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Reconstituting the Constitution

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> It might be considered that Western society, although espousing a religion, is predominantly secular and individualistic in its world-view. Although there is a religious premise for the presumption that human kind has authority over nature, that view probably springs from the secular and rational characteristics of our society. Māori society on the other hand is predominantly spiritual and communal. The Māori world view emphasises the primacy of nature and the need for man to tread carefully when interfering with natural laws and processes.[84]

Similar sentiments have been recognised by the Environment Court, which has acknowledged that "in the world conceptualised by Māori, the spiritual and physical realms are not closed off from each other, as they tend to be in the European context."[85] New Zealand's environment and natural resources also have economic importance for Māori.[86] This is well illustrated by the enactment of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.[87]

One way in which the unique connection between Māori and New Zealand's environment can be recognised is through explicitly granting Māori environmental participation[88] and procedural rights within a written constitution. Some commentators have, however, criticised the focus on participation of indigenous peoples in environmental issues, arguing that this obscures more important issues, such as property rights and self-determination.[89] This seems to be a valid concern, depending on the nature of the participation and procedural rights that are guaranteed under any constitutional provision. The mere existence of a right to be heard, for example, will not necessarily be sufficient to assure rights are not

[84] Waitangi Tribunal (1985).

[85] *Ngati Rangi Trust v Manawatu-Wanganui Regional Council* A 91/98, 29 July 1998 at [95]. It must also be noted that, in 1991, the Wai 262 claim was brought against the New Zealand Crown by the members of six iwi (Ngāti Kuri, Ngāti Wai, Te Rarawa, Ngāti Porou, Ngāti Kahungunu and Ngāti Koata). The claimants asserted that the Crown had: failed actively to protect the exercise of tino rangatiratanga and kaitiakitanga by the claimants over indigenous flora and fauna and other taonga, and also over mātauranga Māori (Māori traditional knowledge); failed to protect the taonga itself; usurped tino rangatiratanga and kaitiakitanga of Māori in respect of flora and fauna and other taonga through the development of policy and the enactment of legislation; and breached the Treaty of Waitangi by agreeing to various international agreements and obligations that affect indigenous flora and fauna and intellectual property rights and rights to other taonga. Submissions on the claim closed in 2007, and the Waitangi Tribunal is now in the report writing phase of the Wai 262 claim. For discussion see: http://www.waitangi-tribunal.govt.nz/inquiries/genericinquiries2/florafauna/.

[86] See discussion in Orange (2004), p. 215.

[87] The Act provided for the settlement of Māori commercial fishing rights, as secured under the Treaty of Waitangi. Substantial assets, primarily quota and half ownership of Sealord Products Ltd were transferred to Māori. The Act also provided for 20% of quota holdings for all new species to be allocated to Māori.

[88] The nature of the participation rights would have to be a matter for discussion. Consistency with the Treaty of Waitangi would presumably be the governing consideration.

[89] Jeffery (2005), p. 11. However, as noted above, Māori subscribe to a holistic world view. Thus, it could be argued that the Māori notion of property would include within its scope promotion of the goal of environmental protection.

breached. Individuals and communities have differing abilities to access justice in terms of social, economic and educational attributes.

In my view, however, procedural and participation rights are necessary but not sufficient in and of themselves. A positive right to environmental protection for the indigenous people of New Zealand is also required. The inclusion of such a right corresponds both with the recognition of the importance of environmental protection for indigenous peoples at international law and with the rights granted to Māori under the Treaty of Waitangi. Such a right would also ensure that the inherent link that Māori have with New Zealand's environment is given proper recognition at the national level.

25.2.8 Should Future Generations Be Explicitly Covered?

Future generations of New Zealanders are another group that should be given explicit recognition in any environmental protection provision. Extending the application of constitutional environmental rights to future generations is important for it would ensure that appropriate recognition is given to the concept of intergenerational equity in environmental decision-making. The concept of intergenerational equity is grounded in the notion that humans hold the natural environment of the planet in common with other species and with past, present and future generations. Thus, members of the present generation are both trustees, responsible for the robustness and integrity of the planet, and beneficiaries, with the right to use and benefit from it for themselves.[90]

Three principles underlying the concept of intergenerational equity have been identified by Edith Weiss.[91] The first is that each generation must conserve the diversity of natural and cultural resources, so that they do not unduly restrict the options available to future generations in solving their problems and satisfying their own values. Second, each generation should be required to maintain the quality of the planet so that it is passed on in a condition no worse than that in which it was received. The third principle is based on the belief that each generation should provide its members with equitable rights of access to the legacy of past generations and conserve this access for future generations.

