

The Heat Is On: Prospects for Climate Change Litigation in the Philippines

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The Author would like to thank Ms. Angelli Camille P. Ancheta from the Board of Editors of the *Ateneo Law Journal* for her invaluable research support.

Cite as 62 ATENEO L.J. 760 (2018).

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I. INTRODUCTION

We are the first generation to be able to end poverty, and the last generation that can take steps to avoid the worst impacts of climate change. Future generations will judge us harshly if we fail to uphold our moral and historical responsibilities.

— Ban Ki-moon¹

Climate change is shaping the history of this generation in ways that have not been imagined. Unlikely and unthought of events fifty years ago are happening today — the increasing frequency of floods and droughts,² record-breaking super typhoons and hurricanes,³ temperature and weather extremes,⁴ and human displacement and migration on an unprecedented

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1. Ban Ki-moon, Eighth Secretary-General of the United Nations, *Tackling Climate, Development and Climate Change*, Secretary-General's Remarks at the World Economic Forum Plenary Session (Jan. 23, 2015) (transcript available at <https://www.un.org/sg/en/content/sg/statement/2015-01-23/secretary-generals-remarks-world-economic-forum-plenary-session> (last accessed Jan. 26, 2018)).
 2. John Vidal, *From heatwaves to hurricanes, floods to famine: seven climate change hotspots*, GUARDIAN, Jun. 23, 2017, available at <https://www.theguardian.com/environment/2017/jun/23/from-heatwaves-to-hurricanes-floods-to-famine-seven-climate-change-hotspots> (last accessed Jan. 26, 2018).
 3. See e.g., Brian McNoldy, *How does Super Typhoon Haiyan compare to Hurricane Katrina?*, WASH. POST, Nov. 14, 2013, available at https://www.washingtonpost.com/news/capital-weather-gang/wp/2013/11/14/how-does-super-typhoon-haiyan-compare-to-hurricane-katrina/?utm_term=.a18f1ba7f34c (last accessed Jan. 26, 2018) & Patrick Scott, *Hurricane Irma in numbers: All the records the storm has blown away*, TELEGRAPH, Sep. 11, 2017, available at <http://www.telegraph.co.uk/news/2017/09/11/hurricane-irma-numbers-records-storm-has-blown-away/> (last accessed Jan. 26, 2018).
 4. See, e.g., Ethan Siegel, *The First Climate Model Turn 50, And Predicted Global Warming Almost Perfectly*, available at <https://www.forbes.com/sites/startwithabang/2017/03/15/the-first-climate-model-turns-50-and-predicted-global-warming-almost-perfectly> (last accessed Jan. 26, 2018) (citing Syukuro Manabe & Richard T. Wetherald, *Thermal Equilibrium of the Atmosphere with a*

scale.⁵ The climate is indeed changing, faster than one can think and imagine. It is now making an impact on other areas of human life and activity, which makes it one of the most pressing challenges of our time.⁶

This situation has, perhaps, naturally resulted in people finding ways to resolve conflicts and disputes in a civilized manner — through the courts and litigation.⁷ This Article will look at the prospects and potential for climate change litigation in the Philippines. It will begin with a brief look at the climate crisis situation globally and in the Philippines. The concept of climate change litigation will then be discussed, followed by a survey of recent jurisprudence on the subject. An analysis of the potential for climate change litigation in the Philippines follows, suggesting “ingredients” that can serve as criteria for these types of cases to take place in Philippine courts.

II. HEATING UP: THE CLIMATE CRISIS

The United Nations Framework Convention on Climate Change⁸ defines climate change as “a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global

Given Distribution of Relative Humidity, 24 J. ATMOSPHERIC SCI. 241, 254-59 (1967)). The Siegel article clarified that what has been predicted is the global temperature and not the effects of the increased temperature to the ecosystems. *Id.*

5. See generally Sarah Opitz Stapleton, et al., *Climate Change, Migration and Displacement: The Need for a Risk-Informed and Coherent Approach* (Report from the Overseas Development Institute and United Nations Development Programme) at 9-11, available at <https://www.odi.org/sites/odi.org.uk/files/resource-documents/11874.pdf> (last accessed Jan. 26, 2018).
6. See Bruce Ledewitz, *Establishing a Federal Constitutional Right to a Healthy Environment in Us and in Our Posterity*, 68 MISS. L.J. 565, 673 (1998). “There are today numerous threats to the Earth’s environment — by which [the author] mean[s] its capacity to support human life. Global warming is not the only such crisis, but in some ways it stands for all of them.” *Id.* at 566.
7. Joana Setzer, *Climate in The Courtroom: Litigation is Increasingly Used to Influence Action on Climate Change*, available at <http://www.lse.ac.uk/GranthamInstitute/news/climate-in-the-courtroom-litigation-is-increasingly-used-to-influence-action-on-climate-change/> (last accessed Jan. 26, 2018).
8. United Nations Framework Convention on Climate Change, *opened for signature* May 9, 1992, 1771 U.N.T.S. 107 [hereinafter United Nations Framework Convention on Climate Change].

atmosphere and which is in addition to natural climate variability observed over comparable time periods.”⁹ Despite the presence of climate change skeptics and deniers,¹⁰ there is a consensus that climate change is taking place and that human activity since 1850, and especially in the last few decades, is a contributing factor.¹¹ Each of the last three decades has been successively warmer at the Earth’s surface than any preceding decade since 1850; and the period from 1983 to 2012 was likely the warmest 30-year period of the last 1,400 years in the Northern Hemisphere where such assessment is possible.¹²

Human influence on the climate system is clear, and recent anthropogenic emissions of greenhouse gases (GHGs) are the highest in history¹³ —

[T]here is no other issue like climate change, where the sources of the problem [—] according to the [Intergovernmental Panel on Climate Change —] are so many and so broad, requiring actions that touch upon virtually every aspect of human endeavor and action. Each of us contributes to climate change[;] each of us will be affected by climate change.¹⁴

9. *Id.* art. I, ¶ 2.

10. Stephan Lewandowsky, et al., *Science and the Public: Debate, Denial, and Skepticism*, J. SOC. & POL. PSYCHOL., Volume No. 4, Issue No. 2, at 540–41.

11. *See, e.g.*, Manabe & Wetherald, *supra* note 4, at 242–53 (This Paper provides a time series analysis of atmospheric temperature prior to 1967 to predict future temperature); National Aeronautics and Space Administration, Graphic: Global warming from 1880 to 2017, *available at* https://climate.nasa.gov/climate_resources/139 (last accessed Jan. 26, 2018); & National Aeronautics and Space Administration, Scientific Consensus: Earth’s climate is warming, *available at* <https://climate.nasa.gov/scientific-consensus> (last accessed Jan. 26, 2018).

12. Intergovernmental Panel on Climate Change, Climate Change 2014: Synthesis Report (Summary for Policymakers of the Synthesis Report for the Fifth Assessment Report of the Intergovernmental Panel on Climate Change) at 2, *available at* http://www.ipcc.ch/pdf/assessment-report/ar5/syr/AR5_SYR_FIN_AL_SPM.pdf (last accessed Jan. 26, 2018).

13. *Id.*

14. Philippe Sands, *Climate Change and the Rule of Law: Adjudicating the Future in International Law*, Lecture at the Symposium on Climate Change and the Rule of Law Hosted by the Dickson Poon School of Law, King’s College London, the Supreme Court of the United Kingdom, and Her Majesty’s Government (Sep. 17, 2015) (transcript *available at* <https://www.supremecourt.uk/docs/professor-sands-lecture-on-climate-change-and-the-rule-of-law.pdf> (last accessed

“Climate change is paradigmatically a cross-cutting area involving a host of policy arenas and actors.”¹⁵ As the Paris Agreement¹⁶ puts it, climate change represents an urgent and potentially irreversible threat to human societies and the planet.¹⁷ The Agreement further states —

[C]limate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote[,] and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities[,] and people in vulnerable situations[,] and the right to development, as well as gender equality, empowerment of women[,] and intergenerational equity[.]¹⁸

Data shows that dramatic climate changes and heat and weather extremes are already impacting people, damaging crops and coastlines, and putting food, water, and energy security at risk.¹⁹ The Asia and the Pacific

Jan. 26, 2018)). This lecture was Philippe Sands’s basis for his Article of the same title in the 28th Volume of the Journal of Environmental Law that has the same title. See Philippe Sands, *Climate Change and the Rule of Law: Adjudicating the Future in International Law*, J. ENVTL. L., Volume No. 28, Issue No. 1.

15. David Markell & J.B. Ruhl, *An Empirical Assessment of Climate Change In The Courts: A New Jurisprudence Or Business As Usual?*, 64 FLA. L. REV. 15, 21 (2012).

16. Paris Agreement under the United Nations Framework Convention on Climate Change, *opened for signature* Apr. 22, 2016.

17. *Id.* pmbl. One author has described the Paris Agreement

also [as an embodiment of] a sea change in international climate change governance. By focusing on ‘bottom up’ nationally determined actions and not on ‘top down’ global mitigation targets, it invites all countries to act on climate change domestically within a treaty architecture that carefully calibrates national sovereignty with international objectives.

Tracy Bach, *Human Rights in a Climate Changed World: The Impact of COP21, Nationally Determined Contributions, and National Courts*, 40 VT. L. REV. 561, 563 (2016).

