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An Analysis of Supreme Court decisions on Rape and Sexual Assault Assessing their compliance with the Convention on the Elimination of Discrimination against Women (CEDAW) mandate to eliminate Gender Discrimination and promote Gender Equality

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COMPILATION OF MONITORING RESEARCH ON
**THEMATIC JUDICIAL
CASES**



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COMPILATION OF MONITORING RESEARCH ON
THEMATIC
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COMPILATION OF MONITORING RESEARCH ON THEMATIC JUDICIAL CASES

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Hustisya Natin (Empowered Civil Society Participation in Monitoring Judicial and Quasi-Judicial Bodies Towards Enhanced Integrity of the Justice System) seeks to enhance the integrity of the justice system through increased accountability and transparency, and improved performance of judicial and quasi-judicial bodies.

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HUSTISYA NATIN

We engage various groups especially regional or local nongovernment and people's organizations (NGOs) that address issues of vulnerable sectors. We work with human rights defenders, the media and academe.

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This Project is Funded
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FOREWORD

In 2016, we launched *Hustisya Natin*, a three-year project funded by the European Union, that envisioned to enhance the integrity of the justice system through increased accountability and transparency, and improved performance of judicial and quasi-judicial bodies in the Philippines.

As the project comes to an end, we hope to leave a concrete contribution with this publication. Experts from our partner legal-resource organizations have teamed up to work on their sectors of specialization.

The research found on this book aim to understand the underlying processes and issues in five particular thematic cases (labor, women, agrarian reform, environment, and extrajudicial killings) that have gone through judicial and quasi-judicial procedures. It is important to look into findings on how the Supreme Court and quasi-judicial bodies ruled on these cases as it is essential in knowing how we could further formulate policy reforms in the justice sector.

As we continue our work towards an accountable and transparent judiciary, this book is intended to be a reference material for lawyers, law students and the general public alike. We hope that there would be more opportunities to write materials like this in the future as the topic of the improvement of the justice system will always be an evolving issue.

This research would not be possible without the support of the European Union and our partners: Ateneo Human Rights Center (AHRC), Environmental Legal Assistance Center (ELAC), *Kaisahan tungo sa Kaunlaran ng Kanayunan at Repormang Pansakahan (KAISAHAN)*, Philippine Alliance of Human Rights Advocates (PAHRA), and *Sentro ng Alternatibong Lingap Panligal (SALIGAN)*.



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CLAIMING WORKERS' RIGHT TO FREEDOM OF ASSOCIATION IN PHILIPPINE JURISPRUDENCE:

A Study of Supreme Court Decisions on the Principles of ILO Convention No. 87 from 2010 to 2017

Saligan¹

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A. Introduction

The right to freedom of association is fundamental in the exercise of workers' rights. When the Philippines ratified International Labor Organization (ILO) Convention No. 87, it committed to adopt domestic policies to attain the objectives of the Convention. While the Philippine Constitution and various national laws have adopted certain measures to uphold the freedom of association, the Convention's role in Philippine jurisprudence must be examined. This paper analyzes decisions of the Supreme Court of the Philippines from 2010 to 2017, focusing on the four fundamental rights under the Convention: (1) the right to organize; (2) the right to organizational autonomy; (3) the right against dissolution and suspension; and (4) the right to affiliate.

While its judiciary is limited by domestic law, the Philippines recognizes international conventions and treaties, and adopts them as part of the law of the land. As such, the paper provides recommendations on how advocates can push for their rights not only in the realm of the lawmakers and implementers, but also in courts as right-holders.

B. Freedom of Association

International instruments and the Philippine Constitution

On December 29, 1953, the Philippines ratified ILO Convention No. 87, or the Convention Concerning Freedom of Association and Protection of the Right to Organize.

It was originally signed on July 9, 1948, predating the Universal Declaration of Human Rights (UDHR), which was adopted by the United Nations General Assembly on December 10, 1948. As of April 2019, 155 countries, including the Philippines, have ratified the Convention.²

Under this Convention, both workers and employers have four fundamental rights: (1) the right of all workers and employers, without distinction, to establish and join organizations of their own choosing without previous authorization;³ (2) the right of workers' and employers' organizations to freely decide on internal matters;⁴ (3) the right of workers' and employers' organizations against dissolution or suspension by administrative authority;⁵ and (4) the right of workers' and employers' organizations to establish and join federations and confederations, as well as affiliate with international workers' and employers' organizations.⁶

The same rights are extended to workers' and employers' federations and confederations, and the acquisition of legal personality by workers' and employers' organizations, federations, and confederations may not be made subject to conditions of such a character as to restrict the same rights.⁷ While domestic law must be respected in exercising such rights, it may not be applied to impair these rights.⁸ This ensures legislative conformity of parties to the Convention. Meanwhile, the extent of application of the same rights to military and police personnel is left to national law and regulations.⁹



The right to form or join organizations under the Convention is not the same as the general right to form or join *any organization*. As used in the Convention, “organisation” refers to “any organisation of workers or of employers *for furthering and defending the interests of workers or of employers*.”¹⁰ Indeed, the UDHR recognizes the right to form and join *trade unions*¹¹ separately from the general freedom of association.¹² It is specifically protected in the International Covenant on Civil and Political Rights (ICCPR)¹³ and the International Covenant on Economic, Social and Cultural Rights (ICESCR),¹⁴ both of which were ratified by the Philippines. These two Conventions echo the rights enshrined in ILO Convention No. 87, including the mandate of legislative conformity.

The Philippine Constitution adopts the generally accepted principles of international law as part of the law of the land.¹⁵ These principles include the rights declared in the UDHR.¹⁶ In particular, Article XIII, Section 3¹⁷ of the Constitution protects the rights of *all workers*, without distinction, to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. Section 8 of the Bill of Rights protects “[t]he right of the people, *including those employed in the public and private sectors*, to form unions, associations, or societies for purposes not contrary to law.” Meanwhile, Article IX-B, Section 2(5) states that “[t]he right to self-organization shall not be denied to government employees.”

Philippine legislation

The Labor Code of the Philippines¹⁸ defines a labor organization as “any union or association of employees which exists in whole or in part *for the purpose of collective bargaining or of dealing with employers concerning terms and conditions of employment*.”¹⁹ Unlike ILO Convention No. 87, the UDHR, the ICCPR, the ICESCR, and the Philippine Constitution, Philippine laws make several distinctions among workers on their right to form and join labor organizations. These include: (1) the presence of employer-employee relationship; (2) private and public sector workers; (3) the level of employment; and (4) employees’ citizenship.

Presence of employer-employee relationship. Under Article 253 of the Labor Code, only workers with employer-employee relationships²⁰ may form, join, and assist labor organizations.²¹ In contrast, other workers may only form and join workers’ organizations “*for their mutual aid and protection*,” which do not fall under the definition of workers’ organizations in ILO Convention No. 87.

Private and public sector workers. The Labor Code grants the right to form, join, and assist labor organizations only to employees “in commercial, industrial and agricultural enterprises and in religious, charitable, medical, or educational institutions, whether operating for profit or not” and to “[e]mployees of government corporations established under the Corporation Code.”²²

On the other hand, civil service employees, or those who work in the various branches and instrumentalities of government, including government-owned or controlled corporations with original charters,²³ may not form or join labor organizations.²⁴ Instead, they may only form or join employees’ organizations.²⁵ Under Executive Order (EO) No. 180 (1987), the rights of employees’ organizations are limited and incomparable to those of labor organizations.²⁶ They may negotiate only terms and conditions of employment that are not fixed by law,²⁷ and may not conduct any strike.²⁸ Moreover, high-level civil service employees, members of the Armed Forces of the Philippines, police officers, firefighters, and jail guards may not form or join employees’ organizations.²⁹

Level of employment. Under Article 255 of the Labor Code, “[m]anagerial employees are not eligible to join, assist or form any labor organization.” Supervisory employees may form, join, or assist labor organizations of their own, but they are not eligible for membership in labor organizations of rank-and-file employees. Nonetheless, labor organizations of both supervisory employees and rank-and-file employees within the same establishment “may join the same federation or national union.”

Employees’ citizenship. Under Article 284 of the Labor Code, aliens working in the Philippines are “strictly prohibited” from forming or joining labor organizations. The narrow exception is when a working alien: (1) has a valid permit issued by the Department of Labor and Employment (DOLE); and (2) is a national of a country that grants Filipino workers the right to organize.

These statutory distinctions run counter to the mandate of Article 2 of ILO Convention No. 87, which grants all workers “without distinction whatsoever” the right to form or join organizations “of their own choosing.” The Convention allows for a distinction between members of the armed forces and police,³⁰ and other workers. However, it does not allow for any distinction in trade union matters and the right to organize between workers without employer-employee relationships,³¹ public sector employees,³² firefighters,³³ prison staff,³⁴ managerial staff,³⁵ and aliens³⁶ on one hand, and other workers on the other.



Notably, certain Philippine regulations further limit the workers' exercise of their right to freedom of association. Among these is the requirement of union registration. Article 2 of ILO Convention No. 87 allows workers to form or join workers' organizations "without previous authorisation." However, for such organizations to acquire legal personality and rights, they have to comply with the numerous requirements under the Labor Code. In 2008, the Supreme Court of the Philippines ruled that the approval of union registration is "not ministerial." According to the Court, "[i]f the union's application is infected by falsification and like serious irregularities, especially those appearing on the face of the application and its attachments, a union should be denied recognition as a legitimate labor organization."³⁷

The ILO Committee on Freedom of Association has ruled:

Even in cases where registration is optional but where such registration confers on the organization the basic rights enabling it to "further and defend the interests of its members", the fact that the authority competent to effect registration has discretionary power to refuse this formality is not very different from cases in which previous authorization is required.³⁸

As to organizational autonomy, domestic law does not prohibit labor organizations from drawing up their own constitutions and by-laws, electing their officers and representatives, organizing their own administration and activities, and formulating their own programs. Notably, however, the exercise of the right to strike is heavily regulated under the Labor Code.³⁹ Nonetheless, the law recognizes that an employer's interference with the workers' exercise of their right to self-organization is an unfair labor practice tantamount to a criminal offense.⁴⁰

Contrary to the plain text of Article 4 of ILO Convention No. 87, labor organizations in the Philippines may be dissolved by administrative authority through petitions for revocation or cancellation of registration. DOLE Regional Directors and the Director of the Bureau of Labor Relations (BLR) are authorized to cancel the certificates of registration of legitimate labor organizations, federations, national unions, industry unions, trade union centers, and workers' associations.⁴¹

There are three grounds for cancellation of registration:

(a) Misrepresentation, false statement or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto, the minutes of ratification, and the list of members who took part in the ratification;

(b) Misrepresentation, false statements or fraud in connection with the election of officers, minutes of the election of officers, and the list of voters;

(c) Voluntary dissolution by the members.⁴²

Another limitation is the minimum membership requirement for unions to federate. The right of labor organizations to form and join federations is protected under Philippine law. However, Article 244 of the Labor Code requires a federation or national union to have a minimum membership of 10 legitimate labor organizations, "each of which must be a duly recognized collective bargaining agent in the establishment or industry in which it operates." This minimum requirement is excessively high according to the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR).⁴³

Lastly, foreign assistance to labor organizations is heavily regulated. While the law does not expressly prohibit labor organizations and federations from affiliating with any international organization, foreign assistance to "any labor organization, group of workers or any auxiliary thereof" is strictly regulated. Under Article 285 of the Labor Code, assistance in any form, "in cash or in kind, directly or indirectly," from any foreign individual, organization, or entity must have prior permission from the DOLE Secretary. Such strict regulation is "incompatible with the principles set out in Article 5 of [ILO] Convention No. 87."⁴⁴

Impact and outcomes

Philippine legislation, therefore, serves to prevent workers, their organizations, and international organizations from consolidating into a trade union movement. It prevents workers from joining labor organizations by not only limiting the right to organize to a narrowly specific category, but also making union registration difficult and discretionary. Federations are required to have an excessively high minimum membership. Foreign assistance, which would help



develop local unions and federations, is strictly regulated. Philippine law, it would seem, favors small, isolated, exclusive, and nuclear unions.

This is contrary to the principles and provisions of ILO Convention No. 87, which specifically mandates legislative conformity. The UDHR, the ICCPR, and the ICESCR all reaffirm the right to freedom of association under the Convention. No less than the Philippine Constitution recognizes the same right in a number of its provisions. Yet, 66 years after it had been ratified, the Convention's impact on Philippine legislation remains uncertain.

These legal obstacles have likely contributed to the massive decline of unionism in the Philippines. From 30.5% in 1995, the private sector's union density rate declined to 20.2% in 2003; 10.6% in 2010; and 7.7% in 2014. Likewise, the collective bargaining agreement (CBA) coverage rate declined from 19.7% in 2003 to 10.9% in 2010, and 8.1% in 2014.⁴⁵ As of 2016, the private sector's union density rate was at 6.5%, while the CBA coverage rate was at 7.2%.⁴⁶

C. Recent Jurisprudence

Philippine jurisprudence reflects just how small a role ILO Convention No. 87 has played in cases of workers' freedom of association. The Convention rarely figures in decisions of the Supreme Court of the Philippines. Unsurprisingly, it is seldom pleaded by any party before the Court. Jurisprudence and practice, along with contradictory legislation, reveal the extent to which the Philippines has failed to comply with its obligations under the Convention. Recent decisions of the Supreme Court from 2010 to 2017 affirm these observations.

Right to organize

In the 2010 case of *Bank of the Philippine Islands v. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank*,⁴⁷ the Bank of the Philippine Islands (BPI) and Far East Bank and Trust Company (FEBTC) entered into a merger in 2000. This transferred all of FEBTC's assets and liabilities to BPI as the surviving corporation. BPI absorbed FEBTC employees as its own, with their status, tenure, salaries, and benefits maintained.

In Davao City, the rank-and-file employees of BPI were unionized under BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank. The union had a CBA with BPI, which included a union shop clause that required "[n]ew employees . . . who may hereafter be regularly employed" to "join the Union as a condition of their continued employment." Some of the FEBTC employees

absorbed in BPI Davao City joined the union, while others did not. Pursuant to the clause, the union requested BPI to terminate the employment of the FEBTC employees who did not join the union. BPI did not act on the request.

The Court resolved whether the former FEBTC employees should be covered by the union shop clause. BPI argued that the clause covered only new employees who were initially hired on a temporary or probationary status and later qualified for regular employment. The Court disagreed, explaining that BPI only became an employer of the absorbed employees upon the merger's effectivity. Thus, the absorbed employees were new employees of BPI.

The Court also found no basis in the CBA for the alleged requirement that, to be covered by the clause, new employees should have been hired on a temporary or probationary status first before being regularized. According to the Court, "the Union Shop Clause did not distinguish between new employees who are non-regular at their hiring but who subsequently become regular and new employees who are 'absorbed' as regular and permanent from the beginning of their employment."

Further, the Court explained that a contrary ruling would endanger the status of the union as the rank-and-file employees' exclusive bargaining agent and as a legitimate labor organization:

Indeed, a union security clause in a CBA should be interpreted to give meaning and effect to its purpose, which is to afford protection to the certified bargaining agent and ensure that the employer is dealing with a union that represents the interests of the legally mandated percentage of the members of the bargaining unit.

The union shop clause offers protection to the certified bargaining agent by ensuring that future regular employees who (a) enter the employ of the company during the life of the CBA; (b) are deemed part of the collective bargaining unit; and (c) whose number will affect the number of members of the collective bargaining unit will be compelled to join the union. Such compulsion has legal effect, precisely because the employer by voluntarily entering in to a union shop clause in a CBA with the certified bargaining agent takes on the responsibility of dismissing the new regular employee who does not join the union.



Without the union shop clause or with the restrictive interpretation thereof as proposed in the dissenting opinions, the company can jeopardize the majority status of the certified union by excluding from union membership all new regular employees whom the Company will “absorb” in future mergers and all new regular employees whom the Company hires as regular from the beginning of their employment without undergoing a probationary period. In this manner, the Company can increase the number of members of the collective bargaining unit and if this increase is not accompanied by a corresponding increase in union membership, the certified union may lose its majority status and render it vulnerable to attack by another union who wishes to represent the same bargaining unit.

Or worse, a certified union whose membership falls below twenty percent (20%) of the total members of the collective bargaining unit may lose its status as a legitimate labor organization altogether, even in a situation where there is no competing union. In such a case, an interested party may file for the cancellation of the union’s certificate of registration with the Bureau of Labor Relations. (*Citations omitted.*)

The Court recognized that the union shop clause impinged upon a worker’s freedom of association, as it restricted a worker’s right *not* to join a union. Citing precedents, the Court said that such a restriction was valid. It explained:

The rationale for upholding the validity of union shop clauses in a CBA, even if they impinge upon the individual employee’s right or freedom of association, is not to protect the union for the union’s sake. Laws and jurisprudence promote unionism and afford certain protections to the certified bargaining agent in a unionized company because a strong and effective union presumably benefits all employees in the bargaining unit since such a union would be in a better position to demand improved benefits and conditions of work from the employer. This is the rationale

behind the State policy to promote unionism declared in the Constitution [...]

In the case at bar, since the former FEBTC employees are deemed covered by the Union Shop Clause, they are required to join the certified bargaining agent, which supposedly has gathered the support of the majority of workers within the bargaining unit in the appropriate certification proceeding. Their joining the certified union would, in fact, be in the best interests of the former FEBTC employees for it unites their interests with the majority of employees in the bargaining unit. It encourages employee solidarity and affords sufficient protection to the majority status of the union during the life of the CBA which are the precisely the objectives of union security clauses, such as the Union Shop Clause involved herein. We are indeed not being called to balance the interests of individual employees as against the State policy of promoting unionism, since the employees, who were parties in the court below, no longer contested the adverse Court of Appeals’ decision. Nonetheless, settled jurisprudence has already swung the balance in favor of unionism, in recognition that ultimately the individual employee will be benefited by that policy. In the hierarchy of constitutional values, this Court has repeatedly held that the right to abstain from joining a labor organization is subordinate to the policy of encouraging unionism as an instrument of social justice.

Notably, the Court did not mention ILO Convention No. 87, let alone use it as basis for any of its rulings or policy considerations. In its decisions, the ILO Committee on Freedom of Association has left the admissibility of union security clauses—like the union shop clause in this case—to the discretion of state parties, as long as the clauses were agreed upon fairly.⁴⁸

The Court gave the former FEBTC employees 30 days from notice of finality of the decision to join the union, or the union may validly request for their employment termination. Upon a motion for reconsideration, the Court further resolved that in addition to the 30-day period, the employees should “be accorded full procedural due process



before their employment may be terminated.⁷⁴⁹

Meanwhile, in the 2015 decision of *University of the Immaculate Conception v. Secretary of Labor and Employment*,⁵⁰ the Court resolved a case that involved a dispute between University of the Immaculate Conception (UIC) and its rank-and-file employees' exclusive bargaining agent, the UIC Teaching and Non-Teaching Employees Union-FFW.

In 1994, the union filed a notice of strike against UIC on the grounds of bargaining deadlock and unfair labor practice. Through the National Conciliation and Mediation Board (NCMB), the parties reached an agreement to grant the workers a pay hike. However, UIC demanded the exclusion of secretaries, registrars, accounting personnel, and guidance counselors from the bargaining unit, claiming that these were confidential employees.

On voluntary arbitration, the arbitration panel ruled in favor of UIC. Accordingly, UIC gave the affected employees the option to choose between keeping their positions or their union membership. When the employees chose to keep both, UIC sent them notices of termination. This led to another notice of strike filed by the union.

What followed was a long judicial dispute that reached the Supreme Court multiple times. In this particular decision, the Court resolved, among others, whether the affected employees' refusal to resign from the union can be validly invoked as basis for their employment termination. The Court ruled in the affirmative:

We hold that the willful act of refusing to leave the Union is sufficient basis for UIC to lose its trust and confidence on Respondent Employees. There was just cause for dismissing the Respondent Employees. Our conclusion follows the same reasoning why we finally adopted the doctrine that confidential employees should be excluded from the bargaining unit and disqualified from joining any union: employees should not be placed in a position involving a potential conflict of interests. In this regard, the Court of Appeals erred in holding that Respondent Employees are allowed to join the Union. If Respondent Employees were allowed to retain their union membership, UIC would not be assured of their loyalty because of the apparent conflict between the employees' personal interests and their duty as confidential employees. Such a

result is likely to create an atmosphere of distrust between UIC and the confidential employees, and it would be nigh unreasonable to compel UIC to continue in employment persons whom it no longer trusts to handle delicate matters.

Finally, the Secretary cites Article 248 [now 259] of the Labor Code to support his conclusion that Respondent Employees were illegally dismissed. Article 248(a) [now 259(a)] considers as unfair labor practice an employer's act of interfering with, restraining or coercing employees in the exercise of their right to self-organization. However, it is well established that the right to self-organization under the Labor Code does not extend to managerial and confidential employees, while supervisory employees are not allowed to join the rank-and-file union. In view of the limitation imposed upon these specific classes of employees, Article 248(a) [now 259(a)] should therefore be interpreted to cover only interference with the right to self-organization of bona fide members of the bargaining unit. The provision finds no application in this case which involves confidential employees who are, by law, denied the right to join labor unions. (*Citations omitted.*)

The Court held that confidential employees may not form or join unions—an additional layer of distinction among workers with respect to their right to organize. This distinction is established purely by jurisprudence. Explaining that such a distinction was only created in its earlier decisions, the Court itself conceded that no such distinction exists in the Labor Code.

The distinction can be traced back to the 1989 case of *Golden Farms, Inc. v. Ferrer-Calleja*,⁵¹ which has been cited by *University of the Immaculate Conception* and other decisions. Interestingly, *Golden Farms* did not really interpret the provisions of the Labor Code. It only focused on a specific stipulation in a CBA between Golden Farms, Inc. and the National Federation of Labor. The relevant stipulation read:

Section 1. The COMPANY and the UNION hereby agree that the recognized bargaining unit for purposes of this



agreement shall consist of regular rank-and-file workers employed by the COMPANY at the plantation presently situated at Alejal, Carmen, Davao. Consequently, all managerial personnel like, superintendents, supervisor, foremen, administrative, professional and **confidential employees**, and those temporary, casual, contractual, and seasonal workers **are excluded from the bargaining unit** and therefore, not covered by this agreement. (*Emphases supplied.*)

In upholding the exclusions in the CBA, the Court ruled:

Respondents do not dispute the existence of said collective bargaining agreement. We must therefore respect this CBA which was freely and voluntarily entered into as the law between the parties for the duration of the period agreed upon. Until then no one can be compelled to accept changes in the terms of the collective bargaining agreement.

Furthermore, the signatories to the petition for certification election are the very type of employees by the nature of their positions and functions which We have decreed as disqualified from bargaining with management in case of *Bulletin Publishing Co. Inc. vs. Hon. Augusto Sanchez, etc.* (144 SCRA 628) reiterating herein the rationale for such ruling as follows: if these managerial employees would belong to or be affiliated with a Union, the latter might not be assured of their loyalty to the Union in view of evident conflict of interests or that the Union can be company-dominated with the presence of managerial employees in Union membership. A managerial employee is defined under Art. 212 (k) of the new Labor Code as “one who is vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees, or to effectively recommend such managerial actions. All employees not falling within this definitions are considered rank-and-file employees for purposes of this Book.”

This rationale holds true also for confidential employees such as accounting personnel, radio and telegraph operators, who having access to confidential information, may become the source of undue advantage. Said employee(s) may act as a spy or spies of either party to a collective bargaining agreement. This is specially true in the present case where the petitioning Union is already the bargaining agent of the rank-and-file employees in the establishment. **To allow the confidential employees to join the existing Union of the rank-and-file would be in violation of the terms of the Collective Bargaining Agreement** wherein this kind of employees by the nature of their functions/positions are expressly excluded. (*Emphases supplied.*)

Clearly, *Golden Farms* did not set any precedent to deprive *all* confidential employees of their right to organize. It merely disqualified the confidential employees of a particular company, *Golden Farms, Inc.*, from joining the union therein *based solely on the CBA, which provided for such disqualification.*

Nonetheless, *Golden Farms* was cited in the 1994 case of *National Association of Trade Unions (NATU)-Republic Planters Bank Supervisors Chapter v. Torres*.⁵² In this case, which was also cited by *University of the Immaculate Conception*, the Court disqualified *all* confidential employees in the private sector from the right to organize under the doctrine of necessary implication. It ruled:

While Art. 245 of the Labor Code singles out managerial employees as ineligible to join, assist or form any labor organization, **under the doctrine of necessary implication, confidential employees are similarly disqualified.** This doctrine states that what is implied in a statute is as much a part thereof as that which is expressed, as elucidated in several cases the latest of which is *Chua v. Civil Service Commission* where we said:

No statute can be enacted that can provide all the details involved in its application. There is always an omission that may not meet a particular situation.



What is thought, at the time of enactment, to be an all-embracing legislation may be inadequate to provide for the unfolding events of the future. So-called gaps in the law develop as the law is enforced. One of the rules of statutory construction used to fill in the gap is the doctrine of necessary implication Every statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms. *Ex necessitate legis*

In applying the *doctrine of necessary implication*, we took into consideration the rationale behind the disqualification of managerial employees expressed in *Bulletin Publishing Corporation v. Sanchez*, thus: “. . . if these managerial employees would belong to or be affiliated with a Union, the latter might not be assured of their loyalty to the Union in view of evident conflict of interests. The Union can also become company-dominated with the presence of managerial employees in Union membership.” Stated differently, in the collective bargaining process, managerial employees are supposed to be on the side of the employer, to act as its representatives, and to see to it that its interests are well protected. The employer is not assured of such protection if these employees themselves are union members. Collective bargaining in such a situation can become one-sided. It is the same reason that impelled this Court to consider the position of confidential employees as

included in the disqualification found in Art. 245 [now 255] **as if the disqualification of confidential employees were written in the provision.** If confidential employees could unionize in order to bargain for advantages for themselves, then they could be governed by their own motives rather than the interest of the employers. Moreover, unionization of confidential employees for the purpose of collective bargaining would mean the extension of the law to persons or individuals who are supposed to act “in the interest of” the employers. It is not farfetched that in the course of collective bargaining, they might jeopardize that interest which they are duty-bound to protect. **Along the same line of reasoning we held in *Golden Farms, Inc. v. Ferrer-Calleja* reiterated in *Philips Industrial Development, Inc. v. NLRC*, that “confidential employees such as accounting personnel, radio and telegraph operators who, having access to confidential information, may become the source of undue advantage. Said employee(s) may act as spy or spies of either party to a collective bargaining agreement.”** (Citations omitted, emphases supplied.)

In its decisions, the ILO Committee on Freedom of Association is silent on the right to organize of confidential employees in the private sector as a specific class of workers. Nonetheless, the general rule should prevail:

Article 2 of Convention No. 87 is designed to give expression to the principle of non-discrimination in trade union matters, and the words “**without distinction whatsoever**” used in this Article mean that freedom of association should be guaranteed **without discrimination of any kind based on occupation**, sex, colour, race, beliefs, nationality, political opinion, etc., not only to workers in the private sector of the economy, but also to civil servants and public service employees in general.⁵³ (Emphases supplied.)

The additional distinction, therefore, is contrary to Article 2 of ILO Convention No. 87. Unfortunately, the Convention was neither invoked nor mentioned in *University of the Immaculate Conception*.



Meanwhile, in the 2015 case of *Samahan ng Manggagawa sa Hanjin Shipyard v. Bureau of Labor Relations*,⁵⁴ the Court clarified what organizations may be formed by employees on one hand, and workers without employer-employee relationships on the other. In 2010, the DOLE issued *Samahan ng mga Manggagawa sa Hanjin Shipyard* (Samahan) a certificate of registration as a workers' association. Hanjin Heavy Industries and Construction Co., Ltd. Philippines (Hanjin) filed a petition for cancellation of registration of Samahan, claiming that a third of the latter's members had definite employers. The second sentence of Article 253 of the Labor Code states that "[a]mbulant, intermittent and itinerant workers, self-employed people, rural workers and those without any definite employers may form labor organizations for their mutual aid and protection."

In this case, the Court ruled that while the right to form and join labor organizations is limited to workers with employer-employee relationships, those without may still form and join "workers' associations." As discussed earlier, the former is a "union or association of employees which exists in whole or in part for the purpose of collective bargaining or of dealing with employers concerning terms and conditions of employment." Meanwhile, the latter can only be formed for the purpose of "mutual aid and protection."

The Court noted, however, that the law does not limit membership in workers' associations only to workers without employers, or those listed in the second sentence of Article 253. Thus, in addition to their right to form and join labor organizations, employees with definite employers also have the right to join workers' associations. The Court ruled in favor of Samahan and upheld its registration as a workers' association.

While it never mentioned ILO Convention No. 87, *Samahan ng Manggagawa* has implications on the freedom of association. The primordial question is whether a workers' association qualifies as an "organisation" under the Convention. It does not. Article 10 of the Convention defines an "organisation" as "any organisation of workers or of employers for furthering and defending the interests of workers or of employers." Meanwhile, a workers' association is an organization formed by workers merely "for their mutual aid and protection"—a concept far too different from the idea of furthering and defending their interests.

Thus, while the Labor Code protects the right of employees to form and join labor organizations in accordance with the Convention, the same cannot be said for workers without definite employers. The Labor Code grants workers without definite employers the right to form

and join workers' associations not because of any specific right of workers to organize, but only because of the general right of any person to form and join any organization.

Indeed, *any* group of persons, workers or not, can form *any* association for their mutual aid and protection under this general right. The ruling in *Samahan ng Manggagawa* is telling: The specific right to unionize is limited to employees, while the general right to organize is accorded to both employees and workers without employers. From this perspective, the second sentence of Article 253 of the Labor Code is a mere superfluity.

Therefore, in *Samahan ng Manggagawa*, the Court did not advance or promote the freedom of association of workers, which is separately protected by ILO Convention No. 87, the various international instruments, and the Philippine Constitution from the general right to organize. It merely upheld the existing distinction in domestic law between employees and workers without employers, as well as the general right of any person to organize.

In the 2016 case of *Mendoza v. Officers of Manila Water Employees Union*,⁵⁵ petitioner Allan M. Mendoza was a member of Manila Water Employees Union (MWEU), a labor organization of rank-and-file employees in the Manila Water Company. On three successive occasions, the MWEU Executive Board charged and found Mendoza guilty of nonpayment of union dues. After being suspended for the first two violations, he was finally expelled on the third. For each finding, Mendoza demanded that the General Membership Assembly convene to allow him to appeal under Article V, Section 2(g) of MWEU's Constitution and By-Laws (CBL). Yet, all of Mendoza's pleas for appeal were ignored.

In interpreting the CBL, the Court found that the MWEU Executive Board did not comply with its obligation to act on each of Mendoza's appeals. Therefore, the suspension and expulsion imposed on Mendoza were illegal. The Court found the members of the Board guilty of unfair labor practice under Article 260(a) and (b) of the Labor Code⁵⁶ for violating Mendoza's right to self-organization, unlawful discrimination, and illegal termination of his union membership.

Like the other cases earlier discussed, *Mendoza* did not mention—much less use—ILO Convention No. 87, it demonstrated how a worker's right to organize may be invoked not just against an employer or the government, but also against labor organizations.



Right to organizational autonomy

Nonetheless, ILO Convention No. 87 is not completely disregarded in jurisprudence. In two recent cases where the right to organizational autonomy was at issue, the Court either mentioned or ruled consistently with the Convention. Notably, in the 2013 case of *Baptista v. Villanueva*,⁵⁷ the Court cited the Convention in resolving the case filed by petitioners Minette Baptista, Bannie Edsel San Miguel, and Ma. Fe Dayon against their then union, the Radio Philippines Network Employees Union (RPNEU). The union was a legitimate labor organization and the sole and exclusive bargaining agent of the rank-and-file employees of Radio Philippines Network (RPN).

On suspicion of union mismanagement, the petitioners filed before the RPN Executive Board a complaint for impeachment of RPNEU President Reynato Siozon. Later, they filed before DOLE another impeachment complaint against all RPNEU officers. They likewise filed multiple petitions for audit covering the years 2000 to 2004.

Within months, three complaints were filed against the petitioners before RPNEU for violating: (1) Article IX, Section 2.2 of the CBL, in joining or forming another union; and (2) Article IX, Section 2.5, in urging a member to start an action in any court of justice or external investigative body against the union or its officers without first exhausting all internal remedies available under the CBL.

RPNEU's Board of Directors found the petitioners guilty and expelled them from the union. Under the union security clause in RPNEU's CBA with RPN, they were terminated from employment. Aggrieved, the petitioners filed complaints against RPNEU's officers for unfair labor practice.

The Court upheld the petitioners' expulsion after finding that the respondents were not guilty of unfair labor practice. In so ruling, the Court cited Article 3 of ILO Convention No. 87, fully quoting the provision, which recognizes the right of workers' organizations to autonomy:

It is well-settled that **workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programs.** In this case, RPNEU's Constitution and By-Laws expressly mandate that before a party is allowed to seek the intervention of the court, it

is a pre-condition that he should have availed of all the internal remedies within the organization. Petitioners were found to have violated the provisions of the union's Constitution and By-Laws when they filed petitions for impeachment against their union officers and for audit before the DOLE without first exhausting all internal remedies available within their organization. This act is a ground for expulsion from union membership. Thus, petitioners' expulsion from the union was not a deliberate attempt to curtail or restrict their right to organize, but was triggered by the commission of an act, expressly sanctioned by Section 2.5 of Article IX of the union's Constitution and By-Laws. (*Citation omitted, emphasis supplied.*)

The citation is significant. In this case, the Court used the Convention as basis for ruling in the respondents' favor. Perhaps, this was due to the absence of any constitutional or statutory provision that expressly grants workers' organizations the right to autonomy, particularly the "right to draw up their constitutions and rules." The Labor Code merely refers to CBLs of labor organizations without expressly recognizing their right to draw up their own CBLs.

Unlike *Baptista*, the 2014 case of *T&H Shopfitters Corp./Gin Queen Corp. v. T&H Shopfitters Corp./Gin Queen Workers Union*⁵⁸ made no mention of the Convention. Nonetheless, in this case, the Court protected union autonomy in accordance with the Convention.

The case stemmed from a complaint for unfair labor practice by way of union busting and illegal lockout filed by T&H Shopfitters Corporation/Gin Queen Workers Union against T&H Shopfitters Corporation (T&H Shopfitters) and Gin Queen Corporation (Gin Queen). The union claimed that before it was even formed, the corporations had been trying to prevent unionization. When employees started discussing the formation of the union, 17 of them were transferred to another workplace and repeatedly ordered to go on forced leave due to unavailability of work. In the meantime, subcontractors were continuously hired to perform their functions. When the employees finally formed the union, filing a petition for certification election to become the exclusive bargaining agent, the corporations transferred union officers and members to another workplace where they were made to work as grass cutters. On the eve of the certification election, the corporations sponsored a field trip for its employees—excluding union officers and members—



where a sales officer of the corporations campaigned against the union. The employees who joined the field trip were escorted the next day to the polling center for the certification election. The votes for “no union” won.

The Supreme Court found the employers guilty of unfair labor practice under Article 259(a), (c), and (e) of the Labor Code.⁵⁹ It said:

Indubitably, the various acts of petitioners, taken together, reasonably support an inference that, indeed, such were all orchestrated to restrict respondents’ free exercise of their right to self-organization. The Court is of the considered view that petitioners’ undisputed actions prior and immediately before the scheduled certification election, while seemingly innocuous, unduly meddled in the affairs of its employees in selecting their exclusive bargaining representative. In *Holy Child Catholic School v. Hon. Patricia Sto. Tomas*, the Court ruled that a certification election was the sole concern of the workers, save when the employer itself had to file the petition x x x, but even after such filing, its role in the certification process ceased and became merely a bystander. Thus, petitioners had no business persuading and/or assisting its employees in their legally protected independent process of selecting their exclusive bargaining representative. The fact and peculiar timing of the field trip sponsored by petitioners for its employees not affiliated with THS-GQ Union, although a positive enticement, was undoubtedly extraneous influence designed to impede respondents in their quest to be certified. This cannot be countenanced.

Not content with achieving a “no union” vote in the certification election, petitioners launched a vindictive campaign against union members by assigning work on a rotational basis while subcontractors performed the latter’s functions regularly. Worse, some of the respondents were made to work as grass cutters in an effort to dissuade them from further collective action. Again, this cannot be countenanced. (*Citation omitted.*)

Right against dissolution and suspension

Concerning the right of workers’ organizations against dissolution and suspension by administrative authority, the Supreme Court decided three cases within the period 2010 to 2017.

In the 2010 case of *Eagle Ridge Golf & Country Club v. Court of Appeals*,⁶⁰ the Eagle Ridge Employees Union filed on January 10, 2006 a petition for certification election after registering as a legitimate labor organization in Eagle Ridge Golf & Country Club (Eagle Ridge). Eagle Ridge opposed the petition and filed a petition for cancellation of registration of the union, alleging that the union committed misrepresentation, false statements, or fraud by falsely claiming that it had more than the minimum number of required members. It further contended that five members withdrew from the union on February 15, 2006, bringing union membership to below the minimum.

The Court ruled that the union did not make any misrepresentation in its application for registration, finding the declared number of members to be correct as of the filing of the application. It also found no merit in Eagle Ridge’s claim on the alleged withdrawal of members since it happened after the petition for certification election had been filed. The Court quoted *S.S. Ventures International, Inc. v. S.S. Ventures Labor Union*:

We have in precedent cases said that the employees’ withdrawal from a labor union made before the filing of the petition for certification election is presumed voluntary, while withdrawal after the filing of such petition is considered to be involuntary and does not affect the same. Now then, if a withdrawal from union membership done after a petition for certification election has been filed does not vitiate such petition, is it not but logical to assume that such withdrawal cannot work to nullify the registration of the union? Upon this light, the Court is inclined to agree with the CA that the BLR did not abuse its discretion nor gravely err when it concluded that the affidavits of retraction of the 82 members had no evidentiary weight.⁶¹ (*Emphases omitted.*)

The Court also observed that Eagle Ridge was using the petition for cancellation of the union’s registration as a subterfuge to prevent a certification election. It ruled:



Indeed, where the company seeks the cancellation of a union's registration during the pendency of a petition for certification election, the same grounds invoked to cancel should not be used to bar the certification election. A certification election is the most expeditious and fairest mode of ascertaining the will of a collective bargaining unit as to its choice of its exclusive representative. It is the fairest and most effective way of determining which labor organization can truly represent the working force. It is a fundamental postulate that the will of the majority, if given expression in an honest election with freedom on the part of the voters to make their choice, is controlling. *(Citations omitted.)*

The Court in this case did not mention ILO Convention No. 87. Notably, the DOLE Regional Director, with whom the petition for cancellation of union registration was filed, ruled in favor of Eagle Ridge and ordered the delisting of the union from the roster of legitimate labor organizations. Under Article 4 of ILO Convention No. 87, the DOLE Regional Director, who was an administrative officer, should not have had the authority to cancel the union's registration in the first place. In its decisions, the ILO Committee on Freedom of Association has ruled that "the cancellation of registration of an organization by the registrar of trade unions or their removal from the register is tantamount to the dissolution of that organization by administrative authority."⁶² According to the Committee, the "[c]ancellation of a trade union's registration should only be possible through judicial channels."⁶³

In the 2011 case of *The Heritage Hotel Manila v. National Union of Workers in the Hotel, Restaurant and Allied Industries-Heritage Hotel Manila Supervisors Chapter*,⁶⁴ the National Union of Workers in the Hotel, Restaurant and Allied Industries—Heritage Hotel Manila Supervisors Chapter filed in 1995 a petition for certification election in Heritage Hotel Manila, which was granted. However, before the certification election, Grand Plaza Hotel Corporation (Grand Plaza), which owned the hotel, filed a petition for cancellation of registration of the union on the ground of the latter's failure to submit annual financial reports and the list of its members.

The union, however, did submit the said documents, albeit belatedly. Nonetheless, Grand Plaza argued that it was the ministerial duty of the DOLE Regional Director to cancel the registration of a labor organization upon determination

that a ground for cancellation was present.

The Court disagreed, ruling that the power to cancel a union's registration is *discretionary*, and the late filing of the said documents may be validly treated as sufficient compliance with the requirements of the law. The Court said:

Labor authorities should, indeed, act with circumspection in treating petitions for cancellation of union registration, lest they be accused of interfering with union activities. In resolving the petition, consideration must be taken of the fundamental rights guaranteed by Article XIII, Section 3 of the Constitution, i.e., the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities. Labor authorities should bear in mind that registration confers upon a union the status of legitimacy and the concomitant right and privileges granted by law to a legitimate labor organization, particularly the right to participate in or ask for certification election in a bargaining unit. Thus, the cancellation of a certificate of registration is the equivalent of snuffing out the life of a labor organization. For without such registration, it loses - as a rule - its rights under the Labor Code.

