OVERLAPPING JURISDICTIONS AND MANAGEMENT SYSTEMS IN THE PHILIPPINE COASTAL ZONE: Palawan Experience

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I. INTRODUCTION

Like most coastal states in the world, the Philippines' coastal areas are under constant threat from overexploitation and destruction. Management of the coastal zone has invariably been underscored as a critical concern in addressing these threats. The fact that such threats and problems continue somehow indicates the success of failure of current management efforts.

Coastal zone management in the Philippines has to deal with an interlocking series of management systems characterized by overlaps and conflicts among a plethora of policies and institutions. The interaction or interface of these management systems may either be on a wide-ranging policy-making or regulatory level or on an operational or implementation level. On the level of policy or regulation, we deal with the allocation of management powers to particular levels or offices of government institutions. On the operational level, we must consider the implementation of various environmental laws.

With this host of institutions exercising management and jurisdiction over the coastal zone, such problems as overlapping institutional roles, divergence in goals and conflicting priorities oftentimes arise. The interface between these institutions and local community actors, especially indigenous communities who have their own customary laws, adds another complexity. This situation has resulted in the lack of an integrated and holistic coastal zone management. How to ensure that these various actors and players would agree to work together is a continuing challenge in coastal zone management.

II. MANAGEMENT OF THE PHILIPPINE COASTAL ZONE: POLICIES AND INSTITUTIONS

(1) LEGAL FRAMEWORK

State Ownership of Natural Resources

Management of the coastal zone and the resources within is anchored on the basic national policy that all natural resources belong to the state[1]. This policy called the Regalian Doctrine (also known as Jura Regalia), was first introduced by the Spanish colonizers in the Philippines almost 500 years ago through the Laws of the Indies and the Royal Cedulas. It was later adopted by the American colonizers through the Public Land

[1] See Article 12, Section 2, Philippine Constitution

Acts and the judiciary. Ultimately, this doctrine was embodied in the Philippine Constitution.

The Regalian Doctrine establishes the responsibility of the state, as owners of these natural resources, to protect and conserve these for the present and future generations. Under this system, the government hopes to generate growth and development through raising revenues and imposing penalties related to natural resource use. This framework, however, lacks a system of direct accountability on the part of the government. Any impact on the environment and resource base is borne usually by affected residents or local communities. Moreover, because government often lacks the will to regulate the use of coastal resources and enforce environmental laws, resources are accessible for everyone to use and destroy.

National Law vs. Customary Law

This national policy on resource use, however, is alien to indigenous peoples and conflicts with their customary laws. Customary law on land and natural resources is founded upon the traditional belief that no one owns the land except the gods and the spirits, and that those who work the land are its mere stewards.[2] Such concepts of "possession" and "ownership", which are described by national laws as the exclusive right to possess, own and alienate as one sees fit, contradicts the traditional beliefs of indigenous communities. Indigenous communities believe that the land and natural resources correctly belonged to them not by virtue by ownership or by legislative action but by the grace of God. Unlike national law, customary law does not rely on documents to prove ownership but rather on the traditions drawn from the actual and long occupation by the indigenous community.

The conflict between national law and customary law has been counterbalanced by constitutional provisions on the rights of indigenous peoples and the current Indigenous People's Rights Act[3]. The Constitution provides that the State recognizes and promotes the rights of indigenous cultural communities withitn the framework of national unity and development.[4] It further provides that the State shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social and cultural well-being.

RA 8371, otherwise known as the Indigenous People's Rights Act of 1997, is the law that concretized the constitutional provisions respecting the rights of Indigenous Peoples/Indigenous Cultural Communities (IPs/ICCs). IPRA recognizes the ownership of IPs/ICCs over their ancestral lands/domains and basically deals with the civil, political, social, cultural and tenurial rights of IPs/ICCs.

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[2] See Ponciano L. Bennagen, "Indigenous Attitutdes Toward Land and Natural Resources of Tribal Filipinos," NCCP Newsletter, vol. 31 (National Council of Churches in the Philippines, October-December, 1991)

[3] Republic Act (RA) No. 8371

[4] See Article 2, Section 22, Philippine Constitution

Multiplicity of Laws and Policies

There is yet no comprehensive legislation that covers all aspects of coastal zone management. What the Philippines has is an aggregate of laws, executive and administrative orders dealing with various resources and activities in the coastal zone: fisheries, aquaculture, mining and quarrying, tourism, forestry, human settlements, reclamation, ports and harbor development and industrial development.

Foremost among this collective of laws is the Philippine Fisheries Code of 1998[5] which has a huge impact on the management of the coastal zone. This law repealed the Fisheries Decree of 1975[6] and several other laws on fishery and aquatic resources. Unlike its predecessor, PD 704, the New Fisheries Code now considers food security as the overriding consideration in the utilization, management, development, conservation and protection of fishery resources. It also stipulates that as a state policy the exploitation of the country's fishery resources would be on limited access basis.

This new fisheries law is a codification of existing fishery laws, consolidates and updates all prior penal laws related to fisheries, and provides for new provisions[7]. Significant changes in this new law include (i) the jurisdiction of municipal governments over waters fifteen (15) kilometers from the shoreline; (ii) limiting the use of municipal waters to fishing operations using boats no bigger than three gross tons and using passive gears; (iii) the creation of Fisheries and Aquatic Resource Management Councils (FARMCs) at the local and national levels to enable multisectoral participation in the management of fishery resources and implementation of fishery laws,[8]; and (iv) incorporation of integrated coastal zone management as one of its policy approaches.

