

Chapter 11

Liberty and Prosperity*

I am deeply honored to have been invited by Atty. Angelica Y. Santiago, the outstanding daughter of an equally outstanding mother; and by Atty. Jose Anselmo I. Cadiz, the distinguished IBP president, to address the 10th National Convention of Lawyers sponsored by the Integrated Bar of the Philippines (IBP) here in Baguio City.

A Grand Vision and a Wise Choice of Heroes

I can never forget the sterling inaugural speech delivered by Atty. Cadiz two years ago at the Supreme Court Session Hall, in which he spelled out his grand vision and mission for the legal profession. What especially impressed me was his psychedelic choice of heroes -- from John and Robert Kennedy, who had brought Camelot to America; to Ho Chi Minh, who had successfully resisted the imposition of the American dream on Vietnam; to Nelson Mandela, whom Atty. Cadiz called “the greatest person of the 20th century”; and finally, to Jose Abad Santos, who had serenely and bravely embraced martyrdom.

Long ago, my high school teacher wisely taught her pupils, “Tell me who your friends are and I will tell you who you are.” By that sagacious standard, Atty. Cadiz rates a perfect 10. His choice of heroes has identified him with the 20th century’s greatest thinkers and

reformers who have altered the course of civilization in our planet.

Liberation from Tyranny and Poverty

Ladies and gentlemen, during the mid-70's, the illustrious Mr. Justice JBL Reyes constantly reminded new lawyers that law was a means to serve justice.^[1] He lamented that some attorneys were acting like “hired guns” who were protecting the interest of their moneyed clients of the moment,^[2] whether or not their causes were just.

I take your overwhelming presence here today as a demonstration meant to dispel the professional morass J. B. L. Reyes spoke of. By your conference theme “Alleviating Poverty and Resolving the Fiscal Crisis: Challenges for the Legal System,” you are saying that lawyers *can* and *must* have an active role in purging Philippine society of economic deprivation and want. Such a brave call for action signifies the legal profession's unity with the common folk and their struggles against hunger and dispossession. This solidarity heralds your commitment to free our people not only from fear, but also from want; to liberate them not only from political tyranny, but also from economic infamy.

The conference theme also aligns the IBP with the Catholic Church's Eucharistic Prayer (recited at Mass every Sunday), which describes our countrymen as a “wounded people, wounded by political conflicts and tribal wars, wounded by unjust socio-economic divisions, wounded by corruption and moral degeneration.”

Maintenance of the Social Order

In civilized societies, law has always been used to maintain social order. To breathe and thrive, an orderly society needs an effective and efficient justice system to interpret rights and duties and to resolve disputes. Thus, courts exist as the great arbiters of all time.^[3]

The resurging interest in the laws impact on poverty alleviation has opened up a new dimension of the utility of the justice system and the legal profession. In a 1995 report entitled “The World Bank in a Changing World,” Dr. Ibrahim F. I. Shihata said, and I quote:

“A complement to economic reform is judicial reform and legal reform. Without effective laws, without effective structures, there may not be investment, there may not be growth.”

Indeed, there can be no meaningful economic development without an effective rule of law in place. In recognition of this truism, the Asian Development Bank (ADB) has been undertaking law and policy reform (LPR) activities as an essential prerequisite to the reduction of poverty in developing countries.^[4] The bank acknowledges that poverty measurements must move away from traditional income-based indicators to those that accentuate equal rights and opportunities. The ADB’s new definition of poverty as a “deprivation of essential assets and opportunities to which every human is entitled”^[5] underpins the bank’s various access-to-justice projects.

Poverty Alleviation Mandated

by the 1987 Constitution

To be sure, I did not really need to cite the Catholic Church, the World Bank, or the Asian Development Bank to show the necessity of upholding the twin goals of liberty and prosperity. Our 1987 Constitution provides more than sufficient authority to the task of alleviating the marginalized and the poor.^[6] In the pursuit of economic development, it directs preferential attention to social justice,^[7] human rights^[8] and ecology,^[9] among others.

