Limit of a Function: Calculating the Implications of *Oposa v. Factoran* in Saving the Pine Trees

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I. REASON IN REVOLUTION

The Philippine society is no stranger to revolutions.[1] On this part of the Asian region, Democracy[2] is a concept that is strongly felt among governmental and individual conducts.[3] The Filipinos are a people who, although not as learned in the technical language of the law,[4] value their

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1. *See generally* NATIONAL CENTENNIAL COMMISSION AND THE ASIAN INSTITUTE OF JOURNALISM AND COMMUNICATION, PHILIPPINE REVOLUTION: THE MAKING OF A NATION vii-ix (1999).
2. Abraham H. Lincoln is known for the statement "government of the people, by the people, and for the people," which became the present day's notion of Democracy. *See* ANDREW HEYWOOD, POLITICAL THEORY: AN INTRODUCTION 224 (2d ed. 1999).
3. *See* HEYWOOD, *supra* note 2, at 220-21.
4. As compared to other countries that are more learned with the letter of the law. The United States of America easily comes to mind —

rights and fight for them in ways that they know of. While some Filipinos choose their pen and paper to express their activism, there are those who deem that rallies on the streets are more expressive and are better heard by those who ought to hear them.

Generally speaking, as in other democratic countries, scenes of people who hold protests to achieve greater state subsidy for education,[5] to show support for or rage against controversial personalities and activities,[6] and to uphold the rights of laborers[7] and farmers[8] have become normal and ordinary

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> When the Constitution was adopted, many people strongly opposed it because the document contained no Bill of Rights to safeguard basic freedoms. They especially feared that the new powers granted to a central government might be interpreted to permit the government to curtail freedom of religion, press, assembly, and speech.

New York Times Co. v. United States, 403 U.S. 713, 715-16 (1971) (J. Black, concurring opinion).

5. *See* Jeannette I. Andrade, *Students March to Mendiola to Protest Cuts in Education Budget*, PHIL. DAILY INQ., Sep. 23, 2011, *available at* http://newsinfo.inquirer.net/63975/students-march-to-mendiola-to-protest-cut s-in-education-budget (last accessed Sep. 6, 2012); Tarra Quismundo, *State Colleges, Universities Protest ₱146-M Budget Cut*, PHIL. DAILY INQ., Sep. 24, 2011, *available at* http://newsinfo.inquirer.net/64223/state-colleges-universities-protest-p146-m-budget-cut (last accessed Sep. 6, 2012); & Sandy Araneta, *Students, Faculty Hold Protest Marches Vs. Budget Cuts*, PHIL. STAR, Sep. 24, 2011, *available at* http://www.philstar.com/Article.aspx?publicationSubCategoryId=63&articleId=730350 (last accessed Sep. 6, 2012).

6. *See* Demonstrators Shout Slogans During Rally Calling Conviction (Photo), *available at* http://ph.news.yahoo.com/photos/demonstrators-shout-slogans-during-rally-calling-conviction-philippine-photo-074146840.html (last accessed Sep. 6, 2012); AP News, Youths in Philippines Protest Against Lady Gaga, *available at* http://asiancorrespondent.com/82797/youths-in-philippines-protest-against-lady-gaga/ (last accessed Sep. 6, 2012); & Jaymee T. Gamil, *Iglesia ni Cristo-led Rally Cheers up Tearful Chief Justice*, PHIL. DAILY INQ., Feb. 10, 2012, *available at* http://newsinfo.inquirer.net/142975/iglesia-ni-cristo-led-rally-cheers-up-tearful-chief-justice (last accessed Sep. 6, 2012).

7. *See* PALEA Stages Rally Against PAL Outsourcing Scheme, *available at* http://www.gmanetwork.com/news/story/232629/economy/palea-stages-rally-against-pal-outsourcing-scheme (last accessed Sep. 6, 2012) & B.L. Vergara/LBG (GMA News), Cops Secure PAL premises in time for union rally, *available at* http://www.gmanetwork.com/news/story/232575/news/nation/cops-secure-pal-premises-in-time-for-union-rally (last accessed Sep. 6, 2012).

8. *See Tobacco Farmers Rally Vs. Sin Tax Bill*, PHIL. STAR, May 28, 2012, *available at* http://www.philstar.com/nation/article.aspx?publicationsubcategoryid=200&articleid=811702 (last accessed Sep. 6, 2012) & Marlon Ramos, *Hacienda Luisita Farmers Protest Outside Supreme Court*, PHIL. DAILY INQ., July 6, 2011, *available at*

in the Philippines especially after the conclusion of one of the most successful revolutions in human history, which is the EDSA Revolution.[9] These protests are naturally rooted from the basic human rights of individuals as found in the Universal Declaration of Human Rights,[10] the 1987 Philippine Constitution,[11] and in various special laws.[12] As can be observed, the rights declared under the State Policies of the Constitution are backed by special laws because they are said to be "non self-executing."[13]

In the landmark case of *Oposa v. Factoran Jr.*,[14] however, the Supreme Court of the Philippines (SC) enlightened the legal profession and the Filipino citizens with the jurisprudential doctrine that "Section 15 (and Section 16) of Article II of the Constitution are self-executing and judicially enforceable even in their present form."[15] The Court went on to say that "[t]he implications of this doctrine will have to be explored in future cases"[16] and that "those implications are too large and far-reaching in nature even to

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http://newsinfo.inquirer.net/ 21790/ hacienda- luisita- farmers-protest-outside-supreme-court (last accessed Sep. 6, 2012).

9. *See* Gene Sharp, *Foreword* to AN EYEWITNESS HISTORY: PEOPLE POWER — THE PHILIPPINE REVOLUTION OF 1986 7 (Monina Allarey Mercado ed., 1986).

10. Universal Declaration on Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), at 71 (Dec. 10, 1948).

11. *See* PHIL. CONST. art II, §§ 9, 11-13, 15, 17-18, 20-22, 24-25, & 27-28.

12. *See, e.g.*, An Act to Ordain the Agricultural Land Reform Code and to Institute Land Reforms in the Philippines, Including the Abolition of Tenancy and the Channelling of Capital into Industry, Provide for the Necessary Implementing Agencies, Appropriate Funds Therefor and for Other Purposes [AGRICULTURAL LAND REFORM CODE], Republic Act No. 3844 (1963); A Decree Instituting a Labor Code Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Insure Industrial Peace Based on Social Justice [LABOR CODE], Presidential Decree No. 442, as Amended (1974); & An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/Indigenous Peoples, Creating a National Commission on Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Funds Therefor, and for Other Purposes [The Indigenous Peoples Rights Act of 1997], Republic Act No. 8371 (1997).

13. Tondo Medical Center Employees Association v. Court of Appeals, 527 SCRA 746, 763-66 (2007).

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

15. *Id.* at 817.

16. *Id.*

be hinted at."[17] Indeed, the decision in *Oposa* raised a curious doctrine that perplexed, if not surprised, legal luminaries in the country.[18]

Recent history has then turned witness to the "implications" of the doctrine, which the Court in *Oposa* mentioned. Nineteen years after that famous and novel case in 1993, the strength of the people's will to protect the environment has become louder and more apparent on the streets.[19] As this Essay discusses the human right to a healthful ecology,[20] it more importantly explores what has become of this right almost two decades after *Oposa*. The ultimate aim is not to answer the query in definite terms, but to show whether at present, there has been a proper exercise of this

17. *Id.*

18. *See, e.g.*, Enrique M. Fernando, *The Constitution and Environmental Law: The Relevance of the Malcolm Activist Approach*, 69 PHIL. L.J. 117 (1994) & Fulgencio S. Factoran, *A Reaction to the Right to a Balanced and Healthful Ecology: The Odyssey of a Constitutional Policy*, 69 PHIL. L.J. 157 (1994).

