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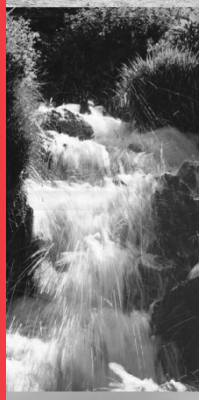
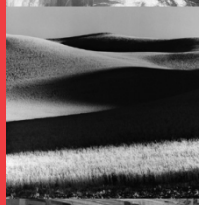
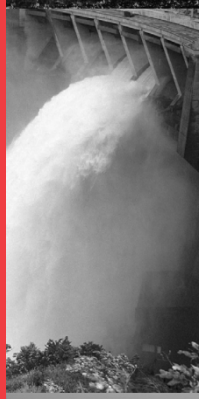

# THE MINING MORATORIUM AND THE CASE OF *PAJE*: THE PHILIPPINE DILEMMA

Article by Meriam Bravante

Unlike Canadian provinces such as Alberta where local governments or municipalities do not play a key role in the resource extraction decisions,[1] the Philippines, under the 1987 Philippine Constitution, guarantees local autonomy[2] and the *Local Government Code*[3] *[hereinafter, Code]* gives local governments decision-making powers which include the governance of natural resources. Local communities, through their local governments, which are opposed to large-scale development of mineral resources challenge the national government's power as against their own based on two principles under the Code: the General Welfare Clause (Section 16) and the veto power under Sections 26 and 27. But do these powers include the power to ban open pit mining? The national government says no, and it wants to dial back this power. The recent case of *Paje v Casiño*[4] [*Paje*] hints at what the Court thinks about who gets to decide the fate of large-scale mining in the Philippines.[5]

The salient provisions of the Code state:

SECTION 16. General Welfare. - Every local government unit shall exercise the powers expressly granted, those necessarily implied there from, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

SECTION 26. Duty of National Government Agencies in the Maintenance of Ecological Balance. - It shall be the duty of every national agency or government-owned or - controlled corporation authorizing or involved in the planning and implementation of any project or program that may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species, to consult with the local government units, nongovernmental organizations, and other sectors concerned and explain the goals and objectives of project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof.

SECTION 27. Prior Consultations Required. - No project or program shall be implemented by government authorities unless the consultations mentioned in sections 2 (c) and 26 hereof are complied with, and prior approval of the Sanggunian concerned is obtained: Provided, that occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided, in accordance with the provisions of the Constitution.

## Context

For the past seven years, there has been a growing momentum among local government units (LGUs) in the Philippines in declaring their jurisdictions as "mining-free" zones. Local governments wield their ordinance-making powers under the General Welfare Clause of the Code to declare moratoriums on mining project approvals.

These spates of moratorium range from general not-in-my-backyard ordinances and resolutions to a specific ban on large-scale mining activities for periods up to fifty years.[6] The prominent face of LGU opposition is the province of South Cotabato on the island of Mindanao. In 2010, instead of passing a mining moratorium however, it enacted a provincial Environment Code[7] banning open-pit mining in the province. The ban prevented Sagittarius Mines Incorporated (SMI) from pursuing the development phase of its US $5 billion dollar Tampakan copper and gold project within the province.

Faced with a wide-scale opposition to large-scale mining and prolonged instability in the mining sector[8], the Aquino Administration issued a series of executive actions[9], which declare the "primacy of national laws"

over anti-mining ordinances passed by local governments.[10] Accordingly, South Cotabato's open-pit mining ban is unreasonable and inconsistent with national laws and regulations.[11] Under the pain of administrative sanctions, local officials were ordered to comply with these directives and to stop opposing mining projects.[12] But these executive actions have no legal teeth.[13]

The national government has another legal problem. There is no law that expressly prohibits the LGUs from passing a local measure that bans open-pit mining, especially when the main purpose of the ordinance is environmental protection. Under the law, ordinances are generally valid so long as they do not contravene the clear and express provisions of law.[14] The Philippine Mining Act of 1995, the primary statute governing large-scale mining, is silent on whether or not local governments have the power to ban open-pit mining. Proponents of local autonomy argue that what the mining law does not disallow, the General Welfare Clause allows.[15] Sections 16 and 458[16] of the Code clearly allow local governments to pass ordinances within their jurisdiction. In *Acebedo Optical v. CA*[17], the Court declared:

