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[G.R. No. 180771. April 21, 2015]

RESIDENT MARINE MAMMALS OF THE PROTECTED SEASCAPE TAÑON STRAIT, *e.g.*, TOOTHED WHALES, DOLPHINS, PORPOISES, AND OTHER CETACEAN SPECIES, Joined in and Represented herein by Human Beings Gloria Estenzo Ramos and Rose-Liza Eisma-Osorio, In Their Capacity as Legal Guardians of the Lesser Life-Forms and as Responsible Stewards of God's Creations, *petitioners, vs.* **SECRETARY ANGELO REYES, in his capacity as Secretary of the Department of Energy (DOE), SECRETARY JOSE L. ATIENZA, in his capacity as Secretary of the Department of Environment and Natural Resources (DENR), LEONARDO R. SIBBALUCA, DENR Regional Director-Region VII and in his capacity as Chairperson of the Tañon Strait Protected Seascape Management Board, Bureau of Fisheries and Aquatic Resources (BFAR), DIRECTOR MALCOLM J. SARMIENTO, JR., BFAR Regional Director for Region VII ANDRES M. BOJOS, JAPAN PETROLEUM EXPLORATION CO., LTD. (JAPEX), as represented by its Philippine Agent, SUPPLY OILFIELD SERVICES, INC.,** *respondents*.

[G.R. No. 181527. April 21, 2015]

CENTRAL VISAYAS FISHERFOLK DEVELOPMENT CENTER (FIDEC), CERILO D. ENGARCIAL, RAMON YANONG, FRANCISCO LABID, in their personal capacity and as representatives of the SUBSISTENCE FISHERFOLKS OF THE MUNICIPALITIES OF ALOGUINSAN AND PINAMUNGAJAN, CEBU, AND THEIR FAMILIES, AND THE PRESENT AND FUTURE GENERATIONS OF FILIPINOS WHOSE RIGHTS ARE SIMILARLY

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AFFECTED, *petitioners, vs.* **SECRETARY ANGELO REYES, in his capacity as Secretary of the Department of Energy (DOE), JOSE L. ATIENZA, in his capacity as Secretary of the Department of Environment and Natural Resources (DENR), LEONARDO R. SIBBALUCA, in his capacity as DENR Regional Director-Region VII and as Chairperson of the Tañon Strait Protected Seascape Management Board, ALAN ARRANGUEZ, in his capacity as Director - Environmental Management Bureau–Region VII, DOE Regional Director for Region VIII[1] ANTONIO LABIOS, JAPAN PETROLEUM EXPLORATION CO., LTD. (JAPEX), as represented by its Philippine Agent, SUPPLY OILFIELD SERVICES, INC.,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC; EXCEPTIONS TO THE "MOOT AND ACADEMIC PRINCIPLE", APPLIED IN CASE AT BAR.— [T]his Court makes clear that the "'moot and academic principle' is not a magical formula that can automatically dissuade the courts in resolving a case." Courts have decided cases otherwise moot and academic under the following exceptions: 1) There is a grave violation of the Constitution; 2) The exceptional character of the situation and the paramount public interest is involved; 3) The constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and 4) The case is capable of repetition yet evading review. In this case, despite the termination of SC-46, this Court deems it necessary to resolve these consolidated petitions as almost all of the foregoing exceptions are present in this case. Both petitioners allege that SC-46 is violative of the Constitution, the environmental and livelihood issues raised undoubtedly affect the public's interest, and the respondents' contested actions are capable of repetition.

2. ID.; RULES OF PROCEDURE FOR ENVIRONMENTAL CASES; APPLIED RETROACTIVELY SO AS TO GIVE

[1] Should be Region VII.

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PETITIONERS LEGAL STANDING TO FILE THE PETITION AS STEWARDS OF NATURE.— Although this petition was filed in 2007, years before the effectivity of the Rules of Procedure for Environmental Cases, it has been consistently held that rules of procedure "may be retroactively applied to actions pending and undetermined at the time of their passage and will not violate any right of a person who may feel that he is adversely affected, inasmuch as there is no vested rights in rules of procedure." x x x Moreover, even before the Rules of Procedure for Environmental Cases became effective, this Court had already taken a permissive position on the issue of *locus standi* in environmental cases. In *Oposa*, we allowed the suit to be brought in the name of generations yet unborn "based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned." Furthermore, we said that the right to a balanced and healthful ecology, a right that does not even need to be stated in our Constitution as it is assumed to exist from the inception of humankind, carries with it the correlative duty to refrain from impairing the environment. In light of the foregoing, the need to give the Resident Marine Mammals legal standing has been eliminated by our Rules, which allow any Filipino citizen, as a steward of nature, to bring a suit to enforce our environmental laws. It is worth noting here that the Stewards are joined as real parties in the Petition and not just in representation of the named cetacean species. The Stewards, Ramos and Eisma-Osorio, having shown in their petition that there may be possible violations of laws concerning the habitat of the Resident Marine Mammals, are therefore declared to possess the legal standing to file this petition.

3. ID.; CIVIL PROCEDURE; PARTIES; UNWILLING CO-PLAINTIFF MUST BE MADE A PARTY DEFENDANT TO THE CASE; THE FORMER PRESIDENT OF THE PHILIPPINES CANNOT BE IMPLEADED AS AN UNWILLING CO-PETITIONER IN THE CASE AT BAR.— Under x x x [Section 10, Rule 3 of the Rules of Court] when the consent of a party who should be joined as a plaintiff cannot be obtained, he or she may be made a party defendant to the case. This will put the unwilling party under the jurisdiction of the Court, which can properly implead him or her through its processes. The unwilling party's name cannot be simply

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included in a petition, without his or her knowledge and consent, as such would be a denial of due process. Moreover, the reason cited by the petitioners Stewards for including former President Macapagal-Arroyo in their petition, is not sufficient to implead her as an unwilling co-petitioner. Impleading the former President as an unwilling co-petitioner, for an act she made in the performance of the functions of her office, is contrary to the public policy against embroiling the President in suits, "to assure the exercise of Presidential duties and functions free from any hindrance or distraction, considering that being the Chief Executive of the Government is a job that, aside from requiring all of the office holder's time, also demands undivided attention." Therefore, former President Macapagal-Arroyo cannot be impleaded as one of the petitioners in this suit. Thus, her name is stricken off the title of this case.

4. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONALITY OF SERVICE CONTRACT NO. 46 (SC-46); THE OIL EXPLORATION AND DEVELOPMENT ACT OF 1972 (PRESIDENTIAL DECREE NO. 87) IS STILL THE GENERAL LAW UPON WHICH A SERVICE CONTRACT FOR PETROLEUM EXPLORATION AND EXTRACTION MAY BE AUTHORIZED.— The disposition, exploration, development, exploitation, and utilization of indigenous petroleum in the Philippines are governed by Presidential Decree No. 87 or the Oil Exploration and Development Act of 1972. This was enacted by then President Ferdinand Marcos to promote the discovery and production of indigenous petroleum through the utilization of government and/or local or foreign private resources to yield the maximum benefit to the Filipino people and the revenues to the Philippine Government. Contrary to the petitioners' argument, Presidential Decree No. 87, although enacted in 1972, before the adoption of the 1987 Constitution, remains to be a valid law unless otherwise repealed x x x If there were any intention to repeal Presidential Decree No. 87, it would have been done expressly by Congress. x x x This Court could not simply assume that while Presidential Decree No. 87 had not yet been expressly repealed, it had been impliedly repealed. As we held in *Villareña v. The Commission on Audit*, "[i]mplied repeals are not lightly presumed." It is a settled rule that when laws are in conflict with one another, every effort must be exerted to reconcile

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them. x x x Consequently, we find no merit in petitioners' contention that SC-46 is prohibited on the ground that there is no general law prescribing the standard or uniform terms, conditions, and requirements for service contracts involving oil exploration and extraction. But note must be made at this point that while Presidential Decree No. 87 may serve as the general law upon which a service contract for petroleum exploration and extraction may be authorized, as will be discussed below, the exploitation and utilization of this energy resource in the present case may be allowed only through a law passed by Congress, since the Tañon Strait is a NIPAS area.

5. ID.; ID.; ID.; ABSENCE OF PROOF THAT THE PRESIDENT WAS A SIGNATORY TO SC-46 AND THAT CONGRESS WAS NOTIFIED OF THE EXECUTION OF THE SAME RENDERS IT NULL AND VOID FOR BEING VIOLATIVE OF SECTION 2, ARTICLE XII OF THE 1987 CONSTITUTION; "ALTER EGO PRINCIPLE" DOES NOT APPLY IN CASE AT BAR.— As SC-46 was executed in 2004, its terms should have conformed not only to the provisions of Presidential Decree No. 87, but also to those of the 1987 Constitution. x x x Paragraph 4, Section 2, Article XII of the 1987 Constitution requires that the President himself enter into any service contract for the exploration of petroleum. SC-46 appeared to have been entered into and signed only by the DOE through its then Secretary, Vicente S. Perez, Jr., contrary to the said constitutional requirement. Moreover, public respondents have neither shown nor alleged that Congress was subsequently notified of the execution of such contract. Public respondents' implied argument that based on the "alter ego principle," their acts are also that of then President Macapagal-Arroyo's, cannot apply in this case. x x x While the requirements in executing service contracts in paragraph 4, Section 2 of Article XII of the 1987 Constitution seem like mere formalities, they, in reality, take on a much bigger role. As we have explained in *La Bugal*, they are the safeguards put in place by the framers of the Constitution to "eliminate or minimize the abuses prevalent during the martial law regime." Thus, they are not just mere formalities, which will only render a contract unenforceable but not void, if not complied with. They are requirements placed, not just in an ordinary statute,

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but in the fundamental law, the non-observance of which will nullify the contract. x x x As this Court has held in *La Bugal*, our Constitution requires that the President himself be the signatory of service agreements with foreign-owned corporations involving the exploration, development, and utilization of our minerals, petroleum, and other mineral oils. This power cannot be taken lightly. In this case, the public respondents have failed to show that the President had any participation in SC-46. Their argument that their acts are actually the acts of then President Macapagal-Arroyo, absent proof of her disapproval, must fail as the requirement that the President herself enter into these kinds of contracts is embodied not just in any ordinary statute, but in the Constitution itself.

6. **ID.; ID.; ID.; SC-46 ALSO VIOLATES OTHER LAWS; SINCE TAÑON STRAIT WAS DECLARED AS A PROTECTED SEASCAPE, SC-46 MUST COMPLY WITH THE PROCEDURE IN OBTAINING AN ENVIRONMENTAL COMPLIANCE CERTIFICATE (ECC) UNDER THE ENVIRONMENTAL IMPACT ASSESSMENT (EIA) SYSTEM BEFORE ANY ACTIVITY MAY BE DONE IN THE AREA; SUBSEQUENT COMPLIANCE CANNOT CURE THE VIOLATION.—** The Tañon Strait is a narrow passage of water bounded by the islands of Cebu in the East and Negros in the West. It harbors a rich biodiversity of marine life, including endangered species of dolphins and whales. For this reason, former President Fidel V. Ramos declared the Tañon Strait as a protected seascape in 1998 by virtue of Proclamation No. 1234 - *Declaring the Tañon Strait situated in the Provinces of Cebu, Negros Occidental and Negros Oriental as a Protected Area pursuant to the NIPAS Act and shall be known as Tañon Strait Protected Seascape*. x x x Under Section 4 of the NIPAS Act, a *protected area* refers to portions of land and water, set aside due to their unique physical and biological significance, managed to enhance biological diversity and protected against human exploitation. The Tañon Strait, pursuant to Proclamation No. 1234, was set aside and declared a protected area under the category of Protected Seascape. The NIPAS Act defines a Protected Seascape to be an area of national significance characterized by the harmonious interaction of man and land while providing opportunities for public enjoyment through recreation and tourism within the

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normal lifestyle and economic activity of this areas; thus a management plan for each area must be designed to protect and enhance the permanent preservation of its natural conditions. Consistent with this endeavor is the requirement that an Environmental Impact Assessment (EIA) be made prior to undertaking any activity outside the scope of the management plan. Unless an ECC under the EIA system is obtained, no activity inconsistent with the goals of the NIPAS Act shall be implemented. The Environmental Impact Statement System (EISS) was established in 1978 under Presidential Decree No. 1586. It prohibits any person, partnership or corporation from undertaking or operating any declared environmentally critical project or areas without first securing an ECC issued by the President or his duly authorized representative. Pursuant to the EISS, which called for the proper management of environmentally critical areas, Proclamation No. 2146 was enacted, identifying the areas and types of projects to be considered as environmentally critical and within the scope of the EISS, while DENR Administrative Order No. 2003-30 provided for its Implementing Rules and Regulations (IRR). x x x **Under Proclamation No. 2146, the Tañon Strait is an environmentally critical area, having been declared as a protected area in 1998; therefore, any activity outside the scope of its management plan may only be implemented pursuant to an ECC secured after undergoing an EIA to determine the effects of such activity on its ecological system.** x x x It is true that the restrictions found under the NIPAS Act are not without exceptions. However, **while an exploration done for the purpose of surveying for energy resources is allowed under Section 14 of the NIPAS Act, this does *not* mean that it is exempt from the requirement to undergo an EIA under Section 12**. x x x **Surveying for energy resources under Section 14 is not an exemption from complying with the EIA requirement in Section 12; instead, Section 14 provides for *additional* requisites before any exploration for energy resources may be done in protected areas.** x x x The public respondents themselves admitted that JAPEX only started to secure an ECC prior to the second sub-phase of SC-46, which required the drilling of an oil exploration well. This means that when the seismic surveys were done in the Tañon Strait, no such environmental impact evaluation was done. Unless seismic surveys are part of the management plan of

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the Tañon Strait, such surveys were done in violation of Section 12 of the NIPAS Act and Section 4 of Presidential Decree No. 1586 x x x. The respondents' subsequent compliance with the EISS for the second sub-phase of SC-46 cannot and will not cure this violation. The following penalties are provided for under Presidential Decree No. 1586 and the NIPAS Act.

7. ID.; ID.; ID.; NO ENERGY RESOURCE EXPLORATION AND UTILIZATION MAY BE DONE IN TAÑON STRAIT SINCE THERE IS NO LAW PASSED BY CONGRESS ALLOWING SUCH ACTIVITIES.— SC-46 was not executed for the mere purpose of gathering information on the possible energy resources in the Tañon Strait as it also provides for the parties' rights and obligations relating to extraction and petroleum production should oil in commercial quantities be found to exist in the area. **While Presidential Decree No. 87 may serve as the general law upon which a service contract for petroleum exploration and extraction may be authorized, the exploitation and utilization of this energy resource in the present case may be allowed only through a law passed by Congress, since the Tañon Strait is a NIPAS area. Since there is no such law specifically allowing oil exploration and/or extraction in the Tañon Strait, no energy resource exploitation and utilization may be done in said protected seascape.**

LEONEN, *J.*, *concurring opinion*:

1. REMEDIAL LAW; RULES OF PROCEDURE FOR ENVIRONMENTAL CASES; ANIMALS CANNOT BE PROPERLY REPRESENTED AS REAL PARTIES IN INTEREST; RESIDENT MARINE MAMMALS AND THE HUMAN PETITIONERS HAVE NO LEGAL STANDING TO FILE ANY KIND OF PETITION.— In our jurisdiction, persons and entities are recognized both in law and the Rules of Court as having standing to sue and, therefore, may be properly represented as real parties in interest. The same cannot be said about animals. Animals play an important role in households, communities, and the environment. While we, as humans, may feel the need to nurture and protect them, we cannot go as far as saying we represent their best interests and can, therefore, speak for them before the courts. As humans,

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we cannot be so arrogant as to argue that we know the suffering of animals and that we know what remedy they need in the face of an injury. x x x ***There is no valid reason in law or the practical requirements of this case to implead and feign representation on behalf of animals. To have done so betrays a very anthropocentric view of environmental advocacy. There is no way that we, humans, can claim to speak for animals let alone present that they would wish to use our court system, which is designed to ensure that humans seriously carry their responsibility including ensuring a viable ecology for themselves, which of course includes compassion for all living things.*** Our rules on standing are sufficient and need not be further relaxed. x x x. Extending the application of "real party in interest" to the Resident Marine Mammals, or animals in general, through a judicial pronouncement will potentially result in allowing petitions based on mere concern rather than an actual enforcement of a right. It is impossible for animals to tell humans what their concerns are. At best, humans can only surmise the extent of injury inflicted, if there be any. Petitions invoking a right and seeking legal redress before this court cannot be a product of guesswork, and representatives have the responsibility to ensure that they bring "reasonably cogent, rational, scientific, well-founded arguments" on behalf of those they represent. Creative approaches to fundamental problems should be welcome. However, they should be considered carefully so that no unintended or unwarranted consequences should follow. I concur with the approach of Madame Justice Teresita J. Leonardo-De Castro in her brilliant *ponencia* as it carefully narrows down the doctrine in terms of standing. Resident Marine Mammals and the human petitioners have no legal standing to file any kind of petition.