19. *See* Greanpeace Joins Baguio Citizens in a 2-Day Protest Vs. SM Mall Baguio Expansion Plans (Photo), *available at* http://www.greenpeace.org/seasia/ph/multimedia/slideshows/Save-Baguio-trees-2-day-protest/ (last accessed Sep. 6, 2012) [hereinafter Greenpeace Joins Baguio Citizens]; Robert J. A. Basilio Jr. & Bernard Testa, Megamall Flash Mob Staged Vs. Baguio Tree Uprooting as Pine City Folk Score Victory, *available at* http://www.interaksyon.com/article/29372/ megamall-flash-mob-staged-vs-baguio-tree-uprooting-as-pine-city-folk-score-victory (last accessed Sep. 6, 2012); Shiela Aballa, SM Baguio Security Guards Photograph Protesters, *available at* http://ph.news.yahoo.com/blogs/the-inbox/sm-baguio-security-guards-photograph-protesters-130204210.html (last accessed Sep. 6, 2012); Maria Elena Gonzalez, Thousands Join Rally Against SM Baguio, *available at* http://www.gmanetwork.com/news/story/245201/news/regions/thousands-join-rally-against-sm-baguio (last accessed Sep. 6, 2012); JM Agreda, *January 20 Rally Vs. SM Firmed*, SUN STAR BAGUIO, *available at* http://www.sunstar.com.ph/baguio/local-news/2012/01/18/january-20-rally-vs-sm-firmed-201161 (last accessed Sep. 6, 2012) [hereinafter Agreda, *January 20 Rally*]; JM Agreda, *Thousands Join Anti-SM Rally*, SUN STAR BAGUIO, *available at* http://www.sunstar.com.ph/baguio/local-news/2012/01/20/thousands-join-anti-sm-rally-201670 (last accessed Sep. 6, 2012) [hereinafter Agreda, *Thousands Join Rally*]; Maybelle A. Luna, Why Cut Trees to Build a Garden in the Sky? Critics of SM Plan in Baguio Ask, *available at* http://www.interaksyon.com/article/22453/why-cut-trees-to-build-a-garden-in-the-sky-critics-of-sm-plan-in-baguio-ask (last accessed Sep. 6, 2012); Michael A. Bengwayan, Bishop Carlito Cenzon to Lead Thousands in Rally for Trees, Against SM (Blog Article), *available at* http://michaelbengwayan.wordpress.com/2012/03/ (last accessed Sep. 6, 2012); & Kristine Valen B. de Velez, Clean but Not Green (Article Contribution to CBCP National Secretariat for Social Action-Justice and Peace Website), *available at* http://nassa.org.ph/?page_id=2 (last accessed Sep. 6, 2012).

20. PHIL. CONST. art II, § 16.

internationally recognized right in the Philippines. In simple terms, and in the context of the main issue that will be elaborated in the next Part of this Essay, a question clouds the mind of the Author — is the right to a balanced and healthful ecology a strongly enforced right or has it just become a sensationalized right under the circumstances? This Essay does not crowd its analysis on whether *Oposa* has been material to the central issue that will be tackled herein; rather, the Essay uses the landmark case as its boundary — the line drawn to distinguish — between what used to be a mere *idea* of a right and what is now a *reality* of it because —

> time is usually measured that way: Christians date from before and after the birth of Christ. Muslims date from before and after the *hijrah.* We look back to the most important moment in our history, and that becomes the dividing line between what we were and what we are now.[21]

II. MYOPIA: "SAVING" THE 182 TREES IN SM BAGUIO

The country's largest shopping mall developer, in its endeavor to carry out an expansion plan, sparked protests which led to discourses regarding protection of the environment.

A. SM and Environmental Sustainability

Early this year, SM Prime Holdings Inc. (SM), announced that it would commence "a one-year expansion and redevelopment plan for SM City Baguio based on an environment-friendly blueprint adhering to globally accepted 'green' building standards."[22] It released a statement that —

> it has been working closely with the Baguio City Government and the Department of Environment and Natural Resources (DENR) — and had received the necessary permits — to re-ball and relocate 142 trees in the shopping mall area. Of these, 80 will be replanted in the mall premises and the rest will be turned over to the DENR compound for replanting.[23]

To further bolster its commitment to a sustainable environment, SM took on a partnership with the US Green Building Council (USGBC) as it constructs its cost-efficient and energy-saving building for the expansion of SM Baguio.[24] Furthermore, SM stated that the expansion project "aims to be the first shopping mall in the country to be certified by the Leadership in

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21. JOHN GREEN, LOOKING FOR ALASKA (2005). The last part of this literary book, which specifically contains the interview with its author, is not paginated.

22. Doris C. Dumlao, *SM Baguio Mall Expansion to Include Replanting of Trees*, PHIL. DAILY INQ., Jan. 16, 2012, *available at* http://business.inquirer.net/39789/sm-baguio-mall-expansion-to-include-replanting-of-trees (last accessed Sep. 6, 2012).

23. *Id.*

24. *Id.*

Energy and Environmental Design (LEED), the internationally recognized standard for green building design and construction developed by the USGBC."[25] Admittedly, aside from SM's adherence to the sustainability of the environment, these efforts had been undertaken in response to the "concerns aired by environmentalists on the trees to be affected by [the] expansion."[26]

As early as October last year, the DENR, through a Memorandum,[27] reportedly allowed SM to "ball"[28] 139 Pine Trees and cut 43 Alnus Trees for its expansion project.[29] Hence, about three months after the Company announced its project, it began its earth-balling and cutting operations on the 182 trees surrounding the area where the expansion was to be constructed.[30] In the presence of DENR personnel, work crews of SM Investment Corporation uprooted and transplanted the trees to a different site in Luneta Hill.[31] This sparked the rage against SM by environmental activists.[32]

B. The Public Clamor to "Save" the 182 Trees

25. *Id.*

26. *Id.*

27. Department of Environment and Natural Resources, Memorandum from the Secretary, Re: Issuance of Clearance to Issue Tree Cutting and Earth-Balling Permit in Favor of Engr. Bien C. Mateo, Vice President-Operations, SM Super Malls, Baguio City (Oct. 17, 2011) [hereinafter DENR Memorandum]. *See also* Noel Sales Barcelona, Partylist Solon Wants SM 'Tree License' Revoked, *available at* http://cbcpnews.com/?q=node/19144 (last accessed Sep. 6, 2012).

28. Earth-balling is the process of "digging around the roots of a tree and uprooting it for replanting somewhere else." Jonathan de Santos, Robredo: No 'New' Permit Issued to SM Baguio, *available at* http://ph.news.yahoo.com/robredo--no--new--permit-issued-to-sm-baguio.html (last accessed Sep. 6, 2012). *See also* Jose R. Claveria, *Hambabalud (Neonauclea Formicaria (Elm.) Merr.) as a Reforestation Crop*, 9 PHIL. J. OF FORESTRY 145, 152 (1953). "In earth-balling, care was exercised to avoid breaking the compact soul around the stem and disturbing the root system. The big and numerous leaves were trimmed." *Id.*

29. DENR Memorandum, *supra* note 27, at 1, ¶ 3.

30. *Mall Execs Stop Baguio Trees' Transfer After Court Issues Order*, PHIL. DAILY INQ., Apr. 11, 2012, *available at* http://newsinfo.inquirer.net/175269/mall-execs-stop-baguio-trees%E2%80%99-transfer-after-court-issues-order (last accessed Sep. 6, 2012).

31. *Id.*

32. Greenpeace Joins Baguio Citizens, *supra* note 19; Basilio Jr. & Testa, *supra* note 19; VERA Files, *supra* note 19; Gonzalez, *supra* note 19; Agreda, *January 20 Rally*, *supra* note 19; & Agreda, *Thousands Join Rally*, *supra* note 19; Luna, *supra* note 19; Bengwayan, *supra* note 19; de Velez, *supra* note 19.

