

# CLASS ACTION, PUBLIC INTEREST LITIGATION AND THE ENFORCEMENT OF SHARED LEGAL RIGHTS AND COMMON INTERESTS IN THE ENVIRONMENT AND ANCESTRAL LANDS IN THE PHILIPPINES\*

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Commonality of interest (which others have a legal duty to respect), when violated by the act or omission of another, is an essential element of class actions and public interest litigations.<sup>1</sup> This common concern exists in connection with environmental protection and “the right of the people to a balanced and healthful ecology.”<sup>2</sup> This shared right is also found among indigenous cultural communities and indigenous peoples in relation to their ancestral domains and ancestral lands because land is central to their existence. They see themselves as stewards of the land, as “trustees” if you will, pursuant to which the right to possession does not only belong to the present generation but the future ones as well.<sup>3</sup>

In this paper, I will first present the fundamentals of class suits and public interest litigation under the Philippine legal system. I will then proceed to discuss substantive rights and the procedure to enforce them in two specific areas: environmental protection and the rights of indigenous cultural communities/indigenous people to ancestral lands and ancestral domains.

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<sup>1</sup> It constitutes the cause of action, *i.e.*, the act or omission of one party in violation of the legal right of the other which causes the latter injury. It is the fact or combination of facts which affords a party a right to judicial interference in his behalf.

<sup>2</sup> PHILIPPINE CONSTITUTION, Art. II, Sec. 16.

<sup>3</sup> Cordillera Studies Program, Land Use and Ownership and Public Policy in the Cordillera, 29-30 [n.d.] cited in Dante B. Gatmaytan, *Ancestral Domain Recognition in the Philippines: Trends in Jurisprudence and Legislation*, 5 PHIL. NAT. RES. L.J. No. 1, pp. 47-48 [1992].

**THE PHILIPPINES HAS WELL-DEFINED RULES ON CLASS SUITS AS WELL AS ON CITIZEN'S OR TAXPAYER'S SUITS ON ISSUES OF PUBLIC CONCERN.**

**1. The Philippine rule on class suits**

When the subject matter of the controversy is one of common or general interest to many persons so numerous that it is impracticable to join all as parties, a number of them which the court finds to be sufficiently numerous and representative as to fully protect the interests of all concerned may sue or defend for the benefit of all.<sup>4</sup> This is the Philippine rule on class suits.

The class suit is exceptional in at least two ways. For one, it allows a departure from the rule that parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.<sup>5</sup> The class suit is also an exception to the principle that only parties, *i.e.*, those named as plaintiffs or defendants, are bound by a judgment. A judgment in a class suit, whether favorable or unfavorable to the class, binds under *res judicata* principles not only the named parties but *all* the members of the class, regardless of whether they were ever formally before the court. For this reason, if nothing else, Philippine courts have applied the rule on class suits with much caution and circumspection.

A court faced with a controversy sought to be litigated under this rule is usually faced with at least two questions at the very inception of the suit: *first*, whether the subject matter of the controversy is of common interest to the class; *second*, whether the persons suing or defending for the benefit of the class are sufficiently numerous and representative as to fully protect the interests of all concerned. The burden of convincing the court to resolve these issues in the affirmative rests, of course, on the party seeking to litigate the case as a class suit. Failure to discharge this burden ordinarily results in dismissal of the action.

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<sup>4</sup> RULES OF COURT, Rule 3, Sec. 12.

<sup>5</sup> RULES OF COURT, Rule 3, Sec. 7.

The leading Philippine case on the subject involved an attempt by 27 plaintiffs to prosecute an action for damages as a class suit in behalf of the 4,000 heirs of the victims of one of the worst sea disasters in Philippine maritime history. I refer to the drowning of all but 24 passengers of the inter-island vessel M/V Doña Paz which sank after colliding with another vessel.<sup>6</sup> This happened just a few days before Christmas of 1987. Soon enough, a complaint for actual, moral and exemplary damages amounting to more than one and a half billion pesos (roughly US\$30 million) was filed against the common carrier. Along with the complaint came a motion by the plaintiffs for leave to prosecute the case as pauper litigants<sup>7</sup> so that they could be exempted from immediate payment of the docket fees. Considering the amount of their money claim, this ran up to more than six million pesos (about US\$120,000). Unfortunately for the plaintiffs, the executive judge was constrained to grant the motion only with respect to seven of them as the rest had failed to meet the qualifications of pauper litigants under the Rules of Court. On the propriety of litigating the case as a class suit, he remained silent. The plaintiffs elevated the matter to the Supreme Court. The Court affirmed the judge's action on the motion for leave to sue as pauper litigants. The Court also held that the case was not a proper one for a class suit. It explained that what makes a situation proper for a class suit is the circumstance that there is only one right or cause of action pertaining or belonging in common to many persons, not separately or severally to distinct individuals. The object of the suit is to obtain relief for or against numerous persons as a group or as an integral entity, and not as separate, distinct individuals whose rights or liabilities are separate from and independent of those affecting the others.

This result, although unfortunate, was not at all surprising. As early as 1974, the Philippine Supreme Court had already explained that the subject matter in which a putative class should have a common interest meant "the physical facts, the things real or personal, the money, lands, chattels, and the like in relation to which the suit is

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<sup>6</sup> *Re: Request of the Heirs of the Passengers of Doña Paz*, A.M. No. 88-1-646-0, March 3, 1988.

