidence lest we wanted the case to lose. The fiscal to whom we brought the case was also very sympathetic to our plight, that even without the “evidence,” he pushed the case to court.

We searched for the mediamen to serve as our witnesses. When we finally found them, they asked a lot of things in return, among which were money and protection. It took us three to four months to convince them to testify. It is a good thing that we were able to get their affidavit because later on, after testifying in court, they retracted their own statements. But, nonetheless, the result was favorable to us. The judge still convicted them.

When the decision was promulgated, the accused and his accomplice did not present themselves in court. The judge then issued a search warrant and filed a *certiorari* at the Court of Appeals. The accused filed a motion for reconsideration in the Court of Appeals, questioning the promulgation of the Metropolitan Trial Court that handled the case. The Appellate Court not only granted the motion for reconsideration, but even acquitted the accused and his accomplice, although it was not their appeal. Now, the case is filed in the Supreme Court.

VI. *ELECTROMAGNETIC FIELD AND RADIATION*

Judge: I’m from Naga City. There are two cellular phone sites in our *barangay*, Smart and Globe. How true is it that the radiation from these sites cause harm to the people living in the surrounding area?

Atty. Concepcion: We require them to submit a certificate from the Radiation Services of the Department of Health. In that certification, there are certain safeguards, such as no person should be so many meters away. Thus, the telecom companies

are supposed to fence the area. However, the debate on electromagnetic fields, whether these are cancerous or not, has still not been resolved.

Judge: But the sites were built within a residential area.

Atty. Concepcion: All ECC holders are required to post the ECC in their establishment. In fact, it is a violation of the law if they do not post it. So you can check their ECC.

Dr. Perry Ong: I think the message there is that, with regards to the harmful effects of electromagnetic fields and radiation, it is still unsettled. Some camps say it has a negative impact, other say it is okay. So it is still unresolved, scientifically speaking. If you want to file a case, you can call expert witnesses from the Department of Health (DOH), University of the Philippines (UP), and the Department of Science and Technology (DOST).

Atty. Oposa: Can you give them your telephone numbers in your offices, in case they have a problem?

Dr. Perry Ong: The telephone number of the Office of the Secretary of DENR is **925-2329**. DENR's website is **www.denr.gov.ph**.

Atty. Concepcion: You can contact EMB at **927-1517 to 18**. But if the problem needs immediate action, you can go to our Regional Offices. We also accept complaints via e-mail. Our website is **www.emb.gov.ph**.

Justice Herrera: May I be allowed a question. I have noticed that in Tagaytay City, there is a proliferation of transmitter towers. I am wondering whether these have received ECCs.

Atty. Concepcion: Thank you, Madam Justice Herrera. There is a cut-off period. Prior to 1982, they are not required to secure an ECC.

Justice Herrera: I'm sure they were constructed after 1982.

Atty. Concepcion: I presume that they have an ECC, but if they don't, then there is a violation.

VII. ENFORCEMENT

Question: You mentioned Clark Air Base, but not Subic where there are also a lot of problems. One victim is my townmate, a former worker at the Base, where he developed asbestosis. Before this case happened, there was a clamor and they asked the national government, no less than the Department of Environment and Natural Resources (DENR) and Department of Agrarian Reform (DAR), to conduct an investigation whether there was ongoing contamination of the place as to asbestosis and other toxic materials, and yet there was no action taken. However, later on, there was a finding confirming the contamination. The question is the enforceability of the decision. Where should the action be filed to enforce liability? Should it be filed with the local courts or the U.S. Courts?

Judge Farrales: There is a group who asked the assistance of my interpreters and they filed a suit in the U.S. for the victims of asbestosis. I heard that some of the claimants have already entered into an amicable settlement. The hearing was held at the Subic International Hotel. Perhaps you can ask somebody to go to Olongapo and find out. They have an office there.

Judge: I could sense the frustration on the part of some of the speakers regarding the litigation of environmental cases. I hope that there will be another seminar like this for prosecutors because judges can definitely help, but if the evidence presented to them cannot go that far, then they cannot do anything else, but dismiss the case or acquit the accused. It is suggested that for the prosecutors' session, expound on the discussions more and concentrate not only on the laws, but especially on the commitment on their part. This is because they may know the law, but they may not want to do the extra mile like the environmentalists. Perhaps it would be better also if we call on the Executive Branch to indulge in this kind of activity to make them aware of the frustrations of the advocates for the protection of the environment.

Atty. Mayo-Anda: There have been, in fact, a lot of creative attempts to pressure the Executive Branch to intervene. On our part, we have done cyberspace advocacy. We also exposed to the media the poachers' cases since we have not had a successful conviction in the history of Palawan.