Dissent against the activity allowed by the DENR's permit was expressed[33] and a few days after the earth-balling activities in SM Baguio began in April, different personalities and organizations had requested the revocation of SM's license to ball the trees.[34]

As early as February this year, the Cordillera Global Network (CGN) filed a Petition for Civil Injunction and Temporary Environmental Protection Order (TEPO)[35] against SM Baguio in the *sala* of Regional Trial Court (RTC) Judge Antonio M. Esteves.[36] Pending this action, another

33. Jandel Posion, NYC Speaks Up Against Cutting of Trees in Baguio, *available at* http://www.cbcpnews.com/?q=node/19030 (last accessed Sep. 6, 2012) & *90% of Baguio Residents Against SM Earth-ball Plans*, SUN STAR BAGUIO, Mar. 16, 2012, *available at* http://www.sunstar.com.ph/baguio/local-news/2012/03/16/90-baguio-residents-against-sm-earth-ball-plans-211605 (last accessed Sep. 6, 2012) [hereinafter *Baguio Residents Against SM Earth-Ball Plans*].

34. It was reported that "Kabataan Partylist Rep. Raymond V. Palatino [urged] the DENR to immediately revoke the 'tree killing license' it issued for SM Supermalls to give way to its expansion." *See* Noel Sales Barcelona, Partylist Solon Wants SM 'Tree License' Revoked, *available at* http://cbcpnews.com/?q=node/19144 (last accessed Sep. 6, 2012). *See also* Shielo Mendoza, *Battle for Baguio Trees Rages*, *available at* http://ph.news.yahoo.com/battle-for-baguio-trees-rages.html (last accessed Sep. 6, 2012).

35. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, A.M. No. 09-6-8-SC, Apr. 13, 2010, rule 2, § 8. To elaborate, this Section provides —

> SEC. 8. Issuance of Temporary Environmental Protection Order (TEPO). — If it appears from the verified complaint with a prayer for the issuance of an Environmental Protection Order (EPO) that the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of the multiple-sala court before raffle or the presiding judge of a single-sala court as the case may be, may issue *ex parte* a TEPO effective for only 72 hours from date of the receipt of the TEPO by the party or person enjoined. Within said period, the court where the case is assigned, shall conduct a summary hearing to determine whether the TEPO may be extended until the termination of the case.
>
> The court where the case is assigned, shall periodically monitor the existence of acts that are the subject matter of the TEPO even if issued by the executive judge, and may lift the same at any time as circumstances may warrant.
>
> The applicant shall be exempted from the posting of a bond for the issuance of a TEPO.

Id.

36. Vincent Cabreza, *Baguio Court Halts SM Trees Removal*, PHIL. DAILY INQ., Apr. 11, 2012, *available at* http://newsinfo.inquirer.net/174697/baguio-court-halts-sm-trees-removal (last accessed Sep. 6, 2012).

RTC branch in Baguio, through a three-day TEPO,[37] ordered SM Baguio "to stop transplanting trees from its Luneta Hill compound as part of its expansion."[38] After the issuance of the said TEPO, the DENR reportedly "revised the environment permit it issued to SM Baguio and allowed the mall to uproot 182 trees that would be covered by its expansion plan."[39]

Previous to the revision, the DENR permit allowed the uprooting of 142 trees and the *cutting* of 40 trees and required SM Baguio to plant only 5,000 saplings.[40] The revised permit, aside from allowing earth-balling of trees *only*, required SM to plant an additional *50,000* saplings in areas in Baguio and Benguet to be determined by the DENR within three years.[41]

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37. Court Saves Trees from SM Baguio Expansion, for Now, *available at* http://www.gmanetwork.com/news/story/254454/news/regions/court-saves-trees-from-sm-baguio-expansion-for-now (last accessed Sep. 6, 2012) [hereinafter Court Saves Trees]. This was a result of a separate action filed by the National Union of People's Lawyers (NUPL) against the Company.

38. Vincent Cabreza, *Baguio Court Halts SM Trees Removal*, PHIL. DAILY INQ., Apr. 11, 2012, *available at* http://newsinfo.inquirer.net/174697/baguio-court-halts-sm-trees-removal (last accessed Sep. 6, 2012). *See also* Vincent Cabreza, *Mall Execs Stop Baguio Trees' Transfer After Court Issues Order*, PHIL. DAILY INQ., Apr. 11, 2012, *available at* http://newsinfo.inquirer.net/175269/mall-execs-stop-baguio-trees%E2%80%99-transfer-after-court-issues-order (last accessed Sep. 6, 2012) & Andreo Calonzo & Maria Elena Gonzales, Court Saves Trees from SM Baguio Expansion, for Now, *available at* http://www.gmanetwork.com/news/story/254454/news/ regions/ court-saves-trees-from-sm-baguio-expansion-for-now (last accessed Sep. 6, 2012).

39. Alexis Romero, *New Permit Allows Baguio Mail to Uproot 182 trees*, PHIL. STAR, Apr. 17, 2012, *available at* http://www.philstar.com/nation/ article.aspx?publicationsubcategoryid=67&articleid=797670 (last accessed Sep. 6, 2012). It should be noted that the initial permit allowed the cutting of 43 trees, but the new permit supposedly disallowed cutting any tree and required uprooting the 182 trees instead.

40. Jonathan de Santos, Robredo: No 'New' Permit Issued to SM Baguio, *available at* http://ph.news.yahoo.com/robredo--no--new--permit-issued-to-sm-baguio.html (last accessed Sep. 6, 2012).

41. *Id. See also* How Much Do You Really Know About the SM Baguio Pine Trees?, *available at* http://smsupermalls.com/smsupermalls/smbg_info/ (last accessed Sep. 6, 2012). The Company publicly declared the following information —

> Re-greening of Baguio City
>
> Many are not aware that SM City Baguio has always played an active role in the re-greening of the city and has always been sensitive to the importance of environmental protection, including the pine trees of Baguio. Some facts that people do not know:

On 23 April 2012, the City Council of Baguio also tackled the issue[42] and proposed some resolutions to resolve it.[43]

It may be recalled that this was not the first time that SM Baguio attracted a public outrage for environmental reasons. In 2001, when the residents found out that the plan to build SM Baguio will displace hundreds of Pine Trees on Luneta Hill, protests against its construction arose.[44] In 2008, SM Baguio again drew protests when it planned "to introduce a condominium into a forested lot owned by the Government Service Insurance System (GSIS), which is near the Baguio Convention Center."[45] Taken altogether, the issue on the 182 trees in SM Baguio this year is the

(1) SM City Baguio has been nurturing and taking care of around 1,130 trees within the mall property alone.

(2) The 182 trees that will be transferred due to the mall redevelopment account for roughly 16% of the trees that is currently being cared for.

(3) SM City Baguio *will plant 10,000 saplings (young pine trees, not seedlings)* this year plus 50,000 more the next three years, a total of 60,000 saplings — *equivalent to more than 300 saplings for each tree that will be transferred.* These trees will be nurtured and cared for until they grow well enough to survive on their own.

(4) *Since 2005*, way before the planned redevelopment, SM City Baguio *has already planted over 8,000 pine saplings* all over the region. Most of these pine trees are located at the Busol Watershed (around 3,000), Buyog Watershed (around 1,500), at Tuba, Benguet (around 900), at Burnham Park (around 2,000), and at the SM City Baguio mall premises (around 800).

(5) The company is committed to help in propagating and nurturing pine trees not just within its premises. It has adopted certain areas in the city where it can plant more trees and further help in the re-greening of Baguio City and Benguet.

These efforts will help secure the future of thousands upon thousands of pine trees. And the long-term benefits will be reaped by the residents of Baguio City, their children, and their children's children for all generations to come.

