

GREEN COURTS INITIATIVE IN THE PHILIPPINES

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Introduction

The Global Judges Symposium, held in Johannesburg in August 2002, resulted in the creation of the “Johannesburg Principles on the Role of Law and Sustainable Development.”¹ These principles called for, “. . .(b) the improvement in the level of public participation in environmental decision-making, access to justice for the settlement of environmental disputes and the defense and enforcement of environmental rights, and public access to relevant information.”²

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The authors would like to acknowledge the assistance of John Boyd, Fellow, Center for Environmental Legal Studies, Pace University School of Law.

1. UNEP Global Judges Symposium, Johannesburg, S. Afr., Aug. 18-20, 2002, *The Johannesburg Principles on the Role of Law and Sustainable Development*, available at <http://www.unep.org/law/symposium/Principles.htm>.

2. *Id.* at 4.

Many nations over the last several years have come to realize the importance of these principles and have begun developing their own environmental courts and tribunals to make improvements.³

These courts and tribunals have become especially important in recent years with an increase in complex environmental regulations, as well as an overall increase in environmental litigation.⁴

During the last decade, over 350 environmental courts, in forty-one countries around the world, have been created.⁵ One of the most recent, and most successful initiatives has been in the Philippines. In 2008, a network of 117 environmental courts was created,⁶ and in 2010, groundbreaking rules of procedure were promulgated.

Philippines' Courts

The Philippines' Supreme Court is granted its power from Article VIII of the 1987 Constitution.⁷ Section I provides that, "The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law."⁸ The 1987 Constitution also states that:

"Judicial power includes the duty of the courts of justice to settle actual controversies involving rights, which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government."⁹

Other provisions within Article VIII of the 1987 Constitution

3. GEORGE PRING & CATHERINE PRING, GREENING JUSTICE: CREATING AND IMPROVING ENVIRONMENTAL COURTS AND TRIBUNALS (THE ACCESS INITIATIVE 2009), available at <http://www.accessinitiative.org/resource/greening-justice> and <http://www.law.du.edu/ect-study> (available free of charge electronically at both websites).

4. Gabriel Nelson, *Study: Last Decade Saw Boom in Environmental Courts, Tribunals*, N.Y. TIMES, Apr. 20, 2010, <http://www.nytimes.com/gwire/2010/04/20/20greenwire-study-last-decade-saw-boom-in-environmental-co-74053.html>.

5. *Id.*

6. Leila Salaverria, *SC designates 117 environment courts*, PHIL. DAILY INQ., Jan. 14, 2008, http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20080114-112156/SC_designates_117_environment_courts; Jay B. Rempillo, *Court News Flash January 2008: SC Names Environmental Courts* (Jan. 29, 2008), available at <http://sc.judiciary.gov.ph/news/courtnews%20flash/2008/01/01290802.php>.

7. CONST. (1987), Art. VIII (Phil.).

8. *Id.* § 1.

9. *Id.*

dictate the powers and authority of the Supreme Court. These provisions speak to the court's jurisdiction, composition, and powers of appeal and review.¹⁰ Article VIII, Section 5, also provides that the Court may promulgate any rules it deems necessary for the protection of constitutional rights.¹¹

Section 16 of Article II of the Constitution states that: "The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature."¹² In addition, Section 15 of Article II provides that "The State shall protect and promote the right to health of the people and instill health consciousness among them."¹³ The Supreme Court, in protecting this right to a healthy environment, has taken steps to "address delays in the resolution of environmental cases, lack of information, stringent requirements in litigation, lack of environmental ("green") courts and other barriers to environmental justice."¹⁴

Emerging Environmental Courts in the Philippines

Former Chief Justice Reynato S. Puno has previously stated that he believes the Philippines to be one of the worst victims of environmental degradation, citing many cases of deforestation, degradation of resources, air and water pollution, contamination of water resources, conversion of farmland into industrial and residential land, and waste disposal issues.¹⁵ As a result of the degraded state of the Philippines, and the Supreme Court's desire to protect the right to a healthy environment, the court, in January 2008,

10. *Id.* §§ 2-5.

11. *Id.* § 5(6).

12. CONST. (1987), Art. II, § 16 (Phil.).

13. *Id.* § 15.

