

ARTIFICIAL JUDICIAL ENVIRONMENTAL ACTIVISM: *OPOSA V. FACTORAN* AS ABERRATION

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I. INTRODUCTION

Over the years, the Philippine Supreme Court has built a reputation as a proponent of judicial environmental activism. The Court seemed to understand the imperative of tempering economic growth with protecting the environment. In a 1990 case, the Court stated:

While there is a desire to harness natural resources to amass profit and to meet the country's immediate financial requirements, the more essential need to ensure future generations of Filipinos of their survival in a viable environment demands effective and circumspect action from the government to check further denudation of whatever remains of the forest lands.¹

In a subsequent case, the Court further stated that the need to promote investments and the growth of the economy should be addressed simultaneously with the "equally essential imperative of protecting the health, nay the very lives of the people, from the deleterious effect of the pollution of the environment."²

The Philippine Supreme Court carved a permanent niche for itself in environmental law lore when it promulgated *Oposa v. Factoran*.³ According to conventional wisdom, the Court in *Oposa*, "granted standing to children in the present generation to represent both their own interests and those of future generations."⁴ The Court secured its place in history, and the international environmental community heaped praises on it for its decision. Today,

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1. *Felipe Ysmael Jr. & Co. v. Deputy Exec. Sec'y*, G.R. No. 79538, 190 S.C.R.A. 673 (Oct. 18, 1990). (Phil.).

2. *Tech. Developers, Inc. v. Court of Appeals*, G.R. No. 94759, 193 S.C.R.A. 147, 152 (Jan. 21, 1991). (Phil.).

3. G.R. No. 101083, 224 S.C.R.A. 792 (July 30, 1993) (Phil.).

4. Jon Owens, *Comparative Law and Standing to Sue: A Petition for Redress for the Environment*, 7 ENVTL. L. 321, 342 (2001).

environmental law scholarship cannot resist making some reference to *Oposa*.⁵

In a previous article,⁶ I explained that praise for *Oposa* was largely undeserved and rested principally on a misinterpretation of what the Supreme Court actually said. Nevertheless, *Oposa* helped give the Philippine Supreme Court a reputation as a champion of the right to a healthy environment.

One might have expected the Philippine Supreme Court to build on this reputation and create a body of case law consistent with the spirit of *Oposa*. If it had, scholars would be poring over its rulings the way they have with decisions from Indian courts.⁷ But they have not. The truth is that *Oposa* was hardly representative of the Court's jurisprudence on environmental law. At best, it represents an aberration in a body of decisions that otherwise portrayed both an insensitivity toward the environment and an inability to appreciate basic environmental legislation.

This Article examines the role of the Philippine Supreme Court in protecting the environment by scrutinizing the Court's record in resolving environmental cases. The Article provides an overview of the framework of Philippine environmental law and analyzes four decisions of the Supreme Court that are representative of Philippine environmental jurisprudence. These

5. See John Edward Davidson, *Tomorrow's Standing Today: How the Equitable Jurisdiction Clause of Article III, Section 2 Confers Standing upon Future Generations*, 28 COLUM. J. ENVTL. L. 185, 195 n.30 (2003); Robert J. Klee, *What's Good for School Finance Should Be Good for Environmental Justice: Addressing Disparate Environmental Impacts Using State Courts and Constitutions*, 30 COLUM. J. ENVTL. L. 135, 141 n.20 (2005); Nicholas A. Robinson, *Legal Structure and Sustainable Development: Comparative Environmental Law Perspectives on Legal Regimes for Sustainable Development*, 3 WIDENER L. SYMP. J. 247, 278 n.56 (1998); Nicholas A. Robinson, *Enforcing Environmental Norms: Diplomatic and Judicial Approaches*, 26 HASTINGS INT'L & COMP. L. REV. 387, 390 n.8 (2003); Armin Rosencranz, *The Origin and Emergence of International Environmental Norms*, 26 HASTINGS INT'L & COMP. L. REV. 309, 313 (2003); Philip Weinberg, *Unbarring the Bar of Justice: Standing in Environmental Suits and the Constitution*, 21 PACE ENVTL. L. REV. 27, 50 (2003).

6. I have taken issue with the conventional interpretation of this case and am of the view that the case provides little by way of protecting the environment. See Dante B. Gatmaytan, *The Illusion of Intergenerational Equity: Oposa v. Factoran as Pyrrhic Victory*, 15 GEO. INT'L ENVTL. L. REV. 457, 484-85 (2003).

7. Courts in India take a proactive role in creating jurisprudence to secure a clean and healthy environment for their citizens. This judicial activism is believed to have grown out of the lack of commitment of the other branches of government to pursue the same goal. See Barry E. Hill et al., *Human Rights and the Environment: A Synopsis and Some Predictions*, 16 GEO. INT'L ENVTL. L. REV. 359, 382 (2004); Jennifer M. Gleason & Bern A. Johnson, *Environmental Law Across Borders*, 10 J. ENVTL. L. & LITIG. 67, 79 (1995). Environmental case law in Indian courts that arose from public interest litigation has been described as both sophisticated and impressive. See Parvez Hassan & Azim Azfar, Comment, *Securing Environmental Rights Through Public Interest Litigation in South Asia*, 22 VA. ENVTL. L.J. 215, 230 (2004). For a discussion of significant decisions of the Indian Supreme Court on the environment, see Armin Rosencranz & Michael Jackson, *The Delhi Pollution Case: The Supreme Court of India and the Limits of Judicial Power*, 28 COLUM. J. ENVTL. L. 223, 229-32 (2003). For a more critical perspective of environmental law cases in India, see generally J. Mijin Cha, *A Critical Examination of the Environmental Jurisprudence of the Courts of India*, 10 ALB. L. ENVTL. OUTLOOK J. 197 (2005).

decisions clash with the spirit of *Oposa*.

I am not suggesting that all the decisions of the Philippine Supreme Court are hostile to the environment. The Court has decided cases that facilitate the prosecution of criminal conduct⁸ or that allow administrative agencies to abate threats to the environment.⁹ This study, however, is limited to the more substantive decisions regarding environmental law. The first case defines the jurisdiction of local governments in the protection of the environment and their power to regulate businesses within their territorial jurisdiction. The next three cases represent the only instances when the Supreme Court interpreted the environmental impact system of the Philippines. Ironically, these cases show that the same Court that earned international acclaim for its decision in *Oposa* has become a stumbling block to the development of environmental law.

This undertaking is important in many respects. It provides a view of how Philippine courts deal with environmental issues in their respective jurisdictions and how these courts interpret widely-used laws, such as an environmental impact system. This study also illustrates how judiciaries may become crucial elements in the struggle to protect the environment. Perhaps most importantly, examination of Philippine Supreme Court decisions has become imperative due to the decisions' negative impact on the implementation of environmental legislation and policies. Members of the judiciary and the public at large should be alerted to trends in Supreme Court decisions in order to gauge whether courts are performing their mandate to enforce directives of the Philippine Constitution. Supreme Court decisions should also be studied to see whether the institution is performing its duty to protect the right of every Filipino to a clean environment.

II. THE FRAMEWORK OF PHILIPPINE ENVIRONMENTAL LAW

The Philippines has a hierarchy of laws that can be used to address environmental concerns. At the top of this hierarchy is the Constitution, followed by statutes enacted by Congress (Republic Acts), implementing rules and regulations promulgated by administrative agencies, such as the

8. See *Mustang Lumber, Inc. v. Court of Appeals*, G.R. No. 104988, 257 S.C.R.A. 430 (June 18, 1996). (Phil.). The defendants in this case were charged with the illegal possession of truckloads of lumber in violation of the Presidential Decree No. 705 (1975), otherwise known as Revised Forestry Code. The Court interpreted the word "timber" to include "lumber" to facilitate prosecution of those in possession of partially processed timber without the required legal documents under the Revised Forestry Code. *Id.*

9. See *Laguna Lake Dev. Auth. v. Court of Appeals*, G.R. No. 110120, 231 S.C.R.A. 292 (Mar. 16, 1994) (Phil.). The Court upheld the power of the Laguna Lake Development Authority to issue cease and desist orders under the broad powers of the Authority under its charter. *Id.* at 308. See also *Pollution Adjud. Bd. v. Court of Appeals*, G.R. No. 93891, 195 S.C.R.A. 112 (Mar. 11, 1991). (Phil.). The Court held that the Board may also issue similar orders upon motion of one party without notice to the opposing party. This order may be issued when there is an appearance that there are violations of allowable waste discharge standards, and there is no need to prove an immediate threat to life, public health, or safety. *Id.* at 308.

