In Re: P.D. 772 – A Prescription for Repeal

SENTRO NG ALTERNATIBONG LINGAP PANGLEGAL (SALIGAN)*

In many developing countries, coping with problems arising from squatting and slum dwelling is hampered by the fact that the legal system has not kept pace with the rapid rate of urbanization. Slum and squatter areas are denied basic urban services because they have no status in law. A strict adherence to the concept of private property tends to make the legal system a punitive rather than a means for the ordering of human relationships and behavior to achieve the development potentials inherent in all segments of the urban community .... Traditional legal concept formulated under conditions of low levels of urbanization may be rendered obsolete by current urban conditions, but they remain in the books. Thus, there is a need to redefine the legal system and to analyze it anew vis-à-vis the prevailing conditions.[1]

I. INTRODUCTION

Before 20 August 1975, the chief remedy for a landowner whose land has been besieged by illegal occupants or *squatters* was the time-tested judicial action for ejectment. In affording this remedy of restitution, the object of the statute is to prevent criminal disorder and breaches of the peace which would ensue from the withdrawal of this remedy.[2] The law throws its cloak of protection in favor of the idea of property as an established expectation, in the persuasion of being able to draw such or such an advantage from the thing possessed.[3]

Before 20 August 1975, and just after the issuance of the above quoted observation by the United Nations, then President Ferdinand E. Marcos made unprecedented steps towards alleviating the plight of squatters in our

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[1] United Nations, 1971:162, *cited in* Hollsteiner, *The Case of "The People Versus Mr. Urbano Planner Y Administrador,"* from DEVELOPMENT IN THE 70S: FIFTH ANNUAL SEMINAR FOR STUDENT LEADERS (James Hoyt, ed., 1974).

[2] MORAN, COMMENTS ON THE RULES OF COURT, at 263.

[3] BENTHAM, THEORY OF LEGISLATION: PRINCIPLES OF THE CIVIL CODE, at 111-113 (1931).

robust urban centers. Letter of Instruction No. 19-A,[4] while it called for massive demolition efforts all over the country, did invoke the humane consideration of providing for a relocation process and a relocation site for evicted slum dwellers.[5] Letter of Instruction No. 34[6] pushed for the acquisition of the Tatalon Estate[7] as a means of implementing social reform programs. Presidential Decree No. 297[8] appropriated the amount of five hundred thousand pesos for the operation of the Task Force on Human Settlements, created under Executive Order No. 419.[9] Presidential Decree No. 399[10] limited the use of a strip of one thousand meters of land along any existing, proposed or on-going public highway or road until the government shall have a competent study and have formulated a comprehensive and integrated land use and development plan. Finally, Presidential Decree No. 757[11] created the National Housing Authority (NHA) and fully recognized the need for a comprehensive and integrated housing program that can meet the needs of Filipino families for decent dwellings.

On 20 August 1975, it was no surprise that Presidential Decree No. 772 was issued with the following bold pronouncement of policy:

> "...[M]any persons or entities found to have been unlawfully occupying public and private lands *belong to the affluent class* ... there is a need to further intensify the government's drive against this illegal and nefarious practice... "[12]

[4] LOI No. 19-A, issued 28 October 1972.

[5] It goes without saying that the provisions of LOI 19-A are exclusive of equally crucial enforcement matters which, for reasons which require lengthy elaboration, leaves so much to be desired. For instance, despite the fact that relocation sites were planned to rehouse hundreds of thousands of squatters, the sites themselves were ill-prepared, the promised facilities were not available and people had to make do with hastily constructed shelters. Perla Q. Makil, *Slums and squatter settlements in the Philippines*, Concerned Citizens of the Urban Poor Series, no. 3 (1982).

[6] LOI No. 34, issued 27 October 1972.

[7] A large tract of land located in Quezon City occupied by *squatters*.

[8] P.D. No. 297, issued 19 September 1973.

[9] E.O. No. 419, issued 19 September 1973.

[10] P.D. No. 399, issued 28 February 1974.

[11] P.D. No. 757, issued 31 July 1975.

[12] P.D. No. 772, issued 20 August 1975.

The alleviation of the plight of *squatters* and slum dwellers apparently included the elimination of opportunists such as *professional squatters*. The inclination towards curbing this "illegal and nefarious practice" of professional *squatting* was, however, miserably blurred by the sweeping language of Section 1 of the law:

> Any person who, with the use of force, intimidation or threat, or taking advantage of the absence or tolerance of the landowner, succeeds in occupying or possessing the property of the latter against his will for residential, commercial, or any other purposes, shall be punished by an imprisonment ranging from six months to one year or a fine of not less than one thousand nor more than five thousand pesos at the discretion of the court, with subsidiary imprisonment in case of insolvency....

Since 20 August 1975, P.D. No. 772 has been a piece of criminal legislation used against *squatters en masse* in the urban areas of the country. It was blatantly applied beyond cases involving the "affluent (*squatting*) class". The result: the criminalization of at least four million people — men, women, children, and the elderly — comprising around 10% of the national and 25% of the entire urban population.

A trial lawyer only needs to be presented with the sight of Dencia Marin and Bella Ulantino, two very frail and aging widows placed side by side with those accused of murder, drug-pushing, and robbery. Their charge: *violation of P.D. No. 772*.[13] A poignant, persistent insight emerges. Something has terribly gone wrong with the law.

This article will go beyond poignant and persistent insight. It will undertake a study on that which has terribly gone wrong with the law — *i.e., the law itself*. Seven unequivocal statements will be presented: *first*, that P.D. No. 772 is an act of State regression; *second*, that P.D. No. 772 is violative of its own spirit; *third*, that P.D. No. 772 fails to look to the past and through the future; *fourth*, that P.D. No. 772 disregards prevailing international law; *fifth*, that P.D. No. 772 runs counter to philosophical tenets of criminal punishment; *sixth*, that P.D. No. 772 is oppressive; and *seventh*, that an unperturbed set of Philippine property laws will continue to be respected without the oppressive criminalization of many brought on by P.D. No. 772.

[13] Accused in Criminal Case Nos. 94-85 and 94-93, respectively, before the *sala* of Judge Susanita E. Mendoza-Parker, Presiding Judge of Branch 40 of the Metropolitan Trial Court of Quezon City.

All of the foregoing point to an unfailing conclusion: *P.D. No. 772 needs to be repealed now.*

II. P.D. 772 Is an Act of State Regression

In *City of Manila v. Garcia*,[14] the Supreme Court declared that houses and constructions of *squatters* on the land constitute a public nuisance *per se* — *i.e.*, "anything that worketh hurt, inconvenience, or damage."[15] The Court bluntly ordered the demolition of *squatter* structures with no regard for relocation and relocation process. The year was 1967. This simplistic approach to the phenomenon of *squatting* and *squatters* was soon to change with the advent of Martial Law, the New Society and *constitutional authoritarianism*.[16] The 1973 Constitution provided that "the State shall establish, maintain, and ensure adequate social services in the field of... housing... to guarantee the enjoyment of the people of a decent standard living."[17] A blueprint for urban development, however flawed, emerged.

A. The Marcos Years

As mentioned, even at the time of its enactment on 21 August 1975, P.D. No. 772 found no place among previous Marcos decrees which resolved to address the *squatter* problem in the metropolis. The criminalization of slum dwellers ran *diametrically opposite* to what was already a relatively compassionate State policy towards the urban poor.

LOI Nos. 19 and 19-A, while they pushed for the removal of "illegal constructions including buildings on and along *esteros*[18] and river banks and those along railroad tracks and those built without permits on public

[14] 19 SCRA 413 (1967).

[15] 3 BLACKSTONE'S COMMENTARIES 5.

[16] "Constitutional authoritarianism", as understood and practiced in the New Society, is the assumption of extraordinary powers by the President, including legislative and judicial and even constituent powers, where such assumption is authorized by the letter or at least by the spirit of a legitimately enacted Constitution. Constitutional authoritarianism is compatible with a republican state if the Constitution upon which the Executive bases his assumption of power is a legitimate expression of the people's will and if the Executive who assumes power received his office through a valid election by the people. This is so because a republic state is nothing more than a state where sovereignty resides in the people and where all government authority emanates from the people. BERNAS, THE (REVISED) 1973 CONSTITUTION: A REVIEWER-PRIMER, at 14 (1983).

[17] 1973 PHILIPPINE CONSTITUTION, § 7, Art. II.

[18] Colloquial term for sewage canals.

or private property",[19] instituted a relocation process and accordingly required the determination of "relocation sites for *squatters* and other persons to be displaced or evicted from cited *esteros* and places."[20] LOI No. 19-A provided for a Site Preparation Phase, Pre-Relocation Phase, Relocation Phase, and Resettlement Phase, if only to amplify the need for a humane and orderly eviction of slum dwellers in the areas specified under LOI No. 19.

On 19 September 1973, Executive Order No. 419 created the Task Force on Human Settlements to conduct a study on the nature, policy issues and strategies related to a comprehensive and integrated human settlement program in this country. P.D. No. 297 appropriated the amount of five hundred thousand pesos for its operation.

Pursuant to P.D. No. 399, lands of the public domain and those owned by private persons within the strip of one thousand meters along public highways or road shall first be available for human settlement sites and relocation of *squatters* from congested areas.[21]

The preamble of P.D. No. 757 proclaimed the following:

> WHEREAS, the magnitude of the housing problem of the country has grown into such proportions that only a purposeful, determined, organized mass housing development program can meet the needs of Filipino families for decent dwellings;
>
> WHEREAS, recognizing the urgency of this problem, the new Constitution of the Philippines has provided in Article II, Section 7 that the "State shall establish, maintain, and ensure adequate social services in the field of... housing... to guarantee the enjoyment of the people of a decent standard of living;
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> WHEREAS, the attainment of this objective is highly dependent on the conservation and rationalization of urban land use as the instrument of urban land reform as well as on our ability to regulate housing financing and construction costs to bring housing within the reach of the greater number of our people;
>
> WHEREAS, government efforts in housing are not proliferated among various agencies and there is an urgent need to concentrate such efforts, resources, functions and activities in a national housing agency to maximize results;
>
> WHEREAS, the effective implementation of housing programs will require the widest participation of the private sector in terms of capital expenditures, land, expertise, and other resources related to housing construction and land development;

[19] LOI No. 19, ¶ 1, issued 2 October 1972.

