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Social Policy and the Law

Articles

Notes and Materials

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This Issue

One could suspect the Constitution's authors of having little faith in whoever might be charged with the responsibility of legislating social justice or building, as the preamble describes it, a "just and humane society." As if to prevent future governments from deciding that the interest of certain groups falls outside the definition of the common good, the charter lists down quite a number of sectors, interests, policies and concerns: from the unborn to senior citizens, from "subsistence fishermen" to "homeless citizens in urban centers."

Sadly, the checklist approach appears to have been necessary — or perhaps insufficient. Almost two decades later, we have yet to fully resolve the issues that plague the underprivileged, marginalized and powerless.

This double issue focuses on the legal aspect of some of these issues. Practitioners, judges, lawmakers and social scientists should find the discussions in this January-July/2004 Journal helpful and interesting. Those involved in family law and juvenile cases should be especially interested in Albert Muyot's comprehensive review of child protection law, and Eric Mallonga's in-depth and passionate critique of the Philippine juvenile justice system. These discussions are rounded off by an informative article on the new anti-trafficking act, written by womens' rights activist Rowena Guanzon and Charmaine Calalang. U.P. professor Marvic Leonen tackles issues relating to the Indigenous Peoples Rights Act while Hans Cacdac, director of the Bureau of Labor Relations, examines the industrial relations model at the heart of the Labor Code's Book V. And lawyers from Ateneo-based SALIGAN examine ejectment as both a legal and social problem affecting the urban poor.

As usual, Tarsi Diño's case digest is a main feature, complemented by Christine Lao's second installment of her *Significant Laws and Issuances*. The update is no longer confined to business laws but has a general coverage.

The Editors

An Overview of the Legal Regime for Child Protection in the Philippines

*Alberto T. Muyot**

I. *Introduction*

This article seeks to provide an overview of the system of legal and judicial protection for children in the Philippines. This, the writer hopes, will be of value since there is no single code for child protection in the Philippines; there are disparate laws and procedures seeking to protect children. However, before going into that, it may be helpful to try to understand the child protection issues confronting the country.

The Second Country Report of the Philippines to the United Nations Committee on the Rights of the Child[1] makes public the child protection issues confronting the country and provides the bases for action points for the justice system. A short backgrounder will help us understand the context of the report. Under the U.N. Convention on the Rights of the Child,[2] a State Party, such as the Philippines, is required to submit periodic reports to the Committee on the Rights of the Child.[3] The initial report of the Philippines was considered by the Committee in 1995. The Committee made several recommendations, including those on the system of justice for children.[4] In 2003, the Philippines submitted its second report for the period 1995-2000.

In the area of child protection, the second report focused on: (i) refugee children and children in situations of armed conflict; (ii) children in conflict with the law; (iii) child labor, drug abuse, sexual exploitation and sexual abuse, and sale, trafficking and abduction of children; (iv) children from indigenous groups.

In the matter of refugee children, the report focused on Vietnamese refugee children. The key issue is on providing assistance to the refugees in pursuing the following

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[1] Republic of the Philippines, Council for the Welfare of Children, SECOND COUNTRY REPORT ON THE IMPLEMENTATION OF THE CONVENTION OF THE RIGHTS OF THE CHILD (1995-2000). It may be accessed at: http://www.unhchr.ch/html/menu2/6/crc/doc/report/srf-philippines-2.pdf.

[2] The Convention entered into force on 2 September 1990.

[3] Sec. 44, Convention on the Rights of the Child.

[4] CRC/C/38 (20 February 1995). The Committee recommended, among others, that the Philippines continue to harmonize domestic legislation with the provisions of the Convention. It said that serious consideration should be given to raising the age limit for sexual consent and penal responsibility, to eliminating discrimination towards children born out of wedlock, to the prohibition of torture and the revision of legal provisions with regard to the administration of juvenile justice. More particularly, the Committee recommended that the Philippines "undertake a comprehensive reform of the system of administration of juvenile justice."

legal options: (i) permanent resident status; (ii) resettlement in US; (iii) resettlement in another country; (iv) Filipino citizenship; and (v) voluntary repatriation.

As to child soldiers, concerns were raised about the children recruited by the New People's Army and Moro Islamic Liberation Front as combatants and the child soldiers captured by the Armed Forces of the Philippines. The key issue is erratic implementation of the *MOA on the Handling and Treatment of Children Involved in Armed Conflict* (2000), which provides for the turnover of child soldiers to the Department of Social Welfare and Development (DSWD) instead of charging them for criminal offenses.

Children in conflict with the law remain a major concern. There were 52,576 documented children in conflict with the law in 1995-2000. The key issues are: (i) delay in enactment of a juvenile justice law; (ii) lack of prevention programs; (iii) status offenses; (iv) detention of minors as a first resort; (v) minors in Death Row; (vi) lack of diversion mechanisms; (vii) delay in disposition of cases; (viii) lack of separate detention facilities; and (ix) inadequate rehabilitation and reintegration services.

With regard to child labor, the number of working children was estimated at 3.7 million in 2000, with about 2.2 million of them in hazardous work. The key issues are: the inadequacy of responses to prevent child labor; and the government's failure to prosecute violations of the child labor law.[5]

Drug abuse remains a major concern. Over the years, there has been a marked increase in drug use among children and youth.[6] The key issues are: (i) inadequate responses in preventing drug abuse; (ii) inadequate rehabilitation facilities; (iii) weak enforcement against those who take advantage of children.

The number of sexual exploitation and sexual abuse cases is alarming. The situation has been aggravated by: (i) weak enforcement of the child abuse law[7], the rape law[8], and the rape victim protection law[9]; (ii) desistance in the prosecution of cases; (iii) delay in the disposition of cases; and (iv) inadequate support for victims.

With regard to the sale, trafficking and abduction of children, there has been an increasing incidence of trafficking within the country. The key issues are: (i) inadequate

[5] Republic Act No. 7658.
[6] The number was estimated at 1.8 million in 2003.
[7] Republic Act No. 7610.
[8] Republic Act No. 8353.
[9] Republic Act No. 8505.

prevention programs; (ii) weak enforcement of the law; (iii) low rate of prosecution; (iv) inadequate support for victims.

Finally, children from indigenous groups are the children most affected by armed conflict. The key issue is the inadequacy of responses to the recruitment of these children as combatants.

II. *1987 Constitution*

The Philippine Constitution has been hailed as a human rights constitution. It provides that the State values the dignity of every human person and guarantees full respect for human rights.[10] A whole article of the Constitution is also devoted to human rights,[11] aside from the Bill of Rights.[12]

It is also one of the few constitutions in the world that makes explicit reference to the protection of children. It provides that "the State shall defend the right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development."[13]

The child is viewed by the Constitution in the context of the family and of the larger society. Under the Constitution, the State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of the parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.[14] The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civil affairs.[15]

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[10] Art. II, sec. 11.
[11] Art. XIII.
[12] Art. III.
[13] Art. XV, sec. 3.
[14] Art. II, sec. 12.
[15] Art. II, sec. 13.

III. *U.N. Convention on the Rights of the Child (1989)*

The Convention on the Rights of the Child has been ratified or acceded to by all countries of the world, except two.[16] Its universality has made it the standard in measuring a country's protection of its children. It recognizes the right of the child to protection from: economic exploitation;[17] narcotic drugs and psychotropic substances;[18] sexual exploitation and sexual abuse;[19] abduction, sale or trafficking;[20] torture and cruel or inhuman treatment; arbitrary detention.[21] It also protects children in armed conflict[22] and children in conflict with the law.[23]

While its provisions broadly protect child, it lays down in detail the protection for children in conflict with the law. It explicitly provides that:

1. No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment, or sentenced to capital punishment or life imprisonment without release;
2. No child shall be unlawfully or arbitrarily deprived of liberty; detention shall only be a last resort and for the shortest possible time;
3. A child deprived of liberty shall be treated with humanity and respect, taking into account the child's age; the child shall be detained separately from adults; and
4. A child deprived of liberty shall have the right to legal assistance and to challenge the legality of his or her detention.[24]

It further provides that the child in conflict with the law shall be treated with dignity, taking into account the child's age and with the objective of the child's reintegration. The child may be liable only for acts prohibited by law at the time they were committed. Moreover, the child is entitled to the following legal guarantees: presumption of innocence; right to be informed of charges against him or her; right to a speedy trial before an impartial body; right to legal assistance; right against self-incrimination; right to confront witnesses; right to appeal; right to an interpreter; and right to privacy.[25]

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[16] These are the United States of America and Somalia.
[17] Article 32.
[18] Article 33.
[19] Article 34.
[20] Article 35.
[21] Article 37.
[22] Article 38.
[23] Article 40.
[24] Article 37.
[25] Article 40.

It also requires States to establish laws, procedures, authorities and institutions applicable to children in conflict with the law, including a minimum age below which children cannot be criminally liable, and measures for dealing with CICL without resorting to judicial proceedings.[26]

Finally, the Convention encourages States to provide a variety of dispositions, such as care, guidance and supervision orders; counseling; probation; foster care; education and vocational training programs and other alternatives to institutional care, to ensure that children in conflict with the law are dealt with in manner appropriate to their well-being and proportionate to their circumstances and the offense.[27]

More recently, two optional protocols to the Convention were adopted to provide children with greater protection.[28] The Optional Protocol on the Involvement of Children in Armed Conflict prohibits the recruitment and use in hostilities of persons below 18 years of age. On the other hand, under the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, the prohibition also includes sexual exploitation, sale of organs, and engagement of children in forced labor.

IV. *The Law on Children as Victims*

A. R.A. No. 7610 (1992); Special Protection of Children Against Child Abuse, Exploitation and Discrimination – The Congress implements the policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development[29] through Republic Act (R.A.) No. 7610.[30] This law declares the best interests of the child as the paramount consideration in all actions concerning them and cites the Convention on the Rights of the Child in this regard.[31]

Under this law, three broad categories of child abuse[32] are penalized: child prostitution and other sexual abuse; child trafficking; and obscene publications and indecent shows.

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[26] Ibid.
[27] Ibid.
[28] The two protocols were ratified by the Philippines on April 23, 2002.
[29] Art. XV, sec. 3, 1987 Constitution.
[30] Passed by the Congress on 7 February 1992 and approved by the President on 17 June 1992.
[31] Section 2.
[32] "Child abuse" as defined in sec. 3(b), refers to the maltreatment, whether habitual or not, of the child which includes any of the following:
1. Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;
2. Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;
3. Unreasonable deprivation of his basic needs for survival such as food and shelter; or

Children exploited in prostitution and other sexual abuse are those who indulge in sexual intercourse or lascivious conduct, for money, profit, or any other consideration or due to coercion of influence of an adult, syndicate or group, whether male or female.[33]

While under the Revised Penal Code prostitutes are the ones penalized,[34] under R.A. No. 7610 child prostitutes are considered victims and those punished are persons who:

1. Engage in or promote, facilitate or induce child prostitution;
2. Commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; or
3. Derive profit or advantage from child prostitution.[35]

Even if sexual intercourse or lascivious conduct is not established, a person can be held liable for an attempt to commit prostitution if he:

1. Is found alone with a child in a room, inn, hotel, motel, etc. with a child under circumstances which would lead a reasonable person to believe that a child is about to be exploited in prostitution and other sexual abuse; or
2. Receives services from a child in a sauna bath, massage clinic, health club and other similar establishments.[36]

The law punishes child trafficking, which is defined as engaging in trading and dealing with children including, but not limited to, the act of buying and selling of a child for money, or for any other consideration, or barter.[37] It also penalizes an attempt to commit child trafficking, which covers the following situations:

1. When a child travels alone to foreign country without a clearance from the DSWD;
2. When a pregnant mother consents to executes an affidavit of consent to adoption for a consideration;
3. When women are recruited to bear children for purpose of child trafficking;

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4. Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

[33] Section 5.
[34] Article 202, Revised Penal Code.
[35] Section 5.
[36] Section 6.
[37] Section 7.

4. When the birth of a person is simulated for the purpose of child trafficking; and
5. When one engages in finding children who can be offered for purpose of child trafficking.[38]

The crime of obscene publications and indecent shows is committed when a person hires, employs, uses, persuades, induces or coerces a child to: perform in obscene exhibitions and indecent shows; pose or model for obscene publications or pornographic materials; or sell or distribute obscene materials.[39] A parent or guardian who allows a child to be employed or to participate in obscene play, scene, act, movie, or show is also penalized.[40]

The law also penalizes "other acts of neglect, abuse, cruelty or exploitation and other conditions prejudicial to the child's development." to cover persons who:

1. Commit other acts of child abuse;
2. Have in his company a minor under 12 or who is 10 years or more his junior in a hotel, motel, beer joint, disco, sauna or massage parlor or similar places;
3. Induce, deliver or offer a minor to any one prohibited by the act;
4. Allow, as owner or manager, a person to take along with him a minor herein described; or
5. Use or force a streetchild to beg, to act as conduit in drug trafficking or pushing, or to conduct criminal activities.[41]

Under R.A. No. 7610, a higher penalty is imposed if the victim is under 12 years of age in the following crimes: murder; homicide; intentional mutilation and serious physical injuries; rape; acts of lasciviousness; qualified seduction; corruption of minors; and white slave trade.[42]

The implementing rules and regulations of R.A. No. 7610 provide for the procedure for reporting and investigation of child abuse cases.[43] Any person[44] may report to the authorities, but health professionals,[45] teachers, law enforcement officers, barangay officials

[38] Section 8.
[39] Section 9.
[40] Ibid.
[41] Section 10.
[42] Ibid.
[43] The Rules and Regulations were issued by the Secretary of Justice in 1993.
[44] Section 3.
[45] Section 4.

and other government workers[46] are duty-bound to report cases of abuse, neglect or exploitation. A person who reports in good faith is immune from suit.[47]

When a case is reported, a home visit is conducted by the social worker, jointly with the police and barangay officials.[48] The social worker may take protective custody of the child if the investigation discloses sexual abuse, serious physical injury or life-threatening neglect,[49] and he or she is immune from suit.[50] The child is referred to a government medical or health officer for a physical examination and medical treatment.[51] If child abuse is reported, the DSWD shall file a petition for involuntary commitment,[52] with suspension of the parental authority of the parent who abused the child.[53] In such case, the court may order the transfer of parental authority to the DSWD.[54]

A complaint against a person who has abused a child may be filed by the offended party, the parent or legal guardian; an ascendant or relative; a social worker or officer of the DSWD or a licensed child caring institution; a barangay chairman; or at least three responsible citizens of the community where the abuse took place who have person knowledge of the offense committed.[55]

The investigation report, together with the medic-legal report, shall be immediately forwarded to the prosecutor for the filing of the appropriate case.[56] The establishment or enterprise found to have promoted, facilitated of conducted activities constituting child abuse shall be immediately closed.[57]

A guardian ad litem may be appointed by the court to represent the best interests of the child.[58] Confidentiality of the identity of victim,[59] the protection of the victim from undue publicity,[60] and the confidentiality of records[61] are mandated. The trial of child abuse cases shall take precedence over all other cases.[62]

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[46] Section 5.
[47] Section 7.
[48] Section 8.
[49] Section 9.
[50] Section 10.
[51] Section 12.
[52] Section 13
[53] Section 14.
[54] Section 15.
[55] Section 16.
[56] Section 17.
[57] Section 18.
[58] Section 19. See also Section 5 of the Rule on Examination of a Child Witness.
[59] Section 20. See also Section 31(d) of the Rule on Examination of a Child Witness.
[60] Section 22.
[61] Section 23. See also Section 31(a) of the Rule on Examination of a Child Witness.
[62] Section 21.

R.A. No. 7610 also contains the law on children in situations of armed conflict. Children are declared 'zones of peace' and shall not be the object of attack. Also, they shall not be recruited to become members of the Armed Forces of the Philippines or its civilian units or other armed groups, nor be allowed to take part in the fighting, or used as guides, couriers or spies.[63] A child who is arrested for reasons related to armed conflict, either as combatant, courier, guide or spy may be prosecuted under a procedure similar to that for youthful offenders under Presidential Decree No. 603.[64] However, the Memorandum of Agreement on the Handling and Treatment of Children Involved in Armed Conflict (2000) provides for the transfer of custody of child soldiers to the DSWD instead of charging them for criminal offenses.

B. R.A. No. 8353 (1997); The Anti-Rape Law – The new law on rape is a very significant legislation on child protection considering that a large portion of the victims of rape are persons below 18 years of age.[65] R.A. No. 8353 amends the Revised Penal Code and relocates the provision on rape from Art. 335 to Art. 266 of the Code. This is in line with the reclassification of rape as a crime against persons, instead of a crime against chastity. This provides the legal basis for the prosecution of the accused despite the execution of an affidavit of desistance by the victim or her parents. The new law also provides for sexual assault as a form of rape.[66] Sexual assault is committed by inserting the penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.[67] For the first time, marital rape is punished.[68] In relation to the rape of children, the new law provides for the death penalty for incestuous rape[69] or where the victim is below seven years of age.[70]

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[63] Section 22, R.A. No. 7610. Section 22 of R.A. No. 8371 (1997), the Indigenous Peoples Rights Act, also prohibits the recruitment of children of indigenous cultural communities into the armed forces during armed conflict.

[64] Section 25, R.A. No. 7610.

[65] For the year 2003, the Philippine National Police reported 7,316 cases of crimes committed against children. Of this number, 3,107 were cases of rape, 290 of incestuous rape, 293 of attempted rape and 1090 of acts of lasciviousness. In Metro Manila, around 51% of the victims of rape are 14 years of age or younger and 86% are 19 years of age or younger. Children below 10 years of age have a higher risk of being raped compared to those who are 20 years of age and older. The 2003 PNP report showed that there were 3 children raped for every female adult raped. More than 90% of the perpetrators of rape are persons who are familiar to the victim. These include friends, neighbors and acquaintances (47%) and relatives (39%) and employers (6%). [*See* Tan, *Analysis of Rape Cases Committed Against Children and Women in the National Capital Region, Philippines (*2002).]

[66] Before the inclusion of sexual assault, rape was committed only by a man against a woman through sexual intercourse, under any of the following circumstances:

1. through force, threat or intimidation
2. when the offended party is deprived of reason or otherwise unconscious
3. by means of fraudulent machination or grave abuse of authority
4. when the offended party is under 12 years of age or is demented, even if none of the above circumstances are present.

[67] The Court of Appeals has held in the case of *Obaña v. Hon. Andres Soriano,* CA-G.R. SP No. 60353, August 28, 2001, that the insertion of a finger into a victim's vagina constitutes rape by sexual assault and not acts of lasciviousness only.

[68] This is implied from the provision which states: "In case it is the legal husband who is the offender the subsequent forgiveness by the wife as the offended party shall extinguish the criminal action or penalty."

[69] Rape is considered incestuous when the victim is under 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

[70] A mandatory death penalty shall be imposed under any of the following circumstances:

1. Incestuous rape
2. Victim is under custody of police, military, etc.

A companion law, R.A. No. 8505 (1998), the Rape Victim Assistance and Protection Act, provides that the investigation, medical examination and preliminary investigation in rape cases shall be conducted by female police officers, physicians and prosecutors, respectively.[71]

C. R.A. No. 9231(2003); Child Labor Law – The new law on child labor has superseded R.A. No. 7658, which amends R.A. No. 7610. As a general rule, children below 15 years of age shall not be employed. But there are two exceptions. The first one is when the child works directly under parents/legal guardian and only members of the employer's family are employed. But the employment must not endanger the life, safety, health and morals or impair the normal development of the child. Moreover, the child must be provided with primary and secondary education. A work permit must be secured from the Department of Labor and Employment (DOLE). The second exception is the employment of children in public entertainment or information through cinema, theater, radio, television or other forms of media is essential. An employment contract has to be approved and a work permit issued by the DOLE. An employer shall ensure the protection, health, safety, morals and normal development of the child. There must be remuneration and the child's working hours regulated. The employer must also provide a continuing program of training and skills acquisition for the child.[72]

The hours of work of a child below 15 years of age should not exceed four hours per day or 20 hours per week, and child should not be made to work between 8 p.m. to 6 a.m. If the child is 15 to below 18, he or she can work no more than eight hours per day or 40 hours per week, but not between 10 p.m. to 6 a.m. The working child's income belongs to child and shall be used primarily for the child's support, education or skills acquisition, and secondarily for collective needs of family. However, not more than 20% may be used for collective needs of the child's family. The income shall be administered by both parents, unless one is absent or incapacitated. A trust fund for the child amounting to 30% of child's earnings shall be set up if the child earns at least P200,000 annually.[73]

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3. Rape was committed in full view of spouse, parent, children or relative within 3rd degree of consanguinity
4. Victim is a religious and is known to be such to the offender
5. Victim is a child below 7 years of age
6. Offender knows he is afflicted with HIV/AIDS or STD and it is transmitted to victim
7. Rape is committed by military, police, etc. taking advantage of his office
8. Victim suffers permanent physical mutilation or disability
9. Offender knew of pregnancy of the victim at the time of the crime
10. Offender knew of mental disability, emotional disorder and/or physical handicap of victim at the time of the crime.

[71] Section 4, R.A. No. 8505.
[72] Section 2, amending sec. 12 of R.A. No. 7610.
[73] Section 3, inserting secs. 12-A, 12-B and 12-C into R.A. No. 7610.

The law also prohibits what are called "the worst forms of child labor," namely: slavery, trafficking, bondage, forced labor, recruitment of children in armed conflict; use of children in prostitution or pornography; use of children in illegal activities, including production and trafficking of drugs; and hazardous work.[74]

One thing new in the law is that a child is not allowed to be a model in advertisements for alcohol, tobacco, gambling, or any form of violence or pornography.[75]

Unfortunately, there have been very few cases of child labor prosecuted, despite the millions of Filipino children engaged in work.

D. R.A. No. 9208 (2003); The Anti-Trafficking In Persons Act – This new law punishes trafficking in persons, which is the recruitment, transportation, transfer or receipt of persons, with or without victim's consent or knowledge, within or across national borders, by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or the giving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation, prostitution or other forms of sexual exploitation, forced labor, slavery, sale of organs. But the recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered as trafficking even if it does not involve any of the mean set forth above.[76]

It is considered an act of trafficking to:

1. Recruit, transport, transfer, harbor, provide or receive a person, including those done under pretext of employment;
2. Introduce or match for consideration Filipino woman to foreign national for marriage for purpose of prostitution, etc.;
3. Offer or contract marriage for purpose of prostitution, etc.;
4. Undertake or organize sex tours;

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[74]Section 3, inserting sec. 12-D into R.A. No. 7610. Hazardous work includes work that:
1. Debases, degrades, demeans
2. Exposes to physical, emotional or sexual abuse
3. Is performed underground, underwater, or at dangerous heights
4. Uses dangerous machinery
5. Exposes to physical danger
6. Is performed in unhealthy environment
7. Is performed under difficult conditions
8. Exposes to biological agents
9. Involves explosives or pyrotechnics

[75] Section 5, amending sec. 14 of R.A. No. 7610.
[76] Section 3(a).

5. Maintain or hire a person for prostitution or pornography;
6. Adopt or facilitate adoption for purpose of prostitution, etc.;
7. Recruit, hire, adopt, transport or abduct for removal or sale of organs;
8. Recruit, transport or adopt child to engage in armed activities.[77]

The following are considered acts that promote trafficking:

1. Lease or allow use of building for trafficking;
2. Produce, print, issue or distribute fake certificates, and stickers;
3. Advertise, publish, print, broadcast or distribute brochures or materials used in trafficking;
4. Fraud in acquisition of clearances and exit documents;
5. Facilitate exit and entry of persons with fake travel documents;
6. Confiscate, conceal or destroy travel documents of trafficked persons;
7. Benefit from use of forced labor, slavery, and involuntary servitude.[78]

The crime is qualified trafficking when:

1. The trafficked person is a child;
2. The crime is effected through inter-country adoption;
3. The crime is committed by syndicate or in a large scale (i.e., three or more persons);
4. The offender is parent, ascendant, sibling, guardian, person exercising authority or public officer;
5. The victim recruited to engage in prostitution with any member of the military or police;
6. The offender is member of the military or police;
7. The victim dies, becomes insane, suffers mutilation or is afflicted with HIV/AIDS.[79]

Any person who buys or engages the services of trafficked persons for prostitution shall be punished under this law.[80]

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[77] Section 4.
[78] Section 5.
[79] Section 6.
[80] Section 11.

E. R.A. No. 9262 (2004); The Anti-Violence Against Women and their Children Act – Recognizing the need to protect the family and its members, particularly women and children, from violence and threats to their personal safety and security,[81] the Congress finally passed the long-awaited law on domestic violence. The law defines violence against women and their children[82] as any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual[83] or dating relationship,[84] or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty.[85] It includes, but is not limited to, physical violence,[86] sexual violence,[87] psychological violence[88] and economic abuse.[89]

Violence against women and their children is a public offense which may be prosecuted upon filing of a complaint by any citizen having personal knowledge of the circumstances involving the commission of the crime.[90] Victim-survivors who are found by the courts to be suffering from battered woman syndrome[91] do not incur any criminal and civil liability notwithstanding the absence of any of the elements of self-defense.[92] A victim who is suffering from battered woman syndrome is not disqualified from

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[81] Section 2.
[82] Children include the biological children of the victim and other children under her care. [Section 2(h).]
[83] Sexual relation refers to a single sexual act which may or may not result in the bearing of a common child. [Section 2(f).]
[84] A dating relationship refers to a situation wherein the parties live as husband and wife without the benefit of marriage or are romantically involved over time and on a continuing basis during the course of the relationship. A casual acquaintance or ordinary socialization between two individuals in a business or social context is not a dating relationship under the law. [Section 2(e).]
[85] Section 3(a).
[86] Physical violence refers to acts that include bodily or physical harm. [Section 3(a)A.]
[87] Sexual violence refers to an act which is sexual in nature, committed against a woman or her child. It includes, but is not limited to:
(a) rape, sexual harassment, acts of lasciviousness, treating a woman or her child as a sex object, making demeaning and sexually suggestive remarks, physically attacking the sexual parts of the victim's body, forcing her/him to watch obscene publications and indecent shows or forcing the woman or her child to do indecent acts and/or make films thereof, forcing the wife and mistress/lover to live in the conjugal home or sleep together in the same room with the abuser;
(b) acts causing or attempting to cause the victim to engage in any sexual activity by force, threat of force, physical or other harm or threat of physical or other harm or coercion;
(c) prostituting the woman or her child. [Section 3(a)B.]
[88] Psychological violence refers to acts or omissions causing or likely to cause mental or emotional suffering of the victim such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and marital infidelity. It includes causing or allowing the victim to witness the physical, sexual or psychological abuse of a member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children. [Section 3(a)C.]
[89] Economic abuse refers to acts that make or attempt to make a woman financially dependent which includes, but is not limited to, the following:
1. withdrawal of financial support or preventing the victim from engaging in any legitimate profession, occupation, business or activity, except in cases wherein the other spouse/partner objects on valid, serious and moral grounds;
2. deprivation or threat of deprivation of financial resources and the right to the use and enjoyment of the conjugal, community or property owned in common;
3. destroying household property;
4. controlling the victim's own money or properties or solely controlling the conjugal money or properties. [Section 3(a)D.]
[90] Section 25.
[91] This is defined by the law as a scientifically defined pattern of psychological and behavioral symptoms found in women living in battering relationships as a result of cumulative abuse. [Section 2(c).]
[92] Section 26.

having custody of her children.[93] On the other hand, being under the influence of alcohol or drugs is not a defense for the offender.[94]

In every case of violence against women and their children, any person, private individual or police authority or *barangay* official who, acting in accordance with law, responds or intervenes without using violence or restraint greater than necessary to ensure the safety of the victim, shall not incur any criminal, civil or administrative liability.[95]

The law also provides for the issuance of protection orders by the court or the *Punong Barangay* in order to prevent further acts of violence against the woman or her child.[96]

F. Act No. 3815 (1930); The Revised Penal Code – We should not forget the Revised Penal Code, which includes several crimes where the victims are children, including: parricide;[97] infanticide;[98] abortion;[99] kidnapping and serious illegal detention;[100] failure to return a minor;[101] inducing a minor to abandon his home;[102] exploitation of child labor;[103] abandoning a minor;[104] exploitation of minors;[105] swindling a minor;[106] qualified seduction;[107] simple seduction;[108] corruption of minors;[109] forcible abduction;[110] consented abduction;[111] and simulation of birth.[112] There are also the crimes of acts of lasciviousness[113] and white slave trade,[114] to which minors are particularly vulnerable.

G. Rule on Examination of a Child Witness (2000)[115] – The Rule applies to the examination of child witnesses who are victims of crime, accused of crime, or witnesses to crime.[116] A child witness is any person who at the time of giving testimony

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[93] Section 28.
[94] Section 27.
[95] Section 34.
[96] Sections 8 - 22.
[97] Article 246.
[98] Article 255.
[99] Articles 256-259.
[100] Article 267.
[101] Article 270.
[102] Article 271.
[103] Article 273.
[104] Articles 276-277.
[105] Article 278.
[106] Article 317.
[107] Article 337.
[108] Article 338.
[109] Article 340.
[110] Article 342.
[111] Article 343.
[112] Article 347.
[113] Articles 336 and 339.
[114] Article 341.
[115] A.M. No. 004-07-SC, issued on November 21, 2000. The Rule took effect on December 15, 2000.
[116] Section 1.

is below 18 years of age, but it includes one over 18 years of age but is unable to fully take care of or protect himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.[117]

The objective of the Rule is to create and maintain an environment that will allow children to give reliable and complete evidence, minimize trauma to children, encourage children to testify, and facilitate the ascertainment of truth.[118]

The Rule is to be liberally construed to promote the best interests of the child and to promote maximum accommodation of child witnesses, without prejudice to the constitutional rights of the accused.[119]

Several innovations are introduced in the Rule, such as: the presumption of competency of the child to testify;[120] the inclusion of persons who assist the child; the creation of a child-sensitive courtroom environment; the use of child-sensitive questioning; the use of new technology; and stricter rules on privacy and confidentiality.

Persons who are allowed to assist the child during the proceedings are: the guardian *ad litem*, to promote the best interests of the child;[121] the interpreter, to interpret for the child;[122] the facilitator, to help counsels pose questions;[123] and support persons, to provide emotional support to the child.[124]

A child-sensitive courtroom environment is prescribed in the Rule that includes rearranging the courtroom,[125] having a waiting area for child witnesses,[126] recess[127] and rest periods,[128] a prohibition on entering or leaving the courtroom,[129] or the exclusion of public.[130] Furthermore, child witnesses may be allowed to bring emotional security items while testifying.[131]

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[117] Section 4(a).
[118] Section 2.
[119] Section 3.
[120] Section 6.
[121] Section 5.
[122] Section 9.
[123] Section 10.
[124] Section 11.
[125] Section 13.
[126] Section 12.
[127] Section 15.
[128] Section 14.
[129] Section 24.
[130] Section 23.
[131] Section 17.

Technological innovations that allow the child to testify without the emotional trauma attendant in a testimony in court are allowed. These include the use of a live-link television system that allows the child to testify in a separate room (usually the judge's chambers)[132] and the use of screens, one-way mirrors and other devices to shield the child from the accused when the child does have to testify in the courtroom.[133] But the Rule also allows a videotape of the child witness' testimony to be presented as evidence. These are in the form of videotaped depositions[134] and videotaped in-depth investigative or disclosure interviews in child abuse cases.[135]

Child-sensitive questioning is also mandated under the Rule. Testimonial aids such as dolls and drawings are allowed.[136] Defense counsels may be prohibited from approaching the witness in an intimidating way.[137] Children are allowed to give their testimony in narrative form.[138] Leading questions may be allowed.[139] Objections should be couched in manner that does not mislead, confuse, frighten of intimidate the child.[140] Corroboration is not required of a child's testimony if it is credible.[141]

A statement made by a child describing any act or attempted act of child abuse, not otherwise admissible under the hearsay rule, may be admitted in evidence under the Rule.[142]

The Rule ensures the privacy of the child witness and the confidentiality of the records of the case. A sexual abuse shield rule makes inadmissible evidence on the alleged sexual behavior or sexual predisposition of the victim, except to prove that a person other than the accused was the perpetrator.[143] Any record regarding a child shall be confidential and kept under seal; such cannot be released except upon written request and upon order of the court.[144] Any videotape or audiotape of a child that is part of the court record shall be under a protective order[145] and shall be destroyed after five years

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[132] Section 25. UNICEF-Manila has supported the installation of the equipment in eight Family Courts in La Trinidad, Benguet; Malolos, Bulacan; Manila, Quezon City, Pasig City; Iloilo City; Cebu City and Davao City.
[133] Section 26.
[134] Section 27.
[135] Section 29. UNICEF-Manila has supported the establishment of 14 child-friendly investigation studios all over the country where these interviews can be videotaped using sophisticated equipment. A *Protocol for Investigative Interviews in Child-Friendly Studios* has also been developed to ensure compliance with the requirements of the Rule on Examination of a Child Witness.
[136] Section 16.
[137] Section 18.
[138] Section 19.
[139] Section 20.
[140] Section 21.
[141] Section 22.
[142] Section 28.
[143] Section 30. A similar rape shield rule is found in sec. 6 of R.A. No. 8505, the Rape Victim Assistance and Protection Act.
[144] Section 31(a).
[145] Section 31(b).

from entry of judgment.[146] The publication of the identity of a child may be punished with contempt.[147]

H. Rule on Commitment of Children (2002)[148] – The Rule provides for the procedure in three types of cases where the custody and parental authority over a child is transferred to the Department of Social Welfare and Development or a duly licensed child-placement or child-caring agency or individual. These are the involuntary commitment[149] or voluntary commitment[150] of a dependent, abandoned or neglected child and the commitment of disabled child.[151] The Rule also provides for the procedure for the restoration of parental authority and the discharge of a disabled child.

I. R.A. No. 9165 (2002); Comprehensive Dangerous Drugs Act – The law is harsh on person drug offenders who victimize children. The maximum penalty is imposed on an offender: when the drug is sold with in 100 meters from a school; when a minor is used as runner, courier or messenger; or when the victim is a minor;[152] or when a dangerous drug is administered, delivered or sold to a minor.[153]

Schools are assigned an important role in countering the drug menace. Drug abuse prevention is included in the elementary, secondary and tertiary school curricula.[154] Student councils are to have drug abuse prevention activities.[155] Random drug-tests are allowed in secondary and tertiary schools, but the government shall shoulder the expenses.[156] Heads, supervisors and teachers of schools are deemed persons in authority and can arrest or cause arrest of drug violators in the school or in its vicinity and even outside during school functions. They also have a duty to report; the can be held administratively liable if they do not report drug violations to authorities.[157]

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[146] Section 31(f).
[147] Section 31(d).
[148] A.M. No. 02-1-19-SC, issued on February 28, 2002. The Rule took effect on April 15, 2002.
[149] Section 4.
[150] Section 5.
[151] Section 6.
[152] Section 5.
[153] Section 6.
[154] Section 43.
[155] Section 42.
[156] Section 36(c).
[157] Section 44.

V. *The Law on Children as the Accused*

A. P.D. No. 603 (1974) and the Rules and Regulations on the Apprehension, Investigation, Prosecution and Rehabilitation of Youth Offenders – Presidential Decree No. 603, the Child and Youth Welfare Code, provides for the law on children in conflict with the law in its section on "Youthful Offenders." Although P.D. No. 603 was issued in 1974, it was only in 1993 that the implementing rules were issued.

A child nine years of age or under who commits an offense is exempt from criminal liability. A child over nine but under 15 years of age is exempt, unless he acted with discernment. A child 15 to below 18 years of age is criminally liable, but the penalty is lower than that of an adult. The civil liability of minors shall be paid by their parents.

A law enforcement officer who apprehends a minor is required to inform him of the reason for apprehension and of his legal rights. The officer should also identify himself when effecting the apprehension. No unnecessary force shall be used. A female minor shall be searched only by a female officer. The use of vulgar words is prohibited. Handcuffs or instruments of restraint shall be used only when necessary.

The parents or guardian and Department of Social Welfare and Development must be informed within eight hours from the apprehension.

The investigation of the apprehended minor shall be in the presence of counsel and his parents or guardian or a social worker. The minor has a right to remain silent and to have competent counsel. The interview will be held privately, whenever practicable.

The youth shall be brought to a government medical or health officer in the area for physical and medical examination and treatment. A medical certificate shall be issued, which shall be a part of records of case.

If the case is filed in court, there are several options regarding the custody of the minor: he may be released on recognizance to his parents or other suitable person or he may be released to the custody of social worker; he may be released on bail; he may be committed to care of the DSWD or a local rehabilitation center or detention home; or, as a last resort, he may be detained in jail. However, the jail must have separate quarters for youthful offenders. Unfortunately, what is supposed to be the last resort has often become the primary resort for reasons of convenience, in violation of international and national law.

If, after trial, the minor is found to have committed the crime the court shall pronounce judgment but suspend the execution of the sentence. The suspension of sentence is automatic.[158] The minor shall be committed to the DSWD, a training institution or some other responsible person. But sentence may not be suspended for an offense punished by death or life imprisonment. In case sentence is suspended, before or upon the minor's reaching age of majority, court will determine, based on reports, if he had behaved properly; if he has, the case will be dismissed; if he is incorrigible, the court will order the execution of the sentence.

A recent law, the Family Courts Act, provides that alternatives to detention, such as counseling, recognizance, bail, community continuum, and diversion from the justice system, shall be made available to children in conflict with the law.[159]

B. Rule on Juveniles in Conflict with the Law (2002)[160] – The Rule applies to juvenile in conflict with the law ("JICL") who at the time of the commission of the offense is below 18 but not less than 9 years of age. But the procedure will not apply if the JICL is 18 or above at the time of initial contact or at any time thereafter.[161]

The first part of the Rule, which outlines the general procedure in the handling of cases of minors who commit criminal offenses, closely follows the provisions of P.D. No. 603 and the Rules and Regulations on the Apprehension, Investigation, Prosecution and Rehabilitation of Youth Offenders, although it gives the court other options for disposition measures when the sentence is suspended, such as: care, guidance and supervision orders; community service orders; drug and alcohol treatment; group counseling; and commitment in DSWD rehabilitation centers.[162]

But the more significant innovation under the Rule is the diversion from the formal justice system of minors who commit petty offenses and their placement in community-based programs.[163]

Diversion is available in criminal cases involving JICL where the maximum penalty imposed by law is imprisonment of not more than 6 months.[164]

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[158] Section 5(a), R.A. No. 8369.
[159] Section 8, R.A. No. 8369.
[160] A.M. No. 02-1-18-SC, issued on February 28, 2002. The Rule took effect on April 15, 2002.
[161] Section 1.
[162] Section 32.
[163] Section 2(b).
[164] Section 20.

The case will not be set for arraignment but will be referred to the Diversion Committee, composed of the branch clerk of court (chairperson), the prosecutor, the public attorney and the court social worker, which shall determine after a conference with the JICL, his parents or legal guardian and counsel and the private complainant and his counsel, whether the JICL can be diverted and referred to alternative measures. The committee will determine and recommend to the Family Court whether the JICL should be diverted to a diversion program or undergo court proceedings.[165] Pending this determination, the JICL will be placed under custody of the parents or legal guardian.[166]

If the committee recommends approval, a diversion program submitted to the Family Court. But it cannot recommend diversion if the JICL or the private complainant objects. The consent to diversion is not deemed an admission of guilt by the JICL and cannot be used as evidence against him.[167]

An undertaking to comply with the diversion program is signed by the JICL, his parents or legal guardian and complainant. The program is approved by the Family Court. [168] The diversion programs that may be ordered by the court include any or a combination of the following: (i) written or oral reprimand or citation; (ii) return of the property; (iii) payment of damages; (iv) written or oral apology; (v) guidance and supervision orders; (vi) counseling for the JICL and his family; (vii) participation in training, seminars, and lectures; (viii) participation in community-based programs; (ix) institutional care and custody; and (x) work-detail program in the community.[169]

The mandatory terms and conditions in a diversion program are to report to the court social worker once a month and to comply with terms and conditions in the undertaking. The failure to comply can lead to the return of the JICL to court for formal proceedings.[170]

Monitoring is done through periodic visits by the court social worker and the submission by the social worker of reports to the Family Court. The court social worker may recommend the closure or the extension of the diversion program. The court shall order the closure of the case if the JICL has complied with the undertaking. But it may

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[165] Section 21.
[166] Section 20.
[167] Ibid.
[168] Section 24.
[169] Section 22.
[170] Section 24.

order the extension of the diversion program, if the JICL needs an additional period for rehabilitation. The case shall be returned to the court for formal proceedings, if the diversion program will no longer serve its purpose.[171]

C. R.A. No. 9165 (2002); Comprehensive Dangerous Drugs Act – The new Dangerous Drugs Law has liberal provisions on minors who fall victims to drugs. A drug dependent who is a minor may voluntarily submit himself (or his parents may voluntarily submit him) for rehabilitation. The minor may be placed in a center or he may be put under care of a Department of Health-accredited physician if he is a first-time offender and non-confinement will not pose a serious danger to the community.[172] He is exempted from criminal liability for the use of drugs if he is a first-time offender.[173]

The sentence of a minor found guilty of possession of drugs may be suspended if he is over 15 to below 18 years of age, and not over 18 at the time of judgment,[174] has not previously been convicted of drug offense, and has not previously been committed to a center or to the care of a physician for rehabilitation. The sentence shall be suspended upon a favorable recommendation of the Dangerous Drugs Board. The period of rehabilitation shall be for six to 18 months.[175] If the rehabilitation is successful, the case shall be dismissed;[176] if not, the court shall order the service of the sentence,[177] but the minor may be put on probation or community service.[178] If the minor is below 15 years of age, the provisions of P.D. No. 603 apply.[179]

D. U.N. Standards on Juvenile Justice – The United Nations General Assembly has adopted some resolutions providing for standards or guidelines in the area of juvenile justice administration. Although these are not treaties, and hence not considered hard law in the Philippines, they have nevertheless been widely accepted and have been used by the U.N. Committee on the Rights of the Child in its assessment of States Parties' compliance with the provisions of the Convention on the Rights of the Child.

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[171] Section 25.
[172] Section 54.
[173] Section 55(2).
[174] Section 68.
[175] Section 66.
[176] Section 67.
[177] Section 69.
[178] Section 70.
[179] Section 66.

1. U.N. Rules for the Protection of Juveniles Deprived of their Liberty (1990)[180]

The Rules promote the following fundamental perspectives in juvenile justice administration: detention as a last resort; detention for the shortest time possible; re-integration of the juvenile into society; non-discrimination; and standards for professionals.

The Rules apply to persons under 18 years of age who are detained or imprisoned or placed in public or private custodial setting, from which he or she is not permitted to leave at will, by order of a judicial, administrative or other public authority. Basically, the deprivation of liberty should be effected in conditions which ensure respect for the basic human rights of juveniles. The burden of ensuring the protection of the rights of the juvenile is placed on the authorities.

The Rules focus on the management of juvenile facilities, particularly on the following matters: (i) records-keeping; (ii) admission, registration, movement and transfer of juveniles; (iii) classification and placement; (iv) physical environment and accommodation; (v) education, vocational training and work; (vi) recreation; (vii) religious worship; (viii) medical care; (ix) notification of illness, injury and death; (x) contacts with the wider community; (xi) limitations of physical restraint and the use of force; (xii) disciplinary measures; (xiii) inspection of detention facilities and mechanism for complaints; (xiv) return of the juvenile to the community; and (xv) professional staff

In the Philippine setting, these Rules would be most applicable to the institutions that have custody of children in conflict with the law, namely: the Philippine National Police, the Bureau of Jail Management and Penology, the Department of Social Welfare and Penology, [181]the provincial jails and the youth detention homes established by local governments[182] and the rehabilitation centers operated by non-governmental organizations.[183]

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[180] Adopted by U.N. General Assembly Resolution 45/113 of December 14, 1990.
[181] The DSWD operates Regional Rehabilitation Centers for Youth which cater primarily to minors under suspended sentences. These are located in: Bauang, La Union; Magalang , Pampanga; Tanay, Rizal; Nueva Valencia, Guimaras; Argao, Cebu; Tanauan, Leyte; Polanco, Zamboanga del Norte; Gingoog City; Davao City; and Muntinglupa City.
[182] Examples are Molave Youth Home in Quezon City, Manila Youth Reception Center, Pasay City Youth Home and Operation Second Chance Center in Cebu City.
[183] Examples are the *Balay Pasilungan* in Cebu City and the *Bahay Pag-asa* in Bacolod City.

2. U.N. Guidelines for the Prevention of Juvenile Delinquency (1990)[184]

The Rules promote the following fundamental principles in the prevention of juvenile delinquency: (i) prevention of juvenile delinquency as part of crime prevention; (ii) participation of the entire society in delinquency prevention; (iii) child-oriented approach; (iv) well-being of young persons from early childhood; (v) progressive delinquency prevention policies; and (vi) community-based services and programmes.

The basic strategy is the adoption of preventive policies that facilitate the successful socialization and integration of all children and young persons, in particular through the family, the community, peer groups, schools and vocational training. The participation of children and young persons is essential in this strategy. The key actors are: the family, to provide care and protection; the schools, to impart social values; the community, to provide support measures; and the media, to communicate positive messages.

3. U.N. Standard Minimum Rules for the Administration of Juvenile Justice (1985)[185]

The Rules provide for the standards in the administration of juvenile justice. They are based on the fundamental perspectives of: promoting the well-being of the juvenile and his family; ensuring for the juvenile a meaningful life in the community; promoting positive measures that involve full mobilization of all possible resources; integrating juvenile justice in the national development process; and improving the competence of service providers.

On the age of criminal responsibility, the Rules provide that it shall not be fixed at too low an age level, bearing in mind the emotional, mental and intellectual maturity of children.

The Rules envision a juvenile justice system that shall emphasize the well-being of the juvenile and ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

In view of the varying special needs of juveniles and the variety of measures available, discretion is encouraged by the Rules. Appropriate scope for discretion shall

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[184] Adopted by U.N. General Assembly Resolution 45/112 of December 14, 1990. This document is also known as "The Riyadh Guidelines."
[185] Adopted by U.N. General Assembly Resolution 40/33 of November 29, 1985.

be allowed at all stages of the proceedings and at the different levels of juvenile justice administration. But sufficient accountability in the exercise of discretion must be ensured. Those who exercise discretion shall be especially qualified or trained to exercise it judiciously.

Basic guarantees, such as the presumption of innocence, the right to be notified of charges, the right to remain silent, the right to counsel, the right to the presence of parents or guardian, the right to confront and cross-examine witnesses, and the right to appeal are to be ensured.

The Rules also provide that the right to privacy shall be respected at all stages in order to avoid harm caused by undue publicity or by labeling. No information that may lead to the identification of the juvenile shall be published.

Parents or guardian shall be immediately notified upon apprehension of the juvenile. A judge or other authority shall, without delay, consider the issue of release.

Diversion of cases of juveniles is encouraged. Whenever appropriate, the juvenile shall be dealt with without resorting to formal trial. Police and prosecutors shall be empowered to dispose of cases, at their discretion, without resort to formal hearings, in accordance with established criteria. But the consent of the juvenile or his parents or guardian to diversion must be given, and the decision to divert shall be subject to review by competent authority.

Detention pending trial shall be a measure of last resort and for the shortest possible period of time. Alternative measures in lieu of detention are encouraged. If they have to be detained, the rights of juveniles shall be respected. They shall be detained separately from adults. Educational, vocational, psychological, and medical assistance shall be provided to them while they are detained.

A juvenile who is charged shall be dealt with by a competent authority in a fair and just trial. The proceedings shall be conducive to the best interests of the child. He shall be represented by legal counsel. His parents or guardian shall be entitled to participate in the proceedings. The background and circumstances in which the juvenile is living or the conditions under which the offence was committed shall be considered in adjudication. The adjudication and disposition of the case shall be guided by the principle of proportionality, and any restrictions on liberty shall be kept to a minimum. The well-being of the juvenile shall be the guiding factor.

The disposition measures that may be ordered shall include: care, guidance and supervision orders; probation; community service orders; financial penalties, compensation and restitution; treatment; counseling; and foster care. No juvenile shall be removed from parental supervision unless necessary. Placement of juvenile in an institution shall be a last resort and for the minimum necessary period. The rehabilitation of the juvenile shall be in a community setting and, as far as possible, within the family unit. Semi-institutional arrangements to assist juveniles in reintegration into society, such as half-way houses, educational homes and day-time training centers are encouraged.

If a juvenile has to be place in an institution, conditional release shall be used to the greatest possible extent and at the earliest possible time. Juveniles released conditionally shall be assisted and supervised by the authorities and shall receive full support from the community.

One would easily see how the Supreme Court's Rule on Juveniles in Conflict with the Law has been influenced by these Rules. It is not even surprising that the Rule on Juveniles in Conflict with the Law expressly refers to the Convention on the Rights of the Child.[186]

The biggest hindrance to the realization of these Rules in the Philippines is the detention of children in conflict with the law, often together with adults. Detention has become the norm, instead of the last resort, and there are often no separate detention facilities for children pending trial.

VI. *The Pillars of the Justice System for Children*

In the Philippines, the traditional "pillars" of the justice system are law enforcement, the courts, the prosecution, the corrections officers and the community.[187]

When we talk of courts, we refer primarily to the Family Courts which has jurisdiction over cases involving children[188]. Among these are: cases where one or more of the accused is below 18 but not less that nine years of age at the time of the commission of the crime, or where one or more of the victims is a minor at the time of

[186] Section 3, Rule on Juveniles in Conflict with the Law.
[187] Narvasa, *Handbook On The Courts And The Criminal Justice System*, p. 29-30.
[188] Republic Act No. 8369 (1997), the Family Courts Act.
[189] Section 5(a).

the commission of the crime;[189] cases against minors under the Dangerous Drugs Act;[190] cases of violation of the Child Abuse Law or the Child Labor Law;[191] and cases of domestic violence committed against women or children.[192] There are currently more than 80 Regional Trial Courts designated by the Supreme Courts as Family Courts. To make court procedures in cases involving children more sensitive to their needs, the Supreme Court has issued several rules relating to children, some of which have been discussed above.

On their part, the Philippine National Police has created a Women and Children's Desk in every police station and the Department of Justice has constituted a task force of prosecutors to handle women and children's cases.

But in referring to the "pillars," we cannot ignore the very important role played by the lawyers from the Public Attorney's Office and the social workers in the justice system for children. Without their participation, the rights of the children in the justice system will not be fully protected. The PAO has even issued it own procedures in order to ensure that the rights of children in conflict with the law are protected.[193]

From the numerous training activities he has conducted for the pillar of justice, the writer has observed that each pillar often tries to address all of the needs of the child victim or child in conflict with the law. This, of course, is not feasible because of the limited role of each pillar and it has often led to unfavorable results despite the good intentions. Thus, we have seen cases of police officers who have taken into their own homes child abuse victims, social workers who have insisted on the prosecution of a case even when the evidence was insufficient, and teachers who have been accused by parents of kidnapping for taking custody of students who are victims of abuse at home. Often this has resulted in casting blame on another pillar for alleged inaction when the root cause is actually a failure to coordinate or make a proper referral. If there is one thing members of each pillar of justice should realize is that the pillars were never meant to operate independently of each other. They are intended to always work together in the pursuit of justice. This is precisely the idea behind their being pillars that support

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[190] Section 5(i).
[191] Section 5(j).
[192] Section 5(k).
[193] PAO Memorandum Circular No. 22, Series of 2002, on the Standard office Procedures in Extending Legal Assistance to Juveniles in Conflict with the Law. This was really needed since the number of cases of youthful offenders handled by PAO dramatically increased during a five-year period from 4,934 in 1998 to 13,293 in 2002.

the justice system. The absence of one pillar will cause an imbalance that may lead to the collapse of the whole system.[194]

VII. *Conclusion*

There are on-going efforts to further strengthen the legal regime for child protection in the Philippines. New laws have been enacted and new rules of procedure have been issued by the Supreme Court. In the area of child abuse, there are many gray areas and there are efforts led by the Department of Justice to amend R.A. No. 7610 in order to plug the loopholes. There are also efforts to enact a comprehensive juvenile justice law that will truly protect the rights of children in conflict with the law.[195] One can readily conclude that the Philippines is on the right track in the area of legislation and rule-making. What has to be improved, as admitted by representatives of the pillars of justice, is the implementation of the law to ensure that the rights of children are respected and fully protected and their best interests are promoted.

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[194] This could very well be the rationale for the multi-sectoral training program of the Philippine Judicial Academy, which gathers together and trains as part of one team the Family Court judge, the clerk-of-court, the court social worker, the prosecutor, the PAO lawyer, the Women and Children's Desk officer of the police, and the jail warden in a particular area. This training program is supported by UNICEF-Manila.

[195] See, for instance, Senate Bill No. 2645, "An Act Establishing a Comprehensive Juvenile Justice System and Delinquency Prevention Program, Creating the Office of the Juvenile Justice and Delinquency Prevention Under the Department of Justice, Appropriating Funds Therefor and for Other Purposes," which was prepared jointly by the Committees on Justice and Human Rights; Youth, Women and Family Relations; and Finance.

In the Child's Best Interest
Reorienting Juvenile Justice

*Eric Henry Joseph F. Mallonga**

The Philippine juvenile justice system was a reinvention of an archaic criminal justice system that formally existed with the establishment of the Spanish colonial regime in this country. Ever since this country became a crown colony of Spain, the criminal justice system has been basically accusatorial. The American military commander established an adversarial system,[2] which modified the accusatorial system implemented by the Spanish colonial government, of criminal justice in the Philippines.[3] Ever since, juvenile justice has always been an integral part of the criminal justice system. Although there have been many domestic and international legal developments since then, progress in juvenile justice remains procedural rather than substantial, token rather than humane, and without any genuine segregation from the generic criminal justice system.

Parens Patriae Doctrine

During the American colonial period in this country, the Philippine Commission as early as 1906 enacted Act No. 1438 to provide for the care and custody of juvenile offenders, which marked the beginning of juvenile delinquency legislation in this country.[4] The philosophical foundation of such juvenile delinquency legislation was the doctrine of ***parens patriae*** – the State as the parent.[5] In the United States, such jurisdictional focus was adopted and expanded to include the handling of "dependent and neglected" children. Court intervention was justified by the theory that a child's natural protectors – the parents – were unable or unwilling to provide the appropriate care. The Court took the place of the parents, and hence, the beginning of ***parens patriae*** and its eventual evolution.[6]

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1 Kenneth Wooden. Weeping in the Playtime of Others: America's Incarcerated Children, 1976: 31.

2 General Order No. 58 of 23 April 1900.

3 Alfredo Tadiar. "The Administration Of Criminal Justice In The Philippines: Some Aspects For A Comparative Study With That Of The United States", Citing *US v. Samio* 3 Phil. 691.

4 Note: Under the common law of England, the Court of Chancery had the authority to intervene in property matters to protect the rights of children.

5 Salvador and Annadaisy Carlota. Legal and Psychological Perspectives on Philippine Juvenile Delinquency, 1983: 4.

6 James A. Inciardi. Criminal Justice, 2nd ed., 1987: 679.

Under such doctrine, the courts would adopt a paternalistic attitude and consider the child as a distinct individual entitled to treatment and rehabilitation rather than prioritise the victim's retribution.[7]

Unfortunately however, such doctrine of State paternalism is viewed as patronising and condescending. The ingress of a child into the criminal justice system stigmatises him or her as a youth offender, juvenile delinquent or child criminal. Indeed the realm of juvenile delinquency has continuously been under State control, and any intervention for children shall always be viewed by child rights advocates as a patronising grant of State largesse, because the system fails to view the child within the context of fundamental human rights innate to the birth or childhood of the person.

"In Re Gault"

The US Supreme Court, in the matter of: "***In re Gault,***" 387 US 1 (1967), offered the first severe legal critique of the '***parens patriae***' conception of juvenile justice. As observed, the problem of any court, even family courts with criminal jurisdiction in the Philippines, is its confusion with the double standard in the treatment of juveniles in legal conflict. There is a judicial mandate that the needs of juveniles whose cases are pending before the court must first be addressed rather than primarily considering the wrongfulness of the offence. The focus of judicial intervention is shifted from the offense to the offender. Supposedly, it is not the offense, committed in the past or prior to any pending State action that determines the content and intensity of the intervention, but the welfare of the offender, as a future aim. Whereas penal justice, which the Court must dispense, is deemed retrospective in the sense that the offender shall be accountable for a previous deed. Yet juvenile justice is prospective in that the child offender must be treated or rehabilitated for reformation or restoration purposes, making the child a constructive member of society. Therefore, sentencing in juvenile justice does not rely on an already available criterion of penal formulae in deciding upon the appropriate amount of deprivation of liberty, but seeks a future goal.[8]

Even the United States Supreme Court concluded that "the Latin phrase, ***parens patriae***, proved to be of great help to those who sought to rationalise the exclusion of juveniles from the constitutional scheme; but its meaning is murky and its historical

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[7] See note 5, *supra* citing G.L.Schramm. Philosophy of the Juvenile Court, 261 Annals 101-106 (1949), reprinted in S. Glueck, ed. The Problem of Delinquency, 1959: 271-273.

[8] Lode Walgrave. "Not Punishing Children but Committing Them to Restore", in Ido Weijers and Antony Duff, eds. Punishing Juveniles: Principle and Critique 2002: 99.

credentials are of dubious relevance."[9] For judges, the exclusion of minors from standard observance of constitutional rights meant the deprivation of minors from, and the justification for not, providing their constitutional rights. In judicial proceedings, the discretion of ***parens patriae*** was deemed a better, more expeditious way to dispose of the criminal complaint against the accused child. Yet the system provided no protection from judicial abuses. Therefore, despite initiatives for historical innovations of child-specific juvenile legislations in the local and international setting, the juvenile still finds himself within the confines of a judicial system that offers no actual redemption or salvation from the manacles of a harsh criminal justice system and that even excludes said child from the exercise of his or her Constitutional or human rights. The criminal justice system, primarily concerned with public security and safety, found more expeditious methods in the case disposition of juveniles in legal conflict because of ***parens patriae***, which justified the alleged speedy "rehabilitative" treatment of children. Such justice system took on an incarcerative and punitive mode, converting the intended "rehabilitative" treatment into a form of incarcerative punishment for the juvenile offender.

It appears virtually impossible to even attempt combining the humane goal of responding to the needs of juveniles and their families with societal goals of punishing the offender. Constraints of formal procedural rules hinder possibilities for flexibility and rich human rights dialogue, which therapeutic ambitions require. As the US Supreme Court rightly expressed, "The child receives the worst of both worlds: he gets neither the protections accorded to adults nor the solicitous care … postulated for children."[10]

Thus, even with American law reform innovations supplanted into the Philippine juvenile system, the latter remains essentially an integral part of criminal justice. With developments in international law focusing on children, standards have been set but Philippine government continuously fails to meet compliance thereof. Government even fails to comply with its own local legislative standards as set by the Child and Youth Welfare Code. The government, and its public officials, both national and local, charged with enforcement of the juvenile justice system, renders itself vulnerable to lawsuits and complaints, within the national and international arena.[11]

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[9] In Re Gault, 387 U.S. 1 (1967).
[10] Kent v US, 383 US 541, 556 (1996) quoted in Weijers and Duff 99.
[11] See Complaint of Monteros et al v President Gloria Macapagal-Arroyo et al, Office of the Ombudsman, 10 December 2003. Note: Several police child prisoners filed a complaint for Crimes Against Humanity against the President, Cabinet Secretaries and PNP Chief for failure to segregate minors from adults in various detention centers.

Nature of Juvenile Justice

An adult is a person who has reached the '***age of majority'***, which is 18 years old, under Philippine jurisdiction.[12] This indicates that the adult is legally responsible for his or her actions and behaviour. If an adult is accused of a crime or violates a criminal law, he or she is processed through a criminal justice system, grounded on procedural due process, which is guaranteed by the Constitution.[13] The adult is presumed to possess absolute discernment over acts committed by him, including the commission of criminal offenses, and may not use the defense of lack of discernment or diminished capacity therefor.

On the other hand, a juvenile is an individual who has not reached the age of majority, thus has not yet been emancipated for purposes of citizenship activities. As such, he or she is deemed to have a '***special status'***, unless deemed emancipated by national laws. Children are held to an alternative standard of behaviour because of their lack of absolute discernment in appreciating consequences of crime. Thus minors are raised with many conditionalities and restrictions as viewed to be in their best interests. Minors are required to attend school until secondary or tertiary level; they are expected to obey their parents; they are forbidden to drink alcohol, smoke cigarettes, or drive motor vehicles; they may not marry; they cannot enter into contracts; they are not permitted to vote, to enter into the military, or run away from home. Some jurisdictions may place other restrictions on minors, such as curfews, truancy, or laws against "incorrigible" or "immoral" behaviour. Although these minors are provided with a special status and are required to observe more restrictive behaviour, without the same freedoms and rights of adults, yet they are unfairly treated with, and charged for, the same violations as adults within the penal system as if they were no different from adults.

It, however, is conceded that the developmental phases of a minor endow him with differential capacities proportionate to age. As the minor grows older, and as he becomes more educated or experienced, so does he become more appreciative of the acts he commits. However, in the commission of serious offenses, it cannot be automatically concluded that the more mature or older minors are, they must definitely possess discernment on the consequences of such criminal behavior nor can it also be automatically concluded that the erring minors are not capable of discernment. It is in such cases where anticipated penalties must be proportionate to the crime committed

[12] Note: 18 years is universally accepted upper age limit for childhood, and stipulated in the United Nations Convention on the Rights of the Child (CRC), Beijing Rules 1985 and Riyadh Guidelines 1990.
[13] Inciardi *op. cit. supra* note 6 at 677.

and to the maturity of the minor in appreciating the consequences of his act, with due consideration for the resilient capacity of the offending minor to improve himself and follow a path away from criminal behaviour.

Reason for Paradigm Shift

The paradigm shift from the purely criminal justice system to a "***parens patriae"*** oriented juvenile justice is supported by two types of argument. First, minority is taken to diminish guilt, since minors are "less capable of understanding and willing."[14] This "***excuse de minorite***"[15] leads to a lightening of punishments as compared to those imposed on adults. Second, it is believed that young offenders can, more than adults, still be influenced positively. Punishments or other measures imposed should therefore be educational as juveniles are considered to be less culpable. Thus, the troublesome behavior is not primarily seen as a "wrong" which must be punished, but as a mistake, due to problems in the juvenile's ongoing socialization. Because parents obviously have not corrected these problems, the State takes the ***parens patriae*** position, meaning that the State will take care of the juvenile's further development and welfare. By enhancing the juvenile's welfare, it is believed, his "need" or "tendency" to commit offences will be diminished.[16]

Despite such paradigm shift, the Philippines, like the United States, has seen no further evolution of an alternative juvenile justice system in the Philippines that is clearly separate from the criminal justice system despite the universal recognition of the "***special status***" of juveniles. Some would even view Philippine criminal justice as retrogressive, rather than progressive. Recent juvenile legislations are aimed at widening the net for juvenile or youth offenders, not at decreasing the number of children caught within the criminal system. The legislations directed at juveniles in conflict with law are also punitive and incarcerative rather than reintegrative, reformative, or restorative.

The question disturbingly remains as to whether *any* juvenile should be dealt with in adult criminal courts at all. On one hand, there is the pragmatic issue of community protection and the state's right to wager war against its enemies, the criminals. On the other hand, there is the more abstract and more philosophical consideration of confinement in a penitentiary as an appropriate treatment for what is defined under national statutes as delinquent behaviour.[17]

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[14] See note 8, supra citing Gatti & Verde 2998: 360.
[15] Ibid citing Gazeau & Peyre 1998: 223.
[16] See note 8 at 99 *supra*.
[17] Inciardi *op. cit. supra* note 6 at 4.

But international law has set universal standards: the two principal goals of a sound juvenile justice system are the well-being of children and the treatment of children in a manner proportionate both to their circumstances and to the offense.[18] To promote and achieve the child's sense of well-being, the child has an overriding right to maintain regular personal relations and direct contact with his or her parents.[19] The maintenance of familial relationship is of paramount importance in the juvenile's treatment so that he is not treated in isolation from the family.[20]

Moreover, the minor's sense of well-being is enhanced with his treatment in a manner consistent with the promotion of a sense of dignity and worth, and which reinforces the child's respect for the human rights and fundamental freedoms of other persons.[21] A juvenile, whose trial is pending, cannot be left to languish in detention with adult offenders as he loses sense of self-worth and dignity, and as he loses respect for human rights, which can never be provided within a city or provincial jail, or a barangay or municipal detention center. Certainly, the treatment of Filipino minors within the criminal justice system provided for adults is totally incompatible with the proportionality principle.

Even as a Child and Youth Welfare Code[22] and a Family Courts Act[23] have been legislated, the continuous detention of child detainees with hardened adult detainees continues with impunity. Prosecution and trial procedures within a criminal judicial system also continues to make no substantial distinction between minor and adult indictees. The biggest fallacy in the establishment of a juvenile justice system is that it is fundamentally structured on the notion that judicial intervention is necessary in the life of a juvenile, and that judicial intervention will result in positive behavioural change.

It is humbly suggested that our archaic criminal justice system must now be supplanted with a child-rights system, one that is oriented towards the well-being of the child and which treats the child sensibly and sensitively, with the view of reintegrating the child with, and restoring the child to, his family, community, and society as normally and as humanly possible,[24] but without encouraging or tolerating any offense that may

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18 Geraldine Van Bueren. The International Law on the Rights of the Child, 1995: 172.
19 Art. 9.3 CRC.
20 G. Van Bueren op. cit. supra note 18 at 172 citing Rule 1.1 of The UN Standard Minimum Rules for the Administration of Juvenile Justice 1985, or the Beijing Rules.
21 Art. 40 CRC.
22 Note: Pres. Decree 603, The Child and Youth Welfare Code was enacted in 1974.
23 Note: Rep. Act No. 8369, The Family Courts Act, was enacted in 2000.
24 Art. 40 CRC.

have been committed albeit treatment should be proportionate to gravity of the offense. Debate over the emergent vision of a child-humane, child-oriented system must be intensified as it can only transform our crime-obsessed society into a more compassionate, more human rights-oriented child's best interests-specific one.

Overview of Juvenile Justice in the Philippines

In an attempt to reduce crime, the usual knee-jerk reaction of both legislative and executive branches of government is to get tough on criminals by increasing the penalties, even expanding the death penalty to various serious offenses,[25] and reducing correctional alternatives such as probation or rehabilitation programs. Unfortunately, in the Philippines, children as young as nine years old have been included in the net of criminal justice, treated as young adults even for light offenses. Some children who have not been able to proffer birth certificates are immediately detained within detention centers, even if they may be younger than nine years of age. Even as international legal developments have decriminalised status offences,[26] law enforcement authorities continue to sanction vagrancy, mendicancy, curfew violations, school truancy, parental disobedience, and incorrigibility within the domestic jurisdiction as if these were actual crimes committed by adult offenders. Government and Congress are in a quandary on the matter, without any real vision of a juvenile justice system.

Even with token developments, such as the creation of the Family Courts with jurisdiction over criminal cases involving children in conflict with law[27] or a diversionary mechanism,[28] the emergent juvenile system will most likely continue to manage delinquent juveniles as a junior version of adult criminals, emphasising due process, harm, intent, and punishment.[29] Within such system, criminality can only be exacerbated.

Age Zone of Conflict – The age of a child in conflict with law is quite important because it determines the types of rights or privileges that the juvenile is entitled to under the present state of the law. Even if there are changes to be made to the existing system, it would be best to categorise children in legal conflict in accordance with their age groupings, but not necessarily in conformity with existing juvenile law.

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[25] See the Dangerous Drugs Law, which expanded the coverage of the Death Penalty Law, instead of providing for more rehabilitation programs.
[26] See Beijing Rules and Riyadh Guidelines.
[27] Rep.Act No. 8369, (1997) Sec. 5, Par. A.
[28] SC Rules on Juveniles in Conflict With The Law (2002), Secs. 20-24.
[29] Simon Dinitz. Foreword in Clemens Bartollas. Juvenile Delinquency, 1993: vii-ix.

Both the Child and Youth Welfare Code and Revised Penal Code exempt from criminal liability all children nine years of age or under at the time of the commission of the offense. Parents, however, are not exempt from civil liability for the damages caused in the commission of the offense.[30] Even as the child is exempt from criminal liability, the law totally does away with any guidance on the proper intervention with the child who may have committed an offence or who may himself or herself have been traumatized by the offence committed.

The same laws also exempt those over nine but under 15 years unless they acted with discernment.[31] Unless there is proof to the contrary, the law will presume that children within the said age range did not act with discernment and are therefore not criminally liable for their acts.

Unfortunately, in actual practice, the presumption of investigating police officers or investigating or inquest prosecutors tends toward criminal culpability of the child. It becomes standard for prosecutors to presume, and thus include in the indictment filed with the court, that the child acted with discernment. During inquest or preliminary investigation proceedings, it is necessary for the private complainant to present evidence that there was an act of discernment on the part of the child in the commission of the offense. Evidence presented before the police or investigating prosecutor should not constitute a mere accusation that the child committed the offense but, in addition, should also include evidence on the child's discernment for the alleged crime to be indictable.

On the other hand, if it is proven in court that the children acted with discernment, they may be given the appropriate sentence but their liability is always mitigated by two degrees.[32]

Children between 15 and 18 years of age at the time of the commission of the crime are conclusively presumed to have acted with discernment,[33] unless they are mentally unstable or insane, and are therefore criminally liable. However, since they are still below the age of majority, the law gives them the benefit of a mitigated liability or reduction of penalty by one degree.[34]

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30 Art. 201, P.D. 603

31 The Child and Youth Welfare Code, P.D. 603, Art. 189, Par. 2; and The Revised Penal Code, Act No. 3815, Art. 12, Par. 3.

32 Philippine Association For Youth Offenders (PAYO). Youth In Detention: Issues and Challenges: A Nationwide Survey, 1996: 12-14.

33 Note: There are no special clauses on the culpability of children between the ages of fifteen and eighteen in the Revised Penal Code or in the Child and Youth Welfare Code.

34 See note 32, supra.

Age is also important in determining whether the youthful offender is entitled to the benefits of a "suspended sentence."[35] Under the Family Courts Act,[36] the sentence of the youth offender is automatically suspended without need of application pursuant to the Child and Youth Welfare Code. In such case, the judge orders the commitment of the minor to the care and custody of the Department of Social Welfare and Development where he is given the chance to be rehabilitated.[37] The minor, however, may only avail of this benefit if he is still below 18 years old at the time of the promulgation of sentence. The slow resolution of his case therefore may deny him of this privilege. On the other hand, a minor who successfully avails of his sentence is given a chance to prove that he has changed to become a useful member of the community, in which case, the judge will render a judgement of dismissal. The minor, however, is given the chance to prove that he has changed for the better, only until he reaches the age of 21 years.[38]

Research reveals that majority of youthful offenders detained (52.6%) are between 15 and 17 years of age. Majority of the respondents related that they have stayed in detention for less than a year. It can be deduced, therefore, that majority of detained youth offenders commit crimes at the age of 15 to 17 years.[39] It may be surmised that among children, the younger ones are less prone to commit crimes than older ones since none of the respondents belong to the 9 to 11 years old age group, and 6.9% of the respondents are between 12 and 14 years of age. These findings support the claim of a similar study "The Filipino Youth: A Profile",[40] that the Filipino juvenile delinquent is likely to be between 14 to 17 years old. Similarly, DSWD reports revealed that out of the 741 youthful offenders it served during the period covered by its report, only 24 or 3% belong to the 9 to 12 years old age group. Data gathered on the age and sex demographics also corroborate observations made in earlier studies which suggest that the Filipino youthful offender would be more likely to be male between 14 to 17 years of age.[41] These findings may serve as a basis for the proposition already raised by concerned groups that the age of absolute exemption from criminal liability be raised from 9 years to a higher age limit. Further studies on this issue should be made.

Since a large portion of the population of children in conflict with law is but a year or two away from the age of majority, there is an urgency to give these children

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35 P.D. 603, Art. 192, Par. 1, as amended by P.D. 1179.
36 Rep.Act No. 8369, Sec. 5, Par. A.
37 See note 35, supra.
38 See note 32, supra.
39 Ibid.
40 Id, citing Research by National Council of Social Development in Partnership with SCF-UK, 1992.
41 Id, citing Philippine Commission for International Youth Year, "The Filipino Youth: A Profile", 1985: 20-21.

complete supervision with respect to their rehabilitation program. If unsupervised and unreformed, these same youthful offenders may graduate to full adult criminality in less than a year. The consequences are damaging, since the commission of a crime upon reaching the age of majority will make them liable for the full penalty provided for by law, which sometimes mistakenly includes capital punishment. Some Family Court judges still make the mistake of meting out the death penalty on minors, making the determinant hinge on whether or not the crime was committed before or after the offender's eighteenth birthday.[42] It is clear, however, that the minority of a convict is always deemed a mitigating circumstance,[43] thus the death penalty can never be enforced upon a minor. It should also be made clear that the age which is significant in the determination of whether the death penalty can be meted is the age at the time of the commission of the offence,[44] not the age of the promulgation or scheduled execution. If a person commits a crime below the age of eighteen, he can never be executed for that crime.[45] The principle behind the prohibition on the imposition of the death penalty for minors is that they are often too young to realize fully the consequences of their actions and are also more susceptible to domination by others, rendering the death penalty wholly inappropriate.[46] This principle should be equally applicable to the prohibition on the incarceration of children.

Categories of Juvenile Offenses

It is necessary to come up with an enumeration of offenses most often committed by minors so that categories can be made, and the proper response undertaken, which would be based on causes from which the offense arises. The purpose of profiling in this case is to prioritise actions on the various categories or classifications to determine reasons or causes for commission of such crimes.

Clearly though, the proportionality principle mandates that incarceration is not an appropriate response to status offenses, light or slight offenses, and even to less serious offenses, especially when children have not been provided with adequate values education and other human rights necessary to their proper growth and development. But neither is incarceration prohibited in the case of mature minors, who may have committed serious, extremely violent, or heinous offenses, for as long as the approach is rehabilitative and reintegrative in complexion, and detention is for the shortest possible

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42 Ibid.
43 Act No. 3815, Art. 13, Par. 2.
44 G. Van Bueren. op. cit. supra note 18 at 185-187
45 Note: The original draft for the prohibition of the death penalty in the CRC did not make this clear and was subsequently amended.

period. Determining the criminal offenses most committed by minors could give a balanced perspective on the most proportionate response to the issue concerned.

It should also be stressed that the Child and Youth Welfare Code confuses the jurisdiction of courts in relation to three categories of juvenile behaviour – delinquency, dependency, and neglect.[47] First, the courts may intervene when a child has been accused of committing an act that would be a misdemeanor or felony had it been committed by an adult, these judicial actions specifically refer to crimes, which are not just status offenses. Second, judicial intervention is also possible when a juvenile commits certain status offenses, which are offences only when committed by minors but not so deemed when committed by adults. Third, judicial intervention is allowed in cases involving dependency and neglect. If the courts determine that a child is being deprived of needed support and supervision, they may decide to remove the child from the home for his or her own protection. The problem with these broad categories of criminal situations is that they lack precise criteria for determining types of behaviour that qualify as juvenile delinquency.

Juvenile justice also does not make any such distinction between heinous offenses from juvenile delinquency. All such offenses, whether status offense, delinquency, misdemeanors or heinous offenses, when committed by a child are treated in the same manner as if they were committed by adults. There are generally no distinctions made once a child is indicted. Fortunately though, there have been recent legal developments that recognise diversion procedures, which helps in rechanelling the child away from the criminal justice system and in shortening the child's detention period.[48]

A. Crimes Against Public Order and Safety – A substantial portion of crimes most often committed by minors are crimes against public order and safety, over which local governments have promulgated ordinances with penalties of incarceration not exceeding thirty days. Light offenses or misdemeanors committed usually involve Violations of Special Laws and Ordinances, which include Disorderly Conduct, Driving without a License, Public Scandal, Harassment, Drunkenness, Public Intoxication, Criminal Nuisance, Vagrancy, Desecration, Drink Driving, Gambling, Mendicancy, Littering, Trespassing, Tattooing, Public Urination, Illegal Possession of Firearms, Explosives and Illegal Possession of Deadly Weapons and the like.[49] Even with a maximum penalty of

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[46] G. Van Bueren. op. cit. supra note 18 at 187.
[47] C. Bartollas, op. cit. supra note 29 at 6-7.
[48] SC Rules on Juveniles in Conflict with the Law, Secs. 20-25.

imprisonment for thirty days, many detainees, especially children, are detained beyond the maximum required period without timely arraignment or trial.

Public order crimes, which include status offenses, tends to be a rather sweeping collection of offenses, mostly misdemeanors, that nevertheless account for a considerable portion of criminal justice activity.[50] Many offenses therein tend to overlap with one another and, depending on the jurisdiction, one or more of these crimes against public order and safety may fall under the proscriptions of a single criminal code. In recent years, the constitutionality of many criminal codes designed for the preservation of public order and safety has been challenged. Numerous cases of disorderly conduct, breach of the peace, and vagrancy have been questioned on grounds that they violate Constitutional protections of free speech and assembly or because they are too vague.