The Philippine Fisheries Code has attempted to address more concerns related to coastal resources than its antecedent law, but other laws affecting the coastal zone and its resources continue to apply.

One law which impacts on the coastal zone is the National Integrated Protected Areas System (NIPAS) Act of 1992 (R.A.7586), a landmark legislation that recognizes the importance of the integrated protected areas system as a powerful mechanism for the conservation of Philippine biodiversity. The NIPAS law is a process legislation in that it defines a mechanism by which the national park system will be governed more realistically, using biodiversity principles, site specific management strategies and public participation. Under this law, all marine protected areas, reserves and sanctuaries existing prior to 1992 are considered initial components of the protected area system. Management of the protected area is exercised by the Protected Area Management Board

[5] RA No. 8550 (1998)
[6] Presidential Decree (PD) No. 704
[7] See Department of Environment and Natural Resources (DENR), Bureau of Fisheries and Aquatic Resources of the Department of Agriculture, Department of Interior and Local Government and Coastal Resource Management Projet, 2000. Philippine Coastal Management Guidebook No. 2: Legal and Jurisdictional Framework for Coastal Management in the Philippines. Coastal Management Project of the DENR. Cebu City, Philippines, page 16.
[8] RA 8550, Sections 4(57), 4(58), 16 and 18.

(PAMB) composed of representatives from the Department of Environment and Natural Resources (DENR), the local government unit, affected communities and private sector.

Another law is the Agriculture and Fisheries Modernization Act[9] or AFMA which seeks to industrialize agriculture in the country including fisheries. This law provides for zone-based development of special areas set aside for agricultural and agro-industrial development and focuses on converting the agriculture and fisheries sector from resource-based to technology-based industries. Given its focus on fishery production, AFMA has serious implications on our coastal resources. It is notable therefore that while the Philippine Fisheries Code focuses on conservation and management, the AFMA prioritizes industrialization.

Other laws which deal with the coastal zone include the Water Code[10] and the Public Land Act[11] which administer activities within foreshore areas, such as tourism activity, squatting, port development and reclamation. The Philippine New Mining Act[12] provide for the management of mining and quarrying activities in the coastal zone. Pollution control in the coastal zone is governed by the Pollution Control Law[13], the Solid Waste Management Act[14] and the Sanitation Code[15]. Determining the impact of development projects such as tourism and industrial estates on the coastal areas is governed by the Philippine Environmental Impact Statement System[16] and Department Administrative Order (DAO) No. 96-37 of the Department of Environment and Natural Resources (DENR).

Another significant legislation which has influence on coastal zone management is the Local Government Code[17] (LGC). It concretizes the constitutional policy on government decentralization and democratization. Where in the past coastal resource management programs originated from national government agencies such as the DA-BFAR and DENR, the LGC reversed this process and gives primary management responsibilities to local government units. Thus, coastal municipalities and cities are now at the forefront of coastal zone management. The LGC gives local government units greater fiscal autonomy through various powers to levy certain taxes, fees or charges. This law also provides for people's direct participation in the planning and implementation of resource management plans, thus, establishing a system where local communities, non-government organizations (NGOs), academic and scientific institutions can become partners of the local government units.

The Philippine Fisheries Code complements the primary management role of local government units as it establishes the jurisdiction of municipal/city governments over

[9] RA 8435 (1998)
[10] Presidential Decree No. 1067
[11] Commonwealth Act No. 141 (1936)
[12] RA 7942 (1995)
[13] PD 984
[14] RA 9003 (2001)
[15] PD 856
[16] PD 1586 (1978)
[17] R 7160 (1991)

municipal waters, assigns to them the enforcement of all fishery laws, rules and regulations and mandates them to enact ordinances to regulate fishery activities, protect and conserve fishery resources and to assist in the creation of councils where local fisherfolk and NGOs are represented.

Opportunities for People or Local Community Participation

The legal framework in the Philippines provides opportunities for the participation of communities in the formulation and implementation of local policies as well as in the actual management of coastal resources. The 1987 Constitution embodies the following provisions:

a) Democratization of Access to Resources: Direct users of natural resources, such as farmers, forest dwellers, marginal fishermen, are guaranteed the right to continue using such resources for their daily sustenance and survival in accordance with existing laws.[18] Hence, the Constitution introduced the concept of small-scale utilization of natural resources as a mode of natural resource utilization[19].

b) Social Justice: There is a bias for the underprivileged as regards the development and management of natural resources such that land and other natural resources shall be made accessible to them. Municipal waters, for example are reserved for the preferential use of subsistence fishers[20].

c) Right of the People to a Balanced and Healthful Ecology: The Constitution protects the right of the people to a "balanced and healthful ecology in accord with the rhythm and harmony of nature"[21]. The State is mandated to protect, advance and promote the people's right to ecological security and health. In the case of Oposa vs. Factoran[22], the Supreme Court declared the "right to a balanced and healthful ecology" as a self-executory right and recognized the primacy and centrality of ecological security and health among the many rights assured by the Constitution.

d) Due Process Clause: The Constitution guarantees the right of the people to life, liberty and property from undue intervention and usurpation without due process of law.

e) Fundamental Liberties: Besides the right to due process, important provisions include the right to information and right to people participation, where the State recognizes and promotes the right of the youth, women , labor, indigenous communities,

[18]See 1987 Philippine Constitution, Article 13, Sections 4, 6 and 7.
[19]See 1987 Philippine Constitution, Article 12, Section 2, paragraph 3.
[20] 1987 Philippine Constitution, Article 12, Section 3.
[21]Constitution, Article 2, Section 16.
[22] 224 SCRA 792

non-governmental organizations (NGO), and community-based or sectoral or people's organizations (PO). There is a provision for a people's initiative and referendum in proposing, amending, rejecting or enacting laws.

