COMMENT:

THE SUPREME COURT'S LIMITED CONSTRUCTION OF THE PRIOR CONSULTATION AND APPROVAL REQUIREMENT IN *PROVINCE OF RIZAL. V. EXECUTIVE SECRETARY*

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We fear to grant power and are unwilling to recognize it when it exists.
—Justice Oliver Wendell Holmes [1]

Everyone takes the limits of his own vision for the limits of the world.
—Arthur Schopenhauer [2]

When Senate Bill No. 155, which in due course became the Local Government Code of 1991,[3] was filed in 1987, it was reportedly delayed because more than a few members of the Cabinet and the House of Representatives were not inclined to share extensive national government powers with local governments.[4] Since the effectivity of the Code in 1992, the Supreme Court has not been wanting in significant issues to resolve with respect to the grant of powers to local government units. With devolution of powers from the national government to local governments as the centerpiece of this "revolutionary legislation,"[5] it is not surprising that among the most important cases that the Court has had to resolve are those that interpret the extent of the powers given by the Code to local government units ("LGUs"), most especially the interplay of powers between the national government and local governments.

This tension of power in intergovernmental relations has once more been brought into the spotlight in the recent case of *Province of Rizal v. Executive Secretary*,[6] where the Court ordered the permanent closure of the San Mateo landfill because of the failure to comply with the Code's mandatory provisions on prior consultation and

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[1] Tyson and Brother v. Banto, 273 U.S. 418 (1927) (Holmes, J., *dissenting*).

[2] ARTHUR SCHOPENHAUER, STUDIES IN PESSIMISM (1851).

[3] Rep. Act No. 7160 (1992) [hereinafter "CODE" or "LOCAL GOVT CODE"].

[4] AQUILINO PIMENTEL, JR., LOCAL GOVERNMENT CODE OF 1991: THE KEY TO NATIONAL DEVELOPMENT 1 (1993).

[5] *Id.* at 2.

[6] Province of Rizal v. Executive Secretary, G.R. No. 129546, December 13, 2005.

approval[7] for the implementation by national government agencies of programs and projects within the territorial jurisdiction of LGUs.

THE CASE

The case arose because in 1988, the Department of Public Works and Highways ("DPWH"), the Department of Environment and Natural Resources ("DENR") and the Governor of the Metropolitan Manila Commission (now the Metro Manila Development Authority or MMDA)[8] entered into a memorandum of agreement, whereby the DENR allowed the MMDA to utilize DENR property located in Pintong Bocaue, San Mateo, Rizal, as a landfill site. The DPWH was designated for its construction. A year later, the *Sangguniang Bayan* of San Mateo wrote the various heads of the departments involved and informed them that it had recently passed a resolution banning the construction of dumpsites for Metro Manila garbage within its jurisdiction. However, these letters were only ignored. In that same year, the Community Environment and Natural Resources Office of the DENR of the Province of Rizal submitted a report expressing its findings that the subject area of the proposed dumpsite actually consisted of arable and agricultural land[9] and that the area is located inside the Marikina Watershed Reservation, thus making the planned dumpsite operation illegal pursuant to the Revised Forestry Code.

On 28 August 1995, despite the strong objections raised by the *Sangguniang Bayan* of San Mateo against the expansion of the dumpsite operation and the recommendations of the DENR to dismantle all facilities in the dumpsite area, the Office of the President, through then Executive Secretary Ruben Torres, issued Proclamation No. 635 ("Proclamation"), which set aside around eighteen hectares of the Marikina Watershed Reservation for use as a sanitary landfill and for other waste disposal applications in order to meet the alarming garbage crisis facing Metro Manila and its nearby municipalities and provinces. In 1996, after failed attempts to have President Fidel Ramos reconsider the Proclamation, the Province of Rizal, the Municipality of San Mateo, Kilosbayan, Inc., and several concerned citizens filed before the Court of Appeals a civil action for certiorari, prohibition and mandamus with application for a temporary restraining order or writ of preliminary injunction assailing the legality and constitutionality of the Proclamation. The Court of Appeals denied the petition for lack of a cause of action.[10]

On a petition for review on certiorari, the Supreme Court *en banc* unanimously declared the illegality of the challenged Proclamation and ordered the permanent closure of the San Mateo landfill site. Although the petitioners raised only two issues in their

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[7] LOCAL GOVT. CODE, section 2 (c), 26, and 27.

