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The Right to Public Participation in Decision-making in the Implementation of Fisheries and other Environmental Laws in the Philippines

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**GREEN ACCESS PROJECT II**

**Osaka University**

The Right to Public Participation in Decision-making in the Implementation of Fisheries and other Environmental Laws in the Philippines  
Gloria Estenzo Ramos<sup>1</sup>

## Introduction

### A. The Empowering Story Must be Told

It was the turn of the affected stakeholders in Cebu to be surprised. They were invited, for the first time, to participate in a public consultation by the coal power plant, KEPCO SPC Power Corporation, in Naga City, province of Cebu, in the Philippines, for an update on the Coal Ash Disposal Plan and “to hear out concerns from the stakeholders regarding the operation of the power plant, particularly on the ash disposal.” (KPSC letter, May, 2013). In said meeting, the management admitted that there was never a genuine multi-party monitoring team to look onto the operations of the coal power plant that RA 8749, the Philippine Clean Air Act of 1999, required to be created.

It has indeed been a long journey for the local residents and the concerned people in Cebu. Their impassioned cry to be consulted and participate in decision-making process on projects that affect them and their health and healthful and balanced ecology, constitutional rights guaranteed by no less than the 1987 Philippines Constitution, seems to be bearing fruits, at last.

For the past ten years, they have waged a seemingly fruitless and dragging struggle for the government, the project proponent and the funding agency, the Asian Development Bank (“ADB”) to stop the construction of the second coal power plant in their community. Since the first power plant became operational years back, their health had suffered. Asthma, chronic cough, heart ailments, and cancer became commonplace. They still have to get used to a house where the windows have to be closed because of dust. Their sources of water from the artesian well had been contaminated since tons of coal ash were dumped in the neighborhood, without their knowledge. Fishing as main livelihood had likewise been badly affected. There has never been an active Metro Cebu Air Shed Management Board, the policy-making body for air quality management required by RA 8749, the Philippine Clean

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Air Act of 1999, to be constituted. Nor, was said law implemented in their community or in the Philippines.

The enlightened among them were certainly not remiss in vigorously asserting their concerns for the adverse health and environmental impacts caused by the existing and the additional power plant, and their illegal exclusion from participation in decision-making, but, to no avail. Despite the clear provisions of the Constitution and environmental laws for their rights to life, health, and healthy environment to be respected, including the requirement of social acceptability for the environmental compliance certificate to be issued by the Department of Environment and Natural Resources, the government, the power plant company and the ADB consistently turned a deaf ear to the constituents' pleas. Then, to add salt to the festering wounds of injustice, the President, Benigno Aquino III, even led officialdom and guests in the inauguration of the second 200 megawatt coal-fired power plant on 100,000 square meters of land in the barangay (district) of Colon, in 2011, and used the event to take potshots against advocates and citizens who opposed the project.<sup>2</sup>

Undaunted, despite financial and human resources constraints, the citizens persisted, availing of tools and remedies granted them by the Constitution and environmental laws and even under the accountability mechanism of ADB.<sup>3</sup> As a result, and in collaboration with non-government organizations, people's organization and the academe, significant milestones had been achieved. Their participation in the aforementioned public consultation is one such fruit of their relentless efforts.

The holding of said event was in compliance with the express instructions of the ADB Board of Governors to the power plant company to "facilitate transparent and inclusive communication and grievance redress," among other conditions.<sup>4</sup>

The ADB action was an offshoot of the complaint filed in May, 2011 by the residents of affected villages in Naga City, Cebu together with the Freedom from Debt Coalition (FDC) - Cebu Chapter and NGO Forum on the ADB, with the ADB, alleging substantive and

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<sup>2</sup> The Freeman (June 28, 2011) 'PNoy lashes at anti-coal group', [www.philstar.com/cebu-news/700284/inauguration-power-plant-pnoy-lashes-anti-coal-group](http://www.philstar.com/cebu-news/700284/inauguration-power-plant-pnoy-lashes-anti-coal-group), accessed 2 March 2015.

<sup>3</sup> Asian Development Bank, [www.adb.org/site/accountability-mechanism/main](http://www.adb.org/site/accountability-mechanism/main), accessed 2 March 2015.

<sup>4</sup> Compliance Review Panel, 'Visayas Base-Load Power Development Project', <http://compliance.adb.org/dir0035p.nsf/alldocs/RDIA-8HF6GG?OpenDocument>, accessed 2 March 2015.

procedural lapses in the implementation of latter's policies in financing the coal power plant, including the exclusion of the stakeholders from decision-making process. This remedy is separate from another court action filed in August, 2011 by environmental advocates and fisherfolk organizations with the environmental court in Mandaue City, province of Cebu, to stop the indiscriminate dumping of coal ash which has caused serious health and environmental impacts in coal communities in Cebu (PEJC V. Secretary of DENR, Environmental Case No. MAN 6461).<sup>5</sup>

After the complaint was filed with the ADB, the latter, finding it eligible, directed a Compliance Review Panel (CRP) to be constituted and look into the stakeholders' declarations of violations involving the KEPCO-SPC coal power plant. The complainants scored a major victory in April, 2012 when the Board of Directors of ADB, approved the findings and recommendations of the CRP. The findings included the failure in complying with the policy guidelines of ADB, which required genuine consultation with the community, among others.

The CRP recommendations include (1) Undertaking "a comprehensive air dispersion modeling study that includes the key pollution sources in the project's area of influence and validate its predictions with actual air emissions and ambient air quality monitoring data", (2) Undertaking "a comprehensive study on ash utilization at cement plants and the ready-to-mix concrete plant and implement plant-specific recommendations and EMPs. In addition, prepare and implement EMPs for the existing ash ponds and historic ash disposal sites, (3) Expanding or complementing "the existing MMT (multi-sectoral monitoring team) to ensure representation of all communities directly affected and all appropriate NGOs and to facilitate transparent and inclusive communication and grievance redress", and (4) Implementing "a community outreach program focusing on preventing negative health impacts from air, water, and noise pollution and potentially negative impacts from exposure to unprotected coal ash deposits." The Board's decision and the CRP Final Report are available in the CRP website.<sup>6</sup>

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<sup>5</sup> The environmental court in Environmental Case MAN 6461 ordered, on 15 March 2011, the respondent KEPCO-SPC to dispose of the coal ash waste in the ash ponds within the premises of the power plan during the pendency of the case. The author was then the representative of the Phil. Earth Justice Center, Inc., as lead petitioner in aforesaid case. The respondents in the case are inclined to settle the case, promising to comply with all environmental laws.

<sup>6</sup> See Footnote 4.

The Secretary General of FDC-Cebu, Mr. Aaron Pedrosa, views the ADB Board decision as “a vindication for the affected people in Naga and a slap not only on ADB but also PNoy (the popular name coined for the President) who inaugurated the project and defended it for complying with the Philippine Clean Air Act!”<sup>7</sup>

The affected constituents are fully aware that their struggle is not yet over. It is continuing. But, steps being undertaken for their participation in the decision-making process is a big boost in their lifelong pursuit of pathways to a sustainable future for them, their families and their community.

