EN BANC

G.R. No. 180771 – RESIDENT MARINE MAMMALS OF THE PROTECTED SEASCAPE TAÑON STRAIT, E.G. TOOTHED WHALES, DOLPHINS, PORPOISES, AND OTHER CETACEAN SPECIES, joined in and represented herein by Human Beings GLORIA ESTENZO RAMOS and ROSE-LIZA EISMA-OSORIO, in their capacity as Legal Guardians of the Lesser Life-forms and as responsible Stewards of God's Creations, and Her Excellency GLORIA MACAPAGAL ARROYO, President of the Republic of the Philippines, as unwilling co-petitioner, Petitioners, **v. SECRETARY ANGELO REYES, in his capacity as Secretary of the Department of Energy (DOE), SECRETARY JOSE L. ATIENZA, in his capacity as Secretary of the Department of Environment and Natural Resources (DENR), LEONARDO R. SIBBALUCA, DENR Regional Director-Region VII and in his capacity as Chairperson of the Tañon Strait Protected Seascape Management Board, Bureau of Fisheries and Aquatic Resources (BFAR), DIRECTOR MALCOLM J. SARMIENTO, JR., BFAR Regional Director for Region VII, ANDRES M. BOJOS, Japan Petroleum Exploration Co., Ltd. (JAPEX), as represented by its Philippine Agent, Supply Oilfield Services,** Respondents; **G.R. No. 181527 – CENTRAL VISAYAS FISHERFOLK DEVELOPMENT CENTER (FIDEC), CERILO D. ENGARCIAL, RAMON YANONG, FRANCISCO LABID, in their personal capacity and as representatives of the subsistence fisherfolks of the municipalities of Aloguinsan and Pinamungahan, Cebu, and their families, and the present and future generations of Filipinos whose rights are similarly affected,** Petitioners, **v. ANGELO REYES, in his capacity as Secretary of the Department of Energy (DOE), JOSE L. ATIENZA, in his capacity as Secretary of the Department of Environment and Natural Resources (DENR), LEONARDO R. SIBBALUCA, in his capacity as DENR Regional Director-Region VII and as Chairperson of the Tañon Strait Protected Seascape Management Board, ALLAN ARRANGUEZ, in his capacity as Director-Environmental Management Bureau-Region VII, DOE Regional Director for Region VII ANTONIO LABIOS, Japan Petroleum Exploration Co., Ltd. (JAPEX), as represented by its Philippine Agent, Supply Oilfield Services,** Respondents.

Promulgated:
April 21, 2015

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CONCURRING OPINION

"Until one has loved an animal,
a part of one's soul remains unawakened."
Anatole France

LEONEN, *J.*:

I concur in the result, with the following additional reasons.

I

In G.R. No. 180771, petitioners Resident Marine Mammals allegedly bring their case in their personal capacity, alleging that they stand to benefit or be injured from the judgment on the issues. The human petitioners implead themselves in a representative capacity "as legal guardians of the lesser life-forms and as responsible stewards of God's Creations."[1] They use *Oposa v. Factoran, Jr.*[2] as basis for their claim, asserting their right to enforce international and domestic environmental laws enacted for their benefit under the concept of stipulation *pour autrui*.[3] As the representatives of Resident Marine Mammals, the human petitioners assert that they have the obligation to build awareness among the affected residents of Tañon Strait as well as to protect the environment, especially in light of the government's failure, as primary steward, to do its duty under the doctrine of public trust.[4]

Resident Marine Mammals and the human petitioners also assert that through this case, this court will have the opportunity to lower the threshold for *locus standi* as an exercise of "epistolary jurisdiction."[5]

The zeal of the human petitioners to pursue their desire to protect the environment and to continue to define environmental rights in the context of actual cases is commendable. However, the space for legal creativity usually required for advocacy of issues of the public interest is not so unlimited that it should be allowed to undermine the other values protected by current substantive and procedural laws. Even rules of procedure as currently formulated set the balance between competing interests. We cannot abandon these rules when the necessity is not clearly and convincingly presented.

The human petitioners, in G.R. No. 180771, want us to create substantive and procedural rights for animals through their allegation that they can speak for them. Obviously, we are asked to accept the premises that (a) they were chosen by the Resident Marine Mammals of Tañon Strait; (b) they were chosen by a representative group of all the species of the Resident Marine Mammals; (c) they were able to communicate with them; and (d) they received clear consent from their animal principals that they would wish to use human legal institutions to pursue their interests. Alternatively, they ask us to acknowledge through judicial notice that the interests that they, the human petitioners, assert are identical to what the

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1 *Rollo* (G.R. No. 180771), p. 7–8.
2 G.R. No. 101083, July 30, 1993, 224 SCRA 792 [Per J. Davide, Jr., En Banc].
3 *Rollo* (G.R. No. 180771), p. 16.
4 *Rollo* (G.R. No. 180771), p. 123–124.
5 Id. at 196.

Resident Marine Mammals would assert had they been humans and the legal strategies that they invoked are the strategies that they agree with.

In the alternative, they want us to accept through judicial notice that there is a relationship of guardianship between them and all the resident mammals in the affected ecology.

Fundamental judicial doctrines that may significantly change substantive and procedural law cannot be founded on feigned representation.

Instead, I agree that the human petitioners should only speak for themselves and already have legal standing to sue with respect to the issue raised in their pleading. The rules on standing have already been liberalized to take into consideration the difficulties in the assertion of environmental rights. When standing becomes too liberal, this can be the occasion for abuse.

