

Environmental Adjudication in the Philippines:

Jurisprudence, Access to Justice, Green Courts and Tribunals, and Judicial Specialization in Environmental and Natural Resources Law

Introduction

Biodiversity and Environmental Challenges

The Philippines is one of the world's most ecologically rich countries because it possesses an abundance of natural resources and is a renowned biodiversity hotspot.¹ The country is host to about 9,253 plant species (65.8% endemic), 167 mammal species (61.1% endemic), 535 bird species (34.8% endemic), 237 reptile species (67.5% endemic), 89 amphibian species (85.4% endemic), and 981 freshwater fish species (23.8% endemic).²

The Philippines is also the epicenter of global marine biodiversity, and lies in an ocean biodiverse hotspot, the Coral Triangle, considered as the global center of marine biodiversity where 76% of the world's coral species lives,³ and spans six countries – Indonesia, Malaysia, the Philippines, Papua New Guinea, Timor Lester, and the Solomon Islands, which lies amidst the border of the Sulu-Sulawesi Seas Marine Ecoregion. Four hundred species of corals, 650 species of reef fishes, including six of the world's eight species of marine turtles, endangered marine mammals, and more than 400 species of marine algae and 16 species of seagrass⁴ can be found in the Sulu Ecoregion. The Coral Triangle is also home to the greatest extent of mangrove forests in the world, and serves as the spawning and juvenile growth areas for the world's largest and most valuable tuna fishery.⁵

However, the marine and coastal resources of the Coral Triangle are at immediate risk from a range of factors, including the impacts of climate change, overfishing, unsustainable fishing methods, and land-based sources of pollution.⁶ These factors adversely affect food security, employment opportunities, and the standard of living for more than 120 million coastal people dependent on fishing,

¹ M. Posa, et.al. *Hope for Threatened Tropical Biodiversity: Lessons from the Philippines*, BIO SCIENCE (March 1, 2008), available <http://business.highbeam.com/411908/article-1G1-177550261/hope-threatened-tropical-biodiversity-lessons-philippines> (last accessed February 3, 2011).

² C. Cumagun, *Biodiversity Research in the Philippines: Challenges and Solutions* (presented at the 1st ASIAHRC Symposium, Japan, July 18-20, 2009).

³ World Wildlife Fund. Ocean Magic Everywhere. http://www.panda.org/what_we_do/where_we_work/coraltriangle/

⁴ World Wildlife Fund. What the WWF is doing in the Sulu Sulawesi Seas Marine Ecoregion. http://www.wwf.org.au/our_work/saving_the_natural_world/oceans_and_marine/marine_solutions/working_across_borders/what_wwf_is_doing_in_sulu_sulawesi/

⁵ ADB. 2010. *ADB Support to the Coral Triangle Initiative*.

⁶ *Id.*

nature tourism, and other coastal and marine resources for their livelihoods.⁷ In the 1980s, Philippine marine fisheries were already considered overfished and at present, has a “catch rate as low as 10% of rates when these areas were lightly fished.”⁸

Philippine forests are also considered to be a biodiverse hotspot, home to more than 6,000 plant species and numerous bird and animal species which are mostly endemic to the country. However, this biodiversity continues to be threatened by deforestation: only 3% of the original forest cover remains in the country⁹ and is ranked 4th in the world’s top ten most threatened forest hotspots.¹⁰ In the 1970s, the Philippines was one of the largest exporters of timber products in the Southeast Asia region before its forest resources were reduced through over exploitation, over harvest, unsound forest management practices, and the need for land for development.¹¹ These illegal forestry practices made the Philippines a net importer of timber products in recent years.¹²

Pollution is also a challenge: only 10% of the sewage gets treated or disposed of in an environmentally sound manner¹³ and the proper disposal and collection of solid wastes is a major problem.¹⁴ Of the 10 million metric tons of garbage generated per year, only 2% is disposed of in sanitary landfills. Because of improper waste disposal, water bodies have been contaminated, resulting to 5,150 reported cases of gastro-intestinal diseases per 100,000 population.¹⁵

The Philippines’ primarily agricultural economy is highly dependent upon the state of the environment. “Some 47% of the islands are used as agricultural land. 70% of the country’s population is in the rural areas and agriculture contributes to around 18% of the country’s GDP. Two-thirds of the population depends on farming for livelihood and about 38% is engaged in agricultural

⁷ *Id.*

⁸ Williams, Meryl Dr. 2007. *Enmeshed: Australia and Southeast Asia Fisheries*. Sydney: Lowy Institute for International Policy. Available at: <http://www.illegal-fishing.info/uploads/Lowry-Inst-Enmeshed.pdf>

⁹ World Wildlife Fund. Environmental Problems in the Philippines. http://www.panda.org/who_we_are/wwf_offices/philippines/environmental_problems_in_philippines/

¹⁰ M. Pamintuan, 2011. Protect Philippine Forests. Philippine Daily Inquirer. June 5, 2011. <http://opinion.inquirer.net/5809/protect-philippine-forests>

¹¹ C.H. Keong, J. Hewitt, and T.H. Chew, Philippines: Scoping Baseline Information for Forest Law Enforcement, Governance and Trade, 2012, available at <http://www.illegal-logging.info/uploads/baselinestudyphilippinesfinal.pdf>.

¹² *Id.*

¹³ World Wildlife Fund. Environmental Problems in the Philippines. http://www.panda.org/who_we_are/wwf_offices/philippines/environmental_problems_in_philippines/

¹⁴ Asian Environmental Compliance and Enforcement Network. 2004. Environmental Compliance and Enforcement in the Philippines: Rapid Assessment. http://www.aecen.org/sites/default/files/PH_Assessment.pdf

¹⁵ *Id.*

activities.”¹⁶ Unfortunately, this sector is also susceptible to environmental changes. Climate change, for example, is projected to cause a decrease of at least 50% in the country’s total rice yield.¹⁷ By the year 2100, the country’s rice production would decrease to 75%.¹⁸ This apparent interrelationship should have alerted the authorities as to the need for additional legal protection in the face of “uncontrolled deforestation in watershed areas, degradation of its vast land and marine resources, air and water pollution in the major cities, growing contamination of its water resources, indiscriminate conversion of prime agricultural land into industrial and residential land, dwindling coastal resources, and growing waste disposal problems.”¹⁹ It stands to reason, therefore, that many of the Philippines’ contemporary legal controversies stem from this reality.

Governance and Enforcement Challenges

Central to most of these environmental challenges is illegality, corruption, and weak environmental governance. Most Philippine agencies mandated to enforce environmental laws often lack human and financial resources. In the assessment conducted by the Asian Environmental Compliance and Enforcement Network (AECEN), it found that the Environmental Management Bureau (EMB) lacked “well-trained inspectors and logistical support needed to carry out the inspections and enforcement actions”²⁰ with respect to compliance monitoring.

Corruption has made a destructive impact on ecological systems. Reports alleged that the logging industry during the regime of President Ferdinand Marcos was controlled by foreign investors and the local elite, timber license agreements (TLAs) given to Marcos followers.²¹ During his reign, from 1965-1986, seven million hectares of Philippine forests were lost.²² TLAs were phased-out during the presidency of Corazon Aquino as TLAs were adjudged to be unconstitutional; however, during the term of former president Gloria Macapagal Arroyo, five TLAs were reinstated with one allegedly to a corporation owned by a senator.²³ Also, during the term of former president Joseph Estrada,

¹⁶ Agriculture and Economy Policy Paper – Philippines (February 2009), available <http://www.fas.usda.gov/country/Philippines/Philippines%20Agricultural%20Economy%20and%20Policy%20Report.pdf>.

¹⁷ Asian Development Bank, *The Economics of Climate Change in Southeast Asia: A Regional Review*, April 2009, p.72. Available <http://www.adb.org/Documents/Books/Economics-Climate-Change-SEA/PDF/Economics-Climate-Change.pdf>.

¹⁸ *Id.*

¹⁹ Message following the Presentation of the Token of Recognition to Chief Justice Reynato S. Puno and retired Justice Ameurfina A. Melencio Herrera, January 29, 2008. (PHILJA)

²⁰ *Id.*

²¹ Pamintuan, M. 2011. Protect Philippine Forests. *Philippine Daily Inquirer*. June 5, 2011. <http://opinion.inquirer.net/5809/protect-philippine-forests>

²² *Id.*

²³ *Id.*

the construction of the San Roque Dam in Pangasinan province was reported to be tainted with wide patronage.²⁴

It has been said that “the Philippines ‘has the most progressive, albeit piecemeal, environmental legislation in place ... [in] Southeast Asia.”²⁸ While there is no comprehensive environmental framework, most of the country’s environmental challenges are, on paper, protected by a plethora of laws and regulations.²⁹ However, without an effective law enforcement structure to combat corruption and illegality, a repository of environmental laws and regulations is not by itself a strong indicator of effective environmental governance.

Role of the Judiciary in Environmental Governance

This Chapter considers the role of the Philippine judiciary in enforcing its environmental laws. The judiciary enunciates principles of environmental law, provides normative interpretations of legal and regulatory frameworks, issues rules and directions to lower courts which affect their priorities, and often plays a role in judicial education. These actions affect not only the courts but also the way the legal system operates, and the way that sector lawyers such as environmental, water, and energy lawyers understand the legal and regulatory frameworks and how they should be enforced. Moreover, these judicial actions also impact private sector investment in related sectors.³⁰ However, without cases being filed in court, the judiciary would be unable to fulfill their mandate. Prosecutors and public interest litigators must also be empowered to bring cases to courts. If public interest lawyers and administrative enforcement officers have limited capacity, or have no rights to bring civil or administrative cases, only a few environmental cases may be brought.

Moreover, for enforcement officers and civil society to effectively play their role, they need to see the benefits of filing cases in court: they, and the community as a whole, need to consider the entire judiciary as having the integrity and skills required to dispose of environmental cases effectively.³¹ Hence, effective judicial participation in enhancing environmental justice and the

²⁴ S. Winbourne, 2002. Corruption and the Environment, available at http://pdf.usaid.gov/pdf_docs/PNACT876.pdf.

²⁸ Alan Tan, Preliminary Assessment of Philippines’ Environmental Law, available at <http://sunsite.nus.sg/apcel/dbase/filipino/reportp.html>.

²⁹ See for example Revised Forestry Code (PD 705), National Integrated Protected Areas System Act (RA 7586), Conservation and Protection of Wildlife Resources (RA 9147), Philippine Mining Act (RA 7942), Biofuels Act (RA 9367), Clean Air Act (RA 8749), Fisheries Code (RA 8550), Clean Water Act (RA 9275), Solid Waste Management (RA 9003).

³⁰ K. Mulqueeny, S. Bonifacio and J. Espenilla. 2010. *Asian Judges, Green Courts, and Access to Environmental Justice: An Asian Judges Network on the Environment*. Journal of Court Innovation (Winter 2010). New York: PACE University.

³¹ K. Mulqueeny and S. Bonifacio. 2011. *ASEAN Chief Justices’ Roundtable on Environment: Towards a Vision on Environment for the Judiciary in Southeast Asia*. Background paper presented at the ASEAN Chief Justices’ Roundtable on Environment in Jakarta, Indonesia, 6-7 December.

rule of law depends upon the entire environmental enforcement chain.³² Environmental enforcement officials, police, and investigators must detect and apprehend environmental criminals and violators of law. Prosecutors and public interest litigators need to be able to bring cases to courts and the judiciary must be empowered and able to hear such cases.³³

This Chapter asks: What is the role of Philippine courts and tribunals in environmental enforcement and adjudication? What have Philippine Courts done to lead the judiciary in particular, and the legal profession, government, and public in general, towards greater awareness of the environment, environmental law, and the need for enforcement? What steps has it taken to strengthen its capacity to decide environmental cases, and what more could be done to strengthen its capacity? What are the key lessons learned from the Philippines that could assist other countries?

Part I of this Chapter provides an overview of the Philippines and its court system. In particular, it describes the Judiciary's formal structure and examines the factors affecting court governance in the Philippines – autonomy, capacity, transparency, integrity, credibility and the legitimacy of adjudication. **Part II** analyzes relevant Supreme Court jurisprudence and extrapolates key principles and themes in Philippine environmental adjudication. **Part III** reviews the actual practice of environmental adjudication in the Philippine setting, as it examines environmental tribunals, the new Rules of Procedure in Environment Cases, and capacity building initiatives for environmental adjudication. **Part IV** summarizes this Chapter, and concludes by painting a picture of the future of environmental adjudication in the Philippines.

PART I The Philippines

The Republic of the Philippines is a Southeast Asian archipelago made up of 7,107 islands, the three largest of which are Luzon, Visayas and Mindanao. Four large bodies of water surround the country – the Luzon Strait (North), the Philippine Sea (East), the Sulu Sea (South) and the South China Sea (West). It is located on the so-called “Pacific Ring of Fire” and the “Typhoon Belt”, making it exceptionally prone to the occurrence of earthquakes,³⁴ volcanic eruptions³⁵ and typhoons,³⁶ with extreme weather events only likely to worsen with the affects

³² *Id.*

³³ *Id.*

³⁴ Alcuin Papa, *Palawan Safest, No Earthquake Faults*, Inquirer News, [internet] Jan. 16, 2010, available at <http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20100116-247760/Palawan-safest-no-earthquake-faults>

³⁵ Sophie Tedmanson, *Thousands Evacuated as Mayon Volcano Threatens Villages*, Times Online UK [internet], Dec. 16, 2009, available at <http://www.timesonline.co.uk/tol/news/world/asia/article6956999.ece>

³⁶ United Nations Office for the Coordination of Humanitarian Affairs, *Philippines: Typhoon Season 2009 Situation Report*, Nov. 3, 2009, available at <http://www.reliefweb.int/rw/rwb.nsf/db900SID/VDUX-7XFN8J?OpenDocument>

of climate change. Climate change is expected to lead to further impacts on agriculture, food and water supplies. However, its geographic position has endowed it with a wealthy natural environment.

The country is currently ranked as the 12th most populous nation in the world, with a population of about 92 million people.³⁷ The Philippines is projected to grow to around 117.8 million people by 2025.³⁸ In terms of development, the Philippines ranks 114th out of 186 countries in the 2013 United Nations Development Programme (UNDP) Human Development Index.³⁹ This ranking pegs the country as having “medium human development”, using such indicators as life expectancy, adult literacy rate, GDP per capita, and migration rate.⁴⁰ According to a UNDP report, “[a] persistent challenge, however, has been to translate [growth] into equitable and sustainable poverty reduction, with over a quarter of the population remaining below the poverty line.”⁴¹

The Philippine government is divided into three co-equal branches: the Executive Department,⁴² Legislative Department⁴³ and Judicial Department.⁴⁴ The powers and responsibilities of each branch are expressly outlined in the 1987 Constitution.

