The Role of Philippine Courts in Establishing the Environmental Rule of Law

by Elizabeth Barrett Ristroph

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Summary

In 2010, the Supreme Court led the Philippines to become the first nation with rules of procedure specific to environmental cases. While the Philippines has made great strides in adopting environmental laws and providing access to courts, more work is needed to ensure consistent decisions and to build capacity in both lower courts and government agencies. As shown in the case of Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay, the Court will need to find a balance between making environmental laws a reality and taking on more than it can (and should) handle.

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ism raises questions as to whether courts are intruding into the arena of executive agencies.

This Article explores the role that the Philippine Supreme Court has played in establishing the environmental rule of law, along with the significance of the Philippines’ 2010 Rules of Procedure for Environmental Cases (hereinafter the Environmental Rules). But first, it lays out the concept of the environmental rule of law and examines how courts in other jurisdictions have helped implement environmental law. It also discusses aspects of the Philippine legal system relevant to the environmental rule of law, including stare decisis, administrative jurisdiction, and standing. Finally, it considers the use of the writ of continuing mandamus in Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay and the prospects for an environmental rule of law in the Philippines.

The Article is based on my review of Philippine and American law review articles, Philippine newspapers, published Supreme Court cases, and interviews with Filipino environmental lawyers. The lawyers’ knowledge was essential, since there is no centralized electronic system in the Philippines for publishing and Shepardizing cases.

I. Defining the Environmental Rule of Law

The “rule of law” is a vague concept. Some definitions focus on the elements believed to be necessary to accomplish the rule of law, such as comprehensive laws, well-functioning courts, and trained law enforcement agencies. Others focus on the goals of the rule of law, including a government bound by law, equality before the law, public order, predictable and efficient rulings, and human rights. Many entities concerned with the rule of law are reluctant to precisely define it, opting instead to list elements that should be included in the definition.

I propose the following definition for the “environmental rule of law”: (1) there is a system of laws in place that regulate, to the extent practicable, all human-induced actions that by themselves or collectively have significant impacts on the environment; (2) these laws will be consistently applied over time and across the jurisdiction; and (3) effective and fair enforcement action, initiated by a government entity or citizen suit/complaint, will be taken against one who breaks the law, regardless of the offender’s socioeconomic or political status.

There has been relatively little discussion in the United States on the rule of law in the environmental context. Two notable exceptions are Craig Segall’s article applying the rule-of-law concept to deforestation, and A. Dan Tarlock’s article on environmental litigation in the United States during the second half of the 20th century.

Segall associates deforestation in developing countries with the central government’s abuse of power, as in the case of clearcutting that has occurred under colonial powers and dictators. He also attributes deforestation to disempowered local communities unable to control resource use through their traditional norms.

Tarlock analyzes the environmental litigation pursued before U.S. environmental statutes and judicial interpretations of these statutes became firmly entrenched in the


14. Id. at 1546 (explaining that where there are no legitimate and local management institutions, individuals have little incentive to avoid overcutting).
legal landscape. He implies that while environmentalists brought suit under the guise of upholding the rule of law, they were really petitioning the court to advance their own view of environmental protection and conservation. This characterization of environmental rule of law litigation seems more applicable to pre-NEPA lawsuits seeking to reinterpret obscure provisions of old laws. It seems less germane to lawsuits seeking judicial enforcement of new statutes (as NEPA was in the early 1970s), or statutes that the executive branch has never really enforced due to a lack of resources or corruption (as may be the case with environmental laws in developing countries).

Tarlock suggests that changes in science and the environment inhibit the application of the rule-of-law concept to environmental law and litigation. Take a different view: changes in the environment may require updates to environmental laws, but the scientific and legal principles behind these laws change little, if at all. There will always be a need for a legal regime through which environmental data is collected and analyzed through transparent, systematic methods; decisions affecting the environment are made by managers with technical competence, subject to being challenged for arbitrariness; and those who exceed set levels of pollution or resource use are held liable.

Without such a legal regime, prospects for both the rule of law and environmental justice are dim.

II. The Judiciary and the Environmental Rule of Law

A. International Recognition of the Judicial Role

The judiciary can play a key role in implementing the environmental rule of law. It upholds constitutional guarantees to a clean environment, provides concrete remedies to prevent or compensate for environmental harm, and may introduce international environmental law into national jurisprudence.

This potential was recognized at the Global Judges Symposium held in Johannesburg in 2002. There, an international group of judges adopted the Johannesburg Principles on the Role of Law and Sustainable Development, melding the sustainable development principles of the 1992 Rio Declaration on Environment and Development with the principles of judicial independence and due process. The 2012 Principles recognize the need for access to the courts, and for judges to be educated on the technical aspects of environmental law.

Since then, the United Nations Environmental Program (UNEP) has implemented the Global Judges Program. Under the program, UNEP and the chief justices of participating countries promote adherence to the rule of law and the effective implementation of national environmental laws. Outputs of the program include environmental case law compilations and training materials explaining the role of the judiciary.

In 2010, UNEP and the Asian Development Bank sponsored the Asian Judges Symposium on Environmental Decision-Making, the Rule of Law, and Environmental Justice in the Philippines. The symposium proposed the establishment of an Asian Judges’ Network on the Environment to help improve adjudication in environmental and natural resource cases.

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15. Tarlock, supra note 12, at 579-82.
16. Id. at 579.
17. One example Tarlock cites is Scenic Hudson Preservation Conference v. FPC, 354 F.2d 608 (2d Cir. 1965), cert. denied, 384 U.S. 941 (1966), regarding the Federal Power Act of 1920. In Tarlock’s words:

First, an ad hoc citizen group gained unprecedented standing to represent non-economic, aesthetic interests. Second, the plaintiffs convinced the Court of Appeals to read a broad regulatory statute, which at best conferred discretion on the agency to consider aesthetic values (a then much contested idea), to impose mandatory compliance by a powerful and influential entrepreneur who belongs to or supports the political or financial establishment.

20. We recognize the importance of ensuring that environmental law . . . feature[s] prominently in academic curricula, legal studies and training at all levels, in particular among judges. We express our conviction that the deficiency in the knowledge, relevant skills and information in regard to environmental law is one of the principal causes that contribute to the lack of effective implementation, development and enforcement of environmental law . . . . We are strongly of the view that there is an urgent need to strengthen the capacity of judges . . . . (calling for “access to justice for the settlement of environmental disputes and the defense and enforcement of environmental rights”).
Thus, at least on an international level, there is recognition of the role judges play in providing for the environmental rule of law. Whether the recognition and training that has come out of these symposia translates into the actual rule of law is a critical question for each country involved.

B. The Judicial Role in the United States

Though it had a late start compared to other fields of law, environmental law has made more progress in the United States than in many other countries. Since the 1970s, the Administrative Procedure Act and citizen suit provisions in environmental statutes have enabled concerned citizens and organizations to prosecute violations of environmental law in court.\(^{28}\) At first, courts lowered the barriers to this litigation, interpreted environmental laws expansively, and rigorously viewed agency decisions that allowed projects to move forward.\(^{29}\) Circuit court cases, such as *Calvert Cliff v. Atomic Energy*,\(^{30}\) breathed life into provisions of NEPA that might have otherwise gone unnoticed. The Supreme Court likewise played a role, putting environmental injuries on par with personal injuries by granting standing to those whose use of an area would be adversely affected by proposed development.\(^{31}\)

As the U.S. environmental law regime aged, the Supreme Court’s interpretation of NEPA,\(^ {32}\) deference to agency decisions,\(^ {33}\) and limitations on standing\(^ {34}\) have disappointed environmentalists. To some extent, these rulings reflect the fact that agencies have become more adept at fulfilling procedural requirements and arguing that substantive standards are discretionary, such that their actions cannot be second-guessed by courts.\(^ {35}\) The rulings may also signify that the environmental rule of law has largely been established, and environmental groups as well as the regulated community have relatively clear expectations of how environmental laws will be enforced.

C. The Judicial Role in Developing Countries

In environmental law and other legal areas, developing countries have often borrowed statutory language and structures from developed countries.\(^ {36}\) As many have pointed out, these models often fail due to limited capacity, corruption, and various social, economic, political, and geographic factors.\(^ {37}\) Rule-of-law reforms have typically sought to increase administrative and judicial capacity and reduce corruption, although it might make sense to devote resources toward drafting laws more suitable to country circumstances.\(^ {38}\) Still, even if laws could be per-

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30. 449 F.2d 1109, 1111, 1 ELR 20346 (D.C. Cir. 1971) (holding that courts have power to require agencies to comply with procedural directions of NEPA and that the Atomic Energy Commission’s rules did not comply with the Act; stating: “Our duty, in short, is to see that important legislative purposes, heralded in the halls of Congress, are not lost or misdirected in the vast hallways of the federal bureaucracy.”).

31. See Sierra Club v. Morton, 405 U.S. 727, 734, 2 ELR 20912 (1972). At the same time, the Court rejected the dissent’s suggestion to allow groups to sue on behalf of other species. Id. at 749-50 (Douglas, J., dissenting). The Court held that a plaintiff group must demonstrate an individualized injury on the part of one or more members, consistent with the collective goals of the group. Id. at 739-40.

32. See, e.g., Kleppe v. Sierra, 427 U.S. 390, 413-15, 6 ELR 20532 (1976) (finding that an agency need not consider the combined effects of concurrent actions throughout a region unless several proposals are pending concurrently before the agency).

33. See, e.g., Kleppe, 427 U.S. at 410 n.21 (“The only role for a court is to insure that the agency has taken a ‘hard look’ at environmental consequences; it cannot ‘interject itself within the area of discretion of the executive as to the choice of the action to be taken.’”) (quoting Natural Resources Defense Council v. Morton, 458 F.2d 827, 838, 2 ELR 20029 (D.C. Cir. 1972)); Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 844, 1 ELR 20507 (1984) (whether the legislature’s delegation of authority to an agency is explicit or implicit, “a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency”).

34. See, e.g., Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61, 22 ELR 20913 (1992) (imposing a three-part standing test on plaintiffs, requiring a concrete, actual injury traceable to the defendant’s action and likely to be redressible by the court). But two later decisions have taken a slightly broader view of standing; see *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. Inc.*, 528 U.S. 161, 181-82, 30 ELR 20246 (2000) (plaintiffs had standing to sue based on current and reasonable concerns about a potential harm from defendant’s discharge of mercury into a river; Court did not intend to “raise the standing hurdle higher than the necessary for achieving success on the merits in an action alleging noncompliance with a NPDES permit”); *Massachusetts v. EPA*, 549 U.S. 497, 520-26, 37 ELR 20075 (2007) (granting standing to a state, acting on behalf its citizens through the *parens patriae* doctrine, to sue for current and future harm resulting from climate change).

35. Tarlock, supra note 12, at 601 (“Environmental law is at best a law of process . . . Students of NEPA and other rational planning processes have long known that efforts to specify processes have inherent limitations and decay over time as agencies comprehend the formal, judicial rules of the game and become better players.”).

36. The Philippines has adopted many laws similar to those of the United States. See infra note 80 (comparing Philippine and U.S. environmental laws).

37. See, e.g., Tu T. Nguyen, *Competition Rules in the TRIPS Agreement—the CFI* Ruling in Microsoft v. Commission and Implications for Developing Countries, IIC 2008, 39(5), 558-86 (explaining that competition law adopted by developing countries based on the laws of developed countries often reflects a lack of understanding of the economic objectives of the developed countries’ competition enforcement policy; noting lack of competition culture in many developing countries); Gary Goodpaster, *Law Reform in Developing Countries*, 13 TRANSNAT’L L. & CONTEMP. PROBS. 659 (2003) (suggesting reasons why laws transplanted to developing countries often fail).

38. In Michael Fure et al., *Bucking the Kuznets Curve: Designing Effective Environmental Regulation in Developing Countries*, 51 VA. J. INT’L L. 95 (2010), the authors question the wisdom of focusing on capacity-building, suggesting that there is a dearth of progress to show for the significant investments it requires. Id. at 109. The authors propose an alternative approach that cen-
fectly adapted to these countries, there would be a need for national and local institutions capable of implementing laws, and independent judiciaries willing to uphold the laws.

