



**ACCESS TO ENVIRONMENTAL JUSTICE:
A CAPACITY ASSESSMENT ON THE
PILLARS OF THE JUSTICE SYSTEM**



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PART I

INTRODUCTION TO THE ASSESSMENT REPORT

A. The Project, Its Objectives and Methodology

The project is entitled *Development of Framework and Capacity Assessment on Environmental Justice*. It is a joint project of the Supreme Court of the Philippines implemented by the Philippine Judicial Academy (PHILJA) in cooperation with the Program Management Office (PMO). The Project is under the *Fostering Democratic Governance Programme – Enhancing Access to the Pillars of Justice*, a partnership between the Philippine Government, through the National Economic Development Authority (NEDA), and the United Nations Development Programme (UNDP).

The Project aims to assess the capacity of the five pillars of the justice system to execute and implement the provisions of the 1987 Philippine Constitution and the various environmental laws and develop a Sourcebook aimed to address all policy gaps and give recommendations for the effective access to Environmental Justice. There are two outputs: the (1) Capacity Assessment on the Pillars of the Justice System in Enhancing Environmental Justice; and (2) Sourcebook on Environmental Justice. This report is the capacity assessment component of the Project.

Methodology of the Report

A capacity assessment provides a comprehensive perspective on the capacities critical to the achievement of a country's development objectives.¹ It is an analysis of desired future capacities against current capacities and offers a systematic way of gathering critical knowledge and information on capacity assets and needs. This in turn will help in identifying the strengths which can be used and the gaps and weaknesses that have to immediately be addressed. It can serve a number of purposes as well, such as:

1. Act as a catalyst for action;
2. Confirm priorities for action;
3. Build political support for an agenda;
4. Offer a platform for dialogue among stakeholders;
5. Provide insight into operational hurdles in order to unblock a programme or project;
6. Provide a starting point for the formulation of capacity development responses.²

¹ UNITED NATIONS DEVELOPMENT PROGRAMME CAPACITY ASSESSMENT PRACTICE NOTE 2 (2008).

² *Id.* at 9.

The study focuses on the five pillars of the justice system namely: law enforcement,³ prosecution,⁴ courts,⁵ penology,⁶ and the community. Each pillar was assessed in the light of the recently promulgated Rules of Procedure for Environmental Cases. The assessment was based on the inputs given by the respective stakeholders drawn from individual consultations, meetings, and focus group and roundtable discussions. The assessment focused on the evaluation of the roles and responsibilities of the pillars of justice; the identification of experiences involving access to judicial and administrative proceedings, including redress and remedy as well as innovative approaches and assessment of the five pillars' strengths and weakness. It also determined the level of awareness of vulnerable groups on their environmental rights and entitlements and their ability to access Environmental Justice. Finally, the assessment reevaluated the Environmental Impact Statement System (EISS) and provided the necessary recommendations.

Different approaches were adopted in assessing the capacity of each pillar of the justice system. Individual meetings, consultations, focus group and roundtable discussions were held to enhance and further develop the analysis of the agency or group. Below is a summary of the activities held and the participating government agencies and organizations:⁷

Date	Activity
September 7	Consultation with the Bureau of Jail Management and Penology
September 14	Consultation with the PNP Program Management Office
September 15	Consultation with the AFP Office of the Inspector General
September 17	Consultation with the National Bureau of Investigation
September 24	Multi-Pillar Focus Group Discussion
October 5	Roundtable Discussion with the Department of Environment and Natural Resources
October 11	Roundtable Discussion with the Bureau of Fisheries and Aquatic Resources
October 12	Consultation with the Office of the Environmental Ombudsman

³ The Law Enforcement pillar for this study involved the participation of the following departments: the Department of Environment and Natural Resources (DENR), the Bureau of Fisheries and Aquatic Resources (BFAR), the Philippine National Police (PNP), the Philippine Coast Guard (PCG), the National Bureau of Investigation–Environment and Wildlife Protection and Investigation Division (NBI-EWPID), and the Armed Forces of the Philippines (AFP).

⁴ The Prosecution pillar for this study involved the participation of the National Prosecution Service (NPS) of the Department of Justice (DOJ).

⁵ The Courts pillar for this study involved the participation of the following departments of the Supreme Court: Office of the Court Administrator (OCA), Court Management Office (CMO), Philippine Judicial Academy (PHILJA) and Program Management Office (PMO).

⁶ The Penology pillar for this study involved the participation of the Bureau of Jail Management and Penology (BJMP).

⁷ The names of the representatives of the government agencies and representatives of non-governmental organizations and peoples' organizations are listed in Annex A of this report.

Date	Activity
October 14	Consultation with the Philippine Coast Guard
October 16	Silliman University Focus Group Discussion
October 19	Consultation with the Secretary of the Department of the Interior and Local Government and the Bureau of Local Government Supervision
October 20	Consultation with the DOJ National Prosecution Service
October 20	Consultation with the NBI-Environment and Wildlife Protection and Investigation Division
October 22	NGO Focus Group Discussion
October 29	Consultation with the DENR-Environmental Management Bureau
November 5	Assessment Report Validation
November 26	Consultation with the Episcopal Council on Indigenous Peoples, the Orders of the Friars Minor (OFM) and the Sagip Sierra Madre Network
November 29	Consultation with the PNP Maritime Group
December 1	Consultation with the AFP Civil Military Operations Group

For the government agencies and offices, the assessment focused on determining the capacity of their agency to ensure access to Environmental Justice on the basis of the following core issues:

1. Institutional Arrangements⁸
2. Leadership⁹
3. Knowledge¹⁰
4. Accountability.¹¹

⁸ Institutional arrangements refer to the policies, procedures and processes that allow individuals, organizations and the enabling environment to function and interact effectively and efficiently in an organized setting, cited in UNDP Practice Note, *supra* note 1, at 13.

⁹ Leadership is the ability to influence, inspire and motivate people, organizations and systems to achieve, and in many cases go beyond, their goals. It is a catalyst for achieving, enhancing and sustaining development objectives. It is also the ability to be open to, anticipate and respond to change, irrespective of whether this is internally initiated or externally imposed, cited in UNDP Practice Note, *supra* note 1, at 13.

¹⁰ Knowledge or literally, what people know, underpins their capacities and hence capacity development, cited in UNDP Practice Note, *supra* note 1, at 14.

¹¹ It allows organizations and systems to monitor, learn, self-regulate and adjust their behavior in interaction with those to whom they are accountable. It provides legitimacy to decision making, increases transparency and helps reduce the influence of vested interests, cited in UNDP Practice Note, *supra* note 1, at 14.

The agencies were also asked to accomplish a capacity assessment matrix on the core issues previously enumerated.

The participants in these activities ranged from heads of departments and bureaus and high level officials to technical and specialist staff. To enhance the discussion during the meetings, consultations, and FGDs, the following points were also addressed by the government agencies:

1. The strategies and programs adopted by the agency to enhance access to Environmental Justice;
2. The key result areas or outputs of these strategies and programs;
3. The cross-cutting issues or problems that the institution deals with as regards enhancing access to Environmental Justice;
4. The capacities necessary to address the issues and execute these strategies and programs;
5. Intra-agency and inter-agency coordination in carrying out the agency's functions;
6. The current status, problems and issues concerning the EIS System which they may be aware of.

On the other hand, as regards the community, the assessment was done similarly through meetings, consultations, focus group and roundtable discussions. Considering that the nature of the community pillar is different from the government institutions, the assessment adopted a free-flowing discussion on their concerns on access to Environmental Justice. The assessment was done by documenting their stories and experiences, and by gathering their reports, studies, and data on environmental issues, cases and problems. Below is a list of the organizations that provided inputs and their corresponding advocacies and fields of interest.

Name of the Organization	Advocacy/Field of Interest	Location
Alyansa Tigil Mina	Mining and natural resources	Nationwide
Buglas Bamboo Institute	Bamboo preservation	Negros Island
Catholic Bishops' Conference of the Philippines-Episcopal Commission on Indigenous People	Indigenous Peoples and Communities	Nationwide
City Fisheries and Aquatic Resources Management Council (CFARMC)	Fisheries	Las Piñas City
Ecowaste Coalition	Solid waste management, incinerators	Nationwide
Haribon Foundation	Biodiversity, climate change, deforestation	Nationwide

Name of the Organization	Advocacy/Field of Interest	Location
Legal Rights and Natural Resources Center-Kasama sa Kalikasan	Indigenous peoples' rights, mining, and climate change	Nationwide
Pambansang Katipunan ng mga Samahan sa Kanayunan (PKSK)	Farmers and fisherfolk	Nationwide
Friends of the Environment in Negros Oriental (FENOR)	Forest and marine resources	Negros Oriental
Silliman University Jovito Salonga Justice and Peace Center	Law reform and advocacy, marine and coastal environment	Negros Province and Visayas Region
Sagip Sierra Madre Network	Deforestation, mining	Luzon Island
Tambuyog Development Center	Fisheries and marine resources	Nationwide
Tanggol Kalikasan	Legal assistance in environmental law enforcement	Nationwide
Order of the Friars Minor (OFM)	Mining and illegal logging	Rizal, Aurora, Quezon and Isabela
Philippine Sociological Society	Sociology and the environment	Nationwide
Upholding Life and Nature (ULAN)	Environmental rights, climate change	Nationwide

A Validation Workshop was also conducted to present the initial findings of the assessment conducted based on the statements and opinions provided during the earlier consultation meetings and focus group discussion, and to obtain additional inputs from the representatives of the various pillars involved in the project.¹² The workshop enabled the writers of this report to verify and ensure the accuracy of its findings. The report was also presented to those agencies that were not able to attend the validation exercise to obtain their inputs and comments on the findings of the capacity assessment.

The findings of the assessment were also culled from a review of existing literature and from studies done by other organizations and institutions. Surveys and statistical data from related literature and from the agencies, offices, and groups involved were also used.¹³

¹² Validation Workshop held on Nov. 5, 2010 at the Fr. Bernas Center, Ateneo Professional Schools, Rockwell Center, Makati City [hereinafter VALIDATION WORKSHOP].

¹³ Major sources of statistical data include the following:

1. THE NATIONAL STATISTICAL COORDINATING BOARD (NSCB) 2008 COMPENDIUM OF PHILIPPINE ENVIRONMENT STATISTICS (2008);
2. ALTERNATIVE LAW GROUPS AND SOCIAL WEATHER STATIONS, RESEARCH ON THE POOR ACCESSING JUSTICE AND THE ALG AS JUSTICE REFORM ADVOCATE (2008). This study contained both national and ALG target area surveys. The ALG target areas included: Metro Manila, North Luzon, South Luzon, Central Visayas, Western/Eastern Visayas, North Mindanao, South Mindanao;

The report is divided into six major parts. Part 1 deals with an introduction to the report, its methodology, and conceptual and legal policy framework. Part 2 explains the state of the Philippine environment and presents the country's rich biodiversity and natural resources and the daunting tasks and problems which the justice system would have to deal with in protecting the environment. Part 3 presents the findings of the assessment on the capacity of the five pillars of the justice system based on the research and consultation done by the writers of the report. Part 4 proceeds to explain the stories and experiences of the vulnerable groups who are most affected by environmental degradation. Part 5 presents the Philippine EIS System with an assessment of its current capacity and effectiveness. Part 6 concludes the report with an analysis of the data obtained during the capacity assessment process and recommending measures aimed to enhance access to Environmental Justice.

B. The Environment and the Courts

In recent years, events that have affected people across the globe such as: the devastating floods in Pakistan, China, and other parts of Asia; heat waves in Europe; bush fires caused by severe drought; and the massive floods caused by Ondoy and Pepeng in the Philippines in 2009; have all pushed the environment to the forefront of the global agenda.¹⁴ As one book puts it, “[w]e and our environment are at risk.”¹⁵

Although it may seem that people are more concerned with other global issues like the global financial turmoil or the threat of terrorism, the environment has slowly crept its way to the minds and hearts of individuals all across the globe.¹⁶ Issues and problems like ozone layer depletion, climate change and their effects, marine pollution from vessels, dumping of wastes, waste export, extinction of species and loss of biological diversity, deforestation, fresh water depletion and acidification are some examples of environmental issues which the world faces.¹⁷ Our environmental concern is not local, rather, it is international and global.¹⁸ According to UN Secretary General Ban Ki-moon, “[m] any of the challenges we face, from poverty to armed conflict, are linked to the effects of global warming. Finding a solution to climate change can bring benefits to other areas. A greener planet will be a more peaceful and prosperous one, too.”¹⁹

3. Websites of the Department of Environment and Natural Resources' Forest Management Bureau (FMB) and Mines and Geosciences Bureau (MGB);

4. The Department of Agriculture's Bureau of Fisheries and Aquatic Resources.

¹⁴ See generally IBON DATABANK AND RESEARCH CENTER, STATE OF THE PHILIPPINE ENVIRONMENT (2006).

¹⁵ YINGYI SITU AND DAVID EMMONS, ENVIRONMENTAL CRIME, 1 (2000).

¹⁶ JONAS EBBESSON, COMPATIBILITY OF INTERNATIONAL AND NATIONAL ENVIRONMENTAL LAW 3 (1996).

¹⁷ *Id.*

¹⁸ John A. Boyd, *International Environmental Law*, 6 PHILJA JUDICIAL JOURNAL 298, 312 (2004).

¹⁹ Ban Ki-moon, *The Right War*, TIME MAGAZINE, April 28, 2008, at 52.

The global community has indeed taken note of issues affecting the environment; and the Philippines is no exception to this worldwide trend.

The Role of the Courts in Environmental Protection

Beginning in the 1970s, numerous efforts and initiatives have been made to combat the destruction of our environment. Before, administrative regulations and technology had been the chief weapons in the effort to stop environmental degradation.²⁰ Regulation had been seen as a civil matter by courts and legislatures.²¹ However, in the late 1980s the procedures and perspectives of criminal justice have been applied to the environmental crisis; and we are witnessing for the first time the criminalization of environmental wrongdoing.²² In International Law, the liability rules for environmental damage are still evolving and in need of further development.²³ In determining state responsibility, the International Law Commission's (ILC) Articles of State Responsibility bring together the rules of general International Law, and they are applicable (to the extent they reflect Customary International Law) with environmental rules established by treaties and other internationally applicable rules.²⁴

This development of liability for environmental damage and for environmental crimes has increased the participation of the court and the justice system in environmental issues and problems. A traditional means by which environmentally concerned persons can participate is by way of court action to challenge the legality of administrative decisions made pursuant to legislation,²⁵ or to check that a decision of a public body has been made in a correct manner.²⁶

Environmental courts, as well as tribunals with expertise in environmental matters, have been increasingly recognized for their accomplishments and further potential in promoting ecologically sustainable development.²⁷ In fact, a recent study reports that, currently, there are over 350 environmental courts and tribunals in 41 countries around the world,²⁸ including the Philippines. The courts focused on resolving environmental, natural resource, land use and

²⁰ SITU AND EMMONS, *supra* note 15, at 1.

²¹ *Id.* at 11.

²² *Id.* at 1.

²³ PHILIPPE SANDS, *PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW* 869 (2003).

²⁴ *Id.* at 873.

²⁵ BENJAMIN J. RICHARDSON AND JONA RAZZAQUE, *Public Participation in Environmental Decision Making*, in *ENVIRONMENTAL LAW FOR SUSTAINABILITY*, 166, 182 (Richardson and Wood, Eds., 2006).

²⁶ DAVID WILKINSON, *ENVIRONMENT AND LAW* 158 (2002)

²⁷ Tun Lin, et al., *GREEN BENCHES: WHAT CAN THE PEOPLE'S REPUBLIC OF CHINA LEARN FROM ENVIRONMENT COURTS OF OTHER COUNTRIES?* 1 (2009) [hereinafter *GREEN BENCHES*], citing B.J. Preston, *Operating an Environment Court: The Experience of the Land and Environment Court of New South Wales*, Inaugural Distinguished Lecture on Environmental Law for the Environmental Commission of Trinidad and Tobago, Port of Spain, Trinidad and Tobago (July 23, 2008) <www.ttenvironmentalcommission.org/speechaddresses.htm> (p. 2).

²⁸ GEORGE PRING AND CATHERINE PRING, *GREENING JUSTICE: CREATING AND IMPROVING ENVIRONMENTAL COURTS AND TRIBUNALS*, xi (2009). [hereinafter *GREENING JUSTICE*]

development and other related issues.²⁹ This is a testimony to the growing trend of establishing specialized judicial and quasi-judicial institutions to provide access to justice in environmental matters.³⁰

The rationale for special environmental courts is that, because many environmental issues are assumed to be highly complex and technical, they require specialized institutions for evaluation of claims and evidence.³¹ Increasingly, it is being recognized that a court with special expertise in environmental matters is best placed to perform this role [of the interpretation, explanation and enforcement of laws and regulations] in the achievement of ecologically sustainable development.³² It would also enhance the role of specialist judges in developing consistent environmental jurisprudence.³³

One study noted the following benefits of a specialized environmental court:³⁴

1. creating a comprehensive, integrated jurisdiction that deals with a range of environmental matters – a “one-stop shop” for merit appeals, judicial reviews, and criminal and civil enforcement;
2. providing a forum for experts in environmental law where they can engage in a free and beneficial exchange of ideas and information;
3. enabling the formation of panels of officers with expertise for the purpose of interdisciplinary decision making;
4. facilitating the development of specialized knowledge of environmental law and issues;
5. allowing the adoption of a holistic approach to the resolution of environmental matters, through comprehensive jurisdictions and interdisciplinary decision making;
6. furthering the use of innovative practices and procedures, such as public interest litigation, to broaden access to justice;
7. encouraging innovative solutions to environmental problems;
8. fostering the growth of a coherent and consistent body of environmental precedents and jurisprudence;

²⁹ *Id.* at 1.

³⁰ *Id.* at xi.

³¹ RICHARDSON AND RAZZAQUE, *supra* note 25, at 187, citing R. Carnwarth, *Environmental Enforcement: The Need for a Specialist Court*, 1992 *Journal of Environment and Planning Law* 798.

³² GREENING JUSTICE, *supra* note 28, at 14, citing Preston 2008, 386.

³³ RICHARDSON AND RAZZAQUE, *supra* note 25, at 187.

³⁴ GREEN BENCHES, *supra* note 27, at 3, citing B.J. Preston, *Operating an Environment Court: The Experience of the Land and Environment Court of New South Wales*, Inaugural Distinguished Lecture on Environmental Law for the Environmental Commission of Trinidad and Tobago, Port of Spain, Trinidad and Tobago (July 23, 2008) <www.ttenvironmentalcommission.org/speechaddresses.htm>.

9. making possible the quick progress of complex environmental cases, thereby boosting the efficiency and reducing the cost of litigation;
10. relieving other courts of some of their backlogs by taking over cases involving environmental issues and resolving them more efficiently; and
11. appealing to the conscience of the public, thereby encouraging adherence to environmental laws and greater participation in programs to protect the environment.

The role of the judiciary in the implementation and enforcement of International Environmental Law was also recognized in the United Nations Environment Program's Montevideo Programme III, which was adopted in 2001, and which identifies the judiciary as one of the key target groups for capacity building.³⁵ In addition, the Johannesburg Principles on the Role of Law and Sustainable Development affirm 'that an independent judiciary and judicial process is vital for the implementation, development, and enforcement of International Environmental Law.'³⁶

The Greening of the Philippine Court System

The Philippine Court System, through the leadership of the Supreme Court, has taken innovative and revolutionary steps in ensuring the capacity of the justice system to deal with environmental matters. As early as 1998, the Philippine courts have been described as "progressive," in relation to other countries, in their recognition of environmental rights.³⁷ In 2008, the Supreme Court held a nationwide Forum on Environmental Justice. The forum paved the way for increasing the awareness of our courts on environmental issues. This was followed by the designation of 117 "green courts" nationwide.³⁸

In April 2010, the Rules of Procedure for Environmental Cases³⁹ was promulgated to aid in the efforts to "green" the courts. The said Rules include the following remedies: Consent Decree, Environmental Protection Orders, the *Writ of Kalikasan* and the *Writ of Continuing Mandamus*. These instruments have given Filipinos additional tools and remedies to enable them to better protect the environment and to ensure that their right to the environment is upheld and promoted.⁴⁰ When the Rules were drafted, the SC began to adopt a rights-based approach, to make sure that

³⁵ Catherine Redgwell, *National Implementation*, in THE OXFORD HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW 922, 931 (Daniel Bodansky, et al., Eds., 2007).

³⁶ *Id.* at 931.

³⁷ A.K.J. Tan, *Environmental Laws of the Southeast Asian Countries: A Preliminary Assessment*, Asia-Pacific Centre for Environmental Law (APCEL), Singapore, 1998, 76 in CAPACITY BUILDING FOR ENVIRONMENTAL LAW IN THE ASIAN AND PACIFIC REGION; APPROACHES AND RESOURCES (VOLUME 1), 74 (Craig, et. al., Eds., 2002).

³⁸ Supreme Court of the Philippines, Supreme Court Administrative Circular No. 23-2008 (Jan. 28, 2008).

³⁹ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, A.M. No. 09-6-8-SC, April 29, 2010.

⁴⁰ *See generally* Supreme Court of the Philippines, Rules of Procedure for Environmental Cases, A.M. No.09-6-8-SC, Rationale.

human rights are protected.⁴¹ Although they are still in the early stages, hence its full effect or significance is not yet known, the Rules of Procedure for Environmental Cases is a welcome development in the protection of our environment and our natural resources.

The adoption of the Rules of Procedure for Environmental Cases was followed by a series of capacity building training seminars in Palawan, Cebu, Cagayan de Oro, and most recently in Laoag City. More training seminars for the pillars of the justice system are being planned in the coming months in line with the efforts to green the Philippine courts and improve the knowledge, information, and understanding of the new Rules.

These developments in the Philippine courts do not only exemplify an increased awareness on environmental issues on the part of Filipinos, but moreover, it reflects the growing recognition of the environment as a global concern and the evolving concept of Environmental Justice. It also recognizes the role of the courts and the justice system in protecting the environment and ensuring access to Environmental Justice.

C. Philippine Constitutional Policy and Framework on Environmental Protection

Increasingly, constitutions also incorporate fundamental environmental rights.⁴² This is an indication of the growing international recognition of the need to protect the environment, the health of citizens, and environmental democracy.⁴³ Today, the constitutions of more than one-third of more than 200 countries recognize the right to a clean and a healthy environment along with the more conventional rights.⁴⁴ To this trend, the Philippines is no exception.

The 1987 Philippine Constitution provides the basic framework by which the environmental policy of the country finds its direction. First of this is Section 16, Article 2, which states that, “[t]he State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature,” which the Supreme Court deemed as a provision that is self-executing in nature and a source of the citizen’s basic environmental rights.⁴⁵ One author notes that this declaration recognizes the importance given to the environment and the change in emphasis with respect to it.⁴⁶ Found also in Article 2 is Section 15, which states that, “[t]he State shall protect and promote the right to health of the people and instill health consciousness among them.”

⁴¹ Atty. Asis G. Perez, Rules of Procedure for Environmental Cases: Reducing Obstacles in Environmental Law Enforcement Implementation, Presentation during the Pilot Multi-Sectoral Capacity Building on Environmental Laws and the Rules of Procedure for Environmental Cases at Puerto Princesa City, Palawan (June 25, 2010).

⁴² RICHARDSON AND RAZZAQUE, *supra* note 25, at 177.

⁴³ GREENING JUSTICE, *supra* note 28, at 10.

⁴⁴ *Id.* at 10, citing Foti/TAI-WRI, 2.

⁴⁵ *Oposa v. Factoran, Jr.*, 224 SCRA 792, 805 (1993).

⁴⁶ Enrico G. Valdez, *Philippines*, in ENVIRONMENTAL LAW AND ENFORCEMENT IN THE ASIA-PACIFIC RIM, 367, 371 (Terri Mottershead, Ed., 2002).

Other provisions in the Constitution that deal with the environment and environmental protection include Article 1 on The National Territory,⁴⁷ Sections 2,⁴⁸ 3,⁴⁹ 4,⁵⁰ 5⁵¹ of Article 12, and

⁴⁷ The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines.

⁴⁸ **Sec. 2.** All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution.

⁴⁹ **Sec. 3.** Lands of the public domain are classified into agricultural, forest or timber, mineral lands and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof, by purchase, homestead, or grant.

Taking into account the requirements of conservation, ecology, and development, and subject to the requirements of agrarian reform, the Congress shall determine, by law, the size of lands of the public domain which may be acquired, developed, held, or leased and the conditions therefor.

⁵⁰ **Sec. 4.** The Congress shall, as soon as possible, determine, by law, the specific limits of forest lands and national parks, marking clearly their boundaries on the ground. Thereafter, such forest lands and national parks shall be conserved and may not be increased nor diminished, except by law. The Congress shall provide for such period as it may determine, measures to prohibit logging in endangered forests and watershed areas.

⁵¹ **Sec. 5.** The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.

Section 7⁵² of Article 13 of the Constitution.

Statutes also sought to embody the environmental policy of the country. The government's activities in environment and natural resource management are guided by the Philippine Environmental Policy (PD No. 1151, 1977), the Philippine Environment Code (PD No. 1152, 1977), the Philippine National Strategy for Sustainable Development (1989), and the National Action Plan for Sustainable Development (Philippine Agenda 21, 1996).

The phenomenal growth of the field of Environmental Law in the Philippines in the 1970s has been fuelled by legislation that falls into two categories, as follows: (1) laws designed to control pollution of the nation's air, water, and land resources; and (2) laws to control activities that include development, recreational use and conservation of natural resources.⁵³ The urgent need to formulate an intensive, integrated program on environmental protection that will bring about a concerted effort towards protection of the entire spectrum of the environment,⁵⁴ gave birth to the Philippine Environment Policy (PD No. 1151). The law declares as a continuing policy of the State:

- a. to create, develop, maintain, and improve conditions under which man and nature can thrive in productive and enjoyable harmony with each other;
- b. to fulfill the social, economic and other requirements of present and future generations of Filipinos, and
- c. to insure the attainment of an environmental quality that is conducive to a life of dignity and well-being.⁵⁵

D. The Concept of Environmental Justice, Access to Justice, and Public Participation

To better understand the objectives and framework of this report, a brief discussion of some related concepts are given below.

The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.

⁵² **Sec. 7.** The State shall protect the rights of subsistence fishermen, especially of local communities, to the preferential use of the communal marine and fishing resources, both inland and offshore. It shall provide support to such fishermen through appropriate technology and research, adequate financial, production, and marketing assistance, and other services. The State shall also protect, develop, and conserve such resources. The protection shall extend to offshore fishing grounds of subsistence fishermen against foreign intrusion. Fishworkers shall receive a just share from their labor in the utilization of marine and fishing resources.

⁵³ Amado S. Tolentino, *Environmental Law Enforcement in the Philippines*, in *ENVIRONMENTAL LAW AND POLICY IN ASIA: ISSUES OF ENFORCEMENT*, INSTITUTE OF DEVELOPING ECONOMIES 12 (Yoshihiro Nomura and Naoyuki Sakumoto, Eds., 1997).

⁵⁴ Whereas clauses, PD No. 1151 ("Whereas, there is now an urgent need to formulate an intensive, integrated program of an environmental protection that will bring about a concerted effort towards the protection of the entire spectrum of the environment through a requirement of environmental impact assessment and statements.").

⁵⁵ *Id.* at § 1.

The term ‘Environmental Justice’ first rose to prominence through the environmental justice movement in the United States which began in the 1970s.⁵⁶ It is defined as “the goal of achieving adequate protection from the harmful effects of environmental agents for everyone, regardless of age, culture, ethnicity, gender, race, or socioeconomic status.”⁵⁷ It focused mainly on the unjust distribution of benefits and burdens in the context of environmental use and protection,⁵⁸ and on how the burdens of environmental harms and regulations are allocated among individual groups within our society.⁵⁹ It champions democratic decision making as a way to ensure social equity in the distribution of the environmental costs and benefits of policy decisions.⁶⁰

A vast potpourri of environmental philosophies and practices relevant to Environmental Justice has been documented.⁶¹ A large literature on the subject matter emerged in the 1970s and 1980s, as academics, environmental activists and community groups demanded greater attention to Environmental Justice in government, economy, society, and personal life.⁶²

Linked to Environmental Justice are the concepts of access to justice and public participation. Public participation in environmental decision making has become an indelible feature of many environmental regulatory systems worldwide over the past few decades,⁶³ and there is a very

⁵⁶ Klaus Bosselman, *Ecological Justice and the Law*, in ENVIRONMENTAL LAW FOR SUSTAINABILITY, 129, 131 (Richardson and Wood, Eds., 2006), citing D. Faber (Ed.), *The Struggle for Ecological Democracy: Environmental Justice Movement in the US* (1998).

⁵⁷ FENG LIU, ENVIRONMENTAL JUSTICE ANALYSIS: THEORIES, METHODS, AND PRACTICE 12 (2000) (citing Perlin, et al., 69 [1994]). However, one author notes that the definition of environmental justice is elastic:

This book x x x involves an elastic definition of environmental justice, but since the principal concerns are the use of ‘legal gateways’ for ‘access’, in practice the definition is procedural rather than substantive; in the same way ‘access to justice’ is usually concerned with issues surrounding how disadvantaged people are enabled to use the legal system, rather than issues surrounding the substantive justice of the results obtained. Access to justice can thus be interpreted in two slightly different ways, viz., as a means of entering the legal process for raising and resolving environmental disputes; or as the securing of environmental decisions that are made equitably as between different interests or communities. (*Access to Environmental Justice: Some Introductory Perspectives*, Andrew Harding, 4 in ACCESS TO ENVIRONMENTAL JUSTICE: A COMPARATIVE STUDY).

⁵⁸ Bosselman, *supra* note 56, at 131.

⁵⁹ JAMES SALZMAN AND BARTON H. THOMPSON, JR., ENVIRONMENTAL LAW AND POLICY 38 (2007).

⁶⁰ RICHARDSON AND RAZZAQUE, *supra* note 25, at 173, citing KS Shrader-Frechette, *Environmental Justice: Creating Equality, Reclaiming Democracy*, Oxford 2002.

⁶¹ Bosselman, *supra* note 56, at 132, citing JB Callicott, *Earth’s Insights: A Multicultural Survey of Ecological Ethics from the Mediterranean Basin to the Australian Outback*, 1994.

⁶² *Id.* at 132. Note: But the author notes that, “In general, this scholarship and activism did not address the question of the role of law or reform of environmental law.”

⁶³ RICHARDSON AND RAZZAQUE, *supra* note 25, at 165.

widespread consensus that public participation is a crucial element of good and democratically legitimate environmental decision making.⁶⁴ It can occur through education, information dissemination, advisory or review boards, public advocacy, public hearings and submissions, and even litigation.⁶⁵

Several interrelated factors have fuelled the growth of participatory processes in decision making.⁶⁶ The first is increased public awareness and concern about the relationship between ecological health and human well-being.⁶⁷ Secondly, the growth of human rights in legal and political systems has heightened people's expectations of participation in policy making.⁶⁸ Thirdly, the prevailing concerns of the international community for good governance and the strengthening of civil societies have contributed to increasing interest in the use of participatory mechanisms.⁶⁹

The importance of meaningful, timely, and effective participation is emphasized (UN Doc. E/CN.4/Sub.2/1994/9, par. 220), and this UN report asserts that, as a minimum, people have the right to receive notice of and to participate in any significant decision making regarding the environment, especially during the process of environmental impact assessment and before potential damage is done (report, par. 221).⁷⁰ The participation of the public is important because greater citizen input may promote Environmental Justice and help integrate ecological and social considerations in governmental decisions.⁷¹

Another concept is access to justice, which means that court practice and procedure promote, rather than impede, the use of the courts by all.⁷² It has three main elements: standing, or *locus standi*, which determines who has formal rights to go to court; more practical questions as to the resources needed to bring an action; and the remedies ('justice') actually provided.⁷³ Another author notes another set of crucial elements for access to justice, namely (1) legal standing, (2) effective remedies, and (3) reasonable costs.⁷⁴

⁶⁴ JANE HOLDER AND MARIA LEE, ENVIRONMENTAL PROTECTION, LAW AND POLICY 85 (2007).

⁶⁵ RICHARDSON AND RAZZAQUE, *supra* note 25, at 165, citing S Stec and S Casey Lefkowitz, *The Aarhus Convention: An Implementation Guide* (UNECE, 2000) 85.

⁶⁶ *Id.* at 166.

⁶⁷ *Id.* at 166, citing B Barton, *Underlying Concepts and Theoretical Issues in Public Participation in Resource Development* 83, in D Zillman, et al., *Human Rights in Natural Resource Development: Public Participation in the Sustainable Development of Mining and Energy Resources*, Oxford, 2002.

⁶⁸ *Id.*

⁶⁹ *Id.* at 166, citing M. Pimbert and T. Wakeford, *Overview-Deliberative Democracy and Citizen Empowerment*, 2001.

⁷⁰ James Cameron and Ruth Mackenzie, *Access to Environmental Justice and Procedural Rights in International Institutions*, in HUMAN RIGHTS APPROACHES TO ENVIRONMENTAL PROTECTION, 129, 132 (Boyle and Anderson, Eds., 1996).

⁷¹ RICHARDSON AND RAZZAQUE, *supra* note 25, at 166 citing S. Stec and S. Casey-Lefkowitz, *The Aarhus Convention: An Implementation Guide* (UNECE, 2000) 85.

⁷² GREEN BENCHES, *supra* note 27, at 11.

⁷³ HOLDER AND LEE, *supra* note 64, at 116.

⁷⁴ Thomas Ormond, *Access to Justice for Environmental NGOs in the EU*, in ENVIRONMENTAL RIGHTS: LAW LITIGATION AND ACCESS TO JUSTICE 74 (Deimann and Dyssli, Eds., 1995).

A study done by Alternative Law Groups (ALG) and Social Weather Stations (SWS) suggests that access to justice is a quantitative problem for the affected poor and marginalized; it is a question of how many of the poor and marginalized are able to obtain justice when they need to, yet are prevented from doing so.⁷⁵ The ALG further defines access to justice from the perspective of developmental legal assistance, adopting a structural approach in looking at the legal problems and needs of the people, particularly the poor and marginalized.⁷⁶

In the Philippines, the Supreme Court, through its Action Program for Judicial Reform (APJR), said that access to justice by the poor is understood to include: (1) physical access to the courts, as well as a speedy and fair adjudication of cases for all; (2) protection of the poor from abuse by those who claim to influence judicial decisions; and (3) improvement in the affordability of judicial services to the poor.⁷⁷

⁷⁵ ALTERNATIVE LAW GROUPS AND THE SOCIAL WEATHER STATIONS, RESEARCH ON THE POOR ACCESSING JUSTICE AND THE ALG AS A JUSTICE REFORM ADVOCATE 4 (2008) [hereinafter ALG and SWS].

⁷⁶ ALTERNATIVE LAW GROUPS, RESEARCH ON THE CONSISTENCY OF NATIONAL LEGISLATION ON WOMEN AND CHILDREN WITH MAJOR INTERNATIONAL HUMAN RIGHTS COVENANTS SIGNED BY THE PHILIPPINE GOVERNMENT 13 (2008).

⁷⁷ ALG AND SWS, *supra* note 75, at 5.

PART II

STATE OF THE PHILIPPINE ENVIRONMENT

The Philippines belongs to an elite list as one of the 17 mega-diversity countries.⁷⁸ The country's landscape is packed with numerous species of fauna and flora and a rich concentration of marine life.⁷⁹ As an archipelago composed of 7,107 islands and a land area of 300,000 square kilometers,⁸⁰ the Philippines is home to numerous and diverse life forms. More than half of the 1,130 terrestrial wildlife in the Philippines are endemic or can only be found in the country.⁸¹ Approximately 65 percent of the 50,000 species of flora and fauna known in the world can also be found in the country.⁸² Nestled within the Philippine waters are 500 of 800 known coral reef species, 2,000 marine fish species, more than 40 mangrove species, and 16 seagrass species.⁸³

In terms of location, the country is bound in the east by the Pacific Ocean, in the west by the South China Sea, in the north by the Bashi Channel, and in the south by the Sulu and Celebes Seas.⁸⁴ The country's coastlines extend to about 36,000 kilometers and have a total of 68 million hectares of territorial waters with around 2.6 million hectares of coral reefs.

The Philippines is known to have a tropical and monsoonal climate dominated by a dry and wet season.⁸⁵ The dry season occurs from December to May and the wet season occurs from June to November.⁸⁶ With regard to its land area, 15.8 million hectares of the country is classified as public forestlands.⁸⁷

⁷⁸ Perry Ong, *The State of the Philippine Environment: Biodiversity Crisis and the Role of the Judiciary*, 6 PHILJA JUDICIAL JOURNAL 31, 41 (2004).

⁷⁹ Antonio G.M. La Viña, *Rethinking Philippine Environmental Institutions: Do We Need to Reallocate Mandates, Powers, and Functions?* <<http://siteresources.worldbank.org/INTPHILIPPINES/Resources/WBCEAINstitutionalAnalysisFINAL.pdf>> (last accessed Nov. 25, 2010) [hereinafter La Viña, *Rethinking Institutions*].

⁸⁰ World Health Organization, *Philippine Environmental Health Country Profile 1* (2005).

⁸¹ Perry Ong, *The Philippine Biodiversity Crisis: A Time Bomb Waiting To Explode*, 6 PHILJA JUDICIAL JOURNAL 22, 26 (2004).

⁸² La Viña, *Rethinking Institutions*, *supra* note 79.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ 2008 Philippine Forestry Statistics, *Forest Resources 1.01 Land Classification 1978-2008* <<http://forestry.denr.gov.ph/stat2008.htm>> (last accessed Nov. 25, 2010).

A. The Problems Facing the Philippine Environment

The destruction and deterioration of the Philippine environment has reached an alarming and an even disturbing level. Some of the most pressing environmental problems in the Philippines include: deforestation and loss of natural habitat due to illegal logging and expanding agricultural settlements; upland soil degradation and sedimentation of rivers due to hillside farming and intensified slash and burn cultivation; fishery depletion due to over-fishing and use of destructive fishing methods; urban air pollution largely from the transport sector which uses cheap fuels and second-hand engines; and water pollution due mainly to untreated domestic effluents.⁸⁸

The Asian Development Bank (ADB) in a recent report cited the following as drivers of environmental change in the Asian region: rapid urbanization, increasing industrialization, agriculture intensification, climate change, and weak environmental enforcement and compliance.⁸⁹

These problems abound despite the fact that the country's environment and natural resources sector, composed of agriculture, marine resources and forestry, depend primarily on the country's land, water, and soil resources, and contribute substantially to national gross domestic product.⁹⁰ In 2006, these sectors generated 18.8 percent of GDP and employed about 36.6 percent of the total labor force.⁹¹

Numerous studies and surveys have presented statistics on the Philippine environment, which can oftentimes be confusing and daunting to a researcher. This part of the report presents a brief overview of the most recent statistics on the Philippine environment. The sections below will be divided into the major segments of the environment, which are flora and fauna, land and mineral resources, water and marine resources, and air and atmosphere. Below is a survey of the most recent environmental data and statistics gathered from both the government and the private sector.

Flora and Fauna

The Philippines is renowned for its rich flora, fauna, and biodiversity. It is considered as one of the world's 17 megadiversity countries⁹² and at the same time, one of the world's 17 biodiversity

⁸⁸ JOSEFO B. TUYOR, ET AL., *THE PHILIPPINE ENVIRONMENTAL IMPACT STATEMENT SYSTEM: FRAMEWORK, IMPLEMENTATION, PERFORMANCE AND CHALLENGES* 22 (WORLD BANK 2007) citing the *PHILIPPINE ENVIRONMENT MONITOR, 2000-2005*. *Note*: The ADB lists the following environmental issues with cumulative impacts: watershed integrity, inappropriate and unsustainable land use and agricultural practices in upland areas, degradation of forest land, and extensive road building; rapid population increase and rapid industrialization, causing increased congestion and pollution particularly in urban areas, environmental degradation of near shore areas due to sedimentation from upstream sources; overexploitation of fisheries and permanent loss of ecosystems from changes in land use due to urbanization and industrialization, including aquaculture. (See ADB Country Environmental Analysis Philippines 2008 [2009]).

⁸⁹ ASIAN DEVELOPMENT BANK, *ENVIRONMENT PROGRAM: PROGRESS AND PROSPECTS, 1-5* (2009) [hereinafter ADB ENVIRONMENT PROGRAM].

⁹⁰ ASIAN DEVELOPMENT BANK COUNTRY ENVIRONMENTAL ANALYSIS PHILIPPINES 2008, xiii (2009) [hereinafter ADB ENVIRONMENTAL ANALYSIS].

⁹¹ *Id.* at xiii.

⁹² *Note*: Megadiversity countries collectively claim more than two-thirds of the Earth's biological resources:

hotspots.⁹³ It has over 50,000 documented species.⁹⁴ Of the 1,130 terrestrial wildlife which can be found in the Philippines, more than half are endemic to the country.⁹⁵ In addition, approximately 65 percent of the 50,000 species of flora and fauna found in the world can be found in the country.⁹⁶ The Fourth National Report on the Convention of Biological Diversity in 2009 shows that the Philippines has two-thirds of the Earth's biodiversity and about 70 percent to 80 percent of the world's plant and animal species. The country is also fifth in the world in terms of the number of plant species and ranked fourth in bird endemism and is home to 3,214 different species of fish.⁹⁷

Despite the richness of the Philippine flora and fauna, it has steadily and gradually deteriorated at an alarming rate. In fact, the Philippines ranks 11th among 89 tropical countries with the lowest per capita forest area.⁹⁸ In a recently launched New Regional Climate Change Vulnerability Map for Southeast Asia, 14 provinces in the Philippines were considered as "climate hotspots" due to their exposure to climate hazards, low adaptive capacity, and sensitivity to climate change.⁹⁹ More than 93 percent of the Philippines' original forest cover has been lost in the last 500 years.¹⁰⁰ In particular, forest cover declined from 21 million hectares, or 70 percent of the total land area in 1900 to only about 5.4 million hectares, or 18.3 percent in 1988.¹⁰¹ However, recent official estimates based on satellite images in 2002, show that the country's forest cover has increased to 7.2 million hectares, or 24 percent of the total land area, which according to the Forestry Management Bureau of the DENR, 91 percent of this area has been validated.¹⁰²

Numerous activities which caused this alarming state of the Philippine forests have been identified. The increasing urbanization, commercial logging, *kaingin* or slash and burn agriculture,

(1) Australia, (2) Brazil, (3) China, (4) Colombia, (5) Democratic Republic of Congo, (6) Ecuador, (7) India, (8) Indonesia, (9) Madagascar, (10) Malaysia, (11) Mexico, (12) Papua New Guinea, (13) Peru, (14) Philippines, (15) South Africa, (16) United States, and (17) Venezuela enumerated in Perry Ong, *The State of the Philippine Environment: Biodiversity Crisis and the Role of the Judiciary*, 6 PHILJA JUDICIAL JOURNAL 31,41 (2004).