Department of Environment and Natural Resources (DENR), and local government ordinances. Supreme Court decisions also become part of the law.

The Constitution is the supreme law to which all other laws must conform. "Courts have the inherent authority to determine whether a statute enacted by the legislature [exceeds] the limit[s] [provided] by the fundamental law. [In such cases,] courts will not hesitate to strike down such unconstitutional law."¹⁰

While Congress enacts laws, the DENR carries out the state's constitutional mandate to control and supervise the exploration, development, utilization, and conservation of the country's natural resources.¹¹ Like other administrative agencies, the DENR supplements statutes by promulgating rules and regulations, which should be "within the scope of the statutory authority granted by the legislature to the administrative agency."¹² These "[r]egulations are not . . . substitute[s] for the general policy-making that Congress enacts in the form of a law. . . . [T]he authority to prescribe rules and regulations is not an independent source of power to make laws."¹³

Under the Local Government Code of 1991, local governments may enact ordinances to protect the environment.¹⁴ "[T]he power of local government units to legislate and enact ordinances and resolutions is . . . delegated . . . [by] Congress"¹⁵ and ordinances cannot contravene a statute Congress has enacted.¹⁶

The judiciary settles controversies arising from the implementation of these laws. It exercises judicial power, defined as "the right to determine actual controversies arising between adverse litigants."¹⁷ Courts merely interpret the laws; they do not enact them. Courts' sole function is to apply or interpret the

10. *Manalo v. Sistoza*, G.R. No. 107369, 371 S.C.R.A. 165 (Aug. 11, 1999) (Phil.).

11. *See Exec. Ord. No. 292*, Bk. IV, tit. XIV, ch. 1, §§ 1, 2 (1987) 83 O.G. 1, vol. 38 (Phil.).

12. *Smart Commc'n, Inc. v. Nat'l Telecomm. Comm'n*, G.R. No. 151908, 408 S.C.R.A. 678 (Aug. 12, 2003). (Phil.). According to the Supreme Court:

It is required that the regulation be germane to the objects and purposes of the law, and be not in contradiction to, but in conformity with, the standards prescribed by law. They must conform to and be consistent with the provisions of the enabling statute in order for such rule or regulation to be valid. Constitutional and statutory provisions control with respect to what rules and regulations may be promulgated by an administrative body, as well as with respect to what fields are subject to regulation by it. It may not make rules and regulations which are inconsistent with the provisions of the Constitution or a statute, particularly the statute it is administering or which created it, or which are in derogation of, or defeat, the purpose of a statute. In case of conflict between a statute and an administrative order, the former must prevail.

Id.

13. *Ople v. Torres*, G.R. No. 127685, 293 S.C.R.A. 141, 153 (July 23, 1998) (Phil.).

14. *The Local Government Code of 1991*, Rep. Act. No. 7160, §§ 16-17 (Jan. 1, 1992) (Phil.).

15. *Lina v. Paño*, G.R. No. 129093, 364 S.C.R.A. 76, 84 (Aug. 30, 2001) (Phil.).

16. *Tatel v. Virac*, G.R. No. 40243, 207 S.C.R.A. 157, 161 (Mar. 11, 1992) (Phil.).

17. *Allied Broad. Ctr., Inc. v. Republic*, G.R. No. 91500, 190 S.C.R.A. 782, 787 (Oct. 18, 1990). (Phil.) (quoting *Muskrat v. United States*, 219 U.S. 346 (1911)).

laws, particularly where there are gaps or ambiguities.¹⁸ By express provision of law, “[j]udicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.”¹⁹

A. *The Constitution and National Laws*

Past President Ferdinand Marcos laid the foundation of environmental legislation in the Philippines in the 1970s. The president promulgated the Philippine Environmental Policy,²⁰ “which is the national blueprint for environmental protection.”²¹ He also implemented the Philippine Environment Code,²² which contains general principles dealing with the major environmental and natural resource concerns of the Philippines. “These laws are very broad . . . and contain few substantive provisions.”²³ At best, these decrees established the basic framework for laws on the environment in the Philippines.

In 1978, Marcos issued Presidential Decree No. 1586, which established an environmental impact statement system.²⁴ It is almost a complete reproduction of the U.S. National Environmental Policy Act.²⁵ Marcos also promulgated the Revised Forestry Code of 1975²⁶ and the Pollution Control Decree of 1976,²⁷ among other statutes. The Marcos Administration ended in 1986 through a massive non-violent uprising that drove the dictator, his family, and allies into exile.²⁸

After successfully removing Marcos, President Corazon Aquino promulgated a new Administrative Code that laid out a blueprint for the exploitation of resources.²⁹ The Code in part provides:

18. *Pagpalain Haulers, Inc. v. Trajano*, G.R. No. 133215, 369 S.C.R.A. 618 (July 15, 1999) (Phil.).

19. CIVIL CODE, ch. 1, art. 8, R.A. 386, as amended (Phil.).

20. Philippine Environmental Policy, Pres. Dec. No. 1151, 73 O.G. 7132, vol. 31 (June 6, 1977) (Phil.).

21. Alan K.J. Tan, *Preliminary Assessment of Philippines' Environmental Law*, <http://sunsite.nus.sg/apcel/dbase/filipino/reportp.html> (last visited Oct. 31, 2006).

22. Philippine Environment Code, Pres. Dec. No. 1152, 73 O.G., vol. 32 (June 6, 1977) (Phil.); *Gordon v. Verdiano II*, G.R. No. L-55230, 167 S.C.R.A. 51 (Nov. 8, 1988) (Phil.).

23. Tan, *supra* note 21.

24. The implementing rules of this Decree are now embodied in Interim Implementing Rules and Regulations of Republic Act No. 8749, “The Philippine Clean Air Act of 1999,” DENR Admin. Ord. No. 2000-03 (2003), 14:3 NAR 1373-88.

25. See 42 U.S.C. §§ 4321-4370 (2006).

26. Revising Presidential Decree No. 389, Otherwise Known as the Forestry Reform Code of the Philippines, Pres. Dec. No. 705, 71 O.G. 4289, vol. 28 (May 19, 1975) (Phil.).

27. Providing for the Revision of Republic Act 3931, Commonly Known as the Pollution Control Law, and for Other Purposes, Pres. Dec. No. 984, 72 O.G. 9796, vol. 42 (July 3, 1992) (Phil.), *repealed by* Philippine Clean Water Act of 2004, Rep. Act No. 9275, § 34, 100 O.G. 5041 vol. 31, (Mar. 22, 2004) (Phil.).

28. For a discussion on the fall of the Marcos regime, see generally Dante B. Gatmaytan, *It's All the Rage: Popular Uprisings and Philippine Democracy*, 15 PAC. RIM L. & POL'Y J. 1, 3-6 (2006).

29. Administrative Code of 1987, Exec. Ord. No. 292 (1987) 83 O.G. 1, vol. 38, bk. IV,

Sec. 1. Declaration of Policy. – (1) The State shall ensure, for the benefit of the Filipino people, the full exploration and development as well as the judicious disposition, utilization, management, renewal and conservation of the country's forest, mineral, land, waters, fisheries, wildlife, off-shore areas and other natural resources, consistent with the necessity of maintaining a sound ecological balance and protecting and enhancing the quality of the environment and the objective of making the exploration, development and utilization of such natural resources equitably accessible to the different segments of the present as well as future generations.

(2) The State shall likewise recognize and apply a true value system that takes into account social and environmental cost implications relative to the utilization, development and conservation of our natural resources.³⁰

The state policy on the protection of the environment was clear. The Code mandated the development of the country's resources for the Filipino people. It also mandated the judicious use of these resources so that they would be accessible to all segments of present and future generations.

Thereafter, the framers of the 1987 Constitution of the Republic of the Philippines incorporated environmental provisions. The 1987 Constitution provided that “[t]he State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.”³¹

In *Oposa*, the Supreme Court explained that this provision was not any less important simply because it was not included in the Bill of Rights. It held:

Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation—aptly and fittingly stressed by the petitioners—the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind.³²

The Court explained that “the right to a balanced and healthful ecology carries with it a correlative duty to refrain from impairing the environment.”³³ “The . . . right implies the judicious management and conservation of the country's forests.”³⁴

tit. XIV, ch. 1, § 1-2 (Phil.).