There are numerous examples of courts in developing countries that are too resource-starved, corrupt, or disempowered to render just decisions on environmental laws. Mary Elizabeth Whittemore describes the challenges Ecuador faces in implementing the environmental provisions of its 2008 Constitution. She relates a history of justices being removed from the constitutional court at the whim of the legislature and notes that the court was once entirely closed down. Since the 2008 Constitution, a court decision halting the government’s construction of a dam has been essentially ignored, and the court lacks the power to impose sanctions on the government.

Laurence Juma describes challenges to enforcing Kenya’s 1999 Environmental Management and Coordination Act (EMCA). Courts are out of the realm of many of the rural poor who might seek redress under the Act, as the courts do not conduct business in the vernacular; complaint filing fees are high; there are only nine court stations in the country that handle EMCA litigation; and courts are reluctant to interfere with government decisions.

Alan Khee-Jin Tan describes problems with the Thai judicial system, including difficult standing requirements and court awards that grant monetary compensations without requiring environmental restoration. While there have been proposals to establish specialized courts for environmental and natural resource conflicts, these courts would still have to overcome Thai prosecutors’ unwillingness to bring environmental cases and indigenous communities’ lack of access to evidence and to the courts.

The Indian Supreme Court stands in stark contrast to these courts, having issued sweeping orders to protect the Taj Mahal, the River Ganges, and Indian forests, as well as addressing air pollution and garbage pile-ups in cities. Lavanya Rajamani describes the Indian Supreme Court’s recognition of the right to pollution-free water and air, based on constitutional protections of the right to life and liberty, as well as other environmental principles based on the 1992 Rio Declaration on Environment and Development. These actions are relevant to the Philippine Supreme Court, as they influenced the development

51. Id.
52. This is not to say that the Indian Supreme Court is the only developing-country supreme court that has had a strong role in effecting the environmental rule of law, although it may be the most well-known. See Mul-queeny et al., supra note 20, at 8, citing landmark decisions from supreme courts in other developing countries, including the 2003 Mundalawangi case in Indonesia (precautionary principle) and the 2000 Eppanwela case (Bodunbuluma v. Secretary, Ministry of Industrial Development) in Sri Lanka (public trust doctrine).
53. M.C. Mehta v. Union of India (Taj Trapezium Case), Writ Petition No. 13381 of 1984 (requiring measures to address air pollution, including banning coal-based industries near the Taj Mahal).
54. M.C. Mehta v. Union of India (Ganga Pollution Case), Writ Petition No. 3727 of 1985.
55. T.N. Godavarman Thirumulpad v. Union of India and Ors, Writ Petition No. 202 of 1995 (prohibiting the conversion of forest and wildlife reserves to other uses; limiting logging and non-forestry activity in national parks and wildlife sanctuaries).
56. M.C. Mehta v. Union of India (Delhi Vehicular Pollution Case), Writ Petition No. 13029 of 1985 (mandating conversion of Delhi’s public transport system from conventional fuel to compressed natural gas); M.C. Mehta v. Union of India (Delhi Industrial Relocation Case), Writ Petition No. 4677 of 1985 (closing or relocating hazardous and noxious industries in Delhi).
59. Id. at n.11, citing Subhash Kumar v. State of Bihar (1991) 1 SCC 598.
60. CONST. (1950), Art. 21 (India).
of the Environmental Rules and the Court’s decision in Manila Bay. This judicial activism is not without criticism. Rajamani cites problems with the Court’s efforts in Almitra Patel v. Union of India to address solid waste problems in large cities. He suggests that the Court ignored the realities of the urban poor, targeting slums despite their relatively low contribution to solid waste, and ignoring the informal recycling industry led by “waste pickers.” Solid waste disposal rules created by the Court may be difficult to implement, as they are too prescriptive in some respects, unrealistic in others, and conflict with existing regulations.

Rajamani also considers problems with M.C. Mehta v. Union of India, in which the Court sought to ameliorate air pollution by requiring New Delhi diesel buses to be retrofitted for compressed natural gas. This requirement addressed only a portion of the pollutants that were contributing to the air pollution problem. It also proved to be extremely expensive. Diesel bus drivers unable to afford compressed natural gas went out of business, only to be replaced by a greater number of private diesel vehicles. Rajamani notes that the court served the role of the executive branch for the many years these cases persisted, at one stage performing all the functions of a Regional Transport Office. He suggests that this overloaded court employees without leading to improved executive capacity.

But what if the executive and legislative branches had no intention of addressing India’s environmental problems, and nothing would have been done in the absence of court action? Michael Faure et al. suggest that the Supreme Court’s actions can be seen as a “second-best” alternative that implemented some measure of environmental protection. Given the weak or unwilling executive agencies and legislators, innovative lawyers and the Indian Supreme Court may have been the only actor capable of bringing about change.

III. Environmental Laws in Philippines

Before considering the Philippine Supreme Court’s approach to the environmental rule of law, an overview of Philippine environmental law is useful. The 1987 Philippine Constitution, like many modern constitutions, provides for “the right of the people to a balanced and healthful ecology.” The Supreme Court has characterized this right as being so basic that it “need not even be written in the Constitution for [it is] assumed to exist from the inception of humankind.”

1. Id.
2. CONST. (1987), Art. II, §16 (Phil.); compare with CONST. (1996), Art. 12 (S. Africa) (“Everyone has the right (a) to an environment that is not harmful to their health or well being; and (b) to have the environment protected, for the benefit of present and future generations .”); CONST. (1948) Art. 35(1) (S. Korea) (“all citizens have the right to a healthy and pleasant environment”) CONST. (2008) Art. 14(1) (Ecuador) (“The right of the population to live in a healthy and ecologically balanced environment that guarantees sustainability and the good way of living (sumak kaway), is recognized.”); CONST. (1948) Art. 18 (Hungary) (“The Republic of Hungary recognizes and shall implement the individual’s right to a healthy environment.”).
3. Minors Oposa v. Factoran, G.R. No. 101083, 224 SCRA 792 (July 30, 1993) (analyzing the intent of drafter of the 1987 Constitution and noting that even if the constitutional provision regarding the environment was not placed under the Bill of Rights, it was no less important than any of civil and political rights; “Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation.”).

In a concurring opinion, Justice Florentino Feliciano noted that the majority was essentially considering the right to a balanced and healthful environment as self-executing, despite being lodged in Article II of the Constitution in a list of general socioeconomic rights. Id. (Feliciano, J., concurring). While Justice Feliciano agreed with the outcome of the case, he found that petitioners should have been required to assert a more specific legal right in order to obtain relief. Id. In Manila Prince Hotel v. Government Service Insurance System, G.R. No. 122156 (Feb. 3, 1997), available at http://sc.judiciary.gov.ph/jurispudence/1997/feb1997/122156.htm, the Court seemed to adopt Justice Feliciano’s position, finding that the constitutional provisions in Article II set forth general principles and were usually not self-executing. Still, the Court found that in case of doubt, a constitutional provision should be considered self-executing rather than non-self-executing. In Kilobydan, Inc. v. Menato, G.R. No. 118910 (Nov. 16, 1995), available at www.lawphil.net/judjuris/juri/juri 1995/nov1995/gn_118910_1995.html, addressing other rights listed in Article II, the Court found that these rights were not self-executing. But the Court distinguished the right to a balanced and healthful ecology (Art. II, §16) as “a right-conferring provision which can be enforced in the courts.” In Tanduay v. Araiza, G.R. No. 118295, 272 SCRA 18 (May 2, 1997), the Court looked to the counterpart to Article II in the 1935 Constitution as well as case law before Oposa in finding that Article II rights are not self-executing. In sum, courts after Oposa have not directly overturned the suggestion that Art. II §16 is self-executing, but have not found any other right in Art. II to be self-executing. The Rationale to the 2010 Rules of Procedure for Environmental Cases [hereinafter Rationale] takes an interesting approach to the right’s position in the Constitution:

This uproot from Article III of the Bill of Rights, however, does not in any way make it less of a human right compared to other freedoms protected by the Constitution, because it also reemerges as part of, and is interdependent of other fundamental rights as carved out (directly and indirectly) in other constitutional provisions, the state polices on peace and order, and general welfare, on social justice, on personal dignity and human rights. Rationale, supra note 77, at 59 (2010), available at http://sc.judiciary.gov.ph/Environmental_Rationale.pdf.

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65. Rajamani, supra note 58, at 302, citing Almitra Patel v. Union of India (Municipal Solid Waste Management Case).
66. Id. at 307.
67. Id. at 310.
69. Rajamani, supra note 58, at 308, citing M.C. Mehta v. Union of India (Delhi Vehicular Pollution Case), initiated by Writ Petition No. 13029 of 1985.
70. Rajamani, supra note 58, at 313-14.
71. Id. at 309.
72. Id. at 315.
73. Id.
74. Faure et al., supra note 38, at 153.
National laws68 consisting of legislative acts and presidential decrees (executed during the martial law period)79 contain civil and criminal provisions regarding pollution control and natural resource management. Many are similar to U.S. laws.80 In the executive branch, most of the authority over both natural resources and pollution control is concentrated81 in the Department of the Environment and Natural Resources and its attached agencies82 and regional divisions (collectively, DENR).83 The DENR is charged with managing and rulemaking in the areas of air quality,84 water quality,85 toxic and nuclear wastes,86 forestry,87 protected areas,88 mining,89 terrestrial and wetland species,90 and caves,91 while the Department of Agriculture manages most fisheries92 and other aquatic resources.93 The National Solid Waste Management Commission, made up of various agencies and chaired by the DENR, has authority over solid waste.94 The DENR’s rules and regulations, like those of U.S. agencies, are supposed to be within the scope of legislatively granted authority.95 But unlike U.S. agencies, the DENR

82. Attached agencies are independent in terms of their regulatory and quasi-judicial functions but are under the administrative supervision of the DENR. See National Water Resources Board website, http://www.nwrb.gov.ph/ (last visited May 23, 2012) (explaining the nature of attached agencies). The Authority, the Environmental Management Bureau, and local government units. The DENR's Pollution Adjudication Board assesses fines for violation of the act, id. at Ch. 6, although the Traffic Adjudication Service of the Land Transportation Office handles motor vehicle air pollution violations, see Clean Air Act Implementing Rules and Regulations, Rule II.

83. See infra notes 84-94 (citing laws giving the DENR authority).

84. See Rep. Act. No. 8749, Philippine Clean Air Act (1999), Ch. 4. The act is implemented mainly through the DENR's local offices, its Environmental Management Bureau, and local government units. The DENR's Pollution Adjudication Board assesses fines for violation of the act, id. at Ch. 6, although the Traffic Adjudication Service of the Land Transportation Office handles motor vehicle air pollution violations, see Clean Air Act Implementing Rules and Regulations, Rule II.

85. See Rep. Act. No. 9275, Philippine Clean Water Act (2004). The act is implemented mainly through the National Water Resources Board (an attached agency of the DENR), the Laguna Lake Development Authority, and local government units. Id. arts.1 and 3. The DENR cooperates with other agencies, including the Philippines Coast Guard, which have jurisdiction over specific waters or uss. Id. at ch. 3, §20; Pres. Decree No. 979, Marine Pollution Decree (1976).


87. The former Bureau of Forestry, now the Forest Management Bureau (FMB) under the DENR, has jurisdiction over all forest lands, grazing lands, and forest reservations, including watershed reservations. Pres. Decree No. 705, Revised Forestry Code (1975) §5, as amended by Exec. Order No. 277 (1987); see also Rep. Act No. 9175, Chain Saw Act (2002) (providing for the DENR to regulate chainsaws used in logging).


89. Rep. Act No. 7942, Philippine Mining Act (1995), §§8 and 9 (charging the Mines and Geo-Sciences Bureau under the DENR with the administration and disposition of mineral lands and mineral resources).
has substantial power to revoke natural resource permits and licenses. This is the case even though the due process and nonimpairment clauses of the Philippine Constitution mirror those of the U.S. Constitution.96 Revocation is considered a valid exercise of police power,97 based on the principle that the State reserves ownership of all natural resources,98 and licenses and permits are privileges, rather than rights.99 Revocation of permits related to pollution discharge also appears to be within the DENR’s police power.100

In addition to its rulemaking authority, the DENR has adjudicatory power through its Pollution Adjudication Board,101 Panel of Arbitrators, and Mines Adjudication Board.102 As in the United States, environmental litigants are generally supposed to exhaust their administrative remedies through the DENR or other agencies prior to going to court.103 The Ombudsman’s Office is a third possible path for Philippine environmental litigants, as it has the jurisdiction to prosecute cases regarding corruption and wrongdoing by public officials.104 The office may file criminal cases with a court based on a complaint against a DENR official submitted by an environmental group.105

The extent of environmental laws, regulations, and institutions in the Philippines106 suggests that there is a system in place to regulate actions that significantly impact the environment—the first prong of my definition of the environmental rule of law. Whether these laws are appropriate for the Philippines’ social and economic situation, and whether they can be enforced, is another question. The next section considers the Philippine judiciary’s ability to give meaning to these laws.