14. Phil. S.C., Forum on Environmental Justice: Upholding the Right to a Balanced & Healthful Ecology, Apr. 16-17, 2009, *Forum Guide 2*, available at sc.judiciary.gov.ph/publications/.../FOEJ_final_forum_guide.pdf. There is delay in resolving many cases in the Philippines since at present, there are only 1,659 appointed judges in 2,187 courts. E-mail from Ria Berbano-Ablan, Attorney, Philippines Judicial Academy, to John Boyd, Fellow, Center for Environmental Legal Studies, Pace University School of Law (Aug. 9, 2010) (on file with author). This is a very low number compared to a country population of over 90 million. In order to more effectively resolve environmental cases, the number of judges will need to be increased in the future.

15. Justice Oswaldo D. Agcaoili (ret.), Phil. Jud. Acad., "Role of the Philippine Judicial Academy in Environmental Law Dissemination, Enforcement and Adjudication," Presentation at the Forum on Environmental Justice: Upholding the Right to a Balanced and Healthful Ecology (Apr. 16-17, 2009), available at sc.judiciary.gov.ph/publications/ejforum/day2/.../agcaoili.pdf.

issued 1 Administrative Order Re: Designation of Special Courts to Hear, Try and Decide Environmental Cases. The order created 117 environmental courts to hear cases involving violations of legislation aimed at protecting the nation's environment and natural resources.¹⁶ The courts hear cases involving violations of a non-exhaustive list of environmental laws, including the Revised Forestry Code, Marine Pollution, Toxic Substances and Hazardous Waste Act, Philippine Fisheries Code, Clean Air Act, Clean Water Act, and the Wildlife Conservation & Protection Act.¹⁷

Within the 117 newly designated environmental courts, there are eighty-four Regional Trial Courts (RTCs) spread across twelve judicial regions, and the national capital judicial region.¹⁸ There are also seven Metropolitan Trial Courts, and twenty-six Municipal Trial Courts across twelve regions.¹⁹

Education for Environmental Courts

The Philippine Judicial Academy (PHILJA), the education sector of the Supreme Court, was created by Republic Act No. 8557 in February 1998.²⁰ PHILJA conducts seminars, workshops and other training programs on a variety of topics "to upgrade the legal knowledge, moral fitness, probity, efficiency, and capability of members of the Bench, court personnel, and lawyers aspiring for judicial posts."²¹ Since its creation, PHILJA has conducted more than

16. Administrative Order Re: Designation of Special Courts to Hear, Try and Decide Environmental Cases, S.C., No. 23-2008 (2008) (Phil.). In addition, the judges will not exclusively hear environmental cases, but rather will handle a normal load of cases on a variety of topics, but will in addition have specialized knowledge of environmental law. E-mail from John Boyd, Fellow, Center for Environmental Legal Studies, Pace University School of Law, to Sara Vinson, Summer Research Scholar, Center for Environmental Legal Studies, Pace University School of Law (Aug. 3, 2010, 04:44:00 EST) (on file with author).

17. *Id.* at 1.

18. *Id.* at 1-4.

19. *Id.* at 4-5.

20. See Justice Oswaldo D. Agcaoili (ret.), Phil. Jud. Acad., Role of the Philippine Judicial Academy in Environmental Law Dissemination, Enforcement and Adjudication, Presentation at the Forum on Environmental Justice: Upholding the Right to a Balanced and Healthful Ecology 4 (Apr. 16-17, 2009), available at sc.judiciary.gov.ph/publications/ejforum/day2/.../agcaoili.pdf; see also An Act Establishing the Judicial Academy, Defining its Powers and Functions, Appropriating Funds Therefor, and for Other Purposes, Rep. Act No. 8557 (1998) (Phil.).

21. Justice Oswaldo D. Agcaoili (ret.), Phil. Jud. Acad., Role of the Philippine Judicial Academy in Environmental Law Dissemination, Enforcement and Adjudication, Presentation at the Forum on Environmental Justice: Upholding the

