

The ADB logo consists of the letters 'ADB' in a white, serif font, centered within a dark blue square.

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

***Cebu, 22-26 August, 2016***

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

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# Teaching Methodology

- Use of comparative approach on environmental litigation
- Structured small group discussion
- Environmental law clinic explanation and discussion



# REMEDIES IN ENVIRONMENTAL CASES



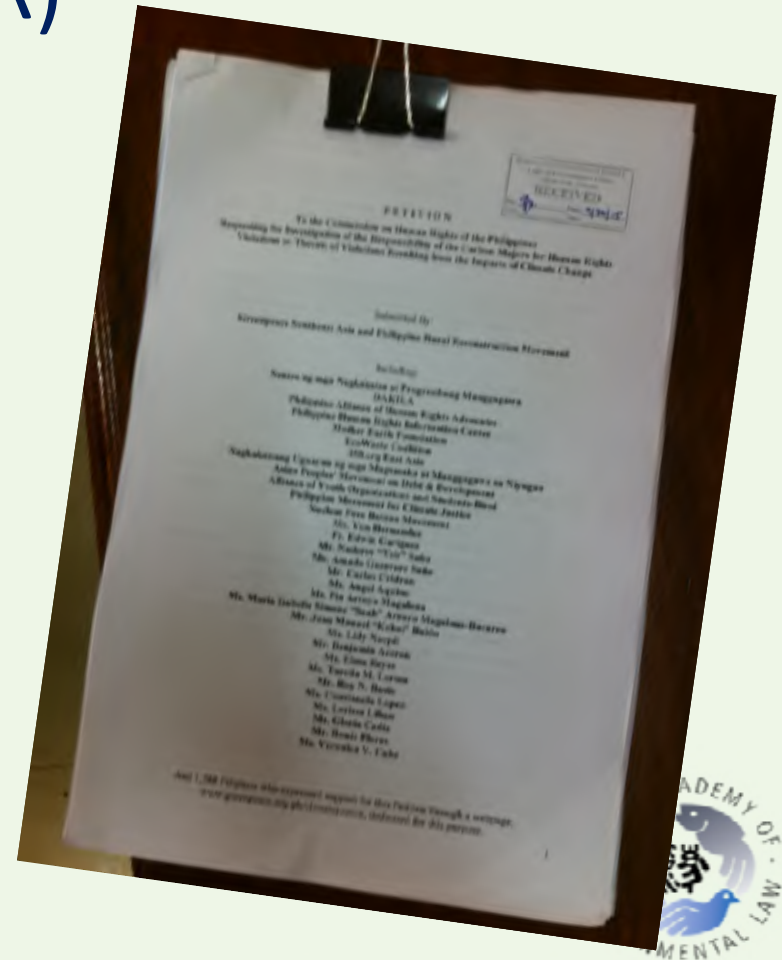
# Administrative Remedies

- 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*



# Petition to the Commission on Human Rights (CHR)

A petition directed to the Philippine CHR to investigate and monitor the human rights implications of climate change that constitute violations or threats of violation of the economic, social cultural, environmental and other rights of Filipino people by the Carbon Majors







# Illegal Fishpond Development in Puerto Princesa







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-Anepahan Range, a key biodiversity area.



# Civil Remedies

- Available when there is an act or omission by which a person violates the rights of another person
- Injunction is a common relief sought; defendants are restrained from proceeding with an unlawful activity





# 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.



# Blasting Caps in Cebu



*(Photo by Marlito Guidote)*



# Nature

## CIVIL

JUDICIAL  
(regular  
courts)

## CRIMINAL

JUDICIAL  
(regular  
courts)

## ADMIN

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

<u>CIVIL</u>	<u>CRIMINAL</u>	<u>ADMIN</u>
Preponderance of evidence	Proof beyond reasonable doubt	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; R estoration or Rehabilitation of destroyed area; Removal from office





**BLACK CORALS** being  
smuggled from the  
Philippines





# 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 “de novo ” 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





# **Greenpeace v. Environmental Management Bureau of the DENR, GR No. 201390, May 2, 2012**

Acting on the petition filed by environmental groups led by Greenpeace, the Court issued the writ to stop the field trials of the genetically-modified *Bacillus Thuringiensis* (Bt) eggplants being done in various parts of the country.

Undergoing testing are eggplants which have been genetically altered with a gene from the Bt bacteria which allow it to produce its own pesticide.



# 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)



# 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>



# Resident Marine Mammals of Tañon Strait represented by NGOs

- Tañon Strait is a protected seascape between the islands of Negros and Cebu, Philippines
- Resident marine mammals are the “toothed whales, dolphins, porpoises and other cetacean species.”
- Citizen Suit





# INITIATIVE: Resident Marine Mammals of Tanon Strait represented by NGOs

- Case for certiorari, mandamus and injunction was filed to enjoin the Department of Energy, et al., from implementing a service contract involving the exploration, development, and exploitation of the country's petroleum resources in and around the Tañon Strait. Among the activities allowed in 2005 were the conduct of a seismic survey and oil drilling.



# Resident Marine Mammals of Tanon Strait represented by NGOs

- Violation of the National Integrated Protected Areas System (NIPAS) Act of 1992 because Tañon Strait is, by virtue of Proclamation No. 2146, an environmentally critical area.
- Environmental Compliance Certificate (ECC) must be secured after undergoing an Environmental Impact Assessment (EIA) to determine the effects of such activity on its ecological system



# Resident Marine Mammals of Tanon Strait represented by NGOs

- Court noted that Service Contract 46 failed to comply with the safeguards required under Paragraph 4, Section 2, Article XII of the 1987 Constitution which required that the service contract be (a) authorized by a general law; (b) signed by the President, and, (c) reported to Congress.

