THE FUTURE OF ENVIRONMENTAL LAW AND GOVERNANCE*

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The objective is straightforward: to identify the challenges posed by environmental issues to the Philippines in the next 25 years and to propose practical approaches, using legal and governance tools, to address them. But why focus on the future? There are enough environmental problems today that cannot even be solved properly. But that is precisely the point. The reason why these problems are always outrunning and overwhelming solutions and efforts is that everyone is always playing catch up and clean up. Even if resources are poured into dealing with them, making laws stricter, and mobilizing more people, environmental problems continue to increase exponentially.

A good illustration would be what is happening to the forests and in particular in the Sierra Madre where one of the very few remaining tropical rainforests of the Philippines remain.

The facts are familiar. In less than a century, 90% of our forests have been lost, and probably thousands of unique species of life along with it that the world will never know. At the height of commercial logging in the 60s and 70s, the country's natural resources seemed inexhaustible. But by the 1980s and early 1990s, there was already trouble. In the ground breaking case of *Oposa v. Factoran*[1], the Supreme Court took notice of this and liberalized standing in environmental cases. In that case, one of the most cited environmental cases worldwide by both legal scholars and judicial authorities, former Chief Justice Davide eloquently justified why Article II, Section 16 of the 1987 Constitution was self-executory:

> While the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any

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1 Oposa et al. v. Factoran, et al. G.R. No. 101083, 224 SCRA 792, July 30, 1993.

> of the civil and political rights enumerated in the latter. *Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation aptly and fittingly stressed by the petitioners the advancement of which may even be said to 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. 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 state policies by the Constitution itself, thereby highlighting their continuing importance and imposing upon the state 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. The right to a balanced and healthful ecology carries with it the correlative duty to refrain from impairing the environment. (Emphasis supplied)[2]

Justice Florentino Feliciano, while raising questions about the doctrines laid down by the Court in that case, was more concise but no less eloquent, in explaining his vote to grant the Petition: because, according to Justice Feliciano, "the protection of the environment, including the forest cover of our territory, is of extreme importance of to the country."[3]

The *Oposa* case was a good case for the environment but did it accomplish what it was supposed to do – prevent deforestation? 15 years has passed since that decision[4] and, since the case was decided in 1994, the Philippines lost more of its forests. Although only a few Timber License Agreements are left, with the last to expire by 2009, the systematic assault on our forests is still happening today, with the Sierra Madre a center of action, with most of that logging activity now illegal but no less destructive. The excuse for the illegal logging is that it benefits poor people, giving them livelihoods that they otherwise do not have.

Trees or people? This is how the deforestation issue is often framed but is this in fact the right framing? Certainly, logging interests have used this argument through the years, using the poverty of our people as an excuse for rent-seeking behavior. In fact, there is no evidence that the share of the poor, especially the workers and the communities that live in these

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[2] Oposa et al. v. Factoran, et al. G.R. No. 101083, 224 SCRA 792, July 30, 1993.

[3] Oposa et al. v. Factoran, et al. G.R. No. 101083, 224 SCRA 792, July 30, 1993.

[4] The minor Oposa is now a first year law student in the UP College of Law and was the author's undergraduate student in Ateneo de Manila.

forests, in the wealth produced by our forests have been significant. There is no evidence as well that the share of local governments and the national government in this wealth has been substantial compared to the total wealth created. What is sad, as will be elaborated in awhile, is that there is a repetition of the same pattern in the use of mineral resources

New ways are difficult at the beginning. What the Bible says is true: "you cannot put new wine into old wineskins or else the wineskins break, the wine is spilled, and the wineskins are ruined."[5] That is what is being done about logging and deforestation and reforestation and as long as this is continued, the results will be the same. There is a need to think ahead of the problem, think forward, and think tomorrow to find the right solution.

This is not to say that the present problems are hopeless against or that they should just be ignored. But it would also make sense to think forward to the future, understand well the importance of facing and planning ahead so that finally, the solution will outrun the problem. This is however not about predicting what tomorrow could bring; after all, the author is lawyer, and not a prophet. Instead of analyzing in the abstract what the future could bring, this paper will proceed by dealing with concrete issues already faced today, challenges that will escalate and become even larger in the next two decades.

The proposal tackles three different and difficult future challenges:

- How to address the negative environmental and social impacts of economic globalization brought about by the liberalization of trade and investment;

- What to do to confront climate change, the most serious global environmental problem which will definitely impact the Philippines in a big way; and finally,

- What needs to be put into place to make sure environmental laws and policies, including judgments ordered by our courts are being implemented?

The challenge faced today will be described and how each challenge will evolve through time. There is a discussion of how each of these issues is being currently addressed and a conclusion that the present approaches are

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[5] Matthew 9:17

inadequate. The author will then propose legal and policy solutions that might be explored so the future would see an operational code of environmental law and governance that is truly effective.

I. MANAGING THE IMPACTS OF GLOBALIZATION

The world today is marked by the increasing economic interdependence of peoples and nations due to ever-greater flows of goods, services, and information. In recent years the World Trade Organization (WTO), of which the Philippines became a founding member on December 14, 1994, has contributed to these flows by overseeing and administering international rules designed to progressively lower trade barriers.[6]

Each WTO Member, including the Philippines, is required to "ensure the conformity of its laws, regulations and administrative procedures with its obligations" under the various WTO agreements. Since 1994, various administrations had cited the Philippines' planned WTO accession and its engagement in globalization, among other rationales, as justification for economy- and natural resource management-related legislative policy changes, including attempts to amend the 1987 Philippine Constitution, and these efforts continue to this day. A large number of laws have since been enacted to directly or indirectly implement WTO treaty obligations in virtually all sectors of the Philippine economy. Among others, the country's mining and forest laws have been changed, or their regulations revised, to promote natural resource exports.[7]

A. THE CHALLENGE OF MINING

The push to favor resource extraction and export is evident in the enactment of Republic Act No. 7942, also known as the Philippine Mining Act of 1995. The Act sought to promote economic growth by making the Philippines a major source of mineral commodities and inviting the participation of foreign investors. It set up a regulatory and institutional framework for the entry and operation of large-scale commercial mining enterprises, and it increased the financial incentives for investment. It gave investors virtually exclusive and monopolistic rights over the mineral and

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[6] *See* Antonio La Viña and Vicente Paolo Yu, *CBNRM and the Future: The Impact and Challenge of Global Change on Philippine Natural Resources Policy*, Paper presented at the Ninth Biennial Conference of the International Association for the Study of Common Property (IASCP), Victoria Falls, Zimbabwe, June 17-21 2002, *available at* http://www.cbnrm.net/pdf/lavina_a_001_philippinescbnrm.pdf.

[7] *Id.*

other natural resources located within the mining area. And, in effect, it directed that priority should be given to mining corporations and other private interests, rather than to resident local communities, when granting rights to mineral extraction, land tenure, and site access, because only such interests have the technical and financial resources that are required to receive priority under the law.[8]

Immediately after the law's enactment, more than 100 foreign and local mining firms, including the major global corporations, applied for mining exploration and development rights in the Philippines. After the Marcopper mine tailing incidents in Marinduque and because of the legal uncertainty around the constitutionality of the Mining Act, there was a hiatus in mining investments. But in recent years, because of the rise in mineral prices and because of the 2004 decision of the Supreme Court in *La Bugal* vs. Ramos[9] which ruled that the Mining Act was constitutional, mining investments and activity are again in an upswing. Of interest in particular, not just in the Philippines but worldwide, is the aggressive entry of Chinese companies in the mining industry, a result of the raw material needs demanded by the unprecedented economic growth of China.