In broad strokes, the Constitution lays down the role of women^[10] and children,^[11] the protection of labor,^[12] and respect for the rights of indigenous communities.^[13] In response to these pro-poor directives of the Charter, the Supreme Court, for its part, has time and time again proactively decided in favor of farmers, fisherfolk, common workers and other groups in such areas as agrarian reform,^[14] human rights,^[15] labor,^[16] environmental protection,^[17] and economic development.^[18] Worthy of special mention are two very recent landmark Decisions, *Department of Agrarian Reform v. Cuenca*^[19] and *Sta. Rosa Realty Development Corporation v. Amante*,^[20] which have been hailed by farmer-groups for championing the Comprehensive Agrarian Reform Program.^[21]

The Supreme Court's Role in Economic Development

In my latest book published in December last year, *Leveling the Playing Field*, I wrote

about the Supreme Court's role in economic development. Whenever the Court ruled on major cases affecting business and investments, traditional economic indicators -- like the stock market and index and foreign exchange rates -- reacted positively or negatively, depending on how business people perceived the ruling. While the Court voided laws regulating investments (like the first Oil Deregulation Law^[22]), mega-contracts and infrastructure projects,^[23] it did so only as a matter of exception.

As a general rule, the High Court has been deferential to and respectful of the actions taken by governmental agencies that have primary responsibility for the economic development of the country. Only when an act has been clearly made or executed with grave abuse of discretion does the Court get involved in policy issues.

This laissez-faire judicial doctrine is well-known to all lawyers. Thus, in upholding the Philippine ratification of the treaty establishing the World Trade Organization (WTO), *Tañada v. Angara*^[24] held that “this Court never forgets that the Senate, whose act is under review, is one of the two sovereign Houses of Congress and is thus entitled to great respect in its actions. It is itself a constitutional body, independent and coordinate, and thus its actions are presumed regular and done in good faith. Unless convincing proof and persuasive arguments are presented to overthrow such presumption, this Court will resolve every doubt in its favor.”

The latest major foray of the Supreme Court into the economic life of the nation involved the constitutionality of Republic Act 7942, the Mining Law of 1995.^[25] At 246 pages, double-spaced, the Decision in that case was and is the longest since the founding of

the Court 104 years ago. It was extraordinarily lengthy, because it dealt not just with the strictly legal issues; it also delved deep into technological, technical, social, ecological, environmental, and financial concerns.^[26]

Economic Implications of the Mining Law Decision

I do not have the time to take up the extensive financial discussions made in that Decision. They are, however, footnoted on the printed copy of this speech, which will be distributed later. Suffice it to say that since the judgment was issued on December 1, 2004, there has been a significant increase in foreign investments, a revival of the moribund stock market, a marked improvement in the peso-dollar exchange rate, and an emergence of a favorable business climate.

Indeed, the sunshine effect of the Court's Decision in *La Bugal-B'laan Tribal Association v. Ramos* (the non-descriptive title of that case) permeated the entire economy, not just the mining sector. Demonstrably, the recent initial public offerings (or IPO) of Manila Water and SM Investments were over-subscribed well beyond the expectations of the business community, due largely to the renewed foreign interest in our country.

Role of the IBP and the Legal Profession

Having taken up the judiciary's role in economic governance, let me now proceed to the

part that the IBP can play.

First, the judiciary is said to be a passive actor in our governmental scheme. It cannot act unless appropriate proceedings are first initiated by the proper parties represented by competent lawyers. This, then, is the first major area in which the legal profession may assist in ensuring liberty and prosperity for our nation: the proactive initiation, prosecution or defense of cases and causes that will ultimately promote economic development.

Legal Accountability

Second, there is a big challenge to the legal profession: to help ensure legal accountability and transparency in the use of public funds. Lawyers are in the best position to bring to the attention of lawmakers, the Executive Department, the specialized constitutional bodies, as well as of the public, the legal standards that ought to be observed in alleviating poverty and in easing the fiscal crunch. Transparency in the use of funds is necessary to ensure that scarce resources are used wisely and effectively.

As a starter, you can undertake educational and information campaigns that stress accountability for every peso allotted and spent and thereby ensure the legal soundness of projects and programs.

The Fight Against Corruption

Third, the bar itself must shun corruption by reporting it where and when it happens. It is not enough, for instance, that lawyers complain of corruption in the judicial system. According to the latest Social Weather Stations (SWS) survey,^[27] more lawyers do complain now, compared with 10 years ago, and yet they do nothing about it.

