



**REGIONAL CAPACITY DEVELOPMENT TECHNICAL
ASSISTANCE
STRENGTHENING CAPACITY FOR ENVIRONMENTAL
LAW IN THE ASIA-PACIFIC: DEVELOPING
ENVIRONMENTAL CHAMPIONS
TRAIN-THE-TRAINERS PROGRAM
22-26 August, 2016
Cebu, Philippines**



Alternative Approaches

In Environmental Dispute Resolution

Role Play Exercise: Mediation

Session 7, Tuesday 23 August 2016

and Session 12, Wednesday 24 August 2016

Introduction

Role playing allows students to practice legal representation of different interest groups concerning the same facts. Role plays can be designed for dispute resolution within formal settings such as courts and tribunals, as well as situations where alternative dispute resolution mechanisms are employed.

Role plays can be based on a fictitious scenario, with roles allocated according to assumed interest groups. They can also be based on actual cases. Further, they can be based on a mixture of fact combined with fiction. Professors can choose between these types, depending on what they are trying to achieve, and whatever is most appropriate in the circumstances.

The chosen fact situation here is a hypothetical scenario. The role play exercise has been designed to encourage students to examine different aspects of the same fact situation, applying the law from their own jurisdictions, and then to engage in a process of mediation as an exercise in alternative dispute resolution.

This role play exercise will be conducted in two parts. The first part is an introduction with respect to the role-play scenario, together with instructions on how to conduct the exercise.



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This part will be conducted during session 7 on Day 2, Tuesday 23 August between 2.30-3.15pm. In this session, the participants will be divided into groups representing different parties involved in the role-play, and given time to read and discuss the fact situation. In this session, they are asked to prepare their negotiating positions and options.

The second part of the exercise is the role-play mediation itself. This will be conducted during session 12 on Day 3, Wednesday 24 August between 3.30 and 4.30pm.

After the role play, there will be an opportunity for reflection and feedback on the role play and a discussion on whether and how the participants might incorporate a role play into an environmental law course.

Instructions

1. The participants will be divided into 6 groups.
2. Each group should choose a reporter who will take notes on behalf of the group, and be prepared to summarize discussions on a white board or on a computer.
3. Each group should choose two participants to lead the discussions and represent them in the mediation.
4. Each participant is expected to take some part in the discussions and negotiations.
5. The role-play leaders will be available for clarifications and input during preparation of the arguments.
6. Two mediators will be appointed to lead the mediation.

HYPOTHETICAL CASE

Barangay Sta. Rosa in the municipality of Rizal, Palawan has a population of 4,300 and a large number of its residents are dependent on farming for their livelihood. The farmers regularly plant rice, vegetables and coconut trees.

In January 2010, barangay residents learned of the proposed large-scale open-pit commercial mining of Aquarius Nickel Mining Corporation (ANMC) which would cover some 5,000 hectares of forest area in their barangay. The farmers sent petitions opposing the proposed mining operations to their local officials in the barangay and municipality and government agencies, including the Palawan Council for Sustainable Development¹ (PCSD), and the Department of Environment and Natural Resources (DENR). They cited in their letter-petitions their concerns on the possible denudation of their village forests and adverse effects of pollution and siltation to their livelihood.

The PCSD issued a Strategic Environmental Plan (SEP) Clearance to ANMC in September 2010. The SEP clearance was based on the endorsements issued by the barangay council and municipal council in August 2010. Some six (6) months later, the DENR Mines and Geosciences Bureau recommended the issuance of a Mineral Production Sharing Agreement (MPSA) to ANMC. The DENR Secretary issued the MPSA to ANMC in May 2011. In October 2011, the DENR Environmental Management Bureau (EMB) issued an Environmental Compliance Certificate (ECC) to ANMC and in December 2011, the DENR Secretary issued a special tree cutting permit to allow ANMC to cut some 10,000 trees in the natural forest of Barangay Sta. Rosa.

Between 2012 to 2015, ANMC committed several violations of environmental laws, their MPSA, ECC and SEP clearance, such as the following:

- a. the failure of ANMC to secure water permits from the pertinent government agency when they constructed a siltation pond near the intake dam of some 200 farmer-irrigators in Bgy. Sta. Rosa;
- b. the blasting activities and construction of road and other mining facilities by ANMC resulted to erosion which caused heavy siltation to

¹PCSD is a special inter-agency body created by the Strategic Environmental Plan for Palawan (SEP; RA 7611) and is mandated to provide policy direction and governance in the implementation of the SEP law. It issues SEP clearances to all project developers/proponents in Palawan to determine compliance with its zonation strategy called the Environmentally Critical Areas Network (ECAN).

the intake dam of the Sta. Rosa Irrigators Association (SRIA) and the Matulig River, one of the adjacent bodies of water in the area;

- c. the failure of the mining companies to implement an approved Environmental Protection and Enhancement Program (“EPEP”) in violation of mining laws. The EPEP is the comprehensive program for the protection and rehabilitation of the environment of the mining sites and other the impact areas which have been adversely affected by the mining companies.
- d. the continued flow of nickel laterite from their mining areas which have inundated the farmlands of some 200 farmers, thus severely affecting their productivity and leading to serious decline in their harvest.

The farmer-irrigators led by SRIA complained to various government agencies, such as PCSD, DENR-MGB, DENR-EMB, CENRO-Rizal, and the local officials, such as the barangay council and municipal government. They sought the cancellation of ANMC’s MPSA, ECC and SEP clearance as well as the endorsements of the local government units due to the violations committed by the mining companies. The DENR-MGB issued three (3) notices of violation to ANMC for failing to submit an EPEP, for failing to contain the siltation due to their defective waste tailings pond and failing to institute mitigating measures related to their road, blasting and other construction-related activities. Unfortunately, ANMC’s operations have continued to inundate the farmlands of some 200 farmer-irrigators. The DENR, PCSD and local government units did not cancel the mining permits, endorsements and SEP Clearances issued to ANMC.

The farmer-irrigators would like to meet with ANMC, the PCSD, DENR and local government officials. All the parties have agreed to come to a mediation to try to resolve this dispute.

The six (6) parties are:

- 1) Farmer-irrigators
- 2) PCSD
- 3) DENR

- 4) Mining company (ANMC)
- 5) Barangay Council
- 6) Municipal Council