

THE ANTI-DEVELOPMENT STATE:  
The Political Economy of  
Permanent Crisis in the Philippines

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31. Walden Bello, "ADB Hand in Power Reform Bribery Scandal?" *Business World*, April 24, 2000)

32. *Ibid.*

33. *Ibid.*

34. *Ibid.*

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42. Gilberto Lantto, "Private Participation in Infrastructure Provision," *Business World*, March 8, 2004.

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## CHAPTER 6

### Unsustainable Development

In 1987 the World Commission on Environment and Development headed by Gro Harlem Brundtland presented its famous report, "Our Common Future," to the United Nations General Assembly. The Brundtland report, as it is now known, popularized what would become the definitive definition of the concept of "sustainable development." According to the report, "[I]t is development that meets the needs of present generations without compromising the ability of future generations to meet their own needs." Under this definition, development is not just limited to economic growth but is made to encompass environmental protection, and an equitable distribution of wealth and resources, with the goal of improving and raising the standards and quality of living for everyone.

With Brundtland's report, it seemed as though proponents of "sustainable development" had finally succeeded in putting the concept on the agenda after years of tireless campaigning and lobbying. The phrase would eventually become a buzzword among governments and civil societies around the world, with many environmentalists, policy makers, and even businesses all claiming to embrace the concept.

In that same period in the Philippines, the advent of a new government offered the promise of putting in place the context for a solution to the country's many problems. Among these was the worsening environmental crisis. Writing in 1993, noted American scholars Robin Broad and John Cavanagh claimed that "the plunder of resources has been taking place at a rate that is the fastest in the world. Fragile ecosystems have been pushed to the limit. As we discover firsthand, there are few places you can go to in the Philippines without meeting some sort of ecological disaster."<sup>1</sup>

Already bad during the Marcos period, the state of the environment at the end of the Aquino period was even worse. Particulate matter in 1993 was up by more than 60 percent from the 1984 figure, with

the level in Manila almost twice the national ambient standards. Rivers in the Metro Manila area were "almost biologically dead."<sup>2</sup> The crisis was exemplified in many people's minds by deforestation. Forest cover in 1993 had declined by nearly half from forest cover in 1985.<sup>3</sup> As of 1991, forest cover was down to 17 percent, far below the 60 percent necessary for the country to maintain a stable ecosystem.<sup>4</sup> Natural disasters such as the massive mudslides that practically swept away the city of Ormoc in 1991, and Southern Leyte and Sarigao del Norte in December 2003, exemplified the massive tragedies that could result from the systematic slashing away of Philippine forests. The emergence and the growing acceptance of the concept of "sustainable development" provided the background and the rhetoric behind the succession of attempts at achieving rapid economic growth while, at the same time, addressing the deteriorating crisis. These would, however, be critically undermined by the government's chosen economic policies.

#### The Promise and the Peril

Since 1986 the Philippine government has formulated and passed an impressive array of laws and regulations that appear to evince greater political sensitivity to environmental problems and to be in keeping with the spirit of the goals of "sustainable development." While arguably still inadequate, many of these policies were considered path-breaking among developing countries and were often held up as models to be emulated.

Emblematic of the newly affirmed importance of the environment during the administration of President Corason Aquino was the creation in 1987 of the Department of Environment and Natural Resources (DENR), a cabinet-level ministry with a mandate to focus exclusively on environmental issues. Before, such concerns were the domain only of smaller agencies with limited resources and narrow directives. But with the DENR given bigger responsibilities such as the power to grant licenses for the extraction of natural resources, it was expected to be the main agency for proposing and executing environmental protection laws.

Aquino also passed the landmark legislation called the Comprehensive Agrarian Reform Program (CARP), which then created the Department of Agrarian Reform. Although its more progressive provisions had

been severely watered down by the landed elite in the Congress, CARP was still seen as a significant law that promised to redistribute lands over a ten-year period. To address the apprehensions of indigenous people regarding mineral extraction, the People's Small-Scale Mining Program (Republic Act 7076) was passed. In terms of international commitments, the Aquino administration ratified the Montreal Protocol, a milestone international treaty aimed at protecting the ozone layer.

But more than any other post-1986 president, it was Fidel Ramos who cultivated the image of being the champion of "sustainable development," consistently employing the concept in promoting many of his government projects, and casting himself as the president who would turn the Philippines into an "economic tiger" without trampling on the environment as the earlier tigers did.

Right after the Earth Summit in Rio de Janeiro, Ramos created the Philippine Commission on Sustainable Development (PCSD), the first national council for sustainable development in Asia. It was, Ramos said, "a concrete gesture of our country's commitment to operationalize sustainable development."<sup>5</sup> The PCSD would later come up with Philippine Agenda 21 (PA 21), the country's translation of the Earth Summit's Agenda 21 to a practical local development plan. With this document, the PCSD proudly announced that it had covered everything needed for the Philippines to take the path to sustainable development. In addition, the Ramos government ratified the international Framework Convention on Climate Change and unveiled the Philippine Strategy for Biodiversity Conservation.

In terms of legislation, Ramos passed two crucial laws: the Toxic Substances, Hazardous and Nuclear Waste Act (Republic Act 6969), which regulated the use and disposal of toxic wastes, and the National Integrated Protected Areas System (Republic Act 7586), which put in place mechanisms for safeguarding habitats of endangered species and other ecologically sensitive public lands. But perhaps the most significant and most controversial of Ramos's legislative achievements was the Indigenous People's Rights Act (IPRA), which recognized and upheld indigenous people's claims to their ancestral domains. The law even called for the establishment of the National Commission on Indigenous Peoples (NCIP), an agency to be headed by indigenous people themselves.