In this case, the Court cited ILO Convention No. 87, but only to contextualize R.A. No. 9481, which deleted the ground upon which the petition for cancellation of union registration relied, and to "fortify" its ruling. The Court said:

It is worth mentioning that the Labor Code's provisions on cancellation of union registration and on reportorial requirements have been recently amended by Republic Act (R.A.) No. 9481, An Act Strengthening the Workers' Constitutional Right to Self-Organization, Amending for the Purpose Presidential Decree No. 442, As Amended, Otherwise Known as the Labor Code of the Philippines, which lapsed into law on May 25, 2007 and became effective on June 14, 2007. The amendment sought to strengthen the workers' right to self-organization and enhance the Philippines' compliance with its international obligations as embodied



in the International Labour Organization (ILO) Convention No. 87, pertaining to the non-dissolution of workers' organizations by administrative authority. [...]

x x x

ILO Convention No. 87, which we have ratified in 1953, provides that “workers’ and employers’ organizations shall not be liable to be dissolved or suspended by administrative authority.” The ILO has expressed the opinion that the cancellation of union registration by the registrar of labor unions, which in our case is the BLR, is tantamount to dissolution of the organization by administrative authority when such measure would give rise to the loss of legal personality of the union or loss of advantages necessary for it to carry out its activities, which is true in our jurisdiction. Although the ILO has allowed such measure to be taken, provided that judicial safeguards are in place, i.e., the right to appeal to a judicial body, it has nonetheless reminded its members that dissolution of a union, and cancellation of registration for that matter, involve serious consequences for occupational representation. It has, therefore, deemed it preferable if such actions were to be taken only as a last resort and after exhausting other possibilities with less serious effects on the organization.

The aforesaid amendments and the ILO’s opinion on this matter serve to fortify our ruling in this case. (*Citations omitted.*)

The third case, resolved in 2014, involved the same employer and union. *The Heritage Hotel Manila v. Secretary of Labor and Employment*⁶⁵ stemmed from the Med-Arbiter’s Order dismissing Grand Plaza’s protest with motion to defer the certification of the election results and the winner after the victory of the union in the certification election.

Grand Plaza contended that the union had no right to file a petition for certification election because it had a mixed membership of supervisory and rank-and-file employees. It cited the Supreme Court’s decisions in *Toyota Motor Philippines Corp. v. Toyota Motor Philippines Corp. Labor Union*⁶⁶ and *Dunlop Slazenger (Phils.), Inc. v. Secretary of Labor and Employment*.⁶⁷

The applicability of the rulings in *Toyota Motor* and *Dunlop Slazenger*, as previously explained by the Court in *Republic v. Kawashima Textile Mfg. Philippines, Inc.*,⁶⁸ depends on when the petition for certification election was filed in each case. While both of these cases applied to petitions filed under the 1989 Rules and Regulations Implementing R.A. No. 6715, a different rule applied to petitions filed under DOLE Department Order (D.O.) No. 9, s. 1997. Per the latter rule, commingling of supervisory and rank-and-file employees in the membership of a union can no longer affect its legitimacy and right to file a petition for certification election. This is because D.O. No. 9 removed the requirement to indicate in a petition for certification election that the appropriate bargaining unit of the rank-and-file employees does not include supervisory employees and/or security guards.

Relevantly, R.A. No. 9481, which took effect on June 14, 2007, inserted new provisions in the Labor Code. Articles 256 and 271 state:

Article 256. *Effect of Inclusion as Members of Employees Outside the Bargaining Unit.* — The inclusion as union members of employees outside the bargaining unit shall not be a ground for the cancellation of the registration of the union. Said employees are automatically deemed removed from the list of membership of said union.

Article 271. *Employer as Bystander.* — In all cases, whether the petition for certification election is filed by an employer or a legitimate labor organization, the employer shall not be considered a party thereto with a concomitant right to oppose a petition for certification election. The employer’s participation in such proceedings shall be limited to: (1) being notified or informed of petitions of such nature; and (2) submitting the list of employees during the pre-election conference should the Med-Arbiter act favorably on the petition.

The new provisions dispelled any doubt on the effect of commingling in union membership. An employer may no longer raise it as a ground to cancel a union’s registration or to prevent certification elections since the employer has no more standing to do so, and the law deems employees not belonging to the appropriate bargaining unit removed from membership in a union.



In this 2014 case of *The Heritage Hotel Manila*, the petition for certification election was filed on October 11, 1995, under the 1989 Rules and Regulations Implementing R.A. No. 6715. *Toyota Motor* and *Dunlop Slazenger*, therefore, applied. Nonetheless, the Court ruled against Grand Plaza, explaining that it failed to adduce substantial evidence to prove the commingling of membership in the union. The Court upheld the union's right to file a petition for certification election.

Unlike the 2011 decision, this decision did not directly cite ILO Convention No. 87. The Convention was mentioned only in the portion directly quoted from the 2011 decision, clarifying that the 2011 decision had already disposed of the question of the union's legitimacy.

Right to affiliate

In the period 2010 to 2017, two cases involving the right of workers' organizations to establish and join federations and confederations were decided by the Supreme Court. No decision was rendered on the right to affiliate with international workers' and employers' organizations. The first case was *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*⁶⁹ The case was decided by the Court on November 15, 2010, while the respondent's motion for reconsideration was resolved on June 6, 2011. The resolution, not the decision, discussed the right of the union to affiliate with a federation.

The case involved Cirtek Employees Labor Union (CELU), which was affiliated with the Federation of Free Workers (FFW) and which had a CBA with Cirtek Electronics, Inc. (Cirtek Electronics). When the renegotiations over the CBA reached a bargaining deadlock, CELU filed a notice of strike against Cirtek Electronics. Another notice of strike was filed when seven officers of CELU were placed under preventive suspension.

Three days after CELU went on strike, the DOLE Secretary assumed jurisdiction over the controversy. Meanwhile, Cirtek Electronics and CELU executed a Memorandum of Agreement (MOA) providing for wage increases. CELU submitted the MOA to the Secretary, alleging that its officers signed the MOA under the assurance of Cirtek Electronics that it would comply should the Secretary award higher wage increases. The Secretary awarded wage increases higher than those in the MOA. Cirtek Electronics, however, questioned the Secretary's order before the Court of Appeals.

When the employer won at the Court of Appeals, FFW, on behalf of CELU, filed the subject petition for certiorari before the Supreme Court. In its 2010 decision, the Court

ruled in favor of CELU. Cirtek Electronics filed a motion for reconsideration questioning, among others, the standing of FFW to file the subject petition. It alleged that CELU had already filed before DOLE a resolution of disaffiliation from FFW. Thus, FFW lacked personality to represent CELU.

The Court ruled against Cirtek Electronics. It said that the issue of whether CELU had validly disaffiliated from FFW was a question of fact which could not be brought before the Supreme Court. Moreover, it found that the resolution of disaffiliation allegedly filed by CELU was signed on February 23, 2010, or two months after the subject petition was filed on December 22, 2009. Therefore, the belated resolution could not have affected FFW's standing or the Court's jurisdiction.

Furthermore, the Court ruled that the issue of disaffiliation was an intra-union dispute over which the Supreme Court had no original jurisdiction and in which the employer had no standing. It also said:

Indeed, as respondent-movant itself argues, a local union may disaffiliate at any time from its mother federation, absent any showing that the same is prohibited under its constitution or rule. Such, however, does not result in it losing its legal personality altogether. Verily, *Anglo-KMU v. Samahan Ng Mga Manggagawang Nagkakaisa Sa Manila Bay Spinning Mills At J.P. Coats* enlightens:

A local labor union is a separate and distinct unit primarily designed to secure and maintain an equality of bargaining power between the employer and their employee-members. A local union does not owe its existence to the federation with which it is affiliated. It is a separate and distinct voluntary association owing its creation to the will of its members. The mere act of affiliation does not divest the local union of its own personality, neither does it give the mother federation the license to act independently of the



local union. It only gives rise to a contract of agency where the former acts in representation of the latter. [...]

Whether then, as respondent claims, FFW “went against the will and wishes of its principal” (the member-employees) by pursuing the case despite the signing of the MOA, is not for the Court, nor for respondent to determine, but for the Union and FFW to resolve on their own pursuant to their principal-agent relationship.

In this resolution, the Court did not cite or mention ILO Convention No. 87. Nonetheless, the pronouncements of the Court regarding the retention of legal personality of a local union upon disaffiliation from its federation are consistent with the principles embodied in the Convention. The ILO Committee on Freedom of Association has ruled that “[t]he acquisition of legal personality by workers’ organizations, federations and confederations shall not be made subject to conditions of such a nature as to restrict the exercise of the right to establish and join federations and confederations of their own choosing.”⁷⁰

The 2013 case of *National Union of Bank Employees v. Philnabank Employees Association*⁷¹ made similar conclusions. In this case, Philnabank Employees Association (PEMA) was a union in the Philippine National Bank (PNB). When it affiliated with National Union of Bank Employees (NUBE), a federation of unions in the banking industry, it changed its name to NUBE-PNB Employees Chapter (NUBE-PEC). This union became the sole and exclusive bargaining agent of the rank-and-file employees of PNB, and later executed a CBA with PNB.

When the CBA expired, another union, the Philnabank Employees Association-FFW (PEMA-FFW), filed a petition for certification election among the rank-and-file employees of PNB. During the pendency of the petition, NUBE-PEC registered itself as an independent labor organization and adopted a resolution of disaffiliation from NUBE, which was ratified by about 81% of the total union membership. Later, NUBE-PEC filed a motion before the Med-Arbitration Unit of DOLE for its name to appear in the official ballots of the certification election as “Philnabank Employees Association (PEMA)” in light of its independent registration and disaffiliation from NUBE. In the alternative, NUBE-PEC asked that it be denominated as “PEMA-Serrana Group” and PEMA-FFW as “PEMA-Bustria Group.”

The question of whether there was a valid disaffiliation from NUBE reached the Supreme Court. As in *Cirtek Employees*, the Court ruled here that the question, being one of fact, could not be brought before it. Nonetheless, it upheld the right of NUBE-PEC to disaffiliate from NUBE. The Court quoted a portion of *Malayang Samahan ng mga Manggagawa sa M. Greenfield v. Ramos*,⁷² which read:

A local union has the right to disaffiliate from its mother union or declare its autonomy. A local union, being a separate and voluntary association, is free to serve the interests of all its members including the freedom to disaffiliate or declare its autonomy from the federation which it belongs when circumstances warrant, in accordance with the constitutional guarantee of freedom of association.

After a survey of other cases, the Court ruled:

These and many more have consistently reiterated the earlier view that the right of the local members to withdraw from the federation and to form a new local union depends upon the provisions of the union’s constitution, by-laws and charter and, in the absence of enforceable provisions in the federation’s constitution preventing disaffiliation of a local union, a local may sever its relationship with its parent. In the case at bar, there is nothing shown in the records nor is it claimed by NUBE that PEMA was expressly forbidden to disaffiliate from the federation nor were there any conditions imposed for a valid breakaway. This being so, PEMA is not precluded to disaffiliate from NUBE after acquiring the status of an independent labor organization duly registered before the DOLE. (*Citation omitted*.)

NUBE, however, also argued that NUBE-PEC’s disaffiliation was invalid because it was not decided upon by the union members through secret ballot and after due deliberation, as supposedly required by Article 250(d) of the Labor Code.⁷³ The Court disagreed. It noted that NUBE did not cite any provision of law or rule requiring a union’s disaffiliation from a federation to follow Article 250(d).



Nonetheless, the Court said:

Granting, for argument's sake, that Article 241 [now 250] (d) is applicable, still, We uphold PEMA's disaffiliation from NUBE. First, non-compliance with the procedure on disaffiliation, being premised on purely technical grounds cannot rise above the employees' fundamental right to self-organization and to form and join labor organizations of their own choosing for the purpose of collective bargaining. Second, the Article nonetheless provides that when the nature of the organization renders such secret ballot impractical, the union officers may make the decision in behalf of the general membership. In this case, NUBE did not even dare to contest PEMA's representation that "PNB employees, from where [PEMA] [derives] its membership, are scattered from Aparri to Jolo, manning more than 300 branches in various towns and cities of the country," hence, "[to] gather the general membership of the union in a general membership to vote through secret balloting is virtually impossible." It is understandable, therefore, why PEMA's board of directors merely opted to submit for ratification of the majority their resolution to disaffiliate from NUBE. Third, and most importantly, NUBE did not dispute the existence of the persons or their due execution of the document showing their unequivocal support for the disaffiliation of PEMA from NUBE. Note must be taken of the fact that the list of PEMA members (identifying themselves as "PEMA-Serrana Group") who agreed with the board resolution was attached as Annex "H" of PEMA's petition before the CA and covered pages 115 to 440 of the CA *rollo*. While fully displaying the employees' printed name, identification number, branch, position, and signature, the list was left unchallenged by NUBE. No evidence was presented that the union members' ratification was obtained by mistake or through fraud, force or intimidation. Surely, this is not a case where one or two members of the local union decided to disaffiliate from the mother federation, but one where more than a majority of the local union members decided to disaffiliate.

Akin to *Cirtek Employees*, the decision here did not cite or mention ILO Convention No. 87, but is nonetheless consistent with the principle of freedom of association under the Convention. Indeed, no union should be forced to affiliate or remain affiliated with any federation. This is but a logical consequence of the right of workers' organizations to form and join federations *of their own choosing*. As the ILO Committee on Freedom of Association explained, "[t]he principle laid down in Article 2 of Convention No. 87 that workers and employers shall have the right to establish and join organizations of their own choosing implies for the organizations themselves the right to establish and join federations and confederations of their own choosing."⁷⁴

D. Conclusions and Recommendations

Of the Supreme Court decisions surveyed from 2010 to 2017, only three—*Baptista*, *Heritage Hotel*, and 2014 *Heritage Hotel*—mentioned ILO Convention No. 87. Of these three, only *Baptista* directly applied the Convention to decide a controversy. The 2011 *Heritage Hotel* case only cited the Convention to contextualize R.A. No. 9481 and "fortify" the Court's ruling. The 2014 *Heritage Hotel* case mentioned the Convention only in directly quoting 2011 *Heritage Hotel*.

Moreover, at least one decision squarely contradicted the Convention. *University of the Immaculate Conception* affirmed the additional distinction disallowing confidential employees from forming and joining unions. The distinction is purely by judicial fiat; no law in the country expressly provides for such prohibition. As discussed, the additional distinction runs counter to Article 2 of the Convention, which grants the right to organize to all workers "without distinction whatsoever." Meanwhile, *Samahan ng Manggagawa* affirmed the legislative distinction between employees and workers without employer-employee relationships: The former is granted the specific right to form and join labor organizations as well as the general right to organize, while the latter is only granted the general right. Thus, workers without employer-employee relationships may only form or join workers' associations, not labor organizations.

Despite mentioning the Convention, the 2011 *Heritage Hotel* case may be incompatible with the Convention, as it allows unions to be subjected to dissolution by administrative authority. Even if the Court warned labor authorities to "act with circumspection" in deciding petitions for cancellation of union registration, it still upheld the rule allowing the administrative cancellation of union registration. The Court declared here that the power of administrative authorities to cancel a union's registration



is *discretionary*. Notably, the Court said this only for the purpose of rejecting the employer's claim that cancellation becomes a ministerial duty upon determination that a ground for it exists. The same may be said of *Eagle Ridge*. There, while the Court did not allow the petition for cancellation of union registration to be used to prevent the certification election, it still affirmed the power of administrative authorities to order such cancellation.

Still, many of the surveyed decisions were consistent with the principle of freedom of association protected by the Convention. *Baptista* correctly applied Article 3 of the Convention to uphold the CBL of RPNEU. Interestingly, however, by upholding RPNEU's CBL, the Court also upheld the employees' expulsion from the union and dismissal from work. *Mendoza, T&H Shopfitters, 2014 Heritage Hotel, Cirtek Employees*, and *National Union* were also consistent with the principles laid down by the Convention. *BPI Employees Union* likewise did not contradict the Convention, considering that the ILO Committee on Freedom of Association has left the admissibility of union security clauses to the discretion of the parties to the Convention.

Despite all these, the troubling fact remains that there is a dearth of use and citations of ILO Convention No. 87. Jurisprudence betrays the near insignificance of the Convention in labor cases concerning freedom of association.

This is largely due to domestic law. When the Supreme Court may use constitutional or statutory provisions to decide cases, whether they be consistent with the Convention or not, it noticeably fails or refuses to use the Convention.

This predicament is telling. After all, in the Philippines, the status of a treaty is merely equivalent to domestic legislation. *Leges posteriores priores contrarias abrogant*;⁷⁵ a later statute prevails over an earlier conflicting statute. The Labor Code and the Philippine Constitution took effect decades after the Philippines had ratified the Convention. Thus, the Convention only sneaks its way into jurisprudence for questions not already addressed by the Constitution and domestic law. For one, the Court used the Convention in *Baptista* because no provision of law expressly grants unions the right to organizational autonomy.

This is unfortunate. As discussed above, the Convention mandates legislative conformity. Article 8 (2) of the Convention states: "The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention."

Nonetheless, this reasoning does not explain *University of the Immaculate Conception*. No law currently in effect disallows confidential employees from forming and joining unions. Yet, the Court ignored the express provision of Article 2 of the Convention granting all workers, "without distinction whatsoever," the right to form and join unions. In this case, judicial fiat prevailed over a treaty.

Indeed, much work remains to be done in the quest for full compliance with ILO Convention No. 87 in the Philippines. Amendatory legislation must be enacted. Specifically: (1) distinctions among workers with respect to their right to form and join labor organizations must be abolished; (2) union registration must be made ministerial and less difficult, and the power of cancellation should be transferred from administrative authorities to courts of law; (3) the minimum membership of federations and national unions must be reduced to reasonable levels to encourage, rather than discourage, their formation; and (4) strict regulations on foreign assistance to and cooperation with unions must be eased and, ultimately, removed.

Just as important is judicial advocacy. The scant mention of the Convention in jurisprudence is not only attributable to the Supreme Court, but also to legal practitioners' reluctance to plead it. The Supreme Court may strike down doctrines contrary to the Convention through judicial advocacy. An example is the doctrine on confidential employees.

The enactment of R.A. No. 9481 and the development of progressive jurisprudence favoring unionism should encourage advocates to push for the full realization of the Convention. With appropriate reforms, the decline and nuclearization of unions in the Philippines may be stopped and, eventually, reversed. The 66-year delay in full compliance underscores the urgency of advocacy work.

Ultimately paramount, then, is advocacy in all branches of government to enable workers to fully enjoy their rights under ILO Convention No. 87. The Philippine government, as the duty bearer, must effectively discharge its mandate of promoting, respecting, and fulfilling workers' rights to freedom of association. But just as indispensable is the role of workers, advocates, and other stakeholders to claim these rights. By pleading the Convention in cases filed in court, they will have already advanced the advocacy one step forward. ●

ENDNOTES

- 1 SALIGAN (Sentro ng Alternatibong Lingap Panlegal) is a legal resource development NGO that works with workers, women and local communities for their empowerment through the creative use of law and legal resources. This study was conducted and written by its team of lawyers: Juan Carlo P. Tejano, Ian DJ Genciano, Alex Tejerero, and Marie Hazel E. Lavitoria.
- 2 International Labor Organization (ILO), Ratifications of C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), ILO WEBSITE, at https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312232 (last visited on April 29, 2019).
- 3 Article 2. Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.
- 4 Article 3. (1) Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes. (2) The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.
- 5 Article 4. Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.
- 6 Article 5. Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.
- 7 ILO Convention No. 87 arts. 6-7.
- 8 ILO Convention No. 87 art. 8.
- 9 ILO Convention No. 87 art. 9.
- 10 ILO Convention No. 87 art. 10.
- 11 Article 23. xxx (4) Everyone has the right to form and to join trade unions for the protection of his interests.
- 12 Universal Declaration of Human Rights art. 20.
- 13 Article 22. (1) Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. (2) No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right. (3) Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.
- 14 Article 8. (1) The States Parties to the present Covenant undertake to ensure: (a) The right of



everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others; (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations; (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others; (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country. (2) This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State. (3) Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

15 CONST. art. II, § 2.

16 *Mejoff v. Director of Prisons*, G.R. No. L-4254, September 26, 1951; *Government of Hong Kong v. Olalia*, G.R. No. 153675, April 19, 2007.

17 Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law. The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace. The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns to investments, and to expansion and growth.

18 Pres. Dec. No. 442 (1974), as amended, and as renumbered by Department of Labor and Employment (DOLE) Dep't Advisory No. 01-2015, s. 2015.

19 LAB. CODE, art. 219, ¶ g.

20 In the Philippines, the existence of an employer-employee relationship is determined through the four-fold test. In *Marsman & Company, Inc. v. Sta. Rita*, G.R. No. 194765, April 23, 2018, the Court said: "The elements of the four-fold test are: 1) the selection and engagement of the employees; 2) the payment of wages; 3) the power of dismissal; and 4) the power to control the employee's conduct."

21 Article 253. Coverage and employees' right to self-organization. All persons employed in commercial, industrial and agricultural enterprises and in religious, charitable, medical, or educational institutions, whether operating for profit or not, shall have the right to self-organization and to form, join, or assist labor organizations of their own choosing for purposes of collective bargaining. Ambulant, intermittent and itinerant workers, self-employed people, rural workers and those without any definite employers may form labor organizations for their mutual aid and protection.

22 LAB. CODE, arts. 253-4.



- 23 CONST. art. IX-B, § 2, ¶ 1.
- 24 LAB. CODE, art. 254.
- 25 Public Sector Labor-Management Council (PSLMC) Rules and Regulations to Govern the Exercise of the Right of Government Employees to Self-Organization (1989), rule II, § 2.
- 26 See Home Development Mutual Fund v. COA, G.R. No. 142297, June 15, 2004.
- 27 Exec. Order No. 180 (1987), § 13, providing guidelines for the exercise of the right to organize of government employees, creating a Public Sector Labor-Management Council, and for other purposes.
- 28 Exec. Order No. 180 (1987), § 14; Civil Service Commission (CSC) Memo. Circ. No. 6 (1987) re: Strike by Government Employees.
- 29 Exec. Order No. 180 (1987), §§ 3-4.
- 30 INTERNATIONAL LABOUR ORGANIZATION (ILO), FREEDOM OF ASSOCIATION: COMPILATION OF DECISIONS OF THE COMMITTEE ON FREEDOM OF ASSOCIATION 64 (6th ed. 2018).
- 31 Id. at 70 (6th ed. 2018).
- 32 Id. at 62-64.
- 33 Id. at 65.
- 34 Id. at 66.
- 35 Id. at 69-70.
- 36 Id. at 60-61.
- 37 S.S. Ventures International, Inc. v. S.S. Ventures Labor Union, G.R. No. 161690, July 23, 2008.
- 38 ILO, *supra* note 30, at 77.
- 39 LAB. CODE, arts. 278-80.
- 40 LAB. CODE, art. 259.
- 41 DOLE Omnibus Rules Implementing the Labor Code (1989), book V, rule XIV, § 1; LAB. CODE, art. 245.
- 42 LAB. CODE, art. 247.
- 43 Committee of Experts on the Application of Conventions and Recommendations (CEACR), Observation (CEACR) - adopted 2018, published 108th ILC session (2019), ILO WEBSITE, at https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3962750:NO (last visited April 30, 2019).
- 44 ILO, *supra* note 30, at 196.
- 45 Philippine Statistics Authority, Decent Work in the Philippines: Statistics on Social Dialogue,



Workers' and Employers' Representation, 21 LABSTAT UPDATES 1, 7-8 (June 2017).

46 Philippine Statistics Authority, *Extent of Unionism and Collective Bargaining in Establishments: 2016*, 21 LABSTAT UPDATES 1, 1 (Nov. 2017).

47 G.R. No. 164301, August 10, 2010.

48 ILO, *supra* note 30, at 102.

49 *Bank of the Philippine Islands v. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank*, G.R. No. 164301, October 19, 2011.

50 G.R. Nos. 178085-6, September 14, 2015.

51 G.R. No. 78755, July 19, 1989.

52 G.R. No. 93468, December 29, 1994.

53 ILO, *supra* note 30, at 59.

54 G.R. No. 211145, October 14, 2015.

55 G.R. No. 201595, January 25, 2016.

56 Article 260. Unfair labor practices of labor organizations. — It shall be unfair labor practice for a labor organization, its officers, agents or representatives:

(a) To restrain or coerce employees in the exercise of their right to self-organization. However, a labor organization shall have the right to prescribe its own rules with respect to the acquisition or retention of membership;

(b) To cause or attempt to cause an employer to discriminate against an employee, including discrimination against an employee with respect to whom membership in such organization has been denied or to terminate an employee on any ground other than the usual terms and conditions under which membership or continuation of membership is made available to other members;

57 G.R. No. 194709, July 31, 2013.

58 G.R. No. 191714, February 26, 2014.

59 Article 259. Unfair labor practices of employers.—It shall be unlawful for an employer to commit any of the following unfair labor practices:

(a) To interfere with, restrain or coerce employees in the exercise of their right to self-organization;

xxx

(c) To contract out services or functions being performed by union members when such will interfere with, restrain, or coerce employees in the exercise of their right to self-organization;

xxx

(e) To discriminate in regard to wages, hours of work, and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. [...]

60 G.R. No. 178989, March 18, 2010.

61 *Supra* note 37.



- 62 ILO, supra note 30, at 184.
- 63 Id. at 185.
- 64 G.R. No. 178296, January 12, 2011.
- 65 G.R. No. 172132, July 23, 2014.
- 66 G.R. No. 121084, February 19, 1997.
- 67 G.R. No. 131248, December 11, 1998.
- 68 G.R. No. 160352, July 23, 2008.
- 69 G.R. No. 190515.
- 70 ILO, supra note 30, at 191.
- 71 G.R. No.174287, August 12, 2013.
- 72 G.R. No. 113907, February 28, 2000.
- 73 Article 250. Rights and conditions of membership in a labor organization. The following are the rights and conditions of membership in a labor organization:
xxx
(d) The members shall determine by secret ballot, after due deliberation, any question of major policy affecting the entire membership of the organization, unless the nature of the organization or force majeure renders such secret ballot impractical, in which case, the board of directors of the organization may make the decision in behalf of the general membership;
- 74 ILO, supra note 30, at 191.
- 75 Carabao, Inc. v. Agricultural Productivity Commission, G.R. No. L-29304, September 30, 1970.





WOMEN



The **Ateneo Human Rights Center (AHRC)**, established in 1986, is one of the first and leading university-based institutions in the Philippines engaged in the promotion and protection of human rights in the country and in the ASEAN region. It works towards the formation of human rights lawyers and advocates to make justice more accessible to victims of human rights violations, and the empowerment of civil society as a means to promote peace, democracy, gender equality, good governance, and the rule of law. Its program areas include training and education, research and education, and law and policy reform. AHRC has been the Secretariat of the Working Group for an ASEAN Human Rights Mechanism since 1996.



AN ANALYSIS OF SUPREME COURT DECISIONS ON RAPE AND SEXUAL ASSAULT:

Assessing Their Compliance with the Convention on the Elimination of Discrimination against Women (CEDAW) Mandate to Eliminate Gender Discrimination and Promote Gender Equality

Atty. Amparita Sta. Maria

I. Introduction

This research paper builds on the writer's previous study¹ on Philippine Supreme Court decisions on rape and other crimes involving violence against women. As with the prior study, this looks into fairly recent decisions of the Court (2010–2017) with a focus on rape and sexual assault. It assesses whether the doctrines and pronouncements made by the Court in these cases comply with the Philippines' mandate under the Convention on the Elimination of Discrimination against Women (CEDAW) to eliminate gender discrimination and promote gender equality.

Two of the CEDAW's more substantive provisions, which are most relevant to this study, are found in Articles 2(c) and (f) and 5(a), which require the following of State Parties:

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the

effective protection of women against any act of discrimination;

....

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

....

Article 5

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women[.]²

In concrete terms, these obligations need to be reflected not only in a de facto environment, but also in laws and jurisprudence, for their full realization and implementation. A legal framework that facilitates the removal of barriers which cause discrimination of women



by addressing the different forms of violence perpetrated against them is crucial to the achievement of gender equality.

As far as the law is concerned, the most reflective of the country's obligations with CEDAW is Republic Act No. 9710, or the Magna Carta of Women, which took effect in 2009. It provides:

SEC. 9. Protection from Violence. — The State shall ensure that all women shall be protected from all forms of violence as provided for in existing laws. Agencies of government shall give priority to the defense and protection of women against gender-based offenses and help women attain justice and healing.³

This study focuses on the role of jurisprudence in promoting gender equality through case law. Hence, in reviewing Supreme Court cases for compliance with CEDAW, it examines the language used by the Court to characterize overt acts of crimes such as rape and sexual assault, its general treatment of perpetrators, and most important, the factors it considered in assessing the credibility of rape or sexual assault victims. The study further examines the presence of gender bias and stereotypes, and to what extent these have affected the resolution of cases.

The study likewise analyzes the Supreme Court's views on the prosecution of these offenses and the ordeal that the involved parties have undergone. The Court has expressly acknowledged that rape victims suffer a generally harrowing ordeal during trials, which, our previous study has found, adds to the stigmatization and double victimization of the victims:

Courts have taken judicial notice that it is not easy for women and girls to report the commission of rape and other acts of violence against their persons. One of the factors to which such reluctance is attributed is the way women have been treated in investigations and trials. The lack of sensitivity, as well as gender bias, often result in the blaming of the victims or, at the very least, in their feeling exposed and humiliated. This experience of double victimization affects their ability to access the justice system. If, in the process of seeking remedies for the violation of their rights, the environment remains hostile to the victims/survivors, then the

justice systems become less accessible and available for and to them, a situation that could ultimately result in the perpetuation of more gender-based violence since the system of making the perpetrators accountable is not effective.⁴

II. The Legal Framework: Definition of Rape and Sexual Assault

Republic Act No. 8353, or the Anti-Rape Act of 1997, amended the Revised Penal Code's provision on rape and reclassified it from being a crime against chastity to a crime against persons. The law states in part:

SEC. 2. Rape as a Crime Against Persons. — The crime of rape shall hereafter be classified as a Crime Against Persons under Title Eight of Act No. 3815, as amended, otherwise known as the Revised Penal Code. Accordingly, there shall be incorporated into Title Eight of the same Code a new chapter to be known as Chapter Three on Rape, to read as follows:

'Chapter Three' 'Rape'

'Article 266-A. Rape: When and How Committed. - Rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.



2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.⁵

The amended law has reclassified rape as a crime against persons and adding the second paragraph on sexual assault, which states that it can be committed against both women and men. Not only are these welcome developments; they also challenge the courts to make the appropriate and corresponding paradigm shift on rape cases.

After the amendment, it was expected that case law on rape would henceforth concentrate more on “the offense’s nature as a violation of a person rather than as a violation of a woman’s honor;”⁶ and that the Supreme Court’s pronouncements would have “less emphasis on the ‘shame,’ ‘humiliation,’ ‘dishonor,’ ‘embarrassment’ and ‘stigma’ befalling the [victim of rape].”⁷

Further, in a previous research paper, the writer posited:

The change in the law should result in the promotion of the rights of women and girls. The woman and girl-child must be believed on the basis of an appreciation of their own testimony and other evidence, if available, but not on how chaste or innocent they have remained or how well they have taken care of their reputation. Courts have the responsibility of reflecting this change, not only because they have the duty to interpret the law but also because those in charge of enforcing and implementing it, every so often rely on jurisprudence for guidance.⁸

Yet, the definition of rape remains problematic: it does not categorically state that the offense is committed when there is sexual intercourse with a woman without her consent. Although the law implies that nonconsensual sex is punishable, the manner by which the lack of consent is manifested has been defined and, to an extent, limited by the circumstances enumerated in the law. This has required the prosecution to prove at least one of these circumstances for the commission of rape, and even sexual assault.

The CEDAW Committee has already made a recommendation for this problem in its Concluding Observations on the Combined Seventh and Eighth Periodic Reports of the Philippines:⁹

26. The Committee recommends that the State [P]arty:

(a) Adopt comprehensive legislation on gender-based violence against women covering all forms of violence;

(b) Expedite the amendment of the Anti-Rape Law of 1997, **putting lack of consent as the primary element of the definition of rape** and raising the minimum age of sexual consent, currently set too low at 12 years, to at least 16 years[.]¹⁰

The flaw in the law becomes especially problematic for mature women who are in possession of their full cognitive faculties when manifesting their non-consent to sexual intercourse. This is despite the fact that, as early as 2002, the Supreme Court has already ruled in *People v. Dulay*¹¹ that:

[a]ny physical overt act manifesting resistance against the rape in any degree from the victim is admissible as evidence of lack of consent. Tenacious resistance, however, is not required. Neither is a determined and persistent physical struggle on the part of the victim necessary.

At the Bicameral Conference Committee Meeting on the disagreeing provisions of S.B. No. 950 and H.B. No. 6265, the forerunners of R.A. No. 8353, the legislators agreed that **Article 266-D is intended to soften the jurisprudence of the 1970s when resistance to rape was required to be tenacious.** The lawmakers took note of the fact that rape victims cannot mount a physical struggle in cases where they were gripped by overpowering fear or subjugated by moral authority. Article 266-D tempered the case law requirement of physical struggle by the victim **with the victim's fear of the rapist or incapacity to give valid consent.** Thus, the law now provides that **resistance may be proved by any physical**



overt act in any degree from the offended party.¹² (Emphasis supplied; citations omitted.)

The issue of resistance in rape shall be discussed further in this research paper.

III. The Supreme Court Rulings

A. Language

In several cases, the Court has referred to rape as “defloration.” In *People v. Gaduyon*,¹³ the Court noted that inconsistencies in a victim’s testimony are expected because “she was a minor child during her **defloration**.”¹⁴ It further described the perpetrator’s carnal lust as that “which **deflowered** and got [the victim] pregnant.”¹⁵ Likewise, in *People v. Agustin and Hardman*,¹⁶ the Court described what the victim had gone through as a deflowering and continuous ravaging.

As to the credibility of the offended party, the Court has also repeatedly referred to the latter’s testimony as “a story of defloration” or “a tale of defloration.” Thus:

1. “A young girl would not usually concoct a **tale of defloration**[.]”¹⁷
2. “No woman would concoct a **story of defloration**[.]”¹⁸
3. “No young woman, especially of tender age, would concoct a **story of defloration**.”¹⁹

If the Court attempts to sanitize the language of its decisions, it should not do so by diminishing the gravity of the violation involved in rape and sexual assault cases. It should not try to use language that underplays the seriousness of the violence inflicted on the offended party. Rape and sexual assault survivors deserve better treatment, including an accurate depiction of the wrong committed against them. Calling rape a “deflowering” or the victims’ testimonies as tales of defloration not only trivializes their ordeal; it also diminishes the viciousness and perversity of the perpetrators.²⁰

Furthermore, comparing the female genitalia to a flower may lead to gender stereotypes of young women and girls as delicate, fragile, and weak. This may, in turn, lead to their stigmatization, such that their “defilement” practically robs them of their chance to grow and blossom, just like what is expected from a flower bud. Thus:

A bud plucked from the stalk would never have its chance to blossom. A young plant prematurely clipped of its branches would never develop and grow to its full and natural potential. Both would need care and attention to be able to recover and mend. In the ultimate end, however, what has been lost could never be regained or restored.²¹

This pronouncement is reminiscent of an old case where the Court has also stigmatized the offended party:

She was also aware that by testifying, she made public a painful and humiliating secret which others would have simply kept to themselves forever, jeopardized her chances of marriage or foreclosed the possibility of a blissful married life, as her husband may not fully understand the excruciatingly painful experience which would haunt her.²²

It is, thus, important that courts use gender-sensitive language especially in their decisions on rape and sexual assault cases. Sanitizing terms with metaphors can lead to gender stereotypes. It can create stigma against the victim while trivializing the crime and acts of the perpetrator.

B. Stereotyping

Most of the rape cases examined accorded credibility to the offended parties mainly because they were “minors,” “of tender age,” “young and immature,” or “not yet exposed to the ways of the world.”

There is merit in finding that young children—specifically in the context of the reviewed cases, girls—could not possibly concoct a story about being raped or sexually assaulted considering their youth and innocence. Indeed, the younger and more “unexposed” they are to the world, the more unlikely they are to fabricate the sordid details of the ordeal that they have undergone. From these truisms, generalizations have been created about children’s behavior, attributes,²³ and reactions to rape and sexual assault, which facilitated the Court’s creation of doctrines regarding children’s credibility when they testify in court. Thus, if the victims were minors, young and immature, and not exposed to the world, they were accorded credibility by all levels of the judiciary. Relying on earlier pronouncements about credibility of the offended parties, doctrines have been enunciated repeatedly in rape cases involving young and immature offended parties. Again, there is nothing



intrinsically wrong with these doctrines or their consistent application. However, in so doing, courts also risk failing to make more nuanced observations and distinctions about and between child-victims.

In *People v. Tejero*:²⁴

[W]hen the offended parties are young and immature girls, as in this case, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability, but also the shame and embarrassment to which they would be exposed if the matter about which they testified were not true.²⁵

In *People v. Biala*:²⁶

The Court has held time and again that the testimony of child-victim is normally given full weight and credit considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified was not true. Youth and immaturity are generally badges of truth and sincerity.²⁷

In *People v. Estrada*:²⁸

Moreover, the testimony of a rape victim, especially one who is young and immature, deserves full credit considering that no woman would concoct a story of defloration, allow an examination of her private parts and thereafter allow herself to be perverted in a public trial if she was not motivated solely by the desire to have the culprit apprehended and punished.²⁹

In *People v. Relanes*:³⁰

[N]o young girl would concoct a sordid tale of so serious a crime as rape at the hands of her own father, undergo medical examination, then subject herself to the stigma and embarrassment of a public trial, if her motive [was] other than a fervent desire to seek justice.³¹

In *People v. Tolentino*:³²

[N]o young woman, especially of tender age, would concoct a story of defloration, allow

an examination of her private parts, and thereafter pervert herself by being subjected to public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her.³³

In *People v. Baraoil*:³⁴

A young girl would not usually concoct a tale of defloration; publicly admit having been ravished and her honor tainted; allow the examination of her private parts; and undergo all the trouble and inconvenience, not to mention the trauma and scandal of a public trial, had she not in fact been raped and been truly moved to protect and preserve her honor, and motivated by the desire to obtain justice for the wicked acts committed against her.³⁵

In *People v. Buca*:³⁶

The Court has held time and again that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. Youth and immaturity are generally badges of truth. It is highly improbable that a girl of tender years, one not yet exposed to the ways of the world, would impute to any man a crime so serious as rape if what she claims is not true.³⁷

Aside from youth and immaturity, the offended parties in the above cases have been further attributed with the following motivations for telling the truth.. In *Tejero and Salvador*, where the offended parties were 14 and 15 years old, respectively, it was “shame and embarrassment to which they would be exposed if the matter about which they testified were not true.” The possibility of shame befalling them was also the motivation attributed for the credibility of the offended parties in *Biala and Llanas*, who were 11 and 15 years old, respectively.

In *Tolentino, Estrada, Relantes, Baraoil, and Buca*, the reasons given for the offended parties’ motivations for



telling the truth were not only the general desire to obtain justice and have themselves vindicated for the wrong done to them, but also their taking the risk of undergoing a trial where they are expected to be “perverted,” subjected to scandal, and stigmatized. In *Tolentino, Estrada, and Relantes*, the offended parties were 11, 12, and 13 years old, respectively, but in *Baraoil and Buca*, the offended parties were merely five and seven years old, respectively.

Certainly, these last two victims, assuming that they feared being in a trial, could not possibly be thinking about the stigma, shame, scandal, or perversion associated with rape and sexual assault trials where victims are insensitively made to relive what was done to them and be “victims” again just so they could successfully prosecute the accused. It cannot also be said that their ability to comprehend the vindication of rights is the same as older victims.

Hence, to attribute their credibility to a profound sense of justice, and further rule that risking double victimization is also proof of truthful testimony coming from a five or seven-year old girl, would be inaccurate. Yet, this has become part of jurisprudence because stereotypes and generalizations have found themselves broadly applied to cases, despite a need for a far more nuanced and differentiated examination of parties and application of doctrine.