The reputation of the Judiciary has suffered blows recently, with a high profile plagiarism issue that implicated a decision penned by one of the sitting justices.⁴⁵ This issue has cast doubt on the integrity of the Court, not only on the manner in which it disposes of its cases but also in the way it protects its ranks from outside critique.⁴⁶ More seriously, the Chief Justice of the Supreme Court was recently impeached, the first ever official to be impeached in the Philippines. In addition, former Chief Justice Renato C. Corona was found to have violated the

³⁷ National Statistics Office, *The 2010 Census of Population and Housing Reveals the Philippine Population at 92.34 Million* (2012), available at <http://www.census.gov.ph/content/2010-census-population-and-housing-reveals-philippine-population-9234-million>.

³⁸ Population Reference Bureau, *World Population Data Sheet* (2012), available at http://www.prb.org/pdf12/2012-population-data-sheet_eng.pdf.

³⁹ United Nations Development Programme, *Human Development Report 2013*, available at <http://www.undp.org.ph/downloads/HDR2013%20Report-EN.pdf>.

⁴⁰ *Id.*

⁴¹ UNDP Results: The Philippines, available at <http://www.undp.org/content/dam/undp/library/corporate/results/english/Results-Philippines-2012-EN.pdf>.

⁴² See generally CONST. (1987), Art. VII (Phil.).

⁴³ See generally CONST. (1987), Art. VI (Phil.).

⁴⁴ See generally CONST. (1987), Art. VIII (Phil.).

⁴⁵ Aries Rufo & Purple Romero, *SUPREME COURT Justice Plagiarized Parts of Ruling on Comfort Women*, ABS-CBN NEWS (December 1, 2010, 4:19PM), http://www.abs-cbnnews.com/nation/07/18/10/Supreme_Court-justice-plagiarized-parts-ruling-comfort-women

⁴⁶ Marvin Sy, *Senate Asks Supreme Court to Show Judicial Restraint in Plagiarism Case*, PHILSTAR (December 1, 2010, 4:30PM); Sophia Dedace, *More Lawyers Call for Beseiged SUPREME COURT Justice to Resign*, GMA NEWS (December 1, 2010, 4:40PM) http://www.gmanews.tv/story/206039/more-lawyers-call-for-besieged-Supreme_Court-justice-to-resign <http://www.philstar.com/Article.aspx?articleId=625317&publicationSubCategoryId=63>

Constitution⁴⁷ by excluding substantial assets from his Statement of Assets, Liabilities and Net Worth (SALN). Public officials, regardless of rank, are required by the Constitution to file their SALN and the public disclosure of such for officials of the judiciary is also required.

General Court System

The structure and powers of the Philippine Judiciary originate in the Constitution. Article VIII, Section 1 states that “[j]udicial power shall be vested in one Supreme Court and in such other courts as may be established by law.”⁴⁸ Apart from the Supreme Court, the other courts forming the core of the judiciary are the Court of Appeals, the Sandiganbayan (SB),⁴⁹ the Court of Tax Appeals, the Regional Trial Courts (RTC), the Metropolitan Trial Courts (MeTC), the Municipal Trial Courts in Cities (MTCC), the Municipal Trial Courts (MTC), and the Municipal Circuit Trial Courts (MCTC). In 1967, former President Ferdinand E. Marcos created a Shari’a-based – or Islamic law - court system as express recognition of the large Muslim community in the country.⁵⁰ Thus, he established the Shari’a Circuit Courts (SCC)⁵¹ and Shari’a District Courts (SDC)⁵² and subsequently, Philippine Congress also created Shari’a Appellate Courts (SAC)⁵³ in Islamic regions and provinces in Mindanao.⁵⁴

⁴⁷ Sec. 17, Art. XI of the Philippine Constitution provides:

A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law.

⁴⁸ CONST. (1987), Art. VIII, §1 (Phil.).

⁴⁹ Established under Article XI, Section 4 of the 1987 Constitution, the Sandiganbayan is a special court which has jurisdiction over corruption cases involving government employees with a salary grade level of 27 (minimum salary of Php 62,670.00 or approximately USD 1,535.10, per Department of Budget and Management National Budget Circular No. 540, May 10, 2012) or higher.

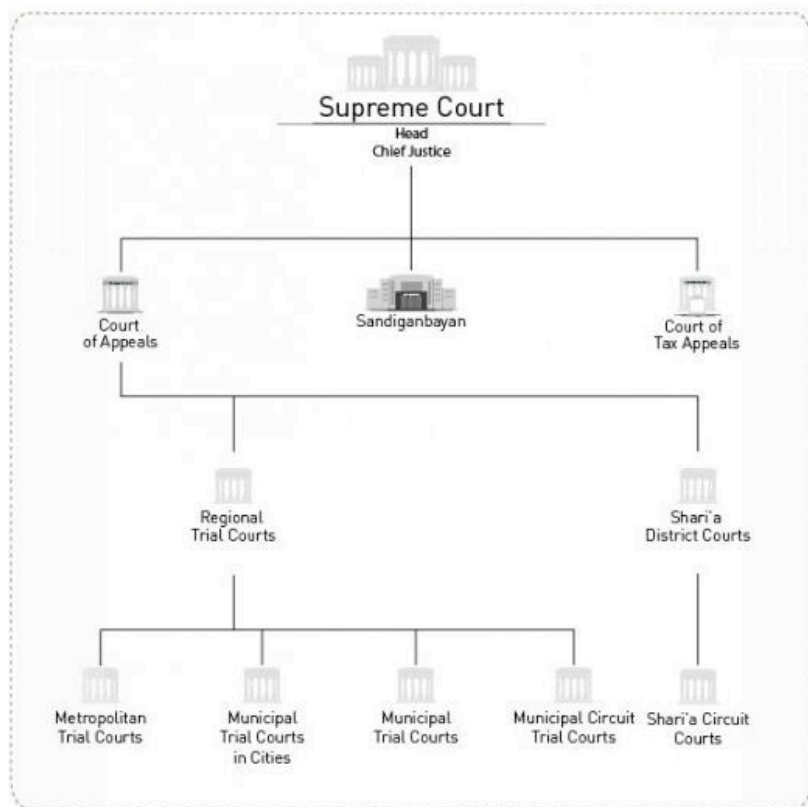
⁵⁰ Code of Muslim Personal Laws, PRES. DEC. NO. 1083, Art. 137 (Phil.).

⁵¹ *Id.*, §150.

⁵² *Id.*, §138.

⁵³ An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao, Amending for the Purpose Rep. Act. No. 6734, Entitled "An Act Providing for the Autonomous Region in Muslim Mindanao," as Amended, REP. ACT. NO. 9054, Art. 8, §9 (Phil.).

⁵⁴ *Id.*



Source: *Judiciary Chart, Official Gazette of the Philippines*, available at <http://www.gov.ph/about/gov/judiciary/>.

As a general rule, cases should be filed in the first instance with either the first level (MeTC, MTCC, MTC or MCTC) or second level courts (RTC), depending on the issue to be adjudicated. However, exceptions to this rule arise if the plaintiff/complainant is suing under a special law that specifically names the appropriate court or quasi-judicial entity in which to file the case. Two separate exceptions in environmental adjudication exist for the Philippines: the Pollution Appeals Board and the Mining Adjudication Board, as will be discussed further below.

As of 2012, there are a total of 1,175 first level courts, composed of MeTCs, MTCCs, MTCs, and MCTCs.⁵⁵ The first level courts are considered courts of special or limited jurisdiction because they can only try the cases provided by

⁵⁵ 2012 Data from the Supreme Court Statistical Reports Division. MeTCs are found in each metropolitan area established by law. MTCCs are found in each city not located within a metropolitan area. Meanwhile, MTCs are found in other cities and municipalities. MCTCs are established in each circuit composed of such cities and municipalities as grouped by law.

statute.⁵⁶ From these inferior courts, the case may be appealed to the RTC in the exercise of its appellate jurisdiction.⁵⁹

RTCs are the second level courts: cases may also be filed with one of the 967⁶⁰ RTC branches found in the country's 13 judicial regions.⁶¹ Considered courts of general jurisdiction, RTCs also have original jurisdiction to issue writs of *certiorari*, *mandamus*, prohibition and injunction, which may be enforced within their respective territorial judicial regions.⁶³

From the RTC, a case may be appealed to the Court of Appeals (CA), the third-level court.⁶⁴ The CA is composed of a Presiding Justice and 68 Associate Justices who are each appointed by the President of the Philippines.⁶⁵ The CA is further divided into 23 Divisions having three members each.⁶⁶ Appeals to the CA may be taken either by ordinary appeal,⁶⁸ or by petition for review.⁶⁹ In hearing appealed cases, the CA may receive evidence and perform any and all acts necessary to resolve factual issues, including conducting new trials or further proceedings.⁷⁰

⁵⁶ An Act Reorganizing the Judiciary, Appropriating Funds Therefor and for Other Purposes, B.P. 129 (1980) (Phil.). Falling within the exclusive original jurisdiction of these courts are, among others: (a) violations of city or municipal ordinances committed within their exclusive territorial jurisdiction, (b) offenses punishable by imprisonment not exceeding 6 years and 2 months, and (c) civil actions in which the demand does not exceed P100,000 (in provinces) or in Metro Manila, Php 200,000.00.

⁵⁹ RULES OF CIVIL PROCEDURE, BAR MATTER NO. 803, Rule 40, §1 (1997) (Phil.).

⁶⁰ 2012 Data from the Supreme Court Statistical Reports Division.

⁶¹ An Act to Amend Section Fourteen of Batas Pambansa Bilang 129, Otherwise Known as the Judiciary Reorganization Act of 1989, REP. ACT. NO. 7154, (1991) (Phil.). Among the kinds of cases in which these second-level courts exercise exclusive original jurisdiction are: (a) civil actions in which the subject of the litigation is incapable of pecuniary estimation, (b) all civil cases not within the exclusive jurisdiction of any court, tribunal, person or body exercising jurisdiction or any court, tribunal, person or body exercising judicial or quasi-judicial functions, (c) all other civil cases in which the demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs or the value of the property in controversy exceeds P100,000.00 (provinces) or Php 200,000.00 (in Metro Manila), and (d) all criminal cases not within the exclusive jurisdiction of any court, tribunal or body, except those now falling under the exclusive and concurrent jurisdiction of the Sandiganbayan.

⁶³ B.P. 129, §21(1).

⁶⁴ RULES OF CIVIL PROCEDURE, Rule 41, §1.

⁶⁵ An Act Creating Additional Divisions in the Court of Appeals, Increasing the Number of Court of Appeals Justices from Fifty-One (51) to Sixty-Nine (69), Amending for the Purpose Batas Pambansa Bilang 129, As Amended, Otherwise Known as the Judiciary Reorganization Act of 1980, Appropriating Funds Therefor, and for Other Purposes, REP. ACT. NO. 8246, §1 (1996)(Phils).

⁶⁶ REP. ACT. NO. 8246, §2. These Divisions are spread out over the country: The 1st to the 17th Divisions are found in Manila (Luzon), the 18th to the 20th are in Cebu City (Visayas), and the 21st to the 23rd Divisions are located in Cagayan de Oro City (Mindanao).

⁶⁸ RULES OF CIVIL PROCEDURE, Rule 41, §2(a) (where the appealed judgment was rendered by the RTC in the exercise of its original jurisdiction).

⁶⁹ RULES OF CIVIL PROCEDURE, Rule 41, §2(b) (where the appealed judgment was rendered by the RTC in the exercise of its appellate jurisdiction).

⁷⁰ B.P. 129, §9.

At the top of this hierarchy sits the Supreme Court, composed of a Chief Justice and fourteen Associate Justices. It may sit *en banc* or in its discretion, in division of three, five, or seven Members.⁷¹ The Constitution confers upon this “court of last resort” both original⁷² and appellate⁷³ jurisdiction, with its decisions in either case treated as binding law. Thus, a decision at the RTC level that is attended with “grave abuse of discretion amounting to lack or excess of jurisdiction” may be brought to the Supreme Court on *certiorari*.⁷⁴ Unlike the CA which may review questions of fact, the Supreme Court only reviews errors or questions of law when entertaining a petition for review on *certiorari* from the RTC.

Unlike most countries, the Constitution confers law making power upon the Supreme Court. Notably, the Supreme Court may “promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts.”⁷⁵ Should the Supreme Court exercise this rule-making power, the issuance must apply equally to all courts and being procedural, these rules cannot diminish, increase or modify substantive rights.⁷⁶ Only the Supreme Court can annul the validity of any of its Rules.⁷⁷

⁷¹ CONST. (1987), Art. VIII, §4(1) (Phil.).

⁷² CONST. (1987), Art. VIII, §5(1) (Phil.). – “...over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.”

⁷³ CONST. (1987), Art. VIII, §5(2) (Phil.). – “...Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

(a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

(b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.

(c) All cases in which the jurisdiction of any lower court is in issue.

(d) All criminal cases in which the penalty imposed is *reclusion perpetua* or higher.