It is worse when corruption is perpetrated by members of the bar. The SWS reported that lawyers include bribe money^[28] in computing attorney's fees. This perception taints the profession's laudable objectives and contributes to the people's distrust in the judicial system.^[29] For those with less in life, this apprehension waters down the oft cited social justice tenet that they should have more in law.

In addition, the IBP may want to consider proposed activities coming from the ranks, per the SWS survey,^[30] such as (1) the filing and prosecution of cases against corrupt lawyers and government officials, (2) the protection of "whistleblowers," (3) lifestyle checks on all officials suspected of corruption, and (4) the forging of an agreement allowing clients to terminate their contracts with their lawyers if the latter participate in bribery.

Legal Empowerment of the Marginalized

Fourth, concurrently with the reforms mentioned, the bar must push legal empowerment; that is, the use of the law by the poor to exercise more control over their lives. You may want to refer to an ADB-commissioned study^[31] on how legal empowerment

contributes to good governance, poverty reduction and other developmental goals. That study recommended the following endeavors: (1) raising awareness of the law and the rights it confers through a mix of informational/educational campaigns and trainings; (2) extending legal assistance, so that the poor can take action to assert their rights or push for the enforcement of judgments; and (3) ensuring participation by the poor or their representatives in local governance structures.

Mechanisms for Social Sharing

Fifth, Jeffrey D. Sachs,^[32] author of a new book, *The End of Poverty*,^[33] presents yet another challenge. He points out that the rich must reach out to the 8 million people who die each year all over the world. The task of ending extreme poverty, he says, is a collective one; it “requires a global network of cooperation among people”^[34] He stresses that, since the sources of poverty are multidimensional, so must the solutions be.

A parallel call for “social sharing” has recently been espoused here at home by the “10-Point Agenda^[35] for Economic Democratization” advocated by the Ateneo de Manila University. Statistics supplied by the paper tell us that one out of four Filipino families is poor; hence, inversely, the three others are not. If one of every three non-poor families helps nurture one poor family out of poverty, the impoverished shall be no more.

The Philippines has already experimented with this concept. Crocodiles, tarsiers,

eagles, and other endangered species have been handed to the care of communities and families. If people can adopt and take care of these animals, could they not do the same for people?

Along this line, the legal profession can help hammer out the institutional mechanisms for social sharing. It should not be difficult to link this proposal with your developmental legal aid program directed towards the poor as a class. After all, Section 1 of the “IBP Guidelines on Legal Aid” clearly declares that “the correction of social imbalances is a public responsibility of the bar.”

Lives of Rectitude

Finally, and on a more personal level, I say that the members of the bar can usher in a new era of moral and fiscal responsibility by leading lives of rectitude and obedience to the rule of law. This means such simple things as paying the correct taxes voluntarily and on time, observing rules and procedures, living modestly, and giving every one else their just share, consistent with the human relations provisions of the Civil Code.

Summary

During the past 20 minutes or so, I endeavored to explain the new programs of developmental organizations, like the World Bank and the Asian Development Bank, to focus on the need for the observance of laws and rules as a prerequisite for economic development and eventually for good governance. For this reason, these developmental agencies have

focused assistance to judicial and legal reforms not only in our country, but all over the world.

I also related to you the response of our Supreme Court to the challenge of ensuring that the rule of law safeguards not just liberty, but also prosperity. Of course, in the process, the Court has also embarked on an extensive judicial reform program to improve the delivery of fair and speedy justice -- a subject I have spoken about so many times in the past.

That the IBP has chosen to discuss poverty alleviation and the fiscal crisis is itself worthy of commendation. However, the challenge is to expand the horizon and to implement more concrete measures -- like the ones I suggested earlier -- to help attain the twin goals of safeguarding liberty and nurturing prosperity.

Magandang gabi po sa inyong lahat.

* Address I delivered on April 20, 2005, during the 10th National Convention of Lawyers sponsored by the Integrated Bar of the Philippines at the CAP-John Hay Convention Center in Baguio City.

[1] “Address to the New Lawyers” delivered in 1977 during the orientation seminar for new lawyers at the UP Law Center. *See also* “The Integrated Bar of the Philippines and the New Lawyers,” an address delivered on June 14, 1975, also at the UP Law Center. *See also JBL Ipse Loquitur*, Ruben F. Balane (2002), UP Law Complex, pp. 293 & 275.

[2] Ibid.