<sup>7</sup> RULES OF COURT (1964), Rule 3, Sec. 22. *Pauper litigant*. – Any court may authorize a litigant to prosecute his action or defense as a pauper upon a proper showing that he has no means to that effect by affidavits, certificate of the corresponding provincial, city, or municipal treasurer, or otherwise. Such authority once given shall include an exemption from payment of legal fees and from filing appeal bond, printed record, and printed brief. The legal fees shall be a lien to any judgment rendered in the case favorably to the pauper, unless the court otherwise provides.

prosecuted, and not the delict or wrong committed by the defendant.”<sup>8</sup> In this case, although all the injuries were caused by a single mishap, there were, in the eyes of the law, as many money claims as there were passengers on board the doomed vessel. (It was suggested, however, that this and similar cases could well have been litigated in groups under the rule on permissive joinder of parties which states that all persons in whom or against whom any right to relief in respect to or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, may join as plaintiffs or be joined as defendants in one complaint where any question of law or fact common to all such plaintiffs or to all such defendants may arise in the action.<sup>9</sup>)

Having found no common interest to make the action proper for a class suit, the Philippine Supreme Court saw no reason to delve into the quantitative aspect of the rule. It would do so, however, in a case of more recent vintage, but even then only in passing.

January 2004 saw the Philippine Supreme Court divided over the viability of a complaint for damages against a daily tabloid that had published an appallingly crass and misguided article insinuating that followers of Islam worshipped pigs. That case was entitled *MVRS Publications, Inc. v. Islamic Da’Wah Council of the Philippines, Inc.*<sup>10</sup> The main issue there was whether the plaintiffs, a local federation of more than 70 Muslim religious organizations and four individual Muslims, had a cause of action against the article’s publisher. The trial court dismissed the complaint for lack of cause of action but the Court of Appeals reversed it and awarded damages to the plaintiffs. Ultimately, however, a majority of the Court felt constrained by precedent and regard for freedom of the press to rule that the plaintiffs had no cause of action. Since the complaint was also instituted as a class suit in behalf of all Muslims, the Court saw fit to make the following remarks:

[A]n element of a class suit is the adequacy of representation. In determining the question of fair and adequate representation of members of a class, the court must

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<sup>8</sup> *Mathay v. Consolidated Bank and Trust Company*, G.R. No. L-23136, August 26, 1974.

<sup>9</sup> RULES OF COURT, Rule 3, Sec. 6.

<sup>10</sup> 444 Phil. 230 (2004).

consider (a) whether the interest of the named party is coextensive with the interest of the other members of the class; (b) the proportion of those named parties as it so bears to the total membership of the class; and, (c) any other factor bearing on the ability of the named party to speak for the rest of the class.

The rules require that courts must make sure that the persons intervening should be sufficiently numerous to fully protect the interests of all concerned. In the present controversy, Islamic Da'wah Council of the Philippines, Inc., seeks in effect to assert the interests not only of the Muslims in the Philippines but of the whole Muslim world as well. Private respondents obviously lack the sufficiency of numbers to represent such a global group; neither have they been able to demonstrate the identity of their interests with those they seek to represent. Unless it can be shown that there can be a safe guaranty that those absent will be adequately represented by those present, a class suit, given its magnitude in this instance, would be unavailing.<sup>11</sup>

One dissenter, had this to say, however:

For adequate representation, it is sufficient that there are persons before the court who have the same interest as the absent persons and are equally certain to bring forward the entire merits of the question and thus give such interest effective protection. [W]hether the class members are adequately represented by the named plaintiffs depends on the quality of representation rather than on the number of representative parties as compared with the total membership of the class. Thus, even one member of a large class can provide the kind of representation for all that is contemplated by the class suit.<sup>12</sup>

This attempt to prosecute a libel case as a class suit was by no means novel. In 1986, a group of sugarcane planters filed a complaint for libel as a class suit in behalf of all sugarcane planters in the Philippine province of Negros Occidental against Newsweek. The news magazine had published an article allegedly portraying the province as a place dominated by sugarcane planters who exploited, brutalized and killed their

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<sup>11</sup> Id. at 257-259.

<sup>12</sup> Id. at 305.

impoverished and underpaid workers with impunity.<sup>13</sup> The Philippine Supreme Court held that the case was not a proper one for a class suit as each of the plaintiffs had a separate and distinct reputation in the community and therefore had no common or general interest in the subject matter of the controversy.

These cases tell us that:

■ There is, as yet, no fixed rational standard by which a court may gauge the numerical adequacy of the named parties purporting to represent the class. Going by the majority opinion in the *MVRS* case, the question may require an inquiry into proportions. The wisdom of the suggestion that adequacy of the representative parties should depend on the quality of representation rather than on quantity cannot, however, be ignored.

■ An indispensable prerequisite to a class suit is that the subject matter of the controversy must be of common or general interest to numerous persons. The mere fact that the claims of numerous individuals against the defendant involve the same transaction and/or the same question of fact or law does not constitute the common interest in the subject matter so indispensable to a class suit. What makes a situation a proper case for a class suit is the circumstance that there is only one right or cause of action pertaining or belonging in common to many persons, not separately or severally to distinct individuals. A case where there are as many rights of action as there are plaintiffs cannot, therefore, be properly called a class suit.

■ Mass torts and actions for damages for breach of contract of carriage cannot be litiga A.B. (Ateneo de Manila University), LL.B. (Ateneo Law School), LL.M. (Harvard Law School)ted as class suits because the causes and rights of action in such cases are personal to each offended party and have, in the eyes of the law, nothing to do with the claims of others who may have suffered from the same incident. In such cases, there is no common interest in a single subject matter. However, these may well be litigated through a joinder of parties and where the claimants are overly numerous, groups could be formed in such numbers as would preclude unwieldiness.

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<sup>13</sup> *Newsweek v. Intermediate Appellate Court*, No. L-63559, May 30, 1986, 142 SCRA 171.

■ Even if class suits for damages could be brought, docket fees, which are assessed based on the total amount of the money claims involved in the action, could prove prohibitive. (This concern is by no means insignificant for, ordinarily, a court will not assume jurisdiction over a case unless the docket and other legal fees have been paid.)

## **2. Public interest cases: a question of standing**

Public interest cases in the Philippines, that is, those which have as their objective the enforcement or vindication of public rights by compelling the government, through the courts, to take positive action, or by having the courts nullify or restrain government acts that are offensive to these rights, are subject to different procedural concerns, not the least of which is the question of standing.

