

January 1993

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Recommended Citation

Edward E. Yates, Public Participation in Economic and Environmental Planning: A Case Study of the Philippines, 22 Denv. J. Int'l L. & Pol'y 107 (1993).

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Public Participation in Economic and Environmental Planning: A Case Study of the Philippines

Keywords

Comparative Law, Judicial Review, Politics, Health, South Africa, Sustainable Development

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I. INTRODUCTION

In the Philippines, Aboriginal, Malay, Chinese and mixed-blood peoples live among unique and productive biological ecosystems. However, environmental degradation threatens socio-economic development in this resource rich but environmentally fragile country. Destruction of forest and marine ecosystems severely affects local economies dependent on traditional fishing and agriculture. The quality of urban air and water is degraded daily, causing major health problems. The increased pollution and natural resource degradation are clearly related to the country's drop in food production and its difficulties raising the national standard of living.¹ Indigenous peoples and rural poor often bear the brunt of this resource degradation. The increased pollution and natural resource erosion are clearly related to the country's drop in food production and its difficulties in developing an economy capable of raising the national standard of living.¹

The traditional western response to difficulties in economic development has been to throw both money and concrete at the problem. Yet the large industrial and infrastructure projects in the Philippines, as in other countries, cause tremendous environmental repercussions.² While the pursuit of socioeconomic development does not necessarily conflict with a strong environmental policy,³ rapid industrial based development with little public scrutiny or involvement has clearly increased damage to the environment and human suffering in the Philippines.

Non-governmental organizations and some political leaders recognize the problems caused by this resource degradation and have stressed the

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1. See generally THE WORLD BANK, FORESTRY, FISHERIES, AND AGRICULTURAL RESOURCE MANAGEMENT IN THE PHILIPPINES (Sept., 1989); U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT, SUSTAINABLE NATURAL RESOURCE ASSESSMENT — PHILIPPINES (Dames and Moore Int'l, et. al., 1989); GARETH PORTER & DELFIN GANAPIN, WORLD RESOURCES, INSTITUTE, RESOURCES, POPULATION AND THE PHILIPPINES FUTURE (1989).

2. See SIERRA CLUB, BANKROLLING DISASTERS (1987); ROBIN BROAD & JOHN CAVANAUGH, PLUNDERING PARADISE: THE STRUGGLE FOR THE ENVIRONMENT IN THE PHILIPPINES (1993).

3. Studies of economic growth in Europe and the United States clearly show that environmental protection does not slow down or interfere with economic growth. See THE COUNCIL ON ENVIRONMENTAL QUALITY, WASHINGTON D.C., 21st ANNUAL REPORT, MAKING THE ENVIRONMENT COUNT (1990).

urgency of the problem.⁴ As these leaders and groups point out, little has been done to address the problem because the wealthy classes in the Philippines benefit from rapid resource exploitation, and the political power of this economic elite has effectively eliminated any serious political restructuring, such as land reform.⁵ Further, the inability of the Philippine government to effectively fund and carry out environmental protection has thwarted genuine efforts to regulate and manage resources. To sustain its resources the Philippines must confront and overcome both the political power of those exploiting resources and the scarcity of administrative funding and capacity.

To address unjust and inadequate economic and environmental policies, citizens and governments in many countries have attempted to open up information control and development planning, through the environmental impact assessment (EIA) process.⁶ EIA, along with open meetings and freedom of information acts, opens proposed programs and projects to external review and criticism.⁷ In the 1970s, the Philippines, along with other countries, established EIA in order to provide an objective, analytical approach to project planning. Although many countries established EIA, only those nations that incorporated extensive external review, coordination, and public involvement — the United States, Canada and the Netherlands⁸ — succeeded in using EIA to avoid and reduce the environmental and socio-economic impacts caused by large scale development.⁹

4. See *Our Threatened Heritage (Proceedings from the Solidarity Seminar on the Environment)*, 124 SOLIDARITY (Oct.-Dec. 1989)[hereinafter SOLIDARITY].

5. PHILIPPINE CENTER FOR INVESTIGATIVE JOURNALISM, *SAVING THE EARTH: THE PHILIPPINE EXPERIENCE* (1991).

6. Most environmental statutory mechanisms need a substantial regulatory framework and are often applied after the pollutant or development has altered the environment. EIA is a study process used to predict and prevent the environmental and socio-economic consequences of development programs and projects and avoid costly regulation and enforcement. Projects can include establishing a forest management plan or building a hydraulic dam. Programs such as water use management plans can also utilize the EIA process. EIA concentrates on natural resource constraints that can effect the success of a program or project. It also sets out how projects might cause harm to people, their homeland or their livelihoods, or to other nearby development projects. EIA then identifies ways to minimize the problems and outlines ways to improve the project so that it better meets its proposed goals. The people who participate in the process include other government agency officials, technical specialists, local leaders and perhaps most importantly, the local citizens of the area for which the program or project is planned. United Nations Environment Program, *ENVIRONMENTAL IMPACT ASSESSMENT: BASIC PROCEDURES FOR DEVELOPING COUNTRIES*, U.N. ENVIRONMENTAL PROGRAM, at 2, 3 (1988).