The arguments offered in support of the concept of intergenerational equity are largely grounded in considerations of morality. For instance, it has been said that

[90] Brown Weiss (1992), p. 20. The requirement for decision-makers to consider the needs of future generations when considering the use of New Zealand's natural resources is included within the purpose section of the RMA. Pursuant to s 5(2)(a), sustainable management is defined to mean managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while sustaining the potential of natural and physical resources (excluding minerals) *to meet the reasonably foreseeable needs of future generations*. [Emphasis added]

[91] Brown Weiss (1992), pp. 22–23.

the goal of intergenerational equity is inherently laudable in light of the fact that, as this generation has inherited the planet without serious resource depletion, it is morally obliged to ensure that the planet stays in the same condition.[92] Reliance is also placed on the fact that it is only this generation that has acquired sufficient knowledge to assess the enormity of the proposed environmental degradation, and with knowledge of the problem comes an obligation to act.[93]

By contrast, the core argument raised in opposition to the application of the principle of intergenerational equity in the environmental context is that the needs of future generations may be actually best met through increasing the comparative wealth of the present generation.[94] However, there is now increasing acknowledgement that the potential harm that could be caused to the earth's environment because of the actions of present generations is of such a scale that the transfer of wealth is unlikely to compensate for it.[95] In particular, it is argued that global warming and climate change have a significant intergenerational dimension and raise the question as to how future generations can best be protected from the environmental degradation caused by the actions of their predecessors.[96]

In order to promote the principles of intergenerational equity, it would be desirable to ensure that the interests of future generations are explicitly recognised within a national constitution. The interests of future generations have been explicitly recognised in the environmental provisions of a number of national constitutions. For instance, Brazil, Iran, Papua New Guinea, Namibia and Vanuatu have all included the interests of future generations within their constitutional environmental provisions,[97] and it would be advisable for New Zealand to follow suit.[98]

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[92] Redgwell (1991), p. 55.

[93] Redgwell (1991), p. 56. It is interesting to note that in Pacific indigenous cultures traditional conservation mechanisms were developed, such as no-take zones where resources including fish or shell fish were dwindling. There was punishment for breach. Some animals were also seen as sacred (I'a sa) and were protected: see Techera (2006), pp. 365 and 368.

[94] Redgwell (1991), p. 41.

[95] Redgwell (1991), p. 42.

[96] Redgwell (1991), p. 41. Judge Richard Posner argues that the debate about the validity of climate change is essentially irrelevant. He argues that the dangers of abrupt warming (because of very rapid changes in both temperatures and sea levels), the evolution and migration of deadly pests and the possibility of a runaway greenhouse effect through melting tundras could lead to catastrophic and irreversible results. He thus argues that making emissions cuts now gives flexibility to reduce warming in the future and may drive innovation. See discussion in Sunstein (2007), pp. 205–215.

[97] Allen (1994), p. 722.

[98] It is clear that adequate promotion of the principles of inter-generational equity would require adherence to the precautionary principle. The principle was described in the Rio Declaration as follows: where there may be threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation. As noted by Palmer (2005), p. 14, the precautionary principle has had increasing importance in environmental law, as public concern is now focused upon the more intransient and far-reaching environmental risks. In New Zealand, different formulations of the

25.2.9 Should Considerations of Biological Diversity Be Included?

The final consideration that must be taken into account when determining the specificity of a constitutional environmental provision is the breadth of the environmental protection that it should afford. As noted above, the broad right to a healthy environment has been construed narrowly in other jurisdictions to include only considerations of human health within its scope. In my view, any right to the environment should not be defined solely in terms of human needs. This is not to suggest that it is inappropriate to relate the right to human needs. That is one of the reasons for having it as a right – so people can relate to it. Human needs must, however, be balanced with express recognition of the right to biological diversity and a balanced ecosystem.[99] Further, as noted above, the right should not be coupled with development or property rights. Including considerations of development within an environmental provision makes it impossible to balance the environment for its own sake against the right to development.