Where the plaintiff, as a representative of the public, assails an official act for contravening a public right, it is not sufficient that the plaintiff has a general interest common to all members of the public; he must show that he has a personal and substantial interest in the case such that he has sustained or will sustain direct injury as a result of the official act complained of. Failure to make such a demonstration may result in dismissal of the action. This is the rule on standing.

In the Philippines, however, standing is viewed as a mere procedural technicality and may be waived by the Court in its discretion. Where the issues involved are of transcendental importance to the public, the Court has been inclined to relax the requirements for standing and allow a suit to prosper despite the lack of direct injury to the parties seeking judicial review.

One example of this liberal policy on standing requirements was the case of *Chavez v. Public Estates Authority*.<sup>14</sup> That case involved a special civil action brought by a single concerned citizen to compel the Public Estates Authority, a government agency, to disclose to the public information on the possible sale of government lands worth

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<sup>14</sup> 433 Phil. 506 (2002).

billions of pesos and to prevent it from selling hundreds of hectares of alienable lands of the public domain to a private corporation in violation of a constitutional provision expressly prohibiting such sales.

The government questioned the petitioner's standing, arguing that he had not shown that he would suffer any injury by reason of the acts in question. But the Supreme Court ruled that since the petition involved the enforcement of the constitutional rights to information and to the equitable diffusion of natural resources – matters of transcendental importance to the Filipino people – the petitioner had the requisite *locus standi*.

If only because of the Court's liberal policy on standing, one can say with a considerable degree of confidence that the Philippines is fertile ground for public interest cases. Cases of this nature, moreover, need not satisfy the requisites of a class suit, for although the plaintiff or petitioner in a public interest case is, in effect, suing to enforce a right pertaining to each member of the populace or a significant part thereof, all that is required of him or her is to either show direct injury to himself or herself or, if that cannot be done, convince the court that the case involves issues of transcendental importance to the public. In truth, there is no need for the class suit device for all to benefit from the judgment in such a case, as every successful action against the government results in a court order nullifying an act of the government, restraining it perpetually, or compelling the government to take positive steps to enforce and protect a right.

Be that as it may, there is nothing to prevent one from litigating a public interest case against the government through a class suit. This has, in fact, been done in the field of environmental rights litigation.

**EVERYONE, INCLUDING THE FUTURE GENERATION, HAS A LEGAL INTEREST IN ENVIRONMENTAL PROTECTION.**

The internationally-heralded case of *Oposa v. Factoran, Jr.*,<sup>15</sup> decided by the Philippine Supreme Court on July 30, 1993, was a milestone in environmental rights litigation. In this case, several minors, represented and joined by their parents, filed a class suit for themselves, for others of their generation and for the succeeding generations. In their complaint, they asserted that the approval by the Secretary of the Department of Environment and Natural Resources (DENR)<sup>16</sup> of timber license agreements (TLA) granting permission to license-holders to log in the country's remaining forests was violative of their constitutional right to a balanced and healthful ecology.<sup>17</sup> Hence, they prayed that the Secretary be ordered to cancel all existing TLAs in the country and to desist from granting and renewing new TLAs.

The trial court dismissed the complaint and ruled that it stated no cause of action. However, the Philippine Supreme Court declared that this class suit was allowed under Section 12, Rule 3 of the Rules of Court. By doing so, the Court explicitly recognized a "novel element" in litigating class suits for the protection of environmental rights: everyone, including minors, can sue not only for themselves and others of their generation but also in behalf of generations yet unborn, on account of the right of the people to a balanced and healthful ecology as enunciated in the Philippine Constitution:

Their personality to sue in behalf of the succeeding generations can only be based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned. x x x Needless to say, every generation has a

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<sup>15</sup> G.R. No. 101083, 224 SCRA 792.

<sup>16</sup> The "primary government agency responsible for the conservation, management, development and proper use of the country's environment and natural resources xxx;" Section 4, Executive Order No. 192 or "The Reorganization Act of the Department of Environment and Natural Resources."

<sup>17</sup> Section 16, Article II of the 1987 Constitution provides:  
"The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature."

responsibility to the next to preserve [the rhythm and harmony of nature] for the full enjoyment of a balanced and healthful ecology. Put a little differently, the minors' assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come.<sup>18</sup>

The right to a balanced and healthful ecology implies the “judicious management and conservation of the country’s forests” because without such forests, the ecological balance would be “irretrievably disrupted.”<sup>19</sup>

Although some have commented that the ruling in *Oposa* regarding its propriety as a class suit was mere *obiter dictum* considering that this was not even in issue, still it is a much-celebrated case and hailed as groundbreaking in environmental law jurisprudence.<sup>20</sup>

The Philippine Congress enacted important laws relating to environmental protection after the *Oposa* ruling: (1) the Philippine Mining Act of 1995 (RA 7942)<sup>21</sup>; (2) the Philippine Clean Air Act of 1999 (RA 8749); (3) the Ecological Solid Waste Management Act of 2000 (RA 9003) and (4) the Philippine Clean Water Act of 2004 (RA 9275). A short discussion of how class suits can be litigated under each of these laws follows.

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<sup>18</sup> *Supra* note 15 at 802-803.

<sup>19</sup> *Id.*, pp. 805-806.

<sup>20</sup> Arthur M. Mitchell, General Counsel of the Asian Development Bank, in a speech delivered on November 29, 2005 stated that the case has been cited as precedent in another jurisdiction. He cited *Farooque v. Bangladesh* wherein the petitioner used the Philippine Supreme Court's statement in *Oposa v. Factoran, Jr.* regarding standing on behalf of future generations to argue that, under Bangladeshi law, petitioner should also be deemed to have standing to sue on behalf of future generations, which in turn cited S. Manguiat and V. Yu, *Maximizing the Value of Oposa v. Factoran*, 15 GEO. INTL. L. REV. (2003). <http://www.adb.org/Documents/Speeches/2005/sp2005058.asp>. Visited on October 3, 2006.

