

# IN DEFENSE OF FUTURE GENERATIONS\* \*\*

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## I. Introduction

Before we begin to study the changeable laws of man, it is important that we must first examine the unchangeable laws of nature. It is perhaps because of the failure of the former to conform to, or be integrated with, the latter that the malfunctioning of the Natural System is now being felt by anthropocentric humankind.

### 1.1 *Etymology of Ecology*

Ecology is derived from the Greek word "oikos" meaning "home." Ecology may therefore be defined as the study of our home, which is, of course, that spinning ball of mass called Planet Earth.

### 1.2 *Ecology defined: The study of the inter-relationships of all things, living and non-living.*

## II. The Immutable Law of Nature

### 1.1 *Four Laws of Ecology*

- A. Everything is interconnected.
- B. Everything has to go somewhere.
- C. Nothing is for free.
- D. Nature has the last say.

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### 1.2 *The Water Cycle*

Water is the most important element of life. It flows and follows a cycle that runs from the rainfall, to the vegetative and forest cover, to the underground water table, and then drawn by man to drink, to bathe, to irrigate and to run his hydropower dams. Excess waters flow into springs, brooks, streams and rivers, and then on to the sea.

The vegetative cover is an essential component of this cycle. Without it, the waters are not absorbed by land. There is no recharging of the acquifer, and water becomes very scarce. Because Nature abhors a vacuum, the pressure from the sea intrudes into the underground water table and water salinity occurs.

### 1.3 *Geographic Considerations*

The Philippines is composed of 7,100 islands with a total land mass of 30 million hectares and total territorial waters of 220 million hectares. Scientists tell us that an island ecology is a self sustaining and a living organism. It also has a very delicate and fragile balance. Scientific data disclose that the proper balance of land use must be that at least 54 percent (up to a minimum of 40 percent) of the island mass must be covered by vegetative or forest cover, and the other 46 percent to 60 percent may be devoted to other land uses such as for agricultural, residential, industrial, etc. Scientific data also disclose that seriously disturbing this balance may lead to the demise of an island ecological system such as the case of the econologically-dead island of Cebu.

## III. The Politics and Laws of Man

1.1 *Politics defined: The science and art of government (presumably of good government).*

1.2 *There are two kinds of politics*

a. The game of trying to arrive at a position of power.

b. The use of the available power, at the game of trying to effect the necessary changes for the common good. And what are those powers? They are our powers of thought, of imagination, even of locomotion,

and the freedom and power of speech. The first kind is what we commonly see in the carnival called "election."

As an ordinary citizen however, one does not have to join the politics of getting into positions. As a matter of fact, the second kind of politics – the game of trying to effect changes for the common good – must be played by all. (Otherwise, there is no commonality of purpose between the politicians of the first kind and that of the second kind.)

### 1.3 *A Genuine "Political" Issue*

It was only in the late 1980's that the country began to realize that it had been wasting its forest resources at a very alarming rate. The malfunctionings were made manifest by the flooding and loss of human lives, erosion, siltation, reduced agricultural and marine productivity and others. By the late 1980's, there was sufficient scientific data on these adverse effects in our ecological system.<sup>1</sup> They are so capable of unquestionable demonstration that they may be submitted as a matter of judicial knowledge.

It is something that all of us, the entire body politic, should know so that we may make a political decision and a determination for action. In other words, it was (and is) in the purest sense of the word, a Political Issue of the First Order. It relates not just to amorphous terms like ecology and environment, but to the very basic issue and common concern of survival. There is nothing alarmist in the statement, it is a simple statement of scientific fact.

Globally, of course, we know that vegetative and forest covers are the so-called "lungs" of the earth. They are not just the concern of Filipinos, but of the entire human and animal kingdom.

### 1.4 *Deforestation and Logging*

Deforestation has been determined to be the result of two basic factors:

- a. Greed -- on the part of the irresponsible logging operators;
- and

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<sup>1</sup>"Ecosystem" for brevity.

b. Need -- on the part of the upland dwellers who, knowing nothing better, and/or constrained by the pangs of hunger, clear forests by unsustainable slash-and-burn farming, farm the area cleared for a short period of time, and then move on to clear more forests.