Under President Joseph Estrada's term, the passage of the Comprehensive Air Pollution Control Policy (Republic Act 8749) was considered a breath of fresh air by its proponents: The Act banned incineration and allowed citizens and communities to file suits against corporations polluting the atmosphere.

President Gloriosa Macapagal Arroyo's three-year term in office saw no groundbreaking environmental policy making or legislation on the scale of Aquino or Ramos. The only bill she signed into law was the Solid Waste Management Act, a reaction to the capital's pressing garbage crisis. By Arroyo's regime, there would have been ample time for all the laws and policies to achieve their intended outcome. But by that time, it had increasingly become clear that after fifteen years, the passage of significant pieces of legislation and the establishment of key institutions had done little to mitigate the country's environmental crisis.

#### What the Other Hand Is Doing

From Aquino to Ramos to Estrada then Arroyo, growing environmental consciousness and the consequent promotion of the ideals of sustainable development provided the context with which government and civil society attempted to respond to the country's environmental problems. Consistently corroding these efforts, however, was the marked continuity in the overall economic policies of the post-Marcos administrations.

In the 1980s, the debt crisis in the Philippines forced the government to sign up for structural adjustment programs (SAPs) with the International Monetary Fund (IMF) and the World Bank. These loans came with the neoliberal prescriptions demanding that the government loosen its restrictions on foreign investments, open the domestic market to foreign products, sell off state-owned enterprises, and deregulate the market. While Aquino inherited two "structural adjustment" loans signed by Marcos, she also chose to follow the model-debtor strategy advocated by a faction in her government and went on to embrace policies that deregulated the domestic market, sold off government-owned corporations and liberalized foreign trade. Aquino then established the Committee on Privatization and the Assets Privatization Trust to implement the required measures of the IMF and the World Bank.

She also passed the Foreign Investment Act of 1991, which liberalized the entry of multinational investors into the country and set out to implement a tariff reduction and simplification program. By the end of her term, Aquino had managed to fully entangle the country in more loans, grants, and measures for structural adjustment, in adherence to IMF-World Bank conditionalities.

Ramos's self-avowed commitment to "sustainable development" was matched and overtaken only by the fervor with which he implemented his favored neoliberal doctrines. Ramos's vision was embodied in the Medium-Term Philippine Development Plan (MTPDP) or "Philippines 2000," a strategy plan for reducing poverty and attaining economic growth by opening up the country to foreign investment, privatizing state-owned enterprises, and removing regulations on business. As part of this strategy, Ramos—assisted by then-Senator Gloriosa Macapagal Arroyo in Congress—vigorously pushed for the country's ratification of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT). He further relaxed rules governing the entry of foreign investors by amending the Foreign Investment Act of 1991 and allowing access to foreign banks through the Bank Liberalization Act. One by one, Ramos disposed of government holdings in key state-owned enterprises as part of his sweeping privatization program. He enacted the Downstream Oil Deregulation Act and implemented one of the biggest privatization projects in the world, the sell-off of the water utilities firm, Metropolitan Waterworks and Sewerage System (MWSS), to the private sector.

Despite his populist image, Estrada and his technocrats continued Aquino's and Ramos's neoliberal thrust. Leaving crucial policy-making decisions to his team of advisers, Estrada's macroeconomic policies followed his predecessors' steps, putting out his own medium-term development plan that basically contained the same components as the previous one and appointing officials subscribing to the same orthodoxy.

Despite the extraordinary circumstances in which Arroyo assumed office, the economic policies she set out to accomplish immediately shattered any notion of change. Under pressure from the World Bank, the IMF, and the Asian Development Bank, one of Arroyo's first important policy initiatives was the passage of the bill that would privatize the country's state-owned power-generation firm. Having been the au-

thor of key neoliberal laws passed by her predecessors, Arroyo expectably pursued as the overriding principle of development an updated but essentially unrevised MTPDP for 2001-2004. The plan reaffirms its commitment to trade liberalization, saying that "the Philippines will continue to participate in trade and investment liberalization and facilitation initiatives under the auspices of WTO, Association of Southeast Asian Nations (ASEAN), and the Asia-Pacific Economic Cooperation [APEC] forum."<sup>6</sup> As before, the cornerstone of MTPDP was still the belief that free markets and foreign investments should be relied on as the engine of growth. As such, Arroyo's MTPDP is unequivocal: investment laws will be interpreted in favor of the investor.<sup>7</sup>

#### Consistent Contradictions

The economic strategy of the post-Marcos administrations directly clashed with their environmental programs, as well as with the proposals advocated by civil society. As a result, the stated goal of achieving "sustainable development" was repeatedly eroded by the government's consistent commitment to neoliberal economic policies through the years and subverted by the power of narrow economic interests. On the one hand, the government passed—but failed to meaningfully enforce—laws to protect natural resources. On the other, it encouraged—and strongly promoted—the exploitation of these resources by giving investors unhampered access and allowing them unfettered operations. Simply put, "sustainable development" became the new rhetoric but structural adjustment remained the practice.