It is more plausible that the parents would be the ones to deeply feel the hurt and sense of retribution to the extent that they would be willing to subject their child to the humiliation and stigma associated with trials involving rape and sexual assault. In *People v. Batula*:³⁸

In *People v. Geraban*, we held:

It is unnatural for a parent, more so for a mother, to use her offspring as an engine of malice especially if it will subject her child to the humiliation, disgrace and even stigma attendant to a prosecution for rape, if she were not motivated solely by the desire to incarcerate the person responsible for her child's defilement.³⁹

Worse, however, is the Court's tendency to measure the credibility of an offended party only within already established parameters of who is a truthful witness, according to stereotyped attributes found in previous decisions. In other words, victims who do not fit the stereotype of a credible witness find themselves with the onus of showing additional proof to qualify as credible.

In *Gaduyon*:

Thus, an errorless recollection of a harrowing experience cannot be expected of a witness, especially when she is recounting details from an experience as humiliating and painful as rape. Furthermore, rape victims, especially child victims, should not be expected to act the way mature individuals would when placed in such a situation. Verily, in this case, minor inconsistencies in the testimony of 'AAA' are to be expected because (1) she was a minor child during her defloration; (2) she was to testify on a painful and humiliating experience; (3) she was sexually assaulted several times; and, (4) she was examined on details and events that happened almost six months before she testified.⁴⁰

In *Alcober*:

It is not uncommon for a young girl to conceal for some time the assault on her virtue. Her initial hesitation may be due to her youth and the molester's threat against her. Besides, rape victims, especially child victims, should not be expected to act the way mature individuals would when placed in such a situation. It is not proper to judge the actions of children who have undergone traumatic experience by the norms of behavior expected from adults under similar circumstances ... It is, thus, unrealistic to expect uniform reactions from them. Certainly, the Court has not laid down any rule on how a rape victim should behave immediately after she has been violated. This experience is relative and may be dealt with in any way by the victim depending on the circumstances, but her credibility should not be tainted with any modicum of doubt. Indeed, different people react differently to a given stimulus or type of situation, and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience.⁴¹

In *Tejero*:

One should not expect a fourteen-year old girl to act like an adult or mature and



experienced woman who would know what to do under such difficult circumstances and who would have the courage and intelligence to disregard a threat on her life and complain immediately that she had been forcibly deflowered. It is not uncommon for young girls to conceal for sometime the assaults on their virtue because of the rapist's threat on their lives, more so when the rapist is living with her.⁴²

In *Llanas*:

As we have repeatedly held, there is no standard norm of behavior for victims of rape immediately before and during the forcible coitus and its ugly aftermath. This is especially true with minor rape victims.⁴³

In these cases, the Court did not just attribute to youth and immaturity the inconsistencies in the witnesses' testimonies, reluctance to report the crime, and state of fearfulness. It further rationalized that such behavior and responses, while not expected from children, are to be expected from adult, mature, or experienced women. Although the Court may have correctly ruled that "different people react differently to a given stimulus or type of situation, and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience," it seems that as far as rape and sexual assault cases are concerned, there is a "standard form" of behavior: on one hand, that which is expected from young and immature girls; on the other, that which is expected from mature women.

Notably, these pronouncements about stereotypical mature women being more consistent in testifying, less fearful of threats, and less likely to delay reporting crimes, as compared to girls, are mostly applied to rape and sexual assault cases only. In other crimes such as murder, the Court has not found it necessary to use youth and immaturity as explanations for the witnesses' minor inconsistencies, delays in reporting, or fear of reprisal. At most, it has acknowledged the young age of witnesses as one factor, but the explanation excluded the inclusion of constructed stereotypes on the supposedly contrary behavior or response expected from adults who find themselves in the same situation. Thus, in *People v. Berondo, Jr.*⁴⁴ the Court ruled:

Accused-appellants guilt is anchored only on the testimony of Nietes. Accused-appellant, however, faults Nietes for

belatedly reporting the identities of the assailants. He claims that the delay impaired Nietes credibility; thus, the latter's testimony should be disregarded.

We disagree. Delay in revealing the identity of the perpetrators of a crime does not necessarily impair the credibility of a witness, especially where sufficient explanation is given (citing *People v. Castillo y Masangkay and Castillo y Arce*, G.R. No. 118912, May 28, 2004). No standard form of behavior can be expected from people who had witnessed a strange or frightful experience (citing *People v. Dulanas*, G.R. No. 159058, May 3, 2006). Jurisprudence recognizes that witnesses are naturally reluctant to volunteer information about a criminal case or are unwilling to be involved in criminal investigations because of varied reasons. Some fear for their lives and that of their family (citing *People v. Zuniega*, G.R. No. 126117, February 21, 2001); while others shy away when those involved in the crime are their relatives (citing *People v. Paraiso*, G.R. No. 131823, January 17, 2001) or townmates (citing *People v. Ignas*, G.R. Nos. 140514-15). And where there is delay, it is more important to consider the reason for the delay, which must be sufficient or well-grounded, and not the length of delay (citing *People v. Natividad*, G.R. No. 138017, February 23, 2001).

In this case, although it took Nietes more than two years to report the identity of the assailants, such delay was sufficiently explained. Nietes stated that he feared for his life because the three accused also lived in the same town and the incident was the first killing in their area. He only had the courage to reveal to Dolores what he had witnessed because his conscience bothered him.⁴⁵

In all but one of the cases cited in *Berondo, Jr.*, the witnesses involved who had minor inconsistencies in their testimonies, experienced fear of reprisal, and belatedly reported the crime, were all adults. In *Castillo v. Masangkay*,⁴⁶ however, the witness whose credibility was questioned was a 13-year old boy. While the Court took



note of his youth, it elaborated further why he should be considered a credible witness:

Appellants conviction depends on the credibility of the lone eyewitness, Romeo Hernandez, whose testimony, appellant maintained, is unnatural and improbable. He regarded Romeo's failure to aid the victim while being attacked and to report the crime immediately as suspicious and contrary to human experience, considering that they were brothers.

Romeo cannot be faulted for not helping his brother even as the latter was being stabbed and struck to death. No standard form of behavioral response can be expected from anyone when confronted with a startling or frightful occurrence (citing *People v. Lachica*, G.R. No. 131915, September 3, 2003). Moreover, this Court does not find anything unnatural in Romeo's failure to help his brother as he was only thirteen years old when the crime happened. Furthermore, as also observed by the Court of Appeals, Romeo did plead with appellants to stop beating his brother. He simply had to flee when appellants turned to him.

Neither can appellant cast suspicion on Romeos failure to report immediately the crime and the identities of his brother's assailants. As correctly pointed out by the Court of Appeals, Romeo in his testimony attributed his silence to his confusion upon seeing his mother cry hysterically and afterwards faint. He also feared that if he disclosed the identities of the assailants right away, his father might look for them and figure into more trouble. It was for these reasons that he waited until after the interment of the victim before issuing a statement to the authorities. Delay in revealing the identity of the perpetrator of a crime, when sufficiently explained, does not impair the credibility of a witness.⁴⁷

It is clear that there were other circumstances which contributed to Romeo's credibility in Castillo, as with other decisions on rape cases. What is glaringly absent, however, is the comparison between the behavior of 13-year old Romeo

and an adult witness to further strengthen his testimony. The Court has simply found plausible explanations to bolster the witnesses' credibility, without resorting to stereotypes. The same cannot be said of most of the Court's decisions in rape and sexual assault cases, where the Court's decisions have been replete with comparisons between the expected response or behavior from a girl and that of a mature woman.

Nonetheless, stereotypes are not always present in the Court's decisions. *People v. Brioso*,⁴⁸ the Supreme Court discussed fear as a factor in delayed reporting, but did not merely attribute the same to the young age of the victim:

Further, it has been written that a rape victim's actions are oftentimes overwhelmed by fear rather than by reason. It is this fear, springing from the initial rape, that the perpetrator hopes to build a climate of extreme psychological terror, which would, he hopes, numb his victim into silence and submissiveness. Moreover, delay in reporting an incident of rape is not an indication of a fabricated charge and does not necessarily cast doubt on the credibility of the complainant. It is likewise settled in jurisprudence that human reactions vary and are unpredictable when facing a shocking and horrifying experience such as sexual assault, thus, not all rape victims can be expected to act conformably to the usual expectations of everyone. In the instant case, AAA, being only four (4) years old at the time that she was violated and threatened with death if she reports the incident, would naturally be cowed into silence because of fear for her life.⁴⁹

In *People v. Dayapdapan*,⁵⁰ the Court was also able to do away with stereotypes:

A young girl like complainant cannot be expected to have the intelligence to defy what she may have perceived as the substitute parental authority that appellant wielded over her. That complainant had to bear more sexual assaults from appellant before she mustered enough courage to escape his bestiality does not imply that she willingly submitted to his desires. Neither was she expected to follow the ordinary course that other women in the



same situation would have taken. There is no standard form of behavior when one is confronted by a shocking incident. Verily, under emotional stress, the human mind is not expected to follow a predictable path.⁵¹

C. Double Victimization

As mentioned, the Supreme Court has acknowledged that in rape and sexual assault cases, offended parties undergo a difficult and humiliating ordeal. Aside from having to repeat in detail what a woman or girl-child has experienced, the condition of the victim's "anatomy" in the aftermath of the crime is revealed through a medico-legal expert and scrutinized during the trial. To aggravate matters, victim blaming has almost always been a key strategy adopted by the defense.

*People v. Gersamio*⁵² sums up several decisions on the re-victimization of the offended party. There, the Court stated that "no woman would concoct a story of defloration, allow an examination of her private parts and submit herself to public humiliation and scrutiny via an open trial, if her sordid tale was not true and her sole motivation was not to have the culprit apprehended and punished."⁵³

The Court has effectively taken judicial notice of the re-victimization of offended parties in rape and sexual assault cases in a long list of cases.

In *Estrada*:

Moreover, the testimony of a rape victim, especially one who is young and immature, deserves full credit considering that no woman would concoct a story of defloration, allow an examination of her private parts and thereafter allow herself to be perverted in a public trial if she was not motivated solely by the desire to have the culprit apprehended and punished.⁵⁴

In *People v. Saludo*:⁵⁵

As it has been repeatedly held, no woman would want to go through the process, the trouble and the humiliation of trial for such a debasing offense unless she actually has been a victim of abuse and her motive is but a response to the compelling need to seek and obtain justice.⁵⁶

In *Relanes*:

As has been repeatedly held, 'no young girl would concoct a sordid tale of so serious a crime as rape at the hands of her own father, undergo medical examination, then subject herself to the stigma and embarrassment of a public trial, if her motive [was] other than a fervent desire to seek justice.'⁵⁷

In *People v. Tubat*:⁵⁸

No woman would go through the process and humiliation of trial had she not been a victim of abuse and her only motive is to seek and obtain justice; xxx

In *Tejero*:

A young girl would not usually concoct a tale of defloration; publicly admit having been ravished and her honor tainted; allow the examination of her private parts; and undergo all the trouble and inconvenience, not to mention the trauma and scandal of a public trial, had she not in fact been raped and been truly moved to protect and preserve her honor, and motivated by the desire to obtain justice for the wicked acts committed against her.⁵⁹

In *People v. Baraoil*:

A young girl would not usually concoct a tale of defloration; publicly admit having been ravished and her honor tainted; allow the examination of her private parts; and undergo all the trouble and inconvenience, not to mention the trauma and scandal of a public trial, had she not in fact been raped and been truly moved to protect and preserve her honor, and motivated by the desire to obtain justice for the wicked acts committed against her.⁶⁰



In *Batula*:

In *People v. Geraban* (G.R. No. 137048. May 24, 2001) we held:

It is unnatural for a parent, more so for a mother, to use her offspring as an engine of malice especially if it will subject her child to the humiliation, disgrace and even stigma attendant to a prosecution for rape, if she were not motivated solely by the desire to incarcerate the person responsible for her child's defilement.

....

it is unnatural for a parent, more so for a mother, to use her offspring as an engine of malice especially if it will subject her child to the humiliation, disgrace and even stigma attendant to a prosecution for rape, if she were not motivated solely by the desire to incarcerate the person responsible for her child's defilement.⁶¹

In *Tolentino*:

The rationale of this jurisprudential principle is that, 'no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subjected to public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her.'⁶²

In *People v. Court of Appeals*:⁶³

No woman, especially one of tender age, would concoct a story of defloration, allow an examination of her private parts, and be subjected to public trial and humiliation if her claim were not true.⁶⁴

People v. Buca:

The Court has held time and again that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of

defloration, allow an examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her.⁶⁵

Acknowledging what transpires during trial and characterizing the proceedings as perverse, humiliating, disgraceful, and stigmatizing are not enough. Compliance with CEDAW in eliminating discrimination at the de jure level entails adopting measures to ensure that courts conduct more gender and child-sensitive criminal proceedings. Women and girl-children should be able to access justice without fear of being re-victimized and stigmatized. This should be the end goal of all courts. Unfortunately, based on how the doctrine on rape cases has been consistently applied, there is no discernible improvement in the situation of victims who opt to bring their cases to court. As early as 1999, a study published by the Ateneo Human Rights Center has already made this observation regarding sexual abuse cases involving children:

This analysis also shows that the court proceedings and examinations expose victims and their families to great embarrassment and social censure. The mere fact that one has been raped places a stigma on the victim despite the fact that she was unwillingly violated. In effect, there was less social repercussions on the perpetrator who has been acquitted than there were on the victim herself regardless of the final outcome of the case. In these instances, the court seems to display insensitivity to gender and child issues as shown in the language and manner of interrogation.⁶⁶

More lamentable, the Court has found a beneficial purpose for such insensitive handling of a rape case. Citing the Court of Appeals, it pronounced in *People v. Gersamio*:⁶⁷

Undergoing all of the humiliating and invasive procedures for the case – the initial police interrogation, the medical examination, the formal charge, the public trial and the cross-examination – proves to be the litmus test for truth, especially when endured by a minor who gives her consistent and unwavering testimony on the details of her ordeal.⁶⁸



IV. A Gendered Assessment of Supreme Court Doctrines

1. Paradigm Shift

As stated earlier, jurisprudence should reflect a paradigm shift in deciding cases because of the changes in the law on rape and the introduction of the concept of sexual assault. Generally, there has been due emphasis on the witnesses' demeanor or manner of testifying in the reviewed cases, on how they remained consistent in their narratives, and how minor contradictions were not material enough to discredit the victims. "[T]here is no standard norm of behavior for victims of rape immediately before and during the forcible coitus and its ugly aftermath. This is especially true with minor rape victims."⁶⁹ In *People v. Morante*,⁷⁰ the Court summed up the established rule in rape cases:

Due to its intimate nature, rape is usually a crime bereft of witnesses, and, more often than not, the victim is left to testify for herself. Thus, in the resolution of rape cases, the victim's credibility becomes the primordial consideration. **It is settled that when the victim's testimony is straightforward, convincing, and consistent with human nature and the normal course of things, unflawed by any material or significant inconsistency, it passes the test of credibility, and the accused may be convicted solely on the basis thereof. Inconsistencies in the victim's testimony do not impair her credibility, especially if the inconsistencies refer to trivial matters that do not alter the essential fact of the commission of rape. The trial court's assessment of the witnesses' credibility is given great weight and is even conclusive and binding.**⁷¹

2. Language

However, these pronouncements have also been laced with inappropriate language, referring to rape as defloration and the victims as having been deflowered. Aside from the descriptions being inappropriate per se, it also casts doubt on whether courts, including trial courts, have actually changed their mindsets on rape as a crime against persons instead of being a crime against chastity. As a matter of fact, in some cases, the Court still refers to rape as a crime against chastity; it has cited previous rulings where the old rape law was still in effect and, therefore, applied.⁷²

3. Stereotypes

Moreover, stereotypes that juxtapose expected behaviors and responses of girl- children against adult women abound. Not only do these comparisons undermine young victims' ability to establish their credibility outside their youth and immaturity; such comparisons also prejudice mature women as courts now require a higher quantum of proof for their own credibility and lack of consent in rape. For instance, since it has been consistently ruled that delay in reporting is understandable in children because of fear, shame, or other reasons, a mature woman who may feel the same would be required to provide further explanation for her delay in reporting as she is expected to be less fearful and hesitant. The Court has emphasized in *Tejero* that "[o]ne should not expect a fourteen-year old girl to act like an adult or mature and experienced woman who would know what to do under such difficult circumstances and **who would have the courage and intelligence to disregard a threat on her life and complain immediately** that she had been forcibly deflowered."⁷³

4. Rape Definition, Elements and Proof Required to Convict

That the definition of rape is ambiguous with regard to non-consent further aggravates the problem.

As earlier stated, the law does not categorically define rape as sexual intercourse with a woman without her consent. Instead, "without her consent" is substituted by the ways enumerated under the law as to how rape was committed. There is rape when either "force, threat, or intimidation," or "fraudulent machination[,] or grave abuse of authority" is present. There is also rape when the "offended party is deprived of reason or otherwise unconscious." Lastly, when the offended party is below 12, statutory rape is committed and consent becomes irrelevant.

The Court has been more generous in appreciating that lack of resistance is not indicative of consent in cases where children are the offended parties. It has often found that intimidation substitutes for resistance. Likewise, the doctrine of each person reacting in varied ways when faced with a traumatic experience has been applied more frequently to child victims. In *People v. Velasco*,⁷⁴ where the offended party was 14 years old, the Court said:

The failure of the victim to shout for help does not negate rape and the victim's lack of resistance especially when intimidated by the offender into submission does not signify voluntariness or consent.



It is likewise settled in jurisprudence that human reactions vary and are unpredictable when facing a shocking and horrifying experience such as sexual assault, thus, not all rape victims can be expected to act conformably to the usual expectations of everyone.⁷⁵

In *People v. Quintos*,⁷⁶ the Court elaborated on the concept of consent and its correlation with resistance:

In any case, resistance is not an element of the crime of rape. It need not be shown by the prosecution. Neither is it necessary to convict an accused. The main element of rape is 'lack of consent.'

'Consent,' 'resistance,' and 'absence of resistance' are different things. Consent implies agreement and voluntariness. It implies willfulness. Similarly, resistance is an act of will. However, it implies the opposite of consent. It implies disagreement.

Meanwhile, absence of resistance only implies passivity. It may be a product of one's will. It may imply consent. However, it may also be the product of force, intimidation, manipulation, and other external forces.

Thus, when a person resists another's sexual advances, it would not be presumptuous to say that that person does not consent to any sexual activity with the other. That resistance may establish lack of consent. Sexual congress with a person who expressed her resistance by words or deeds constitutes force either physically or psychologically through threat or intimidation. It is rape.

Lack of resistance may sometimes imply consent. However, that is not always the case. While it may imply consent, there are circumstances that may render a person unable to express her resistance to another's sexual advances. **Thus, when a person has carnal knowledge with another person who does not show any resistance, it does not always mean that that person consented to such act. Lack of resistance does not negate rape.**

Hence, Article 266-A of the Revised Penal Code does not simply say that rape is committed when a man has carnal knowledge with or sexually assaults another by means of force, threat, or intimidation. **Article 266-A recognizes that rape can happen even in circumstances when there is no resistance from the victim.**⁷⁷

Here, where the offended party was 21 years old but had a mental age of six, the Court ruled that resistance "is not necessary to establish rape, especially when the victim is unconscious, deprived of reason, manipulated, demented, or young either in chronological age or mental age."⁷⁸

While lack of resistance could easily be dismissed as immaterial in cases of child victims, the same has not been true for adult women. In their case, the Court considers resistance—though not technically an element of rape—as vital in proving that the sexual intercourse was against their will and, thus, without their consent.

In cases where force was clearly present, or where a woman was patently intimidated because the perpetrator had a weapon, or where the woman was rendered unconscious, non-consent has not been at issue because it was obvious that the sexual intercourse committed against her amounted to rape.⁷⁹ However, where there was no clear proof of force or intimidation and the woman possessed even an ounce of consciousness, the degree of resistance she has exerted would factor into whether she gave consent to the sexual intercourse.

Such degree of resistance required of women has become difficult to be satisfied. This is because the Court demands a heavier onus on mature women in proving that their "acts of resistance" were tantamount to non-consent or indicative that the sexual act was "against their will," enough for their perpetrators to be guilty of rape.

In *Dulay*, the Court has already abandoned the standard of tenacious resistance. It held that "Article 266-D [of R.A. No. 8353] is intended to soften the jurisprudence of the 1970s when resistance to rape was required to be tenacious."⁸⁰ However, in the 2017 case of *People v. Marquez*,⁸¹ the Court reiterated its ruling in *People v. Amogis*,⁸² which stated that resistance must be tenacious. *Amogis*, in turn, cited *People v. Cabading*,⁸³ a case decided when the old law was still in effect and where rape was classified as a crime against chastity. Thus:

Resistance Should be Made Before the Rape is Consummated.



In *People v. Amogis*, this Court held that **resistance must be manifested and tenacious**. A mere attempt to resist is not the resistance required and expected of a woman defending her virtue, honor and chastity. **And granting that it was sufficient, she should have done it earlier or the moment appellant's evil design became manifest. In other words, it would be unfair to convict a man of rape committed against a woman who, after giving him the impression thru her unexplainable silence of her tacit consent and allowing him to have sexual contact with her, changed her mind in the middle and charged him with rape.**

....

The Age Gap Between the Victim and Appellant Negates Force, Threat or Intimidation.

AAA's state of 'shivering' could not have been produced by force, threat or intimidation. She insinuates that she fell into that condition after Meneses had sexual intercourse with her. However, **their age gap negates force, threat or intimidation; he was only 14 while she was already 24, not to mention that they were friends**. In addition, per 'AAA's' own declaration, Meneses and appellant did not also utter threatening words or perform any act of intimidation against her.

Drunkenness Should Have Deprived the Victim of Her Will Power to Give her Consent.

The fact that AAA was tipsy or drunk at that time cannot be held against the appellant. **Where consent is induced by the administration of drugs or liquor, which incites her passion but does not deprive her of her will power, the accused is not guilty of rape.**

Here, and as narrated by AAA on the witness stand, appellant and Meneses were her friends. Thus, as usual, she voluntarily went with them to the house of appellant and chatted with them while drinking liquor for about four hours. And while "AAA" got

dizzy and was 'shivering,' the prosecution failed to show that she was completely deprived of her will power

'AAA's' degree of dizziness or 'shivering' was not that grave as she portrays it to be for she is used to consuming liquor. And if it is true that the gravity of her 'shivering' at that time rendered her immobile such that she could not move her head to signal her rejection of appellant's indecent proposal or to whisper to him her refusal, then she would have been likewise unable to stand up and walk home immediately after the alleged rape.⁸⁴

Marquez is disturbing on so many levels.

First, it resurrects the doctrine of tenacious resistance, which had already been abandoned when the rape law was amended. To reiterate, the Court in *Dulay* stated that resistance need not be tenacious, explaining that physical struggle to show resistance may be tempered with the "victim's fear of the rapist or incapacity to give valid consent." It is, therefore, quite perplexing why the Court would revert to its previous ruling in *Marquez*, where the old law was still the legal framework.

Moreover, the decision is riddled with gender stereotypes. Requiring that resistance be manifested before the rape is consummated perpetuates discrimination against women. While it has been held that the "[s]lightest penetration of the labia of the female victim's genitalia consummates the crime of rape"⁸⁵—and therefore it is but logical to require that resistance must happen before the slightest penetration—this is not the context within which the pronouncement was made by the Court in *Marquez*. That "resistance should be made before the rape is consummated" would entail that a woman should say no at the beginning of the attempt at sexual intercourse, *before the man becomes so full of carnal lusts that he no longer is capable of stopping*. If the woman changes her mind in the middle, and the man still continues, there is no rape because not only is it impossible, but also "unfair," to abruptly curtail a man's libidinous desires. When the woman *resists, but does not do so at the start*, there is no rape; it is her fault if she later changes her mind.

Furthermore, this case also perpetuates the stereotypes that rape cannot possibly happen just because the woman was older than the perpetrator and that they were friends. An age gap in itself cannot negate force, threat, or



intimidation. While the Court emphasized that the accused in *Marquez* was only 14 years old while the victim was 24, the former was a liquor-drinking adolescent who had another accused as company. Friendship has never deterred one from committing rape or sexual assault.

Admittedly, the offended party was drinking. Both accused knew that she was intoxicated. The Court concluded that the victim's intoxication was not enough to deprive her of the will to refuse sexual intercourse. The issue, however, is whether the offended party's state of drunkenness affected her capacity to give informed consent. If we follow the Court's argument that when "consent is induced by the administration of . . . liquor, which incites her passion but does not deprive her of her will power, the accused is not guilty of rape," then what kind of free consent from the victim is contemplated before rape is committed? If a drug or liquor can incite passion and the victim, as a consequence, does not protest or does so with little tenacity, is there not rape if, despite knowing such state of drunkenness, the accused still proceeded to take advantage and have sexual intercourse with the woman whom he knows to have had lowered inhibitions?

In *People v. Amarela*,⁸⁶ the Court specifically noted the gender stereotypes prevailing in rape cases. It ruled:

[W]e simply cannot be stuck to the Maria Clara stereotype of a demure and reserved Filipino woman. We should stay away from such mindset and accept the realities of a woman's dynamic role in society today; she who has over the years transformed into a strong and confidently intelligent and beautiful person, willing to fight for her rights. In this way, we can evaluate the testimony of a private complainant of rape without gender bias or cultural misconception.⁸⁷

In reality, the gender stereotype referred to above has been mostly applied to young women and girl-children. As stated, mature women are generally faced with the onus of proving non-consent, absent the elements of force, manifest intimidation, and deprivation of reason. In the same decision, the Court further said:

Carnal knowledge of the female with her consent is not rape, provided she is above the age of consent or is capable in the eyes of the law of giving consent. **The female must not at any time consent; her consent**, given at any time prior to

penetration, however reluctantly given, or if accompanied with mere verbal protests and refusals, **prevents the act from being rape, provided the consent is willing and free of initial coercion.**⁸⁸

Amarela is ambiguous. While it says that there is rape when consent was not willingly given, it emphasizes that the "female must not **at any time** consent."⁸⁹ If this phrase is to be construed as the accused having to ascertain that there is consent by the woman to sexual intercourse during the entire time of the act, what is meant by consent being "free of **initial** coercion?" It implies that a woman cannot claim coercion at a later stage because she has already consented at the onset, especially if the consent is accompanied by "mere verbal protests and refusals." This decision reifies the ruling in *Marquez*.

Furthermore, how much resistance is a mature woman required to show and how often, before she is believed?

Moreover, *Amarela* cites the case of *People v. Butiong*,⁹⁰ which, in turn, draws from the legal encyclopedia of Corpus Juris Secundum (CJS). First of all, there is no need to resort to the CJS since there is *Dulay*, which came to be after R.A. No. 8353 became effective. In *Dulay*, the Supreme Court ruled that "the law now provides that resistance may be proved by any physical overt act in any degree from the offended party."⁹¹ Second, even if we examine the CJS, the restatements therein refer to common law. Nonetheless, it still provided that there is no consent if the *woman is not in a position to exercise any judgment about the matter.*⁹² More important, it elucidates the application of the doctrine of consent that is *initially given* by the woman. Thus:

At common law rape could be committed only where the unlawful carnal knowledge of a female was had without her consent or against her will; lack of consent was an essential element of the offense; and there can be no rape in the common-law sense without the element of lack of consent. Under the statutes punishing the offense, an essential element of the crime of rape is that the act was committed without the consent of the female, or, as it is otherwise expressed, against her will. **The act of sexual intercourse is against the female's will or without her consent when, for any cause, she is not in a position to exercise any judgment about the matter.**



Carnal knowledge of the female with her consent is not rape, provided she is above the age of consent or is capable in the eyes of the law of giving consent. Thus, mere copulation, with the woman passively acquiescent, does not constitute rape. The female must not at any time consent; her consent, given at any time prior to penetration, however reluctantly given, or if accompanied with mere verbal protests and refusals, prevents the act from being rape, provided the consent is willing and free of initial coercion. Thus, where a man takes hold of a woman against her will and she afterward consents to intercourse before the act is committed, his act is not rape. **However, where the female consents, but then withdraws her consent before penetration, and the act is accomplished by force, it is rape; and where a woman offers to allow a man to have intercourse with her on certain conditions and he refuses to comply with the conditions, but accomplishes the act without her consent, he is guilty of rape.**⁹³

The last underscored sentence, which qualifies consent in such a way that rape can still be committed despite initial consent having been given, has been omitted in Butiong when it quoted CJS. Thus, when Amarela reiterated the same pronouncements, it stops at “provided the consent is willing and free of initial coercion”—making the presence or absence of such “initial consent” the only basis of whether rape was committed.

The Court is setting dangerous precedents in these cases:

- a) they bring back tenacious resistance as a requirement to prove non-consent in cases where force or intimidation is not glaringly apparent;
- b) resistance is supposed to be manifested before rape is consummated which contemplates resistance at the initial sexual contact but not during;
- c) based on the second, a woman can no longer manifest her non-consent if she consented at the initial stage of sexual intercourse but changed her mind later;
- d) if drugs or liquor are administered to induce consent or the accused knew that the woman was under the influence of either, consent is deemed given as long as these substances “[do] not deprive her of her will power” even though said drug or liquor “incites her passion”; and

e) it is generally not likely that rape could be committed if the accused is considerably younger than the woman and if they are friends.

5. *Marital Rape Established*

The Court has firmly established marital rape in *People v. Jumawan*,⁹⁴ ruling that “[h]usbands do not have property rights over their wives’ bodies. Sexual intercourse, albeit within the realm of marriage, if not consensual, is rape.”⁹⁵ The accused was charged and found guilty of two counts of rape committed by means of force upon a person:

The Philippines, as State Party to the CEDAW, recognized that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between them. Accordingly, the country vowed to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices, customs and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women (citing CEDAW, Article 5, Part I.) One of such measures is R.A. No 8353 insofar as it eradicated the archaic notion that marital rape cannot exist because a husband has absolute proprietary rights over his wife's body and thus her consent to every act of sexual intimacy with him is always obligatory or at least, presumed.

....

A woman is no longer the chattel-antiquated practices labeled her to be. A husband who has sexual intercourse with his wife is not merely using a property, he is fulfilling a marital consortium with a fellow human being with dignity equal (citing Universal Declaration of Human Rights, Article 1) to that he accords himself. He cannot be permitted to violate this dignity by coercing her to engage in a sexual act without her full and free consent. Surely, the Philippines cannot renege on its international commitments and accommodate conservative yet irrational



notions on marital activities (citing UN Declaration on the Elimination of Violence Against Women, Article 4) that have lost their relevance in a progressive society.⁹⁶

This case clearly elucidates how Supreme Court decisions can lead in promoting compliance with CEDAW. In this particular instance, it is the obligation to remove “the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”⁹⁷ As the case stated, “[t]he ancient customs and ideologies from which the irrevocable implied consent theory evolved have already been superseded by modern global principles on the equality of rights between men and women and respect for human dignity established in various international conventions, such as the CEDAW.”⁹⁸

This doctrine was reiterated in *Quintos*, where the accused alleged that the victim was his sweetheart. There, the Supreme Court stated that “[R.A. No.] 9262 recognizes that wives, former wives, co-parents, and sweethearts may be raped by their husbands, former husbands, co-parents, or sweethearts by stating that committing acts of rape against these persons are considered violence against women.”⁹⁹

6. Mental Incapacity and Statutory Rape

The Court has promulgated decisions with different pronouncements on rape committed against women whose mental ages were below 12 years old. In *Quintos*, the offended party was a 21-year old woman but her mental age was 6 years and 2 months. Unfortunately, such mental age was not alleged in the information. Therefore, it was considered as a factor in determining consent but not in determining whether the crime committed was statutory rape:

However, to qualify the crime of rape and increase the penalty of accused from *reclusion perpetua* to death under Article 266-B in relation to Article 266-(A)(1) of the Revised Penal Code, an allegation of the victim’s intellectual disability must be alleged in the information. If not alleged in the information, such mental incapacity may prove lack of consent but it cannot increase the penalty to death. Neither can it be the basis of conviction for statutory rape.

In this case, the elements of sexual congress and lack of consent were sufficiently alleged in the information. They were also clearly and conveniently determined during trial. The fact of being mentally

incapacitated was only shown to prove AAA’s incapacity to give consent, not to qualify the crime of rape.¹⁰⁰

Likewise, in *People v. Bangsoy*,¹⁰¹ the Court affirmed that rape committed against a woman who has a mental age below 12 is statutory rape:

Sexual intercourse with a woman who is a mental retardate with a mental age of below 12 years old constitutes statutory rape. Notably, AAA was also below 12 years old at the time of the incident, as evidenced by the records showing that she was born on March 1, 1993.

....

Nonetheless, the Information averred that AAA was a mental retardate and that the appellant knew of this mental retardation. These circumstances raised the crime from statutory rape to qualified rape or statutory rape in its qualified form under Article 266-B of the Revised Penal Code. Since the death penalty cannot be imposed in view of Republic Act No. 9346 (An Act Prohibiting the Imposition of the Death Penalty in the Philippines), the CA correctly affirmed the penalty of *reclusion perpetua* without eligibility for parole imposed by the RTC on the appellant.¹⁰²

However, in the more recent case of *People v. Falco*,¹⁰³ the Court emphasized that a different ground should be used as basis to convict an accused of rape committed against a victim who has the mental age of a child. It stated that the correct offense is simple rape under Art. 226-A(b), not (d). Thus:

In this case, it is not disputed that AAA was already 22 years old when she was raped albeit she has a mental age of 4-5 years old.

....

This Court, in the case of *People v. Dalan* [], explained:

We are not unaware that there have been cases where the Court stated that sexual intercourse with a mental retardate constitutes statutory rape. Nonetheless, the Court in these cases, affirmed the accused’s



conviction for simple rape despite a finding that the victim as a mental retardate with a mental age of a person less than 12 years old. Based on these discussions, we hold that the term statutory rape should only be confined to situations where the victim of rape is a person less than 12 years of age. If the victim of rape is a person with mental abnormality, deficiency, or retardation, the crime committed is simple rape under Article 266- A, paragraph 1 (b) as she is considered "deprived of reason" notwithstanding that her mental age is equivalent to that of a person under 12. In short, carnal knowledge with a mental retardate whose mental age is that of a person below 12 years, while akin to statutory rape under Article 266-A, paragraph 1(d), should still be designated as simple rape under paragraph 1(b).¹⁰⁴

Moreover, the accused questioned the credibility of the victim based on the conflicting answers that she had given:

He insisted that he should be acquitted of the charge because doubts linger as to whether or not he had sex with AAA or the rape incident happened, considering AAA's conflicting responses to the queries regarding the same. The accused- appellant capitalizes on the fact that during AAA's cross-examination, the latter candidly stated that accused-appellant did not have sex with her.

....

In the case at bar, even though AAA's testimony was not flawless in all particulars, We do not find any justifiable reason to deviate from the findings and conclusion of the RTC, as affirmed by the CA.

The fact that AAA's testimony was practiced and instructed by her mother to impute such serious charge against the accused-appellant does not sway this Court. Given the victim's mental condition, being a 22-year old woman with a mental age of 4-5 years old, we find it highly improbable that she had simply concocted or fabricated the rape charge against the accused-appellant. We neither find it likely that she was merely

coached into testifying against accused-appellant, precisely, considering her limited intellect. In her mental state, only a very startling event would leave a lasting impression on her so that she would be able to recall it later when asked.¹⁰⁵

Notably, even if the Court used "deprived of reason" as basis for the accused's conviction, its rationale was still grounded on the mental age of the offended party. The only factor that qualifies the offended party as being deprived of reason is her intellectual capacity.

Thus, if the mental age of the victim is below 12, it is more appropriate to convict the accused under statutory rape rather than under the section of the law describing deprivation of reason. An intellectually disabled woman with limited agency to give consent because she has the mental age of a child below 12 years old will benefit from established doctrines about the credibility of children in statutory rape cases. Adversely, being "deprived of reason" at the time the woman was raped or sexually assaulted may likely expose her to gratuitous attacks on the accuracy of her facts as she was, after all, "deprived of reason" when the alleged crime happened.

7. *Sexual Assault*

Under the law and current jurisprudence, the crime committed is sexual assault if the accused uses a finger or any object other than the male genitalia. In *People v. Soria*,¹⁰⁶ the Court ruled:

It is evident from the testimony of AAA that she was unsure whether it was indeed appellant's penis which touched her labia and entered her organ since she was pinned down by the latter's weight, her father having positioned himself on top of her while she was lying on her back. AAA stated that she only knew that it was the bird of her father which was inserted into her vagina after being told by her brother BBB. Clearly, AAA has no personal knowledge that it was appellant's penis which touched her labia and inserted into her vagina. Hence, it would be erroneous to conclude that there was penile contact based solely on the declaration of AAA's brother, BBB, which declaration was hearsay due to BBB's failure to testify. Based on the foregoing, it was an error on the part of the RTC and the CA to conclude that appellant raped AAA



through sexual intercourse. Instead, we find appellant guilty of rape by sexual assault.¹⁰⁷

Likewise, in *Salvador*, the Court held that rape by sexual assault is committed if a finger is inserted in the vagina:

By his act of inserting his finger in BBB's organ, the crime of rape by sexual assault has been consummated. The RTC and the CA therefore correctly ruled that appellant should be found guilty of rape as defined in Article 266-A, paragraph 2 of the RPC. Thus, the fact that there were no injuries found in the medical exam deserves scant attention. As correctly stated by the RTC and the CA, the finding of any injury as yielded by the physical exam is not a requirement in rape cases¹⁰⁸

V. Final Word

Although courts have firmly established marital rape, and have consistently applied the credibility of girl-children in rape and sexual assault cases, the stereotypes embedded in their decisions has had a negative impact on mature women. Non-consent as an element of rape and its required manifestation, which is usually the degree or extent of resistance, is getting difficult to prove especially for these women, unless force or intimidation is patently present, or unless they are rendered unconscious. Absent these factors, mature women are expected to resist tenaciously and report their rape promptly. Further, if courts require that non-consent be signified "before the rape is consummated," or at the beginning of the sexual intercourse, women tend to be precluded from changing their minds *after* the beginning of the crime. Is there no rape when this happens? The recent cases of *Marquez and Amarela* perpetuate the stereotype that men cannot control their biological urges. As such, women should already refuse and clearly manifest non-consent at the beginning. Otherwise, rape is off the table as it would be unfair to men to expect them to stop.

Discrimination is present when insensitive criminal proceedings prevent women from exercising their right to effective remedy and access to justice. Discrimination is also present when decisions maintain the subordinate status of women by perpetuating **male privilege**, which is aptly articulated in *Marquez* and is worth reiterating:

A mere attempt to resist is not the resistance required and expected of a woman defending her virtue, honor and chastity. And granting

that it was sufficient, she should have done it earlier or the moment appellant's evil design became manifest. In other words, it would be unfair to convict a man of rape committed against a woman who, after giving him the impression thru her unexplainable silence of her tacit consent and allowing him to have sexual contact with her, changed her mind in the middle and charged him with rape.¹⁰⁹

As highlighted in several of the rape cases in this research paper, gender bias still permeates the decisions of the Supreme Court. As the highest court of the land, it should rid itself of insensitive language and gender stereotypes. It should also address the problem of double victimization of offended parties, instead of regarding such practice as a litmus test in examining the credibility of women. As a genuine commitment to the Philippines' obligations with CEDAW, it is incumbent upon the Supreme Court to take these steps to erase discrimination in law and jurisprudence—and, in effect, society. ●



ENDNOTES

- 1 ATENEO HUMAN RIGHTS CENTER, CEDAW BENCHBOOK (2008) [hereinafter CEDAW Benchbook].
- 2 UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13, arts. 2 (c), (f), & 5 (a) [hereinafter CEDAW].
- 3 An Act Providing for the Magna Carta of Women, [Magna Carta of Women], Republic Act No. 9710, § 9 (2008).
- 4 CEDAW BENCHBOOK, at 85-86.
- 5 An Act Expanding the Definition of the Crime of Rape, Reclassifying the same as a Crime Against Persons, Amending for the Purpose Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code, and for Other Purposes, R.A. No. 8353, § 2 (1997).
- 6 AMPARITA STA. MARIA, IMAGES OF WOMEN IN IMPUNITY IN HUMAN RIGHTS TREATISE ON THE LEGAL AND JUDICIAL ASPECTS OF IMPUNITY (2001).
- 7 Id.
- 8 Id.
- 9 Committee on the Elimination of Discrimination against Women, Concluding observations on the combined seventh and eighth periodic reports of the Philippines [A Report Adopted by the Committee at its 64th Session] July 4-22, 2016, available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhss1YTn0qfX85YJz37paIgUDDEORoO%2bFufiE0lAaW15o4x6ODFDtYEeObySRVS0ldVlU7Z6bIw1k3Ud%2b0FV7g7u6lASdaSqEEFngDtWdzJ3 9z> (last accessed Mar. 2, 2018).
- 10 Id. B (26). (emphasis supplied).
- 11 11 G.R. No. 144344-68, July 23, 2002.
- 12 Id.
- 13 G.R. No. 181473, Nov. 11, 2013.
- 14 Id. (emphasis supplied)
- 15 Id.
- 16 G.R. No. 194581, July 02, 2012.
- 17 People v. Antonio Baraoil, G.R. No. 194608, July 9, 2012.
- 18 People v. Estrada, G.R. No. 178318, Jan 15, 2010; People v. Bacatan, G.R. No. 203315, Sep. 18, 2013; & People v. Gersamio, G.R. No. 207098, July 8, 2015.
- 19 People v. Buca, G.R. No. 209587, Sep. 23, 2015.
- 20 To be fair to the Court, there have also been decisions where it has done away with the term



“defloration.” See *People v. Edgar Padigos*, G.R. No. 181202, Dec. 05, 2012; *People v. Osma*, G.R. No. 187734, Aug. 29, 2012; & *People v. Isang*, G.R. No. 183087, Dec. 4, 2008.