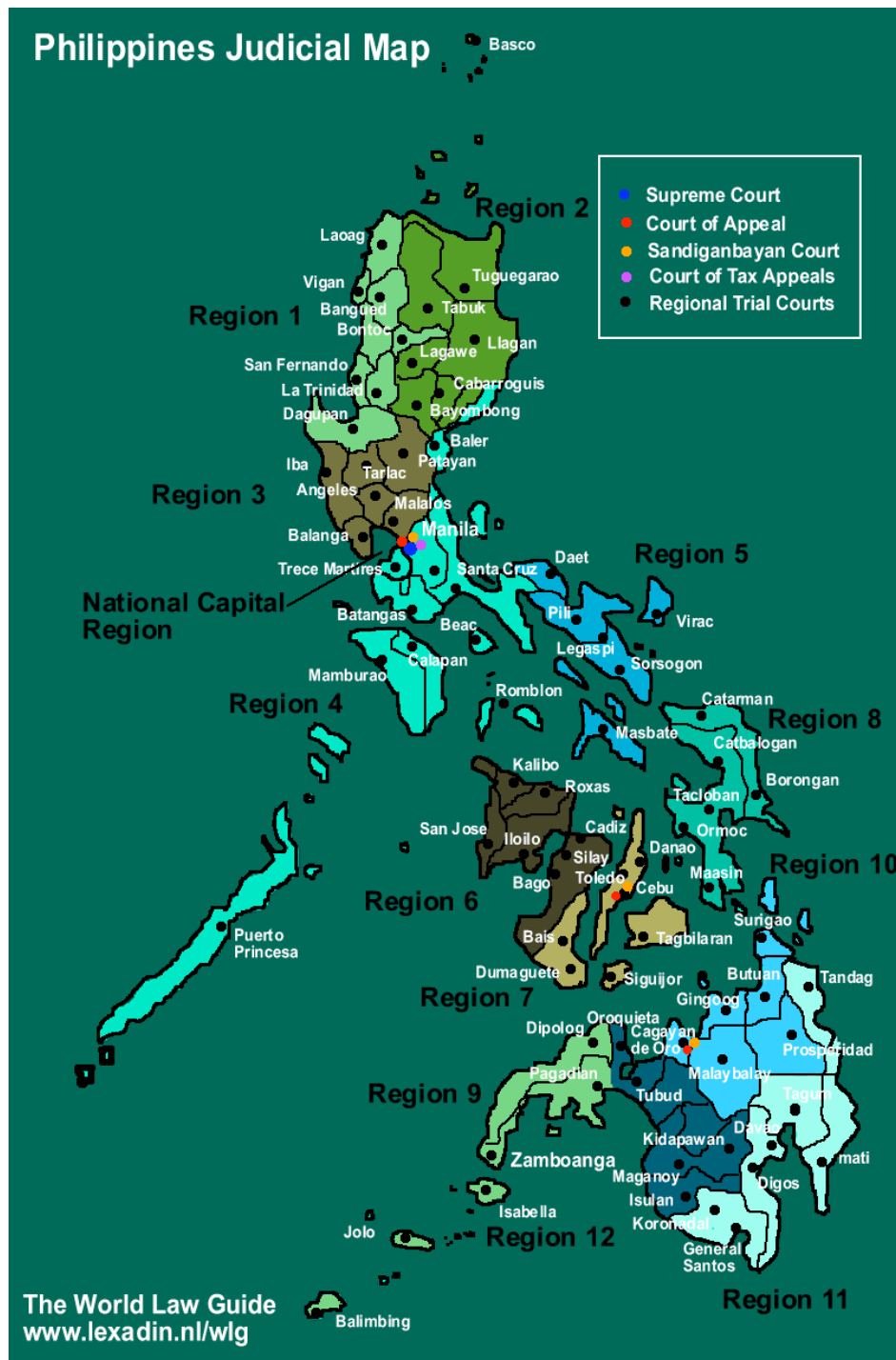
(e) All cases in which only an error or question of law is involved.”

⁷⁴ RULES OF CIVIL PROCEDURE, Rule 65, §1.

⁷⁵ CONST. (1987), Art. VIII, §5(5) (Phil.).

⁷⁶ CONST. (1987), Art. VIII, §5(5) (Phil.).

⁷⁷ CONST. (1987), Art. VIII, §5(5) (Phil.).



Source: The World Law Guide, available at <http://www.lexadin.nl/wlg/courts/nofr/oeur/lxctphi.htm>.

Barangay Justice System

Philippine Congress established the *barangay* justice system in the 1991 Local Government Code “as a means of easing up the congestion of cases in the

judicial courts.”⁷⁸ It involves an out-of court conciliation process at, the Philippines’ smallest political unit, the *barangay*-level. In each *barangay*, a *Lupon Tagapayapa (Lupon)* is appointed by the *punong barangay*⁷⁹ from a group of 10-20 *barangay* residents.⁸⁰ The *Lupon* has the authority to facilitate conciliation proceedings between parties residing in the same city or municipality where it has jurisdiction. Such “confrontation” between parties is a pre-requisite to filing in a court of law and cases that by-pass this are susceptible to dismissal at a later stage in the litigation process.⁸¹

However, in certain instances, confrontation before the *Lupon* is not required and the parties may proceed directly to the proper court.⁸² More often than not, environmental cases fall under these exceptions. Many are instituted against government agencies or are directed against public officers acting in their official capacity. Environmental suits between private parties often involve large sums of damages or other penalties that go beyond the jurisdictional limit of the *Lupon*, leading direct resort to court litigation.

The Road to the Bench

To be appointed as a member of the judiciary, a judge must first undergo a multi-stage selection process: i) application and screening, ii) nomination, iii) appointment.

If the judiciary has a vacancy, qualified individuals may submit their

⁷⁸ Aquino v. Aure, G.R. No. 153567 (February 18, 2008) (Phil.).

⁷⁹ An Act Providing for the Local Government Code of 1991, REP. ACT NO. 7160 (1991) (Phil.). According to §389(a), the *punong barangay* is “the chief executive of the the *barangay* government, shall exercise such powers and perform such duties and functions, as provided by this Code and other laws.”

⁸⁰ REP. ACT NO. 7160, §399.

⁸¹ RULES OF CIVIL PROCEDURE, Rule 16, §1(j).

⁸² REP. ACT NO. 7160, §408. The provision states: “*Subject Matter for Amicable Settlement; Exception Therein.* – The *lupon* of each *barangay* shall have authority to bring together the parties actually residing in the same city or municipality for amicable settlement of all disputes except:

- (a) Where one party is the government or any subdivision or instrumentality thereof;
- (b) Where one party is a public officer or employee, and the dispute relates to the performance of his official functions;
- (c) Offenses punishable by imprisonment exceeding one (1) year or a fine exceeding Five thousand pesos (P5,000.00);
- (d) Offenses where there is no private offended party;
- (e) Where the dispute involves real properties located in different cities or municipalities unless the parties thereto agree to submit their differences to amicable settlement by an appropriate *lupon*;
- (f) Disputes involving parties who actually reside in *barangays* of different cities or municipalities, except where such *barangay* units adjoin each other and the parties thereto agree to submit their differences to amicable settlement by an appropriate *lupon*;
- (g) Such other classes of disputes which the President may determine in the interest of justice or upon the recommendation of the Secretary of Justice.”

application⁸³ to the Judicial and Bar Council (JBC), which is the constitutional body tasked with recommending appointees to the various benches.⁸⁴ Upon receipt of the application, it screens the candidates based on the requirements laid down by the relevant laws.⁸⁵ These minimum qualification requirements for judges are shown in Table 1:

Table 1. Qualifications for Judges

Supreme Court⁸⁶	Court of Appeals⁸⁷	Regional Trial Court⁸⁸	Municipal/Metropolitan/Municipal Circuit Trial Court⁸⁹
Natural born citizen of the Philippines	Natural born citizen of the Philippines	Citizen of the Philippines	Citizen of the Philippines
At least 40 years old	At least 40 years old	At least 35 years old	At least 30 years old
Member of the Philippine Bar	Member of the Philippine Bar	Member of the Philippine Bar	Member of the Philippine Bar
Must have been, for 15 years or more, a judge of a lower court or engaged in the practice of law	Must have been, for 15 years or more, a judge of a lower court or engaged in the practice of law	Must have been, for 10 years or more, a judge of a lower court or engaged in the practice of law	Must have been, for 5 years or more, a judge of a lower court or engaged in the practice of law
Must be a person of proven competence, integrity, probity and independence	Must be a person of proven competence, integrity, probity and independence	Must be a person of proven competence, integrity, probity and independence	Must be a person of proven competence, integrity, probity and independence

Justices of the Supreme Court and the Court of Appeals, and all lower court judges are appointed by the President from a list of at least three nominees prepared by the JBC.⁹⁰ A duly appointed justice/judge's salary is fixed by law and cannot be diminished during his tenure.⁹¹ Once appointed, a judge remains in office until the mandatory retirement age of 70 years old, or sooner, if he becomes incapacitated for work.⁹² The Supreme Court, however, has the power to dismiss or discipline a judge of the lower court at any time if the former

⁸³ See <http://jbc.judiciary.gov.ph/guidelines.php> (Judicial and Bar Council -- Guidelines for Application)

⁸⁴ CONST. (1987), Art. VII, §8(5) (Phil.); The JBC exists under the supervision of the Supreme Court and is composed of the Chief Justice as *ex officio* Chairman, the Secretary of Justice, and a representative of the Congress as *ex officio* members, a representative of the Integrated Bar, a professor of law, a retired Member of the SUPREME COURT, and a representative of the private sector.

⁸⁵ See *generally* CONST. (1987), Art. VII (Phil.); B.P. No. 129; and the Rules of the Judicial and Bar Council of November 2000 (JBC – 009).

⁸⁶ CONST. (1987), Art. VIII, §7 (1) and (3) (Phil.).

⁸⁷ B.P. No. 129, §7.

⁸⁸ B.P. No. 129, §15.

⁸⁹ B.P. No. 129, §26.

⁹⁰ CONST. (1987), Art. VIII, §9 (Phil.).

⁹¹ CONST. (1987), Art. VIII, §10 (Phil.); See R.A. 6758 & R.A. 9227.

⁹² CONST. (1987), Art. VIII, §11 (Phil.).

commits an act deemed deserving of such punishment.⁹³

Judicial Integrity and Transparency

Integrity and transparency in judicial institutions is vital to attain effective environmental adjudication, as “[m]any of the common environmental problems involve the lack of integrity, namely the presence of corruption or crimes such as illegal logging, illegal, mining, and illegal fishing, that go unenforced for a range of reasons, including bribes.”¹⁰⁰

On its own, the Philippine judiciary appears to be aware of the overall need to assess and address areas to strengthen its credibility, and promote integrity and transparency within the institution. Historically, the Supreme Court already instituted numerous judicial reforms: an initial phase after the 1986 February revolution which established the basis for a sound Constitutional system and restored the independence of the judiciary;¹⁰¹ a second phase in the 1990s which strengthened human and institutional capabilities;¹⁰² and a third phase with the adoption of the Action Program for Judicial Reform (APJR), a multi-year program which “identified, prioritized and implemented judicial reforms.”¹⁰³ The APJR apparently improved the Supreme Court’s credibility¹⁰⁴ and succeeding chief justices also adopted and instituted reform agenda which continued the reforms initiated by the APJR.

In 2008, under the auspices of the APJR and through the initiative of former Chief Justice Reynato S. Puno, the Supreme Court launched the *Strengthening the Integrity of Judiciary (SIJ) Project*. The SIJ was an offshoot of the earlier *Integrity Development Review (IDR) for the Judiciary*, “an initiative of the Court to eliminate opportunities for corruption within the administrative aspect of the Judiciary by systematically examining its integrity measures identifying institutional weaknesses that impinge on the overall performance of the judicial branch, and assessing the functions of the courts in terms of their vulnerability to corruption.”¹⁰⁵ The Supreme Court evaluated the SIJ as having achieved its goals via (a) a communication strategy to generate support for the initiative; (b) the dissemination of a report on the results of the performance and integrity review survey; (c) the development of performance and integrity enhancement measures; (d) performance of the performance and integrity enhancement measures through trainings, workshops, and consensus building; (e) maintaining a strategy for sustaining initiatives and gains; and (f) the production of

⁹³ *Id.*

¹⁰⁰ K. Mulqueeny and S. Bonifacio, *ASEAN Chief Justices’ Roundtable on Environment: Towards a Vision on Environment for the Judiciary in Southeast Asia*, *supra* note ____.

¹⁰¹ ADB. 2008. *Report and Recommendation of the President to the Board of Directors: Proposed Program Cluster, Loan for Subprogram 1, and Technical Assistance Grant Republic of the Philippines: Governance in Justice Sector Reform Program*. Manila.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Supreme Court of the Philippines Annual Report (2008), at p. 6.

guidebooks for the conduct of integrity and performance review in lower courts.¹⁰⁶

To support this, ADB provided a \$300 million loan to assist in improving governance in the justice sector. The *Governance in Justice Sector Reform Program* (GJRP) aimed to: (i) increase resources available to the justice sector to levels that would reasonably enable the efficient delivery of justice services; (ii) support Government efforts to strengthen the rule of law in the Philippines by enhancing the efficiency and integrity of justice sector agencies; (iii) improve access to justice by poor and vulnerable groups with specific focus on gender-based discriminatory practices and gaps; and (iv) improve investor confidence and public trust in justice sector agencies.¹⁰⁷

The above initiatives may have generated a slight improvement in the public's perception with respect to judicial integrity and transparency in the Philippines. In 2009, a study reported that the Philippine Judiciary was perceived to be the least corrupt branch of government.¹¹⁶ In addition, according to Transparency International's (TI) 2010-2011 Global Corruption Barometer,¹¹⁷ only 7% of those surveyed believed that the judiciary was susceptible to bribery and other forms of corruption. This was quite low when compared to the perceptions of the corruptibility of other public officers/civil servants (35%) and the legislature (26%).¹¹⁸ According to the Global Corruption Barometer, the judiciary scored 3.1 out of 5¹¹⁹ on perception of corruption with political parties and the police being perceived to be the most corrupt (3.6 out of 5).¹²⁰

Despite reforms, current public perception and actual case data reveal that the quality of the rule of law and administration of justice requires much improvement.¹²⁵ In the 2012-2013 Global Competitiveness Report of the World Economic Forum, the Philippines currently ranked 99 out of 144 countries surveyed for judicial independence,¹²⁷ which, while considered to be one of the most improved,¹²⁸ is still low compared to neighboring countries in Southeast Asia.¹²⁹ In fact, latest figures from the Supreme Court show that a total of 388

¹⁰⁶ *Id.*

¹⁰⁷ ADB, *Technical Assistance Grant Republic of the Philippines: Governance in Justice Sector Reform Program*. *supra* note ____.

¹¹⁶ Erika Dy. "Judiciary Least Affected by Corruption" <http://sc.judiciary.gov.ph/news/courtnews%20flash/2009/06/06100903.php>.

¹¹⁷ Transparency International, Global Corruption Barometer 2010-2011, available at <http://gcb.transparency.org/gcb201011/results/>.

¹¹⁸ *Id.*

¹¹⁹ Transparency International, Global Corruption Barometer 2010-2011, *supra* note ____.

¹²⁰ *Id.*

¹²⁵ ADB, *Technical Assistance Grant Republic of the Philippines: Governance in Justice Sector Reform Program*. *supra* note ____.

¹²⁷ World Economic Forum, *The Global Competitiveness Report 2012-2013*, available at http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2012-13.pdf.

¹²⁸ *Id.*

¹²⁹ *Id.* According to the WEF Global Competitiveness Report, the Philippines ranked below Singapore (20th); Brunei (33rd); Malaysia (43rd); Thailand (59th); Indonesia (76th); and Cambodia (91st).

administrative complaints (15 against appellate court justices, 257 against regional trial court judges, and 116 against first level court judges) were filed in the Supreme Court for disciplinary action.¹³⁰ The high incidence in the filing of administrative disciplinary cases indicates that the Philippine judiciary is not immune from the public perception of lacking integrity, independence and credibility.