The clash between protecting the environment and protecting business interests is perhaps best illustrated by the explicit contradiction between the content of the PA 21 and the MTPDP (see Table 6.1). In the trade-off between growth and equity, the MTPDP assumes that increases in GDP will eventually trickle down to the poor; the PA 21, on the other hand, is committed to the redistribution of income and direct poverty reduction. The MTPDP sees orienting production toward exports is the way to achieve growth while PA 21 believes in harnessing the local market as an engine of growth. The MTPDP advocates the "modernization" of the countryside while the PA 21 promotes "nurturing the inherent strengths of local and indigenous knowledge." The PA 21 seeks to uphold

the right of the people to choose their own development strategy while the MTPDP is all for exposing them to the vagaries of corporate-driven globalization. The MTPDP is littered with rhetorical phrases such as "participatory democracy," but one will be hard pressed to find any concrete provisions for actually putting them into practice.

Table 6.1 Medium-Term Philippine Development Plan vs. Philippine Agenda 21

Model of growth	Neoliberal framework: growth-oriented and export-oriented	Equity-oriented and local market-oriented
Agricultural strategy	Modernization of rural agriculture "We must hasten the modernization of this sector"	Cultural sensitivity "Nurturing the inherent strengths of local and indigenous knowledge, practices..."
Underlying Principles	Principle of a competitive economy "enhance competition, reduce government regulation...expose to foreign competition..."	Principle of self-determination "relying on the inherent capacity of the country & its people to decide on the course of their own development."
Stance on resource-extraction	MTPDP promoted the Mining Act of 1995	Strong positions against pollution, resource depletion and exploitation

The inconsistency is not confined to paper. While the pursuit of the MTPDP's goals was well funded, PA 21 practically got nothing.<sup>8</sup> The PCSD, which was supposed to be the agency for following through the PA 21, received only very limited resources and a very narrow mandate. As expected, it quickly evolved into shop talk and has been unable to fulfill its role as an oversight body, much less ensure the implementation of the policies spelled out in the PA 21.

The contradiction between the government's lip service to "sustainable development" and its driven implementation of neoliberal policies was easily exploited by certain corporations and politicians who were profiting from exploiting the environment. The stated policy of attracting investors at all costs, the intentionally enfeebled regulatory framework, plus the state's incapacity to enforce its laws all facilitated

the subversion of the goals of "sustainable development" by resource-extractive industries and politicians, resulting in the continued depletion of the country's resources.

These dynamics are illustrated in the case of the mining and logging industries.

#### *Case Study 1: A Minefield of Disaster*

In 1996 the Marcopper mine site situated atop a mountain unleashed a torrent of sulfuric mine tailings into the Boac and Makulapit rivers in the island of Marinduque in southern Luzon. An estimated total of 1.5 to 3 million cubic meters of toxic tailings<sup>9</sup> inundated the whole length of the Boac River which goes through almost the entire island, thereby effectively killing the small island's ecosystems and livelihood. The biggest industrial accident in the country's history, it was also one of its worst environmental disasters.

The Marcopper spill brought into the spotlight the workings of the mining industry in a country with one of the highest mineral endowments in the world, according to several geological surveys. Since President Marcos's regime, the Philippine government has been inducing multinational mining corporations to invest in extracting the country's vast mineral resources by offering them various incentives. Dangling these enticements before investors often meant sacrificing the rights of the communities, including those of the indigenous people who live around the mine sites in order to meet the demands or preferences of the prospectors. It also meant relaxing existing regulatory mechanisms or refusing to implement necessary regulations. For many, the Marcopper accident was an unfortunate but predictable consequence of these actions.

In 1974 Marcos passed Presidential Decree 463 or the Mineral Resources Development Decree, which aimed to jumpstart the growth of the mining industry. It allowed, at least on paper, foreign investors to own up to 40 percent of the company while the Filipino partner owned the 60 percent majority. This provision was intended to open the doors to local investors but instead opened a window only to a few privileged elite. Benguet Consolidated, for example, originally a 100-percent American-owned corporation, sold its shares to businessmen like Jaime Orpin and families like the Sorianos, well-known dominant clans both politi-

cally and economically powerful in the country. Marcopper, another originally foreign-owned company, sold a portion of its equities to the Marcoses and Marcos cronies. An important feature of Marcos's decree was the complete disregard for surface owners and present occupants of the lands to be exploited. In many cases, this meant ignoring the indigenous communities who considered the mine sites their home and source of livelihood. According to the decree, any prospector can occupy the land that it applies for and it will be protected by the government against the original occupants refusing to let it in.

In addition, Marcos threw in several more sweeteners like a lease term of twenty-five years, renewable for another twenty-five years; and the duty-free importation of any equipment. There was supposed to be a limit to the size of land a firm could own but this was rendered meaningless by another clause allowing companies to own several plots of land. Cases of pollution, such as the disposal of mine tailings, were to be sanctioned with a ridiculous fine of P<sub>hp</sub> 5,000.

