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**A Rights-Based Approach to Environmental Protection:  
The Balance between Police Power and Livelihood Rights**

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## **ABSTRACT**

Economic tourism has contributed to the national and local economy of the Philippines and has also provided a lot of jobs for the Filipino people. The country is rich in natural resources and has beautiful island destinations. These places has created jobs for the Filipinos and as a result, this dependency has caused harm to the environment. The state has the duty to protect the environment. It may, with its police power, implement laws and perform certain actions with the purpose of conserving the environment. On the other hand, the state also has the obligation to protect the rights of every people. The livelihood rights of those people affected by the acts of the government to protect the environment, especially in island destinations, are being threatened. With these obligations of the government, how can a balance be created between the exercise of police power and livelihood rights in environmental protection?

This study, recognizing that the environment should be protected and preserved, is intended to find ways on how the government can protect the livelihood rights of its people and the environment in the island destinations of the country.

The proponent, with the existence of various environmental and human rights laws has come up with proposed mechanisms in order to maintain the balance between police power and livelihood right in environmental protection. Using the temporary closure of Boracay Island as case study, the proponent was able to study and analyze how this kind of scenario may be prevented in the future. There were proposed mechanisms and standards, including the creation of a single authority and the implementation of environmental impact assessment even in island destinations and proposed standards which may also be implemented in the country. These may serve as a guide during rehabilitation and conservation programs in the country.

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# CHAPTER 1: INTRODUCTION

## A. Background of the Study

As a country with more than 7,000 islands, the Philippines is known for having some of the most beautiful beach destinations in the world. This has contributed to bolstering the tourism industry of the country, in turn providing livelihood to Filipinos. According to a report issued by the Philippine DOT on January 21, 2018, foreign tourists' arrivals in the country in 2017 is 11% higher than the previous year. Data from the World Travel and Tourism Council showed that travel and tourism has directly supported about 2.3 million jobs, which is 5.8% of employment in 2017.<sup>1</sup> However, the economic growth brought about by this progression has had detrimental effects to our environment.

On February 9, 2018, Philippine President Rodrigo Duterte announced his plans to close one of the country's major tourist destinations, Boracay Island, to all visitors and tourists to roll-out a large-scale environmental rehabilitation effort. Duterte stated that Boracay has become a "cesspool" and should therefore be temporarily closed down for a massive cleanup. Environmental issues have been in existence over the past twenty years in Boracay Island. These issues were mostly blamed on the inadequate septic and sewage systems in the island, causing health and sanitation hazards and existence of bacteria that affect marine life and coral reefs. Proclamation 475 was released by Malacañang declaring state of calamity in these three (3) villages in Boracay. The island was temporarily closed down on April 26, 2018. As an effect, all business establishments within the island ceased operations resulting to loss of livelihood.

Senior Deputy Executive Secretary Menardo Guevarra, said that the recommendation to close Boracay from tourists for six (6) months came from the Department of the Interior and Local Government. Two government agencies had also advised the "total" closure of Boracay - the Department of Tourism and the Department of Environment and Natural Resources.<sup>2</sup> This position was contrary to the recommendation of the Department of Trade and Industry, which in a separate memorandum requested that the closure be done

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<sup>1</sup> The World Travel and Tourism Council Report, 2018

<sup>2</sup> Pia Ranada, *Duterte orders 6-Month Closure of Boracay*, Rappler, April 04, 2018 available at <https://www.rappler.com/nation/199580-duterte-orders-closure-boracay-6-months> (last accessed Aug, 04, 2018).

in phases in consideration of the effects on the businesses and livelihood in Boracay as a top Philippine tourist destination.<sup>3</sup>

Then Presidential spokesperson Harry Roque said that the temporary closure may be conducted by virtue of the inherent police power of the government to protect the environment.<sup>4</sup>

The effects of the rehabilitation to the residents and laborers of Boracay Island must be assessed in light of this presidential proclamation. According to the data of Boracay Foundation, almost 19,000 people work in the formal sector, including hotels, resorts, restaurants, dive shops, souvenir shops, tour activity centers, and transport providers, while there are 17,000 work in the informal sector as massage therapists, tattoo artists, and vendors by the beach.<sup>5</sup>

## **B. Statement of the Problem**

The study is focused on the balance between the State's exercise of police power and the rights of the people to livelihood through rehabilitation of beach destinations in the country. Specifically, this study aims to answer whether the State must include in its human rights obligations the duty to ensure the level of environmental protection necessary to allow the full exercise of protected rights. This will be subdivided into two sub questions:

- a. To what extent the government can implement rehabilitation programs especially when it affects livelihood rights?
- b. How can the State provide the same level of protection to livelihood rights and the environment?

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<sup>3</sup> Rosette Adel, *Palace: DTI wants Boracay closure to be done in phases*, Phil. Star, April 2, 2018, available at <https://www.philstar.com/headlines/2018/04/02/1802104/palace-dti-wants-boracay-closure-be-done-phases>, last accessed (Aug. 06, 2018).

<sup>4</sup> Virgil Lopez, *Palace insists Boracay State Owned, closure to proceed sans TRO*, GMA Network News, April 25, 2018, <http://www.gmanetwork.com/news/news/nation/651246/palace-insists-boracay-state-owned-closure-to-proceed-sans-tro/story/> (last accessed Aug.04, 2018).

<sup>5</sup> Dharel Placido, *Boracay closed for 6 months starting April 26, says Roque*, ABS-CBN News, April 4, 2018, available at <http://news.abs-cbn.com/news/04/04/18/boracay-closed-for-6-months-starting-april-26-says-roque> (last accessed Aug. 05, 2018).

These questions shall be addressed using the Boracay Island situation as a case study.

There are no sufficient guidelines available through which affected people and their rights may be protected from such activity conducted by the government in island destinations. Without the existence of proper guidelines, temporary or permanent closures of any beach destinations in the country for environmental rehabilitation can be a capricious and whimsical exercise of police power and a violation of the right to livelihood of the people.

### **C. Objectives of the Study**

All human rights are interconnected, interrelated and indivisible.<sup>6</sup> In practice, states often find themselves in a position where they must prioritize one right over the other as part of balancing act. The study aims to determine the extent to which on the one hand, the government may exercise police power to protect the environment and on the other, ensure that the livelihood rights are recognized and respected. It aims to determine whether a line has to be drawn between its exercise of police power and protection of rights of an individual in cases when the environmental is also at risk, or to allow an overlapping regime seeking to respect and protect both.

This study also aims to propose a mechanism that balances environmental protection through rehabilitation programs while protecting individual livelihood rights of those people affected. It aims to propose a workflow that can serve as a reference for the government to execute a rehabilitation process that will safeguard both the environment and the livelihood of the people.

The proponent hopes that the study may serve as a guide for future plans of the government to rehabilitate beach destinations in the Philippines without prejudicing the rights of the people dependent therein, specifically livelihood rights. This study is looking towards the achievement of environmental sustainability to benefit not only the present generation, but also the future generations.

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<sup>6</sup> Office of the High Commissioner for Human Rights (United Nations), What are human rights? , available at <https://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx> (last accessed Aug. 05, 2018)

## **D. Significance of the Study**

Police power concerns government enactments, which precisely interfere with personal liberty or property to promote the general welfare or the common good.<sup>7</sup> In the exercise of the police power of the state, it may deprive its citizens of property, particularly when the property or the exercise of the rights related thereto, tend or potentially endanger public health, public morals, public safety, and the general welfare and prosperity of its inhabitants.<sup>8</sup>

There are quite a number of beautiful beach destinations in the Philippines that makes it very attractive to both foreign and local tourists. As a consequence, environmental issues such as air and water pollution which affecting marine and freshwater resources, problems with waste water management and waste disposal of land-based activities, caused damage to the environment. These damages are due to activities of careless resort operators, business establishment owners, and tourists themselves.

Intuitively, the need to save the environment allows the government to exercise its police power, recognizing its authority to regulate both liberty and property of all people. Nevertheless, the state also has the obligation to recognize and protect livelihood rights.

This study is conducted to create stability between protecting the environment for general welfare and individual rights of the people.

## **E. Scope and Limitation of the Study**

This study will focus on developing a mechanism that will further protect beach destinations in the Philippines. International and domestic laws on environmental protection and human rights shall also be discussed in this paper in order to assess and formulate the proposed mechanism. The proposed mechanism aims to balance the exercise of police power by the state to protect the environment and the state's duty to protect the rights of its people.

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<sup>7</sup> *JMM Promotion and Management, Inc. v. Court of Appeals*, G.R. No. 120095, August 5, 1996.

<sup>8</sup> *The United States v. Jesus*, G.R. No. L-9651, August 4, 1915.

## **F. Definition of Terms**

**Environmental Assessment (EA)** - the process of systematic analysis, evaluation and management of the potential environmental and social effects, short-term and long-term, of proposed actions or projects. It is an administrative tool that integrates environmental considerations in development initiatives to ensure that the proposed projects will have minimal environmental impacts and be environmentally sound (ADB, 2003).

