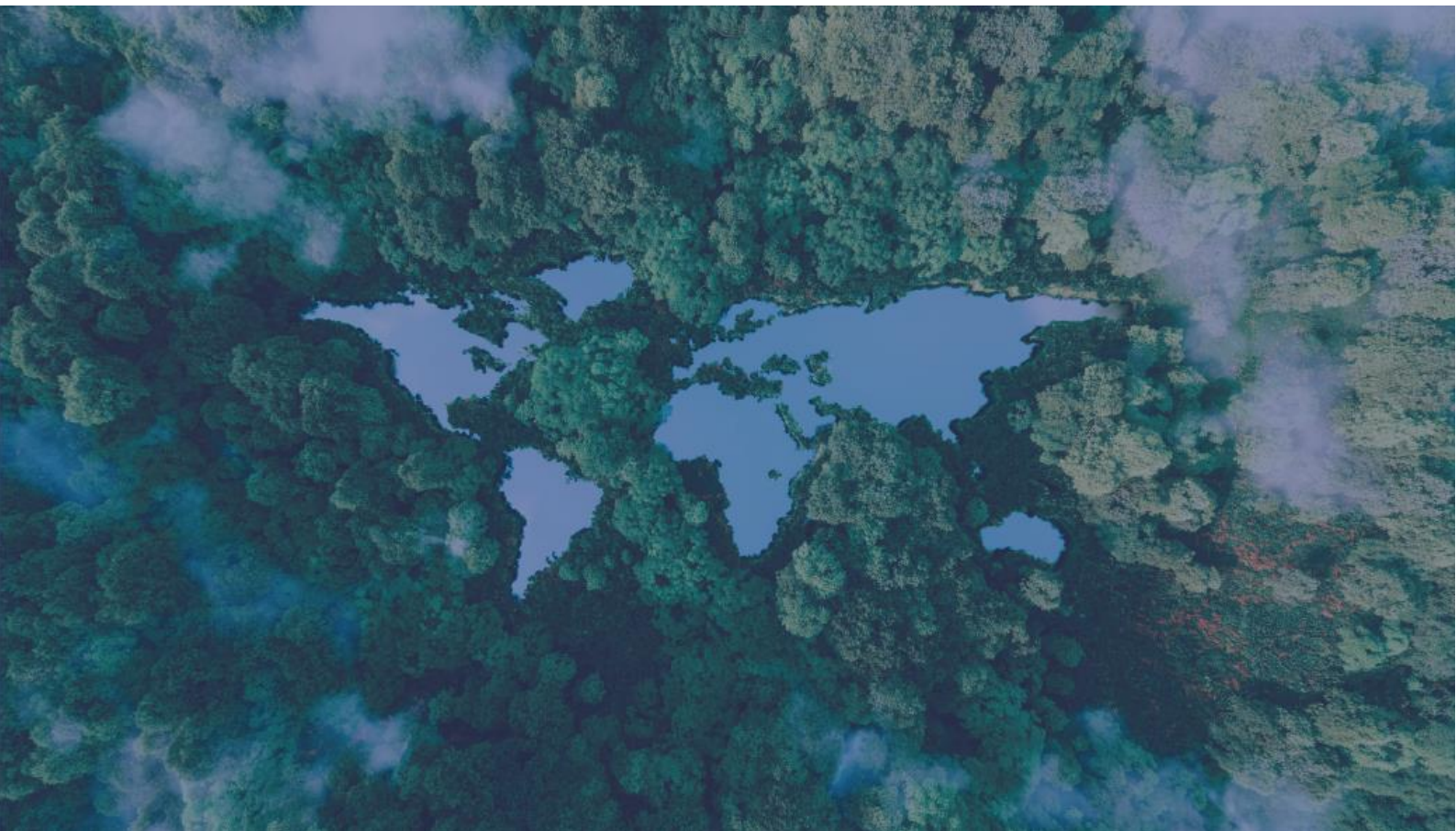




**British Institute of  
International and  
Comparative Law**

# Global Perspectives on Corporate Climate Legal Tactics: Philippines National Report

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# Executive Summary

As a rule, litigation in the Philippines, especially against private entities like corporations, will require the establishment of a cause of action: the existence of a right and the act or omission that violates such a right. In cases relating to the environment, which would be the broad category in which corporate climate change litigation will fall, any theory will have to engage the right of the people to a balanced and healthful ecology. This is a foundational right that can fill the gap when no specific right exists in the environmental statutes or general causes of action available.

There have only been three (3) cases that directly engaged in theorizing a cause of action based on climate change impacts and contribution. For the most part, litigants use specific environmental laws to attain specific redress. In terms of causes of action, the most promising areas that accommodate broad theories in suing corporations would be human rights laws, tort law, and the public trust cases.

Bringing cases in courts in terms of procedure would not be as challenging as theorizing on the cause of action. The Supreme Court of the Philippines (“Supreme Court”), through its case law and the exercise of its rule-making power, continues to create a body of procedural law that makes it easy for a citizen to sue in environmental cases. Standing and group litigation rules are liberally construed. Most issues, however, would arise in the evidence that is required to prove causation. Because of the nature of climate change as a phenomenon, the question on the causal link will require scientific evidence that establishes the duty of the actor in a given context and the exact contribution of that actor, *i.e.* a corporation, in causing the event or its impacts. There is room to test a variety of forms of evidence if cases do in fact move forward. So far, climate change cases in the Philippines do not advance because of compromise, mootness, and the inability of parties to establish the duties of the defendants they sue.

While the question of liability and possible pecuniary remedies is still an open one, some cases that are directly related to climate change impacts have been more successful in that they resulted in the issuance of non-pecuniary remedies like the writs of *kalikasan* and continuing mandamus. This is partly due to the aid of presumptions like *res ipsa loquitur* or the use of the precautionary principle. Thus, the use of these remedies is a promising area in corporate climate change litigation. Some other remedies, mostly administrative or criminal in nature, may also go hand in hand with these non-pecuniary remedies.

## Acknowledgements

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# Introduction

The Philippine Constitution recognizes and declares the advancement and protection of the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature as a state policy.<sup>1</sup> This right binds the various strands of the Philippine legal system relating to the environment and climate change. Ordinarily, principles and state policies declared in the Constitution<sup>2</sup> are non-self-executing, in that they only set policy directives and frameworks that require the enactment of enabling laws.<sup>3</sup> However, in the groundbreaking case of *Juan Antonio Oposa, et. al. v. The Honorable Fulgencio S. Factoran, Jr., et. al. ("Oposa")*,<sup>4</sup> the Supreme Court characterized the right to a balanced and healthful ecology as a "specific fundamental legal right" that carried the correlative duty to refrain from impairing the environment.<sup>5</sup>

Republic Act No. 9729 or the Climate Change Act of 2009 ("Climate Change Act") reiterates the foundational character of this right when it declares that it is the policy of the State "to afford full protection and the advancement of the right of the people to a healthful ecology in accord with the rhythm and harmony of nature."<sup>6</sup>

In *Oposa*, the concept and scope of "nature" was defined in an expansive manner:

Nature means the created world in its entirety. Such rhythm and harmony indispensably include, inter alia, the judicious disposition, utilization, management, renewal and conservation of the country's forest, mineral, land, waters, fisheries, wildlife, off-shore areas and other natural resources to the end that their exploration, development and utilization be equitably accessible to the present as well as future generations.<sup>7</sup>

The statement that views nature in its entirety recognizes nature as a system with processes which are interfered with by human activity. Owing to its breadth, "nature" as a system encompasses the climate system and the natural processes of and human interference in the processes that occur in the atmosphere. This is reinforced by Republic Act No. 8749 or the Philippine Clean Air Act of 1999 ("Clean Air Act") that guarantees the rights of the citizens to breathe clean air<sup>8</sup> and to be notified of the accidental or

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<sup>1</sup> CONST. art. II, § 16. Sec. 16. The 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.

<sup>2</sup> CONST. art. II.

<sup>3</sup> *Manila Prince Hotel v. GSIS*, 335 Phil. 82 (1997).

<sup>4</sup> *Oposa v. Factoran*, G.R. No. 101083, 224 SCRA 792 (1993).

<sup>5</sup> *Id.*

<sup>6</sup> Rep. Act No. 9729 (2009), § 2. Climate Change Act of 2009.

<sup>7</sup> *Oposa*, 224 SCRA 792.

<sup>8</sup> Rep Act No. 8749 (1999), § 4(a). Philippine Clean Air Act of 1999.



deliberate release into the atmosphere of harmful or hazardous substances,<sup>9</sup> which could include greenhouse gases.

This aligns with the definition of climate change in the Climate Change Act that covers the properties and processes of the climate system and catalysts for their variability:

**SECTION 3.** Definition of Terms.—For purposes of this Act, the following shall have the corresponding meanings:

(d) “Climate Change” refers to a change in climate that can be identified by changes in the mean and/or variability of its properties and that persists for an extended period typically decades or longer, whether due to natural variability or as a result of human activity.

This Report begins with a discussion of the recognition of the legal enforceability of the right to a balanced and healthful ecology, as it ties together various potential causes of action and procedural issues such as standing and justiciability. In other words, some causes of action are established and procedural obstacles are hurdled with relative ease because of the recognition of the status of this right. Thus, it is not surprising that such status has been contested.<sup>10</sup>

This Report substantially follows the order of the items in the Questionnaire for National Rapporteurs set out in the Background Document of this project entitled *Global Perspectives on Corporate Climate Legal Tactics* (the “Project”). In particular, the Report discusses various aspects of corporate climate change litigation in the Philippine legal system in the following order: (1) causes of action; (2) procedures and evidence; and (3) remedies. Note, however, that some cross-referencing and integration is inevitable as all these areas of inquiry are connected and, sometimes, interdependent.

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<sup>9</sup> *Id.* § 4(e).

<sup>10</sup> *Oposa*, 224 SCRA 792, (Feliciano, *J.*, *concurring*); *Segovia et al v. Climate Change Commission (CCC)*, 806 Phil. 1019 (2017) (Leonen, *J.* *concurring*).

# 1. Causes of Action

## A. Climate Change Law/Environmental Law Statutory Provisions

### i. Climate Change Act

The Climate Change Act, by itself, does not provide a cause of action. It is taken together with other statutes that protect the environment and the right of the people to a balanced and healthful ecology. This law declares that it is the policy of the State to enjoin the participation of businesses, among others, to prevent and reduce the adverse impacts of climate change.<sup>11</sup> This policy is primarily pursued and carried out by the Climate Change Commission (“CCC”) created by the Climate Change Act.

The specific policy relating to business organizations, corporations or otherwise, is operationalized in Administrative Order No. 2010–01, or the Implementing Rules and Regulations of Republic Act 9729 (“Climate Change Act IRR”) which states that the CCC shall “encourage business, public and private sector compliance with existing environment, forestry, mining, energy, clean air, solid waste and land use laws, rules and regulations.”<sup>12</sup>

Thus, the Climate Change Act is taken together with existing environmental protection statutes to form the basis of a cause of action which is justiciable before the courts. This Report will elaborate on these statutes. It should be noted that the relevant provisions in these statutes may not necessarily refer specifically to climate change and its impacts. Analysis is required to make the connection, particularly one that is anchored on the definition of nature, the scope of the right to a balanced and healthful ecology, and the scientifically-established contributing factors to climate change.

### ii. Disaster Risk Reduction and Management Act

The Climate Change Act marries climate change policy with disaster risk reduction. It is explicitly stated that “climate change and disaster risk reduction are closely interrelated and effective disaster risk reduction will enhance climate change adaptive capacity,”<sup>13</sup> so that it is imperative for the State to “integrate disaster risk reduction into climate change programs and initiatives.”<sup>14</sup>

Republic Act No. 10121 or the Philippine Disaster Risk Reduction and Management Act of 2010 (“Disaster Risk Reduction and Management Act”) provides potential causes of action relevant to accountability for climate change impacts of businesses or corporations. This law holds any person, group, or corporation liable for dereliction of

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<sup>11</sup> Rep. Act No. 9729 (2009), § 2. Climate Change Act of 2009.

<sup>12</sup> Adm. Order No. 01 (2010), § 2, RULE VI. Implementing Rules and Regulations (IRR) of the “Climate Change Act of 2009”.

<sup>13</sup> Rep. Act No. 9729 (2009), § 2. Climate Change Act of 2009.

<sup>14</sup> *Id.*

duties which leads to destruction, loss of lives, critical damage of facilities and misuse of funds.<sup>15</sup> These impacts are closely identified as climate change impacts under scientific studies in the literature and as discussed in the Background Document. While an initial reading of this potential cause of action may lead to the determination that it refers to public officials or persons of authority who have duties, as defined by law, and could therefore be derelict in the performance of those duties, it is reasonable to posit that it could also refer to duties imposed by private and environmental law on corporations (*i.e.* corporate tort under corporate law) and the non-performance of those duties. This position is plausible as the Disaster Risk Reduction and Management Act is one that applies to all possible actors in this area of law, and not only to public officers such as those covered by the Revised Penal Code or the Local Government Code.

Another potential case may be filed against a corporation and its agents who prevent the “entry and distribution of relief goods in disaster-stricken areas, including appropriate technology, tools, equipment, accessories, disaster teams or experts.”<sup>16</sup> This may be relevant in situations where a corporation bars entry into an area where evidence of its complicity in bringing about the climate change impact may be discovered.

In both cases, it is clear that a corporation can violate the provisions and be held liable for such violations, as the Disaster Risk Reduction and Management Act provides:

Section 20. Penal Clause.

If the offender is a corporation, partnership or association, or other juridical entity, the penalty shall be imposed upon the officer or officers of the corporation, partnership, association or entity responsible for the violation without prejudice to the cancellation or revocation of these entities license or accreditation issued to them by any licensing or accredited body of the government.

As this is a recurring provision in statutes on environmental protection, this Report shall refer to this provision as the “*corporate agent liability rule*”.

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<sup>15</sup> Rep. Act No. 10121 (2009). Philippine Disaster Risk Reduction and Management Act of 2010.

<sup>16</sup> *Id.* § 19(b).