IV. Philippine Courts

The previous section suggests that the Philippines has statutes and institutions that are similar to (but not exactly

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a cease and desist order to halt unauthorized garbage disposal, even if the act establishing the agency did not expressly give it this power); Bautista v. Juinio, G.R. No. L-50908, 127 SCRA 329 (Jan. 31, 1984) (explaining that police power trumped due process); Anglo-Fil Trading Corporation v. Lazaro, G.R. No. L-54958, 124 SCRA 49 (Sept. 2, 1983) (explaining that police power trumps the contract clause).

101. This board was created by Executive Order No. 192, issued by President Corazon Aquino before the new (post-Marcos) legislature convened. The Board assumed the adjudicatory functions of the previous National Commission on Pollution Control. Id. at §15.


103. See infra Part V.C., Judicial Versus Administrative Jurisdiction and Administrative Deference.

104. Telephone Interview with Jose F. Leroy Garcia, Consultant, School of Government, Ateneo de Manila University (Feb. 10, 2012) [hereinafter Garcia Interview] (explaining jurisdiction of Ombudsman). Before the impeachment of former Ombudsman Merceditas Gutierrez and promulgation of the Environmental Rules, environmental groups sometimes opted to file complaints with this office. Ramos Interview, supra note 79 (noting that she previously filed cases through the Ombudsman). Ramos Interview, supra note 79 (describing complaint she filed against DENR officials with the Office of the Ombudsman after being denied access to public documents; the Office ultimately filed criminal and civil actions in court); Telephone Interview with Asia Perez, Director of the Bureau of Fish and Aquatic Resources, Department of Agriculture (Feb. 15, 2012) [hereinafter Perez Interview] (describing jurisdiction of the Office of the Ombudsman).

105. At least on paper, the Philippines has expansive environmental laws and policies. See Ellalyn B. De Vera, Philippines is a “Strong Performer” in Environmental Policies, MANILA BULL. A1 (Feb. 19, 2012) http://www.mbb.com.ph/articles/351997/philippines-a-strong-performer-in-environmental-policies (“The Philippines ranked 42nd among 132 countries as a ‘strong performer’ in environmental policies, outranking Australia, United States, Singapore, and Bulgaria, in the latest biennial Environmental Performance Index (EPI) conducted by Yale and Columbia Universities in the U.S.”).
like) those of the United States. The same can be said of the judicial system, which was influenced by the Philippines’ near-half-century of American occupation. Today, like the state of Louisiana or the province of Quebec,107 the Philippines is essentially a mixed common-law/civil-law jurisdiction.108 The civil tradition stems from more than three centuries of Spanish control. Much of the Spanish Civil Code109 remained in effect during the American period,110 although the United States implemented American-style rules of court that are mostly still in place.111 Another American legacy is the principle of *stare decisis*, which was codified through the 1949 Civil Code.112

A. Judicial Power

The 1935 Constitution, created in preparation for the Philippines’ independence from the United States, established a Supreme Court with powers similar to those of the U.S. Supreme Court.113 The 1987 (and current) Constitution, implemented after the ouster of President Ferdinand Marcos, provided for a potentially stronger judiciary. It specifically granted courts the power to determine whether an executive agency has abused its discretion or acted without jurisdiction.114 This provision has been interpreted as expanding judicial review to cover “political questions.”115

The 1987 Constitution also allows the Supreme Court to create rules concerning the enforcement of constitutional rights—a power that is almost legislative.116 The
Supreme Court took advantage of this power in 2010 by promulgating the Environmental Rules.\textsuperscript{117} In spite of the constitutional provisions designed to empower the court, Philippine Supreme Court justices probably enjoy less independence than their U.S. counterparts for both constitutional and political reasons. Judges may only serve until they are 70 years old,\textsuperscript{118} and many are appointees of politicians still in power. In 2011, 12 of the 15 Supreme Court justices were appointees of the former president and then-representative Gloria Arroyo,\textsuperscript{119} and the chief justice was Arroyo’s former spokesman and chief of staff.\textsuperscript{120} When Arroyo was indicted for election fraud, the Department of Justice prohibited her from leaving the country.\textsuperscript{121} The Supreme Court became embroiled in a controversy when it placed a temporary restraining order on the execution of the Department of Justice order.\textsuperscript{122} This led to a political dispute between the president and the chief justice, which ended with the justice’s impeachment and removal.\textsuperscript{123}

The Supreme Court’s constitutional authority is undermined by the other branches’ relatively frequent changes to the Constitution. Since the 1935 Constitution, there have been several major constitutional changes and two completely new constitutions.\textsuperscript{124} In 2006, the Supreme Court narrowly defeated a proposal that would have changed the Constitution again by creating a parliamentary system and allowing Arroyo to retain her presidency beyond the six-year term limit of the 1987 Constitution.\textsuperscript{125}

In sum, the 1987 Constitution creates a potential for a strong judiciary, able to keep executive power in check. But this has not always been a reality, as may be shown by the Supreme Court’s lack of adherence to the stare decisis principle.

B. Stare decisis

In spite of the codification of stare decisis,\textsuperscript{126} Supreme Court orders do not always seem to be consistent with prior case law, or even the law of a case.\textsuperscript{127} This inconsistency may be due in part to the manner in which decisions are often made by different divisions, rather than the full Court.\textsuperscript{128} It may also relate to the fact that orders are not published in an easily searchable electronic system.

But sometimes, inconsistency may be tied to political pressure. An example is the 2004 case of Bugal-B’laan Tribal Association, Inc. v. Ramos.\textsuperscript{129} In that case, the Supreme Court initially granted much of a petition brought by environmental groups and indigenous residents to void the 1995 Mining Act and a mining contract executed pursuant to the Act.\textsuperscript{130} The government and foreign mining company defendants filed motions for reconsideration.\textsuperscript{131} While the motion was under consideration, the DENR drafted a mineral action plan pursuant to the Act,\textsuperscript{132} and the president ordered all government agencies to begin implementing the plan.\textsuperscript{133} Ten months later (and one month before a major international mining conference...
ence was to take place in Manila\textsuperscript{134}, the Supreme Court issued a reconsideration of its original decision.\textsuperscript{135} Reinterpreting the Constitution, the Court held that it “should be construed to grant the President and Congress sufficient discretion and reasonable leeway to enable them to attract foreign investment and expertise” and “not be used to strangle economic growth or to serve narrow, parochial interests.”\textsuperscript{136} The president called the reconsideration an act of statesmanship done in the national interest.\textsuperscript{137}

Another example of this kind of reconsideration is the 1991 case of \textit{Technology Developers, Inc. v. Court of Appeals}, concerning a charcoal manufacturer that failed to obtain permits required by the local government and the DENR.\textsuperscript{138} Finding that fumes from the charcoal plant were polluting the air and affecting human health, the local government issued a cease-and-desist order and declined to grant the locally required operating permit.\textsuperscript{139} The manufacturer’s suit to reopen the plant made its way to the Supreme Court, which upheld lower court decisions in favor of the local government.\textsuperscript{140} The Court acknowledged the DENR’s authority to determine the existence of pollution, but found that the mayor’s police power allowed him to deny a permit application unless appropriate measures were taken to avoid injury to the health of local residents.\textsuperscript{141}

The manufacturer filed a motion for reconsideration, raising completely new facts and legal arguments.\textsuperscript{142} The Supreme Court granted the motion, deciding this time that the DENR’s authority to control pollution under Presidential Decree No. 984 superseded all other laws, including provisions of the legislatively enacted Civil Code relating to nuisance.\textsuperscript{143} This reconsideration conflicts with other decisions regarding the ability of local governments to issue and suspend permits,\textsuperscript{144} as well as cases citing the police power as a basis for permit revocation.\textsuperscript{145}

\textit{Social Justice Society v. Atienza},\textsuperscript{146} a more recent case decided by different justices, provides an interesting contrast. This case concerned a Manila zoning ordinance prohibiting industrial activity in a zone that previously served as an industrial hub. Oil companies had an agreement with the Department of Energy and the Manila mayor allowing them to continue operating in the zone, despite the zoning ordinance. In 2007, the Supreme Court found that the agreement had expired, such that the oil companies were subject to the zoning ordinance. The oil companies moved for reconsideration of this decision, arguing that the zoning ordinance was inconsistent with national ordinances granting regulatory powers to the Department of Energy.\textsuperscript{147} This time, the Court stuck to its original position, emphasizing the Constitution’s guarantee of local autonomy\textsuperscript{148} and the significance of local police power.

The difficulty of squaring rulings such as \textit{Atienza} with \textit{Technology Developers} suggests that environmental laws have not been consistently applied over time and across the jurisdiction, the second prong of my definition of the environmental rule of law.

\begin{footnotes}
\item[134.] Tan (Winter 2005-2006), \textit{supra} note 81, at 202.
\item[135.] \textit{La Buga} (Dec. 1, 2004), \textit{supra} note 131.
\item[136.] \textit{Id.}
\item[137.] Tan (Winter 2005-2006), \textit{supra} note 81, at 203, citing Press Release, Office of the Press Secretary to the President, GMA Points to SC Decision as the Proverbial “Silver Lining” (Dec. 2, 2004).
\item[138.] G.R. No. 94759, 193 SCRA 147 (Jan. 21, 1991) (original Supreme Court decision).
\item[139.] \textit{Id.}
\item[140.] \textit{Id.}
\item[141.] \textit{Id.}
\item[142.] Like American courts, Philippine courts are generally prohibited from considering new facts and legal arguments raised for the first time on appeal (much less on a motion for reconsideration). Philippine Rules of Court, No. 37 (New Trial or Reconsideration), §1 (listing justifications for reconsideration, including fraud, mistake or excusable negligence that ordinary prudence could not have guarded against; newly discovered evidence, which could not have been discovered and produced at the trial, and which if presented would probably alter the result; excessive damages; and where “evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law”); No. 44 (Ordinary Appealed Cases), §15 (“...appellant ... may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties.”); No. 51 (Judgment), §8 (“No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceeding therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief ...”). Antonio v. Barrios, G.R. No. L-15124 (June 30, 1961), available at http://www.lawphil.net/judjuris/juri1961/jun1961/gr_l-15124_1961.html (declining to grant new hearing based on movant’s “illogical” excuse that his lawyer failed to note the hearing on his calendar); see also Ayala Land, Inc. v. Castillo, G.R. No. 178110 (June 15, 2011), available at http://elibrary.judiciary.gov.ph/decisions.php?doctype-Decisions&%20%20signed%20%20Resolution&docid=13121797891674016429 (“We cannot uphold respondents’ proposition for us to disregard basic rules, particularly the rule that new issues cannot be raised for the first time on appeal.”).
\item[143.] Technology Developers, Inc. v. Court of Appeals, G.R. No. 94759, 201 SCRA 11 July 31, 1991), cited in Dante Gatmaytan-Magno, \textit{Artificial Judicial Environmental Activism: Oposa vs. Factoran as Aberration, 17 Ind. Int’l & Comp. L. Rev. 1, 10-14 (2007). The Court quoted the revealing clause in Pres. Decree 984, Providing for the Revision of Republic Act No. 3951, Commonly Known as the Pollution Control Law, and for Other Purposes (Aug. 18, 1976), which states that “any provision of laws, presidential decrees, executive orders, rules and regulations and/or parts thereof inconsis- tent with the provisions of this Decree are hereby repealed and/or modified accordingly.” The legitimacy of this order, issued during President Marcos’ period of martial law, is questionable. Nevertheless, the Court found that, “even the provision of the Civil Code on nuisance, insofar as the nuisance is caused by pollution of the air, water, or land resources, are deemed super- seded by Presidential Decree No. 984 which is the special law on the subject of pollution.” Id. (Civil Code Art. 699 lists “[a]blematment, without judicial proceedings” as a remedy for a public nuisance).
\item[144.] E.g., Roble Arrastre, Inc. v. Villaflo, G.R. No. L-122545 (Nov. 28, 1969), available at http://www.lawphil.net/judjuris/juri1969/jurid1969/gr_l-122545_1969.html (powers conferred by law upon the Public Service Commission were not designed to deny or supersede the regulatory power of local governments over motor traffic in the streets sub- ject to their control).
\item[145.] E.g., Pollution Adjudication Board v. Court of Appeals, supra note 97. There, the Court upheld the DENR’s revocation of an effluent permit based on the failure of the sewerage company to maintain and supervise their sewers and sewage disposal system to protect the health, welfare and comfort of the public, as well as the protection of plant and animal life, commonly designated as the police power. Id. The Court drew support for its decision in this case from its original decision in \textit{Technology Development}. See id., referring to local government’s cease and desist order.
\item[146.] G.R. No. 156052, 517 SCRA 657 (Mar. 7, 2007), reconsidered, 545 SCRA 92 (Feb. 13, 2008).
\item[148.] \textit{Const.} (1987), Art. X (Phil).
\end{footnotes}
C. Judicial Versus Administrative Jurisdiction and Administrative Deference