1,000 training programs.²²

PHILJA recommended the establishment of environmental courts²³ and has thus conducted various specialized environmental law training programs in order to ensure effectiveness of adjudication and management of environmental cases.²⁴ In addition, training programs serve as a tool to update judges on developments in environmental laws and rules, so that they can provide well-informed and intelligent decisions.²⁵ An example of a past program on environmental law is the Judiciary Workshop on Wildlife Crime and Prosecution, which was held by PHILJA, in cooperation with the Association of Southeast Asian Nations' Wildlife Enforcement Network (ASEAN WEN), the Asian Environmental Compliance and Enforcement Network (AECEN), and the U.S. Agency for International Development (USAID).²⁶ PHILJA has also held several convention-seminars and international conferences, such as the 2007 Asian Justices Forum on the Environment.²⁷ In addition, PHILJA has conducted a survey to ascertain the needs of judges in environmental litigation. The database created from the survey results serves as a basis for PHILJA's development of further training programs.²⁸

In June 2010, PHILJA held the seminar, Pilot Multi-Sectoral Capacity Building on Environmental Laws and the Rules of Procedure for Environmental Cases.²⁹ Participants included several judges, branch clerks of court, and prosecutors. Among other sectors represented at the seminar were the Public Attorney's Office, Department of Environment and Natural Resources, United Nations Environment Programme, and Asian Development Bank.³⁰

In addition to environmental law training, public availability of

Right to a Balanced and Healthful Ecology 4-5 (Apr. 16-17, 2009).

22. *Id.* at 5.

23. *Id.* at 9.

24. *Id.* at 7.

25. *Id.* at 5.

26. *Id.* at 7.

27. *Id.* at 8.

28. *Id.* at 9.

29. Philippine Judicial Academy (PHILJA), Seminars, <http://philja.judiciary.gov.ph/seminar.htm> (last visited Aug. 17, 2010).

30. See E-mail from John Boyd, Fellow, Center for Environmental Legal Studies, Pace University School of Law, to Sara Vinson, Summer Research Scholar, Center for Environmental Legal Studies, Pace University School of Law (Aug. 15, 2010, 04:12:00 EST) (on file with author) (referring to Preliminary Report of the Academic Affairs Office of PHILJA on the "Pilot Multi-Sectoral Capacity Building on Environmental Laws and the Rules of Procedure for Environmental Cases")

environmental laws helps ensure access to justice. The Environmental Management Bureau, as well as the Department of Environment and Natural Resources, provide online copies of several environmental laws on their websites.³¹ There are also several other websites that provide electronic copies of the environmental laws.³²

Environmental Court Procedures

In April 2009, the Supreme Court held a “Forum on Environmental Justice: Upholding the Right to a Balanced & Healthful Ecology.”³³ The objectives of the forum were “(1) To validate the draft Rules of Procedure for Environmental Cases; (2) To discuss the need for a mechanism/structure that will address the need to monitor environmental cases or issues and monitor compliance threat; and (3) To identify best practices of some agencies/units and replicate in a particular situation.”³⁴

As a result of the forum, on April 29, 2010, the innovative “Rules of Procedure for Environmental Cases” were put into effect.³⁵ These rules are the very first of their kind and were promulgated to enforce the constitutional right to a “balanced and healthful ecology.”³⁶ In addition to the preservation of a constitutional right, the main objectives of the rules are:

(b) 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

31. See Environmental Management Bureau, <http://www.emb.gov.ph/laws.htm>; see also Republic of the Philippines: Department of Environment and Natural Resources, <http://www.denr.gov.ph/section-policies/>

32. See, e.g., Chan Robles Virtual Law Library, <http://www.chanrobles.com/legal9.htm>

33. Phil. S.C., Forum on Environmental Justice: Upholding the Right to a Balanced & Healthful Ecology, Apr. 16-17, 2009; ADB, *Asian Judges: Green Courts and Tribunals, and Environmental Justice*, LAW & POL’Y REFORM, Brief No. 1 (Apr. 2010). The forum was supported by several international organizations including the Asian Development Bank (ADB), American Bar Association-Rule of Law Initiative (ABA ROLI), the Hanns Seidel Foundation, the United Nations Development Program (UNDP), the United States Agency for International Development (USAID), the United States Department of Interior, and the World Bank. Abigail T. Sze, Court News Flash April 2010: SC Unveils Landmark Rules of Procedure for Environmental Cases (Apr. 14, 2010), available at <http://sc.judiciary.gov.ph/news/courtnews%20flash/2010/04/04141001.php> (Phil.).