### iii. Environmental Protection Statutes

#### i. Clean Air Act

The Clean Air Act is an air pollution prevention and control measure that declares as policy the recognition by the Philippine state that a clean and healthy environment is for the good of all and should, therefore, be the concern of all.<sup>17</sup>

This law, in defining an air pollutant as matter that exceeds “natural” or “normal” concentrations is relevant in the analysis of the occurrence of climate change impacts in the Philippines, as such air pollutants may be:

any matter found in the atmosphere other than oxygen, nitrogen, water vapor, carbon dioxide, and the inert gases in their natural or normal concentrations, that is detrimental to health or the environment, which includes but not limited to smoke, dust, soot, cinders, fly ash, solid particles of any kind, gases, fumes, chemical mists, steam and radio-active substances.<sup>18</sup>

The Clean Air Act recognizes certain rights that form part of causes of action in potential cases for corporate climate change litigation. Further, these rights particularize the right to a balanced and healthful ecology, and also lay the bases for remedies that may be granted in suits for violations of the Clean Air Act. These rights of the citizens are:<sup>19</sup>

- 1) The right to breathe clean air;
- 2) The right to utilize and enjoy all natural resources according to the principles of sustainable development;
- 3) The right to participate in the formulation, planning, implementation and monitoring of environmental policies and programs and in the decision-making process;
- 4) The right to participate in the decision-making process concerning development policies, plans and programs projects or activities that may have adverse impact on the environment and public health;
- 5) The right to be informed of the nature and extent of the potential hazard of any activity, undertaking or project and to be served timely notice of any significant rise in the level of pollution and the accidental or deliberate release into the atmosphere of harmful or hazardous substances; and
- 6) The right of access to public records which a citizen may need to exercise his or her rights effectively under the law.

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<sup>17</sup> Rep Act No. 8749 (1999), § 2. Philippine Clean Air Act of 1999.

<sup>18</sup> *Id.* § 5.

<sup>19</sup> *Id.* § 4.

Anchored on these rights, of which the right to information on the potential hazards of an activity is significant, the law provides for a number of requirements and prohibitions closely connected with the control of greenhouse gas (“GHG”) emissions such as:

(a) the prohibition on the manufacture, import, and sale of leaded gasoline and of engines and components requiring leaded gasoline, with a provision for compliance of existing non-conforming engines;<sup>20</sup>

(b) setting of emissions standards for stationary sources or any building or immobile structure, facility or installation which emits or may emit any air pollutant;<sup>21</sup>

(c) setting of emission standards for motor vehicles,<sup>22</sup> and penalizing a violation of such standards;<sup>23</sup> and

(d) a ban on incineration or the burning of municipal, biomedical and hazardous waste, which emits poisonous and toxic fumes.<sup>24</sup>

Notably, the ban on incineration is intimately connected to climate change, as the Clean Air Act, in the same provision as the ban, states that:

**With due concern on the effects of climate change**, the Department [of Environment and Natural Resources] shall promote the use of state-of-the-art, environmentally-sound and safe non-burn technologies for the handling, treatment, thermal destruction, utilization, and disposal of sorted, unrecycled, uncomposted, biomedical and hazardous wastes.<sup>25</sup>

This is particularly relevant to corporations whose businesses require the disposal of solid wastes, which can no longer be done through this process of burning.

The case of *Victoria Segovia, et. al. v. Climate Change Commission, et. al.* (“*Segovia*”) is a concrete example of how the Clean Air Act can be used as the basis for a cause of action. Together with the Climate Change Act, the Clean Air Act was used as an anchor for a petition that demanded that the government enforce the “Road Sharing Principle” as expressed in an executive issuance.

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<sup>20</sup> The phase-out of leaded gasoline in the Philippines was mandated by Executive Order No. 446 signed on 26 September 1997. Notably, this order anchors the phase-out in the protection and advancement of the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature, as provided in Section 16, Article II of the 1987 Constitution.

<sup>21</sup> *Id.* §§ 16–20.

<sup>22</sup> *Id.* §§ 21–23.

<sup>23</sup> *Id.* § 46.

<sup>24</sup> *Id.* § 20 - *Provided*, that the prohibition shall not apply to traditional small-scale method of community/neighborhood sanitation “siga”, traditional, agricultural, cultural, health, and food preparation and crematoria; *Provided, Further*, That existing incinerators dealing with a biomedical wastes shall be out within three (3) years after the effectivity of this Act; *Provided, Finally*, that in the interim, such units shall be limited to the burning of pathological and infectious wastes, and subject to close monitoring by the Department.

<sup>25</sup> *Id.* (Emphasis and underscoring supplied).

The thrust of the petition was to demand “the bifurcation of roads and the reduction of official and government fuel consumption by fifty percent (50%).”<sup>26</sup> In relation to the Clean Air Act, the petitioners claimed that the Department of Environment and Natural Resources (“DENR”) failed to reduce air pollutant emissions.<sup>27</sup> This argument forms part of the larger contention that the failure to implement the laws and executive issuances “resulted in the continued degradation of air quality, particularly in Metro Manila,” such that the constitutional rights to a balanced and healthful ecology as well as to non-deprivation of life and of life resources such as land, water, and air without due process of law have been violated.<sup>28</sup>

While the Supreme Court ultimately resolved *Segovia* in favor of the government due to the absence of some of the requirements to avail of the remedy prayed for, it is worth noting that the Supreme Court gave due course to the case and confronted aspects of the theory of the petitioners based on the Clean Air Act taken together with the Climate Change Act.

On another note, the Clean Air Act, quite significantly, specifically recognizes the concept of a “gross violation” which includes one which causes irreparable or grave damage to the environment.<sup>29</sup> A finding of gross violation is sufficient basis for a recommendation to file the appropriate criminal charges against the violators.<sup>30</sup> With the current findings regarding the potential irreversibility of global warming, one may characterize a suit based on climate change as a gross violation of the Clean Air Act.

## *ii. Clean Water Act*

There are studies that link water pollution to climate change. Some studies inquire into the relationship between water pollutants, that become sediments or that reduce carbon absorption by bodies of water, to the increased GHG trapped in the atmosphere.<sup>31</sup> Thus, any cause of action that litigates an adverse climate change impact could draw from a number of the prohibitions in Republic Act No. 9275 or the Philippine Clean Water Act of 2004 (“Clean Water Act”), including these prohibited acts:

- a) Discharging, depositing or causing to be deposited material of any kind directly or indirectly into the water bodies or along the margins of any surface water, where, the same shall be liable to be washed into such surface water, either by tide action or by storm, floods or otherwise, which could cause water pollution or impede natural flow in the water body;

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<sup>26</sup> *Segovia*, 806 Phil. 1019.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Rep Act No. 8749 (1999), § 48. Philippine Clean Air Act of 1999.

<sup>30</sup> *Id.*

<sup>31</sup> Cotovicz, Luiz C Jr et al. “Greenhouse gas emissions (CO<sub>2</sub> and CH<sub>4</sub>) and inorganic carbon behavior in an urban highly polluted tropical coastal lagoon (SE, Brazil).” *Environmental science and pollution research international* vol. 28,28 (2021); Hu, Beibei et al. “Greenhouse gases emission from the sewage draining rivers.” *The Science of the total environment* vol. 612 (2018);

- b) Discharging, injecting or allowing to seep into the soil or sub-soil any substance in any form that would pollute groundwater. In the case of geothermal projects, and subject to the approval of the Department, regulated discharge for short-term activities (*e.g.* well testing, flushing, commissioning, venting) and deep re-injection of geothermal liquids may be allowed: Provided, that safety measures are adopted to prevent the contamination of the groundwater;
- c) Operating facilities that discharge regulated water pollutants without the valid required permits or after the permit was revoked for any violation of any condition therein;
- d) Disposal of potentially infectious medical waste into sea water by vessels unless the health or safety of individuals on board the vessel is threatened by a great and imminent peril;
- e) Unauthorized transport or dumping into sea waters of sewage sludge or solid waste;<sup>32</sup>
- f) Transport, dumping or discharge of prohibited chemicals, substances or pollutants;<sup>33</sup>
- g) Operate facilities that discharge or allow to seep, willfully or through gross negligence, prohibited chemicals, substances or pollutants,<sup>34</sup> into water bodies or wherein the same shall be liable to be washed into such surface, ground, coastal, and marine water;
- ...
- i) Discharging regulated water pollutants without the valid required discharge permit pursuant to this Act or after the permit was revoked or any violation of any condition therein.<sup>35</sup>

These prohibitions are connected to climate change mitigation, in that they penalize the commission of acts that alter the capacity of bodies of water to absorb carbon owing to its altered composition. They can, on their own or in conjunction with the Climate Change Act and related laws, form the basis for a cause of action that litigates the culpability of corporations for their activities and operations that contribute to or exacerbate climate change impacts. It should be pointed out that this chapter of the Clean Water Act specifically refers to these acts as source of civil or criminal liability. Thus, apart from the civil aspect of criminal cases, independent civil actions may be instituted for the violations of the duties set out in laws like the Clean Water Act.

Other prohibitions relate to the refusal to allow entry, inspection and monitoring by the DENR,<sup>36</sup> refusal to allow access to reports and records,<sup>37</sup> and the refusal to submit such reports when submitted by the DENR.<sup>38</sup> Like the Disaster Risk and Management Act, these offenses block efforts to check compliance by corporations of their duties under the Clean Water Act. This will have an impact in a case that holds corporations

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<sup>32</sup> As defined under Rep Act No. 9003 (2000), § 3(kk). Ecological Solid Waste Management Act of 2000.

<sup>33</sup> As listed under Rep. Act No. 6969 (1990). Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990.

<sup>34</sup> *Id.*

<sup>35</sup> Rep. Act No. 9275 (2004). Philippine Clean Water Act of 2004.

<sup>36</sup> *Id.* § 27(k).

<sup>37</sup> *Id.* § 27(l).

<sup>38</sup> *Id.* § 27(m).

accountable for their contribution to climate change effects through their water polluting activities.

### *iii. Fisheries Code*

Republic Act No. 8550 or the Philippine Fisheries Code of 1998 (“Fisheries Code”) penalizes aquatic pollution.<sup>39</sup> This law defines aquatic pollution as follows:

4. Aquatic Pollution - the introduction by human or machine, directly or indirectly, of substances or energy to the aquatic environment which result or is likely to result in such deleterious effects as to harm living and non-living aquatic resources, pose potential and/or real hazard to human health, hindrance to aquatic activities such as fishing and navigation, including dumping/disposal of waste and other marine litters, discharge of petroleum or residual products of petroleum or carbonaceous materials/substances, and other, radioactive, noxious or harmful liquid, gaseous or solid substances, from any water, land or air transport or other human-made structure. Deforestation, unsound agricultural practices such as the use of banned chemicals and excessive use of chemicals, intensive use of artificial fish feed, and wetland conversion, which cause similar hazards and deleterious effects shall also constitute aquatic pollution.

With respect to the “discharge of petroleum or residual products of petroleum or carbonaceous materials/substances” and the impact on the heating of the atmosphere of deforestation, unsound agricultural practices makes this law a potential basis for a cause of action to hold a corporation who commits aquatic pollution liable for its contribution to climate change. However, this requires the formulation of a theory that ties the pollution to the impact and the use of other legal sources directly connected to climate change.

### *iv. Revised Forestry Code*

While Presidential Decree No. 705<sup>40</sup> or the Revised Forestry Code of the Philippines (“Revised Forestry Code”) was not particularly enacted to address the climate impacts of human activity, there are provisions in this law that assist in climate change mitigation. In particular, some provisions protect the forests and forest cover, indirectly recognize the value of forests as carbon sinks:

(a) the prohibition of any person, including corporations, from cutting, gathering and/or collecting timber or other forest products from any forest land, or timber from alienable and disposable public lands, or from private lands, without any authority under a license agreement, lease, license or permit;<sup>41</sup>

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<sup>39</sup> Rep. Act No. 8550 (1998), §§ 86–103. Philippine Fisheries Code of 1998.

<sup>40</sup> Series of 1975.

<sup>41</sup> Treated as qualified theft. This could be part of a theory that an environmental impact assessment, which is a requirement to grant the permit, might have captured the impact of the cutting and its contribution to climate change.



(b) the prosecution and punishment of any person who makes *kaingin* (slash-and-burn cultivation) for his own private use or for others any forest land without authority under a license agreement, lease, license or permit, or in any manner destroys such forest land or any of its parts;<sup>42</sup> and

(c) the prohibition of any person from cutting, destroying, damaging, or removing timber or any species of vegetation or forest cover in any portion of a national park.<sup>43</sup>

A related law is Act No. 3572 which prohibits the cutting of tindalo, akle, or molave trees in the public forests, and penalizes any person, company, or corporation for such violation, provided that in the case of a company or corporation, the president or manager shall be directly responsible for the acts of his employees or laborers if it is proven that the latter acted with his knowledge.<sup>44</sup>

#### *v. Renewable Energy Act*

Republic Act No. 9513 or the Renewable Energy Act of 2008 (“Renewable Energy Act”) was enacted as a climate change mitigation measure. It declares that it is the policy of the State to “[e]ncourage the development and utilization of renewable energy resources as tools to effectively prevent or reduce harmful emissions and thereby balance the goals of economic growth and development with the protection of health and the environment.”<sup>45</sup> It also institutes a mechanism that explicitly recognizes climate change imperatives in the grant of incentives.<sup>46</sup>

Like other environmental protection laws, the Renewable Energy Act locates some of its enforcement power from a provision that enumerates prohibited acts that could be relevant to holding a corporation liable for its carbon footprint.<sup>47</sup> In particular, this law penalizes a corporation’s non-compliance with or violation of Renewable Portfolio Standard Rules (“RPS”).<sup>48</sup>

Theorizing on this potential cause of action, if a corporation doing business in the power industry - a stakeholder - continues to source its energy from non-renewable sources by not complying with the minimum percentage assigned to it, it may be held liable through the corporate agent liability rule. It may also be held liable as an entity, as the law empowers the Department of Energy (“DOE”) to impose administrative fines and

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<sup>42</sup> SECTION 53. Criminal Prosecution. — Kaingineros, squatters, cultural minorities and other occupants who entered into forest lands before the effectivity of this Code, without permits or authority, shall not be prosecuted: Provided, That they do not increase their clearings: Provided, Further, That they undertake, within two (2) months from notice thereof, the activities which will be imposed upon them by the Bureau in accordance with a management plan calculated to conserve and protect forest resources.

<sup>43</sup> Pres. Dec. No. 705 (1975), § 80. Revised Forestry Code of the Philippines

<sup>44</sup> Act No. 3572 (1929).

<sup>45</sup> Rep. Act No. 9531 (2008), § 2. Renewable Energy Act of 2008.

<sup>46</sup> *Id.* § 24.

<sup>47</sup> *Id.* §§ 35–36.

