Part III: Environmental Disputes and Resolution Techniques in the Philippines

Dante B. Gatmaytan

I. Introduction

Dispute resolution regarding environmental issues in the Philippines may seem to have very limited application. As a rule, it would seem that law places a premium on the role of the Judiciary as the venue for the resolution of all conflicts including issues pertaining to the environment. The Philippines' contribution to a 1999 symposium on sustainable development produced a list of Supreme Court decisions affecting the environment (Flerida Ruth P. Romero, *The Role of the Judiciary in Promoting the Rule of Law in the Area of Environmental Protection*, THE COURT SYSTEMS JOURNAL 94-101 [Special Edition, April 1999]), and a discussion on the potential uses of ecological agreements with industry to preserve the environment—in essence voluntary negotiations with polluters as opposed to regulation by the State (Antonio A. Oposa, Jr., *A Socio-Cultural Approach to Environmental Law Compliance: A Philippine Scenario* THE COURT SYSTEMS JOURNAL 160-184 (Special Edition, April 1999).

Alternative Dispute Resolution (ADR) was barely even mentioned, lending credence to the view that the concept has yet to gain a foothold in environmental disputes in the Philippines. Alternative dispute resolution is better entrenched in other areas like commercial transactions (*See* Custodio O. Parlade, *Search for Alternative Modes of Dispute Settlement*, 1 CONTINUING LEGAL EDUCATION JOURNAL 51-63 [2000]). Indeed, the representatives of the Judiciaries of Southeast Asia and the other participants of that symposium signed "The Manila Resolution on the Role of the Judiciary in the Promotion of Sustainable Development", which, among other things, called for the promotion and enhancement of recent trends advancing environmental law concepts such as alternative dispute resolution (The Manila Resolution on the Role of the Judiciary in the Promotion of Sustainable Development, March 7, 1999, Manila, Philippines, reprinted in THE COURT SYSTEMS JOURNAL X-XIII, Special Edition, April 1999).

It would be inaccurate to say, however, that ADR is a completely alien concept in Philippine law. There are many laws that permit larger participation on the part of affected communities and other stakeholders in environmental matters. Another angle that one should consider is the fact that in legal pluralist society such as the Philippines, dispute resolution systems may exist outside the formal channels of the law. Indeed, environmental disputes that defined the environmental movement in the United States rarely provoke litigation in the Philippines. On the contrary, Philippine environmentalism is defined by a prominent link between resource protection and community or user access to these resources.

While this paper attempts to present the legal framework for ADR in Philippine environmental disputes and an assessment of its application, it will also present a variety of examples of dispute resolution systems that may not be contemplated under modern international trends—particularly those from the west. It will also attempt to synthesize some lessons that can be learned from these experiences.

II. Jurisprudence on Environmental Protection

Supreme Court decisions on the environment are few and far between. The most significant involved a provision in the Philippine Constitution, which provides that the State "shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature" (Const., Art. II, sec. 16). This provision was invoked by several minors in their attempt to stop the Secretary of the Environment and Natural Resources (DENR) to stop issuing Timber License Agreements and to cancel all existing ones, citing the consequences of continued exploitation of forest resources. The lower court dismissed the case on the ground that the minors did not cite any specific cause of action. In *Oposa v. Factoran* (224 SCRA 792 [1993]), the Supreme Court remanded the case to the lower court saying that the violation of the children's right to a balanced environment did in fact constitute a sufficient cause of action. At best, the *Oposa* case is authority to the effect that the Constitutional provision gives rise to a cause of action against anyone who impairs the environment. It is unclear, however, if the decision means that the plaintiffs still have to exhaust all the administrative remedies before they may go to court.

Perhaps the more significant case decided by the Supreme Court is the case of *Tano v. Socrates* (278 SCRA 154 (1997), where the Supreme Court upheld the power of the Province of Palawan and the City of Puerto Princesa to enact legislation to protect their marine resources, by citing among others, the general welfare clause of the Local Government Code (Rep. Act No. 7160 [1991], sec. 16). Otherwise, the Supreme Court's environmental docket is sparse.

III. Environmental Laws

At the onset, it should be pointed out that the Philippine environmental movement grew immensely in the 1990s (Francisco Magno, *The Growth of Philippine Environmentalism*, KASARINLAN, vol. 9, n. 1 (1993), pp. 7-18). At this time, Filipinos attempted to curb the ecological destruction engulfing the country. Filipino environmentalism, however, is unique in the sense that it unites environmental protection with democratic access to natural resources (*Id.*, at 7). Indeed, one study of Philippine forestry policy was inspired by the Department of Environment and Natural Resources' move to "give the forests back to the people" — a distinct practice compared to other countries in the region (*See* David M. Fairman, *Forest Policy Reform in the Philippines*, 1986-1996, 13 WORLD BULLETIN 175-185 (January-April 1997); *See also*, Gerhard Van den Top & Gerard Persoon, *Dissolving State Responsibilities for Forests in Northeastern Luzon*, *in* Old Ties and New Solidarities: Studies on Philippine Communities 158-176 (2000), expressing apprehensions regarding the "euphoria on community-based resource management").

The unique circumstances of the Philippines are responsible not only for the increase in laws pertaining to environmental protection, but also in the nature of these laws. In many cases, as this paper will show, the link between the protection of the environment and people's right to access to the environment seem inextricably intertwined.