Of the first category, we must start to weed out the good loggers from the bad before we can seriously tackle the infinitely more difficult challenge of the second category.

In the late 1980's, the problem became critical that it was time to force the issue.

#### IV. Environmental Legal Action

##### 1.1 *Utility*

It must be stressed that the primary utility of pro-active environmental legal action is to bring an otherwise political issue to a head; to force it into the consciousness of the body politic in order that it may be corrected, and corrected with dispatch.

##### 1.2 *The Germination of an Environmental Legal Action*

In 1989, available data from the Department of Environment and Natural Resources (DENR) showed that:

1. Commercial logging was being done in the country's old-growth forests;

2. There were only about 800,000 or so hectares left of these old-growth forests, based on satellite pictures; almost all of which we hardly even know exactly where they are located;

3. These old-growth forests are the last frontiers of our biological diversity, a genuine genetic pool of life, known and unknown. Unless these are protected, they will be lost and lost forever;

4. Ninety-two corporations held Timber License Agreements (TLAs) covering a total area of 3.9 million hectares. It appears that the TLAs covered more area than what is legally and technically available. (There is also the collateral issue of firms with legal TLAs using their forest

documents to "legalize" illicitly-sourced forest products, thus making simple law very difficult to enforce.)

It is in the face of these facts and circumstances that the embryo of environmental legal action was conceived. How to frame the problem into a litigable/judicial issue was the challenge of the second kind of politics to use our powers of thought and imagination, to call them to arms and effect a change for the common good.

### 1.3 *Mother Nature and Man*

It is said that Mother Nature is like a good wife, and Man like a drunken, gambling, abusive and no-good husband. For a long time, Man has subjected his wife to physical abuse, battery, assault and rape. The good wife bore the physical abuse in patience and in silence, in almost martyr-like stoicism.

One night, however, the husband comes home drunk. After physically abusing his wife and then falling into sound sleep, the good wife finally despairs and is about to perform the supreme act of "Bobbitization."

### 1.4 *The Strategic and Tactical Legal Considerations*

#### 1. Choice of the Action and Remedies

The action is to compel the performance of an act *i.e.*, to cancel all TLAs. Therefore, it is in the nature of a mandatory injunction.

The other remedy that must be sought is the prevention of the issuance of new, or the renewal of expiring, TLAs. Thus, it must also be in the nature of a prohibitory injunction.

With respect to damages, plaintiffs are not seeking any monetary damages so as not to complicate the case with pedestrian pecuniary issues. Plaintiffs intend to prove, however, that the ecological damage of the accumulated and wanton capacity and neglect of this generation is so enormous that it is literally incapable of pecuniary estimation.

## 2. Choice of Parties

### a. Plaintiffs

While we in this generation are beginning to suffer the malfunctionings of the ecological system, we shall not be the ones to suffer the irreparable damage and irreversible injury. Neither shall it be our children alone, but generations yet unborn as well, who shall suffer the fatal impact of our accumulated wanton acts of negligence and indifference.

In legal parlance, therefore, the future generations are the "real parties-in-interest."<sup>2</sup> They are the parties who stand to suffer the irreparable injury and irreversible damage.

The future generations are best represented by our children, who in legal considerations are the "representative parties."<sup>3</sup>

Since the issue is of such common and general concern, it is also a proper class action.<sup>4</sup>

### b. Defendants

Considering that there have been apparently more areas given to loggers than there is available under the present policy and practice, they would therefore be the proper or necessary parties-defendant.

A tactical problem however presents itself. If the 92 logging concessionaires were all made parties-defendant, it would not be the story of David and Goliath but that of an ant trying to quarrel with an elephant. There is an imbalance of power.

However, it is said that a problem bears within itself the seed of its own solution: The logging concessions were issued by the government; if we cannot successfully attack the holder, let us attack the issuer. The governmental agency concerned happens to be the DENR.

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<sup>2</sup>RULES OF COURT, Rule 3, Section 2.

<sup>3</sup>Representative parties: Section 3, Rule 3 of the Rules.