Palawan is a biodiversity hotspot that boasts of seven (7) protected areas. There are so many laws about it, and yet we are not applying these laws to protect one of the last biodiversity frontiers in the Philippines. We are trying to do our own little share as a non-governmental agency, but it has been difficult in the last ten (10) years. With your help, as judges and through your connections, we can make the government understand.

Most of the time, we are questioned on why we have to make a big thing out of an issue when, in fact, we only want to highlight the frustrations of the law enforcers when the law is not being implemented and equally applied. We have done our part, but we are not saying that we are successful. We are doing this because

the people are begging us to do it for their sake, and we believe that we have to hold some people accountable.

Judge: This question is directed to Atty. Castillo. As a previous member of the task force on illegal logging, if ever that task is revived in the future, can you not change strategies by posting your men at the mountain side, instead of apprehending illegal loggers on the highway?

Atty. Castillo: My membership is not with the Illegal Logging Task Force, but with the *Task Force Taga-Usig*. It undertakes the prosecution of illegal logging cases. Yes, your suggestion is quite valid. The only problem is that as far as the DENR is concerned, we are undermanned and not fully equipped. For instance, only a portion of the budget is given to forest protection. Our forest rangers are living a substandard lifestyle, with practically no food to eat. In Papaya, Nueva Ecija, illegal logging is very rampant, but we removed our checkpoint there because, sad to say, people accused our men of dealing with illegal loggers. I already made a recommendation to reactivate *Task Force Taga-Usig*, and we have made efforts for us to be heard by the authorities. There have been improvements, but perhaps, we need to make our cry a little louder. Moreover, I believe there should be an increase in our constituency or allies.

Remark: This is just a reaction. Justice Hormachuelos' talk pricked my conscience. I have several cases of illegal fishing and I was particularly moved when you said something like balancing the rights of individuals to earn a living and the rights of the future

generation to survive. But you know, we, Filipinos, have the “*pusong mamon*” syndrome. When these men are brought to court, twenty-six (26) or fifty (50) of them, they are in short pants, very dirty, and just came from the sea. They are accused of illegal fishing, such as fishing within prohibited distances, among others. My usual remark is that these men are only trying to make a living. These poor fishermen are brought to court, but not the owners of these big trolls. So I want to thank Justice Hormachuelos for strengthening my resolve. I now know that I should put them in jail.

Atty. Oposa: May I just interject – it is a pity that Romeo Bulotano is not here with us today because we did something interesting in Bantayan, Cebu. You would really sympathize with these people because they would even bring their families with them. But we still sued them, and they were convicted, but placed on probation. Then a condition is included in their probation, such as planting trees or being wardens once a week, as Mr. Bulotano would require. That is the true essence of reformation.

Remark: I thought planting trees was a common condition for probation. When Tony Oposa conducted a seminar on the Protection of Marine Resources about a year ago, I added being fish wardens as one of the conditions for probation. Twice a month, two Sundays in a month to be precise, the fisherman accused of illegal fishing has to act as a sort of fish warden in a coastal *barangay*, giving back to the community what he has taken.

Remark: Perhaps our mayor in Naga City is an environmentalist because he passed an ordinance declaring a “No Smoking” ban. However, we had an RTC Judge who was a chain smoker. In fact, he smoked even in his airconditioned room. Fortunately, he was

transferred to Metro Manila. So I've been thinking about how to implement this ordinance. We are going to have a meeting as soon as I return to talk about drugs law implementation, where the five pillars will be represented. I will give them copies of the Clean Air Act and the Solid Waste Management Act explained in this seminar, and consult them on how to implement the Anti-Smoking Ordinance in our city. If they offer suggestions, then that means they are willing to implement the law even among themselves who are also smokers.

I would also like to suggest that the courts, through your employees, consider the act of paper recycling. We usually throw away these white papers or coupon bonds. In fact, I have found one poor family who collects wastes and said that these white papers are much more valuable than ordinary newspapers. So if we could instruct our stenographers and clerks to keep these used papers and give them to the poor. Those are the ideas that popped up while I was listening to your sharing.

Atty. Candelaria: Thank you, Judge. You just gave us an idea of environment-friendly courts and employees as a form of advocacy.

VIII. ENVIRONMENTAL COMPLIANCE CERTIFICATE (ECC)

Judge: Let me relate to you a case filed before me. The DENR issued an Environmental Compliance Clearance (ECC), but the Mayor refused to issue a permit for this cement factory to operate. I want to know which should prevail. According to the DENR, it can already operate because the environment will be safe. However, according to the Mayor, the people living near that factory could suffer from pollution, and that is why he refused to issue a permit to operate.