<sup>48</sup> *Id.* § 35(a).

penalties for any violation of the provisions of the law, its Implementing Rules and Regulations (“IRR”), and other related issuances.<sup>49</sup>

One other prohibited act which may be relevant is the punishment of falsification or tampering of public documents or official records to avail of the fiscal and non-fiscal incentives.<sup>50</sup> This strengthens the regulatory nature of the law by ensuring that corporations cannot feign compliance through illegal acts such as falsification of documents.<sup>51</sup>

#### *vi. Ecological Solid Waste Management Act*

Republic Act No. 9003 or the Ecological Solid Waste Management Act of 2000 (“Ecological Solid Waste Management Act”) mandates the DENR to prepare a National Solid Waste Management Status Report that considers the varying regional geologic, hydrologic, climatic, and other factors vital in the implementation of solid waste practices to ensure the reasonable protection of the quality of surface and groundwater from leachate contamination; the quality of surface waters from surface run-off contamination; and ambient air quality.<sup>52</sup> The inclusion of climatic factors reveals the consciousness of impacts on the climate of unsustainable waste disposal practices.

This law creates the National Solid Waste Management Commission which includes private sector representation.<sup>53</sup> This Commission is mandated, among others, to develop a mechanism for the imposition of sanctions for the violation of environmental rules and regulations,<sup>54</sup> as well as to develop and prescribe procedures for the issuance of appropriate permits and clearances.<sup>55</sup>

The Commission is also tasked to encourage greater private sector participation in solid waste management.<sup>56</sup> Thus, it shall pay close attention to the goal of this provision on the role of the private sector “to initiate, participate and invest in integrated ecological solid waste management projects, to manufacture environment-friendly products, to introduce, develop and adopt innovative processes that shall recycle and re-use materials, conserve raw materials and energy, reduce waste, and prevent pollution, and to undertake community activities to promote and propagate effective solid waste management practices.”<sup>57</sup>

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<sup>49</sup> *Id.* § 36 ¶ 4.

<sup>50</sup> *Id.* § 35(c).

<sup>51</sup> *Id.*

<sup>52</sup> Rep. Act No. 9003 (2000), §§ 8(b), 14(d). Ecological Solid Waste Management Act of 2000.

<sup>53</sup> *Id.* § 4.

<sup>54</sup> *Id.* § 5(a).

<sup>55</sup> *Id.* § 5(k).

<sup>56</sup> *Id.* § 5(q).

<sup>57</sup> *Id.* § 57.

These provisions in the law lay the groundwork for the punitive aspect that would be sources of liability for persons violating its provisions, including corporations. The Ecological Solid Waste Management Act prohibits the following, among others:

- a) the open burning of solid waste;<sup>58</sup>
- b) open dumping, burying of biodegradable or non-biodegradable materials in flood-prone areas;<sup>59</sup>
- c) establishment or operation of open dumps;<sup>60</sup>
- d) the manufacture, distribution or use of non-environmentally acceptable packaging materials;<sup>61</sup>
- e) importation of consumer products packaged in non-environmentally acceptable materials;<sup>62</sup>
- f) importation of toxic wastes misrepresented as “recyclable” or “with recyclable content”;<sup>63</sup> and
- g) site preparation, construction, expansion or operation of waste management facilities without an Environmental Compliance Certificate required pursuant to Presidential Decree No. 1586 and the Act and not conforming with the land use plan of the local government unit (“LGU”).<sup>64</sup>

Each of these prohibitions target a particular danger in relation to the improper disposal of solid wastes. Most of these dangers are health hazards that damage both human and environmental health, in violation of the right to a balanced and healthful ecology. Each of these contributions to climate change mitigation, and holds a corporation liable for their contribution to adverse climate change impacts.

Corporations who are charged with any of these violations will be held responsible under the corporate agent liability rule. Such cases may be commenced by any citizen under the law’s procedure for citizen suits.<sup>65</sup>

#### vii. Mining Act

Republic Act No. 7942 or the Philippine Mining Act of 1995 (“Mining Act”) has an entire chapter on environmental protection.<sup>66</sup> In this chapter there is a dedicated provision that states:

Section 69  
Environmental Protection

Every contractor shall undertake an environmental protection and enhancement program covering the period of the mineral agreement or permit. Such environmental program

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<sup>58</sup> *Id.* § 48(3).

<sup>59</sup> *Id.* § 48(6).

<sup>60</sup> *Id.* § 48(9).

<sup>61</sup> *Id.* § 48(10).

<sup>62</sup> *Id.* § 48(11).

<sup>63</sup> *Id.* § 48(12).

<sup>64</sup> *Id.* § 48(14).

<sup>65</sup> A citizen suit may also be filed against a person who violates or fails to comply with the provisions of the Ecological Solid Waste Management Act or its implementing rules and regulations.

<sup>66</sup> Rep. Act No. 7942 (1995), §§ 62–71. Philippine Mining Act of 1995.

shall be incorporated in the work program which the contractor or permittee shall submit as an accompanying document to the application for a mineral agreement or permit. The work program shall include not only plans relative to mining operations but also to rehabilitation, regeneration, revegetation and reforestation of mineralized areas, slope stabilization of mined-out and tailings covered areas, aquaculture, watershed development and water conservation; and socioeconomic development.

Environmental protection is ensured through the requirement of the conduct of environmental impact assessment as a precondition to the grant of an Environmental Compliance Certificate (“ECC”) and which integrates consultation mechanisms and participation of potential suitors in climate change litigation. This provision states:

#### Section 70

##### Environmental Impact Assessment (EIA)

Except during the exploration period of a mineral agreement or financial or technical assistance agreement or an exploration permit, an environmental clearance certificate shall be required based on an environmental impact assessment and procedures under the Philippine Environmental Impact Assessment System including Sections 26 and 27 of the Local Government Code of 1991 which require national government agencies to maintain ecological balance, and prior consultation with the local government units, non-governmental and people's organizations and other concerned sectors of the community: Provided, That a completed ecological profile of the proposed mining area shall also constitute part of the environmental impact assessment. People’s organizations and non-governmental organizations shall be allowed and encouraged to participate in ensuring that contractors/permittees shall observe all the requirements of environmental protection.

While the conduct of an environmental impact assessment is preventive, the provision on rehabilitation mandating contractors and permittees to “technically and biologically rehabilitate the excavated, mined-out, tailings covered and disturbed areas to the condition of environmental safety,”<sup>67</sup> ensures that after-operation effects and harms to the environment are mitigated.

Further, the Mining Act penalizes the willful violation of or gross negligence in abiding by the terms and conditions of the ECC issued and which causes environmental damage through pollution.<sup>68</sup>

This penal provision became the basis of one of the charges in the case of *John Eric Loney, et. al. v. People of the Philippines*<sup>69</sup> (“Loney”) - a case that is also instructive in

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<sup>67</sup> *Id.* § 71.

<sup>68</sup> *Id.* § 96.

<sup>69</sup> *Loney, et. al. v. People*, G.R. No. 152644 (2006).

corporate climate change litigation by using a number of causes of action based on different laws.

*Loney* involved criminal charges against officers of Marcopper Mining Corporation, a mining company, for pollution and the violation of the terms and conditions of its ECC.<sup>70</sup> It was alleged that the mining company was negligent in preventing the precipitate discharge of “mine tailings” into two rivers due to a breach caused on the drainage or tunnel.<sup>71</sup> According to the prosecutors, the offense consisted of the negligence of the company and its officers in failing to institute adequate measures to prevent pollution and siltation of the two rivers, which is a condition in the ECC.<sup>72</sup>

It must be noted that the multiple charges were based on the violation not only of the Mining Act, but also of Presidential Decree No. 1067 or the Water Code of the Philippines, and Presidential Decree No. 984 or the Anti-Pollution Law. The charge of Reckless Imprudence Resulting in Damage to Property was based on a violation of Article 365 of the general penal law of the Philippines, the Revised Penal Code (“RPC”).<sup>73</sup>

At this point, it can be stated that the Mining Act, alone or with other laws, may be the basis of an action, criminal or civil, that can pursue a corporation’s liability for its activities that harm the environment, including possibly those that contribute to GHG emissions and climate change.

When taken together with other laws, *Loney* is illustrative of the potential success of using various environmental protection laws as a bundle of causes of action. In this case, the officers of the corporation moved to quash the Informations or charges on account of their duplicity, or that they charged more than one offense for a single act.<sup>74</sup> They also reasoned that the Informations should be thrown out as they alleged elements that constitute legal justification that excuses the officers and the corporation from responsibility.<sup>75</sup>

The trial court agreed with the officers and quashed the Informations based on laws other than the Mining Act, as those offenses were allegedly absorbed in the charge under the Mining Act. The trial court also sustained the validity of the charge under the RPC as it punished an act apart from that covered by the Mining Act. The appellate courts disagreed with the trial court and reasoned that:

Concededly, the single act of dumping mine tailings which resulted in the pollution of the Makulapnit and Boac rivers was the basis for the information[s] filed against the

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> REV. PE. CODE, art. 365 ¶ 3.

<sup>74</sup> *Loney*, G.R. No. 152644.

<sup>75</sup> *Id.*

accused each charging a distinct offense. But it is also a well-established rule in this jurisdiction that –

“A single act may offend against two or more entirely distinct and unrelated provisions of law, and if one provision requires proof of an additional fact or element which the other does not, an acquittal or conviction or a dismissal of the information under one does not bar prosecution under the other. ...”

...

[T]he different laws involve[d] cannot absorb one another as the elements of each crime are different from one another. Each of these laws require [sic] proof of an additional fact or element which the other does not although they stemmed from a single act.<sup>76</sup>

The Supreme Court agreed with the appellate courts and ruled that all charges can stand together. It reiterated the reasoning of the appellate courts, and explained that a single act or incident might offend against two or more entirely distinct and unrelated provisions of law thus justifying the prosecution of the accused for more than one offense, and that does not necessarily mean that the prohibition on double jeopardy is violated.<sup>77</sup> The Supreme Court, then, proceeded to illustrate how each of the charges were based on distinct offenses despite them being the result of a single act or negligence.<sup>78</sup> It was shown that while some elements of the charges overlapped, none of them absorbed each other as there were crucial elements in each that were not elements in the others.

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<sup>76</sup> Citations omitted

<sup>77</sup> *Supra* note 74.; citations omitted.

<sup>78</sup> Loney, G.R. No. 152644.

## B. Human Rights Law

In its path-defining work in the National Inquiry on Climate Change (NICC), the Philippine Commission on Human Rights (“CHR”) determined that:

the Carbon Majors,<sup>79</sup> directly by themselves or indirectly through others, singly and/or through concerted action, engaged in willful obfuscation of climate science, which has prejudiced the right of the public to make informed decisions about their products, concealing that their products posed significant harms to the environment and the climate system.<sup>80</sup>

This conclusion was the result of earlier findings in the NICC Report that: (a) Carbon Majors have known since 1965 that their products, when used as intended, result in various harms to the climate system;<sup>81</sup> and that (b) the fossil fuel industry, including the Carbon Majors, engaged in measures to convince the public that the use of their products would not lead to significant harms.<sup>82</sup>

These findings were made in the context of the corporate responsibility to protect human rights of the Carbon Majors, as defined under the United Nations Guiding Principles on Business and Human Rights (“UNGP”).<sup>83</sup> Thus, in the NICC Report, the CHR pronounced that the Carbon Majors within Philippine jurisdiction may be compelled to undertake human rights due diligence and to provide remediation,<sup>84</sup> aspects of the corporate responsibility that are expressed in the UNGP.<sup>85</sup>

In order to arrive at its determination, particularly that human rights are adversely affected by the contribution of the Carbon Majors to GHG emissions and, ultimately, climate change, the CHR had to identify the rights involved and their legal sources. In identifying the legal bases of the rights, the CHR was careful in laying down both the international and domestic legal *locus* of the rights. This method ensures that local courts, who will be trying cases based on the violations of these rights, are able to hinge their rulings on domestic law. The NICC Report enumerated these rights and the corresponding sources:

- 1) the right to life, as recognized in Article 3 of the United Nations Declarations of Human Rights (“UDHR”),<sup>86</sup> Article 6 of the International Covenant on Civil and

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<sup>79</sup> Fossil fuel users and cement producers.

<sup>80</sup> Commission on Human Rights, National Inquiry on Climate Change, at 108–109 (2022).

<sup>81</sup> *Id.* at 101–104.

<sup>82</sup> *Id.* at 108–109.

<sup>83</sup> *Id.* at 110.

<sup>84</sup> *Id.* at 113–114.

<sup>85</sup> *Id.*

<sup>86</sup> United Nations Declarations of Human Rights art. 3, Dec. 10, 1948, available at <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

- Political Rights (“ICCPR”),<sup>87</sup> and in Article III, Section 1 of the Constitution which provides that no person shall be deprived of life without due process of law.<sup>88</sup>
- 2) Citing the work of the United Nations Environment Programme (“UNEP”),<sup>89</sup> the CHR explained that the violation or threat to the right to life can be both direct and indirect. It is direct in the sense that people actually die from extreme weather events. Its indirect effect can be through “gradual forms of environmental degradation that undermines critical resources that support human life.”<sup>90</sup>
  - 3) the right to health, as recognized in the UDHR, the International Convention on Economic, Social, and Cultural Rights (“ICESCR”), and other international human rights instruments.<sup>91</sup> The CHR also anchored this right on Article II, Section 15 of the Constitution which provides that the State shall protect and promote the right to health of the people and instill health consciousness among them;<sup>92</sup>
  - 4) the right to food security which is a component of the right to a dignified standard of living recognized in Article 25 of the UDHR<sup>93</sup> and Article 11 of the ICESCR.<sup>94</sup>
  - 5) The CHR recognized that the Philippine Constitution does not explicitly mention the right to food, but infers its existence from various provisions on human dignity as well as in Article XV, Section 3 which requires the State to, among others, defend children’s right to proper nutrition.<sup>95</sup>
  - 6) the right to water and Sanitation, as recognized by the United Nations General Assembly in Resolution 64/292,<sup>96</sup> stating that “the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.”<sup>97</sup> Notably, the NICC Report did not refer to a domestic source to support the recognition of this right.
  - 7) the right to livelihood, as recognized in Article 6 of the ICESCR providing that the “the right to work includes the right of everyone to the opportunity to gain his living

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<sup>87</sup> International Covenant on Civil and Political Rights art. 6, Dec. 16, 1966, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

<sup>88</sup> CONST. art. III, § 1.

<sup>89</sup> Supra note 80.

<sup>90</sup> *Id.*

<sup>91</sup> International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),<sup>154</sup> and the Convention on the Rights of the Child (CRC)

<sup>92</sup> CONST. art. II, § 15.

<sup>93</sup> United Nations Declaration of Human Rights art. 25, Dec. 10, 1948, available at <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

<sup>94</sup> International Covenant on Economic, Social and Cultural Rights art. 11, Jan. 3, 1976, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

<sup>95</sup> CONST. art. XV, § 3.