Id.

42. *See* Nr. CR 0157-12, City Council of Baguio, Reg. Sess. NR. R-12 (2012).

43. *Id.*

44. Vincent Cabreza, *In Baguio City, Fight for Survival of the Pine Tree*, PHIL. DAILY INQ., Jan. 17, 2012, *available at* http://newsinfo.inquirer.net/129891/in-baguio-city-fight-for-survival-of-the-pine-tree (last accessed Sep. 6, 2012).

45. *Id.*

third time in this decade that SM fuelled public disapproval. Presently, the expansion project has been indefinitely put on hold.[46]

Nevertheless, subsequent to the controversy, public reaction, and governmental action, some critics also raised their opinion on the public outrage regarding SM's activities involving the 182 trees; these opinions put the issue in a different light, which, will be discussed below.

C. A Divergent View: A Right Gone Wrong?

A view has been forwarded that "[h]uman rights without effective implementation are shadows without substance."[47] When it comes to upholding the rights guaranteed by the Constitution to the citizens, the government is popularly viewed as the main actor.[48]

However, in light of the SM Baguio Trees issue, as the environmental advocates sought the government's assistance to *save* the trees that were in danger of being balled or cut down, it was observed that the exercise of the people's right to a healthful ecology in this specific scenario was pushed too far.[49] One writer remarked that the whole issue was a "tree huggers' hyperbole," stating that —

46. Butch del Castillo, *SM Baguio, a Bit of Bad Luck*, BUS. MIRROR, May 3, 2012, *available at* http://businessmirror.com.ph/home/opinion/26693-sm-baguio-a-bit-of-bad-luck (last accessed Sep. 6, 2012).

47. Marian Joanne K. Co, *When Something Right Becomes Wrong*, 50 UST L. REV. 1, 11 (2005-2006) (citing J.R. COQUIA, HUMAN RIGHTS: AN INTRODUCTORY COURSE 275 (2000)).

48. *Id.* As mentioned in the said Article —

> [T]he recognition of human rights entails not just the protection against individual violations, but more importantly, the observance by the government of due process in curtailing certain freedoms and rights of individuals. The realization of human rights protection in our country is best exemplified in how the government carries out its function without sacrificing the individual rights of its citizens.

Id.

49. *See* Alvin Capino, *Tree Huggers' Hyperbole*, MANILA STAND. TODAY, Apr. 20, 2012, *available at* http://opinion.manilastandardtoday.com/2012/04/19/tree-huggers-hyperbole/ (last accessed Sep. 6, 2012) [hereinafter *Tree Huggers' Hyperbole*]; Alvin Capino, *A Tree Cutter's Impunity*, MANILA STAND. TODAY, Apr. 23 2012, *available at* http://www.scribd.com/doc/90625539/Manila-Standard-Today-April-23-2012-Issue (last accessed Sep. 6, 2012) [hereinafter *A Tree Cutter's Impunity*]; del Castillo, *supra* note 46; Conrado R. Banal III, *Caught in the Hack*, PHIL. DAILY INQ., May 7, 2012, *available at* http://business.inquirer.net/57729/caught-in-the-hack (last accessed Sep. 6, 2012) & Conrado R. Banal III, *Store Wars: Attack of the Clowns*, PHIL. DAILY INQ., May 16, 2012,

> [i]t is unfortunate and sad that the supposed pro-environment activists are resorting to hyperbole and outright disinformation in their campaign against SM on the tree balling issue. In the long run such tactics would boomerang and would cast doubts on the pro-environment groups' well-meaning campaign to save and protect the environment.
>
> SM, because it is big, is a natural target but it would seem that the Baguio project is a wrong environment issue to raise against it.[50]

Other writers raised doubt on the real intention behind the public outrage against SM.[51] The active involvement of the media, religious groups, the youth, and environmental activists in the series of protests and boycotts against the retail store giant led critics to think that the SM Baguio Trees hullabaloo was misplaced.[52]

The abovementioned opinions, of course, do not necessarily allow a nod in terms of legal analysis. The exercise of a human right, after all, is one that many take seriously. How each upholds it is relative. However, because of the divergence of views on this controversy, it is necessary to turn the pages back to *Oposa* and to the "implications" that the Court therein manifested.

III. THE SUPERIOR RIGHT TO A BALANCED AND HEALTHFUL ECOLOGY

Prior to and even after *Oposa*, there has been a vague understanding of the human right to a healthful environment.[53] Internationally, even when there is a wide range of international agreements and conventions that push for and elaborate on this right, the concept of "environment" has remained uncertain.[54] Locally, the Philippine Environmental Policy,[55] the Philippine Environmental Code,[56] the Environmental Impact Statement System,[57] and

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available at http://business.inquirer.net/59871/store-wars-attack-of-the-clowns (last accessed Sep. 6, 2012) [hereinafter *Store Wars*].

50. *Tree Huggers' Hyperbole*, *supra* note 49.

51. *See Store Wars*, *supra* note 49 & *A Tree Cutter's Impunity*, *supra* note 49.

52. *Tree Huggers' Hyperbole*, *supra* note 49.

53. Ma. Carlota Christina Laino, The Right to a Balanced and Healthful Ecology as an Actionable Right (The Oposa vs. Factoran, Jr. Implications), at 22 (1997) (unpublished J.D. thesis, Ateneo De Manila University) (on file with the Professional Schools Library, Ateneo de Manila University).

54. Sevine Ercmann, *Linking Human Rights, Rights of Indigenous People and the Environment*, 7 BUFF. ENVTL. L.J. 15, 18 (2000).

55. Philippine Environmental Policy, Presidential Decree No. 1151 (1979).

56. Philippine Environmental Code, Presidential Decree No. 1152 (1977).

57. Establishing an Environmental Impact Statement System, Including Other Environmental Management Related Measures and for Other Purposes, Presidential Decree No. 1586 (1978).

the National Pollution Control Decree of 1976[58] contain no exact definition of the term in issue. In a Speech, however, before the International Symposium on Environmental Courts and Tribunals, retired SC Chief Justice Hilario G. Davide, Jr. expressed his view that —

> [t]he word 'environment' is often taken to mean something referring to our natural surroundings and not about us, about people. Because of this notion, environment has been taken much for granted and relegated as just a marginal concern.
>
> ...
>
> The environment is not about the birds and the bees and the flowers and the trees. It is nothing less than about life and the sources of life of the earth — land, air, and water, or LAW for brevity — the elements of life and the vital organs of the earth. The trees and the forests are the heart and the lungs of life; the land and the soil are the skin and the flesh of the earth from whence all food comes; and the sea and the rivers are the blood and bloodstreams of life on earth. Destroy any of them and we destroy life itself.
>
> ...
>
> For the people of the Philippines ... the word 'environment' is inseparable from the concept of nature. In fact, in their language, the word nature is 'kalikasan.' Nature (kalikasan) and the natural elements of life of land, air, and water are to them interchangeable. They are all the life sources that enable all life to survive and thrive in this little colorful marble of life we call the earth.[59]

In relation to such view, it has also been noted that the environment is tied to the quality of life, specifically that —

> [i]n the global village of the new millennium, the environment is everyone's backyard. Damage to the environment diminishes quality of life — most immediately for those directly affected, and in the long term, for everyone. Already marginalized sectors of society tend to suffer first and they tend to suffer most, but ultimately, no one can escape the human consequences of environmental degradation. Human society cannot function independent of the natural environment.[60]

This right, then, may be looked at from different angles, which may either give the ordinary citizen an optimal hold on his own right or one that

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58. Providing for the Revision of Republic Act No. 3931, Commonly Known as the Pollution Control Law, and for Other Purposes [National Pollution Control Decree of 1976], Presidential Decree No. 984 (1976).

