

IT'S 2019 AND WE'RE STILL USING PLASTIC?!: ON THE STATE DUTY TO PROHIBIT SINGLE-USE PLASTIC*

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ABSTRACT

Marine plastic pollution is rapidly shaping up to be the most massive environmental debacle of the century. Based on current trends, it is estimated that the amount of global plastic waste will reach 34 billion metric tons by 2050. Much of this waste will likely end up in oceans, where 80% of plastic waste comes from land-based sources. The Philippines is the third biggest plastic polluter of the world's oceans, second only to China and India. It is imperative that the country take steps to eliminate single-use plastic. This paper argues that the State must immediately ban single-use plastic to prevent the destruction of marine life pursuant to its duty to protect the environment and prevent its destruction. This duty is a necessary consequence of the constitutional mandate to advance and protect the right of the present and future generations to a balanced and healthful ecology. The existence of this duty is likewise supported by statutes and jurisprudence. Moreover, the legislative branch of the government, by law, conferred upon the executive branch the authority to ban non-environmentally acceptable packaging. The delegation of this power implies a consequent duty to exercise this very power when circumstances so require.

“By polluting clear water with slime you will never find good drinking water.”

—Aeschylus

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I. INTRODUCTION

The Philippines is the third biggest marine plastic polluter in the world.¹ Inasmuch as the country takes pride in its sterling record of winning boxing matches, basketball games, and beauty pageants in the global arena, surely being a top polluter does not count as a victory.

In 2015, 6.3 billion metric tons (“MT”) of total plastic waste were generated globally. Only two years later, the number rose to 8.3 billion MT. It is projected that by 2050, the amount of plastic waste will reach 3.4 billion MT.²

Approximately 8 million MT of plastic has been thrown into the oceans.³ This number could reach 250 million MT by 2025.⁴

Most plastics are not biodegradable.⁵ Once produced, plastics stay on the planet forever, filling landfills and places not in any way meant for trash, including oceans and stomachs of marine mammals. Marine plastic pollution has affected at least 267 species of marine creatures, forcing them to suffer entanglement, suffocation, infection, and starvation.⁶ A study found that between 50 to 100% of animals in the deepest parts of the ocean had already ingested plastic.⁷

More than half of the plastic waste that ends up in oceans comes from only five countries: China, Indonesia, the Philippines, Thailand, and Vietnam. Eighty percent (80%) of plastics in water come from land-based sources.⁸ A report by Ocean Conservancy, an environmental advocacy group

¹ OCEAN CONSERVANCY, *STEMMING THE TIDE: LAND-BASED STRATEGIES FOR A PLASTIC-FREE OCEAN* 7 (2015), available at <https://oceanconservancy.org/wp-content/uploads/2017/04/full-report-stemming-the.pdf>; see Jenna Jambeck, Roland Geyer, Chris Wilcox, Theodore Siegler, Miriam Perryman, Anthony Andrady, Ramani Narayan & Kara Lavender Law, *Plastic waste inputs from land into the ocean*, 347 *SCIENCE* 768 (2015).

² Roland Geyer, Jenna Jambeck & Kara Lavender Law, *Production, Use, and Fate of All Plastics Ever Made*, 3 *SCI. ADVANCES* 1 (2017); See SILPA KAZA ET AL., *WHAT A WASTE 2.0: A GLOBAL SNAPSHOT OF SOLID WASTE MANAGEMENT TO 2050* 24 (2018).

³ Ocean Conservancy, *supra* note 1, at 11.

⁴ *Id.*

⁵ Yutaka Tokiwa, Buenaventurada Calabia, Charles Ugwu & Seiichi Aiba, *Biodegradability of Plastics*, 10 *INTL J. OF MOL. SCI.* 3722-733 (2009).

⁶ David Laist, *Impacts of Marine Debris: Entanglement of Marine Life in Marine Debris Including a Comprehensive List of Species with Entanglement and Ingestion Records*, in *MARINE DEBRIS: SOURCES, IMPACTS, AND SOLUTIONS* 102 (James Coe & Donald Rogers eds., 1997).

⁷ *Id.*

⁸ Ocean Conservancy, *supra* note 1, at 7.

based in Washington, D.C. concluded that in order to reduce plastic waste leakage, “real and meaningful commitments” must be given by the national governments of these five countries to achieve a 65% reduction, and thereafter effect 45% reduction in the global quantity.⁹

II. THE STATE DUTY TO PROTECT THE ENVIRONMENT AND PREVENT ITS DESTRUCTION

A. The State duty to protect the environment and prevent its destruction is a necessary consequence of the duty to protect and advance the right of the people to a balanced and healthful ecology

The Constitution imposes on the State the duty to protect the environment. Article II, Section 16 of the 1987 Constitution declares: “*The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.*”¹⁰

The highest law of the land is clear in saying that there exists a State duty to uphold the right of the people to a balanced and healthful ecology. A necessary consequence is the existence of a duty on the part of the State to protect such right. This much is revealed not only by logical inference but also by the discussion of the Framers of the 1987 Constitution (“Framers”).

Before agreeing on the present wording of Article II, Section 16 (“Provision”), the Framers entertained the idea of combining in one provision the State duty concerning the protection of the people’s right to health and the State duty to uphold the right to a balanced and healthful ecology. Commissioner Teresa F. Nieva, therefore, proposed the following formulation:

The State shall protect and promote the right of the people to health and a balanced ecological environment.¹¹

Commissioner Jose C. Gascon objected to Nieva’s proposal. For him, the State duty to ensure the optimum health of individuals was distinct

⁹ *Id.* at 6, 37.

¹⁰ CONST., art. II, § 16. (Emphasis supplied.)