> The State, through the legislature, has delegated the exercise of police power to local government units, as agencies of the State, in order to effectively accomplish and carry out the declared objects of their creation.
>
> The scope of police power has been held to be so comprehensive as to encompass almost all matters affecting the health, safety, peace, order, morals, comfort and convenience of the community. Police power is essentially regulatory in nature and the power to issue licenses or grant business permits, if exercised for a regulatory and not revenue-raising purpose, is within the ambit of this power.[18]

The Supreme Court in one case linked this principle directly to the constitutional right to a balanced and healthful ecology[19] where local governments can legislate to protect the environment.[20] In *Tano v. Socrates*[21] the Supreme Court ruled that LGU ordinances protecting marine life in the Province of Palawan are a valid exercise of police power by the local governments of Palawan. In this case, the Court declared:

> …Section 5(c) of the LGC explicitly mandates that the general welfare provisions of the LGC shall be liberally interpreted to give more powers to the local government units in accelerating economic development and upgrading the quality of life for the people of the community.
>
> The LGC vests municipalities with the power to grant fishery privileges in municipal waters and to impose rentals, fees or charges therefor; to penalize, by appropriate ordinances, the use of explosives, noxious or poisonous substances, electricity, *muro-ami*, and other deleterious methods of fishing; and to prosecute any violation of the provisions of applicable fishery laws. Further, the *sangguniang bayan*, the *sangguniang panlungsod* and the *sangguniang panlalawigan* are directed to enact ordinances for the general welfare of the municipality and its inhabitants, which shall include, *inter alia*, ordinances that [p]rotect the environment and impose appropriate penalties for acts which endanger the environment such as dynamite fishing and other forms of destructive fishing ... and such other activities which result in pollution, acceleration of eutrophication of rivers and lakes or of ecological imbalance.
>
> Finally, the centerpiece of LGC is the system of decentralization as expressly mandated by the Constitution. Indispensable thereto is devolution and the LGC expressly provides that *[a]ny provision on a power of a local government unit shall be liberally interpreted in its favor, and in case of doubt, any question thereon shall be resolved in favor of devolution of powers and of the lower local government unit.* Any fair and reasonable doubt as to the existence of the power shall be interpreted in favor of the local government unit concerned. Devolution refers to the act by which the National Government confers power and authority upon the various local government units to perform specific functions and responsibilities.[22]

This pronouncement supports local autonomy to the extent that the Court considers this an LGU mandate to protect the environment. This shows that the power and responsibility for environmental protection is given both to the national and local governments. It is no surprise then that even though the national government and Sagittarius Mines Incorporated believe that the ordinances were out of bounds of LGU power, no law suit was filed questioning its legality. As a result, the gap in the mining law persists causing uncertainty in the mining sector.

## The Mining Revenue Bill

The Philippine Congress had been trying to solve the impasse. On 3 February 2015, House Bill No. 5367 or the Mining Revenue Bill was filed. The bill contained provisions giving the President consolidated power over mineral extraction by: (a) creating Mining Industry Zones under the exclusive jurisdiction of the Department of Environment and Natural Resources (DENR); (b) creating a consultation process that requires LGUs to endorse these mining zones; and (c) requiring that the LGU endorsement shall include a waiver of its power to regulate the mining business – through issuance of business permits and other license requirements -- as mandated by the Code.[23]

Proponents of local autonomy have noted that these wordings in the bill are designed to gut the provisions of the Code that give LGU powers over decisions on mining project approvals.[24] If this becomes law, the legal hurdle to mining caused by the South Cotabato ordinance, as well as LGU moratoriums, will be largely diminished. Critics of the bill pointed out that the proposed increase of local government share from the mining revenue was used as an incentive so that LGUs would agree to give up their powers.[25]

Absent in this debate is the Courts. But in the case of *Paje v Casiño*[26], the Philippine Supreme Court has found an opening to weigh in on the national-local government debate absent an actual case or controversy. While the bill was being deliberated, the *Paje* decision came out in February 2015 as an environmental lawsuit invoking the power of LGUs (although, ironically, no relevant LGU was a party to the proceeding). *Paje* hinted that one way to curtail the LGU decision-making power would be through legislation.[27] Without being explicit, *Paje* seemed to say that that if the national government has problems about the LGUs exercising their powers, executive orders and legal memoranda will not do it. In this case, it declared that special economic zones, set aside by law, with the consent of the LGUs and designed to bypass government

regulations, are exempted from Sections 26 and 27 of the Code. For the Court, this is the way to go: carve out an exemption from Sections 26 and 27 thereby leaving the General Welfare Clause untouched for now. Notably, *Paje* does not involve resource extraction (coal-fired power plant is the issue) nor the interpretation of the power of the LGUs under the General Welfare Clause.