<sup>96</sup> A/RES/64/292, 3 August 2010.

<sup>97</sup> *Id.*



by work which he freely chooses or accepts.”<sup>98</sup> In the Philippine Constitution, this is expressed in Article II, Section 9 which provides that the State shall “promote full employment, a rising standard of living, and an improved quality of life for all,” and Sections 3 and 9 of Article XIII thereof recognize and promote the importance of equal employment opportunities for all.<sup>99</sup>

- 8) the right to adequate housing, which the ICESCR recognizes as a component of the right to an adequate standard of living.<sup>100</sup> According to the CHR, the right to adequate housing is recognized under Article XIII, Section 9 of the Constitution, when it provides that the State shall, by law, and for the common good, undertake, in cooperation with the public sector, a continuing program of urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlements areas.<sup>101</sup>
- 9) the right to preservation of culture, as expressly recognized in Article 15 of the ICESCR providing for the right of every individual to “take part in cultural life.”<sup>102</sup> More specifically, according to the CHR, this coincides with the ICCPR’s guarantee, in Article 27, that “in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”<sup>103</sup>
- 10) The CHR located this right in the Constitution’s mandate that the State protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social and cultural well-being,<sup>104</sup> and in Republic Act No. 7356’s recognition that “culture is a manifestation of the freedom of belief and of expression and is a human right to be accorded due respect and allowed to flourish.”<sup>105</sup>

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<sup>98</sup> International Covenant on Economic, Social and Cultural Rights art. 6, Jan. 3, 1976, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

<sup>99</sup> CONST. art. II, § 9; art. XIII, §§ 3 & 9.

<sup>100</sup> NICC Report: The CESCR clarifies that the right to housing “should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity.”<sup>218</sup> Thus, adequate housing should include: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.

<sup>101</sup> CONST. art. XIII, § 9.

<sup>102</sup> International Covenant on Economic, Social and Cultural Rights art. 15, Jan. 3, 1976, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

<sup>103</sup> Other international instruments including the Convention Concerning the Protection of the World Cultural Heritage, Convention for the Safeguarding of the Intangible Cultural Heritage, Convention Concerning the Protection of the World Cultural and Natural Heritage, Universal Declaration on Cultural Diversity, among others, recognize the importance of cultural rights.

<sup>104</sup> CONST. art. XII, § 5.

<sup>105</sup> Rep. Act No. 7356 (1992), § 2. Law Creating the National Commission for Culture and the Arts.

11) the rights to self-determination and to Development were sourced by the CHR from Article 1 of both the ICCPR and the ICESCR that declare that “[a]ll peoples have the right of self-determination. By virtue of that right they **freely** determine their political status and freely pursue their economic, social and cultural development.”<sup>106</sup> According to the CHR, the right to development is a related right, and its content is defined in Article 1 of the Declaration on the Right to Development which states that “the right to development is an inalienable human right” and that “the human person is the central subject of development.”<sup>107</sup> The CHR supplements this by citing the Rio Declaration on Environment and Development (“Rio Declaration”) which further puts the human being “at the center of concerns for sustainable development,” encompassing environmental protection.<sup>108</sup>

The general pattern of the discussion of the CHR in the NICC Report begins with definition or description of the content of these rights, and a demonstration of how they can be violated and their actual violation in the context of climate change, by using testimonial evidence or narratives from various witnesses to demonstrate the actual impact of climate change on the exercise of the rights.<sup>109</sup> It is notable that the CHR’s framework used an integrated analysis of the impacts of climate change on these rights, and it emphasized the interdependence and indivisibility of the rights in appreciating the systemic character of the impact.

### Constitutional rights

Closely related to the cause of action based on a violation of human rights, and arguably a more tested legal basis, are constitutional rights violated by state action or inaction. As emphasized at the outset, the Philippine Constitution recognizes the right of the people to balanced and healthful ecology. The case of *Hilarion M. Henares, Jr., et. al. v. Land Transportation Franchising and Regulatory Board and Department of Transportation and Communications*<sup>110</sup> (“*Henares*”) elucidated on a component of this right by solidifying the status of the right to clean air as a fundamental right.

In *Henares*, petitioners individuals filed a petition for a writ of mandamus seeking an order for the Land Transportation Franchising and Regulatory Board (“LTFRB”) and the then Department of Transportation and Communications (“DOTC”) to require public utility vehicles (“PUVs”) to use compressed natural gas (“CNG”) as alternative fuel.<sup>111</sup>

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<sup>106</sup> International Covenant on Civil and Political Rights art. 1, Dec. 16, 1966; International Covenant on Economic, Social and Cultural Rights art. 1, Jan. 3, 1976

<sup>107</sup> Declaration on the Right to Development art. 1, Dec. 4, 1986. <https://www.ohchr.org/sites/default/files/rtd.pdf>.

<sup>108</sup> Rio Declaration on Environment and Development principle 1, Jun. 3–14, 1992, available at [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_CONF.151\\_26\\_Vol.I\\_Declaration.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf).

<sup>109</sup> Commission on Human Rights, National Inquiry on Climate Change (2022).

<sup>110</sup> *Henares v. LTFRB*, G.R. No. 158290 (Resolution) (2006).

<sup>111</sup> *Id.*

The petitioners asserted their right to clean air, citing the constitutional right to a balanced and healthful ecology, *Oposa*, and the Clean Air Act as bases for their petition.<sup>112</sup>

In explaining the presence of a legal right, which is a requirement for a court to issue a writ of mandamus, the Supreme Court characterized the right to breathe clean air as follows:

This petition focuses on one fundamental legal right of petitioners, their right to clean air.

...

In the same manner that we have associated the fundamental right to a balanced and healthful ecology with the twin concepts of “inter-generational responsibility” and “inter-generational justice” in *Oposa*, where we upheld the right of future Filipinos to prevent the destruction of the rainforests, so do we recognize, in this petition, the right of petitioners and the future generation to clean air.<sup>113</sup>

## C. Tort Law

### i. Public and private nuisance

Philippine law does not particularly treat a nuisance as a tort, despite the conceptual possibility of framing it as one. Nuisance, in the Philippine legal system, is governed by the law on property. The Civil Code defines a nuisance as

any act, omission, establishment, business, condition of property, or anything else which:

- (1) Injures or endangers the health or safety of others; or
- (2) Annoys or offends the senses; or
- (3) Shocks, defies or disregards decency or morality; or
- (4) Obstructs or interferes with the free passage of any public highway or street, or any body of water; or
- (5) Hinders or impairs the use of property.

The first category of nuisance is most relevant to actions involving corporations and their GHG emissions or their activities that exacerbate climate change impacts. This also recalls the unifying legal right to a balanced and healthful ecology.

Like in other jurisdictions, the Civil Code distinguishes between a public and a private nuisance. A public nuisance “affects a community or neighborhood or any considerable number of persons, although the extent of the annoyance, danger or damage upon individuals may be unequal.”<sup>114</sup>

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<sup>112</sup> *Id.*

<sup>113</sup> Citations omitted; emphases supplied.

<sup>114</sup> CIVIL CODE, § 695.

Any person may file an action to abate a public nuisance, if it is especially injurious to himself.<sup>115</sup> This is particularly *apropos* to climate change when the harm or impact affects a community or neighborhood or a considerable number of persons, which is characteristic of how climate change impacts are experienced. The tenor of this cause of action for a public nuisance also brings to fore a key aspect of climate change mitigation which is vulnerability and vulnerable groups. To recall, the Climate Change Act defines vulnerability as “the degree to which a system is susceptible to, or unable to cope with, adverse effects of climate change, including climate variability and extremes.”<sup>116</sup> Vulnerability is also characterized as “a function of the character, magnitude, and rate of climate change and variation to which a system is exposed, its sensitivity, and its adaptive capacity.”<sup>117</sup> The primary objective of the Climate Change Act is to protect the climate system for the benefit of humankind and to reduce risks of climate-related disasters<sup>118</sup>. The existence of the vulnerability and vulnerable groups, such as the poor, women, and children<sup>119</sup>, further impels the state to address the circumstances that aggravate ecological health. This is why actions that curb public nuisance are of particular importance.

On the other hand, any other nuisance that does not fall under this definition is a private nuisance.<sup>120</sup> The breadth of what can constitute as a private nuisance is significant in climate change litigation as it can cover activities of corporations, the harms of which are felt, although the attribution and causation questions may not be neatly resolved.

Of note also, and quite helpful in climate change litigation, is the clear rule in the Civil Code that “lapse of time cannot legalize any nuisance, whether public or private.”<sup>121</sup>

## ii. Negligence and environmental tort

Philippine tort law encompasses a wide array of potential causes of action.

The cause of action that provides the most potent possibility for climate change litigation is the tort of negligence, which is called a *quasi-delict* in this jurisdiction. The Republic Act No. 386 or the Civil Code of the Philippines (“Civil Code”) defines a quasi-delict as follows:

ARTICLE 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

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<sup>115</sup> CIVIL CODE, § 703.

<sup>116</sup> Rep. Act No. 9729, § 3. Climate Change Act of 2009.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> CIVIL CODE, § 695.

<sup>121</sup> CIVIL CODE, § 698.

The Civil Code defines negligence based on the standard of a how a fictional reasonable person would act:

ARTICLE 1173. The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. When negligence shows bad faith, the provisions of articles 1171 and 2201, paragraph 2, shall apply.

If the law or contract does not state the diligence which is to be observed in the performance, that which is expected of a good father of a family shall be required.

Case law instructs that negligence is a relative term and its application depends on the situation of the parties and the degree of care and vigilance which the circumstances reasonably require.<sup>122</sup> In the case of *Philippine National Construction Corporation v. Hon. Court of Appeals*, the Supreme Court defined negligence as follows:

Negligence is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would do. It also refers to the conduct which creates undue risk of harm to another, the failure to observe that degree of care, precaution and vigilance that the circumstance justly demand, whereby that other person suffers injury.<sup>123</sup>

The Supreme Court, in the 1918 case of *Amado Picart v. Frank Smith*<sup>124</sup> ("*Picart*"), formulated the test by which to determine the existence of negligence:

The test by which to determine the existence of negligence in a particular case may be stated as follows: Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence. The law here in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet paterfamilias of the Roman law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that.

The question as to what would constitute the conduct of a prudent man in a given situation must of course be always determined in the light of human experience and in view of the facts involved in the particular case...Stated in these terms, the proper criterion for determining the existence of negligence in a given case is this: Conduct is said to be negligent when a prudent man in the position of the tortfeasor would have foreseen that

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<sup>122</sup> *Philippine National Railways v. Brunty*, G.R. No. 169891 (2006).

<sup>123</sup> *Philippine National Construction Corp. v. CA*, G.R. No. 159270 (2005).

<sup>124</sup> *Picart v. Smith*, G.R. No. L-12219 (1918).

an effect harmful to another was sufficiently probable to warrant his foregoing conduct or guarding against its consequences.<sup>125</sup>

*Picart* and the succeeding cases that quote its test have used the vantage point of a reasonable person, and this has become the perspective in which the standard of the “good father of the family” in the Civil Code has been understood. In other words, in any given situation, the law considers what would be reckless, blameworthy, or negligent in the person (natural or juridical) of ordinary intelligence and prudence and determines liability by that.<sup>126</sup>

While some decisions use tort and quasi-delict interchangeably, tort is really the broader category of causes of action. Put differently, tort is a classification of several causes of action, while quasi-delict embodies a single cause of action.

Case law has repeatedly pronounced that the elements of a tort action are: (a) duty, (b) breach, (c) injury, and (d) proximate causation.<sup>127</sup> On the other hand, the elements of a quasi-delict are: (a) act or omission, (b) the presence of fault or negligence in the performance or non-performance of the act, (c) injury, (d) causal connection between the negligent act and the injury, and (e) that there is no pre-existing contractual relation between the parties. Save for the element requiring the absence of a contract, both causes of action have similar requirements.

The case of *National Power Corporation et. al. v. The Court of Appeals, Gaudencio C. Rayo, et. al.*,<sup>128</sup> (“*Rayo*”) illustrates the use of a tort or quasi-delict as a cause of action in the context of a climate change impact. This case helps in understanding the appreciation of the content and sources of duties and how they are breached in this context.

*Rayo* involved complaints for damages filed against the National Power Corporation (“NPC”), a government-owned and controlled corporation, and its then plant supervisor Benjamin Chavez, which sought to recover actual and other damages for the loss of lives and the destruction to property caused by the inundation of the plaintiffs’ town.<sup>129</sup> The plaintiffs alleged NPC operated and maintained a multi-purpose hydroelectric plant in their town, and that the flooding was caused by NPC’s negligence in releasing the water through the spillways of the dam in the hydroelectric plant.<sup>130</sup> Specifically, the plaintiffs theorized that NPC and its plant supervisor had prior knowledge that a typhoon was going to enter the area, and that despite such knowledge the defendant

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<sup>125</sup> *Id.*

<sup>126</sup> *Philippine National Construction Corp. v. CA*, G.R. No. 116896 (1997).

<sup>127</sup> *Garcia v. Salvador*, G.R. No. 168512 (2007).

<sup>128</sup> *NPC v. CA*, G.R. Nos. 103442-45 (1993).