18. Paris Agreement, pmbl.

19. See generally World Bank, *Turn Down the Heat: Confronting the New Climate Normal* (Report from the Potsdam Institute for Climate Impact Research and Climate Analytics for the World Bank), *available at* <https://openknowledge.worldbank.org/bitstream/handle/10986/20595/9781464804373.pdf?sequence=3>

region is projected to be one of the most impacted by climate change, partly because of its high exposure to climate impacts and partly because of the great vulnerability of some areas.²⁰ Statistics points to the climate crisis taking place in Asia: Six of the 10 most vulnerable nations to climate change are in Asia and the Pacific;²¹ by 2025, 410 million urban dwellers and 341 million people in inland areas will be under increased risk;²² \$48.7 billion in annual damage is caused by disasters in Asia and the Pacific;²³ and 64 million Asians will be pushed into poverty for every 10% rise in food prices because of fewer crop yields.²⁴ “Making [the] situation worse [is that] the distribution

&isAllowed=y (last accessed Jan. 26, 2018). The Report provides trends and projections on climate change. *Id.*

20. Asian Development Bank, Addressing Climate Change and Migration in Asia and the Pacific (Final Report of an Asian Development Bank-financed technical assistance project launched to generate policy changes to climate-induced migration) at 19, *available at* <https://www.adb.org/sites/default/files/publication/29662/addressing-climate-change-migration.pdf> (last accessed Jan. 26, 2018) [hereinafter Climate Change and Migration]. *See also* Asian Development Bank, A Region at Risk: The Human Dimensions of Climate Change in Asia and the Pacific (Report from the Asian Development Bank and the Potsdam Institute for Climate Impact Research), *available at* <https://www.adb.org/sites/default/files/publication/325251/region-risk-climate-change.pdf> (last accessed Jan. 26, 2018) [hereinafter A Region at Risk].
21. Asian Development Bank, Climate Change and Disasters in Asia and the Pacific (Infographic regarding the trends and projections of the climate change impact in the region), *available at* <https://www.adb.org/news/infographics/climate-change-asia-and-pacific> (last accessed Jan. 26, 2018) [hereinafter Asian Development Bank Infographic] & A Region at Risk, *supra* note 20, at 3. These countries are: the Philippines, the People’s Republic of China, India, Pakistan, Vietnam, Tuvalu, and other Pacific Island states. *See* Asian Development Bank, Climate-Related Disasters in Asia and the Pacific (Part of the Asian Development Bank Economics Working Paper Series undertaken by Asian Development Bank staff, consultants, and resource persons) at 10, *available at* <https://www.adb.org/sites/default/files/publication/30323/ewp-358.pdf> (last accessed Jan. 26, at 2018) & Climate Change and Migration, *supra* note 20, at 4.
22. Asian Development Bank Infographic, *supra* note 21 & Asian Development Bank, Climate Change in Asia and the Pacific by the Numbers, *available at* <https://www.adb.org/news/features/climate-change-asia-and-pacific-numbers> (last accessed Jan. 26, 2018).
23. Asian Development Bank Infographic, *supra* note 21.
24. *Id.*

of harms from climate change is both uncertain and likely to be highly uneven.”²⁵

The Intergovernmental Panel on Climate Change’s Fifth Assessment Report gave these observations on climate change’s impacts in Asia.²⁶ First, warming trends and increasing temperature extremes have been observed across most of the Asian region over the past century.²⁷ Second, coastal and marine systems in Asia are under increasing stress from both climatic and non-climatic drivers.²⁸ Third, multiple stresses caused by rapid urbanization, industrialization, and economic development will be compounded by climate change.²⁹ Lastly, extreme climate events will have an increasing impact on human health, security, livelihoods, and poverty, with the type and magnitude of impact varying across Asia.³⁰

25. Jedediah Purdy, *The Politics of Nature: Climate Change, Environmental Law, and Democracy*, 119 YALE L.J. 1122, 1133 (2010). Purdy adds —

This means that the benefits of mitigating climate change will accrue to future generations while the living bear the costs. Domestic political decisions, particularly in democracies, are tied to electoral cycles not generally longer than seven years, and frequently shorter. Within any political cycle, it is highly likely that the costs of a serious mitigation effort will outweigh the benefits, even setting aside the inevitably speculative character of benefits measured in nonevents. Addressing climate change, therefore, means sacrifice today to win uncertain advantages for the strangers who compose future generations.

Id. at 1134.

26. See generally Intergovernmental Panel on Climate Change Climate Change 2014: Impacts, Adaptation, and Vulnerability (Technical Summary of the Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change) available at http://www.ipcc.ch/pdf/assessment-report/ar5/wg2/WGIIAR5-TS_FINAL.pdf (last accessed Jan. 26, 2018) [hereinafter Technical Summary].

27. *Id.* at 76–77.

28. *Id.* at 76.

29. Intergovernmental Panel on Climate Change Climate Change 2014: Impacts, Adaptation, and Vulnerability (Regional Context of the Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change) at 1181–82 available at http://www.ipcc.ch/pdf/assessment-report/ar5/wg2/WGIIAR5-Chap21_FINAL.pdf (last accessed Jan. 26, 2018).

30. Technical Summary, *supra* note 26, at 76.

The Philippines is not spared from these climate change impacts. The Global Climate Risk Index 2015 listed the Philippines as the number one most affected country by climate change, using 2013 data.³¹ The country is made more vulnerable to this phenomenon because of the following: “[t]he Philippines has no land barrier to protect against climate impact;”³² “[16] provinces are among 50 in the Asian region that are most vulnerable to weather related risks;”³³ and “[i]t has accelerating environmental degradation, unsustainable development practices, and population growth.”³⁴ As noted above, the climate crisis in the Philippines is being exacerbated by the myriad of environmental problems which the country is already facing.³⁵

31. Sönke Krefß, et al., *Global Climate Risk Index 2015: Who Suffers Most From Extreme Weather Events? Weather-related Loss Events in 2013 and 1994 to 2013* (Briefing Paper prepared by Germanwatch with financial support from the German Federal Ministry for Economic Cooperation and Development) at 7, available at <http://germanwatch.org/en/download/10333.pdf> (last accessed Jan. 26, 2018). See also The Climate Reality Project, *How Is Climate Change Affecting the Philippines?*, available at <https://www.ecowatch.com/how-is-climate-change-affecting-the-philippines-1882156625.html> (last accessed Jan. 26, 2018).

32. Climate Change Commission, *Climate Change: A Primer for Local Government* at 9, available at http://www.dilg.gov.ph/PDF_File/reports_resources/dilg-reports-resources-2016418_39818529be.pdf (last accessed Jan. 26, 2018).

33. *Id.*

34. *Id.*

35. Some of the most pressing environmental problems in the Philippines include deforestation and loss of natural habitat due to illegal logging and expanding agricultural settlements; upland soil degradation and sedimentation of rivers due to hillside farming and intensified slash and burn cultivation; fishery depletion due to over-fishing and use of destructive fishing methods; urban air pollution largely from the transport sector which uses cheap fuels and second-hand engines; and water pollution due mainly to untreated domestic effluents.

World Bank & Asian Development Bank, *The Philippine Environmental Impact Statement System: Framework, Implementation, Performance and Challenges* (Discussion paper prepared by the Rural Development, Natural Resources and Environment Sector of the East Asia Pacific Region of the World Bank in partnership with the Asian Development Bank) at 22, available at <http://documents.worldbank.org/curated/en/>

One study described a situation of “climate chaos” as “it is now beyond serious dispute that anthropogenic climate change threatens humanity and other life forms with massive harm.”³⁶ Climate change is a “[super] wicked problem’ that defies resolution because of the enormous interdependencies, uncertainties, and conflicting stakeholders implicated by any effort to develop a solution.”³⁷ “Climate change is the greatest humanitarian challenge of the century and we must do everything in our power to address this crisis now.”³⁸ Humans now face real but uncertain likelihoods of “abrupt climate change,” in which “the climate system is forced to cross

474401468333623208/pdf/423310WPoPHILITAOBox32145201PUBLIC1.pdf (last accessed Jan. 26, 2018).

The ADB also lists the following environmental issues with cumulative impacts —

watershed integrity, inappropriate and unsustainable land use[,] and agricultural practices in upland areas, degradation of forest land, and extensive road building; rapid population increase and rapid industrialization, causing increased congestion and pollution particularly in urban areas, environmental degradation of near shore areas due to sedimentation from upstream sources; overexploitation of fisheries and permanent loss of ecosystems from changes in land use due to urbanization and industrialization, including aquaculture.

Asian Development Bank, Country Environmental Analysis 2008: Philippines at xiv, available at <https://www.adb.org/sites/default/files/institutional-document/32196/5th-country-environmental-analysis-phi.pdf> (last accessed Jan. 26, 2018).

36. R. Henry Weaver & Douglas A. Kysar, *Courting Disaster: Climate Change and the Adjudication of Catastrophe*, 93 NOTRE DAME L. REV. 295, 304 (2017).
37. Richard J. Lazarus, *Super Wicked Problems and Climate Change: Restraining the Present to Liberate the Future*, 94 CORNELL L. REV. 1153, 1159 (2009) (citing Horst W. J. Rittel & Melvin M. Webber, *Dilemmas in a General Theory of Planning*, 4 POLY SCI. 155, 160-69 (1973) & JEFF CONKLIN, DIALOGUE MAPPING: BUILDING SHARED UNDERSTANDING OF WICKED PROBLEMS 3-40 (2006)).
38. Loren B. Legarda, Senator of the 17th Congress of the Philippines, Keynote Speech during the Third Asian Judges Symposium in Law, Policy, and Climate Change at the Asian Development Headquarters, Mandaluyong City (Sep. 26, 2016) (transcript available at <http://www.ajne.org/sites/default/files/event/7081/session-materials/3ajs-sen-legarda-keynote-address.pdf> (last accessed Jan. 26, 2018)).

some threshold, triggering a transition to a new state at a rate [...] faster than the cause.”³⁹

Whether one calls the climate change situation a “crisis,” “chaos,” or “super wicked,” an inevitable result is the increase in conflict. These can be conflicts over scarce resources, government priorities, prioritization of rights, and national interests, among others. To resolve these conflicts, people resort to litigation, and courts are called upon to adjudicate competing interests and claims.

