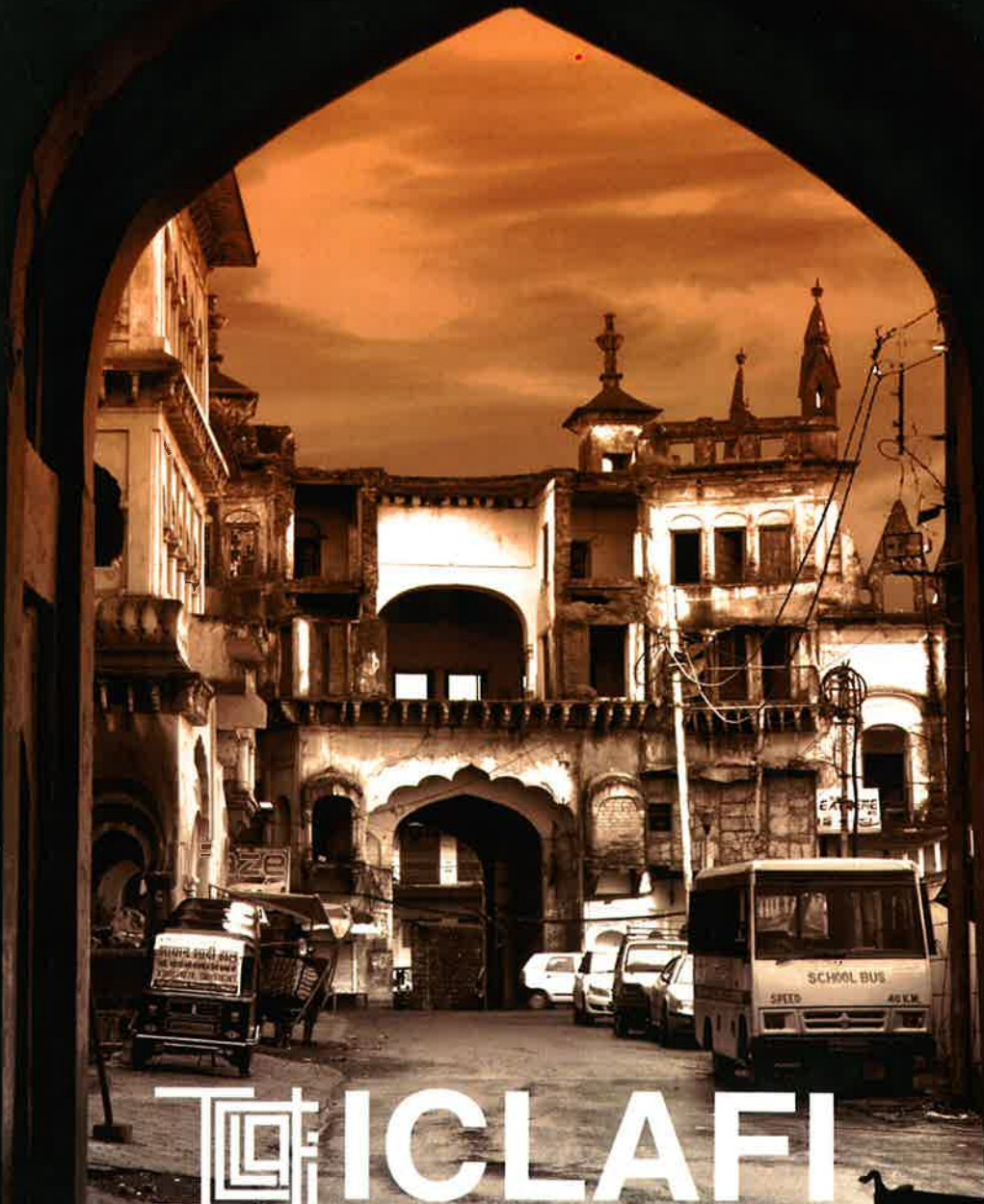


# SHARED GLOBAL EXPERIENCES FOR PROTECTION OF BUILT HERITAGE



 **ICLAFI**  
INTERNATIONAL COMMITTEE ON LEGAL ADMINISTRATIVE AND FINANCIAL ISSUES



SCHOOL OF PLANNING AND ARCHITECTURE, BHOPAL



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## **The Legal Framework for Philippine Heritage Preservation**

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### **Abstract**

Paper discusses the legal framework for Philippine heritage Preservation, presenting two controversial cases in which the Court of law had occasion to interpret the legal aspects of Heritage protection in Philippines. It stresses on the need for a deeper look at the laws covering cultural heritage in Philippines and suggests the necessity of imparting Cultural heritage education right from the basic schooling so that they start appreciating Filipino culture at the earliest possible part of their lives.