These policies have been complemented by the Philippine Fisheries Code, thus:

a) protecting the rights of fisherfolk, particularly of municipal fisherfolk communities, in the preferential use of municipal waters;
b) providing primary support to municipal fisherfolk through appropriate technology and research, adequate financial and marketing assistance and other services;
c) managing fishery and aquatic resources in a manner consistent with the concept of integrated coastal area management in specific natural fishery management areas;
d) establishing Fisheries and Aquatic Resources Management Councils (FARMCs) in the municipal and barangay level to assist LGUs in formulating and enforcing policies.

The Local Government Code also provides for participatory policy-making, as follows:

a) representatives of NGOs and people's organizations (POs) have seats in almost all councils, leagues and boards;
b) resource use or management plans can be enacted into ordinances through the local people's initiative[23];
c) resource use plans formulated by fisherfolk in several barangays or municipalities may be implemented through the league of barangays/municipalities[24]

Special Law for Palawan

In recognition of the need to conserve the important ecosystems of the province of Palawan, the Philippine Congress passed an unprecedented and landmark legislation in June 1992 especially dedicated to the province. Known as the Strategic Environmental Plan (SEP) for Palawan[25], this law seeks to provide a policy framework for the sustainable development of Palawan. A multipartite body called the Palawan Council for Sustainable Development (PCSD) is mandated to provide policy direction in the implementation of the SEP.

The SEP legislation provides for a zonation scheme called the Environmentally Critical Areas Network (ECAN)[26]. ECAN prescribes specific uses for each designated zone. The

[23] Section 120, RA 7160
[24] Sections 491 to 507, RA 7160
[25] RA 7611 (1992)
[26] In its implementation, the ECAN strategy shall consider forest conservation and protection through the imposition of a total commercial logging ban in all areas of maximum protection and in such other restricted use zones as the PCSD may provide;protection of watersheds;preservation of biological diversity;protection of tribal people and their culture;maintenance of maximum sustainable yield;protection of rare and

terrestrial zone covers mountains, ecologically important low hills and lowland areas in the province. The coastal zone covers foreshore areas, mangrove areas, coral reefs and fishing grounds. Tribal land zones are areas traditionally claimed by indigenous communities as their ancestral territories.

To operationalize the ECAN strategy in the coastal/marine areas, guidelines were issued by the PCSD providing for the following:

1) classification of coastal/marine zones into core zone, multiple use zone and ancestral coastal/marine waters;
2) preparation of comprehensive local management plan for coastal/marine areas by the LGU through its ECAN board with the assistance of the PCSDS, which will be reviewed by the PCSD;
3) identification of zones and preliminary mapping to be undertaken by the LGU and its ECAN board or a similar body;
4) conflict resolution to be undertaken by the LGU through its ECAN board or similar body;
5) declaration of an ECAN map for coastal/marine areas;
6) implementation of the comprehensive local management plan through the enactment of an ordinance.

(2) JURISDICTIONAL/INSTITUTIONAL ARRANGEMENTS

The diversity of laws governing the coastal zone has resulted in a variety of institutions implementing these laws, thus giving rise to overlapping institutional mandates.
With regard to implementation of fishery laws, the Department of Agriculture is mandated under the Administrative Code of 1987 to, among others, promulgate and enforce all laws, rules and regulations governing the conservation and use of fishery resources. The DA, through the Bureau of Fisheries and Aquatic Resources, carries out this enforcement function but focused on waters beyond municipal jurisdiction.

Besides the DA, another agency called Department of the Environment and Natural Resources (DENR) exercises management functions over the coastal zone. The DENR's programs, particularly on mangrove conservation and watershed resource management have substantial impacts on the coastal zone and fishery resources. For instance, fishpond development is covered by the environmental impact assessment which is within the domain of the DENR.

On the provincial, municipal or village level, however, the municipal governments exercise management functions. Section 17 of the Local Government Code[27] identifies and provides for the devolution of some environmental and natural resource management functions from the DENR to the LGUs. Said law provides, among others, that:

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endangered species and their habitat;provision of areas for environmental and ecological research, education and training;provision of areas of tourism and recreation.

[27] RA 7160 (1991)

- It is 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 cropland, rangeland or forest cover, and extinction of animal or plant species, to consult with the local government units, non-governmental organizations and other sectors concerned and explain the goals and objectives of the 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 [28];
- Prior consultations are required and the approval of the local council concerned must first be had before any such project or program may be implemented[29];
- Every local government shall exercise those powers which are essential to the promotion of the general welfare and shall enhance the right of the people to a balanced ecology[30]

Given the array of management powers exercised by the LGUs within their territorial jurisdictions, coastal zone management can be considered as among their inherent functions. LGU powers and responsibilities in the coastal zone include protection, regulation, revenue generation, local legislation, enforcement, provision of services, extension and technical assistance, perform inter-government relations and relations with NGOs and people's organizations.