21 *People v. Estrada*, G.R. No. 178318.

22 *People v. Matrimonio*, G.R. Nos. 82223-4, Nov. 13, 1992.

23 See REBECCA J. COOK & SIMONE CUSACK, *GENDER STEREOTYPING TRANSNATIONAL LEGAL PERSPECTIVES*, 10 (2010).

24 G.R. No. 187744, June 20, 2012; and *People v. Jose Salvador*, G.R. No. 207815 June 22, 2015.

25 *Id.*

26 G.R. No. 217975, Nov. 23, 2015.

27 *Id.* See also *People v. Pastor Llanas, Jr. y Belches*, G.R. No. 190616, June 29, 2010.

28 G.R. No. 178318.

29 *Id.*

30 G.R. No. 175831, Apr. 12, 2011.

31 *Id.*

32 G.R. No. 187740 Apr. 10, 2013.

33 *Id.*

34 G.R. No. 194608, July 9, 2012.

35 *Id.*

36 *People v. Buca*, G.R. No. 209587, Sep. 23, 2015.

37 *Id.* (Citing *People v. Perez*, 595 Phil. 1232, 1251-1252 (2008)).

38 G.R. No. 181699, Nov. 28, 2012.

39 *Id.*

40 *People v. Gaduyon y Tapispisan*, G.R. No. 181473, Nov. 11, 2013 (citations omitted).

41 *People v. Alcober*, G.R. No. 192941, Nov. 13, 2013 (citations omitted).

42 *Tejero*, G.R. No. 187744.

43 *Llanas*, G.R. No. 190616.

44 G.R. No. 177827, Mar. 30, 2009.



45 Id.

46 G.R. No. 118912, May 28, 2004

47 Id.

48 G.R. No. 209344, June 27, 2016

49 Id.

50 G.R. No. 209040 December 9, 2015

51 Id.

52 G.R. No. 207098, July 8, 2015.

53 Id.

54 Estrada, G.R. No. 178318.

55 G.R. No. 178406, April 6, 2011

56 Id.

57 Relanes, G.R. No. 175831.

58 G.R. No. 183093, Feb. 01, 2012.

59 Tejero, G.R. No. 187744.

60 Baraoil, G.R. No. 194608.

61 Batula, G.R. No. 181699.

62 Tolentino, G.R. No. 187740.

63 G.R. No. 183652, Feb. 25, 2015.

64 Id.

65 Buca, G.R. No. 209587.

66 EMMA PORIO, PH.D., CHILD ABUSE AND THE COURTS: A SOCIOLOGICAL PERSPECTIVE IN HUMAN RIGHTS TREATISE ON CHILDREN, 25 (1999).

67 G.R. No. 207098, July 8, 2015.

68 Id. (emphasis supplied).

69 Llanas, G.R. No. 190616.

70 G.R. No. 187732, Nov. 28, 2012.



71 Id. (Citing *People v. Dion*, G.R. No. 181035, July 4, 2011) (emphasis supplied).
72 See *People v. Ortega*, G.R. No. 186235, Jan. 25, 2012 and *People v. Patentes*, G.R. No. 190178, Feb. 12, 2014.
73 *Tejero*, G.R. No. 187744 (emphasis supplied).
74 G.R. No. 190318, Nov. 27, 2013.
75 Id.
76 G.R. No. 199402, Nov. 12, 2014.
77 Id. (emphases supplied).
78 Id.
79 See *People v. Regaspi*, G.R. No. 198309, Sep. 7, 2015 & *People v. Domingo*, G.R. No. 225743, June 7, 2017.
80 *Dulay*, G.R. Nos. 144344-68.
81 G.R. No. 212193 Feb. 15, 2017.
82 G.R. No. 133102, Oct. 25, 2001.
83 G.R. No. L-74352, June 6, 1989.
84 Id. (emphases supplied).
85 *People v. Reyes*, G.R. No. 173307, July 17, 2013.
86 G.R. Nos. 225642-43, Jan. 17, 2018.
87 Id.
88 Id. (citing *People v. Charlie Butiong*, G.R. No. 168932, Oct. 19, 2011) (emphasis supplied).
89 Id. (emphasis supplied).
90 *Butiong*, G.R. No. 168932, Oct. 19, 2011.
91 *Dulay*, G.R. No. 144344-68.
92 75 CJS, *Rape*, § 11, at 473-74.
93 Id. (emphases supplied).
94 G.R. No. 187495, April 21, 2014.
95 Id.
96 Id.



- 97 CEDAW, intro.
- 98 Jumawan, G.R. No. 187495.
- 99 Quintos, G.R. No. 199402.
- 100 Id.
- 101 G.R. No. 204047, Jan. 13, 2016.
- 102 Id. (citing *People v. Abella*, G.R. No. 177295, Jan. 6, 2010; *People v. Mateo*, G.R. No. 170569, Sep. 30, 2008; & *People v. Arlee*, 380 Phil. 164, 180 (2000)).
- 103 G.R. No. 220143, June 7, 2017.
- 104 Id. (citing G.R. No. 203086, June 11, 2014).
- 105 Falco, G.R. No. 220143.
- 106 G.R. No. 179031, Nov. 14, 2012.
- 107 Id.
- 108 Salvador, G.R. No. 207815 (citing *People v. Castillo*, G.R. No. 193666, Feb. 19, 2014).
- 109 Marquez, G.R. No. 212193.





ENVIRONMENT



The Environmental Legal Assistance Center (ELAC), Inc. is an environmental non-government organization committed to helping communities uphold their constitutional right to a healthful and balanced ecology.

Many of the issues ELAC works on are related to the access to and use of forestry and coastal resources, pollution, and land use and tenure. Through its area offices in Palawan, Cebu, Bohol and Leyte, ELAC responds to these issues by addressing the leading social causes of environmental degradation: unsound policies, poor resource management and governance, weak enforcement of laws, poverty and lack of awareness.



REVIEW OF THE DECISIONS OF THE SUPREME COURT ON ENVIRONMENTAL CASES¹

Atty. Grizelda Mayo-Anda and Atty. Raffy Pajares

I. Introduction

In 2012, a group of farmers from Calategas, Narra, Palawan filed a civil case for damages and sought the issuance of an Environmental Protection Order (EPO) against mining companies² and some public officials in Palawan. In their Memorandum, the farmers argued that: (1) they have unjustly suffered environmental harms and risks from mining; (2) the public officials neglected performing their duties to protect their environmental rights; and (3) they have continued to bear such burdens until today. The farmers asserted that environmental decisionmakers, both public and private, should be accountable for their decisions. Two years later, the regional trial court decided that the mining companies must be held liable for damages and required the companies to rehabilitate the mined-out areas. However, it dismissed the claims against the public officials after not having been convinced of the evidence against them. As the case is still pending before the Court of Appeals (CA), mining companies have yet to compensate the affected farmers for the damages they suffered and rehabilitate the mined-out areas.

This case is just among several actions taken by farmers who continue to fight for environmental justice. Can this case become a precedent for public officials to seriously consider the nature of an extractive project and its impacts, the applicable laws, the precautionary principle and tenets of environmental justice when they issue local endorsements, clearances, and permits?

The aforementioned case is illustrative of environmental justice,³ which the Supreme Court's, A.M. No. 09-6-8-SC, or the Rules of Procedure for Environmental Cases (RPEC), sought to achieve. The Supreme Court aimed to enhance the mechanisms by which victims of environmental violations may seek justice and, at the same time, uphold the people's constitutional right to a balanced and healthful ecology. It adopted the rights-based approach in effectuating the RPEC, the general framework of which is:

“xxx The Court determines the procedures and rules of the judiciary which are necessary to facilitate the administration of justice and address the obstacles that come with specific legal issues. The complexity of environmental laws and their enforcement requires the Court to rethink its procedures in order to facilitate the administration of environmental justice. Of the many guiding principles in formulating such solutions, the participation of the people in enforcing environmental rights is key. xxx”⁴

Issued in April 2010, the RPEC was a “response to the long felt need for more specific rules that can sufficiently address the procedural concerns that are peculiar to environmental cases.” All Philippine environmental laws were covered by the RPEC.



II. Nature, Objectives and Limitations of the Study

The RPEC sought to address procedural issues faced by local communities and civil society groups who assert their right to a healthy environment, compel government to implement its mandate, and hold violators of environmental laws liable. Following its promulgation, several cases have been filed by local communities, citizens, government officials, and nongovernment organizations. While some cases have been resolved, others remain pending before the Supreme Court.

Other environmental cases, which were filed before the issuance of the RPEC but were decided after 2010, will likewise be covered by this research project. One such case involves the resident marine mammals of Tañon Strait, where marine protected areas, legal requirements for oil exploration, and the legal standing of marine mammals in the marine protected area were discussed.

This study aims to look into and gain insights from the Supreme Court's decisions since April 2010, when it promulgated the RPEC to determine whether the use of the rules resulted in the effective enforcement of remedies and redress for violations of environmental laws.

As such, the study is based mainly on the Supreme Court decisions. The petitions for special writs of *kalikasan* and writ of continuing mandamus, as well as environmental cases currently on appeal before the CA and the Supreme Court, were not covered. Likewise, no interviews were conducted with the parties involved in the cases reviewed to ascertain the implementation of the SC decisions on their cases.

III. Highlights of the Rules of Procedure for Environmental Cases⁵

Before the Supreme Court promulgated the RPEC, it undertook various initiatives related to environmental justice. In July 2006, the High Court organized a roundtable discussion on the prosecution of environmental cases. The Asian Environmental Justice Forum followed in 2007. In 2008, the Supreme Court created 117 environmental courts nationwide through the issuance of Administrative Order No. 23-2008. On April 16 to 17, 2009, the Supreme Court conducted a nationwide forum on environmental justice in Baguio City, Iloilo City, and Davao City. The forum aimed to address issues on the high cost of litigation, adopting innovative rules, and ensuring compliance with the decisions of courts.

The RPEC was established with the following objectives:⁶

- a. Protect and advance the constitutional right of the people to a balanced and healthful ecology;
- b. Provide a simplified, speedy and inexpensive procedure for the enforcement of environmental rights and duties recognized under the Constitution, existing laws, rules and regulations, and international agreements;
- c. Introduce and adopt innovations and best practices ensuring effective enforcement of remedies and redress for violation of environmental laws; and
- d. Enable the courts to monitor and exact compliance with orders and judgments in environmental cases.

Consistent with these objectives, the RPEC had the following important features.

a. Liberalized legal standing and citizen's suit

Although the Supreme Court recognizes the injury aspect of legal standing, it has given standing a more liberal interpretation. This builds upon the case of *Oposa v. Factoran*⁷ where the High Court allowed parents to file a suit on behalf of "their children and generations yet unborn."

b. Speedy Disposition of Cases

Under the RPEC, there are three (3) categories of environmental cases filed: civil, criminal, and special civil actions. In civil cases, a complaint must be accompanied by all evidence supporting the cause of action which can be in the form of affidavits, photographs, video clips, recordings, and the like. Certain pleadings are prohibited to avoid delay.

In civil and criminal cases, pre-trial is extensively used to explore the possibility of settlement, simplify issues, gather evidence through depositions, and handle the administrative side of exhibits. Moreover, affidavits take the place of direct examination, and resolution is limited to one year. In criminal cases, a remedy is provided to avoid the numerous instances where the accused jumps bail prior to arraignment. To avail of bail, an accused shall execute an undertaking authorizing the judge to enter a plea of not guilty if he or she fails to appear on arraignment.



c. Special remedies in the form of the Writ of Kalikasan, Writ of Continuing Mandamus, Environmental Protection Orders

The Supreme Court has fashioned two special writs as special civil actions: the writ of kalikasan and the writ of continuing mandamus. The petition for a writ of kalikasan is an extraordinary remedy because the damage or threatened damage is of such magnitude—covering such a wide area—as to prejudice the ecology in two or more cities or provinces. Since the affected area is not limited geographically to one particular city or province, the petitioner has to go to the CA or the Supreme Court, both of which has nationwide jurisdiction. The petition for a writ of kalikasan bridges the gap between allegation and proof by compelling the production of information regarding the environmental complaint, such as information related to the issuance of a government permit or license, or information contained in the Environmental Compliance Certificate (ECC) or in government records. This petition may be accompanied by a prayer for the issuance of a Temporary Environmental Protection Order (TEPO). A decision on a petition for writ of kalikasan may or may not provide for the other new environmental writ, the writ of continuing mandamus.

On the other hand, the petition for the issuance of a writ of continuing mandamus is primarily directed at government agencies with respect to the performance of their legal duties. The writ is a command of continuing compliance with a final judgment as it “permits the court to retain jurisdiction after judgment in order to ensure the successful implementation of the reliefs mandated under the court’s decision.”⁸

The leading case here is *MMDA v. Concerned Residents of Manila Bay*, where the High Court required the MMDA and other government agencies to clean up Manila Bay and continuously report to the Court the steps they undertook. The Court held certain government agencies primarily responsible for the cleanup of Manila Bay. No private enterprise was impleaded as a polluter; thus, no private entity was charged for the cost of the cleanup.

This petition for a writ of continuing mandamus can be accompanied by a prayer for the issuance of a TEPO. A TEPO may be issued during the proceedings for the issuance of a writ of continuing mandamus. The issuance of the TEPO underscores the sense of immediacy and is used for immediate relief. Upon termination of proceedings, the TEPO may be converted to a Permanent Environmental Protection Order (EPO).

d. Consent decree

Where ordinary civil proceedings have the amicable settlement of disputes, the RPEC provides a similar remedy called “consent decree.” Parties in an environmental controversy can agree on a consent decree that is judicially approved and enforceable. The settlement may provide, among others, for reimbursement for the cost of cleanup or an undertaking of response activities by potentially responsible parties or some other acceptable relief. An amicable settlement, evidenced by a consent decree, has the advantage of being voluntary, mutually acceptable, open to public scrutiny, and can be enforced by court order.

e. Strategic Lawsuit Against Public Participation (SLAPP)

SLAPP, which is a harassment suit, is a strategy to thwart past or anticipated opposition to an action with possible environmental implications. It violates people’s constitutional right to seek redress for their environmental grievances. It draws attention away from the real environmental issues and delays the resolution of an otherwise valid environmental complaint. Parties instituting SLAPP are generally capable—financially, politically, etc.—to burden well-meaning environmentalists with useless litigation. SLAPP can come in different forms such as libel suits, actions for torts and damages, instances of grave coercion and threat, claims for sums of money, counterclaims, or cross-claims. As such, the court must dismiss a SLAPP upon a showing that it is a “sham petition.”

f. Provision on Precautionary Principle

In the RPEC, the formulation of evidence-related provisions was made with the guidance of the precautionary principle to facilitate access to courts in environmental cases and create a more relevant form of court procedure tailored to the unique and complex characteristics of environmental science.⁹

As the Supreme Court’s Annotation to the RPEC further explains, the precautionary principle bridges the gap in cases where scientific certainty in factual findings cannot be achieved. Its effect is to shift the burden of evidence of harm away from those who will likely suffer harm and onto those desiring to change the status quo. When the features of uncertainty, the possibility of irreversible harm, and the possibility of serious harm coincide, the case for precautionary principle is strongest. When doubt arises, the case must be resolved in favor of the constitutional right to a balanced and healthful ecology.¹⁰



IV. Summary of Cases Reviewed

The research team looked into 12 environmental cases decided upon by the Supreme Court between 2010 to 2018. Among these, four cases were filed before the promulgation of the Rules of Procedure for Environmental Cases. Of the four cases, one involves the aerial spray ban ordinance in Davao City; two on mining; and finally, one on the resident marine mammals of Tañon Strait, as mentioned.

The eight other cases that were filed using the RPEC were special writs or special civil actions, filed directly before the Supreme Court. One was filed before a regional trial court and was raised before the Supreme Court on purely questions of law.

(1) *Boracay Foundation, Inc. v. The Province of Aklan, represented by Governor Carlito S. Marquez, the Philippine Reclamation Authority and the DENR-EMB (REGION VI); G.R. 196870, June 26, 2012; Justice Teresita J. Leonardo-de Castro (ponente)*¹¹

In a petition for continuing mandamus, the Boracay Foundation, Inc. prayed for the issuance of an EPO against the Province of Aklan to stop its land reclamation of 2.64 hectares through beach enhancement of the old Caticlan coastline for the rehabilitation and expansion of the existing jetty port.

Petitioner Boracay Foundation cited a preliminary geohazard assessment study on the vulnerability of the coastal zone within the proposed project site and the nearby coastal area due to the effects of sea level rise and climate change, which will affect the social, economic, and environmental situation of Caticlan and nearby communities.

On June 7, 2011, the Court issued a TEPO. Pursuant to this, respondent Province of Aklan immediately ordered the Provincial Engineering Office and the contractor to refrain from conducting any construction activities until further orders from the Court. The Court explained that the new RPEC provides a relief for petitioner under the writ of *continuing mandamus*, a special civil action “to compel the performance of an act specifically enjoined by law,” and which provides for the issuance of a TEPO “as an auxiliary remedy prior to the issuance of the writ itself.”

The Court held that the reclamation is classified as a national project that affects the environmental and ecological balance of local communities, and requires prior consultation with the affected local communities, and prior

approval of the project by the appropriate *sanggunian*—which were not complied with.

Respondent Province of Aklan claimed, among others, that the petition was premature because it failed to exhaust administrative remedies provided under Section 6 of the Department of Environment and Natural Resources (DENR) Administrative Order (A.O.) No. 2003-30. It also argued that the petition became moot and academic because the Sangguniang Barangay of Caticlan and the Sangguniang Bayan of Malay gave their favorable endorsements to the proposed reclamation project.

Ruling in favor of the Boracay Foundation, the Court held that: (1) the resolutions of the two LGUs are not enough to render the petition moot since there are explicit conditions imposed that must be complied with by the province; and (2) the petition cannot be dismissed for failure to exhaust administrative remedies.

The Court said that the rule provided in Section 6, Article II of DENR DAO 2003-30 does not apply in this case because petitioner Boracay Foundation was never made a party to the proceedings before the DENR-EMB, RVI. Accordingly, it required the following:

1. that respondents cooperate with the DENR in its review of the reclamation project proposal, secure approvals from local government units, and hold proper consultations with other stakeholders;
2. that respondents immediately cease from continuing the implementation of the project covered by ECC-R6-1003-096-7100 until further orders from the Court;
3. that respondent Philippine Reclamation Authority (PRA) closely monitor the submission by respondent Province of Aklan of the requirements to be issued by respondent DENR-Environmental Management Bureau (DENR-EMB) Region VI office in connection to the environmental concerns raised by petitioner Boracay Foundation;
4. that petitioner Boracay Foundation and all respondents submit their respective reports to the Court regarding their compliance with the requirements set forth in the decision not later than three



months from the date of promulgation of the Decision.

(2) Maricris Dolot v. Ramon Paje, in his capacity as the Secretary of the Department of Environment and Natural Resources, Reynulfo A. Juan, Regional Director, Mines And Geosciences Bureau, Hon. Raul R. Lee, Governor, Province of Sorsogon, Antonio C. Ocampo, Jr., Victoria A. Ajero, Alfredo M. Aguilar, And Juan M. Aguilar, Antones Enterprises, Global Summit Mines Dev't Corp., and TR ORE; G.R. No. 199199, August 27, 2013; Justice Bienvenido Reyes (ponente)¹²

On September 15, 2011, petitioner Maricris D. Dolot, together with the parish priest of the Holy Infant Jesus Parish and the officers of the *Alyansa Laban sa Mina sa Matnog* (petitioners), filed a petition for continuing mandamus, damages and attorney's fees with the Regional Trial Court (RTC) of Sorsogon, docketed as Civil Case No. 2011-8338.

The petitioners raised the following pertinent allegations:

(1) sometime in 2009, they protested the iron ore mining operations being conducted by Antones Enterprises, Global Summit Mines Development Corporation, and TR Ore in Barangays Balocawe and Bon-ot Daco, located in the Municipality of Matnog, to no avail;

(2) Matnog, a municipality located in the southern tip of Luzon, needs protection, preservation and maintenance of its geological foundation;

(3) Matnog is susceptible to flooding and landslides, and confronted with the environmental dangers of flood hazard, liquefaction, ground settlement, ground subsidence, and landslide hazard;

(4) Mining operators did not have the required permit to operate;

(5) Sorsogon Governor Raul Lee and his predecessor Sally Lee issued to the operators a small-scale mining permit, which they did not have authority to issue;

(6) the representatives of the Presidential Management Staff and the DENR, despite knowledge, did not do anything to protect the interest of the people of Matnog; and

(7) the respondents violated Republic Act (R.A.) No. 7076 or the People's Small-Scale Mining Act of 1991, R.A. No. 7942 or the Philippine Mining Act of 1995, and R.A. No. 7160 or the Local Government Code.

Petitioners prayed for: (1) the issuance of a writ commanding the respondents to immediately stop the mining operations in Matnog; (2) the issuance of a TEPO; (3) the creation of an inter-agency group to undertake the rehabilitation of the mining site; (4) award of damages; and (5) return of the iron ore, among others.

The RTC of Sorsogon-Branch 53 dismissed the case.

Petitioner Dolot appealed the decision to the Supreme Court on pure questions of law. The main issue is whether the RTC of Sorsogon-Branch 53 has jurisdiction to resolve Civil Case No. 2011-8338. The other issue is whether the petition is dismissible on the grounds that: (1) there is no final court decree, order, or decision that the public officials allegedly failed to act on; (2) the case was prematurely filed for failure to exhaust administrative remedies; and (3) the petitioners failed to attach judicial affidavits and furnish a copy of the complaint to the government or appropriate agency.

Granting the petition, the Supreme Court nullified and set aside the RTC of Sorsogon-Branch 53's September 16, 2011 Order and October 18, 2011 Resolution. It directed the Executive Judge of the trial court to transfer with dispatch the case to the RTC of Irosin-Branch 55 for further proceedings. Petitioner Dolot was also ordered to furnish the respondents a copy of the petition and its annexes within 10 days from receipt of the Court's Decision and to submit its Compliance with the RTC of Irosin.

The High Court did not sustain the argument that the petitioners should have first filed a case with the Panel of Arbitrators (PA), which has jurisdiction over mining disputes under R.A. No. 7942. It noted respondents' claim that while the PA has jurisdiction over mining disputes, Dolot's petition did not involve a mining dispute.

Here, what was being protested were: (1) the alleged negative environmental impact of the small-scale mining operations being conducted in Matnog; (2) the authority of the Governor of Sorsogon to issue mining permits in favor of the companies conducting the operations; and (3) the perceived indifference of the DENR and local government officials over the issue. The High Court stated that the resolution of these matters did not entail the technical knowledge and expertise of the members of the PA but



required an exercise of judicial function. Hence, the resort to the PA would be completely useless and unnecessary.

The High Court reiterated its decision in *Olympic Mines and Development Corp. v. Platinum Group Metals Corporation*, thus:

“Arbitration before the Panel of Arbitrators is proper only when there is a disagreement between the parties as to some provisions of the contract between them, which needs the interpretation and the application of that particular knowledge and expertise possessed by members of that Panel. It is not proper when one of the parties repudiates the existence or validity of such contract or agreement on the ground of fraud or oppression as in this case. The validity of the contract cannot be subject of arbitration proceedings. Allegations of fraud and duress in the execution of a contract are matters within the jurisdiction of the ordinary courts of law. These questions are legal in nature and require the application and interpretation of laws and jurisprudence which is necessarily a judicial function.”

The Supreme Court also found erroneous the RTC’s ruling that the petition is infirm for failure to attach judicial affidavits. According to the Court, Rule 8 requires that the petition should be verified, must contain supporting evidence, and must be accompanied by a sworn certification of non-forum shopping. There is nothing in Rule 8 that compels the inclusion of judicial affidavits, albeit not prohibited. Only when the petitioner’s evidence would consist of testimony of witnesses must judicial affidavits (in the question and answer form) be attached to the petition or complaint.

Lastly, the Supreme Court found that the petitioner’s failure to furnish a copy of the petition to the respondents was not fatal enough to have the case dismissed. It ruled that the RTC could have just required the petitioners to furnish a copy of the petition to the respondents. It reiterated that “courts are not enslaved by technicalities, and they have the prerogative to relax compliance with procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to speedily put an end to litigation and the parties’ right to an opportunity to be heard.”

(3) *SR Metals, Inc., San R Mining and Construction Corp. and Galeo Equipment and Mining Company, Inc. v. the Honorable Angelo Reyes in his capacity as Secretary of the DENR; G.R. No. 179669; June 4, 2014; Justice Mariano Del Castillo (ponente)*¹³

SR Metals, Inc., SAN R Mining and Construction Corp., and Galeo Equipment and Mining Co., Inc. filed a Petition for Review on *Certiorari* assailing the CA’s July 4, 2007 Decision and September 14, 2007 Resolution.

The mining companies were each awarded a two-year small-scale mining permit (SSMP) by the Provincial Mining Regulatory Board of Agusan del Norte. They were allowed to extract nickel and cobalt in a 20-hectare mining site in Sitio Bugnang, Brgy. La Fraternidad, Tubay, Agusan del Norte. The companies received a Notice of Violation (NOV) from the DENR-EMB, informing them that they had exceeded the allowed annual volume of 150,000 MTs combined production as their stockpile inventory of nickeliferous ore had already total 177,297 dry metric tons (DMT).

On November 26, 2004, following the EMB’s NOV, then DENR Secretary Angelo T. Reyes issued a Cease and Desist Order (CDO) against the mining corporations. This suspended their operations for the following reasons:

1. the excess in annual production of SR Metals, Inc., maximum capitalization, and labor cost to equipment utilization of 1:1 is, in itself, a violation of existing laws;
2. the ECCs issued in favor of San R Construction Corporation and Galeo Equipment Corporation have no legal basis and, therefore, are considered void from the beginning; and similarly, the SSMPs that were issued by reason of such ECCs are likewise void.

In a November 30, 2006 opinion, then Justice Secretary Raul M. Gonzalez said that Section 1 of P.D. No. 1899 is deemed to have been impliedly repealed by the Small Scale Mining Act as nothing from the provisions of the latter law pertains to an annual production quota for small-scale mining. He categorically concluded that the term ‘ore’ should be confined only to nickel and cobalt, and excludes soil and other materials that are of no economic value to the mining corporations considering that their ECCs explicitly specified ‘50,000 MTs of Ni-Co ore.’

Thus, the mining corporations filed before the CA a Petition for *Certiorari* with prayer for Temporary Restraining



Order and/or Preliminary Injunction, imputing grave abuse of discretion on the part of DENR in issuing the CDO. The CA denied the petition, noting that the ECCs have been mooted by their expiration. In so ruling, it also recognized the DENR's power to issue the CDO, being the agency with the duty of managing and conserving the country's resources.

The CA upheld the validity of the provision of Presidential Decree (PD) No. 1899, which limits the annual production/extraction of mineral ore in small-scale mining to 50,000 metric tons (MT) despite its being violative of the equal protection clause. It also adopted the Mines and Geosciences Bureau's (MGB) definition of 'ore,' which led it to conclude that the mining corporation had exceeded the aforesaid 50,000 MT limit.

The issue here was whether the 50,000 MT limit as provided under existing laws was correctly interpreted. The High Court stated that there was an erroneous interpretation made by the petitioners.

The High Tribunal ruled that there are two different laws governing small-scale mining; namely, P.D. No. 1899 and RA 7076. Section 1 of P.D. No. 1899 provides that "small-scale mining refers to any single unit mining operation having an annual production of not more than 50,000 metric tons of ore and satisfying the following requisites: 1) The working is artisanal, whether open cast or shallow underground mining, without the use of sophisticated mining equipment; 2) Minimal investment on infrastructures and processing plant; 3) Heavy reliance on manual labor; and 4) Owned, managed or controlled by an individual or entity qualified under existing mining laws, rules and regulations."

The Supreme Court emphasized the following:

Under Section 3(b) of RA 7076, small-scale mining refers to 'mining activities which rely heavily on manual labor using simple implements and methods and do not use explosives or heavy mining equipment.' Significantly, this definition does not provide for annual extraction limit unlike in PD 1899.

DOJ Opinion No. 74, Series of 2006 concluded that as nothing from RA 7076 speaks of an annual production limit, Section 1 of PD 1899 should be considered impliedly repealed by RA 7076, the later law. However, while these two laws tackle the definition of what small-scale mining is,

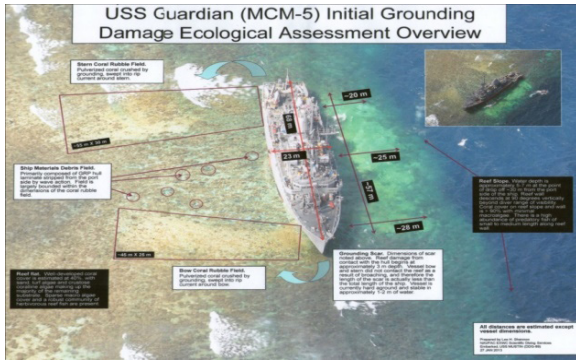
both have different objects upon which the laws shall be applied to. PD 1899 applies to individuals, partnerships and corporations while RA 7076 applies to cooperatives.

The Court further stated that the DENR, being the agency mandated to protect the environment and the country's natural resources, is authoritative on interpreting the 50,000- MT limit.

(4) Most Rev. Pedro D. Arigo, Vicar Apostolic of Puerto Princesa D.D.; Most Rev. Deogracias S. Iniguez, Jr., Bishop-Emeritus Of Caloocan, Frances Q. Quimpo, Clemente G. Bautista, Jr., Kalikasan-PNE, Maria Carolina P. Araullo, Renato M. Reyes, Jr., Bagong Alyansang Makabayan, Hon. Neri Javier Colmenares, Bayan Muna Partylist, Roland G. Simbulan, Ph.D., Junk VFA Movement, Teresita R. Perez, Ph.D., Hon. Raymond V. Palatino, Kabataan Party-List, Peter Gonzales, PAMALAKAYA, Giovanni A. Tapang, Ph. D., AGHAM, Elmer C. Labog, Kilusang Mayo Uno, Joan May E. Salvador, GABRIELA, Jose Enrique A. Africa, Theresa A. Concepcion, Mary Joan A. Guan, Nestor T. Baguion, Ph.D., A. Edsel F. Tupaz, v. Scott H. Swift, in his capacity as Commander of the US 7th Fleet, Mark A. Rice, in his capacity as Commanding Officer of the USS Guardian, President Benigno S. Aquino, in his capacity as Commander-In-Chief of the Armed of the Philippines, Hon. Albert F. Del Rosario, Secretary, Department of Foreign Affairs, Hon. Paquito Ochoa, Jr., Executive Secretary, Office of the President, Hon. Voltaire T. Gazmin, Secretary, Department of National Defense, Hon. Ramon Jesus P. Paje, DENR Secretary, Vice Admiral Jose Luis M. Alano, Philippine Navy Flag Officer In Command, Armed Forces Of The Philippines, Admiral Rodolfo D. Iso Rena, Commandant, Philippine Coast Guard, Commodore Enrico Efren Evangelista, Philippine Coast Guard Palawan, Major Gen. Virgilio O. Domingo, Commandant of Armed Forces of the Philippines Command and Lt. Gen. Terry G. Robling, US Marine Corps Forces, Pacific, and Balikatan 2013 Exercise Co-Director, G.R. No. 20510, September 16, 2014; Justice Martin S. Villarama, Jr. (ponente)¹⁴

This case involves a petition for a writ of kalikasan with prayer for the issuance of a TEPO involving violations of environmental laws and regulations in relation to the grounding of the US military ship USS Guardian over the Tubbataha Reefs Natural Park, as established by Republic Act (R.A.) No. 10067.





The USS Guardian is an Avenger-class mine countermeasures ship of the US Navy. While transiting the Sulu Sea on January 17, 2013, the USS Guardian ran aground on the northwest side of South Shoal of the Tubbataha Reefs, about 80 miles east-southeast of Palawan.

The petitioners claimed that the USS Guardian's grounding, salvaging, and post-salvaging operations had been causing environmental damage of such magnitude as to affect the provinces of Palawan, Antique, Aklan, Guimaras, Iloilo, Negros Occidental, Negros Oriental, Zamboanga del Norte, Basilan, Sulu, and Tawi-Tawi. They alleged that such operations have violated their constitutional rights to a balanced and healthful ecology. They also seek a directive from this Court for the institution of civil, administrative, and criminal suits for acts committed in violation of environmental laws and regulations in connection with the grounding incident.

The petitioners cited violations committed by the US respondents under R.A. No. 10067; namely, unauthorized entry (Section 19); non-payment of conservation fees (Section 21); obstruction of law enforcement officer (Section 30); damages to the reef (Section 20); and destroying and disturbing resources (Section 26[g]). Similarly, they assailed certain provisions of the Visiting Forces Agreement (VFA), asking that it be nullified for being unconstitutional.

At the outset, the High Tribunal stated that there was no dispute on the legal standing of the petitioners in this case. It explained that the "liberalization of standing first enunciated in *Oposa*, insofar as it refers to minors and generations yet unborn, is now enshrined in the Rules which allows the filing of a citizen suit in environmental cases, and that the provision on citizen suits in the Rules 'collapses the traditional rule on personal and direct interest, on the principle that humans are stewards of nature.'"

Other key issues in this case were: (1) whether the US government has given its consent to be sued through the VFA; (2) whether the US government may still be held liable for damages caused to the Tubbataha Reefs; and (3) whether the petitioners could claim for damages caused by violation of environmental laws.

As to the first issue, the High Court said that the US government has not given its consent to be sued; therefore, the general rule on a state's immunity from suit applied. However, on the second issue, the High Court stated that the US government may still be held liable for damages caused to the Tubbataha Reefs. On the third issue, it pronounced that the claim for damages must be filed separately.

Ultimately denying the petition, the Supreme Court ruled that it has become moot because it was filed after the USS Guardian's salvage operations, which ran aground over the Tubbataha Reefs, had already been accomplished.

The High Court deferred to the executive branch on the matter of compensation and rehabilitation measures through diplomatic channels as the resolution of these issues impinges on relations with another State in the context of common security interests under the VFA.

The High Tribunal also ruled that the writ of *kalikasan* is an improper remedy to assail the constitutionality of a treaty, such as the VFA.

(5) Consolidated cases of *Paje, et al. vs Casiño*, (GR No. 207257, GR No. 207276, GR No. 207282, and GR No. 207366, February 3, 2015)

***Hon. Ramon Jesus P. Paje, in his Capacity as DENR Secretary v. Hon. Teodoro A. Casiño, Hon. Raymond V. Palatino, Hon. Rafael V. Mariano, Hon. Emerenciana A. De Jesus, Clemente G. Bautista, Jr., Hon. Rolan C. Paulino, Hon. Eduardo Piano, Hon. James De Los Reyes, Hon. Aquilino Y. Cortez, Jr., Hon. Sarah Lugerna Lipumano-Garcia, Noraida Velarmino, Bianca Christine Gamboa Espinos, Charo Simons, Gregorio Llorca Magdaraog, Rubelh Peralta, Alex Corpus Hermoso, Rodolfo Sambajon, Rev. Fr. Gerardo Gregorio P. Jorge, Carlito A. Baloy, Ofelia D. Pablo, Mario Esquillo, Elle Latinazo, Evangeline Q. Rodriguez, John Carlo Delos Reyes*, G.R. No. 207257.**

Redondo Peninsula Energy, Inc., v. Hon. Teodoro A. Casiño, Hon. Raymond V. Palatino, Hon. Rafael V. Mariano, Hon. Emerenciana A. De Jesus, Clemente G. Bautista, Jr., Hon. Rolan C. Paulino, Hon. Eduardo Piano, Hon. James De Los Reyes, Hon. Aquilino Y. Cortez, Jr., Hon. Sarah Lugerna Lipumano-Garcia, Noraida Velarmino, Bianca Christine Gamboa Espinos, Charo



Simons, Gregorio Llorca Magdaraog, Rubelh Peralta, Alex Corpus Hermoso, Rodolfo Sambajon, Rev. Fr. Gerardo Gregorio P. Jorge, Carlito A. Baloy, Ofelia D. Pablo, Mario Esquillo, Elle Latinazo, Evangeline Q. Rodriguez, John Carlo Delos Reyes, Ramon Jesus P. Paje, in his capacity as DENR Secretary and Subic Bay Metropolitan Authority, G.R. No. 207276;

Hon. Teodoro A. Casiño, Hon. Raymond V. Palatino, Hon. Emerenciana A. De Jesus, Clemente G. Bautista, Jr., Hon. Rafael V. Mariano, Hon. Rolan C. Paulino, Hon. Eduardo Piano, Hon. James De Los Reyes, Hon. Aquilino Y. Cortez, Jr., Hon. Sarah Lugerna Lipumano-Garcia, Noraida Velarmino, Bianca Christine Gamboa Espinos, Charo Simons, Gregorio Llorca Magdaraog, Rubelh Peralta, Alex Corpus Hermosa, Rodolfo Sambajon, et al. v. Ramon Jesus P. Paje In His Capacity as DENR Secretary, Subic Bay Metropolitan Authority, and Redondo Peninsula Energy, Inc., G.R. No. 207282;

Subic Bay Metropolitan Authority v. Hon. Teodoro A. Casiño, Hon. Raymond V. Palatino, Hon. Rafael V. Mariano, Hon. Emerenciana A. De Jesus, Hon. Rolan C. Paulino, Hon. Eduardo Piano, Hon. James De Los Reyes, Hon. Aquilino Y. Cortez, Jr., Hon. Sarah Lugerna Lipumanogarcia, Noraida Velarmino, Bianca Christine Gamboa, Gregorio Llorca Magdaraog, Rubelhperalta, Alex Corpus Hermoso, Rodolfo Sambajon, Rev. Fr. Gerardo Gregorio P. Jorge, Carlito A. Baloy, Ofelia D. Pablo, Mario Esquillo, Elle-Latinazo, Evangeline Q. Rodriguez, John Carlo Delos Reyes, Hon. Ramon Jesus P. Paje, in his capacity as DENG Secretary and Redondo Peninsula Energy, Inc., G.R. No. 207366;

On September 11, 2012, the Casiño group filed a petition for writ of kalikasan against the construction of a coal-fired thermal powerplant in Subic, Zambales.

The group alleged, among others, that: (1) the power plant project they complain of would cause grave environmental damage; (2) it would adversely affect the health of the residents of the municipalities of Subic, Zambales, Morong, Hermosa, and the City of Olongapo; (3) the ECC was issued and the Lease Development Agreement (LDA) was entered into without the prior approval of the concerned sanggunians as required under Sections 26 and 27 of the Local Government Code; (4) the LDA was entered into without securing a prior certification from the National Commission on Indigenous Peoples (NCIP) as required under Section 59 of R.A. No. 8371 or the Indigenous Peoples' Rights Act of 1997 (IPRA); (5) Section 8.3 of DENR A.O. No. 2003-30, which allows amendments of ECCs, is *ultra vires* because the DENR has no authority to decide on requests for amendments of previously issued ECCs in the absence of a new Environmental Impact Statement (EIS); and (6) due to the nullity of Section 8.3 of A.O. No. 2003-30, all amendments to RP Energy's ECC are void.