59. Hilario G. Davide, Jr., *The Environment as Life Sources and the Writ of Kalikasan in the Philippines*, 29 PACE ENVTL. L. REV. 592, 592-93 (2012).

60. Neil A.F. Popovic, *In Pursuit of Environmental Human Rights: Commentary on the Draft Declaration of Principles on Human Rights and the Environment*, 27 COLUM. HUM. RTS. L. REV. 487, 487 (1996) [hereinafter *In Pursuit of Environmental Human Rights*].

when unlimited, may step beyond the purpose for which it was originally made.[61] It is worth to note that "[e]nvironmental human rights cut across the spectrum of human rights and include civil, cultural, economic, political, and social rights of both a positive and a negative character."[62]

A. Before the Birth of Oposa

While *Oposa* has remained one of the most popular environmental cases to date,[63] it is not the first Philippine environmental case.[64] Prior to the SC's decision therein, "cases concerning ownership of timber resources, disputes over timber license agreements, pollution, and ... nuclear power" were already brought before the Court.[65] But while much favor for and weight on the right to a balanced and healthful ecology was emphasized in *Oposa*, the environmental cases that were adjudicated before it were dealt with from a perspective of conflict of rights where the decisions were based on due process, property rights, the Regalian Doctrine, or the law on agrarian reform.[66] Furthermore, as embodied in the 1987 Philippine Constitution,[67] there had also been Philippine recognition on the right to healthful ecology before the Court ratiocinated on it in *Oposa*.[68]

1. International Recognition

The right to a healthy environment is classified as a third generation human right in international law.[69] One of the primary characteristics of this right is

61. *See* Neil A.F. Popovic, *Pursuing Environmental Justice with International Human Rights and States Constitutions*, 15 STAN. ENVTL. L.J. 338, 348 (1996).

62. *Id.* (citing Popovic, *In Pursuit of Environmental Human Rights*, *supra* note 60).

63. Dante B. Gatmaytan, *The Illusion of Intergenerational Equity: Oposa v. Factoran as Pyrrhic Victory*, 15 GEO. INT'L ENVTL. L. REV. 457, 458 (2003).

64. Laino, *supra* note 53, at 48.

65. *Id.* (citing Santiago v. Basilan, 9 SCRA 349 (1963); People v. Court of First Instance of Quezon, 206 SCRA 187 (1992); Suarez v. Reyes, 7 SCRA 462 (1963); Agusmin Promotional Enterprises v. Court of Appeals, 177 SCRA 369 (1982); Tan v. Director of Forestry, 125 SCRA 302 (1983); Pollution Adjudication Board v. Court of Appeals, 195 SCRA 112 (1991); Mead v. Argel, 115 SCRA 256 (1982); & Tanada v. Paec, 141 SCRA 307 (1986)).

66. Laino, *supra* note 53, at 48 (citing Antonio G.M. La Viña, *The Right to a Balanced and Healthful Ecology: The Odyssey of a Constitutional Policy*, 6 PHIL. NATURAL RESOURCES L.J. 1, 7 (1993)).

67. PHIL. CONST. art II, § 16.

68. *See* Convention on Biological Diversity (CBD), *opened for signature* June 5, 1992, 1760 U.N.T.S. 79.

69. Prudence E. Taylor, *From Environmental to Ecological Human Rights: A New Dynamic in International Law?*, 10 GEO. INT'L ENVTL. L. REV. 309, 318 (1998) (citing Burns H. Weston, *Human Rights*, 6 HUM. RTS. Q. 257, 266 (1986)).

that it is essentially collective in dimension.[70] There is a need for substantial cooperation by social forces to achieve it.[71] The existence of this right in the international context is sometimes considered as a reflection of third world nationalism.[72] As early as 1972, a debate regarding "nature's right," in relation to the third generation right to a healthy environment, arose.[73] On one end, Professor Christopher D. Stone forwarded —

> that in order to better protect the environment from the ravages of human activity and behavior, we should recognize the intrinsic value of nature and, in doing so, go beyond the utilitarian values that we currently attribute to it. According to [him], the granting of 'rights' (in this case legally enforceable rights) to 'natural objects' is one way of achieving this transition between values.[74]

On the other hand, however, it was argued that "it is unnecessary to construct 'rights' to deal with problems of value and conflicting activity, inherent in environmental issues."[75]

Three main arguments were raised by critics against the idea of acknowledging and enforcing "nature's right" or what we now know as the right to a healthy environment, thus:

(1) It leads us to anthropomorphize nature, i.e., it becomes humanized in that it is reduced to a rights-holder and is no longer "beautiful, alive, mystical, breath-taking, frightening, part of us, etc.;"[76]

(2) Recognition of this "right" results in repressive and limited conversation as the concept of "rights" is a language of the legal community and not the greater community at large. It speaks of "imminent dangers, foreseeability, likelihood of harm, etc.;"[77] and

(3) "Rights will not liberate the environment or force us to value it more — what they do is 'allow for' the

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70. Taylor, *supra* note 69, at 362.

71. *Id.*

72. *Id.*

73. Christopher D. Stone, *Should Trees Have Standing? — Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 397, 456 (1972).

74. Taylor, *supra* note 69, at 374 (citing Stone, *supra* note 73, at 488).

75. Taylor, *supra* note 69, at 375.

76. *Id.* (citing Cynthia Giagnocavo & Howard Goldstein, *Law Reform or World Reform: The Problem of Environmental Rights*, 35 MCGILL L.J. 345, 362 (1990)).

77. *Id.* at 376.

> environment to engage in flawed legal institutions, the arena in which other rights-holders must battle."[78]

This debate spawned its way through the legal academe. The views of Professor Stone received much support and criticism.

On an international level, apart from educational institutions, the United Nations (U.N.) had always been the forefront of the recognition of the right to environment.[79] In 1968, at the 45th Session of the Economic and Social Council (ECOSOC), a recommendation was made that a U.N. conference on "problems of the human environment" should be considered by the U.N. General Assembly.[80] That same year, in its 23d Session, the U.N. General Assembly adopted a resolution that convened a U.N. Conference on the Human Environment, which took note of the "continuing and accelerating impairment of the quality of the human environment" and its "consequent effects on the condition of man, his physical, mental[,] and social well-being, his dignity, and his enjoyment of basic human rights, in developing as well as developed countries."[81] Following these two resolutions, the U.N. Conference on the Human Environment finally pushed through in Stockholm in 1972.[82] This led to the creation of the U.N. Environment Programme (UNEP).[83] In 1983, through another resolution, the General Assembly established the World Commission on Environment and Development (WCED), which was tasked to report on the "environment and the global problematique to the year 2000 and beyond."[84] The Commission submitted its Brundtland Report[85] after four years of research and study, which had a central theme of development, emphasizing a type of development that "meets the needs of the present generation without compromising the ability of future generations to meet their own

78. *Id.* at 377.

79. *See* United Nations, Global Issues — Environment, *available at* http://www.un.org/en/globalissues/environment/ (last accessed Sep. 6, 2012). *See also* United Nations, United Nations Documentation: Research Guide — The Environment, *available at* http://www.un.org/Depts/dhl/resguide/specenv.htm (last accessed Sep. 6, 2012).

80. E.S.C. Res. 1346 (XLV), at 8, U.N. Doc. E/4561 (July 30, 1968).

81. G.A. Res. 2398 (XXIII), at 2, U.N. Doc. A/L553 (Dec. 3, 1968).

82. Declaration of the United Nations Conference on the Human Environment, U.N. Doc. A/Conf.48/14/Rev. 1 (June 16, 1972).

83. United Nations Environment Programme, Organization Profile, *available at* http://www.unep.org/PDF/UNEPOrganizationProfile.pdf (last accessed Sep. 6, 2012).

