

Annex: Developments in Philippine Caselaw

Developments in Philippine caselaw and procedural rules concerning the protection of the environment may prove useful models for the Marshall Islands in pursuing their quest for redress for harms perpetrated upon their ecology. The Rules of Procedure for Environmental Cases, for instance, expressly recognizes citizen standing to sue on behalf of unborn generations to enforce environmental rights,¹ places the burden of producing evidence in support of allowing some activity that may irreversibly and seriously harm the environment on the proponent instead of the putting the burden of production to prevent the activity on the opponent,² and provides extraordinary remedies aimed at preventing ecological damage and ensuring compliance with the State environmental obligations.³ Watershed decisions by the Supreme Court, on the other hand, guide state practice of the Philippine government's other branches concerning the country's observance of domestic and international environmental norms by either codifying jurisprudence or modifying executive action.

In the landmark case of *Oposa v. Factoran*,⁴ the Supreme Court granted standing for children-plaintiffs to sue not only for their generation but for "generations yet unborn" in vindication of the fundamental right to a healthful and balanced ecology.⁵ Here, children-plaintiffs alleged that the Environment Secretary's execution of timber license agreements and refusal to cancel existing ones promoted severe deforestation that would leave their and future generations access to forest resources in violation of their right to a healthful and balanced ecology and various laws.⁶

¹ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, A.M. No. 09-6-8-SC (2010), rule 2; *cf.* intergenerational responsibility in, *e.g.*, U.N. Conference on the Human Environment, *Stockholm Declaration* principles 1 and 2, U.N. Doc. A/RES/2994(XXVII) (June 16, 1972); U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, principle 3; U.N. Doc. A/CONF.151/26 (Vol. I) (August 12, 1992), Convention on Biological Diversity, article 10, June 5, 1992, 1760 U.N.T.S. 79.

² RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 20; *cf.* precautionary approach in, *e.g.*, *Rio Declaration on Environment and Development*, principle 15; Convention on Biological Diversity, preamble, paragraph 9; United Nations Framework Convention on Climate Change, article 10(3), May 9, 1992, 1771 U.N.T.S. 107.

³ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rules 7 and 8.

⁴ G.R. No. 101083, July 30, 1993.

⁵ *Id.*

⁶ *Id.*

While not disputed by the Secretary, the Court recognized that the minors may file a class suit involving the constitutional right to a healthful and balanced ecology on behalf of existing and future individuals anchored on intergenerational responsibility.⁷ The Court reasoned that the right is examined in relation to using, preserving, renewing existing natural resources to ensure equitable access for present and later generations thus enabling the people of today to assert the right for those of tomorrow.⁸

Resident Marine Mammals v. Reyes is notable for recognizing the standing of citizens not just as fiduciaries for future generations but as stewards of animals to sue for the judicial enforcement of environmental rights and obligations.⁹ Here, human plaintiffs, for themselves and in representation of sea creatures in a protected seascape, sued to stop the Philippine government and a Japanese firm from conducting oil exploration activities. During the case's pendency, the Supreme Court promulgated the Rules of Procedure for Environmental Cases permitting "[a]ny Filipino citizen in representation of others, including minors or generations yet unborn" to file environmental rights enforcement cases.¹⁰

Although it denied the mammals themselves legal standing, the Court dispensed with the traditional standing analysis requiring the human plaintiffs to demonstrate some material injury that they would directly suffer because of the challenged state action and instead considered stewardship over nature as satisfying the standing requirement.¹¹ The Court reasoned that the citizen suit rule was precisely framed to encourage environmental protection and to liberalize standing requirements for citizens seeking to enforce environmental rights in their capacity as stewards of nature and fiduciaries for future generations.¹² It further explained that the citizen standing rule, being a procedural rule, can be retroactively applied without impairing vested rights because it merely facilitates obtaining a remedy for an existing right.¹³

Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay prefigured the Rules of Procedure for Environmental Cases by adopting a tool