Atty. Concepcion: These are two different things. The permit to establish and permit to operate is the responsibility of the Local Government Unit (LGU). ECC is not a permit in itself, but is a stipulation of conditions that will mitigate potential impact to the environment.

Atty. Oposa: There is a beautiful case resolved recently by the Supreme Court. As a lawyer in that case, I tested the annulment of an ECC and the provisions of Sections 26 and 27 of the Local Government Code, which say that whenever there is a potentially polluting agent, one must get the prior approval of the *Sanggunian* concerned. So even if there is an ECC, but there is no *Sanggunian* approval, the Mayor has the right to refuse to issue a permit to operate and this was upheld by the Supreme Court in that decision.

Judge: So does the ECC have any value?

Atty. Concepcion: It has value in the sense that it is a set of conditionalities that prevents negative impact to the environment. However, it is not a permit in itself. The EMB processes the ECC, which is in compliance with P.D. 1586 or the Establishment of the Philippine Environmental Impact Statement System. The ECC is a set of conditions that the establishment must comply with upon construction and during operation so that they do not pollute the air, water, etc. The ECC is the establishment's covenant with the government. Therefore, if they violate those conditions and operate without an ECC, then they are liable to be charged and fined.

Now, the Mayor has the power to issue business permits in his area. Only, his reasoning may not be good enough, *i.e.*, he could be liable administratively, or even criminally, for not issuing the business permit if he is citing the environment as the reason because there is already an ECC.

IX. INVENTIVENESS IN DECISION-MAKING

Judge: This is a challenge to the judges because ordinarily, we are passive; we only hear cases. But can our association, the Philippine Judges Association (PJA), do something like organize us or pass a resolution to the effect that all judges should clean or organize a brigade to clean our waterways, or whatever we can do to protect our environment? I suggest that the PJA and its set of officers do something concrete in protecting the environment.

Justice Hormachuelos: I would like to share with you an experience that I had when I was an RTC Judge. There was a man who made charcoal out of trees. He made a living and supported his family by cutting down trees to make charcoal. This case was brought to my court and the lawyer was very inventive. Speaking before me, a woman judge who is also a mother, he said, "Whose life is more important here? Is it the life of a tree or the life of this man, his wife, his children?" That case was a violation of the Forestry Code, and the penalty for that was equivalent to qualified theft.

If we are to be inventive, we should stick to our principle that we should protect the environment and, thus, survive, but at the same time, also help the person compelled to cut that tree because of poverty. And one way to do it is through plea bargaining to the lesser offense of simple theft. We, as judges, do not need to abandon our principles or our commitment to the environment while enforcing the law, but we can resort to resourceful means of resolving disputes. Therefore, whenever you are faced with the question of which is more important, the life of the tree or the life of the man, his wife, his kids, etc., look for inventive ways of resolving the situation.

X. LEADED GASOLINE

Judge: The biggest gasoline refinery is in Bataan, where, I believe, leaded gasoline is still being sold. I know that leaded gasoline is good for the engine, but not for the human being; and unleaded gas may not be good for the engine, but it is good for the environment. So why are the three big players in the industry still selling leaded gasoline if it is harmful to both the environment and human beings?

Usec. de Rueda: Perhaps, leaded gasoline is still being sold in the provinces. What we can do is send a task force in that province or area to determine whether there are really gasolines with lead.

Lisa Lumbao, ADB: When leaded gas was phased out in 1999 throughout the country, all refineries or companies that import gasoline were all checked by the Department of Energy (DOE) over several months, until it assured the government that there was no more lead in the gasoline. DOE still does regular testing and monitoring, and so far, there is really no more leaded gasoline being sold.

Judge: That is a good report, but if you want evidence, I will buy this leaded gasoline next week, ask for a receipt, and give it to you if you want to.

Dr. Perry Ong: I think that is the best evidence. And anyway, Undersecretary de Rueda and Atty. Concepcion have promised to look into this matter.

XI. PESTICIDES

Judge: Zambales, Pangasinan, and Bataan are mango-producing provinces. And we know that our mangoes no longer go through the natural process: *“Ginagamut na ang mga iyan hanggang*

bumunga at ibenta sa palengke.” My question is whether the fertilizers and pesticides used to accelerate the ripening of these mangoes have your approval as fit for human consumption.

Atty. Concepcion : The regulating agency for that is the Fertilizer and Pesticides Authority (FPA). Many pesticides are banned because they produce POPs or Persistent Organic Pollutants, which stay in the environment for at least a hundred (100) years. Burning waste also produces POPs. Thus, banned pesticides sprayed in the 1960’s are still around. Moreover, we are already a signatory to the Stockholm Convention on the control and regulation or banning of POPs. Therefore, whoever imports banned pesticides are criminally liable.