### **Keywords**

National Cultural Treasures, Cultural Properties, Standards of Conservation, Incentives

## 1.0 Introduction:

The Philippines is a Southeast Asian country. Its history is marked by colonization by Spain and the United States of America. Its laws reflect this history. The earliest laws protecting heritage, for example, were passed during the American colonial period.<sup>i</sup>

## 2.0 Protection under the Constitution

The Philippine Constitution has several provisions recognizing how important cultural heritage is.<sup>ii</sup> Section 2 of Republic Act No. 7356 or the "Law Creating the National Commission for Culture and the Arts" (NCCA) states that "Culture is a manifestation of the freedom of belief and of expression and is a human right to be accorded due respect and allowed to flourish." Section 7 of the same law considers it the duty of every Filipino to preserve and conserve the Filipino historical and cultural heritage and resources.

In recognition of the cultural diversity of the country and its colonial history, Philippine Constitution expressly recognizes the cultural heritage of indigenous peoples. It provides that, "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."<sup>iii</sup>

To implement this Constitutional provision, the Philippine Congress enacted Republic Act No. 8371 or the Indigenous Peoples Rights Act. The validity of this law has been upheld by the Philippine Supreme Court. The reason for the "radical" nature of this law was explained by one of the justices in his concurring opinion as follows: "When Congress enacted the Indigenous Peoples Rights Act (IPRA), it introduced radical concepts into the Philippine legal system which appear to collide with settled constitutional and jural precepts on state ownership of land and other natural resources. The sense and subtleties of this law cannot be appreciated without considering its distinct sociology and the labyrinths of its history. This Opinion attempts to interpret IPRA by discovering its soul shrouded by the mist of our history. After all, the IPRA was enacted by Congress not only to fulfill the constitutional mandate of protecting the indigenous cultural communities' right to their ancestral land but more importantly, to correct a grave historical injustice to our indigenous people."<sup>iv</sup>

## 3.0 Protection under the Cultural Properties Preservation and Protection Act

Before Republic Act No. 10066 or the National Cultural Heritage Act of 2009 was passed, Republic Act No. 4846 or the "Cultural Properties Preservation and Protection Act", enacted in 1966, and as amended by Presidential Decree No. 374, was the main law that protected cultural heritage. While this law did not define "cultural heritage, it defined "cultural properties", "antiques", "National Cultural Treasures", "Historical Sites", among others.

3.1 "Cultural properties" are "old buildings, monuments, shrines, documents, and objects which may be classified as antiques, relics, or artefacts, landmarks, anthropological and historical sites, and specimens of natural history which are of cultural, historical, anthropological or scientific value and significance to the nation; such as physical, anthropological, archaeological and ethnographical materials, meteorites and tektites; historical objects and manuscripts; household and agricultural implements; decorative articles or personal adornment; works of



art such as paintings, sculptures, carvings, jewellery, music, architecture, sketches, drawings, or illustrations in part or in whole; works of industrial and commercial art such as furniture, pottery, ceramics, wrought iron, gold, bronze, silver, wood or other heraldic items, metals, coins, medals, badges, insignias, coat of arms, crests, flags, arms, and armour; vehicles or ships or boats in part or in whole.”<sup>v</sup>

- 3.2 “Important cultural properties” are “cultural properties which have been singled out from among the innumerable cultural properties as having exceptional historical and cultural significance to the Philippines, but are not sufficiently outstanding to merit the classification of ‘National Cultural Treasures.’”<sup>vi</sup>
- 3.3 A “National Cultural Treasure” is “a unique object found locally, possessing outstanding historical, cultural, artistic and/or scientific value which is highly significant and important to this country and nation.”<sup>vii</sup>
- 3.4 A “historical site” is “any place, province, city, town and/or any location and structure which has played a significant and important role in the history of our country and nation. Such significance and importance may be cultural, political, sociological or historical.”<sup>viii</sup>

The Cultural Properties Preservation and Protection Act provided for a procedure for the registration of cultural properties by the National Museum. The Director of the National Museum was given the task of undertaking a census of the important cultural properties of the Philippines, to keep a record of their ownership, location, condition, and to maintain an up-to-date register of the same.<sup>ix</sup> The Cultural Properties Preservation and Protection Act also provided for a procedure for designation of a cultural property as a National Cultural Treasure or as important cultural property.<sup>x</sup> Section 4 of Presidential Decree No. 260, as amended by Presidential Decree No. 1505, provides that “The National Museum and the National Historical Commission are hereby vested with the right to declare other such historical and cultural sites as National Shrines, Monuments, and/or Landmarks, in accordance with the guidelines set forth in R.A. 4846 and the spirit of this Decree.”