7. MICHAËL D. AXLINE, *ENVIRONMENTAL CITIZEN SUITS* (1991).

8. National Environmental Policy Act, 42 U.S.C. §§4321-4347, (1988); Government Organization Act, 1979, P.C. 1984-2132, CAN. GAZ., 118(14) SOR/84/467 (Nov. 7, 1984); Environmental Protection Act, Act of April 23, 1986 (General Provisions), Bulletin of Acts, Orders and Decrees 211 (The Netherlands).

9. W. Kennedy, *Environmental Impact Assessment in North America and Western Europe: What has Worked Where, How, and Why*, *Int'l Env. Rep.* (BNA) 257-262 (Apr. 13, 1988); U.S. COUNCIL ON ENVIRONMENTAL QUALITY, *WASHINGTON D.C., 20TH ANNUAL REPORT ON ENVIRONMENTAL QUALITY, THE NATIONAL ENVIRONMENTAL POLICY ACT; A MODEL FOR*

Those EIA systems, including Asian systems, that did not establish coordination or oversight mechanisms, have had serious implementation problems.¹⁰

The Philippine EIA system incorporated many elements of various other EIA systems and established some indigenous, innovative concepts. The Philippines implemented their EIA system, however, in an uneven manner, emphasizing technical and regulatory aspects and largely ignoring the more important external review aspects such as inter-governmental coordination and public participation.¹¹ Since establishment of the EIA system fifteen years ago, the government has eliminated its inter-agency coordination, granted hundreds of exemptions and, in some cases, simply failed to carry out the planning required by the EIA system. Public scrutiny and oversight could have prevented much of this abuse. Further, the EIA system never adequately utilized a very valuable resource: the input and knowledge of local citizens and organizations.

This paper will briefly set out the more serious problems in the Philippine EIA system, problems which are representative of the economic and environmental planning problems faced in many developing countries.¹² Next, it will show how citizen participation and external review of government planning could produce an effective development planning process that would avoid projects that damage the environment. The last section will suggest a minor revision of The Philippine EIA process by which public involvement is established as an integral part of development project planning in the Philippines and in other developing countries.¹³

II. NATURAL RESOURCES AND ECONOMIC POWER IN THE PHILIPPINES

The commerce and culture of the Philippines has traditionally been

OTHER COUNTRIES 42-51 NOTE (1990).

10. N. Htun, *The EIA Process in Asia and the Pacific Region*; I. Moreira, *EIA in Latin America in Environmental Impact Assessment: Theory and Practice* (P. Wathern, ed., 1988).

11. The period of dictatorship of Ferdinand Marcos seriously affected all Philippine citizen and non-governmental efforts to participate in the economic development process. EIA was viewed as a technical tool under Marcos and that view has not changed in the seven years since his overthrow. For a general history of recent Philippine politics see CLARK NEHER, *SOUTHEAST ASIA IN THE NEW INTERNATIONAL ERA* 55-85 (1991).

12. For a review of EIA in developing countries, see *Symposium: EIA for Developing Countries: Progress and Prospects*, 5 ENVTL. IMPACT ASSESSMENT REV. 3 (Sept. 1985).

13. This paper will not attempt to analyze the analytical or quantitative processes utilized in the Philippine EIA system; e.g. mitigation, alternatives, monitoring, cumulative impact assessment, etc. This paper attempts to assess why the current system is not effective. For another view of the Philippine EIA system see Abracosa & Ortolano, *Environmental Impact Assessment in the Philippines: 1977-1985*, 7 ENVTL. IMPACT ASSESSMENT REV. 293-310 (1987) [hereinafter Abracosa]; PH.D. DISSERTATION, DEP'T OF CIVIL ENGINEERING, STANFORD UNIVERSITY, *THE PHILIPPINE ENVIRONMENTAL IMPACT STATEMENT SYSTEM: AN INSTITUTIONAL ANALYSIS OF IMPLEMENTATION*, (1987)(Available at Stanford Engineering Dept. and the University of the Philippines, Manila School of Urban and Regional Planning).

closely tied to the land and the sea. In recent years the Philippines has put great demands on these natural resources in order to support its rapidly growing population and its need for economic development. Yet these resources, agricultural land, forests and marine ecosystems, are deteriorating rapidly. For instance, forest cover has declined in the Philippines from 75 percent in 1950 to only 25 percent in 1988, and only 980,000 acres of virgin forest remain.¹⁴ The once productive fisheries of the Philippines are being decimated by the destruction of the coral reefs and the pollution of coastal waters by industrial and human wastes.¹⁵ Given that fish and other seafood provide 54 percent of the protein for the average Filipino household, the destruction of marine resources could result in economic disaster and possible famine.