Furthermore, the use of such statutes remain in force in criminal codes of most American jurisdictions, and arrests for vagrancy and disorderly conduct alone approach half a million annually.[51]

B. Status Offenses – A substantial and significant, if not most, number of offenses involving public order and safety committed by minors are status offenses, which means they are offenses or crimes simply because of the status of minority by the persons committing them. If the act is committed by an adult, it is not an offense or a crime.[52] Curfew Violations; Truancy; Parental Disobedience; Incorrigibility; Violation of School Rules and Regulations; Violation of Anti-Smoking and Anti-Drinking Laws and the like are among status offenses in which minors are the only ones held liable therefor.[53] Status offenses are also those acts declared by statute or ordinance to be a crime because it violates the standards of behaviour expected of children.[54] Because there are no real crimes committed, status offenses have already been ruled out in international law as arbitrary and discriminatory to minors as they provide no social benefits and are violative of children's human rights. The Riyadh Guidelines specifically provide that "legislation should be enacted to ensure that any conduct not considered an offense or not penalised if committed by an adult is not considered an offense or not penalised if committed by a young person" so that further stigmatisation, victimization and criminalisation can be prevented.[55]

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[49] PAYO, op.cit. supra note 32; and J. Inciardi, op. cit. supra note 6 at 85-86.
[50] J. Inciardi, op cit. supra note 6 at 85.
[51] Id. at 86-87.
[52] The Beijing Rules 1985, Rule 3, Par. 1.
[53] C. Bartollas, op. cit. supra note 29 at 6.
[54] J. Inciardi, op. cit. supra note 6 at 678.

Unfortunately, in the Philippines, trends in approaching juvenile delinquency issues are retrogressive in that more punitive laws and ordinances are being legislated, which include coverage of status offenses. Most cities and many municipalities all over the country have punitive curfew ordinances and some have even promulgated these ordinances recently.[56] There may be nothing wrong with the desire to protect the children from undue influences during certain hours of the day, more specifically during the late hours of the night and early hours of the morning. Ironically, to provide, and actually impose, punitive sanctions on minors, who are intended to be protected or benefited from a curfew law, contradict and detract from the original noble intentions and spirit of such law.

B.1. Use of Labeling Acronyms – In various jurisdictions, status offenders are known as MINS in Illinois (minors in need of supervision), CHINS (Children in need of supervision) or CHINA (children in need of assistance) in Colorado, CINS in Florida, JINS in New Jersey (juveniles in need of supervision), PINS in new York (persons in need of supervision), YINS (Youths in need of supervision) in Montana, or members of FINS (families in need of supervision).[57] There is a danger in utilizing acronyms or designations in classifying juveniles or children in conflict with law because of the likelihood of labeling or stigmatisation, which generally stick to the child even as they grow into adulthood.

Designations of these children in need of assistance were an outgrowth of an American movement during the 1960s and 1970s to decriminalise status offense behaviour.[58] Prior thereto, such acts fell under statutory definitions of "delinquency." The range of "delinquent" behaviors was so inclusive that it most likely applied to majority of American youth. The need for decriminalising status offenses was obvious: runaways, curfew violators, truant, or otherwise "incorrigible" children were handled in the same manner as juvenile law violators and adult criminals, given the same delinquent status and housed in the same reform and industrial schools.[59] Status offenders were mixed with hard-core delinquent offenders in state correctional and detention institutions. Accused minors who apply for probation, or "recidivist" minors who apply for parole are supervised by the same adult institutional authorities, the same adult officers, under the same conditions, and reporting to the same offices that are used for convicted

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55 The Riyadh Guidelines 1990, Art. VI, Sec. 56.

56 Note: The City of Manila promulgated its curfew ordinance last year reiterating prior ordinances providing for imprisonment for three-time violation thereof. This entails keeping of criminal records, which constitutes another violation of international law standards providing that delinquency records should not be maintained.

57 C. Bartollas, op. cit. supra note 29 at 7; and J. Inciardi, op. cit. supra note 6 at 699.

58 Inciardi, op. cit. supra note 6 at 700.

felons. The results of probation or parole for minors under the same institutional system applicable to adults can only be disastrous, as has been shown in American experience.[60]

Clearly, status offenses are not, in themselves, crimes or felonies. Thus, a minor who associates with criminal or immoral persons should not be punished for such alleged illegal association. It must be clear that such illegal associations by minors should not warrant a penal sanction. The commercial sexual exploitation of children should not be seen or viewed as a child prostituting himself or herself. It should be viewed from the other end of the criminal justice spectrum: that of adults engaging in perverse sexual behaviour with minors, which should be punished. Moreover, "child prostitution" is not an appropriate term for the commercial sexual exploitation of children because minors are presumed not to possess full discernment or fully realize the consequences of such sexual behaviour. The criminal behaviour, and resultant penal sanctions, does not belong to children but to adults engaging or indulging in sexual acts with minors.

B.2. Terms of Disaffection – Some of these children are also termed predelinquent, incorrigible, beyond control, or ungovernable or wayward children.[61] The terms are quite problematic as the acts or behaviour described for children who commit status offenses may not necessarily constitute criminal offenses. On the term "predelinquent", the children are seen as not yet having attained any status of delinquency, yet the law already provides for a punitive approach for the "predelinquency" status. In reality, the possible commission of an offense or delinquent behaviour, which the law seeks to prevent, has not yet been committed. Since no offense has yet been committed, the laws or ordinances ironically provide for punishment of a described situation or behaviour constituting a "predelinquent" offense. On ambiguity, vagueness, and conjectural speculation, that law or ordinance becomes unconstitutional.[62] The Riyadh Guidelines cannot be clearer: there should be no law, and no corollary punitive sanction for minors who commit an act, which does not constitute an actual criminal offense if committed by adults.[63]

There is also an erroneous usage of the term "incorrigible". Is a child deemed incorrigible if he continuously engages in non-conformist behaviour even if such behaviour is not criminal? When terms such as "beyond control", "ungovernable", or "wayward" are used, who or what authority should determine control mechanisms, or

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59 Ibid.
60 Id. at 702 citing personal communication of New York State Division Parole Officer, 17 September 1985.
61 C. Bartollas, op. cit. supra note 29 at 8.
62 1986 Philippine Constitution, Art. III, Sec.1.

guidelines for governance, or the standard for appropriate behaviour of these children? Does behaviour which goes "beyond control", or is "ungovernable" or "wayward" constitute criminal behaviour ***per se***, and therefore punishable within the criminal justice system? If incorrigibility does not constitute criminal behaviour, then why even consider the criminal justice system for the criminalisation and subsequent punishment of such behaviour? Are standards in determining parameters for appropriate behaviour uniformly exercised by family authority, social welfare authority, as well as by official pillars of the criminal justice system?

We must continuously challenge our notions that these children are delinquents or criminal simply because they display or manifest non-conformist behaviour in relation to other "more normal" children. There are many important questions about status offenders[64]: What are the causes for the behavior of the minors, more particularly adolescents? Are status offenders different in their offense behavior than offenders manifesting delinquent behavior? How should society, in general, handle their behavior? Is status offending properly dealt within the criminal justice system? Or will it suffice for social welfare officers or caregivers to treat the matter as a mere behavioural problem and not a criminal issue?

B.3. Behavioural Difficulties of Status Offenders – Status offenders, as well as other children in conflict with law, many of whom come from single-parent homes or from marginalised and deprived domestic environments, generally attribute fault to parental figures in the home.[65] Even though basic needs for sustenance and shelter may have been provided, some children have either been abused or neglected within familial settings or their need for warm parental relationship is unsatisfied. Hostility or belligerency toward parents is a natural reaction in such settings, triggering the child's search for physical affection and acceptance elsewhere. Once exposed to an extra-familial environment, these children will no longer accept behavioural restrictions or limitations that emanate from their parents. Belligerent behaviour of such problematic children are further emphasised or exacerbated in the school environment, where authority figures do not possess same controls as parents within the home environment. In school, they tend to be disruptive, disrespectful, emotionally withdrawn or explosive, and unfocused or unconcerned.[66]

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[63] Beijing Rules, Rule 3 Sec. 1.
[64] C. Bartollas, id.
[65] Ibid.

Many parents, and teachers, have themselves been abused as children. Their development stymied by their negative childhood experiences, these parents and teachers develop very limited parenting skills, evince immature behavior themselves, and/or are themselves incapable of providing affection or setting reasonable boundaries within the filial relationship.[67] By their adverse and reactionary responses to behavioural problems of their children, these parents and teachers continue a vicious cycle of domestic dysfunctionality, resulting in children seeking comfort, acceptance, recognition, and moral support from their peers in the streets, drug dens, or beer houses. The parents and teachers view such responsive behaviour from their children as defiance. Feeling they have minimal control over their children, the parents begin asserting themselves more in their attempts at discipline. But such power struggles within the domestic environment often climax in verbal altercations, then physical violence.[68] Police intervention is then requested by parents, more particularly when there is physical violence, when children stay out very late, or associate with older youngsters or delinquent friends.[69] A former extreme disciplinary strategy of parents against their belligerent children was to file a criminal suit for parental disobedience, even if the child's belligerence could be attributable to domestic abuse, or even incest. With the emergence of a strong child rights advocacy during the last decade, there have been less cases filed against children for parental disobedience.[70]

It should be stressed that status offenses are not delimited to male children and equally applies to female children. Some theories erroneously provide juvenile justice as the appropriate response to domestic problems of adolescent females. Chesney-Lind's feminist theory of delinquency contends that girls are frequently victims of violence and sexual abuse at home; as they run away from abusive settings, they are forced to engage in panhandling, petty theft, and occasional prostitution to survive.[71] Without offering proper shelter or therapeutic services to the runaway female child, society's contradictory response involves an unhealthy fear of sexual activity on the part of adolescent females, providing the juvenile justice system as a moral chastity belt to protect them from potential consequences of sexual desires.[72] Instead of resolving or preventing the sexual and physical abuse within the domestic setting, society's usual absurd response is the criminalisation of female adolescents.

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66 Ibid.
67 Ibid.
68 Ibid.
69 Ibid.
70 Note: In PAYO study, one case of parental disobedience was registered in tabulation.
71 C. Bartollas, id. at 9 citing Meda Chesney-Lind, "Judicial Enforcement of the Female Sex Role: The Family Court and the Female Delinquent," 8 Issues in Criminology 1973: 51-59.

B.4. Decriminalisation of Status Offenses – There is a disturbing view based on statistical figures: status offenders not only differ very little in offense behaviour from status to delinquent offenders but also they tend to progress from status to delinquent offenses.[73] Some researches have generally agreed, however, that the majority of status offenders do differ in offense behaviour from delinquents.[74] Further analysis indicates that most of those receiving a citation for a status offense were juveniles for whom no official record existed of a prior offense of any kind. Juveniles "who began their offender careers engaging in status offenses only" (or in petty illegal behaviour) are not likely to graduate into more serious crime,[75] unless the primitive response thereto is punishment within the criminal justice system.

Experience shows that decriminalisation of status offenses is a positive step, but what is warranted is the total repeal of status offender jurisdiction of courts and shifting the care and management from juvenile courts to the social service delivery network.[76] In many jurisdictions, status offenders continue to be detained or incarcerated with hard-core offenders – sometimes including detention in adult jails and state correctional facilities, as is quite apparent in this country.

Perhaps the most significant problem faced by the juvenile courts in dealing with status offenders is the sheer number. A huge portion of juvenile court dispositions involve status offenders, and the time, attention, and resources spent on these youths significantly reduce the ability of the courts to effectively deal with youths who are serious criminal offenders. Perhaps this accounts for the apparently misplaced priorities in some juvenile sentences. Nationally, in fact, some status offenders are more likely to be incarcerated than are juvenile burglars.[77]

The situation of status offenders demands immediate attention from legislators and the judiciary. Mere status offenders, who are in a sense "lightweights", to minimize

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[72] Id. citing Etta A. Anderson, "The 'Chivalrous' Treatment of the Female Offender in the Arms of the Criminal Justice System: A Review of the Literature" 23 Social Problems 1976: 350-357.

[73] Id. citing Charles W. Thomas, "Are Status Offenders Really So Different?" 22 Crime and Delinquency 1976: 438-455..

[74] C. Bartollas, op. cit. supra note 29 citing Solomon Kobrin, Frank R. Hellum, and John W. Peterson. Critical Issues in Juvenile Delinquency, 1980:11. Authors identified three groups of status offenders: "heavies," who were predominantly serious delinquent offenders; "lightweights," who committed misdemeanors as well as status offenses; and "conforming youths," who occasionally became involved in status offenses. Meaning of status offenses differed for each group. For heavies, a status offense was likely to be an incidental event. For lightweights, pattern was of minor and intermittent delinquent acts as well as status offenses. Conforming youths were likely to restrict themselves to multiple status offenses perhaps as an outburst of rebellion against adult authority.

[75] Ibid. citing Thomas Kelly, "Status Offenders can be Different: a Comparative Study of Delinquent Careers," 29 Crime and Delinquenc, 1983: 365-380). Author found: 1) Status offenders are less prone to recidivism than are delinquent offenders; 2) offense careers are not as long; and (3) process of referring status offenders to juvenile court appears to result in more serious delinquent acts.

the possibility of re-offending or progression into delinquency, should be decriminalised. Decriminalisation prevents behavioural contamination from hardened and more mature offenders. The approach on status offenders should be merely limited to cautioning, which includes the cautioning of parents whenever the behavioral difficulties with the minor heightens.

C. Substance And Drug-Related Offenses – There is also a significant number of crimes related to illegal substances such as Drug Trafficking, Drug Possession, Drug Sale, Violation of the Dangerous Drugs Act RA 6425. Although many crimes are drug-related, the reference to drug-related offenses herein is not to any offense committed wherein the perpetrators were under the influence of illegal substances or drugs at the time of the commission of the offense but to the criminal offense of actual use, sale or trafficking in illegal drugs and substances.

Different types of vices are quite common among youth offenders. PAYO research showed that 48.3% of the respondents are drug users while 38.4% are addicted to alcohol.[78] The BCYW-NAPOLCOM survey indicated that of the 51 offenders, 18 or 35.29% had been drinking alcoholic beverages and 16 or 31.37% had been using drugs in the form of syrup, marijuana, shabu or a combination of all three.[79] Similarly, the NCSD study mentioned that while case records did not indicate drug usage for over one-third of the study sample, drug abuse appeared quite common among street children (56.2%) and non-street children (34%).[80]

In the United States, hard drugs have spread throughout the country; virtually every community has a drug subculture.[81] What is more, heavy alcohol use among teenage boys is equally common.[82] What is quite disturbing, however, is that the criminal justice approach has taken a hard-line stance in combating proliferation in the use of illegal drugs but no stance regarding the use of alcohol by minors. It is noted that the sale of alcohol in the Philippines is big business and its media advertisements are considered perfectly legitimate.

C.1. Interrelation Between Drugs and Gangs – Certainly, the use of illegal drugs and substances is big business. In big business, traders, messengers, and couriers are necessary. These syndicates use even street gangs and law enforcement authorities themselves in

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[76] J. Inciardi, op. cit. supra note 6 at 702.
[77] Ibid citing Charles E. Silberman, "Criminal Violence, Criminal Justice" 1978: 309-370.
[78] See note 32, supra..
[79] Id, citing BCYW-NAPOLCOM Survey.
[80] Id, citing NCSD Study at 74.
[81] C. Bartollas op. cit. supra note 29 at 300.

expanding their business dealings and networking. The bottom line of these criminal syndicates is the continuing increase of their profit margins. What is different about gangs today is that they have an economic base, a mass demand for drugs, that did not exist a few years ago. Drug trafficking has become an attractive option, especially with the population boom, the tight competition for "white-collar" employment, and the decline of economic opportunities for marginalised youth.

One study of gang drug use and drug dealing in three urban communities[83] found that use of illegal drugs is "widespread and normative among gangs, regardless of the city, the extent or nature of collective violence, or their organization or social processes." Serious and violent behaviour is a given standard among the drug gang sub-culture. Drug distribution among gangs could also become so extensive in school communities that, in one study of a Dallas school, students were required to wear picture identification at all times in an attempt to control the number of "drug drops." School seemed an ideal setting for drug distribution because mid-level distributors easily penetrate the school campus by befriending, or enroling as, students. They made their campus connections, leaving drugs with students, who were already, or who became, street-level pushers. Just one stop for the mid-level distributor resulted in contacts with multiple street-level pushers.[84] In another study on Jefferson High School in South Central Los Angeles, it was evident that drug-selling students had become school idols as they enriched themselves enough to wear beepers and bring guns to school, with the school officials intimidated by the student syndicates and became the reasons for the high rate of absent students daily.[85]

What concerns child advocates is the criminal contamination of younger children by mature minors or young adult offenders preying on them within school communities. Sometimes, youth gangs even divide themselves into age-appropriate groups, such as midgets, juniors, and seniors. Conversations with younger children on the streets, even inside school campuses, reveal their familiarity with the drug business, knowing prices for different quantities as well as drug trade jargon. Some younger children even participate as lookouts for drug traffickers at school. They can become couriers, runners, conduits between dealers and buyers as they grow older.[86]

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[82] Ibid.
[83] Ibid citing Jeffrey Fagan, "The Social Organization of Drug Use and Drug Dealing Among Urban Gangs," 27 Criminology 1989: 633-634.
[84] Id, citing Elizabeth H. McConnell and Elizabeth Peltz, "An Examination of Youth Gang Problems at Alpha High School."
[85] Id, citing Elaine S. Knapp, "Kids, Gangs, and Drugs," Embattled Youth. The Council of State Governments 1989: 11.
[86] Id citing Patricia Wen, "Boston Gangs: A Hard World," Boston Globe 1988:31.

C.2. Comprehensive Dangerous Drugs Law – There is only one single strategy that our government provides in approaching the problem, without any distinction between adult or juvenile offenders. The principal mechanism applied automatically in dealing with the drug situation is the criminal justice system. Thus, the "Comprehensive Dangerous Drugs Act of 2002"[87] provides for a criminal justice approach without distinguishing children from adult offenders. Ironically, it declares its policy as aimed at safeguarding the well-being of its citizenry particularly the youth, from the harmful effects of dangerous drugs on their physical and mental well-being, and to defend them against acts or omissions detrimental to their development and preservation.[88] Even when it declares that it aims to achieve a balance in the national drug control program so that people with legitimate medical needs are not prevented from being treated with adequate amounts of appropriate medication from of dangerous drugs,[89] people with legitimate needs are sometimes included within the criminal justice net, becoming victims of penal incarceration rather than being properly rehabilitated and respected as human beings with fundamental rights. It is further declared the policy of the State to provide effective mechanisms or measures to re-integrate into society individuals who have fallen victims to drug abuse or dangerous drug dependence through sustainable programs of treatment and rehabilitation.[90] Ironically, the treatment and rehabilitation program is just another incarcerative institution that does not distinguish the rehabilitate from the convict. A singular and simplistic approach to illegal drug use and trade through the criminal justice system will not resolve such colossal problems without preventive measures in neutralising the sources of illegal substances.

D. Property Related Offenses – These offenses are the crimes most often committed by minors as consistently confirmed in all surveys and studies.[91] Majority of crimes or offenses most often committed by minors are crimes against property, reaching a high of 67.2% of total offenses committed by minors, which include Theft, Qualified Theft, Robbery, Carnapping, Extortion, Estafa.[92] While some figures affirm that crimes against property are the crimes most often committed by minors, more conservative statistics of 48.93% are provided.[93] In developed countries where juvenile systems are deemed separate from the criminal justice system, and with varied mechanisms in approaching

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87 Rep. Act No. 9165, which repeals Rep. Act No. 6425, also Dangerous Drugs Act of 1972.
88 Id. at Sec. 2.
89 Ibid.
90 Ibid.
91 Adhikain Para Sa Karapatang Pambata (AKAP) & UNICEF. Situation Analysis on Children in Conflict with the Law and The Juvenile Justice System, 1998: 73.
92 PAYO, op. cit. supra note 32 at 27-28.
93 AKAP, op. cit. supra note 91.

juvenile criminality, the statistical figures for this category of juvenile crimes against property are higher.[94]

In one judicial precedent, the Supreme Court recognised the rights of a child to be released on recognisance for the crime of robbery. In Virtuoso Jr. v Municipal Judge,[95] seventeen-year-old Francisco Virtuoso Jr. was charged and detained for allegedly committing robbery. A habeas corpus petition was filed on ground that the municipal judge failed to comply with constitutional procedure in the determination of probable cause in the issuance of a warrant of arrest. The Supreme Court ruled that Petitioner-minor is entitled to the protection and benefits of the Child and Youth Welfare Code; as such, he could be provisionally released on recognizance in the discretion of the court. In so ordering his release on recognisance to his parents and counsel, the Supreme Court resolved the Petition without need of passing upon the issue of whether or not the procedure by respondent Judge in ascertaining the existence of probable cause was constitutionally deficient.[96] Thus, the Supreme Court recognised that minors in conflict with law were entitled to provisional liberty ***pendente lite.***

The Supreme Court further bolstered this principle in the promulgation of the Supreme Court Rules on Juveniles in Conflict With The Law when it provided for Bail as a Matter of Right in cases of juveniles where the penalty does not fall under reclusion perpetua, life imprisonment or the death penalty.[97] Recognition towards the rights of minor to be free from detention may be gradual but is a welcome development so that minors need not go through criminal contamination and traumatisation experienced by all persons from detention.

E. Sex Offenses – A small but significant percentage are crimes committed by minors against chastity or sex-related crimes, which include Rape, Sexual Assault, Acts of Lasciviousness, and Child Sexual Abuse, and such related sex-offenses.[98] There have been recent developments in the re-classification of crimes against chastity into crimes against persons.[99] The move elevates sex-related crimes into public crimes, which means that such offences no longer belong to the realm of private crimes. Private crimes are those which are initiated by the private offenders and may be dismissed upon motion of private offended party.

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94 Allison Morris & Henri Giller. Understanding Juvenile Justice 1987: 43.
95 Virtuoso Jr., v. Municipal Judge of Mariveles, Bataan (1978) 82 SCRA 191.
96 AKAP, op. cit. supra note 91 at 132.
97 See Note 48, supra.
98 See note 32, supra.
99 Rep. Act No.8353, also the Anti-Rape Law of 1997.

The scope of illegal sexual activity proscribed by our laws is quite broad as it falls within the parameters of Roman Catholic tradition from the Spanish colonial legacy added to early Puritan codes of American colonial rule, which continues to dominate Philippine society.[100] There are occasional attempts to maintain standards of public decency through the legislation of morality; to requirements of community consensus as to an individual's right to sexual self-determination; and to an effort to protect those who are too young or otherwise unable to make decisions as to heir own sexual conduct. Although in recent years, international codes regulating many sexual activities, such as abortion, contraception, and miscegenation, have been liberalized, eliminated or severely limited, the list of criminal sexual offences is still long and includes forcible rape, statutory rape, seduction, fornication, adultery, incest, sodomy.[101]

Sometimes, there is apprehension from the welfare viewpoint in dealing with the juvenile as any intervention may have its destructive effects on the child. Such attitude generally results in failure to provide for proper intervention strategies in coping with the crime committed and in redeeming the child. From the criminal justice perspective, there is also the principle of "prospectivity" in the systemic approach towards juvenile crime, meaning that only when a crime has been committed will that crime be acted upon. From both perspectives, total apathy arises toward the causes of child crime, minor or serious, though subtle, which may even be more destructive to the young disturbed person.[102]

In the United States, one case had been raised on a boy from Mountain View, who committed sodomy on an infant girl. Since he had no previous history of delinquent behaviour and at Mountain View, he presented no problems, got good marks on his behaviour, he was released without any psychiatric work-up or treatment to deal with his very serious problem during his entire stay at Mountain View.[103] The concerns raised involved the need for the family and the community to be seriously involved with the child's rehabilitation in preventing dangers of recidivism or repeat offending. Such recidivism arises whenever no appropriate intervention is made to deal with the child's particularly difficult behavior and psychological dysfunction. On the other hand, the other extreme of dealing with the child from the criminal justice perspective, can contaminate the child with even more perverse sexual behavior that the child is forever caught within the warp thereof.

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[100] See note 5, supra.
[101] J. Inciardi, op. cit. supra note 6 at 80-81.
[102] K. Wooden, op. cit. supra note 1 at 16.
[103] Ibid.

E.1. Sexual Attitudes – Trends in attitudes towards sex have become liberalised as social mores become more relaxed. However, there are many experiences wherein unwanted sexual activity had been noted. In one survey, an almost absolute majority revealed experiences of unwanted sexual activity, the same sexual activity which surveys had shown to be acceptable to many.[104] The ten most important reasons for engaging in unwanted sexual activity were: enticement by partners, altruism (desire to please partner), inexperience (desire to build experience), intoxication, reluctance (felt obliged, under pressure), peer pressure, sex-role concern (afraid of appearing unmasculine or unfeminine), threat to terminate the relationship, verbal coercion, or physical coercion. Whatever physical coercion existed was mostly of a nonviolent although physical nature.

Another form of unwanted sexual activity but with a violent, physically coercive nature is the date rape. This occurs on a voluntary, prearranged date, or after a woman meets a man on a social occasion and voluntarily goes with him. A survey of 282 university women revealed that 24% of their dates forcibly tried to have coitus. One-third of the coital attempts were successful. Over half of the coital attempts were initiated without foreplay so these women certainly were not leading their dates on.[105] Men who rape women on a date are likely to have a history of repeated episodes of sexual aggression, where they use physical force to gain sexual ends. They are generally more aggressive than other men, and some are hostile to all women. Some exhibit symptoms of sexual sadism in which they experience arousal from a female's emotional distress. Greendlinger and Byrne found the likelihood of college men committing rape was correlated with their coercive fantasies, aggressive tendencies, and acceptance of the rape myth (that women like to be forced).[106]

F. Violence-Related Offenses Against Persons – There is a substantial number of crimes, which are violent in nature and directed at harming, injuring or mutilating other persons, sometimes even directed at killing other persons, or which results in the killing of other persons. Such crimes committed against persons include Slight Physical Injuries to Serious Physical Injuries, Attempted and Frustrated Homicide, Attempted and Frustrated Murder, Homicide, Murder, and Kidnapping.[107]

Various researches offer explanations on the epidemic of youth or juvenile violence. Researchers found that a boy's chances of committing murder are twice as high if he

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[104] F. Philip Rice. The Adolescent, 1990: 404.
[105] Id at 405.
[106] Id at 406.
[107] PAYO, op. cit. supra note 32.

has the following risk factors:[108] comes from a family with a history of criminal violence; has a history of being abused; belongs to a gang; abuses alcohol or drugs. The odds triple when in addition to the aforementioned risk factors the following also apply:[109] uses a weapon; has been arrested; has a neurological problem that impairs thinking and feeling; has difficulties at school and has a poor attendance record. Odds increase as the number of risk factors increases. It is the buildup of negative influences and experiences that accounts for differences in how youth turn out. It is important to recognise the central importance of risk accumulation.[110]

Several risk factors have also been identified as being correlated with a boy's chances of committing murder,[111] which are: 1) child abuse; 2) membership in youth gangs within schools and community; 3) substance abuse; 4) weapons; 5) arrests of more children; 6) neurological problems; and 7) difficulties in school. All these risk factors certainly show the consequential relation with crimes and offences in which children found within these environments display.[112]

F.1. Disarming Children and Youth – One important task before us is to disarm children and youth to make sure they cannot access guns when the sense of intolerable shame, frustration, injustice, and melodrama gives rise to the impulses that result in lethal youth violence. The simplest way to do this would be for all adults to get rid of their guns so that children would neither have role models nor access. It is critical to remember the role that easy access to firearms plays in youth violence and to keep our efforts at ending this easy access at the forefront of our child-positive agenda.[113] Gun-control policies and legislations do matter as shown by the positive figures in Canada. Adolescents in Canada get into as many fights as American teenagers do, but virtually no Canadian kid expects fights to lead to an armed response – and they do not.[114]

Juvenile Street Gangs – Adolescent gang members are primarily male.[115] They join street gangs for a number of reasons: companionship, protection, excitement, and heterosexual contacts.[116] One factor that predisposes youths to gang membership is poor family relationships, more particularly mother-son relationships. If emotional and social needs of adolescents are not met through interpersonal relationships in the family,

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[108] James Garbarino. "Lost Boys: Why Our Sons Turn Violent and How We Can Save Them," 1999:10.
[109] Ibid.
[110] Ibid.
[111] Id at 13-15.
[112] Id at 200-201.
[113] Ibid.
[114] F. Rice, op. cit. supra note 104 at 274.
[115] Ibid, citing C.J. Friedman et al., "A Profile of Juvenile Street Gang Members." 10 Adolescence, 1975: 563-607.
[116] Ibid.

youths turn to the gang to fulfill status needs that would otherwise go unmet. Parental defiance was the most important correlate of gang membership.

Gang and fraternity members are forced through peer pressure to commit illegal acts, especially violent ones that many would never do if acting on their own. Street gangs and school fraternities hold nearly absolute control over the behaviour of individuals.[117] The violent nature of these gangs is revealed in the hazing and gang or fraternity wars encouraged by the leaders thereof. Thus, gangs held life-and-death power over others and were a direct challenge to the authority of the family, community, police, the school, and the individual.[118] These gangs become families and offer acceptance, status, and esteem.[119]

Pillars of the Criminal Justice System

The diverse laws, rules and regulations governing the juvenile justice process are generally supportive of the welfare of the youthful offenders. However, these legal standards will be rendered invalid unless these are properly observed and implemented. Every law needs an effective implementing arm to transform vision into reality. In the Philippines, the juvenile justice system operates through the "Five Pillars of the Criminal Justice System," namely law enforcement, prosecution, courts, correction, and community.[120] Instead of the community playing the greatest role in the lives of the children in conflict with law, it is the police which is given the prerogative of first contact or preliminary inquiry. With this access, the life of the child within the criminal justice begins, and so does his life of crime.

A. Law Enforcement Pillar – The first pillar of the criminal justice system that a child in conflict with the law comes into first contact is the police institution, more particularly because it is the first line of defense against crime.[121] Juveniles often look upon the police as having a job to do; the police's job is to catch juvenile lawbreakers, and the juveniles' job is to avoid being caught. Thus, the rights of juveniles in custody seem not to have changed since the days when "third degree" treatment was standard fare at the precinct.[122]

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[117] Id, at 276.
[118] C. Bartollas op. cit. supra note 29 at 350.
[119] AKAP, op. cit. supra note 91 at 58.
[120] See note 118, supra.
[121] Id at 400 citing H. Ted Rubin, "Juvenile Justice: Police Practice and Law" Santa Monica, Calif." 1979: 75-82.
[122] Note: As per 2004, only Pasay, Manila and Quezon Cities have separate juvenile facilities.

The first contact any adolescent has with the juvenile justice system is the local police department. Charged with maintaining and enforcing the law, the police perform the function of screening cases that may go before the court. When offenses are discovered, the police may take any one of several actions: 1) ignore the offenses; 2) let the juvenile go with a warning; 3) report the problem to parents; 4) refer the case to school, a welfare agency, clinic, counseling or guidance center, or family society; 5) take the juvenile into custody for questioning, to be held or reprimanded by a juvenile officer; or 6) after investigation, arrest the juvenile and turn the matter over to a juvenile court.

Under police procedure in the Philippines, the juvenile is often almost always taken into custody, arrested, then detained pending trial. Other options are often not utilised by the police, whose powers are clipped by procedures of criminal justice. Thus, if arrested and awaiting trial, the juvenile may be released with or without bail, but with most families of minors in conflict with law belonging to the lower social classes, the bail recommended is not generally affordable. Thus, the minor is detained in city or municipal jails with adult offenders as special juvenile facilities are available in only three cities in the Philippines.[123]

The police service does not provide for guidelines on the exercise of police discretion. In enforcing the law, the police do so differentially and often arbitrarily. Adolescents may be arrested if they have tattoos, come from the wrong section of town, have a dark complexion, or wild hair, but may let other adolescents go who come from well-to-do families or are neatly dressed. Also, parents who are able to afford lawyers ensure that their children will be treated more fairly before the law. One of the reasons adolescents become bitter toward the police is because of unfair and differential treatment or harassment.[124]

It would be good for the police service to employ juvenile officers or psychologists with specialization in juvenile treatment. Such officers go far beyond law enforcement functions and strive to assist adolescents and their families in solving problems.[125] Police in many developed countries now go far beyond law enforcement, from sponsoring boys' clubs to offering drug education programs or safety education in local schools.[126]

Police discretionary power in the cases involving minors should allow diversionary mechanisms at that level. The obligation to divert cases away from the criminal justice

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[123] F. Rice, op. cit. supra note 104 at 276.
[124] Id at 277.
[125] Ibid.
[126] AKAP, op. cit. supra note 91 at 58-59.

system must not just belong to the judiciary but to all members of the criminal justice system. Court referrals and custodial arrests must not be the general rule and must constitute exceptional situations to the general rule, i.e. when heinous crimes are committed and the release of the identified child may constitute a danger to the security of the community or to himself.

There have been attempts within the national police service to orient their personnel towards child sensitivity. Under Memorandum Circular No. 92-010 issued by the National Police Commission, all police stations in highly urbanized cities are directed to create a Child an Youth Relations Service (CYRS) and all other police stations to designate a Child and Youth Relations Officer (CYRO). These institutions were intended to be guided by the philosophy that children should be handled differently from adults.[127] Unfortunately, until the police transform their criminal justice orientation, and until more specific guidelines are drawn on the matter of police treatment of children, there does not seem to be any difference between the new police philosophy and the "third degree" treatment of the decades past.

B. Prosecution Pillar – The prosecutor is expected to protect society but at the same time ensure that those children who would harm society are provided with their basic constitutional rights. In larger courts, prosecutors are typically involved at every stage of the proceedings, from intake and detention through disposition. The prosecutor is particularly involved before the adjudication stage because witnesses must be interviewed, police investigations must be checked out, and court rules and case decisions must be researched. In some urban courts, the prosecutor may frequently be involved in plea-bargaining with the defense counsel. Prosecutors in some states are even permitted to initiate appeals for the limited purpose of clarifying a given law or procedure. Ted Rubin, in assessing the role of the prosecutor in the juvenile court, predicts that "the prosecutor will come to dominate juvenile court proceedings during the next decade.[128]

The functions of prosecutors are: 1) to evaluate police findings referred to them, or other complaints filed directly with them; 2) to file corresponding criminal informations before the proper courts on the basis of the evaluation; and 3) to prosecute alleged offenders in behalf of the State.[129]

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[127] C. Bartollas, op. cit. supra note 29 at 438.
[128] Chief Justice Andres Narvasa, "The Courts and the Criminal Justice System," Lawyers Review, Vol. IX No. 12, 1995: 70.
[129] AKAP, op. cit. supra note 91 at 62.

As regards the handling of minors, there is nothing in the Rules of Court which classifies the minor as a special class of offenders wherein priority should be given.[130] Prosecutors are bound to file an information in court if there is a reasonable ground to believe that a crime has been committed and the minor is probably guilty thereof.[131] The prosecutorial phase, however, constitutes a significant occasion in determining a possible diversionary mechanism for the accused child, so that any detention involving the child can be terminated and his reunification, including his possible rehabilitation, planned. In failing to consider minors as a special class, the law fails to provide the necessary and adequate protection to the child from the abominable effects of detention and criminal indictment.

C. Judicial Pillar – Family Court judges not only have enormously important and difficult jobs but also wield considerable power. Power, however, may corrupt. Decisions are sometimes made without any apparent reference to rules or norms, with a completely free evaluation of the merits of each case.[132] Yet some Family Court judges rise to the challenge, sometimes remarkably determining where the best interests of the concerned child lies, with due consideration for procedural safeguards and due process rights for juveniles as well as scrupulous observance of the constitutional rights of the alleged victims, if any. With these judges, the quality of juvenile justice within their jurisdiction gains a positive complexion.[133]

One other problem with the judicial system is that the clogging of the judicial dockets allows for the socialization of juveniles in conflict with law together with adult offenders during trial proceedings. In the same courtroom with the minors are the adult offenders. Criminal contamination, thus, takes place not only in the confines of a jail or detention center but within the courtroom itself.

Courts have the power to grant bail or release on recognisance to a youth who is alleged to have committed an offense. In a case where the crime charged against the minor is a non-bailable offense, the court may still release the youth, in its discretion, on bail or recognizance, taking into account the best interests of the child[134] and the strength of the prosecution evidence against him.[135] However, the judiciary could be more effective

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[130] See New Rules of Court, Rule 112, Sec.4.
[131] See note 127, supra.
[132] Ibid.
[133] Narvasa, op. cit. supra. note 128 at 71-72
[134] See note 62, supra at Sec 13.
[135] AKAP, op. cit. supra note 91 at 64.

in the field of juvenile justice if it provided for a "systematic monitoring system" of cases on children in conflict with law in the determination of the population of children in detention and the length served thereat.[136]

It must be emphasised that there are judicial processes that could unclog the judicial dockets and certainly expedite cases involving children in conflict with law, and thus shorten their period in detention. There is the Diversion Conference Committee. Where the maximum penalty imposed by law for the offense with which the juvenile in conflict with the law is charged is imprisonment of not more than sex months, regardless of fine or fine alone regardless of amount, and the corresponding complaint or information is filed with the Family Court, the case shall not be set for arraignment; instead, it shall forthwith be referred to the Diversion Committee which shall determine whether the juvenile can be diverted and referred to alternative measures or services offered by non-court institutions. Pending determination by the Committee, the court shall deliver the juvenile on recognizance to the custody if his parents or legal guardian who shall be responsible for the presence of the juvenile during the diversion proceedings.[137]

In other jurisdictions, the courts provide for a preliminary intake procedure, similar to the preliminary investigation of the prosecution service. The judicial intake procedure is a preliminary screening process "to determine whether the court should take action and if so what action, or whether the matter should be referred elsewhere.[138] Intake is the investigation to determine whether the case should be adjudicated nonjudicially or petitioned to the court.[139] It constitutes an even better mechanism than the Diversion Conference Committee because the intake officer, who does not even need to be a lawyer, can expedite determination of a case on basic principles and guidelines immediately, without need for conformity of a collegial body.

C.1. Judicial Alternative Dispositions – Alternative dispositions available to Family Courts vary. Dismissal is certainly the most desired disposition for the youth; the fact-finding stage may have shown the youth to be guilty, but the judge can decide, for a variety of reasons, to dismiss the case. Fine or restitution also is usually very desirable

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[136] See note 28, supra at Sec 20.
[137] C. Bartollas, op. cit. supra note 29 at 431-432.
[138] Ibid.
[139] Id at 440-441.

for the youth but little discretion is exercisable by the court if the law provides no alternative fine to the imprisonment penalty. If there is an alternative penalty of fine, the youth offender may be required to work off their debt with a few hours each week under the consideration that their lives are not seriously interrupted, and such employment does not fall under the child labor laws prohibiting child employment below 15 years of age. Family courts should also have the discretion to order psychiatric therapy on an outpatient basis, whether in the court clinic, the community mental-health clinic, or with a private therapist, is a treatment-oriented decision and is often reserved for the middle-class youths to keep them from being sent to "unfitting" placements.

Probation, a widely used disposition, seems to be a popular decision with delinquents as well as a good treatment alternative for the court but only when the offence holds a penalty of not more than six years imprisonment (Probation Law). Probation is sometimes set for a specific length of time, usually a maximum of two years. The probation officer can be directed by the judge to involve the youth in special programs, such as alternative schools, speech therapy, or learning disability programs.

Family Court judges should also be able to come up with creative decisions that work in the best interests of children in conflict with law whose cases are pending before their courts. Foster home placements should be explored but these are more restrictive inasmuch as youths are removed from their natural homes. These placements could be used for status offenders and dependent, neglected children. Day treatment programs should be a popular alternative with juveniles because the youths assigned to these programs return home in the evening without their family environment or normal lives being disrupted. There is also the option of community-based residential programs, such as group homes and halfway houses, which should be made available to Family Courts. These residential facilities may be located in the community or in a nearby community, but they are not as desirable as community-based day programs because youths are taken from their homes to live in these facilities.

Family Court judges should also be given some discretion in determining whether institutionalization in a mental hospital may be seen as appropriate for the child's needs. This placement requires a psychiatric evaluation, after which a recommendation may be made to initiate proceedings for commitment to a mental hospital. Forestry and agricultural farms, ranches and camps envisioned in the Child and Youth Welfare Code should serve as an alternative to State or regional rehabilitation or training schools for those juveniles who have committed serious crimes or for whom everything else has

failed. Adult facilities, which are used as an alternative, if the youth has committed a serious offense, is as too hardcore or inhuman as a juvenile correctional institution.[140]

D. Corrections Pillar: Detention and Penitentiaries – Minors arrested for violation of penal laws are detained either at the city, municipal, or district jails managed by the Bureau of Jail Management and Penology of the Philippine National Police (BJMP/ PNP), or at the provincial jails, or youth detention facilities, which are available only at Pasay Youth Home, Manila Youth Reception Center, or the Molave Youth Detention Home in Quezon City.[141]

Juveniles are presumed innocent and should be treated as such.[142] Detention or imprisonment should be used as a last resort and for the minimum necessary period and should be limited to exceptional cases. But if juveniles are placed under preventive detention, highest priority shall be given to expedite the processing of such cases to ensure the shortest possible time of detention.[143]

The majority of juvenile offenders brought to court, especially those charged for the first time, are given suspended sentences, but in the meantime are sent to a national rehabilitation or training center run by the Department of Social Welfare. The purpose of the court should not just be to punish but also to ensure proper treatment and rehabilitation of the delinquent minor. Thus, the judge often must make quick decisions regarding the best treatment.[144]

Almost all of detention centers involving minors are just primarily for the detention of an accused, whether adult or child, pending trial. In a sense, these detention centers cannot even be considered a correction systems, as the minor would even be more involved in criminality rather than have his behaviour corrected in a detention center. None of the reception centers, except for the Pasay Youth Home, can be called a reception and diagnostic centers or a home, where juveniles receive good education and his basic rights to nutritious food, good leisure activities, and humane treatment as minors, pending judicial hearings.

It must be stressed that majority of the adolescents in detention centers are not even delinquents.[145] Having been detained for status offences and vagrancy offences,

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[140] AKAP, op. cit. supra note 91 at 77.
[141] United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990, Rule III, Sec. 17.
[142] Ibid. Also see the Beijing Rules and the Riyadh Guidelines. Note: Philosophy behind these international laws is the State's obligation for mandatory exploration of better alternatives to child detention prior to even any judicial action.
[143] F. Rice, op. cit. supra note 104 at 278.
[144] Ibid.
[145] Ibid.

they are juveniles in need of supervision and adult guidance, who become wards of the court because their parents cannot, will not, or should not care for them. Some of the parents are ill or deceased; others have neglected, rejected, or abused them to the point where they have been taken out of the home. Others are youths who have run away from home. Many are awaiting disposition by the court. Critics charge that detention centers are no place for juveniles. They are often overcrowded. Sexual psychopaths and narcotics peddlers are detained with juveniles arrested for curfew violations. At best, the centers are a bad influence.[146]

D.1. Options to Incarceration – The correctional system in other jurisdictions also includes training schools, ranches, forestry camps, and farms. In the Philippines, only training schools are available for the juvenile's rehabilitation. Most authorities feel that in their traditional forms, such training schools and correctional institutions do not correct or rehabilitate.[147] While youths are being punished, "rehabilitated" or "corrected," they are exposed to hundred of other delinquents who spend their time running their own behaviour modification program to shape additional antisocial and delinquent behaviour. The influence is therefore negative, not positive.

Such system can be improved greatly by what has been called token economy, which places the emphasis on a "24-hour positive learning environment."[148] In this system, students earn point for good behaviour, with points convertible to money that can be used to purchase goods or privileges. Money can be spent for room rental, fines for misconduct, in the commissary or snack bar, or for recreation. Students earn points for academic accomplishments and schoolwork, for proper social behaviour, for doing chores or other jobs, or for social development. Under this system, they make great gains in academic achievement, on-the-job training, or eliminating assaultive, disruptive, and anti-social behaviour.

One of the criticisms of correctional institutions for youthful offenders is that once the juveniles are released to the community, they often come under the same influences and face some of the same problems that were responsible for their getting into trouble in the first place. One suggestion has been to use halfway houses and group homes where youths could live, going from there to school or to work. This way, some control can be maintained until they have learned self-direction.[149] Referrals are also

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[146] Id at 279.
[147] Ibid.
[148] Ibid.
[149] Ibid.

made to help adolescents get proper treatment and services. One of the most important needs is to prepare youths for employment after discharge.[150]

D.2. Child Imprisonment is Not Rehabilitation – Sending adolescents to prison is not the way to rehabilitate them. A percentage of inmates of a prison population are sociopaths who prefer antisocial behaviour, have no regard for the interests of others, show little or no remorse, are untreatable, and for whom prison may be justified. They are in contrast to adolescents who are put in prison for relatively minor offenses. In spite of this, the average sentences of juveniles are greater than for adults who have committed the same crimes.[151] Juvenile offenders tend to be passive, dependent youths who are easily bullied, try to maintain friendships with other, and then get into trouble trying to model their behaviour after the group's expectations. They have had no adequate adult male models with whom they could have had significant relationships. They are often school dropouts, unemployed, and without plans for the future. Left with no reasonable course of action, they engage in random activities with the wrong gang that eventually gets them into trouble with the law. Once they have a prison record, their chances of finding a useful life are jeopardized.[152]

Legislative acts that govern the Family Court normally require that police either take a child to an investigating prosecutor pending the child's detention or release the child to the parents, which is the least likely police action. Criteria for detention are supposedly based on the need to protect the child and to ensure public safety, with the latter as the more emphasized principle in the police bureaucracy. The decision to detain should be made within a very short period of time for adult offenders, usually nine to thirty-six hours, but which is not generally implemented in the case of minors. Unfortunately, the philosophy applied by the police, prosecution, and judiciary is based on the belief that incarceration would be good for children in conflict with law as they continuously constitute a public nuisance. Since children in conflict with law mostly often come from poverty-stricken families, they certainly will not have any money or support for their legal defence. Even in commuting to the police precincts, prosecutor's offices, or to the courts, will constitute financial difficulties on the part of the family members of the child. As bail, even the most minimal amount, will not be forthcoming in a case of a child, who comes from the slums. Thus, the child will certainly be detained in a facility, whether in a police precinct or a city or municipal jail, together with hardened adult offenders.

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[150] Ibid.
[151] Id at 278-279.
[152] C. Bartollas, op. cit. supra note 29 at 429.

The function of the investigating prosecutor is to determine the probability of the accused person's participation in a crime, not to determine the validity or legitimacy of the detention of the accused person, even in the case of minors. If the procedure accommodated the special needs of children, then a progressive move would be the expansion of the functions of both the investigating police or prosecutor into a determination of the necessity of detention. The determination of detention in the Philippines is often left to judges. Veering away from the criminal justice orientation would require positing more power and authority in other functionaries capable of achieving the same objective of determining the best interests of the child. Sad to say, some Philippine Family Courts lack the competence, expertise, child-sensitivity, and skills training in basic psychology to determine the best interests of the child. In the meantime that an accused child awaits his long-scheduled arraignment, the child would have been detained for months in a detention facility to his or her detriment.

To declog judicial dockets and to expedite determination on validity of detention, Family Courts have clerks who can act as intake officers. The intake officers, who need not even be lawyers but must have expertise and experience in the handling of juveniles, could process the immediate release of children from detention without awaiting judicial conformity. They could resolve detention issues with minimal judicial supervision. Such proposal would constitute a more progressive move for the judiciary. After all, the determination of detention and the decision of guilt or innocence, which is the adjudication process, should not overlap with one another as this constitutes poor practice.[153] For a child who has been languishing for an inappropriate or overly long detention, a speedy resolution becomes necessary and should not involve any more judicial action or participation, which would only further delay or prolong the child's prejudicial incarceration.

D.3. Pre-trial Detention Hearings – It would also constitute good practice if state legislation requires a detention hearing, even at the police, prosecutor, judicial level, or in a community authority leave, to determine whether the child should be released to a parent or guardian, or retained in custody, without still determining culpability of the child in the commission of the alleged offence. The issues to be addressed thereat should include: (1) the need to protect the child; (2) whether the child presents a serious threat to the community; and (3) the likelihood that the child will return to proper authorities, including the court, for adjudication.[154]

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[153] J. Inciardi, op. cit. supra note 6 at 691.
[154] Ibid.

In theory, the temporary detention of juveniles, if deemed even necessary, should meet the three basic objectives: 1) secure custody with good physical care that will offset the damaging effects of confinement; 2) a constructive and satisfying program of activities to provide the juvenile with a chance to identify socially acceptable ways of gaining satisfaction; and 3) observation and study to provide screening for undetected mental or emotional illnesses as well as diagnoses upon which to develop appropriate treatment plans.[155] Should these goals be met, the detention experience might genuinely aid both the child and court in the determination of the child's best interests. In practice, however, most children in detention are housed in facilities that provide little more than security, often detained in secure state correctional facilities and local jails for adults.[156]

In the Philippines, when a judgement of conviction is pronounced,[157] and at the time of said pronouncement the youthful offender is still under 21, he shall be committed to the proper penal institution to serve the remaining period of his sentence. Such penal institutions are required to provide juveniles with separate quarters, and grouped according to appropriate age levels or other criteria to insure their speedy rehabilitation. The Bureau of Prisons is also mandated to maintain agricultural and forestry camps where youthful offenders may serve their sentence in lieu of confinement in regular penitentiaries.

D.4. Separate Detension Facilities for Juveniles – The principle of separate quarters for juveniles in accordance with age levels and other valid criteria is good practice. It is because juveniles are easy prey for physical abuse, sexual exploitation and criminal contamination. Research studies reveal that suicide rates among juveniles incarcerated in adult prisons are five times higher than suicide rates among criminals in the general population, and eight times higher than the rates among those committed to juvenile detention centers.[158]

The traditional model of youth detention is woefully inadequate. A grim-looking detention facility usually is attached to the building that houses administrative offices. Bare cells with one or two showers, and a toilet, clearly visible from the outside of the iron grilled room is all that Manila and Quezon City can offer to its child detainees. There are locked double outer iron gates and high fences or walls prevent escapes. The lack of any programming makes it clear that these facilities were intended merely to be

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155 Ibid.
156 Pres. Decree 603, Art. 197.
157 Crime Prevention and Criminal Justice Branch, United Nations Office at Vienna, "Juvenile Delinquency and Youth Crime: Some Issues and Policy Implications." Children and Juveniles in Detention: Application of Human Rights Standards, United Nations Expert Group Meeting Vienna, Austria, 1994:48.
158 C. Bartollas, op cit. supra note 29 at 491.

holding centers.[159] Fortunately, the nationwide movement to develop standards for detention as well as more innovative detention programs resulted in marked improvement in the overall quality of detention facilities and programs during the past decade, with educational programs now in place for the children in detention.[160] Unfortunately, however, even this traditional model of youth detention is not available as a standard facility for juveniles. It is the city jail model, wherein minors mingle with adult offenders. And even if they are provided with separate sleeping quarters, the kitchen, recreation and toilet areas are common and inmates commingle with one another.

Although the correctional system provides for the maintenance of agricultural and forestry camps where a juvenile can serve his rehabilitation, there are no such institutional facilities, as no budget has been correspondingly appropriated for the concretisation of such program. It is unfortunate that these camps have not been established as most authorities feel that in their traditional forms, training schools and correctional institutions do not correct or rehabilitate, [161] which the camps would have probably subserved. While youths are being punished, "rehabilitated" or "corrected," they are exposed to hundreds of other delinquents who spend their time running their own behaviour modification program in shaping additional antisocial and delinquent behaviour. The influence is therefore negative, not positive.

A system of correction, to be successful, must at least attempt to create or emphasise a "24-hour positive learning environment".[162] In such a creative system involving token economy, students earn points for good behaviour, with points convertible to money that can be used to purchase goods or privileges. Money can be spent for room rental, fines for misconduct, in the commissary or snack bar, or for recreation. Students earn points for academic accomplishments and schoolwork, for proper social behaviour, for doing chores or other jobs, or for social development. Under this system, they make great gains in academic achievement, on-the-job training, or eliminating assaultive, disruptive, and anti-social behaviour.

Forestry camps are popular in a number of states in American jurisdiction. Residents usually do conservation work in a state park, cleaning up, cutting grass and weeds, and doing general maintenance. Group therapy, individual counseling, community events, and home visits are a part of such programs. However, escapes are a constant

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[159] Ibid.
[160] See note 147, supra.
[161] Ibid.
[162] C. Bartollas, op. cit. supra note 29 at 494-495.

problem because of the nonsecure nature of these facilities.[163] Farms should be considered within the system of juvenile corrections. Outdoor activities as taking care of the livestock and cultivating the garden should be valued as juveniles tend to be more responsible in such settings with livestock and farm-related duties on ranches spelled out for the minors.[164]

D.5. Options to Imprisonment – Jails – which have been called "sick,"[165] "the ultimate ghetto,"[166] "the most glaringly inadequate institution on the American correctional scene,"[167] and "brutal, filthy cesspools of crime"[168] – are not humane, proper, adequate, or effective correctional institutions for minors.

The practice of jailing juveniles is inherently offensive and inhuman, more so the incarceration of juveniles with adult criminal offenders.[169] Many problems confront the juvenile incarcerated in a city, municipal or provincial jail. First, there are health problems created by the mingling of detainees with one another. Then, there is the shortage of hygiene and sanitary items such as soap, towels, toothbrushes, clean bedding, and toilet paper. In cramped quarters, these items are generally shared by the inmates. Second, most jails, even the large ones, offer little medical or treatment facilities or recreational programming, because they lack space, expert personnel, staff, and fiscal resources. Third, the lack of professionally trained staff reduces the quality of jail life. The jail warden, even in the youth detention centers, is an officer of the Bureau of Jail Management and Penology under the Philippine National Police. Being responsible for the jail, he sees himself as a law-enforcement officer, tending to regard the supervision of the jail as his principal mandate, not the best interests of the minors in detention as this has no bearing on the security of the jail. Jail guards see their real mission in "real" law enforcement on the streets, not as nannies or caregivers to children in detention. Fourth, juveniles confined in adult jails have a suicide rate nearly five times that of minors in the general population.[170] There is nothing in the jail environment that motivates constructive activity. Rather, the activities in jails are criminal and inhuman. Fifth, jails, like other adult institutions, are overcrowded. Such cramped quarters only creates idle and restless prisoners, in turn fostering a lawless society within the jail environment. In such climate, the survival of the fittest becomes the reality, where the strong take

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[163] Ibid.
[164] Id at 488.
[165] Ibid.
[166] Ibid citing President's Commission on Law Enforcement and Administration of Justice, "Task Force on Prisoner Rehabilitation," 1967.
[167] Id citing "Correctional Trainer" Newsletter for Illinois Correctional Staff Training, Fall 1970:109.
[168] See note 11, supra.
[169] C. Bartollas op. cit. supra note 29 at 489.
[170] Ibid.

advantage of the weak. The physical and sexual victimization of children in jails by adult prisoners is especially offensive, sodomy being a standard within a matter of hours.[171]

Boredom is the actual catalyst for physical, psychological and sexual brutality among inmates, especially for juveniles. Without a healthy, continuous outlet for physical, mental and sexual energies and frustrations, emotional pressures build which sooner or later manifest themselves, oftentimes in a violent or abusive way.[172] Older youngsters locked within the national juvenile jail structure are in various stages of sexual awakening. Given close living quarters, lack of physical exercise, inconsistent supervision, sexual frustration becomes potentially explosive, with the powerful striking the vulnerable. Those children who fall victim to staff and inmate exploitation and rape, the effect is shattering, degrading body, sanity, and personal dignity. No child will be able to forget the sordid, inhuman experience of rape and sexual exploitation; many will be socially and psychologically maimed for their entire lives.[173]

There will be homosexual relationships among the inmates for various reasons. It may become necessary for the protection of the person to get into a sexual relationship with a stronger or more influential inmate. Thus, minors in adult jails become fodder for the adults. There will also be attempts to simulate the "family" found outside the institution and are not primarily for sexual gratification. A "marriage" – a pseudo-family that serves to compensate for the lack of the close family environment that exists on the outside, may be entered into escape the frustration of a failed relationship with significant people outside the jail.[174]

D.6. Solutions to Jail Rapes – There are many alternative solutions to the problem of rape within jail systems, even for adults, in order to minimize such incidences. Regular conjugal visitation has been promoted as a means of reducing homosexuality in prison, as well as of raising inmate morale and maintaining family ties, with the inmates' spouses spending time together in private quarters within prison grounds to perform their consortium obligations.[175] Family Reunion Programs in New York provided for overnight visits for selected inmates and members of their immediate families, who have been assessed with good behavior.[176]

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[171] K. Wooden, op. cit. supra note 1 at 110.
[172] Ibid.
[173] J. Inciardi , op. cit. supra note 6 at 567-568.
[174] Ibid.
[175] Ibid.
[176] Id, at 570.

There are also Coeducational Prisons. In the United States, prisons housing both men and women have proliferated throughout the United States. In coeducational institutions, inmates eat, study, and work together, and associate with each other generally, except with regard to sleeping arrangements. The philosophy behind the establishment of these institutions was that men tend to behave better in the presence of women, have fewer fights, take more pride in their appearance, and are less likely to engage in homosexual contacts. Furthermore, it was felt that for both male and female prisoners, the normal social environment hastens community reintegration.[177] From their experience, coed facility administrators testify to achieving these expectations. Violence and forced homosexuality have declined, attendance in work and education programs has increased, and inmates have been reintegrated with more self-esteem and higher expectations.[178]

D.7. Criminal Contamination of Children – Joe Rowen, a State Director of Youth Service for Florida expressed: "The path from dependency-neglect to delinquency to crime is well worn."[179] For the incarceration of a child for a non-criminal offence but for vagrancy or neglect or curfew violations, the education therein is crime and the child graduates merely from one serious crime to more heinous offences.

There even have been testimonies from parole officers on the evils of incarceration of minors:

> I'll never forget Rebecca. The Girls' Term system really worked against her. She was a bright and beautiful child, and a woman by the time she was 16. She did well in school, but her parents – wealthy New York socialites – just couldn't deal with the way Rebecca slept around, particularly with older men… When she contracted VD from one of her sleeping partners, Mr. And Mrs. B really flipped. In the hopes of scaring Rebecca into straightening out, they hauled her off to Girls' Term Court. But the judge sent her to Westfield State Farm for "correction." There she was brutally raped and sodomized on more than one occasion. She also made some new friends there – heroin addicts, hookers, and some pretty vicious people. I know, I was supervising all of them…To make the long story short, Rebecca ended up as a heroin addict, a junky prostitute, and on her 21st birthday we found her dead of a drug overdose in a sleazy Times Square hotel.[180]

Sending children to prison, whether in a police precinct, a youth detention home, a city jail, a national training school, is the worst way to rehabilitate them. Inmates within a prison population are mostly sociopaths, who have been engaging in antisocial

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[177] Ibid citing Newsweek, January 11, 1982: 66.
[178] Ibid citing Interview by Miami Herald on 26 February 1973.
[179] K. Wooden, op. cit. supra note 1 at 39.
[180] F. Rice, op. cit. supra note 104 at 279.

behavior, with no regard for the interests of others. In contrast to adolescents who are put in prison for relatively trivial or minor offenses, this country has experienced the incarceration of more juveniles than adults who have committed heinous crimes.[181] Children in conflict with law tend to be passive, dependent youths who are easily bullied, try to maintain friendships with others, and then get into trouble trying to model their behaviour after the group's expectations. Without adequate adult male or female models with whom they could have had significant nurturing relationships, these minors become school dropouts, unemployed, and without plans for the future. Eventually getting into trouble with the law, they obtain a prison record, their chances of finding a useful life are jeopardized. Prison provides the child with a model of criminal behaviour, stimulating him to want to get out only to seek his own vengeance.[182] The child who suffers imprisonment will surely return after committing acts he learned while in prison.

In addition, being treated like a prisoner reinforces a child's negative self-image. Even after release, a juvenile may be labeled as a criminal in his community as a result of his jailing, a stigma which can continue for a long period.[183]

D.7. Stigmatisation of Detained and Convicted Children – If a child is ever to get out of the confines of the criminal justice system that we have stigmatized him with, he will still have difficulties of smooth and trouble-free reintegration. Stigmatisation increases the likelihood of subsequent deviant behaviour, often called "secondary deviance" and "deviance amplification."[184] A major criticism of correctional institutions for youthful offenders is that once the juveniles are released to the community, they often come under the same influences and face some of the same problems that were responsible for their getting into trouble in the first place.[185] Moreover, in their reintegration with mainstream society, these juveniles or former juvenile offenders grown into adults, will subsequently encounter the same evil influences or forces, that now acknowledge them as leaders within the crime sub-culture.

Charting A Child Rights System

A. Pillars of the Child Rights System – The pillars of the criminal justice system are not the pillars of our children. They cannot be held to strict enforceability of existing

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[181] Id, at 280.
[182] Ira M. Schwartz, "(In) Justice for Juveniles: Rethinking the Best Interests of the Child," Lexington Books, Lexington, Massachusetts, 1989:66.
[183] J. Vagg. "Delinquency and Shame: Data from Hong Kong," 38 British Journal of Criminology, 1998: 250 in I. Weijers and A Duff, op. cit. supra note 8.
[184] F. Rice, op. cit. supra note 104 at 279.
[185] Andrew Rutherford, Growing Out of Crime: The New Era, 1992: 94.

juvenile justice standards. How can they uphold the rights of children when they cannot abide by international legal standards ratified by the State?

The management of children and young people, who may be involved in crime, has to be rescued from criminal justice and other types of formal intervention, and returned to where he belongs.[186] Children and their management belong to nurturing institutions which have the most stake in their development, more specifically the family, school, and community. Much can be learned from the skill and determination of parents and teachers who hold on to their young children, who exert every effort and undertake every possible preventive and remedial measure in keeping the child within the family. We can also learn as well from practice within the criminal justice arena which seeks to strengthen the community's capacity to manage young people and crime.[187]

Legislators must respond to the challenge of fostering and supporting the capacity of homes, schools, and the immediate community in effectively responding, and holding on to the minors and young people in trouble, without the necessity of having to divert the minor or young person to the criminal justice system. The crucial ingredient for primary consideration is the level of personal support and commitment offered to young people by these institutions although the financial resources of homes and schools are an essential ingredient of this requirement.[188]

Reforms are necessary to improve the plight of children in conflict with the law. If there is a need for a central authority to oversee the enforcement of a child rights system, with distinct and separate features from criminal justice, then the jurisdiction therefor should exclusively belong to one government agency.[189] An exclusive jurisdiction, preferably by a committed government institution such as the Social Welfare, Education Department, or Local Government Department, could better ensure the coordinated and efficient flow of information, preventive and remedial measures, accountable persons and agencies, and good communications among accountable persons and their institutions.

B. The Family Pillar – Government should look upon parents and the families of the children as the primordial social unit in the development of the child. Parents should be seen as partners of the school, the greater community, and the State in the rearing and upbringing of their children. Children may react differently at home compared with

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[186] Ibid.
[187] Ibid.
[188] C. Bartollas, op. cit. supra note 29 at 382.
[189] Valerie E. Besag. Bullies and Victims in Schools, 1989: 155.

school. Thus, it is necessary to put the two halves of the picture together, meaning an integration of the personalities of the child at home and in school, to achieve a better understanding of the child. When there is a multidisciplinary approach involving parents in eliciting an apprisal of the child's personality, even small details of personality or behaviour previously disregarded may be noticed.

A report in Northern Ireland succinctly identified the importance of the family:

> "The family is the first and most basic institution in our society for developing a child's potential… It is within the family that the child experiences love, attention, care, supervision, discipline, conflict, neglect, stress or abuse depending on parental and family characteristics and circumstances… Society must seek to develop and provide the environment, resources and opportunities through which families can become more competent to deal with their own problems."[190]

Levels of control and support provided within the home depend upon many considerations, not least social circumstances and resources including the availability of an extended family.[191] But regardless of social and economic circumstances, there are variations of styles of parental supervision, and these appear to be associated with the extent to which young people get involved in crime. Parental supervision is a 'protective measure against delinquency which appeared to operate effectively among disadvantaged families resident in deprived inner city areas.'[192] Furthermore, social deprivation is not inherently associated with youth crime. In materially affluent societies, there are experiences of rise in criminality, which has mainly involved young persons or juveniles. Such increase in crime rates was experienced with a rapid rise in national standards of material well-being. It was suggested that this type of 'affluence criminality' is the consequence of a decline in informal social controls, resulting from the totally transformed role of teenagers in modern society. It appears that in these materially affluent societies, the young persons therein were no longer subject to the preventive control formerly entailed by working together with adults, from whom they used to receive advice and guidance and who generally exercised supervision over the juveniles' daily activities.[193]

In circumstances where parents experience difficulties and where some form of intervention becomes inevitable, the point for policy-makers is how to assist the home in harnessing resources and to avoid actions which weaken the capacity of the home to

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[190] Id, at 117-119.
[191] Ibid.
[192] Ibid citing Jerzy Sarnecki, Research into Juvenile Crime in Sweden. Information Bulletin of the National Swedish Council or Crime Prevention, 1983: 2.
[193] Id, at 2.

hold on, much more particularly in avoiding radical actions that forever condemn the child to a life of crime.[194]

In Denmark, where raising children is regarded as primarily the job of the family, guidance from government authorities is available, which supplements but does not replace the family's responsibilities. In Sweden, where the developmental role of the family has become weaker, government agencies have also sought to give 'parents and children freedom to create their own lives within the larger "family" of Swedish society.'[195] Sweden pioneered boarding out or fostering of young people as an alternative to incarcerative institutions. Foster placements appears to have been positive in child development in Sweden. Many adolescents who had been rejected by their parents engaged in delinquent or unacceptable behaviour, reflecting and confirming parental rejection. It was during these foster placements that relationships with the biological family tended to become more amicable, probably because the pressure of guilt is eased on both sides.[196]

C. The School Pillar – The school has long been acknowledged as an important agent in the socialization of children. But with the increase in the population, the educational system is not able to cope with the construction of school buildings to meet the demands of population growth. In addition, there is a high drop-out rate that just continues to increase annually. Also, vandalism, fraternity and peer violence, and drug trafficking have become serious problems in many schools.

School administrators and teachers must not be reluctant to take firm and forceful action against disruptive students, although neither should they be abusive in their treatment of juveniles. They must redirect their vision towards two basic goals: (1) the ability of the school experience must be improved so that youngsters will be motivated to achieve their maximum potential and (2) school-community networks must be reestablished and widely extended.[197]

C.1. School Deliquency – Attending schools in high-crime areas may increase the likelihood of association with delinquent peers.[198]

There are also some schools which determine goals and opportunities for its students and the consequent frustration thereof results in either the use of illegitimate

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[194] Id, at 99.
[195] Ibid.
[196] C. Bartollas, op. cit. supra note 29 at 308.
[197] Ibid.
[198] Id, at 309.

means to obtain those goals or a rejection of such goals. For example, when the school is viewed as a middle class institution wherein graduates end up in good universities, there is strain or stress on lower-class children, who are frequently unable to perform successfully. These children frustrated by their low-class status and their low academic achievements turn to delinquency to compensate for feelings of status frustration, failure, and low-self-esteem. In such environments, the school can creatively provide such marginalised children with structure, incentives, expectations, and opportunities for bonding with the other children such as peer tutorial programs or student organizations and activities that provide for constructive interaction among students, regardless of social standing. Accordingly, delinquency is likely to result when a strong bond to school does not develop.

Educators must also be forewarned about attaching stigmatizing labels to their students. Once students are defined as deviant by their teachers, on the basis of academic or extracurricular achievement, they adopt a deviant role in response to their lowered status. Such labeling or stigmatisation may influence the subsequent treatment of students by their peers or future teachers. Students labeled as aggressive, difficult to manage, or slow learners at an early stage in school may be unfairly treated within the school structure.

C.2. Alternative Schools – Disruptive behaviour is currently an especially serious problem in many of this nation's classrooms. Such behaviour takes many forms: defiance of authority, manipulation of teachers, inability or unwillingness to follow rules, lack of motivation to learn, physical fights with peers, destruction of property, use of drugs in school, and physical or verbal altercations with teachers. Disruptive students require a great deal of time from teachers and counselors in order to make them accountable for their behaviour and to teach them acceptable behaviour. The unstructured periods of the school day – between classes, during lunch hours, and immediately after school hours – give disruptive students ample time to participate in a variety of unacceptable behaviours.

School administrators often suspend or expel pupils who cause trouble in the school.[199] This policy of swiftly suspending troublemakers thereby stigmatises them as failure and reinforces their negative behaviours.[200]

Alternative schools, which have smaller classrooms with expert teachers doubling as counselors, are deemed a much more satisfactory way of dealing with youths whom

[199] Ibid.
[200] Ibid citing The National Commission on Excellence in Education, "A Nation at Risk: The Imperative for Educational Reform," 1983: 24.

the public school cannot control or who are not doing satisfactory work in a public school setting. Educationally disadvantaged students may require special curriculum materials, smaller classes, or individual tutoring to help them master the course or material resented. The goal of such alternative schools is to return the students to their school setting.[201] In summary, a major advantage of alternative school programs is that they deal more effectively with disruptive students than does the public school system. They also relieve public schools of disruptive behaviours these youths display in regular classrooms. They tend to reduce absenteeism and dropout rates. Their success appears to be largely related to their individualized instruction, small student population, low student-adult ratio, goal-oriented environment focused on work and learning and caring, competent teachers.[202]

The greater community should also be involved in the socialization process of the child. A strategy of involving the community in school affairs is scheduling seminars conducted by various officers and members of the community in their interaction with students and to explain their roles in society such as police officers, lawyers, barangay officers, councilors, and local politicians and professionals. Another strategy would be for the school to open its facilities for community events as well as to sponsor a wide range of activities designed to integrate the family, community, and students. Parenting seminars or barangay seminars on adolescent behaviour sponsored by the school should educate parents and community authorities alike. Families and other community members also could be used more in the actual education of youths. For example, parents and retired people could become teacher aides or sports coaches or intramural referees, on a voluntary or paid basis.[203] Moreover, business leaders in the community could provide summer employment for high-risk youths, aged fifteen and above, or subsidize skills training courses of those below fifteen years of age, who are still in school.[204] Twenty-two cities across the nation, as well as nine new incentive projects in New York City have implemented similar programs.[205]

The primordial aim of schools, however, in motivating and hanging on to their students is still good teaching. Good teaching is still the first line of defense against misbehavior.[206] Good teaching can also make students feel wanted and accepted and can encourage students to have more positive and successful experiences in the classroom.

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[201] Id, at 311.
[202] Id, at 314.
[203] Ibid.
[204] Ibid.
[205] Id, at 315.
[206] Ibid.
[207] Ibid.

Good teachers express their feelings and enable students to express their emotions. They combat student boredom and restlessness with timely topics, discussions, and open-ended questions. They smile more than ineffective teachers do, and in disciplining students, they do not raise their voices or use corporal chastisement.[207]

Students should also have the right to be involved in the operation of the school, which makes them more responsible and more considerate towards teachers in experiencing the professional difficulties of administrators and teachers. Juveniles frequently see themselves as immersed in an educational system that is beyond their control and unresponsive to their needs. Such perception, of course, does little to increase an adolescent's desire to maintain or create positive relationships with teachers, counselors, or administrators.[208] In sum, to reduce the amount of delinquency generated by the school, policymakers are challenged to improve the quality of the school experience and to develop local networks linking the school with community institutions and agencies.[209]

There are a number of reasons why pupils drop out of school: socioeconomic factors, ethnic prejudices, class discrimination, disturbed family situations and negative parental influences, emotional problems, negative social adjustments and peer associations, financial reasons, school failure, apathy, and dissatisfaction, and pregnancy and marriage, dislike on the school emphasis on grades, irrelevance of courses, the failure to challenge brighter students and many more. Thus, it is necessary that the education system employs teachers who have mature, well-adjusted personalities and are emotionally secure and stable. Teachers must be well adjusted socially and enjoy satisfying social relationships with others. They must be professionally qualified, intelligent, well trained, with a good grasp of subject matter, and willing to spend the necessary preparation time to teach.

The most important developmental institution outside the home is the school. The message of confidence the school inculcates in its pupils that they can be trusted to act with maturity and responsibility is likely to encourage pupils to fulfill those expectations.[210] Equally important is the role-modeling or example set by teachers and administrators, the rewards and punishment system, and the degree to which the school personnel, teachers and staff act together to develop a school-wide set of values. But of paramount importance is the school's ethos rather than its organizational structure.[211]

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[208] Id at 308-316.
[209] A. Rutherford, op. cit. supra note 187 at 99-102.
[210] Ibid.
[211] Ibid.

The incorporative school will do what it can to hold on to disruptive, delinquent, or truant pupils because it regards them in positive terms. It believes that the school should not fail its pupils, and that it has something of value to offer. The school should be concerned not only with academic achievement but also with preparing young people for the society and world in which they are growing up. The school's pastoral role has gained significance with the relative shift of influence over young people away from the family. The school's pastoral role involves watching over the pupil's development and recognizing opportunities to provide support when the young person is in trouble. Pastoral responsibilities are often neglected because many teachers take an insular view of their profession, limiting their roles to a mere educational goal.[212]

It also should be stressed that there should be made available other programs of education: formal, non-formal, and informal. All these have almost infinite potential in helping to prevent delinquency and crime. The early years are crucial for psycho-social development and the formation of a moral conscience, especially where suitable role models are lacking at home and where discipline is erratic. At a time of pervasive social changes, lack of stable norms and conflict of values, the school must also impart a moral and civic education. At a time of waning religion or its radicalization, the school must nurture the qualities of tolerance , empathy, fairness and respect for others. It can also help to detect emotional problems and learning difficulties, to develop the capacity for self-control and to teach non-violent heroes module – and there are initiatives in various countries which train teachers to prevent misbehaviour through "social contracts," or to manage it when it does occur and to better deal with chronically disruptive students. Practical demonstrations show how to resolves conflict situations non-violently, and develop interpersonal and self-management skills.[213] At a time also of radical technological changes, distance learning or distance education in various forms can continuously educate the isolated juvenile, to whom school socialization processes may not be applicable or necessary.

D. The Community Pillar – Local communities and barangays must assume more responsibility in the shepherding of its resident juveniles and innovate programs to serve as local alternatives to incarcerative institutions, and must have a powerful determination to do something about troubled youth, not just accept their imprisonment and detention. The local authorities should abandon the stereotyping of children and should stop stigmatising them as hopeless cases.

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[212] Id, at 45.
[213] Id, at 112-119.

Programs of community placement, which serves as a means of reparation for the offence, not to the individual victim but to the community as a whole, should be established in reforming the behavior of troublesome youth. The placement should be located near to where the offence took place and consists of working one short period a week, with a youth group, a sports club, or a civic association. The purpose of the placement is for the juvenile to become incorporated into a network of people which in turn provides friendship and support. Put another way, the placement serves to bind the young person into his or her locality, reintegrating him and preventing his further isolation from his community environment.

The approach is developmental in that it recognizes the need for the juvenile to be held accountable for the harm he or she may have caused but with a full assessment of the offence and its consequences, and the drawing up of an integrative system that connects with strategies to provide atonement and reparation. The essence of the developmental approach is to bind the young person with the locality.[214]

Economic growth may not reach those most in need, whose children are at greatest risk. Special measures are needed, such as skills training, entrepreneurial or other assistance and the creation of economic development zones.[215] Ways in which communities can be mobilized for more effective crime prevention have been noted before. Young people can be closely involved in efforts to reclaim anemic and dangerous neighborhoods. In some places, youth leaders and "social facilitators" are being trained with this aim in mind, as part of multi-faceted local revitalization schemes. Social solidarity is demonstrated in various ways, including group supervision of youth in situation of risk.[216] Structured cultural and recreational activities can help to bind young people and offer outlets for their energies. Worthwhile community projects can be pursued with the participation of youths, both as helpers and those to be helped.

With such developmental approaches, the need for "get tough with youth crime" becomes ***passé*** or outmoded. With such reintegrative strategies, the move on juvenile justice should be towards decarceration, dejuridification or dejudicialization, and deinstitutionalization. By making parents, schools and communities involved in taking more responsibility for their children or juveniles within their localities, the criminal justice system should wither away. If ever incarceration may be deemed necessary for

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[214] New York State, Commission for the Study of Youth Crime and Violence and Reform of the Juvenile Justice System. New York, June 1994.
[215] J. Finckenhauer and L. Kelly, "Juvenile Delinquency and Youth Subcultures in the Former Soviet Union." 16 International Journal of Comparative and Applied Criminal Justice, 1993: 2.
[216] C. Bartollas, op. cit. supra note 29 at 478.

juveniles, then such detention or incarcerative facilities and institutions should be exclusively reserved for hardcore and violent offenders.[217]

The community is considered an integral part in the criminal justice system. However, instead of utilizing the community as the last pillar of the criminal justice system, it should be the first pillar. Unlike the four other pillars, the community can even function before the minor commits an offense. It is charged with the duty of looking after the intellectual, physical and moral growth of the youth to prepare him or her to become a useful member of the society. Should the community fail in preventing the commission of an offense, it could still play an added responsibility, not just in the rehabilitation of the child in conflict with law,[218] but in providing the alternatives to incarceration and judicial disposition.

Policy Implications

The challenge to Philippine society today is to ensure that its children are exposed to positive processes rather than to negative ones. Beginning with childhood and the family, and continuing with the school, community, and employment, individuals must have increased opportunities to realize their potential. To provide for a more optimal development of individuals requires that children, especially those from impoverished backgrounds, be provided with more positive role models. Participants attracted to deviant associations or organisations tend to espouse such groups' deviant patterns, because they are attracted to their goals, cohesiveness, and intimacy of relationships. But families, schools and communities can counteract to deviant organizations by attracting the youth to their own positive goals, cohesiveness, intimacy of relationships and bonding.