⁹³ Note: A biodiversity "hotspot" is an area where the Earth's biological wealth is most distinctive and rich but where losses could also be severe if conservation efforts do not succeed. Biodiverse hotspots include Belize, Bolivia, Botswana, Brazil, Colombia, Costa Rica, Ivory Coast, Ecuador, Fiji, Ghana, Guatemala, Guyana, Indonesia, Japan, Madagascar, Mexico, New Caledonia, Panama, Papua New Guinea, Peru, Philippines, Solomon Islands, South Africa, Suriname, United Kingdom, United States, and Venezuela.

⁹⁴ ADB ENVIRONMENTAL ANALYSIS, *supra* note 90, at 22.

⁹⁵ Ong, *The Philippine Biodiversity Crisis*, *supra* note 81.

⁹⁶ La Viña, *Rethinking Institutions*, *supra* note 79.

⁹⁷ DENR renews call for biodiversity protection, *Philippine Star*, June 25, 2010 <<http://www.philstar.com/Article.aspx?articleid=587575>> (last accessed Oct. 15, 2010).

⁹⁸ ADB ENVIRONMENTAL ANALYSIS, *supra* note 90, at 18.

⁹⁹ Katherine Adraneda, *Climate Change Mitigation Needed*, *THE PHILIPPINE STAR*, April 22, 2009, at 1 and 6.

¹⁰⁰ IBON DATABANK, *supra* note 14, at 4.

¹⁰¹ ADB ENVIRONMENTAL ANALYSIS, *supra* note 90, at 16.

¹⁰² *Id.* at 16. Note: The World Bank estimates that 2005 Philippine Forest Area amount to 71,620 square kilometers <www.worldbank.org/environment/data>.

and forest fires all contribute to the country's deforestation problem.¹⁰³ There is rapid conversion of forestlands and grasslands to urban use in order to satisfy the needs of the growing population.¹⁰⁴ The ADB also identified land conversion, pest infestation, and typhoons as other causes of deforestation.¹⁰⁵

Our diverse wildlife has not been spared from degradation. According to a 2004 report of the Parks and Wildlife Bureau of the DENR, the Philippines ranks third globally for threatened birds and eighth for threatened mammals.¹⁰⁶ The PAWB adds that its threatened species in 2007 numbered 695 plants and 223 animals. There are 418 threatened species that are already listed in the 2000 IUCN Red List,¹⁰⁷ and 23 percent of the endemic species are threatened with extinction.¹⁰⁸ Approximately 20 percent of the bird and mammal species in the country are threatened.¹⁰⁹ The Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES), which the Philippines ratified in 1981, lists 25 wildlife species that are threatened with extinction, and an additional 116 species that, while not under immediate threat of extinction, could become extinct if their trade is not strictly regulated.¹¹⁰

The common causes of the loss of biodiversity, in terrestrial, coastal and marine, and freshwater areas, cited in various environment and natural resources assessments by the ADB, are unsustainable land-use practices, hunting and wildlife trade, ineffective capacity for natural resource management, low awareness of biodiversity, and poor enforcement of regulations.¹¹¹ Mining activities in the country have also been cited as a cause for the loss of biodiversity.¹¹²

Land and Mineral Resources

The country's total land area of about 30 million hectares is made up of classified forestland (15 million hectares), unclassified forestland (0.7 million hectares), and alienable and disposable land

¹⁰³ The Root Causes of Biodiversity Loss in the Philippines 283 (Alexander Wood, et al., Eds., 2000).

¹⁰⁴ World Bank, *Philippine Environment: Natural Resources Degradation* <<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/EXTEAPREGTOPENVIRONMENT/0,,contentMDK:20266328~menuPK:3558267~pagePK:34004173~piPK:34003707~theSitePK:502886,00.html>> (last accessed Sept. 29, 2010).

¹⁰⁵ ADB ENVIRONMENTAL ANALYSIS, *supra* note 90, at 18.

¹⁰⁶ *Id.* at 23.

¹⁰⁷ IBON DATABANK, *supra* note 14, at 4; *Note:* The Philippine Environment Monitor also reports that the destruction of natural habitat has resulted in the endangerment of 284 species.

¹⁰⁸ Ong, *The Philippine Biodiversity Crisis*, *supra* note 81, at 51.

¹⁰⁹ NANCY K. KUBASEK AND GARY S. SILVERMAN, ENVIRONMENTAL LAW 424 (6TH ed., 2008).

¹¹⁰ ADB ENVIRONMENTAL ANALYSIS, *supra* note 90, at 23.

¹¹¹ *Id.*

¹¹² PHILIPPINE MISEREOR PARTNERSHIP, SITES OF STRUGGLE 31 (2009) [hereinafter SITES OF STRUGGLE].

(14.2 million hectares).¹¹³ Classified forestland, exclusively for forestland use, comprises 10.1 million hectares (67 percent) of established timberland and 3.2 million hectares (21.4 percent) of established forest reserves, as well as national parks, game refuges, bird sanctuaries, and wilderness areas (1.3 million hectares), military and naval reservations (0.13 million hectares), civil reservations (0.17 million hectares), and fishponds (0.1 million hectares).¹¹⁴

Much of the land in the Philippines is susceptible to erosion. While almost half of the land is low-lying, large areas of the main islands are at higher altitudes. There is substantial soil loss from agricultural practices in the upland areas and, in addition, intense rainfall, mining, insufficient cover in degraded forest areas, and road construction can cause severe erosion.¹¹⁵ Twenty-one percent of the country's agricultural lands and 36 percent of non-agricultural lands are moderately or severely eroded.¹¹⁶ Soil erosion has affected the productivity of land, limited the rehabilitation or restoration of degraded lands, lowered the quality of surface water, and modified hydrologic conditions by changing land resources and land management.¹¹⁷

The Philippines' mineral resources, by its own government estimates, are the fifth richest in the world.¹¹⁸ These mineral resources include gold, copper, nickel and chromite.¹¹⁹ Early 1990s estimates show that the country had about 7 billion metric tons in metallic mineral reserves and 50 billion metric tons in non-metallic reserves: copper made up about 72 percent of metallic mineral resources, and nickel, about 16 percent; among the non-metallic minerals, limestone accounted for about 39 percent, and marble, 29 percent.¹²⁰ Aside from the generation of more than 192,000 jobs at the start of 2010,¹²¹ the taxes imposed on mining companies are major sources of revenue for the local government in the area. On a national level, these mining activities also contribute greatly to the country's export earnings, with around USD \$1,469 million in 2009 and USD \$391

¹¹³ ADB ENVIRONMENTAL ANALYSIS, *supra* note 90, at 16 citing the Forest Management Bureau. *See also*: Director Marlo D. Mendoza, *Forestry Situationer and Forest Protection and Law Enforcement in the Philippines*, Presentation during the Pilot Multi-Sectoral Capacity-Building on Environmental Laws and the Rules of Procedure for Environmental Cases at Puerto Princesa City, Palawan (June 23-25, 2010).

¹¹⁴ *Note*: 2008 Data of the FMB shows the following percentages of land use classification in the Philippines: certified alienable and disposable lands, 47.32%; established timberland, 33.52%; established forest reserves, 10.90%; national parks, game refuges and bird sanctuaries, and wilderness areas, 4.47%; civil reservation, 0.55%; military and naval reservation, 0.42%; fishponds, 0.30%; unclassified, 2.52%.

¹¹⁵ ADB ENVIRONMENTAL ANALYSIS, *supra* note 90, at 52.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 53, citing Philippine Business Leaders Forum Inc. website <www.philippinesforum.com> (last accessed on Dec. 3, 2010).

¹¹⁹ *Mining A Sacred Mountain: Protecting the Human Rights of Indigenous Communities*, in HUMAN RIGHTS IMPACT ASSESSMENT FOR FOREIGN INVESTMENT PROJECTS: LEARNING FROM COMMUNITY EXPERIENCES IN THE PHILIPPINES, TIBET, THE DEMOCRATIC REPUBLIC OF CONGO, ARGENTINA AND PERU, 37, 39 (International Center for Human Rights and Democratic Development 2007).

¹²⁰ ADB ENVIRONMENTAL ANALYSIS, *supra* note 90, at 53.

¹²¹ *See* Legal Resource Center–Kasama sa Kalikasan (LRC-KSK), RESEARCH AND POLICY REPORT (2010).

million in the first half of 2010 alone.¹²² In particular, the industry accounted for almost a fourth of the country's total export earnings and contributed significantly to the gross domestic product during its peak in the early 1980s.¹²³

Although the mining industry has contributed to the gross domestic product of the Philippines, these contributions have not come without a cost. Mining activities result in deforestation and loss of wildlife habitat, decrease in the quantity and quality of water supply, decrease in agricultural production, erosion and flash floods, water and air pollution,¹²⁴ and threat to the marine environment brought by erosion and effluents.¹²⁵ In fact, the Philippines today is considered as one of the worst countries in the world when it comes to tailings dam failures.¹²⁶ Toxic wastes from the mining sites are not properly disposed of, which has led to disastrous consequences for the local people and the environment.¹²⁷

Water and Marine Resources

The Philippines is a country rich and abundant with fisheries and marine resources. The distribution of 2,983 marine species, and the highest marine biodiversity was found in the Indo-Malay Philippine Archipelago in terms of fish species, corals and gastropods.¹²⁸

In terms of water resources, the Philippines has 421 principal rivers, about 79 natural lakes, and 36,289 kilometers of coastline.¹²⁹ Nestled within these waters are 500 of 800 known coral reef species, 2,000 marine fish species, more than 40 mangrove species and 16 sea grass species.¹³⁰ The Philippines ranked 11th among the top fish-producing countries in the world in 2006, and the second largest producer of aquatic plants.¹³¹ According to the Bureau of Fisheries and Aquatic Resources (BFAR), the country is currently ranked eighth as a top fish producer, ninth in aquaculture production and third largest producer of seaweed.¹³² More than 50 percent of the animal protein intake in the

¹²² *Id.*

¹²³ TETRA TECH EM, INC., EXECUTIVE SITE SUMMARY: PRELIMINARY SITE ASSESSMENT OF ABANDONED MINES IN THE PHILIPPINES 1 (2009).

¹²⁴ GRIZELDA MAYO-ANDA AND KATHERINE MANA-GALIDO, CASE STUDY: THE COSTS AND BENEFITS OF THREE DECADES OF MINING IN RIO TUBA, BATARAZA, PALAWAN, 28-29 (2006).

¹²⁵ MINING IN THE PHILIPPINES CONCERNS AND CONFLICTS: REPORT OF A FACT-FINDING TRIP TO THE PHILIPPINES JULY-AUGUST 2006 10 (2007).

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ Atty. Annaliza A. Vitug, *RP: The Epicenter of Marine Biodiversity*, Presentation during the Pilot Multi-Sectoral Capacity-Building on Environmental Laws and the Rules of Procedure for Environmental Cases at Puerto Princesa City, Palawan (June 23-25, 2010).

¹²⁹ ADB ENVIRONMENTAL ANALYSIS, *supra* note 90, at 28.

¹³⁰ La Viña, *Rethinking Institutions*, *supra* note 79.

¹³¹ ADB ENVIRONMENTAL ANALYSIS, *supra* note 90, at 18.

¹³² Director Malcolm I. Sarmiento, Jr., *The Philippine Fisheries*, Presentation during the Second National Environmental Law Enforcer Summit and Orientation Workshop on Environmental Laws at Clark Freeport, Pampanga (Nov. 18-20, 2010).

Philippines is known to be derived from marine fisheries, making 62 percent of the population live in coastal zones.¹³³

Unfortunately, this rich water and marine environment is constantly under threat. According to the DENR, not one among the country's 158 major rivers is safe for drinking in its natural flowing state; and 50 of the total 421 rivers in the country are already considered biologically dead.¹³⁴ Ninety percent of watershed reservations are considered degraded, only 4.3 percent of corals remain in excellent condition, while 76 percent of mangrove forests have been lost.¹³⁵

With the current situation, it is estimated that the amount of freshwater available per person by 2025 will decrease by 65 percent of the current per capita availability.¹³⁶ In the past years, access to safe drinking water had declined from 81.4 percent in 1999 to 80.2 percent in 2004, largely because of competing demands from the growing population.¹³⁷ The current freshwater availability per capita in the Philippines is only 1,907 cubic meters/person compared to Asian and world averages of 3,669 cubic meters/person and 7,045 cubic meters/person, respectively, making the country's per capita availability of renewable freshwater source the lowest in Southeast Asia.¹³⁸ Moreover, industrial demand is expected to increase to 13,000 MCM by 2025 and agricultural water usage is expected to require between 50,000 and 73,000 MCM by 2025.¹³⁹ Furthermore, 41 of the 57 priority bathing beaches monitored by the ADB resulted in 61 percent passing the fecal coliform criterion of 200 MPN/100ml class SB waters.¹⁴⁰ In monetary terms, the adverse impact of the water pollution costs the economy an estimated of P67 billion annually.¹⁴¹

An inventory of pollution sources by the EMB revealed that domestic wastes are a major source of pollution (33 percent), followed by agriculture including livestock (29 percent), and industrial sources (27 percent); while non-point sources of pollution account for 11 percent of the

¹³³ ELAC, et al., *Compliance in Fisheries-Related Resources Affecting Women and Children with International Human Rights Conventions Signed by the Philippine Government*, in RESEARCH ON THE CONSISTENCY OF NATIONAL LEGISLATION ON WOMEN AND CHILDREN WITH MAJOR INTERNATIONAL HUMAN RIGHTS COVENANTS SIGNED BY THE PHILIPPINE GOVERNMENT, 26, 27 (ALG 2008) [hereinafter ELAC Women and Children in Fisheries].

¹³⁴ IBON DATABANK, *supra* note 14, at 111.

¹³⁵ PHILIPPINE ENVIRONMENT MONITOR, 2000-2005 cited in TUYOR, et al., *supra* note 88.

¹³⁶ Greenpeace, *Impact and Vulnerabilities in the Philippines* <<http://www.greenpeace.org/raw/content/seasia/en/press/reports/climate-change-water-impacts-philippines.pdf>> (last accessed Sept. 29, 2010).

¹³⁷ ADB ENVIRONMENTAL ANALYSIS, *supra* note 90, at 28-29.

¹³⁸ UNDP Philippines, *Editorial: War on Water*, March 29, 2010 <http://www.undp.org.ph/?link=news&news_id=416&fa=2> (last accessed Oct. 15, 2010).

¹³⁹ Philippine Chamber of Commerce and Industry, *Promoting Water Stewardship Among Industry* <http://www.philippinechamber.com/index.php?option=com_content&view=article&id=768:promoting-water-stewardship-among-industry&catid=32:environment&Itemid=79> (last accessed Oct. 15, 2010).

¹⁴⁰ ADB ENVIRONMENTAL ANALYSIS, *supra* note 90, at 31.

¹⁴¹ World Bank, *Philippine Environment: Water Pollution* <<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/EXTTEAPREGTOPENVIRONMENT/0,,contentMDK:20266328~menuPK:3558267~pagePK:34004173~piPK:34003707~theSitePK:502886,00.html>> (last accessed Sept. 29, 2010).

organic load in water bodies.¹⁴² There is also a high rate of pollution due to the leaching out from solid waste disposal sites into major water bodies.¹⁴³

Present problems on sanitation and sewerage also affect water quality. The ADB said that water supply and sewerage systems must complement each other to reduce the impact on the quality of ground and surface water.¹⁴⁴ More than 27 million Filipinos do not have sanitary toilets; 13 million do not have clean water sources, and only 3.3 percent of households are connected to sewers leading to treatment facilities.¹⁴⁵ Water supplies are commonly contaminated, due to the fact that 95 percent of wastewater in urban areas is discharged untreated into groundwater, canals, and waterways.¹⁴⁶

The marine resources of the Philippines is at an alarming state. The direct threats to the country's resources are over-fishing, destructive fishing practices, sedimentation, coastal development, population pressures, tourism-related activities, pollution, and even the *crown of thorns* starfish infestation.¹⁴⁷ The falling productivity of coastal resources is attributed to overlapping factors such as over-harvesting due to unalleviated poverty and increasing populations, the loss of habitats caused by environmental damage and the use of destructive fishing methods, and increasing pollution coming from land-based activities, industrial and urban development, deforestation and agriculture.¹⁴⁸

About 98 percent of all Philippine corals are at risk from human activities, and 70 percent are at high or very high risk.¹⁴⁹ There is also a declining trend in the country's mangrove cover from 450,000 hectares in 1918 down to 120,000 hectares in 1995;¹⁵⁰ in particular, more than 70 percent of mangrove forests have been converted to aquaculture, logged, or reclaimed for other uses.¹⁵¹

Air and Atmosphere

The World Health Organization rates Manila, the country's capital, as the fourth largest air-polluted city in the world behind Mexico City, Shanghai, and New Delhi. Despite a recent decline in concentration in some cities, particulates regularly exceed annual ambient standards at 70 percent of monitoring sites, and particulate matter levels are very high.¹⁵²

¹⁴² *Id.* at 32, citing EMB (2007).

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 43.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ Vitug, *supra* note 128.

¹⁴⁸ ELAC Women and Children in Fisheries, *supra* note 133, at 27.

¹⁴⁹ ADB ENVIRONMENTAL ANALYSIS, *supra* note 90, at 27. *Note:* An exception cited is the Visayan Seas area, where coastal resource management programs created protected areas in recent years, have helped curtail illegal fishing and encouraged sustainable management.

¹⁵⁰ Vitug, *supra* note 128. *Note:* The greatest threat to mangrove is conversion either to agriculture, aquaculture, saltponds, human settlements, or other coastal developments.

¹⁵¹ ADB ENVIRONMENTAL ANALYSIS, *supra* note 90, at 27.

¹⁵² *Id.* at 46-47.

Air pollution from vehicles, power plants, incinerators, and industries is a major environmental problem in Asian cities.¹⁵³ In the Philippines, air pollution is mainly caused by fuel consumption (e.g., smoke from chimneys in industries and thermal power stations) and exhaust of vehicles,¹⁵⁴ with more than 2 million vehicles in Metro Manila alone. The Environmental Management Bureau of the DENR found, on the basis of its 2006 National Emissions Inventory, that majority of the regions in the country point to the transport sector as the major source of air pollution.¹⁵⁵

An initial analysis in 2005 showed that the health costs of exposure to particulate matter reduce per capita incomes in Metro Manila, Davao, Cebu, and Baguio by 2.5 percent to 6.1 percent, or over \$430 million in total, yearly – about \$140 million from over 2,000 premature deaths, about \$120 million from over 9,000 cases of chronic bronchitis, and about \$170 million from nearly 51 million cases of respiratory symptom-days in Metro Manila. These costs are 70 percent higher than those estimated in a similar study for Metro Manila in 1992.¹⁵⁶

One reason for the steady decay of the Philippine environment is the low priority that the government gives to its protection and rehabilitation. A study shows that the ratio of expenditure of the Philippines on environmental administration to its GNP is only 0.005 percent as compared to Indonesia's 0.38 percent and Papua New Guinea's 0.836 percent.¹⁵⁷

The sad reality then is that the Philippines has miserably failed to protect the environment and prevent its further destruction and degradation. While there has been a growing awareness of the need to protect the Philippine environment, such awareness must necessarily be followed by active participation in the protection and preservation of the environment by all sectors of Philippine society.

¹⁵³ ADB ENVIRONMENT PROGRAM, *supra* note 89, at 2.

¹⁵⁴ TutorVista, *Air and Water Pollution* <<http://www.tutorvista.com/chemistry/air-and-water-pollution-in-the-philippines>> (last accessed Sept. 29, 2010).

¹⁵⁵ National State of the Brown Environment Report at 1; Motorcycles and tricycles comprised the largest group (47.88%), followed by UVs (29.98%), cars (13.58%), trucks (5.09%), SUVs (3.49%), buses (0.55%), and trailers (0.44%).

¹⁵⁶ *Id.* at 51.

¹⁵⁷ Tolentino, *supra* note 53, at 14.

PART III

THE FIVE PILLARS OF THE JUSTICE SYSTEM

A. Overview of the Five Pillars

The discussions on the state of the Philippine environment presented in the previous chapter highlights the need to address the continuing degradation of the environment. The decline of our once teeming and abundant flora and fauna, the loss of our biodiversity, and the continuing and unrestricted assault on the integrity of the environment should indeed be cause for alarm. The growing recognition of environmental problems both internationally and locally have led to the creation and development of concepts like Environmental Justice; and in turn it has led to the growing acceptance and recognition of the key role that the justice system plays in protecting and preserving our environment.

The Five Pillars of the Criminal Justice System¹⁵⁸

The criminal justice system is the mechanism which the society uses in the prevention and control of crime.¹⁵⁹ It consists of the system of courts, including the *barangay* justice system, the informal justice system implemented through practice by indigenous communities, and the quasi-judicial bodies empowered by law to perform adjudicatory functions; the systems for law enforcement and prosecution which involve investigating, apprehending and prosecuting those who could not be deterred from violating the law and the rules of the society; the system of corrections and rehabilitation or the means of rehabilitating offenders and returning them to the community as law-abiding citizens; and the community which collectively imposes limitations on individual behavior of citizens for the common good of civilized and democratic society that deters criminality and criminal behavior.¹⁶⁰ The Supreme Court has also defined the criminal justice system as “the system or process in the community by which crimes are investigated, and the persons suspected thereof are taken into custody, prosecuted in court and punished if found guilty, with provision being made for their correction and rehabilitation.”¹⁶¹

A study listed the goals of the criminal justice system, as follows:¹⁶²

- a) To make sure that there are no wrongful convictions and that the right person is identified and convicted of the crime he/she committed; that both suspect and victim have access to remedies; that they are provided with a speedy and impartial process that ensures

¹⁵⁸ See generally CPRM CONSULTANTS, INC., CONDUCT OF FURTHER STUDY ON OPERATIONS AND LINKAGES OF THE 5 PILLARS OF THE JUSTICE SYSTEM (2006).

¹⁵⁹ *Id.* at 2-1.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.* at 2-2.

- the protection of their human and legal rights, and equal treatment before the law; that the appropriate remedy is applied to the convicted; and that while serving sentence, the convicted is accorded humane treatment and adequate support to enable him to develop or redevelop his capacity as a good and productive member of the community;
- b) To gain and sustain the trust and confidence of the community; and engage the community as an active and effective partner in solving crime and in facilitating the provision of remedies particularly through restorative justice;
 - c) To develop capacity of communities to demand accessible, speedy, impartial and quality justice, and in particular the appropriate remedies for their grievances.

The five pillars of the justice system are traditionally seen as simply the justice system which ultimately and exclusively relates to criminal law. However, the concept of justice is slowly evolving to involve environmental law and protection. The effective protection of the environment requires an efficient, reliable, and accessible justice system. This includes the five pillars that traditionally comprise the entire justice system.

Each pillar has a key role to play in the entire system. While the pillars have individual roles, their participation in the justice system are interrelated in nature. For instance, the prosecutors cannot do their work of filing cases in the courts if the law enforcers do not perform their function of apprehending the violators. In simple terms therefore, the effectiveness and success of the entire justice system depend on the performance of each and every pillar. Hence, any study of the justice system must take a look at all the pillars that comprise it.

B. The Five Pillars and Environmental Justice

Numerous studies have pointed out the critical and crucial role our justice system plays in environmental protection and in the enforcement of environmental laws, rules and regulations. In this regard, each pillar must fulfill its respective roles to ensure the effectiveness of the system in ensuring access to Environmental Justice.

Below is an analysis and assessment of each of the five pillars on their capacity to give effect to environmental rights and Environmental Justice. The assessment consists of a discussion of the following: (1) the mandate of each pillar; (2) its current situation; (3) its level of awareness of environmental problems; and (4) how it addresses environmental problems and issues, problems and limitations it encounters in the performance of its mandate, and (5) recommendations and solutions. The discussion that follows was derived from interviews, meetings, consultations, focus group and roundtable discussions with the representatives of the participating government agencies and NGOs. Self-assessment matrices were also accomplished by agencies. A review of literature and other relevant studies was undertaken to validate the findings of the report.

1. Law Enforcement Agencies

The first of the five pillars are the law enforcement agencies. They are tasked to implement, monitor, and give effect to the laws. At the same time, they are tasked to apprehend violators and to gather evidence for the use of the prosecutors and for the appreciation of the courts. They are the frontliners in the justice system; through their actions and work, the whole system is set in

motion. Hence, any analysis of the justice system should rightfully begin with the enforcement agencies.¹⁶³

The assessment of the enforcement pillar was conducted on the agencies whose tasks directly relate to and deal with environmental laws, rules and regulations. These are the Department of Environment and Natural Resources (DENR), the Bureau of Fisheries and Aquatic Resources (BFAR), the Philippine National Police–Maritime Group (PNP-MG), the Philippine Coast Guard (PCG), the National Bureau of Investigation–Environment and Wildlife Protection and Investigation Division (NBI-EWPID), and the Armed Forces of the Philippines (AFP). Local government units (LGUs), although also mandated to enforce environmental laws within their jurisdiction, are discussed under a separate pillar.

A General Assessment of the Law Enforcement Agencies: The Environmental Law Enforcement Summits

The law enforcement agencies are tasked to implement and enforce all laws of the Philippines within its territorial jurisdiction, although some agencies are specifically in charge of the enforcement of certain laws, rules, or regulations. They are the ones designated by legislators in ensuring that laws are made effective; for without enforcement, the laws and statutes may be mere scraps of paper.

The numerous departments, bureaus and agencies, and the complex government structure of the Philippines have brought about the need to create a body which will facilitate the coordination among the various law enforcement bodies. The National Law Enforcement Coordinating Committee (NALECC) was created to ensure such cooperation and coordination among the various law enforcers of the country. Under the NALECC, a Subcommittee on Environment and Natural Resources (SCENR) was created composed of various agencies of the government.¹⁶⁴ It was established to ensure coordinated efforts of the various agencies to implement and enforce the numerous Philippine environmental laws.

¹⁶³ *Note:* During the VALIDATION WORKSHOP, *supra* note 12, held on Nov. 5, 2010, the concept of self-enforcement and self-help by the communities themselves was raised, arguing that enforcement does not only begin with the agencies of the government. This was addressed by noting that this study focuses on the pillars of the justice system, and in its traditional sense, the system begins with the law enforcement agencies of the government.

¹⁶⁴ The NALECC-SCENR member agencies include: The Department of Environment and Natural Resources and its attached bureaus, namely: the Forest Management Bureau (FMB), the Lands Management Bureau (LMB), the Mines and Geosciences Bureau (MGB), the Parks and Wildlife Bureau (PAWB), the Environmental Management Bureau (EMB), and the Coastal and Marine Management Office (CMMO); the Bureau of Fisheries and Aquatic Resources (BFAR); the Department of Justice (DOJ); the Department of the Interior and Local Government (DILG); the Philippine National– Police Maritime Group (PNP-MG); the National Bureau of Investigation–Environment and Wildlife Protection and Investigation Division (NBI-EWPID); the Philippine Coast Guard (PCG); the Philippine Ports Authority (PPA); the Bureau of Customs; the Philippine Navy (PN); the Philippine Air Force (PAF); the Land Registration Authority (LRA); the Department of Agrarian Reform (DAR); the Land Transportation Office (LTO); the Metro Manila Development Authority (MMDA); the Philippine Economic Zone Authority (PEZA); the National Museum; the Philippine Center for Transnational Crimes (PCTC); the Anti-Terrorism Coordinating Council (ATCC); and the National Intelligence Coordinating Agency (NICA).

In 2006, the NALECC-SCENR held the First Environmental Law Enforcers Summit (ELE Summit).¹⁶⁵ The event was attended by over 150 law enforcement and regulatory officers. It identified problems encountered in environmental law enforcement, crafted a clear vision for the environmental law enforcers for the next five years,¹⁶⁶ and identified priority actions necessary to meet the vision.¹⁶⁷

The First ELE Summit described environmental law enforcement in the Philippines as follows:¹⁶⁸

1. Weak
2. Fragmented
3. Insufficient
4. Ineffective
5. Inadequate
6. *Ningas kugon*.

The same activity identified the following challenges related to environmental law enforcement:¹⁶⁹

1. Lack of coordination
2. Inadequate funds/logistics
3. Lack of trained personnel
4. Policy gaps
5. Strong political intervention
6. Need for improved public education/compliance
7. Inadequate legal support
8. Low prioritization among concerned agencies
9. LGU roles not fully tapped
10. Some enforcers are “in cahoots” with violators.

¹⁶⁵ First NALECC-SCENR Environmental Law Enforcers Summit (Aug. 21-23, 2006).

¹⁶⁶ The vision is stated as follows: “*In five year’s time, we envision a well-coordinated, well-funded environmental law enforcement community consisting of highly-trained and dedicated public and private individuals and institutions enforcing a well-defined set of laws.*”

¹⁶⁷ Atty. Asis Perez, *Output of the First Environmental Law Enforcement Summit*, Presentation during the Second National Environmental Law Enforcers Summit and Orientation Workshop on Environmental Laws at Clark Freeport, Pampanga (Nov. 18-20, 2010).

¹⁶⁸ *Id.* See generally Atty. Asis Perez, *supra* note 41.

¹⁶⁹ *Id.* See generally Atty. Asis Perez, *supra* note 41.

Based on the problems and challenges above, the law enforcers came up with the following action points and plans to address these problems:¹⁷⁰

1. Standardization of enforcement protocols
2. Creation of Enforcement Task Forces
3. Reactivation of multi-sectoral bodies/agencies
4. Institutionalization of rewards for informers/informants and enforcers
5. Standardization of capacity building for enforcers by a training center/institute for environmental law enforcement
6. Strengthen mechanisms for legal support and case presentation.

The First ELE Summit was subsequently followed by the Second ELE Summit.¹⁷¹ The event was held almost five years after the first summit in order to be able to re-evaluate and re-assess the outputs of the previous summit. The second summit included several presentations on environmental laws and enforcement by various government agencies, which helped in training the participants and building their skills and capacities to perform their functions and mandate.

The Department of Environment and Natural Resources

The DENR is the national government agency which primarily deals with environmental issues. It was created on June 10, 1987 under Executive Order No. 192. It is the primary agency responsible for the conservation, management, development, and proper use of the country's environment and natural resources. Among other functions, it licenses and regulates all natural resources use; manages protected areas; assesses environmental impact; controls pollution and decides pollution cases; manages toxic chemicals and hazardous wastes; settles mining conflicts; conducts ecosystems research and technology transfer; carries out information, education, and communication campaigns; and implements international and regional environment and natural resources agreements.¹⁷²

It is composed of several line and staff bureaus which help in its functions and mandate, particularly to draft policies, set standards, and provide technical services.¹⁷³ The agencies attached to DENR are the Laguna Lake Development Authority (LLDA), National Mapping and Resource Information Authority (NAMRIA), the National Resources Development Corporation (NRDC), the National Resources Mining Development Corporation (NRMDC), the National Water Resources Board (NWRB), the Philippine Forest Corporation (PFC), and two specialized offices, the Coastal and Marine Management Office (CMMO) and the River Basin Control Office (RBCO).¹⁷⁴

¹⁷⁰ Perez, Output of the First Environmental Law Enforcement Summit, *supra* note 167.

¹⁷¹ Second National Environmental Law Enforcers Summit and Orientation Workshop on Environmental Laws at Clark Freeport, Pampanga (Nov. 18-20, 2010). *Note:* As of the date of this writing, the final report of the Second ELE Summit was not yet available upon request from the DENR.

¹⁷² ADB ENVIRONMENTAL ANALYSIS, *supra* note 90, at 77.

¹⁷³ *Id.* List of bureaus include: the Environmental Management Bureau (EMB), the Forest Management Bureau (FMB), the Parks and Wildlife Bureau (PAWB), and the Mines and Geosciences Bureau (MGB).

¹⁷⁴ *Id.*

To accomplish this mandate, the DENR shall be guided by the following objectives:

1. Assure the availability and sustainability of the country's natural resources through judicious use and systematic restoration or replacement, whenever possible;¹⁷⁵
2. Increase the productivity of natural resources in order to meet the demands for forest, mineral, and land resources of a growing population;
3. Enhance the contribution of natural resources for achieving national economic and social development;
4. Promote equitable access to natural resources by the different sectors of the population;
5. Conserve specific terrestrial and marine areas representative of the Philippine natural and cultural heritage for present and future generations.¹⁷⁶

It also has numerous functions under the law, and the core of which are to:

1. Formulate and implement policies, guidelines, rules and regulations relating to environmental management, pollution prevention and control;
2. Formulate, implement and supervise the government's policies, plans and programs pertaining to the management, conservation, development, use and replenishment of the country's natural resources and ecological diversity; and
3. Promulgate and implement rules and regulations governing the exploration, development, extraction, disposition, and use of the forests, lands, minerals, wildlife and other natural resources.¹⁷⁷

Situationer

Given this mandate and the numerous functions under the law, a number of DENR personnel said that they are not aware of any definition of Environmental Justice under the laws of the Philippines,¹⁷⁸ which has led them to ask what Environmental Justice is under this study. Although they are classified as an enforcement agency under the justice system, they do not only deal with law enforcement issues, but are also concerned with the protection of the environment, conservation of our natural resources, and even economic development,¹⁷⁹ and they have to engage

¹⁷⁵ *Note:* During the VALIDATION WORKSHOP, *supra* note 12, Director Rolando Acosta of the Bureau of Local Government Supervision of the DILG asked whether the principle of systematic restoration is applicable to mining, on the basis of this function of the DENR. Atty. Danilo Uy Kieng of the Mines and Geosciences Bureau of the DENR said that the MGB adopts the objectives under the law and that this is a general objective. He adds that the law was framed to apply to the whole environment and natural resources. Director Acosta then suggests that the objectives of the DENR should then be amended through legislation.

¹⁷⁶ Department of Environment and Natural Resources Website <www.denr.gov.ph> (last accessed on Dec. 3, 2010).

¹⁷⁷ *Id.*

¹⁷⁸ Atty. Christine Hernandez, Comments during the DENR Roundtable Discussion at the DENR Main Office, Quezon City (Oct. 5, 2010)[hereinafter Hernandez DENR RTD].

¹⁷⁹ *Id.*

in all these functions at the same time.¹⁸⁰ This creates a challenge for the DENR, since oftentimes they need to balance the protection and conservation of the environment with both sustainable and economic development.¹⁸¹

The dilemma mentioned is more clearly seen when it comes to the mining industry. An official of the Mines and Geosciences Bureau of the DENR said that business and those investing in the mining industry are immediately seen as violators of the law, and are not given a chance to comply with the requirements of the law; businesses are seen as having no rights since they are the ones utilizing natural resources.¹⁸² It was added that the concept of justice is to ensure compliance with the law, to go by the rules and regulations in the law, and to ensure equal protection and due process. In contrast to this, some NGOs view mining with apprehension,¹⁸³ describing the Philippine mining industry as unsustainable, irresponsible, and toxic, with a government policy abusing the minerals for a small elite and not for the good of the people.¹⁸⁴

DENR officials also had some comments on the new Rules of Procedure for Environmental Cases recently promulgated by the Supreme Court. The DENR is still seen as an enforcer of rules and regulations, but its status has been downgraded as merely a compliance mechanism of the law.¹⁸⁵ These new Rules mostly affect the bureaus that issue permits and licenses,¹⁸⁶ and regional offices, in particular the PENROs and the CENROs, that see the new Rules as acceptable and applicable to them.¹⁸⁷ In fact, one DENR official said that the Rules strengthen the DENR's efforts and help in the enforcement of laws.¹⁸⁸ In contrast, a DENR official is concerned that the new Rules of Procedure can undermine the DENR's functions because injunctions may be issued against their decisions.¹⁸⁹ The same official stated that the DENR should be allowed to do its job, and only when there is grave abuse of discretion should the court stop its actions.¹⁹⁰

¹⁸⁰ Atty. Geraldine Ramos, Comments during the DENR Roundtable Discussion at the DENR Main Office, Quezon City, Oct. 5, 2010 [hereinafter Ramos DENR RTD].

¹⁸¹ Atty. Emilyne Talabis, Comments during the DENR Roundtable Discussion at the DENR Main Office, Quezon City, Oct. 5, 2010 [hereinafter Talabis DENR RTD].

¹⁸² Atty. Danilo Uy Kieng, Comments during the DENR Roundtable Discussion at the DENR Main Office, Quezon City, Oct. 5, 2010 [hereinafter Kieng DENR RTD].

¹⁸³ *Note:* Examples of these groups are the Sagip Sierra Madre Network and the Alyansa Tigil Mina.

¹⁸⁴ Fr. Archie Casey, Comments during the NGO Focus Group Discussion at the Environmental Science Institute, Quezon City (Oct. 22, 2010) [hereinafter Casey NGO FGD].

¹⁸⁵ Kieng DENR RTD, *supra* note 182.

¹⁸⁶ Atty. Raymond Velicaria, Comments during the DENR Roundtable Discussion at the DENR Main Office, Quezon City, Oct. 5, 2010 [hereinafter Velicaria DENR RTD].

¹⁸⁷ Regional Executive Director Antonio G. Principe, Synthesis/Assessment speech delivered during the Pilot Multi-Sectoral Capacity Building on Environmental Laws and Rules of Procedure for Environmental Cases at Puerto Princesa City, Palawan (June 23-25, 2010) [hereinafter Principe Palawan Capacity Building].

¹⁸⁸ Talabis DENR RTD, *supra* note 181.

¹⁸⁹ Ramos DENR RTD, *supra* note 180.

¹⁹⁰ *Id.*

Working with the Other Pillars

As part of the five pillars of the justice system, the DENR's role usually relates to the enforcement of the laws, although they have other functions such as acting as special prosecutors or performing quasi-judicial functions through the Pollution Adjudication Board and the Mines Adjudication Board.¹⁹¹ Orders and decisions are enforced through the regional offices by the DENR personnel, but in some cases they ask for the assistance of the PNP and AFP when the violators are armed. They also deputize other law enforcement personnel to help in the enforcement of environmental laws.¹⁹² However, in most cases they would have to rely on the prosecutors of the Department of Justice in order to bring the violators to court.

Unfortunately, they see the prosecution as the biggest problem when it comes to the enforcement of environmental laws. Cases are oftentimes lost at the prosecution level and do not even reach the courts,¹⁹³ which leads to the decline in interest of the law enforcers. To the officials of the DENR, they opined that the prosecutors fail to appreciate their tasks, literally interpreting the law,¹⁹⁴ and saying that the laws are too technical for them.¹⁹⁵ One regional director adds that it is difficult to pursue a case because the other government agencies lack the familiarity with environmental laws, rules and regulations which the DENR personnel possess.¹⁹⁶ A task force was created to address these issues, but it was discontinued and was not made permanent.¹⁹⁷

The DENR's relationship with the community pillar is most expressed in its work with the forestry sector wherein forest management plans are put in place.¹⁹⁸ In the mining industry, the mining companies are required to establish a social development program for the benefit of the affected communities, and the community is directly made a part of the program.¹⁹⁹ In some instances, informal settlers are allowed to lease DENR-managed lands for a small amount.²⁰⁰ The

¹⁹¹ See discussion on the quasi-judicial functions of the PAB and MAB in the subsection under the Philippine Court System.

¹⁹² Note: Atty. Kieng of the DENR-MGB noted that the regional offices of the DENR would conduct trainings for the deputized law enforcers; however, the training will be limited to the environmental laws which are related to their area of operation and the location of the deputization.

¹⁹³ Atty. Hernandez recounts a Batangas wildlife case where the prosecution failed to appreciate the evidence that the DENR officials had gathered. (DENR RTD, Oct. 5, 2010).

¹⁹⁴ Kieng DENR RTD, *supra* note 182.

¹⁹⁵ Atty. Teresa Bauzon, Comments during the DENR Roundtable Discussion at the DENR Main Office, Quezon City, Oct. 5, 2010 [hereinafter Bauzon DENR RTD].

¹⁹⁶ Principe Palawan Capacity Building, *supra* note 187.

¹⁹⁷ Kieng DENR RTD, *supra* note 182.

¹⁹⁸ Mr. John Jaramillo, Comments during the DENR Roundtable Discussion at the DENR Main Office, Quezon City, Oct. 5, 2010 [hereinafter Jaramillo DENR RTD].

¹⁹⁹ Kieng DENR RTD, *supra* note 182.

²⁰⁰ Ramos DENR RTD, *supra* note 180.

community is also involved in cases before the Pollution Adjudication Board, as the NGOs are the ones who usually report violations of environmental laws to their office for investigation.²⁰¹

Policies, Strategies, and Programs

The DENR is at the forefront of efforts to protect the environment being the government agency primarily tasked to enforce environmental laws and to preserve the country's natural resources.²⁰² Although the mandate, functions, and tasks of the DENR on the protection, conservation, and development of the environment and natural resources impliedly and indirectly advocate Environmental Justice, the department currently has no policy or program which directly relates to this new concept. Some programs and strategies were mentioned during the course of the study which would in some ways involve the public and the community,²⁰³ but they however do not directly deal with the issue of Environmental Justice. One official pointed out that the programs and strategies of the DENR which relate to their enforcement functions are what can be most related to Environmental Justice.²⁰⁴

In relation to this, it is worth mentioning that the Pollution Adjudication Board has begun orienting its regional officers on the new Rules of Procedure for Environmental Cases. A PAB official said that this orientation was undertaken because the new Rules directly relate to the functions and tasks of the Board as a quasi-judicial body.²⁰⁵

²⁰¹ Atty. Michael Drake Matias, Comments during the Environmental Management Bureau Consultation Meeting at the EMB Office, DENR Compound, Quezon City (Oct. 29, 2010) [hereinafter Matias EMB Consultation].