The impact of mining is overwhelming, pervasive and wide-ranging. The industry cuts across practically all facets of the nation's life (political, economic, social and environmental).[10] Its importance cannot be overlooked. With the Philippine government's aggressive promotion of mining as a driver for economic growth, however, came a huge divide between stakeholders who hold divergent views with respect to mining. On one side, there are those who believe strongly and sincerely that mining is good for the country because of the economic benefits that it brings. Those in this group also believe that, with proper regulation and putting into place the right incentives, sustainable mining is possible. On the other side of this divide are those who are completely against large scale commercial mining as an economic activity. They see mining as an inherently destructive activity and point to the bad environmental legacy of the mining industry, including recent mines such as the La Fayette mine in Rapu-Rapu island in Bicol, as proof that "sustainable mining" is in fact a contradiction in terms.

The proposed view is in the middle of these two opposites. For a highly mineralized country like the Philippines, it would be a mistake not to

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[8] *Id.*

[9] La Bugal B'laan Tribal Association, et al. vs. Ramos, G.R. No. 127882, 445 SCRA 1, Dec. 1, 2004.

[10] M. Miranda, A. La Vina, et. al., *Mining and Critical Ecosystems: Mapping the Risks*, World Resources Institute, Washington D.C. (2003), *available at* http://archive.wri.org/pubs/pubs_pdf.cfm?PubID=3874.

consider and pursue the development of our mineral resources. During the 1980s, the Philippines ranked among the top 10 producers of gold, copper, nickel, and chromites.[11] In 2000, the Philippines ranked second only to Indonesia in terms of prospective minerals and resources.[12] But it should also be borne in mind that together with being highly mineralized, the country has four characteristics that make mining challenging:

- Our population density is one of the highest in the world; with nearly a hundred million people fighting for just 30 million hectares of land; and when you factor in what is inhabitable, in 2003, our population density was approximately 270 people per square kilometer.[13] This means mining will have to compete with other equally or more important land uses - forestry, agriculture, settlements, to name of few.

- We are a mega-biodiversity rich country, one of the top 20 in the world. The patchwork of isolated islands, the tropical location of the country, and the once extensive areas of rainforest have resulted in high species diversity in some groups of organisms and a very high level of endemism. The Philippines has among the highest rates of discovery in the world with sixteen new species of mammals discovered in the last ten years. At the very least, one-third of the more than 9,250 vascular plant species native to the Philippines are endemic.[14] And recently, the Verde Island Passage south of Manila has been described as the "centre of the centre" of the world's marine biodiversity.

- The Philippines is faced with many environmental challenges. While biodiversity rich, we are known as one of the biodiversity hotspots where biological diversity is under constant threat due to unsustainable resource use practices, overexploitation, population pressure, poverty and other factors.

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[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] Miranda, M. et al., *'All That Glitters is Not Gold: Balancing Conservation and Development in Venezuela's Frontier Forests'*, Washington, DC: World Resources Institute (1998).

- Finally, mining in the Philippines will have to be done in the context of poverty and social conflict. High poverty rates, especially in rural areas, are a major human development challenge in the Philippines. In 2000, approximately 45 percent of the population was living on less than US$2 per day and the rural poverty rate was estimated at 37 percent.[15] Our experience of uneven creation and distribution of wealth and power has lead to social upheaval and, in some cases as in Mindanao, in violent conflict. [16]

In sum, the re-emergence of mining as a major industry favored by global economic integration is accompanied by serious environmental and social challenges to the Philippines. How should we respond? What strategies can we employ? How can environmental law help?

B. COMMUNITY-BASED NATURAL RESOURCE MANAGEMENT

This is where the truism that the key to the future is in the past in fact holds. In my view, the response to the challenge of economic globalization lies in a tested approach of the past that we must evolve and adapt to meet the new issues of the future. This approach is Community-Based Natural Resource Management (CBNRM) which emphasizes the fundamental role of local communities in determining their own fate and allows them to become effective and empowered economic and political actors.[17] A genuine and effective implementation of CBNRM can bring social and economic assistance to sectors likely to be adversely affected by global economic integration. CBNRM enables local and indigenous communities to respond to this change in ways that maximize their long-term economic benefits while minimizing potential losses. In effect, CBNRM can be an effective economic and social safety net.[18]

An effective CBNRM policy recognizes that local community ownership and control of the resource base is the key for ensuring economic equity and environmental sustainability. [19] Empirical evidence from many

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[15] World Bank, *Philippines Poverty Assessment, Volume 1: Main Report*, Washington, DC: Poverty Reduction and Economic Management Unit, East Asia and Pacific Region (2001).

[16] *See* J. Pamfilo, A. La Viña, et. al, *Mapping Out Conflicts in Mining Areas: Drawing Lessons and Seeking Spaces for Building Principled Consensus Towards Effective Mining Governance* (2008), *available at* http://74.54.176.226/~ateneo/index.php?option=com_docman&task=cat_view&gid=32&Itemid=30.

[17] La Viña and Yu, *supra* note 8.

[18] *Id.*

[19] For a discussion of the basic concepts, *see* World Resources Institute, *World Resources 2005: The Wealth of the Poor, Managing Ecosystems to Fight Poverty*, Washington DC (2005); *See also* Owen J. Lynch and Kirk Talbott, *Balancing Acts: Community-based Forest Management and National Law in Asia and the Pacific*, 23-29, 109-136, Washington DC (1995).

countries shows that communities are often skeptical of government programs if they provide only limited tenure over local natural resources. CBNRM incorporates community norms for access and use of local resources, doing so in ways that conserve the resources rather than maximizing their extraction. These community norms had typically evolved through long-term relationships between the communities and the natural resources upon which they depended. Consequently, community members tend to consider community-based resource rights more legitimate than externally-imposed State-granted measures such as Torrens land titles, logging permits, and mineral concessions and agreements. Hence, the determination and enforcement of rights, including resolution of disputes over them, should be communal matters rather than the responsibility of State agencies.

The Philippines should employ the following CBNRM principles in addressing the challenges posed by globalization, as in the case of mining[20]:

- **Transparency and information access** – CBNRM calls for full community access to information about policies and regulations, and full transparency in their generation.

- **Community consent**– CBNRM advocates the principle of "free and prior informed consent," which is now enshrined in the Indigenous Peoples Rights Act of 1997.

- **State power devolution** – CBNRM advocates giving local communities a primary role as natural resource managers, considering them capable of making good economic decisions regarding these resources.

- **Economic equity and environmental sustainability** – CBNRM promotes equity and sustainability in ways that enable local communities to integrate themselves into the global market economy on their own terms.

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[20] *See* La Viña and Yu, *supra* note 8, for a full discussion of these principles.