In Palawan where a special law governs the management of the sustainable development of its natural resources, the PCSD, as the policy-making and governing body, issues resolutions and guidelines to implement the SEP and other related laws. The PCSD has a technical staff called Palawan Council for Sustainable Development Staff or PCSDS which assists the PCSD in formulating guidelines and their implementation. The PCSDS has been involved in surveying, research, zoning, education and information dissemination and in law enforcement activities in Palawan.

It is in the area of law enforcement that overlapping institutional roles are accentuated. In the municipal or city level, the LGUs take the lead and are assisted by the local Fisheries and Aquatic Resources Management Councils (FARMCs).

The Presidential Commission on Anti-Illegal Fishing and Marine Conservation (PCAIFMC) or the Bantay Dagat Committee (BDC) enforces laws in coastal waters. The Philippine Coast Guard (PCG) has a principal role in the prevention and control of marine pollution. There is also the Inter-agency Task Force on Coastal Environment Protection (IATFCEP) which coordinates various agencies involved in enforcing coastal environment protection. The PCSDS also gets involved in the conduct of apprehension and prosecution of violators of laws affecting the coastal zone.

[28] Section 26, RA 7160.
[29] Section 27, RA 7160.
[30] Section 16, RA 7160.

III. ISSUES AND PROBLEM AREAS

If all these national agencies, the LGUs and other special bodies such as the PCSD in Palawan, accomplished their mandates in coordination with one another, one would somehow expect a well-managed coastal zone. Unfortunately, national agencies suffer from a myriad of administrative and organizational weaknesses that undermine their effectiveness. Weak coordination, inflexibility in approaches to resource use, centralized nature of management, lack of resources and dearth of competent and well-motivated staff are key problems that limit their ability to effectively implement their mandate.

With so much power bestowed upon local government units under the Local Government Code and the Philippine Fisheries Code, one would expect that LGUs would conceivably take the lead in establishing a co-management scheme for coastal resources. On the ground, however, this has not been the case. Owing to lack of resources, knowledge, competent staff and beleaguered by local politics, some LGUs end up taking a passive or reactive rather than in a pro-active posture.

Consequently, overlapping institutional roles have failed to achieve an integrated and holistic management of the coastal zone and its resources.

General Management

Local government units of Puerto Princesa City and the Province of Palawan have asserted their authority in the past with regard to protection of coastal resources. In 1994, the provincial government of Palawan and the city government of Puerto Princesa passed an ordinance imposing a five-year moratorium on the gathering and trading of live fish. The moratorium was sought in view of rampant cyanide fishing related to the gathering of live fish.

A group of commercial live fish traders questioned before the Supreme Court the authority of the local government units to pass fishery-related ordinances without the approval of the Secretary of Agriculture[31]. The Supreme Court upheld the power of the local government units to pass such ordinances.

One standing conflict in Palawan has been the applicability of the National Integrated Protected Areas System to the province. Since the passage of these laws in 1992, an ongoing tussle between the PCSD and DENR has taken place as regards the management of protected areas in Palawan. It is a raging debate which illustrates the issue of local control versus centralized national control. PCSD asserts that all Protected Areas Management Boards (PAMBs) should be governed by the PCSD. The DENR argues that the NIPAS law maintains the administrative control of the DENR over the PAMBs. This conflict has hampered initiatives towards the development and implementation of

[31] This is the case of Alfredo Tano, et al. versus Hon. Gov. Salvador Socrates, et al. (G.R. No. 110249, August 21, 1997).

protected areas management plans. For instance, the mechanism for setting up the Integrated Protected Areas Fund for marine reserves such as the Tubbataha Reef National Marine Park and World Heritage Site continues to be raised by the DENR as an issue.

The PAMB, however, of the Puerto Princesa Subterranean River National Park (PPSRNP) and World Heritage Site is unique and an exception to the NIPAS and SEP system. Former DENR Secretary Angel Alcala gave the management of the PAMB to the mayor of Puerto Princesa City thus enabling the LGU to take the lead in governing the protected area. The LGU played a key role in expanding the former St. Paul Park and establishing it as a World Heritage Site. International agencies such as the International Union for the Conservation of Nature (IUCN), the United Nations Economic, Social and Cultural Organization (UNESCO) and the United Nations Development Program (UNDP) provided their valuable support and technical assistance to the LGU's initiatives.

However, when the reins of leadership in DENR changed, DENR regional officials have been lobbying for their assumption of the PAMB management. For sometime in 2001, there were two PAMBs – one formed by the DENR while the other being led by the LGU – with each PAMB having its own park superintendent. A series of dialogues and meetings between the DENR and LGU ensued to resolve this conflict.

In marine protected areas within ancestral domains, management becomes more complicated. An array of management and enforcement bodies has to be dealt with --- the IP Council of Elders or PO Board, DENR-Protected Areas Management Board, the LGU, the FARMC, or the DA-BFAR. In Palawan, there is the ECAN (Environmentally Critical Areas Network) Board or the PCSD that has authority over establishment and implementation of zonation schemes.