²⁰² *Note:* During the VALIDATION WORKSHOP, *supra* note 12, Director Rolando Acosta of the DILG pointed out that the protection of the environment is a shared responsibility with the local government units. He refers to Section 16 of the LOCAL GOVERNMENT CODE OF 1991, which states that:

Sec. 16. General Welfare. – Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, **the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology**, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants. (*emphasis supplied*)

²⁰³ For example: (1) the MGB is moving to capacitate industries to process the minerals here; (2) several programs go through consultation at the ground level; (3) the FMB has the following programs: Forest Resource Development Tenurial Instruments, Community Based Forest Management, and watershed management programs; the EMB recently enacted a Circular to improve and enhance public participation in the EIS System.

²⁰⁴ Atty. Danilo Uy Kieng, Comments during the VALIDATION WORKSHOP, *supra* note 12 [hereinafter Kieng Validation Workshop].

²⁰⁵ Matias EMB Consultation, *supra* note 201.

Issues and Problems

The DENR officials also cited some problems and issues which some of them encounter, in addition to the ones previously mentioned.

As regards the mining sector, it was once again reiterated that the new Rules of Procedure for Environmental Cases undermine the functions of the DENR when it comes to its administrative enforcement functions – the process is cut short and people go directly to the courts since a court order is more powerful than a cease and desist order issued by the DENR.²⁰⁶ It was added that the NGOs should help stop illegal mining instead of filing cases against the MGB; and this problem is aggravated by the fact that there are varying ways of implementing the law by the different stakeholders.²⁰⁷

Another issue that was mentioned was how to link Environmental Justice to land dispute cases.²⁰⁸ As a consequence of their mandate, the DENR legal department mostly handles land dispute cases between conflicting claimants, and this increases their case load and takes up a lot of their time. One official added that perhaps Environmental Justice should come in when the issue regarding the land is on its uses and utilization.²⁰⁹

One other problem raised was that the DENR does not have the personnel and resources to prosecute and sustain the cases which they have filed, which leads them to rely on the prosecutors and the DOJ for the filing and prosecution of the cases in court.²¹⁰ This general lack of personnel and resources is echoed in other DENR agencies and bureaus, which in turn affects their capacity to perform their functions and mandate.²¹¹ Another common concern was the effect of the program to streamline the bureaucracy, which disallows the hiring of additional personnel and the filling of positions left vacant. The DENR officials said that this results in one employee having to perform multiple tasks and for most of them to be overworked and underpaid.²¹²

Several non-government organizations (NGOs) and civil society organizations (CSOs) have also identified problems and issues with the DENR. From their perspective, there is a general lack

²⁰⁶ Kieng DENR RTD, *supra* note 182.

²⁰⁷ *Id.*

²⁰⁸ Hernandez DENR RTD, *supra* note 178.

²⁰⁹ Jaramillo DENR RTD, *supra* note 198.

²¹⁰ *Id. Note:* Atty. Kieng, during the VALIDATION WORKSHOP, *supra* note 12, recalls that there was a Task Force on the Environment created before to address this issue, but it was discontinued with the change in administration. There is currently no move to revive the said task force. Atty. Kieng adds that continuity of the task force is the problem.

²¹¹ *Note:* The PAB and EIA Divisions of the EMB said that their lack of personnel causes them to multi-task and fail to monitor compliance with orders or with the ECC and PEISS requirements; they added that most of the employees in their divisions are contractual; there are no regular and permanent employees. (Comments during the Environmental Management Bureau Consultation Meeting at the EMB Office, DENR Compound, Quezon City (Oct. 29, 2010).

²¹² General Comments during the DENR Roundtable Discussion at the DENR Main Office, Quezon City (Oct. 5, 2010) and General Comments during the Environmental Management Bureau Consultation Meeting at the EMB Office, DENR Compound, Quezon City (Oct. 29, 2010).

of action on the part of DENR when violations are reported,²¹³ and they do not know what is happening at the grassroots level.²¹⁴ The DENR is also generally seen as having a perceived institutional conflict, being both the issuer of permits and at the same time the enforcer of the law and the adjudicating arm.²¹⁵ One group says that the most common excuse given by the DENR is that they do not have funds, but are able to implement projects such as reforestation programs.²¹⁶ Another NGO said that it was difficult to coordinate with the DENR for documents, hence making it hard for them to pursue their advocacy.²¹⁷ The problem of the perceived corruption of some DENR officials was also raised by a religious organization, but admitted that there was a problem of gathering evidence and witnesses to prove and substantiate the claims.²¹⁸

The Asian Development Bank, in a recent study, said that some of the problems that plague the DENR based on several assessments are attributed to the following: the DENR's meager resources, its outdated institutional structure, the low capability of its staff to cope with the technical knowledge requirements, overlaps in responsibilities with other government agencies, as well as gaps in implementation.²¹⁹

Recommendations

The general recommendation from the DENR and its officials is the need to spread information to the public, most especially to the judges and prosecutors to balance the different issues involved and for them to be aware of the mandate and functions of the DENR.²²⁰ In addition to this, there is a clear need to educate all sectors on the new Rules of Procedure for Environmental Cases and the Writ of Kalikasan. Increased training on the part of the judges can be done with the help of DENR

²¹³ Citing experiences of FENOR, Haribon, Save Sierra Madre Network, Alyansa Tigil Mina. *Note:* A request has been made to obtain documents and reports on the case mentioned. However, as of this writing, only documents from Sagip Sierra Madre and Alyansa Tigil Mina have been obtained.

²¹⁴ Mr. Apolinario Cariño, Comments during the NGO Focus Group Discussion at Silliman University (Oct. 16, 2010) [hereinafter Cariño Silliman FGD].

²¹⁵ Mr. Leo Mamicpic, Comments during the NGO Focus Group Discussion at Silliman University (Oct. 16, 2010) [hereinafter Mamicpic Silliman FGD].

²¹⁶ Bro. Martin Francisco, Sagip Sierra Madre Network, Comments during the NGO Focus Group Discussion at the Environmental Science Institute, Quezon City (Oct. 22, 2010) [hereinafter Francisco NGO FGD]. *Note:* A request has been made to obtain documents and reports on the reforestation program mentioned. However, as of this writing, the documents have not been forwarded to the writers of this report.

²¹⁷ Ms. Cyrus Pangan, *Tambuyog*, Comments during the NGO Focus Group Discussion at the Environmental Science Institute, Quezon City (Oct. 22, 2010) [hereinafter Pangan NGO FGD].

²¹⁸ Fr. Pedro Montallana, OFM, Consultation Meeting with the CBCP-Episcopal Council for Indigenous Peoples and the Orders of the Friars Minor at the OFM Provincial House (Nov. 26, 2010)[hereinafter Montallana ECIP-OFM Consultation].

²¹⁹ *See generally* ADB ENVIRONMENTAL ANALYSIS, *supra* note 90, at Chapter 3.

²²⁰ General Comments during the DENR Roundtable Discussion at the DENR Main Office, Quezon City (Oct. 5, 2010).

officials and agencies such as the EMB,²²¹ and it was also suggested that all 75 PENROs and 168 CENROs undergo training on the new Rules.²²²

The need to strengthen the coordination with the prosecutors was also expressed. The creation of a special division in the National Prosecution Service could be explored,²²³ who will receive specialized training on environmental laws, rules and regulations.²²⁴ This is in addition to assigning prosecutors solely to the green courts.²²⁵

Another recommendation was to exempt the DENR from the rationalization and streamlining program of the bureaucracy in order to increase its personnel and resources.²²⁶ Related to this is the need to have more regular and permanent staff members, and to reduce the number of contractual personnel.²²⁷

The ADB in a recent study listed the following general recommendations for the DENR:

1. Restructuring in the DENR to fulfill its expanding mandate;
2. Major capacity building for better environment and natural resource regulation;
3. The need for an integrated and improved information and communication management system;
4. Resolution of mandate overlap and gaps;
5. Passage of other important legislation;
6. Improvement of the EIS System;
7. Complete devolution of environment and natural resources functions to the LGUs;
8. Need for increased efforts in forest management and biodiversity conservation;
9. Climate change mainstreaming in the government program;
10. Need for increased financing of environmental projects; and
11. Need to improve and widen the use of market-based instruments.²²⁸

²²¹ Assistant Director Jonas Leones, Comments during the Environmental Management Bureau Consultation Meeting, at the EMB Office, DENR Compound, Quezon City (Oct. 29, 2010) [hereinafter Leones EMB Consultation].

²²² Principe Palawan Capacity Building, *supra* note 187.

²²³ Hernandez DENR RTD, *supra* note 178.

²²⁴ Ramos DENR RTD, *supra* note 180.

²²⁵ Kieng DENR RTD, *supra* note 182.

²²⁶ Kieng DENR RTD, *supra* note 182. *Note:* Director Rolando Acosta, during the VALIDATION WORKSHOP, said that this recommendation is not anymore feasible as the rationalization and streamlining program of the government is already a “done deal.”

²²⁷ Matias EMB Consultation, *supra* note 201.

²²⁸ See generally ADB ENVIRONMENTAL ANALYSIS, *supra* note 90, at 99-119.

Other recommendations that were given include a review of all past issuances, rules and regulations of the DENR to reconcile it with the new Rules of Procedure and improving the information dissemination and consultation processes of the various agencies,²²⁹ the codification of all issuances and regulations,²³⁰ and not to separate the mandates of the DENR bureaus, as they tend to go on their own and not have a clear direction.²³¹

The Bureau of Fisheries and Aquatic Resources

The Bureau of Fisheries and Aquatic Resources (BFAR) is the government agency responsible for the development, improvement, management, and conservation of the country's fisheries and aquatic resources. It was reconstituted as a line bureau by virtue of Republic Act No. 8550, the Philippine Fisheries Code of 1998, which outlines in greater detail the specific functions of the BFAR, although there are other mandates found in other laws which give tasks to the agency.²³² The BFAR is the lead agency in terms of enforcement of fisheries laws outside of the municipal waters.²³³ The Bureau is under the Department of Agriculture as marine resources are seen to relate more to the food security needs of the nation.

Situationer

The consultation with the BFAR began again with a question on what is the definition and concept of Environmental Justice. One official of the BFAR said that if a definition of Environmental Justice is based on Section 16, Article 2, of the 1987 Constitution, then the agency is indirectly related to this concept because their primary function is to manage fish resources in a sustainable way.²³⁴ However, he adds that what can be related to this concept is the other function of the BFAR, which is to conserve and protect aquatic resources; and therefore for him, Environmental Justice can be defined as giving people what is due.²³⁵

It was also added that granting equal access to the marine resources to both the marginal and commercial fishers is also a form of Environmental Justice; however, for a non-lawyer, the concept of Environmental Justice is unfamiliar.²³⁶ This concept can be seen in the work that they do, such as issuing management standards and bulletins to inform farmers and consumers and bringing violators to court.

²²⁹ Ramos DENR RTD, *supra* note 180.

²³⁰ Director Rolando Acosta, Comments during the VALIDATION WORKSHOP at the Fr. Bernas Center, Ateneo Professional Schools, Rockwell Center, Makati City (Nov. 5, 2010) [hereinafter Acosta Validation Workshop].

²³¹ General comments during the DENR Roundtable Discussion at the DENR Main Office, Quezon City (Oct. 5, 2010).

²³² See BFAR, MENDING NETS: A HANDBOOK ON THE PROSECUTION OF FISHERY AND COASTAL LAW VIOLATIONS, 1-14 (2004).

²³³ Assistant Director Benjamin Tabios, Comments during the BFAR Roundtable Discussion at the BFAR Office, Quezon City (Oct. 11, 2010) [hereinafter Tabios BFAR RTD].

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ Ms. Sandra R. Arcamo, Comments during the BFAR Roundtable Discussion at the BFAR Office, Quezon City (Oct. 11, 2010) [hereinafter Arcamo BFAR RTD].

Working with Other Pillars

Although the BFAR has primary jurisdiction over the marine and aquatic resources of the Philippines, this authority extends only beyond the municipal waters or beyond 15 kilometers from the coast.²³⁷ Therefore, the BFAR needs to coordinate with the local government units (LGUs) to ensure the protection, management, and conservation of the Philippine's entire marine environment. For example, the BFAR is primarily in charge of the management of commercial fishing in the country.²³⁸ However, there are instances when these commercial fishing vessels intrude into municipal waters, or are given permits by the LGUs; hence, cooperation is needed to regulate these vessels.²³⁹

This coordination is primarily done by providing the technical framework and tools to the LGUs.²⁴⁰ The BFAR helps establish fisheries management councils to help the LGUs comply with national laws and standards. Oftentimes, the LGUs consult with the BFAR regional and field offices before enacting an ordinance related to marine and aquatic resources, in addition to the conduct of participatory assessment processes with the LGUs. Enforcement operations conducted within municipal waters are also coordinated and done with the LGUs concerned.²⁴¹

²³⁷ An Act Providing for a Local Government Code of 1991 [LOCAL GOVERNMENT CODE OF 1991], Republic Act No. 7160, §§ 17(b)2(i). The provision states:

Sec. 17. Basic Services and Facilities. –

x x x x

b) Such basic services and facilities include, but are not limited to, the following:

x x x x

2) For a Municipality:

- (i) Extension and on-site research services and facilities related to agriculture and fishery activities which include dispersal of livestock and poultry, fingerlings, and other seedling materials for aquaculture; palay, corn, and vegetable seed farms; medicinal plant gardens; fruit tree, coconut, and other kinds of seedling nurseries; demonstration farms; quality control of copra and improvement and development of local distribution channels, preferably through cooperatives; interbarangay irrigation system; water and soil resource utilization and conservation projects; and enforcement of fishery laws in municipal waters including the conservation of mangroves;

x x x x

²³⁸ See An Act Providing for the Development, Management and Conservation of the Fisheries and Aquatic Resources, Integrating All Laws Pertinent Thereto, and for Other Purposes [PHILIPPINE FISHERIES CODE OF 1998], Republic Act No. 8550, Article II: Commercial Fisheries.

²³⁹ Tabios BFAR RTD, *supra* note 233.

²⁴⁰ *Id.*

²⁴¹ Atty. Michael S. Andayog, Comments during the BFAR Roundtable Discussion at the BFAR Office, Quezon City (Oct. 11, 2010) [hereinafter Andayog BFAR RTD]. *Note:* A request has been made to obtain documents and reports on the case mentioned. However, as of this writing, the documents have not been forwarded to the

Although the LGUs have primary jurisdiction over municipal waters, an official from the BFAR expressed that this does not give them the autonomy to disregard national laws, rules, and standards as they are still under the auspices of the national laws and authority.²⁴²

Presently, the BFAR has extensive coordination with other enforcement agencies. Law enforcers are automatically deputized under the Fisheries Code to enforce the same, and no special deputization is needed.²⁴³ Agencies like the Philippine Coast Guard, Philippine National Police, and the Philippine Navy usually ask the BFAR for training and assistance in technical matters, such as identifying fish allegedly killed using dynamites. The BFAR usually needs to coordinate with the PCG and the Philippine Navy during enforcement operations since they do not operate their own vessels, in addition to the coordination done in the gathering and preservation of evidence.²⁴⁴

NGOs and CSOs also help the BFAR with its functions. There are instances when these NGOs help the agency pursue cases against violators, providing the needed legal assistance.²⁴⁵ In addition, NGOs, CSOs, and POs are also represented in the Fisheries and Aquatic Resources Management Councils (FARMCs), which help communities to manage, protect, and preserve their own marine areas.²⁴⁶

Policies, Strategies, and Programs

Although the mandate, functions, and tasks of the BFAR on the protection, conservation, and development of the fisheries and marine resources impliedly and indirectly advocate Environmental Justice, the Department currently has no policy or program which directly relates to this new concept. However, the BFAR presented some programs which the agency has which may relate to environmental justice issues.

To aid in the enforcement of fisheries laws and to impose standards for the benefit of the consuming public, the BFAR imposes management standards for various marine products and continuously issues bulletins to inform the farmers and consumers as regards products such as shellfish.²⁴⁷ This in turn is used to apprehend violators during market inspections to ensure the quality of fish and marine products being sold. Related to this is to promote the market denial of illegally caught fish, which is done with the help of the LGUs.²⁴⁸

writers of this report. *Note also:* Head Agent Sixto Comia of the NBI-EWPID recounts a case they encountered in Carles, Iloilo, wherein it was alleged that the local government allowed trawl fishing within municipal waters, resulting in the destruction of the corals in the area. The request for documentation and report of this case is still pending with the NBI-EWPID.

²⁴² Arcamo BFAR RTD, *supra* note 236.

²⁴³ Atty. Annaliza A. Vitug, Comments during the BFAR Roundtable Discussion at the BFAR Office, Quezon City (Oct. 11, 2010) [hereinafter Vitug BFAR RTD]. See the Philippine Fisheries Code, § 124.

²⁴⁴ Arcamo BFAR RTD, *supra* note 236.

²⁴⁵ *Id.*

²⁴⁶ Vitug BFAR RTD, *supra* note 243.

²⁴⁷ Arcamo BFAR RTD, *supra* note 236.

²⁴⁸ *Id.*

Another program is the establishment of the Fisheries and Aquatic Resources Management Councils where fisherfolk have the authority to manage their own marine resources. Prior consultation with the FARMCs is conducted before local ordinances related to fisheries are passed. The participation in the FARMCs is from the barangay up to the national level, and representatives elected here serve as a means by which the BFAR can directly coordinate and work with the local communities.²⁴⁹ Related to this is the Bantay Dagat program wherein fish wardens are trained. Although these fish wardens are under the authority of and are appointed by the LGUs, the BFAR provides training and technical assistance.

The BFAR has also adopted the Fisheries Resources Management Program, which is a holistic approach to protect the country's waters. This program includes the training of judges and fiscals on fisheries and marine laws through seminars and special workshops. Related to this is the success of the project-based information materials of the BFAR and the guides and Questions and Answers on fisheries laws which they have constantly produced.²⁵⁰

Other programs and strategies adopted by the BFAR include the blacklisting and the cancellation of licenses of vessels caught violating the fisheries laws,²⁵¹ seeking assistance from foreign governments, such as Taiwan, to establish a vessel monitoring system to catch poachers,²⁵² and the pursuit of alternative ways of punishing violators.²⁵³

Issues and Problems

One of the main problems identified by the BFAR is that fisheries law is not a well-understood concept in the criminal justice system.²⁵⁴ It is viewed as being too technical.²⁵⁵ Prosecutors prefer to apply local ordinances instead of the Fisheries Code for violations within their territorial jurisdiction; hence, lower penalties under the ordinances are imposed instead of the stiffer penalties in the Code. What is usually imposed by the ordinances are fines and not imprisonment.²⁵⁶ In addition, the cases prosecuted under ordinances are usually resolved faster and the fines collected go to the LGUs.²⁵⁷ One BFAR official opined that the prosecutors are able to work better

²⁴⁹ Tabios BFAR RTD, *supra* note 233.

²⁵⁰ Vitug BFAR RTD, *supra* note 243. *See generally* BFAR, MENDING NETS: A HANDBOOK ON THE PROSECUTION OF FISHERY AND COASTAL LAW VIOLATIONS (2004).

²⁵¹ Andayog BFAR RTD, *supra* note 241.

²⁵² Tabios BFAR RTD, *supra* note 233.

²⁵³ Atty. Tabios points out that the BFAR pursues administrative cases instead of going to the courts; they deliberately prolong the case to force the violators to pay the fines or to leave their vessel behind as a form of compensation.

²⁵⁴ *See generally* Atty. Grizelda Mayo-Anda, *Prohibitions and Penalties, Jurisprudence and Problem Areas in Fisheries*, Presentation during the Pilot Multi-Sectoral Capacity Building on Environmental Laws and Rules of Procedure for Environmental Cases at Puerto Princesa City, Palawan (June 23-25, 2010).

²⁵⁵ Tabios BFAR RTD, *supra* note 233.

²⁵⁶ Andayog BFAR RTD, *supra* note 241.

²⁵⁷ Tabios BFAR RTD, *supra* note 233. *See* §§ 290-291 of the Local Government Code of 1991 on the share of the LGUs in the fines collected by the national government.

with the LGUs in pursuing cases under the local ordinances because of the allowance given under the law to the said prosecutors.²⁵⁸ This may also be a result of the fact that the prosecutors do not have the technical expertise to appreciate these laws.²⁵⁹ The Fisheries Code therefore loses its deterrent effect because ordinances are being preferred.²⁶⁰ There are also some prosecutors who choose not to file the corresponding cases because they pity the violators, and judges oftentimes ask the BFAR to allow plea bargaining for lower penalties.²⁶¹

The National Prosecution Service of the Department of Justice previously had a desk which handled environment and fisheries cases, but a BFAR official said that it was abolished because there were no cases being elevated to the said desk; and the reason for this was that cases are already dismissed at the local fiscal level.²⁶² A BFAR official believes that the prosecutors fail to appreciate their cases, even asking “what’s the fuss about dead and dry stones,” referring to dead and damaged corals.²⁶³ All these result in little jurisprudence from the Supreme Court on fisheries laws because few cases are prosecuted and filed in the lower courts; oftentimes, preliminary investigation is not even conducted by the fiscals.²⁶⁴ It was added that the new Rules of Procedure are indeed helpful; however, the problem is not much with the courts but rather with the prosecutors who do not appreciate the need to file the cases for violations.²⁶⁵

Another problem which the group identified was the lack of legal officers in the field. This leads to cases not being filed and pursued by the BFAR. There are even instances when their own fish wardens designated to enforce the laws are the ones being charged in court. The BFAR officials recounted an ongoing case in Quezon province where their fish wardens, who caught an illegally fishing vessel, were instead charged by the prosecutors for piracy for boarding and seizing the fishing vessel. One official said that this is a clear injustice for their fish wardens, and the problem is aggravated by the fact that no legal support can be given to their wardens.²⁶⁶

²⁵⁸ Tabios BFAR RTD, *supra* note 233. Note: § 447(1)(xi) of the Local Government Code of 1991 on the Powers, Duties, Functions, and Compensation of LGUs, provides that:

x x x x

- (xi) When the finances of the municipal government allow, provide for additional allowances and other benefits to judges, prosecutors, public elementary and high school teachers, and other national government officials stationed in or assigned to the municipality;

x x x x

²⁵⁹ Kieng Validation Workshop, *supra* note 204.

²⁶⁰ Vitug BFAR RTD, *supra* note 243.

²⁶¹ Andayog BFAR RTD, *supra* note 241.

²⁶² Arcamo BFAR RTD, *supra* note 236.

²⁶³ *Id.*

²⁶⁴ Vitug BFAR RTD, *supra* note 243.

²⁶⁵ *Id.*

²⁶⁶ *Id.* Note: A request has been made to obtain documents and reports on the case mentioned. However, as of this writing, the documents have not been forwarded to the writers of this report.

Problems were also expressed by the BFAR officials in relation to the LGUs. Before, ordinances would need to be approved by the BFAR before they became effective; hence they could be checked with the national fisheries rules, regulations and policies. However, one BFAR official said that their review powers had been removed, and they now only provide technical assistance to the LGUs in enacting ordinances, which could lead to conflicts between the national laws and the ordinances.²⁶⁷ One clear problem was cited in the ARMM: their local fisheries laws are different from the Local Government Code and the national laws, where they define municipal waters as 12 kilometers only, not the 15 kilometers in the Fisheries Code. The ARMM also has its own vessel registry system, and they catch vessels not registered under the ARMM laws and system, although registered under the national laws.²⁶⁸

Some other problems raised include the problem regarding conflicting laws between the agencies like the DENR and the BFAR,²⁶⁹ the lack of facilities to keep seized and detained vessels, and the presence of the political backing of some violators, whose cases are placed in “special folders.”²⁷⁰

Recommendations

One of the recommendations given by the group was to increase the salary of the BFAR officials, especially the lawyers, to entice them to begin working for the Bureau. This would help them with the filing and prosecution of cases against violators.

It was also suggested that an orientation of the courts and judges, the DOJ, and the Office of the Solicitor General on environmental matters be done to help them understand the functions and mandates of agencies like the BFAR. In relation to this, one official suggested that a fisheries academy be established to help train fisheries and marine law enforcers.²⁷¹ This academy could also be used to develop training manuals and materials for the information of the general public.

The Philippine National Police–Maritime Group

The Maritime Group is a National Operational Support Unit of the Philippine National Police mandated to perform all police functions over Philippine Waters. This includes: to enforce the law, to prevent and control crimes, to maintain peace and order, to ensure public safety and internal

²⁶⁷ Vitug BFAR RTD, *supra* note 243. See § 149 of the Local Government Code of 1991 on *Fisheries Rentals, Fees and Charges*.

²⁶⁸ Tabios BFAR RTD, *supra* note 233. See generally §§ 15-19, Article XIII of Republic Act No. 6734, the Organic Act of the Autonomous Region of Muslim Mindanao, Aug. 1, 1989, on the *Agriculture, Fisheries and Aquatic Resources of the Region*.

²⁶⁹ One example of conflicting laws cited by the BFAR RTD Group is on the coral rubbles and pebbles – while the mining laws allow its taking, it is not allowed under the Fisheries Code. *Note:* Atty. Kieng of the MGB noted that for him there are no conflicting laws; corals are not allowed to be mined. The VALIDATION WORKSHOP group agreed that it was then not a matter of conflicting laws but of the application of the law in practice.

²⁷⁰ Tabios BFAR RTD, *supra* note 233.

²⁷¹ Andayog BFAR RTD, *supra* note 241.

security over Philippine islands, coastal areas, ports and harbors and to protect and sustain the development of the maritime environment.²⁷²

Some of its key functions are:

1. To train, equip, mobilize, organize, and manage resources for effective maritime law enforcement and internal security operations;
2. To enforce all laws, rules, regulations, and ordinances relative to the protection of lives, properties and the environment;
3. To arrest, investigate, and assist in the prosecution of terrorists, smugglers, drug traffickers and other criminal elements;
4. To conduct search and rescue operations; and
5. To perform other duties as directed by the Chief of the PNP.

Situationer

The PNP-MG has as one of its functions the protection and development of the marine environment. However, it has no direct mandate with respect to ensuring access to Environmental Justice. The mandate of the PNP-MG falls under the general directive of enforcing the law under Section 24 of RA No. 6975, as amended. This mandate focuses mainly on criminal violations under the Revised Penal Code and other Special Penal Laws, although they are also mandated to enforce the penal provisions of some environmental laws. There are two divisions of the PNP that usually relate to the enforcement of environmental laws, the PNP–Maritime Group and the Explosives Division. The other offices of the PNP are only mobilized when requested to help, usually by the DENR, and is operationalized through a MOA.²⁷³

The priority of the PNP-MG is maritime law enforcement as the responsibility of the MG does not need deputation by the DENR. Climate change is also now part of their protection and conservation efforts.²⁷⁴

Working with Other Pillars

The coordination of the PNP-MG with other pillars as regards the enforcement of environmental laws usually involves a MOA. It has existing MOAs with the DENR and the Maritime Industry Authority (MARINA).²⁷⁵ Coordination with other stakeholders are done through correspondence with the

²⁷² PNP-MG website <http://mg.pnp.gov.ph/index.php?option=com_content&view=article&id=19&Itemid=19> (last accessed on Dec. 3, 2010).

²⁷³ *Note:* A MOA was entered into between the PNP and the DENR in February 2009 to deputize active PNP officers and personnel as Deputy Environment and Natural Resources Officer (DENRO) and Special Deputy Environment and Natural Resources Officer (SDENRO), as provided for under DENR Administrative Order No. 2008-22. (Copy on file with the Research, Publications and Linkages Office, Philippine Judicial Academy).

²⁷⁴ PSupt. Albert Ignatius D. Ferro, Comments during the Multi-Pillar Focus Group Discussion at the Fr. Bernas Center, Ateneo Professional School Campus, Rockwell, Makati City (Sept. 24, 2010) [hereinafter Ferro Multi-Pillar FGD].

²⁷⁵ See MOA between DENR and PNP dated February 2009, and MOA with the MARINA. (Copy on file with the Research, Publications and Linkages Office of the Philippine Judicial Academy).

head to be forwarded to the particular agency or department requested to be mobilized by either the DENR or the courts. There is thus a network with other stakeholders. The PNP focuses on the community with a view to promoting preventive action instead of being reactive to situations. There is a police community relations unit which is in charge of the conduct of “ugnayan” with stakeholders. The PNP-MG is also able to communicate their activities through discussions with local networks or by tapping the mass media.

MOAs are usually entered into with other government agencies.²⁷⁶ These agreements help operationalize and delineate the tasks, roles and functions of the participating agencies. In addition, collaborative mechanisms with the other pillars of the justice system are implemented through these MOAs or through directives from the LGUs when requested for assistance in enforcement situations.

Policies, Strategies, and Programs

The PNP has a capability assessment program which helps assess the needs and the performance of its units. On the basis thereof, priority is given to regions which have relatively a bigger number of environmental law violations as identified by the PNP (i.e., Region 9, Davao, Region 11, Palawan and Region 4-B). To enhance the capacity of the members of the police force, there is a police information and continuing education program in place, which could include environmental laws and issues.²⁷⁷

Issues and Problems

There is generally inadequate funding for operational expenses; only 7 percent of the budget is allocated for operations. As an example, the PNP-MG does not have the equipment to conduct underwater forensic investigations. This lessens the capability of the police force to deal with violations of the law, more so when it comes to environmental issues. There is a general problem with illegal fishers but they are helpless due to the lack of resources, and sometimes due to political intervention.²⁷⁸

In addition, the PNP does not have any training or programs specifically devoted to ensuring access to Environmental Justice. They also do not have any specific training on the integrated coastal resource management. There is also no systematic monitoring of the best practice of the PNP, which could help improve the performance of the police force in terms of environmental law

²⁷⁶ During the VALIDATION WORKSHOP, *supra* note 12, Atty. Villanueva of the PCG noted that they have a MOA with the PNP-MG regarding their areas of operational jurisdiction when it comes to enforcement operations. She pointed out that under RA No. 9993, the PCG has jurisdiction when it comes to the marine environment. To facilitate this, they have entered into an arrangement with the PNP-MG, wherein the latter will enforce the provisions of the RPC within the 15km municipal waters; beyond that, the PCG will enforce the special laws. *Note:* During a Consultation Meeting with the PNP-MG dated Nov. 29, 2010, PSS Ferro said that to his knowledge there is no MOA with the PCG, but says that perhaps the regional commanders have special arrangements with the PCG within their respective jurisdictions.

²⁷⁷ Warren Gaspar Tolito, Comments during the PNP–Program Management Office Consultation Meeting at Camp Crame, Quezon City (Sept. 14, 2010).

²⁷⁸ Ferro, Multi-Pillar FGD, *supra* note 274.

enforcement. One DILG official suggests that one strategy is to identify, document, and popularize the best practices to serve as exemplars in the PNP.²⁷⁹ It would also depend on the leadership of the unit whether the policies will be adjusted to address the law enforcement concerns on Environmental Justice.

There is also a problem with the prosecution of cases; some prosecutors are shocked when the PNP-MG files cases since they do not know about environmental laws. Related to this is the situation that some judges do not give importance or priority to environmental cases.²⁸⁰

Recommendations²⁸¹

Given ample resources, the PNP-MG could be a prime mover in environmental enforcement and programs.²⁸² The PNP recommended making the Maritime Group the lead agency in maritime law enforcement in order to strengthen its role. They mentioned that as MOAs are merely transient in nature, a more permanent and continuous arrangement as regards the enforcement of environmental laws is necessary, perhaps in the form of a law. The PNP should also be included as part of the inter-agency policy formulation body on Environmental Justice.

As regards matters of knowledge and training, the PNP recommended to develop training programs on police action towards the attainment of Environmental Justice; to include the Rules of Procedure in its maritime training program and Police Information and Continuing Education sessions; and to develop a training program among its existing pool of legal officers with a considerable number of environmental justice issues. There should also be an increase in the funds allocated for the maintenance of the Maritime Group to allow it to actively pursue maritime law enforcement operations. They also recommended that the Police Community Relations (PCR) offices of the PNP nationwide be maximized in articulation of its programs on environmental justice, utilizing the commonly used information and education campaigns used by the DENR and BFAR. With respect to accountability mechanisms, there should be strict enforcement of command responsibility, accountability, and transparency at all levels of leadership.

Other recommendations given by the PNP-MG include the creation of Special Courts focused primarily on environmental concerns, an amendment of the Fisheries Code for stiffer penalties for violators and longer periods for the delivery of the accused, and the increase in lab facilities of the BFAR and even that of the PNP-MG.²⁸³

²⁷⁹ Acosta Validation Workshop, *supra* note 230.

²⁸⁰ PSI Rodolfo Gonzales, PNP-MG Comments during the Multi-Pillar Focus Group Discussion at the Fr. Bernas Center, Ateneo Professional School Campus, Rockwell Makati City (Sept. 24, 2010).

²⁸¹ Based on the recommendations submitted by the PNP-MG participants in the Multi-Pillar FGD.

²⁸² PSSupt. Albert Ignatius D. Ferro, Consultation Meeting with the PNP Maritime Group at the PNP-MG Headquarters, Camp Crame (Nov. 29, 2010).

²⁸³ *Id.*

The Philippine Coast Guard

The mission of the Philippine Coast Guard (PCG) is to promote the safety of life and property at sea; to safeguard the marine environment and resources; to enforce all applicable maritime laws; and to undertake other activities in support of the mission of the Department of Transportation and Communications (DOTC).²⁸⁴

²⁸⁴ Philippine Coast Guard website <www.coastguard.gov.ph> (last accessed on Dec. 3, 2010). Under Section 3 of Republic Act No. 9993, or the Philippine Coast Guard Law of 2009 (Feb. 12, 2010), the PCG has the following powers and functions:

Sec. 3. Powers and Functions. – The PCG shall have the following powers and functions:

- (a) To enforce regulations in accordance with all relevant maritime international conventions, treaties or instruments and national laws for the promotion of safety of life and property at sea within the maritime jurisdiction of the Philippines and conduct port state control implementation;
- (b) To conduct inspections on all merchant ships and vessels, including but shall not be limited to inspections prior to departure, to ensure and enforce compliance with safety standards, rules and regulations;
- (c) To detain, stop or prevent a ship or vessel which does not comply with safety standards, rules and regulations from sailing or leaving port;
- (d) To conduct emergency readiness evaluation on merchant marine vessels;
- (e) Subject to the approval of the Secretary of the DOTC, to issue and enforce rules and regulation for the promotion of safety and life and property at sea on all maritime-related activities;
- (f) To coordinate, develop, establish, maintain and operate aids to navigation, vessel traffic system, maritime communications and search and rescue facilities within the maritime jurisdiction of the Philippines;
- (g) To remove, destroy or tow to port, sunken or floating hazards to navigation, including illegal fish and vessels, at or close to sea lanes which may cause hazards to the marine environment;
- (h) To issue permits for the salvage of vessels and to supervise all marine salvage operations, as well as prescribe and enforce rules and regulations governing the same;
- (i) To render aid to persons and vessels in distress and conduct search rescue in marine accidents within the maritime jurisdiction of the Philippines, including the high seas, in accordance with applicable international conventions. In the performance of this function, the PCG may enlist the services of other government agencies and the merchant marine fleet;
- (j) To investigate or inquire into the causes of all maritime accidents involving death, casualties and damage to properties;

Some of its functions include:²⁸⁵

1. Maritime search and rescue
2. Maritime law enforcement
3. Maritime safety and security
4. Maritime environmental protection.

Situationer

There is a mandate for the agency to ensure access to Environmental Justice and its personnel are informed of this mandate. The PCG, to a certain extent, has the capacity to carry out its mandate under the new Rules of Procedure for Environmental Cases. It has a division in charge of handling environmental cases, namely: the Office of the Deputy Chief of Staff for Marine Environmental Protection and the Marine Environmental Protection Command.

Working with Other Pillars

Coordination with other agencies is done usually through a MOA. By way of an example, the PCG has an existing MOA with the BFAR to help patrol maritime waters.²⁸⁶ The PCG also coordinates with the Philippine Navy to patrol our territory to ensure maritime security.

-
- (l) To assist in the enforcement of laws on fisheries, immigration, tariff and customs, forestry, firearms and explosives, human trafficking, dangerous drugs and controlled chemicals, transnational crimes and other applicable laws within the maritime jurisdiction of the Philippines;
 - (m) To board and inspect all types of merchant ships and watercraft in the performance of this functions;
 - (n) To enforce laws and promulgate and administer rules and regulations for the protection of the marine environment and resources from offshore sources or pollution within the maritime jurisdiction of the Philippines;
 - (o) To develop oil spill response, containment and recovery capabilities against ship-based pollution;
 - (p) To grant, within the capabilities and consistent with its mandate, requests for assistance of other government agencies in the performance of their functions;
 - (q) To organize, train and supervise the PCG Auxiliary (PCGA) for the purpose of assisting the PCG in carrying out its mandated functions; and
 - (r) To perform such other functions that may be necessary in the attainment of the objectives of this Act.

²⁸⁵ PCG website <www.coastguard.gov.ph> (last accessed on Dec. 3, 2010).

²⁸⁶ *Note:* A request has been made to obtain documents and reports on the MOA mentioned. However, as of this writing, the documents have not been forwarded to the writers of this report.

The PCG coordinates with the community through the PCG auxiliary cleanup and mangrove planting.²⁸⁷ Coordination is also done through meetings, sometimes seminars, and information campaigns during the PCG anniversary. They coordinate with stakeholders only when a problem has cropped up.

Policies, Strategies, and Programs

One of the best practices identified by the PCG is the effort to teach the fisherfolk about compliance with the law, instead of prosecuting and arresting them. This in turn would facilitate the application of creative penology methods.

Other programs include the conduct of trainings, programs, and the filing of cases against violators. In addition, to promote Environmental Justice, the PCG engages in information campaigns, training of personnel and maritime patrols.

Issues and Problems

Although one of its tasks is to ensure the protection of the marine environment, the PCG does not have a program in place to implement the new Rules of Procedure for Environmental Cases. Environmental Justice and environmental issues are currently not a priority in the agency and of its leadership.²⁸⁸ In addition, it has no capacity to train its personnel on the new Rules of Procedure for Environmental Cases.

Other problems identified include the insufficient funding for the programs of the agency, the inability of the PCG to prosecute violators on its own because there is no enabling law,²⁸⁹ and the absence of a mechanism to check effectiveness of the programs and the accountability of its staff and personnel.

Recommendations

One suggestion given was for a law to be enacted allowing the PCG to prosecute cases on its own, so as not to rely on the services and actions of the DOJ prosecutors. At this point, one PCG official suggests that the skills of the PCG lawyers should be maximized since they are sent by the PCG for master's training at the IMO Academy.²⁹⁰

The National Bureau of Investigation–Environment and Wildlife Protection and Investigation Division

The main objective of the National Bureau of Investigation is the establishment and maintenance of a modern, effective and efficient investigative service and research agency for the purpose of

²⁸⁷ See § 11 of Republic Act No. 9993, or the Philippine Coast Guard Law of 2009 (Feb. 12, 2010), on the establishment of the PCG Auxiliary Unit.

²⁸⁸ Atty. Lissa Belle Villanueva, Comments during the Philippine Coast Guard Consultation Meeting at the Supreme Court, Manila (Oct. 14, 2010) [hereinafter Villanueva Consultation].

²⁸⁹ Atty. Lissa Belle Villanueva of the PCG adds that included here is the lack of funding to sustain cases and witnesses, the refusal of the PCG personnel to testify because they will be away from their duties, and the distance of the courts from their stations.

²⁹⁰ Atty. Lissa Belle Villanueva, Comments during the VALIDATION WORKSHOP at the Fr. Bernas Center, Ateneo Professional Schools, Rockwell Center, Makati City (Nov. 5, 2010) [hereinafter Villanueva Validation Workshop].

implementing fully its principal functions provided under RA No. 157, as amended. Under the said law, the NBI has the following functions:

1. Investigate crimes and other offenses against the laws of the Philippines, both on its own initiative and as public interest may require;
2. Assist, when officially requested in the investigation or detection of crimes and other offenses;
3. Act as national clearing house of criminal records and other information for use of all prosecution and law enforcement entities in the Philippines, of identification records of all persons without criminal conviction, records of identifying marks, characteristics, and ownership or possession of all firearms and test bullets fired therefrom;
4. Give technical help to all prosecuting and law enforcement offices, agencies of the government, and courts which may ask for its services;
5. Extend its services in the investigation of cases of administrative or civil nature in which the government is interested;
6. Establish and maintain an up-to-date scientific crime laboratory and conduct researches in furtherance of scientific knowledge in criminal investigation;
7. Coordinate with other national or local agencies in the maintenance of peace and order;
8. Undertake the instruction and training of a representative number of city and municipal peace officers at the request of their respective superiors along effective methods of crime investigation and detection in order to insure greater efficiency in the discharge of their duties.²⁹¹

Recently, the NBI created a special division to address environmental issues, problems, and cases. This division is called the Environment and Wildlife Protection and Investigation Division (EWPID). The EWPID was created to protect the environment and wildlife in pursuit of maintaining an ecological balance that would sustain both human and non-human elements; it also recognizes the fact that nature and all life forms should harmoniously co-exist.²⁹² Its mandate, based on the evaluation of its members, is to enforce national environmental laws and apprehend and prosecute individuals, groups or entities who violate it, in coordination with other government agencies tasked to protect the environment like the DENR, and other member agencies specially composing the National Law Enforcers Coordinating Council Subcommittee on Environment and Natural Resources (NALECC-SCENR).²⁹³

Situationer

Before the creation of the Division, there was no specialized unit in the NBI which handled environmental cases. Environmental issues were not a priority of the NBI. Agents were merely

²⁹¹ An Act Creating a Bureau of Investigation, Providing Funds Therefor, and for Other Purposes, Republic Act No. 157, § 1 (1947).