2. ID.; CIVIL PROCEDURE; PARTIES; NO PERSON MAY IMPLEAD ANOTHER AS CO-PETITIONER WITHOUT HIS OR HER CONSENT; THE FORMER PRESIDENT OF THE PHILIPPINES CANNOT BE IMPLEADED AS UNWILLING CO-PETITIONER.— In our jurisdiction, there is neither reason nor any legal basis for the concept of implied petitioners, most especially when the implied petitioner was a sitting President of the Republic of the Philippines. In G.R. No. 180771, apart from adjudicating unto themselves the status of "legal guardians" of whales, dolphins, porpoises, and other

cetacean species, human petitioners also impleaded Former President Gloria Macapagal-Arroyo as "unwilling co-petitioner" for "her express declaration and undertaking in the ASEAN Charter to protect Tañon Strait." No person may implead any other person as a co-plaintiff or co-petitioner without his or her consent. In our jurisdiction, only when there is a party that should have been a necessary party but was unwilling to join would there be an allegation as to why that party has been omitted. x x x A party who should have been a plaintiff or petitioner but whose consent cannot be obtained should be impleaded as a defendant in the nature of an unwilling co-plaintiff under Rule 3, Section 10 of the 1997 Rules of Civil Procedure: x x x The reason for this rule is plain: Indispensable party plaintiffs who should be part of the action but who do not consent should be put within the jurisdiction of the court through summons or other court processes. Petitioners should not take it upon themselves to simply implead any party who does not consent as a petitioner. This places the unwilling co-petitioner at the risk of being denied due process. Besides, Former President Gloria Macapagal-Arroyo cannot be a party to this suit. As a co-equal constitutional department, we cannot assume that the President needs to enforce policy directions by suing his or her alter-egos. The procedural situation caused by petitioners may have gained public attention, but its legal absurdity borders on the contemptuous. The Former President's name should be stricken out of the title of this case.

3. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONALITY OF SERVICE CONTRACT NO. 46 (SC-46); SC-46 IS UNCONSTITUTIONAL FOR THERE IS NO LAW PASSED BY CONGRESS ALLOWING EXPLOITATION AND UTILIZATION OF ENERGY RESOURCES IN TAÑON STRAIT.— The general law referred to as a possible basis for SC-46's validity is Presidential Decree No. 87 or the Oil Exploration and Development Act of 1972. It is my opinion that this law is unconstitutional in that it allows service contracts, contrary to Article XII, Section 2 of the 1987 Constitution: The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other

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mineral oils *according to the general terms and conditions provided by law*, based on real contributions to the economic growth and general welfare of the country. x x x The deletion of service contracts from the enumeration of the kind of agreements the President may enter into with foreign-owned corporations for exploration and utilization of resources means that service contracts are no longer allowed by the Constitution. Pursuant to Article XVIII, Section 3 of the 1987 Constitution, this inconsistency renders the law invalid and ineffective. SC-46 suffers from the lack of a special law allowing its activities. The Main Opinion emphasizes an important point, which is that SC-46 did not merely involve exploratory activities, but also provided the rights and obligations of the parties should it be discovered that there is oil in commercial quantities in the area. The Tañon Strait being a protected seascape under Presidential Decree No. 1234 requires that the exploitation and utilization of energy resources from that area are explicitly covered by a law passed by Congress specifically for that purpose, pursuant to Section 14 of Republic Act No. 7586 or the National Integrated Protected Areas System Act of 1992 x x x. No law was passed by Congress specifically providing the standards, terms, and conditions of an oil exploration, extraction, and/or utilization for Tañon Strait and, therefore, no such activities could have been validly undertaken under SC-46. The National Integrated Protected Areas System Act of 1992 is clear that exploitation and utilization of energy resources in a protected seascape such as Tañon Strait shall only be allowed through a specific law.

4. ID.; ID.; ID.; FAILURE TO SHOW COMPLIANCE WITH THE CONSTITUTIONAL REQUIREMENTS THAT FORMER PRESIDENT GLORIA MACAPAGAL-ARROYO WAS A SIGNATORY TO SC-46 AND THAT CONGRESS WAS SUBSEQUENTLY INFORMED OF THE EXECUTION OF THE SAME RENDERS SC-46 NULL AND VOID.— Former President Gloria Macapagal-Arroyo was not the signatory to SC-46, contrary to the requirement set by paragraph 4 of Article XII, Section 2 for service contracts involving the exploration of petroleum. SC-46 was entered into by then Department of Energy Secretary Vicente S. Perez, Jr., on behalf of the government. I agree with the Main Opinion that in cases where the Constitution or law requires the President

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to act personally on the matter, the duty cannot be delegated to another public official. *La Bugal* highlights the importance of the President's involvement, being one of the constitutional safeguards against abuse and corruption, as not mere formality: x x x Public respondents failed to show that Former President Gloria Macapagal-Arroyo was involved in the signing or execution of SC-46. The failure to comply with this constitutional requirement renders SC-46 null and void. x x x Public respondents also failed to show that Congress was subsequently informed of the execution and existence of SC-46. The reporting requirement is an equally important requisite to the validity of any service contract involving the exploration, development, and utilization of Philippine petroleum. Public respondents' failure to report to Congress about SC-46 effectively took away any opportunity for the legislative branch to scrutinize its terms and implemented absent all the requirements conditions. In sum, SC-46 was executed and provided under paragraph 4 of Article XII, Section 2. It is, therefore, null and void.

5. ID.; ID.; ID.; SC-46 IS ALSO NULL AND VOID FOR BEING VIOLATIVE OF NATIONAL INTEGRATED PROTECTED AREAS SYSTEM ACT OF 1992 (P.D. NO. 1234); IT FAILED TO SECURE THE ENVIRONMENTAL COMPLIANCE CERTIFICATE UNDER THE PHILIPPINE ENVIRONMENTAL IMPACT ASSESSMENT SYSTEM.— I am of the view that SC-46, aside from not having complied with the1987 Constitution, is also null and void for being violative of environmental laws protecting Tañon Strait. In particular, SC-46 was implemented despite falling short of the requirements of the National Integrated Protected Areas System Act of 1992. As a protected seascape under Presidential Decree No. 1234, Tañon Strait is covered by the National Integrated Protected Areas System Act of 1992. x x x Pursuant to this law, any proposed activity in Tañon Strait must undergo an Environmental Impact Assessment: x x x The same provision further requires that an Environmental Compliance Certificate be secured under the Philippine Environmental Impact Assessment System before any project is implemented: x x x Public respondents argue that SC-46 complied with the procedural requirements of obtaining an Environmental Compliance Certificate. At any rate, they assert that the activities covered by SC-46 fell under Section 14 of the National Integrated

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Protected Areas System Act of 1992, which they interpret to be an exception to Section 12. They argue that the Environmental Compliance Certificate is not a strict requirement for the validity of SC-46 since (a) the Tañon Strait is not a nature reserve or natural park; (b) the exploration was merely for gathering information; and (c) measures were in place to ensure that the exploration caused the least possible damage to the area. Section 14 *is not an exception* to Section 12, but instead provides additional requirements for cases involving Philippine energy resources. The National Integrated Protected Areas System Act of 1992 was enacted to recognize the importance of protecting the environment in light of resource exploitation, among others. Systems are put in place to secure for Filipinos local resources under the most favorable conditions. With the status of Tañon Strait as a protected seascape, the institution of additional legal safeguards is even more significant. Public respondents did not validly obtain an Environmental Compliance Certificate for SC-46. Based on the records, JAPEX commissioned an environmental impact evaluation only in the second sub-phase of its project, with the Environmental Management Bureau of Region VII granting the project an Environmental Compliance Certificate on March 6, 2007. Despite its scale, the seismic surveys from May 9 to 18, 2005 were conducted without any environmental assessment contrary to Section 12 of the National Integrated Protected Areas System Act of 1992.

APPEARANCES OF COUNSEL

Dante T. Ramos for petitioner in G.R. No. 181527.

Benjamin A. Cabrido, Jr. for petitioners in G.R. No. 180771.

Jose A. Ramos, Jr. & Anna Asuncion Angeles-Patajo for JAPEX Phils. Ltd.

Henry D. Castro for Supply Oilfield Services, Inc.

Noel C. Empleo for Leonardo Sibbaluca & Alan C. Arranguez.

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Ben Julius S. Gagni for Department of Energy Visayas Field Office.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before Us are two consolidated Petitions filed under Rule 65 of the 1997 Rules of Court, concerning **Service Contract No. 46 (SC-46)**, which allowed the exploration, development, and exploitation of petroleum resources within Tañon Strait, a narrow passage of water situated between the islands of Negros and Cebu.[2]

The Petition docketed as **G.R. No. 180771** is an original Petition for *Certiorari*, *Mandamus*, and Injunction, which seeks to enjoin respondents from implementing SC-46 and to have it nullified for willful and gross violation of the 1987 Constitution and certain international and municipal laws.[3]

Likewise, the Petition docketed as **G.R. No. 181527** is an original Petition for *Certiorari*, Prohibition, and *Mandamus*, which seeks to nullify the Environmental Compliance Certificate (ECC) issued by the Environmental Management Bureau (EMB) of the Department of Environment and Natural Resources (DENR), Region VII in connection with SC-46; to prohibit respondents from implementing SC-46; and to compel public respondents to provide petitioners access to the pertinent documents involving the Tañon Strait Oil Exploration Project.[4]

ANTECEDENT FACTS AND PROCEEDINGS

Petitioners in G.R. No. 180771, collectively referred to as the "Resident Marine Mammals" in the petition, are the toothed whales, dolphins, porpoises, and other cetacean species, which

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[2] *Rollo* (G.R. No. 181527), Vol. I, p. 6.

[3] *Rollo* (G.R. No. 180771), Vol. I, pp. 10-11.

[4] *Rollo* (G.R. No. 181527), Vol. I, pp. 13-15.

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inhabit the waters in and around the Tañon Strait. They are joined by Gloria Estenzo Ramos (Ramos) and Rose-Liza Eisma-Osorio (Eisma-Osorio) as their legal guardians and as friends (to be collectively known as "the Stewards") who allegedly empathize with, and seek the protection of, the aforementioned marine species. Also impleaded as an unwilling co-petitioner is former President Gloria Macapagal-Arroyo, for her express declaration and undertaking in the ASEAN Charter to protect the Tañon Strait, among others.[5]

Petitioners in G.R. No. 181527 are the Central Visayas Fisherfolk Development Center (FIDEC), a non-stock, non-profit, non-governmental organization, established for the welfare of the marginal fisherfolk in Region VII; and Cerilo D. Engarcial (Engarcial), Ramon Yanong (Yanong) and Francisco Labid (Labid), in their personal capacities and as representatives of the subsistence fisherfolk of the municipalities of Aloguinsan and Pinamungajan, Cebu.

Named as respondents in both petitions are the late Angelo T. Reyes, as then Secretary of the Department of Energy (DOE); Jose L. Atienza, as then Secretary of the DENR; Leonardo R. Sibbaluca, as then DENR-Regional Director for Region VII and Chairman of the Tañon Strait Protected Seascape Management Board; Japan Petroleum Exploration Co., Ltd. (JAPEX), a company organized and existing under the laws of Japan with a Philippine branch office; and Supply Oilfield Services, Inc. (SOS), as the alleged Philippine agent of JAPEX.

In G.R. No. 181527, the following were impleaded as additional public respondents: Alan C. Arranguez (Arranguez) and Antonio Labios (Labios), in their capacities as then Director of the EMB, Region VII and then Regional Director of the DOE, Region VII, respectively.[6]

On June 13, 2002, the Government of the Philippines, acting through the DOE, entered into a Geophysical Survey and

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[5] *Rollo* (G.R. No. 180771), Vol. I, p. 8.

[6] *Rollo* (G.R. No. 181527), Vol. I, p. 12.

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Exploration Contract-102 (GSEC-102) with JAPEX. This contract involved geological and geophysical studies of the Tañon Strait. The studies included surface geology, sample analysis, and reprocessing of seismic and magnetic data. JAPEX, assisted by DOE, also conducted geophysical and satellite surveys, as well as oil and gas sampling in Tañon Strait.[7]

On December 21, 2004, DOE and JAPEX formally converted GSEC-102 into SC-46 for the exploration, development, and production of petroleum resources in a block covering approximately 2,850 square kilometers offshore the Tañon Strait.[8]

From May 9 to 18, 2005, JAPEX conducted seismic surveys in and around the Tañon Strait. A multi-channel sub-bottom profiling covering approximately 751 kilometers was also done to determine the area's underwater composition.[9]

JAPEX committed to drill one exploration well during the second sub-phase of the project. Since the well was to be drilled in the marine waters of Aloguinsan and Pinamungajan, where the Tañon Strait was declared a protected seascape in 1988,[10] JAPEX agreed to comply with the Environmental Impact Assessment requirements pursuant to Presidential Decree No. 1586, entitled "Establishing An Environmental Impact Statement System, Including Other Environmental Management Related Measures And For Other Purposes."[11]

On January 31, 2007, the Protected Area Management Board[12] of the Tañon Strait (PAMB-Tañon Strait) issued Resolution

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[7] *Id*. at 54.

[8] *Id*. at 16.

[9] *Rollo* (G.R. No. 180771), Vol. I, p. 75.

[10] Presidential Proclamation No. 1234.

[11] *Rollo* (G.R. No. 181527), Vol. I, p. 55.

[12] Created under Section 11 of Republic Act No. 7586, otherwise known as National Integrated Protected Areas System Act of 1992, which provides:

SECTION 11. *Protected Area Management Board*. - A Protected Area Management Board for each of the established protected area shall be created and shall be composed of the following: The Regional Executive

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No. 2007-001,[13] wherein it adopted the Initial Environmental Examination (IEE) commissioned by JAPEX, and favorably recommended the approval of JAPEX's application for an ECC.

On March 6, 2007, the EMB of DENR Region VII granted an ECC to the DOE and JAPEX for the offshore oil and gas exploration project in Tañon Strait.[14] Months later, on November 16, 2007, JAPEX began to drill an exploratory well, with a depth of 3,150 meters, near Pinamungajan town in the western Cebu Province.[15] This drilling lasted until February 8, 2008.[16]

It was in view of the foregoing state of affairs that petitioners applied to this Court for redress, *via* two separate original petitions both dated December 17, 2007, wherein they commonly seek that respondents be enjoined from implementing SC-46 for, among others, violation of the 1987 Constitution.

On March 31, 2008, SOS filed a Motion to Strike[17] its name as a respondent on the ground that it is not the Philippine agent of JAPEX. In support of its motion, it submitted the branch office application of JAPEX,[18] wherein the latter's resident agent was clearly identified. SOS claimed that it had acted as a mere logistics contractor for JAPEX in its oil and gas exploration activities in the Philippines.

Director under whose jurisdiction the protected area is located; one (1) representative from the autonomous regional government, if applicable; the Provincial Development Officer; one (1) representative from the municipal government; one (1) representative from each barangay covering the protected area; one (1) representative from each tribal community, if applicable; and at least three (3) representatives from non-government organizations/ local community organizations, and if necessary, one (1) representative from other departments or national government agencies involved in protected area management.

[13] *Rollo* (G.R. No. 181527), Vol. I, pp. 58-59.

[14] *Id*. at 55-56.

[15] *Rollo* (G.R. No. 180771), Vol. I, p. 14.

[16] *Id*. at 75.

[17] *Id*. at 62-66.

[18] *Id*. at 69.

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Petitioners Resident Marine Mammals and Stewards opposed SOS's motion on the ground that it was premature, it was pro-forma, and it was patently dilatory. They claimed that SOS admitted that "it is in law a (*sic*) privy to JAPEX" since it did the drilling and other exploration activities in Tañon Strait under the instructions of its principal, JAPEX. They argued that it would be premature to drop SOS as a party as JAPEX had not yet been joined in the case; and that it was "convenient" for SOS to ask the Court to simply drop its name from the parties when what it should have done was to either notify or ask JAPEX to join it in its motion to enable proper substitution. At this juncture, petitioners Resident Marine Mammals and Stewards also asked the Court to implead JAPEX Philippines as a co-respondent or as a substitute for its parent company, JAPEX.[19]

On April 8, 2008, the Court resolved to consolidate G.R. No. 180771 and G.R. No. 181527.

On May 26, 2008, the FIDEC manifested[20] that they were adopting *in toto* the Opposition to Strike with Motion to Implead filed by petitioners Resident Marine Mammals and Stewards in G.R. No. 180771.

On June 19, 2008, public respondents filed their Manifestation[21] that they were not objecting to SOS's Motion to Strike as it was not JAPEX's resident agent. JAPEX during all this time, did not file any comment at all.

Thus, on February 7, 2012, this Court, in an effort to ensure that all the parties were given ample chance and opportunity to answer the issues herein, issued a Resolution directing the Court's process servicing unit to again serve the parties with a copy of the September 23, 2008 Resolution of the Court, which gave due course to the petitions in G.R. Nos. 180771 and 181527, and which required the parties to submit their respective memoranda. The February 7, 2012 Resolution[22] reads as follows:

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[19] *Id*. at 96-100.

[20] *Rollo* (G.R. No. 181527), Vol. I, pp. 149-151.

