

The logo for the Asian Development Bank (ADB), consisting of the letters "ADB" in white serif font on a dark blue square background.

ADB

***STRENGTHENING CAPACITY FOR ENVIRONMENTAL  
THE ASIA-PACIFIC : DEVELOPING ENVIRONMENTAL LAW  
CHAMPIONS***

***Manila, June 1 – 5, 2015***

**SESSION 9: Environmental Litigation:  
A Comparative Perspective**

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# REMEDIES IN ENVIRONMENTAL CASES



# Administrative Remedies

- Available in cases where the executive department of government is empowered by statute to act in a quasi-judicial capacity in order to enforce environmental regulations or interfere with the conduct of individuals
- when there is a breach in the norms and standards of a *public office*





# Illegal Fishpond Development in Puerto Princesa



# Mining in Natural Forest





Mining area of Berong Nickel Corporation which plans to expand large-scale mining operations into natural forests. The mined area forms part of the Victoria



# Civil Remedies

- Available of when there is an act or omission by which *a person* violates the rights of *another person*



# INJUNCTION

- Most common relief sought in most public interest environmental litigation
- Called injunctive relief in common law countries
- In civil enforcement proceedings, defendants are restrained from proceeding with an activity because it is not being lawfully pursued





# Criminal Remedies

- Available when there is an act or omission *against the State* that is punishable by imprisonment and/or fine



- May 6, 2014 - PNP Maritime Group patrol seized the Chinese fishermen's boat at Hasa-Hasa Shoal and detained the crew after finding more than 500 marine turtles aboard the vessel.





Source: PCSDS/Atty. Adel Villona

# Blasting Caps in Cebu



*(Photo by Marlito Guidote)*

# Nature

<u>CIVIL</u>	<u>CRIMINAL</u>	<u>ADMIN</u>
JUDICIAL (regular courts)	JUDICIAL (regular courts)	QUASI- JUDICIAL BODIES (i.e., Pollution Adjudication Board [PAB], Ombudsman)

# Parties Involved

<u>CIVIL</u>	<u>CRIMINAL</u>	<u>ADMIN</u>
Private Individuals: Plaintiff and Defendant; Petitioner and Respondent	State (People of the _____) and Private Individual (Accused)	Complainant and Respondent



# Initiatory Pleading

<u>CIVIL</u>	<u>CRIMINAL</u>	<u>ADMIN</u>
Complaint in court  Petitions in special civil actions	Information or complaint filed by the police or prosecutor	Verified complaint with the respective administrative agencies, next higher legislative council or Office of the President, as the case may be

# Evidence

CIVIL

Preponderance  
of evidence

CRIMINAL

Proof beyond  
reasonable  
doubt

ADMIN

Substantial  
evidence





# Penalties

<u>CIVIL</u>	<u>CRIMINAL</u>	<u>ADMIN</u>
Damages, Rehabilitation, Restoration; no imprisonment or fine	Imprisonment, fine, damages	Fine, Suspension or Cancellation of Permit/License; Restoration or Rehabilitation of destroyed area; Removal from office





BLACK CORALS being  
smuggled from the  
Philippines





# Trading of Corals



*Photos  
by Mar  
Guidote*



# MERITS REVIEW, JUDICIAL REVIEW, APPEALS



# MERITS REVIEW

- Review that considers all the evidence about the merits of a decision and decides whether or not a correct and preferable decision should be made
- sometimes called a “d e n o v o” appeal
- Tribunal puts itself in the shoes of the original decision-maker and considers all the evidence from a fresh perspective



# MERITS REVIEW

- Australia (Northern Territory)
  - Lands, Planning and Mining Tribunal has the power to review a decision under the Heritage Act of 2011. A person who has nominated a heritage place for protection has the right to appeal to the Lands, Planning and Mining Tribunal if the Heritage Council decides that a place does not have heritage significance.



# JUDICIAL REVIEW

- a type of proceeding where the Court looks at the lawfulness of the decision-making process
- If the Court finds that a decision is unlawful, that decision will be quashed and the decision-maker can be forced to re-make the decision according to the law.



# JUDICIAL REVIEW (Common Remedies)

- certiorari – an order of the court to set aside or quash the decision
- mandamus – an order for the court to force a tribunal, public body or official to perform the action that it has failed to perform
- declaration – an order in which the court declares the legal position in relation to a particular issue
- injunction – an order which prevents someone from doing something or requires certain action.





# Appeals

- Appellate Courts (eg. Court of Appeals)
  - Questions of facts and law
- Supreme Court
  - Generally questions of law



