# THE CONSTITUTIONAL POLICY ON NATURAL RESOURCES: A SURVEY

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## I. INTRODUCTION

The future looks bleak for our country's natural resources. While the Philippines is one of the world's major suppliers of minerals, the country's mining industry generates millions of tons of tailings and other wastes. These include acids, cyanide, alkalis and heavy metals, some of which are dumped into its ocean and bays.[1] Although the Philippines boasts of the longest discontinuous coastline in the world, its fish supply is decreasing due to illegal methods of fishing, the destruction of its coral reefs, and the pollution of its lakes and rivers.[2] Protected by 75 per cent of forest cover about four decades ago, the Philippines today only has about 22 per cent of its total land area protected by adequate forest cover.[3] According to a recent study, the rate of deforestation since 1950 was pegged at more than 200,000 hectares a year.[4] At the present rate of deforestation, the Forestry Development Center of the University of the Philippines College of Forestry predicts that the "commercial old growth forests" will all be gone by the year 2000. And this, the study says, is an "optimistic view."[5]

Natural resources are crucial to a country's survival. How they are utilized - *and conserved* - is a vital component in state policies aimed to alleviate poverty, promote social justice, and advance economic development.

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[1] C. ROQUE, ENVIRONMENT AND NATURAL RESOURCES: STATUS AND PROSPECTS 20 (1990).

[2] *See* Labitag, *Philippine Natural Resources: Some Problems and Perspectives*, in 2 UNIVERSITY OF THE PHILIPPINES LAW CENTER CONSTITUTION PROJECT 2 (1986).

[3] C. ROQUE, *supra*, at 4.

[4] *Id.* at 8.

[5] *Id.* at 9 (The prediction was made in 1985 based on projected supply and demand patterns).



Indeed, a national policy on the conservation and utilization of natural resources is necessary to ensure the very survival of a nation.

The 1987 Constitution provides the general policy guidelines on how the country's natural resources are to be conserved and developed. These guidelines are laid down in Article XII: The National Economy and Patrimony. This paper will analyze the 1987 constitutional policy on natural resources, its historical development, and the possible problems or prospects for its implementation.

## II. THE CONSTITUTIONAL POLICY

### A. The Premises

One of the primary objectives of the elected delegates to the 1934 Constitutional Convention was to create a national policy concerning the country's natural resources. The Committee on Nationalization and Preservation of Lands and Other Natural Resources was given the duty to "consider, formulate, and propose everything relative to the nationalization and conservation of the land and natural resources of the country." This Committee considered the reports of the committees on agricultural development, national defense, industry, and public utilities. These committee reports, in turn, "drew heavily from the constitutions of Mexico, the Republic of Germany, Spain, Ireland, Czechoslovakia, the Malolos Constitution, the Philippine Bill of 1902, and past Philippine legislation."[6] The report of the Committee on Lands and other Natural Resources, which was approved by the Convention with minor changes, established the four premises upon which the 1935 constitutional policy on natural resources was based:

> 1. That land, minerals, forests, and other natural resources constitute the exclusive heritage of the Filipino Nation. They should, therefore, be preserved for those under the sovereign authority of that Nation and for their posterity.
>
> 2. That the existence of big landed estates is one of the causes of economic inequality and social unrest.
>
> 3. That the multiplication of landowners by the subdivision of land into smaller holdings is conducive to social peace and individual contentment and has been the policy adopted in most civilian countries after the World War.

[6] UNIVERSITY OF THE PHILIPPINES LAW CENTER, UNIVERSITY OF THE PHILIPPINES LAW CENTER CONSTITUTION PROJECT 754 (1971).

> 4. That the encouragement of ownership of small landholdings destroys the institution so deeply entrenched in many parts of the Philippines known as *caciquism*. It is preventive of absentee landlordism, an institution which springs directly from the establishment of big landed estates and has time and again served as an irritant to the actual toiler of the soil.[7]

From these premises, fundamental principles on how to conserve and utilize the country's natural resources emerged. Not only do these four premises remain valid today, but the principles that followed from them were reiterated in the 1973 Constitution, and again in the 1987.

## B. The Principles

### 1. *Nationalism*

From the start of the 1934 Convention, delegates from all over the country were espousing nationalist ideas. Delegate Ledesma, in a privilege speech, declared why it was imperative that the constitution be embodied with nationalistic principles. He said:

> The constitutional precepts that I believe will ultimately lead us to our desired goals: (1) the complete nationalization of our lands and natural resources; (2) the nationalization of our commerce and industry compatible with good international practices. With the complete nationalization of our lands and natural resources, it is to be understood that our God-given birthright should be one hundred per cent in Filipino hands . . . . Lands and natural resources are immovable and as such can be compared to the vital organs of a person's body, the lack of possession of which may cause instant death or shortening of life. If we do not completely nationalize these two of our most important belongings, I am afraid that the time will come when we shall be sorry for the time we were born. Our independence will be just a mockery, for what kind of independence are we going to have if a part of our country is not in our hands but in those of foreigners?[8]

The speech of Delegate Montilla was not merely an outburst of nationalistic pride. The framers of the 1935 Constitution, through the

[7] 2 J.ARUEGO, THE FRAMING OF THE PHILIPPINE CONSTITUTION 595 (1949).

[8] *Id.* at 592.



nationalization of the natural resources of the country, intended "(1) to insure their conservation for Filipino posterity; (2) to serve as an instrument of national defense, helping prevent the extension into the country of foreign control through peaceful economic penetration; (3) and to prevent making the Philippines a source of international conflicts with the consequent danger to its internal security and independence." One of the delegates even cited the example of the cessation of Texas, after being settled by the North Americans, from Mexico to join the United States.[9]

### 2. *State Ownership and the Regalian Doctrine*

Convinced that the principle of State ownership of natural resources and the Regalian doctrine were absolutely necessary to meet the goal of nationalization, the 1934 Convention delegates unanimously adopted these two concepts. By establishing the principle of State ownership, "recognition of the power of the State to control the disposition, exploitation, development, or utilization" will be secured.[10]

The principle of *jus regalia* is a medieval concept, which means the "royal rights which a king has by virtue of his prerogative. In Spanish law, the term was used to indicate a right which the sovereign has over anything in which a subject has a right of property or 'propriedad.'"[11] In modern usage, the principle is more commonly known as the "Regalian doctrine," which is defined as the "property right belonging to a sovereign or state."[12] Thus, under the regalian doctrine, "all minerals found either in public or private lands belong to the state."[13]

Under this doctrine, the state, by virtue of the authority granted by the Constitution, is the owner of all lands of the public domain as well as all natural resources. This system of state ownership was implanted in the Philippines as an extension of the Spanish legal system and remained in force through centuries of Spanish colonization.[14] Whether the regalian doctrine was later on adopted by the United States and maintained during American

[9] *Id.* at 604.

[10] *Id.* at 601. PHIL. CONST. Art. XIII, Sec. 1 (1935) (states the principle of State ownership and the regalian doctrine).