Usec. de Rueda: If you have reliable reports on banned pesticides being sold, then we are going to coordinate with the FPA.

XII. POWER LINES

Judge: Atty. Angeles mentioned electromagnetic fields from transmission lines. In Balayan, Batangas, the power or transmission lines of the National Power Corporation (NAPOCOR) passes through a *barangay* or a residential area. Someone from that *barangay* approached me and asked, “Judge, can you help me convince the NAPOCOR to transfer or realign the power lines?” So I talked to the NAPOCOR manager and they inspected the area and concluded that the power lines should be transferred. Now, my question is, first, are power lines really dangerous? Second, the NAPOCOR refused to shoulder the expenses of transferring. May that person file a case against NAPOCOR?

Atty. Angeles: I mentioned that case in relation to the Pakistan decision and, in that case, the court formed a commission to end

the debate on whether electromagnetic fields really pose health hazards. It was established there that electromagnetic fields are really hazardous to the health of the community.

XIII. POWER PLANTS

Judge: I'm assigned in Balayan, Batangas, and my territorial jurisdiction is Calaca, Calatagan, and Tuy. Now, there is a NAPOCOR (National Power Corporation) power plant in Calaca. At the same time, one cannot swim in the sea or catch fishes anymore in Calaca going to Balayan because the sea is quite polluted. Has NAPOCOR complied with an ECC? Also, an Australian boat delivers coal to this power plant every month. One can see the pollution of air hovering in Calaca, so black! I'm just wondering what your office or the government is doing about this.

Atty. Concepcion: We do monitor all these power plants and they are required to submit quarterly reports. As for the air and water pollution in Calaca, there could be other sources. The NAPOCOR is required to comply with air and water quality standards. If they violate any of these standards, then they are liable under the law.

I, myself, am against coal-fired power plants because I am an environmentalist. In fact, I'm even against the use of electricity because power plants cause air pollution. But the reality is that our power plants are coal-fired because we need cheaper electricity. There are now technologies of greater electric power, which are less polluting, but very expensive. The plant itself is expensive, so the power produced by it would be more expensive. If we are willing to pay double, triple, or even five times the rate that we are paying now for electric consumption, then maybe the government can phase-out all these coal-fired power plants and

adopt natural gas or geothermal plants. The good news is that we are already using geothermal plants in some areas. In fact, we are the second biggest user of geothermal power, next to the U.S.

Judge: As of now, what is your agency doing to minimize the pollution problem?

Usec. de Rueda: Firstly, we are very thankful for all your feedback. Please do not hesitate to contact us after this Forum for further concerns. What we will do is sit down with our Bureau and monitor strictly these main sources of pollution, such as the NAPOCOR plants. A part of our transparency mechanism is informing the public through the LGU's.

Atty. Concepcion: We monitor power plants, but we are not there everyday. So if there is a problem, the community has to inform us, and that is when we will check on the establishment. If we fail to do that, then we will be the ones liable. Therefore, if someone in NAPOCOR does something wrong, like stopping the operation of the control facility for a few hours or for a few days, we have no way of knowing. That is why the community has to inform us. In environmental protection, we have to help each other because the government cannot do this alone. Now, I will ask my people to check the NAPOCOR power plant in Calaca, Batangas, but then, we might not see anything. Thus, it is also very important that you take photographs, gather evidence or make a documentation, so that the supposed violator cannot deny the violations he has committed, which more often than not, are done clandestinely.

XIV. PUBLIC OFFICIALS AS VIOLATORS

Judge: I would like to sympathize with Prosecutor Rabe because he is actually prominent in our province as a crusader against

illegal logging cases. What can the government do when the accused in the case is a mayor or a governor?

Usec. de Rueda: A very good question. I think you are in a better position to answer that. A judge receives allowances from the local government, but like the blindfolded lady justice handling a scale, regardless of who the accused is, the judge should render the best decision possible because he or she owes it to our God and to our country, no more, no less.

Judge: Yes, we know that. But it amazes me that in this country, the violators are the public officials themselves. I think the next participant for this kind of seminar should be the government officials and not necessarily the judges.

Usec. de Rueda: That's true!

Atty. Embido: Judge, they know that it is illegal, yet they still do it. Even if we conduct seminars for them, they will still do it because no one has been apprehended, prosecuted, and convicted. In the case of illegal logging, for instance, the rate of conviction is very low.

Usec. de Rueda: May we ask Atty. Nishida about the rate of conviction in the United States in cases where it is their government officials who had committed the violations?

Atty. Nishida: I do not know the rate of conviction, but it becomes more difficult when the regulatory agency has to take an enforcement action against a government official.