¹¹ JOURNAL CONST. COMM’N 89 (Sept. 22, 1986).

from the State duty to maintain ecological balance. He insisted on the separation of the two to “manifest the *strong call for ecological balance* through the economic, political and social programs and policies.”¹²

The Framers thereafter agreed to have separate constitutional provisions on the people’s right to health and the people’s right to a healthful and balanced ecology.¹³

The Provision was then modified to read as follows:

The State recognizes the right of a person to a healthful environment and the singular demand of nature to follow its own rhythm and harmony. It shall therefore protect, restore, and enhance ecological balance for the sustenance of this and future generations.¹⁴

Commissioner Adolfo S. Azcuna made it plain that the Provision as worded above “mandates the State to provide sanctions against all forms of pollution.”¹⁵ He pointed out that “*the right to a healthful environment necessarily carries with it the correlative duty not to impair [it]* and therefore, sanctions may be provided for impairment of environmental balance.”¹⁶ Asked if this Provision would protect the life and psychological welfare of communities living close to factories, airports, and military bases, he replied that “anything which may harm the environment, like noise pollution, would be controlled or regulated.”¹⁷

Commissioner Jose E. Suarez proposed the following formulation:

The State shall protect and enhance a balanced ecological environment for the present and future generations.¹⁸

Commissioner Azcuna’s predicament with the above formulation was that it did not explicitly spell out the right to a healthful and balanced ecology, which he considered as possessed by “every person which the State

¹² *Id.* (Emphasis supplied.)

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* (Emphasis supplied.)

¹⁷ *Id.*

¹⁸ *Id.*

has the duty to protect by *enhancing ecological balance in the environment*.¹⁹ The Framers thereafter arrived at this wording of the Provision:

The State guarantees the right of the people and their posterity to a balanced and healthful ecological environment in accord with the singular demand of nature to follow its rhythm and harmony.²⁰

Commissioner Ambrosio Padilla voiced out that the inherent police power of the State could already provide legal basis for acts that the Provision intended to authorize. He also pointed to Article 694 of the Civil Code²¹ as a possible source of liability for violators of the people's right to a balanced and healthful ecology.²²

Commissioner Blas F. Ople manifested that the rhythm and harmony of nature was being violated, as seen in the blatant spoilage of forests and lakes. He said that the State should heed the warning of experts who cautioned that, if nothing were done to improve the condition of nature, the Philippines would become a desert in 50 years. According to him, experts predicted that Laguna de Bay would be dead in 20 years because of pollution caused by chemical companies. He asserted that the Provision rightfully belonged in the Declaration of Principles.²³

The Provision was thereafter revised to read as follows:

The state shall protect and advance the right of the people and their posterity to a balanced and healthful ecology in accord with the rhythm and harmony of nature.²⁴

The word "guarantees" was substituted by "shall protect and advance," bolstering the view that indeed the State has the positive duty to protect and advance the right of the people to a balanced and healthful

¹⁹ *Id.* (Emphasis supplied.)

²⁰ *Id.*

²¹ CIVIL CODE, art. 694. A nuisance is any act, omission, establishment, business, condition of property, or anything else which: (1) Injures or endangers the health or safety of others; or (2) Annoys or offends the senses; or (3) Shocks, defies or disregards decency or morality; or (4) Obstructs or interferes with the free passage of any public highway or street, or any body of water; or (5) Hinders or impairs the use of property.

²² JOURNAL CONST. COMM'N 89 (Sept. 22, 1986).

²³ *Id.*

²⁴ *Id.*

ecology. In fact, the word “advance” replaced the word “enhance” precisely because, as Commissioner Ople said, “advance” is the stronger word.²⁵

The claim that there exists alongside the right of the people to a balanced and healthful ecology the State duty to protect the environment aligns with the Hohfeldian theory of relations. Hohfeld pointed out that “right” and “duty” are correlatives of each other.²⁶ Where there exists a right, there necessarily exists a duty to protect it. He illustrated the correlative relationship of right and duty in this way:

[I]f X has a right against Y that he shall stay off the former's land, the correlative (and equivalent) is that Y is under a duty toward X to stay off the place. If, as seems desirable, we should seek a synonym for the term "right" in this limited and proper meaning, perhaps the word "claim" would prove the best. The latter has the advantage of being a monosyllable.²⁷

B. The State duty to protect the environment is articulated in statutes and jurisprudence

Issued on June 6, 1972, Presidential Decree No. 1151, or “the Philippine Environmental Policy,” is one of the laws imposing upon the State the obligation to protect the environment. According to Section 1, paragraph (a) of the law, it shall be the continuing policy of the State to “create, develop, maintain, and improve conditions under which man and nature can thrive in productive and enjoyable harmony with each other.”²⁸

Marcos then issued Presidential Decree No. 1152, or the “Philippine Environment Code,” on June 6, 1977, on the premise that “the broad spectrum of environment has become a matter of vital concern to the government.”²⁹

In 1998, Republic Act No. 8550, or “The Philippine Fisheries Code of 1998,” was passed. According to Section 2 thereof, the State shall ensure the “conservation, protection and sustained management of the country's

²⁵ *Id.*

²⁶ Wesley Newcomb Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 23 YALE L.J. 32 (1913).

²⁷ *Id.*

²⁸ Pres. Dec. No. 1151 (1972), § 1 (a).

²⁹ Pres. Dec. No. 1152 (1977), pmb. ¶ 1.

fishery and aquatic resources.”³⁰ This covers all Philippine waters, including the Exclusive Economic Zone and aquatic and fishery resources whether inland, coastal, or offshore fishing areas.³¹ Furthermore, Section 12 of the law requires the preparation of a detailed Environmental Impact Statement prior to undertaking activities or projects that will affect the quality of the environment.³²

The Philippine Fisheries Code likewise reconstituted the Bureau of Fisheries and Aquatic Resources (“DA-BFAR”) under the Department of Agriculture (DA).³³ One of DA-BFAR’s duties is to “perform such other related functions which shall *promote the development, conservation, management, protection and utilization of fisheries and aquatic resources*.”³⁴ Additionally, the same law established a National Fisheries and Aquatic Resources Management Council,³⁵ which shall “assist in the formulation of national policies for the *protection, sustainable development and management of fishery and aquatic resources* for the approval of the Secretary.”³⁶

Local governments are also required by law to protect the environment. Republic Act No. 7160, or the “Local Government Code,” provides for the sharing of responsibility between the national government and the local government in maintaining the ecological balance in the latter’s respective locality. Section 3(i) states that local government units “shall share with the National Government the responsibility in the *management and maintenance of ecological balance* within their territorial jurisdiction.”³⁷ The same provision likewise implies that the National Government has the responsibility to protect the environment.