⁷ *Id.*

⁸ *Id.*

⁹ G.R. No. 180771, April 21, 2015.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

from Indian caselaw,¹⁴ continuing *mandamus*, to compel various government agencies to perform their nondiscretionary duty to clean up Manila Bay.¹⁵ Here, the residents asserted that the government agencies violated constitutional, statutory, and international law in failing to perform their mandatory duty to clean Manila Bay and asked the trial court to issue the writ of *mandamus* to require performance of the neglected duties.¹⁶ The agencies countered that a writ which lies only to compel ministerial duties is an inappropriate remedy to compel the rendition of duties that require policy evaluation and judgment calls—functions that characterize maintaining adequate solid waste and liquid disposal systems necessary in restoring the bay to the required classification level.¹⁷

The Court however held that the mandatory writ may compel the performance of the duty *per se* to clean up the bay, and used the Indian caselaw-derived writ of continuing *mandamus* to ensure sustained performance of the duty and require submission of quarterly progress reports to the Court.¹⁸ It reasoned that the agencies were not free to refuse to do their legal duties.¹⁹ While *mandamus* may not be appropriate to direct the manner of performing nondiscretionary duties, it is precisely suited to require agencies to execute their long forsaken obligatory duties under their charters and other statutes to clean up Manila Bay.²⁰

The Supreme Court grafted the common-law public trust doctrine in *Maynilad Water Services, Inc. v. Secretary of the Department of Environment and Natural Resources* by fitting it in the interstices of the established doctrines of state ownership over natural resources (*jura regalia*), police power, and state responsibility to act as guardian for persons unable to act for themselves (*parens patriae*).²¹ Here, the Environment Secretary found the governmental water regulator and two water concessionaires, which operate water facilities on behalf of the regulator under concession agreements, in default of their statutory duty under the Clean Water Act to connect households and public, commercial, and industrial establishments to available sewerage systems within a five year period, and consequently imposed hefty

¹⁴ M.C. Mehta v. Union of India, 4 SCC 463 (1987); Vineet Narain v. Union of India, 1998 (1) SCC 226.

¹⁵ G.R. No. 171947, December 18, 2008.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ G.R. No. 202897, August 6, 2019.

finances payable solidarily by regulator and the concessionaires.²² The concessionaires argued that the later enacted Clean Water Act imposing a five-year compliance period cannot impair their existing concession agreements which provides, in its amended form, a period longer than five years to connect served sewage-producers to the sewerage system.²³

The Court held that the compliance period under the concession agreements yield to the obligatory character of the Clean Water Act-provided five-year period since the statute is a reasonable regulatory legislation which circumscribes contractual autonomy; accordingly, it affirmed the imposition of fines anchored on the regulator and the concessionaires' breach of the statutory duty.²⁴

The Court explained that the public trust doctrine considers the state a fiduciary that must manage natural resources, in particular water, guided by the environmental principles of stewardship, communal responsibility, and sustainability, for the benefit of the public—which, in a limited sense, may be considered akin to the defenseless in need of special state protection when confronted by the formidable power of business interest.²⁵ When the trust is breached, courts may enforce the affirmative duty to manage natural resources in accord with the environmental principles against even the state itself.²⁶

Concretely in *Maynilad Water Services, Inc.*, the concessionaires shared in the duties of the trustee with the water regulator because they were granted concession agreements to operate the water facilities on the regulator's behalf.²⁷ Environmental principles that were determined to govern the concessionaires' water rights were optimal use, conservation, preservation for allocative efficiency of water resources.²⁸ The Court demonstrated how police power interacts with the doctrine by expounding that the state, by regulatory statute such as the Clean Water Act, may recalibrate how the water resources are used and allocated when circumstances and necessities change.²⁹ Thus, obligatory provisions of regulatory statutes in service of the public

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

trust may override provisions of agreements to promote public welfare of the hapless public.³⁰

³⁰ *Id.*