It should be stressed that the enactment of environmental legislation is a recent development in the Philippines. These laws emerged only after the fall of the regime of Ferdinand Marcos in 1986. Common environmental issues are only now beginning to be addressed by Congress. Even common problems like water and noise pollution do not have specific legislation and the Philippine Clean Air Act was passed only in the late 1999. As such, there is barely any data available on the use of these laws.

Even these new laws do not have a comprehensive approach to ADR. Each law affecting the environment contains provisions on how disputes pertaining to that resource will be resolved. In most cases, the remedy available is still litigation. In many cases, the avenues for dispute resolution under these laws have never been tested.

1. The Clean Air Act

Republic Act No. 8749 or the Philippine Clean Air Act of 1999 was largely influenced by the United States' Clean Air Act. As such, it contains provisions on the settlement of disputes although it apparently encourages litigation or administrative resolution of these disputes. The following provisions are noteworthy:

> SEC. 40. *Administrative Action.* — Without prejudice to the right of any affected person to file an administrative action, the Department shall, on its own instance or upon verified complaint by any person, institute administrative proceedings against any person who violates:
>
> (a) Standards or limitation provided under this Act; or
> (b) Any order, rule or regulation issued by the Department with respect to such standard or limitation.
>
> SEC. 41. *Citizen Suits.* — For purposes of enforcing the provisions of this Act or its implementing rules and regulations, any citizen may file an appropriate civil, criminal or administrative action in the proper courts against:
>
> (a) Any person who violates or fails to comply with the provisions of this Act or its implementing rules and regulations; or
> (b) The Department or other implementing agencies with respect to orders, rules and regulations issued inconsistent with this Act; and/or
> (c) Any public officer who willfully or grossly neglects the performance of an act specifically enjoined as a duty by this Act or its implementing rules and regulations; or abuses his authority in the performance of his duty; or, in any manner, improperly performs his duties under this Act or its implementing rules and regulations: Provided, however, That no suit can be filed until thirty-day (30) notice has been taken thereon.
>
> The court shall exempt such action from the payment of filing fees, except fees for actions not capable of pecuniary estimations, and shall likewise, upon prima facie showing of the non-enforcement or

> violation complained of, exempt the plaintiff from the filing of an injunction bond for the issuance of a preliminary injunction.
>
> Within 30 days, the court shall make a determination if the complaint herein is malicious and/or baseless and shall accordingly dismiss the action and award attorney's fees and damages.
>
> SEC. 42. *Independence of Action.* — The filing of an administrative suit against such person/entity does not preclude the right of any other person to file any criminal or civil action. Such civil action shall proceed independently.
>
> SEC. 43. *Suits and Strategic Legal Actions Against Public Participation and the Enforcement of This Act.* — Where a suit is brought against a person who filed an action as provided in Sec. 41 of this Act, or against any person, institution or government agency that implements this Act, it shall be the duty of the investigating prosecutor or the court, as the case may be, to immediately make a determination not exceeding thirty (30) days whether said legal action has been filed to harass, vex, exert undue pressure or stifle such legal recourses of the person complaining of or enforcing the provisions of this Act. Upon determination thereof, evidence warranting the same, the court shall dismiss the case and award attorney's fees and double damages.
>
> This provision shall also apply and benefit public officers who are sued for acts committed in their official capacity, there being no grave abuse of authority, and done in the course of enforcing this Act.

This is one case where Congress directly enacted legislation to address a specific environmental issue. The implementation of this law, however, has been hobbled by politics and budget constraints, and has not produced any noteworthy effects apart from a concerted effort by industries to amend the strictures of the law.

Instead, a variety of other laws are available for the settlement of disputes.

2. The Local Government Code

The Local Government Code provides other avenues that should help avoid litigation. The Code generated excitement as it presented an opportunity for non-government and peoples' organizations to directly participate in environmental protection (This could be done in other ways, such as representation in local legislative councils under Section 43(c); and by legislation through initiative and referendum under sections 120-127. One other way, "mandatory consultations" is discussed above). One of the features of the Code is the mandate for consultations. Section 2 of the Code, in particular, provides:

> (c) it is likewise the policy of the State to require all national agencies and offices to conduct periodic consultations with appropriate local government units, non-governmental and people's organizations, and other concerned sectors of the community before any project or program is implemented in their respective jurisdictions.

Other pertinent provisions on consultations actually touch on the environment. Sections 26 and 27 of the Code provide:

> SECTION 26. *Duty of National Government Agencies in the Maintenance of Ecological Balance*. — It shall be the duty of every national agency or government-owned or -controlled corporation authorizing or involved in the planning and implementation of any project or program *that may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species, to consult with the local government units, nongovernmental organizations, and other sectors concerned and explain the goals and objectives of project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof.*
>
> SECTION 27. *Prior Consultations Required*. — No project or program shall be implemented by government authorities unless the consultations mentioned in Sections 2 (c) and 26 hereof are complied with, and prior approval of the *Sanggunian* concerned is obtained: *Provided*, That occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided, in accordance with the provisions of the Constitution.

We should note that section 26 of the Code lists a variety, if not all, possible environmental consequences resulting from the acts of the National Government of government-owned or –controlled corporations. Although a seemingly potent provision, there has only been one Supreme Court case where these provisions were invoked, unfortunately not to protect the environment. In *Lina v. Paño* (G.R. No. 129093, August 30, 2001), the Supreme Court held that these provisions couldn't be invoked against the Philippine Charity Sweepstakes Office to prevent it from operating lotto operations in the Province of Laguna.