III. CLIMATE CHANGE LITIGATION

The global community is experiencing an unprecedented “wave of climate change litigation.”⁴⁰ It has been described as a phenomenon that has unfolded with breathtaking speed.⁴¹ “[C]limate change litigation has been transformed from a creative lawyering strategy to a major force in transnational regulatory governance of [GHG] emissions.”⁴² “There has not been such a spike in cases since the early climate change litigation boomlet in the United States (US) and Australia in the early 2000s.”⁴³

Litigation, in the environmental and in the climate sense, has been understood in several ways. The role of courts in adjudicating environmental disputes has been long recognized and has gained momentum in the past

39. COMMITTEE ON ABRUPT CLIMATE CHANGE OF THE NATIONAL RESEARCH COUNCIL, *ABRUPT CLIMATE CHANGE: INEVITABLE SURPRISES* 14 (2001).

40. See Giulio Corsi, *A Bottom-Up Approach to Climate Governance: The New Wave of Climate Change Litigation* (Reflection published by the Initiative on Climate Change Policy and Governance) at 3-4, available at http://www.iccgov.org/wp-content/uploads/2017/10/57_Climate-change-litigation_Giulio-Corsi.pdf (last accessed Jan. 26, 2018). See also Jessica Hall, *Climate Change Litigation: An Emerging Wave?*, 31 *ENERGY & MIN. L. INST.* 133, 134 (2010).

41. Robert F. Blomquist, *Comparative Climate Change Torts*, 46 *VAL. U.L. REV.* 1053, 1053 (2012).

42. William C.G. Burns & Hari M. Osofsky, *Overview: The Exigencies that Drive Potential Causes of Action for Climate Change*, in *ADJUDICATING CLIMATE CHANGE: STATE, NATIONAL, AND INTERNATIONAL APPROACHES* 1 (William C.G. Burns & Hari M. Osofsky eds., 2009).

43. Bach, *supra* note 17, at 566.

decades.⁴⁴ “[T]he imprimatur of the courts confers considerable legitimacy on the operation of the administrative state[;] [...] courts have considerable latitude to develop law on their own.”⁴⁵ One study suggests that the courts sometimes perform a “signaling” function, in which they “prod” other government institutions to act.⁴⁶ However, another cautions that an “overly aggressive judicial review has the potential to engender administrative ossification — agency paralysis — among other phenomena that many commentators view as counterproductive.”⁴⁷ One author notes that the aim of litigation is “to plug the regulatory gaps where possible and call upon the judiciary, which tends to be the least politicized branch of government in most countries, to hold government to their legal responsibilities of protecting people from the immediate and the long-term impacts of climate change.”⁴⁸

“Litigation is being utilized both to encourage and [to] challenge consideration of climate change.”⁴⁹ Most concretely, courts provide a

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44. See Catherine Redgwell, *National Implementation*, in THE OXFORD HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW (Daniel Bodansky, et al. eds., 2007). There is, however, a growing international recognition that the courts have a crucial role to play in the environmental movement, as recognized in the concept of environmental justice and access to justice — developments in the international sphere have made the courts and the justice system key players in addressing the problems of environmental degradation, global warming, and climate change. *Id.* See also George Pring & Catherine Pring, *Twenty-first century environmental dispute resolution — is there an ‘ECT’ in your future?*, 33 J. ENERGY & NAT. RES. L. 10, 14 (2015).
45. Markell & Ruhl, *supra* note 15, at 20.
46. See Benjamin Ewing & Douglas A. Kysar, *Prods and Pleas: Limited Government in an Era of Unlimited Harm*, 121 YALE L.J. 350, 354 & 379 (2011).
47. Markell & Ruhl, *supra* note 15, at 20 (citing Thomas O. McGarity, *Some Thoughts on “Deossifying” the Rulemaking Process*, 41 DUKE L.J. 1385, 1386-87 (1992); Mark Seidenfeld, *Why Agencies Act: A Reassessment of the Ossification Critique of Judicial Review*, 70 OHIO ST. L.J. 251, 254 (2009); & Jason Webb Yackee & Susan Webb Yackee, *Testing the Ossification Thesis: An Empirical Examination of Federal Regulatory Volume and Speed, 1950-1990*, 80 GEO. WASH. L. REV. 1414, 1414 (2012)).
48. Jolene Lin, *Litigating Climate Change in Asia*, 4 CLIMATE L. 140, 142 (2014).
49. Meredith Wilensky, *Climate Change in the Courts: An Assessment of Non-U.S. Climate Litigation*, 26 DUKE ENVTL. L. & POL’Y F. 131, 172 (2015) [hereinafter Wilensky, *Climate Change*].

mechanism by which the victims of catastrophe may employ State power against people and institutions responsible for rupture.⁵⁰ “Courts can order monetary and injunctive relief, or at the very least declare rights and facilitate out-of-court settlements.”⁵¹

The increase in climate change laws and policies have also contributed to the spike in litigation.⁵² “As these laws have recognized new rights and created new duties, litigation seeking to challenge either their facial validity or their particular application has followed. So[,] too[,] has litigation aimed at pressing legislators and policymakers to be more ambitious and thorough in their approaches to climate change.”⁵³

United Nations Environment Programme (UNEP) notes that litigation has:

- (1) Sought “to fill the gaps left by legislative and regulatory inaction;”⁵⁴
- (2) “[A]rguably never been a more important tool to push policymakers and market participants to develop and implement

50. *Id.* at 137-42.

51. Weaver & Kysar, *supra* note 36, at 300.

52. See Wilensky, *Climate Change*, *supra* note 49, at 133. “A recent study of 66 countries by GLOBE International found that most jurisdictions have taken considerable legislative steps to address climate change. Together the countries in the GLOBE study have enacted almost 500 climate laws.” *Id.* (citing Michal Nachmany, et al., *The GLOBE Climate Legislation Study: A Review of Climate Change Legislation in 66 Countries* (Document prepared by GLOBE International in cooperation with the Graham Research Institute on Climate Change and the Environment) at 24, *available at* <http://www.lse.ac.uk/GranthamInstitute/wp-content/uploads/2014/03/Globe2014.pdf> (last accessed Jan. 26, 2018).

53. United Nations Environment Programme, *The Status of Climate Change Litigation* (Publication by the United Nations Environment Programme in cooperation with the Sabin Center for Climate Change Law at Columbia University) at 6, *available at* <http://columbiaclimatelaw.com/files/2017/05/Burger-Gundlach-2017-05-UN-Env-CC-Litigation.pdf> (last accessed Jan. 26, 2018).

54. *Id.*

effective means of climate change mitigation and adaption than it is today;”⁵⁵

- (3) Served “to test whether particular actions or inactions are compatible with [] international agreements[.]”⁵⁶ and
- (4) Served “to articulate how stated commitments to defend particular rights must be translated into action, notwithstanding changes in the direction of political winds at home or abroad.”⁵⁷

How then do we define climate change litigation? One of the most commonly cited definitions is that of renowned environmental law scholars, David Markell and J. B. Ruhl, who defined climate change litigation as “any piece of federal, state, tribal, or local administrative or judicial litigation in which the party filings or tribunal decisions directly and expressly raise an issue of fact or law regarding the substance or policy of climate change causes and impacts.”⁵⁸ Although Markell and Ruhl do note that a broader definition is possible,⁵⁹ for purposes of this Article, this definition will be used in the subsequent discussions.

IV. SURVEY OF CLIMATE CHANGE LITIGATION JURISPRUDENCE

The past decade has indeed seen an increase in climate change cases. The 2012 study by Markell and Ruhl indicates a rapidly increasing wave of

55. *Id.* at 8.

56. *Id.*

57. *Id.* at 8-9.

58. Markell & Ruhl, *supra* note 15, at 27. *See also* Wilensky, *Climate Change*, *supra* note 49, at 134, & United Nations Environment Programme, *supra* note 53, at 10.

59. *See* Markell & Ruhl, *supra* note 15, at 19. David Markell and J. B. Ruhl stated that

[a] broad view might include any litigation motivated by a concern about climate change or climate change policy. That could mean stopping a coal-fired power plant because of its anticipated GHG emissions or blocking state regulation of emission sources because of its economic impacts. [Markell and Ruhl] concluded, however, that such a definition is too broad of a conception for the purposes of an empirical legal study.

Id. at 26.

litigation,⁶⁰ with “the overwhelming majority of climate change litigation matters [are] concentrated in claims involving substantive challenges to agency permits and rules and in claims challenging agency environmental impact assessments [EIAs].”⁶¹ One environmental law attorney likened it to “siege warfare with large armies that battle for decades[.]”⁶²

One author noted that “[e]ach of these recent cases seeks different remedies, under different kinds of national laws, with some based on human rights law and some based on domestic climate change legislation. But they all share a common litigation strategy: use international climate change norms to hold individual countries accountable through their domestic courts.”⁶³

60. *Id.* at 21.

61. *Id.* at 38.