²⁹² One-page primer prepared by SA Philip Pecache (copy on file with the Research, Publications and Linkages Office of the Philippine Judicial Academy).

²⁹³ *Id.*

designated under the task force created by the DENR.²⁹⁴ NBI agents handled environmental cases which are merely referred to them. They were not made aware of their mandate to enforce environmental laws, since these laws are not part of the basic training modules of all agents. In fact, members of the EWPID say that there were no pending cases on the environment which the NBI passed on to them before the creation of the Division; they started with a clean slate.²⁹⁵ In a particular case cited, protection of marine life is not a priority in the NBI because of logistical concerns.²⁹⁶

The EWPID has only been in operation for a few months with seven agents working under the Department. Nevertheless, they do not view the lack of manpower as a disability. A senior official of the EWPID said that the Division will do its best and will pursue quality work, even with the limited resources, funds, and personnel that it has.²⁹⁷

Working with Other Pillars

Their coordination with the other pillars of the justice system deals mostly with the conduct of trainings and operations. Recently, the Division has coordinated with the DENR to conduct trainings and seminars on the various environmental laws. The first one was on wildlife laws which was conducted in October 2010. As a follow-up and to test their knowledge from the training, the agents immediately conducted two operations with the DENR-NCR and the Parks and Wildlife Bureau which resulted in the apprehension of violators.²⁹⁸ This was followed by the filing of two cases against those apprehended. They have also coordinated with the BFAR for materials and possible training on marine and aquatic resources laws.²⁹⁹

In addition to this, they also coordinate with various NGOs for inputs on their task and mandate and also to obtain materials and information. Some of the NGOs that they have worked with include Tanggol Kalikasan, Animal Welfare Society, and the United States Department of the Interior through the USAID. In addition, members of the communities often give tips to the NBI regarding violations in their areas, and they expect the same to be the case with their Division as regards violations of environmental laws.³⁰⁰

²⁹⁴ Mr. Marlou Baltazar, Comments during the Multi-Pillar Focus Group Discussion at the Fr. Bernas Center, Ateneo Professional School Campus, Rockwell Center, Makati City (Sept. 24, 2010) [hereinafter Baltazar Multi-Pillar FGD].

²⁹⁵ SA Philip Pecache, Comments during the NBI–Environment and Wildlife Protection and Investigation Division Consultation Meeting at the NBI-EWPID Office (Oct. 20, 2010) [hereinafter Pecache NBI-EWPID Consultation].

²⁹⁶ Baltazar Multi-Pillar FGD, *supra* note 294.

²⁹⁷ Pecache NBI-EWPID Consultation, *supra* note 295.

²⁹⁸ One operation netted the sale of *bayawak* eggs and obtained rare birds being illegally sold. *Note:* A request has been made to obtain documents and reports on the case mentioned. However, as of this writing, the documents have not been forwarded to the writers of this report.

²⁹⁹ Pecache NBI-EWPID Consultation, *supra* note 295.

³⁰⁰ *Id.*

Policies, Strategies, and Programs

Being a new division of the NBI and with barely half a year in operation, the EWPID currently does not have any clear programs or policies in place as regards access to Environmental Justice. However, they said that coming up with their strategies is one of their priorities at this stage. They are continuously in the process of learning about environmental laws and procedures, and once their operations are polished, they will invite members of the community and the media to join these enforcement operations. One official of the Division also pointed out that one goal of the new division is to prosecute more violators in the next six months.³⁰¹ Another agent of the NBI also noted that the point system of the Bureau will also be used to determine if the Division is achieving and complying with its tasks, goals, and functions.³⁰²

Issues and Problems

During the NBI Consultation, it was said that at this point in the life of the new division, there are no specific problems that would require the special attention of the agents. They admitted however that the NBI needs to be more involved in the conservation of natural resources.³⁰³ They foresee that their lack of operational setup, a clear plan and strategy, own sources of funding, and limited personnel may cause problems in the long run.³⁰⁴

In addition, a senior agent of the Division said that there is also a problem when it comes to the gathering of evidence. He says that the problem on why the cases do not prosper is not with the prosecution; the problem lies with those who filed the case and built it up, despite not having enough evidence or the preparation was flawed.³⁰⁵

Another agent of the Division pointed out that they see a problem when it comes to violators with political backing, or when it is the politicians themselves who are involved in the violation of environmental laws.³⁰⁶ He recounted their recent experience in Carles, Iloilo, where trawl fishing is allowed by the LGU, despite the fact that the residents there know it will destroy the corals and the rich biodiversity of their community.³⁰⁷ In addition to this, there are some DENR regional offices that do not agree with some cases which the NBI would like to file.³⁰⁸

³⁰¹ *Id.*

³⁰² Baltazar Multi-Pillar FGD, *supra* note 294. *Note:* During the VALIDATION WORKSHOP, Agent Baltazar elaborated on the point system of the NBI. He explained that the system is both for the agent and the Division. Every month, the agent and the Division have a minimum number of points which they are required to obtain; and these points are based on the goals set for the Division or the number of successful prosecutions for an agent. Failure to meet the required number of points in a year could result in a case with the Internal Affairs of the NBI. *Note also:* There is also a similar policy being implemented by the Civil Service Commission, wherein environmental considerations are part of the assessment of a government institution.

³⁰³ Pecache NBI-EWPID Consultation, *supra* note 295.

³⁰⁴ *Id.*

³⁰⁵ *Id.*

³⁰⁶ Head Agent Sixto Comia, Comments during the NBI Environment and Wildlife Protection and Investigation Division (EWPID) Consultation Meeting, at the NBI-EWPID Office (Oct. 20, 2010) [hereinafter Comia NBI-EWPID Consultation].

³⁰⁷ *Note:* A request has been made to obtain documents and reports on the case mentioned. However, as of this writing, the documents have not been forwarded to the writers of this report.

³⁰⁸ Baltazar Multi-Pillar FGD, *supra* note 294.

Recommendations

The first recommendations given by the EWPID relate to their functions and operations. First, there is a need to train and equip their personnel with knowledge and skills regarding environmental laws. As part of their continuing learning process, an assessment of each operation to improve their procedures should be undertaken, which would then lessen the time it takes from arrest to the preparation of the needed documents for the filing of the cases.³⁰⁹ It was also suggested that the EWPID conduct its operations as a composite team, following perhaps similar procedures as in drug cases.³¹⁰

It was also suggested that the NBI should be given the power of general prosecution of cases so as not to rely on the prosecutors who have other cases to handle.³¹¹ Another NBI agent, however, cautions that this may be in conflict with the duties of the NBI as law enforcers.³¹² He points out that what is needed is the strengthening and improvement of the prosecution service, and perhaps the creation of a task force to complement the work of the NBI. Another suggestion was to give agents of the NBI, even those not part of EWPID, a basic course on environmental laws.³¹³

The agents also recommended the establishment of one agency that specializes in environmental crimes, or the creation of an Environmental Protection Agency. In support of this, the mobilization of the community, media, and other organizations to push for a comprehensive law on the environment should be undertaken. For them, this would help in the protection of the environment and the proper enforcement of environmental laws.³¹⁴

Other recommendations of the group included the need to inform the general public of the tasks and functions of the new division, the strengthening of the AMLA so that the money of the criminal syndicates involved in violations of environmental laws are confiscated,³¹⁵ and that the BJMP and the Bureau of Corrections lessen or prohibit the use of mobile phones by the inmates, as this is often used by them in jail to coordinate their criminal activities from behind bars.³¹⁶

³⁰⁹ Pecache NBI-EWPID Consultation, *supra* note 295.

³¹⁰ Comia NBI-EWPID Consultation, *supra* note 306. *Note:* This suggestion was also echoed by Tanggol Kalikasan during the NGO FGD. *Note also:* Under the Comprehensive Dangerous Drugs Act of 2002, the Philippine Drug Enforcement Agency (PDEA) shall invite members of the media and the local community in the conduct of anti-illegal drugs operations.

³¹¹ General Comments of the NBI-EWPID Consultation Group.

³¹² Mr. Marlou Baltazar, Comments during the VALIDATION WORKSHOP on Nov. 5, 2010 at the Fr. Bernas Center, Ateneo Professional Schools, Rockwell Center, Makati City [hereinafter Baltazar Validation Workshop].

³¹³ Baltazar Multi-Pillar FGD, *supra* note 294.

³¹⁴ General Comments of NBI-EWPID Consultation Group.

³¹⁵ Comia NBI-EWPID Consultation, *supra* note 306.

³¹⁶ *Id.* *Note:* During the VALIDATION WORKSHOP, S/Insp. Alvin Arabbi of the BJMP noted that the BJMP does not allow the use of mobile phones by the inmates. In fact, they punish the BJMP personnel who allow such a practice.

The Armed Forces of the Philippines

The AFP has no direct mandate with respect to ensuring access to Environmental Justice. However, there are civil military offices (CMO) which deal with environmental regulation.³¹⁷ Some examples of these activities include tree planting, Adopt a Mountain Project, and cloud seeding operations.³¹⁸ These non-military operations now receive regular funding, and are participated in by all the major units of the Armed Forces. As one AFP officer said, the AFP today is not simply engaged in war fighting and in protecting the country against external threats.³¹⁹ The participation of the AFP in enforcement operations is also requested when the PNP has no capability in the area where environmental laws are allegedly violated, due to the presence of heavily armed groups and areas where there are active insurgent activities.

Situationer

The AFP has no specific division that deals with environmental protection, although its civil military offices deal with environmental regulation. Unfortunately, the AFP does not include Environmental Justice in its priorities, as its mandate is still the defense of the State. However, the AFP does have a mission and directive to assist in nation building, which would include the protection of the environment and the natural resources.³²⁰

Working with Other Pillars

The thrust of the CMO is towards inter-agency coordination with other stakeholders to facilitate its various environmental programs.³²¹ The CMO and the AFP thus play a supporting role in the

³¹⁷ Col. Manuelito Usi, Comments during the VALIDATION WORKSHOP at the Fr. Bernas Center, Ateneo Professional Schools, Rockwell Center, Makati City (Nov. 5, 2010) [hereinafter Usi Validation Workshop].

³¹⁸ In a Consultation Meeting with the AFP Civil Military Operations Office (OJ7) held on Dec. 1, 2010, the following initiatives of the AFP on Climate Change were cited:

1. The Philippine Navy Adopt a Bay Program
2. Rehabilitation of the Pasig River
3. Zero Waste Management Program
4. Green Philippine Highways
5. International Coastal Clean-up
6. ASEAN Agreement on Trans-boundary Haze Pollution
7. AFP Environmental Defense Program
8. AFP Year-round Planting Activity
9. Establishment of Plant Nursery
10. National Clean-up and Green Month every September

³¹⁹ Col. Jesse Alvarez, Comments during the Armed Forces of the Philippines (AFP) OJ7 Consultation at the CMO J7 Headquarters, Camp Aguinaldo (Dec. 1, 2010) [hereinafter Alvarez AFP OJ7 Consultation].

³²⁰ *Id.*

³²¹ *Id.*

socioeconomic programs of the government. The AFP offers its assistance when other agencies of the government request its help.

The relation of the AFP with the other pillars is usually in the conduct of enforcement operations when their help is requested, most especially in anti-illegal logging activities. The AFP conducts operations with the PNP and the DENR when the latter does not have the capacity to operate on its own in some areas, as previously stated. This is largely due to the fact that the training of the police force is towards criminality, while that of the Armed Forces is to be foot soldiers, to search, hide, and destroy.³²² In violations of other environmental laws, the AFP coordinates with the DENR when their assistance is requested by the said agency.³²³

The AFP also works with the community in the protection of the environment. Some of these programs include: the Philippine Navy's "Adopt a Bay" Program, where mangrove reforestation projects were conducted and are being implemented;³²⁴ the MOA entered into between the AFP and the ABS-CBN Foundation, Inc. for the rehabilitation of the Pasig River;³²⁵ and the International Coastal Clean-up conducted in collaboration with the DENR, civil society, the academe, civic organizations, and other sectors.³²⁶

Policies, Strategies, and Programs

Although the AFP engages in environmental enforcement activities, it has no specific policies or programs which directly relate to access to Environmental Justice. Nonetheless, one Army officer cited the AFP's Mission Area 4, that is, to support national development, which could be used as a justification to support the armed forces' engagement in environmental law enforcement and development.³²⁷

As early as 1999, the AFP has recognized the need and the importance of protecting the environment. On June 2, 1999, a General Headquarters (GHQ) Letter Directive was issued for the AFP's continued support to the national government's mandate of defending the country and its people from all threats to their security, including threats to its environment, natural resources and patrimony.³²⁸ Some of the significant directives include the maintenance of environmentally friendly military facilities, mobilization of a "Green Army" or "*Sundalo Para sa Kalikasan*," and assistance in the activation of an Environment Disaster Quick Response Team.³²⁹

³²² Usi Validation Workshop, *supra* note 317.

³²³ *Note:* A request has been made to obtain documents and reports on the operations mentioned. However, as of this writing, the documents have not been forwarded to the writers of this report.

³²⁴ Philippine Navy Letter of Instruction No. 003 (Bakawan 2010) Jan. 9, 2010 (copy on file with the Research, Publications and Linkages Office of the Philippine Judicial Academy).

³²⁵ Memorandum of Agreement between AFP and ABS-CBN Foundation, Inc. (Aug. 24, 2009) (copy on file with the Research, Publications and Linkages Office of the Philippine Judicial Academy).

³²⁶ *See generally* Presidential Proclamation No. 470 (Sept. 15, 2003) (copy on file with the Research, Publications and Linkages Office of the Philippine Judicial Academy).

³²⁷ Usi Validation Workshop, *supra* note 317.

³²⁸ *See generally* General Headquarters Letter Directive issued on June 2, 1999 (copy on file with the Research, Publications and Linkages Office of the Philippine Judicial Academy).

³²⁹ *Id.*

Issues and Problems

One problem identified by an officer of the Philippine Army was that the implementation of Environmental Justice is in conflict with the primary mission of the Armed Forces.³³⁰ The personnel of the AFP are depleted when used by other agencies, and they are thus unable to fulfill their primary functions and mandate. He also adds that there is no regular training course on Environmental Justice, although there is a limited subject or module on the environment which focuses on geo-hazard issues.

On the other hand, an officer of the AFP-CMO says that when it comes to environmental protection, one problem that they encounter is the lack of resources to pursue the environmental programs and policies of the AFP.³³¹ He also adds that there is a problem when it comes to enforcement on the ground, as some violators are in connivance with politicians, or the other agencies themselves refuse to act on the case. He points out that when no prosecution of the violators takes place, then the efforts of the soldiers go to waste.

Recommendations

A recommendation that was given was the creation of a joint environmental committee to integrate the environmental programs of the government to avoid gaps in the law and its implementation.³³² This would also facilitate the uniform application of the environmental laws, and would make the activities integrated and result in coordinated operations. Another recommendation given was to formalize trainings to be conducted by other agencies to familiarize the Armed Forces on environmental laws and protection.³³³

Other recommendations include the creation of environmental protection desks in the major units of the AFP to address environmental issues and concerns, and to limit the role of the AFP as a supporting unit or as a security component of environmental enforcement operations; and not to deputize AFP personnel to shield the uniformed service from the temptation of engaging in illegal activities and from corruption.

2. The Prosecution Service

The second pillar of the justice system is the prosecution. Once the enforcement agencies have done their tasks, it is up to the prosecution to determine if cases are to be filed in the courts; and when there are cases filed, to see to it that they are properly prosecuted. In the Philippines, the prosecutors are under the National Prosecution Service (NPS) of the Department of Justice (DOJ). The DOJ derives its mandate primarily from the Administrative Code of 1987 (EO No. 292). It carries out this mandate through the Department Proper and the Department's attached agencies which are under the direct control and supervision of the Secretary of Justice.

Under EO No. 292, the DOJ is the government's principal law agency. As such, the DOJ serves as the government's prosecution arm and administers the government's criminal justice

³³⁰ Usi Validation Workshop, *supra* note 317.

³³¹ Alvarez AFP OJ7 Consultation, *supra* note 319.

³³² Usi Validation Workshop, *supra* note 317.

³³³ Alvarez AFP OJ7 Consultation, *supra* note 319.

system by investigating crimes, prosecuting offenders and overseeing the correctional system. The National Prosecution Service is the agency in charge of all prosecutors in the country. Its main task is to prosecute cases on behalf of the government.³³⁴

Situationer

The manual of the prosecutors mandates them to handle environmental cases, but not all are mandated to prosecute environmental cases. A special task force, which focused on illegal logging cases, was created before to handle environmental cases, but it was discontinued due to heavy case load of the prosecutors. The functions of the task force were thus transferred to the DENR.³³⁵

In an interview with Chief State Prosecutor Claro A. Arellano, he said that on a scale of 1-10, the level of awareness of prosecutors in general as regards environmental issues would be 5; but the case would be different with regard to the prosecutors in the regions since they are closer to where most environmental cases and violations take place.³³⁶

Working with Other Pillars

Coordination with other agencies by the NPS is done through the creation of a task force. In addition, there is information sharing, conduct of meetings and alliance building with various stakeholders.

Currently, there is no task force created for environmental cases, nor any MOA with other government agencies.³³⁷

Policies, Strategies, and Programs

The NPS currently does not have any policies and programs geared towards environmental measures. However, the NPS intends to orient the prosecutors on the new Rules of Procedure for Environmental Cases.

Issues and Problems

One problem that was identified was the absence of a MOA or a standard operating procedure with the DENR regarding the handling of environmental cases.³³⁸ This results in the poor coordination with the other agencies, especially since the DENR personnel and other enforcement agencies are in charge of gathering evidence to build up a case. In addition to this, cases are not built up properly and not enough evidence is given to the prosecutors, hence the cases are dismissed once they are filed in court.³³⁹

³³⁴ Department of Justice website <<http://www.doj.gov.ph/index.php?id1=2&id2=1&id3=0>> (last accessed on Dec. 3, 2010).

³³⁵ *Note:* A request has been made to obtain documents and reports on the task force mentioned. However, as of this writing, the documents have not been forwarded to the writers of this report.

³³⁶ Chief State Prosecutor Claro A. Arellano, Comment during the National Prosecution Service Consultation Meeting, at the DOJ Compound, Padre Faura, Manila (Oct. 20, 2010) [hereinafter Arellano NPS Consultation].

³³⁷ *Note:* This was confirmed by Atty. Kieng and Atty. Banaz of the DENR, and Atty. Villanueva of the PCG during the VALIDATION WORKSHOP.

³³⁸ Arellano NPS Consultation, *supra* note 329.

³³⁹ *Id.*

Recommendations

There is a clear need for an education and training program of the DOJ members and the prosecutors on environmental laws. However, financial assistance is needed for trainings of the prosecutors since the NPS has a limited budget. In relation to this, the system of gathering evidence for environmental cases should be improved, and a monitoring system of these cases should be set in place.

There should also be proper coordination with the DENR as the lead agency when it comes to environmental laws and protection. Cooperation of the law enforcers is needed to properly gather evidence for the filing of cases in court, since fiscals may argue that it is not their duty to gather evidence and to build up a case.³⁴⁰ In addition, there is also a need to coordinate with the LGUs as regards local ordinances that deal with environmental issues and problems.

3. The Philippine Court System

The Philippine Judiciary is a four-tiered court system consisting of the Supreme Court as the highest court of the land; the intermediate courts consisting of the Court of Appeals, Sandiganbayan, and Court of Tax Appeals; the second level courts totaling 972, which consist of 967 Regional Trials Courts and 5 Shari'a District Courts; and the first level courts comprising 106 Metropolitan Trial Courts, 212 Municipal Trial Courts in Cities, 387 Municipal Trial Courts, and 470 Municipal Circuit Trial Courts and 51 Shari'a Circuit Courts.³⁴¹

The importance of the Judiciary in the promotion and implementation of environmental laws cannot be underestimated.³⁴² As one author puts it, the court system is an integral part of environmental enforcement in the Philippines and has made many important contributions to the field.³⁴³ The efforts to green the Philippine courts began with the initiatives of former Chief Justice Reynato S. Puno. In April 2009, the Forum on Environmental Justice was attended by various stakeholders from around the country: from members of the Court to government officials; from members of the academe to community representatives of farmers and fisherfolk. In the opening speech of Chief Justice Puno, he said that, "[t]he objective [of the Forum] is to give more meaning to our Right to a Balanced and Healthful Ecology. This right forms the third generation of human rights, rights that are communal in character. With this Forum, we hope that your Judiciary shall be able to complete its task of safeguarding the circle of human rights of our people."³⁴⁴

³⁴⁰ Baltazar Validation Workshop, *supra* note 312.

³⁴¹ Data from the Court Management Office of the Supreme Court as of April 30, 2011.

³⁴² Chief Justice Renato Corona, The Judiciary's New Way Forward on Environmental Protection, Closing Remarks delivered during the Pilot Multi-Sectoral Capacity Building on Environmental Laws and Rules of Procedure for Environmental Cases at Puerto Princesa City, Palawan (June 23-25, 2010).

³⁴³ Dominic Nardi, *Issues, Concerns and Challenges in Environmental Adjudication in the Philippine Court System*, Virginia Law Review of Asian Studies 2007.

³⁴⁴ Chief Justice Reynato S. Puno, Environmental Justice: Establishing A Judicious Judicial Framework, Opening Speech delivered during the Forum on Environmental Justice at the University of the Cordilleras (April 16-17, 2009).

The other objectives of the Forum included the following:

1. To recommend to the Supreme Court actions it can take to protect and preserve the environment;
2. To validate the draft of the Rules of Procedure for Environmental Cases;
3. To discuss the need for a mechanism/structure that will address the need to monitor environmental cases or issues and monitor compliance thereat; and
4. To identify best practices of some agencies/units and replicate in a particular situation.³⁴⁵

The Forum ended with the signing of a MOA³⁴⁶ to commit to the protection of the environment. This paved the way for the enactment of the Rules of Procedure for Environmental Cases,³⁴⁷ which included remedies such as Environmental Protection, the Writ of Continuing Mandamus and the Writ of Kalikasan, deemed the first of its kind in the world.³⁴⁸

Subsequent to the 2009 event, a series of capacity building forums were held around the country, particularly in Palawan,³⁴⁹ Cebu,³⁵⁰ Cagayan de Oro, and most recently in Laoag City.³⁵¹

The efforts of the Supreme Court were not unnoticed by the international community. In the recently concluded ADB Asian Judges Symposium, the efforts of the Philippine Judiciary in greening the court were recognized.³⁵² In addition, the designation of the 117 green courts in the Philippines was cited as an example in several works that deal with Environmental Justice.³⁵³

³⁴⁵ Justice Velasco, Opening Remarks, Forum on Environmental Justice at the University of the Cordilleras (April 16-17, 2009).

³⁴⁶ MOA of the Forum on Environmental Justice (copy on file with the Research, Publications and Linkages Office of the Philippine Judicial Academy).

³⁴⁷ *Note*: The Rules became effective on April 29, 2010.

³⁴⁸ Mr. Renaud Meyer, Speech delivered during the Pilot Multi-Sectoral Capacity Building on Environmental Laws and Rules of Procedure for Environmental Cases at Puerto Princesa City, Palawan (June 23-25, 2010).

³⁴⁹ Pilot Multi-Sectoral Capacity Building on Environmental Laws and Rules of Procedure for Environmental Cases at Puerto Princesa City, Palawan (June 23-25, 2010).

³⁵⁰ Second Multi-Sectoral Capacity Building on Environmental Laws and Rules of Procedure for Environmental Cases at Lapu-Lapu City, Cebu (Aug. 11-13, 2010). This was in partnership also with the DENR.

³⁵¹ Third Multi-Sectoral Capacity Building on Environmental Laws and Rules of Procedure for Environmental Cases at Cagayan de Oro City (Sept. 15-17, 2010). This was in partnership also with the DENR and DILG.

³⁵² An article of the SC found in its website was quoted as saying: "ADB Senior Counsel Kala Malqueeny described the presentation of the Philippine panel as 'powerful.' The crowd was particularly interested in the promulgation of the *Rules of Procedure for Environmental Cases* which was presented by retired Chief Justice Puno. Delegates inquired as to how the Supreme Court of the Philippines accomplished the promulgation of the *Rules* despite the Court's judicial role in government."

³⁵³ GREEN BENCHES, *supra* note 27, at 1; GREENING JUSTICE, *supra* note 28.

An Assessment of the Courts

The assessment tool that was used to study the capacity of the courts was the framework designed by the authors of *Greening Justice*,³⁵⁴ a book which aims to help in the creation and improvement of environmental courts and tribunals around the world. The 12 “building blocks” represent a capacity building checklist for environmental courts and tribunals planning.³⁵⁵ The research of many diverse environmental courts and tribunals around the world made it possible to recommend best practices and to provide insights and direction for planners who are advocating the creation or reform of an environmental court.³⁵⁶ The framework presented consists of 12 distinct environmental courts and tribunals design decisions which serve as structural and operational building blocks that decision-makers should consider.³⁵⁷

The assessment of the Philippine Court System will be conducted by analyzing it on the basis of the 12 “building blocks” used by the abovementioned study.

1. Type of Forum

Both judicial and quasi-judicial bodies (i.e., PAB and MAB) are generally made available for environmental cases. The quasi-judicial agencies in the executive branch, although not considered as courts of justice, are empowered to hear and decide on cases provided by their respective mandates.³⁵⁸ For environmental cases, there are two main bodies that act as quasi-judicial bodies, the Pollution Adjudication Board and the Mines Adjudication Board. Both shall be discussed briefly under the assessment of the court system.

The DENR Pollution Adjudication Board was created through Section 19 of EO No. 192, Series of 1987.³⁵⁹ It is a quasi-judicial body that deals with the enforcement of environmental laws being administered by the Environmental Management Bureau.³⁶⁰ It

³⁵⁴ GREENING JUSTICE, *supra* note 28.

³⁵⁵ *Id.* at 21.

³⁵⁶ *Id.* at 20.

³⁵⁷ *Id.*

³⁵⁸ CPRM CONSULTANTS, INC. *supra* note 158, at 2-14.

³⁵⁹ Section 19 of EO No. 192, Series of 1987 states that:

Sec. 19. Pollution Adjudication Board. — There is hereby created a Pollution Adjudication Board under the Office of the Secretary. The Board shall be composed of the Secretary as Chairman, two (2) Undersecretaries as may be designated by the Secretary, the Director of Environmental Management, and three (3) others to be designated by the Secretary as members. The Board shall assume the powers and functions of the Commission/Commissioners of the National Pollution Control Commission with respect to the adjudication of pollution cases under Republic Act 3931 and Presidential Decree No. 984, particularly with respect to Section 6 letters e, f, g, j, k, and p of PD No. 984. The Environmental Management Bureau shall serve as the Secretariat of the Board. These powers and functions may be delegated to the regional officers of the Department in accordance with rules and regulations to be promulgated by the Board.

³⁶⁰ These laws include: Clean Air Act, Clean Water Act, Solid Waste Management Act, Hazardous Wastes Act, and the Philippine Environmental Impact Statement System.

also imposes administrative fines, penalties and sanctions for violations of environmental laws.³⁶¹

Under RA No. 7942 or the Philippine Mining Act of 1995, the settlement of conflicts³⁶² will be administered by a panel of arbitrators³⁶³ and by the Mines Adjudication Board.³⁶⁴

In 2008, the Supreme Court designated 117 green courts nationwide to particularly handle environmental cases.³⁶⁵ With the adoption of the new Rules of Procedure for Environmental Cases, any court is now allowed to take cognizance of environmental cases and disputes.³⁶⁶

2. Legal Jurisdiction

Although the Rules of Procedure for Environmental Cases identify particular laws that are covered by the courts,³⁶⁷ all environmental cases are under the court's jurisdiction as the same Rules cover "other existing laws that relate to the conservation, development, preservation, protection and utilization of the environment and natural resources." With respect to issues on overlapping jurisdictions between agencies and units of government, these are oftentimes resolved through MOAs or through the longer process of legislative reform.³⁶⁸

³⁶¹ See Atty. Michael Drake Matias, Updates on Environmental Policies, Rules and Regulations, Presentation during the Second National Environmental Law Enforcers Summit and Orientation Workshop on Environmental Laws at Clark Freeport, Pampanga (Nov. 18-20, 2010).

³⁶² These conflicts involved the following, as enumerated under Section 77 of RA No. 7942:

- a. Disputes involving rights to mining areas;
- b. Disputes involving mineral agreements or permit;
- c. Disputes involving surface owners, occupants and claimholders/concessionaires; and
- d. Disputes pending before the Bureau and the Department at the date of the effectivity of this Act.

³⁶³ See Philippine Mining Act of 1995, § 77.

³⁶⁴ See Philippine Mining Act of 1995, §§ 78-79.

³⁶⁵ See Supreme Court AO No. 23-2008.

³⁶⁶ See *generally* RULES OF PROCEDURE FOR ENVIRONMENTAL CASES.

³⁶⁷ See RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 1, § 2.

³⁶⁸ See *generally* ADB ENVIRONMENTAL ANALYSIS, *supra* note 77.

3. Environmental Court and Tribunal (ECT) Level

Cases brought before the first level courts are allowed to be brought up on Appeal up to the Supreme Court. In addition, cases decided by administrative tribunals or agencies may also be appealed to the judiciary and eventually up to the Supreme Court.³⁶⁹

4. Geographic Area

The jurisdiction of the courts and its coverage is from the municipal level, in the Municipal Trial Courts and the Regional Trial Courts; up to the national level, in the Court of Appeals and the Supreme Court. Thus, geographically speaking, all environmental issues and cases within the territorial jurisdiction of the Philippines may be brought before the Philippine Court System.

5. Case Volume

A 2008 project of the Haribon Foundation and Office of the Court Administrator of the Supreme Court created a databank of environmental cases in the various courts around the country. This paved the way for the monitoring of environmental cases throughout the country. Interestingly, most of the cases filed involved violations of the Fisheries Code, the Forestry Code, the Mining Act and the wildlife laws.³⁷⁰

6. Standing

In the internationally celebrated case of *Oposa v. Factoran*,³⁷¹ the Supreme Court gave standing to the minors and their parents to represent generations yet unborn on the basis of intergenerational responsibility. This was an unprecedented decision which expanded the notion of standing in environmental cases. Under the new Rules of Procedure for Environmental Cases, any person may be a party to an environmental case,³⁷² and citizen suits are allowed.³⁷³ However, under the Writ of *Kalikasan*, two or more cities or municipalities must be affected before the writ may be issued.³⁷⁴

7. Costs

The cost of litigating and going to court in the Philippines has been criticized as being too expensive due to the amount needed to file the case, hire lawyers, and ensure that there

³⁶⁹ For example, the Supreme Court has consistently ruled that the cases decided by the PAB are appealable to the Court of Appeals through Rule 43, and eventually to the SC via Rule 45. See *Shell Philippines v. Jalos, et al.*, G.R. No. 179918, Sept. 8, 2010, where the Court said that, "In sum, while the complaint in this case sufficiently alleges a cause of action, the same must be filed with the PAB, which is the government agency tasked to adjudicate pollution-related cases. Shell is not an agent of the State and may thus be sued before that body for any damages caused by its operations. The parties may appeal the PAB's decision to the CA. But pending prior determination by the PAB, courts cannot take cognizance of the complaint."

³⁷⁰ See generally Databank of Environmental Cases (on file with the Court Management Office of the Supreme Court).

³⁷¹ 224 SCRA 792 (1993).

³⁷² RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 2, § 4.

³⁷³ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 2, § 5.

³⁷⁴ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7, § 1.

are provisions for the witnesses.³⁷⁵ Under the new Rules of Procedure for Environmental Cases, payment of filing and other legal fees are deferred until after judgment has been issued, or is all together excused if one is to litigate as an indigent.³⁷⁶

8. Access to Scientific and Technical Expertise

The Supreme Court has ruled in several cases that a determination by the DENR, in particular by the EMB-PAB, of the presence of pollution is needed before the courts can make a judgment. The courts therefore rely on the technical and scientific expertise of the other branches of government before deciding a case.³⁷⁷ In addition, the Rules of Court allow the presentation of expert witnesses on technical and scientific matters, which could thus be used in environmental cases as well.³⁷⁸

9. ADR

Mediation and alternative modes of settling disputes is provided for under the new Rules of Procedure for Environmental Cases.³⁷⁹ The court also implemented measures to encourage parties to amicably settle their disputes such as the creation of the Philippine Mediation Center and the imposition of Court-Annexed Mediation.

10. Competence of Judges and Decision-makers

Judges are in need of greater awareness and understanding of environmental issues. However, the SC and the judiciary is in the process of training judges and other court personnel on environmental issues and as regards the new Rules of Procedure. In particular, capacity building trainings for judges have been held around the country.³⁸⁰

11. Case Management

The Court Management Office under the Office of the Court Administrator is in charge of establishing a case monitoring system. Through a joint project with the Haribon Foundation, a monitoring system and databank of environmental cases filed in all courts around the country has been established.

12. Enforcement Tools and Remedies

The new Rules of Procedure provide the following remedies which may be issued by the courts in relation to environmental cases: Temporary Environment Protection Order,³⁸¹

³⁷⁵ See generally ALG AND SWS, *supra* note 75.

³⁷⁶ See RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 2, § 12.

³⁷⁷ General Comments during the Environmental Management Bureau Consultation Meeting, at the EMB Office, DENR Compound, Quezon City (Oct. 29, 2010)

³⁷⁸ Atty. Rhia Muhi, Comments during the VALIDATION WORKSHOP, held on Nov. 5, 2010 at the Fr. Bernas Center, Ateneo Professional Schools, Rockwell Center, Makati City [hereinafter Muhi Validation Workshop].

³⁷⁹ See RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 3, § 3.

³⁸⁰ Note: Capacity building trainings have been held in Palawan, Cebu, Cagayan de Oro, and Laoag as of this writing.

³⁸¹ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 2, § 8.

Environment Protection Order;³⁸² Writ of Continuing Mandamus;³⁸³ and the Writ of Kalikasan.³⁸⁴

Recommendations

The trainings and capacity building seminars for the judges and court personnel should be continued and expanded to increase the awareness and knowledge of the court in environmental issues.³⁸⁵ This may then be bannered as a flagship program to be widely implemented. In addition, there is a need to strengthen and improve coordination with the other agencies and branches of the government. Another recommendation is to ensure that the environmental cases are properly supported by evidence, and that mediation and ADR is undertaken.³⁸⁶

The Alternative Law Groups (ALG), in its Institutional Framework for Judicial Reform, identified the following key reform issues to address problems in the judiciary and the justice system:

1. Empowering the marginalized groups;
2. Legal education in the law schools, the Bar and the Bench on social justice issues;
3. Policy advocacy;
4. Strengthening ADR mechanisms;
5. Transparency and accountability of the judiciary; and
6. Institutional capacity building.³⁸⁷

Another publication of the ALG gave the following recommendations for the courts and the justice system, specifically on environmental matters and issues:

1. There must be special courts for environment-related cases;
2. There should be continuous environmental education for judges and other key players;
3. Administrative penalties must complement the filing of cases in court;
4. Coastal law enforcement must be adopted by local government units within a certain district to address common coastal issues;

³⁸² RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 5, § 3.

³⁸³ *See generally* RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 8.

³⁸⁴ *See generally* RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7.

³⁸⁵ Atty. Sedfrey Candelaria, Philippine Judicial Academy, Comments during the VALIDATION WORKSHOP at the Fr. Bernas Center, Ateneo Professional Schools, Rockwell Center, Makati City (Nov. 5, 2010) [hereinafter Candelaria Validation Workshop].

³⁸⁶ *Id.*

³⁸⁷ Alternative Law Groups, *Institutional Framework for Judicial Reform*, 4-5 <<http://www.alternativelawgroups.org/upimages/ALG%20Framework%20for%20Judicial%20Reform.pdf>> [hereinafter ALG Institutional Framework] (last accessed on Dec. 3, 2010).

5. Environmental crimes must be recognized as affecting private offended parties and this should allow communities to secure the services of counsel to prosecute environmental offenses;
6. There must be deputization of prosecutors for environmental crimes especially for areas that do not have prosecutors;
7. Local government units must allocate a portion of their internal revenue allotment for the prosecution of environmental crimes; and
8. Fines collected for the commission of environmental crimes should form a “litigation fund” for the use of subsequent prosecution of similar cases.³⁸⁸

4. Corrections

The Bureau of Jail Management and Penology

As one of the five pillars of the criminal justice system, the Bureau of Jail Management and Penology (BJMP) was created to address the growing concern of jail management and penology problem, in partnership with the Bureau of Corrections. Primarily, its clients are inmates accused before a court who are temporarily confined in such jails while undergoing investigation, awaiting final judgment, and those who are serving sentence promulgated by the court, which last for three years and below. As provided for under RA No. 6975, the Jail Bureau is mandated to take operational and administrative control over all city, district and municipal jails.³⁸⁹

The Bureau has four major areas of its rehabilitation program, namely: Livelihood Projects, Educational and Vocational Training, Recreation and Sports, and Religious/ Spiritual Activities. These are continuously implemented to eliminate the offenders’ pattern of criminal behavior and to reform them to become law-abiding and productive citizens.³⁹⁰ In addition to this, the BJMP is implementing other areas of rehabilitation through the Therapeutic Behavioral Community Modality Program, and the inmates’ Welfare and Development Program that addresses their rehabilitation.³⁹¹

Situationer

The programs of the BJMP do not articulate ensuring access to Environmental Justice. Its programs related to the environment deal with the aspect of environmental management of the jails and the promotion of the social responsibility of environmental protection. Even on this aspect, however, the environment-related programs are a prerogative of the head of the department. There is currently no division which clearly deals with environmental cases and issues.

Working with Other Pillars

Coordination is done mainly with the judicial pillar from which the commitment orders for detainees originate. The BJMP performs a ministerial duty, complying with the courts’ order to commit or

³⁸⁸ Alternative Law Groups, *From the Grassroots: the Justice Reform Agenda for the Poor and Marginalized*, 28-29 (2004) [hereinafter ALG Justice Reform Agenda].

³⁸⁹ Bureau of Jail Management and Penology website <www.bjmp.gov.ph> (last accessed on Nov. 15, 2010).

³⁹⁰ BJMP website, www.bjmp.gov.ph (last accessed on Nov. 15, 2010).

³⁹¹ S/Insp. Alvin Arabbi, Comments during the VALIDATION WORKSHOP, held at the Fr. Bernas Center, Ateneo Professional Schools, Rockwell Center, Makati City (Nov. 5, 2010) [hereinafter Arabbi Validation Workshop].

release an inmate. In addition to this, the BJMP also coordinates with other agencies such as the Public Attorney's Office for the legal services and needs of their inmates.

Policies, Strategies, and Programs

The BJMP currently has no policies and programs that specifically deal with access to Environmental Justice.

Issues and Problems

A problem cited by an official of the BJMP is the congestion of the jails which makes it difficult for the Bureau to perform its mandate and functions.³⁹²

Recommendations

One recommendation given by an official of the BJMP is to integrate the BJMP and Bureau of Corrections to improve the coordination as regards jail management and penology.³⁹³ Another recommendation is to use the Sourcebook of this study as a training material for their paralegal officers and at the same time have resource persons available to give trainings and seminars for the BJMP officials.³⁹⁴

5. The Community

The last and the biggest pillar of the justice system is the community. It is composed of the citizens and their non-governmental organizations (NGOs), which include civil society organizations (CSOs), and people's organizations (POs); the private enterprises or businesses and industries; and the local government units or LGUs. The discussion of this pillar will be divided into the three main groups above. It is significant to note that it is only in the Philippines that the community is formally recognized as a pillar of the criminal justice system, although the definition and role of the community pillar under the system has somehow not been clearly defined.³⁹⁵

Citizens and the NGOs

The citizens are perhaps the most affected by environmental degradation. They bear the brunt of damage done to the environment. On the other hand, NGOs as advocacy groups play a major role in bringing environmental benefits to communities, with the NGO communities and people's organizations in the Philippines being among the most developed in Asia and the Pacific.³⁹⁶ Local environment NGOs have become more active since the 1980s, helping to shape environmental policy in agrarian reform and against illegal logging and environmental damage from irresponsible mining, with some having become successful innovators.³⁹⁷

³⁹² *Id.*

³⁹³ *Id.*

³⁹⁴ *Id.*

³⁹⁵ CPRM CONSULTANTS, INC. *supra* note 158, at 2-7, citing Menez-Zafra.

³⁹⁶ ADB ENVIRONMENTAL ANALYSIS, *supra* note 90, at 90.

³⁹⁷ *Id.*

Citizens have an important role in the management of the environment, and each one has a role in environmental protection.³⁹⁸ As one officer of an NGO puts it, regardless of one's position or status in life, he or she has a huge stake in the protection of our environment.³⁹⁹ Thus, the citizens and the community as a whole are at the forefront of the fight to protect the environment and to stop its damage and degradation.

Situationer

Consultations with various communities and groups will lead one to conclude that every person may perhaps have a different definition, concept, or idea of Environmental Justice. Perhaps one group may have their own definition of what Environmental Justice is, but a member may look at the term differently and have his or her own understanding. Below are some of the definitions of Environmental Justice encountered during the course of the study:

1. It is care for the environment; it is justice for both the people and the environment.⁴⁰⁰
2. It is the integrity of creation.⁴⁰¹
3. It is an abstract concept for most members, but for them it is going back to the way things were, before all the pollution and environmental destruction.⁴⁰²
4. It is respect, care, and stewardship for the global commons which is for humankind and seeing the environment as God's gift to humankind; justice is humankind's search for equality, dignity, and respect in law; it is bringing into harmony both the environment and justice.⁴⁰³
5. It is to serve the regular people, "the least common denominator in society."⁴⁰⁴
6. It is giving people what is due; it is justice for the people.⁴⁰⁵
7. It is the enjoyment of the right to a decent living, right to food, water, and freedom from hunger.⁴⁰⁶

³⁹⁸ Muhi Validation Workshop, *supra* note 378.

