Pace Environmental Law Review

Volume 29
Issue 2 *Winter 2012*
Environmental Courts and Tribunals: Improving Access to Justice and Protection of the Environment Around the World

Article 9

4-23-2012

The Environment as Life Sources and the Writ of Kalikasan in the Philippines

Hilario G. Davide Jr.

Follow this and additional works at: http://digitalcommons.pace.edu/pelr

Recommended Citation
Hilario G. Davide Jr., *The Environment as Life Sources and the Writ of Kalikasan in the Philippines*, 29 Pace Envtl. L. Rev. 592 (2012)
Available at: http://digitalcommons.pace.edu/pelr/vol29/iss2/9

This Conference Proceeding is brought to you for free and open access by the School of Law at DigitalCommons@Pace. It has been accepted for inclusion in Pace Environmental Law Review by an authorized administrator of DigitalCommons@Pace. For more information, please contact cpittson@law.pace.edu.

SPEECH

The Environment as Life Sources and the Writ of *Kalikasan* in the Philippines

HILARIO G. DAVIDE, JR.*

Ladies and Gentlemen, let me begin by expressing my gratitude to Professor Nick Robinson for inviting me to this symposium and to take up with you, as specifically requested by him, the importance of environmental adjudication; the new writ of *kalikasan* in the Philippines; and why we need more support for capacity building of environmental courts in terms of the challenges we face for sustainable development.

I. RE-DEFINING THE MEANING OF "ENVIRONMENT"

The word "environment" is often taken to mean something referring to our natural surroundings and not about us, about people. Because of this notion, environment has been taken much for granted and relegated as just a marginal concern. Sadly, it is treated as a low priority in many countries.

If we must be able to face the catastrophic crises the rapid and uncontrolled changes in the global climate have brought to humankind today, we need to redefine the word environment to make it fully understandable and real to all countries and all peoples in our shrinking world.

---

* Hilario G. Davide, Jr., retired Chief Justice of the Philippines (1998-2005) and former Permanent Representative of the Philippines to the United Nations in New York (2007-2010). [Editor's Note: This is the text of a speech given at the International Symposium on Environmental Courts and Tribunals, hosted by Pace Law School and the International Judicial Institute for Environmental Adjudication (IJIEA), on April 1, 2011, in White Plains, New York. Any annotations to the text of this speech have been added by the author in connection with its publication in this Special Edition].

The environment is not about the birds and the bees and the flowers and the trees. It is nothing less than about life and the sources of life of the earth – land, air, and water, or LAW[1] for brevity – the elements of life and the vital organs of the earth. The trees and the forests are the heart and the lungs of life; the land and the soil are the skin and the flesh of the earth from whence all food comes; and the sea and the rivers are the blood and bloodstreams of life on earth. Destroy any of them and we destroy life itself. These classic pronouncements are lifted from the writings and thoughts of attorney Antonio Oposa, Jr. of the Philippines, an international figure in environmental law, a holder of a master's degree in Environmental Law from the Harvard Law School, and a 2009 Ramon Magsaysay awardee for his unparalleled work to protect the environment and empower the people to save the earth.[2]

Thus, from now on, we will not use the word "environment." Rather, we will use the [phrase] "life sources." For the people of the Philippines – that beautiful country in Asia with 7,107 islands – the word "environment" is inseparable from the concept of nature. In fact, in their language, the word nature is "*kalikasan*." Nature (*kalikasan*) and the natural elements of life of land, air, and water are to them interchangeable. They are all the life sources that enable all life to survive and thrive in this little colorful marble of life we call the earth.

Now that we have redefined the word environment to mean life sources, our efforts to conserve, protect and restore the land, the air, and the water will acquire a new meaning, and its protection and conservation [will be] imbued with an invigorated sense of purpose and urgency.

1. As a mnemonic aid, the life sources may be summarized as LAW – land, air, and water. This is the inspired framing by the annual Public Interest Environmental Law Conference in the University Oregon.