3. Mining

Two laws on mining provide for clear ADR mechanisms. In 1991, Congress passed An Act Creating A People's Small-Scale Mining Program and for Other Purposes (Republic Act No. 7076 [1991]) to help address environmental and social issues arising from gold-rush situations. Section 24 of the law is pertinent:

> SECTION 24. *Provincial/City Mining Regulatory Board.* — There is hereby created under the direct supervision and control of the Secretary a provincial/city mining regulatory board, herein called the Board, which shall be the implementing agency of the Department, and shall exercise the following powers and functions, subject to review by the Secretary:
>
> (a) Declare and segregate existing gold-rush areas for small-scale mining;
>
> (b) Reserve future gold and other mining areas for small-scale mining;
>
> (c) Award contracts to small-scale miners;
>
> (d) Formulate and implement rules and regulations related to small-scale mining;
>
> (e) *Settle disputes, conflicts or litigations over conflicting claims within a people's small-scale mining area, an area that is declared a small-mining;* and
>
> (f) Perform such other functions as may be necessary to achieve the goals and objectives of this Act.

However, there is very little that has been reported regarding the application of this provision.

Then in 1995, Congress also passed An Act Instituting a New System of Mineral Resources Exploration, Development, Utilization, and Conservation (Rep. Act No. 7942 (1995). Perhaps in anticipation of the conflicts that this law would engender, Congress incorporated specific provisions providing for alternative modes of dispute. Particularly, the law provides that:

> "SECTION 77 *Panel of Arbitrators.* — There shall be a panel of arbitrators in the regional office of the Department composed of three (3) members, two (2) of whom must be members of the Philippine

Bar in good standing and one a licensed mining engineer or a professional in a related field, and duly designated by the Secretary as recommended by the Mines and Geosciences Bureau Director. Those designated, as members of the panel shall serve as such in addition to their work in the Department without receiving any additional compensation. As much as practicable, said members shall come from the different bureaus of the Department in the region. The presiding officer thereof shall be selected by the drawing of lots. His tenure as presiding officer shall be on a yearly basis. The members of the panel shall perform their duties and obligations in hearing and deciding cases until their designation is withdrawn or revoked by the Secretary. Within 30 working days, after the submission of the case by the parties for decision, the panel shall have exclusive and original jurisdiction to hear and decide on the following:

(a) Disputes involving rights to mining areas;
(b) Disputes involving mineral agreements or permits;
(c) Disputes involving surface owners, occupants and claimholders/concessionaires; and
(d) Disputes pending before the Bureau and the Department at the date of the effectivity of this Act[1]"

---

[1] The law goes on to read:

SECTION 78. Appellate Jurisdiction. — The decision or order of the panel of arbitrators may be appealed by the party not satisfied thereto to the Mines Adjudication Board within fifteen (15) days from receipt thereof which must decide the case within thirty (30) days from submission thereof for decision.

SECTION 79. Mines Adjudication Board. — The Mines Adjudication Board shall be composed of three (3) members. The Secretary shall be the chairman with the Director of the Mines and Geosciences Bureau and the Undersecretary for Operations of the Department as members thereof. The Board shall have the following powers and functions:

(a) To promulgate rules and regulations governing the hearing and disposition of cases before it, as well as those pertaining to its internal functions, and such rules and regulations as may be necessary to carry out its functions;

(b) To administer oaths, summon the parties to a controversy, issue subpoenas requiring the attendance and testimony of witnesses or the production of such books, papers, contracts, records, statement of accounts, agreements, and other documents as may be material to a just determination of the matter under investigation, and to testify in any investigation or hearing conducted in pursuance of this Act;

(c) To conduct hearings on all matters within its jurisdiction, proceed to hear and determine the disputes in the absence of any party thereto who has been summoned or served with notice to appear, conduct its proceedings or any part thereof in public or in private, adjourn its hearing at any time and place, refer technical matters or accounts to an expert and to accept his report as evidence after hearing of the parties upon due notice, direct parties to be joined in or excluded from the proceedings, correct, amend, or waive any error, defect or irregularity, whether in substance or in form, give all such directions as it may deem necessary or expedient in the determination of the dispute before it, and dismiss the mining dispute as part thereof, where it is trivial or where further proceedings by the Board are not necessary or desirable;

Experiences under the Mining Act of 1995 will be discussed shortly.

4. Indigenous Peoples' Rights

Another law that provides for alternative modes of dispute involves the Indigenous Peoples' Rights Act (IPRA) (Rep. Act No. 8371 [1997]), which recognizes, among others, indigenous peoples ownership rights over lands they have held since time immemorial. This law was challenged as unconstitutional barely a year after it was enacted on the ground that it allegedly violated the Regalian Doctrine, which provides, in essence, that absent a showing of some form of state grant, all lands belong to the State. The Supreme Court upheld the constitutionality of the law some two years thereafter (*See* Cruz v. Secretary, G.R. No. 135385, December 6, 2000. The Motion for Reconsideration was denied on September 18, 2001). This law has a significant provision, which allows for the use indigenous dispute resolution mechanisms:

> "SECTION 15. *Justice System, Conflict Resolution Institutions, and Peace Building Processes*. — The ICCs/IPs shall have the right to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices within their respective communities and as may be compatible with the national legal system and with internationally recognized human rights."

Indeed, among the rights that are recognized are:

> SECTION 7 *Rights to Ancestral Domains*. — The rights of ownership and possession of ICCs/IPs to their ancestral domains shall be recognized and protected. Such rights shall include…

---

(1) To hold any person in contempt, directly or indirectly, and impose appropriate penalties therefore; and

(2) To enjoin any or all acts involving or arising from any case pending before it which, if not restrained forthwith, may cause grave or irreparable damage to any of the parties to the case or seriously affect social and economic stability.