Moreover, the Local Government Code also imposes the duty to protect the environment upon the *Sangguniang Bayan*,³⁸ *Sangguniang Panlungsod*,³⁹ and *Sangguniang Panlalawigan*.⁴⁰ It states that these local legislative bodies “*shall protect the environment and impose appropriate penalties for acts which*

³⁰ Rep. Act No. 8550 (1998), § 2.

³¹ § 3.

³² § 12

³³ § 64.

³⁴ § 65(s). (Emphasis supplied.)

³⁵ § 70.

³⁶ § 72(a). (Emphasis supplied.)

³⁷ LOCAL GOV'T CODE, § 3(i). (Emphasis supplied).

³⁸ § 447 (a)(1)(vi).

³⁹ § 458 (a)(1)(vi).

⁴⁰ § 468 (a)(1)(vi).

*endanger the environment.*⁴¹ The law then gives a non-exclusive enumeration of such acts, which include the following:

[D]ynamite fishing and other forms of destructive fishing, illegal logging and smuggling of logs, smuggling of natural resources products and of endangered species of flora and fauna, slash and burn farming, and such other *activities which result in pollution*, acceleration of eutrophication of rivers and lakes, or of ecological imbalance[.]⁴²

Notably, several local legislative bodies have already enacted bans on single-use plastic. In 2010, the City of Muntinlupa adopted an ordinance banning the use of plastic on dry goods, styrofoam, and styrophor.⁴³ In 2012, the *Sangguniang Bayan* of the Municipality of Malay, Aklan passed an ordinance banning single-use plastic on dry goods.⁴⁴ It prohibited the use of plastic bags on dry goods pursuant to the Provision and Section 3 (i) of the Local Government Code.⁴⁵ The *Sangguniang Bayan* of Malay saw it fit to ban the use of plastic “to prevent potential serious ecological imbalance particularly in the Island of Boracay and the Municipality’s canals, creeks, rivers, lakes and other waterways.”⁴⁶ Dumaguete City,⁴⁷ Bacolod City,⁴⁸ and Baguio City,⁴⁹ among others, also have similar ordinances.

The Philippine Supreme Court has similarly affirmed, on several occasions, that the State has the duty to safeguard the environment from degradation and promote the right to a balanced and healthful ecology. In

⁴¹ §§ 447 (a)(1)(vi), 458 (a)(1)(vi), 468 (a)(1)(vi).

⁴² §§ 447 (a)(1)(vi), 458 (a)(1)(vi), 468 (a)(1)(vi).

⁴³ Muntinlupa City Ordinance No. 10-109 (Jan. 18, 2010).

⁴⁴ Malay Ordinance No. 320 (Oct. 2, 2012). An Ordinance Prohibiting the Use of Plastic Bags on Dry Goods, Regulating its Utilization on Wet Goods and Prohibiting the Use of Styrofoam/Styrophor in the Municipality of Malay and Prescribing Penalties Thereof.

⁴⁵ LOCAL GOV'T CODE, § 3 (i): Local government units shall share with the national government the responsibility in the management and maintenance of ecological balance within their territorial jurisdiction, subject to the provisions of this Code and national policies.

⁴⁶ Malay Ordinance No. 320, pmb. ¶ 7.

⁴⁷ Dumaguete City Ordinance No. 231 (Aug. 10, 2011). An Ordinance Regulating the Use of Plastic Shopping Bags on Both Dry Goods And Wet Goods in the City of Dumaguete and Prescribing Penalties Thereof.

⁴⁸ Los Baños Municipal Ordinance No. 2008-752 (June 2, 2008). An Ordinance Prohibiting the Use of Plastic Bags on Dry Goods and Regulating its Utilization on Wet Goods and Prohibiting the Use of styrofoam in the Municipality of Los Baños.

⁴⁹ Baguio City Ordinance No. 36, s. of 2017 (Apr. 24, 2017). Plastic and Styrofoam-Free Baguio City Ordinance.

Henares, Jr. v. Land Transportation Franchising and Regulatory Board (“LTFRB”),⁵⁰ where the petitioners prayed for the issuance of a writ of mandamus commanding LTFRB and the Department of Transportation and Communication (“DOTC”) to require public utility vehicles to use compressed natural gas as alternative fuel, the Supreme Court emphasized that “it is clearly the duty of the responsible government agencies to advance the [right to a balanced and healthful ecology].”⁵¹

In *Oposa v. Factoran*,⁵² the Supreme Court ruled that “the right to a balanced and healthful ecology carries with it the correlative *duty to refrain from impairing the environment*.”⁵³

In *Resident Marine Mammals of the Protected Seascape Tañon Strait et al. v. Secretary Angelo Reyes et al.*,⁵⁴ the Supreme Court maintained that the right to a balanced and healthful ecology “does not even need to be stated in our Constitution as it is assumed to exist from the inception of humankind, carries with it the correlative *duty to refrain from impairing the environment*.”⁵⁵

In the case of *Department of Transportation (DOTr), Maritime Industry Authority (MARINA), and Philippine Coast Guard (PCG) v. Philippine Petroleum Sea Transport Association, Herma Shipping & Transport Corporation, Islas Tankers Seatransport Corporation, MIS Maritime Corporation, Petrolift, Ink., Golden Albatross Shipping Corporation, VLA Marine Corporation and Cargomarine Corporation*,⁵⁶ the Supreme Court recognized the existence of a duty to protect the environment. There, entities engaged in the business of transportation and shipping assailed the constitutionality of the Oil Pollution Management Fund under Republic Act No. 9483, or the “Oil Pollution Compensation Act of 2007.” The law imposed the collection of ten centavos on every liter of oil delivered by tanker barges and tanker haulers. The Fund was established to remedy the damage caused by oil spills on the environment and to disincentivize businesses from committing acts destructive to the

⁵⁰ *Henares v. Land Transp. Franchising & Regulatory Bd.*, G.R. No. 158290, 505 SCRA 104, Oct. 23, 2006.

⁵¹ *Id.* at 116. (Emphasis supplied.)