30. *Id.*

31. CONST. (1987), Art. II, § 16 (Phil.).

32. *Oposa v. Factoran*, G.R. No. 101083, 224 S.C.R.A. 792, 805 (July, 30, 1993) (Phil.).

33. *Id.*

34. *Id.* at 805.

After the adoption of the Constitution in 1987, the Philippine Congress produced a series of laws that concerned the environment and natural resources directly or indirectly. Among these laws were: the Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990;³⁵ the National Integrated Protected Areas System Act of 1992;³⁶ the Philippine Mining Act of 1995;³⁷ the Indigenous Peoples Rights Act of 1997;³⁸ the Animal Welfare Act of 1998;³⁹ the Philippine Fisheries Code of 1998;⁴⁰ the Philippine Clean Air Act of 1999;⁴¹ the Ecological Solid Waste Management Act of 2000;⁴² the National Caves and Cave Resources Management and Protection Act;⁴³ the Wildlife Resources Conservation and Protection Act;⁴⁴ the Philippine Plant Variety Protection Act of 2002;⁴⁵ and the Philippine Clean Water Act of 2004.⁴⁶

Evidently, there is no single framework that binds the environmental concerns in a comprehensive manner in the Philippines. Instead, there are an abundance of laws and regulations which address separate environmental issues.⁴⁷ At the very least, the Philippines has the “most progressive, albeit piecemeal, environmental legislation in place . . . [in] Southeast Asia.”⁴⁸

35. Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990, Rep. Act No. 6969, 86 O.G. 10057, vol. 53 (Oct. 26, 1990) (Phil.).

36. National Integrated Protected Areas System Act of 1992, Rep. Act No. 7586, 88 O.G. 4641, vol. 29 (June 1, 1992) (Phil.).

37. Philippine Mining Act of 1995, Rep. Act No. 7942, 91 O.G. 3925, vol. 25 (Mar. 3, 1995) (Phil.). Parts of this Act were subsequently declared unconstitutional. *See La Bugal-B'laan Tribal Ass'n, Inc. v. Ramos*, G.R. No. 127882, 421 S.C.R.A. 148 (Jan. 27, 2004) (Phil.). However, on December 1, 2004, the Supreme Court reversed its ruling and upheld the challenged provisions of the law. *See La Bugal-B'laan Tribal Ass'n, Inc. v. Ramos*, 445 S.C.R.A. 1 (2004).

38. The Indigenous Peoples Rights Act of 1997, Rep. Act No. 8371, 94 O.G. 2276 (Oct. 29, 1997) (Phil.).

39. The Animal Welfare Act of 1998, Rep. Act No. 8485, 94 O.G. 40, vol. 25 (Feb. 11, 1998) (Phil.).

40. The Philippine Fisheries Code of 1998, Rep. Act No. 8550, 94 O.G. 23, vol. 28 (Feb. 28, 1998) (Phil.).

41. Philippine Clean Air Act of 1999, Rep. Act No. 8749, 95 O.G. 683, vol. 39 (June 23, 1999) (Phil.).

42. Ecological Solid Waste Management Act of 2000, Rep. Act No. 9003, 97 O.G. 60, vol. 11 (Jan. 26, 2001) (Phil.).

43. National Caves and Cave Resources Management and Protection Act, Rep. Act No. 9072, 97 O.G. 4722, vol. 31 (Apr. 8, 2001) (Phil.).

44. Wildlife Resources Conservation and Protection Act, Rep. Act No. 9147, 97 O.G. 6565 vol. 45 (July 30, 2001) (Phil.).

45. Philippine Plant Variety Protection Act of 2002, Rep. Act No. 9168, 98 O.G. 4493, vol. 33 (June 7, 2002) (Phil.).

46. Philippine Clean Water Act of 2004, Rep. Act No. 9275, 100 O.G. 5041 (Mar. 22, 2004) (Phil.).

47. Tan, *supra* note 21.

48. *Id.*

B. Local Government Law

The Local Government Code of 1991 provides two avenues through which environmental concerns may be addressed. The first way is by empowering local legislative councils to promulgate environmental protection measures. The second is by mandating the national government and project proponents to conduct consultations with local governments and other stakeholders before implementing any project or program.

1. Legislation

The Local Government Code of 1991 empowers local governments to enact measures to protect the environment.⁴⁹ Some local governments have used these provisions with success and have created legislation to protect their natural resources.⁵⁰ These efforts have not gone unchallenged; on at least one occasion, the Supreme Court had to intervene.

In *Tano v. Socrates*,⁵¹ city and provincial ordinances protecting fish and corals were challenged on various constitutional grounds. In that case, the Court upheld the ordinances as a valid exercise of police power under the General Welfare Clause of the Local Government Code.⁵² The Court held that local legislative councils were directed to enact "ordinances 'that [p]rotect the environment and impose appropriate penalties for acts which endanger the environment such as dynamite fishing and other forms of destructive fishing . . . and such other activities which result in pollution, acceleration of eutrophication of rivers and lakes, or of ecological imbalance.'"⁵³

The Court's ruling in *Tano* provided a link between the constitutional right to a clean environment and the power of local governments to make ordinances, giving local governments a concrete avenue for the protection of the environment. Thus, local legislative councils that are insensitive to environmental rights or sustainable development may be bypassed by residents who invoke "local initiative[s]": "the process whereby the registered voters of a local government unit may directly propose, enact, or amend any ordinance."⁵⁴

2. Consultations

Aside from legislation, the Local Government Code provides for other

49. The powers of local governments over environmental issues are found in various provisions of the Code. See The Local Government Code of 1991, Rep. Act 7160, §§ 16-17 (Jan. 1, 1992) (Phil.).

50. See *Tano v. Socrates*, G.R. No. 110249, 278 S.C.R.A. 154 (Aug. 21, 1997) (Phil.).

51. G.R. No. 110249, 278 S.C.R.A. 154 (Aug. 21, 1997) (Phil.).

52. *Id.* at 189.

53. *Id.*

54. Rep. Act 7160, § 120.

ways to protect the environment. The Code provides:

SEC. 26. Duty of National Government Agencies in the Maintenance of Ecological Balance. — It shall be the duty of every national agency or government-owned or -controlled corporation authorizing or involved in the planning and implementation of any project or program that may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species, to consult with the local government units, nongovernmental organizations, and other sectors concerned and explain the goals and objectives of project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof.

SEC. 27. Prior Consultations Required. — No project or program shall be implemented by government authorities unless the consultations mentioned in Sections 2 (c) and 26 hereof are complied with, and prior approval of the sanggunian concerned is obtained: Provided, That occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided, in accordance with the provisions of the Constitution.⁵⁵

The best interpretation of this provision is that state activities that induce environmental trauma may not be implemented without consultations with stakeholders at the local level. It could be argued that under Section 27, the consent of the local government is required before the project or program can continue. Moreover, the project may continue only if displaced communities are properly relocated. Unfortunately, the Supreme Court has refused to interpret the provision in this way. The Court seems intent on curbing the potential uses of this provision.

III. CASE ANALYSES

The Philippine Constitution recognizes the right to a healthy environment and supplements this right through a number of national laws and local government ordinances, including an arsenal of statutes at its disposal that may

55. *Id.* §§ 26-27.

be used to protect the environment.⁵⁶ The Supreme Court's role, however, in interpreting these laws has scarcely been studied outside the routine reference to *Oposa*. The following section of this Article fills that vacuum in scholarship and analyzes the Court's other decisions on environmental issues. The analysis that follows focuses on four decisions of the Supreme Court, decided after the Constitution was adopted, and, therefore, after the right to a balanced and healthful ecology was incorporated into the fundamental law of the land. These cases interpret environmental laws, define jurisdiction over environmental protection issues, and define the breadth of the environmental impact system in the Philippines.

The logic adopted in these decisions is, at best, strained. In the end, they paint a more depressing picture of environmental litigation in the Philippines than the one suggested by *Oposa*.

A. *Technology Developers, Inc. v. Court of Appeals*

*Technology Developers, Inc. v. Court of Appeals*⁵⁷ involved a corporation that manufactured charcoal briquettes. Technology Developers, Inc. (TDI) received a letter from the acting mayor of Sta. Maria Bulacan, ordering it to stop operations of its plant in Guyong, Sta. Maria, Bulacan and to present various local and national government permits to the office of the mayor. TDI did not have a mayor's permit and its request for one was denied. Without providing notice to TDI, the acting mayor ordered TDI's local station commander to close the plant.

