

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

by Elizabeth Barrett Ristroph

Elizabeth Barrett Ristroph served as a legal specialist in the Manila office of the American Bar Association Rule of Law Initiative (ABA ROLI) in 2011 and 2012. This Article was written outside of Ristroph's work for ABA ROLI and does not necessarily reflect the views of ABA ROLI or its sponsors.

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.

Fifty years ago, there was little “environmental rule of law” in the United States. It was a time when a community could be built on top of a toxic waste dump (Love Canal) and a river, oozing with oil slicks, could catch on fire (the Cuyahoga River). The legal landscape began to change in the late 1960s and early 1970s with the enactment of watershed laws like the National Environmental Protection Act (NEPA),¹ the Clean Air Act (CAA),² and the Clean Water Act (CWA).³ But these aspirational laws were not enough to clean up the environment. Federal courts were instrumental in making NEPA and other laws a reality. Newly established environmental agencies⁴ likewise played an important role in carrying out the laws.

In developing countries that have enacted environmental laws similar to those in the United States, it is apparent that legislative action alone is not enough. Environmentalists around the world have hailed judicial efforts, such as those of the Indian Supreme Court, to implement environmental laws in the face of executive apathy or inability. At the same time, this judicial activ-

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1. 42 U.S.C. §§4321-4370f, ELR STAT. NEPA §§2-209.

2. 42 U.S.C. §§7401-7671q, ELR STAT. CAA §§101-618.

3. 33 U.S.C. §§1251-1387, ELR STAT. FWPCA §§101-607.

4. *E.g.*, the Council on Environmental Quality (CEQ), the U.S. Environmental Protection Agency (EPA), and the National Marine Fisheries Service under the National Ocean and Atmospheric Administration. See Reorganization Plan No. 3 of 1970, Special Message From the President to the Congress About Reorganization Plans to Establish the Environmental Protection Agency and the National Oceanic and Atmospheric Administration (July 9, 1970), available at <http://www.epa.gov/aboutepa/history/org/origins/reorg.html>; EPA Order No. 1110.2, Initial Organization of the Environmental Protection Agency (Dec. 4, 1970), available at http://www.epa.gov/aboutepa/history/org/origins/1110_2.html; 42 U.S.C. §4341 (establishing the CEQ).

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).⁵ 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*⁶ 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.⁷

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.⁸ 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.⁹ Many entities concerned with the rule of law are reluctant to pre-

cisely define it, opting instead to list elements that should be included in the definition.¹⁰

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,¹¹ and A. Dan Tarlock's article on environmental litigation in the United States during the second half of the 20th century.¹²

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.¹³ He also attributes deforestation to disempowered local communities unable to control resource use through their traditional norms.¹⁴

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

5. AM. No. 09-6-8-SC, *Rules of Procedure for Environmental Cases*, effective Apr. 29, 2010, available at <http://sc.judiciary.gov.ph/Rules%20of%20Procedure%20for%20Environmental%20Cases.pdf> [hereinafter the Environmental Rules]. The intent is not to diminish the role of Philippine agencies and local governments in establishing and maintaining the environmental rule of law, but to highlight the past and potential contribution of the judiciary.
6. G.R. Nos. 171947-48.
7. Supreme Court orders are generally published in paper format in the Supreme Court Reports Annotated (SCRA) and in electronic form on the Supreme Court's website, <http://elibrary.judiciary.gov.ph/>, which is not directly searchable by the public. I obtained most of the cases cited herein from two privately maintained websites, Chan Robles Virtual Law Library, <http://www.chanrobles.com>, and the LawPhil Project, <http://www.lawphil.net>. These websites, powered by the Google search engine, contain only Supreme Court cases.
8. Rachel Belton, *Competing Definitions of the Rule of Law, Implications for Practitioners*, Carnegie Paper No. 5 (2005) at 5, available at <http://carnegieendowment.org/files/CP55.Belton.FINAL.pdf>.
9. *Id.*

10. See, e.g., United Nations Security Council and the Rule of Law, The Role of the Security Council in Strengthening a Rules-Based International System, Final Report and Recommendations From the Austrian Initiative, 2004-2008, at 3, available at http://www.ijl.org/research/documents/UNSC_and_the_Rule_of_Law.pdf (collecting definitions and suggesting three elements of the rule of law: (1) powers of the sovereign may not be exercised arbitrarily; (2) law must apply to the sovereign and instruments of the State, with an independent institution such as a judiciary to apply the law to specific cases; and (3) law must apply to all subjects of the law equally, offering equal protection without prejudicial discrimination); USAID Guide to Rule of Law Country Analysis: The Rule of Law Strategic Framework (2010), at 6, available at http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/ROL_Strategic_Framework_Jan-2010_FINAL.pdf ("the term usually refers to a state in which citizens, corporations, and the state itself obey the law, and the laws are derived from democratic consensus"); American Bar Association, What Is the Rule of Law (compiling quotations that define components of the rule of law), available at <http://www.americanbar.org/content/dam/aba/migrated/publiced/features/Part-1DialogueROL.authcheck.dam.pdf>.
11. Craig Segall, *The Forestry Crisis as a Crisis of the Rule of Law*, 58 STAN. L. REV. 1539 (Mar. 2006).
12. A. Dan Tarlock, *The Future of Environmental "Rule of Law" Litigation*, 19 PACE ENVTL. L. REV. 575 (2002); see also Alberto Székely, *Democracy, Judicial Reform, the Rule of Law, and Environmental Justice in Mexico*, 21 Hous. J. INT'L L. 385 (Spring 1999) (discussing how the lack of rule of law in Mexico impedes environmental justice).
13. See Segall, *supra* note 11, at 1541, citing Marites Danguilan Vitug, *Forest Policy and National Politics*, in *FOREST POLICY AND POLITICS IN THE PHILIPPINES: THE DYNAMICS OF PARTICIPATORY CONSERVATION* 11, 12-15 (2000) (referring to the unchecked clearcutting that occurred in the Philippines under President Ferdinand Marcos).
14. *Id.* at 1546 (explaining that where there are no legitimate and local management institutions, individuals have little incentive to avoid overcutting).

legal landscape.¹⁵ 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.¹⁶ This characterization of environmental rule of law litigation seems more applicable to pre-NEPA lawsuits seeking to reinterpret obscure provisions of old laws.¹⁷ 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.¹⁸ I 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.¹⁹

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.²⁰ This potential was recognized at the Global Judges Symposium held in Johannesburg in 2002.²¹ 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 Development²² with the principles of judicial independence and due process.²³ The 2012 Principles recognize the need for access to the courts, and for judges to be educated on the technical aspects of environmental law.²⁴

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.²⁵ Outputs of the program include environmental case law compilations and training materials explaining the role of the judiciary.²⁶ 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.²⁷

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 duties on an agency to consider environmental values and to justify those decisions not to protect environmental values. This is the core "rule of law" litigation strategy.

Id. at 583, internal citations omitted.

18. Tarlock, *supra* note 12, at 595-97; 601-07.

19. In the words of Székely, *supra* note 12, at 425:

In the midst of such legal realities, go ahead and try as a concerned citizen . . . to stop the dumping of nuclear or hazardous wastes in a site located on top of aquifers and near a rural community. Try to stop a highly-polluting industrial project in a zone where the permitted land use is "ecological preservation" . . . Try to ensure compliance by a powerful and influential entrepreneur who belongs to or supports the political or financial establishment. . . .

20. See Kala Mulqueeny et al., Asian Development Bank, *Background Paper for the Asian Judges Symposium on Environmental Decision Making, the Rule of Law, and Environmental Justice* (2010) at 8.

21. Even before this conference, the United Nations Environment Program and the International Union for the Conservation of Nature collaborated to put on symposia on the judiciary's role in sustainable development. Judges from around the world attended six of these events between 1996 and 2002. Lal Kurukulasuriya & Kristen A. Powell, *History of Environmental Courts and UNEP's Role*, 3 J. CT. INNOVATION 1, 270 (2010).

22. Available at <http://www.unep.org/Documents/Multilingual/Default.asp?documetid=78&articleid=1163>.

23. See Johannesburg Principles on the Role of Law and Sustainable Development (Aug. 20, 2002), Preamble, available at <http://www.unep.org/law/Symposium/Principles.htm> ("We recall the principles adopted in the Rio Declaration on Environment and Development and affirm adherence to these principles . . . We affirm that an independent Judiciary and judicial process is vital for the implementation, development and enforcement of environmental law . . .").

24. *Id.*

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").

25. UNEP, Environmental Law Programme, Programme of Work, Judges Programme, at http://www.unep.org/law/Programme_work/Judges_programme/index.asp (last visited Jan. 18, 2012).

26. Kurukulasuriya & Powell, *supra* note 21, at 272. One example is the *Training Manual on International Environmental Law* produced by UNEP in 2006. See UNEP Division of Environmental Law and Conventions, Publications, http://www.unep.org/DEC/Information_Resources/Publications.asp, and UNEP Environmental Law Program, http://www.unep.org/Law/Publications_multimedia/index.asp#compendiums.

27. *Asian Chief Justices, Judges Propose Network to Promote Environment Justice*, ADB Press Release (July 30, 2010), available at <http://insecsecretariat.wordpress.com/2010/08/03/asian-chief-justices-judges-propose-network->

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 reviewed 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 standing³⁴ 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-

to-promote-environment-justice/. It is not clear if this network has ever been put into place.