The Supreme Court had occasion to interpret the Cultural Properties Preservation and Protection Act in the case of *Dean Jose Joya vs. PCGG*.<sup>xi</sup> In this case, Dean Joya and other concerned citizens claimed that, as Filipino citizens, taxpayers and artists deeply concerned with the preservation and protection of the country's artistic wealth, they have the legal personality to restrain respondents, Executive Secretary and Presidential Commission on Good Government (hereafter, “PCGG,” the government agency mandated with recovering the ill-gotten wealth of deposed President Ferdinand Marcos, his family, and his cronies) from acting contrary to their public duty to conserve the artistic creations as mandated by the 1987 Constitution, particularly Article XIV, Sections 14 to 18, on Arts and Culture, and Republic Act No. 4846. Eighty-two (82) Old Masters Paintings and antique silverware seized from Malacañang (the presidential palace) and the Metropolitan Museum of Manila were alleged to be part of the ill-gotten wealth of the late President Marcos, his relatives and cronies, and were to be auctioned off. Petitioners anchored their case on the premise that the paintings and silverware are public properties collectively owned by them and by the people in general to view and enjoy as great works of art. They alleged that with the unauthorized act of PCGG

in selling the art pieces, petitioners have been deprived of their right to public property without due process of law in violation of the Constitution.

The Supreme Court said that they had no personality to bring the suit. It also said that the issue was moot and academic as the auction was over by the time the Supreme Court ruled on it. Still, this case is significant as it interprets what cultural properties are. The Supreme Court held:

"This Court takes note of the certification issued by the Director of the Museum that the Italian paintings and silverware subject of this petition do not constitute protected cultural properties and are not among those listed in the Cultural Properties Register of the National Museum.

We agree with the certification of the Director of the Museum. Under the law, it is the Director of the Museum who is authorized to undertake the inventory, registration, designation or classification, with the aid of competent experts, of important cultural properties and national cultural treasures. Findings of administrative officials and agencies who have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect but at times even finality if such findings are supported by substantial evidence and are controlling on the reviewing authorities because of their acknowledged expertise in the fields of specialization to which they are assigned."<sup>xii</sup>

The second case is *Manila Prince Hotel v. GSIS*<sup>xiii</sup> decided in 1997. The Filipino First Policy enshrined in the 1987 Constitution, i.e., in the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos, was invoked by petitioner in its bid to acquire 51% of the shares of the Manila Hotel Corporation (MHC) which owned the historic Manila Hotel.

The controversy arose when respondent Government Service Insurance System, a government agency, pursuant to the privatization program of the Philippine Government decided to sell through public bidding 30% to 51% of the issued and outstanding shares of respondent MHC. The winning bidder, or the eventual "strategic partner," was to provide management expertise and/or an international marketing/ reservation system, and financial support to strengthen the profitability and performance of the Manila Hotel. In a close bidding, only two (2) bidders participated: petitioner Manila Prince Hotel Corporation, a Filipino corporation, which offered to buy 51% of the MHC or 15,300,000 shares at P41.58 per share, and Renong Berhad, a Malaysian firm, with ITT-Sheraton as its hotel operator, which bid for the same number of shares at P44.00 per share, or P2.42 more than the bid of petitioner.

The Supreme Court ruled in favor of the losing bidder and gave it the right to match the bid of the Malaysian group. It reasoned that the Manila Hotel is part of the Philippine national patrimony. In reaching this conclusion, it cited a book written by Beth Day-Romulo. It held:

"In its plain and ordinary meaning, the term patrimony pertains to heritage. When the Constitution speaks of national patrimony, it refers not only to the natural resources of the Philippines, as the Constitution could have very well used the term natural resources, but also to the cultural heritage of the Filipinos.