TDI sued, claiming that the closure order was issued in error.⁵⁸ Consequently, the judge issued a writ of preliminary mandatory injunction on April 28, 1989.⁵⁹ Counsel for defendant, however, subsequently filed a motion for reconsideration, and the court set aside the writ of preliminary mandatory injunction.⁶⁰ On appeal, the lower court's ruling was upheld.⁶¹ TDI filed a petition for review on certiorari with the Supreme Court, but the Supreme Court also ruled against TDI.⁶²

In upholding the decision of the court of appeals, the Supreme Court held that the decision to issue a writ of preliminary injunction rests on the discretion of the trial court.⁶³ As such, the Court will not disturb that order unless the trial court acted without jurisdiction, in excess of jurisdiction, or in grave abuse of its discretion.⁶⁴ Accordingly, "the court that issued such a preliminary relief

56. See *supra* notes 35-46 and accompanying text.

57. G.R. No. 94759, 193 S.C.R.A. 147 (Jan. 21, 1991) (Phil.).

58. *Id.* at xi.

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

may recall or dissolve the writ as the circumstances may warrant.”⁶⁵

Technology Developers, Inc. was a simple case and was settled by simple reference to case law. TDI filed a motion for reconsideration of the Supreme Court’s decision, however, and the decision was reversed a few months later.⁶⁶

In its motion for reconsideration, TDI presented a completely different set of facts—an act that is highly irregular. Generally, the Supreme Court is not called upon to try facts.⁶⁷ The findings of fact of a trial court, particularly when affirmed by the court of appeals, are generally conclusive and binding on the Supreme Court.⁶⁸ There was no showing in this case, however, that the factual bases of the lower courts’ decisions were erroneous. Factual issues are beyond the ambit of the Court’s authority to review upon certiorari.⁶⁹ On grant of certiorari, the Supreme Court looks to the issues of jurisdiction or a grave abuse of discretion.⁷⁰ A recent decision of the Supreme Court explains this rule:

The rule in appellate procedure is that a factual question may not be raised for the first time on appeal, and documents forming no part of the proofs before the appellate court will not be considered in disposing of the issues of an action. This is true whether the decision elevated for review originated from a regular court or an administrative agency or quasi-judicial body, and whether it was rendered in a civil case, a special proceeding, or a criminal case. Piecemeal presentation of evidence is simply not in accord with orderly justice.

The same rules apply with greater force in certiorari proceedings. Indeed, it would be absurd to hold public respondent guilty of grave abuse of discretion for not considering evidence not presented before it. The patent unfairness of petitioner’s plea, prejudicing as it would public and private respondents alike, militates against the admission and consideration of the subject documents.⁷¹

65. *Id.*

66. *Tech. Developers, Inc. v. Court of Appeals*, G.R. No. 94759, 201 S.C.R.A. xi (Jan. 21, 1991) (Phil.).

67. *J.R. Blanco v. Quasha*, G.R. No. 133148, 376 PHIL. REP. 480, 491 (S.C., Nov. 17, 1999) (Phil.).

68. *Thermochem, Inc. v. Naval*, G.R. No. 131541, 344 S.C.R.A. 76, 83 (Oct. 20, 2000) (Phil.).

69. *Don Orestes Romualdez Elec. Coop., Inc. v. Nat’l Labor Relations Comm’n*, G.R. No. 128389, 377 PHIL REP. 268, 274 (S.C., Nov. 25, 1999).

70. *Negros Oriental Elec. Coop. 1 v. Sec’y of the Dep’t of Labor and Emp.*, G.R. 143616, 357 S.C.R.A. 668, 673 (May 9, 2001) (Phil.).

71. *Matugas v. Comm’n on Elections*, G.R. No. 151944, 420 S.C.R.A. 365, 377 (Jan. 20, 2004) (Phil.).

Incredibly, the Supreme Court in *Technology Developers, Inc.*, accepted the new facts submitted by TDI and substituted them for the facts established by the lower courts reasoning that the new facts “knocked down [the] factual moorings of our decision.”⁷²

Additionally, TDI claimed that it actually had a mayor’s permit—one issued by a different local government.⁷³ Regardless of the validity of this claim, TDI did not have the required mayor’s permit from Bulacan, where the plant was operating.

TDI also raised a new issue in its motion for reconsideration: whether a mayor may close a place of business for lack of a mayor’s permit and for alleged violation of anti-pollution laws.⁷⁴ This, too, is anomalous. Usually, the issues in each case are limited to those presented in the pleadings;⁷⁵ “[f]or an appellate tribunal to consider a legal question it should have been raised in the court below.”⁷⁶ “Fair play, justice, and due process dictate that parties should not raise, for the first time on appeal, issues that they could have raised but never did during trial [or] . . . before the Court of Appeals.”⁷⁷

Under Philippine law, there are occasions when an appellate court may consider issues that are raised for the first time on appeal. Among others, the issue of lack of jurisdiction over the subject matter may be raised at any stage. A reviewing court may also consider an issue not raised during trial when there is plain error or when there are jurisprudential developments affecting the issues, or when the issues raised present a matter of public policy.⁷⁸ In the instant case, however, TDI was no longer filing an appeal. When TDI introduced the new issue for consideration, it was asking the Supreme Court to reconsider a ruling denying their petition for *certiorari*. In other words, TDI introduced a new issue after they had exhausted the appeals process and had been rebuffed by the court of appeals and the Supreme Court. Changing the issue at this late in the judicial process is unprecedented.

Moreover, the Court here did not simply consider a new issue: it completely changed the issue to whether the acting mayor had jurisdiction to order the closure of the plant. In order to decide this issue, the Court applied Presidential Decree No. 984, which created and established the National Pollution Control Commission (presently the Environmental Management Bureau). This Decree, according to the Court, superseded the provisions of the

72. *Tech. Developers, Inc. v. Court of Appeals*, G.R. 947591, 201 S.C.R.A. xi, xiii (Phil.).

73. *Id.*

74. *Id.*

75. *Lianga Lumber Co. v. Lianga Timber Co.*, G.R. No. L-38685, 76 S.C.R.A. 197, 222 (Mar. 31, 1977) (Phil.).

76. *Phil. Nat'l Oil Co. v. Court of Appeals*, G.R. No. 109976, 457 S.C.R.A. 32, 104 (Apr. 26, 2005) (Phil.).

77. *Orquiola v. Court of Appeals*, G.R. No. 141463, 386 S.C.R.A. 301, 310 (Aug. 6, 2002) (Phil.).

78. *Del Rosario v. Bonga*, 350 S.C.R.A. 101, 110-11 (Jan. 23, 2001) (Phil.).

Civil Code which had authorized the local officials to abate pollution.⁷⁹ The Court then made the following pronouncement: “Inasmuch as the petitioner had been issued a permit by the E[nvironmental] M[anagement] B[ureau] to operate its charcoal briquette manufacturing plant . . . the acting municipal mayor may not capriciously deny a permit to operate petitioner’s otherwise legitimate business on the ground that its plant was causing excessive air pollution.”⁸⁰

This pronouncement from the Court is puzzling. Under Philippine case law, businesses may be required to satisfy local government requirements before they can operate, even if in compliance with national law.⁸¹ Accordingly, TDI was subject to local government requirements despite its compliance with requirements of national government agencies. Local governments have the power to refuse to issue business permits and licenses and to suspend or revoke these licenses and permits for violations of their conditions.⁸² The acting mayor closed the plant because it did not have a mayor’s permit and it was allegedly causing pollution.⁸³ TDI had been allowed to show that it had all the necessary documents relative to its operation. There was nothing capricious about the closure.

Additionally, the Court noted that “it is beyond a municipal mayor’s ken and competence to review, revise, reverse, or set aside a permit to operate the petitioner’s . . . plant issued by the EMB.”⁸⁴ The acting mayor did not “review, revise, reverse, or set aside” any order issued by the EMB.⁸⁵ The plant was closed down because it did not have a mayor’s permit. The Supreme Court seems to have confused the roles of the national and local governments in issuing permits. While the EMB should have addressed complaints against TDI for violating pollution laws, compliance with local laws was a matter for local government authorities to address. Ultimately, the Supreme Court ordered the “immediate reopening of the plant” despite the fact that it did not have a permit from Bulacan.⁸⁶

Technology Developers, Inc., is one of the most poorly-reasoned decisions of the Philippine Supreme Court. It is fraught with procedural anomalies and factual inaccuracies. It also contradicted established doctrines of the Philippine judicial system. The case forces local governments to allow

79. *Tech. Developers, Inc. v. Court of Appeals*, G.R. 947591, 201 S.C.R.A. xi, xvii (Phil.).

