From Pronouncement to Enforcement: Bridging the Gap in Law to Promote and Protect the Right to a Decent Environment

*Herbert A. Loja**

I. INTRODUCTION 740
II. THE *OPOSA MINORS* CASE 742
III. BUILDING ON THE LEGACY OF *OPOSA* 748
IV. ANTICIPATING WITH GREAT ENTHUSIASM: THE CONTINUING ELABORATION OF *OPOSA* 751
V. LAYING A BRICK NEXT TO *OPOSA* 752
VI. CONCLUSION 755

I. INTRODUCTION

This Essay views the elaboration of the international right to a decent environment not just as a significant process, but as an essential undertaking towards a clearer and better understanding of the right. Experience has shown that issues concerning the right are inescapably dynamic. In the immediate term, when novel questions on the environment for which no international norm has yet been developed, or no legislation has yet been crafted, are brought before the judiciary for determination, the courts may seize upon the opportunity to navigate the legal uncertainty and bridge the gap in the law to promote and protect the right. In the long term, judicial decisions and pronouncements on these emerging concepts and principles may evolve into national and regional practice, and possibly, international acceptance and establishment of international norms.

In expounding this premise, this Essay will draw validation from the judicial experience of the Philippines, reflected in the domestication of budding norms and nascent principles in international environmental law by way of judicial pronouncements. These pronouncements began in the case

* '13 LL.M., University of Hong Kong; '93 LL.B., Xavier University — Ateneo de Cagayan. The Author is the Chief Political Affairs Officer at the Office of the Honorable Monique Yazmin Q. Lagdameo of the House of Representatives.

This Essay is based on the Paper submitted in partial fulfilment of the requirements for LLAW 6037 (International Environmental Law) of the Master of Laws in Human Rights Programme 2012-2013 at the University of Hong Kong.

Cite as 58 ATENEO L.J. 740 (2013).

of *Oposa v. Factoran, Jr.*,[1] which is enhanced in by case of *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*,[2] and probably reached the highpoint with the adoption of the Rules for Procedure for Environmental Cases (Rules).[3]

The discussion will highlight these three landmark events in Philippine environmental law. It will begin with *Oposa*, where the Supreme Court, barely one year after the 1992 Rio Declaration on the Environment and Development,[4] grappled with issues fundamental and novel in character, such as whether the constitutional right to the environment is a specific, legally demandable, and enforceable right, and whether minors have the legal personality to represent themselves, their generation, and the succeeding generations in a case involving an alleged environmental right violation.[5] It will be followed by a brief examination of the subsequent rulings refining the doctrines laid down in *Oposa.* A distinctive treatment, however, will be accorded in *Concerned Residents of Manila Bay*, where the Court adopted judgments from a foreign jurisdiction to address the insufficiency in environmental law enforcement.[6]

There will be a concise comment on two pending cases in the Court to underline the dynamism of environmental law issues. The first involves, *inter alia*, the legal standing of the resident mammals to file an action.[7] The other encompasses the concept of sustainable development in the light of the right

1. Oposa v. Factoran, Jr., 224 SCRA 792 (1993).
2. Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay, 574 SCRA 661 (2008).
3. RULES FOR PROCEDURE FOR ENVIRONMENTAL CASES, A.M. No. 09-6-8-SC, Apr. 13, 2010.
4. Rio Declaration on Environment and Development, U.N. Doc. A/CONF.151/26 (Vol. I) (June 13, 1992) [hereinafter Rio Declaration].
5. *Oposa*, 224 SCRA at 795-96.
6. *Concerned Residents of Manila Bay*, 574 SCRA at 688. The Supreme Court of India used the doctrine of *mandamus* to enforce the directives of the Supreme Court of India to clean up the Ganges River from industrial and municipal pollution. *Id.*
7. Resident Marine Mammals of the Tañon Strait Protected Seascape v. Reyes, G.R. No. 180771, Apr. 24, 2012. *See also* Rebecca Sato, Justice at Sea: Can Dolphins & Whales Sue?, *available at* http://www.dailygalaxy.com/my_weblog/2007/12/justice-on-the.html (last accessed Dec. 2, 2013) & Benjamin A. Cabrido, Jr., Why Dolphins May Sue in the Philippines, *available at* http://www.slideshare.net/loloowen/why-dolphins-may-sue-in-the-philippines (last accessed Dec. 2, 2013).