[8] The Metropolitan Manila Commission was the predecessor of the Metro Manila Authority, which later became the Metro Manila Development Authority. To avoid confusion due to the changes in the designation, such agency is hereinafter referred to as "MMDA."

[9] Province of Rizal v. Executive Secretary, *supra*, citing CENRO DENR-IV Memorandum dated May 31, 1989.

[10] CA-G.R. No. 41330-SP, June 13, 1997.

memorandum and therefore, pursuant to a Supreme Court administrative matter,[11] may be deemed to have waived or abandoned the issues raised in their petition but not included in the memorandum,[12] the Court nevertheless decided to address the pertinent issues raised in the petition by invoking its symbolic function to educate the bench and bar.[13]

Among the Court's various reasons for its decision to order the permanent closure of the San Mateo landfill was that the Office of the President passed the challenged Proclamation in violation of the Code. As its basis, the Court cited sections 2(c) and 27 of the Code, which provide:

> Sec. 2. *Declaration of Policy*.... (c) It is likewise the policy of the State to require all national agencies and offices to conduct periodic consultations with appropriate local government units, nongovernmental and people's organizations, and other concerned sectors of the community before any project or program is implemented in their respective jurisdictions.
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> Sec. 27. *Prior Consultation Required.* No project or program shall be implemented by government authorities unless the consultations mentioned in Sections 2 (c) and 26[14] hereof are complied with, and prior approval of the sanggunian concerned is obtained. *Provided*, That occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided, in accordance with the provisions of the Constitution.

Based on these provisions, the Court concluded that there are two requisites that must be met before a national project that affects the environmental and ecological balance of local communities can be implemented: (1) prior consultation with the affected local communities, and (2) prior approval of the project by the appropriate local legislative body or *sanggunian*.[15] The Court went on to say that without either of these compulsory requirements, the implementation of such project is illegal.[16]

Without a doubt, the landfill project affects the environmental and ecological balance of the local communities surrounding the landfill area. This finding was

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[11] A.M. No. 99-2-04-SC, In Re: Dispensing with Rejoinder (1999).

[12] *Id.* at 521.

[13] Province of Rizal v. Executive Secretary, G.R. No. 129546, December 13, 2005, citing Republic v. The City of Davao, 437 Phil. 525, 530 (2002), citing Consolidated Bank and Trust Corp. v. Court of Appeals, G.R. No. 78771, January 23, 1991, and Gonzales v. Chavez, G.R. No. 97351, February 4, 1992.

[14] LOCAL GOVT. CODE, sec. 26, provides:

> *Duty of National Government Agencies in the Maintenance of Ecological Balance.* It shall be the duty of every national agency or government-owned or controlled corporation authorizing or involved in the planning and implementation of any project or program that may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, range-land, or forest cover, and extinction of animal or plant species, to consult with the local government units, nongovernmental organizations, and other sectors concerned and explain the goals and objectives of the project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof.

[15] Province of Rizal v. Executive Secretary, *supra.*

[16] *Ibid.*

substantiated by the investigative reports submitted by the DENR indicating that the water supply of a thousand families would be adversely affected. Likewise, there were also findings of ground slumping and erosion as well as respiratory illnesses among pupils of elementary schools located only a hundred meters from the site.

As to the lack of compliance with the consultation and approval requirement, the Court pointed out the fact that during the oral arguments at the hearing for the temporary restraining order prayed for by the petitioners, Director Uranza of the MMDA Solid Waste Management Task Force declared before the Court of Appeals that the agency had conducted the required consultations with the local government officials but these officials were no longer incumbent. The Court noted that the difficulty of complying with the consultation requirement, much less the approval of the various *sanggunian* concerned, was highlighted by the fact that all the municipal mayors of municipalities in the province of Rizal openly declared their full support for the five-day rally and barricade conducted by the people of Antipolo, Rizal, in 1999 to prevent garbage trucks from reaching the dumpsite. The mayors likewise notified the MMDA that they would oppose any further attempt of the latter to dump garbage in the San Mateo site.