<sup>4</sup>Class suit defined as an action wherein the subject matter of the controversy is one of common or general interest to many persons, and the parties are so numerous that it is impracticable to bring them all to court. In such a case one or more may sue or defend for the benefit of all.

The tactical maneuver is then to shift the target of attack to the government.

The great gamble, of course, bears great risks. Among others, if all the 92 TLA holders intervened, each represented by a lawyer, the lone counsel for the plaintiffs will either spend his entire life warding off the legal assaults of the adversaries, or face a crushing submission and shameful defeat.

But it is said that life is a gamble. So if we are to gamble at all, then let it be with the highest stakes in legal tender or in chips called 'moments.'

### 3. Scope and Coverage of the Action

Under the theory that the island ecosystems comprising the territorial fiction called the Philippines are covered by the laws of said country, it follows that the scope of the action must be nationwide. The challenge would be to later prove by judicial evidence what damage a child in Cebu may suffer from the forest despoliation happening in the Sierra Madre mountains. In other words, the challenge is to establish the *vinculum juris*.<sup>5</sup>

### 4. Structural Statement of a Legal Cause of Action

In environmental legal actions, the cause of action must not only be sufficient; it must not only appear sufficient; it must be palpable, such that it can almost be tasted, so to speak. This is extremely important because for such a seemingly wild card of a legal action, the complaint must, on its face, state a cause of action and that the cause of action must be so crystal-clear that the courts will be forced to take cognizance of it. Otherwise, it can be dismissed outright with only one phrase: "frivolous and without merit."

While what is being sought only is a change in policy and practice, the issue must be constructed in a legal framework in order to make it justifiable, *i.e.*, subject to judicial review.

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<sup>5</sup>Meaning "A Link in the Law."

hectares are covered by the TLAs. Juxtaposing these figures, one can make the sound argument that the government has actually granted more than what is available -- a patent, grave and palpable abuse of discretion. Whether or not this contention is factually and legally valid will at least require the presentation of evidence.

#### 5. Provisional Remedies

Two considerations prevent the plaintiffs from praying for provisional remedies:

##### a. Legal

Presidential Decree 1818 prohibits the issuance of temporary restraining orders and preliminary injunctions against an act of an administrative official in the issuance of licenses/permits for natural resources and infrastructure projects. A prayer for a temporary restraining order and/or a preliminary injunction would only expose the plaintiffs to unnecessary difficulties or setbacks at the very first round of the game.

##### b. Logistical

If, in the remote possibility, the court grants the prayer for a preliminary injunction and requires a bond, the plaintiff-children would run the risk of being exposed to embarrassment for their being pauper-litigants.

#### 6. Exhaustion of Administrative Remedies

As a form of substantial compliance to the rule on exhaustion of administrative remedies (and also to warn the defendant), the children forwarded a demand letter to the Secretary of the DENR demanding the cancellation of all logging concessions in the country within 15 days from receipt of said letter. While seemingly simple in-substance and in form, the letter was meant to avoid a dismissal based on a failure to comply with this technicality.

### 1.5 *The Action*

In the morning of March 20, 1990, Civil Case No. 90-777 was filed in the Regional Trial Court of Makati. The plaintiffs – 43 children from all the geographic regions of the country acting on their behalf and on behalf of generations yet unborn -- instituted an action against the government through the DENR to compel the latter to cancel all logging concessions in the country. The basis of their action was that at the rate the forest destruction was occurring, there would be nothing left of this natural and national heritage for their generation and for those yet to come.

Despite the position of the Secretary of the DENR not to indulge in issues of technicalities so that the plaintiffs may proceed to present evidence, the government through the Solicitor General filed a motion to dismiss on the grounds, among others, that:

- a) The plaintiffs failed to state a cause of action.

It was contended that the plaintiff-children (and the generations to come) did not have a clear right to a balanced ecology and that they have no *locus standi* or legal personality to prosecute the action.

- b) The issue is a political question and therefore, non-justiciable.

Plaintiffs, who had earlier anticipated the question and were well-prepared for it, were like turtles thrown into the water.