to economic development vis-à-vis the right to environment, where the Precautionary Principle[8] is expected to be elucidated.[9]

The final part of the Essay focuses on the Rules promulgated by the Court pursuant to its constitutional rule-making power "concerning the protection and enforcement of constitutional rights."[10] In crafting the rules, the Court also utilized the constitutional provision on transformation or incorporation of "generally accepted principles of international law as part of the law of the [Philippines]."[11]

II. THE *OPOSA MINORS* CASE

In his separate concurring opinion written almost two decades ago, then Associate Justice Florentino P. Feliciano of the Court described the principles laid down in *Oposa* as seminal.[12] As the Court struggled to resolve novel environmental issues, he expressed his carefully veiled reservations on whether the constitutional right to a balanced and healthful ecology is a specific, legally demandable, and enforceable right.[13] He characterized the right based on general constitutional statements of policy as lacking substantive standard for a party to properly respond to an alleged right violation.[14] He cautioned his fellow magistrates that this lack of specificity, combined with the duty of the Court to determine the propriety of the exercise of discretion by the executive department, would "propel the courts into the uncharted ocean of social and economic policy making."[15] He likewise reminded them that "courts have no claim to special technical

8. The Precautionary Principle states that when an activity raises threat of harm to human health or environment, precautionary measures should be taken even if some of the cause and effect relationships are not fully established. The Principle encourages policies that protect human health and environment in the face of uncertain risks. David Kriebel, et al., *The Precautionary Principle in Environmental Science*, 9 ENVT'L HEALTH PERSPECTIVES 871, 871 (2001).

9. Mosquedo v. Pilipino Banana Growers and Exporters Association, Inc., G.R. No. 189185. *See generally* Davao Today, Group Files Motion to Intervene in Banana Firms' Case vs Davao City Gov't, *available at* http://davaotoday.com/main/2007/05/10/group-files-motion-to-intervene-in-banana-firms-case-vs-davao-city-govt/ (last accessed Dec. 2, 2013).

10. PHIL. CONST. art. VIII, § 5, ¶ 5.

11. PHIL. CONST. art. II, § 2.

12. *Oposa*, 224 SCRA at 814 (J. Feliciano, concurring opinion).

13. *Id.* at 814-18.

14. *Id.* at 818.

15. *Id.*

competence[,] experience[,] and professional qualification"[16] with regard to the "vast area of environment protection and management."[17] He suggested that "[w]here no specific [and] operable norms and standards are shown to exist, then the policy making departments [must] be given a real and effective opportunity to fashion and promulgate those norms and standards, and to implement them before the courts should intervene."[18]

Notwithstanding these observations, Justice Feliciano would join the majority opinion "because the protection of the environment [is] of extreme importance for the country."[19] He nonetheless counselled that the "doctrines set out in the [decision] be subjected to closer examination."[20]

In *Oposa*, several minors, represented and joined by their parents, filed a class suit in behalf of themselves, their generation, and the succeeding generations against the Secretary of the Department of Environment and Natural Resources (DENR).[21] They claimed that the failure of the DENR to cancel existing timber license agreements (TLA) violated their right to a balanced and healthful ecology.[22] The continued deforestation of the remaining Philippine rainforest by the TLA holders would cause "great damage and irreparable injury"[23] to the minors and the succeeding generations "who may never see, use, benefit from[,] and enjoy this rare and unique [treasure]."[24]

The issues essentially revolved around the *locus standi* of the minors to sue and the minors' cause of action on an alleged infringement of a constitutional right to the environment,[25] where then Associate Justice Hilario G. Davide, Jr. penned the majority opinion.[26] He observed that the minors associated "the right of Filipinos to a balanced and healthful ecology"

16. *Id.*
17. *Id.*
18. *Oposa*, 224 SCRA at 818 (J. Feliciano, concurring opinion).
19. *Id.*
20. *Id.*
21. *Oposa*, 224 SCRA at 796.
22. *Id.* at 798-800.
23. *Id.* at 799.
24. *Id.*
25. *Id.* at 796.
26. *Id.* at 795.