For the Court's resolution were the following issues:

1. Whether the DENR Environmental Compliance Certificate in favor of RP Energy for a 2x150 MW Coal-Fired Thermal Power Plant Project and its amendment to 1x300 MW Power Plant, and the Lease and Development Agreement between SBMA and RP Energy complied with the Certification Precondition as required under Section 59 of Republic Act No. 8371 or the Indigenous People's Rights Act of 1997;
2. Whether RP Energy can proceed with the construction and operation of the 1x300 MW Power Plant without prior consultation with and approval of the concerned local government units pursuant to Sections 26 and 27 of Republic Act No. 7160 or the Local Government Code;
3. Whether Section 8.3 of DENR Administrative Order No. 2003-30 (DAO No. 2003-30) providing for the amendment of an ECC is null and void for being *ultra vires*; and
4. Whether the amendment of RP Energy's ECC under Section 8.3 of DAO No. 2003-30 is null and void.¹⁵

In its January 30, 2013 Decision, the CA denied the petition and the application for an environment protection order, explaining that the Casiño Group failed to prove that its constitutional right to a balanced and healthful ecology was violated or threatened. It likewise found no reason to nullify Section 8.3 of A.O. No. 2003-30.

The CA further said that the provision was not *ultra vires*, as it was implied that in having the express power to issue an ECC, the Environment Secretary, as well as the Director and Regional Directors of the EMB, also has the incidental power to amend the ECC. The CA also ruled that the validity of Section 8.3 could not be collaterally attacked in a petition for a writ of kalikasan.

The Supreme Court upheld the CA's finding that the Casiño group had failed to substantiate its claims that the operation of the assailed coal-fired power plant in the Subic Bay Freeport Zone would cause environmental damage of the magnitude contemplated under the writ of kalikasan. It also held that the signature requirement in the ECC had been substantially complied with *pro hac vice*, and the amendments to the ECC were valid.



The High Tribunal also held that since the ECC was not the license or permit contemplated under Section 59 of IPRA and its implementing rules, there was no need to secure the Certification of Non-Overlap (CNO) beforehand. For reason of equity, the High Court refrained from invalidating the LDA between RP Energy and the Subic Bay Metropolitan Authority (SBMA) as it was only in this case that it first ruled that a CNO should have been secured prior to the consummation of the said LDA under Section 59 of IPRA. It also held that under R.A. No. 7227, or the Bases Conversion and Development Act of 1992, there was no need to first comply with the requirement to seek the approval of the concerned *sanggunian* under Section 27, in relation to Section 26, of the Local Government Code. Finally, the Court ruled that it could not resolve the issue as to the third amendment to the ECC because it was not among the issues set during preliminary conference.

(6) Resident Marine Mammals of the Protected Seascape Tanon Strait, e.g., Toothed Whales, Dolphins, Porpoises, And Other Cetacean Species, joined in and represented by Gloria Estenzo Ramos And Rose-Liza Eisma-Osorio v. DOE Secretary Angelo Reyes, DENR Secretary Jose L. Atienza, et al. G.R. No. 181527; April 21, 2015;

Central Visayas Fisherfolk Development Center (FIDEC), Cerilo D. Engarcial, Ramon Yanong, Francisco Labid, In their personal capacity and as representatives of the subsistence fisherfolks of the Municipalities of Aloguinsan and Pinamungajan, Cebu, and their families, and the present and future generations of Filipinos whose rights are similarly affected v. DOE Secretary Angelo Reyes, DENR Secretary Jose L. Atienza, et al.; G.R. No. 181527; April 21, 2015; Justice Presbitero Velasco (ponente)¹⁶

Here, fisherfolk and stewards, who represent resident marine mammals in Tañon Strait, and subsistence fisherfolks of two municipalities in Cebu filed a petition for certiorari, mandamus, and injunction. They sought to enjoin the Department of Energy (DOE), the DENR, and other government agencies from implementing a service contract to explore, develop, and exploit the country's petroleum resources in and around the Tañon Strait. The DOE had allowed, among others, the conduct of a seismic survey and oil drilling in 2005.

According to the Court, the need to give the resident marine mammals legal standing has been eliminated by the RPEC, which allows any Filipino citizen, as a steward of nature, to bring a suit to enforce our environmental laws. The Court added that the stewards are joined as real parties in the petition and not just in representation of the

named cetacean species. It further added that the stewards, having shown in their petition that there may be possible violations of laws concerning the habitat of the resident marine mammals, were declared to possess the legal standing to file the petition.

The High Court noted that Service Contract 46 failed to comply with the safeguards required under Article XII, Section 2(4) of the 1987 Constitution, which required that the service contract be: (1) authorized by a general law; (2) signed by the President; and (3) reported to Congress.

The Supreme Court also ruled that the respondents committed a violation of the National Integrated Protected Areas System Act of 1992 because Tañon Strait is, by virtue of Proclamation No. 2146, an environmentally critical area. Likewise, it stated that an ECCs must be secured after undergoing an environmental impact assessment (EIA) to determine the effects of such activity on its ecological system.

(7) Narra Nickel Mining and Development Corporation, Tesoro Mining and Development, Inc. and McArthur Mining, Inc. v. Redmont Consolidated Mines Corp; G.R. No. 195580; April 21, 2014; Justice Presbitero Velasco (ponente)¹⁷

Narra Nickel and Mining Development Corp. (Narra), Tesoro Mining and Development, Inc. (Tesoro), and McArthur Mining Inc. (McArthur) filed a petition for review on certiorari, seeking to reverse the CA's October 1, 2010 Decision and the February 15, 2011 Resolution.

In the Supreme Court decision, the following facts were presented:

In December 2006, respondent Redmont Consolidated Mines Corp., made inquiries with the DENR on possible areas for exploration and mineral development. Redmont learned that the areas where it wanted to undertake exploration and mining activities were already covered by Mineral Production Sharing Agreement (MPSA) applications of petitioners Narra, Tesoro and McArthur.

Petitioner McArthur, through its predecessor-in-interest Sara Marie Mining, Inc. (SMMI), filed an application for an MPSA and Exploration Permit (EP) with the Mines and Geo-Sciences Bureau (MGB), Region IV-B, Office of the Department of Environment and Natural Resources (DENR). Subsequently,



SMMI was issued MPSA-AMA-IVB-153 covering an area of over 1,782 hectares in Barangay Sumbiling, Municipality of Bataraza, Province of Palawan and EPA-IVB-44 which includes an area of 3,720 hectares in Barangay Malatagao, Bataraza, Palawan. The MPSA and EP were then transferred to Madridejos Mining Corporation (MMC) and, on November 6, 2006, assigned to petitioner McArthur.

Petitioner Narra acquired its MPSA from Alpha Resources and Development Corporation and Patricia Louise Mining & Development Corporation (PLMDC) which previously filed an application for an MPSA with the MGB, Region IV-B, DENR on January 6, 1992. Through the said application, the DENR issued MPSA-IV-1-12 covering an area of 3,277 hectares in barangays Calategas and San Isidro, Municipality of Narra, Palawan. Subsequently, PLMDC conveyed, transferred and/or assigned its rights and interests over the MPSA application in favor of Narra.

Another MPSA application of SMMI was filed with the DENR Region IV-B, labeled as MPSA-AMA-IVB-154 (formerly EPA-IVB-47) over 3,402 hectares in Barangays Malinao and Princesa Urduja, Municipality of Narra, Province of Palawan. SMMI subsequently conveyed, transferred and assigned its rights and interest over the said MPSA application to Tesoro.

On January 2, 2007, Redmont filed before the Panel of Arbitrators (POA) of the DENR three (3) separate petitions for the denial of petitioners' applications for MPSA designated as AMA-IVB-153, AMA-IVB-154 and MPSA IV-1-12.¹⁸

Narra, Tesoro, and McArthur averred that they were qualified persons under Section 3(aq) of Republic Act No. (RA) 7942 or the Philippine Mining Act of 1995.

Redmont alleged that at least 60% of the capital stock of three other firms, McArthur, Tesoro and Narra are owned and controlled by MBMI Resources, Inc. (MBMI), a 100% Canadian corporation. Redmont argued that since MBMI is a considerable stockholder of petitioners, it was the driving force behind petitioners' filing of the Mineral Production Sharing Agreements (MPSAs) over the areas covered by

applications since it knows that it can only participate in mining activities through corporations which are deemed Filipino citizens.

Redmont further argued that since the petitioners' capital stocks were mostly owned by MBMI, they were likewise disqualified from engaging in mining activities through MPSAs, which are reserved only for Filipino citizens.

The High Court held that petitioners, being foreign corporations, were not entitled to MPSAs. It upheld with approval the CA's finding that there was doubt on petitioners' nationality since a 100% Canadian-owned firm, MBMI, effectively owns 60% of the common stocks of the petitioners by owning equity interest of petitioners' other majority corporate shareholders.

The Supreme Court affirmed its ruling on January 28, 2015.

(8) Tower Condominium Corporation, on behalf of the Residents of West Tower Condominium and in representation of Barangay Bangkal, and others, including minors and generations yet unborn v. First Philippine Industrial Corporation (FPIC), First Gen Corporation West (FGC) and their respective board of directors and officers; G.R. No. 194239; June 16, 2015; Justice Presbitero Velasco, Jr. (ponente)¹⁹

On November 15, 2010, West Tower Condominium Corporation (West Tower Corp.) filed a petition for a writ of kalikasan, on behalf of the residents of West Tower and in representation of the surrounding communities in Barangay Bangkal, Makati City. This was after a leak in the oil pipeline owned by First Philippine Industrial Corporation (FPIC). West Tower Corp. claimed that civil society and several people's organizations, nongovernment organizations, and public interest groups have expressed their intent to join the suit because of the magnitude of the environmental issues involved.

West Tower Corp. alleged that the continued use of FPIC's 117-kilometer leaking oil pipeline that transports diesel and gasoline, among others, from Batangas to the Manila Pandacan oil depot has posed not only a hazard or threat to the lives, health, and property of those who live in areas where the pipeline is laid—Osmeña highway, Makati—but would "also affect the rights of the generations yet unborn to live in a balanced and healthy ecology."

Petitioners prayed that FPIC and First Gen Corporation (FGC), along with both of their boards of directors and officers, be directed to:



(1) permanently cease and desist from committing acts of negligence in the performance of their functions as a common carrier; (2) continue to check the structural integrity of the whole 117-kilometer pipeline and to replace the same; (3) make periodic reports on their findings with regard to the 117-kilometer pipeline and their replacement of the same; (4) rehabilitate and restore the environment, especially Barangay Bangkal and West Tower, at least to what it was before the signs of the leak became manifest; and (5) to open a special trust fund to answer for similar and future contingencies in the future. Furthermore, petitioners pray that respondents be prohibited from opening the pipeline and allowing the use thereof until the same has been thoroughly checked and replaced, and be temporarily restrained from operating the pipeline until the final resolution of the case.²⁰

On November 19, 2010, the Court issued the writ of kalikasan with a TEPO, requiring respondents to:

(a) *cease and desist* from operating the white oil pipeline (WOPL) system until further orders; (b) check the structural integrity of the whole span of the 117-kilometer WOPL while implementing measures to prevent any untoward incident that may result from any leak of the pipeline; and (c) make a report thereon within 60 days from receipt thereof.²¹

On June 16, 2015, the Supreme Court directed the following:

(a) FPIC to continue gas testing along the right of way; (b) DOE to determine if the activities and the results of the test run would warrant the re-opening of the WOPL. In the event that the WOPL is safe for continued commercial operations, DOE shall issue an order allowing FPIC to resume the operations of the pipeline; (c) FPIC to “continue the remediation, rehabilitation and restoration of the affected Barangay Bangkal environment until full restoration of the affected area to its condition prior to the leakage is achieved”; and (d) if DOE “is satisfied that the WOPL is safe for continued commercial operations, it shall

issue an order allowing FPIC to resume the operations of the pipeline.”²²

FPIC said that it would abide by the order.

(9) *International Service v. Greenpeace Southeast Asia (Philippines)*; G.R. No. 209271;

International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Philippines), Magsasaka At Siyentipiko Sa Pagpapaunlad Ng Agrikultura (MASIPAG), Rep. Teodoro Casiño, Dr. Ben Malayang III, Dr. Angelina Galang, Leonardo Avila III, Catherine Untalan, Atty. Maria Paz Luna, Juanito Modina, Dagohoy Magaway, Dr. Romeo Quijano, Dr. Wenceslao Kiat, Jr., Atty. H. Harry Roque, Jr., Former Sen. Orlando Mercado, Noel Cabangon, Mayor Edward S. Hagedorn and Edwin Marthine Lopez. Crop Life Philippines, Inc., Petitioner-In-Intervention; G.R. No. 209271

Environmental Management Bureau of the Department of Environment and Natural Resources, Bureau of Plant Industry and Fertilizer and Pesticide Authority of the Department Of Agriculture vs. Court Of Appeals, Greenpeace Southeast Asia (Philippines), Magsasakaat Siyentipiko Sa Pagpapaunlad Ng Agrikultura (MASIPAG), Rep. Teodoro Casiño, Dr. Ben Malayang III, Dr. Angelina Galang, Leonardo Avila III, Catherine Untalan, Atty. Maria Paz Luna, Juanito Modina, Dagohoy Magaway, Dr. Romeo Quijano, Dr. Wenceslao Kiat, Jr., Atty. H. Harry Roque, Jr., Former Sen. Orlando Mercado, Noel Cabangon, Mayor Edward S. Hagedorn and Edwin Marthine Lopez. Crop Life Philippines, Inc. Petitioner-In-Intervention; G.R. No. 209276;

University of the Philippines Los Banos Foundation, Inc. v. Greenpeace Southeast Asia (Philippines), Magsasakaat Siyentipiko Sa Pagpapaunlad Ng Agrikultura (MASIPAG), Rep. Teodoro Casiño, Dr. Ben Malayang III, Dr. Angelina Galang, Leonardo Avila III, Catherine Untalan, Atty. Maria Paz Luna, Juanito Modina, Dagohoy Magaway, Dr. Romeo Quijano, Dr. Wenceslao Kiat, Jr., Atty. Harry R. Roque, Jr., Former Sen. Orlando Mercado, Noel Cabangon, Mayor Edward S. Hagedorn and Edwin Marthine Lopez; G.R. No. 209301;

University of the Philippines v. Greenpeace Southeast Asia (Philippines), Magsasakaat Siyentipiko Sa Pagpapaunlad Ng Agrikultura (MASIPAG), Rep. Teodoro Casiño, Dr. Ben Malayang III, Dr. Angelina Galang, Leonardo Avila III, Catherine Untalan, Atty. Maria Paz Luna, Juanito Modina, Dagohoy Magaway, Dr. Romeo Quijano, Dr. Wenceslao Kiat, Atty. Harry R. Roque, Jr., Former Sen. Orlando Mercado, Noel Cabangon, Mayor Edward S. Hagedorn and Edwin Marthine Lopez; G.R. No. 209430; December 8, 2015; Justice Martin Villarama (ponente)²³



The consolidated petitions lodged before the Supreme Court sought the reversal of the CA's May 17, 2013 Decision and September 20, 2013 Resolution in CA-G.R. SP No. 00013 which permanently enjoined the conduct of field trials for genetically modified eggplant.



On April 26, 2012, Greenpeace, et al. filed a petition for writ of kalikasan and writ of continuing mandamus with prayer for the issuance of a TEPO. They alleged that the *Bt talong* field trials violated their constitutional right to health and a balanced ecology on the following grounds:

(1) the required environmental compliance certificate under Presidential Decree (PD) No. 1151 was not secured prior to the project implementation; (2) as a regulated article under DAO 08-2002, *Bt talong* is presumed harmful to human health and the environment, and there is no independent, peer-reviewed study on the safety of *Bt talong* for human consumption and the environment; (3) a study conducted by Professor Gilles-Eric Seralini showed adverse effects on rats who were fed *Bt* corn, while local scientists also attested to the harmful effects of GMOs to human and animal health; (4) *Bt* crops can be directly toxic to non-target species as highlighted by a research conducted in the US which demonstrated that pollen from *Bt* maize was toxic to the Monarch butterfly; (5) data from the use of *Bt* CryLAB maize indicate that beneficial insects have increased mortality when fed on larvae of a maize pest, the corn borer, which had been fed on *Bt*, and hence non-target beneficial species that may feed on eggplant could be similarly affected; (6) data from China show that the use of *Bt* crops (*Bt* cotton) can

exacerbate populations of other secondary pests; (7) the built-in pesticides of *Bt* crops will lead to *Bt* resistant pests, thus increasing the use of pesticides contrary to the claims by GMO manufacturers; and (8) the 200 meters perimeter pollen trap area in the field testing area set by the Bureau of Plant Industry (BPI) is not sufficient to stop contamination of nearby non-*Bt* eggplants because pollinators such as honeybees can fly as far as four kilometers and an eggplant is 48% insect-pollinated. The full acceptance by the project proponents of the findings in the MAHYCO Dossier was strongly assailed on the ground that these do not precisely and adequately assess the numerous hazards posed by *Bt talong* and its field trial.²⁴

Greenpeace, et al. further claimed that the *Bt talong* field test project did not comply with the required public consultation under Sections 26 and 27 of the Local Government Code:

A random survey by Greenpeace on July 21, 2011 revealed that ten households living in the area immediately around the *Bt talong* experimental farm in Bay, Laguna expressed lack of knowledge about the field testing in their locality. The *Sangguniang Barangay* of Pangasugan in Baybay, Leyte complained about the lack of information on the nature and uncertainties of the *Bt talong* field testing in their barangay. The Davao City Government likewise opposed the project due to lack of transparency and public consultation. It ordered the uprooting of *Bt* eggplants at the trial site and disposed them strictly in accordance with protocols relayed by the BPI through Ms. Merle Palacpac. Such action highlighted the city government's policy on "sustainable and safe practices." On the other hand, the *Sangguniang Bayan* of Sta. Barbara, Iloilo passed a resolution suspending the field testing due to the following: lack of public consultation; absence of adequate study to determine the effect of *Bt talong* field testing on friendly insects; absence of risk assessment on the potential impacts of genetically modified (GM) crops on human health and the environment;



and the possibility of cross-pollination of *Bt* eggplants with native species or variety of eggplants, and serious threat to human health if these products were sold to the market.²⁵

Greenpeace, et al. argued that the precautionary principle must be applied since the *Bt talong* field testing was an environmental case where scientific evidence as to the health, environmental, and socio-economic safety is insufficient or uncertain. Moreover, they claimed its preliminary scientific evaluation showed reasonable grounds for concern that there were potentially dangerous effects on human health and the environment.

They prayed, among others, that a TEPO be issued to enjoin respondents from conducting the field testing and, eventually, cancel all *Bt talong* experiments.

On May 2, 2012, the Court issued the writ of kalikasan against ISAAA, EMB/BPI/Fertilizer and Pesticide Authority (FPA) and UPLB, ordering them to make a verified return within a non-extendible period of 10 days, as provided in Rule 7, Section 8 of the RPEC.

In hearing the merits of the case, the CA adopted the “hot-tub” method, where the expert witnesses of both parties testified at the same time.

The Court noted that CA justified its ruling by expounding on the theory that introducing a genetically modified plant into the ecosystem is an “ecologically imbalancing act.” Thus:

“We suppose that it is of universal and general knowledge that an ecosystem is a universe of biotic (living) and non-biotic things interacting as a living community in a particular space and time. In the ecosystem are found specific and particular biotic and non-biotic entities which depend on each other for the biotic entities to survive and maintain life. A critical element for biotic entities to maintain life would be that their populations are in a proper and natural proportion to others so that, in the given limits of available non-biotic entities in the ecosystem, no one population overwhelms another. In the case of the Philippines, it is considered as one of the richest countries in terms of biodiversity. It has so many plants and

animals. It also has many kinds of other living things than many countries in the world. We do not fully know how all these living things or creatures interact among themselves. But, for sure, **there is a perfect and sound balance of our biodiversity as created or brought about by God out of His infinite and absolute wisdom.** In other words, every living creature has been in existence or has come into being for a purpose. So, we humans are not supposed to tamper with any one element in this swirl of interrelationships among living things in our ecosystem. Now, **introducing a genetically modified plant in our intricate world of plants by humans certainly appears to be an ecologically imbalancing act. The damage that it will cause may be irreparable and irreversible.**

At this point, it is significant to note that during the hearing conducted by this Court on November 20, 2012 wherein the testimonies of seven experts were given, Dr. Peter J. Davies (Ph.D in Plant [Physiology]), Dr. Tuskar Chakraborty (Ph.D in Biochemistry and Molecular Biology), Dr. Charito Medina (Ph.D in Environmental Biology), Dr. Reginaldo Eborá (Ph.D in Entomology), Dr. Flerida Cariño (Ph.D in Insecticide Toxicology), Dr. Ben Malayang (Ph.D in Wildland Resource Science) and Dr. Saturnina Halos (Ph.D in Genetics) were in unison in admitting that *bt talong* is an altered plant. xxx

Thus, it is evident and clear that *bt talong* is a technology involving the deliberate alteration of an otherwise natural state of affairs. It is designed and intended to alter natural feed-feeder relationships of the eggplant. It is a deliberate genetic reconstruction of the eggplant to alter its natural order which is meant to eliminate one feeder (the borer) in order to give undue advantage to another feeder (the humans). The genetic transformation is one designed to make *bt talong* toxic to its pests (the targeted organisms). In effect, *bt talong* kills its targeted organisms. Consequently, **the testing or introduction of *bt talong* into the Philippines, by its nature and intent, is a**



grave and present danger to (and an assault on) the Filipinos' constitutional right to a balanced ecology because, in any book and by any yardstick, it is an ecologically imbalancing event or phenomenon. It is a willful and deliberate tampering of a naturally ordained feed-feeder relationship in our environment. It destroys the balance of our biodiversity. Because it violates the conjunct right of our people to a balanced ecology, the whole constitutional right of our people (as legally and logically construed) is violated.

Of course, the *Bt talong's* threat to the human health of the Filipinos as of now remains uncertain. This is because while, on one hand, no Filipino has ever eaten it yet, and so, there is no factual evidence of it actually causing acute or chronic harm to any or a number of ostensibly identifiable perms, on the other hand, there is correspondingly no factual evidence either of it not causing harm to anyone. However, in a study published on September 20, 2012 in "*Food and Chemical Toxicology*", a team of scientists led by Professor Gilles-Eric Seralini from the University of Caen and backed by the France-based Committee of Independent Research and Information on Genetic Engineering came up with a finding that rats fed with Roundup-tolerant genetically modified corn for two years developed cancers, tumors and multiple organ damage. The seven expert witnesses who testified in this Court in the hearing conducted on November 20, 2012 were duly confronted with this finding and they were not able to convincingly rebut it. That is why we, in deciding this case, applied the precautionary principle in granting the petition filed in the case at bench.

Prescinding from the foregoing premises, therefore, because one conjunct right in the whole Constitutional guarantee is factually and is undoubtedly at risk, and the other still factually uncertain, the entire constitutional right of the Filipino people to a balanced and healthful ecology is at risk. Hence, the issuance of the writ of *kalikasan* and the continuing

writ of mandamus is justified and warranted." (*Additional emphasis supplied.*)

Applying the precautionary principle, the Court held that the three features of uncertainty, the possibility of irreversible harm, and the possibility of serious harm all coincide which justifies the application of that principle. It found that there existed a preponderance of evidence that the release of genetically modified organisms into the environment threatens to not just the field trial sites, but also the environment and, eventually, the health of our people once the eggplants are consumed as food.

The High Court decided to permanently enjoin the conduct of the assailed field testing for *Bt talong*. It also declared Department of Agriculture A.O. No. 08-02 void, temporarily enjoining any application for contained use, field testing, propagation and commercialization, and importation of genetically modified organisms until a new administrative order is promulgated in accordance with law.

However, on July 29, 2016, the Supreme Court set aside its decision and ruled to instead dismiss the Greenpeace petition for being moot, noting that the *Bt talong* field trials have been completed and terminated, and the biosafety permits have expired.

(10) Pilar Cañeda Braga, Peter Tiu Lavina, Antonio H. Vergara, Benjie T. Badal, Diosdado Angelo A. Mahipus, And Samal City Resort Owners Association, Inc. (Scroa) v. Hon. Joseph Emilio A. Abaya, in his capacity as Secretary of the Department Of Transportation and Communications (DOTC), Pre-Qualification, Bids And Awards Committee (PBAC) and Philippine Ports Authority (PPA); G.R. no. 223076; September 13, 2016; Justice Brion (ponente)²⁶

The petitioners in this case sought the issuance of a writ of continuing mandamus and/or writ of *kalikasan* with a prayer for the issuance of a TEPO to stop the Department of Transportation and Communication's (DOTC) project to modernize the Davao Sasa Wharf under a Public-Private Partnership (PPP) scheme. They alleged that the DOTC neither conducted prior consultation and public hearings nor secured the approval of the *sanggunian* concerned as required by law. Moreover, they pointed out that the Davao City *sanggunian* had passed a resolution objecting to the project, and the DOTC has not yet obtained an ECC as required under P.D. No. 1586.

The petitioners alleged that the respondents have begun the process of transgressing their right to health and a balanced ecology through the bidding process. Citing *The*



Competitiveness of Global Port-Cities: Synthesis Report, they claimed that port operations had negative impacts on the environment, land use, and traffic, among others, as these affect the surrounding localities. They claimed that the environmental impacts of port operations “are within the field of air emissions, water quality, soil, waste, biodiversity, noise and other impacts. These environmental impacts can have consequences for the health of the population of the port city, especially the poorer parts of port cities.”

The petitioners also cited *Managing Impacts of Development in Coastal Zone*, a joint publication of the DENR, the Bureau of Fisheries Aquatic Resources (BFAR), the Department of the Interior and Government (DILG), and the DENR Coastal Resource Management Project (CRMP). The study identified the effects of coastal construction and reclamation, including ports and offshore moorings. The petition alleges that:

According to *Managing Impacts*, “Coastal construction has been the most widespread of activities affecting coastal resources” since “Any construction that modifies the shoreline will invariably change currents, wave action, tidal fluctuations, and the transport of sediments along the coast” while “Coastal construction that restricts the circulation of coastal water bodies can also degrade water quality and coastal ecosystems.”

In their defense, respondents claimed that the petition was premature because the project was still in the bidding process, with no proponent to implement it.

The main issue here was whether the writs prayed for should be issued.

According to the Supreme Court, the petition was premature. Projects or undertakings that pose a potential significant impact to the environment are required to undergo impact assessment to secure an ECC. It noted that the ECC signifies that the proposed project will not cause significant *negative* impact on the environment.

The High Court ruled that the Sasa Wharf Modernization Project had the potential to significantly affect the quality of the environment, putting it within the purview of the EIS System. However, there was still no project proponent responsible for the EIS and the ECC until the bidding process has been concluded and the contract has been awarded.

The High Court also found the petition for continuing mandamus, which would compel the respondents to submit an EIS and secure an ECC, premature. In so ruling, it held that the writ cannot be resorted to when the respondent is not the person obliged to perform the duty under the law (as is the case under the EIS System) or when the period for the respondent to perform its legal duty has not yet expired (as is the case with the consultation requirements of the Local Government Code).

The High Court also ruled that it cannot issue a writ of *kalikasan*. It pointed out that the writ may be issued when there is a violation involving **environmental damage of such magnitude** as to prejudice the life, health, or property of inhabitants **in two or more cities or provinces** in order to arrant the issuance of the writ. Yet, as the Supreme Court explained:

“First, the petition failed to identify the particular threats from the Project itself. All it does is cite the negative impacts of operating a port inside a city based on the Synthesis Report. However, these impacts already exist because the Port of Davao **has been operating since 1900**. The Project is not for the creation of a new port but the modernization of an existing one. At best, the allegations in support of the application for the writ of *kalikasan* are hazy and speculative.

Second, the joint publication is titled *Managing Impacts of Development in the Coastal Zone* for a reason; it identifies the potential environmental impacts and proposes mitigation measures to protect the environment. The petition is misleading because it only identified the risks but neglected to mention the existence and availability of mitigating measures.

Moreover, this Court does not have the technical competence to assess the Project, identify the environmental threats, and weigh the sufficiency or insufficiency of any proposed mitigation measures. This specialized competence is lodged in the DENR, who acts through the EMB in the EIA process. As we have already established, the application of the EIS System is premature until a proponent is selected.



Further, we fail to see an environmental risk that threatens to prejudice the inhabitants of two or more cities or municipalities if we do not restrain the conduct of the *bidding* process. The bidding process is not equivalent to the implementation of the project. The bidding process itself cannot conceivably cause any environmental damage.

Finally, it is premature to conclude that the respondents violated the conditions of Resolution No. 118 issued by the Regional Development Council of Region XI. Notably, the Resolution requires compliance before the *implementation* of the project. Again, the project has not yet reached the implementation stage.”

(11) Wilfredo Mosqueda, Marcelo Villaganes, Julieta Lawagon, Crispin Alcomendras, Corazon Sabinada, Virginia Cata-Ag, Florencia Sabandon, and Ledevina Adlawan v. Pilipino Banana Growers & Exporters Association, Inc., Davao Fruits Corporation, and Lapanday Agricultural and Development Corporation; G.R. No. 189185, August 16, 2016;

City Government of Davao v. Court of Appeals, Pilipino Banana Growers & Exporters Association (PBGEA), Davao Fruits Corporation, and Lapanday Agricultural and Development Corporation; G.R. No. 189305, August 16, 2016; Justice Lucas Bersamin (ponente)²⁷

In this case, the Sangguniang Panlungsod of Davao City had enacted Ordinance No. 0309, series of 2007, to impose a ban against aerial spraying as an agricultural practice by all agricultural entities within Davao City. The ordinance identifies aerial spraying of pesticides as a nuisance because of the unstable wind direction during the aerial application.

The Pilipino Banana Growers and Exporters Association, Inc. (PBGEA), et al. challenged before the RTC the constitutionality of the ordinance, alleging that it: (1) it is an unreasonable exercise of police power; (2) violated the equal protection clause; (3) amounted to the confiscation of property without due process of law; and (4) lacked publication pursuant to Local Government Code.

The RTC held that the City of Davao had validly exercised police power under the general welfare clause; that the ordinance was consistent with the equal protection clause; and that aerial spraying was distinct from other methods of pesticides application because it exposed the residents to a higher degree of health risk caused by aerial drift.

On appeal, the CA declared the ordinance void for being unreasonable and oppressive, particularly in the technical requirements of switching from aerial spraying to truck-mounted boom spraying.

The key issues before the High Court were: (1) whether the ordinance violated the due process and the equal protection clauses; and (2) whether the prohibition against aerial spraying was a lawfully permissible method that the Davao City government may adopt to prevent the purported effects of aerial drift.



The Supreme Court ruled that the claim that petitioners failed to substantiate their claim that aerial spraying produces more aerial drift. It found the ban imposition too broad because the ordinance applies irrespective of the substance to be aerially applied and irrespective of the agricultural activity to be conducted. It further stated that ordinance suffers from being “underinclusive,” explaining that: (1) its classification does not include all individuals tainted with the same mischief that the law seeks to eliminate; (2) it discriminates against large farm holdings that are the only ideal venues for the investment of machineries and equipment capable of aerial spraying; (3) it denies the affected individuals the technology aimed at efficient and cost-effective operations and cultivation not only of banana but of other crops as well; and (4) it seriously hampers the operations of the banana plantations that depend on aerial technology to arrest the spread of the Black Sigatoka disease and other menaces that threaten their production and harvest.

(12) Victoria Segovia, Ruel Lago, Clariesse Jami Chan, representing the Carless People of the Philippines; Gabriel Anastacio, represented by his mother Grace Anastacio,



Dennis Orlandosangalang, represented by his mother May Alili Sangalang, Maria Paulina Castaneda, represented by her mother Triciaann Castaneda, representing the children of the Philippines and children of the future; and Renato Pineda, Jr., Aron Kerr Menguito, May Alili Sangalang, and Glynda Bathan Baterina, representing car owners who would rather not have cars if good public transportation were safe, convenient, accessible and reliable, v. The Climate Change Commission, represented by its Chairman, His Excellency Benigno S. Aquino Iii, and its Commissioners Mary Ann Lucille Sering, Heherson Alvarez and Nadarev Sano; Department of Transportation and Communications (DOTC) represented by its Secretary, Honorable Joseph Abaya; Department of Public Works and Highways (DPWH) and The Road Board, represented by its Secretary, Honorable Rogelio Singson; Department of Interior and Local Government (DILG), represented by its Secretary, Honorable Manuel Roxas; Department of Environment and Natural Resources (DENR), represented by its Secretary, Honorable Ramon Paje; Department of Budget and Management (DBM), represented by its Secretary, Honorable Florencio Abad; Metropolitan Manila Development Authority (MMDA), represented by its Chairman, Francis Tolentino; Department of Agriculture (DA), represented by its Secretary, Honorable Proceso Alcala; and John Does, representing as yet unnamed Local Government Units and their Respective Local Chief Executive, Juridical Entities, and Natural Persons who Fail or Refuse to Implement the Law or Cooperate In the Implementation of the Law; GR NO. 211010; March 7, 2017; Justice Caguioa (ponente)²⁸

In this case, the petitioners sought the issuance of writs of kalikasan and continuing mandamus to compel the implementation of environmental laws, specifically for the respondents to implement the: (1) Road Sharing Principle in all roads; (2) divide all roads for all-weather sidewalk and bicycling; and (3) submit a time-bound action plan for the purpose.

The key issues here are whether the petitioners have standing to sue, and whether there is basis to issue the writs.

In their decision, the High Court mentioned that the liberalized requirements on standing have allowed the filing of citizen's suit for the enforcement of rights and obligations under environmental laws. They stated that in a writ of kalikasan, it is sufficient that the person filing represents the inhabitants prejudiced by the environmental damage subject of the writ. However, a writ of continuing mandamus is only available to one who is personally aggrieved by the unlawful act or omission.

Moreover, the Court noted that a party petitioning the

issuance of a writ of kalikasan has to show that a law, rule, or regulation was violated or would be violated. But there is no showing of that public respondents are guilty of any unlawful act or omission that constitutes a violation of the petitioners' right to a balanced and healthful ecology.

Likewise, the Court ruled that the petitioners failed to prove direct or personal injury arising from acts of the respondents to be entitled to the writ of mandamus. While the respondents were able to show that they were actively implementing projects and programs that seek to improve air quality, the discretion exercised by government agencies could not be checked via this petition for continuing mandamus. Petitioners fell short of showing a threat or an actual violation of their constitutional right to a balanced and healthful ecology arising from an unlawful act or omission by, or any unlawful neglect on the part of, the respondents that would warrant the writs' issuance.

V. Findings

In looking into the 12 environmental cases that the Supreme Court has decided for a period of nine years, from 2010 to 2018, we noted both positive trends and challenges for environmental rights.

Gains

(1) Liberalized citizen's standing to sue

In the seven cases where the parties sought the issuance of the special writs of kalikasan or continuing mandamus, or both, the respondents questioned the petitioners' legal standing. The Supreme Court, however, consistently upheld the petitioners standing to sue, explaining that Rule 2 of RPEC permits any Filipino citizen to file an action before the courts for violations of environmental laws. This collapses the traditional rule on personal and direct interest, on the principle that humans are stewards of nature. The Court explained that the RPEC's more liberal interpretation concerning environmental claims has been established in *Oposa v. Factoran, Jr.*²⁹

In *West Tower Condominium Corporation*, petitioner West Tower Corp. instituted the action on behalf of the residents of West Tower Condominium and in representation of Barangay Bangkal, and others, including minors and generations yet unborn. The High Court recognized their legal standing.

In *Arigo*, the High Court ruled that the petitioners had the standing to sue. It explained:



Locus standi is “a right of appearance in a court of justice on a given question.” Specifically, it is “a party’s personal and substantial interest in a case where he has sustained or will sustain direct injury as a result” of the act being challenged, and “calls for more than just a generalized grievance.” However, the rule on standing is a procedural matter which this Court has relaxed for non-traditional plaintiffs like ordinary citizens, taxpayers and legislators when the public interest so requires, such as when the subject matter of the controversy is of transcendental importance, of overreaching significance to society, or of paramount public interest.

One significant decision is *Resident Marine Animals of Tañon Strait*, where the petitioners were the resident marine mammals of the protected seascape Tañon Strait, which is located between the islands of Negros and Cebu. The marine mammals, through their “human representatives,” filed a petition for certiorari, mandamus, and injunction to enjoin the DOE, et al., from implementing a service contract involving the exploration, development, and exploitation—including a seismic survey and oil drilling—of the country’s petroleum resources in and around the Tañon Strait. The High Court gave due course to the petition, explaining that the citizens who represented the marine mammals were considered their stewards.

It may be recalled that in *Oposa*, the Court held that a suit may be brought in the name of generations yet unborn. Here, the Court did not squarely address the issue on the need to give resident mammals legal standing because the RPEC allows any Filipino citizen, as a steward of nature, to bring suit to enforce environmental laws. It pronounced:

“Moreover, even before the Rules of Procedure for Environmental Cases became effective, this Court had already taken a permissive position on the issue of *locus standi* in environmental cases. In *Oposa*, we allowed the suit to be brought in the name of generations yet unborn “based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned.” Furthermore, we said that the right to a balanced and healthful ecology, a right that does not even need to be stated in our Constitution as it is assumed to exist

from the inception of humankind, carries with it the correlative duty to refrain from impairing the environment.

In light of the foregoing, the need to give the Resident Marine Mammals legal standing has been eliminated by our Rules, which allow any Filipino citizen, as a steward of nature, to bring a suit to enforce our environmental laws. It is worth noting here that the Stewards are joined as real parties in the Petition and not just in representation of the named cetacean species. The Stewards, Ramos and Eisma-Osorio, having shown in their petition that there may be possible violations of laws concerning the habitat of the Resident Marine Mammals, are therefore declared to possess the legal standing to file the petition.⁷³⁰

In *Segovia*, the Supreme Court reiterated that the RPEC liberalized the requirements on standing and allowed the filing of citizen’s suit for the enforcement of rights and obligations under environmental laws. It also stated that in a writ of *kalikasan*, it is sufficient that the person filing represents the inhabitants prejudiced by the environmental damage subject of the writ.

(2) Upholding Constitutional Provisions and Environmental Laws

The High Court recognized the right to a healthful and balanced ecology under Article 2, Section 16 of the Constitution as a basis in the environmental cases filed.

Again, in *Resident Marine Animals of Tañon Strait*, the Court upheld the constitutional provisions on the approval of service contracts as well as the prohibition of exploitation activities in protected areas. The former National Integrated Protected Areas System and the Philippine Environmental Impact Statement System (EISS) were emphasized.

In most of the cases involving the special writs of *kalikasan* and mandamus, the EIS law, the ECC and its regulations were taken up. The importance of the environmental impact assessment process and the EISS as a whole was tackled by the Supreme Court.

Notably, in *Redmont Consolidates Mines Corp.*, the Supreme Court affirmed the CA Decision concerning the violation of existing laws committed by the mining companies. Relating this with the farmers’ case in Narra,



Palawan (which was mentioned in the introduction of this study) involving Narra Nickel Mining and Development Corporation, the trial court held the mining companies liable for damages and the rehabilitation of the mined-out areas. The trial court, however, dismissed the case against the public officials and stated that there was not enough evidence to hold the officials liable. Unfortunately, the trial court failed to appreciate the farmers' arguments regarding the numerous violations made by the small-scale mining companies and the failure of the public officials to consider these legal issues when they endorsed and issued the small-scale mining permits.

The Supreme Court's decision in *Narra* bears repeating:

"To reiterate, Sec. 2, Art. XII of the Constitution reserves the exploration, development, and utilization of natural resources to Filipino citizens and "corporations or associations at least sixty *per centum* of whose capital is owned by such citizens." Similarly, Section 3(aq) of the Philippine Mining Act of 1995 considers a "corporation xxx registered in accordance with law at least sixty per cent of the capital of which is owned by citizens of the Philippines" as a person qualified to undertake a mining operation. Consistent with this objective, the Grandfather Rule was originally conceived to look into the citizenship of the individuals who ultimately own and control the shares of stock of a corporation for purposes of determining compliance with the constitutional requirement of Filipino ownership. It cannot, therefore, be denied that the framers of the Constitution have not foreclosed the Grandfather Rule as a tool in verifying the nationality of corporations for purposes of ascertaining their right to participate in nationalized or partly nationalized activities. xxx

The avowed purpose of the Constitution is to place in the hands of Filipinos the exploitation of our natural resources. Necessarily, therefore, the Rule interpreting the constitutional provision should not diminish that right through the legal fiction of corporate ownership and control. But the constitutional provision, as interpreted and practiced via the 1967 SEC Rules, has favored foreigners contrary to the command of the Constitution.