80. *Id.*

81. *See Gordon v. Veridiano II*, G.R. No. L-55230, 167 S.C.R.A. 51, 59 (Nov. 8, 1988) (Phil.).

82. *Lim v. Court of Appeals*, G.R. No. 111397, 387 S.C.R.A. 149, 159 (Aug. 12, 2002) (Phil.).

83. *Tech. Developers, Inc.*, G.R. 947591, 201 S.C.R.A. xi, xii.

84. *Id.*

85. *Id.*

86. *Id.* at xviii.

businesses to operate within the “jurisdictions” despite their failure to comply with local laws. Thus, this decision seems to severely undermine the power of local governments to address noncompliance.

Notably, the Court’s new resolution was a “minute resolution.” The Philippine Supreme Court uses minute resolutions in the majority of its cases:

[1] where a case is patently without merits [2] where the issues raised are factual in nature, [3] where the decision appealed from is supported by: substantial evidence and, is in accord with the facts of the case and the applicable laws, [4] where it is clear from the records that the petition is filed merely to forestall the early execution of judgment and for non-compliance with the rules.⁸⁷

The substance of the Court’s ruling in *Technology Developers, Inc.*, however, does not fall within the aforementioned circumstances. In fact, it seems that minute resolutions are used to shut down frivolous suits. Thus, if the Supreme Court believed that the suit was frivolous, it could have easily dismissed TDI’s petition. Instead, the Court admitted new facts, addressed a new issue, and declared several provisions of the Civil Code inoperative.

B. Philippines v. City of Davao

The construction of a sports complex in Davao City triggered the suit at issue in *Philippines v. City of Davao*.⁸⁸ The proponents of the project sought a certificate from the EMB that would exclude the project from the Environmental Impact System (EIS). The EMB rejected the application after finding that the project was located in a critical environmental area.⁸⁹

Davao City successfully contested the EMB’s ruling in a regional trial court.⁹⁰ The trial court explained that nothing in Presidential Decree No. 1586⁹¹ required local government units to comply with EIS law.⁹² Only agencies and instrumentalities of the national government, including government-owned or controlled corporations, as well as private corporations, firms, and entities, must go through the EIS process for their respective proposed projects. Further, EIA process need only be followed if projects have

87. *Borromeo v. Court of Appeals*, G.R. No. L-82273, 186 S.C.R.A. 1, 5 (June 1, 1990) (Phil.).

88. G.R. 148622, 388 S.C.R.A. 691 (Sept. 12, 2002) (Phil.).

89. Under the EIS System, all agencies and instrumentalities of the national government, including government-owned or controlled corporations, as well as private corporations, firms and entities, will prepare an environmental impact statement for every proposed project and undertaking which significantly affect the quality of the environment. *See* Pres. Dec. No. 1586, § 2, 74 O.G. 8651, vol. 44 (June 11, 1978) (Phil.).

90. G.R. 148622, 388 S.C.R.A. 691 (Sept. 12, 2002) (Phil.).

91. Pres. Dec. No. 1586, 74 O.G. 8651 vol. 44 (June 11, 1978) (Phil.).

92. *City of Davao*, 388 S.C.R.A. at 693.

significant effects on the quality of the environment.⁹³ The trial court held that the site for the complex was neither within a critical environmental area nor was the project environmentally critical.⁹⁴ Accordingly, it was mandatory for the DENR, through the EMB Region XI, to approve the proponent's application for certificate of non-coverage after it had satisfied all issuance requirements.⁹⁵

On appeal, Davao City argued it was exempt from complying with the mandates of Presidential Decree No. 1586, but the Supreme Court disagreed. The Court reasoned that as a body politic endowed with governmental functions, a local government unit has the duty to ensure the quality of the environment, which is the very same objective of Presidential Decree No. 1586.⁹⁶ Further, the Court added, "[Section] 4 of [Presidential Decree No.] 1586 clearly states 'no person, partnership or corporation shall undertake or operate any such declared environmentally critical project or area without first securing an Environmental Compliance Certificate issued by the president or his duly authorized representative.'"⁹⁷ The Court noted that local governments are considered juridical persons and are not excluded from the coverage of the Decree.⁹⁸

The Court, however, still exempted the project from the EIS system. The Court examined a list of environmentally critical projects⁹⁹ and areas and held:

[The project] does not come close to any of the projects or areas enumerated above. Neither is it analogous to any of them. It is clear, therefore, that the said project is not classified as environmentally critical, or within an environmentally critical area.

Consequently, the DENR has no choice but to issue the Certificate of Non-Coverage. It becomes its ministerial duty, the performance of which can be compelled by writ of

93. Pres. Dec. No. 1586, at § 2.

94. *City of Davao*, 388 S.C.R.A. at 693-94.

95. *Id.*

96. *Id.* at 695.

97. *Id.* at 696 (quoting Pres. Dec. No. 1586 at § 4).

98. The Court also stressed the intent of the decree:

to implement the policy of the state to achieve a balance between socio-economic development and environmental protection, which are the twin goals of sustainable development. . . . [T]his can only be possible if we adopt a comprehensive and integrated environmental protection program where all the sectors of the community are involved

Id. at 696-97.

99. See Proclaiming Certain Areas and Types of Projects as Environmentally Critical and Within the Scope of the Environmental Impact Statement System Established Under Presidential Decree No. 1586, PROC. NO. 2146 (Dec. 14, 1981) (Phil.).

mandamus, such as that issued by the trial court in the case at bar.¹⁰⁰

A sad reality in the Philippines is that there are a limited number of environmentally critical projects and areas identified under Proclamation No. 2146.¹⁰¹ That list, completed more than two decades ago, has scarcely been updated.¹⁰² In the meantime, the evolution of new technology may make other activities more environmentally critical. Furthermore, the intensity and extent of human activity over time has already made other areas environmentally critical. Seemingly harmless activities may pose greater threats to the environment and the population because of climate and geographical changes.

While the responsibility to update the list falls on the executive branch of government, the Supreme Court could have taken a more liberal approach in interpreting the proclamation. For instance, the proclamation includes infrastructure projects, such as major roads and bridges, as environmentally critical projects.¹⁰³ Is a sports complex so different that it cannot be considered analogous to a road insofar as its environmental impact is concerned?

The Supreme Court's ruling in *City of Davao* is so rigid that it seems only those few projects enumerated under Proclamation No. 2146 will ever be required to go through the EIS system. The case makes it a "ministerial duty" on the part of the DENR to issue certificates of noncoverage to every project that is not included on the list. It also takes away executive discretion in determining whether a project should be required to undergo the EIS system.¹⁰⁴

C. *Bangus Fry Fisherfolk v. Lanzanas*

The case of *Bangus Fry Fisherfolk v. Lanzanas* involved the legality of the issuance of an Environmental Clearance Certificate (ECC) in favor of the National Power Corporation (NAPOCOR).¹⁰⁵ The ECC authorized NAPOCOR to construct a temporary mooring facility in Minolo Cove, in Barangay San Isidro, Puerto Galera, Oriental Mindoro. The municipal council of Puerto Galera had declared Minolo Cove an eco-tourist zone, a mangrove area, and breeding ground for bangus fry.

The mooring facility would serve as the temporary docking site of NAPOCOR's power barge, which, due to turbulent waters at its former mooring site, required relocation to Minolo Cove's safer confines. The power

100. *City of Davao*, 388 S.C.R.A. at 701-02

101. Proc. No. 2146 (Dec. 14, 1981) (Phil.).

102. In 1996, former president Fidel V. Ramos declared the "construction, development, and operation of golf courses" as an environmentally critical project. Declaring the Construction, Development and Operation of a Golf Course as an Environmentally Critical Project Pursuant to PD 1586, Proc. No. 803, 101 O.G. 3042, vol. 19 (June 6, 1996) (Phil.).

103. Proc. No. 2146 (Dec. 14, 1981) (Phil.).

104. *City of Davao*, 388 S.C.R.A. at 702.

105. G.R. No. 131442, 405 S.C.R.A. 530 (July 10, 2003) (Phil.).

barge would provide the main source of power for the entire province of Oriental Mindoro pending the construction of a power plant in Calapan, Oriental Mindoro.