with the "twin concepts of '[intergenerational] responsibility' and '[intergenerational] justice.'"[27]

As to the minors' *locus standi*, the Court sustained their position.[28] It held that every generation has the intergenerational responsibility to preserve and conserve a sound environment, allowing equitable access to both the present and future generations.[29]

On the existence of a cause of action, the Court pronounced the right to a balanced and healthful ecology as "one specific fundamental legal right"[30] enshrined for the first time in the 1987 Philippine Constitution.[31] As shown by the records of the plenary debates of the Constitutional Commission, the right "carries with it the correlative duty to refrain from impairing the environment."[32] In addition, even the statutes before the ratification of the 1987 Philippine Constitution "already paid special attention to the 'environmental right' of the present and future generations"[33] as well as the "responsibilities of each generation as trustee and guardian of the environment for succeeding generations."[34] Besides, the 1987 Philippine Constitution declares that it is the policy of the Philippines to "protect and promote the right to health" of its citizens.[35] The Court concluded that the violation of the right to a balanced and healthy ecology gave rise to a cause of action.[36]

Oposa remains a rich mine for extracting emerging concepts and principles in International Environmental Law.[37] Spread across the Decision

---

27. *Oposa*, 224 SCRA at 803.

28. *Id.* at 802.

29. *Id.* at 803 (citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1508 (1986) & Instituting the Administrative Code of 1987, [ADMINISTRATIVE CODE OF 1987], Executive Order No. 292, Book IV, Title XIV (1987)).

30. *Oposa*, 224 SCRA at 815.

31. *Id.* at 804 (citing Section 16, Article II of the Philippine Constitution, which explicitly provides — "Sec. 16. The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature." PHIL. CONST. art. II, § 16).

32. *Oposa*, 224 SCRA at 805.

33. *Id.* at 807.

34. *Id.* at 808.

35. PHIL. CONST. art. II, § 15.

36. *Oposa*, 224 SCRA at 804-09.

37. *Id.* at 802-05.

is the principle of sustainable development[38] intertwined with the principle of intergenerational equity.[39] The principle of sustainable development may be construed through the finding of the Court that the right to a balanced and healthful ecology necessarily entails "the judicious management and conservation of the country's forests[,]"[40] for "[w]ithout such forests, the ecological [balance] would be irreversibly disrupted."[41] The Court also cited various laws mandating that the utilization, conservation, and management of the country's national resources shall be undertaken "consistent with the necessity of maintaining a sound ecological balance and protecting and enhancing the quality of the environment."[42] It added that equitable access to the country's resources shall "not only [be] for the present generation but for the future generations as well."[43]

Interestingly, there was no mention of the 1972 Stockholm Declaration on the Human Environment[44] and the 1992 Rio Declaration on Environment and Development,[45] where the notions of sustainable development and intergenerational equity had their embryonic beginnings. It is possible to speculate that, at the time, the Court did not consider the principles of the non-binding declarations as having attained the degree of acceptance by the international community to be treated as generally accepted principles of international law.[46]

---

38. *See* Rio Declaration, *supra* note 4, Principle 3. This Principle provides that "[t]he right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations." *Id.*
39. *See Oposa*, 224 SCRA at 802-03. The Court used the term "intergenerational responsibility." *Id.*
40. *Oposa*, 224 SCRA at 805.
41. *Id.* at 806.
42. *Id.* at 806-07 (citing ADMINISTRATIVE CODE OF 1987, Book IV, Title XIV, § 1).
43. *Oposa*, 224 SCRA at 806 (citing Office of the President, Providing for the Reorganization of the Department of Environment, Energy, and Natural Resources; Renaming it as the Department of Environment and Natural Resources and for Other Purposes, Executive Order No. 192 [E.O. No. 192], § 3 (June 10, 1987)).
44. Stockholm Declaration, U.N. Doc. A/CONF.48/14 (Jan. 1, 1973).
45. Rio Declaration, *supra* note 4.
46. In order to be treated as generally accepted principles of international law, such declarations must be followed by states with a sense of legal obligation. Once state practice has been determined, there must be a belief that such practice is