**Environmentally Critical Area (ECA)** - an area that is environmentally sensitive and is so listed under Presidential Proclamation (Pres. Proc.) No. 2146, Series of 1981 as well as other areas which the President of the Philippines may proclaim as environmentally critical in accordance with section 4 of P.D. No. 1586

**Environmentally Critical Project (ECP)** - a project that has high potential for significant negative environmental impact and is listed as such under Pres. Proc. No. 2146, Series of 1981 and Pres. Proc. No. 803, Series of 1996, as well as other projects which the President may proclaim as environmentally critical in accordance with Section 4 of P.D. 1586.

**Environmental Impact Assessment (EIA)** - the process of predicting the likely environmental consequences of implementing projects or undertakings and designing appropriate preventive, mitigating and enhancement measures. It involves the process of evaluating likely impacts of a project (including cumulative impacts) on the environment during construction, commissioning, operation and abandonment. It includes designing appropriate preventive, mitigating and enhancement measures addressing these consequences to protect the environment and the community's welfare (EMB MC 005, 2014).

**Environmental Impacts** - the probable effects or consequences of proposed projects or undertakings on the physical, biological and socioeconomic environment that can be direct or indirect, cumulative, and positive or negative.

**Environmental Degradation** - deterioration in environmental quality from ambient concentrations of pollutants and other activities and processes such as improper land use and natural disasters.

**Environmental Health** – branch of public health law which “addresses all the physical, chemical, and biological factors external to a person, and all the related factors impacting behaviours. It encompasses the assessment and control of those environmental factors that can potentially affect health. It is targeted towards preventing disease and creating health-supportive environments. This definition excludes behaviour not related to environment, as well as behaviour related to the social and cultural environment, and genetics” (WHO, n.d, para.1).

**Environmental Protection** - Any activity that maintains the balance of the environment by preventing contamination and the deterioration of the natural resources, including activities such as: a) changes in the characteristics of goods and services, and changes in consumption patterns; b) changes in production techniques; c) waste treatment or disposal in separate environmental protection facilities; d) recycling; e) prevention of landscape degradation.

**Sustainable Development** - development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

**Sustainability** - focuses on meeting the needs of the present without compromising the ability of future generations to meet their needs.

**Project or Undertaking** - any activity, regardless of scale or magnitude, which may have significant impact on the environment.

**Public Participation** - a transparent, gender sensitive, and community-based process involving the broadest range of stakeholders, commencing at the earliest possible stage of project design and development and continuing until post assessment monitoring which aims to ensure social acceptability of a project or undertaking.

**Social Justice** - political and philosophical concept which holds that all people should have equal access to wealth, health, wellbeing, justice and opportunity.

## CHAPTER 2. REVIEW OF RELATED LITERATURE

In this chapter, the proponent will provide an overview of police power exercised by the government, its application in environmental protection and how it affect the enjoyment of human rights. Various environmental laws which are applied in beach destinations of the Philippines is also available as reference to the efforts of the government to protect island destinations of the country. Furthermore, this chapter covers relevant domestic and international laws about human rights in order to develop a deeper understanding on the significance and relation of protecting both the environment and human rights at the same time. Information regarding the temporary closure of Boracay Island, Philippines and its effects to the livelihood of the affected people were also discussed in this chapter, in order to provide a clear picture of a situation which suggests an analysis to further develop mechanism that shall on safeguard both the environment and the people.

### A. Police Power

There are three inherent powers that the state may exercise in relation to its sovereignty. These are the police power, power of eminent domain and the power of taxation. Police power may be defined as the power to prescribe regulations to promote the health, morals, peace, education, good order or safety and general welfare of the people.<sup>9</sup> It is an inherent attribute of sovereignty and the most illimitable power of the government. Such power involves an imposition of restraint upon liberty or property in order to foster the common good.<sup>10</sup> It has been characterized as the “most essential, insistent and least limitable of powers, extending as it does to all great public needs”, and has been negatively defined as “that inherent and plenary power in the State which enables it to prohibit all that is hurtful to the comfort, safety and welfare of the society.<sup>11</sup> Despite having a broad feature, the exercise of police power revolves around the general welfare of the citizens of the State. This power is based upon the concept of necessity of the State and its corresponding right to protect itself and its people.<sup>12</sup> While incapable of an exact definition, it has been purposely veiled in general terms to underscore its comprehensiveness to meet all exigencies and

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<sup>9</sup> *Ermita-Malate Hotel v City of Manila*, GR No.L- 24693, July 31, 1967.

<sup>10</sup> *Philippine Association of Service Exporters, Inc. vs. Drilon*, G.R. No. 81958, June 30, 1988.

<sup>11</sup> *Ermita-Malate Hotel and Motel Operators Association Inc.*, G.R. No. L-24693.

<sup>12</sup> *JMM Promotion and Management Inc. v. Court of Appeals*, G.R. No. 120095.

provide enough room for an efficient and flexible response as the conditions warrant.<sup>13</sup>

Police power is founded on two Latin maxims, *sic utere tuo ut alienum non laedas* which means “so use your own as not to injure another’s property” and *salus populi suprema est lex* which means “the welfare of the people is the supreme law”. It is lodged primarily in the legislature, but may be delegated to the president and administrative agencies.<sup>14</sup> This power has the purpose of protecting the general welfare of the citizens, which as a result may restrain or limit other rights. The liberty and right of an individual is necessarily subject to reasonable restraint by general law for the common good.<sup>15</sup> The imposition of police power of such restraint in upon the liberty or property of the citizens must be for the benefit of the common good. This power of the government, as stated, affects the liberty of the people and this was emphasized in a number of cases wherein it was held that:

Liberty does not import "an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis, organized society could not exist with safety to its members. Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy. Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others . . . There is, of course, a sphere with which the individual may asserts the supremacy of his own will, and rightfully dispute the authority of any human government — especially of any free government existing under a written Constitution — to interfere with the exercise of that will. But it is equally true that in very well-ordered society charged with the duty of conserving

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<sup>13</sup> *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, G.R. No. L-24693.

<sup>14</sup> *Metropolitan Manila Development Authority v. Bel-Air Village Association Inc.*, G.R. No. 135962, March 27, 2000

<sup>15</sup> *Rubi et al. v. Provincial Board of Mindoro*, G.R. No. L-14078, March 7, 1919 citing *Hall v. Geiger-Jones* (1916), 242 U.S. 539; *Hardie-Tynes Manufacturing Co. vs. Cruz* (1914), 189 Ala. 66.

the safety of its members, the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint to be enforced by reasonable regulations, as the safety of the general public may demand." <sup>16</sup>

Police power is exercised by the national government through the legislative department. However, such power may be delegated to the President and to the local government units within the limits provided by law. The Congress the ultimate power to determine the necessity and the means of exercising police power. Public welfare lies at the bottom of the enactment of a law, and the state in order to promote the general welfare may interfere with personal liberty, with property, and with business and occupations.<sup>17</sup>

### **Determination of a Valid Exercise of Police Power**

The State may, in the exercise of police power, perform its duty which through enactment of laws that may impair other rights of the citizens. Hence, it is important to determine whether such act is a valid exercise of the State's police power. The Supreme Court has laid down in a number of cases the test to determine the validity of the exercise of police power. First, it must be in the interest of the public generally, as distinguished from those of a particular class require an interference with private rights and second, the means employed must be reasonably necessary for the accomplishment of the purpose and is not unduly oppressive upon individuals. <sup>18</sup> In a more simple terms, a valid exercise of police power requires a lawful subject and lawful mean. The test merely reiterates the essence of the constitutional guarantees of substantive due process, equal protection, and non-impairment of property rights.<sup>19</sup>

In the exercise of police power, property rights of individuals may be subjected to restraints and burdens in order to fulfill the objectives of the government. Otherwise stated, the government may enact legislation that may interfere with personal liberty, property, lawful businesses and occupations to promote the general

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<sup>16</sup> *Rubi v. Provincial Board of Mindoro*, G.R. No. L-14078.

<sup>17</sup> *Calalang v. Williams*, G.R. No. 47800, Dec. 2, 1940.

<sup>18</sup> *White Light Corporation vs City of Manila*, G.R. No. 122846, Jan. 20, 2009.

<sup>19</sup> *Chavez v Romulo*, G.R. No. 157036. June 9, 2004.

welfare. However, the interference must be reasonable and not arbitrary. And to forestall arbitrariness, the methods or means used to protect public health, morals, safety or welfare must have a reasonable relation to the end in view.<sup>20</sup>

In *Lawton v. Steele*, the court said that the legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations; in other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts.<sup>21</sup>

### **The Limitations on the exercise of Police Power**

The 1987 Constitution provides for the limitations in the exercise of police power by the State. These limitations are the due process clause and equal protection clause which can be found in Section 3, Article III of the 1987 Constitution. These constitutional guarantees which embody the essence of individual liberty and freedom in democracies, are not limited to citizens alone but are admittedly universal in their application, without regard to any differences of race, of color, or of nationality.<sup>22</sup>

### **Due Process Clause**

***“No person shall be deprived of life, liberty, or property without due process of law, xxx”***

The due process clause has to do with the reasonableness of legislation enacted in the exercise of police power by the State.<sup>23</sup> In the exercise of such power, the existence of public interest, public purpose or public welfare is substantial. The act must also be reasonably necessary for the accomplishment of the purpose, and not merely and unjustified interference with private interest.