62. Alejandro de los Rios, Public nuisance cases ‘like a knife fight in a dark alley’, available at <https://legalnewsline.com/stories/510524211-newsinator-public-nuisance-cases-like-a-knife-fight-in-a-dark-alley> (last accessed Jan. 26, 2018) (citing John Parker Sweeney, National Director of DRI, Remarks at the DRI’s Toxic Torts and Environmental Law Conference in New Orleans, Louisiana (Feb. 11, 2011)). The Article further states that “where environmental law cases brought under regulatory actions are like ‘siege warfare with large armies that battle for decades[.]’ public nuisance claims are ‘like a knife fight in a dark alley[.]’” *Id.*

63. Bach, *supra* note 17, at 566. Bach described a first and second wave of climate change litigation —

This first wave of national litigation used national laws and norms to make their cases.

In contrast, the current wave of climate change litigation analyzed in this Article increasingly relies on international norms and data developed via the [United Nations Framework Convention on Climate Change] and [Intergovernmental Panel on Climate Change] when seeking relief under domestic laws. Analysis of this first wave has led legal advocates to make more connections between international and national laws.

...

The half-dozen ‘second wave’ climate change cases filed to date draw on both international and domestic legal resources.

Id. at 581–82.

A more recent study done in 2015 notes that US climate change litigation has far outpaced climate litigation in any other jurisdiction — more lawsuits concerning climate change have been decided or settled in the US than in the rest of the world combined.⁶⁴ By the end of 2013, over 420 pieces of climate change litigation had been resolved in the US alone,⁶⁵ compared to 173 climate change cases in that same period outside of the US.⁶⁶

Another study noted that despite the increase of climate change litigation cited by many authors, the “boom” has been limited primarily to the US, Australia, and the European Union (EU), and has not spread to Asia

In the US and Australia, climate change litigation has, in large part, been a multi-pronged attempt by [S]tate authorities and non-governmental organizations (NGOs) to exert pressure on major [GHG] emitters and the federal government in the face of [lackluster] regulatory efforts. In the EU, climate change litigation has arisen primarily in relation to the implementation of the [EU] Emission Trading Scheme, which is widely regarded as the crown jewel in the EU’s comprehensive climate change action plan. In Asia, however, climate change litigation is practically unknown.

...

This is not surprising, because many Asian developing countries struggle to address yet another challenge in a crowded policy agenda that usually includes poverty alleviation, fighting corruption, and improving energy access in rural areas. The ‘wicked problem’ nature of climate change does not help. It is also not surprising in light of the relatively weak enforcement of environmental laws across Asia — the notable exceptions being jurisdictions such as Japan and Taiwan.⁶⁷

64. See generally Wilensky, *Climate Change*, *supra* note 49.

65. See generally Michael Gerrard, et al., *Climate Change Litigation in the U.S.* (Chart made for Arnold & Porter LLP), available at <https://files.apks.com/climatechangelitigationchart.pdf> (last accessed Jan. 26, 2018).

66. See Columbia Law School Sabin Center for Climate Change Law, *Climate Change Litigation Chart E-mail Updates*, available at http://columbiaclimatelaw.com/files/2017/05/climate_chart_email_update_list.pdf (last accessed Jan. 26, 2018).

67. Lin, *supra* note 48, at 141. Wilensky also notes —

Meredith Wilensky, an attorney specializing in international law and climate change, notes that most climate change cases against the government can be classified as follows:

- (1) Substantive claims regarding climate change laws and regulations;⁶⁸
- (2) Procedural cases related to EIA and permitting;⁶⁹
- (3) Claims asserting rights relating to climate change;⁷⁰ and
- (4) Claims surrounding climate science.⁷¹

Claims against private parties were separated into two groups:

- (1) Suits against corporations;⁷² and
- (2) Suits against individuals.⁷³

In UNEP's study, it also noted five trends in recent climate change litigation:

After the [US], the country with the largest volume of climate litigation is Australia. Climate litigation there is dominated by disputes about the environmental review of proposed projects. Some of these were about major (GHG)-emitting projects; the rest concerned whether and how planning and environmental authorities should consider the effect of climate change on proposed projects. The latter issue has been little litigated in the [US] or elsewhere. Outside of Australia, the European Union Emissions Trading System [] has generated a substantial portion of non-[US] litigation concerning its requirements and the efforts to comply with them.

Meredith Wilensky, *Climate Change in the Courts: An Assessment of Non-U.S. Climate Litigation* (Executive Summary of the journal article of the same title submitted to Duke Environmental Law & Policy Forum) at ii, available at <http://columbiaclimatelaw.com/files/2016/06/Wilensky-2015-02-Climate-Change-in-the-Courts.pdf> (last accessed Jan 26, 2018) [hereinafter Wilensky, Executive Summary].

68. Wilensky, *Climate Change*, *supra* note 49, at 137.

69. *Id.*

70. *Id.* at 138.

71. *Id.*

72. *Id.* at 140.

73. *Id.* at 141.

- (1) “[H]olding governments to their legislative and policy commitments;”⁷⁴
- (2) “[L]inking the impacts of resource extraction to climate change and resilience;”⁷⁵
- (3) “[E]stablishing that particular emissions are the proximate cause of particular adverse climate change impacts;”⁷⁶
- (4) “[E]stablishing liability for failures (or efforts) to adapt to climate change;”⁷⁷ and,
- (5) “[A]pplying the public trust doctrine to climate change.”⁷⁸

What follows below is a discussion of some of the recent climate change jurisprudence in different jurisdictions, particularly from the US, the Netherlands, Pakistan, South Africa, New Zealand, and the Philippines.

A. The United States of America

“Litigation has played a central role in driving the course of climate regulation in the [US], primarily stemming from the landmark 2007 decision of the Supreme Court of the US (SCOTUS) in *Massachusetts v. Environmental Protection Agency*.”⁷⁹

In that case, a group of states, local governments, and private organizations petitioned the Environmental Protection Agency (EPA) to regulate emissions of four GHGs pursuant to the Clean Air Act,⁸⁰ but the EPA denied the same on the ground that it did not have the authority to set emissions standards and that, even if it did, the causal link between GHGs

74. United Nations Environment Programme, *supra* note 53, at 14.

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. Wilensky, Executive Summary, *supra* note 67, at ii. & *Massachusetts v. Environmental Protection Agency*, 549 U.S. 497 (2007).

80. An Act to improve, strengthen, and accelerate programs for the prevention and abatement of air pollution [Clean Air Act of 1963], 77 Stat. 392 (1963) (as amended) (U.S.).

and global surface air temperatures had not yet been unequivocally established.⁸¹

An appeal to the SCOTUS ended with a pronouncement that GHGs fell within the definition of “pollutant” under the Clean Air Act, thus should be regulated by the EPA.⁸²

A more recent case is *Juliana v. United States*,⁸³ where the 19 year-old Kelsey Juliana and 20 other minors

premised their complaint on the notion that a specific scientifically-determined concentration level of carbon dioxide [(CO₂)] in the atmosphere (350 parts per million) must be maintained in order to avoid violation of their fundamental rights. [T]he federal government[,] in its answer[,] has denied that scientific consensus on such a ‘safe limit’ exists.⁸⁴

The Plaintiffs asserted that substantive due process should be further expanded to include the right to a stable climate — “[d]efendants have violated and are violating Plaintiffs’ fundamental constitutional rights to life, liberty, and property by substantially causing or contributing to a dangerous concentration of CO₂ in the atmosphere[.]”⁸⁵ Taking inspiration from *Oposa v. Factoran*,⁸⁶ “[t]he plaintiffs argue that strict scrutiny should apply to measures that burden future generations [—] ‘[f]uture generations do not have present political power or influence, have immutable characteristics, and are also an insular minority.’”⁸⁷

81. *See Massachusetts*, 549 U.S. at 497.

82. *Id.* at 500-01.

83. *Juliana v. United States*, 217 F. Supp.3d 1224 (D. Or. 2016) (U.S.).

84. Weaver & Kysar, *supra* note 36, at 339 (citing *Juliana*, 217 F.Supp.3d at 1233 & 1244).

85. *Id.* at 1264.

86. *Oposa v. Factoran, Jr.*, 224 SCRA 792 (1993). *See Juliana*, 217 F.Supp.3d at 1250 & 1261 (citing *Oposa*, 224 SCRA at 802-03).

87. Weaver & Kysar, *supra* note 36, at 346 (citing First Amended Complaint for Declaratory and Injunctive Relief, at 94, dated Sep. 10, 2015, *in Juliana v. U.S.*, 217 F.Supp.3d 1224 (D. Or. 2016) (U.S.) (on file with the United States District Court of Oregon, Eugene Division).

Juliana has surprisingly not yet been dismissed by the US courts;⁸⁸ and at least one [US] federal judge has — squarely and unblinkingly — recognized the possibility of an environmental due process claim [—]

[W]here a complaint alleges governmental action is affirmatively and substantially damaging the climate system in a way that will cause human deaths, shorten human lifespans, result in widespread damage to property, threaten human food sources, and dramatically alter the planet’s ecosystem, it states a claim for a due process violation.⁸⁹

Torts and damages have also been at the center of some climate change litigation suits in the US. Four major climate change tort lawsuits have been brought in US courts,⁹⁰ while another two arose out of the devastation wrought by Hurricane Katrina.⁹¹ “Each case was ultimately dismissed on grounds of justiciability, so no court has ever reached the merits of a climate change tort claim in the [US].”⁹²

B. *The Netherlands*

Another recent celebrated case is *Urgenda Foundation v. The State of the Netherlands*.⁹³ In this case, “[a] Dutch environmental group, the Urgenda Foundation, and 900 Dutch citizens sued the Dutch government, alleging that the government’s recent revision of GHG emissions reduction goals

88. See Neela Banerjee, Appeals Court Takes Up Youth Climate Change Lawsuit Against Trump, available at <https://insideclimatenews.org/news/17112017/climate-change-lawsuit-kids-donald-trump-administration-our-childrens-trust> (last accessed Jan. 26, 2018).