84. G.A. Res. 38/161, at 132, U.N. Doc. A/38/702/Add.7 (Dec. 19, 1983).

85. General Assembly, *Report of the World Commission on Environment and Development*, U.N. Doc. A/42/47 (Aug. 4, 1987).

needs."[86] In 1989, pursuant to the Brundtland Report, the U.N. General Assembly adopted a resolution[87] that convened the U.N. Conference on Environment and Development (UNCED), which is popularly known as the Rio Conference or the Earth Summit.[88] Four years after the said resolution was made by the General Assembly, the UNCED took place in Rio de Janeiro and adopted three major agreements, to wit:

(1) the Agenda 21;[89]

(2) the Rio Declaration on Environment and Development;[90] and

(3) the Statement of Forest Principles.[91]

The aforementioned U.N. initiatives relating to the now internationally recognized human right to a healthy environment led U.N. member-nations to promote the right in issue in their own regions.[92] The Philippine experience is illustrative on the matter.

2. Local Recognition

Chief Justice Davide, who is also one of the members of the Constitutional Commission of 1986, stated that "[t]he Philippines is the first country in the world to enshrine in its Constitution the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature, and

86. *Id.* ¶ 27.

87. G.A. Res. 44/228, at 151, U.N. Doc. A/44/746/Add.7 (Dec. 22, 1989).

88. U.N. Conference on Environment and Development, Rio de Janeiro, Brazil, June 3-14, 1992.

89. Agenda 21: Programme of Action for Sustainable Development, 46th Sess., Agenda Item 21, U.N. Doc. A/Conf.151/26 (June 14, 1992).

90. Rio Declaration on Environment and Development, U.N. Doc. A/CONF.151/26 (Vol. I) (June 13, 1992).

91. General Assembly, *Report of the United Nations Conference on Environment and Development*, U.N. Doc. A/CONF.151/26 (Vol. III) (June 3-14, 1992).

92. *See, e.g.*, Agenda 21 Implementation (Progress Report, compiled from the national reports to the U.N. Commission on Sustainable Development), *available at* http://sovereignty.net/p/sd/agenda21rpt.htm (last accessed Sep. 6, 2012); French Environmental Policy (A Brief Overview of French National Policy on Environmental Protection), *available at* http://www.ambafrance-my.org/French-environmental-policy (last accessed Sep. 6, 2012); & Mette Loyche Wilkie, et al., Sustainable Forest Management and the Ecosystem Approach: Two Concepts, One Goal (A Forest Management Working Paper) 4, 5, 9, & 10, *available at* http://www.fao.org/forestry/6417-0905522127db12a324c6991d0a53571fa.pdf (last accessed Sep. 6, 2012).

the correlative duty of the State to protect and advance that right."[93] The 1935 and the 1973 Philippine Constitutions had no mention of the right to the environment.[94]

Following the effectivity of the 1987 Philippine Constitution, the Philippine Government, specifically during the administration of former President Corazon C. Aquino, recognized the importance of the environment and the role that the government plays to preserve it.[95] It was only in 1987 that critical concerns on the environment were embraced by a government agency, which institutionalized the enforcement of environmental protection measures.[96] Executive Order No. 192[97] mandated that the DENR —

> shall be the primary government agency responsible for the conservation, management, development, and proper use of the country's environment and natural resources, specifically forest and grazing lands of the public domain, as well as the licensing and regulation of all natural resources as maybe provided for by law in order to ensure equitable sharing of the benefits derived therefrom for the welfare of the present and future generations of Filipinos.[98]

Despite this, the right to a healthful and balanced ecology, enshrined in Section 16, Article II of the Constitution[99] and considered as a "lofty idealism"[100] before *Oposa*, did not enjoy the same priority as the other rights established in the highest law of the land.[101] Indeed, as Chief Justice Davide put it, it was only in *Oposa* that an opportunity to extremely test this right was put in place.[102]

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93. Davide, Jr., *supra* note 59, at 594.

94. *See* 1935 PHIL. CONST. art II (superseded 1973) and 1973 PHIL. CONST. art II (superseded 1987).

95. *Oposa*, 224 SCRA at 806.

96. *See generally* Historical Background (Article on Department of Environment and Natural Resources History), *available at* http://www.denr.gov.ph/index.php?option=com_content&view=article&id=1&Itemid=3 (last accessed Sep. 6, 2012).

97. Providing for the Reorganization of the Department of Environment, Energy and Natural Resources, Renaming it as the Department of Environment and Natural Resources, and for Other Purposes [Reorganization Act of the Department of Environment and Natural Resources], Executive Order No. 192 (1987).

98. *Id.* § 4.

99. PHIL. CONST. art II, § 16.

100. Davide, Jr., *supra* note 59, at 594.

101. PHIL. CONST. art III.

102. Davide, Jr., *supra* note 59, at 594.

B. The Right to the Environment After Oposa

Briefly, *Oposa* is a case brought before the trial court by more than 40 children.[103] Acting on their own behalf and on behalf of the children of future generations, the plaintiffs sought the cancellation of all Timber License Agreements (TLAs) in the Philippines because, among others, such resulted to the distortion and disturbance of the ecological balance in the country.[104] The trial court dismissed the complaint due to its findings that the complaint states no cause of action, that the issue raised by the plaintiffs is a political question, and that the grant of plaintiffs' prayer would result to the impairment of contracts.[105]

The SC took a different turn. It ruled that the right to a balanced and healthful ecology, while it is not found under the Bill of Rights,[106] is a right that —

> belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation ... the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, [it] need not even be written in the Constitution for [it is] assumed to exist from the inception of humankind. If [it is] now explicitly mentioned in the fundamental charter, it is because of the well-founded fear of its framers that unless the [right] to a balanced and healthful ecology ... [is] mandated as [a] state [policy] by the Constitution itself, thereby highlighting [its] continuing importance ... the day would not be too far when all else would be lost not only for the present generation, but also for those to come — generations which stand to inherit nothing but parched earth incapable of sustaining life.[107]

This judicial interpretation has given a legal imprimatur that the right to a balanced and healthful ecology is akin to the *right to life* itself.[108]

1. "Celebrity Status" in the International Scene

After the curious ruling of the SC in *Oposa*, it enjoyed a "celebrity status" in the international legal arena.[109] It was coined as a landmark in the jurisprudence of sustainable development because it recognized in domestic law the concept of intergenerational equity, which is a central issue in the modern environmental debate and one that is embodied in the Rio

103. *Id.*

104. *Oposa*, 224 SCRA at 797.

105. *Id.* at 800.

106. PHIL. CONST. art III.

107. *Oposa*, 224 SCRA at 805.

108. Davide, Jr., *supra* note 59, at 594.

109. Gatmaytan, *supra* note 63, at 458.

Declaration.[110] The decision was considered as praiseworthy because it gave an important incentive for the implementation of a right to a decent environment.[111] The Case, aside from being cited repeatedly in various international law journals and publications and declared as an influential account in the context of environmental law,[112] also became subject of the discussions in the Geneva Meeting of Experts on Human Rights and the Environment.[113] Indeed, being a first of its kind,[114] it was easy for it to leave a mark in the then growing path of Environmental Law.

Atty. Antonio A. Oposa, Jr., the counsel of the petitioners in *Oposa*, claimed that internationally, the Case gained much attention as it was analyzed and debated upon among legal circles.[115] Apart from that, however, he also admitted that interest in *Oposa* in the country's legal community was not as much.[116]

Naturally, as all SC decisions, *Oposa* did not escape criticism. It was criticized as "overrated" because it did not seem to add anything new on the table.[117] An Author declared that the Case was misunderstood in the international setting, and that it did little to affect government conduct in environmental protection.[118] As an additional background, *Oposa* was not the first time where the SC gave weight to the right embodied under

110. Ben Boer, *The Rise of Environmental Law in the Asian Region*, 32 U. RICH. L. REV. 1503, 1537 (1999) (citing Rio Declaration on Environment and Development, *supra* note 90, Principle 3).