2. A Ramon Magsaysay Award is the Asian equivalent of the Nobel Prize. The award recognizes Oposa, Jr. for his "career of wide-ranging and sometimes risky advocacies on behalf of Mother Nature: field enforcement of fishing and logging laws, environmental litigation, education on sustainable living, advising local governments on crafting environment-preserving legislation, establishing marine sanctuaries." *Citation for Antonio Oposa, Jr.*, RAMON MAGSAYSAY AWARD FOUNDATION (Aug. 31, 2009), http://www.rmaf.org.ph/Awardees/Citation/CitationOposaAnt.htm#top.

With this as the backdrop, it is easy to take a tour of the judicial horizon of the Philippines and its effort to protect the country's life sources. It is also easier for all to understand the context of the Philippines' writ of *kalikasan* (or writ of nature).

II. RIGHT TO A BALANCED AND HEALTHFUL ECOLOGY

The Philippines is the first country in the world to enshrine in its Constitution the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature, and the correlative duty of the State to protect and advance that right. Section 16 of Article II of the Philippine Constitution of 1987 provides: "The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature."

It was my rare honor to be a member of the Constitutional Commission of 1986 which drafted this Constitution.

This lofty idealism was put to an extreme test in the now famous Children's Case of the Philippines.[3] To recall the facts, some forty-three children from all over the Philippines – acting on their own behalf, on behalf of children in their generation and of generations yet unborn – filed an audacious legal action to stop all logging in the Philippines. Seeking judicial intervention to cancel all the logging concessions granted by the Philippine government, the children alleged that at the rate the virgin tropical rain forests of the Philippines were being logged and deforested, nothing would be left for them and for future generations of Filipinos.

The trial court dismissed the case outright without even a hearing, allegedly for failure of the plaintiff-children to state a cause of action and for the further reason that they have no right or legal personality to initiate this unprecedented case. They then brought the case on certiorari to the Supreme Court. In its landmark decision of July 30, 1993, the Supreme Court granted the petition. It held that the children have the right and the legal personality to take action [on] their behalf and on behalf of the

3. Oposa v. Factoran, G.R. No. 101083 (S.C. July 30, 1993) (Phil.).

children of their generation and the children of generations yet unborn. Their personality to sue on behalf of the succeeding generations is based on the concept of intergenerational responsibility insofar as it concerns the right to a balanced and healthful ecology in accord with the rhythm and harmony of nature. It says that every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology. Expounding further, [the Supreme Court] declare[d]:

> Such a right belongs to a different category of rights altogether for it concerns nothing less than [the right to] self-preservation and self-perpetuation . . . the advancement of which may even be said to predate all governments and constitutions . . . these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind. If they are now explicitly mentioned in the fundamental charter, it is because . . . unless . . . [it is written in the] Constitution itself . . . the day would not be too far when all else would be lost not only for the present generation, but also for those to come—generations which stand to inherit nothing but parched earth incapable of sustaining life.[4]

This interpretation by the Philippine Supreme Court of the Constitutional principle gives constitutional and legal imprimatur to the statement that to the Filipinos, and perhaps to the other more nature-based people of the world, the right to the environment is nothing less than the right to life itself, and to the sources of life on the Earth — the land, air, and water.

This pronouncement of the Supreme Court of the Philippines rang true in 1993 when the decision was rendered. Today, and in the years to come, especially with the global, catastrophic, [and] devastating effects and consequences of climate change, the pronouncement will ring even more real and true.

It was another honor for me to write for the Court [in] this decision.

4. *Id*. at 1

III. JUDICIAL INTERVENTION

When the right to life is threatened, and the executive department tasked to protect it fails or is wanting in political will to enforce said right, it is the duty of the court, in an appropriate case, to step in. The 1987 Constitution of the Philippines has expanded the judicial power of the courts of the Philippines. Section 1 of Article VIII thereof, on the judicial department, provides:

> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.[5]

The courts have a ready yardstick – the measurements according to the standard of the rule of law and the overarching principles of justice. This sense of justice must include justice for the sources of life on earth – the land, the air, and the water. That justice must be done though heavens should fall [sic]. *Fiat justitia ruat caelum*.

The Philippine Supreme Court, however, has gone beyond simply adjudicating cases involving the threat to life sources. In 2009, it crafted inspired procedural rules to enhance and enforce these rights to the life sources in a court of law. I refer to its *Rules of Procedure for Environmental Cases*,[6] which took effect on April 29, 2010. The Rules govern the procedure in civil, criminal, and special civil actions in the courts of the first and second levels involving enforcement or violations of environmental and other related laws, rules and regulations.