C. INTERNATIONAL AND DOMESTIC LEGAL IMPLICATIONS OF CBNRM

Although the WTO system of global trade militates against overly trade-restrictive policy, to some degree it recognizes that countries must develop policies consistent with their environmental needs. This recognition provides a degree of leeway for employing CBNRM as a means of protecting local and indigenous communities from the pressures of globalization, effectively channeling those pressures toward the economic sectors that can best adapt. Such deviations from the WTO general principles are supported by various provisions of GATT 1994, particularly Articles XX(b) and (g), which allow countries to adopt or enforce measures which, though inconsistent with normal trade obligations, are "necessary to protect human, animal or plant life or health" or which relate "to the conservation of exhaustible natural resources. The only limitation to these measures is that they must not be applied "in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade." In other words, as long as its principles are employed for legitimate purposes, rather than as a method of unfairly restricting trade, the use of CBNRM for the conservation of biodiversity and cultural diversity may be justified under GATT Article XX, at least to a limited extent.

Other annexes to the WTO Agreement similarly provide limited opportunities to impose trade-restrictive or trade-discriminatory measures for non-trade considerations. These include sanitary and phytosanitary measures (such as public and environmental health and safety), the provision of public and private CBNRM-related services (for example, through community organizing, environmental and natural resources protection and management, and product marketing and management), and investment restrictions in CBNRM priority areas (including investments in mining and forestry).

It should be interesting to note that it appears now that the original fear that the WTO dispute system might not be sympathetic to environmental concerns was misplaced. Decisions from the Appellate Body of the WTO have shown ample sensitivity to environmental concerns.[21] It is

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[21] *See WTO Shrimp Turtles, United States – Import Prohibitions of Certain Shrimp and Shrimp Products*, WT/DS58/R, WT/DS58/AB/R, Nov. 8, 1998; *WTO Beef Hormones, EC Measures Concerning Meat and Meat Products (Hormones*, WT/D26/AB/R, WT/DS48/AB/R, Jan. 16, 1998; *WTO Japan Varietals, Japan-measures affecting agricultural products*, WT/DS76/AB/R, Feb. 22, 1999; *WTO GMOs, European Communities – Measures Affecting the Approval and Marketing of Biotech Products: Interim Reports of the Panel*, WT/DS291/INTERIM, WT/DS292/INTERIM, WT/DS293/INTERIM, Feb. 7, 2006.

interesting to note that in the environmental jurisprudence of the WTO Appellate Body, one can see clearly the thinking of our very own Justice Feliciano who has become a hero to many environmental lawyers and activists who have followed the evolution of this jurisprudence.

Philippine constitutional law provides even stronger safeguards. The 1987 Philippine Constitution, especially Articles II, XII, XIII, and XIV, calls for a "Filipino First" trade and economic policy. The Philippine Supreme Court upheld these principles in the Manila Prince Hotel and WTO ratification cases, indicating that the State should provide safeguards for disadvantaged sectors, thereby enabling Filipinos to compete effectively in globally interdependent markets. Only if implemented with such safeguards can the WTO Agreements be consistent with the Philippine Constitution.

"Filipino First" principles have also been expressed in economic legislation such as Rep. Act No. 7844, the Export Development Act of 1994; Rep. Act No. 7900, the High-Value Crops Development Act of 1995; and Rep. Act No. 8800, the Safeguard Measures Act of 2000. These acts effectively aim to promote Filipino competitiveness in the global economy while providing safeguards and other measures that would boost domestic productive capacity and the ability to minimize and adjust to external market shocks. The expressed legislative intent of these laws can best be implemented through the adoption and implementation of a broad-based, cross-sectoral CBNRM policy.

CBNRM need not be restricted to mining. It can certainly be applied to forestry and other natural resources. Indeed, in 1995, through Executive Order No. 263 (1995), the national government adopted community-based forest management as the national strategy for managing the country's forest resources. Republic Act No. 8425, the Social Reform and Poverty Alleviation Act of 1998, provides a statutory basis for broadening CBNRM to non-forest resource sectors. The Act stipulates that the government's social reform agenda must "address the existing inequities in the ownership, distribution, management and control over natural resources and man-made resources from which [people] earn a living or increase the fruits of their labor. Finally, the Indigenous Peoples Rights Act of 1997 (IPRA), Republic Act No. 8371 (IPRA) can provide a statutory basis for the initial application of CBNRM policies to ancestral domains.

Pro-CBNRM laws and policies will be useless unless they are implemented, and implementation is not solely the domain of State actors.

It rests also on the communities' ability to assert their rights against competing interests. Effective assertion depends in turn on the existence of a strong, organized, and empowered community. Global, economic, environmental, and technological change certainly presents serious threats to empowerment, but it can also provide impetus for community organization and self-assertion. The consistent and effective implementation of CBNRM can provide the essential social safety nets and safeguards, enabling a more effective and ultimately more productive response to the pressures arising from global economic integration.

D. SHOULD LA BUGAL[22] BE REVISITED?[23]

Let me end this segment by asking the provocative question on whether it is time to revisit the *La Bugal* doctrine. What I think we should all asked, both academically and legally, in appropriate cases that hopefully would be filed before the Court in the future, is whether or not the rationale articulated by Chief Justice Artemio Panganiban in *La Bugal* can in fact be empirically validated. Let me quote from the concluding portion of the esteemed Chief Justice's opinion:

> Whether we consider the near term or take the longer view, we cannot overemphasize the need for an **appropriate balancing of interests and needs** -- the need to develop our stagnating mining industry and extract what NEDA Secretary Romulo Neri estimates is some US$840 billion (approx. PhP47.04 trillion) worth of mineral wealth lying hidden in the ground, in order to jumpstart our floundering economy on the one hand, and on the other, the need to enhance our nationalistic aspirations, protect our indigenous communities, and prevent irreversible ecological damage.
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> This Court cannot but be mindful that any decision rendered in this case will ultimately impact not only the cultural communities which lodged the instant Petition, and not only the larger community of the Filipino people now struggling to survive amidst a fiscal/budgetary

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[22] La Bugal B'laan Tribal Association, et al. vs. Ramos, G.R. No. 127882, 445 SCRA 1, Dec. 1, 2004.

[23] The author, before presenting his views on this case, made the following disclosure: "The 'Ramos' in this case used to be my boss in the DENR where I was Undersecretary for Legal Affairs. In fact, it was my legal team, and under my direction, that worked with the Mines and Geo-Sciences Bureau to draft the implementing rules and regulations for the Mining Act, including the rules on the FTAAs and the fiscal regime that would govern these agreements. Because of my position, I ordinarily would have taken the lead for the department to work with the Solicitor General in defending the Financial and Technical Assistance Agreements being assailed by the La Bugal petition. But let me make a second disclosure: before I joined the DENR I 1996, I was a co-founder, with Dean Marvic Leonen and other colleagues, of the Legal Rights and Natural Resources Center (LRC), one of the petitioners in the case. And before I joined the DENR, I was research director of LRC. Following my own understanding of the rules on conflict of interest, I voluntarily inhibited myself from handling the case and passed it on to my best mining lawyer, Atty. Cecile Dalupan. For the reasons above and in the context of this forum, I do not think that it is appropriate for me to criticize La Bugal or to second guess the Court on its reasoning when it upheld the constitutional validity of the Mining Act of 1995, in particular the provisions allowing the President to enter into FTAAs."