111. Dr. Alfredo Rest, *Preliminary Efforts in Implementing the Rio Targets*, 40 ATENEO L. J. 1, 11 (1996).

112. Popovic, *supra* note 60, at 513.

113. Dr. Jonna, Razzaque, Human Rights and the Environment: The National Experience in South Asia and Africa (A Background Paper for the Joint UNEP-OHCHR Expert Seminar on Human Rights and the Environment 14-16 January 2002, Geneva), *available at* http://www2.ohchr1.org/english/issues/environment/environ/bp4.htm (last accessed Sep. 6, 2012).

114. Ted Allen, *The Philippine Children's Case: Recognizing Legal Standing for Future Generations*, 6 GEO. INT'L ENVTL. L. REV. 713, 713 (1994). The Case, where it was the first time that the highest court of the land granted standing to minors who claimed to represent future generations, forwarded an emerging principle in environmental law that "present generations [had] a duty to pass on a sustainable environment to their successors." *Id.*

115. Gatmaytan, *supra* note 63, at 459 (citing Antonio A. Oposa, Jr., The Power to Protect the Environment (excerpts of a paper presented before the LAWASIA Conference in Manila), *available at* http://www.oposa.com/oposa_family/environment2.htm (Aug. 30, 1997)).

116. Gatmaytan, *supra* note 63, at 459.

117. *Id.*

118. *Id.*

Section 16, Article II of the Constitution.[119] In *Ysmael, Jr. & Co., Inc. v. Deputy Executive Secretary*,[120] a case that was decided by the SC three years before *Oposa*, the Court already recognized that the right to a healthful and balanced ecology is a constitutional command for the government to act in a manner that would not degrade forestlands.[121]

Ultimately, however, *Oposa* still enjoys a superior status in the field of Environmental Law here and abroad because of its doctrinal pronouncement that the right to a balanced and healthful ecology is an *actionable right*.[122]

2. Philippine Situationer

As it now stands, there is a network of 117 environmental courts in the Philippines.[123] In 2010, the SC also adopted the Rules of Procedure for Environmental Cases,[124] which provides for rules involving civil, criminal, and special civil actions for violations or the enforcement of environmental regulations.[125] Included in the Rules is the remedy of the Writ of *Kalikasan*, which is —

> available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice life, health, or property of inhabitants in two or more cities or provinces.[126]

The following procedural innovations[127] are specifically introduced in the Rules:

(1) Citizen Suits;[128]

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119. *Id.* at 479.

120. Felipe Ysmael, Jr. & Co., Inc. v. Deputy Executive Secretary, 190 SCRA 673 (1990).

121. Gatmaytan, *supra* note 63 at 479 (citing *Ysamel*, 190 SCRA at 683).

122. Gatmaytan, *supra* note 63 at 479. *See also* Ma. Socorro Z. Manguiat & Vincent Paolo B. Yu III, *Maximizing the Value of Oposa v. Factoran*, 15 GEO. INT'L ENVTL. L. REV. 487, 489 (2003).

123. Robert Carnwath, *Institutional Innovation for Environmental Justice*, 29 PACE ENVTL. L. REV. 555, 564 (2012).

124. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, A.M. No. 09-6-8-SC, Apr. 13, 2010.

125. Davide, Jr., *supra* note 59, at 596.

126. Carnwath, *supra* note 123, at 564.

127. Davide, Jr., *supra* note 59, at 596.

(2) Consent Decrees;[129]

(3) the TEPO;[130]

(4) the Writ of *Kalikasan*;[131]

(5) the Writ of Continuing *Mandamus*;[132]

(6) Strategic Lawsuit Against Public Participation (SLAPP Suits);[133] and

(7) the Precautionary Principle.[134]

Unlike in *Oposa* where there seemed to be no available remedy for ordinary citizens to enforce their right to a balanced and healthful ecology, the abovementioned procedural rules enable any civilian to go to the courts and to exercise the *actionable* right that was declared in *Oposa*. The Rules indicate the environmental and other related laws that have the tendency of being violated, and upon which an injured party may make use of any of the civil, criminal, or special civil actions provided for by its provisions.[135]

As shown by the adoption of the said Rules and by the list of special laws that it seeks to protect, the government, through its executive, judicial, and legislative branches, has indeed actuated serious steps to tread the path of environmental protection and preservation through the State's citizens.[136] The availability of the remedies to ordinary individuals reflects the enforceability of what used to be just among a set of non self-executing rights. To be sure, the right to a balanced and healthful ecology underwent a metamorphosis — the becoming of a real and tangible right that grew from what was merely an abstract concept. To the Author, although *Oposa* had some procedural lapses,[137] its main doctrinal contribution paved the way to a strong institutional support for the right to a balanced and healthful ecology, especially in the Philippines.

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128. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 2, § 5.

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

130. *Id.* rule 2, § 8.

131. *Id.* rule 7.

132. *Id.* rule 8.

133. *Id.* rule 6.

134. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 20.

135. *Id.* rule 1, § 2.

136. *See generally* Abigail T. Sze, SC Unveils Landmark Rules of Procedure for Landmark Cases, *available at* http://sc.judiciary.gov.ph/news/courtnews%20flash/2010/04/04141001.php (last accessed Sep. 6, 2012).

137. *See generally* Gatmaytan, *supra* note 63, at 459-60.

IV. THE SM BAGUIO TREES ISSUE ANALYZED

The Writ of *Kalikasan* and the Writ of Continuing Mandamus found application in several cases before the SC.[138] In *Global Legal Action Against Climate Change v. The Philippine Government*,[139] the Global Legal Action Against Climate Change sought to enforce Republic Act No. 6716.[140] The Group sued the Department of Public Works and Highways (DPWH) and the Department of Interior and Local Government (DILG) for the implementation of the said law.[141] In another case, the SC issued a Writ of *Kalikasan* that ordered a pipeline operator to cease and desist from operation until the leaking of its pipeline has stopped.[142] As can be remembered, this pipeline case was controversial because the gas leaks affected residents of a certain condominium.[143] In *Metro Manila Development Authority v. Concerned Citizens of Manila Bay*,[144] a group of citizens, after ten years of litigation, won a court action and caused the Court to order twelve national government agencies to implement the cleaning of Manila Bay.[145] The Court therein issued a Writ of Continuing Mandamus, which served as a continuing order from the Court to enforce the action plan of the agencies involved in the case to restore the marine resources of Manila Bay to their productive state.[146]

The courts, then, are currently no strangers to the application of the remedies provided for by the Rules of Procedure for Environmental Cases. Chief Justice Davide believes that it is the duty of the judiciary to intervene when other branches of the government fail to enforce the right to a balanced and healthful ecology.[147] It is claimed that today, more than ever,

138. *See* Davide, Jr., *supra* note 59, at 598-99.

139. The Global Legal Action on Climate Change v. The Philippine Government, G.R. No. 191806, Oct. 18, 2011.

140. An Act Providing for the Construction of Water Wells, Rainwater Collectors, Development of Springs and Rehabilitation of Existing Water Wells in All Barangays in the Philippines, Republic Act No. 6716 (1989).

141. *Id.*

142. West Tower Condominium Corporation v. First Philippine Industrial Corporation, G.R. No. 194239, July 19, 2011.

143. *Id.*

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

145. *Id.*

146. *Id.*

147. Davide, Jr., *supra* note 59, at 596 (citing PHIL. CONST. art VIII, § 1).

the pronouncement in *Oposa* will ring even more real and true.[148] This proved to be the case in the SM Baguio Trees issue.