[20] *Id.* at ¶ 2.

[21] §§ 2 and 3, P.D. No. 399 (1974).

Section 1 of P.D. No. 757 is most notable for its incisive portrayal of the State's role in housing and urban development:

> Section 1. *Housing Program.* Pursuant to the mandate of the New Constitution, there shall be developed a comprehensive and integrated housing program which shall embrace, among others, housing development and resettlement, sources and schemes of financing, and delineation of government and private sector participation. The program shall specify the priorities and targets in accordance with the integrated national human settlements plan prepared by the Human Settlements Commission.
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> In the preparation of said program, the following factors shall be considered:
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> (a) The management of urban development to promote the economic and social well being and physical mobility of the people, and facilitate industrial growth and dispersal;
>
> (b) The conservation of land for housing development as well as the regulation of land use to achieve optimum utilization patterns;
>
> (c) The organization of public and private resources into financial intermediaries to meet the demand for housing, including provisions for incentives and facilities to broaden the private sector participation in housing investment; and
>
> (d) The extensive use of building systems, which shall maximize the use of indigenous materials and reduce building costs without sacrificing sound engineering and environmental standards.

Though issued amidst the backdrop of constitutional authoritarianism, these laws were enacted by virtue of the State's police power, *i.e.*, the inherent power to enact wholesome and reasonable laws to promote order, safety, health, morals, and general welfare of society.[22]

[22] Calalang vs. Williams, 70 Phil. 726 (1940).

Police power is the power inherent in government *to protect itself and all its constituents*, and for this purpose to hold the government immune, so far as necessary, from any limitations imposed in the past. The exercise of the police power must violate the constitutional safeguards of individual rights only so far as it is necessary to accomplish purposes justified by the public evil to be removed or the public good to be achieved.[23]

In 1974, the International Architectural Foundation chose Manila as the first demonstration site for the 1976 International Architectural Competition held in connection with the 1976 United Nations Conference-Exposition on Human Settlements in Vancouver, British Columbia in Canada. In the preamble of Proclamation No. 1372,[24] ex-President Marcos saw Manila's selection as "a signal recognition of the *innovative human settlements program* being undertaken by the Philippine government." Hence, the said proclamation declared a five-hectare portion of the Dagat-Dagatan Resettlement area in Navotas, Rizal as a demonstration site.

For whatever Proclamation No. 1372 was worth, it would have been absurd to establish "an innovative human settlements program" with pervasive thoughts of massive criminalization.

Legislative and executive issuances enacted after P.D. No. 772 further underscored its regressive nature.

Letter of Instruction No. 557[25] declared "slum improvement" to be the policy of the Government. It was considered to be "an acceptable approach to meeting the housing need of the country and primary strategy for dealing with slums, *squatter* areas and other blighted communities in urban areas."[26] "Slum improvement" consisted of:

> ...[U]pgrading or introducing, where there are none, basic community facilities and services such as roads, footpaths, drainage, sewerage, water and power systems, schools, barangay centers, community center, and clinics. A contemporary socio-economic program including

[23] GERSTENBERG, AMERICAN CONSTITUTIONAL LAW, at 264 (1937).

[24] Proclamation No. 1372, issued 15 January 1975.

[25] LOI No. 557, issued 11 June 1977.

[26] *Id.* at ¶ 1.

> but not limited to, health, sanitation, nutrition, manpower training, family planning economic opportunities particularly the provision of employment among resident families, shall be undertaken to induce improvement in the quality of life of the people within the area.[27]

Signifying the shift in urban policy from slum clearance and resettlement to slum upgrading and sites and services, Letter of Instruction No. 555[28] materialized the nationwide Slum Improvement and Resettlement (SIR) Program. Local governments were directed to pinpoint in their jurisdictions all slums and blighted areas. They were likewise directed to formulate a 3-year, a 5-year and a long-term ongoing program for the improvement of slums and blighted areas and shall integrate these plans with the development plan of their city or municipality and with the efforts in housing of the National Housing Authority. Agencies such as the Department of Public Works and Highways, the National Electrification Administration and the Local Water Utilities Administration also had specific roles in the program.

This police power measure served to alleviate the conditions of dwellers in urban blighted areas. *If the State saw it fit to play an active role in "slum improvement", its criminalization of the subjects of slum improvement becomes easily deplorable.* In addition, LOI No. 555's grant of expropriation powers – *i.e.*, the right of the State to acquire private property for public use upon payment of just compensation – to local governments (Paragraph 10 thereof) obviously entailed that (1) slum improvement and resettlement did have a *public use*, and that (2) the State saw as its *remedy* the forced purchase of land in order to implement the slum improvement and resettlement program. The State does not see the direct prosecution of slum dwellers through criminal legislation as a viable solution. Hence, whatever objections to *squatting* or illegal occupancy of land should be left to the private landowner.

Of course, under the sweeping criminalization provisions of P.D. No. 772, the State contradicts itself when it declares that the same slum dwellers sought to be aided by LOI No. 555 are nothing but criminals.

Then on 11 June 1978, the most popular Marcos pro-urban poor measure was issued: P.D. No. 1517. Sec. 2 of the law states:

[27] *Id.* at ¶ 2.

[28] LOI No. 555, issued 11 June 1977.

> Section 2. *Declaration of Policy*. It is hereby declared to be the policy of the State a) to liberate out human communities from blight, congestion, and hazard, and to promote their development and modernization; b) to bring about the optimum use of land as a national resource for public welfare rather than as a commodity of trade subject to price speculation and indiscriminate use; c) to provide equitable access and opportunity to the use and enjoyment of the fruits of the land; d) to acquire such lands as are necessary to prevent speculative buying of land for public welfare; and e) to maintain and support a vigorous private enterprise system responsive to community requirements in the use and development of urban lands.

Section 4 of the decree authorized the President to proclaim specific parcels of urban and urbanizable lands as Urban Land Reform Zones. In a case of overwhelming State fervor, Proclamation No. 1893[29] declared the entire Metropolitan Manila area as an urban land reform zone. Of course, Proclamation No. 1967[30] tempered this overzealous gesture by specifying 244 sites in Metropolitan Manila as areas for priority development (APD) and urban land reform zones.

P.D. No. 1640[31] declared that in order "to effectively carry out the aims and objectives of the urban land reform program in Metropolitan Manila, it is necessary to freeze the prices of lands until appropriate guidelines, rules and regulations shall have been adopted..."

One of the final acts made by Marcos prior to his ouster in 1986 was P.D. No. 2016,[32] which prohibited the eviction of occupants from land identified and proclaimed as areas of priority development or as urban land reform zones and exempted such land from payment of real property taxes.

All the above enactments – from LOI No. 19 in 1972 to P.D. No. 2016 in 1986 – were measures enacted during this country's years under constitutional authoritarianism. There was a surprising array of supposedly benevolent State acts which interfered with private property use for the sake of urban development. *Even during the years of such constitutional authoritarianism, P.D. No. 772's criminalization of millions*

[29] Proclamation No. 1893, issued 11 September 1979.

[30] Proclamation No. 1967, issued 14 May 1980.

[31] P.D. No. 1640, issued 21 September 1979.

[32] P.D. No. 2016, issued 23 January 1986.

of urban slum dweller found itself misplaced and ran afoul with the relatively progressive pronouncements of the era.[33]

B. The 1987 Constitution

The progression of Philippine social development is said to have marched at a fast pace immediately after the ascendancy of Corazon C. Aquino to the presidency.

One of her first and arguably foremost achievements was the return to a constitutional government which understandably required the primordial need to create a Constitutional Commission which drafted the Constitution ratified by an overwhelming majority.

The salient provisions of the 1987 Constitution on Social Justice and Human Rights, particularly those belonging to Article XIII,[34] are crucial to the progression of Philippine social development and, consequently,

[33] It should not be inferred that Marcos urban development policies were not without betrayal of the national interest. In *The Third World City* (1987), David Drakakis-Smith correctly observed: "In 1975, following the example of other Southeast Asian governments, the capital city-region of Metro Manila was established under the governorship of Imelda Marcos, wife of President Ferdinand Marcos, and also Minister of Human Settlements. Immediately, a major World Bank planning analysis was undertaken and a series of major investments in urban development were instigated. These clearly illustrated the westernization favored by the Marcos regime... The poor did receive direct attention in the context of these investments but only in the sense that squatter settlements in the vicinity of the center, the hotels or the road from the airport, were demolished in a well-publicized beautification programme. It is estimated that some 60,000 squatters lost their homes before the World Bank conference and a further 100,000 prior to the Miss World (sic) pageant the following year." There was, however, no mistaking the honest attempt at addressing the problem of squatting through the foregoing presidential enactments.

[34] § 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

To this end, the State shall regulate the acquisition, ownership, use, and, disposition of property and its increments.

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§ 2. The promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance.

§ 9. The State shall, by law and for the common good undertake, in cooperation with the private sector, a continuing program of urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlement areas. It shall also promote adequate employment opportunities to such citizens. In the implementation of such program, the State shall respect the rights of small property owners.

§ 10. Urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner.

No resettlement of urban or rural dwellers shall be undertaken without adequate consultation with them and the communities where they are to be relocated.

to the glaring regressive nature of P.D. No. 772. The Chairperson on the Committee on Social Justice, Commissioner Nieva, invoked the concept of social justice as the *centerpiece* of the supreme law of the land. According to Bernas,

> The route to achieving social justice is presented as consisting of two principal tracks: first, according to the second paragraph of Section 1, there must be regulation of the acquisition, ownership, use, and disposition of property and its increments, and second, according to Section 2, Congress should create economic opportunities based on freedom of initiative and self-reliance. The ideas of freedom of initiative and self-reliance are placed in Section 2 in order to convey the message that these should not be allowed to impede the creation of a just social structure through regulation. Moreover, the task of creating wealth is made to follow the task of diffusing wealth because even now, in the present economic state of the nation and quite independently of the need to create wealth, there already is the urgent need for diffusion of existing wealth.
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> It should also be noted that, while Section 1 puts down a dual goal of diffusing economic wealth and political power, the second paragraph of Section 1 and all of Section 2 deal only with wealth. *This is a recognition of the reality that, in a situation of extreme mass poverty, political rights, no matter how strongly guaranteed by the Constitution, become largely rights enjoyed by the upper and middle classes and are a myth for the underprivileged.* Without the improvement of economic conditions there can be no real enhancement of the political rights of all the people.[35]

Following these two principal tracks needs the companionship of the realization that *squatting is a social – in contrast to a purely legal – problem.*[36]

Commissioner Garcia stressed that the concept of social justice involves a *vision of man in society.* First, man is a person with personal dignity and possessed of certain rights which the State did not confer and cannot take away. He can never legitimately become the instrument of another man or of the State. Also, man has certain inalienable rights which are inherent to his dignity.[37]

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[35] 2 BERNAS, THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 470 (1987).