II

Rule 3, Section 1 of the 1997 Rules of Civil Procedure, in part, provides:

> ***SECTION 1. Who may be parties; plaintiff and defendant.*** – Only natural or juridical persons, or entities authorized by law may be parties in a civil action.

The Rules provide that parties may only be natural or juridical persons or entities that may be authorized by statute to be parties in a civil action.

Basic is the concept of natural and juridical persons in our Civil Code:

> ARTICLE 37. Juridical capacity, which is the fitness to be the subject of legal relations, is inherent in every natural person and is lost only through death. Capacity to act, which is the power to do acts with legal effect, is acquired and may be lost.

Article 40 further defines natural persons in the following manner:

> ARTICLE 40. Birth determines personality; but the conceived child shall be considered born for all purposes that are favorable to it, provided it be born later with the conditions specified in the following article.

Article 44, on the other hand, enumerates the concept of a juridical person:

> ARTICLE 44. The following are juridical persons:
> (1) The State and its political subdivisions;
> (2) Other corporations, institutions and entities for public interest or purpose, created by law; their personality begins as soon as they have been constituted according to law;
> (3) Corporations, partnerships and associations for private interest or purpose to which the law grants a juridical personality, separate and distinct from that of each shareholder, partner or member.

Petitioners in G.R. No. 180771 implicitly suggest that we amend, rather than simply construe, the provisions of the Rules of Court as well as substantive law to accommodate Resident Marine Mammals or animals. This we cannot do.

Rule 3, Section 2 of the 1997 Rules of Civil Procedure further defines *real party in interest*:

> **SEC. 2.** ***Parties in interest.***— A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest. (2a)[6]

A litigant who stands to benefit or sustain an injury from the judgment of a case is a real party in interest.[7] When a case is brought to the courts, the real party in interest must show that another party's act or omission has caused a direct injury, making his or her interest both material and based on an enforceable legal right.[8]

Representatives as parties, on the other hand, are parties acting in representation of the real party in interest, as defined in Rule 3, Section 3 of the 1997 Rules of Civil Procedure:

> **SEC. 3.** ***Representatives as parties.*** — Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest. A representative may be a trustee of an express

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6 1997 RULES OF CIV. PROC., Rule 3, sec. 2.

7 *See Consumido v. Ros*, 555 Phil. 652, 658 (2007) [Per J. Tinga, Second Division].

8 *Rebollido v. Court of Appeals*, 252 Phil. 831, 839 (1989) [Per J. Gutierrez, Jr., Third Division], *citing Lee et al. v. Romillo, Jr.*, 244 Phil. 606, 612 (1988) [Per J. Gutierrez, Jr., Third Division].

> trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal.(3a)[9]

The rule is two-pronged. First, it defines a representative as a party who is not bound to directly or actually benefit or suffer from the judgment, but instead brings a case in favor of an identified real party in interest.[10] The representative is an outsider to the cause of action. Second, the rule provides a list of who may be considered as "representatives." It is not an exhaustive list, but the rule limits the coverage only to those authorized by law or the Rules of Court.[11]

These requirements should apply even in cases involving the environment, which means that for the Petition of the human petitioners to prosper, they must show that (a) the Resident Marine Mammals are real parties in interest; and (b) that the human petitioners are authorized by law or the Rules to act in a representative capacity.

The Resident Marine Mammals are comprised of "toothed whales, dolphins, porpoises, and other cetacean species inhabiting Tañon Strait."[12] While relatively new in Philippine jurisdiction, the issue of whether animals have legal standing before courts has been the subject of academic discourse in light of the emergence of animal and environmental rights.

In the United States, animal rights advocates have managed to establish a system which Hogan explains as the "guardianship model for nonhuman animals":[13]

> Despite *Animal Lovers***,** *there exists a well-established system by which nonhuman animals may obtain judicial review to enforce their statutory rights and protections: guardianships. With court approval, animal advocacy organizations may bring suit on behalf of nonhuman animals in the same way court-appointed guardians bring suit on behalf of mentally-challenged humans who possess an enforceable right but lack the ability to enforce it themselves.*
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> In the controversial but pivotal *Should Trees Have Standing?-Toward Legal Rights for Natural Objects*, Christopher D. Stone asserts that the environment should possess the right to seek judicial redress even

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9 1997 RULES OF CIV. PROC., Rule 3, sec. 3.

10 *Ang, represented by Aceron v. Spouses Ang*, G.R. No. 186993, August 22, 2012, 678 SCRA 699, 709 [Per J. Reyes, Second Division].

11 1997 RULES OF CIV. PROC., Rule 3, sec. 3.

12 *Rollo* (G.R No. 180771), p. 8.

13 Marguerite Hogan, *Standing for Nonhuman Animals: Developing a Guardianship Model from the Dissents in Sierra Club v. Morton*, 95 CAL. L. REV. 513 (2007) <http://scholarship.law.berkeley.edu/californialawreview/vol95/iss2/4> (visited March 15, 2015).

though it is incapable of representing itself. While asserting the rights of speechless entities such as the environment or nonhuman animals certainly poses legitimate challenges – such as identifying the proper spokesman – the American legal system is already well-equipped with a reliable mechanism by which nonhumans may obtain standing via a judicially-established guardianship. Stone notes that other speechless – and nonhuman – entities such as corporations, states, estates, and municipalities have standing to bring suit on their own behalf. There is little reason to fear abuses under this regime as procedures for removal and substitution, avoiding conflicts of interest, and termination of a guardianship are well established.