After more than one year of the case being pending in the lower court before two judges, the court dismissed the complaint on the following grounds:

- a. The children failed to state a cause of action.
- b. The issue was political and therefore non-justiciable.
- c. A positive relief granted would be tantamount to a violation of the Constitutional prohibition against the impairment of contracts.

Plaintiffs elevated the matter to the Supreme Court on a petition for review on *certiorari* claiming that the lower court gravely abused its discretion by dismissing the action without hearing the evidence. The matter was brought to the Supreme Court on a pure question of law and perhaps, of philosophy.

## 1.6 *The Legal and Philosophical Bases of the Petition*

### 1. Constitutional Law

The 1987 Constitution states:

The State shall protect and advance the right of the people to a healthful and balanced ecology in accord with the rhythm and harmony of nature.<sup>6</sup>

This line -- composed of words trembling on the brink of poetry -- was aching to be tested. To the plaintiffs, it meant two things:

- a. A duty on the part of the State to protect the ecology.
- b. A newly-enshrined right of a people to that balanced ecology.

The Government, however, said this environmental right was "nebulous" and unclear.

### 2. Common Law

Expanding the Trust Doctrine, plaintiffs contended that the natural resource treasures of the country are held in trust by the present generation (represented by the incumbent holders of governmental agencies) in trust for, and for the benefit of, not just plaintiffs generation but also of the generations yet unborn. Put differently, the natural resources are the objects of the trust, we are the trustees, and the future generations are the beneficiaries. (The Trustor, of course, is Him who created these natural resources in the first place.)

A misuse and misappropriation of the property held in trust by the trustee to the prejudice of the beneficiaries gives rise to a cause of action for the violation of that fiduciary trust.

### 3. Statutory Law

PD 1151 and 1152 (Philippine Environmental Policy Act and the Philippine Environmental Code), PD 705 (Revised Forestry Code) as well as

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<sup>6</sup>CONST., Article II, Section 16.

Executive Order 192 (creating the DENR) all state that the forest resources of the country are for the use and benefit of our, and of future, generations.

#### 4. Civil Law

Civil Law provisions on Human Relations<sup>7</sup> state that whoever causes damage in a manner that is contrary to morals and public policy is liable for the damage done. Plaintiffs contended that the public policy is stated not only in the aforementioned statutory acts but also in the Constitution.

Blending it with the cause of action issue, plaintiffs argued that assuming the government had indeed granted more areas than what is available, said act is contrary to the public policy of ensuring the sustainability of the forest resources.

This is where a "palpable" cause of action becomes very important, nay, essential. Without a clear and apparently unmistakable cause of action, the legal framework sought to be constructed cannot withstand the storm of judicial scrutiny.

#### 5. Criminal Law

This is perhaps best illustrated in a simple example. Let us imagine a situation where Mr. A and Mr. B are good friends, Mr. B being a lawyer. Mr. A entrusts to Mr. B a parcel of land on the condition that Mr. B will give said property to the one-year old son of Mr. A once the child becomes 18 years of age. As compensation, Mr. A allows Mr. B to harvest and sell the fruits of that land. He is under the injunction however, to retain intact the parcel of land (the capital and *corpus* of the trust) so that when the son of Mr. A comes of age, he would have some means to sustain himself.

Instead, however, of tilling the land and harvesting only its fruits, Mr. B sells the entire land and gambles away the proceeds, buys a car and a house for his exclusive use and benefit. Seventeen years later, the *corpus* of the trust had been dissipated to the damage and prejudice of the beneficiary.

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<sup>7</sup>REPUBLIC ACT 386 (otherwise known as the New Civil Code of the Philippines), Article 21.

The offense committed is swindling.<sup>8</sup> The property held in trust was misappropriated and converted into the personal and exclusive use and benefit of the trustee at the expense and prejudice of the beneficiary.

If the actor and the victim of this felony is not just an individual, not just a family, but an entire generation, can we perhaps denominate the offense as "Generational Swindling?"

And note that what the present generation is swindling is not only a parcel of land or money; what we are misappropriating and removing is nothing less than the life-support system of the succeeding generations.

