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## **INTERGENERATIONAL RESPONSIBILITY IN THE PHILIPPINE CONTEXT AS A JUDICIAL ARGUMENT FOR PUBLIC ACTION ON DEFORESTATION**

OPOSA, ANTONIO A., JR.

Attorney, Philippine Ecological Network (PEN), 1807 Tower One, Cityland 10, Ayala Avenue, Cor H. V. Dela Costa St., Salcedo Village, 1200, Makati, Philippines

### **1 INTRODUCTION**

One of the basic principles stated and reiterated in the Agenda 21 is the concept of 'inter-generational responsibility.' It states that:

*"Man ... bears a solemn responsibility to protect and improve the environment for present and future generations."*<sup>1</sup>

Essentially, the principle means that we hold the natural resource treasures of the earth in trust for the benefit, enjoyment and use of the generations of humankind yet to come. It is therefore a trust endowed upon us — as trustee and depository — to use and enjoy. While our generation has the right to use the earth's resources, as a trustee and depository, we are also duty bound not to misuse or exhaust it, so that those of our species to come in much later years will still have something to use. This, in simple terms is the meaning of "sustainable development", using natural resources without exhausting them.

The time frame is not limited to nor extending only until the generation of our children and of our children's children. Rather, it extends up to a horizon of reasonable perpetuity, i.e. up to the time when the species homo sapiens is still around and that they will still need the life-support systems of the natural resource treasures of the earth.

This concept was tested in the legal forum in the Philippines. On July 30, 1993, one year after the Earth Summit that produced Agenda 21, the Philippine Supreme Court had the occasion to rule on the legal standing of children to sue before a court of law on a question of nationwide significance — the issue of deforestation.

### **2 GEOGRAPHIC CONDITIONS**

The Philippines is an archipelagic country of 7100 islands with a total land area of 30 million hectares. Being an island ecology and given the slope and terrain of our islands, the proper land use balance should be about 50-50, i.e. 50% for forest lands and 50% for other land uses.

Lest we forget, the laws of man must follow the laws of nature.

It is estimated that approximately 50 years ago, the country had about 16 million hectares of old-growth forest covering 53% of the land mass.

In 1988, it was determined through satellite imagery that the country had approximately 800,000 hectares of old growth forests left and about 3-4 million hectares of residual and/or logged-over forests.

### **3 POLICY ADVOCACY THROUGH LEGAL ACTION**

The Philippine mahogany was once famous worldwide. They were extracted from the virgin forests of the Philippines. Because these forests were once lush and almost limitless, it was the governmental policy to allow logging only in our virgin forests.

To recall, there were only 800,000 hectares left. In 1989, data from the Government<sup>2</sup> revealed that there were 92 logging corporations holding Timber License Agreements (TLA's) covering an area of 3.9 million hectares. There was even evidence that certain logging companies did not have forested areas within their logging concessions. Something was wrong with the arithmetic. It was estimated that about 100,000 hectares of old-growth forests were destroyed every year. Thus, on its very face, total removal of the virgin forest cover may happen in less than 10 years.

If one were to seek a change in the policy, and the law was the only tool on hand, the avenue for attempt, however modest, would be through a legal action. How to frame the problem into a justiciable and litigable issue was the challenge.

## **4 STRATEGIC AND TACTICAL CONSIDERATIONS**

### 4.1 Choice of the parties:

#### 4.1.1 Plaintiff:

While the present generation was and will continue to suffer the ecological malfunctioning as a result of forest destruction, it is the generation of our children and those to follow that will suffer what in legal parlance is called irreversible damage and irreparable injury. Under the rules on procedure, they are the real parties in interest.

#### 4.1.2 Defendant: Who should be the defendant/s?

The necessary defendants are:

- a. The holders of the license.
- b. The issuer of the license.

To unnecessarily pick a fight with 92 multimillion logging companies, with their battery of topnotch lawyers and their massive political clout, may not be an act of heroism but of foolhardy quixotism.