PART II

The Evolution of Environmental Jurisprudence in the Philippines¹³¹

Emergent Judicial Environmental Awareness: Forestry Cases

In 1968, the Supreme Court decided the case of *Director of Forestry, et al. v. Muñoz, et al.*,¹⁴⁰ one of the earliest environment cases during the height of commercial logging operations in the country.¹⁴¹ In acknowledging that “forests constitute a vital segment of any country’s natural resources”¹⁴² and that denudation would result in “ill effects”¹⁴³ for the environment, the Supreme Court cancelled a private corporation’s Certificate of Private Woodland Ownership (the “Certificate”) which served as its authority to conduct logging operations over land it claimed ownership of.

The Pinagcamaligan Indo Agro Development Corporation, Inc. (PIADECO) claimed ownership of 7,000 hectares of forest land in Bulacan and Rizal, provinces adjacent to Metro Manila. Upon registration of its title and formalization of its claim with the Bureau of Forestry, (BOF), the BOF granted the Certificate covering only 4,400 hectares of the property and excluding certain areas like the Angat and Marikina Watershed Reservations¹⁴⁴ which were covered by the title. The Director of Forestry ordered the cancellation of PIADCO’s Certificate in 1968, on the ground that it felled logs from the Angat and Marikina Watershed areas, which was expressly excluded from the Certificate. The BOF also ordered seizure of the illegally felled logs. PIADCO brought legal action and alleged that the BOF and Acting Director’s actions as “precipitate, arbitrary, whimsical and capricious.”¹⁴⁵

The Supreme Court, however, ruled the Director correct in cancelling

¹³⁰ Supreme Court of the Philippines Annual Report (2011), at pp. 91-92.

¹³¹ This Part is a survey of environmental cases decided in the Philippines, and traces the evolution of environmental adjudication. All the cases discussed are limited to Supreme Court cases since in the Philippines; almost all cases are appealed to the highest court of the land for finality, and these decisions shape environmental law by express provision of Article 8 of the Civil Code of the Philippines, which states that “[j]udicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.”

¹⁴⁰ G.R. No. L-24796, June 28, 1968 (Phil.).

¹⁴¹ A. La Vina, 2008. *The Future of Environmental Law and Governance*. Speech given for the 5th Metrobank Foundation Professorial Chair Lecture. Manila. 3 October 2008. ,

¹⁴² *Director of Forestry, et al. v. Muñoz, et al.*, G.R. No. L-24796, at p. 1214.

¹⁴³ *Id.*

¹⁴⁴ This property, in 2009, was one of the hardest-hit areas affected by Typhoon Ondoy.

¹⁴⁵ *Director of Forestry, et al. v. Muñoz, et al.*, G.R. No. L-24796, at p. 1188.

PIADECO's certificate because PIADECO had its terms violated namely, the prohibition against cutting of trees in a protected watershed area. The Director was also correct in seizing the illegally cut logs in accordance with a Bureau of Internal Revenue (BIR) Circular and a directive from the Office of the President. Because of the importance of forests to the nation, the Court invoked the police power of the State (to restrain or regulate the use of liberty and property to promote public welfare), to regulate the use and occupancy of forests and forest reserves, stating: "the right of the individual is necessarily subject to reasonable restraint by general law for the common good [and the] liberty of the citizen may be restrained in the interest of public health, or of the public order and safety."¹⁴⁶

Thus, the Supreme Court determined that protection of the environment was integral to the general welfare, so justifying the government's seizure. At the height of logging operations in the country, the Supreme Court in *Muñoz* showed prescience that forest resources were not inexhaustible and restrained the abuse of a privilege even if the respondent claimed private ownership of the land.

It was another 15 years before the Court had the opportunity to consider the importance of forest resources. In the 1983 case of *Tan v. Director of Forestry*,¹⁴⁷ the Court recognized the importance of forest resources and its exhaustibility, which involved 6,240 hectares of public forest land located within the former US Naval Reservation which was turned over by the United States Government to the Philippine Government.¹⁴⁸ In this case, the Acting Director of the Bureau of Forestry awarded the plaintiff a logging concession in the area.¹⁴⁹ However, before the license could be granted, it was decreed that all new and renewals of timber licenses would have to be signed by the DENR Director, until further notice.¹⁵⁰ The new DENR Director then revoked the timber license previously issued to the plaintiff, on the ground that it was issued without authority, and was therefore void.¹⁵¹

Subsequently, then President Diosdado Macapagal, through Executive Proclamation No. 238, declared the area covered by the concession award as the Olongapo Watershed Forest Reserve.¹⁵² On plaintiff's appeal, the Supreme Court explicitly recognized that the public interest trumped the private concerns of the timber concession awardee, where continued logging would result in irreversible harm. The Supreme Court said that:

It is of public knowledge that watersheds serve (sic) as a defense against soil erosion and guarantees the steady supply of water. As a matter of general policy, the Philippine Constitution expressly mandated the conservation and proper utilization of natural resources, which includes the country's watershed. Watersheds in

¹⁴⁶ *Id.* at p. 1214.

¹⁴⁷ *Tan v. Director of Forestry*, G.R. No. L-24548, October 27, 1983 (Phil.).

¹⁴⁸ *Id.* at p. 307.

¹⁴⁹ *See id.* at p. 310.

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at p. 311.

¹⁵² *Id.* at p. 318.

*the Philippines had been subjected to rampant abusive treatment due to various unscientific and destructive land use practices. Once lush watersheds were wantonly deforested due to uncontrolled timber cutting by licensed concessionaries and illegal loggers.*¹⁵³

On the merits, the case showed that the plaintiff indeed failed to obtain a valid timber license, as the Acting Director of Forestry signed the plaintiff's license on the same day that the new DENR Director promulgated the new rules on license issuance. Thus, it was no stretch for the Supreme Court to rule that the plaintiff never acquired the right to log. However, for purposes of environmental adjudication, the decision in *Tan* is historically significant because it demonstrated the Supreme Court's capacity to resolve doubts in favor of the environment.

Another seven years passed before the issue of forest resources would come before the Supreme Court. In the 1990 case of *Ysmael v. the Deputy Executive Secretary, the Secretary of Environment and Natural Resources, the Director of the Bureau of Forest Development, and Twin Peaks Development and Realty Corporation*,¹⁵⁴ the Supreme Court resolved whether the former holder of a Timber License Agreement (TLA) who lost the license due to a national government-declared log ban, should be re-awarded its TLA given that the TLA was subsequently awarded to another corporation after the log ban was lifted.¹⁵⁶ Although the Supreme Court ruled that petitioner was not entitled to be re-awarded the TLA and it made a pronouncement regarding the state of the country's forest resources, the government did lift the total log ban in the area and two other corporations continued the logging operations of petitioner.

Similar to the decision in *Tan*, *Ysmael* demonstrated the ability of the judiciary to decide a dispute in favor of the environment. In resolving this case, the Supreme Court took judicial notice of the "profligate waste of the country's forest resources"¹⁵⁷ which had resulted in the "irreversible loss of flora and fauna peculiar to the region, as well as caused disastrous and lasting economic and social effects."¹⁵⁸ The Supreme Court specifically called attention to the endangerment of the "delicate balance of nature as the root cause of floods, droughts, and the depletion of food and energy resources."¹⁵⁹ According to the Supreme Court:

While there is a desire to harness natural resources to amass profit and to meet the country's immediate financial requirements, the more essential need to ensure future generations of Filipinos of their survival in a viable environment demands effective and circumspect action from the government to

¹⁵³ *Tan v. Director of Forestry*, G.R. No. L-24548, at p. 318.

¹⁵⁴ G.R. No. 79538, October 18, 1990 (Phil.).

¹⁵⁶ *See id.* at p. 681.

¹⁵⁷ *Id.* at p. 683.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

*check further denudation of whatever remains of the forest lands. Nothing less is expected of the government, in view of the clear constitutional command to maintain a balanced and healthful ecology.*¹⁶⁰

It bears to mind, however, that while these cases reflect environmental awareness in the Supreme Court for a relevant period, there is no real trend or affirmative progression in environmental jurisprudence in the coming years. What these forestry cases highlight, however, is that environmental issues did reach the courts; with deforestation and illegal logging as the most pressing environmental challenges at that time. With its inherent power to resolve disputes of paramount importance, the three decisions discussed above show that the judiciary can respond to address environmental challenges.

The concern over deforestation precipitated the filing of the most celebrated case into Philippine environmental law, *Oposa v. Factoran*.¹⁶¹ The decision in *Oposa* appears to have heightened the judiciary's environmental awareness as seen in the cases discussed below.

Heightened Environmental Awareness: The Narvasa Supreme Court (1 December 1991 - 30 November 1998)

Under the leadership of Chief Justice Andres Narvasa, the Supreme Court produced many sound cases decided in favor of environmental protection, among which include the landmark environmental case of *Oposa v. Factoran*.¹⁶² The suit sought to compel the Secretary of the DENR to cancel all timber license agreements in the country, as well as to stop the issuance of new ones. *Oposa* further asserted that uncontrolled deforestation would lead to grave and irreparable damage, not only to the complainant minors, but to future generations as well.

The *Oposa* case, through then Justice Hilario Davide, gave birth to two important legal concepts: 1) the doctrine of “*inter-generational responsibility*” as a viable cause of action in environment cases; and 2) the declaration of the self-executory nature of Article II, Section 16 of the Constitution. The Supreme Court held:

While the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation — aptly and fittingly stressed by the petitioners —

¹⁶⁰ *Id.*

¹⁶¹ See La Viña, The Future of Environmental Law and Governance, *supra* note ____.

¹⁶² G.R. No. 101083, July 30, 1993 (Phil.).

the advancement of which may even be said to predate all governments and constitutions... these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind. If they are now explicitly mentioned in the fundamental charter, it is because of the well-founded fear of its framers that unless the rights to a balanced and healthful ecology and to health are mandated as state policies by the Constitution itself, thereby highlighting their continuing importance and imposing upon the state a solemn obligation to preserve the first and protect and advance the second, the day would not be too far when all else would be lost not only for the present generation, but also for those to come — generations which stand to inherit nothing but parched earth incapable of sustaining life.

*The right to a balanced and healthful ecology carries with it the correlative duty to refrain from impairing the environment.*¹⁶³

While the decision generated a lot of praise and attention from international scholars, local lawyers have commented on the lack of practical effect of the *Oposa* on the environmental protection in the country.¹⁶⁴ They claim, first, it did not result in the cancellation of the Timber License Agreements (TLAs) sought by the petitioner.¹⁶⁵ Second, the celebrated use of inter-generational equity to allow standing is insignificant, since the Supreme Court has historically been lenient with regard to standing.¹⁶⁶ Third, there was no immediate and discernable impact on environmental policy, in both legislative and administrative departments.¹⁶⁷ Hence, green, lush forests promised by the decision in *Oposa* were more of an “illusion” than a practical contribution to environmental adjudication.

Despite the lack of a practical contribution, *Oposa* is important because it declared that the right to a balanced and healthful ecology is a directly actionable constitutional right that is superior to the Bill of Rights.¹⁶⁸ According to an eminent Philippine constitutionalist, state policies, such as the right to a balanced and healthful ecology, are mere policy declarations and require enabling legislation, as these are directives addressed to the executive and legislative branches of the government.¹⁶⁹ However, because of *Oposa*, citizens now have standing to sue for the enforcement of right to a balanced and

¹⁶³ *Id.* at pp. 804-805.

¹⁶⁴ See generally D. Gatmaytan-Magno, *The Illusion of Intergenerational Equity: Oposa v. Factoran as Pyrrhic Victory*, 15 Geo. Int'l Envtl. L. Rev. 457 (2002-2003); La Viña, *The Future of Environmental Law and Governance*, *supra* note ____.

¹⁶⁵ Gatmaytan-Magno, *The Illusion of Intergenerational Equity*, *supra* note ____ at p. 459.

¹⁶⁶ *Id.* at p. 460.

¹⁶⁷ Ma. S. Manguiat and P. Yu, *Maximizing the Value of Oposa v. Factoran*. 15 Geo. Int'l Envtl. L. Rev. 487, 488 (2002-2003).

¹⁶⁸ Gatmaytan-Magno, *The Illusion of Intergenerational Equity*, *supra* note ____ at p. 485. See also Ma. S. Manguiat, and P. Yu, *Maximizing the Value of Oposa v. Factoran*, *id.*

¹⁶⁹ J. BERNAS, 2 THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 2 (1988).

healthful ecology. Environmental advocates could invoke such right against the DENR Secretary who is mandated “to control and supervise the exploration, development, utilization, and conservation of the country’s natural resources.”¹⁷⁰

After *Oposa*, the Narvasa court affirmed the self-executing and directly actionable right to a balanced and healthful ecology in a number of cases.¹⁷³ *Tano v. Socrates*¹⁷⁵ was one of these cases. The local government of Puerto Princesa City in Palawan enacted an ordinance where all shipment of live fish and lobster outside of the City was banned for a period of five years. The ordinance also banned “the catching, gathering, possessing, buying, selling and shipment of live marine coral dwelling aquatic organisms.”¹⁷⁶ As a result, city officials conducted regular inspection of shipment cargoes containing the live fish and lobster. The petitioners in this case questioned the legality of the ordinance and its implementing regulations because these rules effectively deprived them of their livelihood as subsistence fishermen and restricted them from the practice of their trade. Specifically, the petitioners allege that the ordinance violated the constitutional provisions on national economy and patrimony¹⁷⁷ and social justice and human rights.¹⁷⁸

In upholding the validity of the ordinance, the Supreme Court explained that the constitutional provisions alleged to be violated stress the duty of the State to protect the nation’s marine wealth and do not primarily bestow any right to subsistence fishermen. They may be given priority in cooperative fish farming if the State allows such, through law. However, there was no breach of such preferential right given to them in the case at bar. Petitioners also failed to show that they were marginal or subsistence fishermen within the definition provided in the Local Government Code. Moreover, the preferential right of

¹⁷⁰ Gatmaytan-Magno, *The Illusion of Intergenerational Equity*, *supra* note __ at p. 481 (citing A. G.M. La Viña, *The Right to a Balanced and Healthful Ecology: The Odyssey of a Constitutional Policy*, 6 Phil. Nat. Res. L.J. 10 (1994)).

¹⁷³ See *Kilobayan v. Morato* (G.R. No. 118910, November 16, 1995 (Phil.)), which involved government permission for the establishment of an on-line lottery, and *Tanada v. Angara* (G.R. No. 118295, May 2, 1997 (Phil.)), which ruled on the constitutionality of Philippine membership in the World Trade Organization (WTO).