89. Weaver & Kysar, *supra* note 36, at 347 (citing *Juliana*, 217 F.Supp.3d at 1250).

90. *Id.* at 322. See *Native Village of Kivalina v. Exxonmobil Corp.*, 696 F.3d 849 (9th Cir. 2012) (US); *American Elec. Power Co. v. Connecticut*, 564 US 410 (2011); *Comer v. Murphy Oil USA, Inc.*, 607 F.3d 1049 (5th Cir. 2010) (US); & *California v. General Motors Corp.*, No. C06- 05755 MJJ, 2007 WL 2726871, (9th Cir. 2007) (US).

91. Weaver & Kysar, *supra* note 36, at 322. See *In Re: Katrina Canal Breaches Consolidated Lit.*, 696 F.3d 436 (5th Cir. 2012) (US) & *Barasich v. Columbia Gulf Transmission Co.*, 467 F.Supp.2d 676 (E.D. La. 2006) (US).

92. Weaver & Kysar, *supra* note 36, at 322.

93. *Urgenda v. The State of the Netherlands*, C/09/456689/HA ZA 13-1396 (Hague DC 2015) (Neth.).

amounted to a violation of its constitutionally imposed duty of care.”⁹⁴ The Urgenda Foundation, among others, asked the Supreme Court of the Netherlands to rule that:

- (1) [T]he joint volume of the current annual [GHG] emissions in the Netherlands is unlawful;
- (2) [T]he State is liable for the joint volume of [GHG] in the Netherlands; [and]
- (3) [Principally,] the State acts unlawfully if it fails to reduce or have reduced the annual [GHG] emissions in the Netherlands by 40%, in any case at least 25%, compared to 1990, by the end of 2020[.]⁹⁵

Furthermore, Urgenda asked the Supreme Court of the Netherlands to order the State “to reduce or have reduced the joint volume of annual [GHG] emissions in the Netherlands that it will have been reduced by 40% by the end of 2020, in any case by at least 25%, compared to 1990[.]”⁹⁶

The District Court of the Hague ruled that the Dutch government is required to reduce its emissions by at least 25% by the end of 2020 (compared to 1990 levels).⁹⁷ It also added that the State has a duty to implement climate change mitigation measures “[d]ue to the severity of the consequences of climate change and the great risk of hazardous climate change occurring[.]”⁹⁸ Even if the Netherlands’ contribution to global emissions is a mere 0.5%, “it has been established that any anthropogenic [GHG] emission, no matter how minor, contributes to an increase in CO₂ levels in the atmosphere and therefore to hazardous climate change.”⁹⁹ This decision was path-breaking in the jurisprudence of separation of powers because it grounded its instruction to the government to tighten emissions

94. United Nations Environment Programme, *supra* note 53, at 15 (citing *Urgenda*, C/09/456689/HA ZA 13-1396, ¶¶ 2.1, 2.6, & 2.7).

95. *Urgenda*, C/09/456689/HA ZA 13-1396, ¶ 3.1 (4)-(6).

96. *Id.* ¶ 3.1 (7).

97. *Id.* ¶ 5.1. See also United Nations Environment Programme, *supra* note 53, at 15.

98. *Urgenda*, C/09/456689/HA ZA 13-1396, ¶ 4.83.

99. *Id.* ¶¶ 4.78-4.79.

limits on a rights-based analysis, rather than through reference to statutory requirements.¹⁰⁰

C. Pakistan

Celebrated as the first climate change case in Pakistan, *Ashgar Leghari v. Federation of Pakistan*¹⁰¹ is a bold example of judicial prodding and pleading — “[a]lthough the opinion from the Lahore High Court used the language of fundamental rights, the order itself aimed to facilitate more effective cooperation among various government officials.”¹⁰² The Pakistani farmer, Ashgar Leghari sued the national government because it failed to implement the 2012 National Climate Change Policy.¹⁰³ He argued that the government inaction amounted to a violation of his Constitutional rights such as the rights to life, to a healthy and clean environment, and to human dignity.¹⁰⁴ In a climate change order, the Lahore High Court, considering that no material act had been done to implement the Framework, ordered the constitution of a Climate Change Commission composed of several key ministers of government, NGOs, and technical experts, with designated powers, working quorum, and secretariat.¹⁰⁵ As of the writing of this Article, the Lahore High Court has said that it will continue to exercise jurisdiction over the Commission until its instructions are executed.¹⁰⁶

One article notes that the Lahore High Court’s words lacked the force of law, however “[t]heir power — if they had power at all — was to bring renewed attention to a neglected issue [—] to plead ‘for other branches or levels of government to deploy power when the speaker cannot.’”¹⁰⁷

100. See *Urgenda*, C/09/456689/HA ZA 13-1396, ¶ 4.94-4.102 & United Nations Environment Programme, *supra* note 53, at 30.

101. *Leghari v. Federation of Pakistan*, W.P. No. 25501/2015, (Lahore High C. 2015) (Pak.).

102. Weaver & Kysar, *supra* note 36, at 343 (citing *Leghari*, W.P. No. 25501/2015, ¶ 11).

103. *Leghari*, W.P. No. 25501/2015, ¶ 4.

104. *Id.* See also PAK. CONST. art. 9 & 14 (1).

105. See *Leghari*, W.P. No. 25501/2015, ¶ 11 (1).

106. See generally *Leghari*, W.P. No. 25501/2015, ¶¶ 11-15.

107. Weaver & Kysar, *supra* note 36, at 344 (citing Ewing & Kysar, *supra* note 46, at 336)).

D. South Africa

The case of *EarthLife Africa Johannesburg v. Minister of Environmental Affairs*¹⁰⁸ is an example of petitioners challenging a coal-fired power plant on the basis of climate change.¹⁰⁹ EarthLife Africa appealed the grant of authorization issued by the Minister of Environment to the Thabametsi Power Company, allowing it to construct new coal-fired power stations on the basis of non-consideration of climate change impacts.¹¹⁰ The Minister of Environment acknowledged that a fuller assessment was needed but nevertheless granted the permit.¹¹¹ In ruling for EarthLife, the High Court of South Africa stated that even if not expressly stated, the plain reading of South Africa's National Environmental Management Act (NEMA)¹¹² confirms that climate change impacts are indeed relevant factors that must be considered.¹¹³ The injunction to consider any pollution, environmental impacts, or environmental degradation logically expects consideration of climate change.¹¹⁴ Emission of GHGs is pollution, and consideration of pollution is covered by NEMA.¹¹⁵ This is also in line with South Africa's commitments under the Paris Agreement.¹¹⁶

E. New Zealand

A 2015 case in New Zealand made headlines for considering an application to be a climate refugee.¹¹⁷ Mr. Ioane Teitiota and his wife moved to New

108. *EarthLife Africa Johannesburg v. Minister of Environmental Affairs*, 2 All SA 519 (GNP 2017) (S. Afr.).

109. *Id.* ¶ 5.

110. *Id.* ¶ 2.

111. *Id.* ¶ 9.

112. National Environmental Act, Act No. 107 (1998) (S. Afr.).

113. *Id.* ¶ 124.

114. *Id.* ¶ 121.

115. See *EarthLife Africa Johannesburg*, 2 All SA ¶¶ 119 & 124 (citing National Environmental Act, § 240 (1) (b) (i)).

116. *Id.* ¶ 124.

117. *Ioane Teitiota v. Chief Executive of the Ministry of Business Innovation and Employment*, 2013 N.Z.H.C. 3125 (H.C. 2013) (N.Z.). The Decision noted that there have been previous applications and cases for climate refugee status both in Australia and in New Zealand from residents of Kiribati, Tuvalu, Tonga, Bangladesh, and Fiji. *Id.* ¶ 13.

Zealand from Kiribati in 2007.¹¹⁸ The family remained in the country illegally following the expiration of their visas in October 2010.¹¹⁹ To avoid deportation, Mr. Teitiota applied for refugee status under the Immigration Act 2009.¹²⁰ This legislation incorporates into domestic law the 1951 Convention Relating to the Status of Refugees.¹²¹ Mr. Teitiota claimed that he was entitled to be recognized as a refugee on the basis of changes to his environment in Kiribati caused by sea-level-rise associated with climate change.¹²² A refugee and protection officer declined to grant refugee status, and the decision was upheld by the Immigration and Protection Tribunal.¹²³

On appeal, the Supreme Court of New Zealand upheld the decisions of the lower courts and dismissed Mr. Teitiota's application for leave to appeal.¹²⁴ It confirmed the lower courts' findings that, in relation to the Refugee Convention, Mr. Teitiota does not face "serious harm" and further that there is no evidence that the Government of Kiribati is failing to take steps to protect its citizens from the effects of environmental degradation to the extent that it is capable.¹²⁵

One author noted that

[w]hile the [Supreme Court of New Zealand] ultimately permitted them to stay in New Zealand, this was not because of the impacts of climate change in Tuvalu, but rather because of their strong family ties within New Zealand.

...

However, since 2013, New Zealand has started to specifically and systematically delineate the legal protection framework applicable to claims

118. *Id.* ¶ 19.

119. *Id.*

120. *Id.* ¶¶ 17-19. *See also* Immigration Act 2009, Public Act No. 51 (2009) (N.Z.).

121. *Teitiota*, 2013 N.Z.H.C. ¶ 4. *See also* Convention Relating to the Status of Refugees, *opened for signature* July 28, 1951, 189 U.N.T.S. 137 (entered into force Apr. 22, 1954).