Hence, **the Grandfather Rule must be applied to accurately determine the actual participation, both direct and indirect, of foreigners in a corporation engaged in a nationalized activity or business."**

(3) Upholding the Local Government Code provisions on prior consultations

In *Boracay Foundation*, the Supreme Court held that the reclamation project is classified as a national project that affects the environmental and ecological balance of local communities. This, the Court held, requires prior consultation with the affected local communities and prior approval by the appropriate *sanggunian*—which were not complied with. Hence, the Court ordered the following:

(i) that the respondent government agencies (a) cooperate with the DENR in its review of the reclamation project proposal and (b) secure approvals from local government units and hold proper consultations with other stakeholders;

(ii) respondents shall immediately cease and desist from continuing the implementation of the project covered by ECC-R6-1003-096-7100 until further orders from the Court;

(iii) respondent Philippine Reclamation Authority shall closely monitor the submission by respondent Province of the requirements to be issued by respondent DENR-EMB RVI in connection to the environmental concerns raised by petitioner.

(4) Application of Precautionary Principle

In *Greenpeace, et al.*, the High Court applied the precautionary principle, justifying that the three features—uncertainty, the possibility of irreversible harm, and the possibility of serious harm—were present. It found a preponderance of evidence showing that the release of GMOs into the environment threatens to damage not just the field trial sites, but also ecosystems, which will eventually lead to the people's health once the eggplants are consumed as food. Thus, the High Court, among others, prohibited the field testing of *Bt talong* and temporarily enjoined GMOs from being tested and commercialized.

The Court, however, later set its decision aside and instead dismiss the petition for being moot, following the



completion of the *Bt talong* field trials and the expiration of the biosafety permits.

Notably, in *Mosqueda*, where the petitioners pleaded that the Supreme Court should look at the merits of the ordinance based on the precautionary principle, the Supreme Court ruled otherwise. The petitioners argued that under the precautionary principle, the City of Davao is justified in enacting Ordinance No. 0309-07 to prevent harm to the environment and human health despite the lack of scientific certainty.

The High Court stated that they could not see the presence of all the elements that would merit the application of the precautionary principle. According to the Court, there has been no scientific study. "Although the precautionary principle allows lack of full scientific certainty in establishing a connection between the serious or irreversible harm and the human activity, its application is still premised on empirical studies. Scientific analysis is still a necessary basis for effective policy choices under the precautionary principle."

(5) Converting Environmental Protection Order (EPO) into a Writ of Continuing Mandamus

In *Boracay Foundation*, the Supreme Court converted the TEPO into a writ of continuing mandamus. While RPEC provides for this, it will ultimately depend on the High Court's appreciation of the factual and legal basis of an environmental case. The Court was convinced that the petitioner was not part of the consultations conducted by the provincial government.

The High Court required the respondents, among others, their concerned contractor/s, and/or their agents, representatives or persons acting in their place or stead, to immediately desist from continuing the implementation of the project until further orders from the Court.

(6) Sustaining the Mandates of Government Agencies

Still in *Boracay Foundation*, the High Court, in converting the TEPO to a writ of continuing mandamus, required the concerned government agencies to undertake activities in line with their mandates:

1. Respondent Department of Environment and Natural Resources-Environmental Management Bureau Regional Office VI shall revisit and review the following matters:

- a. its classification of the reclamation project as a single instead of a co-located project;
- b. its approval of respondent Provinces classification of the project as a mere expansion of the existing jetty port in Caticlan, instead of classifying it as a new project; and
- c. the impact of the reclamation project to the environment based on new, updated, and comprehensive studies, which should forthwith be ordered by respondent DENR-EMB RVI.

2. Respondent Province of Aklan shall perform the following:

- a. fully cooperate with respondent DENR-EMB RVI in its review of the reclamation project proposal and submit to the latter the appropriate report and study; and b. secure approvals from local government units and hold proper consultations with non-governmental organizations and other stakeholders and sectors concerned as required by Section 27 in relation to Section 26 of the Local Government Code.

3. Respondent Philippine Reclamation Authority shall closely monitor the submission by respondent Province of the requirements to be issued by respondent DENR-EMB RVI in connection to the environmental concerns raised by petitioner, and shall coordinate with respondent Province in modifying the MOA, if necessary, based on the findings of respondent DENR-EMB RVI.

4. The petitioner Boracay Foundation, Inc. and the respondents The Province of Aklan, represented by Governor Carlito S. Marquez, The Philippine Reclamation Authority, and The DENR-EMB (Region VI) are mandated to submit their respective reports to this Court regarding their compliance with the requirements set forth in this Decision no later than three (3) months from the date of promulgation of this Decision.



Challenges

Meanwhile, there are challenges that law enforcement agencies, citizens, and civil society groups need to contend with in the litigation of environmental cases.

(1) Critical role of scientific and technical evidence

Time and again, environmental champions have reminded us that environmental law is 99% science. Matters such as deforestation, pollution and biodiversity-related crimes, to name a few, are replete with scientific and technical concepts that require expert testimony and object and documentary evidence to establish the violation of an environmental law and the legal basis for special civil actions. Without the needed scientific evidence, the Court may not be convinced of the merits of our cases.

In *Casiño*, the Supreme Court upheld the CA finding that the Casiño group had failed to substantiate its claims that building the assailed coal-fired power plant would cause environmental damage of the magnitude contemplated in the writ of kalikasan. The Court said that the experts' alleged statements could not be given weight as none of them testified before the CA to confirm the pertinent contents of the Final Report. It further noted that the case records showed no reason on the petitioners' failure to present the expert witnesses.

In this case, the Supreme Court raised an important concern: "Here, where the right to a healthful and balanced ecology of a substantial magnitude is at stake, should we not tread the path of caution and prudence by compelling the testimonies of these alleged experts?" However, after due consideration, the Supreme Court decided as follows:

"xxx based on the statements in the Final Report, there is no sufficiently compelling reason to compel the testimonies of these alleged expert witnesses for the following reasons.

First, the statements are not sufficiently specific to point to us a flaw (or flaws) in the study or design/implementation (or some other aspect) of the project which provides a causal link or, at least, a reasonable connection between the construction and operation of the project vis-à-vis potential grave environmental damage. In particular, they do not explain why the Environmental Management Plan (EMP) contained in the EIS of the project will not adequately address these concerns.

Second, some of the concerns raised in the alleged statements, like acid rain, warming and acidification of the seawater, and discharge of pollutants were, as previously discussed, addressed by the evidence presented by RP Energy before the appellate court. Again, these alleged statements do not explain why such concerns are not adequately covered by the EMP of RP Energy.

Third, the key observations of Dr. Cruz, while concededly assailing certain aspects of the EIS, do not clearly and specifically establish how these omissions have led to the issuance of an ECC that will pose significant negative environmental impacts once the project is constructed and becomes operational. The recommendations stated therein would seem to suggest points for improvement in the operation and monitoring of the project, but they do not clearly show why such recommendations are indispensable for the project to comply with existing environmental laws and standards, or how non-compliance with such recommendations will lead to an environmental damage of the magnitude contemplated under the writ of kalikasan. Again, these statements do not state with sufficient particularity how the EMP in the EIS failed to adequately address these concerns.

Fourth, because the reason for the non-presentation of the alleged expert witnesses does not appear on record, we cannot assume that their testimonies are being unduly suppressed."

(2) Exhaustion of Administrative Remedies

In several cases, respondents have argued that since there is an administrative appeal provided for, the petitioners are duty bound to follow this process first before seeking recourse from the courts.

In *Boracay Foundation*, the High Court did not agree with respondents' appreciation of the applicability of the rule on exhaustion of administrative remedies. It said:

"We are reminded of our ruling in *Pagara v. Court of Appeals*, which summarized our earlier decisions on the procedural requirement of exhaustion of administrative remedies, to wit:



The rule regarding exhaustion of administrative remedies is not a hard and fast rule. It is not applicable (1) where the question in dispute is purely a legal one, or (2) where the controverted act is patently illegal or was performed without jurisdiction or in excess of jurisdiction; or (3) where the respondent is a department secretary, whose acts as an alter ego of the President bear the implied or assumed approval of the latter, unless actually disapproved by him, or (4) where there are circumstances indicating the urgency of judicial intervention, *Gonzales vs. Hechanova*, L-21897, October 22, 1963, 9 SCRA 230; *Abaya vs. Villegas*, L-25641, December 17, 1966, 18 SCRA; *Mitra vs. Subido*, L-21691, September 15, 1967, 21 SCRA 127. Said principle may also be disregarded when it does not provide a plain, speedy and adequate remedy, (*Cipriano vs. Marcelino*, 43 SCRA 291), when there is no due process observed (*Villanos vs. Subido*, 45 SCRA 299), or where the protestant has no other recourse (*Sta. Maria vs. Lopez*, 31 SCRA 637)."

Similarly, in *Dolot*, the High Court did not sustain the argument that the petitioners should have exhausted administrative remedies by filing a case before the PA, which had jurisdiction over mining disputes under the Philippine Mining Act. It ruled that resorting to the PA was useless and unnecessary because the petition filed did not involve a mining dispute. Petitioners were protesting alleged negative environmental impacts of the small-scale mining operations, the governor's authority to issue mining permits, and the indifference of the DENR and local officials. Such matters need not require the exercise of technical knowledge and expertise of the Panel of Arbitrators.

(3) Establishing the requisites for Writ of Kalikasan and Writ of Continuing Mandamus

The Supreme Court continued to reiterate the key requirements of these two special writs in their decisions.

In *Braga*, the Court did not issue a writ of mandamus because the Sasa Wharf Modernization Project had not yet reached the construction stage. The bidding process had not even been concluded when the petition was filed. As such,

the Court held that the petition for a writ of continuing mandamus was premature:

"The writ of continuing mandamus cannot be resorted to when the respondent is not the person obliged to perform the duty under the law (as is the case under the EIS System) or when the period for the respondent to perform its legal duty has not yet expired (as is the case with the consultation requirements of the LGC)."

In *Arigo*, the Supreme Court denied the petition for a writ of kalikasan with prayer for a TEPO. It explained that the petition became moot since the USS Guardian, which ran aground over the Tubbataha Reefs, had already been removed when petitioners sought recourse from the Court.

The project assailed in Braga can typify the "build-build-build" projects that are being assailed and opposed by local communities and civil society groups. Ideally, projects that threaten forests, marine ecosystems, biodiversity, and culture should be carefully studied and not even be considered in any development plan. Affected stakeholders must be consulted and participate in the process, as held in *Boracay Foundation*, where the petitioner was not a participant in the consultation process.

As such, before planning on any extractive or heavy infrastructure development project, local government units must take cognizance of the state of their locality's natural resources. Planning for development projects that could destroy ecosystems, impede biodiversity conservation efforts, cause community displacement, and prevent climate resilience, among others, should be scrutinized from the time these are conceived. If citizens wait until the bidding process, the development project can essentially proceed. By then, it would be too costly and too late to change the development direction in a specific area.

Justice Marvic Leonen, in his concurring and dissenting opinion in *Casiño*, stated that a petition for a writ of kalikasan was not the proper remedy since what the petitioners assailed was the propriety of the issuance and subsequent amendment of the ECCs by DENR for a project that has yet to be implemented. He opined that the novel action is inapplicable even more so to projects with ECCs yet to be issued or can still be challenged through administrative review processes. Thus, the extraordinary initiatory petition neither subsumed nor substitute for "all remedies that can contribute to the protection of communities and their environment."



However, Justice Presbitero Velasco had a contrary opinion, where he explained the differences between a petition for certiorari under Rule 65 and a writ of kalikasan under Rule 7 of RPEC. He explained that with the advent of RPEC, there had been significant changes in the procedural rules that apply to environmental cases. He identified eight areas where a certiorari petition and kalikasan petition differ from each other:

“1. Subject matter. Since its subject matter is any ‘unlawful act or omission,’ a Rule 7 kalikasan petition is broad enough to correct any act taken without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction which is the subject matter of a Rule 65 certiorari petition. Any form of abuse of discretion as long as it constitutes an unlawful act or omission involving the environment can be subject of a Rule 7 kalikasan petition. A Rule 65 petition, on the other hand, requires the abuse of discretion to be “grave.” Ergo, a subject matter which ordinarily cannot properly be subject of a certiorari petition can be the subject of a kalikasan petition.

2. Who may file. Rule 7 has liberalized the rule on locus standi, such that availment of the writ of kalikasan is open to a broad range of suitors, to include even an entity authorized by law, people’s organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose right to a balanced and healthful ecology is violated or threatened to be violated. Rule 65 allows only the aggrieved person to be the petitioner.

3. Respondent. The respondent in a Rule 65 petition is only the government or its officers, unlike in a kalikasan petition where the respondent may be a private individual or entity.

4. Exemption from docket fees. The kalikasan petition is exempt from docket fees, unlike in a Rule 65 petition. Rule 7 of RPEC has pared down the usually burdensome litigation expenses.

5. Venue. The certiorari petition can be filed with (a) the RTC exercising jurisdiction over the territory where the act was committed; (b) the Court of Appeals; and (c) the Supreme Court. Given the magnitude of the damage, the kalikasan petition can be filed directly with the Court of Appeals or the Supreme Court. The direct filing of a kalikasan petition will prune case delay.

6. Exhaustion of administrative remedies. This doctrine generally applies to a certiorari petition, unlike in a kalikasan petition.

7. Period to file. An aggrieved party has 60 days from notice of judgment or denial of a motion for reconsideration to file a certiorari petition, while a kalikasan petition is not subject to such limiting time lines.

8. Discovery measures. In a certiorari petition, discovery measures are not available unlike in a kalikasan petition. Resort to these measures will abbreviate proceedings.”

(4) FPIC in relation to the Environmental Compliance Certificate (ECC)

Still in *Casiño*, the Supreme Court held that since the ECC is not the license or permit contemplated under Section 59 of the IPRA and its implementing rules, there is no need to secure the Certification of Non-Overlap (CNO) beforehand. The Court likewise refrained itself, for reason of equity, from invalidating the LDA between RP Energy and the SBMA, explaining that it was only in this case that it first ruled that a CNO should have been secured prior to the consummation of the said LDA under Section 59 of IPRA.

Alas, this decision can put at risk the assertion of indigenous peoples (IPs) communities of their rights as part of the EIA process. The ECC is required for every project. Does this mean then that before a project applies for an ECC, it must secure first an FPIC? Shouldn’t the DENR require all project proponents to secure first an FPIC before allowing them to submit their ECC application?

To avoid further confusion, it is important that the DENR and NCIP harmonize their processes. Otherwise, the rights and interest of IP communities will be put in jeopardy from several extractive and development projects within ancestral domains.



Insights

The 12 cases studied provide us with important jurisprudence to strengthen our efforts in using the RPEC and our environmental laws to protect our environmental rights and our natural resources. Such jurisprudence may be a good start but, as of this writing, these cases cannot yet adequately exemplify the key environmental challenges faced by many local communities.

Several cases lie in trial courts, the CA, and the Supreme Court pending resolution. We need to monitor the progress and impact of these cases on the ground.

In the focus group discussions (FGD) organized by the Alternative Law Groups, there was a consensus that many citizens, especially local communities affected by environmental problems, are not yet aware of the opportunities provided by the RPEC. The FGD also showed that many affected communities cannot avail of remedies under RPEC because of lack of adequate information on their rights and remedies, as well as access to legal resources.

Thus, public interest environmental lawyers are challenged to continue honing their legal skills and deepen their understanding on the use of the special writs and other remedies under RPEC through, among others, taking stock of the Supreme Court decisions in the last eight years. Justice Leonen's concurring and dissenting opinion in the RP Energy case is an important consideration for us as we pursue our advocacy work and public interest environmental lawyering, thus:

“xxx Environmental advocacy is primarily motivated by care and compassion for communities and the environment. It can rightly be a passionately held mission. It is founded on faith that the world as it is now can be different. It implies the belief that the longer view of protecting our ecology should never be sacrificed for short-term convenience.

However, environmental advocacy is not only about passion. It is also about responsibility. There are communities with almost no resources and are at a disadvantage against large projects that might impact on their livelihoods. Those that take the cudgels lead them (sic) as they assert their ecological rights must show that they have both the professionalism and the capability to carry their cause

forward. When they file a case to protect the interests of those who they represent, they should be able to make both allegation and proof. The dangers from an improperly managed environmental case are as real to the communities sought to be represented as the dangers from a project by proponents who do not consider their interests.

The records of this case painfully chronicle the embarrassingly inadequate evidence marshalled by those that initially filed the Petition for a Writ of Kalikasan. Even with the most conscientious perusal of the records and with the most sympathetic view for the interests of the community and the environment, the obvious conclusion that there was not much thought or preparation in substantiating the allegations made in the Petition cannot be hidden. Legal advocacy for the environment deserves much more.”³¹

Another challenge is enhancing our existing community empowerment efforts to enable communities and ordinary citizens to avail of the remedies provided by RPEC. Public interest environmental litigation efforts cannot stand alone. Would-be petitioners and complainants need to be fully aware of their role in making the RPEC work in their favor.

In engaging the government, we need to keep on emphasizing the public trust doctrine; that is, the State is a trustee of our common resources and must preserve its common use for the public. The State has the responsibility to protect what is considered as a public right and is mandated to take affirmative state action for effective management of resources.

On the other hand, as stewards and trustees of our natural resources and environment for the present and future generations, we as citizens are empowered to question the ineffective management of our environment and natural resources. Environmental justice cases are part of public interest litigation, which impacts present and future generations. Judicial decisions on environmental cases are, therefore, significant. This is where RPEC and public interest litigation play a crucial role.●



ENDNOTES

- 1 A study undertaken by the Environmental Legal Assistance Center, Inc. (ELAC) under a research grant from the Alternative Law Groups' (ALG) Hustisya Natin Program (particularly, monitoring of special cases).
- 2 The mining companies consisted of three small-scale mining companies (Narra Nickel Mining and Development Corporation, Patricia Louise Mining and Development Corporation and Palawan Alpha South Mining and Development Corporation) and a foreign mining company, Mighty Beut Minerals, Inc. (MBMI).
- 3 In the Philippine Judicial Academy's (Philja) 2011 Sourcebook on Environmental Rights and Legal Remedies, it states that Environmental Justice stems from a growing recognition that the Right to the Environment is a fundamental human right which ought to be protected (page 28). The Philja Sourcebook noted varying concepts of Environmental Justice among groups. The United States Environmental Protection Agency defines it as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies." Others view it as "the equitable distribution of burdens of the environmental harms among various groups".
- 4 Supreme Court of the Philippines. The Rationale and Annotation to the Rules of Procedure for Environmental Cases. 2010, page 50.
- 5 Adapted from RPEC and The Rationale and Annotation to the Rules of Procedure for Environmental Cases. 2010.
- 6 Section 3, RPEC.
- 7 G.R. No. 101083, July 30, 1993
- 8 Boracay Foundation, Inc.v Province of Aklan, G.R No. 196870, June 26, 2012.
- 9 Supreme Court, Supra. p. 81.
- 10 Supreme Court, Supra, page 159.
- 11 https://www.lawphil.net/judjuris/juri2012/jun2012/gr_196870_2012.html, June 26, 2012.
- 12 See https://www.lawphil.net/judjuris/juri2013/aug2013/gr_199199_2013.html, August 27, 2013.
- 13 See <http://www.chanrobles.com/cralaw/2014junedecisions.php?id=383>, June 4, 2014.
- 14 See https://lawphil.net/judjuris/juri2014/sep2014/gr_206510_2014.html, September 16, 2014.
- 15 https://www.lawphil.net/judjuris/juri2015/feb2015/gr_207257_2015.html, February 3, 2015.
- 16 See <http://www.chanrobles.com/cralaw/2015aprildecisions.php?id=356>, April 21, 2015.
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AGRARIAN REFORM



KAISAHAN (Kaisahan tungo sa Kaunlaran ng Kanayunan at Repormang Pansakahan or Solidarity Towards Countryside Development and Agrarian Reform) is a social development organization promoting a sustainable and humane society through the empowerment of marginalized groups in rural areas, especially among farmers and farmworkers, to undertake their own development, participate fully in democratic processes and demand their rightful share in the stewardship of the land and the fruits of their labor.



FROM ESTRIBILLO TO CARRIEDO:

Affirming the indefeasibility of agrarian reform titles under the Philippine agrarian reform programs

Atty. Mary Claire Demaisip

Agrarian Reform in the Philippines is viewed as a vehicle to realize social change that will even out the distribution of wealth, resources and opportunities among Filipinos. Former Department of Agrarian Reform (DAR) Secretary Virgilio delos Reyes mentioned that in promote social justice, agrarian reform has three goals: “a) to restitute social wrongs so lands were given to tillers or the farmworkers, b) to reduce rural poverty by working towards making the awarded land productive and income-earning, and c) diffuse wealth thereby achieving a stable society.”¹

No less than the 1987 Constitution recognizes the State’s mandate of undertaking agrarian reform. Article XIII, Section 4 provides:

“The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the rights of small landowners. The

State shall further provide incentives for voluntary land-sharing.”

Under the agrarian reform program’s land transfer scheme, agricultural lands belonging to owners in excess of the retention area allowed by applicable laws are acquired by the State and distributed to qualified farmer beneficiaries (FBs). This was in accordance with two laws: (1) Presidential Decree No 27 (P.D. No. 27), covering agricultural lands devoted for rice and corn; and (2) Republic Act No. 6657, or the Comprehensive Agrarian Reform Law (CARL), for all agricultural lands regardless of the crops planted.

FBs who qualified under either law are awarded land titles as proof of ownership: Emancipation Patents (EPs) and Certificates of Land Ownership Award (CLOAs). EPs are government-issued land titles under P.D. No. 27, which was enacted on October 21, 1972. On the other hand, CLOAs are land titles issued under the CARL, which was enacted on June 15, 1988² and the Comprehensive Agrarian Reform Program Extension with Reforms (CARPER) or R.A. No. 9700 enacted on August 7, 2009.³

As provided in *Republic v. CA*,⁴ a certificate of title is the evidence to property in favor of the person whose name appears on it. It serves as a legal instrument that secures the ownership and tenure of the farmers to their land.⁵



Operation Land Transfer (OLT) under PD 27

P.D. No. 27 mandated the coverage of tenanted agricultural lands devoted to rice and corn. It provides that “[t]he tenant farmer, whether in land classified as landed estate or not, shall be deemed owner of a portion constituting a family-size farm of five (5) hectares if not irrigated and three (3) hectares if irrigated[.]”⁶ Landowners, on the other hand, may retain an area of not more than seven (7) hectares. Before EPs may be issued to qualified tenant farmers, P.D. No. 27 requires that they be full-fledged members of a duly recognized farmer’s cooperative and pay the amortizations in full to the said land.⁷

To operationalize the implementation of P.D. No. 27, P.D. No. 266⁸ was issued on August 4, 1973. It outlined the process of registration and transfer of titles of landholdings prior to and after qualified tenant farmers have fully complied with the requirements for the grant of a title under P.D. No. 27. Subsequently, on July 17, 1997, Executive Order 228 was issued, setting the guidelines to determine the value of remaining unvalued rice and corn lands subject to P.D. No. 27. It also provided the manner of payment by the FBs and the modes of compensation to the landowner.⁹

Although P.D. No. 27 states that tenant farmers shall be deemed owners of the land, they still need to comply with conditions set forth in the law before having full ownership of the land under the OLT program. Until then, they have an inchoate ownership on the land awarded to them. As proof of this inchoate right, DAR issued a Certificate of Land Transfer (CLT) to the tenant farmers.

H. De Leon, in his textbook *Agrarian Reform and Taxation*, defined a CLT as “a document issued to a tenant-farmer, which proves inchoate ownership of an agricultural land primarily devoted to rice and corn production. It is issued in order for the tenant-farmer to acquire the land. This certificate prescribes the terms and conditions of ownership over the said land and likewise describes the area and location of the landholding. A CLT is the provisional title of ownership over the landholding while the lot owner is awaiting full payment of the land’s value or for as long as the beneficiary is an ‘amortizing owner’.”¹⁰

After a tenant farmer has fully complied with the law’s requirements, an EP shall be issued by the DAR in his or her favor.¹¹ As explained in *Del Castillo v. Orciga*:¹²

“Land transfer under PD No. 27 is effected in two (2) stages: (1) issuance of a CLT to a farmer-beneficiary as soon as DAR

transfers the landholding to the farmer-beneficiary in recognition that said person is a “deemed owner”; and (2) issuance of an Emancipation Patent as proof of full ownership of the landholding upon full payment of the annual amortizations or lease rentals by the farmer or beneficiary.”

Comprehensive Agrarian Reform Program (CARP) under R.A. 6657

R.A. 6657 was enacted pursuant to the 1987 Constitution’s mandate to establish an agrarian reform program aimed at the redistribution of agricultural lands to landless tillers.¹³ The law expanded the land coverage under CARP to all agricultural lands regardless of tenurial arrangements and crops planted therein.¹⁴ In implementing CARP, land distribution is complemented with support services delivery, such as farm input and machineries.

Under the law, FBs will be awarded an area of not exceeding three hectares.¹⁵ Landowners, on the other hand, are entitled to a retention area of five hectares, while their children may be awarded three hectares provided that they comply with the legal requirements and qualify as preferred beneficiaries under CARP.¹⁶ Moreover, distribution of all agricultural lands covered by the program shall be completed within 10 years from the law’s effectivity.¹⁷

In 1998, R.A. No. 8532¹⁸ was enacted, providing for additional funding for CARP in the next 10 years.

In 2009, R.A. No. 9700, or the CARPER, was legislated to amend certain CARL provisions. Among others, it infused new funding for CARP implementation and introduced reforms to the existing law. CARPER further provided for the continuing acquisition and distribution of agricultural lands until they are all distributed. Subsequently, DAR issued rules and regulations to govern the implementation of the land acquisition and distribution (LAD) under CARP.¹⁹

FBs go through the lengthy LAD process, which culminates in the awarding of land they can cultivate and make productive. As proof of their ownership, the DAR issues CLOAs to them.

After identifying the qualified FBs, the DAR will survey the subject landholding to segregate coverable and non-coverable areas.²⁰ Together with the Land Bank of the Philippines (LBP), DAR will conduct a joint field investigation for the valuation of land covered under CARP.²¹ The LBP then determines the initial valuation of the landholding.



Afterwards, it will furnish DAR, through its provincial office (DARPO), a Memorandum of Valuation (MOV) informing the agency of its computation.²²

The landowner will be informed by the DAR, through its Provincial Agrarian Reform Program Officer (PARPO), of the valuation of the land through the service of the Notice of Land Valuation and Acquisition (NLVA).²³ Simultaneously, the PARPO will transmit his Order to Deposit Landowner's Compensation to the LBP. The LBP, in turn shall issue a Certificate of Deposit (COD) upon receipt of the said Order.

The PARPO shall transmit copies of the COD and the Advanced Survey Plan (ASP) of the landholding to the Register of Deeds (RoD) and request for the issuance of a Transfer Certificate Title (TCT) in the name of the Republic of the Philippines (RP). Upon receipt of the request, the RoD shall immediately issue the RP title for the CARP covered area and a separate title to the retention and non-coverable areas in the name of the landowner.

As a general rule, DAR shall take immediate possession of a landholding after the LBP has issued the COD.²⁴ It shall also proceed with the distribution process to the qualified beneficiaries upon completion of the requirements specified in the law.²⁵

As stated in the LAD implementing rules, FBs already have usufructuary rights over the landholding from the time the DAR takes constructive or actual possession of the property until the CLOA awarding.²⁶ "Pending the award of the CLOA and for purposes of establishing usufructuary rights, the DAR, upon issuance of the COD and upon actual possession of the land, shall inform the ARBs that they have been identified and qualified to receive the land."²⁷

In the award and distribution of land to the FBs, the ROD has the ministerial duty to: (1) issue the land title in the name of the RP after the LBP has certified that the claim proceeds were deposited in the landowner's name, constituting full payment in cash and bonds with due notice to the landowner; (2) Register the CLOA generated by DAR; (3) Cancel previous titles; and (4) Issue a title for the landowner's retained area and other non-coverable areas.²⁸

Upon registering the CLOA, the ROD shall release it to the LBP as the mortgagee financing institution. The LBP will then provide two sets of certified true copies of the CLOA to the PARPO. In turn, the PARPO will transmit one set of the copies to the ARBs. As owners of the awarded land, the FBs shall pay annual amortizations to the LBP beginning one year from the date of the CLOA registration.

If occupancy took place after the CLOA registration, the annual amortization shall start one year from actual occupancy.²⁹ "The LBP shall be the responsible repository of the encumbered CLOAs until the time of their release to the ARBs upon full payment of the land amortization, and the cancellation of the encumbrance."³⁰

Indefeasibility of Titles

As mentioned, a land title is the evidence of the owner's right corresponding to the extent of his/her interest, and by which means he can maintain control, possession and enjoyment of the property.³¹ It cannot be assailed through a collateral attack, and altered, modified, or cancelled except in a direct proceeding in accordance with law.³² Once issued and registered in the ROD, it becomes the primary evidence of land ownership. The indefeasibility of titles is an essential doctrine in land ownership and is entrenched in jurisprudence. In *Abobon v. Abobon*:³³

"First of all, a fundamental principle in land registration under the Torrens system is that a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. The certificate of title thus becomes the best proof of ownership of a parcel of land; hence, anyone who deals with property registered under the Torrens system may rely on the title and need not go beyond the title. This reliance on the certificate of title rests on the doctrine of indefeasibility of the land title, which has long been well-settled in this jurisdiction. It is only when the acquisition of the title is attended with fraud or bad faith that the doctrine of indefeasibility finds no application."

Similarly, in *Decaleng v. The Philippine Episcopal Church*:³⁴

"It is a hornbook principle that a certificate of title serves as evidence of an indefeasible title to the property in favor of the person whose name appears therein."⁵⁷ In order to establish a system of registration by which recorded title becomes absolute, indefeasible, and imprescriptible, the legislature passed Act No. 496, which took effect on February 1, 1903. Act No. 496 placed all registered lands in the Philippines under the Torrens system. The Torrens



system requires the government to issue a certificate of title stating that the person named in the title is the owner of the property described therein, subject to liens and encumbrances annotated on the title or reserved by law. The certificate of title is indefeasible and imprescriptible and all claims to the parcel of land are quieted upon issuance of the certificate. Presidential Decree No. 1529, known as the Property Registration Decree, enacted on June 11, 1978, amended and updated Act No. 496.”

However, under prevailing laws and jurisprudence, the indefeasibility of the owner’s title may be discredited in cases where it was acquired through fraud, bad faith, or misrepresentation.³⁵ *Baguio v. Republic of the Philippines, et. al.*³⁶ declared that the “indefeasibility of a title does not attach to titles secured by fraud and misrepresentation. The registration of a patent under the Torrens System merely confirms the registrant’s title. It does not vest title where there is none because registration under this system is not a mode of acquiring ownership.” As stated in *Sacdalán vs. Court of Appeals*, “The Torrens Title does not furnish a shield for fraud.”³⁷

Indefeasibility of EPs and CLOAs

Under our agrarian reform laws, EPs and CLOAs are titles issued by the government in favor of the FBs. As such, they are accorded the same recognition and protection as other titles issued under the Torrens System and registered in the RoD.

In 2006, the Supreme Court in *Estrabillo v. DAR*³⁸ categorically established the indefeasibility of EPs and CLOAs as titles of lands awarded to FBs. It stated:

“The EPs themselves, like the Certificates of Land Ownership Award (CLOAs) in Republic Act No. 6657 (the Comprehensive Agrarian Reform Law of 1988), are enrolled in the Torrens system of registration. The Property Registration Decree in fact devotes Chapter IX²⁷ on the subject of EPs. Indeed, such EPs and CLOAs are, in themselves, entitled to be as indefeasible as certificates of title issued in registration proceedings.”

The Supreme Court further ruled:

“After complying with the procedure, therefore, in Section 105 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree (where the DAR is required to issue the corresponding certificate of title after granting an EP to tenant-farmers who have complied with Presidential Decree No. 27), the TCTs issued to petitioners pursuant to their EPs acquire the same protection accorded to other TCTs. “The certificate of title becomes indefeasible and incontrovertible upon the expiration of one year from the date of the issuance of the order for the issuance of the patent, x x x. Lands covered by such title may no longer be the subject matter of a cadastral proceeding, nor can it be decreed to another person.”

***DAR v. Estrabillo* G.R. No. 159674, June 30, 2006**

Facts

The petitioners are recipients of EPs over parcels of land in Agusan del Sur. These lands were formerly part of a forested area, which have been denuded as a result of logging operations of respondent, Hacienda Maria, Inc. (HMI). The petitioners were among those who occupied and tilled these areas.

In 1956, HMI acquired the land from the Republic through Sales Patent No. 2683. It was later issued Original Certificate of Title (OCT) No. P30771661.

On October 21, 1972, P.D. No. 27 was issued, mandating that tenanted rice and corn lands be brought under the OLT program and awarded to FBs.

HMI, through a certain Joaquin Colmenares, requested that 527.8308 hectares of its landholdings be placed under OLT. Receiving compensation for the property, HMI allowed the petitioners and other occupants to cultivate the landholdings, though the same may be covered under said law.

HMI, through its representatives, actively participated in all relevant proceedings, including the determination of the average gross production per hectare at the Barangay Committee on Land Production. It was also a signatory of an undated



Landowner and Tenant Production Agreement (LPTA), which covered the 527.8308 hectares of land. The LPTA was submitted to the LBP in 1977.

In 1982, a final survey over the entire area was conducted and approved. From 1984 to 1998, the corresponding TCTs and EPs covering the entire 527.8308 hectares of land were issued to petitioners, among others.

In December 1997, HMI filed before the Regional Agrarian Reform Adjudicator (RARAD) of CARAGA Region XIII petitions seeking the declaration of the erroneous coverage under P.D. No. 27 of 277.5008 hectares of its former landholdings. HMI claimed that: (1) the area was not devoted to either rice or corn; (2) it was untenanted; and (3) no compensation had been paid.

On November 27, 1998, the RARAD rendered a Decision declaring the TCTs and EPs awarded to the petitioners void. It reasoned that the land covered was not devoted to rice and corn, and that there had been no established tenancy relations between HMI and the petitioners when P.D. No. 27 took effect.

The petitioners appealed to the Department of Agrarian Reform Adjudication Board (DARAB), which then affirmed the RARAD Decision. Thus, they elevated their case to the Court of Appeals.

The Court of Appeals dismissed the petition for violation of Rule 7, Section 5 of the 1997 Rules of Civil Procedure.

Hence, the petition before the Supreme Court was filed, contending that: (1) there had been compliance with Rule 7, Section 5; and (2) EPs are ordinary titles, which became indefeasible one year after the registration.

Issue

Whether the EPs issued to Estribillo, et al. are accorded the same protection as to other TCTs.

Ruling

Yes. The EPs issued to the petitioners are titles registered under the Torrens System; thus, they are accorded the same treatment and protection granted to other TCTs.

The Court ruled that Certificates of Title (COTs) issued pursuant to EPs are as indefeasible as TCTs issued in registration proceedings. Therefore, after complying with the procedure under Section 105 of P.D. No. 1529, or the Property Registration Decree—where DAR is required to issue the corresponding COT after granting an EP to farmer-tenants who complied with P.D. No. 27—the TCTs issued to the petitioners pursuant to their EPs acquired the same protection accorded to other TCTs.

Moreover, “[t]he certificate of title becomes indefeasible and inconvertible upon the expiration of one year from the date of issuance of the order for the issuance of the order of the issuance of patent, xxx. Lands covered by such title may no longer be the subject matter of the cadastral proceeding, nor can it be decreed to another person.”

The Court further noted that the EPs themselves, like CLOAs in CARL, are enrolled in the Torrens System of Registration, and that the Property Registration Decree devotes its Chapter IX on the subject of EPs. EPs and CLOAs are, the Court ruled, entitled to be as indefeasible as COTs issued in registration proceedings.

The indefeasibility of EPs and CLOAs was institutionalized in Section 9 of CARPER, which amended Section 24 of CARL. It provides:

“SEC. 24. Award to Beneficiaries (AS AMENDED BY SECTION 9 OF R.A. No. 9700). — The rights and responsibilities of the beneficiaries shall commence from their receipt of a duly registered emancipation patent or certificate of land ownership award and their actual physical possession of the awarded land. Such award shall be completed in not more than one hundred eighty (180) days from the date of registration of the title in the name of the Republic of the Philippines: *Provided, That the emancipation patents, the certificates of land ownership award, and other titles issued under any agrarian reform program shall be indefeasible and imprescriptible after one (1) year from its registration with the Office of the Registry of Deeds, subject to the conditions, limitations and qualifications of this Act, the property*



registration decree, and other pertinent laws. The emancipation patents or the certificates of land ownership award being titles brought under the operation of the Torrens System, are conferred with the same indefeasibility and security afforded to all titles under the said system, as provided for by Presidential Decree No. 1529, as amended by Republic Act No. 6732. (Emphasis supplied.)

Issues on the Indefeasibility of EPS and CLOAs

Despite being an established principle in law and jurisprudence, the indefeasibility of EPS and CLOAs has still been assailed. In 2016, the Supreme Court in *Department of Agrarian Reform v. Carriedo*³⁹ ruled that CLOAs are not equivalent to a Torrens Certificate of Title and, therefore, are not indefeasible. It stated:

“Finally, petitioners cannot argue that the CLOAs allegedly granted in favor of his co-petitioners Corazon and Orlando cannot be set aside. They claim that CLOAs under R.A. No. No. 6657 are enrolled in the Torrens system of registration which makes them indefeasible as certificates of title issued in registration proceedings. Even as these allegedly issued CLOAs are not in the records, we hold that CLOAs are not equivalent to a Torrens certificate of title, and thus are not indefeasible.

CLOAs and EPS are similar in nature to a Certificate of Land Transfer (CLT) in ordinary land registration proceedings. CLTs, and in turn the CLOAs and EPS, are issued merely as preparatory steps for the eventual issuance of a certificate of title. They do not possess the indefeasibility of certificates of title. Justice Oswald D. Agcaoili, in *Property Registration Decree and Related Laws (Land Titles and Deeds)*, notes, to wit:

Under P.D. No. 27, beneficiaries are issued certificates of land transfers (CLTs) to entitle them to possess lands. Thereafter, they are issued emancipation patents (EPS) after compliance with all necessary conditions. Such EPS, upon their presentation to the Register of Deeds, shall be the basis for the issuance of the corresponding transfer

certificates of title (TCTs) in favor of the corresponding beneficiaries.

Under R.A. No. No. 6657, the procedure has been simplified. Only certificates of land ownership award (CLOAs) are issued, in lieu of EPS, after compliance with all prerequisites. Upon presentation of the CLOAs to the Register of Deeds, TCTs are issued to the designated beneficiaries. CLTs are no longer issued.

The issuance of EPS or CLOAs to beneficiaries does not absolutely bar the landowner from retaining the area covered thereby. Under AO No. 2, series of 1994, an EP or CLOA may be cancelled if the land covered is later found to be part of the landowner’s retained area.

The issue, however, involving the issuance, recall or cancellation of EPS or CLOAs, is lodged with the DAR, which has the primary jurisdiction over the matter.”

Nonetheless, two years later, the Supreme Court reversed this Decision upon DAR’s Motion for Reconsideration.⁴⁰ It cited the *Estrabillo* case and Section 24 of CARL, as amended, and held that a “CLOA is a document evidencing ownership of the land granted or awarded to the beneficiary by the DAR, and contains the restrictions and conditions provided for in the CARL and other applicable laws.”

Even with the existence of recognized precepts on the indefeasibility of EPS and CLOAs, the Supreme Court in the 2016 *Carriedo* case did not refer to these legal bases in its ruling. Instead, it contradicted itself by going against settled jurisprudence and undermined the doctrine on the indefeasibility of EPS and CLOAs as enshrined in CARPER.

The 2016 *Carriedo* Decision reduced the issuance of EPS and CLOAs to mere preparatory steps in the eventual issuance of a Certificate of Title. It relegated the status of EPS and CLOAs from being incontrovertible proofs of ownership to preliminary documents necessary for the issuance of a land title. It diminished the value of EPS and CLOAs as evidence of the FBS’ land ownership to titles that are vulnerable to legal attacks.