**SPECIAL WRITS AND ACTIONS  
(PHILIPPINE SUPREME COURT'S RULES  
ON PROSECUTION OF ENVIRONMENTAL  
CASES)**

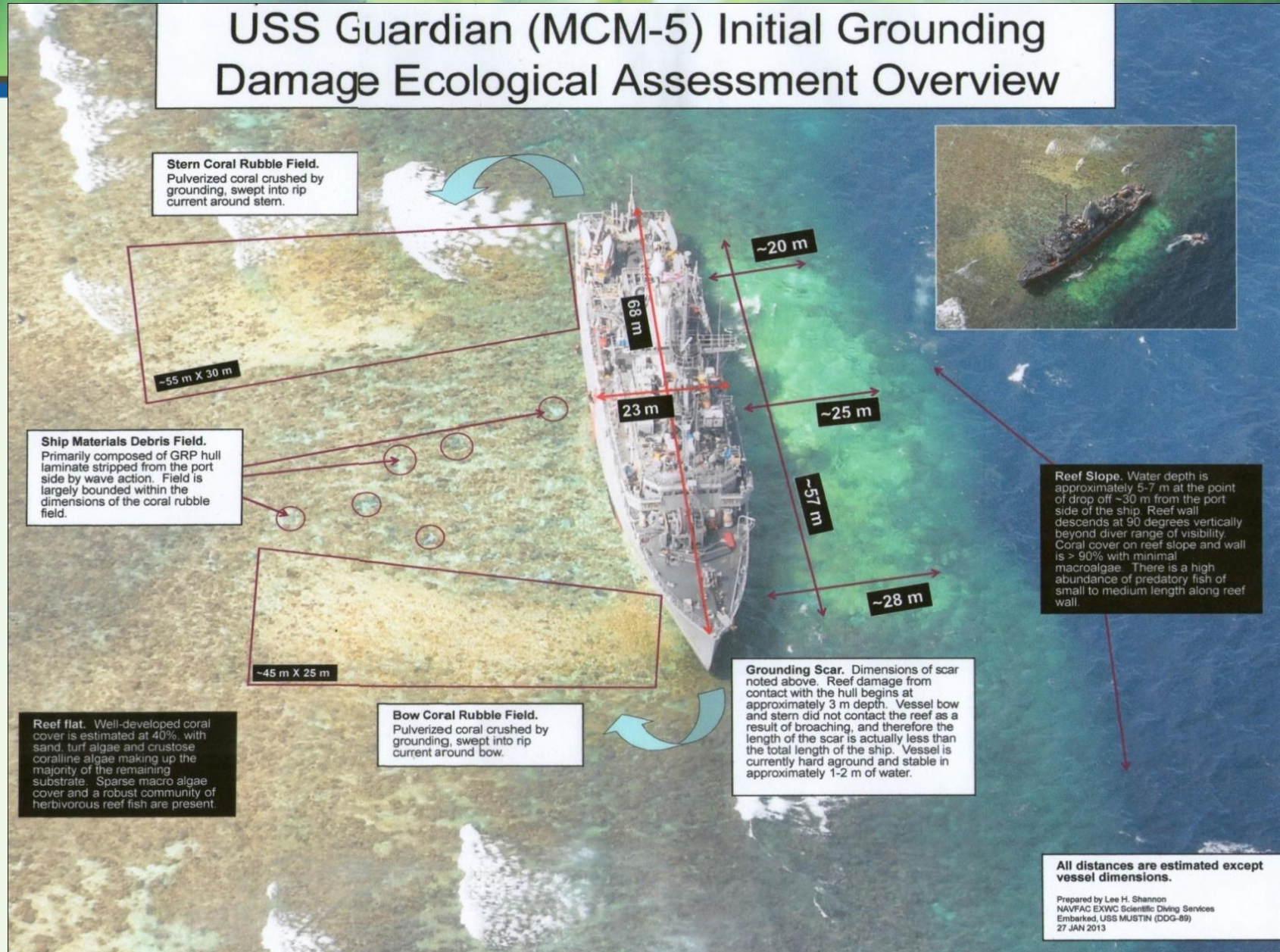


# Writ of *Kalikasan* (Nature)

- Provides immediate relief or remedy to person/s whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces



# USS Guardian (MCM-5) Initial Grounding Damage Ecological Assessment Overview



Tubbataha's biggest challenge yet...



*(Photo of Tubbataha Reefs by Lorenzo Tan)*

# Comparative Compensation

	Hawaii reefs (2009)	Tubbataha (2013)
Destroyed	890 square meters	1680 square meters
Compensation	P610M++ (US\$15M)	P87M

# Writ of Continuing Mandamus

a writ issued by a court in an environmental case directing any agency or instrumentality of the government or officer thereof to perform an act or series of acts decreed by final judgment which shall remain effective until judgment is fully satisfied



# Environmental Protection Order (EPO)

- Refers to an **order issued by the court directing or enjoining any person or government agency to perform or desist from performing an act in order to protect, preserve or rehabilitate the environment**
- Integrates prohibitive and mandatory reliefs
- Can be prayed for in civil and criminal cases and in the writs of *kalikasan* and continuing mandamus
- Can be ancillary or temporary





# TEPO

- Issued in matters of extreme urgency and applicant will suffer grave injustice and irreparable injury
- May be issued *ex-parte* effective for 72 hours from the date of receipt of the TEPO by the party or person enjoined
- Summary hearing, and court shall monitor existence of acts which are subject of the TEPO
- Applicant exempted from posting of bond



# Initiatives

- Class Action for Damages
- Citizen Suits
  - Citizens (a group of individuals, civil society groups) assert their environmental rights and seek damages
  - Direct injury to a petitioner or complainant is no longer required for purposes of filing a case





**COMPLAINT  
With Damages and  
With Prayer for  
Environmental  
Protection Order  
And Temporary  
Environmental  
Protection Order**





Road construction by Narra Nickel Mining Corporation (photo by PNNI)





# ENVIRONMENTAL OR “GREEN” COURTS



# Development of Environmental Courts and Tribunals

- Global Judges Symposium in Johannesburg in August 2002 resulted in the creation of the Johannesburg Principles on the Role of Law and Sustainable Development
  - “the improvement in the level of public participation in environmental decision-making, access to justice for the settlement of environmental disputes and the defense and enforcement of environmental rights, and public access to relevant information”



# Development of Environmental Courts and Tribunals

- Increase in complex environmental regulations, as well as an overall increase in environmental litigation
- over 350 environmental courts in 41 countries around the world were created (as of 2009)
- Philippines -- 117 environmental courts were created in 2008





# Environmental Courts and Tribunals

- George Pring and Catherine Pring, GREENING JUSTICE: CREATING AND IMPROVING ENVIRONMENTAL COURTS AND TRIBUNALS (THE ACCESS INITIATIVE 2009), available at <http://www.accessinitiative.org/resource/greening-justice> and <http://www.law.du.edu/ect-study>