From a theoretical perspective, the Court slightly touched upon natural law[47] as the basis of the right to a balanced and healthful ecology, saying that the right "concerns nothing less than self-preservation and self-perpetuation[, the] advancement of which may even be said to predate all governments and constitutions."[48] The Court further stated that such basic rights "need not even be written in the Constitution for they are assumed to exist from the inception of humankind."[49] The reason that they are found in the Constitution sprang from 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, ... 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."[50]

It would have been interesting had the Court elaborated on this natural law foundation of the right to a balanced and healthful ecology. But nonetheless, it can be safely speculated what the Court meant by this. A premise, which everyone can use as a take-off point, is the concept put forward by *Oposa* on "generational genocide."[51] Everyone would agree that killing the entire succeeding generation is inherently wrong. This is true in all jurisdictions, for such killing would be the end of humanity. A killing of this magnitude runs counter to the nature of humanity to preserve and perpetuate itself.

Everybody would also concur that the massive killing of the next generation may be executed through acts or omissions by the present generation. Such acts or omissions may involve the unabated desecration of the rainforests. The uninterrupted desecration could result to an irreversible

---

obligatory or *opinio juris*. *See* JOAQUIN G. BERNAS, S.J., INTRODUCTION TO PUBLIC INTERNATIONAL LAW 10-13 (2009).

47. Natural Law is a "system of right or justice common to all humankind and derived from nature." *See* Merriam-Webster Encyclopedia Online, Natural Law, *available at* http://www.merriam-webster.com/dictionary/natural%20law (last accessed Dec. 2, 2013).

48. *Oposa*, 224 SCRA at 805.

49. *Id.*

50. *Id.*

51. *Id.* at 801.

disruption of the ecological balance.[52] And the resulting environment for the succeeding generations would no longer be capable of sustaining human life.

Therefore, no statute is necessary in order for humanity to grasp the inherent wrongfulness of generational genocide through environmental degradation. Neither is there a need for a declaration that fundamental rights and freedoms can only be fully enjoyed under a sound, balanced, healthy, and decent environment. But positive law has to be there in order to give "flesh" to this natural law right and thus trigger positive law's enforcement mechanism.

Oposa also mentioned the declared policy of the Philippines to "recognize and apply a true value system that takes into account social and environmental cost implications relative to the utilization, development[,] and conservation of [its] natural resources."[53] This recognizes the importance of a process akin to environmental impact assessment, which is interlinked with the Precautionary Principle in international environmental law.[54]

With respect to the Court's findings that the right to the environment is not only specific but fundamental, the Court might have been influenced by environmental conditions that no longer require rocket science to know that something is wrong. The effects of forest denudation can no longer be ignored.[55] Floods have been felt by the general population and have become a common misery experienced by Filipinos.[56] The violation of the right of the people to a sound environment has become specific enough.

In sum, it appears that in *Oposa*, the Court relied on its own reasoning and declaration, as well as on its own interpretation and construction of relevant domestic laws to resolve new issues and explain emerging concepts. But it is highly unlikely that the Court was not keeping abreast with international developments. It is likewise apparent that in dealing with these

52. *See generally* World Wildlife Fund, Deforestation, *available at* http://wwf.panda.org/about_our_earth/about_forests/deforestation/ (last accessed Dec. 2, 2013).

53. *Oposa*, 224 SCRA at 807 (citing ADMINISTRATIVE CODE OF 1987, Book IV, Title XIV, § 1).

54. Kriebel, et al., *supra* note 8, at 871.

55. *See* Henrylito Tacio, Philippine forests are rapidly disappearing, *available at* http://environews.ph/biodiversity/philippine-forests-are-rapidly-disappearing/ (last accessed Dec. 2, 2013).

56. Charles E. Buban, *Solving the flooding problem*, PHIL. DAILY. INQ., Aug. 18, 2012, *available at* http://business.inquirer.net/77462/solving-the-flooding-problem (last accessed Dec. 2, 2013).

novel issues, the Court declared in broad strokes that the right of the people to the environment has its basis in natural law.[57] And the right need not even be expressed in positive law.[58] The Court thus recognized the right as inherent and universal.[59]

The Court would cement and refine the legacy of *Oposa* as subsequent cases were brought for adjudication. It would later on enrich its decisions by borrowing from foreign jurisprudence. And when judicial determinations were not enough, the Court would finally make optimal use of its constitutional rule-making power to bridge the gaps.