<sup>21</sup> “RA” means Republic Act.

## 1. Philippine Mining Act of 1995 (RA 7942)

Under this law, people, in general, have the right to protection against environmental damage caused by mining activities. Thus, any indigenous cultural community or ICC,<sup>22</sup> in case of damage to its burial grounds and cultural resources, may file an application for damages caused by mining operations.<sup>23</sup> The application shall be filed with the Regional Investigation and Assessment Teams headed by the DENR Regional Director<sup>24</sup> within 30 calendar days from the occurrence of the damage.<sup>25</sup> The amount of the damages shall be determined by the community, the concerned local government unit or the National Museum.<sup>26</sup>

This is best litigated as a class suit since the members of the community are numerous and it is quite difficult for all of them to be brought before the court. Also, they have a common or general interest in their burial grounds and cultural resources which, according to their customs and traditions, are owned or possessed by all of them in common.

## 2. Philippine Clean Air Act of 1999 (RA 8749)

RA 8749 expressly provides for “citizen suits” wherein any citizen may file an appropriate civil, criminal or administrative action in the proper courts against:

- a. any person who violates or fails to comply with the provisions of this Act or its implementing rules and regulations; or

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<sup>22</sup> Section 3 (w) of RA 7942 states:

“Indigenous cultural community” means a group or tribe of indigenous Filipinos who have continuously lived as communities on communally-bounded and defined land since time immemorial and have succeeded in preserving, maintaining, and sharing common bonds of languages, customs, traditions, and other distinctive cultural traits, and as may be defined and delineated by law.

<sup>23</sup> Section 199, Department Administrative Order (DAO) No. 96-40.

<sup>24</sup> *Id.*, section 198.

<sup>25</sup> *Supra* note 23.

<sup>26</sup> *Id.*, section 200.

b. the DENR or other implementing agencies with respect to orders, rules and regulations issued inconsistent with this Act; and/or

c. any public officer who willfully or grossly neglects the performance of an act specifically enjoined as a duty by this Act or its implementing rules and regulations; or abuses his authority in the performance of his duty; or, in any manner, improperly performs his duties under this Act or its implementing rules and regulations. xxxx<sup>27</sup>

The complainant(s), however, must give the public officer or alleged violator a 30-day notice to act with no appropriate action undertaken — a condition precedent to the filing of the suit.<sup>28</sup> The rules implementing RA 8749 clarify that the alleged violator can be a natural or juridical person.<sup>29</sup> Within 30 days from receipt of the complaint, the court shall make a preliminary determination whether the case is malicious or baseless and shall accordingly dismiss the action if found to be so.<sup>30</sup> If a suit is brought against the citizen or citizens who filed the citizen suit, it shall be the duty of the investigating prosecutor or the court to immediately make a determination within 30 days whether this legal action has been filed to harass, vex, exert undue pressure or stifle such legal recourses of the complainant.<sup>31</sup> If warranted, the court shall dismiss the case and award attorney's fees and double damages.<sup>32</sup> The filing of an administrative suit against such person or entity does not preclude the right of any other person to file any criminal or civil action which shall proceed independently.<sup>33</sup>

Although a lone citizen may file a suit under this law, a group of citizens may also bring a class suit for as long as the requirements under Section 12, Rule 3 of the Rules of

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<sup>27</sup> Section 41, RA 8749.

<sup>28</sup> *Id.*

<sup>29</sup> Section 3 (a), Rule LII, DAO No. 81-00.

<sup>30</sup> *Supra* note 27. The availability of technical data secured through the monitoring conducted by the DENR through the Environmental Management Bureau, if any, or the presence of a photograph showing a visibly opaque emission shall be sufficient evidence to prove that the case is neither malicious nor baseless (Section 8, Rule LII, DAO No. 81-00).

<sup>31</sup> Section 43, RA 8749.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*, section 42.

Court of the Philippines are met. The law expressly recognizes certain rights of citizens such as the right to breathe clean air and the right to utilize and enjoy all natural resources according to the principle of sustainable development.<sup>34</sup> Considering that the same air is commonly inhaled by everyone, people can protect the rights granted to them under this law via a class suit.

For example, residents of a municipality can file a class suit against the person who violates the prohibition against incineration which is defined as the burning of municipal, bio-medical and hazardous wastes, which process emits poisonous and toxic fumes.<sup>35</sup> RA 8749 states that the Department of Transportation and Communication (DOTC) shall implement the emission standards for motor vehicles.<sup>36</sup> It is possible that a class suit can be filed alleging that the emission standards are not being followed due to the negligence of DOTC in implementing them, resulting in unabated air pollution reaching critical levels to the prejudice of the whole class. Similarly, a class suit can be filed against the local government unit (LGU) by the residents of such LGU if it does not implement the prohibition against smoking inside a public building or an enclosed public place.<sup>37</sup>

### **3. Ecological Solid Waste Management Act of 2000 (RA 9003)**

RA 9003 has an almost exactly worded provision as RA 8749 on citizen suits. Any citizen (or possibly numerous citizens in a class suit) may file an appropriate civil, criminal or administrative action in the proper courts or administrative bodies against:

a. any person who violates or fails to comply with the provisions of this Act or its implementing rules and regulations; or

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<sup>34</sup> Id., section 4.

<sup>35</sup> Id., section 20.

<sup>36</sup> Id., section 21.