The empowering developments in Naga City, Cebu encapsulate the steadfast reliance on the Law, challenges, creative strategies, unstinting courage and commitment of affected stakeholders in their determination that their rights be equally valued by other key players in governance, especially by the government, which should have been its protector. Their knowledge of their rights under the Law and use of the tools for accountability and, and the indispensable support of civil society organizations and institutions have enabled them to assert and claim them even against the powerful and influential sectors and officials of the land. They have realized that while the Law is intended to protect them, it remains empty and meaningless unless implemented by government, or, as in their case, vigorously asserted by the citizenry. For them, the Law adds more meaning to the people’s lives when they themselves ensure that they are complied with by those tasked by the State to enforce them.

## B. Ecological and Political Profile of the Philippines: Then and Now

The Philippines, an archipelago with 7,100 islands in the western side of the Pacific Ocean, is tagged as having the fifth longest coastline in the world.<sup>8</sup> Thus, “it has more water than it has land. With a total territorial water of 2,200,000 km<sup>2</sup>, it only has 299,735 km<sup>2</sup> of land area of which 102,984 km<sup>2</sup> or 34% is agricultural.”<sup>9</sup>

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<sup>7</sup> Ramos, G. (16 April 2012), ‘Not for the Faint-hearted’, Cebu Daily News, <http://newsinfo.inquirer.net/177543/not-for-the-faint-hearted>, Accessed on 2 March 2015.

<sup>8</sup> Maps of the World, <http://www.mapsofworld.com/world-top-ten/world-top-ten-longest-coastline-countries-map.html>

<sup>9</sup> <http://www.fao.org/docrep/003/x6943e/x6943e05.htm>

Being such, it can be said that “Every Filipino lives within 45 miles of the coast.”<sup>10</sup> The sea holds a special meaning to the growing populace of over a hundred million, not just as a source of food, legends and fondest memories of the years past where families would congregate in the beautiful beaches and then pristine seas and waterways, but as itself, fishing is a source of livelihood for many.

“With more than 20,000 endemic species of plants and animals, the Philippines is identified as one of the world’s 17 “mega-diverse” countries, as has also been cited as the world’s “center of the center of marine shore fish biodiversity” (Carpenter and Springer, 2005). At the apex of the Coral Triangle, the Philippines’ marine resources are among the richest in the world, while its terrestrial environments host five major and at least five minor centers of endemism... whose natural resources are facing pressures brought about by weak land-use planning, industrialization and unsustainable or destructive resource use practices.”<sup>11</sup>

The country’s environmental challenges ranged from “uncontrolled deforestation especially in watershed areas; soil erosion; air and water pollution in major urban centers; coral reef degradation; increasing pollution of coastal mangrove swamps that are important fish breeding grounds”<sup>12</sup>

The Philippines is a democracy, after having been under colonial rule under the Spaniards for more than three centuries and by the United States from 1898-1946. “Spanish and US influences remain strong, especially in terms of language, religion and government. Self-rule in 1935 was followed by full independence in 1946 under a US-style constitution. The Philippines was marked by rapid economic development and a flourishing democracy until the rule of President Ferdinand Marcos, a close ally of the US, who imposed martial law in the early 1970s.

His corrupt and repressive rule led to economic stagnation and growing public discontent, culminating in mass demonstrations in 1986 that cost him the support of the armed forces.”<sup>13</sup>

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<sup>10</sup> Castro, Joan and [http://www.wilsoncenter.org/sites/default/files/ECSP\\_Focus\\_Apr08Castro.pdf](http://www.wilsoncenter.org/sites/default/files/ECSP_Focus_Apr08Castro.pdf)

<sup>11</sup> Conservation International in the Philippines, ‘Cutting-edge conservation approaches for human well-being benefits’, [http://www.conservation.org/global/philippines/about/pages/about\\_us.aspx](http://www.conservation.org/global/philippines/about/pages/about_us.aspx). Accessed 2 March 2015.

<sup>12</sup> The World FactBook, <https://www.cia.gov/library/publications/the-world-factbook/geos/rp.html>

<sup>13</sup> Philippines profile, <http://www.bbc.com/news/world-asia-15521300>, accessed on 2 March 2015.

The country's existing fundamental law of the land is a visible output of the People Power revolution which deposed the Marcos regime. It is clearly a road map to avoid at all means any possibility of reinstating any form of dictatorship which violated and suppressed human rights in the Philippines for 14 years. Thus, measures to ensure that human rights are protected are incorporated in the progressive environmental legislations and jurisprudence that aim to protect the rights of the people to life, health, a healthful and balanced ecology. These rights are specifically provided in the 1987 Constitution, the highest law of the land. But, are these rights genuinely protected?

A writer<sup>14</sup> posited that the Philippines has “a façade democracy” calling it an “oligarchipelago”, as political and economic elites have continued to dominate the governance landscape as they had been for centuries. Policies are largely the result of the influence of the powerful business community. The author adds that, “As a result of political and economic exclusion of the majority of the population, there is great wealth inequality and minimal economic growth”.

Thus, despite being a democracy and with a constitutional guarantees of the people's right to access information, participate in decision-making and to due process of law, the justice and administrative systems are still largely a work in progress.

This paper puts forth the view that the Philippines, although still saddled with a variety of challenges, there is emerging a growing number of vigorous community initiatives and multi-stakeholder collaborations to protect the integrity of ecosystems and in building capacity for engagement among the people amid the glaring failure of government to perform the mandate of protecting them and the degraded ecosystems. Active citizen engagement is the key. However, as the author noted in her Cebu Daily News column, *Mindfully Greenie*,<sup>15</sup> “Our country will continue to be what Dr. Kent Carpenter describes as ‘the center of the center of marine biodiversity adversity’ if citizens allow the almost nil implementation of laws, the pervasive state of ignorance of rights and responsibilities to protect Nature and the people by public officials and citizens, the appalling apathy by those vested with the

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<sup>14</sup> Almeida, T. The Philippines: Oligarchipelago, 2012. <http://prospectjournal.org/2012/04/11/the-philippines-oligarchipelago/>, accessed on 2 March 2015.

<sup>15</sup> See Footnote 7.

knowledge of law, science, economics and other fields, and the worsening anthropogenic impacts inflicted upon our home planet, and of course, the shameless avarice by those who worship money and the self above anything else.”

## **1. Strong Legal Framework for Environmental Protection and Resources Conservation But Nil Implementation**

The triumph of the people for their rights to be protected, powerfully illustrated by the case, reveals how empowering the 1987 Constitution is, especially once people understand the substantive and procedural rights that they can, and must, vigorously demand from the duty holder, the State.