[36] 2 RECORD OF THE CONSTITUTIONAL COMMISSION 672 (1986) [hereinafter referred to as CONCOM].

[37] *Id.* at 620.

In the nature of things, however, the satisfaction of these demands under Article XIII must depend on legislation.[38] The command is directed towards Congress, which must respond with a high degree of fealty and dispatch. After all the constitution is a compact made by and between the citizens of the state to govern themselves in a certain manner.[39] It is the peculiar value of a written constitution that it places in unchanging form limitations upon legislative action, and thus gives a permanence and stability to popular government which otherwise would be lacking,[40] for when Article XIII commands Congress to give social justice measures the *highest priority,* it in effect ties down the legislative agenda. Dicey avers that the advocate of constitutional law must feel that he is called upon to perform the part neither of a critic nor of an apologist, nor of a eulogist, but simply of an expounder.[41]

Bernas observes that the preamble of the Constitution bears witness to the fact that the Constitution is the *manifestation of the sovereign will of the Filipino people.* The identification of the Filipino people as the author of the Constitution also calls attention to an important principle: that the document is not just the work of representatives of the people but of the people themselves who put their mark of approval by ratifying it in a plebiscite.[42]

Dicey likewise points out that a constitution consists of rules, conventions, or understandings which may regulate the conduct of the several members of the sovereign power, which he so appropriately calls *constitutional morality.*[43] The call for social justice and the provision for an entirely separate Article in the 1987 Constitution just on Social Justice and Human Rights highlights this new constitutional morality which Congress has been tasked to observe.

Section 9 commands the State to undertake a continuing program of urban land reform and housing which will make available at affordable cost decent housing and basic services to *underprivileged and*

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[38] *Id.* at 469.

[39] Chisholm v. Georgia, 2 Dall. 419, 1 L Ed 440 (1794).

[40] Muller v. Oregon, 208 U.S. 412, 28 S. Ct. 324, 52 L Ed 551 (1908).

[41] DICEY, INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION, at 3-4 (1902).

[42] 1 BERNAS, THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY, at 4-5 (1987).

[43] DICEY, *supra* note 39, at 23.

homeless citizens in urban centers and resettlement areas. Commissioner Foz enumerated the goals of an urban land reform program:

> First, to liberate human communities from blight, congestions and hazards to promote their development and modernization; second, to bring about the optimum use of land as a national resource for public welfare rather as community [*sic*] of trade subject to price speculation and indiscriminate use; third, to provide equitable access to and opportunity for the use and enjoyment of the fruits of the land; fourth, to acquire such lands for public welfare; and finally, to maintain and support a vigorous enterprise system responsive to community requirements in the use and development of urban lands.[44]

The program will be embodied under a law to emanate from Congress.

Section 10 of the Constitution commands Congress to enact measures which should set forth a *humane demolition process* involving underprivileged and homeless citizens. As Commissioner Garcia stressed:

> Our historical experience precisely refers to urban poor communities occupying unused lands or abandoned lands where they have been living for a long time. In the past, whenever there was an excuse for the government to evict them, it would bring in the military or police to drive the people out by force without any kind of consideration as to the historical circumstances and to the rights of these inhabitants who, after many long years, have been residents of that area and have found jobs nearby.[45]

Then Commissioner (now Supreme Court Associate Justice) Davide made the observation that the provisions of Section 10 warrant the repeal of P.D. No. 772:

> We have the Anti-Squatting Law which is P.D. No. 772. According to the law it is a crime to squat, and one's dwelling unit can be demolished even without court order because the act itself of occupying a private land or a public land according to that decree is a crime. I agree that this should be interpreted to mean that P.D. No. 772 would be deemed repealed upon the ratification of this Constitution.[46]

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[44] 3 CONCOM 90.

[45] 2 CONCOM 673.

[46] *Id.* at 672.

Given that the *manifestation of the sovereign will of the Filipino people* calls for the Congress to give highest priority to social justice measures, more specifically, the enactment of a law which will provide for an urban land reform program and a human process of demolition, it is alarming to realize that part of the legislative will at present is P.D. No. 772. The subjects of the well-desired social justice measures, sadly, are the same subjects of criminalization in P.D. No. 772. Hence, the same constitutional command should include, without question a view that treating *squatting* as a *social problem* does not allow the criminalization of millions of squatters. They cannot be aided, on one hand, and brutally imprisoned, on the other.

Our renewed *constitutional morality* calls for the repeal of P.D. No. 772. This particular piece of criminal legislation bears not a trace of compliance with the mandate to provide for a humane process of demolition for it in fact orders the painful incarceration of supposed subjects of social justice.

C. The Urban Development and Housing Act of 1992

The legislative response to the mandate of Section 9 of the 1987 Constitution was the Urban Development and Housing Act (UDHA) of 1992. It was a declared policy of the State to create a *comprehensive and continuing* Urban Development and Housing Program (UDHP) with the following objectives:

1. Uplift the conditions of the underprivileged and homeless citizens in urban areas and in resettlement areas by making available to them decent housing at affordable cost, basic services, and employment opportunities.

2. Provide for the rational use and development of urban land in order to bring about the following:

   a. equitable utilization of residential lands in urban and urbanizable areas with particular attention to the needs and requirements of the underprivileged and homeless citizens and not merely on the basis of market forces;

   b. optimization of the use and productivity of land and urban resources;

   c. development of urban areas conducive to commercial and industrial activities which can generate more economic opportunities for the people;

d. reduction in urban dysfunctions, particularly those that adversely affect public health, safety and ecology; and

e. access to land and housing by the underprivileged and homeless citizens.

3. Adopt workable policies to regulate and direct urban growth andexpansion towards a dispersed urban net and more balanced urban-rural interdependence.

4. Provide for an equitable land tenure system that shall guarantee security of tenure to Program beneficiaries, but shall respect the rights of small property owners and ensure the payment of just compensation.

5. Encourage more effective people's participation in the urban development process.

6. Improve the capability of local government units in undertaking urban development and housing programs and projects.

The principal sponsor of the law, Sen. Jose D. Lina, Jr. stated the law, "emphasizes the compassionate and humane policy formulated and program developed by the government in cooperation with the private sector and intended beneficiaries of the program."[47]

The UDHP calls for a system of Land Inventory, Identification of Sites for Socialized Housing, Beneficiary Listing, Land Acquisition, and Disposition which will commit the urban land reform program into fruition.

Section 28 of the law realizes the mandate laid down in Section 10 of the 1987 Constitution. The so-called Law on Demolition outlines the process for a humane demolition involving underprivileged and homeless citizens. The key steps in the process would be, *inter alia*, the twin requirements of adequate consultation and adequate relocation. The latter directly addressed the so-called vicious cycle of eviction, relocation and remigration, brought on by the resettlement strategy of the 70s.[48]

[47] Sponsorship speech by Sen. Lina, Conference Committee Report on S. No. 234 and H. No. 34310, 3 February 1992.

[48] Pilar Ramos-Jimenez, Ma. Elena Chiong-Javier, Judy Carol Sevilla, PHILIPPINE URBAN SITUATION ANALYSIS, at 10 (1986)

Section 28 also proclaimed that demolition as a practice shall be discouraged, save for a few exceptions.

The comprehensive character of the UDHP can be gleaned from provisions on Incentives for Private Sector Participation, Promotion of Indigenous Housing Materials and Technologies, Transport System, Ecological Balance, Population Movements, and Urban-Rural Interdependence. There were also provisions on Funding which enumerated the sources of the UDHP.

Finally, penal provisions for violators of the UDHA, more particularly professional squatters, imposed a heavier penalty on those who went against the tide of an invigorated urban land reform program.

The *comprehensive and continuing* character of the UDHP as created under the UDHA are undoubtedly acts of progression towards achieving the dream of social justice for the urban poor. The UDHA was a major first step towards fulfilling the mandate of the sovereign will of the Filipino people. *Criminalizing intended beneficiaries of the UDHP and the Law on Demolition is anathema to the aspirations of our Constitution, and is a regressive approach to the squatting problem.* The contemptuous approach of the State in criminalizing millions of *squatters* in P.D. 772 runs counter to the compassionate and humane approach emanating from Article XIII of the 1987 Constitution — the supreme manifestation of the sovereign will — and the UDHA.

D. The So-Called Non-Interventionist Strategy

A report by the Philippine Government to the United Nations Economic and Social Council[49] reveals a Medium-Term Philippine Development Plan for 1993-98 which highlights the housing policies and strategies of the Ramos administration.[50] The underlying principle beneath these policies and strategies is the recognition of Government as a *non-*

[49] U.N. Economic and Social Council, E/1986/3/Add. 17 (1994) [hereinafter referred to as PHILIPPINE GOVERNMENT REPORT].