In any proceeding before the Board, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Act that shall govern. The Board shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process. In any proceeding before the Board, the parties may be represented by legal counsel. The findings of fact of the Board shall be conclusive and binding on the parties and its decision or order shall be final and executory.

A petition for review by certiorari and question of law may be filed by the aggrieved party with the Supreme Court within thirty (30) days from receipt of the order or decision of the Board.

h) *Right to Resolve Conflict* — Right to resolve land conflicts in accordance with customary laws of the area where the land is located, and only in default thereof shall the complaints be submitted to amicable settlement and to the Courts of Justice whenever necessary.

The IPRA is significant in the sense that indigenous ownership practices are not accommodated under the western land laws that were introduced to this country by Spain and the United States (*See* Rene Agbayani, *Some Indigenous Cultural Traditions in the Philippines: Their Implications on Environmental Conservation*, KASARINLAN, vol. 9, n. 1 (1993), pp. 54-69), some of which have their own dispute settlement systems (*See* Steve Olive, *Competition and Dispute Settlement for Fishery Resources*, KASARINLAN, vol. 9, n. 1 (1993), pp. 71-95). The rule has clearly changed in light of the express provisions recognizing the ownership rights of indigenous Filipinos (Rep. Act No. 8371, secs. 7-8). Among other things, IPRA allows indigenous peoples to delineate their ancestral domains (Rep. Act No. 8371, secs. 51-52). Section 57 of the law further provides that indigenous peoples "shall have the priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains" and that outsiders may only exploit resources with the consent of the community through a "formal and written agreement" or "pursuant to its own decision making processes."

Furthermore, Section 59 of the law provides that:

"SECTION 59 *Certification Precondition*. — All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain. Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domains Office of the area concerned: *Provided*, That no certification shall be issued by the NCIP without the free and prior informed and written consent of ICCs/IPs concerned: *Provided, further*, That no department, government agency or government-owned or -controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: *Provided, finally*, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process."

Rule III, Part II of the implementing rules (NCIP Administrative Order No. 01-98, Rules and Regulations Implementing Republic Act No. 8371, Otherwise Known as "The Indigenous Peoples' Rights Act of 1997" [June 9, 1998]) of IPRA provide:

> "SECTION 8 *Right to Resolve Conflicts According to Customary Laws*. — All conflicts pertaining to property rights, claims and ownership, hereditary succession and settlement of land disputes within ancestral domains/lands shall be resolved in accordance with the customary laws, traditions and practices of the ICCs/IPs in the area where the conflict arises."
>
> If the conflict between or among ICCs/IPs is not resolved, through such customary laws, traditions and practices, the Council of Elders/Leaders who participated in the attempt to settle the dispute shall certify that the same has not been resolved. Such certification shall be a condition precedent for the filing of the complaint with the NCIP, through its Regional Offices for adjudication.
>
> Decisions of the NCIP may be brought on Appeal to the Court of Appeals by way of a Petition for Review.

In addition, the Rules also provide that the following:

> "RULE IX"
>
> Jurisdiction and Procedures for Enforcement of Rights
>
> SECTION 1 P*rimacy of Customary Law* — All conflicts related to ancestral domains and lands, involving ICCs/IPs, such as but not limited to conflicting claims and boundary disputes, shall be resolved by the concerned parties through the application of customary laws in the area where the disputed ancestral domain or land is located.
>
> All conflicts related to the ancestral domains or lands where one of the parties is a non-ICC/IP or where the dispute could not be resolved through customary law shall be heard and adjudicated in accordance with the Rules on Pleadings, Practice and Procedures before the NCIP to be adopted hereafter.
>
> All decisions of the NCIP may be brought on Appeal by Petition for Review to the Court of Appeals within fifteen (15) days from receipt of the Order or Decision.
>
> SECTION 2 R*ules of Interpretation* — In the interpretation of the provisions of the Act and these rules, the following shall apply:
>
> a. All doubts in the interpretation of the provisions of the Act, including its rules, or any ambiguity in their application shall be resolved in favor of the ICCs/IPs.

b. In applying the provisions of the Act in relation to other national laws, the integrity of the ancestral domains, culture, values, practices, institutions, customary laws and traditions of the ICCs/IPs shall be considered and given due regard

c. The primacy of customary laws shall be upheld in resolving disputes involving ICCs/Ips

d. Customary laws, traditions and practices of the ICCs/IPs of the land where the conflict arises shall first be applied with respect to property rights, claims and ownership, hereditary succession and settlement of land disputes

e. Communal rights under the Act shall not be construed as co-ownership as defined in Republic Act No. 386, otherwise known as the New Civil Code of the Philippines;

f. In the resolution of controversies arising under the Act, where no legal provisions or jurisprudence apply, the customs and traditions of the concerned ICCs/IPs shall be resorted to; and

g. The interpretation and construction of any of the provisions of the Act shall not in any manner adversely affect the rights and benefits of the ICCs/IPs under other conventions, international treaties and instruments, national laws, awards, customary laws and agreements.

SECTION 3 Appeals to the Court of Appeals — Decisions of the NCIP is appeal able to the Court of Appeals by way of a petition for review within fifteen (15) days from receipt of a copy thereof.