In other words, the government laid out a golden brick road toward an industry that raked in an average of 20 percent of the total Philippine exports<sup>10</sup> and contributed an average of 1.3 percent share gross value added in the country's gross national product.<sup>11</sup> This categorized the industry as a veritable income-generating source for the government. It paid a sizeable amount in excise taxes, reaching sums of \$19 million in one year alone.<sup>12</sup>

By the time Aquino took over, 270 mining firms were operating in the country, most of which were partially owned by multinational mining corporations. In 1987 Aquino's Executive Order 279 gave the DENR secretary full authority to negotiate and conclude leasehold agreements with resource extracting firms in the form of Financial and Technical Assistance Agreements (FTAAs). This effectively hastened the entry of many investors. In contrast to Marcos's time, the FTAs made the government full joint-venture partners with the private mining firms in the exploitation of the nation's minerals. Like Marcos, Aquino added some bonuses such as tax holidays and other forms of tax exemptions to encourage foreign investors to enter the industry.

When Ramos entered the picture, he cited the mining industry as an example of how the concept of "sustainable development" could be translated to action. This industry was to fuel the country's industrializa-

tion but it was also going to be a showcase of how to reconcile the needs of business with the needs of the environment. For Ramos, this meant implementing his MTPDP and kicking the industry's doors open to foreign investors. Taking the liberalization of the industry a big step further, he pushed Congress to pass the Mining Act of 1995 or Republic Act 7942, a significant piece of legislation that would have allowed foreign corporations 100-percent ownership of their investments, repatriate their profits in full, and effectively own land. (These provisions were later deemed unconstitutional by the Supreme Court.)

In this all-out effort to woo the mining companies, the Marcopper spill revealed what was often foregone in favor of investments. It turned out that Marcopper had no business permit all along and that, being one of the biggest investors in the field, it had been exempted from the requisite environmental impact assessments.<sup>13</sup> Moreover, subsequent inspections by engineers revealed that the spill was caused by a faulty plugging system, an obviously reckless oversight by both the company and the government regulators who, in theory, should constantly be keeping an eye on their operations. Several more covered-up errors surfaced, showing an irresponsibly run operation with government deliberately looking the other way. The DENR has a separate agency, the Mines and Geosciences Bureau, which was created to focus exclusively on monitoring and regulating the exploitation of the country's mineral resources. But as with the entire government, the bureau is wracked by conflicting goals—that of promoting industry and that of protecting the mine lands. It has no effective power to sanction firms that violate its regulations.

In the end, Marcopper's mother company, Placer Dome, one of the world's largest mining companies, got away virtually scot-free. "When we were going to file a complaint against [them], we were shocked to see that the companies no longer existed, somehow they were able to sell shares, change names, and ultimately cover their tracks,"<sup>14</sup> said an astonished Mitch Maling of the Marinduque Council for Environmental Concerns, of their efforts to pin down the firm. It had been easy for Placer Dome to come, it had also been easy for it to leave.

The way by which the mining companies were pampered contrasted markedly with the way by which local mining employees as well as the indigenous communities living on the mining sites were treated.

While the multinational corporations were given tax holidays and various forms of assistance to start up their operations, the plight of the workers was constantly ignored. Despite generous incentives, however, the mining industry has not lived up to its promise of delivering economic growth and has in fact been losing money. During the past twenty years, while the government was throwing incentives left and right, twenty-nine firms had declared bankruptcy because of declining world prices for minerals.<sup>15</sup>

The workforce consequently decreased by the thousands, with big companies like Benguet and Lepanto downsizing from a high of 15,000 to 6,000 workers.<sup>16</sup> Though some firms like Benguet claimed to have paid off their workers with sizeable retirement sums, most have completely relinquished their responsibilities by declaring bankruptcy, thereby escaping the legal requirements of compensating workers. And since mining is a skills-specific industry, losing a job here is not as simple as losing a job at, say, a stuffed-toy factory. Most miners enter the trade as young adults, learning and developing mining skills, and ending up spending most of their lives in the industry. Because mine sites are usually in remote areas, mining companies put up houses for their miners, as well as other basic services like hospitals or clinics, schools, and retail stores. Miners in turn end up bringing up their families with them. Unlike the mining corporations that can easily relocate to another mine site, abandoned miners often have nowhere to go and no government to turn to once a mine closes down.

In attracting the mining prospectors to mine sites in the country, the government often disregarded the fact that what it was selling off may not have been its own to sell. Some of the mine sites had actual people living on them—the indigenous communities who considered the mountains their ancestral domains. But for the government and for the mining companies these people simply did not exist. Because the indigenous people often move around the mountain from season to season, the fact that they do not have land titles and that they do not build physical infrastructure in the places where they live has been used to prove that they are not there. "Benguet has been around for ninety-eight years and we have not encountered a genuine indigenous community,"<sup>17</sup> said the vice president of a mining firm in Northern Luzon. For

him, the indigenous people are just a figment of the imagination. Since these indigenous people are not real, mining companies—as tolerated by government—have found it all too easy to evict them from their lands. With the laws often interpreted in favor of the firms, indigenous people have been thrown out of their lands, forced to find new homes or go down to the cities where they become street urchins or part of the squatters in slum areas. Entire communities are dislocated, disrupting cultural and family ties.

All this was supposed to change in October 1997 when the IPRA, a landmark law which affirms the existence of the indigenous people, was passed. A key provision is the recognition of “ancestral domains” or lands that have belonged to these communities since time immemorial but have no regular legal documentation like land titles and are instead supported by tribal laws and practices. Tied to this recognition of “ancestral domains” is the right of the communities to explore and utilize the minerals in their lands. In other words, the mine sites were now to be owned by the indigenous people themselves and mining companies could not enter without permission. The law required a process of “informed” consultation before mining could be allowed on the community’s lands. Interested mining companies now had to secure a written consent from the communities before they could begin digging. All these presented a formidable threat to the mining companies, as well as to those who wanted to attract them.