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<sup>20</sup> *Social Justice Society v. Atienza, Jr.*, G.R. No. 156502, 13 February 2008.

<sup>21</sup> *Lawton v. Steele*, 14 S.Ct. 499, 38 (1894)(U.S.).

<sup>22</sup> *Ichong v. Hernandez*, G.R. No. L-7995, May 31, 1957.

<sup>23</sup> *Id.*

## Equal Protection Clause

“xxx, *nor shall any person be denied the equal protection of the laws.*”

On the other hand, as ruled in the case of *Ichong vs. Hernandez*, the equal protection of the law clause is against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality. It is not intended to prohibit legislation, which is limited either in the object to which it is directed or by territory within which is to operate. It does not demand absolute equality among residents; it merely requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced.<sup>24</sup>

These limitations set forth by law in the exercise of the police powers determines the validity of the actions of the government in exercising such power.

### **B. Human Right to Livelihood**

Human rights is defined as the rights that are inherent to all human beings, whatever the nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status.<sup>25</sup> These are rights that are to be respected and protected by the State in the performance of its obligation to safeguard its people.

The 1987 Constitution provides that the State values the dignity of every human person and guarantees full respect for human rights.<sup>26</sup> The provisions on human rights of Filipino citizens are found under Article III of the 1987 Constitution or the Bill of Rights. It provides for the rights and privileges that must be protected by the State at all costs. Three important rights are protected under the Bill of Rights, and these are life, liberty and property. However, the

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<sup>24</sup> *Id.*

<sup>25</sup> Office of the High Commissioner for Human Rights (United Nations), *supra* note 6.

<sup>26</sup> PHIL. CONST. Art. II, § 11.

hierarchy of rights, life, liberty and property does not share the same level of equality, thereby putting property right in the lowest level.

While the Bill of Rights also protects property rights, the primacy of human rights over property rights is recognized. Because these freedoms are "delicate and vulnerable, as well as supremely precious in our society" and the "threat of sanctions may deter their exercise almost as potently as the actual application of sanctions," they "need breathing space to survive," permitting government regulation only "with narrow specificity."

Property and property rights can be lost thru prescription; but human rights are imprescriptible. If human rights are extinguished by the passage of time, then the Bill of Rights is a useless attempt to limit the power of government and ceases to be an efficacious shield against the tyranny of officials, of majorities, of the influential and powerful, and of oligarchs — political, economic or otherwise.

In the hierarchy of civil liberties, the rights of free expression and of assembly occupy a preferred position as they are essential to the preservation and vitality of our civil and political institutions; and such priority "gives these liberties the sanctity and the sanction not permitting dubious intrusions."

The superiority of these freedoms over property rights is underscored by the fact that a mere reasonable or rational relation between the means employed by the law and its object or purpose — that the law is neither arbitrary nor discriminatory nor oppressive — would suffice to validate a law which restricts or impairs property rights. On the other hand, a constitutional or valid infringement of human rights requires a more stringent criterion, namely existence of a grave and

immediate danger of a substantive evil which the State has the right to prevent.<sup>27</sup>

In *JMM Promotion and Management, Inc. v. Court of Appeals*, the court ruled that the right to work and to earn a living is a protected property right.<sup>28</sup> Thus, as a protected right, all matters that may affect such right must be given careful considerations. Government must be cautious in implementing regulations and restrictions that may limit an individual to his right to earn a living because, not only such right relates to his economic status, but also to his dignity as a person. The right to earn a living, as a property right, must be protected so that the people, especially the poor, would be able to survive. As stated by Father Bernas, “[e]xperience does teach a very clear lesson that property is an important instrument for the preservation and enhancement of personal dignity. The poor are oppressed precisely because they are poor. In their regard therefore property is as important as life and liberty.”<sup>29</sup>

Moreover, Article XIII of the Constitution provides for the duty of the State to promote social justice and human rights<sup>30</sup>, afford full protection to labor<sup>31</sup> and to the rights of the workers<sup>32</sup>.

Social justice, as mandated in the 1987 Constitution, is based on the principle that “those who have less in life, should have more in law.” This principle serves as a guide to favor the underprivileged, except in cases when there is an unlawful behavior.<sup>33</sup>

The Philippines is one of the signatories to the International Bill of Rights. This includes the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). As a State party to these conventions, the Philippines is obliged to recognize and protect the rights of all its citizens and in order to comply with this duty, the Philippines has the duty to enact and implement laws that protects such rights.

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<sup>27</sup> *Philippine Blooming Mills Employment Organization vs. Philippine Blooming Mills Co. Inc.*, G.R. L-31195, 5 June 1973.

<sup>28</sup> *JMM Promotion and Management, Inc. v. Court of Appeals*, G.R. No. 120095, August 5, 1996.

<sup>29</sup> Joaquin G. Bernas, S.J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* 112 (2009 ed.).

<sup>30</sup> PHIL. CONST. Art. XIII, § 2.

<sup>31</sup> PHIL. CONST. Art. XIII, § 3.

<sup>32</sup> PHIL. CONST. Art. XIII, § 18.

<sup>33</sup> Bernas, *supra* note 29, at 1237.

The Philippines ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1976. Under this convention, the Philippines is committed to grant every individual, within its territory, economic, social and cultural rights. Included in this convention are the rights of self-determination and to freely pursue their economic, social and cultural development<sup>34</sup>, the right to work<sup>35</sup>, right to adequate standard of living, including adequate food, clothing and housing<sup>36</sup>, right to the highest attainable standard of health<sup>37</sup> and right to education.<sup>38</sup>

Human rights are classified in various ways, one of which is according to aspect of life, wherein the civil, political, economic, social and cultural rights are categorized. The economic, social and cultural rights are considered as second generation rights because these rights are based on the principles of social justice and public obligation. They are also commonly known as social welfare rights or affirmative rights and are generally stated as positive undertakings or obligations of the government to ensure economic well-being of the people. These rights ensure that every individual attain equal conditions and treatment, and viewed as goals and aspirations of the government for the people which are dependent on the availability of its resources.

Under the category of social welfare rights is the livelihood right of an individual. The United Nations made use of the definition suggested by Chambers and Conroy:

A livelihood comprises the capabilities, assets (including both material and social resources) and activities required for a means of living. A livelihood is sustainable when it can cope with and recover from stress and shocks and maintain or enhance its capabilities and assets both now and in the future, while not undermining the natural resource base.<sup>39</sup>

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<sup>34</sup> International Convention on Economic, Social and Cultural Rights (1966), art. 1[hereinafter ICESCR](1966).

<sup>35</sup> ICESCR, art. 6.

<sup>36</sup> ICESCR, art. 11.

<sup>37</sup> ICESCR art. 12.

<sup>38</sup> ICESCR, art. 13.

<sup>39</sup> Guidance Note on Recovery: Livelihood, United Nations and Development Program, *available at* [https://www.unisdr.org/files/16771\\_16771guidancenoteonrecoveryliveliho.pdf](https://www.unisdr.org/files/16771_16771guidancenoteonrecoveryliveliho.pdf) (last accessed Sept. 01, 2018).

This definition recognizes that in order to achieve a sustainable livelihood, there must be existence of capabilities, assets and activities. In the context of livelihood, capability of an individual is his ability or power to do something in a work or occupation to which he is in to, while the assets are the resources which include social resources, natural resources, financial resources, basic infrastructures, knowledge and others.

These factors contribute to the development and maintenance of an individual's means of support. Livelihood is normally related with a source of income, a job or other kinds of activities that enables a person to provide himself and his family the basic needs such as food, shelter and clothing. Livelihood are considered as set of activities which are to be carried out repeatedly in order to maintain the ability to support the needs of an individual. Thus, it is important that there be opportunities available for different people in different places in order for them to maintain a source of income.

The importance of livelihood is recognized in the Philippines. Being a country with a high number of population, the significance of having an employment or engaging in an activity which generates income is a top priority for the survival of every family. Government and non-government organizations have continuously provided livelihood programs as assistance to the Filipinos. Even international organizations have aided the country with skill programs and trainings that will help Filipinos earn for a living. Work is treated as an important condition of life to every Filipino, because without work there is poverty.

The purpose of the Bill of Rights is to protect the people against arbitrary and discriminatory use of political power. This bundle of rights guarantees the preservation of our natural rights which include personal liberty and security against invasion by the government or any of its branches or instrumentalities. Certainly, in the hierarchy of rights, the Bill of Rights takes precedence over the right of the State to prosecute, and when weighed against each other, the scales of justice tilt towards the former. Thus, relief may be availed of to stop the purported enforcement of criminal law where it is necessary to provide for an orderly administration of justice, to prevent the use of the strong arm of the law in an oppressive and vindictive manner, and to afford adequate protection to constitutional rights.<sup>40</sup>

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<sup>40</sup> *Allado v. Diokno*, G.R. No. 113630, May 5, 1994.

