

Right to Water, Right to Life

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I. INTRODUCTION

In July of 2010, with the Philippines experiencing annual droughts,¹ a newspaper article reported that the Government is using troops to implement water rationing and quell any possible water riots.² During early 2010 and the summer season, the drought has forced the country to cut back on water consumption, irrigation, and power generation.³ According to the

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Cite as 55 *ATENEO L.J.* 1042 (2011).

1. See Carlos H. Conde, *Philippines 'Bracing for the Worst' in Drought*, *N.Y. TIMES*, Feb. 19, 2010, available at <http://www.nytimes.com/2010/02/20/world/asia/20phils.html> (last accessed Feb. 25, 2011).
2. TJ Burgonio, et al., *Gov't calls in troops to avert water riots*, *PHIL. DAILY INQ.*, July 23, 2010, available at <http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20100723-282643/Govt-calls-in-troops-to-avert-water-riots> (last accessed Feb. 25, 2011).
3. Conde, *supra* note 1.

report, “[a]t least four battalions or roughly 2,000 soldiers from the National Capital Region” will be deployed to “restore order and avert any riot in at least 177 *barangays* (villages) in Metro Manila.”⁴

To address water shortage, water utilities sent water tankers directly to consumers.⁵ “Reports of residents muscling their way in long queues at water pumps or scrambling to get to water tankers” and an incident in the city of Malabon where residents (mostly squatters) destroyed a main water pipeline to get water⁶ seemed to validate troop response. Maynilad, a water utility company, was even quoted asking the Department of National Defense for soldiers to secure water lines and water tankers.⁷

President Benigno “Noynoy” S. Aquino III eventually denied the use of troops.⁸ “You only bring out troops to suppress [lawless elements],”⁹ said President Aquino, who dismissed the incident in Malabon as an “isolated case.”¹⁰

Nevertheless, that the deployment of a standing army in the nation’s capital was considered a viable option for water security highlights a volatile potential for societal collapse. Under the 1987 Constitution of the Philippines, the President, as Commander-in-Chief of the Armed Forces, can “call out such [A]rmed [F]orces to prevent or suppress lawless violence, invasion, or rebellion,”¹¹ with the only criterion being “whenever it becomes necessary.”¹² This extraordinary power does not even need Congressional approval or authorization; it is solely within the prerogative of the Chief Executive.¹³

Water, as an essential element for life, is sometimes taken for granted. But it is a limited and sometimes a non-renewable resource. It is used for

4. Burgonio, et al., *supra* note 2.

5. *Id.*

6. *Id.*

7. *Id.*

8. Abigail Kwok, *Aquino denies troop deployment over water crisis*, PHIL. DAILY INQ., July 23, 2010, available at <http://newsinfo.inquirer.net/breaking-news/nation/view/20100723-282696/Aquino-denies-troop-deployment-over-water-crisis> (last accessed Feb. 25, 2011).

9. See PHIL. CONST. art. VII, § 18. This Article provides that “[t]he President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion.” *Id.*

10. Kwok, *supra* note 8.

11. PHIL. CONST. art. VII, § 18.

12. *David v. Macapagal-Arroyo*, 489 SCRA 161, 242 (2006).

13. *Integrated Bar of the Philippines v. Zamora*, 338 SCRA 81, 107 (2000).

nutrition, irrigation, hygiene, energy, and industry.¹⁴ The small but volatile incident in Malabon and rumors of troop deployment raise questions on the right to water as a legal and binding human right.

On one hand, the Malabon residents scrambling for water is telling of an abject poverty and water shortage that drove them to destroy property. On the other hand, would they be justified in resorting to violence for survival? The water shortage scenarios can be extended further to comprehend water regulation, access, and control. Is water rationing legal if it guarantees equal access to water? With privatized water utilities in the country,¹⁵ would a government take-over of operations be justified by the right to water?¹⁶

This Essay does not intend to answer the scenarios described above. This Essay, instead, explores the justiciability of the right to water, the status of water as a human right both from a domestic and global perspective, as well as current conditions which propel the right to water to the forefront. In the process, the Author examines the Constitution, various statutes, jurisprudence,¹⁷ and international instruments. Also, recognition is given to Section 2, Article II of the Constitution, providing that the Philippines “adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.”¹⁸

14. See *Our Environment: Promoting Environmental Sustainability, Importance of Water*, available at <http://www.sawse.org/Training.html> (last accessed Feb. 25, 2011).

15. The privatized Metropolitan Waterworks and Sewerage System (MWSS) and the privately-owned Manila Water Co., Inc. both operate within the National Capital Region. For a discussion on water privatization in the capital, see generally Xun Wu & Nepomuceno A. Malaluan, *A Tale of Two Concessionaires: A Natural Experiment of Water Privatisation in Metro Manila*, 45 URB. STUD. 1, 207-29 (2008).

16. See PHIL. CONST. art. XII, § 17. This Article provides that “[i]n times of national emergency, when the public interest so requires, the State may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any privately-owned public utility or business affected with public interest.” *Id.*

For a discussion on this government take-over power, see generally *David*, 489 SCRA at 248-57.

17. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, art. 8 (1950). This Article provides that “[j]udicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.” *Id.*

18. PHIL. CONST. art. II, § 2.

II. THE RIGHT TO WATER AS A SUBSTANTIVE RIGHT

A substantive law “creates, defines or regulates rights concerning life, liberty or property, or the powers of agencies or instrumentalities for the administration of public affairs, whereas rules of procedure are provisions prescribing the method by which substantive rights may be enforced in the courts of justice.”¹⁹ This distinction between substantive and procedural or remedial rights is crucial because, while the Author concedes that there is no local law which explicitly declares the right to water, he argues that the constellation of recognized sources of laws in the Philippines all point to water as a human right.