The argument has been raised that the anthropocentric[100] nature and judicial construction of some constitutional environmental rights should not cause concern in light of the fact that, once a basic right has been established, wider social norms will develop to support more far-reaching environmental aims.[101] However, while it is clear that there is inherent value in including even a minimal standard of

precautionary principle are found in a number of statutes. For instance, s 7 of the Hazardous Substances and New Organisms Act 1996 requires that persons exercising functions, powers and duties under the Act take into account the need for managing adverse effects where there is scientific and technical uncertainty about those effects. Section 10 of the Fisheries Act 1996 incorporates the precautionary principle through stating that all persons exercising or performing functions, duties, or powers under the Act, in relation to the utilisation of fisheries resources or ensuring sustainability, are required to take into account the following information principles: decisions should be based on the best available information; decision-makers should consider any uncertainty in the information available in any case; decision-makers should be cautious when information is uncertain, unreliable, or inadequate; the absence of, or any uncertainty in, any information should not be used as a reason for postponing or failing to take any measure to achieve the purpose of this Act.

[99] The importance of ecosystems is being increasingly recognised pursuant to the ecosystem approach at international law. Trouwborst (2009), p. 28 outlines that the core elements of the ecosystem approach are: the holistic management of human activities based on the best available knowledge of the components, structure and dynamics of ecosystems aimed at satisfying human needs in a way that does not compromise the integrity, or health of ecosystems. The ecosystem approach was recognised by the United Nations General Assembly Resolution on Oceans and the Law of the Sea GA Res 61/222 (2006) which stated that ecosystem approaches "should be focused on managing human activities in order to maintain and, where needed, restore ecosystem health".

[100] The term anthropocentric has been defined as centering in humans; regarding humanity as the central fact of the universe: *Oxford English Dictionary* (5th ed, Oxford University Press, Oxford, 2002).

[101] Hayward (2000), p. 560.

environmental protection in a constitution, such an argument fails to give adequate recognition to the growing acceptance that it is of the upmost importance to ensure that biological diversity is maintained and the environment protected for its own sake.

In order to explore the myriad benefits associated with maintaining biological diversity, it is first necessary to explore the meaning of the concept. Biological diversity has been defined as the variability amongst living organisms from all sources including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part: this includes diversity within species, between species, and also of ecosystems.[102] The preservation of biological diversity has been seen as vital not only in ensuring that the environment is protected but also in ensuring that human life is sustained. For instance, protecting biological diversity ensures that quality food sources can be maintained, and the existence of biological diversity has played a vital role in aiding the development of medical research.[103] The protection of biological diversity is also seen to be vital for maintaining an ecologically sustainable society.[104] As discussed above, the maintenance of biological diversity is also important for the preservation of cultural diversity. Finally, it is apparent that protecting biological diversity ensures the protection of New Zealand's threatened species; and ensures both New Zealand's striking coastlines and landscape are protected, which in turn preserves the spiritual and economic health of New Zealand.[105]

In light of the important function that biological diversity plays in both environmental protection and sustaining human life it is unsurprising that there is now a broad acceptance at international level that biological diversity must be maintained. For instance, in 1982, the General Assembly of the United Nations adopted the World Charter for Nature which was one of the first international instruments that recognised the intrinsic value of nature. Ten years later, explicit recognition of the importance of biological diversity was granted through the adoption of the United Nations Convention on Biological Diversity.[106] One of the Convention's primary objectives is the conservation of biological diversity[107] while the Preamble to the Convention notes that the States parties are conscious not only of the intrinsic value of biological diversity, but also the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components.[108]

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[102] Convention on Biological Diversity, art 2.

[103] Olembo (1992), p. 7.

[104] Bruckerhoff (2008), p. 619.

[105] For a general discussion of the importance of biological diversity in New Zealand see: https://www.biodiversity.govt.nz/picture/biodiversity/index.html.

[106] The Convention was concluded at Rio de Janiero on 5 June 1992 and entered into force on 29 December 1993.

[107] Convention on Biological Diversity, art 1.

[108] Convention on Biological Diversity, preamble.

One of the ways through which the goal of preserving biological diversity can be achieved is through constitutional recognition of biological diversity principles. The inclusion of such principles within a constitutional provision can serve a number of purposes. As Bruckerhoff notes, not only will extending the ambit of an environmental constitutional provision serve to deter national courts from opting for a narrow construction of environmental constitutional rights, it will also prevent the situation where significant environmental degradation is allowed to occur before harm to humans is established.[109] Moreover, as discussed above, protection of biological diversity can play an important role in promoting the rights of indigenous peoples. It is thus apparent that there are clear advantages to widening the scope of an environmental constitutional right to include biocentric considerations within its parameters.