## **C. Environmental Protection**

The environment and the natural resources plays a vital role in the life of every person. It contributes to the daily human activities that affect his life, development and survival. The environment is the physical conditions including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character.<sup>41</sup> In general, natural resources refer to material objects of economic value and utility to man produced by nature. The relevant provision in the 1987 Constitution on natural resources is found in Section 2, Article XII which provides the importance of the natural resources in our country, as it mandates to prioritize the Filipinos in the utilization of such resources. People affect the environment in so many and different ways, thereby making it everyone's responsibility to safeguard it. Every day activities, whether positive or negative, which consist of the use and consumption of the environment creates an obligation for everyone to care and protect it. These human activities create various concerns which damage the surroundings. With the manifestation of the destruction caused by this activities and the intent to preserve and protect the environment, the concept of environmental protection comes to play. As such, various activities that have been done prevents the contamination and deterioration of the natural resources.

### **a. Laws Governing Environmental Protection to Beach Destinations in the Philippines**

The Philippines, with a total of 36, 289 kilometers, is one of the countries in the world with the longest coastlines, thereby resulting to a vast and rich coastal and marine resources.<sup>42</sup> These resources have been one of the greatest contribution in the survival and development of every Filipino. Most of the Philippine population are dependent on the coastal resources for their livelihood and as a result of such dependency, it has caused damage to the environment. Thus, in order to protect these resources, the government has implemented and applied various laws and principles to maintain an ecological and sustainable environment for all.

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<sup>41</sup> *Chinese Staff v. City of NY*, 68 NY 2d 359 (Court of Appeals 1986) (N.Y.).

<sup>42</sup> Conservation, Protection & Rehabilitation of the Environment & Natural Resources, National Economic and Development Authority *available at* <http://www.neda.gov.ph/wp-content/uploads/2013/09/CHAPTER-10.pdf> (last accessed Sept. 01, 2018)

## 1. 1987 CONSTITUTION

### **Police power as an inherent attribute of sovereignty**

As mentioned in the previous discussions, police power is the power to prescribe regulations to promote the health, morals, peace, education, good order or safety and general welfare of the people.<sup>43</sup> The scope of police power has been held to be so comprehensive as to encompass almost all matters affecting the health, safety, peace, order, morals, comfort and convenience of the community.<sup>44</sup>

### **Right to health and right to a balanced and healthful ecology**

Pursuant to these definitions of police power, the government may enact laws or implement rehabilitation and conservation programs in order to protect the environment as compliance with the constitutionally mandated obligation. These obligation, together with the right to health, is enshrined under Article II of the 1987 Constitution which provides:

SEC. 15. The State shall protect and promote the right to health of the people and instill health consciousness among them.

Section 16. 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.

These rights are considered as a self-executory rights and it was emphasized in one of the Supreme Court ruling which stated:

While the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter. Such a right

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<sup>43</sup> *Ermita-Malate Hotel and Motel Operators Association Inc.*, G.R. No. L-24693.

<sup>44</sup> *Acebedo Optical Company, Inc. v. CA*, 329 SCRA 314, Mar., 2000.

belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation — aptly and fittingly stressed by the petitioners — the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind. If they are now explicitly mentioned in the fundamental charter, it is because of the well-founded fear of its framers that unless the rights to a balanced and healthful ecology and to health are mandated as state policies by the Constitution itself, thereby highlighting their continuing importance and imposing upon the state a solemn obligation to preserve the first and protect and advance the second, the day would not be too far when all else would be lost not only for the present generation, but also for those to come — generations which stand to inherit nothing but parched earth incapable of sustaining life.<sup>45</sup>

Thus, a balanced and healthful ecology also promotes the right of the people to a healthy living. Environmental health contributes to the daily lives of the people which enables them to engage in any work for their survival and growth.

## **2. PRESIDENTIAL DECREE NO. 1151: PHILIPPINE ENVIRONMENTAL POLICY**

This policy recognized the conflicting demands of population growth, urbanization, industrial expansion, rapid natural resources utilization and increasing technological advances have resulted in a piecemeal-approach concept of environmental protection.<sup>46</sup>

It aims to use all practicable means, with the cooperation of the private organizations and entities, to use all practicable means, consistent with other

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<sup>45</sup> *Oposa v. Factoran*, G.R. No. 101083, Jul. 30, 1993.

<sup>46</sup> Philippine Environmental Policy Paragraph 1, Presidential Decree No. 1151, (1979).

essential considerations of national policy, in promoting the general welfare to the end. The goals of the policy, as laid down in Section 2 of PD 1151, is for the Nation to, among others, recognize, discharge and fulfill the responsibilities of each generation as trustee and guardian of the environment for succeeding generations, encourage the widest exploitation of the environment without degrading it, or endangering human life, health and safety or creating conditions adverse to agriculture, commerce and industry and attain a rational and orderly balance between population and resource use.

The right of the people to a healthy environment with the duty and responsibility of each individual to contribute in the preservation and enhancement of the Philippine environment was recognized in the achievement of its goals and policies.<sup>47</sup> All agencies and instrumentalities of the national government, including government-owned or controlled corporations, as well as private corporations firms and entities was tasked to prepare, file and include in every action, project or undertaking which significantly affects the quality of the environment a detailed statement of, among others, environmental impact of proposed action, project or undertaking, any adverse environmental effect which cannot be avoided should the proposal be implemented and an alternative to the proposed action.<sup>48</sup>

### **3. PRESIDENTIAL DECREE NO. 1152: PHILIPPINE ENVIRONMENTAL CODE**

Promulgated in 1977 with the purpose to achieve and maintain levels of air quality to protect public health and to prevent to the greatest extent practicable, injury and / or damage to plant and animal life and property, and promote the social economic development of the country.

<sup>49</sup> It provided for land use management and standards in air and water quality management, rules on its regulations and enforcements and the monitoring of air quality. It also provides for the management and conservation of the natural resources with the purpose to provide the basics on the management and conservation of the country's natural resources to obtain the optimum benefits therefrom and to preserve the same for the future generations; and to provide

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<sup>47</sup> Presidential Decree 1151, Sec. 3.

<sup>48</sup> Presidential Decree 1151, Sec. 4.

<sup>49</sup> Philippine Environmental Code Section 2, Presidential Decree No. 1152, (1977).

general measures through which the aforesaid policy may be carried out effectively.<sup>50</sup>

#### **4. REPUBLIC ACT 9003: ECOLOGICAL SOLID WASTE MANAGEMENT ACT OF 2000**

One of the major environmental issue in the country is waste management due to heavy garbage load in all places in the Philippines. R.A. 9003 provides for systematic, comprehensive and ecological solid waste management program in the country. It ensures the protection of public health and the environment and proper segregation, collection, transport, storage, treatment and disposal of solid waste through the formulation and adoption of the best environmental practices in ecological waste management excluding incineration.<sup>51</sup>

#### **5. REPUBLIC ACT 9275: AN ACT PROVIDING FOR A COMPREHENSIVE WATER QUALITY MANAGEMENT AND FOR OTHER PURPOSES**

The Act is also known as the Philippine Clean Water Act of 2004, It was signed into law was by former President Gloria Macapagal-Arroyo which shall to water quality management in all water bodies.<sup>52</sup> It pursues a policy of economic growth in a manner consistent with the protection, preservation and revival of the quality of our fresh, brackish and marine waters through a framework for sustainable development.<sup>53</sup> This was also reiterated by the Supreme Court in *MMDA v. Concerned Citizens of Manila Bay* to which it stated:

“One of the country’s development objectives is enshrined in RA 9275 or the Philippine Clean Water Act of 2004. This law stresses that the State shall pursue a policy of economic growth in a manner consistent with the protection, preservation, and revival of the quality of our fresh, brackish, and marine waters. It also provides

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<sup>50</sup> Presidential Decree 1152, Sec. 25.

<sup>51</sup> An Act Providing for an Ecological Solid Waste Management Program, Creating the Necessary Institutional Mechanism and Incentives, Declaring Certain Acts Prohibited and Providing Penalties, Appropriating Funds Therefor, and For Other Purposes [Ecological Solid Waste Management Act of 2000] § 2, Republic Act No. 9003 (2000).

<sup>52</sup> An Act Providing for a Comprehensive Water Quality Management and For Other Purposes [Philippine Clean Water Act of 2004]§ 3, Republic Act No. 9275, (2004).