⁵² *Oposa v. Factoran* [hereinafter “*Oposa*”], G.R. No. 101083, 224 SCRA 792, July 30, 1993.

⁵³ *Id.* at 805. (Emphasis supplied.)

⁵⁴ *Resident Marine Mammals of the Protected Seascape Tañon Strait v. Sec’y Reyes*, G.R. No. 180771, 756 SCRA 513, Apr. 21, 2015.

⁵⁵ *Id.* at 547. (Emphasis supplied.)

⁵⁶ *Dep’t of Transp. v. Phil. Petroleum Sea Transport Ass’n*, G.R. No. 230107, 224 SCRA 792, July 24, 2018.

environment. The Supreme Court, which ruled that the establishment of the Fund was a proper exercise of police power, declared that “we have the *duty to protect our environment* for the future generations, and all must share in this responsibility, including legal entities.”⁵⁷

C. The State duty to protect the environment is owed to present and future generations

The most immediate antecedent of the Provision as it is worded now is provided below:

The State shall protect and advance the right of the people and their posterity to a balanced and healthful ecology in accord with the rhythm and harmony of nature.⁵⁸

It is noticeable that the Framers opted to remove the word “posterity.” They did so with the shared understanding that what they wrote in the Constitution was intended to apply to present and future generations. Commissioner Padilla categorically stated that “whatever we do here is *intended for the general welfare of all the people now and tomorrow.*”⁵⁹

The existence of the State duty to protect the environment for present and future generations is likewise codified in Executive Order No. 292, otherwise known as the “Administrative Code of 1987.” Section 1 of the general provisions under Environment and Natural Resources states:

The State shall ensure, for the benefit of the Filipino people, the full exploration and development as well as the judicious disposition, utilization, management, renewal and conservation of the country's forest, mineral, land, waters, fisheries, wildlife, off-shore areas and other natural resources, consistent with the necessity of maintaining a sound ecological balance and protecting and enhancing the quality of the environment and the objective of making the exploration, development and utilization of such natural resources equitably accessible to the different segments of the present as well as *future generations.*⁶⁰

In 2006, former President Gloria Macapagal-Arroyo issued Executive Order No. 578 establishing the national policy on biological

⁵⁷ *Id.* (Emphasis supplied.)

⁵⁸ JOURNAL CONST. COMM'N 89 (Sept. 22, 1986).

⁵⁹ *Id.* (Emphasis supplied.)

⁶⁰ REV. ADM. CODE, tit. XIV ch. 1, § 1.

diversity and prescribing its implementation in the entire country, particularly in the Sulu Sulawesi Marine Ecosystem and Verse Island Passage Marine Corridor. The Executive Order states that it is the policy of the State to “protect, conserve and sustainably use biological diversity to ensure and secure the well-being of *present and future generations of Filipinos*,” and that this policy “extends to all the components of biodiversity — ecosystems, species and genes.”⁶¹

Section 3 of Executive Order No. 292 also tasks the Department of Environment and Natural Resources (DENR) to “conserve specific terrestrial and marine areas representative of the Philippine natural and cultural heritage for *present and future generations*.”⁶²

In the landmark case of *Oposa v. Factoran*,⁶³ the Supreme Court upheld the legal standing of petitioner-minors who sought to assert their right and that of generations yet unborn to a balanced and healthful ecology. The Supreme Court stated that the right of the minors to sue on behalf of future generations is based on the concept of “*intergenerational responsibility*.”⁶⁴ The Supreme Court elaborated on the nature of such right:

Such a right, as hereinafter expounded, considers the “rhythm and harmony of nature.” Nature means the created world in its entirety. Such rhythm and harmony indispensably include, *inter alia*, the judicious disposition, utilization, management, renewal and conservation of the country's forest, mineral, land, waters, fisheries, wildlife, off-shore areas and other natural resources to the end that their exploration, development and utilization be equitably accessible to the present as well as future generations. Needless to say, *every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology*. Put a little differently, the minors' assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come.⁶⁵

Clearly, the State duty extends to the protection of the right of future generations to a balanced and healthful ecology.

⁶¹ Exec. Order No. 578 (2006), § 1. (Emphasis supplied.)

⁶² REV. ADM. CODE, tit. XIV ch. 1, § 3. (Emphasis supplied.)

⁶³ *Oposa*, 224 SCRA 792.

⁶⁴ *Id.* at 803. (Emphasis supplied.)

⁶⁵ *Id.* (Emphasis supplied.)

III. BANNING SINGLE-USE PLASTIC TO PREVENT FURTHER DEGRADATION OF MARINE LIFE

A. The State is mandated to exercise its powers to protect Philippine waters and abate marine pollution

Marcos, recognizing the “*urgent need to prevent, mitigate or eliminate the increasing damages to marine resources as a result of pollution,*”⁶⁶ issued Presidential Decree No. 979, or the “Marine Pollution Decree of 1976.” Its stated policy is the prevention and control of sea pollution caused by the dumping of wastes that create hazards to human health and marine life.⁶⁷

On December 9, 1974, Marcos issued Presidential Decree No. 600, otherwise known as the “Prevention and Control of Marine Pollution.” Stated therein as a declared national policy is the prevention and control of marine pollution caused by the accumulation of waste in natural bodies of water.⁶⁸

Presidential Decree No. 1152⁶⁹ mandates the regulation of human activities that tend to pollute waters. It states that disposal and discharge of substances resulting from normal operations of industries, water-borne sources, and other human activities that may pollute waters shall be regulated by appropriate government agencies.⁷⁰ Since the government can regulate not only waste disposal but also “other human activities,” it may be inferred that its authority is broad enough to include ordering the cessation of any kind of activity hazardous to nature.

⁶⁶ Pres. Dec. No. 979 (1976), pmb. ¶ 5. The Marine Pollution Decree of 1976. (Emphasis supplied.)

⁶⁷ § 2.

⁶⁸ Pres. Dec. No. 600 (1974), § 2. Prevention and Control of Marine Pollution.

⁶⁹ ENV'T CODE.