As in the United States, exhaustion of administrative remedies is generally required before pursuing a case in court. In some cases, this rule has been taken to the extreme, suggesting a lack of judicial power. An example is the 1982 case of *Mead v. Argel*, in which the Supreme Court dismissed the prosecution of an oil company for unauthorized waste discharge. The bill of information alleged that the discharge damaged vegetation in the vicinity, in violation of Republic Act No. 3991. This act broadly defines pollution and requires a permit to discharge industrial waste or any waste that could cause pollution. The Court looked to §6 of the Act, which authorizes a DENR commission to “[d]etermine if pollution exists in any of the waters and/or atmospheric air of the Philippines.” Although the Act does not give the commission exclusive authority to make this determination, the Court decided that the commission alone had the technical expertise to determine whether the discharge at issue was “pollution,” and to hold the public hearings necessary to make this determination.

In other cases, the Supreme Court has acknowledged exceptions to the rule of administrative exhaustion—where the administrative action in question is patently illegal; there is a risk of irreparable injury; or purely legal questions are involved. But the Court has narrowly interpreted what constitutes a “patent illegality.” An example is the 2003 case of *Magbuhos v. Lanzana*, where fishermen sued to cancel the DENR’s issuance of an environmental clearance certificate (ECC) that exempted proposed construction from the environmental impact statement (EIS) system. Plaintiffs alleged that the proposed construction was patently illegal, in violation of the Local Government Code and a presidential decree designating the area as an ecologically threatened zone. Dismissing arguments as to why the construction was patently illegal, the Court

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149. See Factoran v. Court of Appeals, G.R. No. 93540, 320 SCRA 530 (Dec. 13, 1999) (“The doctrine of exhaustion of administrative remedies is basic. Courts . . . should not entertain suits unless the available administrative remedies have first been resorted to and the proper authorities have been given an appropriate opportunity to act and correct their alleged errors, if any, committed in the administrative forum.”); Dy v. Court of Appeals, G.R. No. 121587 (Mar. 9, 1999), available at http://sc.judiciary.gov.ph/ju-risprudence/1999/mar99/121587.htm (a party must exhaust all administrative remedies before he can resort to the courts); Ysmael v. Deputy Executive Secretary, G.R. No. 79538, 224 SCRA 992 (Oct. 18, 1990) (“A long line of cases establishes the basic rule that the courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies”).

150. G.R. No. L-41958, 115 SCRA 256 (July 20, 1982). The Supreme Court granted certiorari in this case despite recognizing that certiorari should not normally be granted in such cases:

There is no disputing the validity and wisdom of the rule invoked by the respondents. However, it is also recognized that, under certain situations, recourse to the extraordinary legal remedies of certiorari, prohibition or mandamus to question the denial of a motion to quash is considered proper in the interest of “more enlightened and substantial justice.” . . .


152. Id. at §2(a).

153. Id. at §9.

154. Mead v. Argel, supra note 150:

As may be seen from the law, the determination of the existence of pollution requires investigation, public hearings and the collection of various information relating to water and atmospheric pollution. . . . The definition of the term ‘pollution’ in itself connotes that the determination of its existence requires specialized knowledge of technical and scientific matters which are not ordinarily within the competence of . . . those sitting in a court of justice.

See also Remman Enterprises, Inc. v. Court of Appeals, G.R. No. 107671 (Feb. 26, 1997), available at http://sc.judiciary.gov.ph/jurisprudence/1997/feb1997/107671.htm (finding that petitioners did not have to go before the former Pollution Control Commission prior to bringing suit against a hog and poultry farm discharging waste into petitioners’ yard, but only because the case was filed as a nuisance claim).

The more recent CAA provides for citizen suits without any mention of the need for an agency to determine if pollution exists, although the Supreme Court does not appear to have ruled on whether citizen plaintiffs must first seek relief with the DENR’s Pollution Adjudication Board. See Rep. Act No. 8749, CAA (1999) at §41.

155. See Paat v. Court of Appeals, G.R. No. 111107, 266 SCRA 167 (Jan. 10, 1997) (citations omitted), listing 11 instances in which administrative remedies need not be exhausted:

(1) a violation of due process; (2) when the issue involved is purely a legal question; (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction; (4) when there is estoppel on the part of the administrative agency concerned; (5) when there is irreparable injury; (6) when the respondent is a department secretary whose acts as an alter ego of the President bears the implied and assumed approval of the latter; (7) when to require exhaustion of administrative remedies would be unreasonable; (8) when it would amount to a nullification of a claim; (9) when the subject matter is a private land in land case proceedings; (10) when the rule does not provide a plain, speedy and adequate remedy, and (11) when there are circumstances indicating the urgency of judicial intervention.

See also PNOC-Energy Development Corp. v. Veneracion, G.R. No. 129820, 509 SCRA 93 (Nov. 30, 2006) (distinguishing between disputes concerning the granting of an application, which are resolved by executive agencies, and disputes of a civil or contractual nature that may be adjudicated only by courts).


157. Id. Presidential Decree 1586 (1978) established an environmental impact statement (EIS) system similar to the U.S. system created by NEPA. All proposed projects (public as well as private) that “significantly affect the quality of the environment” are generally required to secure environmental clearance on “Environmental Compliance Certificate” (ECC). The requirements and processes vary depending on whether a proposed project is outside thepurview of the EIS system, considered an environmentally critical project, or located in an environmentally critical area. Id. §4. The government agency evaluating a proposed project may issue an ECC certifying that the project will not bring about an unacceptable environmental impact and that the proponent has complied with the requirements of the EIS system. See Rep. Act No. 7942, Philippine Mining Act (1995), at §3.

158. Sections 26 and 27 of Republic Act No. 7160, the Local Government Code (1991), require national agencies and corporations to consult with local governments prior to undertaking any project that may cause pollution, climatic change, depletion of non-renewable resources, loss of forest, or species extinction. The Magbuhos decision determined that the construction in that case, a wharf, did not fall into any of those categories (even though barge using the wharf could require consultation).

159. Presidential Decree No. 1605, Granting the Metropolitan Manila Commission Certain Powers (1978) prohibits construction of commercial structures as well as “any form of destruction by other human activities.” The Magbuhos court ignored this catch-all category, determining that the proposed construction would not come under the category of “any form of destruction by other human activities.”

160. See notes 158-59, supra (citing laws that the project appeared to violate). In a similar case, Odadan v. Rio Tuba Nickel Mining Corp., G.R. No. 161436 (June 23, 2004), available at http://sc.judiciary.gov.ph/resolutions/2nd/2004/2/jun/161436.htm, the Supreme Court declined to overturn an ECC issued to a mining company. It held:

The issuance of the ECC is an exercise by the Secretary of the DENR of his quasi-judicial functions. This Court has consistently held that the courts will not interfere in matters which are addressed to the sound discretion of the government agency entrusted
found that the plaintiffs failed to exhaust the administrative remedies provided in a DENR order concerning EISs.161

Still, there are cases in which the Court has ruled against DENR, either in favor or against environmental plaintiffs. An example is the 2005 case of Province of Rizal v. DENR, concerning a landfill that was contaminating the local watershed.162 The Supreme Court ruled against the DENR and in favor of the local government and conservation group, ordering the landfill to be closed. The Court chastised the DENR for falling short of its duty to refrain from impairing the environment.163 In contrast to its finding in Magbuho, the Court found that the DENR had failed to consult with the local communities, as required by the Local Government Code.164

The inconsistency of these rulings makes it hard to predict whether a case must be pursued through administrative or judicial channels, and whether a court will defer to the DENR’s position. Again, this inconsistency suggests that the second prong of my definition of the environmental rule of law (regarding the consistent application of environmental laws) has not been met.

D. Standing

The Supreme Court’s doctrine on standing on, in contrast to its variable application of stare decisis, has consistently favored environmental litigants. This liberal standing doctrine165 was made famous in Minors Oposa v. Factoran,166 with the regulation of activities coming under the special and technical training and knowledge of such agency.

Id.


163. See id.: we expounded on this matter in the landmark case of Oposa v. Factoran, G.R. No. 101083, 30 July 1993, 224 SCRA 792, where we held that the right to a balanced and healthful ecology is a fundamental legal right that carries with it the correlative duty to refrain from impairing the environment. This right implies, among other things, the judicious management and conservation of the country’s resources, which duty is reposed in the DENR.

164. Id. An example of a case with an unfavorable outcome for environmental litigants is Philippines v. City of Davao, G.R. No. 148622, 388 SCRA 691 (Sept. 12, 2002). Developers sued the DENR for failing to exempt their project from the environmental impact assessment. Id. The DENR declined to exempt the project since it was located in a critical environmental area, even though the area was not on the DENR’s list of critical environmental areas, which had not been updated in 20 years. Id. The Supreme Court found that the DENR did not have the discretion as to whether the project should be exempt—it had to exempt any project that fell within categories listed in Presidential Decree No. 1586 and related laws. Id.


166. Oposa, supra note 77. This was probably the first suit to be brought based on the right to a “balanced and healthful ecology” under Article 2 of the 1987 Philippine Constitution. La Viña Interview, supra note 128, Ramos a suit brought in 1991 to annul timber licenses based on the right to a “balanced and healthful ecology” under the Philippine Constitution.167 Characterizing this right as an issue of transcendental importance with intergenerational implications, the Court recognized the standing of future generations.168

Courts before and after Minors Oposa have conferred standing to litigants asserting a “public right” (such as contesting an illegal official action) upon a showing that the case is one of “transcendental importance.”169 One example, reminiscent of the vehicular pollution case in India,170 is the 2006 case Henares v. Land Transportation Franchising and Regulatory Board.171 As in the Indian case, the Henares plaintiffs were citizens concerned about air pollution, seeking a mandamus to require public buses to use compressed natural gas.172 The Supreme Court found that plaintiffs clearly had standing, since the petition invoked the fundamental right to clean air.173 The Court characterized standing as a “procedural technicality which may, in the exercise of the Court’s discretion, be set aside in view of the importance of the issue raised.”174

Another example is La Bugal-B’laan Tribal Association v. Ramos, which, as discussed in the section on stare decisis, Interview, supra note 79 (noting that the 1987 Constitution was the first to have a provision on environmental rights (Art. II, §16), and the Minors Oposa case was filed in 1991).

167. Standing was not challenged in this case, but the Court made a point of emphasizing that “every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology.” Id.