Members of the local fishing community asked for reconsideration of the decision, but the Regional Executive Director of the DENR denied their request.¹⁰⁶ Thereafter, they filed a complaint with the Regional Trial Court of Manila asking it to cancel authorization of the ECC and to stop the construction of the mooring facility because of alleged violations of environmental laws.¹⁰⁷

The trial court dismissed the complaint because the fishermen failed to exhaust their administrative remedies before taking this legal action in court.¹⁰⁸

The Supreme Court agreed, holding that the petitioners should have appealed to the DENR Secretary, mandated by article VI of DENR Administrative Order No. 96-37.¹⁰⁹

The fishermen argued that they were exempt from filing an appeal with the DENR Secretary¹¹⁰ because the issuance of the ECC violated existing laws and regulations, specifically:¹¹¹ (1) Section 1 of Presidential Decree No. 1605, as amended by Presidential Decrees Nos. 1605-A and 1805;¹¹² (2) Sections 26

106. *Id.* at 533.

107. *Id.*

108. *Id.*

109. *See* Revising DENR Administrative Order No. 21, Series of 1992, to Further Strengthen the Implementation of the Environmental Impact Statement (EIS) System, DENR Admin. Ord. No. 96-37, art. VI, (Dec. 2, 1996) (Phil.).

110. The Philippine Supreme Court allows exceptions to the doctrine of exhaustion of administrative remedies, in cases:

- 1) when there is a violation of due process;
- 2) when the issue involved is a purely legal question;
- 3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction;
- 4) when there is estoppel on the part of the administrative agency concerned;
- 5) when there is irreparable injury;
- 6) when the respondent is a Department Secretary whose acts as an alter ego of the President bears the implied and assumed approval of the latter;
- 7) when to require exhaustion of administrative remedies would be unreasonable;
- 8) when it would amount to a nullification of a claim;
- 9) when the subject matter is a private land in land case proceedings;
- 10) when the rule does not provide a plain, speedy, adequate remedy;
- 11) when there are circumstances indicating the urgency of judicial intervention;
- 12) when no administrative review is provided by law;
- 13) when the rule of qualified political agency applies; and
- 14) when the issue of non-exhaustion of administrative remedies has been rendered moot.

Laguna CATV Network, Inc. v. Maraan, G.R. No. 139492, 440 PHIL. 734, 742 (Nov. 19, 2002) (Phil.).

111. *Bangus*, 405 S.C.R.A. at 534.

112. Declaring the Enclosed Coves and Waters Embraced by Puerto Galera Bay and Protected by Medio Island, an Ecologically Threatened Zone and Forbidding Therein the Construction of Marinas, Hotels, Restaurants or any Structures Along Its Coastline Draining into the Endangered Zone and Causing Further Pollution; and Further Forbidding Unwarranted

and 27 of Republic Act No. 7160 (Local Government Code of 1991),¹¹³ and (3) the provisions of DENR Administrative Order No. 96-37, regarding the documentary requirements for the zoning permit and social acceptability of the mooring facility.¹¹⁴

The Supreme Court disagreed. The Court pointed out that Presidential Decree No. 1605-A, which declares “the coves and waters embraced by Puerto Galera Bay . . . an ecologically threatened zone,”¹¹⁵ was inapplicable.¹¹⁶ The mooring facility at issue was a government-owned public infrastructure and not a “commercial structure; commercial or semi-commercial wharf or commercial docking” as contemplated in the decree.¹¹⁷ Presidential Decree No. 1605 reads in pertinent part:

Section 1. Any provision of law to the contrary notwithstanding, *the construction of marinas, hotels, restaurants, other commercial structures; commercial or semi-commercial wharfs [sic]; commercial docking within the enclosed coves of Puerto Galera; the destruction of its mangrove stands; the devastation of its corals and coastline by large barges, motorboats, tugboat propellers, and any form of destruction by other human activities are hereby prohibited.*¹¹⁸

The word “commercial,” however, does not qualify all the prohibited activities listed under section 1 of the Decree.¹¹⁹ In other words, section 1 of the Decree prohibits:

- 1) the construction of marinas, hotels, restaurants, other commercial structures;
- 2) the construction of commercial or semi-commercial wharfs;
- 3) the construction of commercial docking within the enclosed coves of Puerto Galera;
- 4) the destruction of its mangrove stands;
- 5) the devastation of its corals and coastline by large barges, motorboats, tugboat propellers; and
- 6) any form of destruction by other human activities.¹²⁰

Only the first three items refer to commercial structures. There appears to be no reason to constrict the application of the Decree to only commercial

Ship Docking, Ship Repair Except in Duluruan; and Appointing a Special Committee to Study the Ecologically Endangered Zone’s Rehabilitation and Preservation, Pres. Dec. No. 1605-A, 70 O.G. 2961, vol. 20 (Nov. 21, 1980) (Phil.) [hereinafter Structures Decree].

113. *Id.*

114. *Id.*

115. Pres. Dec. No. 1605-A.

116. *Bangus*, 405 S.C.R.A. at 544-45.

117. *Id.* at 543.

118. *Id.* at 542 (quoting Pres. Dec. No. 1605-A at § 1).

119. Pres. Dec. No. 1605-A at § 1.

120. *Id.*

structures as it also prohibits the destruction of mangroves and “the devastation of its coral reefs” and “any form of destruction by other human activities.”¹²¹

The Court then addressed the alleged violation of the Local Government Code by the issuance of the ECC.¹²² The Court held that the Code did not apply to the present case because the mooring facility was not an environmentally critical project and hence did not fall under the projects mentioned in section 26 of the Code.¹²³ The Court held that the Code would have applied if the operation of the power barge was at issue because “[a]s an environmentally critical project that causes pollution, the operation of the power barge needs the prior approval of the concerned *sanggunian*.”¹²⁴

This interpretation is incorrect. The Local Government Code does not require that the project be environmentally critical for the provisions on local government approval under sections 26 and 27 to apply.¹²⁵

The Court also construed section 27 narrowly and held that it can only be invoked when the environmental harms mentioned in section 26 are present.¹²⁶ This is also incorrect. Section 27 refers expressly to section 2(c) of the Local Government Code before the project or program may be implemented.¹²⁷ Rather than referring to this section, however, the Supreme Court quoted section 27, deleting the reference to section 2(c). Thus, in the Court’s opinion, section 27 read:

Prior Consultations Required. — No project or program shall be implemented by government authorities unless the consultations mentioned in Section . . . 26 hereof are complied with, and prior approval of the *sanggunian* concerned is obtained: *Provided*, That occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided, in accordance with the provisions of the Constitution.¹²⁸

The omission is significant because section 2(c) of the Code does not limit the consent requirement to programs that could lead to environmental damage. It directs national agencies to conduct periodic consultations with

121. *Id.*

122. The Local Government Code of 1991, Rep. Act 7160, §§ 26-27, (Jan. 1, 1992) (Phil.). For the text of sections 26 and 27, see *supra* note 55 and accompanying text.

123. *Id.* at § 26.

124. *Bangus*, 405 S.C.R.A. at 544-45.

125. Rep. Act 7160, §§ 26-27.

126. *Bangus*, 405 S.C.R.A. at 544-45.

127. Section 2(c) of the Local Government Code provides: “It is likewise the policy of the State to require all national agencies and offices to conduct periodic consultations with appropriate local government units, nongovernmental and people’s organizations, and other concerned sectors of the community before any project or program is implemented in their respective jurisdictions.” Rep. Act 7160 at § 2(c).

128. *Bangus*, 405 S.C.R.A. at 544 (emphasis added).

local government units, nongovernmental and people's organizations, and other concerned sectors of the community before any project or program is implemented in their respective jurisdictions."¹²⁹ NAPOCOR is a government-owned corporation and is an agency under Philippine law.¹³⁰ Thus, section 27 should apply even if the government project or program did not have any severe environmental impacts listed under section 26.

Finally, the petitioners alleged that the ECC was illegal because NAPOCOR did not submit certain documents that were required of project proponents.¹³¹ The Court disagreed again and ruled that while such documents are part of the submissions required from a project proponent, "their mere absence does not render the issuance of the ECC patently illegal."¹³² The Court explained:

To justify non-exhaustion of administrative remedies due to the patent illegality of the ECC, the public officer must have issued the ECC "[without any] semblance of compliance, or even an attempt to comply, with the pertinent laws; when manifestly, the officer has acted without jurisdiction or has exceeded his jurisdiction, or has committed a grave abuse of discretion; or when his act is clearly and obviously devoid of any color of authority."¹³³

The Court cited an unreported case, *Mangubat v. Osmeña, Jr.*,¹³⁴ to support its position. *Mangubat* was decided in 1959 and did not involve the issuance of an ECC. Consequently, *Mangubat* was not on point and was improperly applied in *Bangus*.