Regulation of Resource Access/Use

Since the government has full control over coastal areas, the issuing authority as regards resource access and use permits is still the national government and the LGUs. With regard to offshore and commercial fishing and aquaculture, the DA-BFAR remains to function as a regulatory body. The LGU issues permits for municipal fishing and activities within municipal waters, except for fishponds. The DENR issues tenure instruments such as the Community-Based Forest Management Agreements (CBFMA) over mangrove areas.

The tendency of some LGUs to issue permits allowing for exploitation of coastal zones and municipal waters have come in conflict with community management initiatives. Permits issued to pearl farms, seafood processing entities, and tourist establishments and the continued tolerance of illegal fishpond development activities by LGUs and government agencies are deterrents to community management of municipal fishing grounds. Likewise, attempts to protect foreshore areas were thwarted by the issuance of LGU permits to tourist resort operators who have set up structures along the foreshore despite the absence of an ECC or foreshore lease.

Another conflict is in the regulation of sand quarrying and pebble quarrying activities. Under the new fisheries code, quarrying of white sand and pebbles are not allowed. However, some LGUs allow the quarrying of pebbles and white sand even without an environmental impact assessment. Usually, the issuance of Environmental Compliance Certificates (ECCs) by the DENR for quarrying operations comes much later than quarry permits issued by the provincial governor.

Tenure, Communal Property Rights and Indigenous/Community Resource Management Systems

Advocates of community-based resource management (CBRM) generally assert that the foundation of coastal resource management starts with the community's control of the use, management of or access to the resource. This entails the establishment of communal property rights (CPR) which includes the attainment of tenurial security for local communities.

In the case of indigenous groups or communities, attaining CPR is institutionalized because the State recognizes ancestral domain titles over land and waters. The Certificate of Ancestral Domain Titles (CADTs) appears to be a powerful instrument for indigenous groups or peoples (IPs) to assert control over the resources covered by their title. One apparent problem is the lack of support by local government units and migrant communities to such IP community control and management. Some LGUs claim that ancestral domains and lands do not completely divest them of their territorial jurisdiction and assert that IP communities continue to be subjected to municipal ordinances and rules issued by the LGUs. IP groups can be intimidated by LGUs in many ways, one of which is in the matter of imposing taxes. The IPRA law, for instance, provides that portions of ancestral domains or lands used for residential purposes can be subject to taxes.

In the area of Ulugan Bay and St. Paul Bay, Puerto Princesa City, Palawan, while the Batak and *Tagbanua* communities have a sense of security with their certificate of ancestral domain claim (CADC), competition posed by settlers, migrants and other stakeholders give them a sense of instability. Their inability to compete with both marginal and commercial fishers and other stakeholders in the use of Ulugan Bay and St.Paul Bay has given rise to food insecurity that is equated as a form of instability about their future.[32] This has given the indigenous communities the idea of reclaiming their traditional fishing grounds as a way of invoking their rights to a physical space that was once theirs.[33]

The experience of the *Tagbanua* community of Coron Island, Municipality of Coron, Northern Palawan also highlights issues on resource utilization and management. The

[32]See United Nations Educational, Scientific and Cultural Organization (UNESCO) Jakarta Office, Environment and Development in Coastal Regions and Small Islands (CSI), 2001. Coastal Resource Management, Ulugan Bay, Palawan Island, Philippines, Volume 1, Ecology, Culture and Socio-Economics, Chapter 2, Traditional Resource Use and the Culture of Indigenous Communities in Ulugan Bay, E.R. Guieb III, page 133.

[33] Ibid., page 131

Tagbanuas of Coron Island were awarded the first Certificate of Ancestral Domain Claim (CADC) to cover land and waters in the Philippines, consisting of some 22,000 hectares. While the indigenous community secured rights over their domain, they continue to deal with threats posed by migrants, private groups and the local government unit. The LGU opposed the recognition of the ancestral waters before the DENR and even threatened to institute legal action. The DENR and the LGU continue to issue use permits over Coron Island and recognize private claims on the basis of tax declarations. The mayor allowed pearl farming to operate in the surrounding waters of Coron Island without notifying the *Tagbanua* community. The LGU and Department of Tourism identified Coron Island as a tourism potential without even discussing the matter with the *Tagbanuas*. Were it not for the intervention of NGOs who facilitated the dialogue between the indigenous community, LGU, DENR and private groups, the *Tagbanuas* would not have been included in the tourism planning process.

Conflict arose when the *Tagbanua* community imposed entrance fees or resource user's fees to tourists or visitors who visited the pristine Kayangan Lake within their ancestral domain. The entrance fee was considered too high by the LGU and tourism association in Coron. Another issue raised by the tour operators was the absence of an official receipt. Having perceived this matter as an unresolved issue, the tourism association decided, for the time being, not to include Kayangan Lake in their regular tours. After a series of meetings, however, the *Tagbanua* community decided to reduce the entrance fee.

In the context of non-IP communities dependent on mangrove forests, tenurial instruments are awarded as Community-Based Forest Management Agreements (CBFMAs) or individual Certificate of Stewardship (CS) within identified CBFMA areas.