The right to water as a substantive right subjugates an entire body of remedial law for its protection. This is important, not only for validly applying the Rules of Court, but also other rules which may be promulgated by the Supreme Court which remain un-codified.²⁰ As held in *Fabian v. Desierto*,²¹ a valid rule of procedure is the “judicial process for enforcing rights and duties recognized by *substantive law*.”²² It also “operates as a means of implementing an *existing right*.”²³

Finally, it is “the nature and the purpose of the law which determines whether it is substantive or procedural, and not its place in the statute or its inclusion in a code.”²⁴ By examining local laws, jurisprudence, and international instruments, this Essay affirms the right to water as a justiciable human right.

III. DOMESTIC WARDSHIP

A. The 1987 Constitution

Initial provisions of the Constitution treat water as a property right rather than a human right. Article I of the Constitution defines the country’s national territory where the State properly exercises sovereignty or jurisdiction:

The national territory comprises the Philippine archipelago, with all the islands and *waters* embraced therein, and all other territories over which the Philippines has *sovereignty or jurisdiction*, consisting of its terrestrial, *fluvial* and

19. *Primicias v. Ocampo, et al.*, 93 Phil. 446, 452 (citing 1 MANUEL V. MORAN, COMMENTS ON THE RULES OF COURT 4 (1952 ed.)).

20. See RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, A.M. No. 09-6-8-SC, Apr. 29, 2010.

21. *Fabian v. Desierto*, 295 SCRA 470 (1998).

22. *Id.* at 492 (emphasis supplied).

23. *Id.* (emphasis supplied).

24. 1 FLORENZ D. REGALADO, REMEDIAL LAW COMPENDIUM 19 (10th ed. 2010).

aerial domains, including its *territorial sea*, the seabed, the subsoil, the insular shelves, and other submarine areas. The *waters around, between, and connecting the islands of the archipelago*, regardless of their breadth and dimensions, form part of the internal *waters* of the Philippines.²⁵

Section 2 of Article XII on National Patrimony treats waters as a natural resource to be exploited, regulated, and, in some instances, limited enjoyment only to Philippine citizens:

All lands of the public domain, *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* are owned by the State ... The exploration, development, and utilization of natural resources shall be under the *full control and supervision of the State* ... In cases of water rights for irrigation, water supply fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.²⁶

Nevertheless, a few provisions of the Constitution support, or at least protect, a right to water. Article II, Sections 15 and 16 accord water a place in State policy.²⁷ Section 15 provides that “[t]he State shall protect and promote the right to health of the people and instill consciousness among them.”²⁸ Section 16 also provides that “[t]he 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.”²⁹ These two Sections treat public health as a primary consideration to which water is essential. Furthermore, Section 16 indicates a “clear desire to make environmental protection and ecological balance conscious objects of police power.”³⁰

As seen below in this Essay, a number of laws have been enacted to protect the environment and the ecological balance. Jurisprudence also expounds further on Section 16.

B. Statutory Protection

While there are a number of laws that can conceivably have some impact on water, a few specifically regulate the appropriation, development, exploitation, and conservation of water resources, which will be discussed below.

25. PHIL. CONST. art. I (emphasis supplied).

26. PHIL. CONST. art. XII, § 2 (emphasis supplied).

27. PHIL. CONST. art. II, §§ 15 & 16.

28. PHIL. CONST. art. II, § 15.

29. PHIL. CONST. art. II, § 16.

30. JOAQUIN G. BERNAS, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 90 (2009 ed.).

1. The Water Code of the Philippines

Presidential Decree (P.D.) No. 1067³¹ or the Water Code of the Philippines establishes State ownership of all waters.³² Therefore, the State “may allow the use or development of waters by administration concession.”³³ Furthermore, the “utilization, exploitation, development, conservation, and protection of water resources” are subject to the control and regulation of the National Water Resources Council (now the National Water Resources Board)³⁴.³⁵

Waters, as used in the Code, are defined as “water under the grounds, water above the ground, water in the atmosphere, and the waters of the sea within the territorial jurisdiction of the Philippines.”³⁶

The State’s guardianship over waters is extensive, to the point that appropriation of this resource requires a “water permit.”³⁷ Appropriation is defined as the “acquisition of rights over the use of waters or the taking or diverting of waters from a natural source in the manner and for any purpose allowed by law.”³⁸ The Code enumerates the purposes for which water may be appropriated:

- (a) Domestic;
- (b) Municipal;
- (c) Irrigation;
- (d) Power generation;
- (e) Fisheries;
- (f) Livestock raising;
- (g) Industrial;
- (h) Recreational; and

31. A Decree Instituting a Water Code, Thereby Revising and Consolidating the Laws Governing the Ownership, Appropriation, Utilization, Exploitation, Development, Conservation and Protection of Water Resources [WATER CODE], Presidential Decree No. 1067 (1976).

32. *Id.* § 3 (a). This in turn is based on the constitutional delineation of national territory in Article I of the 1987 Constitution. *See* PHIL. CONST. art. I.

33. WATER CODE, art. 3 (c).

34. *See generally* Office of the President, Reconstituting the National Water Resources Board, Executive Order No. 123 (Sep. 12, 2002).

35. WATER CODE, art. 3 (d).

36. *Id.* art. 4.

37. *Id.* art. 13.

38. *Id.* art. 9.