## The *Paje* Case

*Paje v. Casiño* was a Petition for the Writ of *Kalikasan*[28] originally filed before the Supreme Court. At the heart of the issue is the proposed coal-fired power plant, the operation of which, as alleged by the petitioners, would cause grave environmental damage and adversely impact the health of the affected residents of the Municipality of Subic. The following facts are undisputed: (1) that the issue involves a national government project which typically should receive local government consent under Sections 26 and 27 of the Code; (2) that no approval was sought from the concerned *sanggunians* relative to the project; (3) that the affected LGUs have expressed their strong opposition to the project through various *sanggunian* resolutions; and (4) that the project is located within the Subic Special Economic Zone (SSEZ) and- thus, under the territorial jurisdiction of both the concerned LGUs and the Subic Bay Metropolitan Authority (SBMA) pursuant to Republic Act (RA) 7227.[29]

As an aside, the case could have been dismissed outright on ground that the petitioners sought an improper remedy and forum (aside from the utter lack of evidence),[30] but the Court took this as an "opportunity to expound on the nature and scope of the writ of *kalikasan*" as well as delve into the issue of local government power or alternatively, the superiority of SBMA law.

## Liberal Interpretation of the SSEZ Law

The Court was asked to nullify the Environmental Compliance Certificate (ECC) of a power plant project partly because it lacked local government consent under Sections 26 and 27 of the Code. It ruled that while indeed, there is no LGU consent, the Subic Special Economic Zone (SSEZ) is exempted from the jurisdiction of local governments. It disagreed with the Court of Appeal's position that the provisions of the Code and RA 7227 can be harmonized. The ponencia believes that under Section 14 of RA 7227, the "SBMA's decision to approve the project prevails over the apparent objections of the concerned *sanggunians*."[31]

The Court's rationalization is as follows: First, when Republic Act 7227[32] created the SSEZ and SBMA, the legislature intended to exempt SSEZ from LGU jurisdiction. The Senate deliberations on the bill which would eventually become Section 13 b (4)[33] of RA 7227 "rejected the attempts to engraft Section 27's prior approval of the concerned *sanggunian* requirement under the Code into RA 7227".[34] Second, while it is true that both the SBMA and the LGUs have power to approve or disapprove projects, SBMA's power is superior. As the Court sees it, the coal-fired power plant is not subject to the consent requirements of the Code and the "SBMA's decision to approve the project prevails over the apparent objections of the concerned *sanggunians*."[35] Finally, the concerned LGUs consented to the diminution of their local powers. According to the Court, the very act of joining SSEZ and their representation on the SBMA Board of Directors[36] are indicative of the *sanggunian's* consent because they were "fully aware that this would lead to the diminution of their local autonomy in order to gain the benefits and privileges of being part of the SSEZ."[37]

*Limited Interpretation of Sections 26 and 27*

The liberal interpretation of the SSEZ law effectively constrained the scope of the power of the LGUs. While the majority opinion highlighted and expounded the background and details of RA 9227, it failed to discuss the LGU power under the Constitution and the Code in relation to the overlap with that of the SBMA's. An explanation of LGU power under sections 26 and 27 was made by way of a mere footnote citing *Lina v Paño [Lina]*.[38]

*Lina* established the prevailing doctrine for interpreting Sections 26 and 27. It holds a restrictive view that "Section 27 of the Code should be read in conjunction with Section 26"[39]. It states that the implementation of the national programs and/or projects shall comply with the mandatory prior approval of the concerned *sanggunian* only when the twin requisites are present, namely:

> (1) the planning and implementation of the project or program is vested in a national agency or government-owned and-controlled corporation, i.e., national programs and/or projects which are to be implemented in a particular local community; and
>
> (2) the project or program may cause pollution, climatic change, depletion of non-renewable resources, loss of cropland, rangeland, or forest cover, extinction of animal or plant species, or call for the eviction of a particular group of people residing in the locality where the project will be implemented.[40]

In this case, it declared that the lottery operation is not within the scope of Sections 26 and 27 because (a) Congress has expressly allowed the operation of lotteries through the Republic Act 1169, therefore the province's *Sangguniang Panlalawigan* cannot prevent something that is already allowed by Congress[41] and (b) the operation of lotto is not an environmental issue, therefore it is outside the scope of LGU's legislative authority.