In ruling on the illegality of the questioned Proclamation for its failure to meet the twin mandatory requirements of prior consultation with affected local communities and prior approval of the *sanggunian*, the Court merely relied on the doctrine of *Lina, Jr. v. Paño*,[17] a fairly recent case which involved the validity of a lotto system set up by the Philippine Charity Sweepstakes Office in San Pedro, Laguna. It is in *Lina, Jr. v. Paño* that the Court laid the groundwork for interpreting the consultation and approval requirements of the Code. The Court ruled that section 27 of the Code should be read together with section 26 thereof,[18] which provides:

> Sec. 26. *Duty of National Government Agencies in the Maintenance of Ecological Balance.* It shall be the duty of every national agency or government-owned or controlled corporation authorizing or involved in the planning and implementation of any project or program that may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, range-land, or forest cover, and extinction of animal or plant species, to consult with the local government units, nongovernmental organizations, and other sectors concerned and explain the goals and objectives of the project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof.

The Court ruled in *Lina, Jr. v. Paño* that the term "projects and programs" in section 27, which necessitate compliance with prior consultation and prior approval for their validity, should be interpreted to mean such projects which have the effects

[17] Lina, Jr. v. Paño, 416 Phil. 438 (2001).
[18] *Id.* at 449.

referred to in both sections 26 and 27.[19] The Court enumerated these projects and programs as those that:

> (1) may cause pollution; (2) may bring about climactic change; (3) may cause the depletion of non-renewable resources; (4) may result in loss of crop land, range-land, or forest cover; (5) may eradicate certain animal or plant species from the face of the planet; and (6)other projects or programs that may call for the eviction of a particular group of people residing in the locality where these will be implemented.[20]

Based on this enumeration, the Court held that lotto does not fall within the purview of the provisions of the Code requiring consultation of the local communities and approval by the local sanggunian since a lotto system does not produce any of the itemized effects.[21]

In *Province of Rizal v. Executive Secretary*, the Court pointed out that it reiterated the foregoing doctrine of *Lina, Jr. v. Paño* in *Bangus Fry Fisherfolk v. Lanzanas*, a case which involved the legality of the DENR's issuance of an environmental compliance certificate to the National Power Corporation ("NAPOCOR") for the construction of a mooring facility for NAPOCOR's power barge in Minolo Cove in Puerto Galera, Oriental Mindoro. Notwithstanding an ordinance of the *Sangguniang Bayan* of Puerto Galera declaring that Minolo Cove is a mangrove area and breeding ground for *bangus* fry and therefore an eco-tourist zone, the Court held that the mandatory requirements in sections 26 and 27 of the Code do not apply.[22] Based on the admission by the petitioners therein that the mooring facility is not environmentally critical, the Court concluded that it does not fall under the enumeration pronounced in *Lina, Jr. v. Paño* and therefore, the approval of the *Sangguniang Bayan* is not necessary for its construction.[23]

COMMENT

Supreme Court precedent therefore indicates that it is only where a program or project implemented by the national government is "environmentally critical" — i.e., falling under the six circumstances outlined in *Lina, Jr. v. Paño*— that the mandatory consultation requirements of prior consultation and prior approval apply. Thus, in *Province of Rizal v. Executive Secretary*, where what is involved is a landfill site found to seriously affect the ecological balance and environmental condition of the community, the Court held that the implementation of the project is illegal for violating the mandatory requirements of the Code. On the other hand, in *Lina, Jr. v. Paño* and *Bangus Fry Fisherfolk v. Lanzanas*, where the projects involved are a lotto system and a mooring facility, respectively, the Court held that since they are not environmentally critical

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[19] *Id.* at 450.
[20] *Ibid.*
[21] *Ibid.*
[22] Bangus Fry Fisherfolk v. Lanzanas, G.R. No. 131442, July 10, 2003.
[23] *Ibid.*

projects, then the provisions of the Code on prior consultations and approval do not apply compulsorily.