Among the procedural innovations introduced in said rules are:

5. CONST. (1987), art. VIII, sec. 1 (Phil.).

6. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, A.M. No. 09-6-8-SC (Phil.), *available at* http://www.lawphil.net/courts/supreme/am/am_09-6-8-sc_2010.html.

1. Citizen Suits – giving the right to ordinary citizens to initiate legal action to enforce their right to the life sources (a.k.a. environmental right);
2. Consent Decrees;
3. Temporary Environmental Protection Orders (TEPO) in cases of threat of serious damage to the environment (or life sources);
4. Writ of *Kalikasan*;
5. Writ of Continuing Mandamus;
6. Protection against harassment countersuits (i.e., SLAPP suits – Strategic Lawsuits Against Public Participation); and
7. Adoption of the Precautionary Principle.

What is especially notable about the new *Rules of Procedure for Environmental Cases* are the two special civil actions that it adds to the existing rules of court in the Philippines, namely:

1. The writ of *Kalikasan* or the writ of Nature; and
2. The writ of Continuing Mandamus.

a. The Writ of *Kalikasan*

The writ of *kalikasan*, or the writ of nature, is available when the environmental damage is of such magnitude that it prejudices the life, health, or property of inhabitants in two or more cities or provinces. The writ is issued by either the Supreme Court or the Court of Appeals within three days after the filing of the application. Hearing of the matter is set within sixty days. No docket or filing fee is required upon the filing of the complaint or petition. The proceedings terminate within sixty days from submission of the original application.[7]

Note the emphasis on the enforcement of the right to life. Note also the availability of the legal remedy where the damage is of such magnitude as to threaten the life and health of inhabitants in two or more cities or provinces. In said cases, the petitioner (or affected party) can immediately take recourse to the higher courts – the Court of Appeals and the Supreme Court – and seek relief in summary proceedings.

7. *Id.* R.7.

The first test case of the writ of *kalikasan* was filed by a group of citizens known as the Global Legal Action Against Climate Change.[8] The group sought to enforce a long-forgotten law, Republic Act No. 6716, requiring all local governments down to the *barangay* level to put up rainwater catchment ponds and rainwater collectors. The *barangay* is the smallest territorial and political subdivision in the Philippines. This law, approved in March 1989, had never been implemented. The group alleged in its complaint that implementing this law is one effective way to face the adverse impacts of rapid climate change and the recurrent events of torrential floods and intense dry spells.

The national government agencies sued by the group, particularly the Department of Public Works and Highways and the Department of Interior and Local Government, the latter having jurisdiction over the 43,000 local government units of the Philippines, are now preparing a work plan for the construction of rainwater catchments (collectors) throughout the country.[9]

The second writ of *kalikasan* was issued by the Supreme Court in a case involving an oil leak in the pipeline that traversed from the Province of Batangas, more than 100 kilometers south of Manila, to the Pandacan oil depot in the City of Manila. In this case, the Supreme Court issued an injunction for the oil pipeline operator to cease and desist [] operating said pipeline until the leaking had been stopped.[10]

b. The Writ of Continuing Mandamus

The new *Rules of Procedure for Environmental Cases* also integrate another procedure that was adopted by the Supreme Court in the Manila Bay case in its en banc decision of December

8. Global Legal Action Against Climate Change v. Phil., G.R. 191806 (S.C. Oct. 18, 2011) (Phil.).

9. The latest information on this case, according to the lead petitioner and counsel, is that the parties may soon submit this work plan to the Supreme Court in the form of a Consent Decree or compromise agreement. The implementation of the work plan will be the subject of monitoring by the Court in [a] like manner [to] the action plan for the clean-up of Manila Bay.

10. West Tower Condo. Corp. v. First Phil. Indus. Corp., G.R. 194238 (S.C. Mar. 29, 2011) (Phil.).

18, 2008.[11] In this case, a group of citizens won a court action to compel the Philippine government to clean up Manila Bay. The Philippine Supreme Court, after ten years of litigation by the petitioners, ordered twelve national government agencies to prepare a plan of action to clean Manila Bay. The continuing mandamus is an extensive, persistent, and continuing order of the Court to implement the action plan to remedy the environmental degradation and restore Manila Bay to the once productive state of its marine resources. To ensure the continuing efficacy of its order, the respondent government agencies were required to submit to the Supreme Court every ninety days written reports of the progress of the cleanup.