SECTION 4 Execution of Decisions, Awards, and Orders — Upon expiration of the period herein provided and no appeal is perfected by any of the contending parties, the Hearing Officer of the NCIP, on its own initiative or upon motion by the prevailing party, shall issue a writ of execution requiring the sheriff or the proper officer to execute final decisions, orders or awards of the Regional Hearing Officer of the NCIP."

Evidently, dispute resolution mechanisms are now built into laws that are likely to generate animosity between resource users. In the Philippine context, this usually pertains to communities that directly use the resources such as small-scale miners and fishing communities, and large-scale resource extractive industries like mining and logging. The provisions on the IPRA were included because ancestral domains are presently being eyed by large-scale miners from all over the world as a potential source of income.

Despite these measures, however, a recent law (Rep. Act No. 8975 [2000]) makes it extremely difficult for disputes to be resolved in court:

> "SECTION 3 *Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions* — No court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private, acting under the government's direction, to restrain, prohibit or compel the following acts:
>
> (a) Acquisition, clearance and development of the right-of-way and/or site or location of any national government project;
> (b) Bidding or awarding of contract/project of the national government as defined under Section 2 hereof;
> (c) Commencement, prosecution, execution, implementation, operation of any such contract or project;
> (d) Termination or rescission of any such contract/project; and
> (e) The undertaking or authorization of any other lawful activity necessary for such contract/project.
>
> This prohibition shall apply in all cases, disputes or controversies instituted by a private party, including but not limited to cases filed by bidders or those claiming to have rights through such bidders involving such contract/project. This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise. The applicant shall file a bond, in an amount to be fixed by the court, which bond shall accrue in favor of the government if the court should finally decide that the applicant was not entitled to the relief sought.
>
> If after due hearing the court finds that the award of the contract is null and void, the court may, if appropriate under the circumstances, award the contract to the qualified and winning bidder or order a rebidding of the same, without prejudice to any liability that the guilty party may incur under existing laws."

In short, parties contesting resource rights will find it difficult to even temporarily stop projects pending resolution of a case. This is nothing new because two laws issued by former President Ferdinand Marcos similarly banned the issuance of injunctive relief by the courts. Presidential Decree No. 605 (1974) provided that:

> "No court of the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction or preliminary mandatory injunction in any case involving or growing out of the issuance, approval or disapproval, revocation or suspension of, or any action whatsoever by the proper administrative official or body on concessions, licenses, permits, patents, or public grants of any kind in connection

> with the disposition, exploitation, utilization, and/or development of the natural resources of the Philippines." (Pres. Decree No. 605 (1974), sec. 1)
>
> On the other hand, Presidential Decree No. 1818 provided that:
>
> "No court of the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction or preliminary mandatory injunction in any case, dispute, or controversy involving an infrastructure project, or a mining, fishery, forest or other natural resource development project of the government, or any public utility operated by the government…to prohibit any person or persons, entity or government official from proceeding with, or continuing the execution or implementation of any such project, or the operation of such public utility, or pursuing any lawful activity necessary for such execution, implementation or operation (Pres. Decree No. 1818 (1981), sec. 1).

Both laws have the effect of preventing even a temporary halt to these project or undertakings even while the issues are litigated. It should be of little surprise then why litigation is not the favored option for dispute settlement in the Philippines.

IV. Experiences in Dispute Resolution

The experiences in dispute resolution in the Philippines differ markedly from the experience in the United States where the regulatory framework of Federal laws is often invoked to compel compliance with environmental standards. The Philippine experiences in ADR rarely involve the issues of air, water, or noise pollution (except as tort cases where they can be abated by the proper authorities). Indeed, they rarely involve the law. Instead, the Philippine experience usually involves conflicts over the use of natural resources.

The cases are legion and only a few significant cases can be accommodated in this study. A few things should be emphasized. The circumstances in these cases differ from invariably. It is, therefore, dangerous to make generalizations as to the nature of the disputes, and the manner in which they are resolved. In many cases, these disputes rarely reach the courts. It will also become evident that the disputes are triggered by community initiatives.

1. The EIA System

The Philippines has an Environmental Impact Assessment System Pres. Decree No. 1586 (1977) that is virtually copied from the United States' National Environmental Policy Act (42 U.S.C. §§ 4321-4347 (1968)). Strangely, however, the Supreme Court has never interpreted it. In essence, the law requires project proponents to prepare an Environmental Impact Statement before they can proceed with a project (For a study of issues pertaining to the EIA system, *see* Research and Policy Development Team, Legal Rights and Natural Resources Center, Inc., *The More They Stay the Same: Recent Developments in the EIA System*, 8 PHIL. NAT. RES. L. J. 49-74 (1997)).

In its evolution new opportunities for community intervention have surfaced. The Implementing Rules of the EIA System under DENR Administrative Order No. 97-73 provide for "social acceptability" — the result of a process mutually agreed upon by the DENR, key stakeholders, and the project proponent "to ensure that the valid and relevant concerns of stakeholders, including affected communities, are fully considered and/or resolved in the decision-making process for granting or denying the issuance of an ECC (DENR Admin. Order No. 96-73, Art. III, sec. 6). Before the DENR issues an ECC, the proponent must secure proof of "social acceptability" of the project.

One case that is often cited as a successful use of alternative dispute resolution is the case of the proposed cement plant in the coastal town of Bolinao, Pangasinan. The DENR denied the application for an Environmental Compliance Certificate (ECC) in 1995, and again "with finality" in 1996. The DENR cited unacceptable environmental risks, serious land- and resource-use conflict, and problems of social acceptability as its reasons for denying the application.