³⁹⁹ Atty. Asis Perez, *supra* note 41.

⁴⁰⁰ Ms. Inday Kaurkampf, Comments during the NGO Focus Group Discussion held at Silliman University (Oct. 16, 2010).

⁴⁰¹ Ms. Elanor Zea, Comments during the NGO Focus Group Discussion held at Silliman University (Oct. 16, 2010) [hereinafter Zea Silliman FGD].

⁴⁰² Mr. Paeng Lopez, Global Alliance for Incinerator Alternatives (GAIA)/Ecowaste, Comments during the NGO Focus Group Discussion at the Environmental Science Institute, Quezon City (Oct. 22, 2010) [hereinafter Lopez NGO FGD].

⁴⁰³ Casey NGO FGD, *supra* note 184.

⁴⁰⁴ Mamicpic Silliman FGD, *supra* note 215.

⁴⁰⁵ Mr. Edwin Arnando, DAR, Comments during the NGO Focus Group Discussion held at Silliman University (Oct. 16, 2010) [hereinafter Arnando Silliman FGD].

⁴⁰⁶ Atty. Rhia Muhi, Comments during the NGO Focus Group Discussion at the Environmental Science Institute, Quezon City (Oct. 22, 2010) [hereinafter Muhi NGO FGD].

8. It is the remedies available in the courts; the highest form of justice is to seek remedy from the courts.⁴⁰⁷
9. It is the environment supporting the people, a mutually beneficial and co-existing relationship.⁴⁰⁸
10. It is the right of marginal fishermen to resources in municipal waters.⁴⁰⁹
11. *Malaya at makatuwirang pagtamasa sa pakinabang na hatid ng likas na yaman na may pagkiling sa mga maliliit na sektor; para sa pag-unlad.*⁴¹⁰
12. It is citizen empowerment.⁴¹¹
13. It is going beyond the judicial system; it's a big spectrum of ideas.⁴¹²
14. It is the NPA and justice for the eco-martyrs who were killed and did not receive any justice from the government.⁴¹³

The list above is not an exhaustive list of the definitions of Environmental Justice, rather, it is meant to show that people from different communities fighting for different causes and issues have their own conception of Environmental Justice. From these experiences, one can draw the various issues which the justice system tries to address, and puts in perspective the problems which the efforts to green the courts are trying to address.

The Continuing Fight for Justice: Experiences from the Ground

To understand the level of awareness of the community in terms of Environmental Justice and environmental rights and remedies, it is essential to look at the experiences of the people on the ground. Oftentimes, these issues are not brought to the courts. The following are examples and stories of people, groups, and communities that have, in one way or another, fought for or are advocating environmental rights and issues.

The residents of Dumaguete City, in a discussion held in Silliman University, recounted their experience in the Tañon Strait Case. The people of Negros Oriental and Cebu were opposed to oil drilling explorations to be conducted by a Japanese company in the said strait, which has one of the richest marine biodiversity in the world. The people filed a complaint against the proposed

⁴⁰⁷ Atty. Gary Guido Tabios, PAO, Comments during the NGO Focus Group Discussion held at Silliman University (Oct. 16, 2010) [hereinafter Tabios Silliman FGD].

⁴⁰⁸ Mr. Noriel Capulong, Comments during the NGO Focus Group Discussion held at Silliman University (Oct. 16, 2010).

⁴⁰⁹ Mr. Ruben Navales, Comments during the NGO Focus Group Discussion at the Environmental Science Institute, Quezon City (Oct. 22, 2010) [hereinafter Navales NGO FGD].

⁴¹⁰ Pangan NGO FGD, *supra* note 217.

⁴¹¹ Atty. Galahad Pe Benito, Comments during the NGO Focus Group Discussion at the Environmental Science Institute, Quezon City (Oct. 22, 2010).

⁴¹² Mr. Albert Banico, Comments during the NGO Focus Group Discussion at the Environmental Science Institute, Quezon City (Oct. 22, 2010) [hereinafter Banico NGO FGD].

⁴¹³ Cariño Silliman FGD, *supra* note 214.

oil explorations. One interesting point is that the case was also filed on behalf of the dolphins in the Tañon Strait. When the case was set to be heard in court, the Japanese company decided to discontinue the project, and the case was dismissed. The people in Dumaguete City saw this as a big victory. Here, the courts showed that it was at least ready to hear the side of the people.⁴¹⁴

However, the people of Dumaguete City were not successful in another case. They were opposed to the reclamation being done by the Philippine Ports Authority (PPA) in the bay area of Dumaguete City.⁴¹⁵ They alleged that the reclamation project should first have acquired an Environmental Compliance Certificate (ECC), hence, the project should be stopped. The PPA, however, claimed it was exempt from procuring an ECC. A case against PPA was filed in Manila, but the people lost because the courts ruled that the project was exempt. They said that PPA did not procure an ECC because they implemented the reclamation in a different manner: they made the project in phases, making each reclamation activity appear to be different projects; and the land area that was reclaimed during each phase was below the minimum area needed to be covered by an ECC requirement.⁴¹⁶

Next we have the experiences of Haribon Foundation in Zambales.⁴¹⁷ Their community organizer notes that the main environmental problems in the region relate to mining and illegal logging.⁴¹⁸ The local community is organized as a group; however they are not organized when it comes to enforcement in their areas. The community claims that they oftentimes report illegal activities to the DENR but do not know if the Department can stop the violations. The local community feels as though environmental laws are not enforced at the local level and that little or no support is given by the LGUs to the local communities, especially in the far-flung *sitios* and villages.

The Sagip Sierra Madre's activities in Bulacan and Rizal deal mostly with the issue of illegal logging and mining.⁴¹⁹ A member of the group narrates that in Bulacan, it seems as though there is a lack of enforcement of environmental laws since environmental violations are rampant.⁴²⁰

⁴¹⁴ *Note:* For background on the case, see Kaira Zoe K. Albuero and Aloysius L. Cañete, *Saving Tañon Strait: Social Movements, Discourses, and the Politics of Environmentalism in Central Visayas, Philippines*, Paper presented at the Philippine Sociological Society National Conference on Natures in Transition: Sociologizing the Environment, Oct. 15-16, 2010, Silliman University, Dumaguete City, Negros Oriental (copy on file with PHILJA).

⁴¹⁵ See Silliman University Office of Information and Publications, Position Paper on Port Development: Is Silliman Opposing Development or Proposing to do Development Right?, Oct. 12, 2007.

⁴¹⁶ Ms. Rebecca Capulong, Comments during the NGO Focus Group Discussion held at Silliman University (Oct. 16, 2010). *Note:* The reaction of the PPA to this case has not been obtained as of this writing.

⁴¹⁷ Ms. Elvie Arnuco, Haribon, Comments during the NGO Focus Group Discussion at the Environmental Science Institute, Quezon City (Oct. 22, 2010) [hereinafter Arnuco NGO FGD].

⁴¹⁸ *Note:* A request has been made to obtain documents and reports on the case mentioned. However, as of this writing, the documents have not been forwarded to the writers of this report.

⁴¹⁹ Francisco NGO FGD, *supra* note 216.

⁴²⁰ *Note:* A request has been made to obtain documents and reports on the case mentioned. However, as of this writing, the documents have not been forwarded to the writers of this report.

On the part of groups like Global Alliance for Incinerator Alternatives (GAIA) and Ecowaste Coalition,⁴²¹ their representative pointed out that their members do not want to go to the courts to fight for their advocacy. They prefer to do rallies and mobilizations, and involve the mass media, because they feel that court processes take too long and their success may be uncertain. He cited as an example a case which their groups have filed and have been pending in the Office of the Ombudsman for a decade.⁴²² Their main advocacy is waste management. They claim that the LGUs do not give enough support to the local communities to ensure the reduction of waste; in fact, they are oftentimes the ones violating the laws, most especially the Solid Waste Management Act, since open dumpsites are still widely used and operated. He adds that it is frustrating to seek help from the government agencies, because they will usually do a “volleyball” of responsibilities, referring the group to another agency who they say has the capability or the jurisdiction to act on their request.⁴²³

The Alyansa Tigil Mina is another NGO working to protect the environment. As the group’s name suggests, they advocate for a mining policy which focuses on planning the use of minerals for the needs of the people and the Philippines and not for multinational companies;⁴²⁴ and in the process, they try to find justice in the complex mining industry. The group criticizes past administrations for its mining policy which seems to favor the multinational companies and foreign investors, and hope that the current Aquino administration will come up with a mining industry more favorable to the Filipino people. One member of the group notes that the mining issue is not seen as a concern by most Filipinos because the people in the cities are oblivious to what is happening in the uplands.⁴²⁵ However, they expressed hope in the fact that there are more LGUs opposed to indiscriminate and destructive mining in their local communities.⁴²⁶

Tanggol Kalikasan is another NGO working with the community to protect the environment. The group is active in the area of enforcement, adopting a multi-agency and multi-sectoral approach by creating task forces to gather, substantiate, and identify evidence for cases to be filed against violators.⁴²⁷ Although they admit there are lots of problems in terms of enforcement of the laws and the prosecution of violators, the group has cited numerous experiences of their successful efforts to protect the environment.⁴²⁸

⁴²¹ Lopez NGO FGD, *supra* note 402.

⁴²² *Note:* A request has been made to obtain documents and reports on the Ombudsman case mentioned. However, as of this writing, the documents have not been forwarded to the writers of this report.

⁴²³ Lopez NGO FGD, *supra* note 402.

⁴²⁴ Casey NGO FGD, *supra* note 184.

⁴²⁵ *Id.*

⁴²⁶ The group cited 17 LGUs opposed to mining, which include the Mindoro provinces; Boac, Catanduanes, Samar, Capiz, and Iloilo.

⁴²⁷ Ms. Vida Gonzalez, Tanggol Kalikasan, Comments during the NGO Focus Group Discussion at the Environmental Science Institute, Quezon City (Oct. 22, 2010)[hereinafter Gonzales NGO FGD].

⁴²⁸ The groups cited the following: stopping of dynamite fishing in Lamon Bay in Tayabas, Quezon; their Sierra Madre Task Force has had gains in curbing illegal logging; and successful efforts in saving endangered species in the Taal Lake area. See Listing of Cases from Tanggol Kalikasan.

The religious sector has also been engaged in the fight to protect the environment. Two priests of the Orders of the Friars Minor (OFM) shared their stories and experiences on addressing the issues of mining and illegal logging.⁴²⁹ Their advocacy against mining in Paenaan, Rizal, has been successful, yet the problem still persists. In 2006, the OFM and the community were able to stop a P200 million mining project in the area.⁴³⁰ However, a new project has been approved and there is an ongoing opposition by the OFM and the community. In the provinces of Isabela, Aurora, and Quezon, the advocacy of the OFM priests and the community they work with is against illegal logging and the destruction of the forests. Members of the OFM and the community have been deputized by the DENR as environment and natural resources officers.⁴³¹

Issues and Problems

One problem identified was that, at the grassroots level, the presence of agencies under the pillars of the justice system is not felt by the citizenry. Oftentimes there are no police, no lawyer, no DENR; and only the citizens are there to enforce the laws.⁴³² The people from far flung *sitio* do not have the capacity to communicate with the lawyers in the cities. As an example, in Zambales, the communities at the barangay and *sitio* levels need to be educated on their environmental rights because they do not know how to get them involved with environmental protection in their areas.⁴³³

Although the country has a plethora of environmental laws, a problem cited was that these are not accessible to everyone.⁴³⁴ One NGO member even said that the laws are simply made to conform to the wishes of those in power.⁴³⁵ In particular, the courts are not accessible to everyone, especially to the regular people; environmental laws are vague to the courts, not in the mainstream thinking of judges and lawyers.⁴³⁶ Add to this is the fact that funds are needed to pursue cases in court, and the people do not have the resources to go to the courts, which causes some groups and sectors to be disheartened with the legal and judicial system.⁴³⁷ A related problem is the lack of legal knowledge of affected communities and the difficulty of understanding the legal aspects of the issue.⁴³⁸ There is also a general lack of environmental lawyers since it is not a lucrative career.⁴³⁹

⁴²⁹ Consultation meeting at the OFM Provincial House (Nov. 26, 2010).

⁴³⁰ Fr. Efren Jimenez, *How We Stopped a P200 Million Mining/Quarry Venture at Paenaan* (2006).

⁴³¹ *See generally* DENR Special Order, Deputization of Bishop Joseph Nacua, Diocese of Ilagan, Isabela, et al., as Deputy Environment and Natural Resources Officer, 2009.

⁴³² Carino Silliman FGD, *supra* note 214.

⁴³³ Arnuco NGO FGD, *supra* note 417.

⁴³⁴ Anatoly Karpov Buss, Comments during the NGO Focus Group Discussion held at Silliman University (Oct. 16, 2010).

⁴³⁵ Francisco NGO FGD, *supra* note 216.

⁴³⁶ Mamicpic Silliman FGD, *supra* note 215.

⁴³⁷ Banico NGO FGD, *supra* note 412.

⁴³⁸ Mr. Pablo Rosales, Comments during the NGO Focus Group Discussion at the Environmental Science Institute, Quezon City (Oct. 22, 2010) [hereinafter Rosales NGO FGD].

⁴³⁹ Tabios Silliman FGD, *supra* note 407.

Another major issue is the presence of political dynasties and violators with political backing.⁴⁴⁰ Violations are done with impunity because of this;⁴⁴¹ the strongman in the area is immune from prosecution,⁴⁴² and the people cannot do anything because they are against the strong and the powerful.⁴⁴³ In addition, the violators are usually armed and the people cannot do anything and have no capacity to fend them off. Without the help of the police or other law enforcement agencies, they are helpless.

One other issue noted was that the government officials who fail to do their tasks are not held responsible. As an example, there are still numerous illegal dumpsites even though the law disallows it.⁴⁴⁴ Even the NBI has asked what action can be taken against these public officials.⁴⁴⁵

Recommendations

The first group of recommendations relate to the courts and to the judicial system. Judges and the courts should be empowered with the knowledge and information regarding environmental laws and the ability to decide swiftly on environmental cases. Judges must ensure a speedy resolution of environmental cases, and their discretion should be used to “let the ax fall” when needed.⁴⁴⁶ The training of judges and fiscals on the new Rules and on environmental issues should be done,⁴⁴⁷ even going to the extent of having social consciousness activities for our judges.⁴⁴⁸

In addition, judges should be more sensitive to the conditions and culture of the low-income people and communities they serve if access to the courts is to be improved.⁴⁴⁹ They should also move to improve their image and integrity to increase the trust of the people in the justice system.⁴⁵⁰ More support to single sala courts should be given, especially to areas where most environmental cases and violations take place.⁴⁵¹ In addition, judges should be independent, and no politics should be involved in choosing judges. The justice system should also show a clear-

⁴⁴⁰ *Note:* During the First National Environmental Law Enforcement Summit, Atty. Asis Perez, in his presentation during the Palawan capacity building seminar, said that an issue identified was the presence of strong political intervention, which can either be a positive or a negative factor.

⁴⁴¹ Cariño Silliman FGD, *supra* note 214.

⁴⁴² Tabios Silliman FGD, *supra* note 407.

⁴⁴³ Arnuco NGO FGD, *supra* note 417.

⁴⁴⁴ Francisco NGO FGD, *supra* note 216.

⁴⁴⁵ Pecache NBI-EWPID Consultation, *supra* note 295.

⁴⁴⁶ Tabios Silliman FGD, *supra* note 407.

⁴⁴⁷ *Id. Note:* As previously mentioned, the SC through the PHILJA has been engaging in multi-sectoral capacity building seminars for our judges to particularly address this issue.

⁴⁴⁸ Muhi NGO FGD, *supra* note 406.

⁴⁴⁹ Tabios Silliman FGD, *supra* note 407.

⁴⁵⁰ Arnando Silliman FGD, *supra* note 405.

⁴⁵¹ Tabios Silliman FGD, *supra* note 407.

cut avenue of accessibility by which people can go to the courts, and in turn the CSOs will respond by relying on the system to resolve environmental cases and issues.⁴⁵²

There were also recommendations given on what the community itself can do to improve access to Environmental Justice. It was suggested that the NGOs and those advocating for environmental rights and protection should “walk the talk,” living environmentally friendly lifestyles and putting into action their advocacies.⁴⁵³ One NGO suggests the need for the community itself to learn about the legal process to make it easy for them to understand the law and not simply to rely on the NGOs, who may also have difficulty in understanding the rules and the law.⁴⁵⁴ Another NGO recommends that a multi-sectoral approach should be emphasized so that the implementation of the laws will be successful.⁴⁵⁵ One lawyer suggests that NGOs should focus on what they currently have rather than looking at what the problems are: the NGOs should accept what’s lacking and should then encourage the community to join and to help.⁴⁵⁶

Another recommendation includes translating the Rules of Procedure for Environmental Cases and other environmental issuances into the vernacular.⁴⁵⁷ In relation to this, environmental laws should be properly communicated to the people, simply because the people should know.⁴⁵⁸ Information dissemination to the general public on the new Rules and remedies available would perhaps improve the accessibility to the courts.⁴⁵⁹

Other recommendations include having a multi-stakeholder approach in addressing environmental problems,⁴⁶⁰ political issues at the grassroots should be addressed,⁴⁶¹ law schools should move to produce green lawyers,⁴⁶² and the use of media to spread environmental information and in turn to strengthen media advocacy.⁴⁶³

⁴⁵² Mamicpic Silliman FGD, *supra* note 215.

⁴⁵³ Zea Silliman FGD, *supra* note 401.

⁴⁵⁴ Rosales NGO FGD, *supra* note 438.

⁴⁵⁵ Gonzales NGO FGD, *supra* note 427.

⁴⁵⁶ Atty. Ronaldo Gutierrez, Upholding Life and Nature (ULAN), Comments during the NGO Focus Group Discussion at the Environmental Science Institute, Quezon City (Oct. 22, 2010).

⁴⁵⁷ Lopez NGO FGD, *supra* note 402.

⁴⁵⁸ Atty. Asis Perez *supra* note 41.

⁴⁵⁹ Kieng Validation Workshop, *supra* note 204.

⁴⁶⁰ General Comment of the NGO FGD Group.

⁴⁶¹ Cariño Silliman FGD, *supra* note 214.

⁴⁶² Ms. Ester Sanisa Wendler, Comments during the NGO Focus Group Discussion held at Silliman University (Oct. 16, 2010); and Leones EMB Consultation, *supra* note 221. *Note:* Leones adds that the law schools should see that the SC is moving towards greening the courts, and they should move in the same direction.

⁴⁶³ Cariño Silliman FGD, *supra* note 214.

Private Enterprise

Businesses are seen as the violators of the law (i.e., mining companies).⁴⁶⁴ The challenge therefore is to strike a balance between ecological integrity and soundness and having economic vibrancy for the country.⁴⁶⁵ Admittedly, corporations must do their part to protect the environment.⁴⁶⁶

The Mining Industry on the Rules of Procedure for Environmental Cases

The Chamber of Mines recently released a position paper on the Rules of Procedure for Environmental Cases⁴⁶⁷ which presents insights of the mining industry on recent initiatives to green the courts. The Chamber says that it supports the speedy disposition of cases, strict implementation of laws that seek to protect the environment, and the empowerment of people and communities.⁴⁶⁸ However, they also said that it will object against measures that can encourage harassment suits, abuse of judicial remedies, denial of justice, arrogation of administrative functions, and the overriding of substantive laws, which they see as exacerbating the problems being faced by local and foreign businesses which are just recovering from the effects of the global financial crisis.⁴⁶⁹

The Chamber recognizes that powerful and expansive corporate machineries working against the individual make it necessary to afford more rights in the law to the individual. It should be emphasized that such conditions should not be skewed so much in favor of one party at the expense and oppression of another. They add that while efforts to introduce new measures to help in the protection of the environment are laudable, the new Rules appear to be too lopsided in favor of one party.⁴⁷⁰ They point out that this imbalance in the Rules will increase the burden of doing business in the Philippines, scare investments both from local and foreign sources, and make the country uncompetitive with the rest of the world.⁴⁷¹

The Chamber points out the following items which should be reviewed and revisited by the courts: the dangers of the precautionary principle;⁴⁷² the derogation by the Rules from the

⁴⁶⁴ Kieng DENR RTD, *supra* note 182.

⁴⁶⁵ Atty. Jessehan Pia, Synthesis/Assessment Speech of the Federation of Philippine Industries delivered during the Pilot Multi-Sectoral Capacity Building on Environmental Laws and Rules of Procedure for Environmental Cases held in Puerto Princesa City, Palawan (June 23-25, 2010)[hereinafter FPI Palawan Capacity Building].

⁴⁶⁶ Mr. Guillermo Luz, *Environmental Justice: Doing Our Corporate Share*, Speech delivered in the Forum on Environmental Justice at the University of the Cordilleras (April 16-17, 2009).

⁴⁶⁷ The position paper is entitled *Analysis of the Supreme Court Rules of Procedure for Environmental Cases* [hereinafter Chamber of Mines Position Paper] (Copy on file with the Research, Publications and Linkages Office of the Philippine Judicial Academy).

⁴⁶⁸ *Id.* at 1.

⁴⁶⁹ *Id.*

⁴⁷⁰ *Id.*

⁴⁷¹ *Id.* at 2.

⁴⁷² *Id.* at 2-4.

doctrines of primary jurisdiction and exhaustion of administrative remedies;⁴⁷³ the violation of the prohibition against issuance of restraining orders or preliminary injunctions in cases involving infrastructure and natural resource development projects;⁴⁷⁴ the lack of a bond requirement and scientific evidence for the issuance of a TEPO;⁴⁷⁵ liberalized rules on standing which can be subject to abuse;⁴⁷⁶ and the lack of procedures for court monitoring and the mediation which is to be conducted by an untrained clerk of court.⁴⁷⁷

However, the Chamber welcomes the writ of continuing mandamus as a positive development in the enforcement of environmental laws and regulations, which would keep government officials diligent.⁴⁷⁸ This renewed diligence would in turn benefit the mining industry because the vigilance of government agencies regulating mining companies will result in sanctioning and weeding out companies that violate environmental laws and do not conduct responsible mining practices and in a way would also reward responsible miners.⁴⁷⁹

The Chamber ended by saying that it is imperative for the SC to revisit the Rules to ensure that (i) the Rules do not contravene the substantive laws of the land, and (ii) assuming that the SC finds the answer to the first question in the affirmative, to remedy the imbalance in the Rules.⁴⁸⁰

Recommendations

One recommendation the business sector gave is the codification of all issuances. A change in administration means a change in issuances, and if these are not codified it would be hard for industries to comply. Regarding the precautionary principle an amendment should be made so that the side of the industry could also be heard.⁴⁸¹ Thus, the challenge for the industries is to make society understand where they are coming from and to hopefully strike a balance between their interests and environmental concerns and protection.

Local Government Units

Local government units are the territorial and political subdivisions of the State, as defined in the 1987 Philippine constitution. They are the provinces, cities, municipalities, and *barangays*.⁴⁸² The Constitution mandates that the LGUs shall enjoy local autonomy,⁴⁸³ which is understood as a more responsive and more accountable local government structure instituted through a system of

⁴⁷³ Chamber of Mines Position Paper, *supra* note 467, at 4-5.

⁴⁷⁴ *Id.* at 5-6.

⁴⁷⁵ *Id.* at 6-7.

⁴⁷⁶ *Id.* at 7.

⁴⁷⁷ *Id.* at 7-8.

⁴⁷⁸ *Id.* at 8.

⁴⁷⁹ Chamber of Mines Position Paper, *supra* note 467.

⁴⁸⁰ *Id.* at 9.

⁴⁸¹ FPI Palawan Capacity Building, *supra* note 465.

⁴⁸² PHILIPPINE CONSTITUTION, Art. 10, § 1.

⁴⁸³ PHILIPPINE CONSTITUTION, Art. 10, § 2 and Art. 2, § 25.

decentralization.⁴⁸⁴ From this flows the power of the LGUs to protect the environment and enforce environmental laws, as embodied in the General Welfare Clause of the Local Government Code of 1991.⁴⁸⁵

LGUs are tasked with formulating municipal environment codes and forest and coastal management plans for implementing environment-related programs and activities.⁴⁸⁶ Some functions of the national government have also been devolved to the LGUs through legislation.⁴⁸⁷

The national government agency tasked to work with the LGUs is the Department of the Interior and Local Government (DILG). The mandate of the DILG is to enforce the laws in general and to supervise the LGUs nationwide; but when it comes to specific activities, the entry point is the LGU. The function of the DILG is in part regulatory and in part to allow the LGUs to develop on their own based on the concept of local autonomy.

The DILG currently has no specific program focusing on Environmental Justice.⁴⁸⁸ There is no mandate and technical sufficiency to monitor environmental compliance. There is a MOA on the issue of logging with the league of cities, but it does not impose an accountability mechanism.

Policies, Strategies, and Programs

One strategy noted was to work with the LGUs using its regulatory, developmental, and oversight functions.⁴⁸⁹ They also have foreign-assisted climate change projects (a pilot project only) and an existing MOA on climate change risk reduction. The DILG also has a regional monitoring commission to oversee the PNP, BJMP, BFP, and NAPOLCOM. Top performing LGUs are given incentives by the Department, and an accountability mechanism is in place by which problems identified may be remedied and resolved by the LGUs before charges or cases are filed.

Issues and Problems

One limitation of the DILG which can be considered as a problem is the local autonomy of the LGUs. Because of this constitutional mandate, the DILG cannot dictate on the LGUs, as they are supposed to chart their own destinies; and among the LGUs, there is a lack of desire and capacity to promote Environmental Justice.⁴⁹⁰ In relation to this, if the local leaders are not concerned about

⁴⁸⁴ PHILIPPINE CONSTITUTION, Art. 10, § 3.

⁴⁸⁵ Local Government Code of 1991, § 16.

⁴⁸⁶ ADB ENVIRONMENTAL ANALYSIS, *supra* note 90, at 88.

⁴⁸⁷ An example of this is the Clean Water Act, where LGUs are jointly responsible, together with the national government, for managing and improving water quality within their territorial jurisdictions. The DENR was to devolve some aspects of water quality management and regulation, including permit issuance, monitoring, and imposition of administrative penalties, “when the LGU has demonstrated its readiness and technical capability to undertake such functions.”

⁴⁸⁸ Secretary Jesse Robredo, Department of the Interior and Local Government, DILG Consultation Meeting at the DILG Main Office (Oct. 19, 2010) [hereinafter Robredo DILG Consultation].

⁴⁸⁹ *Id. Note*: This is generally done through the Local Government Program Management System, which monitors the environmental state and condition of the various LGUs.

⁴⁹⁰ *Id.*

environmental laws and issues, cases against violators more often do not reach the courts.⁴⁹¹ In addition, one DILG official mentioned that there are LGUs which are not fully aware of the laws at the national level.⁴⁹²

Another problem is regarding the capacity of the DILG to enforce these environmental laws.⁴⁹³ The DILG on its own does not have the technical capacity to monitor the environmental compliance of the LGUs; thus, they would seek the help of the DENR. In addition, the Department could not simply allocate a budget for Environmental Justice, because some might question such an allocation and say that it is beyond the mandate of the DILG. Moreover, the budget is usually determined by the demands of the local constituency and jurisdiction.

Recommendations

During the Consultation Meeting, Secretary Robredo emphasized the necessity for a general recognition of the need to protect the environment, the willingness of the LGUs and a higher objective to enforce their mandate. He also said that there must be a synergy that is more developmental than regulatory. He adds that Environmental Justice may be included in the DILG roadmap for the LGUs.

⁴⁹¹ Tabios Silliman FGD, *supra* note 407.

⁴⁹² Maria Flores, DILG-BLGS, Comments during the VALIDATION WORKSHOP at the Fr. Bernas Center, Ateneo Professional Schools, Rockwell Center, Makati City (Nov. 5, 2010).

⁴⁹³ *Note:* Some of the laws identified as difficult to enforce were: The Solid Waste Management Act; the SC decision to clean up the Manila Bay; establishing a sewerage system; and compliance with the water impounding area law, a case now pending in the SC and the first one to ask for a Writ of *Kalikasan*.

PART IV

VULNERABLE GROUPS

A. Who are the Vulnerable Groups?

In the course of this study, several groups of NGOs and POs, which represent the sectors of society adversely affected by environmental degradation, were interviewed. For purposes of this report, the vulnerable groups which have been identified are the following:

1. Indigenous Peoples and Indigenous Cultural Communities;
2. Farmers and Fisherfolk;
3. Informal Settlers and Impoverished Communities; and
4. Women and Children.⁴⁹⁴

B. An Assessment of the Groups

1. Indigenous Peoples and Indigenous Cultural Communities

Indigenous Peoples and Indigenous Cultural Communities (IPs/ICCs) have special rights to land and resources, as well as participation in decision making processes related thereto, as outlined in numerous international agreements.⁴⁹⁵ They have a strong connection with the environment – whose deep concern for the environment is entirely different from outsiders who may only be concerned with commercial exploitation.⁴⁹⁶ IPs/ICCs are not only relevant to the general goal of sustainable development and environmental protection, but they themselves embody a culture and way of life that deserves to be sustained.⁴⁹⁷ Their close connection with the environment in effect makes them one of the vulnerable groups of environmental degradation.

IPs/ICCs are at the forefront of the devastating and harmful effects of environmental degradation. Two-thirds of all extractive industries worldwide are found in IP/ICC areas.⁴⁹⁸ In the Philippines, these extractive industries are found in the uplands,⁴⁹⁹ where 12 million IPs/ICCs

⁴⁹⁴ The list was derived in the course of interviews and consultations with various groups and stakeholders. It is not meant to be an exhaustive list of vulnerable groups but will merely be used as an assessment tool for purposes of this study.

⁴⁹⁵ GAIL WHITEMAN AND KATY MAMEN, *MEANINGFUL CONSULTATION AND PARTICIPATION IN THE MINING SECTOR? A REVIEW OF THE CONSULTATION AND PARTICIPATION OF INDIGENOUS PEOPLES WITHIN THE INTERNATIONAL MINING SECTOR 4* (2002).

⁴⁹⁶ Insigne, Speech delivered during the 2008 Forum on Environmental Justice; Benjamin J. Richardson and Donna R. Craig, *Indigenous Peoples, Law, and the Environment*, in *ENVIRONMENTAL LAW FOR SUSTAINABILITY*, 195, 197 (Richardson and Wood, Eds., 2006).

⁴⁹⁷ Richardson and Craig, *supra* note 496.

⁴⁹⁸ Muhi NGO FGD, *supra* note 406.

⁴⁹⁹ Casey NGO FGD, *supra* note 184.

reside and consider those areas as their ancestral domain.⁵⁰⁰ In eight sites of struggles⁵⁰¹ in various parts of the country,⁵⁰² ICCs/IPs have experienced deception and manipulation by the mining companies in obtaining their free, prior and informed consent.⁵⁰³ Thus, they are displaced from their traditional areas.⁵⁰⁴ In places where they relocate, they are discriminated by society and often seen as second class citizens.⁵⁰⁵

There is a wide gap between government policy and environmental sustainable development for the vulnerable sectors, especially the IPs/ICCs. Despite the passage of the Indigenous Peoples Rights Act of 1997 (IPRA), tenurial insecurity of IPs/ICCs is still prevalent, which can be attributed to existing government policies.⁵⁰⁶ By way of an example, the Forestry Code criminalizes any occupation or habitation of forest land, even if the IPs occupy forest lands which they consider as their ancestral domain.⁵⁰⁷

In addition to this, traditional resource use and land tenurial arrangements of the IPs/ICCs are seen as unscientific and primitive by some, and access to these sources has decreased or become limited, while control has partially transferred to the government and sometimes to NGOs.⁵⁰⁸ Their lack of control, access over natural resources, and the non-recognition and respect of their rights over their territories affect their daily lives, cause extreme poverty and impact on their survival as a distinct community.⁵⁰⁹

The root cause of this is that IP/ICC rights are still not being recognized. As an NGO representative opined, “how can their environmental rights and their right to environmental justice be given effect if their rights as persons and their right to self-determination are not seen?”⁵¹⁰

⁵⁰⁰ David E. De Vera, *Indigenous Peoples in the Philippines: A Country Case Study*, Presentation at the RNIP Regional Assembly, Hanoi, Vietnam (Aug. 20-26, 2007) [hereinafter De Vera IPs in the Philippines].

⁵⁰¹ Sites of struggles are defined as communities who have or are expected to have initiatives to counter the entry of mining initiatives in the country, in *SITES OF STRUGGLE*, *supra* note 112, at 8.

⁵⁰² The areas cited are Aurora, Dipidio, Gabaldon, Oriental Mindoro, Zambales, Benguet, Siocon, and Tampakan.

⁵⁰³ *SITES OF STRUGGLE*, *supra* note 112, at 27.

⁵⁰⁴ See Zona Hildegard S. Amper, *Contrasting Perspectives on Marine Protected Areas in Central Visayas*, Study presented during the Philippine Sociological Society National Conference on Natures in Transition: Sociologizing the Environment, Oct. 15-16, 2010, Silliman University, Dumaguete City, Negros Oriental.

⁵⁰⁵ Mr. Tony Abuso, Catholic Bishops’ Conference of the Philippines – Episcopal Council for Indigenous Peoples, Comments during the NGO Focus Group Discussion at the Environmental Science Institute, Quezon City (Oct. 22, 2010) [hereinafter Abuso NGO FGD]; See generally *SITES OF STRUGGLE*, *supra* note 112.

⁵⁰⁶ De Vera IPs in the Philippines, *supra* note 500, at 8.

⁵⁰⁷ *Id.*

⁵⁰⁸ *Id.* at 7.

⁵⁰⁹ *Id.* at 9.

⁵¹⁰ Abuso NGO FGD, *supra* note 505.

Examples on the Ground

1. IP Fishing Communities in the Central Visayas Region

The study entitled *Contrasting Perspectives on Marine Protected Areas in Central Visayas*,⁵¹¹ by Zona Hildegarde S. Amper, examined how ethnic fishing communities in the Central Visayas region were affected by the establishment of marine protected areas in their traditional fishing grounds. The study analyzed the problem brought about by contrasting perspectives between those who sought to establish the MPAs and the communities affected.

One of the groups studied were the Badjaus of Mambaling, Cebu City. They are traditionally sea-faring people, knowledgeable of the seas and skillful fisherfolk. They rely on the seas and its resources for their livelihood and subsistence. The Badjaus see the sea without any boundaries, as a resource which is a blessing from the gods and left to them by their ancestors.

Marine protected areas (MPAs)⁵¹² have been established throughout the Visayas region by the LGUs with the help of NGOs and the national government. In particular, there are currently 564 MPAs in the Visayas alone;⁵¹³ and of these, 34 percent are functional, 43 percent are non-functional, 15 percent are newly established, and 18 percent are legislated but have not yet been implemented.⁵¹⁴ Ordinary people see the MPA as restricted or exclusive spaces, curtailing traditions of open-access to the seas, and controversial as being exclusionist or anti-people.⁵¹⁵ On the other hand, MPA advocates see it as a promising tool for sustainable marine development with multiple protection benefits.⁵¹⁶

MPAs have been established in the traditional fishing areas of the Badjaus. However, the latter found themselves restricted from the seas because of the MPAs. The Badjaus were not involved in the planning and establishment of the protected areas. Confused as to why they were not allowed to fish in the areas left to them by their ancestors, some of the IPs/ICCs shifted to other forms of livelihood. There were also times when some of their members were arrested for fishing within the restricted areas.⁵¹⁷

⁵¹¹ Amper, *supra* note 504.

⁵¹² An MPA has been defined as: “x x x any coastal or offshore area set aside for management and conservation measures or where some form of protection, whether legislated or traditionally practiced, is being enforced.” (White, Salamanca and Courtney, 2002) cited in Enrique G. Oracion, *Fencing the Sea: Politics, Marine Protected Areas and Transdisciplinarity*, Study presented during the Philippine Sociological Society National Conference on Natures in Transition: Sociologizing the Environment, Oct. 15-16, 2010, Silliman University, Dumaguete City, Negros Oriental.

⁵¹³ *Id.* citing Alcala, et al. 2008.

⁵¹⁴ *Id.* citing Alcala, et al. 2008.

⁵¹⁵ *Id.*

⁵¹⁶ *Id.*

⁵¹⁷ Amper, *supra* note 504.

The study found that MPAs should be community-oriented, participatory, and culturally sensitive to be successful. There is a need to include all stakeholders, like the Badjaos of Mambaling, in the planning and establishment process and to take into consideration the cultural concerns of the communities affected. The study concluded that the MPAs should be both beneficial to the environment and to the communities that will be affected and will eventually benefit from its establishment.⁵¹⁸

2. Mining in Ancestral Lands in Mindanao

The study entitled *Mining and Ancestral Domain: Some Issues in Mindanao*,⁵¹⁹ conducted by Isaias S. Sealza of Xavier University, examined the effects of the mining industry on the IPs/ICCs of Mindanao. The main objective of the paper is to review and highlight some of the major issues that complicate mining activities especially in the light of the ancestral domain claims in Mindanao.

Displacement from ancestral lands became a real threat and a major issue in Mindanao and in many parts of the country as land grabbers from the lowlands exploited the fact that land registration agencies of government gave priority to date of filing rather than date of occupancy of the land being claimed.⁵²⁰ This led to the abuse of the IPs/ICCs' ancestral lands which have taken various forms over the years, some of which have threatening repercussions to the environment.⁵²¹ One of these is mineral mining which destroys normal watershed; causes massive landslides, siltation of river and reef; endangers potable water sources; and produces hazardous wastes and tailings.⁵²²

The study found that the major issues with the government include land use and ownership, security of tenure, and human welfare.⁵²³ A related issue is the ability of the government to protect the IPs/ICCs.⁵²⁴ Numerous non-IPs have taken possession of ancestral lands. In addition, the government is having difficulty identifying the IPs/ICCs, which enables companies to obtain easily the social acceptability requirement of mining applications. The IPs/ICCs' sources of livelihood, the natural habitat of rare flora and fauna species have also been affected by the mining in IP/ICC areas.⁵²⁵ The issue on the creation of PONGOs (Politician-Organized NGOs) and BONGOs (Business-Organized NGOs) are sometimes used to easily obtain the consent of the IPs/ICCs to mining in their ancestral lands.⁵²⁶ Another

⁵¹⁸ *Id.*

⁵¹⁹ Isaias S. Sealza, *Mining and Ancestral Domain: Some Issues in Mindanao*, Study presented during the Philippine Sociological Society National Conference on Natures in Transition: Sociologizing the Environment, Oct. 15-16, 2010, Silliman University, Dumaguete City, Negros Oriental [hereinafter Sealza Mining in Ancestral Domains].

⁵²⁰ *Id.* at 1.

⁵²¹ *Id.* at 2.

⁵²² *Id.* at 2.

⁵²³ *Id.* at 7.

⁵²⁴ Sealza Mining in Ancestral Domains, *supra* note 519, at 7.

⁵²⁵ *Id.* at 8.

⁵²⁶ *Id.* at 10.

issue that affects the community is corruption, wherein migrants have been able to register themselves as IPs/ICCs through the manipulation of documents.⁵²⁷

The study gave the following recommendations:⁵²⁸

1. The government should be able to identify who the real IPs are and delineate their ancestral land;
2. The government should have the political will to demand from the business sector engaged in mining its social responsibility;
3. The mining business sector should develop schemes to help the government and concerned groups in restoring the ridge, desilting the river, and rehabilitating the reef; and
4. Civil society, business and government should work together to contain corruption and restore decency in transactions.

2. Farmers and Fisherfolk

Coastal resources provide much of what supports daily life: food, livelihood, economic development, clean water, and even the air we breathe.⁵²⁹ Farmers and fisherfolk rely on the environment for their livelihood and sustenance. About 1 million small fishers or about 62 percent of the population living along coastal areas are directly dependent on the reefs for their livelihood.⁵³⁰ Thus, changes in weather conditions which affect crop harvests and fish yield have devastating effects for these communities, making them vulnerable to the effects of environmental damage and degradation.

For the majority of small fishing communities, this deterioration of the resource base has invariably led to their economic decline. Poverty is widespread in coastal areas and fishers are today, among the poorest of the poor.⁵³¹ Artisanal fisherfolk are the most affected by environmental degradation: they do not have the resources and ability to relocate themselves if needed, and will opt to survive in their area. They do not have the literacy level to fight for their environmental rights even if they are made aware of it.⁵³²

⁵²⁷ *Id.*

⁵²⁸ *Id.* at 10-11.

⁵²⁹ ELAC Women and Children in Fisheries, *supra* note 133, at 27.

⁵³⁰ Vitug, *supra* note 128.

⁵³¹ ELAC Women and Children in Fisheries, *supra* note 133, at 27.

⁵³² Mr. Roy Olsen De Leon, responses in an email interview. *Note:* In addition to this, the Food and Agriculture Organization as early as 1988 said that:

Fisherfolk and fishing communities are among the poorest and most undernourished of the rural poor, with all the terror and constraints that accompany severe malnourishment and abject poverty. Few fisherfolk have either the land of [sic] the skills to grow crop foods and so depend on a single source for food and income. Due to the nature of various fishing types, requiring men to spend extended periods at sea, many fisherwomen are the [sic] alone much of the time. Ocean fishing especially is often extremely hazardous, injuries and deaths are not uncommon, so it is not unusual that women find themselves the sole providers for the family. (Cited in ELAC Women and Children in Fisheries, *supra* note 133, at 27.)