¹⁷⁵ G.R. No. 110249, August 21, 1997 (Phil.).

¹⁷⁶ *Id.* at p. 164.

¹⁷⁷ CONST. (1987), Art. XII, §2 (Phil.) – “... The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens. The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.”

¹⁷⁸ CONST. (1987), Art. XIII, §2 and §7 (Phil.) –

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

§7: “The State shall protect the rights of subsistence fishermen, especially of local communities, to the preferential use of the communal marine and fishing resources, both inland and offshore. It shall provide support to such fishermen through appropriate technology and research, adequate financial, production, and marketing assistance, and other services. The State shall also protect, develop, and conserve such resources. The protection shall extend to offshore fishing grounds of subsistence fishermen against foreign intrusion. Fishworkers shall receive a just share from their labor in the utilization of marine and fishing resources.”

subsistence or marginal fishermen to use marine resources is not absolute. The State owns all marine resources pursuant to the Regalian doctrine and their “exploration, development and utilization ... shall be under the full control and supervision of the State.”¹⁷⁹ The minutes of the Constitutional drafting show that the intent was to recognize marginal fishermen through a licensing process and their rights to fish are subject to laws and regulation that would be passed. The Court also emphasized that the “*ordinances in question are meant precisely to protect and conserve our marine resources to the end that their enjoyment by the people may be guaranteed not only for the present generation, but also for the generations to come.*”¹⁸⁰

More than the affirmation of *Oposa* however, *Tano* is interesting because of how the Supreme Court balanced two important values: (a) the right of subsistence fishermen in the utilization of the natural resources;¹⁸¹ and (b) the authority of the local government unit to protect marine resources.¹⁸² In *Tano*, the Supreme Court affirmed the important role of the local government in environmental protection. It commended the legislative bodies of the City of Puerto Princesa and the Province of Palawan for exercising the requisite political will to enact urgently needed legislation to protect and enhance the marine environment, thereby sharing in the Herculean task of arresting the tide of ecological destruction.¹⁸³ The Supreme Court also expressed the hope that other local government units would be roused from their lethargy and adopt a more vigilant stand in the battle against the decimation of Philippine fishery and aquatic resources, the legacy to future generations.¹⁸⁴

The Supreme Court also invoked the self-executing nature of the right to a balanced and healthful ecology to direct local government to immediately respond to an urgent environmental issue in the name of public interest. In the 1994 case of *Laguna Lake Development Authority (LLDA) v. Court of Appeals*,¹⁸⁵ the LLDA, after conducting investigation and extensive water sampling, issued a cease-and-desist order against the City Government of Caloocan upon discovery that the improperly disposed garbage in the open dumpsite of Camarin contaminated the nearby creeks and streams that merged into Laguna Lake.¹⁸⁶ For its main argument, the City Government of Caloocan questioned the power and authority of the LLDA to issue a cease-and-desist order within the City’s territorial jurisdiction. In resolving the issue, the Supreme Court articulated that while the LLDA was “not expressly conferred with the power to issue a cease-and-desist order,”¹⁸⁸ such power was necessarily implied to fulfill LLDA’s mandate as “a regulatory and quasi-judicial body with respect to pollution cases

¹⁷⁹ CONST. (1987), Art. XII, §2 (Phil.).

¹⁸⁰ *Tano v. Socrates*, G.R. No. 110249, at p. 177 (emphasis supplied).

¹⁸¹ *Id.* at p. 194 (J. Mendoza, concurring).

¹⁸² *See id.* at p. 189.

¹⁸³ *Id.*

¹⁸⁴ *Id.* at pp. 189-190.

¹⁸⁵ G.R. No. 110120, March 16, 1994 (Phil.).

¹⁸⁶ *Id.* at pp. 296-297.

¹⁸⁸ *Id.* at p. 306.

in the Laguna Lake region.”¹⁸⁹ The Supreme Court also drew a correlation between the right to a balanced and healthful ecology with another constitutional state policy: “to protect and promote the right to health of the people and instill health consciousness among them,”¹⁹⁰ and treated the cease-and-desist order as an immediate response to the demands of “the necessities of protecting vital public interests.”¹⁹¹ From the *LLDA* decision, it appears that environmental government agencies are empowered to issue urgent reliefs to meet the laudable objective of giving “vitality” to the constitutional right to environment.¹⁹²

In the 1996 case of *Mustang Lumber, Inc. v. Court of Appeals, et al.*,¹⁹³ the Supreme Court again took a liberal approach in favor of environmental protection in a forestry case. The case involved three consolidated petitions that assailed the legality of a warrantless administrative seizure conducted by the Special Actions and Investigation Division of the DENR over stockpiles of assorted lumber shipments.¹⁹⁴ The petitioner lumberyard corporation argued that the Revised Forestry Code only penalized the possession of illegal “timber”, and not “lumber” as a processed product.¹⁹⁵ In resolving the issue, the Supreme Court interpreted the term “timber” to include “lumber”, since the exclusion of the term “lumber” from the penal provisions of the Revised Forestry Code would defeat the very purpose of the law, which was “to minimize, if not halt, illegal logging that has denuded Philippine forests.”¹⁹⁶ The Supreme Court stated: “insofar as possession of timber without the required legal documents is concerned, Section 68 of [the Forestry Code] makes no distinction between raw or processed timber. Neither should we.”¹⁹⁷

In the 1997 case of *Paat, et al. v. Court of Appeals, et al.*,¹⁹⁸ the Supreme Court affirmed the authority of the DENR Secretary and his authorized representatives to forfeit and confiscate conveyances utilized in violating the Forestry Code or other forest laws, rules and regulations. In this case, private respondent Victoria de Guzman was the owner of the truck that was seized by the DENR because it was found to be carrying undocumented forest products.¹⁹⁹ She questioned the seizure and forfeiture and alleged that “the Secretary of DENR and his representatives have no authority to confiscate and forfeit conveyances utilized in transporting illegal forest products.”²⁰⁰ In deciding the case, the Supreme Court explained that the Forestry Code had been amended “because of the need to make forestry laws ‘more responsive to present

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at p. 307-308. See CONST. (1987), Art. II, §15 (Phil.).

¹⁹¹ *Id.* at p. 307.

¹⁹² See *Laguna Lake Development Authority (LLDA) v. Court of Appeals*, G.R. No. 110120, at p. 307.

¹⁹³ G.R. Nos. 104988, 106424 & 123784, June 18, 1996 (Phil.).

¹⁹⁴ See *id.* at pp. 434-435.

¹⁹⁵ See *id.* at p. 441.

¹⁹⁶ *Id.* at p. 442.

¹⁹⁷ *Id.* at p. 448-449.

¹⁹⁸ G.R. No. 111107, January 10, 1997 (Phil.).

¹⁹⁹ See *id.* at p. 173.

²⁰⁰ *Id.* at p. 175.

situations and realities' and in view of the 'urgency to conserve the remaining resources of the country,' [m]ore than anything else, it is intended to supplant the inadequacies that characterize enforcement of forestry laws through criminal actions."²⁰¹ Thus, the Supreme Court recognized that the DENR must necessarily be empowered to fulfill its mandate in conserving the remaining forestry resources in the country.²⁰²

While not absolute, the foregoing cases decided during this period seem to demonstrate a positive trend towards a judicial appreciation for the value of environment as a vital public interest in the Philippines. Perhaps coming from the "landmark" decision in *Oposa*, the Supreme Court, within this period, followed suit in its recognition of the roles played by different environmental government agencies in fulfilling their mandates to protect the environment in the name of the constitutional right to a balanced and healthful ecology.

The Davide Supreme Court (1 December 1998 - 20 December 2005)

In 1998, President Joseph Estrada appointed the *ponente* of the *Oposa* case, Justice Hilario Davide, as the 20th Chief Justice of the Philippine Supreme Court. While the decision in *Oposa* celebrated judicial environmental activism and incorporated the self-executing nature of the right to a balanced ecology and environment in Philippine law, the cases decided during the tenure of Chief Justice Davide seems to have painted a different picture. In key environmental cases decided during this period, the Supreme Court consistently deferred its decisions involving environmental matters to administrative agencies, primarily on the ground of strict interpretation of environmental laws, and the application of the rule of exhaustion of administrative remedies, where administrative agencies possessed scientific and technical expertise to handle the environmental disputes (for example, the Pollution Adjudication Board for pollution cases).

In *Bangus Fry Fisherfolk Diwata Magbuhos, et al. v. Lanzanas*,²⁰⁵ the Supreme Court upheld the validity of the environmental clearance certificate (ECC) issued for the construction of a temporary mooring facility in Minolo Cove, Puerto Galera, Oriental Mindoro. The mooring facility would serve as the temporary docking site of National Power Corporation's power barge which provides the main source of power for the entire province of Calapan, Mindoro. The power barge had to be transferred due to turbulent waters around its docking site in Calapan, Mindoro. The petitioners questioned the validity of the issuance of the ECC, alleging that it was issued in violation of relevant provisions of Presidential Decree No. 1605, as amended, declaring areas around Medio Island (which includes Minolo Cove) as an "ecologically threatened zone" and the Local Government Code.²⁰⁶ Since the ECC issued was a patent illegality due to the

²⁰¹ *Id.* at 181.

²⁰² *Id.* at p. 177-178.

²⁰⁵ G.R. No. 131442, July 10, 2003 (Phil.).

²⁰⁶ *Id.* at p. 542.

violation of these laws and regulations, exhaustion of administrative remedies does not apply.

The Supreme Court, however, found that the issuance of the ECC was not a patent illegality. Thus, petitioners should have appealed the issuance of the ECC by the DENR Regional Executive Director to the DENR Secretary. Some commentators have opined that the Supreme Court too narrowly interpreted the laws alleged to have been violated.²⁰⁷ Instead of ruling on whether Minolo Cove was included as one of the protected coves on Medio Island and thus, an ecologically threatened zone where no structures may be built, the Supreme Court ruled that it was a question fact that should have been raised with the DENR Secretary. Moreover, it construed the decree as only prohibiting the construction of commercial structures which the mooring facility was not. The relevant part of the decree states:

*Section 1. Any provision of law to the contrary notwithstanding, the construction of marinas, hotels, restaurants, other commercial structures; commercial or semi-commercial wharfs [sic]; commercial docking within the enclosed coves of Puerto Galera; the destruction of its mangrove stands; the devastation of its corals and coastline by large barges, motorboats, tugboat propellers, and any form of destruction by other human activities are hereby prohibited.*²⁰⁸

The apparent intent of the decree was to prevent “the destruction of its mangrove stands; the devastation of its corals and coastline by large barges, motorboats, tugboat propellers, and any form of destruction by other human activities.”²⁰⁹ Thus, there was no reason for the Supreme Court to limit the application of the decree to commercial structures. However, despite the existence of the municipal ordinance declaring Minolo cove as an eco-tourist zone because it was a mangrove area and breeding ground for bangus fry, the Supreme Court gave more value to the fact that the mooring facility will “serve a basic need of the people of Oriental Mindoro.”²¹⁰

The Supreme Court also ruled that it was unnecessary for NAPOCOR to obtain the prior approval of the local legislative body, since the construction of the mooring facility was not an environmentally crucial project needing prior approval. Thus, Sections 26 and 27 of the Local Government Code requiring periodic public consultations did not apply. Again, the Supreme Court construed these two provisions narrowly. Section 27 provides for periodic consultations with the local government unit, *regardless of the nature of the project.*²¹¹ A

²⁰⁷See D. Gatmaytan-Magno, *Artificial Judicial Environmental Activism: Oposa v. Factoran as Abberation*, 17 Ind. Int'l. & Comp. L. Rev. 1, 19 (2007); E. Ristroph, *The Role of Philippine Courts in Establishing Environmental Rule of Law* (2012), available at http://works.bepress.com/elizabeth_ristroph/3.

²⁰⁸ Presidential Decree No. 1605, as amended, §1.

²⁰⁹ *Bangus Fry Fishersfolk Diwata Magbuhos, et al. v. Lanzanas*, G.R. No. 131442, at p. 542.

²¹⁰ *Id.* at p. 543.

²¹¹ Emphasis supplied.

commentator explains that Section 27 of the Local Government Code “directs national agencies to conduct periodic consultations with local government units, nongovernmental and people’s organizations, and other concerned sectors of the community before any project or program is implemented in their jurisdiction.”²¹² Since NAPOCOR is a government agency, it had the duty to conduct consultation with the local government, and concerned sectors to check the cost and benefit of an upcoming project to the public. However, in this case, the Supreme Court reasoned that “what is before this Court is only the construction of the mooring facility, not the operation of the power barge.”²¹³ Thus, it held that the issuance of the ECC did not violate Sections 26 and 27 of the Local Government Code.

The second case involved in this trend is *Estrada v. Court of Appeals*.²¹⁵ In this case, concerned citizens filed a complaint for injunction and damages against Bacnotan Cement Corporation and a number of government agencies. The petitioners alleged that the company’s cement plant was a nuisance that “causes pollution, endangers health, life and liberty of the residents and deprives them of the full enjoyment of their properties.”²¹⁶ However, the Supreme Court dismissed the case for the petitioners’ failure to exhaust administrative remedies, ruling that they should have first sought relief from the DENR before taking the case to the regular courts.

In dismissing the petitioners’ argument that the DENR did not have the authority to issue a preliminary injunction against the respondent, the Supreme Court discussed the powers of DENR. The Supreme Court affirmed the power to issue a cease-and-desist order upon *prima facie* showing that (i) the discharged sewage and waste are of immediate threat to life, public health, safety or welfare, or to animal or plant life; or (ii) exceed the allowable standards set by the commission. The Supreme Court further explained that because of the re-organization of DENR, the task of determining whether there is a pollution of the environment is now lodged with the Pollution and Adjudication Board, thereby establishing that the PAB has the power to issue cease-and-desist orders.

In each of the two cases of *Bangus Fry Fisherfolk* and *Estrada*, the Court refused to grant the relief asked for by the petitioners, on the ground that they should have sought such reliefs primarily from the DENR. It would seem that the Supreme Court emphasized the role and authority of DENR in resolving all environmental matters within its technical expertise and competence.

However, from the point of view of one commentator, this deference of judgment from the Supreme Court to the executive branch – despite a clear case calling for environmental adjudication -- is “disappointing ... when juxtaposed with the constitutionally-protected right to a balanced and healthful ecology”

²¹² D. Gatmaytan-Magno, *Artificial Judicial Environmental Activism*, *supra* note ___, at pp. 19-20.

²¹³ *Bangus Fry Fisherfolk Diwata Magbuhos, et al. v. Lanzanas*, G.R. No. 131442, at p. 545.