The Philippines has a strong legal framework for the protection of the rights of its people, ecosystems and species and the prevention of pollution. Its legal system is replete with emphasis for human rights protection, both on the procedural and substantive aspects, good governance, environmental protection, resources conservation and promotion of social justice, especially for the most vulnerable sectors. According to environmental lawyer Jun Quicho, the country has in fact “some of the best environmental laws in the world.”<sup>16</sup> But, the biggest problem is in the implementation.

No ‘big fish’ was ever held accountable for environmental violations. The Executive Branch led by the President, and the citizenry, for that matter, except for a handful of courageous ones, are still sorely lacking the much-needed political will to ensure that the laws are implemented, and people’s quality of life, health and rights to a healthy environment are promoted.

The author was quoted in saying that “Laws need to be implemented and there still seems to be no political will to do so. There is a big gap between the policy and the implementation.”<sup>17</sup>

### **1.1. The Emerging Trends in Environmental Law Implementation in the Philippines**

Environmental Law norm can only thrive if the Rule of Law is in place. An American lawyer, Barrett Ristroph (Ristroph, 2012) put forth the concept of ‘environmental rule of law’ which possesses certain attributes, as follows (1) there is a system of laws in place that regulate, to

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<sup>16</sup> GMA News(23 April 2013)‘Environmentalists lament govt's inability to fully implement green laws’, <http://www.gmanetwork.com/news/story/305051/news/nation/environmentalists-lament-govt-s-inability-to-fully-implement-green-laws>. Accessed 2 March 2015.

<sup>17</sup> Ibid.

the extent practicable, all human-induced actions that by themselves or collectively have significant impacts on the environment; (2) these laws will be consistently applied over time and across the jurisdiction; and (3) effective and fair enforcement action, initiated by a government entity or citizen suit/complaint, will be taken against one who breaks the law, regardless of the offender's socioeconomic or political status.”<sup>18</sup>

In regard to the Philippines, she concludes that “A quarter-century after the enactment of a constitutional provision guaranteeing the right to a healthful and balanced ecology, there are many environmental laws in place, but not the environmental rule of law.”<sup>19</sup> Her conclusion jives with the public assessment that there is almost nil implementation of environmental laws in the Philippines.

A study on the developments in Environmental Law enforcement or the environmental rule of law in the Philippines is timely as it offers crucial lessons to local, national and regional stakeholders, and even to the emerging democracies and countries in transition, for the following reasons:

- a. The country does not have a long history of Environmental Law codification, compared to the countries in the North. Environmental Law, as a field of Law, had its beginnings ironically in the dark years of Martial Law, where human rights were stifled. The Environment Code was promulgated under the Martial law powers of then President Ferdinand E. Marcos, as Presidential Decree No. 1152 on January 6, 1977. The Environmental Impact Statement System, Presidential Decree No. 1586 was enacted also during Martial Law and is considered the oldest in Asia but is characterized as “exceedingly weak.”<sup>20</sup>
- b. After the People Power revolution that toppled the dictator in 1986, the country has managed to catch up and successfully churned a highly progressive Environmental Law system and accountability tools under the Constitution, statutes and judicial rulings and Rules and the various international conventions to which it is a signatory.

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<sup>18</sup> Ristroph, E. (9-2012) 42 ELR 10886 Environmental Law Reporter ‘The Role of Philippine Courts in Establishing the Environmental Rule of Law’, p.2.

<sup>19</sup> Ibid., pp. 19-20.

<sup>20</sup> Briffett, C., J.P. Obbard, J. Mackee , ‘Towards SEA for the developing nations of Asia, Environmental Impact Assessment Review,’ Volume 23, Issue 2, March 2003, Pages 171-196.

The *Oposa v Factoran* Ruling (G.R. 101083, (224 SCRA 792 [1993]) is hailed worldwide for mainstreaming the international environmental law principle of intergenerational responsibility and the liberalized standing to sue, where minors can sue for their future and for the generations yet unborn. In April, 13, 2010, the Supreme Court of the Philippines promulgated the first in the world, the Rules of Procedure for Environmental Cases, with remedies intending environmental proceedings to be resolved with dispatch.

- c. The Philippine example shows that a strong legal framework for environmental protection and resources conservation does not automatically guarantee that the ecosystems are and remain healthy and not subjected to further pressures. Government and citizenry need to work and collaborate together to implement the Law and change behaviors of stakeholders.
  
- d. With climate change posing a grave threat to the survival of species, including humans, the Philippines is ranked among the most vulnerable, with devastating consequences. It is “fourth among more than 190 countries around the world that have suffered the most extreme weather events such as flooding and storms over the past 20 years, according to the 2013 Global Climate Risk Index.”<sup>21</sup>
  
- e. Social, governance and economic issues confront developing countries, with the Philippines having its palpable share in high poverty incidence, highest birth rate in Asia and persistent corruption issues.
  - (i) Poverty incidence among Filipinos, although has eased at 24.9% as of the first six months of 2013,<sup>22</sup> remains high, estimated at 27.9 percent during the first semester of 2012, according to NSCB Secretary General Jose Ramon G.

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<sup>21</sup> Abano, I. InterAksyon (28 November 2012), ‘Philippines 4th most vulnerable to climate change over past 20 years, 5th in 2011’, <http://www.interaksyon.com/article/49162/philippines-4th-most-vulnerable-to-climate-change-over-past-20-years-5th-in-2011>, Accessed on 2 March 2015.

<sup>22</sup> Torres, T. Poverty incidence eases to 24.9%. Philippine Star, July 5, 2014. <http://www.philstar.com/business/2014/07/05/1342488/poverty-incidence-eases-24.9>. Accessed 2 March 2015.

Albert.<sup>23</sup>The fisherfolk and the farmers are the poorest of the poor, with 39.2 percent and 38.3 percent respectively in 2012.<sup>24</sup>

- (ii) The Philippines has a population growth rate of 2.04%, one of the highest in Asia.
  - (iii) The Philippines has worrisome governance issues. The weak implementation of laws is an indication of its weak accountability mechanism. It is also “still perceived as one of the most corrupt countries in the world, getting a score of 34 on a scale of 1 to 100 with 100 being very clean, according to the latest Corruption Perceptions Index of Transparency International.”<sup>25</sup> The Philippines has since ranked 85th out of 175 countries in Germany-based watchdog Transparency International's Corruption Perceptions Index (CPI) for 2014, up from 94 in 2013, and 105 in 2012.<sup>26</sup>
- f. Its dynamic civil society sector, as so envisioned by the 1987 Constitution and the RA 7160, the Local Government Code, is a potent force in promoting environmental governance, specifically in the delivery of services, in remote and vulnerable communities. However, despite the preferential treatment accorded to civil society organizations (CSOs) and their recognized right in participating in governance and membership in local development councils and special bodies, governance and empowerment issues are continuing challenges that some CSOs have to hurdle. These diminish their capacity and potential to be the forceful and unifying mouthpiece of the voiceless and marginalized sectors. Still, CSOs are proving to be an effective channel for citizens to seek redress for grievances against the government and private sectors, as in the cases described in this paper.