[21] *Rollo* (G.R. No. 180771), Vol. I, pp. 135-137.

[22] *Id*. at 277a-277b.

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G.R. No. 180771 (Resident Marine Mammals of the Protected Seascape Tañon Strait, *e.g.,* Toothed Whales, Dolphins, Porpoises and Other Cetacean Species, et al. *vs*. Hon. Angelo Reyes, in his capacity as Secretary of the Department of Energy, et al.) and **G.R. No. 181527** (Central Visayas Fisherfolk Development Center, et al. *vs.* Hon. Angelo Reyes, et al.). – The Court Resolved to direct the Process Servicing Unit to **RE-SEND** the resolution dated September 23, 2008 to the following parties and counsel, together with this resolution:

Atty. Aristeo O. Cariño Counsel for Respondent Supply Oilfield Services, Inc.	20th Floor Pearlbank Centre146 Valero StreetSalcedo Village, Makati City
JAPEX Philippines Ltd.	20th Floor Pearlbank Centre 146 Valero Street Salcedo Village, Makati City
JAPEX Philippines Ltd. c/o Atty. Maria Farah Z.G. Nicolas-Suchianco	19th Floor Pearlbank Centre 146 Valero Street, Salcedo Village, Makati City
Atty. Maria Farah Z.G. Nicolas-Suchianco Resident Agent of JAPEX Philippines Ltd.	Suite 2404 Discovery Centre 25 ADB Avenue Ortigas Center, Pasig City

This Resolution was personally served to the above parties, at the above addresses on February 23, 2012. On March 20, 2012, JAPEX Philippines, Ltd. (JAPEX PH), by way of special appearance, filed a Motion to Admit[23] its Motion for Clarification,[24] wherein JAPEX PH requested to be clarified as to whether or not it should deem the February 7, 2012 Resolution as this Court's Order of its inclusion in the case, as it has not been impleaded. It also alleged that JAPEX PH had already stopped exploration activities in the Tañon Strait way back in 2008, rendering this case moot.

On March 22, 2012, JAPEX PH, also by special appearance, filed a Motion for Extension of Time[25] to file its Memorandum.

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[23] *Id*. at 278-281.

[24] *Id*. at 282-288.

[25] *Id*. at 289-293.

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It stated that since it received the February 7, 2012 Resolution on February 23, 2012, it had until March 22, 2012 to file its Memorandum. JAPEX PH then asked for an additional thirty days, supposedly to give this Court some time to consider its Motion for Clarification.

On April 24, 2012, this Court issued a Resolution[26] granting JAPEX PH's Motion to Admit its Motion for Clarification. This Court, addressing JAPEX PH's Motion for Clarification, held:

> With regard to its Motion for Clarification (By Special Appearance) dated March 19, 2012, this Court considers JAPEX Philippines, Ltd. as a real party-in-interest in these cases. Under Section 2, Rule 3 of the 1997 Rules of Court, a real party-in-interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Contrary to JAPEX Philippines, Ltd.'s allegation that it is a completely distinct corporation, which should not be confused with JAPEX Company, Ltd., JAPEX Philippines, Ltd. is a mere branch office, established by JAPEX Company, Ltd. for the purpose of carrying out the latter's business transactions here in the Philippines. Thus, JAPEX Philippines, Ltd., has no separate personality from its mother foreign corporation, the party impleaded in this case.
>
> Moreover, Section 128 of the Corporation Code provides for the responsibilities and duties of a resident agent of a foreign corporation:
>
> > SECTION 128. *Resident agent; service of process.* — The Securities and Exchange Commission shall require as a condition precedent to the issuance of the license to transact business in the Philippines by any foreign corporation that such corporation file with the Securities and Exchange Commission a written power of attorney designating some person who must be a resident of the Philippines, on whom any summons and other legal processes may be served in all actions or other legal proceedings against such corporation, and consenting that service upon such resident agent shall be admitted and held as valid as if served upon the duly authorized officers of the foreign corporation at its home office. Any such foreign corporation shall likewise execute and file with the

[26] *Id*. at 305-308.

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Securities and Exchange Commission an agreement or stipulation, executed by the proper authorities of said corporation, in form and substance as follows:

"The (name of foreign corporation) does hereby stipulate and agree, in consideration of its being granted by the Securities and Exchange Commission a license to transact business in the Philippines, that if at any time said corporation shall cease to transact business in the Philippines, or shall be without any resident agent in the Philippines on whom any summons or other legal processes may be served, then in any action or proceeding arising out of any business or transaction which occurred in the Philippines, service of any summons or other legal process may be made upon the Securities and Exchange Commission and that such service shall have the same force and effect as if made upon the duly-authorized officers of the corporation at its home office."

Whenever such service of summons or other process shall be made upon the Securities and Exchange Commission, the Commission shall, within ten (10) days thereafter, transmit by mail a copy of such summons or other legal process to the corporation at its home or principal office. The sending of such copy by the Commission shall be a necessary part of and shall complete such service. All expenses incurred by the Commission for such service shall be paid in advance by the party at whose instance the service is made.

In case of a change of address of the resident agent, it shall be his or its duty to immediately notify in writing the Securities and Exchange Commission of the new address.

It is clear from the foregoing provision that the function of a resident agent is to receive summons or legal processes that may be served in all actions or other legal proceedings against the foreign corporation. These cases have been prosecuted in the name of JAPEX Company, Ltd., and JAPEX Philippines Ltd., as its branch office and resident agent, had been receiving the various resolutions from this Court, as evidenced by Registry Return Cards signed by its representatives.

And in the interest of justice, this Court resolved to grant JAPEX PH's motion for extension of time to file its memorandum,

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and was given until April 21, 2012, as prayed for, within which to comply with the submission.[27]

Without filing its Memorandum, JAPEX PH, on May 14, 2012, filed a motion, asking this Court for an additional thirty days to file its Memorandum, to be counted from May 8, 2012. It justified its request by claiming that this Court's April 24, 2012 Resolution was issued past its requested deadline for filing, which was on April 21, 2012.[28]

On June 19, 2012, this Court denied JAPEX PH's second request for additional time to file its Memorandum and dispensed with such filing.

Since petitioners had already filed their respective memoranda,[29] and public respondents had earlier filed a Manifestation[30] that they were adopting their Comment dated March 31, 2008 as their memorandum, this Court submitted the case for decision.

Petitioners' Allegations

Protesting the adverse ecological impact of JAPEX's oil exploration activities in the Tañon Strait, petitioners Resident Marine Mammals and Stewards aver that a study made after the seismic survey showed that the fish catch was reduced drastically by 50 to 70 percent. They claim that before the seismic survey, the average harvest per day would be from 15 to 20 kilos; but after the activity, the fisherfolk could only catch an average of 1 to 2 kilos a day. They attribute this "reduced fish catch" to the destruction of the "*payao*," also known as the "fish aggregating device" or "artificial reef."[31] Petitioners Resident Marine Mammals and Stewards also impute the incidences of

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[27] *Id*. at 307.

[28] *Id*. at 311.

[29] *Id*. at 149-268, and *Rollo* (G.R. No. 181527), Vol. I, pp. 235-304.

[30] *Id*. at 140-142.

[31] *Id*. at 12.

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"fish kill"[32] observed by some of the local fisherfolk to the seismic survey. And they further allege that the ECC obtained by private respondent JAPEX is invalid because public consultations and discussions with the affected stakeholders, a pre-requisite to the issuance of the ECC, were not held prior to the ECC's issuance.

In its separate petition, petitioner FIDEC confirms petitioners Resident Marine Mammals and Stewards' allegations of reduced fish catch and lack of public consultations or discussions with the fisherfolk and other stakeholders prior to the issuance of the ECC. Moreover, it alleges that during the seismic surveys and drilling, it was barred from entering and fishing within a 7-kilometer radius from the point where the oilrig was located, an area greater than the 1.5-kilometer radius "exclusion zone" stated in the IEE.[33] It also agrees in the allegation that public respondents DENR and EMB abused their discretion when they issued an ECC to public respondent DOE and private respondent JAPEX without ensuring the strict compliance with the procedural and substantive requirements under the Environmental Impact Assessment system, the Fisheries Code, and their implementing rules and regulations.[34] It further claims that despite several requests for copies of all the documents pertaining to the project in Tañon Strait, only copies of the PAMB-Tañon Strait Resolution and the ECC were given to the fisherfolk.[35]

Public Respondents' Counter-Allegations

Public respondents, through the Solicitor General, contend that petitioners Resident Marine Mammals and Stewards have no legal standing to file the present petition; that SC-46 does not violate the 1987 Constitution and the various laws cited in the petitions; that the ECC was issued in accordance with existing laws and regulations; that public respondents may not be

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[32] *Id*. at 13.

[33] *Rollo* (G.R. No. 181527), Vol. I, pp. 16-19.

[34] *Id*. at 34-40.

[35] *Id*. at 24.

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compelled by *mandamus* to furnish petitioners copies of all documents relating to SC-46; and that all the petitioners failed to show that they are entitled to injunctive relief. They further contend that the issues raised in these petitions have been rendered moot and academic by the fact that SC-46 had been mutually terminated by the parties thereto effective June 21, 2008.[36]

ISSUES

The following are the issues posited by petitioners Resident Marine Mammals and Stewards in G.R. No. 180771:

I. WHETHER OR NOT PETITIONERS HAVE *LOCUS STANDI* TO FILE THE INSTANT PETITION;

II. WHETHER OR NOT SERVICE CONTRACT NO. 46 IS VIOLAT[IVE] OF THE 1987 PHILIPPINE CONSTITUTION AND STATUTES;

III. WHETHER OR NOT THE ON-GOING EXPLORATION AND PROPOSED EXPLOITATION FOR OIL AND NATURAL GAS AT, AROUND, AND UNDERNEATH THE MARINE WATERS OF THE TAÑON STRAIT PROTECTED SEASCAPE IS INCONSISTENT WITH THE PHILIPPINE COMMITMENTS TO INTERNATIONAL ENVIRONMENTAL LAWS AND INSTRUMENTS; AND

IV. WHETHER OR NOT THE ISSUANCE OF THE ENVIRONMENTAL COMPLIANCE CERTIFICATE (ECC) IN ENVIRONMENTALLY CRITICAL AREAS AND HABITATS OF MARINE WILDLIFE AND ENDANGERED SPECIES IS LEGAL AND PROPER.[37]

Meanwhile, in G.R. No. 181527, petitioner FIDEC presented the following issues for our consideration:

I. WHETHER OR NOT SERVICE CONTRACT NO. 46 EXECUTED BETWEEN RESPONDENTS DOE AND JAPEX SHOULD BE NULLIFIED AND SET ASIDE FOR BEING IN DIRECT VIOLATION OF SPECIFIC

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[36] *Rollo* (G.R. No. 180771), Vol. II, pp. 945-946.

[37] *Id.*, Vol. I, p. 14.

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PROVISIONS OF THE 1987 PHILIPPINE CONSTITUTION AND APPLICABLE LAWS;

II. WHETHER OR NOT THE OFF-SHORE OIL EXPLORAT[I]ON CONTEMPLATED UNDER SERVICE CONTRACT NO. 46 IS LEGALLY PERMISSIBLE WITHOUT A LAW BEING DULY PASSED EXPRESSLY FOR THE PURPOSE;

III. WHETHER OR NOT THE OIL EXPLORATION BEING CONDUCTED WITHIN THE TAÑON STRAIT PROTECTED SEASCAPE VIOLATES THE RIGHTS AND LEGAL PROTECTION GRANTED TO PETITIONERS UNDER THE CONSTITUTION AND APPLICABLE LAWS.

IV. WHETHER OR NOT THE ISSUANCE OF THE ENVIRONMENTAL COMPLIANCE CERTIFICATE (ECC) FOR SUCH AN ENVIRONMENTALLY CRITICAL PROJECT INSIDE AN ENVIRONMENTALLY CRITICAL AREA SUCH AS THE TAÑON STRAIT PROTECTED SEASCAPE CONFORMED TO LAW AND EXISTING RULES AND REGULATIONS ON THE MATTER.

V. WHETHER OR NOT THE RESPONDENTS MAY BE COMPELLED BY MANDAMUS TO FURNISH PETITIONERS WITH COPIES OF THE DOCUMENTS PERTAINING TO THE TAÑON STRAIT OIL EXPLORATION PROJECT.[38]

In these consolidated petitions, this Court has determined that the various issues raised by the petitioners may be condensed into two primary issues:

I. Procedural Issue: *Locus Standi* of the Resident Marine Mammals and Stewards, petitioners in G.R. No. 180771; and

II. Main Issue: Legality of Service Contract No. 46.

DISCUSSION

At the outset, this Court makes clear that the "'moot and academic principle' is not a magical formula that can

[38] *Rollo* (G.R. No. 181527), Vol. I, pp. 25-26.

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automatically dissuade the courts in resolving a case." Courts have decided cases otherwise moot and academic under the following exceptions:

1) There is a grave violation of the Constitution;
2) The exceptional character of the situation and the paramount public interest is involved;
3) The constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and
4) The case is capable of repetition yet evading review.[39]

In this case, despite the termination of SC-46, this Court deems it necessary to resolve these consolidated petitions as almost all of the foregoing exceptions are present in this case. Both petitioners allege that SC-46 is violative of the Constitution, the environmental and livelihood issues raised undoubtedly affect the public's interest, and the respondents' contested actions are capable of repetition.

Procedural Issues

Locus Standi of Petitioners Resident Marine Mammals and Stewards

The Resident Marine Mammals, through the Stewards, "claim" that they have the legal standing to file this action since they stand to be benefited or injured by the judgment in this suit.[40] Citing *Oposa v. Factoran, Jr.*,[41] they also assert their right to sue for the faithful performance of international and municipal environmental laws created in their favor and for their benefit. In this regard, they propound that they have the right to demand that they be accorded the benefits granted to them in multilateral

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[39] *David v. Macapagal-Arroyo*, 522 Phil. 705, 754 (2006).

[40] *Rollo* (G.R. No. 180771), Vol. I, p. 15.

[41] G.R. No. 101083, July 30, 1993, 224 SCRA 792.

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international instruments that the Philippine Government had signed, under the concept of stipulation *pour autrui*.[42]

For their part, the Stewards contend that there should be no question of their right to represent the Resident Marine Mammals as they have stakes in the case as forerunners of a campaign to build awareness among the affected residents of Tañon Strait and as stewards of the environment since the primary steward, the Government, had failed in its duty to protect the environment pursuant to the public trust doctrine.[43]

Petitioners Resident Marine Mammals and Stewards also aver that this Court may lower the benchmark in *locus standi* as an exercise of epistolary jurisdiction.[44]

In opposition, public respondents argue that the Resident Marine Mammals have no standing because Section 1, Rule 3 of the Rules of Court requires parties to an action to be either natural or juridical persons, *viz.*:

> Section 1. *Who may be parties; plaintiff and defendant*. – Only natural or juridical persons, or entities authorized by law may be parties in a civil action. The term "plaintiff" may refer to the claiming party, the counter-claimant, the cross-claimant, or the third (fourth, etc.)-party plaintiff. The term "defendant" may refer to the original defending party, the defendant in a counterclaim, the cross-defendant, or the third (fourth, etc.)-party defendant.

The public respondents also contest the applicability of *Oposa*, pointing out that the petitioners therein were all natural persons, albeit some of them were still unborn.[45]

As regards the Stewards, the public respondents likewise challenge their claim of legal standing on the ground that they are representing animals, which cannot be parties to an action. Moreover, the public respondents argue that the Stewards are

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[42] *Rollo* (G.R. No. 180771), Vol. I, pp. 15-16.

[43] *Id*. at 123.

[44] *Id*. at 196.

[45] *Id*. at 78.

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not the real parties-in-interest for their failure to show how they stand to be benefited or injured by the decision in this case.[46]

Invoking the alter ego principle in political law, the public respondents claim that absent any proof that former President Arroyo had disapproved of their acts in entering into and implementing SC-46, such acts remain to be her own.[47]

The public respondents contend that since petitioners Resident Marine Mammals and Stewards' petition was not brought in the name of a real party-in-interest, it should be dismissed for failure to state a cause of action.[48]

The issue of whether or not animals or even inanimate objects should be given legal standing in actions before courts of law is not new in the field of animal rights and environmental law. Petitioners Resident Marine Mammals and Stewards cited the 1972 United States case *Sierra Club v. Rogers C.B. Morton*,[49] wherein Justice William O. Douglas, dissenting to the conventional thought on legal standing, opined:

> The critical question of "standing" would be simplified and also put neatly in focus if we fashioned a federal rule that allowed environmental issues to be litigated before federal agencies or federal courts in the name of the inanimate object about to be despoiled, defaced, or invaded by roads and bulldozers and where injury is the subject of public outrage. x x x.
>
> Inanimate objects are sometimes parties in litigation. A ship has a legal personality, a fiction found useful for maritime purposes. The corporation sole - a creature of ecclesiastical law - is an acceptable adversary and large fortunes ride on its cases. The ordinary corporation is a "person" for purposes of the adjudicatory processes, whether it represents proprietary, spiritual, aesthetic, or charitable causes.