Manila Hotel has become a landmark — a living testimonial of Philippine heritage. While it was restrictively an American hotel when it first opened in 1912, it immediately evolved to be truly Filipino. Formerly a concourse for the elite, it has since then become the venue of various significant events which have shaped Philippine history. It was called the Cultural Center of the 1930's. It was the site of the festivities during the inauguration of the Philippine Commonwealth. Dubbed as the Official Guest House of the Philippine Government it plays host to dignitaries and official visitors who are accorded the traditional Philippine hospitality." (Ibid.)

The case does not mention that Manila Hotel was registered in the National Museum or that it was recognized as a historical landmark by the National Museum or the National Historical Institute. Republic Act No. 4846 is not even cited in the main decision.

#### **4.0 Protection under the National Cultural Heritage Act**

Despite such exuberant statements in the Constitution and the NCCA law, cultural heritage, popularly exemplified by built heritage structures, was not preserved in the way advocates would have wanted. The demolition of the Jai-alai Building in Manila in 15 July 2000 prompted heritage advocates to demand a law with "more teeth."<sup>xiv</sup>

The Jai-Alai Building was designed by Welton Becket, an American architect who designed the residences of Hollywood stars as well as the Los Angeles airport. It opened in 1940 and was the home of "the game of a thousand thrills" and the meeting place of Manila's socialites.<sup>xv</sup> It survived the bombardment of Manila in World War II but Manila City Mayor Lito Atienza who did not think that the building could be adaptively reused as the city's Hall of Justice. In an interview, he was quoted as saying: "That building has been housing criminals, [purse-] snatchers and pickpockets and even deteriorated into a casbah. It would not work as a new justice building if we kept the facade because people would remember the game-fixing and cheating; instead of the dignity that befits a hall of justice. It just wouldn't blend."<sup>xvi</sup>

Heritage advocates claimed that existing laws on built heritage were not sufficient to protect Philippine cultural heritage and that they did not provide penalties that would sufficiently deter potential violators of the law. They argued that a building or site that had not been declared as a National Treasure, a National Landmark or an Important Cultural Property should still be preserved. On 26 March 2010 or almost ten years after the demolition of the Jai-alai Building, Republic Act No. 10066 or the National Cultural Heritage Act of 2009 (hereafter, the "National Cultural Heritage Act") was signed into law by President Gloria Macapagal-Arroyo. The Cultural Properties Preservation and Protection Act, however was not expressly repealed by this law.

The National Cultural Heritage Act retained the categories for declaring and classifying heritage. These are: National Cultural Treasure, Important Cultural Property, World Heritage Site, National Historical Shrine, National Historical Monument, and National Historical Landmark.

It introduced innovations such as incentives for preservation. Section 36 thereof states:

“SEC.36. *National Heritage Resource Assistance Program.*—The Commission may provide financial assistance in the form of a grant to historic, archaeological, architectural artistic organizations for conservation or research on cultural property. No grant made pursuant to this Act shall be treated as taxable income.”

Section 18 of the National Cultural Heritage Act provides for heritage agreements between the NCCA and private owners of cultural properties with regard to the preservation of such properties. Matters to be covered by a heritage agreement would include: (a) Public access to the property; (b) Value of the encumbrance; (c) Duration of the servitude of the property; (d) Restriction of the right of the owner or occupant to perform acts on or near the place; (e) Maintenance and management of the property; (f) Provision of financial assistance for the conservation of the property; and (g) Procedure for the resolution of any dispute arising out of the agreement.

Section 49 of the National Cultural Heritage Act increased the penalties for violation of the law to a fine of not less than Two Hundred Thousand Pesos (P200,000.00) or imprisonment for a term of not less than ten (10) years, or both, upon the discretion of the court. This is a huge jump from the fine of not more than Ten Thousand Pesos (P10,000) or imprisonment of not more than two (2) years or both, found under Republic Act No. 4846.

More than the incentives and the higher penalties, however, the most significant change the National Cultural Heritage Act introduced was the concept of “presumed” Important Cultural Property and the power of cultural agencies to issue a cease and desist order. Section 5 of the National Cultural Heritage Act states that:

“Section 5. *Cultural Property Considered Important Cultural Property.* - For purposes of protecting a cultural property against exportation, modification or demolition, the following works shall be considered important cultural property, unless declared otherwise by the pertinent cultural agency:

Unless declared by the Commission,

- (a) Works by a Manlilikha ng Bayan;
- (b) Works by a National Artist;

Unless declared by the National Museum,

- (c) Archaeological and traditional ethnographic materials;

Unless declared by the National Historical Institute,

- (d) Works of national heroes;
- (e) Marked structure;
- (f) Structures dating at least fifty (50) years old; and

Unless declared by the National Archives,

- (g) Archival material/ document dating at least fifty (50) years old

The property owner may petition the appropriate cultural agency to remove the presumption of important cultural property which shall not be unreasonably withheld.”