Atty. Rabe: As a matter of fact, there are so many cases against public officials now filed in the Ombudsman.

Comm. Flores: This is addressed to all judges. How should a judge behave when the accused is a governor or a mayor and he or she continues to receive allowances from the local government

unit (LGU)? Firstly, note that when there are allowances from LGUs, most of the time it is your executive judge who transacts for you. In other words, you are given ample protection since you do not have to face them. Secondly, when I was in Manila as an RTC judge, there were instances when the local executives encouraged the Council to stop giving allowances to the judges. According to one local executive, what good does it do the city when they do not win a case in their *sala*, but the City Council continues to give allowances? When we accepted our appointments to the Bench, we knew that it would not be a bed of roses. And then, there are certain attributes that a judge must meet, namely: judicial statesmanship, judicial courage, and judicial competence. You need judicial courage because that is the only way the Judiciary can fight the evils of the society. And, of course, judicial statesmanship: when we convict, we are not necessarily against the government officials, we are just enforcing the law. The judge is not an enemy of any person charged in court; he is just an enforcer of the law.

Atty. Embido: With respect to the question of the judge pertaining to a case where a high government official is involved, we, in the law enforcement, was able to find an antidote to that. In Oplan Jericho, we targeted all big time illegal loggers in the Philippines. What we did was organize sectors of the society, such as the National Bureau of Investigation (NBI), Department of Environment Natural Resources (DENR), the prosecutors, the Philippine National Police (PNP), and the coast guards into a task force. The establishment of this task force strengthened the campaign against big time illegal loggers, including government officials. We were successful in that endeavor, and I think we can also do the same this time.

XV. TOXIC WASTE

Judge: I would like to refer to R.A. 6969, or the Toxic Substances and Hazardous and Nuclear Wastes Control Act. Who determines whether the waste is toxic or hazardous?

Atty. Concepcion: The EMB is the main implementing agency of R.A. 6969. We have laboratory services to determine whether the waste is hazardous, although it is limited to the parameters to be measured.

Usec. de Rueda: For everyone to understand, there was a case of dumping of seemingly “hazardous” waste in Bataan because its odor is absolutely foul and all kinds of vegetation that it passed through died, even organisms in the canal. Now, what kind of toxic waste it is must still be determined. So, the judge went to the local DENR, but was told that they do not have the capability to determine what kind of toxic waste it is because their laboratory is lacking in equipment. I, then, assured the judge that I will take note of it and sit down with the EMB to come up with a mechanism so that this kind of report is acted upon right away.

Judge: I went over R.A. 6969 and found out that there is no penal clause for dumping toxic waste when it should be a prohibited act. I even called the attention of Senator Biazon and Senator Jaworski. They promised me that they will make the necessary amendments, but it has been already more than a year and I still have not heard anything about it.

Atty. Concepcion: In fairness to them, they are working on these amendments, but they have to follow a certain process. The law was passed in 1990, so they were not yet Senators then. It

appears that dumping is not prohibited, but there are other laws that may apply. For instance, P.D. 984 (Pollution Control Law) prohibits dumping of any kind of pollution in land, water, and air. But for me, as an advocate, we can apply R.A. 6969 because toxic waste cannot be dumped without transporting it. Violators cannot dump hazardous waste without transporting it, so they have already violated the provision on transportation of hazardous waste. They are already liable under R.A. 6969.

Judge: Is there an EMB office in the region in case we need assistance for the examination of that waste?

Atty. Concepcion: Yes, we do, in San Fernando Pampanga, Region 3. And, in fact, the upgrading of our laboratory is continuing, and it has tremendously improved.

XVI. VIOLATION OF FORESTRY LAW

Judge: I decided a case involving a violation of our Forestry Law, pursuant to Section 68 of P.D. 705. I convicted two (2) men accused of transporting wood without the necessary permit. I imposed a penalty based on Article 310 of the Revised Penal Code, which is a non-probationable penalty. The accused appealed and the Court of Appeals affirmed my decision. It was raised on certiorari by the Supreme Court, which also affirmed my decision.

Now, the trial court imposed a non-probationable penalty, and the Court of Appeals affirmed the principle, but modified the decision to a probationable penalty. Thus, the accused filed a petition for probation before the trial court. I denied the petition and motion for reconsideration. The case went back to the Court of Appeals, which affirmed the motion for reconsideration. Then it went to the Supreme Court and my decision was affirmed, but there was a kind of innuendo in the decision. A sort of an aside

that had the accused appealed the decision purely on the penalty that was imposed, then the Supreme Court might have sympathized with him. Can we apply agricultural restraint for possessing 600 cu. ft. of wood bolts?