34. Phil. S.C., *supra* note 14, at 2.

35. Phil. S.C., Rules of Procedure for Environmental Cases, A.M. No. 09-6-8-SC.

36. CONST. (1987), Art. II, § 16 (Phil.).

international agreements;

(c) To introduce and adopt innovative and best practices ensuring the effective enforcement of remedies and redress for violation of environmental laws; and (d) To enable the courts to monitor and exact compliance with orders and judgments in environmental cases.³⁷

The rules include provisions for: (1) citizen suits, (2) consent decrees, (3) environmental protection orders (EPOs), (4) *Writ of Kalikasan* (Nature), (5) Writ of Continuing Mandamus, (6) Strategic Lawsuits against Public Participation (SLAPP), and (7) Precautionary Principle.³⁸

The important citizen suit provision “liberalizes standing for all cases filed enforcing environmental laws.”³⁹ With regard to consent decrees, the rules allow for parties to agree to settlement terms rather than take the litigation route.⁴⁰ This provision aids in limiting the number of cases that go to court, keeping those cases out that may not necessarily require litigation for a fair resolution.⁴¹ The court may issue environmental protection orders (EPOs) to either direct a party to take action, or refrain from taking action, in order to protect the environment.⁴² The rules also contain a provision to allow for the issuance of temporary environmental protection orders (TEPOs), in a situation of “extreme urgency” where the party “will suffer grave injustice and irreparable injury.”⁴³ The court may convert a TEPO into an EPO if necessary.⁴⁴ The writ of continuing mandamus is used when a government agency, or entity, fails to perform a duty “in connection with the enforcement or violation of an environmental law or regulation or right therein.”⁴⁵ The writ allows for the court to command the agency to perform its duty. The writ of continuing mandamus is, procedurally, similar to an ordinary writ of mandamus;

37. Phil. S.C., Rules of Procedure for Environmental Cases, A.M. No. 09-6-8-SC, Pt. 1, R. 1 § 3.

38. Phil. S.C., Rules of Procedure for Environmental Cases, A.M. No. 09-6-8-SC (Apr. 29, 2010).

39. *Id.* Pt. 2, R. 2 § 5; *Sze*, *supra* note 33.

40. Phil. S.C., Rules of Procedure for Environmental Cases, A.M. No. 09-6-8-SC Pt. 2, R. 3 § 5.

41. *Sze*, *supra* note 33.

42. Phil. S.C., Rules of Procedure for Environmental Cases, A.M. No. 09-6-8-SC Pt. 2, R. 5 § 3.

43. *Id.* Pt. 2, R. 2 § 8.

44. *Id.* Pt. 2, R. 5 § 3.

45. *Id.* Pt. 3, R. 8 § 1.

however, “the issuance of a Temporary Environmental Protection Order is made available as an auxiliary remedy prior to the issuance of the writ itself.”⁴⁶ A strategic lawsuit against public participation (SLAPP) allows for a pre-emptive defense for those parties engaged in enforcing environmental laws, against whom a legal challenge may be made.⁴⁷ Finally, the rules include a provision on the precautionary principle, which allows the court to bridge the gap between evidence and injury in cases where there is a “lack of full scientific certainty in establishing a causal link between human activity and environmental effect.”⁴⁸

Perhaps the most innovative provision found within the new rules, designated as a “Special Civil Action,” is the writ of *kaliksan*, or the writ of nature.⁴⁹ The rules state:

The writ is a remedy available to a natural or juridical person, entity authorized by law, people’s organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice life, health, or property of inhabitants in two or more cities or provinces.⁵⁰

The *Writ of Kalikasan* is immediate in nature and the rules provide specific remedies, which include:

- (a) Directing respondent to permanently cease and desist from committing acts or neglecting the performance of a duty in violation of environmental laws resulting in environmental destruction or damage;
- (b) Directing the respondent public official, government agency, private person or entity to protect, preserve, rehabilitate or restore the environment;
- (c) Directing the respondent public official, government agency,

46. *Sze*, *supra* note 33.

47. *Sze*, *supra* note 33; Phil. S.C., Rules of Procedure for Environmental Cases, A.M. No. 09-6-8-SC Pt. 2, R. 6.

48. *Sze*, *supra* note 33; Phil. S.C., Rules of Procedure for Environmental Cases, A.M. No. 09-6-8-SC Pt. 5, R. 20.