(i) Other purposes.³⁹

Domestic use of water is the “utilization of water for *drinking*, washing, bathing, cooking or other household needs, home gardens, and watering or lawns or domestic animals.”⁴⁰ Municipal use of water involves “supplying the water requirements of the community.”⁴¹ The Code also establishes a preference in the appropriation of water, thus:

Between two or more appropriation of water from the same sources of supply, priority in time of appropriation shall give the better right, except that in times of emergency, the use of water for *domestic and municipal purposes* shall have a better right over all other uses; *Provided*, That where water shortage is recurrent and the appropriator for municipal use has a lower priority in time of appropriation, then it shall be his duty to find an alternative source of supply in accordance with conditions prescribed by the Council.⁴²

Also, in Article 95, the Code states that “[w]hen priority in time of appropriation from a certain source of supply cannot be determined, the order of preference in the use of the waters shall be as follows:”

- (a) Domestic and municipal use;
- (b) Irrigation;
- (c) Power generation;
- (d) Fisheries;
- (e) Livestock raising;
- (f) Industrial use; and
- (g) Other uses.⁴³

As noted above, the country’s principal codification of water regulation and water rights gives preference to the domestic and municipal use of water.

2. The National Water Crisis Act of 1995

Republic Act (R.A.) No. 8041⁴⁴ or the National Water Crisis Act of 1995 was specifically enacted to “adopt urgent and effective measures to address the nationwide water crisis which adversely allocate the *health and well-being*

39. *Id.* art. 10.

40. *Id.* (emphasis supplied).

41. WATER CODE, art. 10.

42. *Id.* art. 22 (emphasis supplied).

43. *Id.* art. 95.

44. An Act to Address the National Water Crisis and for Other Purposes [National Water Crisis Act of 1995], Republic Act No. 8041 (1995).

of the population, food production, and industrialization process.”⁴⁵ The strong measures adopted by this Law include the privatization of state-run water utilities,⁴⁶ imposition of penal sanctions for acts detrimental to water supply and water access,⁴⁷ and the organization of the Joint Executive-Legislative Water Crisis Commission.⁴⁸

The Water Crisis Commission is a recommendatory body which streamlines the national policy and structure on water supply and distribution.⁴⁹ Beyond conducting studies and recommending policies, its only real power is to “designate by resolution the watershed areas in which developmental undertakings are to be suspended.”⁵⁰

3. The Philippine Clean Water Act of 2004

R.A. No. 9275⁵¹ or the Philippine Clean Water Act of 2004 addresses the more technical aspects of clean water, water pollution, and quality control. Section 2 declares a sustainable state policy of “economic growth in a manner consistent with the protection, preservation and revival of the quality of our fresh, brackish, and marine waters.”⁵² To this end, the State shall “formulate a holistic national program of water quality management that recognizes that water quality management issues cannot be separated from concerns about *water sources and ecological protection, water supply, public health, and quality of life.*”⁵³

The Act creates a National Water Quality Management Fund, administered by the Department of Environment and Natural Resources (DENR), primarily for “finance containment and clean-up operations of the government in water pollution cases.”⁵⁴ The Act likewise establishes an Area Water Quality Management Fund to maintain designated water quality

45. *Id.* § 2 (emphasis supplied).

46. *Id.*

47. *Id.* §§ 9-11.

48. *Id.* § 3.

49. *Id.* § 4.

50. National Water Crisis Act of 1995, § 5 (b).

51. An Act Providing for a Comprehensive Water Quality Management and for Other Purposes [Clean Water Act of 2004], Republic Act No. 9275 (2004).

52. *Id.* § 2.

53. *Id.* § 2 (c) (emphasis supplied).

54. *Id.* § 9 (a).

management areas,⁵⁵ which are water bodies or water resources most susceptible to pollutants.⁵⁶

The Act also imposes water pollution permits and charges in the form of discharge permits of wastewater.⁵⁷ Conversely, it grants rewards in the form of fiscal and non-fiscal incentives for water pollution projects and technologies.⁵⁸

C. *Judicial Affirmation*

Jurisprudence in the Philippines has developed to respond to the needs of public health, contribute to people's consciousness of environmental concerns, and aid in the maintenance of the ecological balance. In 2008, the Supreme Court designated 117 environmental courts "to handle all types of environmental cases, including violations of the Fisheries Code (R.A. No. 8550)⁵⁹ and violations of the [National Integrated Protected Areas System] Act (R.A. No. 7586),⁶⁰ among others."⁶¹

At this point, three cases indicating the ecological stance adopted by the Supreme Court will be examined: *Oposa v. Factoran, Jr.*,⁶² *Laguna Lake Development Authority v. Court of Appeals*,⁶³ and *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*.⁶⁴

55. *Id.* § 10.

56. *Id.* § 5.

57. Clean Water Act of 2004, §§ 13 & 14.

58. *Id.* §§ 25 & 26.

59. An Act Providing for the Development, Management and Conservation of the Fisheries and Aquatic Resources, Integrating All Laws Pertinent Thereto, and for Other Purposes [FISHERIES CODE OF 1998], Republic Act No. 8550 (1998).

60. An Act Providing for the Establishment and Management of National Integrated Protected Areas System, Defining its Scope and Coverage, and for Other Purposes [National Integrated Protected Systems Act of 1992], Republic Act No. 7586 (1992).

61. Supreme Court, Re: Environmental Courts and Forestry Courts, A.M. No. 07-11-12-SC (Jan. 22, 2008).

62. *Oposa v. Factoran, Jr.*, 224 SCRA 792 (1993).

63. *Laguna Lake Development Authority v. Court of Appeals*, 251 SCRA 42 (1995).

64. *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*, 574 SCRA 661 (2008).