When a human being is killed by another with evident premeditation and treachery, the act is classified as "Murder". When a generation inflicts upon the next a fatal blow against the natural systems that should have allowed it to live -- in means assured to remove any resistance and with deliberate, malicious and evil cunning -- perhaps what is committed is not just "Generational Swindling;" perhaps it may best be described as "Generational Genocide".

#### 6. Natural Law

It is also the contention of the plaintiffs that the permanent removal of the forest and natural life-support systems is a violation of the highest law of humankind (in fact it is the highest law of all living creatures). It violates their right -- and instinct -- of self-preservation and self-perpetuation. It is contrary to the Law of Nature (or Natural Law).

With a stroke of good fortune, the Supreme Court decided to give due course to the petition and required the parties to submit their respective memoranda.

On July 30, 1993, the Supreme Court rendered the decision. Not surprisingly, the legal perspicacity, elegant language and high poetry of the Philippine Supreme Court in this decision has received more notice internationally than it seems to have locally. Locally, the legal import of this decision still remains to be seen within the next decade or two.

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<sup>8</sup>REVISED PENAL CODE, Article 315.

Beyond the legalese and poetry of the decision, however, what has been achieved as a matter of practical support?

Let us backtrack a little bit and inquire from ourselves again what was the object of the action in the first place? Was it not to force an issue into the consciousness of the body politic to effect a change for the better? Was it not to force the shift in the policy of logging in primary-growth forests so as to preserve them as our last frontiers of biodiversity? Was it not to pare down the number of TLA-holders to only the more responsible ones, and weed out the undesirables pending resolution of the policy question as to what form of logging policy we will allow for the country?

Perhaps it is a wonderful stroke of good fortune that there were (and are) like-minded individuals within the government bureaucracy. In 1991, the DENR by Administrative Order No. 24 prohibited the commercial logging in primary-growth forests effective 1992. In 1992, Congress passed Republic Act No. 7586 otherwise known as the National Integrated Protected Areas System (NIPAS) which mandates the protection of the primary-growth forests as an integral part of the National Parks System. In the process -- and perhaps using this "political pressure" as one of the excuses -- the DENR more strictly implemented the rules and regulations on forestry, and the holders of TLA have been reduced to only about 27 from the 92 in 1989.

It is safe to generalize the statement that the objective of an environmental legal action is itself moot and academic. It must be rendered moot by the fact that the "police" issue<sup>9</sup> has been resolved by the more expeditious administrative and/or political action. As you know, a case won thirty years hence is not a victory but a loss. This is better highlighted in an environmental law case when, if won 30 years later, there may be nothing left to even talk about. (In fact, there may no longer even be sufficient parties.)

The more difficult problems of total forest protection remains to be done -- issues such as watershed rehabilitation, flora and fauna protection, resolution of land tenure issues and ancestral land claims, etc. In the matter of the primary growth forests, we must begin to locate them, demarcate them on the ground, and inject them with fiscal and logistical transfusion if

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<sup>9</sup>May also be referred to as "political".

we are to be truly serious and committed about preserving these natural and national patrimony.

It is also safe to conclude that one of the functions of environmental legal action is to jolt the body politic into an awakening of sorts, and perhaps electrocute the arthritic governmental bureaucracy into a positive course of action.

#### V. A Call to Arms

After all the legal verbiage, there is still the issue of commercial illegal logging that has been pestering the effort of total forest protection.

In early 1992, a small team of highly dedicated and competent men got together and decided to use the bold and daring methods of the law to drive home the message: The plunder of our forest resources for commercial gain must be stopped -- immediately and with surgical precision. In late 1992, this small team planned to perform legal surgery by way of a highly confidential and very special operation.

Backed up by a team of Special Forces, the Team -- composed of two National Bureau of Investigation (NBI) agents, a Department of Justice (DOJ) State Prosecutor, a photojournalist and a private lawyer -- raided a notorious establishment in the heart of the illegal logging operations in Mindanao. What was unusual in this raid was that it targeted the top people of the establishment -- the general and the assistant general managers and the procurement officer, and with innovative techniques never before used in the law enforcement history of the country. Upon arrest, the suspects were not brought to the Office of the Prosecutor for inquest proceedings. Rather, the Prosecutor was brought to the site of the arrest (the sawmill) and then and there inquest proceedings were conducted. The team was amply equipped with a notebook computer and a printer. Thus, the sworn statements, complaints and Information were all prepared within a matter of minutes. After the immediate inquest proceedings were conducted (with the respondents duly represented by counsel and the proceedings duly recorded on video tape), the accused were committed to jail -- all in a matter of five hours.