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[46] *Id*. at 79.

[47] *Id*. at 80.

[48] *Id*. at 81.

[49] 405 U.S. 727, 92 S.Ct 1361, 31 L.Ed.2d 636.

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So it should be as respects valleys, alpine meadows, rivers, lakes, estuaries, beaches, ridges, groves of trees, swampland, or even air that feels the destructive pressures of modern technology and modern life. The river, for example, is the living symbol of all the life it sustains or nourishes—fish, aquatic insects, water ouzels, otter, fisher, deer, elk, bear, and all other animals, including man, who are dependent on it or who enjoy it for its sight, its sound, or its life. The river as plaintiff speaks for the ecological unit of life that is part of it. Those people who have a meaningful relation to that body of water—whether it be a fisherman, a canoeist, a zoologist, or a logger—must be able to speak for the values which the river represents and which are threatened with destruction.[50] (Citations omitted.)

The primary reason animal rights advocates and environmentalists seek to give animals and inanimate objects standing is due to the need to comply with the strict requirements in bringing a suit to court. Our own 1997 Rules of Court demand that parties to a suit be either natural or juridical persons, or entities authorized by law. It further necessitates the action to be brought in the name of the real party-in-interest, even if filed by a representative, *viz.*:

Rule 3
Parties to Civil Actions

Section 1. *Who may be parties; plaintiff and defendant*. – Only natural or juridical persons, or entities authorized by law may be parties in a civil action. The term "plaintiff" may refer to the claiming party, the counter-claimant, the cross-claimant, or the third (fourth, etc.)-party plaintiff. The term "defendant" may refer to the original defending party, the defendant in a counterclaim, the cross-defendant, or the third (fourth, etc.)-party defendant.

Sec. 2. *Parties in interest*. – A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

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[50] *Id*. at 647.

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Sec. 3. *Representatives as parties*. – Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal.

It had been suggested by animal rights advocates and environmentalists that not only natural and juridical persons should be given legal standing because of the difficulty for persons, who cannot show that they by themselves are real parties-in-interests, to bring actions in representation of these animals or inanimate objects. For this reason, many environmental cases have been dismissed for failure of the petitioner to show that he/she would be directly injured or affected by the outcome of the case. However, in our jurisdiction, *locus standi* in environmental cases has been given a more liberalized approach. While developments in Philippine legal theory and jurisprudence have not progressed as far as Justice Douglas's paradigm of legal standing for inanimate objects, the current trend moves towards simplification of procedures and facilitating court access in environmental cases.

Recently, the Court passed the landmark **Rules of Procedure for Environmental Cases**,[51] which allow for a "citizen suit," and permit any Filipino citizen to file an action before our courts for violations of our environmental laws:

SEC. 5. *Citizen suit.* – **Any Filipino citizen in representation of others, including minors or generations yet unborn, may file an action to enforce rights or obligations under environmental laws.** Upon the filing of a citizen suit, the court shall issue an order which shall contain a brief description of the cause of action and the reliefs prayed for, requiring all interested parties to manifest their interest to intervene in the case within fifteen (15) days from notice thereof. The plaintiff may publish the order once in a newspaper

[51] A.M. No. 09-6-8-SC, effective April 29, 2010.

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of a general circulation in the Philippines or furnish all affected barangays copies of said order.

Citizen suits filed under R.A. No. 8749 and R.A. No. 9003 shall be governed by their respective provisions.[52] (Emphasis ours.)

Explaining the rationale for this rule, the Court, in the Annotations to the Rules of Procedure for Environmental Cases, commented:

Citizen suit. To further encourage the protection of the environment, the Rules enable litigants enforcing environmental rights to file their cases as citizen suits. This provision liberalizes standing for all cases filed enforcing environmental laws and collapses the traditional rule on personal and direct interest, **on the principle that humans are stewards of nature.** The terminology of the text reflects the doctrine first enunciated in *Oposa v. Factoran*, insofar as it refers to minors and generations yet unborn.[53] (Emphasis supplied, citation omitted.)

Although this petition was filed in 2007, years before the effectivity of the Rules of Procedure for Environmental Cases, it has been consistently held that rules of procedure "may be retroactively applied to actions pending and undetermined at the time of their passage and will not violate any right of a person who may feel that he is adversely affected, inasmuch as there is no vested rights in rules of procedure."[54]

Elucidating on this doctrine, the Court, in *Systems Factors Corporation v. National Labor Relations Commission*[55] held that:

Remedial statutes or statutes relating to remedies or modes of procedure, which do not create new or take away vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing, do not come within the legal conception

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[52] Rule 2. Pleadings and Parties.

[53] Annotations to Rules of Procedure for Environmental Cases, p. 111.

[54] *Santiago v. Bergensen D.Y. Philippines,* 485 Phil. 162, 166 (2004).

[55] 399 Phil. 721, 726-727 (2000).

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> of a retroactive law, or the general rule against retroactive operation of statutes. Statutes regulating the procedure of the courts will be construed as applicable to actions pending and undetermined at the time of their passage. Procedural laws are retroactive in that sense and to that extent. x x x.

Moreover, even before the Rules of Procedure for Environmental Cases became effective, this Court had already taken a permissive position on the issue of *locus standi* in environmental cases. In *Oposa*, we allowed the suit to be brought in the name of generations yet unborn "based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned."[56] Furthermore, we said that the right to a balanced and healthful ecology, a right that does not even need to be stated in our Constitution as it is assumed to exist from the inception of humankind, carries with it the correlative duty to refrain from impairing the environment.[57]

In light of the foregoing, the need to give the Resident Marine Mammals legal standing has been eliminated by our Rules, which allow any Filipino citizen, as a steward of nature, to bring a suit to enforce our environmental laws. It is worth noting here that the Stewards are joined as real parties in the Petition and not just in representation of the named cetacean species. The Stewards, Ramos and Eisma-Osorio, having shown in their petition that there may be possible violations of laws concerning the habitat of the Resident Marine Mammals, are therefore declared to possess the legal standing to file this petition.

Impleading Former President Gloria Macapagal-Arroyo as an Unwilling Co-Petitioner

Petitioners Stewards in **G.R. No. 180771** impleaded as an unwilling co-petitioner former President Gloria Macapagal-Arroyo for the following reasons, which we quote:

> **Her Excellency Gloria Macapagal-Arroyo**, also of legal age**,** Filipino and resident of Malacañang Palace, Manila Philippines.

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[56] *Oposa v. Factoran, Jr., supra* note 41 at 803.

[57] *Id*. at 805.

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> Steward Gloria Macapagal-Arroyo happens to be the incumbent President of the Philippine Islands. She is personally impleaded in this suit as an unwilling co-petitioner by reason of her express declaration and undertaking under the recently signed ASEAN Charter to protect Your Petitioners' habitat, among others. She is meantime dominated as an unwilling co-petitioner due to lack of material time in seeking her signature and imprimatur hereof and due to possible legal complications that may hereafter arise by reason of her official relations with public respondents under the alter ego principle in political law.[58]

This is incorrect.

Section 10, Rule 3 of the Rules of Court provides:

> Sec. 10. *Unwilling co-plaintiff*. - If the consent of any party who should be joined as plaintiff can not be obtained, he may be made a defendant and the reason therefor shall be stated in the complaint.

Under the foregoing rule, when the consent of a party who should be joined as a plaintiff cannot be obtained, he or she may be made a party defendant to the case. This will put the unwilling party under the jurisdiction of the Court, which can properly implead him or her through its processes. The unwilling party's name cannot be simply included in a petition, without his or her knowledge and consent, as such would be a denial of due process.

Moreover, the reason cited by the petitioners Stewards for including former President Macapagal-Arroyo in their petition, is not sufficient to implead her as an unwilling co-petitioner. Impleading the former President as an unwilling co-petitioner, for an act she made in the performance of the functions of her office, is contrary to the public policy against embroiling the President in suits, "to assure the exercise of Presidential duties and functions free from any hindrance or distraction, considering that being the Chief Executive of the Government is a job that, aside from requiring all of the office holder's time, also demands undivided attention."[59]

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[58] *Rollo* (G.R. No. 180771), Vol. I, p. 8.

[59] *Soliven v. Judge Makasiar*, 249 Phil. 394, 400 (1988).

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Therefore, former President Macapagal-Arroyo cannot be impleaded as one of the petitioners in this suit. Thus, her name is stricken off the title of this case.

Main Issue:
Legality of Service Contract No. 46

Service Contract No. 46 *vis-à-vis* Section 2, Article XII of the 1987 Constitution

Petitioners maintain that SC-46 transgresses the *Jura Regalia* Provision or paragraph 1, Section 2, Article XII of the 1987 Constitution because JAPEX is 100% Japanese-owned.[60] Furthermore, the FIDEC asserts that SC-46 cannot be considered as a technical and financial assistance agreement validly executed under paragraph 4 of the same provision.[61] The petitioners claim that *La Bugal-B'laan Tribal Association, Inc. v. Ramos*[62] laid down the guidelines for a valid service contract, one of which is that there must exist a general law for oil exploration before a service contract may be entered into by the Government. The petitioners posit that the service contract in *La Bugal* is presumed to have complied with the requisites of (a) legislative enactment of a general law after the effectivity of the 1987 Constitution (such as Republic Act No. 7942, or the Philippine Mining Law of 1995, governing mining contracts) and (b) presidential notification. The petitioners thus allege that the ruling in *La Bugal*, which involved mining contracts under Republic Act No. 7942, does not apply in this case.[63] The petitioners also argue that Presidential Decree No. 87 or the Oil Exploration and Development Act of 1972 cannot legally justify SC-46 as it is deemed to have been repealed by the 1987 Constitution and subsequent laws, which enunciate new policies concerning

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[60] *Rollo* (G.R. No. 180771), Vol. I, p. 18 & *Rollo* (G.R. No. 181527), Vol. I, p. 26.

[61] *Rollo* (G.R. No. 181527), Vol. I, pp. 26-28.

[62] 486 Phil. 754 (2004).

[63] *Rollo* (G.R. No. 180771), Vol. I, p. 19.

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the environment.[64] In addition, petitioners in G.R. No. 180771 claim that paragraphs 2 and 3 of Section 2, Article XII of the 1987 Constitution mandate the exclusive use and enjoyment by the Filipinos of our natural resources,[65] and paragraph 4 does not speak of service contracts but of FTAAs or Financial Technical Assistance Agreements.[66]

The public respondents again controvert the petitioners' claims and asseverate that SC-46 does not violate Section 2, Article XII of the 1987 Constitution. They hold that SC-46 does not fall under the coverage of paragraph 1 but instead, under paragraph 4 of Section 2, Article XII of the 1987 Constitution on FTAAs. They also insist that paragraphs 2 and 3, which refer to the grant of exclusive fishing right to Filipinos, are not applicable to SC-46 as the contract does not grant exclusive fishing rights to JAPEX nor does it otherwise impinge on the FIDEC's right to preferential use of communal marine and fishing resources.[67]

Ruling of the Court
On the legality of Service Contract No. 46
vis-à-vis Section 2, Article XII of the 1987 Constitution

The petitioners insist that SC-46 is null and void for having violated Section 2, Article XII of the 1987 Constitution, which reads as follows:

Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-

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[64] *Rollo* (G.R. No. 181527), Vol. I, pp. 276-277.

[65] *Rollo* (G.R. No. 180771), Vol. I, p. 20.

[66] *Id.* at 127.

[67] *Id.* at 81-83.

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production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution. (Emphases ours.)

This Court has previously settled the issue of whether service contracts are still allowed under the 1987 Constitution. In *La Bugal*, we held that the deletion of the words "service contracts" in the 1987 Constitution did not amount to a ban on them *per se*. In fact, in that decision, we quoted in length, portions of the deliberations of the members of the Constitutional Commission (ConCom) to show that in deliberating on paragraph 4, Section 2, Article XII, they were actually referring to service contracts as understood in the 1973 Constitution, albeit with safety measures to eliminate or minimize the abuses prevalent during the martial law regime, to wit:

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Summation of the ConCom Deliberations

At this point, we sum up the matters established, based on a careful reading of the ConCom deliberations, as follows:

• In their deliberations on what was to become paragraph 4, the framers used the term *service contracts* in referring to *agreements x x x involving either technical or financial assistance*.

• They spoke of *service contracts* as the concept was understood in the 1973 Constitution.

• It was obvious from their discussions that they were not about to ban or eradicate *service contracts*.

• Instead, *they were plainly crafting provisions to put in place safeguards that would eliminate or minimize the abuses prevalent during the marital law regime*. In brief, they were going to permit service contracts with foreign corporations as contractors, but with safety measures to prevent abuses, as an exception to the general norm established in the first paragraph of Section 2 of Article XII. This provision reserves or limits to Filipino citizens — and corporations at least 60 percent of which is owned by such citizens — the exploration, development and utilization of natural resources.

• This provision was prompted by the perceived insufficiency of Filipino capital and the felt need for foreign investments in the EDU of minerals and petroleum resources.

• The framers for the most part debated about the sort of safeguards that would be considered adequate and reasonable. But some of them, having more "radical" leanings, wanted to ban service contracts altogether; for them, the provision would permit aliens to exploit and benefit from the nation's natural resources, which they felt should be reserved only for Filipinos.

• In the explanation of their votes, the individual commissioners were heard by the entire body. They sounded off their individual opinions, openly enunciated their philosophies, and supported or attacked the provisions with fervor. Everyone's viewpoint was heard.

• In the final voting, the Article on the National Economy and Patrimony — including paragraph 4 allowing service contracts with foreign corporations as an exception to the general norm in

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paragraph 1 of Section 2 of the same article — was resoundingly approved by a vote of 32 to 7, with 2 abstentions.

Agreements Involving Technical Or Financial Assistance Are Service Contracts with Safeguards

From the foregoing, we are impelled to conclude that the phrase *agreements involving either technical or financial assistance*, referred to in paragraph 4, are in fact *service contracts*. But unlike those of the 1973 variety, the new ones are between foreign corporations acting as contractors on the one hand; and on the other, the government as principal or "owner" of the works. In the new service contracts, the foreign contractors provide capital, technology and technical know-how, and managerial expertise in the creation and operation of large-scale mining/extractive enterprises; and the government, through its agencies (DENR, MGB), actively exercises control and supervision over the entire operation.[68]

In summarizing the matters discussed in the ConCom, **we established that paragraph 4, with the safeguards in place, is the exception to paragraph 1, Section 2 of Article XII.** The following are the safeguards this Court enumerated in *La Bugal*:

Such service contracts may be entered into only with respect to minerals, petroleum and other mineral oils. The grant thereof is subject to several safeguards, among which are these requirements:

(1) The service contract shall be crafted in accordance with a general law that will set standard or uniform terms, conditions and requirements, presumably to attain a certain uniformity in provisions and avoid the possible insertion of terms disadvantageous to the country.

(2) The President shall be the signatory for the government because, supposedly before an agreement is presented to the President for signature, it will have been vetted several times over at different levels to ensure that it conforms to law and can withstand public scrutiny.

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[68] *La Bugal-B'laan Tribal Association, Inc. v. Ramos*, *supra* note 62 at 813-815.

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(3) Within thirty days of the executed agreement, the President shall report it to Congress to give that branch of government an opportunity to look over the agreement and interpose timely objections, if any.[69]

Adhering to the aforementioned guidelines, this Court finds that SC-46 is indeed null and void for noncompliance with the requirements of the 1987 Constitution.

1. The General Law on Oil Exploration

The disposition, exploration, development, exploitation, and utilization of indigenous petroleum in the Philippines are governed by Presidential Decree No. 87 or the Oil Exploration and Development Act of 1972. This was enacted by then President Ferdinand Marcos to promote the discovery and production of indigenous petroleum through the utilization of government and/or local or foreign private resources to yield the maximum benefit to the Filipino people and the revenues to the Philippine Government.[70]

Contrary to the petitioners' argument, Presidential Decree No. 87, although enacted in 1972, before the adoption of the 1987 Constitution, remains to be a valid law unless otherwise repealed, to wit:

ARTICLE XVIII – TRANSITORY PROVISIONS

Section 3. All existing laws, decrees, executive orders, proclamations, letters of instructions, and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed, or revoked.

If there were any intention to repeal Presidential Decree No. 87, it would have been done expressly by Congress. For instance, Republic Act No. 7160, more popularly known as the Local Government Code of 1991, expressly repealed a number

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[69] *Id.* at 815.

[70] Presidential Decree No. 87, Section 2.

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of laws, including a specific provision in Presidential Decree No. 87, *viz.*:

SECTION 534. *Repealing Clause*. — (a) Batas Pambansa Blg. 337, otherwise known as the "Local Government Code," Executive Order No. 112 (1987), and Executive Order No. 319 (1988) are hereby repealed.

(b) Presidential Decree Nos. 684, 1191, 1508 and such other decrees, orders, instructions, memoranda and issuances related to or concerning the barangay are hereby repealed.

