Framework for Strengthening Environmental Adjudication in the Philippines*

*Justice Consuelo Ynares-Santiago***

I. INTRODUCTION

The Philippines is known for having the toughest and most progressive among other environmental laws in the world. Our Constitution guarantees the right of the people to a healthy environment,[1] which the Supreme Court has declared, in the leading case of *Oposa v. Factoran, Jr.*,[2] as legally demandable and enforceable.[3] Yet mere recognition of the right is not enough. The government has to protect the exercise of that right. The role of the Court is to ensure that laws, actions of government agents, as well as

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1. PHIL CONST. art II, § 16.
2. Oposa v. Factoran, Jr., 224 SCRA 792 (1993).
3. *Id.* at 804-06.

actions of fellow citizens, do not trample on that right. However, the Court will only have this opportunity when appropriate cases are brought before it.

Many concerned groups have voiced their suggestions to improve access to environmental justice. The Philippine Judicial Academy (PHILJA) and its partners, such as the United States Agency for International Development (USAID), United Nations Development Program (UNDP), and other Philippine civil society environmental and alternative law organizations, have taken great strides to advance the cause of the environment within the judiciary, especially through judicial trainings.

The framework I am sharing today seeks to synthesize the discussions and present options for addressing the most pressing issues. Our overall strategy is to increase the relevance of the courts by making the judiciary better prepared in handling environmental cases. Indeed, the goals of a framework for strengthening environmental adjudication in the Philippines are improved efficiency, integration of jurisdiction (where allowed by law), and greater access to justice especially by the poor. These goals are particularly important in taking steps to strengthen *green benches*.

At this point, allow me to acknowledge that the preparation of the framework was done in partnership with PHILJA and was supported by USAID, through the Asian Environmental Compliance and Enforcement Network (AECEN), and by UNDP, through a grant provided to the Haribon Foundation.[4]

II. BACKGROUND OF THE FRAMEWORK

To properly situate the framework for strengthening environmental adjudication in the Philippines, some background on our environmental and judicial systems and their interaction is probably helpful.

The Philippines is a republican state with a presidential form of government. We have three co-equal branches of government — an executive branch headed by the President, a bicameral legislature which consists of the Senate and the House of Representatives, and an independent judiciary — whose powers are well-defined in the 1987 Constitution. The legislature enacts the laws, the executive branch implements them, and the judiciary adjudicates when there are controversies involving the other branches or where the rights of citizens are affected.

4. The Haribon Foundation for the Conservation of Natural Resources is the pioneer environmental organization in the Philippines dedicated to the conservation of Philippine biodiversity. It became a full-fledged foundation in 1983.

The judiciary also interprets the Constitution, aside from the laws passed by the legislature. It has the power of judicial review[5] over acts of the different branches that raise questions of constitutional validity. The Supreme Court and the lower courts have these powers apportioned to them by the Constitution[6] and by legislative act.[7] Finally, the Supreme Court as the highest court of the land has also been explicitly given the constitutional power to administer and manage the courts and thus, has the authority to organize the courts, issue rules and regulations, and perform other acts to ensure effective and efficient access to justice.[8]

Let me go now to the administrative and legal issues that might have to be addressed to strengthen our system of environmental adjudication.

III. INSTITUTIONAL AND ADMINISTRATIVE ISSUES

Let us begin first with the recommendation of establishing *green benches*. There are already specially designated courts (for example, family courts) that hear certain types of cases. However, these courts still hear regular cases, aside from the additional task of adjudicating special cases. In the Philippines, we already have green benches although their jurisdiction is limited to forestry cases. In order to strengthen the competency of *green benches*, the following four options could be explored:

- First, strengthen the current system of specially designated forestry courts by providing judges assigned to these courts additional trainings, as well as technical and other resources that increase capacity;
- Second, expand the jurisdiction of current designated courts to cover all environmental cases (except those under quasi-judicial bodies, such as the Pollution Adjudication and Mining Adjudication Boards) and locate them in accessible areas (where cases are expected to be numerous);
- Third, establish special courts that are strictly for environmental cases; and
- Fourth, establish green benches that focus not only on the judges, but the support system needed for environmental cases, with particular attention to developing technical expertise not only among judges but also other officers of the court.