49. Phil. S.C., Rules of Procedure for Environmental Cases, A.M. No. 09-6-8-SC Pt. 3, R. 7.

50. *Id.* § 1.

private person or entity to monitor strict compliance with the decision and orders of the courts;

(d) Directing the respondent public official, government agency, or private person or entity to make periodic reports on the execution of the final judgment; and

(e) Such other reliefs which relate to the right of the people to a balanced and healthful ecology or to the protection, preservation, rehabilitation or restoration of the environment, except the award of damages to individual petitioners.⁵¹

The writ is expected to increase the efficiency of resolving environmental cases.⁵² It was developed as a result of the April 2009 forum on environmental justice.⁵³ At this forum, former Chief Justice Reynato S. Puno identified the three main issues that affect prosecution in environmental cases.

These issues were:

(1) whether to relax the rule on 'locus standi' to encourage more citizens to file suits involving violations of the country's environmental laws;

(2) the delay in the disposition of pending environmental cases; and

(3) the problem of procuring evidence and crafting effective remedies."⁵⁴

Overall, the writ, along with the other rules of procedure, was primarily created to preserve the constitutional right to a clean environment.

First Petition for *Writ of Kalikasan*

Antonio Oposa, an environmental pro bono lawyer representing Global Legal Action on Climate Change (GLACC), has filed the first petition for a *Writ of Kalikasan*.⁵⁵ The organization is asking the Supreme Court to compel various government agencies to implement

51. *Id.* § 15.

52. "*Writ of Kalikasan*" will strengthen environmental courts – Puno, DATELINE PHIL., Jan. 31, 2010, available at <http://dateline.ph/?p=5685>.

53. *Id.*

54. *Id.*

55. Purple S. Romero, TrustLaw, Pro bono lawyer leads landmark court challenge in Philippines, <http://www.trust.org/trustlaw/pro-bono/news-and-analysis/detail.dot?id=5975e714-5b5e-46f1-bb42-57a5e3a0b4b5> (last visited July 20, 2010).

two already existing laws, Republic Acts 6716 and 7160.⁵⁶ Under these laws, the government is required to provide rainwater collectors and complete other related flood control projects.⁵⁷ Flooding is a common problem in the Philippines and is expected to become an even larger problem with the increasing effects of climate change.⁵⁸ If the Supreme Court grants the petition, several government agencies would be commanded to fund and oversee the development of at least 100,000 rainwater collectors throughout the Philippines.⁵⁹

Conclusion

The development of the environmental court system in the Philippines has largely been seen as a great success in the realm of global environmental governance. The Philippines have taken a great step forward in promoting the Johannesburg Principles, by ensuring access to justice and the protection of the environment. It is certain that many countries around the world will turn to the Philippines as an example of a successful environmental court system, upon which they may model their own. Former Chief Justice Reynato S. Puno will likely be remembered for his great efforts in the protection of the Philippines' environment.⁶⁰ In realizing the need for environmental courts, Puno stated, "All efforts will be undertaken so that the newly designated environmental courts will be manned by "green judges" — skillful judges who not only master environmental laws, but also understand the philosophy of environmentalism and ecologism."⁶¹ Due to Puno, and the Supreme Court's efforts in general, the

56. See *id.*; see also Alcuin Papa, *Forgotten law never enforced can solve water crisis, floodings*, PHIL. DAILY INQ., July 25, 2010, <http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20100725-282989/Forgotten-law-never-enforced-can-solve-water-crisis-floodings>.

57. *Id.*; see also An Act Providing for the Construction of Water Wells, Rainwater Collectors, Development of Springs and Rehabilitation of Existing Water Wells in All Barangays in the Philippines, Rep. Act No. 6716 (1989) (Phil.); An Act Providing for a Local Government Code of 1991, Rep. Act No. 7160, § 15(b) (1991) (Phil.).

58. Romero, *supra* note 55.

59. *Id.*

60. Genalyn Kabling, *Green advocates honor, thank Puno*, MANILA BULL. PUB. CORP. (May 27, 2010), available at <http://www.mb.com.ph/articles/257706/green-advocates-honor-thank-puno> (Phil.).

61. USAID, Success Story: Philippines' Green Benches To Deliver Environmental Justice, Specialized Courts and Judges Appointed to Resolve Environmental Disputes, Aug. 26, 2008, available at www.usaid.gov/.../RDMA_SS_AECEN_Green_Benches082608.pdf.

Philippines are pioneering the way for environmental courts and tribunals worldwide.