Conclusion

The criminal justice system, which includes the Family Court system, has fallen far short of its idealistic goal of serving the best interests of the child. Too much has clearly been expected from a Family Court that lacks sufficient resources and community support to fulfill its mission. The Family Court's lack of sufficient supervision from the Supreme Court can only result in discretionary abuses. The approach of the criminal justice system in handling cases of juveniles has only been adversarial, without actually

[217] AKAP, op. cit. supra note 91 at 65.
[218] C. Bartollas, op. cit. supra note 29 at 444.

touching upon the best interests of the child, because of the system's priority interest in public security and victim's retribution.

Structures that are established for the child should spur and encourage positive child development, not initiate the child into criminal behaviour. It should be a system that precludes any contact with the formalised system of criminal justice, or one that would prevent or minimize any contact with the pillars of the criminal justice system. Conceptualised and widely-accepted structures within criminal justice are not necessarily suitable, and may certainly be unsuitable, for the normal and healthy development of a child. Philippine society should not be so profound in providing mechanisms which may only exacerbate the child's plight rather than apprise the child or his or her parents of the proportionality of child's alleged delinquency. Ideally, society should leave him or her unharmed with time-tested and recognised institutional structures genuinely concerned over his plight and development, such as the family, the school, and the community to which his or her family resides in and belongs. After all, these social institutions are themselves assisted, guided and supervised by government bodies such as the Department of Social Welfare and Development, the Department of Education, and the Department of the Interior and Local Government. If there is apprehension on the lack of a superstructure with control over the juvenile delinquency or criminality, then these Cabinet bodies can always administratively intervene, whenever necessary.

Utilising the criminal justice system as an exclusive response to juvenile delinquency or criminality may only be creating a dilemma that may result in an unhealthy future social climate. Children who are abused within the institutional government settings may exact their revenge upon an unsuspecting society. Children, who have been detained for status offenses and for misdemeanors, are continuously being detained together with adults indicted for multiple murders, serial rapes, and such other heinous offenses. Within such an environment, children are bound to be contaminated with adult criminal behaviour. By going through an inhumane although impartial criminal justice system, children are bound to be permanently stigmatised and traumatised that there can never be genuine rehabilitation. It is doubtful whether a child, who has been initiated into, and flourished in, the criminal underworld will still be treated normally within the community to which he is reintegrated. Such minors will never be admitted back into the formal educational system or they may never be cleared by law enforcement agencies for employment purposes. These children in conflict with law will grow up forever within the marginal fringes of a society that excludes and ignores their welfare and best interests, forever stigmatised, and forever within the shadows of a criminal underworld.

We can continuously debate about the propriety of the criminal justice system in the treatment of our juveniles. In the meantime, our children are being transformed into criminals within that system. The eternal hope and optimism, of course, is that there are persons working within the criminal justice system who have come to realize that an adversarial justice system will not work in making a difference in our children's lives and in converting them towards more positive behaviours.[219] There must be a wake-up call when the pillars of the criminal justice system have become the edifice of crime itself, rather than justice. This is the wake-up call. These pillars of criminal justice are the primordial reasons for the children's transformation into primitive human beings, without any empathy, nurturance or concern for others.

It is hoped that our most sacrosanct institutions, primarily the Supreme Court and Congress, pro-actively explore all possibilities of supplanting a system for children in conflict with law totally separate from the criminal justice system – one that should manifest extreme sensitivity towards the child, aiming for the child's best interests and progressive development and providing for his or her basic human rights in preventing further harm and degradation. We should advocate no less than the strongest stand: no minor should be jailed or even come in contact with any of the pillars of the criminal justice system, more especially for light or less serious offenses, which can easily be corrected within existing family, school, and/or community structures. We do not have to go beyond those structures most oriented towards, and most interested in achieving, the best interests of the child. Going beyond these structural parameters would constitute a grave desecration of the sacrosanctity of the human being concerned — the child.

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[219] Mallonga, Eric F. Doubletake, Opinion Column: "Pillars of our children". 29 October 2001.

The Anti-Trafficking in Persons Act of 2003
Issues and Problems

*Rowena V. Guanzon and Charmaine M. Calalang**

Introduction

Trafficking in persons, especially in women and children, is a highly lucrative business worldwide. Millions of women and girls, mostly from poor countries, are trafficked globally into the sex industry. They are traded as objects or goods to be used like any commodity. This human rights problem has been the subject of various international instruments, including, notably, the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. Trafficking victimizes mostly women and girls because of gender discrimination and their vulnerability.

In response to this problem, many countries have signed or acceded to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which obliges States to pass laws to stop trafficking. The Philippines ratified this convention in 1981. These international instruments notwithstanding, trafficking continues unabated, with syndicates preying on vulnerable women and children from developing countries like the Philippines, Cambodia and Thailand. It thrives as a very lucrative business because there is an existing demand for cheap labor, sex slaves, and organs of human beings. Traffickers take advantage of the lack of laws and inadequate government policies, poor law enforcement, corruption in government, political and economic conditions of the countries of origin, as well as the domestic situations of their target victims.

In this age of globalization of technology and information, and with the ease in transferring capital worldwide, organized trafficking syndicates, some in groups of as small as three persons, have found sophisticated ways to do business across national borders while minimizing the risk of arrest and prosecution through bribery of government officials. Children and women are sold through the Internet, where evidence for the prosecution will be difficult to obtain, especially in poor and developing countries.

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Children are easily trafficked between the borders of Thailand, Burma and Cambodia, sold to recruiters and often end up in brothels for international tourists.[1]

The figures are alarming. In 1997, the United Nations estimated that corrupt public officials, procurers and smugglers engaged in international trafficking in persons gained USD $7 billion in profits, making it more profitable than international trade in illicit weapons.[2] It estimates that trafficking syndicates operate on 5-7 billion U.S. dollars annually, with 4 million persons being moved within and outside their countries.[3]

Due to the clandestine nature of trafficking, it is difficult to give an actual number of victims in the Philippines and within Asia, especially as most victims would rather keep silent about their harrowing experiences due to lack of resources, fear of being stigmatized by society, and fear of reprisal from their recruiters and traffickers.

In a research conducted in 2003 by the Coalition Against Trafficking in Women – Asia Pacific (CATW-AP) in 12 regions of the Philippines, government and non-government organizations recorded 6,298 cases of trafficking in women and children for sexual exploitation, some dating back three to four years ago.[6] This is a very conservative number. Several reasons account for the low reporting, such as the lack of resources of victims and the lack of a specific law on trafficking at that time of the commission of the crime. The lack of such a law has resulted in the reported cases as being classified as illegal recruitment or "involuntary" prostitution.

On October 24, 2001, the Philippine government ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (2000) (UN Protocol). A year and seven months thereafter, Congress passed Republic Act (RA) No. 9208, otherwise known as the Anti-Trafficking in Persons Act of 2003 ("Anti-Trafficking Act"). The law took effect on June 19, 2003. The principal author in the House of Representatives was Representative Bellafor Angara-Castillo. In the Senate, the bill was filed by Senator Luisa Estrada but the amendments were made by Senate President Franklin M. Drilon. The Philippine Anti-Trafficking Act substantially complies with the U.N. Protocol.

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[1] Guide to the New UN Trafficking Protocol, Article Primer, Coalition Against Trafficking in Women, p.2.
[2] USAID: Gender Matters Quarterly No. 1 [????] February 1999
[3] Guide to the New UN Trafficking Protocol, p.2.
[6] Enriquez, Calalang, Belarmino, Trade in Women and Children, The Asia Foundation, 2003. The regions that are subject of the study are Regions 1,CAR, 3, 4, NCR, 7 to 12 and the Autonomous Region in Muslim Mindandao.

UN Protocol

The UN Protocol addresses the protection of victims of trafficking with a human rights dimension. It defines trafficking in persons as, "the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs."[7]

The consent of a trafficked victim is deemed irrelevant where any of the means described in the definition is present. If the victim is a child (below 18 years old), the recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation will be considered "trafficking in persons" even if it does not involve any of the means described above. [8]

Some of the salient features of the Protocol are: (a) the trafficked persons, especially women in prostitution and child laborers are viewed as victims and not as criminals, (b) global trafficking will be answered with a global response (Art. 10), (c) consent of the victim is irrelevant (Art. 3b), (d) the definition provides a comprehensive coverage of criminal means by which trafficking takes place, including not only force, coercion, abduction, deception or abuse of power, but also the abuse of the victim's vulnerability. (Art. 3a), and (e) the new international definition of trafficking helps insure that victims of trafficking will not bear the burden of proof (Art. 3b).

This international definition of trafficking and agreed-upon mechanisms for prosecution, protection and prevention are the standards for national legislations and policies and serve as a basis for harmonizing the laws of various countries. Trafficking cuts across national borders and must be viewed as a continuing crime, and in order for States to be effective as a global effort, the laws of different countries must provide for the definition and penalties of the crime committed even when in transit or en route to the receiving country.

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[7] United Nations Protocol, Art. 3.
[8] *Id*.

Existing Laws before R.A. No. 9208

It took the Philippines 22 years since the Senate ratified the CEDAW in 1981 to pass the Anti-Trafficking Act. Before it took effect, the laws that were used to prosecute offenders were our Revised Penal Code (RPC) and other special laws. These laws, however, did not address the problem because they do not capture the different dimensions of trafficking. For example, while Art. 272 of the RPC criminalizes slavery, this provision limits the means by which the crime is committed to purchasing, selling, kidnapping, or detaining a person for the purpose of enslaving him or her. The means are very limited considering that there are more ways to commit the crime, and the means provided in the provision require the use of force or must have been against the will of the victim.

Another provision that may be used in filing a case when the victim is a minor is Art. 340 of the RPC on corruption of minors. It punishes the promotion or facilitation of prostitution or corruption of minors to satisfy the lust of another. However, prostitution of victims is just one form of exploitation. Children are also trafficked for forced labor and in some counties, for removal or sale of their organs.

Another provision of the RPC, Art. 341, punishes white slave trade. This may be committed in any manner or under any pretext in order to: (a) engage in the business (of prostitution); or (b) profit by prostitution; or (c) enlist the services of any other person for the purpose of prostitution. The first two modes require profit and habituality, although the third one does not. The purpose of the said provision is to protect women from being victimized and placed in prostitution. It is however imperative to prove that the victim did not consent nor had any knowledge that she would be placed in prostitution in order to get a conviction. All these provisions (Arts. 272, 340, and 341) impose a penalty of *prision mayor*, which is relatively lenient considering the effect of these crimes on the victims, the long duration of their suffering and trauma, and the violation of their rights.

During the administration of then President Corazon Aquino, RA No. 6955 was passed. This law prohibits the matching of Filipino women to foreign national. It punishes any person who: (a) carries on a business that matches Filipinas to foreign nationals through mail-order basis or personal introduction; or (b) advertises for the same or publish propaganda materials to promote the same; or (c) attracts or induces Filipinas to become a member of a club or association that promotes such objective for a fee; or (d) uses the postal service to promote such prohibited acts. It also punishes the manager or officer-in-charge or advertising manager of the tri-media who knowingly

allowed or consented to the aforementioned prohibited acts. In the first mode of violation of R.A. No. 6955, there must be a business, which connotes habituality and profit. It does not cover a person who introduced a Filipino woman to a foreigner only once because the perpetrator must be engaged in such kind of business so that he or she may be indicted under this law. In addition, this law was not able to anticipate the swift developments in information technology at the time of its passage such that all advertisements, matching and offer or purchase done through the Internet escaped criminal prosecution.

The special law which carries a high penalty for recruiters often used by the prosecution prior to the Anti-Trafficking Law, is R.A. No. 8042 or the Migrant Workers' Act. This law is applicable when the mode used to traffic a person to foreign countries is offering false employment or when the worker is recruited or placed in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines. The problem with this law is that it treats trafficking as a mere labor problem, when in fact it is a human rights issue and a migration problem. Also, the Migrant Workers' Act does not recognize the gender issues of the problem, and as such does not provide for special protection to victims who are mostly women and girls.

One other limitation of this law is that it applies only to victims who are trafficked abroad. It completely disregards trafficking within the country, where the victims are taken from one region of the country to another or even from one city to another within the same province. This law also provides very little time within which to file a case — five years from the time of the commission of the crime. In many instances, it takes more than five years for victims of trafficking just to escape from their inhuman situations abroad. By the time they get back to the country, the crime has prescribed. All these weak points were taken into consideration when women's groups lobbied for an anti-trafficking law.

Children as victims

When children are trafficked, the prosecution may seek to apply R.A. No. 7610 or An Act Providing for Stronger Deterrence And Special Protection Against Child Abuse, And Discrimination, And For Other Purposes. Now, R.A. No. 9208 may also apply to certain acts such as trafficking a child through adoption using the Inter-Country Adoption Law. Section 7 of R.A. No. 7610 punishes any person who engages in trading and dealing with children including, but not limited to, the act of buying and selling of a child for money, or for any other consideration, or barter. The imposable penalty for such act is *reclusion temporal* to *reclusion perpetua*. The maximum penalty is

imposed when the victim is below 12 years old, which is lower than the penalty of life imprisonment under R.A. No. 9208 when children below 18 years old are trafficked. "For any other consideration" includes the giving of the child to the trafficker in payment of a debt. However, this law does not include the acts of harboring, transporting or receiving a trafficked child, which are included in R.A. No. 9208.

Section 8 of R.A. No. 7610 referring to the attempt to commit child trafficking penalizes a person who engages in the act of finding children among low-income families, hospitals, clinics, nurseries, day-care centers, or other child-caring institutions who can be offered for the purpose of child trafficking. This provision overlooks the fact all children are vulnerable especially those coming from poor or dysfunctional families who want to get away from home.

R.A. No. 9208, which penalizes trafficking of children with life imprisonment, does not amend R.A. No. 7610. While a criminal case for trafficking of a child may be filed under R.A. No. 9208, the prosecution may also file under R.A. No. 7610 to ensure the immediate closure of the establishment. Under R.A. No. 7610, social workers may file the complaint when children are victimized, whereas in R.A. No. 9208 they must have had personal knowledge of the commission of the crime. While R.A. 9208 does not contain provisions on immunity from suit of social workers of the DSWD and local governments, they may still use this legal protection when performing their duties related to trafficking of children.

Women as victims also

Philippine laws[,] as well as prosecutors and judges have recognized children's vulnerability and as such they are considered as victims. Unfortunately, it is not the same in the case of women. Biases and discrimination against women are causes of disbelief when women report that they were prostituted or trafficked. Prior to R.A. No. 9208, legal battles are an uphill climb for women because they have to prove that they did not consent or that they were forced into sexual exploitation before they are viewed as victims by society and the judicial system. Otherwise, they were viewed as criminals for having "participated" in or "consented" to the commission of the crime, or at the least, that they should bear the consequences of their "choice." The laws failed to consider the sad realities of women's lives where opportunities are slim and the future bleak, thus they are vulnerable and fall prey to prostitution or trafficking. This is one gender issue that R.A. No. 9208 rectified. The Anti-Trafficking Act avoided the child/adult divide and treated persons equally as victims, regardless of age, sex, and race.

The Anti-Trafficking Act and the laws in some countries[9]

Other countries such as the United States and Thailand have passed special laws addressing trafficking in persons. Other countries have provisions in their criminal code that punish similar acts.

In 1997, Thailand enacted Measures in Prevention and Suppression of Trafficking in Women and Children Act B.E. 2540. It defined trafficking as:

> "…buying, selling, vending, bringing from or sending to, receiving, detaining or confining any women or child, or arranging for any woman (sic) or child to act or receive any act, for sexual gratification of another person, for an indecent sexual purpose, or purpose, or for gaining any illegal benefit for his/herself or another person, with or without the consent of the woman or child…"

The focus of the law of Thailand is on sex trafficking, without recognizing the other possible exploitative purposes for trafficked persons such as forced labor or slavery. Only women and children can be victims under the said law unlike the Anti-Trafficking Act in the Philippines that protects all persons, including men.

In compliance with the UN Protocol, Cambodia's Law on Suppression of the Kidnapping, Trafficking, and Exploitation of Human Beings penalizes " any person who lures another person, male or female, minor or adult of whatever nationality by ways of enticing or any other means, by promising to offer any money or jewelry, whether or not there is consent from that other person, by ways of forcing, threatening, or using of hypnotic drugs, in order to kidnap him/her for trafficking/sale or for prostitution, shall be subject to imprisonment from ten (10) to fifteen (15) years. The perpetrator shall be punished by imprisonment from fifteen (15) to twenty (20) years, if the victim is a minor of less than 15 years old." It penalizes accomplices, sellers, buyers and those who provide money or means for committing the offence.

The United States uses its economic and security assistance to countries that meet the minimum standards for the elimination of trafficking. The US law covers two forms of trafficking:[10]

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[9] The authors wish to thank the Commission on Filipinos Overseas, especially Atty. Golda Myra Roma, for its data on the laws in different countries pertaining to trafficking in persons.

[10] Section 103, sub-section 8, Victims of Trafficking and Violence Protection Act of 2000, Public Law 106-386-October 28, 2000.

1 . Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

2. The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Under the U.S. law, for the indictment of sex trafficking to prosper, the person trafficked must be below 18 years old, in which case he or she need not prove force, fraud or coercion. However, when the person is 18 years old and above, the trafficked person has the burden of proving force, fraud or coercion. This makes it burdensome for adult victims to prove their case and avail of government services and programs.

Interviews with victims and studies conducted by organizations like the Coalition Against Trafficking in Women Asia-Pacific, reveal that trafficking happen to many women above 18 years of age and that there are other factors that contribute to or facilitate trafficking aside from coercion, threat or fraud, that on the surface might give the impression that the victim "consented" to the trafficking or that it was her "choice". Examples of these are poverty, violence in the home from which the victim wants to escape, lack of economic opportunities to those who did not attain high level of education and the like.

The Philippines considered all the above in drafting the law and closely followed the definition provided in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. As a result, Republic Act No. 9208 defines trafficking in persons as:

> "…the recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs." [11]

The purpose of trafficking is quite clear, which is to place the victim in a situation of exploitation. Thus, trafficking can be distinguished from any other crime, for example smuggling, by considering the purpose/s for the recruitment or transfer or receipt.

Other salient features of R.A. No. 9208

One of the most important concepts forwarded by R.A. No. 9208 is that trafficking can be committed with or without the consent of the trafficked persons, who are considered victims and not criminals. Thus, trafficked persons cannot be penalized for crimes directly related to the acts of trafficking enumerated in this law or in obedience to the order made by the trafficker such as signing a falsified passport. Section 17 of R.A. No. 9208 absolves victims from any criminal liability.

The following are some of the punishable acts under Section 4 of the Anti-Trafficking Act:

a) recruiting, transporting, transferring, harboring, providing or receiving a person including those done under the pretext of domestic or overseas employment or training, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

b) introducing or matching for money, profit or other consideration, any person to a foreign national, for marriage for the purpose of acquiring, buying, offering or trading him/her to engage in prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

c) undertake or organize tours and travel plans for the purpose of utilizing and offering persons for prostitution, pornography or sexual exploitation;

d) maintaining or hiring a person to engage in prostitution or pornography;

e) adopting or facilitating the adoption of persons for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

f) recruiting, hiring, adopting, transporting or abducting a person by means of threat, force, fraud, deceit, violence or intimidation for the purpose of removal or sale of organs

The above acts are punishable with 20 imprisonment and a fine of not less the P1 million but not more than P2 million.

Acts that promote trafficking[12] such as knowingly leasing or allowing to be used any building or house for trafficking; advertising, publishing or distributing advertisements for the purpose of trafficking; assisting in the exit or entry of persons for the purpose of trafficking; facilitating the acquisition of clearances and exit documents from government agencies; confiscating, concealing or destroying the travel documents or personal belongings of trafficked persons in furtherance of trafficking or to prevent them from leaving the country. These are punishable with 15 years imprisonment and a fine of not less than P500,000.00 but not more than P1 million.

Section 6 provides that the crime of trafficking is qualified when:

a) the victim is a child (below 18 years old);
b) when the adoption is done through the Inter-Country Adoption Act of 1995 and said adoption is for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
c) when committed by a syndicate or by a group of three or more persons, or if committed against three or more persons;
d) when the offender is an ascendant, parent, sibling, guardian or person who exercised authority over the trafficked person;
e) when the offense is committed by a public officer or employee;
f) when the trafficked person is recruited to engage in prostitution with any member of the limitary or law enforcement agencies;
g) when the offender is a member of the military or law enforcement agencies;
h) when by reason of the act of trafficking the victim dies, becomes insane, suffers mutilation or is afflicted with Human Immunodeficiency Virus (HIV) or Acquired Immune Deficiency Syndrome (AIDS)

The penalty for qualified trafficking is life imprisonment and a fine of not less than P2 million but not more than P5 million.

Some of these provisions are not new but have also been included in Section 6 because of the responsibility that goes with the relationship of the offender to the victim. The same is true with public officers and employees, or the members of the law

enforcers who are supposed to provide protection to victims and instead they violate their human rights.

Trafficking cases prescribe in 10 years. When committed in large scale or victimizing 3 or more persons or by a syndicate (when committed by 3 or more perpetrators), the prescription period is 20 years.

As most trafficked persons are not ready to file complaints immediately given their traumatic experience the law recognizes the fact that they need to be healed and to prepare themselves and their resources for litigation which is the reason for providing them a period of 10 years within which to file an action. If the trafficking were committed by a syndicate or in large scale, the prescriptive period is 20 years. The prescriptive period shall commence to run from the day on which the trafficked person is delivered or release from conditions of bondage (Section 12). This is in response to the gap in other special laws where the prescriptive periods are too short and do not give any consideration to the difficult situation of the victims.

A new concept being introduced by this law is punishing a person who buys or engages the services of a trafficked person as provided in Section 11. First time offender will be punished with 6 months community service and a fine of P50,000; while those convicted for the second and subsequent offenses will be penalized with 1 year imprisonment and a fine of P100,000. This is the first time a law punishes buyers of trafficked persons, who are mostly prostituted.

The law discourages the use of any person, young and adult alike, for sexual gratification and it is a progressive step towards eventually repealing our law on vagrancy and prostitution. The cited provision also veers away from looking at women in prostitution as criminals and confronts the real culprits in the system of prostitution, who are the customers, pimps, and establishments that uses and profits from them. Unfortunately, R.A. 9208 did not expressly repeal Article 202 of the Revised Penal Code, another law that discriminates against women.

As trafficking is considered a public crime, any personwho has personal knowledge of the crime may file the complaint. The parents, spouse, siblings, children or legal guardian of the trafficked person may file it as well (Section 8).

R.A. No. 9208 has introduced another radical change in relation to venue. Trafficking is a continuing crime and the criminal action may be filed where the offense was committed, or where any of its elements occurred, or where the victim resides at

the time of commission of the offense (Section 9). Most service providers and prosecutors have had difficulty in pursuing their cases once victims have gone home to their communities. With this option, more victims would be encouraged to report and prosecute cases, as they do not need to go out of their hometown.

Section 23 enumerates the mandatory services available to trafficked persons such as emergency shelter, counseling, free legal services, medical or psychological services; livelihood and skills training; and educational assistance to be provided by the concerned government agencies. Government personnel must be trained to be sensitive in the handling of victims, taking into consideration their sex, age, and painful experiences.

Conclusion and Recommendations

Although it took nine years to pass the Anti-trafficking Act, it is a groundbreaking law that substantially complies with international human rights standards and provides wholistic and comprehensive protection to victims. Judges, prosecutors and lawyers need to study this law and its rationale, as well as the situation of trafficked persons, so as to have an adequate appreciation of every trafficking case that they are handling. To dispense justice, they must understand women's experiences and get rid of their biases against women that continue to prevail in Philippine society and permeate in the judicial and legal system. Not only must trafficked persons, especially women and children, have remedies under the law, they must have adequate access to justice, which is possible only if, among others, they have lawyers and prosecutors who are trained in R.A. No. 9208, and prosecutors and judges who are gender-sensitive. Law schools should also include R.A. 9208 and other special laws protecting women and children in their curriculum.

Government agencies, especially the Department of Social Welfare and Development, local government units, and non-government organizations continue to face difficulties in providing services and programs for victims because of lack of funds, facilities and personnel. The law adequately provides remedies for victims but it is yet to be seen if the government will provide adequate funding for services in its budget and go after traffickers with the full force of the law. The commitment of law enforcers and *barangay* officials are required in order to stop this menace in their communities.

Inasmuch as non-governmental organizations render services for trafficked women and children and several are collaborating with government agencies, the national government and local government units should give them financial support and other resources. Non-governmental organizations help government do its work and are entitled to a share in government resources.

Although the problem is serious, trafficking does not get as much attention from the public compared to domestic violence or abuse of women in intimate relationships because of the difficulty in detecting traffickers in the community, the lack of information on their identities and locations, and the unwillingness of many victims to report the crime. Public information and community organizing could help in solving these problems. These entail a massive information campaign and the popularization of the law in the barangay so as to warn the community against recruiters and teach people their remedies under the law.

The obligation of the Philippine Government under international law does not end with the passage of the Anti-Trafficking Act. To fully respond to the problem of international trafficking, the government needs to forge and enforce bilateral and or multi-lateral agreements among countries to come up with mechanisms to prevent trafficking.

At the same time, the government should solve the problem of poverty and provide adequate jobs and livelihood with social protection for more than one-third of its population who are poor. The search for better-paying jobs abroad is the primary reason for migration of Filipinos. The feminization of migration compounds the problem for women, who are recruited for household chores and lesser paying jobs in the host countries. It is this desperate search for jobs that makes people susceptible to the baits of traffickers.

Governments would be ineffective in solving the problem of trafficking if they do not address development issues. Seeing also that mostly women and girls are victimized, our government and society must seriously address the problem of gender inequality, which results to the exploitation and discrimination of women.

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Ejectment: Beyond Possession
The Social Imperative

Saligan Urban Poor Unit[*]

Introduction

Amidst the looming weight of Philippine traditional property rights provisions and jurisprudence, where the owner and/or legitimate possessor reign supreme in relation to claiming possessory rights, the need to recognize and realize the evictees' right to adequate housing and right against forced eviction provide a crucial counterweight. The mandate to recognize and realize every person's right to adequate housing and right against forced evictions traces its legal moorings to international covenants, conventions, declarations, the 1987 Constitution, and several statutes. Suffice it to say that these instruments, when juxtaposed with the more appropriate framework for addressing the phenomena of urban poverty and homelessness, point to a balancing of property and housing rights.

This article by no means condones the act of squatting or "informal settling" by the urban poor. Instead, it dwells on the possessory action of ejectment, its limitations, its effects on the evictees, and the implications upon it by social trends and legislation based on international instruments. Specifically, this article will focus on the summary ejectment actions of *forcible entry* or *unlawful detainer* as these are commonly used against informal settlers on private land.

The Issue of Better Possesory Rights

A person's domain is sacrosanct: a preserve that one has to defend. Thus, any violation of that dominion is usually a *casus belli*.[1]

Article 539 of the Civil Code provides that "every person has a right to be respected in his possession; and should he be disturbed therein he shall be protected in or restored to said possession by the means established by the laws and the Rules of Court."

Under appropriate circumstances the property owner may avail of any of three types of actions involving ejectment of a person from another's property. The actions

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[1] JUDGE DANILO A. MANALASTAS, THE LAW ON EJECTMENT AND OTHER POSSESSORY ACTION (1995).

established by law and the Rules of Court for judicial restitution of real or immovable property are:

(1) forcible entry and unlawful detainer which seek the recovery only of the physical possession and must be brought within one year in first level courts;

(2) accion publiciana or the plenary action to recover the right of possession in ordinary civil proceeding before the Regional Trial Courts; and

(3) accion reinvindicatoria or the action to recover ownership which includes recovery of possession.[2]

Actions for forcible entry and unlawful detainer are popularly referred to as ejectment actions. Ejectment actions are among the most numerous suits litigated in our courts, and their number continues to grow practically at pace with the surge in population growth.

In forcible entry, the possession of the land by the defendant is unlawful from the beginning as the person acquires possession thereof by force, intimidation, threat, strategy, or stealth. In unlawful detainer, the possession of the defendant is inceptively lawful but it becomes illegal by reason of the termination of the right to the possession of the property under contract with the plaintiff.[3]

The action for forcible entry originated from the English common law where it was originally in the form of a criminal proceeding whereby land or properties seized through the use of force could immediately be returned. In time, this action was transformed into a civil one and became applicable in those cases where a person has been dispossessed of an estate by force or intimidation, and the law desires that the possession lost be returned in a summary proceeding. In the course of time, the action was extended to cases where tenants refused to deliver property rented by them to their landlords despite the existence of contract obligations to surrender possession of the property leased.[4]

Forcible entry and unlawful detainer are summary cases. They are disturbances to social order, which must be restored as promptly as possible. Hence, procedural technicalities and details, which unnecessarily cause delay, are avoided.[5]

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[2] *De Leon vs. Court of Appeals*, 245 SCRA 166 (1995).
[3] RULES OF COURT, § 1.
[4] LEONARDO P. REYES, THE LAW ON FORCIBLE ENTRY AND UNLAWFUL DETAINER (1991).
[5] *Co Tiamco vs. Diaz*, 75 Phil 672 (1946).

The marrow in summary ejectment cases is the determination of who among the party litigants have a better right to possess. Such right is classified according to degrees in ascending order of importance, to wit:

(a) mere holding or having, without any right whatsoever (e.g., possession by a thief or squatter);

(b) with juridical title, but not that of an owner (e.g., lessee, pledgee or depositary);

(c) with title of dominium, that is with just title from the owner (i.e., possession that springs from ownership).[6]

In cases where the party litigants are individuals covered by either letter (b) or (c) as against letter (a) as described above, the squatters or informal settlers lose due to the crisp and clear-cut delineation of possessory degrees.

Moreover, a squatter's possession, when there is no violence, is by mere tolerance. Such tolerance does not affect possession[7] and effectively justifies a favorable decision for the party who "tolerated" such settlement.[8]

The Supreme Court has said that ejectment cases are mere quieting processes, and the "one year bar to the suit is in pursuance of the summary nature of the action. The use of summary procedure in ejectment cases is intended to provide an expeditious means of protecting actual possession or right to possession of the property." Furthermore, actual title to the property is never determined. If at all, the inferior court may rule on the defendant's question of ownership only to resolve the issue of possession.[9]

Despite the landowner's loaded legal arsenal, however, the same does not justify the recovery of possession through force and violence. In the case of *Spouses Laurora vs. Sterling Technopark III and S.P. Properties*[10], respondents bulldozed and uprooted plants and trees, and with the use of armed men and by means of threats and intimidation succeeded in forcibly ejecting petitioners. The Supreme Court said that the owners of the property have no authority to use force and violence against alleged usurpers who

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[6] EDGARDO L. PARAS, CIVIL CODE OF THE PHILIPPINES ANNOTATED 405 (1994) (citing 3 Sanchez Roman 405).
[7] CIVIL CODE art. 537 (1950).
[8] *Vda d. Catchuela vs. Francisco*, 98 SCRA 172 (1980); *Calubayan vs. Pascual*, 21 SCRA 146 (1967).
[9] *Somodio vs. Court of Appeals*, 235 SCRA 307 (1994).
[10] 401 SCRA 181 (2003).

were in prior physical possession of it. Even if petitioners were mere usurpers of the land owned by the respondents, they are still entitled to remain on it until they are lawfully ejected therefrom.

Hence, property owners have every right to exclude usurpers, but the rule of law does not allow them to take the law into their hands. The purpose of ejectment actions, regardless of the actual condition of the title to the property, is that the party in peaceable and quiet possession shall not be turned out by strong hand, violence, or terror.

Therefore, based on the foregoing, the principal remedy of a landowner whose land is under the possession of wrongful occupants is a judicial action for ejectment. If such owner is adjudged as the lawful possessor, a writ of execution, upon the owner's motion, will ensue ordering the demolition of illegal structures and the eviction of the occupants in the premises.

Regained Possession: At What Cost?

In 1980, Lito Nicosia married Odelia. Lito was then working in a garments factory in Manila, earning only enough for the daily sustenance of their small but growing family. They constructed a dwelling on an idle lot in Pandacan, Manila. The Nicosia family, with four children studying at the nearby public elementary school stayed on the property for almost 10 years when eventually the landowner appeared demanding that they vacate the property. The landowner then filed an action for ejectment. The decision of the Municipal Trial Court of Manila ordered them to vacate. In August of the same year, during the middle of the school year, they were evicted and their house was demolished. With nowhere else to go, the family was forced to settle in a precarious strip of land near the Pasig River.

The story of Lito and Odelia is not just a story of a poor and unfortunate Filipino family; neither is it a predicament of two or ten or even of hundreds of families. Such is the situation of hundreds of thousands of Filipino families in Metro Manila and other urban areas.

At present, there are 81 million individuals[11] approximately half of which, or about 40 million, reside in urban areas. Of the 81 million, 21% or around 17 million are urban poor (i.e., incomes below the poverty threshold). While said number can be

[11] National Statistics Office, 2004.

traced partly to the in-migration of rural folk to the urban areas due to stunting rural underdevelopment and wars, the same can be substantially traced to the high rate of in-city births in urban slums (12% as compared to 6% in other areas).[12]

Juxtapose the almost 50% annual increase in land values since 1996[13] and nigh-stagnant income increases for the urban poor [14] to the high urban poor densification on fixed urban land, and one can have a sense of the causes of inescapable urban poverty and homelessness.

Even without conclusive data on the percentage thereof of urban poor settling on private lands, one can reasonably surmise that even a conservative 10% of 17 million urban poor amounts to a staggering 1.7 million individuals that may face the long yet swift arm of an ejectment demolition.

Once demolished, where do we place these families? Absent a far reaching asset reform thrust to once and for all address security of tenure, court-ordered evictees are forced to settle on other lands and may be subject to demolition once again.

While ejectment provisions in the Civil Code and the Rules of Court serve their purpose in providing a vehicle within which possession is regained, they dismally fail to address the homelessness surrounding the same. While the provisions promote the preservation of every person's possession which he/she considers as wealth, the same often destroys a settler family's home and exposes the evicted and demolished to the elements. The family is then perceived as a cold, unfeeling entry to an ever increasing statistic of homelessness.

One may therefore conclude that ejectment provisions as well as their application do not bridge social chasms but rather create them, manifesting a latent bias for the affluent or propertied sector. These provisions, by themselves, do not address the profound social consequences of their execution. Most, if not all of the victims of demolitions and evictions on private lands are urban poor. More so, ejectment provisions are mute on the provision of relocation sites and the conduct of demolition and eviction. Thus, human rights violations often occur during their execution. Consequently, judges then issue eviction orders based on possessory pre-eminence absent any provision for alternative relocation sites for the dislocated families.

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[12] Anna Marie A. Karaos, *Urban Governance and Poverty Alleviation in the Philippines*, May 2003.
[13] Anna Marie A. Karaos, 1997.
[14] David Yap, *Impact of Land Values on the Housing Situation in the Philippines*, July 2002.

The Human Rights Violated: The Right to Adequate Housing and the Right Against Forced Evictions

The Universal Declaration of Human Rights (UDHR, 1948) enshrines a specific right of everyone to adequate housing. Article 25 thereof provides:

> Everyone has the right to a standard of living, adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) underscores the State obligation of providing for the right to housing of its citizens by declaring that:

> [t]he State parties to the present covenant recognize the right of everyone to an adequate standard of living for himself and his family including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

Other international instruments recognize the right to adequate housing of particular groups, specifically women and children, some of which are arrayed below.

Article 14.2(h) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979) declares that: "*States Parties shall undertake all appropriate measures to eliminate discrimination against women.. XXX.. and in particular, shall ensure to such women the right..(h) to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity..*"

Article 16.1 of the Convention on the Rights of the Child (CRC, 1989) declares that: "*No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.*" Article 27.3 in turn, declares that: "*States parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in the case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.*"

Other declarations and recommendations by United Nations global conferences and summits like the Vancouver Declaration on Human Settlements (section III.8 and chapter II.A3, 1976), Habitat Agenda of the second United Nations Conference on

Human Settlements (UNCHS, Habitat II, 1996) and the UN General Assembly resolution adopting the Global Strategy for Shelter in the Year 2000 (Res. 43/181 in 1998, GSS 2000) likewise provide legal impetus on the Right to Adequate Housing.

General Comment No. 4 on the indicators of the Right to Adequate Housing adopted by the UN Committee on Economic, Social and Cultural Rights (UNCESCR), enumerates seven standards of housing adequacy, and provides the single most authoritative interpretation on the right to adequate housing under international human rights law. For housing to be adequate, it must, at a minimum, include the following: *security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy*.[15]

Paragraph 13 of General Comment No. 7 [16] on the Right Against Forced Evictions mandates that "*in cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality*."[17] More pointedly, the UNCESR in this Comment declares that "*forced evictions are prima facie incompatible with the provisions of the Covenant (CESCR), and can only be carried out in exceptional circumstances*".

Paragraph 15 of General Comment No. 7, which inspired the later provision in the Urban Development and Housing Act of 1992[18] (UDHA, particularly Section 28 thereof which provides for the just and humane eviction of the urban poor, outlines several procedural safeguards considered necessary to protect the human rights of individuals in the case of eviction:

> The Committee considers that the procedural protections which should be applied in relation to forced evictions include:
>
> a. an opportunity for **genuine consultation** with those affected;
>
> b. adequate and reasonable **notice** for all affected persons prior to the scheduled date of eviction;

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[15] Center on Housing Rights and Evictions (COHRE), Defining Housing Rights (citing General Comment No. 4), *available at* http://www.cohre.org/hrframe.htm.
[16] General Comment No. 7, International Covenant on Economic, Social and Cultural Rights (1997), *available at* http://www.cesr.org/ESCR/intlcovenant.htm.
[17] General Comment No. 7, ¶ 4, International Covenant on Economic, Social and Cultural Rights
[18] Republic Act No. 7279 (1994).

c. **information on the proposed evictions**, and where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;

d. especially where groups of people are involved, government officials or their **representatives** to be present during an eviction;

e. all persons carrying out the eviction to be properly **identified**;

f. **evictions not to take place in particularly bad weather or at night** unless the affected persons consent otherwise;

g. provision of legal remedies; and

h. provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts. (*Emphasis ours*).

Hence, these international covenants and conventions provide a solid legal basis for holding the government accountable to protect the full spectrum of the right to housing of everyone and for promoting national legislative enactments, policies and other initiatives that are in full compliance with these international standards which the Philippine government has freely accepted.

These Rights in the Philippine Context

In response to these various international sources, the urban poor and concerned non-government organizations (NGOs) successfully lobbied for constitutional and statutory translations of these twin rights.

Article XIII on Social Justice and Human Rights of the 1987 Constitution includes two (2) sections concerning urban land reform and housing:

Section 9 provides for the right to adequate housing and affirms the State's obligation to undertake "*a continuing program of urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlement areas*." The State is likewise mandated to respect the right of small property landowners.

Section 10 on the other hand speaks of the right against forced evictions when it recognizes the rights of urban and rural poor dwellers against forced evictions. It states that such persons "*shall not be evicted nor their dwellings demolished, except in accordance with law*

and in a just and humane manner." The law also states that "*no resettlement of urban and rural dwellers shall be undertaken without adequate consultation with them and the communities where they are to be relocated*."

However, implementing legislations are needed to transform these generally vague provisions on housing rights into concrete, practical and effective directives. Yet before we delve into the post-1987 Constitution statutes relative to adequate housing and the demolition protocol, a glimpse into the past is in order.

Past Forward

The Head of the Quezon City Urban Poor Affairs Office (UPAO), an astute legal scholar on the subject, aptly observes that:

> [t]he absence from the outset until 1986 of explicit constitutional guidelines on the subject appears to have accumulated over the years, and the promulgation of contradictory government policies were borne largely of political considerations and expediency. The sad truth is that the old statutes and administrative pronouncements continue to remain in force, confusing the bureaucratic implementation of the new rules and policies issued in response to changed conditions. What's sadder is there hasn't been any real legislative attempt to reconcile them.[19]

Indeed, aside from the ejectment and possession provisions abovementioned, the Civil Code likewise contain provisions on Nuisance that are being used to justify demolition of urban poor dwellings.[20] The same, like the ejectment and possessory provisions before it, need to be applied, or modified in the light of international instruments and Sections 9 and 10 of Article XIII of the 1987 Constitution.

In addition, the Revised Philippine Highway Act under Presidential Decree No. 17 (P.D. No. 17 and later amendments), the Anti-Squatting Decree, (P.D. No. 772, now repealed) as well as the National Building Code, (P.D. No. 1096 and amendments), are but some of the of the dated laws that are, to this day, erroneously being used to effect summary demolition of urban poor dwellings. Particularly on the inordinate utility of the building code provisions against urban poor dwellings, noteworthy is the opinion of then Minister Hipolito of the Public Works and Highways that once a builder is determined as a squatter, it is the anti-squatting laws, and not P.D. No. 1096, that should be enforced against them. [21] The Minister further opines that:

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[19] Remedios Catungal Balbin, The Law on Squatting and Demolition Annotated Compilation (1996).
[20] Civil Code arts. 694 to 707.
[21] Ministry Order No. 31, Series of 1983.

> It is an elementary rule that specific laws should be applied to appropriate cases. More importantly, the squatting problem is not a simple matter that can be completely solved by just resorting to the expediency of demolition. The problem transcends the socio-economic and political spheres. For this reason, the government has harnessed the resources and deviced the squatters with material needs, sites for resettlement to sustain their upliftment and well-being…xxx whenever structures subject of a complaint for demolition / condemnation pertains to a squatter, the case against him should be dismissed outright and the matter referred to the appropriate agency enforcing anti-squatting laws.

Consequently, these extant yet inconsistent laws need to be harmonized in relation with normative housing rights, the constitution and the subsequent but specific laws on housing and demolishing the urban poor.

An early attempt to address the larger issue of urban poverty and homelessness and to recognize the housing rights occurred during the Marcos era. Arguably the first major pro-urban poor legislation, the Urban Land Reform Decree, Presidential Decree No. 1517 (P.D. No. 1517) was enacted and became effective on June 11, 1978. Under P.D. No. 1517, tenant families occupying land classified as *urban land reform zones* (ULRZ) and *areas for priority development* (APDs) for at least ten years have the right of first refusal and are proscribed from being evicted. Despite its enactment, however, eviction of the homeless and underprivileged families who fell under the scope of the benefit of the decree continued. Thus, on January 23, 1986 Presidential Decree No. 2016 (P.D. No. 2016) was issued widening the scope as to beneficiaries on ULRZ and APDs, thereby including occupant families and not only tenants.

Unfortunately, the Supreme Court has been restrictive in its interpretation of these pro-urban poor decrees[22]. Jurisprudence states that the area subject of the right of first refusal and proscription on eviction must both be within the ULRZ and APDs[23], and that only legitimate tenants (despite expressed provision on "occupants" under P.D. No. 2016) fall within the scope of the Decrees.[24]

The Post-1987 Constitution Statutes: A Paradigm Shift

Going now to the post–1987 Constitution milieu, two (2) statutes stand out in providing flesh to the constitutional provisions on urban land and housing[25] and on the

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[22] Hans Leo J. Cacdac, *Judicial Interpretation of the Law on Just and Humane Evictions*, Unpublished Thesis, 2000 [hereinafter Cacdac, *Judicial Interpretation of the Law on Just and Humane Evictions*].
[23] *Bejer vs. Court of Appeals*, 169 SCRA 566 (1986).
[24] *Bermudez vs. IAC*, 143 SCRA 351 (1986); *Zanzibarian Residents Association vs. Municipality of Makati*, 135 SCRA 235 (1985).
[25] PHIL. CONST. art. XIII, § 9.

just and humane manner of demolition[26], both of which reflect the right to adequate housing and the corollary right against forced evictions.

Firstly, the Local Government Code of 1991[27] (LGC) mandates local government units to be self-reliant and to continue to discharge the functions and responsibilities devolved upon them from the national agencies and offices. Local government units shall likewise exercise such powers as are necessary, appropriate, and incidental to the efficient and effective provision of basic services, one of which is to provide a program for low-cost housing and other mass dwellings for constituents.[28]

Finally, the Urban Development and Housing Act of 1992[29] (UDHA), the statute that breathes life into the said international and constitutional mandates took effect on March 28, 1992. The UDHA provides for a comprehensive and continuing urban development and housing program detailing Section 9, Article XIII of the 1987 Constitution. Article IV of the Act details the mandate for local government units (LGUs) to implement a social housing program, specifically the conduct of:

(a) UDHA beneficiary listing;

(b) land inventory;

(c) land identification;

(d) land acquisition;

(e) land and housing disposition;

(f) balanced housing compliance; and

(g) local shelter planning integrated in city comprehensive land use plans (CLUPs).[30]

On the other hand, Section 28 of the UDHA provides for an eight-step demolition process that reflects the general proscription against demolitions in Section 10, Article XIII of the 1987 Constitution and institutionalizes as well the UN General Comment No. 7 provisions on just and humane protocol on demolition. To wit:

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[26] PHIL. CONST. art. XIII, § 10.
[27] Republic Act No. 7160 (1991).
[28] Local Government Code of 1991 § 17.
[29] Republic Act No. 7279 (1994).
[30] Republic Act No. 7279 § 16, 17, 7, 8, 9, 10, 11, 12, 18, & 39.

Sec. 28. Eviction and Demolition.- Eviction and demolition as a practice shall be discouraged. Eviction or demolition, however, may be allowed under the following situations:

a. When persons or entities occupy danger areas such as esteros, railroads ways, garbage dumps, riverbanks, shorelines, waterways, and other public places, sidewalks, roads, parks, and playgrounds;
b. When government infrastructure projects with available funding are to be implemented; or
c. When there is a court order for eviction and demolition.

In the execution of eviction or demolition orders involving underprivileged and homeless citizens, the following shall be mandatory:

1. Notice upon the affected persons or entities at least thirty (30) days before the date of eviction or demolition;
2. Adequate consultation on the matter of resettlement with the duly designated representatives of the families to be resettled and the affected communities of the areas where they are to be relocated;
3. Presence of local government officials or their representatives during eviction or demolition;
4. Proper identification of all persons taking part on the demolition;
5. Execution of eviction or demolition only during regular office hours from Mondays to Fridays and during good weather, unless the affected families consent otherwise;
6. No use of heavy equipment for demolition except for structures which are permanent and of concrete materials;
7. Proper uniforms for members of the Philippine National Police who shall occupy the first line of law enforcement and observe proper disturbance and control procedures; and
8. Adequate relocation, whether temporary or permanent; Provided, however, That in cases of eviction and demolition pursuant to a court order involving underprivileged and homeless citizens, relocation shall be undertaken by the local government unit concerned and the National Housing Authority with the assistance of other government agencies within forty-five (45) days from service of notice of final judgment by the court, after which period the said order shall be executed: Provided, further,

> That should relocation not be possible within the said period, financial assistance in the amount equivalent to the prevailing minimum daily wage multiplied by sixty days 60 days shall be extended to the affected families by the local government unit concerned. (*Emphasis ours*).

Unfortunately, this latter provision received a strict and therefore anti-poor interpretation from the judiciary.[31] Most court-ordered demolitions are executed without regard to the requirements under Section 28 of the UDHA.

The first case to reach the Supreme Court involving the UDHA was *Macasiano vs. National Housing Authority*[32]. As a consultant of the Department of Public works and Highways (DPWH), Police General Macasiano challenged the constitutionality of Sections 28 and 44 of the said law. He asserted that because of such provisions of the law, he "*[was] unable to continue the demolition of illegal structures which he assiduously and faithfully carried out in the past*". As a taxpayer, he alleged that "*he [had] a direct interest in seeing to it that public funds are properly and lawfully disbursed.*"

The Court, through Justice Davide, disposed of the case by invoking the basic principle in Political Law that before the Supreme Court may exercise its power of judicial review, the constitutional question must be "raised by the proper party." General Macasiano had not shown that he was vested with any authority to demolish obstructions and encroachments on properties of the public domain, much less, private lands. Likewise, General Macasiano did not claim to be an owner of an urban property whose enjoyment and use thereof will be affected by the challenged provisions of the UDHA. For lack of the so-called *locus standi*, the Court dismissed the case.[33]

However, despite the question of legal standing, the Court can waive this requirement on the basis of "transcendental importance", but not in this case. That urban poor concerns are of no "transcendental importance" could be an engaging lament. But just the same, *Macasiano vs. National Housing Authority* should still be claimed as a victory for advocates of constitutional, just and humane eviction. After all, the attacks launched by Gen. Macasiano (e.g. deprivation of property without due process of law and without compensation, and rewarding unlawful acts) were the stereotype objections to Section 28 of the UDHA. For Justice Davide to proclaim such attacks

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[31] Cacdac, *Judicial Interpretation of the Law on Just and Humane Evictions*.
[32] 224 SCRA 236 (1993).
[33] Cacdac, *Judicial Interpretation of the Law on Just and Humane Evictions*

were not "indubitable grounds" to declare Section 28 unconstitutional is in itself a strong statement for just and humane evictions.[34]

Banson vs. Court of Appeals[35] involves an ejectment case resolved in favor of the landowner. The urban poor occupants urged that P.D. 1517[36] and R.A. 7279[37] should apply. The Supreme Court practically ignored such a contention. Justice Quiason asserted that P.D. 1517 and R.A. 7279 did not apply because both laws require the urban poor dweller to be a "legitimate tenant" before its salient provisions can be applied. This is definitely plain legal error. The UDHA and Section 28 do not speak of "legitimate tenants" but "underprivileged and homeless citizens."

More judicial stumbling blocks can be seen in the case of *Galay vs. Court of Appeals,*[38] *Serapion vs. Court of Appeals,*[39] and Supreme Court En Banc Resolution dated 27 November 2001.

In *Galay vs. Court of Appeals,*[40] the Supreme Court, for the first time recognized Section 28 of the UDHA, particularly the rule on adequate relocation on court-ordered demolition.

The *Galay* case involved an ejectment suit. A certain Virginia Wong filed an ejectment suit against urban poor dwellers who illegally occupied her 405 sq. meter lot in Quezon City. The Metropolitan Trial Court ruled in favor of Wong and ordered the eviction the urban poor defendants. The RTC affirmed the decision, and the Court of Appeals dismissed the case on the basis of a technicality.

A writ of execution was issued by the MTC. In an attempt to prevent execution, the urban poor defendants filed an injunction case before the RTC, asserting necessary compliance with Section 28 of the UDHA. The RTC denied the petition for injunction. On the petition for certiorari, the Court of Appeals issued a writ of preliminary injunction to temporarily enjoin the ejectment of urban poor defendants. Wong filed a motion to lift the writ of preliminary injunction, contending that the People's Bureau of Quezon City had been notified, and that more than 45 days had lapsed since notice was effected. The Court of Appeals' decision, which was sustained by the Supreme Court, ordered

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[34] *Id*.
[35] 246 SCRA 42 (1995).
[36] Presidential Decree No. 1517 proclaimed urban land reform in the Philippines. Section 6 thereof granted legitimate tenants who have resided for ten (10) years or more in designated urban land reform zones a right of first refusal.
[37] Urban Development and Housing Act of 1992 § 28.
[38] 250 SCRA 629 (1995).
[39] 299 SCRA 689 (1998).
[40] 250 SCRA 629 (1995).

the People's Bureau to relocate the urban poor not later than October 30, 1994 (date of eviction) or if the relocation be not finished on or before the said date, the People's Bureau shall pay the petitioners a daily allowance for every day of delay but in no case shall such allowance last more than 60 days.

Justice Francisco in his ponencia disposed of the urban poor defendants assertion regarding Section 28 of the UDHA on the 45-day notice to the LGU/NHA rule for relocation and financial assistance with, ironically, a plain and strict interpretation of this provision. Since the 45-day period for the notice had already lapsed from the time the decision for ejectment became final and the CA ruling on the injunction, compliance with the same was already had.

Thus, while the case may be doctrinal as it succeeds in suggesting the mechanism where the LGU may be impleaded during the eviction proceedings, it dilutes the social justice intent when it strictly applied the provision resulting in the observation that a simple notice to the LGU or NHA (without the provision of relocation or financial assistance) shall suffice for compliance thereto.

Aside from invoking the UDHA, the urban poor defendants relied on the social justice provisions of the Constitution. To their plea, the Court responded:

> *[T]he policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. At best it may mitigate the penalty but certainly will not condone the offense. Compassion for the poor is an imperative of every human society but only when the recipient is not a rascal claiming an undeserved privilege.*

The reference to the urban poor defendants as "rascals" in the case should not be arbitrarily applied to the a vast number of cases involving the underprivileged and homeless citizens sought to be evicted by virtue of court orders for eviction. They should be differentiated from the professional squatters or "individuals or groups who occupy land without the express consent of the landowner and who have sufficient income for legitimate housing. The UDHA itself creates a glaring distinction between them."[41]

In terms of UDHA litigation, *Galay* succeeds in suggesting the mechanism within which the LGU and the NHA may be impleaded during eviction and demolition

[41] Cacdac, *Judicial Interpretation of the Law on Just and Humane Evictions*.

proceedings involving underprivileged and homeless citizens. It turns out that a simple notice to the LGU or the NHA will suffice. [42]

In *Serapion vs. Court of Appeals*[43], the urban poor defendants moved to recall a writ of execution for their eviction in the subject property, raising as their last line of defense the "guidelines for the eviction of urban poor and rural poor urban dwellers set forth in the Constitution and RA 7279, but the Court dismissed the same. On appeal of the main ejectment case before the RTC, however, the MTC judgment in favor of the landowner was reversed, in view of the three-year moratorium on evictions and demolitions under Section 44, particularly on the failure of the defendants to prove their program beneficiary status under Section 16 [44] of the UDHA.

Meanwhile, sometime in mid- 2001, the Presidential Commission for the Urban Poor wrote a letter request to the Supreme Court requesting for the issuance of a circular that directs first and second level courts to strictly comply with Section 28 of the UDHA, there being pervasive violations thereon particularly the notice to the LGU and NHA and the relocation requirement. The High Court responded through En Banc Resolution dated 27 November 2001 which in effect denies the Presidential Commission for the Urban Poor's (PCUP) request for the issuance of a Supreme Court Administrative Circular specifically on the lower court's compliance with Section 28 of the UDHA on the 45-day notice requirement to the LGU or NHA for the following reasons:

(a) the right granted under said law should be raised by the proper parties involved in or affected by eviction and demolition;

(b) the matter of compliance with said Section 28 involves factual issues which should be resolved by the trial court which rendered the judgment.

Thus, respondent informal settlers in ejectment cases need to raise their entitlement to notice and relocation benefits under Section 28 of UDHA by alleging and proving only their *underprivileged and homeless status* in the pleadings and in the proceedings.

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[42] *Id*.
[43] 299 SCRA 689 (1998).
[44] Urban Development and Housing Act of 1992 § 16 provides the criteria for local government unit social housing program beneficiary qualifications : Filipinos, underprivileged and homeless, landless, not professional squatters and members of squatting syndicates.

Government Attempts to Address Section 28 Implementation Gaps

The Executive - The government's attempt to abide by international covenants, constitutional and statutory mandate continues. After the effectivity of UDHA, several pronouncements were made by the executive department relative to compliance thereto. One of its recent directives was Executive Order No. 152, Series of 2002 (E.O. No. 152).

To give meaning to the constitutional mandate of Section 10, Article XIII on just and humane evictions and to ensure compliance with Section 28 of UDHA, President Gloria Macapagal Arroyo issued E. O. No. 152 on December 2, 2002, designating the Presidential Commission for the Urban Poor[45] (PCUP) as the sole clearing house for the conduct of demolition and eviction activities involving the homeless and the underprivileged citizens. In pursuit of this mandate, the PCUP shall monitor all evictions and demolitions, whether extrajudicial or court-ordered. As such, concerned departments, agencies, including local government units proposing to undertake demolition and eviction activities, are required to:

1. secure first from the PCUP Central office (in case of National Project) or PCUP Regional Office (in the case of local projects) the checklist, guidelines and compliance certificates on demolition and eviction prior to the actual implementation.

2. submit to the PCUP the completed checklist, attested to under oath by the proponent and indicating that: adequate consultation with affected families have already been undertaken; adequate resettlement site and relocation facilities are available; and provisions on pre-location (IRR, Sec. 28, UDHA) have been complied with.

Based on the completed checklist and subject to further verification, PCUP issue demolition and eviction compliance certificates or COC to propose demolitions and evictions involving the homeless and underprivileged citizens. The following charts show data on PCUP's monitoring and compliance certificate functions:

[45] Bureau under the Office of the President to serve as direct link with the Urban Poor, created by virtue of Executive Order No. 82, Series of 1992.

Cases issued by the PCUP with Certificate of Compliance (COC) under Section 28:

Year	No. of applications	Proponent outside MM MM	Total no. of families affected	No. of families affected given relocation	No. of families given fianancial assistance
2003	18	9 9	1,103	1,087	5
2004	5	1 4	---	---	---

Cases issued with COC under Section 27 and 30[46]

Year	No. of application	Proponent MM MM outside	No. of Affected Families
2003	6	1 5	21 (incomplete)
2004	4	1 4	---

PCUP denied 7 applications for COC in 2003, while acted on 11 cases involving E.O. No. 152 violations, most of them concern illegal demolitions and without either Certificate of Compliance issued from PCUP or clear relocation.

More importantly, the PCUP, from January to December 2003, monitored 93 court decisions[47] involving ejectment and demolition, from the first and second level courts all over the country. The 93 cases show that the following cities have had the corresponding number of ejectment cases sent to the PCUP for monitoring purposes: Quezon City-30; Caloocan-12; Pasay-8; Antipolo-8; Roxas City-6; Las Pinas-6; Rizal-5; Malabon-3; Paranaque-2; Manila-2. Other cases are from Gingoog City, Iriga City, Gumaca, Quezon, Laguna, Cebu City, Iriga City, Legazpi City, Marikina City , Valenzuela, and Pasig City.

All of these data, especially the 93 cases, should provide initial information to eventually validate the conclusion that most court-ordered demolitions occur without

[46] Urban Development and Housing Act of 1992 § 27 provides for administrative and criminal penalties against Professional Squatters and Squatting Syndicates as defined under the UDHA; § 30 pertains to new illegal structures on danger zones and public places.
[47] PCUP data on 2003 court-ordered demolitions pursuant to Executive Order No. 152, Series of 2002 and Office of Court Administrator Circular No. 72-2003.

compliance with the notice and relocation requirement of Section 28 of RA 7279. Yet, even if indeed notices were given by the courts to the LGUs well within the 45-day UDHA requirement, relocation for these underprivileged and homeless evictees remain a pipe dream. LGUs do not plan, much less program a socialized housing thrust as mandated by Article IV of the UDHA. There being no forward or proactive planning to meet shelter needs, no funding and resource allocation is provided. What is needed is for the LGUs to seriously look into the phenomena of urban poverty and homelessness and once and for all address the same through rational planning and implementation of the socialized housing program. Only in so doing, can government recognize and realize housing rights.

The Judiciary - Nevertheless, in a dialogue between the PCUP and the Office of the Court Administrator (OCA) concerning the court's non-compliance with paragraph two (2) of Section 28, Article VII of the UDHA, the OCA issued OCA Circular No. 72-2003 directing all judges, clerk of courts, and sheriffs of the first and second level courts to furnish the PCUP copies of decisions issued in cases involving the urban poor in order for the Commission to properly and effectively carry out its mandate by monitoring the conduct of demolitions. The PCUP shall also be furnished with the writs of eviction/ demolition in those cases within five (5) days prior to its intended implementation. This is in accordance with E.O. No. 152, series of 2002, which designates the PCUP as the sole clearing house and monitoring body relative to compliance with eviction and demolition provisions of the UDHA.

In sum, traditional property laws give property owners a more or less supreme right over their property, save the limitations set by the Constitution and statutes. One of these limitations, as discussed above is to afford a just and humane manner of eviction and demolition. However, these limitations are not enough to safeguard the rights of a growing marginalized sector — the homeless and underprivileged citizens. Executive implementation down to local government units, as well as judicial interpretation play a crucial role in affording them their basic human right to adequate housing and against forced evictions. Furthermore, it is in this that the legal profession, as instruments for the uplifting of the rule of law and the attainment of social justice, plays a crucial part.

Dating Tubig sa Lumang Tapayan
Should Labor Relations Law Be Transformed?

Hans Leo J. Cacdac[*]

Introduction

A typical bahay kubo had an earthen knee-tall jar used for storing cleaning water, called a "tapayan". The perennial sidekick of the bamboo ladder entrance, ubiquitous inhabitant of the back porch ("batalân"),[1] this implement accommodated greater amounts of water used to prepare for and maintain oneself in the pure and idyllic comforts of home. Obtaining water from the source and filling up "tapayans", whether done by an able member of the household or a persevering suitor undergoing "paninilbihan,"[2] stood for devotion and cooperation to a family. The "tapayan" itself became a "positive conduit"[3] for such virtues.

The act of "filling up" the law also intimates legislation as a positive conduit for Filipino norms and moral values. The congressional duty to "make law" compartmentalizes Filipino life insofar as it may be divided into different facets, eg. civil relations, commercial transactions, punishment of deviant behavior. Allocated areas are to be "filled" and encapsulated in laws that serve as a common understanding of rules in our ordered society.

Laws as vessels of rules are, of course, not immutable. As norms and values are shaped by internal and external changes, laws become vulnerable to repeal or reform. When developments hinder a proper understanding or enforcement of a law, then calls for legislative review arise.

Such is the backdrop for recent calls to amend the Labor Code of the Philippines. A 2002 General Survey on Labor Organizations by the Bureau of Labor and Employment

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[1] Whenever you come up a house, polite manners necessitate that you wash your muddled feet. Ergo, the water jar and the "tabó" are just the right implements. In addition, the attached back-porch "batalân" serves as the out-bathhouse where there are several "tapayans". Penelope V. Flores, Ph.D., *The Multifunctional Palayók*, MANILA BULLETIN USA, July 13-19, 1995.

[2] *Id.* "Tapayans" figured prominently in the old practice of "paninilbihan", a form of courtship where the suitor works and labors in the household of the maiden. In this exercise, words are hardly spoken; actual labor functions as the desired trait. Filling up "tapayans" was the means towards the ultimate objective.

[3] *Id.*

Statistics (BLES) indicates that respondents from 167 labor federations and 10 national labor centers want amendments pertaining to labor-only contracting (49%); lesser mandatory requirements for union registration (29.3%); restriction on the authority of the Secretary of Labor and Employment to assume or certify labor disputes (29.3%); mandatory requirements for establishments to employ a large proportion of regular workers (27.2%); and granting cooperative members the right to self-organization (23.9%).[4]

On the other hand, former Employers Confederation of the Philippines (ECOP) President Donald Dee speaks of an "urgent need to amend (the Labor Code) because the business environment is now different."[5] A manifesto drawn by various business groups pointed out that many "concepts and features which were orthodoxy at the time of (Labor Code) promulgation three decades ago… have now become archaic, anachronistic and rigid."[6] Hence, they call for more "flexibility to survive and compete in the global market with due regard to the promotion of decent work within the context of the Philippine labor market."[7]

Calls for amendments to the Labor Code have given rise to two proposed omnibus measures before the House of Representatives, namely House Bill Nos. 5996 and 6031. Insofar as these bills seek to amend the Book on Labor Relations in the Labor Code,[8] both measures submit line-by-line changes or modifications to existing provisions. Because of this detailed review approach, both measures substantially adhere to the basic framework of collective bargaining in Book V.

With the inclusion of Book V in the omnibus effort to review the Labor Code, the industrial relations system is the subject of scrutiny, rendering it important to consider socio-cultural, economic, political and environmental factors.[9]

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[4] HIGHLIGHTS OF THE 2002 GENERAL SURVEY ON LABOR ORGANIZATIONS, BUREAU OF LABOR AND EMPLOYMENT STATISTICS (BLES), April 2003.
[5] Max de Leon and Jonathan Vicente, *Labor Code in need of amendments, but …*, THE MANILA TIMES, May 1, 2003, accessed from <www.manilatimes.net>.
[6] MANIFESTO OF THE BUSINESS COMMUNITY ON THE BILLS ESTABLISHING A NEW LABOR CODE, August 9, 2003, downloaded from <www.philonline.com.ph>. Signatories to the manifesto include the ECOP, Philippine Chamber of Commerce and Industry, Philippine Exporters Confederation, Federation of Philippine Industries, Federation of Filipino Chinese Chambers of Commerce and Industry, Makati Business Club, Chinese Filipino Business Club, American Chamber of Commerce and Industry, Management Association of the Philippines, and the Motor Vehicles Parts and Manufacturers of the Philippines.
[7] *Id.*
[8] Book V.
[9] Maragtas A.V. Amante, Discussion Paper on a Fundamental Framework of industrial relations system and related legislation in the ASEAN, Presented at a Regional Policy Workshop, ASEAN Programme on Industrial Relations, Tokyo, Japan (April 2, 2003). "Industrial relations" concerns work processes and results of the employment relationship at the level of the workplace, the industry and society as a whole.

This paper presents the proposition that continued adherence to the primacy of collective bargaining in the "Labor Code for the 21st Century" sweeps the rug out of labor market and collective behavior assumptions that should form the basis of future labor-management relations. A detailed "line-by-line" review may mistake the forest for the trees, as it were, and miss the grand point of providing a truly reflective and responsive foundation for industrial peace.

Part I provides a "classical" framework of the institution of collective bargaining, established under the Industrial Peace Act of 1953 and maintained in the Labor Code of 1974. Part II is a summary of proposed amendments to current labor relations law through House Bill Nos. 5996 and 6031. Part III presents an emergent dynamic framework for labor relations under the 1987 Constitution. Part IV presents basic empirical data on the union and administrative machinery that maintain the institution of collective bargaining. Parts V and VI establish incongruities in affirming the primacy of collective bargaining under the classical framework vis-à-vis the emergent approach and basic empirical data. Part VII proposes a structural framework for the new Book on Labor Relations.

This endeavor is built around the premise that labor relations law should provide a positive conduit for the developmental aspirations of stakeholders in labor relations.

Delimitation of the Study

For purposes of this study, only portions seeking to amend Book V of the Labor Code in House of Representatives Bill Nos. 5996 and 6031 shall be discussed. Other matters involving overseas employment, working conditions, health and safety, and security of tenure are better addressed by pertinent agencies and the sectoral partners. The business community, for instance, has supported the provisions on apprenticeship and productivity gainsharing in the COCLE bill.[10] There will no be attempt to undermine such expressions of principled support.

I. THE DREAM OF PRIMACY: Revisiting Classical Foundations

A. Industrial Peace Act – Current State policy enunciated in Book V of the Labor Code proclaims the "*primacy* of collective bargaining" as a mode of settling disputes

[10] MANIFESTO, *supra* note 6.

between labor and management.[11] First introduced by the legislature in the Industrial Peace Act (IPA),[12] collective bargaining was meant to eliminate the causes of industrial unrest[13] and promote sound, stable industrial peace and the advancement of the general welfare, health and safety and the best interests of employers and employees.[14]

Pascual observed that the advent of collective bargaining was a clear departure from the governmental interventionist approach established under the Court of Industrial Relations Act,[15] where a Court of Industrial Relations (CIR) was clothed with the broad jurisdiction to compulsorily arbitrate questions or issues between labor and a labor union, labor union and management, and management and labor. With the enactment of the IPA, the power and authority of the CIR was diminished considerably and labor relations law in the Philippines moved into a period of autonomy.[16]

When the Conference Report from a joint congressional committee on disagreeing provisions returned to the Senate for consideration, Senator Primicias from Pangasinan boldly declared that the measure[17] practically liberated labor from the status of subjugation, and that the promotion of "really free labor unions" and the interests of the laboring class were legislatively enshrined.[18]

"Collective bargaining" essentially meant a process for labor and management to settle issues respecting terms and conditions of employment.[19] Within the framework created under the IPA, this economic relationship could only exist between a duly-selected or designated labor union or association "dealing with"[20] with the employer.[21] For this purpose, interference with the right to self-organization was considered an "unfair labor practice", the prevention of which was placed under the jurisdiction of the CIR.[22] And through the enumerated rights and conditions of union membership,[23] the IPA leaned heavily towards the promotion of responsible unionism.

Several reasons were invoked to explain the adoption of collective bargaining as an industrial relations policy in 1953. For instance, it is mentioned that powerful unions

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[11] Article 211 (a).
[12] REPUBLIC ACT NO. 875: AN ACT TO PROMOTE INDUSTRIAL PEACE AND FOR OTHER PURPOSES (1953).
[13] R.A. 875, SEC. 1 (a).
[14] R.A. 875, SEC. 1 (b).
[15] COMMONWEALTH ACT NO. 103 (1936).
[16] CRISOLITO PASCUAL, LABOR AND TENANCY RELATIONS LAW 18 (1966).
[17] The House of Representatives version was House Bill No. 825.
[18] RECORD OF THE SENATE 733 (May 5, 1953).
[19] R.A. 875, SEC. 1 (b).
[20] R.A. 875, SEC. 2 (e).
[21] PASCUAL, *supra* note 16, at 19.
[22] R.A. 875, SECS. 4 & 5.
[23] R.A. 875, SEC. 17.

thought they would get a better deal under a bilateral framework. Foreign employers supported the shift from compulsory arbitration because they began to realize the disadvantage of a foreign entity facing a Filipino labor union before a Filipino arbitrator.[24]

Calderon cited rising discontent, exposure of Filipino labor leaders to the concept of collective bargaining, the ILO conventions and American influence.[25]

Wurfel broadly attributed the shift to the interaction of economic, political and ideological forces.

> One of these forces is related to the rate of competing economic interests with the appearance of a sizeable group of entrepreneurial elite to challenge the predominant power position of the landed elite after the war. Since the elite maintained political and economic power, competition has also largely been limited among sub-groups of the elite. In this particular case, the landed elite, although somewhat disinterested in the type of industrial relations policy that should prevail, found it politically advantageous to support legislation designed to help urban workers. On the other hand, the urban enterpriser seeks to dislocate the rural power base of his political rivals by means of agrarian reform.[26]

A sobering observation by Ramos was his reference to a Philippine labor market characterized by an abundant supply of common labor "whose bargaining power is nil". He noted that under such circumstances trade unions did not possess the bargaining leverage to offset the apparent disadvantage of wage-setting under compulsory arbitration.[27]

B. The Labor Code of the Philippines – The enactment of Presidential Decree No. 442 in 1974 saw the codification of labor laws, with the essence of collective bargaining in the IPA transplanted to Book V of the Labor Code of the Philippines, under the title "Labor Relations". Azucena defines "labor relations" as the interaction between the employer and employees or their representatives, and the mechanism by which the standards and other terms and conditions of employment are negotiated, adjusted and enforced.[28] As in political democracy, the crux of labor relations is the process how rights and duties are exercised, how the agreements are reached, how differences are resolved, and how the relationship is enhanced.[29]

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[24] ELIAS RAMOS, DUALISTIC UNIONISM AND INDUSTRIAL RELATIONS 43 (1990).
[25] *Id.*
[26] *Id.* at 44.
[27] *Id.*
[28] II C.A. AZUCENA, THE LABOR CODE WITH COMMENTS AND CASES 8 (1999 ed.).
[29] *Id.*

Under Book V, free collective bargaining remained the centerpiece of the Philippine industrial relations system. Therefore, unions as they were known under the IPA remained under a framework that respected the workers' right to self-organization.[30] There are provisions on union registration,[31] rights and conditions of union membership,[32] unfair labor practices,[33] collective bargaining procedure,[34] and strikes and lockouts.[35]

In dispute settlement, the National Labor Relations Commission initially created under Presidential Decree No. 21 in 1972 was formally installed as the quasi-judicial compulsory arbitration arm,[36] alongside the Bureau of Labor Relations.[37]

Book V went through a series of amendatory pieces of legislation, culminating in the Herrera-Veloso Law of 1989.[38] State labor relations policy was substantially amended to include two salient approaches, i.e., the declared "primacy" of collective bargaining, and the participation of workers in decision and policy-making processes affecting their rights, duties and welfare. The latter concept of "workers' participation" could have been seen as a departure from the basic collective bargaining framework, but the legislature was serious in its insertion of the word "primacy" – indeed the amendments in 1989 even set to strengthen the institution of collective bargaining.[39]

II. BILLS OF CHANGE

A. Background – There have been two proposed measures in the House of Representatives that seek to amend Book V in its entirety, namely House Bill Nos. 5996 and 6031.

House Bill No. 6031 is principally authored by the Chair of the House Committee on Labor and Employment, Rep. Roseller F. Barinaga from Zamboanga del Norte. Rep.

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[30] BOOK V, TITLE V.
[31] BOOK V, TITLE IV, CHAPTER I.
[32] BOOK V, TITLE IV, CHAPTER II.
[33] BOOK V, TITLE VI.
[34] BOOK V, TITLE VII.
[35] BOOK V, TITLE VIII.
[36] BOOK V, TITLE II.
[37] BOOK V, TITLE III.
[38] REPUBLIC ACT NO. 6715 (1989): AN ACT TO EXTENT PROTECTION TO LABOR, STRENGTHEN THE CONSTITUTIONAL RIGHTS OF WORKERS TO SELF-ORGANIZATION, COLLECTIVE BARGAINING AND PEACEFUL CONCERTED ACTIVITIES, FOSTER INDUSTRIAL PEACE AND HARMONY, PROMOTE THE PREFERENTIAL USE OF VOLUNTARY MODES OF SETTLING LABOR DISPUTES, AND REORGANIZE THE NATIONAL LABOR RELATIONS COMMISSION, AMENDING FOR THESE PURPOSES CERTAIN PROVISIONS OF PRESIDENTIAL DECREE NO. 442, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES.
[39] ITEM 1 (B), BRIEFING PAPER ON R.A. 6715 (1989).

Barinaga explained that his bill was based on policy recommendations by a 1998-2001 congressional body (Congressional Commission on Labor [LABORCOM]), as well as the results of technical consultation meetings with stakeholders conducted by a second congressional body created from 2001-2003 (Congressional Oversight Committee on Labor and Employment [COCLE]).[40] For this reason, this bill is commonly known as the "COCLE Bill".

Rep. Barinaga noted that Book V amendments pertain to the area of labor relations, ensuring that workers the fullest possible exercise of their constitutional rights to self-organization, collective bargaining, peaceful concerted activities and the right to strike. It likewise seeks to provide speedy labor justice by strengthening the administrative machinery for the expeditious settlement of labor disputes.[41]

House Bill No. 5996, on the other hand, is principally authored by representatives from the party-list group Bayan Muna, namely Reps. Crispin Beltran, Satur Ocampo, and Liza Maza. Its authors have dubbed it as "an alternative labor code from the viewpoint of the workers." This measure includes provisions strengthening workers' trade union and democratic rights.[42]

B. State Policy – Both bills proclaim that the labor relations system for the 21st century shall continue to 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.[43]

While both measures likewise provide workers the opportunity to participate in policy and decision-making processes affecting their rights and benefits,[44] the labor relations systems maintained by HB Nos. 5996 and 6031 essentially adhere to collective bargaining as a primordial mode of settling disputes.

In resolving disputes between labor and management, both measures invoke the "principle of shared responsibility" in the 1987 Constitution,[45] but the Bayan Muna

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[40] House Committee of Labor and Employment, *Measures establishing new labor code discussed*,Committee News (August 13, 2003), downloaded from <www.congress.gov.ph>.
[41] *Id.*
[42] *Id.*
[43] HB 5996, ART. 167 (a); HB 6031, ART. 213 (a).
[44] HB 5996, ART. 167 (b); HB 6031, ART. 213 (b).
[45] 1987 CONST., art. XIII, sec. 3 (3RD paragraph): 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.

version proposes "workers cannot be forced or coerced into settling disputes through mere conciliation when their just demands are not satisfactorily met."[46]

An innovation introduced by both bills is the inclusion of tripartism in the provisions on State policy.[47] Both empower the Secretary of Labor and Employment to call for national, regional, or industrial conferences of representatives from government, workers, and employers to adopt voluntary codes to promote industrial peace.

C. Salient Features – As stated, both measures generally maintain the primacy of collective bargaining in labor relations, traversing provisions on registration and cancellation, rights and conditions of union membership, unfair labor practices, collective bargaining, representation issues, grievance machinery, and strikes and lockouts.

In essence, substantial differences arise in the field of eligibility of managerial employees to form unions, failure to submit reportorial requirements as a ground to cancel union registration, criminalization of unfair labor practices, nature of conciliation and grievance machinery proceedings, and procedures in strikes or lockouts. The Bayan Muna version generally favors greater union coverage, punitive anti-union measures, compulsory grievance and conciliation efforts, and a less-regulated exercise of the right to strike. The COCLE measure proposes a more qualified approach with respect to these matters.

Another interesting difference between the two bills is the treatment of the National Labor Relations Commission (NLRC). The COCLE version is replete with provisions to strengthen the NLRC.[48] The Bayan Muna version, however, is silent on the NLRC, though there are numerous references to compulsory arbitration.

III. DYNAMIC FOUNDATIONS

A. "Afford Protection to Labor Plus" Clause – A critical look into House Bill Nos. 5996 and 6031 (and any similar bill that may be filed in the future) should begin with reference to the supreme manifestation of the sovereign will of the Filipino people – the 1987 Constitution.