In fact, the opinion in Animal Lovers suggests that such an arrangement is indeed possible. The court indicated that ALVA might have obtained standing in its own right if it had an established history of dedication to the cause of the humane treatment of animals. It noted that the Fund for Animals had standing and indicated that another more well-known advocacy organization might have had standing as well. The court further concluded that an organization's standing is more than a derivative of its history, but history is a relevant consideration where organizations are not well-established prior to commencing legal action. ALVA was not the proper plaintiff because it could not identify previous activities demonstrating its recognized activism for and commitment to the dispute independent of its desire to pursue legal action. The court's analysis suggests that a qualified organization with a demonstrated commitment to a cause could indeed bring suit on behalf of the speechless in the form of a court-sanctioned guardianship.

This Comment advocates a shift in contemporary standing doctrine to empower non-profit organizations with an established history of dedication to the cause and relevant expertise to serve as official guardians ad litem on behalf of nonhuman animals interests. The American legal system has numerous mechanisms for representing the rights and interests of nonhumans; any challenges inherent in extending these pre-existing mechanisms to nonhuman animals are minimal compared to an interest in the proper administration of justice. To adequately protect the statutory rights of nonhuman animals, the legal system must recognize those statutory rights independent of humans and provide a viable means of enforcement. Moreover, the idea of a guardianship for speechless plaintiffs is not new and has been urged on behalf of the natural environment. Such a model is even more compelling as applied to nonhuman animals, because they are sentient beings with the ability to feel pain and exercise rational thought. Thus, animals are qualitatively different from other legally protected nonhumans and therefore have interests deserving direct legal protection.

Furthermore, the difficulty of enforcing the statutory rights of nonhuman animals threatens the integrity of the federal statutes designed to protect them, essentially rendering them meaningless. Sensing that laws protecting nonhuman animals would be difficult to enforce, Congress provided for citizen suit provisions: the most well-known example is found in the Endangered Species Act (ESA). Such provisions are evidence of legislative intent to encourage civic participation on behalf of nonhuman animals. Our law of standing should reflect this intent and its implication that humans are suitable representatives of the natural

> environment, which includes nonhuman animals.[14] (Emphasis supplied, citation omitted)

When a court allows guardianship as a basis of representation, animals are considered as similarly situated as individuals who have enforceable rights but, for a legitimate reason (e.g., cognitive disability), are unable to bring suit for themselves. They are also similar to entities that by their very nature are incapable of speaking for themselves (e.g., corporations, states, and others).

In our jurisdiction, persons and entities are recognized both in law and the Rules of Court as having standing to sue and, therefore, may be properly represented as real parties in interest. The same cannot be said about animals.

Animals play an important role in households, communities, and the environment. While we, as humans, may feel the need to nurture and protect them, we cannot go as far as saying we represent their best interests and can, therefore, speak for them before the courts. As humans, we cannot be so arrogant as to argue that we know the suffering of animals and that we know what remedy they need in the face of an injury.

Even in Hogan's discussion, she points out that in a case before the United States District Court for the Central District of California, *Animal Lovers Volunteer Ass'n v. Weinberger*,[15] the court held that an emotional response to what humans perceive to be an injury inflicted on an animal is not within the "zone-of-interest" protected by law.[16] Such sympathy cannot stand independent of or as a substitute for an actual injury suffered by the claimant.[17] The ability to represent animals was further limited in that case by the need to prove "genuine dedication" to asserting and protecting animal rights:

> *What ultimately proved fatal to ALVA's claim, however, was the court's assertion that standing doctrine further required ALVA to differentiate its genuine dedication to the humane treatment of animals from the general disdain for animal cruelty shared by the public at large. In doing so, the court found ALVA's asserted organizational injury to be abstract and thus relegated ALVA to the ranks of the "concerned bystander."*
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> . . . .

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14 Id. at 517–519.

15 Id. at 513–514. Footnote 1 of Marguerite Hogan's article cites this case as *Animal Lovers Volunteer Ass'n v. Weinberger*, 765 F.2d 937, 938 (9th Cir., 1985).

16 In that case, the claim was based on a law called "National Environmental Policy Act."

17 Marguerite Hogan, *Standing for Nonhuman Animals: Developing a Guardianship Model from the Dissents in Sierra Club v. Morton*, 95 CAL. L. REV. 513, 514 (2007) <http://scholarship.law.berkeley.edu/californialawreview/vol95/iss2/4> (visited March 15, 2015).

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What may be argued as being parallel to this concept of guardianship is the principle of human stewardship over the environment in a citizen suit under the Rules of Procedure for Environmental Cases. A citizen suit allows any Filipino to act as a representative of a party who has enforceable rights under environmental laws before Philippine courts, and is defined in Section 5:

> SEC. 5. Citizen suit. – Any Filipino citizen in representation of others, including minors or generations yet unborn, may file an action to enforce rights or obligations under environmental laws. Upon the filing of a citizen suit, the court shall issue an order which shall contain a brief description of the cause of action and the reliefs prayed for, requiring all interested parties to manifest their interest to intervene in the case within fifteen (15) days from notice thereof. The plaintiff may publish the order once in a newspaper of a general circulation in the Philippines or furnish all affected barangays copies of said order.