<sup>53</sup> Republic Act No. 9275, Sec. 2.

that it is the policy of the government, among others, to streamline processes and procedures in the prevention, control, and abatement of pollution mechanisms for the protection of water resources; to promote environmental strategies and use of appropriate economic instruments and of control mechanisms for the protection of water resources; to formulate a holistic national program of water quality management that recognizes that issues related to this management cannot be separated from concerns about water sources and ecological protection, water supply, public health, and quality of life; and to provide a comprehensive management program for water pollution focusing on pollution prevention.”<sup>54</sup>

The Supreme Court also noted that the cleanup and/or restoration just an initial step towards a long-term solution. The Court stated:

“The cleanup and/or restoration of the Manila Bay is only an aspect and the initial stage of the long-term solution. The preservation of the water quality of the bay after the rehabilitation process is as important as the cleaning phase. It is imperative then that the wastes and contaminants found in the rivers, inland bays, and other bodies of water be stopped from reaching the Manila Bay. Otherwise, any cleanup effort would just be a futile, cosmetic exercise, for, in no time at all, the Manila Bay water quality would again deteriorate below the ideal minimum standards set by PD 1152, RA 9275, and other relevant laws.”<sup>55</sup>

The promotion of environmental strategies, use appropriate economic instruments and control mechanisms for the protection of water resources was recognized by the State<sup>56</sup> Thus, the government must ensure that water quality and water resources are protected. It is important that there must be continuity of the process and formulation of a long-term solution after rehabilitation

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<sup>54</sup> *MMDA v. Concerned Citizens of Manila Bay*, G.R. Nos. 171947-48, Feb. 15, 2011.

<sup>55</sup> *Id.*

<sup>56</sup> Philippine Clean Water Act of 2004, Sec. 2 (b).

process, otherwise there would still be deterioration of water quality in the long run.

## **6. REPUBLIC ACT 8749: AN ACT PROVIDING FOR A COMPREHENSIVE AIR POLLUTION CONTROL POLICY AND FOR OTHER PURPOSES**

The Act is commonly known as the Philippine Clean Air Act of 1999 which addresses air pollution in the country. It was enacted to provide for a comprehensive management program for air quality and quality.<sup>57</sup> Pursuant to the declared principles of protection and advancement of the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature, this law recognizes the rights of the citizens to enjoy their right to breathe clean air<sup>58</sup> and to utilize and enjoy all natural resources according to the principle of sustainable development.<sup>59</sup>

## **7. PHILIPPINE ENVIRONMENTAL ASSESSMENT POLICIES**

In 1977, the issuance of the Philippine Environmental Policy law, through Presidential Decree 1151, provided for the Environmental Impact Statement in the Philippines. It led to the issuance of Presidential Decree 1586 in 1978 and thereafter, established Philippine Environmental Impact Statement System.

Presidential Decree 1586 aims to attain and maintain a rational and orderly balance between socio-economic growth and environmental protection.<sup>60</sup> It established the Environmental Impact System which required all agencies and instrumentalities of the national government, including government-owned or controlled corporations, as well as private corporations, firms and entities, for every proposed project and undertaking which significantly affect the quality of the environment.<sup>61</sup>

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<sup>57</sup> An Act Providing for a Comprehensive Air Pollution Control Policy and For Other Purposes [Philippine Clean Air Act of 1999]§ 3(c), Republic Act No. 8749, (1999).

<sup>58</sup> Republic Act No. 8749, Sec. 4, (a).

<sup>59</sup> Republic Act No. 8749, Sec. 4, (b).

<sup>60</sup> Establishing Environmental Impact Statement System, Including Other Environmental Management Related Measures and For Other Purposes § 1, Presidential Decree No. 1586, (1978).

<sup>61</sup> Presidential Decree No. 1586, Sec. 2.

Certain areas and types of projects was proclaimed under Proclamation 2146, as environmentally critical and was considered within the scope of the Environmental Impact Statement System (1981).<sup>62</sup> The projects were categorized as environmentally critical projects, resource extractive industries and infrastructure projects. Golf course projects were included in the coverage of the EIS system by virtue of DENR Administrative Order No. 96-37. Proclamation 2146 also provides a list of the environmentally critical areas. The list includes all areas declared by law as national parks, watershed reserves, wildlife preserves and sanctuaries, areas set aside as aesthetic potential tourist spots and those which constitute the habitat for any endangered or threatened species of indigenous Philippine Wildlife (flora and fauna), areas of unique historic, archaeological, or scientific interests, areas which are traditionally occupied by cultural communities or tribes, areas frequently visited and/or hard-hit by natural calamities, areas with critical slopes and areas classified as prime agricultural lands, recharged areas of aquifers. It also includes water bodies, mangrove areas and coral reefs characterized under certain conditions

#### **b. The Temporary Closure of Boracay Island**

The most pressing issue with regard to the duty of the government to protect the environment is the current situation of the Boracay Island which was temporarily closed for rehabilitation and conservation by virtue of the police power, as an inherent power of the State. The rehabilitation program of the government has gained different reactions from Filipinos. Majority of the Filipinos, even those who are from other countries, support the temporarily closure of the island for rehabilitation. For them, it is about time that the government conduct the rehabilitation due to a growing number of environmental issues in the island and as such, this activity should have been done a long time ago. However, there were also some who expressed their concern over the effects of the temporary closure to the people residing and working in the island. In an interview with President Duterte on April 9, 2018, he said that he has no master plan for the said closure of the island to address the needs of the affected people. The lack of a concrete plan was questioned by the public and also the lawmakers.

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<sup>62</sup> 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 Paragraph 7, Presidential Decree No. 2146, (1981).

### c. Executive Order No. 53

The Boracay Island was temporarily and officially closed to tourists on April 26, 2018. Thereafter, on May 8, 2018, Philippine President Rodrigo Duterte signed Executive Order (EO) 53 which created the Boracay Inter-Agency Task Force and was released to the press on May 10, 2018. The Executive Order was composed of officials from different government agencies who were tasked to formulate policies on the island. These government agencies, including some officials of the local government of Aklan, are the Department of Environment and Natural Resources (DENR), Department of the Interior and Local Government (DILG), Department of Tourism, Department of Justice (DOJ), Department of Public Works and Highways, Department of Social Welfare and Development (DSWD), Department of Trade and Industry (DTI) and the Tourism Infrastructure and Enterprise Zone Authority (TIEZA). Such government agencies were assigned perform their respective duties in social welfare, labor, trade, public works and justice.

The Boracay Inter-agency Task Force was created to formulate an "action plan" and help rehabilitate the island.<sup>63</sup> The said task force was headed by Environment Secretary Roy Cimatu and Undersecretary Eduardo Ano, as the chairman and vice-chairman respectively. The task force was created with various powers and functions, one of which is to ensure that all local policies of the island are consistent to the relevant laws, rules and regulations and are fully implemented.<sup>64</sup> They must also review and consolidate existing master plans and formulate an action plan taking into account sustainable tourism development taking into account the current environmental, social and tourism issues<sup>65</sup> of the island. They may also withhold or revoke permits and licenses of any establishment who shall be caught in violation of environmental laws and other related ordinances.

The officials of the government agencies who are part of the Boracay Inter-agency task Force were also ordered to perform functions in accordance with and/or in conjunction with their respective mandates. As provided in the

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<sup>63</sup> Paterno Esmaquel II, *2 Weeks After Island's Closure, Duterte forms Boracay Task Force*, Rappler, May 10, 2018 available at <https://www.rappler.com/nation/202206-duterte-boracay-inter-agency-task-force-rehabilitation> (last accessed 28 April 2018).

<sup>64</sup> Creating Boracay Inter-Agency Task Force, Providing for its Powers And Functions and Those Member-Agencies Thereof and Other Measures to Reverse the Degradation of Boracay Island, Executive Order No. 53 [E.O. No. 53](May 8, 2018).

<sup>65</sup> Id.

Executive Order No. 53, the task force shall be deemed dissolved after two years from the effectivity of the order, unless extended by the President, upon the recommendation of the Cabinet.<sup>66</sup>

**d. The Temporary Closure in Relation to the Livelihood of the Affected Residents and Workers**

**Declaration of State of Calamity**

The Philippine Disaster Risk Reduction and Management Act of 2010 defines “State of Calamity” as a condition involving mass casualty and/or major damages to property, disruption of means of livelihoods, roads and normal way of life of people in the affected areas as a result of the occurrence of natural or human-induced hazard.<sup>67</sup> It may be declared by the President of the Philippines as recommended by the National Council or issued by the local sanggunian, upon recommendation of a local disaster management council.<sup>68</sup> Declaration of a cluster of barangays, municipalities, cities, provinces, and regions under a state of calamity, and the lifting thereof shall be based on the criteria set by the National Council.<sup>69</sup> In such case, the local government units shall have access to calamity funds which shall be use to assist and support the affected families. The law allows automatic appropriation for such cases in areas declared to be in state of calamity where unforeseen expenditures are foreseen due to occurrence of calamities.<sup>70</sup>

On April 26, 2018, Proclamation No. 475 was signed by President Duterte declaring state of calamity in three barangays in Boracay Island. These barangays were Barangay Balabag, Manoc-Manoc and Yapak in Malay, Aklan. According to President Duterte, the declaration will allow access to calamity funds thereby, expediting the rehabilitation process of the island. This declaration, according

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<sup>66</sup> *Id.*

<sup>67</sup> An Act Strengthening the Philippine Disaster Risk Reduction and Management System, Providing for the National Disaster Risk Reduction and Management Framework and Institutionalizing the national Disaster Risk Reduction and management Plan, Appropriating Funds Therefor and For Other Purposes. [Philippine Disaster Risk Reduction and Management Act of 2010] § 3 (II), Republic Act 10121, (2010).