The Court in *Province of Rizal v. Executive Secretary* is correct in its conclusion that since the San Mateo landfill project failed to comply with the mandatory requirements of prior consultation and approval of the Code, then the implementation of the project is illegal. However, by employing the doctrine of *Lina, Jr. v. Paño* and *Bangus Fry Fisherfolk v. Lanzanas* that such mandatory requirements apply only to environmentally critical projects in order to arrive at its conclusion, the Court continues its regrettable misinterpretation of the Code's provisions. While the preservation of the environmental and ecological balance of the local communities is an important concern embodied in the Code,[24] the Court's limited application of the mandatory consultation and approval requirements of section 27 only to environmentally critical projects is actually an improper interpretation of the letter and spirit of the Code. This limited construction contravenes not only the actual wording of the pertinent provisions of the Code but it also undermines the Code's provisions on private sector participation and its thrust of giving greater local autonomy to LGUs.

The Court ignores the clear and obvious wording of the law by its interpretation of section 27. The Court concluded in *Lina, Jr. v. Paño,* which it adopted in the most recent case of *Province of Rizal v. Executive Secretary,* that the requirements of prior consultation and approval of section 27 apply only to the environmental projects and programs under section 26. It is a basic principle in statutory construction that where a statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without any attempt at construction or interpretation.[25] *Verba legis non est recedendum,* or from the words of the statute there should be no departure.[26]

Section 27 is phrased clearly enough. It provides that "[n]o project or program shall be implemented by government authorities unless the consultations mentioned in sections 2(c) and 26 hereof are complied with, and prior approval of the sanggunian concerned is obtained." It is patent that section 27 does not only refer to section 26 but also to section 2(c). If it were indeed the intention of Congress that the mandatory consultation and approval requirements of section 27 should apply only to projects with environmental implications, then it would not have bothered to include section 2(c) and instead would have referred to section 26 only. Since each section of a law should be construed together with other sections in order to produce a harmonious whole,[27] each and every part of the statute should be conferred its due effect and meaning;[28] and, whenever possible, a legal provision must not be construed so as to be a useless surplusage.[29] Thus, the prior approval and consultation mandated by section 27 apply

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[24] A. PIMENTEL, *op. cit. supra* note 4 at 16, 124.
[25] Director of Lands v. Abaya, 63 Phil. 559 (1936).
[26] RUBEN AGPALO, STATUTORY CONSTRUCTION 124 (2003).
[27] Sotto v. Sotto, 43 Phil. 688 (1922); Araneta v. Concepcion, 99 Phil. 709 (1956).
[28] R. AGPALO, *op. cit. supra* note 26 at 261.
[29] Uytengsu v. Republic, 95 Phil. 890 (1948).

not only to the ecological projects enumerated under section 26 but also to the projects and programs under section 2 (c).

Article X, section 2 of the Constitution provides: "The territorial and political subdivisions shall enjoy local autonomy." Congress reiterated this constitutional mandate in the Code's declaration of policy,[30] as set forth in section 2 thereof. Aside from declaring that the territorial and political subdivisions of the State shall enjoy genuine and meaningful autonomy[31] and that the State shall ensure the accountability of LGUs,[32] the Code provides in section 2(c) that it is the policy of the State to require all national agencies and offices to conduct periodic consultations with appropriate local government units, people's and non-governmental organizations ("NGOs"), and other concerned sectors of the community before any project or program is implemented in their respective jurisdictions. As clearly indicated by the use of the word "any", section 2(c) does not make any qualification with respect to the kind of project or program that needs periodic consultations with the LGUs. Since section 2(c) refers to "any project or program" and not specifically to environmental ones only, then the mandatory prior consultation and approval under section 27 pertain to any and all projects and programs to be implemented by the national government within the jurisdiction of the LGUs.