Barely three months after its enactment into law the IPRA’s validity was challenged. In September 1998 former Supreme Court Justice Isagani Cruz filed a case in court, questioning the constitutionality of the IPRA. “The IPRA was a rank violation of the constitution. I have nothing against the indigenous people but their protection should be in accordance with the law,” Cruz argued.<sup>18</sup> The basic issue raised in the petition involved the Regalian Doctrine or the law that says that the State has ownership and control over all lands and natural resources and therefore the right to sell or lease them as well. According to Cruz, the provision in the IPRA that allows the indigenous people to own and control their ancestral domains violates this doctrine. Because this provision prevents the government from inviting mining corporations, the Regalian doctrine had to be invoked and upheld.

So controversial were the provisions in question that, in a country where court cases routinely take months or even years to begin their hearings, the respondents in this case received their summons twenty-four hours after it was filed. The solicitor general abandoned it, according to Commissioner David Daos of the NCIP.<sup>19</sup>

The SC eventually ruled 7–7 in favor of the law. Though it resulted in a tie, the vote effectively upheld the constitutionality of the IPRA and denied the motion to issue a temporary restraining order (TRO) that would prevent its implementation. Seven justices of the Supreme Court had rescued the IPRA from certain death. But who would deal it a fatal blow but then-DENR Secretary Antonio Cerilles himself? Despite the Supreme Court’s ruling, Cerilles declared a TRO of his own and cut funding to the IPRA’s main implementor, thereby effectively paralyzing the agency.<sup>20</sup> Cerilles justified his actions by saying that the IPRA’s constitutionality had been questioned and therefore could not be implemented. But even Cruz, the original complainant, did not agree with this. “[Cerilles’s action] is not constitutional because the Supreme Court itself did not issue a TRO so the IPRA should be implemented fully.”<sup>21</sup> With the IPRA effectively nullified, the indigenous people have ceased to exist again.

The paralyzing effect of pro-environmental legislation and court rulings being contradicted by pro-business executive enforcement was again evident in the controversy over Republic Act 7942 (Philippine Mining Act of 1995). On January 27, 2004, the Supreme Court issued a ninety-five-page decision declaring a number of provisions of Republic Act 7942 as unconstitutional following a petition filed by concerned sectors questioning the constitutionality of the law and its implementing rules and regulations formulated by the DENR through Administrative Order 96-40. The petitioners pointed out that Republic Act 7942 is unconstitutional for it authorizes the execution of service contracts with foreign-owned firms for the exploration, development, exploitation, and use of country’s minerals, petroleum, and other mineral oils. The SC ruled in this favor declaring Republic Act 7942 unconstitutional; it further held that even if “the statute employs the phrase ‘financial and technical agreements’ in accordance with the 1987 Constitution, it actually treats these agreements as service contracts that grant



beneficial ownership to foreign contractors contrary to the fundamental law."<sup>22</sup> Likewise, all provisions of DENR Administrative Order 96-40 that do not conform to the said decision have been considered void and the FTAA between the government and Western Mining Corporation Philippines Inc. nullified.

While this should have been seen as a positive leap toward the preservation of the environment, Mines and Geo-Sciences Director Horacio Ramos contends that the SC ruling would jeopardize the revitalization program of the minerals industry, threaten existing and proposed developmental projects, and discourage foreign investments that are estimated to bring in \$5 billion worth of potential investments. The government appealed.

But even before the Court could decide on the appeal, the government was already trying to devise a way out of the Court's decision that rendered illegal full foreign ownership of mining operations. The government's proposal, according to Trade and Industry Secretary Cesar Purisima, would be to outsource or contract mining to a foreign firm. This would preserve the legal fiction of ownership of the mines lying with the government, while giving actual control over investment and operations to foreign investors "for a fee."<sup>23</sup> It was as if the proponents of subcontracting in mining had not heard of the disaster that had overtaken the projects subcontracted to the foreign investor-linked private firms in electricity generation and water provision discussed in the previous chapter.

The court ruling should have marked an encouraging advance in battling the adverse effects of mining operations and its devastating social impact on indigenous communities. Unfortunately, the prime agency mandated to safeguard the environment spearheads the move to reverse what little victory had been won. Environmental equilibrium and economic strategy were simply in contradiction.

#### *Case Study 2: Battles under the Foliage*

As early as the American occupation of the Philippines, the forests were considered a great source of wealth because of the high demand for timber in the West at the time. As a result, the modernization of the logging industry was considered among the top priorities of the US

colonial administration at the turn of the century.<sup>24</sup> Government worked hand in hand with large timber corporations, both foreign and domestic, to transform the Philippines from a timber importer to Southeast Asia's largest timber exporter.<sup>25</sup> The colonial Bureau of Forestry was only too happy to cash in on the demand, giving out promotional booklets targeting US customers saying, "When you buy Philippine lumber, you are helping not only the Filipinos, but also the American lumbermen in the Philippines and the American machine manufacturers in the United States."<sup>26</sup>