## **1.2. Barriers to effective implementation of Environmental Law and a sustainable future**

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<sup>23</sup> Poverty incidence unchanged, as of first semester 2012—NSCB, <http://www.nscb.gov.ph/poverty/defaultnew.asp>, Accessed 2 March 2015.

<sup>24</sup> See Footnote 22.

<sup>25</sup> Philippine Daily Inquirer (5 December 2012) ‘Philippines remains one of most corrupt countries—survey’, <http://globalnation.inquirer.net/58823/philippines-remains-one-of-most-corrupt-countries-survey>, Accessed on 2 March 2015.

<sup>26</sup> Casauay, A. PH perceived to be less corrupt – 2014 global survey. Rappler, December 3, 2014. <http://www.rappler.com/nation/76856-philippines-corruption-perceptions-index-2014>. Accessed on 2 March 2015.

Strong legal framework for environment protection is never a guarantee for the laws' effective implementation and enforcement, as the Philippine experience has shown. It is essential however, to ask why, despite the State's adherence to the Rule of Law and commitment to democratic principles such as public participation in governance, environmental laws in the Philippine are not given the reverence that they should have been accorded to.

The reasons are as varied as the 7,100 islands that make up the archipelago. Among the obvious factors are:

- a. Lack of political will to implement the Law, due perhaps to any or a combination of the following considerations:
  1. Patronage politics – With an electoral and political system characterized as weak and favors the elite, the moneyed and the powerful, it is inevitable that officials through dummy corporations or supporters with vested interests are favored with contracts and concessions from government. Many of these projects impact the environment and the livelihood of the people in the communities.
  2. Political dynasties – Family affairs and politics are intertwined in the Philippines. The expressive Senator Miriam Santiago quipped that it is "the world capital of political dynasties".<sup>27</sup> Political dynasties are prohibited by the Constitution but Congress, largely made up of the political elites in the country, chose not to enact the required implementing law to stop them. Thus, political dynasty has proliferated. There are "178 dynasties ruling 73 of the 80 provinces in the Philippines. Half come from the old landed elites, while the rest turned up after the 1986 popular revolt that ousted dictator Ferdinand Marcos."<sup>28</sup>

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<sup>27</sup> Mendez, C. Miriam: Philippines is world's political dynasty capital. Philippine Star, March 1, 2013. <http://www.philstar.com/headlines/2013/03/01/914637/miriam-philippines-worlds-political-dynasty-capital>. Accessed on 2 March 2015.

<sup>28</sup> Regencia, T. Family affair: Philippine political dynasties. Aljazeera, 11 May 2013. <http://www.aljazeera.com/indepth/features/2013/05/2013511104835690790.html>, Accessed 2 March 2015.

Environmental protection is a devolved service of the local government units. But, with families holding a tight grip on the political landscape, is it any wonder that these laws are not seriously enforced, at the expense of the environmental rights of the constituents?

3. Lack of coherence in policies and planning – In addition to the various laws, rulings, rules and action plans that push for an ecologically sustainable present and future, the Philippine Development Plan, as the official roadmap of the present Aquino administration, envisions a sustainable and inclusive growth. But, the phrase ” sustainable growth” becomes a mere play of words considering that extractive and polluting industries such as mining, reclamation and coal power plant operation, are clearly prioritized by the administration, with stakeholders excluded from participation in decision-making.

(b) Cultural Barrier – Being direct and straightforward is unfortunately not a distinct cultural attribute of many Filipinos. Respect for authority and elders is deeply embedded in both personal and societal values. Thus, when it comes to pressuring for accountability from political authorities, despite an explicit guarantee by the Constitution of the right of the people, people’s organizations (POs) and non-government organizations (NGOs) to participate at all levels of decision-making process (Art. XIII, sec.16), the right to access public information and the declared State policy of full disclosure, only a handful of citizens and even NGOs and POs are asserting actively these procedural rights. Nor are state institutions, even independent ones, bold enough to file cases against the “big fish” or influential persons in government.

© Poverty, high population growth and unique State-Church relationship – Poverty incidence is likewise very high at 26.5%. The Philippines has one of the highest birth rates in Southeast Asia at 3.3%.The larger the family size, the higher the

poverty incidence is.<sup>29</sup> Of the total population, 62.7% live in urban areas (2005) with an urban annual growth rate of 3.45%, much higher than the annual population growth rate of 2.28%. (National Framework Strategy for Climate Change, p.15).

The influential Catholic Church does not hesitate to articulate its stance against reproductive health. RA 10354 the Responsible Parenthood and Reproductive Health (RH) Act of 2012, became a law after going through very contentious decades of lobbying that pitted pro-RH advocates and the Catholic Church. It was subsequently declared as “not unconstitutional” by the Supreme Court in April 9, 2014 but it struck down eight provisions.<sup>30</sup>

In a position paper, professors of the School of Economics of the University of the Philippines articulated the distinct Church-State relationship and observed that “The Catholic Church hierarchy has maintained its traditional stance against modern family planning (FP) methods, particularly modern (also referred to as “artificial”) contraceptives. On the other hand, the State acknowledges the difficulties posed for development by rapid population growth, especially among the poorest Filipinos. But it has been immobilized from effectively addressing the issue by the Catholic hierarchy’s hard-line position, as well as the tendency of some politicians to cater to the demands of well-organized and impassioned single-issue groups for the sake of expediency. Caught between a hard Church and a soft State are the overwhelming majority of Filipinos who affirm the importance of helping women and couples control the size of their families and the responsibility of the government to provide budgetary support for modern FP services.”<sup>31</sup>

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<sup>29</sup> Pernia, E. et.al. (29 July 2012), ‘Population, Poverty, Politics and the Reproductive Health Bill’, <http://rhbillresourcepage.wordpress.com/2012/07/29/population-poverty-politics-and-the-reproductive-health-bill/#more-844>, Accessed on 2 March 2015.

<sup>30</sup> Cebu Daily News, SC declares RH law ‘not unconstitutional’, April 9, 2014. <http://cebudailynews.inquirer.net/26407/sc-declares-rh-law-not-unconstitutional>. Accessed on 2 March 2015.

<sup>31</sup> UP School Of Economics : Population, Poverty, Politics and the Reproductive Health Bill, 11 August 2008. <https://2010presidentiables.wordpress.com/reproductive-health-bill-5043/population-poverty-politics-and-the-reproductive-health-bill-up-school-of-economics/>. Accessed on 2 March 2015.

More than ever, faced with the extreme vulnerability of the marginalized sectors of the Philippines, amid the undeniable climate and governance crisis, and the continuing degradation of the environment, CSOs need to work together and with the enlightened champions from the public and other sectors to push for stronger actions to implement the long-languishing Environmental Laws.