With these considerations in mind, it is necessary to examine how an enforceable environmental right that is formulated to include biocentric considerations within its scope could be included within a written constitution, were New Zealand to promulgate one. It can be conceded that difficulties could arise with attempting to enforce a right granted to the environment itself. However, one way in which such difficulties could be overcome is through including both an environmental statement of public policy and a declaration of an environmental fundamental right within a constitutional environmental provision.[110] Indeed, as outlined by Bruckerhoff, it is possible to include an entirely biocentric public policy statement within a national constitution. Such a provision would not only serve an important function in defining the State's duties but also in encouraging the judiciary to consider biocentric principles when dealing with an enforceable environmental right.[111]

As well, guidance could be taken from the recently enacted constitution of Ecuador. In September 2008, Ecuador became the first country in the world to declare constitutional rights to nature. Article 1 of the country's constitution provides that Nature or Pachamama, where life is reproduced and exists, has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution and that every person, people, community or nationality, will be able to demand the recognitions of rights for nature before the public institutions.[112]

[109] Bruckerhoff (2008), p. 624.

[110] Brandl and Bungert (1992), p. 96.

[111] Bruckerhoff (2008), p. 636.

[112] The idea that individuals could represent the rights of nature in court was introduced by Stone (1972) where it was argued that legal rights could be given to the natural environment as a whole and that guardians could be appointed to promote the interests of natural objects in court. Examining the impact of art 25 years later, Stone (1996), p. 171 noted that there had been steady but slow progress towards giving the environment its own legal voice and status. He saw the liberalisation of citizen suit standing and the creation of public trusteeship powers for natural resources as evidence that some of his original agenda had been adopted. However, at the time he

Article 2 of Ecuador's constitution outlines that Nature has the right to an integral restoration. This integral restoration is stated to be independent of the obligation on natural and juridical persons or the State to indemnify the people and the collectives that depend on the natural systems. Moreover, in cases of severe or permanent environmental impact, including the ones caused by the exploitation of non-renewable natural resources, the State is required to establish the most efficient mechanisms for their restoration, and to adopt the adequate measures to eliminate or mitigate the harmful environmental consequences. The Community Environmental Legal Defence Fund worked closely with members of Ecuador's constitutional assembly on the drafting of these legally enforceable rights of Nature, and it is clear that constitutional recognition of the rights of the environment has been a landmark step in the development of environmental law.[113]

Therefore, including a biocentric public policy statement within any written constitution, taking guidance from the constitutional developments that have occurred in Ecuador and formulating an environmental protection provision that grants constitutional rights to nature could provide much benefit for New Zealand.[114] The adoption of these potential formulations could play an important role in protecting New Zealand's indigenous species and ecosystems through ensuring that appropriate recognition is given to the importance of biological diversity.

25.3 Conclusion

New Zealand's environment, like the global environment, is in need of protection. Not only does New Zealand have a unique ecosystem that is not replicated elsewhere around the world,[115] but the preservation of New Zealand's environment is vital for its economic and spiritual health and to our notion of national identity. Constitutional environmental provisions can play an important role in environmental protection. If New Zealand does promulgate a written constitution, it is clear that an environmental protection provision should be included within its scope.

In formulating such a provision it is important that a substantive right is recognised as well as a duty to protect and respect the environment. It is apparent

was of the opinion that progress had only been partial. In March 2010, a new edition of this publication was released: Stone (2010).

[113] For general comment see Smith (2009); Koons (2008); Volkmann-Carlsen (2009); Newman (2009); Mychaeljko (2008). See also the Appendix to this paper for further discussion of Ecuador's constitution.

[114] It has, however, been recognised by Mari Margil, the associate director of the Community Environmental Legal Defence Fund, that adopting Ecuador's constitutional approach in many countries would require nothing short of "a fundamental change in both the legal and cultural atmosphere": see Kari Volkmann-Carlsen (2009).

[115] See generally: http://www.biodiversity.govt.nz/picture/biodiversity/why.html.

that a substantive right would serve a number of purposes. A specific right would give greater prominence to the environment and would also ensure that the spiritual, cultural and economic importance of the environment for all New Zealanders is both recognised and protected. Moreover, the inclusion of a substantive right within a written constitution would ensure that the goal of environmental protection is able to be both balanced against potentially competing rights in the decision-making process and adequately promoted.

Any constitutional environmental right should be enjoyed not only by individuals but by peoples and communities, but consequent duties to protect the environment should be imposed. It is also of the upmost importance that explicit recognition should be given to the rights of Māori and future generations. Moreover, in order to ensure that the goal of environmental protection is given appropriate recognition, considerations of biological diversity must be included within the provision.