But *Lina's* reading of Sections 26 and 27 has long been argued to be incorrect.[42] This is a misinterpretation and a source of the confusion that was carried on to *Paje*.[43] Justice Marvic Leonen sought to correct this and argued that Sections 26 and 27 are not purely environmental provisions. He maintained a broader view,

> Although Section 26 of the Local Government Code requires "prior consultation" with local government units, organizations, and sectors, it does not state that such consultation is a requisite for the issuance of an ECC. Section 27 of the Local Government Code provides instead that consultation, together with the consent of the local government is a requisite for the implementation of the project.
>
> Further, the results of the consultations under Sections 26 and 27 do not preclude the local government from taking into consideration concerns other than compliance with the environmental standards. Section 27 does not provide that the local government's prior approval must be based only on environmental concerns. It may be issued in light of its political role and based on its determination of what is economically beneficial for the local government unit.[44]

There is nothing in Section 27 that says local government's prior approval must be based on environmental concerns exclusively. If we follow what the Court said in *Lina* that Section 27 "should be read in conjunction with Section 26" then the proper construction is that Section 27 "does not limit the consent requirement to programs that could lead to environmental damage."[45] Also, for a valid implementation of a project or program, two requirements are needed: consultation and consent of the local governments.

The underlying reason why the dissenting opinion took pains in expounding how Sections 26 and 27 should be interpreted is because prior to *Lina* the Court had declared that "where a law is capable of two interpretations, one in favor of centralized power in Malacañang and the other beneficial to local autonomy, the scales must be weighed in favor of autonomy."[46] Clearly, this pronouncement looks at the power of local governments broadly. As the majority opinion flees away from this rule, Justice Leonen reminded the majority of the wisdom and clarity of the Supreme Court ruling in giving local autonomy a liberal interpretation in *San Juan v Civil Service Commission*:

> The exercise by local governments of meaningful power has been a national goal since the turn of the century. And yet, inspite of constitutional provisions and, as in this case, legislation mandating greater autonomy for local officials, national officers cannot seem to let go of centralized powers. They deny or water down what little grants of autonomy have so far been given to municipal corporations.
>
> Our national officials should not only comply with the constitutional provisions on local autonomy but should also appreciate the spirit of liberty upon which these provisions are based.[47]

Another reason is the constitutional ramification of the interpretation - that SBMA is more powerful than LGUs. The dissenting opinion's logic is this[48]: the principle of local autonomy is enshrined in the Constitution. So is the makeup and creation of LGUs: provinces, cities, municipalities, and barangays with accompanying requirements on income, population and land area. SBMA is not an LGU. It is a mere implementing arm of the Bases Conversion Development Authority, which is under the President's control and supervision. The established doctrine in the Philippine law is that LGUs are not subject to control and supervision of the President. The President's power over our local government units is limited to general supervision. If SBMA (under Section 14 of RA 7227) has the prerogative to supplant the power of LGUs, then this interpretation violates the Constitution.[49]

## Summary

The importance of local governments and public participation was made clear by the 1987 Constitution as a means to correct past wrongs and ensure a check on the national government. They are assurances that local voices are taken into consideration in the national dialogue. The General Welfare Clause and Sections 26 and 27 of the Code are life-giving and validating provisions of the concept of local autonomy. These are also legal pillars for environmental protection that is easily available to local communities through their LGUs. As legal and political tools, these are harnessed by local communities worried that their national representatives are not doing enough to protect the environment, their health, their safety, and their livelihoods.

These two powers are also separate and distinct. Jurisprudence leading up to *Paje* has consistently limited the application of Sections 26 and 27. Unlike the police power of local governments, this veto power lacks the depth and breadth of the former. The General Welfare Clause is based on the police powers of LGUs as given by the Code. It is akin to the police power of the state except that its application is confined within local jurisdictions. It is founded on the duty of the state to protect. A portion of such power is transferred to local governments so that they are able to govern and regulate effectively through the promotion of public health, safety, morals, and order as well as convenience, prosperity and welfare. The Philippine Supreme Court has traditionally afforded it a liberal interpretation. If there is doubt as to whether a power has been conferred upon local governments, then local governments receive the benefit of that doubt and the power is deemed to have been conferred. This is, however, not without limits. The Court provided guidance for its valid exercise in numerous cases.[50] It is a regulatory measure and applies only prospectively.