[3] *See* the speech of Chief Justice Hilario G. Davide Jr. on October 21, 1999, “Judicial Reform and its Significance to Economic Reform,” in which he said that “the role of the justice system in economic development is no different from its general utility”; and that as a direct result of order, peace fosters a climate conducive to progress, prosperity and stability.

[4] February 2004 “Report on the ADB’s Law and Policy Reform Activities in Support of Poverty Reduction,” prepared by the Office of the ADB General Counsel (18 pages).

[5] Id., p. 1.

[6] The pro-poor bias of the Constitution is evident in these provisions, among others:

Article II (Declaration of Principles and State Policies):

“Sec. 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.”

Article XII (National Economy and Patrimony):

“Sec. 1. The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.”

x x x

x x x

x x x

“Sec. 5. The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.”

x x x

x x x

x x x

Article XIII (Social Justice and Human Rights):

“Sec. 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

“To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.”

“Sec. 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. x x x.”

“Sec. 9. The State shall, by law, and for the common good, undertake, in cooperation with the private sector, a continuing program of urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlement areas. It shall also promote adequate employment opportunities to such citizens. In the implementation of such program the State shall respect the rights of small property owners.”

“Sec. 10. Urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner.

“No resettlement of urban and rural dwellers shall be undertaken without adequate consultation with them and the communities where they are to be relocated.”

“Sec. 12. The State shall establish and maintain an effective food and drug regulatory system and undertake appropriate health manpower development and research, responsive to the country's health needs and problems. x x x.”

“Sec. 14. The State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation.”

[7]

The pertinent provisions are as follows:

Article II:

“Sec. 10. The State shall promote social justice in all phases of national

development.”

“Sec. 26. The State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law.”

Article XIII:

“Sec. 1. Supra.

“Sec. 2. The promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance.”

[8]

Some provisions concerning human rights are enumerated below:

Article II:

“Sec. 11. The State values the dignity of every human person and guarantees full respect for human rights.”

Article XIII:

“Sec. 17. (1) There is hereby created an independent office called Commission on Human Rights.”

x x x

x x x

x x x

“Sec. 18. The Commission on Human Rights shall have the following powers and functions:

x x x

x x x

x x x

“(3) Provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection;”

x x x

x x x

x x x

“Sec. 19. The Congress may provide for other cases of violations of human rights that should fall within the authority of the Commission, taking into account its recommendation.”

Article XVI (General Provisions):

“Sec. 5(2). The State shall strengthen the patriotic spirit and nationalist consciousness of the military, and respect for people’s rights in the performance of their duty.”

[9]

Section 16 of Article II of the Constitution states thus:

“Sec. 16. The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.”

[10]

The pertinent provisions are as follows:

Article II:

“Sec. 14. The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.”

Article XIII:

“Sec. 14. The State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation.”

“Sec. 11. The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged sick, elderly, disabled, women, and children. The State shall provide free medical care to paupers.”

[11] Among the provisions on children and the youth are the following:

Article II:

“Sec. 13. The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.”

Article XIV:

“Sec. 2. The State shall:

x x x

x x x

x x x

“(2) Establish and maintain a system of free public education in the elementary and high school levels. Without limiting the natural right of parents to rear their children, elementary education is compulsory for all children of school age;

“(3) Establish and maintain a system of scholarship grants, student loan programs, subsidies, and other incentives which shall be available to deserving students in both public and private schools, especially to the underprivileged.”

x x x

x x x

x x x

[12] The Constitution is replete with state policies favoring labor. These include the following:

Article II:

“Sec. 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.”

“Sec. 10. The State shall promote social justice in all phases of national development.”

“Sec. 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.”

Article XIII:

“Sec. 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of opportunities for all.

“It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

“The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes of settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

“The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.”

[13] The pertinent provisions are as follows:

Article II:

“Sec. 22. The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.”

Article XII:

“Sec. 5. The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities

to their ancestral lands to ensure their economic, social, and cultural well-being.

“The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.”

Article XIII:

“Sec. 6. The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain under lease or concession suitable to agriculture, subject to prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands.”

x x x

x x x

x x x

Article XIV:

“Sec. 17. The State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies.”

Article XVI:

“Sec. 12. The Congress may create a consultative body to advise the President on policies affecting indigenous cultural communities, the majority of the members of which shall come from such communities.”