Though the demand from the US eventually dwindled, the lost revenues were quickly compensated for by the demand from other markets. From the 1960s to the 1990s, Japan took the lead, purchasing as much as 70 percent of timber logged in the Philippines.<sup>27</sup> The '60s and the '70s would be considered the golden years of the logging industry, with the Philippines ranking as the fifth-largest timber exporter in the world market. With the industry accounting for about 33 percent of total export earnings,<sup>28</sup> it was lavished with special treatment by the government. As a number of loggers became local and national politicians and as politicians also went into logging, they began to exercise control over the government's relation with their industry. This included the granting of concessions, grants, and exemptions. Former DENR Secretary Victor Ramos attests that most timber licensing agreements (TLAs) given out before were part of political spoils.<sup>29</sup>

But as the loggers rose in power, more and more trees fell. Afraid to lose their stronghold, the loggers ensured that the felling of timber would continue at an even more intense pace, peaking at an annual production average of 15,475 cubic meters for the years 1966 to 1970.<sup>30</sup> At this time, there were less than a hundred TLAs. This would increase significantly during the next decade, reaching a peak of 230 TLAs in 1977,<sup>31</sup> with each TLA covering tens of thousands of hectares.<sup>32</sup> Ironically, this high was reached when the government declared what was at first a total log ban but would later be downgraded to a selective log ban.

After a few years of what Secretary Ramos calls "legitimized illegal logging,"<sup>33</sup> the effects of irresponsible logging methods became evident. In the beginning of the '80s the government tried to curb the

denudation of forests by requiring timber concession holders to reforest their areas. It was a vain attempt. Instead of replanting, companies underreported actual log production and exports<sup>34</sup> or, in some cases, submitted nonexistent reforestation projects.<sup>35</sup> Coupled with the other causes of deforestation namely slash-and-burn farmers, conversion of forest lands to croplands, migration of lowlanders to the uplands, and natural occurrences like forest fires, the outcome was a severe depletion of the forest cover.

In 1986 the DENR was established as a separate agency that would focus exclusively on the environment. A former secretary, Fulgencio Factoran, explained this decision as a tactical move to give the department more teeth in pursuing and implementing environmental protection laws. "We saw that the agencies handling the environment like the national pollution commission were small agencies with limited budgets and limited mandates."<sup>36</sup> The belief was that, in giving the DENR the power to grant licenses for the extraction of natural resources, it would also then be in a better position to execute environmental protection laws.

With this new mandate, the DENR under Factoran dramatically reduced the number of TLAs from 137 in 1987 to 29 at the end of the term as a deliberate move to stop the rapid denuding of forests.<sup>37</sup> At the instance of environmental groups, the DENR also cancelled all stump-age contracts and then raised the fee for cutting a tree from a ridiculous amount of Php 5 to Php 525. Such an increase was met with resistance by the logging community but the public's growing environmental consciousness had countered the influence of the loggers and their friends in government. The abrupt change of governments from Marcos to Aquino also did not give the logging industry enough time to switch allegiances.<sup>38</sup> This diminished influence paved the way for the passage of a twelve-year commercial logging ban in Congress.

By the time President Fidel Ramos came to power, however, it became apparent that the loggers had found ways to circumvent the government's efforts. This was starkly evident in the statistics on forest cover. By 1993 forest cover was down to 5.8 million hectares, down by nearly half from 10.4 million figure at the end of the Marcos period.<sup>39</sup> The annual deforestation rate during the Aquino period was, in fact, higher than during the Marcos period, with forest cover being removed

at about 5.1 percent in the former, compared to 2.5 percent in the latter.<sup>40</sup> By then, it became evident that the only way to save the forests was through a total log ban. Illegal loggers, however, proved adept in skirting the ban. They deliberately let the agency's officials confiscate their logs to fool them into thinking that the confiscation rate was going up. In truth, the amount confiscated was only a small percentage of their actual cut.<sup>41</sup> Loggers would also recycle logging permits at checkpoints, buy TLAs from legal holders for purposes of presenting to inspectors and, sometimes bribe the DENR personnel.<sup>42</sup>

Table 6.2 Reduction in Forest Cover  
(Marcos and Aquino periods)

Year	Forest Cover (thousand ha)
1970	15,898.90
1971	15,875.01
1972	15,671.10
1973	13,893.96
1974	13,690.06
1975	13,476.04
1976	13,272.14
1977	13,068.23
1978	12,864.33
1979	12,661.00
1980	12,456.52
1981	12,252.61
1982	11,963.41
1983	11,759.50
1984	11,555.60
1985	10,368.03
1986	9,180.47
1987	6,789.64
1988	6,480.60
1989	6,307.40
1990	6,158.80
1991	6,015.40
1992	5,900.20
1996	5,590.78

Source: Ponciano Inel Jr. and Erlinda Medalla, "The East Asian Financial Crisis and Philippine Sustainable Development, in *Economic Crisis... Once More*, ed. Mario Lamberte (Makati: Philippine Institute for Development Studies, 2001), 97; Department of Environment and Natural Resources.

Because of the loggers' success in foiling the government's attempts at keeping logging under control, the forests continued to be denuded at an alarming rate, resulting in a dismal forest cover of six million hectares by 1991, only 700,000 hectares of which are virgin forests.<sup>43</sup> If anything, the failure to arrest the continued denudation of the country's forests highlighted the structural problems facing an ineffective government regulatory agency vis-à-vis a powerful industry.