²¹⁵ *Alfredo Estrada v. Court of Appeals*, G.R. No. 137862, November 11, 2004 (Phil.).

²¹⁶ *Id.* at p. 119.

and the general sentiment of the ruling in *Oposa*.²¹⁷ In some way, the Supreme Court has “veered away from environmental issues and has relegated environmental law to the sidelines.”²¹⁸

In two more cases, *Republic of the Philippines, et al. v. City of Davao*,²¹⁹ and *Otadan, et al. v. Rio Tuba Nickel Mining Corporation*,²²⁰ the Supreme Court continued to put primacy on strict interpretation of laws as a key factor in resolving environmental disputes.

In *Republic*, the City of Davao filed an application for a Certificate of Non-Coverage (CNC) for its proposed project, the Davao City Artica Sports Dome, with the regional Environmental Management Bureau (EMB). The EMB denied the application after finding that the proposed project was within an environmentally critical area. The EMB also ruled that pursuant to environmental law regulations,²²¹ the City of Davao must proceed with the environmental impact assessment (EIA) process to secure an Environmental Compliance Certificate (ECC), before it could proceed with the construction of its project. Believing that it was entitled to a CNC, the City of Davao filed a petition for *mandamus* and an injunction with the trial courts, alleging that its proposed project was neither an environmentally critical project nor within an environmentally critical area; thus it was outside the scope of the EIA system.²²² Hence, it was the ministerial duty of the Department of Environment and Natural Resources (DENR), through the regional EMB, to issue a CNC in favor of respondent upon submission of the required documents.²²³

The trial court granted the petition, reasoning that there was nothing in the regulations that require local government units, such as the City of Davao, to comply with the EIA laws.²²⁴ Further, the trial court declared that based on the certifications of the relevant government agencies, the site for the Artica Sports Dome was not within an environmentally critical area, consequently rendering the project not an environmentally critical one. It therefore became mandatory for the DENR, through the EMB Region XI, to approve the respondent’s application for CNC after it had satisfied all the requirements for its issuance.

On appeal, the Supreme Court ruled that as a body politic endowed with governmental functions, a local government unit has the duty to ensure the quality of the environment, which is the very same objective of the EIA laws.²²⁵ Further, since local governments are considered juridical persons by nature,

²¹⁷ D. Gatmaytan-Magno, *Artificial Judicial Environmental Activism*, *supra* note ___, at p. 26.

²¹⁸ *Id.*

²¹⁹ G.R. No. 148622, September 12, 2002 (Phil.).

²²⁰ G.R. No. 161436, June 23, 2004 (Phil.).

²²¹ Section 2, Presidential Decree No. 1586, otherwise known as the Environmental Impact Statement System, in relation to Section 4 of Presidential Decree No. 1151, also known as the Philippine Environment Policy,

²²² *Republic of the Philippines, et al. v. City of Davao*, G.R. No. 148622, at pp. 692-693.

²²³ *Id.* at p. 693.

²²⁴ *Id.*

²²⁵ *Id.* at p. 694.

they are not exempt from securing an ECC prior to undertaking or operating an environmentally critical project or area.²²⁶ Despite this view, the Supreme Court excluded the project from the coverage of the EIA laws. After an enumeration of the environmentally critical areas prescribed by the regulations, the Supreme Court came to the conclusion that “[t]he Artica Sports Dome in Langub does not come close to any of the projects or areas enumerated above. Neither is it analogous to any of them. It is clear, therefore, that the said project is not classified as environmentally critical, or within an environmentally critical area.”²²⁷

The above conclusion of the Supreme Court is seen as antithetical to the supposed inclination towards the protection of environmental rights post-*Oposa*. In making a case out of what should really be considered as an environmentally critical project, a commentator observes:

*A sad reality in the Philippines is there are a limited number of environmentally critical projects and areas identified under Proclamation No. 2146. That list, completed more than two decades ago, has scarcely been updated. In the meantime, the evolution of new technology may make other activities more environmentally critical. Seemingly harmless activities may pose greater threats to the environment and the population because of climate and geographical changes.*²²⁸

The Supreme Court’s strict interpretation of laws at the expense of the environment would continue in the case of *Otadan*. The central issue in this case is the issuance of an ECC to Rio Tuba Nickel Mining Corporation for the operation of a hydrometallurgical plant. While the petitioners questioned the power of the Secretary of the DENR to issue the ECC, the Supreme Court, in a minute resolution, dismissed the petition due to the petitioners’ failure to perfect the appeal on time, a procedural technicality. Considering that tardiness in filing appeals is not an absolute bar for judicial review and the potential environmental impact of the operation of the hydrometallurgical plant, the Supreme Court may have exercised its inherent power to relax the rules of procedure so as not to frustrate the substantive right to a healthy environment.

However, in the 2005 case of *Province of Rizal v. Executive Secretary of Environment & Natural Resources*,²³² the Supreme Court stepped in and chastised the DENR for failing to perform its duty in protecting the environment. As owner of a portion of the Marikina Watershed Reservation, the DENR entered into a Memorandum of Agreement with the DPWH and MMC which allowed the utilization of a portion of the watershed as a sanitary landfill site. Since 1998, the landfill had affected water sources and caused adverse health effects to the residents of the area.

²²⁶ *Id.* at p. 696.

²²⁷ *Id.* at pp. 701-702.

²²⁸ D. Gatmaytan-Magno, *Artificial Judicial Environmental Activism*, *supra* note ___, at p. 16.

²³² G.R. No. 129546 (Dec. 13, 2005) (Phil.).

In issuing a temporary restraining order and eventually a permanent closure order against the San Mateo Landfill in 2005, the Supreme Court ruled that DENR's action in allowing the operation of the dump site "def[ies] all logic."²³³ The Supreme Court reminded DENR that in carrying out its mandate of "controlling and supervising the exploration, development, utilization, and conservation of the country's national resources, it is still subject to law and higher authority."²³⁴

The Panganiban Court (20 December 2005 - 7 December 2006)

Chief Justice Hilario Davide retired in December 2005, and upon his retirement, Chief Justice Artemio Panganiban was appointed to office. During his brief tenure as chief justice, the Supreme Court decided key cases involving the exploration of natural resources.

In *Henares et al. v. Land Transportation and Franchising Regulatory Board and the Department of Transportation and Communications*,²³⁵ the petitioners filed a case before the Supreme Court to grant a writ of *mandamus* commanding the Land Transportation Franchising and Regulatory Board (LTFRB) and the Department of Transportation and Communications (DOTC) to require public utility vehicles (PUVs) to use compressed natural gas (CNG) as an alternative fuel. To support his claim, petitioner Henares cited the constitutional provision on the right to a balanced and healthful ecology, and the offshoot right to breathe clean air in a healthy environment under Section 4 of the Clean Air Act as legal basis.

The Supreme Court denied the remedy because "*mandamus* is available only to compel the doing of an act specifically enjoined by law as a duty." Respondents LTFRB and the DOTC are not required by any law "to order owners of motor vehicles to use CNG,"²³⁶ and it was for "the legislature to "provide first the specific statutory remedy to the complex environmental problems" raised.²³⁷ The decision in *Henares* qualified the self-executing nature of the right to environment in *Oposa*: invoking the right is not enough, as litigants must anchor their claim on a specific law which spells out the relief they are seeking.²³⁹ Thus, the message to environmental activists appears to be that "the route to a balanced and healthful environment is through the enactment of laws" and the campaign must be brought to political branches of the government and not the courts.²⁴⁰

²³³ *Id.* at p. 459.

²³⁴ *Id.* at p. 463.

²³⁵ G.R. No. 158290 (October 23, 2006).

²³⁶ *Id.* at p. 117.

²³⁷ *Id.* at pp. 118-119.

²³⁹ See D. Gatmaytan-Magno, *Judicial Restraint and the Enforcement of Environmental Rights in the Philippines*, 12 Or. Rev. Int'l L. 1, 10 (2010).

²⁴⁰ *Id.*

The Supreme Court decided two other significant environmental cases during Chief Justice Panganiban's tenure. In *Alvarez v. PICOP Resources, Inc.*,²⁴¹ the Supreme Court held that the issuance of a timber license agreement (TLA) does not rob indigenous cultural communities or peoples of possession of the lands covered by the TLA. The Supreme Court ruled that "ancestral domains remain as such even when possession or occupation of the area has been interrupted by causes provided under the law such as voluntary dealings entered into by the government and private individuals/corporation."²⁴²

In *Dipidio Earth-Savers' Multi-Purpose Association et al. v. Gozun*,²⁴³ petitioners comprising an organization of farmers and indigenous peoples sought to annul a Financial and Technical Assistance Agreement (FTAA) between the Philippines and Climax-Arimco Mining Corporation, on the ground that the enabling law for the implementation of the FTAA, the Philippine Mining Act and its implementing regulations, are unconstitutional. In giving due course to the petition, the Supreme Court recognized the petitioners standing to sue, as "the transcendental importance of the issues raised and the magnitude of the public interest involved will have a bearing on the country's economy which is to a greater extent dependent upon the mining industry."²⁴⁴

While the Supreme Court upheld the validity of the mining laws and regulations in question, it nonetheless established that the State did not abdicate its primary responsibility to the full control and supervision of natural resources through the Philippine Mining Act and the Financial and Technical Assistance agreement it entered into with a mining corporation. The State is not a "passive regulator dependent on submitted plans and reports."²⁴⁵ The Supreme Court reiterated that:

*[t]he State definitely possesses the means by which it can have the ultimate word in the operation of the enterprise, set directions and objectives, and detect deviations and noncompliance by the contractor; likewise, it has the capability to enforce compliance and to impose sanctions, should the occasion therefore arise.*²⁴⁶

The two cases of *Alvarez* and *Dipidio* serve as a reminder by the Panganiban court that the State still owns and controls the exploration of natural resources (based on the Regalian doctrine) and the Supreme Court will step in to affirm such right.

The Puno Supreme Court (2006-2010)

²⁴¹ G.R. Nos. 162243, 164516 & 171875, November 29, 2006 (Phil.).

²⁴² *Id.* at p. 544.

²⁴³ G.R. No. 157882, March 30, 2006 (Phil.)

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.*

In the last quarter of 2006, President Gloria Macapagal-Arroyo appointed then Associate Justice Reynato Puno as the new Chief Justice. While only two notable environmental cases were decided, institutional changes adopted by Chief Justice Puno brought what perhaps is the most significant change.

In the 2007 case of *Social Justice Society (SJS) et al. v. Atienza*,²⁴⁷ the SJS petitioners filed for the writ of *mandamus* to compel the local government of Manila to enforce Ordinance No. 8027 which reclassified the zoning of an area from industrial to commercial, and gave existing businesses six months to cease and desist from their existing business. The Supreme Court granted the petition²⁴⁸ on the basis that the mayor has a ministerial duty to enforce the Ordinance. It ruled that a later Memorandum of Agreement (MOU) between the City Government of Manila and the oil companies making use of the Depot did not supersede the Ordinance. The MOU effectively allowed for the continued operation of the Depot, albeit on a scaled down basis. According to the Supreme Court, the Ordinance was enacted “pursuant to the police power delegated to local government units, a principle described as the power inherent in a government to enact laws, within constitutional limits, to promote the order, safety, health, morals and general welfare of the society.”²⁴⁹

Subsequently, the oil companies involved and the Department of Energy (DOE) filed a motion for reconsideration which was denied by the Supreme Court. The Supreme Court reiterated that under the principle of local autonomy enshrined in the Philippine Constitution, the local government had the power and authority to enact the ordinance in question.²⁵⁰ The national government, through the DOE, cannot exercise the power of control over local government units.²⁵¹ The power of the president over local government units is one of general supervision, pursuant to Article IV of the Constitution and does not include a restraining authority over such body.²⁵² Thus, in attempting to set aside the local ordinance, the Supreme Court ruled that the DOE acted unconstitutionally.²⁵³

In terms of environmental adjudication, the decision in *Social Justice Society* highlighted the importance of the environment as a vital public interest within the ambit of police power and general welfare on the level of local government units. Through this case, the Supreme Court was able to call on local government units to enact and implement rules to regulate acts that may create public health and environmental impacts.

²⁴⁷ G.R. No. 156052, March 7, 2007 (Phil.).

²⁴⁸ Ordinance 8027 reclassified a part of Manila from industrial to commercial. This area contained the Pandacan Oil Depot so the Ordinance also required the immediate Supreme Courtaling down of its operations and the closure of said Depot within 6 months from the date of the issuance.

²⁴⁹ *Social Justice Society (SJS) et al. v. Atienza*, G.R. No. 156052, at p. 660.

²⁵⁰ *Social Justice Society (SJS) et al. v. Atienza*, G.R. No. 156052, February 13, 2008 (Phil.), at p. 136.

²⁵¹ *Id.* at p. 152.

²⁵² *Id.*

²⁵³ *Id.* at p. 153.

One of the most famous environmental cases decided during the Puno tenure is the 2008 case of *MMDA v. Concerned Residents of Manila Bay*.²⁵⁵ Here, a group of Filipino citizens²⁵⁶ filed a complaint before a regional trial court against several government agencies for the cleanup, rehabilitation, and protection of the Manila Bay. The complaint alleged that the water quality of the Manila Bay had fallen way below the allowable standards set by law, specifically Presidential Decree No. 1152, or the Philippine Environment Code.²⁵⁷ Petitioner government agencies alleged that under the decree, they were only required to do clean-up operations after a specific pollution incident.²⁵⁸

The Supreme Court held that the maintenance of the Manila Bay was a ministerial duty that the respondents must perform. These government agencies must act to maintain the prescribed water quality standards and even in the absence of a specific pollution accident.²⁵⁹ The order of the court was very specific and tried to address all possible causes of pollution.²⁶⁰ The Court's directives focused on three main areas: (i) prevention, control, and protection; (ii) prosecution and sanctions; and (iii) rehabilitation.²⁶¹ To ensure compliance with the Court's directives, it used the principle of continuing *mandamus* which was not codified in Philippine statutes at the time of the case's promulgation.

Justice Presbitero Velasco penned the decision and later explained that they looked to jurisprudence from the Supreme Court of India in using the principle of continuing *mandamus*. According to Justice Velasco, the use of continuing *mandamus* in India has been "justified for extraordinary cases where the court wanted to ensure that the execution of its orders was not being tampered with."²⁶³ Interestingly, Indian public interest environmental lawyer M.C. Mehta, who litigated the continuing *mandamus* cases in India, was visiting the Philippine Supreme Court when the case was being deliberated and thus, had the opportunity to discuss his cases with the Supreme Court.²⁶⁴

In setting the concept of continuing *mandamus* in environmental jurisprudence, the *Manila Bay* case is now precedent to allow the courts to issue such relief whenever so warranted. The concept of continuing *mandamus* would then appear as one of the remedies under the Rules of Procedure in Environmental Cases, which was formulated and implemented during the term of Chief Justice Puno, as will be discussed below.