1. *Oposa v. Factoran, Jr.*

There are several novel features in *Oposa*. It is the first application of Section 16, Article II of the Constitution as a self-executing right.⁶⁵ Furthermore, the Supreme Court applied Section 16 with the twin concepts of “inter-generational responsibility” and “inter-generational justice.”⁶⁶

The controversy stemmed from a group of minors and the Philippine Ecological Network, Inc. seeking to cancel timber license agreements (TLA) executed between the DENR and several commercial logging corporations, as well as to prevent the DENR from “receiving, accepting, processing, renewing or approving new [TLAs].”⁶⁷ They alleged a number of “environmental tragedies” including, among others, “water shortages resulting from drying up of the water table, otherwise known as the ‘aquifer,’ as well as of rivers, brooks and streams” and “salinization of the water table as a result of the intrusion therein of salt water, incontrovertible examples of which may be found in the island of Cebu and the Municipality of Bacoor, Cavite.”⁶⁸

The Minors “assert that they represent their generation as well as generations yet unborn.”⁶⁹ The Court validated the Minors’ personality to sue based on inter-generational responsibility, in relation to Section 16, Article II of the Constitution.⁷⁰ The Court explained the concept that “every generation has a responsibility to the next to preserve the rhythm and harmony for the full enjoyment of a balanced and healthful ecology.”⁷¹ By bringing the case to court, the Minors merely asserted their right to enjoy a balanced and healthful ecology while at the same time performing “their obligation to ensure the protection of that right for the generations to come.”⁷²

The Court granted the petition, justifying the cancellation of TLAs based on Section 16, Article II of the Constitution which carries “the correlative duty to refrain from impairing the environment.”⁷³ This also

65. BERNAS, *supra* note 30, at 90.

66. *Oposa*, 224 SCRA at 795-96.

67. *Id.* at 796-97.

68. *Id.* at 797.

69. *Id.* at 802.

70. *Id.* at 802-03.

71. *Id.* at 803.

72. *Oposa*, 224 SCRA at 803.

73. *Id.* at 805.

includes the “judicious management and conservation of the country’s forests.”⁷⁴ It explained that —

[S]uch a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation — aptly and fittingly stressed by the petitioners — the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind. If they are now explicitly mentioned in the fundamental charter, it is because of the well-founded fear of its framers that unless the rights to a balanced and healthful ecology and to health are mandated as state policies by the Constitution itself, thereby highlighting their continuing importance and imposing upon the state a solemn obligation to preserve the first and protect and advance the second, the day would not be too far when all else would be lost not only for the present generation, but also for those to come — generations which stand to inherit nothing but parched earth incapable of sustaining life.⁷⁵

2. *Laguna Lake Development Authority v. Court of Appeals*

That the right to a balanced and healthy ecology does not need a statutory or jurisprudential affirmation may perhaps explain the Supreme Court’s decision in *Laguna Lake Development Authority*. The controversy sprang from a conflict of jurisdiction between the Laguna Lake Development Authority (LLDA) and local government units (LGUs) over the fishery rights of Laguna de Bay.⁷⁶ The LLDA was created by R.A. No. 4850⁷⁷ or the Laguna Lake Development Authority Act of 1966, as amended by P.D. No. 813.⁷⁸

The law mandated the LLDA to develop the Laguna de Bay area but with “due regard and adequate provisions for environmental management and control, preservation of the quality of human life and ecological systems, and the prevention of undue ecological disturbances, deterioration and pollution.”⁷⁹ R.A. No. 4850 stated that the LLDA “shall have exclusive jurisdiction to issue new permit for the use of the lake waters for any projects

74. *Id.* at 805-06.

75. *Id.* at 805.

76. *See Laguna Lake Development Authority*, 251 SCRA at 55.

77. An Act Creating the Laguna Lake Development Authority, Prescribing its Powers, Functions and Duties, Providing Funds Therefor, and for Other Purposes [Laguna Lake Development Authority Act of 1966], Republic Act No. 4850, as Amended (1966).

78. Amending Certain Sections of Republic Act Numbered Forty Eight Hundred Fifty, Otherwise Known as the “Laguna Lake Development Authority Act of 1966,” Presidential Decree No. 813 (1975).

79. Laguna Lake Development Authority Act of 1966, § 1.

or activities in or affecting the said lake including navigation, construction, and operation of fishpens, fish enclosures, fish corrals[,] and the like.”⁸⁰ This gave the LLDA the sole authority to issue and collect on fishing privileges within the Laguna de Bay area.

Section 149 of the Local Government Code of 1991,⁸¹ however, states that “[m]unicipalities shall have the exclusive authority to grant fishery privileges in the municipal waters and impose rental fees or charges.”⁸² This was interpreted by the LGUs as transferring the LLDA function to their jurisdiction.⁸³ The result was an unchecked proliferation of fishpens and fishcages in violation of LLDA policies.⁸⁴ By July 1995, the Court observed that unregulated fishpens and fishcages mushroomed to cover a third of the lake area.⁸⁵

Resolving this dispute, the Court held that the Laguna Lake Development Authority Act of 1966, being a special law, prevails over the Local Government Code of 1991, a law of general application.⁸⁶ Hence, the provisions of the Local Government Code did not repeal the authority of the LLDA.⁸⁷

At the outset of the decision, however, the Court saw this incident as a balancing act “between environmental protection, on the one hand, and the individual personal interests of people, on the other.”⁸⁸ The Court made this pronouncement:

It is difficult for a man, scavenging on the garbage dump created by affluence and profligate consumption and extravagance of the rich or fishing in the murky waters of the Pasig River and the Laguna Lake or making a clearing in the forest so that he can produce food for his family, to understand why protecting birds, fish, and trees is more important than protecting him and keeping his family alive.⁸⁹

80. *Id.* § 4 (k).

81. An Act Providing for a Local Government Code of 1991 [LOCAL GOVERNMENT CODE OF 1991], Republic Act No. 7610 (1991).

82. *Id.* § 149 (a).

83. *Laguna Lake Development Authority*, 251 SCRA at 52.

84. *Id.*

85. *Id.*

86. *Id.* at 56–57.

87. *Id.* at 56.

88. *Id.* at 47.

89. *Laguna Lake Development Authority*, 251 SCRA at 47.