5. PHIL. CONST. art VIII, § 5, ¶ 2.
6. PHIL. CONST. art VIII, § 1.
7. PHIL. CONST. art VIII, § 2.
8. PHIL. CONST. art VIII, § 5.

All four options can be acted upon by the Supreme Court but the first and the fourth option would have to be with the PHILJA and other partners while the third option can also be acted upon by Congress.

Environmental cases can arise in any part of the country, perhaps certain issues more than the others, depending on the type of activities in the area. For example, in big cities, one will expect more pollution cases than forestry cases. The designation of courts in identified priority areas is only a temporary measure while the rest of the judiciary undergoes orientation and training. The goal is for all courts to be able to handle environmental cases. Regardless of whether or not we ultimately decide to establish exclusive or special courts, we need to reorient the judges when it comes to handling environmental cases. We started by identifying the courts where the cases are most likely to occur and by initiating the training of judges in these courts. Through PHILJA, we are moving towards training more judges and, perhaps, eventually making environmental law part of the general training curriculum for judges.

PHILJA has conducted several trainings on environmental law that benefited some 400 judges. It has also prepared training modules on environmental law, including materials on specific topics, such as climate change and wildlife. However, these are all basic trainings. Data from PHILJA's training partner Haribon Foundation show that there were instances where the same judges had attended two or more basic environmental law trainings. PHILJA should monitor who have been trained and see to it that they get advanced training depending on the particular need of the jurisdictional area for knowledge about the most prevalent cases filed in the area.

IV. LEGAL ISSUES AROUND ENVIRONMENTAL CASES

We will look now at specific legal issues surrounding environmental cases. Several suggestions have been made in order to address the unique challenges faced by parties in an environmental case. In various consultative forums discussing environmental adjudication, the issues of standing to sue and class suits are always raised. Environmental law advocates often suggest that the Court should relax the rules on standing to sue and class actions in order to make it easier for the injured parties to file a case. Other suggestions include amending the rules on accrual of causes of action and burden of evidence to allow plaintiffs to overcome the technical barriers to filing environmental cases. Moreover, other suggestions deal with improving court rules in the custody and appreciation of bulky and perishable evidence. Let us clarify these issues.

A. Standing to Sue

The case of *Oposa* is famously quoted for its pronouncement on intergenerational responsibility. The Court said:

> Petitioners minors assert that they represent their generation as well as generations yet unborn. We find no difficulty in ruling that they can, for themselves, for others of their generations and for succeeding generations, file a class suit. Their personality to sue in behalf of the succeeding generations can only be based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned.[9]

Standing to sue has always been considered a mere procedural matter[10] that can be set aside. The pronouncement in *Oposa* has been reiterated in *Henares, Jr. v. Land Transportation Franchising and Regulatory Board*,[11] where we recognized plaintiffs' (who were ordinary citizens, including minors) right to sue the government to compel the use of compressed natural gas by utility vehicles. We said:

> This petition focuses on one fundamental legal right of petitioners, their right to clean air. Moreover, as held previously, a party's standing before this Court is procedural technicality which may, in the exercise of the Court's discretion, be set aside in view of the importance of the issue raised. We brush aside this issue of technicality under the principle of the transcendental importance to the public, especially so if these cases demand that they be (sic) settled promptly.[12]

However, having standing to sue does not automatically mean that the petitioners have a cause of action. The question of standing involves who the proper parties are to the case.[13] On the other hand, the issue on cause of action requires not only that the plaintiff is the proper party — has a right that has been or may be violated — but also that the defendant has a correlative duty to protect or respect such right. Our Rules of Court defines a cause of action as "the act or omission by which a party violates a right of another."[14]

9. Oposa v. Factoran, Jr., 224 SCRA 792, 802-03 (1993).
10. Barredo v. Commission on Elections, 84 Phil. 368 (1949).
11. Henares, Jr. v. Land Transportation Franchising and Regulatory Board, 505 SCRA 104 (2006).
12. *Id.* at 114.
13. 1997 REVISED RULES OF CIVIL PROCEDURE, rule 3, § 2.
14. *Id.* rule 2, § 2.