First of all, the DENR does not have enough teeth to police the logging industry. It is not given enough funds and enough power to achieve its objectives. In 2004 DENR faces another budget slash, reflecting a dwindling trend in its budget. This makes life a lot easier for illegal loggers. For example, forest rangers and DENR officials use outdated means to police the forests. While loggers often have the latest technologies at their disposal, rangers do not even have the means to get to the actual logging sites except by foot. Validating reforested areas through aerial photos came as a recent development only with Secretary Ramos specifically allocating budget for the purchase of only one helicopter. Another antiquated approach at catching illegal loggers is the setting up of checkpoints at the logging roads and piers. Often, loggers transporting premium hardwood get past inspectors by simply covering the wood under bags of charcoal.<sup>44</sup>

The budgetary inadequacy also explains why the agency could not hire the kind of people it needs and why its employees are vulnerable to the temptation of easy money. Rey Alcanes, chief of the Environmental Impact Assessment Committee, for instance, laments that he loses his best people—and their expertise—to corporations and other private firms.<sup>45</sup> "They come here young and idealistic and then they realize that their hands are tied because of lack of funds and the bureaucracy so they leave," Alcanes relates.<sup>46</sup> With their low salaries, the DENR's employees are prone to accepting the wads of cash that loggers can afford to spread around.

DENR's impotence stands in stark contrast with the vast resources of the loggers, not least of which is their firepower. What, for example, can an unarmed ranger do in the face of armalites and guns? Feeling helpless, some rangers have actually requested for weapons and firearms from the department. Secretary Ramos recalls encountering several forest rangers pleading for arms. "They would tell me that they could stop

the trucks and the loggers if they had the same, if not more powerful firearms," Ramos said.<sup>47</sup> In the lucrative business of logging, the forest ranger is not the only one used for target practice. A number of DENR provincial officials have been targeted and killed. The highest official murdered was Central Luzon Director Ric Serrano, whose pending appointment as the department's undersecretary may have been a big threat to certain quarters.

In the morning of June 24, 1998, as Serrano made his way through the usual traffic of Quezon City, armed men stopped in front of his car and blasted away. It was common knowledge that Serrano had a lot of enemies because of the way he clamped down on illegal loggers in Central Luzon. He also closed down factories he deemed environmentally harmful to nearby rainforests, rivers, and watersheds. Investigators then zeroed in on this slighted group. True enough, witnesses slowly began coming out, with one linking the murder to a powerful family that owned one of the factories that Serrano has ordered closed. But before the case could be heard, witnesses began dying or disappearing. The case remains unresolved.

The government's apparent helplessness in the face of powerful logging interests has prodded communities and NGOs to take matters into their own hands. In Palawan, for example, a noteworthy group called Environmental Legal Assistance Center (ELAC) has been doing what the DENR couldn't: apprehending illegal loggers and confiscating their chainsaws and timber. Tired of waiting for the nonexistent assistance from the government, ELAC has been assisting communities in invoking and performing "citizen's arrest." The sheer number of the community residents allows them to overpower the armed loggers and stop them from felling trees.

It's not that the communities can do without the DENR because they can't; they just want the DENR to perform its job. In one community, for example, paralegals from ELAC made it a point to stay with DENR personnel at the checkpoint to ensure that they would apprehend an oncoming truck stealthily loaded with hot lumber.<sup>48</sup> As ELAC's Bobby Chan explains, "We cannot keep doing their jobs! That's why whenever we can, we ask, drag or force DENR personnel to come with us during arrests and confiscation of lumber and chainsaws."<sup>49</sup>

But even if the government had the capacity to enforce its own laws and regulations, there is still the question of whose side it is really on. Even if the DENR had all the bright minds, the equipment, or the guns, these would still not give the assurance that the agency would be allowed to do its job properly without any interference. There have been cases, for example, of environmental offenders getting off the hook despite the valiant attempts of committed DENR officials fulfilling their roles and defying the risks. Worse, the DENR officials who went after these violations were the ones prosecuted, instead of the illegal loggers.<sup>50</sup>

The tug of competing interests within the DENR is played out in the agency's mandate. "The present DENR as it is presently structured is really schizophrenic," argues Von Hernandez, regional campaign director of Greenpeace.<sup>51</sup> On the one hand, the DENR is supposed to conserve the environment and control the extraction of natural resources. And yet, on the other, it is responsible for granting the permits to corporations from which the agency is supposed to protect the environment. Indeed, the agency's independence had been dented after certain assessments and rulings that were unfavorable to certain parties were "softened."<sup>52</sup> "There's a battle of interests and we are often at the losing end," laments Alcanes.

Perhaps the most glaring manifestation of how the interests of the industry prevail over the interests of the environment was the installation of a known logger, Antonio Cerilles, as DENR secretary during the Estrada administration. The appointment of Cerilles, a former governor with no background in the area of natural resources, except being a former extractor, was best explained as a political favor. Cerilles, who acted as the campaign manager of Estrada's LAMMP party in the 1998 election, and a close friend of Executive Secretary Ronaldo Zamora whose family controls the nickel mining industry in the country, added to the controversy of his appointment. So notorious was Cerilles among environmental groups that he was described as being "born with a chainsaw in his hand."<sup>53</sup> True enough, Cerilles did not waste time appointing his fellow loggers to key positions in the department and exempting certain companies from fulfilling usual requirements including his own. His recommendation to install ex-Lapuwan, Zamboanga del