As recognised by George French Angas, the striking nature of New Zealand's landscape can be seen to encapsulate the "grandeur and loveliness of nature in her wildest aspect"[116] and the introduction of a multi-textured environmental protection provision should help ensure that New Zealand's unique natural environment is preserved.

Appendix

Environmental Protection Provisions in Other Jurisdictions

In 2007, out of the 109 constitutions which recognise some protection for the environment, 56 recognise explicitly the right to a clean and healthy environment, 97 make it the duty of governments to prevent harm to the environment and 56 recognise the responsibility of citizens and residents to protect the environment.[117] For example, the South African Constitution guarantees a right to an environment that is "not harmful to . . . health or well-being".[118] The Belgian Constitution puts it less negatively. It recognises the entitlement of "everyone to the protection of a healthy environment".[119]

The Constitution of India contains two explicit environmental provisions within its scope. Article 48A of the Constitution requires the State to protect and improve the environment and to safeguard the forests and wildlife of the country, while art 51A outlines a fundamental duty of the citizens of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have

[116] Angas (1847), p. 121.

[117] Asia Pacific Forum of National Human Rights Institutions (2007a), p. 87.

[118] Constitution of the Republic of South Africa 1996, s 24.

[119] Constitution of Belgium 1970, art 23.

compassion for living creatures.[120] In the decision of *Koolwal v State of Rajasthan*[121] the Rajasthan High Court was required to examine difficulties with the City of Jaipur's sanitation, in light of the fact there was an ongoing failure to remove rubbish and offensive matter from the streets. Examining the scope of art 51A, the Court stated that the provision not only established a duty but was also a right. It was accordingly reasoned that the provision provided citizens with a right to move the Court to see that the State performed its duties faithfully and in accordance with the law.

Interesting remedies have been fashioned by the courts. For example, in *M C Mehta v Union of India and Others*[122] (a decision relating to burnt corpses in the Ganga River), the Court ordered the Central government to order one hour of environmental classes per week throughout the Indian educational system and mandated public broadcasts of environmental information on the radio and at films. Finally, in *Kinkri Devi v Himachal Pradesh*[123] the High Court of Himachal Pradesh mandated the closure of mines causing environmental degradation and prohibited the issue of further mining leases until the State produced a long-term plan for issuing leases based on scientific and ecological information.

Similarly, an enforceable right has been recognised in Chile where art 19(8) of the Chilean Constitution provides that citizens have "the right to live in an environment free from contamination." Significantly, in *Communidad de Chanaral v Codeco Division el Saldor*,[124] the Supreme Court acknowledged that this right extended to future generations as such problems were seen to affect "not only the well being of man [or woman] but also his [or her] own life, and actually not only the [livelihood] of a single community of persons" but also that of future generations. The substantive nature of this right was later recognised by the Supreme Court in *Pedro Flores y Otros v Corporacion Del Cobre, Codeloco*,[125] in which residents of a village brought a claim to restrain a government-run copper mine from discharging waste on local beaches. The Supreme Court found that "the preservation of nature and conservation of the environmental heritage" was an obligation of the State and the discharge of waste was thus restricted for the period of a year.[126]

Consideration of wider ecological and biological concerns has been included in a number of national constitutions. The Constitution of Brazil provides one of the most detailed environmental provisions in a national constitution with the inclusion of a

[120] See generally, Eurick (1999–2001), p. 190.

[121] *Koolwal v State of Rajasthan* 1998 AIR 2.

[122] *M.C Mehta v Union of India and Others* 1988 AIR 1115, discussed in Eurick (1999–2001), p. 193.

[123] *Kinkri Devi v Himachal Pradesh* 1988 AIR 4. Discussed in Eurick (1999–2001), p. 194.

[124] *Communidad de Chanaral v Codeco Division el Saldor* (1998) S/Recurso de Protection. Cited in Hill et al. (2004), p. 387.

[125] *Pedro Flores y Otros v Corporacion Del Cobre, Codeloco* (1988) 12.753.FS.641.

[126] Cited in Hill et al. (2004), pp. 387–388.

whole chapter dedicated to the environment. While no significant jurisprudence has yet emerged from judicial application of the environmental provisions, they do provide a useful illustration of the way in which wider environmental considerations can be successfully encompassed within a national constitution. For example, art 225 of the Brazilian Constitution provides that "all have the right to an ecologically balanced environment, which is an asset of common use and essential to a healthy quality of life, and both the government and the community shall have the duty to defend and preserve it for present and future generations."