[50] These policies and strategies are the following: (a) grant of government housing assistance to the poorest 50 percent of the population through the cross-subsidy scheme, *Abot-Kaya Pabahay Fund*, other subsidies, and community-based financing schemes; (b) encouragement of community-based housing and site development activities; (c) sustaining a long-term mortgage shelter finance programme that allows for cost recover, cross-subsidy mechanisms, expanded service to different regions, and development of new self-financing/cooperative schemes for land acquisition and housing; (d) provision of government lands as resettlement sites for squatter families occupying priority infrastructure projects and danger zones; (e) private sector and

interventionist facilitator, whereby its primary task is to ensure that all resources are mobilized and that the private and community sectors can contribute in full to shelter development. Government has realigned its traditional role as the sole provider and producer of actual public housing units to an enabler and facilitator within an integrated and comprehensive delivery system. Towards this end, it shall create an *enabling environment* to encourage and mobilize private sector investment in low-cost housing and institution community or people's initiative.[51]

It goes without saying that part of this *enabling environment* should include the decriminalized state of Government's primary subjects of urban and shelter development, *i.e.*, the millions of *squatters* who dwell in our urban areas. Creating an "enabling environment" only for the private sector totally misses the point. To exclude the most obvious subjects of urban and shelter development from the context of a so-called *enabling environment* proves to be short-sighted.

Government needs to maintain an interventionist stance, at least in the area of destroying the image of the urban poor as second-class citizens; as criminals, if you will. Intervention does not necessarily evoke images of giving them land for free, but rather liberating them from obvious forms of oppression, such as P.D. No. 772.

NGO-PO participation in the provision of low-cost housing for the poor; (f) allocation of more resources to housing programmes designed to provide security of tenure and upgrading of housing facilities; (g) design of assistance packages that are affordable to the homeless population, without prejudice to the sustainability of housing finance; (h) formulation and implementation of a comprehensive preventive and remedial programme on squatting; (i) promotion of a more balanced population distribution to ease pressures on existing physical resources and basic services, particularly housing in the urban areas; (j) national reconciliation to reduce the problem of displaced families; (k) expansion and strengthening of existing community, family, women, and child welfare programmes in resettlement sites, slums or depressed areas and low-income communities; (l) emergency shelter and psychological services for individuals and families traumatized by natural and man-made disasters; (m) establishment of regional one-stop shops for housing and regional housing agencies for efficient delivery of housing services; (n) creation of local housing boards to plan and implement local housing programmes and projects; (o) production of low-cost housing and development and alternative housing options to lower housing construction cost; (p) encouragement of private sector involvement in social housing, land development, and house construction; (q) synchronization of the provision of necessary infrastructure, *e.g.*, water, electricity, communications, sewerage, rights of way, health centres; and (r) establishment of resettlement areas and undertaking of sites and services development.

[51] PHILIPPINE GOVERNMENT REPORT, *supra* note, ¶ 358.

E. The Summary Remedy of Ejectment

At the time P.D. No. 772 was enacted, the major remedy of a landowner or legitimate possessor deprived of possession of his or her land would be the summary action for ejectment. Moran explains that the proceedings involving the early forcible entry and detainer statutes were originally by indictment and *purely criminal in nature*, though upon complaint of the injured party.[52] Thereafter,

> ...[B]y the statute of Henry VI, the court before which the case was tried, although by indictment, was conferred with authority to order the restitution of the detained estate to the party entitled to it; and it is said that perhaps generally, now, in those States in which the statute of Henry VI has been followed, the prosecution under the statute is ordinarily a public prosecution by indictment.
>
> The statutes of the several States of the United States are substantially based on these prohibitory English statutes, and speaking generally, they declare that no entry shall be made into land or other possessions but in cases where an entry is given by law; and in such cases only in a peaceable manner, and not with a strong hand, nor with multitude of people ... *Although the proceedings were originally in the form of a criminal prosecution, yet by gradual addition to the early prohibitory statutes of provisions looking to the restitution of the property to the party dispossessed, the remedy had in general become a private rather than a public one,* notwithstanding that the form of the proceeding, the rules of law which govern it, and the jurisdiction of the court wherein it may be maintained remained to a great degree unchanged.

In Anglo-American common law, the action for ejectment was the landlord's primary judicial remedy for the removal of a tenant. It was an expensive and often dilatory proceeding, especially considering that a landlord's expenses (taxes, insurance, debt service, etc.) continue to accrue whether the tenant pays his rent or not. The 19th century witnessed a new remedy, the *summary* form of proceeding, of which an 1820 New York statute was typical.[53]

When the first Philippine Code of Civil Procedure became law as Act No. 190, the Anglo-American remedy of ejectment and the summary nature of its proceedings were infused into the Philippine legal system.

[52] MORAN, *supra* note 2, at 260.

[53] BERGER, LAND OWNERSHIP AND USE, at 422 (1975).

What becomes readily apparent is the evolution of the action for ejectment from a criminal to a civil action, due mainly to the fact that what was only necessary was the immediate restitution of the property to its rightful possessor, and to no other. Centuries of Anglo-American judicial and legal reform transpired before such a transformation. The enactment of P.D. No. 772, breathtakingly akin to the elements of a forcible entry action, reverted to what the common law sought to avoid – the criminalization of a case of forcible entry.

Our very own Supreme Court issued Rules on Summary Procedure (in 1983 and 1991) to improve summary action proceedings, if only to dramatize the need to provide an adequate remedy for the legal possessor who was illegally deprived of his or her possession of the land. The enhancement of summary action proceedings already provides a step in the right direction. On the other hand, *a diligent student of legal history should know that criminalization of forcible entry actions brings us back to the dark, medieval past.* P.D. No. 772 is a step in the wrong direction.

III. P.D. No. 722 Is Violative of its Own Spirit

A. Right To Fair Warning

It may be argued that the intent of P.D. No. 772 was to punish those who belonged to the "affluent (*squatting*) class". A long line of Supreme Court cases[54] certainly belies this intent. It is well-settled that the elements of the offense constitute the following: (a) the accused is not the owner of the land; (b) that the accused succeeded in occupying or possessing the property through force, intimidation, or threat or by taking advantage of the absence or tolerance of the owner; and (c) such occupation of the property is without the consent or against the will of the owner.[55]

In *Jumawan v. Eviota*, Mr. Justice Mendoza underscored the "unambiguous" nature of Section 1 of P.D. 772. Hence, applying a basic rule of statutory construction – *i.e.*, no construction where no ambiguity is present – the provisions of the preamble were virtually neglected. Hence, the sweeping language *cum* sweeping criminalization of all *squatters*

[54] People v. Echaves, 95 SCRA 663 (1980); Bernardo v. People, 123 SCRA 365 (1983); People v. Siat, 172 SCRA 640 (1989); Ocampo v. Court of Appeals, 180 SCRA 27 (1989); Ortigas vs. Hidalgo, 198 SCRA 635 (1991); People v. City Court, Br. III, General Santos City, 208 SCRA 8 (1992); Jumawan v. Eviota, 234 SCRA 524 (1994); Apa vs. Fernandez, 242 SCRA 509 (1995).

[55] Ocampo v. Court of Appeals, 180 SCRA, at 31.

patent in Section 1 prevails. The argument that P.D. 772 only applies to the "affluent (squatting) class" is, according to the Court, legally unavailable.

However, one cannot avoid the fact that the legislative intent of P.D. No. 772 was made an *integral* part of the law. What may have been lost in the sweeping language of Section 1 remains an imposing presence, appearing as it does in the introductory text of the law.

According to the *right to fair warning*, enunciated by the United States Supreme court in *Bouie v. Columbia*,[56] a criminal statute must give fair warning of the conduct that it considers a crime. There is a violation of the right to fair warning where the criminal statute was not sufficiently explicit to inform those who are subject to it and what conduct on their part will render them liable to its penalties. Mr. Justice Brennan explained that a statute which either forbids or requires the doing of an act in terms so vague that men of *common intelligence* must necessarily guess at its meaning and differ as to its application violates the first essential rule of due process of law. No one may be required, at the peril of his or her life, liberty or property, to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.[57]

If a penal statute such as P.D. No. 772 invokes limited application as to intent and sweeping application as to letter, then the criminal act to be punished has not been clearly set out. People of common intelligence deserve to know clearly that they face the risk of incarceration.

P.D. No. 772 must be accordingly repealed for being violative of its own spirit.

B. Substantive Due Process

The due process clause must be a guarantee against the exercise of arbitrary power even when the power is exercised according to proper forms and procedure.[58] Arbitrary power, enforcing its edicts to the injury of the persons and property of its subjects, is not law, whether manifested

[56] 378 U.S. 347, 84 S. Ct. 1697, 12 L ed 894 (1964).

[57] *Id.*

[58] 1 Bernas, *supra* note 40, at 48.

as the decree of a personal monarch or of an impersonal multitude.[59] If due process is all proper procedure, then life, liberty and property can be destroyed provided proper forms are observed.[60]

According to *U.S. v. Toribio*,[61]

> [T]o justify the State in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals.[62]

1. PUBLIC INTEREST

P.D. No. 772 antagonizes the avowed public interest at stake in the socialized housing pursuits of the State. If the dream of genuine urban land reform is an esteemed public purpose, then legislation which criminalizes the subjects of genuine land reform runs opposed to such a public purpose. In *Sumulong v. Guerrero*,[63] Mme. Justice Cortes specified that the more pressing State need would be to implement "socialized housing" whereby the primordial subjects of genuine urban land reform are identified as none other than the squatters themselves. She declared:

> Housing is a basic human need. Shortage in housing is a matter of state concern since it directly and significantly affects the public health, safety, the environment and in sum, the general welfare. The public character of housing measures does not change because housing project units cannot be occupied by all but only by those who satisfy prescribed qualification. A beginning has to be made, for it is not possible to provide housing for all who need it, all at once.[64]

No public purpose is attained by P.D. No. 772 when it easily opposes the accepted public purpose of socialized housing.

[59] Hurtado v. California, 110 U.S. 516, 28 L ed 232 (1884).

[60] 2 BERNAS, *supra* note 33, at 48.

[61] 15 Phil. 85 (1910).

[62] U.S. v. Toribio, 15 Phil., at 98.

[63] 154 SCRA 461 (1987).

[64] 154 SCRA, at 468-69.

2. REASONABLE MEANS

The more important aspect of substantive due process, however, involves the reasonable means through which the public purpose is to be carried out.

If the avowed intent of P.D. No. 772 is to curb the "illegal and nefarious practice" of *squatting* by members of the affluent class, then the massive criminalization of all squatters is definitely not a *reasonably necessary* means to such an end. For this reason, the repeal of P.D. No. 772 looms inevitable.

C. A Conservative Supreme Court

Accepting the freakish nature of P.D. 772 is made easy by the fact that our very own Supreme Court has adopted an interpretation of the law which runs contrary to its own spirit.