<sup>68</sup> Republic Act 10121, Sec. 16.

<sup>69</sup> *Id.*

<sup>70</sup> Briefer: State of Calamity, *available at* <http://www.officialgazette.gov.ph/laginghanda/briefer-state-of-calamity/> (last accessed Aug. 29, 2018).

to Solicitor General Jose Calida, was pursuant to the power of the President as chief executive under Sections 1 and 17, Article VII of the Constitution.<sup>71</sup>

Funds for different purposes were allotted by the government and its agencies for the rehabilitation of the island, including infrastructures and training programs for the affected workers of Boracay Island. President Duterte assured P2-billion funds that shall be used to assist displaced workers as a result of the island's temporary closure.<sup>72</sup>

#### **e. Closure of Business Establishments and Displacement of Workers**

The temporary closure of Boracay Island led to the closure of business establishments therein. Department of the Interior and Local Government Undersecretary Epimaco V. Densing III, during his presentation at the American Chamber of Commerce and Industry said that there were 1,552 establishments in Boracay Island, 38 of which were compliant with the government regulations and the remaining were either non-compliant or were not inspected because it was already closed during the time of the inspection.<sup>73</sup> As an effect, everyone in Boracay whose livelihood was dependent of these business establishments lost their jobs. Majority of the people in Borcay Island rely on the tourism industry.

Various government agencies has implemented programs that will helped the displaced workers of the island. There were also funds which were used to support these workers and their families while the rehabilitation was ongoing.

The Department of Labor and Employment (DOLE) has implemented programs that will help almost 19,000 displaced workers of Boracay Island. One of the programs implemented by DOLE is the Boracay Emergency Employment Program-Adjustment Measures Program (BEEP-AMP) under the DOLE's Department Order 191-A series of 2018. The BEEP-AMP is a new program with three components which includes training, facilitation and financial

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<sup>71</sup> Caliwan, Christopher Lloyd, *SolGen asks SC to junk petition vs. Boracay closure* . Philippine News Agency, August 22, 2018 *available at* <http://www.pna.gov.ph/articles/1045649> (last accessed Aug. 29, 2018).

<sup>72</sup> Dharel Placido, *Duterte declares state of calamity in Boracay*, ABS-CBN News, 26 April 2018 <http://news.abs-cbn.com/news/04/26/18/duterte-declares-state-of-calamity-in-boracay> , (last accessed Aug. 29, 2018).

<sup>73</sup> Ma. Stella F. Arnaldo, *Only 3.5% of Boracay Establishments are Compliant with Government Regulations* , Business Mirror, May 31, 2018, *available at* <https://businessmirror.com.ph/only-3-5-of-boracay-establishments-are-compliant-with-government-regulations/> (last accessed August 29, 2018)

support.<sup>74</sup> It aims ease the situation of the affected workers through financial support and active labor market programs such as emergency employment, livelihood and training.<sup>75</sup> Through this program, the affected workers of Boracay Island will receive Php 4,200 per month or 50 percent of the monthly minimum wage for the region, for a period of six months.<sup>76</sup> Under the same program, BEEP beneficiaries will be required to submit two job contacts and one training for the six months duration.<sup>77</sup>

In addition, the Department of Social Welfare and Development (DSWD) has also made contributions by distributing relief goods and food packs to the residents of Boracay Island. However, there were reports in June 2018 that there were contaminated food packs that were distributed by DSWD.<sup>78</sup> This was also the first time that the said agency distributed food packs in Boracay during the six-month rehabilitation period.

Despite the assistance of these government agencies to those who were affected by the temporary closure of the island, these may seem insufficient given that the absence their livelihood was to last for six months or for a longer period. It must be emphasized that these people are dependent to the environment and the natural resources, thus when it is taken away from them, they lose source of income. People are important considerations to a sustainable development, making them entitled to a healthy and productive life in harmony with nature.<sup>79</sup> The government must be able to address environmental issues by making laws more effective, because aside from environmental protection, it also helps in the economic development of the people.

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<sup>74</sup> Displaced Boracay workers to get 25% to 50% of Minimum Wage for 6 months, *Politiko Bicol*, May 24, 2018, available at <http://bicol.politics.com.ph/2018/05/24/displaced-boracay-workers-to-get-25-to-50-of-minimum-wage-for-6-months/> (last accessed Sept. 14 2018).

<sup>75</sup> Amendments to the Guidelines on the Adjustment Measures Program for Affected Workers Due to the Boracay Island Rehabilitation [DOLE DO-191A], Sec. 2 (2018).

<sup>76</sup> Bermejo, Karen, *DOLE relaxes guidelines for Boracay workers assistance*, Philippine News Agency, August 10, 2018, available at <http://www.pna.gov.ph/articles/1044481> (last accessed Sept. 14 2018).

<sup>77</sup> *Id.*

<sup>78</sup> Jalea, Mary Gleefer F. *DSWD admits mishandling spoiled Boracay Relief Goods.*, Manila Times, June 26, 2018 available at <https://www.manilatimes.net/dswd-admits-mishandling-spoiled-boracay-relief-goods/412470/> (last accessed Sept. 14 2018).

<sup>79</sup> The Rio Declaration on Environment and Development [Rio Declaration] Principle 1,(1992).

## CHAPTER 3. ANALYSIS AND CONCLUSION

### Police Power and Livelihood Rights in the Realm of Environmental Protection

The Philippines is abundant with both natural resources and human resources. With the growing number of population in the country, the dependency of the people to the environment, especially those below poverty line and those in the rural areas, has become very high. This dependency has caused damage to the environment, prompting the government to exercise its police power to address the situation. People tend to maximize whatever resources are available in their area.

Filipinos are innovative people and would always try to come up with something out of whatever resources they have in order to live. This includes the kind of skill which they open their minds to any business ideas in order to survive and further develop, not only one's self but also their families. Most people who have less opportunities for jobs create their own income stream by generating products and services, utilizing the environment and the natural resources available.

Most of the islands in the country have become island destinations for both foreign and local tourists, and as an effect, more jobs were created for Filipinos helping both local and national economy through tourism. Tourism, with its accessibility to the poor, has become a major industry in the economy of most of the developing countries and is considered to be relatively labor intensive sector.<sup>80</sup> Many jobs are created through activities done in tourist destinations. Businesses and enterprises are established to provide services to tourists and jobs for those who are in need. Most of the jobs created in the tourism industry requires only basic skills which makes it easier for the poor to get involved. However, the growing need and dependency of the people to the environment and natural resources has become reflective of the current situation of the tourist destinations. Thus, with the obligation of the government, to protect the environment, particularly by providing a balanced and healthful ecology, to ensure the health of the people, may exercise its police power in order to comply with such obligation. There are various laws created and implemented, people

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<sup>80</sup> Tourism and Poverty Alleviation, United Nations World Tourism Organization, *available at* <http://step.unwto.org/content/tourism-and-poverty-alleviation-1> (last accessed Sep. 14, 2018).

are trained, and programs are established in order to protect the environment. However, at times, in its exercise, the government infringes on other human rights, and in this case, it is the right to livelihood.

In 2018, one of the State of the Nation Address' (SONA's) highlights is the strict enforcement of environmental laws by the local governments units. In his speech, President Duterte considered the Boracay Island rehabilitation as the beginning of a new national effort to rehabilitate other tourist destinations in the country. In the same speech, he emphasized that the protection of the environment is a priority and such is non-negotiable. The rehabilitation program of the government has set a precedence in temporarily closing an entire island destination to conduct clean up in the environment. The President has urged the local government units to proactively enforce environmental laws otherwise the national government shall intervene with the rehabilitation and conservation.

The Philippines recognizes the principle that “polluters must pay”. This is one way to discipline those who caused damage to the environment<sup>81</sup>. The Polluter Pays Principle or the PPP is one of the core principle of a sustainable development. It recognizes that the polluter should pay for any environmental damage created, and that burden of proof in demonstrating that a particular technology, practice or product is safe should lie with the developer or company concerned, not the general public.<sup>82</sup> This is also embodied under the Rio Declaration on Environment and Development. Such provision states, that:

Principle 16. National authorities should endeavor to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.<sup>83</sup>

This principle is a commonly accepted practice wherein those who produce pollution bears the cost of management in order to prevent damage or

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<sup>81</sup> Republic Act No. 8749, Sec. 2.