## **2. The Role of Environmental Law in Promoting Mindsets of Respect for Human Rights, Public Participation, Ecological Integrity and Sustainability**

One of the reasons why Environmental Rule of Law is still a work in progress in the Philippines may be attributed to the fact that the field of Environmental Law is still in its infancy stage. Of the more than 50,000 or so members of the Philippine Bar, only a handful have devoted their focus, energy and time to practice Environmental Law and engage with communities on issues affecting their rights to life, health and a healthy environment. A nationwide network of environmental lawyers still has to be constituted as there are only patches of CSOs devoted to environmental law advocacy. As a course in the law curriculum, it was only in 2012, that the then newly-constituted Legal Education Board required it as a mandatory subject among law schools.

While Environmental Law system is considered advanced and progressive, there is a compelling need to build the capacity, knowledge and skills of the key stakeholders, including those in the judiciary and prosecution arm of the government and the members of the Bar, and law students. It is perhaps this vacuum that fostered the culture of impunity that disregards the Rule of Law in the Philippines.

It is a cause for celebration that, despite the dearth of environmental law specialists, successes had been savored in growing number of not just court rulings that prioritize the health of the people, their right to access information and participate in decision-making and a balanced natural world but also active engagement from the citizenry. The convergence of forces among champions in the CSOS and Public and Private Sectors, and the gradual greening of the Judiciary, with the support of media, helped clinched these victories.

### **2.1 Case studies of CSO initiated actions for effective Environmental Law implementation**

Considering the foregoing gigantic challenges, a study of the strides taken by determined citizenry and evaluation of the impacts of their initiatives who would no longer tolerate the “learned helplessness” syndrome of the past, are most helpful. The citizens have begun to assert their rights through creative and collaborative strategies among various stakeholders, against government and officials who disregard the laws and promote destructive project.

The demand for public participation in governance created palpable changes in policy-making, which coincide significantly in the averred policies of accountability, transparency and open governance of the Aquino administration.

‘There is a bigger ‘space’ for civil society engagement with Government, a fact that most civil society members acknowledge.’<sup>32</sup> Even in budgeting, state agencies are required to invite the participation of the various stakeholders through the bottom-up budgeting (BUB) policy of the Department of Budget and Management and the Department of Interior and Local Government (DILG).<sup>33</sup> The BUB policy has since been known as the Grassroots Participatory Budgeting through a Joint Memorandum Circular No. 4 (November 26, 2013) issued by the DBM, DILG, Department of Social Welfare and the National Anti-Poverty Commission.<sup>34</sup>

As DILG Secretary Mar Roxas himself admitted that “For a government to be successful, we should harness the power of the people and encourage partnership with the citizenry.”<sup>i</sup>

Some of the examples of creative strategies and the learning from the citizens-led initiatives for the protection of the people and the planet, include the following engagements:

### **2.1.1 Stoppage of the Offshore Drilling Project in Tanon Strait Protected Seascape (TSPS)**

Facts: TSPS is one of the richest fishing grounds in the Philippines, covering the provinces of Cebu, Negros Oriental and Negros Occidental. It is also the migratory pathway of 14 out

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<sup>32</sup> Ramos. G. IUCN Academy of Environmental Law (2012) ‘Country Report: Philippines Climate Change, Sustainability and Resilience’, p. 9.

<sup>33</sup> Gonzales, I. The Philippine Star (25 November 2012) ‘Gov’t to implement bottom-up budget process in pilot municipalities’, <http://www.philstar.com/business/2012/11/25/872793/gov%E2%80%99t-implement-bottom-budget-process-pilot-municipalities>, Accessed 2 March 2015.

<sup>34</sup> <http://www.dbm.gov.ph/wp-content/uploads/Issuances/2013/Joint%20Memorandum%20Circular/JMC-4.pdf>. Accessed on 2 March 2015.

of 26 species of whales and dolphins in the country. The former President, Gloria Macapagal Arroyo, with the participation of then DENR Secretary, the Department of Energy Secretary and then Cebu Governor Gwendolyn Garcia, with two mayors from the Cebu municipalities of Pinamungahan and Alegria, approved the offshore drilling project in the protected area undertaken by the Japanese company, Japan Petroleum Exploration Co. Ltd. (JAPEX). Apart from the affected fisherfolk, the members of the Philippine Association of Marine Scientists objected to the project, followed by the academe, environmental lawyers, NGOs and POs and even the Cebu Chamber of Commerce officials who cautioned the authorities from undertaking such harmful activity and instead pushed for sustainable projects. The lawyers pointed to the laws violated which included the Constitution, the National Integrated Protected Area System (there were and still are no protected area management board and management plan), the Fisheries Code and the EIS Law. But, the public officials were dead set in implementing it. In gross violation of the social justice provision of the Constitution and the Fisheries Code that subsistence fisherfolk have preferential access to their traditional fishing grounds, they were displaced and the number of species of cetaceans dwindled. The lawyers sent a letter to the Japanese Ambassador to the Philippines detailing the violations of the Philippine Government. In 2007, two cases were filed in the Supreme Court to stop the project, one filed by the fisherfolk and the other by the residents, whales and dolphins of TSPS, represented by two environmental lady lawyers and mothers. The case is still pending. In 2008, JAPEX withdrew from the Project. But, DOE declared it will continue to invite proponents for drilling in TSPS. There has been no such activity conducted since then.

As a strange but much-welcome twist and postscript to the Tanon Strait saga, under a different administration, some of the parties to the case,<sup>35</sup> and after seven years since the offshore drilling controversy erupted, agreed to partner and co-organize the Tanon Strait stakeholders' summit and the convening for the first time the Tanon Strait Protected Area Management Board, the policy-making body of the TSPS. The events held from February 10-12, 2015 in Cebu were participated in by almost 400 participants, including local government executives, NGOs and POs and private sector and highly respected resource speakers, given

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<sup>35</sup> Department of Environment and Natural Resources-Region 7, Oceana Philippines International represented by the author and Rare, Inc. entered into a Memorandum of Agreement for the convening of the two TSPS events.

wide media mileage<sup>36</sup> and triggered inspiring feedback from the community. A TSPS website<sup>37</sup> was created where the DENR undertook to have a Comment Period of 30 days for stakeholders for the TSPS Management Plan.

Strategies:

- (i) Raising the awareness of the constituents were crucial to action. Thus, natural and behavioral science and the Law were merged and popularized in the modules prepared for both formal and informal courses. Concepts related to human rights, environmental law, science, ethics, patriotism, governance through active citizen engagement, were simplified to reach the cross section of constituents. Teachers and students from different universities conducted teach-ins in and out of the university, with fisherfolk, scientists and environmental lawyers as speakers.
- (ii) Law students visited the communities and shared their knowledge with the people. Some were inspired to write songs and poems which were publicized.
- (iii) Champions from the public and private sectors who supported the cause were given public recognition.
- (iv) Peer review of the two petitions was done in collaboration with the University of the Philippines International Legal Studies.
- (v) The first citizen movement for the protection of the environment in Cebu was launched named 'Save Tanon Strait Citizens Movement' (STSCM) made up largely of CSOs and the youth. Online petitions and Multiply website of STSCM were created.
- (vi) The inspiring story of collaboration and partnership that stopped a destructive project in the protected seascape led to the investigation and publication of

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<sup>36</sup> Gitgano, F. Sunstar.Cebu, February 1, 2015. <http://www.sunstar.com.ph/cebu/local-news/2015/02/11/need-address-threats-tanon-strait-tackled-three-day-summit-391445>. Accessed on 2 March 2015.