However, the institutionalization of CPR in relation to municipal fishing grounds is difficult under the current legal system. Waters or water bodies are generally owned by the State as provided under the Constitution. Except for IPRA, there is no other law that provides for the application of CPR in municipal fishing grounds. Migrant fishing communities usually find themselves at a losing end especially when big commercial interests such as pearl farm owners, tourist resorts, or quarry operators deprive them of fishing and navigational areas or the use of foreshore areas.

Law Enforcement

Some law enforcement agencies tend to be conservative and passive in the implementation of their mandate, consequently hindering law enforcement efforts. In one case, the BFAR office in Palawan released a commercial fishing vessel seized by the Philippine Navy last November 1999 for conducting *muro-ami*[34] operations in Southern Palawan. The Navy personnel submitted the documents and turned over the vessel to BFAR on the premise that BFAR Palawan will assist them in instituting the appropriate

[34] Muro-ami is fishing with the use of fine-meshed nets and pounding on the corals to scare the fish and the operations use minors who dive. Muro-ami has been banned in the Philippines for more than ten years.

administrative or judicial action. BFAR personnel released the vessel purportedly due to lack of evidence and in order to avoid any harassment suit from the vessel's owner. The BFAR personnel also argued that since the vessel was caught in the municipal waters of Brooke's Point, Southern Palawan, the local government unit should initiate legal action since it is within their jurisdiction. Were it not for the timely intervention of the media and environmental NGOs, this case would just have been part of the archive of *muro-ami* violations and then forgotten.

Another problem is in the handling of poaching which is defined under Section 87 of the Fisheries Code as fishing by any foreign person, corporation or entity in Philippine waters. Under this provision, "the entry of any foreign fishing vessel in Philippine waters shall constitute *prima facie* evidence that the vessel is engaged in fishing in Philippine waters".[35] Navy and police personnel usually file two cases against poachers – one for illegal entry and another for poaching. They complain that the illegal entry case is usually dismissed by the prosecutor's office on the ground that the act of illegal entry is already absorbed in poaching. Enforcement agencies argue otherwise because these are two separate crimes governed by two special laws. This problem is exacerbated by the fact that the prosecution and court, usually at the behest of national executive agencies as the Department of Foreign Affairs (DFA) and the Department of Justice (DOJ), release the fishing vessels and the fishing paraphernalia confiscated.

Another conflict area is in the custody of the seized fishery and coastal resources (eg. fish, corals, quarry materials), vehicle, vessel and other paraphernalia used in the commission of the environmental crime. Law enforcement personnel and environmental NGOs assert that these seized materials are used as evidence and therefore cannot be released. Unfortunately, there were cases where seized products, vessel and paraphernalia were released by either the executive agency, prosecutor's office or the court.

Still another problem faced by law enforcement agencies, including local communities who participate in enforcement, is the long, tedious court litigation and the harassment or SLAPP (strategic litigation against public participation) suits against them when they apprehend violators. Law enforcement personnel and affected communities believe that the impact on the violator and on the affected resource must be immediate to ensure justice to the environment and the community users. Other creative, expeditious forms of sanction such as administrative fines, seizure or impoundment of the paraphernalia used in the environmental crime, or rehabilitation of the destroyed area are therefore necessary.

Existing customs and traditions of indigenous peoples on conflict resolution and decision-making provide interesting insights on alternative enforcement mechanisms. However, some local government officials are threatened by such initiatives and have failed to appreciate the complementary value of indigenous systems in law enforcement.

A case in point is the community-based enforcement initiatives of the *Tagbanua* community in Barangay Malawig, Municipality of Coron, Northern Palawan. Having

[35] Paragraph 2, Section 87, RA 8550

heard and experienced the lackadaisical attitude of law enforcement agencies towards illegal activities, the community decided to initiate their own law enforcement activities to curb illegal fishing activities within their ancestral domain.

In several instances in 1999, members of Bantay Dagat/Kalikasan, a Special Task Force of the *Tagbanua* Foundation of Brgy. Malawig, Coron apprehended fishermen engaged in blast and cyanide fishing within the ancestral domain/waters claims of the *Tagbanua*. The members of the Bantay Dagat confiscated the fishing boat and all the fishing paraphernalia and turned over the items to the custody of the *Tagbanua* Foundation.

After these apprehensions, the *Tagbanua* community met to discuss their options. One option considered was to take all the seized items to town and turn them over to the police for their custody while preparing all the legal documents for the subsequent filing of case or cases against the illegal fishers. Another option was to try the case under the tribal justice system and impose traditional sanctions. This is perfectly legal under Sec. 15 of the Indigenous Peoples Rights Act (RA 8371). The tribal council agreed to meet and settle the case. However, in several instances, the local officials intervened and pressured the indigenous community to release the confiscated vessel and fishery paraphernalia. The interference of municipal officials suppressed the initiatives of the *Tagbanua* in guarding their ancestral territory.

Conflict Resolution/Management

Indigenous communities have, under IPRA law, the right to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices within their respective communities and as may be compatible with the national legal system and with internationally recognized human rights.[36] Under the Local Government Code, certain civil and criminal cases pass through the barangay conciliation system before they reach the court.

The experience of most indigenous communities in Palawan is that boundary disputes, taxation issues and encroachment of large commercial fishers into the municipal waters are brought to the LGU. Somehow, with some indigenous leaders occupying barangay positions, there is an interface of formal barangay structure and the non-formal indigenous management structure.