[11] 76 C.J.S. 508.

[12] PHIL. LAW DICTIONARY 804 (3d. ed. 1988).

[13] 2 ARUEGO, *supra* note 7, at 600.

[14] A. NOBLEJAS, PHILIPPINE LAW ON NATURAL RESOURCES 5 (1961).

colonial rule is uncertain. The Philippine Bill of 1902, however, which was passed by the United States Congress on July 7, 1908, placed

> all the property and rights which may have been acquired in the Philippine Islands, by the United States under the treaty of peace with Spain, signed December tenth, eighteen hundred and ninety-eight, except such land or other property as shall be designated by the President of the United States for military and other reservations of the Government of the United States,... *under the control of the government of the said islands* to be administered for the benefit of the inhabitants thereof, except as provided in this Act. (Emphasis added)[15]

The 1935 Constitution established the principle of state ownership and the regalian doctrine in Section 1 of Article XIII, The Conservation and Utilization of Natural Resources. Since then these two concepts or principles were reiterated in the 1973 and the 1987 constitutions. Under the present constitution, they can be found in Section 2, Article XII: The National Economy and Patrimony:

> All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State.

It is upon these two pillars -- State ownership and the regalian doctrine -- that the historical foundation of the country's constitutional policy on natural resources rests.

### 3. *The Prohibition on Alienation*

Although ownership of all lands and natural resources is vested in the State, its authority and power to alienate is limited to public agricultural lands. All other natural resources shall not be alienated.[16]

During the Spanish regime, the *Maura* law governed the disposition of lands of the public domain.[17] Under American rule the Philippine Bill of

[15] Philippine Bill of 1902, Sec. 12 (1902) (The Jones Law, which was passed on Aug. 29, 1916 and which provided for a more autonomous government in the Philippines, contained an almost identical provision).

[16] PHIL. CONST. Art. XII, Sec. 2.

[17] *See* NOBLEJAS, *supra* note 14, at 59.



1902 contained a prohibition on the alienation of timber and mineral lands.[18] The same bill, however, provided for the disposition of mineral lands by two means: by absolute grant or the "freehold system" and by lease. The 1935 Constitution retained the prohibition against alienation of natural resources after a heated debate between proponents of the "freehold system" and those for lease. Aruego summed up the arguments in support of the prohibition in this manner:

> (U)nder the leasehold system, the government could direct better the development and exploitation of the mineral resources; that monopoly would be eliminated; and that it would be easier for the government to collect the dues that should go to it. They added that the natural resources, particularly the mineral resources which constituted a great source of wealth, belonged not only to the generation then but also to the succeeding generations and consequently should be conserved for them.[19]

The 1973 Constitution also contained a similar prohibition, but, as mentioned earlier, it broadened the classification of alienable lands of the public domain. Under the 1987 Constitution the prohibition remains.

### *The Public Domain*

Land is the country's primary resource, and all lands belong to the state by virtue of the concept of *dominium* -- "the capacity of the state to own and alienate land."[20]

The lands falling under the State's domain are known as lands of the public domain. The concept of "public domain" refers to "lands belonging to the government and which are subject to sale or otherwise disposable under general laws, and not reserved or held back for any special governmental or public purpose."[21] A state holds the public domain as "absolute owner and is no sense a trustee except as it is organized and possessed all its property, functions and powers for the benefit of the people. As owners of the public

[18] Philippine Bill of 1902, Sec. 15 (1902).

[19] 2 ARUEGO, *supra* note 7, at 603.

[20] 2 J. BERNAS, S.J., THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES 419 (1988).

[21] BLACK'S LAW DICTIONARY 1393 (1951). *Also* 63A Am.Jur. 2D 486 (1963).

land the state has the same right and dominion over them that any owner would have, and may protect them from depredation."[22] Under the concept of public domain, the government and its grants are the "true source of title" to all lands in the country.[23]

Lands of the public domain are, under the 1987 Constitution, classified into four categories: agriculture, forest or timber, mineral lands, and national parks.[24] Except for "national parks," this classification of lands of the public domain is the same as that of 1935 Constitution. The addition of a fourth category, national parks, was made in order to segregate such lands "from existing timber lands and preserved permanently as forests for ecological and recreational purposes."[25] Some members of the 1986 Commission wanted to provide more concrete and specific measures to ensure the preservation of forests and national parks. Most of the Commissioners, however, felt that if they were to make explicit directions on what to do with these natural parks, they would already be legislating; thus, the Commissioners thought it sufficient to give constitutional recognition to "national parks" to put emphasis on the value of reserving them permanently for ecological and recreational purposes. They settled on general statements to serve as guidelines for future legislators and policy makers.

Returning to the 1935 classification of lands of the public domain was deemed necessary due to the perception among the framers of the 1987 Constitution that the 1973 classification[26] gave too much flexibility to the state in the disposition of the lands of the public domain. The 1973 classification of lands of the public domain included in addition to agricultural, forest or timber, and mineral lands, "industrial or commercial, residential, resettlement, and grazing lands." The members of the Commission saw this broad classification as what probably gave former President Marcos "tremendous leeway for declaring public lands alienable."[27]

The rationale for the change is to limit alienable lands of the public domain to public agricultural lands. This would prevent the widespread and indiscriminate disposition of public lands, especially timber and mineral lands, by the simple expedient of classifying such lands into industrial, commercial,

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[22] 73 C.J.S. 649 (1960).

[23] 42 Am.Jur. 783 (1963).

[24] PHIL. CONST., Art. VII, Sec. 3.

[25] 3 CONSTITUTIONAL COMMISSION RECORDS 253 (1986) [hereinafter cited as CONCOM].

[26] PHIL. CONST., Art. XIV, sec. 10 (1973).

[27] 3 CONCOM 265.



and residential or resettlement lands. The 1987 classification is also a safeguard against land speculation.[28]

With the return to the categories of the 1935 classification - agricultural, timber, and mineral lands - and now, including "national parks," it would seem that the jurisprudence on what is "public agricultural lands" would still apply.

*Public Agricultural Lands*

The Philippine Bill of 1902 first classified agricultural lands as those public lands acquired from Spain which are "neither mineral nor timber lands."[29] The term "agricultural lands" under the 1935 constitutional classification used to be construed as referring to those that are neither timber nor mineral lands.[30] This category of public lands was to be classified according to their character and productiveness. The decisions of the Supreme Court while the Philippine Bill of 1902 was in effect, and even after the 1935 Constitution, recognized sub-categories under public agricultural lands. Some of these are private residential lots,[31] fishponds,[32] and lands that though not actually used for agriculture but are susceptible for agriculture, and those the product of which do not directly result from the tillage of the soil.[33]

In any case, Congress may further classify agricultural lands of the public domain according to the uses they may be devoted.[34] Congress shall also determine, "by law, the size of the lands of the public domain which may be acquired, developed, held, or leased and the conditions thereof." But, in so doing, Congress must take into account "the requirements of conservation, ecology and development," and its determination must be "subject to the principles of agrarian reform."[35]

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[28] *See* Article on National Economy and Patrimony, in 2 UNIVERSITY OF THE PHILIPPINES LAW CENTER CONSTITUTION PROJECT 21 (1986) [hereinafter referred to as UPL 1986 CONSTITUTION PROJECT].