<sup>37</sup> Including public vehicles and other means of transport or in any enclosed area outside of one's private residence, private place of work or any duly designated smoking area (Id., section 24).

b. the DENR or other implementing agencies with respect to orders, rules and regulations issued inconsistent with this Act; and/or

c. any public officer who willfully or grossly neglects the performance of an act specifically enjoined as a duty by this Act or its implementing rules and regulations; or abuses his authority in the performance of his duty; or, in any manner, improperly performs his duties xxxx.<sup>38</sup>

Citizens may also file an action directly with the secretariat of the National Solid Waste Management Commission<sup>39</sup> concurrently with any other appropriate legal proceeding.<sup>40</sup>

For example, under this law, the LGU, within five years after the law's effectivity should have been able to divert at least 25% of all solid waste from waste disposal facilities through re-use, recycling and composting<sup>41</sup> activities.<sup>42</sup> This is in line with the declared policy of the law to ensure the protection of public health and the environment and to encourage valuable resource conservation and recovery.<sup>43</sup> Citizens can file a class suit against public officers of the LGU who are willfully negligent of their duty to comply with this mandate. RA 9003 also prohibits the establishment, operation and use of open dumps.<sup>44</sup> Class suits can be filed against any person who violates this prohibition.

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<sup>38</sup> Section 52, RA 9003.

<sup>39</sup> The Commission shall be composed of 14 members from the government sector and 3 members from the private sector. It shall oversee the implementation of solid waste management plans and prescribe policies to achieve the objectives of the Act. It is also mandated to develop a mechanism for the imposition of sanctions for the violation of environmental rules and regulations. [Id., sections 4 and 5(i)]

<sup>40</sup> Section 6, Rule XIX, DAO No. 34-01.

<sup>41</sup> This refers to the controlled decomposition of organic matter by micro-organisms, mainly bacteria and fungi, into a humus-like product [Section 3 (f), RA 9003]

<sup>42</sup> Id., section 20.

<sup>43</sup> Id., section 2 (a) and (b).

<sup>44</sup> Id., section 37. An open dump refers to a disposal area wherein the solid wastes are indiscriminately thrown or disposed of without due planning and consideration for environmental and health standards [Id., section 3 (t)].

#### 4. Philippine Clean Water Act of 2004 (RA 9275)

This law protects the right of the people against water pollution and to a holistic national program of water quality management.<sup>45</sup> The DENR shall, upon verified complaint by any person, institute administrative proceedings against any person who violates:

- a. standards or limitations provided by this Act; or
- b. any such order, rule or regulation issued by the DENR with respect to such standard or limitation.<sup>46</sup>

For instance, it is stated under this law that any vessel from which oil or other harmful substances are discharged in violation of Section 4 of Presidential Decree No. 979<sup>47</sup> can be held liable.<sup>48</sup> This complaint can be instituted by several people in a class

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<sup>45</sup> Section 2 (a) and (c), RA 9275.

<sup>46</sup> Id., section 30.

<sup>47</sup> Known as the Marine Pollution Decree of 1976. Section 4 states:

Prohibited Acts. - Except in cases of emergency imperiling life of property, or unavoidable accident, collision, or stranding or in any cases which constitute danger to human life or property or a real threat to vessels, aircraft, platforms, or other man-made structure, or if dumping appears to be the only way of averting the threat if there is probability that the damage consequent upon such dumping will be less than would otherwise occur, and except as otherwise permitted by regulations prescribed by the National Pollution Control Commission or the Philippine Coast Guard, it shall be unlawful for any person to

a. discharge, dump or suffer, permit the discharge of oil, noxious gaseous and liquid substances and other harmful substances from or out of any ship, vessel, barge, or any other floating craft, or other man-made structures at sea, by and method, means or manner, into or upon the territorial and inland navigable waters of the Philippines;

b. throw, discharge or deposit,, dump, or cause suffer or procure to be thrown, discharged, or deposited either from or out of any or from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state into tributary of any navigable water from which the same shall float or be washed into such navigable water; and

c. deposit or cause, suffer or procure to be deposited material of any kind in any place on the bank of any navigable water or on the bank of any tributary of any navigable water, where the same shall be liable to be washed into such navigable water, either by ordinary or high tides, or by storms or floods, or otherwise, whereby navigation shall or may be impeded or obstructed or increase the level of pollution of such water.

<sup>48</sup> For violations falling under Section 4 of Presidential Decree No. 979 or any regulations prescribed in pursuance thereof, such person shall be liable for a fine of not less than Fifty thousand pesos (₱50,000.00) nor more than One million pesos (₱1,000,000.00) or by imprisonment of not less than one (1) year nor more than six (6) years or both, for each offense, without prejudice to the civil liability of the offender in accordance with existing laws. If the offender is a juridical entity, then its officers, directors,

suit since the pollution caused by an oil spill has far-reaching consequences to the entire water system.<sup>49</sup>

Such administrative proceedings may be filed with the Pollution Adjudication Board or any other agency with jurisdiction over aspects of the violation.<sup>50</sup> Official reports, undertaken by the person filing or from inspection teams, shall be sufficient basis of the complaint but other evidence on the violation may also be presented.<sup>51</sup>

Other than environmental protection, another area where the institution of a class suit is allowed (and is, in fact, the logical and necessary action considering the nature of the right[s] involved) is the rights of indigenous cultural communities/indigenous peoples over their ancestral lands and ancestral domains.

**INDIGENOUS CULTURAL COMMUNITY AND INDIGENOUS PEOPLES HAVE A COLLECTIVE RIGHT TO THEIR ANCESTRAL DOMAINS AND ANCESTRAL LANDS.**

Early Philippine legal history was not kind to Indigenous Cultural Communities and Indigenous Peoples. In a case decided in 1919, the Philippine Supreme Court upheld a provincial board resolution resettling the Mangyan tribe (described in the resolution as the “non-Christian people of [the province of] Mindoro” and characterized in the decision as one of “the uncivilized elements” or “uncivilized tribes” of the Philippines

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agents or any person primarily responsible shall be held liable. x x x [C]learance of such vessel from the port of the Philippines may be withheld until the fine is paid and such penalty shall constitute a lien on such vessel which may be recovered in proceedings in rem in the proper court which the vessel may be. The owner or operator of a vessel or facility which discharged the oil or other harmful substances will be liable to pay for any clean-up costs. (Section 28, RA 9275).