Sections 26 and 27 collectively, on the other hand, have limited application. They are meant as a veto power of LGUs for projects or programs of the national government that they decide are inappropriate for their jurisdictions. It is a process that needs to be undertaken before the implementation of the project. It involves a judicial pronouncement that the project or program requires local government consent, the absence of which makes the project illegal. The Philippine Supreme Court has limited its application to environmental concerns, and those instances are specifically enumerated in Section 26. More recently, cases like *Paje* have shown the Court's willingness to curb this power.

The timing of the *Paje* decision is another thing. As pointed out earlier, the ruling was handed down amidst the ruckus caused by the various mining moratoriums and South Cotabato's open-pit ban. The Supreme Court could have simply dismissed the *Paje* petition outright without touching on the exemption to the Code. Instead, the Court went out of its way to carve an exemption.

It is possible that the Court is making a statement here. The court's thinking is encapsulated in its pronouncement that SBMA is exempted from Sections 26 and 27 of the Code. Local government power may be further curtailed through a piece of legislation similar in wording, or effect, as that of the SBMA law. The text of the law should indicate that LGUs have conceded their regulatory powers. If Congress and the executive branch can design mining legislation that can muster this *Paje* requirement, it is possible that local autonomy can be given up the way the local governments within SSEZ are said to have "given up" their powers in the creation of SBMA.

This is what the Mining Revenue Bill is designed to do: by-pass LGU regulation in order to streamline the permitting and application process for mining projects. It will be recalled that the Mining Revenue Bill contains provisions creating mining industry zones, and requiring mandatory LGU endorsement of these zones (including express waivers of their powers to regulate mining). These provisions more than comply with the *Paje* test. The SBMA law did not require any of these express concessions, while the Mining Revenue Bill does. If passed, critics fear that such mining

legislation "will raze local autonomy"[51] and this may very well be the legal track that the Supreme Court is taking to break the power struggle on control of mineral resources. Will the Philippine Supreme Court issue an opinion explicitly crafting an exception that will create fissures in the foundation of local autonomy? Only the members of the Supreme Court can answer this question.

## ANALYSIS AND CONCLUSION

Since the ouster of the dictator Ferdinand Marcos in 1986, local communities have taken on bigger influence in the economic development and governance decision-making which has traditionally been the realm of the state, especially the national government. This was made possible due to the presence of a strong civil society movement in the Philippines. This movement also played a key role in crafting a constitution that expressly recognized decentralization and civil society participation. [52] This, in turn, led to the enactment of the Local Government Code of 1991 that institutionalized citizen participation both in the structures and processes of local governance. Following the constitutional mandate, the Philippine Mining Act of 1995 has created a regime for industrialized mining that recognizes the role of LGUs in mineral development. The mainstreaming of civil society involvement was styled as "the transition to redemocratization from a dictatorship…" and this expanded governance arrangement "…is one means by which to decentralize and diffuse the power of a previously highly centralized politico-administrative machinery".[53]

Civil society through LGUs has utilized conventional institutions and rules to press for enforcement of environmental protection measures and influence policy-making in areas where they feel it is lacking. Where local communities' economic and political interests do not necessarily align with that of the executive and legislative branches, communities look for interstices in the law and have carved out creative solutions to their issues. The South Cotabato Environmental Code, and its ban on open-pit mining, has illustrated that a small opening in the Mining Act (where the law is silent on LGU prohibition) can be deliberately used as a legal device in cases where options appear to be very limited. It has caused legal uncertainty and forced the national government to reckon with local governments – a scenario unheard and unthinkable two decades ago. The Supreme Court has to directly weigh in on this issue if, and when, a case is filed.

As the local communities have begun to recognize and harness this immense power in the face of modern mining and the demands of globalization, the central government is pushing back, hesitant to share this power. The actual democratic process of governing, all of a sudden becomes messy and mocks central planning. Aside from the weak governance[54], graft, corruption, and government bureaucracy, the grand project to move away from decades of dictatorship and economic malaise through decentralization is challenged.