<sup>37</sup> <http://www.tanonstrait.org/>.

‘Hunger and Plunder in the Seas’ by Food Coalition for Food Sovereignty and Pesticide Action Network Asia and the Pacific (2008),<sup>38</sup> ‘When Dolphins Went to Court’ and the ‘Tanon Saga’ by Pesticide Action Network Asia and the Pacific and Central Visayas Fisherfolk Development Center (2013).<sup>39</sup>

- (vii) The 2015 TSPS Summit and convening of the TSPS management body showed that persistence and dedication among stakeholders can result in a successful collaboration, the benefits of which will be felt in the generations to come.

Lessons Learned: The realization of the empowering Law and human rights formed the anchor and the focal point in which multi-stakeholders engaged and collaborated at the local, national and international arena. Media from print, broadcast and television played key role in highlighting the issues and influencing policy and action from some local government units in Negros and Cebu, some of whose officials became more courageous and articulated against the project. Online petitions and creation of website where legal documents were also uploaded cascaded the issue and the learning in various geographical jurisdictions both in and out of the affected provinces. The series of engagements with the communities and public officials were continuing even after the drilling company decided to withdraw from the area in 2008, as the DOE expressed its desire to continue to open the protected seascape for future oil drillings.<sup>40</sup>

On a personal note, the surge of hope that grew among the affected fisherfolk whom our group helped remains embedded in the memory. The author’s heart-warming personal encounter with a group of displaced fisherfolk cannot be forgotten. A fisherfolk commented “Attorney, now we believe that the Law can also work on our side.” To him, I said “Yes, Manong (“Sir”), the Law works, and we have to constantly make sure that it does.”

### **2.1.2 Stoppage of the Coal Ash Dumping in Coal Communities and the filing of the ADB Complaint on violations of the latter’s policy**

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<sup>38</sup> Quijano, I. Hunger and Plunder in the Seas (2008), <http://www.panap.net/en/fs/post/food-sovereignty/266>, accessed on 2 March 2015.

<sup>39</sup> When Dolphins Went to Court, <http://www.panap.net/en/fs/post/food-sovereignty/1509> and Tanon Saga, <http://www.panap.net/sites/default/files/tanon-saga.pdf>, Accessed on 2 March 2015.

<sup>40</sup> GMA Network, Tañon Strait in Cebu still open to oil explorers – DOE, May 7, 2008. <http://www.gmanetwork.com/news/story/95807/news/regions/ta-on-strait-in-cebu-still-open-to-oil-explorers-doe>. Accessed on 2 March 2015.

Facts: As illustrated in this paper's Introduction, the knowledge of their human rights under the Constitution and the various environmental laws, together with the active support and engagement of stakeholders contributed in empowering the residents to demand respect of their rights, environmental protection and participatory and transparent governance, from the government and even from the funding agency. The stories of their struggle and the assistance rendered by scientists and lawyers are highlighted by media and helped in disseminating information about their plight and the hazardous impacts of coal.<sup>41</sup>

The announcement by the former Cebu Governor that the province would earn from the coal ash and build a coal ash disposal facility for the power plant, in a controversial Balili beachfront property, triggered the demand from environmental lawyers from her and Cebu provincial officials for the release of the documents involved in the sale and agreement with the coal power plant. Notice to Sue was sent to government officials and the coal power plant for violation of rights and the two laws -Solid Waste Management Law and the Clean Air Act and the lack of the required public consultation.<sup>42</sup> This led eventually to the filing of the administrative and criminal cases in the Office of the Ombudsman, when the Governor refused to release the document,<sup>43</sup> and an environmental case in the green court of Mandaue City, Cebu, to stop the pervasive dumping of coal ash, the testing of the samples of which showed the presence of mercury, cadmium and arsenic.

The green court judge, after conducting ocular inspection where she also took pictures, and even noted the presence of mangroves in Naga, stopped the hazardous practice for the duration of the case.<sup>44</sup>

When the ecology advocates again filed another administrative case against the Governor and the Cordova Mayor for illegal reclamation, the Governor, the latter, five days after said filing, also filed a malicious prosecution case against the author of this paper, for an earlier

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<sup>41</sup> Salgado, R. Bulatlat. (10 August 2009) 'Coal-Fired Power Plant Contaminates Air in Naga City, Cebu' <http://bulatlat.com/main/2009/08/10/coal-fired-power-plant-contaminates-air-in-naga-city-cebu/>, Accessed on 2 March 2015.

<sup>42</sup> Freeman (2009) 'Environmentalists issue notice to sue to officials', <http://www.philstar.com/cebu-news/499405/environmentalists-issue-notice-sue-officials>. Accessed on 2 March, 2015.

<sup>43</sup> Balita, Environment group sues Cebu Capitol officials for 'not responding' to requests on power plant operation, August 18, 2009. <http://balita.ph/2009/08/18/environment-group-sues-cebu-capitol-officials-for-not-responding-to-requests-on-power-plant-operation/> Accessed on 2 March 2015.

<sup>44</sup> See Footnote No. 5.

administrative case the latter filed regarding the coal ash disposal facility, which however the Ombudsman dismissed.<sup>45</sup> On the defense that the case is a SLAPP and should be dismissed, the issue has not been resolved, three years after the criminal case was filed. Yet, it is another case for possible violation of the accused's right to due process of law and a speedy disposition of the case, as well as period required by the Supreme Court in hearing defense of SLAPP specifically provided under the Rules of Procedure for Environmental Cases and two laws, RA 9003 and RA 8749.

Meanwhile, the Governor was charged by the Sandiganbayan for criminal violations of the Anti-Graft and Corrupt Practices Act as a result of the purchase of the Balili property. She faced additional criminal and administrative charges when she covered the area for dumping, without any authorization from the local lawmaking body or the Philippine Reclamation Authority.

Strategies:

1. Environmental lawyers and constituents utilized not just the provisions of Environmental Laws but also Accountability Laws such as RA 9485, the Anti-Red Tape Act, for the release of the requested public documents from public officials and civil servants.
2. Media presence was and is visible in almost all activities of the stakeholders.
  - (a) Obtaining the samples of coal ash for testing was conducted by a known toxicologist, Dr. Romeo Quijano, done in the presence of stakeholders, including representatives of local government units, and media, and the result of the testing were publicly released and given media mileage<sup>46</sup> which added to the education of the public and public authorities hopefully on the hazards of coal.

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<sup>45</sup> Cebu Daily News, Gwen Fights Back as Siitoy Hurts, March 14, 2012, <https://cebudailynews.wordpress.com/2012/03/14/gwen-fights-back-as-sitoy-hurts/> Accessed 2 March 2015.