Destruction of the natural resource base results in the breakdown of the socioeconomic and cultural foundation of Filipino rural society. The loss of that base causes the mass migration of rural peoples to the vastly overcrowded, polluted cities of the Philippines. In urban areas, buses and factories emit huge clouds of black smoke into small, highly populated areas where health care for the poor often does not exist. Open sewers and lack of zoning regulations allow processing of toxic substances and hazardous waste in thickly populated, lower-income areas.

For years, government agencies or rapid growth oriented political appointees have dominated the agencies charged with managing the nation's natural resources. The Aquino administration initially attempted to change this dynamic by establishing the Department of Environment and Natural Resources (DENR) and appointing more enlightened administrators. Unfortunately, the laws intended to control air and water pollution and wanton destruction of the country's natural resources remain only rarely enforced. The belief prevails in much of industry that the Philippines must follow a "pollute and grow" approach.

Access to natural resources and economic benefits from the extraction of resources creates political and economic power. The traditional land-holding elite and foreign multinationals, who have little interest in the type of planning that encourages sustainable development of resources, hold most of this power.¹⁶ Citizens and local communities in the

14. PHILIPPINE MINISTRY OF NATURAL RESOURCES, REPORT OF THE TASK FORCE ON FOREST PRODUCTS UTILIZATION 1 (1987); DANTE B. GATMAYTAN, LEGAL RIGHTS AND NATURAL RESOURCES CENTER, MANILA, IT'S TOO EARLY FOR CONSERVATION: TOKENISM IN THE ENVIRONMENTAL IMPACT ASSESSMENT SYSTEM OF THE PHILIPPINES (1993).

15. Delfin J. Ganapin & Gareth Porter, *Philippine Fisheries: Who Benefits?* in RESOURCES, POPULATION AND THE PHILIPPINES FUTURE (1988). See also *The Philippines Marine Wealth: Who Owns It?*, in SARILAKAS, Sept, 1987 (The authors describe how fishery resources that are supposedly open access are often destroyed by large scale fish and shrimp farming enterprises aimed at export).

16. See generally Delfin J. Ganapin, TOWARDS MORE EFFECTIVE REGULATION: A CASE STUDY OF THE PHILIPPINES (Presented to the Conference on Environmental Management in Developing Countries, Organization for Economic Cooperation and Development, Paris, France, Oct. 2-5, 1990) [hereinafter GANAPIN]; PHILIPPINE CENTER FOR INVESTIGATIVE JOUR-

Philippines have few tools with which to manage or protect natural resources.

A panel of natural resource policy experts, including Sen. Orlando Mercado and noted Filipino economist Sixto Roxas, declared that "decision making and responsibility over the natural ecosystem should belong to local communities whose livelihoods are most directly affected by its protection."¹⁷ Given the Philippine government's record managing resources and regulating polluters, this policy recommendation may provide the only alternative for long term resolution of the environmental crisis in the Philippines. The panelists also acknowledged the need for government-community partnerships where large scale projects receive public support. Regional and national infrastructure projects such as highways, ports, and energy facilities could provide excellent vehicles for development of such partnerships through both regional planning and EIA processes. Yet EIA, and most development planning in the Philippines, failed during the first fifteen years.

III. EIA IN THE PHILIPPINES: A BRIEF HISTORY

A. *Intergovernmental Coordination Aspects*

The regulatory system¹⁸ set up to implement the EIA system in the Philippines stressed two elements: (1) the technical and procedural review required prior to the granting of permits; and (2) the interdisciplinary approach and coordination needed for development planning. All project proponents (other federal agencies or local governments) were required to carry out this process and obtain "Environmental Compliance

NALISM, SAVING THE EARTH: THE PHILIPPINE EXPERIENCE (1991).

17. Many large scale policy changes are currently being advocated by Philippine leaders and activists to address environmental protection and economic development. Most, however, require either huge policy changes by governments or costly and ambitious (but necessary) regulatory apparatus. In the Philippines the most far reaching yet basic reforms would be to change the land tenure system and to allow its citizens democratic access to natural resources. See SOLIDARITY, *supra* note 4. Many of these reforms can only be implemented after extensive changes in property and even Constitutional law. This paper does not address those reforms but instead will identify immediate steps to improve the present planning processes which could build toward and complement more far reaching reforms when they are in place.

18. Presidential Decree No. 1151 set out the general administrative framework for environmental protection in the Philippines. Presidential Decree No. 1586 (June 11, 1978) set out the statutory framework for the environmental impact statement system including the establishment of the Environmental Critical Projects and Areas concept. The National Environmental Protection Council issued specific Rules and Regulations to implement Presidential Decrees No. 1151 and No. 1586 on July 22, 1983. Presidential Proclamation No. 2146 (Dec. 14, 1981) identified the environmentally critical areas and projects called for in Presidential Decree No. 1586. In 1983 the NEPC issued guidance regarding Presidential Proclamation No. 2146. Office Circular 3, *Technical Definitions and Scope of the Environmentally Critical Projects and Areas Enumerated in Proclamation 2146 (1990)*; see also Legal Assistance Center for Indigenous Filipinos, *Commission on Ancestral Domain: The Legislative Agenda*, PANLIPI HORIZONS, Jan. 1989, vol. 1, no. 2.