Ecological considerations are further emphasised through the requirement that the government must preserve and restore the essential ecological processes and provide for the ecological treatment of species and ecosystems. The constitution also requires the government to preserve the diversity and integrity of the genetic patrimony of the country and to protect the fauna and the flora. There is a prohibition, in the manner prescribed by law, of all practices which represent a risk to ecological function, cause the extinction of species or subject animals to cruelty. The Constitution thus provides an expansive environmental right which has a strong biocentric focus.

Another country which has incorporated ecological considerations in its national constitution is the Philippines. This provision is my personal favourite, not just because of the evocative language but because of the recognition of the need for a balanced ecology and the emphasis on nature. It guarantees that the "State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature".[127] Thus, the environmental provision provides for a balanced consideration of the advancement of human rights in conjunction with ecological considerations.

The potential utility of the environmental provision in the Philippine Constitution is illustrated by the Supreme Court's examination of the provision in its decision of *Oposa*.[128] This decision demonstrates that the inclusion of an environmental provision within the policy section of a national constitution need not necessarily act as a barrier towards judicial recognition of an actionable right. In *Oposa*, a group of children, represented by the Philippine Ecological Network, a Manila environmental group, sought to stop the logging of the nation's rainforests. It was argued that continuation of the deforestation[129] would breach the constitutional right to a balanced and healthful ecology, as it would cause lasting harm to

[127] Constitution of the Republic of the Philippines 1987, art II s 16.

[128] *Oposa v Factoran* (1995) 33 I.L.M. 173.

[129] While the Philippines had previously approximately 16 million hectares of rainforests, constituting roughly 53% of the country's land mass, at the time of the *Oposa* decision recent surveys had revealed that a mere 850,000 hectares of virgin old-growth rainforests were left, which equated to barely 2.8% of the entire land mass. The significant deforestation was claimed to have been caused by the actions of the Philippine Department of the Environment and Natural Resources in granting timber license agreements for commercial logging purposes.

both their generation and future generations.[130] Thus, the claim provided the Court with a unique opportunity to examine the scope of the Constitution's environmental right.

While the Supreme Court did not award the remedies sought, rather sending the issue back to the trial court,[131] there was a judicial acknowledgement that there had been a significant breach of the right to a balanced and healthful ecology. Significantly, Davide J's judgment, delivered on behalf of the majority, illustrated the way in which such rights can effectively operate to protect the needs of future generations. It was stated:

> This case, however, has a special and novel element. Petitioners minors assert that they represent their generation as well as generations yet unborn. We find no difficulty in ruling that they can, for themselves, for others of their generation and for the succeeding generations, file a class suit. Their personality to sue in behalf of the succeeding generations can only be based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned. Such a right, as hereinafter expounded, considers the "rhythm and harmony of nature." Nature means the created world in its entirety. Such rhythm and harmony indispensably include, inter alia, the judicious disposition, utilization, management, renewal and conservation of the country's forest, mineral, land, waters, fisheries, wildlife, off-shore areas and other natural resources to the end that their exploration, development and utilization be equitably accessible to the present as well as future generations. Needless to say, every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology. Put a little differently, the minors' assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come.[132]

In *Oposa,* the Court also examined whether the way in which the right was formulated in the Constitution had any impact upon its effectiveness. For instance, noting that the right to a balanced and healthy ecology was included within the Declaration of Principles and State Policies rather than the Bill of Rights section, the majority emphasised that this was not indicative of the right's comparative importance. Indeed, it was stated that the framers of the Constitution were of the opinion that, unless the rights to a balanced and healthful ecology and to health were mandated as State policies by the Constitution itself, "the day would not be too far when all else would be lost not only for the present generation, but also for those to come - generations which stand to inherit nothing but parched earth incapable of sustaining life".[133] It was further emphasised that the right to a balanced and

[130] See discussion in Allen (1994), p. 713.

[131] Gatmaytan (2003), p. 467. The claimants had sought a cancellation of all timber licences in the country and an order that the government cease and desist from receiving, accepting, processing, renewing or approving new timber licence agreements. Such a request was made on the premise that such remedies would "prevent the misappropriation or impairment" of the Philippine rainforests and would "arrest the unabated haemorrhage of the country's vital life support systems."

[132] *Oposa v Factoran* (1995) 33 I.L.M. 173, at 185.

[133] *Oposa v Factoran* (1995) 33 I.L.M. 173, at 188.