Sur Mayor Cesar Sulong, an Estrada ally with a record of graft and small-town patronage politics attached to his name,<sup>54</sup> as NCIP chairman, was interpreted as a clear demonstration of putting the interest of a political ally over and above the indigenous people's needs. Adding to a long string of controversy assailing the secretary was the disclosure that his very own rubber processing plant was operating without an environmental compliance certificate. A few days later, the environmental permit was quietly issued by a DENR regional director he promoted just ten days before.<sup>55</sup> At one point, Cerilles was even supposedly witnessed by his staff to have ordered Jimmy Pisigan, the head of an investigating team for these ocular inspections, to drop a number of names from the list of violators, explaining, "*Hindi mo pa ba kilala ang mga kabigan natin?* [Do you still not know who our friends are?]<sup>56</sup> For an agency that had often been hijacked by certain interests from the outside, DENR under Cerilles and his friends represented a takeover of the very agency that was supposed to regulate them.

At the outset, environmentalists say that Cerilles's attitude toward illegal logging was betrayed by his choice of a vacation resort. According to Chan, "[Cerilles] and his staff regularly stayed at the Dos Palmas resort... in Puerto Princesa [Palawan] for free, when it is a well-known fact that this resort is owned by apprehended illegal loggers."<sup>57</sup> The very cottage where Cerilles and his staff slept in was actually made of endangered premium hardwood taken from the forests of Palawan, a no-logging zone.<sup>58</sup>

#### An Incompatible Match

As demonstrated in the cases above, it is not that the government has ignored the environmental crisis afflicting the country. It has passed a number of groundbreaking, if imperfect, pieces of legislation in an attempt to solve specific environmental concerns and has even established particular institutions entrusted to follow through these proposed solutions. For example, the DENR has been tasked to enforce log bans and to clamp down on illegal logging in the logging industry as well as to oversee the operations of the mining industry. A special council was even constituted to ensure that the country does not stray from the path of "sustainable development." But as the current state of the environ-

ment proves, all these efforts have been critically negated by the governments' consistent adherence to neoliberal orthodoxy and have been successfully sabotaged by the very resource-extractive interests that it sought to rein in.

This contradiction has subverted the work of well-meaning individuals who came to head the DENR, such as Factoran and Ramos. The latter created an activist team that incorporated key people from environmental nongovernment organizations, like Tony Lavina and Delfin Ganapin, who were appointed undersecretaries. One of the victories they notched was stopping the construction of an environmentally destabilizing cement plant in Bolinao, Pangasinan. However, their ability to go against the institutional current was limited. Vic Ramos was eventually abandoned, at the urging of the tourist industry lobby, by his namesake President Ramos, when he tried to prolong a ban on fishing and swimming at Boracay, one of the Philippines' prized beach resorts, owing to high levels of wastewater pollution.

If the DENR leadership was pro-business under Estrada and pro-environment but frustrated under Ramos, it was paralyzed by internecine conflict under Heherson Alvarez, Arroyo's first DENR secretary.

The example of the mining industry showed to what lengths the government has gone in showering potential investors with incentives and entitlements even as it sidelined the interests of indigenous communities, the workers, and the environment. Since Marcos's time, policies on mining have had the effect of privatizing what should otherwise have been the collective resources of the people. These policies have put the commons in the hands of local and multinational corporations who demanded, as a condition for their investment, that the market be liberalized and deregulated in order for them to have the widest latitude in maximizing their profits. The Marcopper tragedy politically—and literally—exposed the disastrous effects of these policies. As evidenced by the disaster, the demands of neoliberalism dictated that regulation and accountability were the first to go in the process of attracting mining companies to invest in the country. The environment and the community were the ultimate losers.

Clearly, the Marcopper disaster may not have happened had the government not relaxed its requirements—in this case, exempting Marcopper from environmental impact assessment—and if it did not weakly enforce its regulations. That Marcopper was able to leave unpunished may not have been possible had the government not surrendered its power to keep investors in check. As the fate of the IPRA showed, even efforts by civil society to subordinate mining corporations under the interests of the people and the environment would constantly be challenged for contravening the neoliberal objective of putting the interests of corporations over everything else.

The case of the logging industry, on the other hand, showed how institutional efforts to halt the continuing depletion of the forests could easily be subverted by certain interests' firm hold over the government. The ineptitude of the DENR contrasts starkly with the loggers' clout over government, as personified by the appointment of a known logger as the country's chief environmental law enforcer. Rather than just an isolated error in judgment, Cerilles's appointment should be seen as a predictable, if extreme, manifestation of the extent to which the formulation and determination of the government's environmental laws and policies have been circumvented, if not driven, by corporate interests.

That the series of legal and bureaucratic reforms undertaken by the government have not moved the country closer to sustainable development should therefore come as no surprise. Sustainable development cannot be reconciled with neoliberal policies of privatization, deregulation, and liberalization because they are ultimately about different means and aims. Sustainable development recognizes that balancing the requirements of development with the needs of the environment requires decisive state action, something anathema to a doctrine that calls for the withdrawal of the state. Sustainable development stands for equity within and among generations—something rendered impossible by a set of policies which calls for the supremacy of the market in allocating resources. Simply put, protecting the environment is fundamentally at odds with giving corporate interests free rein to exploit it. Hence, government measures to respond to environmental degradation have been and will continue to be rendered meaning-

less and futile for as long as the contradictory policies that undermine them as well as the interests which are capable of subverting them remain entrenched.

## Notes

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