While government policy considers conflict resolution mechanisms of local communities in the formulation of coastal resource management plans, the general tendency is to have these conflicts brought before the LGU, the courts or administrative agencies such as the DENR. It would help community initiatives if the legal system would recognize the value of non-formal community management structures and utilize such mechanisms in the resolution of resource use conflicts in the coastal zone.

III. EMERGING INITIATIVES/ATTEMPTS: Palawan Experience

[36] Section 15, RA 8371

(1) Inter-Agency Agreements to Harmonize Overlapping Mandates

With regard to the jurisdictional conflict between PCSD and DENR, both institutions realized that any attempt to amend existing legislation creating them would entail a long and tedious process. Other remedies to resolve this seeming legal impasse were undertaken. The DENR, for instance, sought the legal opinion of the Department of Justice.

Guidance from the DOJ was complemented by a series of meetings and dialogue between top officials of concerned agencies. Ultimately, a Memorandum of Agreement (MOA) was entered into between the PCSD and DENR to systematize the process of policy implementation and management. Another MOA was prepared with respect to specific marine protected areas such as Tubbataha Reefs. Between the DA and the PCSD, a Memorandum of Agreement has yet to be prepared.

It is noteworthy that an action for declaratory relief was filed by the former mayor of the municipality of El Nido before Branch 50 of the Regional Trial Court of Palawan and Puerto Princesa sought to have the SEP law declared as the law of primary application in said municipality. The court, while recognizing the complementariness of the goals of the SEP and NIPAS laws, decided that the SEP law is the "law of primary application in the Municipality of El Nido, Palawan in its state as a protected area and that all other laws are, in so far as they are not inconsistent with SEP, merely suppletory" (page 11, DECISION, Civil Case No. 3100). It must be noted, however, that the Decision was appealed by the DENR.

On the matter of coastal/marine law enforcement, a Memorandum of Agreement was also entered into in 2001 between the PCSD, DENR, DA-BFAR, all law enforcement agencies such as the PNP-MARIG, PCG, NGOs and multisectoral law enforcement bodies and task forces. In this agreement, each agency identified its roles and responsibilities. However, due to lack of resources, the multisectoral planning has not been undertaken. The current arrangement is that certain bodies such as PCSD, DENR, PCG, PNP-MARIG, DA-BFAR and NGOs meet on specific coastal zone issues such as poaching, quarrying of sand and pebbles, illegal fishpond development, mangrove destruction and marine mammal rescue activities.

(2) Collaborative Undertakings between International, National and Local Institutions towards CRM and CBCRM

The Coastal Resource Management and Sustainable Tourism in Ulugan Bay, a pilot project of UNESCO, supported by UNDP, collaborated by the Government of Puerto Princesa City and implemented together with national scientific institutions and NGOs, is a good example of how partnership between various institutions can lead to a comprehensive approach to the management of a specific coastal area.

UNESCO implemented the two-year project under the umbrella of its Environment and Development in Coastal Regions and Small Islands Programme (CSI) which is devoted to

developing "wise practices" that achieve culturally appropriate, socially balanced and environmentally sound development in coastal regions and in small islands.

This project is part of a strategic effort to save one of the most ecologically diverse, yet threatened areas in the Philippines. Ulugan Bay accounts for 15% of the total mangroves in the Philippines and 50% of the mangroves in the province of Palawan[37].

The Ulugan Bay project adopted a bottom-up approach in developing a working empirical model for community-based coastal resource management. The model is anchored on a collective effort of the local government unit, national scientific institutions, NGOs and local communities. Various core activities were identified with each partner institution getting involved in every activity. The project started with four studies dealing with the ecology of the bay, traditional resource use and culture of the indigenous communities, socio-economic profile and tourism potential. This was followed by specific activities, namely, the implementation of sustainable fish farming, establishment of a fisheries database, the development of a masterplan for community-based sustainable tourism and the conduct of non-formal environmental education for youth and adults.

The Ulugan Bay project illustrates how partnerships between various institutions at all levels can lead to mobilization and sharing of resources as well as technical assistance. Among the key lessons gleaned from the project include the following:

(a) Gathering of high quality data and communicating the results to policy makers are crucial for the development of correct coastal zone management practice. For example, studies on traditional, indigenous knowledge and resource management systems provided project implementers with insights on the perspective of indigenous communities towards tourism. It also stressed the need to recognize the traditional management systems of indigenous communities within their ancestral domains.
(b) Enhancement of local community participation in coastal environment conservation, from the earliest stages of planning and management to actual implementation, and coupled with the use of traditional community knowledge ensures effective implementation.
(c) Adopting an interdisciplinary and inter-sectoral approach at all levels of planning and implementation results in cooperation and integrated management and reduces the social costs associated with overlapping jurisdictional and management issues.
(d) Local community participation in law enforcement is an essential tool to effective coastal area management.
(e) More efforts should be invested to stimulate the exchange of experiences from successful models of coastal resource management.

[37]See United Nations Educational, Scientific and Cultural Organization (UNESCO) Jakarta Office, Environment and Development in Coastal Regions and Small Islands (CSI), 2001. Coastal Resource Management, Ulugan Bay, Palawan Island, Philippines, Volume 1, Chapter 1, Ecology of Ulugan Bay, M.D. Fortes and S. Fazi, page 37.