168. Id.

169. See, e.g., Solicitor General v. Metro. Manila Authority, G.R. No. 102782 (Dec. 11, 1991), available at http://www.lawphil.net/judjuris/juri1991/dec1991/gr_102782_1991.html (granting Solicitor General standing to sue to prohibit government from confiscating license plates, even though parties injured by the confiscation had not filed complaints; citing Araneta v. Dinglasan, G.R. No. L-2044 (Aug. 26, 1949), http://www.lawphil.net/judjuris/juri1949/aug1949/1949rp2644_1949.html (“the transcendental importance of the public interest to the public of these cases demands that they be settled promptly and definitely, bruising aside, if we must, technicalities of procedure”); Tatadfa v. Tuvera, G.R. No. 63915, 136 SCRA 27 (Apr. 24, 1985) (finding that petitioners had standing to sue to compel the publication of unpublished presidential issuances of general application, even if petitioners were not personally affected by non-publication); La Bugal (Jan. 27, 2004) (overturned on other grounds by La Bugal (Dec. 1, 2004) (granting standing to residents to enjoin an allegedly unconstitutional use of natural resources); compare with Morton, 405 U.S. at 738-40 (to establish standing, a member of an organization seeking judicial review must allege facts to show that he himself is adversely affected). Philippine courts also employ a standing doctrine similar to the American concept, in which standing may only be accorded to the real party in interest. See People v. Vera, G.R. No. L-45685 (Nov. 16, 1937), www.lawphil.net/judjuris/juri1937/nov1937/gr_l-45685_1937.html (plaintiff must have “a personal and substantial interest in the case such that he has sustained, or will sustain direct injury as a result.”); Biraogo v. Philippine Truth Commission of 2010, G.R. No. 192935 (Dec. 7, 2010), available at http://sc.judiciary.gov.ph/jurisprudence/2010/december2010/192935.htm (explaining the difference between standing in private-interest and public-interest suits). But, as stated in the above-cited cases, plaintiffs who are able to demonstrate that a matter is of transcendental importance need not prove that they are the real parties in interest.

170. M.C. Mehta v. Union of India (Delhi Vehicular Pollution Case), initiated by Writ Petition No. 13029 of 1985.


172. Id.

173. Id.

174. Id.
was brought by environmentalist and indigenous plaintiffs to invalidate a government mining contract on grounds that the mining activities would displace residents.\textsuperscript{175} Defendants argued that, since plaintiffs were not parties to the mining contract, they had no standing to sue.\textsuperscript{176} The Supreme Court accorded standing on grounds that the action was not merely for annulment of the contract, but for prohibition of an allegedly unconstitutional use of natural resources and mandamus.\textsuperscript{177} The Court stated: “As the case involves constitutional questions, this Court is not concerned with whether plaintiffs are real parties in interest, but with whether they have legal standing.”\textsuperscript{178}

A 2009 case that pushes the limits of the Philippine standing doctrine is *Dolphins v. Reyes*, brought by lawyers acting as guardians for marine mammals whose habitat has been affected by underwater blasting and drilling.\textsuperscript{179}

By increasing the likelihood that action will be taken against those who break the law, the Supreme Court’s broad concept of standing can help implement the third prong of my definition of the environmental rule of law. Compared to the United States, there seems to be relatively little resistance to allowing broad standing in Philippine environmental actions.\textsuperscript{180} Of course, broad standing does not guarantee success in environmental cases. Plaintiffs in *Minors Oposa*, *Henares*, and *La Bugal* were all beneficiaries of the Court’s liberal standing doctrine, but none of their claims prevailed.

V. Rules of Procedure in Environmental Cases

All of the cases discussed above were brought before the Supreme Court promulgated its Environmental Rules in 2010. The annotation to the Environmental Rules explains that they were “a response to the long felt need for more specific rules that can sufficiently address the procedural concerns that are peculiar to environmental cases.”\textsuperscript{181} The Environmental Rules apply to cases concerning environmental law in most trial courts across the country, including 117 trial courts specifically designated as “Special Courts” for environmental cases in 2008.\textsuperscript{182} The Environmental Rules govern procedure in civil and criminal actions involving any environmental law or provision of a law.\textsuperscript{183} Also covered are “strategic lawsuits against public participation” (SLAPP)—suits to stifle action taken to enforce environmental laws or assert environmental rights.\textsuperscript{184}

The Environmental Rules are designed to expedite proceedings.\textsuperscript{185} Courts must prioritize the adjudication of environmental cases over other kinds of cases,\textsuperscript{186} and timeframes for pleadings and decisions are truncated.\textsuperscript{187} The effort to expedite cases is notable, since litigation in Philippine courts can drag on for years.\textsuperscript{188}

The Environmental Rules allow citizen suits to be filed in any environmental case.\textsuperscript{189} Citizen plaintiffs can hear environmental cases in their respective cities. See Admin. Order No. 23-2008. In a city or town with no Special Court, any trial court may hear environmental cases. See id. at 5-6 (Guidelines 1 and 2); Environmental Rule 1(2) (Scope).

183. Environmental Rule 1(2) (containing a nonexclusive list of environmental statutes), Annotation, supra note 62, at 100.

184. See Environmental Rule 6 (explaining how a defendant may assert the defense that a civil suit is a SLAPP); Environmental Rule 19 (governing criminal suits).

185. One of the stated purposes of the Environmental Rules is to “provide a simplified, speedy and inexpensive procedure for the enforcement of environmental rights and duties recognized under the Constitution, existing laws, rules and regulations, and international agreements.” Environmental Rule 1(3)(b). Compare Environmental Rule 2(2) (prohibiting motions to dismiss, motions for clarification, and third-party complaints), with Civil Rule of Procedure 16 (stating grounds for motions to dismiss), Civil Rule 12 (allowing for a motion for particulars), and Civil Rule 6(12) (allowing for third-party complaints); compare Environmental Rule 3(1) (requiring court to set pretrial hearing within two days of the last pleading), with Civil Rule 18(1) (imposing on plaintiff the duty to move for a pretrial hearing); compare Environmental Rule 15(1) (requiring court to set arraignment within 15 days of acquiring jurisdiction), with Criminal Rule of Procedure 116(1)(g) (setting arraignment 30 days after jurisdiction is acquired); compare Environmental Rule 17(1) (trial to last three months), with Criminal Rule 119(2) (trial to last six months). Under the Environmental Rules, the court generally has one year from the filing of the complaint to hear environmental cases in their respective cities. See Admin. Order No. 23-2008. In a city or town with no Special Court, any trial court may hear environmental cases. See id. at 5-6 (Guidelines 1 and 2); Environmental Rule 1(2) (Scope).

186. Environmental Rule 4(5). See supra note 186 (detailing time lines for motions and proceedings).


188. Of course, broad standing does not guarantee success in environmental cases. Plaintiffs in *Minors Oposa*, *Henares*, and *La Bugal* were all beneficiaries of the Court’s liberal standing doctrine, but none of their claims prevailed.

189. The Supreme Court made this designation through Administrative Order No. 23-2008, Designation of Special Courts to Hear, Try and Decide Environmental Cases (Jan. 28, 2008). See Annotation, supra note 62, at 101. The order lists 117 Special Courts, which are the only courts entitled to

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\textsuperscript{175} *La Bugal* (Jan. 27, 2004) (overturned on other grounds by *La Bugal* (Dec. 1, 2004)).

\textsuperscript{176} Id.

\textsuperscript{177} Id.

\textsuperscript{178} Id.

\textsuperscript{179} G.R. No. 180771, discussed in Delmar Carino, *SC chief Implementation of Environment Laws Poor*, *Philippine Daily Inquirer*, 17, 2009 WLNR 7094043 (Apt. 17, 2009). At the time of this Article, the Court had not yet ruled on the issue of standing. Ramos Interview, supra note 79. The case was filed before the implementation of the Environmental Rules, and it apparently could not benefit from the Environmental Rules’ expedited time lines for environmental cases. See infra note 186 (describing expedited timelines in environmental cases).

\textsuperscript{180} Defendants in *Minors Oposa* did not contest standing. See *Oposa*, supra note 77.

\textsuperscript{181} Annotation, supra note 62, at 100.

\textsuperscript{182} The Supreme Court made this designation through Administrative Order No. 23-2008, Designation of Special Courts to Hear, Try and Decide Environmental Cases (Jan. 28, 2008). See Annotation, supra note 62, at 101. The order lists 117 Special Courts, which are the only courts entitled to

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Another innovation of the Environmental Rules is the writ of *kalikasan* (nature), a special civil action for indefinite injunctive relief designed to address unlawful acts or omissions by anyone that threaten to violate the constitutional right to a balanced and healthful ecology.\(^{198}\)

The unlawful act or omission must involve environmental damage that prejudices the life, health, or the property of inhabitants in two or more cities or provinces.\(^{200}\) A petition for the writ can be filed with the Supreme Court or the Court of Appeals by anyone for no fee.\(^{201}\) Relief may include monitoring and periodic reports to ensure enforcement of the judgment of the court.\(^{202}\) The writ may also be used by environmental litigants to compel information necessary to prove their case.\(^{203}\) Thus, it can serve a function similar to a motion to compel in the United States, or a request under the U.S. Freedom of Information Act.\(^{204}\)

Antonio Oposa Jr., the attorney and one of the plaintiffs behind the famous *Oposa Minors* case, put the Environmental Rules to test straightforward by filing the first petition for a writ of *kalikasan*.\(^{205}\) The petition sought to compel the government to enforce laws requiring the construction of rainwater collectors in every locality.\(^{206}\) The Supreme

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\(^{198}\) Environmental Rule 7(1). Rule 7(5) explains that the writ of *kalikasan* includes a “cease and desist order and other temporary remedies effective until further order.” The writ of *kalikasan* has been compared to the writ of *amparo*, a remedy that may be tapped by any person whose right to life, liberty, and security has been violated or is threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity. See *Rationales, supra note 77*, at 79 (“Similar to the writs of habeas corpus, amparo, and habeas data, the writ of *kalikasan* was recast as a different and unique legal device drawing as models available writs in the country and practices in other jurisdictions.”); Randy David, *The Writ of Kalikasan and Judicial Activism, Philippine Daily Inquirer* 14, 2010 WLNR 23169022, Nov. 21, 2010; *Tony La Viña, Good News for Environmental Justice, Manila Standard*, 2010 WLNR 8614716, Apr. 27, 2010.

\(^{200}\) See Environmental Rule 7(1). The requirement that damage must affect “inhabitants in two or more cities or provinces” has been criticized as being unfair to residents from any of the large island ecosystems that only constitute one province (like Palawan) or unincorporated municipalities, where large numbers of people may be affected. *La Viña Interview, supra note 128*.

\(^{201}\) See Environmental Rule 7(2)-3.

\(^{204}\) See Environmental Rule 7(15), listing the relief available under this writ. The rule does not provide for damages, although a plaintiff can bring a separate action for damages. See *Annotation, supra note 62*, at 139 (“A person who avails of the Writ of *Kalikasan* may also file a separate suit for the recovery of damages for injury suffered.” This is consistent with Sec. 17, *Institution of Separate Actions*).

\(^{205}\) See *Rationales, supra note 77*, at 80 (“the writ of *kalikasan* was refashioned as a tool to bridge the gap between allegation and proof by providing a remedy for would-be environmental litigants to compel the production of information within the custody of the government”).

\(^{206}\) See *id.* (“This function is analogous to a discovery measure, and may be availed of upon the application for the writ.”).

\(^{199}\) Environmental Rule 7(1). Rule 7(5) explains that the writ of *kalikasan* includes a “cease and desist order and other temporary remedies effective until further order.” The writ of *kalikasan* has been compared to the writ of *amparo*, a remedy that may be tapped by any person whose right to life, liberty, and security has been violated or is threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity. See *Rationales, supra note 77*, at 79 (“Similar to the writs of habeas corpus, amparo, and habeas data, the writ of *kalikasan* was recast as a different and unique legal device drawing as models available writs in the country and practices in other jurisdictions.”); Randy David, *The Writ of Kalikasan and Judicial Activism, Philippine Daily Inquirer* 14, 2010 WLNR 23169022, Nov. 21, 2010; *Tony La Viña, Good News for Environmental Justice, Manila Standard*, 2010 WLNR 8614716, Apr. 27, 2010.

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\(^{205}\) Global Legal Action on Climate Change v. Philippines, G.R. No. 191806 (filed Apr. 21, 2010).