Mangubat involved the termination of a police detective's employment pursuant to the mayor's perceived authority to remove him at any time for loss of confidence.¹³⁵ Detective Mangubat challenged the legality of his removal saying it violated the appeals process mandated under Commonwealth Act No. 58, which was the Charter of the City of Cebu.¹³⁶ Hence the Court was required to decide "whether the appeal mentioned in . . . [Commonwealth Act No. 58] is a condition *sine qua non* to every suit for the protection of the rights

129. *Id.*

130. Under Philippine law, an "Agency of the Government refers to any of the various units of the Government, including a department, bureau, office, instrumentality, or government-owned or controlled corporations, or a local government or a distinct unit therein." Administrative Code of 1987, Exec. Ord. No. 292, § 2(4), 83 O.G. 1 vol. 38-39 (July 25, 1987) (Phil.).

131. *Bangus*, 405 S.C.R.A. at 545.

132. *Id.* at 545.

133. *Id.*

134. G.R. No. L-12837 (unreported) (Apr. 30, 1959) (Phil.).

135. *Id.* at 1.

136. *See id.* at 2.

of an employee who has been suspended or removed by the Mayor.”¹³⁷

The Court held generally that the Act’s requirement should be followed, but this rule was not absolute:

However, when, from the very beginning, the action of the City Mayor is patently illegal, arbitrary, and oppressive; when there has been no semblance of compliance, or even an attempt to comply with the pertinent laws; when, manifestly, the Mayor has acted without jurisdiction, or has exceeded his jurisdiction, or has committed a grave abuse of discretion, amounting to lack of jurisdiction; when his act is clearly and obviously devoid of any color of authority, as in the case at bar, the employee adversely affected may forthwith seek the protection of the judicial department. Thus, in *Mission v. Del Rosario*[,] *Uy v. Rodriguez*[,] and *Abella v. Rodriguez*, we did not hesitate to order the reinstatement of detectives of the police force of Cebu, who were dismissed by the City Mayor under identical conditions as those obtaining in the case at bar. Though not involving members of said force, we also, deemed it proper to grant the review prayed for by the dismissed employees, notwithstanding their failure to appeal from the order of dismissal to the department head, in *Palamine v. Zagado*, *Manuel v. de la Fuente* *F. Jose v. Lacson*¹³⁸

Mangubat supports the contention of the petitioners. There is no need to follow the appeals procedure because the government’s action was patently illegal.

It will be recalled that the petitioners were arguing that the ECC was void because the project proponent failed to submit certain documents when applying for the certificate. The Court in *Bangus*, however, either completely misunderstood or avoided the argument. The Court stated, “While such documents are part of the submissions required from a project proponent, their mere absence does not render the issuance of the ECC patently illegal.”¹³⁹ The Court noted that the Regional Executive Director (RED) is the officer duly authorized to issue ECCs for projects located within environmentally critical areas and that the RED issued the ECC on the recommendation of the Director of the EMB.¹⁴⁰ The Court concluded that the RED acted within DENR regulations: “[T]he legal presumption is that he acted with the requisite authority. This clothes [his] acts with presumptive validity and negates any

137. *Id.* at 6 (emphasis added).

138. *Id.* at 6 (citations omitted).

139. *Bangus Fry Fisherfolk v. Lanzanas*, G.R. No. 131442, 405 S.C.R.A. 530, 545 (July 10, 2003) (Phil.).

140. *Id.* at 546.

claim that his actions are patently illegal or that he gravely abused his discretion.”¹⁴¹ Petitioners must therefore present their case, “before the proper administrative forum before resorting to judicial remedies.”¹⁴²

Evidently, the Court equated patent illegality with the lack of authority to issue the ECC. The petitioners, however, were not questioning the authority of the RED to issue ECCs. Rather, they claimed that since certain documentation was not submitted with the ECC application, the ECC was invalid.¹⁴³ The Court’s explanation is a study in absurdity; the defects in the issuance of an ECC do not make the ECC void because the RED is authorized to issue an ECC.

Notably, proof that the RED’s actions were patently illegal or a grave abuse of discretion must be submitted “before the proper administrative forum before resorting to judicial remedies.”¹⁴⁴ This is an intriguing statement from the Court: when a party invokes an exemption from the exhaustion of administrative remedies, that party must present evidence in the administrative forum from which it claims exemption.¹⁴⁵

D. Otadan v. Rio Tuba Nickel Mining Corp.

Otadan v. Rio Tuba Nickel Mining Corp. involved the issuance of an Environmental Compliance Certificate to the Rio Tuba Nickel Mining Corporation for the operation of a hydrometallurgical processing plant.¹⁴⁶ The petitioners contested the DENR Secretary’s issuance of the ECC.¹⁴⁷ The court of appeals, however, did not find grave abuse of discretion on the part of the Secretary.¹⁴⁸ The petitioners filed an appeal before the Philippine Supreme

141. *Id.* (footnote omitted).

142. *Id.*

143. *Id.*

144. *Id.*

145. The petitioners also claimed that judicial recourse was justified because NAPOCOR was “guilty of violating the conditions of the ECC, which requires it to secure a separate ECC for the operation of the power barge. The ECC also mandates NAPOCOR to secure the usual local government permits, like zoning and building permits, from the municipal government of Puerto Galera.” The Court disagreed and held that “the fact that NAPOCOR’s ECC is subject to cancellation” does not mean petitioners may ignore “the procedure prescribed in DAO 96-37 on appeals from the decision of the DENR Executive Director.” “Under . . . DAO 96-37, complaints to nullify an ECC must undergo an administrative investigation, after which the hearing officer will submit his report to the EMB Director or the Regional Executive Director, who will then render his decision.” The decision may be appealed to the DENR Secretary. “Article IX also classifies the types of violations covered under DAO 96-37, including projects operating without an ECC or violating the conditions of the ECC.” *Id.*

146. G.R. No. 161436 (unreported) (June 23, 2004) (Phil.) available at <http://www.supremecourt.gov.ph/resolutions/2nd/2004/2Jun/161436.htm>. The Author thanks Atty. Brenda Jay Angeles for informing me of this case.

147. *Id.*

148. *Id.*

Court.¹⁴⁹

In a minute resolution, the Supreme Court denied the appeal, finding it “axiomatic that the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional and the failure to perfect the appeal has the effect of rendering the judgment final and executory.”¹⁵⁰ It added:

The issuance of the ECC is an exercise by the Secretary of the DENR of his quasi-judicial functions. This Court has consistently held that the courts will not interfere in matters which are addressed to the sound discretion of the government agency entrusted with the regulation of activities coming under the special and technical training and knowledge of such agency.

It has also been held that the exercise of administrative discretion is a policy decision and a matter that can best be discharged by the government agency concerned, and not by the courts. This Court has likewise consistently adhered to the principle that factual findings of quasi-judicial bodies which have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect but even finality and are binding even upon the Supreme Court if they are supported by substantial evidence. Further, administrative agencies are given a wide [sic] latitude in the evaluation of evidence and in the exercise of its adjudicative functions. This latitude includes the authority to take judicial notice of facts within its special competence. The petitioners failed to present compelling reasons to warrant the deviation by this Court from the foregoing salutary principles.¹⁵¹

This resolution is disappointing. The Court relied on a procedural technicality to defeat an action that potentially provided an opportunity to examine the extent of the DENR Secretary’s power to issue ECCs.¹⁵²

Tardiness in filing appeals has never been an absolute bar to review by the Supreme Court.¹⁵³ The Court explained:

If respondents’ right to appeal would be curtailed by the mere

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

153. *Trans Int’l v. Court of Appeals*, G.R. No. 128421, 285 S.C.R.A. 49, 54-58 (Jan. 26, 1998). (Phil.).

expediency of holding that they had belatedly filed their notice of appeal, then this Court as the final arbiter of justice would be deserting its avowed objective, that is to dispense justice based on the merits of the case and not on a mere technicality.¹⁵⁴

Further, this case involved the operation of a hydrometallurgical processing plant. It might have been prudent for the Court to be less inclined to invoke procedural deadlines, considering the potential environmental consequences of the plant's activities. If there is any case that warrants leniency, it should be one that involves serious environmental consequences.