Three weeks ago, Justices of the Supreme Court, including the Chief Justice himself and the *ponente* of the en banc decision, Justice Presbitero J. Velasco, Jr., took an unprecedented tour and ocular inspection of the Manila Bay. During the briefing on land after the judicial ocular inspection, the Court was updated of the progress of the clean up by the lead agency and respondent Department of Environment and Natural Resources.

It may also be stressed that to encourage citizens to enforce their environmental rights by way of class suits, they are not required to pay filing fees upon commencement of the action. Payment is deferred until after judgment.[12]

There exists no constitutional or statutory obstacle for the Supreme Court of the Philippines to promulgate the new Rules of Procedure for Environmental Cases. Under the 1987 Constitution of the Philippines, it has the power to promulgate rules concerning the protection and enforcement of constitutional rights.[13] [A]rticle 8 of the Civil Code of the Philippines provides [that] judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines.

11. Metro. Manila Dev. Auth. v. Concerned Citizens of Manila Bay, G.R. 171947-48 (S.C. Dec. 18, 2008) (Phil.).

12. For some detailed discussion on the writ of kalikasan and the writ of continuing mandamus, see Gloria Estenzo Ramos, *Innovative Procedural Rules on Environmental Cases in the Phillipines: Ushering in a Golden Era for Environmental Rights Portection*, 2011(1) IUCN ACAD. E-J. ENVT'L L. 187 (2011).

13. CONST. (1987), art. VII, sec. 5(5) (Phil.).

IV. CONCLUSION

I started with a redefinition of the term "environment" to mean life itself and the sources of life of the earth: the land, the air, and the water. All of a sudden we see the change in the thrust and in the entire context of the debate on the environment. It now assumes a more direct, and in fact, more real, relevance to our lives. After all, no life is possible without the food from the soil, without the air that we breathe, and without the water that we drink. The health and well-being of these vital organs of the earth – its heart and lungs, skin and flesh, blood and veins – must be conserved, protected, and restored at all costs. Lest we forget, without them life as we know it will simply cease to exist. All peoples and all governments must faithfully assume the role of conservator, protector, restorer of life, and the sources of life of the earth.

Let me hasten to add that these sources of life – LAW, yes LAW – may have been the inspiration in the original crafting of the word "law" to generally refer to "that which is laid down, ordained or established," and which "must be followed by citizens subject to sanctions, or legal consequences."

The law is humanity's thinking tool, and in a manner of speaking, is the architecture of civilization. The will, the force and the power of the law must be used in a way that seeks to breathe life. It must do so not only to the seemingly stale provisions of the law, but more important, to breathe life back to the moribund sources of life of land, air, and water up to a horizon of reasonable perpetuity.

The consequences of our pyromaniacal propensity – our reckless burning of our fossilized energy sources – are beginning to unravel today in the form and shape of a rapidly changing climate. We must face this reality, and to the extent possible, cease and desist from our continuing acts of planetary arson.[14]

14. This term 'planetary arson' was coined by Filipino environmental lawyer Tony Oposa to describe the massive burning that is happening in the world today; the burning in a matter of seconds [of] fossil fuels (coal, oil and gas) created by the carbon fossilization that happened over hundreds of millions of years.

May there be not only more environmental laws, but more courts to try and decide cases involving the environment or the Sources of Life. May such courts have the activism and dynamism of the Supreme Court of the Philippines.

It is my prayer and hope that the matter of environmental adjudication should now be given utmost priority. A global response is a must. May this symposium serve as a strong impetus in this regard, especially in the creation of the International Judicial Institute for Environmental Adjudication.

I close with an expression of special gratitude to Professor Nick Robinson. He may not be aware of it, but he was responsible for inspiring the principal petitioner and lead counsel of the Manila Bay case I mentioned earlier, attorney Antonio Oposa, Jr., and for giving the latter encouragement and guidance to the Global Legal Action on Climate Change which initiated the rainwater catchment case in the Philippines. I thank you.