<sup>82</sup> Atty. Alvin Claridades, Polluter Pays Principle, June 22, 2012, *available at* <https://attyalvinclaridades.wordpress.com/2012/06/22/polluter-pays-principle/> (last accessed Sept. 25, 2018).

<sup>83</sup> Rio Declaration, Sec. 15.).

further damage to the health of both humans and the environment.<sup>84</sup> Rehabilitation and conservation programs should be implemented with careful consideration to the effects of such programs and should be executed with prudence and common sense.<sup>85</sup> These are the kind of programs which should be planned and assessed carefully, as many stakeholders are going to be affected by such implementation. These considerations should be given importance in light of those whose livelihood are dependent to the tourism industry of an island destination. The right to work is considered as an affirmative right, thus the government must be doing all it can to ensure that jobs are created for employment opportunities to exist. Poverty is one of the major problems in the country and the exercise of the right to work can be anchored to other important rights such as the right to adequate food, water, health, shelter and the right to live. The fact that many people are dependent to the natural resources must always be a consideration.

As a developing country where poor people struggle to survive to get through their everyday lives and rely more to anything that nature has to offer, the Philippines is still far from achieving a sustainable environment. There are many environmental laws in the country and it is clear that certain powers may be exercised by the government to protect the environment. These laws must be strictly enforced by the authorities, not just for the benefit of the environment but also of the people.

The obligation of the state to protect the environment is recognized by the proponent, however, individual rights such as the livelihood rights, should also be protected in the same way. While such act of the government is based on the inherent power of the state to protect the environment, this must be exercised with due regard to its effect on the livelihood rights of the residents. There should be standards and mechanisms that must serve as the guide post of the government in implementing rehabilitation and conservation programs to the environment in order to mitigate the harmful effects to the people.

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<sup>84</sup> Grantham Research Institute and Duncan Clark , What is the 'polluter pays' principle?, The Guardian Jul. 2, 2012, *available at* <https://www.theguardian.com/environment/2012/jul/02/polluter-pays-climate-change> (last accessed Sept. 25, 2018).

<sup>85</sup> Gomez, Buddy. OPINION: That Boracay moment, ABS-CBN News, 14 June 2018. <https://news.abs-cbn.com/blogs/opinions/06/14/18/opinion-that-boracay-moment> (last accessed Sept. 25, 2018).

## **CHAPTER 4. RECOMMENDATION**

The recommendation will be two-pronged, first a mechanism which covers a procedural aspect, and in the second part, a set of standards which shall cover the substantive aspect.

### **A. Proposed Mechanism**

#### **Prior to Rehabilitation and Conservation Program**

##### **1. Creation of a Body Task Force**

During one of the Senate hearings, Senator Franklin Drilon suggested the creation of a single authority that will oversee the implementation of environmental laws in Boracay Island. The idea was the same as the Subic Bay Management Authority which is currently in existence in Subic Bay. Such body may also be created in certain island destinations to monitor the impact of activities and other factors in such places in the country. Part of this single body would consist of an advisory board and/or an oversight committee which may provide standards on how to implement rehabilitation programs.

##### **2. Environmental Impact Assessment**

The Philippines currently has an existing Environmental Impact Assessment System. The Environmental Impact Assessment (EIA) is considered as a device of the government for sustainable development, which aims to protect the health of the people and damage to the environment. Through this system, the government is given the duty to assess the implications of commercial activities to the environment. The Environmental Impact Assessment, by its definition, may also be applied to developing island destinations. The government is given the duty to assess first the possible impacts of business establishments to the environment.

The United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro, Brazil (Rio Declaration) has recognized the protection of the environment through precautionary approach and that

environmental impact assessment as a national instrument under the following provisions:

Principle 15. In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.<sup>86</sup>

Principle 17. Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.<sup>87</sup>

The Environmental Impact Assessment is done for proposed activities of companies or any businesses. This is the duty of the government prior to the establishment of any business. However, it should be considered that the government should also conduct assessments and monitoring from time to time in order to prevent environmental degradation even after such establishment. These assessments and monitoring shall provide information on the status of the activities and its implications in the environment. The information gathered shall be useful in determining preventive measures to activities that may further damage the environment.

### **3. Consultation with the Private Sector**

The key to a good relationship is a communication. Thus, it is important that the government communicates with the private sector. Public participation is one of the best ways to harmonize both interest of the parties. People who are well-informed are able to participate in the decisions and policies of the government.

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<sup>86</sup> Rio Declaration, Sec. 15.

<sup>87</sup> Rio Declaration, Sec. 17.

One of the principles under the Rio Declaration is the participation of the concerned citizens and access to appropriate information, to wit:

Principle 10. Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.<sup>88</sup>

This principle simply entails an open communication between the government and the concerned people of an affected area. A dialog between these two parties on how to address environmental issues in a specific area would be more effective. It would be a better approach in determining the environmental issues and defining the solutions that would resolve the problems. There would be a higher chance of attaining balance between the interests of the government and the concerned people. On one hand, the government who complies with its obligation to protect and advance the right to a healthful ecology, and on the other, the concerned citizens, who despite the rehabilitation and conservation programs implemented by the government, would still be able to maintain their livelihood in order to provide for their basic needs and of the family.

Unfortunately, what happened in the temporary closure of Boracay Island, the locals, who were mostly dependent on the island for their livelihood were hardly consulted by the government before they implemented the rehabilitation program. Stakeholders and the residents were not properly informed of the plan and the procedures before the government implemented the program. As a result, majority of them were not prepared to what was coming during the six-month closure of the island. Most of them were dependent with the assistance

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<sup>88</sup> Rio Declaration, Sec. 10.

of the government, because they were not financially prepared for the said closure. The business owners, especially the small players, who had no choice but suspend their operations, were also unprepared thereby making the possibility of declaring bankruptcy very high.

#### **4. Formulation of a Master Plan for Rehabilitation and Conservation Programs**

The formulation of a master plan for the rehabilitation and conservation program is one of the major preparations that has to be done by the government prior to the implementation of any rehabilitation and conservation programs. It is highly suggested that this should be done prior and not during the program. There must be a concrete plan which shall be fully observed during the period of rehabilitation because there are many implications that may be encountered. These kind of activities will surely affect the laborers of the island destinations, the owners of the business establishments, residents, tourists and even the national and local economy. Everyone will be given enough time to prepare. The government may allot proper budget for the rehabilitation and the people can also have the chance to prepare financially. It would also serve as a chance for the different organizations including non-governmental organizations, United Nations agencies and other donor agencies to provide specific programs that may assist those affected people. One of the important matters that should be discussed is the manner of implementing the rehabilitation of the island as there are many options that could have been laid down in the formulation of a master plan. One option is to close down the island destination by zone so that rotational temporary loss of jobs and closure of establishments would take effect. Less impact of the program would be felt because there is continuance in livelihood and the operations of the business while the government conducting the program.

The decision to temporarily close Boracay Island, without a master plan, has jeopardizes the livelihood of thousands employed as an effect of a active tourist trade on the island that each year serves two million guests and provides

roughly \$1 billion in revenue into the Philippine economy.<sup>89</sup> Hence, it did not only affect the livelihood but also the economy.

### **During the Roll-out of the Rehabilitation and Conservation Program**

Members of the task force that was created to act on the rehabilitation shall provide timely reports of the status of the implemented program. As persons who have first-hand experience with the situation, they are in the best position to determine and lay down necessary details relating to the program. Such reports must contain information which will present the development of the island destination subjected to such rehabilitation. It will be helpful to determine the effects to the environment and the people, and may also be used to further improve the program for future application of rehabilitation plans to other island destinations.

### **After the Roll-out of the Rehabilitation and Conservation Program**

#### **1. Strict Enforcement of the Environmental Laws**

The Philippines, committed to protect the environment and natural resources, has a lot of existing environmental laws in order to protect and preserve our environment. These are very good laws that, when strictly implemented, would result to a clean and healthy environment. The current problem in the country is the implementation and enforcement of such laws. It is an important matter to deal with, because these laws were created to prevent harm to the environment. This may also be considered as a preventive action against the possibility of restoring a deteriorating environment.

#### **2. Creation of Long-Terms Plans**

The government must come up with long-term plans in order to maintain the rehabilitation and conservation effects of the island destinations. There can be a lot of ways to maintain the cleanliness and prestige of an island destination, however it requires a feasible plan. These long-term plans must be created with

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<sup>89</sup>Philippines to close Boracay Island for six months from April 26, Deutsche Welle Travel, *available at* <https://www.dw.com/en/philippines-to-close-boracay-island-for-six-months-from-april-26/a-43262418> (last accessed Sept. 25, 2018).

due regard to everyone in the community. The local government, with the assistance of the national government must be able to come up with policies and programs that will benefit not only the island but also the people.

One example of a long-term plan would be limiting the number of tourists in the island destination. An implementation of the carrying capacities of the island destinations must be studied in order to come up with the number of allowable tourists that a beach can accommodate for a certain period.

The government must also provide trainings, seminars and other programs that may help residents and workers in participating with environmental friendly activities. People must also be well-informed of the laws relating to the protection of the island beaches in the country.