III. BUILDING ON THE LEGACY OF *OPOSA*

The concept of intergenerational responsibility would again find application in *Sta. Rosa Realty Development Corporation v. Court of Appeals*.[60] The Court acknowledged the vital importance of watersheds not only as a water source but also as a natural system of flood control.[61] The watersheds need to be protected to "[ensure] an adequate supply of water for future generations"[62] and mitigate the adverse effects of flash floods on property and human life.[63] The Court emphasized that the "[p]rotection of watersheds is an 'intergenerational responsibility.'"[64]

In the interesting case of *Province of Rizal v. Executive Secretary*,[65] the Philippine government faced a garbage crisis in Metro Manila.[66] Uncollected garbage piled up because of lack of dumpsites, threatening the health of the population.[67] The government tried to re-open a landfill located in a watershed reservation to solve the problem.[68]

---

57. *Oposa*, 224 SCRA at 805.
58. *Id.*
59. *Id.*
60. Sta. Rosa Realty Development Corporation v. Court of Appeals, 367 SCRA 175 (2001).
61. *Id.* at 196.
62. *Id.*
63. *Id.*
64. *Id.*
65. Province of Rizal v. Executive Secretary, 477 SCRA 436 (2005).
66. *Id.* at 439.
67. *Id.* at 455.
68. *Id.* at 439.

In denying the government's action, the Court reaffirmed its ruling in *Sta. Rosa Realty Development Corporation* that the "protection of watersheds is an 'intergenerational responsibility.'"[69] It also reiterated its pronouncements in *Oposa* that "the right to a balanced and healthful ecology is a fundamental legal right that carries with it the correlative duty to refrain from impairing the environment."[70] It reminded the government agencies concerned of their mandate under existing laws to safeguard the country's resources for present and future generations.[71]

Another precedent-setting Court ruling would come in *Concerned Residents of Manila Bay*. Its importance lies not so much in the restatement of the doctrines in *Oposa* as the adoption of a foreign legal process of continuing *mandamus*.[72] The Court borrowed the concept from the decisions of the Supreme Court of India in *Vineet Narain v. Union of India*[73] in 1998 and *M.C. Mehta v. Union of India*[74] in 1987.[75] In *Vineet Narain*, the Supreme Court of India issued a continuing *mandamus* order not only to compel the Central Bureau of Investigation (CBI) and other agencies to investigate high-ranking political officials involved in receiving funds from unlawful sources, but also to monitor CBI's compliance with the directive.[76] In *M.C. Mehta*, the Supreme Court of India resorted to a continuing *mandamus* to ensure the satisfaction of its orders for the clean-up of the Ganges River from municipal and tannery pollution.[77] Adopting the continuing *mandamus*, the Court ordered the Metropolitan Manila Development Authority and the other government agencies to do a general clean-up of the Manila Bay, and

69. *Id.* at 458.

70. *Id.* at 461.

71. *Province of Rizal*, 477 SCRA at 461.

72. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 1, § 4 (c). The Court would later on define the Writ of Continuing *Mandamus* as "a writ issued by a court in an environmental case directing any agency or instrumentality of the government, or officer thereof to perform an act or series of acts decreed by final judgment which shall remain effective until judgment is fully satisfied." *Id.*

73. Vineet Narain v. Union of India, 1 SCC 226 (1998).

74. M.C. Mehta v. Union of India, 4 SCC 463 (1987).

75. *Concerned Residents of Manila Bay*, 574 SCRA at 688 (citing *Vineet Narain*, 1 SCC at 226 & *M.C. Mehta*, 4 SCC at 463).

76. PHILIPPINE JUDICIAL ACADEMY, ACCESS TO ENVIRONMENTAL JUSTICE: A SOURCEBOOK ON ENVIRONMENTAL RIGHTS AND LEGAL REMEDIES 163-64 (2011).

77. *Id.*

to submit quarterly progress reports on their compliance.[78] Former Chief Justice Renato C. Corona would recall that the introduction of this new extraordinary remedy elicited intense debate among the magistrates.[79] The deliberation centered on the propriety of the Court monitoring the enforcement of its decisions by the agencies of the executive department.[80]

The significance of the adoption of the approach from one jurisdiction to another arguably goes beyond parochial considerations. After all, decisions of civilized countries like the Philippines and India are sources of international law.[81] Such rulings may contribute to the crystallization of some concepts and norms intimately related to the international right to a decent environment.