More important than the impact of any single case, during his tenure,

²⁵⁵ G.R. Nos. 171947-48, December 8, 2008 (Phil.).

²⁵⁶ The case was filed through Antonio Oposa, Jr. as lead counsel.

²⁵⁷ *MMDA v. Concerned Residents of Manila Bay*, G.R. Nos. 171947-48, at p. 666.

²⁵⁸ *See id.* at p. 669.

²⁵⁹ *Id.* at 686.

²⁶⁰ P. Velasco, *Manila Bay: A Daunting Challenge in Environmental Rehabilitation and Protection*, 11 Or. Rev. Int'l L. 441 (2009).

²⁶¹ *Id.*

²⁶³ *Id.*

²⁶⁴ Interview with J. P. Velasco, June 21, 2010.

Chief Justice Puno led two significant institutional changes, leaving a legacy that is likely to have even more far-reaching and enduring impact in shaping subsequent Philippine environmental jurisprudence, and the approach of the legal profession as a whole, than any particular environmental cases decided to that time. The Puno court institutionalized key environmental judicial governance measures: (i) designating 117 selected first-level and regional trial courts as environmental courts; (ii) initiating training through the Philippine Judicial Academy; and (iii) adopting the Rules of Procedure for Environmental Cases which contain a number of international best practices: adoption of precautionary principle, provisions to prevent strategic lawsuits against public participation (or SLAPP suits), Writ of continuing mandamus, and the Writ of *Kalikasan* (Writ of Nature). The Rules and its highlight provisions will be further discussed in Section ____ below.

The Corona Supreme Court (2010-2012)

Justice Puno retired early in 2010 and was replaced by Chief Justice Renato Corona. Chief Justice Corona led the Court until he was impeached in May 2012, for betraying the public trust through his failure to declare his assets, liabilities, and net worth as required by the Constitution.²⁶⁶ Despite his impeachment, the Corona court largely contributed to the process towards capacity building for environmental adjudication in the Philippines. In July 2010, the Supreme Court, under the leadership of Chief Justice Corona, extended strong institutional support when the Philippines hosted ADB's Asian Judges Symposium on Environmental Decision Making. This demonstration of support, together with the recent issuance of the Rules of Procedure on Environmental Cases, provided a backdrop for adopting a more liberal view towards environmental cases.

In September 2010, the Supreme Court, in *Shell Philippines Exploration B.V. v. Jalos et al.*,²⁶⁷ recognized the harmful and deleterious effects of a Shell underwater gas pipeline to the marine life in Palawan, by ruling that respondents had a cause of action against petitioner Shell.²⁶⁸ Petitioner alleged that respondents have no cause of action because they failed to specify any actionable wrong or omission on Shell's part in the construction of a 504 km. pipeline that crossed the Oriental Mindoro Sea.²⁶⁹ However, the Supreme Court ruled that even if there was no scientific explanation on how the construction

²⁶⁶ CONST. (1987), Art. XI, §17 (Phil.):

A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law.

²⁶⁷ G.R. No. 179918, Sept. 8, 2010 (Phil.).

²⁶⁸ *Id.*

²⁶⁹ *Id.* at p. 403.

and pipeline disturbed marine life and resulted to less fish in the sea (and respondents failed to allege an act of “pollution”), this lack of explanation was not a basis for dismissing the complaint.

The Court eventually dismissed the petition brought by the fisher folk on the ground that they failed to pursue the proper administrative remedies. However, the Supreme Court dispensed with technicalities and found a cause of action in respondents’ allegations.²⁷⁰ It ruled that respondents were alleging the petitioner was guilty of pollution and thus, because the issue involved is pollution, instead of filing directly with the RTC, respondents should have filed their case first with the Pollution Adjudication Board (PAB), the agency vested with exclusive original jurisdiction to hear and try cases concerning pollution under the Clean Water Act.²⁷¹ Shortly after in the same month, the Corona court again applied the doctrine of exhaustion of administrative remedies to dismiss a petition²⁷² by SM Manila assailing the decision of the LLDA.

Notably, the Corona court first applied the Rules of Procedure on Environmental Cases. Under the Rules, on November 19, 2010, the Court issued the very first Writ of *Kalikasan* (Writ of Nature), in the case of *West Tower Condominium Corporation v. First Philippine Industrial Corporation*.²⁷³ The Court ordered the cessation of the operation of a 117 km. pipeline used to transport diesel, gasoline, jet fuel and kerosene. The residents of the West Tower Condominium, in Makati City, filed a petition for a Writ of *Kalikasan* against the First Philippine Industrial Corporation (FPIC),²⁷⁴ a corporation that has a 25-year concession to transport roughly 50%-60% of Metro Manila’s crude and refined petroleum product needs until 2017.²⁷⁵

According to the petitioners, a leak in a portion of the FPIC’s 117 kilometer pipeline caused petroleum to seep into the condominium’s basement.²⁷⁶ Since July 2010, up to the time the petition was filed, drums of effluents were lodged in the basement.²⁷⁷ This prompted the petitioners to claim, that “the health and environment damage wrought by the petroleum leak in the pipeline of FPIC” had led to “grave damage to public health and the environment,” which was ongoing.²⁷⁸ Based on the constitutional right to a balanced and healthful ecology,²⁷⁹ the petitioners sought the Writ of *Kalikasan*, with the remedy of a temporary protection order (TPO) “to stop the operation of

²⁷⁰ See *id.* at p. 408.

²⁷¹ *Shell Philippines Exploration B.V. v. Jalos et al.*, G.R. No. 179918, Sept. 8, 2010. (Phil.)

²⁷² *Public Hearing Committee of the Laguna Lake Development Authority v. SM Prime Holdings, Inc.*, G.R. No. 170599, September 22, 2010 (Phil.).

²⁷³ G.R. No. 194238, March 29, 2011.

²⁷⁴ Ina Reformina, *Writ of Kalikasan Filed against FPIC, First Gen*, ABS-CBN NEWS, available at <http://www.abs-cbnnews.com/-depth/11/15/10/writ-kalikasan-filed-vs-fpic-first-gen>

²⁷⁵ Ira Pedrasa, *FPIC Replies to Writ of Kalikasan*, ABS-CBN NEWS, available at <http://www.abs-cbnnews.com/-depth/12/02/10/fpic-replies-writ-kalikasan>.

²⁷⁶ *Id.*

²⁷⁷ *Id.*, at note 266.

²⁷⁸ *Id.*, at note 265.

²⁷⁹ *Id.*, at note 3.

the pipeline until the entire stretch is inspected by [an] independent and qualified by a third party.”²⁸¹ Finding the petition to be “sufficient in form and substance”, the Supreme Court issued the *Writ* to stop the operation of the pipeline, and likewise ordered the respondent to check its structural integrity.²⁸²

“Green” Jurisprudence?

From the foregoing survey of environmental cases, it would be inaccurate to make a sweeping conclusion that the Philippine judiciary is fully inclined to develop a body of case law that absolutely embodies principles for the protection and preservation of environmental rights.

While there is sentiment in favor of addressing pressing environmental concerns, and the celebration of the constitutional right to a balanced and healthful ecology as held in *Oposa*, some cases nevertheless demonstrate that environmental adjudication is not as absolute as it may seem. It appears that the Supreme Court tends to defer its judgment in cases where issues such as the doctrine of exhaustion of administrative remedies, technical rules of procedure, and interpretation of statutes strictly come into play. It is also suggested that in certain cases, the Supreme Court, at times, “may find itself confronted with the task of balancing economic progress with environmental concerns,”²⁸³ so as to strictly apply legal principles that could hamper the development of environmental adjudication.

However, as seen with the progression of cases, the issuance and implementation of the Rules of Procedure on Environmental Cases, the Supreme Court would then demonstrate how a liberal approach would assist in developing jurisprudence that addresses environment principles. With the *West Tower Condominium* case as a precedent, the Supreme Court would then issue a number of Writs of *Kalikasan* in other environmental cases. A survey of these cases demonstrating actual environmental adjudication under the Rules of Environmental Procedure will be discussed in the next Section.

Part III

Environmental Adjudication in the Philippines: Environmental Tribunals, Rules of Procedure, and Capacity Building

Environmental Tribunals: Quasi-Judicial Environmental Adjudication

Environmental adjudication in the Philippines is not limited to court processes. Under the aegis of the DENR, a department reporting to the Executive branch, the government established two quasi-judicial bodies: the Pollution

²⁸¹ *Id.*, at note 266.

²⁸² ‘Writ of Kalikasan’ issued vs pipeline, available at <http://www.philstar.com/Article.aspx?articleId=631751&publicationSubCategoryId=63>.

²⁸³ D. Gatmaytan-Magno, *Artificial Judicial Environmental Activism*, *supra* note __, at p. 26.

Adjudication Board (PAB)²⁸⁴ and the Mines Adjudication Board (MAB).²⁸⁵ The PAB was created by executive order in 1987, while the MAB was created via legislation.

The rationale behind requiring certain environment cases to be filed before quasi-judicial entities before resorting to courts was that these entities would be more qualified to understand and process the technical and scientific data involved in the case. As the Supreme Court explained in relation to the PAB:

The laws creating the PAB and vesting it with powers are wise. The definition of the term “pollution” itself connotes the need for specialized knowledge and skills, technical and scientific, in determining the presence, the cause, and the effects of pollution. These knowledge and skills are not within the competence of ordinary courts [citing the case of *Mead v. Hon. Argel*, 200 Phil. 650, 662 (1982).] Consequently, resort must first be made to the PAB, which is the agency possessed of expertise in determining pollution-related matters.²⁸⁶

The Pollution Adjudication Board

President Corazon Aquino created the PAB under Section 19 of Executive Order No. 192, which re-organized the DENR.²⁸⁷ In doing so, the powers of the National Water and Air Pollution Control Commission (NPCC) were transferred to the Environmental Management Bureau (EMB), except the adjudication of pollution cases which was assumed by PAB.²⁸⁸ Like an RTC,²⁸⁹ the PAB orders are appealable to the Court of Appeals; orders that are final and executory are enforced in the same manner as that of an RTC order. It has original jurisdiction over air and water pollution cases under the Clean Air Act²⁹⁰ and the Clean Water Act.²⁹¹

The PAB is composed of the DENR Secretary (as Chairman) and five members (two DENR Undersecretaries, the Environment Management Bureau

²⁸⁴ An Act Providing for the Organization of the Department of Environment, Energy and Natural Resources; Renaming it Department of Environment and Natural Resources and for Other Purposes, Exec. Ord. No. 192, §19 (1987)(Phil.).

²⁸⁵ An Act Instituting A New System Of Mineral Resources Exploration, Development, Utilization, And Conservation, Rep. Act. No. 7942, § 79 (1995) (Phil.).

²⁸⁶ *Shell Philippines v. Jalos*, G.R. 179918, Sept. 10, 2010 (Phil.).

²⁸⁷ EO 192, §19; An Act Providing for the Revision of Rep. Act. No. 3931, Commonly Known as the Pollution Control Law, And for Other Purposes, Pres. Dec. No. 984, §7 (d) (1976) (Phil.).

²⁸⁸ *Alfredo Estrada v. Court of Appeals*, G.R. No. 137862, November 11, 2004 (Phil.).

²⁸⁹ *Id.*, at note 61, §7(d) of P.D. 984.

²⁹⁰ Philippine Clean Air Act of 1999, Republic Act No. 8749, §45 (Phil.).

²⁹¹ An Act Creating the National Water and Air Pollution Control Commission, Rep. Act No. 3931 (1964) (Phil.); An Act Providing for a Comprehensive Water Quality Management and for Other Purposes, Rep. Act. No. 9275 (2004)(Phil.); An Act Providing for a Comprehensive Air Pollution Control Policy and for other purposes, Rep. Act. No. 8749 (1999)(Phil.).

Director, and three designated by the DENR Secretary).²⁹² Its mandate is to “resolve cases that have remained pending with the Board for more than 10 years, thus the Board conducts its regular hearing at least once a week in order to ensure the deliberation of pending cases, as well as immediate actions of the cases elevated by the Regional Office to the PAB.”²⁹³ It has primary jurisdiction over the adjudication of pollution cases, with pollution defined as:

*any alteration of the physical, chemical, and biological properties of any water, air and/or land resources of the Philippines, or any discharge thereto of any liquid, gaseous or solid wastes as will or is likely to created or to render such water, air and land resources harmful, detrimental or injurious to public health, safety or welfare or which will adversely affect their utilization for domestic, commercial, industrial, agricultural, recreational or other legitimate purposes.*²⁹⁴

Though PAB was created to adjudicate on all pollution-related cases, it has been observed that complaints have been limited to violations of effluent or emission standards by industrial facilities.²⁹⁵ The law provides certain exceptions to PAB’s jurisdiction, for example, when it provides the forum for the adjudication: pollution cases affecting the Laguna Lake region are under the Laguna Lake Development Authority (LLDA)²⁹⁶ while compensation for pollution damages under the Oil Pollution Compensation Act of 2007 is filed under the Regional Trial Courts.²⁹⁷

To fulfill its mandate, the PAB has the power to issue cease-and-desist orders, directing the discontinuance of the emission or discharge of pollutants or the temporary cessation of operation of the establishment or person generating such pollutants.²⁹⁸ In a 1991 case, the Supreme Court noted that “[the PAB] was the very agency of the Government charged with the task of determining whether the effluents of a particular industrial establishment comply with or violate applicable anti-pollution statutory and regulatory provisions.”²⁹⁹

²⁹² The PAB Membership is currently composed of Ramon Paje (Chair, DENR Secretary), Demetrio Ignacio (Presiding Officer, DENR Undersecretary), Manuel Hirochi (Member, DENR Undersecretary), Reynato Derueda (Member.), Jeffrey Mijares (Member, Industry Representative), Anthony Chiu (Member, Academ Representative) and Juan Miguel Cuna (Member, EMB Director)

²⁹³ See http://www.emb.gov.ph/pab/template/What_iDO_TLO_FLO.htm

²⁹⁴ Sec. 2, P.D. 984. An Act Providing for the Revision of Rep. Act. No. 3931, Commonly Known as the Pollution Control Law, And for Other Purposes, Pres. Dec. No. 984, §7 (d) (1976)(Phil.).