122. *Teitiota*, 2013 N.Z.H.C. ¶ 21.

123. *Id.* ¶ 16.

124. *Id.* ¶ 24.

125. *Id.* ¶ 30.

based on the impacts of climate change, natural disasters[,] or environmental degradation.¹²⁶

F. The Philippines

The Philippine case of *Greenpeace Southeast Asia v. Chevron (US)*¹²⁷ is unique because redress is being sought not from the courts, but from the Commission on Human Rights (CHR),¹²⁸ an independent commission created under the 1987 Philippine Constitution and tasked with the conduct of investigations into human rights violations.¹²⁹ “This litigation contrasts sharply with the other cases analyzed here in that it is directly framed as a human rights case that is pled to a human rights commission[,] rather than an environmental case argued to a court of general jurisdiction [—]”¹³⁰

Greenpeace Southeast Asia and the Philippine Rural Reconstruction Movement petitioned the [CHR] of the Philippines on behalf of 13 organizations and 20 individuals, alleging that some 50 companies, referred to as the Carbon Majors — including Chevron, ExxonMobil, Rio Tinto, Lukoil, and Massey Coal — knowingly contributed to the root causes of climate change and thus violated the human rights of Filipinos.¹³¹

126. Jane McAdam, *The Emerging New Zealand Jurisprudence on Climate Change, Disasters and Displacement*, 3 *MIGRATION STUD.* 131, 132 (2015). The author adds —

While no one has yet been granted protection on these grounds, New Zealand’s jurisprudence provides the most comprehensive analysis by decision-makers to date about the scope and content of protection for people escaping the impacts of climate change and disasters. Using the recent Tuvaluan case as a starting point, this article examines the development of New Zealand’s case law and its implications for other jurisdictions.

Id. at 132–33.

127. *Greenpeace Southeast Asia v. Chevron (US)*, CHR–NI–2016–0001 (Commission on Human Rights, filed May 9, 2016) (pending).

128. Petition by the Plaintiffs, in *Greenpeace Southeast Asia*, CHR–NI–2016–0001.

129. PHIL. CONST. art. XIII, § 17 & Commission on Human Rights, About the Commission, available at <http://chr.gov.ph/about-us/> (last accessed Jan. 26, 2018).

130. Bach, *supra* note 17, at 592 (on file with the Commission on Human Rights).

131. *Id.* at 591.

In particular, the petitioners ask “whether the top 50 CO₂ emitters in the world between 1751 and 2010 (collectively accounting for 21.71% of the world’s CO₂ emissions) have violated, or threaten to violate, [the] rights to life[,] the highest attainable standard of physical and mental health[,] food[,] water[,] sanitation[,] adequate housing[,] and self-determination[.]”¹³²

Reliefs sought include:

- (1) [A]n investigation by the Commission into the human rights implications of climate change and ocean acidification[;]
- (2) [A] request to the corporate entities to provide plans to remedy the human rights violations resulting from climate change[;] and[.]
- (3) [L]egislative and policy recommendations in relation to both corporate reporting on human rights issues and corporate accountability relating to climate change[.]¹³³

In March 2018, the Carbon Majors are expected to file their responses to the petitioners’ consolidated reply, which is the latest pleading filed in this case.¹³⁴ A series of public hearings has also been scheduled, with the first to take place on 27 to 28 March 2018 in Manila.¹³⁵

132. Justice Rachel Pepper, *Climate Change Litigation: A Comparison Between Current Australian and International Jurisprudence* (Presentation during the Sixth ASEAN Chief Justices’ Roundtable on Environment) at 12, *available at* <http://www.ajne.org/sites/default/files/event/7076/session-materials/climate-change-regime-implications-for-asean-judiciaries-justice-rachel-pepper.pdf> (last accessed Jan. 26, 2018).

133. *Id.*

134. Business and Human Rights Resource Center, Philippines: Commission on Human Rights’ investigation of 47 fossil fuel companies’ contribution to climate & human rights impacts, *available at* <https://business-humanrights.org/en/philippines-commission-on-human-rights-investigation-of-47-fossil-fuel-companies-contribution-to-climate-human-rights-impacts> (last accessed Jan. 26, 2018).

135. Greenpeace Philippines, ‘People and planet, not profit’ Greenpeace activists de, and Shell show up at climate change and human rights inquiry, *available at* <http://www.greenpeace.org/seasia/ph/press/releases/People-and-planet-not-profit---Greenpeace-activists-demand-Shell-show-up-at-climate-change-and-human-rights-inquiry/> (last accessed Feb. 23, 2018).

V. CAN PHILIPPINE JURISPRUDENCE TAKE THE HEAT? THE POTENTIAL FOR CLIMATE CHANGE LITIGATION IN THE PHILIPPINES

The survey of jurisprudence above — a mere sliver of the hundreds of climate change cases around the world — points to the fact that courts and tribunals all over are facing litigation over issues surrounding climate change.¹³⁶ In almost every region of the world, from the Americas, to Europe, and to Asia and the Pacific, government policies are being scrutinized, action is being urged, or corporate decisions and projects are being challenged.¹³⁷

Climate change litigation is now past the stage at which it would be considered nascent [—] [a] variety of lawsuits, petitions, and other actions have now been filed in the [US], Australia, Germany, New Zealand, Canada[,] and various other forums against a variety of actors for a variety of acts or omissions, [all] somehow related to [GHG emissions].¹³⁸

“This kind of national litigation will only grow as the dust settles on the Paris Agreement.”¹³⁹ International tribunals can also potentially be called upon to decide on climate change cases.¹⁴⁰

136. *But see* Wilensky, *Climate Change*, *supra* note 49, at 177-78. She said that

Consequently, while courts have played an important role in ensuring that climate change is considered in land use and planning decisions, and have demonstrated a willingness to closely examine agency decision-making, they have not necessarily favored climate change considerations above competing interests.

...

Climate change litigation across does not lend itself to one consistent narrative.

...

Climate change has been treated in the courts much like any other environmental issue and has not resulted in the development of a distinct climate change jurisprudence.

Id.

137. *See generally* Wilensky, *Climate Change*, *supra* note 49, at 151-69.

138. Shi-Ling Hsu, *A Realistic Evaluation of Climate Change Litigation through the Lens of a Hypothetical Lawsuit*, 79 U. COLO. L. REV. 701, 710 (2008).

139. *Id.* at 714 & Bach, *supra* note 17, at 566. Bach added —

First, the new ‘bottom up’ orientation of international climate change law places authority in nation states for determining the content of

Markell and Ruhl noted that “climate change litigation is a highly active and dynamic field about to take on new dimensions and magnitudes.”¹⁴¹

these pledges and hence opens the door for making enforcement claims based on the domestic laws and policies used to create them. Second, the absence of a world climate change tribunal or other specific enforcement mechanism in the new Agreement makes domestic courts an attractive venue for addressing non- or low-performance of national obligations. Third, the transparent submission of [Nationally Determined Contributions] (NDCs) will provide ample, available information for bringing suit. Fourth, NDC analysis by third parties like the NGO Climate Action Tracker and the United Nations Framework Convention on Climate Change Secretariat, along with the Intergovernmental Panel on Climate Change’s reports on mitigation pathways needed to stay within a predicted carbon budget, provide expert evidence on global norms that national courts may draw on. While threshold procedural issues may impede litigation on the merits, these suits individually — and more so en masse — place the spotlight on national efforts to achieve their NDCs.

Bach, *supra* note 17, at 566-67.

140. See Sands, *supra* note 14. Sands explained —

Climate change poses a significant challenge, and international law will play a central role in defining our ability to meet that challenge. [Sands is] not starry-eyed about international courts, but they do and should have a role to play, in helping to resolve disputes, in contributing to the development in the law, in raising public consciousness, and in offering workable, effective solutions that have the special authority of the law to back them.

Id. at 19.

141. Markell & Ruhl, *supra* note 15, at 84. The authors, however, also concluded in their study that

[c]limate change may be an exceptional problem for other institutions, but for the courts it has generally been business as usual.

...

If anything, a fair and complete reading of the case law on climate change tells a story of courts applying existing laws consistent with their settled interpretations, rather than embedding a new jurisprudence of climate change within the existing statutory frameworks.

...

The authors added that they “expect the citizen suit component of pro litigation to expand dramatically,”¹⁴² and that “it will make sense to refer to climate change law for some statutes as being established and reasonably settled through the aggregation of judicial opinions.”¹⁴³

Philippine jurisprudence on environment has consistently evolved and can be considered, at times, ground-breaking and innovative. From cases such as *Oposa*, which for the first time made a judicial pronouncement on standing on the basis of intergenerational equity,¹⁴⁴ to the more recent *Metropolitan Manila Development Authority v. Concerned Residents of Manila*,¹⁴⁵ a long line of decisions of Philippine courts have sought to protect the environment and give life and meaning to the constitutional right of the people to a balanced and healthful ecology.¹⁴⁶ The Rules of Procedure for Environment Cases¹⁴⁷ also include the one-of-a-kind remedy called the Writ of *Kalikasan*.¹⁴⁸

In light of this trend and willingness of Philippine courts to tackle environmental issue and the protection of biodiversity and natural resources, is the Philippine judiciary ready to take on climate change litigation?

[Their] assessment is that, at this point at least, climate change litigation looks about the same as litigation over any other regulatory question that has ground its way through the courts. Nothing about adding climate change into the mix has appeared to trigger judicial responses leading to anything distinctly or exceptionally ‘climate change’ in quality. In terms of actual litigation outcomes and aftermaths and of judicial tone and temperament, climate change in the courts has been a story of business as usual.