Certificates" (ECC).¹⁹ The ECC system established a list of environmentally critical projects or areas that trigger the requirement to draft an Environmental Impact Statement (EIS).²⁰ This list system usually provides for an assured minimal level of planning for those projects and areas listed.²¹ As in many EIA systems around the world, the Philippine system emphasizes the technical, quantitative methodologies of EIA. The Philippines and India, where well developed higher education systems existed, assumed that technical analysis could provide the objective scrutiny that would reform narrowly focused, inefficient, or corrupt government programs.

The designers of this EIA system correctly predicted that the line agencies approving the projects were narrow, mission oriented entities not interested in broad based planning. Therefore, the designers attempted to create an environmental awareness and expertise in government ministries. They required the establishment of environmental units within all government agencies involved in planning development projects. This system proposed to develop environmental expertise and awareness in the very officials who design and oversee projects. The National Environmental Protection Council's (NEPC) original task was simply to give advice, oversee the EIA system, and review the EISs for adequacy.²² However, neither the NEPC nor the public had the power to enforce the EIA system.²³

When the Department of Environment and Natural Resources (DENR) took over the functions of the NEPC in 1986,²⁴ the line agencies had stopped complying with the intended system, and DENR's Environment and Management Bureau (EMB) was charged with drafting all the EISs for the entire country! As in many other environment ministries worldwide,²⁵ other government departments who want little scrutiny of their projects often block officials at DENR.²⁶ These departments do not

19. Presidential Proclamation No. 2146 (1981).

20. *Id.*; Letter of Instructions No. 1179 (1981); NEPC Council Special Order No. 1 (1982).

21. JOHN HORBERRY, WORLD CONSERVATION UNION, STATUS AND APPLICATION OF ENVIRONMENTAL IMPACT ASSESSMENT FOR DEVELOPMENT 68, (1984).

22. These two processes are performed by two different government agencies in the U.S.; under the National Environmental Policy Act, 42 U.S.C. §4321 (1988), the Council on Environmental Quality is charged with oversight of the EIA process, while section 309 of the Clean Air Act, 42 U.S.C. §7609 (1988), charges the Environmental Protection Agency with the duty to review EISs for substantive and technical adequacy.

23. Abracosa, *supra* note 13, at 293.

24. President Aquino issued Presidential Order No. 192, which mandated a reorganization of government agencies dealing with environmental and natural resources issues. Oversight of the EIA process was transferred from the now defunct National Environmental Protection Council (NEPC) to the Environmental Management Bureau of the newly formed Department of Environment and Natural Resources.

25. See generally Jaro Mayda, *Environmental Legislation in Developing Countries: Some Parameters and Constraints*, 12 *ECOLOGY L.Q.* 997 (1985).

26. In the last two years DENR has addressed some of these coordination issues by

report their projects to DENR until the funds have been appropriated or the project has already started in order to avoid intervention.

For example, in order to exploit the "ecotourism" boom, the Philippine government has made extensive investment inroads on the thickly forested, sparsely inhabited island of Palawan. An EIS is being drafted for one such road from the airport in Puerto Princesa to Sabong on the beautiful and little visited west coast. This road passes through the watershed that feeds the unusual underground river at St. Paul National Park, a park that the Philippine government has recently spent millions of Pesos to protect. Road construction, however, has already started and has brought settlers practicing "kaingin," or slash and burn agriculture, to the watershed and to the ancestral domain of the traditional Batak and Tagbanue peoples. By not adequately complying with the coordination process, the municipality building the road ignored the knowledge of the national government entity that manages the park.²⁷ The rush to ignore planning and coordination will not only stunt economic development but will also threaten the survival of two indigenous cultures.

B. *External Oversight*

Public scrutiny makes government agencies uncomfortable. Yet, as the noted international environmental legal scholar Nicholas Robinson points out, public involvement and oversight of project planning have helped eliminate or reassess poorly planned projects. From the citizen suits by inner city workers in New York to outreach in rural Russia, EIA allows people to participate in and improve planning.²⁸

Unfortunately, the Philippines' attempt to ensure some oversight lacked force and application. Review panels made up of governmental and academic technical specialists convened to examine the adequacy of the environmental analysis.²⁹ This process unfortunately became a somewhat closed, technical, and eventually meaningless exercise. Further, the

establishing agreements with other government agencies, such as the National Economic Development Agency, that attempt to reestablish coordination between line agencies and DENR. DENR has also issued Administrative Order No. 38-A (September 12, 1990) and Special Order No. 589 (June 27, 1991), which set out internal procedures for EMB in implementing the EIA system. None of these above measures are legally binding but instead set up an institutional framework.