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

failed to exercise due diligence in monitoring the water level at the dam.<sup>131</sup> Thus, when the said water level went beyond the maximum allowable limit, the defendants suddenly and recklessly opened the dam's spillways.<sup>132</sup> The release of a large amount of water inundated the banks of the river in the town where the plaintiffs lived, which resulted in the drowning of the members of the household of the plaintiffs and their animals, as well as in the destruction of their properties.<sup>133</sup>

NPC and its plant supervisor defended their action by stating that they sent written notices to the different municipalities in the area near the plant to warn about the impending release of a large volume of water and to advise the residents to take the necessary precautions.<sup>134</sup> Further, the defendants alleged that they "exercised due care, diligence and prudence in the operation and maintenance of the hydroelectric plant" and that the release of the water was necessary to prevent the collapse of the dam and avoid greater damage to people and property.<sup>135</sup> Despite exercising due diligence, however, NPC and its plant supervisor could still not contain or control the flood that resulted.<sup>136</sup>

From the positions of the parties, two positions are apparent. First, the plaintiffs alleged that NPC and its supervisors were negligent in monitoring the water level so that they released the water too late, causing the flooding. The defendants countered that the release was necessary, and that they took precautions before they made this decision. Second, the plaintiffs argued that the defendants were negligent in not informing the residents early enough about the release of the water, thus preventing the residents from preparing for the release and the potential damage it may cause. On this point, the defendants posited that the "early warning written notices" they sent to the town's residents was sufficient to inform the plaintiffs.<sup>137</sup>

In deciding whether NPC breached its duty, and that such breach caused the injury to the plaintiffs, the Supreme Court referred to an earlier decided case which also involved NPC, the same typhoon, and similar injuries to different residents. The Supreme Court applied its reasoning in the 1992 case of *National Power Corporation, et. al., vs. Court of Appeals, et. al.* ("1992 NPC case") The Supreme Court stated:

These same errors were raised by herein petitioners in G.R. No. 96410, entitled *National Power Corporation, et al., vs. Court of Appeals, et al.*, which this Court decided on 3 July 1992. The said case involved the very same incident subject of the instant petition. In no uncertain terms, We declared therein that **the proximate cause of the loss and damage**

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<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

**sustained by the plaintiffs therein — who were similarly situated as the private respondents herein — was the negligence of the petitioners, ... We thus cannot now rule otherwise..., but also because of the fact that on the basis of its meticulous analysis and evaluation of the evidence adduced by the parties in the cases subject of CA-G.R. CV Nos. 27290-93, public respondent found as conclusively established that indeed, the petitioners were guilty of “patent gross and evident lack of foresight, imprudence and negligence in the management and operation of Angat Dam,” and that “the extent of the opening of the spillways, and the magnitude of the water released, are all but products of defendants-appellees’ headlessness, slovenliness, and carelessness.”**<sup>138</sup>

With the early knowledge of NPC and its plant supervisor, a reasonable person in their position should have closely monitored the water levels, and released the water early and gradually to prevent the damage caused by the flooding that would follow when the water is released in one go. Not having done this, the Supreme Court ruled in *Rayo*, citing the 1992 NPC Case, that NPC and the plant supervisor were negligent and that such negligence was a proximate cause of the injury.

Another proximate cause, according to *Rayo*, was the lack of early warning on the release of water that could have apprised the residents to take precautionary measures and be on alert at the time of release. On this point, the NPC and the plant supervisor’s defense was that they sent this notice to the town about three days before the flooding. The Supreme Court found this notice insufficient.<sup>139</sup>

Thus, there is negligence committed by NPC in its failure to warn the residents of the release of water that could cause injury to them. There was failure in two aspects. First, the content of the notice did not meaningfully or sufficiently convey the risk or the gravity of the situation. In fact, it was tentative in its tone. Second, NPC did not ensure that the notice was in fact received by the authorities and the people, so that it did not actually achieve its purpose. This had implications in the potential theory of a case involving climate change. In the *Rayo* case, knowledge of the risk and the implication of what action is required of a reasonable person (in this case a corporation) to address or mitigate that risk were defined based on the circumstances. The characterization of the duty and breach played a crucial role in finding a corporation liable for its negligence. This approach is useful in building a case for climate change litigation.

In fact, such a case had been built and acknowledged in the 2021 case of *Pacalna Sanggacala, et. al. v. National Power Corporation*,<sup>140</sup> (“*Sanggacala*”) a landmark case that explicitly created a cause of action called an environmental tort. The Supreme Court opened its discussion with this line:

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<sup>138</sup> G.R. No. 96410, July 3, 1992. Citations omitted; emphases supplied.

<sup>139</sup> NPC v. CA, G.R. No. 96410 (1992).

<sup>140</sup> *Sanggacala v. NPC*, G.R. No. 209538 (2021).



Tort law can be used to address environmental harms to a well-defined area or specific person, or a class of persons, when readily supported by general and specific causation and closely fits the elements of a tort cause of action.

*Sanggacala* involves the same corporation (NPC) and substantially similar facts as *Rayo*. The case was commenced through a complaint for damages filed by a group of farmers, farmland and fishpond owners along the Lake Lanao shore claiming that NPC's refusal to open the floodgates of Agus Regulation Dam whenever flooding occurred damaged their farmlands and crops.<sup>141</sup> The duties of NPC described in this case were based on the 1973 Memorandum Order No. 398 issued by the Office of the President prescribing measures to preserve the Lake Lanao Watershed, and to enforce the reservation of areas around the lake below 702 meters elevation.<sup>142</sup> The memorandum mandated NPC to "place in every town around the lake, at the normal maximum lake elevation of seven hundred and two meters, benchmarks warning that cultivation of land below said elevation is prohibited."<sup>143</sup> Like *Rayo*, this case involves a duty to warn residents of a certain risk.

In *Sanggacala*, the Supreme Court found NPC liable for an environmental tort. In arriving at this determination, it traced the basis of the cause of action from quasi-delict, and acknowledged that it is often used interchangeably with the concept of tort.<sup>144</sup> Although the Supreme Court did not resolve this confusion, possibly because their crucial elements overlapped anyway, it proceeded to define and explain the cause of action of an environmental tort. The discussion of the Supreme Court is substantially quoted to induce a fuller appreciation of the conceptual basis of this newly articulated cause of action:

Environmental tort is a hybrid of two disciplines—tort law and environmental law, and may provide an "institutional answer that addresses the remaining gaps in public health protection." Environmental harm may include "immediate and future physical injury to people, emotional distress from fear of future injury, social and economic disruption, remediation costs, property damage, ecological damage, and regulatory harms."

...

Tort law provides a means to address environmental harms, where the "harm is to a well-defined area or specific person or class of persons, is readily supported by general and specific causation, and closely fits the traditional elements of a tort cause of action[;]" to wit:

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<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> Citations omitted.

*In the “classic” environmental tort action involving negligence, or nuisance, or both, an accident occurs releasing a hazardous substance onto another’s land. The polluter is clearly identifiable, the impacted area relatively confined, the injuries caused and capable of being caused in the absence of remediation are known, and the extent of the damage both to persons and property are readily quantifiable. The elements of the tort actions are satisfied, and the common law can provide an effective remedy.*

But rarely in environmental tort actions are these issues quite so clear-cut. Problems and disputes among the parties often develop over the scope of the impacted area, the parties responsible, causation, and the potential long-term effects of a hazardous substance release. **Where there is no immediate accident or event giving rise to the action, but rather a gradual release involving multiple hazardous substances with differing degrees of potential toxicity and exposure routes, or multiple potential sources or defendants, the benefits of the tort system quickly begin to break down and can result in a very costly, protracted, and unsatisfactory resolution of the claim. Virtually all modern environmental tort actions also involve dueling experts with competing views regarding causation and the scope of the harm and remediation necessary. It is in these more complex toxic tort cases where the tort system often becomes far less efficient and effective in responding to alleged environmental harms.**

*Regardless of the relative efficiency of the common law, tort law remains an important source of law to resolve harms to the environment. In the case of comparatively simple and straightforward harms, for instance flooding someone’s land and killing off plant life, tort law may provide the only means of redress available...Where the situation is more serious and complex, numerous parties are involved, and the scope of alleged injury is more widespread, the common law has been less up to the task and environmental legislation has proved both helpful and necessary.<sup>145</sup>*

In its disquisition, the Supreme Court acknowledged the value of the tort system to address harms both to people and to the environment caused by an event which may have been spread over a period of time. While it did recognize the weakness of the system in addressing cases involving “multiple potential sources or defendants,” it nonetheless concretely aids in the resolution of harms to the environment.

On this score, **the Supreme Court discussed the concept of negligence as an element in a cause of action for environmental tort by stating that such a cause of action will prosper when one proves an actual injury to a person or group of persons or to property.**<sup>146</sup> According to the Supreme Court, the essential purpose of an environmental tort action is “to provide corrective justice based upon the relative fault or blameworthiness of another.”<sup>147</sup> Expounding on negligence as the core element of this

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<sup>145</sup> (Emphasis supplied, citations omitted)

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

cause of action, *Sanggacala* quoted the article of Mark Latham, *et. al.* entitled *The Intersection of Tort and Environmental Law Where the Twains Should Meet and Depart*.<sup>148</sup>

The Supreme Court has laid the basis for a cause of action that litigates contribution to climate change and its impacts, particularly as it impresses that the tort of negligence may be used to hold persons accountable for harmful releases to the environment (GHG emissions), failure to warn risks of injury (as in climate change science obfuscation like the CHR's NICC finding), or failure to promptly remediate (climate change mitigation).

Similar to the approach in *Rayo*, *Sanggacala* made reference to the 2005 *National Power Corporation v. Court of Appeals*<sup>149</sup> case ("2005 NPC Case") where NPC was similarly sued "for its failure to increase the water outflow from the Agus Regulation Dam despite the rise of the lake's water level from heavy rains in 1986 causing damage to their fishponds and its improvements sited along the Lake Lanao shore."<sup>150</sup> In the 2005 NPC Case, the Supreme had already ruled that NPC was negligent for failing to perform its two-fold duty under Memorandum Order No. 398: (1) to maintain the normal maximum level of the lake at 702 meters; and (2) to build and maintain benchmarks warning the inhabitants in the area of the prohibition on cultivation of land below the 702-meter elevation.<sup>151</sup>

Using the 2005 NPC Case basis, together with the trial court's appreciation of the evidence of negligence, the Supreme Court in *Sanggacala* found that the overflowing caused an environmental harm<sup>152</sup> and this injury was, in turn, caused by NPC's negligence in operating the Agus Regulation Dam.<sup>153</sup> With the injury present and the showing of general and specific causation that closely fits the traditional elements of a tort cause of action,<sup>154</sup> the Supreme Court concluded that the essential elements of an environmental tort action based on negligence are present.<sup>155</sup> The government-owned and controlled corporation, NPC, is liable for an environmental tort.

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<sup>148</sup> Mark Latham, Victor E. Schwartz, and Christopher E. Appel, *The Intersection of Tort and Environmental Law Where the Twains Should Meet and Depart*, 80 FORDHAM L. REV. 737, 742 (2011), available at <<https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=4670&context=flr>> (last accessed on April 28, 2021).

<sup>149</sup> NPC v. CA, G.R. No. 124378 (2005).

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

### iii. Trespass

Article 19 of the Civil Code governs the law on human relations in the Philippines. This provision sets certain standards which must be observed in the exercise of one's rights and the performance of one's duties. These standards are: (a) to act with justice; (b) to give everyone his or her due; and (c) to observe honesty and good faith.

When a right is exercised in a manner which does not conform with the norms under Article 19 and results in damage to another, a legal wrong is committed. However, Article 19 does not provide a remedy for its violation. An action for damages under either Article 20 or Article 21 of the Civil Code would be proper. Trespass may fall under this cause of action as it is illegal to enter private property without the consent of the owner. It can be a civil action on top of a criminal action.

Further, even when there is a right to enter, it must not be exercised in a manner that unduly prejudices the owner. Thus, Article 21 may support a cause of action for being *contra bonus mores*.

As regards trespass as a criminal action, Article 280 of the Revised Penal Code prescribes *arresto menor*—imprisonment from one day to 30 days—or a fine not exceeding 200 pesos, or both, for simple trespass. These penalties can escalate based on the presence of aggravating factors like use of weapons or injuring someone during the act. Other forms of trespass are penalized as follows:

*Art. 281. Other forms of trespass.* - The penalty of *arresto menor* or a fine not exceeding Forty thousand pesos (P40,000), or both, shall be imposed upon any person who shall enter the closed premises or the fenced estate of another, while either or both of them are uninhabited, if the prohibition to enter be manifest and the trespasser has not secured the permission of the owner or the caretaker thereof.

### iv. Impairment of Public Trust Resources

Arguably, the impairment of public trust resources could fall under the broad category of human relations torts, particularly since a relevant provision in the area expresses this cause of action:

ARTICLE 27. Any person suffering material or moral loss because a public servant or employee refuses or neglects, without just cause, to perform his official duty may file an action for damages and other relief against the latter, without prejudice to any disciplinary administrative action that may be taken.

However, a cause of action based on constitutional provisions reserving natural resources to citizens could fit more neatly into what is aimed to be achieved in cases involving environmental protection, generally, or climate change litigation, specifically. Attempts to litigate on these bases are illustrated by at least two cases.

First, in the case of *Most Reverend Pedro D. Arigo, et. al. v. Scott H. Swift in his capacity as Commander of the US. 7th Fleet, et. al.*<sup>156</sup> (“*Arigo*”), the subject of the dispute was the grounding of the US military ship USS Guardian over the Tubbataha Reefs.<sup>157</sup> The USS Guardian, an Avenger-class mine countermeasures ship of the US Navy,<sup>158</sup> ran aground on the northwest side of South Shoal of the Tubbataha Reefs, while it was transiting the Sulu Sea.<sup>159</sup> U.S. 7th Fleet Commander, Vice Admiral Scott Swift, expressed regret for the incident, and then US Ambassador to the Philippines Harry K. Thomas, Jr., assured that the United States will provide appropriate compensation for damage to the reef caused by the ship.<sup>160</sup> The US Navy led a salvage team that removed the pieces of the grounded ship from the coral reef.<sup>161</sup>

Petitioners religious personalities, academics, and party-list groups and representatives, filed with the Supreme Court a petition for the issuance of a Writ of Kalikasan with prayer for the issuance of a Temporary Environmental Protection Order (“TEPO”) asserting that the “grounding, salvaging and post-salvaging operations of the USS Guardian cause[d] and continue to cause environmental damage of such magnitude as to affect the provinces... which events violate their constitutional rights to a balanced and healthful ecology.”<sup>162</sup> Petitioners also sought a directive from the Supreme Court for the institution of civil, administrative and criminal suits for acts committed in violation of environmental laws and regulations in connection with the grounding incident.<sup>163</sup>

In particular, the petitioners argued that the grounding and salvaging violated Republic Act No. 10067 or the Tubbataha Reefs Natural Park of 2009 (“TRNP Act”) which law ensures “the protection and conservation of the globally significant economic, biological, sociocultural, educational and scientific values of the Tubbataha Reefs into perpetuity for the enjoyment of present and future generations.”<sup>164</sup> The TRNP Act mandates a “no-take” policy which means that entry into the waters of Tubbataha Reefs Natural Park is strictly regulated and many human activities are prohibited and penalized or fined, including fishing, gathering, destroying and disturbing the resources within the natural park.<sup>165</sup>

The law created the Tubbataha Protected Area Management Board (“TPAMB”) which shall be the sole policy-making and permit-granting body of the TRNP, with the function of, among others, “ensuring the implementation and enforcement of laws, rules and

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<sup>156</sup> *Arigo v. Swift*, G.R. No. 206510 (2014).

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> Rep. Act No. 10067 (2009), § 2. Tubbataha Reefs Natural Park (TRNP) Act of 2009.