⁷⁰ § 19. Enforcement and Coordination. The production, utilization, storage and distribution of hazardous, toxic and other substances such as radioactive materials, heavy metals, pesticides, fertilizers, and oils, and the disposal, discharge and dumping of untreated wastewater, mine tailings and other substances that may pollute any body of water of the Philippines resulting from normal operations of industries, water-borne sources, and other human activities as well as those resulting from accidental spills and discharge shall be regulated by appropriate government agencies pursuant to their respective charters and enabling legislations. In the performance of the above functions, the government agencies concerned shall coordinate with the National Environmental Protection Council and furnish the latter with such information as may be necessary to enable it to attain its objectives under Presidential Decree No. 1121.

In 1987, DENR initiated the crafting of the Philippine Strategy for Sustainable Development (“PSSD”), which was approved by the Cabinet in November 1990. PSSD incorporates sustainable development principles and concepts in the national priorities of the government.⁷¹

In 1992, the Philippines participated in the United Nations Conference on Environment and Development (“UNCED”), where it pledged to implement the Global Agenda 21 or the UNCED’s program of action to advance sustainable development. Section II of the Global Agenda 21 on Conservation and Management of Resources for Development covers pollution control.⁷²

Paragraph 17.21 under Section B (Marine Environment Protection) of the Global Agenda 21 prescribes the necessity for a “*precautionary and anticipatory* rather than a reactive approach [...] to prevent the degradation of the marine environment.”⁷³ It goes on to state that this requires “the adoption of *precautionary measures*, environmental impact assessments, clean production techniques, recycling, waste audits and minimization, [...] and a comprehensive approach to damaging impacts from air, land and water.”⁷⁴

Paragraph 17.22 of the Global Agenda 21 also speaks of the need to “apply *preventive, precautionary and anticipatory approaches* so as to avoid degradation of the marine environment, as well as to reduce the risk of long-term or irreversible adverse effects upon it.”

Although Global Agenda 21 is non-binding, the State, in Executive Order No. 15, series 1992 issued by former President Fidel V. Ramos, declared that the country adhered to the principle of sustainable development as discussed at the UNCED and committed to the principles in the Rio Declaration and Global Agenda 21.⁷⁵ Executive Order No. 15 also created the Philippine Council for Sustainable Development (“PCSD”) to “provide the mechanism for attaining the principles of sustainable development and assure its integration in the Philippine national policies,

⁷¹ Philippine Strategy for Sustainable Development: A Conceptual Framework [hereinafter “PSSD”], 2 (Nov. 1990).

⁷² United Nations Sustainable Development [hereinafter “UNSD”], Agenda 21, ¶¶ 9-22 (1992).

⁷³ Id. at ¶ 17.21. (Emphasis supplied.)

⁷⁴ Id. at ¶ 17.21. (Emphasis supplied.)

⁷⁵ Exec. Order No. 15 (1992), pmb. ¶ 4. Creating a Philippine Council for Sustainable Development.

plans and programs.”⁷⁶ On September 26, 1996, Ramos issued Executive Order No. 370, series of 1996 strengthening the PCSD.⁷⁷

The definition of “Sustainable Development” can be traced back to *Our Common Future*,⁷⁸ a report on the work of the World Commission on Environment and Development (the “Brundtland Commission”) published by the United Nations through the Oxford University Press in 1987. Sustainable Development was therein defined as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”⁷⁹

Paragraph 2.2 of the PSSD contains a definition of Sustainable Development, which mirrors the definition given by *A Common Future*. PSSD further points out that there is a “compelling need to overhaul the traditional concepts of development, with its exclusive focus on economic principles and the political economy of natural resources.”⁸⁰

Later on, Republic Act No. 8749, or the “Philippine Clean Air Act of 1999,” would exhort the State to guarantee the people’s “right to utilize and enjoy all natural resources according to the principles of sustainable development.”⁸¹

It is also noteworthy that the principle of Sustainable Development is congruent with the settled view that the constitutional duty to protect the right of the people to a balanced and healthful ecology extends to the future generations.

Years later, Macapagal-Arroyo decreed the adoption of the Integrated Coastal Management as a national management policy framework. The policy meant to address the reality that “increasing human activities on land, coasts and seas exert pressure on the sustaining capacity of marine areas as well as amplify the risks of environmental degradation, destruction of vital

⁷⁶ PmbL ¶ 6.

⁷⁷ Exec. Order No. 370 (1996), pmbL ¶ 8. Strengthening the Philippine Council For Sustainable Development. “[I]t is necessary to strengthen the Philippine Council for Sustainable Development to institutionalize the support of other key sectors of the society and to further enhance its ability to coordinate planning and policy formulation, monitoring and evaluation in the pursuit of sustainable development[.]”

⁷⁸ U.N. General Assembly, Report of the World Commission on Environment and Development: *Our Common Future*, U. N. Doc. A/42/427 (Aug. 4, 1987).

⁷⁹ Ch. 2, ¶ 1.

⁸⁰ *PSSD*, *supra* note 71, at 1.

⁸¹ Rep. Act No. 8749 (1999), § 4(b). Philippine Clean Air Act.

coastal habitats, loss of marine biological diversity, and deterioration of near shore water quality[.]”⁸²

Section 2 of Republic Act No. 9275, or the “Clean Water Act of 2004,” which was also passed during the Macapagal-Arroyo presidency, declares that the State “shall pursue a policy of economic growth in a manner consistent with the *protection, preservation and revival of the quality of our fresh, brackish and marine waters.*”⁸³ To achieve such end, the law further requires the State to streamline processes and procedures in the prevention, control and, abatement of pollution of water resources and promote environmental strategies to protect water resources.⁸⁴

On April 26, 2018, President Rodrigo Duterte issued Proclamation No. 475⁸⁵, which declared a state of calamity in and ordered the temporary closure of *barangay* Balabag, Manoc-Manok, and Yapak in the municipality of Malay in Aklan (Boracay area) as a tourist destination to address the daily accumulation of 85 tons of uncollected waste and the deterioration of the natural habitats of marine creatures. Here, the State was impelled by the motive to “implement urgent measures” to “prevent further degradation of the rich ecosystem.”⁸⁶

What is at once clear is that the law prescribes that the right to enjoy natural resources must not remain unchecked.