In *Concerned Residents of Manila Bay*, the Court also touched upon the "Polluter Pays Principle"[82] and remarked that existing laws already obligate polluters to undertake environmental clean-up of water pollution at their own expense.[83] If polluters refuse or neglect to do their responsibility, government agencies can do the clean-up at the polluters' account.[84]

The Court took judicial notice of the shanties and industrial plants along the rivers that flow to the Manila Bay as primary sources of pollution.[85] But by reason of the magnitude of the pollution of the Manila Bay, it was

---

78. *Concerned Residents of Manila Bay*, 574 SCRA at 697.

79. Renato C. Corona, *To Every One His Due: The Philippine Judiciary at the Forefront of Promoting Environmental Justice*, *in* PHILIPPINE JUDICIAL ACADEMY, *supra* note 76, at xxxviii.

80. *Id.*

81. Art. 38 (d) of the Statute of the International Court of Justice states that "subject to the provision of Art. 59, judicial decisions and teachings of the most highly qualified publicists of the various nations" are sources of international law. *See* Statute of the International Court of Justice art. 38 (d), June 26, 1945, 33 U.N.T.S. 993.

82. The Polluter Pays principle states that "those who produce pollution should bear the costs of managing it to prevent damage to human health or environment." *See* Grantham Research Institute & Duncan Clark, What is the 'polluter pays' principle?, *available at* http://www.theguardian.com/environment/2012/jul/02/polluter-pays-climate-change (last accessed Dec. 2, 2013).

83. *Concerned Residents of Manila Bay*, 574 SCRA at 684.

84. *Id.* at 686.

85. *Id.* at 688-89.

impossible to determine the polluters' identity with certainty.[86] In effect, the Court was saying that through the years, the residents of Metro Manila and the neighboring cities and towns contributed in one way or another to the pollution of the bay.[87] However, the government had to shoulder the clean-up costs because no polluter was made a party to the case.[88]

Moving into the future, two environmental cases now pending in the Court have captured the attention of the Filipino nation. Environmentalists, legal scholars, students of law, and ordinary citizens await with great expectation the rulings of the Court on the novel issues and emerging principles presented in these cases.

IV. ANTICIPATING WITH GREAT ENTHUSIASM: THE CONTINUING ELABORATION OF *OPOSA*

The resident marine mammals of Tañon Strait,[89] such as "toothed whales, dolphins, porpoises, and other cetacean species[,] [t]hrough their human representatives,"[90] filed a Petition before the Court.[91] The Case, docketed as *Resident Marine Mammals of the Tañon Strait Protected Seascape v. Reyes*,[92] seeks to enjoin the Department of Energy and other entities from implementing the service contract awarded to Japan Petroleum Exploration Co. (Japex).[93] At the time, Japex had been conducting underwater seismic surveys for oil exploration.[94] The Petition asserts that the underwater noise created by the seismic survey was fatal to the marine mammals[95] and that the resident

86. *Id.* at 687.

87. *Id.*

88. Corona, *supra* note 79, at xxxi.

89. The Tañon Strait is a body of water near Cebu and Negros which was declared to be a protected area by President Fidel V. Ramos in 1998. Office of the President, Declaring the Tañon Strait Situated in the Provinces of Cebu, Negros Occidental, and Negros Oriental as a Protected Area Pursuant to Republic Act No. 7586 (NIPAS Act of 1992) and shall be known as Tañon Strait Protected Seascape, Presidential Proclamation No. 1234 [P.P. No. 1234] (May 27, 1998).

90. Corona, *supra* note 79, at xxxiii.

91. *Resident Marine Mammals of the Tañon Strait Protected Seascape*, G.R. No. 180771.