In *Oposa* and in *Cruz v. Secretary of Environment and Natural Resources*,[15] where the constitutionality of the Indigenous People's Rights Act (IPRA)[16] was at issue, we declared that the citizen-plaintiffs had standing because they possessed the right that could be violated and that the government had the correlative duty to protect such right.[17] On the other hand, in *Henares*, while the Court recognized that the plaintiffs had standing, it also found that there was no provision in the Clean Air Act[18] that required the government agency to compel public utility vehicles to use compressed natural gas (CNG).[19] The Court ruled that the petitioners had no cause of action.[20]

When public interest law groups ask that the rules on standing be relaxed, what they are really asking is to be allowed to sue on behalf of the proper (injured) parties. Is present jurisprudence relaxed enough to allow public interest groups to stand as plaintiffs? Our jurisprudence is rich in cases where ordinary citizens file suits as taxpayers. In *Kilosbayan v. Morato*,[21] we said that, the Court has in the past accorded standing to taxpayers and concerned citizens in cases involving "paramount public interest."[22] Taxpayers, voters, concerned citizens, and legislators have indeed been allowed to sue but only in cases involving constitutional issues and under certain conditions. These conditions are well-established under our case law. Public interest groups must meet the conditions for taxpayers' suits in order to have standing to sue on their own.

To summarize, we have three options, all of which may be acted upon by the Supreme Court:

- First, complete liberalization of the rules on standing for environmental cases;
- Second, selective liberalization of rules, such as waiver of standing in cases of transcendental importance; and

15. Cruz v. Secretary of Environment and Natural Resources, 347 SCRA 128 (2000).
16. The Indigenous Peoples Rights Act of 1997 [IPRA], Republic Act No. 8371 (1997).
17. *Cruz*, 161 SCRA at 161-62.
18. An Act Providing for a Comprehensive Air Pollution Control Policy and for other purposes [Philippine Clean Air Act of 1999], Republic Act No. 8749 (1999).
19. Henares, Jr. v. Land Transportation Franchising and Regulatory Board, 505 SCRA 104, 114 (2006).
20. *Id.*
21. Kilosbayan v. Morato, 246 SCRA 540 (1995).
22. *Id.* at 564-65.

- Last, adoption of the rule that environmental cases are imbued with public interest, where rules on standing and cause of action may be interpreted liberally.

B. Class Suits

A class suit is one where:

> the subject matter of the controversy is one of common or general interest to many persons so numerous that it is impracticable to join all as parties, a number of them which the court finds to be sufficiently numerous and representative as to fully protect the interests of all concerned may sue or defend for the benefit of all. Any party in interest shall have the right to intervene to protect his individual interest.[23]

The main advantage of a class suit is that it brings together small claims that are impractical or unlikely to be litigated separately. By aggregating small claims, class actions efficiently and effectively spread the cost of litigation among many claimants. Because there are numerous members of a class, each member contributes only a small amount that adds up to cover litigation costs and to pay for good lawyers. The large amount of the aggregate claim can attract good legal talents who are willing to work on a contingency basis. The negotiating power of small claimants is also strengthened in class suits due to the large number of people involved.

Just because numerous parties are affected by an environmental violation does not automatically mean that the court has to certify the case as a class suit. The specific requirements must be met, namely: (1) Numerosity — the class must be so numerous that joinder of all parties is impracticable;[24] (2) Commonality — the questions of fact or law are common to the class;[25] (3) Typicality — the class representatives who file the suit must be typical of those of the class members; and (4) Adequacy — the class representatives must be able to represent the class adequately.[26]

It is not hard to imagine that environmental cases would involve numerous plaintiffs. The question is whether all of them have a common interest in the subject matter of a petition. Class suits have not been common in our jurisdiction, perhaps because of the strictness in the interpretation of the rule. Indeed, it appears that our strict interpretation of class suits could prevent the filing of environmental class actions to claim losses or damages.