There is no valid reason in law or the practical requirements of this case to implead and feign representation on behalf of animals. To have done so betrays a very anthropocentric view of environmental advocacy. There is no way that we, humans, can claim to speak for animals let alone present that they would wish to use our court system, which is designed to ensure that humans seriously carry their responsibility including ensuring a viable ecology for themselves, which of course includes compassion for all living things.

Our rules on standing are sufficient and need not be further relaxed.

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[18] Id. at 515, 518.

In *Arigo v. Swift*,[19] I posed the possibility of further reviewing the broad interpretation we have given to the rule on standing. While representatives are not required to establish direct injury on their part, they should only be allowed to represent after complying with the following:

> [I]t is imperative for them to indicate with certainty the injured parties on whose behalf they bring the suit. Furthermore, the interest of those they represent must be based upon concrete legal rights. It is not sufficient to draw out a perceived interest from a general, nebulous idea of a potential "injury."[20]

I reiterate my position in *Arigo v. Swift* and in *Paje v. Casiño*[21] regarding this rule alongside the appreciation of legal standing in *Oposa v. Factoran*[22] for environmental cases. In *Arigo*, I opined that procedural liberality, especially in cases brought by representatives, should be used with great caution:

> *Perhaps it is time to revisit the ruling in Oposa v. Factoran.*
>
> *That case was significant in that, at that time, there was need to call attention to environmental concerns in light of emerging international legal principles. While "intergenerational responsibility" is a noble principle, it should not be used to obtain judgments that would preclude future generations from making their own assessment based on their actual concerns. The present generation must restrain itself from assuming that it can speak best for those who will exist at a different time, under a different set of circumstances. In essence, the unbridled resort to representative suit will inevitably result in preventing future generations from protecting their own rights and pursuing their own interests and decisions. It reduces the autonomy of our children and our children's children. Even before they are born, we again restricted their ability to make their own arguments.*
>
> *It is my opinion that, at best, the use of the Oposa doctrine in environmental cases should be allowed only when a) there is a clear legal basis for the representative suit; b) there are actual concerns based squarely upon an existing legal right; c) there is no possibility of any countervailing interests existing within the population represented or those that are yet to be born; and d) there is an absolute necessity for such standing because there is a threat of catastrophe so imminent that an immediate protective measure is necessary. Better still, in the light of its*

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19 J. Leonen, Concurring Opinion in *Arigo v. Swift*, G.R No. 206510, September 14, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/september2014/206510_leonen.pdf> [Per J. Villarama, Jr., En Banc].

20 Id. at 11.

21 J. Leonen, Concurring and Dissenting Opinion in *Paje v. Casiño*, G.R. No. 205257, February 3, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/207257_leonen.pdf> [Per J. Del Castillo, En Banc].

22 G.R. No. 101083, July 30, 1993, 224 SCRA 792, 803 [Per J. Davide, Jr., En Banc].

costs and risks, we abandon the precedent all together.[23] (Emphasis in the original)

Similarly, in *Paje*:

> A person cannot invoke the court's jurisdiction if he or she has no right or interest to protect. He or she who invokes the court's jurisdiction must be the "owner of the right sought to be enforced." In other words, he or she must have a cause of action. An action may be dismissed on the ground of lack of cause of action if the person who instituted it is not the real party in interest.[24] The term "interest" under the Rules of Court must refer to a material interest that is not merely a curiosity about or an "interest in the question involved." The interest must be present and substantial. It is not a mere expectancy or a future, contingent interest.
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> A person who is not a real party in interest may institute an action if he or she is suing as representative of a real party in interest. When an action is prosecuted or defended by a representative, that representative is not and does not become the real party in interest. The person represented is deemed the real party in interest. The representative remains to be a third party to the action instituted on behalf of another.
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> . . . .
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> To sue under this rule, two elements must be present: "(a) the suit is brought on behalf of an identified party whose right has been violated, resulting in some form of damage, and (b) the representative authorized by law or the Rules of Court to represent the victim."
>
> The Rules of Procedure for Environmental Cases allows filing of a citizen's suit. A citizen's suit under this rule allows any Filipino citizen to file an action for the enforcement of environmental law on behalf of minors or generations yet unborn. It is essentially a representative suit that allows persons who are not real parties in interest to institute actions on behalf of the real party in interest.
>
> The expansion of what constitutes "real party in interest" to include minors and generations yet unborn is a recognition of this court's ruling in *Oposa v. Factoran*. This court recognized the capacity of minors (represented by their parents) to file a class suit on behalf of succeeding generations based on the concept of intergenerational responsibility to ensure the future generation's access to and enjoyment of [the] country's natural resources.
>
> To allow citizen's suits to enforce environmental rights of others, including future generations, is dangerous for three reasons:

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[23] J. Leonen, Concurring Opinion in *Arigo v. Swift*, G.R No. 206510, September 14, 2014, 13 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/september2014/206510_leonen.pdf> [Per J. Villarama, Jr., En Banc].

[24] J. Leonen, Concurring and Dissenting Opinion in *Paje v. Casiño*, G.R. No. 205257, February 3, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/207257_leonen.pdf> [Per J. Del Castillo, En Banc]. *See also De Leon v. Court of Appeals*, 343 Phil. 254, 265 (1997) [Per J. Davide, Jr., Third Division], *citing Columbia Pictures, Inc. v. Court of Appeals*, 329 Phil. 875, 900–902 (1996) [Per J. Regalado, En Banc].