> deficit, ever increasing prices of fuel, food, and essential commodities and services, the shrinking value of the local currency, and a government hamstrung in its delivery of basic services by a severe lack of resources, but also countless future generations of Filipinos.
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> For this latter group of Filipinos yet to be born, their eventual access to education, health care and basic services, their overall level of well-being, the very shape of their lives are even now being determined and affected partly by the policies and directions being adopted and implemented by government today. And in part by the Resolution rendered by this Court today.
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> Verily, the mineral wealth and natural resources of this country are meant to benefit not merely a select group of people living in the areas locally affected by mining activities, but the entire Filipino nation, present and future, to whom the mineral wealth really belong.

I agree with all of these declarations but I will, as an academic, raise two fundamental questions:

- Does the Mining Act as currently implemented, with the fiscal regime that has now further evolved and looking at actual existing mining activities (including the environmental impacts of the first new mine under the Mining Act of 1995, La Fayette in Rapu-Rapu island) and the new contracts being entered into, in fact appropriately balance the interests and needs between development and environment, between industry and communities, and between the present and the future?

- Is the country – and by that I mean the national government, the local governments, and the communities directly affected by mining – really benefiting from the mining operations already going on? Where is the revenue actually going and ultimately how is it being used?

In raising these questions, I am mindful that generally the Judiciary accord the political branches of government wide respect in the appreciation of facts and broad discretion in policy. However, as I will elaborate, the future of environmental law and governance will challenge the courts to be more proactive and engaged in monitoring the execution of their decisions because otherwise, as the case of the original *Oposa vs. Factoran* case illustrate,

courts could realize that their brave and eloquent decisions have not, in the end, made a difference for our environment and for our people.[24]

II. RESPONDING TO CLIMATE CHANGE

Climate change represents the most serious, most pervasive environmental threat that the world faces. In climate change, we find a convergence of humanity's improvident past, its difficult present, and its uncertain future brewing into one of the world's biggest challenges: a "perfect storm."[25] The issues are not merely scientific; climate change spans political, social, and economic dimensions, crosses national boundaries, and will reach beyond the present generation. It will aggravate the complex problems of development that we struggle with today like poverty, food security, and water availability that threaten to ignite large-scale political and social upheavals.

The Philippines will not be spared from climate change. These are the impacts that are predicted for us:[26]

- **Weather**: climate change will influence Philippine weather in terms of changes in temperature, rainfall, and tropical cyclone activity. This, in turn, will cause impacts in various sectors including agriculture, forestry, and water resources.

- **Sea level rise:** Another impact is the accelerated rise in sea level. As the oceans expand due to warming, and as mountain glaciers and polar ice melt and drain into the oceans, some islands and many coastal areas are in danger of being inundated with the rising waters. Sea-level rise due to thermal expansion is a threat to this country, given its archipelagic nature and long stretches of coastline. Rising sea levels may contaminate groundwater sources and expose communities to harsh storm surges. Sea-level rise will increase the risk of flooding and storm damage.

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[24] "Indeed for an international environmental lawyer like me, a frequent embarrassing moment whenever I am abroad is when fellow lawyers and legal scholars find out that I am a Filipino. Immediately, they would ask me about the Oposa case and they would praise our Supreme Court. And then they would say – "your forests and environment must be in great shape". It is humbling being asked such a question again and again."

[25] This section is based and borrows text from a lecture delivered by the author in collaboration with colleagues from the Manila Observatory. *See* Jose Ramon T. Villarin, Ma. Antonia Y. Loyzaga, Antonio G.M. La Viña, et. al., *In the eye of the Perfect Storm: What the Philippines should do about Climate Change*, SC Johnson Lecture on Environmental leadership, Ateneo de Manila University (2008).

[26] Villarin, *supra* note 27.

- **Agriculture:** Various sectors in the Philippines will be affected by the changes in climate. In agriculture, the country is expected to experience dry days that are drier and wet days that are wetter, which may result in poorer crop production, storage, and distribution since changes in the timing and volume of rain are critical. In addition, a CO_2 rise favors crops, but weeds are more likely to proliferate simultaneously, thereby necessitating the development of new crop varieties or herbicides.

- **Forests:** Moist forests will shrink and turn to dry forests (Lasco et. al, 2007). Biodiversity loss will be aggravated since global warming will raise the risk of floods, worsening degradation and species loss. Marine resources will be affected as well, since warmer waters induce coral bleaching which eventually leads to declining fish populations.

- **Energy:** Roughly 20% of total power supply in the Philippines comes from hydro-electric sources. Changes in the patterns, volume and geographic distribution of rainfall threaten to increase and perpetuate intensified reliance on imported coal and oil. As discussed earlier, rainfall is increasing in rainfall over the Visayas and decreasing in Luzon and Mindanao. This trend points to implications on the hydropower generation of the country; since the country's major dams are located in Luzon and Mindanao.

- **Health:** There are also health implications due to a warmer wetter environment. Prolonged periods of high temperature and water impounding due to sudden heavy downpours serve as ideal breeding conditions for disease vectors such as *Aedes* and *Anopheles* mosquito for dengue fever and malaria.

- **Floods and Water:** Severe flooding on the extreme can totally re-write the contours of the land. Water shortages due to drought, salt-water intrusion, or floods will influence decision-making on investments in engineering and infrastructure.

- **Conflict:** Political conflicts and civil unrest may intensify due to the impact of food and water constraints on areas already experiencing socio-economic pressures due to a historical clash of cultures.

Displacement: climate-related disasters, coupled with geo-physical hazard-related disasters (such as landslides or rain-induced lahar flows), increase the risk to vulnerable populations. Thus, more displacement will result in the necessary relocation of communities and rehabilitation of the affected areas (Manila Observatory, 2007).

A. THE GLOBAL RESPONSE TO CLIMATE CHANGE

Climate change, as a global problem, presents a challenge that is characterized by the irrelevance of national boundaries both in terms of its causes and the required solutions. It requires the definitive manifestation of the interdependence of nations and the adoption of a global framework. Negotiations and lengthy discussions led to the creation of the United Nations Framework Convention on Climate Change (UNFCCC) which main objective is the stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to insure that food production is not threatened, and to enable economic development to proceed in a sustainable manner.

The adoption of the Kyoto Protocol on Climate Change in 2007 was an important landmark for the global response to climate change. Its principle feature is that it sets binding targets for industrialized countries for reducing GHG emissions by an average of 5% against 1990 levels which these countries should achieve within the commitment period of 2008-2012. It established individual legally binding targets for them to reduce their greenhouse gas emissions. Although the United States did not ratify the Kyoto Protocol, it entered into force on February 16, 2005. As of April 2008, a total of 178 countries have ratified the agreement.

Last December 2007, meeting in Bali, Indonesia, the Parties to the Convention launched a two-year negotiating process which aims to secure a new climate agreement by 2009. The negotiations will stand on four basic approaches.[27]

- *Mitigation.* Industrialized countries are expected to cut their emissions by as much as 40% by 2020, while developing countries are expected to pursue more climate-friendly development strategies.

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[27] *Id.*

- *Adaptation.* This important issue is now finally part of the agenda, after decades of being disregarded and ignored in the negotiations.

- *Financing.* A key feature of the Bali deal is the commitment from the developed countries to operationalize financing for adaptation and mitigation to assist developing countries.

- *Technology.* The fourth approach is aimed at helping poorer nations cut their emissions through the transfer of technology.