[29] Philippine Bill of 1902, sec. 13 (1902).

[30] N. PEÑA, PHILIPPINE LAW ON NATURAL RESOURCES 4 (rev. ed. 1982).

[31] *See generally* Krivenko v. Register of Deeds, 79 Phil. 461 (1947).

[32] *See* Molin v. Bafferty, 38 Phil. 461 (1918).

[33] *Id.*

[34] PHIL. CONST., Art. XIII, Sec. 3.

[35] *Id.* at Sec. 3, Para. 2.

It is worth noting that whatever limitations the Constitution imposes on ownership of lands by private citizens which, under Section 3, is 12 hectares, is still "subject to the principles of agrarian reform." It would mean, therefore, that the 12 hectare limitation must yield to the limitations imposed in Republic Act. No. 6657 or the Comprehensive Agrarian Reform Law. Section 3 of Article XII in connection with Section 6 of Article XIII supports this view:

> The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain under lease or concession suitable to agriculture.[36]

4. *The Exclusion of Aliens*

Excluding aliens from owning land and natural resources is deemed necessary not only to preserve the country's natural resources but also to guarantee the security of the State against foreign intrusion or domination in its internal affairs. Vicente G. Sinco provided the rationale for this principle:

> It should be emphatically stated that the provisions of our Constitution which limits to Filipinos the rights to develop the natural resources and to operate the public utilities of the Philippines is one of the bulwarks of our national integrity. The Filipino people decided to include it in our Constitution in order that it may have the stability and permanency its importance requires. It is written in our Constitution so that it may neither be the subject of barter nor be impaired in the give and take of politics. With our natural resources, our sources of power and energy, our public lands, and our public utilities, the material basis of the nation's existence, in the hands of aliens over whom the Philippine Government does not have complete control, the Filipinos may soon find themselves deprived of their patrimony and living as it were, in a house that no longer belongs to them.[37]

The 1973 Constitution maintained the prohibition of alienation of natural resources. And like the 1935 Constitution, it gave the State authority

[36] *See also* 2 BERNAS, *supra* note 20, at 435.

[37] *Id.* at 422.



to allow the exploration, exploitation, and development of natural resources by license, concession,or lease for a period of twenty-five years, renewable for another twenty-five years.[38] Under the 1987 Constitution, however, nothing is mentioned about "grant, lease, or concession"; instead, the State takes a more prominent role by directly undertaking "exploration, development, or utilization" or by "co-production, joint venture, or production-sharing agreements" with qualified individuals or corporations. Furthermore, such activities must be under the "full control and supervision of the State."

The alienable or disposable lands of the public domain is limited to public agricultural lands. And the sale or lease of such lands is reserved for Filipino citizens and qualified private corporation or association. Section 3, Article XII states:

> Private corporations or associations may not hold such lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof by purchase, homestead, or grant.

*Citizenship requirement*

Individual acquisition of alienable public lands is reserved exclusively for Filipino citizens; the maximum limit is twelve hectares.

Early in the American colonial occupation, the need to diffuse land ownership for political, social, and economic stability was recognized. The Philippine Bill of 1902 sets the limit of the sale or conveyance of "parts and portions of the public domain; other than timber and mineral lands, ... *not exceeding sixteen hectares to any one person...*"[39] Section 2, Article XIII, of the 1935 Constitution provided that no individual may "acquire such lands *by purchase in excess of one hundred and forty-four hectares*...or *by homestead in excess of twenty-four hectares.*" Section 11, Article XIV of the 1973 Constitution provided that no individual may acquire "*by purchase or homestead* in excess of twenty-four hectares." The 1987 Constitution reduces the allowable limit from twenty-four hectares to twelve hectares, whether "by purchase, homestead or grant." The word "grant" was meant to cover every

[38] PHIL. CONST., Art. XIII, Sec. 1 (1935). PHIL. CONST., Art. XIV, Sec. 8 (1973).

[39] Philippine Bill of 1902, sec. 15 (1902) (emphasis added).

other mode of disposition of land.[40] The large reduction was intended to diffuse further the ownership of land in order to benefit more people.

Although the general rule is that only Filipino citizens may own land, it is still possible, however,under certain circumstances, for foreign nationals to own alienable lands of the public domain in the Philippines. One such circumstance is through "hereditary succession" as provided in Section 7, Article XII: "Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain." The phrase "hereditary succession" in Section 7, however, should be interpreted as referring to intestate succession, meaning by operation of law; not testamentary succession, through a testament or will. To interpret this otherwise, would make the prohibition on alien ownership of lands of the public domain meaningless. Any foreigner can induce a Filipino landowner for a devise of a piece of land.[41]

Another instance wherein a citizen of a foreign country can acquire land in the Philippines is when former Filipino citizens decide to acquire land in this country. Section 8, Article XII provides that:

> Notwithstanding the provision of Section 7 of this Article, a natural-born citizen of the Philippines who has lost his citizenship may be a transferee of private lands subject to limitations provided by law.

The implications of this provision were brought out clearly in the following exchange:

> MR. RODRIGO. Before we vote on the whole section, under the phrase "natural-born citizen of the Philippines who has lost his citizenship," a natural-born citizen who has become an American citizen falls under this section.
>
> MR. VILLEGAS. Yes....
>
> MR. RODRIGO. If his children are American citizens they come under Section 6 (finally Section 7). So if this natural-born citizen who became an American citizen dies, his children who are not

[40] 3 CONCOM 589.

[41] Ramirez v. Vda. de Ramirez, 111 SCRA 704, at 714 (1982). *See also* H. DE LEON, TEXTBOOK ON THE PHILIPPINE CONSTITUTION 484 (1987); and NOBLEJAS, *supra* note 14, at 42-43.



> natural-born but American citizens inherit the land.
>
> MR. VILLEGAS. Yes....[42]

Section 8 was taken from a 1981 amendment to the 1973 Constitution, which provided that a natural-born citizen of the Philippines who has lost his citizenship may be a transferee of private land, for use by him *"as his residence,"* as the Batasang Pambansa may provide.[43] The 1987 Constitution, however, does not limit the purpose of such land to residential purposes the way the 1973 Constitution did. Instead, the framers left the discretion to Congress to determine the purpose and area for land transfers to former Filipino citizens. But before Congress passes a law on the matter, the limitations existing at the time of the adoption of the 1987 Constitution remain in force.[44]

*Disqualifying private corporations*

From the text of Section 3, Article XII, it may seem that no citizenship qualification is required for private corporations or associations to lease alienable lands. This must be read, however, in connection with Section 2, which states the general rule to be followed in the utilization of natural resources: "The state may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years under such terms and conditions as may be prescribed by law." Being a part of the country's natural resources, the utilization of alienable lands is covered by the requirements in Section 2. While corporations may not lease inalienable lands, the "tenor of the discussion" of Section 2 was that alienable lands may be leased to qualified corporations. Section 3 clearly states that corporations may hold alienable land by lease.[45]

The policy of disqualifying private corporations from acquiring lands of the public domain was first stated in the 1973 Constitution. This was a

[42] 3 CONCOM 604.

[43] PHIL. CONST., Art. XIV, Sec. 15 (1973).

[44] *See* 2 BERNAS, *supra* note 20, at 447 (The law governing this subject matter is Batas Pambansa Blg. 185 approved March 16, 1982).

[45] *Id.* at 429.

radical departure from the 1935 Constitution which allowed private corporations to own lands of the public domain. The 1987 Constitution maintains the 1973 policy.

The main purpose of limiting the acquisition of alienable public land is to "equitably diffuse land ownership or to encourage owner cultivatorship and economic family size farms and thereby prevent the recurrence of huge land holdings by corporators or private persons."[46] The constitutional prohibition was also, as suggested by Justice Teehankee in *Republic v. Judge Villanueva and Iglesia ni Kristo*, aimed against the undue exploitation of our public lands and natural resources by large corporations.[47]

Some Commissioners in the 1986 Constitutional Commission, particularly Commissioner Tadeo, asked what was to be done about existing leases in excess of the one thousand hectare limit such as those of multinationals like Dole and Del Monte. Mr. Villegas, Chairman of the Committee on the National Economy and Patrimony, replied that "they (multinationals and other corporations with leases exceeding the allowable limit) will have to comply with the Constitution..." Commissioner Tadeo probed further:

> MR. TADEO. Are they to be exempted because of prior rights?
>
> MR. MONSOD. The law is very clear. Even if the above mentioned corporations have prior rights, the adjustment might be made in the case of those who distributed these hectares of lands. That is where we consider just compensation or progressive or fair compensation. But the law is quite clear. There is a limit on what these corporations can hold.[48]

The discussion went into the possibility of reversion proceedings against private corporations holding leases exceeding the one thousand hectare limit, prompting Sister Tan to inquire thus:

> SISTER TAN. Would private corporations in this section include family corporations which own thousands of hectares of land? So, even if they got it from the King of Spain, they would have to give part of it; is that the understanding?
>
> MR. VILLEGAS. Yes, whatever corporation.

[46] *Id. citing* Lanson Ayog v. Judge Cusi, 118 SCRA 492 (1982).

[47] *Id. citing* 114 SCRA 875, AT 898 (1982).

[48] *See* 3 CONCOM 587.



> SISTER TAN. That is wonderful. Does it include friar lands that the church got from the King of Spain?
>
> MR. VILLEGAS. Yes.[49]

Finally, the answer given to the question on what was to be done with corporations leasing more than one thousand hectares of land was that the Transitory Provisions should contain a provision on reversion proceedings. Nothing, however, is said about reversion proceedings in the Transitory Provisions.[50]

What Section 21 of the Transitory Provisions states is: "The Congress shall provide efficacious procedures and adequate remedies for the reversion to the State of all lands of the public domain and real rights connected therewith which were acquired in violation of the Constitution and the public land laws or through corrupt practices act." Commenting on this provision, Bernas, in his Annotated Text says that "though the Rules of Court provide the procedures for escheat and reversion, there is no substantive basis for the procedure. Moreover, existing decisions of the Supreme Court involve lands acquired in violation of the Constitution or of the Public Land Law, but not those acquired through corrupt practices."[51] What can undergo the reversion proceedings provided by Section 21 of the Transitory Provisions are corporations holding leases beyond the area requirement acquired through the service contracts under the Marcos regime. Reversion proceedings will have to be instituted by the State.[52]

Private corporations, though prohibited from acquiring alienable public lands, are still allowed to acquire private lands. When lands ceases to be part of the public domain and becomes private land, the Supreme Court held in *Director of Lands v. Intermediate Appellate Court*, "the correct rule . . . is that alienable land held by a possessor, personally or through his predecessors-in-interest, openly, continuously and exclusively for the prescribed statutory period (30 years under the Public Land Act, as amended) is converted to private property by the mere lapse or completion of said period, *ipso jure*."[53]

[49] *Id.* at 588.

[50] 2 BERNAS, *supra* note 20, at 433. *See also* J. BERNAS, S.J., THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: AN ANNOTATED TEXT 126 (1987).

[51] 2 BERNAS, *supra* note 20, at 433, n.40. *See also* BERNAS, *supra* note 50, at 126, n.28.

[52] *See* BERNAS, *supra* note 50, at 85, n. 16.

[53] 146 SCRA 509, at 522 (1986).

5. *Inalienable Lands: Development and Utilization*

Only agricultural lands of the public domain can be alienated by the State. The Constitution provides other means to utilize "waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources."

Section 2, Article XII provides:

> The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. Such activities may be directly undertaken by the State, or it may enter into co-production, joint venture, production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period of not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law.[54]

Commissioner Davide's Interpellation of the Committee on National Economy & Patrimony clarifies the interpretation of this provision, and its implications.

> MR. DAVIDE. Under the proposal, I notice that except for the inalienable lands of the public domain, all the other natural resources cannot be alienated and in respect to lands of the public domain, private corporations with the required ownership by Filipino citizens can only lease the same. Necessarily, in so far as other natural resources are concerned, it would only be the State which can exploit, develop, and utilize the same. However, the State may enter into a joint venture, in production or production-sharing. Is that not correct?
>
> MR. VILLEGAS. Yes.
>
> MR. DAVIDE. Consequently, henceforth, upon the approval of this Constitution, no timber or forest concessions, permits, or authorization can be exclusively granted to any citizen of the Philippines nor to any corporation qualified to acquire lands of the public domain.

[54] PHIL. CONST., Art. XII, Sec. 2, Para. 1 (1987).



> MR. VILLEGAS. Would Commissioner Monsod like to comment on that? I think his answer is "Yes."
>
> MR. DAVIDE. So what will happen now to licenses or concessions earlier granted by the Philippine government to private corporations or to Filipino citizens? Would they be deemed repealed?
>
> MR. VILLEGAS. This is not applied retroactively. They will be respected.[55]

The State, therefore, may explore, develop, and utilize natural resources in conjunction with Filipino citizen and qualified corporations. The requirement for corporations or associations is that sixty per centum of their capital must be owned by Filipino citizens.[56]

There were attempts to increase the sixty percent requirement of Filipino capitalization. The amendments ranged from one hundred per cent Filipino capitalization to seventy-five per cent and to two-thirds capitalization; but all these attempts failed.[57] There was even an impassioned appeal by Commissioner Davide to the members of the Commission, "for the sake of future generations, that if we have to pray in the Preamble 'to preserve and develop the national patrimony for the sovereign people and the generations to come;' we must, at this time, decide once and for all that our natural resources must be reserved only to Filipino citizens."[58]

Commissioner Villegas answered Mr. Davide's appeal and justified the 60-40 equity ratio. According to the Chairman, the Committee on the National Economy and Patrimony had, after extensive discussion and public hearings, concluded that "60 per cent Filipino ownership is a sufficient guarantee that the national welfare is going to be preserved." Secondly, it was argued that the lack of domestic capital is "most acute in the exploration and development of natural resources because it is in these activities that there is very high risk, especially in oil exploration."[59] Thus,the 60-40 equity ratio in the 1935 and 1973 Constitutions were retained.

[55] 3 CONCOM 260.

[56] 3 CONCOM 255 ("Capital" refers to subscribed capital stock. But the rule applies even if the entity involved is not a stock corporation. The "grandfather rule" applies.).

[57] 3 CONCOM 361, 364, 365.

[58] 3 CONCOM 359.

[59] *Id.*

As for the lease period limit of 25 years, renewable for another 25, the rationale given was that 50 years is a sufficient time to attract foreign capital.

### C. Some Innovations

1. *State Activism*

A clear departure from earlier constitutions is the greater interventionist role of the State in the exploration, development, and utilization of natural resources.

The new role of the State as a direct or active participant in such activities is believed to be more advantageous than its former rather passive role. Under the licensing, concession, or lease schemes, the government benefited from such activities by collecting fees, charges, and taxes. The benefits to the state were negligible compared with the immense profits reaped by the licensees, concessionaires, or lessees who had complete control over the particular resource over which they enjoyed exclusive rights to exploit. Moreover, some, if not most of them, neglected or disregarded the conservation aspect of the license, concession, or lease agreements. With its new and more active role, the State will be able to secure a greater share in the profits. Furthermore, the State can conserve the country's natural resources more efficiently and manage them more responsibly for the benefit of its citizens.[60]

Complementing this more interventionist role, the State is given "full control and supervision" over exploitation activities. This, too, is a new concept. But what exactly is the meaning of the phrase "full control" is not clear. The only clue from the commission records of what "full control" meant occurred in the following exchange:

> MR. NOLLEDO . . . . I would like to know the meaning of the term "full control". In political law, when we talk of control, an authority can supersede the decision of a lower authority. Does it apply to this situation?
>
> MR. VILLEGAS. That proceeds from the statement that all natural resources are owned by the State. And so, that full control is deducted from the fact that these resources belong to the State. But then, the State can, of course, delegate some part of that control

[60] *See* 1 1986 UPL CONSTITUTION PROJECT, at 10-11.



> through lease of those that can be alienated.
>
> MR. NOLLEDO. Suppose a juridical entity is given the power to exploit natural resources and, of course, there are decisions made by the governing board of that juridical entity, can the State change the decisions of the governing board of that entity based on the "full control?"
>
> MR. VILLEGAS. If it is within the context of the contract, I think the State cannot violate the laws of the land.[61]

Unfortunately, Mr. Nolledo did not pursue his line of questioning on the subject. The only background we have is that "full control" does not mean the State can, at least under normal circumstances, overturn decisions of entities given the privilege of exploiting our natural resources, and that this power of "control" can be delegated.

2. *Presidential "Contractual Agreements"*

The 1987 Constitution provides for another method by which natural resources can be explored and utilized. Article, XII, Section 2, paragraph 4 states:

> The President may enter into agreements with foreign owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the state shall promote the development, and use of local scientific and technical resources.
>
> The President shall subsequently notify the Congress of every contract entered into in accordance with this provision within thirty days from its execution.

The agreements referred to in this section are what were known as "service contracts" under the 1973 Constitution, wherein the power to approve them was vested in the Batasan Pambansa. The 1973 Constitution did not mention the process of approval except that service contracts may be allowed

[61] 3 CONCOM 255.

in the "national interest."[62] It was Presidential Decree No. 151, dated March 13, 1973 that provided the implementation mechanism. P.D. No. 151 defined "service contract" and allowed Filipino citizens or qualified corporations to enter into such contracts for financial, technical, management, or other forms of assistance with any foreign person or entity. "No service contract shall be valid without the prior approval of the Secretary of Agriculture and Natural Resources."[63]

The members of the 1986 Commission regarded the service contracts under the past administration as merely another method of circumventing the prohibitions of the Constitution; thus, the phrase itself was consciously avoided.[64]

The present policy allowing service contracts or "presidential contractual agreements" differs in several aspects from those allowed in the past.

For one, the Constitution explicitly grants to the President - not Congress - the power to negotiate and enter into such agreements.[65]

Two, the scope of these agreements with foreign-owned corporations is restricted only to technical or financial assistance and limited to "large-scale exploration, development and utilization of minerals, petroleum, and other mineral oils." Under the 1973 Constitution, "assistance" covered not only financing and technology, but also management or other forms of assistance. With the former service contracts, exclusive management and control could be given to foreign service contractors; hence, legitimizing what was prohibited by the 1935 Constitution - the exploitation of the country's natural resources by foreign nationals. The present rule, on the other hand, "recognizes the need for foreign capital and technology to develop our natural resources without sacrificing our sovereignty and control over such resources since the foreign entity is just a pure contractor and not a beneficial owner

[62] PHIL. CONST., Art. XIV, Sec. 9 (1973) (The 1973 Constitution stated: "The Batasan Pambansa, in the national interest, may allow such Filipino citizens, corporations or associations to enter into service contracts for financial, technical, management, or other forms of assistance with any foreign person or entity for the exploration, development, exploitation, or utilization of any of the natural resources.").

[63] *See* 2 BERNAS, *supra* note 20, at 425-426.

[64] 3 CONCOM 278. *See also* 2 BERNAS, *supra* note 20, at 426.

[65] 3 CONCOM 348.



thereof."[66] Moreover, these agreements the President may enter into should involve only "large-scale" operations, which usually refer to very capital-intensive activities like, for example, petroleum mining and copper mining. The standard or measure to be applied is the requirement of capital; not the geographical size of the area involved. When asked if this could also include export-products, Commissioner Villegas said, "Definitely yes."[67] By the definition given by the Committee, the areas that presidential contractual agreements may cover are those where Filipino capital is deemed insufficient. Thus, lands of the public domain, timberlands forests, marine resources, fauna and flora, wildlife and national parks are beyond the scope of these agreements.[68]

The third aspect of the present policy on "service contracts", which distinguishes it from its 1973 predecessor are the safeguards against its abuse provided in the 1987 Constitution.

Since presidential contractual agreements must be entered into "in accordance with the general terms and conditions provided by law," the President can exercise this power only after Congress passes a general law on the subject matter. By "general law," the Committee on the National Economy and Patrimony explained that this did not mean mere "statements of motherhood. Congress can build all the restrictions that it wishes into that general law so that every contract entered into by the President under that specific area will have to be uniform. The President has no choice but to follow all the guidelines that will be provided by law."[69]

Some members of the Commission wanted a more stringent Congressional safeguard. There were proposals to make each and every agreement that the President may enter into subject to the concurrence of Congress. One proposal even called for a concurrence of 2/3 vote of all members of Congress sitting separately.[70]

But the members of the Commission agreed with the Committee's reasoning that requiring each and every contract to be approved by Congress would be unrealistic: each contract will turn out to be different from another even if they involve the utilization of the same type of natural resource. In addition, the extensive lobbying which will accompany every proposed agreement presented by the President to Congress for its approval may prove

[66] 1 1986 UNIVERSITY OF THE PHILIPPINES LAW CONSTITUTION PROJECT, at 11 (1986).

[67] 3 CONCOM 255.

[68] 3 CONCOM 355. *See also* 2 BERNAS, *supra* note 20, at 426.

[69] 3 CONCOM 350, *also* 348.

[70] 3 CONCOM 350.

too great a temptation that will only breed corruption among future legislators.[71]

Furthermore, presidential contractual agreements must not only be in accordance with the general law to be enacted by Congress, but they must also be "based on real contributions to economic growth", the "general welfare of the country," and "promote the development, and use of local and scientific and technical resources."

Finally, to ensure the President's compliance with the general law, the Chief Executive is required to "notify the Congress of every contract entered into in accordance with this provision within thirty days from its execution." Reporting to Congress will also keep legislators "abreast of the needs of the country," and thus, enable it to adjust the governing law if necessary.[72]

*The Waters and Marine Wealth*

The policy laid down for the utilization of our waters and marine wealth deserves a separate discussion. The general rule of the twenty-five year limit on agreements for the exploitation of our natural resources does not apply to "water rights for irrigation, water supply, fisheries, or industrial uses *other than* development of water power." In these cases, "beneficial use may be the measure and the limit of the grant."[73] This standard dates back to Section 19 of the Philippine Bill of 1902, and was retained by the earlier constitutions. The development of water power, on the other hand, being a potential force of energy, is covered by the general rule.

Regarding the country's marine resources, Article XII, Section 2, paragraph 2 provides that: "The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserves its use and enjoyment to Filipino citizens."

Protecting the national territory is a fundamental function and duty of the State. Article I defines national territory as including "its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine area. The waters around, between, connecting the islands of the archipelago, regardless of their breadth and dimensions . . . ."[74] It would seem, therefore, that

[71] *Id.*

[72] 3 CONCOM 351. *See also* 2 BERNAS, *supra* note 20, at 426.

[73] PHIL. CONST., Art. XII, Sec. 2, Para. 1.

[74] *Id.* at Art. I.



paragraph 2, Section 2 of Article XII is redundant.

The members of the Commission felt, however, a sense of urgency in light of the reckless exploitation of our marine resources, and the State's inability to protect our waters from foreign intrusion and exploitation. Commissioner Ople was one of the members who raised the alarm:

> May I call your attention to the fact that the deep-sea fishing fleets of the Philippines are just about gone. They cannot compete with Taiwanese, Korean, and Japanese fishing operators who routinely, habitually, and with total impunity intrude into our waters, depleting the marine resources that should be reserved to the exclusive exploitation and enjoyment of the Filipino people.[75]

The provision on marine wealth is meant to put emphasis on the crucial role of the State in protecting the country's marine resources, and to explicitly state that these resources should be for the use and enjoyment of only Filipino citizens. This policy, however, needs to be qualified.

"Archipelagic waters," under Article 49 of The Convention of the Law of the Sea, are "all waters enclosed by the baseline depths as archipelagic waters, regardless of their depths and distances from the coast, as well as over the seabed, subsoil and resources."[76] The "territorial sea" is defined as the "belt of the sea located between the coast and the internal waters of the coastal state, on the one hand, and the high seas, on the other hand," which is not to exceed 12 nautical miles.[77] Both these areas are considered "internal waters" over which a coastal state has jurisdiction; however, innocent passage shall be allowed subject to regulation by the coastal state. Reserving the "archipelagic waters" and "territorial sea" for the exclusive use of Filipino citizens will pose no problem.

But when we speak of "exclusive economic zone", some problems might arise. This area, which is "beyond and adjacent to the territorial sea not to exceed 200 nautical miles,"[78] is part of the "high seas", and therefore, subject to the general principles of international law. As a signatory to the Convention of the Law of the Sea, the Philippines has, among other prerogatives,

[75] 3 CONCOM 686.

[76] COQUIA AND M. DEFENSOR-SANTIAGO, PUBLIC INTERNATIONAL LAW 396 (1984) *citing* The Convention on the Law of the Sea, Article 49.

[77] *Id.* at 372, 374.

[78] *Id.* at 413.

(a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the sea-bed and subsoil and the superjacent waters, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents, and the winds.[79]

A controversy may come up when we try to enforce this policy of exclusivity against countries who are not signatories to the Convention on the Law of the Seas. A special problem might arise with respect to Japan because of the Treaty of Amity, Commerce, and Navigation between the Philippines and Japan signed in 1960. "But there should be no difficulty if Japan is a signatory to the recent Convention on the Law of the Sea."[80]

*Mineral Lands*

Mineral lands may be defined as lands "containing deposits of valuable, useful or precious minerals in such quantities as to justify expenditures in the effort to extract them, and which are more valuable for the minerals they contain than for agricultural or other uses."[81] Under Presidential Decree No. 463, the term "minerals" embraces all naturally occurring inorganic substances in solid, liquid, or any intermediate state, including coal. Soil, which supports organic life, sand and gravel, guano, petroleum, geothermal energy and natural gas are included in this term."[82]

During the Spanish rule, the disposition, exploration, and development of mineral lands in the Philippines were governed by the Royal Decree of May 14, 1867. In addition, the Spanish Civil Code (Article 339) made mines and minerals susceptible of private appropriation by means of grants from the State. Under the regalian doctrine, minerals are owned by the State wherever they may be found, whether in public lands or private lands.[83] During the American regime, the fundamental law on mining was incorporated in the Philippine Bill of 1902.

Under the 1987 Constitution, the country's mineral resources may be explored, developed, and utilized through direct activity by the State, or in

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[79] *Id.*

[80] 2 BERNAS, *supra* note 20, at 424 n. 23.

[81] BLACK'S LAW DICTIONARY 897 (5th ed. 1979).

[82] PENA, *supra* note 30, at 87.

[83] *Id.* at 84.



active participation through joint ventures or production-sharing schemes with corporations the capital of which are at least sixty percent Filipino-owned. The exploitation of mineral lands are also subject to "presidential contractual agreements" with foreign-owned corporations provided such agreements are limited to technical and financial assistance, and other conditions set forth in paragraphs 4 and 5, section 2, Article XII.

*Timber or Forest lands*

Forest is defined as a "large tract of land covered with a natural growth of trees and underbrush. It does not embrace land only partly woodland; it is a tract of land covered with trees, usually of considerable extent.[84]

Section 4 of Article XII states that:

Congress shall, as soon as possible, determine by law the specific limits of forest lands and national parks, marking clearly their boundaries on the ground. Thereafter, such forest lands and national parks shall be conserved and may not be increased or diminished, except by law. Congress shall provide for such periods as it may determine, measures to prohibit logging in endangered forests and watershed areas.

Under this provision, existing boundaries of forests and national parks are to be conserved. It is not clear if the Commission intended Congress to reevaluate existing laws on forests, and come up with new legislation marking clearly and specifically their boundaries. In any case, these boundaries become permanent; only another law can alter them.

Concerned with the deteriorating state of the country's forests, some members of the 1986 Commission pressed for a ban on logging for a specific period of time. But the Commission eventually agreed that there are just too many technical questions involved in reforestation that they did not think they had the competence, time, and resources to make explicit statements about forest policies.[85] For national parks, however, it is understood that no logging whatsoever will be permitted.[86]

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[84] Ramos v. Director of Lands, 39 Phil. 175, at 181. *See also id.* at 139.

[85] 3 CONCOM 258.

[86] *Id.*

*Ancestral Lands*

One of the State's policies as declared in Article II: Declaration of Principles and State Policies, Section 22 is that: "The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development."

In connection with this provision, Article XII, Section 5 provides that:

> The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.
>
> The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of the ancestral domain.

Section 5 expressly recognizes the legal existence and identity of indigenous cultural communities, and their rights to their ancestral lands. The most serious problem that these communities face is that of ownership of lands they have occupied and cultivated since time immemorial. The divergent concepts of ownership between indigenous customary law and the "modern" legal system are the roots of injustice indigenous Filipinos have suffered for centuries. For these cultural communities, land is essentially communal property belonging to a tribe or a clan as a whole; exclusive title to one person or family is an alien concept. Forced to deal with the legal system imposed upon them, their problems are aggravated by poverty and illiteracy, which puts them at a great disadvantage in articulating their needs, most specially their claim to ownership, within the legal system.[87]

Section 5 provides the opportunity for policy innovation, through legislation, that would recognize and implement "indigenous customary laws governing proprietary rights or relations as part of the laws of the land, in defining the ownership and extent of ancestral domain."

The clear intent behind this provision, which serves as a guide to what future legislation should contain was given by Commissioner Bennagen, a member of the Committee on the National Economy and Patrimony:

> The phrase "ancestral domain" is a broader concept than ancestral land. The former includes land not yet occupied, such as deep forests, but which generally is regarded as belonging to a cultural

[87] *See* 1 UPL 1986 CONSTITUTION PROJECT, *supra* note 28, at 16.



> community or region. It is the extent of the "ancestral domain", not merely ancestral land, that is to be determined by Congress. And the ancestral domain referred to includes both those within the autonomous regions and outside.[88]

*Small-scale Utilization*

A significant policy innovation in the 1987 Constitution is the provision on small-scale utilization. "The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons."[89] This provision recognizes the plight of forest-dwellers, gold pawners, marginal fishermen and others similarly situated who exploit our natural resources for their daily sustenance and survival.[90]

"Small-scale" utilization refers to "single proprietorships and, therefore, to individuals". "Camote-mining" in Cebu was cited as an example of small-scale utilization. The term also covers cooperative fish farming and similar aggrupations.[91]

The concept of small-scale utilization can be better understood in connection with Section 6 under Agrarian and Natural Resources Reform, Article XIII on Social Justice and Human Rights:

> The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of natural resources, including lands of the public domain under lease or concession suitable to agriculture, subject to prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands.

As stated, the principles of agrarian reform or stewardship shall be applied in the disposition or utilization of natural resources whenever applicable and in accordance with law. The fundamental principle in agrarian reform is that land must be given to the tiller. For other natural resources, such as forestry or mining, the intent of this provision, according to the Committee, is:

[88] 3 CONCOM 257-8.

[89] PHIL. CONST., Art XII, Sec. 2 Para. 3.

[90] *See* 1 UPL 1986 CONSTITUTION PROJECT, *supra* note 28, at 11.

[91] 3 CONCOM 255.

> (M)erely to say that in applying the principle of agrarian reform, the chief beneficiaries should be the people in the areas. So, instead of having absentee logging concessions owned by people outside the area, the people in the area and the communities themselves should be considered, too, as the principal beneficiaries.[92]

One of the avenues available for implementing reform in the utilization of natural resources is that of "stewardship", wherein people are entrusted with the land, but title need not be given to them. It can be the same kind of concessions or rights that are now given under the law. Or in legal terms, "usufructuary." The expectation is, that since the people in the area have their roots there, spanning generations, and will most likely continue for generations more, they will take better care of the land, including its reforestation.[93]

In the discussion of how the stewardship principle shall apply, the members of the Commission repeatedly referred to the 600,000 *kaingineros* in the country as a concrete example. Instead of the "slash and burn" method, the *kaingineros* can be given usufruct over areas of forests, and the State shall give them all the assistance and support, but they will not receive titles.[94]

The provision on "small-scale utilization" makes special mention of cooperative fish farming, and the subsistence fishermen and fishworkers; they are to be given priority in the utilization of marine resources. Mentioning specifically subsistence fishermen was intended to stress the need to address their problems. The discussion on this subject centered on the worsening problems in Laguna Lake, where large fishpens owned by powerful families and corporations have deprived the "small fisherfolk" around the bay of their means of livelihood. In addition to the worsening socio-economic conditions is the environmental damage in the lake's ecosystem.

So serious is the plight of the subsistence fisherman that the 1987 Constitution contains another provision addressing the issue under the Social Justice article. Article XIII, Section 7:

> The State shall protect the rights of subsistence fishermen, especially of local communities, to the preferential use of the communal marine and fishing resources, both inland and offshore. It shall provide support to such fishermen through appropriate technology and research, adequate financial, production, and

[92] 2 CONCOM 702.

[93] *Id.*

[94] 3 CONCOM 40-41.



> marketing assistance, and other services. The State shall also protect, develop, and conserve such resources. The protection shall extend to offshore fishing grounds of subsistence fishermen against foreign intrusion. Fishworkers shall receive a just share from their labor in the utilization of marine and fishing resources.

There is no doubt that preferential - but not exclusive - treatment is to be extended to "subsistence fishermen." As to who these subsistence fishermen are can be gleaned from the broad guidelines offered by Commissioner Ople:

> The phrase "subsistence fishermen" should be used liberally in the sense that it should not be restricted to the poorest fishermen who are on the edge of existence day to day and who will perish if they do not fish tomorrow . . . Some fishermen may be a little bit more affluent than the others, but by the standard of the really big commercial fishing vessels, they are all subsistence fishermen. And so, the intent of the proposal is almost all encompassing with respect to real and actual fishermen in the area who fish for a living.[95]

Clearly, State protection contemplated here is to "small" fishermen as opposed to commercial fishing. And the State is directed to intervene actively in the fishing sector by providing financial and logistical support. The State's protection must extend against "foreign intrusion", which according to the Constitutional Commission records, means *any* form of intrusion, including foreign capital.[96] The addition of fishworkers was included to encompass the entire sector, which is not, as commonly perceived, composed merely of fishermen, but also of those who work in the piers, the warehouses, and canneries, who have been victims of exploitation in the crudest form.