27. The Protected Areas and Wildlife Bureau of the DENR. Exec. Order 192 (1987). Admin. Code of 1987, Tit. XIV, Ch. 2, § 19.

28. Nicholas Robinson, *The National Environmental Policy Act: Today's Law for the Future*, address at the Council on Environmental Quality sponsored Conference (September 22, 1989) (transcript available in Pace University School of Law Center for Environmental Legal Studies); see GATMAYTAN, *supra* note 14, at 9-14.

29. Section 5 of the Regulations for implementing Presidential Decree No. 1586 establishes the mandate for the EIS Review Committee. Yet these panels are rarely convened and are generally made up of technically oriented government and ex-government officials. Broader systemic and socio-economic issues are not addressed and the panels are not viewed as independent.

implementing regulations permitted the government to grant exemptions for certain projects or areas, with little or no basis. Even more disappointing, a large quantity of projects were never reviewed because the line agencies failed to inform EMB that these projects existed. Dr. Ramon Abracosa, a Philippine EIA expert, notes that the regulations provide for too much discretion for government decision makers and do not clarify the enforcement process.³⁰

Even worse, powerful political patrons have cut short EIA processes.³¹ For example, little documentation preceded the massive Japanese funded Philippine Associated Smelting and Refining Corporation project in Leyte. Similarly, the Ortigas-EDSA Overpass, a critical urban transportation link in Manila, was never the subject of EIA documentation. This overpass cannot accommodate public transit, leaving the overpass an expenditure of public funds that will only benefit the auto owning upper classes.

Inconsistent implementation of the EIA system in the Philippines has resulted in a dearth of environmental or socio-economic safeguards for a large majority of the major development programs and projects in the Philippines. Agency statistics show that between 1983 and 1990 DENR denied only five Environmental Compliance Certificates out of the hundreds of projects subject to the EIA system.³² Hundreds of large scale projects escaped needed scrutiny.

Even more troublesome, project proponents fail to bring countless projects to the attention of DENR, and other projects receive exemptions, legally or illegally, from high level politicians.³³ For example, senior officials at DENR and the Department of Public Works cut off environmental analysis of the Manila Light Rail Transit (LRT) project. The results of that illegal interference could prove catastrophic to the Filipino taxpayer. The LRT is now sinking in unstable ground. A thorough hydrogeological investigation of an EIS could have helped predict and avoid a fiasco that may waste millions of Philippine Pesos.

No process exists to halt the undue influence by industry and politicians that derails the EIA system. Public hearings and public oversight that could have provided the scrutiny necessary to enforce an effective EIA system were never implemented. The system has generally excluded

30. Interview with Ramon Abracosa, Engineer with the Philippine Department of Agriculture (August 15, 1991).

31. This includes attempts by the Congress to delegate additional political powers to local governments set out in the Local Government Act, Rep. Act No. 7160 (1991). This law includes, among other decentralizing mandates, the requirement that all national agencies "conduct periodic consultations with appropriate local government units, nongovernmental and people's organizations" before projects are implemented. Tit. I, Ch. 3, § 2. This notice requirement has not been effective, however, as it does not require any involvement or consultation with the public.

32. *Statistical Summary of EIA Projects: 1983-1991, Department of Environment and Natural Resources, Environmental Management Bureau* (1991).

33. GANAPIN, *supra* note 16, at 3.

local citizens and officials, thereby omitting the participation of those who have the most relevant experience and knowledge concerning projects. Only EIAs on selected, highly controversial projects give citizens an opportunity to express their views. Yet these hearings occur late in the process, if they occur at all.

For example, a huge EIS was drafted for the internationally debated Mount Apo geothermal development project. Philippine National Oil Company officials knew that substantial opposition existed to destruction of a bioregion that contains the Philippines' most important national park, the only habitat for the highly endangered Philippine Eagle and an area sacred to many indigenous tribes.

Local citizens were allowed to comment on the eleven volume EIS only after the sponsor, the Philippine National Oil Company, had invested millions of pesos and after approval and completion of virtually all the feasibility studies. For all practical purposes the decision had already been made based on incomplete information.³⁴ Requirements for early and effective public participation would have uncovered the inappropriateness of such a project and avoided the national and international controversy and embarrassment suffered by the Philippines.³⁵

IV. OVERCOMING RESTRAINTS: PUBLIC PARTICIPATION AND OVERSIGHT CAN WORK

EIA systems do not generally work as their designers plan. Often the problems result from a theoretically faulty legislative framework or inadequate regulatory measures.³⁶ For example, other national EIA systems currently in use have been criticized for lack of regional planning tools such as carrying capacity.³⁷ But more often than not, the basic legislative/regulatory system suffers from functional inadequacy rather than theoretical inadequacy. The system is quite simply not implemented. In the Philippines, documents are drafted late in the planning process, the gov-

34. For an extensive discussion of the socio-economic impacts and the EIA process regarding Mt. Apo National Park, see C. Fay, A. Royo & Dante B. Gatmaytan, *The Destruction of Mt. Apo: In Defense of Bagobo Ancestral Domain*, 2 PHILIPPINE NATURAL RESOURCES LAW JOURNAL 18-25 (May 1990).