²⁹⁵ Asian Environmental Compliance and Enforcement Network. 2004. Environmental Compliance and Enforcement in the Philippines: Rapid Assessment. http://www.aecen.org/sites/default/files/PH_Assessment.pdf

²⁹⁶ An Act Creating The Laguna Lake Development Authority, Prescribing Its Powers, Functions And Duties, Providing Funds Therefor, And For Other Purposes, Rep. Act. No. 4850, §2 and § 4. (1966).

²⁹⁷ Philippine Judicial Academy. 2011. Access to Environmental Justice: A Sourcebook on Environmental Rights and Remedies. Manila

²⁹⁸ Pollution Adjudication Board v. Court of Appeals and Solar Textile Finishing Corporation, G.R. No. 93891, (March 11, 1991)(Phil.).

²⁹⁹ *Id.* at p. 123.

The decisions of the PAB can only be appealed to the Court of Appeals, and from there, the Supreme Court, so bypassing the jurisdiction of the lower courts. Hence, a potential complainant must pay close attention to the venue specified in the environment law under which he is suing. Filing a case in the wrong venue, could render the complaint dismissible.³⁰⁰

In addition to the issuance of cease-and-desist orders, the PAB may also impose fines based on environmental damage. The Clean Water Act provides that violators of said law may be fined an amount between Php 10,000 to Php 200,000 for every day of violation.³⁰² Failure to undertake clean-up operations may warrant a fine not less than Php 50,000 – Php 100,000.00 per day for each day of violation.³⁰³ If such failure or refusal results in serious injury or loss of life and/or irreversible water contamination of surface, ground, coastal and marine water, the violator will be required to pay a fine of Php 500,000.00 per day.³⁰⁴ Meanwhile, the Clean Air Act allows the PAB to impose a fine not exceeding Php 100,000 per day of violation of the Act. In determining the amount of the fine to be imposed, the PAB will take into consideration “the violator's ability to pay, degree of willfulness, degree of negligence, history of non-compliance and degree of recalcitrance.”³⁰⁵

Little and sparing information is available to determine the effectiveness of the power of the PAB to impose fines. Between August 2007 and January 2008, the PAB collected a total of Php 3,651,391.69 (roughly \$81,000) from various polluting companies.³⁰⁶ In a high profile drive in April 2008, the PAB also slapped a slew of large corporations with million-peso fines for disposing wastewater into the rivers and creeks in their respective areas.³⁰⁷ In 2009, the PAB imposed more such fines for violating the Clean Water Act. Following the ruling of the Supreme Court in the Manila Bay Case, the PAB imposed a Php 29.4 million penalty on the state-run Metropolitan Waterworks and Sewerage System (MWSS) and its two service concessionaires – Maynilad Water Services Inc. (MWSI) and Manila Water Co. Inc. (MWCI) – for turning the Manila Bay into its “septic tank” when they failed to mount wastewater treatment facilities as required by the Clean Water Act.³⁰⁸ The Court of Appeals denied the motion for reconsideration filed by MWSI³⁰⁹ and it remains to be seen if it will bring the case

³⁰⁰ RULES OF CIVIL PROCEDURE, §17.

³⁰² Clean Water Act, §28.

³⁰³ Clean Water Act, §28.

³⁰⁴ Clean Water Act, §28.

³⁰⁵ Clean Air Act, §45.

³⁰⁶ http://www.emb.gov.ph/pab/template/List_fines_collected_2008.htm

³⁰⁷ Jocelyn Uy and Kristine Alave, “SM Megamall, Five Others Fined P10million for Pollution”, (April 4, 2008), available at http://newsinfo.inquirer.net/breakingnews/nation/view/20080404-128452/SM_Megamall%2C_five_others_fined_P10M_for_pollution.

³⁰⁸ Sophia Dedace, “DENR Fines 3 Water Firms P29.4m for Violating Clean Water Act” (May 11, 2009), available at <http://www.gmanews.tv/story/176349/denr-fines-3-water-firms-p294m-for-violating-clean-water-act>.

³⁰⁹ See <http://www.bworldonline.com/content.php?section=Corporate&title=Court-junks-Maynilad-appeal-vs-pollution-fine&id=56067>.

up to the Supreme Court.

There is also a dearth of information to determine the effectiveness of the PAB. Documented cases and resolutions are only recorded until the year 2008,³¹⁰ and most accounts of enforcement are only obtainable through news reports. In terms of actual practice, PAB currently only has one office located in Metro Manila. Thus, all cases are heard in Manila. A report by AECEN has observed this centralized adjudication to be inefficient and costly for parties.³¹¹ It recommended the decentralization of PAB and the delegation to regional offices of the initial resolution of cases³¹² to make adjudication more efficient, fair, and cost-effective.

The Mines Adjudication Board

Mining-related disputes arising under the Philippine Mining Act³¹³ are resolved at the first instance by a Panel of Arbitrators, and on appeal, by the Mines Adjudication Board.

The Panel of Arbitrators is composed of the legal staff of the Regional Office of the Mines and Geosciences Bureau (MGB); three members,³¹⁴ two of whom must be members of the Philippine Bar in good standing and one licensed Mining Engineer, Geologist or professional from a related field, all designated by the Secretary of the DENR.³¹⁵ The inclusion of a mining specialist in the Panel is an express recognition of the technical nature of mining disputes.

The Panel of Arbitrators has original and exclusive jurisdiction to hear and decide cases involving: rights to mining areas; mining permits, mineral agreements, financial or technical assistance agreements; and disputes involving surface owners, occupants, claimholders and concessionaires.³¹⁶ The Panel

³¹⁰ See PAB Resolutions, available at http://www.emb.gov.ph/pab/template/PAB_resolutions_2008.htm.

³¹¹ Asian Environmental Compliance and Enforcement Network. 2004. Environmental Compliance and Enforcement in the Philippines: Rapid Assessment. http://www.aecen.org/sites/default/files/PH_Assessment.pdf

³¹² *Id.*

³¹³ An Act Instituting a New System of Mineral Resources Exploration, Development, Utilization, and Conservation, REP. ACT NO. 7942 (1995)(Phil.).

³¹⁴ The Panel shall be composed of three individuals, two of whom must be members of the Philippine Bar in good standing and one licensed Mining Engineer, Geologist or professional from a related field.

³¹⁵ 1997 Rules of Pleading, Practice and Procedure before the Panel of Arbitrators and the MAB, Rule 3, §1.

³¹⁶ §202, Mining Act IRR; 1997 Rules of Pleading, Practice and Procedure before the Panel of Arbitrators and the MAB, Rule 3, §2. The Panel of Arbitrators has 30 days after submission for decision to address all issues and controversies. The vote or concurrence of majority of the Panel members is required for the adoption of a decision or resolution. The decision is final and executory, unless an appeal is made to the MAB within 15 days from receipt of the notice of the decision by the aggrieved party. It bears noting that the jurisdiction of the MAB does not involve any pollution-related cases stemming from mining.

would still have jurisdiction over pollution-related mining cases as the definition of pollution under the Pollution Control Act includes “any alteration of the physical, chemical, and biological properties of any water, air and/or **land** resources of the Philippines (emphasis provided).”

The MAB hears appeals from the Panel of Arbitrators in each DENR Regional Office.³¹⁹ The MAB is composed of three members – the DENR Secretary, the DENR Undersecretary, and the Director of the Mines and Geosciences Bureau.³²⁰ Like the PAB, the MAB has the power to enjoin any or all acts involving or arising from any case pending before it, which may cause grave or irreparable damage to any of the parties to the case or seriously affect social and economic stability.³²¹ However, the remedy is only valid for a maximum of 20 days. The MAB may, after due hearing, issue a permanent protection order. The MAB only has 30 days from the time that the controversy is submitted for decision within which to make its final adjudication. Decisions of the MAB may be brought via *certiorari* to the Supreme Court.³²²

Little information is available to form a concrete assessment of the MAB’s effectiveness. As of April 30, 2012,³²³ there were 58 appeals pending before the MAB, with 44 original appeals, 12 motions for reconsideration, as well as reconsideration motion to reopen the case and a motion for reconsideration to the order of execution. The scant information may not truly reflect the effectiveness of the MAB, considering that mining disputes have become rampant in the recent years.

Specially-designated Environment Courts

In August 1993, the Supreme Court designated 101 trial courts as forestry courts³²⁴ to handle violations of the Forestry Code which were numerous during that time.³²⁵ These designated courts were located in areas where forestry violations were most rampant.³²⁶ However, the usefulness of these courts was limited by a lack of awareness on the part of the public of their existence and a lack of expertise on the part of the designated judges in forestry law. Notably, these forestry courts only had jurisdiction over cases involving the Revised

³¹⁹ *Id.*, at note 73, §78.

³²⁰ 1997 Rules of Pleading, Practice and Procedure before the Panel of Arbitrators and the MAB, Rule 5, §1.

³²¹ 1997 Rules of Pleading, Practice and Procedure before the Panel of Arbitrators and the MAB, Rule 8, §1

³²² 1997 Rules of Pleading, Practice and Procedure before the Panel of Arbitrators and the MAB, Rule 5, §13.

³²³ Latest figures available from the MAB.

³²⁴ S.C. EN BANC, Resolution, A.O. No. 150-B93.

³²⁵ S. Candelaria and M. Ballesteros, *Designation of “Green Benches” in the Philippines: Regional Exchange in Support of Improved Judicial Institutions and Capacity*, available at <http://www.aecen.org/sites/default/files/GreenCourtsPaper.pdf>.

³²⁶ *Id.*

Forestry Code.³²⁷

On 28 January 2008, the Supreme Court designated 117 first and second level trial courts as “environmental courts” (48 1st level, and 24 2nd level courts).³²⁸ In doing so, 45 of the pre-existing forestry courts were re-designated as environmental courts, leaving 56 forestry courts.³²⁹ According to the Supreme Court, these specially-designated “green” courts were meant to try and decide cases that are in violation of a non-exclusive list of environmental laws. These laws are described in Table 2.

The creation of environmental courts began when the Supreme Court and PHILJA have strengthened their linkages in international and regional environmental cooperation.³³⁰ In the 2007 Asian Judges Forum on the Environment, PHILJA partnered with USAID, AECEN, UNEP, the Asia Pacific Jurist Association, and the United States Environmental Protection Agency (USEPA) to determine a strategy for the establishment of green benches in the Philippines. The following options were presented to the Philippine Supreme Court, with each option receiving a commentary from senior justices from Indonesia, India, Thailand, Sri Lanka, Australia and the United States:

- 1) to designate special courts to hear environmental cases using empirical data showing the high incidence of environmental cases;
- 2) to expand the jurisdiction of forestry courts to cover all environmental cases; and
- 3) to designate special divisions in the Court of Appeals to handle environmental cases.³³³

To help the Supreme Court and PHILJA decide on the best option to take, an inventory and classification of pending environmental cases was implemented. The main objectives of this initiative were “to improve the efficiency in the administration of justice, and to provide greater access to environmental justice, by having these courts in places where environmental violations were shown to be most frequent, and providing judges with specialized skills and knowledge relevant to the cases prevalent in their area.”³³⁴ The inventory revealed that there were 2,353 cases pending and the majority of these involved violations of forestry and fisheries law.³³⁵ Cases on mining, clean

³²⁷ Revising Presidential Decree No. 389, Otherwise Known As the Forestry Reform Code of the Philippines, PRES. DEC. NO. 705 (Phil.).

³²⁸ SC Administrative Order No. 23-2008.

³²⁹ S. Candelaria and M. Ballesteros, *Designation of “Green Benches” in the Philippines*, *supra* note

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³³⁰ *Id.*

³³³ *Id.*

³³⁴ *Id.*

³³⁵ *Id.*

air, solid waste management, wildlife, and indigenous peoples have also been filed with the courts.³³⁶ In concluding that the environmental cases needed to be distributed court-wide and at the appellate level, the Supreme Court and PHILJA decided to designate special courts as environmental courts.³³⁷

According to retired Supreme Court Justice Adolfo Azcuna (incumbent Chancellor of the Philippine Judicial Academy (PHILJA)), the newly designated “green benches” were only the first step in the eventual designation of all trial courts as environment courts.³³⁸ In selecting which courts were to be initially designated, the Supreme Court took into consideration the number of environment cases being filed in the jurisdiction.³³⁹ By designating local courts and equipping judges with technical training, the Supreme Court sought to facilitate the disposition of environment cases in these hotspot regions.³⁴⁰ In support, he noted that these specially-designated environmental courts are functionally analogous to the previously designated drug and family courts – while they are still functionally courts of general jurisdiction, they must give special prioritization to environment cases and resolve them at the earliest possible opportunity.³⁴¹

Unlike the other regular courts, the term “environment court” is nowhere found in the Constitution or in the 1997 Rules of Court. The Supreme Court did not create these specially-designated courts to be stand-alone courts. Rather, it designated existing RTCs and first level courts with environmental law as an additional area of expertise. The special designation requires judges of such courts to undergo special training in environment law to strengthen their knowledge and develop their capacity to decide environmental cases, and for the courts to prioritize the speedy resolution of environmental cases over and above other types of cases that reach the docket.³⁴² However, the designation does not reallocate existing general law cases or establish procedures to reduce the docket of existing trial courts in relation to environmental matters. One major reason given for retaining these courts’ general jurisdiction is that a specialized jurisdiction may limit the growth and advancement of judges, given that under the Philippine judicial system, appellate courts themselves are not specialized.³⁴³ Judges themselves voiced this concern to the PHILJA.³⁴⁴

³³⁶ *Id.*

³³⁷ S. Candelaria and M. Ballesteros, *Designation of “Green Benches” in the Philippines*, *supra* note —.

³³⁸ Interview with Justice Adolfo Azcuna, Chancellor, Philippine Judicial Academy, in Manila (June 21, 2010); Interview with Justice Presbiterio Velasco, Justice, Supreme Court of the Philippines, in Manila (June 21, 2010).

³³⁹ *Id.*

³⁴⁰ *Id.*

³⁴¹ Administrative Order No. 23-2008. §4,

³⁴² S. Candelaria and M. Ballesteros, *Designation of “Green Benches” in the Philippines*, *supra* note —.

³⁴³ *Id.*

³⁴⁴ *Id.*

The Supreme Court has yet to release any guidelines for the selection of new green judges, should one of the incumbent judges of the 117 environment courts vacate his or her office. Without such criteria, the Supreme Court may fill the bench with judges without knowledge in environmental law. Thus, the Supreme Court needs to specify criteria and qualifications upfront for Judges to qualify for environmental courts, as well as ongoing criteria and qualifications for judges to maintain that status. These could include (1) either pre-existing training or qualifications in environmental law, or passing certain new training sessions in environmental law; (2) interest in environmental law; and (3) integrity checks.