B. THE ROLE OF THE PHILIPPINES

The Philippines is playing a crucial role in the ongoing climate negotiations, having been a major player at the very start while serving as the main spokesperson for the Group of 77 (G77) and China[28]. The Philippines was instrumental in obtaining the major agreement in Kyoto where the country chaired key negotiations that included the debates on Land Use, Land Use Change, and Forestry (LULUCF) and today, Philippine negotiators continue to play a vital role in the negotiations launched in Bali for long-term cooperation and to serve as spokespersons for G77 and China. The challenge for the Philippines is how to translate this political role into concrete benefits for the country. For that to happen, we have to be clear about what we want to do about climate change in the Philippines.[29]

Progress has been made in terms of the institutional arrangements in the Philippines in addressing climate change but the present situation requires a comprehensive strategy that will enable the country to effectively chart a more sustainable future. The establishment of a clear institutional mechanism by which the challenge of climate change can be addressed is necessary. Ambiguities in the government institutions tasked to deal with climate change issues must be eliminated and there is an imperative to establish a long-term and authoritative government institution that will be in charge of climate change. The highest priority however is to adopt and implement a strategic framework which should guide the Philippine response to climate change.[30]

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[28] Villarin, *supra* note 27.
[29] Villarin, *supra* note 27.
[30] Villarin, *supra* note 27.

C. AN INTEGRATED ADAPTATION-MITIGATION FRAMEWORK

Mitigation and adaptation are not mutually exclusive, so the most effective way that these strategies can be maximized in the context of Philippine development is to integrate mitigation with adaptation. Together with colleagues from the Manila Observatory, I propose a framework that builds on mitigation measures as part of adaptation, and vice-versa. Such a framework will provide the necessary mechanisms by which policies, science, markets, capacity building and information are able to respond to the realities of climate change and ensure that the core objective of the UNFCCC as articulated in Article 2 are attained.[31]

Mitigation strategies in the Philippine context provide opportunities for enhancing development and boosting the adaptation capacity of communities. Adaptation is as much a development concern as mitigation. With the context of global-scale shifts in the climate system, development can only succeed with adaptation integrated into the process.[32]

In sum, the Philippines should adopt an integrated adaptation-mitigation framework that identifies core strategies, establishes clear responsibilities between and among sectors, and provides a clear picture of the interdependence between mitigation and adaptation efforts. In a recent lecture, a proposed a framework was summarized (Figure 1).[33]

The framework identifies four main factors for the successful implementation of adaptation and mitigation strategies to address the impacts of climate change on the natural environment and the socio-economic development paths of humans. First is the development of science-based climate policies. Second is the use of market-based mechanisms to attract the use of cost-effective technologies and options to address climate change. Third is the importance of research and development in order to come up with better strategies to combat the impacts of climate change. The last factor is the importance of effective capacity development and information awareness campaigns. The authors have identified the relevant sectors needed for each of the factors.[34]

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[31] *See* McGray, H., A. Hammill, & R. Bradley, *Weathering the Storm: Options for Framing Adaptation and Development*, World Resources Institute Report, Washington, D.C.: WRI. (2007).

[32] *Id.*

[33] *Id.*

[34] Villarin, *supra* note 27.

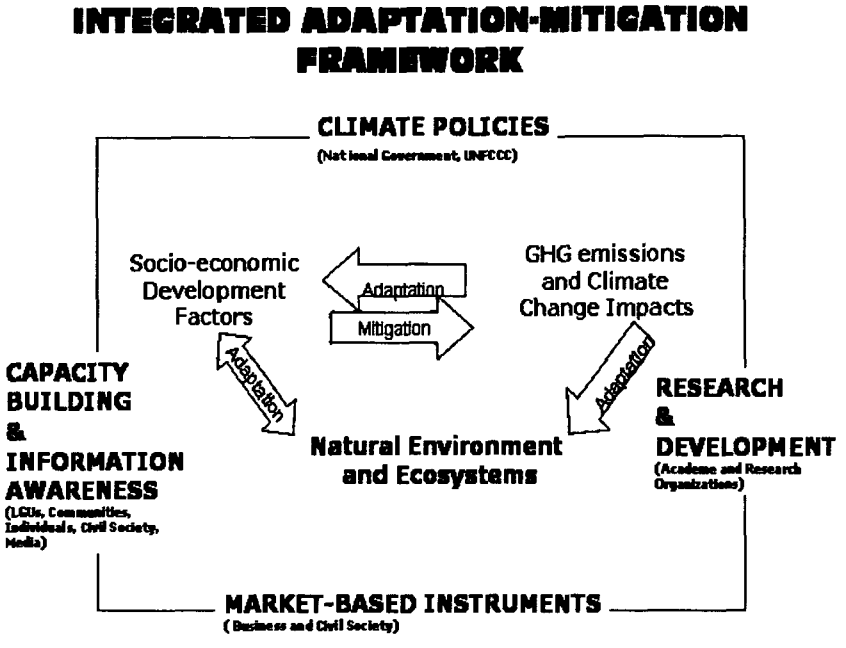

Figure 1. Proposed Integrated Adaptation-Mitigation Framework for the Philippines.

In the final analysis, an integrated Adaptation-Mitigation framework is based on sustainable development. As defined by the Brundtland Commission in 1987,[35] sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.[36] Addressing climate change means pursuing such an agenda that simultaneously addresses poverty while protecting the environment. An integrated Adaptation-Mitigation framework is consistent with this because it would allow for the identification of "no regrets" options that can serve best the long-term interests of the country. Fortunately, many response measures to climate change move towards achieving other important objectives, including infrastructure goals, disaster risk reduction and mitigation objectives, food

[35] Also known as the World Commission on Environment and Development. This was formed upon recognition by the UN General Assembly of the necessity to include all nations in the race to conserve and preserve the environment by establishing policies on sustainable development.

[36] World Commission on Environment and Development, *Our Common Future* (1987)

security concerns, energy development and independence, and biodiversity conservation.[37]

Climate change is a complex problem that requires a multitude of solutions. At the core of the multitude of solutions is sustainable development. As the country has made substantial progress in institutionalizing laws and policies that aim to promote sustainable development, the Philippine predicament and challenge lies chiefly in serious gaps and deficits in implementation. Indeed, at the heart of the solutions to climate change is good governance. Good governance requires designing, adapting, and implementing a coherent approach to climate change. An integrated Adaptation-Mitigation framework is responsive to the realities of the nation, reflects the needs of its people, and empowers all sectors of society to act. This is a modest but essential step forward.[38]

III. IMPLEMENTING ENVIRONMENTAL LAWS AND POLICIES

One of the biggest contradictions that environmental practitioners immediately perceive about the Philippines is that, in contrast to the sorry state of our environment and natural resources, the country's environmental policy framework is formidable and robust. How can our environment be in so bad a shape when we had all the laws and policies in place to prevent that from happening? Or do we have these laws and policies because in fact we are already in bad shape and therefore we need them?

Our newer environmental laws are an example of this contradiction. Considered world class and hailed as landmark legislation are the Clean Air Act (1999), the Ecological Solid Waste Management Act (2000), and the Clean Water Act (2004). These laws have been lauded for laying down a comprehensive framework for air quality, solid waste and water quality management, respectively, in the place of piece-meal legislation that previously governed these matters. They are characterized by the emphasis they place on:

Multi-sectoral cooperation (e.g., institutionalization of national and local multi-sectoral governing boards);

a) Information-based policy-making (e.g., preparation national and local management frameworks and plans based on status reports);

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[37] Villarin, *supra* note 27.
[38] *Id.*

b) The use of market-based instruments (e.g., emission or waste water charge system, environmental guarantee funds) and the role of business and industry;
c) The role of local government units (LGUs); and
d) Public participation (e.g., provisions on public hearings in the preparation of plans, citizen suits).