Id. at 76-77.

142. *Id.* at 84.

143. *Id.* at 85.

144. *See Oposa*, 224 SCRA at 803.

145. *Metropolitan Manila Development Authority v. Concerned Residents of Manila*, 574 SCRA 661 (2008).

146. *See, e.g., Resident Marine Mammals of the Protected Seascape Tañon Strait v. Reyes*, 756 SCRA 513 (2015).

147. *Rules of Procedure for Environmental Cases*, A.M. No. 09-6-8-SC (Apr. 13, 2010).

148. *Id.* rule 7, § 1.

In *Metropolitan Manila Development Authority*, Justice Presbitero J. Velasco, Jr. began his *ponencia* as such —

The need to address environmental pollution, as a cause of climate change, has of late gained the attention of the international community. Media have finally trained their sights on the ill effects of pollution, the destruction of forests and other critical habitats, oil spills, and the unabated improper disposal of garbage. And rightly so, for the magnitude of environmental destruction is now on a scale few ever foresaw and the wound no longer simply heals by itself. But amidst hard evidence and clear signs of a climate crisis that need bold action, the voice of cynicism, naysayers, and procrastinators can still be heard.¹⁴⁹

Although there is no other mention of climate change in the case, and one may categorize this decision as one for environmental enforcement, it is clear that the Court recognized the causal link between environmental pollution and climate change.¹⁵⁰

In the case challenging the constitutionality of the Enhanced Defense Cooperation Agreement,¹⁵¹ the Court had occasion to say in its epilogue that “[t]he Philippines is one of the countries most directly affected and damaged by climate change.”¹⁵² Although climate change was not discussed, the Court showed its awareness and acceptance of the country’s vulnerability to the global phenomenon.¹⁵³

Despite these pronouncements, there is yet no climate change case in the Philippines based on the definition of climate change litigation adopted for this Article.¹⁵⁴ Perhaps the closest attempt was the recent case of *Victoria*

149. *Metropolitan Manila Development Authority*, 574 SCRA at 665.

150. *Id.* at 665.

151. *Saguisag v. Ochoa, Jr.*, 779 SCRA 241 (2016).

152. *Id.* at 475.

153. *Id.*

154. See Ronaldo R. Gutierrez, *Developing Environment and Climate Change Jurisprudence: Philippine Experience* (Presentation during the South Asia Judicial Roundtable on Environment and Climate Change), available at <http://www.ajne.org/sites/default/files/event/7072/session-materials/developing-environment-climate-change-jurisprudence.pdf> (last accessed Jan. 26, 2018).

Segovia v. Climate Change Commission,¹⁵⁵ wherein petitioners prayed for the issuance of Writs of *Kalikasan* and Continuing *Mandamus* for the government to implement laws which included the Climate Change Act of 2009.¹⁵⁶ Specifically, the minors-petitioners wanted the government to implement the Road Sharing Principle, giving more space on roads for car-less people.¹⁵⁷ In its decision denying the petition, the Court stated that the government was able to show that it was taking action to address the environmental issues raised, and that the Court cannot compel the executive branch to implement a principle, which requires the exercise of discretion and cannot thus be the subject of *mandamus*.¹⁵⁸

This does not mean that climate change cases and litigation is not “ripe” for Philippine courts. As stated, the willingness of the judiciary to decide cases in favor of the environment, as well as procedural tools such as the *Writ of Kalikasan* can be channeled to look at climate change issues in the Philippines. One author notes that “[c]onditions are ripe in the Philippines

155. *Victoria Segovia v. Climate Change Commission*, G.R. No. 211010, Mar. 7 2017, available at <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/march2017/211010.pdf> (last accessed Jan. 26, 2018).

156. *Id.* at 3 (citing An Act Mainstreaming Climate Change Into Government Policy Formulations, Establishing the Framework Strategy and Program on Climate Change, Creating for This Purpose the Climate Change Commission, and for Other Purposes [Climate Change Act of 2009], Republic Act No. 9729 (2009) (as amended)).

157. *Segovia*, G.R. No. 211010, at 3. The Court enumerated the petitioners’ prayers

The [p]etitioners [sought] to compel: (a) the public respondents to: (1) implement the Road Sharing Principle in all roads; (2) divide all roads lengthwise, one-half (½) for all-weather sidewalk and bicycling, the other half for Filipino-made transport vehicles; (3) submit a time-bound action plan to implement the Road Sharing Principle throughout the country; (b) the Office of the President, Cabinet officials and public employees of Cabinet members to reduce their fuel consumption by fifty percent (50%) and to take public transportation fifty percent (50%) of the time; (c) Public respondent DPWH to demarcate and delineate the road right-of-way in all roads and sidewalks; and (d) Public respondent DBM to instantly release funds for Road Users’ Tax.

Id.

158. *Id.* at 11.

for the use of climate change litigation as part of a broader advocacy strategy to press for governmental action.”¹⁵⁹ “[L]egal innovation to promote access to justice and to empower the judiciary to solve serious problems stemming from inept government has been the essential driving force behind [public interest litigation in the Philippines].”¹⁶⁰ This is also aligned with global efforts, particularly in the Asian region, to move beyond environmental adjudication and look at climate change litigation as the next big challenge for judges.¹⁶¹

What then are the potential “pioneer” climate change cases to be brought before Philippine courts? International developments may serve as guide. In the run up to the Paris Agreement, experts at ClientEarth, a non-profit group promoting environmental protection through litigation and advocacy, suggested five main legal grounds for filing cases on climate change:

- (1) Health and environmental laws;
- (2) Market regulation;
- (3) Loss and damage;
- (4) Duty of care for citizens; and,
- (5) Long-term financial risk.¹⁶²

159. Lin, *supra* note 48, at 142. The author added —

The focus is therefore likely to be on climate adaptation, not mitigation, because maladaptation raises the sort of issues that fit squarely within the environmental [public interest litigation] tradition in these jurisdictions: infringement of the constitutional right to life, enforcement of statutory rights and duties, and giving voice to marginalized or vulnerable sectors of society.

Id. at 143.

160. *Id.* at 148.

161. Asian Judges Network on Environment, ADB’S Office of the General Counsel Launches New Technical Assistance Project to Develop Judicial Capacity for Adjudicating Climate Change Issues, *available at* <http://ajne.org/article/adb-office-general-counsel-launches-new-ta-develop-judicial-capacity-adjudicating-climate-change-issues> (last accessed Jan. 26, 2018).

162. Claudia Delpero, 5 ways to litigate on climate change, *available at* <http://roadtoparis.info/2015/10/26/5-ways-to-litigate-on-climate-change> (last accessed Jan. 26, 2018).

UNEP's recent report saw two trends in climate change litigation: one on climate refugees, and another on the increase in cases in the global South.¹⁶³

One expert suggests using existing laws and procedures as potential climate change litigation cases.¹⁶⁴ Victims of the 2013 Typhoon Yolanda (Haiyan) can file anti-graft and corruption cases against negligent government officials whose inaction potentially led to the numerous deaths.¹⁶⁵ Consumer protection laws can also be used to enforce strict liability for design, manufacturing, and labelling requirements.¹⁶⁶

One area of potential litigation will be the implementation of adaptation and mitigation measures as outlined in the Philippines' National Climate Change Action Plan.¹⁶⁷ Projects funded by the People's Survival Fund under Republic Act No. 10174,¹⁶⁸ or the way resources have been allocated, can also be potential conflict areas. Given the infrastructure boom being pushed by the current administration, as well as projects and developments by the private sector,¹⁶⁹ challenges on the grant of approval for projects, particularly EIAs can be expected.¹⁷⁰

163. See United Nations Environment Programme, *supra* note 53, 25-26.

164. Gutierrez, *supra* note 154, at 4 & 8.

165. *Id.* at 18.

166. *Id.*

167. See Climate Change Commission, National Climate Change Action Plan (Executive Summary), available at http://www.dilg.gov.ph/PDF_File/reports_resources/DILG-Resources-2012116-d7b64f9faf.pdf (last accessed Jan. 26, 2018).

168. An Act Establishing the People's Survival Fund to Provide Long-Term Finance Streams to Enable the Government to Effectively Address the Problem of Climate Change Amending for the Purpose Republic Act No. 9729, otherwise known as the "Climate Change Act of 2009", and for Other Purposes, Republic Act No. 10174 (2012).

169. National Economic Development Authority, Philippine Development Plan 2017-2022 ch. 19, available at <http://pdp.neda.gov.ph/wp-content/uploads/2017/01/PDP-2017-2022-07-20-2017.pdf> (last accessed Jan. 26, 2018).

170. See generally Princess Alma B. Ani, The Philippine Environmental Assessment Policies (Policy Article from the Food and Fertilizer Technology Center for the Asian and Pacific Region), available at http://ap.ffc.agnet.org/ap_db.php?id=625&print=1 (last accessed Jan. 26, 2018).

Given the Philippines' vulnerability to climate change,¹⁷¹ victims of natural disasters as a result of climate-induced events can seek compensation for loss and damage. Although identifying the respondent or accused may prove to be difficult, cases can potentially be brought before local or perhaps international tribunals. Persons and families displaced because of climate change — those who can constitute as internal climate refugees — can also seek redress and compensation for the loss of their homes and properties.

VI. INGREDIENTS FOR CLIMATE CHANGE LITIGATION IN THE PHILIPPINES

One study noted some “daunting jurisprudential and scientific obstacles”¹⁷² to climate change litigation. “First, the plaintiff must demonstrate that it is an appropriate party to bring a lawsuit [...] Second, the defendant must be an appropriate party from which to seek redress [...] Third, finding an appropriate forum in which to bring an action will prove difficult.”¹⁷³ This short list can thus serve as a guide in identifying ingredients for potential climate change litigation cases in the Philippines.