(c) The provisions of Sections 2, 3, and 4 of Republic Act No. 1939 regarding hospital fund; Section 3, a (3) and b (2) of Republic Act No. 5447 regarding the Special Education Fund; Presidential Decree No. 144 as amended by Presidential Decree Nos. 559 and 1741; Presidential Decree No. 231 as amended; Presidential Decree No. 436 as amended by Presidential Decree No. 558; and Presidential Decree Nos. 381, 436, 464, 477, 526, 632, 752, and 1136 are hereby repealed and rendered of no force and effect.

(d) Presidential Decree No. 1594 is hereby repealed insofar as it governs locally-funded projects.

(e) The following provisions are hereby repealed or amended insofar as they are inconsistent with the provisions of this Code: Sections 2, 16 and 29 of Presidential Decree No. 704; **Section 12 of Presidential Decree No. 87,** as amended; Sections 52, 53, 66, 67, 68, 69, 70, 71, 72, 73, and 74 of Presidential Decree No. 463, as amended; and Section 16 of Presidential Decree No. 972, as amended, and

(f) All general and special laws, acts, city charters, decrees, executive orders, proclamations and administrative regulations, or part or parts thereof which are inconsistent with any of the provisions of this Code are hereby repealed or modified accordingly. (Emphasis supplied.)

This Court could not simply assume that while Presidential Decree No. 87 had not yet been expressly repealed, it had been impliedly repealed. As we held in *Villareña v. The Commission on Audit*,[71] "[i]mplied repeals are not lightly presumed." It is

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[71] 455 Phil. 908, 916 (2003).

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a settled rule that when laws are in conflict with one another, every effort must be exerted to reconcile them. In *Republic of the Philippines v. Marcopper Mining Corporation*,[72] we said:

> The two laws must be absolutely incompatible, and a clear finding thereof must surface, before the inference of implied repeal may be drawn. The rule is expressed in the maxim, *interpretare et concordare leqibus est optimus interpretendi*, *i.e.*, every statute must be so interpreted and brought into accord with other laws as to form a uniform system of jurisprudence. The fundament is that the legislature should be presumed to have known the existing laws on the subject and not have enacted conflicting statutes. Hence, all doubts must be resolved against any implied repeal, and all efforts should be exerted in order to harmonize and give effect to all laws on the subject. (Citation omitted.)

Moreover, in cases where the statute seems to be in conflict with the Constitution, but a construction that it is in harmony with the Constitution is also possible, that construction should be preferred.[73] This Court, in *Pangandaman v. Commission on Elections*[74] expounding on this point, pronounced:

> It is a basic precept in statutory construction that a statute should be interpreted in harmony with the Constitution and that the spirit, rather than the letter of the law determines its construction; for that reason, a statute must be read according to its spirit and intent. x x x. (Citation omitted.)

Consequently, we find no merit in petitioners' contention that SC-46 is prohibited on the ground that there is no general law prescribing the standard or uniform terms, conditions, and requirements for service contracts involving oil exploration and extraction.

But note must be made at this point that while Presidential Decree No. 87 may serve as the general law upon which a service

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[72] 390 Phil. 708, 730 (2000).

[73] *Subic Bay Metropolitan Authority v. Commission on Elections*, 330 Phil. 1082, 1097 (1996).

[74] 377 Phil. 297, 312 (1999).

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contract for petroleum exploration and extraction may be authorized, as will be discussed below, the exploitation and utilization of this energy resource in the present case may be allowed only through a law passed by Congress, since the Tañon Strait is a NIPAS[75] area.

2. President was not the signatory to SC-46 and the same was not submitted to Congress

While the Court finds that Presidential Decree No. 87 is sufficient to satisfy the requirement of a general law, the absence of the two other conditions, that the President be a signatory to SC-46, and that Congress be notified of such contract, renders it null and void.

As SC-46 was executed in 2004, its terms should have conformed not only to the provisions of Presidential Decree No. 87, but also to those of the 1987 Constitution. The Civil Code provides:

> ARTICLE 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, *provided they are not contrary to law*, morals, good customs, public order, or public policy. (Italics ours.)

In *Heirs of San Miguel v. Court of Appeals*,[76] this Court held that:

> It is basic that the law is deemed written into every contract. Although a contract is the law between the parties, the provisions of positive law which regulate contracts are deemed written therein and shall limit and govern the relations between the parties. x x x. (Citations omitted.)

Paragraph 4, Section 2, Article XII of the 1987 Constitution requires that the President himself enter into any service contract

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[75] National Integrated Protected Areas System Act of 1992; Republic Act No. 7586, Section 14.

[76] 416 Phil. 943, 954 (2001).

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for the exploration of petroleum. SC-46 appeared to have been entered into and signed only by the DOE through its then Secretary, Vicente S. Perez, Jr., contrary to the said constitutional requirement. Moreover, public respondents have neither shown nor alleged that Congress was subsequently notified of the execution of such contract.

Public respondents' implied argument that based on the "alter ego principle," their acts are also that of then President Macapagal-Arroyo's, cannot apply in this case. In *Joson v. Torres*,[77] we explained the concept of the alter ego principle or the doctrine of qualified political agency and its limit in this wise:

> Under this doctrine, which recognizes the establishment of a single executive, all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, **except in cases where the Chief Executive is required by the Constitution or law to act in person or the exigencies of the situation demand that he act personally**, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the Secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive presumptively the acts of the Chief Executive. (Emphasis ours, citation omitted.)

While the requirements in executing service contracts in paragraph 4, Section 2 of Article XII of the 1987 Constitution seem like mere formalities, they, in reality, take on a much bigger role. As we have explained in *La Bugal*, they are the safeguards put in place by the framers of the Constitution to "eliminate or minimize the abuses prevalent during the martial law regime."[78] Thus, they are not just mere formalities, which will only render a contract unenforceable but not void, if not complied with. They are requirements placed, not just in an ordinary statute,

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[77] 352 Phil. 888, 915 (1998).

[78] *La Bugal-B'laan Tribal Association, Inc. v. Ramos*, *supra* note 62 at 814.

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but in the fundamental law, the non-observance of which will nullify the contract. Elucidating on the concept of a "constitution," this Court, in *Manila Prince Hotel v. Government Service Insurance System*,[79] held:

> A constitution is a system of fundamental laws for the governance and administration of a nation. It is supreme, imperious, absolute and unalterable except by the authority from which it emanates. It has been defined as *the fundamental and paramount law of the nation.* It prescribes the permanent framework of a system of government, assigns to the different departments their respective powers and duties, and establishes certain fixed principles on which government is founded. The fundamental conception in other words is that it is a supreme law to which all other laws must conform and in accordance with which all private rights must be determined and all public authority administered. **Under the doctrine of constitutional supremacy, if a law or contract violates any norm of the constitution that law or contract whether promulgated by the legislative or by the executive branch or entered into by private persons for private purposes is null and void and without any force and effect.** Thus, *since the Constitution is the fundamental, paramount and supreme law of the nation, it is deemed written in every statute and contract*. (Emphasis ours.)

As this Court has held in *La Bugal*, our Constitution requires that the President himself be the signatory of service agreements with foreign-owned corporations involving the exploration, development, and utilization of our minerals, petroleum, and other mineral oils. This power cannot be taken lightly.

In this case, the public respondents have failed to show that the President had any participation in SC-46. Their argument that their acts are actually the acts of then President Macapagal-Arroyo, absent proof of her disapproval, must fail as the requirement that the President herself enter into these kinds of contracts is embodied not just in any ordinary statute, but in the Constitution itself. These service contracts involving the exploitation, development, and utilization of our natural resources are of paramount interest to the present and future generations.

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[79] 335 Phil. 82, 101 (1997).

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Hence, safeguards were put in place to insure that the guidelines set by law are meticulously observed and likewise to eradicate the corruption that may easily penetrate departments and agencies by ensuring that the President has authorized or approved of these service contracts herself.

Even under the provisions of Presidential Decree No. 87, it is required that the Petroleum Board, now the DOE, obtain the President's approval for the execution of any contract under said statute, as shown in the following provision:

> SECTION 5. *Execution of contract authorized in this Act*. - Every contract herein authorized shall, subject to the approval of the President, be executed by the Petroleum Board created in this Act, after due public notice pre-qualification and public bidding or concluded through negotiations. In case bids are requested or if requested no bid is submitted or the bids submitted are rejected by the Petroleum Board for being disadvantageous to the Government, the contract may be concluded through negotiation.
>
> In opening contract areas and in selecting the best offer for petroleum operations, any of the following alternative procedures may be resorted to by the Petroleum Board, subject to prior approval of the President[.]

Even if we were inclined to relax the requirement in *La Bugal* to harmonize the 1987 Constitution with the aforementioned provision of Presidential Decree No. 87, it must be shown that the government agency or subordinate official has been authorized by the President to enter into such service contract for the government. Otherwise, it should be at least shown that the President subsequently approved of such contract explicitly. None of these circumstances is evident in the case at bar.

Service Contract No. 46
***vis-à-vis* Other Laws**

Petitioners in G.R. No. 180771 claim that SC-46 violates Section 27 of Republic Act. No. 9147 or the Wildlife Resources Conservation and Protection Act, which bans all marine exploration and exploitation of oil and gas deposits. They also aver that Section 14 of Republic Act No. 7586 or the National

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Integrated Protected Areas System Act of 1992 (NIPAS Act), which allows the exploration of protected areas for the purpose of information-gathering, has been repealed by Section 27 of Republic Act No. 9147. The said petitioners further claim that SC-46 is anathema to Republic Act No. 8550 or the Philippine Fisheries Code of 1998, which protects the rights of the fisherfolk in the preferential use of municipal waters, with the exception being limited only to research and survey activities.[80]

The FIDEC, for its part, argues that to avail of the exceptions under Section 14 of the NIPAS Act, the gathering of information must be in accordance with a DENR-approved program, and the exploitation and utilization of energy resources must be pursuant to a general law passed by Congress expressly for that purpose. Since there is neither a DENR-approved program nor a general law passed by Congress, the seismic surveys and oil drilling operations were all done illegally.[81] The FIDEC likewise contends that SC-46 infringes on its right to the preferential use of the communal fishing waters as it is denied free access within the prohibited zone, in violation not only of the Fisheries Code but also of the 1987 Constitutional provisions on subsistence fisherfolk and social justice.[82] Furthermore, the FIDEC believes that the provisions in Presidential Decree No. 87, which allow offshore drilling even in municipal waters, should be deemed to have been rendered inoperative by the provisions of Republic Act No. 8550 and Republic Act No. 7160, which reiterate the social justice provisions of the Constitution.[83]

The public respondents invoke the rules on statutory construction and argue that Section 14 of the NIPAS Act is a more particular provision and cannot be deemed to have been repealed by the more general prohibition in Section 27 of Republic Act No. 9147. They aver that Section 14, under which SC-46

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[80] *Rollo* (G.R. No. 180771), Vol. I, pp. 21-22.

[81] *Rollo* (G.R. No. 181527), Vol. I, pp. 28-29.

[82] *Id*. at 31-34.

[83] *Id*. at 284.

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falls, should instead be regarded as an exemption to Section 27.[84]

Addressing the claim of petitioners in G.R. No. 180771 that there was a violation of Section 27 of Republic Act No. 9147, the public respondents assert that what the section prohibits is the exploration of minerals, which as defined in the Philippine Mining Act of 1995, exclude energy materials such as coal, petroleum, natural gas, radioactive materials and geothermal energy. Thus, since SC-46 involves oil and gas exploration, Section 27 does not apply.[85]

The public respondents defend the validity of SC-46 and insist that it does not grant exclusive fishing rights to JAPEX; hence, it does not violate the rule on preferential use of municipal waters. Moreover, they allege that JAPEX has not banned fishing in the project area, contrary to the FIDEC's claim. The public respondents also contest the attribution of the declining fish catch to the seismic surveys and aver that the allegation is unfounded. They claim that according to the Bureau of Fisheries and Aquatic Resources' fish catch data, the reduced fish catch started in the 1970s due to destructive fishing practices.[86]

Ruling of the Court
On the legality of Service Contract No. 46
vis-à-vis Other Laws

Although we have already established above that SC-46 is null and void for being violative of the 1987 Constitution, it is our duty to still rule on the legality of SC-46 *vis-à-vis* other pertinent laws, to serve as a guide for the Government when executing service contracts involving not only the Tañon Strait, but also other similar areas. While the petitioners allege that SC-46 is in violation of several laws, including international ones, their arguments focus primarily on the protected status of the Tañon Strait, thus this Court will concentrate on those

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[84] *Rollo* (G.R. No. 180771), Vol. I, pp. 84-85.

[85] *Id*. at 86.

[86] *Id*. at 87-88.

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laws that pertain particularly to the Tañon Strait as a protected seascape.

The Tañon Strait is a narrow passage of water bounded by the islands of Cebu in the East and Negros in the West. It harbors a rich biodiversity of marine life, including endangered species of dolphins and whales. For this reason, former President Fidel V. Ramos declared the Tañon Strait as a protected seascape in 1998 by virtue of Proclamation No. 1234 - *Declaring the Tañon Strait situated in the Provinces of Cebu, Negros Occidental and Negros Oriental as a Protected Area pursuant to the NIPAS Act and shall be known as Tañon Strait Protected Seascape*. During former President Joseph E. Estrada's time, he also constituted the Tañon Strait Commission *via* Executive Order No. 76 to ensure the optimum and sustained use of the resources in that area without threatening its marine life. He followed this with Executive Order No. 177,[87] wherein he included the mayor of Negros Occidental Municipality/City as a member of the Tañon Strait Commission, to represent the LGUs concerned. This Commission, however, was subsequently abolished in 2002 by then President Gloria Macapagal-Arroyo, via Executive Order No. 72.[88]

True to the constitutional policy that the "State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature,"[89] Congress enacted the NIPAS Act to secure the perpetual existence of all native plants and animals through the establishment of a comprehensive system of integrated protected areas. These areas possess common ecological values that were incorporated into a holistic plan representative of our natural heritage. The system encompasses outstandingly remarkable areas and biologically important public lands that are habitats of rare and endangered

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[87] Amending Executive Order No. 76, Series of 1999, to include a mayor of Negros Occidental Municipality/City along the Tañon Strait as member of the Tañon Strait Commission.

[88] Rationalizing the Agencies under or attached to the Office of the President, February 11, 2002.

[89] 1987 *Constitution*, Article II, Section 16.

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species of plants and animals, biogeographic zones and related ecosystems, whether terrestrial, wetland, or marine.[90] It classifies and administers all the designated protected areas to maintain essential ecological processes and life-support systems, to preserve genetic diversity, to ensure sustainable use of resources found therein, and to maintain their natural conditions to the greatest extent possible.[91] The following categories of protected areas were established under the NIPAS Act:

a. Strict nature reserve;
b. Natural park;
c. Natural monument;
d. Wildlife sanctuary;
e. Protected landscapes and seascapes;
f. Resource reserve;
g. Natural biotic areas; and
h. Other categories established by law, conventions or international agreements which the Philippine Government is a signatory.[92]

Under Section 4 of the NIPAS Act, a *protected area* refers to portions of land and water, set aside due to their unique physical and biological significance, managed to enhance biological diversity and protected against human exploitation.

The Tañon Strait, pursuant to Proclamation No. 1234, was set aside and declared a protected area under the category of Protected Seascape. The NIPAS Act defines a Protected Seascape to be an area of national significance characterized by the harmonious interaction of man and land while providing opportunities for public enjoyment through recreation and tourism within the normal lifestyle and economic activity of this areas;[93]

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[90] REPUBLIC ACT NO. 7586, Section 2.

[91] *Id*., Section 4(a).

[92] *Id*., Section 3.

[93] *Id*., Section 4(i).

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thus a management plan for each area must be designed to protect and enhance the permanent preservation of its natural conditions.[94] Consistent with this endeavor is the requirement that an Environmental Impact Assessment (EIA) be made prior to undertaking any activity outside the scope of the management plan. Unless an ECC under the EIA system is obtained, no activity inconsistent with the goals of the NIPAS Act shall be implemented.[95]

The Environmental Impact Statement System (EISS) was established in 1978 under Presidential Decree No. 1586. It prohibits any person, partnership or corporation from undertaking or operating any declared environmentally critical project or areas without first securing an ECC issued by the President or his duly authorized representative.[96] Pursuant to the EISS, which called for the proper management of environmentally critical areas,[97] Proclamation No. 2146[98] was enacted, identifying the areas and types of projects to be considered as environmentally critical and within the scope of the EISS, while DENR Administrative Order No. 2003-30 provided for its Implementing Rules and Regulations (IRR).

DENR Administrative Order No. 2003-30 defines an *environmentally critical area* as "an area delineated as environmentally sensitive such that significant environmental impacts are expected if certain types of proposed projects or programs are located, developed, or implemented in it";[99] thus, before a *project*, which is "any activity, regardless of scale or magnitude, which may have significant impact on the environment,"[100] is undertaken in it, such project must undergo

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[94] *Id*., Section 9.

[95] *Id*., Section 12.

[96] Presidential Decree No. 1586, Section 4.

[97] Proclamation No. 2146 (3rd whereas clause).

[98] Proclaiming Certain Areas and Types of Projects as Environmentally Critical and Within the Scope of the Environmental Impact Statement System Established under Presidential Decree No. 1586.