If the Court upholds such a right under the general welfare clause, it is a win for local autonomy. It will be seen as an affirmation of the Constitutional mandate. Communities opposed to large-scale mining can claim some form of victory now that their power to protect the environment and livelihood from the potential negative impact of open-pit mines is acknowledged. Local autonomy is strengthened. The new administration will have to negotiate with the Philippine Congress to enact an amendment to the mining law, akin to the pending Mining Revenue Bill. This will be a slow grinding process given what is at stake. Nevertheless, this is a best case scenario where the newly elected national officials will receive a fresh mandate to enact a new mining law which the public can view as having some legitimacy instead of a Court-legislated interpretation. This is also in keeping with the doctrine that local governments are creatures of the state.

The Court may also choose to design a new path on local autonomy. It may be one where the LGU power to veto resource extraction projects is put under a higher standard of scrutiny to prevent abuse of such power by local governments. One can imagine the Court limiting the broad powers of LGUs under the general welfare clause. Or there is the *Paje* approach: limit the scope of Sections 26 and 27 by creating more exemptions. Now that *Paje* has created this opening, it is leaving it up to Congress to limit or altogether remove such power. This is a scenario where the promotion of common interest of local constituents is trumped by the public-welfare-for-all-citizens argument in the areas of environment and natural resources. It will have the effect of re-writing the doctrine of local autonomy as reflected in the Philippine jurisprudence.

As the power struggle between the national government and local government on mining plays out, the Philippine Supreme Court's role is as important as ever. As the last arbiter of these controversies, it has to walk a fine line between balancing out two strong impulses: protect and strengthen local autonomy and the environment and promote economic growth through resource extraction.

The *Paje* case signals the Supreme Court's continued adherence to constitutionalism tempered by its dilemma on how to "reign in" rambunctious LGUs. It is telling Congress, the administration, the mining sector and the general public that while local autonomy is almost sacrosanct, it is the legislature's role to curtail the power that it has given to LGUs, not the Courts. On the other hand, the majority opinion failed to address the Constitutional issue raised by Justice Leonen concerning abrogation of the power of LGUs and endowing it in the Presidency. As a whole, it is up to the Filipino electorate to elect public officials who will more or less represent their interests. Their choice is not binary -- environment or development. It is sustainable development that contemplates a long and enduring development strategy, integrating solutions to socio-economic and environmental issues for contemporary Filipinos.

Interpretations of local autonomy will surely evolve. After all, doctrines no matter how solid and enduring are not hermetically sealed just as the members of the Supreme Court do not live in glass bubbles. Public opinion on mining may also evolve – but as it stands today, the person who campaigned on mining as growth strategy clearly lost the presidential election.[55] In the meantime, mining companies will have to rethink their options including whether investing in Philippine mining projects is worth the uncertainty and risks.

[1]Nickie Vlavianos & Chidima Thompson, "Alberta's approach to local governance in oil and gas development" (2010) 48:1 Alberta Law Review 55.

[2] See s 1 Art. X, s 25, Art. II, The State shall ensure the autonomy of local governments; s. 2, Art. X, The territorial and political subdivisions shall enjoy local autonomy, *The Constitution of the Republic of the Philippines, 1987.*

[3]The Local Government Code of 1991 Republic Act No.7160.

[4] *Paje v Casino,* G.R. No. 207257, 03 February 2015 (Philippines). [*Paje*]

[5] For an extended discussion, see Meriam A. Bravante, "THE POWER TO SAY NO: LOCAL AUTONOMY AND SOCIAL LICENSE TO OPERATE MINES IN THE PHILIPPINES", LL.M Major Paper, Faculty of Law, University of Calgary (2016) [unpublished].

[6] For example, the South Cotabato open pit ban is for a period of 50 years; the General Generoso ban is for 15 years; Oriental Mindoro provincial government declared a 25-year moratorium on mining since 2000, particularly opposing the plan of the Canadian Crew Minerals Development Corporation to undertake open-pit mining in the province. See, Minerva Chaloping-March, PhD, "The trail of a mining law: 'resource nationalism' in the Philippines" Journal de la Societe de Oceanistes, online: https://www.academia.edu/10401305/The_mining_policy_of_the_Philippines_and_resource_nationalism_towards_nation-building_--by_Minerva_Chaloping-March?auto=download. The actual count of LGU ordinances may be lower than this report. There is an inherent difficulty in getting an accurate count because local ordinances and resolutions in the Philippines are not published and there is no registry for this purpose.