35. The most recent revision of the Philippine EIA process came in the form of an administrative order pushed through by DENR Secretary Fulgencio Factoran before a change in administration. DENR Administrative Order 21, § 1992 generally streamlines and decentralizes the Rules and Regulations of Presidential Decree 1586. DENR regional offices now have greater flexibility in regard to requiring ECCS and issuing exemptions. Art. 2, § 5. In regard to public involvement, little has changed except that the requirements have been lessened. Public hearings are not required except for projects that are "environmentally critical" and where there is "mounting public opposition." Art. IV, § 4.2.4. For a more in-depth review of this administrative order, see GATMAYTAN, *supra* note 14, at 18-25.

36. See generally R. COENEN & J. JORISSEN, ENVIRONMENTAL IMPACT ASSESSMENT IN THE MEMBER COUNTRIES OF THE EUROPEAN COMMUNITY 39 (1989).

37. See William Rees, *A Role for Environmental Assessment in Achieving Sustainable Development*, 8 ENVTL. IMPACT ASSESSMENT REV. 273 (1988).

ernment environment agency does not have the capabilities to carry out its responsibilities, and many projects never face review due to political pressure or political debts known as "utang na loob."

How can these restraints be overcome? One approach is to adjust or "tinker" with the analytical process (e.g. improve mitigation analysis) or reorganize the government administrative functions. These types of adjustments, however, do not address the basic lack of implementation. The Philippine government is not able to carry out and enforce an EIA system on its own.³⁸ For that matter, no government is capable of such a task without both public participation and external oversight.

A. *Public Participation*

The necessity of a local knowledge base to the completion of successful project planning has become clear to many countries.³⁹ The European experience is instructive. As W.R. Sheate stated, regarding EIA in the United Kingdom, "[i]f sufficient public involvement occurs in the early stages it may be possible to identify the priority issues and thereby explore ways of addressing and hopefully removing or mitigating their worst effects."⁴⁰

Economic and environmental planning requires the mobilization of those people most familiar with the environmental and socio-economic factors in question. Environmental planning and management demands a broader base of support and knowledge from universities, economic enterprises, and those most familiar with local resource constraints, the local communities.⁴¹ Filipino citizens, including civic leaders and local businessmen, all have knowledge of the potential and limits of local resources, normally not ascertainable from scientific or economic studies.⁴²

The public participation processes utilized in EIA can be implemented without extensive training or restructuring of local government laws. Two methods of public participation are "scoping" and public comment and access to documents.

Under scoping, those parties with special or particular knowledge concerning a project or its site are given the opportunity to comment

38. Dames and Moore, *supra* note 1, at vi.

39. HORBERRY, *supra* note 21, at 67-70; THE WORLD BANK, MAKING BETTER DECISIONS: INFORMATION, INSTITUTIONS, AND PARTICIPATION 83-97 (1992).

40. W.R. Sheate, *Public Participation: The Key to Effective Environmental Assessment*, 21 ENVTL. POL'Y & LAW 3, 4 (1991); CELIA MOHN, BARRY BREEN & WILLIAM FUTRELL, ENVIRONMENTAL LAW FROM SOURCE TO RECOVERY 88 (1993).

41. HORBERRY, *supra* note 21, at 69.

42. Article four of the Regulations promulgated under P.D. 1151 provided a framework for the invocation of public hearings. P.D. 1151 §4 (1977). These regulations, however, do not specifically require that public hearings or other public participation mechanisms be incorporated into the EIA process. Hearings are often held only where great public controversy has arisen over the project, and they are generally held late in the planning stage solely in order to allow the irate public to blow off steam.

early in the planning process. This method encourages participants to indicate major issues and discard unimportant issues making future efforts more focused and efficient. Public access to and comment on project documents opens up the decision making process to necessary public light and scrutiny.⁴³

By allowing public comment and access to documents, agencies can benefit from the additional expertise that only the public can provide.⁴⁴ Public comment overcomes the inherent bias by government agencies in favor of the projects and industries that they regulate. Where the government agency holds all the information secretly, the opposition cannot verify the EIS's underlying base analysis.

Public comment on documents in the Philippines is not required nor used efficiently. The Philippines could adapt or expand both processes, scoping and public comment, to meet their specific needs. For example, the Philippine National Irrigation Administration has successfully incorporated public participation in many of its projects.⁴⁵ The Philippines cannot afford to waste local knowledge.

B. *External Review/Enforcement*

Just as environmental planning needs the expertise and participation of the affected local communities, the government agencies that implement the projects need oversight. The unwillingness of Philippine government line agencies to establish environmental units, the narrow mindset of mission-oriented agencies, and the politicians' continued support of special interests clearly demonstrate the barriers to the EIA system's ability to enforce itself. Indeed, the problem of enforcement of the EIA process is not unique to the Philippines.