Moreover, the Court referred to the power of the DENR Secretary to issue an ECC as a "quasi-judicial function."¹⁵⁵ This assertion demonstrates the Court's failure to understand the essence of the EIA system. The issuance of an ECC does not involve "the exercise of judgment and discretion as incident to the performance of administrative functions."¹⁵⁶ In *Smart Communications, Inc.*, the Court explained:

The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act which is essentially of an executive or administrative nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it. In carrying out their quasi-judicial functions, the administrative officers or bodies are required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.¹⁵⁷

There is nothing "quasi-judicial" about the DENR's power to issue an ECC. Sadly, the Court's pronouncements indicate that it is unwilling to interfere with the power of the Secretary in matters relating to the issuance of ECCs.

IV. SUMMARY

Anyone familiar with *Oposa* might be startled by the quality of the Philippine Supreme Court decisions analyzed in this Article. *Oposa* earned

154. *Id.*

155. *Otadan v. Rio Tuba Nickel Mining Corp.*, G.R. No. 161436 (unreported) (June 23, 2004) (Phil.) available at <http://www.supremecourt.gov.ph/resolutions/2nd/2004/2Jun/161436.htm>.

156. *Phil. Tobacco Flue-Curing & Redrying Corp. v. Sabugo*, 112 PHIL. REP. 1061. (S.C., Aug. 31, 1961).

157. G.R. No. 151908, 408 S.C.R.A. 678, 687 (Aug. 12, 2003) (Phil.).

international acclaim for the Philippine Supreme Court.¹⁵⁸ It inspired hope that judiciaries were beginning to appreciate the gravity of environmental problems facing the world and were willing to adopt new approaches to address them.

The other four cases decided by the Philippine Supreme Court that this Article reviews present a picture of a different judiciary: one that has overlooked facts, disregarded procedure, rewritten laws, and abandoned precedent to the detriment of the environment. On occasion, the Court's pronouncements are simply inexplicable.

Technology Developers, Inc., allowed parties to raise new facts and issues mid-stream. Additionally, the Supreme Court admonished local officials for acts they did not commit. Worst of all, the Court suggested that local governments are powerless to stop businesses cleared by the national government from operating in their jurisdictions.¹⁵⁹

The other three cases resulted in constriction of the EIS system. *City of Davao* limited the EIA law to a short list of projects drawn up in 1981.¹⁶⁰ In *Bangus*, the Court refused to recognize the defects in the issuance of the ECC.¹⁶¹ In *Otadan*, the Court invoked procedural deadlines to avoid addressing the validity of the ECC.¹⁶²

Otadan also seems to be sending signals about the amount of deference the Supreme Court is willing to extend to the executive branch in the implementation of the EIS system.¹⁶³ This deference, as pointed out earlier, seems misplaced and based on the misconceived nature of the EIS system. Moreover this deference is unwise. The Philippine experience with the DENR's approach to EIA is not encouraging. One author asserts that "EIS procedures can be compromised by the pressure exerted by project proponents, including foreign investors and government figures themselves. Not uncommonly, these procedures are either influenced to support a particular predetermined outcome, or are simply carried out as a perfunctory exercise that has no bearing on the ultimate outcome."¹⁶⁴

The Philippine EIA System was modeled on the U.S. National Environmental Policy Act (NEPA). But NEPA has attained a quasi-constitutional and even mythic status in the United States.¹⁶⁵ NEPA "is

158. See *supra* note 5.

159. See discussion *supra* Part III A.

160. *Philippines v. City of Davao*, G.R. 148622, 388 S.C.R.A. 691, 693 (Sept. 12, 2002) (Phil.).

161. *Bangus Fry Fisherfolk v. Lanzanas*, G.R. No. 131442, 405 S.C.R.A. 530, 544-45 (July 10, 2003) (Phil.).

162. *Otadan v. Rio Tuba Nickel Mining Corp.*, G.R. No. 161436 (unreported) (June 23, 2004) (Phil.) available at <http://www.supremecourt.gov.ph/resolutions/2nd/2004/2Jun/161436.htm>.

163. *Id.*

164. Alan Khee-Jin Tan, *All That Glitters: Foreign Investment in Mining Trumps the Environment in the Philippines*, 23 PACE ENVTL. L. REV. 183, 205 (2005) (footnote omitted).

165. See, e.g., Bradley C. Karkkainen, *Whither NEPA?*, 12 N.Y.U. ENVTL. L.J. 333, 334 (2004).

regarded today as the legal cornerstone of environmental protection. NEPA is the model for environmental laws adopted in almost every jurisdiction across the globe."¹⁶⁶ NEPA has helped Americans preserve their "most treasured places" and helped citizens "protect their communities and enhance the quality of their lives."¹⁶⁷

Philippine case law on the EIA scarcely resembles its counterpart in the United States. As one author explained:

The spate of federal environmental legislation enacted in the late 1960's and early 1970's provided a fertile breeding ground for litigation. The federal courts reacted to the resulting proliferation of lawsuits by aggressively promoting the new, pro-environmental legislative objectives. They lowered the barriers to private litigants' access to the federal courts, subjected administrative agencies to procedural requirements not always apparent on the face of applicable legislation, interpreted environmental laws expansively and used common law to fill statutory gaps, and engaged in rigorous review of the substantive merit of agency decisions which seemed to give insufficient weight to legislatively sanctioned environmental values.¹⁶⁸

As this Article points out, however, the Philippine Supreme Court constricted the interpretation of environmental legislation and deferred to the judgment of the executive branch despite the evident violation of these laws. In the three post-*Oposa* cases discussed herein, the Court stunted the potential of the law, preventing the Philippines from enjoying the same benefits resulting from effective environmental legislation that Americans have in the United States. The Supreme Court has veered away from environmental issues and has relegated environmental law to the sidelines.

It is possible that the Court finds itself confronted with the task of balancing economic progress with environmental concerns. This, however, cannot justify the misinterpretation of laws or the refusal to directly address environmental disputes.

The Supreme Court's performance in environmental law is even more disappointing when juxtaposed with the constitutionally-protected right to a

166. Whitney Deacon, *The Bush Administration's Attack on the Environment; Target: Nepa's Environmental Impact Statement*, 10 MO. ENVTL. L. & POL'Y REV. 147, 147 (2003) (footnotes omitted).

167. Sharon Buccino, *NEPA Under Assault: Congressional and Administrative Proposals Would Weaken Environmental Review and Public Participation*, 12 N.Y.U. ENVTL. L.J. 50, 50 (2003).

168. Robert L. Glicksman, *A Retreat from Judicial Activism: The Seventh Circuit and the Environment*, 63 CHI.-KENT L. REV. 209, 209 (1987).

balanced and healthful ecology.¹⁶⁹ The Supreme Court in *Oposa* explained:

Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation—aptly and fittingly stressed by the petitioners—the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind.¹⁷⁰

No other right in the Philippines has been characterized in this manner. No other right's advancement "predates all governments and constitutions" or "need[s] not be written in the Constitution."¹⁷¹ Nor has another right been assumed to "exist from the inception of humankind."¹⁷² Still, the decisions analyzed in this study all seem less inclined to uphold this right. Rather, if a theme runs through these decisions, it is the willingness of the Court to overlook the various threats that undermine Filipinos' right to a balanced and healthful environment.

IV. CONCLUSION

Oposa helped the Philippine Supreme Court earn a reputation for judicial environmental activism. An examination of the Court's other decisions, however, reveals a disappointing collection of cases. The Philippine Supreme Court failed to live up to its reputation and has instead produced poorly reasoned decisions. The cases show a court that has narrowed the statutory avenues for environmental protection and has opted to refrain from involvement in environmental litigation.

The Court's decisions have left *Oposa* standing alone as rhetoric while the environment remains in peril. The Philippine experience demonstrates how fleeting and misleading a judiciary's commitment to the environment can be. It calls into question the wisdom of resorting to the courts as an avenue to address environmental problems.

The Philippine experience also indicates that the protection of the environment cannot be guaranteed by the enactment of progressive legislation. Evidently, the constitutional mandate to protect environmental rights is meaningless without a judiciary that is sensitive to its role in protecting the environment. A timid court, or one that sanctions executive ineptitude or

169. CONST. (1987), Art. II., § 16 (Phil.).

170. *Oposa v. Factoran*, G.R. No. 101083, 224 S.C.R.A. 792, 804-05 (July 30, 1993) (Phil.).

171. *Id.*

172. *Id.*

avoids the adjudication of environmental rights, becomes an obstacle to the realization of environmental rights.