Atty. Concepcion: The mere act of cutting and transporting, or mere possession of wood or timber, without a permit, pursuant to E.O. 277, is already an act punishable by law. It is qualified theft.

Supreme Court of the Philippines
Philippine Judicial Academy
in collaboration with the
Asian Development Bank
and
Program Management Office

TAGAYTAY DECLARATION OF COMMITMENT

Cognizant that the environmental crisis faced by humankind today threatens the very support systems that make all life possible;

Aware that man is only one of the strands in the web of life, and that whatever we do to the other strands, we do to ourselves;

Sensitive to the fact that man, in his self-proclaimed wisdom, is merely a trustee, a steward, and a guardian of the natural creations;

Emphasizing that any change must begin within one's self;

Noting that the Law is one of the engines that can propel a change in the way man has treated the natural elements of life;

Determined to use the Law as a thinking tool to advance human behavior to a path befitting its role as the thinking part of Nature.

HEREBY COMMIT OURSELVES TO -

- I. At the personal level, that we will continue to expand our knowledge in the field of environmental protection to the

end that in due time, we will be able to share this knowledge with our peers and colleagues.

To the extent possible, we shall undertake measures to lead by example in such simple matters as reduction of solid waste in our homes and in our offices, and avoid the use of smoke-belching vehicles.

2. At the official level, we will:
 - a. Initiate solid waste reduction in our offices and within the circles of our influence.
 - b. Be keenly sensitive to the environmental issues that our beloved country faces today in our official decision-making process, with due regard to the Law and individual human rights.
 - c. Conduct a periodic inventory of environment and natural resources-related cases with the end in view of expediting their resolution.
3. At the institutional level:
 - a. To recommend to the Chief Justice, through the PHILJA, to study the feasibility of designating courts all over the country to handle cases involving violations of fundamental Environmental Laws, such as the laws on clean air, solid waste management laws, forests, fisheries, and protected areas, and criminal violations of pollution control laws.
 - b. To properly disseminate Environmental Law information by urging the PHILJA and/or all associations of judges to conduct echo-seminars to judges and prosecutors nationwide.

- c. To request the Supreme Court and other concerned foundations to initiate an Environmental Award for three best decisions on Environmental Law.
- d. To link up with the UN Environmental Programme (UNEP), the IUCN Commission on Environmental Law, other international organizations, and judges worldwide for the institutional sharing of knowledge, experiences, and expertise in the judicial handling of Environmental Law cases.
- e. To form ourselves into a core team of environmental judges who shall undertake the abovementioned initiatives to the extent possible.

In God we implore for strength, wisdom, and courage in the performance of this commitment.

Done this 15th day of the month of August 2003, in the City of Tagaytay, Cavite.

(Sgd.) **HON. ALEXANDER S. BALUT**
MCTC Aritao, Nueva Viscaya

(Sgd.) **HON. ALEJANDRO G. BIJASA**
MeTC Br. 5, Manila

(Sgd.) **HON. RODNEY A BOLUNIA**
RTC Br. 44, Bacolod City

(Sgd.) **HON. MARCELO C. CABALBAG**
MTC Gattaran, Aparri, Cagayan

- (Sgd.) **HON. RAMON S. CAGUIOA**
RTC Br. 74, Olongapo City
- (Sgd.) **HON. ANDRES Q. CIPRIANO**
RTC Br. 9, Aparri, Cagayan
- (Sgd.) **HON. BENEDICTO G. COBARDE**
RTC Br. 53, Lapu-Lapu City
- (Sgd.) **HON. BAUDILIO K. DOSDOS**
RTC Br. 2, Tagbilaran City, Bohol
- (Sgd.) **HON. RAY ALAN T. DRILON**
RTC Br. 4I, Bacolod City
- (Sgd.) **HON. CESAR M. DUMLAO**
MTC Br. I, San Mateo, Isabela
- (Sgd.) **HON. REMEGIO M. ESCALADA**
RTC Br. 3, Balanga, Bataan
- (Sgd.) **HON. JOSEFINA D. FARRALES**
RTC Br. 69, Iba, Zambales
- (Sgd.) **HON. NELIA Y. FERNANDEZ**
RTC Br. 50, Puerto Princesa City, Palawan
- (Sgd.) **HON. RODOLFO S. GATDULA**
MTC Balanga, Bataan
- (Sgd.) **HON. FE A. MADRID**
RTC Br. 2I, Santiago City, Isabela