<sup>165</sup> *Id.*

regulations, policies, programs and projects within the natural park”<sup>166</sup> and “determining, based on existing scientific evidence, laws, rules and regulations, international instruments, traditional resource utilization, management modalities in the area, carrying capacity, and observing precautionary principle, the modes of utilization of the natural park and all the resources found therein.”<sup>167</sup>

The tenor of these functions, and the very nature of the TRNP Act with a mandate of preserving the natural park and its resources “for the enjoyment of present and future generations” makes it clear that the TPAMB, as representative of the people, is a steward of the natural park.

While the Supreme Court did not resolve the issues raised by the arguments based on the TRNP Act owing to mootness, the Supreme Court acknowledged the viability of a cause of action based on the impairment of public resources when it stated that petitioners are entitled to the reliefs of protection and rehabilitation by Philippine officials of the natural park.<sup>168</sup>

Second, in *Resident Marine Mammals of the Protected Seascape Tañon Strait, e.g., Toothed Whales, Dolphins, Porpoises, and Other Cetacean Species, et.al. v. Secretary Angelo Reyes, et.al.*<sup>169</sup> (“*Resident Marine Mammals*”), petitions were filed challenging the validity of Service Contract No. 46 (the “Service Contract”) entered into by and between the Department of Energy (“DOE”) and Japan Petroleum Exploration Co., Ltd. (“JAPEX”), which allowed the exploration, development, and exploitation of petroleum resources within Tañon Strait, a narrow passage of water situated between the islands of Negros and Cebu.<sup>170</sup> One petition sought the nullification of the Service Contract for being a gross violation of the Constitution and certain international and municipal laws, while the other prayed for the nullification of the ECC issued for the Service Contract and the Tañon Strait Oil Exploration Project.<sup>171</sup>

In one of the petitions, the petitioners were the Resident Marine Mammals toothed whales, dolphins, porpoises, and other cetacean species, which inhabit the waters in and around the Tañon Strait.<sup>172</sup> They were joined by natural persons who in their capacity as legal guardians and friends of the Resident Marine Mammals who referred to themselves as Stewards.<sup>173</sup>

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<sup>166</sup> *Id.* § 13.

<sup>167</sup> Permits shall only be issued for such modes of utilization and enjoyment as the TPAMB and this Act shall allow.

<sup>168</sup> Arigo, G.R. No. 206510. (Emphases and underscoring supplied).

<sup>169</sup> *Resident Marine Mammals v. Sec. Angelo Reyes*, G.R. No. 180771 (2015).

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> Citations omitted; emphasis supplied.

The position emphasized in the arguments of the petitioners show the tenor of the argument - that the Service Contract and the oil exploration project involved impaired the public trust of these resources. This stewardship over public trust resources is rooted in Article XII, Section 2 of the 1987 Constitution:

Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. **The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens.** Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

**The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.** The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

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

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution.<sup>174</sup>

In resolving the question of the constitutionality of the Service Contract for a joint oil exploration project between a state agency and a private foreign corporation, the Supreme Court set the premise that, as ruled in the earlier case of *La Bugal-B'laan Tribal Association, Inc. v. Ramos*,<sup>175</sup> service contracts are still allowed under the 1987 Constitution, albeit with new safeguards that did not exist in the 1973 Constitution.<sup>176</sup>

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<sup>174</sup> *Id.* (Emphasis supplied).

<sup>175</sup> *La Bugal-B'laan Tribal Association, Inc. v. Ramos*, G.R. No. 127882 (2004).

<sup>176</sup> *Id.*

The Supreme Court in the end ruled that, while service contracts are allowed, this particular Service Contract did not conform to the parameters because the President was not the signatory of the Service Contract, and Congress was not notified of such contract.<sup>177</sup> Thus, the Service Contract was null and void.<sup>178</sup>

The tenor of the Supreme Court's reasoning on the absence of these requisites in the *Resident Mammals Case* reveal the public trust characteristics of the resources covered, and the nature of the safeguards that protect their impairment. In the same case, the Supreme Court also considered the arguments that the Service Contract violated Republic Act No. 9147 or the Wildlife Resources Conservation and Protection Act and Republic Act No. 7586 or the National Integrated Protected Areas System Act of 1992 ("NIPAS Act"), and agreed with petitioners that respondent state agencies did violate the environmental safeguards in these laws:

**True to the constitutional policy that the "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," Congress enacted the NIPAS Act to secure the perpetual existence of all native plants and animals through the establishment of a comprehensive system of integrated protected areas. These areas possess common ecological values that were incorporated into a holistic plan representative of our natural heritage.** The system encompasses outstandingly remarkable areas and biologically important public lands that are habitats of rare and endangered species of plants and animals, biogeographic zones and related ecosystems, whether terrestrial, wetland, or marine. It classifies and administers all the designated protected areas to maintain essential ecological processes and life-support systems, to preserve genetic diversity, to ensure sustainable use of resources found therein, and to maintain their natural conditions to the greatest extent possible.

...

**Under Section 4 of the NIPAS Act, a protected area refers to portions of land and water, set aside due to their unique physical and biological significance, managed to enhance biological diversity and protected against human exploitation.**

**The Tañon Strait, pursuant to Proclamation No. 1234, was set aside and declared a protected area under the category of Protected Seascape. The NIPAS Act defines a Protected Seascape to be an area of national significance characterized by the harmonious interaction of man and land while providing opportunities for public enjoyment through recreation and tourism within the normal lifestyle and economic activity of this areas;** thus a management plan for each area must be designed to protect and enhance the permanent preservation of its natural conditions. Consistent with this endeavor is the requirement that an Environmental Impact Assessment (EIA) be made

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<sup>177</sup> *Id.*

<sup>178</sup> *Id.*



prior to undertaking any activity outside the scope of the management plan. Unless an ECC under the EIA system is obtained, no activity inconsistent with the goals of the NIPAS Act shall be implemented.

...

It is true that the restrictions found under the NIPAS Act are not without exceptions. However, while an exploration done for the purpose of surveying for energy resources is allowed under Section 14 of the NIPAS Act, this does not mean that it is exempt from the requirement to undergo an EIA under Section 12.

...

The public respondents themselves admitted that JAPEX only started to secure an ECC prior to the second sub-phase of [the Service Contract], which required the drilling of an oil exploration well. This means that when the seismic surveys were done in the Tañon Strait, no such environmental impact evaluation was done. Unless seismic surveys are part of the management plan of the Tañon Strait, such surveys were done in violation of Section 12 of the NIPAS Act and Section 4 of Presidential Decree No. 1586, which provides:

...

The respondents' subsequent compliance with the EISS for the second sub-phase of [the Service Contract] cannot and will not cure this violation.

...

Moreover, [the Service Contract] was not executed for the mere purpose of gathering information on the possible energy resources in the Tañon Strait as it also provides for the parties' rights and obligations relating to extraction and petroleum production should oil in commercial quantities be found to exist in the area. While Presidential Decree No. 87 may serve as the general law upon which a service contract for petroleum exploration and extraction may be authorized, the exploitation and utilization of this energy resource in the present case may be allowed only through a law passed by Congress, since the Tañon Strait is a NIPAS area. Since there is no such law specifically allowing oil exploration and/or extraction in the Tañon Strait, no energy resource exploitation and utilization may be done in said protected seascape.<sup>179</sup>

In the recent case of *Maynilad Water Services, Inc. v. The Secretary of the Department of Environment and Natural Resources* (G.R. No. 202897, 06 August 2019), the Supreme strengthened the impairment of public resources as a cause of action when it imported into Philippine law the "public trust doctrine":

In this framework, a relationship is formed – "the [s]tate is the trustee, which manages specific natural resources the *trust principal* - for the trust principal for the benefit of the current and future generations - the *beneficiaries*." "[T]he [S]tate has an affirmative duty

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<sup>179</sup> Citations omitted; emphases and underscoring supplied.

to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible.” But with the birth of privatization of many basic utilities, including the supply of water, this has proved to be quite challenging. The State is in a continuing battle against lurking evils that has afflicted even itself, such as the excessive pursuit of profit rather than purely the public's interest.

These exigencies forced the public trust doctrine to evolve from a mere principle to a resource management term and tool flexible enough to adapt to changing social priorities and address the correlative and consequent dangers thereof. **The public is regarded as the beneficial owner of trust resources, and courts can enforce the public trust doctrine even against the government itself.**

In *Maynilad*, the Supreme Court ruled that the public trust doctrine speaks of an imposed duty upon the State and its representative (concessionaires) of continuing supervision over the taking and use of appropriated water. Thus, parties who acquired rights in trust property only hold these rights subject to the trust and, therefore, could assert no vested right to use those rights in a manner harmful to the trust.

The Supreme Court further noted that the doctrine holds that certain natural resources belong to all and cannot be privately owned or controlled because of their inherent importance to each individual and society as a whole. It impresses upon states the affirmative duties of a trustee to manage these natural resources for the benefit of present and future generations and embodies key principles of environmental protection: stewardship, communal responsibility, and sustainability.

In the public trust framework, a relationship is formed: the *state* is the trustee, which manages specific natural resources the *trust principal* – for the benefit of the current and future generations – the *beneficiaries*.

In connection with this, the Supreme Court recognized that with the privatization of many basic utilities, including water supply, it has proven to be quite challenging for the State to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible.

Thus, while there has been no case that pursued this as a tort action, *Maynilad* offers a basis for such a future action. This is in addition to cases filed under administrative law and public law causes of action.

## v. Civil Conspiracy

Apart from the provision on quasi-delict, there are other provisions in the Civil Code which may be used as basis for a tort cause of action. These provisions are:

Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

Article 20. Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.

Article 21. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

Case law is instructive that Article 19 cannot stand alone.<sup>180</sup> It is made enforceable and concrete when paired with either Article 20 or 21.<sup>181</sup> Articles 19 and 20, together, make a person liable for illegal acts. Thus, apart from criminal and administrative actions for violation of the environmental protection statutes discussed earlier, these human relations torts provisions may be the anchor of a cause of action for the violation of statutory commands relevant to climate change.

Further, Article 19 and 21, together holds one liable for acts *contra bonus mores*. This is wider in scope than Article 20, because there is no need for an illegal act or a violation to have occurred. In this cause of action, it is enough that one willfully causes loss or injury to another in a manner that is contrary to public policy. In many laws, the State has declared that it is a public policy to address and mitigate climate change. This could contemplate a situation like that found by the CHR's NICC Report that a corporation had knowledge of the harmful contribution of its business or activity to climate change and the exacerbation of its impacts, and that refusal to address it despite such knowledge could mean a willful causing of loss to any citizen in the Philippines.

The breadth of the tort action here can encompass virtually everything that is listed under the category of tort law in the Questionnaire, including trespass and civil conspiracy. More specifically, trespass would be covered by this provision in the Revised Penal Code that penalizes various forms of trespass:

ARTICLE 281. Other Forms of Trespass. — The penalty of *arresto menor* or a fine not exceeding 200 pesos, or both, shall be imposed upon any person who shall enter the closed premises or the fenced estate of another, while either of them are uninhabited, if the prohibition to enter be manifest and the trespasser has not secured the permission of the owner or the caretaker thereof.

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<sup>180</sup> Arco Pulp and Paper Co. Inc., et. al. v. Dan T. Lim, et. al., G.R. No. 206806, June 25, 2014.

<sup>181</sup> *Id.*

Although a criminal action, the civil action for the civil liability of the offender would be impliedly instituted in this action.<sup>182</sup> In addition, an independent civil action may also be filed for acts constituting trespass, when they fall under the tort action contemplated by the violation of constitutional rights.

#### vi. Fraudulent misrepresentation

An independent civil action for fraud may be filed as a tort. This is explicitly provided in the Civil Code:

ARTICLE 33. In cases of defamation, **fraud**, and physical injuries, **a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party.** Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.

The Civil Code defines fraud, in the context of contractual relations, as the inducement of a part to enter into a contract through the use of insidious words or machinations of one of the contracting parties, without them, the other party would not have agreed to enter into the contract.<sup>183</sup> The Civil Code also states that there is fraud when there is failure to disclose facts, when there is a duty to reveal them, as when the parties are bound by confidential relations.<sup>184</sup>

#### vii. Insurance liability

Special laws on insurance and misrepresentation are covered by the domain of commercial law. This is usually not considered a tort in the Philippines. However, Philippine legislators have recognized this gap. Thus, some have imagined and called for the need to develop new insurance products to address emerging challenges brought by climate change.<sup>185</sup>

#### viii. Product liability

The Civil Code provides for a strict liability rule for death or injuries caused by negligence in the manufacturing and processing of products. This cause of action falls under a tort or quasi-delict as it is explicit that no contractual relation is required:

Article 2187. Manufacturers and processors of foodstuffs, drinks, toilet articles and similar goods shall be liable for death or injuries caused by any noxious or harmful substances used, although no contractual relation exists between them and the consumers. (n)

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<sup>182</sup> RULES OF COURT, Rule 111, § 1.

<sup>183</sup> CIVIL CODE, § 1338.

<sup>184</sup> CIVIL CODE, § 1339.

<sup>185</sup> Chino S. Leyco, *Recto wants climate-change-focused insurance options*, Manila Bulletin Online, Jan. 25, 2024, available at: <https://mb.com.ph/2024/1/24/recto-wants-climate-change-focused-insurance-options>

## ix. Unjust enrichment

The action for unjust enrichment arises from a source of obligation called quasi-contracts, which is distinct from torts or quasi-delicts.<sup>186</sup>

The Civil Code defines this cause of action, and its source relationship as follows:

Article 2142. Certain lawful, voluntary and unilateral acts give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another. (n)

The Supreme Court explained the concept of unjust enrichment in *National Power Corporation v. Commission on Audit*,<sup>187</sup> thus:

Unjust enrichment refers to the result or effect of failure to make remuneration of, or for property or benefits received under circumstances that give rise to legal or equitable obligation to account for them. To be entitled to remuneration, one must confer benefit by mistake, fraud, coercion, or request.

Despite it being a cause of action independent of a tort, one may still frame an unjust enrichment case as a tort considering these provisions that one finds in the section on human relations torts in the Civil Code:

ARTICLE 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

ARTICLE 23. Even when an act or event causing damage to another's property was not due to the fault or negligence of the defendant, the latter shall be liable for indemnity if through the act or event he was benefited.