3. *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*

With severe accumulation of waste rendering Manila Bay unsafe for bathing and other forms of recreational activities, residents of Manila Bay successfully obtained a Writ of *Mandamus* to compel various government agencies to clean up and rehabilitate Manila Bay.⁹⁰ The agencies challenged the court order, arguing that the cleanup of Manila Bay is not a ministerial act which may be compelled by *mandamus*.⁹¹

The Supreme Court ruled otherwise, holding that, based on the body of law in force, the concerned government agencies have a ministerial duty which can be compelled by *mandamus*, though the manner in which they are to perform that act is left to their discretion.⁹²

The Metropolitan Manila Development Authority (MMDA), for example, is mandated by its charter⁹³ and the Ecological Solid Waste Management Act of 2000,⁹⁴ to implement waste management in accordance with law.⁹⁵ Furthermore, the Court affirmed the *mandamus* as a “continuing *mandamus*,” which is described as directives under extraordinary circumstances “with the end in view of ensuring that [the Court’s] decision would not be set to naught by administrative inaction or indifference.”⁹⁶

At the end of the decision, the Court harked back to the right to a balanced and healthful ecology and noted that:

[E]ven assuming the absence of a categorical legal provision specifically prodding petitioners to clean up the bay, they and the men and women representing them cannot escape their obligation to future generations of Filipinos to keep the waters of the Manila Bay clean and clear as humanly as possible. Anything less would be a betrayal of the trust reposed in them.⁹⁷

90. *Metropolitan Manila Development Authority*, 574 SCRA at 667-69.

91. *Id.* at 669.

92. *Id.* at 671.

93. An Act Creating the Metropolitan Manila Development Authority, Defining its Powers and Functions, Providing Funds Therefor and for Other Purposes, Republic Act No. 7924, § 3 (c) (1995).

94. An Act Providing for an Ecological Solid Waste Management Program, Creating the Necessary Institutional Mechanisms and Incentives, Declaring Certain Acts Prohibited and Providing Penalties, Appropriating Funds Therefor, and for Other Purposes [Ecological Solid Waste Management Act of 2000], Republic Act No. 9003, §§ 36 & 37 (2001).

95. *Metropolitan Manila Development Authority*, 574 SCRA at 672.

96. *Id.* at 688.

97. *Id.* at 692.

4. The Rules of Procedure for Environmental Cases

In April of 2010, the Supreme Court promulgated the Rules of Procedure for Environmental Cases.⁹⁸ The Rules are to govern civil, criminal, and special civil actions before Regional Trial Courts, Municipal and Metropolitan Trial Courts, and Municipal Circuit Trial Courts “involving enforcement or violations of environmental and other related laws, rules and regulations.”⁹⁹ Those laws include the Water Code and the Clean Water Act.¹⁰⁰

The Rules incorporate many of the ecological principles developed in law and jurisprudence. The objectives of the Rules include the protection and advancement of the constitutional right to a balanced and healthful ecology¹⁰¹ and to “provide a simplified, speedy and inexpensive procedure for the enforcement of environmental rights and duties.”¹⁰²

The Rules also recognize a citizen suit as one made “in representation of others, including minors or generations yet unborn” to enforce rights or obligations under environmental laws.¹⁰³

But perhaps the most salient features of the Rules are the Writs of *Kalikasan* and Continuing *Mandamus*. The Writ of *Kalikasan* is

a remedy available to a natural or juridical person, entity authorized by law, people’s organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.¹⁰⁴

If the Writ is granted, it would either enjoin the respondent to “permanently cease and desist from committing acts or neglecting the performance of a duty in violation of environmental laws resulting in environmental destruction or damage”¹⁰⁵ or direct the respondent to

98. See generally RULES OF PROCEDURE FOR ENVIRONMENTAL CASES.

99. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 1, § 2.

100. *Id.* § 2 (e) & (w).

101. *Id.* § 3 (a).

102. *Id.* § 3 (b).

103. *Id.* rule 2, § 5.

104. *Id.* rule 7, § 1.

105. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 1, § 15 (a).

“protect, preserve, rehabilitate or restore the environment,”¹⁰⁶ as well as to comply with monitoring and reporting requirements.¹⁰⁷

On the other hand, the Writ of Continuing *Mandamus* is available

[w]hen any agency or instrumentality of the government or officer thereof unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station in connection with the enforcement or violation of an environmental law rule or regulation or a right therein, or unlawfully excludes another from the use or enjoyment of such right and there is no other plain, speedy and adequate remedy in the ordinary course of law.¹⁰⁸

If the Writ is granted, the court will require the government agency or instrumentality to “perform an act or series of acts decreed by final judgment which shall remain effective until judgment is fully satisfied.”¹⁰⁹

The Rules of Procedure for Environmental Cases is the latest among many judicial actions protecting the constitutional right to a healthy and balanced ecology. With this constitutional right firmly encased in the legal psyche, affirming a legal and binding right to water as a human right cannot be far behind.

IV. GLOBAL CONSENSUS

The United Nations (U.N.) declared the year 2003 as the “International Year of Freshwater,” partly to reassert and reaffirm U.N. Millennium Development Goal 7: to “[r]educe by half the proportion of people without sustainable access to safe drinking water and basic sanitation” by 2015.¹¹⁰

The right to water is both “explicit and implicit” in several international human rights instruments,¹¹¹ belonging to a category of rights “necessary to ensure the right to an adequate standard of living.”¹¹² One observation from these instruments is that a right to water has been emerging, first implicitly, then explicitly. As seen below, the last decade has seen a resurgence of recognition as water as a basic human right.

106. *Id.* § 15 (b).

107. *Id.* § 15 (c) & (d).

108. *Id.* rule 8, § 1.

109. *Id.* rule 1, § 3 (c) & rule 8, § 7.

110. Ramin Pejan, *The Right to Water: The Road to Justiciability*, 36 GEO. WASH. INT'L L. REV. 1181, 1181 (2004). See also G.A. Res. 55/2, at 19, U.N. GAOR, 55th Sess., U.N. Doc. A/Res/55/2 (2000).