As earlier discussed in this Essay, SM Baguio was able to obtain permits[149] for its earth-balling operations before it implemented its expansion project. It spent one year obtaining such permits[150] as it was sensitive to the environmental implications of its plans. This was despite the fact that its project had an environmental-friendly blueprint. However, when the expansion project ran its course beginning with the Company's operations involving the 182 trees, and in compliance with the permits issued by the government to them, several protests were staged against it.[151] More than one court action was sought to restrain SM from uprooting or cutting down the trees.[152] Eventually, an RTC in Baguio issued a TEPO against SM. Currently, the expansion project of SM has been put indefinitely on hold.[153] Some people, just like the citizens of Baguio City who take pride in their Pine Trees, and personalities consider the issuance of the TEPO a successful application of the remedy afforded to them by law;[154] while other commentators only see it as a misimpression of the facts of the matter in issue.[155]

148. Davide, Jr., *supra* note 59, at 596.

149. DENR Memorandum, *supra* note 27 & Romero, *supra* note 39.

150. *Id.*

151. Posion, *supra* note 33 & *Baguio Residents Against SM Earth-Ball Plans*, *supra* note 33.

152. Cabreza, *supra* note 36 & Court Saves Trees, *supra* note 37.

153. Del Castillo, *supra* note 46.

154. Carlos Celdran, Is off to Bed With a Little Bit of Hope (Photo), *available at* http://www.facebook.com/photo.php?fbid=10151041720621131&set=a.338730946130.197062.329069471130&type=3&theater (last accessed Sep. 6, 2012). Mr. Celdran was initially known for being one of the best tourist guides that one can find in the City of Manila. *See* Carlos Celdran, Walk This Way, *available at* http://celdrantours.blogspot.com/ (last accessed Sep. 6, 2012). Later on, he has become famous for being a cultural activist. Isabel Roces, *Carlos Celdran — How He Keeps Fresh While Walking This Way and That*, PHIL. DAILY INQ., Aug. 3, 2012, *available at* http://lifestyle.inquirer.net/60317/carlos-celdran-how-he-keeps-fresh-while-walking-this-way-and-that (last accessed Sep. 6, 2012). He is now a public figure who continues to advocate not only for culture, but also for the environment.

155. *See* Federico D. Pascual, Jr., *Trees Handled Properly in SM Baguio Upgrade*, PHIL. STAR, May 1, 2012, *available at* http://www.philstar.com/Article.aspx?articleId=802352&publicationSubCategoryId=64 (last accessed Sep. 6, 2012) & Conrado R. Banal III, *Loose in Translation*, PHIL. DAILY INQ., Apr. 16, 2012, *available at* http://business.inquirer.net/53729/loose-in-translation (last accessed Sep. 6, 2012).

Turning now to the question that this Essay seeks to address — has the legal evolution of the right in issue been strongly enforced in the context of the SM Baguio Trees dilemma after the doctrinal pronouncement in *Oposa* or has it ended up as a sensationalized right, which is mistakenly exercised and which falls short of the hopeful idealism that the Court therein sought to uphold?

The Author agrees with the proposition that the right to a balanced and healthful ecology has turned into a human right that may be enforced by any person. A failure to acknowledge this manifests ignorance to the consequences of man's daily undertakings that largely degrade the biological balance of the ecosystem. It is worth to note that the deliberations of the Constitutional Commission regarding the right tackled herein was aimed at providing for sanctions against all forms of pollution, such as air, water, and noise pollution.[156] The aim to protect the ecological balance most likely stems from the belief of one of the drafters of our Constitution that —

> no life is possible without the food from the soil, without the air that we breathe, and without the water that we drink. The health and well-being of these vital organs of the earth — its heart and lungs, skin and flesh, blood and veins — must be conserved, protected, and restored at all costs. Lest we forget, without them life as we know it will simply cease to exist. All peoples and all governments must faithfully assume the role of conservator, protector, restorer of life, and the sources of life of the earth.[157]

However, in the context of the SM Baguio Trees Issue and for the purpose of legal analysis, the Author advances the view that the exercise of the right herein was misplaced, if not exaggerated. Although the issue has been popularly viewed as a battle between David and Goliath,[158] the Author believes that the exercise of the right herein was overly stated for two reasons.

Firstly, SM Baguio, having complied with the standard set by the law and the government,[159] should not suffer the indefinite suspension. In this case, the suspension had been in force for three months. It should not take a business expert to understand that this indefinite suspension is likely to result to a certain degree of loss in investments. Even when SM is a large retail enterprise, which has more than enough resources to increase its market shares and profits, it is still a business entity that is under the law's watch. It operates through a system that other profit and non-profit institutions operate — it has assets and investments because its very purpose is to survive,

156. 4 RECORD OF CONSTITUTIONAL PROCEEDINGS AND DEBATES 913.

157. Davide, Jr., *supra* note 59, at 600.

158. Celdran, *supra* note 154.

159. *See* Department of Environment and Natural Resources, Administrative Order No. 2000-21, (Feb. 28, 2000).

to thrive in the business world. The laws that govern businesses such as SM exist so that those that are rich and powerful would not only respect the rights of those who have less in life, but would also not exercise their own business and other rights abusively. The purpose of the laws on securing permits has been complied with in this case and the very threats that the laws seek to protect against do not appear to exist. It is then unjust to punish the retail store indefinitely.

Secondly, and as a final point, there is no argument that the courts should be swift and vigilant in protecting the rights of the people.[160] After all, that is the ultimate role of the judiciary. However, the judicial branch must also be quick in ascertaining the ultimate facts of the cases brought to them by complainants who claim to be injured parties. Even if SM is a large retail company, it also has its own rights being an entity recognized by law. It exercised its diligence in obtaining the proper permits and, as discussed earlier, this was due to the recognition by SM of the environmental implications of its project.

Those who claim to be injured parties, aside from the media attention that they have acquired, have not appeared to show, much less claim, the injury that they have suffered because of the permits granted to SM. These permits, which have been modified,[161] did not result to the damage that the residents and activists fear of having. The science of earth-balling trees, as can be seen by its definition, does not "kill" the trees *per se*. The methods that SM Baguio was about to employ are legal and even scientifically correct. It should be emphasized that the remedies available to any party under the law should be available only to those who show a clear violation of their right and to some extent, the damage or injury that they seek to address. Otherwise, the purpose of these remedies would be defeated.

V. CONCLUSION

Aside from the global recognition of climate change, it cannot be gainsaid that Filipinos, because of geographical and cultural considerations, have a certain level of consciousness and proximity to nature.[162] This may logically be one of the reasons why the government and several institutions in the country are liberal in upholding the right to a balanced and healthful ecology.[163]

160. *See* Morales, Jr., v. Minister Enrile, et al., 206 Phil. 466, 505 (1983) (C.J. Fernando, concurring and dissenting opinion).

161. The revised permits provided for more stringent requirements against SM Baguio.

162. Rest, *supra* note 111, at 11.

163. *Id.*

However, and more importantly, the application of the law, through the enforcement of rights, should be akin to the symbolism that is the blindfolded lady justice. Its interpretation does not only lie on custom and popular justice; its exercise is bound by tools such as jurisprudential doctrines, statutory construction, and legal hermeneutics.[164] The availability of remedies for the advancement of the doctrinal pronouncement in *Oposa* should strengthen the right that they seek to protect. Not every cause that is believed to result into some inconvenience in the exercise of a human right is a cause of action. When a right is sought to be enforced through the courts, such act does not necessarily indicate the proper exercise of that right. As Manguiat and Yu properly put it —

> the value of any jurisprudential pronouncement, such as the case of *Oposa v. Factoran* discussed by Professor [Dante B.] Gatmaytan, lies not only in the positive outcomes for the plaintiff or the respondent that may arise as a result of the decision. It also lies in the extent to which the decision advances the state of the law in the pursuit of the public welfare.[165]

164. Manguiat & Yu III, *supra* note 122, at 488.
165. *Id.*