This means that the owners of covered property will have to petition the proper authority to

remove the presumption that the property is an Important Cultural Property. Thus, the owner of a fifty-year old house, for example, will have to petition the National Historical Commission of the Philippines (NHCP) to declare that the property is not an Important Cultural Property. If the owner does not, and demolishes the house without the NHCP declaration that it is not an Important Cultural Property, then the owner could be in violation of the law.

Section 25 of the National Cultural Heritage Act states that:

*“SEC.25. Power to Issue a Cease and Desist Order. When the physical integrity of the national cultural treasures or important cultural properties are found to be in danger of destruction or significant alteration from its original state, the appropriate cultural agency shall immediately issue a Cease and Desist Order *ex parte* suspending all activities that will affect the cultural property. The local government unit which has the jurisdiction over the site where the immovable cultural property is located shall report the same to the appropriate cultural agency immediately upon discovery and shall promptly adopt measures to secure the integrity of such immovable cultural property. Thereafter, the appropriate cultural agency shall give notice to the owner or occupant of the cultural property and conduct a hearing on the propriety of the issuance of the Cease and Desist Order. The suspension of the activities shall be lifted only upon the written authority of the appropriate cultural agency after due notice and hearing involving the interested parties and stakeholders.”*

Under the National Cultural Heritage Act, one who seeks to stop the demolition of a heritage structure that has not been declared as a National Cultural Treasure, an Important Cultural Property or a National Historical Landmark could ask a cultural agency to issue a cease and desist order. In theory, there was no need for a declaration by the National Museum or the NHCP that the property is a National Cultural Treasure, an Important Cultural Property, or a National Historical Landmark or to go to court for a heritage structure to be protected. A cultural agency could issue the cease and desist order and the person about to demolish a heritage building would have hold off plans to do so.

To the disappointment of heritage advocates, the National Cultural Heritage Act did not save buildings that were presumed Important Cultural Property. September 2014 was dubbed as the month of the “heritage massacre.” Admiral Hotel, a structure that was at least fifty (50) years old, was demolished. Even the Army and Navy Club, a National Historical Landmark, was gutted.<sup>xvii</sup> Poor coordination between the cultural agencies was blamed and a lot of finger-pointing ensued in the aftermath. What happens if a person refuses to heed the cease and desist order? How can such an order be enforced?

Aside from the demolition of heritage structures, there are other problems related to heritage preservation. Among these are the overlapping jurisdictions of the NCCA, the National Museum, and the NHCP. Under Sec. 13 of the NCCA Law, the NCCA has the power to “regulate activities inimical to preservation/conservation of national cultural heritage/properties.” Under Republic Act No. 8492 or the National Museum Act of 1998, the National Museum is tasked with the duty to implement and enforce Presidential Decree Nos. 260 and 374, among other laws. The National Museum also has the power to supervise restoration, preservation, reconstruction, demolition, alteration, relocation and remodelling of immovable properties



and archaeological landmarks and sites. Under Republic Act No. 10086, the NHCP has the power to regulate activities pertaining to the preservation, restoration and conservation of historical property or resources. Thus, the National Museum and the NHCP can declare a single heritage structure as a National Cultural Treasure and a National Historical Landmark. What happens when these government agencies do not agree on what to do with that heritage structure? An illustration of this problem is the case of *Knights of Rizal v. DMCI Homes, Inc. and DMCI Project Developers, Inc.*<sup>xviii</sup> now pending before the Supreme Court. The NCCA and the National Museum both argue that the condominium tower built by the respondents behind the Rizal Monument, declared by the National Museum as a National Cultural Treasure and by the NHCP as a National Monument, mars the vista of the Rizal Monument and should be demolished. The NHCP claims that it has no power to regulate the vista. Until the Supreme Court decides or Congress passes an amendatory law to remove the overlapping jurisdictions, confusion will reign.

Moreover, there are no clear Philippine standards or guidelines on conservation. Section 15 of the National Cultural Heritage Act states that "The appropriate cultural agency shall approve only those methods and materials that strictly adhere to the accepted international standards conservation." What exactly does this mean given that there are various principles of conservation found in different countries and that some of these contradict each other? To address this, the NCCA is currently leading efforts to come up with a Philippine Charter for Heritage Conservation to determine how internationally recognized principles of conservation apply in the Philippine setting.

