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## Governance Stream - Governance and the Law

### ‘Globalisation and decentralisation: the role of legal frameworks’

#### The Philippine Experience

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#### General Remarks

The Philippines is one of the countries that can be said to have embraced the concept of globalisation, believing that with its rich natural resources, high literacy rate and skilled workforce, it would derive mainly gains from opening its doors to the rest of the world.

Even earlier than moves towards globalisation, the Philippines has put a premium on localisation, known in local terms as decentralisation or devolution.<sup>1</sup>

#### Globalisation

The Philippines is one of the countries in Southeast Asia that has been most open to globalisation. Its investment policy has always been geared towards the increasing competitiveness in the global economy, as reflected in the generous incentives provided to export activities and foreign investment in capital-intensive industries. Other activities listed in the recent Investment Priorities Plans (the document, issued annually, that determines which activities are eligible for a basket of prime incentives) reflect a tendency to promote resource extractive industries such as exploration, mining, quarrying and processing of minerals, exploration/development of indigenous, new and renewable energy sources and technologies. These also tend to be the activities that require heavy capital investment and, more often than not, foreign capital.

While the Philippine Constitution declares that “[t]he State shall develop a self-reliant and independent national economy effectively controlled by Filipinos” (Section 19, Article II), the reality is that many of the capital-intensive industries, including those that relative to resource use and extraction, require infusion of capital from foreign investors. Thus, the pro-Filipino economic policy

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<sup>1</sup> "Devolution" is formally defined as "the act by which the national government confers power and authority upon the various local government units to perform specific functions and responsibilities." (Republic Act No. 7160, The Local Government Code of 1991, Sec. 17 (e))

has had to be adjusted to this reality. This is illustrated in the Constitution, which provides that the President may enter into agreements with foreign corporations for technical or financial assistance for large-scale exploration, development, and utilisation of mineral, petroleum, and other mineral oils, even if these activities are supposed to be reserved for Filipino citizens and corporations. (Section 2, Article XII, 1987 Constitution)

### **Localisation**

Section 25, Article II of the 1987 Constitution states that “[t]he State shall ensure the autonomy of local governments.” Towards this end, Republic Act No. 7160, the Local Government Code of 1991 (the LGC), was enacted. The Local Government Code grants considerable powers to local governments, including powers relating to natural resource management.

For years now, central agencies such as the Department of Environment and Natural Resources (DENR), which has retained primary responsibility over the protection of the environment, and local government units, have been trying to explore how best to develop an effective partnership that will result in the overall improvement of environmental conditions in the Philippines. More than 10 years after the enactment of the LGC, arrangements are still being set in place for such coordination. (*See*, for instance, Joint DENR-DILG [Department of Interior and Local Government] Memorandum Circular No. 2003-01, Strengthening and Institutionalizing the DENR-DILG-LGU [Local Government Unit] Partnership on Devolved and Other Forest Management Functions.) Part of the challenges involved in developing this relationship is the wide disparity in the capacity of local governments to deal with environmental issues within their jurisdiction.

Even where specific legislation does not grant express powers to the local government units, implementing and operationalizing laws and activities that impact on the environment and protected areas will inevitably require the active involvement of the local government units. The question, however, is to what extent this involvement goes into actual formulation of policies, most especially on the “regulation” of investments within the boundaries of the local government unit, and the protection of the environment.

### **Globalisation-Localisation Tensions?**

Ideally, the national and local governments should have one shared vision on globalisation, including strategies to deal with effects of globalisation on the environment. Localisation then would mean the translation of this vision into the scale and realities of each local government unit. For such a goal to be attained, however, at least two conditions must exist: (a) a country must have a clear vision, goals and strategy with regard to globalisation; and (b) a fairly developed system of localisation must be in place.

The reality, however, not only in the Philippines but also in the rest of the developing world, is that there are mixed feelings about globalisation. Although there is increasing scepticism about the benefits that foreign trade and investments can bring (*See*, for instance “Trade rigged against the poor,” *New York Times News Service*, 21 July 2003.), formal Philippine policy still tends to favour a free trade, pro-foreign investment stance. While it may be too harsh to conclude that globalisation has had only negative impacts on the Philippines, it can be safely said that globalisation has exerted pressure on natural resources in at least two ways: (a) through the drive towards more investment in resource-extractive industries; and (b) through the worsening of the situation of some of the less-privileged Filipinos involved in basic industries such as agriculture. These pressures inevitably affect protected areas, which are often among the richest basins of these resources. The situation is aggravated by the fact that most areas that would fall under the category of protected areas have not,

as yet, been legally declared to be protected areas, and thus do not enjoy the protection accorded by the National Integrated Protected Areas (NIPAS) Act.<sup>2</sup>

On the side of localisation, while headway is being made with regard to central government-local government relations, many details and jurisdictional questions still need to be worked out. While the Local Government Code is fairly detailed in its enumeration of devolved functions, the language used, when referring to the responsibility of central governments in relation to these devolved functions, is often vague and poses a challenge in actual implementation. The local government, with its advantage of proximity and direct contact, can often, at the first instance, exercise *de facto* control over activities that should legally fall within the jurisdiction of the national government. Local government, often under pressure to provide basic services to their constituents and to improve the sources of revenue, can push for larger investments and more intensive economic activities, regardless of the declared national policy on the issue, and environmental standard. Because of the uneven way in which development has taken place in various regions of the Philippines, regional, provincial, or municipal competition can also lead to a disregard of environmental policy and baseline standards.

Pressures may, however, work the other way around, with local government bowing to central government sponsored activities and programs which, because its benefits, are considered as being of national importance despite their location in a particular city or province. In the process of defining the boundaries of protected areas, for instance, national government agencies, which have greater access to the legislators who decide on the definition of protected areas, could manage to have them defined so that particularly resource-rich portions of the protected area are either removed from the definition or relegated to the buffer zone.

### **Future directions**

- Greater cooperation between the central and local governments, for the delivery of a unified policy while at the same time maintaining the autonomy of the local governments, with cooperative instruments that are clear on lines of responsibility and mechanisms for cooperation, but are also flexible
- A system of consultation on development and investment policy that involves not only *post facto* comment from local government units and other local stakeholders, but begins at the stage of policy formulation
- Greater intensity of transforming initial components of the protected areas system into legislatively-established protected areas, and greater rigor in the establishment of protected areas, so that its boundaries, as indicated in the law that officially declares its creation, tally with the ecological boundaries to the best extent possible

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<sup>2</sup> Republic Act No. 7586, An Act Providing for the Establishment and Management of National Integrated Protected Areas System, Defining its Scope and Coverage, and for Other Purposes.