<sup>46</sup> Parco, B. Cebu Daily News (2010) 'Tests Show Toxic Ash Naga City's coal ash dumps have arsenic, mercury' <http://globalnation.inquirer.net/cebudailynews/news/view/20100416-264565/Naga-Citys--coal-ash-dumps-have-arsenic-mercury>, Accessed 2 March 2015

- (b) Media persons were likewise invited to and reported on the assessment of the ailments in the coal community done by a team of doctors, from both the private and public sectors.<sup>47</sup>
- (c) It helped that environmental lawyers also expanded their platforms, not just in courts and lectures, but even spaces in print and air time on radio. The author is a weekly columnist for environment and governance in print media, which is published online. She hosted a radio program devoted likewise to environmental stewardship, where various specialists in environment related fields are invited to share their knowledge with the listeners.
3. Multi-stakeholder collaboration among members of the academe, NGOs, POs, church and some supportive officials from the local government units strengthened the engagement and added pressure to government to comply with the mandates of the Law.

Lessons Learned: The collaboration among stakeholders and the greening of the judiciary because of the promulgation of the first of its kind in the world, the Rules of Procedure for Environmental Cases (A.M. No. 09-6-8-SC) helped tremendously in the stoppage of the hazardous activity and in institutionalizing public participation in decision-making.

The filing of harassment suit by the governor against the author of this paper, and the countersuit by the coal power plant against petitioners in the petition to stop the indiscriminate coal ash dumping were publicized and led to debates and the education of the public on strategic legal action against public participation (SLAPP), meriting even an Editorial in a local daily on the matter.

The most visible lesson learned from this case and the anti- offshore drilling engagements was the increased surge of the feeling of hope, among the most affected stakeholders, the marginal fisherfolk, that the Law is potent in protecting human rights.

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<sup>47</sup> Parco, B. Cebu Daily News (13 December 2009) 'Experts check effects of coal ash in Naga' <http://globalnation.inquirer.net/cebudailynews/news/view/20091213-241755/Experts-check--effects-of-coal-ash-in-Naga>, Accessed on 2 March 2015.

### **2.1.3 Stoppage of the Two Flyover Projects Worth P600 Million In Cebu City**

Facts: Cebu City is the oldest city in the Philippines. It has been the center of trade and commerce, even during the Spanish era. It was declared a City of Culture by the Association of Southeast Asian Nations (ASEAN) in 2011 during the 12<sup>th</sup> ASEAN Summit.

The residents of Cebu City woke up, one day, and read in the newspapers that the pet project of a Congresswoman, Cutie del Mar, involved the construction of two flyovers worth almost P600M in two places with heritage rich landmarks. As was usual in the Philippines, the projects were concocted without public participation, out of the desire of the official and her father, the former Congressman, to solve the traffic congestion in the metropolis.

The usually reticent residents largely from the middle and upper class, business sector, church and NGOs swung into action and consulted advocates and experts in the field of law, engineering, transport, heritage and other discipline. They wrote the officialdom from the President down to the barangay officials and declared their consternation at being excluded from the process. They opposed the flyovers projects because there was no Comprehensive Master Plan, and the projects were a “Band-Aid solution”, with flawed design as “Single lane flyovers constrict the road from two lanes per direction into a single lane. This design is not used anywhere else in the world” and destroys urban core. They proposed alternatives to “Transform the Urban Core, by providing viable urban mobility alternatives via Mass Transit (land & water), True & Useable Sidewalks, Dedicated Bike Lanes, Parks & Green Public Spaces & Green Corridors. The citizens found an ally in the city Mayor, Michael Rama, and the traffic management body, Cebu City Traffic Operations Management (Citom).

A Stop Cebu Flyovers Movement was established. A Facebook account created, which garnered over 3,000 members in a matter of days. Tarpaulins saying “No to Flyovers” mushroomed in the city. Media highlighted the brewing controversy that pitted citizens against political giants. A petition to stop the case in the Supreme Court was prepared. Two days before its filing, the key leaders were given an opportunity to meet the Secretary of the implementing agency, Department of Public Works and Highways (DPWH) in Manila.

To the shock and consternation of the Congresswoman and politician who backed her, Congressman and former Mayor Tomas Osmena, DPWH stopped the projects and other

flyover projects in the plantilla and has been on hold since October, 2011, pending a comprehensive master plan.

The citizens' movement has since evolved and now known as the Movement for a Livable Cebu. It is in the frontline of initiatives promoting activities to make the city sustainable and the people healthy. The Youth for Livable Cebu was likewise established made up of the youth and young professionals.

The citizens' fight to stop the flyovers was another David-Goliath fight, with very inspiring results to citizens who believed, and rightly so, in the cause they were fighting for.

Strategies: Strategies utilized were similar in the TSPS and the coal campaign. Appraisal of and exercise of the citizens' rights under the Law, multi-stakeholder collaboration, consistent and regular media coverage, and citizen led initiatives promoting sustainability.

Lessons Learned: The significant lessons learned are best summed up by Mr. Rudy Alix, in his speech before the members of the Philippine Bar during the Continuing Legal Education Seminar in March, 2013 at the University of Cebu. He said:

"We sooner realized we had to fight the flyover proponents but not with the usual weapons, and not in their arena.

1. The arena of traditional politics involves lies, illusions, name calling, and then threats. The politicians are monsters in the field in there, and we stand no chance at all. We were branded "vested interests out to protect our businesses", and the "alter ego of Mike Rama"...

We knew that if we focused on answering accusations, on showing physical numbers, we will be forever on the defensive, we will need huge sums of money, and so we will lose.

Politicians have the money, can mobilize the numbers, and have a whole stockyard of lies.

We will lose in their arena.

2. We had to bring them to the arena of Law, Logic and Truth. Atty. Golly Ramos pointed out The Local Government Code and some sections of the Philippine Constitution which we can use as weapons in this fight. We had two arenas before us: Public debate and the Courts.

These are forbidden lands for them. Lies will be exposed by Truth. The Law and the Constitution are clear in regard to requiring prior consultation with stakeholders for projects, processes which were not done. The courts, if ever resorted to, will always reach a resolution for conflicts, and the Law will always be the basis for the decision. There is no room for open-ended discussions, there is no room for lies and deception. Our Urban Planners and heritage advocates presented clear professionally done opinions about the uselessness of flyovers, and offered technically and socially sound solutions. Until now, those politicians cannot defend their proposals with sound data.

Those politicians were in strange territory, possibly frightening for them. They avoided public debate, would not answer our questions and challenges. They continued to work around the legally prescribed processes, but at every step of the way, they were exposed. Enlightened citizens made sure of that.

Not seeing any decent response from the flyover proponents, we later explained our advocacy to the decision makers in Government: the Cabinet Secretaries, Regional Directors of Government agencies, and to the President himself. We got the responses we needed from the known decent officials. I can't name names, but these officials simply made sure the Law and the Constitution are followed.