23. 1997 REVISED RULES OF CIVIL PROCEDURE, rule 3, § 12.

24. *See*, 1 VICENTE J. FRANCISCO, THE REVISED RULES OF COURT IN THE PHILIPPINES, RULES 1-19, 293 (1973 ed.).

25. *Id.*

26. *Id.*

Perhaps, there is room for reconsideration. However, the right case has yet to come to the attention of the Court.

It should be noted that taxpayers and citizen suits are class suits,[27] because plaintiffs claim to represent the rest of the citizens or taxpayers not named in the case. The difference with damage class suits is that, the relief sought in a taxpayer's suit (typically *mandamus* or prohibition) automatically and equally benefits all, without having the problem of apportioning the proceeds. Otherwise, we face the problem of deciding what each plaintiff is entitled to and requiring proof of their respective claims.

In summary, these are the options:

- First, the Supreme Court might want to liberalize the rules on class suits for environmental cases;
- Second, both the Court and Congress could institutionalize the concept of citizen suits for environmental cases; and
- Finally, Congress could examine and adopt changes to the principles underlying mass tort actions, especially as the only viable means for aggregating small claims in complex, expensive, and technical cases.

C. Accrual of Cause of Action

The interval between the violative or injurious act and the manifestation of injury can take years. This is of critical concern because actions must be instituted within the limited time periods. The statute of limitation for tort is four years from the occurrence of the wrongful act.[28] The primary and secondary effect of environmentally damaging acts can take longer than this period. Environmental advocates propose to change the reckoning of the prescriptive period from the date of occurrence to the date of discovery. It should be noted that the Supreme Court has also held that when considerations of substantial justice and equity come in, it is better to resolve the issue based on the merits of the case, instead of strictly applying the rule on prescription.[29]

The application of article 1150 of the Civil Code may be resorted to. Said article provides that "the time of prescription for all kinds of actions, when there is no special provision which ordains otherwise, shall be counted *from the day they may be brought.*"[30] This could be interpreted to mean the

27. Francisco v. House of Representatives, 415 SCRA 44, 134 (2003).

28. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, art. 1146 (1949).

29. Videogram Regulatory Board v. Court of Appeals, 265 SCRA 50, 58 (1996).

30. CIVIL CODE, art. 1150 (emphasis supplied).

time when the impact of the injurious act became manifest or was discovered.

For this issue, the option is either for the Supreme Court to adopt appropriate discovery rules or for Congress to adopt special rules on prescription for environmental cases.

D. Burden of Evidence on Causation and Damages

The burden of proving facts and causation can be heavy and costly. In several instances, the law creates presumptions that shift the burden of presenting evidence. In section 88 of the Philippine Fisheries Code of 1998,[31] the law creates a *prima facie* case of fishing with the use of explosives in case of possession of explosives, as held in *People v. Vergara.*[32]

However, the Court cannot shift the burden of evidence through the rules. There is danger that it will fly in the face of the constitutional right to be presumed innocent.[33] While the burden of proof remains with the plaintiff, the Supreme Court can identify how certain disputable presumptions can be established (by law) to shift the burden of presenting evidence on the defendant.

Difficulties in proving causation and liability can be addressed through adopting strict liability rules, which we already have in transportation and product liability laws. But this is a matter that should be addressed to the legislature, and not to the judiciary.

E. Custody of Bulky and Perishable Evidence

Public interest law groups point to practical problems in dealing with evidence in court. In many cases, the evidence (for example, logs, fish, and wildlife) can be bulky, highly perishable, dangerous, or delicate. The general rules on the handling and custody of evidence, while the case is pending, are inadequate to address the problems encountered in the field.

In illegal fishing cases, as part of acquiring jurisdiction, trial courts order the surrender of materials and paraphernalia involved in the case — these may include fishing nets that weigh several tons and boats. The court is faced with the problem of storage and payment for maintenance costs, including wharfage fees. The court is also faced with the challenge of storing the fish,

31. An Act Providing for the Development, Management and Conservation of the Fisheries and Aquatic Resources, Integrating all laws pertinent thereto and For other purposes [THE PHILIPPINE FISHERIES CODE], Republic Act No. 8550 (1998).