This case was typical of energy-generating projects in the sense that it polarized the affected communities into opposing camps. On one hand, local officials, and segments of the business communities supported the proposed plant. Most of those who opposed the project were local residents whose livelihood depended heavily on the healthy condition of Bolinao's natural resources—later organized as the Movement of Bolinao Concerned Citizens, Inc. (MBCCI). Allied with the opposition were groups of educators, women, church and the academe (Marie Lourdes Baylon, *Dispute Management Within the Framework of the EIA System: The Case of the ECC*

Application of the Bolinao Cement Plant Complex, Tropical Coasts, vol. 6, no. 2 (December 1999), pp. 22-27).

After the initial denial of their application in 1995, the proponent submitted "new information," which sought to address the issues by the project oppositors. DENR conducted a series of consultations with both sides of the controversy, and agreed to create an expanded EIA review committee. The new committee included experts in marine pollution, land use, and hydrology to evaluate the "new information."

The Review Committee also gave both sides a chance to present arguments on the technical aspects of the proposed project. This avoided direct confrontations that normally ensued from public hearings. The points raised in these technical meetings were used in the Committee's final decision to deny the application a second time.

Analysts argue that the success of this case rested heavily on the fact that the process was consultative and transparent. These factors contributed to the perception that decisions made by the DENR were not arbitrary. Also credited for the success in this case were the DENR officials' ability to play the roles of facilitator and decision-maker responsibly. The highly controversial nature of the conflict and the publicity generated by the case "forced the DENR to act with great prudence and wisdom in the decisions that it made" (*Id*., at 27).

Experience under the EIA system, however, has also been problematic. There is community distrust of the DENR, which requires the latter to engender trust by ensuring access to current and understandable information about the project. Others have demanded that the Environmental Impact Statement (EIS) prepared by project proponents must be in a language or dialect understood by majority of the residents that could be affected by the project. Experience shows that the EIS usually consists of volumes of technical data that do not convey a clear impact of the proposed project (*See* Research and Policy Team, LRC-KSK, *The More They Stay The Same: Recent Developments in the EIA System*, 8:1 PHIL. NAT. RES. L. J. 49 51 (1997), *citing* Ipat Luna, *The EIA System and the Rush for Philippines 2000: Insurance in a Runaway Train*, 25-28 (1994), n.3).

2. Mining

The initial attempts at introducing alternative modes of dispute resolution in the Philippines are not faring well. The experience of communities against the

incursion of large-scale mining activities under the Philippine Mining Act of 1995 presents a case against the proper use of these alternatives. Experience has shown that the MGB is always wary of releasing information regarding applicants of mining permits and contracts, in violation of the right of citizens to information (Edgar Bernal, *Engaging a Biased and Unjust Structure: The Case of the Mines and Geo-Sciences Bureau and the Panel of Arbitrators*, *in* LAWYERING FOR THE PUBLIC INTEREST: 1ST ALTERNATIVE LAW CONFERENCE 45 [2000]).

Part of the problem is the manner in which the law is written. It will be recalled that the said Act created the Panel of Arbitrators under the Mining and Geo-sciences Bureau and vested it with jurisdiction over "mining disputes" at the regional level (Rep. Act No. 7942 (1995), sec. 77). The Panel of Arbitrators are designated by the Environment Secretary from the regular staff of the MGB. Most of the time, the designees are MGB Regional officials "whose primary task is to encourage and facilitate the entry of mining companies in their jurisdiction" (*Id.*, at 46). While it is true that their decision may be appealed to the Mines Adjudication Board, this Board is composed of the DENR Secretary, the Director of the MGB, and the DENR Undersecretary for Operations.

Historically, the functions of what is now the Panel of Arbitrators was precisely to "hasten the exploration and development of our mineral resources" (*Id.*, at 46-47). Even under the present law, the Panel simply performs an administrative function—to grant or reject applications. The panel is designed to provide a forum "for expressing and then eliminating oppositions and adverse claims that obstruct the entry and operation of mining companies" (*Id.* at 47).

In 1997, for example, a coalition of women, youth, religious, farmers, and indigenous peoples filed their opposition to some 30 applications for various forms of mining contracts and permits in the Province of Aurora. However, the Panel of Arbitrators, contrary to their own rules, refused to recognize the right of the coalition's paralegal to represent the oppositors. The Panel then dismissed the opposition despite the failure of the applicants to consult them regarding their application. And suggested, instead, that the matter be taken up when the applicants apply for their Environmental Compliance Certificate (ECC). The ECC is not required for purposes of securing mining permits and contracts under the Mining Act (*Id.*, at 47).

Bernal also cites the case of Subanen farmers and women organizations who opposed the application of mining permits in Zamboanga del Sur. The opposition was

based on the fact that the application covered a watershed and old growth forests. They also pointed out that the application was written in English, and not generally understood by the local communities. The Panel dismissed the opposition, claiming simply that these matters were not under their jurisdiction. The Panel's decision was mailed to the oppositors six months after it was rendered. A Motion for Reconsideration of the decision was filed, but which the Panel claimed they never received—despite contrary evidence in their own records (*Id*., at 47-48).

In both cases the local communities did not resort to legal assistance until after their own initiatives at participating in the application processes ran aground (*Id*., at 48).

3. Initiative and Referendum

It should also be stressed that certain communities are testing other possible avenues to protect their environment from mining activities. Barangay Didipio, in Kasibu, Nueva Vizcaya is using the Local Government Code's provisions on initiative to override agreements signed by their local governments with Climax-Arimco Mining Company (Rep. Act No. 7160 (1991), secs. 120-127). The Supreme Court is presently deciding whether this was a proper exercise of the power of initiative.