[99] DENR Administrative Order No. 2003-30, Section 3(e).

[100] *Id*., Section 3(y).

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an EIA to evaluate and predict the likely impacts of all its stages on the environment.[101] An EIA is described in detail as follows:

> h. Environmental Impact Assessment (EIA) - process that involves evaluating and predicting the likely impacts of a project (including cumulative impacts) on the environment during construction, commissioning, operation and abandonment. It also includes designing appropriate preventive, mitigating and enhancement measures addressing these consequences to protect the environment and the community's welfare. The process is undertaken by, among others, the project proponent and/or EIA Consultant, EMB, a Review Committee, affected communities and other stakeholders.[102]

Under Proclamation No. 2146, the Tañon Strait is an environmentally critical area, having been declared as a protected area in 1998; therefore, any activity outside the scope of its management plan may only be implemented pursuant to an ECC secured after undergoing an EIA to determine the effects of such activity on its ecological system.

The public respondents argue that they had complied with the procedures in obtaining an ECC[103] and that SC-46 falls under the exceptions in Section 14 of the NIPAS Act, due to the following reasons:

1) The Tañon Strait is not a strict nature reserve or natural park;

2) Exploration is only for the purpose of gathering information on possible energy resources; and

3) Measures are undertaken to ensure that the exploration is being done with the least damage to surrounding areas.[104]

We do not agree with the arguments raised by the public respondents.

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[101] *Id*., Section 3(h).

[102] *Id*.

[103] *Rollo* (G.R. No. 180771), Vol. I, pp. 91-92.

[104] *Id*. at 85.

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Sections 12 and 14 of the NIPAS Act read:

SECTION 12. Environmental Impact Assessment.—Proposals for activities which are outside the scope of the management plan for protected areas shall be subject to an environmental impact assessment as required by law before they are adopted, and the results thereof shall be taken into consideration in the decision-making process.

No actual implementation of such activities shall be allowed without the required Environmental Compliance Certificate (ECC) under the Philippine Environmental Impact Assessment (EIA) system. In instances where such activities are allowed to be undertaken, the proponent shall plan and carry them out in such manner as will minimize any adverse effects and take preventive and remedial action when appropriate. The proponent shall be liable for any damage due to lack of caution or indiscretion.

SECTION 14. Survey for Energy Resources. - Consistent with the policies declared in Section 2 hereof, protected areas, except strict nature reserves and natural parks, may be subjected to exploration only for the purpose of gathering information on energy resources and only if such activity is carried out with the least damage to surrounding areas. Surveys shall be conducted only in accordance with a program approved by the DENR, and the result of such surveys shall be made available to the public and submitted to the President for recommendation to Congress. Any exploitation and utilization of energy resources found within NIPAS areas shall be allowed only through a law passed by Congress.

It is true that the restrictions found under the NIPAS Act are not without exceptions. However, **while an exploration done for the purpose of surveying for energy resources is allowed under Section 14 of the NIPAS Act, this does *not* mean that it is exempt from the requirement to undergo an EIA under Section 12**. In *Sotto v. Sotto*,[105] this Court explained why a statute should be construed as a whole:

A statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently each part or section should be construed in connection with every other

[105] 43 Phil. 688, 694 (1922).

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part or section and so as to produce a harmonious whole. It is not proper to confine the attention to the one section to be construed. It is always an unsafe way of construing a statute or contract to divide it by a process of etymological dissection, into separate words, and then apply to each, thus separated from its context, some particular definition given by lexicographers, and then reconstruct the instrument upon the basis of these definitions. An instrument must always be construed as a whole, and the particular meaning to be attached to any word or phrase is usually to be ascertained from the context, the nature of the subject treated of and the purpose or intention of the parties who executed the contract, or of the body which enacted or framed the statute or constitution. x x x.

Surveying for energy resources under Section 14 is not an exemption from complying with the EIA requirement in Section 12; instead, Section 14 provides for *additional* requisites before any exploration for energy resources may be done in protected areas.

The rationale for such additional requirements are incorporated in Section 2 of the NIPAS Act, to wit:

SECTION 2. Declaration of Policy – Cognizant of the profound impact of man's activities on all components of the natural environment particularly the effect of increasing population, resource exploitation and industrial advancement and recognizing the critical importance of protecting and maintaining the natural biological and physical diversities of the environment notably on areas with biologically unique features to sustain human life and development, as well as plant and animal life, it is hereby declared the policy of the State to secure for the Filipino people of present and future generations the perpetual existence of all native plants and animals through the establishment of a comprehensive system of integrated protected areas within the classification of national park as provided for in the Constitution.

It is hereby recognized that these areas, although distinct in features, possess common ecological values that may be incorporated into a holistic plan representative of our natural heritage; that effective administration of this area is possible only through cooperation among national government, local government and concerned private organizations; that the use and enjoyment of these protected areas

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must be consistent with the principles of biological diversity and sustainable development.

To this end, there is hereby established a National Integrated Protected Areas System (NIPAS), which shall encompass outstandingly remarkable areas and biologically important public lands that are habitats of rare and endangered species of plants and animals, biogeographic zones and related ecosystems, whether terrestrial, wetland or marine, all of which shall be designated as "protected areas."

The public respondents themselves admitted that JAPEX only started to secure an ECC prior to the second sub-phase of SC-46, which required the drilling of an oil exploration well. This means that when the seismic surveys were done in the Tañon Strait, no such environmental impact evaluation was done. Unless seismic surveys are part of the management plan of the Tañon Strait, such surveys were done in violation of Section 12 of the NIPAS Act and Section 4 of Presidential Decree No. 1586, which provides:

Section 4. *Presidential Proclamation of Environmentally Critical Areas and Projects.* - The President of the Philippines may, on his own initiative or upon recommendation of the National Environmental Protection Council, by proclamation declare certain projects, undertakings or areas in the country as environmentally critical. No person, partnership or corporation shall undertake or operate any such declared environmentally critical project or area without first securing an Environmental Compliance Certificate issued by the President or his duly authorized representative. For the proper management of said critical project or area, the President may by his proclamation reorganize such government offices, agencies, institutions, corporations or instrumentalities including the re-alignment of government personnel, and their specific functions and responsibilities.

For the same purpose as above, the Ministry of Human Settlements shall: (a) prepare the proper land or water use pattern for said critical project(s) or area(s); (b) establish ambient environmental quality standards; (c) develop a program of environmental enhancement or protective measures against calamitous factors such as earthquakes, floods, water erosion and others, and (d) perform such other functions as may be directed by the President from time to time.

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The respondents' subsequent compliance with the EISS for the second sub-phase of SC-46 cannot and will not cure this violation. The following penalties are provided for under Presidential Decree No. 1586 and the NIPAS Act.

Section 9 of Presidential Decree No. 1586 provides for the penalty involving violations of the ECC requirement:

> Section 9. *Penalty for Violation*. - Any person, corporation or partnership found violating Section 4 of this Decree, or the terms and conditions in the issuance of the Environmental Compliance Certificate, or of the standards, rules and regulations issued by the National Environmental Protection Council pursuant to this Decree shall be punished by the **suspension or cancellation of his/its certificates and/or a fine in an amount not to exceed Fifty Thousand Pesos (₱50,000.00) for every violation thereof, at the discretion of the National Environmental Protection Council**. (Emphasis supplied.)

Violations of the NIPAS Act entails the following fines and/or imprisonment under Section 21:

> SECTION 21. *Penalties*. – Whoever violates this Act or any rules and regulations issued by the Department pursuant to this Act or whoever is found guilty by a competent court of justice of any of the offenses in the preceding section shall be **fined in the amount of not less than Five thousand pesos (₱5,000) nor more than Five hundred thousand pesos (₱500,000), exclusive of the value of the thing damaged or imprisonment for not less than one (1) year but not more than six (6) years, or both, as determined by the court**: Provided, that, **if the area requires rehabilitation or restoration as determined by the court, the offender shall be required to restore or compensate for the restoration to the damages**: Provided, further, that court shall order **the eviction of the offender from the land and the forfeiture in favor of the Government of all minerals, timber or any species collected or removed including all equipment, devices and firearms used in connection therewith, and any construction or improvement made thereon by the offender**. If the offender is an association or corporation, the president or manager shall be directly responsible for the act of his employees and laborers: Provided, finally, that **the DENR may impose administrative fines and penalties consistent with this Act**. (Emphases supplied.)

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Moreover, SC-46 was not executed for the mere purpose of gathering information on the possible energy resources in the Tañon Strait as it also provides for the parties' rights and obligations relating to extraction and petroleum production should oil in commercial quantities be found to exist in the area. **While Presidential Decree No. 87 may serve as the general law upon which a service contract for petroleum exploration and extraction may be authorized, the exploitation and utilization of this energy resource in the present case may be allowed only through a law passed by Congress, since the Tañon Strait is a NIPAS area.**[106] **Since there is no such law specifically allowing oil exploration and/or extraction in the Tañon Strait, no energy resource exploitation and utilization may be done in said protected seascape.**

In view of the foregoing premises and conclusions, it is no longer necessary to discuss the other issues raised in these consolidated petitions.

WHEREFORE, the Petitions in G.R. Nos. 180771 and 181527 are **GRANTED,** Service Contract No. 46 is hereby declared **NULL AND VOID** for violating the 1987 Constitution, Republic Act No. 7586, and Presidential Decree No. 1586.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Brion, Peralta, Bersamin, del Castillo, Villarama, Jr., Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Leonen, J., see concurring opnion.

Jardeleza, J., no part. Prior OSG action.

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[106] Republic Act No. 7586, Section 14.

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CONCURRING OPINION

"Until one has loved an animal,
a part of one's soul remains unawakened."
Anatole France

LEONEN, *J.*:

I concur in the result, with the following additional reasons.

I

In G.R. No. 180771, petitioners Resident Marine Mammals allegedly bring their case in their personal capacity, alleging that they stand to benefit or be injured from the judgment on the issues. The human petitioners implead themselves in a representative capacity "as legal guardians of the lesser life-forms and as responsible stewards of God's Creations."[1] They use *Oposa v. Factoran, Jr.*[2] as basis for their claim, asserting their right to enforce international and domestic environmental laws enacted for their benefit under the concept of stipulation *pour autrui*.[3] As the representatives of Resident Marine Mammals, the human petitioners assert that they have the obligation to build awareness among the affected residents of Tañon Strait as well as to protect the environment, especially in light of the government's failure, as primary steward, to do its duty under the doctrine of public trust.[4]

Resident Marine Mammals and the human petitioners also assert that through this case, this court will have the opportunity to lower the threshold for *locus standi* as an exercise of "epistolary jurisdiction."[5]

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[1] *Rollo* (G.R. No. 180771), pp. 7-8.

[2] G.R. No. 101083, July 30, 1993, 224 SCRA 792 [Per *J.* Davide, Jr., *En Banc*].

[3] *Rollo* (G.R. No. 180771), p. 16.

[4] *Rollo* (G.R. No. 180771), pp.123-124.

[5] *Id.* at 196.

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The zeal of the human petitioners to pursue their desire to protect the environment and to continue to define environmental rights in the context of actual cases is commendable. However, the space for legal creativity usually required for advocacy of issues of the public interest is not so unlimited that it should be allowed to undermine the other values protected by current substantive and procedural laws. Even rules of procedure as currently formulated set the balance between competing interests. We cannot abandon these rules when the necessity is not clearly and convincingly presented.

The human petitioners, in G.R. No. 180771, want us to create substantive and procedural rights for animals through their allegation that they can speak for them. Obviously, we are asked to accept the premises that (a) they were chosen by the Resident Marine Mammals of Tañon Strait; (b) they were chosen by a representative group of all the species of the Resident Marine Mammals; (c) they were able to communicate with them; and (d) they received clear consent from their animal principals that they would wish to use human legal institutions to pursue their interests. Alternatively, they ask us to acknowledge through judicial notice that the interests that they, the human petitioners, assert are identical to what the Resident Marine Mammals would assert had they been humans and the legal strategies that they invoked are the strategies that they agree with.

In the alternative, they want us to accept through judicial notice that there is a relationship of guardianship between them and all the resident mammals in the affected ecology.

Fundamental judicial doctrines that may significantly change substantive and procedural law cannot be founded on feigned representation.

Instead, I agree that the human petitioners should only speak for themselves and already have legal standing to sue with respect to the issue raised in their pleading. The rules on standing have already been liberalized to take into consideration the difficulties in the assertion of environmental rights. When standing becomes too liberal, this can be the occasion for abuse.

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II

Rule 3, Section 1 of the 1997 Rules of Civil Procedure, in part, provides:

SECTION 1. Who may be parties; plaintiff and defendant. – Only natural or juridical persons, or entities authorized by law may be parties in a civil action.

The Rules provide that parties may only be natural or juridical persons or entities that may be authorized by statute to be parties in a civil action.

Basic is the concept of natural and juridical persons in our Civil Code:

> ARTICLE 37. Juridical capacity, which is the fitness to be the subject of legal relations, is inherent in every natural person and is lost only through death. Capacity to act, which is the power to do acts with legal effect, is acquired and may be lost.

Article 40 further defines natural persons in the following manner:

> ARTICLE 40. Birth determines personality; but the conceived child shall be considered born for all purposes that are favorable to it, provided it be born later with the conditions specified in the following article.

Article 44, on the other hand, enumerates the concept of a juridical person:

> ARTICLE 44. The following are juridical persons:
>
> (1) The State and its political subdivisions;
>
> (2) Other corporations, institutions and entities for public interest or purpose, created by law; their personality begins as soon as they have been constituted according to law;
>
> (3) Corporations, partnerships and associations for private interest or purpose to which the law grants a juridical personality, separate and distinct from that of each shareholder, partner or member.

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Petitioners in G.R. No. 180771 implicitly suggest that we amend, rather than simply construe, the provisions of the Rules of Court as well as substantive law to accommodate Resident Marine Mammals or animals. This we cannot do.

Rule 3, Section 2 of the 1997 Rules of Civil Procedure further defines *real party in interest*:

SEC. 2. ***Parties in interest.***— A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest. (2a)[6]

A litigant who stands to benefit or sustain an injury from the judgment of a case is a real party in interest.[7] When a case is brought to the courts, the real party in interest must show that another party's act or omission has caused a direct injury, making his or her interest both material and based on an enforceable legal right.[8]

Representatives as parties, on the other hand, are parties acting in representation of the real party in interest, as defined in Rule 3, Section 3 of the 1997 Rules of Civil Procedure:

SEC. 3. ***Representatives as parties.*** — Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without

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[6] 1997 RULES OF CIV. PROC., Rule 3, Sec. 2.

[7] See *Consumido v. Ros*, 555 Phil. 652, 658 (2007) [Per *J.* Tinga, Second Division].

[8] *Rebollido v. Court of Appeals*, 252 Phil. 831, 839 (1989) [Per *J.* Gutierrez, Jr., Third Division], citing *Lee et al. v. Romillo, Jr.*, 244 Phil. 606, 612 (1988) [Per *J.* Gutierrez, Jr., Third Division].

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joining the principal except when the contract involves things belonging to the principal.(3a)[9]

The rule is two-pronged. First, it defines a representative as a party who is not bound to directly or actually benefit or suffer from the judgment, but instead brings a case in favor of an identified real party in interest.[10] The representative is an outsider to the cause of action. Second, the rule provides a list of who may be considered as "representatives." It is not an exhaustive list, but the rule limits the coverage only to those authorized by law or the Rules of Court.[11]

These requirements should apply even in cases involving the environment, which means that for the Petition of the human petitioners to prosper, they must show that (a) the Resident Marine Mammals are real parties in interest; and (b) that the human petitioners are authorized by law or the Rules to act in a representative capacity.

The Resident Marine Mammals are comprised of "toothed whales, dolphins, porpoises, and other cetacean species inhabiting Tañon Strait."[12] While relatively new in Philippine jurisdiction, the issue of whether animals have legal standing before courts has been the subject of academic discourse in light of the emergence of animal and environmental rights.

In the United States, animal rights advocates have managed to establish a system which Hogan explains as the "guardianship model for nonhuman animals":[13]

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[9] 1997 RULES OF CIV. PROC., Rule 3, Sec. 3.

[10] *Ang, represented by Aceron v. Spouses Ang*, G.R. No. 186993, August 22, 2012, 678 SCRA 699, 709 [Per *J.* Reyes, Second Division].

[11] 1997 RULES OF CIV. PROC., Rule 3, Sec. 3.

[12] *Rollo* (G.R No. 180771), p. 8.

[13] Marguerite Hogan, *Standing for Nonhuman Animals: Developing a Guardianship Model from the Dissents in Sierra Club v. Morton*, 95 Cal. L. Rev. 513 (2007) <http://scholarship.law.berkeley.edu/californialawreview/vol95/iss2/4> (visited March 15, 2015).