Indeed, these are great laws. However, these laws will never be implemented until the institutional and governance aspects of environmental protection are actually addressed.

A. RETHINKING THE INSTITUTIONAL FRAMEWORK[39]

The country's main environmental institution is the Department of Environment and Natural Resources (DENR). It was created in 1987 by Executive Order No. 192, which consolidated several government agencies performing environmental functions. The DENR is primarily responsible for the conservation, management, development and proper use of the country's environment and natural resources, specifically forest and grazing lands, mineral resources, and lands of the public domain, as well as the licensing and regulation of all natural resources.

Apart from the DENR, there are other national government agencies involved in environmental management. The major ones include the Department of Agriculture (DA) and its Bureau of Fisheries and Aquatic Resources (BFAR), Department of Energy (DOE), Department of Health (DOH), National Commission on Indigenous Peoples (NCIP),[40] National Water Resources Board (NWRB), National Power Corporation (NAPOCOR), and Philippine National Oil Corporation (PNOC) (the last two, in connection with watershed areas and reservations supporting hydroelectric power generation and geothermal fields, respectively). Moreover, even agencies not traditionally associated with environmental functions, such as the Department of Trade and Industry (DTI), Department of Transportation and Communication (DOTC) and Department of Public Works and Highways (DPWH), have been given

[39] This section is based on a study of the author commissioned by the World Bank. *See* Antonio La Viña, *Re-thinking Philippine Environmental Institutions: Do We Need to Reallocate Mandates, Powers, and Functions?* (2008).

[40] Very recently, the NCIP was transferred from the Department of Agrarian Reform (DAR) to the DENR, by virtue of Executive Order No. 726 issued on May 23, 2008. The implications of this transfer will be discussed below. Although such transfer has been postponed for six months and the NCIP is now attached to the Office of the President, the intent is to still transfer NCIP to the DENR.

environmental management roles under the Clean Air Act and Clean Water Act.

Given the country's poor fiscal position, limited financial resources is a problem that the DENR and other agencies with environmental management functions share with the rest of the bureaucracy. To address the environmental sector's financial needs despite this limitation, reforms are necessary in both demand and supply sides.

On the demand side, the government may want to consider streamlining the bureaucracy to free up a portion of the budget devoted to personnel services, which can instead be used for needed capital outlays and development expenditures. The government may also consider dispensing with some functions and processes that add little value to environmental management. An example of this is the continued conduct of environmental impact assessment for projects whose environmental impacts are already well-known and to which routine control measures can simply be applied. In this case, an option would be to tighten the environmental impact assessment (EIA)[41] screening process.[42]

The government may also choose to focus on selected priority programs, or priority areas to ensure impact, or start with tasks that can be completed despite limited resources.[43] For instance, special focus could be given to hotspots or key areas where enforcement is weakest or most needed (*e.g.,* Tawi-Tawi), or to areas where there are still relatively abundant resources to save or conserve (*e.g.,* Sierra Madre).[44]

On the supply side, there is a need to adopt innovative ways to generate more financial resources. This may include: (a) increasing the use of environmental user fees; (b) encouraging private sector investments in environmental management.

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[41] An EIA consists of the following steps: (i) screening, (ii) scoping, (iii) impact identification, (iv) baseline establishment; (iv) impact forecasting and evaluation; (v) impact mitigation and management plan formulation. *Available at* http://www.sbma.com/ecology/faq.html.

[42] World Bank and Asian Development Bank, *The Philippine Environmental Impact Statement System: Framework, Implementation, Performances and Challenges* (2007).

[43] World Bank, *Governance of Natural Resources in the Philippines: Lessons from the Past, Directions for the Future* (2003).

[44] La Viña, *supra* note 43.

B. RESOLVING OVERLAPS AND MOVING TOWARDS INTEGRATED MANAGEMENT

The current institutional set-up is characterized by two features: fragmentation and overlaps.[45] Efforts at improving inter-agency coordination (*e.g.*, institutionalization of PAMBs, Airshed Governing Boards, the NSWMC and local Solid Waste Management Boards, and water quality management boards) have been initiated and are laudable. However, these continue to reflect sector-based planning and management. That is, following these mechanisms, in any given locality, protected area management, air quality management and solid waste management would remain to be treated as separate concerns. The same is true for water quality management, coastal resource management and other concerns.

Sector-based planning is flawed in that it fails to take into consideration trade-offs in the use of resources, and tends to give rise to inter-sectoral conflicts. Integrated, spatially-based management has been offered as an alternative to this. Under this scheme, management units are organized around a critical resource following ecosystem boundaries. This has already been done in several areas, such as the Laguna Lake region and the Agno River Basin. To do this on a national scale, comprehensive land and water use planning must be done, and the basic planning and management units must be identified. In doing so, overlaps between planning and management units must be avoided. The organizational structure, powers and functions of the body that will run the planning and management unit must be carefully considered. It must have adequate powers to ensure self-sustainability. It must be multi-sectoral and LGUs must be given a central role in it. There must also be adequate mechanisms for public participation, and transparency and accountability in decision-making.[46]

C. STRENGTHENING AND EXPANDING THE ROLE OF LOCAL GOVERNMENTS

Pursuant to the policy of decentralization, the Local Government Code of 1991 (Republic Act No. 7160) devolved numerous functions—including environmental management functions—to local government units (LGUs). Substantial environmental law-making powers were also delegated

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[45] *Id.*
[46] *Id.*

to local legislative bodies.[47] Furthermore, the Code requires all national agencies and offices to conduct periodic consultations with appropriate local government units, non-governmental and people's organizations, and other concerned sectors of the community before any project or program is implemented in their respective jurisdictions. No project or program shall be implemented by government authorities unless the consultations are complied with, and prior approval of the local legislative council concerned is obtained. Under the Code, local governments may appoint an Environment and Natural Resources Officer.

The powers and mandates granted under the Code were further affirmed and reinforced by various laws. These include: (a) the Small-Scale Mining Act; (b) the NIPAS Act; (c) the Mining Act; (d) the Fisheries Code; (e) the Clean Air Act; (f) the Ecological Solid Waste Management Act; and (g) the Clean Water Act.

Various experiences in the forestry, fisheries and solid waste management sectors have shown that local governments can be effective environmental managers, provided enabling conditions are present. First, they must be made to realize the value of the environment and natural resources, and assisted in formulating their vision for environmental management in their locality. Second, they must be given the space that would allow them a sense of ownership over environmental initiatives. Part of this would entail clarifying the boundaries between responsibilities of the national government and LGUs. Third, the DENR must be on hand to render technical assistance. Fourth, networking and knowledge sharing among LGUs should be facilitated (*e.g.,* conduct of study tours to LGUs with good environmental programs). Fifth, the formation of broad-based partnerships with communities and community groups and the business sector should be encouraged.[48]

As to budgetary constraints, LGUs may consider tapping into their share in the utilization of natural wealth, using private sector financing, maximizing user fees and establishing social enterprises (*e.g.,* eco-tourism). LGUs can also tap into local taxes and revenues generated from natural resource use (*e.g.,* quarry taxes) which, in the case of some localities like the province of Pampanga, can be quite substantial in amount. Delays have been noted in the release to LGUs' share in natural wealth utilization. Automatic

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[47] LOCAL GOV'T CODE, §447, 458, 468.
[48] LOCAL GOV'T CODE, §447, 458, 468.

release or even direct payment of these shares to the LGUs should be reconsidered.[49]

Finally, the role of LGUS should be strengthened by removing DENR control over functions that have previously been devolved. At present, the DENR remains to have "control and supervision" over certain functions devolved to LGUs, namely, the implementation of community-based forestry projects, pollution control law, small-scale mining law and other laws on the protection of the environment. Control implies that the DENR may substitute its own judgment for that of the LGU, and supersede LGU actions. In these respects, DENR intervention should be limited to supervision, only to ensure that LGU action conform to existing laws and policies and are not in excess of jurisdiction or performed with grave abuse of discretion.