[7] *The Environment Code of the Province of South Cotabato,* online: http://www.southcotabatonews.com/2010/10/environment-code-of-province-of-south.html. Paragraph 3 of the "whereas" clauses cites the following provisions of the Local Government Code:

Sections 2(a), 2(c), 3(d), 3(e), 3(f) up to 3(m), 5(a), 16, 17, 26, 27, 33, 34, 35, 36, 129,186,289, 389 (b) (9), 444(b)(3)(vii), 455(b)(3)(v), 465(b)(3)(v), 447(a)(1)(vi), and Section 468(a)(1)(vi).

[8]Amy Remo, "Reforms to Mining Act Opposed", *Philippine Daily Inquirer*, online: <http://business.inquirer.net/178514/reforms-to-mining-act-opposed>.

**[9]** Executive Order No. 79, Institutionalizing and Implementing Reforms in the Philippine Mining Sector Providing Policies and Guidelines to Ensure Environmental Protection and Responsible Mining in the Utilization of Mineral Resources, Department of Environment and Natural Resources (Philippines) Secretary of Justice Opinion No. 87, series of 2012; Department of Interior and Local Government Memorandum (DILG) Circular No. 2012-181, online: <http://www.denr.gov.ph/news-and-features/latest-news/831-executive-order-79-s-2012.html>.

[10] Dina Bilabo,"*Paje*: Nat'l mining laws have primacy", The Philippine Star, online: <http://www.Philippinesstar.com/headlines/2012/06/24/820749/*Paje*-natl-mining-laws-have-primacy>.

[11] See s 12 Executive Order 79. The section in addition states that LGUs shall confine themselves only to the imposition of reasonable limitations on mining activities conducted within their respective territorial jurisdictions that are consistent with national laws and regulations.

[12] Department of Justice, Opinion 87, s.2012; Memorandum Circular No. 2012-181, Department of Interior and Local Government, cited in Dante B. Gatmaytan, "Resource Extraction & Local Autonomy" (2012)37:1&2 The Integrated Bar of Philippines (IBP) Journal 22 [Gatmaytan, Resource Extraction].

[13] Executive orders and memorandum circulars have no force of law. *Ibid* at 28-31.

[14] *Tatel v. Virac*, G.R No. 40243, 207 S.C.R.A. 157 at 161. (11 Mar 1992) (Philippines)[*Tatel*].

[15]Gatmaytan, Resource Extraction, *supra* note 12 at 25.

[16] "The *Sangguniang Panlungsod*, as the legislative body of the city, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the city and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the city as provided for under s 22 of this Code.

[17] G.R No. 100152, March 31, 2000 (Philippines).

[18] *Ibid*.

[19] 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. See s 16, Article II, *Constitution of the Republic of the Philippines 1987.*

[20] Dante Gatmaytan-Magno, "Artificial Judicial Environmental Activism: *Oposa v. Factoran* as Aberration" 17 Ind. Int'l & Comp. L. Rev. 1: 1-28. [Gatmaytan-Magno, Judicial Activism].

[21] *Tano v. Socrates* G.R No. 110249, 278 SCRA 154 (August 21, 1997) (Philippines), online: http://sc.judiciary.gov.ph/jurisprudence/1997/aug1997/110249.htm.

[22] *Ibid* at 189.

[23] Philippines, House Bill 5467, Philippine Fiscal Regime and Revenue Sharing Arrangement for Large-scale Metallic Mining Act of 2014, 2 Session, 16th Cong, 2015. See s5.

[24] Dante Gatmaytan, "Government mining bill to raze local autonomy," online: < http://alyansatigilmina.net/2015/03/12/government-mining-bill-to-raze-local-autonomy-by-dante-gatmaytan/>. [Gatmaytan, Mining Bill].

[25] *Ibid*.

[26] *Paje*, supra note 4.

[27] Bravante, *supra* note 5 at 17-18.

[28] The Writ of *Kalikasan is* a legal remedy available to any natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces. See Rules of Procedure for Environmental Cases A.M. No. 09-6-8-SC Rule 7, s 1. The Rules on the Writ of *Kalikasan* is Part III of the Rules of Procedure for Environmental Cases issued by the Philippine Supreme Court pursuant to its power to promulgate rules for the protection and enforcement of constitutional rights, in particular, the individual's right to a balanced and healthful ecology. *Paje v Casino*, G.R. No. 207257, 03 February 2015 (Philippines).

[29] *Paje*, *supra* note 4 at 98.