4. Coastal Resources

One heavily documented case involves the depletion of fishery resources in Sarangani Bay in Mindanao. This is an interesting case in the sense that there are a variety of competing property regimes in operation over the bay—which, ironically, is the reason why fishery resources continue to be depleted. As one author pointed out:

> "…one of the reasons behind the depletion of the fishery resources is the uncertainty in the way disputes over resources use are settled. Because a great deal of uncertainty exists over who actually has the right to the resources and who can be excluded, fishers compete with one another following favorable institutional arrangements, which justify their claims to the resources. This uncertainty leads to both resource depletion— because many fishers do not follow or accept the rules of other property regimes—and at the same time, the opening up of possibilities for fishers to change institutional arrangements. Each property regime competes with other property regimes in order to have their form of institutional arrangements recognized as the proper way to manage resource and allocate resource rights" (Steve Olive, *Competition*

and Dispute Settlement for Fishery Resources, KASARINLAN, vol. 9, n. 1 (1993), pp. 71, 73).

The major conflict in Sarangani Bay involved the incursion of commercial vessels in municipal waters. Since municipal fishers do not have power over the commercial fishers, local government intervention is usually required. Commercial fishers likewise have their own conflicts over their fellow fishers who deplete the spawning grounds of the fish. In this case, they asked for the help of the national government to determine which areas may not be used for fishing purposes. On the other hand, municipal fishers argue over the use if illegal fishing methods such as dynamite and poison. Most of these disputes are settled through the Katarungang Pambarangay system, now under the Local Government Code. Occasionally, Filipinos venture into Indonesian fishing grounds and are apprehended. In one such case, the local officials attempted to settle the dispute, which took longer than anyone had wanted. The political fallout of the mayor's adventure cost him the next election.

These cases illustrate how the plurality of dispute settlement mechanisms gives the contending groups an opportunity to shop for the forum that will likely favor their case. In some cases, parties sought the intervention of powerful political figures to rally their cause (*Id*., at 91-93).

These cases also illustrate how parties to disputes opt to use competition and cooperation to win their cases. To stop illegal fishers, the national government started to arm fishing boats, which however, remain armed even when the threat of piracy and the incidence of illegal fishing declined. Sometimes, agreements are reached instead. Municipal fishers and local officials have set up checkpoints to curb dynamite fishing. Commercial and municipal fishers often fish in the same waters without the intervention of third parties (*Id*., at 94).

The Sarangani Bay example showed that where dispute settlements are weak, the political arena becomes more competitive, which in turn, generates more uncertainty as to the outcome of the settlement, and that dispute settlements which maximize public participation and debate are likely to be more effective (*Id*., at 96).

Similar effects of legal pluralism were observed in the North. Wiber's study of an Ibaloi community shows that "forum shopping " is used when residents have gold, water, or land disputes. She pointed out that wealthy parties often opt to use the official legal system, while poorer claimants are often intimidated by the notion of

going to court on the ground that "rights defined by the state legal system are in opposition to customary practice" (MELANIE G. WIBER, POLITICS, PROPERTY AND LAW IN THE PHILIPPINE UPLANDS 91 [1993]).

5. Consortium-Building

The NGOs for Integrated Protected Areas, Inc. is a consortium of 18 non-government and people's networks, coalitions, and organizations that was created in 1993 to serve as the partner of the Philippine government and the World Bank in the implementation of Conservation of Priority Protected Areas Project. The project was conceived to curb the loss of biological diversity primarily through the depletion of forest resources. The idea, however, was not simply to protect biodiversity, but also to empower communities by devolving control and management of local resources to the communities that depend on them. The idea was to organize local communities and forge partnerships with other sectors such as the local governments, the church, and the academe to the end of developing concrete strategies for resource management and community development (*See* Ma. Teresa Ramos Melgar, *Shareholders in the Environment: A Case Study of the NGOs for Integrated Protected Areas (NIPA)*, *in* 3 PHILIPPINE DEMOCRACY AGENDA: CIVIL SOCIETY MAKING CIVIL SOCIETY 127-148 (Miriam Coronel-Ferrer ed., 1997).

The NIPAS, claims one study, succeeded in bringing together stakeholders with varying perspectives and persuasions:

In many ways, NIPAS's experiences in the last three years have drawn a window into some of the many sources of conflict and tensions that often frustrate NGO-PO efforts to build consensus around specific issues or initiatives. These…include competition in accessing funds and in project implementation, a varying appreciation of the role and contribution of foreign or international NGOs to local development efforts, and even personality differences among development workers and leading figures in the NGO-PO community (*Id*., at 143).

While consortium building is relatively new in the Philippines, the early years of the NIPAS indicated its willingness to conduct dialogues with all the sectors who have a stake in the project, and attempting to work out problems as it moves along.

6. Ancestral Domains

One important point needs to be stressed—communities threatened by the depletion of resources initiated many of these cases. One unique case of dispute settlement involved the depletion of coastal resources in Coron, Northern Palawan. In this case, the Tagbanwa, an indigenous fishing community faced serious environmental problems when dynamite and cyanide fishing threatened to deplete their resources. In the 1970s, local officials auctioned off caves from where the Tagbanwa traditionally harvested swiftlet nests and reduced them to hired hands for their new owners. Tourist resorts and cattle ranchers were slowly encroaching into their territories.

