

FOREWORD*

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I am writing this in the middle of a pandemic. With massive global deforestation, hunting of rare species for consumption, and human encroachment on habitats of wild animals carrying infectious diseases, scientists said it was only a matter of time before a pandemic of this scale blows up. They were right.

However, I would like to believe this global phenomenon does more than scare us. It is a wake-up call. Throughout the year, we have been confronted with climate change endangering coastal populations, as well as deforestation and wildfires wiping out species. Yet, we only began to take the consequences of changing environmental landscapes seriously when the thought of human mortality came knocking at our doorstep.

This is why the Special Environmental and Energy Law issue of the Philippine Law Journal comes at a very opportune time—a time when we, as global citizens, are confronted with the fragility of our natural and social ecosystems. It arrives at a time when we can clearly see how policies drastically alter the course of our country’s fight against the effects of climate change and dwindling biodiversity.

In his article *Revisiting Foreign Investment Limits on Renewable Energy Contracts in Light of the Text and Context of the 1987 Constitution*, Joseph Emmanuel Angeles posits that the constitutional foreign equity limitations do not apply to renewable energy. Using statutory construction, he argues that the Renewable Energy Act’s implementing rules should be corrected in light of the fundamental law’s text and context to promote competition in renewable energy.

In *Exploring the Normative Implications of the Development of Indigenous Peoples’ Rights in International Environmental Law*, Raymond Marvic Baguilat illustrates the increasing participation of indigenous peoples in forming international environmental law. Indigenous peoples are recognized as stewards of the land and the environment, and their contributions to international lawmaking facilitate the “crystallization” of the UN Declaration on the Rights of Indigenous Peoples (“UNDRIP”) as customary international

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law. Their participation in international environmental lawmaking likewise inspires parallel developments in domestic policy-making.

Meanwhile, in *Reducing Statelessness and According Safe Haven to Climate Change Refugees*, Mark Darryl Caniban and Francis Ron de Guzman propose solutions to address the policy gap in protecting climate change refugees. Here, the authors suggest a devolution of refugee protection from an international legal standpoint to a domestic intervention. They propose to expand the definition of refugees to include those who may be displaced due to environmental reasons. The authors also look into the Philippines' treatment of refugees seeking asylum in the country and its own citizens who were displaced due to natural disasters. They conclude that the recognition and protection of climate change refugees may be beneficial in the long run, as any good policy gesture may be deemed to be an investment in how our citizens may be treated, in case the Philippines becomes a sinking state.

In their article *Mining and Climate Change: Revisiting the Alternative Minerals Management Bill in the Age of Climate Crisis*, Alenz Avril De Torres and Brent Ivan Andres reevaluate the Alternative Minerals Management Bill ("AMMB") in the context of climate change and climate crisis. They recognize that the AMMB represents a "progressive" alternative to the country's existing mining laws. However, the authors underscore the immediate need to integrate the emerging climate discourse of climate adaptation and just transition into the decade-old bill and the necessity to make it more responsive to the country's commitments to the 2015 Paris Agreement.

Cecilia Therese Guiao, in her article, *Recognizing the Role of Cultural Heritage in Climate Change Adaptation: Relevant Platforms and Workstreams under the United Nations Framework Convention on Climate Change*, demonstrates how although the United Nations Framework Convention on Climate Change ("UNFCCC") does not mention cultural heritage, the latter is an incredibly rich resource in climate change adaptation. She discusses the numerous reports and decisions that have been produced and adopted since the UNFCCC took effect. The author notes that the value of cultural heritage has been recognized in the Paris Agreement—an indisputably legally binding international instrument.

In Jose Maria Marella and Julia Therese Pineda's article, *Green Disclosures: Enhancing the Environmental Aspect of Sustainability Reporting*, the authors emphasize the need for publicly-listed companies' accountability for reporting business information that poses a significant impact on the environment. These disclosures, which should comply with SEC's Sustainability Reporting Guidelines, are meant to promote environmentally-

sustainable company practices. The article serves as a critique of the Sustainability Reporting Guidelines and proposes mechanisms that further refine the disclosure process to reflect material information more accurately.

In *Finding an Oft-Forgotten Solution to the Persistent Energy Problem: An Introduction to the Philippine Energy Efficiency and Conservation Law*, Efren II Resurreccion illustrates the challenges which have dogged the country's energy sector, and argues that a demand-side solution is just as important as conventional solutions such as renewable energy. He traces the various attempts to institutionalize energy efficiency and conservation through decades, culminating in the passage of the Energy Efficiency and Conservation Law in 2019. The article also provides an extensive discussion of this recent legislation and its potential to transform how both the public and private sectors consume power, with enormous consequences to the economy and the environment.

Michael Tiu, Jr. examines the jurisdiction of the ICC as regards crimes involving environmental destruction in his article, *From Protection to Accountability: Can We Punish Acts Involving Environmental Destruction as Rome Statute Crimes?*. The author argues that these acts can be punished based on the enumeration and definition of crimes provided under the Rome Statute. The author further relates the crimes of environmental destruction to various war crimes, genocide, and crimes against humanity.

Land reclamation has been one of the priority projects of the Duterte Administration. However, such activities may lead to adverse effects on the ecological integrity of coastal habitats, which is, in turn, inconsistent with the State's constitutional obligation to uphold the people's right to a balanced and healthful ecology, as well as its commitment to comply with various international treaties. In her note, *Philippine Statutory Compliance with Biodiversity Treaty Obligations on Land Reclamation Projects*, Maria Lynette Arreola observes that our existing laws dedicated to conserving the country's biodiversity are insufficient to prevent the potential threats brought about by land reclamation. Arreola proposes that a land reclamation law that sets standards and limitations on how the activity should be conducted should be created to minimize the adverse effects on our country's biodiversity.

Meanwhile, Troy John Butac, Katrina Kaye Estrada, Amer Madcasim, Jr., and Ray Lemuel Molabola review how the Supreme Court has exercised its expanded powers of judicial review and rule-making in relation to the constitutional right to a balanced and healthful ecology in *The Court and the Right to Environment: Duty, Powers, and Limits*. Here, several aspects of environmental law, such as the need for scientific expertise, reveal the

interplay between these powers, as well as the difficulties that may arise therein.

In her note, *It's 2019 and We're Still Using Plastic?!: On the State Duty to Prohibit Single-Use Plastic*, Faye Monchelle Gonzalez contends that in light of the constitutional mandate to advance and protect the right of present and future generations to a balanced and healthful ecology, the State must immediately ban single-use plastic to prevent the destruction of marine life. She adds that in light of the magnitude of marine plastic pollution, it is high time for the National Solid Waste Management Commission to exercise its delegated power from the legislature to ban non-environmentally acceptable packaging.

In *Expanding the Boundaries of Legal Protection for the Environment: The PEISS as a Tool for Environmental Litigation*, Numeriano Anton Rodriguez III discusses the historical roots of the Philippine Environmental Impact Statement System (PEISS) as well as its framework, its role alongside various environmental statutes and rules currently in place, and its being a viable yet underrated tool for environmental litigation. The Note also presents various recommendations to policymakers in order to strengthen the PEISS framework as a means of ensuring the protection of environmental rights.

Along with the publication of this volume comes the hope that issues on environment and energy no longer be a distant echo but a clear and resounding signal for policymakers and citizens alike to heed. It is then auspicious that this publication is made at a time when we are all paying attention. My fervent hope is that this message does not fall on deaf ears.