B. The conferment of authority to the executive branch of the government implies the imposition of a duty to exercise it when certain conditions are met

The State must ban single-use plastic nationwide by classifying it as non-environmentally acceptable material.

Republic Act No. 9003, or the “Ecological Solid Waste Management Act” declares that it is the policy of the state to “adopt a

⁸² Exec. Order No. 533 (2006), pmb. ¶ 4. Adoption of the Integrated Coastal Management (ICM) Policy.

⁸³ Rep. Act No. 9275 (2004), § 2. Philippine Clean Water Act. (Emphasis supplied.)

⁸⁴ § 2 (a).

⁸⁵ Proc. No. 475 (2018). Declaring a state of calamity in the Boracay island and temporarily closing it as a tourist destination.

⁸⁶ Pmb. ¶ 10.

systematic, comprehensive and ecological solid waste management program” which shall fulfill the following duties:

- (a) Ensure the protection of the public health and environment;
- (b) Utilize environmentally-sound methods that maximize the utilization of valuable resources and encourage resource conservation and recovery;
- (c) Set guidelines and targets for solid waste avoidance and volume reduction through source reduction and waste minimization measures, including composting, recycling, re-use, recovery, green charcoal process, and others, before collection, treatment and disposal in appropriate and environmentally sound solid waste management facilities in accordance with ecologically sustainable development principles;
- (d) Ensure the proper segregation, collection, transport, storage, treatment and disposal of solid waste through the formulation and adoption of the best environmental practice in ecological waste management excluding incineration;
- (e) Promote national research and development programs for improved solid waste management and resource conservation techniques, more effective institutional arrangement and indigenous and improved methods of waste reduction, collection, separation and recovery;
- (f) Encourage greater private sector participation in solid waste management;
- (g) Retain primary enforcement and responsibility of solid waste management with local government units while establishing a cooperative effort among the national government, other local government units, non- government organizations, and the private sector;
- (h) Encourage cooperation and self-regulation among waste generators through the application of market-based instruments;
- (i) Institutionalize public participation in the development and implementation of national and local integrated,

comprehensive, and ecological waste management programs;
and

- (j) Strengthen the integration of ecological solid waste management and resource conservation and recovery topics into the academic curricula of formal and non-formal education in order to promote environmental awareness and action among the citizenry.⁸⁷

The Ecological Solid Waste Management Act created the National Solid Waste Management Commission (“NSWMC”) to oversee and ensure the implementation of its provisions. The NSWMC is charged with the duty to “formulate and update a list of non-environmentally acceptable materials in accordance with the provisions of this Act.”⁸⁸ The statute provides an express prohibition on the use of non-environment friendly packaging. Section 30 states:

Section 30. *Prohibition on the Use of Non-Environmentally Acceptable Packaging.*—No person owning, operating or conducting a commercial establishment in the country shall sell or convey at retail or possess with the intent to sell or convey at retail any products that are placed, wrapped or packaged in or on packaging which is not environmentally acceptable packaging[.]⁸⁹

It is clear from the above provision that any person engaged in business may be prohibited from selling or possessing an item with the intent to sell it if such item is packaged in or is accompanied by a type of packaging deemed not environmentally acceptable. This may provide basis to compel big corporations that sell products wrapped in single-use plastic—such as bottled water, soap, shampoo, candies, and junk food—to change the way they package their products. As mentioned, most of the plastic waste that ends up in oceans and along the shoreline are mass-produced goods like shampoo, soap, detergent, candies, and junk food, among others.

The legislature has given the executive the authority to ban the use of packaging whose effects on the environment can be deleterious. Likewise, in the very same statute that granted the executive this authority, it is stated that there exists a duty to “*ensure the protection of [the] environment.*”⁹⁰ The

⁸⁷ Rep. Act No. 9003 (2001), § 2. Ecological Solid Waste Management Act of 2000.

⁸⁸ § 5 (i).

⁸⁹ § 30.

⁹⁰ § 2 (a). (Emphasis supplied.)

authority must then be exercised in accordance with this duty. One of the most obvious goals of the passage of the Ecological Solid Waste Management Act is to reduce the amount of waste produced. It requires “solid waste avoidance and volume reduction through source reduction and waste minimization measures.” For this purpose, the NSWMC is given the “primary enforcement and responsibility of solid waste management with local government units.”⁹¹

The threshold inquiry in determining whether the circumstances demand that authority be exercised is this: Is it necessary for the fulfillment of the duty to ensure the protection of public health and the environment? Based on the principles stated in the law, the following are the major considerations in the exercise of the state duty to ban non-environmentally friendly packaging: the volume of trash collected, produced, or needs to be disposed of vis-à-vis the capacity of the state to dispose of and manage the same; effectivity of waste collection methods and waste segregation scheme; the state of waste management; and, the least considered albeit arguably the most important part, the behavior of the corporations that produce plastic waste, as well as the ways in which consumers that purchase products sold by these corporations dispose of the same.

To reiterate, “solid waste avoidance and volume reduction [of waste]” must be achieved through “source reduction and waste minimization measures.”⁹² Being generated at a breakneck pace, plastic must then be eliminated immediately. The source of the waste must be dealt with directly. At this rate, there is no other way to solve the plastic waste problem but to go after those that are directly responsible for producing plastics. Again, the power of the NSWMC to ban packaging that is not environmentally friendly must be exercised in accordance with the goals of the law that created it. The next section will explain how the present circumstances require the exercise thereof.

C. The magnitude of marine plastic pollution demands prompt State action

Four hundred (400) MT of plastic is produced globally on an annual basis. Around 36% of such are plastic packaging meant to be disposed of

⁹¹ § 2 (c).

⁹² § 2 (c).

immediately.⁹³ In 2015, almost 50% of the global plastic wastes generated were plastic packaging.