Because the concept of the indefeasibility of EPS and CLOAs is well-supported in law and jurisprudence, it behooves the Supreme Court to have utilized and applied



its established ruling and the pertinent legal provisions on the legal issue at hand. However, it took the Court two years to reverse its ruling and issue the 2018 *Carriedo* Decision, reaffirming the indefeasibility of EPs and CLOAs. Had there been no Motion for Reconsideration filed, and had the Decision become final, around 2.9 million ARBs would have had to deal with its legal implications. The ruling in the 2016 *Carriedo* case would have weakened the farmers' hold over the lands awarded to them.

DAR, et al. vs. Romeo C. Carriedo
G.R. No. 176549, January 20, 2016

Facts

The petitioner, Pablo Mendoza, became a tenant of a five-hectare agricultural land, which was originally part of the 73.3157 hectares of land owned by Roman De Jesus. They executed a *Contrato King Pamamuisan*, where Mendoza would pay De Jesus 25 piculs of sugar every crop year as lease rental. This eventually became P2,000.00 per crop year as the land was no longer devoted to sugarcane.

When Roman died, his wife Alberta and two sons, Mario and Antonio, executed a Deed of Extrajudicial Succession with Waiver of Right, dividing the agricultural land into equal shares. Mario later sold to respondent Romeo Carriedo approximately 70 hectares of the land, which included the portion tenanted by Mendoza. Mendoza alleged that he did not know of and consent to the sale. Carriedo then sold the land to the People's Livelihood Foundation, Inc. (PLFI). Except for the portion tenanted by Mendoza, the landholdings were subjected to Voluntary Land Transfer/Direct Payment Scheme and were awarded to FBs.

A. Ejectment Case

Carriedo filed before the PARAD of Tarlac a Complaint for Ejectment and Collection of Unpaid Rentals against Mendoza.

The PARAD ruled that Mendoza had knowledge of the sale; thus, he could not assail the validity of the conveyance. Mendoza violated Section 2 of P.D. No. 816, Section 50 of R.A. No. 119918, and Section 36 of R.A. No. 3844. The PARAD declared the leasehold contract terminated and ordered Mendoza to vacate the premises.

On Mendoza's appeal, the DARAB affirmed the PARAD Decision. Ruling that Carriedo owned the land, it found that the deed of sale was unregistered did not affect Carriedo's title to the land. By virtue of his ownership, Carriedo was subrogated to the rights and obligation of the former landowner, Roman.

Mendoza then filed a Petition for Review before the Court of Appeals. Affirming the DARAB Decision, the Court of Appeals ruled that Mendoza's reliance on Section 6 of CARL as ground to nullify the sale between De Jesus and Carriedo was misplaced, since the provision was limited to retention limits. The registration was not a condition for the validity of the contract of sale between the parties. Mendoza's subsequent Motions for Reconsideration and New Trial were denied.

B. Redemption Case

Mendoza filed a Petition for Redemption before the PARAD, which dismissed his petition on the grounds of *litis pendentia* and lack of the required certification against forum-shopping. Moreover, the petition was dismissed the petition pending the resolution of the ejectment case before the Court of Appeals. Its outcome partakes of a prejudicial question, which determines the tenability of Mendoza's right to redeem the land under tenancy.

Mendoza appealed to DARAB. Reversing the PARAD Decision, the DARAB granted Mendoza redemption rights over the land, ruling that at the time Carriedo filed his complaint for ejectment on October 1, 1990, he was no longer the owner of the land, having sold the land to PLFI in June 1990. Thus, the cause of action pertained to PLFI, not to him. The DARAB also ruled that Mendoza was not notified of the land sale to Carriedo and of the latter's subsequent sale of it to PLFI. The absence of the mandatory requirement of notice did not stop the running of the 180-day period within which Mendoza could exercise his redemption right. DARAB denied Carriedo's Motion for Reconsideration.

Thus, Carriedo filed a Petition for Review before the Court of Appeals. The Court of Appeals reversed the DARAB ruling and held that Carriedo's land ownership had been conclusively established and affirmed by the Supreme Court. Mendoza was not able to substantiate his claim that when Carriedo



filed the ejectment case, he was no longer the owner of the land at the time. Moreover, the Court of Appeals held that DARAB erred when it ruled that Mendoza was not guilty of forum-shopping. Mendoza did not appeal the Court of Appeals' Decision.

C. Coverage Case

Mendoza, his daughter Corazon Mendoza, and Orlando Gomez filed a Petition for Coverage of the land under CARP. They claimed that they had been in physical and material possession of the land as tenants since 1956, and has made the land productive. They prayed that an order be issued placing the land under CARP, and that the DAR, the PARO, and the MARO of Tarlac City be ordered to proceed with the acquisition and distribution of the land in their favor. The Regional Director issued an Order granted the petition.

Carriedo filed a Protest with Motion to Reconsider the Order and to Lift Coverage, alleging that only learned of the Petition for Coverage upon receipt of the Order. He received a copy of a Notice of Coverage dated October 21, 2002 from MARO Maximo E. Santiago, informing him that the land had been placed under the coverage of the CARP. The Regional Director denied Carriedo's protest.

Carriedo appealed to the DAR Central Office. The DAR Central Office, through Secretary Rene C. Villa, affirmed the Regional Director Order, ruling that Carriedo was no longer allowed to retain the land due to his violation of CARP provisions. It further ruled that his act of disposing his agricultural landholdings amounts to the exercise of his retention right, or a valid waiver of such right in accordance with applicable laws and jurisprudence. However, it did not rule whether Mendoza was qualified to be a farmer-beneficiary of the land.

Carriedo filed a Petition for Review before the Court of Appeals, which reversed the DAR Central office Order and declared the land as Carriedo's retained area. In so ruling, the Court of Appeals declared that the right of retention is a constitutionally-guaranteed right, subject to certain qualifications specified by the legislature. It serves to mitigate the effects of compulsory land acquisition by balancing the rights of the landowner and the tenant by implementing the doctrine that social justice was not meant to perpetrate an injustice against the

landowner. The Court of Appeals also held that Carriedo did not commit any of the acts under Section 6 of DAR Administrative Order No. 02-03, which would constitute waiver of his retention rights.

Issue

Whether Carriedo has the right to retain the land.

Ruling

Yes, Carriedo did not waive his right to retain the land.

The Supreme Court cited the 1987 Constitution, which expressly recognizes landowner retention rights in its Article XIII, Section 4, as implemented by Section 6 in CARP, as interpreted under Section 6 of A.O. No. 02-03.

According to the Court, the Court of Appeals correctly held that Carriedo "[n]ever committed any of the acts or omissions above-stated (DAR AO 02-03). Not even the sale made by the herein petitioner in favor of PLFI can be considered as a waiver of his right of retention. Likewise, the Records of the present case is bereft of any showing that the herein petitioner expressly waived (in writing) his right of retention as required under sub-section 6.3, section 6, DAR Administrative Order No. 02-S.2003."

As to the indefeasibility of CLOAs, the Court held that they are not equivalent to a Torrens certificate of title and, thus, are not indefeasible. In ordinary land registration proceedings, it explained, CLOAs and EPs are similar to CLTs; like CLTs, they are issued merely as preparatory steps for the eventual issuance of a certificate of title.

The Court further cited Justice Oswald D. Agcaoili's *Property Registration Decree and Related Laws (Land Titles and Deeds)*, which reads:

Under PD No. 27, beneficiaries are issued certificates of land transfers (CLTs) to entitle them to possess lands. Thereafter, they are issued emancipation patents (EPs) after compliance with all necessary conditions. Such EPs, upon their presentation to the Register of Deeds, shall be the basis for the issuance of the corresponding transfer certificates of title (TCTs) in favor of the corresponding beneficiaries.



Under RA No. 6657, the procedure has been simplified. Only CLOAs are issued, in lieu of EPs, after compliance with all prerequisites. Upon presentation of the CLOAs to the Register of Deeds, TCTs are issued to the designated beneficiaries. CLTs are no longer issued.

The issuance of EPs or CLOAs to beneficiaries does not absolutely bar the landowner from retaining the area covered thereby. Under AO No. 2, series of 1994, an EP or CLOA may be cancelled if the land covered is later found to be part of the landowner's retained area. (*Citations omitted; underscoring supplied.*)

DAR, et al. v. Romeo C. Carriedo
G.R. No. 176549, October 10, 2018

Facts

The issue originated from the Motion for Reconsideration of the Decision dated January 20, 2016 filed by DAR.

DAR contended that it had been denied due process when it was not afforded the opportunity to refute the allegations against the validity of DAR A.O. No. 05-06 before the Court of Appeals and the Supreme Court. Claiming that it was not notified of either the petition before the Court of Appeals—as well as its proceedings and Decision—DAR insisted that the Supreme Court reconsider the Court of Appeals Decision on the issues involving the enforcement and validity of its regulations.

First Issue

Whether Carriedo's previous sale of his landholdings to PLFI can be treated as the exercise of his retention rights, such that he can no longer lawfully claim the subject landholding as his retained area.

Ruling

Yes.

The Supreme Court agreed with DAR's argument that in applying Item No. 4 of A.O. No. 05-06, the

subject landholding cannot be considered as the retained area of Carriedo anymore because he has already exercised his right of retention after selling his landholdings without DAR clearance. Sometime in June 1990, Carriedo unilaterally sold to PLFI his agricultural landholdings with approximately 58.3723 hectares, which the Court found as tantamount to Carriedo's exercise of his right of retention under the law.

Second Issue

Whether Item No. 4 of AO 05-06 and the relevant provisions of the CARL are valid.

Ruling

Yes. The Court stated that both the Constitution and CARL underscore the agrarian reform program's underlying principle of endeavoring a more equitable and just distribution of agricultural lands with equity considerations, among others. Moreover, the Court agreed with DAR's argument that the objective of A.O. No. 05-06 is equitable, explaining that to ensure the effective implementation of the CARL, previous sales of landholding without DAR clearance should be treated as the landowner's exercise of retention rights.

Moreover, the Court ruled that the equity in A.O. No. 05-06 is apparent and easily discernible. It is presumed that by selling his landholdings, the landowner has already received an amount (as purchase price) commensurate to the just compensation conformable with the constitutional and statutory requirement. Equity dictates that he can no longer claim, either in the guise of his retention area or otherwise, that which he has already received in the previous sale of his land.

The Court also agreed with DAR that A.O. No. 05-06 is the regulation adopted by the agency precisely to prevent these perceived dangers in the implementation of CARL.

The Court ruled that this interpretation is consistent with the agrarian reform program's objective to distribute land to the landless farmers and farmworkers. Item No. 4 of AO 05-06 provides the consequences in situations where a landowner has sold portions of his or her land with an area



more than the statutory limitation of five hectares. In such scenarios, Item No. 4 of A.O. No. 05-06 treats the sale of the first five hectares as the exercise of the landowner's retention rights. This is because the landowner has already chosen, disposed of, and has been duly compensated for the area that he is entitled to retain under the law. Further, Item No. 4 of AO 05-06 is consistent with Section 70 of CARL, as it treats the sale of the first five hectares (in multiple or a series of transactions) as valid, such that the same already constitutes the retained area of the landowner. The legal consequence arising from the previous sale of land eliminates the prejudice in equitable land distribution that may befall the landless farmers and farmworkers.

Third Issue

Whether CLOAs possess the indefeasibility accorded to a Torrens certificate of title.

Ruling

Yes. According to the Court, a CLOA is a document evidencing ownership of the land granted or awarded to the beneficiary by DAR. It contains the restrictions and conditions provided in the CARL and other applicable laws. Section 24 of CARL, as amended, states:

Sec. 24. Award to Beneficiaries. — The rights and responsibilities of the beneficiaries shall commence from their receipt of a duly registered emancipation patent or certificate of land ownership award and their actual physical possession of the awarded land. Such award shall be completed in not more than one hundred eighty (180) days from the date of registration of the title in the name of the Republic of the Philippines: **Provided, That the emancipation patents, the certificates of land ownership award, and other titles issued under any agrarian reform program shall be indefeasible and imprescriptible after one (1) year from its registration with the Office of the Registry of Deeds,** subject to the conditions, limitations and qualifications of this Act, the property registration decree, and other pertinent laws. **The emancipation patents or the certificates of land ownership award**

being titles brought under the operation of the torrens system, are conferred with the same indefeasibility and security afforded to all titles under the said system, as provided for by Presidential Decree No. 1529, as amended by Republic Act No. 6732. (*Emphasis supplied.*)

The Court also cited *Estribillo v. Department of Agrarian Reform*, which held:

The rule in this jurisdiction, regarding public land patents and the character of the certificate of title that may be issued by virtue thereof, is that where land is granted by the government to a private individual, the corresponding patent therefor is recorded, and the certificate of title is issued to the grantee; thereafter, the land is automatically brought within the operation of the Land Registration Act, the title issued to the grantee becoming entitled to all the safeguards provided in Section 38 of the said Act. In other words, upon expiration of one year from its issuance, the certificate of title shall become irrevocable and indefeasible like a certificate issued in a registration proceeding.

The Court also found that EPs, like CLOAs, are enrolled in the Torrens system of registration. The Property Registration Decree devotes Chapter IX on the subject of EPs. Thus, it ruled, EPs and CLOAs are entitled to be as indefeasible as certificates of title issued in registration proceedings.

Other Threats to FBS' Land Tenure Security

Despite the indefeasibility of EPs and CLOAs, FBS are constantly confronted with threats to their security of land tenure. Although the Supreme Court upheld the indefeasibility of FBS' land titles in several of its landmark rulings, there were also cases where the legitimacy of their land ownership was invalidated.

The Supreme Court has declared that the mere issuance of titles in favor of the of FBS does not place their ownership beyond attack and scrutiny.⁴¹ Titles issued in their favor may be cancelled for violations of agrarian laws, rules, and regulations.⁴²



In *Ayo Alburo v. Matobato*,⁴³ the Supreme Court granted the cancellation of the EP issued to Liberty Ayo Alburo in favor of Uldarico Matobato. It found that Ayo Alburo has committed acts prohibited under P.D. No. 27, warranting the invalidation of her title. In its ruling, which was affirmed by the Court of Appeals and Supreme Court, the PARAD stated:

“From 1985 up to the present, it is the private petitioner⁴⁴ who tilled the land and gave shares to the private respondent. He also paid the land amortization with the Land Bank in 1985 and 1986. In effect private respondent⁴⁵ has taken the shoes of a landlord, an inimical practice the Agrarian Reform Program among others is designed to abolish if not eradicate. Having tolerated private petitioner in the cultivation of the land in question and received shares for the past eleven (11) years is no different at all from having installed a tenant. Farmer beneficiaries are prohibited from installing tenants on the land they acquired under P.D. 27. xxx even a transfer of the right to use or cultivate the land constitutes a grave violation of P.D. 27 and its implementing rules and regulation. xxx’

Erroneously issued titles to FBs have been cited as grounds for cancellation of EPs or CLOAs. The Supreme Court has rendered titles invalid because of improper or inadequate compliance with the acquisition process under agrarian reform laws.

In *Delfino v. Anasao*,⁴⁶ the Court found that the landowner’s retention right was not complied with as he was not allowed to choose the portion comprising his retention area. It ruled that:

“While we agree with Secretary Pangandaman in holding that Delfino had partially exercised his right of retention when he sold two hectares to SM Prime Holdings, Inc., after his application for retention was granted by Secretary Garilao, we cannot affirm the portion of the February 2, 2006 Order which decreed that the remaining three hectares shall be taken “either from the 4.8120 hectares covered by TCT Nos. T-21711 (T-49744) and T-216233.”⁴⁰ Such directive encroaches on the prerogative expressly given to landowners under Section 6 of R.A. No. 6657 to choose their area of retention.”

In this case,⁴⁷ the Supreme Court modified the DAR Order limiting the assignment of the remaining retention area to the 4.8120 hectares of the landholding corresponding to the area not covered by the OLT. In so doing, it sanctioned the invalidation of the EPs awarded to Anasao, et al.

EPs and CLOAs are also subjected to invalidation upon findings that the requirement of due process was not observed in the acquisition of the land under agrarian reform laws. This was the case in *Jugalbot v. Court of Appeals*⁴⁸ and *Roxas v. Court of Appeals*.⁴⁹ In both cases, the Notices of Coverage of the subject landholdings were not properly served and received by the landowner, or authorized representatives.

In *Jugalbot*, the Court found:

“Firstly, the taking of subject property was done in violation of constitutional due process. The Court of Appeals was correct in pointing out that Virginia A. Roa was denied due process because the DAR failed to send notice of the impending land reform coverage to the proper party. The records show that notices were erroneously addressed and sent in the name of Pedro N. Roa who was not the owner, hence, not the proper party in the instant case. The ownership of the property, as can be gleaned from the records, pertains to Virginia A. Roa. Notice should have been therefore served on her, and not Pedro N. Roa.”

The Court further held:

By analogy, *Roxas & Co., Inc. v. Court of Appeals* applies to the case at bar since there was likewise a violation of due process in the implementation of the Comprehensive Agrarian Reform Law when the petitioner was not notified of any ocular inspection and investigation to be conducted by the DAR before acquisition of the property was to be undertaken. Neither was there proof that petitioner was given the opportunity to at least choose and identify its retention area in those portions to be acquired. Both in the Comprehensive Agrarian Reform Law and Presidential Decree No. 27, the right of retention and how this right is exercised, is guaranteed by law.



Since land acquisition under either Presidential Decree No. 27 and the Comprehensive Agrarian Reform Law govern the extraordinary method of expropriating private property, the law must be strictly construed. Faithful compliance with legal provisions, especially those which relate to the procedure for acquisition of expropriated lands should therefore be observed. In the instant case, no proper notice was given to Virginia A. Roa by the DAR. Neither did the DAR conduct an ocular inspection and investigation. Hence, any act committed by the DAR or any of its agencies that results from its failure to comply with the proper procedure for expropriation of land is a violation of constitutional due process and should be deemed arbitrary, capricious, whimsical and tainted with grave abuse of discretion.”

In *Jugalbot*, the Court ordered the cancellation of the FBs’ EP on the ground that it was issued without factual and legal basis. In *Roxas*, the Court gave the DAR a chance to correct its procedural lapses and remanded the case to the agency. In both cases, DAR’s error in the conduct of the LAD process cast doubt on the FBs’ right to own lands under agrarian reform.

Another threat to the FBs’ ownership is the declaration of their lands as erroneously covered despite already being adjudged as owners. In the case of *Aninao vs. Asturias*⁵⁰ the lands covered by the FBs’ EPs were found to be mineral lands and, thus outside the ambit of agrarian reform.⁵¹ The Supreme Court reasoned that:

“... the more compelling reason arguing for the propriety of the DAR’s assailed nullification action is its determination that the property in question ‘*had long ceased to be agricultural and converted to mineral land even before it was placed under OLT coverage.*’ For, lands classified as mineral are exempt from agrarian reform coverage. There is, to be sure, adequate evidence to support DAR’s finding on the mineralized nature of the land. The DAR mentioned one in page 8 of its Order of August 4, 2000, referring to the study made in May 1965 of the then Bureau of Mines which reported that “*ample reserves of calcitic limestone and tuffaceous shall-*

sandstone suitable as basic raw materials for portland cement manufacture are available in ... more than 339 hectares ... Baha and Talibayog, Calatagan.” Not to be overlooked is the 25-year Mineral Production Sharing Agreement²²(MPSA) entered into in July 1997 by and between respondent and the Department of Environment and Natural Resources covering 2,336.8 hectares of land situated in Baha, Talibayog, Punta and Hukay, Calatagan, Batangas, including the disputed property, for the sustainable development and utilization of limestone and other mineral deposits existing within the contract mining area. And for a third, the DENR has issued in favor of respondent an Environmental Clearance Certificate (ECC) for its cement plant complex within the disputed area and authorizing it to conduct limestone and shale quarrying operations thereat.”

Notably, at the time of coverage under P.D. No. 27, the lands were classified as agricultural. No proclamation or law was passed changing or legally reclassifying the lands from agricultural to mineral. As an effect of this Decision, the EPs issued to the FBs were invalidated and subjected to cancellation proceedings in the DAR.

Conclusion

For farmers, land is at the core of their existence. More than a source of livelihood, it is a symbol of a better life for them and their families—a legacy that they can pass on to their children for generations to follow.

Most farmers who took a chance at owning the piece of land they tilled have done so in the hope that in making their lands productive, they may free themselves from poverty. This is mainly why they availed of the government’s agrarian reform program.

The Constitution has secured the framework in establishing an agrarian reform program that will breathe life into the Social Justice principle enshrined in its provisions. Founded on the rights of landless farmers and farmworkers, the agrarian reform program shall undertake the just distribution of all agricultural lands in the country.⁵²

The indefeasibility of EPs and CLOAs is among the principles that farmers rely on to safeguard the stability and



credibility of land tenure and ownership under our agrarian reform laws. Our laws and jurisprudence establishing this principle guarantee the realization of redistributing land to landless farmers. To comply with this constitutional mandate, our jurisprudence must, therefore, fortify the legal principles that protect the sanctity and integrity of land ownership. It should not water down, let alone reverse, the gains of agrarian reform with decisions that run counter to doctrines on land tenure security.

The laws, rules, and regulations set the guidelines in implementing the agrarian reform program and ensuring the protection of all stakeholders. Inasmuch as the landowners' right should be respected and protected, it should not be used to prejudice the rights of FBs. In many instances, the implementation of agrarian laws is confronted with resistance from landowners, such as when they refuse to cooperate or participate in the LAD process, or when they file cases against DAR or FBs, among others. These factors should be assessed in weighing information, evidence, and bases for the implementation and interpretation of existing laws, rules, and regulations.

For its part, DAR should also ensure the effective and efficient implementation of the LAD process. On several occasions, the FBs' land ownership is put at risk and invalidated because of procedural lapses in the acquisition process of the agrarian laws. In all cases where EPs and CLOAs are cancelled because of erroneous title issuances—brought by DAR's incomplete or lack of compliance with the LAD process—it is the farmers who fatally suffer the consequences of these errors.

Ultimately, the success of our agrarian programs will be measured by attaining of irreversible gains in securing the farmers' rights and improving their lives. It is thus imperative that the government fulfill its role in protecting the right of all Filipinos to human dignity, and reducing social and economic inequalities for the common good.⁵³ ●

ENDNOTES

- 1 Delos Reyes, Virgilio R., Librojo, Rolando G., Capacio Jane Lynn D., *Offering Guidepost for Reform Efforts: Lessons from the Agrarian Reform Program in the Philippines*, 2016 World Bank Conference on Land and Poverty, March 14–18, 2016.
- 2 R.A. No. 6657 was enacted under the administration of former President Corazon Aquino.
- 3 R.A. No. 9700 was enacted under the administration of former President Gloria Macapagal-Arroyo.
- 4 G.R. No. 116111, January 21, 1999.
- 5 Lo, Frances Theresa C., *Cancellation of Land Titles Pulling the Rug from Under Agrarian Reform*, 2004, p. 5
- 6 Presidential Decree No. 27, Decreeing the Emancipation of Tenant from the Bondage of the Soil, Transferring to Them the Ownership of the Land they Till and Providing the Instruments and Mechanism Therefor.
- 7 Ibid.
- 8 Presidential Decree No. 266, Providing for the Mechanics of Registration of Ownership and/or Title to Land Under Presidential Decree No. 27.
- 9 Executive Order No. 228, Declaring Full Land Ownership to Qualified Farmer Beneficiaries Covered by Presidential Decree No. 27: Determining the Value of Remaining Unvalued Rice and Corn Lands Subject to P.D. No. 27; and Providing for the Manner of Payment by the Farmer Beneficiary and Mode of Compensation to the Landowner.
- 10 *Del Castillo v. Orciga*, G.R. No. 153850, August 31, 2006, citing H. De Leon, Textbook on Agrarian Reform and Taxation (1990).
- 11 Presidential Decree No. 266, Sec. 2.
- 12 G.R. No. 153850, August 31, 2006.
- 13 1987 Philippine Constitution, Art. XIII, Sec. 4.
- 14 R.A. No. 6657, as amended by R.A. No. 9700, Sec. 4.
- 15 Section 25, R.A. No. 6657, as amended by R.A. No. 9700, Sec. 25.
- 16 R.A. No. 6657, as amended by R.A. No. 9700, Secs. 4 and 6.
- 17 R.A. No. 6657 as amended by R.A. No. 9700, Sec. 5.
- 18 An Act Strengthening Further the Comprehensive Agrarian Reform Program (CARP), by Providing Augmentation Fund Thereof, Amending for the Purpose Section 63 of Republic Act No. 6657, Otherwise Known as the CARP Law of 1988.



19 After the passage of R.A. No. 9700 in 2009, DAR issued A.O. No. 02-09 as the governing rules of the LAD process. In 2011, the DAR issued A.O. No. 07-11, aimed to streamline the process and strengthen the due process requirement for the CARP coverage. Since then, amendments to the implementing rules have been made in response to the continuing challenges in the implementation of the CARP. To date, DAR has issued A.O. No. 03-12, A.O. No. 05-17 and A.O. No. 03-18, which has amended certain provisions of A.O. No. 07-11.

20 A.O. No. 07-11, as amended, Sec. 65.

21 A.O. No. 07-11 as amended, Sec. 68.

22 A.O. No. 07-11, Sec. 72.

23 Chapters 8 and 9 of AO 7 Series of 2011 as amended.

24 A.O. No. 07-11, Sec. 81.

25 Signing of the Application of Purchase and Farmers Undertaking (APFU) and the taking of an oath before a judge.

26 A.O. No. 07-11, Sec. 100.

27 Ibid.

28 A.O. No. 07-11, Sec. 106.

29 R.A. No. 6657, as amended, Sec. 26.

30 A.O. No. 07-11, Sec. 107.

31 Balay Alternative Legal Advocates for Development in Mindanaw, Inc., A Primer on The Indefeasibility of Emancipation Patent (EP) and Certificate of Land Ownership Award (CLOA) as an Important Component in Protecting the Gains of Agrarian Reform, citing Narciso Pena and Narciso Pena, Jr. 1994 Registration of Land Titles and Deeds.

32 Presidential Decree No. 1529, Sec. 48.

33 G.R. No. 1555830, August 15, 2012.

34 G.R. No. 171209, June 27, 2012.

35 *Abobon v. Abobon*, G.R. No. 1555830, August 15, 2012.

36 G.R. No. 119682, January 21, 1999.

37 *Sacdalan v. Court of Appeals*, G.R. No. 128967, May 20, 2004.

38 G.R. No. 159674, June 30, 2006.

39 G.R. No. 176549, January 20, 2016.

40 *DAR v. Carriedo*, G.R. No. 176549, November 14, 2018.



41 *Delfino v. Anasao*, G.R. No. 197486, September 10, 2014; *Gabriel v. Jamias*, G.R. No. 156482, September 17, 2008.

42 *Ayo-Alburo v. Matobato*, G.R. No. 155181, April 15, 2005.

43 *Ibid.*

44 Referring to Uldarico Matobato, respondent in the SC case.

45 Referring to Liberty Ayo-Alburo, petitioner in the SC case.

46 G.R. No. 197486, September 10, 2014.

47 Petitioner Renato Delfin's landholding was covered under P.D. No. 27 and EPs were issued in favor of his tenants Avelino Anasao, et. al. He applied for retention, which was eventually granted by DAR Secretary Ernesto Garilao and was allowed a retention area of five hectares. Meanwhile, Delfin sold two hectares of his tenanted riceland to SM Prime Holdings, Inc. Subsequently, he filed a Petition for Cancellation of the EP issued to Anasao, et al. on the basis of the DAR Secretary's Order. DAR Secretary Pangandaman, who succeeded Garilo, then issued an Order stating that the two-hectare riceland sold to SM Prime Holdings, Inc. shall form part of his retention area, while the remaining three hectares shall be taken from the 4.8120-hectare parcel of his landholding not covered by the OLT.

48 G.R. No. 170346, March 12, 2007.

49 G.R. No. 127876, December 17, 1999.

50 G.R. No. 160420, July 28, 2005.

51 In 1988-1989, the FBs were awarded with EPs covering 507 hectares of land in Barangays Baha and Talibayog, Calatagan, Batangas. The said parcels of land were originally part of the 807 hectares previously owned by the late Ceferino Ascue. They have paid fully their land amortizations and their respective land titles were registered in the RoD of Nasugbu, Batangas. In 1995 the heirs of Ascue sold the landholding to Asturias Industries. In 1997 Asturias Industrial Inc was able to secure a Mineral Production Sharing Agreement (MPSA) for the extraction of limestone and construction of cement factory from the DENR. The MPSA covered several barangays in Calatagan, Batangas including Baha and Talibayog comprising an area of 2,336 hectares. In 2000, Asturias Industries Inc protested that the coverage of the lands under agrarian laws. In 2005 the Supreme Court ruled that the land was erroneously covered under PD 27 as the land was not tenanted and planted with rice and corn. Moreover, it also mentioned that the subject landholding was not agricultural land but mineral land, thus outside the ambit of agrarian laws.

52 Article XIII Section 4, 1987 Philippine Constitution.

53 1987 Philippine Constitution, Article XIII, Section 1.





EXTRAJUDICIAL KILLINGS



The **Philippine Alliance of Human Rights Advocates (PAHRA)** an alliance of individuals, institutions and organizations committed to the promotion, protection and realization of human rights in the country.



A REPORT ON THE EXTRAJUDICIAL KILLINGS IN METRO MANILA AND THE ACCESS TO JUSTICE OF THE VICTIMS' FAMILIES

Atty. Mario Maderazo

INTRODUCTION

Police operations under the Duterte Administration's war on drugs are conducted in urban poor communities usually through buy-bust operations or, as dubbed by the administration, "Oplan Tokhang." However, such operations have resulted in numerous killings of not only suspected drug personalities, but even bystanders termed as "collateral damage," and unlawful warrantless arrests.

According to The Drug Archive Philippines,¹ the Ateneo Policy Center has compiled a list of 5,021 drug-related deaths from news reports from May 10, 2016 to September 29, 2017. From these deaths, most were typically tricycle drivers, construction workers, vendors, farmers, jeepney barkers, garbage collectors, or were unemployed. Forty percent (40%) of these killings happened within Metro Manila, mostly in the cities of Manila, Quezon, and Caloocan, while 60% occurred in the provinces. Furthermore, 2,753 persons or 55% were allegedly committed by police officers during police operations, 1,907 persons or 38% were killed by mostly unknown assailants, and 355 or 7% were found dead, often with gunshot or stab wounds, and in many cases, with hand-written cardboard signs left beside their bodies saying they were drug pushers.²

Unfortunately, it is rare that the victims' families, or the victims themselves, resort to legal remedies by filing cases in court. This is due to the prevailing

atmosphere of fear and impunity of the persons responsible. One of these places is in Tondo, Manila.

Reporters from news network Rappler tracked the reported killings in Police Station 2 – Moriones and conducted interviews with people who alleged that their family members were summarily executed by police officers, among them PO3 Ronald Alvarez.³

One of the alleged victims was Joseph.⁴ His mother Nina⁵ and his cousin James⁶ witnessed how Joseph had been allegedly killed by PO3 Alvarez and another police officer. But according to the incident report by the investigators, the anti-criminality patrol of the area chanced upon Joseph and some other men doing a drug transaction. A certain PO1 Sherwin Mipa followed Joseph inside the basement of a shanty where Joseph turned on the police officer and fired two shots. PO1 Mipa fired back and killed him. Nina finds this account of the incident utterly false, but she is unwilling to file a case against the police officers. She said, "Will they pay attention to me? We're little people nobody pays attention to. They salvage the big ones, don't they? So I did nothing."

Another alleged victim was Ralph.⁷ According to his relatives, PO3 Alvarez, along with four armed men in civilian clothes, allegedly forcibly entered the shanty where Ralph lived. He was shot four times and died. But according to the police reports, the police officers were undertaking a Tokhang Operation when



Ralph suddenly drew out his gun and fired shots at the police officers, which caused the police officers to retaliate. According to SPO2 Charles John Duran, the case investigator, when he arrived at the crime scene, he was surrounded by neighbors who told him that no encounter took place. Duran said, "They were saying he didn't fight back, but I told them, if there's a witness, come with us. They didn't want to go with us. I told them to come to Homicide if they had time. They didn't want to." Duran added that the spot report he wrote was largely based on the incident report by the Delpan PCP. Without the witnesses willing to sign the affidavits, he is constrained to believe the version of the police officers due to the presumption of regularity in the performance of duty.

From the perspective of the victims and/or their families, this study will look into the factors that hinder the victims of extrajudicial killings (EJKs) or illegal arrests to seek legal remedies in the courts of law within the framework of Access to Justice.

For the purposes of this study, EJK is defined as "all acts and omissions of State actors that constitute violations of the general recognition of the right to life embodied in the Universal Declaration of Human Rights, the United Nations Covenant on Civil and Political Rights, the UNCRC and similar other human rights treaties to which the Philippines is a State party."⁸

THEORETICAL FRAMEWORK

The American Bar Association Rule of Law Initiative in its Access to Justice Assessment Tool⁹ ("the Tool") states that access to justice requires that citizens must be able to avail of justice institutions to obtain solutions to common justice problems. It stresses that unless citizens have access to justice, the State will fail to provide any protection to vulnerable groups and the rights and duties enshrined in constitutions, laws, and international treaties will be deemed meaningless. For access to justice to exist, justice institutions must function effectively to provide fair solutions to the citizens' justice problems. The Tool laid down the six elements of Access to Justice which are: Legal Framework, Legal Knowledge, Advice and Representation, Access to a Justice Institution, Fair Procedure, and Enforceable Solution.

These elements are defined as follows:

1. Legal Framework refers to laws and regulations that establish citizens'

rights and duties and provide citizens with mechanisms to solve their justice problems;

2. Legal Knowledge refers to the citizens' awareness of their rights and duties and the mechanisms available to solve their justice problems;
3. Legal Advice and Representation identifies how citizens can access the legal advice and representation necessary to solve their justice problems;
4. Access to a Justice Institution identifies both the formal and informal justice institutions, characterized as affordable, accessible and can timely process cases;
5. Fair Procedure refers to justice institutions, whether formal or informal, which ensure that citizens have an opportunity to present their case and that disputes are adjudicated impartially and without improper influence and, where cases are resolved by mediation, citizens can make voluntary and informed decisions to settle; and,
6. Enforceable Decision refers to justice institutions that are able to enforce their decisions, including through the use of sanctions.

METHODOLOGY

The study covers EJK cases in Metro Manila under the Monitoring component of the Hustisya Natin Project being implemented by the Philippine Alliance of Human Rights Advocates (PAHRA). The access to information on cases filed in court provides a major limitation in conducting the study. Hence, the study covers only the cases monitored and investigated by PAHRA, its partners, and the Commission on Human Rights (CHR).

Data for this report were collected through a focus group discussion (FGD) where the participants were



selected based on the recommendations of PAHRA and its partners in terms of their willingness to undergo the FGD. The participants were duly informed that their personal information would be kept confidential. The FGD was conducted in Filipino.

Supplementary to the responses of the FGD are the cases of HRVs documented by PAHRA's partner organizations.¹⁰ The documentation of EJK victims begins with the interview of the families and witnesses of the incidents who reported the HRV cases either directly to the organizations or through other networks (such as the Catholic Church, the media groups, from legal and medical missions). From these interviews, data are encoded into a database from where themes and emerging patterns are found and analyzed. The answers of the FGD respondents were compared with these narratives in the said documented cases to widen and triangulate the analysis.

Likewise, to further enhance the assessment of the Access to Justice Framework, the CHR was requested to provide copies of Resolutions of HRV cases related to the drug war waged by the Philippine government from 2016 to the present.

A review of relevant laws and secondary sources was also conducted before assessing the information culled from the FGD, the documented cases, and the case records from CHR.

REVIEW OF RELATED LITERATURE

Related Policies

To properly assess the legal framework in which Duterte's war on drugs is conducted, the related laws, policies, and rules that make up this legal framework must be examined. These policies serve as the minimum standard to which the reality of the war on drugs must conform; thus, should the policy implementation not match the intent and desire of the policy itself, then it would be difficult to conclude that our domestic criminal justice system is accessible and properly working.

Additionally, the Rome Statute and its applicability were also examined as a related international policy. The Rome Statute serves as an alternative remedy should domestic legal remedies prove inaccessible. Thus, in assessing the domestic legal framework, a comparative assessment of the international legal framework was made.

Domestic Policy

The 1987 Philippine Constitution

The 1987 Philippine Constitution has listed various human rights and access to justice principles that serve as fundamental guides that the government uses in implementing various laws and policies.

These human rights and access to justice principles include the right to due process and the equal protection clause;¹¹ the right against unreasonable searches and seizures;¹² the right to free access to the courts and quasi-judicial bodies and adequate legal assistance;¹³ the right against torture, force, violence, threat, intimidation;¹⁴ the right to bail;¹⁵ the right to be presumed innocent until proven guilty and to have a speedy, impartial, and public trial;¹⁶ the right not to be compelled to be a witness against oneself;¹⁷ the right against double jeopardy;¹⁸ and the prohibition of ex post facto laws and bills of attainder.¹⁹

The Department of Justice (DOJ)

As the government's principal law agency, the DOJ serves as the government's prosecution arm. It administers the government's criminal justice system by investigating crimes, prosecuting offenders, and overseeing the correctional system. Through its offices and constituent or attached agencies, it is also the government's legal counsel and representative in proceedings requiring the services of a lawyer, implements the Philippine laws on the admission and stay of aliens within its territory, and provides free legal services to indigent and other qualified citizens.²⁰

Through the National Bureau of Investigation (NBI) and the National Prosecution Service (NPS), the DOJ investigates the commission of crimes and prosecutes offenders. Meanwhile, through the Office of the Solicitor General (OSG) and the Office of the Government Corporate Counsel (OGCC), the DOJ acts as the legal representative of the Government, its agencies, and instrumentalities, including government-owned and controlled corporations and their subsidiaries, and officials and agents in any proceeding, investigation, or matter requiring legal services.

The DOJ, through the Department of Justice Action Center (DOJAC), acts on complaints, requests for legal assistance, and queries of walk-in and over-the-phone clients. The DOJAC has been established and launched in



every region nationwide, with members of the NPS and the Public Attorneys' Office tasked with staffing them.²¹

The Commission on Human Rights (CHR)

As a response to the atrocities committed during President Ferdinand Marcos' declaration of martial law, the 1987 Philippine Constitution defined the creation of the CHR.²² As an independent National Human Rights Institution, it is mandated to conduct investigations on HRVs against marginalized and vulnerable sectors of society, specifically involving civil and political rights.²³ Among others, its functions include: exercising visitorial powers over jails, prisons, or detention facilities; monitoring the government's compliance with international treaty obligations on human rights; and recommending to Congress effective measures in promoting human rights and providing compensation to HRV victims.²⁴

Criminal Procedure

The Revised Rules of Criminal Procedure (Rules 110-127 of the Rules of Court) provides the standard procedure in prosecuting and/or defending a criminal case in court. Generally, a criminal complaint is instituted by first being filed before the Office of the Public Prosecutor that has jurisdiction over the place where the offense was committed. Complainant and accused will undergo a Preliminary Investigation (PI) before a public prosecutor. This is part of the right to due process of both parties. When the investigating public prosecutor finds probable cause, he or she files an Information in Court. A warrant of arrest shall be issued by the presiding judge where the Information was filed for cases cognizable by the regional trial court that has jurisdiction over the case.

There are also lawful warrantless arrests, where a person may be arrested even without the prior institution of a criminal complaint in court. Under the Rules of Court and the Constitution, it is only allowed in the following instances:

(a) When, in the presence of the arresting officer, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed, and the arresting officer

has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.²⁵

Most of the drug-related arrests are done without arrest warrants. These are usually done during buy-bust or entrapment operations.

All persons who are arrested or are in police custody have the right to bail. This right is absolute before or after conviction in cases filed with the first level courts.²⁶ For cases filed before second level courts or the Regional Trial Courts, the right to bail is available before the Regional Trial Court convicts one of an offense not punishable by death, *reclusion perpetua*, or life imprisonment. Upon conviction, bail becomes discretionary.

Upon the filing of Information before the appropriate court, an accused is then arraigned to be apprised of the nature and cause of the accusation against him or her. Following this is the pre-trial, where the possibility of plea bargaining, stipulation of facts, determination of issues to be resolved during trial, identification of witnesses, and pre-marking of documentary exhibits happen. On trial, both the prosecution and the defense are given the opportunity to present their respective witnesses and evidence. Subsequently, judgment is rendered.

Accused, upon conviction at the Regional Trial Court, may file an Appeal before the Court of Appeals or the Supreme Court as appropriate. Should the accused be acquitted, the prosecution cannot file an appeal.

