

Is Trusting the Process Enough?: Introducing the Public Trust Doctrine’s Application to All Natural Resources, Exploring Its Placement in Philippine Environmental Laws, and Supplementing the Rules of Procedure for Environmental Cases

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I. INTRODUCTION

A. *Background of the Study*

Integrated into Philippine law are the legal principles of the Regalian Doctrine and the Doctrine of *Parens Patriae*. The former, which is embodied in Section 2, Article XII of the 1987 Constitution, reads in part, “[a]ll lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources shall be under the full control and supervision of the State.”¹ The latter provides that the State is the “parent” of the country.² Thus, the State inculcates upon itself the duty of caring for the country as would a parent for his or her child. As the Supreme Court has explained, it is the “last-ditch provider of protection to those unable to care and fend for themselves.”³

1. PHIL. CONST. art. XII, § 2.

2. BLACK’S LAW DICTIONARY 1269 (10th ed. 2014).

3. *Maynilad Water Services, Inc. v. Secretary of the Department of Environment and Natural Resources, et al.*, G.R. No. 202897, Aug. 6, 2019, *available at*

I. The Case

The facts that led to the introduction of the Public Trust Doctrine began in 2009, when two water utility companies were charged with the violation of a provision under the Clean Water Act.⁴ The story starts when the Regional Office of the Department of Environment and Natural Resources Environmental Management Bureau (DENR EMB)-Region III filed a complaint before the Pollution Adjudication Board.⁵ The Management Bureau charged the Metropolitan Waterworks and Sewerage System (MWSS) and its concessionaires Maynilad and Manila Water

with failure to provide, install, operate, and maintain adequate Wastewater Treatment Facilities (WWTFs) for sewerage system resulting in the degraded quality and beneficial use of the receiving bodies of water leading to Manila Bay, and which had directly forestalled the DENR's mandate to implement the operational plan for the rehabilitation and restoration of Manila Bay and its river tributaries.⁶

Subsequently, the Regional Directors of the DENR EMB-National Capital Region (NCR) and Region VI-A also filed their complaints with the Pollution Adjudication Board, charging the same parties with their failure to maintain sufficient WWTFs up to the standards provided by the Clean Water Act, failure to construct Sewerage Treatment Plants and Sewerage Treatment Facilities (STPs and STFs) for the treatment of household waste, and simply, the failure of these companies to oblige by their duties provided under the law.⁷ Under the law, it is mandated clearly that all concessionaires or agencies authorized to utilize the resource abide by the provision within the five-year period.

Section 8 of the Clean Water Act⁸ provides, thus —

Domestic Sewage Collection, Treatment[,] and Disposal. — Within five (5) years following the effectivity of this Act, the agency vested to provide water supply and sewerage facilities and/or concessionaires in Metro Manila and

<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65416> (last accessed July 31, 2023).

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. An Act Providing for a Comprehensive Water Quality Management and for Other Purposes, [Philippine Clean Water Act of 2004], Republic Act. No. 9275 (2004).

other highly urbanized cities (HUCs) as defined in Republic Act No. 7160, in coordination with LGUs, shall be required to connect the existing sewerage line found in all subdivisions, condominiums, commercial centers, hotels, sports and recreational facilities, hospitals, market places, public buildings, industrial complex[,] and other similar establishments including households to available sewerage system: Provided, That the said connection shall be subject to sewerage services charge/fees in accordance with existing laws, rules[,] or regulations unless the sources had already utilized their own sewerage system: Provided, further, [t]hat all sources of sewage and septage shall comply with the requirements herein. In areas not considered as HUCs, the DPWH in coordination with the Department, DOH[,] and other concerned agencies, shall employ septage or combined sewerage-septage management system.⁹

Following an issued Notice of Violation and the requisite technical conference before the Public Adjudication Board which found that they indeed failed to abide by the Clean Water Act, MWSS, Maynilad, and Manila Water filed their respective answers to the charges.¹⁰ MWSS defended itself, saying that they had complied with the law.¹¹ Manila Water and Maynilad asserted “the supremacy of the Concession Agreements (Agreement/s) executed with MWSS containing service targets for water supply, sewerage, and sanitation within specific milestone periods spread over the [25-]year concession period.”¹²

The Secretary of Environment and Natural Resources (SENR), after taking all the complaints into consideration, ruled that the provisions of the Clean Water Act “on the five-year period to connect the existing sewerage lines, is mandatory.”¹³ The SENR then fined them with a hefty sum for violating the law.¹⁴ The three defendants filed their respective motions of reconsideration and were all likewise denied.¹⁵ The Court of Appeals (CA) ruled the same on each of their petitions, but on varying grounds.¹⁶

9. *Id.* § 8.

10. *Maynilad Water Services, Inc.*, G.R. No. 202897.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Maynilad Water Services, Inc.*, G.R. No. 202897.

The appellate court denied Maynilad's petition due to procedural grounds.¹⁷ For Manila Water's petition, on the other hand, the CA ruled that Section 8 of the Clean Water Act is "clear, plain[,] and free from ambiguity, in requiring Manila Water to connect the existing sewage lines in its service area to sewerage systems ready for and already in use within five years from effectivity of the law."¹⁸

In sum, MWSS, Maynilad, and Manila Water's petitions were all denied. Their motions for reconsideration met the same fate. The story concluded in 2019 when the Court ultimately found the two liable under Section 8 of the Clean Water Act and further explained that the installation of the sewerage treatment plants and facilities were essential.¹⁹

Thus, the Court, in a monumental decision, introduced formally the Public Trust Doctrine into Philippine jurisdiction. The Court noted that 15 years since the Clean Water Act was enacted, "allegations that certain entities demonstrated and are continuing to demonstrate blatant apathy with their obligations thereunder now surface and clamor for resolution."²⁰

The Court emphasized that the Public Trust Doctrine "is based on the notion that private individuals cannot fully own trust resources but can only hold them subject to a servitude on behalf of the public."²¹ The Court utilized the Public Trust Doctrine in justifying the liability of the water companies under the Clean Water Act. To summarize, the Public Trust Doctrine "aims to put an additional strain upon the duty of the water industry to comply with the laws and regulations of the land."²²

In that same case, the Court explained what the Public Trust Doctrine is and its consequent application in the case at bar. It explained that the Public Trust Doctrine "speaks of an *imposed duty* upon the State and its *representative[s]* of continuing supervision over the taking and use of appropriated water."²³ It further elaborated that "parties who acquired rights in trust property [only hold] these rights subject to the trust" and therefore, no vested right can be

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.* (citing Richard C. Ausness, *Water Rights, the Public Trust Doctrine, and the Protection of Instream Uses*, 1986 U. ILL. L. REV. 407, 437 (1986)).

22. *Maynilad Water Services, Inc.*, G.R. No. 202897.

23. *Id.* (citing *National Audubon Society v. Superior Court*, 33 Cal. 3d 419, 437 (Cal. 1983) (U.S.) (commonly referred to as Mono Lake)) (emphases supplied).

asserted to use the same rights in a way that would be harmful to the said trust.²⁴

The Public Trust Doctrine then “impresses upon [the State] the *affirmative duties of a trustee to manage these natural resources* for the benefit of present and future generations and embodies key principles of environmental protection: stewardship, communal responsibility, and sustainability.”²⁵ This doctrine also reaffirms the superiority of public rights over private rights for *critical resources*.²⁶

In August of 2019, the Public Trust Doctrine was categorically and formally introduced by the Court to the Philippine legal system. The Public Trust Doctrine thus provides that the State is a “trustee” of the national patrimony or the “*res*” and the public or the citizenry is the “beneficial owner” of the same. According to Associate Justice Marvic Leonen, under the Doctrine, “the State’s resources exist and are tempered for the benefit of the community.”²⁷ This trusteeship vested upon the State, however, had been extended to include the State’s representatives which are duly licensed to develop, utilize, and hold these resources.²⁸ Effectively, therefore, as trustees, both the State and its representatives are vested with the burden and the privilege of holding the nation’s natural resources in trust.

In applying the Public Trust Doctrine, “[n]atural resources have traditionally been found either under the sovereignty of a particular state or in the so-called global commons.”²⁹ Essentially, the doctrine states that the State is a trustee with a “fiduciary duty of stewardship,” and is mandated to responsibly hold the State’s environmental capital on behalf of the citizens.³⁰

This Doctrine, in turn, holds the trustee accountable for any damages done on the natural resources it was supposed to hold in trust on behalf of the beneficiary-citizens. These resources must be held in trust by the State for the

24. *Maynilad Water Services, Inc.*, G.R. No. 202897 (citing Ausness, *supra* note 21, at 426 (citing *National Audubon Society*, 33 Cal. 3d at 437)).

25. *Maynilad Water Services, Inc.*, G.R. No. 202897 (citing ALEXANDRA B. KLASS & LING-YEE HUANG, *RESTORING THE TRUST: WATER RESOURCES AND THE PUBLIC TRUST DOCTRINE, A MANUAL FOR ADVOCATES 1* (2009)) (emphasis supplied).

26. *Maynilad Water Services, Inc.*, G.R. No. 202897.

27. *Id.* (J. Leonen, concurring).

28. *Maynilad Water Services, Inc.*, G.R. No. 202897.

29. Patricia Kameri-Mbote, *The Use of the Public Trust Doctrine in Environmental Law*, 3/2 L. ENV'T DEV. J. 195, 199 (2007).

30. *Id.*

benefit and use of the general public.³¹ This public includes current and future generations.³² Notably, the Public Trust Doctrine has only been prevalently applied in the United States (U.S.) and few other states.

In the Philippines, under Section 16, Article II of the 1987 Constitution,³³ “[t]he 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.”³⁴ Further, the Court has recognized the concept of intergenerational responsibility in the landmark case, *Oposa v. Factoran, Jr.*³⁵ The right to a balanced and healthful ecology considers

the ‘rhythm and harmony of nature.’ ... Such rhythm and harmony indispensably include, *inter alia*, the judicious disposition, utilization, management, renewal[,] and conservation of the country’s forest, mineral, land, waters, fisheries, wildlife, off-shore areas[,] and other natural resources to the end that their exploration, development[,] and utilization be equitably accessible to the present as well as future generations.³⁶

In this case, the minors, who were found to have the *locus standi* to bring the suit, had the right to “ensure the protection of that right for the generations to come.”³⁷ Intergenerational responsibility is the concept that the present generation has a responsibility for the generation yet to be born, with regard to the right of balanced and healthful ecology.³⁸ Intergenerational responsibility, along with the Public Trust Doctrine, fortifies a legal protection over the natural resources that the State owns and holds in trust for the public. Thus, licensed corporations and other persons utilizing natural resources have a significant role in protecting these resources and ensuring their preservation.

31. *Id.*

32. *Id.* (citing EDITH BROWN WEISS, IN FAIRNESS TO FUTURE GENERATIONS: INTERNATIONAL LAW, COMMON PATRIMONY, AND INTERGENERATIONAL EQUITY 219 (1989)).

33. PHIL. CONST. art. II, § 16.

34. PHIL. CONST. art. II, § 16.

35. *Oposa v. Factoran, Jr.*, G.R. No. 101083, 224 SCRA 792 (1993).

36. *Id.* at 803 (citing WEBSTER’S NEW INTERNATIONAL DICTIONARY 1508 (3rd ed. 1986) & Instituting the “Administrative Code of 1987” [ADMIN. CODE], Executive Order No. 292, tit. XIV, bk. IV, § 1 (1987)).

37. *Oposa*, 224 SCRA, at 803.

38. *Id.*

In the 2008 case of *Metro Manila Development Authority v. Concerned Residents of Manila Bay*,³⁹ the Court recognized impliedly the Public Trust Doctrine. In this case, the Court stated —

Even assuming the absence of a categorical legal provision specifically prodding petitioners to clean up the bay, [the State] cannot escape [its] obligation to future generations of Filipinos to keep the waters of the Manila Bay [as] clean and clear as humanly as possible. Anything less would be a *betrayal of the trust reposed in them*.⁴⁰

In other jurisdictions,

the [P]ublic [T]rust [D]octrine has been used to prevent governments from conveying public resources to private enterprises (prohibition on conveyance) as well as to guarantee the public some access to natural resources after the resources have been conveyed to private interests for purposes such as fishing and navigation (prohibition with impression).⁴¹

In the recent case of *Maynilad v. Secretary of the Department of Environment and Natural Resources (DENR)*,⁴² MWSS, Maynilad, and Manila Water attempted to escape liability under the Clean Water Act. The Court emphasized that, “[t]he [D]octrine speaks of an imposed duty upon the State and its representative of continuing supervision over the taking and use of appropriated water.”⁴³

In the country today, private corporations do not take accountability for the destruction inflicted upon these resources. They continue to claim to be within the bounds of environmental regulations — “[r]egulated corporations raise the defense that their activities are legal, as evinced by permits granted to them for their undertakings.”⁴⁴ They claim that since they were granted the necessary permits and licenses, they are allowed to do what they will with the resources entrusted upon them. This is what the Public Trust Doctrine seeks to address. The Public Trust Doctrine recognizes that even though there are

39. *Metro Manila Development Authority v. Concerned Residents of Manila Bay*, G.R. No. 171947-48, 574 SCRA 661 (2008).

40. Joyce Melcar Tan, *Breathing Life into the Public Trust Doctrine: Holding the State Accountable for Protecting the Atmosphere*, 62 ATENEO L.J. 728, 739 (citing *Concerned Residents of Manila Bay*, 574 SCRA at 692) (emphasis supplied).

41. Kameri-Mbote, *supra* note 29.

42. *Maynilad Water Services, Inc.*, G.R. No. 202897.

43. *Id.*

44. Tan, *supra* note 40, at 740.

private-property interests vested in these corporations' activities, this does not empower them to override the interest of the public over natural resources.

Thus, the Regalian Doctrine, *Parens Patriae*, as well as the Public Trust Doctrine, must go hand in hand to protect the general and public interest of natural resources. As held in *Republic v. Medida*, “[u]nder the Regalian Doctrine, which is embodied in our Constitution, all lands of the public domain belong to the State, which is the source of any asserted right to any ownership of land.”⁴⁵ Meanwhile, *Parens Patriae* “mandates that persons suffering from serious disadvantage or handicap, which places them in a position of actual inequality in their relation or transaction with others, are entitled to the protection of the State.”⁴⁶

The application of these doctrines with respect to the water industry is, therefore, justified. Furthermore, it is argued that this Doctrine must be applied further to other public utility corporations as representatives and trustees of natural resources of the State. Clearly, applying the Public Trust Doctrine and introducing it to jurisprudence has its legal effects, one of which is setting the precedent that it should be applied also in relation to other natural resources that the State herein also holds in trust for Filipino citizens. A legal framework encapsulating and harmonizing both laws and doctrines is a necessity to address the problem of lack of accountability of corporations engaged in activities involving natural resources. Also, it will address the possible question of the application to natural resources and their corresponding environmental laws, apart from the Clean Water Act.

B. Statement of the Problem

When the Court formally introduced the Public Trust Doctrine in *Maynilad*, it created a precedent that would allow future corporations to be held liable under the same Doctrine. Private entities are given the power to exploit state resources via franchises.⁴⁷ These entities skid past accountability from the damage they cause on natural resources for irresponsibly exploiting the same. These private entities should be held at a higher standard for the very reason that the products they produce, exploited from natural resources, are not theirs to exploit *per se*.

45. Republic of the Philippines v. Marlon Medida, G.R. No. 195097, 678 SCRA 317, 325 (2012).

46. Cruz v. Secretary of the Departmental of Environment and Natural Resources, G.R. No. 135385, 347 SCRA 128, 193-94 (2000).

47. See PHIL. CONST. art. XII, §§ 1-2.

These entities are merely provided with licenses and contractual partnerships to be allowed to use these resources.⁴⁸ At the end of the day, however, the true owner of these resources are the people of the State, and anyone who is vested with a trust to hold these resources and utilize them for the country's benefit should do so responsibly and diligently.⁴⁹ By allowing irresponsible usage, there is a clear lack of action on the State's part in preserving natural resources.

Private corporations, individuals, and partnerships are given licenses, franchises, and contracts to be able to utilize, develop, and operate on natural resources.⁵⁰ Arrangements are either through franchises, mineral agreements, or license agreements.⁵¹ It is through these arrangements that private corporations are given the licenses and the authority from the State to handle public utility, develop mines, and utilize forests for the benefit of the public good and to be of use to all citizens of the Philippines.

Philippine environmental laws have been lauded as comprehensive and advanced.⁵² Some, however, still manage to skid past liabilities for merely meeting the bare minimum written in these laws. These entities are licensed and authorized to utilize natural resources and yet, many of them continue to over-exploit natural resources.⁵³ Those authorized are effectively representatives of the State and must thus be held at a higher standard.

Instead, these corporations are inclined to utilize these resources without thinking about the repercussions that may be inflicted on the environment. This fact liberates these corporations to continue mismanaging and being irresponsible in handling these natural resources which they use for profit.

48. *Maynilad Water Services, Inc.*, G.R. No. 202897.

49. *Id.*

50. See PHIL. CONST. art. XII, § 2.

51. See Patricia Bunye, In Brief: Mining Rights and Title, available at <https://www.lexology.com/library/detail.aspx?g=968ca777-38ba-468e-a1e7-29917e07b213> (last accessed July 31, 2023) [<https://perma.cc/3CWA-8JD5>].

52. See Ed Garcia, *PH Laws Ensure Protection of Ecosystem*, PHIL. DAILY INQ., Feb. 13, 2018, available at <https://opinion.inquirer.net/110981/ph-laws-ensure-protection-ecosystem> (last accessed July 31, 2023) [<https://perma.cc/2GVU-BESC>].

53. The Philippine Clearing House Mechanism, Trends and Threats, available at <http://www.philchm.ph/status-of-philippine-biodiversity-2/trends-and-threats> (last accessed July 31, 2023) [<https://perma.cc/3E2W-JYCS>].

Years of leniency and tolerance have allowed corporations to continually exploit these resources to destruction and grave pollution.

Furthermore, with the decision of the Court in *Maynilad*, the application of the Public Trust Doctrine to hold water concessionaires liable has set a precedent. With the legal basis in place, Philippine jurisdiction must now recognize the Doctrine in other facets of the law, including remedies for environmental cases.

C. Thesis Statement

In August 2019, in the monumental case of *Maynilad*, the Court decided to apply the Public Trust Doctrine, which provides that the State must hold natural resources in trust for the Filipino people as beneficial owners of the same. While this Doctrine had been recognized and referenced to in previous jurisprudence, it was only in *Maynilad* that the Court formally applied this legal principle to an environmental law. Following that, since the Doctrine can be applied to water as a natural resource, it can therefore be applied to other natural resources. The Public Trust Doctrine is an emerging concept that must be further analyzed and explored to understand its placement in the Philippine legal context. In this same case, the Court found water concessionaires liable under the Clean Water Act, supplemented by the Public Trust Doctrine. As such, private corporations, partnerships, and other entities entrusted with natural resources must be held at a higher standard, as they are extended trustees of the State.

D. Objectives of the Study

This Note aims to understand the Doctrine and its possible application to other natural resources, following the ruling in *Maynilad*.⁵⁴ This Note aims to find the feasibility and possible framework to implement a supplement to already existing environmental laws. This Note also aims to propose an addition to current remedies to supplement or to further bolster the State's mission to uphold its obligation to the people to their right to a balanced and healthful ecology. The Public Trust Doctrine, therefore, aims to deter further destruction of natural resources by supplying an accountability mechanism for private entities that hold natural resources in trust for the benefit of the public.

This Note is also an attempt to shed light on the feasibility of the applicability of the Public Trust Doctrine. In effect, this Note is an extension and expansion of what already has been decided by the Court when they

54. *Maynilad Water Services, Inc.*, G.R. No. 202897.

applied the same to water as a natural resource. The very objective of this study is to provide an avenue for which the State can regularize, as well as call for accountability of irresponsible usage of natural resources. This is in line with the protection of the State's constitutional obligations, as well as its obligations as trustee under the Public Trust Doctrine. In effect, this Note explores this emerging concept in Philippine law.

E. Research Methodology

To effectively pursue this Note, the Author used doctrinal research. Both empirical and theoretical data are utilized to fully grasp the feasibility and possible application of the Public Trust Doctrine. Further, the Author used comparative research in studying this emerging doctrine in Philippine law. This research method examined foreign and Philippine doctrines and examples in using the Public Trust Doctrine.

Moreover, since this Note requires an in-depth analysis of environmental law, the Author used library research. Sources such as books, law journals, law blogs, commentaries, environmental reports, scientific journals, news articles, as well as foreign and Philippine jurisprudence have likewise been utilized.