(Sgd.) **HON. ANTONIO D. MARIGOMEN**
RTC Br. 61, Bogu, Cebu

(Sgd.) **HON. MEINRADO P. PAREDES**
RTC Br. 13, Cebu City

(Sgd.) **HON. PERFECTO E. PE**
RTC Br. 52, Puerto Princesa City, Palawan

(Sgd.) **HON. ILDEFONSO F. RECITIS**
2nd MCTC Masinloc-Palauig, Zambales

(Sgd.) **HON. MAXWELL S. ROSETE**
MTCC Br. 2, Santiago City, Isabela

(Sgd.) **HON. ROLANDO F. SILANG**
MTC Calatagan, Batangas

(Sgd.) **HON. MARLENE G. SISON**
RTC Br. 85, Quezon City

(Sgd.) **HON. LUCENITO N. TAGLE**
RTC Br. 20, Imus, Cavite

(Sgd.) **HON. CORAZON A. TORDILLA**
RTC Br. 24, Naga City

(Sgd.) **HON. ELIHU A. YBAÑEZ**
RTC Br. 9, Balayan, Batangas

Republic of the Philippines
Supreme Court
Manila

**Administrative Circular
No. I7-2003**

**PLANTING OF TREES AS ONE OF THE
CONDITIONS FOR PROBATION**

WHEREAS, the ultimate goal of the science of penology is to rehabilitate the offender and restore his relationship to society as a useful and law-abiding citizen;

WHEREAS, one of the constructive means to achieve this goal is to suspend the execution of sentence imposed upon an offender and place him under probation subject to certain conditions, such as rendering service to the community;

WHEREAS, the acts of planting and nurturing a tree, tending a garden, or caring for a marine sanctuary provide a singular opportunity to reconnect the ties between man and Nature; and recent studies confirm that this reconnection with Nature is also a spiritually-restorative exercise, well in line with the goal of rehabilitating the offender;

WHEREAS, restoring natural systems, such as by planting trees, also leads to greater productivity;

WHEREAS, helping to restore the Earth's natural systems is one of the highest forms of community service, for it is encompassed in the constitutional duty of the State to protect

and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature (Article II, Section 16, Constitution);

WHEREAS, under Section 10 of the Probation Law (P.D. No. 968, as amended) on the Conditions of Probation, the court may impose any other condition related to the rehabilitation of the offender and not duly restrictive of his liberty or incompatible with his freedom of conscience, and hence, the planting of trees may validly be required as one of such conditions;

WHEREFORE, trial judges in territorial jurisdiction where public lands are located or where the offender involved has a land, are hereby directed to include the planting of trees by the probationer as among the conditions in the grant of probation under the Probation Law.

For this purpose, the Secretary of the Department of Environment and Natural Resources (DENR) is hereby requested to coordinate with the Office of the Court Administrator in designating the public land where probationers may plant trees and in providing the materials (seedlings, etc.) and the expertise to ensure proper planting and care of the plants. The Secretary and the Court Administrator shall issue the appropriate Guidelines in this regard, which shall include a compilation or a databank of relevant information necessary to monitor compliance with this specific condition for probation.

The Guidelines shall be submitted to the Court before 31 May 2003; once approved, it can take effect on the first day of July 2003. Nonetheless, even before the approval of the Guidelines, trial judges in places where public lands are located may, with the support of the local offices of the DENR, impose in probation cases the condition subject of this Administrative

Circular. The present practice of some judges of imposing such a condition is hereby commended.

This Administrative Circular, whose issuance was approved by the Court *En Banc* in A.M. No. 03-03-10-SC, 11 March 2003, shall take effect upon its issuance.

Issued this 12th day of March 2003.

(Sgd.) **HILARIO G. DAVIDE, JR.**
Chief Justice

**Memorandum of Agreement (MOA)
By and Between the Supreme Court,
the Department of Environment and
Natural Resources, and the
Department of Justice**

KNOW ALL BY THESE PRESENTS THAT on this
8th day of October 2003, in the City of Manila -

THE PARTIES

The SUPREME COURT OF THE PHILIPPINES, with
address at Padre Faura Street, Manila, herein represented by its
CHIEF JUSTICE HILARIO G. DAVIDE, JR.,

The DEPARTMENT OF ENVIRONMENT AND
NATURAL RESOURCES, with address at Visayas Avenue,
Diliman, Quezon City, herein represented by its SECRETARY ELISEA
G. GOZUN, and

The DEPARTMENT OF JUSTICE, with address at Padre Faura
Street, Manila, herein represented by its SECRETARY SIMEON A.
DATUMANONG.

WITNESSETH THAT -

The Philippines is one of the richest countries in the world in
terms of its abundant natural resources and unique plant and
animal life.