1. UNDERMINING THE PREAMBLE

The Supreme Court started out by upholding the Preamble of P.D. No. 772. In *People v. Echaves*,[65] the issue which confronted the Court was whether or not P.D. No. 772 applies to agricultural lands. Mr. Justice Aquino's answer and corresponding reasoning succinctly provides that "the decree does not apply to pasture lands because its preamble shows that it was intended to apply to squatting in *urban communities* or *more particularly to illegal constructions in squatter areas made by well-to-do individuals.*"[66] Three years later, Mr. Justice Relova reiterated the ruling in *Echaves* in *Bernardo v. People*.[67] Six years after *Bernardo*, Mr. Justice Bidin adhered to *Echaves* in *People v. Siat*.[68]

As stated, fourteen years after *Echaves* the Court changed its tune in *Jumawan*. Mr. Justice Mendoza downplayed the pronouncement respecting the whereas clauses of the decree, designating the latter as mere *dictum*. Although the issue in *Jumawan* did not involve the intent

[65] 95 SCRA 663 (1980).

[66] Italics supplied.

[67] 123 SCRA 365 (1983).

[68] 172 SCRA 640 (1989).

directed against the affluent *squatting* class, the bold declaration that a preamble may be resorted to only when the statute is in itself ambiguous is bad news for those who push for the limited application of the law.

2. CONTINUOUS CRIME DOCTRINE

In *People v. City Court, Br. III, General Santos City*,[69] the Supreme Court proclaimed that *squatting* is a continuous offense. Hence, even if the illegal occupancy by a person of the property of another commenced prior to the promulgation of P.D. No. 772 on 20 August 1975, if such illegal occupancy continued up to the filing of the information, such person can be held liable under the law.

This obviously oppressive ruling has resulted in an annotation alongside the *City Court* case.[70] Briefly, a close study of the concept of continuous crime reveals that such has its origin in the juridical fiction *favorable to the law transgressor*. Hence, the interpretation that a violation of P.D. No. 772 is a continuous offense insofar as it covers illegal entry committed before its promulgation oppresses rather than favors the transgressor, which violates the original concept of continuous offenses.

3. A LEGISLATIVE CHECK

In order to avert the rising volume of jurisprudence which undermines the avowed spirit of P.D. No. 772, namely the suppression of the affluent squatting class, it does well for our system of checks and balances to eliminate the very source of oppressive judicial interpretation.

Eradication of P.D. No. 772 from our statute books is most appropriate.

IV. P.D. 772 FORSAKES HISTORY AND LACKS FORESIGHT

The old adage says that *those who do not learn from the lessons of history are condemned to repeat it.*

[69] 208 SCRA 8 (1992).

[70] 208 SCRA 12 (1992). The annotation was written by Judge David G. Nitafan of the Manila Regional Trial Court.

Although the Philippines remains predominantly rural, it has recently demonstrated more rapid *urbanization*, whether measured in terms of level (the proportion of the population living in urban areas), tempo (the difference between the urban and rural growth rates) or rate of urbanization. While its level of urbanization is still low by world standards, the Philippines which had an average urbanization level of 31% as of 1980, is considered as one of the more urbanized among the less developed countries.[71]

What needs to be established is the historical truth that *voluntary* and *involuntary factors* played big roles in the urbanization process. Even presently, these are still what constitute the social dimension of the *squatting* problem.

A. Voluntary and Involuntary Components of Urbanization

1. INVOLUNTARY COMPONENT: THE GLOBAL COLONIAL ECONOMY

The existing pattern of urban settlements, which is highly polarized, is not only influenced by the present economic setting but might have evolved from certain historical processes which endowed economic advantage to particular urban nuclei over others.[72]

Indeed, during the sixteenth century, Spain practiced the same type of enclave colonialism in Asia as did the Portuguese, with almost her entire colonial efforts being concentrated in the establishment and maintenance of Manila as an entrepot for the pre-existing inter-Asian trade.[73]

The lucrative nature of trade swelled Manila's population as settlers flooded in from Spain and the commercial areas of Southeast Asia. By the early seventeenth century Manila had become a thriving city surrounded by an almost completely rural society.[74]

[71] *Urbanization and Socio-Economic Development in Asia and the Pacific*, United Nations Population Studies Series No. 122, at 10 (1993) [hereinafter referred to as U.N. Population Studies Series].

[72] *Id.* at 19.

[73] Smith and Nemeth, *Urban Development in Southeast Asia: A Historical Structural Analysis*, in URBANIZATION IN THE DEVELOPING WORLD at 121-32 (David Drakakis-Smith ed., 1986).

[74] *Id.*

The eighteenth century ushered in the Industrial Revolution and the sweeping changes in relationships within and between centuries in the world economy. City growth was radically altered. The transformation in the countryside was beginning to generate the flow of dispossessed peasants which would become a torrent by the mid-twentieth century. Other more positive factors also provided impetus for city growth. The more intensive form of colonialism required the growth of large multifunctional port cities to serve as an economic intermediary between the metropolitan power and the colony.[75]

When in the throes of twentieth century industrialization, the most prominent function of emerging urban centers was economic: the colonial city was the "nerve centre" of colonial exploitation. Concentrated here were the institutions through which capitalism extended its control over the colonial economy – the banks, the agency houses, the trading companies, the shipping companies, and the insurance companies. One result was *uneven urbanization* linked to dependency which, in turn, emphatically defines the internal situation, and which a country cannot break out from simply by isolating itself from external influences.[76]

Primate cities were on the rise. In the early twentieth century the demographic growth rates of these cities accelerated considerably. A dimension of uneven urban development exacerbated during this period was *intra-urban inequality*.[77]

2. VOLUNTARY COMPONENT: GOVERNMENT

Was formal colonialism the sole influence on urbanization? Definitely not.

Development does not just happen. Instances of accelerated economic growth or social transformation among modern nations have generally been preceded by deliberate policies initiated and sustained by

[75] *Id.*

[76] The economist Dos Santos defines dependence as a "conditioning situation, in which economies of one group of countries are conditioned by the development and expansion of others." That is, dependence is based on an international division of labor which allows industrial development to take place in some countries while restricting it in others "whose growth is conditioned by and subjected to the power centers of the world." It is undoubtedly the case that the dependency theory provided many important insight into the characteristics of LDCs and the interaction between them and developed capitalist countries, despite harsh criticism from Marxist economists. COLMAN and NIDSON, ECONOMICS OF CHANGE IN LDCS, at 54-55, 59 (1994).

[77] *Id.* at 132.

national governments. Ever since the international division between technologically advanced powerful nations and technologically backward poor ones became evident, rapid development has generally been the result of a consciously guided process.[78]

Nearly all of the nations in Southeast Asia have won their independence since 1945 and most of the Europeans and Americans who ran both their colonial administration and major commercial enterprises have departed. Their roles are not filled by Asians. However, little has changed with regard to the structure of economic and political power. These new elites have failed to do much more than their predecessors in redressing either rural-urban inequality or urban under- and un-employment.[79]

Urbanization policies conformed to the view that the expansion of the industrial sector required some degree of spatial concentration to generate the economies of scale necessary for successful development.[80] Consequently, the strategy highly favored Metro Manila, whose rapid economic growth generated desirable production externalities that continuously attracted a massive inflow of capital and human resources to the area.[81]

A more revealing observation declares the ruling class to be inextricably tied to the transnational structure of imperialism. Problems such as inequality and imbalance in urban system development are not just the products of a past era of intrusive colonialism. External dependency *vis-à-vis* the world economy continues to be reflected and reinforced by elites whose class interests coincide more closely with the interests of fractions of international capital than with balanced national development. The influence of international dependencies has become interwoven into the whole fabric of Southeast Asian societies, primarily through the development of class structure typical of subordinate capitalism.[82]

The National Urban Development and Housing Framework (NUDHF) issued by the Housing and Urban Development Coordinating Council (HUDCC) narrates that the absence of a long-term plan or vision for urban

[78] Portes, *On the Sociology of National Development: Theories and Issues*, 82 AMERICAN JOURNAL OF SOCIOLOGY No. 1, at 55-85 (1976).

[79] Smith and Nemeth, *supra* note 71, at 136.

[80] U.N. Population Studies Series, *supra* note 69, at 19.

[81] *Id.* at 20.

[82] Smith and Nemeth, *supra* note 71, at 136.

development resulted in the implementation of urban-related projects that were mere remedies, palliatives or stop-gap measures to existing deficiencies. The implication of such projects on urban population or demographic shifts, and their socio-economic impact in relation to urban growth and ultimately, toward national development have not been considered.[83]

B. Squatting in the Urbanization Process

Among the more evident problems created by the unbalanced urbanization process would be the proliferation of *squatters*. Likewise, the difficulties in keeping up with the rapid pace of urban population growth are evident not only in the lack of housing facilities of good condition but also in the substantial proportion of households without the benefit of basic urban amenities.[84]

A report submitted before the Asian Development Bank estimated that there are now more than ten million people living in slums and *squatter* colonies in major cities. In more recent times, migration has played an increasing role in urban growth, particularly in the largest cities.[85] The contribution accounted for by migration increased from 17.6% between 1960 and 1970 to 30.8% in the next decade.[86] There are two factors, according to a study conducted by the De La Salle University Research Center, which encourage rural migrants to live in slums: (1) proximity of employment and (2) the availability of undeveloped and private land. The lack of productive employment in the rural areas drive the rural poor to seek work in urban centers. Once there, the confluence of low household income, high cost of real estate, building materials and construction, shortage of credit and high interest rates on housing loans, prevent them from acquiring homes of their own.[87]

C. Projections Into the Next Century

The projections convey that by the time the Philippines enters the early part of the 21st century, it will have reversed its position from a

[83] National Urban Development and Housing Framework, at 2 (1994).

[84] U.N. Population Studies Series, *supra* note 69, at 17.

[85] Balisacan, *Urban Poverty in the Philippines: Nature, Causes and Policy Measures*, 12 ASIAN DEV. REV. No. 1, at 127 (1994).

[86] U.N. Population Studies Series, *supra* note 69, at 17.

[87] Ramos-Jimenez, *supra* note 46.

predominantly rural to a predominantly urban society. In particular, the level of urbanization is expected to increase by 16% from around 38% in 1980 to 54% in 2010. This implies that the level of urbanization in the country in thirty years, or in 2010, will have paralleled that of developed countries.[88]

D. The State as Parens Patriae

To constitute a crime, squatting must be punished to protect the public, and it must be punished *by the State or other sovereign power*.[89] Under civil law, private parties file suit in court alleging an infringement of private rights under criminal law violations of a public wrong are prosecuted by the state. Thus, criminal law differs from civil law in that a crime is a public wrong, prohibited by law, for which a punishment is provided.[90]

The ideal aim of law is to maintain social order in the interests of the community at large, and the criminal justice system has both a preventive and a punitive function.[91]

> The *preventive function* is justified by appeal to two traditional principles. The first is that of *parens patriae*, in which the state assumes "parental" responsibility for citizens in need of care and protection ... The second is the assumption by the state of police powers to protect its citizens from law-breakers or those who are a danger to others.
>
> The *punitive function* of criminal justice arises from the rights of the state to impose sanctions on those who violate the criminal law.[92] [italics supplied]

If the criminal statute is enacted by the State (through government mechanisms, *i.e.*, legislative and executive branch processes) to protect its citizens by virtue of its role as *parens patriae*, then a continuing recognition of P.D. No. 772 disregards the role of involuntary and

[88] U.N. Population Series, *supra* note 69, at 24.

[89] Marshall and Clark, *The Legal Definition of a Crime*, from a *Treatise on the Law of Crimes*, *in* THE SOCIOLOGY AND CRIME OF DELINQUENCY, at 16 (Marvin E, Wolfgang, Leonard Savitz & Norman Johnston eds., 1970).

[90] NEUBAKER, AMERICA'S COURTS AND THE CRIMINAL JUSTICE, at 18 (1984).

[91] BLACKBURN, THE PSYCHOLOGY OF THE CRIMINAL CONDUCT (THEORY, RESEARCH AND PRACTICE), at 11 (1993).

[92] *Id.*

voluntary forces in the phenomenon of urbanization and squatting.

The State cannot arrogantly impose punitive measures against a lowly class of its citizens who were placed in the "criminal" situation by circumstances beyond (global colonialist economy) and within (flawed policy measures) its control.

In addition, the criminalization of *squatting* fails to anticipate the rapid growth of the urban population into the 21st century. Criminalizing and prosecuting millions of *squatters* entail more expenditures on the criminal justice system. And a substantial criminal justice budget, cannot successfully solve the economic and political problems of the capitalist system. This conventional economic analysis of crime is a science for preserving the social order of advanced capitalism.[93] Moreover, when arrests are made, the time of officers in court, and of judges and court personnel and prosecutors, will be taken from other, perhaps more important, matters; then conviction means taking the time of probation personnel and of the already grossly inadequate resources of the correctional system. The result may be *assembly-line justice* or worse for all concerned.[94]

In fact, this obvious tendency to "overcriminalize" — to misuse the criminal sanction — can contribute to disrespect, if not an over-all cynical attitude, towards the law. The conduct usually punished by "overcriminalization" efforts usually entails no victim in the usual sense of the word, because the participants in the offense are willing; or, the interest of the victim is often so insubstantial that it does not justify imposition of the criminal sanction to protect it; or the defendant himself is the victim. In recent years, legal scholars have drawn attention to society's failure to discriminate between appropriate and inappropriate uses of the criminal sanction.[95]

The existing inter-urban inequality prevalent in Philippine society will constantly recur if the policy which we impose upon our slum dwellers is one of contempt and inherent criminalization. We will end up reinforcing past policies which caused such inequality, and worse, we shall have shackled ourselves to the malady of overcriminalization and assembly-line justice.

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[93] QUINNEY, CLASS, STATE AND CRIME, at 139-40 (1980).

[94] LAW AND ORDER RECONSIDERED: A STAFF REPORT TO THE NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE, at 600-606 (1970).

[95] *Id.*

V. P.D. 772 IS NOT IN ACCORD WITH INTERNATIONAL LAW

A. United Nations Instruments

International pressure and government policy converged in various international instruments which sought to create an atmosphere of political and economic development. Thus, the Universal Declaration of Human Rights proclaims that

> [E]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, *housing*, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.[96] [italics supplied]

The International Covenant on Economic, Social and Cultural Rights contains perhaps the most significant foundation of the right to housing found in the entire body of legal principles which comprise international human rights law.[97] Article 11.1 of the Covenant declares that

> ...[T]he States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing *housing*, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. [italics supplied]

Article 2.1 of the Covenant is of central importance in determining what Governments must do and what they should refrain from doing in the process leading to the society-wide enjoyment of the rights found in the Covenant.[98] This article reads as follows:

> Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization

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[96] Art. 25.1 (1948).

[97] United Nations Human Rights Facts Sheet, No. 21, at 5.

[98] *Id.*

> of the rights recognized in the present Covenant *by all appropriate means*, including particularly the adoption of legislative measures. [italics supplied]

A paper presented by the Ateneo Legal Aid Society[99] observed that "(a)mong the 'second generation' human rights guaranteed by the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights is the right to adequate housing which is deemed included in the right to an adequate standard of living. This has been reiterated in many subsequent international conventions, regional conventions and U.N. Charter practice."[100]

A group of distinguished experts in international law met in Maastricht in June 1986 to consider the nature and scope of state obligation under the International Covenant on Economic, Social, and Cultural Rights. This meeting resulted in the adoption of the *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights.*

According to the Limburg Principles, the phrase "by all appropriate means" affirms that States Parties have the obligation to immediately take steps towards the full realization of the rights contained in the Covenant.[101] States have to use all appropriate means, including legislative, administrative, judicial, economic, social and education measures, consistent with the nature of the right in order to fulfill their obligations of the Covenant.[102] Legislative measures alone are not sufficient to fulfill the obligations of the Covenant, though *legislative action is required in cases where existing legislation violates obligations assumed under the Covenant.*[103]

If the State, pursuant to the International Covenant on Economic, Social and Cultural rights, should, "by all appropriate means" promote the right to housing of everyone, then allowing P.D. No. 772 to be part and parcel of the legislative measure will defeat the purpose of the efforts

[99] A student organization of the Ateneo School of Law that provides *pro bono* legal services to indigent clients.

[100] Ateneo Legal Aid Society, *The Unconstitutionality of P.D. 772*, PHILIPPINE HUMAN RIGHTS MONITOR, Vol. 6, No. 6, at 10-11 (1993).

[101] The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, principle 16 (1986).

[102] *Id.*, principle 17.

[103] *Id.*, principle 18.

to undertake genuine urban land reform. The repeal of P.D. No. 772 should be taken to mean that the State has undertaken, through its "most appropriate means", one outstanding mode of compliance with the International Covenant on Economic, Social and Cultural. It all takes the simple realization that the subjects of the Covenant should not be subjected to the kind of sweeping criminalization emanating from P.D. No. 772.

Other international conventions containing provisions on the right to housing are the 1965 International Convention on the Elimination of All Forms of Racial Discrimination,[104] the 1979 International Convention on the Elimination of All Forms of Discrimination Against Women,[105] and the 1989 International Convention on the Rights of the Child.[106] Significantly, the Philippines is a party to all these instruments.[107]

On 19 May 1995, the Committee on Economic, Social and Cultural Rights, in consideration of the abovementioned Philippine Government Report[108] issued as one of its "concluding observations" an outright attack on P.D. No. 772, stating that:

> 13. The Committee expresses particular concern at the use of criminal provisions to deal with problems arising from the inadequacy of housing. It notes in this regard that Presidential Decree (PD) 772 has been used in some cases as a basis for the criminal conviction of squatters and that P.D. 1818 restricts the right to due process in the case of evictees. While the Committee does not condone the illegal occupation of land not the usurpation of property rights by persons otherwise unable to obtain access to adequate housing, *it believes that in the absence of concerted measures to address these problems resort should not be had in the first instance to measurers of criminal law...*
>
> *E. Suggestions and Recommendations*
>
> 31. ...In general, the Committee urges that consideration be given to the repeal of P.D. 772....[109]

[104] Art. 5 (e) (111).

[105] Art. 14 (2) (h).

[106] Article 27 (3).

[107] Ateneo Legal Aid Society, *supra* note 97.

[108] *Supra* note 47.

[109] Future E/C.12/1995/7 (1995).

Not to be missed is the resolution adopted unanimously by the Commission on Human Rights dated 10 March 1993.[110] It declared, *inter alia*, that the Commission on Human Rights committed itself to the following:

> *Reaffirming* that every woman, man and child has the right to a secure place to live in peace and dignity,
>
> *Concerned* that, according to United Nations statistics, in excess of one billion persons throughout the world are homeless or inadequately housed, and that this number is growing,
>
> *Recognizing* that the practice of forced eviction involves the involuntary removal of persons, families and groups from their homes and communities, resulting in increased levels of homelessness and in inadequate housing and living conditions,
>
> *Disturbed* that forced evictions and homelessness intensify social conflict and inequality and invariably affect the poorest, most socially, economically, environmentally and politically disadvantaged and vulnerable sectors of society,
>
> *Aware* that forced evictions can be carried out, sanctioned, demanded, proposed, initiated or tolerated by a range of actors,
>
> *Emphasizing* that ultimate legal responsibility for preventing forced evictions rests with governments,
>
> x x x
>
> *Taking note* of the observations of the Committee on Economic, Social and Cultural Rights at its fifth (1990) and sixth (1991) sessions concerning forced evictions,
>
> x x x
>
> *Taking note further* of Sub-Commission resolution 1992/14 (Forced evictions) of 27 August 1992,
>
> *1. Affirms that the practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing;*

[110] Resolution 1993/77.

Considering that the forced eviction of a person convicted under P.D. No. 772 would fall under one of the chief effects inherent in a criminal conviction, *i.e.*, "reparation for the damage caused",[111] then the penal nature of P.D. No. 772 collides with Resolution 1993/77 of the Commission on Human Rights. *Forced evictions constitute a gross violation of human rights,* plain and simple.

In sum, the Ateneo Legal Aid Society study asserts that:

> ...[I]t is impossible to maintain that P.D. 772 is consistent with the Philippines' obligation to afford adequate housing to its citizens. P.D. 772 penalizes all squatters and makes no distinction as to the kind of squatters it considers criminal. This law fails to look into the reason or cause for the squatting, but punishes all squatters without qualification. The law is in direct contravention with Art. 25 of the Universal Declaration of Human Rights which guarantees the right to adequate housing "in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond his control." Under international law, the reason for squatting is all-important because, depending on the cause for lack of housing, the homeless (or squatter) becomes a beneficiary instrument and a ward of the State.[112]

B. Philippine Representations to the International Community

On 28 June 1994, the Philippine government submitted its official report pertaining to its implementation of the commitment to respect, protect and fulfill the human right to adequate housing as embodied in the International Covenant on Economic, Social and Cultural Rights.[113] Each of the 119 countries which have ratified the Covenant (the Republic of the Philippines included) are required to submit detailed reports on housing rights and the other economic, social and cultural rights found in the Covenant once every five years, based on certain rights found in the Covenant and on certain guidelines which include, *inter alia*, information concerning State legislation on the urban poor, to wit:

[111] Art. 38, REVISED PENAL CODE (1932).

[112] Ateneo Legal Aid Society, *supra* note 97.

[113] PHILIPPINE GOVERNMENT REPORT. As of May 1993, 119 countries, including the Philippines, have ratified the Covenant on Economic, Social, and Cultural Rights and thus have unequivocally accepted to respect, protect and fulfill the human right to adequate housing and to ensure the continuous improvement in living conditions.

i) legislation which gives substance to the right to housing in terms of defining the content of this right;

ii) legislation such as housing acts, homeless person acts, municipal corporation acts, etc.;

iii) legislation relevant to land use, land distribution, land allocation, land zoning, land ceilings, expropriations including provisions for compensation, land planning including procedures for community participation;

iv) legislation concerning the rights of tenants to security of tenure, to protection from eviction, to housing finance and rent control (or subsidy), housing affordability, etc.;

v) legislation concerning building codes, building regulations and standards and the provision of infrastructure;

vi) legislation prohibiting any and all forms of discrimination in the housing sector, including groups not traditionally protected;

vii) legislation prohibiting any form of eviction;

viii) *any legislative appeal or reform of existing laws which detracts from the fulfillment of the right to housing;*

ix) legislation restricting the speculation on housing or property particularly when such speculation has a negative impact on the fulfillment of housing rights for all sectors of society;

x) legislative measures conferring legal title to those living in the 'illegal' sector; and

xi) legislation concerning environmental planning and health in housing and human settlements.

[italics supplied]

The Report asserted that "the Philippine government has enacted legislative measures, introducing statutes and implemented guidelines, establishing various programmes which directly or indirectly provide housing services to its burgeoning population and instituting the necessary implementing structures and mechanisms."[114] It enumerates a barrage of legislative enactments which reinforce the commitment to uphold the right

[114] PHILIPPINE GOVERNMENT REPORT, *supra* note 110, Paragraph 331.

to adequate housing, but makes no averment as regards P.D. No. 772, undoubtedly a detraction from the fulfillment of the right to housing because of its criminal nature.

The repeal or "reform" of P.D. No. 772 remains only a measure which the Philippine Government should be delighted to assert in future reports to the U.N. Economic and Social Council.

VI. P.D. 772 RUNS AFOUL WITH THE PHILOSOPHICAL BASES FOR CRIMINAL PUNISHMENT

As stated, the *punitive* function of criminal justice arises from the responsibility of the state to impose sanctions on those who violate the criminal law. Legal punishment entails the infliction of suffering, loss, or disablement on a convicted offender by an official who is legally authorized to inflict that punishment, and may take the form of capital or corporal punishment, detention in an institution, monetary fines, or restriction of movement within the community.[115]

Legal punishment has several purposes, underlying which are the three justifying philosophical positions of *retribution, utilitarianism,* and *reformation.*

A. Retribution and the Justice Model

The notion that punishment should be inflicted in proportion to the harm done underlies the *lex talionis,* but legal retribution differs from revenge in that the penalty is exacted by the state rather than an aggrieved victim. Punishment expresses the moral disapproval of the state for law-breaking, but its severity is determined by standards of what is just and fair. This position was taken by Kant, who argued that criminals should be treated as rational people who accept the consequences of their action, and that punishment preserves the dignity of offenders.[116]

Retribution looks backward to the offense itself, and questions of the explanation for the crime, or the future effects of punishment are irrelevant to the moral function of punishment. It is thus distinct from rehabilitation, which focuses on the offender, or from deterrence, which

[115] BLACKBURN, *supra* note 89, at 10.

[116] *Id.* at 11-12.

is concerned with the utility of punishment from society's viewpoint.[117]

As previously discussed, the "moral disapproval of the state" with regard to squatting is a sheer absurdity, for the phenomenon of *squatting* was brought on by the involuntary hand of the global colonial economy and voluntary governmental policy measures. In other words, the retributive purpose of punishment is not achieved by criminalizing a phenomenon which arose through no historical fault of the so-called offender. In the same way that social behavior is a function of the personality, situation, culture, time, and geography, so also is crime.[118] Likewise, centerpiece social justice commands pertaining to the implementation of genuine urban land reform and humane demolition processes are intended to overturn the reality of criminalization.

B. Utilitarianism

Utilitarianism provided the basis for the *classical school of criminology*, and was the product of the Age of Enlightenment. Punishment in the eighteenth century was excessively harsh and capricious and was not governed by due process or conceptions of human rights. Utilitarians reacted by articulating a theory of legal punishment based on concepts of human rationality and social contract.[119]

The ethical "principle of utility" equates moral good with the greatest happiness of the greatest number. Legal punishment should promote the happiness of the community, and "prevent mischief" by applying sufficient pain to outweigh the pleasure of a crime.[120]

Like retribution, then, utilitarianism focuses on the crime rather than the criminal. However, the two philosophies are irreconcilable in terms of the criteria for the degree of punishment to be inflicted, since what is socially useful is not necessarily just. It pays no attention to individual rights. It should be just sufficient to dissuade the individual offender from repeating criminal acts (individual or *special deterrence*), or to intimidate would-be offenders from crime (*general deterrence*).[121]

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[117] *Id.*

[118] ABRAHAMSEN, THE PSYCHOLOGY OF CRIME, at 15 (1960).

[119] *Id.* at 12-13.

[120] *Id.*

[121] *Id.*

But has the deterrent character of utilitarian purpose been achieved, what with the incessant increase of slum dwellers and overall growth in urban areas?

In 1980, it was estimated that over four million people, comprising around ten *per centum* of the national population and 25% of the entire urban population, lived in slums and *squatter* colonies.[122] By 1991, despite the existence of P.D. No. 772, these figures have nearly doubled. The Asian Development Bank study as aforementioned estimated that there are now more than ten million people living in slums and *squatter* colonies in major cities nationwide. They comprise some 17% of the national population and nearly 40% of the entire urban population.[123]

After twenty years in effect as law, *P.D. No. 772 has been an abysmal failure in its attempt to stop squatting in this legal jurisdiction.* The new approach involving the renewed constitutional morality of social justice and human rights should have its chance.

C. Reform and Rehabilitation

The individualization of punishment entailed by neo-classicism coincided with the philosophy of rehabilitation which emerged towards the end of the nineteenth century. Rehabilitation assumes that crime results from personal deficiencies or maladjustment. Attention is therefore focused on the individual criminal rather than the crime. It is not an alternative to punishment, since the law aims to prevent first offenses and not simply re-offending by convicted criminals, but the legal sanction provides the occasion and means to help the individual adjust to society.[124]

If, as mentioned, the confluence of low household income, high cost of real estate, building materials and construction, shortage of credit and high interest rates on housing loans prevent squatters form rising out of their criminalized state, how can the matter of rehabilitation of the offender reduce the incidence of squatting? The prison system in this country offers incarceration and impoverished living standards. It does not offer higher income and low cost of real estate.

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[122] Ramos-Jimenez, *supra* note 46.

[123] BALISACAN, *supra* note 83.

[124] *Id.* at 13-14.

VII. P.D. 772 IS OPPRESSIVE

A. P. D. 772 as Mala Prohibita

In the common law, crimes were originally divided into those that were *mala in se*, or wrong in themselves, and those that were *mala prohibita*, or wrong merely because they were prohibited and punished by statute. Acts *mala prohibita* included any act forbidden by statute, but not otherwise wrong. This distinction is obvious, but the use that is made of it is frequently unfounded, and even as early as 1822, an English judge said that the distinction had long since been exploded.[125]

Mala in se and *mala prohibita*, however, are alive and operative in the Philippine legal jurisdiction. The term *mala in se* generally refers to felonies defined and penalized by the Revised Penal Code. The term *mala prohibita* generally refers to acts made criminal by special laws.[126]

In *U.S. v. Gochico*,[127] Mr. Justice Moreland ruled that in many crimes which are *mala prohibita* the intention of the person who commits the crime is entirely immaterial. In these crimes, the evil to society and to the Government does not depend upon the state of mind of the one who performs the prohibited act, but upon the effect which the act has upon the public mind.

[125] Marshall and Clark, *supra* note 87 at 19. Noted criminal law professor Jerome Hill observes: "[t]he unfortunate effect of the judicial application of the *mala in se-mala prohibitum* doctrine has been the setting up of a rigid dichotomy between traditional harms and the mass of petty misdemeanors which were declared to be amoral. This encouraged the most serious fallacies, namely, the legal theory that *mens rea* is not a material element of these offenses, and thence, that strict liability is therefore justified. The ancient advocates of the classical theory never drew any such inference from the principles underlying the distinction, *mala in se-mala prohibita*. Nor did Blackstone. A sounder interpretation, in light of the above analysis is suggested by the notion of a 'continuum' which ranges from the major moral principles to the least of ethical norms. The notion, 'moral continuum.' Which provides a common, connecting link unifying all criminal laws which serve a desirable end. The differences throughout run in terms of degree, not of kind. On the other hand, it is, of course, quite possible that a law may be immoral just as it may run directly counter to the moral attitudes entertained by the vast majority. But these and other significant matters, especially of petty offenses, were not relied on to support the ancient formulae nor were they relevant to the judicial objectives. The judges sought a theory to support liability imposed regardless of innocence and care." HALL, GENERAL PRINCIPLES OF CRIMINAL LAW, at 297-298 (1947).

[126] 1 REYES, THE REVISED PENAL CODE 55 (1994 ed.)

[127] 14 Phil. 128 (1909).

P.D. No. 772 is one such special law considered as *mala prohibita*, which means that regardless of criminal intent, the mere act of *squatting* would suffice to secure a conviction under the law. Nowhere is there any consideration of the voluntary and involuntary causes of *squatting* and the benevolent constitutional morality towards social justice which emerged from the 1987 Constitution. For this reason, the arbitrary hand of punishment imposed by P.D. No. 772 becomes glaringly oppressive.

B. Criminalization of Millions

P.D. No. 772 makes millions of slum-dwelling men, women, children, and old folk criminals.

The Special Rapporteur for the Commission on Human Rights named twelve noted misconceptions and misinterpretations of the right to housing[128] which included, *inter alia*, the notion that "*squatters* are criminals". His analysis cuts through the heart of this so-called myth:

> 30. One of the consequences of homelessness is that many people occupy public places, as well as houses kept vacant for extended periods of time. This is an expression of their desperate condition. Nevertheless, a very unfavourable projection is put across of these persons as mischief makers. Contrary to such a projection, the Netherlands, for example, has enacted legislation recognizing the claims of such squatters in specific circumstances.
>
> 31. One of the most unjustly dealt with segments of the urban population in many developing countries are the pavement dwellers, about whom all kinds of false assumptions are made. Somehow, the impression is created that pavement dwellers are anti-social elements, and that majority of them are criminally inclined, unemployed and not interested in working. This is sheer slander. Pavement dwellers are an important part of the economy of these countries, and even include civic and government employees.

What constitutes a criminal mind? The differences in what good and bad people see share a generality because evil has been defined in socio-psychological research as deviation from a humanitarian and progressive standard.

[128] *The Realization of Economic, Social, and Cultural Rights*, Second Progress Report submitted by Mr. Rajindar Sachar, Special Rapporteur, E/CN.4/Sub.2/1994/20 (1994).

> The purportedly fantastic world seen by the bad man is a jungle. And a jungle may be defined as a place where strength and cunning decide and win – not "humanness", "justice", "principle", nor any other ethic than force and fraud. It is a place where each against all is truer than all for each or, even, each for himself alone.[129]

The prevailing constitutional morality and State policy towards the urban poor definitely calls for the recognition that *squatters* are human beings blessed with dignity, as assured by natural, international, and constitutional law. They are not people with no sense of "justice" and "humanness", and bereft of "principle." They are not criminals by virtue of their being typecast as victims of intra-urban inequalities and the rapid urbanization process brought on by external voluntary and involuntary factors.

The repeal of P.D. No. 772 is in order.

VIII. PHILIPPINE LAWS RESPECTING OWNERSHIP AND POSSESSORY RIGHTS WILL REMAIN INTACT WITHOUT P.D. 772

The provisions of the 1987 Constitution on Social Justice and Urban Poor do not constitutionalize *squatting*.[130] The rights of the legal owner or legal possessor will still be definitely respected. Arguing in favor of

[129] Nettler, *Good Men, Bad Men, and the Perception of Reality*, 24 SOCIOMETRY 279-94 (1961). Dr. Abrahamsen of Columbia University in *The Psychology of Crime* (1960) explains that the birth of a criminal act contains three factors: criminalistic tendencies [T], the total situation [S], and the person's mental and emotional resistance to temptation [R]. A criminal act is the sum of a person's criminalistic tendencies plus his total situation, divided by the amount of his resistance. The formula used is C = T + S / R. The total situation consists of the external and internal components. The external criminal situation is the total environmental situation - all the stresses and strains which contribute to mobilizing a person's criminalistic tendencies. The internal criminal situation is the person's psychological state. Resistance arises from an emotional, intellectual, and social root, all three intimately connected with the super ego formation and its relationship to the ego and the person's situation. With the foregoing discussion on voluntary and involuntary factors of urbanization, a squatter's resistance to perform the criminal act of squatting should be perceived to be low.

[130] 2 CONCOM 624. The pertinent provisions read:

"MR. DE CASTRO. Section 11, page 3 says: '[u]rban poor dwellers shall not be evicted nor their dwellings demolished without due process of law.' There is no question that this refers to squatters. Is that right?
MS. NIEVA. That is right.
MR. DE CASTRO. Are we constitutionalizing squatting?
MR. MONSOD. No actually if we read the whole page, it says 'without due process of law'."

the repeal of P.D. No. 772 only seeks to decriminalize the lawful remedies available to the deprived legal owner or possessor. The ultimate effect is to return the offense of *squatting* to the class of private wrongs; as an infringement or privation of a civil right which belong to individuals, considered merely as individuals.

There is absolutely no dearth of remedies available to the deprived legal owner or possessor of land.

A. Ejectment

There are three types of ejectment actions: (1) forcible entry or unlawful detainer, (2) *accion publiciana*, and (3) *accion reivindicacion*. Forcible entry or unlawful detainer seeks the recovery only of physical possession and must be brought within one (1) year in the inferior courts; *accion publiciana* is intended for the recovery of the right of possession and is a plenary action in an ordinary civil proceeding before the Regional Trial courts; *accion reivindicacion* seeks the recovery of ownership.[131]

The main attraction of a forcible entry or unlawful detainer case is the *summary* nature of its proceedings. Such cases involve perturbation of social order which must be restored as promptly as possible. Technicalities or details of procedure which may cause unnecessary delays should carefully be avoided.[132] The intention is to provide an expeditious manner of protecting possession or right to possession without involvement of title.[133]

In *Mabalot v. Madela, Jr.*[134] the Supreme Court, in response to the view that forcible entry and detainer actions were most cumbersome, noted that it is "about time that this situation be remedied if only to contribute to the solution of the worsening problems of court congestion."

With the two considerations of immediate restoration and court congestion, the Supreme Court adequately responded with the Rules on Summary Procedure in 1983. These rules were subsequently refined in 1991. At present, the judicial trend has been to enhance the summary

[131] Reyes v. Sta. Maria, 91 SCRA 164 (1979).

[132] Co Tiamco v. Dias, 75 Phil. 672 (1946).

[133] Dy Sun v. Brilliantes, 93 Phil. 175 (1953).

[134] 121 SCRA 347 (1983).

nature of forcible entry or detainer proceedings. As a result, it is now usual for a deprived owner or possessor to be restored to physical possession of his land within six months to a year from filing of suit.

B. Usurpation and Trespass

Under Article 281 of the Revised Penal Code, "any person who shall enter the closed premises or the fenced estate of another, while either of them are inhabited, if the prohibition to enter be manifest and the trespasser has not secured the permission of the owner or the caretaker thereof", can be punished with the penalty of *arresto menor* or a fine not exceeding 200 pesos, or both.

Under Article 312 of the Revised Penal Code, "[a]ny person who, by means of violence against or intimidation of persons, shall take possession of any real property or shall usurp any real rights in property belonging to another, in addition to the penalty incurred for the acts of violence executed by him, shall be punished by a fine from 50 to 100 *per centum* of the gain which he shall have obtained, but not less than 75 pesos."

C. Professional Squatting[135]

The sound intention of P.D. No. 72 to punish the "affluent (*squatting*) class" is embodied in the UDHA. Section 45 of the UDHA contains the following penalty clause:

> Section 45. *Penalty Clause.* — Any person who violates any provision of this Act shall be imposed the penalty of not more than six (6) years of imprisonment or a fine of not less than five thousand pesos (P5,000.00) but not more than one hundred thousand pesos (P100,000.00) or both at the discretion of the court; *Provided,* That, if the offender is a corporation, partnership, association or other juridical entity, the penalty shall be imposed on the officer or officers of said corporation, partnership, association or juridical entity who caused the violation.

[135] Under the UDHA and its implementing rules and regulations, a "professional *squatter*" refers to individuals or groups who occupy lands without the express consent of the landowner and who have sufficient income for legitimate housing. The term shall also apply to persons who have previously been awarded homelots or housing units by the Government but who sold, leased, or transferred the same and settled illegally in the same place or in another urban area, and non-bona fide occupants and intruders of land reserved for socialized housing. The term shall not apply to individuals or groups who simply rent land and housing from professional *squatters* or *squatting* syndicates.

This mandate has been reaffirmed in Executive Order No. 129.[136]

To be sure, the State's abhorrence of professional *squatting* is obvious. Under P.D. No. 772, a professional squatter could be punished with imprisonment ranging from six months to one year or a fine of not less than one thousand not more than five thousand pesos at the discretion of the court, with subsidiary imprisonment in case of insolvency.

Under Section 45 of the UDHA and Section 3.3 of E.O. No. 129 (Series of 1993), a professional *squatter* can be sentenced to imprisonment of not more than six years or a fine of not less than five thousand pesos but not more than one hundred thousand pesos or both at the discretion of the court.

The provisions of the UDHA punishing professional *squatters* are more punitive than that provided in P.D. No. 772. If anything, the proper piece of legislation which can be used to combat professional *squatters* is the UDHA, and not P.D. No. 772.

D. New Illegal Structures[137]

One of the chief myths about the UDHA is that it actually encourages *squatting* and more *squatting*, which, sad to say, is dreadfully untrue. Prosecutors of new illegal structures can look to the UDHA as well.

Under the same Section 45 and Section 4 of the Implementing Rules and Regulations Governing Summary Eviction issued by the Department of Interior and Local Government (DILG) and the Housing and Urban Development and Coordinating Council (HUDCC), structures erected after the date of effectivity of the UDHA (28 March 1992) shall be punished the same way professional *squatters* are punished, *i.e.*, not more than six years imprisonment or a fine of not less than five thousand pesos but not more than one hundred thousand pesos or both, at the discretion of the court.

[136] E.O. 129, issued 15 October 1993.

[137] To address the shelter and humane eviction concerns of owners of such new illegal structures, while necessary, should be the subject of another study.