In response to these threats to their livelihood, the Tagbanwa met among themselves to determine the range of their ancestral domains. They laid their claim to their territories through DENR Administrative Order No. 2 (1993), which was the precursor of the IPRA. They agreed that the coral reefs formed the backbone of their traditional fishing grounds and then set out to map their claims using global positioning systems. They used the data they gathered to generate their own maps to explain the importance of recognizing their claims for their survival.

Despite the obstacles hurled at them by local officials, the government recognized the Tagbanwa's claim over the "ancestral waters" — a first in Philippine history (*See* Philippine Association for Intercultural Development, *Mapping the Ancestral Lands and Waters of the Calamian Tagbanwa of Coron, Northern Palawan*, *in*, MAPPING THE EARTH, MAPPING LIFE 44-63 (Ponciano L. Bennagen & Antoinette G. Royo eds, 2001).

V. Some Observations

As these cases show, disputes regarding the environment in the Philippines usually revolve around resource use. It should also be evident that in many cases, the law seldom figures into the equation. This is clear from the cases involving coastal resources. In fact, the use of the law often reduces the chances of successful resolution. In the mining cases, recourse to the mechanisms incorporated in the mining act proved futile, where the decision makers showed bias. The case involving the EIA system and the proposed cement plant in Bolinao is the exception. In fact, it is the only instance when the DENR denied an application for an ECC.

The profusion of dispute systems outside the official legal system also provides an opportunity for stakeholders to choose the forum that will hear their case. This is particularly evident in the manner in which indigenous peoples settle their disputes.

The Tagbanwa's successful attempt at securing recognition of their ancestral domains should not detract from the fact that the implementation of the IPRA is mired in politics. Other implementing rules are clearly skewed to favor mining ventures (*See* Legal Rights and Natural Resources Center-Kasama sa Kalikasan, The Indigenous Peoples' Rights Act and Community Mapping, *in* MAPPING THE EARTH, MAPPING LIFE 19-43 (Ponciano L. Bennagen & Antoinette G. Royo eds, 2001).

In any case, resort to litigation is often disregarded as a viable option either because of perceived costs and bias against the interests of one of the parties.

We should stress that these conflicts cannot be regarded separately from the larger political context in which they operate. Conflict often arises because of the implementation of State policies that conflict with the rights of communities who are dependent on natural resources. In short, these case studies on ancestral domains recognition arise because the State has a separate economic agenda.

Some of those who are challenging mining activities under the Mining Act point out that "the restructuring of the country's mining industry was not divorced from the new initiative by transnational corporations to recolonize Third World countries under the theme of globalization" (Catalino L. Corpuz Jr., *National Situation: The Mining Industry in the Philippines*, paper written in October 1999 for the National Workshop on Mining and for Third World Resurgence, available at http://www.minesandcommunities.org/Country/Philippines1.htm). Corpuz also pointed to "the unethical way the mining companies conducted themselves" and that even before the new mining law was approved and discussed in local consultations, mining companies "already forced themselves into people's territories to conduct exploration work."

It is not suggested here that ADR *should* have a single mechanism for all environmental disputes. The historical development of the environmental movement could explain the late, if disparate treatment of environmental issues. The primacy of democratization of access to natural resources produced laws that address ancestral domains rights because these are areas where the strain of population and industrialization bear heavily on local communities. The policy on decentralization

gave local communities a chance to influence policies at the local level and produced dispute resolution mechanisms under the Local Government Code. The piece-meal approach can be justified as a response to intense conflicts at the local level over environment and natural resource utilization.

The Clean Air Act, by comparison, was not perceived as similarly urgent. That law was written in response to pressure from the international legal community rather than the initiative of Congress or the lobby of local environmental groups. A law on clean water has yet to be enacted.

VI. Conclusion

If ADR is viewed from a wider perspective — as a means through which Filipinos can avert the tedious process of litigation, then the Philippines is not short on legislation. From the incorporation of mediation at the village level to very specific provisions on environmental laws, it is evident that Congress is aware of the advantages of ADR.

This paper demonstrated, however, that ADR mechanisms on environmental disputes are not uniform. Often, Congress will incorporate specific mechanisms in specific laws that affect natural resources or the environment. Thus, no single rule for ADR mechanisms exists. Instead, various remedies are available under the Clean Air Act or the Mining Act of 1995.

It should be clear, however, that Filipinos do not rely purely on the express provisions of the law to settle disputes. People often choose existing modes of dispute resolution, or lobby for changes in policy such as the EIA implementing rules, which allow for the incorporation of concepts such as "social acceptability" to be factored in the official decision-making processes.

It would seem that several factors are needed before ADR can become successful as a means of resolving environmental disputes.

Transparency in the actions of the government officials contributes greatly to the engendering trust in the system. Broad consultations with stakeholders also seem to produce the most satisfactory settlements.

The increase in legislation that incorporates ADR mechanisms must also be neutral. Some of the express provisions on the availability of ADR mechanisms are skewed to favor certain parties, and cannot by themselves generate sufficient trust

among the contending parties. The Philippine experience under the Mining Act of 1995 bears this out. When the law itself is designed to encourage the exploitation of resources, the odds are stacked against those protecting the environment. In the case of the mining law, the structure of the ADR mechanisms makes the chances of successfully opposing mining activities virtually impossible.

Some measures remain untested. The community's power to contest local government acquiescence to resource extractive activities awaits the decision of the Supreme Court.

Finally, the Philippine experience illustrates that other dispute mechanisms exist outside the formal legal framework, and are resorted to when the official mechanisms are suspect.