Numerous works have detailed the problems in implementation and enforcement of the various governmental and institutional EIA processes worldwide.⁴⁶ Lack of external review makes correcting these deficiencies difficult. Those systems established without adequate provisions for environmental review have faltered.⁴⁷ Much of the success of the EIA systems

43. U.S. COUNCIL ON ENVIRONMENTAL QUALITY, MEMORANDUM FOR GENERAL COUNSELS, NEPA LIAISONS, AND PARTICIPANTS IN SCOPING (1981).

44. Several military base closure programs in the U.S. use an even more proactive model of public participation. Advisory panels made up of community representatives and local government officials work closely with base commanders on issues of cleanup and reuse of the bases. See U.S. Environmental Protection Agency, Interim Report of the Federal Facilities Environmental Restoration Dialogue Committee (1993).

45. F. KORTEN AND R. SIY, TRANSFORMING A BUREAUCRACY: THE EXPERIENCE OF THE PHILIPPINES NATIONAL IRRIGATION ADMINISTRATION (1989).

46. ENVIRONMENTAL IMPACT ASSESSMENT: THEORY AND PRACTICE (Peter Wathern, ed., 1988); JOHN HORBERRY, STATUS AND APPLICATION OF ENVIRONMENTAL IMPACT ASSESSMENT FOR DEVELOPMENT, CONSERVATION FOR DEVELOPMENT CENTRE, GLAND (1984); Mayda, *supra* note 25; COENEN, *supra* note 36.

47. UNITED STATES COUNCIL ON ENVIRONMENTAL QUALITY, TWENTIETH ANNUAL REPORT ON ENVIRONMENTAL QUALITY 42-51 notes (1990).

in the U.S. and the Netherlands flows from independent review commissions or direct citizen suits that shed light on government processes and ensure their implementation.⁴⁸ Even Canada, which developed an efficient review panel system, has recognized the need for expansion of public participation and oversight.⁴⁹

C. *International Movement on EIA and Public Involvement*

For several years international institutions, such as the United Nations and the Association of Southeast Asian Nations,⁵⁰ have recognized the problems caused by poorly planned, large scale development projects with little outside scrutiny. These institutions have called for the revamping and/or establishment of EIA in member countries. However, the unwillingness of international banks to require environmental feasibility studies, alongside economic and engineering studies, has provided little incentive for governments to revise their planning systems. In recent years, non-governmental organizations have been pressuring the international financial institutions to adopt more stringent environmental review requirements for large scale development projects. International NGOs succeeded in pushing the Pelosi Amendment, a bank reform bill,⁵¹ through the U.S. Congress. This law requires the U.S. Executive Directors at the four multilateral development banks to vote against any project that significantly affects the environment that has not been the subject of an EIS.⁵²

Banks, while scrambling to revise their own project cycle,⁵³ have not aggressively or effectively communicated their mandate to assist borrower countries in developing and/or revising such procedures. Even more important, the banks have refused to require their borrower countries to

48. See THE COUNCIL ON ENVIRONMENTAL QUALITY, TWENTIETH ANNUAL REPORT 42-46 note (1989); S. TAYLOR, MAKING BUREAUCRACIES THINK (1984). Taylor's study found that judicial enforcement of EIA norms is the only effective way to insure their implementation. Taylor does note that many government officials feel that EIA would be more effective as a standard, non-regulatory planning tool. Interview with Dr. Ramon Abracosa, Philippine Department of Agriculture (Aug. 15, 1991) (Dr. Abracosa cites cost-benefit analysis as a successful example of non-regulatory planning).

49. See CANADIAN ENVIRONMENTAL ADVISORY PANEL, REVIEW OF THE PROPOSED ENVIRONMENTAL PROTECTION ACT (1987).

50. *Goals and Principles for Environmental Impact Assessment*, United Nations Environment Programme, UNEP/GC14/17, Nairobi, 1987, Principle #7; Association of Southeast Asian Nations, *Agreement on the Conservation of Nature and Natural Resources*, Article 14(1) (1985).

51. 13 International Financial Institutions Act § 1307(a); Pub. L. No. 101-240; 22 U.S.C. § 262(m) (1990).

52. The four multilateral banks clearly covered by this law are the World Bank, the Asian Development Bank, the Inter-American Development Bank, and the African Development Bank. It is not clear whether the Pelosi Amendment applies to the newly formed European Bank for Reconstruction and Development.

53. THE WORLD BANK, OPERATIONAL DIRECTIVE 4.00 (1989); THE INTERAMERICAN DEVELOPMENT BANK; PROCEDURES FOR CLASSIFYING AND EVALUATING ENVIRONMENTAL IMPACTS OF BANK OPERATIONS (1990).

carry out the public participation process. For example, the Asian Development Bank (ADB) has developed a complex and extensive set of environmental planning guidelines that do not strictly follow the EIA process.⁵⁴ ADB's environment chief, Bindu Lohani, notes that ADB's requirements go beyond EIA by requiring resource assessment and regional planning. Yet the ADB does not require public participation. Instead, it uses mathematical formulas to determine social impacts.⁵⁵ The technical prowess of environmental planners will not, as has been shown in the Philippines, prevent funding of unsound projects.