28. Two of the major early environmental laws, the CWA and the CAA, allowed citizen suits through which prevailing plaintiffs could collect attorneys fees. Other environmental laws allowing attorneys fees include the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§9601-9675, ELR STAT. CERCLA §§101-405; the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. §§11001-11050, ELR STAT. EPCRA §§301-330; the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§6901-6992k, ELR STAT. RCRA §§1001-11011; the Safe Drinking Water Act (SDWA), 42 U.S.C. §§300f to 300j-26, ELR STAT. SDWA §§1401-1465; and the Toxic Substances Control Act (TSCA), 15 U.S.C. §§2601-2692, ELR STAT. TSCA §§2-412.
29. See Robert L. Glicksman, *A Retreat From Judicial Activism: The Seventh Circuit and the Environment*, 63 CHI.-KENT L. REV. 209, 209 (1987).
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, 14 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 redressable 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. 167, 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's 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 Faure 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.³⁹ Mary Elizabeth Whittemore describes the challenges Ecuador faces in implementing the environmental provisions of its 2008 Constitution.⁴⁰ She relates a history of justices being removed from the constitutional court at the whim of the legislature⁴¹ and notes that the court was once entirely closed down.⁴² Since the 2008 Constitution, a court decision halting the government's construction of a dam has been essentially ignored,⁴³ and the court lacks the power to impose sanctions on the government.⁴⁴

Laurence Juma describes challenges to enforcing Kenya's 1999 Environmental Management and Coordination Act (EMCA).⁴⁵ 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 vernacular⁴⁶; complaint filing fees are high⁴⁷; there are only nine court stations in the country that handle EMCA litigation⁴⁸; and courts are reluctant to interfere with government decisions.⁴⁹

Alan Khee-Jin Tan describes problems with the Thai judicial system, including difficult standing requirements and court awards that grant monetary compen-

sation without requiring environmental restoration.⁵⁰ 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.⁵¹

The Indian Supreme Court stands in stark contrast to these courts,⁵² having issued sweeping orders to protect the Taj Mahal,⁵³ the River Ganges,⁵⁴ and Indian forests,⁵⁵ as well as addressing air pollution⁵⁶ and garbage pile-up⁵⁷ in cities. Lavanya Rajamani⁵⁸ describes the Indian Supreme Court's recognition of the right to pollution-free water and air,⁵⁹ based on constitutional protections of the right to life and liberty,⁶⁰ as well as other environmental principles based on the 1992 Rio Declaration on Environment and Development.⁶¹ These actions are relevant to the Philippines Supreme Court, as they influenced the development

tralizes power and employs fewer, simpler, and more precise rules to reduce administrative costs and reduce local corruption. *Id.* at 145. The authors suggest that this command-and-control approach could negate the need for complicated individual permits and economic incentives. *Id.* at 148. But international donors may not be willing to wade into the political morass that this approach would likely instigate.

39. See generally Luz Estella Nagle, *The Cinderella of Government: Judicial Reform in Latin America*, 30 CAL. W. INT'L L.J. 345 (2000) (describing systemic problems with courts in Latin American countries, stemming back to the establishment of courts during colonialization); Székely, *supra* note 12 (highlighting problems with the Mexican judiciary that worsened with changes implemented by President Ernesto Zedillo, noting that the Constitution has continually been implemented to benefit those in power); Faure et al, *supra* note 38, at 99 ("Although countries including India, Columbia, and Costa Rica have registered modest successes, environmental regulation in developing countries has remained a dead letter, unimplemented and unenforced.");
40. Mary Elizabeth Whittemore, *The Problem of Enforcing Nature's Rights Under Ecuador's Constitution: Why the 2008 Environmental Amendments Have No Bite*, 20 PAC. RIM L. & POL'Y J. 659 (2011) (citing CONST. (2008) Arts. 71-74 (Ecuador) (guaranteeing nature the inalienable right to exist); see also Arts. 14-15 (right to balanced environment).
41. *Id.* at 674 (noting that, between 1996 and 2007, no constitutional court justice completed the constitutionally mandated four-year term).
42. *Id.* (noting that, after one of Ecuador's presidents was removed from office, new constitutional court members were not appointed for 11 months, during which time the court simply ceased to function).
43. *Id.* at 677, citing Resolution No. 1212-2007-RA.
44. *Id.* at 678-79.
45. Laurence Juma, *Environmental Protection in Kenya: Will the Environmental Management and Coordination Act (1999) Make a Difference?*, 9 S.C. ENVTL. L.J. 181 (2002), citing Act No. 8 of 1999, Kenya Gaz. Supp. No. 3 (Acts No. 1, 2000) 43-175 (Govt. Printer, Nairobi, Jan. 14, 2000).
46. *Id.* at 214, citing CONST. §77(2)(b) (Kenya).
47. *Id.* at 209, citing 8 Laws of Kenya Schedule to Part IX, Section I (1988).
48. *Id.* at 214.
49. *Id.* at 215.

50. See Alan Khee-Jin Tan, *Environmental Laws and Institutions in Southeast Asia: A Review of Recent Developments*, 8 S.Y.B.I.L. 177, 180 (2004).

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 Mulqueeny et al., *supra* note 20, at 8, citing landmark decisions from supreme courts in other developing countries, including the 2003 *Mandalawangi* case in Indonesia (precautionary principle) and the 2000 *Eppawela* case (*Bulankulama 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 Thirumulkpad 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).
57. Almitra Patel v. Union of India, Writ Petition No. 888 of 1996.
58. Lavanya Rajamani, *Public Interest Environmental Litigation in India: Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability*, 19(3) J. ENVTL. L. 293, 294 (2007).
59. *Id.* at n.11, citing Subash Kumar v. State of Bihar (1991) 1 SCC 598.
60. CONST. (1950), Art. 21 (India).
61. These include the polluter-pays principle, cited in *Indian Council for Enviro-Legal Action v. Union of India (Bichbri Case)* (1996) 3 SCC 212 and *M.C. Mehta v. Kamal Nath* (2000) 6 SCC 213, 220; the precautionary principle, cited in *Vellore Citizens' Welfare Forum v. Union of India* (1996) 5 SCC 647 and *Narmada Bachao Andolan v. Union of India* (2000) 10 SCC 664, 727; the principle of intergenerational equity, cited in *State of Himachal Pradesh v. Ganesh Wood Products* (1995) 6 SCC 363; the principle of sustainable development, cited in *M.C. Mehta v. Union of India (Taj Trapezium Case)* (1997) 2 SCC 353, 381 and *Narmada Bachao Andolan v. Union of India* (2000) 10 SCC 664, 727; and the notion of the state as a trustee of all natural resources, cited in *M.C. Mehta v. Kamal Nath* (1997) 1 SCC 288. See Lavanya Rajamani, *Public Interest Environmental Litigation in India: Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability*, 19(3) J. ENVTL. L. 293, 295 (2007).

of the Environmental Rules⁶² and the Court's decision in *Manila Bay*.⁶³

This judicial activism is not without criticism. Rajamani cites problems with the Court's efforts in *Almitra Patel v. Union of India*⁶⁴ 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,⁶⁵ and ignoring the informal recycling industry led by "waste pickers."⁶⁶ 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.⁶⁷

Rajamani also considers problems with *M.C. Mehta v. Union of India*,⁶⁸ in which the Court sought to ameliorate air pollution by requiring New Delhi diesel buses to be retrofitted for compressed natural gas.⁶⁹ This requirement addressed only a portion of the pollutants that were contributing to the air pollution problem.⁷⁰ 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.⁷¹ 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.⁷² He suggests that this overloaded court employees without leading to improved executive capacity.⁷³

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.⁷⁴ 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.⁷⁵

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."⁷⁶ 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."⁷⁷

75. *Id.*

76. 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 kawsay*), is recognized."); CONST. (1948) Art. 18 (Hungary) ("The Republic of Hungary recognizes and shall implement the individual's right to a healthy environment.")

77. *Minors Oposa v. Factoran*, G.R. No. 101083, 224 SCRA 792 (July 30, 1993) (analyzing the intent of drafters 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/jurisprudence/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 *Kilosbayan, Inc. v. Morato*, G.R. No. 118910 (Nov. 16, 1995), available at www.lawphil.net/judjuris/juri1995/nov1995/gr_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 *Tanada v. Angara*, 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 anyway 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 policies 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.

62. See *Annotation to the Rules of Procedure in Environmental Cases*, 103 (2010), available at http://sc.judiciary.gov.ph/Environmental_Annotation.pdf [hereinafter *Annotation*], discussing the rule providing for continuing mandamus: "The Philippine concept of a continuing mandamus traces its origin to the cases of *T.N. Godavarman v. Union of India & Ors*, 2 SCC 267 (1997), and *Vineet Narain v. Union of India*, 1 SCC 266 (1998)."

63. See *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*, G.R. Nos. 171947-48, 574 SCRA 661 (Dec. 18, 2008), available at <http://sc.judiciary.gov.ph/jurisprudence/2008/december2008/171947-48.htm> [hereinafter *Manila Bay* (2008)]; *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*, G.R. Nos. 171947-48 (Feb. 15, 2011) [hereinafter *Manila Bay* (2011)], Dissent, Sereno, J., available at <http://elibrary.judiciary.gov.ph/decisions.php?doctype=Decisions%20/%20Signed%20Resolutions&docid=13007751231124106079> (suggesting that the idea of a continuing mandatory injunction for environmental cases was drawn from the Indian Supreme Court).

64. Initiated by Writ Petition No. 888 of 1996, cited in Rajamani, *supra* note 58, at 297-307.

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.