Court ordered the defendant government agencies to comment on the petition, 207 and a settlement was reached. 208

The writ of kalikasan was first issued in West Tower Condominium Corporation v. First Philippine Industrial Corporation, based on a petition filed by residents citing health and environmental concerns. 209 The Supreme Court directed the defendant pipeline company to stop operating its leaking fuel pipeline until ordered otherwise. 210 In Hernandez v. Placer Dome, Inc., the Supreme Court issued its second writ of kalikasan pending the resolution of a petition filed by residents living along a river contaminated with toxic mine tailings. 211

By itself, the writ of kalikasan may be mostly symbolic, since it does not impose substantial costs on defendants. 212 Still, the symbolism of a "Writ of Nature" is important, 213 and the writ can allow for quick relief while actions with more significant consequences are pending. 214

Another procedure under the Environmental Rules with no equivalent in U.S. law is the writ of continuing mandamus. 215 A petition for this writ can be filed by any

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207. Edu Punay, Supreme Court Orders Government to Answer First Kalikasan Petition, THE PHILIPPINE STAR, Apr. 29, 2010, http://www.philstar.com/article.aspx?articleId=570587&publicationSubCategoryId=67 (last visited June 8, 2012). 208. See Global Legal Action on Climate Change, supra note 205, Manifestation and Motion to Set for Oral Hearing (Sept. 27, 2011); Rita Linda V. Jimeno, Rainwater Collection, MANILA STANDARD TODAY, July 25, 2011, http://www.manilastandardtoday.com/insideOpinion.htm?f=2011/july/25/rital-indajimeno.isx&c=2011/july/25 (last visited June 8, 2012) (explaining that the case led to a Memorandum of Agreement between the Department of Public Works and the Department of Interior and Local Governments to construct rainwater collection systems in local government units by the end of 2012). 209. See West Tower Condominium Corporation, supra note 165 (explaining that the writ was issued Nov. 19, 2010). 210. Id. 211. Hernandez v. Placer Dome, Inc., G.R. No. 195482 (June 21, 2011), available at http://www.chanrobles.com/secsolutions/2011jurisreflections.php?id=189 (explaining that the writ was issued Mar. 8, 2011). 212. Telephone Interview with Prof. Harry Roque, University of Philippines College of Law and the Center for International Law (Feb. 10, 2012) [hereinafter Roque Interview] [suggesting that the writ of kalikasan is largely symbolic and does not impose enough costs on defendants to deter their behavior]. 213. La Vña Interview, supra note 128 (stating that just the name, "writ of kalikasan (nature)," is attractive to plaintiffs). 214. Roque Interview, supra note 212 (suggesting that a TEPO and the writ of continuing mandamus can be more effective than the writ of kalikasan). 215. See Environmental Rule 8. In the United States, Civil Procedure Rule 81(b) abolished the writ of mandamus in the district courts (although not in the appellate courts). The Rule still permits "[r]elief heretofore available by mandamus" to be obtained by actions brought in compliance with the rules. Fed. R. Civ. P 81(b). In re Cheney, 406 F.3d 723, 728-29 (D.C. Cir. 2005). Today, the writ of mandamus is an extraordinary remedy available to compel an "officer or employee of the United States or any agency thereof to perform a duty owed to plaintiff." Burke v. U.S. Dept. of Justice, slip op., No. 11-2271 (2011 WL 6404922) (D.D.C. Dec. 21, 2011) at *1, citing 28 U.S.C. §1361. Prior to the implementation of the Environmental Rules in the Philippines, the mandamus concept was used in Manila Bay (2008) (see infra Section VI) and in Social Justice Soc’y v. Arienda, supra note 78. In Arienda, the Supreme Court issued a writ of mandamus to compel the enforcement of a zoning ordinance prohibiting oil operations in a commercial zone. The Court cited Rule of Court No. 65(3) (providing for issuance of mandamus when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station).

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216. This provision suggests that standing for a continuing mandamus is narrower than that for a writ of kalikasan. See Annot., supra note 62, at 143, explaining the difference between the continuing mandamus and the writ of kalikasan.

217. Environmental Rule 8(1). A continuous mandamus may also arise when a court decides to convert a TEPO to continuing mandamus through its judgment, see Environmental Rule 5(3), or as relief obtained from a writ of kalikasan. See Annot., supra note 134 at 134 (discussing Rule 7(2)). The continuing mandamus can only be directed at a government party, while the writ of kalikasan can be directed at anyone. See Annot., supra note 62, at 143 (explaining the difference between the continuing mandamus and the writ of kalikasan).

218. Environmental Rule 8(1). The writ may be filed with the Regional Trial Court, the Court of Appeals, or the Supreme Court. In contrast, the writ of kalikasan can only be filed with the Court of Appeals or the Supreme Court. See Environmental Rule 7(2-3).


223. See Environmental Rule 20 (“... When there is a lack of full scientific certainty in establishing a causal link between human activity and environmental effect, the court shall apply the precautionary principle in resolving the case before it...”). Environmental Rule 1(3)(f) “Precautionary principle states that when human activities may lead to threats of serious and irreversible damage to the environment that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that threat.” These Rules probably represent the first appearance of the precautionary principle in Philippine law. Garcia Interview, supra note 104.

224. Rationale, supra note 77, at 46.

225. In the Annotation, the Supreme Court states that “the precautionary principle shifts the burden of evidence of harm away from those likely to suffer harm and onto those desiring to change the status quo.” Id. at 158 (discussing Rule 20(2)).

226. See Annot., supra note 62, at 143, explaining that the writ of kalikasan requires the court to submit written progress reports. 221 The writ remains in effect until the judgment is fully satisfied. The Environmental Rules rely on the precautionary principle as an actual rule of evidence. In its rationale accompanying the Environmental Rules, the Supreme Court says that adoption of the rule gives environmental plaintiffs a better chance of proving their cases when the risks of environmental harm may not easily be proven. 224 It is not yet clear whether this rule shifts the burden of proof, requiring defendants to prove that their activity will not cause environmental damage. 225

As of 2012, the only published Supreme Court order to mention the principle is Tribal Coalition of Mindanao v. Taganito Mining Corporation, 226 in which plaintiffs sought
a writ of kalikasan and a TEPO against a nickel mining operation. The Court found that the petition on its face did not contain sufficient allegations and evidence for immediate relief. Still, based on the precautionary principle, the Court gave applicants a chance to re-plead their allegations and submit evidence.

VI. Continuing Mandamus in the Manila Bay Case

A decade before the Environmental Rules were in place, environmentalists sought a writ of mandamus to require government agencies to restore and protect Manila Bay. Plaintiffs, including the Concerned Residents of Manila Bay and Antonio Oposa, alleged that the defendant government agencies had allowed the water quality of Manila Bay to fall far below the standards set by law. They also asserted their constitutional right to a balanced and healthful environment.

Three years later, the trial court issued a decision in favor of plaintiffs, generally directing each government agency to fulfill its duties under the relevant environmental laws. The government agencies appealed.

In 2005, the Court of Appeals denied the government agencies’ appeal, stressing that the trial court’s decision did not require defendants to do tasks outside of their usual, basic functions under existing laws. The court then came before the Supreme Court, and on December 18, 2008, Justice Presbitero Velasco issued an opinion in which all justices concurred.

The opinion explained the applicability of a writ of mandamus, differentiating between the government agencies’ obligation to perform their duties as defined by law and the manner in which they choose to carry out these duties. While the implementation of cleanup duties could entail discretion, “the very act of doing what the law exacts to be done is ministerial in nature and may be compelled by

mandamus.” In other words, the agency charged with executing the Ecological Solid Waste Management Act could choose where to set up landfills, but not whether to set them up.

The December 18, 2008, order was essentially a continuing mandamus, directing the DENR to implement a specific plan for the rehabilitation, restoration, and conservation of the Manila Bay at the earliest possible time. Ten other agencies received similarly ambitious marching orders. Local government units were required “to inspect all factories, commercial establishments, and private homes along the banks of the major river systems in their respective areas of jurisdiction” to determine whether they had compliant wastewater treatment systems. All informal settlements and structures along the bay and riverbanks were to be demolished.

The Department of Education would have to “inculcate in the minds and hearts of the people through education the importance of preserving and protecting the environment.”

All defendant-agencies were ordered to submit quarterly progress reports to the Manila Bay Advisory Committee, created to monitor the execution phase of the judgment. This committee was comprised of Justice Velasco, as well as the court administrator and technical experts.

On February 15, 2011, Justice Velasco issued a new order in the same case, setting specific deadlines for each agency’s tasks. But this time, not everyone on the Court agreed. Justice Antonio Carpio, joined by two other justices, wrote a dissenting opinion, as did Justice Maria Lourdes Sereno.

Justice Carpio argued that the justices were improperly assuming nonjudicial administrative functions. Justice

227. A writ of kalikasan was later issued, but not a TEPO. Ramos Interview, supra note 79. At least one trial court has relied on the precautionary principle in issuing a TEPO: Earth Justice v. DENR, Regional Trial Court, Branch 28, Mandaue City (Aug. 17, 2010), cited in Laurens ice, Judge Halts Coal Ash Dumping (Mar. 29, 2011), http://lawspotlight.wordpress.com/2011/03/29/judge-halts-coal-ash-dumping/ (last visited June 8, 2012) (“Judge Yap said she was practicing the ‘precautionary principle’”) and the Jan. 26, 2012 order in the same case (stating “The court continues to adhere to the ‘precautionary principle’ to avoid or diminish the threat to human life or health, inequity to present or future generations or prejudice to the environment.”).


229. Id.


231. Manila Bay (2008), citing Sept. 13, 2002 Regional Trial Court opinion.


234. Id.

235. Id.


237. Id.

238. The Court used the term “continuing mandamus” even though it did not yet exist in Philippine law, referencing the Indian Supreme Court. Id. (“Under what other judicial discipline describes as ‘continuing mandamus,’ the Court may, under extraordinary circumstances, issue directives with the end in view of ensuring that its decision would not be set to naught by administrative inaction or indifference.”)

239. Specifically, the Court ordered “Defendant DPWH [Department of Public Works and Highways], to remove and demolish structures and other nuisances that obstruct the free flow of waters to the bay.” Id.

240. Id.

241. Id.


243. Manila Bay (2011). The order was issued based on the recommendation of the Manila Bay Advisory Committee rather than on the basis of a motion. Id.

244. The February 15, 2011, resolution, like the December 18, 2009, decision, was issued by the Court sitting en banc.

245. Manila Bay (2011) (Dissent, Carpio, J.), citing Const. (1987) Art. VIII, §12 (“The members of the Supreme Court and of other courts established by law shall not be designated to any agency performing quasi-judicial or administrative functions.”); Noblejas v. Teehankee, 131 Phil. 931 (1968) (Court cannot be required to exercise administrative functions such as supervision over executive officials); In re Designation of Judge Manzano as Member of the Ilocos Norte Provincial Committee on Justice, 248 Phil. 487 (1988) (invalidating the designation of a judge as a member of a committee to receive complaints and to make recommendations for the speedy disposition of detainee cases); Manila Electric Co. v. Pasay Transportation Co., 57 Phil 600 (1932) (prohibiting court from sitting as a board of arbitrators).
Sereno’s cited cases regarding the separation of powers, and suggested that the Court was improperly using mandamus to compel discretionary actions. She argued that the Philippine Constitution did not authorize the Courts to “monitor” the execution of its decisions, and that Congress (rather than the Court) had the power to monitor and ensure that its laws were enforced. She also pointed out problems the Indian judiciary faced in “taking on the role of running the government in environmental cases.”

Justice Sereno’s opinion concludes: “While the remedy of ‘continuing mandamus’ has evolved out of a Third World jurisdiction similar to ours, we cannot overstep the boundaries laid down by the rule of law.”

The dissent’s criticism is reminiscent of Justice Florentino Feliciano’s warning in his concurring opinion to Minors Oposa. Observing that the Court lacked technical competence and experience in the area of environmental protection and management, he suggested that “where no specific, operable norms and standards are shown to exist, then the legislature must be given a real and effective opportunity to fashion . . . them, before the courts may intervene.”

Justice Velasco responded to the dissent’s criticism in his opinion, stating that the progress report requirement was an exercise of judicial power under Article VIII of the Constitution, “because the execution of the Decision is but an integral part of the adjudicative function of the Court.”

He pointed out that none of the agencies ever questioned the power of the Court to implement the December 18, 2008, Decision. He also noted that the Environmental Rules specifically gave courts the authority to require progress reports.