## D. Company and Financial Laws

Republic Act No. 11232 or the Revised Corporation Code of the Philippines ("Revised Corporation Code") has provisions that make reference to liabilities for corporate tort. In Section 20, the law, in stating the general rule on corporations by estoppel, also provides that "when any such ostensible corporation is sued on any transaction entered by it as a corporation or on any tort committed by it as such, it shall not be allowed to use its lack of corporate personality as a defense." Further, Section 99 on Agreements by Stockholders in Close Corporations, emphasizes the strict fiduciary duties of stockholders actively engaged in the management or operation of the business and affairs of a close corporation and, includes the rule that "[t]he stockholders shall be

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<sup>186</sup> CIVIL CODE, § 1157.

<sup>187</sup> NPC v. COA, G.R. No. 242342 (2020).

personally liable for corporate torts unless the corporation has obtained reasonably adequate liability insurance.”<sup>188</sup>

In *Jose Emmanuel P. Guillermo v. Crisanto P. Uson*,<sup>189</sup> the Supreme Court defined “corporate tort” plainly as a violation of a right given or the omission of a duty imposed by law; a breach of a legal duty.<sup>190</sup>

In the earlier case of *Sergio F. Naguiat, et. al. v. National Labor Relations Commission*<sup>191</sup> (“*Naguiat*”), the Supreme Court had occasion to apply the provision on liability for corporate tort in a complaint of the terminated taxi drivers against an officer of a close corporation who had ended their engagement.<sup>192</sup> The Supreme Court discussed the application:

Our jurisprudence is wanting as to the definite scope of “corporate tort.” Essentially, “tort” consists in the violation of a right given or the omission of a duty imposed by law. Simply stated, tort is a breach of a legal duty. Article 283 of the Labor Code mandates the employer to grant separation pay to employees in case of closure or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, which is the condition obtaining at bar. CFTI failed to comply with this law-imposed duty or obligation. Consequently, its stockholder who was actively engaged in the management or operation of the business should be held personally liable.

This discussion in *Naguiat* on the absence of a definite scope for corporate torts is significant considering its potential to cover activities and the business of corporations that contribute to an increase in GHG emission, and to the worsening of climate change and its impacts. This is discussed in this section, and not under tort law, due to the specificity of its source, *i.e.* the Close Corporations chapter of the Revised Corporation Code.

Further, the Revised Corporation Code’s provision on the liability of corporate agents may be used as basis to pursue cases against corporate policies that violate environmental and climate change laws, that take a different direction from mandates for climate change mitigation, and policies that just outright pursue or continue dependence on activities that increase GHG emissions. This provision reads:

SEC. 30. Liability of Directors, Trustees or Officers. – Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees

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<sup>188</sup> Rep. Act No. 11232 (2019), § 99. Revised Corporation Code.

<sup>189</sup> *Guillermo v. Uson*, G.R. No. 198967 (2016).

<sup>190</sup> *Id.*

<sup>191</sup> *Naguiat v. NLRC*, G.R. No. 116123 (1997).

<sup>192</sup> *Id.*

shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons. A director, trustee, or officer shall not attempt to acquire, or acquire any interest adverse to the corporation in respect of any matter which has been reposed in them in confidence, and upon which, equity imposes a disability upon themselves to deal in their own behalf; otherwise the said director, trustee, or officer shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation.<sup>193</sup>

Apart from statutes, issuances of the Securities and Exchange Commission (SEC) relevant to climate change may also be the source of liability for corporations and their agents.

One potent method for ensuring that corporations comply with their climate change commitments is the requirement that they report certain information to a regulatory agency. In 2019, the (SEC) issued SEC Memorandum Circular No. 4, Series of 2019 or the Sustainability Reporting Guidelines for Publicly-Listed Companies (“Sustainability Guidelines”).

The Guidelines is intended to help Publicly-Listed Companies (“PLCs”) assess and manage non-financial performance across Economic, Environmental and Social aspects of their organization, and enable PLCs to measure and monitor their contributions towards achieving universal targets of sustainability, such as the United Nations Sustainable Development Goals, as well as national policies and programs, such as the Philippine Development Plan.<sup>194</sup>

The Sustainability Guidelines use Reporting Principles for defining report quality guide choices on ensuring the quality of information in a sustainability report, including its proper presentation.<sup>195</sup> The quality of information is important for enabling stakeholders to make sound and reasonable assessments of an organization, and to take appropriate actions.<sup>196</sup> These principles are:

(a) materiality - important information reflecting the organization's economic, environmental, and social impacts, or influencing the decisions of stakeholders, with ‘impact’ referring to the effect an organization has on the economy, the environment, and/or society (positive or negative) and not to an effect upon an organization, such as a change to its reputation (anticipating the greenwashing campaigns of corporations);<sup>197</sup>

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<sup>193</sup> Rep. Act No. 11232 (2019), § 30. Revised Corporation Code.

<sup>194</sup> SEC Mem. Circ. No. 4 (2019).

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

(b) stakeholder inclusiveness - providing insight into the nature and quality of the organization's relationships with its key stakeholders, including how and to what extent the organization understands, takes into account and responds to their legitimate needs and interests;<sup>198</sup>

(c) balance - in the selection or presentation of information, the report shall reflect both positive and negative aspects of the reporting organization's performance to enable a reasoned assessment of overall performance, including comparisons against previously reported targets, projections, and expectations;<sup>199</sup>

(d) completeness - relating to the extent of information disclosed and its level of specificity or preciseness;<sup>200</sup>

(e) reliability - a discussion of the processes used in the preparation of the report (similar to maintaining an audit trail) in a way that they can be subjected to examination, and that establishes the quality and materiality of the information;<sup>201</sup>

(f) accuracy - sufficient accuracy and detail for stakeholders to assess the performance, including proper citation of information sources, estimated data and methodology for estimation;<sup>202</sup> and

(g) consistency and comparability - presentation of information with consistency over time, enabling analysis of any changes in the organization's performance.<sup>203</sup>

The Sustainability Guidelines penalize corporations for non-attachment of the Sustainability Report to the Annual Report, as provided in the rules on penalty for Incomplete Annual Report provided under SEC Memorandum Circular No. 6, Series of 2005 (Consolidated Scale of Fines).<sup>204</sup>

## E. Consumer Protection Law

Republic Act No. 7394 or the Consumer Act of the Philippines ("Consumer Act") prohibits the manufacture, importation, exportation, sale, offering for sale, distribution or transfer of any food, drug, device or cosmetic that is adulterated or mislabelled.<sup>205</sup>

To form a cause of action based on a corporation's commitments to protect the environment or mitigate climate change, this can be taken together with eco-labelling and packaging provisions in the Ecological Solid Waste Management Act.

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<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> SEC Mem. Circ. No. 6 (2005), § 17.1; SRC Rule No. 17.1.

<sup>205</sup> Rep. Act No. 7394 (1992), art. 40. (Consumer Act of the Philippines).



Additional protection is found in the same law which penalizes the manufacture, distribution or use of non-environmentally acceptable packaging materials,<sup>206</sup> and the importation of consumer products packaged in non-environmentally acceptable materials.<sup>207</sup>

## F. Fraud Laws

Causes of action based on fraud may fall under the earlier discussion under the tort of fraudulent misrepresentation or contractual fraud. There are felonies relating to fraud defined in the Revised Penal Code, but they have almost always been used in relating to financial fraud or monetary or property damage. In any case, Article 315 of the RPC may be framed to relate to fraud under a climate change-related cause of action. These are the relevant acts in the provision:

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:
  - (a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.
  - (b) By altering the quality, fineness or weight of anything pertaining to his art or business.
  - (c) By pretending to have bribed any Government employee, without prejudice to the action for calumny which the offended party may deem proper to bring against the offender. In this case, the offender shall be punished by the maximum period of the penalty.

If this does not work, there is a catch-all provision on other forms of deceit which would provide more room for argument:

**Article 318. Other deceits.** - The penalty of *arresto mayor* and a fine of not less than the amount of the damage caused and not more than twice such amount shall be imposed upon any person who shall defraud or damage another by any other deceit not mentioned in the preceding articles of this chapter.

In addition, the Ecological Solid Waste Management Act has a provision with a fraud element. It penalizes the importation of toxic wastes misrepresented as “recyclable” or “with recyclable content.”<sup>208</sup>

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<sup>206</sup> Rep. Act No. 9003 (2000), § 48(10). (Ecological Solid Waste Management Act of 2000).

<sup>207</sup> *Id.* § 48(11).

<sup>208</sup> *Id.* § 48(12).

## G. Contractual Obligations

The Civil Code provides for the law on obligations and contracts.<sup>209</sup> The provisions on contractual fraud include the definition of fraud presented earlier in this Report.<sup>210</sup>

One thing to note is that the Philippine legal system follows the rule that laws are read into contracts, and this does not violate the constitutional guarantee of non-impairment of contracts.<sup>211</sup> This means that the provisions of environmental protection and climate change laws, as discussed in this Report, are also read into contracts. In addition, the terms and conditions of the ECCs and permits of entities whose activities have impact on the environment or climate change are also treated much like contractual obligations.<sup>212</sup>

## H. Planning and Permitting Laws

### i. Environmental Impact Statement System Law

Presidential Decree No. 1586 entitled Establishing an Environmental Impact Statement System, Including Other Environmental Management Related Measures and for Other Purposes (“EIA Law”) established the Environmental Impact Statement System with the policy of attaining and maintaining a rational and orderly balance between socio-economic growth and environmental protection.<sup>213</sup>

Under this law, the President or his agents can “declare certain projects, undertakings or areas in the country as environmentally critical.”<sup>214</sup> The rule in the EIA Law is that a partnership or corporation which aims to undertake or operate any such declared environmentally critical project or area must first secure an Environmental Compliance Certificate (“ECC”).<sup>215</sup> As discussed earlier in this Report, an ECC is a requirement for the grant of permits or licenses in many projects involving the environment.

The EIA Law has a penal provision that applies when an ECC is not secured before an environmentally-critical project is undertaken or operated:

**Section 9. *Penalty for Violation.*** Any person, corporation or partnership found violating Section 4 of this Decree, or the terms and conditions in the issuance of the Environmental Compliance Certificate, or of the standards, rules and regulations issued by the National Environmental Protection Council pursuant to this Decree shall be punished by the suspension or cancellation of his/its certificate or and/or a fine in an amount not to exceed Fifty Thousand Pesos (P50,000.00) for every violation thereof, at the discretion of the National Environmental Protection Council.

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<sup>209</sup> CIVIL CODE, §§ 1156–2251.

<sup>210</sup> See page

<sup>211</sup> CONST. art. III, § 10.

<sup>212</sup> See Antonio Principe v. Ombudsman, G.R. No. 145973 (2002).

<sup>213</sup> Pres. Dec. No. 1586 (1978), § 1.

<sup>214</sup> *Id.* § 4.

<sup>215</sup> *Id.*

## ii. Local Government Code

Republic Act No. 7160 or the Local Government Code of 1991 (“LGC”) has a number of provisions requiring permits of corporations and other business organizations who locate or operate in their local jurisdictions.<sup>216</sup> The grant of these permits may also require that corporations abide by certain local ordinances that include protections to the environment and climate change mitigation, particularly since these ordinances are based on the police power of LGUs as encapsulated in the general welfare clause.<sup>217</sup>

On top of this, the LGC has two crucial provisions that apply in the planning and permitting of projects, and that certainly become anchors of causes of action when they are not complied with:

*Section 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 the 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.<sup>218</sup>

*Section 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.<sup>219</sup>

The ordinance power and the duty to consult are relevant to climate change, particularly since the Climate Change Act also identifies LGUs as frontline agencies in climate change mitigation and adaptation.

## iii. Other Laws with Permitting Systems or Rules

a.) The Revised Forestry Code requires authorization under a license agreement, lease, license, or permit for any person or corporation to utilize, exploit, occupy, possess or conduct any activity within any forest land.<sup>220</sup>

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<sup>216</sup> Rep. Act No. 7160 (1991). Local Government Code.

<sup>217</sup> *Id.* § 16. (Underscoring supplied).

<sup>218</sup> *Id.* § 26. (Emphases and underscoring supplied).

<sup>219</sup> *Id.* § 27.

<sup>220</sup> Pres. Dec. No. 705 (1975), § 20. Revised Forestry Code of the Philippines.

b.) The Sanitation Code requires that a person, firm, corporation, or entity obtains a sanitary permit in order to operate an industrial establishment.<sup>221</sup>

## I. Other Causes of Action

### i. Indigenous Peoples Rights Act

Republic Act No. 8371 or the Indigenous Peoples' Rights Act of 1997 ("IPRA") also emphasizes the nexus between climate change and the hardships of vulnerable groups such as indigenous peoples. It recognizes the protective role that indigenous peoples, through their way of life, have over areas considered as their ancestral lands or domains.

On this account, the IPRA penalizes certain acts often committed by corporations who do business using the resources and entitlements of indigenous peoples, such as the unauthorized and/or unlawful intrusion upon any ancestral lands or domains<sup>222</sup> and the requirement to obtain free and prior informed consent, particularly in Section 58 of the replete in the IPRA. A corporation who commits these prohibited acts is penalized under the corporate agent liability rule and, as an entity, its certificate of registration or licenses may be cancelled.<sup>223</sup>

### ii. Other Statutes Relating to the Environment and Natural Resources

Republic Act 6716 or the Rainwater Collector and Springs Development Law requires each Filipino locality to have and maintain a rainwater collector to ensure fresh drinking water is available in times of flooding.<sup>224</sup>

This law, in conjunction with the duties of LGUs in water management provided in the LGC, were used as basis in the case of *Global Legal Action on Climate Change v. the Philippine Government* ("GLACC") where by a group called Global Legal Action on Climate Change filed a petition for writ of mandamus from the Supreme Court to order various government departments including the Climate Change Commission, the Department of Public Works and Highways, the Department of Interior, and Local Government to act on the provisions of two statutes pertaining to flood control.<sup>225</sup>

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<sup>221</sup> Pres. Dec. No. 856 (1975), § 14. Code of Sanitation in the Philippines.

<sup>222</sup> Rep. Act no. 8371 (1997), § 10. The Indigenous Peoples' Rights Act of 1997.

<sup>223</sup> SECTION 73. Persons Subject to Punishment. — If the offender is a juridical person, all officers such as, but not limited to, its president, manager, or head of office responsible for their unlawful act shall be criminally liable therefor, in addition to the cancellation of certificates of their registration and/or license: Provided, That if the offender is a public official, the penalty shall include perpetual disqualification to hold public office. (Emphasis supplied).

<sup>224</sup> Rep. Act No. 6716 (1989).

<sup>225</sup> *Global Legal Action on Climate Change v. The Philippine Government*.

## 2. Procedures and Evidence

### A. Actors Involved

#### i. Who is bringing climate litigation in the Philippines against corporations?

Of the cases discussed in this Report, only three (3) cases directly framed the issues using the lens of climate change.