> *First*, they run the risk of foreclosing arguments of others who are unable to take part in the suit, putting into question its representativeness. *Second*, varying interests may potentially result in arguments that are bordering on political issues, the resolutions of which do not fall upon this court. *Third*, automatically allowing a class or citizen's suit on behalf of minors and generations yet unborn may result in the oversimplification of what may be a complex issue, especially in light of the impossibility of determining future generation's true interests on the matter.
>
> In citizen's suits, persons who may have no interest in the case may file suits for others. Uninterested persons will argue for the persons they represent, and the court will decide based on their evidence and arguments. Any decision by the court will be binding upon the beneficiaries, which in this case are the minors and the future generations. The court's decision will be res judicata upon them and conclusive upon the issues presented.[25]

The danger in invoking *Oposa v. Factoran* to justify all kinds of environmental claims lies in its potential to diminish the value of legitimate environmental rights. Extending the application of "real party in interest" to the Resident Marine Mammals, or animals in general, through a judicial pronouncement will potentially result in allowing petitions based on mere concern rather than an actual enforcement of a right. It is impossible for animals to tell humans what their concerns are. At best, humans can only surmise the extent of injury inflicted, if there be any. Petitions invoking a right and seeking legal redress before this court cannot be a product of guesswork, and representatives have the responsibility to ensure that they bring "reasonably cogent, rational, scientific, well-founded arguments"[26] on behalf of those they represent.

Creative approaches to fundamental problems should be welcome. However, they should be considered carefully so that no unintended or unwarranted consequences should follow. I concur with the approach of Madame Justice Teresita J. Leonardo-De Castro in her brilliant ponencia as it carefully narrows down the doctrine in terms of standing. Resident Marine Mammals and the human petitioners have no legal standing to file any kind of petition.

However, I agree that petitioners in G.R. No. 181527, namely, Central Visayas Fisherfolk Development Center, Engarcial, Yanong, and Labid, have standing both as real parties in interest and as representatives of subsistence fisherfolks of the Municipalities of Aloguinsan and

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[25] J. Leonen, Concurring and Dissenting Opinion in *Paje v. Casino*, G.R. No. 205257, February 3, 2015, 3–5 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/207257_leonen.pdf> [Per J. Del Castillo, En Banc].

[26] Id. at 7.

Pinamungahan, Cebu, and their families, and the present and future generations of Filipinos whose rights are similarly affected. The activities undertaken under Service Contract 46 (SC-46) directly affected their source of livelihood, primarily felt through the significant reduction of their fish harvest.[27] The actual, direct, and material damage they suffered, which has potential long-term effects transcending generations, is a proper subject of a legal suit.

III

In our jurisdiction, there is neither reason nor any legal basis for the concept of implied petitioners, most especially when the implied petitioner was a sitting President of the Republic of the Philippines. In G.R. No. 180771, apart from adjudicating unto themselves the status of "legal guardians" of whales, dolphins, porpoises, and other cetacean species, human petitioners also impleaded Former President Gloria Macapagal-Arroyo as "unwilling co-petitioner" for "her express declaration and undertaking in the ASEAN Charter to protect Tañon Strait."[28]

No person may implead any other person as a co-plaintiff or co-petitioner without his or her consent. In our jurisdiction, only when there is a party that should have been a necessary party but was unwilling to join would there be an allegation as to why that party has been omitted. In Rule 3, Section 9 of the 1997 Rules of Civil Procedure:

> **SEC. 9.** ***Non-joinder of necessary parties to be pleaded.*** — Whenever in any pleading in which a claim is asserted a necessary party is not joined, the pleader shall set forth his name, if known, and shall state why he is omitted. Should the court find the reason for the omission unmeritorious, it may order the inclusion of the omitted necessary party if jurisdiction over his person may be obtained.
>
> The failure to comply with the order for his inclusion, without justifiable cause, shall be deemed a waiver of the claim against such party.
>
> The non-inclusion of a necessary party does not prevent the court from proceeding in the action, and the judgment rendered therein shall be without prejudice to the rights of such necessary party.[29]

A party who should have been a plaintiff or petitioner but whose consent cannot be obtained should be impleaded as a defendant in the nature of an unwilling co-plaintiff under Rule 3, Section 10 of the 1997 Rules of Civil Procedure:

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[27] *Rollo* (G.R No. 180771), p. 12.
[28] Id. at 8.
[29] 1997 RULES OF CIV. PROC., Rule 3, sec. 9.

> **SEC. 10.** ***Unwilling co-plaintiff.*** — If the consent of any party who should be joined as plaintiff can not be obtained, he may be made a defendant and the reason therefor shall be stated in the complaint.[30]

The reason for this rule is plain: Indispensable party plaintiffs who should be part of the action but who do not consent should be put within the jurisdiction of the court through summons or other court processes. Petitioners should not take it upon themselves to simply implead any party who does not consent as a petitioner. This places the unwilling co-petitioner at the risk of being denied due process.

Besides, Former President Gloria Macapagal-Arroyo cannot be a party to this suit. As a co-equal constitutional department, we cannot assume that the President needs to enforce policy directions by suing his or her alter-egos. The procedural situation caused by petitioners may have gained public attention, but its legal absurdity borders on the contemptuous. The Former President's name should be stricken out of the title of this case.

IV

I also concur with the conclusion that SC-46 is both illegal and unconstitutional.

SC-46 is illegal because it violates Republic Act No. 7586 or the National Integrated Protected Areas System Act of 1992, and Presidential Decree No. 1234,[31] which declared Tañon Strait as a protected seascape. It is unconstitutional because it violates the fourth paragraph of Article XII, Section 2 of the Constitution.

V

Petitioner Central Visayas Fisherfolk Development Center asserts that SC-46 violated Article XII, Section 2, paragraph 1 of the 1987 Constitution because Japan Petroleum Exploration Co., Ltd. (JAPEX) is 100% Japanese-owned.[32] It further asserts that SC-46 cannot be validly classified as a technical and financial assistance agreement executed under Article XII, Section 2, paragraph 4 of the 1987 Constitution.[33] Public respondents

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30 1997 RULES OF CIV. PROC., Rule 3, sec. 10.

31 Declaring the Tañon Strait Situated in the Provinces of Cebu, Negros Occidental and Negros Oriental as a Protected Area Pursuant to R.A. 7586 (NIPAS Act of 1992) and Shall be Known as Tañon Strait Protected Seascape, May 27, 1998.

32 *Rollo* (G.R No. 181527), p. 26.

33 Id. at 26–28.

counter that SC-46 does not fall under the coverage of paragraph 1, but is a validly executed contract under paragraph 4.[34] Public respondents further aver that SC-46 neither granted exclusive fishing rights to JAPEX nor violated Central Visayas Fisherfolk Development Center's right to preferential use of communal marine and fishing resources.[35]

VI

Article XII, Section 2 of the 1987 Constitution states:

> **Section 2.** All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.
>
> The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.
>
> The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fish-workers in rivers, lakes, bays, and lagoons.
>
> *The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.*
>
> The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution. (Emphasis supplied)

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34 *Rollo* (G.R No. 180771), p. 81–83.

35 Id.

I agree that fully foreign-owned corporations may participate in the exploration, development, and use of natural resources, *but only through either financial agreements or technical ones. This is the clear import of the words "either financial or technical assistance agreements."* This is also the clear result if we compare the 1987 constitutional provision with the versions in the 1973 and 1935 Constitution:

1973 CONSTITUTION
ARTICLE XIV
THE NATIONAL ECONOMY AND THE PATRIMONY OF THE NATION

> SEC. 9. The disposition, exploration, development, of exploitation, or utilization of any of the natural resources of the Philippines shall be limited to citizens of the Philippines, or to corporations or association at least sixty per centum of the capital of which is owned by such citizens. The Batasang Pambansa, in the national interest, may allow such citizens, corporations, or associations to *enter into service contracts for financial, technical, management, or other forms of assistance with any foreign person or entity for the exploitation, development, exploitation, or utilization of any of the natural resources.* Existing valid and binding service contracts for financial, the technical, management, or other forms of assistance are hereby recognized as such. (Emphasis supplied)

1935 CONSTITUTION
ARTICLE XIII
CONSERVATION AND UTILIZATION OF NATURAL RESOURCES

> SECTION 1. All agricultural timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for another twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and the limit of the grant.

The clear text of the Constitution in light of its history prevails over any attempt to infer interpretation from the Constitutional Commission deliberations. The constitutional texts are the product of a full sovereign act: deliberations in a constituent assembly and ratification. Reliance on

recorded discussion of Constitutional Commissions, on the other hand, may result in dependence on incomplete authorship. Besides, it opens judicial review to further subjectivity from those who spoke during the Constitutional Commission deliberations who may not have predicted how their words will be used. It is safer that we use the words already in the Constitution. The Constitution was their product. Its words were read by those who ratified it. The Constitution is what society relies upon even at present.

SC-46 is neither a financial assistance nor a technical assistance agreement.

Even supposing for the sake of argument that it is, it could not be declared valid in light of the standards set forth in *La Bugal-B'laan Tribal Association, Inc. v. Ramos:*[36]

> Such service contracts may be entered into *only with respect to minerals, petroleum and other mineral oils*. The grant thereof is subject to several safeguards, among which are these requirements:
>
> (1) The service contract shall be crafted in accordance with a general law that will set standard or uniform terms, conditions and requirements, presumably to attain a certain uniformity in provisions and avoid the possible insertion of terms disadvantageous to the country.
>
> (2) The President shall be the signatory for the government because, supposedly before an agreement is presented to the President for signature, it will have been vetted several times over at different levels to ensure that it conforms to law and can withstand public scrutiny.
>
> (3) Within thirty days of the executed agreement, the President shall report it to Congress to give that branch of government an opportunity to look over the agreement and interpose timely objections, if any.[37] (Emphasis in the original, citation omitted)

Based on the standards pronounced in *La Bugal*, SC-46'S validity must be tested against three important points: (a) whether SC-46 was crafted in accordance with a general law that provides standards, terms, and

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[36] 486 Phil. 754 (2004) [Per J. Panganiban, En Banc].
[37] Id. at 815.

conditions; (b) whether SC-46 was signed by the President for and on behalf of the government; and (c) whether it was reported by the President to Congress within 30 days of execution.

VII

The general law referred to as a possible basis for SC-46's validity is Presidential Decree No. 87 or the Oil Exploration and Development Act of 1972. It is my opinion that this law is unconstitutional in that it allows service contracts, contrary to Article XII, Section 2 of the 1987 Constitution:

> The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils *according to the general terms and conditions provided by law*, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources. (Emphasis supplied)

The deletion of service contracts from the enumeration of the kind of agreements the President may enter into with foreign-owned corporations for exploration and utilization of resources means that service contracts are no longer allowed by the Constitution. Pursuant to Article XVIII, Section 3 of the 1987 Constitution,[38] this inconsistency renders the law invalid and ineffective.

SC-46 suffers from the lack of a special law allowing its activities. The Main Opinion emphasizes an important point, which is that SC-46 did not merely involve exploratory activities, but also provided the rights and obligations of the parties should it be discovered that there is oil in commercial quantities in the area. The Tañon Strait being a protected seascape under Presidential Decree No. 1234[39] requires that the exploitation and utilization of energy resources from that area are explicitly covered by a law passed by Congress specifically for that purpose, pursuant to Section 14 of Republic Act No. 7586 or the National Integrated Protected Areas System Act of 1992:

> SEC. 14. Survey for Energy Resources. - Consistent with the policies declared in Section 2, hereof, protected areas, except strict nature reserves and natural parks, may be subjected to exploration only for the purpose of gathering information on energy resources

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[38] Section 3. All existing laws, decrees, executive orders, proclamations, letters of instructions, and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed, or revoked.

[39] Declaring the Tañon Strait Situated in the Provinces of Cebu, Negros Occidental and Negros Oriental as a Protected Area Pursuant to R.A. 7586 (NIPAS Act of 1992) and Shall be Known as Tañon Strait Protected Seascape, May 27, 1998.

> and only if such activity is carried out with the least damage to surrounding areas. Surveys shall be conducted only in accordance with a program approved by the DENR, and the result of such surveys shall be made available to the public and submitted to the President for recommendation to Congress. *Any exploitation and utilization of energy resources found within NIPAS areas shall be allowed only through a law passed by Congress.*[40] (Emphasis supplied)

No law was passed by Congress specifically providing the standards, terms, and conditions of an oil exploration, extraction, and/or utilization for Tañon Strait and, therefore, no such activities could have been validly undertaken under SC-46. The National Integrated Protected Areas System Act of 1992 is clear that exploitation and utilization of energy resources in a protected seascape such as Tañon Strait shall only be allowed through a specific law.

VIII

Former President Gloria Macapagal-Arroyo was not the signatory to SC-46, contrary to the requirement set by paragraph 4 of Article XII, Section 2 for service contracts involving the exploration of petroleum. SC-46 was entered into by then Department of Energy Secretary Vicente S. Perez, Jr., on behalf of the government. I agree with the Main Opinion that in cases where the Constitution or law requires the President to act personally on the matter, the duty cannot be delegated to another public official.[41] *La Bugal* highlights the importance of the President's involvement, being one of the constitutional safeguards against abuse and corruption, as not mere formality:

> At this point, we sum up the matters established, based on a careful reading of the ConCom deliberations, as follows:
>
> - In their deliberations on what was to become paragraph 4, the framers used the term *service contracts* in referring to *agreements x x x involving either technical or financial assistance.*
> - They spoke of *service contracts* as the concept was understood in the 1973 Constitution.
> - It was obvious from their discussions that they were not about to ban or eradicate *service contracts*.
> - Instead, *they were plainly crafting provisions to put in place safeguards that would eliminate or*

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40 Rep. Act No. 7856 (1992), sec. 14.

41 *See Joson v. Executive Secretary Ruber Torres*, 352 Phil. 888 (1998) [Per J. Puno, Second Division].

> *minimize the abuses prevalent during the marital law regime*.[42] (Emphasis in the original)

Public respondents failed to show that Former President Gloria Macapagal-Arroyo was involved in the signing or execution of SC-46. The failure to comply with this constitutional requirement renders SC-46 null and void.

IX

Public respondents also failed to show that Congress was subsequently informed of the execution and existence of SC-46. The reporting requirement is an equally important requisite to the validity of any service contract involving the exploration, development, and utilization of Philippine petroleum. Public respondents' failure to report to Congress about SC-46 effectively took away any opportunity for the legislative branch to scrutinize its terms and conditions.

In sum, SC-46 was executed and implemented absent all the requirements provided under paragraph 4 of Article XII, Section 2. It is, therefore, null and void.

X

I am of the view that SC-46, aside from not having complied with the 1987 Constitution, is also null and void for being violative of environmental laws protecting Tañon Strait. In particular, SC-46 was implemented despite falling short of the requirements of the National Integrated Protected Areas System Act of 1992.

As a protected seascape under Presidential Decree No. 1234,[43] Tañon Strait is covered by the National Integrated Protected Areas System Act of 1992. This law declares as a matter of policy:

> SEC. 2. Declaration of Policy. Cognizant of the profound impact of man's activities on all components of the natural environment particularly the effect of increasing population, resource exploitation and industrial advancement and recognizing the critical importance of protecting and maintaining the natural biological and physical diversities of the environment notably on areas with biologically unique features to sustain human life and

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42 *La Bugal-B'laan Tribal Association, Inc. v. Ramos*, 486 Phil. 754, 813–814 (2004) [Per J. Panganiban, En Banc].

43 Declaring the Tañon Strait Situated in the Provinces of Cebu, Negros Occidental and Negros Oriental as a Protected Area Pursuant to R.A. 7586 (NIPAS Act of 1992) and Shall be Known as Tañon Strait Protected Seascape, May 27, 1998.

> development, as well as plant and animal life, *it is hereby declared the policy of the State to secure for the Filipino people of present and future generations the perpetual existence of all native plants and animals through the establishment of a comprehensive system of integrated protected areas within the classification of national park as provided for in the Constitution.*
>
> It is hereby recognized that these areas, although distinct in features, possess common ecological values that may be incorporated into a holistic plan representative of our natural heritage; that effective administration of these areas is possible only through cooperation among national government, local and concerned private organizations; that the use and enjoyment of these protected areas must be consistent with the principles of biological diversity and sustainable development.
>
> *To this end, there is hereby established a National Integrated Protected Areas System (NIPAS), which shall encompass outstanding remarkable areas and biologically important public lands that are habitats of rare and endangered species of plants and animals, biogeographic zones and related ecosystems, whether terrestrial, wetland or marine, all of which shall be designated as "protected areas."*[44] (Emphasis supplied)

Pursuant to this law, any proposed activity in Tañon Strait must undergo an Environmental Impact Assessment:

> SEC. 12. Environmental Impact Assessment. - *Proposals for activities which are outside the scope of the management plan for protected areas shall be subject to an environmental impact assessment as required by law before they are adopted, and the results thereof shall be taken into consideration in the decision-making process.*[45] (Emphasis supplied)

The same provision further requires that an Environmental Compliance Certificate be secured under the Philippine Environmental Impact Assessment System before any project is implemented:

> *No actual implementation of such activities shall be allowed without the required Environmental Compliance Certificate (ECC) under the Philippine Environment Impact Assessment (EIA) system.* In instances where such activities are allowed to be undertaken, the proponent shall plan and carry them out in such manner as will *minimize any adverse effects and take preventive and remedial action when appropriate*. The proponent shall be liable for any damage due to lack of caution or indiscretion.[46] (Emphasis supplied)

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44 Rep. Act No. 7856 (1992), sec. 2.
45 Rep. Act No. 7856 (1992), sec. 12.
46 Rep. Act No. 7856 (1992), sec. 12.

In projects involving the exploration or utilization of energy resources, the National Integrated Protected Areas System Act of 1992 additionally requires that a program be approved by the Department of Environment and Natural Resources, which shall be publicly accessible. The program shall also be submitted to the President, who in turn will recommend the program to Congress. Furthermore, Congress must enact a law specifically allowing the exploitation of energy resources found within a protected area such as Tañon Strait:

> SEC. 14. Survey for Energy Resources. - Consistent with the policies declared in Section 2, hereof, protected areas, except strict nature reserves and natural parks, may be subjected to exploration only for the purpose of gathering information on energy resources and only if such activity is carried out with the least damage to surrounding areas. *Surveys shall be conducted only in accordance with a program approved by the DENR, and the result of such surveys shall be made available to the public and submitted to the President for recommendation to Congress. Any exploitation and utilization of energy resources found within NIPAS areas shall be allowed only through a law passed by Congress.*[47] (Emphasis supplied)

Public respondents argue that SC-46 complied with the procedural requirements of obtaining an Environmental Compliance Certificate.[48] At any rate, they assert that the activities covered by SC-46 fell under Section 14 of the National Integrated Protected Areas System Act of 1992, which they interpret to be an exception to Section 12. They argue that the Environmental Compliance Certificate is not a strict requirement for the validity of SC-46 since (a) the Tañon Strait is not a nature reserve or natural park; (b) the exploration was merely for gathering information; and (c) measures were in place to ensure that the exploration caused the least possible damage to the area.[49]

Section 14 *is not an exception* to Section 12, but instead provides additional requirements for cases involving Philippine energy resources. The National Integrated Protected Areas System Act of 1992 was enacted to recognize the importance of protecting the environment in light of resource exploitation, among others.[50] Systems are put in place to secure for Filipinos local resources under the most favorable conditions. With the status of Tañon Strait as a protected seascape, the institution of additional legal safeguards is even more significant.

Public respondents did not validly obtain an Environmental Compliance Certificate for SC-46. Based on the records, JAPEX

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47 Rep. Act No. 7856 (1992), sec. 14.
48 *Rollo* (G.R No. 180771), p. 91–92.
49 Id. at 85.
50 Rep. Act No. 7856 (1992), sec. 2.

commissioned an environmental impact evaluation only in the second sub-phase of its project, with the Environmental Management Bureau of Region VII granting the project an Environmental Compliance Certificate on March 6, 2007.[51] Despite its scale, the seismic surveys from May 9 to 18, 2005 were conducted without any environmental assessment contrary to Section 12 of the National Integrated Protected Areas System Act of 1992.

XI

Finally, we honor every living creature when we take care of our environment. As sentient species, we do not lack in the wisdom or sensitivity to realize that we only borrow the resources that we use to survive and to thrive. We are not incapable of mitigating the greed that is slowly causing the demise of our planet. Thus, there is no need for us to feign representation of any other species or some imagined unborn generation in filing any action in our courts of law to claim any of our fundamental rights to a healthful ecology. In this way and with candor and courage, we fully shoulder the responsibility deserving of the grace and power endowed on our species.

ACCORDINGLY, I vote:

(a) to DISMISS G.R. No. 180771 for lack of standing and STRIKE OUT the name of Former President Gloria Macapagal-Arroyo from the title of this case;
(b) to GRANT G.R. No. 181527; and
(c) to DECLARE SERVICE CONTRACT 46 NULL AND VOID for violating the 1987 Constitution, Republic Act No. 7586, and Presidential Decree No. 1234.

MARVIC M.V.F. LEONEN
Associate Justice

[51] *Rollo* (G.R No. 181527), p. 58–59.