Republic Act No. 7160 or the Local Government Code gives the authority to cities and municipalities to craft zoning ordinances. What happens if a city or municipality refuses to do so despite the identification of a heritage zone by the National Museum or the NHCP? There is currently no baseline data on the level of awareness of local government officials on heritage conservation and whether or not local government units have programs on cultural heritage. At present, the NCCA is piloting Project Busilak, a community-based cultural mapping program that seeks to assist local government units to come up with the inventory of cultural heritage required under the National Cultural Heritage Act as well as to encourage the community to develop a better appreciation of their local heritage. It is a start but it will be a while before enough meaningful data is gathered, analyzed, and interventions designed to ensure that local government units fulfil their mandate under Section 16 of the Local Government Code. This provision is the General Welfare Clause and it states that, within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture.

## 5.0 Conclusion

All these show the need for a deeper look at all the laws covering cultural heritage including the charters of various government agencies that deal with culture and the arts. Structural reforms are required to ensure that persons with the right competencies in heritage conservation are hired by the concerned government agencies. Most importantly, cultural heritage should be truly made part of the basic education system so that Filipino children start appreciating Filipino culture at the earliest possible part of their lives. That may be the best

way for Filipinos to start caring for cultural heritage. Perhaps if they understood how valuable cultural heritage is, they might be more protective of the same.

#### End notes:

<sup>i</sup>The Philippine Legislature, for example, passed Act No. 2494 in 1915 appropriating funds for a national monument and an adjacent park to honor the heroes who fought in the Revolution against Spain.

<sup>ii</sup> The pertinent sections of Article XIV (Education, Science and Technology, Arts, Culture, and Sports) of the Constitution provide:

“Sec. 14. The State shall foster the preservation, enrichment, and dynamic evolution of a Filipino national culture based on the principle of unity and diversity in a climate of free artistic and intellectual expression.

Sec. 15. Arts and letters shall enjoy the patronage of the State. The State shall conserve, promote and popularize the nation's historical and cultural heritage resources, as well as artistic creations.

Sec. 16. All the country's artistic and historic wealth constitutes the cultural treasure of the nation and shall be under the protection of the State which may regulate its disposition.

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.

Sec. 18. (1) The State shall ensure equal access to cultural opportunities through the educational system, public or private cultural entities, scholarships, grants and other incentives, and community cultural centers, and other public venues.

<sup>iii</sup> Article XIV, Section 17, Constitution.

<sup>iv</sup> Separate Opinion of J. Puno in *Cruz v. Secretary of Environment and Natural Resources, et al.*, G.R. No. 135385. December 6, 2000.

<sup>v</sup> Sec. 3, par. a, Rep. Act No. 4846.

<sup>vi</sup> Sec. 3, par. b, Rep. Act No. 4846.

<sup>vii</sup> Sec 3, par. c, Rep. Act No. 4846.

<sup>viii</sup> Sec.3, par. I, Rep Act No. 4846.

<sup>ix</sup> Sec. 5, Rep. Act No. 4846.

<sup>x</sup> Secs. 6-7, Rep. Act No. 4846.

<sup>xi</sup> G.R. No. 96541, August 24, 1993, 225 SCRA 568.

<sup>xii</sup> *Ibid.*

<sup>xiii</sup> 335 Phil. 82 (1997).

<sup>xiv</sup> Augusto Villalon. “Remember jai alai: Stop making Manila heritage demolition victim.” *Philippine Daily Inquirer*. 15 July 2012. <http://lifestyle.inquirer.net/57505/remember-jai-alai-stop-making-manila-heritage-demolition-victim#ixzz3zUCcJWLr> accessed on 8 February 2016.

<sup>xv</sup> “The Game's Over: A link with the past goes as Manila's Jai Alai stadium is torn down” by PETER CORDINGLY and RUEL S. DE VERA. SEPTEMBER 1, 2000 VOL. 26 NO.

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<sup>xvi</sup> *Ibid.*

<sup>xvii</sup> Edgar Allan M. Sembrano. ‘September Massacre of Manila’s Heritage’ condemned. *Philippine Daily Inquirer*. October 6, 2014. <http://lifestyle.inquirer.net/173745/september-massacre-of-manilas-heritage-condemned>

<sup>xviii</sup> G.R. No. 213948. The case has not been decided upon by the Supreme Court as of this writing.

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