A. The Appropriate Party to Bring a Suit

Justiciability and standing are two issues which any plaintiff must first overcome.¹⁷⁴ These are procedural requirements that do not yet delve into the substantial issues and merits of the case.¹⁷⁵

[J]usticiability analysis entail[s] both legal and prudential questions. First is the question of whether the court is legally empowered to adjudicate the case — this typically depends on the constitutional grant of authority to the court. Second is the question of whether it would be imprudent for the court to adjudicate the case — the court typically has discretion to determine this matter based on the facts before it.¹⁷⁶

As for standing, the different definitions and jurisprudential rulings on the matter principle may prove to be a barrier to climate change. It generally

171. See Climate Change Commission, *supra* note 32, at 9.

172. Hsu, *supra* note 138, at 702-03.

173. *Id.* at 702-03.

174. United Nations Environment Programme, *supra* note 53, at 28.

175. *Id.* at 27.

176. *Id.*

“refers to the criteria one must satisfy in order to be a party to a legal proceeding.”¹⁷⁷

In the Philippines, standing may be easier to overcome given the long line of decisions of the courts on liberalized standing.¹⁷⁸ This is also embodied in the Rules of Procedure for Environmental Cases, which specifically provides for Citizen’s Suits as under Section 5 thereof.¹⁷⁹

On justiciability, the power of judicial review as provided in the 1987 Philippine Constitution gives ample leeway for the courts to accept potential cases.¹⁸⁰ More challenging is the determination of the propriety of court adjudication on the matter in light of the separation of powers and the respect accorded to other branches of government.¹⁸¹ Judicial overreach and judge-made legislation are also issues which courts tend to avoid.¹⁸²

Increased public awareness and the willingness of the public and NGOs to bring these cases are also important factors for climate change cases.¹⁸³ Plaintiffs can “test the waters” and prod the judiciary to give doctrinal rulings on climate change.¹⁸⁴ However, the “demand side” or public interest lawyering needs to increase for climate change issues to be brought before governments and, eventually, the courts.¹⁸⁵

177. *Id.* at 28.

178. *See, e.g.,* Kilosbayan v. Guingona, Jr., 232 SCRA 110 (1994); *Oposa*, 224 SCRA; & *Resident Marine Mammals of the Protected Seascape Tañon Strait*, 756 SCRA.

179. Rules of Procedure for Environmental Cases, rule 2, §§ 4 & 5.

180. PHIL. CONST. art. VIII, § 1, para. 2.

181. *See* *Ocampo v. Enriquez*, 807 SCRA 223, 259 (2016) (citing *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, 586 SCRA 402, 450 (2008)).

182. *See Ocampo*, at 276.

183. *See* *Bach*, *supra* note 17, at 591.

184. *See* *Ewing & Kysar*, *supra* note 46, at 379 & *Weaver & Kysar*, *supra* note 36, at 343 (citing *Leghari*, W.P. No. 25501/2015, ¶ 11).

185. *See* *Lin*, *supra* note 48, at 143.

B. The Party to Seek Redress From

The next challenge is to identify who the respondent should be.¹⁸⁶ Despite the fact that the science on climate change is settled, imputing a direct causal link to one person, company, or industry is difficult and is the subject of much debate.¹⁸⁷ In the Philippines, the *Segovia* case on road-sharing was not successful in forcing the government to act — partly because according to the Court, the government was able to prove that it was indeed taking action.¹⁸⁸ In the *Greenpeace* case, the respondents are the carbon majors, although the forum is in an investigation conducted by the CHR.¹⁸⁹

The most likely respondent in potential climate change cases in the Philippines — at least in the near future — will be the government. Petitioners can seek to compel the government to meet its commitments under the Paris Agreement, as a signatory and based on the country's Nationally Determined Contributions (NDCs).¹⁹⁰ For example, will the government's push for coal power plant projects compromise or render inutile the NDC and Paris Agreement? Can local government units without local climate change action plans be compelled to enact the same? Can the government's failure to fully and effectively implement environmental laws, such as the Clean Air Act, make the State liable for damages in favor of those displaced by climate-induced events?

Making the government accountable seems like a feasible task. However, one hindrance, assuming there is a positive and favorable outcome to the case, is the fact that the Philippine government may not have enough resources to implement and enforce the decision. As with most other Philippine laws, they are good on paper but implementation is enough not enough and falls short of the objectives and stated outcomes of the legislation. For climate change, the government has already stated that its fulfillment of its NDCs is contingent on foreign funding and international

186. Hsu, *supra* note 138, at 702.

187. See United Nations Environment Programme, *supra* note 53, at 19–20.

188. *Segovia*, G.R. No. 211010, at 11.

189. Petition by the Plaintiffs, *supra* note 128, at 4–7.

190. A copy of the Philippines' Intended Nationally Determined Contributions is available online. Republic of the Philippines, Intended Nationally Determined Contributions, *available at* <http://www4.unfccc.int/submissions/INDC/Published%20Documents/Philippines/1/Philippines%20-%20Final%20INDC%20submission.pdf> (last accessed Jan. 26, 2018).

aid — this is still a sticky and oftentimes contentious issue in climate change negotiations.

C. Finding the Appropriate Forum

The third challenge is to find the right forum to file the case.¹⁹¹ As earlier discussed, the openness of Philippine courts to decide environmental cases, as shown by the Rules of Procedure,¹⁹² and by the designation of green courts around the country,¹⁹³ will make it possible to bring up climate change cases, assuming other issues such as standing, justiciability, and proper parties, among others, are overcome. Thus, Philippine courts are well-placed to adjudicate some of the case cited above.

The continuous training of green bench/environmental court judges by the Philippine Judicial Academy will also help ensure that those who will hear these cases have an appreciation of environment and climate change issues. It would be ideal if the current curricula¹⁹⁴ could be expanded to include climate change — laws (both international and local), the science behind the phenomenon, and adjudicatory tools such as use of *amicus curiae* and special evidence.¹⁹⁵

191. Hsu, *supra* note 138, at 703.

192. Rules of Procedure for Environmental Cases, rule 2, §§ 4 & 5.

193. Supreme Court, Re: Designation of Special Courts to Hear, Try and Decide Environmental Cases, SC Administrative Order No. 23-2008 (Jan. 28, 2008).

194. See Philippine Judicial Academy, Programs and Courses, *available at* <http://philja.judiciary.gov.ph/programs.html> (last accessed Jan. 26, 2018).

195. See AMSTERDAM INTERNATIONAL LAW CLINIC, ET AL., ANALYSES OF ISSUES TO BE ADDRESSED: CLIMATE CHANGE LITIGATION CASES (2007). Amsterdam International Law Clinic, et al., provided the burdens on the plaintiff in a climate litigation case:

- (1) Firstly, evidence that the plaintiff is suffering or has suffered from climate change. These damages must be tangible and personal, already evident and therefore not hypothetical.
- (2) Then, the damages must be able to be linked to actions of the defendant. This does not necessarily mean proving a direct one-to-one relationship between [GHG] emissions by the charged government or business and the damages suffered by the claimant. The scientific evidence that there is a relationship between [GHG] emissions and climate change is sufficient.
- (3) Thirdly, it must be proven that the damage can be reduced if the defendant stops the activities in question.

The Court can also help by specifically listing climate change related laws in the scope of the Rules of Procedure.¹⁹⁶ Although the laws as enumerated are not an exhaustive list, the inclusion of the said laws will signify the Court's acceptance and recognition of potential climate change litigation cases.¹⁹⁷

Other forums such as the CHR, which has investigatory powers, have been invoked, as in the *Greenpeace* petition.¹⁹⁸ The Office of the Ombudsman has also designated an Environmental Ombudsman who can help in investigating government officials and their actions.¹⁹⁹

D. Future Prospects

Climate change litigation has come of age globally, and the Philippine courts and legal system should anticipate an increase in cases and potential disputes. Although considered as nascent in the Philippines, there are many potential areas of litigation, particularly for implementation of government policies, liability for loss and damage, and fulfillment of international obligations. The existing trove of environmental cases and the active environmental movement in the country can be channeled to look into possible climate change cases, given the clear nexus between environmental issues and climate change. In particular, it would not be far-fetched to consider an environmental case, such as implementation of forestry laws, as a climate change case, given the known impact of forests on the phenomenon as carbon sinks and buffers for climate-related disasters.

Philippine jurisprudence has long been an inspiration for other jurisdictions when it comes to environmental decisions. The words of the court have been cited and echoed in many other cases, a reflection of the commitment which our judges have shown for the cause of nature. Bold decisions and norm-challenging *ponencias* on climate change from Philippine

Id. at 5.

196. See PHIL. CONST. art. VIII, § 5 (5).

197. See Rules of Procedure for Environmental Cases, rule 1, § 2.

198. See Petition by the Plaintiffs, *supra* note 128.

199. Department of Environment and Natural Resources, Rules and Regulations Implementing the Philippine Ecological Solid Waste Management Act of 2000, Republic Act No. 9003, rule XX, § 3 (2001). See also Office of the Ombudsman, Frequently Asked Questions, available at <http://www.ombudsman.gov.ph/index.php?home=1&navId=Mg==&subNavId=MTY=&l=3#link3> (last accessed Jan. 26, 2018).

courts is not a far prospect — it is just a matter of time before another landmark judgement on climate change comes and for the court to be once again a beacon of hope in tackling this global phenomenon.