111. Pejan, *supra* note 110, at 1184.

112. *Id.*

A. International Human Rights Instruments

The Universal Declaration of Human Rights (UDHR)¹¹³ provides, in Article 25, the “right to a standard of living for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services.”¹¹⁴ The word “including” signifies a non-exhaustive enumeration which conceivably encompasses water.¹¹⁵

Aside from the UDHR, other instruments provide more evidence as to this implicit right. Article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹¹⁶ provides a similar declaration with the UDHR as it recognizes “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”¹¹⁷ With more regard to health, Article 12.1 recognizes the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”¹¹⁸

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)¹¹⁹ forwards an agenda of equality for women everywhere on the basis of human dignity.¹²⁰ Article 14 (2) (h) of the Convention explicitly guarantees “water supply” with respect to rural women.¹²¹ As part of eliminating gender discrimination against rural women, parties to the Convention must ensure that the former will “enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and *water supply*, transport and communications.”¹²²

The Convention on the Rights of the Child¹²³ recognizes that children need special care and protection.¹²⁴ Article 24 of the Convention obligates state parties to guarantee access to “the highest attainable standard of

113. G.A. Res. 217A (III), at 71, U.N. Doc. A/810 (Dec. 10, 1948).

114. *Id.*

115. Pejan, *supra* note 110, at 1184.

116. International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

117. *Id.* art. 11.1.

118. *Id.* art. 12.1.

119. Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

120. *Id.* intro.

121. *Id.* art. 14 (2) (h).

122. *Id.* (emphasis supplied).

123. Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

124. *Id.* pmb1.

health.”¹²⁵ Considering environmental pollution, the appropriate measures to ensure the health of a child include combating disease and malnutrition by providing “adequate nutritious food and *clean drinking-water*.”¹²⁶ Accordingly, Article 27 recognizes standards of living “adequate for the child’s physical, mental, spiritual, moral, and social development” as beneficial for children and obligations for states.¹²⁷

Early statements and declarations on the right to water are subsumed under general conditions of well-being, health, and adequate living. Recent international instruments, however, have been more explicit in arguing for water as a human right. Numerous instruments, including those discussed below, affirm the right to water.

B. The Dublin Principles

The International Conference on Water and the Environment in Dublin, Ireland, held on 26–31 January 1992, produced the Dublin Statement on Water and Sustainable Development,¹²⁸ otherwise known as the Dublin Principles.¹²⁹ The Dublin Principles laid out four guidelines in addressing water security and the management and allocation of freshwater as a resource.¹³⁰

These Principles are:

Principle No. 1: Fresh water is a finite and vulnerable resource, essential to sustain life, development and the environment;

...

Principle No. 2: Water development and management should be based on a participatory approach, involving users, planners[,] and policy-makers at all levels;

...

Principle No. 3: Women play a central part in the provision, management[,] and safeguarding of water; and

...

Principle No. 4: Water has an economic value in all its competing uses and should be recognized as an economic good.¹³¹

¹²⁵ *Id.* art. 24 (1).

¹²⁶ *Id.* art. 24 (2) (c) (emphasis supplied).

¹²⁷ *Id.* art. 27 (1).

¹²⁸ International Conference on Water and Sustainable Development, Dublin Statement on Water and Sustainable Development, A/CONF.151/PC/112 (Jan. 31, 1992) [hereinafter Dublin Principles].

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.* princ. 1–4.

Principle No. 1 affirms the role of fresh water in life.¹³² Principle No. 2 calls for an inclusive and democratic approach to policy decisions on water as it affects the public in general.¹³³ Principle No. 3 speaks of a gender-based institutionalized approach to water management as well as providing for gender-specific needs.¹³⁴ The more controversial principle, however, is Principle No. 4, categorizing water as an economic good rather than a universal right.¹³⁵ This view has been linked to cost recovery and privatization of water utilities.¹³⁶ Apologists, however, interpret this principle as favoring industrial over agricultural use in a situation where high water crops would be disadvantageous to an economy.¹³⁷ With this interpretation, the preference for domestic and municipal use would still be served.

C. General Comment No. 15

I. Defining the Human Right to Water

General Comment No. 15¹³⁸ is the “most exhaustive and authoritative elaboration of the right to adequate water” as drafted by the Committee on Economic, Social, and Cultural Rights, “the treaty body charged with interpreting and monitoring the ICESCR.”¹³⁹ According to its definition,

[T]he human right to water entitles everyone to sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal, and domestic hygienic requirements.¹⁴⁰

132. *Id.* princ. 1.

133. *Id.* princ. 2.

134. Dublin Principles, *supra* note 128, princ. 3.

135. *Id.* princ. 4 & Patrick Moriarty, et. al., Integrated Water Resources Management and the Domestic Water and Sanitation Sub-Sector, An IRC International Water and Sanitation Centre Thematic Overview Paper, 8, available at http://www.irc.nl/redir/content/download/11479/168383/file/IWRM_Final_.pdf (last accessed Feb. 25, 2011).

136. Moriarty, et. al., *supra* note 135, at 8.

137. *Id.*

138. U.N. Comm. Econ., Soc. & Cultural Rts. [CESCR], *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights*, General Comment No. 15, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003) [hereinafter General Comment No. 15].

139. Pejan, *supra* note 110, at 1185.

140. General Comment No. 15, *supra* note 138, ¶ 2.

As observed in the Comment, there is an “[i]nterrelation between the right to water, the right to life, and other human rights,” with all human rights being “indivisible or interdependent.”¹⁴¹ Thus,

[W]ater is required for a range of different purposes, besides personal and domestic uses, to realize many of the Covenant rights. For instance, water is necessary to produce food (right to adequate food) and ensure environmental hygiene (right to health). Water is essential for securing livelihoods (right to gain a living by work) and enjoying certain cultural practices (right to take part in cultural life). Nevertheless, priority in the allocation of water must be given to the right to water for personal and domestic uses. Priority should also be given to the water resources required to prevent starvation and disease, as well as water required to meet the core obligations of each of the Covenant rights.¹⁴²

Moreover, the right to water “must be *adequate* for human dignity, life and health.”¹⁴³ The word *adequate* is to be understood not merely in terms of quantity or, seemingly contrary to the Dublin Principles,¹⁴⁴ “economic good,” but as a “social and cultural good” in terms of sustainability for present and future generations.¹⁴⁵

While adequacy may vary, it always involves the following factors: (a) availability, (b) quality, and (c) accessibility.¹⁴⁶

The availability of water must be “sufficient and continuous for personal and domestic uses.”¹⁴⁷ Water quality must be safe for drinking and free from waterborne diseases and should be “of an acceptable [color], [odor], and taste for each personal or domestic use.”¹⁴⁸

General Comment No. 15 also provides for a non-discriminatory stance in terms of access to water, especially to “vulnerable and marginalized” sectors of society.¹⁴⁹ Water accessibility includes both physical and economic accessibility, with water facilities being within reach of homes, schools, and

141. Pejan, *supra* note 110, at 1190.

142. General Comment No. 15, *supra* note 138, ¶ 6.

143. *Id.* ¶ 11.

144. Dublin Principles, *supra* note 128, princ. 4.

145. General Comment No. 15, *supra* note 138, ¶ 11.

146. *Id.* ¶ 12.

147. *Id.* ¶ 12 (a).

148. *Id.* ¶ 12 (b).

149. *Id.* ¶ 12 (c) (iii).

workplaces, as well as being affordable.¹⁵⁰ Also, “[p]hysical security should not be threatened during access to water facilities and services.”¹⁵¹

A further feature of accessibility is included by the Comment as information accessibility or the “right to seek, receive[,] and impart information concerning water issues.”¹⁵²

2. State Obligations

In general, states have the obligation to work efficiently and expeditiously towards the “full realization of the right to water.”¹⁵³ As with all human right, the right to water imposes three distinct obligations on states: (1) to respect, (2) to protect, and (3) to fulfill.¹⁵⁴

The obligation to respect precludes interfering with others’ right to the enjoyment of water, whether for domestic, industrial, or cultural reasons.¹⁵⁵ This includes refraining from activity, including water pollution, or infrastructure development, which limits or defeats others’ right to water.¹⁵⁶

The obligation to protect requires states to enact legislative and executive measures and restraints to prevent third parties from denying others access to water.¹⁵⁷ Third parties include private individuals, juridical entities, as well as state agents under authority.¹⁵⁸ Internationally, states also have the obligation to respect other countries’ water rights and ensure that their own citizens do the same.¹⁵⁹ The Comment also categorically states that water “should never be used as an instrument of political and economic pressure.”¹⁶⁰

The obligation to fulfill is, on the other hand, “disaggregated into the obligations to facilitate, promote[,] and provide.”¹⁶¹ Towards the full realization of the right, states are mandated to adopt low-cost measures to ensure a secure and affordable and equitable water distribution, especially to

150. *Id.* ¶ 12 (c) (i) & (ii).

151. General Comment No. 15, *supra* note 138, ¶ 12 (c) (i).

152. *Id.* ¶ 12 (c) (iv).

153. *Id.* ¶ 17.

154. *Id.* ¶ 20.

155. *Id.* ¶ 21.

156. *Id.*

157. General Comment No. 15, *supra* note 138, ¶ 23.

158. *Id.*

159. *Id.* ¶ 31.

160. *Id.* ¶ 32.

161. *Id.* ¶ 25.

disadvantaged groups.¹⁶² Furthermore, water conservation technologies and strategies are mandated to ensure water sustainability, considering various climate, geographical, and environmental changes.¹⁶³

D. United Nations Initiatives

In 2006, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights to conduct a “detailed study on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation” under international law.¹⁶⁴

In 2007, the High Commissioner proclaimed that it is “now time to consider access to safe drinking water and sanitation as a human right, defined as the right to equal and non-discriminatory access to a sufficient amount of safe drinking water for personal and domestic uses ... to sustain life and health.”¹⁶⁵ Furthermore, “States should prioritize [] personal and domestic uses over other water uses and should take steps to ensure ... sufficient amounts [] of good quality, affordable for all, and can be collected within a reasonable distance from a person’s home.”¹⁶⁶

It is to be noted that the right to water includes sanitation as part of the broader right to adequate standards of living and the right to health.

In September of 2010, the Human Rights Council issued a Resolution on Human Rights and Access to Safe Drinking Water and Sanitation¹⁶⁷ directly affirming the “human right to safe drinking water and sanitation” as “derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity.”¹⁶⁸

162. *Id.* ¶ 27.

163. General Comment No. 15, *supra* note 138, ¶ 28.

164. U.N. Hum. Rts. Council [UNHRC], *Human Rights and Access to Safe Drinking Water and Sanitation*, Dec. 2/104, Human Rights and Access to Water (Nov. 27, 2006).

165. United Nations High Commissioner for Human Rights, Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments, ¶ 66, delivered to the sixth Session of the Human Rights Council, U.N. Doc. A/HRC/6/3 (Aug. 16, 2007) [UNHCHR Report on Water].

166. *Id.*

167. UNHRC, *Human Rights and Access to Safe Drinking Water and Sanitation*, U.N. Doc. A/HRC/15/L.14 (Sep. 24, 2010) [hereinafter UNHRC Resolution].

168. *Id.* ¶ 3.

The Resolution also reaffirms the role of states in ensuring the “full realization of all human rights” and their role in the equitable delivery of water.¹⁶⁹ Moreover, the Resolution stresses the role of international cooperation and technical assistance by states and specialized, developmental, and donor agencies to adopt a human rights approach to water initiatives in attaining the relevant Millennium Development Goals.¹⁷⁰

With the Human Rights Council’s Resolution on Human Rights and Access to Safe Drinking Water and Sanitation, the right to water is reaffirmed as a legally binding right.

The U.N.’s Millennium Development Goals highlight the inaccessibility of water to a large population. General Comment No. 15 is guided by principles of equitable and affordable access to water, as well as sustainable use and management.¹⁷¹ Water has a function necessary to the enjoyment of economic, social, and cultural rights. It is also interrelated and interdependent with other human rights. Like other human rights, states have the obligation to work for its protection and realization.¹⁷²

V. FROM A HUMAN RIGHT TO A GLOBAL COMMODITY: THE NEW OIL?

Climate change and increasing population have driven water resources to the point of near depletion and freshwater crisis. Greenpeace Southeast Asia reports that the water distribution is unevenly distributed, thus creating “[d]isparities between water supply and demand.”¹⁷³ Water shortage is further compounded by a lack of a clear water allocation formula to govern water use.¹⁷⁴ With these conflicts in supply and usage, the Water Code’s principle of first in time priority in right¹⁷⁵ “may no longer be an equitable approach in resolving such conflicts.”¹⁷⁶

Industrial competition for water rights is also a unique problem. For instance, Benguet Corporation, a United States mining firm, holds 65 water appropriation permits that compete with domestic and agricultural needs in

169. *Id.* ¶ 6. See also UNHRC Resolution, *supra* note 167, ¶ 8.

170. UNHRC Resolution, *supra* note 167, ¶ 10.

171. See generally General Comment No. 15, *supra* note 138.

172. *Id.*

173. GREENPEACE SOUTHEAST ASIA, THE STATE OF WATER IN THE PHILIPPINES 29 (2007).

174. *Id.*

175. WATER CODE, art. 22.

176. GREENPEACE SOUTHEAST ASIA, *supra* note 173, at 29.

the Municipality of Itogon, Benguet.¹⁷⁷ This is also the case with the mineral water plant owned by Nestle Philippines, Inc. in San Pablo City, Laguna.¹⁷⁸

Depleted groundwater resources also limit water sources, as groundwater wells have become cost-effective sources of water for domestic needs due to the inadequacies in water delivery by major utilities.¹⁷⁹

Weak and fragmented government regulation,¹⁸⁰ climate change, commercial logging, and watershed deterioration all point to an emerging freshwater crisis in the Philippines.¹⁸¹ All these factors make it difficult for the Philippines to comply with local statutes and ICESCR obligations, not only on account of water distribution efficiencies, but also of depleting water supply.

Blue Lake in Sitka, Alaska holds trillions of gallons of pure freshwater which excessively serves fewer than 10,000 people in the region.¹⁸² With 6.2 billion gallons of freshwater going unused annually, Sitka has been provided an opportunity to exploit and export its vast reserves of water.¹⁸³ Two American companies, True Alaskan Bottling and S2C Global, have arranged for the purchase, transport, and bottling of Sitka's waters from Alaska to Mumbai, India, and finally to the Middle East.¹⁸⁴ While the "transfer of water is nothing new," the vast distance of transfer and the vast quantities of transfer from public to private hands worry critics.¹⁸⁵ The commodification of water as a resource has begun.

As water reserves dwindle and human waste pollutes the rest, water infrastructure is costing countries more and more to supply their water needs.¹⁸⁶ This creates a demand, which private firms that can provide water infrastructure and countries with vast water reserves, can exploit.¹⁸⁷ In China, ever-depleting groundwater has forced the government to rely on

177. *Id.* at 30.

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.* at 31.

182. Jeneen Interlandi, *The New Oil*, NEWSWEEK, Oct. 8, 2010, available at <http://www.newsweek.com/2010/10/08/the-race-to-buy-up-the-world-s-water.html> (last accessed Feb. 25, 2011).

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

private firms with the capacity to dig deeper for water, raising water prices throughout the country.¹⁸⁸

The bottom line is this: “that water is essential to life makes it no less expensive to obtain, purify, and deliver, and does nothing to change the fact that as supplies dwindle and demand grows, that expense will only increase.”¹⁸⁹ Water’s economic inelasticity means that no matter how much it costs, it is still needed.¹⁹⁰ Because of this, there is actually less incentive for profit-driven firms to conserve water.¹⁹¹ Also, if there is one thing that says water is the new oil, it is that

in between the countries that will profit from the freshwater crisis, and those that will buy their way out of it, are the countries that have neither water to sell nor money with which to buy it. In fact, if there’s one thing water has in common with oil, it’s that people will go to war over it. Already, Pakistan has accused India of diverting too much water from rivers running off the Himalayas; India, in turn, is complaining that China’s colossal diversion of rivers and aquifers near the countries’ shared border will deprive it of its fair share; and Jordan and Syria are bickering over access to flows from a dam [that] the two countries built together.¹⁹²

Former U.N. Secretary General Boutros Boutros-Ghali once was quoted saying: “the next war in the Middle East will be fought over water, not politics.”¹⁹³

VI. CONCLUSION

The various international instruments all point to a global consensus that water is a justiciable and fundamental human right. Local laws and jurisprudence all afford the right to water protection under the constitutional right to a healthful and balanced ecology. Yet circumstances beyond human intervention, such as climate change and geographical and geopolitical events, stretch state assets to realize this right.

Recognizing the right to water is one thing, realizing it is another. State institutions have to do more in terms of sustainable water distribution, management, and conservation.

188. Interlandi, *supra* note 182.

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.*

193. WATER IN THE MIDDLE EAST: POTENTIAL FOR CONFLICTS AND PROSPECTS FOR COOPERATION I (Waltina Scheumann & Manuel Schiffler eds., 1998).