[14] See *Bautista v. Vda de Villena*, GR No. 152564, September 13, 2004; *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, 175 SCRA 343, July 14, 1989.

[15] See, among others, *Velarde v. Social Justice Society*, GR No. 159357, April 28, 2004; *People v. Besonia*, GR No. 151284-85, February 5, 2004; *People v. Bodoso*, 398 SCRA 642, March 5, 2003; *People v. Ferrer*, 406 SCRA 658, July 18, 2003; *Yao v. Court of Appeals*, 344 SCRA 202, October 24, 2000; *Guazon v. De Villa*, 181 SCRA 623, January 30, 1990.

[16] See, among others, *Emco Plywood Corp. v. Abelgas*, GR No. 148532, April 14, 2004; *Bolinao Security and Investigation Service, Inc. v. Toston*, GR No. 139135, January 29, 2004; *Tanjuan v. Philippine Postal Savings Bank, Inc.*, 364 SCRA 204, September 16, 2003; *Philimare Shipping & Equipment Supply, Inc. v. NLRC*, 378 Phil. 131, December 23, 1999; *Samar II Electric Cooperative Inc. v. NLRC*, 337 Phil. 24, March 21, 1997.

[17] See, among others, *Republic v. Marcopper Mining Corp.*, 390 Phil. 708, July 10, 2000; *Tano v. Socrates*, 343 Phil. 671, August 21, 1997; *Laguna Lake Development Authority v. CA*, 231 SCRA 292, March 16, 1994; *Oposa v. Factoran Jr.*, 224 SCRA 792, July 30, 1992.

[18] See *La Bugal-B'laan Tribal Association v. Ramos*, GR No. 127882, December 1, 2004; *John Hay People's Alternative Coalition v. Lim*, 414 SCRA 356, October 24, 2003; *Agan v. PIATCO*, 402 SCRA 612, May 5, 2003 and January 21, 2004; *Chavez v. Public Estates Authority*, 433 Phil. 506, July 9, 2002; 403 SCRA 1, May 6, 2003; and 415 SCRA 403, November 11, 2003; *Republic v. Manila Electric Company*, 391 SCRA 700, November 15, 2002; *Tatad v. Secretary of Energy*, 346 Phil. 321, November 5, 1997; *Tañada v. Angara*, 338 Phil. 528, May 2, 1997.

[19] GR No. 154112, September 24, 2004.

[20] GR No. 112526, March 16, 2005.

[21] See the *Philippine Daily Inquirer*, April 14, 2005, p. A-20; and March 30, 2005, p. A-2.

[22] *Tatad v. Secretary of Energy*, *supra*.

[23] See Panganiban, *Leveling the Playing Field* (2004), pp. 60-75.

[24] 338 Phil. 546, 604-605, May 2, 1997.

[25]

La Bugal-B'laan Tribal Assn. v. Ramos, supra.

[26]

Here are some excerpts from the Decision showing these concerns:

“The Constitution should be read in broad, life-giving strokes. It should not be used to strangle economic growth or to serve narrow, parochial interests. Rather, it should be construed to grant the President and Congress sufficient discretion and reasonable leeway to enable them to attract foreign investments and expertise, as well as to secure for our people and our posterity the blessings of prosperity and peace.” (p. 6)

“x x x. As a matter of fact, financial, and even technical assistance, regardless of the nationality of its source, would be welcomed in the mining industry anytime with open arms, on account of the dearth of local capital and the need to continually update technological know-how and improve technical skills.” (p. 45)

“Full control is not anathema to day-to-day management by the contractor, provided that the State retains the power to direct overall strategy; and to set aside, reverse or modify plans and actions of the contractor. x x x.” (p. 5)

“The end in view is ensuring that these enterprises contribute to the economic development and general welfare of the country, conserve the environment, and uplift the well-being of the affected local communities. x x x.” (p. 78)

“x x x. *The general framework or concept followed in crafting the fiscal regime of the FTAA is based on the principle that the government expects real contributions to the economic growth and general welfare of the country, while the contractor expects a reasonable return on its investments in the project.*” (p. 118)