<sup>49</sup> Last August 11, 2006, tanker M/T Solar I, owned by Sunshine Maritime Development Corporation, sank in the southern part of Guimaras Island in Western Visayas. Petron Corporation chartered the tanker to bring two million liters of bunker fuel from the Petron refinery in Limay, Bataan to the Western Mindanao Power Corporation in Zamboanga del Sur. The Special Board of Marine Inquiry, created to investigate the oil spill, submitted its findings and recommendations to the Department of Transportation and Communication and Department of Justice. These government agencies have not yet come up with their reports.

<sup>50</sup> Rule 27.9, DENR Administrative Order No. 10-05.

<sup>51</sup> Id., Rule 27.8.

who were “very low in culture” and “primitive”) in a reservation and confining them therein.<sup>52</sup> Any Mangyan who refused to comply was to be imprisoned. Questioning the constitutionality of the measure and alleging illegal deprivation of their liberty, the Mangyans filed a petition for writ of *habeas corpus*. However, the Supreme Court sustained the validity of the resolution as an exercise of police power promoting the idea that a permanent settlement was the only successful method for educating the Mangyans, introducing civilized customs, improving their health and morals and protecting the public forests in which they roamed. It was justified as a form of protection and introduction of civilized customs to the Mangyans similar to the treatment accorded by the U.S. government (which, at that time, exercised colonial power over the Philippines) to the Indian tribes in the United States.<sup>53</sup>

In another case decided in 1939, a law prohibiting the sale to and possession by a “member of a non-Christian tribe” of highly intoxicating liquor was passed. A native inhabitant of Benguet<sup>54</sup> was arrested for possession of a bottle of gin, an intoxicating liquor.<sup>55</sup> The accused assailed the law as unconstitutional for being discriminatory and violative of equal protection. Again, the Philippine Supreme Court, characterizing “non-Christian tribes” as “of a low grade of civilization,” upheld the law. The Court declared that the statute was not discriminatory under the equal protection clause but based on a valid classification of the “natives” not based on accident of birth or parentage but upon the degree of civilization and culture. The Court reasoned that the prohibition was designed to insure peace and order among “non-Christian tribes” and that the challenged law was “designed to promote peace and order in the non-Christian tribes so as to remove all obstacles to their moral and intellectual growth and, eventually, to hasten their equalization and unification with the rest of their Christian brothers.”<sup>56</sup>

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<sup>52</sup> *Rubi v. Provincial Board of Mindoro*, 39 Phil. 660 (1919).

<sup>53</sup> *Id.*

<sup>54</sup> One of the provinces situated in northern Philippines.

<sup>55</sup> *People v. Cayat*, 68 Phil. 12 (1939).

<sup>56</sup> *Id.*

## 1. Constitutional recognition of rights of indigenous cultural communities and indigenous peoples

With the passage of time came enlightenment and enlightenment ushered efforts to rectify the historical and legal injustice inflicted upon indigenous cultural communities/indigenous peoples. Thus, incipient constitutional recognition of the rights of indigenous cultural communities and indigenous peoples found its way in the 1973 Philippine Constitution. In particular, it provided for the consideration of the customs, traditions, beliefs and interests of national cultural communities in the formulation and implementation of State policies.<sup>57</sup>

The 1987 Philippine Constitution signaled a new era for indigenous cultural communities and indigenous peoples. As the most significant fruit of the 1986 “People Power” revolution in the Philippines, it sought to reflect and implement the principles of participatory democracy, people empowerment and social justice. In this light, it introduced provisions which categorically and specifically recognize, guarantee, promote and protect the rights of indigenous cultural communities and indigenous peoples. These are:

a. Art. II, Sec. 22 which recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development;

b. Art. VI, Sec. 5(2) which recognizes indigenous cultural communities as a distinct sector entitled to participate in the party-list system<sup>58</sup> of representation in the Philippine Congress;

c. Art. XII, Sec. 5 which protects the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social and cultural well-being, subject to other constitutional provisions and national development policies and programs. It also encourages the Philippine Congress to provide for the applicability of customary laws

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<sup>57</sup> Section 11, Art. XV.

<sup>58</sup> The party-list system is an innovation of the 1987 Philippine Constitution. It allocates 20% of the total number of representatives including those under the party list.

governing property rights and relations in determining the ownership and extent of ancestral domains;

d. Art. XIII, Sec. 6 which speaks of the use of property bearing a social function subject to the duty of the State to promote distributive justice;

e. Art. XIII, Sec. 1 which gives priority to the enactment of measures that protect and enhance the right of all people to human dignity, reduce social, economic and political inequalities and remove cultural inequities by equitably diffusing wealth and political power for the common good;

f. Art. XIII, Sec. 6 which limits the application of the agrarian reform principles with the rights of indigenous cultural communities over their ancestral lands;

g. Art. XIV, Sec. 17 which recognizes, respects and protects the rights of indigenous peoples to preserve and develop their cultures, traditions and institutions and mandates the consideration of these rights in the formulation of national plans and policies and

h. Art. XVI, Sec. 12 which provides for a consultative body to advise the President of the Philippines on policies affecting indigenous cultural communities.

## **2. The Indigenous Peoples Rights Act of 1997**

With this compassionate regard of the 1987 Philippine Constitution to indigenous cultural communities and indigenous peoples in mind, the Philippine Congress enacted RA 8371 entitled “An Act to Recognize, Protect and Promote the Rights of indigenous cultural communities/indigenous peoples, Creating a National Commission on indigenous peoples, Establishing Implementing Mechanisms, Appropriating Funds Therefor, and for Other Purposes.” The law is also known as “The Indigenous Peoples Rights Act of 1997” or, simply, the IPRA.