## III. CONCLUSION

What is most conspicuous about the evolution of the constitutional policy on natural resources is that the major premises first articulated in the 1934 Constitutional Convention remain valid today. The injustices caused by an inequitable distribution of land, the question of alien domination in the exploitation of natural resources, and the problem of land and agrarian reform

[95] 2 CONCOM 68.

[96] 3 CONCOM 55.

are still major issues that need to be resolved.

On the inequitable distribution of land, the 1987 Constitution provided for an agrarian reform program that "takes into account ecological, developmental, or equity considerations, and subject to payment of just compensation."[97] In addition, the rights of small landowners are to be respected, and voluntary sharing shall be encouraged. But, just as with land and agrarian reform programs in the past, controversies are rife regarding the meaning of "just compensation." And since the details of the policy are left to the discretion of a Congress dominated by landowners, a genuine agrarian reform program remains elusive. The present Comprehensive Agrarian Reform Law and the scandal-ridden manner of its implementation confirm this view.

On the question of foreign intrusion or dominance in our economy and the exploitation of our national patrimony, pragmatism prevails. The requirement of sixty percent Filipino capitalization first established in the 1935 Constitution is still perceived as sufficient to enable Filipinos to control foreign influence and at the same time take advantage of capital and technology from foreign sources. Ironically, the 1934 delegates imposed the 60-40 equity ratio as a means not to attract foreigners, but to hamper their exploitation activities. The choice was between opening up to foreign capital and technology in order to develop or utilize the country's natural resources more rapidly or to risk a slow process of utilization with Filipino capital. They chose the latter, believing that it was a risk that had to be taken. However, at the 1972 Convention and the 1987 Commission, the emphasis appears to be more on how not to discourage foreign capital. There seems to be a lack of appreciation of the possibility that over reliance on foreign capital and technology may be the main reason why our own capitalists and industrialists have failed for several decades to increase their capital and improve local technology through research and development.

Significant modifications, however, on the role of the State and the controversial service contracts of the past, may secure our natural resources from foreign control or intrusion.

With its new "activist" role, the State can more effectively fulfill its duty as the custodian of our natural patrimony. By directly undertaking exploration and development, or by participating actively in such activities under profit-sharing arrangements with qualified private corporations, the State can exercise greater control over management decisions. Under this set-up, the State can regulate effectively and manage responsibly the utilization of our natural resources.

97 PHIL. CONST., Art. XII, Sec. 4.



Making or taking an active role in management decisions has two distinct advantages. One, policies on the conservation or preservation of natural resources can be enforced more vigorously. And two, the State can be held accountable for any decisions detrimental to the environment or prejudicial to the national interest.

On the modified service contracts or presidential contractual agreements, the 1987 Constitution provides sufficient safeguards against the recurrence of past abuses. The provisions are explicit: these contracts are restricted to financial or technical assistance. The intent is clear: they shall cover only areas where Filipino capital is inadequate. The checks against the President's power are substantial: Congress must first pass a law to guide the Chief Executive's decisions, and he or she must report to Congress within thirty days after the execution of the contract.

*Recognition of Other Sectors*

For decades, national attention and policy considerations have been focused on the social unrest and economic maladies brought about by the inequitable distribution of land. The plight of the landless tiller of the soil has, for a long time, been the primary concern of legislators and policy-makers -- understandably so. But, the attention given the farming sector was to the detriment of other sectors. Now, other sectors are given constitutional recognition.

The plight of the "subsistence" and "small" fishermen, concomitant with the need to protect our marine sources, are major policy areas in the 1987 Constitution. The provisions in this area -- the conservation of marine wealth, its exclusive use by Filipino citizens and preferably "subsistence fishermen," State protection against foreign intrusion, State logistical and financial support for this sector -- all point to nothing less than a comprehensive reform program for the fishing sector. What is needed now, and what the Constitution calls for, is a detailed program or legislation embodying the constitutional principles for the reform of the fishing sector.

Another sector that has finally gained constitutional recognition is the indigenous cultural communities. There is no doubt about the spirit and the letter of the fundamental law: indigenous Filipinos have a right to their ancestral domain. The Constitution has gone beyond the usual statements of the need for respect and tolerance of diverse cultures in a pluralistic and democratic society, and other cliches. It recognizes the fundamental problem of clashing concepts of property ownership, and calls for some kind of reconciliation or resolution.

But the task will be extremely difficult. Already, legislative proposals

to delineate ancestral domain are facing strong opposition in the legislature. At this time, the most that can be said about the Constitutional policy on indigenous Filipinos is that the opportunity is now there to claim their right to their ancestral lands.

*Small-Scale Utilization and Natural Resources Reform*

Throughout the evolution of the constitutional policy on natural resources, the promotion of small landholdings is a goal believed to be necessary to address the problems of the inequitable distribution of land. Having more independent farmers engaged in small and medium scale agriculture would improve not only social conditions but also advance economic development through effective utilization of the land. Under the 1987 Constitution, this principle is applied to other natural resources.

The Constitution mandates the application of the "principles of agrarian reform" to other natural resources. It also provides the option of "stewardship" or usufructuary relations. The Constitution also allows "small-scale" utilization. These three concepts, taken together, comprise a major area of policy on natural resources reform: decentralization.

This development is significant because it shows a substantial shift of priorities from the traditional bias in favor of large corporations or entities, where the benefits of utilization of natural resources are concentrated in a few hands, towards individuals, families, or communities where the benefits are distributed widely. From this diffusion of ownership, or at least utilization, improvements in social, economic, and even political conditions will follow.

One particular area where decentralization through any of these three concepts will be useful is in the conservation and reforestation of the country's forests. Applying the principles of agrarian reform or stewardship will encourage forest dwellers or indigenous communities to participate in, and cooperate with, conservation and reforestation policies. Being familiar with their area, their involvement will be useful in the planning, implementation, and enforcement of State programs and policies. Since these people are directly affected by changes in their environment, their views will be invaluable for any program to succeed.

There will also be problems, however, with decentralization, particularly with the concept of "small-scale" utilization. The prevailing conditions of the country's natural resources makes their conservation and preservation a top priority. In this respect, stricter regulation is necessary. The proliferation of "small-scale" utilization, particularly of our mineral resources, where chemical wastes are involved, will make regulation more difficult. Regulation is, therefore, a crucial factor to be considered in any future policy.



In retrospect, the Constitution tried to address old problems and dilemmas. Concerning the national patrimony: it is necessary to redistribute land but within the liberal conception of private property; foreign capital and technology are valuable, but our sovereignty must be guarded zealously; the role of the State must be strengthened to protect and conserve our resources, but decentralization is necessary to diffuse wealth and promote social justice. The Constitution can only provide general policies and principles, or the structure within which the State can act. The legislators, policy-makers, opinion moulders, and the people must do the rest.