Since it is apparent from the wording of the law that the mandatory consultation and approval requirements of section 27 apply to any kind of project or program and not only to environmental projects under section 26, then the former provision's specific reference to the latter may be explained by the law's particular concern for the environment. The Code indeed embodies a prominent concern for safeguarding and preserving a sound ecological system,[33] as demonstrated by the fact that one of the operative principles to guide the policies and measures of local autonomy is that LGUs shall share with the national government the responsibility of managing and maintaining ecological balance within their territorial jurisdictions.[34] However, it does not follow that the mandatory prior consultation and approval mechanism of the Code is limited to safeguarding only environmental interests, thereby making the other concerns of the LGUs and their affected sectors susceptible to the national government's unilateral, and possibly unwanted, imposition of non-environmental projects and programs within their communities.

With respect to the Court's contravention of the Code's private sector participation provisions, it is noteworthy that before the Code's passage, national government agencies and offices were not required to consult with the LGUs concerned whenever the former implements projects and programs within the jurisdiction of the latter.[35] At present however, section 2(c) of the Code requires national agencies to carry out periodic consultations not only with LGUs but also with people's organizations and

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[30] A. PIMENTEL, *op. cit. supra* note 4 at 14.
[31] LOCAL GOVT. CODE, sec. 2(a).
[32] LOCAL GOVT. CODE, sec. 2(b).
[33] Bangus Fry Fisherfolk v. Lanzanas, G.R. No. 131442, July 10, 2003.
[34] LOCAL GOVT. CODE, sec. 3(i).
[35] A. PIMENTEL, *op. cit. supra* note 4 at 16.

NGOs, as well as with other concerned sectors of the community. This suggests that the prior consultation requirement is aimed at fashioning a more congruous and efficient relationships not only between the national government and the LGUs but also between the local and central government and the people in the community.[36]

The dynamics of the prior consultation requirement in relation to the private sector, NGOs and people's organizations in the system of local government is better understood in the light of the Code's other provisions. Section 3 provides that among the operative principles of decentralization is to encourage the participation of the private sector in local governance to guarantee the success of local autonomy as an alternative strategy for sustainable development.[37] To this end, the Code establishes the role of NGOs and people's organizations as active partners in the pursuit of local autonomy[38] and authorizes LGUs to enter into joint venture and cooperative agreements with them for the delivery of basic services and livelihood projects, as well as to develop local enterprises.[39] The law further ensures the involvement of the private sector in local governance by requiring its representation alongside local government officials in the composition of various local bodies created under the Code, namely, the local school boards,[40] local health boards,[41] the local development councils,[42] the local peace and order councils[43] and the local prequalification, bids, and awards committees.[44]

Significantly, these local bodies are tasked to perform a broad array of functions, covering education, health, socio-economic development, investment programs, peace and order, and accountability.[45] Thus, it is evident that the Code contemplates a broad platform for private sector participation in local governance, in no way limited merely to environmental protection. Certainly, the immediate connection of environmental matters with the local community's welfare can be gleaned from section 26, insofar as it gives a more specific procedure for conducting the consultation for environmental projects. Section 26 provides that national government agencies and government owned or controlled corporations consult with LGUs, NGOs and other concerned sectors and "explain the goals and objectives of the project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof." Nevertheless, it is a manifest fact that ecological and environmental issues are not the only critical concerns of local communities in which NGOs, people's organizations and the rest of the public are involved. This is readily evident not only in the Code's provisions on the private sector's required representation in the various local

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[36] *Ibid.*
[37] LOCAL GOVT. CODE, sec. 3(l).
[38] LOCAL GOVT. CODE, sec. 34.
[39] LOCAL GOVT. CODE, sec. 35.
[40] LOCAL GOVT. CODE, sec. 98.
[41] LOCAL GOVT. CODE, sec. 102.
[42] LOCAL GOVT. CODE, secs. 107 and 108.
[43] LOCAL GOVT. CODE, sec. 116. See Exec. Order No. 309, sec. 1 (1987).
[44] LOCAL GOVT. CODE, sec. 37.
[45] LOCAL GOVT. CODE, secs. 99, 102, 109, and Exec. Order No. 309 (1987).