Plastics fall under a sub-category of polymers, which are huge molecules with long chain-like molecular architecture and very high molecular weights. The main categories of plastics are thermoplastics and thermosets. Thermoplastics are those that melt when heated, harden when cooled, and are thus susceptible to being reshaped, reheated, and frozen endlessly. Thermosets, on the other hand, are those that cannot be reformed after being heated and formed. Most plastics are not biodegradable. Instead, these photodegrade or break down into fragments called microplastics.⁹⁴

Most of the plastic waste generated globally and in the Philippines are thermoplastics, which are further categorized into Polyethylene Terephthalate (“PET”), Polypropylene (“PE”), Low Density Polyethylene (“LDPE”), High Density Polyethylene (“HDPE”), Polystyrene (“PS”), Expanded polystyrene (“EPS”), Polyvinyl-chloride (“PVC”), Polycarbonate, Polypropylene (“PP”); Polylactic acid (“PLA”) and Polyhydroxyalkanoates (“PHA”). Thermoplastics are commonly used for food packaging, shampoo bottles, water bottles, bottles of different types of beverages, protective packaging for fragile items, bags, containers for cleansing liquids, plates, cups, cutlery, junk food bags, and ice cream containers, among others.⁹⁵

The United Nations Environment Programme (“UNEP”), citing Ten Brink (2016), characterizes single-use plastics or disposable plastics as “items intended to be used only once before they are thrown away or recycled.”⁹⁶

Every year, Ocean Conservancy initiates the International Coastal Cleanup (“ICC”). According to the 2018 report of the Ocean Conservancy, during the 2017 ICC, participants collected 1,739,743 food wrappers; 1,569,135 plastic beverage bottles; 1,091,107 plastic bottle caps; 757,523 plastic grocery bags; 746,211 other plastic bags; 643,562 straws and stirrers; 632,874 plastic take-out containers; 624,878 plastic lids; and 580,570 foam take-out containers from coastlines across the world.⁹⁷

⁹³ UNITED NATIONS ENVIRONMENT PROGRAMME, SINGLE-USE PLASTICS: A ROADMAP FOR SUSTAINABILITY 4 (2018).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.* at 2.

⁹⁷ OCEAN CONSERVANCY, BUILDING A CLEAN SWELL 13 (2018), available at <https://oceanconservancy.org/wp-content/uploads/2018/07/Building-A-Clean-Swell.pdf>.

Microplastics form around 85% of plastic found along coastlines. It is feared that microplastics are already seeping their way into the food chain. Of the 672 fish caught during a 2008 Pacific Gyre voyage, researchers found that 35% of the fish had ingested plastic.⁹⁸

A 2017 study on the presence of microplastics in commercial salts from eight different countries showed that there is still no significant amount of microplastics in salts (higher than 149 μm). Nonetheless, the same study warns that “the increasing trend of plastic use and disposal, however, might lead to the gradual accumulation of MPs in the oceans and lakes and, therefore, in products from the aquatic environments.”⁹⁹

Plastic pollution in oceans is a global problem in which the Philippines figures largely. The country generates 2.7 million MT of plastic waste and 500,000 MT plastic waste leakage every year.¹⁰⁰ As mentioned in the Introduction, the Philippines was identified as the third biggest plastic polluter of the world’s oceans. 4,223,167 pieces of trash were collected from Philippine coastlines during the 2017 ICC.¹⁰¹

According to the draft report of the NSWMC, plastic waste accounts for only 2.93% of the total solid waste in the Philippines.¹⁰² However, this report, aside from being merely a draft, appears to be outdated.

Using data gathered from 21 waste assessment sites in the Philippines, the Global Alliance for Incinerator Alternatives (“GAIA”), a non-governmental organization lobbying against waste incineration, stated in its report on plastic waste in the Philippines that “almost 164 million pieces of sachets are used in the Philippines daily, equating to around 59.7 billion pieces of sachets yearly.”¹⁰³

⁹⁸ Ali Karami et al., *The presence of microplastics in commercial salts from different countries*, 7 SCIENTIFIC R. 6 (2017).

⁹⁹ *Id.*

¹⁰⁰ Ocean Conservancy, *Stemming the Tide: Land-based Strategies for a Plastic-Free Ocean*, *supra* note 1, at 12.

¹⁰¹ Ocean Conservancy, *Building A Clean Swell*, *supra* note 96, at 16.

¹⁰² NAT’L SOLID WASTE MGMT. COMM’N, NATIONAL SOLID WASTE MANAGEMENT STATUS REPORT (2008-2014) 6 (2015), available at <https://nswmc.emb.gov.ph/wp-content/uploads/2016/06/Solid-Wastefinaldraft-12.29.15.pdf>

¹⁰³ GLOBAL ALLIANCE FOR INCINERATOR ALTERNATIVES, PLASTICS EXPOSED: HOW WASTE ASSESSMENTS AND BRAND AUDITS ARE HELPING PHILIPPINE CITIES FIGHT PLASTIC POLLUTION 7 [hereinafter “GAIA”] (2019), available at <https://www.no-burn.org/wp-content/uploads/PlasticsExposed-3.pdf>

Moreover, GAIA's report reveals that 60% of all branded residual¹⁰⁴ or non-recyclable plastic waste in the Philippines come from only 10 companies: Nestlé; Unilever; Procter and Gamble; Universal Robina Corporation, PT Mayora Indah Torabika ("Kopiko"); Republic Biscuit Corporation ("Rebisco"); WL Foods; Liwayway Marketing Corporation ("Oishi"); Coca-Cola; and JBC Food Corporation.¹⁰⁵

The same report also states that the average Filipino uses 591 pieces of sachets, 174 shopping bags, and 163 plastic bags every year. Almost 57 million shopping bags are used throughout the Philippines every day, translating to approximately 20.6 billion shopping bags every year.¹⁰⁶

In 2017, Break Free From Plastic, an environmental coalition working towards a plastic-free world, conducted a brand audit of the plastic waste they picked up from Freedom Island, which is located in the Las Piñas-Parañaque Critical Habitat and Ecotourism Area near Manila Bay. The audit revealed that Nestlé, Unilever, PT Torabika Mayora, Universal Robina Corporation, Procter & Gamble, Nutria-Asia, Monde Nissin, Zesto, Colgate Palmolive, and Liwayway are the biggest plastic polluters in such part of the Philippine ocean. Nestle, Unilever, and PT Torabika Mayora accounted for 9,143, 5,889, and 5,618 pieces of trash, respectively. Most of these are packaging for soap, shampoo, conditioner, coffee, milk, and other food products and toiletries.¹⁰⁷

On March 19, 2019, it was reported that 40 kilograms of plastic was found in the stomach of a dead whale near the coastal town of Mabini in Compostela Valley. Abigail Aguilar, Regional Greenpeace campaigner, shared that a crab was found trapped inside a disposable cup in the deep part of the Verde Island Passage, and that within the first quarter of the year alone, three whales and a dolphin were found dead with plastic in their stomachs.¹⁰⁸

¹⁰⁴ "Residual wastes are solid waste materials that are non-compostable and non-recyclable. It should be disposed ecologically through a long-term disposal facility or sanitary landfill." NAT'L SOLID WASTE MGMT. COMM'N, SOLID WASTE MANAGEMENT FOR HOUSEHOLD, 1 (2016), available at <http://nswmc.emb.gov.ph/wp-content/uploads/2016/06/ESWM-for-HH.pdf>.