The IPRA, a statutory recognition that indigenous cultural communities and indigenous peoples are a distinct sector of Philippine society, was enacted precisely to implement the provisions of the 1987 Constitution on indigenous cultural communities and indigenous peoples. It provides, among others, that the State shall recognize and promote the rights of Indigenous Peoples within the context of national unity and development, protect their rights over the ancestral lands and ancestral domains and recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of the ancestral domains.<sup>59</sup> Moreover, it enumerates the civil and political rights of indigenous peoples,<sup>60</sup> spells out their social and cultural rights,<sup>61</sup> acknowledges a general concept of indigenous property right and recognizes title thereto,<sup>62</sup> and creates the National Commission on Indigenous Peoples (NCIP) as an independent agency under the Office of the President.<sup>63</sup>

The IPRA acknowledges the right of indigenous cultural communities and indigenous peoples to their ancestral domains and ancestral lands. It grants them the ownership and possession of their ancestral domains and ancestral lands, and defines the concept and extent of these lands and domains.

Under the law, ancestral domains are all areas belonging to indigenous cultural communities/indigenous peoples held under a claim of ownership, occupied or possessed by themselves or through their ancestors, communally or individually since time immemorial, continuously until the present except when interrupted by war, *force majeure* or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings with government and/or private individuals or corporations.<sup>64</sup> These comprise lands, inland waters, coastal areas and natural resources

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<sup>59</sup> Sec. 2(a) and (b), IPRA.

<sup>60</sup> Secs. 13-20, IPRA.

<sup>61</sup> Secs. 21-37, IPRA.

<sup>62</sup> Secs. 4-12, IPRA.

<sup>63</sup> Secs. 38-50, IPRA.

<sup>64</sup> Sec. 3(a), IPRA.

therein and includes ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable or not, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources.<sup>65</sup> They also include lands which may no longer be exclusively occupied by indigenous cultural communities/indigenous peoples but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of indigenous cultural communities/indigenous peoples who are still nomadic and/or shifting cultivators.<sup>66</sup>

Ancestral lands are defined under the law as lands occupied by individuals, families and clans who are members of indigenous cultural communities/indigenous peoples under the same conditions as ancestral domains except that these are limited to lands and that these lands are not merely occupied and possessed but are also utilized by indigenous cultural communities/indigenous peoples under claims of individual or traditional group ownership.<sup>67</sup> These lands include but are not limited to residential lots, rice terraces or paddies, private forests, swidden farms and tree lots.<sup>68</sup>

The ownership given to indigenous cultural communities and indigenous peoples over their ancestral domains or ancestral lands is distinct (as distinguished from the civil law concept of co-ownership), that is, the indigenous concept of ownership under customary law which traces its origin to native title.<sup>69</sup> The indigenous concept of ownership sustains the view that ancestral domains and all resources found therein serves as the material bases of their cultural integrity.<sup>70</sup> The indigenous concept of ownership generally holds that ancestral domains are the indigenous cultural communities'/

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<sup>65</sup> Id.

<sup>66</sup> Id.

<sup>67</sup> Sec. 3(b), IPRA.

<sup>68</sup> Id.

<sup>69</sup> Under Sec. 3(1), IPRA, native title refers to pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish conquest.

<sup>70</sup> Sec. 5, IPRA.

indigenous peoples' private but *community* property which belongs to *all generations* and therefore cannot be sold, disposed or destroyed.<sup>71</sup> It likewise covers sustainable traditional resource rights.<sup>72</sup>

The right of ownership of ancestral domains is “[t]he right to claim ownership over lands, bodies of water traditionally and actually occupied by indigenous cultural communities/indigenous peoples, sacred places, traditional hunting and fishing grounds, and all improvements made by them at any time within the domains.”<sup>73</sup> This right includes, but is not limited to, the right over the fruits, the right to possess, the right to use, right to consume, right to exclude and right to recover ownership, and the rights or interests over land and natural resources.<sup>74</sup> The right to recover shall be particularly applied to lands lost through fraud or any form of vitiated consent or transferred for an unconscionable price.<sup>75</sup>

This right of ownership of ancestral domains embraces the following rights:

- i. to develop lands and natural resources<sup>76</sup>

Indigenous cultural communities/indigenous peoples have the right to develop, control and use lands and territories traditionally occupied, owned, or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from allocation and utilization of the natural resources found therein.<sup>77</sup> They have the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the

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<sup>71</sup> Id.

<sup>72</sup> Id.

<sup>73</sup> Sec. 7(a), IPRA.

<sup>74</sup> Sec. 1, Part II, Rule III, IPRA Implementing Rules and Regulations.

<sup>75</sup> Id.

<sup>76</sup> Sec. 7(b), IPRA.

<sup>77</sup> Id.

purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws.<sup>78</sup> They also have the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which they may sustain as a result of the project, as well as the right to effective measures by the government to prevent any interference with, alienation and encroachment upon these rights.<sup>79</sup>

ii. to stay in their territories<sup>80</sup>

Indigenous cultural communities/indigenous peoples have a right to remain in their territories. Corollarily, they cannot be removed therefrom. They cannot be relocated without their free and prior informed consent or through any means other than eminent domain.<sup>81</sup>

iii. to resettlement in case of displacement<sup>82</sup>

In case displacement occurs as a result of natural catastrophes, the law mandates that displaced indigenous cultural communities/indigenous peoples be resettled in suitable areas where they can have temporary life support systems.<sup>83</sup>

iv. to regulate the entry of migrant settlers and organizations into their domains<sup>84</sup>

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<sup>78</sup> Id.

<sup>79</sup> Id.

<sup>80</sup> Sec. 7(c), IPRA.

<sup>81</sup> Id.

<sup>82</sup> Sec. 7(d), IPRA.

<sup>83</sup> Id.