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[46] HB 5996, ART. 167 (c).
[47] HB 5996, ART. 168-A; HB 6031, ART. 214.
[48] Among the proposed changes include an increase in Commission membership, non-confirmation by the Commission on Appointments, jurisdiction over money claims arising from employer-employee relations involving an amount exceeding fifty thousand pesos (P50,000.00).

Section 3, Article XIII of the 1987 Constitution reads:

> 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 on investments, and to expansion and growth.

The "afford protection to labor" clause was transplanted from the 1935 and 1973 Constitutions. This mandate underscores the need to exercise the police power of the State and enact measures to protect the working class. But what is significant with the latest version of the clause is its elaboration on such protective measures. "Afford protection to labor plus" encompasses the collective bargaining framework for the organized workforce, as well as collective negotiation, enhancement of working conditions, and a participatory and representational framework in the unorganized segment. The Chair of the Committee on Social Justice in the 1986 Constitutional Commission, Ma. Teresa F. Nieva, alluded to 21 million Filipinos then comprising the labor force, inclusive of unionized workers estimated at 5.1 percent of the total number. She emphasized that those in the non-unionized sector did not enjoy the rights of organized labor.[49]

B. Collective Bargaining and Negotiation and Participation in Policy and Decision-Making Processes – The immediate reference to collective bargaining and the rights to self-organization and peaceful concerted activities after the afford protection to labor clause are indicative of a recognition of collective bargaining as a mode of labor-management relations at the enterprise level. But to the term "collective bargaining" was appended the concept of "collective negotiations". Commissioner Nieva explained this innovation:

[49] II RECORD OF THE CONSTITUTIONAL COMMISSION 607 (August 2, 1986).

We have also added a new concept in Section 4, not only of collective bargaining but also collective negotiations which would extend the right to bargain for the protection of the rights of the unorganized sector …[50]

During Consitutional Commission deliberations on the proposed expanded "afforded protection to labor" clause, a healthy exchange transpired between Commissioners Nieva, Foz and Aquino, as follows:

MR. FOZ. … I have another question. Section 4, line 4 says: "collective bargaining and negotiations"? Do they amount to the same thing?

MS. NIEVA. Yes. Collective negotiations are especially intended for the great majority of workers who are not covered by CBAs. We feel that there are different ways of negotiating for the protection of their rights. Generally, when we say collective bargaining, we refer to those that are unionized and covered by CBAs. As mentioned here, those constitute only about 3.1 percent of the total labor force of the country, so we felt that there was to be worked out some other way of negotiating for the rights of these greater majority of people who are not covered by CBAs.

MR. FOZ. In other words, in a private firm for instance, the employees may group among themselves or organize an association short of calling their association a labor union?

MS. NIEVA. Yes, there are different ways.

MR. FOZ. They can negotiate with management as to terms and conditions of employment.

MS. NIEVA. That is right.

MR. FOZ. Short of organizing themselves into a formal labor union or organization.

MS. NIEVA. These may be preliminary steps that they may take.

MR. FOZ. I recall a provision under our existing Labor Code precisely encouraging, without making it mandatory, the formation of what it calls "employees committees." These are voluntary groups of employees to be set up within different companies. The only unfortunate thing about that provision is that it gives management the initiative to form such employees committees. But then, perhaps the law involving the matter could provide that the initiative should come from the employees themselves to avoid any management influence in the running of such committees.

MS. NIEVA. That is right. This can be left again to the legislature to work out.

MS. AQUINO. May I clarify the concept of collective negotiation. It is an innovative concept introduced to us by the Institute of Labor and Management Relations

[50] *Id.*

> of U.P. The specific concern of this concept is, first to address the difficulties of the non-unionized employees and laborers and second, that of the government employees. These two groups would suffer the same difficulty in not having a specific collective bargaining agent to represent them. So the process of collective negotiation is to offset that disadvantage already. The idea is to recognize it and provide a constitutional mandate for the process of collective negotiation.
>
> MR. FOZ. Thank you.

The second half of the equation is the phrase "participate in policy and decision-making processes affecting their rights and benefits as may be provided by law." When asked about the manner in which "participative rights" embodied in this more elaborate version of the "afford protection to labor" clause shall be carried out, Commissioner Nieva asserted that, aside form collective bargaining, other methods take various forms of labor-management cooperation as in other countries.[51] She added that specific modes shall be provided by the legislature, along with different companies who can work out different ways of using voluntary methods of negotiations.[52] As Commissioner Aquino summarized:

> One may notice that on line 4, page 2, there is a provision for collective bargaining and negotiations. The concern here is to provide for unorganized workers. So, this is the forum within which we can contemplate statutory implementation of measures that would accommodate the need of ununionized workers in their collective negotiation with management.[53]

The basis of this constitutional participative approach was revealed in the following exchange:

> MR. GARCIA. If I may add, the reason why guaranteeing the rights of workers to self-organization is important is, one of its consequences is that once workers get organized, the possibility of participation becomes more real and effective. And I think that recognition is rather crucial in this entire arrangement.
>
> MR. ROMULO. Fine. So, the base is really the first part of the sentence; that is, self-organization.

In the classical sense of labor relations under the collective bargaining framework, the right to self-organization was exercised to form unions for purposes of collective bargaining. Under the emergent participative approach, the right to self-organization is invoked to promote labor-management cooperation in non-unionized establishments.

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[51] II RECORD, *supra* note 51, at 640 (August 4, 1986).
[52] *Id.*
[53] *Id.*

But Commissioner Aquino appeared to have balked in further discussions on participation in policy and decision-making processes when issues on mandatory profit-sharing and worker representation in corporate boards of directors were raised. Initially she clarified that there was no intention to provide for such mandatory profit-sharing;[54] Commissioner Monsod later stated that the participatory approach did not mean mandatory representation of workers in corporate boards of directors.[55]

Four days after Commissioner Monsod's clarification, however, the matter on board representation was again raised by Commissioner Regalado.[56] Commissioner Ople responded by explaining the works councils framework in Europe. Commissioner Quesada elaborated on three corporate levels of decision making where employees could participate. Commissioner Villegas pointed out the existence of employer-employee councils that discuss workers' issues in a "nonconfrontational" manner.[57] Commissioner Romulo inquired as to whether "participation in policy and decision-making processes" shall be rendered compulsory in the Constitution. The response from the representative of the Committee on Social Justice was as follows:

> MS. AQUINO. First, we shall address the clarification of the position of the Committee on the matter of participation in policy- and decision-making. Some of the Commissioners may have perceived a measure of difference and conflict in the interpretation of the Committee, so this now will be our submission in interpreting the phrase "participation in policy and decision-making processes affecting their interests." What is it? What it is in terms of processes has been previously defined in response to the query of Commissioner Romulo. We were referring to the grievance procedures, conciliation proceedings, voluntary modes of settling labor disputes and negotiations in free collective bargaining agreement. What it is, pertaining to the scope and substance, would now be the rights and benefits of workers. In other words, the focus of participation is now introverted to the rights and benefits of the workers. What it is not refers to the practice in the industrialized nations in Europe and in Japan referring to codetermination which pertains to charting of corporate programs and policies.
>
> However, the other matters mentioned by Commissioner Quesada which she just read for purposes of informing the Commission are already rightfully covered in the negotiations of the collective bargaining agreement. So just to eliminate the confusion, these are the parameters contemplated by "participation in policy and decision-making processes."
>
> The Committee is proposing an amendment to delete the word "interest" on the first page and substitute the words RIGHTS AND BENEFITS if only to clarify the intention of the Committee on this matter.[58]

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[54] *Id.* at 609 (August 2, 1986).
[55] *Id.* at 615.
[56] *Id.* at 757 (August 6, 1986).
[57] *Id.* at 758.
[58] *Id.* 759-60.

Commissioner Aquino clarified once and for all that "codetermination" in the context of participation of workers in corporate planning, the charting of corporate management and acquisition of property was not in the mind of the Committee. "Participation in policy and decision-making processes" meant grievance procedures, conciliation proceedings, voluntary modes of settling labor disputes and negotiations in free collective bargaining.[59] This may have severely blunted the role of labor-management cooperation in the expanded "afford protection to labor " clause, but consider this subsequent exchange:

> MR. FOZ. The Commissioner does not foresee the passage of a law under this provision which would allow workers to be represented in the board insofar as certain matters are involved?
>
> MS. AQUINO. We envision that as the evolution of a process but not arising from a compulsory mandate from the Constitution.
>
> MR. FOZ. But a law may be passed?
>
> MS. AQUINO. Congress has the inherent right to pass legislation.
>
> MR. FOZ. Thank you.[60]

Even prior to voting, Commissioner Foz raised the apprehension that curtailment of the participatory approach would "not provide for anything new", given Commissioner Aquino's restrictive analysis.[61] Bishop Bacani, however, reiterated the evolutionary nature of the workers' right to participation, leading towards mandatory workers' representation in corporate planning and management.[62]

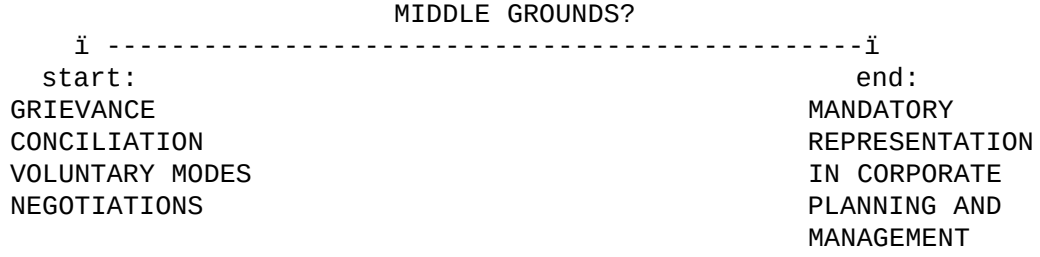
What can certainly be gleaned from above-stated excerpts are the following: (1) the balanced approach towards collective bargaining *and* negotiation; (2) concern over representation of employees in non-unionized enterprises; (3) a participatory and representational framework to be designed by the legislature, in view of the addition of the phrase "as may be provided by law"; and (4) expansion or evolution of the participatory and representational framework "as may be provided by law".

While the framers of the 1987 Constitution envisioned mandatory workers' representation in corporate planning and management as the pinnacle of participation and collective negotiation, has labor relations evolved from a participatory approach

[59] *Id.*
[60] *Id.* at 760.
[61] *Id.* at 769.
[62] *Id.*

involving grievance machinery and other voluntary modes of settling disputes to a "middle ground" based on an institutionalized participatory and representational framework? Figure 1 illustrates the starting and finishing points of the framers' participatory and representational framework. If we have not arrived at a point where we can give the workers a mandatory right to be represented in boards of directors or corporate planning and management, is it possible to seek these middle grounds of workers' participation and representation?

FIGURE 1. SPECTRUM OF PARTICIPATION AND REPRESENTATION
AS DETERMINED BY THE CONSITUTIONAL FRAMERS



Another interpretation, and by no means lesser in nature, is to expand Commissioner Aquino's explanation of the participatory and representative framework. Hence, the areas of "grievance", "conciliation", "voluntary modes of settling labor disputes" and "negotiations in free collective bargaining" could be given a broader context to encompass all other methods of labor-management cooperation.

In all cases, the legislature must determine the occurrence of an evolutionary process, and calibrate the current scope of the constitutional participatory and representational framework. These constitute the dynamism of the foundations of our current labor relations system.

C. Legislative Response – As stated, Congress responded by including concepts of "collective bargaining and negotiation" and the participative approach ("participation of workers in policy and decision-making processes affecting their rights and benefits") in the enumeration of State policies in labor relations. Workplace cooperation in non-unionized establishments received attention through the inclusion of voluntary formation of labor-management committees.[63] Nevertheless, collective bargaining without a doubt still stood as the dominant statutory mode of labor-management relations.

[63] R.A. 6715, SEC. 33: Paragraphs (a), (b), (c), (f), (h) and (i) of Article 277 of the same Code, as amended, is further amended to read as follows: … (h) In establishments where no legitimate labor organization exists, labor-management committees may be formed voluntarily by workers and employers for the purpose of promoting industrial peace. The Department of Labor and Employment shall endeavor to enlighten and educate the workers and employers on their rights and responsibilities through labor education with emphasis on the policy thrusts of this Code.

IV. THE REALITY OF NON-PRIMACY

A. Union Density and CBA Coverage – The face of collective bargaining is shaped in terms of union density and coverage of collective bargaining agreements. Figure 2 shows the number of labor unions in the country.

FIGURE 2 ñ LABOR ORGANIZATIONS (as of September 2003)

KIND	NUMBER	MEMBERSHIP
Federations/Labor Centers	180	-
Private Sector Unions Independent/Chartered Locals)	10,214	3,698,000
TOTAL	10,574	-

Source: Factbook on Labor and Employment, Bureau of Labor and Employment Statistics

Figure 3 shows current CBA coverage:

FIGURE 3 ñ CBA COVERAGE (as of September 2003)

Number of collective bargaining agreements	2,770
Workers covered by CBAs	549,000

Source: Factbook on Labor and Employment, Bureau of Labor and Employment Statistics

Union and CBA coverage appear to be paltry amounts, but when taken in the light of data on the Philippine labor force, a different picture emerges. Figure 4 is a menu of union density indicators:

FIGURE 4 ñ UNION DENSITY AND CBA COVERAGE INDICATORS

DENSITY IN TERMS OF:	DENSITY (CBA COVERAGE)
Wage and salary workers	22.98 (3.41)
Non-agricultural labor force	17.86 (2.65)
Employed labor force	12.39 (1.84)
Labor force	10.81 (1.60)

With wage and salary workers numbering 16,089,000,[64] union density is at 22.98% of the formal sector. With a labor force of 34,206,000,[65] union density is at 10.81%. With an employed labor force of 29,858,000,[66] union density is at 12.39%. With 20,701,000 members of the non-agricultural labor force,[67] union density is at 17.86%.

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[64] FACTBOOK ON LABOR AND EMPLOYMENT, BUREAU OF LABOR AND EMPLOYMENT STATISTICS 3 (as of September 2003). Data on wage and salary workers were released by the National Statistics Office (NSO) in July 2003.
[65] *Id.*
[66] *Id.*
[67] The number was computed by subtracting the number of workers in the agriculture, hunting, and forestry industry (9,157,000) from the number of employed persons (29,858,000). FACTBOOK, *supra* note 66, at 3.

10,214 unions and 2,770 CBAs reveals a union to CBA ratio of 4:1,[68] 14.85% of union members are covered by a collective agreement. This means only one of seven union members is covered by a CBA.[69] Bitonio surmised that these figures tend to reinforce two key inferences.

> One is that inactive and minority unions are accumulating. The other is that enterprise bargaining units are characterized by a multiplicity of unions, giving rise to possible problems of multiple membership and inter-union rivalries.[70]

All told, a greater number of Filipino workers are not union members. An even greater number are not covered by any collective bargaining agreement. Approximately 26,160,000 working Filipino men and women are not covered by the collective bargaining framework under the Labor Code.

In addition, union organizing was also most prevalent in industries that do not have the greater share in the number of employed persons. Figure 5 presents union density by industry group and the number of employed persons per industry:

FIGURE 5 ñ UNION DENSITY BY INDUSTRY (as of April 2003)

INDUSTRY	UNION DENSITY PCT	EMPLOYED PERSONS SHARE
Agriculture, Hunting and Forestry	4.89	30.7
Fishing	1.71	4.1
Mining and Quarrying	32.66	0.4
Manufacturing	35.06	10.1
Electricity, Gas and Water Supply	28.32	0.3
Construction	1.16	5.7
Wholesale and Retail Trade, Repair of Motor Vehicles, Motorcycles, and Personal and Household Goods	4.37	18.3
Hotel and Restaurant	7.28	2.6
Transport, Storage and Communication	14.90	7.9
Financial Intermediation	15.21	1.0
Real Estate, Renting and Business	8.88	2.4
Education	13.70	2.9
Health and Social Work	44.14	1.2
Other Community, Social and Personal Service	3.07	2.7

Source: Bureau of Labor Relations and Current Labor Statistics (BLES)
National Statistics Office (NSO)

[68] This figure has been rounded-off. The exact quotient is 3.6874.
[69] This figure has been rounded-off. The exact quotient is 6.7359.
[70] Benedicto Ernesto R. Bitonio Jr., *Unions on the Brink: Issues, Challenges and Choices Facing the Philippine Labor Movement in the 21st Century*, PHILIPPINE INDUSTRIAL RELATIONS FOR THE 21ST CENTURY: EMERGING ISSUES, CHALLENGES AND STRATEGIES 128 (2000).

The most highly unionized sectors are the health and social work, manufacturing, mining and quarrying, and electricity, gas and water supply industries. But organizing is wanting in sectors where most Filipinos are employed, namely in the agricultural and wholesale and retail trade, repair of motor vehicles, motorcycles and personal and household goods sectors. This gains more significance in the light of the fact that employees in wholesale and retail trade represent one of the lowest-ranked sectors in terms of compensation per employee in the first quarters of 2002 and 2003.[71]

Be that as it may, union density in the Philippines remains one of the highest in Southeast Asia. Singapore with the highest per capita gross domestic product appears to be the most unionized country in the region.

B. Union and CBA Coverage Growth – Growth rates in terms of unionization and CBA coverage reveal a bleaker collective bargaining picture. In terms of union and CBA coverage growth over the years, Figure 6 shows union growth rates over the last seven years:

FIGURE 6 ñ UNION GROWTH RATES

YEAR	NUMBER	GROWTH RATE	MEMBERS(000)	GROWTH RATE
1995	7882	8.36	3587	2.16
1996	8248	4.64	3611	0.67
1997	8822	6.96	3635	0.66
1998	9374	6.26	3687	1.43
1999	9850	5.08	3731	1.19
2000	10296	4.53	3788	1.53
2001	10924	6.10	3850	1.64
2002	11365	4.04	3917	1.74
July 2003	11601	2.08	3943	0.66

Source: Bureau of Labor and Employment Statistics

The number of unions have increased at an average of 6.78% per year from 1995 to July 2003. The number of members organized, however, only have an average eight-year growth rate of 1.30% per year. As to number of registered unions per year, Figure 7 shows a list of averages from 1975 to June 2003.

[71] FACTBOOK, *supra* note 66, at 13.

FIGURE 7 ñ AVERAGES OF REGISTERED UNIONS

YEARS	NUMBER
1975-1979	173
1980-1984	167
1985-1989	428
1990-1994	578
1995-1999	409
2000-June 2003	378

Source: Bureau of Labor and Employment Statistics

There is a serious decline in unionization over the last eight years. The growth rates during this period bottomed at an all-time post-Martial Law low. The last time union growth rates had been this dismal was between 1975-1979, when negative rates were registered under a regime that suppressed workers' political rights.

In the same manner, the average of 378 unions registered from 2000 to June 2003 is matched only by low numbers tallied during the Marcos era. Outside of Martial Law figures, the only other time when union registration went below 378 over a four- to five-year period was before the enactment of the Industrial Peace Act in 1953.[72]

The numbers are even more dismal in terms of members covered by unions registered. Seven of the last fourteen years have seen negative rates in terms of members under newly-registered unions. This indicates a patchy record relative to the number of workers organized on a yearly basis. Figure 8 illustrates this declining trend.

FIGURE 8 ñ WORKERS ORGANIZED PER YEAR

YEAR	NUMBER OF WORKERS ORGANIZED	PCT CHANGE
1990	74,453	-4.44
1991	61,417	-17.51
1992	45,511	-25.90
1993	58,385	28.29
1994	69,862	19.66
1995	77,348	10.72
1996	33,738	-56.38
1997	28,671	-15.02
1998	34,919	21.79
1999	29,403	-15.80
2000	30,676	4.33
2001	55,533	81.03
2002	59,502	7.15
June 2003	19,524	-67.19

Source: Bureau of Labor and Employment Statistics

[72] Union registration data between 1946-1974 were culled from LEOPOLDO J. DEJILLAS, TRADE UNION BEHAVIOR IN THE PHILIPPINES 1946-1990 32 (1994). This table involves private *and* public sector union registration. Year-end 2003 data are

Bitonio maintained that the slackening growth rate in union membership may be due to persistent patterns in the Philippine labor market. He observed that the growth of the informal sector and members of the "atypical" labor force (part-time workers, workers covered by flexible employment arrangements, and workers employed in small enterprises with less than ten employees) have effectively excluded a great number of workers from collective bargaining.[73] Another viable explanation could be the number of workers kept out of the employed workforce altogether. As of July 2003, the army of the 4,348,000 unemployed[74] has hogtied the Philippines to a double-digit unemployment scenario (12.7%), the highest in Asia with Sri Lanka a far second at 9.2%.[75]

Unions also do not fare well in the "more reliable gauge" of their strength, namely the ability to conclude collective bargaining agreements and the number of workers covered by such agreements.[76] Figure 9 shows CBA coverage growth rates from 1995 to June 2003:

FIGURE 9 ñ CBA COVERAGE GROWTH RATES

YEAR	NUMBER	GROWTH RATE	MEMBERS (000)	GROWTH RATE
1995	3264	-27.42	364	-31.58
1996	3398	4.11	411	12.91
1997	2987	-12.10	525	27.94
1998	3106	3.98	551	4.95
1999	2956	-4.83	529	-3.99
2000	2687	-9.10	484	-8.51
2001	2518	-6.29	462	-4.55
2002	2700	7.23	528	14.29
June 2003	2770	2.59	529	3.98

Source: Bureau of Labor and Employment Statistics

Growth rates in terms of CBAs registered from 1995 to June 2003 averaged -4.64% per year. In terms of membership coverage, average growth over the nine-year period was 1.71% per year.

The negative growth rate in CBA registration from 1995 to June 2003 is the lowest ever since the Labor Code was enacted in 1974. The same is true with the growth rate on CBA membership coverage. Figure 10 indicates CBA registration from 1975 to June 2003.

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projected, based on June, July or September 2003 statistics.
[73] Bitonio, *supra* note 72, at 135.
[74] FACTBOOK, *supra* note 66, at 2.
[75] *Id.* at 23.
[76] Bitonio, *supra* note 72,at 132.

FIGURE 10 ñ AVERAGES OF REGISTERED CBAs

YEARS	NUMBER
1975-1979	772
1980-1984	850
1985-1989	1396
1990-1994	1346
1995-1999	637
2000-June 2003	409

Source: Bureau of Labor and Employment Statistics
Bureau of Labor Relations

Once again, raw numbers in terms of CBA registration have reached an all-time Labor Code low.

C. Subjects of Collective Bargaining: Wages and Security of Tenure – The law on collective bargaining defines the duty to bargain collectively as

> the performance of a mutual obligation to meet and convene promptly and expeditiously in good faith for the purpose of negotiating an agreement with respect to wages, hours of work and all other terms and conditions of employment, including proposals for adjusting any grievances or questions arising under such agreement executing a contract incorporating such agreements if requested by either party but such duty does not compel any party to agree to a proposal or to make any concession.[77]

The statutory subjects of bargaining are mainly wages, hours of work, and all other terms and conditions of employment, including proposals for adjusting grievances or questions arising under such an agreement. Azucena enumerates matters that are generally considered mandatory subjects of bargaining: (1) wages and other types of compensation; (2) working hours and working days, including work shifts; (3) vacations and holidays; (4) bonuses; (5) pensions and retirement plans; (6) seniority; (7) transfer; (8) layoffs; (9) employee workloads; (10) work rules and regulations; (11) rent of company houses; and (12) union security arrangements. [78]

A survey of 155 collective bargaining agreements conducted by Professor Divina Edralin of De La Salle University revealed that subjects of bargaining could commonly be divided into economic and political issues.[79] The economic issues consisted of the following:

[77] BOOK V, TITLE VII, ART. 252.
[78] AZUCENA, *supra* note 30, at 275.
[79] DIVINA M. EDRALIN, COLLECTIVE BARGAINING IN THE PHILIPPINES 185 (2003).

> (1) Salaries and wages, which includes provisions concerning across-the-board wage increase and premium payment for time worked like overtime, and night differential; (2) Job and wage scales, which includes the number of job levels, base rate of lowest level, and wage gaps; (3) Health and safety benefits, including provisions on medical and dental clinics, emergency, medical material or medicine, annual general check-up, group life and accident insurance, hospitalization, and sleeping quarters/washroom/lockers, etc.; (4) Leaves, including bereavement leave, birthday leave, emergency leave, maternity and paternity leaves, sick leaves, vacation leaves and special leaves; (5) Post employment benefits such as retirement, separation and disability pay; and (6) Other benefits, which are either monetary (e.g. Christmas/year-end bonus, mid-year bonus, service/longevity awards, no-absence incentives, service charge distribution, burial assistance, and signing bonus) non-monetary (e.g. rice subsidies, free uniforms, free meals, Christmas party, training and development of employees) benefits.[80]

The political issues in CBAs consisted of the following:

> (1) union recognition/scope and coverage; (2) union security; (3) union rights and privileges; (4) job security/security of tenure; (5) employee discipline; (6) promotions and transfers; (7) hours of work; (8) grievance machinery; (9) labor-management relationship, including provisions on Labor-Management Committee/Council and strikes/lockouts; and (10) other provisions concerning the effectivity, validity and implementation of the contract.[81]

It was observed that 94% of CBAs in the survey stipulated an across-the-board increase either on a daily (40%) or monthly (60%) basis for a period of two to three years.[82]

For daily wage increases, the lowest minimum increase was P0.67 in the hotel industry, with the biggest minimum rate at P24.00 from the mining and quarrying sector. The least daily maximum increase was at P4.00 from construction, while the highest daily maximum wage increase is P70.00 from the manufacturing sector.[83]

In monthly increases, the lowest minimum amount was P20.90 from the manufacturing sector. The biggest minimum rate was P1,795.00 from the electricity, water, and utilities group. The least monthly maximum increase was P500.00 in wholesale and retail trade and transportation sectors. The highest monthly maximum wage increase was P2,600.00 from the communication industry.[84]

Bitonio lamented that collective bargaining does not set the benchmark for wages at particular occupational categories.

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[80] *Id.*
[81] *Id.* at 216.
[82] *Id.* at 186.
[83] *Id.*
[84] *Id.*

> The "wage leader" as far as most enterprises are concerned is the minimum wage fixing machinery of the State. The minimum entry-level pay for most enterprises is the minimum wage fixed by the wage boards. A common strategy is for unions to use minimum wage orders as leverage for their collective bargaining demands. Some wage orders in fact mandate higher increases than CBA anniversary increases distorting enterprise-level wage structures. In this sense, the results of minimum wage-fixing tend to overlap with, if not render academic, collective bargaining goals and outcomes.[85]

Federation and labor center respondents to the 2002 General Survey of Labor Organizations, however, continued to sustain collective bargaining as the best method of determining wages.[86]

Collective bargaining also has not been the proven venue for discussing pertinent concerns of the labor movement. In the 2002 General Survey of Labor Organizations, contractualization was the top issue raised by federation and labor center respondents.[87] A considerable number (58%) felt that contractualization undermines workers' security of tenure.[88] Flexibility was the issue for 51.1% of the respondents, with more than half explaining that this phenomenon poses a threat to the security of tenure of workers.[89]

The 155-CBA survey conducted by Professor Edralin, however, reveals that only 68% of CBAs contained stipulations on job security. Only 21% squarely dealt with a prohibition against labor-only contracting.[90] Compared to usual political subjects of bargaining such as bargaining unit coverage and check-off provisions, security of tenure is not a major issue on the negotiating table. The Supreme Court has, in fact, ruled that the matter of whether to farm out certain aspects of company operations could be not be stipulated in a CBA arbitral award, as it is within managerial prerogative and does not fall within the ambit of the "participate in policy- and decision-making processes" clause in the Constitution and the Labor Code.[91]

D. So Atypical – A common provision with regard to union recognition or scope of coverage in collective bargaining agreements appears as follows:

> All regular rank-and-file employees excluding: temporary employees, supervisors, managers and other senior officers, executive secretaries performing highly technical and primarily confidential work.[92]

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[85] Bitonio, *supra* note 72, at 140.
[86] HIGHLIGHTS OF THE 2002 GENERAL SURVEY, *supra* note 4.
[87] *Id.* The bulk (92.4%) signified strong opposition to contractualization.
[88] *Id.* Only five labor organizations responded favorably to the issue.
[89] *Id.*
[90] EDRALIN, *supra* note 81, at 217-18.
[91] MERALCO vs. Secretary of Labor, G.R. No. 127598, 27 January 1999, 302 SCRA 173.
[92] EDRALIN, *supra* note 81, at 226.

This presents a dilemma in terms of the economic plight of temporary, casual, contractual, and other contingent employees, dubbed by Macaraya as "unprotected workers".[93] The traditional or "atypical" concept of regular employment defined as work undertaken by those whose functions are "usually necessary or desirable in the usual trade and business of the employer"[94] has given way to more flexible work arrangements utilized by domestic industries to cope with globalization.[95]

Macaraya illustrated the dwindling number of regular employees, and the growth of flexible work arrangements, represented by contractual, part-time, casual, commission-paid, boundary, and home workers. With the decline in the number of regular workers, he concluded that "the effectiveness of collective bargaining as a mode to disperse wealth and to create demands in the market is now put in issue."[96]

Hyman explains that traditional trade unions were shaped by the existence of a "normal" employment relationship. This in turn shaped the trade union agenda, e.g., better terms and conditions of employment, payment of a decent wage, and security of tenure.[97] But the emergence of atypical forms of employment has altered the terrain.

Traditional worker identities have been displaced and "transformatory ideals" have "lost their grip." Workers adopt a more practical approach towards unions, and this "makes practicable the new managerial efforts to capture workers' loyalties and displace identification with trade unionism."[98]

The shift from collectivism to individualism at the management level reflects "a serious moral and intellectual crisis" that unions must face. Unions must, therefore, mobilize "countervailing power resources",

> but such resources consist in the ability to attract members, to inspire members and sympathizers to engage in action, and to win the support (at least neutrality) of the broader public. The struggle for trade union organization is thus a struggle for the hearts and minds of people; in other words, a battle of ideas.[99]

In the United States, unions have "fashioned a variety of mechanisms to deal with the growth of the contingent workforce."[100] Innovative organizing techniques

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[93] Bach M. Macaraya, *The Labor Code and the Unprotected Workers*, PHILIPPINE INDUSTRIAL RELATIONS FOR THE 21ST CENTURY: EMERGING ISSUES, CHALLENGES AND STRATEGIES 224 (2000).
[94] LABOR CODE, BOOK VI, ART. 280.
[95] Macaraya, *supra* note 95, at 224-225.
[96] *Id.* at 231.
[97] RICHARD HYMAN, AN EMERGING AGENDA FOR TRADE UNIONS? 2-3 (1999).
[98] *Id.* at 4-5.
[99] *Id.* at 5.
[100] Jennifer Middleton, *Contingent Workers in a Changing Economy: Endure, Adapt or Organize?*, 22 N.Y.U. REV. OF LAW AND SOCIAL CHANGE 557, 589 (1996).

leading to the "Justice for Janitors" campaign in Silicon Valley proved successful. The Service Employment International Union (SEIU) organized building owners (instead of contractors), and used strong public pressure to ensure that they hired unionized janitorial contractors.[101]

Professor Charles Heckscher of Harvard Business School suggested a program of "associational unionism", i.e., decentralized representative organizations forged around employees' common identity within a sector of work or profession, rather than around a single employer or a single contract.[102]

> Heckscher describes his model of associational unionism as a mix between a political pressure group, service organization, and traditional confrontational union. Such associations would exhibit five defining characteristics: (1) a focus on principles, such as excellence in the profession or respect on the job; (2) heightened internal education and participation; (3) diversified forms of representation and service; (4) a wide variety of tactics to pressure employers besides the strike; and (5) "extended alliances" with outside organizations and local groups.[103]

On the other hand, Professor Dorothy Sue Cobble of Rutgers University conducted a comprehensive study of waitress unionism in the first half of the century to develop a model for "occupational unionism", a form of craft unionism particularly adapted to the women workers' needs as waitresses. She proposed to "reinvigorate occupationally-based forms of organization particularly suited to women's experiences in the workforce." This holds tremendous potential for effective representation of the contingent workforce.[104]

Howard Wial of the U.S. Department of Labor proposed a "geographic associationalism" model, which unites workers in a region around loosely-defined common occupational interests, primarily seeking to impose a uniform wage and benefit structure on employers in that region. This model, though, may not be an appropriate one for many contingent workers who work alongside permanent, full-time employees because it may not provide adequate representation of the former's interests.[105]

Kochan observed that unions "will need to develop new capacities to build coalitions and leverage the presence and legitimacy of these alternative worker advocacy

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[101] *Id.* at 595.
[102] CHARLES C. HECKSCHER, THE NEW UNIONISM: EMPLOYEE INVOLVEMENT IN THE CHANGING CORPORATION (1988).
[103] Middleton, *supra* note 102, at 615.
[104] *Id.* at 617.
[105] *Id.* at 618-620.

groups to achieve their objectives in a more networked, fluid economy."[106] He added that research "must ask tougher and more fundamental questions about unions and examine the various experiments playing around the world where unions are trying new approaches."[107]

The success of these efforts in the Philippine setting remains to be seen. There have been attempts to speak for contingent employees in the wholesale and retail trade sector,[108] but by and large organized labor finds it difficult to adjust its programs and institutional structure to the rapidly changing and diversified needs of formal sector workers,[109] leading Ofreneo to ask, "Do labor centers and federations have to come up with new forms of labor organizing that will fit the needs of various categories of workers?"[110]

E. "The Logic of Mutual Aid"[111] – Professor Elias Ramos already expressed the view that a considerable amount of workers expect their union to take care of mutual aid problems.[112] Indeed, the Philippine union movement essentially began with mutual benefit societies. Such organizations proliferated and by World War I a number had evolved into or had been superseded by unions skilled in the use of the strike.[113]

The Labor Code 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."[114] On the other hand, 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.[115]

Is the Filipino worker's exercise of the right to self-organization limited to forming a union for purposes of collective bargaining? Deliberations in the Constitutional

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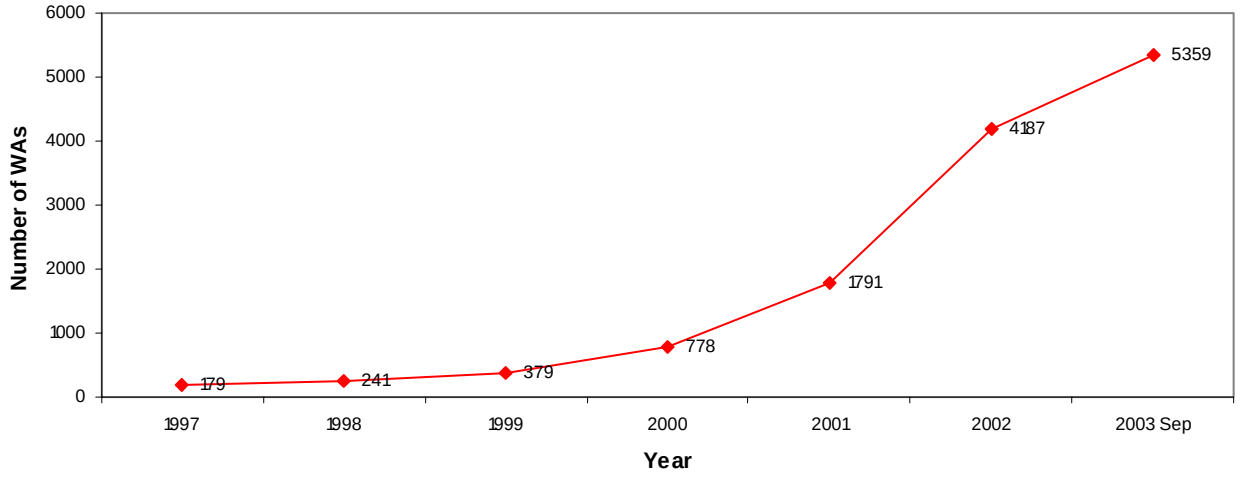
[106] Thomas A. Kochan, Rapporteur's Report, Collective Actors in Industrial Relations: What Future?, Track 4, 13th World Congress of the International Industrial Relations Association, Berlin, Germany, September 8-12, 2003.
[107] *Id.* at 13.
[108] Max de Leon and Jonathan Vicente, *supra* note 5, where contractualization in Shoemart was assailed by the secretary-general of the Shoemart union.
[109] INTERNATIONAL LABOR OFFICE, WORLD LABOR REPORT ON INDUSTRIAL RELATIONS, DEMOCRACY AND SOCIAL STABILITY (1997).
[110] Rene E. Ofreneo, *Trade Union Movement: Meeting the Challenge of the Global Economy,* INTERSECT 4,20 (April-May 1995).
[111] Inspired by Paul Jarley, Unions as Social Capital: Renewal Through a Return to the Logic of Mutual Aid?, Paper presented at the 13th World Congress of the International Industrial Relations Association, Berlin, Germany, September 8-12, 2003.
[112] RAMOS, *supra* note 26, at 195.
[113] DANIEL F. DOEPPERS, MANILA 1900-1941 4, 117 (1984).
[114] BOOK V, TITLE I, ART. 212 (g).
[115] BOOK V, TITLE V, ART. 243.

Commission already suggest that the foundation of labor relations is the right itself, and not collective bargaining. In the light of the definition of a labor organization as an entity existing in whole *or in part* for collective bargaining, purposes catering to mutual aid should be an acceptable basis for the exercise of the right to self-organization.

For this reason, the Department of Labor and Employment (DOLE) Secretary issued Department Order No. 9, series of 1997, to include *inter alia* the recognition of a workers' association, i.e., "an association of workers organized for the mutual aid and protection of its members or for any legitimate purpose other than collective bargaining." The mechanism for registration of labor unions was made available to those who would want to form such a workers' association. This approach has been affirmed in the recent amendment to the rules implementing Book V, namely Department Order No. 40-03.

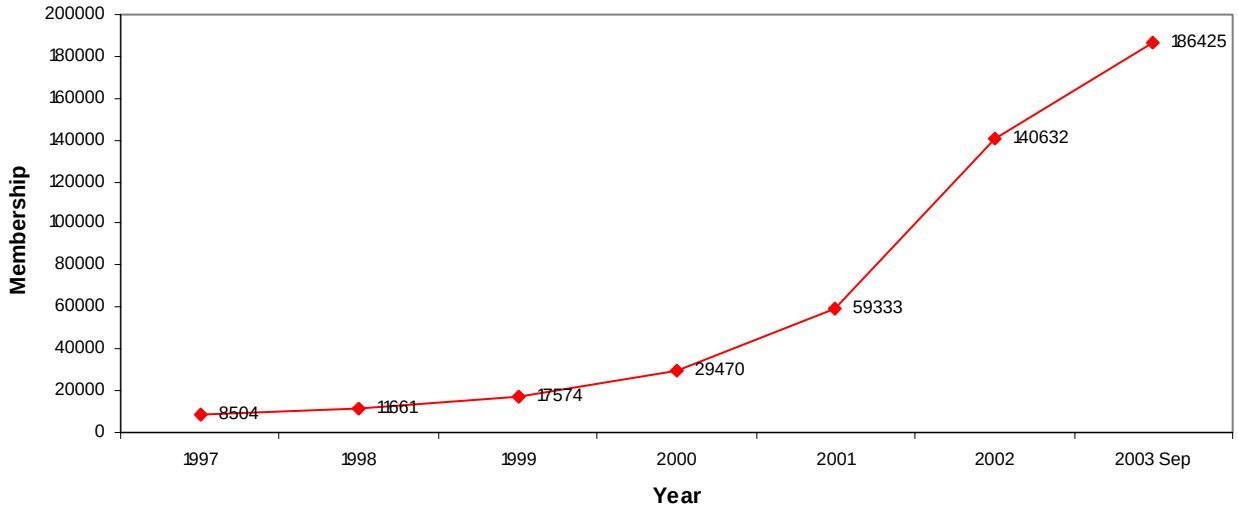
The recognition of workers' associations could not have been more timely. Graph 1 illustrates the robust organizing activity involving workers' associations. Graph 2 indicates a growing membership for these associations.[116]

Graph 1. Annual Distribution of Registered Workers' Associations: Philippines, 1997-2003 September



[116] These data in the graphs were culled from records of the Bureau of Labor Relations.

Graph 2. Annual Distribution of Membership of Registered Workers' Associations: Philippines, 1997-2003 September



More than any other labor organization as of October 2003, workers' associations have experienced massive growth in terms of numbers (35.57%) and membership (41.05%). To acquaint itself with workers' associations registered by Labor Relations Divisions in DOLE Regional Offices nationwide, the Bureau of Labor Relations undertook a study of workers' associations in Region VIII (Eastern Visayas).[117]

The main study as presented in the DOLE-ILS National Research Conference last November 2003 included case studies on three workers' associations in Region VIII, namely the following: (a) Nena Abaca Craft Producers Association (NACPA), a women workers' association producing "sinamay" in the coastal barangay of Nena, San Julian, Eastern Samar; (b) Mohon Farmers Association (MFA), whose male and female members are engaged in placemat making in Barangay Mohon, Tabon-Tabon, Leyte; and (c) Lemon Dispatchers Association (LDA), an all-male group operating dispatching services and a passenger terminal in Barangay Lemon, Capoocan, Leyte.

It was concluded that the "social legitimacy" of the respondents need development and enhancement.[118] Workers' associations have to ensure meaningful and effective participation in community affairs. It cannot be denied that the importance

[117] The study began in March 2003 and ended October 2003. The team headed by Supervising Labor Enforcement Officer Alex Avila included Richie Dimailig, Marijo Cordova, Cocoi Marquez, Jay Ocampo, Cora Rojo, and the Labor Relations Division Staff of DOLE-Region VIII headed by Chief Enriqueta Eclipse.

[118] In the broadest sense, "social legitimacy" (of a group) can be construed as the manner by which the community or society accepts the presence of a group and judges its actions against the values system and norms of that community or society. The level or degree of a group's "social legitimacy" therefore may be gauged by the manner by which the community or society associates its interest with the interests of the group. The higher the level of the association, the higher the level of the group's "social legitimacy".

of "social legitimacy" was not lost on the respondents, who consider social standing a critical factor not only in the growth and development of their organizations, but also in their individual and organizational empowerment. "Social legitimacy" also depends on the economic viability of respondents associations. They have to project an image of economic success, which includes the manner in which the association deploys its economic resources for the furtherance of communal interests.

V. AN INTERFACIAL NECESSITY: Human Resources Development and Industrial Relations

A. The Break from Fundamentalism – Philippine industrial relations is at a crossroads. The current Book V model needs to confront its incongruities with reality. The right to self-organization as guaranteed by labor relations law primarily caters to the collective bargaining framework. But with fewer Filipino workers covered by collective agreements, workers' efforts at seeking a "voice" in the workplace, whether individual or collective, have been straitjacketed into a sense of "industrial relations fundamentalism." Workers' self-organizational and participatory freedoms have been drastically reduced to the option of unionization. There is hope offered by mutual aid and social capital unionism efforts, the creation of guilds, more aggressive and globally-linked organizing of unorganized sectors, or social movement approaches, but State policy under Book V could offer only the primacy of collective bargaining.

The naked reality is this – 30,508,000 Filipinos in the labor force are not governed by the Philippine law on labor relations. Hence, there is a primordial necessity to close the "representation gap" between the organized sector and the rest of the Philippine labor force. These unorganized segments can be divided along formal and informal sector lines.

B. A Marriage Proposal – Covering the unorganized formal sector in a new labor relations framework enters the realm of human resources development (HRD). These would include engagement of "primeval" conditions of the worker before or in the absence of union representation. At the onset of company operations, HR management personnel deal with manifestations of prosocial, defensive, and acquiescent "voice" [119] by employees.

[119] Linn Van Dyne, Soon Ang and Isabel C. Botero, *Conceptualizing Employee Silence and Employee Voice as Multidimensional Constructs,* 40 J. OF MGT. STUDIES 1359, 1369-74 (2003).

Transcending individual "voice" behavior are various forms of employee involvement, in its "hard" variant when management of human resources is integrated with other elements of corporate strategy, possibly involving one-way communications channels; in its "soft" variant the emphasis on management of "resourceful" humans, and to assumptions that employees represent an important asset to the organization and a potential source of competitive advantage.[120]

More participatory approaches highlight increased employee involvement in the workplace. In the United States, four common labels are applied to participatory management efforts, namely labor-management committees, quality of work life projects, quality control circles, and employee production teams.[121]

As far back as 1980, Gatchalian and Dia already emphasized the need to inject the concept of "worker participation" at the enterprise level. They predicted the emergence of a social order that was "egalitarian, participatory, self-reliant, and humane" going into the 21st century. But they also warned that workers' participation requires change and transition in all levels of industrial society.[122]

Needless to state, Filipino values of non-egocentric personalism and the "familycentric" character of social organizations conjured a "management by culture" approach that enhances harmony, unity, and cooperation in the company.[123]

Enterprises that have transformed into "people-focused" organizations recognize that the information necessary to formulate strategy is with their frontline people who know what is actually going on.[124]

> In essence, (people-focused organizations) highlight the importance of the basic concepts of information sharing, consultation and two-way communication. The effectiveness of procedures and systems which are established for better information flow, understanding and, where possible, consensus-building, is critical today to the successful managing of enterprises and for achieving competitiveness. As such, the basic ingredients of sound enterprise level labour relations are inseparable from some of the essentials for managing an enterprise in today's global environment. These

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[120] Mick Marchington, *Involvement and Participation*, HUMAN RESOURCE MANAGEMENT: A CRITICAL TEXT (John Storey, ed.) 280 (1995).
[121] Note, *Participatory Management Under Sections 2(5) and 8(a) (2) of the National Labor Relations Act*, 83 MICH. L. REV. 1736, 1738 (1985).
[122] Jose C. Gatchalian and Manuel A. Dia, *Workers' Participation in the Philippines: An Exploration of Issues and Prospects*, 5 PHIL. LAB. REV. 15, 31 (1980).
[123] F. LANDA JOCANO, TOWARDS DEVELOPING A FILIPINO CORPORATE CULTURE 166-174 (1999 ed.).
[124] Sriyan de Silva, The Changing Focus of Industrial Relations and Human Resource Management, Paper presented at the ILO Workshop on Employers' Organizations in Asia-Pacific in the Twenty-First Century, Turin, Italy, May 5-13, 1997.

> developments have had an impact on ways of motivating workers, and on the hierarchy of organizations. They are reducing layers of management thus facilitating improved communication. Management today is more an activity rather than a badge of status or class within an organization, and this change provides it with a wider professional base.[125]

"People-focused" approaches are reflective of the emergence of HRM over traditional personnel functions. HRM is pre-occupied with utilizing the human resource to achieve strategic management objectives. HRM emphasizes strategy and planning rather than problem solving and mediation.[126]

Jimenez has introduced an "employee and labor relations master plan" that undoubtedly represents an HRM "people-focused" approach. There are three strategic thrusts in this model, namely: (1) management of the employee relations environment; (2) relating to people; and (3) management of internal employee relations systems.[127] Specific programs and expected results are outlined to ensure the success of the plan.[128]

HRM undoubtedly exists even in a unionized environment, where the collective bargaining model of industrial relations prevails. There are, of course, theoretical and practical differences between the HRM and industrial relations systems. Figure 13 presents these distinctions.

FIGURE 13 ñ IR/HR INTERFACE[129]

INDUSTRIAL RELATIONS	HR MANAGEMENT
Collectivist/pluralist	Individualistic
Consists of large component of State rules	Deals with policies and practices
Assumes potential conflict	Unitarist, sees commonality of interests
Involves unions in standardization ofwages, contracts, functions, working hours	Individualization of employment through equity and efficiency
At periphery of corporate planning	Integrated to corporate strategy
Adversarial employer-employee relations	Harnessing employee loyalty and commitment

[125] *Id.* at 12.
[126] *Id.* at 22.
[127] Josephus B. Jimenez, Presentation at a DOLE-ILO-Ancilla Consulting management education forum entitled "Labor Relations for Foreign Employers", Clark Economic Zone, Pampanga, October 19, 2003.
[128] *Id.* In management of the employee relations environment, he established the following programs: coping with trends in the labor front, keeping pace with government policy and legislation, and reconciling employee relations with business goals. Hence, the following results are expected: familiarity with the risks and challenges, mastering the rules, and achieving a balance between business and people. In terms of relating to people, the programs are improving communication systems and grievance management, enhancing rewards and sanctions, and restructuring the dispute settlement system. The results are: better channels of interactions, clear systems of motivation and control, streamlined effective dispute settlement system, and non-adversarial employee relations approaches. With management of internal employee relations systems, the programs are clarifying company policies and norms, empowering managers and improving internal communication. The results are: understanding of and commitment to norms, confident and committed managers and supervisors, and well-coordinate and balanced systems.
[129] De Silva, *supra* note 126, at 25-27.

To translate industrial relations strategy into the realm of labor-management relations in the non-unionized formal sector is the challenge that social partners in industrials relations must face. De Silva enumerates preconditions to this "marriage" or task of harmonization:[130]

- Changes in both management and union attitudes
- Acknowledgement of the link between employee development and enterprise growth
- Recognition that employer and employee interests are not only divergent but also common
- Both HRM and IR should be prepared to accommodate the other, without HRM viewing IR (and vice-versa) as its nemesis
- Unions would need to be more willing to involve themselves in HRM, and not over-emphasize their national agenda
- Changes in IR thinking, in terms of redesigning collective bargaining to accommodate workplace issues and less adversarial relations
- IR needs to open its doors to other social disciplines
- IR would have to recognize that communication in an enterprise need not necessarily be only effected collectively
- Managements should be wiling to involve unions in HRM initiatives
- A more strategic perspective of IR needs to be developed, going beyond traditional objectives such as distributive justice, and espousing productivity and competitiveness

This marriage of IR and HRM will develop a firm labor relations policy for the unorganized formal sector. Workers and employers shall have firm guidance from statutory law relative to strategies to pursue company objectives, uphold workers' rights, and compete in the global market.

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[130] *Id.* at 28-29.

C. Labor-Management Committees: Towards Workplace Democracy and Cooperation

1. CURRENT POLICY

Article 277 (h) of Book V states that in unorganized establishments, labor-management committees (LMC) may be formed voluntarily by workers and employers for purposes of promoting industrial peace. While the statute is silent on LMCs in organized establishments, the 1989 rules implementing Book V mandated the DOLE to promote the formation of LMCs in such entities. But no system of representation in LMCs for both unionized and non-unionized establishments was laid down in the issuance.[131]

In 1997, the rules implementing Book V were amended to provide for a process of representation in LMCs in both organized and unorganized establishments.[132] Such a rule of representation has been transplanted to the current issuance amending the Book V rules.[133]

2. HISTORY

There were already attempts to introduce workplace cooperative schemes as far back as 1976, in the penumbral set of issuances that supported the primary collective bargaining framework. Originally, Article 231 of Book V granted the Bureau of Labor Relations the authority to "certify collective bargaining agreements which comply with standards established by the Code …"[134]

In 1976, then Minister Blas F. Ople clarified that labor-management cooperation schemes were "directory requirements" in the certification of CBAs.[135] A presidential instruction issued in 1978 subsequently requested government, the employers and trade unions to formulate a strategy for the promotion of labor-management cooperation programs at the workplace.[136]

But in 1981, Cabinet Bill No. 45 sought to amend provisions in Book V and included, among others, Section 12 on workers' participation and labor-management cooperation:

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[131] Omnibus Rules Implementing the Labor Code (as amended 24 May 1989), Book V, Rule XII, Section 1.
[132] Omnibus Rules Implementing the Labor Code (as amended by Department Order No. 9, series of 1997), Book V, Rule XXI.
[133] Department Order No. 40-03.
[134] The certification requirement, of course, has given way to a mere registration procedure.
[135] Policy Instruction No. 17 (1976).
[136] LETTER OF INSTRUCTION NO. 688 (1978).

> ART. 278. *Workers participation and Labor-Management Cooperation.* – (A) The Ministry shall promote and gradually develop, with the agreement of labor organizations and employers, industrial democracy and workers' participation in decision-making at appropriate levels of the enterprise based on shared responsibility and mutual respect in order to ensure a just and more democratic workplace and the improvement in working conditions and the quality of working life.
>
> (B) In establishments with thirty (30) or more workers, and where no labor organization exists, the Ministry shall promote the creation of labor-management committees without restricting the workers' right to self-organization and collective bargaining for purposes of dealing with matters affecting labor-management relations like the promulgation and implementation of company rules, the threshing out of grievances and other matters of mutual interest to labor and management.[137]

Initially, there was a proposal by the Honorable Amado Inciong to delete Section 12.[138] He opposed the provision because his experience as Deputy Minister of Labor and Employment proved that labor-management cooperation schemes became channels of unfair labor practices.[139] This point, however, was not pursued during the public hearing.

Another proposal that was discussed pertained to the fear that promotion of labor-management committees will operate as a coercive measure that will compel workers in non-unionized establishments to organize "State unions".[140] It was clarified, however, that the bill only mandated the Ministry to promote the formation of labor-management committees, and that actual formation of LMCs was left to both labor and management.[141]

To further emphasize the voluntary nature of such committees, the Committee on Labor, Employment and Manpower Development agreed to insert the word "help" between the words "shall" and "promote" and the phrase "on a voluntary basis" between "promote" and "creation". The Chairman of the Committee clarified that LMCs is a "sort of umbrella for possibilities of innovative approaches to cooperation and harmony that will make use of the strike or lockout weapon less and less necessary."[142]

At the floor of the Batasan, Assemblyman and bill sponsor Ople laid down the basis for the establishment of LMCs in unorganized establishments:[143]

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[137] Cabinent Bill No. 45, R.B. No. 96, 3rd Sess. (1981).
[138] Public hearing on C.B. 45, Committee on Labor, Employment, and Manpower Development, Batasang Pambansa, Army Navy Club, Manila (May 28, 1981).
[139] *Id.*
[140] Public hearing on C.B. 45, Committee on Labor, Employment and Manpower Development VIP Lounge, Batasang Pambansa (July 29, 1981).
[141] *Id.*
[142] *Id.*
[143] I RECORD OF THE BATASAN 148 (August 4, 1981).

> The committee thought that because 90% of the organizable work force, that is to say about 8 million workers in the wage and salary system throughout the country, is not yet organized, how can schemes of labor-management cooperation flourish unless we provide for the creation of a vehicle of cooperation short of forming a union? And the answer was: through the creation of labor-management committees without restricting the workers' right to self-organization and collective bargaining for purposes of dealing with matters affecting labor-management relations, like the promulgation and implementation of company rules, the threshing out of grievances and other matters of mutual interest to labor and management.

During the period of amendments, however, the recommended thirty-worker cut-off for establishment of LMCs was deleted.[144] Also, the role of the Ministry of Labor and Employment to promote the formation of LMCs in unorganized establishments was omitted.[145]

Thus, in its final form Article 278 (g) and (h) of Batas Pambansa No. 130[146] read:

> The Ministry shall promote and gradually develop with the agreement of labor organizations and employers, labor-management cooperation programs at appropriate levels of the enterprise based on shared responsibility and mutual respect in order to ensure industrial peace and improvement in productivity, working conditions and the quality of working life.
>
> In establishments where no labor organization exists, labor-management committees may be formed voluntarily by workers and employers for the purpose of promoting industrial peace.

The rules issued to implement Book V as amended by B.P. 130 mandated the employer to report to the DOLE the establishment of any labor-management committee within its enterprise as well as the activities undertaken by such committee from time to time and whenever required by the Department.[147]

After the ratification of the 1987 Constitution, separate bills in the House of Representatives[148] and the Senate[149] were filed to amend the provisions of Book V. In the original version of House Bill No. 11524, there were strong proposals relative to the implementation of the workers' right to participate in policy- and decision-making processes as guaranteed by the Constitution. There were original proposals to provide for workers' representation in the board of directors of a company with more than 100

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[144] I JOURNAL OF THE BATASAN 85 (4th Reg. Sess., 1981-1982).
[145] *Id.*
[146] The law took effect on August 21, 1981.
[147] Omnibus Rules Implementing the Labor Code, Book V, Rule XII (as amended 4 September 1981).
[148] House Bill No. 11524.
[149] Senate Bill No. 530.

employees.[150] Also a profit-sharing scheme was put forward.[151] Both proposals, however, did not materialize.

But commitments to pursue labor-management cooperation persisted. In place of workers' representation in company boards, two proposals were suggested. The first was to provide worker representation in the corporate executive committee. The second involved the voluntary creation of labor-management committees. A consensus favored the second proposal. At the Conference Committee level, the provision mandating the DOLE to "enlighten and educate the workers and employers on their rights and responsibilities through labor education with emphasis on the policy thrusts of (the) Code" was added in anticipation of objections from unions regarding discouragement of formation of unions in unorganized establishments.[152]

The present Book V provisions on labor-management cooperation as worded emerged from Republic Act No. 6715.

3. WORK IN PROGRESS

Twenty-years after his prediction on the importance of participatory approaches in industrial relations, Gatchalian maintained that there is a "strongly felt need to further explore the area of employee representation in the Philippines."[153] He lamented that LMCs in the Philippines still largely function as consultative and advisory mechanisms, and that workers' representatives do not have substantial influence in managerial decision-making on more meaningful issues and concerns.[154] He might have referred to the broad spectrum of participatory modes ranging from information to consultation to co-decision and even full participation,[155] and how LMCs have failed to run through the gamut of levels of workers' participation.

An issuance by the Secretary of Labor and Employment clarified that labor-management cooperation could be undertaken: (a) as a tool for promoting non-adversarial and harmonious relationship between labor and management; (b) as a tool for both short term and long term conflict prevention and resolution; (c) complement or supplement, but not supplant collective bargaining, the dispute settlement machinery in

[150] Section 15, H.B. 11524.
[151] Section 18, H.B. 11524.
[152] Bicameral Conference Committee on H.B. 11524 and S.B. 530 XIV-1 (December 15, 1988).
[153] Jose C. Gatchalian, *Employee Representation and Workplace Participation: Focus on Labor-Management Councils*, 19-20 PHIL. J. OF INDUS. REL. 41, 46 (1999-2000).
[154] *Id.* at 49.
[155] Gatchalian and Dia, *supra* note 124, at 19.

place (eg. grievance machinery) or other mechanisms (eg. safety committees); (d) may be translated into programs mutually beneficial to labor and management such as schemes for enhancing enterprise and workers productivity, reducing wastage, improving the quality of goods and services, facilitating the acceptance of technological change and opening channels or venues for free communication.[156]

Data from the National Conciliation and Mediation Board (NCMB) as of March 2002 reveals that there are a total of 639 LMCs existing in the country. This still represents a small amount compared to the vast number of unorganized establishments in the country.

A landmark study in 1994 revealed that most LMCs did not have sufficient support from the management of the respondent companies. A key advocate of labor-management cooperation asserted that company support is a crucial factor in the success of LMCs.[157] The study suggested greater focus on productivity and quality improvement that must be taken by companies in their LMCs to broaden the scope of the same beyond mere conflict resolution or industrial relations concerns.[158]

In the United States, various measures have been suggested to ensure worker protection against workplace cooperation efforts that manipulate employees' workplace governance choice. Several indicators for autonomous worker representation in these cooperative efforts have been mentioned, such as the following:[159]

- Team leaders-facilitators should be chosen by team members or by rotation from among team members, not appointed by upper management, and should be subject to recall.
- Team members should have the right to meet for specified periods at specified intervals, with pay, without the presence of managerial or supervisory representatives.
- Teams should have the right to meet, again at specified intervals and durations, with other teams, again without the presence of managerial or supervisory representatives.

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[156] Department Order No. 21, series of 1988.
[157] Lorenzo B. Ziga, LMCs in the Philippines: Issues and Prospects, Paper presented in the Conference on the Century of Labor Struggle in Asia and the Pacific, Quezon City, November 28-29, 2002.
[158] *Id.*
[159] Mark Barenberg, *Democracy and Domination in the Law of Workplace Cooperation: From Bureaucratic to Flexible Production,* 94 COLUM. L. REV. 758, 971 (1994).

- Individual team members should be entitled (on a rotating or lottery basis) to attend, or receive full minutes of, any meetings held between team leaders-facilitators as a group and managerial representatives.

- Teams should be entitled to specified periods of training – from trainers selected from the Participation Centers' labor-oriented consultants and educators – in technological and organizational design, group-process and problem-solving skills, ergonomics, and health and safety standards.

Aside from undermining worker free choice, workplace cooperative efforts have the potential to unleash employer "opportunistic behavior". These may occur when: a) employees who have participated in cooperative programs are terminated; and b) the workplace cooperation program itself is terminated. [160] Thus, the system could be authorized by a majority of employees by secret ballot; that before the ballot, employees were specially advised of their right to oppose the creation of such a plan without reprisal; that such authorization expires in some uniform period of time, perhaps three years, unless reauthorized; that the system may be abolished by a majority of employees in a secret ballot at any time; and that the system cannot at any time be unilaterally abolished by the employer.[161]

VI. BRIDGING HR AND IR: The Pursuit of Industrial Peace

A. Conciliation and Mediation – Book V's substantive provisions open with the State's compulsory arbitration machinery, administered by the National Labor Relations Commission (NLRC) and the Bureau of Labor Relations (BLR).[162] This bias towards compulsory arbitration was established as far back as 1936 with Commonwealth Act No. 103, supposedly restricted by collective bargaining through Republic Act No. 875, and discouraged by its omission in the dispute settlement policy in Section 3, Article XIII of the 1987 Constitution.

But compulsory arbitration remains the top dispute settlement option. In the first half of 2003, cases in the NLRC regional arbitration branches (RABs) totaled 29,640. Appealed cases to the Commission amounted to 9,711, bringing the total number of NLRC cases to a whopping 39,351. Of these 10,260 were disposed, for a 26%

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[160] Rafael Gely, *Whose Team Are You On? My Team or My TEAM?: The NLRA's Section 8(A)(2) and the TEAM Act*, 49 RUTGERS LAW REV. 323, 381 (1997).
[161] *Id.* at 397, n. 389, citing Joel Rogers, *Reforming U.S. Labor Relations*, 69 CHI.-KENT LAW REV. 97, 114 (1993). In addition, the full-blown study presented in the DOLE-ILS National Research Conference featured a sub-chapter on codification of workplace cooperation arrangement in Philippine collective agreements, co-written by Atty. Sherwin Lopez of the Bureau of Labor Relations.
[162] Book V opens with the declaration of state policies and definition of terms before proceeding to the NLRC and the BLR.

disposition rate.[163] Concrete efforts by Chairman Roy Señeres to highlight conciliation and mediation at the preliminary conference level have relieved the caseload, but without a proper administrative conciliation and mediation machinery supporting the NLRC, cases will continue to hound its existence. Between the first half of 2002 and the first half of 2003, for instance, there were 809 more cases filed, projecting a 5% increase at year's end.

Be that as it may, the NLRC has doubled the amount of benefits awarded to workers, from P2,762,600 in 2002 to 4,609,800 as of the first half of 2003.[164]

On the other hand, the main conciliation and mediation service of the DOLE, the National Conciliation and Mediation Board (NCMB), managed to maintain a 90.3% disposition rate pertaining to strike and lockout notices in 2002, and managed to keep strikes down to 36,[165] a twenty-five year low.[166] These numbers are astounding, considering there were only 40 assumed or certified cases for compulsory arbitration, and 570 settled through the efforts of NCMB conciliators.[167]

B. Tripartism – Tripartism allows workers and employers to be represented in decision and policy-making bodies of the government. The Secretary of Labor and Employment is also given the authority to call national, regional, or industrial tripartite conferences for the consideration and adoption of voluntary codes of principles designed to promote industrial peace based on social justice or to align labor movement relations with established priorities in economic and social development.[168]

During the Martial Law era, several tripartite conferences were called to discuss labor and employment issues. Tripartism was institutionalized when President Corazon Aquino issued Executive Order No. 403, series of 1990, and created a Tripartite Industrial Peace Council (TIPC) with a three-fold purpose: (a) monitor full implementation with the provisions of the industrial peace accord (IPA); (b) assist in the preparation and conduct of national tripartite conferences; and (c) formulate tripartite views on labor and social concerns. The members of the Council were the Secretary of Labor and Employment as Chairman, and twelve representatives each from the labor and management sectors.

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[163] FACTBOOK, *supra* note 66, at 38.
[164] *Id.*
[165] *Id.* at 35.
[166] There were 33 actual strikes in 1977. DEJILLAS, *supra* note 74, at 34.
[167] FACTBOOK, *supra* note 66, at 35.
[168] BOOK V, TITLE IX, ART. 275.

Two years later, President Fidel Ramos issued Executive Order No. 25, series of 1992, which reconvened the TIPC and maintained its functions and membership. To carry out the provisions of E.O. 25, then Secretary of Labor and Employment Nieves R. Confesor issued Department Order No. 8, series of 1995, which laid down guidelines for the constitution and institutionalization of national industry councils, regional tripartite industrial peace councils, and regional or local industry tripartite councils under the national tripartite council.

President Ramos later amended E.O. 25 and issued Executive Order No. 383, series of 1996. Government representation in the TIPC included the Department of Trade and Industry (DTI), Department of Interior and Local Government (DILG), and the Director-General of the National Economic and Development Authority (NEDA). E.O. 383 also incorporated the industrial and regional tripartite council framework initially established by Secretary Confesor.

Under E.O. 383, the Council's functions included the following: (a) monitoring full implementation and sectoral compliance with the provisions of all international conventions, tripartite agreements and commitments; (b) assisting in the preparation and conduct of national, regional or industry-specific tripartite conferences; (c) reviewing existing labor, economic and social policies and to evaluate local and international developments affecting them; (d) formulation of tripartite views, recommendations and proposals on labor, economic and social concerns; (e) advise the Secretary of Labor and Employment in the formulation or implementation of major policies; and (f) serve as a joint communication channel and a mechanism for undertaking joint programs.

President Joseph Estrada later issue Executive Order No. 49, series of 1998, which reconstituted and expanded the members of the TIPC, to include more heads of executive departments or agencies, as well as increase the number of sectoral representatives to twenty each. The regional and industrial tripartite framework was maintained. On Labor Day five months later, President Estrada issued Executive Order No. 97, series of 1999, to include overseeing the medium-term comprehensive plan as a basic function of the TIPC.

In 2001, President Gloria Macapagal-Arroyo reconvened the TIPC, which maintains its nature, functions and composition under E.O. 49 and E.O. 97. The National TIPC has been responsible for the enactment of various DOLE regulations on labor relations, contractualization, employment in security agencies, health and safety, child labor, and overseas employment.

Six industrial councils exist, representing the banking, construction, automotive assembly, sugar, hotels and restaurants, and garments sectors. There are regional tripartite councils all over the country, including several provincial councils created through local ordinance, such as the Laguna Labor Management Council, pursuant to Provincial Ordinance No. 822, series of 1998.

In an International Labor Organization (ILO) study on tripartism in the Philippines, Fashoyin raised the possibility of bringing the decent work agenda to the TIPC. He also pointed out the need to effectively transmit national TIPC decisions at the relevant lower levels. He exhorted tripartite partners to include civil society representatives within the scope of TIPC representation, and to keep tripartism relevant.[169]

VII. THE COURTSHIP RITUAL

With the advent of labor-management cooperative efforts and the re-emergence of mutual aid, not to mention the continuing growth of an unorganized and informal segment of the labor market, has Philippine industrial relations "evolved" enough to bring about the type of change envisioned by the framers of the Constitution? We need not delve into a debate on representation of workers in corporate boards of directors, but we may rethink the current industrial relations model through the lens of basic notions of workplace democracy and cooperation, notions that easily become relevant at the enterprise level even before thoughts of unionization emerge.

To rethink the current industrial relations model, we could start with dream of a wedding – the marriage between human resources development and industrial relations.

In the marriage between human resources development and industrial relations, a courtship or "paninilbihan" must commence. Dr. Penelope Flores of San Francisco State University has emphasized the importance of "filling up the tapayan" in true Filipino "paninilbihan" tradition, where the "tapayan" stands as a positive conduit of communication. This fusion of HRD and IR in the law "to be filled" must come with discourse and discussion in the free market of ideas to adequately create a Book V for the new millennium.

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[169] TAYO FASHOYIN, WORKING PAPER ON SOCIAL DIALOGUE AND LABOUR MARKET PERFORMANCE IN THE PHILIPPINES 49-52 (2003).

In this courtship dance, a proposal for consideration by all stakeholders in labor relations is hereby put forward. In view of the preservation of a strong collective bargaining flavor in House Bill Nos. 5996 and 6031, a new approach could be forthcoming. A possible configuration could be as follows:

a) *Chapter One, State Policy.* Emphasizing not just a declared policy of collective bargaining to cover a small percentage of the Philippine labor force, but a framework of workplace democracy and cooperation that will promote harmonious relations between and among workers, and between workers and management. The foundation shall be the workers' right to self-organization, the method is workplace democracy and cooperation and collective bargaining, and the goal is industrial peace.

b) *Chapter Two, Definition of Terms.* To include a definition of groups, teams, associations, or committees that function within the realm of workplace democracy and cooperation, as well as tripartism.

c) *Chapter Three, Workplace Democracy and Cooperation.* Providing a framework for workplace relations prior to or in the absence of union representation, with guidelines to be observed in terms of nature, functions, composition, and other mechanics of institutional workplace cooperation. This shall also include mutual aid organizing to cover the expansion efforts of unions and workers across occupational, geographical, or "social movement" lines.

d) *Chapter Four, Tripartism.* Enhancing efforts to forge policy and decision consensus among social partners in the regional, industrial, and national levels.

e) *Chapter Five, Collective Bargaining*. Upholding the right to self-organization, prohibiting unfair labor practices. Continued pursuit of a fair and expeditious administrative machinery for union and CBA registration, determination of representation status, collective bargaining and strikes and lockouts. Enhancing mediation-arbitration and conciliation-mediation.

f) *Chapter Six, Special Provisions on Informal Sector and Rural Workers.* Dealing with organizational matters, as well as mechanisms to encourage self-enterpreneurship, uphold financial sustainability, and provide opportunity for political representation.

g) Chapter Seven, Dispute Settlement. Establishing a primary conciliation and mediation machinery prior to adjudication or arbitration, as well as administrative or jurisdictional amendments to address the caseload of the NLRC.

This framework adheres to the view that the current system does not adequately cover all Filipino workers, and that the current system of collective bargaining could best be supported or complemented by less adversarial modes of workplace democracy and cooperation.

Weaving Worldviews
Implications of Constitutional Challenges to the Indigenous Peoples Rights Act of 1997[1]

Marvic M.V.F. Leonen[2]

Republic Act No. 8371 or the Indigenous Peoples Rights Act ("IPRA") was signed into law on October 29, 1997. It became effective on November 22, 1997. Its implementing Rules and Regulations were approved on June 9, 1998 and became effective fifteen (15) days after its publication.

On September 25, 1998, a special civil action for Mandamus and Prohibition (hereafter only "petition") was filed by former Supreme Court Justice Isagani Cruz and Atty. Cesar Europa against the Secretaries of Environment and Natural Resources and of Budget and Management and against the Chairman and Commissioners of the National Commission on Indigenous Peoples ("NCIP")[3] to enjoin the implementation of IPRA in so far as it recognizes the rights of indigenous peoples to their ancestral lands and domains.

The petition in Cruz v. NCIP does not only raise questions on the constitutionality of IPRA. The petitioners raise the more fundamental question. It asks whether the Republic of the Philippines in 1998, in the centennial of its independence, is still beholden to culturally hostile and unjust legal concepts and doctrines imposed during the colonial era. But it may also be asking whether the 1987 constitution can be interpreted so as to weave indigenous worldviews into the fabric of the national legal system.

The primary substantive challenge raised by the Petitioners is based on the Regalian Doctrine. The doctrine is a mythical and historically fallacious principle that permeates the thinking of, but has prompted little reflection within, the Filipino legal profession. Every Filipino lawyer learns in law school that the Regalian Doctrine has been embedded in the Constitutions of 1935, 1973, and most recently, section 2 of the 1987 Constitution.

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1 This article (apart from its postcript) was originally written during the pendency of Cruz et al vs. Secretary of Environment and Natural resources, et al, G.R. No. 135385, which was decided by the Supreme Court on December 6, 2000 (347 SCRA 128). It has been abridged for this issue of the Journal.

2 Faculty, College of Law, University of the Philippines; Founder and Chairman of the Board of Trustees, Legal Rights and Natural Resources Center Inc. —Kasama sa Kalikasan (LRC-KSK/FoE-Philippines); Convenor, Alternative Law Groups Network, 1998-1999.

3 Hereafter, the case is referred to as "Cruz v. NICP" for brevity.

Despite the doctrine's longevity, there is hardly any reflection on its origins and implications.

The Regalian Doctrine asserted by the Petitioners in Cruz v. NCIP is implicitly premised on the largely unquestioned belief that at some unspecified moment during the Spanish colonial period, sovereign rights of the Philippine people's forebears were usurped by and simultaneously vested in the Crowns of Castille and Aragon. At that moment, every native in the politically undefined and still largely unexplored and unconquered archipelago became a squatter – bereft of any legal rights to land or other natural resources.

These implicit assumptions about the Regalian Doctrine are not supported by our legal and political history. These mistaken perspectives serve as rationale for much of policy thinking on natural resource management as well as indigenous peoples recognition.

Article XII, Section 12 of the 1997 Constitution mandates that the State establish legal processes and procedures for identifying and recognizing ancestral domain rights. IPRA reflects the considered opinion of the legislature as to how best to fulfill its constitutional mandate.

IPRA does not involve any abdication of State prerogatives. It does not sanction unjust taking of private lands. Rather, it establishes a long overdue legal process for recognizing private property rights of indigenous peoples, with appropriate constitutional safeguards. The law initiates procedures for rectifying long-standing injustices suffered by them. As such it ennobles the state by its belated but profoundly significant acknowledgment that some laws are not rooted in the colonial past, but originate and endure in our indigenous heritage.

1. THE INDIGENOUS PEOPLES RIGHTS ACT (IPRA) AND THE MYTH OF THE REGALIAN DOCTRINE

Petitioners and the Solicitor General both assert that Article XII, Section 2, article XII of the Constitution supports their interpretation of the "time-honored" principle of the Regalian Doctrine. They argue that, based on their interpretation of that single provision, sections 3 (a), 3 (b), 7 (a), 7 (b), 57 and 58 of IPRA deprive the State of its ownership and control over these lands and natural resources.

This interpretation fails to consider other provisions in the Constitution. It is legally inaccurate considering the text, context, purposes and recent interpretations of these provisions of the Constitution.

Ancestral Lands are Not Lands of the Public Domain

Rights to Ancestral Lands as Vested and Private – The most authoritative articulation of the doctrine that time immemorial possession in the concept of owner creates the presumption, heavily considered against the State, that the land is not public is in *Cariòo v. Insular Government*[4]. That case is important for three reasons:

First, it declares that time immemorial possession in the concept of owner is sufficient basis to claim protection of vested property rights. Holmes, speaking for a unanimous Supreme Court, then said –

> "Whatever the law upon these points may be, and we mean to go no further than the necessities of the decision demand, every presumption is and ought to be against the Government in a case like the present. *It might, perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land."*[5] *(emphasis ours)*

Second, it pronounces that this vested right is principally embodied in the due process clause of the Constitution. Thus —

> "The acquisition of the Philippines was not like the settlement of the white race in the United States. Whatever consideration may have been shown to the North American Indians, the dominant purpose of the whites in America was to occupy the land. It is obvious that, however stated, the reason for our taking over the Philippines was different. No one, we suppose, would deny that, so far as consistent with paramount necessities, *our first object in the internal administration of the islands is to do justice to the natives, not to exploit their country for private gain. By the organic act of July 1, 1902, c. 1369 sections 12, 32 Stat. 691, all the property and rights acquired there by the United States are to be administered "for the benefit of the inhabitants thereof.*" It is reasonable to suppose that the attitude thus assumed by the United States with regard to what was unquestionably its own is also its attitude in deciding what it will claim for its own. The same statute made a bill of rights embodying the safeguards of the Constitution, and, like the Constitution, extends those safeguards to all. *It provides that "no law shall be enacted in said islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws." Section 5. In the light of the declaration that we have quoted from section*

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[4] 212 U.S. 449, 460 (1909); see also 41 Phil. 935 (1909).
[5] Cariòo v. Insluar Government, 212 U.S. 449, 460 (1909).