68. Initiated by Writ Petition No. 13029 of 1985.

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 laws⁷⁸ 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

78. There is a broad expanse of local environmental law that I do not attempt to cover in this Article. *See, e.g.*, Local Government Code of 1991, Rep. Act. No. 7160, §§16-17 (Jan. 1, 1992) (Phil.) (allowing local governments to enact ordinances to protect the environment); Taño v. Socrates, G.R. No. 110249, 278 SCRA 154 (1997) (upholding the power of a local government to enact laws criminalizing destructive fishing methods, based on the general welfare clause of the Local Government Code of 1991, stating: "We hope that other local government units shall now be roused from their lethargy and adopt a more vigilant stand in the battle against the decimation of our legacy to future generations"); Social Justice Soc'y v. Atienza, G.R. No. 156052, 517 SCRA 657 (Mar. 7, 2007), *reconsidered*, 545 SCRA 92 (Feb. 13, 2008) (requiring the Manila mayor to comply with the Manila Council's zoning ordinance prohibiting oil terminals from locating within city limits despite the mayor's entering into a Memorandum of Understanding with the Department of Energy allowing the oil terminals to remain, since the Local Government Code required the mayor "to enforce all laws and ordinances relative to the city").
79. *E.g.*, Pres. Decree No. 705, Revised Forestry Code (1975); Pres. Decree No. 856, Sanitation Code (1975); Pres. Decree No. 979, Marine Pollution Decree (1976); Pres. Decree No. 1067, Water Code (1976); Pres. Decree No. 1151, Philippine Environmental Policy (1977); Pres. Decree No. 1433, Plant Quarantine Law (1978); Pres. Decree No. 1586, Establishing an Environmental Impact Statement System Including Other Environmental Management Related Measures and for Other Purposes (1978). Presidential decrees were executed while President Ferdinand Marcos, through his declaration of martial law, had control of both the executive and legislative branches. E-mail from Prof. Gloria Estenzo Ramos, University of Cebu College of Law and Philippine Earth Justice Center (Feb. 13, 2012) [hereinafter Ramos Interview]. These decrees continue to be upheld to the extent not superseded or amended. *See* Environmental Rule 1(2) (listing presidential decrees related to the environment as being within the scope of the Rules); Antonio G.M. La Viña and Jose F. Leroy Garcia, *Environmental Law and Procedural Rules*, in Alfredo Tadiar (ed.), BENCHBOOK FOR PHILIPPINE TRIAL COURTS (REVISED AND EXPANDED) (2011) [hereinafter BENCHBOOK] K-1 (listing decrees pertinent to environmental law).
80. *Compare* Pres. Decree No. 1151, Philippines Environmental Policy (1977) and Pres. Decree No. 1586, Establishing an Environmental Impact Statement System Including Other Environmental Management Related Measures and for Other Purposes (1978) (requiring environmental impact statements for actions that significantly affect the quality of the environment), with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §4321; *compare* Rep. Act No. 9147, Wildlife Resources Conservation and Protection Act (2001), §2 (Phil.) (criteria for determining whether species are threatened, requirement for designating critical habitat), with Endangered Species Act (ESA), §4, 6 U.S.C. §1533, 16 U.S.C. §§1531-1544, ELR STAT. ESA §§2-18; *see* Implementing Rules and Regulations of the Philippine Clean Air Act of 1999 (setting ambient air quality standards, requiring the use of best available control technology, and relying on criteria set by the U.S. EPA in 40 C.F.R. Parts 50 and 60); *Rationale, supra* note 77, at 69 ("The general structure of these citizen suit provisions is similar to the citizen suit provisions in U.S. environmental statutes.").
81. Prof. Alan Khee-Jun Tan has drawn attention to the conflict of interest inherent in the Department of Environment and Natural Resources's (DENR's) mandate to simultaneously protect natural resources and collect revenue from natural resource licensing. *See* Alan Khee-Jun Tan, *All That Glitters: Foreign Investment in Mining Trumps the Environment in the Philippines*, 23 PACE ENVTL. L. REV. 183 (Winter 2005-2006). The situation is akin to that of the U.S. Minerals Management Service before it was split into separate agencies for regulation and revenue collection. Splitting the DENR into different agencies might address this issue, but it might also create another layer of bureaucracy that would reduce capacity and coordination between executive agents. *See* Tan, *supra* note 50, at 185. In 2010, a bill was filed in the Senate to split the DENR into two agencies, one for natural resources utilization, and one for environmental protection. No similar bill was passed in the House. Alex Pal, *Scrap DENR, Urges Environmentalist*, PHILIPPINE DAILY INQUIRER 4, 2010 WLNR 16281601 (Aug.15, 2010).

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.nwr.gov.ph/> (last visited May 23, 2012) (explaining the nature of attached agencies). The Laguna Lake Development Authority, established in 1966 to promote sustainable development in the Laguna de Bay Region, is an example of a DENR-attached agency. *See* Laguna Lake Development Authority website, <http://www.llda.gov.ph/geojuris.shtml>. The agency has environmental regulatory and law enforcement functions, particularly concerning water quality monitoring, conservation of natural resources, and community-based natural resource management. *Id.*
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 LI.
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 uses. *Id.* at ch. 3, §20; Pres. Decree No. 979, Marine Pollution Decree (1976).
86. Rep. Act No. 6969, Toxic Substances and Hazardous and Nuclear Wastes Control Act (1990), §6.
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).
88. *See* Rep. Act No.7586, National Integrated Protected Areas System Act (1992), §10 (establishing a Protected Areas and Wildlife Division under the DENR).
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).
90. Rep. Act No. 9147, Wildlife Resources Conservation and Protection Act (2001), §4 (listing species over which the DENR has jurisdiction).
91. Rep. Act No. 9072, National Caves and Cave Resources Management and Protection Act (2002), §4. Jurisdiction is coordinated with the Department of Tourism (DOT), the National Museum, the National Historical Institute, concerned local government units, and the Palawan Council for Sustainable Development.
92. Under Rep. Act No. 8550, Philippine Fisheries Code (1998), Art. 1, the Department of Agriculture, through the Bureau of Fisheries and Aquatic Resources, has jurisdiction over waters not under the jurisdiction of municipalities and the DENR. National and local Fisheries and Aquatic Resources Management Councils serve in an advisory capacity. *Id.* Art. 2.
93. Rep. Act No. 9147, Wildlife Resources Conservation and Protection Act (2001), §4 (listing aquatic habitats and resources over which the Department of Agriculture has jurisdiction).
94. Rep. Act No. 9003, Ecological Solid Waste Management Act (2000), §§4-5.
95. *See* Smart Comm'n, Inc. v. Nat'l Telecomm. Comm'n, G.R. No. 151908, 408 SCRA 678 (Aug. 12, 2003) (regulations "must conform to and be con-

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

sistent with the provisions of the enabling statute in order for such rule or regulation to be valid"); *Ople v. Torres*, G.R. No. 127685, 293 SCRA 141, 153 (July 23, 1998) ("[r]egulations are not . . . substitute[s] for the general policy-making that Congress enacts in the form of a law).

96. *Compare* CONST. (1987), Art. III, §1 (Phil.) ("No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.") and Art. III, §10 ("No law impairing the obligation of contracts shall be passed."), *with* U.S. CONST. amend. 14 (" . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.") and Art. I, §10 ("No State shall . . . pass any . . . Law impairing the Obligation of Contracts").
97. See BENCHBOOK K-24 (referring to State's all-encompassing police power); Pollution Adjudication Board v. Court of Appeals, GR No. 93891, 195 SCRA 112 (Mar. 11, 1991) (referring to "pervasive, sovereign power to protect the safety, health, and general welfare and comfort of the public, as well as the protection of plant and animal life"; upholding revocation of effluent permit).
98. See CONST. (1987), Art. XII, §2 (Phil.):
All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State.
See also *Southeast Mindanao Gold Mining v. Balite Portal Mining Cooperative*, G.R. No. 135190 (Apr. 3, 2002), available at <http://sc.judiciary.gov.ph/jurisprudence/2002/apr2002/135190.htm> (applying Article XII, §2, of the 1987 Constitution to mining exploration permits); *Republic of the Philippines v. Rosemoor Mining and Development Corporation*, G.R. No. 149927, 426 SCRA 517 (Mar. 30, 2004) (discussing principle of state ownership of all natural resources).
99. In *Minors Oposa v. Factoran*, *supra* note 77, the Court held that timber licenses were not contracts, property, or a property right protected by the due process clause of the constitution, such that they could be revoked or rescinded by executive action. This finding has been cited numerous times to revoke licenses, e.g., *Alvarez v. PICOP Resources, Inc.*, G.R. Nos. 162243, 508 SCRA 498 (Nov. 29, 2006) ("Needless to say, all licenses may thus be revoked or rescinded by executive action."); *Southeast Mindanao Gold Mining Corp.*, *supra* note 98 (like timber licenses, mining permits "do not vest in the grantee any permanent or irrevocable right within the purview of the non-impairment of contract and due process clauses of the Constitution"); *Alcantara v. DENR*, G.R. No. 161881 (July 31, 2008), available at <http://elibrary.judiciary.gov.ph/decisions.php?doctype=Decisions%20/%20Signed%20Resolutions&docid=12180906381988754104> ("Like timber or mining licenses, a forest land grazing lease agreement is a mere permit which, by executive action, can be revoked . . . whenever public welfare or public interest so requires.").
100. In *Pollution Adjudication Board v. Court of Appeals*, *supra* note 97, the Supreme Court upheld the DENR Pollution Adjudication Board's decision to revoke an effluent permit. The Court found that, based on Presidential Decree No. 984, an ex parte cease and desist order could be issued even when discharge standards were not established, so long as there was clear evidence that an effluent posed an immediate threat to life, public health, safety, or welfare or to animal or plant life. The Court held: "It is a constitutional commonplace that the ordinary requirements of procedural due process yield to the necessities of protecting vital public interests like those here involved, through the exercise of police power." See also *Laguna Lake Development Authority (LLDA) v. Court of Appeals*, G.R. 110120 (Mar. 16, 1994), available at http://www.lawphil.net/judjuris/juri1994/mar1994/gr_110120_1994.html (finding that LLDA had implied authority to issue

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

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. Junio*, G.R. No. L-50908, 127 SCRA 329 (Jan. 31, 1984) (explaining that police power trumps 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 §19.
102. The Panel of Arbitrators has jurisdiction over disputes regarding mining rights. Decisions are appealed first to the Mines Adjudication Board, then the Supreme Court. See Rep. Act No. 7942, An Act Instituting a New System of Mineral Resources Exploration, Development, Utilization, and Conservation, Chapter XIII, §78 (1995).
103. See *infra* Part VI.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 environmental complaints with this office. Ramos Interview, *supra* note 79 (noting that she previously filed cases through the Ombudsman).
105. 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 Asis 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).
106. At least on paper, the Philippines has expansive environmental laws and policies. See Ellalyn B. De Vera, *Philippines a "Strong Performer" in Environmental Policies*, MANILA BULL. A1 (Feb. 19, 2012) <http://www.mb.com.ph/articles/351897/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 US.").