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Despite *Animal Lovers***,** *there exists a well-established system by which nonhuman animals may obtain judicial review to enforce their statutory rights and protections: guardianships. With court approval, animal advocacy organizations may bring suit on behalf of nonhuman animals in the same way court-appointed guardians bring suit on behalf of mentally-challenged humans who possess an enforceable right but lack the ability to enforce it themselves.*

In the controversial but pivotal *Should Trees Have Standing?-Toward Legal Rights for Natural Objects,* Christopher D. Stone asserts that the environment should possess the right to seek judicial redress even though it is incapable of representing itself. While asserting the rights of speechless entities such as the environment or nonhuman animals certainly poses legitimate challenges – such as identifying the proper spokesman – the American legal system is already well-equipped with a reliable mechanism by which nonhumans may obtain standing via a judicially-established guardianship. Stone notes that other speechless – and nonhuman – entities such as corporations, states, estates, and municipalities have standing to bring suit on their own behalf. There is little reason to fear abuses under this regime as procedures for removal and substitution, avoiding conflicts of interest, and termination of a guardianship are well established.

In fact, the opinion in Animal Lovers suggests that such an arrangement is indeed possible. The court indicated that ALVA might have obtained standing in its own right if it had an established history of dedication to the cause of the humane treatment of animals. It noted that the Fund for Animals had standing and indicated that another more well-known advocacy organization might have had standing as well. The court further concluded that an organization's standing is more than a derivative of its history, but history is a relevant consideration where organizations are not well-established prior to commencing legal action. ALVA was not the proper plaintiff because it could not identify previous activities demonstrating its recognized activism for and commitment to the dispute independent of its desire to pursue legal action. The court's analysis suggests that a qualified organization with a demonstrated commitment to a cause could indeed bring suit on behalf of the speechless in the form of a court-sanctioned guardianship.

This Comment advocates a shift in contemporary standing doctrine to empower non-profit organizations with an established history of

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dedication to the cause and relevant expertise to serve as official guardians ad litem on behalf of nonhuman animals interests. The American legal system has numerous mechanisms for representing the rights and interests of nonhumans; any challenges inherent in extending these pre-existing mechanisms to nonhuman animals are minimal compared to an interest in the proper administration of justice. To adequately protect the statutory rights of nonhuman animals, the legal system must recognize those statutory rights independent of humans and provide a viable means of enforcement. Moreover, the idea of a guardianship for speechless plaintiffs is not new and has been urged on behalf of the natural environment. Such a model is even more compelling as applied to nonhuman animals, because they are sentient beings with the ability to feel pain and exercise rational thought. Thus, animals are qualitatively different from other legally protected nonhumans and therefore have interests deserving direct legal protection.

Furthermore, the difficulty of enforcing the statutory rights of nonhuman animals threatens the integrity of the federal statutes designed to protect them, essentially rendering them meaningless. Sensing that laws protecting nonhuman animals would be difficult to enforce, Congress provided for citizen suit provisions: the most well-known example is found in the Endangered Species Act (ESA). Such provisions are evidence of legislative intent to encourage civic participation on behalf of nonhuman animals. Our law of standing should reflect this intent and its implication that humans are suitable representatives of the natural environment, which includes nonhuman animals.[14] (Emphasis supplied, citation omitted)

When a court allows guardianship as a basis of representation, animals are considered as similarly situated as individuals who have enforceable rights but, for a legitimate reason (e.g., cognitive disability), are unable to bring suit for themselves. They are also similar to entities that by their very nature are incapable of speaking for themselves (e.g., corporations, states, and others).

In our jurisdiction, persons and entities are recognized both in law and the Rules of Court as having standing to sue and, therefore, may be properly represented as real parties in interest. The same cannot be said about animals.

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[14] *Id.* at 517-519.

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Animals play an important role in households, communities, and the environment. While we, as humans, may feel the need to nurture and protect them, we cannot go as far as saying we represent their best interests and can, therefore, speak for them before the courts. As humans, we cannot be so arrogant as to argue that we know the suffering of animals and that we know what remedy they need in the face of an injury.

Even in Hogan's discussion, she points out that in a case before the United States District Court for the Central District of California, *Animal Lovers Volunteer Ass'n v. Weinberger*,[15] the court held that an emotional response to what humans perceive to be an injury inflicted on an animal is not within the "zone-of-interest" protected by law.[16] Such sympathy cannot stand independent of or as a substitute for an actual injury suffered by the claimant.[17] The ability to represent animals was further limited in that case by the need to prove "genuine dedication" to asserting and protecting animal rights:

What ultimately proved fatal to ALVA's claim, however, was the court's assertion that standing doctrine further required ALVA to differentiate its genuine dedication to the humane treatment of animals from the general disdain for animal cruelty shared by the public at large. In doing so, the court found ALVA's asserted organizational injury to be abstract and thus relegated ALVA to the ranks of the "concerned bystander."

. . . .

In fact, the opinion in *Animal Lovers* suggests that such an arrangement is indeed possible. *The court indicated that ALVA might have obtained standing in its own right if it had an established*

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[15] *Id*. at 513-514. Footnote 1 of Marguerite Hogan's article cites this case as *Animal Lovers Volunteer Ass'n v. Weinberger*, 765 F.2d 937, 938 (9th Cir., 1985).

[16] In that case, the claim was based on a law called "National Environmental Policy Act."

[17] Marguerite Hogan, *Standing for Nonhuman Animals: Developing a Guardianship Model from the Dissents in Sierra Club v. Morton*, 95 Cal. L. Rev. 513, 514 (2007) <http://scholarship.law.berkeley.edu/californialawreview/vol95/iss2/4> (visited March 15, 2015).

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history of dedication to the cause of the humane treatment of animals. It noted that the Fund for Animals had standing and indicated that another more well-known advocacy organization might have had standing as well. *The court further concluded that an organization's standing is more than a derivative of its history, but history is a relevant consideration where organizations are not well-established prior to commencing legal action.* ALVA was not the proper plaintiff because it could not identify previous activities demonstrating its recognized activism for and commitment to the dispute independent of its desire to pursue legal action. *The court's analysis suggests that a qualified organization with a demonstrated commitment to a cause could indeed bring suit on behalf of the speechless in the form of a court-sanctioned guardianship*.[18] (Emphasis supplied, citation omitted)

What may be argued as being parallel to this concept of guardianship is the principle of human stewardship over the environment in a citizen suit under the Rules of Procedure for Environmental Cases. A citizen suit allows any Filipino to act as a representative of a party who has enforceable rights under environmental laws before Philippine courts, and is defined in Section 5:

> SEC. 5. Citizen suit. – Any Filipino citizen in representation of others, including minors or generations yet unborn, may file an action to enforce rights or obligations under environmental laws. Upon the filing of a citizen suit, the court shall issue an order which shall contain a brief description of the cause of action and the reliefs prayed for, requiring all interested parties to manifest their interest to intervene in the case within fifteen (15) days from notice thereof. The plaintiff may publish the order once in a newspaper of a general circulation in the Philippines or furnish all affected barangays copies of said order.

There is no valid reason in law or the practical requirements of this case to implead and feign representation on behalf of animals. To have done so betrays a very anthropocentric view of environmental advocacy. There is no way that we, humans, can claim to speak for animals let alone present

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[18] *Id*. at 515, 518.

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that they would wish to use our court system, which is designed to ensure that humans seriously carry their responsibility including ensuring a viable ecology for themselves, which of course includes compassion for all living things.

Our rules on standing are sufficient and need not be further relaxed.

In *Arigo v. Swift,*[19] I posed the possibility of further reviewing the broad interpretation we have given to the rule on standing. While representatives are not required to establish direct injury on their part, they should only be allowed to represent after complying with the following:

> [I]t is imperative for them to indicate with certainty the injured parties on whose behalf they bring the suit. Furthermore, the interest of those they represent must be based upon concrete legal rights. It is not sufficient to draw out a perceived interest from a general, nebulous idea of a potential "injury."[20]

I reiterate my position in *Arigo v. Swift* and in *Paje v. Casiño*[21] regarding this rule alongside the appreciation of legal standing in *Oposa v. Factoran*[22] for environmental cases. In *Arigo*, I opined that procedural liberality, especially in cases brought by representatives, should be used with great caution:

> *Perhaps it is time to revisit the ruling in Oposa v. Factoran.*
>
> *That case was significant in that, at that time, there was need to call attention to environmental concerns in light of emerging*

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[19] *J.* Leonen, Concurring Opinion in *Arigo v. Swift*, G.R No. 206510, September 14, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/september2014/206510_leonen.pdf> [Per *J.* Villarama, Jr., *En Banc*].

[20] *Id.* at 11.

[21] *J.* Leonen, Concurring and Dissenting Opinion in *Paje v. Casiño*, G.R. No. 205257, February 3, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/207257_leonen.pdf> [Per *J.* Del Castillo, *En Banc*].

[22] G.R. No. 101083, July 30, 1993, 224 SCRA 792, 803 [Per *J.* Davide, Jr., *En Banc*].

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international legal principles. While "intergenerational responsibility" is a noble principle, it should not be used to obtain judgments that would preclude future generations from making their own assessment based on their actual concerns. The present generation must restrain itself from assuming that it can speak best for those who will exist at a different time, under a different set of circumstances. In essence, the unbridled resort to representative suit will inevitably result in preventing future generations from protecting their own rights and pursuing their own interests and decisions. It reduces the autonomy of our children and our children's children. Even before they are born, we again restricted their ability to make their own arguments.

It is my opinion that, at best, the use of the Oposa doctrine in environmental cases should be allowed only when a) there is a clear legal basis for the representative suit; b) there are actual concerns based squarely upon an existing legal right; c) there is no possibility of any countervailing interests existing within the population represented or those that are yet to be born; and d) there is an absolute necessity for such standing because there is a threat of catastrophe so imminent that an immediate protective measure is necessary. Better still, in the light of its costs and risks, we abandon the precedent all together.[23] (Emphasis in the original)

Similarly, in *Paje*:

A person cannot invoke the court's jurisdiction if he or she has no right or interest to protect. He or she who invokes the court's jurisdiction must be the "owner of the right sought to be enforced." In other words, he or she must have a cause of action. An action may be dismissed on the ground of lack of cause of action if the person who instituted it is not the real party in interest.[24] The term

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[23] *J.* Leonen, Concurring Opinion in *Arigo v. Swift*, G.R No. 206510, September 14, 2014, 13 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/september2014/206510_leonen.pdf> [Per *J.* Villarama, Jr., *En Banc*].

[24] *J.* Leonen, Concurring and Dissenting Opinion in *Paje v. Casiño*, G.R. No. 205257, February 3, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/207257_leonen.pdf> [Per *J.* Del Castillo, *En Banc*]. See also *De Leon v. Court of Appeals,* 343 Phil. 254, 265 (1997) [Per *J.* Davide, Jr., Third Division], citing *Columbia Pictures, Inc. v. Court of Appeals,* 329 Phil. 875, 900-902 (1996) [Per *J.* Regalado, *En Banc*].

"interest" under the Rules of Court must refer to a material interest that is not merely a curiosity about or an "interest in the question involved." The interest must be present and substantial. It is not a mere expectancy or a future, contingent interest.

A person who is not a real party in interest may institute an action if he or she is suing as representative of a real party in interest. When an action is prosecuted or defended by a representative, that representative is not and does not become the real party in interest. The person represented is deemed the real party in interest. The representative remains to be a third party to the action instituted on behalf of another.

xxx xxx xxx

To sue under this rule, two elements must be present: "(a) the suit is brought on behalf of an identified party whose right has been violated, resulting in some form of damage, and (b) the representative authorized by law or the Rules of Court to represent the victim."

The Rules of Procedure for Environmental Cases allows filing of a citizen's suit. A citizen's suit under this rule allows any Filipino citizen to file an action for the enforcement of environmental law on behalf of minors or generations yet unborn. It is essentially a representative suit that allows persons who are not real parties in interest to institute actions on behalf of the real party in interest.

The expansion of what constitutes "real party in interest" to include minors and generations yet unborn is a recognition of this court's ruling in *Oposa v. Factoran*. This court recognized the capacity of minors (represented by their parents) to file a class suit on behalf of succeeding generations based on the concept of intergenerational responsibility to ensure the future generation's access to and enjoyment of [the] country's natural resources.

To allow citizen's suits to enforce environmental rights of others, including future generations, is dangerous for three reasons:

> *First,* they run the risk of foreclosing arguments of others who are unable to take part in the suit, putting into question its representativeness. *Second,* varying interests may potentially result in arguments that are bordering on political issues, the resolutions of which do not fall upon this court. *Third,* automatically allowing a class or citizen's suit on behalf of minors and generations yet unborn may result in the

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> oversimplification of what may be a complex issue, especially in light of the impossibility of determining future generation's true interests on the matter.

In citizen's suits, persons who may have no interest in the case may file suits for others. Uninterested persons will argue for the persons they represent, and the court will decide based on their evidence and arguments. Any decision by the court will be binding upon the beneficiaries, which in this case are the minors and the future generations. The court's decision will be res judicata upon them and conclusive upon the issues presented.[25]

The danger in invoking *Oposa v. Factoran* to justify all kinds of environmental claims lies in its potential to diminish the value of legitimate environmental rights. Extending the application of "real party in interest" to the Resident Marine Mammals, or animals in general, through a judicial pronouncement will potentially result in allowing petitions based on mere concern rather than an actual enforcement of a right. It is impossible for animals to tell humans what their concerns are. At best, humans can only surmise the extent of injury inflicted, if there be any. Petitions invoking a right and seeking legal redress before this court cannot be a product of guesswork, and representatives have the responsibility to ensure that they bring "reasonably cogent, rational, scientific, well-founded arguments"[26] on behalf of those they represent.

Creative approaches to fundamental problems should be welcome. However, they should be considered carefully so that no unintended or unwarranted consequences should follow. I concur with the approach of Madame Justice Teresita J. Leonardo-De Castro in her brilliant ponencia as it carefully narrows down the doctrine in terms of standing. Resident Marine Mammals and the human petitioners have no legal standing to file any kind of petition.

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[25] *J.* Leonen, Concurring and Dissenting Opinion in *Paje v. Casiño*, G.R. No. 205257, February 3, 2015, 3-5 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/207257_leonen.pdf> [Per *J.* Del Castillo, *En Banc*].

[26] *Id.* at 7.

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However, I agree that petitioners in G.R. No. 181527, namely, Central Visayas Fisherfolk Development Center, Engarcial, Yanong, and Labid, have standing both as real parties in interest and as representatives of subsistence fisherfolks of the Municipalities of Aloguinsan and Pinamungahan, Cebu, and their families, and the present and future generations of Filipinos whose rights are similarly affected. The activities undertaken under Service Contract 46 (SC-46) directly affected their source of livelihood, primarily felt through the significant reduction of their fish harvest.[27] The actual, direct, and material damage they suffered, which has potential long-term effects transcending generations, is a proper subject of a legal suit.

III

In our jurisdiction, there is neither reason nor any legal basis for the concept of implied petitioners, most especially when the implied petitioner was a sitting President of the Republic of the Philippines. In G.R. No. 180771, apart from adjudicating unto themselves the status of "legal guardians" of whales, dolphins, porpoises, and other cetacean species, human petitioners also impleaded Former President Gloria Macapagal-Arroyo as "unwilling co-petitioner" for "her express declaration and undertaking in the ASEAN Charter to protect Tañon Strait."[28]

No person may implead any other person as a co-plaintiff or co-petitioner without his or her consent. In our jurisdiction, only when there is a party that should have been a necessary party but was unwilling to join would there be an allegation as to why that party has been omitted. In Rule 3, Section 9 of the 1997 Rules of Civil Procedure:

SEC. 9. ***Non-joinder of necessary parties to be pleaded.*** — Whenever in any pleading in which a claim is asserted a necessary party is not joined, the pleader shall set forth his name, if known, and shall state why he is omitted. Should the court find the reason for the

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[27] *Rollo* (G.R No. 180771), p. 12.

[28] *Id*. at 8.

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omission unmeritorious, it may order the inclusion of the omitted necessary party if jurisdiction over his person may be obtained.

The failure to comply with the order for his inclusion, without justifiable cause, shall be deemed a waiver of the claim against such party.

The non-inclusion of a necessary party does not prevent the court from proceeding in the action, and the judgment rendered therein shall be without prejudice to the rights of such necessary party.[29]

A party who should have been a plaintiff or petitioner but whose consent cannot be obtained should be impleaded as a defendant in the nature of an unwilling co-plaintiff under Rule 3, Section 10 of the 1997 Rules of Civil Procedure:

SEC. 10. ***Unwilling co-plaintiff.*** — If the consent of any party who should be joined as plaintiff can not be obtained, he may be made a defendant and the reason therefor shall be stated in the complaint.[30]

The reason for this rule is plain: Indispensable party plaintiffs who should be part of the action but who do not consent should be put within the jurisdiction of the court through summons or other court processes. Petitioners should not take it upon themselves to simply implead any party who does not consent as a petitioner. This places the unwilling co-petitioner at the risk of being denied due process.

Besides, Former President Gloria Macapagal-Arroyo cannot be a party to this suit. As a co-equal constitutional department, we cannot assume that the President needs to enforce policy directions by suing his or her alter-egos. The procedural situation caused by petitioners may have gained public attention, but its legal absurdity borders on the contemptuous. The Former President's name should be stricken out of the title of this case.