“In any event, what is quite evident is the fact that the **additional government share**, as formulated, has nothing to do with taxes -- direct or indirect -- or with duties, fees or charges. To repeat, it is over and above the basic government share composed of taxes and duties. Simply put, the additional share may be (a) an amount that will result in a 50-50 sharing of the cumulative present value of the *cash flows of the enterprise*; (b) an amount equivalent to 25 percent of the *additional or excess profits of the enterprise*, reckoned against a benchmark return on investments; or (c) an amount that will result in a fifty-fifty sharing of the cumulative *net mining revenue* from the end of the recovery period up to the taxable year in question. The contractor is required to select one of the three options or formulae for computing the additional share, an option it will apply to all of its mining operations.” (p. 130)

“Furthermore, it should be noted that the three options or formulae *do not yet take into account the indirect taxes and other financial contributions of mining projects*. These indirect taxes and other contributions are real and actual benefits enjoyed by the Filipino people and/or government. x x x.” (pp. 132)

“x x x *[N]ot only foreign contractors, but all businessmen and all business entities in general, have to recoup their investments and costs.* x x x. Recovery of investments is absolutely indispensable for business survival; and business survival ensures soundness of the economy, which is critical and contributory to the general welfare of the people. *Even government corporations must recoup their investments in order to survive and continue in operation.* x x x.” (p. 150)

“The whole point of developing the nation’s natural resources is to benefit the Filipino people, future generations included. And the State as sovereign and custodian of the nation’s natural wealth is mandated to protect, conserve, preserve and develop that part of the national patrimony for their benefit. Hence, the Charter lays great emphasis on “real contributions to the economic growth and general welfare of the country” as essential guiding principles to be kept in mind when negotiating the terms and conditions of FTAA’s.” (p. 172)

“Suffice it to say that the State control accorded by the Constitution over mining activities assures a proper balancing of interests. More pointedly, such control will enable the President to demand the best mining practices and the use of the best available technologies to protect the

environment and to rehabilitate mined-out areas. Indeed, under the Mining Law, the government can ensure the protection of the environment during and after mining. It can likewise provide for the mechanisms to protect the rights of indigenous communities, and thereby mold a more socially-responsive, culturally-sensitive and sustainable mining industry.” (p. 191)

[27] In its “2003-2004 Surveys of Lawyers and Judges on the State of the Judiciary and the Legal Profession in the Philippines,” the SWS reported that although half or 49% of the 400 lawyers surveyed from November 2003 to July 2004 said that, in their own city or province, they knew a case wherein a judge had taken a bribe, only 8% said they reported the bribery. The others said that they did not report the incident, mainly because they could not prove it.

[28] According to the same SWS survey, the lawyers polled were asked how often lawyers included bribe money in the fees they charged their clients. Twenty-two (22)% replied “Sometimes,” 15% “Occasionally,” 10% “Often,” 5% “Very often”; as compared with 28% who said “Rarely or Never” and 28% “Undecided.”

[29] Many have expressed disagreement with the survey results or the methodology. For one, Senator Jovito R. Salonga, my esteemed mentor, has disputed some of them. Rightly, he observes that perception, being something that can neither be confirmed nor denied, is inadmissible in evidence for being no more than “opinion evidence and double-deck hearsay at the same time.” Just the same, the persisting public perception of corruption among members of the bar is disturbing and must be addressed. See “Corruption among RP Judges and Lawyers: An Analysis and Two Proposed Solutions,” *Kilosbayan*, Volume XII, No. 7, February 2005, p. 7.

[30] Supra.

[31] *Regional Technical Assistance for the Legal Literacy for Supporting Governance* (1999), Manila.

[32] Sachs is also the director of the UN Millenium Project, whose goal is to eradicate extreme poverty from the world by 2025.

[33] The Penguin Press (2005), NY. See some excerpts in the March 14, 2005 issue of *Time*.

[34] *Time*, March 14, 2005, p. 34.

[35] The nine other points in the Agenda are enumerated below:

1. Rectify injustices in the revenue system.
2. Complete the Comprehensive Agrarian Reform Program soonest.
3. Accelerate other asset reforms.
4. Adopt SME development as the government’s centerpiece program.
5. Strengthen state institutions against vested interests.
6. Sustain a broad-based campaign against corruption.
7. Intensify decentralization of development.
8. Guarantee the public’s right to information.
9. Reform the political and electoral processes toward greater inclusiveness.

See “Democratizing the economy” by Cielito F. Habito, *Philippine Daily Inquirer*, March 7, 2005.