> *12, it is hard to believe that the United States was ready to declare in the next breath that "any person" did not embrace the inhabitants of Benguet, or that it meant by "property" only that which had become such by ceremonies of which presumably a large part of the inhabitants never had heard, and that it proposed to treat as public land what they, by native custom and by long association, - one of the profoundest factors in human thought, - regarded as their own."*[6] *(emphasis ours)*

Third, it holds that the process leading to the issuance of paper titles does not create the vested and private nature of the right, but rather only symbolically, but significantly, evinces ownership. Thus —

> "There are indications that registration was expected from all, *but none sufficient to show that, for want of it, ownership actually gained would be lost. The effect of the proof, wherever mad, was not to confer title, but simply to establish it, as already conferred by the decree, if not by earlier law*. The royal decree of February 13, 1894, declaring forfeited titles that were capable of adjustment under decree of 1880, for which adjustment had not been sought, should not be construed as confiscation, but as the withdrawal of a privilege."[7] (emphasis ours)

This doctrine is consistent with our political history and the laws existing at the time when the Spaniards first reached our shores.[8] It is consistent with the colonial laws and decrees existing during our colonization under Spain.[9] The Treaty of Paris also protects undocumented private property rights.[10]

The ruling in *Cariòo v. Insular Government* has been adopted in a host of cases. Thus in *Oh Cho v. Director of Land*[11], the Court qualified that –

> "all lands that were not acquired from the Government, either by purchase or by grant, belong to the public domain. An exception to the rule would be any land that should have been in the possession of an occupant and of his predecessors in interest since time immemorial, for such possession would justify the presumption that the land had never been part of the public domain or that it had been a private property even before the Spanish conquest."[12]

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6 Id., at 458-459 (1909).
7 Id., at at 462 (1909).
8 Lynch, Owen Dr., "The Legal Bases of Philippine Colonial Sovereignty: An Inquiry," 62 Phil. L. J. 279 (1987).
9 For instance Law VII, Title 12, Book 4 (1958) declared that "lands be assessed without unfair discrimination among persons and *without offense to the Indians*." Law IX, Title 12, Book 4 (1594) declared, "Let not lands be given with prejudice to the Indians and those already given be returned to the owners." Law XVII, Title 12, Book 4 (1646) refused the admittance of applications for adjustment of lands not possessed for 10 years and gave preference to Indians. Law XVII, Title 1, Book 6 (1572) gave indios the freedom to sell their farms with judicial authority. Law XXX, Title 1, Book 6 (1546) prohibited commissioners to succeed the land left vacant upon death of the Indians. Law XXXII, Title 1, Book 6 (1580) allowed Indians the freedom to dispose of their lands. Law IX, Title 3, Book 6 (1560) prohibited the deprivation of Indians of lands they previously owned. See also discussion in Royo, Antoinette G., "Regalian Doctrine: Wither the Vested Rights?" 1:2 Phil. Nat. Res. L. J., 1 (1988).
10 Article VIII, second paragraph, Treaty of Paris (December 10, 1898) reproduced in Mendoza, Vicente V., FROM MCKINLEY'S INSTRUCTIONS TO THE NEW CONSTITUTION, 60 (1978).
11 75 Phil. 890 (1946).
12 Ibid.

The doctrine has been reiterated in cases such as *Suzi v. Razon*[13] and in the more recent cases of *Director of Lands v. Buyco*[14] and *Republic v. Court of Appeals and Lapina*[15].

Confusing Time Immemorial Possession with Rights under the Public Land Act and other laws – There is a tendency of lawyers, especially of the Petitioners, to confuse the segregation of agricultural lands from the public domain into private land through any one of the modes under the Public Land Act with originally vested rights under Article III, Section 1 of the Constitution as interpreted by *Cariòo*.

Private (not public) vested property rights, which have vested by virtue of time immemorial possession, are "presumed never to have been public". On the other hand, rights which vest as a result of any of the modes of acquiring ownership under Commonwealth Act No. 141 initially assume that the land is part of the public domain.

Under *Cariòo v. Insular Government*, except to delineate the area claimed under ownership, there is no need to comply with any administrative requirements to complete a "grant from the State." Under Cariòo and subsequent cases, all that is required to be proven in order to get a Certificate of Title in a land registration proceeding as required by statute is adequate proof of the character of the possession and the extent of the claim of ownership.

Thus, for want of proof of time immemorial possession, applications for registration had been denied.[16] But, for want of the proper ceremonies of procuring paper titles, vested ownership rights protected by the due process clause could not be destroyed.

On the other hand, in order to gain vested property rights under Commonwealth Act No. 141[17], there is a need to comply with the provisions enumerated under the law. *First*, the State determines its classification subject to the provisions of law[18]. *Second*, it

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13 48 Phil. 424 (1925).

14 Per Davide J, Gutierrez, Jr., Bidin, Romero and Melo, JJ. Concur. No dissents. 216 SCRA 79, 90 (1992). See also, Republic v. Court of Appeals and Spouses Lapina and Flor De Vega, 235 SCRA 567 (1994). The latter case was decided en bank with only Cruz, Padilla and Davide, Jr. JJ dissenting on the question of citizenship.

15 235 SCRA 567 (1994). Per Bidin J.

16 See for instance Oh Cho v. Director of Lands, 75 Phil. 890 (1946) where the court held that possession that started only in 1880 was not sufficient. Also Suzi v. Razon, 48 Phil. 424, Director of Lands v. Buyco, G.R. No. 91189, November 27, 1992 and Republic v. Court of Appeals and Lapina an De Vega, 235 SCRA 569 (1994) where the Court cited Cariòo v. Insular Government but said that it did not apply for want of proof.

17 This covers only agricultural lands of the public domain or the "public lands." Section 2, Commonwealth Act No. 141. The sole exception is Section 48 (c) introduced by Rep. Act No. 3872 or the Manahan Amendments. This was subsequently removed by Pres. Dec. No. 1073.

18 Director of Lands v. Court of Appeals, 129 SCRA 689, 692. Classification now done by the NAMRIA an attached agency of the Department of Environment and Natural Resources (DENR). Exec. Ord. No. 192 (1987).

then determines whether all the conditions for a grant from the State have been complied with.[19] Only then would the land be considered as private and the rights declared to be vested in nature. This is true whether this be done through free patents[20], homesteads[21] or through confirmation of imperfect titles[22].

As part of its comment on the Case, the NCIP, for instance, has mistakenly cited the Second Public Land Act (1919) and Commonwealth Act No. 141 (1936) and Republic Act No. 3872 (1964) as the legal sources of vested rights of indigenous peoples through time immemorial possession.[23] These statutes provide for a manner of segregating lands from the public domain through various administrative processes. They do not refer to recognition of rights vested since time immemorial, nor to lands which are "never to have been presumed to be public."

In response, the Petitioners in their Consolidated Reply invoke *Director of Land Management v. Court of Appeals*[24] as precedent that "ruled that claims of indigenous peoples under Commonwealth Act No. 141 to ownership by virtue of open, continuous, exclusive and notorious possession are subject to constitutional mandate."[25] However the Petitioners did cite that the procedure that was adopted was to file for registration of their title that vested as a result of *Section 48 (c), Commonwealth Act No. 141*.[26] The applicant sought a grant from lands that he considered initially as part of the public domain. The applicant did not consider the land, as in *Cariòo*, presumptively private.

Besides, such an interpretation Section 48 (c) of Commonwealth Act No. 141 had been overturned by *Republic v. Court of Appeals and Paran*. Interpreting changes to the Public Land Act, the Court there noted:

> "The distinction so established in 1964 by Rep. Act no. 3872 was expressly eliminated or abandoned thirteen (13) years later by Pres. Dec. No. 1073 effective 25 January 1977, only highlights the fact that *during those thirteen years, members of national cultural minorities*

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19 Francisco v. Rodriguez, 67 SCRA 212,217 (1975) citing Gonzaga v. Court of Appeals, 51 SCRA 388 (1973). See also Director of Lands v. Abordo, 74 Phil. 44; Hernandez v. Claipz, 98 Phil. 687; De los Santos v. Rodriguez, 22 SCRA 451 (1968).

20 Section 44, Com. Act No. 141 as amended by Rep. Act No. 782. The grant of a free patent is considered not a matter of right but a privilege. A history of free patenting as one of the original modes of recognizing rights of indigenes is outlined in Lynch, Owen J. "Colonial Legacies in a Fragile Republic: A History of Philippine Land Law and State Formation," unpublished Ph. D. Dissertation, 533 (Yale University Law School, 1991).

21 Sections 12, 13, 17, Com. Act No. 141. The concept of a homestead was imported to the Philippines through the first Public Land Act, Act No. 2874. Homesteads are not indigenous to the Philippines. Discrimination against indigenous peoples (non-Christian Filipinos) is seen by more stringent requirements in Section 21, Com. Act No. 141.

22 Section 48, Com. Act No. 141. Paragraph c was introduced in 1964 by Rep. Act No. 3872 after the Senate's Report on the Socio Economic Status of the Cultural Minorities of the Philippines. This was subsequenlty removed thirteen years later by Pres. Dec. No. 1073 (1977).

23 Comment, NCIP, par. 2.31, p. 15.

24 172 SCRA 455 (1989)

25 Consolidated Reply, Pettiioners, par. 2.18, pp. 19-20.

26 Consolidated Reply, Petitioners, par. 2.19, p. 20. This paragraph was added by Rep. Act No. 3872.

> *had rights in respect of lands of the public domain, disposable or not.* . .It is important to note that private respondents' application for judicial confirmation of imperfect title was filed in 1970 and that the land registration court rendered its decision confirming their long continued possession of the lands here involved in 1974, that is, during the time when Section 48 (c) was in legal effect. Private respondents' imperfect title was, in other words, perfected or vested by completion of the required period of possession prior to the issuance of Pres. Dec. No. 1073. Private respondents' right in respect of the land they had possessed for thirty (30) years could not be divested by Pres. Dec. No. 1073."[27] (emphasis ours)

Reiterating this line of jurisprudence, the Court, in *Republic v. Court of Appeals and Cosalan*[28], even ruled that the classification of timberland is subject to this species of vested rights. Ruling on the proper interpretation of subsection [c], section 48 of the Public Land Act, the Court emphasized —

> "It appears, therefore, that respondent Cosalan and his predecessors-in-interest have been in continuous possession and occupation of the land since the 1840s. . .Despite the general rule that forest lands cannot be appropriated by private ownership, it has been previously held that 'while the Government has the right to classify portions of public land, the primary right of a private individual who possessed and cultivated the land in good faith much prior to such classification must be recognized and should not be prejudiced by after events which could not have been anticipated… *Government in the first instance may, by reservation, decide for itself what portions of public land shall be considered forestry land, unless private interests have intervened before such reservation is made."*[29] *(emphasis ours)*

Also in their Consolidated Reply, the Petitioners cite the following doctrine out of context –

> " 2.22. It is 'already a settled rule that forest lands or forest resources are not capable of private appropriation and possession thereof, however long, cannot convert them into private property…unless such lands are reclassified and considered disposable and alienable by the Director of Forestry, but even then, possession of the land prior to reclassification of the land as disposable and alienable cannot be credited as part of the thirty-year requirement under Section 48 (b) of the Public Land Act…"[30]

The aforementioned applies to lands that are part of the public domain. It does not apply to lands that have, as in *Cariòo*, never been considered public. The principal issue in *Republic v. Court of Appeals*[31] was whether there had already been a reclassification

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[27] Republic v. Court of Appeals and Paran, 201 SCRA 1 (1992). See also Republic v. Court of Appeals and Cosalan, 208 SCRA.
[28] Per Nocon J, Melencio-Herrera, Paras, Padilla, Regalado concurs. No dissent. 208 SCRA 429 (192). See also the earlier case of Republc v. Court of Appeals and Paran, 201 SCRA 1 (1991) with no dissents from the Third Division.
[29] 208 SCRA 429, 433 (1992). Citing Ankron v. Government of the Philippine Islands, 10 Phil. 10 (1919); Republic v. C.A., 167 SCRA 77 (1988); Republic v. CA, 182 SCRA 290 (1990). See also Oh Cho v. Director of Lands, 75 Phil. 890 (1946).
[30] Consolidated Reply, Petitioners, par. 2.22, pp. 21-22. Citing Republic v. Court of Appeals, 154 SCRA 476 (1987).
[31] 154 SCRA 476 (1987). The citation of cases in this case are also applications for public land grants not assertions of the initial private character of the land.

of the land from timber to agricultural. There was no question as to whether the land was initially part of the public domain. It is not a precedent for overturning the doctrine in *Cariòo v. Insular Government*.

Attempts to Reinterpret Cariòo – There are attempts in the pleadings to reinterpret *Cariòo v. Insular Government*.

The Petitioner's argument is that the Constitution may have contained waivers on the rights articulated in *Cariòo v. Insular Government*. In response, it is sufficient to cite Article XIII, Section 6 of the Constitution, which provides—

> "The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain under lease or concession suitable to agriculture, *subject to prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands*."

The Solicitor General makes a more fundamental error of jurisprudential interpretation when it embarrassingly argues –

> "The granting of the petition for registration in Cariòo can be justified under the 1987 Constitution on the ground that agricultural lands of the public domain may be alienated by the State."[32]

In 1909, when *Cariòo v. Insular Government* was decided, the 1987 Constitution did not yet exist. The Solicitor General's claim that rights of indigenous peoples should only vest in areas that have been declared as alienable and disposable is, at best, specious and, at worst, a failure to understand the basics of constitutional construction and natural resources law.

Ancestral Domains Not Public

Petitioners, in their Consolidated Reply[33], and the Solicitor General, in its Comment[34], make a distinction between lands and other "natural resources". Their bases of distinction are founded on their reading of Article XII, Section 2 of the Constitution, which thus provides –

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[32] Comment, Solicitor General, p. 11.
[33] Consolidated Reply, Petitioners, pp. 12 to 16.
[34] Comment, Solicitor General, pp. 11 to 12.

> "Section 2. All lands of the public domain, water, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other *natural resources are owned by the State*. With the exception of agricultural lands, all other *natural resources shall not be alienated*. The exploration, development and utilization of natural resources shall be under the full control and supervision by the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production sharing agreements with Filipino citizens, or corporations or associations at least sixty percentum of whose capital is owned by such citizens…"

The Solicitor General joins the Petitioners in arguing that a literal reading of this single paragraph in the Constitution justifies a finding that the following provisions of the Indigenous Peoples Rights Act are unconstitutional:

(a) section 3 (a) defining ancestral domains[35],
(b) section 5 defining the indigenous concept of ownership,
(c) section 6 defining the composition of ancestral lands and domains,
(d) section 7 defining rights to ancestral domains,
(e) section 8 defining rights to ancestral lands,
(f) section 57 providing for the use of natural resources within ancestral domains
(g) section 58 on environmental considerations, and
(h) section 59 requiring some certification as a precondition to private and public projects within ancestral domains

Their reading is that these provisions, taken individually and as a whole, imply that (1) the State does not own the natural resources within ancestral domains; and (2) the control of the use, exploitation and development lies with the indigenous community and not with the State.

Respondent NCIP and Intervenors Ikalahan and Haribon, on the other hand, read the provisions differently. They submit that the provisions are consistent with Article XII, Section 2 of the Constitution. Their best argument is that the law in question simply articulates a policy of providing priority rights to indigenous communities. In their formulation, (1) the State still owns the natural resources, and (2) the State still controls their use, exploitation and development. However, (3) the State has declared through the IPRA that its policy would be to provide for priority use, exploitation and development to indigenous peoples and their communities within areas declared as ancestral domains.[36]

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[35] Definition of ancestral domain includes inland waters, coastal areas and natural resources therein.
[36] Comment, NCIP, p. 18-23; Comment-in-Intervention, Kalahan and Haribon, p.12-16.

The position of the NCIP, Ikalahan and Haribon Foundation thus imply that the ultimate decision still lies with the State, as exercised through its various bureaucracies. It is therefore these State agencies, such as the Department of Environment and Natural Resources (DENR) and the NCIP, rather than the indigenous communities themselves, that will ultimately determine whether or not indigenous communities will enjoy rights contained under the IPRA. They point to provisions such as Section 57 to show that indigenous peoples only have priority rights.

In the formulation of the NCIP and Intervenors Ikalahan and Haribon Foundation, the total development of indigenous peoples is still heavily dependent on the discretion of the political appointees of the DENR and the NCIP. Indigenous peoples do not immediately own their resources. Under their theory, indigenous peoples still need to negotiate with the State to confirm the grant of their rights.

These parties hold similar, if not identical, positions on the second paragraph of Article XII, Section 5 of the Constitution. They all agree that, to harmonize them, Article XII, Section 5 should be subordinated to Article XII, Section 2.

The Solicitor General, without any basis, simply asserts upon his own authority that "Section 2 should be seen as a limitation on Section 5, rather than Section 5 being read as an exception to Section 2."[37]

The Petitioner points to the qualifier in the first paragraph which states that the rights of "indigenous cultural communities ***to their ancestral lands***" are "subject to the provisions of the Constitution and national development policies and programs." It ironically adds that there are other provisions to the Constitution other than Article XII, Section 2.[38]

These positions on resources within ancestral domains as legally unacceptable. Ancestral domains are not public. However the rights and duties comprising their concepts of "ownership" are defined not under the Civil Code[39] nor under the Public Land Act[40] but by the Indigenous Peoples Rights Act[41]. The ownership is *sui generis.* The State still retains control over these ancestral domains not through its powers of *dominium* but by its powers of *imperium*.

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37 Comment, Solicitor General, p. 12.
38 Petition, Concluding Statement
39 Rep. Act No. 386 as amended.
40 Commonwealth Act No. 141 as amended.

This is a conclusion borne by a consideration of the following

(a) the textual, contextual and historical basis of the "Regalian Doctrine" as contained in Article XII, Section 2 of the Constitution;
(b) the textual, contextual and historical basis of the second paragraph of Article XII, Section 5, in relation to other provisions, of the Constitution; and
(c) the special nature of the concepts of non-public (and therefore private) ownership of ancestral domains of indigenous peoples.

Jura Regalia **Reconsidered**

The Regalian Doctrine has never been a permanent provision of the different versions of our constitutional framework.

Petitioners themselves admit that the concept of *jura regalia* is only embodied in Article XII, Section 2, of the Constitution.[42] They acknowledge that this provision was largely based on the 1935 constitution.[43] This is consistent with the decisions of the Supreme Court. In *Atok Big Wedge Mining Co. vs. Intermediate Appellate Court*[44] (cited by the Petitioners in a different context), the Court reflected on the history of mining rights in the Philippines. Thus,

> "*This concept of jura regalia enshrined in past and present Philippine constitutions, has not always been the prevailing principle in this jurisdiction*; however, the abundant resources within our coastal frontiers have in the past filled not just one colonizer's booty haul."[45] (emphasis ours)

It is possible for rights over natural resources to vest on a private (as opposed to a public) holder if these were held prior to the 1935 Constitution.

In *Fianza v. Reavies*[46], the Court was confronted with a conflict between a foreign miner, who sought to establish a mineral claim made even prior to but only relatively shortly before the enactment of the Philippine Bill of 1902, and an indigenous occupant, who had mined the area since time immemorial. Ruling on the nature of their rights and for the indigenous miner-plaintiff, the Court pronounced –

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41 Rep. Act No. 8371.
42 Petiton, par. 6.1., pp. 15-16.
43 Petition, third paragraph, p. 2.
44 Per Hermosisima, Jr., Padilla (Chairman), Bellosillo, Vitug and Kapunan, JJ concurring. 261 SCRA 529 (1996).
45 Ibid., at 546. Emphasis ours.
46 40 Phil. 1017 (1909).

> "This is the provision of law upon which the court below decided the case in favor of the plaintiffs. This view of that court must, in our opinion, be sustained. The statute of limitations of the Philippine Islands in force on July 1, 1902, was ten years. According to the evidence and the findings, the plaintiffs had held and worked these claims for more than that length of time prior to the 1st of July, 1902. They had for more than forty years prior to that date been in possession thereof. That possession had been open, notorious, continuous and under a claim of ownership.The locations made by Reavis in accordance with the act of Congress of July 1, 1902, were not made until October of that year. *They were made after the rights of the plaintiffs had become vested in accordance with the provisions of said section 45, and therefore such locations can not prejudice the plaintiffs.*"[47] (emphasis ours)

Again, in *Atok Big Wedge Mining Co. vs. Intermediate Appellate Court*[48], the nature of mining claims that were established under the Philippine Bill of 1902 was clarified[49]. While exclusive rights to use and possession vest as soon as location was made under this law, it was not immune from the police power of the State. Thus,

> "…it can be said (1) that the rights under the Philippine Bill of 1902 of a mining claim holder over his claim has been made subject by the said Bill itself to the strict requirement that he actually performs work or undertakes improvements on the mine every year and does not merely file his affidavit of annual assessment, which requirement was correctly identified and declared in E.O. No. 141; and (2) *that the same rights have been terminated by P.D. No. 1214, a police power enactment*, under which non-application for mining lease amounts to waiver of all rights under the Philippine Bill of 1902 and application for mining lease amounts to waiver of the right under said Bill to apply for patent. In the light of these substantial conditions upon the rights of a mining claim holder under the Philippine Bill of 1902, there should remain no doubt now that such rights were not, in the first place, absolute or in the nature of ownership, and neither were they intended to be so."[50]

Atok Big Wedge v. Intermediate Appellate Court[51] and *Fianza v. Reavis* thus support the theory that rights could vest prior to the 1935 Constitution, notwithstanding the later introduction of the concept of *jura regalia*. Of course private rights, as in *Atok Big Wedge*, could always be the subject of police power regulation.

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47 Fianza, et al. vs. Reavis, G.R. No. L-2940, March 6, 1907.

48 Per Hermosisima, Jr., Padilla (Chairman), Bellosillo, Vitug and Kapunan, JJ concurring. 261 SCRA 529 (1996).

49 Further qualifying United Paracale Mining v. Court of Appeals, 232 SCRA 663. Precedents cited in favor of the apparent doctrine that the location vested almost absolute rights vis-à-vis the state were McDaniel v. Apacible and Cuisia, 42 Phil. 749; Gold Creek Miing v. Rodriguez, 66 Phil. 259 (1939); Salacot Mining Company v. Rodriguez, 67 Phil. 97 (1939); Bambao v. Denicky, 1 SCRA (1961); Comilang v. Buendia, 21 SCRA 486 (1967); Benguet Consolidated, Inc v. Republic, 143 SCRA 466 (1986); Republic v. Court of Appeals, 160 SCRA 228 (1988) and Atok Big Wedge Mining Co. Inc. v. Court of Appeals, 193 SCRA 71 (1991). Precents cited in favor of the apparent doctrine that mere location does not mean absolute ownership are Santa Rosa Mining Co., Inc. v. Leido, Jr., 156 SCRA 1 (1987); Director of Lands v. Kalahi Investments, Inc. 169 SCRA 683 (1989), Zambales Chromite Mining Company, Inc. v. Leido, Jr. 176 SCRA 602 (1989); Poe Mining Association v. Garcia, 202 SCRA 222 (1991); United Paracale Mining Company, Inc. v. De la Rosa (1993); and Manuel v. Intermediate Appellate Court 243 SCRA 552 (1995).

50 Atok Big-Wedge Mining Co. v. Intermediate Appellate Court, 261 SCRA 529, 556-557 (1996)

51 *Atok Big Wedge* did not rule on rights to minerals or mining lands that have vested prior to the Philippine Bill of 1902.

In *Director of Lands v. Funtilar,*[52] the court reiterated that the Regalian Doctrine does not enjoy primacy. It should be related to other provisions in the Constitution. Thus –

> "The Regalian Doctrine which forms the basis of our land laws and, in fact all laws governing natural resources is a revered and long standing principle. It must, however, be applied together with the constitutional provisions on social justice and land reform and must be interpreted in a way as to avoid manifest injustice."

The cases on the Regalian Doctrine cited by petitioners are not in point.

Lee Hong Hok v. David and *Atok Big-Wedge v. Intermediate Appellate Court* are some of the cases favorably cited to imply the absolute application of the Regalian Doctrine. [53] In their Consolidated Reply[54], the petitioners also argue that *Rellosa v. Gaw Chee Hun* "imputes to the sovereign or to the government the ownership of all lands and makes such sovereign or government the original sources of private titles." [55]

A more responsible reading of *Lee Hong Hok vs. David*[56] reveals that its *ratio decidendi* concerned itself with ownership of a disputed lot that was allegedly acquired through *accretion*. The Indigenous Peoples Rights Act does not cover rights on the basis of accretion.

The issue raised in *Atok Big Wedge Mining Co. vs. Intermediate Appellate Court*[57] was the nature of the rights of a holder of a patentable mining claim. It was not on the absolute nature of the Regalian Doctrine.

Rellosa v. Gaw Chee Hun relied on the *American Jurisprudence*[58] as its source of authority. Its *ratio* had nothing to do with the nature of *jura regalia.*

Article XII Section 2 is premised on commercial exploitation – The applicability of the Regalian Doctrine should be limited by the purposes for which it had been enacted.

The premises of natural resource management under Article XII, Section 2 and that under the second paragraph of Article XII, Section 5 are different.

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[52] G.R. No. L-68533, May 23, 1986.
[53] Petition, par. 6.2, p. 16.
[54] Consolidated Reply, Petitioners, p. 21.
[55] 93 Phil. 827 (1953).
[56] 48 SCRA 372 (1972). Petition, par. 6.2., p. 16.
[57] Per Hermosisima, Jr., Padilla (Chairman), Bellosillo, Vitug and Kapunan, JJ concurring. 261 SCRA 529 (1996).
[58] Specifically 42 Am. Jur 785 which states that "In the United States, as almost everywhere else, the doctrine which imputes to the sovereign or government the ownership of all lands and makes such sovereign or government the original source of private titles, is well recognized." This is not historically correct even in the United States. Am Jur remains to be a secondary reference for the US jurisdiction and only persuasive for the Philippines.

Jura regalia under Article XII, Section 2, which presupposes the possibility of managing resources separately, was designed to guard against (1) alien ownership, (2) control of a large amount of a resource by a few, and (3) regulation of large commercial extractive ventures (logging concessions, mining companies et al.).

Ancestral domains, on the other hand, consider natural resources as part of an entire ecosystem. Resources are not valuable when separately considered. It is the whole ecosystem and its dynamic relationship with their occupant that provides value.

The report of the Committee on Nationalization and Preservation of Lands on the original provisions of Article XII during the Constitutional Convention that created the 1935 constitution highlighted the need for the Regalian Doctrine as protection against alien control and large-scale holdings of land. The report articulated the following four fundamental principles,

> "(1) That land, minerals, forests, and other natural resources constitute the exclusive heritage of the Filipino Nation. They should, therefore be preserved for those under the sovereign authority of the nation and for their posterity.
>
> "(2) That the existence of big landed estates is one of the causes of economic inequality and social unrest.
>
> "(3) That the multiplication of landowners by the subdivision of land into smaller holdings is conducive to social peace and individual contentment and has been the policy adopted in most civilized countries after the World War.
>
> "(4) That the encouragement of ownership of small landholdings destroys that institution so deeply entrenched in many parts of the Philippines known as caciquism. It is preventive of absentee landlordism, an institution which springs directly from the establishment of big landed estates and has time and again served as an irritant to the actual toilers of the soil."[59]

The dissent of Mr. Justice Feria in *Mabanag v. Lopez Vito*[60] was one of the first extended opinions that recalled the reasons for the adoption of the Regalian Doctrine. Thus –

> "This provision of the Constitution has been criticized as establishing the outworn Regalian doctrine which, it is suggested, may serve to retard the economic development of the Philippines. The best encomic on this provision is probably the very criticism launched against it. It is inconceivable that the Filipinos would liberalize the acquisition, disposition and exploitation of our natural resources to the extent of permitting their alienation or of depriving the people of this country of their heritage. *The life of any*

[59] Aruego, THE FRAMING OF THE PHILIPPINE CONSTITUTION, 595 (1949).
[60] 78 Phil. 1 (March 5, 1947)

> *nation depends upon its patrimony and economic resources. Real freedom, if it is to be lasting, must go hand in hand with economic security, if not economic prosperity.* We are at most usufructuaries of our domains and natural resources and have no power to alienate them even if we should want to do so. They belong to the generations yet unborn and it would be the height of folly to even think of opening the door for their untrammeled disposition, exploitation, development or utilization to the detriment of the Filipino people. With our natural resources in the hands of foreigners what would be there left except the idealism of living in a country supposedly free, but where freedom is, after all, an empty dream? We would be living in a sumptuous palace that is not ours. We would be beggars in our own homes, strangers in our own land."[61] (emphasis ours)

Article XII, Section 2 therefore reflects not just the desire to protect resources but also to economically profit from it. Its very formulation implies that the State views the resources not as part of an integrated ecosystem but as distinct units capable of separate commercial exploitation.

Different laws regulating the rights to extract have historically governed each of these distinct resources.[62] Many of these laws do not even complement each other.[63] Under these laws, the usufructuary rights or the power to enjoy, use and economically exploit all other resources, whether or not found on public or private lands, depend on the State. Even when a torrens title is successfully procured, the owners do not, by virtue of that title, gain ownership nor full control of waters[64], timber products[65], non-timber forest resources, minerals[66] and other resources over their land.

This view and approach to natural resource allocation is completely different from the perspective of indigenous peoples,[67] has caused them untold suffering, and precipitated generations of social conflicts in many areas of indigenous communities. The powers that were given to the DENR had been close to near absolute. The privileges that could be granted continue to constitute a fertile breeding ground for abuse and corruption.

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61 Citing Laurel, THE THREE POWERS OF GOVERNMENT 117, 118.

62 Private and public agricultural (in the sense of being actually devoted to agricultural activity), Rep. Act No. 6657 (1988) and other agrarian laws; Public Agricultural (in a constitutional sense), Com. Act No. 141 (1939); Forest, Pres. Dec. No. 705 (1974) as amended; Water, Pres. Dec. No. 1058 et al. See LRC-KSK, LAW AND ECOLOGY (1992).

63 The only notable exception is the Protected Area System established through Rep. Act No. 7586 (199?).

64 Pres. Dec. No. 1058 or the Water Code vests control over waters in a National Waters Regulatory Board.

65 Sec. 68, Pres. Dec. No. 705 (1974) makes it a crime to cut, gather and/or collect timber and other forest products without a license.

66 Both Rep. Act No. 7076 (1993) and Rep. Act No. 7942 (1995) are premised on the State's authority to award mining claims.

67 Leonen, Marvic M.V.F., "On Legal Myths and Indigenous Peoples: Re-examining Carino v. Insular Government" 1 PHIL. NAT. L. J (1990); Gatmaytan, Augusto B., "Land Rights and Land Tenure Situation of Indigenous Peoples in the Philippines," 5(1) PHIL. NAT. RES. L. J. 5, (1992).

The second paragraph of Article XII, Section 5 uses a different perspective – The premises of prevailing natural resource laws contradict indigenous peoples' communities view of their ecosystems. This was not lost on the framers of the 1987 Constitution.[68]

Thus, as a statement of a goal or principle, Article II, Section 22, states—

> "The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development."

Then in Article XIV, Section 17, it is further reiterated and emphasized that—

> "The State shall recognize, respect and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies."

These are improvements on the single provision in the 1973 Constitution, which read—

> "The State shall consider the customs, traditions, beliefs, and interests of national cultural communities in the formulation of state policies."[69]

The choice of the term "indigenous cultural communities" and the recognition and promotion of their rights was a departure from the negative stereotypes instilled by our colonizers. These prejudices against the "cultural minorities" and the "non-christian tribes" effectively pictured indigenous peoples then as backward and therefore incapable of reasonable resource management. The specific use of the term "indigenous cultural communities" in the Constitution was a constitutional recognition of the intricacies and complexities of culture and its continuity in defining ancestral lands and domains.[70]

Indigenous peoples' rights to their ancestral domains are protected – The Constitution also recognizes the special nature of the relationship of indigenous peoples to their ancestral domains. Legislative power to formally recognize the existence of these resources is found in Article XII, Section 5 of the Constitution, which states—

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[68] See Sponsorship Speech on the Autonomy by Commissioner Ponciano Bennagen in 3 Records of the Constitutional Commssion 171 (1986)

[69] Section 11, article XV, 1973 Constitution as amended.

[70] See for instance exchange between Regalado, Davide and Bennagen, 4 Records of the Constitutional Commission, 33-34 (August 28, 1986) during the Second Reading of P.R. No. 533. The definition of Indigenous Peoples is further refined in section 3 (h) of the challenged law.

> "The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well being.
>
> "The Congress may provide for the applicability of customary laws **governing property rights or relations** in determining the ownership and extent of ancestral domain." (emphasis ours)

The discussions on the formulation of this provision reveal the following fundamental understandings.[71] *First*, that there is a difference between "ancestral lands" and "ancestral domains." *Second*, that there are differences in concepts of ownership in the civil code and under customary law. *Third*, that neither the Regalian Doctrine nor customary law will be considered as the primary rule. There will be a balancing of interests to be accomplished by the State.

Distinction between Ancestral Land and Ancestral Domain – The distinction between ancestral lands and ancestral domains is readily apparent from the use of different terms in the first and second paragraph of Article XII, Section 5. It is also patent in the use of "ancestral lands" in Article XII, section 6.[72]

The rules governing ancestral lands could be different from the rules governing ancestral domains. The first paragraph of the Constitutional provision governs ancestral *lands*. The second paragraph governs ancestral *domains*.

The text of the second paragraph of the provision as well as the discussions of the Constitutional Commission indicate that ancestral domains are not public. They do not require a grant from the State in order to be held by individuals, families, clans or groupings of families.[73] Thus the second paragraph empowers Congress to allow for the application of customary law (1) to "govern property rights or relations" and (2) to determine "the *ownership and extent* of ancestral domains."

It is also obvious from the discussions that ancestral domains are not simply abstract concepts but areas that also contain natural resources. Both Article XII, Section 2 and the second paragraph of Article XII, Section 5 contain provisions on the character

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[71] There were nine (9) different interventions during the period of amendments of Proposed Resolution (P.R.) No. 533. This was a companion resolution to the proposal for the article on National Economy and Patrimony.

[72] ""The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain under lease or concession suitable for agriculture, subject to prior rights, homestead rights of small settlers, and the *rights of indigenous communities to their ancestral lands.*" (emphasis ours)

[73] Note also that there was one dissenting vote to the approval of the provision. Padilla voted only against the second sentence implying that there was a clear sense of the distinct norms created for ancestral lands and ancestral domains. 4 Records of the Constitutional Commmission 39 (August 28, 1986).

of natural resources. Reconciling the provisions should not just be a matter of subordinating the latter to the former. They clearly apply to different conditions.

Therefore: forests, waters, lands, minerals *outside* ancestral domains are controlled by the State—in *imperium* **as well as in *dominium***. These are governed by Article XII, Section 2 of the Constitution. Forests, waters, lands, minerals *within* ancestral domains, as may be defined by Congress, are still controlled by the state—**but only in *imperium***. These are governed by the legislative power granted under Article XII, Section 5.

"Ownership" and "property relations" within Ancestral Domains are different from "ownership" and "property relations" in the Civil Code – The deliberations of the Constitutional Commission on the provision also clearly indicate that the concepts of "ownership" and "property relations" in ancestral domains could be governed by a law different from the Civil Code (Republic Act No. 386 as amended).[74] Thus —

> "Mr. Regalado. Thank you. Madam President, may I seek some clarifications from either Commissioner Bennagen or Commissioner Davide regarding the phrase "CONGRESS SHALL PROVIDE FOR THE APPLICABILITY OF CUSTOMARY LAWS GOVERNING PROPERTY RIGHTS OR RELATIONS" in determining the ownership and extent of ancestral domain," because ordinarily it is the law on ownership and the extent thereof which determine the property rights or relations arising therefrom. On the other hand, in the proposed amendment, the phraseology is that it is the property rights or relations which shall be used as the basis in determining the ownership and extent of the ancestral domain. *I assume that there must be a certain difference in the customary laws and our regular civil laws on property*."
>
> "Mr. Davide. *That is exactly the reason, Madame President, why we will leave it to Congress to make the necessary exception to the general law on property relations*." (*emphasis ours*)

This is consistent with established theoretical concepts of the nature of property.

There is nothing necessary or natural in any concept of ownership, even as understood within specific legal systems. Law, and therefore legal definitions of "ownership", is a creation of culture. It is as much a cultural as it is a historical expedient. It manifests the current balance of political and economic interests within dominant structures in a given society.

Concepts of property and therefore of ownership arise and take shape not because of any physical-material attribute of the thing being owned.[75] They are reflections of

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[74] Like Rep. Act No. 8371, Indigenous Peoples Rights Act.
[75] Crocome, Roy, "An Approach to the Study of Land Tenure Systems" (?).

human associations in relation to things.[76] In other words, specific cultures create their own sets of property relationships. Or perhaps more accurately, specific political settings within which cultures exist create their own sets of property relationships. The ownership concepts in the Civil Code are, therefore, as natural as ownership concepts in the Indigenous Peoples Rights Act.

Unfortunately, Petitioners and Respondent NCIP have assumed that the word "ownership" carries the same meaning for all cultures.[77]

Under the Civil Code, ownership is defined by Article 427[78] and 428[79] of our Civil Code. Ownership is understood as either: ". . .the independent and general power of a person over a thing for purposes recognized by law and within the limits established thereby," or "a relation in private law by virtue of which a thing pertaining to one person is completely subjected to his will in everything not prohibited by public law or the concurrence with the rights of another."[80] Moreover, ownership is said to have the attributes of *jus utendi, fruendi, abutendi, disponendi et vindicandi*[81]. One therefore is said to own a piece of land when he exercises, to the exclusion of all others, the rights to use, enjoy its fruits and alienate or dispose of it in any manner not prohibited by law.

Among indigenous, unwesternized or unhispanicized Philippine populations, there is no such concept of "ownership" or of "land". There have been many attempts at finding common perspectives on these from among those expressed by various communities and ethno-linguistic groups, but the following seems to have captured most of such views, thus –

> "1. Ancestral domain is a sacred land area, God's gift to a tribe or to a tribal community, the source of their life, where their ancestors lived since time immemorial, and is now claimed by…organized tribal Filipino community.
>
> "2. The boundaries are marked by mountains, rivers, trees or stones, graves and places of worship, or other signs of native's presence.

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[76] See Ely, "Property and Contract in their Relation to the Distribution of Wealth, " in Cohen and Cohen (eds.), READINGS IN JURISPRUDENCE AND LEGAL PHILOSOPHY 8 (1953). He remarked: "but what has been said about the subservience of things to persons does not carry us very far. We find this—that things exist for the sake of persons; we find established a human control over things. But the essence of property is more than this. The essence of property is in the relation among men arising out of their relation to things."

[77] Comment, NCIP, par 2.32-2.36, pp. 14- 18; Consolidated Reply, par. 2.8, 2.9, 2.10, p. 15- 16 See also Consolidated Reply, par. 2,10, p. 15.

[78] Art. 427. "Ownership may be exercised over things or rights."

[79] Art. 428. "The Owner has the right to enjoy and dispose of the thing, without other limitations other than those established by law. The owner has also a right of action against the holder and possessor of a thing in order to recover it."

[80] II Tolentino, Civil Code of the Philippines 42 (1983) citing Filmosi, Scialoja and Ruggiero.

[81] Id., at 43 citing Sanchez Roman.

"3. Ancestral domain includes the forests and their products, hunting grounds and pasture lands, bodies of water and mineral resources and air spaces and all living creatures like birds, animals and fishes. These natural resources are meant to be preserved because without them, the land cannot support the way of life of the tribal community which is determined to defend this land unto death as their communal inheritance.

"4. Ancestral land and its natural resources cannot be sold or alienated by members or leaders of the community, but can only be used, preserving its natural resources according to the customary laws of the tribal community.

"5. Non-tribals in these areas should respect the customary laws. Particular arrangements with outsiders can be made only with the consensus of the entire tribal Filipino community but they can never obtain titles or portions of these lands.

"6. Apportionment of these lands among natives is only a transfer of the right to use or usufruct according to ancestral laws.

"7. All lands—forested, alienable or disposable—that are occupied or used for the livelihood of a tribal community can be claimed as ancestral domain."[82]

But there are still differences present between communities and even among the same ethnolinguistic groupings. The complexity has been documented in various publications. The ethnographic evidence also shows that present day views and attitudes of indigenous peoples who have already organized so as to assert their rights to their ancestral territories bear striking resemblance to the findings of earlier studies conducted by anthropologists, both Filipino and foreign.[83]

The framers of our Constitution already knew these nuances of rights and duties over various types of resources governed by customary law within specific ancestral domains. Thus, they formulated the second paragraph of Article XII, Section 5. They and the Filipino people who ratified the Constitution did not depend on the simple divisions of "agricultural, forestal or timber, and mineral" that had been sufficient for a past that did not recognize indigenous customs and traditions. Rather, the Congress was empowered to recognize these rights to ancestral domains. Congress did so through the Indigenous Peoples Rights Act.

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[82] Ibid. at 69-70. Citing ECTF Tribal Filipino Apostolate Convention in 1990 focusing on the clarification of the concept of ancestral domain.

[83] Ibid at 74. See for instance Carino Joana et al. (eds.), Dagami Ya Nan Dagami. Papers and Proceedings of the First Cordillera Multisectoral Land Congress, 11-14 March 1983. Baguio City: Cordillera Consultative Committee. (1984); Prill-Brett June. "Coping Strategies in the Bontok Highland Agro-ecosystem: The Role of Ritual. (Cordillera Studies Center, Baguio: 1987). Cordillera Studies Program, "Land Use and Ownership and Public Policy in the Cordillera. In Indigenous Peoples in Crises. Tribal Filipino Lecture Series Collated Papers. (1983). Pawid, Zenaida Hamada, "Indigenous Patterns of Land Use and Public Policy in Benguet, in Dakami Ya Nan Dagami (1984). Compare with Barton, Roy F., IFUGAO LAW (University of California: 1969), Barton, Roy F., THE KALINGAS (University of Chicago: 1949), Bennagen, Ponciano and Lucas-Fernan, eds, CONSULTING THE SPIRITS, WORKING WITH NATURE, SHARING WITH OTHERS, (1996), Conklin, Harold C., Ethnographic Atlas of Ifugao (Yale University: 1980), Fry, Howard T., A HISTORY OF THE MOUNTAIN PROVINCE (new Day:1983), Jenks, Albert E, THE BONTOC IGOROT (Bureau of Printing: 1905).

Sections 4 and 5 of the IPRA embody this shift in perspective in the 1987 Constitution, thus —

> "Section 4. Concept of Ancestral Lands/Domains. – Ancestral lands/domains shall include such concepts of territories which cover *not only the physical environment but the total environment including the spiritual and cultural bonds to the areas* which the ICCs/IPs possess, occupy and use and *to which they have claims of ownership*." (emphasis ours)
>
> "Section 5. Indigenous Concept of Ownership – Indigenous concept of ownership substains the view that ancestral domains and all resources found therein shall serve as material bases of their cultural integrity.

Article XII, Section 5 was never meant to be subordinated to Article XII, Section 2 – There is ample basis to show that the provisions of Article XII, Section 2 of the Constitution do not subordinate Article XII, Section 5. Three exchanges took place during the Constitutional Commission's Period of Amendments to then Proposed Resolution No. 533, on such subject.[84] In none of these exchanges was there any indication of the desire to make the Regalian Doctrine absolute. In fact all of these exchanges reiterated the use of the present version of Section 5 as basis for balancing interests.

That the State, through the legislature, might, at some point, recognize more powers in favor of indigenous peoples within their ancestral domains is furthermore consistent with the two principles of subsidiarity and solidarity underlying the entire article of the Constitution on National Economy and Patrimony.

Even first world countries now recognize the need to harness common property systems – Comparative developments in other nations over the past decade concerning the legal recognition of indigenous rights to land and other natural resources make clear that the IPRA is not isolated nor atypical. Rather, IPRA is very much in accord with the ongoing development of legal standards for recognizing native title and other indigenous rights in even such first world countries as Australia and Canada.

The High Court of Australia (HCA) has held that native title are rights "sui generis" because of the special cultural and spiritual connection of aboriginal people to

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[84] See 4 Records of the Constitutional Commission 34, 37 (August 28, 1986) Period of amendments to P.R. 533,

their ancestral domains. The primary prerequisite for gaining legal recognition of ancestral domain rights is proof of traditional and continuous connections to the area.

Australian jurisprudence concerning native title emanates from the Mabo cases. On June 3, 1992, the HCA upheld the claims of indigenous peoples from Murray Island in the Torres Strait. The HCA ruled that Australia was not *terra nullius*[85] when settled by the British in 1788. Rather, it was occupied by mainland Aboriginal and Torres Strait Islander people who had their own laws and customs and whose "native title" to land survived the Crown's annexation of Australia.[86]

The position of the HCA in the first Mabo case was reaffirmed in another Mabo case. The later case held that section 10 of Australia's Federal Racial Discrimination Act of 1975 constitutes a Federal "safety net" agaisnt State or Territory legislation that would otherwise extinguish native title rights.[87]

Australia's Native Title Act (NTA) of 1993 came into effect on January 1, 1994. This legislation was the direct result of the aforementioned decisions and provided the first nationally valid mechanism to clarify native title claims. The NTA established a National Native Title Tribunal (NNTT) similar to the National Commission on Indigenous Peoples (NCIP) created by IPRA. It also validated state laws that provided for recognition of native title. Procedures and standards for future native title agreements were introduced. A Land Fund was also established for those indigenous peoples who cannot take advantage of the NTA.[88]

Pursuant to the NTA, a diverse array of negotiated Native Title Agreements and Land Use and Resource Agreements exist in Australia today.

The Canadian Constitution Act of 1982 on the other hand recognizes "aboriginal and treaty rights" in section 35. Its "Charter of Rights and Freedoms" also contains several sections regarding indigenous rights. Even before the Constitution Act of 1982 was promulgated, and twenty years before the HCA's Mabo decision, the Supreme Court of Canada (SCC) issued its famous Calder decision.[89] In Calder, the SCC recognized for the first time the continuous existence of an "aboriginal (Indian) title." The case

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85 Empty territory belonging to no one.
86 Mabo v. Queensland (No. 2) 175 CLR 1 (1992).
87 Mabo v. Queensland (No. 2) 175 CLR 88 (1992). In a 1996 decision, Wik Peoples v. Queensland, 187 CLR 1, the HCA also determined that native titles can coexist and overlap with pastoral leases.
88 This applied to those that have lost their traditional connections because of involuntary removal.
89 Calder v. The Queen, 34 DLR (3d) 145 (1973).

originated in the province of British Columbia where no treaties with any First Nations[90] existed.[91]

These are only some of the ways in which indigenous rights worldwide have been recognized.

IPRA will not mean that the entire country will be controlled by Indigenous peoples – IPRA does not replace the premises of the Regalian Doctrine in areas not occupied or used by these indigenous peoples' communities. It is in such areas where the motive for individual profit is left unchecked by non-official customs or other social institutions. The State should continue to own as well as regulate the use of these resources.

On the other hand, IPRA does not pretend to give absolute control to indigenous peoples over all resources within areas occupied or used by them. For certainly, the Police Power of the State could govern the recognition of the rights from domains which have neither been full public open access nor entirely individual. The police power of the State is seen in the very provisions challenged by the Petitioner.

The fears expressed by the Petitioner could best be addressed by a more genuine attempt to understand the systems prevailing within ancestral domains, rather than by making conclusions based on hysteria, stereotypes and acculturated prejudice. They could also be addressed by examining the provisions of the very law that is being attacked.

The fear that indigenous peoples will claim all of the territory of the Philippines[92] is best addressed by understanding that indigenous peoples must have a continuous history, culture and possession over the ancestral domains that they claim. The definition of ancestral domains and indigenous peoples[93] as well as the process of delineation in the law[94], provide conditions for achieving such continuity.

The fear that indigenous peoples will create different "Republics" within their ancestral domains is best answered by such provisions in IPRA as the recognition of

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90 Indigenous groups in Canada.
91 Further SCC decisions expanded on Calder's recognition of aboriginal rights. See Guerin v. The Queen, 2 SCR 335 (1984) and R. v. Sparrow, 1 SCR 1075 (1990).
92 Petition, par. 4.9, p. 11
93 Section 3 (a), (h), Rep. Act No. 8371, Definitions of Ancestral Domains and Indigenous Peoples
94 Sections 51, 52, 53, Rep. Act No. 8371, Delineation processes of ancestral lands and domains

the power of eminent domain[95], the determination of common and public welfare in cases of overlapping claims to reservations[96] , and the compromise on watersheds.[97]

The Constitution can bear an interpretation which is not repugnant to the needs of the times – The Constitution can bear an interpretation that creates space for these new perspectives and imperatives of natural resource management to be recognized in law.

This discussion is not meant to impose a particular theory of natural resource management. It however clearly demonstrates that the IPRA is neither totally unreasonable nor enacted simply for the benefit of a select few, as argued by the Petitioners. The inability of old antiquated approaches at resource management systems to meet issues of poverty and ecological disasters within ancestral domains led both Congress and the President[98] to enact Republic Act No. 8371.

There is no clear contradiction between the provisions in the IPRA challenged by the Petitioners and the Constitution. At the very least, a high premium on the presumption of its constitutionality should be accorded.

2. WHETHER OR NOT IPRA DEPRIVES OTHER INTERESTED PARTIES DUE PROCESS

The challenged provisions of IPRA do not include lands held by others within the purview of Ancestral Lands and Domains – Petitioners further argue that the IPRA will deprive private property rights owners of their property without due process of law.

Before an area can be declared by the National Commission on Indigenous Peoples (NCIP) as being part of an ancestral domain or ancestral land, a lengthy process that involves all the stakeholders in the are being claimed must first be observed. During this process, private owners included within the area claimed have the right to be notified of the application. They are protected by Section 56 of the law. They also have the right to file their oppositions and are give every opportunity to be heard.

The "cardinal primary rights" for procedural due process[99] are present in the process for the identification and delineation of ancestral domains outlined in Section

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95 Section 7 (c), Rep. Act No. 8371. Right to Stay in Territories.
96 Section 7 (g), Rep. Act No. 8371, Right to Claim parts of Reservations
97 Section 58, Rep. Act No. 8371, Environmental Considerations
98 See also Exec. Ord. No. 263 (1996). This Executive Order proclaims that Community Based Resource Management Systems are given priority.
99 Ang Tibay v. Court of Industrial Relations, 69 Phil. 635 (1940).

52 of the challenged statute. The processes of identification and delineation of ancestral lands are contained in Section 53. These processes involve the filing of a petition, investigation, publication and posting, and a period for considering oppositions to the grant of the certificates.

Recognizing ancestral lands within ancestral domains likewise follows a very transparent procedure. Once an ancestral domain has been certified, the allocation of ancestral lands within such domain to individual, family or clan claimants of the ICC/IP concerned will be made in accordance with the ICC/IP community's customs and traditions.[100] Such individual, family or clan claimants need no longer acquire a Certificate of Ancestral Land Title or CALT from the NCIP over their ancestral land claims that lie within their community's ancestral domain.

In the process of delineation, any conflict arising from any opposition to the application are resolved using the following procedure:

(1) The Ancestral Domains Office (ADO) first calls the contending parties to meet and assist them in coming up with a preliminary resolution of the conflict;[101]

(2) In the event that no preliminary resolution of the conflict is made, the NCIP hears and decides the dispute after providing notice to the parties.[102] However, if the parties are both ICCs/IPs and the subject involves traditional boundaries of their ancestral domains, customary process should be followed.[103] This implies that if the parties involve a non-ICC/IP and an ICC/IP, the conflict will be heard and decided by the NCIP according to its rules of procedure. In its absence, the process of administrative adjudication specified in the Administrative Code of 1987 will be followed.[104]

(3) The decision, order, award, or ruling of the NCIP on any ancestral domain dispute or on any matter pertaining to the application, implementation, enforcement and interpretation of the IPRA may be appealed to the Court of Appeals. The remedy would be a Petition

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[100] Rep Act No. 8371, sec 53 (a).
[101] Rep Act No. 8371, sec 52(h) and sec 53(f).
[102] Rep. Act No. 8371, sec 62.
[103] *Ibid.*
[104] Book VII, Chapter 3, Executive Order No. 292 (1987).

> for Review that should be filed within fifteen (15) days from receipt by the appellant of a copy of such decision.[137]

The IPRA does not provide for blanket nor automatic cancellation of titles to privately owned lands in favor of their inclusion in ancestral domains or ancestral lands. The power of the NCIP to effect the cancellation of officially documented titles to land is restricted by the following limitations:

(a) The holders must have illegally acquired the documents of title;
(b) The cancellation can only be effected through "appropriate legal action";
(c) Despite the action for cancellation, the rights of possessors in good faith will be respected; and

(d) The action for cancellation may be initiated only within two (2) years from the effectivity of the IPRA – or until 23 November 1999.[138]

In addition to such procedural safeguards, Section 56 of IPRA substantively provides:

> "Property rights within ancestral domains already existing and / or vested upon effectivity of this Act, shall be recognized and respected."[105]

The challenged provisions of the IPRA which recognize the use of customary law for the settlement of disputes on property rights do not violate due process of law.

Petitioners fear that "a non-member of an ICC/IP who has a dispute with an ICC/IP will have his case decided solely by members of ICCs/IPs/."[106] They add that "a non-member of an ICC/IP who must defend his case against an ICC/IP member before judges who are all members of ICCs/IPs cannot but harbor a suspicion that they do not have the cold neutrality of an impartial judge."[107]

Shorn of its legalese, the argument simply states that Tagalogs, Ilocanos, Warays, Cebuanos cannot trust Manobos, Bagobos, Ibalois and other indigenous peoples as judges.

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[105] *Ibid.*
[106] Petition, par. 6.21, p. 24.
[107] Petition, par. 6.22, p. 24, underscoring by Petitioners. Per Malcolm.
[108] Per Malcolm. Rubi v. Provincial Board of Mindoro, 39 Phil. 660 (1919).

This mistrust is not based upon any concrete behavior of those that would resolve disputes. It is not also based upon any established relationship between any of those involved in the dispute and the mediator/ arbitrator / judge. The only basis for the mistrust is that they are indigenous peoples. It is based on ethnicity and the fact that they belong to a different culture.

On a wholesale basis, Petitioners would have the Supreme Court disqualify indigenous peoples from deciding disputes simply on the basis of their ethnicity.

This is prejudice pure and simple. It plays to a stereotype that has long been swept away through the provisions of Article XII, Section 22 of the Constitution. Time was when indigenous peoples were referred to as "backward" and as "natives of the Philippine Islands of a low grade of civilization"[108], that they were peoples who were needful of protection and could not be trusted because of the accident of their lineage and birth.[109]

This is a prejudice that the Constitution has done away with and for which IPRA has been enacted.

In order to find prejudice sufficient to render proceedings unconstitutional, the requirement now is that there must be a finding of specific and undue partiality. It is not sufficient that there be only some speculation that there will be prejudgment. Thus, in *Webb v. People*[110], speaking on the prejudice that might be caused by undue publicity, the Supreme Court noted:

> "Be that as it may, we recognize that pervasive and prejudicial publicity under certain circumstances can deprive an accused of his due process right to fair trial. Thus in Martelino, et al. V. Alejandro, et al, we held that to warrant a finding of prejudicial publicity, there must be allegation and proof that the judges have been unduly influenced, not simply that they might be, by the barage of publicity. In the case at bar, we find nothing in the records that will prove that the tone and content of the publicity that attended the investigation of Petitioners fatally infected the fairness and impartiality of the DOJ Panel. Petitioners cannot just rely on the subliminal effects of publicity on the sense of fairness of the DOJ Panel, for these are basically unbeknown and beyond knowing…"[111]

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[109] People v. Cayat, per Moran, 68 Phil. 12 (1939).
[110] 247 SCRA 653, 692 (1995) per Puno J, Regalado, Narvasa, Mendoza, Francisco concur. 247 SCRA 653, 692 (1995) citing Martelino v. Alejandro, 32 SCRA 106 (1970)
[111] 247 SCRA 653, 692 (1995) citing Martelino v. Alejandro, 32 SCRA 106 (1970)

Also, the use of customary law is not new. Our laws have acceded to its existence. It has been in our statute books ever since the New Civil Code[112]. The Local Government Code[113] has recognized the use of indigenous processes for dispute resolution in areas inhabited by indigenous peoples.

The Supreme Court has, on occasion, also recognized the difficulties caused by the dichotomies of customary law and the official national legal system. Thus, for instance, then Chief Justice Fernan in *Pit-og v. People*, acquitted the accused for a charge of theft on the basis of the application of the concept of "tayan" ownership prevalent in the Cordilleras. The Court then observed

> "These disparities, however, gain significance under the peculiar circumstances of this case. The case involved was communal before the sale to Edward Pasiteng, being co-owned by the members of the *tomayan*. Anyone, including non members of the *tomayan,* could build a house thereon."

Then with all the other Justices concurring, the Court said —

> "We see this case as exemplifying a clash between a claim of ownership founded on customs and tradition and another such claim supported by written evidence but nonetheless based on the same customs and tradition. When a court is beset with this kind of case, where the accused, an illiterate tribeswoman who cannot be expected to resort to written evidence of ownership, stands to lose her liberty on account of an oversight in the court's appreciation of the evidence." [114]

What IPRA now provides is a more transparent interface between laws which have been existing in our indigenous communities and the norms that have found their way into our official national legal system. By doing so, it has provided for processes of resolving disputes which may not be in accord with the westernized systems that others have grown accustomed with. The rules contained in our statute books may be the law that many people in Cebu, Baguio, Manila or Davao City are comfortable with. But this has not been the case with the occupants of various Kalinga *ili*[115], or a B'laan *sakuf*[116] or other indigenous communities.

For centuries, indigenous peoples have endured the proceedings in our courts and accepted the alien procedures and metaphors that we use. There are grumblings

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[112] Rep Act No. 386 as amended, article 11 and 12.
[113] Rep Act No. 7160 (1991), sec. 399 (f). "In barangays where majority of the inhabitants are members of indigenous cultural communities, local systems of setting disputes through their councils of datus or elders shall be recognized without prejudice to the applicable provisions of this Code."
[114] Pit-og v. people, G.R. 765399, October 11, 1990.
[115] community
[116] constituents of a *f'long* (datu)

that the incumbents in various salas do not understand the differences in their cultures. But they have still participated in our court systems. Never had they, as the Petitioners have done, implied that the ethnicity of the incumbent judges or justices could *per se* cloud their capacity to be human and impartial.

To strike down this law simply because it starts to recognize systems — norms closer to many of our peoples than those embodied in other statutes — that have been in place since time immemorial, is not consistent with Article II, Section 22 of the Constitution.

POSTSCRIPT[117]

The enactment of Republic Act 8371 or the Indigenous Peoples Rights Act (IPRA) in 1997 was a product of a century old struggle of indigenous peoples for recognition of their ownership of their ancestral domain. In the words of Justice Puno,

> "the IPRA was enacted by Congress not only to fulfill the constitutional mandate of protecting the indigenous cultural communities' right to their ancestral land but more importantly, **to correct a grave historical injustice to our indigenous people**."[118]

IPRA recognizes fundamental rights of indigenous peoples, particularly, the right to their ancestral domains/lands[119], the right to self-governance[120], the right to cultural integrity[121], and other human rights[122].

The filing of a petition in the Supreme Court to have IPRA declared unconstitutional portended a major setback to the struggle not only because it placed doubt on the constitutionality of the law but, more significantly, because the petition placed the full implementation of the law on hold. For while the Supreme Court never

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[117] This postscript was, by way of updating the article as appearing in this Journal, written by Atty. Ingrid Rosalie Gorre, the OIC Team Leader of the Research and Policy Development Team of the Legal Rights and Natural Resources Center.
[118] Isagani Cruz and Cesar Europa vs. NCIP et. al., G.R. NO. 135385.. December 6, 2000.
[119] Chapter 3, RA 8371, Indigenous Peoples Rights Act.
[120] Chapter 4, id.
[121] Chapter 6, id.
[122] Chapter 5, id.

issued any order restraining the implementation of the IPRA, its implementation was *de facto* restrained.[123]

On December 6, 2000, three years after the enactment of the law, the Supreme Court, in a *per curiam* decision, declared the law constitutional. Seven justices voted to grant the petition while another seven voted to dismiss it.[124]

Justice Kapunan, together with the Chief Justice, Justices Bellosillo, Quisumbing and Santiago, sustained the validity of the challenged provisions of the IPRA. Justice Puno also filed a separate opinion sustaining all challenged provisions of the law with the exception of Section 1, Part II, Rule III of NCIP Administrative Order No. 1, series of 1998, the Rules and Regulations Implementing the IPRA, and Section 57 of the IPRA. Justice Mendoza voted to dismiss the petition on procedural grounds.[125]

Seven (7) other Justice voted to grant the petition. Justice Panganiban dissented and was of the view that Sections 3 (a)(b), 5, 6, 7 (a)(b), 8, and related provisions of R.A. 8371 are unconstitutional. Justice Vitug likewise dissented and was of the view that Sections 3(a), 7, and 57 of R.A. 8371 are unconstitutional. Justices Melo, Pardo, Buena, Gonzaga-Reyes, and De Leon joined in the separate opinions of Justices Panganiban and Vitug.

There was no clear ruling on the various issues raised by both Petitioners and Intervenors. The dismissal was mainly based on the lack of a necessary majority required to declare a law unconstitutional. It is not unlikely that another case may be filed in which the Supreme Court may rule more decisively, and hopefully for the benefit of Philippine indigenous peoples.

The dismissal of the case did not mean that the struggles of indigenous peoples ended. Recognition of the ancestral domain rights of indigenous peoples has proceeded at a snail's pace. Based on the latest data from the NCIP, only "70,000 hectares or about 1.4 % of the total estimated ancestral domain area are covered by CADTs".[126] The total remaining area covered by Certificate of Ancestral Domain Certificates[127] (CADC) for

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[123] The Department of Environment and Natural Resources, for example, explained that their inaction was to avoid "a legal juggernaut involving millions of pesos to undo the claims and titles" if IPRA is declared unconstitutional. Ballesteros (ed.), A Divided Court: Case Materials from the Constitutional Challenge to the Indigenous Peoples Rights Act of 1997, Legal Rights and Natural Resources Center-Kasama sa Kalikasan) citing the Statement of Assistant Secretary Paula Defensor, DENR Press Release, July 24, 2000 at <http://www.denr.gov.ph/072400.htm>

[124] Cruz vs. NCIP, id.

[125] Id.

[126] NCIP Data, 2003, cited in the Medium-Term Philippine Development Plan for Indigenous Peoples for 2004-2008.

[127] Certificate of Ancestral Domain Certificates (CADCs) were issued by the Department of Environment and Natural Resources under Department Administrative Order No. 2, Series of 1993. IPRA recognized the CADCs and provided for a procedure for conversion of the CADCs into a Certificate of Ancestral Domain Title (CALT).

conversion into Certificate of Ancestral Domain Titles (CADT) is 2,530,366 hectares while the area of ancestral domain for direct titling is estimated at 2,500,000 hectares. Budgetary and other technical constraints have prevented an expedient way of recognizing the ancestral domain titles of indigenous peoples. For example, the estimated budget for the titling of the CADCs and the new direct applications is around Php 287,000,000.[128] As of July 2003, only eleven CADTs have been approved covering a total area of 367,440 hectares.[129]

The continued failure to implement the IPRA and consequent lack of recognition of the ancestral domain rights of indigenous peoples is a growing concern from a human rights standpoint. In the report of the United Nations Special Rapporteur on Indigenous Peoples on his visit to the Philippines, concern was expressed over the "serious human rights issues related to the lack of the effective implementation of the IPRA."[130]

> "For poor indigenous farming communities crucial land rights are addressed by filing legal claims to their own ancestral domains and titles. The process is cumbersome and indigenous representatives perceive that the business interests of private enterprises, which over the years have encroached upon their ancestral domains, are more protected than their own rights based on land use and continuous occupation. High poverty rates and the lack of basic social services force many indigenous people to migrate to poor urban areas where the situation of women and children is of particular concern."[131]

The enactment of IPRA also did not mean that violations of indigenous peoples' human rights ended. Numerous such violations have been reported in the last few years. The UN Special Rapporteur for Indigenous Peoples also indicated his concern

> "about multiple reports of serious human rights violations involving indigenous peoples, within the framework of a process of militarization of indigenous areas. Such abuses include attacks upon the physical integrity and security of indigenous persons, dispossession and destruction of property, forced evacuation and relocation, threats and harassment, disruption of the cultural and social life of the community, in other words, the violation of civic, economic, social and cultural rights. xxx

The frequent occurrence of human rights violations is a typical negative effect experienced by Philippine indigenous peoples, especially in connection with the promotion of various economic development projects, including dams, mining, logging and

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[128] NCIP Data, 2003, id.
[129] <http://www. ncip.gov.ph>
[130] Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, submitted in accordance with Commission on Human Rights, Addendum, Misssion to the Philippines. E/CN.4/2003/90/Add.3 (5 March 2003).
[131] Id.

commercial plantations. Such effect upon the livelihood and lifestyles of indigenous peoples are aptly described as "development aggression".

The implementation of the Indigenous Peoples Rights Act is not only about recognition of rights to ancestral domain of the indigenous peoples. It is also about ensuring that indigenous peoples, just like their lowland counterparts, enjoy the rights that pertain to them as human beings.

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Significant Laws and Issuances
January to April 2004

*Christine V. Lao**

Recent legislation and administrative issuances aim to increase investor interest in the Philippine market, protect property rights, and promote social justice and good governance.

LAWS

Republic Act No. 9267, The Securitization Act of 2004

Republic Act No. 9267 seeks to create a favorable market environment for asset-backed securities (ABS)[1] by developing a legal and regulatory framework for securitization.[2] The law, which took effect on April 10, 2004, sets the qualifications, duties and powers of three key players in the securitization process—Special Purpose Entities (SPEs), Servicers[3] and Secondary Mortgage Institutions (SMIs).[4]

SPEs, which the law requires to be corporations or trusts incorporated in accordance with the Corporation Code,[5] act as buyers of assets for securitization. Incorporated solely for the purpose of securitization, they are required to submit a

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[1] "Asset-backed securities" refer to the certificates issued by a Special Purpose Entity, the repayment of which shall be derived from the cash flow of assets (loans or receivables or similar financial assets with an expected cash stream) in accordance with a securitization plan approved by the Securities and Exchange Commission. Republic Act No. 9267, Sec. 3(b) and (c).

[2] Section 3(a) of Republic Act No. 9267 defines "securitization" as "the process by which assets are sold on a without recourse basis by the Seller to a Special Purpose Entity (SPE) and the issuance of asset-backed securities (ABS) by the SPE which depend, for their payment, on the cash flow from the assets so sold and in accordance with [a] Plan [for securitization approved by the Securities and Exchange Commission]."

[3] The Servicer is the entity designated by the SPE to collect and record payments received on the assets, remit the collections to the SPE, and perform other services (with the exception of asset management or administration) provided under a servicing agreement. (Republic Act No. 9267, Sec. 3(k).) The Servicer must be a corporation incorporated under Philippine law with a minimum authorized capitalization of PHP10,000,000 or such higher amount that the SEC may prescribe. It should also be independent of the SPC or trustee and should not share common ownership, officers, or directors with the SPC or the trustee. (Republic Act No. 9267, Sec. 24.) The Servicer's failure to perform with due diligence the obligations under its servicing agreement may merit revocation of its corporate registration and the imposition of a fine not less than PHP1,000,000. Its officers and responsible employees may be imprisoned not more than five years and fined not less than PHP100,000. If the breach of duty arises from bad faith or gross negligence, the Servicer may be fined not less than PHP5,000,000 and have its corporate registration revoked. Its officers and responsible employees may be imprisoned for not less than six years and one day up to a maximum of 20 years, and be fined not less than PHP500,000.

[4] An SMI is an entity created to enhance a secondary market for residential mortgages and housing-related ABS. (Republic Act No. 9267, Sec. 3(i).) It should be organized as a stock corporation with a minimum initial paid-up capital of PHP2,000,000,000. Its total obligations should not exceed 15 times its paid-up capital, and its actual obligations should not be greater than 10 times its paid-up capital. (Republic Act No. 9267, Sec. 39.) SMIs should register its business and operation plans with the SEC and be subject to the same disclosure requirements imposed on SPCs. (Republic Act No. 9267, Sec. 36.)

[5] Republic Act No. 9267, Sec. 5 states,

securitization plan[6] to the Securities and Exchange Commission (SEC) for approval. They generally cannot undertake any activity other than that contained in the approved plan.[7] The ABS they issue must be registered in accordance with the relevant provisions of the Securities Regulation Code.[8] The SEC will issue its order and permit to sell ABS only after SPEs comply with all registration requirements and after it approves the SPE plan.[9]

SPEs enjoy several tax incentives. Transfers of assets to an SPE, including the sale or transfer of any and all security interests thereto, which are made in accordance with the securitization plan, are exempted from value-added tax (VAT) and documentary stamp tax (DST). All applicable registration and annotation fees incidental to the transfer of assets or security interest thereto (except for registration fees with the SEC), are 50 percent of the applicable registration and annotation fees. Moreover, a transfer of assets by way of *dacion en pago* by an obligor in favor of an SPE is not subject to capital

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> Special Purpose Entity (SPE).—The SPE in the form of an SPC [Special Purpose Corporation] shall be established in accordance with the Corporation Code of the Philippines and the rules promulgated by the [Securities and Exchange Commission] solely for the purpose of securitization and registered as such with the Commission. An SPE constituted as an SPT shall be a trust administered by an entity duly licensed to perform trust functions under the General Banking Law and need not be registered as such with the Commission. In any event, the SPE, whether in the form of an SPT or SPC, shall be solely organized and operated for purposes of securitization in accordance with this Act. The Commission and the BSP shall, from time to time, determine the required capitalization for the SPCs and SPTs, respectively.

[6] Section 6 provides that the securitization plan must include the following: (a) the nature and mechanics of the sale of assets from the seller to the SPE, including the terms, conditions and circumstances specified in the plan, wherein the assets may be reverted to the seller; (b) the credit enhancements or liquidity supports for the ABS; (c) the identities and qualifications of the originator (that is, the original obligee of the assets such as a financial institution that grants a loan or a corporation in the books of which the assets were created in accordance with the plan), seller, servicer, underwriter and dealer of ABS and description of any compensation the issuer, seller or underwriter has received or will receive in connection with the ABS; (d) the identity, qualifications and compensation of the trustee that will administer the assets conveyed to the SPE for the benefit of the ABS holders, which trustee shall not be related directly or indirectly to the originator or seller; (e) the aggregate principal amount of the value of the ABS to be issued, the principal amount of each class within the ABS, and the denominations which shall not be lower than PHP5,000 in which the ABS will be issued; (f) the structure of the ABS to be registered, including the structure and payment priorities of each class of certificate within the ABS, anticipated payments and yields for each class, and the circumstances under which the ABS may be redeemed or retired; (g) a full description of the assets contained, or to be contained, in the asset pool supporting the ABS; (h) the rating agency/agencies for the ABS, the criteria used to rate the ABS, and any limitation, qualification or material risks not addressed by the rating agency/agencies; (i) a full description of how the issuer will collect and maintain remittances from the assets pending distribution to holders of the ABS, including the issuer's investment policies and the identity of the issuer's investment advisor, if any; (j) the plan for the management and administration of the assets, asset pool and the ABS including the disposition of the foreclosed properties, if any; and (k) the manner of disposal of any residual value or asset with the SPE after all obligations to holders of ABS shall have been settled.

[7] Section 11 provides,

> The SPE shall not undertake any activity other than that contained in the approved Plan except upon a written approval of the Commission and the written consent of the holders of the ABS representing at least two-thirds (2/3) of the outstanding amount of the ABS; *Provided*, That in case the originator of the assets is a bank or any other financial intermediary which under special laws is subject to the supervision of the BSP or an entity directly or indirectly related to the said bank or other financial intermediary or in the event the SPE is constituted in the form of an SPT, prior endorsement by the BSP is necessary.

[8] Republic Act No. 9267, Sec. 7.

[9] Republic Act No. 9267, Sec. 8.

gains tax.[10] Where the implementation of the securitization plan or the provisions of the law requires a transfer of the assets and collateral back to the originator or seller, the Where the implementation of the securitization plan or the provisions of the law requires a transfer of the assets and collateral back to the originator or seller, the transfer will enjoy the foregoing tax exemptions and fee reductions.[11] It should be noted, however, that any transfer of assets to an SPE should be a "true sale" determined in accordance with Section 12 of the law.[12]

The original issuance of ABS and other securities related solely to a securitization transaction is exempt from VAT, but is subject to DST. All secondary trades and subsequent transfers of ABS, including all forms of credit enhancements in such instruments, are exempt from both VAT and DST.[13] Moreover, the law expressly states that SPEs should not be classified as banks, quasi-banks or financial intermediaries and should therefore not be subject to the gross receipts tax.[14]

To promote the securitization of mortgage and housing-related receivables of government housing agencies, the yield or income of investors from any low-cost housing-related ABS is exempt from income tax.[15]

Republic Act No. 9234, The Optical Media Law of 2003

Republic Act No. 9239, which was enacted to promote and protect intellectual property rights in the Philippines, took effect on March 2, 2004. The law provides a

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[10] Republic Act No. 9267, Sec. 28.

[11] Republic Act No. 9267, Sec. 32.

[12] Section 12 states,

> *Transfer of Asset and Security.*—The transfer of the assets from the Originator or Seller to the SPE shall be deemed a "true sale" when it results in the following:
> (a) The transferred Assets are legally isolated and put beyond the reach of the Originator or Seller and its creditors;
> (b) The transferee SPE has the right to pledge, mortgage or exchange those transferred Assets;
> (c) The transferor relinquishes effective control over the transferred assets;
> (d) The transfer shall be effected by either a sale, assignment or exchange in any event on a without recourse basis to the Originator or Seller;
> (e) The transferee shall have the right to profits and disposition with respect to the assets;
> (f) The transferor shall not have the right to recover the assets and the transferee shall not have the right to reimbursement of the price or other consideration paid for the assets; and
> (g) The transferee shall undertake the risks associated with the assets. This shall not, however, prevent the transferor form giving moral representations or warranties in respect of the assets sold.

[13] Republic Act No. 9267, Sec. 29.

[14] Republic Act No. 9267, Sec. 30. Although the law provides that the ABS issued by SPEs are not considered deposit substitutes, it does state that the yield from the ABS that are not held by tax-exempt investors should be subject to a 20 percent final withholding tax. *Id.*, Sec. 31.

[15] Republic Act No. 9267, Sec. 33.

regulatory framework for optical media,[16] penalizes violators, and reorganizes the Videogram Regulatory Board into the Optical Media Board (OMB).[17]

The law requires persons engaged in mastering, manufacturing, replicating, importing, exporting and selling optical media or equipment parts and accessories used in the first three activities, to register with, and secure a license from, the OMB prior to engaging in any of the foregoing activities. If a person wishes to engage in more than one of the foregoing, he needs to register each business separately. Securing an OMB license is a condition precedent for securing the necessary business permits, licenses or registration from the appropriate authorities for businesses engaged in mastering, manufacturing, replicating, importing and exporting optical media. It is also required for the release of equipment and materials intended for use in mastering and/or manufacturing optical media from customs or economic zones.[18] The law also provides the grounds on which the OMB may refuse to issue, suspend or cancel a license.[19]

Persons engaging in covered acts without a license, mastering, manufacturing or replicating optical media without the consent of the owner of the original material, and

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[16] The law defines "optical media" as "a storage medium or device in which information, including sounds and/or images, or software code, has been stored, by mastering and/or replication, which may be accessed and read using a lens scanning mechanism employing a high intensity light source such as a laser, or any such other means as may be developed in the future…." Republic Act No. 9239, Sec. 3(i). Its provisions apply *mutatis mutandis* to the regulation of magnetic media. Republic Act No. 9239, Sec. 26.

[17] Among the OMB's powers and functions are the powers to issue, suspend or cancel licenses required by the act, inspect establishments covered by the law, apply for search warrants, take optical media into preventive custody, hear and resolve administrative cases involving optical media, impose sanctions, fines, penalties, operate or close establishments that violate the law, and *issue subpoenas* or *subpoenas duces tecum.* Republic Act No. 9239, Sec. 10.

[18] Republic Act No. 9239, Sec. 13 states:

> *Licensing and Registration.* –Any person, establishment or entity shall, prior to engaging in one or more of the businesses or activities enumerated hereunder, register with, and secure the appropriate licenses from the OMB:
>
> (a) Importation, exportation, acquisition, sale or distribution of optical media, manufacturing equipment, parts and accessories and manufacturing materials used or intended for use in the mastering, manufacture or replication of optical media;
> (b) Possession or operation of manufacturing equipment, parts and accessories, or the possession, acquisition, sale or use of manufacturing materials for the mastering, manufacture or replication of optical media; and
> (c) The mastering, manufacture, replication, importation or exportation of optical media.
>
> With respect to the preceding paragraph (c), the licenses issued by the OMB are conditions precedent for securing the necessary business permits, licenses or registration from the appropriate authorities, and shall also be a necessary requirement for the release of manufacturing equipment, parts and accessories and materials intended for use in mastering and/or manufacturing optical media, from customs or economic zones exercising independent customs laws.
>
> Those engaged or intending in more than one of the abovementioned activities and/or conduct or intend to conduct business in more than one location shall separately register with and secure the license from the OMB for every business activity at each place of business.
>
> No business activity registered and licensed by the OMB for a specific place of business shall be conducted in a place and/or location other than that indicated in the license, without the prior written approval of the OMB. The registration and license issued by the OMB shall be prominently displayed at the designated place of business.