Examples on the Ground

1. The Residents of Mantigue Island, Camiguin and Climate Change

The study entitled *Mantigue Island, Camiguin Climate Change Vulnerability Assessment*, conducted by Roy Olsen de Leon and Persie Mark Sienes of Silliman University, presents the experiences of the people of the said island as they deal with the effects of climate change and environmental degradation. It was presented during the Philippine Sociological Society National Conference on October 15-16, 2010 at Silliman University. The study was conducted to determine the vulnerability of Mantigue Island to the impacts of climate change in terms of the biophysical aspect as well as the socio-economic fundamentals of the community currently residing in the island. Although the study does not deal directly with issues related to Environmental Justice, the insights of the proponents of the study have been used to assess the objectives of this report.

Mantigue Island is located 3.7 km southeast off Camiguin Island and is under the jurisdiction of the municipality of Mahinog on the mainland. There are 22 households on the island with a little over 100 residents. Because it is off the mainland, the community has its own *de facto* leader to whom problems are reported and who in turn settles disputes. In fact, the proponents of the study had to ask permission from the *de facto* leader before they conducted their work. The community is practically on its own, with no NGOs or government offices operating in the area. The community is aware of the need to protect the environment, as they do have practices which help keep the island clean. They have also received some training from Silliman University on the benefits of establishing an MPA in the area.

A marine protected area was supposed to be set up within the fishing grounds of the residents of the island, but it was discontinued due to conflicts between the LGU and the local community. The community's mistrust of the LGU stemmed from the latter's plans to relocate all the residents, allegedly due to plans to construct a commercial facility in the island. Some want to accept the government's offer for relocation, but those who have a long history with the island refuse to go.

Based on the experience of the proponents of the study in the island, they consider the residents of Mantigue Island as a vulnerable group as regards environmental degradation. To give effect to Environmental Justice for the community, they suggest that the residents be informed of their environmental rights and to implement a system by which they can report violators. In addition, providing legal aid and addressing the high costs of litigation would improve their perception of the courts and the legal system.

2. The Displacement of Marginalized Fisherfolk from the Beaches

The study entitled *Cosmopolitan Appropriation of Coastal Space and its Effect on Local Communities: A Case Study from Negros Oriental*, conducted by Magne Knudsen of the Australian National University, examined how beachfront development has displaced fishing communities. It was presented during the Philippine Sociological Society National Conference on October 15-16, 2010 at Silliman University. It also looks at the land tenure and right of way issues affecting the displaced fisherfolk.

In the late 1970s and early 1980s, a few rich newcomers started to buy land in Negros Oriental for recreation, ocean view residence, and investment purposes. In the 1990s, there was a rapid expansion in the number of rich newcomers buying beachfront properties. These newcomers gain the support of the municipal and provincial elites, hence they are able to build their properties and displace the marginal fisherfolk. These owners even built seawalls and conducted their own reclamation activities to increase their beachfront properties. In particular, the priority of the Municipality of Sibulan, where the study was conducted, is to develop tourism and urbanize foreshore lands.

The fisherfolk and other low-income coastal dwellers have not filed formal complaints against the development of seawalls and other structures that limit their access to and use of the foreshore areas.⁵³³ The main reason for this is that they have little trust in the legal system. They commonly say that “those who have money get what they want.” While they oppose the developments of such structures, they feel powerless to prevent them from being built. However, they do continue to voice their complaints, claiming their right of way and saying the foreshore is public land.

The most vulnerable groups have so far been those who are very poor, who depend largely on fishing and gleaning the foreshore for their livelihoods.⁵³⁴ Many do know that the foreshore is, by law, public land. At the same time, all the land down to the sea has in many instances been issued private titles. Some of the families who have been evicted and not found alternative places to rebuild their houses have been offered small lots through the government-assisted relocation project.

Although many of the people who were part of the study had limited knowledge of the full extent of their environmental rights under the law, the situation may not have been very different had they been informed of these rights since many of them do not place much trust in the legal process. They experience that those with power and influence tend to get their way.

To address these issues, the proponent of the study suggested that a working group be established to look at a wider range of options for the community, but this has to be developed with the active participation of the local coastal communities themselves.⁵³⁵

3. The Sumilao Farmers’ Walk for Land and Justice

The Sumilao farmers trace their roots some 1,700 kilometers away from Metro Manila in Sumilao, Bukidnon. The Higaonon, the indigenous group of the farmers, have been fighting for the land which their ancestors tilled and toiled even before the first foreigners came to the Philippines.⁵³⁶ For decades, little by little, hectare by hectare, their lands were taken from them, for the sake of progress and development. The history of the case and the struggle of the farmers are recounted below:

⁵³³ Mr. Magne Knudsen, responses to an email interview.

⁵³⁴ *Id.*

⁵³⁵ *Id.*

⁵³⁶ *See generally* Simbahang Lingkod ng Bayan, Backgrounder on the Case of the Sumilao Farmers <<http://www.tinig.com/backgrounder-on-the-case-of-the-sumilao-farmers/>> (last accessed on Dec. 3, 2010).

The Sumilao case involved a 144-hectare agricultural land situated in San Vicente, Sumilao, Bukidnon. The property was formerly owned by the Quisumbing family and managed through the Norberto Quisumbing, Sr. Management and Development Corporation. Eventually, covered under the Comprehensive Agrarian Reform Program (CARP), the Certificate of Land Ownership Award (CLOA) was awarded to the 137 members of the Mapadayonong Panaghiusa sa mga Lumad Alang sa Damlag (MAPALAD) in 1995.

The Quisumbings filed an application for conversion but this was denied by then DAR Secretary Ernesto Garilao reasoning that as prime agricultural land, the area was exempt from conversion by virtue of DAR Administrative Order No. 20, Series of 1992. The Sumilao saga should have ended happily right there and then if not for the unfortunate intervention of then Executive Secretary Ruben Torres, who reversed the decision. The reversal was based on little more than a mere letter from the then-Bukidnon Governor Fortich, justifying the conversion by saying that “converting the land in question would open great opportunities for employment and bring about real development towards a sustained economic growth in the municipality x x x distributing the land to would-be beneficiaries x x x does not guarantee such benefits.”

x x x x

Fast-forward to 2007 and the Sumilao beneficiaries, some of them the sons and daughters of the original hunger strikers, are again in the headlines. Apparently, the Quisumbings did not appreciate a win-win solution where they did not attain all the winnings. Somehow, they managed to sell the entire property to San Miguel Corporation forcing the Sumilao folk to go on a 1,700 kilometer trek all the way to Manila to fight for their forgotten cause right in the seat of government.⁵³⁷

The Sumilao farmers took their case from the courts to the streets, marching across the Philippines in a bid to gather support from the people. It was a story of a small farming community versus the big machinery of a multinational company. They simply wanted to keep 144 hectares of land so that they and their children and the generations after will have their own lands to till. This was not simply a struggle for land and for the rights of indigenous communities, but rather it was a struggle for justice and equity under our laws and our government.

Their march to Manila to the gates of Malacañang and to the walls of San Miguel Corporation bore fruit when San Miguel Corporation agreed to give them the 144 hectares of land that they have been fighting for. Deadlines were not met and delays hampered the transfer of the lands to the Sumilao farmers, until finally, in October 2010, the government formally transferred the 144 hectares to them after years of waiting.⁵³⁸

⁵³⁷ Centro Saka, *The Sumilao Farmers' Saga and a Callous Government* <http://www.centrosaka.org/agrarian_reform/issues_campaigns/sumilao_1.html> (last accessed on Dec. 3, 2010).

⁵³⁸ See Fidelis Angela Tan, *Sumilao Farmers Get Own Land*, Oct. 12, 2010 <http://www.thepoc.net/breaking-news/politics/9911_sumilao-farmers-get-own-land.html> (last accessed on Dec. 3, 2010).

3. Informal Settlers and Impoverished Communities

Informal settlers and other impoverished communities also feel the brunt of changes in our climate and environmental degradation. The poor are most closely related to degraded environments.⁵³⁹ They are often the ones who suffer the most and are sometimes left with nothing after a devastating storm. Take for example the events that transpired during Typhoon *Ondoy* in September 2009. The scenes that filled our TV screens were of displaced informal settlers whose homes and belongings were washed away by the floods, or worse, who lost family members in the wake of the unprecedented typhoon. Some blame climate change for the catastrophe, while others blame environmental degradation and the lack of concern by the people for the environment.

The number of informal settler families is rising and is expected to rise further with rural-urban migration, population growth, and new household formation, given the inadequacy of formal housing programs.⁵⁴⁰ These groups also rely on the environment for their livelihood and sustenance. In fact, in the Asia and Pacific region, billions of poor people depend on some form of natural resource use for their livelihood and/or survival.⁵⁴¹ Those living by the shore rely on the rich marine resources that the sea has to offer. Communities inland, on the other hand, rely on the rich soil for bountiful harvests or the forests for food and other sources of income. Nevertheless, increased activities of humans, expansion of industrialization into more areas, and indiscriminate and irresponsible use of our natural resources have deprived the communities who rely on the environment for survival.

Examples on the Ground

1. The Manila Bay Case and the Residents of Las Piñas

On December 18, 2008, the Supreme Court rendered a decision entitled *MMDA et al. v. Concerned Residents of Manila Bay*.⁵⁴² In this case, various residents of Metro Manila and surrounding areas that are within the Manila Bay area filed a case to compel the government agencies concerned to clean up, rehabilitate, and protect the said bay. They claim that the water quality of the bay has fallen below the standards set by law, and therefore it is the duty of the government to restore the bay to acceptable standards and to ensure that pollution which affects the area is to be abated.

The Supreme Court described the bay as “a place with a proud historic past, once brimming with marine life and, for so many decades in the past, a spot for different contact recreation activities; but is now a dirty and slowly dying expanse mainly because of the abject official indifference of people and institutions that could have otherwise made a difference.”⁵⁴³ The Supreme Court also noted the attitude of the government, adding that “the pollution menace does not seem to carry the high national priority it deserves, if their

⁵³⁹ Asian Development Bank, *NATURE AND NURTURE: POVERTY AND THE ENVIRONMENT IN ASIA AND THE PACIFIC 4* (2009) [hereinafter ADB Nature and Nurture].

⁵⁴⁰ ADB ENVIRONMENTAL ANALYSIS, *supra* note 90, at xiv.

⁵⁴¹ ADB Nature and Nurture, *supra* note 539, at 7.

⁵⁴² *MMDA et al. v. Concerned Residents of Manila Bay*, 574 SCRA 661 (2008).

⁵⁴³ *Id.* at 665.

track records are to be the norm. Their cavalier attitude towards solving, if not mitigating, the environmental pollution problem is a sad commentary on bureaucratic efficiency and commitment.”⁵⁴⁴ The High Court ruled in favor of the residents, and ordered the various government agencies impleaded to clean up Manila Bay and to restore it to its former clean and healthy condition, specifically “to clean up, rehabilitate, and preserve Manila Bay, and restore and maintain its waters to SB level (Class B sea waters per Water Classification Tables under DENR Administrative Order No. 34 [1990]) to make them fit for swimming, skin-diving, and other forms of contact recreation.”⁵⁴⁵

The Court once again made mention of the case *Oposa v. Factoran, Jr.* where the Court said that “the right to a balanced and healthful ecology need not even be written in the Constitution for it is assumed, like other civil and political rights guaranteed in the Bill of Rights, to exist from the inception of mankind and it is an issue of transcendental importance with intergenerational implications.”⁵⁴⁶ The Court then added that, “[e]ven assuming the absence of a categorical legal provision specifically prodding petitioners to clean up the bay, they and the men and women representing them cannot escape their obligation to future generations of Filipinos to keep the waters of the Manila Bay clean and clear as humanly as possible. Anything less would be a betrayal of the trust reposed in them.”⁵⁴⁷

From this case stems the plight of the fisherfolk and residents of Las Piñas. A member of a FARMC (Fisheries and Aquatic Resource Management Council) in the area recounts that after the decision of the Supreme Court cited above, the MMDA immediately got to work, not with the abatement of the pollution in the area but with the dismantling and demolition of their homes and fish traps in the bay area. They contend that the cleanup of Manila Bay ordered by the Supreme Court does not include the cleanup of their settlements and tools for livelihood; it only includes the removal of the garbage and those industries which pollute the bay.⁵⁴⁸

They add that the MMDA says they do not have permits for their fish traps, therefore, such is illegal. Meanwhile, the group blames the local government for their lack of permits and for failure to implement the law. They said that the LGU allowed them to construct the fish traps without a permit, and they were not oriented on the laws that they needed to follow. They therefore urge the Supreme Court to clarify its decision so that their homes and livelihood will not be affected by the enforcement of the said case.⁵⁴⁹

⁵⁴⁴ *Id.*

⁵⁴⁵ *Id.* at 693.

⁵⁴⁶ *Oposa*, 224 SCRA 792, 805 (1993).

⁵⁴⁷ *MMDA et al.*, 574 SCRA 692.

⁵⁴⁸ Navales NGO FGD, *supra* note 409.

⁵⁴⁹ *Id.*

The residents also lament the effect of the ongoing reclamation project in the area as part of the R1 Road Extension Project in Bacoor, Cavite. This has also resulted into the dismantling and demolition of their settlements and fish traps, and the displacement of their community. They allege that the community was not consulted about the project; and that the project did not have proper documentation and allegedly began without the mandatory Environmental Compliance Certificate. The group tried gathering documents from the various government offices to be able to file a case for damages against the project proponents; however, they have not been successful in obtaining the needed materials.⁵⁵⁰

2. The Payatas Dumpsite of Quezon City

The Payatas area has not always been linked to the garbage problem in Metro Manila. What we now know as the Payatas dumpsite was historically a part of the Payatas Estate. The Payatas Estate was first registered with the Roguera family in 1907 under Original Certificate of Title No. 333, which was then transferred to Nanjo Kaisha Ltd., a Japanese corporation, in 1920.⁵⁵¹ Back then, it was considered an unclassified public forest by the Bureau of Forestry.⁵⁵² Part of the area was only designated as a dumpsite in 1973. However, residents contend that the garbage rose only at the start of 1990 and after the closure of the Smokey Mountain in 1993 by the orders of President Fidel V. Ramos.⁵⁵³

This mounting pile of garbage and trash situated beside the homes of hundreds of families was a tragedy waiting to happen. The first recorded slide in the dumpsite occurred in 1999 at the height of a typhoon, where only pigs were reportedly killed and 32 families lost their homes.⁵⁵⁴ A year later, on July 10, 2000, the infamous Payatas tragedy took place. Five hundred families lost their homes, properties and loved ones. Two hundred thirty-four people were confirmed dead immediately after the tragedy, while more than a hundred people were still missing or unidentified.⁵⁵⁵ A recent study found that the reasons for the tragedy were the following: (1) lack of equipment in managing a garbage disaster; (2) absence of standard operating procedures in the recovery and rescue operations; (3) insufficient number of evacuation centers; (4) lack of coordination among the agencies; and (5) lack of protective health gear and hazards equipment.⁵⁵⁶

⁵⁵⁰ *Id.*

⁵⁵¹ Kadamay and Task Force Damayan, *Payatas: The Story of A Tragedy*, 1 <<http://www.docstoc.com/docs/2310546/PayatasThe-Story-of-a-Tragedy>> [hereinafter Kadamay Payatas Tragedy] (last accessed on Dec. 3, 2010).

⁵⁵² *Id.* at 1.

⁵⁵³ *Id.* at 2.

⁵⁵⁴ *Id.* at 3.

⁵⁵⁵ *Id.* at 3.

⁵⁵⁶ Florida Padilla, *A Study on the Post-tragedy Project on Participatory Disaster Risk Reduction and Management in Payatas Community*, Study presented during the Philippine Sociological Society National Conference on Natures in Transition: Sociologizing the Environment, Oct. 15-16, 2010, Silliman University, Dumaguete City, Negros Oriental [hereinafter Padilla Payatas Community].

In their struggle to find justice, the victims and the community organized themselves into groups, in particular the July 10 Payatas Victims Organization (J10PVO).⁵⁵⁷ They filed a class suit against local officials involved in the tragedy and criminal and administrative cases in the Office of the Ombudsman.⁵⁵⁸ After 10 years, the cases have yet to be resolved.⁵⁵⁹ Worse, the dumpsite is still operational and the community is still continuously at risk from yet another garbage slide tragedy.⁵⁶⁰ One researcher notes that the fact that the dumpsite is still open shows a lack of political will in reducing the risk of potential disasters to communities like Payatas.⁵⁶¹

4. Women and Children

Other vulnerable groups in our society are the women and children. “There exists a *de jure* discrimination [against women] in the [Philippines] rooted from reliance on Spanish colonial laws and *de facto* non-separation of church and state x x x which proves to be detrimental most especially to women’s rights both in law and in its implementation.”⁵⁶² In fact, the role of women in the formation and implementation of environmental policy is mostly uncharted territory.⁵⁶³ Their largely unnoticed yet important role in the fisheries sector,⁵⁶⁴ peasant and rural communities,⁵⁶⁵ and the informal sector,⁵⁶⁶ are areas where women’s rights are being advocated.⁵⁶⁷

⁵⁵⁷ Kadamay Payatas Tragedy, *supra* note 551, at 5.

⁵⁵⁸ *Id.*

⁵⁵⁹ See Abner Mercado, Payatas Tragedy Victims Still Cry for Justice, July 10, 2010 <<http://www.abs-cbnnews.com/nation/metro-manila/07/10/10/payatas-tragedy-victims-still-cry-justice>> (last accessed on Dec. 3, 2010).

⁵⁶⁰ The study by Florida Padilla, *supra* note 556, suggests a project to reduce the disaster risk of the Payatas Community. She cites the need to conduct the following: (1) increase awareness of the community; (2) community disaster management; (3) information dissemination; and (4) rehabilitation.

⁵⁶¹ Padilla Payatas Community, *supra* note 556.

⁵⁶² Clara Rita A. Padilla, *A Call for Philippine Implementation of Women’s Rights Under CEDAW*, 52 *Ateneo L.J.* 765 (2008).

⁵⁶³ Rita Marie L. Mesina, *A Take on Ecofeminism: Putting an Emphasis on the Relationship Between Women and the Environment*, 53 *Ateneo L.J.* 1120, 1120-1121 (2009). As the author notes, “While it has been recognized that the participation of women is a key element in all areas of sustainable development, this function is still in the nascent stage of development – more is yet to be witnessed in the field of environmental law and policy-making.”

⁵⁶⁴ See generally ELAC Women and Children in Fisheries, *supra* note 133, at 27.

⁵⁶⁵ KAISAHAN Tungo sa Kaunlaran ng Kanayunan at Repormang Pansakahan (Kaisahan), *Not Reaping the Benefits: Gaps in the Comprehensive Agrarian Reform Law in Addressing Discrimination Against Peasant Women in their Access to and Control Over Resources*, in RESEARCH ON THE CONSISTENCY OF NATIONAL LEGISLATION ON WOMEN AND CHILDREN WITH MAJOR INTERNATIONAL HUMAN RIGHTS COVENANTS SIGNED BY THE PHILIPPINE GOVERNMENT, 64 (ALG 2008).

⁵⁶⁶ Alternative Law Research and Development Center, Inc., *A Review of Philippine Legislation Concerning Human Rights of Women Vendors in the Informal Sector*, in RESEARCH ON THE CONSISTENCY OF NATIONAL LEGISLATION ON WOMEN AND CHILDREN WITH MAJOR INTERNATIONAL HUMAN RIGHTS COVENANTS SIGNED BY THE PHILIPPINE GOVERNMENT, 138 (ALG 2008) [hereinafter ALRDCI Women and Children].

⁵⁶⁷ *Note:* It is interesting to note that in a 2007 survey conducted by the ALG and the SWS, on the question of accessibility of justice for women, only 14% of respondents said that it is harder for women to access justice, 66% said there is no difference for men and women, while 20% said it was easier. (ALG AND SWS, *supra* note 75, Table 42, at 46.)

Although the problems related to gender sensitivity and the discrimination of women and children still abound, numerous studies and efforts have been made to bridge this gap in our society.⁵⁶⁸ The 1987 Philippine Constitution has also made significant headway in promoting the rights of women and children, having specific provisions which deal with the role and rights of women,⁵⁶⁹ and the development and participation of the youth.⁵⁷⁰

Presented below is a brief discussion of some of the significant studies dealing with the issue of women and children in the justice system.

Significant Studies on Women and Children

1. Gender and the Philippine Courts

The Philippine court system, through the leadership of the Supreme Court, has also been engaged in efforts to make the justice system more gender sensitive. On March 27, 2003, Chief Justice Hilario Davide, Jr. and the Chairpersons of the Second and Third Divisions of the Court, issued Administrative Circular No. 22-2003,⁵⁷¹ creating the Committee on Gender Responsiveness in the Judiciary (CGRJ).⁵⁷² The CGRJ is tasked with the preparation of a comprehensive Gender and Development (GAD) Plan, with a corresponding program of action to “mainstream gender” in the Judiciary programs and structures particularly by “undertaking, coordinating, and monitoring judicial activities that promote gender responsiveness.”⁵⁷³

Under its first co-chairs, the CGRJ had crafted seven core strategies, namely:⁵⁷⁴

- a. Transform paradigm and enhance commitment of the judicial system to gender equality through training and capability building;
- b. Review or conduct gender audit of policies, programs and practices to make these more gender-responsive;
- c. Establish a gender-responsive database in the judicial system;
- d. Promote the use of gender-fair language, core messages and rituals for higher gender awareness;

⁵⁶⁸ See generally Amparita S. Sta. Maria, *Defining Women in Family Law*, 52 Ateneo L.J. 335 (2007); Mesina *supra* note 558; ALTERNATIVE LAW GROUPS, *TUNING IN TO WOMEN’S VOICES (AN INITIAL REVIEW OF LITERATURE ON PHILIPPINE PUBLICATIONS ON WOMEN AND JUSTICE)* (2005).

⁵⁶⁹ See PHILIPPINE CONSTITUTION, Art. 2, § 14; Art. 13, § 14; and Art. 15.

⁵⁷⁰ See PHILIPPINE CONSTITUTION, Art. 2 § 13; Art. 14; and Art. 15.

⁵⁷¹ Supreme Court, Administrative Circular No. 22-2003, *Creating a Committee on Gender Responsiveness* (March 27, 2003).

⁵⁷² Edna E. Dino, *The Experience of the Philippine Judiciary in the Generation and Gathering of Sex-Disaggregated Data*, 52 Ateneo L.J. 954, 956 (2008).

⁵⁷³ *Id.* at 956 citing Supreme Court, Administrative Circular No. 22-2003, *Creating a Committee on Gender Responsiveness* (March 27, 2003), 4th Whereas Clause.

⁵⁷⁴ *Id.* at 956-957.

- e. Enhance partnership and networking with other GAD advocates;
- f. Regularize family courts throughout the country; and
- g. Create a Committee on Decorum and Investigation (CODI) in each court station and train CODI members.

SC Administrative Circular No. 22-2003 was followed by Administrative Circular No. 81-2006,⁵⁷⁵ issued by Chief Justice Artemio V. Panganiban on September 19, 2006. It provides that the generation of sex-disaggregated data “will determine the representation of women and men in the Philippine Judiciary which will be the basis for the conduct of gender-related interventions.⁵⁷⁶ The various offices of the Supreme Court were tapped and given specific responsibilities to implement the administrative circular.⁵⁷⁷

Efforts have been taken by the Supreme Court and the CGRJ to make the courts and the judiciary more gender-sensitive and responsive. The SC website has its own Gender Corner, where data and materials of the CGRJ can be found.⁵⁷⁸ Workshops and seminars were held over the past years in developing the awareness of the courts on gender issues.⁵⁷⁹ More recently, the Philippine Judicial Academy conducted eight gender sensitivity programs in 2009 with a total of 392 participants composed of judges, branch clerks of court, SC and CA attorneys, Court of Tax Appeals and Sandiganbayan employees.⁵⁸⁰

Gender sensitivity in the courts and the judiciary is indeed a continuing and ongoing effort and process. More needs to be done to address the issues of gender affecting women in the justice system, not just the personnel but also the parties and litigants. Perhaps a first step is to increase the number of women who sit in the highest court in the land.⁵⁸¹

2. Research on the Consistency of National Legislation on Women and Children with Major International Human Rights Covenants Signed by the Philippine Government

The Alternative Law Groups published a study in 2008 entitled *Research on the Consistency of National Legislation on Women and Children with Major International Human Rights*

⁵⁷⁵ Supreme Court, Administrative Circular No. 81-2006 (Sept. 19, 2006).

⁵⁷⁶ Dino *supra* note 572, at 956 (2008) citing Supreme Court Administrative Circular No. 81-2006.

⁵⁷⁷ *See generally Id.* at 957-959.

⁵⁷⁸ *See* <http://sc.judiciary.gov.ph/gender/index.php> (last accessed on Dec. 3, 2010).

⁵⁷⁹ *See generally* First Regional Seminar Workshop on Improving Access to Family Courts in Davao City <http://sc.judiciary.gov.ph/gender/davao_workshop.php>; Knowledge Sharing on Gender Equality and the Judiciary <<http://sc.judiciary.gov.ph/gender/message.php>>; Second Regional Multi-Stakeholders Seminar-Workshop in Improving Access to Justice in Family Courts for the NCR <http://sc.judiciary.gov.ph/gender/seminar_workshop.php>; and more recently, the Seminar-Workshop on CEDAW and Gender Sensitivity for Court of Appeals Lawyers (Manila Station), Sept. 9-10, 2010, at the Century Park Hotel (last accessed on Dec. 3, 2010).

⁵⁸⁰ PHILIPPINE JUDICIAL ACADEMY, ANNUAL REPORT 2009, 20 (2009).

⁵⁸¹ *See generally* Justice Ameurfina A. Melencio Herrera, *Feminine Grace, the High Court and Jurisprudence*, 52 Ateneo L.J. 965 (2008). *Note:* As of the date of this report, only 13 women Associate Justices of the Supreme Court have been appointed in the more than 100 years history of the High Court, and no Chief Justice.

Covenants Signed by the Philippine Government, which studied several key Philippine legislations on women and children in relation to their compliance with the international obligations of the country. The research was coordinated by the Women's Legal Bureau, Inc., with the participation of other NGOs namely Alternative Law Research and Development Center, Inc. (ALTERLAW), the Children's Legal Bureau, Inc. (CLB), Environmental Legal Assistance Center (ELAC), KAISAHAN Tungo sa Kaunlaran ng Kanayunan at Repormang Pansakahan, Kanlungan Center Foundation, Inc., Participatory Research Organization of Communities and Education Towards Struggle for Self-Reliance-Panay (PROCESS Foundation-Panay, Inc.), and Tanggol Kalikasan.

The publication put together various studies, reports, and researches on the plight of women and children in the fisheries sector, peasant and farming, migration, women vendors in the informal sector, and children in conflict with the law. The research aims to analyze the consistency of domestic legislation affecting women and children, vis-à-vis the core international human rights conventions entered into by the Government of the Republic of the Philippines.⁵⁸² It is also the objective of the research to contribute to understanding access to justice of women and children in recommending law and policy proposals that would create a legal environment definitively enabling of women and children to assert and claim their human rights.⁵⁸³

The study recognizes that despite the gaps and patently discriminatory provisions in some laws, the Philippines may indeed speak of significant achievements in terms of *de jure* compliance or consistency with its obligations under the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child, and other core or so-called foundational human rights covenants forged by the international community.⁵⁸⁴ However, the research asserts that *de jure* consistency is not enough. The ultimate objective of human rights is for people, particularly women and children who are among the most vulnerable and excluded, to live full lives of dignity, free from discrimination and violence, injustice and want.⁵⁸⁵ The research concludes by saying that while the Philippine government is moving towards compliance in terms of *de jure* implementation, it significantly lags behind in terms of *de facto* implementation. The inconsistencies with international human rights commitments remain at a level where women and children, especially among the economically disadvantaged and socially excluded, are still not substantively enjoying the rights and entitlements due them.⁵⁸⁶

The study and research gave the following general recommendations:⁵⁸⁷

1. The issue of gender inequality in Philippine society needs to be more adequately addressed in Philippine legislation. It is imperative that gender

⁵⁸² ALRDCI Women and Children, *supra* note 566, at 13.

⁵⁸³ *Id.*

⁵⁸⁴ *Id.*

⁵⁸⁵ *Id.* at 14.

⁵⁸⁶ *Id.*

⁵⁸⁷ ALRDCI Women and Children, *supra* note 566, at 20. *Note:* For specific recommendations for each study and research, see generally pages 21-25.

issues and concerns are integrated when attempting to protect the rights of women and children;

2. There is a need for massive information drives regarding existing laws, policies, and programs that protect the rights of women and children. Women should be informed of the available mechanism for legal redress, which can be used by the sector to empower themselves;
3. It is clear that legal empowerment is one part of the larger picture of empowering the poor. There needs to be a shift in the governmental and cultural treatment of the poor;
4. The government should use the rights-based approach to protect the human rights of women and children;
5. The need for information dissemination and understanding of pertinent laws, rules and regulations, rights and responsibilities/obligations affecting each sector to all concerned/involved belonging to the sector;
6. A development approach should also be used to address the development problems that are the roots of social ills affecting these sectors, through the passage and/or implementation of more responsive national and local laws, policies, rules and regulations;
7. Laws protecting women and children should be implemented more strictly;
8. Temporary special measures should be undertaken by the Philippine government to combat discrimination against women and children;
9. Repeal laws and administrative orders that continue to discriminate women and children;
10. Ensure the representation of women and children in all governance bodies, from the local to international levels, and their meaningful participation in policy discussions and decision-making processes;
11. Ensure credible and accountable monitoring mechanisms to track results and impact of government services;
12. Maximize the use of gender and development (GAD) budget to implement measures that will protect women's rights;
13. Engage local government to mainstream GAD in its thrusts, programs, projects (agenda and process); and
14. Press for the sex disaggregation of data.

PART V

THE PHILIPPINE ENVIRONMENTAL IMPACT STATEMENT SYSTEM

A. Environmental Impact Assessments⁵⁸⁸

Environmental Impact Assessments (EIAs) emerged internationally after the 1972 Stockholm Conference⁵⁸⁹ and is now an established international and domestic legal technique for integrating environmental considerations into socioeconomic development and decision making processes.⁵⁹⁰ It is defined as “the need to identify and predict the impact on the environment and on man’s health and well-being of legislative proposals, policies and programs, projects, and operational procedures, and to interpret and communicate information about the impacts.”⁵⁹¹ The United Nations Economic Commission for Europe in 1991 defined an EIA as, “an assessment of the impact of the planned activity on the environment.”⁵⁹² The United Nations Environmental Programme (UNEP), in its Goals and Principles of EIA,⁵⁹³ defined an EIA as an examination, analysis and assessment of planned activities with a view to ensuring environmentally sound and sustainable development. It has also been described as “a process, a systematic process that examines the environmental consequences of developmental action [where the] emphasis, compared to many other mechanisms for environmental protection, is on prevention;”⁵⁹⁴ simply put, it is a procedure for evaluating the likely impact of a proposed activity on the environment.⁵⁹⁵

More specifically, an EIA describes a process which produces a written statement to be used to guide decision making;⁵⁹⁶ it provides decision makers with information on the environmental consequences of proposed activities and, in some cases, programs and policies and their alternatives; it requires decisions to be influenced by that information; and it provides a mechanism for ensuring

⁵⁸⁸ Note: This section is taken from Atty. Gregorio Rafael P. Bueta, *A Critique of the Philippine Environmental Impact Statement System in Light of Recent Developments in International Environmental Law*, (2010) (unpublished J.D. Thesis, Ateneo de Manila University) (on file with the Professional Schools Library, Ateneo de Manila University) [hereinafter Bueta Critique of PEISS].

⁵⁸⁹ See Erika L. Preiss, *The International Obligation to Conduct an Environmental Impact Assessment: The ICJ Case Concerning the Gabčíkovo-Nagymaros Project*, 7 N.Y.U. ENVTL. L.J. 307, 317 (1999) (“On the international level, the roots of environmental impact assessment can be found in the 1972 Stockholm Declaration, which resulted from the first international meeting on the environment.”).

⁵⁹⁰ SANDS, *supra* note 23, at 799-800.

⁵⁹¹ JOHN GLASSON, ET AL., *INTRODUCTION TO ENVIRONMENTAL IMPACT ASSESSMENT* 4 (1999), citing Munn (1979).

⁵⁹² *Id.* at 4.

⁵⁹³ UNEP/GC/Dec./14/25 (1987).

⁵⁹⁴ GLASSON, *supra* note 591, at 4.

⁵⁹⁵ PATRICIA BIRNIE AND ALAN BOYLE, *INTERNATIONAL LAW AND THE ENVIRONMENT*, 130 (2nd ed., 2002); See also, TUYOR, *supra* note 88, at 7 (“Environmental Assessment is the general term used to refer to the process of systematic analysis, evaluation, and management of the potential environmental and social effects of a proposed action before a decision is made to proceed or not with its implementation.”).

⁵⁹⁶ *Id.* *supra* note 595, at 130.

the participation of potentially affected persons in the decision making process.⁵⁹⁷ It is also a process by which information about the environmental effects of a project is collected, both by the developer and from other sources, and taken into account by the relevant decision making body before a decision is given on whether the development should go ahead;⁵⁹⁸ it also considers aspects such as project alternatives and mitigation measures that should be implemented if the development is allowed.⁵⁹⁹

The object of an EIA is to provide decision makers with information about possible environmental effects when deciding whether to authorize the activity to proceed;⁶⁰⁰ its purpose is to help them plan, design, manage, and regulate projects and programs.⁶⁰¹ It functions as a means for gathering adequate information to decision makers and others concerned, but does not, as such, force the decision maker to grant a permit or set certain permit conditions.⁶⁰² An EIA is a useful tool that forces policy makers to consider the implications of their decisions before the decisions become permanent.⁶⁰³

In Philippine law, an EIA is defined as a “process that involves predicting and evaluating the likely impacts of a project (including cumulative impacts) on the environment during construction, commissioning, operation and abandonment. It also includes designing appropriate preventive, mitigating and enhancement measures addressing these consequences to protect the environment

⁵⁹⁷ SANDS, *supra* note 23, at 800; See GLASSON, *supra* note 591, at 8; BIRNIE AND BOYLE, *supra* note 595, at 130.

⁵⁹⁸ Riki Therivel and Peter Morris, *Introduction*, in *METHODS OF ENVIRONMENTAL IMPACT ASSESSMENT 3* (Peter Morris and Riki Therivel, Eds., 2001); See also R.K. JAIN, ET AL., *ENVIRONMENTAL IMPACT ASSESSMENT 5* (1993); SANDS, *supra* note 23, at 800; See generally Preiss, *supra* note 589.

⁵⁹⁹ *Id.* Therivel and Morris, *supra* note 598, at 3; See also David A. Wirth, *International Technology Transfer and Environmental Impact Assessment*, in *TRANSFERRING HAZARDOUS TECHNOLOGIES AND SUBSTANCES: THE INTERNATIONAL LEGAL CHALLENGE 83, 84* (Gunther Handle & Robert E. Lutz, Eds., 1989):

A component of a planning process by which environmental considerations are integrated into decision-making procedures for activities that may have adverse environmental effects. The emphasis in EIA is on the collection and analysis of information relating to the environmental consequences of a proposed action. EIA is a process-oriented technique distinct from substantive environmental standards and requirements. The principal purpose of environmental impact assessment is to facilitate informed decision making through a thorough scrutiny of anticipated environmental effects. With the assistance of this analysis, an informed decision maker should be able to assess the advisability of proceeding with proposed actions and to modify proposals to eliminate or mitigate their adverse environmental effects.

⁶⁰⁰ BIRNIE AND BOYLE, *supra* note 595, at 130.

⁶⁰¹ PAUL A. ERICKSON, *ENVIRONMENTAL IMPACT ASSESSMENT: PRINCIPLES AND APPLICATION 20* (1979); See also ALEXANDRE KISS AND DINAH SHELTON, *INTERNATIONAL ENVIRONMENTAL LAW 44* (3rd ed., 2004) (“The purpose of Environmental Impact Assessment is to provide adequate and timely information on the likely environmental and social consequences of development projects and on possible alternatives and mitigating measures.”).

⁶⁰² EBBESSON, *supra* note 16, at 186.

⁶⁰³ Preiss, *supra* note 589, at 312.

and the community's welfare."⁶⁰⁴ The Philippine version of the EIA, the Philippine Environmental Impact Statement System, is also defined under Presidential Decree No. 1586⁶⁰⁵ as, "the documentation of the studies of the environment impact of a project including discussion of the direct and indirect consequences upon human welfare and ecological and environmental integrity."

B. History and Overview of the PEISS

During the 1970s, at a time of increasing awareness regarding environmental issues initiated by the Stockholm Declaration,⁶⁰⁶ there was an urgent need to formulate an intensive, integrated program of environmental protection that will bring about a concerted effort towards protection of the entire spectrum of the environment, brought about by a piecemeal approach and tunnel-vision concept on protecting the environment.⁶⁰⁷ This need gave birth to Presidential Decree No. 1151,⁶⁰⁸ or the *Philippine Environment Policy*. Under Section 4 of this law, an environmental impact statement was required from all agencies and instrumentalities of the national government, including government-owned and controlled corporations, and private corporations, firms and entities, for every action, project, or undertaking which significantly affects the quality of the environment.

The declared policy in Section 4 of PD No. 1151 led to the enactment of the law that established environmental impact assessment in the Philippines, Presidential Decree No. 1586, entitled *Establishing an Environmental Impact Statement System, Including Other Environmental Management Related Measures and for Other Purposes*. As a matter of policy, PD 1586 states that the pursuit of a comprehensive and integrated environmental protection program necessitates the establishment and institutionalization of a system whereby the exigencies of a socioeconomic undertaking can be reconciled with the requirements of environmental quality.⁶⁰⁹

To fully implement PD No. 1586, Presidential Proclamation No. 2146, issued on December 14, 1986, declared certain areas and types of projects as environmentally critical and within the scope of the PEISS; Presidential Proclamation No. 803 issued in 1996 made additions to Proclamation No. 2146. It was only after the issuance of Proclamation No. 2146 that full implementation of the system began.

Throughout the years, there have been several amendments to the PEISS in order to improve the procedures and processes of the system. One of the more significant improvements was the establishment of environmental units in national government agencies, government-owned and controlled corporations, and government financial institutions, to facilitate the adoption of

⁶⁰⁴ Implementing Rules and Regulations (IRR) for the Philippine Environmental Impact Statement (EIS) System, DENR Administrative Order No. 2003-30, § 3(h) (2003).

⁶⁰⁵ Establishing an Environmental Impact Statement System, Including Other Environmental Management-Related Measures and for Other Purposes, Presidential Decree No. 1586 (1978).

⁶⁰⁶ Stockholm Declaration on the Human Environment, U.N./Doc./A/CONF.48/14/Rev.1 (1973).

⁶⁰⁷ Whereas clauses, PD No. 1151 ("Whereas, there is now an urgent need to formulate an intensive, integrated program of environmental protection that will bring about a concerted effort towards the protection of the entire spectrum of the environment through a requirement of environmental impact assessment and statements.").

⁶⁰⁸ Philippine Environment Policy, Presidential Decree No. 1151 (1977).

⁶⁰⁹ PD No. 1586, Whereas clause.

environmental impact statements.⁶¹⁰ Such environmental units were, however, required in agencies whose mandates include the introduction of physical plants and structures.⁶¹¹ Administrative orders were also enacted to further strengthen the PEISS and to clarify the authority to grant or deny an environmental compliance certificate.⁶¹²

In 2003, the Department of Environment and Natural Resources (DENR) issued DENR Administrative Order No. 2003-30, entitled *Implementing Rules and Regulations for the PEISS*. Amendments to the Implementing Rules and Regulations were all incorporated in the Revised Procedural Manual for DAO No. 2003-30.⁶¹³

In June 29, 2010, the DENR–EMB issued Memorandum Circular No. 10-14 entitled *Standardization of Requirements and Enhancement of Public Participation in the Streamlined Implementation of the Philippine EIS System*. The circular was enacted consistent with the public policy of the State to ensure optimum development without delay through sustainable development.⁶¹⁴ It was adopted for an efficient, transparent, systematic, and participatory implementation of the Philippine EIS System under PD No. 1586.⁶¹⁵

Principles and Objectives of the System

The DENR implements the PEISS with the principles of sustainable development and a systems-oriented and integrated approach to ensure a rational balance between socioeconomic development and environmental protection for the benefit of present and future generations.⁶¹⁶

⁶¹⁰ Office of the President, Improving the Environmental Impact Statement System, Executive Order No. 291, § 3 (1996).

⁶¹¹ *Id.*

⁶¹² Office of the President, Further Strengthening the PEISS and Clarifying the Authority to Grant or Deny an ECC, Administrative Order No. 300 (1996).

⁶¹³ Department of Environment and Natural Resources, Revised Procedural Manual for DENR Administrative Order No. 2003-30, Memorandum Circular No. 2007-02, 41 (Aug. 21, 2007) [hereinafter Revised Procedural Manual for DAO No. 03-30]. DENR MC No. 2007-02 states:

The attached Revised Procedural Manual for DAO 2003-30 is hereby being adopted, superseding the Procedural Manual (First Edition) for DAO 2003-30 issued as MC 2005-01 on January 5, 2005. This revised Manual integrates DENR MC 2007-08 issued on July 13, 2007 segregating from the EIA process the practice of prior submission of permits, clearances, licenses and other similar government approvals outside the EMB mandate. This revised Manual also integrates other EMB MCs issued in 2006 which provide for a) clarifications in the PEISS implementation guidelines (MC 005 issued December 19, 2006), b) improvement in the ECC format/content for more timely and substantive advice of EIA Recommendations to other government entities for their consideration in their decision-making process (MC issued December 22, 2006) and (c) a manual on guidelines for focusing EIA Review to the most significant issues (EMB MC 2007-01 issued on March 9, 2007). x x x x

⁶¹⁴ DENR Memorandum Circular No. 10-14.