32. People of the Philippines v. Vergara, 270 SCRA 624 (1997).

33. PHIL. CONST. art III, § 14, ¶ 2.

which is alleged to have caught illegally. It is the same situation with logging cases — storage is a problem, and the materials deteriorate quickly if not preserved properly. At the end of the trial, which can take years, the materials are already useless — either to the accused, when acquitted, or to the government, in case of forfeiture.

Practitioners have suggested to the Court the promulgation of rules to allow the sale or disposition of bulky or perishable evidence to preserve their value. The proceeds of the sale are then deposited with the court to await the outcome of the case. Photographs, samples, and inventory records can then be used for presentation in court in lieu of the actual bulky and/or perishable objects.

In sum, the options which may be acted upon by the Supreme Court are:

- Allow the selling (where appropriate) of bulky or perishable goods to preserve their value;
- Convert actual bulky or perishable evidence to other acceptable forms such as photographs, representative samples, etc.;
- Use modes of discovery to immediately establish the facts related to the bulky or perishable object evidence.

V. REMEDIES

To deal with remedies, let us look at three issues: (1) appropriate penalties; (2) judicial review of executive agency; and (3) alternative modes of dispute resolution. Careful study of these issues is needed.

A. Creative Penology

Penalties should not only be imposed as punishment to deter subsequent commission of the offense, but also to educate the violator on why the action is considered wrong or illegal. Courts can help reform environmental offenders by imposing creative conditions that educate the offender. In 2003, the Supreme Court issued Administrative Circular 17-2003 that required the planting of trees as condition for probation. The imposition of conditions for community service can include other activities that can expose the offender to the value of the natural resources that he has destroyed. Trial courts in Cebu, for instance, make it a condition in fishery crimes that the violator serve as a guardian of the marine sanctuary. In such instances, the violator learns about the value of the marine ecosystem in his/her livelihood.

As a rule, for appropriate penalties to be imposed, congressional action is needed. Some examples of what could be done are:

- To require offenders to render community service by attending environmental seminars and participating in community environmental protection work; or
- To impose civil and criminal penalties that can result in deterrence.

B. Judicial Review

The appellate courts also play an important role in the review of cases. There are two types of reviews: appeals from lower court decisions[34] and judicial review of cases heard by quasi-judicial bodies.[35] For appeals, the appellate courts should be equipped with some of the technical skills necessary to appreciate the issues in environmental cases. For judicial review, the appellate courts should also develop sensitivity to executive decisions and establish a clear standard for review. The Supreme Court has been consistent in upholding the powers of environmental agencies to protect the environment. In *Sta. Ines Melale Forest Products Corp. v. Executive Secretary*,[36] we said:

> Findings of fact of quasi-judicial bodies which have acquired expertise because their jurisdiction is confined to specific matters, are accorded not only with respect but even finality if they are supported by substantial evidence, even if such evidence might not be overwhelming or preponderant. Courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies. Indeed, issues involving basically technical matters deserve to be disentangled from undue interference from courts.[37]

The Constitution has greatly strengthened the power of judicial review. The second paragraph of section 1, article VIII of the Constitution states that:

> [j]udicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.[38]

34. 1997 REVISED RULES OF CIVIL PROCEDURE, rules 40 & 41.

35. *Id.* rule 43.

36. Sta. Ines Melale Forest Products Corp. v. Executive Secretary, 299 SCRA 491 (1998).

37. *Id.* at 510-11.

38. PHIL. CONST. art VIII, § 1.

But such power does not give the court the license to supplant with its own decision what is best left to the expertise of executive agencies.

VI. ALTERNATIVE MECHANISM FOR RESOLVING ENVIRONMENTAL DISPUTES

Oposa is famous for the Court's pronouncement on intergenerational responsibility. However, it is also criticized for not having followed through with concrete actions that actually benefited the environment. If we recall, the ruling in *Oposa* was to remand the case to the trial court for further proceedings and to implead the timber license holders. The logical continuation of the case would have been to prove that the harvesting of forest products by timber license holders was not sustainable and thus, impaired the rights of future generations from enjoying the value of our forests. But who is to decide that question — the court or the environmental agency? The filing of the case had achieved its goal of forcing the environmental agency to reexamine its policy on exploitation of forest resources, under the watchful eyes of the court. However, to decide whether the subsequent actions of the agency are sufficient for sustainable resource management would have been difficult for the court.