However, abundance breeds waste. In the last fifty (50) years, we have heaped great abuse on these natural resources. Today, the country's forest resources and coral reefs have declined by as much as 90% to 95%. Not only does this threaten the balance of water and food supply, it also unravels the very thread that weaves through the fabric of all life for the present and future generations of Filipinos.

Aware that we are now in a singular position to make a difference, we hereby express our individual commitment and institutional political will to help arrest, and if possible, reverse the unfolding crisis. We hereby commit to use the Law - as a thinking tool and as an agent of change - for the pursuit of common ecological good, *i.e.*, the greatest good for the greatest number for the longest time.

The Parties hereby agree to establish an inventory and database of pending environment and natural resources (ENR)-related cases nationwide. To facilitate the flow and ensure transparency and accountability in the resolution of these cases, we will conduct continued nationwide monitoring.

Now, THEREFORE, the Parties agree as follows:

I. The Team

The Parties hereby create the 'The Joint Environmental Monitoring Team (TEAM)' composed of representatives of each of the Parties. The mandate of the TEAM is spelled out in the attached Terms of Reference.

2. Periodic Assessment

The Parties shall meet at least once every four (4) months to assess the progress of the joint monitoring initiative.

3. Institutional Arrangement

As the primary agency tasked to protect the country's environment and natural resources, the DENR shall institutionalize this initiative. Because budgetary allocation is the best expression of political will, the DENR shall appropriate an annual budget to operate the Secretariat and to conduct field monitoring meetings. As their counterpart, the Supreme Court and the Department of Justice shall endeavor to provide the traveling expenses of their respective representatives.

4. Assistance of the Public Attorneys' Office (PAO)

The Public Attorneys' Office (PAO) of the Department of Justice shall extend legal assistance to DENR personnel who are the objects of harassment suits arising out of the faithful performance of their duties. The DENR will extend logistical support to the PAO for cases of this nature.

(Sgd.) HILARIO G. DAVIDE, JR.
Chief Justice
Supreme Court

(Sgd.) ELISEA G. GOZUN
Secretary
Department of Environment
and Natural Resources

(Sgd.) SIMEON A. DATUMANONG
Secretary
Department of Justice

Signed in the presence of:

(Sgd.) AMEURFINA A. MELENCIO HERRERA
Chancellor
Philippine Judicial Academy

(Sgd.) JOSE ANSELMO I. CADIZ
President
Integrated Bar Philippines

Terms of Reference for the JOINT ENVIRONMENTAL MONITORING TEAM (TEAM)

I. COMPOSITION OF THE TEAM

The TEAM shall be composed of representatives from the:

Supreme Court *as designated by the Chief Justice,*
DENR *as designated by the Secretary,*
DOJ *as designated by the Secretary,*
Special Counsel to the Parties *as designated in this*
Memorandum of Agreement,
and a
Representative of the Secretariat.

II. MANDATE

The TEAM shall perform, among others, the following functions:

I. Inventory of ENR-Related Cases

The TEAM shall prepare all inventory and database of pending environmental and natural resources (ENR) - related cases nationwide. They may begin with violations of forestry laws (Presidential Decree 705) and fisheries laws (Republic Act No. 8550) and, in due course, move on to other ENR-related cases (e.g., violations of the Clean Air Act, Ecological Solid Waste Management Act, etc.)

This national database of ENR-related cases shall be the basis for the conduct of continued field monitoring to ensure transparency, accountability and expeditious resolution.

2. Identification of Hotspots

The TEAM shall identify the hotspot areas where illegal activities relating to the abuse of natural resources still occur with great frequency and intensity. The TEAM shall prepare a prioritized list of ENR-related cases in these hotspots and subject them to intensive monitoring.

3. Secretariat

The DENR shall serve as the nerve center and Secretariat of the TEAM and the repository of records. It shall dedicate, on a full-time basis, a staff of at least two (2) members to collect and collate available data, and recommend proper courses of action.

4. Special Counsel to the Parties

To ensure the implementation of this Agreement, environmental lawyer Antonio A. Oposa, Jr. is hereby appointed Special Counsel to the Parties. He is tasked to submit a periodic written report to the Parties on the progress of this joint undertaking. For this purpose, he may seek the assistance of the Integrated Bar of the Philippines (IBP) and other government agencies and non-government organizations.

5. Field Monitoring Meetings

The TEAM shall hold a meeting at least once every quarter in the identified hotspot areas. The TEAM shall endeavor to address, on-the-spot, all pending issues that delay the caseflow of the ENR-related cases being monitored.

6. Report of Actions Taken

The TEAM shall prepare formal resolutions and submit a report to the Parties of the actions taken during, and as a result of, the field monitoring meetings.

7. Other Duties

The TEAM shall perform such other duties as may be directed by the Parties.