[30] *Paje*, *supra* note 4 (Leonen, J., Separate Concurring and Dissenting) 98.

[31] *Paje*, *supra* note 4 at 116.

[32] Republic Act No. (RA) 7227 or "The Bases Conversion and Development Act of 1992."

[33] See s 13 *The Subic Bay Metropolitan Authority…* (b) *Powers and functions of the Subic Bay Metropolitan Authority* - The Subic Bay Metropolitan Authority, otherwise known as the Subic Authority, shall have the following powers and function:… (4) To construct, acquire, own, lease, operate and maintain on its own or through contract, franchise, license permits bulk purchase from the private sector and build-operate transfer scheme or joint-venture the required utilities and infrastructure in coordination with local government units and appropriate government agencies concerned and in conformity with existing applicable laws therefor;

[34] *Ibid*.

[35] *Paje*, *supra* note 4 at 116.

[36] s 13 (c) of The *Subic Bay Metropolitan Authority Act* provides, "The powers of the Subic Authority shall be vested in and exercised by a Board of Directors, hereinafter referred to as the Board, which shall be composed of fifteen (15) members, to wit: (1) Representatives of the local government units that concur to join the Subic Special Economic Zone.

[37] *Paje, supra* note 4 at 106.

[38] *Ibid* at 96. See, *Lina* v *Paño*, G.R. No. 129093, 364 S.C.R.A. 76 at 84, 30 Aug. 2001, (Philippines) [*Lina*].

[39] *Ibid*.

[40] *Ibid*.

[41] *Ibid*.

[42]Gatmaytan-Magno, Judicial Activism, *supra* note 20; Judy Alice U. Repol, "The Supreme Court's Limited Construction of the Prior Consultation and Approval Requirement in Province of Rizal v. Executive Secretary" 80 Philippines L.J. 170 (2005).

[43] See, Bravante, *supra* note 5 at 51-59 tracing how on the misinterpretation of *Lina* perpetuated in the Philippine jurisprudence.

[44] *Paje*, *supra* note 4 (Leonen, J., Separate Concurring and Dissenting) at 21-22. [Emphasis included]

[45] Gatmaytan-Magno, Judicial Activism, *supra* note 20 at 19.

[46] *Paje, supra* note 4 (Leonen, J., Separate Concurring and Dissenting) at 26, citing *San Juan v Civil Service Commission*, G.R. No. 92299, April 19, 1991, 196 SCRA 69 [Per J. Gutierrez, Jr., En Banc] at 75-80.

[47] *Ibid*.

[48] *Ibid* at 23-25.

[49] *Ibid*.

[50] Social Justice Society v. Atienza G.R No. 156052 (2008); *Manila Metropolitan Development Authority* v. *Concerned Citizens of Manila Bay*, G.R 171947 (December 2008); Tatel v. Virac, G.R No. 40243, 207 S.C.R.A. 157 at 161. (11 Mar 1992) (Philippines); *Magtajas* v. *Pryce*, G.R. No. 111097 July 20, 1994; *Solicitor General* v. *Metropolitan Manila Authority*, 204 SCRA 837; *De la Cruz* v. *Paras*, 123 SCRA 569; *U.S.* v. *Abandan*, 24 Philippines 165 (Philippines).

[51] Gatmaytan, Mining Bill, *supra* note 24.

[52]Bravante, *supra* note 5 at 67-70.

[53] Alex B. Brillantes, Jr, "Redemocratization and decentralization in the Philippines: the increasing leadership role of NGOs, 60 (1994) Int'l Rev. of Admin. Sci.575 at 576.

[54]Vivoda in describing the weak Philippines state said, "The basic institutions and governance structures in the Philippines are dominated by powerful vested interests, who, through informal influences, such as patronage politics, corruption, cronyism and clientelism, control the Philippines state… there are an estimated 250 political families nationwide, with at least one in every province, occupying positions in all levels of the bureaucracy and, of the 265 members of Congress, 160 belong to clans". Vlado Vivoda, "Assessment of the Governance Performance of the Regulatory Regime Governing Foreign Mining Investment in the Philippines" (2008) 23:3 Minerals & Energy 127.

[55] See, GMANewsOnline, "PILIPINAS DEBATES 2016: Roxas open to 'clean' coal plants, more mining if he becomes president", online: http://www.gmanetwork.com/news/story/563892/news/nation/roxas-open-to-clean-coal-plants-more-mining-if-he-becomes-president.

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