[19] Republic Act No. 9239, Secs. 15 and 16.

failure to affix a proper Source Identification Code on optical media products, may be imprisoned and fined. Refusal to submit to inspection by the OMB or surrender for preventive custody any optical media, equipment or manufacturing materials, the use of armed resistance against the OMB's authorized agents, and knowing possession of items produced in violation of the law and used for commercial purposes are likewise punished by the law.[20]

Republic Act No. 9243, Amendments to NIRC Provisions on DST

Republic Act No. 9243, which took effect on March 20, 2004, reduced the amount of DST due on original issues of shares of stock from PHP1.50 to PHP1.00 on each PHP200 or fractional part thereof, of the par value of issued shares.[21] The DST on sales, agreements to sell, memoranda of sales, deliveries or transfers of shares or stock certificates was likewise reduced from PHP1.50 to PHP0.75 on each PHP200 or fractional part thereof, of the par value of the transferred shares.[22]

Section 174 of the National Internal Revenue Code (NIRC), which imposed DST on debentures and certificates of indebtedness issued by corporations, was deleted.[23] Section 180, which prescribed DST on bonds, loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government, deposit substitute debt instruments, certificates of deposit bearing interest and others not payable on sight or demand, was renumbered as Section 179 and amended as follows:

> Section 179. *Stamp Tax on All Debt Instruments.*—On every original issue of debt instruments, there shall be collected a documentary stamp of One peso (P1.00) on each Two hundred pesos (P200), or fractional part thereof, of the issue price of any such debit instrument; Provided, That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ratio of its term in number of days to three hundred sixty-five (365) days; Provided further, That only one documentary stamp tax shall be imposed on either loan agreement or promissory notes issued to secure such loan.
>
> For purposes of this section, the term debt instrument shall mean instruments representing borrowing and lending transactions, including but not limited to debentures, certificates of indebtedness, due bills, bonds, loan agreements, including those signed abroad wherein the object of the contract is located or used in the Philippines, instruments and securities

[20] The offenses listed in Section 19 of the law "shall be punished without prejudice to the application of the appropriate penalties or sanctions provided under Section 216 and such other appropriate sections of the [Intellectual Property] Code or Republic Act No. 8792, also known as the Electronic Commerce Act, the Revised Penal Code or other applicable laws." Republic Act No. 9239, Sec. 19.

[21] Republic Act No. 9243, Sec. 2.

[22] Republic Act No. 9243, Sec. 3.

> issued by the government or any of its instrumentalities, deposit substitute debt instruments, certificate or other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit taking into consideration the size of the deposit and the risk involved or drawing interest and having a specific maturity date, orders for payment of any sum of money otherwise than at sight or on demand, promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation.

A new provision, Section 180, was inserted. It reads:

> Section 180. *Stamp Tax on All Bills of Exchange or Drafts.*—On all policies of insurance or other instruments by whatever name the same may be called, whereby any insurance shall be made or renewed upon any life or lives, there shall be collected a documentary stamp tax of Fifty centavos (P0.50) on each Two hundred pesos (P200) or fractional part thereof, of the amount of premium collected.

The provision imposing DST on life insurance policies was amended in order to make clear that DST should be imposed on all policies of annuities. The amended provision likewise imposed on pre-need plans DST equivalent to PHP0.20 on each PHP200 of the premium collected.[24]

The law also added twelve instruments to the list of documents exempt from DST.[25]

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[23] Republic Act No. 9243, Sec. 1. Sections 175 to 179 of the NIRC were renumbered as Sections 174 to 178.

[24] Section 186 now reads:

> *Stamp Tax on Policies of Annuities and Pre-need Plans.*—On all policies of annuities or other instruments by whatever name the same may be called, whereby any annuity may be made, transferred or redeemed, there shall be collected a documentary stamp tax of Fifty centavos (P0.50) on each Two hundred pesos (P200) or fractional part thereof, of the premium or installment payment or contract price collected. On pre-need plans, the documentary stamp tax shall be Twenty centavos (P0.20) on each Two hundred pesos (P200), or fractional part thereof, of the premium or contribution collected.

[25] Section 199. *Documents and Papers Not Subject to Stamp Tax.*—The provisions of Section 173 to the contrary notwithstanding, the following instruments, documents and papers shall be exempt from documentary stamp tax:

…

(c) Borrowing and lending of securities executed under the Securities Borrowing and Lending Program of a registered exchange, or in accordance with regulations prescribed by the appropriate regulatory authority; *Provided, however,* That any borrowing or lending of securities agreement as contemplated hereof shall be duly covered by a master securities borrowing and lending agreement acceptable to the appropriate regulatory authority and which agreement is duly registered and approved by the Bureau of Internal Revenue (BIR).

(d) Loan agreements or promissory notes, the aggregate of which does not exceed Two hundred fifty thousand pesos (P250,000) or any such amount as may be determined by the Secretary of Finance, executed by any individual for his purchase on installment for his personal use or that of his family and not for business or resale, barter or hire of a house, lot, motor vehicle, appliance or furniture; *Provided*, however, That the amount to be set by the Secretary of Finance shall be in accordance with a relevant price index not to exceed ten percent (10%) of the current amount and shall remain in force at least for three (3) years.

(e) Sale, barter or exchange of shares of stock listed and traded through the local stock exchange for a period of five (5) years from the effectivity of [the] Act.

(f) Assignment or transfer of any mortgage, lease or policy of insurances, or the renewal or continuance of any agreement, contract, charter or any evidence of obligation or indebtedness, if there is no change in the maturity date or remaining period of coverage from that of the original instrument.

Republic Act No. 9238, Amendments to NIRC provisions on VAT

Services rendered by banks, non-bank financial intermediaries and finance companies, doctors and lawyers, and other medical, dental, hospital and veterinary services (except those rendered by professionals), all of which were formerly subject to VAT, are once again exempt under Republic Act No. 9238.[26] The law, which took effect on March 2, 2004, has also re-imposed the tax on the gross receipts (GRT) derived by banks and non-bank financial intermediaries. It has, however, amended the rate of GRT on gross receipts from lending activities and income from financial leasing, so that the GRT is based on the remaining maturities of the instruments from which the gross receipts are derived, in accordance with the following schedule:

> Maturity period is five years or less…….5%
> Maturity period is more than five years……1%.[1]

Republic Act No. 9262, Violence Against Women and Children

The Anti-Violence Against Women and Their Children Act of 2004, which took effect on March 27, 2004, penalizes acts of physical, sexual, psychological violence and economic abuse against women.[28] It also and recognizes Battered Woman Syndrome as a defense against criminal and civil liability.[29]

(g) Fixed income and other securities traded in the secondary market or through an exchange.

(h) Derivatives: *Provided*, That for purposes of this exemption, repurchased agreements and reverse repurchase agreements shall be treated similarly as derivatives.

(i) Interbranch or interdepartmental advances within the same legal entity.

(j) All forbearances arising from sales or service contracts including credit card and trade receivables; *Provided*, That the exemption be limited to those executed by the seller or service provider itself.

(k) Bank deposit accounts without a fixed term or maturity.

(l) All contracts, deals, documents and transactions related to the conduct of business of the Bangko Sentral ng Pilipinas.

(m) Transfer of property pursuant to Section 40(c)(2) of the National Internal Revenue Code of 1997 as amended.

(n) Interbank call loans with maturity of not more than seven (7) days to cover deficiency in reserves against deposit liabilities, including those between or among banks and quasi-banks.

[26] Republic Act No. 9238, Secs. 1 and 2.

[27] Republic Act No. 9238, Sec. 3. Under Republic Act No. 8424, Section 121, the interest, commissions and discounts from lending activities, as well as income from financial leasing were taxed based on the following schedule:

> Short-term maturity (not in excess of two years)…….....…..5%
> Medium-term maturity (over two years but not exceeding four years)….....3%
> Long term maturity
> (1) Over four years but not exceeding seven years……...….....….....1%
> (2) Over seven years…….....……..0%

Republic Act No. 9231, Amendments to Republic Act No. 7160

Republic Act No. 9231, which took effect on February 23, 2004, amends the Special Protection of Children Against Abuse, Exploitation and Discrimination Act by penalizing the "worst forms of child labor." Among the acts penalized by the amendatory law is the employment of children in advertisements directly or indirectly promoting gambling or pornography.[30] The amendment clarifies that the term "child," as used in the law, refers to "all persons under 18 years of age."[31] It also increases the penalties for violations of the law[32] and gives family courts original jurisdiction over all cases involving offenses punishable under Republic Act No. 7160.[33]

Republic Act No. 9255, Amendment to the Family Code

Republic Act No. 9255, which took effect on March 29, 2004, amends Article 176 of the Family Code of the Philippines. It allows illegitimate children to use their father's surname if their filiation has been expressly recognized by their father in their

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[28] Section 3 defines "violence against women and their children" as,

> "…any act or series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child, whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse, including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty..."

and Section 5 punishes the following acts of violence:

(a) causing, threatening or attempting to cause, physical harm to the woman or her child, or placing them in fear of imminent physical harm;
(b) attempting to compel or compelling the woman or her child to engage in conduct which the woman or child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm or intimidation directed against the woman or her child (such as depriving, or threatening to deprive, the woman or her children of financial support or of any other legal right, or deliberately providing the woman's children insufficient financial support or preventing the woman in engaging in any legitimate profession, occupation, business or activity, or controlling the victim's own money or properties or solely controlling the conjugal or common money or properties)
(c) inflicting, or threatening to inflict physical harm on oneself for the purpose of controlling the woman's actions or decisions;
(d) causing, or attempting to cause the woman or her child to engage in sexual activities that do not constitute rape, by force or threat of force, physical harm or through intimidation directed against the woman, her child or her/his immediate family;
(e) engaging in purposeful, knowing or reckless conduct personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child (including stalking, lingering outside the woman's residence, entering or remaining in the property of the woman or her child against their will; destroying the belongings of the woman or child against their will and engaging in any form of harassment or violence); and
(f) causing mental or emotional anguish, public ridicule or humiliation to the woman or her child (including repeated verbal and emotional abuse and denial of financial support or custody of minor children or denial of access to the woman's child/children).

[29] Republic Act No. 9262, Sec. 26. Section 3(c) defines "Battered Woman Syndrome" as "a scientifically defined pattern of psychological and behavioral symptoms found in women living in battering relationships as a result of cumulative abuse."

[30] Republic Act No. 9231, Sec. 5.

[31] Republic Act No. 9231, Sec. 2.

[32] Republic Act No. 9231, Sec. 6.

[33] Republic Act No. 9231, Sec. 9.

birth certificate, or when the father has made an admission to this effect in a public document or a private handwritten instrument.[34]

Republic Act No. 9257, Senior Citizens' Act

Republic Act No. 9257, which amends Republic Act No. 7432, grants additional benefits and privileges to senior citizens, to encourage their participation in nation building. The law, which took effect on March 21, 2004, entitles resident citizens at least 60 years of age, to a 20 percent discount from all establishments relative to the use of services in lodging establishments, restaurants and recreation centers, the purchase of medicines, funeral and burial services, entrance fees to places of culture, leisure and amusement, medical and dental services, diagnostic and laboratory fees, fares for domestic air and sea travel, public railway, skyway and bus fares. Establishments may claim the discounts granted to senior citizens as tax deductions based on the net cost of the goods sold or services rendered. Moreover, the cost of the discount may be deducted from the establishment's gross income for the same taxable year that the discount is granted.[35] The law also exempts senior citizens from paying income tax[36] and training fees for socio-economic programs.[37] Private entities that employ senior citizens as employees are generally entitled to an additional deduction from their gross income equivalent to 15 percent of the total amount paid as salaries and wages to senior citizens.[38]

Persons that violate the law may be fined not less than PHP50,000 but not more than PHP200,000 and imprisoned not less than six months but not more than six years.[39] Persons who abuse the privileges granted by the law may also be fined not less than PHP5,000 but not more than PHP50,000, and imprisoned not less than six months.[40]

Republic Act No. 9244, Amendment to the Local Government Code

Republic Act No. 9244, which took effect on March 16, 2004, amends Sections 70 and 71 of Republic Act No. 7160 by eliminating the preparatory recall assembly as a

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[34] Republic Act No. 9255, Sec. 1.

[35] Republic Act No. 9257, Sec. 4.

[36] Republic Act No. 9257, Sec. 4(c) states, "To avail of the exemption, the senior citizen must have an annual taxable income that does not exceed the poverty level determined by the National Economic and Development Authority for that year."

[37] Republic Act No. 9257, Sec. 4(d).

[38] Republic Act No. 9257, Sec. 5(a)

[39] Republic Act No. 9257, Sec. 10 (1) and (2).

[40] Republic Act No. 9257, Sec. 10.

mode of instituting the recall of elective local government officials. All pending petitions for recall initiated through the Preparatory Recall Assembly are now considered dismissed.[41]

Republic Act No. 9227, Additional Compensation to Judiciary

To guarantee the independence of the judiciary, Republic Act No. 9277 grants all justices, judges and other positions in the judiciary with the equivalent rank of justices of the Court of Appeals and judges of the Regional Trial Court special allowances equivalent to 100 percent of their basic monthly salary.[42] The amount necessary to implement the additional compensation shall be sourced from the legal fees imposed and collected under Rule 141 of the Rules of Court and from increases in current fees and new fees that may be imposed by the Supreme Court.[43]

PROPOSED LAWS

Senate Bill No. 2671 and House Bill 5654; Alternative Dispute Resolution Act of 2004

At the time of this writing, a reconciled version of Senate Bill No. 2671 and House Bill 5654, entitled, "An Act to Institutionalize the use of an Alternative Dispute Resolution System in the Philippines and to Establish the Office for Alternative Dispute Resolution and Other Purposes" has been forwarded to the Philippine president for her signature.

The Alternative Dispute Resolution (ADR) Act provides principles that guide the conduct of mediation and conciliation proceedings and other ADR forms that are not combined with arbitration, as well as the process by which settlement agreements may be enforced.[44]

It adopts the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law[45] (the Model Law) for matters involving

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[41] Republic Act No. 9244, Sec. 3.

[42] Republic Act No. 9227, Sec. 2.

[43] Republic Act No. 9227, Sec. 3.

[44] Note, however, that Section 53 provides that the bill, once signed into law, will not repeal, amend or modify the jurisdiction of the Katarungang Pambarangay under the Local Government Code.

[45] United Nations Document A/40/17.

international commercial arbitration.[46] It expressly provides that domestic arbitration continues to be governed by Republic Act No. 876, the Arbitration Law of the Philippines.[47] However, it makes certain provisions of the Model Law and some of the bill's own provisions apply to domestic arbitration.[48] The bill also expressly provides that the arbitration of construction disputes shall continue to be governed by Executive Order No. 1008, the Construction Industry Arbitration Law.[49]

With respect to judicial review of arbitral awards, the bill provides that the confirmation of a domestic arbitral award should be governed by Section 23 of the Arbitration Law of the Philippines. Recognition and enforcement of an award in international commercial arbitration proceedings should be governed by Article 35 of the Model Law. When confirmed, an award should be enforced in the same manner as final and executory decisions of the Regional Trial Court. The confirmation of a domestic award should be made by the Regional Trial Court in accordance with the Rules of Procedure. CIAC arbitral awards need not be confirmed by the Regional Trial Court to be executory.[50]

On the other hand, the bill provides that the New York Convention governs the recognition and enforcement of arbitral awards covered by the convention.[51] If the foreign arbitral award is not covered by the New York Convention, its recognition and enforcement should be done in accordance with rules to be promulgated by the Supreme Court.[52] A foreign arbitral award confirmed by a foreign court should be recognized and enforced as a foreign arbitral award and not as a judgment of that court. Once confirmed

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[46] S.B. 2671/H.B. 5654, Sec. 19. According to Section 21, "An arbitration is "commercial" if it covers matters arising from all relationships of a commercial nature, whether contractual or not."

[47] *Id.*, Sec. 32.

[48] *Id.*, Sec. 33. *Applicability to Domestic Arbitration.*—Articles 8, 10, 11, 12, 13, 14, 18 and 19 and 29 to 32 of the Model Law and Sections 22 to 31 of the preceding Chapter 4 shall apply to domestic arbitration.

[49] *Id.*, Sec. 34. Section 35 clarifies,

> Construction disputes which fall within the original and exclusive jurisdiction of the Commission shall include those between or among parties to, or who are otherwise bound by, an arbitration agreement, directly or by reference whether such parties are the project owner, contractor, subcontractor, fabricator, project manager, design professional, consultant, quantity surveyor, bondsman or issuer of an insurance policy in a construction project.
>
> The Commission shall continue to exercise original and exclusive jurisdiction over construction disputes although the arbitration is "commercial" pursuant to Section 21 of this Act.

[50] *Id.*, Sec. 40.

[51] *Id.*, Sec. 42.

[52] *Id.*, Sec. 43.

by a Philippine Regional Trial Court, a foreign arbitral award should be enforced in the same manner as final and executory decisions of Philippine courts.[53]

ADMINISTRATIVE ISSUANCES

SEC Memorandum Circular No. 15 Series of 2003, Legal Opinions

The SEC has issued guidelines to expedite the processing of requests for legal opinions. The circular states that such requests must pertain to specific questions of law, and present the complete factual circumstances giving rise to the issue. The requesting party must submit all pertinent papers and documents, including the articles of incorporation, by-laws, and general information sheets of the corporation in question, and indicate its business address, telephone and fax numbers and e-mail address. The circular lists instances when the SEC will refrain from rendering an opinion,[54] but nevertheless states that "[n]othing shall preclude the Commission from processing any request for opinion notwithstanding non-compliance…when circumstances warrant." The circular likewise states that opinions issued by the SEC should not be construed as "standing rules" that bind the commission in other cases whether of similar or dissimilar circumstances.

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[53] *Id.*, Sec. 44.

[54] Item 5 states:

> As a matter of policy, the Commission shall refrain from rendering opinion[s] on the following:
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> 5.1. Issues which had been decided by the courts or have been elevated to the court and are pending therein.
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> 5.2. Matters which involve the substantive and contractual rights of private parties who would, in all probability, contest the same in court if the opinion turns out to be adverse to their interest.
>
> 5.3. Matters which would necessarily require a review and interpretation of contracts or an opinion on the validity of contracts since interpretation of contract is justiciable in nature and contract review calls for legal examination of contract on a general basis and not on specific legal issues.
>
> 5.4. Questions which are too general in scope or hypothetical, abstract, speculative and anticipatory in character and those pertaining to undisclosed entities.
>
> 5.5. Queries which will involve a review of presidential issuances or official acts of the President…
>
> 5.6. Requests which involve interpretation of administrative rules and issuances of other government agencies…
>
> 5.7. The action being requested would require an examination and review of the acts and ruling of another government agency…
>
> 5.8. The resolution of the queries would necessitate the determination of factual issues.
>
> 5.9. Matters which clearly involve the exercise of business discretion or judgment which properly falls within the competence of the management of the entities concerned, or those which call for financial and technical expertise of economic manager.
>
> 5.10. The request will entail gathering of legal materials or writing abstract essay for the requesting party….

SEC Memorandum Circular No. 1, Series of 2004, Guidelines on Foundations

The SEC issued new guidelines on foundations[55] on January 20, 2004. Under the circular, foundations applying for registration must submit, together with a Plan of Operation executed under oath by its president, a certificate of bank deposit in the amount of not less than PHP1,000,000, representing the funds to be used for extending grants or endowments.[56] In addition to the reportorial requirements for ordinary non-stock, non-profit corporations, a registered foundation should submit to the SEC a Statement of Funds Application executed under oath by its president, detailing the sources and amounts of funds established, the names of beneficiaries and the amounts of funds granted thereto.[57]

BSP Circular No. 414 Series of 2004

To strengthen risk management in the banking system, the Monetary Board approved the guidelines for managing large exposures[58] and credit risk concentrations on January 13, 2004. The circular applies to banks and non-banks with quasi-banking functions.[59]

The circular sets the minimum standard for bank policy on large exposures and credit risk concentrations[60] and requires the board of directors to review the policy at least annually.[61] The board and senior management are also directed to ensure that adequate systems and controls to identify, measure, monitor and report large exposures and credit risk concentrations of the bank are in place, and regularly review the bank's large exposures.[62] With respect to monitoring large exposures, the circular provides that banks should have a central liability record for each loan exposure, and monitor such exposures on a daily basis.[63] Banks are also required to have an adequate management

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[55] SEC Memorandum Circular No. 1 (2004) Sec. 1 states: "A "Foundation" is a non-stock, non-profit corporation with funds established to maintain or aid charitable, religious, educational, athletic, cultural, literary, scientific, social welfare or similar activities primarily through extending grants or endowments."

[56] *Id.*, Sec. 2.

[57] *Id.*, Sec. 4.

[58] Under BSP Circular No. 414 (2004), Sec. 1(A)(7)(b), "large exposures" refer to exposures to a counterparty or a group of related counterparties equal or greater than five percent of the bank's qualifying capital.

[59] BSP Circular No. 414 (2004), Sec. 2.

[60] *Id.*, Sec. 1(A)(6).

[61] *Id.*, Sec. 1(A)(5).

[62] *Id.*, Sec. 1(A)(7).

[63] *Id.*, Sec. 1(B)(1).

information and reporting system that enables management to identify credit risk concentrations within the asset portfolio of the bank.[64] Their auditors are required to conduct a review of the quality of large exposures and the bank's controls to safeguard against credit risk concentrations at least annually.[65]

Non-observance of the principles and requirements set forth by the circular may be a ground for a finding of unsafe and unsound practice under Section 56 of the General Banking Law of 2000.[66] Failure or delay in notifying the BSP with respect to large exposures or credit risk concentrations that may impact materially upon a bank's capital adequacy, or in making bank records on large exposures available to BSP examiners, may likewise be sanctioned.[67]

BSP Circular No 417 Series of 2004, Credit-linked Notes

The Monetary Board approved guidelines for the capital treatment of banks' investments in credit-linked notes (CLNs)[68] and similar credit derivative products such as credit-linked deposits (CLDs) and credit-linked loans (CLLs) on December 18, 2003. The circular took effect on February 25, 2004. The circular provides the qualifications needed by a bank that intends to invest in CLNs.[69] It also provides how banks should compute risk-weighted exposures of CLNs and the corresponding capital charge. It likewise revises Part II of the report form on the Computation of Risk-based Capital Adequacy Ratio Covering Credit Risk and the supporting Schedule of Credit-linked Notes in the Banking Book.

Revenue Regulation No. 1-2004, on Sec. 2.57.2(S) of Rev. Reg. No. 2-98

Revenue Regulation No. 1-2004 exempts marginal income earners from creditable withholding tax on payments made by hotels, restaurants, resorts, caterers, food

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[64] *Id.,* Sec. 1(B)(2).

[65] *Id.,* Sec. 1(B)(3)

[66] *Id.,* Sec. 1(C).

[67] *Id.,* Sec. 1(F).

[68] A Credit-linked Note refers to a pre-funded credit derivative instrument under which the note holder effectively accepts the transfer of credit risk pertaining to a reference asset or basket of assets issued by a reference entity. The repayment of the principal to the note holder is contingent upon the occurrence of a defined credit event. In consideration the note holder receives an economic return reflecting the underlying credit risk of the reference asset. BSP Circular No. 417 (2004), Item A.

[69] BSP Circular No. 417 (2004), Item B. Qualified Banks. In general, only banks with expanded derivatives authority may invest in CLNs…on the principle that such banks have already demonstrated a more sophisticated ability to manage risks. Pending issuance of specific guidelines, they may, subject to prior BSP approval, also invest in SPV-issued CLNs that co-exist with other CLNs of different seniority of claims against the reference asset pool. As an exception to the general rule, a universal/commercial bank without expanded derivatives authority may invest in single name CLNs where the reference asset is a direct ROP obligation or an obligation fully guaranteed by the ROP.

processors, canneries, supermarkets, livestock, poultry, fish and marine product dealers, hardware dealers, factories, furniture shops and all other establishments. The amendment defines "marginal income earners" as "individuals not otherwise deriving compensation as an employee under an employee-employer relationship, but who are self-employed and deriving gross sales/receipts not exceeding PHP100,000 during any 12-month period."[70] The effect of the regulation retroacts to January 1, 2004.[71]

Executive Order No. 272, Social Housing Finance Corporation

Executive Order No. 272, which was issued by the President on January 20, 2004, authorizes the National Home Mortgage Finance Corporation (NHMFC) to organize the Social Housing Finance Corporation (SHFC). Once formed, the SHFC will be supervised by the Housing and Urban Development Coordinating Council.[72] It will be the lead government agency with respect to social housing projects catering to formal and informal sectors in the low-income bracket. It shall also take charge of developing and administering the Community Mortgage Program (CMP), the Abot-Kaya Pabahay Program (AKPF), and other social housing program schemes.[73] All powers, functions, rights and duties previously exercised by NHMFC relating to the administration and development of the CMP and AKPF Program, and all of the NHMFC's functions as a trustee or administrator, should be transferred to SHFC.[74]

Executive Order No. 278, on Government Foreign-Assisted Infrastructure Projects

Executive Order No. 278, which took effect on February 21, 2004, prescribes guidelines for project loan negotiations and packaging government foreign-assisted infrastructure projects. The circular seeks to assist Filipino constructors and consultants in participating in the bidding of goods and services to be used in such projects. It provides that the government should, as much as possible, fund consultancy services for government infrastructure projects with local funds and using local resources and expertise. Consultancy services should be proposed for foreign assistance only where foreign funding is indispensable or local funds are insufficient. It also provides that Filipino consultants may hire or associate themselves with foreign consultants, provided

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[70] BIR Revenue Regulation No. 1-2004, Sec. 2.

[71] *Id.,* Sec. 4.

[72] Executive Order No. 272 (2004), Sec. 1.

[73] *Id.,* Sec. 2.

[74] *Id.,* Sec. 6.

that the Filipino is the lead consultant, and only when Filipino capability is determined by appropriate authorities to be insufficient. Moreover, where foreign funding is indispensable, foreign consultants must enter into a joint venture with Filipino consultants.[75]

Executive Order No. 279, Financing Policies for Water Supply

Executive Order No. 279, which took effect on February 21, 2004, transfers administrative authority over the Local Water Utilities Authority (LWUA) from the Department of Public Works and Highways to the Office of the President.[76] It directs the LWUA to submit a plan rationalizing its organization and manpower structure to the Philippine president. Once the president approves the policy reforms of LWUA, the latter will be transferred to the Department of Finance.[77] The order also indicates the sources of financing for the water supply and sewerage sector.[78]

DAR Administrative Order No. 06 Series of 2003

The Department of Agrarian Reform issued Administrative Order No. 06 to determine and fix lease rentals of agricultural leasehold tenancy arrangements.[79] The order covers all tenanted agricultural lands.[80]It sets forth the rights and obligations of agricultural lessors and lessees,[81] the procedures for leasehold operations,[82] and a mechanism for monitoring the effectivity of the leasehold system.[83]

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[75] Executive Order No. 278 (2004), Sec. 1.

[76] Executive Order No. 279 (2004), Sec. 9.

[77] *Id.,* Sec. 10.

[78] *Id.,* Sec. 12.

[79] Republic Act No. 6657, Sec. 12 mandated the Department of Agrarian Reform to determine and fix lease rentals within retained areas and areas not yet acquired for agrarian reform. The law also converted all share crop tenants into agricultural lessees as of June 15, 1988, whether or not a leasehold agreement had been executed.

[80] DAR Administrative Order No. 06 (2003), Art. I, Sec. 1.

[81] *Id.,* Art. II.

[82] *Id.,* Art. III.

[83] *Id.,* Art. V.

Tarcisio Diño

AGRARIAN REFORM LAWS

THE CODE OF AGRARIAN REFORMS OF THE PHILIPPINES (REPUBLIC ACT NO. 3844)

Tenancy Relationship. Termination Upon the Reclassification of Land from Agricultural to Residential. Once established, a tenancy relationship entitles the tenant to a security of tenure. He can only be ejected from the agricultural landholding on grounds provided by law (Section 7, Section 36), one of which is the reclassification of the landholding from agricultural to non-agricultural. (ALARCON, ET AL v. COURT OF APPEALS, G.R. No. 152085, July 8, 2003).

Ejectment of Tenant. Disturbance Compensation. A tenant can be lawfully ejected only if there is a court authorization in a judgment that is final and executory. If the court authorizes the ejectment, the tenant who is dispossessed of his tenancy is entitled to disturbance compensation. (Id.). The reclassification of the land is not enough to entitle the tenants to disturbance compensation. Court proceedings are indispensable where the reclassification of the landholding is duly determined before ejectment can be effected, which in turn paves the way for the payment of disturbance compensation. (Id.)

Reclassification Distinguished From Conversion. Conversion is the act of changing the current use of a piece of agricultural land into some other use as approved by the Department of Agrarian Reform. On the other hand, reclassification is the act of specifying how agricultural lands shall be utilized for non-agricultural uses such as residential, industrial or commercial, as embodied in the land use plan, subject to the requirements and procedure for land use conversion. Accordingly, a mere reclassification of agricultural land does not automatically allow a landowner to change its use and thus cause the ejectment of the tenants. He has to undergo the process of conversion before he is permitted to use the agricultural land for other purposes. (Id.)

THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (REPUBLIC ACT NO. 6657)

Saltbeds. Section 76 of RA 6657 expressly repealed Section 35 of RA 3844. It

abolished the exemption applied to saltbeds and provided that all tenanted agricultural lands shall be subject to leasehold. (Id.)

Voluntary Offer to Sell (Section 20). Determination of just compensation, as provided for in Section 16 (f). Rule XI, Section 3 of the 1994 DARAB New Rules of Procedure. (LAND BANK OF THE PHILIPPINES v. LISTANA, G.R. No. 152611, August 5, 2003).

CIVIL LAW

PROPERTY, OWNERSHIP AND ITS MODIFICATIONS

Possession

Possessor in Good Faith. Articles 526 and 1127, Civil Code of the Philippines ("Civil Code"). The Loys were not in good faith when they built on the lots which they bought from someone whom they knew was not the registered owner thereof. (LIU v. LOY, JR., G.R. No. 145982, July 3, 2003).

DIFFERENT MODES OF ACQUIRING OWNERSHIP

Succession

Testamentary. Article 838, Civil Code. Until admitted to probate, a will has no effect whatever and no right can be claimed thereunder. Remedios anchors her right in filing this suit on her being a devisee of Catalina's last will. However, since the probate court has not admitted Catalina's last will, Remedios has not acquired any right under the last will. Remedios is thus without any cause of action either to seek reconveyance of the lots or to enforce an implied trust over them. (SPOUSES PASCUAL v. COURT OF APPEALS, G.R. No. 115925, August 15, 2003).

Prescription

Acqusitive Prescription. Possession was not established in this case by land titles, contract to sell, location plan of the property, and tax receipts covering only the years 1988 and 1993. (CANSINO v. COURT OF APPEALS, G.R. No. 125799, 21 August 2003). *See also* LAND LAWS, Judicial Confirmation Of Imperfect Title.

Extinctive Prescription. (a) *Action to Annul Title Based on an Implied Trust.* The four-year prescriptive period relied upon by the trial court applies only if the fraud does not give rise to an implied trust, and the action is to annul a voidable contract under Article 1390 of the Civil Code. In such a case, the four-year prescriptive period under Article 1391 begins to run from the time of discovery of the mistake, violence, intimidation, undue influence or fraud. In this case, Remedios does not assail the validity of the sale embodied in the *Kasulatan*. The action is for "Annulment or Cancellation of Transfer Certificate [of Title] and Damages" to exclude the additional 1,335 sq. m. of land included in the TCT due to alleged mistake or fraud. Such action is based on an implied trust under Article 1456. Clearly, the applicable prescriptive period is ten years under Article 1144 and not four years under Articles 1389 and 1391. This ten-year prescriptive period begins to run from the date the adverse party repudiates the implied trust, which repudiation takes place when the adverse party registers the land. (SPOUSES PASCUAL, G.R. No. 115925, 15 August 2003). In this case, however, the Court reckoned the ten-year prescriptive period for enforcing implied trusts not from registration of the adverse title but from actual notice of the adverse title by the *cestui que trust*, in the absence of proof of the commission of specific fraudulent conduct. Other than asserting that petitioners are guilty of fraud because they secured title to Lot Nos. 2-A and 2-E with an area twice bigger than what Canuto allegedly sold to Consolacion, Remedios did not present any other proof of petitioners' fraudulent conduct. (Id.)

(b) *Action to Declare Nullity of Contract.* From the allegations of the complaint, the action is in reality one for declaration of nullity of contract on the ground of absence of the essential requisites thereof. These contracts are void *ad initio* and actions to declare their inexistence do not prescribe. (FELIX GOCHAN AND SONS REALTY CORPORATION v. HEIRS OF BABA, G.R. No. 138945, 19 August 2003).

Estoppel

Estoppel. Since petitioners themselves admitted that they donated and caused registration of the lot in Renato's name, they cannot now be allowed to defeat respondents' claim by conveniently asserting that they are co-owners of the lot. Otherwise, respondents, who rightfully relied on the certificate of title, would be prejudiced by petitioners' misleading conduct. (MANIPOR, ET. AL v. SPOUSES RICAFORT, G.R. No. 150159, July 25, 2003).

Laches. (a) Defined as failure or neglect for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier. It is negligence or omission to assert a right within a reasonable time,

warranting a presumption that the party entitled to assert it has abandoned it or has declined to assert it. (LARENA v. MAPILI, G.R. No. 146341, August 7, 2003). Elements. Applies even to imprescriptible actions, (FELIX GOCHAN AND SONS REALTY CORPORATION, G.R. No. 138945, August 19, 2003).

(b) Respondents allege that the motion for summary judgment was based on respondents' answer and other documents that had long been in the records of the case and claim that thus, by the time the motion was filed on March 10, 2000, estoppel by laches had already set in against petitioner Republic. The principle of laches is one of estoppel because "it prevents people who have slept on their rights from prejudicing the rights of third parties who have placed reliance on the inaction of the original parties and their successors-in-interest". A careful examination of the records reveals that petitioner Republic was in fact never remiss in pursuing its case against respondent Marcoses through every remedy available to it, including the motion for summary judgment. (REPUBLIC vs. SANDIGANBAYAN [EN BANC], G.R. No. 152154, July 15, 2003). In invoking the doctrine of estoppel by laches, respondents must show not only unjustified inaction but also that some unfair injury to them might result unless the action is barred. During the pre-trial conference, the respondents disclaimed ownership of the Swiss deposits. Not being the owners, as they claimed, respondents did not have any vested right or interest which could be adversely affected by petitioner's alleged inaction. Laches is not a mere question of time but is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted. Equity demands that petitioner Republic should not be barred from pursuing the people's case against the respondents. (Id.) But even assuming for the sake of argument that laches had already set in, the doctrine of estoppel or laches does not apply when the government sues as a sovereign or asserts governmental rights. Nor can estoppel validate an act that contravenes law or public policy. (Id.)

See also REMEDIAL LAW, Jurisdiction.

Contracts

Binding Force. Declaration of Nullity. Courts should move with all the necessary caution and prudence in holding contracts void. A duly executed contract carries with it the presumption of validity. The contract has the force of law between the parties and they are expected to abide in good faith by their respective contractual commitments. Just as nobody can be forced to enter into a contract, in the same manner, once a contract is entered into, no party can renounce it unilaterally or without the consent of

the other. (GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS) v. THE PROVINCE OF TARLAC, G.R. No. 157860, December 1, 2003).

Essential Requisites. Article 1318 of the Civil Code. The absence of any of these essential requisites renders the contract inexistent. Consent. There is no effective consent in law without the capacity to give such consent. Legal consent presupposes capacity. Thus, there is said to be no consent, and consequently, no contract when the agreement is entered into by one in behalf of another who has never given him authorization therefor unless he has by law a right to represent the latter. If any party to a supposed contract was already dead at the time of its execution, such contract is undoubtedly simulated and false and therefore null and void. Death terminates contractual capacity. (FELIX GOCHAN AND SONS REALTY CORPORATION, G.R. No. 138945, August 19, 2003).

Perfection of contract. Articles 1305 and 1315 of the Civil Code. A contract is perfected by mere consent, which is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. (GATEWAY ELECTRONICS CORPORATION v. LAND BANK OF THE PHILIPPINES, G.R. Nos. 155217 & 156393, 30 July 2003).

Relativity of Contract. (Id.)

Construction of Contract. Courts can interpret a contract only if there is doubt in its letter. (SPOUSES EVANGELISTA v. MERCATOR FINANCE CORP., G.R. No. 148864, August 21, 2003).

Sales

Contract To Sell. Executed By Decedent During His Lifetime. Frank Liu's contract to sell became valid and effective upon its execution. The seller and registered owner of the lots was then alive and thus there was no need for court approval for the immediate effectivity of the contract to sell. (LIU, G.R. No. 145982, July 3, 2003). Any cancellation of such contract by the administrator of the estate must observe all legal requisites, like written notice of cancellation based on lawful cause. It is immaterial if the prior contract is a mere contract to sell and does not immediately convey ownership. If it is valid, then it binds the estate to convey the property in accordance with Section 8 of Rule 89 upon full payment of the consideration. (Id.)

Contract Of Sale. Null and void in this case: (1) to the extent of the participation or interest on the land of the petitioners who did not sell or authorize the sale of such

shares or interest. It is essential that the vendors be the owners of the property sold otherwise they cannot dispose that which does not belong to them. (Article 1458, Civil Code). Consequently, respondents could not have acquired ownership over the land to the extent of the shares of petitioners. The issuance of a certificate of title in their favor could not vest upon them ownership of the entire property; neither could it validate the purchase thereof which is null and void. (2) Similarly, the claim that the seller died in 1963 but appeared to be a party to the Extrajudicial Settlement and Confirmation of Sale executed in 1967 would be fatal to the validity of the contract, if proved by clear and convincing evidence. (FELIX GOCHAN AND SONS REALTY CORPORATION, G.R. No. 138945, August 19, 2003).

Damages

Attorneys Fees. Two commonly accepted concepts of attorney's fees: (a) Ordinary concept. The reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter. The basis of this compensation is the fact of his employment by and his agreement with the client. (b) Extraordinary concept. Indemnity for damages ordered by the court to be paid by the losing party in a litigation in the instances enumerated in Article 2208 of the Civil Code, and is payable not to the lawyer but to the client, unless they have agreed that the award shall pertain to the lawyer as additional compensation or as part thereof. (DR. REYES v. COURT OF APPEALS, G.R. No. 154448, August 15, 2003). The policy of the law is to put no premium on the right to litigate. The court may award attorney's fees only in the instances mentioned in Article 2208 of the Civil Code. (LIU, G.R. No. 145982, July 3, 2003). Awarded, where defendant's acts have compelled the plaintiff to litigate or incur expenses to protect his interest. (YANG v. COURT OF APPEALS, G.R. No. 138074, August 15, 2003).

Moral Damages. (a) *Scope.* Include mental anguish, serious anxiety, besmirched reputation, wounded feelings, social humiliation, and similar injury. (Article 2217, Civil Code). By needlessly dragging David into this case all because he and Chandiramani knew each other, the petitioner not only unduly delayed David from obtaining the value of the checks, but also caused him anxiety and injured his business reputation while waiting for its outcome. (Id.)

(b) *In Breaches of Contract of Carriage. Article 2220, Civil Code.* As the rule now stands, where in breaching the contract of carriage the defendant airline is shown to have acted fraudulently, with malice or in bad faith, the award of moral and exemplary damages, in addition to actual damages, is proper. In this case, the carrier's utter lack of care and sensitivity to the needs of its passengers, clearly constitutive of gross negligence,

recklessness and wanton disregard of the rights of the latter, are acts evidently indistinguishable or no different from fraud, malice and bad faith. (CHINA AIRLINES v. CHIOK, G.R. No. 152122, 30 July 2003). Airline companies must not merely give cursory instructions to their personnel to be more accommodating towards customers, passengers and the general public; they must *require* them to be so. The acts of PAL's employees clearly fell short of the extraordinary standard of care that the law requires of common carriers. Respondent had secured confirmation of his flight — not only once, but twice — by personally going to the carrier's offices where he was consistently assured of a seat thereon. Hence, he had every reason to expect that he would be put on the replacement flight as a confirmed passenger. Instead, he was harangued and prevented from boarding the original and the replacement flights. Thus, PAL breached its duty to transport him. After he had been directed to pay the terminal fee, his pieces of luggage were removed from the weighing-in counter despite his protestations. PAL's negligence was so gross and reckless that it amounted to bad faith. In view of the foregoing, moral and exemplary damages were properly awarded by the lower courts. (Id.)

Interest. Computation. The rate of interest on obligations not constituting a loan or forbearance of money is six percent (6%) per annum. If the purchase price can be established with certainty at the time of the filing of the complaint, the six percent (6%) interest should be computed from the date the complaint was filed until finality of the decision. If the adjudged principal and the interest (or any part thereof) remain unpaid thereafter, the interest rate shall be twelve percent (12%) per annum computed from the time the judgment becomes final and executory until it is fully satisfied. (DELSAN TRANSPORT LINES, INC. v. C & A CONSTRUCTION, INC., G.R. No. 156034, October 1, 2003).

Quasi-Delicts

Negligence Or Fault. Article 2176, Civil Code. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a *quasi-delict*. The test for determining the existence of negligence in a particular case may be stated as follows: Did the defendant in doing the alleged negligent act use the reasonable care and caution which an ordinary prudent person would have used in the same situation? If not, then he is guilty of negligence. In this case, Capt. Jusep was negligent in deciding to transfer the vessel only at 8:35 in the morning of October 21, 1994. As early as 12:00 midnight of October 20, 1994, he received a report from his radio head operator in Japan that a typhoon was going to hit Manila after 8 hours. This,

notwithstanding, he did nothing, until 8:35 in the morning of October 21, 1994, when he decided to seek shelter at the North Harbor, which unfortunately was already congested. The finding of negligence cannot be rebutted upon proof that the ship could not have sought refuge at the North Harbor even if the transfer was done earlier. It is not the speculative success or failure of a decision that determines the existence of negligence in the present case, but the failure to take immediate and appropriate action under the circumstances. When he ignored the weather report notwithstanding reasonable foresight of harm, Capt. Jusep showed an inexcusable lack of care and caution which an ordinary prudent person would have observed in the same situation. (Id.)

Emergency Rule. One who suddenly finds himself in a place of danger, and is required to act without time to consider the best means that may be adopted to avoid the impending danger, is not guilty of negligence, if he fails to adopt what subsequently and upon reflection may appear to have been a better method, unless the danger in which he finds himself is brought about by his own negligence. Clearly, the emergency rule is not applicable to the instant case. (Id.)

Vicarious Liability Of Employer. Article 2180, Civil Code. An employer may be held solidarily liable for the negligent act of his employee. Whenever an employee's negligence causes damage or injury to another, there instantly arises a presumption *juris tantum* that the employer failed to exercise *diligentissimi patris families* in the selection (*culpa in eligiendo*) or supervision (*culpa in vigilando*) of its employees. To avoid liability for a *quasi-delict* committed by his employee, an employer must overcome the presumption by presenting convincing proof that he exercised the care and diligence of a good father of a family in the selection and supervision of his employee. There is no question that petitioner, who is the owner/operator of M/V Delsan Express, is also the employer of Capt. Jusep who at the time of the incident acted within the scope of his duty. The defense raised by petitioner was that it exercised due diligence in the selection of Capt. Jusep because the latter is a licensed and competent Master Mariner. However, the required diligence of a good father of a family pertains not only to the selection, but also to the supervision of employees. It is not enough that the employees chosen be competent and qualified, inasmuch as the employer is still required to exercise due diligence in supervising its employees. Due diligence in supervision requires the formulation of rules and regulations for the guidance of employees and the issuance of proper instructions as well as actual implementation and monitoring of consistent compliance with the rules. Once negligence on the part of the employees is shown, the burden of proving that he observed the diligence in the selection and supervision of its employees shifts to the employer. In the case at bar, petitioner presented no evidence that it formulated rules/guidelines for the

proper performance of functions of its employees and that it strictly implemented and monitored compliance therewith. Failing to discharge the burden, petitioner should therefore be held liable for the negligent act of Capt. Jusep. (Id.)

Surety

Liability. A surety is one who is solidarily liable with the principal. Petitioners cannot claim that they did not personally receive any consideration for the contract for the consideration necessary to support a surety obligation need not pass directly to the surety, a consideration moving to the principal alone being sufficient. A surety is bound by the same consideration that makes the contract effective between the principal parties thereto. (SPOUSES EVANGELISTA, G.R. No. 148864, August 21, 2003).

COMMERCIAL LAWS

INTELLECTUAL PROPERTY CODE

Trademark

Registration of Trademark. The protective mantle of the Trademark Law extends only to the goods used by the first user as specified in the certificate of registration. (Section 20, Republic Act 166, as amended, otherwise known as the Trademark Law). (PEARL & DEAN [PHIL.], INCORPORATED v. SHOEMART, INCORPORATED, G.R. No. 148222, August 15, 2003).

Infringement of Trademark. Trademark certificate for "Poster Ads" covering "stationeries such as letterheads, envelopes, calling cards and newsletters" does not extend to electrically operated backlit advertising units and the sale of advertising spaces thereon which are not specified in the trademark certificate. (Id.). Use, without prior authority, of the mark "Rolex" in the business establishment named "Rolex Music Lounge" as well as in its newspaper advertisements "Rolex Music Lounge, KTV, Disco & Party Club." Under the old Trademark Law, where the goods for which the identical marks are used are unrelated, there can be no likelihood of confusion and there is therefore no infringement in the use by the junior user of the registered mark on the entirely different goods. This ruling, however, has been to some extent, modified by Section 123.1(f) of the Intellectual Property Code (Republic Act No. 8293), which took effect on January 1, 1998. A junior user of a well-known mark on goods or services which are not similar to the goods or services, and are therefore unrelated, to those

specified in the certificate of registration of the well-known mark is precluded from using the same on the entirely unrelated goods or services, subject to the certain requisites. (246 CORPORATION v. HON. DAWAY, G.R. No. 157216, November 20, 2003).

Doctrine of Secondary Meaning. "Secondary meaning" means that a word or phrase originally incapable of exclusive appropriation with reference to an article in the market (because it is geographically or otherwise descriptive) might nevertheless have been used for so long and so exclusively by one producer with reference to his article that, in the trade and to that branch of the purchasing public, the word or phrase has come to mean that the article was his property. (PEARL & DEAN [PHIL.], INCORPORATED, G.R. No. 148222, August 15, 2003).

Patents

Infringement of Patent. Registration of Copyright does not protect against "infringement" of patentable inventions. Not having gone through the arduous examination for patents, the petitioner cannot exclude others from the manufacture, sale or commercial use of the light boxes on the sole basis of its copyright certificate over the technical drawings. There can be no infringement of a patent until a patent has been issued, since whatever right one has to the invention covered by the patent *arises alone from the grant of patent*. (Id.)

Trademark, Copyright and Patents – Are different intellectual property rights that cannot be interchanged with one another. *A trademark is any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container of goods.* In relation thereto, a trade name means the name or designation identifying or distinguishing an enterprise. Meanwhile, *the scope of a copyright is confined to literary and artistic works* which are original intellectual creations in the literary and artistic domain protected from the moment of their creation. *Patentable inventions, on the other hand, refer to any technical solution of a problem in any field of human activity* which is new, involves an inventive step and is industrially applicable. (Id.)

Copyright

Copyright Protection. Works Subject To Copyright. Only the expression of an idea is protected by copyright, not the idea itself. When a drawing is technical and depicts a utilitarian object, a copyright over the drawings like plaintiff-appellant's will not extend to the actual object. The copyright of a book on perspective, no matter how many drawings and illustrations it may contain, gives no exclusive right to the modes of drawing described, though they

may never have been known or used before. By publishing the book without getting a patent for the art, the latter is given to the public. The description of the art in a book, though entitled to the benefit of copyright, lays no foundation for an exclusive claim to the art itself. The object of the one is explanation; the object of the other is use. The former may be secured by copyright. The latter can only be secured, if it can be secured at all, by letters patent." (Id.)

Infringement Of Copyright. Petitioner P & D's complaint was that SMI infringed on its copyright over the light boxes when SMI had the units manufactured by Metro and EYD Rainbow Advertising for its own account. Obviously, petitioner's position was premised on its belief that its copyright over the engineering drawings extended *ipso facto* to the light boxes depicted or illustrated in said drawings. The Court of Appeals correctly ruled that there was no copyright infringement, as the copyright was limited to the drawings alone and not to the light box itself. (Id.). In fine, if SMI and NEMI reprinted P & D's technical drawings for sale to the public without license from P & D, then no doubt they would have been guilty of copyright infringement. But this was not the case. SMI's and NEMI's acts complained of by P & D were to have units similar or identical to the light box illustrated in the technical drawings manufactured by Metro and EYD Rainbow Advertising, for leasing out to different advertisers. This is not an infringement of petitioner's copyright over the technical drawings. (Id.)

Unfair Competition. By the nature of things, there can be no unfair competition under the law on copyrights although it is applicable to disputes over the use of trademarks. (Id.)

NEGOTIABLE INSTRUMENTS LAW

Holder in Due Course

Crossed Checks. A check with two parallel lines in the upper left hand corner means that it could only be deposited and not converted into cash. The effects of crossing a check relates to the mode of payment, meaning that the drawer had intended the check for deposit only by the rightful person, *i.e.*, the payee named therein. The rediscounting of the check by the payee knowingly violated the avowed intention of crossing the check. Thus, in accepting the cross checks and paying cash for them, despite the warning of the crossing, the subsequent holder could not be considered in good faith and thus, not a holder in due course. (YANG, G.R. No. 138074, August 15, 2003).

COMMON CARRIERS

Air Carriers

Transportation by Various Successive Carriers. Liability of the Ticket-Issuing Airline. The contract of air transportation was between petitioner CAL and respondent, with the former endorsing to PAL the Hong Kong-to-Manila segment of the journey. Such contract of carriage has always been treated in this jurisdiction as a single operation. This jurisprudential rule is supported by the Warsaw Convention, to which the Philippines is a party, and by the existing practices of the International Air Transport Association (IATA). Article 1, Section 3 of the Warsaw Convention and Article 15 of IATA-Recommended Practice cited. In the instant case, CAL, the ticket-issuing airline is the principal in a contract of carriage and is thus liable for the acts and the omissions of any errant carrier to which it may have endorsed any sector of the entire continuous trip. PAL acted as the carrying agent of CAL. CAL cannot evade liability to respondent, even though it may have been only a ticket issuer for the Hong Kong-Manila sector. (CHINA AIRLINES, G.R. No. 152122, July 30, 2003).

SECURED TRANSACTIONS

Mortgage

Mortgage Trust Indenture. Joint Real Estate Mortgage. Collateral-Sharing Agreement. (GATEWAY ELECTRONICS CORPORATION, G.R. Nos. 155217 & 156393, July 30, 2003).

CORPORATION LAW

Juridical Personality

Piercing the Veil of Corporate Fiction. (TAN v. COURT OF APPEALS, G.R. No. 127210, August 7, 2003*).* The corporate veil of related companies may not be pierced in the absence of proof that the corporate fiction is being used to defeat public convenience, justify a wrong, inflict a fraud or defend a crime. Piercing the corporate veil and considering Insular Builders and Queen City as one entity would be disadvantageous to petitioners, because doing so would no longer entitle them to back wages and separation pay. Indeed, if the two entities were one and the same company, then there would have been no dismissal from one and transfer to the other to speak about. (RETUYA, ET AL. v. HON. DUMARPA, G.R. No. 148848, August 5, 2003).

Management

Board of Directors. Derivative Suits. A corporation's board of directors is understood to be that body which (1) exercises all powers provided for under the Corporation Code of the Philippines; (2) conducts all business of the corporation; and (3) controls and holds all property of the corporation. Its members have been characterized as trustees or directors clothed with a fiduciary character. It is clearly separate and distinct from the corporate entity itself. Where corporate directors have committed a breach of trust either by their frauds, *ultra vires* acts, or negligence, and the corporation is unable or unwilling to institute suit to remedy the wrong, a stockholder may sue on behalf of himself and other stockholders and for the benefit of the corporation, to bring about a redress of the wrong done directly to the corporation and indirectly to the stockholders. This is what is known as a derivative suit, where the corporation is the real party in interest while the stockholder filing suit for the corporation's behalf is only a nominal party. The corporation should be included as a party in the suit. (HORNILLA v. ATTY. SALUNAT, A.C. No. 5804. July 1, 2003).

CRIMINAL LAW

REVISED PENAL CODE (RPC)
Book I

Circumstances Which Affect Criminal Liability

Conspiracy As A Mode Of Committing A Felony. (PEOPLE v. DE GUZMAN, G.R. Nos. 135779-81, November 21, 2003; PEOPLE v. GALLEGO, G.R. No. 127489, July 11, 2003). The existence of conspiracy may be logically inferred and proved through acts of the accused that point to a common purpose, a concert of action, and a community of interest. With the existence of conspiracy, it is no longer necessary to determine who among the malefactors rendered the fatal blow. (PEOPLE v. BERDIN [EN BANC], G.R. No. 137598, November 28, 2003).

Justifying Circumstances

Self-Defense. Essential requisites. (RIMANO v. PEOPLE, G.R. No. 156567, November 27, 2003; PEOPLE v. ESCARLOS [EN BANC], G.R. No. 148912, September 10, 2003; BERDIN, G.R. No. 137598, November 28, 2003; GALLEGO, G.R. No. 127489, July 11, 2003).

(a) *Unlawful Aggression on the Part of the Victim.* A *condition sine qua non* for upholding the justifying circumstance of self-defense. In this case, appellant claims that the victim unceremoniously boxed him on the forehead in the heat of their argument. Appellant adds that he had initially thought of hitting back when he noticed that the victim was pulling out a kitchen knife. To save his life, appellant grabbed the weapon and used it to stab the victim. Appellant insists that under the circumstances, he was legally justified in using the knife to ward off the unlawful aggression, and for him to wait for the knife to be raised and to fall on him before acting to defend himself would be asking too much. HELD: The alleged drawing of a knife by the victim could not have placed the life of appellant in imminent danger. The former might have done it only to threaten or intimidate the latter. Unlawful aggression presupposes *actual, sudden, unexpected or imminent danger* — not merely threatening and intimidating action. Uncertain, premature and speculative was the assertion of appellant that the victim was about to stab him, when the latter had merely drawn out his knife. Even assuming *arguendo* that there was an altercation before the stabbing incident and that some danger did in fact exist, the imminence of that danger had already ceased the moment appellant disarmed the victim by wresting the knife from the latter. When an unlawful aggression that has begun no longer exists, the one who resorts to self-defense has no right to kill or even to wound the former aggressor. (ESCARLOS, G.R. No. 148912, September 10, 2003). Self-defense must be distinguished from retaliation. (GALLEGO, G.R. No. 127489, July 11, 2003).

(b) *Reasonable Necessity of the Means Employed to Prevent or Repel the Unlawful Aggression.* (RIMANO, G.R. No. 156567, November 27, 2003). The nature, number and location of the wounds inflicted upon the victim were important indicia disproving self-defense. The claim of appellant that only two of the four stab wounds were fatal is of no moment, inasmuch as the means he employed were glaringly disproportionate to the perceived unlawful aggression. (Id.)

(c) *Lack of Sufficient Provocation on the Part of the Person Defending Himself.* (Id.)

Mitigating Circumstances

Incomplete Self-Defense. Under Article 69 of the RPC, in order to avail of the privileged mitigating circumstance of incomplete self-defense which at the discretion of the court reduces the penalty by one or two degrees than that prescribed by law, appellant must prove the existence of a majority of the requisites for self-defense, including the indispensable requisite of unlawful aggression on the part of the victim. (Id.)

Minority. The offender is under eighteen (18) years of age. Once asserted, all doubts should be resolved in favor of the accused. The claim of minority by an appellant will be upheld even without any proof to corroborate his testimony, especially so when the prosecution failed to present contradictory evidence thereto. Here, the prosecution only questioned the birth certificate presented by the defense, but did not adduce any evidence to disprove appellant's claim of minority when he committed the crime. (PEOPLE v. CALPITO, G.R. No. 123298, November 27, 2003).

Voluntary Surrender. Requisites: (1) the offender has not been actually arrested; (2) the offender surrenders himself to a person in authority or the latter's agent and (c) the surrender is voluntary. (PEOPLE v. DE LA CRUZ, G.R. No. 140513, November 18, 2003). A surrender to be voluntary must be spontaneous, showing the intent of the accused to submit himself unconditionally to the authorities, either because he acknowledges his guilt, or he wishes to save them the trouble and expense necessarily incurred in his search and capture. If none of these two (2) reasons impelled the accused to surrender, because his surrender was obviously *motivated more by an intention to insure his safety*, his arrest being inevitable, the surrender is not spontaneous. In this case, it appears that accused-appellant willingly went to the police authorities with Gilbert only to escape the wrath of private complainant's relatives who were pursuing him and who appeared to be thirsting for his blood. (PEOPLE v. BASITE, G.R. No. 150382, October 2, 2003).

Voluntary Plea of Guilty to the Offense Charged. Requisites: (1) the offender spontaneously confessed his guilt; (2) such confession was made in open court, that is, before the competent court that is to try the case; and (3) such confession was made prior to the presentation of evidence for the prosecution. (CALPITO, G.R. No. 123298, November 27, 2003).

Aggravating Circumstances

Nighttime. Absorbed by treachery. (DE GUZMAN, G.R. Nos. 135779-81, November 21, 2003).

Evident Premeditation. Requisites. (DE LA CRUZ, G.R. No. 140513, November 18, 2003; ESCARLOS, G.R. No. 148912, September 10,2003).

Abuse of Superior Strength. Absorbed by treachery. (DE GUZMAN, G.R. Nos. 135779-81, November 21, 2003). Evident from the notorious disparity between the relative strength of the victim, a 74-year-old unarmed woman, and the assailant, a young man armed with a knife. (CALPITO, G.R. No. 123298, November 27, 2003).

Nine assailants, including the appellants, ganged up on the victim and inflicted no less than six mortal wounds on the unarmed victim. (GALLEGO, G.R. No. 127489, July 11, 2003). Appellant was a "big hulk of a man," 5'7" in height, and "muscularly bulky." He was 33 years old and armed. The female victim was only about 5'5" in height, 27 years old and trying to escape from appellant, when she was senselessly shot at close range. (PEOPLE v. PO3 ROXAS [EN BANC], G.R. No. 140762, September 10, 2003).

Treachery. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and especially to ensure its execution, without risk to himself arising from any defense which the offended party might make. For treachery to be appreciated, the prosecution must prove: (1) that at the time of the attack, the victim was not in a position to defend himself, and (2) that the offender consciously adopted the particular means, method or form of attack employed by him. The essence of treachery is a deliberate and sudden attack, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape. Treachery may be committed even if the attack is frontal, but no less sudden and unexpected, giving the victim no opportunity to repel it or offer any defense to his person. Treachery may still be appreciated even when the victim was forewarned of the danger to his person. What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate. (PEOPLE v. PIDOY, G.R. No. 146696, July 3, 2003; PEOPLE v. ALMEDILLA, G.R. No. 150590, 21 August 2003). This circumstance cannot be appreciated where the prosecution only proved the events after the attack happened, but not the manner the attack commenced or how the act which resulted in the victim's death unfolded. (CALPITO, G.R. No. 123298, November 27, 2003; PEOPLE v. DELA CRUZ, G.R. No. 152176, October 1, 2003).

(a) Established in the following cases: [iI] The wrestling incident occurred at 7:30 p.m. The crowd broke up the fight and appellant was led away to the side of the ricefield while Santia stayed and sat at the front yard. At 8:00 p.m., appellant returned and stabbed Santia in the chest with a bolo. There was, therefore, an appreciable lapse of time from the first encounter between appellant and Santia to the stabbing incident. Nevertheless, Santia was taken unaware by the turn of events when appellant suddenly appeared in front of him and, before he could instinctively react to protect himself, stabbed him. The fact that Santia was sitting down and presumably inebriated indicates that he had let his guard down. Significantly, he was unarmed when he was stabbed. (PIDOY, G.R. No. 146696, July 3, 2003). [ii] Appellants, together with four other armed men, surrounded the unarmed and defenseless victims and fired at them using high-caliber automatic weapons. Because of the weapons used and the victims' relative

positions, i.e., seated together on a sofa against the wall, the victims could not have defended themselves against appellants' attack. The fact that the killings were frontal did not negate treachery because the carnage was so sudden and unexpected, and the victims unarmed, that they were not in a position to offer any defense at all. (DE GUZMAN, G.R. Nos. 135779-81, November 21, 2003). [iii] Although Almedilla and the victim got engaged in an argument before the incident, there was a gap of about a minute between the argument and the shooting, which shows that the shooting did not immediately follow the altercation of the parties. In fact, Almedilla waited for the victim to turn around and head for the office before he fired the fatal shot. Ruel was shot while not in a position to defend himself. Appellant waited for Ruel to turn around before shooting him. The victim was shot at his back. The victim had no weapon with which to defend himself. There was a lapse of time between the argument and the shooting. With that gap of time, appellant cannot claim that the shooting was not deliberate. (ALMEDILLA, G.R. No. 150590, August 21, 2003).

(b) Not Established. [i] Cannot be appreciated against appellant because the victim was forewarned of the impending attack and he could have in fact escaped had he not stumbled. (DE LA CRUZ, G.R. No. 140513, November 18, 2003). There is no treachery when the assault is preceded by a heated exchange of words between the accused and the victim; or when the victim is aware of the hostility of the assailant towards the former. In the instant case, the verbal and physical squabble prior to the attack proves that there was no treachery, and that the victim was aware of the imminent danger to his life. The prosecution failed to establish that appellant had deliberately adopted a treacherous mode of attack for the purpose of depriving the victim of a chance to fight or retreat. The victim knew that his scuffle with appellant could eventually turn into a violent physical clash. Indeed, a killing done at the spur of the moment is not treacherous. Any doubt as to the existence of treachery must be resolved in favor of the accused. (ESCARLOS, G.R. No. 148912, September 10, 2003).

Civil Liability

In Homicide Or Murder. (a) Actual damages. To be entitled to such damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable to the injured party. (DELA CRUZ, G.R. No. 152176, October 1, 2003; ALMEDILLA, G.R. No. 150590, August 21, 2003; DE LA CRUZ, G.R. No. 140513, November 18, 2003). Loss of Earning Capacity. (ALMEDILLA, G.R. No. 150590, August 21, 2003).

(b) Civil Indemnity of P50,000 for each of the victims of Murder is automatically granted to their heirs without need of any evidence other than appellant's responsibility for the death of the victim. Article 2206 of the Civil Code provides that when death occurs as a result of a crime, the heirs of the deceased are entitled to be indemnified, without need of any proof thereof. (PIDOY, G.R. No. 146696, July 3, 2003; RIMANO, G.R. No. 156567, November 27, 2003; BERDIN, G.R. No. 137598, November 28, 2003; ALMEDILLA, G.R. No. 150590, August 21, 2003; PO3 ROXAS, G.R. No. 140762, 10 September 2003; DELA CRUZ, G.R. No. 152176, October 1, 2003).

(c) Moral damages of ₱50,000 also awarded on account of the grief and suffering of the victim's heirs. (RIMANO, G.R. No. 156567, November 27, 2003; ALMEDILLA, G.R. No. 150590, August 21, 2003; DELA CRUZ, G.R. No. 152176, October 1, 2003). The trial court erred when it awarded the amount of P50,000.00 as moral and exemplary damages without indicating what amount constitutes moral damages and exemplary damages. (PIDOY, G.R. No. 146696, July 3, 2003) Unlike in rape cases, moral damages is not automatically given in murder or homicide. (ESCARLOS, G.R. No. 148912, September 10, 2003). (d) Temperate damages. (PO3 ROXAS, G.R. No. 140762, September 10, 2003; ALMEDILLA, G.R. No. 150590, August 21, 2003; DE GUZMAN, G.R. Nos. 135779-81, November 21, 2003; CALPITO, G.R. No. 123298, November 27, 2003; PIDOY, G.R. No. 146696, July 3, 2003).

(d) Temperate Damages. When actual damages proven by receipts during the trial amount to less than P25,000.00, the award of temperate damages for P25,000.00 is justified in lieu of actual damages for a lesser amount. It would be anomalous and unfair that the heirs of the victim who tried but succeeded in proving actual damages amounting to less than P25,000.00 would be in a worse situation than those who might have presented no receipts at all but would be entitled to P25,000.00 temperate damages. (DELA CRUZ, G.R. No. 152176, October 1, 2003).

(e) Exemplary Damages of ₱25,000 are also awarded, given that the qualifying circumstance of treachery attended the commission of the crime. (DE GUZMAN, G.R. Nos. 135779-81, November 21, 2003; CALPITO, G.R. No. 123298, November 27, 2003). Under Article 2230 of the Civil Code, exemplary damages as part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. The term "aggravating circumstances" as used therein is to be understood in its broad or generic sense since the law did not specify otherwise. The ordinary qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil liability of the offender. (PIDOY, G.R. No. 146696, July 3, 2003).

In Rape Where The Death Penalty Is Imposed. For each count of rape: (a) Civil indemnity of P75,000.00 is mandatory; (b) Moral Damages of P75,000.00 is also awarded; and (c) Exemplary Damages of P25,000.00 is further awarded to deter other fathers with perverse or aberrant sexual behavior from sexually abusing their daughters. (PEOPLE v. ILAGAN [EN BANC], G.R. No. 144595, 6 August 2003; PEOPLE v. DE CASTRO [EN BANC, *PER CURIAM*], G.R. Nos. 148056-61, October 8, 2003;PEOPLE v. CANOY [EN BANC, PER CURIAM], G.R. Nos. 148139-43, October 15, 2003).

In Rape Where The Death Penalty Is Not Imposed. For each count of rape: (a) Civil indemnity of P50,000.00 is automatically granted once the fact of rape had been established. Such award is mandatory upon the finding of the fact of rape without need of further evidence other than the commission of the rape; (b) The award of moral damages in the amount of ₱50,000, separate and distinct from the award of civil indemnity, is also mandatory; and (c) Exemplary damages of ₱25,000.00 is further awarded where the rape is attended by an aggravating circumstance, like the use of a deadly weapon. It is awarded to deter fathers with aberrant sexual behavior. (PEOPLE v. PASCUA, G.R. Nos. 128159-62, 14 July 2003; PEOPLE v. MOLLEDA, G.R. No. 153219, December 1, 2003; PEOPLE v. DALISAY [EN BANC], G.R. No. 133926, August 6, 2003; PEOPLE v. MANAHAN, G.R. NO.138924, August 5, 2003; PEOPLE v. TALAVERA, G.R. Nos. 150983-84, November 21, 2003; PEOPLE v. ESPERAS [EN BANC], G.R. No. 128109, November 19, 2003; PEOPLE v. PULANCO, G.R. No. 141186, November 27, 2003; PEOPLE v. PASCUA, G.R. No. 151858, November 27, 2003; PEOPLE v. AYUDA, G.R. No. 128882, October 2, 2003; PEOPLE v. FONTANILLA [EN BANC], G. R. No. 147662-63, August 15, 2003).

In Statutory Rape. (a) Civil indemnity - P50,000.00; (b) Moral damages - P50,000.00. (PEOPLE v. OLAYBAR, G.R. No. 150630-31, October 1, 2003).

In Rape By Sexual Assault. (a) Civil indemnity - P30,000.00; (b) Moral damages - P30,000.00. (Id.)

In Acts Of Lasciviousness. For each count: (a) Moral Damages of P20,000.00 pursuant to Art. 2219 of the New Civil Code; (b) But the award of P20,000.00 in civil indemnity is deleted for want of legal basis. (CANOY, G.R. Nos. 148139-43, October 15, 2003).

Book II

Crimes Against Persons

Rape

Anti-Rape Act of 1997 (R.A. No. 8353). Incorporated a new chapter in the RPC. In a new provision, designated Article 266-A, the crime of rape is committed either by (1) *sexual intercourse* or (2) by *sexual assault.* (OLAYBAR, G.R. No. 150630-31, October 1, 2003).

(1) *Rape By Sexual Intercourse* is committed 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.

Item (d) above constitutes what is referred to as STATUTORY RAPE. (Id.)

(2) *Rape By Sexual Assault* is committed by *any person* who, under any of the aforestated circumstances, inserts his penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person. (Id.)

(a) *Carnal Knowledge.* (PULANCO, G.R. No. 141186, November 27, 2003; PEOPLE v. MOLE, G. R. No. 137366, November 27, 2003; DALISAY, G.R. No. 133926, August 6, 2003; PEOPLE v. TAMPOS, G.R. No. 142740, August 6, 2003). Impotency - as a defense. (MANAHAN, G.R. NO.138924, AUGUST 5, 2003).

(b) *Force Or Intimidation.* (PEOPLE v. FABIAN, G.R. Nos. 148368-70, July 8, 2003). There being force and intimidation, it is pointless to discuss whether or not the private complainant was below 12 years of age on said date. (PEOPLE v. BUATES, G.R. Nos. 140868-69, August 5, 2003; PULANCO, G.R. No. 141186, November 27, 2003). Intimidation must be viewed in light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule. When appellant threatened the victim with a gun during the sexual intercourse, intimidation,

was present. (MOLLEDA, G.R. No. 153219, December 1, 2003; PEOPLE v. GALANG [EN BANC, *PER CURIAM*], G.R. Nos. 150523-25, July 2, 2003; PASCUA, G.R. Nos. 128159-62, July 14, 2003; FABIAN, G.R. Nos. 148368-70, July 8, 2003; TALAVERA, G.R. Nos. 150983-84, November 21, 2003). In incestuous rape where the father/stepfather exercises moral dominance over his daughter/stepdaughter, the victim by the sheer force of this moral influence is reduced to a docile creature, vulnerable and submissive to the sexual depredations of her tormentor. (DE CASTRO, G.R. Nos. 148056-61, October 8, 2003). Physical resistance need not be established in rape when intimidation is exercised upon the victim herself. The test is whether the intimidation produces a reasonable fear in the mind of the victim that if she resists or does not yield to the desires of the accused, the threat would be carried out. When resistance would be futile, offering none at all does not amount to consent to sexual assault. (ILAGAN, G.R. No. 144595, August 6, 2003; TALAVERA, G.R. Nos. 150983-84, November 21, 2003). However, in this case, the threat and intimidation were claimed to have been used by appellant only *after* consummating the sexual act. This is not what is contemplated by Article 355 (1) of the RPC. To convict under this mode, the accused must have used force or intimidation to compel complainant into having sexual relations with him. (PEOPLE v. MENDIGURIN, G.R. No. 127128. August 15, 2003). Sweetheart defense. (PULANCO, G.R. No. 141186, November 27, 2003).

Qualified Rape Punishable by Death.

(A) Child Rape. When the victim is beow seven years old (Anti-Rape Law of 1997. (TAMPOS, G.R. No. 142740, August 6, 2003).

(B) On account of the circumstance that "the offender knows that he is afflicted with Human Immuno-Deficiency Virus (HIV), Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim." While it is established that the victim contracted a sexually transmitted-disease, no evidence was adduced to show the accused was aware of his own affliction with such a disease. Moreover, the above aggravating circumstance was not even alleged in the two Informations. (OLAYBAR, G.R. No. 150630-31, October 1, 2003).

(C) In view of the concurrence of both: (1) the minority of the victim ("Minority") and (2) her filial relationship to accused-appellant ("Relationship") pursuant to Article 266-B of the Anti-Rape Law of 1997, amending Art. 335 of the RPC. (GALANG, G.R. Nos. 150523-25, July 2, 2003). Sec. 11 of RA 7659. (CANOY, G.R. Nos. 148139-43, October 15, 2003). The qualifying circumstances of Minority and Relationship must concur. Both must be alleged and proved in order to qualify the crime of rape and

warrant the imposition of the death penalty. The severity of the death penalty, especially its irreversible and final nature once carried out, makes the decision-making process in capital offense aptly subject to the most exacting rules of procedure and evidence. (ILAGAN, G.R. No. 144595, August 6, 2003). Thus, appellant cannot be convicted of qualified rape, because the Informations did not allege Relationship and Minority at the time the crimes were committed or the same was not proven by the prosecution. (ESPERAS, G.R. No. 128109, November 19, 2003; DE CASTRO, G.R. Nos. 148056-61, October 8, 2003).

(1) *Minority*. Not proven: [i] when the testimony of the mother as to the true age of the victim contradicted that of the latter. (id.); [ii] where the prosecution failed to present the birth certificate or similar authentic document, such as the school records or baptismal certificate of the victim to prove Minority. (ILAGAN, G.R. No. 144595, August 6, 2003).

Guidelines In Appreciating Age, Either As An Element Of The Crime Or As A Qualifying Circumstance: (a) The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party. (b) In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age. (c) If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree, such as the exact age or date of birth of the offended party, pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

[i] If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old.

[ii] If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old.

[iii] If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

[iv] In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.

[v] It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

[vi] The trial court should always make a categorical finding as to the age of the victim. (Id.; DALISAY, G.R. No. 133926, August 6, 2003).

(2) *Relationship.* Must be duly alleged in the Information in order to justify the imposition of the death penalty. If the offender is merely a relation – not a parent, ascendant, step-parent, guardian, or common law spouse of the mother of the victim, the specific relationship must be alleged in the information, *i.e.*, that he is "a relative by consanguinity or affinity [as the case may be] within the third civil degree." (DE CASTRO, G.R. Nos. 148056-61, October 8, 2003). That appellant and Esmeralda were married is documented. The certification issued by the Office of the Local Civil Registrar shows, however, that complainant's mother is Carmelita, the sister of Esmeralda. The explanation given by appellant that when complainant was baptized another sister of Esmeralda instructed the latter to make it appear that complainant is the daughter of Carmelita and the latter's husband Anthony who did not have a daughter does not suffice to overturn the *prima facie* truth of such entry in a public document, the acknowledgement of Esmeralda that complainant is her daughter and appellant's admission that complainant is his stepdaughter notwithstanding. (FONTANILLA, G. R. No. 147662-63, August 15, 2003). That the accused is the *step-grandfather* of the victim is not included in the list of relatives whose relationship as such would qualify the commission of rape. (MANAHAN, G.R. No. 138924, August 5, 2003).

Statutory Rape. Article 335 of the RPC, as amended by R.A. No. 7659. Essential elements: (1) the offender had carnal knowledge of a woman; and (2) the woman is below 12 years of age. Appellant cannot be convicted of statutory rape if the prosecution failed to prove the victim's age as alleged in the information. Nonetheless, he should be convicted of simple rape under paragraph 1 of Article 335 of the RPC, as amended. (DALISAY, G.R. No. 133926, August 6, 2003). Distinguished from *Child Rape*. Statutory rape (when the offended party is below twelve years of age) is punishable by *reclusion perpetua* under the RPC. Child rape (when the victim is below seven years old) is punishable by death pursuant to the Anti-Rape Law of 1997. (TAMPOS, G.R. No. 142740, August 6, 2003).

Rape With the Use of a Deadly Weapon. (BASITE, G.R. No. 150382, October 2, 2003; AYUDA, G.R. No. 128882, October 2, 2003).

Guiding Principles in Reviewing Rape Cases. (PASCUA, G.R. No. 151858, November 27, 2003).

Homicide

(DE LA CRUZ, G.R. No. 140513, November 18, 2003).

Murder

(BERDIN, G.R. No. 137598, November 28, 2003).

Crimes Against Personal Liberty

Arbitrary Detention. Elements: [i] the offender is a public *officer* or *employee;* [ii] he *detains a person;* and [iii] the detention is *without legal grounds*. The curtailment of the victim's liberty need not involve any physical restraint upon the victim's person. If the acts and actuations of the accused can produce such fear in the mind of the victim sufficient to paralyze the latter, to the extent that the victim is compelled to limit his own actions and movements in accordance with the wishes of the accused, then the victim is, for all intents and purposes, detained against his will. In the case at bar, in spite of their pleas, the witnesses and the complainants were not allowed by petitioner to go home. This refusal was quickly followed by the call for and arrival of almost a dozen "reinforcements," all armed with military-issue rifles, who proceeded to encircle the team, weapons pointed at the complainants and the witnesses. It was not just the presence of the armed men, but also the evident effect these gunmen had on the actions of the team which proves that fear was indeed instilled in the minds of the team members, to the extent that they felt compelled to stay in Brgy. Lucob-Lucob. (ASTORGA v. PEOPLE, G.R. No. 154130, October 1, 2003).

Crimes Against Chastity

Seduction. Distinguished from rape. (PASCUA, G.R. Nos. 128159-62, July 14, 2003).

Acts of Lasciviousness. (CANOY, G.R. Nos. 148139-43, October 15, 2003).

SPECIAL PENAL LAWS

THE DANGEROUS DRUGS ACT OF 1972
(R.A. No. 6425, As Amended By R.A. No. 7659)

Prohibited Drugs

Sale. Section 4, Article III. (PEOPLE v. MILADO, G.R. No. 147677, December 1, 2003).

Attempted Sale. Section 21(b), Article IV. An attempt to sell the prohibited drug *shabu* is necessarily included in the crime of sale thereof; hence, the appellant may be convicted of an attempt to sell under an Information for the sale of the prohibited drug. (PEOPLE v. ADAM, G.R. No. 143842, October 13, 2003).

Regulated Drugs

Sale. Section 15, Article III. (PEOPLE v. CHUA, G.R. No. 144312, September 3, 2003; ADAM, G.R. No. 143842, October 13, 2003; PEOPLE v. LEE, G.R. No. 145337, October 2, 2003).

Illegal Possession. Section 16, Article III. In a prosecution for illegal possession of a dangerous drug, it must be shown that (1) appellants were in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the appellants were freely and consciously aware of being in possession of the drug. The crime is *malum prohibitum*, hence, lack of criminal intent or good faith does not exempt appellants from criminal liability. Mere possession of a regulated drug without legal authority is punishable under the Dangerous Drugs Act. (PEOPLE *vs.* TIU, G.R. No. 149878, July 1, 2003).

Penalty

Imprisonment And Fine. Section 15 prescribes the penalty of *reclusion perpetua* to death AND a fine ranging from five hundred thousand pesos to ten million pesos where the *shabu* or methamphetamine hydrochloride sold weighs 200 grams or more. The rules on penalties in the RPC have suppletory application to the Dangerous Drugs Act after its amendment by R.A. No. 7659 on December 31, 1993. (Id.; LEE, G.R. No. 145337, October 2, 2003).

Defense

Buy-bust Operation. Frame-up. (Id.)

MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (R.A. No. 8042)

Illegal Recruitment In Large Scale - constituting economic sabotage under Sec. 6 (l) and (m) in relation to Sec. 7(b) of R.A. No. 8042. Persons criminally liable: principals, accomplices and accessories. In case of juridical persons, the officers having control, management or direction of their business shall be liable. An employee of a company or corporation engaged in illegal recruitment may be held liable as principal, together with his employer, if it is shown that he actively and consciously participated in illegal recruitment, with knowledge of the business, its purpose and effect. The culpability of the employee therefore hinges on his knowledge of the offense and his active participation in its commission. Where it is shown that the employee was merely acting under the direction of his superiors and was unaware that his acts constituted a crime, he may not be held criminally liable for an act done for and in behalf of his employer. In the case at bar, the prosecution failed to establish that appellant, as secretary, had control, management or direction of the recruitment agency. Appellant started her employment with the agency on May 1, 1998 and she was tasked to hold and document employment contracts from the foreign employers. She did not entertain applicants and she had no discretion over how the business was managed. On July 30, 1998, appellant received the processing fees of the private complainants since the cashier was absent that day. Her receipt of the money was in compliance with the order of her employer. She did not convince the applicants to give her their money since they went to the agency precisely to pay the processing fees upon the earlier advice of her employer. (PEOPLE v. CORPUZ, G.R. No. 148198, 1 October 2003).

PROBATION LAW OF 1976 (P.D. No. 968, As Amended By P.D. No. 1990)

Section 4 provides that no application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgement of conviction. Under Section 9 (a) of the law, offenders who are sentenced to serve a maximum term of imprisonment of more than six years are disqualified from seeking probation. In the case at bar, the trial court sentenced petitioners to a maximum term of eight years. They appealed the judgment of conviction to the Court of Appeals (CA) which modified the judgment of the trial court and reduced the maximum term of the penalty imposed

on them to one year, eight months and twenty-one days. Petitioners then applied for probation contending that their case should be considered an exception to the general rule which excludes an accused who has appealed his conviction from the benefits of probation, considering that they appealed their convictions solely for the purpose of reducing an incorrect penalty. Held: Having appealed from the judgment of the trial court and having applied for probation only after the CA had affirmed their conviction, petitioners were clearly precluded from the benefits of probation. The fact that petitioners put the merits of their conviction in issue on appeal belies their claim that their appeal was prompted by what was admittedly an incorrect penalty. The protestations of petitioners connote a profession of guiltlessness, if not complete innocence, and do not simply assail the propriety of the penalties imposed. Petitioners never manifested that they were appealing only for the purpose of correcting a wrong penalty – to reduce it to within probationable range. Hence, upon interposing an appeal, more so after asserting their innocence therein, petitioners should be precluded from seeking probation. Had the petitioners' appeal from the decision of the trial court raised the impropriety of the penalty imposed upon them as the *sole* issue, perhaps the Court would have been more sympathetic to their plight. (LAGROSA v. PEOPLE, G.R. No. 152044, July 3, 2003).

THE PHILIPPINE FISHERIES CODE OF 1998
(R.A. No. 8550)

Penalty. Sec. 90. The trial court may only exercise its discretion as to the amount of fine to be meted out on the boat owner, but it is not within the discretion of the court whether or not to impose the penalty of imprisonment on the boat captain. Upon a finding of guilt, it is mandatory for the court to impose the penalty of imprisonment on the accused boat captain. (SANGGUNIANG BAYAN v. JUDGE DE CASTRO [EN BANC], A.M. No. MTJ-03-1487, December 1, 2003).

LABOR LAWS

LABOR CODE OF THE PHILIPPINES

General Provisions

Construction In Favor Of Labor. In carrying out and interpreting the Labor Code's provisions and its implementing regulations, the employee's welfare should be the primordial and paramount consideration. Article 4, Labor Code and Article 1702, Civil

Code. (DR. REYES, G.R. No. 154448, August 15, 2003).

Conditions of Employment

Contractor. Sub-Contractor. Indirect Employer. Solidary Liability. Articles 106, 107 and 109, Labor Code. In this case, when petitioner contracted for security services with Longest Force as the security agency that hired private respondents to work as guards for the shipyard corporation, petitioner became an indirect employer of private respondents pursuant to Article 107. Following Article 106, when the agency as contractor failed to pay the guards, the corporation as principal becomes jointly and severally liable for the guards' wages. The security agency is held liable by virtue of its status as direct employer, while the corporation is deemed the indirect employer of the guards for the purpose of paying their wages in the event of failure of the agency to pay them. (PHILIPPINE TRANSMARINE CARRIERS, INC. v. CORTINA, G.R. No. 146094, November 12, 2003). Petitioner cannot evade its liability by claiming that it had religiously paid the compensation of guards as stipulated under the contract with the security agency. Labor laws are considered written in every contract and legislated wage increases amendments thereof. Stipulations in violation thereof are considered null. Thus, employers cannot hide behind their contracts in order to evade their (or their contractors' or subcontractors') liability for noncompliance with the statutory minimum wage. (Id.). However, the solidary liability of petitioner with that of Longest Force does not preclude the application of the Civil Code provision on the right of reimbursement from his co-debtor by the one who paid. (Id.)

Payment Of Wages. Attorneys Fees In Labor Cases. The extraordinary concept of attorney's fees is the one contemplated in Article 111 of the Labor Code. Although an express finding of facts and law is still necessary to prove the merit of the award, there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. There need only be a showing that the lawful wages were not paid accordingly. (DR. REYES, G.R. No. 154448, August 15, 2003). In the case at bar, what was withheld from petitioner was not only his salary, vacation and sick leave pay, and 13th month pay differential, but also his separation pay. Pursuant to current jurisprudence, separation pay must be included in the basis for the computation of attorney's fees. (Id.)

Termination of Employment

Employer-Employee Relationship. (RETUYA, G.R. No. 148848, August 5, 2003).

Regular Employee. Article 280 of the Labor Code. Private respondent was indeed a

regular employee whose services lasted for three (3) years. Moreover, after the completion of each project during the period he was hired, petitioner failed to file termination reports with the nearest public employment office, in contravention of Policy Instruction No. 20 of the Department of Labor and Employment (DOLE). Such failure showed that respondent was not a project employee. (C-E CONSTRUCTION CORPORATION v. NATIONAL LABOR RELATIONS COMMISSION G.R. No. 145930, August 19, 2003). Although respondents were initially hired as part-time employees for one year, they performed duties that were usually necessary or desirable in the usual trade or business of petitioner. The over-all circumstances with respect to duties assigned to them, number of hours they were permitted to work including over-time, and the extension of their employment beyond two years can only lead to one conclusion: that they should be declared full-time employees. Nomenclatures assigned to a contract shall be disregarded if it is apparent that the attendant circumstances do not support their use or designation. (PHILIPPINE AIRLINES, INC. v. PASCUA, G.R. No. 143258, 15 August 2003). Not Just Regular But Regular Full-time Employees. (Id.)

Termination By Employer. Dismissal. To constitute a valid dismissal, two requisites must concur: (a) the dismissal must be for any of the causes expressed in Art. 282 of the Labor Code; and (b) the employee must be accorded due process, basic of which is the opportunity to be heard and to defend himself. The twin requirements of due process, substantive and procedural, must be complied with before a dismissal can be considered valid. The mandatory first notice is absent in this case. (LOADSTAR SHIPPING CO., INC. v. MESANO, G.R. No. 138956, August 7, 2003).

Just Causes. (a) *Willful Breach of the Trust Reposed on Employee by Employer*. Article 282(c) of the Labor Code. Requisites: [i] The loss of confidence should not be simulated; [ii] it should not be used as a subterfuge for causes which are improper, illegal or unjustified; [iii] it should not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and [iv] it must be genuine, not a mere afterthought to justify earlier action taken in bad faith. (DIAMOND MOTORS CORPORATION v. COURT OF APPEALS, G.R. No. 151981, December 1, 2003).

(b) *Fraud.* Respondent passed off what was otherwise a retail sale as a fleet sale. The fact that petitioner failed to show it suffered losses in revenue as a consequence of private respondent's questioned act is immaterial. That respondent attempted to deprive petitioner of its lawful revenue is tantamount to fraud against the company, which warrants dismissal from the service. (Id.)

Authorized Causes. Retrenchment. Petitioner tendered his resignation letter to respondents requesting that he be given the same benefits granted by the company to resigned/retrenched employees. There is no showing that respondents accepted his resignation which is necessary to make the resignation effective. What appears in the record is a letter of respondent terminating the services of petitioner due to retrenchment, which should be interpreted as a non-acceptance of petitioner's resignation. (DR. REYES, G.R. No. 154448, 15 August 2003). However, petitioner is estopped from claiming that he was illegally dismissed and that his retrenchment was without basis. (Id.)

Illegal Dismissal. (PHILIPPINE TRANSMARINE CARRIERS, INC., G.R. No. 146094, November 12, 2003). Petitioners were dismissed because of a "change of management." They were not given any prior written notice, but simply told that their services were terminated on the day they stopped working for Insular Builders, Inc. Under the circumstances, they had been illegally dismissed. While petitioners continued to work in the same place and office as in their previous employment, they had in fact been illegally dismissed by their previous employer. Thus, they lost their former work status (seniority) and employment benefits (with the first employer) *in a manner violative of the law.* Without their consent, their employment was changed — from Insular Builders, which was controlled by Antonio; to Queen City, which was managed and controlled by private respondent Rodolfo. (RETUYA, G.R. No. 148848, August 5, 2003). An illegally dismissed employee is entitled to the twin reliefs of (1) either reinstatement or separation pay, if reinstatement is no longer feasible; and (2) back wages (Article 279, Labor Code). These are distinct and separate reliefs given to alleviate the economic setback brought about by the employee's dismissal. The award of one does not bar the other. (Id.; DR. REYES, G.R. No. 154448, 15 August 2003).

Backwages. Illegally dismissed employees are entitled to back wages that should not be diminished or reduced by the amount they have earned from another employment during the period of their illegal dismissal. The fact that the employees worked for a sister company immediately after being dismissed by their employer, should not preclude such award. The contention that they will be unjustly enriched thereby has been squarely addressed by the Court. (RETUYA, G.R. No. 148848, August 5, 2003). Insular Builders, Inc. has ceased operations. Absent any showing that its business was deliberately stopped to avoid reinstating the complaining employees, the amount of back wages shall be computed from the time of their illegal termination on July 26, 1993, up to the time of the cessation of the business operations. (Id.). Jurisprudence on backwages. (Id.). When Article 279 of the Labor Code was amended by Republic Act No. 6715, the legislature clearly intended to grant an illegally dismissed employee full back wages inclusive of allowances and other benefits, or the monetary equivalent of such benefits without any

diminution or reduction. Employees were thus given more benefits on grounds of equity than were allowed under the Mercury Drug rule. The new compensation package also served as part of the public reparation imposed upon the erring employer for violation of the Labor Code. It further prevented the undue delay and complication of reinstatement proceedings and thus gave more teeth to the constitutional mandate of affording full protection to labor. (C-E CONSTRUCTION CORPORATION, G.R. No. 145930, August 19, 2003).

Social Welfare Benefits

Permanent Total Disability. Permanent Partial Disability. Permanent total disability does not mean a state of absolute helplessness, but means disablement of an employee to earn wages in the same kind of work, or work of similar nature, that he was trained for, or any work which a person of similar mentality and attainment could do. The fact that the respondent, Police Chief Superintendent, did not lose the use of any part of his body does not justify the denial of his claim for permanent total disability. (GOVERNMENT SERVICE INSURANCE SYSTEM v. CADIZ, G.R. No. 154093, July 8, 2003).

Labor Relations

National Labor Relations Commission (NLRC)

Technical Rules of Procedure. Administrative and quasi-judicial bodies, like the NLRC, are not bound by the technical rules of procedure in the adjudication of cases filed before them. What is important, however, is that the parties be given sufficient opportunity to be heard. (RETUYA, G.R. No. 148848, August 5, 2003).

Appeal to the NLRC. (a) *Appeal Bond.* The posting of appeal bond and submission of a joint declaration on its genuineness is mandatory. Sections 4(a) and 6 of Rule VI of the NLRC Rules of Procedure, as amended by Resolution No. 01-02, Series of 2002. For petitioner's failure to comply with said requirements, the Labor Arbiter's Decision become final and unappealable in this case. (PHILIPPINE TRANSMARINE CARRIERS, G.R. No. 146094, November 12, 2003). (b) *Certified True Copy of Assailed Decision. Substantial Compliance with the Rules.* While said documents were not attached to the original petition, petitioner subsequently submitted with his motion for reconsideration the certified true copy of the Labor Arbiter's decision, the complainant's position paper and the respondent's memorandum of appeal. (DR. REYES, G.R. No. 154448, August 15, 2003).

Decision of the NLRC. Factual findings entitled to respect, absent any showing of patent error, or that the NLRC failed to consider a fact of substance that if considered would warrant a different result. (PHILIPPINE AIRLINES, G.R. No. 143258, August 15, 2003). However, when the findings of the NLRC contradict those of the labor arbiter, the Court, in the exercise of its equity jurisdiction, may look into the records of the case and re-examine the questioned findings. (DIAMOND MOTORS CORPORATION, G.R. No. 151981, December 1, 2003). Once final and executory, a decision of the NLRC may no longer be changed or amended. True, even after a judgment has become final and executory, an appellate court may still modify or alter it when intervening circumstances render execution of that decision unjust and inequitable. This principle does not apply, however, when the basis for modification is previously existing evidence that a party fails to adduce during the hearing on the merits, despite ample opportunity to do so. (RETUYA, G.R. No. 148848, 5 August 2003). By the same token, a party may no longer be allowed to present evidence to show that the final judgment is erroneous. (Id.)

Petition for Review. RULE 45 of the 1997 Rules of Procedure. Such appeals should be confined to a determination only of legal issues, because the appellate court's findings of fact are generally conclusive. In a petition for review on certiorari, the Court's jurisdiction is limited to reviewing errors of law in the absence of any showing that the factual findings complained of are devoid of support in the records or are glaringly erroneous. (Id.). The computation of the separation pay and the circumstances showing the existence of an employer-employee relationship are questions of fact that are generally not proper in a petition for review on certiorari. (Id.). Likewise, is the issue of the propriety of the award of overtime pay. (PHILIPPINE TRANSMARINE CARRIERS, G.R. No. 146094, November 12, 2003). The pleadings and documents filed extensively discussed the issues raised by the parties. Such being the case, there is sufficient basis for the Court to resolve the instant controversy. The case was no longer remanded to the CA. (DR. REYES, G.R. No. 154448, August 15, 2003).

Labor Arbiters

Money Claims. (a) Money claims of workers which fall within the jurisdiction of Labor Arbiters are those which arise out of employer-employee relationship. Petitioner's claim for payment of rental for the use of his house as office of Philmalay should be denied for having been ventilated in the wrong forum. (Id.). (b) Moral Damages - recoverable only where the act complained of is tainted by bad faith or fraud, or where it is oppressive to labor, and done in a manner contrary to morals, good customs, or public policy. (Id.). Exemplary damages may be awarded only if the act was done in a

wanton, oppressive, or malevolent manner. Here, there is no basis in awarding moral and exemplary damages, inasmuch as respondents were not shown to have acted in bad faith in initially refusing to award separation pay equivalent to 1 month salary for every year of service. Respondents even offered to pay petitioner separation pay, albeit in an amount not acceptable to petitioner. (Id.)

LAND LAWS

REPUBLIC ACT NO. 26

Reconstitution of Title.

Null And Void. Where the owner's duplicate certificate was in fact not lost or destroyed. The second owner's duplicate of the TCT issued thereunder is also void. (PINEDA v. COURT OF APPEALS, G.R. No. 114172, August 25, 2003).

THE LAND REGISTRATION ACT (ACT NO. 496).

PROPERTY REGISTRATION DECREE (PD NO. 1529). THE PUBLIC LAND ACT (CA NO. 141), ETC.

Certificate of Title

Torrens Title. The Torrens system does not create or vest title," but is merely an "evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. Land registration under the Torrens system was never intended to be a means of acquiring ownership. (LARENA v. MAPILI, G.R. No. 146341, August 7, 2003). Placing a parcel of land under the mantle of the Torrens system does not mean that ownership thereof can no longer be disputed. The transfer certificate of title (TCT) is only the best proof but not a conclusive evidence of ownership of a piece of land. (PINEDA, G.R. No. 114172, August 25, 2003). Petitioners' contention that the compromise judgment is null and void for failure of respondents to implead them as parties-defendants, is mainly anchored on the supposition that they are co-heirs of Renato to the lot covered by TCT No. 199241. This assertion has no merit given the fact that on its face, the certificate of title shows that the property is solely owned by RV, married to TV, and without any indication whatsoever that petitioners have an interest in the disputed lot. The respondents cannot be expected to know

details that are not reflected on the face of the certificate of title. In other words, no one could have guessed that petitioners were claiming a right over the property by virtue of succession or, assuming petitioners' allegations to be true, that RV only held the property in trust for his brothers and sisters. (MANIPOR, G.R. No. 150159, July 25, 2003).

Title Distinguished From TCT. The TCT is that document issued by the Register of Deeds. By title, the law refers to ownership which is represented by the TCT. Here, what is void is the TCT and not the title over the property. The nullity of the second owner's duplicate of TCT did not affect the validity of the sale as between the Spouses Benitez and Mojica. (PINEDA, G.R. No. 114172, August 25, 2003).

Voluntary Dealings With Registered Lands

Sale

Buyer In Good Faith. (a) A purchaser in good faith is one who buys the property of another without notice that some other person has a right to or interest in such property and pays a full and fair price at the time of purchase or before he has notice of the claim or interest of some other person in the property. Here, respondent knew that prior to 1962 and the sale, there were erected on the land in question an old wooden house and a semi-bungalow house which were occupied by parties other than the vendor. These facts alone should have put respondent on guard that there were possible defects in the title of the vendor. (HEIRS OF CELESTIAL v. HEIRS OF CELESTIAL, G.R. No. 142691, August 5, 2003).

(b) The rule is well-settled that ***"one who buys from a person who is not the registered owner is not a purchaser in good faith."*** The registration by the Loys of their contracts of sale did not defeat the right of prior buyers because the person who signed the Loys' contracts was not the registered owner. They were under notice that the lots belonged to the "Estate of Jose Vaño" and any sale of the lots required court approval. Any disposition would be subject to the claims of creditors of the estate who filed claims before the probate court. (LIU, G.R. No. 145982, July 3, 2003).

(c) Mojica was not a purchaser in good faith. She filed the petition for reconstitution of the owner's duplicate of the TCT when in fact she only purchased the house, and not the lot covered by the TCT. Her bad faith was not cured when she later purchased the lot since she knew of the irregularity in the reconstitution of the second owner's duplicate of the TCT. (PINEDA, G.R. No. 114172, August 25, 2003).

Mortgage

Pactum Commissorium. The mortgagor's default does not operate to vest the mortgagee the ownership of the encumbered property and the act of the mortgagee in registering the mortgaged property in his own name upon the mortgagor's failure to redeem the property amounts to *pactum commissorium*, a forfeiture clause declared as contrary to good morals and public policy and, therefore, void. Before perfect title over a mortgaged property may thus be secured by the mortgagee, he must, in case of non-payment of the debt, foreclose the mortgage first and thereafter purchase the mortgaged property at the foreclosure sale. (RAMIREZ, ET AL v. COURT OF APPEALS, G.R. No. 133841, August 15, 2003).

Sale Of Property By Mortgagor. The prior mortgage of the property by the Spouses Benitez to Pineda and Sayoc did not prevent the Spouses Benitez, as owners of the Property, from selling the Property to Mojica. A mortgage is merely an encumbrance on the property and does not extinguish the title of the debtor who does not lose his principal attribute as owner to dispose of the property. The law even considers void a stipulation forbidding the owner of the property from alienating the mortgaged immovable. (PINEDA, G.R. No. 114172, August 25, 2003).

Annotation Of Mortgage On Void TCT. A mortgage annotated on a void title is valid if the mortgagee registered the mortgage in good faith. To bind third parties to an unregistered encumbrance, the law requires actual notice. The fact that Mojica (who sold the property to Gonzales) had actual notice of the unregistered mortgage did not constitute actual notice to Gonzales, absent proof that Gonzales herself had actual notice of the prior mortgage. Thus, Gonzales acquired her rights as a mortgagee in good faith. (Id.)

Auction Sale. Retroacts to the date of the registration of the mortgage, putting the auction sale beyond the reach of any intervening *lis pendens,* sale or attachment. The prior registered mortgage of Gonzales prevails over the subsequent notice of *lis pendens,* even if the auction sale took place after the notation of the *lis pendens*. (Id.)

Equity Of Redemption. What remained with Pineda and Sayoc after the foreclosure was the mortgagor's residual rights over the foreclosed Property, which rights are the equity of redemption and a share in the surplus fund, if any. (Id.)

Prior Unregistered Mortgage. Not prejudiced by notice of lis pendens in this case. (PINEDA, G.R. No. 114172, August 25, 2003). The unregistered mortgage of Pineda and Sayoc was extinguished upon foreclosure of Gonzales' mortgage even assuming for the sake of argument that the latter mortgage was unregistered. Between two unregistered mortgagees, both being in good faith, the first to foreclose his mortgage prevails over the other. (Id.)

Lis Pendens

Concept. (id.). The Register of Deeds of Cebu City denied registration of the *lis pendens* and Liu did not appeal to the Land Registration Commission to keep alive the *lis pendens*. Such failure to appeal the denial of the registration rendered the *lis pendens* ineffective. (LIU, G.R. No. 145982, July 3, 2003).

Judicial Confirmation Of Imperfect Title

Requisites. (Section 14 (1) of Presidential Decree No. 1529; Section 48 (b) of Commonwealth Act No. 141, as amended by Section 4 of Presidential Decree No. 1073). Before one can register his title over a parcel of land, the applicant must show that: (1) he, by himself or through his predecessors-in-interest, has been in open, continuous, exclusive and notorious possession and occupation of the subject land under a *bona fide* claim of ownership since June 12, 1945 or earlier; and (2) the land subject of the application is alienable and disposable land of the public domain. The foregoing requirements have not been amended by Republic Act No. 6940. (REPUBLIC v. LAO, G.R. No. 150413, July 1, 2003).

(a) Acquisitive Prescription is a mode of acquiring ownership by a possessor through the requisite lapse of time. In order to ripen into ownership, possession must be *en concepto de dueño*, public, peaceful and uninterrupted. Coupled with the court *a quo*'s finding that the claims of purchase were unsubstantiated, petitioners' acts of a possessory character — acts that might have been merely tolerated by the owner — did not constitute possession. No matter how long tolerated possession is continued, it does not start the running of the prescriptive period. (LARENA, G.R. No. 146341, 7 August 2003). Tax Declaration. Not a conclusive evidence of ownership, but a "proof that the holder has a claim of title over the property." Normally, one will not pay taxes on a property not in one's actual or constructive possession. Hence, being good indicia of possession in the concept of owner, the Tax Declarations in the name of Petitioner Aquila may strengthen her *bona fide* claim of acquisition of ownership. Petitioners, however, have not been able to present the evidence needed to tack the date of possession

on the property in question. (Id.)

(b) Alienable Land. Under the Regalian doctrine which is embodied in our Constitution, all lands of the public domain belong to the State, which is the source of any asserted right to ownership of land. All lands not appearing to be clearly within private ownership are presumed to belong to the State. Unless public land is shown to have been reclassified or alienated to a private person by the State, it remains part of the inalienable public domain. To overcome this presumption, incontrovertible evidence must be established that the land subject of the application is alienable or disposable. Declassification of forest land and its conversion into alienable or disposable land for agricultural or other purposes requires an express and positive act from the government. (LAO, G.R. No. 150413, July 1, 2003). In the case at bar, no certification from the appropriate government agency or official proclamation reclassifying the land as alienable and disposable was presented by respondent. Respondent merely submitted the survey map and technical descriptions of the land, which contained no information regarding the classification of the property. These documents are not sufficient to overcome the presumption that the land sought to be registered forms part of the public domain. (id.). An applicant for registration of a parcel of land has the initial obligation to show that the property involved is agricultural and that the same is indeed alienable or disposable. She cannot rely on the mere presumption that it was agricultural and, therefore, alienable part of the public domain because no opposition to her application was ever made by the appropriate government agencies. The absence of opposition from the government agencies is of no moment because the State cannot be estopped by the omission, mistake or error of its officials or agents. (Id.)

Right of Legal Redemption or Pre-Emption

Owner Of Adjoining Rural Land. Article 1621 of the Civil Code. Applies to a piece of rural land not exceeding one hectare in area. If alienated, the law grants to the adjoining owners a right of redemption except when the grantee or buyer does not own any other rural land. In order that the right may arise, the land sought to be redeemed and the adjacent property belonging to the person exercising the right of redemption must both be rural lands. If one or both are urban lands, the right cannot be invoked. The right of redemption may be defeated if it can be shown that the buyer or grantee does not own any other rural land. Article 1623 of the Civil Code provides that the right of legal pre-emption or redemption shall not be exercised except within thirty days from notice in writing by the prospective vendor, or by the vendor, as the case may be. The deed of sale shall not be recorded in the Registry of Property unless the same is accompanied by an affidavit of the vendor that he has given notice thereof

to all possible redemptioners. (PRIMARY STRUCTURES CORP. v. SPS. VALENCIA, G.R. No. 150060, August 19, 2003). A statement in the deed of sale that the vendors have complied with the provisions of Article 1623 does not meet the required affirmation under oath and written notice to petitioner, as the adjoining owner in this case. Petitioner is not a party to the deed of sale between respondents and Mendoza and had no hand in the preparation and execution of the said deed of sale. (Id.)

LEGAL AND JUDICIAL ETHICS

JUDICIAL ETHICS

Powers And Duties Of Courts And Judicial Officers

Amendment of Decisions. Section 5, Rule 135 of the Revised Rules of Court. Inherent power of courts to amend their decisions to make them conformable to law and justice does not contemplate amendments that are substantial in nature. (CANSINO, G.R. No. 125799, August 21, 2003).

Uphold The Integrity And Independence Of The Judiciary

Judge Must Be Impartial and Must Appear Impartial. (NEGROS GRACE PHARMACY, INC. v. JUDGE HILARIO, A.M. No. MTJ-02-1422, November 21, 2003). Clarificatory questions during trial – not indicative of judicial bias. (ASTORGA, G.R. No. 154130, October 1, 2003).

Avoid Impropriety And Appearance Of Impropriety In All Activities.

Judge Must Be Circumspect In Both Official And Personal Conduct. (EJERCITO v. JUDGE SUERTE, A.M. No. RTJ-99-1501, September 3, 2003). Should avoid even the slighted infraction of law. (Rule 2.01 of the Code of Judicial Conduct). The holding of court session and setting of arraignment on a Saturday is a blatant violation of Administrative Circular No. 3-99, which provides that "[t]he session hours of all Regional Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall be from 8:30 in the morning to noon and from 2:00 to 4:30 in the afternoon, from Monday to Friday." (SANGGUNIANG BAYAN, A.M. No. MTJ-03-1487, December 1, 2003).

Perform Official Duties Honestly And With Impartiality And Diligence

Adjudicative Responsibilities

Maintain Professional Competence. Canon 3, Rule 3.01. Breached by judge who relied solely on the clerk of court and approved bail on the basis of the "findings" of the latter. (JUDGE DE LOS SANTOS v. JUDGE MANGINO, A.M. No. MTJ-03-1496, July 10, 2003). Misquoting Court Decisions Due to Reliance on Unofficial Syllabus Thereof. Lawyers and litigants are mandated to quote decisions of the Court accurately. Judges should do no less by strictly abiding by this rule when they quote cases that support their judgments and decisions. (CHINA AIRLINES v. CHIOK, G.R. No. 152122, 30 July 2003).

Render Just Decisions. As a ground for disciplinary action, the acts complained of in a case of rendering an unjust decision must not only be contrary to existing law and jurisprudence, they must be motivated by bad faith, fraud, dishonesty and corruption. (NEGROS GRACE PHARMACY, INC., A.M. No. MTJ-02-1422, November 21, 2003; PROSECUTOR CONTRERAS v. JUDGE MONSERATE, A.M. No. MTJ-02-1437, August 20, 2003; ASLARONA v. JUDGE ECHAVEZ, A.M. No. RTJ-03-1803, October 2, 2003; SANGGUNIANG BAYAN, A.M. No. MTJ-03-1487, December 1, 2003; JUDGE DE GUZMAN v. JUDGE DY, A.M. No. RTJ-03-1755, July 3, 2003).

Prompt Disposition of Cases. Constitutionally Prescribed Period. Rule 3.05, Canon 3, of the Code of Judicial Conduct. Sec. 15, par. (1), Art. VIII, of the 1987 Constitution). Right to speedy disposition of cases. (Section 16, Article III of the Constitution). Heavy workload is not a valid reason for delay nor an excuse that will spare the judge from administrative liability. (ASLARONA, A.M. No. RTJ-03-1803, October 2, 2003; PROSECUTOR VISBAL v. JUDGE SESCON, A.M. No. RTJ-03-1744, 18 August 2003).

Right Attitude to Lawyers. Violated with use of intemperate language, making statement that complainant's lawyers acted "wickedly" and possessed "wicked minds." (NEGROS GRACE PHARMACY, A.M. No. MTJ-02-1422, November 21, 2003).

Administrative Responsibilities

Supervision Of Court Personnel. Rule 3.09 of the Code of Judicial Conduct. (UNITRUST DEVELOPMENT BANK v. JUDGE CAOIBES, JR., A.M. No. RTJ-03-1745, August 20, 2003).

Political Activities

Partisan Political Activity. Canon 5.10 of the Code of Judicial Conduct. (PRESIDENT ESTRADA v. SANDIGANBAYAN [EN BANC, PER CURIAM], G.R. No. 159486-88, November 25, 2003).

Disqualifications

Inhibition of Court Justices. Supreme Court Circular A.M. No. 99-8-09 is applicable only to cases assigned to the Divisions of the Court. For cases assigned to the Court *En Banc*, the policy of the Court is if the *ponente* is no longer with the Court, his replacement will act upon the motion for reconsideration of a party and participate in the deliberations thereof. (PEOPLE v. LACSON [EN BANC], G.R. No. 149453, 7 October 2003).

Judges. Inhibitions. Section 1, Rule 137 of the Rules of Court contemplates two kinds of inhibition: (a) In the first paragraph, compulsory disqualification conclusively assumes that a judge cannot actively or impartially sit on a case for the reasons therein stated. (b) The second paragraph, concerning voluntary inhibition, leaves to the judge's discretion whether he should desist from sitting in a case for other just and valid reasons. The decision on whether a judge should inhibit himself must be based on his rational and logical assessment of the circumstances prevailing in the case brought before him. The judge does not have the unfettered discretion to decide whether he should desist from hearing a case. The inhibition must be for just and valid causes. (CHIN v. COURT OF APPEALS, G.R. No. 144618, August 15, 2003).

Certificates of Service

Judiciary Act of 1948. Judges are required to submit a monthly certificate of service stating therein that all the special proceedings, applications, petitions, motions and all the civil and criminal cases which are already submitted for decision have been decided and resolved within the period required by law. (RE: EDITORIAL OF THE NEGROS CHRONICLE AND OTHER CHARGES AGAINST JUDGE CARAMPATAN [EN BANC], A. M. No. 02-10-614-RTC, September 3, 2003).

Disciplinary Action Against Judges

Nature. Any of the following grounds for the removal of a judicial officer should be established beyond reasonable doubt: misconduct in office, willful neglect, corruption or incompetence. The general rules regarding admissibility of evidence in criminal trials apply. (EJERCITO, A.M. No. RTJ-99-1501, 3 September 2003). In administrative proceedings against judges, the complainant has the burden of proving by substantial evidence the allegations in his complaint. In the absence of contrary evidence, what will prevail is the presumption that the respondent has regularly performed his duties. (JUDGE DE GUZMAN, A.M. No. RTJ-03-1755, July 3, 2003). The alleged errors committed by respondent judge in the exercise of his adjudicative functions cannot be corrected through administrative proceedings, but should instead be assailed through judicial remedies. Disciplinary proceedings against judges do not complement, supplement or substitute judicial remedies, whether ordinary or extraordinary. An inquiry into their administrative liability arising from judicial acts may be made only after other available remedies have been settled. (BELLO III v. JUDGE DIAZ, AM-MTJ-00-1311, October 3, 2003). Desistance. The withdrawal of the case by the complainant, or the filing of an affidavit of desistance or the complainant's loss of interest does not necessarily cause the dismissal of an administrative action. (UNITRUST DEVELOPMENT BANK, A.M. No**.** RTJ-03-1745, August 20, 2003).

LEGAL ETHICS

Duty to the Courts. Canon 11, Code of Professional Responsibility. The lawyer should observe and maintain the respect due to the courts and judicial officers and should insist on similar conduct by others. In liberally imputing sinister and devious motives and questioning the impartiality, integrity, and authority of the members of the Court, counsel has only succeeded in seeking to impede, obstruct and pervert the dispensation of justice. The Court will not countenance any wrongdoing nor allow the erosion of the people's faith in the judicial system, let alone, by those who have been privileged by it to practice law in the Philippines. (PRESIDENT ESTRADA, G.R. No. 159486-88, November 25, 2003).

Duty to Other Lawyers. Lawyer's Oath. Canon 8, Code of Professional Responsibility. Lawyers should treat each other with courtesy, dignity and civility. The bickering and the hostility of their clients should not affect their conduct and rapport with each other as professionals and members of the bar. In this case, the lawyer for the defendant was included without just cause in the collection suit against the latter. This demonstrates a misuse of the legal process. The aim of every lawsuit should be to render justice to the

parties according to law, not to harass them. The Lawyer's Oath exhorts law practitioners not to "wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid nor consent to the same." (REYES v. CHIONG JR. [EN BANC], A.C. No. 5148. July 1, 2003).

Duty to Client. (a) Candor, Fairness and Loyalty. Rule 15.03, Code of Professional Responsibility. Conflicting Interests in Derivative Suits. A lawyer engaged as counsel for a corporation cannot represent members of the same corporation's board of directors in a derivative suit brought against them. To do so would be tantamount to representing conflicting interests, which is prohibited. (HORNILLA v. ATTY. SALUNAT, A.C. No. 5804, July 1, 2003).

(b) Fidelity to the Cause of Client. Breach of Trust and Confidence. Canon 17 of the Code of Professional Responsibility. An attorney is not permitted to disclose communications made to him in his professional character by a client, unless the latter consents. This obligation to preserve the confidences and secrets of a client arises at the inception of their relationship. The protection given to the client is perpetual and does not cease with the termination of the litigation, nor is it affected by the party's ceasing to employ the attorney and retaining another, or by any other change of relation between them. It even survives the death of the client. However, the privilege against disclosure of confidential communications or information is limited only to communications which are legitimately and properly within the scope of a lawful employment of a lawyer. It does not extend to those made in contemplation of a crime or perpetration of a fraud. If the unlawful purpose is avowed, as in this case, the complainant's alleged intention to bribe government officials in relation to his case, the communication is not covered by the privilege as the client does not consult the lawyer professionally. It is not within the profession of a lawyer to advise a client as to how he may commit a crime. (GENATO v. ATTY. SILAPAN, A.C. No. 4078, July 14, 2003). In this case the disclosures were not indispensable to protect respondent's rights as they were not pertinent to the foreclosure case. It was improper for the respondent lawyer to use it against the complainant in the foreclosure case as it was not the subject matter of litigation therein and respondent's professional competence and legal advice were not being attacked in said case. (Id.)

Duty to Society. Gross Misconduct. The deliberate failure to pay just debts and the issuance of worthless checks constitute gross misconduct, for which a lawyer may be sanctioned with one-year suspension from the practice of law. The Court can exercise its power to discipline lawyers for causes which do not involve the relationship of an attorney and client. Membership in the legal profession is a privilege. It demands a high

degree of good moral character, not only as a condition precedent to admission, but also as a continuing requirement for the practice of law. (LAO v. ATTY. MEDEL [EN BANC], A.C. No. 5916, July 1, 2003).

POLITICAL LAW

PUBLIC INTERNATIONAL LAW

Covenant On Civil And Political Rights ("Covenant"). The Universal Declaration Of Human Rights ("Declaration"). The protection accorded to individuals under the Covenant and the Declaration remained in effect during the period of the *Interregnum* (that is *after* the actual and effective take-over of power by the revolutionary government following the cessation of resistance by loyalist forces *up to* 24 March 1986, immediately before the adoption of the Provisional Constitution. The revolutionary government did not repudiate the Covenant or the Declaration during the *Interregnum,* as it repudiated the 1973 Constitution. (REPUBLIC v. SANDIGANBAYAN [EN BANC], G.R. No. 104768, July 21, 2003).

CONSTITUTIONAL LAW

Bill of Rights

Due Process Clause. The right to due process is a cardinal and primary right which must be respected in all proceedings. (SAYA-ANG, SR. v. COMMISSION ON ELECTIONS [EN BANC], G.R. No. 155087, November 28, 2003). It has two aspects: substantive and procedural. Due process does not always and in all situations require a trial-type proceeding. Its essence is found in the reasonable opportunity to be heard and submit one's evidence in support of his defense. What the law prohibits is not merely the absence of previous notice but the absence thereof *and* the lack of opportunity to be heard. (REPUBLIC v. SANDIGANBAYAN [EN BANC], G.R. No. 152154, November 18, 2003; (CALOOCAN v. HON. ALLARDE, G.R. No. 1G07271, September 10, 2003; ATTY. VILLAREÑA v. THE COMMISSION ON AUDIT [EN BANC], G.R. Nos. 145383-84, August 6, 2003) This opportunity was made completely available to respondents who participated in all stages of the litigation. (REPUBLIC, G.R. No. 152154, November 18, 2003). Applied to administrative proceedings: Labor Arbiter. (MARIVELES SHIPYARD CORP v. COURT OF APPEALS, G.R. No. 144134, November 11, 2003); Office of the Ombudsman. (ALCALA v. VILLAR, G.R. No. 156063, November 18, 2003); the Philippine Commission Against Graft and Corruption

(PCAGC) (MONTEMAYOR v. BUNDIALAN, ET. AL, G.R. No. 149335, July 1, 2003). In order that a particular act may not be impugned as violative of the due process clause, there must be compliance with both substantive and the procedural requirements thereof. (REPUBLIC, G.R. No. 152154, November 18, 2003). While the due process clause is intended as a protection of individuals against arbitrary action of the State, it may also be invoked by the Republic to protect its properties. (PINLAC, ET AL v. COURT OF APPEALS, ET AL, G.R. No. 91486, September 10, 2003). The indecent undue haste with which the accused were arraigned, the arbitrary imposition of penalties on them and their consequent release, constitute a patent denial to the prosecution of the opportunity to fully protect the interest of the State. (SANGGUNIANG BAYAN, A.M. No. MTJ-03-1487, December 1, 2003).

Equal Protection Clause. Section 18 of Republic Act No. 6758 does not violate the equal protection clause. (ATTY. VILLAREÑA, G.R. Nos. 145383-84, August 6, 2003).

Freedom From Unreasonable Searches And Seizures. Article III, Section 3(2) of the Constitution. The general rule is that a search may be conducted by law enforcers only on the strength of a valid search warrant. Exceptions. Search incidental to a lawful arrest. (MILADO, G.R. No. 147677, December 1, 2003). The Constabulary raiding team seized items not included in the warrant, such as monies, communications equipment, jewelry and land titles The raiding team had no legal basis to seize these items without showing that these items could be the subject of a warrantless search and seizure. The seizure of these items was therefore void, and unless these items are contraband *per se*, they must be returned to the person from whom the raiding team seized them. (REPUBLIC, G.R. No. 104768, July 21, 2003).

Rights Of The Accused. Right to Counsel. Assuming that appellant was not afforded the assistance of a counsel of his own choice, the proceedings in the trial court will not necessarily be struck down because no incriminatory evidence in the nature of a compelled or involuntary confession or admission was used as evidence against him. (PEOPLE v. MONTE, G.R. No. 144317, August 5, 2003).

Right To Speedy Disposition Of Case. The people and the State are entitled to favorable judgment, free from vexatious, capricious and oppressive delays, the salutary objective being to restore the ownership of the Swiss deposits to the rightful owner, the Republic of the Philippines, within the shortest possible time. (REPUBLIC, G.R. No. 152154, November 18, 2003).

The Bill Of Rights And The Revolutionary Government Following EDSA 1. The EDSA Revolution took place on 23-25 February 1986. The Bill of Rights under the 1973 Constitution was not operative during the *Interregnum*, when the directives and orders of the revolutionary government were the supreme law because with the abrogation of the 1973 Constitution by the successful revolution, there was no municipal law higher than the directives and orders of the revolutionary government. Thus, during the *Interregnum*, a person could not invoke any exclusionary right under a Bill of Rights because there was neither a constitution nor a Bill of Rights then. (REPUBLIC, G.R. No. 104768, July 21, 2003).

The Provisional Constitution Of March 25, 1986. Adopted verbatim the Bill of Rights of the 1973 Constitution. It served as a self-limitation by the revolutionary government to avoid abuses of the absolute powers entrusted to it by the people. (Id.)

Suffrage

Right Of Suffrage. Section 1, Article V of the Constitution. Suffrage may be exercised by (1) all citizens of the Philippines, (2) not otherwise disqualified by law, (3) at least eighteen years of age, (4) who are residents in the Philippines for at least one year and in the place where they propose to vote for at least six months immediately preceding the election. (MACALINTAL v. COMMISSION ON ELECTIONS [EN BANC], G.R. No. 157013, July 10, 2003). On the residency requirement, Section 2 of Article V of the Constitution is an exception. "Domicile" and "Residence" Explained. One may seek a place for purposes such as pleasure, business, or health. If a person's intent be to remain, it becomes his domicile; if his intent is to leave as soon as his purpose is established it is residence. An individual can have different residences in various places. However, *a person can only have a single domicile, unless, for various reasons, he successfully abandons his domicile in favor of another domicile of choice*. In our election law, what has clearly and unequivocally emerged is the fact that residence for election purposes is used synonymously with domicile. (Id.)

The Legislative Department

Legislative Power. (a) *Law-Making.* Article VI of the 1987 Constitution. Circumscribed by Section 1 of Article IX-A thereof ordaining that constitutional commissions, such as the COMELEC, shall be "independent." (Id.)

(b) *Legislative Inquiry In Aid Of Legislation.* Sec. 21, Article VI of the Constitution. Standard for the conduct of legislative inquiries. (FRANCISCO v. THE HOUSE OF REPRESENTATIVES, [EN BANC], G.R. No. 160261, November 10, 2003).

(c) *Impeachment.* Secs. 2 and 3, Article XI of the 1987 Constitution. (Id.)

(d) *Proclamation of Winning Candidates for President and Vice-President.* Paragraph 4, Sec. 4, Article VII of the Constitution. (MACALINTAL, G.R. No. 157013, July 10, 2003).

Joint Congressional Oversight Committee (JCOC). Composed of Senators and Members of the House of Representatives, is a purely legislative body. The authority of Congress to "monitor and evaluate the implementation" of R.A. No. 9189 is geared towards possible amendments or revision of the law itself and thus, may be performed in aid of its legislation. However, the provisions of R.A. No. 9190 granting the JCOC the functions: (a) to "review, revise, amend and approve the Implementing Rules and Regulations" promulgated by the COMELEC [Sections 25 and 19]; and (b) subject to the approval of the JCOC [Section 17.1], the voting by mail in not more than three countries for the May 2004 elections and in any country determined by COMELEC – are unconstitutional, as they intrude into the independence of the COMELEC. (Id.)

Executive Department

The President Of The Philippines

Control Over the Executive Departments. Article VII, Section 17, of the Constitution. The President's control of all executive departments, bureaus, agencies and offices may justify an executive action to inactivate the functions of a particular office or to carry out reorganization measures under a broad authority of law. The President, through the issuance of an executive order, can validly carry out the reorganization of the National Tobacco Administration. (BAGAOISAN, ET. AL v. NATIONAL TOBACCO ADMINISTRATION, G.R. No. 152845, August 5, 2003). The President has the power to transfer any function or agency under the Office of the President to any other Department or Agency as well as transfer any function or agency to the Office of the President from other Departments and Agencies pursuant to Section 31(2) and (3) of Executive Order No. 292 (Administrative Code of 1987) and the power to restructure the internal organization of the Office of the President proper under Section 31 (1) of the same Code. (Id.)

Other Emoluments. Under the 1935 and the 1973 Constitution, the President could not receive during his tenure any other emolument from the Government or any of its subdivisions and instrumentalities or any other source. Management of businesses, like the administration of foundations to accumulate funds, was expressly prohibited under the 1973 Constitution: (REPUBLIC v. SANDIGANBAYAN [EN BANC], G.R. No. 152154, July 15, 2003).

Judicial Department

The Supreme Court ("the Court")

Judicial Power. Judicial Review. Expanded Certiorari Jurisdiction Of The Court. Sec. 1, Article VIII of the 1987 Constitution. This is not only a judicial power but a duty to pass judgment on matters of the nature stated in the said Constitutional provision. The second paragraph of Section 1 means that **the courts cannot hereafter evade the duty to settle matters of this nature, by claiming that such matters constitute a political question**. (FRANCISCO, G.R. No. 160261, November 10, 2003.). Even in cases where it is an interested party, the Court cannot inhibit itself and must rule upon the challenge because no other office has the authority to do so. The duty to exercise the power of adjudication regardless of interest had already been settled. The power of judicial review includes the power of review over justiciable issues in impeachment proceedings. The possibility of the occurrence of a constitutional crisis is not a reason for this Court to refrain from upholding the Constitution in all impeachment cases. There exists no constitutional basis for the contention that the exercise of judicial review over impeachment proceedings would upset the system of checks and balances. The Constitution did not intend to leave the matter of impeachment to the sole discretion of Congress. Instead, it provided for certain well-defined limits, or "judicially discoverable standards" for determining the validity of the exercise of such discretion, through the power of judicial review. (Id.). Cases in which the Court exercised the power of judicial review over congressional action.(Id.)

(a) *Limitations On The Power Of Judicial Review*: "Seven Pillars" of limitations. Briefly stated as follows: [i] an actual case or controversy calling for the exercise of judicial power; [ii] the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; [iii] the question of constitutionality must be raised at the earliest possible opportunity; and [iv] the issue of constitutionality must be the very *lis mota* of the case. (Id.)

Justiciability. Political Question. Truly Political Questions. Questions Which Are Not Truly Political In Nature. There are two species of political questions: (1) "truly political questions" and (2) those which "are not truly political questions." *Truly political questions* are beyond judicial review, the reason for this is the doctrine of separation of powers. On the other hand, by virtue of Sec. 1, Article VIII of the Constitution, courts can review questions which are not truly political in nature. The determination of a truly political question from a non-justiciable political question lies in the answer to the question of whether there are constitutionally imposed limits on powers or functions conferred upon political bodies. If there are, then our courts are duty-bound to examine whether the branch or instrumentality of the government properly acted within such limits. (Id.). The issue of whether the offenses alleged in the Second impeachment complaint constitute valid impeachable offenses under the Constitution goes into the merits of the second impeachment complaint over which the Court has no jurisdiction. (Id.)

Ripeness Or Prematurity. For a case to be considered ripe for adjudication, "it is a prerequisite that something had by then been accomplished or performed by either branch before a court may come into the picture." Only then may the courts pass on the validity of what was done, if and when the latter is challenged in an appropriate legal proceeding. (Id.)

Lis Mota. An issue assailing the constitutionality of a governmental act should be avoided whenever possible. Courts will not touch the issue of constitutionality unless it is truly unavoidable and is the very *lis mota* or *crux* of the controversy. In determining whether one, some or all of the remaining substantial issues should be passed upon, this Court is guided by the related cannon of adjudication that "the court should not form a rule of constitutional law broader than is required by the precise facts to which it is applied." (Id.)

Legal Standing. Defined as a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. The gist of the question of standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions. In a long line of cases, the Court has given standing to the following: [i] concerned citizens [ii] taxpayers and [iii] legislators - when specific requirements have been met by them. (Id.). The mere invocation by the Integrated Bar of the Philippines or any member of the legal profession of the duty to preserve the rule of law and nothing more, although undoubtedly true, does not suffice to clothe it with standing. Its interest is too general. It is shared by other groups

and the whole citizenry. However, a reading of the petitions shows that it has advanced constitutional issues which deserve the attention of the Court in view of their seriousness, novelty and weight as precedents. (Id.)

Transcendental Importance Rule. The Court has adopted a liberal attitude on the *locus standi* where the petitioner is able to craft an issue of transcendental significance to the people. Such liberality does not, however, mean that the requirement that a party should have an interest in the matter is totally eliminated. A party must, at the very least, still plead the existence of such interest, it not being one of which courts can take judicial notice. There is no doctrinal definition of transcendental importance but the following determinants are instructive: [i] the character of the funds or other assets involved in the case; [ii] the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and [iii] the lack of any other party with a more direct and specific interest in raising the questions being raised. (Id.). The question of propriety of the instant petition which may appear to be visited by the vice of prematurity as there are no ongoing proceedings in any tribunal, board or before a government official exercising judicial, quasi-judicial or ministerial functions as required by Rule 65 of the Rules of Court, dims in light of the importance of the constitutional issues raised by the petitioner. (MACALINTAL, G.R. No. 157013, July 10, 2003).

Jurisprudence. Precedents. The ruling of the Court of Appeals (CA) cannot be binding upon the Court which has the last word on what the law is. It is the final arbiter of any justifiable controversy. There is only one Court from whose decisions all other courts should take their bearings. (COMMISSIONER OF INTERNAL REVENUE v. MICHEL J. LHUILLIER PAWNSHOP, INC., G.R. No. 150947, July 15, 2003). Judicial decisions which form part of our legal system are only the decisions of the Court. While rulings of the CA may serve as precedents for lower courts, they only apply to points of law not covered by any Court decision. (GOVERNMENT SERVICE INSURANCE SYSTEM, G.R. No. 154093, July 8, 2003).

Court En Banc. Is not an appellate tribunal to which appeals from a Division of the Court may be taken. A Division of the Court is the Supreme Court as fully and veritably as the Court En Banc itself and a decision of its Division is as authoritative and final as a decision of the Court En Banc. (BAGAOISAN, G.R. No. 152845, August 5, 2003).

Court Justices. Inhibition from hearing petition. (PRESIDENT ESTRADA, G.R. No. 159486-88, November 25, 2003).

Courts in General

Decisions. (a) Must express therein clearly and distinctly the facts and the law on which it is based. Section 14, Art. VIII of the Constitution. Section 14, Rule 110 of the Revised Rules of Criminal Procedure (RRCP). (SANGGUNIANG BAYAN, A.M. No. MTJ-03-1487, December 1, 2003; PEOPLE v. ERNAS [EN BANC], G.R. Nos. 137256-58, August 6, 2003). Members of the bar and the bench must refer to and quote from the official repository of Court decisions whenever practicable. In the absence of this primary source, which is still being updated, they may resort to unofficial sources like the SCRA. The Court's *ponencia*, when used to support a judgment or ruling, should be quoted accurately. (CHINA AIRLINES, G.R. No. 152122, July 30, 2003). (b) *Stare decisis et non quieta movere.* When a court has laid down a principle of law applicable to a certain state of facts, it must adhere to such principle and apply it to all future cases in which the facts sued upon are substantially the same. (PINLAC, G.R. No. 91486, September 10, 2003).

The Civil Service Commission (CSC)

Appeals. Section 2, Revised Uniform Rules on Administrative Cases in the Civil Service. The filing and pendency of petition for review with the CA or certiorari with the Court shall not stop the execution of the final decision of the CSC unless the Court issues a restraining order or an injunction. (HON. CONSTANTINO-DAVID, ET AL v. PANGANDAMAN-GANIA, G.R. No. 156039, 14 August 2003).

Finality Of Decisions. Even after acknowledging the finality of its Resolution, the CSC still entertained the twin motions of respondent to modify the same resolution and insert therein an order for the payment of back wages. The CSC was in the legitimate exercise of its mandate under Sec. 3, Rule I, of the Revised Uniform Rules on Administrative Cases in the Civil Service that "[a]dministrative investigations shall be conducted without necessarily adhering strictly to the technical rules of procedure and evidence applicable to judicial proceedings." This authority is consistent with its powers and functions to "[p]rescribe, amend and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws" being the central personnel agency of the Government. There are special circumstances in this case that warrant, in accordance with the tenets of justice and fair play, such liberal attitude on the part of the CSC and a compassionate like-minded discernment by the Court. To prevent respondent from claiming back wages would leave incomplete the

redress of the illegal dismissal that had been done to her and amount to endorsing the wrongful refusal of her employer or whoever was accountable to reinstate her. A too-rigid application of the pertinent provisions of the Revised Uniform Rules on Administrative Cases in the Civil Service as well as the Rules of Court will not be given premium where it would obstruct rather than serve the broader interests of justice in the light of the prevailing circumstances in the case under consideration. (Id.). Residual jurisdiction. (Id.)

When CSC May Appeal From Adverse Rulings Of The CA. In the instant case, the CSC is not the real party-in-interest as this suit confronts the Decision of the CA to award back wages for respondent arising from an illegitimate personnel and non-disciplinary action of MSU, which is different from an administrative disciplinary proceeding where the injured party is the government. As a rule, the material interest for this purpose belongs to MSU since it instigated the illegal dismissal and the execution of the Decision devolves upon it. However, respondent cannot insist that MSU be the indispensable party in the instant petition since the latter was not designated as respondent in the petition before the CA. Hence, by force of circumstances, the CSC has the standing to initiate the instant petition for review. (Id.). What is crucial is that both CSC and MSU are part of the same bureaucracy that manages and supervises government personnel, and as such, represent a common interest on the question raised in the petition to be defended by the same core of lawyers from the Office of the Solicitor General (OSG) or the Office of the Government Corporate Counsel (OGCC). Considering that there was no injury caused and that the underlying principle in the administration of justice and application of the rules is substance rather than form, reasonableness and fair play in place of formalities, this particular case should be an exception from the rigid operation of the procedure for the joinder of parties. (Id.)

The Commission On Elections (COMELEC)

Jurisdiction And Powers. (a) *Certificate of Candidacy.* COMELEC has jurisdiction to deny due course to or cancel a certificate of candidacy. Such jurisdiction continues even after the elections, if for any reason no final judgment of disqualification is rendered before the elections, and the candidate facing disqualification is voted for and receives the highest number of votes, and provided further that the winning candidate has not been proclaimed or taken his oath of office. Furthermore, a decision by the COMELEC to disqualify a candidate shall become final and executory only after a period of five days. (SAYA-ANG, SR., G.R. No. 155087, November 28, 2003).

(b) *Election Controversies.* COMELEC has the authority to determine the true nature of the cases filed before it. The COMELEC can treat a petition for election protest as a case for correction of manifest errors in election returns. (DELA LLANA, G.R. No. 152080, November 28, 2003).

(c) *Election Returns. Material Defects.* The lack of merit of petitioner's arguments notwithstanding, the COMELEC, in ordering the exclusion of the questioned return, should have determined the integrity of the ballot box, the ballot-contents of which were tallied and reflected in the return, and if it was intact, it should have ordered its opening for a recounting of the ballots if their integrity was similarly intact. Sections 234, 235 and 237 of the Omnibus Election Code. (LEE v. COMMISSION ON ELECTIONS, G. R. No. 157004, July 4, 2003).

(d) *Authority to Suspend Own Rules.* (DELA LLANA, G.R. No. 152080, November 28, 2003).

(f) *Proclamation of Winning Candidates for President and Vice-President of the Philippines.* Section 18.5 of R.A. No. 9189 empowering the COMELEC to order the proclamation of winning candidates insofar as it affects the canvass of votes and proclamation of winning candidates for the President and the

Vice-President, is unconstitutional because it violates the provisions of paragraph 4, Section 4 of Article VII of the Constitution, giving to Congress the authority to proclaim the winning candidates for the positions of President and Vice-President. (MACALINTAL, G.R. No. 157013, July 10, 2003).

The Commission on Audit (COA)

COA Personnel. Allowances and Benefits from Other Government Entity. Officials and employees of the COA are prohibited from receiving salaries, honoraria, bonuses, allowances or other emoluments from any government entity, local government unit, and government-owned and controlled corporations, and government financial institutions, except those compensation paid directly by the COA out of its appropriations and contributions (Section 18 of R.A. No. 6758, An Act Prescribing a Revised Compensation and Position Classification System in the Government and for Other Purposes, COA Memorandum 89-584 and COA Chairman's Indorsement dated March 23, 1995). The above prohibition was not lifted by R.A. No. 7160, providing for the authority of local legislative councils to grant benefits to national government officials.

R.A. No. 6758 was NOT repealed either expressly or impliedly by RA No. 7160. (ATTY. VILLAREÑA, G.R. Nos. 145383-84, August 6, 2003).

Accountability of Public Officers

Impeachment
(Article XI of the 1987 Constitution)

Impeachment Proceedings. Sec. 3 (5). Once an impeachment complaint has been initiated, another impeachment complaint may not be filed against the same official within a one year period. The initiation of impeachment proceedings starts with the filing of the complaint under Sec. 3 (2). The vote of one-third of the House in a resolution of impeachment does not initiate the impeachment proceedings. (FRANCISCO, G.R. No. 160261, November 10, 2003.).

Impeachment Case. Sec. 3 (6). Distinguished from *Impeachment Proceedings.*(Id.)

Impeachable Offenses. Sec. 2. Enumerates six grounds for impeachment, two of these, namely, "other high crimes and betrayal of public trust," elude a precise definition. (Id.)

House Rules On Impeachment. These rules cannot contravene the very purpose of the Constitution which said rules were intended to effectively carry out. Courts may inquire into the validity of the Rules of Congress. (Id.). Sections 16 and 17 of Rule V of the Rules of Procedure in Impeachment Proceedings which were approved by the House of Representatives on November 28, 2001 are unconstitutional. Consequently, the second impeachment complaint against Chief Justice Hilario G. Davide, Jr. which was filed October 23, 2003 is barred under paragraph 5, section 3 of Article XI of the Constitution. (Id.)

Philippine Commission Against Graft And Corruption (PCAGC)

Investigation of Charges of Unexplained Wealth. Anti-Graft and Corrupt Practices Act (R.A. No. 3019). The lack of verification of the administrative complaint and the non-appearance of the complainant at the investigation did not divest the PCAGC of its authority to investigate the charge of unexplained wealth. Under Section 3 of Executive Order No. 151 creating the PCAGC, complaints involving graft and corruption may be filed before it **in any form or manner** against presidential appointees in the executive department. Indeed, it is not totally uncommon that a government agency is given a wide latitude in the scope and exercise of its investigative powers. The Ombudsman,

under the Constitution, is directed to act on any complaint likewise filed in any form and manner concerning official acts or omissions. The Court Administrator of the Court investigates and takes cognizance of, not only unverified, but even anonymous complaints filed against court employees or officials for violation of the Code of Ethical Conduct. This policy has been adopted in line with the serious effort of the government to minimize, if not eradicate, graft and corruption in the service. (MONTEMAYOR, G.R. No. 149335, July 1, 2003).

Ombudsman

Jurisdiction. R.A. No. 6770 (the Ombudsman Act of 1989). The Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries, except over officials who may be removed by impeachment or over Members of Congress, and the Judiciary. (ALCALA, G.R. No. 156063, November 18, 2003).

National Economy And Patrimony

Submerged Lands. Inalienable, being part of the public domain. Section 2, Article XII of the 1987 Constitution. Under Commonwealth Act No. 141, foreshore and lands under water were not to be alienated and sold to private parties, and such lands remained property of the State. Commonwealth Act No. 141 has remained in effect at present. Submerged lands, like the waters (sea or bay) above them, are part of the State's inalienable natural resources. They are property of public dominion, absolutely inalienable and outside the commerce of man. The instant case involves principally submerged lands within Manila Bay. (CHAVEZ v. PUBLIC ESTATES AUTHORITY [EN BANC], G.R. No. 133250, November 11, 2003).

Reclaimed Land. Sale Of. Grossly Undervalued. Government Contracts. (Id.). With the subsequent enactment of the Government Auditing Code (Presidential Decree No. 1445) on 11 June 1978, any sale of government land must be made only through public bidding. Thus, an "irrevocable option" to purchase government land would now be void being contrary to the requirement of public bidding expressly required in Section 79 of PD No. 1445. This requirement of public bidding is reiterated in Section 379 of the Local Government Code of 1991. (Id.)

Entities Allowed To Hold Public Lands. End-User. Under the 1935, 1973, and 1987 Constitutions, public corporations are authorized to hold alienable or even inalienable

lands of the public domain. Cebu City is an end user government agency, just like the Bases Conversion and Development Authority or the Department of Foreign Affairs. Thus, Congress may by law transfer public lands to the City of Cebu to be used for municipal purposes, which may be public or patrimonial. Lands thus acquired by the City of Cebu for a public purpose may not be sold to private parties. However, lands so acquired by the City of Cebu for a patrimonial purpose may be sold to private parties, including private corporations. But the Public Estates Authority (PEA) is not an end user agency with respect to the reclaimed lands under the Amended JVA. PEA is treated in the same manner as the DENR with respect to reclaimed foreshore or submerged lands. (Id.). The 1935 Constitution allowed private corporations to acquire alienable lands of the public domain. However, the 1973 Constitution prohibited private corporations from acquiring alienable lands of the public domain, and the 1987 Constitution reiterated this prohibition. (Id.)

Rights Of Innocent Third Party Purchaser Of Reclaimed Lands Under The JVA.. Not prejudiced by the Resolution in this case. (Id.)

Education

State Universities. University of Southeastern Philippines. (DR. CAMACHO v. HON. GLORIA, G.R. No. 138862, August 15, 2003).

An Act Creating The Commission On Higher Education (Republic Act 7722). (Id.)

The Higher Education Modernization Act Of 1997 (Republic Act 8292). (Id.)

PUBLIC OFFICERS

Notary Public

Notarial Acknowledgment. Under Public Act No. 2103 (Sec. 1 [a]), it is necessary that a party to any document notarized by a notary public appear in person before the latter and affirm the contents and truth of what are stated in the document. It is the duty of every notary public to see to it that this requirement is observed and that the formalities for the acknowledgment of documents are complied with. The acknowledgment of a document converts it into a public document, making it admissible in court without further proof of its authenticity. (HEIRS OF CELESTIAL, G.R. No. 142691, August 5, 2003).

Disciplinary Actions

(a) *Clerk Of Court.* [i] Gambling in court premises during office hours, using abusive language, sexual harassment of female subordinates, gross discourtesy, conduct unbecoming a public officer. Sexual harassment in the workplace is not about a man taking advantage of a woman by reason of sexual desire – it is about power being exercised by a superior over his women subordinates. That power emanates from the fact that he can remove them if they refuse his amorous advances. (PAISTE v. MAMENTA [EN BANC, PER CURIAM], A.M. No. P-03-1697, October 1, 2003; GOLTIAO v. MAMENTA [EN BANC, PER CURIAM], A.M. No. P-03-1699, October 1, 2003). [ii] Gross neglect of duty for failing to issue official receipts in violation of the National Accounting and Auditing Manual which mandates that no payment of any nature shall be received by a collecting officer without immediately issuing an official receipt in acknowledgment thereof. (Id.). [iii] Dishonesty and gross misconduct. (REPORT ON THE FINANCIAL AUDIT CONDUCTED AT THE MUNICIPAL TRIAL COURTS OF BANI, ALAMINOS, AND LINGAYEN, IN PANGASINAN [EN BANC], A.M. No. 01-2-18-MTC, December 5, 2003). [iv] Cash shortage relating to various legal fees, cash bond, and numerous violations of the government auditing rules constitute grave misconduct and make the respondent unworthy of the public trust reposed on him. (PROVINCIAL AUDITOR DIZON v. ATTY. BAWALAN [EN BANC], A.M. No. P-94-1031, July 1, 2003). [v] Custody and release of fiduciary funds. The release of fiduciary funds is not a purely judicial act so there is no ground to hold the respondent liable for usurpation of judicial function. (PACE v. LEONARDO, A.M. No. P-03-1675, August 6, 2003). [vi] Neglect of duty, simple misconduct and violation of reasonable office rules and regulations. These infractions can be committed even if the offender was in good faith. (ATTY. VILLAREÑA, G.R. Nos. 145383-84, August 6, 2003).

(b) *Sheriff.* [i] Dishonesty in the implementation of writ of execution. Withholding the money from complainant, the prevailing party in the damage suit, and delivering the money in installments only after learning that an administrative case had been filed against him. (TRINIDAD v. PACLIBAR, A.M. No. P-03-1673, 25 August 2003). [ii] Misconduct. Failure to promptly implement court order to conduct auction sale. (AVELLANOSA v. CAMASO, A.M. No. P-02-1550, October 3, 2003). The duty imposed upon the sheriff in the proper execution of a valid writ is mandatory. When a writ is placed in the hands of the sheriff, it becomes his ministerial duty to proceed with reasonable celerity and promptness to implement it in accordance with its mandate. (TRINIDAD, A.M. No. P-03-1673, 25 August 2003). Unless restrained by a court order to the contrary, sheriffs should see to it that the execution of judgments is not unduly

delayed. (BELLO III v. JUDGE DIAZ, AM-MTJ-00-1311, October 3, 2003). [iii] Unreasonable delay in the implementation of writ of demolition. (MENDOZA v. SHERIFFS TUQUERO[EN BANC], A.M. No. P-99-1343, November 24, 2003). [iv] For Non-payment of just debt, the Sheriff may not be held accountable under Section 4 (A), subheading (c) of R.A. No. 6713, providing for the standards of personal conduct of public officials and employees in the discharge and execution of their official duties, since such act is not in any way connected with the discharge of his official duties. However, respondent may still be held administratively liable for his willful failure to pay his debt to complainant, an act which is unbecoming of a public employee and a ground for disciplinary action under Book V, Title I, Subtitle A, Chapter 6, Section 46 (b) (22) of E.O. No. 292 and the Uniform Rules on Administrative Cases in the Civil Service. (BAGO v. FERAREN, A.M. No. P-01-1466, September 3, 2003).

ADMINISTRATIVE LAW

Rule-Making Power Of Administrative Agencies

Administrative Issuances. (a) Two kinds: [i] Legislative and [ii]. Interpretative. A legislative rule is in the matter of subordinate legislation, designed to implement a primary legislation by providing the details thereof. An interpretative rule, on the other hand, is designed to provide guidelines to the law which the administrative agency is in charge of enforcing. When an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed. When an administrative rule goes beyond merely providing for the means that can facilitate or render less cumbersome the implementation of the law and substantially increases the burden of those governed, it behooves the agency to accord at least to those directly affected a chance to be heard and, thereafter, to be duly informed, before the issuance is given the force and effect of law. The due observance of the requirements of notice, hearing, and publication should not be ignored. (BPI LEASING CORPORATION v. COURT OF APPEALS, G.R. No. 127624, November 18, 2003).

(b) Administrative issuances must not override, supplant or modify the law, but must remain consistent with the law they intend to carry out. Only Congress can repeal or amend the law. (COMMISSIONER OF INTERNAL REVENUE, G.R. No. 150947, July 15, 2003).

(c) Prospective application of. (BPI LEASING CORPORATION, G.R. No. 127624, November 18, 2003).

(d) Publication for the validity of a legislative rule. (Id.)

Adjudicatory Powers

Administrative Investigations. (a) Revised Uniform Rules on Administrative Cases in the Civil Service. (VILLAROS v. ORPIANO [EN BANC, PER CURIAM], A.M. No. P-02-1548, October 1, 2003.). Conducted without necessarily adhering strictly to the technical rules of procedure and evidence applicable to judicial proceedings. (HON. CONSTANTINO-DAVID, G.R. No. 156039, August 14, 2003; MONTEMAYOR, ET AL, G.R. No. 149335, July 1, 2003).

(b) *Res Judicata* does not apply to administrative proceedings. Petitioner was investigated by the Ombudsman for his possible criminal liability for the acquisition of the Burbank property in violation of the Anti-Graft and Corrupt Practices Act and the RPC. For the same alleged misconduct, petitioner, as a presidential appointee, was investigated by the PCAGC by virtue of the administrative power and control of the President over him. As the PCAGC's investigation of petitioner was administrative in nature, the doctrine of *res judicata* finds no application in the case at bar. (MONTEMAYOR, G.R. No. 149335, July 1, 2003).

(c) Civil indemnity to complainant cannot be granted in an administrative case. (BAGO, A.M. No. P-01-1466, 3 September 2003).

(d) Public School Teachers. R.A. No. 4670, the Magna Carta for Public School Teachers, specifically covers and governs administrative proceedings involving *public school teachers*. The CSC does not have original jurisdiction over an administrative case against a public school teacher. Such jurisdiction is lodged with the Investigating Committee created pursuant to Section 9 of R.A. No. 4670, now being implemented by Section 2, Chapter VII of DECS Order No. 33, S. 1999, otherwise known as the DECS Rules of Procedure. (ALCALA, G.R. No. 156063, November 18, 2003). However, with respect to state universities, their governing board has retained jurisdiction over administrative cases involving its officials and employees. (DR. CAMACHO, G.R. No. 138862, August 15, 2003). Of course under EO 292, a complaint against a state university official may be filed either with the university's Board of Regents or directly with the CSC, although the CSC may delegate the investigation of a complaint and for that purpose, may deputize any department, agency, official or group of officials to conduct such investigation. (Id.)

Judicial Review Of Administrative Actions

Guidelines. (a) In reviewing administrative decisions of the executive branch of the government, the findings of facts made therein are to be respected so long as they are supported by substantial evidence. Hence, it is not for the reviewing court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its judgment for that of the administrative agency with respect to the sufficiency of evidence. Administrative decisions in matters within the executive jurisdiction can only be set aside on proof of gross abuse of discretion, fraud, or error of law. These principles negate the power of the reviewing court to re-examine the sufficiency of the evidence in an administrative case as if originally instituted therein, and do not authorize the court to receive additional evidence that was not submitted to the administrative agency concerned. (MONTEMAYOR, G.R. No. 149335, July 1, 2003).

(b) Exhaustion of Administrative Remedies. The administrative authority must be given an opportunity to act and correct the errors committed in the administrative forum. In this case, petitioner has no valid reason to block at the very outset the Board of Regents and the Special Investigation Committee from performing their functions. Only after administrative remedies are exhausted may judicial recourse be allowed. (DR. CAMACHO, G.R. No. 138862, August 15, 2003).

THE CIVIL SERVICE LAW

The Civil Service

Scope. Embraces every branch, agency, subdivision, and instrumentality of the government, including government-owned or controlled corporations whether performing governmental or proprietary function. (ALCALA, G.R. No. 156063, November 18, 2003).

Probationary Employment. At the time petitioner was appointment in the PNB, PNB was still a government agency subject to civil service rules and regulations that, among other things, subjected appointments "into the career service under a permanent status" to a probationary period. The high rating of "very satisfactory" obtained by petitioner after his reinstatement, in compliance with the order of the NLRC, was not controlling, the point in question being his performance during the probationary period of the employment. (LUCERO v. COURT OF APPEALS, G.R. No. 152032, July 3, 2003).

Disciplinary Actions Against Civil Service Employees

Court Employees. (a) Conduct unbecoming of an officer/employee of the Court. (RUGA v. LIGOT, A.M. No. 2003-5-SC. November 20, 2003).

(b) Habitual tardiness. Absences without official leave for more than thirty days caused the automatic dropping of respondent from the roll of employees. (JUDGE MADRID v. QUEBRAL [EN BANC PER CURIAM], A.M. No. P-03-1744, October 7, 2003; QUEBRAL v. RILLORTA [EN BANC PER CURIAM], A.M. No. P-03-1745, October 7, 2003).

(c) Dishonesty. Tampering of Daily Time Record. Each false entry thereon constitutes one count of falsification of official documents. Dishonesty and falsification are grave offenses punishable by dismissal from the service, even for the first offense. (Id.). Falsification. The use of a false certificate in order to facilitate promotion constitutes an act of dishonesty under Civil Service Rules. Dishonesty further carries the sanction of forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification for re-employment in the government service. (Id.). Improper solicitation in relation to the service of summons. (VILLAROS v. ORPIANO [EN BANC, PER CURIAM], A.M. No. P-02-1548, October 1, 2003).

(d) Issuance of clearance without charging the proper court fees – simple neglect of duty. (JUDGE MADRID, A.M. No. P-03-1744, October 7, 2003; QUEBRAL, A.M. No. P-03-1745, October 7, 2003).

(e) Conduct prejudicial to the best interest of the service. Respondent, not being a court-deputized collector, accepted the money from a party litigant payable to another party litigant under their compromise agreement. (RACCA ET AL v. BACULI, A.M. No. P-02-1627, August 7, 2003).

(f) Arguing heatedly with a relative or other person found within the residence or place where the person to be served summons would be found is undignified behavior. (SOLIMAN, JR. v. SORIANO, A. M. No. P-03-1705, September 2, 2003).

(g) However, there is nothing in the records that would show that the absence of the court-deputized collector from his post was inexcusable or unjustified. (RACCA, A.M. No. P-02-1627, 7 August 2003).

Illegal Dismissal, Reinstatement, Back Salaries And Other Benefits. (a) An illegally dismissed government employee who is later ordered reinstated is entitled to back wages and other monetary benefits from the time of his illegal dismissal up to his reinstatement. (HON. CONSTANTINO-DAVID, G.R. No. 156039, August 14, 2003).

(b) The above rule does not apply to petitioner who participated in the mass action which resulted in the filing of charges against him and his subsequent dismissal. His reinstatement was not the result of exoneration but an act of liberality by the CA. Accordingly, petitioner's claim for back wages for the period during which he was not allowed to work must be denied. The general rule is that a public official is not entitled to any compensation if he has not rendered any service. (BALITAOSAN, G.R. No. 138238, September 2, 2003). The ruling in *Fabella* (which allowed backwages) does not apply to this case. In *Fabella*, the jurisdiction and composition of the investigation committee was put in issue from the very start. When the Court found the investigation committee to be without competent jurisdiction, it declared all the proceedings undertaken by said committee void; therefore, it could not have provided the legal basis for the suspension and dismissal of private respondents therein. In the case at bar, aside from the catch-all and sweeping allegation of "denial of due process," petitioner never questioned the competence and composition of the investigating committee. He belatedly raised this issue for the first time in the petition for review before the CA. Thus, the appellate court acted correctly in rejecting petitioner's argument. (Id.)

(c) MSU cannot be made to pay all accruing back salaries and other benefits in favor of respondent. There are allegations to the effect that officials of MSU disobeyed in bad faith the writ of execution issued by the CSC. If the illegal dismissal, including the refusal to reinstate an employee after a finding of unlawful termination, is found to have been made in bad faith or due to personal malice of the superior officers then they will be held personally accountable for the employee's back salaries; otherwise, the government disburses funds to answer for such arbitrary dismissal. This rule is also enunciated in Secs. 38 and 39 of Book I, E.O. 292, and in Secs. 53, 55, 56 and 58 of Rule XIV of the Omnibus Civil Service Rules and Regulations. (HON. CONSTANTINO-DAVID, G.R. No. 156039, 14 August 2003).

ELECTION LAWS

The Overseas Absentee Voting Act Of 2003 (Republic Act No. 9189). Filipinos who are immigrants and permanent residents in their host countries may still be considered as a "qualified citizen of the Philippines abroad" upon fulfillment of the requirements of registration under the law for the purpose of exercising their right of suffrage. Under

Section 5(d), one of those disqualified from voting is an immigrant or permanent resident who is recognized as such in the host country unless he/she executes an affidavit declaring that: [i] he/she shall resume actual physical permanent residence in the Philippines not later than three years from approval of his/her registration under said Act; and [ii] he/she has not applied for citizenship in another country. Thus, they must return to the Philippines; otherwise, their failure to return "shall be cause for the removal" of their names "from the National Registry of Absentee Voters and his/her permanent disqualification to vote *in absentia.*" The execution of the affidavit itself is not the enabling or enfranchising act. It is not only proof of the intention of the immigrant or permanent resident to go back and resume residency in the Philippines, but more significantly, it serves as an explicit expression that he had not in fact abandoned his domicile of origin. (MACALINTAL, G.R. No. 157013, July 10, 2003).

Certificate Of Candidacy. Defects in the certificates of candidacy should have been questioned on or before the election and not after the will of the people has been expressed through the ballots. While provisions relating to certificates of candidacy are mandatory in terms, it is an established rule of interpretation as regards election laws, that mandatory provisions requiring certain steps before elections will be construed as directory after the elections, to give effect to the will of the electorate. (SAYA-ANG, G.R. No. 155087, November 28, 2003). A petition to cancel a certificate of candidacy shall be heard summarily *after due notice.* (Id.)

Statement Of Votes. Correction of manifest errors. (DELA LLANA, G.R. No. 152080, November 28, 2003).

Election Controversies. (Id.)

ILL-GOTTEN WEALTH

Prima Facie Presumption. Section 2 of RA 1379 raises the *prima facie* presumption that a property is unlawfully acquired, hence subject to forfeiture, if the following concur: (1) the offender is a public officer or employee; (2) he must have acquired a considerable amount of money or property during his incumbency; and (3) said mount is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property. The burden of proof was on the respondents to dispute this presumption and show by clear and convincing evidence that the Swiss deposits were lawfully acquired and that they had other legitimate sources of income. (REPUBLIC, G.R. No. 152154, July 15, 2003). Under R.A. No. 1379 and EO Nos. 1 and 2, the Government is required only to state the known lawful

income of respondents for the prima facie presumption of illegal provenance to attach. *Petitioner Republic was able to establish this prima facie presumption. Thus, the burden of proof shifted, by law, to the respondents to show by clear and convincing evidence that the Swiss deposits were lawfully acquired and that they had other legitimate sources of income.* This, respondent Marcoses did not do. They failed ¯ or rather, refused ¯ to raise any genuine issue of fact warranting a trial for the reception of evidence therefor. (REPUBLIC, G.R. No. 152154, November 18, 2003).