bodies[46] but also in section 35, which authorizes linkages of LGUs with NGOs and local organizations for "the delivery of certain basic services, capability-building and livelihood projects, and to develop local enterprises designed to improve productivity and income, diversify agriculture, spur rural industrialization, promote ecological balance, and enhance the economic and social well-being of the people." Notably, ecological concern is only one of the various interests itemized. Linking this extensive range of interests in which the private sector of local communities is intended to participate with section 2(c) of the Code, which requires periodic consultations not only with the LGUs but also with NGOs, people's organizations and other concerned sectors of the community, then it is reasonable to construe the Code's mandatory consultation and approval requirements as encompassing this very same broad range of interests and not merely environmental concerns. Thus, the Court's limited application of the prior approval and consultation requirements only to environmental projects contradict the aim of the Code to amplify private sector participation.

Moreover, the Court's limited construction likewise contradicts the Code's fundamental policy of granting genuine and meaningful local autonomy to LGUs through a system of decentralization of powers from the national government to local governments.[47] In accordance with the basic policy of autonomy facilitated through improved coordination of national government policies and programs,[48] section 25 of the Code directs national agencies and offices with project implementation functions to coordinate not only with one another but also with the LGUs concerned.[49] More importantly, it provides that these national agencies and offices ensure the participation of local government units in the planning and implementation of national projects.[50] Taking this provision on local government participation in the context of the whole chapter on intergovernmental relations between the national government and LGUs[51] reasonably leads to the construction of mandatory consultation and approval for the legality of a project's implementation under section 27 as applicable to a broad variety of national projects, and not only to those that affect the environment.

In conclusion, the mandatory prior consultation and approval requirements of the Code are essential components of the local autonomy of LGUs granted not only by statute but by the Constitution itself. As such, these mandatory requirements manifest the spirit of decentralization of powers which imbues the Code as a whole. Section 2 c) categorically requires national agencies to conduct periodic consultations for any project or program. On the other hand, section 26 provides a more specific consultation procedure for environmental projects. Section 27 unconditionally prohibits government authorities from implementing any project or program which does not comply with the consultation requirements provided in both sections 2(c) and 26 and which does not obtain prior approval of the *sanggunian* concerned. Undeniably, section 27 in

[46] See notes 40 to 43.
[47] LOCAL GOVT. CODE, sec. 2(a).
[48] LOCAL GOVT. CODE, sec. 3(k).
[49] LOCAL GOVT. CODE, sec. 25 (b).
[50] LOCAL GOVT. CODE, sec. 25 (b).
[51] LOCAL GOVT. CODE, chap. III, art. I.

conjunction with sections 2 (c) and 26 embody the principle that local government officials have powers of autonomy over their territorial jurisdiction.[52] More than simply affirming the power of LGUs within their jurisdictions however, these mandatory requirements also give life to the Code's other equally vital operative principles of decentralization. They facilitate the improved coordination of national programs and ensure the participation of the private sector in local governance. There is no doubt that the share of LGUs in the maintenance of ecological balance is a very important manifestation of decentralization. Section 26 of the Code in fact emphasizes this concern for preserving the environment through its specific consultation process. However, it is likewise undeniable that the application of the mandatory consultation and approval provisions of the Code to any project or program to be implemented by the national government and not just to those projects with environmental implications does not in anyway lessen the protection the law confers on the environment.

The beginnings of the passage of the Code consisted of an issue of power allocation. Admittedly, the primary challenge of decentralization is to institutionalize the balance of powers between national and local governments.[53] Nearly two decades later in the case of *Province of Rizal v. Executive Secretary*, the Supreme Court failed to put the issue to rest by not totally affirming the balance of powers the Code seeks to establish. By simply reiterating, without correcting, its own doctrine that limits the application of the mandatory consultation and approval provisions of the Code only to environmentally critical projects and programs, the Court once again turned a blind eye to the clear and obvious wording of the law. Thus, it lamentably falls short of its asserted function to educate the bench and bar, which though admittedly symbolic, is no less imperative.

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[52] A. PIMENTEL, *op. cit. supra* note 4 at 124.

[53] WORLD BANK, WORLD DEVELOPMENT REPORT 112 (2000).