Now, we have bottom to top budgeting as a policy, flyover projects were deferred pending a master plan, and it is now the policy in DPWH to involve Civil Society Organizations in its planning activities.

3. Our premier strategy, however, was, and continues to be, Prayer. We were heard. If your cause is honorable, you will never be alone.”

It has to be mentioned that in the anti-flyover campaign, unlike in the two cases above discussed, environmental lawyers stayed in the background. Their role was to render legal advice as may be needed, prepare the petition and speak in forums and programs. The now-visible empowered citizens were and remain in the forefront of numerous activities which they themselves planned, strategized and implemented. One visible factor would be that the leaders in the MLC, with their financial and educational background, are not hampered by survival needs and have choices, unlike the residents in the affected communities in Tanon

Strait Protected Seascape and the coal communities, many of whom are not even aware that they are vested human rights to life and health and to participate in governance.

2.2 Common elements of the three successful cases/campaigns were the use of creative strategies by “unflinching” citizenry demanding accountability from government – youth, artists, students, professionals, NGOs and POs, Collaboration with various sectors and citizens, Extensive media coverage and indispensable presence of environmental lawyers and specialists, with varying degrees of involvement

### **3. Emerging Trends in Accessing Green Justice in the Philippines**

The promulgation of the Rules of Procedure for Environmental Cases have “triggered a renewed sense of hope, especially on the part of the most vulnerable sectors, that the law can work in their favour after all. In the short time since the Rules came into force, there is a growing realization that the right to a healthy environment can now be effectively asserted and claimed even against influential stakeholders, through environmental suits. The Rules have become the State’s response to Principle 10 of the Rio Declaration, to the effect that ‘effective access to judicial and administrative proceedings, including redress and remedy, shall be provided’. It is not wishful thinking to state at this stage that perhaps, in the future, the trust in the efficacy of the law, institutions and legal processes will be restored. These are essential prerequisites for the rights to life and a healthy environment to be protected.”<sup>48</sup>

#### **3.1 Gradual Greening of the Courts**

One of the victories for the environment and the people’s right to life and health involve the much-lauded ruling of the Court of Appeals which ordered the issuance of the writ of kalikasan (nature), ordering the stoppage of the BT Talong (Eggplant) field trial, in the case of Greenpeace Southeast Asia (Philippines) et al v. Environment Management Bureau of the DENR (CA GR SP No. 00013, May 17, 2013). The Court based its judgment, among others, on the constitutional rights to health and to ‘a healthful and balanced ecology’ and the precautionary principle, as specifically provided for by Rule 20 of the Rules.

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<sup>48</sup> Ramos, G. IUCN Academy of Environmental Law e-Journal Issue 2011(1), Innovative Procedural Rules on Environmental Cases in the Philippines: Ushering In a Golden Era for Environmental Rights Protection’ pp. 189-190.

It declared that “It bears stressing that our Constitutional right to a balanced and healthful ecology is a compound right which consists of (1) the right to one’s health which should not be put to risk by a willful disturbance of the ecological balance, and (2) the right to live in an environment of balanced ecological relations. The former speaks of threats to human health which, in the case of bt talon field trials, had not yet been assessed and categorically declared as safe for humans. On the other hand, the latter concerns the people’s right to a balanced ecology which presupposes that all living things, as they are naturally ordained, are equally necessary to maintain the aforementioned balance. In the instant case, the field trials of bt talon involve the willful and deliberate alteration of the genetic traits of a living element of the ecosystem and the relationship of living organisms that depend one other for their survival. Consequently, the field trials of bt talon could not be declared by this Court as safe to human health and to our ecology, with full scientific certainty, being an alteration of an otherwise natural state of affairs in our ecology.”

While there had been more judgments favoring petitioners in environmental cases, after the Rules were promulgated, there had been setbacks as well. One court in an environmental case required all mining companies to be impleaded. This action would tend to defeat the purpose of the writ of kalikasan, which is to expedite the process where “proceedings terminate within sixty days from submission of the original application” (Rule 7, Rules).

As author Ristroph declares, “Knowledge of the rules is key. Where judges and litigants understand the Environmental Rules, cases have been resolved more quickly—often in favor of the environmental litigants.”<sup>49</sup>

### 3.2 Growing National Coalition to Stop Ecologically Destructive Projects and Demand for Government to Prioritize People’s Safety and Health

Recent developments include the forging of national coalition among various NGOs and POs and even business and public sectors to stop destructive projects such as reclamation, coal and Mining. The Road Revolution, softened as a Road Sharing movement, “calls for the Philippine Government to transform the road and transportation system from the present car-

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<sup>49</sup> See Footnote 18, p. 21.

based system to one that is more fair and more people-friendly.”<sup>50</sup> It has since been transformed into a Bayanihan sa Daan (Heroism in the Streets).<sup>51</sup>

Another influential ecological vanguard, the Eco-waste Coalition, has successfully pursued a continuing series of exposures of the presence of harmful level of lead and hazardous substances in consumer products which are well-publicized and considerably increased the level of awareness of the stakeholders. But, government response is not as fast as hoped for.

## **Conclusion and Recommendations**

The heroic struggle put up by various enlightened constituents and sectors to defend the people and the planet and promote green justice will be bolstered, as it has been, by the continuing assistance emanating from the academe and specialists in the field of Environmental Law to attain the twin objectives of incessantly capacitating stakeholders to sustain the momentum of vigorous engagement for environmental rights to be protected and mainstreaming the mindset of conserving and nurturing our natural environment.

These trainings can include environmental education through participatory, creative and out-of-the-box approaches, and which, in addition to Environmental Law, touch upon and connect with Human Rights, Participatory Governance and Ethics, among other areas; Enhancing Advocacy Skills and Research Capability to Influence Policy; Increased Capacity to connect with Media, and Strengthening the skillful use of social networks in promoting the advocacy and the necessary engagement tools.

There should be more innovations in implementation, including new approaches to community engagement and community partnerships, or actions by concerned communities through Popularizing Environmental Law - not just for lawyers and law students but for all sectors, and citizens – to encourage strong sense of responsibility and stewardship..

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<sup>50</sup> Oposa, A. Cebu Daily News (21 April 2013) ‘Road-sharing: Time for Talk is over’.

<http://newsinfo.inquirer.net/394785/road-sharing-time-for-talk-is-over>, Accessed 2 March 2015.

<sup>51</sup> Codilla, M. Road sharing pioneers honored in Malacañang, Cebu Daily News, November 29, 2014.

<http://cebudailynews.inquirer.net/47306/road-sharing-pioneers-honored-in-malacanang>, Accessed on 2 March 2015.

Research, or research collaborations, that should be tackled for behavioral change and effective implementation of environmental law may include mainstreaming the right to a healthy environment as a human right, Environmental Law Interlinked with other disciplines and practitioners and Environmental Law and Good Governance.

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