<sup>84</sup> Sec. 7(e), IPRA.

v. to safe and clean water and air<sup>85</sup>

For this purpose, the indigenous cultural communities/indigenous peoples shall have access to integrated systems for the management of their inland waters and air space.<sup>86</sup>

vi. to claim parts of reservations.<sup>87</sup>

This refers to the right to claim parts of the ancestral domains which have been reserved for various purposes, except those reserved and intended for common and public welfare and service.<sup>88</sup>

vii. to resolve land conflicts in accordance with customary laws of the area where the land is located.<sup>89</sup> Only in default thereof shall the complaints be submitted to amicable settlement and to the courts of justice whenever necessary.<sup>90</sup>

Ownership of ancestral domains by native title does not entitle the indigenous cultural community/indigenous people to a torrens title but to a Certificate of Ancestral Domain Title (CADT).<sup>91</sup> The CADT formally recognizes the indigenous concept of ownership of the indigenous cultural communities/indigenous peoples over their

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<sup>85</sup> Sec. 7(f), IPRA.

<sup>86</sup> Id.

<sup>87</sup> Sec. 7(g), IPRA.

<sup>88</sup> Id.

<sup>89</sup> Sec. 7(h), IPRA.

<sup>90</sup> Id.

<sup>91</sup> Separate opinion of Justice Reynato S. Puno in *Cruz v. Secretary of Environment and Natural Resources*, 400 Phil. 904 (2000).

ancestral domain.<sup>92</sup> Like a torrens title, a CADT is evidence of private ownership of land by native title.<sup>93</sup>

On the other hand, the right of ownership of ancestral lands includes:

a. the right to transfer land/property to/among members of the same indigenous cultural communities/indigenous peoples, subject to customary laws and traditions of the community concerned<sup>1</sup>

This is in keeping with the option given to indigenous cultural communities/indigenous peoples to secure a torrens title over the ancestral lands, but not to domains. The option is in lieu of securing a certificate of land title (CALT). Moreover, the option can be exercised over lands that are individually, not commonly, owned. The option exists in favor of individual members of indigenous cultural communities/indigenous peoples who, by themselves or through their predecessor-in-interest, have been in continuous possession and occupation of the ancestral land in the concept of an owner since time immemorial or for a period of at least 30 years, and whose claims are uncontested by the members of the same indigenous cultural communities/indigenous peoples.

b. the right of redemption for a period not exceeding 15 years from date of transfer, if the transfer is to a non-member of the indigenous cultural community/indigenous people and the transfer is tainted by vitiated consent of the indigenous cultural community/indigenous people or if the transfer is for an unconscionable consideration.

The rights of indigenous cultural communities and indigenous peoples under the IPRA may be enforced and implemented primarily through the NCIP. All members of a particular indigenous cultural communities/indigenous people possess a unity of interest, the *vinculum juris* or legal tie which is a common element of both class suits and public

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<sup>92</sup> Id.

<sup>93</sup> Id.

interest litigation, in their ancestral domains and ancestral lands. Since the right of ownership of indigenous cultural communities/indigenous peoples of their ancestral domains or ancestral lands is communal, the remedies available to indigenous cultural communities/indigenous peoples to enforce this right are also necessarily shared and communal (and inter-generational as well since the right of ownership of ancestral domains belongs to “all generations”). They are availed by the aggrieved indigenous cultural community/indigenous people for and in behalf of the entire indigenous cultural community/indigenous people.

Under the law, the NCIP, with the consent of the concerned indigenous cultural community/indigenous people, may initiate the process of delineation of ancestral domain. Or a majority of the members of indigenous cultural communities/indigenous peoples may file a petition for delineation of ancestral domain. After delineation, further submission of proof, notice and publication of claim of ancestral domain, a CADT or CALT may be issued by the NCIP to the concerned indigenous cultural community/indigenous people.

The law mandates that disputes involving indigenous cultural communities and indigenous peoples shall be resolved with the use of customary laws and practices. The NCIP regional offices have jurisdiction over all claims and disputes involving rights of indigenous cultural communities/indigenous peoples. However, no such dispute shall be brought to the NCIP unless all the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the council of elders/leaders who participated in the attempt to settle the dispute that the same has not been resolved. This certification is a condition precedent to the filing of a petition with the NCIP. The decision of the NCIP may be appealed to the Court of Appeals by way of a petition for review. Again, since at least one of the parties to the suit is an indigenous cultural community/indigenous people, the suit is either a class suit (that is, one initiated by the indigenous cultural community/indigenous people as a class) or a suit against a class (that is, one filed against the indigenous cultural community/indigenous people).

It is worthy of note that, in 1998, the IPRA was challenged before the Philippine Supreme Court by one of the Court's retired members on the ground that the right of ownership of indigenous cultural communities/indigenous peoples over their ancestral lands or ancestral domains as defined under the law amounted to an unlawful deprivation of the State's ownership over lands of the public domain in violation of the regalian doctrine. To assert their rights, leaders and members of 112 groups of indigenous cultural communities/indigenous peoples moved (and were allowed) to intervene in the case. They joined the NCIP in defending the constitutionality of IPRA and praying for the dismissal of the petition. The Philippine Commission on Human Rights, a constitutional body created under the 1987 Philippine Constitution, also intervened and asserted that IPRA was an expression of the principle of *parens patriae* and that the State had the responsibility to protect and guarantee the rights of those who are at a serious disadvantage like indigenous peoples.

This time, the indigenous cultural communities and indigenous peoples were victorious. On December 6, 2000, the Supreme Court dismissed the case, *Cruz v. Secretary of Environment and Natural Resources*.<sup>94</sup> The constitutionality of IPRA was sustained and the rights of indigenous cultural communities/indigenous peoples guaranteed under the law upheld.

## CONCLUSION

With the growing complexity of modern living brought about by advancement in technology and development in transportation and communication, people become acutely aware of their interconnectedness, interdependence and common concerns. They are reminded that despite their diversity and differences, they share many things in common. Fortunately, through class suits and public interest litigation, Philippine law (like the various legal systems in the ASEAN) affords a remedy for the protection and enforcement of shared rights and common interests.

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<sup>94</sup> 400 Phil. 904 (2000).