⁶¹⁵ *Id.*

⁶¹⁶ DENR AO 2003-30, § 1; *See also* PD No. 1151 § 1 (“It is hereby declared a continuing policy of the State (a) to create, develop, maintain and improve conditions under which man and nature can thrive in productive

As a basic principle, the EIA is used to enhance planning and guide decision making.⁶¹⁷ Through this process, adverse environmental impacts of proposed actions are considerably reduced through a reiterative review process of project siting, design, and other alternatives, and the subsequent formulation of environmental management and monitoring plans.⁶¹⁸ DAO No. 2003-30 lists the following as the key operating principles in the implementation of the PEISS:

- a. The PEISS is concerned primarily with assessing the direct and indirect impacts of a project on the biophysical and human environment and ensuring that these impacts are addressed by appropriate environmental protection and enhancement measures;
- b. The PEISS aids proponents in incorporating environmental considerations in planning their projects as well as in determining the environment's impact on their project;
- c. Project proponents are responsible for determining and disclosing all relevant information necessary for a methodical assessment of the environmental impacts of their projects;
- d. The review of the environmental impact statement (EIS) by the EMB shall be guided by three general criteria: (1) that environmental considerations are integrated into the overall project planning, (2) that the assessment is technically sound and proposed environmental mitigation measures are effective, and (3) that social acceptability is based on informed public participation;
- e. Effective regulatory review of the EIS depends largely on timely, full, accurate disclosure of relevant information by project proponents and other stakeholders in the EIA process;
- f. The social acceptability of a project is a result of meaningful public participation, which shall be assessed as part of the environmental compliance certificate (ECC) application, based on concerns related to the project's environmental impacts;
- g. The timelines prescribed by this Order, within which an ECC must be issued or denied, apply only to processes and actions within the Environmental Management Bureau's (EMB) control and do not include actions or activities that are the responsibility of the proponent.⁶¹⁹

The Lead Agency: The DENR–Environmental Management Bureau

The Environmental Management Bureau, or the EMB, with the help of the Regional Offices, is primarily responsible for the implementation of PD No. 1586 and the PEISS. It is one of the line

and enjoyable harmony with each other, (b) to fulfill the social, economic, and other requirements of present and future generations of Filipinos, and (c) to ensure the attainment of an environment quality that is conducive to a life of dignity and well-being.”); PD No. 1586, § 1 (“It is hereby declared the policy of the State to attain and maintain a rational and orderly balance between socioeconomic growth and environmental protection.”)

⁶¹⁷ Revised Procedural Manual for DAO 03-30, at 1.

⁶¹⁸ *Id.* at 1.

⁶¹⁹ DAO No. 2003-30, §1.

bureaus⁶²⁰ of the DENR and is in charge of the “brown environment sector” – industrial pollution or any pollution coming from industrial sources.⁶²¹ The EMB was created from the merger of the National Environmental Protection Council and the National Pollution Control Commission.⁶²² The EMB has eight divisions, one of which is the Environmental Impact Assessment and Management Division which is specifically in charge of processing environmental compliance certificate applications and post-environmental compliance certificate monitoring. The EMB has 16 regional offices, and each one has a division dedicated to the EIS implementation. The processing of EIS documents for environmentally critical projects (ECP) is undertaken by the EMB. On the other hand, EIS documents arising from the evaluation of project descriptions are evaluated by the regional offices.

Some of the key functions of the EMB are:

- a. Advise the DENR Secretary on matters relating to environmental protection, conservation, and pollution control;
- b. Formulate and implement comprehensive plans, policies, projects, and activities for the prevention and control of pollution, and the protection of the environment;
- c. Conduct special response and monitoring during pollution emergencies and catastrophes;
- d. Promote public information and education to encourage participation of an informed citizenry in environmental planning and monitoring; and
- e. Enforce the EIS System.⁶²³

Overview of the PEISS Procedures and Processes

The PEISS is primarily proponent-driven. In a project cycle, it is in the Feasibility Study stage when a proponent defines its range of actions and considers project alternatives; thus, it is the most ideal stage in the cycle wherein the EIA study will have the most added value.⁶²⁴ In fact, under Administrative Order No. 42, proponents are required to simultaneously conduct the environmental impact study and the project planning or feasibility study.⁶²⁵

⁶²⁰ A line bureau operates as a suborganization in the department with direct line of command, usually with their own representative office, down to the regional and field offices of the Department.

⁶²¹ Fernandino Y. Concepcion, *Environmental Management Bureau*, 6 PHILJA JUDICIAL JOURNAL 106, 108 (2004).

⁶²² Tolentino, *supra* note 53, at 13.

⁶²³ Concepcion, *supra* note 621.

⁶²⁴ Revised Procedural Manual for DAO No. 03-30, at 2.

⁶²⁵ Rationalizing the Implementation of the Philippine Environmental Impact Statement (EIS) System and Giving Authority, in Addition to the Secretary of the Department of Environment and Natural Resources, to the Director and Regional Directors of the Environmental Management Bureau to Grant or Deny the Issuance of Environmental Compliance Certificates, Administrative Order No. 42, §2(a) (2002).

There are six main stages in the Philippine EIA process, namely: Screening, Scoping, EIA Study and Report Preparation, EIA Report Review and Evaluation, Decision Making, and Monitoring, Validation, and Evaluation/Audit.⁶²⁶

- a. Screening – is the stage wherein a project proponent determines if the proposed activity is covered or not covered by the PEISS. The proponent will determine if the project falls in either one of the categories listed.⁶²⁷ If the project is covered, the proponent will then determine what type of document needs to be prepared to secure the needed approval.⁶²⁸
- b. Scoping – is a proponent-driven multi-sectoral formal process of determining the focused Terms of Reference of the EIA study. It identifies the most significant issues/ impacts of a proposed project. There is public scoping, wherein the local community is involved; and there is technical scoping done by a third party EIA Review Committee, also with the participation of the DENR-EMB.⁶²⁹
- c. EIA Study and Report Preparation – The EIA study involves a description of the proposed project and its alternatives, characterization of the project environment, impact identification and prediction, evaluation of impact significance, impact mitigation, and formulation of an environmental management and monitoring plan. The study is embodied in an EIA Report.⁶³⁰
- d. EIA Report Review and Evaluation – At this stage, the EMB reviews and evaluates the study and report done by the proponent. The EMB will look at the recommendations of the third party review committee, the public, and compliance with both procedural and substantive requirements of the process.⁶³¹
- e. Decision Making – This stage involves the evaluation of the EIA recommendations which results in the issuance of an ECC, a Certificate of Non-Coverage (CNC), or a Denial Letter. Should the EIA be approved, the ECC that was issued shall be transmitted to concerned local government units (LGUs) and other government agencies for integration in their decision making processes.⁶³²

⁶²⁶ See also TUYOR, *supra* note 88. The World Bank divided the System into three major phases: (i) screening, (ii) application for an environmental compliance certificate, (iii) the post-environmental compliance certificate evaluation.

⁶²⁷ Category A projects are those which are considered as environmentally critical projects (ECPs); Category B are those which are not ECPs but are within an environmentally critical area (ECA); Category C are projects which are in themselves intended to enhance the environment (Department Administrative Order 30-2003); and Category D, which are projects that neither ECPs or are within an ECA.

⁶²⁸ Revised Procedural Manual for DAO No. 03-30, at 15.

⁶²⁹ *Id.* at 15.

⁶³⁰ *Id.*

⁶³¹ *Id.*

⁶³² *Id.*

- f. Monitoring, Validation, and Evaluation/Audit – This stage assesses the performance of the proponent against the ECC and its commitments to the environmental management and monitoring plan; and ensures that actual impacts of the projects are adequately prevented or mitigated.⁶³³

Central to the PEISS is the issuance of the ECC, which is the document issued by the DENR-EMB certifying that the proponent has complied with all the requirements of the system and has committed to implement its approved environmental management plan; the ECC contains specific measures and conditions that the project proponent has to undertake before and during the operation of the project and, in some cases, during abandonment to mitigate environmental impacts.⁶³⁴ The ECC has come to be recognized as one of the most important requirements of any project undertaking: most banks in the Philippines make loans contingent upon the proponent securing an ECC, and a number of government agencies require an ECC before issuing project related permits and approvals.⁶³⁵

Category A projects need to go through a full EIS report, while Category B projects need only to conduct an initial environmental examination unless such an examination would not be enough, and a scaled-down EIS report would then be required. Category C projects only require a project description⁶³⁶ for the issuance of a certificate of non-coverage. Category D projects may be issued a certificate of non-coverage upon request from the DENR-EMB, but the latter may still require such projects to provide additional environmental safeguards as it may deem necessary.

Current Trends and Developments in the PEISS

The Martial Law era merely provided for the general framework and policy of the PEISS and the details and procedures were left to be determined by the government agencies. The often-changing rules and procedures also make a study and analysis of the system difficult; and as one environmental NGO experienced, a comprehensive study on the PEISS that they made consisting of a book 3 inches thick was rendered obsolete and outdated in a matter of a few months on account of new issuances by the DENR on the PEISS.⁶³⁷

As of the writing of this report, the most recent of the DENR issuances on the PEISS is DENR MC 10-14 which was issued in June 2010. DENR MC 10-14 standardizes the requirements and enhances public participation in the EIA process. This is accomplished by mandating that scoping be conducted with the community⁶³⁸ and requiring that the EIA findings for the ECPs shall be presented in a

⁶³³ Revised Procedural Manual for DAO No. 03-30, at 15.

⁶³⁴ TUYOR, *supra* note 88, at 24.

⁶³⁵ *Id.* at 50.

⁶³⁶ The project description is a document that described the nature, configuration, use of raw materials and natural resources, production system, waste and pollution generation and control, and the activities of the proposed project in all its phases.

⁶³⁷ Muhi NGO FGD, *supra* note 406.

⁶³⁸ Department of Environment and Natural Resources, Standardization of Requirements and Enhancement of Public Participation in the Streamlined Implementation of the Philippine EIS System, Memorandum Circular No. 2010-14, 3.1 (June 29, 2010).

public consultation involving all legitimate stakeholders.⁶³⁹ In addition, the Planning and Development Officer or the Environment and Natural Officer of the LGU where the ECP is to be located shall be invited as a resource person of the EIA Review Committee,⁶⁴⁰ and the results of the review shall be presented to the concerned LGUs to get their inputs prior to the issuance of the ECC.⁶⁴¹ Regional offices are also required to participate in the review of ECPs in their jurisdictions; as there were prior instances when the regional office would know of an ECC issued for a project in their area only when a person files a complaint.⁶⁴²

The issuance of MC 10-14 is part of the ongoing streamlining process of the PEISS. Some of the measures being undertaken by the EMB are the following: (1) improvement of the documentation procedure by allowing applications to be viewed online; (2) removal of issues which are not deemed necessary in the application; (3) removal of the need to present permits from other agencies in the application process; and (4) devising report format in the form of a checklist to make it easier for proponents to comply.⁶⁴³

Another amendment being undertaken by the EMB is the creation of sectors or categorization of industries to make the requirements sector industry specific. This will guide the proponent in preparing the essential documentation, and it will also aid the review committee in evaluating the requirements submitted. This is intended to speed up the preparation and the review and evaluation process of the system. Examples of the proposed sectors that are being created are the food industry, horizontal developments (subdivisions), vertical developments (buildings), mining projects, hydro projects, and the livestock industry.⁶⁴⁴

There are currently no steps to reduce the number of covered projects under the PEISS.⁶⁴⁵ The current streamlining initiatives, however, address these problems by reducing the processing time of applications; and the solution being adopted here is to create sectors and categories for the projects. In addition to this, there are efforts to remove conflicts and overlaps with other laws and regulations:⁶⁴⁶ for example, an administrative order is currently being drafted to resolve conflicts between the PEISS and the rules of the Mines and Geosciences Bureau.⁶⁴⁷

⁶³⁹ *Id.* at 3.2.

⁶⁴⁰ *Id.* at 5.1.

⁶⁴¹ *Id.* at 5.2.

⁶⁴² Mr. Ernesto Flores, Comments during the Environmental Management Bureau Consultation Meeting at the EMB Office, DENR Compound, Quezon City (Oct. 29, 2010) [hereinafter Flores EMB Consultation].

⁶⁴³ *Id.*

⁶⁴⁴ *Id.*

⁶⁴⁵ *Id.*

⁶⁴⁶ Tuyor, *supra* note 88, at 33-34: The most common overlaps include: (i) the requirement of other studies and reports that serve the same purpose or are already covered by the EIS; (ii) specific processes which are already covered by the EIS System but which the project must undergo to fulfill the requirements of another law (i.e., FPIC); (iii) establishment of funds for the same purpose; (iv) environmental monitoring requirements of other laws and agencies. Other overlaps identified were as regards agency jurisdiction and the ECC being made a prerequisite for other agency requirements.

⁶⁴⁷ Leones EMB Consultation, *supra* note 221.

Another interesting development is the inclusion of sociologists in the EIA Review Committee.⁶⁴⁸ Although it is not mandated by law, the inclusion of a sociologist to help in determining the impact of a project on a community is commonly done in practice. There was a time when these social scientists were not included in the review committees. However, under the current leadership of the DENR and EMB, they are once again made part of the review committees.⁶⁴⁹

Significantly, despite the proposed amendments and improvement of the system, it is to be noted that these new procedures which seek to enhance public participation in the PEISS cover only ECPs, which according to the EMB are no more than 30-40 per year, and not to projects located in ECAs, wherein the number of applications in the regional offices could be as high as 30-50 per week.⁶⁵⁰

C. An Assessment of the Philippine EIS System

The Philippines is one of the first countries in the world to adopt and enact EIA legislation. The PEISS has been described as one of the most elaborate and comprehensive environmental assessment systems in the world.⁶⁵¹ While the use of an EIA as an environmental management tool has gained acceptance in the Philippines, particularly among economists and development planners,⁶⁵² and despite the fact that Philippine policy making has been receptive towards new concepts and ideas such as the PEISS,⁶⁵³ there are still problems and limitations in the system which ought to be addressed.

Problems and Issues in the System

One author made a general critique of the PEISS, to wit: “[In the EIA in the Philippines], responsibilities are divided among six agencies and accountability among the participants is low. Public hearings are not mandatory. Between 1978 and 1983, averages of only eight EISs were filed each year, while several hundred new projects were registered. EIA is not welcomed by many participants. EIA in the Philippines performs an agency adjustment function.”⁶⁵⁴ The author also cited some common problems as regards EIA in general in developing countries.⁶⁵⁵

⁶⁴⁸ Flores EMB Consultation *supra* note 642.

⁶⁴⁹ *Id.*

⁶⁵⁰ Flores EMB Consultation, *supra* note 642; Leones EMB Consultation, *supra* note 221.

⁶⁵¹ TUYOR, *supra* note 88, at 29.

⁶⁵² Tolentino, *supra* note 53, at 20.

⁶⁵³ TUYOR, *supra* note 88, at 19.

⁶⁵⁴ JAIN, *supra* note 598, at 178.

⁶⁵⁵ *Id.* at 179.

Observers find several general tendencies in the application of Environmental Assessment (EA) in developing countries which limit its effectiveness. Assessments are undertaken too late in the planning to contribute to decision making and are used instead to confirm that environmental consequences of the project are acceptable. The environmental management plans discussed in the EIS document are often not carried out, and there is no mechanism for monitoring compliance x x x. Many countries limit projects which are subject to EA such that projects which may have significant environmental impact are excluded.

Several NGOs and POs criticized the system as being too technical and too voluminous,⁶⁵⁶ and oftentimes the community is given misleading data.⁶⁵⁷ It was also noted that the language and format of the EIA is very difficult for the public to understand which hinders public participation in the process.⁶⁵⁸ One study says that the EIA experience in the Philippines has shown that many problems associated with the EIA process are traceable to a lack of communication and understanding, as well as inadequate appreciation of the social, cultural, and political factors that affect EIA implementation.⁶⁵⁹ In addition, the cost of the EIS preparation where the proponent pays the preparer also sometimes constitutes conflict of interest because the preparer is sometimes not paid until an ECC is issued.⁶⁶⁰

There is also a recognized problem in the implementation of the system. Similar to other areas of Philippine law, the legislation is adequate at best, but the implementation is poor and at times rigged with corruption,⁶⁶¹ even describing it as words for deeds exercises.⁶⁶² One author notes that on account of the novelty of the EIA process in a developing country like the Philippines, the EIA law is encountering problems in implementation;⁶⁶³ furthermore, there is a special need for clearer guidelines as to when EIAs are required and as to the roles in the process of various governmental agencies, project proponents and the public.⁶⁶⁴ A 2007 study conducted by the World Bank and the Asian Development Bank on the PEISS considered the implementation of the system as generally insufficient.⁶⁶⁵

The lack of manpower and technical expertise of the DENR-EMB also affected the implementation of the system, with the bureau only being able to monitor 18 percent of the

⁶⁵⁶ Muhi NGO FGD, *supra* note 406.

⁶⁵⁷ Navales NGO FGD, *supra* note 409.

⁶⁵⁸ Atty. Ma. Paz D. Luna, Linear Resource Use: Pollution Laws, Pilot Multi-Sectoral Capacity Building on Environmental Laws and the Rules of Procedure for Environmental Cases at Puerto Princesa City, Palawan (June 23-25, 2010) [hereinafter Luna Pollution Laws].

⁶⁵⁹ *See generally* LOHANI, ET AL., ENVIRONMENTAL IMPACT ASSESSMENT FOR DEVELOPING COUNTRIES IN ASIA, (Vol. 1, 1997).

⁶⁶⁰ Luna Pollution Laws, *supra* note 658.

⁶⁶¹ Tolentino, *supra* note 53, at 12. "Despite the existence of numerous environmental legislations in the Philippines, much is to be desired in regard to their implementation and enforcement and these may be due to problems in the laws themselves x x x poor draftsmanship, ambiguity, presence of loopholes, conflicts with other legislation."

⁶⁶² *Id.* at 13.

⁶⁶³ *Id.* at 11. Among the problems are: lack of general information on the legal requirement for an EIA, lack of technical know-how in carrying out the process, generally expensive preparation for an EIA, absence of coordination among the government agencies in the implementation of EIA requirements, lack of database and competent personnel.

⁶⁶⁴ *Id.* at 13.

⁶⁶⁵ TUYOR, *supra* note 88, at 4-5, 51-57. The identified reasons for the inefficiency of the system are: (1) the expanded coverage of small businesses into the System overwhelms the DENR-EMB with its limited manpower and resources; (2) lack of focus on the environmental assessment results in voluminous reports; (3) administration by a central agency violates the principle of subsidiarity; (4) there are overlaps of processes and procedures with other laws and agencies; and (5) there is a lack of systematic feedback.

projects which were issued ECCs, even with the average issuance of 1,600 ECCs per year.⁶⁶⁶ Despite the fact that the EMB implements and enforces five major environmental laws, its structure has not changed and lags behind in fulfilling its expanding responsibilities.⁶⁶⁷ The World Bank, in its recent assessment of the PEISS, cited the problem of harmonization of the local EIA system with the systems of development agencies and the concern as regards the effectiveness and efficiency of the system.⁶⁶⁸ Even the DENR-EMB personnel admit that there is a lack of manpower, which in turn affects their capacity to monitor the compliance of the project with the ECC requirements. Most of the personnel working in the EIA Division of the EMB are contractual employees and there is generally a high turnover rate of employees, resulting in lack of training and expertise on the part of its staff.⁶⁶⁹ The reality is that some EMB personnel who have gained experience working with the PEISS decide to move to more lucrative careers in the private sector.⁶⁷⁰

Other problems and issues related to the PEISS are the following: (1) some environmental consultancy firms have their own format and template for preparing the requirements, making it difficult for the EMB to process it;⁶⁷¹ (2) law reforms to improve the system cannot pass through Congress;⁶⁷² (3) ECC's are being violated but nothing is being done;⁶⁷³ (4) exemptions from the requirement can easily be given by the President;⁶⁷⁴ and (5) issuances and procedures can easily be changed leading to confusion.⁶⁷⁵

D. Recommendations

As the previous section has shown, despite the ongoing efforts for the past three decades to improve the PEISS, problems, issues, and gaps still plague the EIA regime in the Philippines: the

⁶⁶⁶ TUYOR, *supra* note 88, at 32.

⁶⁶⁷ ADB ENVIRONMENTAL ANALYSIS, *supra* note 90, at 101.

⁶⁶⁸ *Id.* at 8.

One concern relates to the ongoing effort by development agencies to harmonize their environmental assessment system with the country system pursuant to the Paris Declaration on Aid Effectiveness x x x. The other concern relates to the effectiveness and efficiency of the Philippine EIS System given the continuing environmental and natural resource degradation, and the lackluster investment climate in the country which has been blamed on, among others, the uncertainty and inconsistency in the application of regulation and the high cost of doing business compared to other countries.

⁶⁶⁹ Flores EMB Consultation, *supra* note 642.

⁶⁷⁰ *Id.*

⁶⁷¹ *Id.*

⁶⁷² Leones EMB Consultation, *supra* note 221.

⁶⁷³ Atty. Francine Dalumpines, Comments during the Consultation Meeting with the Office of the Environmental Ombudsman at the Office of the Ombudsman, Quezon City (Oct. 12, 2010).

⁶⁷⁴ Muhi NGO FGD, *supra* note 406.

⁶⁷⁵ *Id.*

laws and rules are too technical and confusing, the system overlaps with other laws and procedures, and there is poor implementation of the system due to the lack of manpower and resources. Nevertheless, there is room for growth and improvement to ensure the efficiency and effectiveness of the system. This section will present various recommendations from different sectors and stakeholders on how to improve the system.

A 2007 study of the World Bank and the ADB gave the following recommendations on how to improve the PEISS:⁶⁷⁶

1. Maximizing the contributions of the EIS to local planning and decision making through decentralization and de-concentration of the environmental assessment functions;
2. Improving the quality of the assessment;
3. Streamlining and simplifying requirements;
4. Focusing environmental assessment resources on environmentally critical projects and prioritizing the mapping of environmentally critical areas;
5. Moving towards strategic environmental assessment; and
6. Subjecting proposed new regulations, including new regulations on the EIS to cost-benefit or impact study.

In another article, which examined the development of EIA law in Asia and cited the Philippines as an example, the author gave the following conclusions and recommendations:⁶⁷⁷

1. Prepare relevant and necessary laws, regulations, or orders relating to standards to be satisfied by an EIA;
2. Appropriate enforcement processes should be established;
3. Processes for freedom of access to relevant environmental data regarding projects should be adopted, along with clear and advanced announcements of legal settlement measures if access is denied;
4. Environmental education for persons engaged in the EIA process; and
5. Exchange of information by the government authorities concerned relating to the scope of the EIA, procedures used, follow-up requirements, and the reviewing process in case of denial.

Law reform is also another area where improvements can be made.⁶⁷⁸ In an interview with EMB Assistant Director Jonas Leones, he admitted that the EIA law in the Philippines is outdated, thus the need for the DENR to constantly issue administrative orders and circulars to improve the

⁶⁷⁶ See Tuyor, *supra* note 88.

⁶⁷⁷ Nobuo Kumamoto, *Development of Environmental Law and Policy in Asia Concerning Environmental Impact Assessment*, in ENVIRONMENTAL LAW AND POLICY IN ASIA: ISSUES OF ENFORCEMENT, INSTITUTE OF DEVELOPING ECONOMIES 172, 183 (Yoshihiro Nomura and Naoyuki Sakumoto, Eds., 1997).

⁶⁷⁸ See Bueta Critique of PEISS, *supra* note 588.

system.⁶⁷⁹ He adds that there are good proposed bills pending in Congress, but the problem is that they do not get passed.⁶⁸⁰

Other recommendations relate to increasing the number of personnel of the EIA Division.⁶⁸¹ As mentioned earlier, there are a lot of contractual personnel in the said division. Increasing the number of permanent and regular staff would help the division in its tasks. This would also help in the continuous training and professional education of the EIA personnel.

Increased awareness and an information campaign on the requirements should be done to help project proponents and the general public.⁶⁸² A recent study also suggests that the role of the LGUs should be enhanced at all stages of the EIA process.⁶⁸³

Other recommendations include: clarifying the exemptions that can be granted by the President under LOI No. 1179;⁶⁸⁴ exploring the viability of adopting a strategic EIA,⁶⁸⁵ and including human rights assessment and social and cultural assessment in the EIA process.⁶⁸⁶

⁶⁷⁹ Leones EMB Consultation, *supra* note 221.

⁶⁸⁰ *Id.* Note: As of Oct. 28, 2010, the Senate has 5 pending bills specifically on EIA.

⁶⁸¹ Flores EMB Consultation, *supra* note 642.

⁶⁸² *Id.*

⁶⁸³ See Elazegui, et al., Enhancing the Roles of Local Government Units in Environmental Protection, (UP Los Baños).

⁶⁸⁴ Luna Pollution Laws, *supra* note 658.

⁶⁸⁵ Casey NGO FGD, *supra* note 184.

⁶⁸⁶ Muhi NGO FGD, *supra* note 406.

PART VI

ANALYSIS AND RECOMMENDATIONS

The previous parts of this report presented the complex and interrelated issues surrounding the concept of access to Environmental Justice. The first two chapters provided a brief discussion of this concept followed by a glimpse of the current state of the Philippine environment. This emphasizes the need to enhance efforts to protect and preserve the environment and highlights the important role of the justice system in the protection of the environment. The third chapter discussed the five pillars of the justice system and the results of the assessment conducted on the various agencies and groups that comprise it. The fourth chapter discussed vulnerable groups who bear the brunt of environmental degradation; which again underscores the need for the justice system to be vigilant in protecting these groups. Finally, an assessment and evaluation of the PEISS was conducted which emphasized the importance of this environmental protection tool and the challenges that it continues to face.

This part of the report pieces together the various data and information gathered from related literature and interviews and presents its own analysis and recommendations.

A. The Analytical Tool: SWOT Analysis

To further understand and analyze the findings of the report, the SWOT analysis tool was used to examine the capacities of the various pillars of the justice system.

SWOT, which stands for Strengths, Weaknesses, Opportunities and Threats, is a “general technique which can be applied across diverse functions and activities, but it is particularly appropriate to the early stages of planning.”⁶⁸⁷ The SWOT analysis is a valuable step in a situational analysis: assessing the firm’s strengths, weaknesses, market opportunities, and threats through a SWOT analysis is a very simple process that can offer powerful insight into the potential and critical issues affecting a venture.⁶⁸⁸

Strengths and weaknesses help focus the [organization] to look internally at what [it] can do.⁶⁸⁹ Strengths describe the positive attributes, tangible and intangible, internal to the organization that is within its control.⁶⁹⁰ Weaknesses are factors that are within its control that detract from its ability to obtain or maintain a competitive edge, which it might improve.⁶⁹¹

Threats and opportunities are external; focusing on the conditions of the real world.⁶⁹² Opportunities assess the external attractive factors that represent the reason for the [organization

⁶⁸⁷ <www.britishcouncil.org/tipd-undertaking-a-swot-analysis.doc> (last accessed on Dec. 3, 2010).

⁶⁸⁸ <<http://articles.bplans.com/business/how-to-perform-swot-analysis/116>> (last accessed on Dec. 3, 2010).

⁶⁸⁹ <<http://sbinformation.about.com/cs/bestpractices/a/swot.htm>> (last accessed on Dec. 3, 2010).

⁶⁹⁰ <<http://articles.bplans.com/business/how-to-perform-swot-analysis/116>> (last accessed on Dec. 3, 2010).

⁶⁹¹ *Id.*

⁶⁹² <<http://sbinformation.about.com/cs/bestpractices/a/swot.htm>> (last accessed on Dec. 3, 2010).

or project] to exist and prosper.⁶⁹³ Threats include factors beyond its control that could place the strategy, or the [organization] itself, at risk; these are also external, but it may benefit by having contingency plans to address them if they should occur.⁶⁹⁴

The SWOT analysis will be used in this study – looking at the strengths, weaknesses, opportunities and threats of each pillar and the agencies, institutions, and individuals that comprise it, in relation to the goal of achieving and enhancing access to Environmental Justice. Each pillar will be separately discussed and analyzed using the SWOT analysis. In addition, the pillar's relationship and coordination with the other pillars will also be examined. The analysis will be based on the results of the assessment conducted, which have been presented in Part III of this report.

B. Analysis of the Five Pillars

Presented below is an analysis of the five pillars of the justice system based on the assessment conducted by the proponents of the study, from the data and materials gathered, and the review of related literature. A brief discussion of a recent survey on access to justice is first presented below, to enhance the analysis and assessment of the five pillars of the justice system.

ALG Research on the Poor Accessing Justice and the ALG as a Reform Advocate

The study was a collaboration between the Alternative Law Groups and the Social Weather Stations conducted in 2007. The results of the survey and study were published in 2008. The project was undertaken to complement the Action Program for Judicial Reform of the Supreme Court, and as part of the Justice Reform Initiatives Support project (JURIS) of the ALG. The evaluation research was intended to evaluate the impact of the third component of the JURIS project on justice reform advocacy.⁶⁹⁵

Particular results and findings chosen from the evaluation research will be presented below. The results gathered complement and enhance the objectives, goals, and also the findings of this study on access to environmental justice, and provide the reader with a statistical background on the five pillars of the justice system. The survey also highlights the role of the justice system in ensuring access to justice.

In the study, the first significant question asked concerns the level of satisfaction with the justice system in the Philippines.⁶⁹⁶ The results showed that only 36 percent are satisfied while 64 percent were dissatisfied.⁶⁹⁷ People in urban areas were more dissatisfied than those in the rural areas, while the NCR posted the highest dissatisfaction with the justice system at 75 percent.⁶⁹⁸ In

⁶⁹³ <<http://articles.bplans.com/business/how-to-perform-swot-analysis/116>> (last accessed on Dec. 3, 2010).

⁶⁹⁴ *Id.*

⁶⁹⁵ ALG AND SWS, *supra* note 75, at 1.

⁶⁹⁶ The question was phrased as follows: "Overall, how satisfied or dissatisfied are you with the system of justice in the Philippines?"

⁶⁹⁷ ALG AND SWS, *supra* note 75, at 16, Table 7.

⁶⁹⁸ *Id.* at 17, Table 8.

relation to this, another question concerns the accessibility of justice for poor people.⁶⁹⁹ The results showed that only 13 percent said that it was very accessible while 48 percent said that it was practically inaccessible.

A question was also asked as regards trust in personalities/institutions in the legal profession and the judicial system.⁷⁰⁰ Paralegals were the most trusted at +48 percent net rating, followed by NGO lawyers and PAO lawyers in the area at +45 percent and +33 percent, respectively.⁷⁰¹ The least trusted yet still receiving positive marks were the police in the area at +11 percent, fiscals and government prosecutors with +14 percent, and the military in the area at +15 percent.⁷⁰² The other personalities and institutions appear in the following order: following the top three, include the Supreme Court at +27 percent, the Court of Appeals at +22 percent, the Sandiganbayan at +20 percent, judges in the area at +19 percent, and private lawyers in the area at +16 percent.⁷⁰³ In relation to this question, another question was asked as regards the respondent's trust in selected government agencies; and of particular importance was the result for the DENR, which received a +27 percent rating.⁷⁰⁴

Another significant question that was asked in the evaluation research was as regards the knowledge about the justice system in the Philippines.⁷⁰⁵ In the ALG target areas, only 13 percent of the respondents said that they had extensive knowledge of the justice system and 37 percent said that they had adequate knowledge.⁷⁰⁶ On the other hand, 40 percent said that they had only little knowledge while 11 percent said that they had very little.⁷⁰⁷ In terms of area and locale, people in the NCR and the rest of Luzon fared better than those in the Visayas and Mindanao, while more people in the urban areas had an idea about the justice system in the Philippines.⁷⁰⁸

Related to the previous question was the one which asked the respondent as regards their sources of knowledge about the system of justice.⁷⁰⁹ Not surprisingly, 56 percent of the respondents said that they gain knowledge from the mass media.⁷¹⁰ This was followed by getting knowledge

⁶⁹⁹ *Id.* at 45, Table 41. The question was phrased as follows: "In your opinion, how accessible is it for poor people to achieve justice from the system of justice?"

⁷⁰⁰ *Id.* at 17, Chart 2. The question was phrased as follows: "How much trust do you have in the following people and institutions in your area?"

⁷⁰¹ *Id.*

⁷⁰² ALG and SWS, *supra* note 75, at 17, Chart 2.

⁷⁰³ *Id.*

⁷⁰⁴ *Id.* at 19, Chart 3.

⁷⁰⁵ *Id.* at 21, Table 12. The question was phrased as follows: "Overall, how much is your knowledge about the system of justice in the Philippines?"

⁷⁰⁶ *Id.*

⁷⁰⁷ ALG and SWS, *supra* note 75, at 21, Table 12.

⁷⁰⁸ *Id.* at 21, Table 13.

⁷⁰⁹ *Id.* at 22, Table 15. The question was phrased as follows: "Have you learned about the system of justice in any of the following ways? Please mention all that apply."

⁷¹⁰ *Id.*

from people with experience in a case and from NGOs, which were at 43 percent and 38 percent respectively.⁷¹¹ Other sources of information included relatives and friends at 24 percent, personal experience in a case at 20 percent, and from school at 16 percent.⁷¹² Significantly, in relation to this question, the most dissatisfied with the justice system were the ones who got their knowledge from the NGOs, followed by those who got information from people with case experience, and those with a personal case experience, respectively.⁷¹³

Other significant questions and results in the evaluation research related to knowledge about laws include the knowledge of general concepts of rights,⁷¹⁴ knowledge of search warrants, *barangay* justice system and subpoena,⁷¹⁵ knowledge of illegal detention and issuance of ordinances,⁷¹⁶ knowledge of environmental laws,⁷¹⁷ and knowledge of laws on indigenous peoples.⁷¹⁸

The Law Enforcement Agencies

The law enforcement agencies that were part of the report ranged from an executive department, to the civilian national police, and to the armed forces. This shows that numerous agencies, bureaus, and branches of the government are involved in environmental law enforcement. The assessment of the various agencies shows that almost all areas and aspects of the environment receive some form of protection under existing laws.

The analysis below highlights the crucial role of the enforcement agencies in environmental protection. At the same time, it presents the reality that more work needs to be done in order for this pillar to effectively and efficiently perform its part in achieving environmental justice.

Strengths

One clear strength of the law enforcement agencies that are part of this report is that all are aware of environmental issues and the need to protect the environment, whether because of a specific mandate or through their experiences in the field and on the ground. In relation to this, all the enforcement agencies have a mandate connected to or dealing with the environment, although not directly regarding Environmental Justice. Such mandate may be included in the core functions of the agency or due to the need to coordinate with government offices.⁷¹⁹

⁷¹¹ *Id.*

⁷¹² ALG and SWS, *supra* note 75, at 22, Table 15.

⁷¹³ *See Id.* at 23, Table 18.

⁷¹⁴ *Id.* at 25-26, Tables 19-20.

⁷¹⁵ *Id.* at 27-28, Tables 21-22.

⁷¹⁶ *Id.* at 29, Table 23.

⁷¹⁷ ALG and SWS, *supra* note 75, at 32-33, Tables 28-29.

⁷¹⁸ *Id.* at 37-38, Tables 33-34.

⁷¹⁹ For example, under the law establishing the Philippine National Police, there is no directive to protect the environment. However, one of its units, the Maritime Group, has been tasked to help in the enforcement of marine environmental laws due to its area of operations and coordination with other agencies.

The law enforcement agencies have also created a coordinating body, the National Law Enforcement Coordinating Council (NALECC),⁷²⁰ which has a Subcommittee on the Environment and Natural Resources which is chaired by the DENR. This body helps in ensuring the success of enforcement operations by giving the different agencies a venue by which they are able to coordinate efforts between and among the various organizations. This body also ensures that problems between the different law enforcers are resolved and that evaluation of the coordination process is done.

Another strength of the various enforcement agencies is the knowledge and technical expertise they have in their specific fields.⁷²¹ This helps when they coordinate with other agencies, as each agency has specialized skills which can be tapped by others. This also facilitates the exchange of information through trainings and seminars, thereby enhancing the skills of the other agencies.

Weaknesses

While environmental policies, laws, and institutions have been strengthened, effective enforcement and compliance continue to pose challenges.⁷²² As cited in a recent study of the ADB:

These challenges are brought about by weak political will, low levels of institutional capacity, and inadequate budget allocations. The unclear roles and mandates of government agencies, the lack of transparency, and lack of active civil society involvement also contribute to the problem. Challenges remain in how environmental governance can be made more effective and how environmental policies and institutions can be strengthened, as these are expected to largely determine the region's prospects for environmentally sustainable development in the coming decades.⁷²³

One weakness that was consistently raised by the various law enforcement agencies was the lack of resources. Despite the presence of programs that address environmental issues, they are not able to fully implement it or fully utilize its potential and effectiveness. The lack of resources includes insufficient funding or budget of the agencies or the inadequacy of equipment and materials.

Related to this is the lack of personnel to fully implement their functions and responsibilities. Most of the agencies raised the effect of the government rationalization plan on their offices, wherein no new employees are allowed to be hired, be it as a replacement for a person who has resigned or retired, or as additional personnel. This plan to streamline the bureaucracy causes many of their officials and staff to multi-task and to perform functions which are not part of their designation. They are thus forced to cope with the increased work load and do the best that they can given the situation. It adversely affects the efficiency and performance of the personnel because they are not able to focus on their primary functions due to the increased work load.

⁷²⁰ The NALECC is chaired by the PNP Chief.

⁷²¹ For example, the SC has consistently ruled that the DENR-PAB is to be consulted to determine the existence of pollution; the BFAR gives technical advice to the LGUs in the enactment of local fisheries ordinance.

⁷²² ADB ENVIRONMENTAL ANALYSIS *supra* note 90, at 5.

⁷²³ *Id.*

The lack of proper and effective coordination is also a weakness encountered by the enforcement agencies. Despite the presence of the NALECC which can facilitate coordination, there still remains a gap in institutionalizing arrangements between the agencies. This coordinating body has not been fully utilized for environmental law enforcement. Only few enforcement units have MOAs or SOPs when it comes to coordinating law enforcement efforts and most of these are not permanent and could be removed with a change in leadership or administration. In some cases, task forces are created but they are short-lived since they merely focus on a specific issue or performance of a task, and are dissolved once completed.

For some agencies, one weakness is that their leadership does not prioritize environmental protection and environmental issues.⁷²⁴ Although it may be a part of their mandate, its other tasks and functions are given priority and the limited manpower and resources are focused away from environmental issues. This then results in few activities related to environmental protection and law enforcement.

A weakness that the various law enforcement agencies raised was their lack of awareness of a definition of Environmental Justice in Philippine law. Although they would have their own concept of what it is, the lack of knowledge of a clear definition made it difficult for them to identify specific projects or activities which are related to the concept. In relation to this, some of the agencies are still in the process of acquainting themselves with various environmental laws, rules and regulations, due to the fact that they have been newly created or have had no experience in dealing with environmental cases.⁷²⁵

The reliance of the law enforcement agencies on the other pillars to be able to see results and success in their actions is also a problem that they face. These agencies would have to rely on the prosecution and the courts to see that they have successfully apprehended and punished the violators for their crimes. However, if the other pillars do not perform their functions, or in some cases cannot appreciate the work of the law enforcers, then the end result that they are hoping for cannot be achieved. Although they may have performed their functions properly and efficiently, most enforcement agencies still view the punishment of violators as the measure of their success.

Opportunities

The Rules of Procedure for Environmental Cases is an opportunity for the law enforcement agencies to be able to perform their functions. The Rules serve as a guide for the law enforcers on how these environmental cases will proceed, allowing them to work more closely with the prosecution. The provisions in the Rules on the custody and disposition of seized items,⁷²⁶ and on the allowable documentary evidence⁷²⁷ are aids to the performance of their enforcement functions. In addition to this, several agencies also welcome the enactment of the Strategic Lawsuit Against Public

⁷²⁴ An example is the current situation in the PCG wherein the leadership prioritizes maritime security over environmental protection, Villanueva Consultation, *supra* note 288.

⁷²⁵ An example is the NBI-EWPID.

⁷²⁶ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 12.

⁷²⁷ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 21.

Participation (SLAPP),⁷²⁸ which would allow them to fully perform their tasks and mandate by giving them a remedy for counter charges that would be filed by violators.

Another opportunity which the enforcement agencies can use is the availability of help from other institutions, organizations, and the general public. There is an increase in awareness of the general public as regards environmental issues. This translates into more people and groups working with environmental issues. New agencies like the NBI-EWPID can tap into the knowledge base and resource of these groups in order to strengthen their capacity. Similarly, existing enforcement agencies can utilize the help of the public in their enforcement functions, since many groups are willing to work with the government to protect the environment.

The willingness of the different enforcement agencies to increase their capacity, skills and knowledge in addressing environmental issues is also an opportunity that they can use. Their receptiveness to ideas and suggestions, also shown by their cooperation to this study, is an indication that the law enforcement pillar can be more instrumental in protecting the environment.

Threats

One threat which is recurring in the other pillars is the adverse effects of corruption. Corruption, in general, dissipates the funds of the government that can be utilized for environmental protection. It also prevents the effective and efficient enforcement of our laws. The work that good and honest government officials are doing to protect the environment are being put to waste because of the corrupt who take advantage of their positions.

Related to this is the problem caused by politics. Law enforcement agencies are part of the bureaucracy of the government, and hence perform their functions in line with the plan of the government. If there is no political will to act on environmental issues and cases then the law enforcers can only do so much as would be allowed by the political leaders. Related to this is the problem of political intervention that has been identified in the course of this report. Law enforcers are powerless and can do very little when politicians intervene in their cases dealing with violators. They identify violators who have political backing, and this is the reason why they disobey the laws and pillage the environment with impunity.

The Prosecution Service

The main government agency dealing with prosecution assessed in this study is the National Prosecution Service of the Department of Justice. In sum, most of the other agencies point to the problems with the prosecution of environmental cases despite their successful law enforcement efforts. Clearly, more work needs to be done in improving not only the coordination by the prosecutors with the other pillars but also in enhancing their capacity to deal with environmental cases and issues.

Strengths

One strength of the prosecution service is the nationwide reach and coverage of the NPS. There are prosecutors all over the Philippines, particularly in every city and municipality around the country.