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

107. The laws of both of these jurisdictions are rooted in the French civil code system, but both jurisdictions are now part of common law countries.

108. There are also provisions for Islamic law under Pres. Decree 1083, Code of Muslim Personal Laws of the Philippines (1977), which codified Sharia family and inheritance law and established a court system with jurisdiction over matters covered under the Code involving Muslim parties.

109. A July 31, 1889, Spanish decree made the Spanish Civil Code of 1889 applicable to the Philippines, Cuba, and Puerto Rico. Código Civil de Puerto Rico Comentado 9 (1984).

110. The United States acquired the Philippines in 1898 and governed the territory under military rules for nearly three years, until a civilian government was instituted through the Philippine Organic Act, ch. 1369, 32 Stat. 691 (1902). The civilian government was authorized to enact laws for the Philippines, although the U.S. Congress retained the ability to make laws regulating the territory. The same year, Act of July 1, 1902, Pub. L. No. 57-235, §10, 32 Stat. 691, 695, gave the U.S. Supreme Court "jurisdiction to review, revise, reverse, modify, or affirm the final judgments and decrees of the supreme court of the Philippine Islands" in most types of cases. The U.S. Supreme Court exercised broad discretion in deciding where U.S. law trumped or supplanted Philippine and Spanish law. See Tahirih V. Lee, *The United States Court for China: A Triumph for Local Law*, 52 BFLR 923 (2004), citing *Dorr v. United States*, 195 U.S. 138, 142-44 (1904) (Congress may refuse to incorporate into the United States a territory ceded to the United States by treaty and yet retain the power to legislate for that territory); *Carino v. Insular Government*, 212 U.S. 449 (1909); *Bosque v. United States*, 209 U.S. 91 (1908) (U.S. law on professions supplant Spanish law); *Alzua v. Johnson*, 231 U.S. 106, 111 (1913) (U.S. principles of law supplant Spanish law with the establishment of U.S. courts in the Philippines).

The Act of March 24, 1934, c. 84, 48 Stat. 456, turned the Philippines into a Commonwealth and provided for its gradual independence. The Philippines enacted and the United States approved the first Philippine Constitution in 1935. After independence from the United States, the Philippines enacted a new civil code. See Rep. Act No. 386, An Act to Ordain and Institute the Civil Code of the Philippines (1949).

111. In 1900, American colonials introduced a Code of Criminal Procedure similar to the American code, but not providing for jury trials. General Orders No. 58 (1900), cited in Amy Rossabi, *The Colonial Roots of Criminal Procedure in the Philippines*, 11 COLUM. J. ASIAN L. 175, 189 (1997). In 1901, the Philippine Commission enacted a Code of Civil Procedure superseding provisions of the Spanish Code. See Book Review, Notes to the Spanish Civil Code Showing Changes Effected by American Legislation, with Citation of Cases, by Charles A. Willard, 18 HVLR 161, 161 (2004). The utility of American-style rules, particularly strict rules on evidence, is questionable in a system in which there is no jury. The drafting of the Environmental Rules is part on a larger effort to rewrite the Philippines Rules of Court. *Id.*

112. See Civil Code Art. 8 ("Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines."); see also *Lazatin v. Desierto*, G.R. No. 147097 (June 5, 2009), available at <http://sc.judiciary.gov.ph/jurisprudence/2009/june2009/147097.htm> ("only upon showing that circumstances attendant in a particular case override the great benefits derived by our judicial system from the doctrine of *stare decisis*, can the courts be justified in setting aside the same"); *Fermin v. People*, G.R. No. 157643, 550 SCRA 132 (Mar. 28, 2008) ("The doctrine of *stare decisis* . . . requires courts in a country to follow the rule established in a decision of the Supreme Court thereof."); *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation*, G.R. No. 159422, 550 SCRA 180 (Mar. 28, 2008):

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

Time and again, the court has held that it is a very desirable and necessary judicial practice that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same.

113. Compare CONST. (1935), Art. VIII (Phil.) (providing for the judicial department), with U.S. CONST., Art. III (establishing the judicial branch).

114. CONST. (1987), Art. VIII, §1 (Phil.) (giving courts the power "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"). The incorporation of judicial review into the Constitution reflects the drafters' intent to avoid a repeat of the virtually unchecked executive power during the Marcos era. See Diane Desierto, *Justiciability of Socio-Economic Rights: Comparative Powers, Roles, and Practices in the Philippines and South Africa*, 11 ASIAN-PAC. L. & POL'Y J. 114, 119 (2010) (referring to the former Chief Justice's proposal of this provision to the 1986 Constitutional Commission). Journalists and politicians critical of a particular executive action often compare it to the extreme executive power of the Marcos era. E.g., Christina Mendez, *Joker Slams Noys' Legal Advisers, De Lima for Hitting SC*, THE PHILIPPINE STAR NEWS 10 (Dec. 5, 2011), available at <http://www.abs-cbnnews.com/nation/12/05/11/joker-slams-noys-legal-advisers-de-lima-hitting-sc> (Sen. Joker Arroyo compared the Department of Justice's attempts to circumvent the Supreme Court to events that occurred under martial law); Rey E. Requejo, *Aquino Like Hitler, Marcos, Critics Say*, MANILA STANDARD, 2011 WLNR 25732573 (Dec. 14, 2011).

By comparison, the U.S. Constitution does not specifically provide for judicial review. This power was recognized by the Supreme Court in *Marbury v. Madison*, 5 U.S. 137, 170 (1803):

If one of the heads of departments commits any illegal act under color of his office by which an individual sustains an injury, it cannot be pretended that his office alone exempts him from being sued in the ordinary mode of proceeding, and being compelled to obey the judgment of the law.

and codified in the Administrative Procedure Act. See 5 U.S.C. §706(a)(2) (allowing courts to set aside agency decisions that are arbitrary and capricious, unconstitutional, or in excess of statutory jurisdiction).

115. *Oposa*, *supra* note 77; see also *Daza v. Singson*, G.R. No. 86344 (Dec. 21, 1989) (political questions "come within our powers of review under the expanded jurisdiction conferred upon us by Article VIII, Section 1, of the Constitution"). This contrasts with the prohibition on the American judiciary from considering political questions, see *Baker v. Carr* 369 U.S. 186, 212 (1962) (outlining the elements of the political question doctrine), and that on Philippine courts prior to the 1987 Constitution, see *Mabanag v. Vito*, G.R. No. L-1123 (Mar. 5, 1947), available at http://www.lawphil.net/judjuris/juri1947/mar1947/gr_l-1123_1947.html ("It is a doctrine too well established to need citation of authorities, that political questions are not within the province of the judiciary, except to the extent that power to deal with such questions has been conferred upon the courts by express constitutional or statutory provision.")

116. See CONST. (1987), Art. VIII, §5(5) (Phil.). The 1973 and 1935 Constitutions also allowed the Supreme Court to make rules, but these rules could be repealed, altered, or supplemented by the legislative body. See CONST. (1973) Art. X, §5(5); CONST. (1935) Art. VIII, §13; *Rationale*, *supra* note 77, at 49-50 ("the Court can enact rules to enforce constitutional rights, the

Supreme Court took advantage of this power in 2010 by promulgating the Environmental Rules.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,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,¹¹⁹ and the chief justice was Arroyo's former spokesman and chief of staff.¹²⁰ When Arroyo was indicted for election fraud, the Department of Justice prohibited her from leaving the country.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.¹²² This led to a political dispute between the president and the chief justice, which ended with the justice's impeachment and removal.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.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.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*,¹²⁶ Supreme Court orders do not always seem to be consistent with prior case law, or even the law of a case.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.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*.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.¹³⁰ The government and foreign mining company defendants filed motions for reconsideration.¹³¹ While the motion was under consideration, the DENR drafted a mineral action plan pursuant to the Act,¹³² and the president ordered all government agencies to begin implementing the plan.¹³³ Ten months later (and one month before a major international mining confer-

power of which may be typically lodged in the legislative bodies or branches of other jurisdictions").

117. Rules of procedure are adopted by the Supreme Court pursuant to its rule-making power under §5(5) of Article VIII of the 1987 Constitution.

118. CONST. (1987) Art. VIII, §11.

119. Tetch Torres, *De Lima Warns SC: Aquino to Reclaim Court for the People*, INQUIRER.NET (Dec. 15, 2011), available at <http://newsinfo.inquirer.net/111603/de-lima-warns-sc-aquino-to-reclaim-court-for-the-people> (Secretary of Justice Leila De Lima warned the Arroyo-appointed associate justices at the Supreme Court that they could face impeachment, as the chief justice did).