92. *Id.*

93. *Id.*

94. *Id.*

95. Corona, *supra* note 79, at xxxiv.

marine mammals sustained "direct injury by reason of the oil exploration and resulting pollution in their habitat."[96]

It is not difficult to predict the obvious. The Court will evidently make a discourse on the legal standing of the resident marine mammals, and on the constitutional right to a balanced and healthful ecology *vis-à-vis* the constitutional prerogative of the President to enter into agreements for large-scale oil exploration for the economic development of the nation.[97] This balancing of interests poses a challenge on how the Court will interpret sustainable development in this situation.[98]

The other Case involves a city ordinance banning the use of aerial spraying of pesticides in banana plantations. In *Mosquedo v. Pilipino Banana Growers and Exporters Association, Inc.*,[99] the constitutional right to a balanced and healthful ecology stands to receive further elucidation.[100] People were allegedly getting sick after having been aerially sprayed of pesticides.[101] The Court finds itself in the position to apply the Precautionary Principle of International Environmental Law.[102]

The Precautionary Principle formally found its way in the Philippine jurisdiction not through a statute or case law but through the rule-making power of the Court.[103] The Court adopted the Rules primarily to bridge the gap between pronouncements on and enforcement of the right to a sound environment.[104]

V. LAYING A BRICK NEXT TO *OPOSA*

The exasperation of the Court over the neglect by government agencies of their constitutional and legal mandate to maintain a decent environment for the Filipino citizen has been seen and spread through its decisions in the

96. *Id.*

97. *See* PHIL. CONST. art. XII, § 2.

98. *See* Lagunzad v. Soto Vda. De Gonzales, 92 SCRA 476, 488 (1979). The Balancing of Interests Test requires "a court to take conscious and detailed consideration of the interplay of interests observable in a given situation or type of situation." *Id.*

99. *Mosquedo*, G.R. No. 189185.

100. *Id.*

101. *Id.*

102. Corona, *supra* note 79, at xxxv.

103. *Id.*

104. RULES FOR PROCEDURE FOR ENVIRONMENTAL CASES, rule 1, § 3.

previously mentioned environmental cases. This exasperation has triggered a bold initiative to fill in the gap in the enforcement aspect of environmental law. The Court anchored this initiative on its constitutional rule-making power, as well as on the constitutional provision of transformation or incorporation of general principles of international law as part of the law of the Philippines.[105]

The Rules incorporated and consolidated pertinent rules on citizen suit first articulated in *Oposa*[106] and the Writ of Continuing *Mandamus* introduced in *Concerned Residents of Manila Bay*.[107] The Polluter Pays Principle is also subsumed in the Rules.[108] It also introduced new processes or remedies like the Writ of *Kalikasan*,[109] defense against a Strategic Lawsuit Against Public Participation (SLAPP),[110] consent decree,[111] and the Precautionary Principle in the reception of evidence in environmental

---

105. *See* PHIL. CONST. arts. VIII, § 5, ¶ 5 & II, § 2.

106. RULES FOR PROCEDURE FOR ENVIRONMENTAL CASES, rule 2, § 5. "*Citizen suit.* — Any Filipino citizen in representation of others, including minors or generations yet unborn, may file an action to enforce rights or obligations under environmental laws." *Id.*

107. *Id.*

108. *Id.* rule 5, § 1.

109. *Id.* rule 7. The Writ of *Kalikasan* is defined as

> [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.

Id.

110. RULES FOR PROCEDURE FOR ENVIRONMENTAL CASES, rule 6. The SLAPP is defined as

> [a] legal action filed to harass, vex, exert undue pressure[,] or stifle any legal recourse that any person, institution[,] or the government has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights shall be treated as a SLAPP and shall be governed by these Rules.

Id.

111. *See* RULES FOR PROCEDURE FOR ENVIRONMENTAL CASES, rule 1, § 4 & rule 3, § 5.

cases.[112] But the rule on Precautionary Principle in the reception of evidence in environmental cases happens to be the most revolutionary.[113]

Briefly, the Writ of *Kalikasan* affords a remedy to a person, on behalf of others "whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission"[114] of another, "involving environmental damage of such magnitude as to prejudice the life, health[,] or property of inhabitants in two or more cities or provinces."[115]

The consent decree allows a court-approved settlement between the parties to the suit "in accordance with law, morals, public order[,] and public policy to protect the right of the people to a balanced and healthful ecology."[116]