To safeguard the right of an accused to speedy trial, the Supreme Court has issued the Guidelines for Continuous Trial. This is also an offshoot of the rise in the drug cases filed in court.²⁷



Administrative Order No. 35 (series of 2012)

On November 22, 2012, President Benigno Aquino issued Administrative Order No. 35, or The Inter-Agency Committee On Extralegal Killings, Enforced Disappearances, Torture, and Other Grave Violations of the Right to Life, Liberty, and Security of Persons (IAC).

The committee was formed to serve as the government's institutional machinery dedicated to the resolution of unsolved cases of political violence in the form of extralegal killings (ELKs), enforced disappearances (ED), torture, and other grave violations of the right to life, liberty, and security of persons.

Its functions include inventorying all cases of ELKs, ED, torture, and other grave violations of the right to life, liberty, and security of persons perpetrated by both state and non-state agents; classifying the cases as unsolved, under investigation, under preliminary investigation, and under trial; prioritizing unsolved cases for action by assigning special investigation teams (SIT); designating and mobilizing the SITs in various cases for the immediate investigation and prosecution of the perpetrators; and monitoring and updating a database of the progress of all inventoried cases.²⁸

Republic Act No. 9165

Even before Duterte introduced his version of the war on drugs, the Philippines has already enacted Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002. This law limited the applicability of the Revised Penal Code (enacted in 1930), repealed the previous Dangerous Drugs Act of 1972 (R.A. No. 6425), and amended the penalties provided in R.A. No. 7659 (by removing the death penalty for violations of the law).

R.A. No. 9165 penalizes various acts in connection to illegal drugs, such as the:

- Importation, sale, delivery, distribution, manufacture, possession, use, and prescription of drugs and its essential chemicals;
- Maintenance of and being employed in a drug den;
- Manufacture, delivery, and possession of equipment and other drug paraphernalia;

- Cultivation of plants that are sources of drugs; and,
- Planting of evidence.

The penalties range from a fine of Php10,000 to Php500,000 and imprisonment of six months and one day to life imprisonment; likewise, accessory penalties include disqualification from the exercise of civil and political rights.

Aside from the penal provisions, R.A. No. 9165 also provides the procedure by which the law is implemented. For instance, the Philippine Drug Enforcement Agency (PDEA) is designated as the agency that "shall take charge and have custody of all dangerous drugs..." Following such designation, the law, as amended by R.A. No. 10640, outlines the chain of custody that must be followed for the subsequent prosecution of the crime. Likewise, plea bargaining has been explicitly prohibited to any person charged with violating the law, regardless of the imposable penalty. As for drug traffickers and pushers, the resort to the Probation Law has also been prohibited.

As to community involvement, the law provides for the engagement of the private sector, the local government units, and even providing for treatment and rehabilitation.

Administrative Matter No. 18-03-16-SC

In August 2017, the Supreme Court ruled that the provision of RA No. 9165 disallowing plea bargaining was struck down as unconstitutional for violating the rule-making power of the Supreme Court granted by the Constitution. Following this, the Court issued Administrative Matter No. 18-03-16-SC, which provides the Plea Bargaining Framework in Drug Cases.

The Court has clarified that plea bargaining is still generally prohibited when the case involves an imposable penalty of life imprisonment (or death) and for violations of Section 5 of the law, on the illegal sale and trade of all other dangerous drugs except shabu and marijuana. In other instances, the accused can bargain for a lesser offense. For example, in cases of possession of 0.01 to 4.99 grams of shabu, which carries a penalty of 12 years and one day to 20 years and a fine of Php300,000 to Php400,000, the accused can bargain for the lesser offense of possession of equipment



and other paraphernalia, which entails a penalty of six months and one day to four years and a fine of Php10,000 to Php50,000).

People v. Lim (G.R. No. 231989)

In September 2018, the Supreme Court provided another policy regarding the war on drugs, this time concerning the chain of custody that must be followed. In *People v. Lim*, the Court outlined the following mandatory policy:

1. "In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, and its IRR.
2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefore as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.
3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.
4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court."

Art. 11, Revised Penal Code

An oft-cited legal principle invoked by the anti-illegal drug operatives is that of valid self-defense. In their narrative, during an anti-illegal drug

operation, the culprits allegedly fight back, leaving law enforcement agents no other option but to defend themselves.

Article 11 of the Revised Penal Code provides the following:

"Art. 11. Justifying circumstances.
— The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

First, unlawful aggression;

Second, reasonable necessity of the means employed to prevent or repel it; and,

Third, lack of sufficient provocation on the part of the person defending himself."

These three elements must be present when the culprits are killed for the claim of valid self-defense to prosper. This would also remove the categorization of the incident as an EJK since it would fall under a circumstance justified by the law.

International Policy

Rome Statute

Recognizing the need to ensure the prosecution of the most serious crimes, the international community has created the Rome Statute of the International Criminal Court (ICC), which provides a remedy in international law that is complementary to the internal law of States.

The ICC was given the ability to exercise its functions and powers in the territories of its State parties and even in the territory of other States, pursuant to a special agreement. Among the crimes within its jurisdiction are crimes against humanity, such as murder, imprisonment, enforced disappearances, and torture. What qualifies these acts as crimes against humanity is their commission as part of a widespread or systematic attack directed against any civilian population and with the accused having knowledge of such attack.



As for the principle of complementarity, the Rome Statute provides that a case can be dismissed for inadmissibility when the ICC finds, among others, that:

“(a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;

(b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute.”

In determining the existence of this unwillingness, the ICC shall consider whether there is one or more of the following circumstances:

“(a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court;

(b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;

(c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.”

In determining inability, the ICC shall consider “whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.”

Relevant Institutions

State Institutions

The Commission on Human Rights (CHR)

The CHR, an NHRI established by the 1987 Philippine Constitution, is mandated to conduct investigations on HRVs against marginalized and vulnerable sectors. Article XIII on Social Justice and Human Rights defined the creation of the Commission. It is an “A” accredited NHRI, fully complying with the Paris Principles adopted by the United Nations General Assembly in 1995.

The Ombudsman

The Office of the Ombudsman was created through the 1987 Philippine Constitution and R.A. No. 6770, otherwise known as the Ombudsman Act of 1989. It is a fiscally autonomous body independent from any other branch of government,²⁹ headed by an Ombudsman who could be removed from office only by way of impeachment.³⁰ It has an extraordinary range of oversight and investigative authority over the actions of all public officials, employees, offices, and agencies. Not only can it investigate on its own or on complaint any official act or omission that appears to be illegal, unjust, improper, or inefficient, but it can also prod officials into performing or expediting any act or duty required by law. Likewise, it can stop, prevent, and control any abuse or impropriety in the performance of such duties, as well as require the submission of documents relative to contracts, disbursements, and financial transactions of government officials to ferret out any irregularities.³¹

Non-State Human Rights Institutions

BALAY Rehabilitation Center, Inc.

The BALAY Rehabilitation Center, Inc. provides psychosocial services and advocacy support to persons deprived of liberty due to political circumstances, as well as survivors of torture and other forms of organized political violence. It also provides services to survivors of massacres and extra-judicial killings and their families.³²



Families of Victims of Involuntary Disappearance (FIND)

FIND, a nationwide mass organization of families and friends of the disappeared victims and surfaced desaparecidos, advocates for human rights and participative empowerment.³³

Free Legal Assistance Group (FLAG)

FLAG is a nationwide human rights lawyers organization committed to the protection and promotion of human rights and civil liberties. It was founded in 1974 by Jose W. Diokno, Lorenzo Tanada, Sr., and Joker Arroyo. Among its many advocacies are those against political repression, military and police abuses, and the death penalty.³⁴

Initiatives for Dialogue and Empowerment through Alternative Legal Services (IDEALS)

IDEALS is a local nonprofit that addresses the legal and technical needs of the marginalized, disempowered, and vulnerable groups, particularly farmers, persons, and communities affected by disasters and victims of HRVs.

Medical Action Group (MAG)

MAG, founded on April 16, 1982, consists of doctors and concerned individuals who saw the need for the health sector to collectively respond and speak against the grave human rights violations perpetrated by the Marcos regime.³⁵

Philippine Alliance of Human Rights Advocates (PAHRA)

PAHRA was formed as an alliance of individuals, institutions, and organizations committed to the promotion, protection, and realization of human rights in the Philippines. Among its founding members are organizations and individuals that were at the forefront of the struggle against the dictatorship under the Marcos regime. Through its initiative, the Philippine Declaration of Human and People's Rights was adopted in December 1993 during the Human Rights Summit, which PAHRA convened. This Declaration led to the adoption of The Human and Peoples' Rights Declaration of the Philippines, which is meant to be the Philippines' contribution to the long-envisioned ASEAN Human Rights Declaration.³⁶

Philippine Human Rights Information Center (PhilRights)

PhilRights is the research and information arm of PAHRA, providing information, documentation, research, and analyses.³⁷

Task Force Detainees of the Philippines

The Task Force Detainees of the Philippines is a national human rights organization that documents HRVs, assists the victims and their families in their material and legal needs, and conducts human rights education work.³⁸

FOCUS GROUP DISCUSSION

The main method for research was the creation of a FGD with the families of the victims of HRVs, specifically of EJKs. The participants are clients of the partner organizations under PAHRA who willingly agreed to participate in the FGD to share their stories. The purpose of the FGD is to assess the three elements of Access to Justice which are: Legal Knowledge, Advice and Representation, and Access to a Justice Institution.

Profile of FGD Participants

SEX	
Male	Female
2	9

CITY OF RESIDENCE		
Caloocan	Manila	Navotas
2	9	1

HIGHEST EDUCATIONAL ATTAINMENT			
Elementary Graduate	3rd Year High School	High School Graduate	College Graduate
2	4	4	1



EMPLOYMENT						
Construction Worker	Hairdresser	Laundry Woman	Sampaguita Vendor	Fisherman	Teacher	None
1	2	1	1	1	1	4

NUMBER OF CHILDREN						
1 Child	2 Children	3 Children	5 Children	6 Children	9 Children	None
1	3	1	3	1	1	1

CIVIL STATUS		
Common Law Relationship	Married	Widowed
4	5	2

ESTIMATED MONTHLY INCOME				
~ Php 2,500	~ Php 4,800	~ Php 7,000	~ Php 10,800	None
1	2	1	2	5

Questions Asked

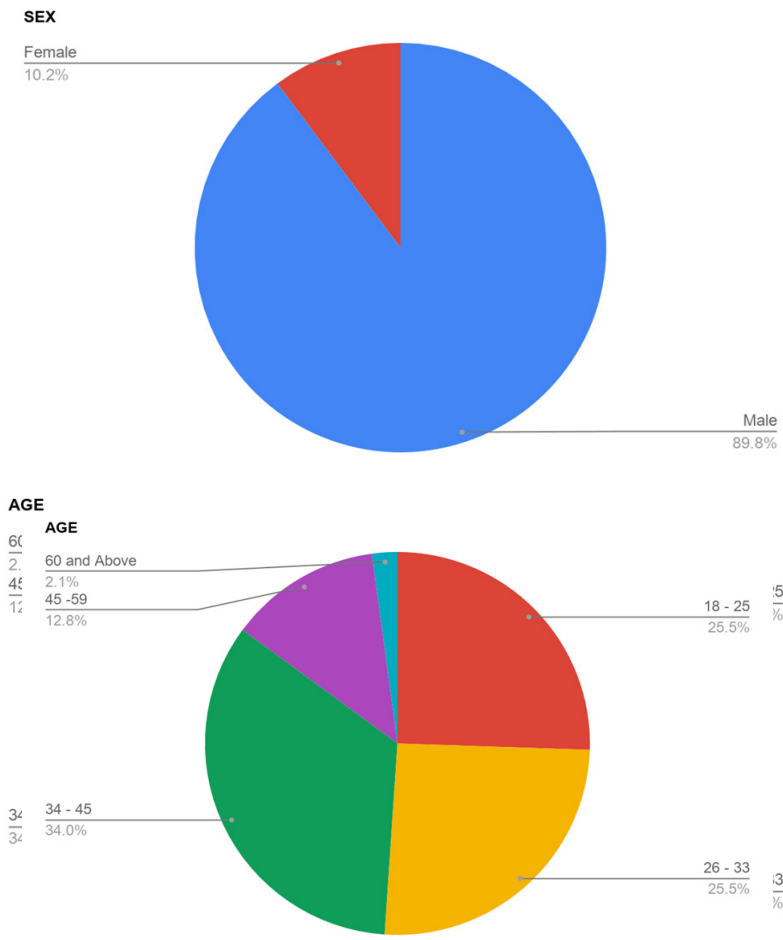
1. *Ano sa pagkakaintindi niyo ang karapatang pantao?* (What is your understanding of human rights?)
2. *Sa kaso niyo, meron bang paglabag sa karapatang pantao?* (In your case, do you think there was a violation of human rights?)
3. *Bakit merong paglabag ng karapatang pantao?* (Why do you think there are human rights violations?)
4. *Saan niyo natutunan ang konsepto ng karapatang pantao?* (Where did you learn about the concept of human rights?)
5. *Meron bang government effort para ipaalam ang karapatang pantao?* (Are there government efforts to educate people about human rights?)
6. *Saan kayo unang lumapit?* (Where did you first go to after the incident?)
7. *Saan pa ba pwede?* (Where else do you think you can go to?)
8. *Nabigyan ba kayo ng tulong ng pulis?* (Did the police help you?)
9. *May tiwala ba kayo sa kanila?* (Do you trust the police?)
10. *Meron pa ba sa komunidad niyo na pwedeng lapitan?* (Is there anyone else in your community you can approach?)
11. *May nilapitan rin bang ibang org?* (Did you approach any other organization?)
12. *Lumapit ba kayo sa CHR?* (Did you approach the Commission on Human Rights?)
13. *Nakasampa ba kayo ng kaso?* (Were you able to file a case?)
14. *Bakit hindi kayo nagsampa?* (Why did you not file a case?)
15. *Ano ang gusto niyong makamit kaya kayo nagsampa ng kaso?* (What do you hope to attain by filing a case?)
16. *Lumapit ba kayo sa abugado?* (Did you approach a lawyer?)
17. *Kung may pera kayo, kukuha ba kayo ng abugado?* (If you had the means, would you hire a private lawyer?)
18. *Ano ang tulong na binigay ng fiscal?* (What help did the public prosecutor provide?)



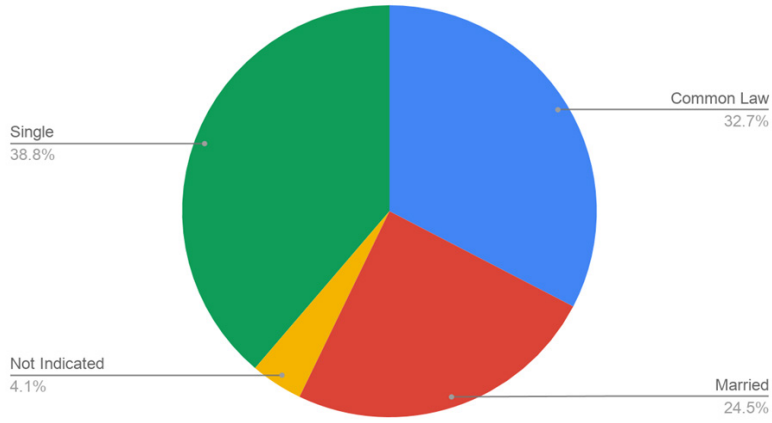
19. *Ano masasabi niyo sa mga humawak ng kaso niyo?* (What can you say about the lawyers who handled your cases?)
20. *Meron pa bang ibang org na nagbibigay sa inyo ng legal services?* (Were there other organizations that provided legal services to you?)
21. *Meron ba kayong kakayahan para magbayad ng mga pangangailangan sa kaso?* (Do you have the financial capacity to pay for the necessary expenses for filing a case?)
22. *Meron bang nananakot o nagbabanta sa inyo nung nagdesisyon kayo na magsampa ng kaso?* (Did you receive threats when you decided to file a case?)
23. *Gaano kahaba yung panahon mula sa insidente hanggang sa lumapit na kayo sa pwedeng magbigay ng tulong?* (How long did it take you to approach someone for help?)
24. *Nahirapan ba kayo kumuha ng mga dokumento?* (Did you have difficulty in gathering the necessary documents?)
25. *Lumapit ba kayo sa police chief o sa ibang may kapangyarihan?* (Did you approach the local chief of police or anyone else in a position of power?)
26. *Ano pa ang kailangan niyo na legal services?* (What are your other legal needs?)
27. *May plano pa ba kayong magsampa ng kaso?* (Do you still plan on filing a case?)
28. *Sa tingin niyo ba ay makukuha niyo ang gusto niyong makamit na hustisya?* (Do you think you will be able to attain the justice you seek?)
29. *Pagkatapos ng administrasyon na ito, sa tingin niyo makukuha niyo ang hustisya?* (After this current administration, do you think you will be able to attain the justice you seek?)

Profile of Documented Cases

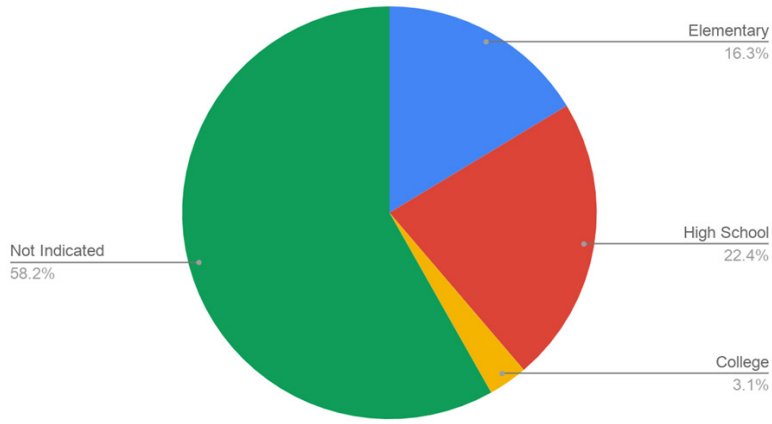
The following graphs show the profiles (sex, age, civil status, educational attainment, and employment) of the victims who were documented by the partner organizations of PAHRA and used to supplement the FGD.



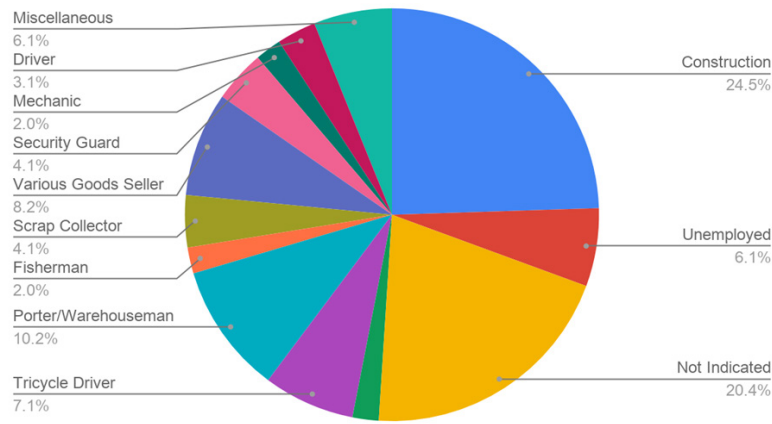
CIVIL STATUS



EDUCATIONAL ATTAINMENT



EMPLOYMENT



CHR Data

A total of 13 Resolutions/cases were provided by the CHR, as follows:

DATE OF INCIDENT	PLACE OF INCIDENT	ALLEGED VICTIM	ALLEGED PERPATRATORS	ALLEGED HRV	INITIATION OF THE COMPLAINT	DATE OF RESOLUTION FROM THE CHR	FINDINGS AND RECOMMENDATIONS
May 24, 2016	Jaen, Nueva Ecija	O.B.	Police Senior Inspector D.R. Police Senior Inspector W.B. Police Senior Inspector A.A.	Arbitrary Deprivation of Life	Motu proprio investigation of the CHR	March 29, 2017	Case closed and terminated as there is no finding of human rights violation due to the refusal of the family members to pursue the case further, without prejudice to the reopening should new witnesses come forward.
July 7, 2016	Pasay City, Metro Manila	J.B. R.B.	Police Officer II A.B. Police Officer I M.T. Police Officer I D.L.S.	Arbitrary Deprivation of Life Illegal Arrest	Motu proprio investigation of the CHR	October 11, 2016	Respondents are liable for human rights violation. For forwarding to the Office of the Ombudsman for filing of appropriate criminal and administrative cases. Financial assistance to the heirs of the victim, to amount of Php 10,000.00.
July 13, 2016	Tugegarao City, Cagayan	M.M.	Philippine Drug Enforcement Agency (PDEA) Assistant Regional Director R.Y. Investigating Agent V, Chief of Operations A.L.L. Investigating Officer I M.J.G. Investigating Officer II G.R.C. Investigating Officer I J.M.M. Investigating Officer I J.T. John Does of PDEA	Arbitrary Deprivation of Life	Through the initiatives of the heirs of the victims	January 9, 2017	Case closed and terminated as administrative and criminal complaints had already been filed at the Office of the Deputy Ombudsman for Luzon. Financial assistance to the heirs of the victim shall be given.
July 17, 2016	Roxas, Isabella	M.A.	R.H. and a certain John Doe	Arbitrary Deprivation of Life	Motu proprio investigation of the CHR	April 10, 2017	Case closed and terminated as this is a case of a common crime perpetrated By assailants who are private persons.



July 25, 2016	Aurora, Isabela	C.A.	R.C.	Arbitrary Deprivation of Life	Motu proprio investigation of the CHR	March 7, 2017	Case dismissed as this is a case of a common crime perpetrated by an assailant who is a private person.
July 26, 2016	Lasam, Cagayan	E.B. W.V.	Police Chief Inspector E.U. Police Superintendent L.U. Police Officer III J.B. Police Officer II A.C. Senior Police Officer IV R.A. Senior Police Officer I J.D. Police Officer II G.P. Police Officer II B.P. Police Officer II E.D.	Arbitrary Deprivation of Life	Through the initiatives of the heirs of the victims	January 24, 2017	Respondents are liable for human rights violation. For case monitoring of the cases filed by the complainants with the Ombudsman.
July 26, 2016	Valenzuela City, Metro Manila	A.A.	Police Officer III R.C. Police Officer II J.B. Police Officer II	Arbitrary Deprivation of Life	Through the initiatives of the heirs of the victims	May 30, 2017	Respondents are liable for human rights violation. For forwarding to the Office of the Ombudsman for filing of appropriate criminal and administrative cases. Financial assistance to the heirs of the victim, to amount of Php 10,000.00.
July 26, 2016	Manila City, Metro Manila	B.D.	Police Officer II R.S. Police Inspector R.G. Senior Police Officer II L.R. Senior Police Officer II C.J. Jr. Police Officer III R.F. Police Officer III R.S. Police Officer I R.P. Police Officer I L.T.	Violation on the Right to Life	Through the initiatives of the heirs of the victims	March 30, 2017	Respondents are liable for human rights violation. For forwarding to the Office of the Ombudsman for filing of appropriate criminal and administrative cases. Financial assistance to the heirs of the victim, subject to the submission of the required documents.



August 1, 2016	Cauayan City, Isabela	J.B.	C.M.	Arbitrary Deprivation of Life	Motu proprio investigation of the CHR	May 3, 2017	Case dismissed as this is a case of a common crime perpetrated by an assailant who is a private person.
August 10, 2016	Abulug, Cagayan	G.G.	Unidentified Assailant	Arbitrary Deprivation of Life	Through the initiatives of the heirs of the victims	January 16, 2017	There is a human rights violation. Case is archived, subject to CHR's monitoring as perpetrator is still unidentified. Financial assistance to be given to the heirs of the victim.
September 22, 2016	Baguio City, Benguet	C.O.	Unidentified Assailant	Arbitrary Deprivation of Life	Motu proprio investigation of the CHR		There is a human rights violation. Financial assistance to the heirs of the victim, amounting to Php 10,000.00. Case closed and terminated, without prejudice to the filing of a case against the perpetrator when identified.
January 8, 2017	Caloocan City, Metro Manila	H.R.K. (17 y.o.)	Police Superintendent W.B. Senior Police Officer IV B.B. II Police Officer III A.M. Police Officer III C.H. Police Officer III H.N. Police Officer III P.A. Police Officer III C.T. Police Officer II F.U. Police Officer I J.T. Police Officer I M.B. Police Officer I M.M. Police Officer I Z.C. Police Officer I M.O	Arbitrary Deprivation of Life Planting of Evidence under Sec. 29 of RA No. 9165	Through the initiatives of the heirs of the victims	June 8, 2017	Respondents are liable for human rights violations. For forwarding to the Office of the Ombudsman for filing of appropriate criminal and administrative cases. Financial assistance to the heirs of the victim, subject to the submission of the required documents.



August 15, 2017	San Jose Del Monte, Bulacan	J.A.	Joint elements of Police Community Precint-4, City of San Jose Del Monte, Bulacan, and Provincial Public Safety Company (PPSC) 4th Maneuver Platoon	Arbitrary Deprivation of Life	Motu proprio investigation of the CHR	February 1, 2018	The victim was killed in an armed encounter against the respondents. Case closed and terminated due to the blatant and express disinterest of the victim's family in proceeding further with the investigation.
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From these 13 cases, seven were initiated *motu proprio* by the CHR, while six were initiated through the initiative of the victims' heirs.

Eight of the 13 cases received were found to be HRVs, specifically Arbitrary Deprivation of Life. From these eight cases, six had known assailants, while two had unknown assailants. From the six cases who had known assailants, five were allegedly perpetrated by the members of the Philippine National Police (PNP), while one incident was allegedly perpetrated by the members of the PDEA. Those who were identified as the perpetrators from the PNP include: two Police Superintendents, one Police Chief Inspector, three Police Senior Inspectors, one Police Inspector, two Senior Police Officers IV, two Senior Police Officers II, one Senior Police Officer I, seven Police Officers III, nine Police Officers II, ten Police Officers I, and the whole Community Precinct - 4 and the 4th Maneuver Platoon of the Provincial Public Safety Company of San Jose del Monte, Bulacan. Meanwhile, those who were identified as perpetrators from the PDEA include: one PDEA Regional Director, one Investigating Agents V, three Investigating Officers 1, and one Investigating Officer II.

The eight HRV cases occurred in the cities of Manila, Pasay, Caloocan, and Valenzuela (all within Metro Manila); the city of Baguio (within the province of Benguet); and in the city of Tuguegarao and the municipalities of Lasam and Abulug (all within the province of Cagayan), respectively. From the eight HRV cases, four were recommended to be filed before the Office of the Ombudsman for the filing of appropriate criminal and administrative charges against the perpetrators, while two cases are for monitoring by the CHR as the victims' relatives have already filed appropriate charges before the Ombudsman. The two remaining cases with unknown assailants were archived, without prejudice to the reopening of the case upon discovery of new evidence and

witnesses. Lastly, in seven of the eight HRV cases, it was recommended that the victims' family members be given financial assistance.

Two of the 13 cases were not conclusively resolved as HRV cases perpetrated by the elements of the PNP due to the family members' refusal of further investigation. In one of these cases, the victim's family members specifically requested that the investigation be terminated for fear of possible reprisal from the state agents. The cases happened in the city of San Jose Del Monte (within the province of Bulacan) and in the municipality of Jaen (within the province of Nueva Ecija), respectively.

Lastly, three of the cases were found not to be incidents of HRVs as the alleged perpetrators were identified as private persons. These incidents happened in Cauayan City and the municipalities of Roxas and Aurora, all within the Isabela Province.

MAIN REPORT

The flow of the FGD was divided into the three elements of the Access to Justice Framework, starting with Legal Knowledge, then Advice and Representation, and finally the Access to a Justice Institution. The elements of Legal Framework, Fair Procedure, and Enforceable Decision were not covered in the FGD as none of the participants have an active case filed in court.

Legal Knowledge

All the participants had an idea of what human rights are. They expressed that it is a system of accessible and equal justice for all, regardless of socioeconomic standing. Expounding on this idea, they manifested that they simply knew when their rights were being violated even if they were unable to



pinpoint what those rights were. They explained that the concept of human rights was not formally taught to them; instead, they were taught as children by their families and in school to distinguish what is right and wrong. From here, they concluded that what they had experienced were violations of their human rights. As examples, they cited that in the cases of EJKs, they said that their relatives, the victims, were summarily and mercilessly killed without giving them a chance to explain or to be arrested instead and to have the opportunity to change their ways.

Such interpretation is consistent with most, if not all, the cases that PAHRA has documented. Despite lack of formal education, they understood that what had been done to their relatives was immoral and unjust.

It could be drawn from their answers that there is a general grasp of what they are entitled to in terms of safeguarding their human rights. However, the lack of education and information dissemination of what these exact rights are and how they are enforced shows that the element of Legal Knowledge still has a long way to go. They knew that EJKs are wrong; however, their statement that they preferred instead that their relatives—whom they admit were involved with illegal drugs—be arrested shows that there is no understanding of the mechanisms of due process, the presumption of innocence, and other concepts of human rights.

Worse, the participants have little to no trust in the institutions that have the duty to defend their rights. They have no trust in the police because they know that the violators are the police themselves. As for the CHR, the Department of Justice, and any other government office or agency, the participants said either they do not know these agencies and the services they offer or, if they do know, they were not much help.

The problem with government institutions also extends to the nongovernment organizations. Usually, the participants had to wait for these organizations to find them, and the help they provided were not always what they wanted or needed, which are mostly financial support and legal aid.

The concerns with both government and nongovernment institutions exacerbates the difficulty in attaining legal knowledge. Although the nongovernment sector seeks to mitigate this issue, their efforts are not enough to fully bridge the gap.

Advice and Representation

All respondents stated that they were unable to secure private legal counsel because of the high lawyer fees. This is expected given their income. As such, they were constrained to rely on the public prosecutors and the public attorneys. Unfortunately, as they shared, they did not receive the help they expected. Some manifested that they lost hope because the public prosecutors made the process longer and more difficult, while some public attorneys gave detrimental advice such as accepting the terms of the plea bargain even if the victims were arrested without warrants and had no involvement with illegal drugs at all.

These responses were again shared by the narratives collated in the documented cases. In connection with the element of Legal Knowledge, almost all the victims' families stated that they did not know the laws, rules, terms, and the legal process as a whole. Thus, they relied heavily on what the public prosecutors and public attorneys told them, without the ability to supply alternatives or recommendations.

As with Legal Knowledge, the Advice and Representation is anchored not only on the institutions in the legal system but also on the people's knowledge of them. The families here already have to overcome a huge barrier in accessing Advice and Representation, *i.e.*, the high cost of proper legal counsel, and when they are unable to, they are forced to seek the help of those who are not as inclined to provide the best legal advice and representation due to various reasons, such as the number of assigned cases, lack of resources, and political pressures, among others.

Access to Justice Institution

For this element, the respondents had mixed answers, specifically on the non-monetary costs of accessing justice institutions. Aside from the financial cost of taking days off from work to attend to their cases, paying various fees, and other financial costs, a set of respondents said that they were able to ask for help from both state and non-state institutions. However, the larger set maintained that they not only mistrusted the state institutions, but were also afraid of approaching them because they did not know if these institutions would turn on them, or they did not think they could help. Almost all the respondents, thus, turned to non-state institutions for help.



The documented cases also back up this narrative. Most of the families have had difficulty requesting for legal documents related to their cases for the same monetary and non-monetary costs. As can be gleaned from their profiles, the victims are poor who have low income jobs. Likewise, they were usually the breadwinners of the families they left behind. This sudden loss of income is a huge burden for the families who would rather spend on day-to-day living expenses rather than on filing a case. As for the non-monetary costs, fear, threats, and mistrust play a huge part in the inability of these families to approach the justice institutions. Coupled with the lack of legal knowledge, then what is left is for the families to simply accept their circumstances in defeat.

This is likely the biggest hurdle that must be overcome when it comes to Access to Justice for the HRV victims and their families. Even if there is a lack of legal knowledge and the inability to receive proper legal advice and representation, access to a justice institution would have been able to mitigate those shortcomings. However, the state institutions are far out of reach and the non-state institutions are having difficulty addressing the huge demand for justice.

CONCLUSIONS

Legal Knowledge

The families know their rights based on what is generally accepted as good or bad. Deprivation of the right to life of their family members as a result of EJKs are perceived negatively, but there is no understanding of its normative content, such as the mechanisms of due process, presumption of innocence, and other concepts of human rights. Their concept of human rights was mainly drawn from their families or at school. This may suggest that other formal institutions that are supposed to provide human rights education have not influenced their legal knowledge. They have become aware of their human rights only after a human rights group has helped them in dealing with their EJK case. This is worsened by their lack of appreciation for the formal institutions such as DOJ, PAO, and CHR, which are supposed to protect, respect, and promote human rights. If ever they know such institutions, there is a question of trust on how these institutions can help them.

Moreover, assuming that the victims' families decide to pursue criminal and administrative actions,

they still need to address several factors in their quest to access justice. One of these factors is the direct financial burden, such as paying filing fees and other court costs. While the victims' families do not need to pay for a legal representative as they are already represented by the State in these actions, there is a strong likelihood that these family members will be burdened by travel and opportunity costs, such as travel time in attending the court hearings. Another factor is when the family members may be intimidated or harassed by the State agents, leading them to abandon their action and fail in holding the perpetrators to account.

Advice and Representation

The respondents' economic status is the key deterrent for them to seek legal help from private lawyers. Reliance on the legal aid provided by the DOJ through the public prosecutors and PAO lawyers is the usual means of accessing legal advice and representation. However, there is much to be desired from the services provided by the public prosecutors and/or public attorneys, whom they have sought for legal advice and representation. The level of appreciation of the services provided by the public prosecutor and/or PAO may also be correlated with their legal knowledge.

Access to a Justice Institution

Although we have sufficient formal rules and institutions to address HRVs, access to justice institutions by the families of the victims of EJK is determined by monetary and non-monetary costs. Monetary costs includes not only the actual cost of filing a complaint or pursuing a case in court but also include financial cost of taking days off from work to attend to their cases. Non-monetary costs refer to the various other factors that affect their desire to pursue their case, such as fear of retribution from the perpetrators, mistrust of the institutions that should be helping them with their cause, and even the lack of legal knowledge to properly participate in their attainment of justice.

Meanwhile, when the CHR finds a human rights violation in an incident exists, it recommends that a case be filed before the Office of the Ombudsman for the prosecution of the appropriate criminal and administrative actions. But such findings are only recommendatory, and it is still within the prerogative



of the victims' families to pursue the case or not. In cases that the CHR initiated *motu proprio*, the Commission may recommend the prosecution of the cases to the Ombudsman. However, there is a strong possibility that such cases will be dismissed as witnesses who are essential in pursuing the criminal and/or administrative actions are often unwilling to come forward and testify.

Thus, in every case filed before the Office of the Ombudsman, the initiative of the victims' families is vital. Without it, there would be no legal actions against the perpetrators, and they will not be held accountable. However, it is helpful to note that such persons who were found by the CHR as perpetrators of HRVs will not be given clearances by the CHR whether or not a case was filed before the Office of the Ombudsman against them.

RECOMMENDATIONS

Working on the legal knowledge of the victims' families is where the path to accessing justice begins. In the short term, they should be provided with legal knowledge on how to pursue their case in court. Asking the right questions on how the case proceeds will enable them to confidently engage the public prosecutor and/or public attorney with the end goal of safeguarding their rights and ensuring a speedy disposition of their case. Understanding the legal process may enable them to deal with their lack of trust in the existing formal access to justice institutions. Other skills such as basic legal documentation may provide them with practical knowledge that they can use in case they are faced with similar situations within their family or community.

In the long term, it will be helpful if the families will be oriented to seek further accountability from the State or its agents who are responsible for the systematic violation of their rights. Legal knowledge focusing on claim-making against State agents could be done through their collective undertaking. The experience of the martial law victims is instructive on the required legal documentation, level organization of the claimants, and public advocacy in seeking compensation for HRV victims.

As rights-holders and victims of HRVs, they can seek accountability from the State by developing and providing a counter narrative to the justifications of the drug war of the Duterte Administration. They themselves, or with the help of human rights groups,

can document their own stories—a crucial step in seeking legal remedies. These stories may be a source of information, albeit information should be translated to evidence for it to be useful in seeking legal remedy in court. Hence, a good documentation of the EJK cases is important and the victims' families should be oriented in this regard.

As for the HRV cases that the CHR has recommended to the Office of the Ombudsman for filing, or have already been filed, the progress of these cases on trial—if they are indeed already on trial—should be monitored as it will elucidate the present status of access to justice when it comes to HRVs being waged by State agents. Some of the criteria that should be monitored include: (a) whether the prosecution is willing and able to hold the alleged perpetrators accountable; and, (b) whether the prosecution represented by lawyers are unbiased, fair, and efficient. ●



ENDNOTES

- 1 The Drug Archive Philippines (drugarchive.ph) is the project of a research consortium led by the Ateneo School of Government of the Ateneo de Manila University, De La Salle Philippines, the University of the Philippines-Diliman, and the Stabile Center for Investigative Journalism of Columbia University's Graduate School of Journalism. It supports multidisciplinary and evidence-based research on the anti-drug campaign in the Philippines (<https://drugarchive.ph/page/40-about-the-project>, last accessed: June 18, 2019).
- 2 <https://drugarchive.ph/post/26-the-drug-killings-who-what-where-when-how-master>, last accessed: June 18, 2019.
- 3 "Where the drug war began", <https://www.rappler.com/newsbreak/investigative/beginning-war-on-drugs-philippines#ch2>, last accessed: June 19, 2019.
- 4 Name has been changed to protect their identity.
- 5 *Id.*
- 6 *Id.*
- 7 *Id.*
- 8 Sec. 5(l), Republic Act No. 111888, An Act Providing for the Special Protection of Children in Situations of Armed Conflict and Providing Penalties for Violations Thereof, 10 January 2019.
- 9 American Bar Association Rule of Law Initiative - Access to Justice Assessment Tool 2012, https://www.americanbar.org/content/dam/aba/directories/roli/misc/aba_rol_i_access_to_justice_assessment_manual_2012.authcheckdam.pdf, last accessed May 30, 2019.
- 10 The partner organizations relied upon for these documented cases are the Initiatives for Dialogue and Empowerment through Alternative Legal Services, Inc., Philippine Human Rights Information Center, and Medical Action Group.
- 11 Article III, Section 1, 1987 Philippine Constitution.
- 12 Article III, Section 2, 1987 Philippine Constitution.
- 13 Article III, Section 11, 1987 Philippine Constitution.
- 14 Article III, Section 12, 1987 Philippine Constitution.
- 15 Article III, Section 13, 1987 Philippine Constitution.
- 16 Article III, Section 14, 1987 Philippine Constitution.
- 17 Article III, Section 17, 1987 Philippine Constitution.
- 18 Article III, Section 21, 1987 Philippine Constitution.
- 19 Article III, Section 22, 1987 Philippine Constitution.



- 20 <https://doj.gov.ph/vision-mission-and-mandate.html>, last accessed: June 3, 2019.
- 21 <https://doj.gov.ph/doj-action-center-dojac.html>, last accessed: June 3, 2019.
- 22 Article XIII, Sections 17 & 18, 1987 Philippine Constitution.
- 23 <http://chr.gov.ph/about-us/>, last accessed: May 29, 2019.
- 24 Article XIII, Section 18, 1987 Philippine Constitution.
- 25 Rule 113, Section 5, Revised Rules of Criminal Procedure, Rules of Court.
- 26 Refers to Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities, or Municipal Circuit Trial Court.
- 27 <https://www.pna.gov.ph/articles/1047395> last accessed 4 June 2019.
- 28 <https://doj.gov.ph/administrative-order-35.html>, last accessed: May 29, 2019.
- 29 Article XI, Section 14, 1987 Philippine Constitution.
- 30 Article XI, Section 2, 1987 Philippine Constitution.
- 31 Article XI, Section 13, 1987 Philippine Constitution.
- 32 <https://balayph.net/about-us/who-we-are>, last accessed: October 18, 2018.
- 33 https://www.facebook.com/pg/FIND1985/about/?ref=page_internal, last accessed: October 18, 2018.
- 34 <http://flagfaqs.blogspot.com/>, last accessed: October 18, 2018.
- 35 <https://www.tfdp.net/links/20-philippine-human-rights-groups>, last accessed: October 18, 2018.
- 36 <https://philippinehumanrights.org/about>, last accessed: October 18, 2018.
- 37 <https://www.tfdp.net/links/20-philippine-human-rights-groups>, last accessed: October 18, 2018.
- 38 <https://www.tfdp.net/about-us>, last accessed: October 18, 2018.





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