A device known as a "consent decree"[39] is used in the United States, notably by the Environmental Protection Agency (EPA),[40] to make a comprehensive settlement of environmental enforcement cases. Essentially, the EPA negotiates with the violator to arrive at agreements containing comprehensive and mutually-acceptable solutions to the environmental problem that resulted in a violation. The unique feature of the EPA consent decree is that it is subject to public notice and comment before it is finally entered into.

While *Oposa* is not an enforcement case, we can learn from the United States' experience on consent decrees to arrive at negotiated solutions to environmental disputes. The advantage of this process is that the parties can have a wide choice of actions to address the issues and not be limited to the issues recognized by the court.

39. BLACK'S LAW DICTIONARY 419 (Bryan A. Garner, *et al.*, eds. 7d ed. 1999). A consent decree is defined as "a court decree that all parties agree to."

40. The Environmental Protection Agency was established under Reorganization Plan No. 3, an executive order issued by former United States President Richard Nixon. It is an agency of the federal government which is mandated to protect human health and the environment. It commenced its operations on December 2, 1970. *See*, Jack Lewis, The Birth of EPA, http://www.epa.gov/history/topics/epa/15c.htm (last accessed Mar. 1, 2008).

The added benefit of consent decrees over normal negotiations is that it has the imprimatur of the court and can be enforced though a court order. While the parties have a wide discretion over the remedial actions, the court still has the power to determine whether the action is reasonable, without having to decide by itself what the actual terms should be.

To make progress on this, the Supreme Court may want to adopt rules on consent decrees for environmental cases. The Department of Environment and Natural Resources and other agencies may also want to develop capacity to negotiate and enter into consent agreements. Citizen organizations will also need capacity building in this regard.

VII. SUMMARY AND CONCLUSION

When the Supreme Court said in *Oposa* that the constitutional right of the people to a healthy environment was as fundamental as the right to self-preservation, it elevated the environmental right to the level of civil and political rights. In my view, this is appropriate given the importance of the right to a good quality of life for all citizens and for the sustainable development of the country. This is the reason why an effective and efficient framework for environmental adjudication is necessary.

To fully develop this framework, this article discussed the issues that need to be addressed and the options that the judicial system, through the Supreme Court, as the administrator of the system, may undertake. In sum, environmental cases have features that distinguish them from ordinary civil and criminal cases. Treating them differently does not mean giving special favors or bias to environmental causes, instead, it is recognition that the nature of environmental cases makes it difficult for injured parties to find redress. The special rules only try to balance the playing field.

Administrative measures are intended to make adjudication more efficient, by giving judges the right training and by ensuring that trained judges are available in the areas where the cases are likely to occur. Finally, alternative modes should be encouraged because the nature of environment cases requires broader settlements that are more appropriate to negotiation or agency action.

Charter Places Absolute Ban on Use of Illegal Wiretap*

*Senator Miriam Defensor Santiago***

I. CONSTITUTIONAL BAN IS ABSOLUTE

The Bill of Rights provides:

> Sec. 3 (1) The privacy of communication and correspondence shall be inviolable, except upon order of the court, or when public safety or order requires otherwise, as prescribed by law.
>
> (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.[1]

This provision came down to us from the 1935 Constitution. It has no counterpart in the Constitution of the United States. In the 1967 case of *Katz v. United States*,[2] however, the U.S. Supreme Court ruled that wiretapping is banned, under the search and seizure clause of the U.S. Constitution.

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* This privilege speech was delivered on Aug. 28, 2007 in relation to the pending investigation of the 2004 Presidential Election controversy involving Commission on Elections Commissioner Virgilio O. Garcillano in the Senate.

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1. PHIL. CONST. art III § 3.
2. Katz v. United States of America, 38 U.S. 347 (1967).