The rules on SLAPP, derived from the United States (U.S.),[117] grant a person the opportunity to set up as an affirmative defense that the case filed against such person is a harassment suit intended to "exert undue pressure or stifle any legal recourse that [the said person] has taken or may take in the enforcement of environmental laws, protection of the environment[,] or assertion of environmental rights."[118]

As intimated, the Rules took the Precautionary Principle a step further and established a preference for the environment.[119] In adopting the Rules, the Court took a categorical position that "[w]hen there is a lack of full scientific certainty in establishing a causal link between human activity and environmental effect, the Court shall apply the Precautionary Principle."[120] It further guaranteed that "[t]he constitutional right of the people to a balanced and healthful ecology shall be given the benefit of the doubt."[121] It also outlined factors, which may be considered in the application of the

---

112. RULES FOR PROCEDURE FOR ENVIRONMENTAL CASES, rule 1, § 4 (f).

113. *Id.* This Section states that "when human activities may lead to threats of serious and irreversible damage to the environment that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that threat." *Id.*

114. *Id.* rule 7, § 1.

115. *Id.*

116. *Id.* rule 1, § 4 (b) & rule 3, § 5.

117. PHILIPPINE JUDICIAL ACADEMY, *supra* note 76, at 150.

118. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rules 1, § 4 (g), 6, & 19.

119. *Id.* rule 20, § 1.

120. *Id.*

121. *Id.*

Principle such as: "(1) threats to human life or health; (2) inequity to present or future generations; or (3) prejudice to the environment without legal consideration of the environmental rights of those affected."[122]

As previously mentioned, this most innovative part of the Rules will soon be tested in *Mosquedo*.[123] Ranged against the Precautionary Principle is a multi-million dollar banana industry employing thousands of Filipino citizens.[124] The treatment of the Court on the issue of economic development delicately juxtaposed with sustainability is thus anticipated by many with great enthusiasm.[125]

VI. CONCLUSION

Going back to Justice Feliciano, his apprehensions in *Oposa* have not materialized.[126] The right of the people to a balanced and healthful ecology expressed in general constitutional statements has turned out to be a specific fundamental right, legally demandable and enforceable.[127] Its violation gives rise to a cause of action.[128] The ruling has since stood the test of time and now appears settled. Nibbling at the edges of the right, however, are questions relating to its extent as well as its remaining policy and enforcement gaps.

As to Justice Feliciano's fear that the courts would be unnecessarily propelled into the "uncharted ocean of social and economic policy making,"[129] the courts find their judicial activism for the environment a voyage of legal craftsmanship worth embarking upon. The Court has not shirked from navigating the legal uncertainty. It has neither hesitated to borrow rulings from foreign jurisdiction nor wavered in its commitment to adopt emerging concepts and principles in international environmental law to enrich its own jurisprudence. It has introduced innovations in procedural rules and made optimal use of its rule-making powers.

Even assuming that the Court extended its reach on legislative and executive prerogatives through its judicial pronouncements and its adoption

---

122. *Id.* rule 20, § 2.

123. *Mosquedo*, G.R. No. 189185.

124. *Id.*

125. *Id.*

126. *Oposa*, 224 SCRA at 814-18 (J. Feliciano, concurring opinion).

127. *Id.* at 815.

128. *Id.*

129. *Id.* at 818.

of extraordinary rules in environmental cases, the political environment allows wiggle room for such intrusion in order for the rule of law to flourish. The Court not only bridged some gaps in the law but created a process to cross the chasms between principle and policy and between rhetoric and enforcement. It may be added that in certain situations, calculated judicial activism may be necessary to prompt the other branches of government to perform their crucial roles involving a common core right of the citizens of the Philippines.

Indeed, the "sailing" has so far been remarkable, but there are storms and rough seas up ahead. The courts may dish out controversial decisions from time to time, but things will ultimately sort themselves out.

The Philippine judicial experience is thus a wager supporting the argument that the international right to a decent environment needs elaboration. As emerging norms and nascent principles in international environmental law are given relevance through domestication in judicial pronouncements and as environmental issues are further clarified, these pronouncements may evolve into national and regional practice, and possibly, international acceptance and establishment of international norms. Elaboration thus breathes life, meaning, and color to the universal right of every human being to the maintenance of the necessary decent conditions for life.