Aside from primary sources, this Note also made use of the Internet. Journal articles that are only available online, as well as other useful information that may contribute to this Note have also been utilized. The Author used laws to model a working framework to possibly house the Public Trust Doctrine in the future.

F. Significance of the Study

Global warming is happening, and the worsening of climate change is inevitable.⁵⁵ Now, as inhabitants of this world, the goal is to try and delay it. With the application of the Public Trust Doctrine, it holds private corporations liable for any mismanagement or reckless behavior with the natural resources they handle.⁵⁶ For a profit, several corporations tend to abuse and overuse these resources to the point that they are no longer as pristine as they should be.⁵⁷

55. See Rafe Pomerance, *The Dangers from Climate Warming: A Public Awakening*, 12 EPA J. 15, 16 (1986).

56. *Maynilad Water Services, Inc.*, G.R. No. 202897.

57. Richard J. Witsmann, *Redefining Success: Overcoming Greed for a More Sustainable World*, available at <https://incorporate.ee/founders->

In light of such circumstances, the Public Trust Doctrine is a legal principle that seeks to deter further environmental damage by establishing its theory. The State is a trustee of natural resources, and the public is the beneficial owner of the same.⁵⁸ Since it is close to impossible for the government to take care of these resources alone, it delegates this responsibility via public utility franchises to private corporations that manage and distribute water, energy, and other resources. It is imperative that this Note be made to further establish and elaborate this theory and its possible applicability in Philippine law, since this Doctrine had only been formally introduced and applied in August 2019.⁵⁹

G. Scope and Limitation

The scope of this Note primarily focuses on the Philippine jurisdiction. This Note explores the depths of the constitutionality of the Public Trust Doctrine, the effectiveness of Philippine environmental laws, the weight of these guidelines, as well as several commentaries regarding these issues. This Note mainly revolves around Philippines jurisprudence, foreign jurisprudence, and Philippine environmental laws.

This Note involves a comparative study of the Public Trust Doctrine in other jurisdictions vis-à-vis the Public Trust Doctrine in the Philippines. This includes the comparison of the applicability of the Doctrine in several natural resources in this jurisdiction and in others, which shall be limited only to water, forestry, minerals, fauna, and flora.

These four resources are the top resources exploited by companies all over the country. Further, these four resources are the resources that have most to benefit if the Public Trust Doctrine were to be fully applied on them. These resources are also resources that the Philippines has been heavily reliant on, whether as products of necessity or products that contribute to the economy.

H. Organization of the Thesis

This Note is divided into five chapters. Following this Chapter on the introduction of the topic, the second Chapter is about the Public Trust Doctrine, which explores the history and the application of this Doctrine in Philippine and foreign jurisdictions.

perspective/redefining-success-overcoming-corporate-greed-for-a-more-sustainable-world (last accessed July 31, 2023) [<https://perma.cc/U8K8-S4XF>].

58. *Maynilad Water Services, Inc.*, G.R. No. 202897.

59. *Id.*

Chapter Three explores the different laws on specific natural resources, namely, water, minerals, and forestry. The Author discusses the distinctive and significant provisions of each respective law on these resources. In these Chapters, the authority by which persons and entities are granted by the government is also explained.

The fourth Chapter contains the Author's analysis of the applicability of the Public Trust Doctrine given all the information laid out in the previous chapters. It is here where the Author weaves the argument of the Doctrine's applicability, its pitfalls, as well as its feasibility. It is also in this Chapter that the Author explains and proposes a framework in which the Public Trust Doctrine may be housed.

The fifth Chapter concludes the Note as it dovetails into the recommendation. This Chapter recommends the framework to establish the Public Trust Doctrine — the Writ of *Kinaiyahan* — as an additional remedy to the already existing remedies on environmental cases. The said writ is modeled after the Rules of Procedure on Environmental Cases.⁶⁰

II. THE PUBLIC TRUST DOCTRINE

A. History of Public Trust

As early as the Roman era, to the 1800s, to the 1900s, and to the present, the concept of Public Trust has already been recognized among several jurisdictions has formed part of environmental law.⁶¹ The Public Trust Doctrine derives its origin from Justinian Code from sixth century Rome.⁶² In the Roman context, this Doctrine was dubbed as the doctrine of “*res communes*,” which enunciates that some things are “common to mankind [—] the air, running water, the sea, and consequently the shores of the sea [and] the right of fishing in a port, or in rivers is common to all men.”⁶³

The Romans also pegged the concept of “common property” and extended the protection to rivers, sea, the seashore, and the air by the government.⁶⁴ Later on, the concept of “common ownership,” in the legal or

60. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, A.M. No. 09-6-8-SC (Apr. 29, 2010).

61. See generally *Kameri-Mbote*, *supra* note 29, at 197.

62. *Id.*

63. *Id.* (citing Joseph L. Sax, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 MICH. L. REV. 471, 475 (1970)).

64. *Kameri-Mbote*, *supra* note 29, at 198.

moral sense had emerged “as more of a reservation of ‘a series of a particular rights to the public’ to engage in certain activities, thus limiting ‘the prerogatives of private ownership.’”⁶⁵ To further elaborate, “[c]ommon property resources are those resources not controlled by a single entity and access to which is limited to an identifiable community of individuals or states.”⁶⁶ This suggests that there is no one user or person who has the right to exploit such property.

In England, this concept is also accepted and appears in their common law. In 1865, in the case of *Gann v. Free Fishers of Whitstable*,⁶⁷ the English House of Lords had defined the concept of public trust and held that the “bed of all navigable rivers where the tide flows, and all estuaries or arms of the sea, is by law vested in the [C]rown.”⁶⁸ But, this ownership vested upon “the [C]rown” was for its subjects’ benefit and not to be used in any other manner that would disrupt with the subjects’ right to the navigation of the waters.⁶⁹

B. Concept of Public Trust

This concept of “Public Trust” then imposes a “high fiduciary duty of care and responsibility upon the sovereign[.]”⁷⁰ and this entails hallmarks of this fiduciary duty:

- (1) The fiduciary has to cope for the exercise of discretion;
- (2) The fiduciary can unilaterally exercise that power and discretion so as to affect the beneficiary’s legal or practical interests; and
- (3) The beneficiary is peculiarly vulnerable to or at the mercy of the fiduciary holding the discretion or power.⁷¹

Furthermore, in line with establishing the fiduciary nature of the Public Trust Doctrine, Professor Joseph L. Sax penned three points of criteria to determine how the Doctrine can be properly used. First, “[i]t must contain

65. *Id.* at 197 (citing Sax, *supra* note 63, at 478).

66. Kameri-Mbote, *supra* note 29, at 198.

67. *Gann v. Free Fishers of Whitstable*, 11 E.R. 1305 (HL 1865) (U.K.).

68. Kameri-Mbote, *supra* note 29, at 198 (citing *Gann*, 11 E.R. at 1312).

69. *Id.*

70. Kameri-Mbote, *supra* note 29, at 198 (citing Godber W. Tumushabe, et al., *Sustainably Utilizing Our Natural Heritage: Legal Implications of the Proposed Degazettement of Butamira Forest Reserve* (Kampala, ACODE, Policy Research Series, No. 4, 2001)).

71. Kameri-Mbote, *supra* note 29, at 198.

some concept of a legal right in the general public.” Second, “[i]t must be enforceable against the government[,]” and third, “[i]t must be capable of an interpretation consistent with contemporary concerns for environmental quality.”⁷² In addition, Mary Christina Wood and Charles Woodward found that the Public Trust Doctrine charges the State and vests upon its trustees a twin-duty: the first is the “duty to protect the *res* against substantial impairment[,]” and the second is the “duty to repair any damage to the *res*.”⁷³

The *res* in the Public Trust Doctrine are natural resources of the State, such as water, land, minerals, forests, flora, and fauna. This refers to the national patrimony or the natural resources the country is blessed with. Mary Christina Wood and Dan Galpern further stated that “these duties are active, not merely passive.”⁷⁴ This means that it is on the part of the State to *actively* abide by these duties and not merely use it when necessary or when it serves its purpose. The duties must also be fulfilled actively and diligently by those agencies, corporations, or individuals who are deemed to be trustees of natural resources.

These duties should not only be resorted to or recognized when there is already a blatant and obvious violation of environmental laws; this will run counter to the Public Trust Doctrine’s essence. To fulfill the twin-duty of the Public Trust Doctrine, it cannot be said that it is sufficient that laws are passed; the trustees “must *actually work* to protect and maintain the trust resources.”⁷⁵ Thus, it is incumbent upon the trustees of the *res* to responsibly and diligently exercise care when they exploit resources. The purpose of the Public Trust Doctrine should not be limited only to management and conservation of resources but must also extend to its sustainability for future generations.⁷⁶

72. Tan, *supra* note 40, at 733 (citing Sax, *supra* note 63, at 474).

73. Tan, *supra* note 40, at 733 (citing Mary Christina Wood & Charles Woodward IV, *Atmospheric Trust Litigation and the Constitutional Right to a Healthy Climate System: Judicial Recognition at Last*, 6 WASH. J. ENVTL. L. & POL’Y. 633, 666 (2016)).

74. Tan, *supra* note 40, at 733 (citing Mary Christina Wood & Dan Galpern, *Atmosphere Recovery Litigation: Making the Fossil Fuel Industry Pay to Restore a Viable Climate System*, 45 ENVTL. L. 259, 282-83 (2015)).

75. Tan, *supra* note 40, at 733 (emphasis supplied).

76. Michael C. Blumm & Rachel D Guthrie, *Internationalizing the Public Trust Doctrine: Natural Law and Constitutional and Statutory Approaches to Fulfilling the Saxion Vision*, 45 U.C. DAVIS L. REV. 741, 775 (2012).

As ruled in *Oposa v. Factoran, Jr.*,⁷⁷

[n]ature means the created world in its entirety. Such rhythm and harmony indispensably include, *inter alia*, the judicious disposition, utilization, management, renewal[,] and conservation of the country's forest, mineral, land waters, fisheries, wildlife, off-shore areas[,] and other natural resources to the end that their exploitation, development[,] and utilization be equitably accessible to the present as well as future generations.⁷⁸

C. Public Trust in Other Jurisdictions

American jurisprudence shows the meaning of the Public Trust Doctrine in earlier cases and has since given examples on how the doctrine can be applied in cases involving natural resources. In the case of *State v. Cleveland & P.R. Co.*,⁷⁹ the Supreme Court of Ohio stated that “the [S]tate is merely a custodian of the legal title, charged with the specific duty [of] protecting the trust estate and regulating its use An individual may abandon his private property, but a public trustee cannot abandon public property.”⁸⁰ This entails that, while private persons may validly abandon their own properties, it is not just for public trustees to abandon public property. The latter are owned in common by the State's citizenry and are thus not at the same level as private property.

The Court in this case further clarified and concluded that “although in limited instances the State can allow private persons to use property, that grant of license remains at all times imbued with public interest and that the State retains the responsibility to ensure that the use of that property does not diminish the *res*.”⁸¹

In *Illinois Central Railroad v. Illinois*,⁸² wherein state law had transferred the ownership of 1,000 acres of waterfront to the railroad in Chicago, four years later, a new law had sought the revocation of such transfer. The U.S. Supreme Court had decided, however, to maintain the revocation holding that “[i]t is a title held in trust for the people of the [S]tate that they may enjoy the

77. *Oposa*, 224 SCRA at 792.

78. *Id.* at 803 (citing Webster's New International Dictionary 1508 (3d ed. 1986) & Instituting the “Administrative Code of 1987” [ADMIN. CODE], Executive Order No. 292, bk. IV, tit. XIV, ch. 1, § 1 (1987)).

79. *State v. Cleveland & P.R. Co.*, No. 14825, 1916 Ohio LEXIS 164 (Ohio 1916) (U.S.).

80. *Id.* at 26.

81. Tan, *supra* note 40, at 735.

82. *Illinois Central R. Co. v. Illinois*, 146 U.S. 387 (1892).

navigation of the waters, carry on commerce over them, and have the liberty of fishing therein freed from the obstruction or interference of private parties.”⁸³

In Kenyan jurisprudence, *Waweru v. Republic*,⁸⁴ the High Court of Kenya had decided that “[i]n the case of land resources, forests, wetlands[,] and waterways [... ,] the Government and its agencies are under a public trust to manage them in a way that maintains a proper balance between the economic benefits of development with the needs of a clean environment.”⁸⁵

In Pakistan, the Supreme Court found a public trust duty to maintain and preserve the *res*. In the case of *General Secretary, West Pakistan Salt Miners Labour Union (CBA) Khewral, Jhelum v. The Director, Industries and Mineral Development, Punjab, Lahore*,⁸⁶ it ensured that access to its water by its citizens was not impaired by pollution and nullified the executive licenses that authorized companies to utilize the water and later on harmed it.⁸⁷ This case involved the pollution of a spring which was the only major source of water in the area. Citizens had claimed that due to the mining activities surrounding the spring, it had polluted the spring water and caused poisoning of the same. The Supreme Court of Pakistan then ordered the mining companies that were also operating near the area to “take necessary measures to prevent pollution of the stream, reservoir, and catchment area[.]”⁸⁸ It also enjoined the granting of new licenses or the renewal of old ones.⁸⁹

D. Public Trust in the Philippines

Philippine jurisdiction had only recently accounted for the Public Trust Doctrine. The earliest this Doctrine had been manifested was in the Water

83. *Kameri-Mbote*, *supra* note 29, at 200 (citing *Illinois Cent. R. Co.*, 146 U.S. at 452).

84. *Waweru v. Republic*, Misc. Civil Application No. 118 of 2004, 2006 EKLR (2006) (Kenya).

85. *Id.* at *31.

86. *General Secretary, West Pakistan Salt Miners Labour Union (CBA) Khewral, Jhelum v. The Director, Industries and Mineral Development, Punjab, Lahore*, 1994 SCMR 2061 (1994) (Pak.).

87. *Tan*, *supra* note 40, at 738 (citing *Khewral Jhelum*, 1994 SCMR at ¶ 6).

88. *Id.*

89. *Id.*

Code of 1976,⁹⁰ wherein the law declared that all waters belong to the State.⁹¹ In Presidential Decree No. 1151 or the National Environmental Policy Act,⁹² it declared that the State would “recognize, discharge[,] and fulfill the responsibilities of each generation as trustee and guardian of the environment for succeeding generations[.]”⁹³

While formal application of the Public Trust Doctrine had only been in August 2019 in the monumental decision of *Maynilad*, the Court had previously recognized this Doctrine in *Metro Manila Development Authority v. Concerned Residents of Manila Bay*⁹⁴ and *Oposa v. Factoran, Jr.*⁹⁵

In *Oposa*,⁹⁶ the Court recognized the existence of the Doctrine. This case has been a landmark case regarding intergenerational responsibility. This is a case wherein minors, representing future generations, challenged timber licenses granted by the DENR.⁹⁷ The Court had reversed the ruling of the lower court, which ruled on the minors’ *locus standi*, saying that they had valid standing to pursue this case.⁹⁸ The Court further held that issues presented were not merely political issues, and that the license agreements were not constitutionally-protected contracts.⁹⁹ The Court said in this case, “every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology.”¹⁰⁰ The Court explained the right to a balanced and healthful ecology by saying that “it concerns nothing less than self-preservation and self-perpetuation[.]”

90. A Decree Instituting a Water Code, Thereby Revising and Consolidating Laws Governing Ownership, Appropriation, Utilization, Exploitation, Development, Conservation and Protection of Water Resources [WATER CODE], Presidential Decree No. 1067, § 3 (1976).

91. Blumm & Guthrie, *supra* note 76, at 770 (citing WATER CODE, art. 3 (a)).

92. Philippine Environmental Policy, Presidential Decree No. 1151 (1977).

93. *Id.* § 2 (a).

94. *Concerned Residents of Manila Bay*, 574 SCRA.

95. *Oposa*, 224 SCRA 792.

96. *Id.*

97. *Id.* at 796–97.

98. *Id.* at 802.

99. *Oposa*, 224 SCRA at 811 (citing *Tan v. Director of Forestry*, G.R. No. L-24548, 125 SCRA 302, 325 (1983)).

100. *Oposa*, 224 SCRA at 803.

which “need not be written in the Constitution for they are assumed to exist from the inception of humankind.”¹⁰¹

Despite this pursuance and noble cause of the minors, this had little effect on timber harvesting in the country.¹⁰² *Concerned Residents of Manila Bay* had impliedly recognized the Public Trust Doctrine.¹⁰³ The Court in this case approved the filing of Continuing Mandamus and explained its scope —

Even assuming the absence of a categorical legal provision specifically prodding petitioners to clean up the [B]ay, [the State] cannot escape [its] obligation to future generations of Filipinos to keep the waters of the Manila Bay [as] clean and clear as humanly as possible. Anything less would be a betrayal of the trust reposed in them.¹⁰⁴

In the monumental case of *Maynilad*,¹⁰⁵ the Public Trust Doctrine was only applied to supplement the gaps that the Clean Water Act failed to fill. Noting the water crisis that Metro Manila, and by extension the Philippines had been experiencing, the Court had decided to apply the Public Trust Doctrine. To decide on this case, the Court “connected the more established Regalian and *parens patriae* doctrines to the concept of public trust, using the latter to develop a more systematic and integrated framework of utilizing natural resources, one which is more consistent with sustainable development and environmental protection.”¹⁰⁶

Thus, the Public Trust Doctrine has entrenched itself well in the Philippine legal system, albeit not categorically. The application of the doctrine in Filipino Public Trust Doctrine jurisprudence was hinged on Section 16, Article II of the 1987 Constitution which enunciates the people’s right to a balanced and healthful ecology.¹⁰⁷ The Court had pronounced that the constitutional right “merely reflects the [P]ublic [T]rust [D]octrine. The

101. *Id.* at 805.

102. Blumm & Guthrie, *supra* note 76, at 772.

103. *Concerned Residents of Manila Bay*, 574 SCRA at 692.

104. Tan, *supra* note 40, at 739 (citing Metro Manila Development Authority v. Concerned Residents of Manila Bay, 574 SCRA at 692).

105. *Maynilad Water Services, Inc.*, G.R. No. 202897.

106. Antonio La Viña, *Water as a Public Trust*, MANILA STANDARD, Oct. 15, 2019, available at <https://manilastandard.net/opinion/columns/eagle-eyes-by-tony-la-vina/307441/water-as-a-public-trust.html> (last accessed July 31, 2023) [<https://perma.cc/HQU6-MZ35>].

107. PHIL. CONST. art II, § 16.

doctrine in turn is part of natural law rights to self-preservation and self-perpetuation that have existed from time immemorial.”¹⁰⁸

The harmonization of the *Parens Patriae* and the Regalian Doctrine had resulted because of the application of the Public Trust Doctrine. The usage of these three doctrines in Philippine environmental laws and policies are the legal system’s contribution in lessening environmental destruction and further destruction or over-exploitation of natural resources.

III. NATURAL RESOURCES AND PUBLIC TRUST

Water, minerals, forestry, flora and fauna, and biodiversity form part of the country’s national patrimony.¹⁰⁹ These natural resources are sources of necessity, as well as products contributive to the country’s economy.¹¹⁰ These resources are not only vital to the prosperity of the environment, but they are beneficial towards the country’s economy.¹¹¹

These natural resources can be considered as “public goods.”¹¹² The latter can be defined as “non-trivial and to which cannot be restricted.”¹¹³ This means that even if one consumer uses the resource, it does not diminish its use for other people.¹¹⁴ Simply put, even if one uses the resource such as water, he is not robbing another of his ability to drink or use that water.

These resources are then regulated by the government to prevent tarnish, depletion, or overall deterioration.¹¹⁵ If these resources are left to the whims and caprices of the public, there will be chaos. Thus, regulation from the government and careful implementation of the projects done with regard to these resources must be supervised diligently. The government was deemed

108. Blumm & Guthrie, *supra* note 76, at 774.

109. PHIL. CONST. art. XII, § 2.

110. See e.g., WATER CODE, art. 2 (a)-(c).

111. See *id.*

112. James P. Power, *Reinvigorating Natural Resource Damage Actions Through the Public Trust Doctrine*, 4 N.Y.U. ENVTL. L.J. 418, 421 (1995).

113. *Id.*

114. Power, *supra* note 112 at 421 (citing HARVEY S. ROSEN, PUBLIC FINANCE 99 (1985)).

115. See e.g., WATER CODE.

the “best provider” of these services “because it achieves society’s preference by paying the sum of what each individual is willing to pay.”¹¹⁶

In this Chapter, the Author discussed four natural resources, namely: water, minerals, forestry, and flora and fauna. Although only these resources are considered in this Note, it does not mean that the value of any other natural resources is diminished. These four natural resources are simply those most significant in the country today.

A. Water

I. Water as a Resource

Water is one of humanity’s most important resources, and as such, must be held with utmost regard and responsibility. Aside from utilizing water for day-to-day activities such as cleaning, cooking, and bathing, water is a vital source of life that cannot be utilized without it being managed at the highest of standards.¹¹⁷ As written by the Court in *Maynilad*,¹¹⁸ “[s]anitation is its corollary constant, as a poor state of sewerage systems is one of the pillars of people’s miseries. [Everyone has] the collective responsibility to preserve water resources and improve sanitation facilities for future generations.”¹¹⁹

The water resource and water-dependent activities is the root of the Public Trust Doctrine.¹²⁰ The applicability of this Doctrine began with the importance of water resources. In the *Mono Lake* case,¹²¹ which is a landmark ruling which ultimately held that the Public Trust Doctrine is applied to the Los Angeles Mono Basin diversions and that the State must exercise continuous supervision to ensure that trust values are continuously considered.¹²² The California Supreme Court pronounced that the Public

116. Power, *supra* note 112 at 421 (citing HARVEY S. ROSEN, PUBLIC FINANCE 99 (1985)).

117. See Santinder Ahuja, *Sustaining Water, the World’s Most Crucial Resource*, in CHEMISTRY AND WATER: THE SCIENCE BEHIND SUSTAINING THE WORLD’S MOST CRUCIAL RESOURCE 21-22 (Santinder Ahuja ed. 2017).

118. *Maynilad Water Services, Inc.*, G.R. No. 202897.

119. *Id.* (citing KLAS & HUANG, *supra* note 25, at 2).

120. KLAS & HUANG, *supra* note 25, at 6.

121. *National Audubon Society*, 33 Cal. 3d.

122. *Id.* at 425-26.

Trust Doctrine is applicable upon private water rights.¹²³ This means that “individual water rights that affect public trust resources are rights of use that a state can revoke if the private right harms those resources.”¹²⁴ Although, its applicability is not limited only to water, it is important to discuss the latter’s significance on the Doctrine’s enforceability and applicability.

Under the same case, the Court affirmed that the modern Public Trust Doctrine has its origins in common law water doctrines.¹²⁵ It further affirmed that under the Public Trust Doctrine, the State’s duty as trustee of the *res* is “continuous.”¹²⁶ This means that the trustee’s duty and obligation to protect the resources they are holding in trust never ceases.¹²⁷ According to the Court in *Maynilad*,¹²⁸ “[t]he State has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible.”¹²⁹

Thus, following this, it is incumbent upon the State to continually regulate and furthermore ensure that trust resources are handled well and responsibly. When trust resources are then exploited under the franchise or license granted by the government, such licensee or franchise-holder effectively becomes an extended trustee of the State. This means that such an extended trustee is given the same responsibility as the state-trustee in responsibly caring for the resources owned, beneficially by the citizenship of the country.

The Public Trust Doctrine has become a response on the move to ensure that critical resources such as water are sustainably and responsibly managed.¹³⁰ In American water laws, the Public Trust Doctrine, as used in its jurisprudence, “applies to every water right that impacts a trust resource and may define the very nature of a water right.”¹³¹ Regardless of the nuances in state water laws across the U.S., the Doctrine “underlies the exercise of every

123. KCLASS & HUANG, *supra* note 25, at 5 (citing *National Audubon Society*, 33 Cal. 3d. at 452).

124. *National Audubon Society*, 33 Cal. 3d at 452.

125. *Id.* at 434.

126. *Id.* at 423.

127. *Id.*

128. *Maynilad Water Services, Inc.*, G.R. No. 202897.

129. *Id.* (citing KCLASS & HUANG, *supra* note 25, at 5 (citing *National Audubon Society*, 33 Cal. 3d. at 446)).

130. KCLASS & HUANG, *supra* note 25, at 6.

131. *Id.* at 9.

water right that withdraws or affects a public trust resource[.]”¹³² Thus, through the Doctrine, private water rights are *not* considered absolute and must instead be subject to public considerations.¹³³

In the Philippines, the country’s water resources are governed by the Clean Water Act.¹³⁴ The primary government agency responsible for enforcing this act is the DENR.¹³⁵ Under the law, specifically in its declaration of policy, it emphasizes the importance of conserving and protecting this natural resource.¹³⁶ This is where the Court hinges its basis on applying the Public Trust Doctrine, coupled with the right to a healthful ecology and other environmental law principles.

Under the Clean Water Act, it declared policies such as —

- (i) To formulate and enforce a system of accountability for short and long-term adverse environmental impact of a project, program[,] or activity; and
- (j) To encourage civil society and other sectors, particularly labor, the academe[,] and business undertaking environment-related activities in their efforts to organize, educate[,] and motivate the people in addressing pertinent environmental issues and problems at the local and national levels.¹³⁷

Furthermore, the same law had also defined the meaning of “beneficial use,” which is “[t]he use of the environment or any element or segment thereof conducive to domestic, municipal, irrigation, power generation, fisheries, livestock raising, industrial, recreational, and other purposes.”¹³⁸ Thus, the Clean Water Act requires

the agency vested to provide water supply and sewerage facilities and/or concessionaires in Metro Manila and other highly urbanized cities [...] to connect the existing sewage line found in all subdivisions, condominiums, commercial centers, hotels, sports and recreational facilities, hospitals [...] and other similar establishments including households to [an] available sewerage system[.]¹³⁹

132. *Id.*

133. *Id.*

134. Philippine Clean Water Act of 2004, § 32.

135. *Id.* § 2.

136. *Id.* § 2 (i)-(j).

137. *Id.* § 4 (c).

138. *Id.* § 8.

139. *Id.* § 15.

This is required within five years from the enactment of the Clean Water Act which was in 2004.

Further, the Clean Water Act requires programs and project proponents “to put up environmental guarantee fund (EGF) as part of the environmental management plan attached to the environmental compliance certificate pursuant to Presidential Decree No. 1586 and its implementing rules and regulations.”¹⁴⁰ This environmental guarantee fund “may be in the form of a trust fund, environmental insurance, surety bonds, letters of credit, self-insurance[,] and any other instruments which may be identified by the Department.”¹⁴¹

Seeing as the Clean Water Act is one of the more progressive environmental laws established in the Philippines, it is still baffling how many concessionaires or private corporations continue to elude its provisions and irresponsibly handle natural resources such as water. These concessionaires had continually feigned liability for their obligations and were then held accountable for their actions or inactions as pointed out by the Court in *Maynilad*.

2. Authority to Utilize Water

Private-Public Partnerships (PPP) are contractual arrangements between the government and private corporations or entities in order to develop, explore, and use the country’s resources so as to provide a public good to the citizens of the country.¹⁴² PPPs can be done through concessions or joint ventures, depending on the nature of the project underway.¹⁴³

There are two forms of PPPs: *availability* and *concession-based* PPPs.¹⁴⁴ Availability PPP is a PPP “wherein the public authority contracts with a private sector entity to provide a public good, service[,] or product at a constant capacity to implementing agency (IA) for a given fee (capacity fee) and a separate charge for usage of the public good, product[,] or service (usage

140. Philippine Clean Water Act of 2004, § 15.

141. *Id.*

142. See generally Public-Private Partnership Center, What is PPP?, available at <https://ppp.gov.ph/ppp-program/what-is-ppp> (last accessed July 31, 2023) [<https://perma.cc/R3AC-K3QK>] & ASIAN DEVELOPMENT BANK, PUBLIC-PRIVATE PARTNERSHIP HANDBOOK 1-2 (2008).

143. See ASIAN DEVELOPMENT BANK, *supra* note 142, at 27.

144. Public-Private Partnership Center, *supra* note 142. On the website, click on “General Forms of PPP.”

fee).”¹⁴⁵ An example of an Availability PPP is the PPP for School Infrastructure Project (PSIP) Phase 1 wherein “the private sector is responsible for making available classrooms.”¹⁴⁶ This includes the design, financing, construction, and maintenance of such classrooms. These are then contracted with a fee with the Department of Education.

Concession PPP is a “form of PPP wherein the government grants the private sector the right to build, operate[,] and charge public users of the public good, infrastructure[,] or service, a fee or tariff which is regulated by public regulators and the concession contract.”¹⁴⁷ An example of a concession PPP is the authorization from Department of Public Works and Highways and the DENR to MWSS, Maynilad, and Manila Water to distribute safe water all over Metro Manila, subject to the provisions of the Clean Water Act of 2004.¹⁴⁸ The MWSS is in charge of regulation of concessionaires. In concessions, the government grants certain rights to a private entity to utilize a specific facility or resource for a fixed period of time.¹⁴⁹ For example, Maynilad has a concession contract with the State with the duration of 25 years. In concessions, “payments can take place both ways: [C]oncessionaire pays to the government for the concession rights and the government may also pay the concessionaire, which it provides under the agreement to meet certain specific conditions.”¹⁵⁰

145. *Id.*

146. *Id.*

147. *Id.*

148. Revised Concession Agreement, Metropolitan Waterworks and Sewerage System–Manila Water Services, art. 5.1, Mar. 25, 2021, *available at* <https://ro.mwss.gov.ph/wp-content/uploads/2022/01/REVISED-CA-FOR-MANILA-WATER-30-MARCH-2021.pdf> (last accessed July 31, 2023) [<https://perma.cc/B8AD-K93S>] & Revised Concession Agreement, Metropolitan Waterworks and Sewerage System–Maynilad Water Services, art. 5.1, May 10, 2023, *available at* <https://ro.mwss.gov.ph/wp-content/uploads/2022/01/REVISED-CA-FOR-MAYNILAD-18-MAY-2021.pdf> (last accessed July 31, 2023) [<https://perma.cc/3X56-R6YB>].

149. *Id.*

150. U.N. Economic and Social Commission for Asia and the Pacific, A Primer to Public-Private Partnerships in Infrastructure Development, *available at* https://www.unescap.org/ttdw/ppp/ppp_primer/225_concessions.html (last accessed July 31, 2023) [<https://perma.cc/SV7A-AT5V>].

B. Minerals

Minerals are primarily regulated under the 1987 Constitution, the Mining Act of 1995,¹⁵¹ Implementing Rules and Regulations of the Mining Act of 1995,¹⁵² and Executive Order No. 79.¹⁵³ Under the Constitution, the State owns all lands of the public domain, waters, minerals, coal, petroleum, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources.¹⁵⁴ These resources cannot be alienated, except for agricultural lands.¹⁵⁵

Minerals refer to all inorganic substances which are natural.¹⁵⁶ These substances can be in the form of solid, gas, liquid, “or any intermediate state excluding energy materials such as coal, petroleum, natural gas, radioactive materials, and geothermal energy.”¹⁵⁷ Minerals are natural substances which normally form inorganic elements or compounds.¹⁵⁸ These usually have characteristics which have specific internal structures and have significant physical traits; they can come in crystal or metal form.

According to the Philippine Statistics Authority, “[a]ny concentration of these minerals, with a potential economic value that can be extracted at a

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

152. Department of Environment and Natural Resources, Revised Rules and Regulations Implementing the Philippine Mining Act of 1995, Republic Act No. 7942 (2010).

153. Office of the President, Institutionalizing and Implementing Reforms in the Philippine Mining Sector Providing Policies and Guidelines to Ensure Environmental Protection and Responsible Mining in the Utilization of Mineral Resources, Executive Order No. 79, Series of 2012 [E.O. No. 79, s. 2012] (July 6, 2012).

154. PHIL. CONST. art. XII, § 2.

155. PHIL. CONST. art. XII, § 2.

156. Philippine Mining Act of 1995, ch. I, § 3 (aa). *See also* MICHAEL O’DONOGHUE, ROCKS AND MINERALS 23 (1st ed. 1990).

157. Philippine Mining Act of 1995, ch. I, § 3 (aa).

158. O’DONOGHUE, *supra* note 156. *See also* Philippine Statistics Authority, Mineral Accounts of the Philippines 2012–2018 (Report No. 1, Series of 2020), at 1 & 41 available at <https://psa.gov.ph/sites/default/files/Mineral%20Accounts%20of%20the%20Philippines.pdf> (last accessed July 31, 2023) [<https://perma.cc/93F4-TFXS>].

profit, is considered a mineral resource.”¹⁵⁹ The Philippines, despite only being 298,170 square kilometers in terms of land area,¹⁶⁰ has one of the richest mineral reserves in the world.¹⁶¹ All minerals found in national land cannot be alienated. Section 2, Article XII of the 1987 Constitution further states —

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.¹⁶²

The Mining Act of 1995 regulates the utilization of minerals and other resources found during mineral explorations. In its declaration of policy, the Mining Act proclaims that

[a]ll mineral resources in public and private lands within the territory and exclusive economic zone of the Republic of the Philippines are owned by the State. It shall be the responsibility of the State to promote their rational exploration, development, utilization[,] and conservation through the combined efforts of government and the private sector in order to enhance national growth in a way that effectively safeguards the environment and protect the rights of affected communities.¹⁶³

The above statement then provides clear obligations on both the State and its representatives (the private sector) to uphold the preservation of such minerals through rational utilization of the same. Mining companies are likewise vested with the responsibility to mine with care and ensure that these ventures will not disrupt the environment.

159. Philippine Statistics Authority, *supra* note 158.

160. The World Bank, Land Area (sq. km) - Philippines, *available at* https://data.worldbank.org/indicator/AG.LND.TOTL.K2?locations=PH&year_high_desc=false (last accessed July 31, 2023) [<https://perma.cc/57XP-TDMY>]. In the graph shown on the webpage, point the cursor on the year 2020 to reveal the land area of the Philippines in square kilometers. Alternatively, scroll down to “Selected Countries and Economies” to see the land area under “Most Recent Value.”

161. Philippine Statistics Authority, *supra* note 158, at 1.

162. PHIL. CONST. art. XII, § 2.

163. Philippine Mining Act of 1995, § 2.

1. The Authority to Mine

When it comes to companies involved with minerals or forestry, they derive their authority from the DENR. Mining companies attain their authority through a mineral agreement which can take the form of three kinds: mineral production sharing agreement, co-production agreement, or joint-venture agreement.¹⁶⁴

This agreement entails that the government shall grant a specific contractor the *exclusive* right to conduct mining operations, as well as to extract all the minerals found in the area concerned.¹⁶⁵ A mineral production sharing agreement is one which the government will grant a contractor the exclusive right of conducting mining operations in the area specified.¹⁶⁶ In this agreement, however, the contractor shall be responsible for all the necessities for the conduct of the mining operation, which includes financing, management, technology, and personnel.¹⁶⁷

In the second kind of agreement, or the co-production agreement, the government shall also play a role in the mining operations, wherein it shall provide input, and not just the mineral resources.¹⁶⁸ Lastly, a joint-venture agreement wherein a joint-venture company is actually organized by both the contractor and the government to which both parties shall earn from the mining operations on equity.¹⁶⁹

Whatever agreement the contractor may choose, he may later on be allowed to convert the agreement into any other mode of agreement covering the remaining period of the original contract entered into. This, however, is still subject to the approval of the SENR.¹⁷⁰

2. The Mining Industry

The mining industry has a very important and significant role in the economic development of the country.¹⁷¹ It furthermore provides employment opportunities for many Filipinos. Mining companies are then encouraged to

164. *Id.* § 26 (a)-(c).

165. *Id.*

166. *Id.* § 26 (a).

167. *Id.*

168. *Id.* § 26 (b).

169. Philippine Mining Act of 1995, § 26 (c).

170. *Id.* § 26, para. 2.

171. Philippine Statistics Authority, *supra* note 158, at 1.

invest in utilities, facilities, and road infrastructure in relation to its mining activities near a mine site.¹⁷² Through mineral exports, mining contributes to the Philippines' foreign exchange earnings, and it also provides additional revenue in favor of the government through taxes and other fees related to mining activities.¹⁷³

The Philippines exports copper, gold, and nickel.¹⁷⁴ Cobalt, for example, is a mineral that the Philippines is rich with. This particular mineral is used in battery technology.¹⁷⁵ The Philippines has reserves of the mineral of up to 280,000 tons, which makes the country the fourth largest cobalt reserve in the world.¹⁷⁶

In the country, however, only a few regions are considered as mining regions. These regions are Benguet, Masbate, Nueva Vizcaya, Cebu, Compostela Valley, Davao, Palawan, and Surigao.¹⁷⁷ All these regions have high gold and metallic mining activities.¹⁷⁸ Four of these regions are in Luzon, one in Visayas, and three in Mindanao.

In the plenary meeting of the Mining Bill in 1993, during the sponsorship speech of Mr. Yap, he surmised that then House Bill No. 10816, had an important role in encouraging foreign investors to venture into the mining industry of the Philippines "by stabilizing the country's mining policies, its social and environmental impact will long be felt by future generations."¹⁷⁹

He further said,

What are not conspicuous but are equally important, particularly in House Bill 10816, are the social and environmental benefits our people get in the long term.

172. *Id.*

173. *Id.*

174. Patricia Bunye, Mining in the Philippines, available at <https://www.lexology.com/library/detail.aspx?g=7537d507-42c3-4274-bd2a-d66507c629d6> (last accessed July 31, 2023) [<https://perma.cc/2FS6-N939>].

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

179. PLENARY MEETING, at 284, 9th Cong., 2d Reg. Sess. (Sept. 29, 1993) (Plenary meeting records found in the legislative archives on the Mining Act of 1995). This was a meeting for the consideration of H.B. No. 10816, during the Period of Sponsorship and Debate (1993).

This law, once promulgated, will discourage the traditional migration of uplanders to the lowland in search of livelihood opportunities as mining mostly occurs in the upland.

Moreover, explicit provisions for the rehabilitation and reforestation of mined out areas and their vicinities would help conserve our forest products[] and keep us on track towards our goal of sustainable development.¹⁸⁰

Notably, mining firms have produced thousands of jobs in several mining provinces in the country and have been the sources of livelihood for thousands of families in the country.¹⁸¹ While this was part of the cornerstones provided by Mr. Yap when the Bill was first proposed and later on when the Mining Act was signed into law, mining firms have still managed to mine minerals with no thought as to the consequences.

As such, 22 years after the promulgation of the Mining Act, in 2017, then SENR Gina Lopez moved to shut down 28 out of the 41 mining companies in the country¹⁸² — most of which were mainly mining nickel.¹⁸³ The country is the top exporter of nickel ore in the world.¹⁸⁴ Apart from taking a hit in export earnings, the closure of mining companies entails a loss of a government estimate of 234,000 jobs.¹⁸⁵

The closure of these mining companies was prompted by the adverse environmental impact they present. Mining has caused “deforestation, flattened mountaintops[,] and heavy metal contamination of water and soil,” as stated by Mr. Yeb Saño, an executive director of Greenpeace for Southeast

180. *Id.* at 285.

181. See Ben O. de Vera, *Mining Revival Eyed to Generate Rural Jobs, Says Dominguez*, PHIL. DAILY INQ., Oct. 7, 2020, available at <https://business.inquirer.net/309013/mining-revival-eyed-to-generate-rural-jobs-says-dominguez> (last accessed July 31, 2023) [<https://perma.cc/C2NY-8XFP>].

182. Aurora Almendral, *Philippines Moves to Shut Mines Accused of Polluting*, N.Y. TIMES, Apr. 27, 2017, available at <https://www.nytimes.com/2017/04/27/world/asia/philippines-mining-environment.html> (last accessed July 31, 2023) [<https://perma.cc/FZL6-RKLV>].

183. *Id.*

184. *Id.*

185. *Id.*

Asia.¹⁸⁶ He further surmised that “[g]overnment corruption has let Philippine mining companies skirt environmental regulations for decades[.]”¹⁸⁷

It is said that while the country has environmental laws in place, many companies, mining or not, have been able to shirk from their responsibilities. In the plenary meeting, the discussion was as follows:

MR. YAP (R.). [] This mining package seeks to address the three major concerns of the industry: the need for a comprehensive law to cover the exploration, development, utilization, and conservation of mineral resources; the need to address the mining safety and environmental protection concerns in the mining operations; and the need to revitalize the mining industry for it to be able to compete in the world market through (1) incentives under the Omnibus Investments Act; (2) the setting of the government share or excise tax under the National Internal Revenue Act at 2% to make the mining industry competitive worldwide; and lastly, the exemption of tailings dam or pond and other pollution control devices from the real property tax under the Local Government Code.¹⁸⁸

Based on the plenary meeting records, the spirit of the law remains to be focused and fueled to the betterment of the Philippine economy, while keeping the environment in mind. Despite the State being as responsible for its mismanagement of national trust resources, private entities who are vested with the authority to exploit these minerals cannot feign liability from the Public Trust Doctrine simply because they are part of the private sector. It is about time that all private companies or persons actively participating in the utilization, exploitation, and possession of trust resources are held accountable for their actions and duly care for resources that are not even theirs to begin with.

In April 2021, the former President Rodrigo Duterte announced that he will end the nine-year moratorium on new mining permits.¹⁸⁹ This might lead to an easing of local restrictions against open-pit mining.¹⁹⁰ On 14 April 2021,

186. *Id.*

187. *Id.*

188. PLENARY MEETING, at 281.

189. ASEAN Today, Philippines Lifts Ban on New Mining Permits, *available at* <https://www.aseantoday.com/2021/04/philippines-lifts-ban-on-new-mining-permits> (last accessed July 31, 2023) [<https://perma.cc/PP6A-U62Z>].

190. Lois Calderon, *Exclusive: Tampakan, Other Giant Mines Could Strike Gold in Wake of Duterte's New Order*, CNN PHILIPPINES, Apr. 26, 2021, *available at* <https://www.cnnphilippines.com/news/2021/4/26/Exclusive--Tampakan-->

Duterte signed Executive Order No. 130.¹⁹¹ Current concerns regarding the impact on the environment, however, shall remain unresolved if open-pit mining is to be pursued in the near future. Large mining companies are eyeing Mindanao, which is rich in gold and other minerals for their ventures.¹⁹² Open-pit mining has an array of hazards and environmental concerns.¹⁹³ This form of mining, while strategic,

exposes rock that has lain unexposed for geological eras. When crushed, these rocks expose radioactive elements, asbestos-like minerals, and metallic dust. During separation, residual rock slurries, which are mixtures of pulverized rock and liquid, are produced as tailings, [and] toxic and radioactive elements from these liquids can leak into bedrock if not properly contained.¹⁹⁴

3. Minerals and Public Trust

The Public Trust Doctrine essentially declares that the State is a trustee and holder of all natural resources for the benefit of the citizenship of the State who are beneficial owners.¹⁹⁵ As proclaimed by the Court, the State, as well as its representatives, have the affirmative duty to care for natural resources under its supervision.¹⁹⁶

Minerals, again, according to the Constitution, are inalienable property and cannot be converted into private property.¹⁹⁷ These minerals such as nickel, cobalt, or gold belong to the State, as trustee, for the Filipino people. While it is important for the country to utilize these mineral products for the benefit of our economy as well as the livelihood of the people, entities cannot

other-giant-mines-could-strike-gold-in-wake-of-Duterte-s-new-order.html (last accessed July 31, 2023) [<https://perma.cc/42FR-YXLJ>].

191. Office of the President, Amending Section 4 of Executive Order No. 79, S. 2012, Institutionalizing and Implementing Reforms in the Philippine Mining Sector, Providing Policies and Guidelines to Ensure Environmental Protection and Responsible Mining in the Utilization of Mineral Resources, Executive Order No. 130, Series of 2021 [E.O. No. 130, s. 2021] (Apr. 14, 2021).

192. Calderon, *supra* note 190.

193. See Massachusetts Institute of Technology, Environmental Risks of Mining, available at <https://web.mit.edu/12.000/www/m2016/finalwebsite/problems/mining.html> (last accessed July 31, 2023) [<https://perma.cc/B2ZW-W98W>].

194. *Id.*

195. *Maynilad Water Services, Inc.*, G.R. No. 202897.

196. *Id.* (citing KLASS & HUANG, *supra* note 25, at 5 (citing *National Audubon Society*, 33 Cal. 3d. at 446)).

197. PHIL. CONST. art. XII, § 6.

compromise the search of profit at the expense of the environment. Impacts may include deforestation, soil-erosion, and contamination of nearby water sources or wetlands.¹⁹⁸

C. Forestry

1. Forests

The Philippines boasts of wide forest coverage all over the country. These forest lands are notably a habitat to almost 6,000 plant species and home to 12 million indigenous peoples.¹⁹⁹ Presidential Decree No. 705 or the Revised Forestry Code of the Philippines is the governing law on the proper classification, management, and utilization of the lands of public domain in the Philippines.²⁰⁰ One of the policies pronounced in the law is to adopt “the protection, development[,] and rehabilitation of forest lands[]” to emphasize and to ensure that there will be continuity in productive condition.²⁰¹

According to the same law, “public forest” is defined as “the mass of lands of the public domain which has not been the subject of the present system of classification for the determination of which lands are needed for forest purposes and which are not.”²⁰² Initially, the Food and Agricultural Organization’s Forestry Resources Assessment pegged the definition of forests. They referred to forests as “tree plantations[] and bamboo, palm, and fern formations, logging roads, and open spaces adjacent to logging sites of corporate forest concessions.”²⁰³ In 2005, however, the DENR pegged a more exhaustive definition of forest in a memorandum made that year. The memorandum defines a forest as

198. Neal R. Haddaway, et al., *Evidence of the Impacts of Metal Mining and the Effectiveness of Mining Mitigation Measures on Social-Ecological Systems in Arctic and Boreal Regions: A Systemic Map Protocol*, ENVTL. EVID., Volume No. 8, at 1.

199. Marjorie Pamintuan, *Protect Philippine Forests*, PHIL. DAILY. INQ., June 5, 2011, available at <https://opinion.inquirer.net/5809/protect-philippine-forests> (last accessed July 31, 2023) [<https://perma.cc/QY25-EB59>].

200. Revising Presidential Decree No. 389, Otherwise Known as the Forestry Reform Code of the Philippines [REV. FORESTRY CODE], Presidential Decree No. 705. (1975).

201. *Id.* § 2 (d).

202. *Id.* § 3 (a).

203. Pamintuan, *supra* note 199 (citing FOOD AND AGRICULTURAL ORGANIZATION OF THE UNITED NATIONS, GLOBAL FOREST RESOURCES ASSESSMENT 2000 MAIN REPORT 363-66 (2001)).

land with an area of more than 0.5 hectare and tree crown [] or equivalent stocking level[] of more than 10 percent. The trees should be able to reach a minimum height of [five] meters at maturity in situ. It consists either of closed forest formations where trees of various storeys and undergrowth cover a high proportion of the ground or open forest formations with a continuous vegetation cover in which tree crown cover exceeds 10 percent. Young natural stands and all plantations established for forestry purposes, which have yet to reach a crown density of more than 10 percent or tree height of [five] meters are included under forest.

These are normally forming part of the forest area which are temporarily unstocked as a result of human intervention or natural causes[,] but which are expected to revert to forest. It includes forest nurseries and seed orchards that constitute an integral part of the forest; forest roads, cleared tracts, firebreaks[,] and other small open trees with an area of more than 0.5 hectare and width of more than 20 meters; [and] plantation primarily used for forestry purposes, including rubber wood plantations. It also includes bamboo, palm[,] and fern formations [] except coconut and oil palm[].²⁰⁴

The memorandum further enumerates the kinds of forests, which include: natural forest, closed forest, open forest, coniferous forest, mixed forest, bamboo/palm formation, mangrove forest, mossy forest, beach forest, and plantation forest.²⁰⁵

While the Philippines originally had rich forests that spanned over 90% of the land area, the Philippines is en route to rapid deforestation.²⁰⁶ Although there are measures initiated by the government for reforestation efforts, it is not enough. Coupled with mining trouble and other environmental factors, the Philippine environment is not in a good place.

a. The Wood Industry

Logging companies are given the authority to produce timber and other wood products in order to fulfill the demand for furniture, construction panels, and other essentials needed in day-to-day lives. It cannot be ignored that the wood industry will continue to be important to the economy. The wood industry

204. Department of Environment and Natural Resources, Adopting Forestry Definitions Concerning Forest Cover/Land Use, Memorandum Circular No. 5, Series of 2005 [DENR Memo. Circ. 5, s. 2005], at 1 (May 26, 2005).

205. *Id.* at 1-3.

206. Pamintuan, *supra* note 199.

supplies the Filipino people with thousands of jobs and allows many families to earn a living.²⁰⁷

The top producer of wood in the country is in Mindanao, in the CARAGA Region to be exact.²⁰⁸ This region has been dubbed as the “Timber Corridor” of the country.²⁰⁹ As of 2019, the CARAGA region has 684,503 hectares worth of forest lands in the region.²¹⁰ While wood extraction from natural forests was eventually banned in 2010, wood products are still vibrant in the region via timber plantations.²¹¹

A problem, however, has been seen in the wood industry in 2018 as the country has only been producing 1.34 million cubic meters, where 740,000 cubic meters come from commercial plantations of other regions.²¹² The wood industry, in order to survive, would require the production of two million cubic meters.²¹³ Because of the ban of logging in the region, the government has allowed the importation of wood products from other countries.²¹⁴

In 2018, the Philippines had imported over one million cubic meters of wood which was valued at \$200 to \$300 million.²¹⁵ These products were used

207. See, e.g., Manila Standard, *Wood Processing Project to Create Export-Oriented Industries, Jobs*, MANILA STAND., July 15, 2021, available at <https://manilastandard.net/lgu/mindanao/359805/ood-processing-project-to-create-export-oriented-industries-jobs.html> (last accessed July 31, 2023) [<https://perma.cc/28Q8-49EL>].

208. Eirene Grace C. Zaragoza, *The Philippines' Wood Industry: Putting the Spotlight on Industrial Tree Plantations*, AGRIMAG, Feb. 4, 2019, available at <https://www.agriculture.com.ph/2019/02/04/the-philippines-wood-industry> (last accessed July 31, 2023) [<https://perma.cc/N9EE-MHVG>].

209. *Id.*

210. *Id.*

211. *Id.*

212. *Id.*

213. *Id.*

214. Zaragoza, *supra* note 208.

215. Louise Maureen Simeon, *Philippines Wood Production Can Grow into a \$20 Billion Industry*, PHIL. STAR, Oct. 22, 2019, available at <https://www.philstar.com/business/2019/10/22/1962156/philippines-wood-production-can-grow-20-billion-industry> (last accessed July 31, 2023) [<https://perma.cc/85WT-7CKX>].

in the construction industry and the furniture industry.²¹⁶ According to the Philippine Wood Producers Association, the wood industry of the Philippines could have earned 20 billion dollars “if at least one million hectares of the country’s nine million hectares of barren forest land will be reforested.”²¹⁷

Reforestation unarguably would allow both the industry and the environment to flourish. Philippine Wood Producers Association Chairman Charlie Liu during a press briefing at the Philippine Wood Expo in 2019 said, “[w]e need sustainable tree farming in the Philippines and we need help from regulators[.]”²¹⁸ Before, the country was able to export natural forest products but extraction of timber had been highly regulated, as well as the sales of these products.²¹⁹ Now, while there are areas available, there is an absence of thousands of trees to meet the demand.²²⁰

2. Deforestation Problem in the Philippines

The Philippines, notably, has underwent such rapid deforestation from its total land area. The total forest land coverage in the Philippines was 70% in 1900 and lessened to 50% in 1950, and at 19% by 1990.²²¹ Through the National Greening Program’s (NGP) implementation in 2011,²²² however, reforestation significantly helped in terms of forest coverage. There was an increase of forest coverage by 3.29% per year starting 2011.²²³ While there is an effort in reforestation, there must be a response from private logging companies as well. There must be a joint effort between the government and the private sector to make up for the rapid deforestation prior to the NGP.

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

221. Jean Meir Jardeleza, et al., *Simulating National-Scale Deforestation in the Philippines Using Land Cover Change Models*, 148 PHIL. J. SCI. 597, 597 (2019) (citing DAVID M. KUMMER, *DEFORESTATION IN THE POSTWAR PHILIPPINES* 45 (1992)).

222. Office of the President, Expanding the Coverage of the National Greening Program, Executive Order No. 193, Series of 2015 [E.O. No. 193, s. 2015] (Nov. 12, 2015).

223. Jardeleza, et al., *supra* note 221, at 597 (citing Food and Agriculture Organization of the United Nations, *Global Forest Resources Assessment 2015 Country Report (Philippines)*, at 23, available at <https://www.fao.org/3/az306e/az306e.pdf> (last accessed July 31, 2023) [<https://perma.cc/B6VX-4JJ7>]).

While true, there has been a notable increase in forest lands over the past decade, and these forest lands still require added protection and certain safeguards to ensure smooth enforcement and implementation of our reforestation initiatives.

3. Government Response

In 2018, the DENR sought a slight decrease in their budget — a decrease of ₱740 million, from ₱25.72 billion to ₱24.17 billion.²²⁴ At that budget proposal, Secretary of Environment and Natural Resources Roy A. Cimatu promised that the Department will focus its efforts on reforestation efforts for the year.²²⁵ The Department allocated ₱6 billion for reforestation efforts through the Enhanced National Greening Program (ENGP).²²⁶

This program prioritizes forest and reforestations through the rehabilitation of 1.2 million hectares of denuded forest lands by 2022 and the maintenance and protection of forests already existing.²²⁷ The ENGP aims to firstly, “contribute in reducing poverty among upland and lowland poor households, indigenous peoples, and in coastal and urban areas[.]”²²⁸ Second, “implement sustainable management of natural resources through resource conservation, protection, and productivity enhancement[.]”²²⁹ Thirdly, “provide food, goods[,] and services such as timber, fiber, non-timber forest products, aesthetic values, air enhancement values, water regulation values, and mitigate climate change by expanding forest cover that serve as carbon sink[.]”²³⁰ Fourth, “promote public awareness as well as instill social and environmental consciousness on the value of forests and watersheds[.]”²³¹ Fifth, “enhance the formation of positive values among the youth and other

224. Jerome Carlo Paunan, *DENR Seeks Slightly Lower Budget for 2019*, PHIL. INFO. AGENCY, Aug. 13, 2018, available at <https://web.archive.org/web/20180814115643/https://pia.gov.ph/news/article/s/1011506>.

225. *Id.*

226. *Id.*

227. Department of Environment and Natural Resources, Enhanced National Greening Program, available at <https://www.denr.gov.ph/index.php/priority-programs/national-greening-program> (last accessed July 31, 2023).

228. *Id.*

229. *Id.*

230. *Id.*

231. *Id.*

partners through shared responsibilities in sustainable management of tree plantations and forest resources[,]”²³² and sixth, “consolidate and harmonize all greening efforts of the government, civil society, and the private sector.”²³³

The program was also in conformity to Executive Order No. 26, Series of 2011²³⁴ and Executive Order No. 193, Series of 2015;²³⁵ the former promising the planting of 1.5 billion trees in 1.5 million hectares of lands for a period of six years, from 2011 to 2028.²³⁶ On the other hand, the latter promised that the Enhanced National Greening Program will rehabilitate unproductive and degraded forestlands, which is an estimate of 7.1 million hectares from the years 2016 to 2028.²³⁷ For the year of 2020, Secretary Cimatú sought an additional ₱3.036 billion in the department’s budget,²³⁸ with hopes to focus efforts on the enforcement of the Enhanced National Integrated Protected Areas System Act of 2018 (E-NIPAS)²³⁹ and for land titling. On 20 September 2019, Congress approved the ₱4.1 trillion national budget for 2020.²⁴⁰ It included a 16% increase in DENR’s budget, raising the budget from ₱21.96 billion to ₱25.5 billion for 2020.²⁴¹

232. *Id.*

233. Department of Environment and Natural Resources, *supra* note 227.

234. Office of the President, Declaring an Interdepartmental Convergence Initiative for a National Greening Program, Executive Order No. 26, Series of 2011 [E.O. No. 26, s. 2011] (Feb. 24, 2011).

235. E.O. No. 193, s. 2015.

236. Department of Environment and Natural Resources, *supra* note 227.

237. *Id.*

238. Department of Environment and Natural Resources, DENR Seeks Additional ₱3-B for Enforcement Bureau, E-NIPAS, Land Titling, *available at* <https://www.denr.gov.ph/index.php/news-events/press-releases/1258-denr-seeks-add-l-p3-b-for-enforcement-bureau-e-nipas-land-titling> (last accessed July 31, 2023) [<https://perma.cc/ZQ4X-KSY5>].

239. An Act Declaring Protected Areas and Providing for Their Management, Amending for This Purpose Republic Act No. 7586, Otherwise Known as the “National Integrated Protected Areas System (NIPAS) Act of 1992,” and for Other Purposes [Expanded National Integrated Protected Areas System Act], Republic Act No. 11038 (2017) (commonly referred to as E-NIPAS).

240. Department of Environment and Natural Resources, *supra* note 227.

241. *Id.*

The DENR proposed the creation of its own Enforcement Bureau.²⁴² Secretary Cimatú explained that if this Bureau is formed, the DENR will be able to enforce environmental laws “and protect its workers who have been the vicious targets of illegal loggers and other environmental criminals.”²⁴³

4. Laws on Forestry

According to the Revised Forestry Code,

only the utilization, exploitation, occupation[,] or possession of any forest lands and grazing lands, or any activity therein, involving one or more of its resources, which will produce the optimum benefits to the development and progress of the country and the public welfare, without impairment or with the least injury to its resources, shall be allowed.²⁴⁴

A license agreement shall only be granted to those companies that qualify under the qualifications set forth by the SENR.²⁴⁵

Companies granted with license agreements are then authorized to utilize, exploit, graze, and convert the forest lands as deemed proper under the law.²⁴⁶ “License agreements” are defined in the law as

a privilege granted by the State to a person to utilize forest resources within any forest land with the right of possession and occupation thereof to the exclusion of others, except the government, but with the corresponding obligation to develop, protect[,] and rehabilitate the same in accordance with the terms and conditions set forth in said agreement.²⁴⁷

“License” on the other hand, is defined as

a privilege granted by the State to a person to utilize forest resources within any forest land, without any right of occupation and possession over the same, to the exclusion of others, or establish and operate a wood processing plant, or conduct any activity involving the utilization of any forest resources.²⁴⁸

The licenses and license agreements effectively extend the trust onto the company holding such agreement from the government, thus entailing them

242. *Id.*

243. *Id.*

244. REV. FORESTRY CODE, § 19, para. 2.

245. *Id.* § 20.

246. *Id.*

247. *Id.* § 3 (ee).

248. *Id.* § 3 (dd).

to have a certain degree of responsibility and care in handling the utilization of forest lands.

Under the Revised Forestry Code, the exploitation, occupation, utilization, or possession of any forest land will only be allowed if such usage, exploitation, or possession shall produce “optimum benefits to the development and progress of the country and public welfare[.]”²⁴⁹

The Revised Forestry Code also declares the multiple uses of forest land

—
The numerous beneficial uses of the timber, land, soil, water, wildlife, recreation value[,] and grass of forest lands shall be evaluated and weighted before allowing the utilization, exploitation, occupation[,] or possession thereof, or the conduct of any activity therein.²⁵⁰

To attain the authority of exploiting or using any forest lands, however, the person or entity is required under the Revised Forestry Code to acquire a license agreement, license, lease, or permit.²⁵¹ With regard to timber licenses, the duration of the license or license agreement for a person to harvest timber in a forest land shall be at the maximum, 25 years.²⁵² The license agreements, licenses, and all other activities related to forest lands are under the jurisdiction of the Bureau of Forest Development which was a merger of the Bureau of Forestry, the Reforestation Administration, the Southern Cebu Reforestation Development Project, and the Parks and Wildlife Office.²⁵³

The Bureau shall be “responsible for the protection, development, management, regeneration, and reforestation of forest lands[.]”²⁵⁴ It is also responsible for the regulation and supervision of the operation of authorized persons in forest land, grazing lands, and all other forest reservations, which includes watershed reservations.²⁵⁵

249. *Id.* § 19, para. 2.

250. REV. FORESTRY CODE, § 19, para. 1.

251. *Id.* § 20.

252. *Id.* § 27, para. 3.

253. *Id.* § 4.

254. *Id.* § 5, para. 2.

255. *Id.*

5. Forestlands and Public Trust

Forestlands, whatever kind it may be, forms part of the national patrimony of the State and thus belongs to the *res*, as a natural resource.²⁵⁶ Seeing as there is a need for Philippine lands to be reforested before the wood industry can flourish again, the Public Trust Doctrine may still come into play.

As extended trustee, timber license holders, as well as logging companies, are extended trustees of the state and are vested with the same level of responsibility as the government when it comes to the care and diligence of natural resources. As such, when it comes to timber and other wood products which necessarily entail the growth and harvest of forestlands and trees, these entities and persons are required to balance the needs of their demands and the demands of the environment.

In these three relationships between private persons and the government, the government confers certain authority to private entities or persons to exploit, use, or possess natural resources, subject to the government's regulation.²⁵⁷ In the case of *Illinois Central Railroad Company v. Illinois*,²⁵⁸ as elucidated by Professor Sax,

[w]hen a state holds a resource which is available for the free use of the general public, a court will look with considerable skepticism upon *any* governmental conduct which is calculated *either* to [relocate] that resource to more restricted uses *or* to subject public uses to the self-interest of private parties.²⁵⁹

Although private entities are vested with authority to exploit, possess, or utilize natural resources, the government still has supervisory or regulatory powers over the actions proceeded on these natural resources. Despite all of this, it is opined that these entities are effectively converted into extended trustees by virtue of the authority conferred upon them by the government, the original trustee of the *res* or the natural resources which are beneficially owned by the citizenship of the State.

Thus, with this public trust bestowed upon these entities, it is incumbent upon them to utilize, exploit, and possess these natural resources in a diligent and responsible manner. It is gainsaid that the usage of these natural resources is still for the benefit of the public even though there is profit involved on the

256. PHIL. CONST. art. XII, § 2.

257. See REV. FORESTRY CODE, § 20.

258. *Illinois Central R. Co.*, 146 U.S.

259. Sax, *supra* note 63, at 490 (emphasis supplied).

part of these entities or persons. With the wood industry not in the best position as of the moment, public trust comes into play.

D. Flora and Fauna

According to the Convention on Biological Diversity (CBD),²⁶⁰ “biological diversity” means the “variability among living organisms from all sources including, *inter alia*, terrestrial, marine[,] and other aquatic ecosystems and the ecological complexes of which they are part[.]”²⁶¹ The Philippines is a signatory of the CBD²⁶² and under Article 6,²⁶³ it is required to create a National Biodiversity Strategies and Action Plan (NBSAP) which is aimed to “integrate consideration of the conservation and sustainable use of biological resources into national decision-making and mainstream issues across all sectors of the national economy and policy-making framework[.]”²⁶⁴

In the Philippines, the Philippine Biodiversity Strategies and Action Plan had recently been updated in 2015 and the same hopes to integrate the CBD’s

260. Convention on Biological Diversity, *opened for signature* June 5, 1992, 1760 U.N.T.S. 79.

261. *Id.* art. 2.

262. The Philippines ratified the Convention on 8 October 1993. United Nations, Convention on Biological Diversity Details, *available at* https://treaties.un.org/Pages/showDetails.aspx?objid=080000028002934a&clang=_en (last accessed July 31, 2023) [<https://perma.cc/N22C-SX66>].

263. Convention on Biological Diversity, *supra* note 260, art. 6. Article 6 of the Convention provides —

Article 6. *General Measures for Conservation and Sustainable Use*

Each Contracting Party shall, in accordance with its particular conditions and capabilities:

- (a) Develop national strategies, plans[,] or [programs] for the conservation and sustainable use of biological diversity or adapt for this purpose existing strategies. Plans or [programs] which shall reflect, *inter alia*, the measures set out in this Convention relevant to the Contracting Party concerned[;] and
- (b) Integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, [programs,] and policies.

Id.

264. Convention on Biological Diversity, What is an NBSAP?, *available at* <https://www.cbd.int/nbsap/introduction.shtml> (last accessed July 31, 2023) [<https://perma.cc/TM2U-QVAF>].

objectives into the mainstream, which includes the continued protection and preservation of forests, wetlands, and other protected areas.²⁶⁵

Like the other facets of the environment, the threats of biodiversity are quite extensive. This would include habitat destruction and loss, changes in the ecosystem, disruption of ecosystems caused by non-native species being forced in other species' habitats, over-exploitation, pollution, contamination, and of course, global climate change.²⁶⁶

I. Philippines as the Global Center of Wildlife

Along with other natural resources, the Philippines is home to thousands of animal and plant species, residing in the forests, sea, rivers, and other habitats which ought to be protected and preserved. The Philippines is known as one of the “hotspots” for biodiversity and wildlife in the world.²⁶⁷ Along with other hotspots, the Philippines is host to over two-thirds of the world's plant and animal species.²⁶⁸ The Philippines is a provider of several ecosystem services — “[i]t provides, food, water, energy, sources pharmaceuticals, biomass fuels, carbon sequestration and climate regulation, crop pollination, cultural and spiritual inspiration[,] and ecotourism value.”²⁶⁹ The Philippines

265. Department of Environment and Natural Resources, Convention on Biological Diversity, *available at* <https://web.archive.org/web/20220928153828/http://intl.denr.gov.ph/multilateral/un-conventions/article/3-convention-on-biological-diversity>. *See also* DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, PHILIPPINE BIODIVERSITY STRATEGY AND ACTION PLAN 2015-2028 (2016).

266. Ecological Society of America, Biodiversity, at 1, *available at* <https://www.esa.org/wp-content/uploads/2012/12/biodiversity.pdf> (last accessed July 31, 2023) [<https://perma.cc/8MST-7U33>].

267. Convention on Biological Diversity, Philippines - Main Details, *available at* <https://www.cbd.int/countries/profile/?country=ph> (last accessed July 31, 2023) [<https://perma.cc/CSB3-RUWW>].

268. Conservation International Philippines, Protecting Biodiversity in the Philippines, *available at* <https://www.conservation.org/philippines/projects/protecting-biodiversity-in-the-philippines> (last accessed July 31, 2023) [<https://perma.cc/5ZHR-PCMY>].

269. United States Agency for International Development, Philippines Biodiversity and Watersheds Improved for Stronger Economy and Ecosystem Resilience (B+Wiser) Program, *available at* <https://2012-2017.usaid.gov/philippines/energy-and-environment/bwiser> (last accessed July 31, 2023) [<https://perma.cc/D6D7-E8E4>].

is also home to a large number of endangered and threatened species, which makes it a “top global conservation priority area.”²⁷⁰

The country is home to an estimate of 53,000 species of flora and fauna, half of which are considered endemic and only found in the Philippines.²⁷¹ In terms of marine biodiversity, the Philippines is part of the Coral Triangle.²⁷² The country is home to an estimate of 10,000 marine species.²⁷³ While the country is rich in biological and endemic flora and fauna species, it has also more than 700 threatened species, including the *tamaraw*, *dugong*, Philippine eagle, and the Philippine freshwater crocodile.²⁷⁴

2. Destruction of Wildlife

Unfortunately, the Philippines is also plagued with illegal wildlife activities. It is an “international hub for illegal wildlife trafficking, while the domestic exotic pet and bushmeat trade continues to threaten biodiversity.”²⁷⁵ Sadly enough, Philippine authorities lack the support when it comes to enforcement of environmental protection laws in the country since it is overwhelmed with the “sheer volume of illegal activity.”²⁷⁶ Although there are current initiatives to protect the country’s biodiversity resources, the Philippines still struggles to keep illegal trade at bay.²⁷⁷

The Philippines, being home to thousands of species of animals, and also being a tropical archipelago, has one of the richest marine life biodiversity in

270. *Id.*

271. Princess Alma B. Ani & Monica B. Castillo, Revisiting the State of Philippine Biodiversity and the Legislation on Access and Benefit Sharing (FFTC Agricultural Policy Platform Policy Article, Mar. 3, 2020), *available at* <https://ap.fftc.org.tw/article/1836> (last accessed July 31, 2023) [<https://perma.cc/56AR-LGTQ>].

272. World Wildlife Fund, Coral Triangle, *available at* https://wwf.panda.org/discover/knowledge_hub/where_we_work/coraltriangle (last accessed July 31, 2023) [<https://perma.cc/C73Z-ZUTE>].

273. Ani & Castillo, *supra* note 271.

274. *Id.*

275. Conservation International Philippines, *supra* note 268.

276. *Id.*

277. Faith Argosino, *Illegal Wildlife Trade in PH: DENR Warns Buyers*, MANILA BULL., Feb. 2, 2022, *available at* <http://web.archive.org/web/20220218132235/https://mb.com.ph/2022/02/04/illegal-wildlife-trade-in-ph-denr-warns-buyers>.

the world.²⁷⁸ However, due to decades of destructive practices such as bottom trawling, cyanide fishing, and dynamite fishing, marine life has been bleak.²⁷⁹ To put it into perspective, the Philippines makes up a large portion of the Coral Triangle.²⁸⁰ The country is home to more than 16,800 square kilometers of coral reef.²⁸¹ Furthermore, “[i]ts central region, from Luzon to Mindanao, has more marine species per unit area than any other place on the planet.”²⁸²

Due to the global rising of temperatures which is causing the bleaching of corals all over the world and the destructive fishing practices being done in the country, the Philippine marine biodiversity is in grave danger. Although Congress has passed several laws and policies in order to protect our wildlife and biodiversity, these practices continue. Individuals and corporations who engage in these practices continue to do so without thought to the consequences.

In a 2017 report by the United Nations, following the largest bleaching event in the world, it “predicted that all 29 World Heritage coral reefs, including one in the Philippines, will die out by 2100 unless carbon emissions are drastically reduced.”²⁸³ Coral reefs are home to 25% of the world’s marine life and they are *essential* to the health of the ocean.²⁸⁴ Without it, a quarter of the marine life will die.²⁸⁵ Thus, while this is a collective global effort, the Philippines must do its part to mitigate the effects of rising global emissions by

278. Heloise Garry, *The Philippines’ Marine Biodiversity Faces Decimation*, available at <https://earth.org/marine-biodiversity-in-the-philippines-faces-decimation> (last accessed July 31, 2023) [<https://perma.cc/RM82-KEBK>].

279. *Id.*

280. *Id.*

281. *Id.*

282. *Id.*

283. *Id.* (citing United Nations Educational, Scientific and Cultural Organization & World Heritage Convention, *Impacts of Climate Change on World Heritage Coral Reefs (A First Global Scientific Assessment, 2017)*, at 9, available at <https://whc.unesco.org/document/158688> (last accessed July 31, 2023) [<https://perma.cc/T9JC-JLPZ>]).

284. Rick MacPherson, *Coral Reefs Need You*, available at <https://ocean.si.edu/ecosystems/coral-reefs/coral-reefs-need-you> (last accessed July 31, 2023) [<https://perma.cc/UL5W-LTEC>].

285. Reef World, *What Would Happen if There Were No Coral Reefs?*, available at <https://reef-world.org/blog/no-coral-reefs> (last accessed Aug. 31, 2023) [<https://perma.cc/4UGF-M7EJ>].

ensuring that Philippine biodiversity has a fighting chance, while racing to reduce the rising global temperature.

3. Laws on Biodiversity

The Philippines is a signatory to several treaties aimed at protecting biodiversity including the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES),²⁸⁶ Ramsar Conventions on Wetlands,²⁸⁷ Convention on the Conservation of Migratory Species of Wild Animals,²⁸⁸ and the Convention on Biological Diversity.²⁸⁹

CITES is “an international agreement between governments which aims to ensure [that] the international trade in specimens of wild animals and plants does not threaten their survival.”²⁹⁰ Furthermore, “[a]ll imports, exports, re-exports, and introduction from the sea of species covered by the [CITES] have to be authorized through a standard permitting/licensing system.”²⁹¹ Since this is legally binding, the Philippines as a party is required to “adopt national legislation to implement CITES’ rules.”²⁹² It requires laws that prohibit trade in violation of CITES, to provide for penalties for such trade, and to provide laws that provide for the confiscation of illegally traded species.²⁹³ The national legislation that implements these rules is Republic Act No. 9147 or the

286. Convention on International Trade in Endangered Species of Wild Fauna and Flora, *opened for signature* July 1, 1975, 993 U.N.T.S. 243.

287. Convention on Wetlands of International Importance Especially as Waterfowl Habitat, *opened for signature* Feb. 3, 1971, 996 U.N.T.S. 245 (commonly referred to as the Ramsar Convention on Wetlands).

288. Convention on the Conservation of Migratory Species of Wild Animals, *opened for signature* June 23, 1979, 1651 U.N.T.S. 333.

289. Convention on Biological Diversity, *supra* note 260.

290. Department of Environment and Natural Resources, Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) *available at* <https://web.archive.org/web/20220706222930/https://intl.denr.gov.ph/database-un-conventions/article/4>.

291. *Id.*

292. *Id.*

293. *Id.*

Wildlife Resources Conservation and Protection Act.²⁹⁴ Section 2 or the Declaration of Policy of the said act provides —

Section 2. *Declaration of Policy.* — It shall be the policy of the State to conserve the country's wildlife resources and their habitats for sustainability. In the pursuit of this policy, this Act shall have the following objectives:

- (a) to conserve and protect wildlife species and their habitats to promote ecological balance and enhance biological diversity;
- (b) to regulate the collection and trade of wildlife;
- (c) to pursue, with due regard to the national interest, the Philippine commitment to international conventions, protection of wildlife and their habitats; and
- (d) to initiate or support scientific studies on the conservation of biological diversity.²⁹⁵

In line with Section 2 (c) of the Act, the Philippines is signatory to the CBD,²⁹⁶ and some of the country's commitments include to “[r]ehabilitate and restore degraded ecosystems and promote the recovery of threatened species in collaboration with local[]residents[]” and “[r]espect, preserve[,] and maintain traditional knowledge of the sustainable use of biodiversity with the involvement of indigenous peoples and local communities[.]”²⁹⁷

Another local legislation that is aimed at protecting marine wildlife is the Philippine Fisheries Code of 1998.²⁹⁸ Its policy reads:

- (c) To ensure the rational and sustainable development, management[,] and conservation of the fishery and aquatic resources in Philippine waters including the Exclusive Economic Zone (EEZ) and in the adjacent high seas, consistent with the primordial objective of maintaining a sound ecological balance, protecting[,] and enhancing the quality of the environment. The Philippines shall pursue its commitment to international conventions and cooperate with other states and international bodies, in order to conserve and manage threatened []

294. An Act Providing for the Conservation and Protection of Wildlife Resources and Their Habitats, Appropriating Funds Therefor and For Other Purposes [Wildlife Resources and Conservation and Protection Act], Republic Act No. 9147 (2001).

295. *Id.* § 2.

296. Convention on Biological Diversity, *supra* note 260.

297. Department of Environment and Natural Resources, *supra* note 265.

298. An Act Providing for the Development, Management and Conservation of the Fisheries and Aquatic Resources, Integrating All Laws Pertinent Thereto, and for Other Purposes [FISHERIES CODE], Republic Act No. 8550 (1998) (as amended).

aquatic species, straddling and highly migratory fish stocks[,] and other living marine resources;

...

- (f) To adopt the precautionary principle and manage fishery and aquatic resources, in a manner consistent with the concept of an ecosystem-based approach to fisheries management and integrated coastal area management in specific natural fishery management areas, appropriately supported by research, technical services and guidance provided by the State[.]²⁹⁹

4. Authority to Trade, Transport Wildlife

Under Section 6 of R.A. No. 9147 —

Wildlife Information. — All activities, as subsequently manifested under this Chapter, shall be authorized by the Secretary upon proper evaluation of best available information or scientific data showing that the activity is, or for a purpose, not detrimental to the survival of the species or subspecies involved and/or their habitat. For this purpose, the Secretary shall regularly update wildlife information through research.³⁰⁰

The activities mentioned under the Act include the collection of wildlife,³⁰¹ the possession of wildlife,³⁰² collection and/or possession of by-products and derivatives,³⁰³ local transport of wildlife, by-products, and derivatives,³⁰⁴ exportation and/or importation of wildlife,³⁰⁵ introduction, reintroduction or restocking of endemic or indigenous wildlife,³⁰⁶ and introduction of exotic wildlife.³⁰⁷

299. FISHERIES CODE, § 2 (as amended).

300. Wildlife Resources and Conservation and Protection Act, § 6.

301. *Id.* § 7.

302. *Id.* § 8.

303. *Id.* § 9.

304. *Id.* § 10.

305. *Id.* § 11.

306. Wildlife Resources and Conservation and Protection Act, § 12.

307. *Id.* § 13.

5. Biodiversity and Public Trust

Flora and fauna, as well as animal species, form part of the national patrimony of the country.³⁰⁸ Although persons are allowed licenses to import/trade wildlife, and likewise are authorized to commercially fish in our territorial waters, there are still instances when practices such as bottom trawling go by without any repercussions. The corporations or persons believe that if they possess the necessary permit to conduct these activities, they will no longer need to strictly abide by the Public Trust Doctrine.

Generally speaking, the concept of Public Trust and biodiversity says “that publicly[-]owned wildlife resources are entrusted to the government (as trustee of these resources) to be managed on behalf of the public, the beneficiaries.”³⁰⁹ Accordingly, however, because of the privatization of wildlife, the same can no longer be seen as “public” resources.³¹⁰ Then, the general public may have no apparent benefit from wildlife resources.³¹¹ Biodiversity, however, plays a big role in the environment. In the Philippines, around 75% of the diversity of the world is found in the archipelago.³¹² Even though the benefits of “wildlife” is not apparent, these resources make up the oxygen mankind breathes, and the overall quality of life.

To reiterate, the Public Trust Doctrine effectively places an affirmative duty upon the State and its representatives to hold natural resources in trust for the benefit of the beneficial owners which are the people of the country.³¹³ In this vein, it should be incumbent upon the persons or corporations that are duly authorized to conduct these activities to do so responsibly and with the care and due diligence expected of it under this Doctrine.

308. PHIL. CONST. art. XII, § 2.

309. GORDON R. BATCHELLER, ET AL., *THE PUBLIC TRUST DOCTRINE: IMPLICATIONS FOR WILDLIFE MANAGEMENT AND CONSERVATION IN THE UNITED STATES AND CANADA* 10 (2010).

310. *Id.*

311. *Id.*

312. Ani & Castillo, *supra* note 271.

313. *Maynilad Water Services, Inc.*, G.R. No. 202897 (citing *KLASS & HUANG, supra* note 25, at 5 (citing *National Audubon Society*, 33 Cal. 3d. at 446)).

IV. ANALYSIS

A. The Philippine Environmental Impact Assessment System in a Nutshell

The Environmental Impact Assessment (EIA) is a process by which there is a determination of the prediction and evaluation of the likely impacts of a certain project which involves the environment during the commissioning, construction, operation, and abandonment.³¹⁴ It also provides for the design of appropriate prevention, mitigation, and enhancement measures in addressing possible consequences that may be brought about by the project.³¹⁵ This is to ensure that the environment is protected and the general welfare of the community is accounted for.³¹⁶

The Environmental Impact Assessment System or the EIA System was first established in 1978 under Presidential Decree No. 1586.³¹⁷ Under the latter, the Presidential Decree had established the EIA System in the Philippines in the “pursuit of a comprehensive and integrated environmental protection program [which] necessitates the establishment and institutionalization of a system where the exigencies of socioeconomic undertakings can be reconciled with the requirements of environmental quality.”³¹⁸ Under Section 4 of P.D. No. 1586, “[n]o person, partnership[,] or corporation shall undertake or operate any such declared environmentally critical project or area without first securing an Environmental Compliance Certificate issued by the President or his duly authorized representative.”³¹⁹

The procedure of the system is then provided for in DENR Administrative Order No. 96-37.³²⁰ Currently, however, the main reference,

314. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, REVISED PROCEDURAL MANUAL FOR DENR ADMINISTRATIVE ORDER NO. 30 SERIES OF 2003 (DAO 03-30) I (2007) [hereinafter PROCEDURAL MANUAL].

315. *Id.*

316. *Id.*

317. Establishing an Environmental Impact Statement System, Including Other Environmental Management Related Measures and for Other Purposes, Presidential Decree No. 1586 (1978).

318. *Id.* whereas cl. 1.

319. *Id.* § 4.

320. Department of Environment and Natural Resources, Revising DENR Administrative Order No. 21, Series of 1992, to Further Strengthen the Implementation of the Environmental Impact Statement (EIS) System, Administrative Order No. 37, Series of 1996 [DENR A.O. No. 37, s. 1996] (Dec. 2, 1996).

along with other documents for the full implementation of the EIA System, is the Procedural Manual for DENR Administrative Order 2003-30 which was provided for in 2007.

According to the Procedural Manual, the Proponent, which is any entity or person who is interested in implementing a project that involves a natural resource, has to receive a “positive determination” by the DENR-EMB, which results in the issuance of the ECC or the Environmental Compliance Commitment document, “to be conformed to by the Proponent and represents the project’s Environmental Compliance Certificate.”³²¹ As mentioned in P.D. No. 1586, the projects covered under the EIA System are those that are environmentally-critical projects.³²² This does not, however, limit or preclude the DENR from including and requiring non-environmentally-critical projects from undergoing the process of the EIA System.³²³ The Procedural Manual had summarized Environmental Critical Projects.³²⁴ As declared by Proclamation No. 2146:³²⁵ (1) heavy industries which involve non-ferrous metal industries; (2) resource extractive industries which involve mining, forestry projects, fishery projects, and introduction of fauna (exotic animals) in both private and public forests; and (3) infrastructure projects which involve major dams, major power plants.³²⁶

The Procedural Manual had also summarized the Environmental Critical Areas to which, if a proponent shall seek a project implementation on such area, the DENR shall require a favorable assessment under the EIA System. Under Proclamation No. 2146 (1981), the following are Environmentally Critical Areas:

- (1) Areas declared by law as national parks, watershed reserves, wildlife preserves, sanctuaries[;]
- (2) Areas set aside as aesthetic potential tourist spots[;]

321. PROCEDURAL MANUAL, *supra* note 314, at 1-2.

322. Presidential Decree No. 1586, § 2.

323. PROCEDURAL MANUAL, *supra* note 314, at 5.

324. *See id.* at 5 tbl. 1-1.

325. Proclaiming Certain Areas and Types of Projects as Environmentally Critical and Within the Scope of the Environmental Impact Statement Established Under Presidential Decree No. 1586, Proclamation No. 2146 (1981).

326. PROCEDURAL MANUAL, *supra* note 314, at 5 tbl. 1-1 (citing Proclamation No. 2146).

- (3) Areas which constitute the habitat of any endangered or threatened species of Philippine wildlife (flora and fauna)[;]
- (4) Areas of unique historic, archaeological[,] or scientific interests[;]
- (5) Areas which are traditionally occupied by cultural communities or tribes[;]
- (6) Areas frequently visited and/or hard-hit by natural calamities [];
- (7) Areas with critical slopes[;]
- (8) Areas classified as prime agricultural lands[;]
- (9) Recharged areas of aquifers[;]
- (10) Water bodies characterized by one or any combination of the following conditions: tapped for domestic purposes[,] within the controlled and/or protected areas declared by appropriate authorities[, and] which support wildlife and fishery activities[;]
- (11) Mangrove areas characterized by one or any combination of the following conditions: with primary pristine and dense young growth; adjoining mouth of major river systems; near or adjacent to traditional productive fry or fishing grounds; areas which act as natural buffers against shore erosion, strong winds[,] and storm floods; [and] areas on which people are dependent for their livelihood[;]
- (12) Coral reefs characterized by one or any combination of the following conditions: [w]ith 50% and above live coralline cover; [s]pawning and nursery grounds for fish; [and] [a]ct as natural breakwater of coastlines.³²⁷

The Non-Environmentally Critical Project Types are also classified in the Procedural Manual, some of which include treasure hunting in NIPAS areas, wildlife farming or any related projects, textile, wood, and rubber industries, and water supply, irrigation, or flood control projects.³²⁸

An EIA report typically has these substantive contents: (1) project description; (2) baseline environmental description; (3) impact assessment; and (4) environmental management plan.³²⁹ Long story short, the EIA process must be complied with if a proponent wishes to implement a certain project on an Environmentally Critical Area or plans to implement an Environmentally Critical Project. In this vein, all projects relating to natural resources require the satisfaction of all the procedures and requirements of the

327. *Id.*

328. PROCEDURAL MANUAL, *supra* note 314, at 6, tbls. 1-2 (citing Proclamation No. 2146).

329. *Id.* at 8.

EIA System before the corporation or person is afforded the Environmental Compliance Certificate.

This System is a system that ensures that the project that is sought to be implemented will not damage the environment, and if it will, the Proponent must prove or justify to the DENR-EMB that it has mitigation, prevention, and conservation plans in order to protect the environment. Many persons, however, after initially acquiring the ECC, no longer comply with the promises made to protect the natural resources they seek to exploit, develop, or utilize. Or, at the very least, they abide by it but only at the bare minimum where, in the long run, environmental damage can still be expected, albeit not of such magnitude as to affect two or more cities or municipalities.

In line with that, what must be addressed or at least acknowledged is the fact that small to medium destruction of natural resources contributes to a much larger problem of general environmental degradation. Again, the purpose of the EIA System is to protect the general welfare of the people and to ensure the preservation of the environment. In that same line, the purpose is the protection of the people's right to a balanced and healthful ecology, which is established under Section 16, Article II of the 1987 Constitution.³³⁰

B. The Different Environmental Remedies

Before delving into the idea of a framework of a recently identified doctrine in Philippine law, the Author will explain the various remedies available to any petitioners when it comes to environmental issues. Currently, there are four: the Writ of *Kalikasan*, the Writ of Continuing Mandamus, the Environmental Protection Order (EPO), and the Temporary Environmental Protection Order (TEPO). The Court has established specialized courts called the "Green Courts" to specially hear and decide on environmental cases.³³¹ The Writ of *Kalikasan* allows for any petitioner to file a petition on behalf of persons whose constitutional right to a balanced and healthful ecology has been violated, despite the petitioner not being directly affected.³³²

The Writ of *Kalikasan* is "a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental

330. PHIL. CONST. art. II, § 16.

331. I CARLO L. CRUZ, NOTES ON THE CONSTITUTION: 190 (2016) (citing Supreme Court, Re: Designation of Special Courts to Hear, Try and Decide Environmental Cases, Administrative Order No. 23-2008 [S.C. A.O. No. 23-2008] (Jan. 28, 2008)).

332. *Id.*

organization, or any public interest group accredited by or registered with any government agency[.]”³³³ This Writ is enforced

on behalf of persons whose constitutional right to a balance and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health[,] or property of inhabitants in two or more cities or provinces.³³⁴

As such, “within [60] days from the time the petition is submitted for decision, the court shall render judgment granting or denying the privilege of the writ of *kalikasan*.”³³⁵ The reliefs that may be granted under the writ are: (a) “directing respondent to permanently cease and desist from committing acts or neglecting the performance of a duty in environmental laws resulting in environmental destruction or damage[;]”³³⁶ (b) “to protect, preserve, rehabilitate[,] or restore the environment[;]”³³⁷ (c) “to make periodic reports on the execution of the final judgment;”³³⁸ and (d) “[s]uch other reliefs which relate to the right of the people to a balanced and healthful ecology or to the protection, preservation, rehabilitation[,] or restoration of the environment, except the award of damages to individual petitioners.”³³⁹

The Writ of Continuing Mandamus shall be petitioned for only when any agency or instrumentality of the government of officer thereof unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust[,] or station in connection with the enforcement or violation of an environmental law[,] rule or regulation[,] or a right therein, or unlawfully excludes another from the use or enjoyment of such right[.]³⁴⁰

Furthermore, this shall only be petitioned for when “there is no other plain, speedy[,] and adequate remedy in the ordinary course of law.”³⁴¹ If the privilege of the writ is granted, the Court shall order the respondent to “perform an act or series of acts until judgment is fully satisfied and to grant

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

334. *Id.*

335. *Id.* § 15.

336. *Id.* § 15 (a).

337. *Id.* § 15 (b).

338. *Id.* § 15 (d).

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

340. *Id.* rule 8, § 1.

341. *Id.*

such other reliefs as may be warranted resulting from the wrongful or illegal acts of the respondent.”³⁴² The Court shall “require the respondent to submit periodic reports detailing the progress and execution of the judgment, and the court may, by itself[,] or through a commissioner or the appropriate government agency, evaluate and monitor compliance.”³⁴³

The writs of *Kalikasan* and Continuing Mandamus are special civil actions which are remedies of last resort. These are remedies that can only be applied for when clearly there are no other procedural remedies the plaintiff can avail of.

An EPO is a remedy which refers “to an order issued by the court directing or enjoining any person or government agency to perform or desist from performing an act in order to protect, preserve[,] or rehabilitate the environment.”³⁴⁴ This is a provisional remedy which can be issued when the “matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury[.]”³⁴⁵

The TEPO can be applied for when the “matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury.”³⁴⁶ An issuance of a TEPO *ex parte* may be made by an executive judge of a multiple-sala court or a presiding judge of a single-sala court.³⁴⁷ This issuance shall only be “effective for [72] hours from the date of the receipt of the TEPO by the party enjoined.”³⁴⁸ The effectivity of the temporary restraining order may be extended until the case is terminated.³⁴⁹

These remedies have served to protect the environment and honor the Filipino’s right to a balanced and healthful ecology. Even with these remedies, however, the government has many a time fallen short in protecting the environment. These remedies also have meticulous requisites and requirements that it becomes difficult to acquire and delays actual actions that would stop further destruction of the environment.

342. *Id.* § 7.

343. *Id.*

344. *Id.* rule 1, § 4 (d).

345. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 2, § 8.

346. *Id.*

347. *Id.*

348. *Id.*

349. *Id.*

C. Finding the Gap

In *LNL Archipelago Minerals, Inc. v. Agham Party List*,³⁵⁰ the petition for Writ of *Kalikasan* was denied.³⁵¹ Agham raised the argument that due to the mining and tree-cutting activities of LNL Archipelago Minerals, the “mountain” had been flattened and due to the flattening, it will cause an environmental damage of such magnitude as to affect the lives of inhabitants of two or more cities or provinces.³⁵² They accused LNL of violating the Mining Act and the Forestry Code.³⁵³ The Court, however, ultimately denied the petition on the grounds that: (1) the “mountain” was in fact merely an “elongated mound;”³⁵⁴ and (2) Agham had not presented evidence that showed that there was an existence of a grave and real environmental damage to the barangay and the surrounding vicinity.³⁵⁵

The Court in this case also discussed that LNL Archipelago Minerals had strictly complied with the requirements and were granted the proper licenses and permits in order to conduct the activities on LAMI Port.³⁵⁶ It is worthy to note, however, that the “elongated mound” had still been decreased from 23 [meters above sea level] to 7.5 [meters above sea level].³⁵⁷ This is not deemed “significant” enough to warrant the issuance of the writ since the hill to begin with was not large enough to protect the area from typhoons or storm surges.³⁵⁸ In the Court’s own words, however,

[t]he hill shields against the direct impact of large, south-moving waves to several homes located immediately south of the hill. Since the V-cut of the access road is small compared to the rest of the hill and terminates at a *relatively high* 7.7 [meters above sea level], this protection offered by the hill is not significantly diminished.³⁵⁹

350. *LNL Archipelago Minerals, Inc. v. Agham Party List*, G.R. No. 209165, 789 SCRA 271 (2016).

351. *Id.* at 307.

352. *Id.* at 280.

353. *Id.* at 286.

354. *Id.* at 296.

355. *Id.* at 307.

356. *LNL Archipelago Minerals, Inc.*, 789 SCRA at 299.

357. *Id.* at 302.

358. *Id.* at 303.

359. *Id.* at 304 (emphasis supplied).

While it is true that the decrease of the height of the mound was not significant, there was still a slight damage to the environment that could possibly lead to great environmental damage in the long run. Following the principle of the Public Trust Doctrine, damage *should not* reach a magnitude so large and so grave as to affect the lives of people living in two or more cities or provinces before action should be taken.

In *Paje v. Casiño*,³⁶⁰ a petition was filed against the construction of a power plant mainly based on coal in Subic Bay Industrial Park. The Court had likewise denied the petition for the Writ of *Kalikasan* for failure to provide evidence to meet the requisites for its application —

The records of this case painfully chronicle[d] the embarrassingly inadequate evidence marshalled by those that initially filed the Petition for a Writ of *Kalikasan*. Even with the most conscientious perusal of the records and with the most sympathetic view for the interests of the community and the environment, the obvious conclusion that there was not much thought or preparation in substantiating the allegations made in the Petition cannot be hidden. Legal advocacy for the environment deserves much more.³⁶¹

In *Abogado v. Department of Environment and Natural Resources*,³⁶²

[t]he imminence of emergency of an ecological disaster should not be an excuse for litigants to do away with their responsibility of substantiating their petitions before the courts. As with any special civil action for extraordinary writs, parties seeking the [W]rit of *Kalikasan* must be ready with the evidence required to prove their allegations by the time the petition is filed.³⁶³

In the same case, the Court had said, “[a] [W]rit of *Kalikasan* cannot and should not substitute other remedies that may be available to the parties, whether legal, administrative, or political. Mere concern for the environment is not an excuse to invoke this Court’s jurisdiction in cases where other remedies are available[.]”³⁶⁴

The Writ of Continuing Mandamus was emphasized as a remedy “which allows for the enforcement of the conduct of the tasks to which the writ

360. *Paje v. Casiño*, G.R. No. 207257, 749 SCRA 39 (2015).

361. *Id.* at 282.

362. *Abogado v. Department of Environment of Natural Environmental*, G.R. No. 246209, 917 SCRA 544 (2019).

363. *Id.* at 579.

364. *Id.* at 581.

pertains[—] the performance of a legal duty.”³⁶⁵ This remedy then provides a “distinct remedy and procedure for allegations of unlawful *neglect* in the enforcement of environmental laws or the unlawful exclusion in the use or enjoyment of an environmental right.”³⁶⁶ Thus, this particular remedy is then filed against public officials or agencies for the compulsion of their legal duties and responsibility. Regarding procedure “in special civil actions for *certiorari*, prohibition, and *mandamus*, however, this procedure also requires that the petition should be sufficient in form and substance before a court can take further action. Failure to comply may be basis for the petition’s outright dismissal.”³⁶⁷ Thus, for “every petition for the issuance of a [W]rit of [C]ontinuing [M]andamus” there must be a clear showing on the guidelines sought for its implementation and its termination point.”³⁶⁸ As can be gleaned in these cases, although there exists environmental concerns, these issues do not meet the requisites required to be granted the remedies of the Writ of *Kalikasan* and the Writ of Continuing Mandamus. If such is the case, a remedy to address such problems needs to be created.

It is submitted, however, that according to the Rules of Procedure for Environmental Cases, the Precautionary Principle shall likewise be utilized in the absence of evidence. As to its applicability, Section 1, Rule 20 provides —

When there is a lack of full scientific certainty in establishing a causal link between human activity and environmental effect, the court shall apply the precautionary principle in resolving the case before it.

The constitutional right of the people to a balanced and healthful ecology shall be given the benefit of the doubt.³⁶⁹

Thus, it now creates a clear gap. In several instances where petitioners have been denied the Writ of *Kalikasan* for failure to provide sufficient evidence to prove that there was an environmental damage of “such magnitude as to prejudice the life, health[,] or property of inhabitants in two or more cities or provinces[,]”³⁷⁰ the same could have been supplied with the precautionary principle for evidentiary purposes to support providing the

365. *Boracay Foundation, Inc. v Province of Aklan*, G.R. No. 196870, 674 SCRA 555, 606 (2012) (citing Supreme Court, Rationale to the Rules of Procedure for Environmental Cases, at 76 (Apr. 29, 2010) (emphasis supplied)).

366. *Abogado*, 917 SCRA at 584.

367. *Id.* at 584-85.

368. *Id.* at 586.

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

370. *Id.* rule 7, § 1.

constitutional right to a balanced and healthful ecology the benefit of the doubt. The gap, however, lies in the fact that the granting of the application for the Writ of *Kalikasan* requires that this environmental threat or damage must be so grave. This is not addressed in the current Rules of Procedure for Environmental Cases.

With all these judicial remedies available, however, it must not be forgotten that prior to going to the courts, applicants or petitioners must exhaust all available remedies before resorting to judicial relief. In *Pagara v. Court of Appeals*,³⁷¹ the Court summarized the procedural requirement of exhaustion of administrative remedies —

The rule regarding exhaustion of administrative remedies is not a hard and fast rule. It is not applicable: (1) where the question in dispute is a purely legal one, or (2) where the controverted act is patently illegal or was performed without jurisdiction or in excess of jurisdiction; or (3) where the respondent is a department secretary, whose acts as an alter ego of the President bear the implied or assumed approval of the latter, unless actually disapproved by him, or (4) where there are circumstances indicating the urgency of judicial intervention[.]

Said principle may also be disregarded when it does not provide a plain, speedy[,] and adequate remedy, when there is no due process observed, or where the protestant has no other recourse.³⁷²

In sum, aggrieved parties may proceed to the courts when it falls under any of the exceptions stated above. Again, the Court has the power to protect the constitutional rights of the people, and likewise has the distinct power of ruling on these matters. The Public Trust Doctrine contemplates a more affirmative stance in environmental protection since this doctrine is hinged on the ideology that the State and its representatives must hold the natural resources in trust. This contemplates the fact that private companies are not entitled to whimsically use natural resources for their sole benefit. While profit remains to be a priority, public welfare must be primary. The Public Trust Doctrine allows the judiciary to hold corporations liable for their substandard management of their facilities when it comes to handling natural resources. As

371. *Pagara v. Court of Appeals*, G.R. No. 96882, 254 SCRA 606 (1996).

372. *Id.* at 619 (citing *Gonzales v. Hechanova*, G.R. No. L-21897, 9 SCRA 230 (1963); *Abaya v. Villegas*, G.R. No. L-25641, 18 SCRA 1034 (1966); *Mitra v. Subido*, G.R. No. L-21691, 21 SCRA 127 (1967); *Cipriano v. Marcelino*, G.R. No. L-27793, 43 SCRA 291 (1972); *Villanos v. Subido*, G.R. No. 23169, 45 SCRA 299 (1972); & *Sta. Maria v. Lopez*, G.R. No. L-30773, 31 SCRA 637 (1970)).

such has already been enunciated in *Maynilad*, with regard to water, it must logically be applied with other natural resources as well.

D. Natural Resources as the “Res”

1. Water

In reiteration, the Public Trust Doctrine aims to put an additional strain upon the duty of the water industry to comply with the laws and regulation of the land. The Doctrine had been first applied to water, as it was believed that everything came from water; water unarguably is where everything is borne from.³⁷³ This natural resource is a basic necessity for all, and its management cannot be any less than excellent. When the Court applied the Public Trust Doctrine in *Maynilad*, it stated that the introduction “aims to put an additional strain upon the duty of the water industry to comply with the laws and regulations of the land.”³⁷⁴

The Court acknowledged that there have already been doctrines that protect public welfare. One of those doctrines was that of Article XII, Section 2 of the Constitution,³⁷⁵ which housed the Regalian Doctrine or *jura regalia*.³⁷⁶ Part of such provision provides, “[t]he exploration, development, and utilization of natural resources shall be under the full control and supervision of the State.”³⁷⁷ This Doctrine is the State’s exercise of its sovereign function and power as owner of all lands and natural resources of public domain and the country’s patrimony. Water forms part of this patrimony.³⁷⁸

The Court also acknowledged that due to the vastness of this patrimony, the State is precluded from managing all of it by itself;³⁷⁹ thus, the necessity of the extension of the trusteeship. The Court explained, “[i]n the interest of quality and efficiency, it thus outsources assistance from private entities, but this must be delimited and controlled for the protection of the general welfare.”³⁸⁰ In this vein, the State then grants utility franchises to *Maynilad*

373. Richard Rojcewicz, *Everything Is Water*, 44 RESEARCH IN PHENOMOLOGY 194, 194-95 (2014).

374. *Maynilad Water Services, Inc.*, G.R. No. 202897.

375. PHIL. CONST. art. XII, § 2.

376. PHIL. CONST. art. XII, § 2.

377. PHIL. CONST. art. XII, § 2.

378. *Maynilad Water Services, Inc.*, G.R. No. 202897.

379. *Id.*

380. *Id.*

and Manila Water through MWSS, the delegated representative. This was under the “firm belief that they shall serve as protectors of the public interest and the citizenry.”³⁸¹

Regarding water resource in the Philippines, the law that governs its distribution is the Clean Water Act, to which the Court in *Maynilad* explained that the purpose of the law is to consolidate a coherent piece of legislation geared toward a more cohesive water management system.³⁸² The framework of Public Trust had created a simple relationship between the State or its representatives and the citizenry. This Doctrine pronounces that the State shall be the trust principal who shall hold the *res* “for the benefit of the current and future generations” for the citizens as beneficiaries.³⁸³

The Court also recognized that “with the birth of privatization of many basic utilities, including the supply of water,” protecting public interest has been challenging.³⁸⁴ The State is thus in a perpetual struggle “against the lurking evils that has afflicted even itself, such as the excessive pursuit of profit rather than purely the public’s interest.”³⁸⁵

2. Minerals

It is with the Regalian Doctrine that the State, through the DENR, grants licenses, license agreements, or mineral agreements to mining companies for which they are allowed to mine in designated mining areas to harvest precious minerals.³⁸⁶ There are several cases today wherein mining companies are found to have involved themselves in irresponsible and reckless practices when mining minerals to the point of destruction in the neighboring municipalities or land.

The Public Trust Doctrine, by definition, explains that the State is the designated trustee for the *res* or natural resources for the benefit of the Filipino people as beneficial owners.³⁸⁷ While this concept of trust is similar to that of

381. *Id.*

382. *Id.*

383. *Maynilad Water Services, Inc.*, G.R. No. 202897 (citing *KLASS & HUANG, supra* note 25, at 16).

384. *Maynilad Water Services, Inc.*, G.R. No. 202897.

385. *Id.*

386. *See* Philippine Mining Act of 1995, ch.1, § 2.

387. *Id.*

the Civil Code provisions on trust,³⁸⁸ the Regalian Doctrine does not fall under such Code.

The Doctrine primarily rests its foundations on public welfare, and its application will be for the benefit of the same. When the Court ruled for the application of the Public Trust Doctrine, it considered the ongoing water crisis in Metro Manila at the time³⁸⁹ and its duty not to shirk from its responsibility from the environment.³⁹⁰

The Philippines, being one of the biggest exporters of minerals such as gold and nickel,³⁹¹ are at a position to gain the most profit from natural resources. As discussed, however, these are often undertaken in partnership with private entities or corporations. In this light, minerals are then exploited for the benefit of both the private sector and the public sector.

Now, the problem arises when minerals are mined to the point wherein neighboring lands or communities are affected by these mining activities. While the law that governs mining has standards as to how these activities must be taken underway, it is argued that this is not enough. It is surmised by the Author that this concept of Public Trust is implied in the contract which mining companies enter. With that, it holds them accountable for their actions and does not give them unbridled discretion to dispose, abuse, and harm environmental resources since these resources are not theirs to abuse. Primarily, these natural resources remain within the ownership of the Filipino people. The usage of which is for the benefit of all who reside in the Philippines and not just for the companies.

3. Forestry

One of the policies set forth by the Revised Forestry Code is that “[t]he protection, development[,] and rehabilitation of forest lands shall be emphasized so as to ensure their continuity in productive condition.”³⁹²

There are several kinds of forests in the country, and the government has exerted continued efforts to reforest the country. Through the Enhanced Greening Program, the Philippine government and its agencies have

388. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, arts. 1440-57 (1949).

389. *Maynilad Water Services, Inc.*, G.R. No. 202897.

390. *Id.*

391. See Bunye, *supra* note 174.

392. REV. FORESTRY CODE, § 2 (d).

significantly increased forest coverage by five percent.³⁹³ While these efforts are notable, it does not discredit the need for public trust to be instilled in logging companies.

Saving the environment will always be a joint effort. Through the combined will of both the public and private sector, reforestation will be underway, as promised by Secretary Cimatú.³⁹⁴ Knowing this, however, public trust still plays a vital role in providing a sense of accountability among logging companies.

If the Public Trust Doctrine is applied to forestry laws, all licenses and all contracts entered into in relation to forests would impliedly have the Public Trust Doctrine vested within its words. As such, persons or entities vested with the authority to utilize, exploit, or possess any of the forestlands cannot feign liability when it irresponsibly utilizes, exploits, or possesses the same. Cases of improper use of their licenses, leases, and license agreements have proven detrimental not only to the environment but also to the neighboring human inhabitants of these forest lands.

Even though the Revised Forestry Code had provided penal sanctions for usage of these authorizations,³⁹⁵ it is likewise not enough to derail the irresponsible exploitation of forest lands. These penal sanctions, on paper, look threatening against persons or entities engaged in forestry activities, but as long as they claim to bring profit through these activities, they can leave scot-free.

Knowing this, the application of the Public Trust Doctrine in *Maynilad* sets a precedent and can be subject to abuse and bogus suits if metes and bounds are not established. The Public Trust Doctrine establishes that the State is merely a trustee, holding the State's natural resources in trust, while the public is the beneficial owner of such resources.³⁹⁶

Thus, in all agreements involving the utilization, exploitation, and harvesting of natural resources, the State or any other authorized representative is expected and mandated by virtue of the Public Trust Doctrine to preserve the resource with utmost diligence. Reiterating Professors Wood and Woodward's position on State's twin-duty, is to first protect the *res* and to

393. See Department of Environment and Natural Resources, *supra* note 227.

394. Paunan, *supra* note 224.

395. REV. FORESTRY CODE, ch. IV, §§ 68-80.

396. *Maynilad Water Services, Inc.*, G.R. No. 202897.

repair any damage inflicted upon it.³⁹⁷ These two are active duties rather than passive.

In line with this, it must be kept in mind that the State as the trustee has an extraordinary responsibility to ensure that all natural resources are maintained, protected, and utilized befitting for the public as the beneficiary. Due to the privatization of companies authorized to handle natural resources, the pursuit of profit propels these companies to be reckless and irresponsible in handling the natural resources the State needs to protect.

The Public Trust Doctrine can thus be utilized by the Court as a more compelling doctrine that combines both the Regalian Doctrine and *Parens Patriae*. In *Maynilad*, the Public Trust Doctrine was used as a tool to vest liability upon the water companies involved under Section 8 of the Clean Water Act.³⁹⁸

Such utility of the doctrine, however, can also be converted to that of a positive act. It can be used as more than just a tool of equity, but a framework imbedded in the Philippine legal structure. The legitimization of the Public Trust Doctrine shall not only instill a sense of accountability in companies, but it shall also formalize the call for responsibility of these corporations. Standing alone, however, the Public Trust Doctrine has the potential to absorb the absences the law may have by supplying this extra degree of responsibility as a *trustee* vested upon the State and its representatives. Now, it is argued and provided that a framework needs to be formulated and established, evolving the Public Trust Doctrine not only as a tool of equity, but also as a principle established by law.

Further, the decision in *Waweru*³⁹⁹ echoes that of in *Maynilad*. In the case, it was held that, “[i]n the case of land resources, forests, wetlands[,] and waterways[,] [...] the Government and its agencies are under a public trust to manage them in a way that maintains a proper balance between the economic benefits of development with the needs of a clean environment.”⁴⁰⁰ The two are alike because in the Kenyan case, the High Court recognized the fact that

397. Tan, *supra* note 40, at 733 (citing Mary Christina Wood & Charles Woodward IV, *Atmospheric Trust Litigation and the Constitutional Right to a Healthy Climate System: Judicial Recognition at Last*, 6 WASH. J. ENVTL. L. & POL’Y. 633, 666 (2016)).

398. *Maynilad Water Services, Inc.*, G.R. No. 202897.

399. *Waweru*, Miscellaneous Civil Application No. 118 of 2004, at *31.

400. *Id.* at 31.

even though a private corporation is vested with a license, it is still vested with public trust as extended by the State.⁴⁰¹

E. Its Weakness

While this concept of public trust regarding natural resources had been revolutionized by Professor Sax in the 1970s, it is not without criticism. Almost 17 years after Professor Sax released his article on the Doctrine of Public Trust, Professor Richard J. Lazarus criticized his work. Professor Lazarus “advocated that the [D]octrine be set aside in favor of a police power justification for governmental environmental protection.”⁴⁰² He argued that the Doctrine vested the government as a private property owner of the natural resources and that this has several adverse effects.⁴⁰³ This included that the governmental power would depend on “property ownership” and would be “inadequate.”⁴⁰⁴

This ideology suggests that this governmental power necessarily relies on ownership and will adversely affect the concept of private property.⁴⁰⁵ Professor Lazarus basically argues that the legal differences between public and private property are fading and that “environmental protection should be at the forefront of the move toward a more collectivist approach to property, and that the police power represents a better modern justification for environmental regulation.”⁴⁰⁶

Another weakness that can be gleaned with the Public Trust Doctrine in the Philippines is that, simply, it is young; it had only been formally introduced in 2019. Although this Doctrine is not new to environmental law, its application and introduction had been dubbed as “monumental” by the Court.⁴⁰⁷ Even prior to that, the Doctrine had only been implied or briefly mentioned in previous decisions by the Court. Even with this decades-old Doctrine, however, its developments over the years had been mainly its

401. *Id.*

402. Power, *supra* note 112, at 432 (citing Richard J. Lazarus, *Changing Conceptions of Property and Sovereignty in Natural Resources: Questioning the Public Trust Doctrine*, 71 IOWA L. REV. 631 (1986)).

403. *Id.*

404. *Id.*

405. *Id.*

406. *Id.* at 432-33.

407. *Maynilad Water Services, Inc.*, G.R. No. 202897.

application on water resources in various jurisdictions.⁴⁰⁸ This was primarily because there had been a lack in legal and evidentiary support. Prior to *Maynilad*, the Philippines had only used the concept of Public Trust in environmental cases and written in passing.

Thus, while in previous years the Doctrine had only been applied to water resources, recent jurisprudence has allowed the possibility of the Doctrine's application. Public trust had been noted to be under the "arresting phrase"⁴⁰⁹ which directs "the attention with intimations of guardianship, responsibility, and community."⁴¹⁰ Critics have attacked the Public Trust Doctrine's applicability saying that "it is little more than a 'simple, easily understood, and intuitively appealing approach to environmental protection."⁴¹¹ Its applicability, however, must be seen as beyond its roots, and be seen by its practicality and by its logic. The Public Trust Doctrine expands beyond the common resource of water, simply because all resources are for the benefit of all and must be taken care of and managed to the highest standard by its trustees.

F. Coming Together

It was in 1970 when Professor Sax pegged a more modern concept of the Public Trust Doctrine and its overarching applicability to all natural resources. This argument was thought to be revolutionary. Professor Sax's position "sought to expand the scope of the [P]ublic [T]rust [D]octrine to encompass environmental preservation[.]"⁴¹² This new claim of public trust is referred to as *jus publicum*.⁴¹³ This is "the notion that certain resources are of so common a nature that they defy private ownership in the classical liberal sense."⁴¹⁴ This position had encouraged a string of pro-environment decisions and legislations

408. Erin Ryan, *Public Trust and Distrust: The Theoretical Implications of the Public Trust Doctrine for Natural Resource Management*, 31 ENV'T. L. 477, 490 (2001).

409. *Id.* at 495 (citing Carol M. Rose, *Joseph Sax and the Idea of the Public Trust*, 25 ECOLOGY L. Q. 351, 351 (1998)).

410. Ryan, *supra* note 408, at 495.

411. *Id.* at 495-96 (citing Richard Delgado, *Our Better Natures: A Revisionist View of Joseph Sax's Public Trust Theory of Environmental Protection, and Some Dark Thoughts on the Possibility of Law Reform*, 44 VAND. L. REV. 1209, 1210 (1991) (citing Sax, *supra* note 63, at 474)).

412. Ryan, *supra* note 408, at 482.

413. *Id.* at 479.

414. *Id.*

leaning towards the application of the Public Trust Doctrine. The *Mono Lake* decision⁴¹⁵ was a pivotal decision in the Public Trust Doctrine timeline.

The California Supreme Court had ruled that the Constitution shall ensure that there shall be “beneficial use” of water resources, especially the Mono Lake.⁴¹⁶ The Court herein had also ruled that the uses of the water resource — its environmental and human uses — must be protected by the public trust, and must be considered.⁴¹⁷ Professor Sax’s article had also inspired the development of environmental laws such as the National Environmental Policy Act in the United States.⁴¹⁸ Furthermore, because of this emergence, environmentalists have pegged the Doctrine of Public Trust as the “legal tool

415. *National Audubon Society*, 33 Cal. 3d.

416. *See id.* at 452. *See also* CAL. CONST. art. X, § 2. Section 2, Article X of the California Constitution provides —

Section 2. It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to *beneficial use* to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or water course in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water. Riparian rights in a stream or water course attach to, but to no more than so much of the flow thereof as may be required or used consistently with this section, for the purposes for which such lands are, or may be made adaptable, in view of such reasonable and beneficial uses; provided, however, that nothing herein contained shall be construed as depriving any riparian owner of the reasonable use of water of the stream to which the owner’s land is riparian under reasonable methods of diversion and use, or as depriving any appropriator of water to which the appropriator is lawfully entitled. This section shall be self-executing, and the Legislature may also enact laws in the furtherance of the policy in this section contained.

CAL. CONST. art. X, § 2 (emphasis supplied).

417. Ryan, *supra* note 408, at 479 (citing *National Audubon Society*, 33 Cal. 3d. at 452).

418. Ryan, *supra* note 408, at 480 (citing National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4370 (e) (1969)).

that would finally empower them against powerful private and government interests they believed imperiled natural resources nationwide.”⁴¹⁹

It is only natural that the Public Trust Doctrine in legal parlance, left that in American jurisdiction and trickled its way to other countries. In the Philippines, the Public Trust Doctrine had already been mentioned in previous jurisprudence — most recently in *Maynilad*.⁴²⁰ While the Doctrine is premised on the concept of trusteeship, its basic application is to protect the people’s right to a balanced and healthful ecology.

Section 16, Article II of the 1987 Constitution states, “[t]he State shall protect and advance the right of the people to a balanced and healthful ecology in accord with them.”⁴²¹ This is an enforceable right.⁴²² When this provision was construed, the “discussions manifested a clear desire to make environmental protection and ecological balance conscious objects of police power.”⁴²³ This right has also been acknowledged as a special provision which is assumed guaranteed, made official in *Oposa*, and not written in the Constitution, it is deemed “to exist from the inception of humankind and it is an issue of transcendental importance with intergenerational implications.”⁴²⁴ In *Oposa*, this Constitutional right was recognized as a “‘public right’ of citizens to ‘a balanced and healthful ecology which, for the first time in our constitutional history, is solemnly incorporated in the fundamental law.’”⁴²⁵

To reiterate, the Public Trust Doctrine pronounces that natural resources are held in trust by the State and its representatives on behalf of the citizenry as beneficiaries. The Public Trust Doctrine is reflective of the constitutional right to a balanced and healthful ecology,⁴²⁶ which is an enforceable right and

419. Ryan, *supra* note 408, at 480 (citing JOHN HART, *STORM OVER MONO: THE MONO LAKE BATTLE AND THE CALIFORNIA WATER FUTURE* 179–186 (1996)).

420. *Maynilad Water Services, Inc.*, G.R. No. 202897.

421. PHIL. CONST. art. II, § 16.

422. JOAQUIN G. BERNAS, S.J., *THE 1987 PHILIPPINE CONSTITUTION: A COMPREHENSIVE REVIEWER* 20 (2011 ed.) (citing *Oposa*, 224 SCRA at 817).

423. JOAQUIN G. BERNAS, S.J., *THE 1987 PHILIPPINE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 90 (2009 ed.) (citing 4 RECORD OF THE CONSTITUTIONAL COMMISSION, NOS. 904–09, at 912–16 (1986)).

424. *Id* at 190 (citing *Oposa*, 224 SCRA at 804).

425. I CRUZ, *supra* note 331, at 190 (citing *Oposa*, 224 SCRA at 804).

426. PHIL. CONST. art. II, § 16.

is found in the Constitution's Declaration of Principles. The Doctrine is also the marriage of the Regalian Doctrine and *Parens Patriae*. These three doctrines together make a legal system that protects the environment fiercely. The application of the Public Trust Doctrine, along with the already recognized Regalian Doctrine and *Parens Patriae*, only serves to further bolster the Filipino's right to a balanced and healthful ecology.

G. Application of the Doctrine of Public Trust on Natural Resources

While this Doctrine had been recognized and referenced to in previous jurisprudence, it was only in *Maynilad* that the Court formally applied this legal principle to an environmental law. Following that, since the Doctrine can be applied to water as a natural resource, it can be applied to other natural resources. This decision sets a precedent that can be subject to abuse by any potential petitioner and thus requires metes and bounds on its application.

While there are current environmental laws established by the legislature, several entities skirt past liabilities because they claim to be within the bounds of the law. These entities, because of the leniency of government agencies and the inadequacy of resources at enforcement, can exploit these resources to the last drop for profit. This leaves natural resources devastated, and the Filipino people robbed of their right to a healthful ecology.

In this Note, the Author examined three different resources along with their corresponding environmental laws: water, minerals, and forests. Although these three environmental laws are highlighted, it does not mean that other environmental laws are not covered by the Public Trust Doctrine. It must be reiterated yet again that the Public Trust Doctrine applies to all natural resources that are deemed to be national patrimony of the State.

The Public Trust Doctrine promotes an affirmative duty on both the government and its representatives.⁴²⁷ This affirmative duty means that the trustees of the *res* must be proactive with the natural resources it was sought to care for. This entails a certain level of diligence, responsibility, and initiative. This does not mean that one must just abide by the law and skirt on the technicalities. "Technically" abiding by laws is not enough. This Doctrine asserts the need to be accountable since these natural resources are not alienable property that anyone from the private sector may abuse for profit. The Public Trust Doctrine is the marriage of the Regalian Doctrine and *Parens Patriae*. According to *Maynilad*,

⁴²⁷ *Maynilad Water Services, Inc.*, G.R. No. 202897 (citing *KLASS & HUANG*, *supra* note 25, at 5 (citing *National Audubon Society*, 33 Cal. 3d. at 446)).

[w]hile the Regalian doctrine is state ownership over natural resources, police power is state regulation through legislation, and *parens patriae* is the default state responsibility to look after the defenseless, there remains a limbo on a flexible state policy bringing these doctrines into a cohesive whole, enshrining the objects of public interest, and backing the security of the people, rights, and resources from general neglect, private greed, and even from the own excesses of the State. [The Court] fill[s] this void through the Public Trust Doctrine.⁴²⁸

To reiterate, Professor Sax had penned criterion to determine the applicability of the Public Trust Doctrine. These three criteria are: One, there must be a certain concept of a legal right in the general public.⁴²⁹ Second, it “must be enforceable against the environment.”⁴³⁰ And third, it is “capable of an interpretation consistent with contemporary concerns for environmental quality.”⁴³¹ The Philippines has met the three criteria.

First, the concept of the legal right in the general public can be seen in the Declaration of Principles, specifically Section 16, Article II of the 1987 Constitution that declares that the Filipino has the right to a balanced and healthful ecology.⁴³²

Second, this right is enforceable against the government.⁴³³ The Bill of Rights, inherently, was written in order to protect its citizens from the actions of the government.⁴³⁴ While private corporations are not in the government and are private sectors, their being extended trustees makes them just as liable as the government when it comes to this right. Again, the government is too overwhelmed to be able to oversee all natural resources, thus the necessity of extended trustees. These private entities are vested with this extended trusteeship through franchises, licenses, license agreements, or partnership agreements.

Third, it is capable of an interpretation consistent with contemporary concerns for environmental quality. When the Court ruled against the water utility companies, it acknowledged the need of the Doctrine’s application to emphasize the importance of the water resource as a resource owned in

428. *Maynilad Water Services, Inc.*, G.R. No. 202897.

429. Tan, *supra* note 40, at 733 (citing Sax, *supra* note 63, at 474).

430. *Id.*

431. *Id.*

432. PHIL. CONST. art. II, § 16.

433. BERNAS, *supra* note 422.

434. See BERNAS, *supra* note 423 at 105.

common. *Maynilad* states that the Doctrine can be applied in Philippine jurisdiction.⁴³⁵ The decision of the Court also opens the possibility of its application to all natural resources.

V. CONCLUSION AND RECOMMENDATION

Having an additional remedy gives ordinary people the ability and the power to protect their right to a balanced and healthful ecology. This Note suggests that the Public Trust Doctrine is reflective of such right and is thus enforceable. The Doctrine also lifts the standard of care and diligence on the State and its representatives to properly care for the natural resources it is utilizing and holding in trust for the beneficial owners.

A. Framework Proposed

Professor Sax had argued that the Public Trust Doctrine could enable “judicial oversight when inadequacies in legislative and administrative processes result in wrongful discounting of natural resource values vis-à-vis competing economic use values, noting that ‘the public trust concept is, more than anything else, a medium for democratization.’”⁴³⁶ It is established that corporations that are authorized by the government are also vested with public trust. As such, they should be placed at a much higher standard, as holders, carers, and managers of natural resources.

The above remedies established by the Court in the Rules of Procedure for Environmental Cases are remedies that have been effective over the years and will continue to remedy and alleviate environmental destruction in the country.⁴³⁷ The Author, however, surmises that these remedies are not enough. As far as corporations that are responsible for natural resources are concerned, a framework establishing the Public Trust Doctrine is prudent to establish a sense of accountability.

Under the contemplation of the Court in *Maynilad*, the Public Trust Doctrine brings together the Regalian Doctrine, police power, and *Parens Patriae*, to address this void and to fully enforce an application of the Public Trust Doctrine.⁴³⁸ There are several ways to apply this Doctrine through

435. *Maynilad Water Services, Inc.*, G.R. No. 202897.

436. Ryan, *supra* note 408, at 483 (citing Joseph L. Sax, *The Limits on Private Rights in Public Waters*, 19 ENVTL. L. 473, 562-65 (1989)).

437. See RULES OF PROCEDURE FOR ENVIRONMENTAL CASES.

438. *Maynilad Water Services, Inc.*, G.R. No. 202897.

frameworks such as a writ, an additional remedy in the Rules of Procedure of Environmental Cases.

The Public Trust Doctrine was first introduced by the judicial branch and should likewise be addressed by the judiciary as well. When the Doctrine was introduced by the Court, it opened the possibility of its application to other natural resources in the country, apart from water. While it is undisputed that water is a necessity that must be cared for at all times, other natural resources cannot be forgotten. They are just as important to everyday life in this country.

Section 16, Article II of the 1987 Constitution again states, “[t]he State shall protect and advance the right of the people to a balanced and healthful ecology in accordance with the rhythm and harmony of nature.”⁴³⁹ This is an enforceable right.⁴⁴⁰ The same right had been the basis to grant *mandamus* in the case of *Laguna Lake Development Authority v. Court of Appeals*⁴⁴¹ in order “to protect the inhabitants of the Laguna Lake Development Authority to protect the delirious effects of pollutants coming from garbage dumping and the discharge of wastes in the area as against the local autonomy claim of local governments in the area.”⁴⁴² The same was also used in *Oposa*, in further “conferring ‘standing’ on minors to challenge logging policies of the government.”⁴⁴³

Thus, this right is an enforceable right that can be invoked and deemed implied in all environmental laws. The same right is also enunciated in most, if not all, environmental statutes in Philippine jurisdiction. Following this, the Public Trust Doctrine is implied in this right and in environmental laws and must simply be solidified.

The Public Trust Doctrine “contemplates that while preservation of the *corpus* itself need not be absolute, the *publicness* and *trust values* that it supports must be maintained.”⁴⁴⁴ This Doctrine is representative of the ideology of interest rights in natural resources and that such rights have further “evolved in tandem with the changing public perception of the values and uses of water-

439. PHIL. CONST. art II, § 16.

440. BERNAS, *supra* note 422.

441. *Laguna Lake Development Authority v. Court of Appeals*, G.R. No. 110120, 231 SCRA 292 (1994).

442. BERNAS, *supra* note 423, at 91 (citing *Laguna Lake Development Authority*, 231 SCRA at 307-08).

443. BERNAS, *supra* note 422.

444. Power, *supra* note 112, at 432 (emphases supplied).

ways” and the same should “not be considered fixed or static.”⁴⁴⁵ This means that the Doctrine shall not be limited only to water resources and must continue to evolve and mold to adapt to the changing conditions and needs of society.

While it had only been in recent decades when the Philippine courts had caught wind of the Public Trust Doctrine, it is not the first time that this Doctrine has “led the courts into new and controversial realms.”⁴⁴⁶ This should not be the last time for this Doctrine to trickle its way into judicial affairs. After all, “[t]he procedural mandate of the [D]octrine has, however, remained constant, expressing skepticism of any violation of the *corpus*, emphasizing the role of the courts in enforcing the trust and maintaining the distinction between the people and the legislature.”⁴⁴⁷ As the past couple of decades have shown, the Doctrine was mainly applied to the water resource but it has been extended to other natural resources, mainly in American jurisdiction.⁴⁴⁸

In the Philippines, the Court had adopted the precautionary principle which states that “when human activities may lead to threats of serious and irreversible damage to the environment that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that threat.”⁴⁴⁹ This principle had originated from Germany in the 1960s.⁴⁵⁰ This very principle expressed the idea that governments are obligated to “‘foresee and forestall’ harm to the environment.”⁴⁵¹ Throughout the decades, this principle “has served as the normative guideline for policymaking by many national governments.”⁴⁵² This bolstered the implementation of remedies for environmental cases promulgated by the Court.

These remedies, however, are admittedly difficult to attain. The Rules of Procedure for Environmental Cases, with regard to Writs of Continuing Mandamus and *Kalikasan*, provide for stringent requirements and procedure before an applicant can be granted its privilege. If the Public Trust Doctrine

445. *Id.* at 420 (citing *National Audubon Society*, 33 Cal. 3d at 434 & *People ex rel. Scott v. Chicago Park Dist.*, 360 N.E. 2d 773, 780 (Ill. 1976) (U.S.)).

446. Power, *supra* note 112, at 429.

447. *Id.*

448. *Id.*

449. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 1, § 4 (f).

450. I CRUZ, *supra* note 331, at 194.

451. *Id.*

452. *Id.*

is converted into a writ, it shall be more accessible, or at least relatively more efficient than other remedies provided in the Rules of Procedure for Environmental Cases.

While the Writ of *Kalikasan*, Continuing Mandamus, and Environmental Protection Orders are remedies effective against environmental destruction and protective of the right to a healthful ecology, the Writ of Public Trust allows both an extensive and more specific purpose. The Writ of Public Trust empowers the courts to order corporations to live up to the trust extended to them. To illustrate, in *Maynilad*, when MWSS and its concessionaires underwent the installations of the proper sewage systems, it displayed a “blatant apathy” with mandatory, albeit technical requirements under the Clean Water Act.⁴⁵³ Likewise, if for example, a mining company named Corporation X had operated in a mining site and left it devastated, left it with polluted water, destroyed forestlands, and an uninhabitable environment. Although, reforestation, cleaning of the water, and installing the necessary equipment to lessen the devastation of the environment is not written under the Mining Act, Corporation X must still be liable for its similar apathy displayed by the corporation and shall likewise be liable. It should and can be made accountable under the Public Trust Doctrine.

Simply put, the responsibilities of public trustees include caring, protecting, and developing these natural resources for the benefit of the true owners, the Filipino people. As to be gleaned from recent circumstances, corporations are clearly not up to par with the responsibility that should be expected from them as trustees of natural resources of the country.

Thus, an additional remedy should be supplied in addition to already existing remedies under the Rules of Procedure for Environmental Cases. The Writ of Public Trust does more than just address the environmental wrong committed by the corporation; it expands more than that. The remedy shall be targeting not the ordinary contractors or license holders, but corporations that have been authorized to utilize, develop, and exploit natural resources. These are the corporations that have been specifically vested with the authority and the trust to care for the natural resources. The notion of Public Trust is that corporations or individuals are given part of national patrimony, and these trustees are supposed to care, protect, and develop, and not destroy these resources.

Unfortunately, natural resources are simply not being cared for in this country. As already acknowledged by *Maynilad* with regard to MWSS,

453. *Maynilad Water Services, Inc.*, G.R. No. 202897.

Maynilad, and Manila Water and their inaction to comply with the Clean Water Act.⁴⁵⁴ It can also be seen in the balding of the country's forestlands due to the lack of reforestation or the poisoning of several areas across the country because of irresponsible mining by mining companies.

B. Proposal of the Writ of Kinaiyahan

The word “*kinaiyahan*” is a Cebuano word that means “nature”⁴⁵⁵ or “inherent.”⁴⁵⁶ This word can be interpreted in two ways, whether to describe nature as in the “environment” or nature as in “inherent traits.”⁴⁵⁷ This is fitting for this writ since “*kinaiyahan*” could be interpreted to mean that natural resources are trust resources inherently by virtue of the Public Trust Doctrine.

Irresponsible management or substandard facilities of the licensed private corporations shall trigger the warranting of the issuance of the Writ. The creation of this Writ empowers the Court to issue a writ in favor of the plaintiff to enforce the Public Trust Doctrine. When such Writ is invoked, the Court shall order the corporation to halt activities pertaining to the act or irresponsible usage and endangerment to the environment. Further, aside from being an injunction, such writ will order corporations to pay for damages. If need be, the Court shall order the entity or individual involved to assist affected peoples or animals, or other needs, if the case demands. Additionally, the Writ can or may order the Department of Environment and Natural Resources to review the contractual agreement, license agreement, or mining agreement. Result of such review will determine the renewal, cancellation, or suspension of such agreement.

If a writ shall be created, it will be under the Rules of Procedure for Environmental Cases, likewise, such Rules will be amended in order to accommodate the Writ of Public Trust. The Writ of Public Trust will be borne out of the same family as that of the Writ of *Kalikasan*, the Writ of Continuing Mandamus, and the TEPO. It will, however, be starkly different and its addition to the Rules of Procedure for Environmental Cases will be monumental in how the courts will proceed with Environmental Law and its natural consequences.

454. *Id.*

455. Binisaya, *Kinaiyahahan* (Translated from Cebuano to English), available at <http://www.binisaya.com/cebuano/kinaiyahan> (last accessed July 31, 2023) [<https://perma.cc/HMZ6-SVYD>].

456. *Id.*

457. *Id.*

First, the Writ of *Kalikasan* is “a remedy available to a natural or juridical person, entity authorized by law, people’s organization, non-governmental organization, or any public interest group accredited by or registered with any government agency.”⁴⁵⁸ This Writ is enforced

on behalf of persons whose constitutional right to a balance and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health[,] or property of inhabitants in two or more cities or provinces.⁴⁵⁹

Second, the Writ of Continuing Mandamus shall be petitioned for only when

any agency or instrumentality of the government or officer thereof unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust[,] or station in connection with the enforcement or violation of an environmental law rule or regulation or a right therein, or unlawfully excludes another from the use or enjoyment of such right.⁴⁶⁰

Third, the TEPO can be applied for when the “matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury.”⁴⁶¹

The aforementioned remedies pronounced in the Rules of Procedure for Environmental Cases are different from the Writ of Public Trust insofar as the latter provides for an active stance, and that the privilege of the Writ of Public Trust shall only be granted when concessionaires, private corporations, agencies, and individuals fail to do their due diligence in responsibly using the natural resources entrusted to them.

In sum, the Writ of *Kalikasan* is premised in that there is environmental damage so big as to endanger the lives of people. The Writ of Continuing Mandamus is a writ that presupposes a government official, instrumentality, or agency had neglected in its mandated duties. The TEPO, however, can still be used prior to the granting of the privilege of the Writ of Public Trust, in cases of extreme urgency. While all these remedies are still useful and can be availed of by petitioners and applicants, as the case may be, the Writ of Public Trust surmises a more positive act to address the clear absence of due diligence and the neglect of the two-fold duty inherent under the Public Trust

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

459. *Id.*

460. *Id.* rule 8, § 1.

461. *Id.* rule 2, § 8.

Doctrine, which is “to protect the *res* against substantial impairment”⁴⁶² and “to repair any damage to the *res*.”⁴⁶³

C. *The Parameters*

The Writ shall be a remedy granted only by the Court under specific circumstances. The proposed writ can only be invoked under the proposed circumstances:

- (1) There is a violation of the constitutional right to a balanced and healthful ecology;
- (2) The violation arises from an unlawful act or omission of any private or public entity vested with authority to explore, utilize, and develop natural resources.
- (3) The actual or threatened violation will lead to or involve a breach of the public trust by such trustee against the beneficiaries.

Since the beneficial owner of these natural resources is the public, any person, who is a citizen of the Republic of the Philippines, can file a motion for writ of Public Trust. Once the motion is granted by the Court, the following effects will take place:

- (1) A mandatory halt or suspension of any operations done by the corporations.
- (2) A mandatory review of the contractual agreement, permit, or license shall be reviewed by the proper agency and;
- (3) If it shall be found that the entity had indeed irresponsibly utilized the natural resources entrusted upon them, their franchises or permits, as the case may be, shall be revoked.
- (4) A compulsion on the entities to provide necessary facilities beneficial to the environment and towards the natural resources under the supervision of the entity.

In determining the third requisite, a test must be applied in order to sufficiently meet the requirements for this remedy. The test that would be applied would be whether the act or omission would be detrimental to public

462. Tan, *supra* note 40, at 733 (citing Mary Christina Wood & Charles Woodward IV, *Atmospheric Trust Litigation and the Constitutional Right to a Healthy Climate System: Judicial Recognition at Last*, 6 WASH. J. ENVTL. L. & POL’Y. 633, 666 (2016)).

463. *Id.*

welfare. Public Trust is broken when public welfare is negatively impacted by a breach of public trust. In this sense, even if there is no substantial and so grave a danger but can be anticipated to lead to such detriment, this remedy in turn can compel a party to go beyond the law if the Public Trust Doctrine or the Writ of Public Trust is so applicable. When such a writ is invoked, the Court shall order the corporation to halt activities pertaining to the act or irresponsible usage and endangerment to the environment.

Further, aside from being an injunction, such a writ will order corporations to pay for damages, if need be, assist affected peoples or animals, or other needs, if the case demands. Additionally, the writ can or may order the DENR to review the contractual agreement, license agreement, or mining agreement. The result of such a review will determine the renewal, cancellation, or suspension of such an agreement.

ANNEX: DRAFT RULE ON THE WRIT OF *KINAIYAHAN*

Republic of the Philippines
Supreme Court
Manila

RULE __

WRIT OF *KAIYAHAN*⁴⁶⁴

SECTION 1. *Nature of the writ.* — The writ is a remedy available to a natural or juridical person, entity authorized by law, people’s organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is threatened with the clear action or omission of any corporation, franchise holder, or licensee who is authorized to utilize natural resources, and is inflicting possible environmental damage through the irresponsible management, utilization, and operation of natural resources or of their facilities in connection to the natural resources entrusted to them. The writ further applies the Public Trust Doctrine, which provides that the State, as well as its extended trustees are holding natural resources in trust on behalf of the State’s citizenry as beneficial owners.

SECTION 2. *To what Writ of Public Trust extends.* — The writ of public trust shall extend to all cases of irresponsible usage or management of natural

464. This draft rule is modeled after Rule 7 of the Rules of Procedure for Environmental Cases and Rule 102 of the Rules of Court on the Writ of Habeas Corpus). RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 7 & 1964 SPECIAL PROCEEDINGS, rule 102.

resources, not in compliance with the standard imposed by the Public Trust Doctrine.

SECTION 3. *To whom shall this writ extend.* — The respondents of herein Rule shall be, but not limited to, any corporation, partnership, franchise holder, license holder, or licensee who is vested with the authority to utilize, develop, manage, process, or exploit natural resources.

SECTION 4. *To what the term irresponsible refers to.* — The term “irresponsible” shall refer to acts or omissions by the corporation, partnership, franchise holder, license holder, or licensee which would lead to the detriment of the natural resources entrusted upon them or which would lead to the threatening of the lives or environment surrounding the entity’s area of activity. If no such scientific or causal connection can be clearly found, the precautionary principle shall be referred to as defined in Rule 20 of the Rules of Procedure for Environmental Cases.

SECTION 5. *Who may grant the writ.* — The writ of public trust may be granted by the Supreme Court, or any member thereof, on any day, and at any time, or by the Court of Appeals, or any member thereof, or any designated Regional Trial Court Branch authorized by the Court to hear environmental cases.

SECTION 6. *Contents of the Petition.* — The verified petition shall contain the following:

- (a) The personal circumstances of the petitioner;
- (b) The name and personal respondent or the business name of the corporation, as the case may be. If the name or business name are unknown or uncertain, the respondent may be described by an assumed appellation;
- (c) The environmental law, rule, or regulation violated or threatened to be violated, the act or omission complained of, and the environmental damage that is expected through the act or omission of a corporation vested with the authority to utilize, operate, and develop a natural resource;
- (d) All relevant and material evidence consisting of the affidavits of witnesses, documentary evidence, scientific or other expert studies, and if possible, object evidence;

- (e) The certification of petitioner under oath that: (1) petitioner has not commenced any action or filed any claim involving the same issues in any court, tribunal, or quasi-judicial agency, and no such other action or claim is pending therein; (2) if there is such other pending action or claim, a complete statement of its present status; (3) if petitioner should learn that the same or similar action or claim has been filed or is pending, petitioner shall report to the court that fact within five (5) days therefrom; and
- (f) The reliefs prayed for which may include a prayer for the issuance of a TEPO.

SECTION 7. *Where to file.* — The petition shall be filed with the Supreme Court or with any of the stations of the Court of Appeals, or any branch of the Regional Trial Court designated by the Supreme Court to hear and try environmental cases.

SECTION 8. *No docket fees.* — The petitioner shall be exempt from the payment of docket fees.

SECTION 9. *Issuance of the writ.* — Within three (3) days from the date of filing of the petition, if the petition is sufficient in form and substance, the court shall give an order: (a) issuing the writ; and (b) requiring the respondent to file a verified return as provided in Section 8 of this Rule. The clerk of court shall forthwith issue the writ under the seal of the court including the issuance of a cease and desist order and other temporary reliefs effective until further order.

SECTION 10. *How the writ is served.* — The writ shall be served upon the respondent by a court officer or any person deputized by the court, who shall retain a copy on which to make a return of service. In case the writ cannot be served personally, the rule on substituted service shall apply.

Section 11. *Penalty for refusing to issue or serve the writ.* — A clerk of court who unduly delays or refuses to issue the writ after its allowance or a court officer or deputized person who unduly delays or refuses to serve the same shall be punished by the court for contempt without prejudice to other civil, criminal, or administrative actions.

SECTION 12. *Return of respondent; contents.* — Within a non-extendible period of ten (10) days after service of the writ, the respondent shall file a verified return which shall contain all defenses to show that respondent did not violate or threaten to violate, or allow the violation of any environmental law, rule, or regulation or commit any act resulting to environmental damage, or

prejudices the right to a healthful ecology, or is in consonance with the public trust doctrine.

All defenses not raised in the return shall be deemed waived.

The return shall include affidavits of witnesses, documentary evidence, scientific or other expert studies, and if possible, object evidence, in support of the defense of the respondent.

A general denial of allegations in the petition shall be considered as an admission thereof.

SECTION 13. *Prohibited pleadings and motions.* — The following pleadings and motions are prohibited:

- (a) Motion to dismiss;
- (b) Motion for extension of time to file return;
- (c) Motion for postponement;
- (d) Motion for a bill of particulars;
- (e) Counterclaim or cross-claim;
- (f) Third-party complaint;
- (g) Reply; and
- (h) Motion to declare respondent in default.

SECTION 14. *Effect of failure to file return.* — In case the respondent fails to file a return, the court shall proceed to hear the petition *ex parte*.

SECTION 15. *Hearing.* — Upon receipt of the return of the respondent, the court may call a preliminary conference to simplify the issues, determine the possibility of obtaining stipulations or admissions from the parties, and set the petition for hearing.

The hearing including the preliminary conference shall not extend beyond fifteen (15) days and shall be given the same priority as petitions for the writs of *habeas corpus*, *amparo*, and *habeas data*.

SECTION 16. *Discovery Measures.* — A party may file a verified motion for the following reliefs:

- (a) *Ocular inspection; order* — The motion must show that an ocular inspection order is necessary to establish the clear lack of inaction on the part of the corporation, or its irresponsibility when it came to the natural resource it was entrusted with. The order shall specify the person or persons

authorized to make the inspection and the date, time, place, and manner of making the inspection and may prescribe other conditions to protect the constitutional rights of all parties.

- (b) *Production or inspection of documents or things; order* — The motion must show that a production order is necessary to establish the clear lack of inaction on the part of the corporation, or its irresponsibility when it came to the natural resource it was entrusted with. After hearing, the court may order [a] person in possession, custody or control of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, or objects in digitized or electronic form, which constitute or contain evidence relevant to the petition or the return, to produce and permit their inspection, copying or photographing by or on behalf of the movant.

The production order shall specify the person or persons authorized to make the production and the date, time, place, and manner of making the inspection or production and may prescribe other conditions to protect the constitutional rights of all parties.

SECTION 17. *Contempt.* — The court may after hearing punish the respondent who refuses or unduly delays the filing of a return, or who makes a false return, or any person who disobeys or resists a lawful process or order of the court for indirect contempt under Rule 71 of the Rules of Court.

SECTION 18. *Submission of case for decision; filing of memoranda.* — After hearing, the court shall issue an order submitting the case for decision. The court may require the filing of memoranda and if possible, in its electronic form, within a non-extendible period of thirty (30) days from the date the petition is submitted for decision.

SECTION 19. *Judgment.* — Within thirty (30) days from the time the petition is submitted for decision, the court shall render judgment granting or denying the privilege of the writ of public trust.

The reliefs that may be granted under the writ are the following:

- (a) Directing respondent corporation to halt or suspend any operations done by the corporations that show irresponsible usage, exploitation, or development of a natural resource.

- (b) Directing agency, bureau, or department concerned to mandatorily review the contractual agreement, permit, or license shall be reviewed; and
- (c) Directing the mandatory revocation of the franchise, permit, or contract if found that the entity has indeed irresponsibly utilized the natural resources entrusted upon the entity involved.

SECTION 20. *Appeal.* — Within ten (10) days from the date of notice of the adverse judgment or denial of motion for reconsideration, any party may appeal to the Supreme Court under Rule 45 of the Rules of Court. The appeal may raise questions of fact.

SECTION 21. *Institution of separate actions.* — The filing of a petition for the issuance of the writ of public trust shall not preclude the filing of separate civil, criminal, or administrative actions.