In addition, devolving other functions not previously devolved, subject to a readiness criterion. Further devolution can be done on a phased approach by starting with LGUs that are ready, *i.e.*, willing to assume additional responsibilities, allocate sufficient human and financial resources, and be accountable for energy and natural resources (ENR) management.[50] Functions that can be devolved may include the administration of the environmental impact statement (EIS)[51] System, large-scale mining and other matters where the impacts and usual concerns raised are primarily local in scope.

All the former and present officials of the DENR interviewed for a World Bank study I recently did generally supported strengthening the role of LGUs. For example, former Secretary Elisea Gozun encourages such capacity building programs and raised the idea of finding a role for the Leagues of Cities, Provinces, and other LGU aggrupations. Those supporting a greater environmental role for local governments emphasized though that devolution is not possible for all activities, particularly those that transcend local borders and have broader impact.[52]

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[49] LOCAL GOV'T CODE, §447, 458, 468.

[50] World Bank, *Natural Resources Governance: Way Forward Action Plan* (2005)

[51] An environmental impact statement (EIS) is a formal report disclosing the nature of the project and its potential impacts as well as mitigation measures. EISs are required to present: (i) alternatives to a development proposal; (ii) environmental impacts of the proposed activities; and (iii) adverse environmental effects that cannot be avoided and mitigation measures for these. For projects that will involve use of natural resources, the EIS is required to make an assessment of whether short-term uses are consistent with long-term productivity.

[52] La Viña, *supra* note 43.

D. RE-DEFINING THE ROLE OF THE DENR

The DENR needs to be re-defined in two important ways: (1) taking from the agency its utilization promotion functions and (2) shifting from being "doer" to being an "enabler".[53]

The apparent contradiction in the DENR's role as protector of the environment and promoter of NR utilization has been observed. It should be noted, as former Secretaries Fulgencio Factoran and Victor Ramos have affirmed in interviews with this author, that this contradiction was intended. The utilization and protection mandates were given to one Department and to one Secretary so that there would be a balancing of development and environmental interests. Former Secretary Factoran recalled that the Brundtland Commission (also know as the World Commission on Environment and Development) report entitled *Our Common Future* in fact provided the basis and rationale of the creation of the DENR. Nevertheless, the tensions persist and various proposals have been put forward to remedy this situation. These include splitting the department into two—a Department of Environment and a Department of Natural Resources—or creating of an independent National Environmental Protection Agency.[54]

It is the author's position that splitting the DENR into two must be avoided because this will only result in two weaker agencies. Whatever option is taken, it should be emphasized that environmental protection must continue to be lodged in a cabinet-level body, for several reasons.[55] First, effective enforcement requires a high degree of political commitment to environmental protection, and cabinet rank can be a symbol of this commitment. Second, other government agencies are often direct or indirect agents of environmental harm. Cabinet status will allows the head of the environmental protection agency to confront the other agencies from a position of equal strength. Third, this can be a means to maintain the agency's political independence. Finally, cabinet level agencies may have greater success in competing for financial resources essential to build capacity for effective enforcement.[56]

The enhanced role of LGUs and the movement towards integrated, spatially-based management require a corresponding shift in the role of the

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[53] *Id.*

[54] Interviews with Atty. Fulgencio Factoran and Victor O. Ramos, Former Secretaries of Environment, Department of Environment and Natural Resources, Sept. 26, 2008.

[55] La Viña, *supra* note 43.

[56] Karen Shih, *Effective Governance Structures*, Unpublished (2004).

DENR. Under this set-up, the DENR's main role would be as a catalyst, coordinator and convenor. As such, its tasks would include:

- formulation of national-level policies;
- coordination work for the integrated, multi-sectoral planning and management bodies;
- building the capacity of, and providing technical services to, the aforementioned bodies and LGUs;
- supervision of LGU-devolved functions; and,
- administration of phased devolution process.

It would continue, however, to perform regulatory functions for activities that have not been devolved.

E. THE ROLE OF CITIZENS: IMPLEMENTING THE ACCESS PRINCIPLES

Principle 10 of the Rio Declaration on Environment and Development calls for: public access at the national level to environmental information; access to public participation in decision making; and, public access to judicial and administrative proceedings in environmental matters.[57] As assessed in a recent initiative, there is much work we still need to do to implement these access principles.

There is a bill pending in Congress for a Freedom of Information Act. But while the proposed law will facilitate the assertion of the people's right to information, it will have little impact in the ENR sector unless monitoring, data gathering and data storage capability is improved. The DENR needs to put in place an information and communications technology program that would integrate information scattered among different agencies. Setting up a system should be placed on top of the DENR's priorities.[58]

While the legal framework for public participation is already strong, one glaring flaw is the absence of an effective mechanism to enforce compliance with the requirements set by law. Deterrents and speedy remedies against non-compliance with public participation requirements

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[57] World Resources Institute, *World Resources 2002-2004: Decisions for the Earth, Balance, Voice and Power*, Washington DC (2003).

[58] La Viña, *supra* note 43.

need to be put in place. This may come in the form of administrative imposition of penalties against non-complying officials, and administrative nullification of acts which did not pass through the required processes.

Citizens and citizens' organizations have been successful in advocating for the passage of progressive environmental laws. This advocacy must be carried on to exact greater accountability in the implementation and enforcement of laws. Citizens' organizations should continue, if not intensify, critical engagement with government. [59]

There are also existing legal tools that citizens can avail themselves of to compel the government to perform its duties. The Clean Air Act and the Ecological Solid Waste Management Act contain provisions allowing citizen suits in case of government's failure to implement their mandate. Also, the Office of the Ombudsman has created a Task Force for Environmental Concerns to address complaints against national and local officials for non-compliance with environmental laws. Participation of citizens in law enforcement must also be encouraged.

While many NGOs, POs, other community groups and environmental law practitioners have expressed interested in or are already currently engaged in environmental law enforcement, their inability to prosecute criminal actions constitute a barrier to effective enforcement. Save for provisions of the Clean Air Act and Ecological Solid Waste Management Act on citizen suits, there is no legal recognition of citizens' right to bring actions for violations of environmental laws. Hence, in some cases where citizens have been instrumental in apprehending environmental law violators, the latter are able to escape conviction given the scarcity or inability of government prosecutors. Accordingly, rules of procedure allowing prosecution of environmental law violations by environmental law organizations or practitioners need to be crafted by the Supreme Court.[60]

F. THE ROLE OF THE JUDICIARY AND QUASI-JUDICIAL AGENCIES

The judiciary influences environmental management through its power of judicial review. Judicial review is defined as the power to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any

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[59] *Id.*
[60] *Id.*

branch or instrumentality of the government. (Constitution, Article VIII, section 1) Specifically, courts:

- adjudicate "conflicts and violations that arise out of the implementation or enforcement of laws dealing with the use of natural resources and impact of human activities on public health and the ecosystem;"[61] and
- decide on the just apportionment of limited resources.[62]

In 1993, the Supreme Court designated special courts to handle violations of the Revised Forestry Code. This was in response to the number of violations of forestry laws. (Melencio Herrera, 2007). Very recently, on January 28, 2008, the Supreme Court designated 84 branches of first-level courts and 31 branches of second-level courts (or a total of 115 courts) as special Environmental Courts, with jurisdiction to try and decide violations of environmental laws.[63] This was done based on an inventory and assessment of pending environmental cases. The objective is to improve efficiency in the administration of justice, and to provide greater access to environmental justice, by having these courts in places where environmental violations were shown to be most frequent, and providing judges with specialized skills and knowledge relevant to the cases prevalent in their area.

Environmental cases pending at the time of the issuance of the Court's Administrative Order were required to be transferred to the special courts, except those civil cases where pre-trial had commenced and criminal cases where the accused had already been arraigned, which remained in the branches where they were originally assigned. New environmental cases shall be assigned (or raffled, in case of localities where more than one environmental court has been designated) to the special courts. The special courts, however, continue to handle criminal, civil and other cases.

Recently, a consultative workshop for the environmental courts[64] was conducted by the Philippine Judicial Academy among judges, prosecutors, environmental law enforcers and practitioners for the purpose

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[61] Consuelo Ynares-Santiago, *Framework for Strengthening Environmental Adjudication in the Philippines*, Paper presented at Asian Justices Forum on the Environment, Manila, July 6-7, 2007.

[62] Hilario Davide, *The Role of Courts in Environmental Protection*, PHILJA Judicial Journal. Volume 6, Issue No. 20, April-June 2004.

[63] Moreover, all single sala first- and second-level courts are considered special courts for this purpose.

[64] *Multi-Sectoral Consultative Workshop on the Manual and Training Design for Green Courts*, The Pearl Manila Hotel, Manila, July 16-18, 2008.

of gathering suggestions on improving access to environmental justice, Recommendations gathered during the workshop include the following:

(a) Training for judges on the technical aspects of environmental cases, and developments in environmental law and jurisprudence
(b) Promulgation of rules to govern the disposition of harassment suits filed against law enforcers and citizens in retaliation for environmental law enforcement;
(c) Promulgation of rules exempting all environmental cases filed as citizen suits from docket and other lawful fees, and from the injunction bond requirement, where an application for injunction is made; and
(d) Requiring the Integrated Bar of the Philippines to have a deputized special prosecutor for environmental cases in every chapter under the organization's legal aid program.

The low number of cases being filed in courts despite the huge number of violations suggests that other pillars of justice, namely, law enforcement and prosecution, need to be strengthened as well. In the same consultative workshop referred to above, the following recommendations intended for environmental law enforcement agencies were also gathered:

(a) Development of a guidebook for prosecutors on environmental cases;
(b) Designation of environmental prosecutors, and deputation of additional special prosecutors (from environmental law enforcement agencies and environmental law organizations);
(c) Conduct of trainings and provision of reference materials to prosecutors on technical matters usually involved in environmental cases
(d) Considering that lack of technical services and facilities often serve as a bar to the filing of cases for environmental crimes, the establishment of a system for accreditation of private individuals and laboratories, to conduct tests and/or provide certifications needed in specific environmental cases.

This is an exciting time in terms of the evolution of the role of the judiciary in the protection of the environment. The creation of Green Courts is a positive development. However, this is only an initial step as there are still a number of measures needed to make these courts fully functional and more effective. These include: (a) an enhanced training program for environmental court judges; and; (b) amendment of procedural and evidentiary rules that appear to be inappropriate for environmental cases

given their peculiar nature. Indeed, it might be time for the Supreme Court to consider drafting and issuing a Rule of Court specifically for environmental cases. According to Justice Ynares-Santiago, speaking at the *Asian Justices Forum on the Environment* held here in Manila last year:

> Environmental cases have features that differentiate them from ordinary civil and criminal cases. Treating them differently does not mean giving special favors or giving bias to environmental causes. Instead, it is recognition that the nature of environmental cases makes it difficult for injured parties to find redress. The special rules only try to correct the situation to balance the playing field.[65]

Foremost of the issues that the Court may want to address in drafting an environmental rule is the challenge of executing court judgments in environmental cases. Should the Court continue to be a passive actor and refrain from taking steps to monitor and ensure that its decisions are implemented? Or should it be more active in making sure that the environmental problems being dealt with is in fact addressed and solved. Should it actually retain continuing jurisdiction over environmental cases until such time it is satisfied that the environmental outcomes mandated by our laws were going to be achieved? Should it supervise, directly or through the lower courts or through other bodies, the implementation of its environmental orders such as it has done in the case of the Pandacan oil depots where it has ordered the oil companies[66] to relocate their facilities within a reasonable period of time?

Fourteen years ago, the author harbored skepticism as to the role of the judiciary in environmental cases.[67] Today, invoking academic freedom to change this due to the weight of experience, it is clear that courts, and that includes the highest court of the land, have to be actively involved and engaged in environmental cases. Many environmental disputes involve issues of transcendental importance and their resolution requires the balancing of primordial economic and political interests. If enabled and capacitated, the courts are in the best position to do this balancing and in making sure that their judgments are in fact executed.

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[65] Ynares-Santiago, *supra* note 65.

[66] Social Justice Society, et al. v. Atienza, Jr., G.R. No. 156052, 517 SCRA 657, March 7, 2007.

[67] Antonio G.M. La Viña, *The Right to a Sound and Balanced Ecology: The Odyssey of a Constitutional Policy*, 6 Phil. Nat. Res. L.J. 3 (Manila, 1994).

IV. CONCLUSION

The environmental problems posed by globalization have been visited using mining as an illustration. What is needed in order to address the issue of climate change has already been articulated. In both cases, there are solutions and strategies that could be used to achieve good environmental and social outcomes. But these will not be realized until the institutional framework and governance institutions undergo reforms. There is a need to rethink the concept of the DENR and evolve it into a catalyst of capacity, a convenor of institutions and stakeholders, and devolving much more significant environmental functions and powers to local governments. It is also concluded that a new rule of court for environmental cases might be appropriate. Finally but not the least, it is emphasized that the role of the judiciary is critical to make sure that environmental laws and policies are actually implemented.

It will be a challenge to do all of this. Indeed, an appreciation of what lies ahead in terms of environmental challenges is sobering. Perfect storms are ahead. If solutions are not thought of now to address tomorrow's environmental challenges, they will continue to overwhelm. But if these challenges are going to be recognized and addressed right now - whether it is the environmental outcomes of globalization, the grave and serious impacts of climate change, or the likely increase in our governance and implementation deficits – the generations that follow us, those who will inherit this beautiful country of ours, will have a fair chance to meet their needs and to build a prosperous and just nation that is, in the magnificent and grand words of the 1987 Constitution, "in accordance with the rhythm and harmony of nature."

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