The art of war teaches us to choose the line of least resistance. Thus, the issuer, the Government, was the easier target.<sup>3</sup> Besides, under the Regalian doctrine, Government (representing the State) is the owner of the country's natural resources. Being the owner and possessor of authority, Government is also bestowed with responsibility. As the temporal representative of this generation, Government is duty bound to care for the natural resources of the Philippines and to keep it in good, if not in a better, condition for the benefit of the present and future generations of Filipinos.

In fact this line of thinking was already present in our existing environmental laws. An environmental provision had even been recently enshrined in the 1987 Constitution.

### 4.2 Choice of the action:

A cause of action in an environmental legal action with a policy (a.k.a. political) complexion must not only be sufficient, it must also appear sufficient, clear, unmistakable, and palpable. Otherwise, it can suffer the setback of early dismissal for failing to state a cause of action.

The clear and unmistakable cause of action was in the fact that:

- There were only 800,000 hectares left of virgin forests.

- The Government had granted logging concessions to 3.9 million hectares (almost five times more than was available).
- At the present rate of forest depletion, there will be nothing left for our children and those of them to follow.
- If the generations to follow will suffer irreparable injury and permanent damage, they are therefore the proper parties-plaintiff.

## 5 THE LEGAL ACTION

On March 20, 1990, (two years before Agenda 21) Civil Case No. 90-777 for mandatory injunction was initiated before the Regional Trial Court of Makati, Metro Manila. The plaintiffs, forty three children from all over the Philippines filed a legal action against the Secretary of the Department of Environment and Natural Resources (DENR) and prayed for the cancellation of all logging concessions in the country. The legal and philosophical basis are as follows.

### 5.1. Constitution:

The 1987 Constitution states that, *“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”* (Article 2, Section 16).

### 5.2 Common Law:

This generation, represented by the Government, is the trustee of the natural resource treasures of the country. As such, it must properly care for these treasures so that succeeding generations — the beneficiary — may still enjoy, use and benefit from these resources until and up to an horizon of reasonable perpetuity. The Trustier, of course, is the Creator of Nature.

### 5.3 Civil Law:

Whoever does damage to another in a manner that is contrary to morals and public policy shall be liable for the damage done. Public policy is contained in the Constitution and in the various dormant environment laws of the country. All of them state, in effect, that we hold these natural resources for the benefit of future generations. If this public policy is violated by our act of willful and continued forest depletion, there is actionable damage.

### 5.4 Natural law:

Plaintiff minors alleged that the act of allowing the total decimation of the forest resources of the country violated their right (and instinct) of self-preservation and self-perpetuation. It is an at tantamount to generational genocide.

## 6 THE INITIAL SETBACK

The Government, as anticipated, filed a motion to dismiss on the ground of the failure to state a cause of action, and that the issue was political in complexion. After about one year, the Regional Trial Court dismissed the case on the following grounds:

1. Failure to state a cause of action on the part of the plaintiffs and lack of personality to sue.
2. The issue is a political question and therefore, non-justiciable.

3. Canceling the timber license agreements will violate the constitutional protection against infringement of contracts.

## 7 THE SUPREME COURT DECISION

The Supreme Court of the Philippines rendered an en banc and unanimous decision on July 30, 1993.<sup>4</sup> The following legal issues and clarifications may be of interest:

### 7.1 Class suit

*“The subject matter of the complaint is of common and general interest not just to several, but to all the citizens of the Philippines. Since the parties are so numerous, it is impossible to bring them all before the court.”*

The case was ruled as a proper class suit. It was also ruled that the petitioners are numerous and representative enough to ensure full protection of all the concerned interests.<sup>5</sup>

### 7.2 Legal personality to sue:

The Supreme Court clarified the question of the children’s legal right of action, their *locus standi*. It said:

*“Petitioners minors assert that they represent their generation as well as generations yet unborn. We find no difficulty in ruling that they can, for themselves, for others of their generation and for the succeeding generations, file a class suit.”*

*“Their personality to sue in behalf of the succeeding generations can only be based on the concept of inter-generational responsibility insofar as the right to a balanced and healthful ecology is concerned. Such a right considers the “rhythm and harmony of Nature.”*

*“Nature means the created world in its entirety. Such rhythm and harmony indispensably include, inter alia, the judicious disposition of the natural resources to the end that their development be equitably accessible to the present as well as future generations.”*

*“Needless to say, every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology.”*

*“Put a little differently, the minors’ assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come.”*

The Court also clarified the legal status of the right to a sound environment. It noted that:

*“While the right to a balanced ecology is found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter.”*

*“Such right belongs to a different category of right altogether for it concerns nothing less than self-preservation and self-perpetuation the advancement of which may be said to predate all governments and constitutions.”*

*“As a matter of fact, 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 of the well-founded fear of its framers that unless the rights are mandated by 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.”*

## **8 POST FACTO INCIDENTS**

The Government has since prohibited logging in old growth forests.<sup>6</sup> The number of Timber License Agreement (TLA) holders has since been reduced to about 24. In effect, what was sought to be achieved by protracted legal action was accomplished, at least partially, by administrative action. This is not to say that the legal action was principally or even significantly responsible for this development. If at all contributory, it served to merely stoke the fire of concern over our vanishing forest resources.

## **9 LESSONS LEARNED**

For all its jurisprudential value and implications in constitutional and political law, remedial law and environmental law, the important lesson learned is that environmental controversies and issues are not resolved by legal action and in the legal forum. After a 3-year battle all the way to the Supreme Court, only the legalistic issue of the legal personality to sue had been resolved. If a proactive environmental legal action can be of any value at all, it is in the fact that it serves to:

1. Force the issue and disturb the molecules of thought not only in the minds of the concerned sectors (Government, logging operators, legislators, etc.), but also the minds of the general public.
2. Oftentimes an environmental issue becomes a highly-charged emotional controversy. Submitting it before a court of law will render it *sub judice* and subject the controversy to the court's dispassionate scrutiny. The issues can be clarified in an orderly manner.
3. Given a sympathetic bureaucracy, the government administrators may just be looking for additional ammunition with which they can enact a policy that they wanted to do in the first place but could not on account of political considerations and sensitivities.

## 10 CONCLUSION

So far we have discussed a legal precedent on the issue of inter-generational responsibility. What are the possible theoretical extensions of the principle?

1. If a generation is fully aware of its destructive behavior in such environmental concerns as climate change, deforestation, and marine resource depletion, yet continues to follow such conduct, is there malice and bad faith?<sup>7</sup>

If so, is the next generation entitled to inter-generational moral damages?

2. If a generation converts and misappropriates for its own use and benefit the natural resource treasures which it holds in trust for succeeding generations — the beneficiaries — can the former be held for, and is there a crime of, generational swindling? The answers to these we shall leave to future jurisprudence.

## REFERENCES

1. Stockholm Declaration, Principle No. 1, and the Rio Declaration, Principle 3.
2. The agency of Government primarily mandated to protect the country's natural resources in the Department of Environment and Natural Resources (DENR).
3. To the credit of then DENR Secretary, F.S. Factoran, his administration was of similar thinking. In fact, he was informed beforehand of the legal action which he gamely encouraged and supported.
4. *Minors vs. Secretary of the DENR*, GR 101083, 224 SCRA 792. All quotations hereinafter cited may be found in the decision.
5. The plaintiffs-children were carefully selected to come from all the geographic regions of the country.
6. DENR Dept. Admin. Order No. 24, Series of 1991.
7. It is a universal principle of law that when one knows that something is wrong yet goes ahead and does it, there is premediated malice and evident bad faith.