Still, Justice Velasco acknowledged some of the obstacles to the execution of the December 18, 2008, order. As was the case with M.C. Mehta, the Court was overloaded with quasi-administrative responsibilities. Voluminous quarterly progress reports were being submitted, and reporting was not taking place in a uniform manner. A national election took place in 2010, changing leadership in the agencies subject to the continuing mandamus. And “some agencies . . . encountered difficulties in complying with the Court’s directives.”

These were not the only issues raised by the case. Another is the unanticipated impact of the 2008 ruling on poor slum-dwellers in the Manila Bay area, not unlike that on Delhi slum-dwellers resulting from the Indian Supreme Court’s decisions on solid waste. In 2009, groups of fishermen sought to intervene in the already decided case, asserting that the DENR was destroying their fishing facilities under the guise of following the 2008 order. In reality, the fishermen argued, the demolition was clearing the path for a highway project and the development of a billion-dollar casino. They warned the Court that 26,000 fishermen and urban poor families stood to lose their home and livelihood.

The Court found that the groups were not entitled to intervene in the case. But it clarified the vague requirement in the 2008 order regarding removal of structures along the bay, explaining that the structures to be removed were those illegally situated within three meters of water bodies. It also emphasized that any evictions had to conform to the Philippines’ protective squatter law.


Manila Bay (2011) (Dissent, Sereno, J.), citing Tolentino v. Secretary of Finance, G.R. No. 115525, 435 SCRA 630 (Aug. 25, 1994) (case and controversy requirement means that judges “render judgment according to law, not according to what may appear to be the opinion of the day”).


Opus, supra note 77 (Feliciano, J., concurring).

Opus, supra note 77 (Feliciano, J., concurring).

Manila Bay (2011). Justice Velasco expounded on the separation of powers issue in an article he authored for the Oregon Law Review, stating that “separation of powers between the three branches is not absolute. . . . The same concerns that led the framers of the U.S. Constitution to delegate specific powers to separate branches of government also led them to incorporate internal balancing mechanisms so that powers cannot be abused.” Presbitero J. Velasco Jr, Manila Bay: A Daunting Challenge in Environmental Rehabilitation and Protection, 11 OR. REV. INT’L L. 441, 450 (2009). He noted that the Philippine Constitution goes beyond the U.S. Constitution by specifi-
It is not clear how much can be accomplished if the executive agencies do not take ownership of the cleanup, such that it remains a court-supervised endeavor. The Court is not equipped to handle all the executive and legislative work needed to address the country’s environmental problems. Still, the Court continues to take on a role akin to that of executive officials in the Manila Bay case—court justices have personally conducted site inspections. Meanwhile, Attorney Oposa has filed motions alleging that the agencies have failed to comply with both the 2008 and 2011 court orders. Interestingly, the head of the DENR has expressed support for the court-mandated time lines, publicly stating that they “will hopefully lead to the bay’s rehabilitation at the soonest possible time.”

The cleanup has limped forward. In August 2011, the government embarked on a month-long cleanup of the tributaries leading to Manila Bay, which have been clogged with garbage. Enough garbage to fill three Olympic-sized pools was removed. Another cleanup was held in February 2012. The same month, the DENR announced that it was considering banning plastic from the Metropolitan Manila Area, to reduce the amount of plastic that ends up in the bay.

The Court’s active role in the Manila Bay case is interesting when compared to its 2006 decision in Henares. As discussed above, the environmental plaintiffs in that case sought a mandamus to compel federal agencies to require public buses to use compressed natural gas. Plaintiffs asserted a right to clean air based on the CAA277 and their constitutional right to a balanced and healthful ecology,278 and pointed to an executive order calling for increased compressed natural gas usage. While plaintiffs may have hoped for a sweeping mandamus, à la Indian Supreme Court in the Delhi vehicular pollution case,279 they did not get one. The Court agreed that the defendant agencies were responsible for controlling air emissions, but found that there was no law requiring the use of compressed natural gas in public vehicles.280 Thus, the Court could not compel agencies to impose this requirement through mandamus.281 The Court added that mandamus generally could not be used to require the legislative or executive branch to take discretionary action.282 The Court urged Congress to address the air quality problem by statute.283

This showed far more restraint than the Manila Bay order would two years later, when the Court would order agencies to demolish all informal settlements along the bay and to “inculcate in the minds and hearts of the people . . . the importance of preserving and protecting the environment.”284

The reasons for the difference are not entirely clear. Justice Velasco participated in both decisions, although the Henares decision was issued by a five-member panel of judges, and Justice Renato Corona was not yet on the Court. Perhaps the Henares case lacked the star power of Oposa. Or perhaps the Henares case dealt with a single, concrete issue, which the Court thought Congress should address. Manila Bay, on the other hand, concerned a quagmire of laws and agencies, with no clear road map for legislative or executive action. Justice Velasco hints at this last point in his Oregon Law Review article defending the 2008 Manila Bay decision. There, he argues that because of the jurisdictional overlap and disorganized bureaucracy among agencies charged with maintaining Manila Bay, no action would have been taken without the Court’s specific task assignments.

### VII. Prospects for Environmental Rule of Law in Philippines

A quarter-century after the enactment of a constitutional provision guaranteeing the right to a healthful and bal-

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277. See Rep. Act 8749, Clean Air Act (1999) §4 (“Recognition of Rights. . . the following rights of citizens are hereby sought to be recognized and the State shall seek to guarantee their enjoyment: [a] The right to breathe clean air: . . .”).
280. Henares, supra note 171 (noting that neither the constitutional right to a clean environment, CAA, nor any other act required compressed natural gas usage, and that an executive order encouraging the use of this fuel did not require executive agencies to order usage).
281. Id.
282. Id.
283. Id.
284. Id.
anced ecology, there are many environmental laws in place, but not the environmental rule of law.286

While the first prong of my definition of environmental rule of law (requiring a system of laws to be in place) may have been met, there is room for progress on the other two. At least prior to the 2010 Environmental Rules, Supreme Court decisions in similar environmental cases have been inconsistent. There is no way to measure the consistency of other courts’ decisions, since they are not published. This suggests that environmental laws have not been applied consistently over time and across the jurisdiction.

Adequate enforcement action, the third prong, is also lacking. Philippine newspapers are replete with headlines of noncompliance by both the private sector and government officials.287 Lack of administrative as well as judicial capacity288 is clearly an obstacle to carrying out environmental laws. If the best-equipped court in the land has had difficulty managing the sea of reports generated from the continuing mandamus in the Manila Bay case, one can only imagine how difficult this would be for a provincial trial court.

Corruption is another obstacle to adequate enforcement action.289 Despite a plethora of anti-graft laws,290 a special court that considers nothing but government corruption cases (the Sandiganbayan),291 and an Ombudsman and Special Prosecutors to handle these cases,292 Anti-corruption campaigns were particularly challenged by the impeachment of the Ombudsman in 2011.293 The same year, President Ninoy Aquino’s advisor on environmental protection went on trial for graft,294 and Chief Justice Corona was impeached.

Improving the environmental situation in the Philippines will require not only the work of environmental litigants and attorneys, but also reform targeting the pervasive corruption and lack of administrative competence. The judiciary can contribute to the rule of law by acting as an independent branch, deferring to the DENR when legally required to do so, and rendering consistent decisions when it has jurisdiction. Publication of significant decisions in a database that is easily accessible to courts and practitioners could increase the likelihood of consistent decisions. The Supreme Court, which has substantially more knowledge of environmental law and Environmental Rules than other courts,295 can further contribute to the environmental rule of law by ensuring that all courts hearing environmental cases are properly trained. Except for 117 courts specifically designated as “Special Courts” for environmental cases, judges have not received training on the Environmental Rules.296

286. See Tony La Viña, The Bridges of Cagayan de Oro, Manila Standard, 2010 WLNR 17745616, Sept. 7, 2010 (noting that CAA, the Ecological Solid Waste Management Act, and CWA provide a for a comprehensive pollution control framework, with public involvement and market-based incentives, yet these laws remain largely unimplemented); Delmar Carino, SC Chief Implementation of Environmental Laws Poor, PHILIPPINE DAILY INQUIRER 17, 2009 WLNR 7094043, Apr. 17, 2009.

287. See Sheila Chrisotomo, Poor Law Enforcement, Graft Worsens Air Pollution in Metro, The Philippine Star, May 1, 2012, http://www.philstar.com/article.aspx?articleId=7825458&publicationSubCategoryId=63 (last visited June 8, 2012) (“Doctors see poor law enforcement and graft and corruption as the cause of the worsening air pollution in Metro Manila.”); Bash B. Mau- lana & Edwin O. Fernandez, More Heads to Roll on ARMM Logging, PHILIPPINE DAILY INQUIRER, Dec. 27, 2011, http://newsinfo.inquirer.net/118251/more-heads-to-roll-on-armm-logging (last visited June 8, 2012) (describing the inability of the head of a local environment and natural resources office to explain why logging persists in the province despite a logging ban); DENR Taps Website to Boost LGU Compliance With Environmental Laws, INTERAKSYON, Dec. 26, 2011, http://interaksyon.com/article/20434/denrtaps-website-to-boost-lgu-compliance-with-environmental-laws (last visited June 8, 2012) (the DENR reports that only 36% of local government units were complying with the Solid Waste Management Law); Redempto D. Anda, Court Issues Order for Arrest, Bars Travel of Ex-Palawan Gov, PHILIPPINE DAILY INQUIRER 15, 2011 WLNR 17365421, Sept. 2, 2011 (arrest of former province governor for violation of mining laws); Marlon Ramos & Juan Escardor Jr., DOJ Decision in Palawan Murder Case Slammed, PHILIPPINE DAILY INQUIRER 1, 2011 WLNR 11942053, June 16, 2011 (Department of Justice dismissed criminal charges against former provincial governor and five others tagged in the killing of a Palawan broadcaster and environmentalist; the ruling that came out a day after another media person was murdered); T.J. Burgonio, Senate to Probe State of Dump, PHILIPPINE DAILY INQUIRER 9, 2012 WLNR 3571769, Feb. 19, 2012 (more than 1,000 local government units are operating open and controlled trash dumps); Melvin Gascon, Cagayan Groups Protest Inaction on Mine Abuse, PHILIPPINE DAILY INQUIRER 10, 2011 WLNR 2316397, Nov. 10, 2011 (environmental groups criticize government failure to stop the operations of international mining companies, which they accuse of blatantly violating environmental laws); Alcuin Papa, Global Warming Blamed for Wet Summer, PHILIPPINE DAILY INQUIRER 1, 2009 WLNR 7539580, Apr. 25, 2009 (state regulator failed to put up wastewater and sewage treatment plants as required by CWA); Nelson F. Flores, Ombudsman to Go After Officials Abetting Dumps, PHILIPPINE DAILY INQUIRER 7, 2005 WLNR 8536987, May 30, 2005 (government officials failing to close illegal dumptsites).

288. See ABA ROLI-Philippines articles, supra note 189 (re lack of case management automation).

289. Judicial Reform Activities in the Philippines Project, USADF, http://philippines.usaid.gov/programs/democracy-governance/judicial-reform-activities-philippines-project (last visited June 8, 2012) (“Weak rule of law is a central [democratic governance] challenge in the Philippines . . . . Whether the issue is about common crime . . . or environmental degradation, impunity is the common thread which allows perpetrators (particularly those with resources and connections) to routinely get away with crimes.”).


291. This Court was created by the 1973 Constitution (Art. XIII, § 3) and retained by the 1987 Constitution (Art. IX, § 4).

292. CONST. (1987), Art. IX, §§5-7 (referring to the Offices of the Ombudsman and Special Prosecutor).


295. La Viña Interview, supra note 128 (suggesting that Supreme Court has a good record of deciding environmental cases, although many cases do not get to the Court; lower courts have a spottier history).