⁷²⁸ *Id.* Rule 6 and Rule 19. Section 1 of Rule 6 defines SLAPP as “A legal action filed to harass, vex, exert undue pressure or stifle any legal recourse that any person, institution or the government has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights shall be treated as a SLAPP and shall be governed by these Rules.”

This will allow them to be able to handle environmental cases anywhere in the country and allow the other pillars to tap their help and services when needed.

Another strength of the prosecution is their expertise when it comes to the rules and procedures in court. The nature of their task and functions allows them to specialize in the prosecution of violators of the law. It gives them the skills and knowledge needed to successfully gain a conviction. This can then prove beneficial to the other pillars of the justice system who have little or no knowledge regarding the trial and court practice. Effectively working with the prosecutors will ensure the successful punishment of violators of environmental laws, and the efficient coordination between the various pillars.

Weaknesses

One weakness often cited as regards the prosecution service is the low priority that is given to environmental cases and violations. Because the traditional view of the justice system is related more often to criminal law, most prosecutors focus on pursuing violations of criminal laws found in the penal code and other special penal laws, even though most environmental laws have provisions for criminal penalties and sanctions. This takes place despite the fact that environmental cases are part of the mandate of the prosecutors, although there are only some who are designated to handle these cases.

Related to this is the problem on the lack of training of the prosecutors to familiarize themselves with environmental laws. Prosecutors are more familiarized with the violations in the Revised Penal Code and other Special Penal Laws, since these are the most common cases which they would have to handle. Once confronted with an environmental case, they would have to study the laws related to it due to lack of familiarity with the said laws. In relation to this, prosecutors lack the technical expertise to evaluate an environmental case, especially when scientific and technical analysis would have to be done. They would thus have to rely on the evaluation by the other agencies of the government to determine if there is indeed a violation of the law.

The heavy case and work load of the prosecutors also constitute as a weakness on the part of this pillar. The number of prosecutors nationwide is not enough to handle the numerous cases filed each day. Often they are overworked; hence, have little time to focus on cases that deal with the environment. This then results in cases being dismissed if the evidence gathered by the law enforcers is not satisfactory to the prosecutor, which would then help free up the docket and work load of the office.

There is also poor coordination and cooperation with the other pillars, especially the law enforcement agencies. Currently, the NPS does not have any permanent mechanism to facilitate the coordination with any other agency when it comes to environmental matters. Task forces have been created before which allowed for coordination but these were discontinued and no permanent arrangements were put in place. This then leads to the law enforcement agencies having a difficult time working with the prosecutors, and few violators of environmental laws are punished and brought to court.

Opportunities

An opportunity which the prosecution service can tap is the willingness of the other agencies to work and coordinate with them in order to facilitate the successful prosecution of violators of environmental laws. NGOs and members of the community are also willing to work for the

prosecution of cases if the prosecutors themselves would show openness and receptiveness to working with them. In addition, there are trainings and capacity building seminars which would help the prosecutors build their skills and knowledge as regards environmental law and environmental issues.⁷²⁹

Another opportunity for the prosecutors is the advantage of having at hand the expertise and knowledge base of the other agencies that they work with. If proper coordination is done, the prosecutors can easily rely on the other agencies to analyze technical and scientific data. They do not need to spend time studying in great detail the relevant environmental law to be able to evaluate a case properly. This in turn leads to a speedy resolution of cases at the prosecution level and to the conviction of violators.

Threats

One threat which the prosecutors may encounter is the lack or inadequacy of the evidence gathered by the enforcement agencies. If the evidence is not enough to have probable cause to file a case, then the prosecutors would have no choice but to dismiss the case. The prosecutors are not tasked to gather evidence and to build up the case. They would have to rely on the work and skills of the law enforcers to successfully bring a case to court. Poor law enforcement can thus hamper their work.

Another threat similarly faced by the prosecution is the lack of political will of the government leaders to pursue environmental issues and cases. There may be instances when the prosecutors would be asked to focus their time and energy on particular cases which may be important to the political leadership. Being part of the government bureaucracy, they would have little choice but to do as ordered, despite the fact that they may want to focus on environmental cases.

The Philippine Court System

The Supreme Court, through the Philippine Judicial Academy and the Program Management Office, initiated this project and study through the help of the United Nations Development Programme. This project comes right after the passage of the new Rules of Procedure for Environmental Cases, which is expected to facilitate the filing and settling of cases related to environmental issues and problems. The Rules of Procedure for Environmental Cases is a major step in greening the justice system. The capacity building seminars for the courts pillar is an ongoing process, but much work needs to be done. With enough support, the courts pillar, through its projects, can reform the entire justice system towards ensuring Environmental Justice.

Strengths

A strength of the Philippine court system is the leadership that the justices of the Supreme Court have shown. Beginning with the term of former Chief Justice Puno, who initiated and spearheaded the efforts to green the courts, the Supreme Court has consistently taken steps to make the courts more accessible for environmental cases. The current Chief Justice Renato C. Corona has echoed the need to continue to green the courts, and has vowed to continue the work began under the

⁷²⁹ An example of this is the capacity building seminars of the Supreme Court to which prosecutors are invited to participate.

former leadership. Leadership is crucial because the 1987 Constitution gives the Supreme Court the power to promulgate the Rules of Procedure for the trial and practice in court,⁷³⁰ which would greatly facilitate access to the courts and, in turn, aid in the protection of the environment.

The new Rules of Procedure is a strength of the courts pillar. It allows judges the means to properly and efficiently handle environmental cases brought before them. It improves the accessibility of the courts by the general public by relaxing the rules on standing⁷³¹ and the deferment of filing fees.⁷³² The Rules also highlight the importance and significance of environmental cases, since specific procedures would have to be undertaken unlike in other cases. The Rules also provide that cases are to be summarily handled, and new and unique remedies are afforded those seeking relief from the courts.

In relation to this, the new remedies provided for in the Rules, such as the Environmental Protection Order, the Writ of Kalikasan, and the Writ of Continuing Mandamus, can also be seen as a strength of the courts. These new remedies and reliefs will allow judges to address the complex issues surrounding environmental cases. It would allow the courts to take immediate and decisive action in addressing damage to and degradation of the environment.

Another strength of the courts is the continuing effort to train and orient judges on the new Rules of Procedure for Environmental Cases and on other environmental laws and issues. The capacity building seminars and workshops held by the courts, wherein representatives from various sectors also participated, help equip the judges and other court personnel with the needed skills and knowledge to handle environmental cases. It also helps in the establishment of linkages and cooperation mechanisms between the various agencies.

Weaknesses

The discussion below is taken from the various comments, recommendations, and problems identified by the participants and partner organizations of this study.

A regional consultation conducted by the Alternative Law Groups (ALG), participated in by NGOs and POs, identified the following major issues in the judicial system that needs to be addressed:⁷³³

1. Inaccessibility of the courts and lack of legal representation for the poor and marginalized groups;
2. Lack of capacity of the poor and marginalized groups to access and avail of judicial, quasi-judicial, and other mechanisms for addressing their issues and concerns;
3. Lack of legal education on the part of members of the bar and the bench, and other stakeholders, on issues affecting the marginalized groups;
4. Lack of recognition of alternative dispute resolution mechanisms;

⁷³⁰ PHILIPPINE CONSTITUTION, Art. 8, § 5.

⁷³¹ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 2, §§ 4-5.

⁷³² *Id.* Rule 2, § 12.

⁷³³ ALG Institutional Framework, *supra* note 387, at 3-4. *See generally* ALG Justice Reform Agenda, *supra* note 388.

5. Unfavorable policy formulation and implementation that undermine the rights of the poor and marginalized groups; and
6. Lack of transparency and accountability of the judiciary and the justice system in general.

One clear weakness of the courts is the clogged dockets and heavy case load of judges. Although the new Rules mandate the summary disposition of environmental cases, this may be hampered by the case load of the judge handling an environmental case. The heavy case load may also be a potential hurdle for the judge in properly addressing the environmental case brought before him.

Related to this is the high cost of litigation in general in the Philippines. The expenses needed to hire a lawyer, allowances to be given to witnesses, and to simply sustain a case is somewhat prohibitive for most people, especially the lower-income families who are most often affected by environmental problems. Some inherent problems in the justice system that affect the entire public are costs and delays in the court cases and the lack of capacity of *barangay* mediators.⁷³⁴ In fact, past SWS survey data showed that 70 percent of the public believed that taking a case to court costs more money and time than they can afford.⁷³⁵ Although the courts have tried to remedy this by allowing the filing fees to be paid after the case under the new Rules, this does not address the other expenses needed by a litigant to successfully proceed with a case, such as fees of lawyers, allowances for witnesses, and expenses to attend and participate in court and judicial proceedings. In addition, this high cost of litigation has made some sectors and groups choose not to bring to the courts their problems and grievances.

Another weakness of the courts is that not all judges are fully aware of environmental laws. The new Rules allow any court to handle an environmental case brought before it, an expansion of the 117 green courts designated in 2008. However, most of these judges have not received any training on environmental laws, therefore limiting their capacity to act quickly on environmental cases brought before them. In relation to this, judges do not have the scientific and technical expertise needed to evaluate environmental cases. They thus have to rely on the analysis done by other government agencies when it is available.

Opportunities

An opportunity which the court should use is the enthusiasm by which most sectors have shown as regards the new Rules of Procedure for Environmental Cases. Many government offices and NGOs welcome this new development in our legal system, and are willing to work with the courts to ensure the successful use of the new Rules. They have also put their trust in the courts to protect the people's rights to a balanced and healthful ecology and to be able to provide the remedies and reliefs asked for.

Another opportunity for the courts is the successful capacity building seminars which it has been conducting. The trainings that have been held so far show that the five pillars can indeed work together to address environmental problems and concerns. It has also shown the potential for learning and growth that the courts can derive from the insights, knowledge, and experience of

⁷³⁴ ALG AND SWS, *supra* note 75, at 5.

⁷³⁵ *Id.* at 3.

the other pillars. The capacity building seminars can thus be great opportunities to enhance not only the capacity of the courts but also of the other pillars of the justice system.

Threats

One threat which the courts would have to deal with is the need to build public confidence in the court and legal system. The Philippine judicial system does not enjoy such public confidence due to corruption, delays in the resolution of cases, political influence in the selection of judges and justices, inaccessibility of legal and judicial processes by the poor, as well as inefficient systems in the judiciary. Nevertheless, it fares well compared with the other two major branches of government.⁷³⁶ A survey conducted by the SWS in September 2007 reveals that the attitude of the public towards equality in the justice system is presently mixed, and leans slightly towards unfavorable with a -7 result, with Metro Manila having a high unfavorable opinion with 62 percent disagreeing with the statement.⁷³⁷ Compare this with previous national surveys, where the results were slightly better than the above cited.⁷³⁸ If the public in general does not have confidence in the legal system, then the innovations in the new Rules would not even be utilized as the public may refuse to cooperate as witnesses in environmental cases or may not even bring the cases against violators before the courts.

Related to this is the need for the courts to rely on the work of the other pillars, particularly the enforcement agencies and the prosecutors. If the cases are not properly built up with evidence and there is poor prosecution, then the courts would have no choice but to rule appropriately, either to dismiss the case or to not grant the relief prayed for.

Corrections

The Bureau of Jail Management and Penology (BJMP) admits that it does not have a big role to play in the promotion of access to Environmental Justice, although it is part of the justice system. The presence of environmental programs and the possible application of creative penology on violators of environmental laws show that the BJMP is willing to do its part in the promotion of Environmental Justice.

Strengths

One strength of the BJMP is its willingness to consider the application of Environmental Justice into their functions and mandates. Although admittedly its agency has no direct mandate of promoting access to Environmental Justice, it has put up programs within the jails to promote environmental awareness and consciousness among the inmates. It has also considered the possibility of imposing creative penology measures for those found violating environmental laws. This is its way of doing its part in the protection of the environment.

⁷³⁶ ALG Institutional Framework, *supra* note 387, at 2.

⁷³⁷ ALG AND SWS, *supra* note 75, at 14. The survey asked if the respondent agreed or disagreed with the statement, “Whether rich or poor, people who have cases in court generally receive equal treatment.” Nationwide, 38% agreed, 45% disagreed, and 16% were undecided.

⁷³⁸ See *Id.* at 15. The following were the results in previous surveys: July 1985: +23; Dec. 1993: +4; April 1997: +1; Dec. 1999: -7; June 2003: +4.

Weaknesses

A clear weakness of the BJMP is that it has no program or policy which directly relates to Environmental Justice. Although it may have environmental programs within the jails which mostly deal with waste segregation and cleanliness of facilities, no specific program deals with Environmental Justice.

Opportunities

An opportunity which the BJMP can use is the availability of resources and materials to help it develop programs which address Environmental Justice, an example of which is the Sourcebook being developed as a complement to this report. There are also numerous groups and organizations willing to work with agencies in the government to help in the greening not just of the courts, but also of the entire justice system.

Threats

The lack of a clear mandate under the law which deals with the environment and environmental justice is a threat which may hamper the receptiveness of its current leadership to developing programs on Environmental Justice.

The Community

The community plays an important role in the complex justice system. Not only do they bear the brunt of environmental degradation; their help and cooperation is also crucial in the effective implementation and enforcement of environmental laws. More often, it is only the community on the ground that can ensure the execution of laws, with the government not being able to adequately reach the far-flung areas. In a way, they may perhaps be the front-liners in the enforcement of environmental laws.

The assessment of the community, which comprises the NGOs, private enterprise and business, and the local government units, has shown the potential for this pillar to help in the promotion of access to Environmental Justice. Although their different stories show that they are also the ones seeking access to the courts and asking for justice as regards environmental issues, they are also instrumental in ensuring that access to the courts is indeed realized. Their contributions to the promotion of access to the courts are indispensable to the true realization and fulfillment of Environmental Justice.

Strengths

The awareness of environmental issues is a strength of the community which can be seen in the various experiences that they have recounted. This first-hand experience of environmental issues and degradation on the ground and at the grassroots makes the community an invaluable partner in promoting Environmental Justice. This is not only true as regards the NGOs, but also with the private enterprises and the LGUs. Private enterprises deal with environmental laws and its enforcement everyday, as they are the ones who are most often required to comply with the laws, rules, and regulations. The LGUs on the other hand deal with their own environmental issues and problems within their jurisdiction, with their mandate in the Local Government Code pushing them to ensure a balanced and healthful ecology for their local constituents.

Another strength of the community pillar, in particular of the NGOs, is the networks and linkages that they have established among themselves. This can be seen in how the different groups who were participants in this study have worked together on common issues and advocacies. This then helps in the exchange of knowledge, information, resources and skills among the NGOs. For example, some groups focus on providing legal services to the other NGOs who do not have their own lawyers. This network and link also helps in the mobilization and concerted action of these groups. This also facilitates the coordination and working relationship of the community with the other pillars of the justice system. On the other hand, the private enterprises and the LGUs also have their own networks and common groups, as can be seen in the federations and chambers that business creates, and the various leagues which the local governments have created.

Their perseverance in pursuing their different advocacies is also a strength which the community should utilize. By continuously working on one environmental issue or problem, these NGOs and individuals develop a knowledge and information base which can be beneficial not just for other groups in different issues but also for the different agencies in the government. In a way, they also become the experts and specialists in their field of advocacy, which the courts can in turn rely upon in deciding environmental cases.

Weaknesses

A weakness which the community pillar encounters is the different and oftentimes clashing views and interests between the NGOs, business, and the LGUs. NGOs, LGUs, and businesses differ on their stands on issues like mining and forest utilization, wherein the issues of sustainable development and environmental protection are pitted against the issue of economic development and the security of investments. This makes it difficult for the community to work together in pushing for a common stand on environmental issues. More often, they are the ones bringing their stands and issues before the courts. In addition, this creates a difficult situation since under the justice system they are all under the community pillar and are supposed to be working together.

Another weakness which the community deals with, in particular the NGOs, is the lack of resources, personnel, and finances to pursue environmental issues and cases. Often, the NGOs will complain that they do not have the resources to pursue cases against violators of environmental laws which they have identified. They would have to rely on funding or help from external sources, which more often is also not enough. Their lack of personnel also limits the areas and localities wherein they can operate in, even though they would want to help and work with more communities around the country. LGUs also complain about the lack of funding and resources to be able to engage in environmental protection programs. In fact, lower class municipalities, which are situated nearer to environmentally critical areas, receive a lower share in the internal revenue allotment allocation.⁷³⁹

Related to this is the lack of legal resources and expertise of some environmental groups. Although aware of the environmental laws which their advocacies relate to, the NGOs cannot bring these issues to the courts because they have little or inadequate knowledge of legal procedures or have no lawyers or paralegals to assist them. They often have to rely on other legal NGOs or volunteer lawyers who, however, already have heavy case or work loads.

⁷³⁹ See generally LOCAL GOVERNMENT CODE OF 1991.

Opportunities

An opportunity which the community should take advantage of is the vast network and the untapped groups that are tirelessly working on environmental issues throughout the country. Although these NGOs already have networks and linkages, there are still numerous groups who are not part of this synergy among environmental advocates. Localized issues, when linked with other local issues in another part of the country, can send a bigger message to the general public. NGOs can thus establish nationwide networks and use this to push for their advocacies through national campaigns.

The Rules of Procedure for Environmental Cases is also an opportunity which the community can utilize. The Rules can provide the avenue by which NGOs, businesses, and LGUs can go to the court to protect their environmental rights. The new and unique remedies provided for in the Rules can be used by NGOs who have long sought for true access to and justice from the courts. The Rules can also serve as a way by which the community can work with the other pillars of the justice system, since the procedures to be followed for environmental cases have been provided for and would be more effective if there is coordination and cooperation.

The community can also view the increasing awareness of the public with regard to environmental issues as an opportunity to be able to gather support for the advocacies they are pushing for. In the course of the study, it has been shown that all sectors of society have an awareness of the need to protect the environment, although the extent and depth may differ from different groups and pillars. This growing awareness of environmental issues can result into additional resources, manpower, and other forms of support for the different NGOs.

Threats

A threat which the community has to deal with, in particular the NGOs, is the vast amount of resources which opposing sides would usually have. These resources can be used to divert the attention of the public from the real issues, prolong cases which the NGOs cannot sustain, and could even be used to corrupt public officials. The experiences of the NGOs have shown that when they go against a resource-rich opposition, then the likely outcome is that they would lose and would not be able to get what they had advocated for.

Another threat which the community has to deal with is the issue and problem of corruption. For the NGOs, corruption means that they will not have the support of the government, they will be working on their own, or they will have to go against corrupt officials. For the businesses and industries, corruption results in additional costs to their investments, in addition to the slow action by government officials, which can result in huge investment losses. For the LGUs, corruption reduces the amount of funds which they have to be able to implement environmental protection programs, and also results in inaction on the part of some officials.

C. Recommendations

The study presents an analysis of the capacity of the five pillars of the justice system in addressing access to Environmental Justice. The results of the assessments came from the pillars themselves through a self-assessment method, other studies conducted by other organizations, and through a review of related literature. The participants of this study gave statements both of opinion and of actual events which took place. Efforts were thus exerted to verify and assure the accuracy of the cases cited, incidents reported, and statements made to the best extent possible.

The previous sections analyzed the five pillars through the SWOT methodology, pointing out and identifying best practices which they should continue and build upon, weaknesses that they should address and work on, opportunities that they should capitalize on, and threats that they must be conscious of. The analysis showed that much has already been done and achieved and that there are significant accomplishments in every pillar. Nevertheless, it equally pointed out that more work needs to be done to fully attain true access to environmental justice and to be able to effectively protect the environment.

Through the course of this study and report, various recommendations and suggestions were made by the participating agencies and individuals in order to address the various issues and problems that were identified in relation to Environmental Justice. From these recommendations, this study identifies several general recommendations which can be undertaken by the justice system to improve access to Environmental Justice. These recommendations are:

1. Continuous education, training, and capacity building among the five pillars;
2. Increased public participation at all levels;
3. Establish and institutionalize more permanent coordination mechanisms;
4. Establish a system of data collection and storage and a system of review and evaluation;
5. Law reform should be undertaken as regards some environmental laws;
6. Improvements in the court and legal system;
7. The need for political will to decisively deal with environmental issues.

Continuous education, training, and capacity building among the five pillars

The need for education, training, and capacity building on environmental laws and issues has been noted by the participants and contributors to this assessment report. This will help enhance the skills and capacity of the five pillars of the justice system in addressing environmental issues and problems that they encounter. The ADB in a recent study notes that training could solve problems in the monitoring and evaluation system of agencies like the DENR by improving the knowledge, skills, and attitudes of stakeholders.⁷⁴⁰ The trainings also ensure that they are up-to-date on the most relevant information and developments as regards environmental laws and issues. It will strengthen performance, efficiency, and productivity, and sustain trust and partnership between the regulator, the regulated entities, and the multipartite monitoring team members in the Philippine EIS System process.⁷⁴¹ Giving the members of the five pillars the skills, knowledge, and capacity on environmental laws and issues will help them in the promotion of access to Environmental Justice. It will allow them to better understand and act upon cases that they face.⁷⁴²

⁷⁴⁰ ADB ENVIRONMENTAL ANALYSIS, *supra* note 90, at 105.

⁷⁴¹ *Id.*

⁷⁴² See GREEN BENCHES, *supra* note 27, at 14 on the discussion on the training of green judges:

In addition to the general importance of judicial education, the training of “green” judges has a great significance in the development of environment courts. As environmental law is a comparatively new branch of law, it is still in the process of being molded. The judiciary can

In addition, the five pillars will be better equipped to deal with environmental cases, and with the different environmental issues and problems that are plaguing the country.

Most of the groups cited the need to have more information on recent developments and trends, most especially on the new Rules of Procedure for Environmental Cases and the remedies that the said rules provide. The passage of these laws is only a part of the solution, and to be effective it must be communicated to the people.⁷⁴³ Since the Rules involve legal technicalities of which not all people are familiar with, trainings to explain and to simplify the new procedures would be most beneficial to the law enforcers and to the members of the NGOs, since they are usually the ones at the front lines of efforts to protect the environment. The capacity building seminars held by the Supreme Court and by other groups and institutions have received praise; and more of such events have been requested. In addition, being familiar with the new Rules will help them maximize its benefits, and ensure the effective and efficient implementation and enforcement of the laws.

Although most, if not all, of the pillars of the justice system are indeed aware of environmental issues and problems that plague our country, they lack the knowledge, skills, and capacity to address specific cases that they face in the field. Familiarization with the various environmental laws, rules and regulations, will hasten the building of the case by the law enforcers, the determination and resolution of the prosecutor, and the trial of the case by the courts. This will resolve the oft-cited problem of prosecutors and even judges who fail to fully appreciate the environmental cases that are brought before them and which they subsequently dismiss or deny. This will also ensure that law enforcers and members of the community who help in the implementation of the laws are able to properly identify violations and violators of the numerous environmental laws that we have.

These trainings and seminars will also help in the effective exchange of information on the knowledge and experiences of the various pillars. Best practices and effective methods will also be shared and may be used and followed by the other participants. In addition, these events may serve as a forum wherein they may re-evaluate plans, programs, and strategies. These may also serve as a way to strengthen cooperation and coordination by the agencies by bringing them together to discuss problems and issues.

Increased public participation at all levels

Public participation in environmental issues and problems leads to the empowerment of the citizenry. The empowerment of civil societies has been identified as one of the best means to

play a vital role in this process, as opposed to the legislature, which has no time or resources to deal with the fine nuances that judges encounter in their various cases. Consequently, it is often judicial decision making that gives rise to new concepts and procedures. So the judiciary must have an understanding of environmental problems, as well as a creative vision of how the law can deal with them. (citing D. Kelton and A. Kiss, *UNEP Judicial Handbook on Environmental Law* [2005]. Introduction by C. Weeramantry. Nairobi: United Nations Environment Programme, p. xxi. <www.unep.org/law/PDF/JUDICIAL_HBOOK_ENV_LAW.pdf>)

⁷⁴³ Atty. Asis Perez, *supra* note 41.

promote good environmental governance.⁷⁴⁴ Some of the groups who took part in the study, especially the members of the NGOs, noted that public participation is essential to ensure access to Environmental Justice. As one author notes, “[access to environmental justice and participation in environmental decision making] rests on a view that environmental protection and sustainable development cannot be left to the government alone but require and benefit from notions of civic participation in public affairs already reflected in existing civil and political rights.”⁷⁴⁵ Therefore, it can be said that participating in the decision making process is an indispensable part of the other basic rights of the people.

In developing countries, the participation agenda is often manifested in calls for greater local community involvement in development planning and poverty alleviation projects, especially in the context of development aid schemes.⁷⁴⁶ When the people are involved and participate at all levels of the process, they will be able to make an informed decision and choice, and may accept a project or activity more openly. Listening to the stories of the NGOs and members of the community, they often complain about the lack of information being shared to them, which leads to their opposition to plans and projects they encounter. They simply ask to be informed of all the information available and to be involved in some way in the decision-making process, which will then allay their fears, doubts, and apprehensions about what is being offered to them.

Public participation may be increased and improved by establishing multi-sectoral and multi-stakeholder groups, an idea echoed by many NGOs. This should then be implemented at the earliest stage of any activity or project, and should be maintained at all levels, even during the monitoring and evaluation stages. An example of this in practice is the recent amendment and addition to the Philippine EIS System procedures which mandates public participation in the impact assessment process. Nevertheless, its implementation and success has yet to be tested.

In addition, public participation helps in promoting the realization of access to the courts and Environmental Justice by ensuring that the public is informed and is given full information about environmental matters which they may choose to bring to the court. With the knowledge that they have because of their involvement in the decision-making process, they will be able to go to the courts fully prepared with the information, knowledge, and also the evidence that they would need.

Establish and institutionalize more permanent coordination mechanisms

A problem commonly cited by the various pillars, especially the enforcement agencies, was the lack of coordination among and between the pillars of the justice system. The lack of coordination is seen within a pillar when the various agencies fail to work together in the enforcement of environmental laws or the coordination of actions and activities. This problem is especially prevalent

⁷⁴⁴ RICHARDSON AND RAZZAQUE, *supra* note 25, at 169 citing J. Steffek and P. Nanz, *Deliberation and Democracy in Global Governance: The Role of Civil Society*, in PARTICIPATION FOR SUSTAINABILITY IN TRADE (S. Thoyer and B. Martimort-Asso, Eds., 2005).

⁷⁴⁵ Alan Boyle, *The Role of International Human Rights Law in the Protection of the Environment*, in HUMAN RIGHTS APPROACHES TO ENVIRONMENTAL PROTECTION, 43, 59-60, (Boyle and Anderson, Eds., 1996).

⁷⁴⁶ RICHARDSON AND RAZZAQUE, *supra* note 25, at 168, citing M. Aycrigg, *Participation and the World Bank: Successes, Constraints, and Responses*, 1998.

among the enforcement agencies on the ground, who oftentimes find it difficult to coordinate with their counterparts from other agencies. Between the different pillars, the problem is highlighted by the fact that few violators of environmental laws are convicted and sent to jail; although cases have been filed and pursued and numerous reports of violations are made by various groups.

There have been efforts to solve the problem cited above. Among the law enforcement agencies there is the National Law Enforcers Coordinating Council–Subcommittee on Environment and Natural Resources (NALECC-SCENR), which facilitates the coordination among the various environmental law enforcement agencies at the national level. However, even this national assemblage cited the lack of coordination as one of the problems that they continuously encounter.⁷⁴⁷ Task forces and MOAs have usually been created, but no permanent and continuing arrangements are put in place; once the task or the objective of the MOA has been completed, or when the priorities of the agency leadership have changed, the coordination also ceases.

Institutionalized and permanent coordination mechanisms would help speed up the resolution of environmental cases. With clear coordination guidelines and procedures, members and components of each pillar will immediately know what to do or what steps to take in order to effectively work with their counterparts in the other pillars. As an example, law enforcers would not find it difficult to approach the prosecutors as regards violators they have caught; and in turn prosecutors could easily access the skills and expertise of other government agencies and even the members of the communities. Inter-agency and inter-pillar ties will also be strengthened since there will be familiarity among the different pillars, creating an atmosphere of a shared vision and common goal of protecting the environment.

The existing bodies such as the NALECC-SCENR may be used to further facilitate the coordination among the law enforcement agencies. MOAs coupled with clear and concrete coordination guidelines may be entered into among the agency heads, crafted in a way which will be implemented by the succeeding leadership. Among the other pillars, coordination may be done by creating a national body which would also facilitate coordination among the various pillars. Currently, there is no national coordinating body for all the pillars of the justice system. Laws may also be passed creating permanent and institutionalized coordination mechanisms among the various pillars, as this would have a more permanent character than a MOA.

Establish a data collection, storage and management system and a review and evaluation procedure

One of the problems encountered by the proponents of this study was the difficulty in obtaining documents and reports from the various agencies of the government. Most of the agencies have files of the requested materials, while there are some that lacked the documentation asked for. The lack of a system which allows the easy retrieval and recovery of such files affects the operation of the concerned agency, and also makes them unable to immediately respond to requests for information from the public and from other agencies. This leads to the perception that the government is inefficient, ineffective, and plagued by bureaucratic red tape.

⁷⁴⁷ During the Second Environmental Law Enforcers Summit of the NALECC-SCENR, one of the problems cited during a workshop was the lack of coordination among the enforcement agencies, despite the existence of the said body.

Creating a data collection, storage, and management system will enable the agency to not only quickly respond to requests for information or data, but will also facilitate their efficient and effective operation. Officials and employees will be able to immediately access files and records which they may need for their tasks and functions. Cases may be easily built up and evidence may be effectively gathered, which would lead to the successful filing and prosecution of cases. The sharing of information among agencies will also be made easier, thereby facilitating the coordination and cooperation between them. This will also create a system of accountability, since there will be records of the action or inaction taken by the concerned government agency and its officials. This data storage and management system may also be made available online to make it more accessible to the general public.

Related to this is the establishment of a review and evaluation procedure for the various government agencies which would serve to improve the knowledge and skills base of the officials. Some agencies that the proponents have encountered already have an assessment system,⁷⁴⁸ although they admit that it serves more as a performance indicator rather than a learning tool and process. A clear procedure and system for the evaluation and review of actions and activities undertaken would help in the improvement of future operations. Best practices documented and learned through the review and evaluation system may be emulated in future activities, and may also be replicated by other partner agencies.

Law reform should be undertaken as regards some environmental laws

The participants and partners of this study also noted the need to reform and amend several environmental laws, and even some non-environmental related laws and national policies. Some of these reform areas include:

1. Improving and streamlining the outdated Philippine EIS System law;
2. Reforms in the Mining Act and mining policy of the government;
3. Change in the rationalization and streamlining policy of the government affecting its personnel and staff;
4. Stiffer penalties for violators of environmental laws.

Although admittedly there are already numerous laws dealing with the environment and environmental protection, these laws have to be updated and reviewed in order to be made more effective in response to the changing times. Some laws are more than 30 years old, and in the more than three decades that have passed, major changes in human activity and in the environment have taken place. Therefore, it is imperative that steps be taken to ensure that our laws, rules, and procedures are in line with the changing times and the changing environment.

Improvements in the court and legal system

The role of the courts in the enforcement of environmental laws and the promotion of access to justice cannot be understated. As one author puts it: “effective implementation receives a fillip where the enshrined right is clearly defined, with explicit and accessible procedures delineated,

⁷⁴⁸ Examples of these agencies are the PNP and the NBI.

and is accompanied by a wide range of flexible and effective remedies.”⁷⁴⁹ Environmental courts and alternative dispute resolution mechanisms provide means of facilitating public access to justice. They are institutions that have significant public participation implications.⁷⁵⁰ It can thus be stated that there can be no true access to justice without a clear way of accessing the courts.

The Philippine court system, under the leadership of the Supreme Court, has indeed made significant headway in the efforts to green the courts in the past few years, from the designation of 117 green courts in 2008, to the promulgation of the Rules of Procedure for Environmental Cases in 2010. In addition to this, continuous capacity building trainings are being held throughout the country, to introduce the new Rules to judges, court personnel, prosecutors, and other members of the enforcement agencies. These have greatly bolstered the environmental movement in the country, and have been praised both locally and internationally.

Nevertheless, more needs to be done and the courts and the Supreme Court should not stop at what they have so far accomplished. The training and capacity building of the judges and court personnel should be continued, especially in the areas and regions where most environmental cases may potentially arise. Judges should be made continuously aware of the changing dynamics and issues of the environment if they are expected to properly rule and handle environmental cases. The practice of making these seminars multi-sectoral and multi-stakeholder should also be continued, as this will enable the courts to see the perspectives of the community and to be able to learn from their knowledge and experiences. The participants will thus be able to mutually learn from the inputs of the others. In turn, resources are needed to ensure that the trainings and capacity building seminars can be sustained.

Efforts should also be made to speed up the disposition of environmental cases. A common problem faced by litigants and parties in court is the long period it takes before a final decision is rendered. Partly due to clogged dockets, complex issues, and legal maneuverings, cases take years to end. This then discourages people from bringing their cases to the courts as it will only entail hardships and high costs. The SC should thus strictly enforce the periods set in the new Rules for the disposition of environmental cases. Judges who err in complying with the said time frame should be admonished, which would signify the seriousness of the courts in disposing of environmental cases. In addition, this will indirectly improve the image of the courts in the eyes of the common people, making them trust and rely on the integrity, competence, and skill of the judiciary and the justice system.

The courts should also take steps to inform the general public of the recent developments regarding the new Rules of Procedures for Environmental Cases and the remedies and reliefs under it. During the course of the study, some NGOs noted that they were not aware of the promulgation of the new Rules, while others said they know of its promulgation but have little or no knowledge of its contents. Legal practice and procedure are too technical and complicated for the common people for whom the Rules have been promulgated. This leads to their reliance on lawyers and paralegals to explain to them the intricacies of the law. Unfortunately, there are only a handful of lawyers and paralegals available to inform the general public of their environmental

⁷⁴⁹ Michael Anderson, *Human Rights Approaches to Environmental Protection*, in HUMAN RIGHTS APPROACHES TO ENVIRONMENTAL PROTECTION, 1, 20, (Boyle and Anderson, Eds., 1996).

⁷⁵⁰ RICHARDSON AND RAZZAQUE, *supra* note 25, at 187.

rights. Therefore, the help of the Supreme Court and the other government agencies in establishing an information and education campaign for the general public is needed to ensure that the new Rules are indeed used by those who would benefit from it the most.

The need for political will to decisively deal with environmental issues

Much needed change and reform can only take place when the political leadership wills it. The leaders and politicians determine what the priorities and programs of the government will be, what will be changed and what will remain, and what will be the direction of the country in the future. Therefore, when we talk about improving the capacity of the justice system in addressing environmental issues and access to Environmental Justice, a discussion on the need for political will is inevitable.

Too often, efforts to protect the environment and to stop its destruction and degradation have become words for deeds exercises. They are simply promises made to entice and to attract, but no decisive steps and decisions are taken. Those who relied on the promise of change, hope, and reform, were left disappointed at the lack of action.

Political will is needed if the justice system is to truly grant access to Environmental Justice. The changes and reforms cannot come from one pillar or from one agency alone. The leaders and heads of the government agencies, the courts, and the members of the community must all work together to ensure that environmental issues are addressed and that the justice system works in synergy to protect our fragile environment. It is only through the concerted efforts of all the branches and agencies of the government that the needed reforms, programs, and actions for the environment can be achieved.

D. The Way Forward for the Environment

At the beginning of the report, it was mentioned that this project was part of the ongoing efforts of the Supreme Court to green the judiciary and the justice system. Nevertheless, this report makes it clear that, while efforts are spearheaded by the courts pillar, collaboration and synergy between the five pillars of the justice system and the entire country is essential. Each pillar must do its part in its role to ensure that Environmental Justice is achieved at its end in the justice system.

This report has highlighted the important role of the justice system in the protection of the environment. The justice system plays a crucial role in the promotion of environmental rights and in ensuring that future generations have a healthy and livable environment. The courts and the justice system are called upon to ensure that the rights of the people are protected, and more efforts are needed to make sure that all the pillars are prepared and equipped to fulfill this duty.

It is the hope of this report to be able to contribute to the continuing effort to protect, preserve, and conserve our environment. The justice system cannot sit idly by and watch as the environment is laid to waste, degraded, and may be lost forever. The new Rules of Procedure for Environmental Cases has laid down the path for the people to know that the justice system is doing its part to protect the environment. What needs to be done now is to ensure that all the pillars of the justice system, from the law enforcers to the members of the community, work together towards achieving Environmental Justice.

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ANNEX A

PARTICIPANTS TO THE ASSESSMENT REPORT

Consultation with the Bureau of Jail Management and Penology

PSupt Dennis Rocamora
SInsp Alvin C. Arabbi
Ms. Malou Reyes

Consultation with the PNP Program Management Office

Mr. Warren Gaspar A. Tolito

Consultation with the AFP Office of the Inspector General

Col. Manuelito Usi

Consultation with the National Bureau of Investigation

Mr. Marlou Baltazar

Multi-Pillar Focus Group Discussion

Col. Manuelito Usi, Office of the Inspector General, AFP
SInsp Alvin C. Arabbi, BJMP
Pros. Josef Albert T. Comilang, DOJ
Pros. Dione V. Bustonera, DOJ
Atty. Jesse Bañaz, DENR
Mr. Marlou Baltazar, NBI
Atty. Lissa Belle Villanueva, PCG
PSI Rodolfo S. Gonzales, PNP-MG
PSupt Albert Ignatuis D. Ferro, PNP-MG
PCI Roger U. Mangaoang, PNP-MG
Atty. Francine Delumpines, Office of the Ombudsman

Roundtable Discussion with the Department of Environment and Natural Resources

Atty. Cristina B. Hernandez, Legal Service
Atty. Jesse Banas, Legal Service
Atty. Teresa Bauzon, Legal Service, Investigation
Atty. Geraldine Ramos, Legal Service
Atty. Emilyne Talabis, LMB, Legal Service
Mr. John Jaramillo, FMB, Forestry Sector
Atty. Danilo Uy Kieng, MGD Legal Services, Mines Education Board Secretary
Atty. Raymond Velicaria, Legal and Legislative Affairs

Roundtable Discussion with the Bureau of Fisheries and Aquatic Resources

Atty. Benjamin S.F. Tabios, Assistant Director for Administrative Services
Atty. Annaliza A. Vitug, BFAR-FQRD

Atty. Michael S. Andayog, Legal Division
Ms. Sandra R. Arcamo, BFAR-FRMD

Consultation with the Office of the Environmental Ombudsman

Atty. Francine Dalumpines

Consultation with the Philippine Coast Guard

Atty. Lissa Belle Villanueva

Silliman University Focus Group Discussion

Anatoly Karpov P. Buss, Instructor, Silliman University School of Public Affairs and Governance
Noriel Capulong, Silliman University Divinities School
Eleanor Zea, Student Housing Division and Divinities School, Silliman University
Inday Koerkamp, Order of the Carmelites/Buglas Bamboo Institute/
Silliman Justice and Peace Center
Edwin Arnando, DAR Sheriff
Rebecca Capulong, Religious Studies Program, Silliman University
Fran K.L. Koerkamp, Buglas Bamboo Institute
Jobert Koerkamp, Buglas Bamboo Institute
Apolinario B. Carino, Friends of the Environment in Negros Oriental/
Exec. Officer, Federation of Farmers in Twin Lakes
Leo Mamicpic, Coordinator of FENOR
Atty. Gary Guido Tabios, Friends of the Environment in Negros Oriental/PAO
Ms. Ester Sanisa Wendler, FENOR

Consultation with the Department of the Interior and Local Government and the Bureau of Local Government Supervision

Secretary Jessie Robredo
Director Rolando Acosta – BLGS-DILG
Atty. Domnina Rances – Office of the Secretary
Atty. Maria Flores – BLGS-DILG
Mr. Alfred Mamuyac – BLGS-DILG

Consultation with the Department of Justice

Prosecutor General Claro Arellano

Consultation with the NBI–Environment and Wildlife Protection Division Consultation Meeting

HA Sixto Comia
SA Philip Pecache

NGO Focus Group Discussion

Mr. Tony Abuso, CBCP-ECIP
Mr. Ruperto Alerozaa, Pambansang Katipunan ng mga Samahan sa Kanayunan
Ms. Elviro Amuco, HARIBON
Fr. Archie Casey, Greenresearch
Bro. Martin Francisco, Save Sierra Madre Environmental Society Inc.
Ms. Vida Gonzales, Tanggol Kalikasan

Atty. Ronaldo Gutierrez, Upholding Life and Nature (ULAN)
Mr. Paeng Lopez, GAIA
Atty. Rhia Muhi, Legal Rights and Natural Resources Center–Kasama sa Kalikasan
Mr. Ruben Navales, CFARMC
Ms. Cyrus Pangan, Tambuyog Development Center
Atty. Galahad PeBenito, Greenresearch
Mr. Mickey Perocho, NGOs for Fisheries Reform
Dr. Donna Paz, Environmental Studies Institute
Mr. Pablo Rosales, Pangisda
Mr. Joselito Vasquez, Save Sierra Madre Network

Consultation with the DENR–Environmental Management Bureau

Asst. Director Jonas R. Leones, EMB
Atty. Michael Matias, Atty. III, PAB-EMB
Ms. Jonah Osorio, Legal Staff, PAB-EMB
Mr. Ernesto Flores, Technical Staff, EIAMD-EMB

Consultation with the the CBCP–Episcopal Council on Indigenous Peoples (CBCP-ECIP), the Orders of the Friars Minar (OFM) and Sagip Sierra Madre Consultation Meeting

Fr. Pete Montallana, OFM
Fr. Efren Jimenez, OFM
Fr. Samuel Salazar, OFM
Mr. Tony Abuso, ECIP
Mr. Joselito Vasquez, OFM/JPIC, SSMN

Consultation with the PNP–Maritime Group

PSS Albert Ignatius Ferro, PNP-MG
PSI Rodolfo S. Gonzales, PNP-MG

Consultation Meeting with the AFP–Civil Military Operations Group

Lt. Col. Nawang, Admin Division, OJ7
Col. Jesse Alvarez, CMO Civil Affairs Office



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