120. Christina Mendez, *Joker Slams Noy's Legal Advisers, De Lima for Hitting SC*, THE PHILIPPINE STAR 10 (Dec. 5, 2011) (Sen. Frank Drilon noted that the chief justice had sided with the former president in many Supreme Court cases).

121. *See Arroyo Still in Watch List*, BUSINESSWORLD, 2011 WLNR 21592624 (Oct. 21, 2011).

122. *See Marlon Ramos, High Court Affirms TRO: It Still Stands*, PHILIPPINE DAILY INQUIRER 1, 2011 WLNR 23967132 (Nov. 19, 2011).

123. Gil C. Cabacungan Jr. & Cynthia D. Balana, *188 Solons Impeach CJ Corona*, PHILIPPINE DAILY INQUIRER 1, 2011 WLNR 25602238 (Dec. 13, 2011); Cheryl M. Arcibal et al., *Senate: Corona Guilty*, THE PHILIPPINE STAR (May 29, 2012), available at <http://www.philstar.com/nation/article.aspx?publicationscategoryid=63&articleid=811998>.

124. *See* Philippines House of Representatives website, Brief History of the Philippine Congress, <http://www.congress.gov.ph/about/index.php?about=history> (describing the 1941 constitutional change providing for a bicameral legislature, the 1973 Constitution enacted during the Marcos era, and the 1987 Constitution).

125. *See Lambino v. Comm'n on Elections*, G.R. No. 174153, 505 SCRA 160 (Oct. 25, 2006). The majority seemed aware of the need to avoid repeated changes to the Constitution: "To allow such change in the fundamental law is to set adrift the Constitution in uncharted waters, to be tossed and turned by every dominant political group of the day. . . . A revolving-door constitution does not augur well for the rule of law in this country." Five of the seven dissenting justices were Arroyo appointees, while the four other Arroyo appointees joined the eight-justice majority. *See* biographies of justices, indicating dates of appointment, at <http://sc.judiciary.gov.ph/justices/>

index.php; Summary of Voting in *Lambino*, at http://sc.judiciary.gov.ph/jurisprudence/2006/october2006/174153_summary.htm.

126. *See* Civil Code Art. 8, *supra* note 112.

127. It is not uncommon for the Supreme Court to reverse itself on a second or even third motion for reconsideration. *See* Apo Fruits Corporation v. Landbank of the Philippines, G.R. No. 164195, 632 SCRA 727 (Oct. 12, 2010) (listing cases in which a judgment was reversed on the second or third motion for reconsideration "after finding that doing so was in the interest of substantial justice"); League of Cities v. Comelec, G.R. No. 176951 (June 28, 2011) (Sereno, J., dissent), available at http://sc.judiciary.gov.ph/jurisprudence/2011/june2011/176951_sereno.htm (noting that the Supreme Court had reconsidered its ruling in the case five times).

128. Telephone Interview with Antonio G.M. La Viña, Dean of the Ateneo School of Government (Feb. 15, 2012) [hereinafter La Viña Interview] (explaining that Supreme Court decisions are issued by different divisions, and some divisions may have stricter standards than others). *See* the Internal Rules of the Supreme Court, Rule No. 2, A.M. No. 10-4-20-SC (2010), available at http://www.lawphil.net/courts/supreme/am/am_10-4-20-sc_2010.html (explaining that most Supreme Court cases are heard by divisions of five out of the 15 justices; but the Court considers certain kinds of cases en banc, including cases that raise novel questions of law and cases of sufficient importance to merit en banc consideration).

129. G.R. No. 127882, 421 SCRA 148 (Jan. 27, 2004) [hereinafter *La Bugal* (Jan. 27, 2004)]. An eight-member majority granted the petition.

130. *Id.* (declaring unconstitutional the mining agreement and parts of the Mining Act).

131. *See* *La Bugal-B'laan Tribal Ass'n v. Ramos*, G.R. No. 127882, 445 SCRA 1 (Dec. 1, 2004) [hereinafter *La Bugal* (Dec. 1, 2004)].

132. *See* Tan (Winter 2005-2006), *supra* note 81, at 191; Mining Action Plan Executive Summary 1 (Sept. 13, 2004) ("The most pressing concern facing the Industry is the January 27, 2004 Supreme Court Decision that nullified the provisions of the Mining Act allowing the direct participation of foreign-owned corporations in mining.")

133. Memo. Circular No. 67 from the Office of the President of the Phil., to All Heads of Dep'ts, Chiefs of Bureaus and Offices/Instrumentalities of the Nat'l and Local Gov'ts and Others Concerned (Sept. 13, 2004), available at <http://philippinemining.imagnet.com.ph/mining-act-and-related-content/op-memo-circular-67>.

ence was to take place in Manila¹³⁴), the Supreme Court issued a reconsideration of its original decision.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.”¹³⁶ The president called the reconsideration an act of statesmanship done in the national interest.¹³⁷

Another example of this kind of reconsideration is the 1991 case of *Technology Developers, Inc. v. Court of Appeals*, concerning a charcoal manufacturer that failed to obtain permits required by the local government and the DENR.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.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.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.¹⁴¹

The manufacturer filed a motion for reconsideration, raising completely new facts and legal arguments.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.¹⁴³ This reconsideration conflicts with other decisions regarding the ability of local governments to issue and suspend permits,¹⁴⁴ as well as cases citing the police power as a basis for permit revocation.¹⁴⁵

Social Justice Society v. Atienza,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.¹⁴⁷ This time, the Court stuck to its original position, emphasizing the Constitution’s guarantee of local autonomy¹⁴⁸ and the significance of local police power.

The difficulty of squaring rulings such as *Atienza* with *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.

134. Tan (Winter 2005-2006), *supra* note 81, at 202.

135. *La Bugal* (Dec. 1, 2004), *supra* note 131.

136. *Id.*

137. Tan (Winter 2005-2006), *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).

138. G.R. No. 94759, 193 SCRA 147 (Jan. 21, 1991) (original Supreme Court decision).

139. *Id.*

140. *Id.*

141. *Id.*

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. Ramos, 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 “flimsy” 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%20Resolutions& 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.”).

143. *Technology Developers, Inc. v. Court of Appeals*, G.R. No. 94759, 201 SCRA 11 July 31, 1991), cited in Dante Gatmaytan-Magno, *Artificial Judicial Environmental Activism: Oposa v. Factoran as Aberration*, 17 INT’L & COMP. L. REV. 1, 10-14 (2007). The Court quoted the repealing clause in Pres. Decree 984, Providing for the Revision of Republic Act No. 3931, 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 inconsistent 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 superseded by Presidential Decree No. 984 which is the special law on the subject of pollution.” *Id.* (Civil Code Art. 699 lists “[a]batement, without judicial proceedings” as a remedy for a public nuisance).

144. *E.g.*, *Roble Arrastre, Inc. v. Villafor*, G.R. No. 128509 (Aug. 22, 2006), *available at* http://www.lawphil.net/judjuris/juri2006/aug2006/gr_128509_2006.html (finding that Local Government Code of 1991 allows local government units to prescribe regulations to protect the lives, health, and property of their constituents and maintain peace and order within their respective territorial jurisdictions); *Luque v. Villegas*, G.R. No. L-22545 (Nov. 28, 1969), *available at* http://www.lawphil.net/judjuris/juri1969/nov1969/gr_l-22545_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 subject to their control).

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 “pervasive, sovereign power to protect the safety, health, and general 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 *Technology Development*. *See id.*, referring to local government’s cease and desist order.

146. G.R. No. 156052, 517 SCRA 657 (Mar. 7, 2007), *reconsidered*, 545 SCRA 92 (Feb. 13, 2008).

147. *Id.*, citing Rep. Act 7638, Department of Energy Act (1992) and Rep. Act 8479, Downstream Oil Industry Deregulation Law (1998).

148. CONST. (1987), Art. X (Phil).

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.¹⁴⁹ 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.¹⁵⁰ The bill of information alleged that the discharge damaged vegetation in the vicinity, in violation of Republic Act No. 3931.¹⁵¹ This act broadly defines pollution¹⁵² and requires a permit to discharge industrial waste or any waste that could cause pollution.¹⁵³ 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.¹⁵⁴

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/jurisprudence/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 establish 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. . . .”

151. An Act Creating a National Water and Air Pollution Control Commission (1964).

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.

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.¹⁵⁵ But the Court has narrowly interpreted what constitutes a “patent illegality.” An example is the 2003 case of *Magbuhos v. Lanzanas*,¹⁵⁶ 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.¹⁵⁷ Plaintiffs alleged that the proposed construction was patently illegal, in violation of the Local Government Code¹⁵⁸ and a presidential decree designating the area as an ecologically threatened zone.¹⁵⁹ Dismissing arguments as to why the construction was patently illegal,¹⁶⁰ the Court

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).

156. G.R. No. 131442, 405 SCRA 530 (July 10, 2003).

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 or/and “Environmental Compliance Certificate” (ECC). The requirements and processes vary depending on whether a proposed project is outside the purview 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* court determined that the construction in that case, a wharf, did not fall into any of these categories (even though barges 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 was not commercial such that the decree did not apply.

160. See notes 158-59, *supra* (citing laws that the project appeared to violate). In a similar case, *Otadan v. Rio Tuba Nickel Mining Corp.*, G.R. No. 161436 (June 23, 2004), available at <http://sc.judiciary.gov.ph/resolutions/2nd/2004/2Jun/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 *Magbuhos*, 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, 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.

161. *Id.*, citing DENR Dept. Admin. Order No. 96-37, Revising DENR Administrative Order No. 21, Series of 1992, to Further Strengthen the Implementation of the Environmental Impact Statement (EIS) System (Dec. 02, 1996).

162. G.R. No. 129546 (Dec. 13, 2005), available at <http://sc.judiciary.gov.ph/jurisprudence/2005/dec2005/129546.htm>.

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. 148622, 388 SCRA 691 (Sept. 12, 2002). Developers sued the DENR for failing to exempt their project from an 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.*

165. The Environmental Rules incorporate the Supreme Court's liberal standing doctrine. *See* Environmental Rule 2(5) (recognizing the right of any Filipino citizen to file a citizen suit on behalf of "others, including minors or generations yet unborn."); *West Tower Condominium Corp. on Behalf of Various Parties "Including Minors and Generations Yet Unborn" v. First Philippine Industrial Corporation*, G.R. No. 194239 (May 31, 2011), available at www.chanrobles.com/scresolutions/2011mayresolutions.php?id=161.

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/gr_l-2044_1949.html ("the transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside, if we must, technicalities of procedure"); *Tañada 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.

171. *Henares v. Land Transportation Franchising and Regulatory Board*, G.R. No. 158290, 505 SCRA 104 (Oct. 23, 2006).

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.¹⁷⁵ Defendants argued that, since plaintiffs were not parties to the mining contract, they had no standing to sue.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.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.”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.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.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.”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 2008.¹⁸² The Environ-

mental Rules govern procedure in civil and criminal actions involving any environmental law or provision of a law.¹⁸³ Also covered are “strategic lawsuits against public participation” (SLAPP)—suits to stifle action taken to enforce environmental laws or assert environmental rights.¹⁸⁴

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

The Environmental Rules allow citizen suits to be filed in any environmental case.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 and decide the case. See Environmental Rule 4(5). There is no such time limit in the Civil Rules of Procedure. Finally, judgments “in favor of the environment,” i.e., directing the performance of acts for the protection, preservation, or rehabilitation of the environment, are not stayed on appeal unless ordered by the appellate court. Environmental Rule 5(2).

186. Environmental Rule 4(5).

187. See *supra* note 186 (detailing time lines for motions and proceedings).

188. See, e.g., Aie Balagtas, *MMDA to Sue Judge Over Billboard Ruling*, THE PHILIPPINE STAR (Jan. 23, 2012), available at <http://www.philstar.com/nation/article.aspx?publicationsubcategoryid=65&articleid=770403> (“Most legal battles in the country usually last for years.”); La Viña Interview, *supra* note 128 (environmental cases could last for seven to 10 years).

Part of the reason for the delay is the lack of appointed judges—in 2010 the number of courts exceeded the number of judges by about 500. See Hilario G. Davide Jr. & Sara Vinson, *Green Courts Initiative in the Philippines*, 3 J. CT. INNOVATION 1, 123 (2010); Another source of delay is the lack of automated case management information systems outside of small claims and appeals courts. See *Case Monitoring System Strengthens Local Courts’ Transparency and Accountability*, ABA ROLI-Philippines (Nov. 2011), http://apps.americanbar.org/rol/news/news_philippines_case_monitoring_system_strengthens_local_courts_transparency_and_accountability_1111.shtml (last visited June 8, 2012) (discussing automation of small claims courts); *Court of Appeals Automation System Strengthens Transparency in the Judiciary*, ABA ROLI-Philippines (Aug. 2011), http://apps.americanbar.org/rol/news/news_philippines_court_automation_system_strengthens_the_judiciary_0811.shtml (last visited June 8, 2012) (discussing automation of Court of Appeals).

189. Civil suits concerning environmental laws are governed by the Environmental Rules unless brought under the citizen suit provisions of the Clean Air Act or the Ecological Solid Waste Management Act. See Environmental Rule 2(5) and *Annotation, supra* note 62, at 111, citing Act 8749 (Clean Air Act) at §41 and Rep. Act No. 9003 at §52. Citizens also have the opportu-

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

176. *Id.*

177. *Id.*

178. *Id.*

179. G.R. No. 180771, discussed in Delmar Carino, *SC chief: Implementation of Environment Laws Poor*, PHILIPPINE DAILY INQUIRER, 17, 2009 WLNR 7094043 (Apr. 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).

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

181. *Annotation, supra* note 62, at 100.

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

defer payment of filing fees until after the judgment,¹⁹⁰ and they may recover attorneys fees and litigation expenses if successful.¹⁹¹ They typically cannot recover damages,¹⁹² although the defendant may be required to pay for restoration.¹⁹³

Plaintiffs can seek injunctive relief in the form of ex parte Temporary Environmental Protection Orders (TEPOs),¹⁹⁴ as well as long-term Environmental Protection Orders (EPOs).¹⁹⁵ Orders can require defendants to take action to protect or restore the environment.¹⁹⁶

The provision allowing courts to issue TEPOs is striking, given that the legislature has prohibited any court other than the Supreme Court from issuing temporary restraining orders (TROs) against government-authorized construction or public works projects.¹⁹⁷ An injunction cast as a TEPO instead of a TRO could potentially be used to halt a project posing imminent danger to the environment.¹⁹⁸

nity to participate in criminal actions under Environmental Rule 9(3) (“In criminal cases, where there is no private offended party, a counsel whose services are offered by any person or organization may be allowed by the court as special prosecutor, with the consent of and subject to the control and supervision of the public prosecutor.”).

190. Environmental Rule 2(12).

191. Environmental Rule 5(1). As in the United States, each litigant must pay her own attorneys fees unless litigating under a statute allowing for awards of attorneys fees. The prevailing party is typically awarded costs. See Civil Code Art. 2208.

192. Environmental Rule 5(1) does not provide for personal damages in citizen suits. Environmental plaintiffs may still collect damages in cases where they are filing on their own behalf, as real parties in interest. Compare Environmental Rule 2(4) (personal suits), with Environmental Rule 2(5) (citizen suits). Other opportunities for damages include the writ of continuing mandamus (Environmental Rule 8), actions for civil liability instituted simultaneously with criminal actions (Environmental Rule 10), and civil suits brought under the Ecological Solid Waste Management Act, which provides for “moral damages.” See Rep. Act No. 9003 at §52.

193. Environmental Rule 5(1).

194. See Environmental Rule 2(8) (providing for 72-hour TEPOs). Similar to temporary restraining orders, TEPOs are available when it appears that “the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury.” *Id.* See also *West Tower Condominium Corp.*, *supra* note 165 (Supreme Court issued a TEPO and writ of *kalikasan* requiring defendant to cease operations on two pipelines). The bond normally required for TROs is waived for TEPO applicants. See Environmental Rule 2(8).

195. See Environmental Rule 1(4)(d) (defining environmental protection order (EPO) as “an order issued by the court directing or enjoining any person or government agency to perform or desist from performing an act in order to protect, preserve or rehabilitate the environment”). EPOs and TEPOs may also be used in criminal cases. Rule 13(2).

196. See Environmental Rule 5(1).

197. See Rep. Act No. 8975, An Act to Ensure the Expedient Implementation and Completion of Government Infrastructure Projects by Prohibiting Lower Courts From Issuing Temporary Restraining Orders (2000). The only exception to this act is a “matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise.” *Id.* §3. This law and its predecessors (Pres. Decree 1818, Prohibiting Courts From Issuing Restraining Orders in Cases Involving Infrastructure and Natural Resource Development (1981) and Pres. Decree 605, Banning the Issuance of Restraining Orders in Cases Involving the Exploitation of Natural Resources (1974)) could block TROs against projects with the potential to cause irreparable damage to the environment. See Gregg M. Rubio, DPWH: *No Turning Back on Fly-over Construction*, THE PHILIPPINE STAR, Sept. 28, 2011, <http://www.philstar.com/Article.aspx?articleId=731740&publicationSubCategoryId=107> (quoting government official regarding Rep. Act 8975 in the context of a highway project opposed by citizen groups and environmentalists).

198. La Viña Interview, *supra* note 128 (noting that a TEPO is basically a form of TRO, but prior to the Environmental Rules, it was difficult to get TROs in environmental cases).

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.¹⁹⁹ 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 straightaway 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

199. Environmental Rule 7(1). Rule 7(5) explains that the writ of *kalikasan* includes a “cease and desist order and other temporary reliefs 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 *Rationale*, *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).

202. 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*.”).

203. See *Rationale*, *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”).

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

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

206. See *Citizens, Lawyers Sue Government to Push for Rainwater Catchment Ponds*, 32:11 UP NEWSL. (Nov. 2011), <http://www.up.edu.ph/upnewsletter2.php?i=1190&pg=1203&pgidx=&pgmax=1&issue=84> (last visited June 8, 2012). Rep. Act 6716, Water Wells, Rainwater Collectors, and Spring Development (1989), requires the Department of Public Works and Highways to construct rainwater collectors and develop springs in every barangay (similar to a subdivision of a city). Rep. Act 7160, the Local Government Code (1991), extends the requirement to local governments.

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

one personally aggrieved²¹⁶ by the government’s neglect of its enforcement duties, or by a violation of a right for which there is no adequate remedy in the ordinary course of law.²¹⁷ Like the writ of *kalikasan*, a petition for the writ of continuing mandamus can be filed directly with the court for no fee.²¹⁸ Unlike the writ of *kalikasan*, the writ of continuing mandamus can provide for monetary damages resulting from an agency’s “malicious negligence.”²¹⁹ The court issuing the writ can set timetables for the government’s performance of tasks²²⁰ and require the agency to submit written progress reports.²²¹ The writ remains in effect until the judgment is fully satisfied.²²²

The Environmental Rules rely on the precautionary principle as an actual rule of evidence.²²³ 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

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&d=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/scresolutions/2011juneresolutions.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 Viña 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.” *Burks v. U.S. Dept. of Justice*, slip op., No. 11-2271 2011 WL 6440922 (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. Atienza*, *supra* note 78. In *Atienza*, 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).

216. This provision suggests that standing for a continuing mandamus is narrower than that for a writ of *kalikasan*. See *Annotation*, *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 *Annotation* 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 *Annotation*, *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).

219. Environmental Rule 8(1).

220. Environmental Rule 8(7), *Manila Bay* (2011).

221. Environmental Rules 5(3) and 8(7).

222. Environmental Rules 1(4)(c) and 8(8).

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(1), applicability of precautionary principle). But the Supreme Court also states that application of the precautionary principle is limited to cases where there is “truly a doubt in the evidence available.” *Id.* at 159 (discussing Rule 20(2)).

226. G.R. No. 196835 (June 28, 2011), available at <http://www.chanrobles.com/scresolutions/2011juneresolutions.php?id=185>. In *Makati v. Meralco*, CA-G.R. SP No. 116742-UDK (Jan. 20, 2011), a case that seemed ripe for the application of the precautionary principle, the Court of Appeals did not mention it. The court denied a petition for a writ of *kalikasan*, rejecting assertions and evidence linking power lines to cancer. Assessing an article

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.²²⁷

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.²²⁸ 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.²²⁹ They also asserted their constitutional right to a balanced and healthful environment.²³⁰

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.²³¹ 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.²³²

The case then came before the Supreme Court, and on December 18, 2008, Justice Presbitero Velasco issued an opinion in which all justices concurred.²³³ 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.²³⁴ 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."²³⁵ In other words, the agency charged with executing the Ecological Solid Waste Management Act²³⁶ could choose *where* to set up landfills, but not *whether* to set them up.²³⁷ The December 18, 2008, order was essentially a continuing mandamus,²³⁸ 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.²³⁹ 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."²⁴⁰

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.²⁴¹ This committee was comprised of Justice Velasco, as well as the court administrator and technical experts.²⁴²

On February 15, 2011, Justice Velasco issued a new order in the same case, setting specific deadlines for each agency's tasks.²⁴³ But this time, not everyone on the Court agreed.²⁴⁴ 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.²⁴⁵ Justice

submitted by plaintiffs, the court stated, "In fine, the studies (given that the sources of the article actually exist) mentioned in this article have not established on a scientific level the causation between EMF and the diseases commonly associated with its exposure."

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 Lauren Ice, *Judge Halts Coal Ash Dumping* (Mar. 29, 2011), <http://elawspotlight.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.")).

228. Civil Case No. 1851-99 of the Imus, Cavite Regional Trial Court, Branch 20, cited in *Manila Bay* (2008).

229. *Id.*

230. *Id.*, referring to CONST. (1987) Art. II, §16.

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

232. *Manila Bay* (2008), citing Court of Appeals opinion, CA-G.R. CV No. 76528, CA-G.R. SP No. 74944 (Sept. 28, 2005).

233. *Manila Bay* (2008).

234. *Id.*

235. *Id.*

236. Rep. Act No. 9003 (2000).

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.*

242. *Manila Bay* (2011), at n.2.

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, Caprio, 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 tasked 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).

Sereno²⁴⁶ cited cases regarding the separation of powers,²⁴⁷ and suggested that the Court was improperly using mandamus to compel discretionary actions.²⁴⁸ She argued that the Philippine Constitution did not authorize the Courts to “monitor” the execution of its decisions,²⁴⁹ and that Congress (rather than the Court) had the power to monitor and ensure that its laws were enforced.²⁵⁰ She also pointed out problems the Indian judiciary faced in “tak[ing] on the role of running the government in environmental cases.”²⁵¹ 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*.²⁵² 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.”²⁵³

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.”²⁵⁴

He pointed out that none of the agencies ever questioned the power of the Court to implement the December 18, 2008, Decision.²⁵⁵ He also noted that the Environmental Rules specifically gave courts the authority to require progress reports.²⁵⁶

Still, Justice Velasco acknowledged some of the obstacles to the execution of the December 18, 2008, order.²⁵⁷ As was the case with *M.C. Mehta*,²⁵⁸ 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.²⁵⁹ A national election took place in 2010, changing leadership in the agencies subject to the continuing mandamus.²⁶⁰ And “some agencies . . . encountered difficulties in complying with the Court’s directives.”²⁶¹

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.²⁶² In 2009, groups of fisherman 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.²⁶³ In reality, the fishermen argued, the demolition was clearing the path for a highway project and the development of a billion-dollar casino.²⁶⁴ They warned the Court that 26,000 fishermen and urban poor families stood to lose their home and livelihood.²⁶⁵

The Court found that the groups were not entitled to intervene in the case.²⁶⁶ 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.²⁶⁷ It also emphasized that any evictions had to conform to the Philippines’ protective squatter law.²⁶⁸

246. Justice Sereno was not on the Court at the time of the December 18, 2008 decision.

247. *Manila Bay* (2011) (Dissent, Sereno, J.), citing *Anak Mindanao Party-list Group v. Executive Secretary*, G.R. No. 166052, 531 SCRA 583 (Aug. 29, 2007) (explaining presidential powers); *Ople v. Torres*, G.R. No. 127685, 293 SCRA 141 (July 23, 1998) (same).

248. *Manila Bay* (2011) (Dissent, Sereno, J.), citing *Sps. Abaga v. Sps. Panes*, G.R. No. 147044, 531 SCRA 56 (Aug. 24, 2007) (mandamus lies “(1) 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; or (2) when any tribunal, corporation, board, officer or person unlawfully excludes another from the use and enjoyment of a right or office to which the other is entitled”); *Alvarez v. PICOP Resources*, G.R. No. 162243, 508 SCRA 498 (Nov. 29, 2006) (“remedy of mandamus lies only to compel an officer to perform a ministerial duty, not a discretionary one”).

249. *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”).

250. *Manila Bay* (2011) (Dissent, Sereno, J.), citing *Macalintal v. Comelec*, G.R. No. 157013, 405 SCRA 614 (July 10, 2003) (describing Congress’ oversight function).

251. *Manila Bay* (2011) (Dissent, Sereno, J.) (discussing continuing mandamus in *Vineet Narain and Others v. Union of India*, 1996 SC (2) 199 JT 1996 (1) 708 1996 SCALE (1) SP 31, and *T.N. Godavarman v. Union of India*, T.N. Godavarman Thirumulkpad v. Union of India & Ors (1997) 2 SCC 267).

252. *Oposa*, *supra* note 77 (Feliciano, J., concurring).

253. *Id.*

254. *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 speci-

cally providing for judicial review of legislative and executive actions. *Id.* at 450, n.28, citing CONST. (1987), Art. VIII, §1 (Phil.).

255. *Id.* at 452. Taking this a step further, the Court posted on its website a news story suggesting that the DENR welcomed the Court-imposed deadline. See Manila Bay Advisory Committee, <http://sc.judiciary.gov.ph/features/manilabay/index.php> (last visited Feb. 22, 2012), citing Michael Punongbayan, *DENR Welcomes Supreme Court Manila Bay Cleanup Deadline*, THE PHILIPPINE STAR, Mar. 14, 2011.

256. Environmental Rule 8(7-8).

257. *Manila Bay* (2011).

258. Initiated by Writ Petition No. 13029 of 1985.

259. *Manila Bay* (2011).

260. *Id.*

261. *Id.*

262. *Almitra Patel v. Union of India*, Writ Petition No. 888 of 1996.

263. Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay, G.R. Nos. 171947-48 (Oct. 6, 2009), available at <http://www.chanrobles.com/scresolutions/2009octoberresolutions.php?id=127> [hereinafter *Manila Bay* (2009)].

264. *Id.*

265. *Id.*

266. *Id.*

267. *Id.*, citing Pres. Decree No. 1067, Water Code of the Philippines (1976) (establishing setbacks from water bodies).

268. *Manila Bay* (2009), *supra* note 263, citing Rep. Act 7279, Urban Development Housing Act (1992) (governing procedure in cases of eviction and demolition). The order did not settle the controversy regarding the removal of structures from around the bay. In May 2011, local fishermen and non-profit groups submitted a letter to the Court complaining that that the bay

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.²⁶⁹ Meanwhile, Attorney Oposa has filed motions alleging that the agencies have failed to comply with both the 2008 and 2011 court orders.²⁷⁰ 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.”²⁷¹

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.²⁷² Enough garbage to fill three Olympic-sized pools was removed.²⁷³ Another cleanup was held in February 2012.²⁷⁴ 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.²⁷⁵

The Court's active role in the *Manila Bay* case is interesting when compared to its 2006 decision in *Henares*.²⁷⁶ 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.²⁸⁵

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-

cleanup was really targeted at removing slum-dwelling communities from around the bay in order to make way for corporate interests. See *Manila Bay Cleanup Ruling Stirs Unrest*, MANILA STANDARD, 2011 WLNR 9874445, May 17, 2011; Jerome Aning, *Spare Us From Cleanup, Manila Bay Squatters Urge High Court*, PHILIPPINE DAILY INQUIRER 11, 2011 WLNR 6384571, Apr. 2, 2011. It is not clear how this was addressed.

In June 2012, the Department of Public Works and Highways announced that it would demolish 654 shanties built along the dikes of the mouth of Manila Bay in two provinces. Tonette Orejas, *Shanties Up for Demolition for Manila Bay Cleanup*, PHILIPPINE DAILY INQUIRER 14, 2012 WLNR 2556488, June 16, 2011.

269. See Rey G. Panaligan, SC: *Chief Justice Corona, a Year After Assuming as Top Magistrate*, MANILA BULL., May 14, 2011, available at <http://www.mb.com.ph/articles/318225/sc-chief-justice-corona-a-year-after-assuming-top-magistrate> (following *Manila Bay* (2011), Court conducted an inspection and cruise of portions of the Pasig River and Manila Bay “in order for them to realize the immensity of the tasks that lie ahead”). The Court also made a visual inspection of the pipeline involved in *West Tower Condominium Corporation*, *supra* note 165. See Marlon Ramos, *Makati Oil Pipeline Set to Open for Tests*, PHILIPPINE DAILY INQUIRER 23, 2011 WLNR 25602224, Dec. 13, 2011.

270. *Gov't Execs Face Contempt Over Manila Bay Neglect*, ABS-CBNNEWS.COM, Aug. 24, 2009, <http://www.abs-cbnnews.com/nation/08/24/09/govt-execs-face-contempt-over-manila-bay-neglect> (last visited June 8, 2012); Jerome Aning, *Spare Us From Cleanup, Manila Bay Squatters Urge High Court*, PHILIPPINE DAILY INQUIRER 11, 2011 WLNR 6384571, Apr. 2, 2011.

271. Fidelis Angela Tan, *MANILA BAY CLEAN-UP PLAN DEADLINE ON JUNE 2011*, PHILIPPINE ONLINE CHRONICLES, Mar. 21, 2011, <http://www.thepoc.net/breaking-news/breaking-stories/11497-manila-bay-clean-up-plan-deadline-is-june-2011.html> (last visited June 8, 2012).

272. Ellison A. Quismorio, *MMDA Conducts "August Estero Blitz"*, MANILA BULL., Aug. 1, 2011, <http://www.mb.com.ph/node/329114/mmda-conduct> (last visited June 8, 2012).

273. Tina G. Santos, *45 Esteros Yield Huge Garbage Pile*, PHILIPPINE DAILY INQUIRER 25, 2011 WLNR 17969834, Sept. 11, 2011.

274. DJ Yap, *People Power One Day, One Bay in Metro Cleanup*, PHILIPPINE DAILY INQUIRER 1, 2012 WLNR 4014821, Feb. 25, 2012.

275. *Plastics Ban for Manila Underway*, THE VISAYAN DAILY STAR, Feb. 6, 2012, <http://www.visayandailystar.com/2012/February/06/negor4.htm> (last visited June 8, 2012).

276. *Henares*, *supra* note 171.

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; . . .”).

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

279. Initiated by Writ Petition No. 13029 of 1985.

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.*

285. Velasco, *supra* note 254, at 452-53.

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 Environment Laws Poor*, PHILIPPINE DAILY INQUIRER 17, 2009 WLNR 7094043, Apr. 17, 2009.

287. See Sheila Crisostomo, *Poor Law Enforcement, Graft Worsen Air Pollution in Metro*, THE PHILIPPINE STAR, Mar. 1, 2012, <http://www.philstar.com/Article.aspx?articleId=782545&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."); Nash B. Maulana & 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/denr-taps-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 Escandor Jr., *DOJ Decision in Palawan Murder Case Slammed*, PHILIPPINE DAILY INQUIRER 1, 2011 WLNR 11942033, 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 Dumps*, 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 Abuses*, PHILIPPINE DAILY INQUIRER 10, 2011 WLNR 23163937, Nov. 10, 2011 (environmental groups criticize government failure to stop the operations of international mining companies, which they accuse of blatantly violating environment laws); Alcuin Papa, *Global Warming Blamed for Wet Summer*, PHILIPPINE DAILY INQUIRER 1, 2009 WLNR 7539580, Apr. 23, 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 dumpsites).

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

289. Judicial Reform Activities in the Philippines Project, USAID, <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.")

290. *E.g.*, Rep. Act No. 3019, Anti-Graft and Corrupt Practices Act (1960).

291. This Court was created by the 1973 Constitution (Art. XIII, §5) 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).

293. See Edu Punay, *DOJ Creates Panel to Probe Charges v. Merc*, THE PHILIPPINE STAR, June 11, 2011, <http://www.philstar.com/Article.aspx?articleId=695026&publicationSubCategoryId=> (last visited June 8, 2012).

294. See Leila B. Salaverria, *Suspend Me, Suspend P-Noy*, PHILIPPINE DAILY INQUIRER 2, 2011 WLNR 26651944, Dec. 28, 2011.

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 (PHILJA), 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-Sectoral Capacity Building on Environmental Laws and the Rules of Procedure for Environmental Cases. Davide 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/IJIEA/IJIEABriefingPaper.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 *kalikasan*), 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 Environmental Rules, and it is probably too early to assess their impact on environmental cases.²⁹⁷ But some practitioners have expressed optimism,²⁹⁸ noting that environmental litigants are now better able to obtain information²⁹⁹ and timely injunctive relief.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.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.³⁰²

Mindanao v. Taganito Mining Corporation, *supra* note 226. Ramos Interview, *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. Tubeza, *SC Issues Writ vs. Taal Fish Cages*, PHILIPPINE DAILY INQUIRER 16 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., Philippines 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 Corpaz (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 when 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 *Filinvest Land v. Taro* (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 when the Environmental Rules are used appropriately; 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. Placer Dome, 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 Aklan*, 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 consultation 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 Taal Lake); *Cosalan 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-*

It may also be too early to tell whether courts will liberally construe the Environmental Rules to ensure access to justice, as they have for other procedural rules.³⁰³ In *Filinvest Land v. Taro*,³⁰⁴ the Court denied a petition for a standard preliminary injunction against landfill construction that was allegedly endangering the health and safety of nearby residents, noting that plaintiffs should have brought the proper action under the Environmental Rules. On the other hand, in *Cosalan v. Baguio*,³⁰⁵ the Court liberally construed the requirement for the writ of *kalikasan* that damage must affect “inhabitants in two or more cities or provinces.”³⁰⁶ The Court granted the writ to plaintiffs, even though they resided in one city and one province, as opposed to two cities or two provinces.³⁰⁷

ippine Earth Justice Center v. DENR, G.R. 197754 (Aug. 16, 2011), cited in Kristine L. Alave, *SC Halts Zamboanga Mining*, PHILIPPINE DAILY INQUIRER 7, 2011 WLNR 17091431, Aug. 30, 2011 (issuing writ of *kalikasan* banning mining in the Zamboanga peninsula of Mindanao); *Concerned Citizens of Obando v. DENR* (Feb. 21, 2012), cited in T.J. Burgonio, *SC Grants Bulacan Folk Relief in Fight vs. Dump*, PHILIPPINE DAILY INQUIRER 3, 2012 WLNR 4679081, 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 second TEPO ever in *Philippine Earth Justice v. SPC Power Corp.*, Regional Trial Court, Branch 28, Mandaue City (Aug. 17, 2010); see *Issuance of Tepo a “Partial Victory” for Environmental Groups*, SUNSTAR CEBU, Aug. 24, 2010, <http://www.sunstar.com.ph/cebu/issuance-tepo-partial-victory-environmental-groups> (last visited June 8, 2012); *Environmentalists, Power Firms Explore Conditions on Coal Ash Dumping*, SUNSTAR CEBU, Jan. 11, 2012, <http://www.sunstar.com.ph/cebu/local-news/2012/01/11/environmentalists-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 agreeing on locations where the coal ash can be dumped. *Id.*

303. See, e.g., *Collado v. Bockasanjo ISF Awardees Association, Inc.*, G.R. No. 107764 (Oct. 4, 2002), available at <http://sc.judiciary.gov.ph/jurisprudence/2002/oct2002/107764.htm> (“We also hold that environmental consequences in this case override concerns over technicalities and rules of procedure.”); *Cruz v. Sec. of Env. and Nat’l Res.*, G.R. 135385 (Dec. 6, 2000) (Vitug, J., dissenting), available at http://sc.judiciary.gov.ph/jurisprudence/2000/dec2000/135385_vitug.htm (“An issue of grave national interest indeed deserves a proper place in any forum . . . the rules of procedure . . . should not be so perceived as good and inevitable justifications for advocating timidity, let alone isolationism, by the Court.”); *Sol. Gen. v. Metro. Manila Authority*, G.R. No. 102782 (Dec. 11, 1991), available at http://www.lawphil.net/judjuris/juri1991/dec1991/gr_102782_1991.html (citations omitted) (“In proper cases, procedural rules may be relaxed or suspended in the interest of substantial justice, which otherwise may be miscarried because of a rigid and formalistic adherence to such rules.”).

304. G.R. No. 194246 (Dec. 01, 2010), available at <http://www.chanrobles.com/sresolutions/2010december/resolutions.php?id=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 preliminary injunction. The Court denied the petition, noting that it frowned upon interlocutory appeals, and that petitioners had not filed the case using the Environmental Rules. 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.

305. See Aubrey E. Barrameda, *High Court Orders Dump Site Closure*, BUSINESSWORLD, 2012 WLNR 2001333, Jan. 30, 2012 (stating that writ of *kalikasan* was issued on Jan. 17, 2012).

306. Environmental Rule 7.

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 aware-

ness 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.

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 Manguiat & 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 Env't. Compliance and Enforcement, Chiang Mai, Thailand (Apr. 1996), available at <http://www.inece.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").

309. See, e.g., *Province of Rizal v. DENR*, *supra* note 162 (Dec. 13, 2005) (citing *Oposa* in connection with the DENR's duty to protect the environment; police power to revoke licenses); *Heirs of Reyes v. Philippines*, G.R. No. 150862 (Aug. 3, 2006), available at <http://sc.judiciary.gov.ph/jurisprudence/2006/august2006/G.R.%20No.%20150862.htm> (emphasizing the DENR's duty to protect the environment); OLIVER A. HOUCK, *TAKING BACK EDEN: EIGHT ENVIRONMENTAL CASES THAT CHANGED THE WORLD* (2010), ch. 3.

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 as Top Magistrate*, MANILA BULL., 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).