The commitment of the people to protect the environment may also be strengthened by encouraging them to engage in activities and programs that will be helpful to their own community. Incentives may be given to the community if they are able to perform any acts that would be beneficial to the environment. At the same time, it shall also be a way to encourage the tourists to protect the beaches.

Also, continuous monitoring and checking of all business establishments in the beaches must be performed in order to determine compliance to all environmental laws and ordinances.

### **3. Achievement of Sustainability**

Sustainable environment is a struggle especially when a lot is dependent to the natural resources. Certain decisions create issues that affects both humans and environment, despite this, there are a lot of ways to achieve sustainability.<sup>90</sup> The achievement of sustainability requires hard work. It may sound impossible due to certain factors that can affect the outcome of the actions to protect the economic growth and the environment, but with the strong will, dedication and discipline of the people as stewards of the nature, everything is possible.

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<sup>90</sup> Peter P Rogers, Kazi F Jalal & John A Boyd, An Introduction to Sustainable Development 23 (2008 ed.)

## **B. Proposed Standards**

### **1. Best Practices from Other Countries**

In July 2017, a list of the “100 Best Beaches in the World” was released and it is not surprising that there are three beaches in the list that can be found in the Philippines. The Puka Beach in Boracay was placed in the 84<sup>th</sup> place, El Nido, Palawan in the 14<sup>th</sup> spot and the Palaui Island in Cagayan Valley in the 10<sup>th</sup> spot.<sup>91</sup> One of these islands has undergone a temporary closure for rehabilitation and conservation due to various environmental issues caused by human activities. Aside from the existing environmental laws in the Philippines, it would also help if the country would adopt the best practices towards a clean environment in the island beaches of their countries.

#### **a. Soneva Fushi, Maldives**

This place ranked first place in the list of best global destinations released in 2017, when the United Nations celebrated the Year of Sustainable Tourism for Development. It is considered as an environmental friendly luxury resort for its processes which do not or mitigate the harm to the environment.

“They recycle 90% of their waste, including 100% of food waste that's used in their organic gardens, in turn reducing the cost of transporting food. Construction includes building blocks made from Styrofoam packaging, while all glass goes to their on-site studio where it's turned into works of art. The solar-based system provides all daytime electricity needs and 100% of water used is desalinated.”<sup>92</sup>

Soneva has another property in Thailand which is already implementing eco-friendly activities for tourism, reforestation and renewable energy projects

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<sup>91</sup>100 best beaches around the world, CNN Travel, *available at* <https://edition.cnn.com/travel/article/100-best-beaches/index.html> (last accessed September 25, 2018).

<sup>92</sup>Dwyer, Chris, CNN Travel: Green vacations: 10 places that don't cost the Earth, August 25, 2015, *available at* <https://edition.cnn.com/travel/article/green-vacations-sustainable-places/index.html> (last accessed September 25, 2018).

### **b. Loola Adventure Resort, Indonesia**

A resort located in Bintan, Indonesia. It was awarded for its management because it focuses on the employment of Bintan locals. These employees are given the chance to run their own business within the resort. It provides economic growth to every staff, thereby allowing them to become entrepreneurs in their own right and provides educational trainings and advancements to the employees.

### **c. Turtle Bay Beach Club, Kenya**

A beach club located in Watamu Kenya, is considered as eco-friendly for its Watamu National Marine Park which features free bikes to tourists. Watamu Marine Association is an organization which brings together members from the local community to address environmental issues. The association protects marine life while enabling people to live in the area and the environment to flourish.<sup>93</sup>

These are just a few of the best practices around the world. Here in the Philippines, Amarella Resort in Panglao Island, Bohol is one of the eco-friendly beaches in the country and is a recipient of the ASEAN Green Hotel Award. It is in the business of cultivating and preserving the environment, and the staff therein holds monthly beach cleanup. Such practice enables the members of the local community to participate in environmental protection.<sup>94</sup> In Palawan, many activities are conducted to save the environment. There are resorts which recognizes the importance of turtles in the ecosystem and there are those which promotes eco-friendly practices such as nature-based activities with staff members undergoes trainings and seminars. These are a few, but meaningful practices done by Filipinos in order to contribute to the protection of the environment while achieving economic growth.

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<sup>93</sup> Watamu Marine Association *available at* [https://www.turtlebaykenya.com/watamu\\_marine.html](https://www.turtlebaykenya.com/watamu_marine.html) (last accessed September 25, 2018).

<sup>94</sup> Christa I. De La Cruz, 10 Eco-Friendly Places for Your Next Getaway, June 24, 2017 *available at* <https://www.spot.ph/things-to-do/weekend-guides/70551/eco-friendly-resorts-philippines-a00171-20170624-lfrm> (last accessed Sept. 25, 2018).

## **2. Promotion of eco-friendly beaches**

In the growing industry of tourism, many jobs are generated, establishments of business are continuously growing and human activities are done for the enjoyment of tourists and residents in the island destinations. Thus making it prone to violations of environmental laws and ordinances. Some countries in the world, in order to protect their beaches, have come up with eco-friendly practices in the operations of their businesses. Phuket, Thailand is a well-known destination for eco-travellers. There are environmental friendly tourism rules which plays an important role in the protection of wildlife and ecosystems and preservation of the natural wonders and resources.

## **3. The Jacobson Ruling As A Guideline In The Exercise Of Police Power In The Rehabilitation And Conservation Of The Environment For Protection Of Public Health.**

Environmental health is a branch of public health law which focuses on the relationships between people and their environment and promotes human health and fosters healthy and safe communities.<sup>95</sup> A healthy environment plays a significant role to the health of the people, thereby making them productive in their everyday lives. The health of the people is an important factor also in their livelihood. In the case of *Jacobson v. Massachusetts*, the court upheld the authority of the state, with its police power, to implement compulsory vaccination laws.<sup>96</sup> The decision of the Court was founded on the power of the State to exercise police power for public welfare. In this case, the Court provided for the standards which required deliberative governmental process. These are necessity, reasonable means, proportionality and harm avoidance.

### **a. Necessity**

The state must act only when there is a paramount necessity, which requires the exercise of police power to protect the health of the people in the community. According to Justice Harlan, insisted that police powers must be based on the “necessity of the case” and could not be exercised in “an arbitrary,

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<sup>95</sup> Environmental Health, American Public Health Association *available at* <https://www.apha.org/topics-and-issues/environmental-health> (last accessed Sept. 25, 2018).

<sup>96</sup> *Jacobson v Massachusetts*, 197 US 11 (U.S. Supreme Court 1905)(U.S.).

unreasonable manner” or go “beyond what was reasonably required for the safety of the public.”<sup>97</sup>

### **b. Reasonable Means**

In addition to the condition of necessity, the government must also act through religious means, in order to achieve the objective of the government. Even though the objective of the legislature may be valid and beneficent, the methods adopted must have a “real or substantial relation” to protection of the public health and cannot be “a plain, palpable invasion of rights.”<sup>98</sup>

### **c. Proportionality**

Justice Harlan said that “[p]olice power of a state, whether exercised directly by the legislature, or by a local body acting under its authority, may be exerted in such circumstances, or by regulations so arbitrary and oppressive in particular cases, as to justify the interference of the courts to prevent wrong and oppression.”<sup>99</sup> Acts of the authorities requires a reasonable balance between the public good to be achieved and personal invasion, thus if the act is onerous and unfair, it may result to consequences such as violation of certain rights of the people. .

### **d. Harm Avoidance**

The control measure is done for the common good. However, the control measure itself, should not pose a risk to its subject.<sup>100</sup>

This case was cited in a number of Supreme Court rulings in the United States when the issue relates to the validity of the exercise of the police power. Thus, the application of these standards in the Jacobson ruling may also be used in cases when the government is required to exercise its police power to protect the environment. These standards can be used to determine the level of

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<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> Lawrence O. Gostin, JD, *Jacobson v Massachusetts at 100 Years: Police Power and Civil Liberties in Tension*, US National Library of Medicine, *available at* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1449223/#r1> (last accessed Sept. 25, 2018).

environmental protection that may be enforced so that people may still enjoy the exercise of their human rights. This may also be considered in the careful analysis of the situation in order to come up with solutions that would not impair other rights.

The human rights and the environment protection cannot be separated. What affects the environment will also affect the people and vice-versa, therefore, giving importance to the rights of the people and protecting the environment must be emphasized and equally recognized. The obligation of the State to its people and the environment may be performed through the exercise of its police power as one of the fundamental powers of the state. As such, the government may choose to close down and perform an environmental rehabilitation activity to an island destination in case the latter is under environmental distress due to human activities and violations certain of environmental laws. Such closure, even if temporary, may be implemented no matter what the effect would be and even if a lot of people derive their income from the island by virtue of the police power of the state. It would then result to the shutting down of business establishments, loss of jobs and income to support their families. Yes, it would have a positive result towards the achievement of a clean island, but the fact that there would be people affected cannot be neglected.

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