296. The Philippine Judicial Academy (PHIJA), the division of the Supreme Court responsible for training judges in the Philippines, has partnered with non-profit organizations, donors, and the U.S. EPA’s Environmental Appeals Board to hold training sessions specific to environmental law, such as its 2010 seminar entitled Pilot Multi-Sectional Capacity Building on Environmental Laws and the Rules of Procedure for Environmental Cases. Da-vide and Vinson, supra note 183, at 123; Giving Force to Environmental Laws: Court Innovations Around the World, Briefing Paper to Pace Law School Symposium on April 1, 2011 (Mar. 12, 2011), available at http://www.pace.edu/school-of-law/sites/pace.edu-school-of-law/files/JJEA/JJEA-BriefingPaper.pdf. But apart from the 117 Special Courts, it does not appear that the nearly 2,000 courts responsible for hearing environmental cases have had any training on the Environmental Rules. This includes the Court of Appeals, which hears appeals from the environmental courts and shares original jurisdiction with the Supreme Court on some proceedings under the Environmental Rules. E.g., Environmental Rule 7(3) (writ of certiorari), Rule 8(2) (continuing mandamus). Also, the Supreme Court may assign its cases to the Court of Appeals, as in the case of Tribal Coalition of
There are few published decisions referencing the Environ-
mental Rules, and it is probably too early to assess their
impact on environmental cases.\textsuperscript{297} But some practitioners
have expressed optimism,\textsuperscript{298} noting that environmental
litigants are now better able to obtain information\textsuperscript{299}
and timely injunctive relief.\textsuperscript{300} Also, it may now be possible
to bypass drawn-out administrative adjudications, such
as those conducted by the Pollution Adjudication Board
to determine the existence of pollution.\textsuperscript{301} Knowledge
of the rules is key. Where judges and litigants understand
the Environmental Rules, cases have been resolved more
quickly—often in favor of the environmental litigants.\textsuperscript{302}

Mindanao v. Taganito Mining Corporation, supra note 226. Ramos Inter-
view, supra note 79 (explaining that the case was assigned to the Court
of Appeals in Cagayan de Oro, where the justice openly admitted that he
has no knowledge of environmental law); Palmones v. DENR, cited in Philip C.
Tibanda, SC Issue Writ vs. Talit Fish Cages, \textit{Philippine Daily Inquirer} 16
299, 2012 WLNR 3115259 (Feb. 8, 2012 (Supreme Court referred case to
the Court of Appeals).) Further training for these courts is needed. Interview
with Renato Lopez Jr., Philippine Deputy Director for the American Bar
Association Rule of Law Initiative (Mar. 9, 2012) (describing the lack of
clarity as to which courts have been designated to hear environmental cases);
Interview with Municipal Trial Court Judge Ruben Corpuz (Mar. 5, 2011)
(indicating that he had not been trained on the Environmental Rules and
had not yet tried an environmental case); Ramos Interview, supra note 79;
Roque Interview, supra note 212 (suggesting that Supreme Court has more
knowledge of rules than Court of Appeals); Perez Interview, supra note 105
(stating that training scheduled for Court of Appeals justices in Mindanao
was postponed).

297. Garcia Interview, supra note 104, Perez Interview, supra note 105, La Viña
Interview, supra note 128.

298. Ramos Interview, supra note 79 (“Changes are visible.”); Perez Interview,
 supra note 105 (noting cases filed, training ongoing); La Viña Interview,
supra note 128 (stating that after the Environmental Rules went into place,
there was spike of environmental cases, particularly those seeking the writ of
kalikasan). In contrast, Attorney Harry Roque suggests that the best way to
get justice is not in Philippine courts, but to sue defendants in the United
States where there is jurisdiction. Roque Interview, supra note 212.

299. Ramos Interview, supra note 79 (indicating that government officials seem
more willing to provide requested documents since the enactment of
the Environmental Rules).

300. La Viña Interview, supra note 128, and Roque Interview, supra note 212
describing utility of TEPO).

301. See Mead v. Argel, supra note 150 (cases concerning pollution must go
through the Pollution Adjudication Board (PAB) before going to the
courts); Technology Developers, Inc. v. Court of Appeals, supra note 143
(nuisance cases may be exempt from going before PAB); Garcia Interview,
supra note 104 (Environmental Rules may change court precedent, allowing
one who meets the requisites for a writ of kalikasan or TEPO to go straight
to court, bypassing PAB).

302. Ramos Interview, supra note 79 (judges and lawyers alike lack training and
knowledge of the Environmental Rules; cases like Filiinvest Land v. Tarö
(see infra note 304) suggest that environmental lawyers need to know the rules
by heart); Perez Interview, supra note 105 (noting a big difference in terms of
case resolution in the Environmental Rules are used and the Environmental
Rules cases are solved much more quickly than before). Supreme Court cases
in which environmental litigants obtained relief under the Environmental
Rules include West Tower Condominium Corp., supra note 165 (Supreme
Court issued a TEPO and writ of kalikasan requiring defendant to cease
operations on two pipelines); Hernandez v. Plaza Decor, Inc., supra note 212
(Supreme Court issued writ of kalikasan pending the resolution of a petition
filed against a mining company); Boracay Foundation v. Province of Abra,
G.R. No. 196870 (June 9, 2011) (Supreme Court issued a TEPO and writ of
kalikasan where plaintiffs argued that defendants failed to perform a full
environmental impact assessment and undergo the necessary public con-
sultation before beginning a reclamation project to renovate and expand a
port); Palmones v. DENR, supra note 296 (writ of kalikasan issued to stop
new clearances for fish cages in Tal Lake); Closuran v. Baguio, issued Jan.
17, 2012, cited in Aubrey E. Barrameda and AFP, High Court Orders Dump Site
Closure, BusinessWorld, 2012 WLNR 2001333, Jan. 30, 2012 (issuing writ of
kalikasan and a TEPO against city regarding its illegal dump); Phil-
ippines Earth Justice Center v. DENR, G.R. No. 177’754 (Aug. 16, 2011), cited in
Kristine L. Alave, SC Halts Zamboanga Mining, \textit{Philippine Daily Inquirer}
7, 2011 WLNR 17091431, Aug. 30, 2011 (issuing writ of kalikasan ban-
ning mining in the Zamboanga peninsula of Mindanao); Concerned Citizens
of Obrero v. DENR (Feb. 21, 2012), cited in T.J. Burgonio, SC Grants
Bulacan Folk Relief in Fight vs. Dump, \textit{Philippine Daily Inquirer} 3, 2012
WLNR 4671013, Mar. 4, 2012 (issuing writ of kalikasan in response to a
petition filed to halt the construction of a garbage disposal facility along
Manila Bay).

In August 2010, a trial court in Cebu issued what was perhaps the sec-
ond TEPO ever in Philippine Earth Justice v SPC Power Corp., Regional Trial
Court, Branch 28, Mandaue City (Aug. 17, 2010); see Issuance of Teto a
‘Partial Victory’ for Environmental Groups, \textit{SunStar Cebu}, Aug. 24, 2010,
http://www.sunstar.com.ph/cebu/issuance-tepo-partial-victory-environ-
mental-groups-(last visited June 8, 2012); Environmentalists, Power Firms
Explore Conditions on Coal Ash Dumping, \textit{SunStar Cebu}, Jan. 11, 2012,
http://www.sunstar.com.ph/cebu/local-news/2012/01/11/environmental-
ists-power-firms-explore-conditions-coal-ash-dumping-199980 (last visited
June 8, 2012). In that case, three environmental groups sought to compel
six government offices and three electric companies to stop improper coal
ash disposal. Id. In March 2011, a TEPO was extended indefinitely, and the
companies were ordered to dump coal ash only in court-designated areas.
Id. As of January 2012, it appears that parties may settle the case by agree-
ing on locations where the coal ash can be dumped. Id.

107764 (Oct. 4, 2002), available at \textit{http://sc.judiciary.gov.ph/jurspru-
dence/2002/oc2002/oc2002/107764.htm (“We also hold that environmental
consequences in this case override concerns over technicalities and rules
6, 2000) (Vitug, J., dissenting), available at \textit{http://sc.judiciary.gov.ph/jur-
interest indeed deserves a proper place in any forum . . . the rules of pro-
cedure . . . should not be so perceived as good and inevitable justifications
for advocating timidity, let alone isolationism, by the Court.”); Sol. Gen.
hnl (citations omitted) (‘In proper cases, procedural rules may be relaxed
or suspended in the interest of substantial justice, which otherwise may be
incompatible with the public interest indeed deserves a proper place in any forum . . . the rules of pro-
cedure . . . should not be so perceived as good and inevitable justifications
for advocating timidity, let alone isolationism, by the Court.”); Chan v.
Metro. Manila Authority, G.R. No. 93227 (Feb. 21, 2001), available at
pid/356. The trial court in this case declined to grant the requested injunction, and petitioners
sought a writ of certiorari from the Supreme Court on the issue of the pre-
liminary injunction. The Court denied the petition, noting that it frowned
upon interlocutory appeals, and that petitioners had not filed the case using
the Court was apparently unwilling to convert the petition for a writ of certiorari into one for a TEPO, writ of kalikasan,
or writ of continuing mandamus, even if all of the elements of these actions
were present.

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liminary injunction. The Court denied the petition, noting that it frowned
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305. See Aubrey E. Barrameda, \textit{High Court Orders Dump Site Closure, Busi-
nessWorld}, 2012 WLNR 2001333, Jan. 30, 2012 (stating that writ of kalikasan
was issued on Jan. 17, 2012).


307. La Viña Interview, supra note 128 (describing the case and the petition,
which he helped draft).
Perhaps the greatest contribution the Supreme Court, its Environmental Rules, and litigants have made to the environmental rule of law is raising awareness that environmental law exists. Before Minors Oposa, it is doubtful that anyone considered the constitutional right to a balanced and healthful ecology. Even though the case did not result in the suspension of any timber licenses,308 it became seminal in Philippine and international environmental law.309 At least prior to Chief Justice Corona’s impeachment, the Court has had the stature to raise public awareness more so than other institutions.310 and it has seen itself as the protector of environmental rights.311

If the Court can continue to foster environmental law and judicial independence, it can help close the gap between the Philippines’ well-meaning environmental laws and the effective, even-handed implementation of these laws. But the Court cannot do this alone, and its perceived assumption of nonjudicial powers could undermine the environmental rule of law. If the other branches are not compelled or shamed into action, then the environmental rule of law will remain a problem for the Philippines.

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308. Neither the Supreme Court nor the trial court ever mandated DENR to take any action regarding the timber licenses in question. See Dante B. Gatmaytan, The Illusion of Intergenerational Equity: Oposa v. Factoran as Pyrrhic Victory, 15 Geo. Int’l Envtl. L. Rev. 457, 471. After the Supreme Court remanded the case to the trial court, plaintiffs did not pursue it. That said, prior to the case, the DENR had already stopped issuing new timber licenses, and there was a logging ban in place to protect old growth forests. See Maria Socorro Manguit & Vicente Paolo Yu, Maximizing the Value of Oposa v. Factoran, 15 Geo. Int’l Envtl. L. Rev. 487, 489 (2003). While Oposa himself did not see the case as having much practical effect, he continued bringing environmental cases. See Antonio A. Oposa Jr., Intergenerational Responsibility in the Philippine Context as a Judicial Argument for Public Action on Deforestation, paper presented at Fourth International Conference on Environmental Compliance and Enforcement, Int’l Network on Envtl. Compliance and Enforcement, Chiang Mai, Thailand (Apr. 1996), available at http://www.ince.org/4thvol1/oposa2.pdf (suggesting that the case “merely stoke[d] the fire of concern over our vanishing forest resources” and that “environmental controversies and issues are not resolved by legal action and in the legal forum”).


310. See Randy David, The Writ of Kalikasan and Judicial Activism, PHILIPPINE DAILY INQUIRER 14, 2010 WLNR 23169022, Nov. 21, 2010 (suggesting that the public and the Court view the Court as protecting constitutional rights more so than the executive and legislative branches, but noting that the judiciary cannot remedy the inadequacies of the administrative and legislative branches by assuming their functions). Public trust has presumably weakened with the negative press from the 2012 impeachment trial of Chief Justice Corona.

311. In his speech delivered at the 2011 Asian Judges Symposium on Environmental Adjudication, Chief Justice Corona highlighted the role of the judiciary in enforcing environmental laws: “As protectors of the Constitution, the Supreme Court of the Philippines has considered environmental protection as a sacred duty, not only because the people have a right to it but more importantly, because future generations deserve it.” Rey G. Panaligan, SC: Chief Justice Corona, a Year After Assuming at Top Magistrate, MANILA BULLETIN, May 14, 2011, http://www.mb.com.ph/articles/318225/sc-chief-justice-corona-a-year-after-assuming-top-magistrate (last visited June 8, 2012).