The same partner institutions involved in the pilot project intend to continue the partnership through another integrated project which will focuse on zonation, enterprise development and additional institutional strengthening activities. While the proposal for the next phase is still being completed, UNESCO assisted its partner NGO, the Environmental Legal Assistance Center (ELAC) in securing support for its planned Community-based Coastal Resource Management Program (CBCRM) for Ulugan Bay. UNESCO likewise provided funds for capacity building of local community tour guides in the Puerto Princesa National Park and Heritage Site, refinement of their CBST plans and in the construction of the Ugong Rock Interpretive Center and View Deck.

ELAC's CBCRM project and UNESCO's continuing support for Community Based Sustainable Tourism activities are important steps towards strengthening the gains achieved during the UNESCO/UNDP/Puerto Princesa City Coastal Resource Management and Sustainable Tourism in Ulugan Bay, particularly, in the area of capacity building.

Through non-formal environmental education and training, community organizing, resource management planning, legal defense, provision of land tenure, and policy advocacy, the CBCRM program seeks to continue the capacity-building efforts undertaken during the UNESCO/UNDP/PPC Project in order to further equip the coastal communities in Ulugan Bay with the capacity to manage, protect, conserve and judiciously utilize their resources. The program also seeks to give tenurial security to the coastal and indigenous communities to their resource base.

Continuing education on environmental laws, and training on resource management planning, enterprise development and environmental law enforcement, will enable fisherfolks take an active role in formulating appropriate local plans and policies attuned to their needs. Enabling communities secure tenure over their land and resources will strengthen community's participation and interest in conserving resource-rich areas.

(3) Forging Partnerships between LGU, NGOs and Local Communities

In Palawan, some LGUs have forged partnerships with NGOs and local communities in formulating local ordinances and enforcing environmental laws. In the case of Puerto Princesa City, NGOs participated in the formulation of a city-wide fisheries ordinance in 1996 and helped facilitate community consultations to ensure that proposals from the community will be considered. Recent initiatives include the establishment of marine protected areas or sanctuaries and formulation of tourism guidelines.

In several instances, law enforcement agencies fail to assert their mandate when the violator is a powerful one. To bolster government's effort in law enforcement, some agencies like the DENR, BFAR and LGUs have deputized community members or private citizens. The deputized citizens will be mobilized in monitoring, patrolling and apprehension activities.

Existing policies support this initiative. The DENR has a program for the organization of Deputy Environment and Natural Resource Officers (DENROs)[38]. The BFAR has a continuing program for deputizing fish wardens. The new Philippine Fisheries Code provides for community-based councils such as the Fisheries and Aquatic Resources Management Councils (FARMCs) which is tasked to assist in law enforcement.

In a novel display of initiative in late 1999, with the support of ELAC, the former Puerto Princesa City Mayor deputized fisherfolk leaders and paralegals as volunteer community paralegals of the city government. As a result, local fisherfolks and indigenous communities in Puerto Princesa City have actively participated in monitoring violations of environmental laws such as illegal fishing, illegal logging, illegal quarrying and pollution.

The formation of community-based enforcement teams included the conduct of education and training on legal framework, remedies and legal procedures. Usually, the participation of government enforcement personnel in these trainings has enhanced the building of linkages and partnerships between government, NGOs and community members.

The new city administration continued this initiative by renewing the deputization of these community paralegals and supporting plans for the deputization of new paralegals from other barangays/villages.

Moreover, in partnership with barangay and some municipal officials, community members and NGOs are advocating for an ordinance that would ensure speedy justice and resolution of environmental cases. Taking off from the tribal justice concept of indigenous communities or taking the mold of the old tribal law, the ordinance can provide for the application of seizure and confiscation as an alternative enforcement mechanism. This will be applied in cases where the legal seizure, confiscation and appropriation of vehicle, vessel, equipment such as chainsaw, fishing gears and other paraphernalia will redound to the benefit of the community at large and reduce the incidence of environmental offenses. Such action should be pursued in conjunction with or in lieu of traditional litigation.

These initiatives are critical interventions in ensuring the effective enforcement of environmental laws by local governments, communities and NGOs.

IV. INSIGHTS/LESSONS

Our experience in Palawan has illustrated the importance of harmonizing multiple policies as well as initiatives of various institutions and stakeholders in the coastal zone in order to bring about a holistic, integrated coastal zone management.

[38] DENR Department Administrative Order No. 41, Series of 1991.

The Ulugan Bay project, for instance, has shown that despite the overlapping jurisdictions and management systems that deter integrated coastal management, partnerships and collaborative undertakings among various institutions in all levels can be established and developed. It is critical, however, that such partnerships recognize the important contributions of local, traditional knowledge and customary laws.

These experiences are significant and must continually be documented. The lessons and insights from these experiences eventually shape laws and policies on coastal zone management. As aptly stated by former US Supreme Court Justice Oliver Wendell Holmes, the life of the law is not logic but experience. Law is experience developed by reason and applied continually to further experience[39]. We should therefore explore various opportunities for sharing these experiences among common environments on a province-wide, regional or national scale.

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[39]Roscoe Pound, Dean Emeritus, Harvard Law School