¹⁰⁵ *GALA*, *supra* note 103, at 29.

¹⁰⁶ *Id.* at 8.

¹⁰⁷ *Id.* at 52.

¹⁰⁸ Philippine News Agency, *Marine animals killed by plastic alarm environmentalist*, PHILIPPINE NEWS AGENCY WEBSITE, Mar. 19, 2019, available at <http://www.pna.gov.ph/articles/1064974>

As borne out by the facts, Philippine seas are in dire need of saving. There is more than enough convincing proof perceivable by the senses and validated by scientists, researchers, and common experience that plastic waste has already done significant damage to the environment and will continue to wreak greater havoc should it remain unacted upon.

In the case of *Philippine Plastics Industry Association, Inc. (PPIA) v. San Pedro*,¹⁰⁹ the Court upheld the validity of an ordinance prohibiting single-use plastic. There, PPIA, a non-stock corporation representing the interests of the plastic industry, challenged the constitutionality of Ordinance No. 10-10, which was enacted by the *Sangguniang Panlungsod* of Muntinlupa City. The Ordinance prohibited the use of plastic bags on dry goods, banned styrofoam, and styropor, and regulated the utilization of plastic bags on wet goods. The Supreme Court eventually ruled in favor of the validity of the Ordinance, saying it was “consistent with the mandate under the Constitution that the State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.”¹¹⁰ It explained:

We are cognizant with the emerging trend in the nation to prohibit and/or regulate the use of plastic bags and styrofoam and/or styrophor either as primary or secondary packaging or as food containers for waste or source reduction purposes. The foremost consideration of the subject Ordinance, as well as the similar ordinances enacted by other local government units in the country[,] is to preserve the environment and the ecological balance.¹¹¹

In the case of *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*,¹¹² the residents living along and near Manila Bay filed in the Regional Trial Court of Imus, Cavite a complaint against different government agencies, including the DENR, to compel them to undertake the clean-up, rehabilitation, and protection of Manila Bay. In granting the petition, the Supreme Court had this to say about the government agencies in charge of ensuring the cleanliness of Manila Bay: “Their cavalier attitude towards solving, if not mitigating, the environmental pollution problem, is a sad commentary on bureaucratic efficiency and commitment.”¹¹³

¹⁰⁹ G.R. No. 231030 (Notice), Jan. 17, 2018.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Metropolitan Manila Dev. Auth. v. Concerned Residents of Manila Bay*, G.R. No. 171947, 574 SCRA 661, Dec. 18, 2008.

¹¹³ *Id.* at 665.

In this Decision, the Court found it fitting to “put the heads of the petitioner-department-agencies and the bureaus and offices under them on continuing notice about, and to enjoin them to perform their *mandates and duties towards cleaning up the Manila Bay and preserving the quality of its water*[.]”¹¹⁴

Moreover, the Supreme Court also clarified that “even assuming the absence of a categorical legal provision specifically prodding petitioners to clean up the bay, they [...] cannot escape their *obligation to future generations of Filipinos to keep the waters of the Manila Bay clean and clear as humanly as possible*” and that “anything less would be a betrayal of the trust reposed in them.”¹¹⁵

By way of conclusion, the Court left this relevant reminder: “In the light of the ongoing environmental degradation, the Court wishes to emphasize the *extreme necessity for all concerned executive departments and agencies to immediately act and discharge their respective official duties and obligations*.”¹¹⁶

IV. CONCLUSION

The State has the duty to protect the environment. This is a clear from Article II, Section 16 of the 1987 Constitution, which explicitly declares that the State must protect and advance the right of the people to a safe, clean, and healthy environment. The existence of the State duty to protect the environment, finds further support in existing statutes and jurisprudence. This duty is owed not only to Filipinos alive today, but also to those generations of Filipinos yet unborn.

Laws and jurisprudence also carve out a particular State duty to ensure the preservation of marine life. Considering that plastic pollution in marine waters has become so severe, and in light of the policy of the state to protect marine life, it is now incumbent upon the State to expeditiously ban single-use plastic in order to fulfill its duty to protect the environment, as well as its constitutionally mandated duty to protect the right of the present and future generations of Filipinos to a balanced and healthful ecology in accord with the rhythm of nature.

The State should, through the NSWMC, exercise its power to prohibit single-use plastic by declaring it as non-environmentally acceptable

¹¹⁴ *Id.* at 688. (Emphasis supplied.)

¹¹⁵ *Id.* at 692. (Emphasis supplied.)

¹¹⁶ *Id.* at 691. (Emphasis supplied.)

packaging, thus prohibiting any sale or transaction when the article involved comes in or with non-environmentally acceptable packaging, and disincentivizing businesses from using single-use plastic packaging for their products.

The Philippines is a major contributor to as well as a piteous victim in this losing battle against Mother Nature. The use-and-dispose mentality prevalent today and the corporations that condone and feed on this kind of thinking are primarily responsible for the global marine pollution.

It is high time for the NSWMC to ban single-use plastic. The State cannot shirk from its duty to prevent further destruction of the marine environment in the face of overwhelming evidence showing the unabated continuous production and accumulation of plastic materials, and the negative effects these have had and will continue to have on marine life, the environment, and all of humanity. The State is now called upon to step forward and perform its legal duty to reverse the path towards environmental destruction.