Preliminary Investigations. The preliminary investigation of unexplained wealth amassed on or before 25 February 1986 falls under the jurisdiction of the Ombudsman, while the authority to file the corresponding forfeiture petition rests with the Solicitor General. The Ombudsman Act or Republic Act No. 6770 ("RA No. 6770") vests in the Ombudsman the power to conduct preliminary investigation and to file forfeiture proceedings involving unexplained wealth amassed after 25 February 1986. (REPUBLIC, G.R. No. 104768, July 21, 2003).

Prescription. The right of the State to forfeit unexplained wealth under RA No. 1379 is not subject to prescription, laches or estoppel. (Id.)

Forfeiture Proceedings Under R.A. No. 1379. (a) Civil in character, even as the preliminary investigation required prior to the filing of the petition, in accordance with Section 2 thereof, is expressly provided to be similar to a preliminary investigation in a criminal case. It is an action *in rem*, against the thing itself instead of against the person. Being civil in character, it requires no more than a preponderance of evidence. It does not end in the imposition of a penalty but merely the forfeiture of property illegally acquired in favor of the State. The factual findings of the Court in its decision dated July 15, 2003 will, as a consequence, neither affect nor do away with the requirement of having to prove the guilt of the respondent beyond reasonable doubt in the criminal cases against her. (REPUBLIC, G.R. No. 152154, November 18, 2003).

(b) Section 5 of RA 1379 speaks of a "hearing" that does not always require the formal introduction of evidence in a trial, only that the parties are given the occasion to participate and explain how they acquired the property in question. If they are unable to show to the satisfaction of the court that they lawfully acquired the property in question, then the court shall declare such property forfeited in favor of the State. There is no provision in the law that a full blown trial ought to be conducted before the court declares the forfeiture of the subject property. Thus, even if the forfeiture proceedings do not reach trial, the court is not precluded from determining the nature of the acquisition of the property in question even in a summary proceeding. (Id.)

Presidential Commission On Good Government ("PCGG"). Sequestration Proceedings Against AFP Personnel. (a) Executive Order No. 1 ("EO No. 1") creating the PCGG. EO Nos. 2, 14 and 14-A. (REPUBLIC, G.R. No. 104768, July 21, 2003).

(b) EO No. 1 primarily tasked the PCGG to recover all ill-gotten wealth of former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates. Accordingly, the PCGG created an AFP Anti-Graft Board ("AFP Board") tasked to investigate reports of unexplained wealth and corrupt practices by AFP personnel, whether in the active service or retired. (Id.). In this case, the PCGG has no jurisdiction to investigate and cause the filing of a forfeiture petition for unexplained wealth under R.A. No. 1379. The PCGG, through the AFP Board, can only investigate the unexplained wealth and corrupt practices of AFP personnel who fall under either of the two categories mentioned in Section 2 of EO No. 1: [i] AFP personnel who have accumulated ill-gotten wealth during the administration of former President Marcos by being the latter's immediate family, relative, subordinate or close associate, taking undue advantage of their public office or using their powers, influence x x x; or [ii] AFP personnel involved in other cases of graft and corruption provided the President assigns their cases to the PCGG. (Id.). Mere position held by a military officer does not automatically make him a "subordinate" as this term is used in EO Nos. 1, 2, 14 and 14-A, absent a showing that he enjoyed close association with former President Marcos. (Id.)

(c) The proper government agencies, and not the PCGG, should investigate and prosecute forfeiture petitions not falling under EO No. 1 and its amendments. (Id.)

(d) No Jurisdiction. Hence, No Waiver of Jurisdiction. Petitioner's argument that private respondents have waived any defect in the filing of the forfeiture petition by submitting their respective Answers with counterclaim deserves no merit as well. Petitioner has no jurisdiction over private respondents. Thus, there is no jurisdiction to waive in the first place. PCGG's powers are specific and limited. Unless given additional assignment by the President, PCGG's sole task is only to recover the ill-gotten wealth of the Marcoses, their relatives and cronies. Without these elements, the PCGG cannot claim jurisdiction over a case. (Id.)

Sequestration Orders. (a) During the *Interregnum*. No one could validly question the sequestration orders as violative of the Bill of Rights because there was no Bill of Rights then. (REPUBLIC, G.R. No. 104768, July 21, 2003).

(b) Validity of Sequestration After the Freedom Constitution Was Adopted. The Freedom Constitution, and later the 1987 Constitution (Section 26, Article XVIII), *expressly recognized* the validity of sequestration orders. The framers of both the Freedom Constitution and the 1987 Constitution were fully aware that the sequestration orders would clash with the Bill of Rights. Thus, the framers of both constitutions had to include specific language recognizing the validity of the sequestration orders. They were fully aware that absent Section 26, sequestration orders would not stand the test of due process under the Bill of Rights. (Id.)

Unexplained Wealth. The Swiss deposits of the respondents should be considered ill-gotten wealth and forfeited in favor of the State in accordance with Section 6 of RA 1379. The Republic was able to prove its case for forfeiture in accordance with the requisites of Sections 2 and 3 of RA 1379. (REPUBLIC, G.R. No. 152154, July 15, 2003). Petitioner dismissed as Regional Director of the Department of Public Works and Highways (DPWH) for violation of Section 8 of R.A. No. 3019. (MONTEMAYOR, G.R. No. 149335, July 1, 2003).

OFFICE OF THE SOLICITOR GENERAL (OSG)

Certification Of Non-Forum Shopping And Verification Of Pleading. Where the OSG is acting as counsel of record for a government agency, the OSG cannot execute the verification and certificate of non-forum shopping in behalf of the agency it represents. In such case, it becomes necessary to determine whether the petitioning government body has authorized the filing of the petition and is espousing the same stand propounded by the OSG. (HON. CONSTANTINO-DAVID, G.R. No. 156039, August 14, 2003). "Substantial compliance" – is not enough. Henceforth, to be able to verify and certify an initiatory pleading for non-forum shopping when acting as counsel of record for a client agency, the OSG must [i] allege under oath the circumstances that make signatures of the concerned officials impossible to obtain within the period for filing the initiatory pleading; [ii] append to the petition or complaint such authentic document to prove that the party-petitioner or complainant authorized the filing of the petition or complaint and understood and adopted the allegations set forth therein, and an affirmation that no action or claim involving the same issues has been filed or commenced in any court, tribunal or quasi-judicial agency; and [iii] undertake to inform the court promptly and reasonably of any change in the stance of the client agency. Anent the document that may be annexed to a petition or complaint under [ii] above, the letter-endorsement of the client agency to the OSG, or other correspondence to prove that the subject-matter of the initiatory pleading had been previously discussed between the OSG and its client, is satisfactory evidence of the facts under [ii] above. In

this exceptional situation where the OSG signs the verification and certificate of non-forum shopping, the court reserves the authority to determine the sufficiency of the OSG's action as measured by the equitable considerations discussed herein. (Id.)

LOCAL GOVERNMENT

Legislative Power

Grant Of Allowances To COA Personnel. Under the Local Government Code, local legislative bodies may provide for additional allowances and other benefits to national government officials stationed or assigned to their municipality or city. This authority, however, does not include the grant of benefits that runs in conflict with other statutes, such as Republic Act No. 6758. By allocating a portion of the local budget for financial assistance to the auditing office of Marikina City, the legislative council of Marikina acted in excess of its powers under the Local Government Code. (ATTY. VILLAREÑA, G.R. Nos. 145383-84, August 6, 2003).

Appropriation By Local Government Units. Budget Ordinance. (CITY OF CALOOCAN v. HON. ALLARDE, G.R. No. 1G07271, 10 September 2003).

Contracts

Onerous Donation By Local Government Units. Section 381 of Republic Act No. 7160, better known as the Local Government Code of 1991. A transfer of real property by a local government unit to an instrumentality of government without first securing an appraised valuation from the Local Committee on Awards is not void. (GOVERNMENT SERVICE INSURANCE SYSTEM, G.R. No. 157860, December 1, 2003).

Obligation To Pay Just Claims. (CITY OF CALOOCAN, G.R. No. 1G07271, September 10, 2003).

STATUTORY CONSTRUCTION

The Constitution. Rules of Construction: (a) First, *verba legis.* Wherever possible, the words used in the Constitution must be given their ordinary meaning except where technical terms are employed. Second, where there is ambiguity, *ratio legis est anima.* The words of the Constitution should be interpreted in accordance with the intent of its framers. Finally, *ut magis valeat quam pereat.* The Constitution is to be interpreted as a

whole. If, however, the plain meaning of the word is not found to be clear, resort to other aids is available. (FRANCISCO, G.R. No. 160261, November 10, 2003). (Id.).

(b) Constitutional provisions are mandatory in character unless, either by express statement or by necessary implication, a different intention is manifest. (MACALINTAL, G.R. No. 157013, July 10, 2003).

Statutes. Constitutionality Of Laws. Generally, presumed. Such presumption must be overcome convincingly. (Id.). In case of a conflict between R.A. No. 6758 and the Local Government Code, the proper action is not to uphold one and annul the other, but, if possible, to give effect to both by harmonizing the two. Under the Local Government Code, local legislative bodies may provide for additional allowances and other benefits to national government officials stationed or assigned to their municipality or city. This authority, however, does not include the grant of benefits that runs in conflict with other statutes, such as R.A. No. 6758. (ATTY. VILLAREÑA, G.R. Nos. 145383-84, August 6, 2003).

REMEDIAL LAW

Jurisdiction

Regional Trial Courts (RTC). Civil Cases. (a) Petitioners' argument that the present action is one incapable of pecuniary estimation considering that it is for annulment of a deed of sale and partition is not well-taken. Where the ultimate objective of the plaintiffs is to obtain title to real property, the case should be filed in the proper court having jurisdiction over the assessed value of the property subject thereof. (SPOUSES HUGUETE v. SPOUSES EMBUDO, G.R. No. 149554, July 1, 2003).

(b) *Accion Reinvindicatoria.* Petitioners' contention that the writ of execution issued by the RTC is void for lack of jurisdiction does not hold water. The complaint filed by the petitioners was not only for annulment of the MTC decision; it was also for *accion reinvindicatoria* and quieting of title. The RTC was consequently not restricted to determining the validity of the MTC decision. It may, as it correctly did, decide on the issue of who, between petitioners and respondent, owns the disputed land as ownership is the crux of the matter in an *accion reinvindicatoria* and quieting of title. Perforce, considering the nature of Civil Case No. B-3433, the RTC has the power to direct the ejectment of the petitioners and order them to vacate the disputed land. (CAPACETE v. BARORO, G.R. No. 154184, July 8, 2003).

As An Issue. (a) May be raised at any time, even on appeal, provided that its application does not result in a mockery of the tenets of fair play. (PINLAC, G.R. No. 91486, September 10, 2003). May be tackled *motu proprio* on appeal even if none of the parties raised the same. (ALCALA, G.R. No. 156063, November 18, 2003). (b) This rule, however, is not absolute. Under the principle of estoppel by laches, petitioner is now barred from impugning the CSC's jurisdiction over his case. (Id.)

CIVIL PROCEDURE

CIVIL ACTIONS

Ordinary Civil Actions

Cause Of Action. *Nature of. Not determined by what is stated in the caption of the complaint but by the allegations of the complaint and the reliefs prayed for. (SPOUSES HUGUETE, G.R. No. 149554, July 1, 2003). A devisee under a will that has not been admitted to probate has no cause of action under the said will. If one who is not a real party-in-interest brings the action, the suit is dismissible for lack of cause of action. (SPOUSES PASCUAL, G.R. No. 115925, August 15, 2003).*

Parties To Civil Actions

Real Party In Interest. (TAN, G.R. No. 127210, August 7, 2003*).*

Indispensable Party. An indispensable party is defined as one without whom no final determination of an action can be had. Necessarily, an indispensable party is likewise a party in interest who stands to be benefited or injured by the judgment or is entitled to the avails of the suit. (MANIPOR, G.R. No. 150159, July 25, 2003). For purposes of the action for annulment of title, the only indispensable party-defendant is the registered owner of the lot who is conclusively presumed, for all intents and purposes, to be its owner in fee simple. (Id.). For the purpose of ruling on the cross-claim in this case, PAL is an indispensable party. (CHINA AIRLINES, G.R. No. 152122, July 30, 2003).

Compulsory Joinder of Indispensable Parties. Section 7, Rule 3 of the 1997 Rules of Civil Procedure. Generally, an indispensable party must be impleaded for the complete determination of the suit. However, failure to join an indispensable party does not divest the court of jurisdiction since the rule regarding indispensable parties is founded on equitable considerations and is not jurisdictional. Thus, the court is not divested of its power to render a decision even in the absence of indispensable parties, though such

judgment is not binding on the non-joined party. (REPUBLIC v. SANDIGANBAYAN [EN BANC], G.R. No. 152154, July 15, 2003).

Misjoinder of Indispensable Party. Not A Ground for Dismissal. Section 11, Rule 3 of the 1997 Rules of Civil Procedure prohibits the dismissal of a suit on the ground of non-joinder or misjoinder of parties and allows the amendment of the complaint at any stage of the proceedings, through motion or on order of the court on its own initiative. (Id.). Petitioner Republic did not err in not impleading the foreign foundations in this case in light of the admission by respondent before the Sandiganbayan that she was the sole beneficiary of 90% of the subject matter in controversy with the remaining 10% belonging to the estate of Ferdinand Marcos. Viewed against this admission, the foreign foundations were *not* indispensable parties. (Id.). Assuming *arguendo,* that the foundations were indispensable parties, the failure of petitioner to implead them was a curable error. Although there are decided cases wherein the non-joinder of indispensable parties in fact led to the dismissal of the suit or the annulment of judgment, such cases do not jibe with the matter at hand. The better view is that non-joinder is not a ground to dismiss the suit or annul the judgment. (Id.). Thus, respondent cannot correctly argue that the judgment rendered by the Sandiganbayan was void due to the non-joinder of the foreign foundations. The court had jurisdiction to render judgment which, even in the absence of indispensable parties, was binding on all the parties before it though not on the absent party. If she really felt that she could not be granted full relief due to the absence of the foreign foundations, she should have moved for their inclusion, which was allowable at any stage of the proceedings. (Id.)

Real Party In Interest And Standing To Sue– Distinguished. (FRANCISCO, G.R. No. 160261, November 10, 2003).

Class Suit. (Id.)

Procedure In The RTC

Pleadings

Answer. Specific Denial. Section 10, Rule 8 of the 1997 Rules of Civil Procedure. The purpose of requiring respondents to make a specific denial is to make them disclose facts which will disprove the allegations of petitioner at the trial, together with the matters they rely upon in support of such denial. (REPUBLIC, G.R. No. 152154, July 15, 2003). (a) If an allegation directly and specifically charges a party with having done, performed or committed a particular act which the latter did not in fact do, perform or commit, a categorical and express denial must be made. (Id.)

(b) When matters regarding which respondents claim to have no knowledge or information sufficient to form a belief are plainly and necessarily within their knowledge, their alleged ignorance or lack of information will not be considered a specific denial. A profession of ignorance about a fact which is patently and necessarily within the pleader's knowledge or means of knowing is *as ineffective as no denial at all.* (Id.). Here, despite the serious and specific allegations against them, the respondents simply said that they had no knowledge or information sufficient to form a belief as to the truth of such allegations. Respondents should have positively stated how it was that they were supposedly ignorant of the facts alleged. (Id.). In their answer, respondents failed to specifically deny each and every allegation contained in the petition for forfeiture in the manner required by the rules. All they gave were stock answers like "they have no sufficient knowledge" or "they could not recall because it happened a long time ago," and "the funds were lawfully acquired," without stating the basis of such assertions. Mrs. Marcos claimed that the funds were lawfully acquired. However, she failed to particularly state the ultimate facts surrounding the lawful manner or mode of acquisition of the subject funds. (Id.)

(c) *Negative Pregnant.* Denial pregnant with the admission of the substantial acts in the pleading responded to which are not squarely denied. In effect, an admission of the averments it was directed at. (Id.). Petitioner correctly points out that respondents' denial was not really grounded on lack of knowledge or information sufficient to form a belief but was based on lack of recollection. By reviewing their own records, respondents could have easily determined the genuineness and due execution of the ITRs and the balance sheets. They also had the means and opportunity of verifying the same from the records of the BIR and the Office of the President. (Id.)

Parts Of A Pleading

Certification Against Forum-Shopping. Substantial Compliance – Not Sufficient. The requirement that the certification of non-forum shopping should be executed and signed by the plaintiff or the principal means that counsel cannot sign said certification unless clothed with special authority to do so. A certification signed by counsel alone is defective and constitutes a valid cause for dismissal of the petition. In the case of natural persons, the Rule requires the parties themselves to sign the certificate of non-forum shopping. In the case of the corporations, the physical act of signing may be performed, on behalf of the corporate entity, only by specifically authorized individuals for the simple reason that corporations, as artificial persons, cannot personally do the task themselves. In this case, the petitioner utterly failed to show that the Personnel Manager of the corporation who signed the verification and certification of non-forum shopping attached to its motion for reconsideration was duly authorized for the purpose.

(MARIVELES SHIPYARD CORP, G.R. No. 144134, November 11, 2003). BLC insists that there was substantial compliance with the rule as the verification/certification was issued by a counsel who had full personal knowledge that no other petition or action has been filed or is pending before any other tribunal. According to BLC, said counsel's law firm has handled this case from the very beginning and could very well attest and/or certify to the absence of an instituted or pending case involving the same or similar issues. Held: The argument of substantial compliance deserves no merit. The records are bereft of the authority of BLC's counsel to institute the present petition and to sign the certification of non-forum shopping. While said counsel may be the counsel of record for BLC, the representation does not vest upon him the authority to execute the certification on behalf of his client. There must be a resolution issued by the board of directors that specifically authorizes him to institute the petition and execute the certification, for it is only then that his actions can be legally binding upon BLC. (BPI LEASING CORPORATION, G.R. No. 127624, November 18, 2003).

Manner Of Making Allegations In Pleadings

Absence Of Due Diligence In Quasi-Delicts. Petitioner cannot disclaim liability on the basis of respondent's failure to allege in its complaint that the former did not exercise due diligence in the selection and supervision of its employees. It is not necessary to state that petitioner was negligent in the supervision or selection of its employees, inasmuch as its negligence is presumed by operation of law. Allegations of negligence against the employee and that of an employer-employee relation in the complaint are enough to make out a case of *quasi-delict* under Article 2180 of the Civil Code. (DELSAN TRANSPORT LINES, G.R. No. 156034, October 1, 2003).

Service Of Pleadings

Priorities In Modes Of Service. Required explanation why service was not done personally. (Section 11, Rule 13 of the 1997 Rules of Civil Procedure). Liberally applied in this case. The rule should be strictly complied with beginning September 5, 1998. (ESTRELLA v. ESPIRIDION, G.R. No. 134460, November 27, 2003).

Summons

Service Of Summons. (a) *Personal Service.* (Section 6, Rule 14, Rules of Court). Service to be done personally does not mean that service is possible only at the defendant's actual residence. It is enough that defendant is handed a copy of the summons in

person by anyone authorized by law. (LAZARO v. RURAL BANK OF FRANCISCO BALAGTAS, INC., G.R. No. 139895, 15 August 2003).

(b) *Substituted Service.* (Section 7, Rule 14 of the Revised Rules of Court). Requires that summons be served at the defendant's residence in the event personal service is not possible within a reasonable time for justifiable reasons. (Id.)

Motion To Dismiss

Grounds: (a) *Forum-Shopping.* Exists when a party repetitively avails himself of several judicial remedies in different venues, simultaneously or successively, all substantially founded on the same transactions, essential facts and circumstances, all raising substantially the same issues and involving exactly the same parties. (PEOPLE v. SANDIGANBAYAN, G.R. No. 149495, August 21, 2003). Its essence is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining favorable judgment. It exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. (TOLENTINO v. NATANAUAN, G.R. No. 135441, November 20, 2003). Violation of the forum-shopping prohibition, by itself, is a ground for summary dismissal of the instant Petition. (SANDIGANBAYAN, G.R. No. 149495. August 21, 2003). Rule violated where petitioner did not inform the Court that it had filed an Urgent Motion for Consolidation, while the instant Petition was pending. A scrutiny of the Urgent Motion reveals that petitioner raised the same issues and prayed for the same remedy therein as it has in the instant Petition. A becoming regard for the Court should have prevailed upon petitioner to await the outcome of the instant Petition. (Id.)

(b) *Res Judicata.* A road accident occurred along the national highway in San Jose, San Joaquin Sur, Agoo, La Union. Four (4) vehicles were involved: [i] a "Jack and Yolly" minibus, [ii] an Izusu Elf van owned by the Juntos, [iii] a Petron tanker truck owned and operated by petitioner Taganas and [iv] a Shell tanker truck. The minibus, the Isuzu Elf van and the petitioner's Petron tanker truck were traveling in that order on one side of the road. Going the opposite direction on the other side of the road was the Shell tanker truck. The Isuzu Elf tried to overtake the minibus but collided head-on instead with the Shell tanker truck, after which it swerved back to its lane, this time bumping the rear of the minibus. The Petron tanker truck at the end of the column was not able to stop and in turn rammed the rear of the Isuzu Elf van.

The Juntos, owners of the Elf van, filed a complaint for damages against petitioners Taganas and Tabbal, the owner and driver respectively of the Petron tanker truck. The

case was docketed as Civil Case No. 97-02055-D. On the other hand, private respondent, Standard Insurance Co., Inc, insurer of the Shell tanker truck, filed a separate complaint for damages against both the Juntos and petitioners Taganas and Tabbal, docketed as Civil Case No. 6754.

Petitioners filed a motion to dismiss Civil Case No. 6754 on the grounds of prematurity of action and multiplicity of suits.

In April 1999, Civil Case No. 97-02055-D was decided holding the Juntos (owners of the Izusu Elf van) liable for the damage sustained by petitioner Taganas' Petron tanker truck.

The trial court, in Civil Case No. 6754, denied petitioners' motion to dismiss.

Petitioners, invoking the doctrine of *res judicata*, contend that since the RTC in Civil Case No. 97-02055-D already decided with finality that they were not liable for the vehicular accident, private respondent no longer had any cause of action against them.

Held: *Res Judicata* refers to the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in the former suit. Elements: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and the parties; (4) there must be, between the first and the second action, identity of parties, of subject matter and cause of action. For *res judicata* to apply, all the above essential requisites must exist. Between Civil Case No. 97-02055-D and Civil Case No. 6754, there was neither identity of parties, nor identity of subject matter, much less identity of cause of action. (TAGANAS v. HON. EMUSLAN, G.R. No. 146980, September 2, 2003). In another instance, the Court held that although both Civil Cases Nos. TG-1188 and TG-1421 involve the same Tagaytay property, there are no identities of parties, subject matter and causes of action between the two civil cases. Hence, the final judgment in Civil Case No. TG-1eld188 does not constitute as a bar on Civil Case No. TG-1421. (TOLENTINO, G.R. No. 135441, November 20, 2003). The fourth requisite of *res judicata* was likewise not present in this case. (RAMIREZ, G.R. No. 133841, August 15, 2003).

(c) *Prescription Of Action.* The real question in the instant case is whether or not from the allegations of the complaint, there exists a cause of action to declare the inexistence of the contract of sale with respect to the shares of respondents in Lot No.

3537 on the ground of absence of any of the essential requisites of a valid contract. If the answer is in the negative, then the dismissal of the complaint must be upheld, otherwise, the dismissal on the ground of prescription is erroneous because actions for the declaration of inexistence of contracts on the ground of absence of any of the essential requisites thereof do not prescribe. (FELIX GOCHAN AND SONS REALTY CORPORATION, G.R. No. 138945, August 19, 2003).

(d) *Estoppel By Laches.* Evidentiary in nature which could not be established by mere allegations in the pleadings and can not be resolved in a motion to dismiss. (Id.). It is only after a full-blown trial that the trial court would be able to determine whether or not respondents Natanauans could have raised this matter in Civil Cases Nos. TG-680 and TG-1188 which were filed in 1982 and 1991, respectively. The trial court correctly held that the trial thereon must proceed. (TOLENTINO, G.R. No. 135441, November 20, 2003).

Denial Of Motion To Dismiss. Having been denied by the trial court, petitioner's recourse was to have it reviewed in the ordinary course of law by an appeal from the judgment after trial. (Id.).

Pre-trial

Pre-Trial Brief. Section 6, Rule 18 of the 1997 Rules of Civil Procedure. It is within the court's power to require the parties to submit their pre-trial briefs and to state the number of witnesses intended to be called to the stand, and a brief summary of the evidence each of them is expected to give as well as to disclose the number of documents to be submitted with a description of the nature of each. The tenor and character of the testimony of the witnesses and of the documents to be deduced at the trial thus made known, in addition to the particular issues of fact and law, it becomes apparent if genuine issues are being put forward necessitating the holding of a trial. (REPUBLIC, G.R. No. 152154, July 15, 2003).

Intervention

Purpose. To facilitate a comprehensive adjudication of rival claims overriding technicalities on the timeliness of the filing thereof. In exceptional cases, the Court has allowed intervention notwithstanding: [i] the rendition of judgment by the trial court; [ii] even when the petition for review of the assailed judgment was already submitted for decision in the Court; [iii] even after the decision became final and executory. (PINLAC, G.R. No. 91486, 10 September 2003).

Who May Intervene. (FRANCISCO, G.R. No. 160261, November 10, 2003).

Consolidation Or Severance

Consolidation Of Cases. Section 1 of Rule 31 of the 1997 Rules of Civil Procedure. Since Civil Case No. 97-02055-D was already near its conclusion when Civil Case No. 6754 was filed, consolidation was no longer possible. (TAGANAS, G.R. No. 146980, September 2, 2003).

Summary Judgment

Nature. A procedural technique aimed at weeding out sham claims or defenses at an early stage of the litigation. The crucial question in a motion for summary judgment is whether the issues raised in the pleadings are genuine or fictitious, as shown by affidavits, depositions or admissions accompanying the motion. (SPOUSES EVANGELISTA, G.R. No. 148864, August 21, 2003). The rule on summary judgments applies to forfeiture proceedings under R.A. No. 1379. Save for annulment of marriage or declaration of its nullity or for legal separation, summary judgment is applicable to all kinds of actions. (REPUBLIC, G.R. No. 152154, November 18, 2003).

For Claimant. (a) Section 1, Rule 35 of the 1997 Rules of Civil Procedure. Summary judgment is appropriate when there are no genuine issues of fact requiring the presentation of evidence in a full-blown trial. Even if on their face the pleadings appear to raise issues, if the affidavits, depositions and admissions show that such issues are not genuine, then summary judgment as prescribed by the rules must ensue as a matter of law. *Genuine Issue of Fact.* Defined. (Id.). A motion for summary judgment is premised on the assumption that the issues presented need not be tried either because these are patently devoid of substance or that there is no genuine issue as to any pertinent fact. It is a method sanctioned by the Rules of Court for the prompt disposition of a civil action where there exists no serious controversy. (REPUBLIC, G.R. No. 152154, July 15, 2003).

(b) Section 3, Rule 35. Mere denials, if unaccompanied by any fact which will be admissible in evidence at a hearing, are not sufficient to raise genuine issues of fact and will not defeat a motion for summary judgment. In this case, the absence of opposing affidavits, depositions and admissions to contradict the sworn declarations in the Republic's motion only demonstrated that the averments of respondents' opposition were not genuine and therefore unworthy of belief. Respondents' defenses of "lack of knowledge for lack of privity" or "(inability to) recall because it happened a long time ago" or that "the funds were lawfully acquired" are fully insufficient to tender genuine

issues. The "facts" pleaded by them, while ostensibly raising important questions or issues of fact, in reality comprised mere verbiage that was evidently wanting in substance and constituted no genuine issues for trial. (Id.)

Proper Time For Filing Motion For Summary Judgment. The plaintiff can move for summary judgment "at any time after the pleading in answer thereto (i.e., in answer to the claim, counterclaim or cross-claim) has been served." No fixed reglementary period is provided by the Rules. Whenever it becomes evident at any stage of the litigation that no triable issue exists, or that the defenses raised by the defendant(s) are sham or frivolous, plaintiff may move for summary judgment. (Id.). A motion for summary judgment may not be made until issues have been joined, meaning, the plaintiff has to wait for the answer before he can move for summary judgment. "Any stage of the litigation" means that "even if the plaintiff has proceeded to trial, this does not preclude him from thereafter moving for summary judgment." (Id.)

In the case at bar, petitioner moved for summary judgment after pre-trial and before its scheduled date for presentation of evidence. The fact that petitioner agreed to proceed to trial did not in any way prevent it from moving for summary judgment, as indeed no genuine issue of fact was ever validly raised by respondents. (Id.)

New Trial Or Reconsideration

Motion For New Trial. Requisites for newly discovered evidence to warrant a new trial. (CANSINO, G.R. No. 125799, August 21, 2003).

Motion For Reconsideration. Section 1, Rule 37 of the Revised Rules of Court. Must point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making specific reference to the testimonial or documentary evidence presented or to the provisions of law alleged to be violated. Cannot be used as a vehicle to introduce new evidence. (Id.)

Relief From Judgment

Time For Filing Petition. Section 3, Rule 38 of the 1997 Rules of Civil Procedure. Within sixty (60) days after the petitioner learns of the judgment and within six months after entry thereof. Applied to a compromise judgment, the period runs from the date the compromise was approved by the trial court. (MANIPOR, G.R. No. 150159, July 25, 2003).

Execution, Satisfaction And Effect Of Judgment

Order Of Execution. Once a decision or resolution becomes final and executory, it is the ministerial duty of the court or tribunal to order its execution. Such order is not appealable. (KING INTEGRATED SECURITY SERVICES, INC. v. GATAN, G.R. No. 143813, July 7, 2003).

Writ Of Execution. Accion Reinvindicatoria. (CAPACETE, G.R. No. 154184, July 8, 2003).

Property Exempt From Execution. All government funds deposited in the PNB or any other official depositary of the Philippine Government by any of its agencies or instrumentalities, whether by general or special deposit, remain government funds and may not be subject to garnishment or levy, in the absence of a corresponding appropriation as required by law. However, when there is such appropriation, the above rule does not apply. Otherwise stated, the rule on the immunity of public funds from seizure or garnishment does not apply where the funds sought to be levied under execution are already allocated by law specifically for the satisfaction of the money judgment against the government. (CITY OF CALOOCAN v. HON. ALLARDE, G.R. No. 1G07271, September 10, 2003).

Writ Of Possession. (CHAILEASE FINANCE, CORPORATION v. SPOUSES MA, G.R. No. 151941, August 15, 2003).

Writ Of Demolition. (LARIOSA v. JUDGE BANDALA, A. M. No. MTJ-02-1401, 15 August 2003).

Rules On Public Auction. (CITY OF CALOOCAN, G.R. No. 1G07271, September 10, 2003).

Appeal From The RTC

Notice Of Appeal. Section 5, Rule 41 of the 1997 Rules of Civil Procedure. Liberally applied in this case despite the failure of petitioners to specify in their notice of appeal the appellate court to which they intended to bring their appeal. In the higher interest of orderly administration of justice and to spare the parties from further delay in the final resolution of CA-G.R. SP No. 46671 as well as Civil Case No. 169-M-92, the Court moved on to resolve the issue of whether or not petitioners' appeal should have been

given due course by the trial court (ESTRELLA v. ESPIRIDION, G.R. No. 134460, November 27, 2003).

Procedure In The Court Of Appeals (CA)

Second Motion For Reconsideration. The rule prohibiting a second motion for reconsideration applies to final judgments and orders, not interlocutory orders. (TOLENTINO, G.R. No. 135441, November 20, 2003).

Appeal By Certiorari To The Supreme Court (the "Court")

Petition For Review On Certiorari. Only questions of law may be raised in petitions for review before the Court under Rule 45 of the Rules of Court. It was thus error for petitioners to ascribe to the appellate court grave abuse of discretion. This procedural lapse notwithstanding, in the interest of justice, the Court treated the issues as cases of reversible error. (RAMIREZ, G.R. No. 133841, August 15, 2003). In this case, the petition for review on *certiorari* (Rule 45) should properly be a petition for *certiorari* under Rule 65 of the Rules of Court. (ESTRELLA, G.R. No. 134460, November 27, 2003). Questions of fact are not proper subjects in this mode of appeal. The factual findings of the CA affirming those of the trial court are final and conclusive and may not be reviewed on appeal, except under any of the following circumstances: [i] the conclusion is grounded on speculations, surmises or conjectures; [ii] the inference is manifestly mistaken, absurd or impossible; [iii] there is grave abuse of discretion; [iv] the judgment is based on a misapprehension of facts; [v] the findings of fact are conflicting; [vi] there is no citation of specific evidence on which the factual findings are based; [vii] the finding of absence of facts is contradicted by the presence of evidence on record; [viii] the findings of the CA are contrary to those of the trial court; [ix] the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; [x] the findings of the CA are beyond the issues of the case; and [xi] such findings are contrary to the admissions of both parties. (LARENA, G.R. No. 146341, August 7, 2003). Findings of fact of the CA, particularly if they coincide with those of the Labor Arbiter and the NLRC when supported by substantial evidence – are accorded respect and even finality. (COSMOS BOTTLING CORPORATION v. NATIONAL LABOR RELATIONS COMMISSION, ET AL, G.R. No. 146397, July 1, 2003). However, when the trial court and the appellate court reached divergent factual assessments in their respective decisions and the basis thereof refers to documents made available to the scrutiny of both courts, the rule that factual findings of trial courts deserve respect and even finality will not apply. There is therefore

a need to review the evidence on record to arrive at the correct findings. (HEIRS OF CELESTIAL, G.R. No. 142691, 5 August 2003).

Issues Raised For The First Time On Appeal. Cannot be considered because a party is not permitted to change his theory on appeal. To allow him to do so is unfair to the other party and offensive to the rules of fair play, justice and due process. (BALITAOSAN, G.R. No. 138238, September 2, 2003; PINLAC, G.R. No. 91486, September 10, 2003).

Annulment Of Judgments Or Final Orders Resolutions

Grounds For Annulment. Section 2, Rule 47 of the 1997 Rules on Civil Procedure governs annulment by the CA of judgments or final orders and resolutions in civil actions of the RTC. Under this rule, extrinsic fraud and lack of jurisdiction are the only two exclusive grounds upon which an annulment of a judgment may be based. (MANIPOR, G.R. No. 150159, 25 July 2003).

Requisite For Availing Of The Remedy. The remedy of annulment of judgment may be availed of only where the ordinary remedies of new trial, or appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. If the petitioner failed to avail of such remedies without sufficient justification, he cannot avail of an action for annulment because, otherwise, he would benefit from his own inaction or negligence. (Id.; (LAZARO, G.R. No. 139895, 15 August 2003).

Period For Filing Action. Section 3, Rule 47 of the 1997 Rules of Civil Procedure. (Id.)

Effect Of Judgment. Section 7, Rule 47. A judgment of annulment shall set aside the questioned judgment or final order or resolution and render the same null and void, without prejudice to the original action being re-filed in the proper court. (PINLAC, G.R. No. 91486, September 10, 2003).

PROVISIONAL REMEDIES

Preliminary Injunction

Nature. Section 3, Rule 58 of the 1997 Rules on Civil Procedure. An order granted at any stage of an action, prior to the judgment or final order, requiring a party, court, agency or person to perform or to refrain from performing a particular act or acts. It is *merely temporary*, subject to the final disposition of the principal action. Its purpose is to

preserve the status *quo* of the matter subject of the action to protect the rights of the plaintiff during the pendency of the suit. The issuance of a writ rests entirely within the discretion of the court and is generally not interfered with except in cases of manifest abuse. The assessment and evaluation of evidence in the issuance of the writ of preliminary injunction involve findings of facts ordinarily left to the trial court for its conclusive determination. (DUNGOG v. COURT OF APPEALS, G.R. No. 139767, 5 August 2003; GATEWAY ELECTRONICS CORPORATION, G.R. Nos. 155217 & 156393, July 30, 2003). An order granting a writ of preliminary injunction is an interlocutory order, hence, unappealable. The proper remedy of a party aggrieved by such an order is to bring an ordinary appeal from an adverse judgment in the main case, citing therein the grounds for assailing the interlocutory order. However, the party concerned may file a petition for certiorari where the assailed order is patently erroneous and appeal would not afford adequate and expeditious relief. (LAND BANK OF THE PHILIPPINES, G.R. No. 152611, 5 August 2003).

SPECIAL CIVIL ACTIONS

Certiorari

When Available. (a) The extraordinary remedy of certiorari will lie only if there is "no appeal or any other plain, speedy and adequate remedy in the ordinary course of law." Here, the law expressly provided for a motion for reconsideration to be filed within fifteen (15) days from promulgation or notice of the final order or judgment. (PEOPLE v. ESPINOSA, G.R. Nos. 153714-20, August 15, 2003).

(b) Normally, decisions of the Sandiganbayan are brought before the Court under Rule 45, not Rule 65. But where the case is undeniably ingrained with immense public interest, public policy and deep historical repercussions, certiorari is allowed notwithstanding the existence and availability of the remedy of appeal. (REPUBLIC, G.R. No. 152154, July 15, 2003). The Court is fully aware of the relevance, materiality and implications of every pleading and document submitted in this case. The Court carefully scrutinized the proofs presented by the parties, analyzed, assessed and weighed them to ascertain if each piece of evidence rightfully qualified as an admission. Owing to the far-reaching historical and political implications of this case, the Court considered and examined, individually and totally, the evidence of the parties, even if it might have bordered on factual adjudication which, by authority of the rules and jurisprudence, is not usually done by this Court. (Id.)

(c) The petition for *certiorari* is not the proper remedy to question the denial of a motion to dismiss, it being merely an interlocutory order, i.e., one that does not terminate nor finally dispose of the case, and leaves something else to be done by the court before the case is finally decided on the merits. (TOLENTINO, G.R. No. 135441, November 20, 2003). Can be availed of only if the denial of the motion is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. (Id.)

Forcible Entry And Unlawful Detainer

Ejectment Case. (a) Action *in Personam*. Summary in Nature. They involve perturbation of social order which must be addressed as promptly as possible. (LARIOSA, A. M. No. MTJ-02-1401, August 15, 2003). Although an ejectment suit is an action *in personam* wherein the judgment is binding only upon the parties properly impleaded and given an opportunity to be heard, the judgment becomes binding on anyone who has not been impleaded if he or she is: [i] a trespasser, squatter or agent of the defendant fraudulently occupying the property to frustrate the judgment; [ii] a guest or occupant of the premises with the permission of the defendant; [iii] a transferee *pendente lite*; [iv] a sublessee; [v] a co-lessee or [vi] a member of the family, relative or privy of the defendant. In this case, the members of petitioner association are trespassers or squatters who do not have any right to occupy the property of respondent. (SUNFLOWER NEIGHBORHOOD ASSOCIATION v. COURT OF APPEALS, G.R. No. 136274, September 3, 2003).

(b) Physical Possession. Complainants in an ejectment case must allege and prove that they had prior physical possession of the property before they were unlawfully deprived thereof by defendants. Possession is the only issue in a case for unlawful detainer. (CANSINO, G.R. No. 125799, August 21, 2003).

Contempt

Indirect Contempt. (a) Contempt of Court. Having acted in good faith, the officers of the bank cannot be held in contempt of court. (GATEWAY ELECTRONICS CORPORATION, G.R. Nos. 155217 & 156393, July 30, 2003). Failure of a witness to appear before the court in two (2) scheduled hearings despite due notice. (RE: EDITORIAL OF THE NEGROS CHRONICLE, A. M. No. 02-10-614-RTC, September 3, 2003).

(b) Contempt Against Quasi-Judicial Entities. Section 4, and 12, Rule 71 of the 1997 Rules of Civil Procedure. Rule XVIII of the 2003 DARAB Rules. Quasi-judicial agencies that have the power to cite persons for indirect contempt can only do so by initiating them in the proper RTC. It is not within their jurisdiction and competence to decide the indirect contempt cases. (LAND BANK OF THE PHILIPPINES, G.R. No. 152611, August 5, 2003).

SPECIAL PROCEEDINGS

Settlement Of Estate Of Deceased Persons

Sale Or Conveyance Of Property Of The Decedent. (a) Sale by Decedent During His Lifetime. In Frank Liu's case, as successor-in-interest of Benito Liu, his seller was Jose Vaño (the registered owner of the lots) who, during his lifetime executed the contract to sell through an attorney-in-fact, Teodoro Vaño. This is a disposition of property which is specifically governed by Section 8, Rule 89 of the 1964 Rules of Court. Thus, Frank Liu applied to the probate court for the grant of authority to the administratrix to convey the lots in accordance with the contract made by the decedent during his lifetime. The probate court approved the application. (LIU, G.R. No. 145982, July 3, 2003). The administrator cannot unilaterally cancel a contract to sell made by the decedent in his lifetime. Any cancellation must observe all legal requisites, like written notice of cancellation based on lawful cause. It is immaterial if the prior contract is a mere contract to sell and does not immediately convey ownership. If it is valid, then it binds the estate to convey the property in accordance with Section 8 of Rule 89 upon full payment of the consideration. (Id.)

(b) Sale by Heir. An heir can sell his interest in the estate of the decedent, or even his interest in specific properties of the estate. However, for such disposition to take effect against third parties, the court must approve such disposition to protect the rights of creditors of the estate. What the deceased can transfer to his heirs is only the net estate, that is, the gross estate less the liabilities. In Alfredo Loy's case, his seller executed the contract of sale after the death of the registered owner Jose Vaño. The seller was Teodoro Vaño who sold the lot in his capacity as sole heir of the deceased Jose Vaño. The sale of the lot to Alfredo Loy, Jr. and the contract of sale is binding between Teodoro Vaño and Alfredo Loy, Jr., but *subject to the outcome of the probate proceedings.* (Id.)

(c) Sale by Estate Through the Administrator. Section 91 of the Land Registration Act specifically requires court approval for any sale of registered land by an executor or

administrator. So, does Section 88 of the Property Registration Decree. Both law and jurisprudence expressly require court approval before any sale of estate property by an executor or administrator can take effect. (Id.). Any such sale without court authority is void and does not confer on the purchaser a title that is available against a succeeding administrator. (Id.). As to the sale to the Loys in this case, the probate court did not validly give this approval since it failed to notify all interested parties of the Loy's motion for court approval of the sale. Besides, the probate court had lost jurisdiction over the lots after it approved the earlier sale to Frank Liu. (Id.)

Loss Of Jurisdiction Of Probate Court. When the Loys filed their *ex-parte* motions for approval of their contracts of sale, there was already a prior order of the probate court approving the sale of Lot Nos. 5 and 6 to Frank Liu. In fact, the administratrix had signed the deed of sale in favor of Frank Liu, pursuant to the court approval. Thus, when the probate court approved the contracts of the Loys on 19 and 23 March 1976, the probate court had already lost jurisdiction over Lot Nos. 5 and 6 because the lots no longer formed part of the Estate of Jose Vaño. The probate court's approval of the sale to the Loys was completely void due. (Id.)

CRIMINAL PROCEDURE

Prosecution Of Offenses

Information. Designation Of The Offense. Cause Of Accusation. Section 9, Rule 110 of the Revised Rules on Criminal Procedure (RRCP) given retroactive effect: [i] being favorable to the accused and [ii], regulating the procedure of the court, will be construed as applicable to actions pending and undetermined at the time of its passage. (PO3 ROXAS, G.R. No. 140762, September 10, 2003). Before December 1, 2000, the date of effectivity of the RRCP, generic aggravating circumstances, even if not alleged in the information, may be appreciated if proven at the trial. (Id.) Rule 110 of the RRCP provides strict requirements for the State Prosecutor to observe. The prosecution must avoid ambiguity, vagueness or uncertainty as to what offense is being charged. (TAMPOS, G.R. No. 142740, August 6, 2003). Where the information specifically alleged that appellant succeeded in having sexual intercourse with the complainant "by employing force, threat, and intimidation," thus invoking paragraph 1 of Article 355 of the RPC, the accused cannot be convicted of the offense by proving that complainant was violated while in a state of unconsciousness, as provided under the 2nd paragraph of Article 355 of the same Code. (MENDIGURIN, G.R. No. 127128, August 15, 2003). The information charging STATUTORY RAPE could not be validly converted to a charge of CHILD-RAPE. (TAMPOS, G.R. No. 142740, August 6, 2003). However, under an information

charging the crime of rape, appellant can be convicted of acts of lasciviousness because the latter is necessarily included in rape. (MOLE, G. R. No. 137366, November 27, 2003).

Preliminary Investigation

Mandatory. The right to have a preliminary investigation conducted before being bound over for trial for a criminal offense and hence at the risk of incarceration or some other penalty is not a mere formal or technical right but a substantive right. Any exception to the enjoyment of said right must be strictly construed. That the accused did not resist arrest is immaterial, as voluntary surrender is not among the exceptions to the mandatory requirement of preliminary investigation in criminal prosecution. (HEGERTY v. COURT OF APPEALS, G.R. No. 154920, August 15, 2003).

Provincial Or City Prosecutors And Their Assistants. The determination of probable cause during a preliminary investigation or reinvestigation is recognized as an executive function exclusively of the prosecutor. An investigating prosecutor is under no obligation to file a criminal action where he is not convinced that he has the quantum of evidence at hand to support the averments. (Id.). The remedy of mandamus does not lie to compel the City Prosecutor to file an Information against petitioner, there being no showing of grave abuse of discretion which will warrant the reversal of the dismissal of the complaint against petitioner. (Id.)

Appeal To The Department Of Justice. (Id.)

Service Of Resolutions. Section 2 of DOJ Order No. 223 expressly provides that in preliminary investigations, service of resolutions may be made to the party or his counsel. (Id.)

Judges Of MTC And Municipal Circuit Trial Courts. (a) In all criminal cases cognizable by the RTC, but filed before the Municipal Trial Court (MTC), the latter must always conduct a preliminary investigation to determine probable cause. Under Section 7, Rule 112 of the RRCP, the only instance where an information for an offense which requires a preliminary investigation may be filed directly with the court is when an accused is lawfully detained without a warrant *and* he expressly refuses to waive in writing the provisions of Art. 125 of the RPC. If the accused refuses or fails to sign the requisite waiver, an information shall forthwith be filed against him, subject to his right to move for reinvestigation within five (5) days from the time he learns of the filing of said information. (Id.). Preliminary investigation is not a judicial function, and as such the

findings of the investigating judge are subject to the oversight powers of the public prosecutor. (Id.)

Grave Abuse Of Discretion. Defined. (Id.)

Arrest

Warrantless Arrest. Persons arrested without a warrant shall be delivered to the nearest police station or jail. (MONTE, G.R. No. 144317, August 5, 2003).

Waiver Of Defect In Arrest. When appellant entered his plea and actively participated in the trial of the case, he submitted to the jurisdiction of the trial court, thereby curing any defect in his arrest. (Id.)

Bail

Where Filed. Section 17 (a), Rule 114 of the RRCP. (1) Where the accused is arrested in the same province, city or municipality where his case is pending, the accused may file bail in the court where his case is pending or, in the absence or unavailability of the judge thereof, with another branch of the same court within the province or city. (2) Where the accused is arrested in the province, city or municipality other than where his case is pending, the accused may file bail [i] in the court where his case is pending or [ii] with any RTC in the province, city or municipality where he was arrested. When no RTC judge is available, he may file bail with any Metropolitan Trial Court judge, MTC judge or Municipal Circuit Trial Court judge therein. (JUDGE DE LOS SANTOS, A.M. No. MTJ-03-1496, July 10, 2003).

Authenticity Of Bail Bond. (Id.)

Arraignment And Plea

Nature. Arraignment is an indispensable requirement of due process. It consists of the judge's or the clerk of court's reading of the criminal complaint or information to the defendant. At this stage, the accused is granted, for the first time, the opportunity to be officially informed of the nature and the cause of the accusation. Thus, arraignment cannot be regarded lightly or brushed aside peremptorily. (ESPINOSA, G.R. Nos. 153714-20, August 15, 2003).

Notice To The Offended Party. Sec. 1(f), Rule 116 of the RRCP. Requires written notice of arraignment to the offended party. (SANGGUNIANG BAYAN, A.M. No. MTJ-03-1487, December 1, 2003).

Conditional Arraignment. Practice in the Sandiganbayan of "conditionally" arraigning the accused pending the Ombudsman's reinvestigation of the case. The alleged conditions attached to an arraignment must be unmistakable, express, informed and enlightened. They must be expressly stated in the Order disposing of the arraignment. Otherwise, the plea should be deemed to be simple and unconditional. (ESPINOSA, G.R. Nos. 153714-20, August 15, 2003).

Suspension Of Arraignment. Under Section 11(c), Rule 116 of the RRCP, the arraignment shall be suspended for a period not exceeding 60 days when a reinvestigation or review is being conducted at either the Department of Justice or the Office of the President. However, the court does not lose control of the proceedings by reason of such review. (Id.)

Plea Of Guilty To A Capital Offense. Three things are enjoined of the trial court after a plea of guilty to a capital offense has been entered by the accused: (1) To conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea; (2) To require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and (3) To inquire from the accused if he desires to present evidence on his behalf and allow him to do so if he desires. This procedure is mandatory, and a judge who fails to observe it commits a grave abuse of discretion. A conviction in capital offenses cannot rest alone on a plea of guilt. The prosecution evidence must be sufficient to sustain a judgment of conviction independently of the plea of guilt. (ERNAS, G.R. Nos. 137256-58, August 6, 2003).

Searching Inquiry. Guidelines For Trial Judges To Observe:

(a) Ascertain from the accused himself [i] how he was brought into the custody of the law; [ii] whether he had the assistance of a competent counsel during the custodial and preliminary investigations; and [iii] under what conditions he was detained and interrogated during the investigations. This is intended to rule out the possibility that the accused has been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent quarters or simply because of the judge's intimidating robes.

(b) Ask the defense counsel a series of questions as to whether he had conferred with, and completely explained to, the accused the meaning and consequences of a plea of guilty.

(c) Elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed plea of guilty.

(d) Inform the accused the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. For not infrequently, an accused pleads guilty in the hope of a lenient treatment or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to ensure that the accused does not labor under these mistaken impressions.

(e) Inquire if the accused knows the crime with which he is charged and fully explain to him the elements of the crime which is the basis of his indictment. Failure of the court to do so would constitute a violation of his fundamental right to be informed of the precise nature of the accusation against him and a denial of his right to due process.

(f) All questions posed to the accused should be in a language known and understood by the latter.

(g) The trial judge must satisfy himself that the accused, in pleading guilty, is truly guilty. The accused must be required to narrate the tragedy or re-enact the crime or furnish its missing details. (Id.)

Double Jeopardy. Section 21 of Article III of the Constitution. Section 17, Rule 117 of the RRCP. Requisites. The dismissal of the estafa and the corruption cases was made upon petitioner's *ex parte* Motion for the withdrawal of the Informations. Private respondent was not notified of this Motion. Neither was a hearing held thereon. Such dismissal, having been secured by petitioner without the *express* consent of the accused, does not amount to a waiver of the right against double jeopardy. (ESPINOSA, G.R. Nos. 153714-20, August 15, 2003).

Motion To Quash

Provisional Dismissal Of Case. Time-Bar. The Court is not mandated to apply retroactively Section 8, Rule 117 of the RRCP simply because it is favorable to the accused. The time-bar under the new rule was fixed by the Court to excise the malaise that plagued the administration of the criminal justice system for the benefit of the State and the accused; not for the accused only. Matters of procedure are not necessarily retrospective in operation as a statute. The Court in defining the limits of adherence may make a choice for itself between the principle of forward operation and that of relating forward. The institution and prosecution of criminal cases are governed by existing rules and not by rules yet to exist. Statutes regulating the procedure of the courts will be construed as applicable to actions pending and undetermined at the time of their passage. In that sense and to that extent, procedural laws are retroactive. The two-year bar in the new rule should not be reckoned from the March 29, 1999 dismissal of Criminal Cases Nos. Q-99-81679 to Q-99-81689 but from December 1, 2000 when the new rule took effect. The Court applied Section 8 of Rule 110 of the RRCP, retroactively, only to cases *still pending* with the Court and not to cases already terminated with finality. (LACSON [EN BANC], G.R. No. 149453, October 7, 2003). While it may be true that the trial court may provisionally dismiss a criminal case if it finds no probable cause, absent the express consent of the accused to such provisional dismissal, the latter cannot thereafter invoke Section 8 to bar a revival thereof. (Id.)

Trial

Consolidation Of Trials. Section 22, Rule 119 of the Rules of Court. Section 2, Rule XII of the Sandiganbayan (SBN) Revised Internal Rules. The consolidation of criminal cases is a matter of judicial discretion. Jurisprudence has laid down the requisites for the consolidation of cases. Joint trial is permissible where the actions arise from the same act, event or transaction, involve the same or like issues, and depend largely or substantially on the same evidence, provided that the court has jurisdiction over the cases to be consolidated and that a joint trial will not give one party an undue advantage or prejudice the substantial rights of any of the parties. Cases where consolidation was proper. Cases where consolidation was found to be improper. (SANDIGANBAYAN, G.R. No. 149495, August 21, 2003). In the instant case, the SBN did not commit grave abuse of discretion in denying petitioner's Motion to Consolidate the indirect bribery and the plunder cases. Their consolidation would have unduly exposed herein private respondent to totally unrelated testimonies, delayed the resolution of the indirect bribery case, muddled the issues therein, and exposed him to the inconveniences of a lengthy and complicated legal battle in the plunder case. Consolidation has also been rendered inadvisable by

supervening events — in particular, the testimonies sought to be introduced in the joint trial had already been heard in the plunder case. (Id.)

New Trial

Affidavit Of Recantation. Cannot qualify as newly discovered evidence to justify a new trial. (FONTANILLA, G. R. No. 147662-63, August 15, 2003

Appeal

Automatic Review. Although appellant did not directly raise the sufficiency of the prosecution's evidence as an issue, the Court nonetheless deliberated on it *motu proprio,* because an automatic appeal in a criminal action opens the whole case for review. (ESCARLOS, G.R. No. 148912, September 10, 2003).

Search And Seizure

Search Warrant. Requisites for a valid warrant: (1) it must be issued upon "probable cause"; (2) probable cause must be determined personally by the judge; (3) such judge must examine under oath or affirmation the complainant and the witnesses he may produce; and (4) the warrant must particularly describe the place to be searched and the persons or things to be seized. A mistake in the identification of the owner of the place to be searched does not invalidate the warrant provided the place to be searched is properly described. (TIU, G.R. No. 149878, July 1, 2003).

Warrantless Search. Illegality of the search conducted on the car, as it was not part of the description of the place to be searched mentioned in the warrant. Moreover, the search of the car was not incidental to a lawful arrest. To be valid, such warrantless search must be limited to that point within the reach or control of the person arrested, or that which may furnish him with the means of committing violence or of escaping. In this case, appellants were arrested inside the apartment, whereas the car was parked a few meters away from the building. (Id.). Rule 127, Section 12, of the Rules of Court. Search incident to lawful arrest - for anything which may be used as proof of the commission of an offense. (SPECIAL PROSECUTOR SENSON, A.M. No. MTJ-02-1430, September 8, 2003).

Release By Seized Item. All criminal actions commenced by a complaint or information are prosecuted under the direction and control of the prosecutor. The seized items ordered released by respondent Judge have not yet been offered in evidence;

hence, the prosecution, not the court, could still be deemed to be in the legal custody and to have the responsibility over such items. (Id.)

EVIDENCE

What Need Not Be Proved

Judicial Admissions. (a) Section 4, Rule 129 of the Revised Rules of Court. A judicial admission is a formal statement made either by a party or his or her attorney, in the course of judicial proceeding which removes an admitted fact from the field of controversy. It may occur at any point during the litigation process. An admission in open court is a judicial admission that binds the client even if made by his counsel. The respondent's contention that his admissions made in his pleadings and during the hearing in the CA cannot be used in the present case as they were made in the course of a different proceeding does not hold water. The proceedings before the Court was by way of an appeal under Rule 45 of the Rules of Court, as amended, from the proceedings in the CA; as such, the present recourse is but a mere continuation of the proceedings in the appellate court. (LACSON, G.R. No. 149453, October 7, 2003).

(b) May be made: [i] in the pleadings filed by the parties; [ii] in the course of the trial either by verbal or written manifestations or stipulations; or [iii] in other stages of judicial proceedings, as in the pre-trial of the case. Thus, facts pleaded in the petition and answer, as in the case at bar, are deemed admissions of petitioner and respondents, respectively, who are not permitted to contradict them or subsequently take a position contrary to or inconsistent with such admissions. An admission made in the pleadings cannot be controverted by the party making such admission and becomes conclusive on him, and that all proofs submitted by him contrary thereto or inconsistent therewith should be ignored, whether an objection is interposed by the adverse party or not. (REPUBLIC, G.R. No. 152154, July 15, 2003).

(c) A written statement is nonetheless competent as an admission even if it is contained in a document which is not itself effective for the purpose for which it is made, either by reason of illegality, or incompetency of a party thereto, or by reason of not being signed, executed or delivered. Contracts have been held as competent evidence of admissions, although they may be unenforceable. (Id.)

(d) The individual and separate admissions of each respondent bind all of them pursuant to Sections 29 (Admission by co-partner or agent) and 31 (Admission by privies), Rule 130 of the Rules of Court. The declarations of a person are admissible

against a party whenever a "privity of estate" exists between the declarant and the party, the term "privity of estate" generally denoting a succession in rights. (Id.)

Rules On Admissibility

Documentary Evidence

Parol Evidence Rule. As the repository of the terms and conditions agreed upon by the parties, the Memorandum of Understanding is considered as containing all their stipulations and there can be no evidence of such terms other than the contents thereof. (GATEWAY ELECTRONICS CORPORATION, G.R. Nos. 155217 & 156393, July 30, 2003). Where the parties admitted the existence of the loans and the mortgage deeds and the fact of default on the due repayments but raised the contention that they were misled by respondent bank to believe that the loans were long-term accommodations, the parties could not be allowed to introduce evidence of conditions allegedly agreed upon by them other than those stipulated in the loan documents. (SPOUSES EVANGELISTA, G.R. No. 148864, August 21, 2003).

Testimonial Evidence

Admissions And Confessions

Extrajudicial Confession. Inadmissible in evidence, as same was not in writing and there is no showing that appellant was assisted by a competent and independent counsel of his choice when he made such statement in accordance with Section 2 (d) of Republic Act 7438 in relation to Section 12 (1) Article III of the Constitution. (MOLE, G. R. No. 137366, November 27, 2003).

Exceptions To The Hearsay Rule

Hearsay Rule. Bars the admission of evidence that has not been given under oath or solemn affirmation and has not been subjected to cross-examination by opposing counsel. (LARENA, G.R. No. 146341, August 7, 2003). The hospital record presented in court by the records officer of the Quezon City General Hospital (that appellant was treated for eye irritation and for abrasions on his right hand) was not attested to by any supposed attending physician. A medical certificate would be hearsay and inadmissible in evidence without the affirmation or confirmation on the witness stand of the physician who prepared it and corroborated by the testimony of the physician who had examined the patient. (PO3 ROXAS, G.R. No. 140762, September 10, 2003).

Res Gestae. All the requisites are present in this case. The principal act, *i.e.*, the stabbing, was a startling occurrence. The declaration was made right after the stabbing while the victim was still under the exciting influence of the startling occurrence, without any prior opportunity to contrive a story implicating the appellant. The declaration concerns the one who stabbed the victim. (DELA CRUZ, G.R. No. 152176, October 1, 2003).

Witnesses

Credibility. (a) *Inconsistencies Which Did Not Affect Credibility.* Those referring to minor details and not in actuality touching upon the central fact of the crime. (PASCUA, G.R. No. 151858, November 27, 2003; ESPERAS, G.R. No. 128109, November 19, 2003).

(b) *Ill Motive For Testifying Or Filing Criminal Charges*. Not established. (MENDIGURIN, G.R. No. 127128, August 15, 2003; BUATES, G.R. Nos. 140868-69, August 5, 2003; DALISAY, G.R. No. 133926, August 6, 2003; OLAYBAR, G.R. No. 150630-31, October 1, 2003; PEOPLE v. VARGAS, G.R. No. 122765, October 13, 2003; ESPERAS, G.R. No. 128109, November 19, 2003; PIDOY, G.R. No. 146696, July 3, 2003). However, in this case, it was shown that complainant's aunts had sufficient motive to concoct falsehoods against appellant. (PEOPLE v. SAYANA [EN BANC], G.R. Nos. 142553-54, July 1, 2003).

(c) *Relationship To Victim Or The Accused.* Did not affect the credibility of the witness. (DE LA CRUZ, G.R. No. 140513, November 18, 2003; PO3 ROXAS, G.R. No. 140762, September 10, 2003; MENDIGURIN, G.R. No. 127128. August 15, 2003).

(d) *Delay In Reporting Crime.* (ILAGAN, G.R. No. 144595, August 6, 2003; FABIAN, G.R. Nos. 148368-70, July 8, 2003). The length of delay is not as significant and pivotal as the reason or explanation of the delay, which must be sufficient and convincing. (VARGAS, G.R. No. 122765, October 13, 2003). The five-month delay in reporting the incident to the authorities was reasonable as it is common for a rape victim to hesitate, for varying periods of time, before reporting the incident. (MANAHAN, G.R. NO.138924, AUGUST 5, 2003). That complainant did not inform any member of her family about the alleged sexual assaults in 1990 and 1993 but only in 1998 was satisfactorily explained. Being in her early teens, the victim was obviously cowed into silence as the appellant warned her not to divulge the incident to anybody, otherwise she and her family would be killed. Fear of reprisal, social humiliation, familial considerations and economic reasons have been held as sufficient explanations. (BUATES, G.R. Nos. 140868-69, 5 August 2003). However, where complainant failed to promptly report her agonizing experience to the authorities, or at the very least to her family, despite all the opportunities

to do so, it seriously affected the veracity of her narration. (MENDIGURIN, G.R. No. 127128, August 15, 2003)

(e) *Conduct After The Crime.* Not inconsistent with the commission of the crime in these cases. (CANOY, G.R. Nos. 148139-43, October 15, 2003; BUATES, G.R. Nos. 140868-69, August 5, 2003; BASITE, G.R. No. 150382, 2 October 2003). Job cannot be blamed for leaving the *situs criminis* rather than helping out the victim. The appellant was armed with a gun, while Job was not. Job feared for his life. Moreover, although Job knew the victim, they were not even friends. Not every witness to a crime can be expected to act reasonably and conformably to the expectation of mankind. In some instances, witnesses to a crime do not give succor to the victim due to fear for their personal safety. Self-preservation is still recognized as the most fundamental human instinct. (VARGAS, G.R. No. 122765, October 13, 2003). That Esmeralda turned her back on Methel and testified for the defense do not militate against the credibility of Methel's testimony. It bears noting that when Methel went to the Laoac Police Station to report the rape incidents, she was even accompanied by Esmeralda. Her change of heart can most likely be attributed to a realization of the consequences of proving the charges against her husband including loss of the family's sole means of support, appellant being the breadwinner. Some wives are overwhelmed by emotional attachment to their husbands such that they knowingly or otherwise suppress the truth and act as medium for injustice to preponderate. (FONTANILLA, G. R. No. 147662-63, August 15, 2003).

(f) *Positive Identification Of Criminal.* (1) Sufficient Illumination of the Crime Scene and Having Known Appellant for a Long Time. Experience dictates that precisely because of the startling acts of violence committed right before their eyes, eyewitnesses can recall with a high degree of reliability the identities of the criminals and how at any given time the crime has been committed by them. (GALLEGO, G.R. No. 127489, July 11, 2003). Pablo steadfastly pointed to appellant as the one who stabbed Santia with a combat bolo. He was sure of appellant's identity as he had known him for two years. The crime scene was also illuminated by a wick lamp. (PIDOY, G.R. No. 146696, July 3, 2003). The area was well illuminated by a fluorescent lamp. (RIMANO, G.R. No. 156567, November 27, 2003; CALPITO, G.R. No. 123298, November 27, 2003) (2) Through the Voice and Pysique of the Criminal. Louvella's failure to initially identify her rapist by name is not fatal considering that she subsequently and satisfactorily established his identity by means of his physique and voice. (PEOPLE v. LOPEZ, G.R. No. 149808, November 27, 2003).

(g) *Expert Witness.* The testimony of expert witnesses must be construed to have been presented not to sway the court in favor of any of the parties, but to assist the

court in the determination of the issue before it. (BASITE, G.R. No. 150382, October 2, 2003).

(h) *Principles Pertinent to Rape Cases.* (1) Rape Victim. (TALAVERA, G.R. Nos. 150983-84, November 21, 2003). Child. (MENDIGURIN, G.R. No. 127128, August 15, 2003; FONTANILLA, G. R. No. 147662-63, August 15, 2003). Young and immature girls from 12 to 16. Courts are inclined to lend credence to their version of what transpired. (PASCUA, G.R. Nos. 128159-62, 14 July 2003; ESPERAS, G.R. No. 128109, November 19, 2003; DE GUZMAN, G.R. Nos. 135779-81, November 21, 2003).

(2) Guiding Principles in the Review of Rape Cases. (MOLLEDA, G.R. No. 153219, December 1, 2003; BUATES, G.R. Nos. 140868-69, 5 August 2003; ILAGAN, G.R. No. 144595, 6 August 2003).

(3) Place of Commission of Rape. Rape is no respecter of time or place. It may be committed in a room, while the victim's great-grandmother was in the next room (MANAHAN, G.R. NO.138924, AUGUST 5, 2003); in a jeepney in a public place and in the presence of many people (OLAYBAR, G.R. No. 150630-31, October 1, 2003); while complainant's "half-siblings" were beside sleeping. (FONTANILLA, G. R. No. 147662-63, August 15, 2003).

(4) Carnal Knowledge. Absence of Laceration or Injuries. Medico-Legal Certificate and Physical Examination. (PIDOY, G.R. No. 146696, July 3, 2003; BASITE, G.R. No. 150382, October 2, 2003; MENDIGURIN, G.R. No. 127128, August 15, 2003; ESPERAS, G.R. No. 128109, November 19, 2003).

(5) A person accused of rape can be convicted solely on the testimony of the victim if the trial court finds said testimony to be credible, natural, convincing, and consistent with human nature and the normal course of things. (PASCUA, G.R. No. 151858, November 27, 2003; PEOPLE v. ILAGAN [EN BANC], G.R. No. 144595, August 6, 2003; PEOPLE v. FABIAN, G.R. Nos. 148368-70, July 8, 2003; BASITE, G.R. No. 150382, October 2, 2003; BUATES, G.R. Nos. 140868-69, August 5, 2003; DALISAY, G.R. No. 133926, August 6, 2003).

(6) Sweetheart Defense. (FABIAN, G.R. Nos. 148368-70, 8 July 2003). Not established. To be credible, should be substantiated by some documentary or other evidence of the relationship – like mementos, love letters, notes, pictures and the like. (AYUDA, G.R. No. 128882. October 2, 2003; CANOY, G.R. Nos. 148139-43, October 15, 2003).

(i) *Alibi. Denial.* Not given credence. Unless substantiated by clear and convincing proof, such defenses are negative, self-serving, and undeserving of any weight in law. (PASCUA, G.R. No. 151858, November 27, 2003; BERDIN, G.R. No. 137598, November 28, 2003; DELA CRUZ, G.R. No. 152176, October 1, 2003; CANOY, G.R. Nos. 148139-43, October 15, 2003; PIDOY, G.R. No. 146696, July 3, 2003; MOLLEDA, G.R. No. 153219, December 1, 2003). The requirement of time and place must be strictly met. It is incumbent upon appellant to prove with clear and convincing evidence that at the time of the commission of the offense charged, he was in a place other than the *situs criminis* or immediate vicinity thereof, such that it was physically impossible for him to have committed the crime charged. (ILAGAN, G.R. No. 144595, August 6, 2003; OLAYBAR, G.R. No. 150630-31, October 1, 2003). Where there is even the least chance for the accused to be present at the crime scene, the defense of alibi will not hold water. (LOPEZ, G.R. No. 149808, November 27, 2003; ADAM, G.R. No. 143842, October 13, 2003; VARGAS, G.R. No. 122765, October 13, 2003).

(j) *Testimonies Which Were Not Given Credence.* (1) Complainant's claim that she has a heart ailment which caused her to faint under extreme emotional condition was unsupported by any medical finding. (MENDIGURIN, G.R. No. 127128, August 15, 2003). Complainant's narration of how appellant allegedly ravished her on two occasions were incredibly identical, as if lifted from a single script. The testimony of the complainant should not be received with precipitate credulity but with utmost caution. The test for determining the credibility of complainant's testimony is whether it is in conformity with common knowledge and consistent with the experience of mankind. Whatever is repugnant to these standards becomes incredible and lies outside judicial cognizance. (PIDOY, G.R. No. 146696, July 3, 2003). The alleged facts and circumstances testified on by Rico, if not inconsistent with the joint affidavit he and Niala executed, are improbable, not being in consonance to reason and the common experience, knowledge and observation of ordinary men. (PEOPLE *v.* AÑORA, G. R. No. 136741, July 17, 2003).

(2) *Non Siquitur*: That it is unbelievable for appellant to be drunk during that time because, as a member of the Iglesia ni Cristo, he is "disciplined not to drink any wine." That it was impossible for appellant to have challenged Santia to a fistfight, considering that Santia was of larger built than appellant. (PIDOY, G.R. No. 146696, July 3, 2003; CHUA, G.R. No. 144312, September 3, 2003). Being a "church-goer" is insufficient to establish the improbability of committing any crime, including rape. The same holds true against appellant's claim that he did not own, or have access to, a knife because he had no enemies. (MANAHAN, G.R. NO.138924, AUGUST 5, 2003).

Evaluation Of Whole Testimony. In construing the testimony of a witness, such testimony must be considered as a whole, and not in its truncated parts, and the meaning of any answer to isolated questions is to be ascertained by due consideration of all the questions propounded on the witness and his answers thereon throughout his testimony. Facts imperfectly stated in answer to a question may be supplied or clarified by his answer to another or other questions. (GALLEGO, G.R. No. 127489, July 11, 2003).

Presentation Of Evidence

Genuiness Of Signature. Section 22, Rule 132 of the Revised Rules of Court. (PALOMA v. COURT OF APPEALS, G.R. No. 145431, November 11, 2003). The genuineness of a handwriting may be proved by: (a) any witness who believes it to be the handwriting of such person because: [i] he has seen the person write; or [ii] he has seen writing purporting to be his upon which the witness has acted or been charged; (b) a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party, against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge. (HEIRS OF CELESTIAL, G.R. No. 142691, 5 August 2003).

Non-Presentation Of Witness For The Prosecution. With the positive identification by eyewitness Joelyn of appellant as being the perpetrator of the crime, the non-presentation by the prosecution of the weapon used in committing the crime would not at all be fatal. (PO3 ROXAS, G.R. No. 140762, September 10, 2003). The prosecution has the exclusive prerogative to determine whom to present as witnesses. The testimonies of the other witnesses may, therefore, be dispensed with if they are merely corroborative in nature. Non-presentation of corroborative witnesses does not constitute suppression of evidence. (PIDOY, G.R. No. 146696, July 3, 2003).

Offer Of Evidence. Section 35, Rule 132 of the Revised Rules of Court. The party calling a witness must give a gist of the proposed testimony to enable the court and the adverse party to determine its relevancy to the issues at hand. The appellant did not object to Job's testimony when the public prosecutor offered it. Instead, the appellant cross-examined the witness The appellant did not protest when the prosecutor faultily offered its documentary and physical evidence and rested its case. The appellant even offered testimonial evidence to controvert Job's testimony. It is now too late in the day for the appellant to assail, for the first time in this Court, the public prosecutor's failure to offer the testimony of a witness before direct examination. (VARGAS, G.R. No. 122765, October 13, 2003). The failure to offer the original title in evidence was deemed

a waiver of the right to offer it as exhibit. Evidence not formally offered should not be considered. (LARENA, G.R. No. 146341, 7 August 2003).

Weight And Sufficiency Of Evidence

Proof Beyond Reasonable Doubt. (a) Rape Case. (MENDIGURIN, G.R. No. 127128, August 15, 2003). Where the victim merely stated that on 24 March 1999, the appellant "raped" her; or the complainant only made a general assertion that she had been sexually abused by her "stepfather" from March 1997 up to April 1999 - such declarations are not evidence but simply conclusions. In any criminal prosecution, it is necessary that every essential ingredient of the crime charged must be proved beyond reasonable doubt in order to overcome the constitutional right of the accused to be presumed innocent. This means that the prosecution must still prove the elements of the crime of rape, and it is not enough for a woman to claim she was raped without showing how the crime was specifically committed. (DE CASTRO, G.R. Nos. 148056-61, October 8, 2003). A woman raped in a state of unconsciousness would not be able to narrate her defloration during that state, and her violation may be proved indirectly by other evidence. Whereas, a woman fully conscious at the time of rape need only testify in a categorical, straightforward, spontaneous and frank manner, and remain consistent in her testimony to convict the accused. In the case at bar, save for Emerita's inconsistent testimonies, there is no other evidence showing that appellant did have carnal knowledge with her. (MOLE, G. R. No. 137366, November 27, 2003; BASITE, G.R. No. 150382, October 2, 2003). (b) Illegal Recruitment Case. (CORPUZ, G.R. No. 148198, October 1, 2003). (c) Where the evidence admits of two interpretations, one of which is consistent with guilt, and the other with innocence, the accused must be acquitted. (id.; MENDIGURIN, G.R. No. 127128, August 15, 2003).

Circumstantial Evidence. Rule 133, Section 4 of the Revised Rules of Court. (DE GUZMAN, G.R. Nos. 135779-81, November 21, 2003).

Factual Findings Of Lower Courts. Generally, the Court accords due deference to the trial court's views on the issue of credibility. (BUATES, G.R. Nos. 140868-69, 5 August 2003; TAMPOS, G.R. No. 142740, 6 August 2003; VARGAS, G.R. No. 122765, October 13, 2003; FONTANILLA, G. R. No. 147662-63, 15 August 2003; DELA CRUZ, G.R. No. 152176, 1 October 2003; ASTORGA, G.R. No. 154130, October 1, 2003; CANOY, G.R. Nos. 148139-43, October 15, 2003; PIDOY, G.R. No. 146696, July 3, 2003; ESPERAS, G.R. No. 128109, November 19, 2003; PASCUA, G.R. No. 151858, November 27, 2003; BERDIN, G.R. No. 137598, November 28, 2003; BASITE, G.R. No. 150382, October 2, 2003; ILAGAN, G.R. No. 144595, August 6, 2003). However,

this principle does not apply if the trial court ignored, misunderstood or misconstrued cogent facts and circumstances of substance which, if considered, would alter the outcome of the case. (CORPUZ, G.R. No. 148198, October 1, 2003; AYUDA, G.R. No. 128882, October 2, 2003).

Desistance. Cannot be the sole consideration that can result in acquittal. There must be other circumstances which, when coupled with the retraction or desistance, create doubts as to the truth of the testimony given by the witnesses at the trial and accepted by the judge. The Joint Affidavit of Desistance of the private complainants is evidently not a clear repudiation of the material points alleged in the information and proven at the trial, but a mere expression of the lack of interest of private complainants to pursue the case. (ASTORGA, G.R. No. 154130, 1 October 2003).

Frame-Up. Not given credence. (MONTE, G.R. No. 144317, August 5, 2003).

Flight. As an indication of guilt. (DE LA CRUZ, G.R. No. 152176, October 1, 2003).

THE 1991 REVISED RULE ON SUMMARY PROCEDURE

Liberally construed in this case in the light of the presence rather than a total absence of a responsive pleading of the respondents. (SPS. JALIQUE v. SPS. DANDAN, ET AL, G.R. No. 148305, November 28, 2003).

TAXATION

NATIONAL INTERNAL REVENUE CODE

Income Tax

Gross Receipts Tax. Finance and Leasing Companies. Revenue Regulation 19-86 of November 10, 1986. Republic Act 5980. Rental income. (BPI LEASING CORPORATION, G.R. No. 127624, November 18, 2003).

Percentage Tax

Pawnshops. Not "lending investors" and are not subject to tax as such. (COMMISSIONER OF INTERNAL REVENUE, G.R. No. 150947, July 15, 2003).

Administrative Provisions

Commissioner of Internal Revenue (CIR). Power to issue rules and regulations implementing internal revenue laws. (Section 245 of the NIRC of 1977, as amended by E.O. No. 273). The CIR cannot issue administrative rulings or circulars not consistent with the law sought to be applied. Since Section 116 of the NIRC of 1977 had already been repealed, RMO 15-91 and RMC 43-91, which depended upon it, are deemed automatically repealed. (Id.)

Tax Refunds - In the nature of tax exemptions and are to be strictly construed against the person or entity claiming them. (Id.)

Protesting Assessments. Section 228, the National Internal Revenue Code of 1997 (Republic Act No. 8424, otherwise known as the *Tax Reform Act of 1997*). (Id.)

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