First, in the CHR's NICC, the petition was submitted by non-governmental organizations ("NGOs") Greenpeace Southeast Asia and Philippine Rural Reconstruction Movement, with "12 organizations, 20 individuals, and 1,288 Filipinos who expressed support for this Petition through a webpage, [www.greenpeace.org.ph/climatejustice](http://www.greenpeace.org.ph/climatejustice), dedicated for this purpose."<sup>226</sup>

The CHR described the petitioners as "typhoon victims, human rights groups, and concerned citizens before the CHR, seeking to frame climate change as a human rights issue."<sup>227</sup>

Second, *Segovia* involved a class of individuals or plaintiffs called themselves the "Carless People of the Philippines" who are "parents, representing their children, who in turn represent 'Children of the Future, and Car-owners who would rather not have cars if good public transportation were safe, convenient, accessible, available, and reliable.'"<sup>228</sup>

Third, in *GLACC*, the petitioner was a group called Global Legal Action on Climate Change filed a petition for a writ of mandamus. GLACC is described as a non-government organization.<sup>229</sup>

Other cases which involved complaints due to environmental harms, although not framed under climate change, involved the following suitors:

- 1) 1. In *Oposa*, the class suit was instituted by minors duly represented and joined by their parents and Philippine Ecological Network, Inc. (PENI), a domestic, non-stock and non-profit corporation organized for the purpose of engaging in concerted action geared for the protection of the environment and natural resources.<sup>230</sup> The principal plaintiffs who were minors also asserted that they were suing in representation of their generation as well as generations yet unborn.<sup>231</sup>

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<sup>226</sup> Petition of Greenpeace, available at [http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2015/20150512\\_Case-No.-CHR-NI-2016-0001\\_petition.pdf](http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2015/20150512_Case-No.-CHR-NI-2016-0001_petition.pdf).

<sup>227</sup> Commission on Human Rights, National Inquiry on Climate Change (2022).

<sup>228</sup> *Segovia*, 806 Phil. 1019.

<sup>229</sup> *Global Legal Action on Climate Change v. The Philippine Government*.

<sup>230</sup> *Oposa*, 224 SCRA 792.

<sup>231</sup> *Id.*

- 2) 2. In *Rayo*, the plaintiffs were residents of the flooded area whose family members died and properties were damaged because of the negligence of NPC.<sup>232</sup>
- 3) 3. In *Arigo*, the petitioners were priests and religious personalities, academics, and party-list organizations and their representatives.<sup>233</sup>
- 4) 4. In *Resident Marine Mammals*, there were two sets of petitioners. The first was composed of fauna or the toothed whales, dolphins, porpoises, and other cetacean species, which inhabit the waters in and around the Tañon Strait. They were joined by natural persons who acted as their legal guardians and as friends (referring to themselves as “the Stewards”) who allegedly empathize with, and seek the protection of, the aforementioned marine species.<sup>234</sup>

The second set was composed of NGO Central Visayas Fisherfolk Development Center and certain individuals in their personal capacity and as representatives of the subsistence fisherfolk of affected municipalities, their families, and the present and future generations of Filipinos whose rights are affected.<sup>235</sup>

## ii. Against whom has such litigation been brought?

Most of the climate action and related suits had been brought against the Philippine government, relevant officers, and their agents for lack of implementation of climate change laws, as shown in the cases of *Oposa* and *Segovia*, and against a foreign state and its agents in *Arigo*.

Some cases, however, are significant in that they have been brought against corporations and their corporate agents.

- 1) In the CHR’s NICC, climate action was brought specifically against the “largest multinational and state-owned *producers* of crude oil, natural gas, coal and cement”<sup>236</sup> collectively known as the “Carbon Majors”.<sup>237</sup> The Carbon Majors include Chevron, ExxonMobil, Royal Dutch Shell, British Petroleum, Peabody Energy, Total, and Console Energy Inc.<sup>238</sup>
- 2) In *Loney*, criminal action was brought against a mining company and its agents.<sup>239</sup>

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<sup>232</sup> NPC v. CA, G.R. Nos. 103442-45.

<sup>233</sup> Arigo, G.R. No. 206510.

<sup>234</sup> Resident Marine Mammals, G.R. No. 180771.

<sup>235</sup> Commission on Human Rights, National Inquiry on Climate Change (2022).

<sup>236</sup> Recent research endeavor, undertaken by Mr. Richard Heede of the *Climate Accountability Institute*, quantified and traced “for the first time the lion’s share of cumulative global CO<sub>2</sub> and methane emissions

<sup>237</sup> Commission on Human Rights, National Inquiry on Climate Change (2022).

<sup>238</sup> Krixia Subingsubing, CHR report indicts fossil fuel companies for climate change, PHIL. DAILY INQUIRER, December 8, 2022 available at <https://newsinfo.inquirer.net/1702702/chr-report-indicts-fossil-fuel-companies-for-climate-change#ixzz7yCm55SZj>.

<sup>239</sup> Loney, G.R. No. 152644.

- 3) In *Resident Marine Mammals*, a special civil action was commenced against JAPEX, a company organized and existing under the laws of Japan, and Supply Oilfield Services, Inc. (SOS), as the alleged Philippine agent of JAPEX.<sup>240</sup>
- 4) In *Rayo* and *Sanggacala*, the defendant was power corporation NPC which is a government-owned and controlled entity (“GOCC”).<sup>241</sup> Although it is a GOCC, it performs proprietary functions similar to the business of private corporations.

It is worth pointing out that the laws which may be bases for causes of action in climate change litigation cover all persons, including corporations. The law on nuisance, for example, is temporally expansive as to who may be sued for a nuisance related to climate change, as it includes the current owner or possessor who may not be the person who created the nuisance:

Article 696. Every successive owner or possessor of property who fails or refuses to abate a nuisance in that property started by a former owner or possessor is liable therefor in the same manner as the one who created it.

Further, laws like the Clean Air Act and their IRR which allow for citizen suits also identify potential party defendants as covering any private natural or juridical person, including government owned and controlled corporations, who violate or fail to comply with their provisions.<sup>242</sup>

### iii. Who are/might be the third-party intervenors in corporate climate litigation?

With the liberal rules on standing in the Philippines, any person who has a legal interest in the dispute or who asserts a public right like the right to a balanced and healthful ecology may be intervenors. Further, the State and its agencies may intervene when the actions affect certain agreements or contracts with the corporations, as in the case of *Resident Marine Mammals* had the state not been impleaded therein.

### iv. Others

Specific state agents could be claimants or intervenors in certain classes of actions. For example, owing to their duties in the LGC, local government officials may also sue corporations independent of the national government.<sup>243</sup>

Providing added basis to this identification is the law on nuisance which is explicit in allowing local officials to commence certain actions:

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<sup>240</sup> *Resident Marine Mammals*, G.R. No. 180771.

<sup>241</sup> *NPC v. CA*, G.R. Nos. 103442-45; *Sanggacala*, G.R. No. 209538.

<sup>242</sup> Rep Act No. 8749 (1999). Philippine Clean Air Act of 1999.

<sup>243</sup> See powers of local government units under the LGC.

Article 701. If a civil action is brought by reason of the maintenance of a public nuisance, such action shall be commenced by the city or municipal mayor.

Article 702. The district health officer shall determine whether or not abatement, without judicial proceedings, is the best remedy against a public nuisance.

## B. Approach of the courts to procedural issues in corporate climate litigation

Below details some of the most common hurdles and barriers encountered in corporate climate cases and examples of potential solutions.

### i. Standing

Standing in the Philippine litigation is a concept that overlaps with, but is quite different from the idea of real parties-in-interest.<sup>244</sup> It is different because of its constitutional litigation or public interest suit dimension, as in some cases the Supreme Court has pronounced that “unless a person’s constitutional rights are adversely affected by the statute or ordinance, [that person] has no legal standing.”<sup>245</sup>

The general rule is that a party has legal standing to sue or *locus standi* when that party has a personal and substantial interest in a case such that he has sustained or will sustain direct injury as a result of the governmental act being challenged.<sup>246</sup> Cases repeatedly state that the term “interest” means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest, or a generalized grievance.

Case law on standing, in general, mirror standing requirements set in US cases. In *Atty. Oliver Lozano, et. al. v. Speaker Prospero C Nograles (“Lozano”)*,<sup>247</sup> the Supreme Court enumerated these requisites similar to those in the US:

Yet another requisite rooted in the very nature of judicial power is *locus standi* or standing to sue. Thus, generally, a party will be allowed to litigate only when he can demonstrate that (1) he has personally suffered some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by the remedy being sought.<sup>248</sup>

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<sup>244</sup> Kilosbayan, Inc. v. Morato, G.R. No. 118910 (1995).

<sup>245</sup> Jumamil v. Cafe, G.R. No. 144570 (2005).

<sup>246</sup> Assoc. of Flood Victims v. COMELEC, G.R. No. 203775 (2014).

<sup>247</sup> Lozano et. al. v. Norales, G.R. No. 125221 (1997).

<sup>248</sup> *Id.* (Emphasis supplied).



However, through time, the exceptions to the 'personal injury' requirement have arisen and been recognized in public interest cases. The Supreme Court has expressed these exceptions in the landmark case of *Randolf David, et. al. v. Gloria Macapagal-Arroyo, et.al.*<sup>249</sup>

By way of summary, the following rules may be culled from the cases decided by this Court. Taxpayers, voters, concerned citizens, and legislators may be accorded standing to sue, provided that the following requirements are met:

- (1) the cases involve constitutional issues;
- (2) for taxpayers, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;
- (3) for voters, there must be a showing of obvious interest in the validity of the election law in question;
- (4) for concerned citizens, there must be a showing that the issues raised are of transcendental importance which must be settled early; and
- (5) for legislators, there must be a claim that the official action complained of infringes upon their prerogatives as legislators.

Significantly, recent decisions show a certain toughening in the Court's attitude toward legal standing.<sup>250</sup>

Thus far, it is clear that the rules on standing in the Philippines may not pose a significant hurdle in pursuing cases involving environmental harms or climate change impacts.

Not content with these fairly liberal standing exceptions, the Supreme Court revolutionized the rules further by granting standing and personality to sue representatives (minors, in this case) of members of "generations yet unborn." In *Oposa*, the Supreme Court paid particular attention to the unique nature and scope of environmental harms.<sup>251</sup>

At this point, it must be pointed out that the Rules on Civil Procedure which governs ordinary and special civil action provides for a stricter rule on who can be parties in an action, as in a complaint for damages under tort law. The real parties-in-interest rule is provided, thus:

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<sup>249</sup> *David v. Arroyo*, G.R. No. 171396 (2006).

<sup>250</sup> *David*, G.R. No. 171396. *See also* *Gios-Samar v. DOTC*, G.R. No. 217158 (2019) on transcendental importance

<sup>251</sup> Citations omitted.

**Section 2. *Parties in interest.*** - A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.<sup>252</sup>

However, this rule was also relaxed when the Supreme Court, in the exercise of its constitutional power to make rules on pleading, practice, and procedure before the courts,<sup>253</sup> has textualized the liberal policy of standing in environmental cases in Administrative Matter No. 09-6-8-SC or the Rules of Procedure for Environmental Cases (“RPEC”):

**Section 4. *Who may file.*** — Any real party in interest, including the government and juridical entities authorized by law, may file a civil action involving the enforcement or violation of any environmental law.

**Section 5. *Citizen suit.*** — Any Filipino citizen in representation of others, including minors or generations yet unborn, may file an action to enforce rights or obligations under environmental laws. Upon the filing of a citizen suit, the court shall issue an order which shall contain a brief description of the cause of action and the reliefs prayed for, requiring all interested parties to manifest their interest to intervene in the case within fifteen (15) days from notice thereof. The plaintiff may publish the order once in a newspaper of a general circulation in the Philippines or furnish all affected barangays copies of said order.

Citizen suits filed under R.A. No. 8749 and R.A. No. 9003 shall be governed by their respective provisions.

In *Resident Marine Mammals*, the Supreme Court granted standing to the natural person who represented the fauna as their stewards. In *Segovia*, the “Carless People of the Philippines” were granted standing as citizens, even though they were unable to show that they suffered a concrete injury. Thus, it is reasonable to state that there would not be major roadblocks in granting standing to citizens. Further, it can be argued that these exceptions mean that there are semblances of *actio popularis* in the Philippine jurisdiction. However, this will take a different turn when the litigation involves holding a corporation liable for damages, for example, as it will certainly call into application the rule on real parties-in-interest as such an action would be considered an ordinary civil action.

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<sup>252</sup> RULES OF COURT, Rule III, § 2.

<sup>253</sup> CONST. art. VIII, § 5(5).

## ii. Justiciability

In litigation before Philippine courts, the matter of justiciability proceeds from the general question of whether or not judicial power can be exercised in a case before a court. The Constitution defines judicial power as “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 a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.”<sup>254</sup>

Case law particularizes the exercise of judicial power by laying down these requisites, standing being one of them: (1) there must be an actual case or justiciable controversy before this Court; (2) the question before this Court must be ripe for adjudication; (3) the person challenging the act must be a proper party; and (4) the issue of constitutionality must be raised at the earliest opportunity and must be the very *lis mota* (or the very issue) of the case.<sup>255</sup>

The key to ensuring justiciability is the presentation of the problem as a concrete case of a battle of legal positions based on legal rights recognized by statutes and case law and their violations. It should also include, a matter of ripeness, a presentation of the hardship of the parties due to the direct adverse effect of the action.

Two hurdles may arise. For one, these cases often involve state action. Thus, justiciability reasoning may not be completely applicable in a private suit against a corporation which requires the presence of a cause of action, defined in the Rules of Civil Procedure as the act or omission by which a party violates a right of another.<sup>256</sup> In any case, as long as the right and duties are established by referring to a clear legal basis, the case against a corporation would not be vulnerable to the charge of lack of cause of action. Then, the second challenge would be to present the hardship in concrete terms. A cause of action would require the presentation of the injury’s traceability to the act or omissions of the corporation. This is a preliminary examination of the merits, which will be discussed later in this Report. In fact, the Supreme Court mentioned this hurdle in passing *Sanggacala* when it discussed the insufficiency of tort law as it refers to “[t]he interests remedied by the tort system are always direct harms to an individual or legally recognized entity.”<sup>257</sup>

Another issue that may arise is the question of whether the right is legally enforceable, or simply a principle that is non-self-executing.

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<sup>254</sup> CONST. art. VIII, § 1.

<sup>255</sup> *Biraogo v. Philippine Truth Commission*, G.R. No. 192935 (2010).

<sup>256</sup> RULES OF COURT, