Filling in the Gaps: Strengthening Environmental Tort Law in the Philippines

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Cite as 63 ATENEO L.J. 1156 (2019).

I. INTRODUCTION

The right to litigate environmental claims is relatively new in the legal profession despite the existence of causes of action arising from the use and abuse of environmental resources for decades.[1] Although there are only few court decisions addressing the issue of civil liability in environmental cases, this does not mean that Philippine jurisprudence is replete with such. In fact, news reports concerning violations of environmental laws often exhibit the frustration of aggrieved communities who are substantially affected by the impacts of environmental exploitation in spite of their concerted action against the erring corporate players.

The difficulty in furnishing an effective remedy for environmental tort victims may be attributed to the fact that characteristics of environmental toxic injuries complicate efficient liability determinations. Combined with high costs of litigation, environmental cases result in the undercompensation of plaintiffs and the systematic undeterrence of polluters.[2] The issue is aggravated by the certainty that environmental harms, in general, do not fall within neat and easily separable categories but rather flow into each other to create a holistic social problem.[3]

The primacy of compensating persons who experience first-hand impacts of adverse anthropological practices cannot be disregarded by the government as it imposes fines, fees, and other penal sanctions on companies and proprietors of environmentally-involved businesses. *Bona fide* business prerogatives must be cautiously exercised as a right when what is at stake is the infringement of the people's right to go about their daily activities in peaceful occupation of their property.

A careful perusal of most environmental laws shows that penal sanctions imposed on law violators are punitive and regulatory in character. The large sums paid by corporations to secure permits for commencement or continuance of their business operations are given to and exhausted by governmental agencies for administrative purposes only. Individual claimants, therefore, if disadvantaged by corporate projects, have little to no remedy from specific environmental legislations in litigating their rights to

1. Albert C. Lin, *Beyond Tort: Compensating Victims of Environmental Toxic Injury*, 78 S. CAL. L. REV. 1439, 1441-42 (2005).

2. *Id.* at 1514 (citing Glen O. Robinson, *Probabilistic Causation and Compensation for Tortious Risk*, 14 J. LEGAL STUD. 779, 796-97 (1985)).

3. EDWARD H.P. BRANS, LIABILITY FOR DAMAGE TO PUBLIC NATURAL RESOURCES: STANDING, DAMAGE AND DAMAGE ASSESSMENT 30 (2001).

monetary damages and other forms of compensation. Neither can they seek relief from the executive government, for the agency responsible for environmental protection, the Department of Environment and Natural Resources (DENR), is already said to lack the manpower and the finances to effectively implement environmental laws,[4] resulting in the unbridled exploitation of the environment and the victimization of its constituents.

Persons incurring damages due to environmental use or misuse would then necessarily have to rely on general precepts of laws to receive compensation for their injuries. Laws establishing the civil liability of environmental tortfeasors, such as the New Civil Code on torts and damages and on nuisances, are ineffective remedies to environmental tort victims[5] who manifest unique characteristics as injured parties.[6] The recognition of civil liability in environmental cases is impressed in the promulgation of the Rules of Procedure for Environmental Cases,[7] but the notion remains that the pertinent rule for civil procedure has been circulated prematurely as nowhere in environmental legislation is civil liability of its violators established, except in two laws.[8] After all, the Supreme Court has ruled that no vested right may attach to, nor arise from, procedural laws.[9] Thus, there is an apparent gap in the law because, although the method and the guidelines to enforce the right to litigate valid claims due to repercussions of environmental use to health and safety are meticulously laid out in the rules,

4. Karen Sy Ong, The Application of the Strict Liability Doctrine in Philippine Environmental Legislation, at 18 (1998) (unpublished J.D. thesis, Ateneo de Manila University) (on file with the Professional Schools Library, Ateneo de Manila University).

5. Interview *with* Antonio G.M. La Viña, Dean of the Ateneo School of Government, *in* Makati City, Philippines (Feb. 14, 2015).

6. MATTHEW HALL, VICTIMS OF ENVIRONMENTAL HARM: RIGHTS, RECOGNITION AND REDRESS UNDER NATIONAL AND INTERNATIONAL LAW 26 (2013).

7. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, A.M. No. 09-6-8-SC (Apr. 13, 2010).

8. *See* An Act Providing for a Comprehensive Air Pollution Control Policy and for Other Purposes [Philippine Clean Air Act of 1999], Republic Act No. 8749, § 45 (1999) & An Act Providing for an Ecological Solid Waste Management Program, Creating the Necessary Institutional Mechanisms and Incentives, Declaring Certain Acts Prohibited and Providing Penalties, Appropriating Funds Therefor, and for Other Purposes [Ecological Solid Waste Management Act of 2000], Republic Act No. 9003, § 52 (2001).

9. Tan v. Court of Appeals, 373 SCRA 524, 536 (2002).

the very right it seeks to promote is wanting in substantial laws that safeguard the environment.

Specific to the adjudication of environmental cases is the provision for the Writ of *Kalikasan*,[10] which, at first sight, may seem like a viable remedy for aggrieved parties. An examination of its requirements, however, shows that it has inherent limitations restricting its use. For instance, the writ may be sought to deal with environmental damage of "such magnitude"[11] that it threatens the "life, health[,] or property of inhabitants in two or more cities or provinces."[12] In effect, the extraordinary writ is available only when affected parties are so numerous so as to call upon the exercise of state powers to curtail activities unfavorably affecting public interest.[13]

As it now stands, claimants are made to rely on other Philippine laws for establishing their cause of action. These laws cater to a wider scope of civil liability, requiring general concepts of law — such as negligence or proximate cause — to be substantiated by proof, making it difficult, if not impossible, for victims of exploitative practices to obtain what is due them. It is often forgotten that extensive resource use is likely to have a significant adverse environmental impact across boundaries. Consequently, when general laws are applied to environmental cases, common iron-clad principles of proximate cause and foreseeability may be inadequate to verify a claim.

This Note will discuss the failure of environmental laws in clearly establishing the liability of persons engaged in environmental projects. Given that interrelated legal causes of actions can emerge from the enforcement of environmental laws, liability may also be established by reference to other general laws. Also, particular focus is set on the liability of corporations as critical projects or operations engaged in critical areas are often backed by substantial capital within the faculty of corporate players.

Although environmental legislation pays much attention to reparative or punitive justice in the exercise of state powers, civil liability in the form of environmental torts and damages is of more practical importance for individual stakeholders. In this regard, the compensatory liability of

10. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 7.

11. *Id.* rule 7, §§ 1, 2, & 8.

12. *Id.* rule 7, § 1.

13. Maria Cristina T. Mundin, *Access to Environmental Justice: A Closer Look at the Rules of Procedure for Environmental Cases*, 55 ATENEO L.J. 1066, 1079-80 (2011).

corporations to particular individuals, communities, or classes for redress of the latter's grievances will be given more weight in this Note.

II. THE RIGHT TO A BALANCED AND HEALTHFUL ECOLOGY UNDER PHILIPPINE LAW AND JURISPRUDENCE

As early as 1973, Philippine fundamental law has recognized the importance of ecological conservation in pursuit of national development.[14] This directive is reiterated in the present Constitution, which mandates the Congress to take into account "the requirements of conservation, ecology, and development"[15] when demarcating and determining control over landholdings. Governmental duty to protect the environment is introduced in Section 16, Article II of the 1987 Constitution, which provides that "the State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature."[16]

Such particular provision was enlivened by the landmark case of *Oposa v. Factoran*,[17] which held that the right to a healthy environment is in conjunction with the correlative duty to refrain from impairing it and that it is the duty of the responsible administrative agencies to advance the said right.[18] Instituted by minors and their parents against the then Secretary of Environment and Natural Resources, *Oposa*'s main thrust is the flexibility granted by the Court with regard to *locus standi* on the basis of "intergenerational responsibility," which posits that every generation has a responsibility to preserve our country's resources and to protect the right to a healthy environment for the generations to come.[19]

Interrelated with the right to a beneficial environment is the right to health and sanitation. The United Nations' Universal Declaration of Human Rights (UDHR), which considers the right to health as a fundamental human right, provides that "[every person] has the right to a standard of living adequate for the health and well-being of himself [or herself] and of his [or her] family[.]"[20] The Constitution adheres to such declaration as it

14. 1973 PHIL. CONST. art. XIV, § 11 (superseded 1986).

15. PHIL. CONST. art. XII, § 3 (2).

16. PHIL. CONST. art. II, § 16.

17. Oposa v. Factoran, 224 SCRA 792 (1993).

18. *Id.* at 805.

19. *Id.* at 803.

20. Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, art. 25 (Dec. 10, 1948).

likewise decrees that "[t]he State shall protect and promote the right to health of the people and instill health consciousness among them."[21] The Supreme Court in *Oposa* recognized this right and the right to a balanced and healthful ecology as fundamental rights, which "need not even be written in the Constitution[,] for they are assumed to exist from the inception of humankind."[22]

The standing to sue on the basis of the right to a healthy environment was strengthened in the case of *Henares, Jr. v. Land Transportation Franchising and Regulatory Board*.[23] The petitioners therein asserted their right to clean air by filing a writ of *mandamus* compelling the Land Transportation and Franchise Regulatory Board to require public utility vehicles to use compressed natural gas as a greener alternative for fuel.[24] Although the case was dismissed due to the impropriety of the relief sought, the petitioners' standing to file suit was affirmed.[25] The Court recognized the citizens' right to clean air, as a matter of transcendental importance, which cannot be trampled by a procedural technicality.[26]

The Constitutional mandate to protect the environment has been echoed by the Court in numerous cases, particularly where profit-seeking companies cross environmental boundaries at the expense of people directly affected by the diminution of resources. In a case where petitioner corporation sought to reinstate a timber license agreement cancelled by the then Bureau of Forest Development, the Court held that while harnessing natural resources for the sake of the country's economic development is important, "the more essential need to ensure future generations of Filipinos of their survival in a viable environment demands effective and circumspect action from the government to check further denudation of whatever remains of the forest lands."[27]

21. PHIL. CONST. art. II, § 15.

22. *Oposa*, 224 SCRA at 805.

23. Henares, Jr. v. Land Transportation Franchising and Regulatory Board, 505 SCRA 104 (2006).

24. *Id.* at 109.

25. *Id.* at 114.

26. *Id.*

27. Felipe Ysmael, Jr. & Co., Inc v. Deputy Executive Secretary, 190 SCRA 673, 683 (1990).

III. LEGAL TOOLS UNDER PHILIPPINE LAW FOR THE LITIGATION OF ENVIRONMENTAL TORTS

The purpose of this Chapter is to determine the legal remedies available to victims of environmental torts under Philippine law. The New Civil Code,[28] for one, encompasses Philippine substantive laws wherein private rights and interests may be hinged, as such system of laws generally determine and regulate the relations between members of the society.[29] Furthermore, the Corporation Code [30] clarifies the obligations of a corporation and its directors and officers, so that they do not merely become "entities established for private gain, but effective partners of the national government in spreading the benefits of capitalism for the social and economic development of the nation." [31] Thus, responsibility for environmental degradation due to corporate acts is strengthened. Finally, while the Rules of Civil Procedure do not create substantial rights,[32] they allow the filing of class actions by numerous individuals as parties, such as in environmental cases, to avoid multiplicity of suits when claiming for damages.[33]

A. The New Civil Code

1. Nuisance

A nuisance is one of the most serious hindrances to the enjoyment of life and property.[34] As per the New Civil Code,

> [a] nuisance is any act, omission, establishment, business, condition of property, or anything else which:
>
> (1) [i]njures or endangers the health or safety of others; or

28. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386 (1950).

29. TIMOTEO B. AQUINO, REVIEWER ON CIVIL LAW 1 (2014 ed.).

30. The Corporation Code of the Philippines [CORP. CODE], Batas Pambansa Blg. 68 (1980).

31. CESAR L. VILLANUEVA & TERESA S. VILLANUEVA-TIANSAY, PHILIPPINE CORPORATE LAW 7-8 (2013 ed.).

32. *Tan*, 373 SCRA at 536.

33. JOSE FERIA & MARIA CONCEPCION NOCHE, CIVIL PROCEDURE ANNOTATED 280 (2013 ed.).

34. EDGARDO L. PARAS, THE CIVIL CODE OF THE PHILIPPINES ANNOTATED 741 (2013 ed.).

(2) [a]nnoys or offends the senses; or

(3) [s]hocks, defies[,] or disregards decency or morality; or

(4) [o]bstructs or interferes with the free passage of any public highway[,] or street[,] or any body of water; or

(5) [h]inders or impairs the use of property.[35]

The term *nuisance* has been applied so comprehensively to almost all acts that have "interfered with the rights of [a] citizen[ ], [whether] in [his or her] person, [his or her] property, [his or her] enjoyment of such property, or his [or her] comfort."[36] A nuisance is public when it "affects a community or neighborhood or any considerable number of persons[;]" otherwise, it is a private nuisance.[37]

In environmental cases, the abatement of a nuisance is a remedy availed of by a person affected by the pollutive industrial practices of corporations, it being an act that "injures or endangers the health or safety of others."[38] In *Mead v. Argel*,[39] the definition of the term *pollution* was adopted from Republic Act No. 3931, to wit —

> 'Pollution' means such alteration of the physical, chemical[,] and/or biological properties of any water and/or atmospheric air of the Philippines, or any such discharge of any liquid, gaseous[,] or solid substance into any of the waters and/or atmospheric air of the country as will or is likely to create or render such waters and/or atmospheric air harmful[,] detrimental[,] or injurious to public health, safety[,] or welfare, or to domestic, commercial, industrial, agricultural, recreational[,] or other legitimate uses, or to livestock, wild animals, birds, fish[,] or other aquatic life.[40]

In the cited case, the Court held that the power to determine the existence of pollution is vested in the National Water and Air Pollution and Control Commission[41] and that a court action involving the determination

35. CIVIL CODE, art. 694.

36. Rana v. Wong, 727 SCRA 539, 552 (2014).

37. CIVIL CODE, art. 695.

38. *Id.* art. 694 (1).

39. Mead v. Argel, 115 SCRA 256 (1982).

40. *Id.* at 265 (citing An Act Creating the National Water and Air Pollution Control Commission, Republic Act No. 3931, § 2 (a) (1964)).

41 *Mead*, 115 SCRA at 265 (citing Republic Act No. 3931, § 6 (a) (1)). Presently, the National Water and Air Pollution and Control Commission has been

of the existence of pollution may not be initiated until the Commission has ruled upon it, except in cases related to nuisance.[42]

Under Article 683 of the New Civil Code, "factories and shops may be maintained[,]" provided that they be "[s]ubject to zoning, health, police[,] and other laws and regulations" and that "the least possible annoyance is caused to the neighborhood."[43] Thus, any person injured by a private nuisance may remove it without committing a breach of the peace or doing unnecessary injury, provided, among other requisites, that a demand to abate the nuisance upon the owner or possessor of the property causing it has been rejected.[44] Aside from the remedy of abatement, any person injured by the nuisance may recover damages, even for its past existence.[45] In the same vein, "a private person may file an action on account of a public nuisance, if it is especially injurious to himself [or herself]."[46] Also, jurisprudence has proclaimed that "the remedies of abatement and damages are cumulative; hence, both may be demanded."[47]

2. Torts and Damages

Under tort law, liability is obligatory upon the person who "by act or omission causes damage to another, there being fault or negligence, [and] is obliged to pay for the damage done."[48] In order to pin liability to the person who caused the injury, the act or omission must be the proximate cause of the injury. The doctrine of proximate cause pertains to "that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred,"[49] and is often used by the Court to impute liability upon the tortfeasor. In other words, proximate cause is that

reorganized into the Environmental Management Bureau (EMB). Remman Enterprises, Inc. v Court of Appeals, 268 SCRA 688, 695 (1997).

42. *Mead*, 115 SCRA at 266-67.

43. CIVIL CODE, art. 683.

44. *Id.* art. 704.

45. *Id.* art. 697.

46. *Id.* art. 703.

47. *Rana*, 727 SCRA at 555.

48. CIVIL CODE, art. 2176.

49. Vda. de Bataclán, et al. v. Medina, 102 Phil. 181, 186 (1957) (citing 57A AM. JUR. 2D *Negligence* § 413).

> acting first and producing the injury either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor, the final event in the chain immediately effecting the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinarily prudent and intelligent person, have reasonable ground to expect at the moment of his [or her] act or default that an injury to some person might probably result therefrom.[50]

Likewise, "the test is to be found not in the number of intervening events or agents, but in their character and in the natural and probable connection between the wrong done and the injurious consequence."[51] However, as held in *Calalas v. Court of Appeals*,[52]

> [t]he doctrine of proximate cause is applicable only in actions for quasi-delict [and] not in actions involving breach of contract. [It] is a device for imputing liability to a person where there is no relation between him [or her] and another party. In such a case, the obligation is created by law itself.[53]

The obligation created by a tort is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.[54] Employers shall be liable for damages caused by their employees acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.[55] In *Sabido and Lagunda v. Custodio, et al.*,[56] the Court emphasized the rule that

> where the concurrent or successive negligent acts or omission of two or more persons, although acting independently of each other[ ] are, in combination, the direct and proximate cause of a single injury to a third person, and it is impossible to determine in what proportion each contributed to the injury, either is responsible for the whole injury, even though his [or her] act alone might not have caused the entire injury, or

50. Corpuz v. Lugue, 465 SCRA 90, 102-03 (2005) (citing *Vda. de Bataclán*, 102 Phil. at 186) (emphases omitted).

51. Añonuevo v. Court of Appeals, 441 SCRA 24, 38 (2004) (citing Teague v. Fernandez, 51 SCRA 181, 185 (1973) (citing 38 AM. JUR. 841)).

52. Calalas v. Court of Appeals, 332 SCRA 356 (2000).

53. *Id.* at 362.

54. CIVIL CODE, art. 2180.

55. *Id.* art. 2180, para. 5.

56. Sabido and Lagunda v. Custodio, et al., 17 SCRA 1088 (1966).

> the same degree might have resulted from the acts of the other [tortfeasor].[57]

When the negligence of the tortfeasor constitutes a violation of a franchise, ordinance, or statute, such as in environmental cases, the legal consequences arise so far as it is a contributing cause of the injury.[58] In *National Power Corporation v. Heirs of Noble Casionan*,[59] petitioner faults the victim in engaging in *pocket mining*[60] without a permit — which is prohibited by the DENR — as a contributory factor in his electrocution when the bamboo pole he was carrying touched one of the dangling high-tension wires of petitioner.[61] The Court held that the violation of a statute is not sufficient to hold that the violation was the proximate cause of the injury, unless the very injury that happened was precisely what was intended to be prevented by the statute.[62] Additionally, in *Teague v. Fernandez*,[63] the Court ruled that "[i]f by creating the hazard which the [law] was intended to avoid brings about the harm which the [law] intended to prevent, it is a legal cause of the harm ... [and the] law has no reason to ignore the causal relation which exists in fact."[64]

B. The Corporation Code on Accountability and the Emerging Concept of Corporate Social Responsibility

Under the Corporation Code of the Philippines,

> [d]irectors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation[,] or who are guilty of gross negligence or bad faith in directing the affairs of the corporation ... shall be

57. *Id.* at 1091-92 (citing 38 AM. JUR. 946-47).

58. Sanitary Steam Laundry, Inc. v. Court of Appeals, 300 SCRA 20, 27-28 (1998) (citing CESAR SANGCO, PHILIPPINE LAW ON TORTS AND DAMAGES 20 (1993)).

59. National Power Corporation v. Heirs of Noble Casionan, 572 SCRA 71 (2008).

60. *Id.* at 75.

61. *Id.* at 76-77.

62. *Id.* at 83 (citing Añonuevo v. Court of Appeals, 441 SCRA 24, 38 (2004) (citing Teague v. Fernandez, 51 SCRA 181, 184 (1973) (citing 38 AM. JUR. p.841))).

63 Teague v. Fernandez, 51 SCRA 181 (1973).

64. *Id.* at 185 (citing Ross v. Hartman, 139 F.2d 14, 15 (D.C. Cir. 1943) (U.S.)).

> liable jointly and severally for all damages [suffered by other persons as a result of such acts].[65]

Should the corporation be found liable, it shall be reimbursed by the erring director.[66] A convenient example of patently unlawful acts is a fraudulent contract entered into by a corporate officer in behalf of the corporation.[67] Jurisprudence provides that in such a case, the corporate entity theory, which usually renders corporate officers or directors immune to corporate lawsuits, cannot apply where it is invoked as a cloak or shield for illegality.[68]

Section 31 of the Corporation Code serves as the basis for an officer's duty of diligence to the corporation and its stakeholders.[69] However, said basis presents quite high standards, such that before liability is attached to a certain individual, the plaintiff must prove three things:

(1) willful assent to patently unlawful acts of the corporation;

(2) gross negligence in directing the affairs of the corporation; and

(3) bad faith.[70]

Thus, as the Corporation Code requires that said acts are to be *patently* unlawful, simple negligence or honest mistakes are not sufficient to hold directors liable. The negligence must be gross, or there must a dishonest purpose or some moral obliquity amounting to bad faith before the director's direct liability may be established.[71]

In *Carag v. National Labor Relations Commission*,[72] a director of a corporation was sought to be made liable for the illegal dismissal of its employees brought about by its illegal closure of business.[73] The Court held, however, that bad faith, as per Section 31 of the Corporation Code, does not automatically arise just because the notice requirement under the Labor

65. CORP. CODE, § 31, para. 1.

66. VILLANUEVA & VILLANUEVA-TIANSAY, *supra* note 31, at 380.

67. Paradise Sauna, Massage Corporation v. Ng, 181 SCRA 719, 729 (1990).

68. *Id.*

69. CORP. CODE, § 31.

70 VILLANUEVA & VILLANUEVA-TIANSAY, *supra* note 31, at 388.

71. Board of Liquidators v. Kalaw, 20 SCRA 987, 1007 (1967).

72. Carag v. National Labor Relations Commission, 520 SCRA 28 (2007).

73. *Id.* at 31-32.

Code was not complied with.[74] The failure to give notice is a mere violation of procedural due process that does not amount to an unlawful act, which would hold a director personally liable.[75] The wrongdoing imputed to the director must be a patently unlawful act, which the Court held as "those declared unlawful by the law which imposes penalties for commission of such unlawful acts."[76]

Another area in corporation law where the right to litigate claims in environmental cases may be supported is that where Corporate Social Responsibility (CSR) belongs. CSR is a "company's sense of responsibility towards the community [and social and ecological environment] in which it operates."[77] Companies express this citizenship through their waste and pollution reduction processes, among others.[78] More concretely, "[CSR] is a commitment to improve community well-being through discretionary business practices and contributions of corporate resources."[79] Discretion, as used in the context of CSR, refers to voluntary commitment demonstrated through the adoption of new business practices or monetary or non-monetary contributions in furthering support for community well-being, which includes environmental issues.[80] In the Philippines, CSR has yet to be strengthened under law; however, a semblance of it is encountered in the Volunteer Act of 2007.[81]

C. Class Suits Under the Rules of Civil Procedure

The Rules of Court provide that

> [w]hen the subject matter of the controversy is one of common or general interest to many persons so numerous that it is impracticable to join all as

74. *Id.* at 49-50.

75. *Id.* at 50.

76. *Id.*

77. Corporate Social Responsibility, *available at* http://www.businessdictionary.com/definition/corporate-social-responsibility.html (last accessed May 5, 2019).

78. *Id.*

79. PHILIP KOTLER & NANCY LEE, CORPORATE SOCIAL RESPONSIBILITY: DOING THE MOST GOOD FOR YOUR COMPANY AND YOUR CAUSE 3 (2005).

80. *Id.*

81. An Act Institutionalizing a Strategy for Rural Development, Strengthening Volunteerism and for Other Purposes [Volunteer Act of 2007], Republic Act No. 9418 (2007).

> parties, a number of them[,] which the court finds to be sufficiently numerous and representative as to fully protect the interests of all concerned[,] may sue or defend for the benefit of all.[82]

The foregoing definition refers to a class suit, the requisites of which are the following:

> (1) the subject matter of the controversy is one of common or general interest to many persons;
>
> (2) the persons are so numerous that it is impracticable to join all as parties; and
>
> (3) the parties actually before the court are sufficiently numerous and representative so as to fully protect the interests of all concerned.[83]

The determination of a suit as a class suit depends upon the attending facts and not upon the mere designation of the case as such in the pleading.[84] Thus, for the court to recognize that a case is instituted in representation of others in a class suit, it is necessary for the parties filing the pleading to allege "the existence of a subject matter of common interest, and the existence of a class and the number of persons in the alleged class."[85]

The common good or general interest among all the members in a class suit is the main basis of its success; thus, such a case will be denied where interests are conflicting.[86] In *Cadalin vs. POEA's Administrator*,[87] the Court held that basic to the concept of a *class suit* is the principle that "plaintiffs brought on the record must fairly represent and protect the interests of the others[.]"[88] As a consequence, if it appears that the claimants are only interested in obtaining individual relief, without regard to the interests of others in the suit, "[t]he most that can be accorded to them ... is to be allowed to join as plaintiffs in one complaint[.]"[89]

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82. 1997 RULES OF CIVIL PROCEDURE, rule 3, § 12.

83. FERIA & NOCHE, *supra* note 33, at 281-82.

84. Banda v. Ermita, 618 SCRA 488, 499 (2010) (citing Mathay v. Consolidated Bank and Trust Company, 58 SCRA 559, 570-71 (1974)).

85. *Mathay*, 58 SCRA at 570.

86. FERIA & NOCHE, *supra* note 33, at 283.

87. Cadalin v. POEA's Administrator, 238 SCRA 721 (1994).

88. *Id.* at 769 (citing Dimayuga, et al. v. Ct. of Ind. Relations, et al., 101 Phil. 590, 598 (1957)).

89. *Id.* (citing RULES OF CIVIL PROCEDURE, rule 3, § 6).

The purpose of the rule providing for class suits is to provide a mode of obtaining a complete determination of the rights of the parties in cases when the number of complainants is so large that bringing them all to court may prove to be impracticable.[90] While the general rule is a joinder of all indispensable parties in a civil action, "the class suit contemplated an exceptional situation where there are numerous persons all in the same plight and all together constituting a constituency whose presence in the litigation is absolutely indispensable to the administration of justice."[91] Consequently, "each member of the class for whose benefit the class action is brought is a party plaintiff"[92] who is bound by the jurisdiction and judgment of the court.[93] Thus, "persons intervening [in a class suit] must be sufficiently numerous to fully protect the interests of all concerned... for a judgment in a class suit, whether favorable or [not], is under the *res judicata* principle, [which binds] all the member of the class," regardless of their attendance in court.[94]

Prior to the promulgation of the Rules of Procedure for Environmental Cases, environmental class suits were filed pursuant to the provisions in the Rules of Civil Procedure. In *Oposa*, the Court ruled that all the requisites for the filing of a valid class suit are present in the civil case, which prayed for the ban on the issuance of timber license agreements in the country and the cancellation of old ones.[95] The case, however, has "a special and novel element"[96] in that minor petitioners seek to represent their generation as well as "generations yet unborn"[97] in enforcing their right to a healthful ecology.[98] As this assertion constitutes, at the same time, the performance of their obligation to ensure the protection of the right for future generations, the Court held that "[the petitioners'] personality to sue in behalf of the

90. Jorge R. Coquia, Annotation, *Representative or Class Suit*, 72 SCRA 359, 360 (1976) (citing Whitaker v. Manson 84 S.C. 29, 34 (S.C. 1909) (U.S.)).

91. *Id.* at 360 (citing Borlaza v. Polistico, 47 Phil. 345, 348 (1925)).

92. MVRS Publications, Inc. v. Islamic Da'wah Council of the Philippines, Inc., 396 SCRA 210, 281 (2003) (J. Austria-Martinez, dissenting opinion).

93. *Id.*

94. *Francisco, Jr.*, 415 SCRA at 138 (citing *MVRS Publications, Inc.*, 396 SCRA at 234 & Re: Request of the Heirs of the Passengers of Doña Paz, 159 SCRA 623, 627 (1988)).

95. *Oposa*, 224 SCRA at 802.

96. *Id.*

97. *Id.*

98. *Id.* at 802-03.

succeeding generations can only be based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned."[99]

IV. CIVIL LIABILITY IN ENVIRONMENTAL CASES UNDER FOREIGN AND INTERNATIONAL LAW

A. Environmental Toxic Torts in Common Law

A common law tort is a private or civil wrong or injury, other than a breach of contract, for which the court will provide a remedy in the form of an action for damages.[100] Tort law encompasses a number of different civil causes of action providing a private remedy, in the form of payment of damages, for an injury to a person brought by the tortious act of another.[101] A typical traditional tort case involves "a single identifiable plaintiff, a single identifiable defendant, and a readily determinable cause of the tortious event."[102]

A *toxic tort* is lawsuit in which the plaintiff claims a personal injury or disease caused by exposure to a chemical attributed to the defendant.[103] It comprises of harms to persons, property, or the environment due to the toxicity of a product, a substance, or process.[104] Product sales, waste disposal, property ownership, and industrial activities all give rise to possible toxic tort liability, where the term *toxic* is understood generally to mean "substances that by inhalation, ingestion, dermal exposure[,] or otherwise cause personal physical injury or disease."[105] An *environmental tort*, on the other hand, refers to a tort involving exposure to disagreeable or harmful environmental

99. *Id.*

100. TIMOTEO B. AQUINO, TORT AND DAMAGES 1 (2013 ed.).

101. *Id.* at 2.

102. Lin, *supra* note 1, at 1445.

103. Robert F. Blomquist, *An Introduction to American Toxic Tort Law: Three Overarching Metaphors and Three Sources of Law*, 26 VAL. U. L. REV. 795, 795-96 (1992).

104. *See* Steve Gold, *Causation in Toxic Torts: Burdens of Proof, Standards of Persuasion, and Statistical Evidence*, 96 YALE L.J. 376, 376 (1986).

105. Ma. Clarisse P. Oben, Toxic Torts: The Elimination of Barriers to Damage Recovery for Latent Disease Claims, at 8 (1996) (unpublished J.D. thesis, Ateneo de Manila University) (on file with the Professional Schools Library, Ateneo de Manila University).

conditions or harm to and degradation of an environment.[106] Thus, many scholars and practitioners consider environmental suits and toxic torts to be the same, as there are many similarities between the two.[107] These similarities include the following:

> (1) the creation or discharge of an injurious substance into the environment;
>
> (2) the requirement of difficult factual or technical determinations in resolving claims, "particularly in establishing a causal link between the offending substance and the claimed injury[;]" and
>
> (3) the determination of causation by judges as a matter of law.[108]

Common law jurisprudence is rich in cases exhibiting the state of toxic tort litigation. In several cases decided in the United States (U.S.), the determination of injury causation was aided by the identification of a general and a specific causation.[109] Firstly,

> [g]eneral causation addresses whether products of the same nature as the defendant's product are capable of causing the type of injuries alleged, while specific causation addresses whether the defendant's product more likely than not caused injuries in the particular case.[110]

An illustration of this method is seen in the case of *Goebel v. Denver and Rio Grande Western Railroad Company*,[111] where the plaintiff, an employee of a Railroad Company, was awarded damages for injuries suffered on the job.[112] In proving that the conditions in the tunnel could have caused the plaintiff's disease (high cerebral edema), the court distinguished two aspects of causation: "(1) general causation, meaning that the particular circumstances in the tunnel could have caused [the plaintiff's] injury; and (2)

106. BLACK'S LAW DICTIONARY 1626 (9th ed. 2009).

107. *Causation in Environmental Law – Lessons from Toxic Torts*, 128 HARV. L. REV. 2256, 2256-57 (2015) [hereinafter *Causation in Environmental Law*].

108. *Id.*

109. *Id.* at 2261 (citing Goebel v. Denver and Rio Grande Western Railord Company, 215 F.3d 1083 (10th Cir. 2000) (U.S.); In re Hanford Nuclear Reservation Litigation, 292 F.3d 1124 (9th Cir. 2002) (U.S.); & In re: Meridia Products Liability Litigation, 328 F.Supp.2d 791 (N.D. Ohio 2004) (U.S.)).

110. *Causation in Environmental Law*, *supra* note 107, at 2261 (citing Heller v. Shaw Industries, Inc., 167 F.3d 146, 165 (3d Cir. 1999) (U.S.)).

111. Goebel v. Denver and Rio Grande Western Railroad Company, 346 F.3d 987 (10th Cir. Ct. App. 2003) (U.S.).

112. *Id.* at 989.

specific causation, meaning that those circumstances did in fact cause [plaintiff's] injury."[113]

In the adjudication of environmental toxic torts, the courts often rely on expert testimony, particularly that of persons learned in the field of toxicology or epidemiology. In the much cited case of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*,[114] where the *Daubert* standard was culled from, the Court recognized the difficulty of differentiating a fact from a scientific theory in proving causation.[115]

A picture of modern toxic tort litigation is exhibited in the celebrated case of *Anderson v. W.R. Grace*,[116] the events of which were popularized in a 1998 film.[117] In the 1986 case, 33 plaintiffs filed a suit for "wrongful death and conscious pain and suffering" against W.R. Grace & Co. and Beatrice Foods Co. for the alleged contamination of the groundwater in certain areas of Woburn, Massachusetts.[118] The plaintiffs alleged that the contaminated water caused a variety of illnesses, one of them was leukemia, which killed five minors.[119] The plaintiffs also sought compensation for "increased risk of developing future illness [ ] and emotional distress"[120] and injunctive relief under a nuisance theory.[121] As a defense, the companies, contended, *inter alia*, that the claims for emotional distress does not hold water as they are "not caused by any physical injury[,]"[122] to which the district judge agreed, stating that the Supreme Judicial Court will not award damages for emotional distress "arising from the negligently induced illness of another [ ]"[123] on the basis of Massachusetts law.[124] However, on the claim for

113. *Id.* at 990-91 (citing Soldo v. Sandoz Pharmaceuticals Corp., 244 F.Supp.2d 434, 524-25 (W.D. Pa. 2003) (U.S.)).

114. Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993).

115. *Id.* at 599.

116. Anderson v. W.R. Grace & Co., 628 F. Supp. 1219 (Mass. D.C. 1986) (U.S.).

117. A CIVIL ACTION (Touchstone Pictures, et al. 1998).

118. *Anderson*, 628 F. Supp. at 1222. The decision cited is a Memorandum and Order on Defendants' Joint Motion for Partial Summary Judgment, penned by District Judge Skinner. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.* at 1230.

124. *Anderson*, 628 F.Supp. at 1230.

emotional stress based on "subcellular physical harm," the court distinguished harm which can be proven to exist through evidence from harm which is merely speculative.[125] By case law requiring that the harm be "manifested by objective symptomatology and substantiated by expert medical testimony,"[126] the alleged harm need not be immediately apparent, as in subcellular injuries, but must still be substantiated by objective evidence, which plaintiffs were capable of furnishing.[127]

Anderson likewise raised the issue of whether plaintiffs may recover damages for an increased risk of serious illness caused by the negligent acts of the defendant. The Court, relying on case law, agreed with the plaintiffs' argument that the State accepts the general rule of tort law that an injured party is entitled to recover damages for "all harm, past, present[,] and prospective, legally caused by the tort," provided that the future harm be established by "reasonable probability" and that the cause of action should have "accrued at the time the recovery is sought."[128]

1. Discovery Rule

As gleaned from the aforementioned case scenarios, "because of the nature of the substances involved in a toxic tort, the harms due to exposure typically are not discovered until long after the exposure occurred."[129] This means that the toxic harm is asymptomatic for a period of time and is not discernible, or in cases of diseases, not diagnosable for years or even decades.[130] As such, a usual defense against toxic tort claims is the running of the statute of limitations — that prescription has already set in. This problem has been resolved by the courts by resorting to the use of the discovery rule.[131]

125. *Id.* at 1227.

126. *Id.* at 1226 (citing Payton v. Abbott Labs, 386 Mass. 540, 556 (1982) (U.S.)).

127. *Id.*

128. *Anderson*, 628 F. Supp. at 1230-31 (citing Pullen v. Boston Elevated Railway Co., 208 Mass. 356, 357-58 (1911) (U.S.)).

129. Causation in Environmental Law, *supra* note 107, at 2259.

130. Edward S. Relucio, Medical Monitoring for Toxic Tort Victims, at 7-8 (2000) (unpublished J.D. thesis, Ateneo de Manila University) (on file with the Professional Schools Library, Ateneo de Manila University) (citing HUGH D. CRONE, CHEMICALS AND SOCIETY 28 (1986)).

131. Oben, *supra* note 105, at 15.

In the U.S. case of *Urie v. Thompson*,[132] defendants alleged that plaintiff's cause of action accrued in 1910, when he was first exposed to the silica dust, resulting in his contracting silicosis.[133] The statute of limitations provided three years from the time of the accrual of the cause of action for plaintiff to enforce his claim.[134] In ruling that the filing of the action was within the prescriptive period set by law, the court held that the plaintiff's failure to be diagnosed within the applicable statute of limitation of a disease, of which he is not yet aware of, would be a bar to his obtaining compensation at the day of discovery of the disease.[135] The case established that a person can be held to be injured only at the time when the accumulated effects of the toxin manifest themselves.[136] The court reiterated in another case the principle behind the discovery rule, which states that "the cause of action does not accrue until the injury is discovered or[,] in the exercise of reasonable diligence[,] should have been discovered."[137]

In general toxic tort suits, there are varied responses to the question of when the cause of action accrues so as to commence the running of the statute of limitations. Factors to be determined include: "(1) when the wrongful act occurs, (2) when the plaintiff is injured, (3) when the plaintiff discovers his [or her] injury, and (4) when the plaintiff discovers the causal connection between the injury and the defendant's conduct."[138]

2. Strict Liability

There is strict liability if one is made liable independent of fault, negligence, or intent after establishing certain facts specified by law. Strict liability torts can be committed even if reasonable care was exercised and regardless of the state of mind of the actor at that time. Under American law, strict liability

132. Urie v. Thompson, 337 U.S. 163 (1949).

133. *Id.* at 169.

134. *Id.*

135. *Id.* at 168–71.

136. *Id.* at 170 (citing Associated Indemnity Corp. v. Industrial Accident Commission, 124 Cal. App. 378, 381 (Cal. Ct. App. 1932) (U.S.)).

137. Borel v. Fibreboard Paper Paper Products Corp., 493 F.2d 1076, 1102 (5th Cir. 1973) (U.S.).

138. Steven L. White, *Toward a Time-of-Discovery Rule for the Statute of Limitations in Latent Injury Cases In New York State*, 13 FORDHAM URB. L.J. 113, 114 (1984).

includes liability for injuries caused by animals, ultrahazardous activities, and nuisance.[139]

Exposure to harmful substances as an occupational hazard may give rise to a toxic tort case in a workplace, commonly in an industrial setting. In *Borel v. Fibreboard Paper Products Corporation*,[140] an industrial insulation worker sued manufacturers of insulation materials containing asbestos for failing to warn its users of the danger of handling asbestos.[141] He claimed to have contracted asbestosis and mesothelioma as a result of a 23-year exposure to the defendants' products.[142] The jury ruled in favor of the plaintiff on the basis of strict liability, which does not consider contributory negligence of the plaintiff or the negligence of the seller in establishing liability.[143] The court held that where strict liability is raised, the defense of contributory negligence consists in "voluntarily and unreasonably proceeding to encounter a known danger"[144] — an assumption of risk — which in the said case was wanting.

B. Environmental Torts Under International Law

1. Access to Justice Under the Aarhus Convention

The United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters was adopted on 25 June 1998 in the Danish city of Aarhus.[145] It entered into force on 30 October 2001.[146] The Convention provides for "access to justice"[147] or the "right to review

139. AQUINO, *supra* note 100, at 829-37.

140. Borel v. Fibreboard Paper Paper Products Corp., 493 F.2d 1076 (5th Cir. 1973) (U.S.).

141. *Id.* at 1081.

142. *Id.*

143. *Id.*

144. *Id.* at 1106.

145. Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, *opened for signature* June 25, 1998, 2161 U.N.T.S. 447 [hereinafter Aarhus Convention].

146. *Id.*

147. *Id.* art. 9.

procedures to challenge public decisions that have been made without respecting the aforementioned rights or environmental laws in general."[148]

Environmental justice posits that "an impacted community should be afforded the opportunity to communicate with those deciding how the case is to be resolved and how case resolution may help offset the environmental burden the community has carried."[149] The Convention comprises of three pillars:

(1) access to information, the goal of which is to afford citizens easier access to environmental information;

(2) public participation in decision making, the goal of which is to give the public an opportunity to take part in decisions concerning plans, programs related to the environment; and

(3) access to justice, which provides the public with recourse before an impartial body on matters involving violations of environmental laws and rights.[150]

The Convention has been signed and ratified by 41 countries around the world, but the Philippines was not one of them.[151]

2. The Right to a Healthy Environment Under International Law

Under the rights-based approach employed by International Human Rights Law,[152] the right of persons to environmental protection has the same level as a basic human right. This is strengthened in the Stockholm Declaration,[153]

148. What is the Aarhus Convention?, *available at* http://ec.europa.eu/environment/aarhus (last accessed May 5, 2019).

149. Kris Dighe & Lana Pettus, *Environmental Justice in the Context of Environmental Crimes*, 59 U.S. ATTORNEY'S BULLETIN 4, 12 (2011).

150. Aarhus Convention, *supra* note 145, arts. 1, 4, 6, & 9.

151. 2 ANTONIO G. M. LA VIÑA, PHILIPPINE LAW AND ECOLOGY: INTERNATIONAL LAW AND RULES OF PROCEDURE, at 18 (2012).

152. A conceptual framework for the process of human development, a human rights-based approach "seeks to [analyze] inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress." HRBA Portal, What is a human rights-based approach?, *available at* https://hrbaportal.org/faq/what-is-a-human-rights-based-approach (last accessed May 5, 2019).

153 PHILIPPINE JUDICIAL ACADEMY, ACCESS TO ENVIRONMENTAL JUSTICE: A SOURCEBOOK ON ENVIRONMENTAL RIGHTS AND LEGAL REMEDIES 21 (2d ed. 2003) (citing PHILIPPE SANDS, PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW 236 (2d ed. 2003)).

the cornerstone of International Environmental Law, wherein Principle 1 provides that "man has the fundamental right to freedom, equality[,] and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he [or she] bears a solemn responsibility to protect and improve the environment for future and present generations."[154] The Declaration also reiterates the governmental duty to protect the environment and the rights of every person associated with it.[155] Similarly, States have "the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."[156]

Adherence to environmental health protection rights in International Law is reflected in the U.S. enactment of the Alien Tort Statute (ATS), which states that "the district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the [U.S.]"[157] The provision has allowed survivors of human rights violations to use the ATS to seek justice in U.S. courts when redress might be unavailable in their home countries.

3. Polluter Pays Principle

The Polluter Pays Principle states that "the polluter should bear the expenses of carrying out pollution prevention measures or paying for damage caused by pollution."[158] It is an environmental policy principle that aims to determine how the costs of pollution prevention and control must be

154. United Nations Conference on the Human Environment, June 5-16, 1972, *Report of the United Nations Conference on the Human Environment*, princ. 1, U.N. Doc. A/Conf. 48/14/Rev. 1.

155. *Id.* ch. I, ¶ 2.

156. *Id.* annex II, pt. II, ¶ 21.

157. Alien Tort Statute, 28 U.S.C. § 1350 (1980).

158. Organisation for Economic Co-operation and Development, Environmental Principles and Concepts (An unpublished paper prepared as part of the OECD work programme on Trade and Environment and derestricted under the responsibility of the Secretary-General) at 12, *available at* http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=OCDE/GD(95)124&docLanguage=En (last accessed May 5, 2019).

allocated.[159] The principle promotes economic efficiency, justice in the law, harmonization of international environmental policy, and accountability through allocation of costs within a State.[160]

The costs of such measures, as stated in the 1972 Organization for Economic Cooperation and Development (OECD) Guiding Principles on the International Economic Aspects of Environmental Policies, should be reflected in the cost of goods and services which cause pollution in production and/or consumption.[161] In the OECD context, the principle concerns *who* should pay for environmental protection, not *how much* should be paid.[162]

Application of the Polluter Pays Principle is found in the Kyoto Protocol,[163] where parties that have the obligation to reduce greenhouse gas emissions must bear the costs of reducing them.[164] It has also been mentioned in the 1992 Rio Declaration,[165] which stated that States should promote the "internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should [ ] bear the cost of pollution[.]"[166]

159. *Id.* (citing Organisation for Economic Co-operation and Development, The Polluter-Pays Principle: OECD Analyses and Recommendations at 13, *available at* http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=OCDE/GD(92)81&docLanguage=En (last accessed May 5, 2019).

160. London School of Economics and Political Science-Grantham Research Institute on Climate Change and the Environment, What is the polluter pays principle?, *available at* http://www.lse.ac.uk/GranthamInstitute/faqs/what-is-the-polluter-pays-principle/ (last accessed May 5, 2019).

161. Organization for Economic Cooperation and Development, The Polluter-Pays Principle: OECD Analyses and Recommendations, *available at* http://www.tradevenvironment.eu/uploads/OCDE_GD_92_81.pdf (last accessed May 5, 2019).

162. Organization for Economic Co-operation and Development, *supra* note 158.

163. Kyoto Protocol to the United Nations Framework Convention on Climate Change, *opened for signature* Mar. 10, 1998, 2303 U.N.T.S. 162.

164. *Id.* art. 2, ¶ 1 (a).

165. United Nations Conference on Environment and Development, Rio de Janeiro, June 3-14, 1992, *1992 Rio Declaration on Environment and Development*, UN Doc. A/CONF.151/26 (Vol. 1) (Aug. 12, 1992).

166. *Id.* princ. 16.

4. The Precautionary Principle

Principle 15 of the Rio Declaration states that, "[i]n order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities."[167] Lack of scientific certainty shall not hinder the carrying out of cost-effective measures to prevent environmental degradation.[168] This principle advocates that the potential harm should be addressed even with minimal predictability at hand. It requires a high degree of prudence on the part of the stakeholders as decision makers are not only mandated to account for scientific uncertainty but can also take positive action.[169]

The Precautionary Principle, as commonly used in international law, has been adopted by the Philippine courts as regards environmental cases.[170] The Supreme Court's adoption of the Principle in the Rules of Procedure for Environmental Cases affords plaintiffs "a better chance of proving their cases, where the risks of environmental harm may not easily be proven."[171]

V. THE LACK OF A RIGHT TO AN EFFECTIVE REMEDY IN ENVIRONMENTAL TORTS CASES

Philippine jurisprudence is wanting in court decisions which address the issue of civil liability in environmental cases, but it does not necessarily mean that dockets are not replete with said cases. On the contrary, exploitation of natural resources in the country is so extensive that the scarcity of known environmental torts cases in this jurisdiction is absurd. Possible causes may be attributed to the clogging of court dockets or expedient settlement of personal claims through immediate compensation. However, given the unique nature of environmental torts cases, it is highly probable that the want of case law in the Philippines, as compared to those of countries where environmental tort law is concretely practiced, is due to the inadequacy and

167. *Id.* princ. 15.

168. *Id.*

169. PHILIPPINE JUDICIAL ACADEMY, *supra* note 153, at 24.

170. *See, e.g.*, Social Justice Society (SJS) Officers v. Lim, 742 SCRA 1 (2014); West Tower Condominium Corporation v. First Philippine Industrial Corporation, 758 SCRA 292 (2015); & International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Philippines), 776 SCRA 434 (2015).

171. Rationale to the Rules of Procedure for Environmental Cases at 46, *available at* http://philja.judiciary.gov.ph/assets/files/pdf/learning_materials/A.m.No.09-6-8-SC_rationale.pdf (last accessed May 5, 2019) [hereinafter RPEC, ratio].

ineffectiveness of usual remedies in litigating private claims brought about by violations of environmental laws.

Due mainly to the latency of environmental claims and the difficulty of isolating responsibility, the displacement of persons from their habitats, chronic illnesses, loss of property, or other such grievances, are likely to be uncompensated. As victims of environmental torts are at a disadvantage, the right to litigate liability for environmental torts must be clearly determined in substantive environmental laws and effectively enforced by administrative agencies and by the courts.

A. Case Study: Marcopper Mining Disaster

Marked as one the largest mining disasters in Philippine history, the Marcopper Mining Disaster of 1996 is telling of the climate of environmental tort law in the Philippines. The province of Marinduque was distraught and shaken that one fateful day in March 1996, when toxic wastes, in the form of three million cubic meters of mine tailings, were discharged into the 26-kilometer Boac River following a leak in Marcopper Mining Corporation's mine waste pool dam.[172] The leakage into the rivers not only caused exponential damage of its biota, but it also resulted in flash floods, which forced 20,000 villagers to evacuate to higher ground.[173] As the Boac River was declared dead and unusable, livelihoods were affected, livestock and crops were eradicated, the drinking water was contaminated, and the locals were warned by the Department of Health about having copious amounts of zinc in their bodies twice beyond the safe level.[174] The deleterious effects had residents complaining of skin irritations and respiratory problems due to the poisonous vapors from the mine tailings.[175]

172. Gerald Gene R. Querubin, *Marcopper mine spill still haunts Marinduque*, PHIL. DAILY INQ., Mar. 24, 2011, *available at* https://hronlineph.com/2011/03/24/marcopper-mine-spill-still-haunts-marinduque-inquirer-net-philippine-news-for-filipinos/ (last accessed May 5, 2019).

173. Lean Santos, #WhyMining Conversation: Which is worse, Philex or Marcopper incident?, *available at* http://www.rappler.com/business/special-report/whymining/whymining-latest-stories/16197-whymining-conversation-philex-vs-marcopper (last accessed May 5, 2019).

174. *Id.*

175. Querubin, *supra* note 172.

1. Legal Action

Immediately after the disaster, a criminal action was filed with the Municipal Trial Court of Boac by the Department of Justice against Marcopper's President, Senior Manager, and Resident Manager for Mining Operations.[176] The three officers were charged with Reckless Imprudence Resulting to Damage to Property as per Article 365 of the Revised Penal Code[177] and violations of provisions of the Water Code of the Philippines (Presidential Decree No. 1067),[178] Philippine Mining Act of 1995 (Republic Act No. 7942),[179] and the National Pollution Control Decree of 1976 (Presidential Decree No. 984).[180] The accused prayed for the court to quash the Informations on the ground that such were duplicitous in nature, which were denied by the lower courts.[181] The Supreme Court reinstated the criminal case upon appeal and only after 11 years from the institution of the action. However, as of January 2014, the criminal case has yet to be resolved on its merits.[182]

In 2006, the province filed a U.S.$100 million damage suit against the mining firm in the district court in Nevada, where Marcopper's successor, Barrick Gold Corp., is registered.[183] The Nevada Supreme Court dismissed

176. Loney v. People, 482 SCRA 194, 196-201 (2006).

177. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815, art. 365 (1932).

178. A Decree Instituting a Water Code, Thereby Revising and Consolidating the Laws Governing the Ownership, Appropriation, Utilization, Exploitation, Development, Conservation and Protection of Water Resources [WATER CODE], Presidential Decree No. 1067 (1976).

179. An Act Instituting a New System of Mineral Resources exploration, Development, Utilization, and Conservation [Philippine Mining Act of 1995], Republic Act No. 7942 (1995).

180. Providing for the Revision of Republic Act No. 3931, Commonly Known as the Pollution Control Law, and for Other Purposes, Presidential Decree No. 984 (1976).

181. *Loney*, 482 SCRA at 202-07.

182. Maricar Cinco, *Marinduque town seeks better deal in mining tragedy payment*, PHIL. DAILY INQ., Jan. 3, 2014, *available at* http://newsinfo.inquirer.net/557285/marinduque-town-seeks-better-deal-in-mining-tragedy-payment (last accessed May 5, 2019) [hereinafter Cinco, *Marinduque town seeks better deal*].

183. Maricar Cinco, *Malacañang steps into Marinduque deal with mining company*, PHIL. DAILY INQ., Feb. 26, 2014, *available at* http://newsinfo.inquirer.net/580657/malacanang-steps-into-marinduque-deal-with-mining-company (last accessed May 5, 2019).

the complaint, ruling that the case lacked a *bona fide* connection to the State, as Barrick Gold Corp is based in Canada. The U.S. Court took 10 years to decide on the jurisdictional question.[184]

More recent news has revealed that the defendants in the case have given an offer to the victims of the Marinduque disaster for the satisfaction of their claims.[185] In denying a U.S.$20 million dollar deal from the mining company, spokesperson for the victims wrote, "the best outcome would be a much improved offer from Barrick or a rejection of the offer and a continuation of the trial."[186]

Eighteen years after the disaster in Marcopper's open pit, the Court of Appeals has just given its go signal to commence trial for the class suit instituted by the fisherfolk community.[187] This, after reports of people dying and inflicted with disease, and after the heavy metal poisoning has been discovered to be "'persistent and systemic' and will likely be transferred from the present generation to the next[.]"[188]

B. Tort Law as a Remedy to Environmental Harm

1. The Difficulty of Proving Causation

As mentioned in the previous chapters, an *environmental tort* is a tort involving exposure to disagreeable or harmful environmental conditions or harm to and degradation of an environment.[189] The use of the term connotes the remedy of environmental harms through tort law, which has

184. Rey Panaligan, *'Marinduque must be represented by Canadian lawyers in mining lawsuits'*, MANILA BULL., Oct. 27, 2016, *available at* https://news.mb.com.ph/2016/10/27/marinduque-must-be-represented-by-canadian-lawyers-in-mining-lawsuits (last accessed May 5, 2019).

185. Cinco, *Marinduque town seeks better deal*, *supra* note 182.

186. *Id.*

187. Leonard Postrado, *CA OKs trial of fishermen's class suit vs mining firm*, MANILA BULL., July 13, 2015, *available at* https://www.pressreader.com/philippines/manila-bulletin/20150713/281586649273269 (last accessed May 5, 2019).

188. *Id.*

189. BLACK'S LAW DICTIONARY 643.

traditionally been used as a *blunt instrument* to recover environmental claims.[190]

A traditional tort usually involves a physical impact which causes an immediate injury. The plaintiff is injured by the defendant in a present, immediate, and identifiable manner. The defendant is easily ascertainable, and the resultant damage is easily established. All that is required of the plaintiff is to prove a cause of action, including damages, for compensation to be awarded.[191] A cause of action is generally said to come into existence when the action could have first been maintained. Its essential elements are:

(1) a legal right of the plaintiff;

(2) the correlative obligation of the defendant; and

(3) an act or omission of the defendant in violation of the plaintiff's said legal right.[192]

In an action for torts, therefore, the plaintiff, must prove the existence of his or her injury, the act or omission of the defendant, and the causal link between the act of the defendant and the resultant injury of the plaintiff.[193]

In the case of *Shell Philippines Exploration B.V. v. Jalos*,[194] the Court stated that the test for determining the sufficiency of a cause of action rests on "whether the complaint alleges facts which, if true, would justify the relief demanded."[195] Thus, in the aforesaid case, the valid judgment for damages can be made in favor of plaintiffs, "if the construction and operation of the pipeline indeed caused fish decline and eventually led to the fishermen's loss of income, as alleged in their complaint."[196] The defendants filed a motion to dismiss the case, stating that the Pollution Adjudication Board has the primary jurisdiction over pollution cases and actions for related damages. The trial court granted the motion and dismissed the case.

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190. Mark Latham, et al., *The Intersection of Tort and Environmental Law: Where the Twains Should Meet and Depart*, 80 FORDHAM L. REV. 737, 750 (2011) (citing ZYGMUNT J.B. PLATER, ET AL., ENVIRONMENTAL LAW AND POLICY: NATURE, LAW, AND SOCIETY 283 (3d ed. 2004)).

191. Oben, *supra* note 105, at 15.

192. FERIA & NOCHE, *supra* note 33, at 245.

193. AQUINO, *supra* note 100, at 77.

194. Shell Philippines Exploration B.V. v. Jalos, 630 SCRA 399 (2010).

195. *Id.* at 409 (citing Raytheon International, Inc. v. Rouzie Jr., 546 SCRA 555, 565 (2008)).

196. *Shell Philippines Exploration B.V.*, 630 SCRA at 409.

The decision was reversed by the Court of Appeals but was reinstated by the Supreme Court.[197] The ruling of the Court in the said case lends credence to the fact that technical knowledge of environmental matters is outside the competence of our courts.[198]

The realization of every tort action lies in the last requisite, that which links the injury of the plaintiff to the defendant's actions. Such link is created by a cause which, "in the natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the result would not have occurred,"[199] otherwise known as the proximate cause. Once the plaintiff establishes that the proximate cause of his or her injury is the defendant's actions, damages are likely to be awarded in the former's favor. However, not every allegation of proximate cause imputed to the defendant's act would grant full damages to a plaintiff. Defenses that the defendant may avail of include the presence of intervening causes, laches, prescription, and contributory negligence on the part of the plaintiff.[200]

In environmental toxic tort litigation, the issues are whether the harm suffered by the plaintiff is the disease or illness that is usually caused by the toxin and whether the defendant was the real party who caused or was responsible for the harm. To arrive at the proximate cause, evidence would necessarily rely on the testimony of doctors, scientists, or chemists who are oriented with such illnesses and substances.[201] The challenge with using the proximate cause doctrine in such cases is that the plaintiff must prove fault or negligence on the tortfeasor. However, several factors distinct to environmental harm make it difficult, if not impossible, for proof to be accomplished. For one, the volatile nature of environmental processes compromise scientific evidence which would constitute the causal link between the damage and the injury. In fact, "the context of environmental damage is [so] radically different from common quasi-delicts [that] factors at play in environmental cases are beyond the realm of ordinary human experience[,] albeit the fatal results are [ ] familiar."[202] Without sufficient evidence to prove fault on the part of the defendant, the injury will not be

197 *Id*. at 412.

198. *Id*. at 407 (citing *Mead*, 115 SCRA at 268).

199. *Vda. de Bataclán*, 182 Phil. at 186.

200. AQUINO, *supra* note 100, at 263.

201. Sterling v. Velsicol Chemical Corp., 855 F.2d 1188, 1208 (6th Cir. 1988) (U.S.).

202. Ronaldo R. Gutierrez, *Improving Environmental Access to Justice: Going Beyond Environmental Courts*, 53 ATENEO L.J. 916, 936 (2009).

attributed to him or her and will leave the plaintiff uncompensated, regardless of the strength of his or her claim. The plaintiff's case encounters yet another hurdle since the data necessary to prove culpability are, more often than not, in the possession of the responsible party. Unless such aggrieved parties have the financial and legal means, resort to the relevant provisions in the Rules of Court as to the modes of discovery, will not yield significant results.[203]

Clearly, environmental torts are a unique type of tort as compared to other torts, such as that as would result from a hit-and-run or medical malpractice. This is due to the reality that an injury resulting from environmental causes may not immediately be seen as a foreseeable consequence of the defendant's acts. By the time injury is detected or is ascertained to have been caused by the defendant, evidence establishing the plaintiff's claim may have been altered or obliterated by the environment's natural course. Thus, in establishing liability in environmental cases, causation is key; however, due to latency of claims and the difficulty of isolating responsibility, a chain of causation is difficult to establish.

To put things in perspective, it is important to note that most environmental torts may be classified as toxic torts, specifically those caused by exposure to harmful elements in one's home through inhalation or ingestion,[204] among others. Thus, in the Philippines, violations of certain environmental laws are more prone to producing environmental torts than violation of others. Laws that address waste management, sanitation, industrial, air, and water pollution, and mineral resource extraction, when violated, would most likely lead to an environmental tort case. These laws, apart from being penal and administrative in character, aim to prevent harm to the health and safety of the people who, as established, bears the constitutional right to a balanced and healthful ecology.

As mentioned in the discussion above, the Marcopper Mining Disaster of 1996 lends credence to the current climate of environmental justice in the Philippines, as regards private claims yielding from environmental harms. In the said case, the investigation headed by the Department of Health found that from the blood samples of the residents of Calancan Bay were found unacceptable levels of lead and cyanide, from soil samples, unacceptable levels of lead, cadmium, copper, and zinc, and from air samples,

203. *Id.* at 936-37.

204. Gold, *supra* note 104, at 377.

unacceptable levels of lead.[205] These toxic substances, all of which originating from the leaked mine tailings, may cause deleterious effects to one's central nervous system, causing anemia, reduced mental functioning, memory loss, and retarded mental development in children, among others.[206]

The *Marcopper* case has the potential of setting precedent in environmental tort cases in the Philippines, although trial on the merits of the case has not yet commenced.[207] The inadequacy of the law as regards the right of the environmental victims to an effective remedy in settling their claims cannot be negated by the mere denial of a motion to dismiss. The plaintiffs have yet to establish through evidence the accrual of a cause of action against the defendants, primarily banked on the leakage of the mine tailings as the proximate cause of their injuries. There being no provision in the Civil Code on Torts and Damages setting environmental torts apart from other types of torts, the prerogative to prove fault rests with the plaintiffs, and the defenses available may just as easily tip the scales in favor of the defendants.

In fact, three problems are found with the accrual of a cause of action in toxic tort cases:

(1) that there is no injury immediately apparent upon exposure to the hazardous substance;

(2) that the date of injury is medically impossible to determine; and

(3) that maintaining an action for an injury inherently incapable of discovery within the statute of limitations is legally impossible.[208]

Proximate cause is not as easily determined in environmental torts as in ordinary torts. Intervening causes may come into play. An efficient intervening cause is defined as "[a]n event that occurs after a party's improper or dangerous action and before the damage that could otherwise have been caused by the dangerous act, thereby breaking the chain of

205. Marcopper Mining Corporation v. Regional Trial Court, CA-G.R. SP No. 134633, at 3 (CA, June 29, 2015).

206. *Id.* at 3-4.

207. Postrado, *supra* note 187.

208. Susan D. Glimcher, *Statutes of Limitation and the Discovery Rule in Latent Injury Claims: An Exception or the Law?*, 43 U. PITT. L. REV. 501, 501-02 (1982).

causation between the original act and the harm to the injured person."[209] Thus, a problem arises when there is a significant time interval between the time of the wrongful act and the manifestation of the injury, as is usual in toxic substance exposure cases. The injury or damage may remain undetected for years after the exposure or contamination.[210]

Toxic tort claims almost always involve injury or damage that have a long latency period before the harm manifests itself, and because of the long latency between exposure to the chemical product and claimant's injury, toxic torts usually involve complex questions of medical or scientific causation. As a result, experts in medicine and other sciences, such as toxicology and epidemiology, are required to assist the counsel and the court in determining whether a causal relationship exists between the toxin and the harm.[211]

A common legal tool used tort cases related to toxic exposure was exhibited in *Rutherford v. Owens-Illinois, Inc.*,[212] where the Court used the "reasonable medical probability"[213] test to impute liability upon a tobacco company. The test requires the plaintiff to establish a reasonable medical probability that his or her exposure to the toxic substance is the legal cause or the substantial factor in bringing about his or her injury.[214] In another case, the court used the "reasonable person standard,"[215] which "takes into account the circumstances with which the actor was actually confronted[,] including the reasonably perceivable risk and gravity of harm to others and any special relationship of dependency between the victim and the actor."[216]

Both standards, which have yet to be employed in the Philippine tort system, seem to provide sufficient flexibility to permit particular

209. Cornell Law School, Intervening Cause, *available at* https://www.law.cornell.edu/wex/intervening_cause (last accessed May 5, 2019).

210. Relucio, *supra* note 130, at 9 (citing Daniel A. Faber, *Toxic Causation*, 71 MINN. L. REV. 1219, 1221 (1987)).

211. In re: "Agent Orange" Product Liability Litigation, 611 F. Supp. 1396, 1408 & 1415 (1985) (U.S.).

212. Rutherford v. Ownes-Illinois, Inc., 16 Cal. 4th 953 (1997) (U.S.).

213. *Id.* at 957-58.

214. *Id.*

215. Lowrey v. Montgomery Kone, Inc. 42 P.3d 621, 627 (Ariz. Ct. App. 2002) (U.S.).

216. *Id.*

circumstances of the case that may reasonably affect the conduct required. Despite these allowances, however, the fact remains that the plaintiff in such cases is still regarded as the party with the burden to prove causation, and as established earlier, environmental tort victims do not have the necessary means to discharge such burden.

In environmental cases, the proximate cause may not be as easily proven as in negligence cases. Ecological factors explained by scientific inquiries often alter and modify consequences brought by industrial activities to make them more adverse to the environment, so that although companies engaged in resource-utilizing activities take the necessary safety and health measures, injuries to third persons may be inevitable. If used in environmental litigation, the accepted definition and doctrine of proximate cause can lead to the denial of a valid claim.

For specific causation in environmental cases where there are multiple emitters of harms, it may be impossible to determine which specific entity is responsible for the exposure that led to the plaintiff's harms.[217] Traceability may also be difficult, if not impossible, due to the fungibility of the toxin and the duration between exposure and the manifestation of its effects.[218] An illustration of this challenge may be culled from the *Marcopper* case, where one of the conditions said to have been caused by exposure to mine wastes is mental retardation.[219] Although scientific studies have indeed established the link between lead poisoning to the occurrence of retarded mental development in children, thus establishing the "general causation" in the case, a difficulty may arise in proving that the mental retardation suffered by a number of children in the Calancan Bay was specifically caused by exposure to mine tailings from the defendant's site, considering that mental retardation may also be caused by other factors, e.g., genetics and exposure to other teratogens. Although the frequency of the medical condition in several plaintiffs in a class action may prove to be helpful in asserting their claim, those individual claimants whose injuries are detected belatedly will undoubtedly face the challenges posed by the evidentiary requirements of causation.

In air pollution and in analogous cases where several pollution-contributing anthropogenic activities come into play, multiple entities may emit a pollutant with no feasible means to determine whether any individual entity's emissions created the injury complained. This may be true even

217. Causation in Environmental Law, *supra* note 107, at 2261.

218. *Id.* at 2262.

219. *Marcopper Mining Corporation*, CA-G.R. SP No. 134633, at 4.

when a court has accepted that the result of the accumulated emissions has created the injury. In those cases, the Court has considered whether the defendants' conduct has made a "meaningful contribution" to the pollution. However, "the extent of what suffices to show a meaningful contribution remains unclear."[220] Such was the case in *Comer v. Murphy Oil USA Inc.*,[221] where a group of Mississippi Gulf Coast residents alleged that emissions by energy companies contributed to global warming, which intensified Hurricane Katrina.[222] In *Public Interest Research Group of New Jersey v. Magnesium Elektron, Inc.*,[223] the court denied a citizen suit based on an alleged violation of the Clean Water Act due to a finding that no additional harm to the waterway was proven to be caused by defendant's activities.[224]

Often, the law on nuisance is an important component in tort law as a remedy in aid of environmental protection.[225] In fact, common law courts have considered whether "such a theory could apply to automobile manufacturers, oil refineries, electric power utilities, and other entities for harms associated with alleged anthropogenic climate change."[226] Although strict liability is often associated with nuisance, it is not in the case for recovery of damages that strict liability steps in, but with the abatement of a nuisance, such that the party causing the nuisance would have to prove that his or her act does not constitute a nuisance. Although a plaintiff may institute a civil action for damages the nuisance has caused him or her, the causal link between the alleged nuisance and the plaintiff's injury must still be established by evidence from the plaintiff, for it is his or her burden to do so.

Nevertheless, it cannot be denied that, in other jurisdictions, general tort law theories have been successfully applied to remedy numerous types of harm to the environment. This occurs, however, "in areas where the harm [caused] is to a well-defined area or specific person or class of persons, is readily supported by general and specific causation, closely fitting the

220. Causation in Environmental Law, *supra* note 107, at 2265.

221. Comer v. Murphy Oil USA, Inc., 718 F.3d 460 (5th Cir. Ct. App. 2013) (U.S.).

222. *Id.* at 465.

223. Public Interest Research Group of New Jersey, Inc. v. Magnesium Elektron, Inc., 123 F.3d 111 (3d Cir. 1997) (U.S.).

224. *Id.* at 124-25.

225. AQUINO, *supra* note 100, at 837.

226. Mark Latham, et al., *supra* note 190, at 748.

traditional elements of a tort cause of action."[227] As seen and explained in many cases, when it comes to environmental causes, an injury may be difficult to prove, and the aforesaid conditions wherein an environmental harm can be remedied by tort are descriptive of exceptional cases. Rarely in environmental tort actions are these issues quite so clear-cut.[228]

2. Procedural Infirmities: Statute of Limitations and *Res Judicata*

Under Rule 16 of the Rules of Civil Procedure, statute of limitations and *res judicata* are grounds for the dismissal of a complaint.[229] Environmental tort cases run the risk of accruing this ground for dismissal given the latency of claims.

On the ground of prescription, the Civil Code provides that a case for quasi-delict or an injury to the rights of the plaintiff must be instituted within four years.[230] However, the law does not specify when the cause of action accrues; it is generally said to come into existence when the action could have first been maintained. Under Philippine jurisprudence, in actions for damages arising from physical injuries because of tort, the cause of action accrues at the time the quasi-delict is committed. In *Ferrer v. Ericta*,[231] a case for physical injuries was dismissed by the Court on the ground of prescription, stating that "actions for damages arising from physical injuries because of a tort must be filed within four years,"[232] and it shall be reckoned from the day the quasi-delict is committed or the date of the accident.[233]

In the *Marcopper* case, the defendant, filed a Motion to Dismiss on the ground of prescription and laches, alleging that even before 1980, when the mining operations were at its inception, until 1996, when the disaster occurred, the plaintiffs were already aware of the discharge of the mine tailings, and yet they did not file their complaint during those times. In denying the motion, the trial court ruled on the "peculiar circumstances" surrounding the case, to wit —

227. *Id*. at 750.

228. *Id*.

229. RULES OF CIVIL PROCEDURE, rule 16, § 1 (f).

230. CIVIL CODE, art. 1146.

231. Ferrer v. Ericta, 84 SCRA 705 (1978).

232. *Id*. at 711 (citing CIVIL CODE, art. 1146 (2)).

233. *Ferrer*, 84 SCRA at 711 (citing Paulan v. Sarabia, 104 Phil. 1050 (1958) & Jamelo v. Serfino, 44 SCRA 464, 468 (1972)).

> [T]he plaintiffs should not be expected to hurriedly file a complaint against Marcopper for an anticipated injury[ ] because, obviously, such an action will also be prey to dismissal for lack of cause of action. It added that the complaint indicates that the symptoms of the damage only manifested over a period of time, and that the presence of toxic substances in Calancan Bay still causes harmful effects to the plaintiffs. It concluded that it deems it more prudent to continue with the case. Where it cannot be determined with certainty whether the action has already prescribed or not, the defense of prescription cannot be sustained on a mere motion to dismiss based on what appears to be on the face of the complaint. And where the ground on which prescription is based does not appear to be indubitable, the court may do well to defer action on the motion until after trial on the merits.[234]

To the Court's viewpoint, the *Marcopper* case suffered from several particularities, such as fact "that Marcopper's activity that allegedly caused the damage to the plaintiffs' health did not immediately produce the alleged result, [and] that [the] case is different from damage sustained from a car accident where the precise date and hour can be determined."[235] Truly, in toxic tort cases, the injury or the disease may be asymptomatic in its earlier stages, such that when finally the repercussions of the exposure appear, years have already passed.

In the U.S., case law has developed in a way that caters to this problem of prescription by adopting the discovery rule. The discovery rule is a significant development in limitations statutes as it dictates that a cause of action accrues when a person discovers, or, in the exercise of reasonable diligence, should have discovered the injury which gives rise to an action.[236] The statute of limitation begins to run only upon discovery of the injury by the plaintiff.

In moving to dismiss a case on grounds of *res judicata*, claim preclusion is based on finality and judicial economy.[237] The finality established by this doctrine discourages "vexatious and multiple lawsuits arising out of a single [tortious act]" and promotes greater stability in the law; it is also necessary in "bringing litigation to an end."[238] Inasmuch as courts have acknowledged

234. *Marcopper Mining Corporation*, CA-G.R. SP No. 134633, at 5.

235. *Id.*

236. Klein v. State Farm Fire & Cas., 250 Fed. Appx. 150, 154 (6th Cir. Ct. App. 2007) (U.S.).

237. Salud v. Court of Appeals, 233 SCRA 384, 389 (1994).

238. J. Brian Manion, *Damages for Increased Risk of Future Injury: Can Illinois Courts See Into The Future?*, 28 S. ILL. U. L.J. 201, 222 (2003).

that *res judicata* is also for the benefit of individual litigants, the doctrine is principally one of public policy. The economy of the time of the courts is one of the beneficial results of said doctrine.

In environmental tort litigation involving immediate and latent disease, the determining factor for the application of *res judicata* is whether the first and second injuries constitute one cause of action. If answered in the affirmative, a plaintiff who suffers an immediate disease and who recovers damages for them cannot obtain compensation for a second disease if the courts consider both as part of a single cause of action. Thus, under a strict interpretation of the doctrine of *res judicata*, if a victim of environmental tort brings suit to recover the costs of an initial injury, he or she cannot bring another suit to recover damages for another injury, which has developed over time, since the subsequent disease is viewed as part of the cause of action of the first suit. Again, allowing the institution of the second action for damages would violate the rule against splitting a cause of action.[239] The rule against splitting a cause of action is to avoid vexatious and multiple lawsuits arising out of the same tortious incident and is consistent with the need to bring litigation to an end.[240]

The query of whether an environmental tort victim was elucidated by the U.S. court in the *Anderson* case.[241] The court held that "[t]o view the risk of a future illness as part of damages is to ignore the question of whether a cause of action has accrued."[242] The statement lends credence to the fact that the broad definition of a "cause of action" does not take into consideration the situation of a victim who is suffering from a present injury for which the cause of suit emanates from and is at high risk of developing another injury due to the same cause. Since the second disease has not yet manifested itself at the time of the first action, the inclusion of a claim for that injury is impossible. Consequently, the victim must bring a second suit to recover damages for the latent disease.[243] However, the strict application of the *res judicata* doctrine deprives her of full compensation for her losses and injuries.

Citing the *Marcopper* case as an example, reports reveal that high levels of lead, cadmium, zinc, and other heavy metals and mine waste toxins have

239. RULES OF CIVIL PROCEDURE, rule 2, § 3.

240. FERIA & NOCHE, *supra* note 33, at 490.

241. *Anderson*, 628 F.Supp. at 1219.

242. *Id.* at 1231.

243. *Id.*

proliferated in the area, affecting the health and livelihood of Calancan Bay residents, among others.[244] Years after the disaster, the provincial health officer has recorded a rise in the number of cases of renal disease, spontaneous abortion, and even cancer, in the towns of Sta. Cruz, Mogpog, and Boac.[245] If or when these losses will be duly compensated through court action, there is a risk that *res judicata* will likewise bar compensation for future illnesses, as is anticipated in jurisprudential precedents applying the doctrine. This peril is aggravated by the reality that medical professionals have observed an increase in chronic illnesses in people living near the sites.[246]

Applying the discovery rule, as aforementioned, may likewise eradicate the barrier posed by *res judicata* in environmental tort cases. Courts applying the discovery rule definition of cause of action view two diseases as distinct when they are caused by the same exposure but develop independently of each other. Thus, prescription for the second disease only starts to run upon discovery.

C. Inadequacy of Rules of Procedure for Environmental Cases

It is status quo that, in the Philippines, the effects of violations of environmental laws are mostly felt by those in the marginalized sectors, namely, the fisherfolk, farmers, urban and rural poor, and communities of indigenous people. Their underprivileged circumstances make it quite difficult for them to cope with the devastating effects of pollution and environmental damage to their health and quality of life. In the end, "the adverse effects of environmental violations are silent killers whose victims are those who do not have the means to protect themselves."[247] Unfortunately, even the administrative aspect of the country's environmental laws, as they stand today, are rendered ineffectual as they are not strictly enforced by those mandated by the law to do so. As for the remedial aspect, the insufficiency of general legal procedures to provide guidelines as to the filing of environmental suits for torts has resulted in a dearth of prosecution of environmental cases and lack of jurisprudence to base decisions on.

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244. Karol Anne M. Ilagan, Chronic illnesses on the rise in Marcopper towns, *available at* http://pcij.org/stories/chronic-illnesses-on-the-rise-in-marcopper-towns (last accessed May 5, 2019).

245. *Id.*

246. *Id.*

247. PHILIPPINE JUDICIAL ACADEMY, *supra* note 153, at 33.

In many aspects, the Rules of Procedure for Environmental Cases is a commendable piece of legislation as it seeks to remove barriers in the dispensation of environmental justice.[248] The Rules were designed to enhance the judicial process for upholding the people's constitutional right to a balanced and healthful ecology, while at the same time, making it easier to administer justice to victims of environmental violations.[249] Despite its noble purpose, however, the fact remains that such Rules merely *clear the way* for the prosecution of rights in courts, but does not *supply* the said right necessary for the accrual of a cause of action. Stated otherwise, plaintiffs cannot simply rely on procedural laws as a source of their right to litigate environmental torts.

The following sections discuss the salient provisions of the Rules of Procedure for Environmental Cases and their inherent flaws and inadequacies vis-à-vis the litigation of a case for damages in environmental torts. The discussion aims to exhibit the substantial similarities of the present Rules of Court for the prosecution of ordinary and special civil cases and the Rules of Procedure for Environmental Cases for the same objective. Ultimately, this subchapter shall prove that the promulgation of the Rules of Procedure for Environmental Cases does not specifically address the civil liability aspect of violations of environmental laws.

1. The Indifference of Citizen Suits

No different than the provisions of Civil Procedure, Section 4 of the Rules of Procedure for Environmental Cases (RPEC) provides that "[a]ny real party in interest, including the government and juridical entities authorized by law, may file a civil action involving the enforcement or violation of any environmental law."[250] In the rationale behind the RPEC, the Court wrote that "the phrase 'real party in interest' in said provision retains the same meaning under the Rules of Civil Procedure" but must be appreciated in light of environmental rights.[251] The Court further wrote that under the same provision, "both a Filipino citizen and an alien can file a suit so long as they are able to show direct and personal injury."[252]

248. *Id.* at xxxvi.

249. *Id.*

250. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 2, § 4.

251. PHILIPPINE JUDICIAL ACADEMY, *supra* note 153, at 110.

252. *Id.*

This further supports the argument that environmental injury cases as regards the civil liability of accountable persons are not different from traditional tort cases, even with the promulgation of specialized rules of procedure. The RPEC also attempts to expedite the disposition of cases by relatively relaxing the rules of admissibility in the appreciation of evidence. The Rules require the submission of all evidence supporting the cause of action, such as affidavits and documentary evidence.[253] This is not different from the requirements of the Judicial Affidavit Rule,[254] which complements the Rules of Civil Procedure.

2. The Magnitude Requirement of the Writ of *Kalikasan*

The Writ of *Kalikasan* poses certain restriction on its use as it pertains to class action when two or more cities or municipalities are affected by environmental exploitation.[255] In other words, the extraordinary writ cannot be utilized by a particular aggrieved individual in claiming compensation for injuries acquired by reason of territorial environmental exploitation. The writ also only acts as a means to stop operations which violate the citizens' right to a healthy ecology; it is neither the remedy to prosecute offenders nor one that would afford injured persons a cause of action for damages.

Both "lawyers and judges alike are still grappling with the idea as to how this [w]rit should be implemented, given the grounds upon which such [w]rit can be issued."[256] First, there must be a violation of the constitutional right to a balanced and healthful ecology; and second, there must be environmental damage of such magnitude as to prejudice the life, health, or property of inhabitants in two or more cities or provinces.[257]

One problem that can be seen with the Writ of *Kalikasan* is its strict application of the second requirement which involves "environmental damage of such magnitude as to prejudice the life, health[,] or property of

253. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 2, § 3.

254. The Judicial Affidavit Rule was compulsorily implemented in 2013 in order to shorten proceedings. It shall comprise of "direct testimonies of the witnesses[,] and the documentary or object evidence of the parties will be attached." Mylen P. Manto, *Judicial affidavit rule in use by 2013*, PHIL. STAR, Sep. 16, 2012, *available at* https://www.philstar.com/cebu-news/2012/09/16/849627/judicial-affidavit-rule-use-2013 (last accessed May 5, 2019).

255. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 7, § 1.

256. Mundin, *supra* note 13, at 1079.

257. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 7, § 1.

inhabitants in two or more provinces."[258] One does understand that the purpose of requiring the element of two or more cities or provinces is that the damage is of such magnitude as to affect a greater land area and a much larger number of people.

The provision seems to have overlooked the fact that the Philippines is an archipelago made of provinces situated in isolated islands or are of a large size, making it difficult, if not possible, to comply with the magnitude requirement. The Rules are, therefore, ineffectual for the inhabitants of isolated islands who may have to resort to the usual civil remedies prolonging their situation.[259]

As discussed in the previous chapters, it must be stressed that the Writ of *Kalikasan* does not carry with it the civil case necessary to claim damages for environmental torts. The RPEC provides that the court may also grant such other reliefs which "relate ... to the protection, preservation, rehabilitation[,] or restoration of the environment," with the exception of the award of damages to individual petitioners.[260] Thus, to recover damages for injury suffered, a person who avails of the writ must still file a civil suit, which shall proceed separately from the petition for the issuance of the writ, as they are "different actions with different objectives."[261]

3. The Dangers of Applying the Precautionary Principle

Under Rule 20 of the RPEC, "[w]hen 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."[262] The precautionary principle bridges the gap in cases where scientific certainty in factual findings cannot be achieved. By applying the precautionary principle, the court may construe a set of facts as warranting either judicial action or inaction, with the goal of preserving and protecting the environment.[263] An application of the precautionary principle

258. *Id.*

259. Mundin, *supra* note 13, at 1080.

260. THE RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 7, § 15 (e).

261. Annotation to the Rules of Procedure for Environmental Cases at 140, *available at* http://philja.judiciary.gov.ph/assets/files/pdf/learning_materials/A.m.No.09-6-8-SC_annotation.pdf (last accessed May. 5, 2019).

262. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 20, § 1.

263. PHILIPPINE JUDICIAL ACADEMY, *supra* note 153, at 33.

to the rules on evidence will enable courts to tackle future environmental problems before ironclad scientific consensus emerges.[264]

The precautionary principle is regarded as a regulatory tool in international law, but as used in the Rules of Procedure for Environmental Cases, it is considered as a tool for assessing evidence in civil and criminal cases involving violations of environmental laws.[265]

The precautionary principle cannot be used to *fill in the gaps* where there is a mere *difficulty* in proving alleged facts; what the law requires for the application of the principle is a "lack of full scientific certainty in establishing a causal link between human activity and environmental effect[.]"[266] In proving causation in environmental torts, the difficulty lies in the means of obtaining existing evidence, not in establishing that the evidence is proof of the injury. As there are myriad of scientific studies linking various medical conditions to by-products of environmental harm, e.g., that exposure to mine wastes causes neurological complications, what the plaintiff is more burdened to prove is the fact that the defendant's act or omission is the very cause of his or her injury.

In other words, whether the act *is known* to have caused the injury may be remedied by the precautionary principle should there be a lack of scientific data to support it. However, the principle is not intended to replace missing evidence in cases where science has already ascertained the supposed causal link between the activity and its effect. In such cases, the established rule in evidence, that each party must prove his or her affirmative allegations, still stands. Thus, in environmental torts where the defendant is merely obligated to exercise ordinary diligence,[267] without the necessary evidence to discharge the burden of proof, the plaintiff is likely to lose his or her claim.

D. Accountability for Environmental Torts

As earlier mentioned, Philippine environmental law has become almost plenary in scope, such that multifarious ecological issues are already sufficiently addressed by prevailing legislation. However, of the many major environmental laws, only two explicitly provide for the right of injured

264. *Id.*

265. Gregorio Rafael P. Bueta, *Taking Another Green Step Forward: An Analysis of the Rules of Procedure for Environmental Cases*, 56 ATENEO L.J. 522, 550-51 (2011).

266. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 20, § 1.

267. *See* CIVIL CODE, art. 1163.

persons to file a citizen's suit.[268] Perforce, the enforcement of the aforementioned environmental laws ensures the preservation of the environment and the conservation of resources for the benefit of persons and future generations. However, persons found violating provisions of environmental laws are sanctioned administratively with the imposition of fines and penalties. While environmental projects may be temporarily or permanently stopped, substantive law forgets to mention a remedy that tort victims may use to claim compensation for the injuries they have sustained on their persons and property. This negation from environmental legislation lends credence to the non-recognition of environmental cases as distinct from that of ordinary civil cases. The end result, therefore, is that victims of environmental harm will have to rely on general notions of tort in litigating their claims, which as discussed in this chapter is an inadequate remedy for environmental torts.

Furthermore, redress for environmental tort injuries can neither be found in the Corporation Code of the Philippines. As earlier stated,

> [d]irectors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation[,] or who are guilty of gross negligence or bad faith in directing the affairs of the corporation ... shall be liable jointly and severally for all damages [suffered by other persons as a result of such acts].[269]

While on the surface, the provisions seem promising as a reference for individual liability of responsible corporate players, it is important to note that what constitutes as *patently unlawful act* needs to be properly delineated by law as unlawful, such as entering into fraudulent contracts.[270] It should also be stressed that most, if not all, cases dealing with an officer's duty of diligence consists in acts *corporate* in character, such as entering into contracts for settling corporate debts and dealing with the public for increased profits.[271] To claim damages for environmental torts committed by corporations, therefore, minimum reliance is placed in the Corporation Code as to the provisions regarding accountability of officers. On a practical viewpoint, resort to individual liability, as opposed to corporate liability, may even be for naught since compensation for environmental torts usually

268. Philippine Clean Air Act of 1999, § 45 & Ecological Solid Waste Management Act of 2000, § 52.

269. CORP. CODE, § 31.

270. *Paradise Sauna, Massage Corporation*, 181 SCRA at 729.

271. VILLANUEVA & VILLANUEVA-TIANSAY, *supra* note 31, at 388-94.

involve millions of pesos, which are better claimed from the corporation's coffers.

The iniquitous persona of corporations as regards environmental degradation is slightly offset by a phenomenon called Corporate Social Responsibility, which is a company's sense of responsibility towards the community and the social and ecological environment in which it operates. It is a commitment to improve community well-being through discretionary business practices and contributions of corporate resources.[272] The decision *to do good* is an exercise of discretion on key corporate officers, which may be exercised through the adoption of new business practices or monetary or non-monetary contributions in furthering support for community well-being. In the Philippines, CSR is not a legal precept in which legally enforceable rights may be vested. Volunteerism is its main thrust,[273] which in reality, is also an effective tool for uplifting communities while at the same time helping the environment in a way.

To illustrate, the victims of the Marcopper Mining Disaster cannot claim under the Corporation Code's provisions on Accountability of Officers without going through the arduous process of filing an ordinary civil case for damages. Such initiative, in fact, is seen through the filing of the criminal case against Marcopper's President, Senior Manager, and Resident Manager for Mining Operations.[274] The three officers were charged with violation of various environmental laws, and while the Supreme Court reinstated the criminal case in 2011, the criminal case has yet to be resolved on its merits, as of January 2014.[275] In corporations where environmental exploitation is already so routinely practiced such that detrimental means are already institutionalized, redress to internal corporate rules and insistence on "piercing the veil of corporate fiction" for individual accountability may be tough, especially when corporations tend to reciprocate the loyalty of its officers by masking the deleterious consequences of their decisions.

272. KOTLER & LEE, *supra* note 79, at 3.

273. Volunteer Act of 2007, § 5.

274. *Loney*, 482 SCRA at 197.

275. Cinco, *supra* note 182.

VI. RECOMMENDATIONS: TOWARDS THE ESTABLISHMENT OF A PHILIPPINE ENVIRONMENTAL TORT SYSTEM

A. Applicability of Strict Liability Principle, Res Ipsa Loquitur, and the Discovery Rule in Establishing Liability

Strict liability "does not depend on actual negligence or intent to harm, but [ ] is based on the breach of an absolute duty to make something safe."[276] The only provision in the New Civil Code believed to cover strict liability is that referring to manufacturers dealing with defective products,[277] to wit, "[m]anufacturers and processors of foodstuffs, drinks, toilet articles[,] and similar goods shall be liable for death or injuries caused by any noxious or harmful substances used, although no contractual relation exists between them and the consumers."[278]

In the U.S. case of *Escola v. Coca Cola Bottling Co.*,[279] the Court, in applying the liability of a manufacturer to an exploding bottle of soda, awarded damages to the injured plaintiff on the basis of *res ipsa loquitur*, creating and upholding a *prima facie* presumption of negligence on the part of the defendant.[280] The legal application of *res ipsa loquitur* in tort cases presupposes that:

(1) the accident is of a kind which does not ordinarily occur unless someone is negligent;

(2) the cause of the injury was under the exclusive control of the [defendant]; and

(3) there was no contributory fault on the part of the plaintiff.[281]

Putting the abovementioned doctrines in the context of environmental cases, specific U.S. Codes provide for a similar liability in aiming to obtain environmental justice. U.S. Federal Law provides for the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)[282]

276. BLACK'S LAW DICTIONARY 996.

277. AQUINO, *supra* note 100, at 874.

278. CIVIL CODE, art. 2187.

279. Escola v. Coca Cola Bottling, Co., 24 Cal.2d 453 (1994) (U.S.).

280. *Id.* at 459-61.

281. Del Carmen, Jr. v. Bacoy, 671 SCRA 91, 108 (2012).

282. Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C., §§ 9601-75 (1980) (U.S.).

and the Oil Pollution Act (OPA),[283] which provide easier routes to recover damages for injury to natural resources. Both statutes impose a strict joint and several liability on potentially responsible parties, assist the trustees in assessing damages by developing damage assessment regulations, and grant the trustees the benefit of a rebuttable presumption of accuracy if the trustees assess the damages in accordance with these regulations.

However, unlike CERCLA, OPA allows private parties to seek redress for injury to real or personal property, but it does not create a private right of recovery for damage to public natural resources themselves. In other words, a private party may only claim damages under OPA if the damage to public natural resources results in a loss of subsistent use of such resources, or if the damage to natural resources results in a loss of profit or an impairment of earning capacity.[284] Strict liability is the "assessment of liability for damages without requiring proof of negligence."[285]

Under the CERCLA, a tax is imposed on chemical and petroleum industries to provide the federal authority with a quick response to releases of hazardous substances that may endanger public health or the environment.[286] Adopting the strict liability doctrine in the enforcement of environmental legislation has certain advantages in regulating environmental activities:

> (1) it provides a more effective enforcement tool as it relieves the government of the burden of proving fault or direct causation on the part of the defendant;
>
> (2) it furnishes a quicker response and remedial measure to effectuate clean up; and
>
> (3) it deters potential offenders of environmental or pollution laws.[287]

The application of the strict liability doctrine and consequently, *res ipsa loquitur*, not only in an administrative or regulatory context but also in private suits for damages will serve to be the most appropriate treatment of

283. Oil Pollution Act, 33 U.S.C., §§ 2701-62, 2702 (b) (2) (B) (1990) (U.S.).

284. *Id.* § 2792 (b) (2) (C) & (E).

285. United States Environmental Protection Agency, Glossary, *available at* https://web.archive.org/web/20150617121128/http://www.epa.gov/superfund/programs/reforms/glossary.htm#s (last accessed May 5, 2019).

286. United States Environmental Protection Agency, CERCLA Overview, *available at* https://web.archive.org/web/20150924142032/http://www.epa.gov/superfund/policy/cercla.htm (last accessed May 5, 2019).

287. Ong, *supra* note 4, at 50.

courts to environmental tort cases when appreciating evidence. Strict liability would have the most impact on adherence to the Rules on Evidence, with regard to the burden and quantum of proof needed to establish facts in the case. In the Rules of Court, the burden of proof is defined as "the duty of a party to present evidence on the facts in issue necessary to establish [a] claim or defense by the amount of evidence required by law."[288] In civil cases, the party having the burden of proof must establish his or her case by a preponderance of evidence,[289] which is such evidence as when weighed against that opposed to it, has more convincing force, and thus the greater probability of the truth.[290] In determining where the superior weight of evidence on the issues involved lies, the court considers "all the facts and circumstances of the case,"[291] as well as "the witness' manner of testifying,"[292] the "probability or improbability of their testimony,"[293] and their knowledge of the facts to which they are testifying, among others.[294] Thus, by applying the strict liability doctrine, the burden of proof is shifted to the defendant, who shall furnish preponderant evidence showing that the injury complained of is not caused by his act or omission.

1. Proposed Actions

The provision in the Civil Code establishing liability of common carriers[295] shall be used as a guide to amend existing substantial law for the application of the strict liability principle. The provision shall read —

> Owners or operators of Environmentally Critical Projects or projects in Environmentally Critical Areas, as per the Philippine Environmental Impact Statement System Law, or violators of environmental laws, are bound to observe extraordinary diligence in the conduct of their activities. In case of death or injuries sustained by persons due to the negative effects of their operations, said owners or operators are presumed to have been at fault unless they prove, by a preponderance of evidence, that the injury was not caused and could not have been caused by their acts or omissions.

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288. 1989 REVISED RULES ON EVIDENCE, rule 131, § 1.

289. *Id.* rule 133, § 1.

290. WILLARD RIANO, EVIDENCE (THE BAR LECTURE SERIES) 130 (2012 ed.).

291. REVISED RULES ON EVIDENCE, rule 133, § 1.

292. *Id.*

293. *Id.*

294. *Id.*

295. CIVIL CODE, arts. 1733 & 1756.

Furthermore, the discovery rule as used in common law toxic tort cases shall be used to amend the Civil Code provisions on Prescription of Actions[296] so as to prevent the premature application of the statute of limitations. The provision shall read —

> An action for damages based on an injury sustained by a person, brought by the negative effects of an environmentally critical project or a violation of an environmental law, must be commenced within four years from the time the cause of action accrues, which may be set at the time the injury, or the cause of the injury, is discovered.

B. Nipping it in the Bud: Compensation-for-risk Approach

The principle of prevention aims to stop environmental damage even before it occurs or when it is critical, and potential damage may already be irreversible.[297] In cases wherein individuals are exposed to hazardous substances due to environmental projects, courts appropriately demand scientific evidence to support a causal connection, but the evidence science provides often does not well fit the legal model. The best that science can do is demonstrate that the toxic exposure is a risk factor for the plaintiff's disease — that it sometimes causes the disease.[298]

The benefits of the compensation-for-risk approach may be illustrated in cases where the volatility of environmental agents is more evident, such as in air pollution cases. For cases where causes of injury may be determined, albeit evidence may be difficult to obtain, tort law can aptly be used to "fill in the gaps," subject to several changes in substantial law as aforementioned. However, tort law concepts can be troublesome if used in an air pollution case filed by persons living in an industrial area where various factories emit harmful gases in the breathable air. Thus, proving specific causation in such instances would be difficult, if not impossible. As for air pollution cases, therefore, compensation-for-risk mechanisms are a better alternative to ensure compensation for environmental torts.

Generally, under the compensation-for-risk approach, individuals would receive compensation according to the health risk involved as a result of their exposure to the pollution. Said strategy avoids troublesome case-by-case determinations of specific causation. It also provides "compensation

296. *Id.* art. 1146.

297. RPEC, ratio, *supra* note 171, at 45 (citing NICHOLAS DE SADELEER, ENVIRONMENTAL PRINCIPLES: FROM POLITICAL SLOGANS TO LEGAL RULES 61 (2002)).

298. Gold, *supra* note 104, at 376-77.

prior to illness, which may facilitate preventive measures."[299] Furthermore, "traditional doctrines that allow the award of restoration damages in limited circumstances should be reformed in order to allow the broader application of such awards."[300]

In pursuit of environmental justice, "[an environmental law intersecting with (tort laws) should provide for either dual enforcement through a statutory liability scheme or preempt or displace tort remedies.]"[301] An environmental law should be clear as to how its enforcement relates to any remedy provided under other laws and should establish some form of statutory stability in the processing of claims brought about by injury from environmental harms. A semblance of this demarcation may be found in the Philippine Environmental Impact Statement System, which provides for an Environmental Guarantee Fund (EGF) which shall be readily accessible and disbursable for the immediate clean-up or rehabilitation of affected areas or for the compensation of communities affected by the negative impacts of the project.[302] In practice, however, the rehabilitation process costs millions of pesos more than what the EGF allows. This may leave little to no allowance for the payment of private claims.[303]

1. Proposed Action

Enactment of a law requiring an "Environmental Tort Fund" from proponents of ECPs or projects in ECAs, subject to the following conditions:

(1) The amount for the ETF shall be determined by valuation of risks through a feasibility study conducted by and at the expense of the environmental project proponent.

(2) Members of directly affected communities shall be accounted for and shall be notified of the health and safety risks of the project to be undertaken.

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299. Lin, *supra* note 1, at 1440.

300. James R. Cox, *Reforming the Law Applicable to the Award of Restoration Damages as a Remedy for Environmental Torts*, 20 PACE ENVT'L L. REV. 777, 777 (2003).

301. Latham, et al., *supra* note 190, at 770.

302. Department of Environment and Natural Resources, Implementing Rules and Regulations (IRR) for the Philippine Environmental Impact Statement (EIS) System, DENR Administrative Order No. 2003-30, art. 1, § 3 (g) (Nov. 2, 2002).

303. Interview *with* Antonio G.M. La Viña, *supra* note 5.

(3) The ETF shall be both curative and preventive. It shall be answerable not only for private claims due to injuries resulting from an environmental project, but also for those which are reasonably expected from such activities.

(4) The requirement of the contingency fund or bond shall be included in the Environmental Impact Statement of the proponent. Failure to furnish the fund will suspend the issuance of the necessary Environmental Compliance Certificate.

(5) The Environmental Tort Fund shall be disbursed to local government units prior to commencement of the project. Failure to provide the fund will suspend issuance of permits and clearances for continuous operations.

VII. CONCLUSION

The problem addressed in this Note is whether environmental laws, Philippine tort law, and the Rules of Procedure for Environmental Cases provided an effective remedy in the litigation of private claims for environmental harm; and consequently, whether the inadequacy upholds the constitutional right to a balanced and healthy ecology. A perusal of laws, cases, and other similar materials leads to a negative answer.

After a survey of pertinent laws, rules, and cases, it can be concluded that there is in fact no law that addresses injuries arising from an environmental tort, exceptional as it is, with regard to the compensation of injured parties. This gap in the law results in a violation of rights elucidated in this Note through the following:

First, the necessity to modify applicable laws to specifically address environmental torts is determined by the unique characteristics of environmental victims. The context of environmental damage is radically different from common quasi-delicts, such that factors at play in environmental cases are beyond the realm of ordinary human experience although the fatal results are familiar. Victims of environmental harm are uncertain about who victimized them or who exactly is responsible. Also, victimization in environmental cases is often delated, with the victim becoming aware of the victimization much later.

The latency of claims and the evolution of the injury give rise to problems of prescription, *res judicata*, and the emergence of more perceptible intervening causes. As a result, isolating responsibility and proving the causal link between the damage and the injury are rendered difficult, if not impossible.

Second, present laws do not address the novelty of environmental torts and the difficulty in proving fault, which may lead to the undercompensation of claims for personal injuries. The abatement of a nuisance provided by the Civil Code may be used to discontinue pollution-causing industrial practices, but the consequential civil case for damages arising from quasi-delict under the Civil Code treats proximate cause as the primary consideration in establishing liability. The law presumes that the defendant acted with due care and puts the burden of proving fault on the plaintiff. In environmental torts, however, the evidence necessary to substantiate the proximate cause is the possession of the defendant, who may likewise raise the defenses of intervening cases, prescription, and contributory negligence.

The Rules of Procedure for Environmental Cases promulgated in 2010 neither addresses the problem. While it recognizes the necessity to preserve and rehabilitate the environment, it does not take into consideration the exceptionality of a personal injury arising from environmental exploration. Although *locus standi* is liberalized by the Rules through the allowance of citizen suits, it provides that no damages can be awarded in a citizen suit, because a citizen suit is filed in public interest for the vindication of the environment.

Finally, the accountability of corporations in environmental tort cases as regards personal injuries is not properly delineated by existing environmental laws. Assuming that a prohibited act is imputed upon the corporation, the remedies available within a specific environmental law does not address the problem of proving fault as regards personal injuries, as the sanction merely amount to cancellation of persons, confiscation of conveniences, payment of rehabilitation costs, or imprisonment. Again, this omission from environmental laws negates the actuality that environmental cases are distinct from ordinary civil cases.

Given the inadequacies of our system of Philippine laws as regards environmental tort cases, this Note proposes that the strict liability principle, the doctrine of *res ipsa loquitur*, and the discovery rule shall be applied in environmental tort cases. It is also proposed that an Environmental Tort Fund shall be established, which shall require a valuation of risks, public participation, and the accounting of every member in a high-risk community.

The Note stresses upon the necessity to remove private claims in environmental torts from the realm of ordinary torts as such classification will logically result in a violation of the right to a balanced and healthy ecology and a blatant denial of justice. The plethora of Philippine

environmental laws would then serve little purpose if, based on such laws, corporations can only be effectively penalized criminally and administratively, for the real and immediate casualty of every environmental project are the people who stand to be injured by such exploitative practices. The recommendations of this Note do not only provide an effective remedy to aggrieved persons but also encourages corporations to be environmentally compliant.