Members of this Team have figured in other different dramatic raids. Last June of 1993, the Team arrested a boat towing forest contraband in the seas off Quezon. A member of the Team piloted a helicopter to the middle of the sea and then and there arrested the boat captain and owner,

brought him to a nearby island, loaded him onto the helicopter and brought him to the helipad and base camp. The boat was impounded. There, a Provincial Prosecutor was waiting. Upon arrival of the suspect, inquest proceedings were conducted and within 2 1/2 hours, the accused was in jail.<sup>11</sup>

Recently, a member of the Team led a raid in the heart of illegal logging operations in Muslim Mindanao, against illegal sawmill activities in Regions II and IV, and similar dramatic (almost cinematographic) special operation raids.

To monitor the illegal logging cases, the DENR, DOJ and non-governmental organization (NGO) three-man National Steering Team has been travelling throughout the regions to hold its meetings in the field. This is meant to serve as a signal and send a message to all and sundry that this time, it is not just the government that is serious, but we, the people. And that we the people are willing to pay the price to bring this pestering issue to a logical conclusion.

We are left with no option, and the absence of alternatives clears the mind marvelously.

The law will not solve the forestry or the environmental crisis. If it is of any use at all, it is merely as a tourniquet to arrest the hemorrhage in the natural resources. The greater challenge lies in the prevention of this recurrence. (After all, a tree cut is already gone forever. No amount of paste or glue will bring it back to life.) The greater challenges lie in the other numerous things that have to be done to protect and preserve the natural resource treasures of this and of the generations yet to come.

And let us also remember that the forests and vegetative cover is only one, albeit a very critical, component of the life-support systems of all flora and fauna, including that species of fauna that is called *Homo sapiens* (the modern descendant of the *Homo erectus*). There are at least a hundred other environmental issues that need to be addressed: air pollution, marine resource productivity, global climate change and others.

The war against ecological despoliation is not won merely in the courts of law or in the arena of action. It must be won in the hearts and in the

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<sup>11</sup>The speed was on account of the sworn statements and complaint forms were already encoded for easy retrieval and printing.

minds of the people, of anthropocentric human kind. Then, and only then, will the victory become complete and permanent.

## VI. Conclusion

### Story of the King.

Once upon a time in a faraway land there lived a King. In his kingdom, the land was rich, the forests were plenty and cattle abound – cows and carabaos.

Because the King liked to roam his kingdom and his feet were hurt by the sticks and stones that littered the road, he decreed that hence forth, all cows and cattle shall be slaughtered to provide the hide with which to line the roads.

The good subjects obeyed. Almost all of the cows and carabaos were killed and the leather was used to line the roads.

Soon, however, the air was foul with the stench of rotting meat, the waters were dirty, and the animals were about to run out.

The subjects were almost up in arms. They complained to the King that at the rate it was going, there will be nothing left to help them in their farms, and to provide for meat in the morrows yet to come.

It is said that if necessity is the mother of invention, crisis is the father.

The good King stood up from his throne, went to cut a piece of leather and then wrapped it around his feet.

That, my friends, is the story of the first shoe.

That is also the story of natural resources conservation.

The Chinese character for crisis represents two other characters: of danger and of opportunity. If there is crisis in the air, there must be in our actions a sense of urgency, nay, a sense of *emergency*.

Perhaps with our gifted powers of thought, of imagination stretched to human limits, of the powers of locomotion extended to daring heights, and

in the responsible exercise of the freedom and power of speech we can yet effect certain change, however modest, in the pursuit of the common good.

As we pursue that ideal, however, we find that perhaps it is the fate of people who follow the path of their ideals to realize that the path is endless. That in walking it, one finds not the end of the path, nor the fulfillment of his ideals; rather, he finds the joy of walking.

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