V. AN EXTERNAL/INTERNAL APPROACH

In many countries, citizens have the legal standing to challenge an agency action that abuses administrative discretion⁵⁶ or violates a Constitutional right to a clean environment. Other countries reject the use of litigation to settle social disputes or challenge government action. While small environmental disputes do sometimes go to trial in the Philippines, the conservative courts discourage the use of litigation to achieve social change.⁵⁷ Effectuating social change in the Philippines through statutory reform proves even more difficult. The Philippine Congress spends its time on fractious politics and has passed fewer than ten major laws in the last ten years. Many political activists have more faith in administrative reform than in congressional or court mandated social change.⁵⁸

Oversight of governmental processes by quasi-governmental commissions could provide an alternative. This approach may provide a more theoretically preferable or culturally acceptable method of dispute resolu-

54. ASIAN DEVELOPMENT BANK, ENVIRONMENTAL GUIDELINES FOR SELECTED INFRASTRUCTURE DEVELOPMENT PROJECTS (1986, revised 1988); ASIAN DEVELOPMENT BANK, ENVIRONMENTAL GUIDELINES FOR SELECTED INDUSTRIAL AND POWER DEVELOPMENT PROJECTS (1987, revised 1988); ASIAN DEVELOPMENT BANK, ENVIRONMENTAL GUIDELINES FOR SELECTED AGRICULTURAL AND NATURAL RESOURCES DEVELOPMENT PROJECTS (1987)(the above documents are available through the Asian Development Bank in Manila).

55. The Asian Development Bank has developed a "Mathematical Formulation of the Human Development Index," yet does not require community involvement as an aspect of their social analysis. ASIAN DEVELOPMENT BANK, GUIDELINES FOR SOCIAL ANALYSIS OF DEVELOPMENT PROJECTS (June 1991).

56. *Sierra Club v. Morton*, 405 U.S. 727 (1972); *U.S. Students Challenging Regulatory Procedures (SCRAP)*, 412 U.S. 669 (1973). Many U.S. environmental statutes also include "citizen suit" provisions which grant citizens a right of action against a government agency for enforcement of the statute. For example, The Clean Air Act, 42 U.S.C. §7604 (1990); The Endangered Species Act, 16 U.S.C. §1540(g) (1973); The Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §11046 (1986).

57. In a case brought on behalf of children and future generations against the DENR for granting timber concessions, the Judge dismissed the case stating that "the Court firmly believes that the matter before it, being impressed with political color and involving a matter of public policy," violates the Separation of Powers clause of the Philippine Constitution. *Tony Oposa, et. al v. Fulgencio Factoran, The Department of the Environment and Natural Resources, et. al*, Civil Case 90-777, July 18, 1991.

58. Interview with Marvic Leonen and Tony LaVina, Philippine Legal Rights and Natural Resources Center, Inc., in Manila (Aug. 1991).

tion than litigation. The Philippine EIA law holds the basic framework for both the coordination and external review needed for a workable development planning process. The system, however, lacks much needed public oversight and enforcement. As in the Canadian system, this public oversight role could be taken on by the Review Commission.

The Philippines have not successfully implemented such a method of external review. An Executive Order based on the current EIA law could allow the DENR to seat representatives from NGOs on the Review Commissions, require the Commission to hold public hearings, and grant citizen groups the right to administratively appeal Commission decisions. Such an approach avoids expensive confrontation through the courts and yet allows for extensive public involvement.

VI. CONCLUSION

The rapid destruction of soils, watersheds, marine life, and forests in the Philippines threatens its ability to achieve just and sustainable development. The lack of funds to regulate and monitor environmental degradation and pollution strongly suggests the need for strengthened environmental planning. Yet the government clearly lacks the resources to do so. The lack of reliable information and the failure to enforce environmental laws in the Philippines demonstrate the strong need for a planning system that includes both public participation and external review.

For many years, NGOs have recognized the problems inherent in programs and projects planned without public involvement and external review. Government and industry have recently begun to recognize the need for sustainable economic development and the further democratization of government decision making. Asia Week reports that, regarding pollution, Asian governments are "indeed beginning to take notice — and take action."⁵⁹ Now is an opportune time to reassess the making of development decisions and how to increase citizen involvement in natural resource planning.

59. *The Green Crusaders*, ASIA WEEK, June 21, 1991, at 58; see also *National Power Corporation v. Vera*, G.R. No. 83558, 170 CSCRA 721 (1989), in which the Philippine Supreme Court interpreted Presidential Decree 1818 (1974) to continue to prohibit courts from issuing injunctions on infrastructure or natural resources development projects.