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[29] 1997 RULES OF CIV. PROC., Rule 3, Sec. 9.

[30] 1997 RULES OF CIV. PROC., Rule 3, Sec. 10.

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IV

I also concur with the conclusion that SC-46 is both illegal and unconstitutional.

SC-46 is illegal because it violates Republic Act No. 7586 or the National Integrated Protected Areas System Act of 1992, and Presidential Decree No. 1234,[31] which declared Tañon Strait as a protected seascape. It is unconstitutional because it violates the fourth paragraph of Article XII, Section 2 of the Constitution.

V

Petitioner Central Visayas Fisherfolk Development Center asserts that SC-46 violated Article XII, Section 2, paragraph 1 of the 1987 Constitution because Japan Petroleum Exploration Co., Ltd. (JAPEX) is 100% Japanese-owned.[32] It further asserts that SC-46 cannot be validly classified as a technical and financial assistance agreement executed under Article XII, Section 2, paragraph 4 of the 1987 Constitution.[33] Public respondents counter that SC-46 does not fall under the coverage of paragraph 1, but is a validly executed contract under paragraph 4.[34] Public respondents further aver that SC-46 neither granted exclusive fishing rights to JAPEX nor violated Central Visayas Fisherfolk Development Center's right to preferential use of communal marine and fishing resources.[35]

VI

Article XII, Section 2 of the 1987 Constitution states:

Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy,

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[31] Declaring the Tañon Strait Situated in the Provinces of Cebu, Negros Occidental and Negros Oriental as a Protected Area Pursuant to R.A. 7586 (NIPAS Act of 1992) and Shall be Known as Tañon Strait Protected Seascape, May 27, 1998.

[32] *Rollo* (G.R No. 181527), p. 26.

[33] *Id*. at 26-28.

[34] *Rollo* (G.R No. 180771), pp. 81-83.

[35] *Id*.

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fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fish-workers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution. (Emphasis supplied)

I agree that fully foreign-owned corporations may participate in the exploration, development, and use of natural resources, *but only through either financial agreements or technical ones. This is the clear import of the words "either financial or technical assistance agreements."* This is also the clear result if we compare

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the 1987 constitutional provision with the versions in the 1973 and 1935 Constitution:

1973 CONSTITUTION
ARTICLE XIV
THE NATIONAL ECONOMY AND THE PATRIMONY OF THE NATION

SEC. 9. The disposition, exploration, development, of exploitation, or utilization of any of the natural resources of the Philippines shall be limited to citizens of the Philippines, or to corporations or association at least sixty per centum of the capital of which is owned by such citizens. The Batasang Pambansa, in the national interest, may allow such citizens, corporations, or associations to *enter into service contracts for financial, technical, management, or other forms of assistance with any foreign person or entity for the exploitation, development, exploitation, or utilization of any of the natural resources.* Existing valid and binding service contracts for financial, the technical, management, or other forms of assistance are hereby recognized as such. (Emphasis supplied)

1935 CONSTITUTION
ARTICLE XIII
CONSERVATION AND UTILIZATION OF NATURAL RESOURCES

SECTION 1. All agricultural timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for another twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and the limit of the grant.

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The clear text of the Constitution in light of its history prevails over any attempt to infer interpretation from the Constitutional Commission deliberations. The constitutional texts are the product of a full sovereign act: deliberations in a constituent assembly and ratification. Reliance on recorded discussion of Constitutional Commissions, on the other hand, may result in dependence on incomplete authorship. Besides, it opens judicial review to further subjectivity from those who spoke during the Constitutional Commission deliberations who may not have predicted how their words will be used. It is safer that we use the words already in the Constitution. The Constitution was their product. Its words were read by those who ratified it. The Constitution is what society relies upon even at present.

SC-46 is neither a financial assistance nor a technical assistance agreement.

Even supposing for the sake of argument that it is, it could not be declared valid in light of the standards set forth in *La Bugal-B'laan Tribal Association, Inc. v. Ramos:*[36]

> Such service contracts may be entered into *only with respect to minerals, petroleum and other mineral oils*. The grant thereof is subject to several safeguards, among which are these requirements:
>
> (1) The service contract shall be crafted in accordance with a general law that will set standard or uniform terms, conditions and requirements, presumably to attain a certain uniformity in provisions and avoid the possible insertion of terms disadvantageous to the country.
>
> (2) The President shall be the signatory for the government because, supposedly before an agreement is presented to the President for signature, it will have been vetted several times over at different levels to ensure that it conforms to law and can withstand public scrutiny.
>
> (3) Within thirty days of the executed agreement, the President shall report it to Congress to give that branch of government an opportunity to look over the agreement and interpose

[36] 486 Phil. 754 (2004) [Per *J.* Panganiban, *En Banc*].

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> timely objections, if any.[37] (Emphasis in the original, citation omitted)

Based on the standards pronounced in *La Bugal,* SC-46'S validity must be tested against three important points: (a) whether SC-46 was crafted in accordance with a general law that provides standards, terms, and conditions; (b) whether SC-46 was signed by the President for and on behalf of the government; and (c) whether it was reported by the President to Congress within 30 days of execution.

VII

The general law referred to as a possible basis for SC-46's validity is Presidential Decree No. 87 or the Oil Exploration and Development Act of 1972. It is my opinion that this law is unconstitutional in that it allows service contracts, contrary to Article XII, Section 2 of the 1987 Constitution:

> The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils *according to the general terms and conditions provided by law*, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources. (Emphasis supplied)

The deletion of service contracts from the enumeration of the kind of agreements the President may enter into with foreign-owned corporations for exploration and utilization of resources means that service contracts are no longer allowed by the Constitution. Pursuant to Article XVIII, Section 3 of the 1987 Constitution,[38] this inconsistency renders the law invalid and ineffective.

SC-46 suffers from the lack of a special law allowing its activities. The Main Opinion emphasizes an important point,

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[37] *Id.* at 815.

[38] Section 3. All existing laws, decrees, executive orders, proclamations, letters of instructions, and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed, or revoked.

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which is that SC-46 did not merely involve exploratory activities, but also provided the rights and obligations of the parties should it be discovered that there is oil in commercial quantities in the area. The Tañon Strait being a protected seascape under Presidential Decree No. 1234[39] requires that the exploitation and utilization of energy resources from that area are explicitly covered by a law passed by Congress specifically for that purpose, pursuant to Section 14 of Republic Act No. 7586 or the National Integrated Protected Areas System Act of 1992:

> SEC. 14. Survey for Energy Resources. - Consistent with the policies declared in Section 2, hereof, protected areas, except strict nature reserves and natural parks, may be subjected to exploration only for the purpose of gathering information on energy resources and only if such activity is carried out with the least damage to surrounding areas. Surveys shall be conducted only in accordance with a program approved by the DENR, and the result of such surveys shall be made available to the public and submitted to the President for recommendation to Congress. *Any exploitation and utilization of energy resources found within NIPAS areas shall be allowed only through a law passed by Congress*.[40] (Emphasis supplied)

No law was passed by Congress specifically providing the standards, terms, and conditions of an oil exploration, extraction, and/or utilization for Tañon Strait and, therefore, no such activities could have been validly undertaken under SC-46. The National Integrated Protected Areas System Act of 1992 is clear that exploitation and utilization of energy resources in a protected seascape such as Tañon Strait shall only be allowed through a specific law.

VIII

Former President Gloria Macapagal-Arroyo was not the signatory to SC-46, contrary to the requirement set by paragraph 4 of Article XII, Section 2 for service contracts involving the

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[39] Declaring the Tañon Strait Situated in the Provinces of Cebu, Negros Occidental and Negros Oriental as a Protected Area Pursuant to R.A. 7586 (NIPAS Act of 1992) and Shall be Known as Tañon Strait Protected Seascape, May 27, 1998.

[40] Rep. Act No. 7856 (1992), Sec. 14.

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exploration of petroleum. SC-46 was entered into by then Department of Energy Secretary Vicente S. Perez, Jr., on behalf of the government. I agree with the Main Opinion that in cases where the Constitution or law requires the President to act personally on the matter, the duty cannot be delegated to another public official.[41] *La Bugal* highlights the importance of the President's involvement, being one of the constitutional safeguards against abuse and corruption, as not mere formality:

> At this point, we sum up the matters established, based on a careful reading of the ConCom deliberations, as follows:
>
> - In their deliberations on what was to become paragraph 4, the framers used the term *service contracts* in referring to *agreements x x x involving either technical or financial assistance*.
> - They spoke of *service contracts* as the concept was understood in the 1973 Constitution.
> - It was obvious from their discussions that they were not about to ban or eradicate *service contracts*.
> - Instead, *they were plainly crafting provisions to put in place safeguards that would eliminate or minimize the abuses prevalent during the marital law regime*.[42] (Emphasis in the original)

Public respondents failed to show that Former President Gloria Macapagal-Arroyo was involved in the signing or execution of SC-46. The failure to comply with this constitutional requirement renders SC-46 null and void.

IX

Public respondents also failed to show that Congress was subsequently informed of the execution and existence of SC-46. The reporting requirement is an equally important requisite to

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[41] See *Joson v. Executive Secretary Ruber Torres*, 352 Phil. 888 (1998) [Per *J.* Puno, Second Division].

[42] *La Bugal-B'laan Tribal Association, Inc. v. Ramos*, 486 Phil. 754, 813-814 (2004) [Per *J.* Panganiban, *En Banc*].

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the validity of any service contract involving the exploration, development, and utilization of Philippine petroleum. Public respondents' failure to report to Congress about SC-46 effectively took away any opportunity for the legislative branch to scrutinize its terms and conditions.

In sum, SC-46 was executed and implemented absent all the requirements provided under paragraph 4 of Article XII, Section 2. It is, therefore, null and void.

X

I am of the view that SC-46, aside from not having complied with the 1987 Constitution, is also null and void for being violative of environmental laws protecting Tañon Strait. In particular, SC-46 was implemented despite falling short of the requirements of the National Integrated Protected Areas System Act of 1992.

As a protected seascape under Presidential Decree No. 1234,[43] Tañon Strait is covered by the National Integrated Protected Areas System Act of 1992. This law declares as a matter of policy:

> SEC. 2. Declaration of Policy. Cognizant of the profound impact of man's activities on all components of the natural environment particularly the effect of increasing population, resource exploitation and industrial advancement and recognizing the critical importance of protecting and maintaining the natural biological and physical diversities of the environment notably on areas with biologically unique features to sustain human life and development, as well as plant and animal life, *it is hereby declared the policy of the State to secure for the Filipino people of present and future generations the perpetual existence of all native plants and animals through the establishment of a comprehensive system of integrated protected areas within the classification of national park as provided for in the Constitution.*

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[43] Declaring the Tañon Strait Situated in the Provinces of Cebu, Negros Occidental and Negros Oriental as a Protected Area Pursuant to R.A. 7586 (NIPAS Act of 1992) and Shall be Known as Tañon Strait Protected Seascape, May 27, 1998.

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It is hereby recognized that these areas, although distinct in features, possess common ecological values that may be incorporated into a holistic plan representative of our natural heritage; that effective administration of these areas is possible only through cooperation among national government, local and concerned private organizations; that the use and enjoyment of these protected areas must be consistent with the principles of biological diversity and sustainable development.

To this end, there is hereby established a National Integrated Protected Areas System (NIPAS), which shall encompass outstanding remarkable areas and biologically important public lands that are habitats of rare and endangered species of plants and animals, biogeographic zones and related ecosystems, whether terrestrial, wetland or marine, all of which shall be designated as "protected areas."[44] (Emphasis supplied)

Pursuant to this law, any proposed activity in Tañon Strait must undergo an Environmental Impact Assessment:

SEC. 12. Environmental Impact Assessment. - *Proposals for activities which are outside the scope of the management plan for protected areas shall be subject to an environmental impact assessment as required by law before they are adopted, and the results thereof shall be taken into consideration in the decision-making process.*[45] (Emphasis supplied)

The same provision further requires that an Environmental Compliance Certificate be secured under the Philippine Environmental Impact Assessment System before any project is implemented:

No actual implementation of such activities shall be allowed without the required Environmental Compliance Certificate (ECC) under the Philippine Environment Impact Assessment (EIA) system. In instances where such activities are allowed to be undertaken, the proponent shall plan and carry them out in such manner as will *minimize any adverse effects and take preventive and remedial action*

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[44] Rep. Act No. 7856 (1992), Sec. 2.

[45] Rep. Act No. 7856 (1992), Sec. 12.

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when appropriate. The proponent shall be liable for any damage due to lack of caution or indiscretion.[46] (Emphasis supplied)

In projects involving the exploration or utilization of energy resources, the National Integrated Protected Areas System Act of 1992 additionally requires that a program be approved by the Department of Environment and Natural Resources, which shall be publicly accessible. The program shall also be submitted to the President, who in turn will recommend the program to Congress. Furthermore, Congress must enact a law specifically allowing the exploitation of energy resources found within a protected area such as Tañon Strait:

SEC. 14. Survey for Energy Resources. - Consistent with the policies declared in Section 2, hereof, protected areas, except strict nature reserves and natural parks, may be subjected to exploration only for the purpose of gathering information on energy resources and only if such activity is carried out with the least damage to surrounding areas. *Surveys shall be conducted only in accordance with a program approved by the DENR, and the result of such surveys shall be made available to the public and submitted to the President for recommendation to Congress. Any exploitation and utilization of energy resources found within NIPAS areas shall be allowed only through a law passed by Congress.*[47] (Emphasis supplied)

Public respondents argue that SC-46 complied with the procedural requirements of obtaining an Environmental Compliance Certificate.[48] At any rate, they assert that the activities covered by SC-46 fell under Section 14 of the National Integrated Protected Areas System Act of 1992, which they interpret to be an exception to Section 12. They argue that the Environmental Compliance Certificate is not a strict requirement for the validity of SC-46 since (a) the Tañon Strait is not a nature reserve or natural park; (b) the exploration was merely for gathering

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[46] Rep. Act No. 7856 (1992), Sec. 12.

[47] Rep. Act No. 7856 (1992), Sec. 14.

[48] *Rollo* (G.R No. 180771), pp. 91-92.

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information; and (c) measures were in place to ensure that the exploration caused the least possible damage to the area.[49]

Section 14 *is not an exception* to Section 12, but instead provides additional requirements for cases involving Philippine energy resources. The National Integrated Protected Areas System Act of 1992 was enacted to recognize the importance of protecting the environment in light of resource exploitation, among others.[50] Systems are put in place to secure for Filipinos local resources under the most favorable conditions. With the status of Tañon Strait as a protected seascape, the institution of additional legal safeguards is even more significant.

Public respondents did not validly obtain an Environmental Compliance Certificate for SC-46. Based on the records, JAPEX commissioned an environmental impact evaluation only in the second sub-phase of its project, with the Environmental Management Bureau of Region VII granting the project an Environmental Compliance Certificate on March 6, 2007.[51] Despite its scale, the seismic surveys from May 9 to 18, 2005 were conducted without any environmental assessment contrary to Section 12 of the National Integrated Protected Areas System Act of 1992.

XI

Finally, we honor every living creature when we take care of our environment. As sentient species, we do not lack in the wisdom or sensitivity to realize that we only borrow the resources that we use to survive and to thrive. We are not incapable of mitigating the greed that is slowly causing the demise of our planet. Thus, there is no need for us to feign representation of any other species or some imagined unborn generation in filing any action in our courts of law to claim any of our fundamental rights to a healthful ecology. In this way and with candor and courage, we fully shoulder the responsibility deserving of the grace and power endowed on our species.

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[49] *Id*. at 85.

[50] Rep. Act No. 7856 (1992), Sec. 2.

[51] *Rollo* (G.R No. 181527), pp. 58-59.

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ACCORDINGLY, I vote:

(a) to DISMISS G.R. No. 180771 for lack of standing and STRIKE OUT the name of Former President Gloria Macapagal-Arroyo from the title of this case;

(b) to GRANT G.R. No. 181527; and

(c) to DECLARE SERVICE CONTRACT 46 NULL AND VOID for violating the 1987 Constitution, Republic Act No. 7586, and Presidential Decree No. 1234.

EN BANC

[G.R. No. 216098. April 21, 2015]

BISHOP BRODERICK S. PABILLO, DD, PABLO R. MANALASTAS, JR., PhD, MARIA CORAZON AKOL, CONCEPCION B. REGALADO, HECTOR A. BARRIOS, LEO Y. QUERUBIN, AUGUSTO C. LAGMAN, FELIX P. MUGA, II, PhD, ATTY. GREGORIO T. FABROS, EVITA L. JIMENEZ, and JAIME DL CARO, PhD, *petitioners, vs.* **COMMISSION ON ELECTIONS, *EN BANC*, represented by Acting Chairperson CHRISTIAN ROBERT S. LIM, and SMARTMATIC-TIM CORPORATION, represented by Smartmatic Asia-Pacific President CESAR FLORES,** *respondents*.

[G.R. No. 216562. April 21, 2015]

INTEGRATED BAR OF THE PHILIPPINES, *petitioner, vs.* **COMMISSION ON ELECTIONS, represented by**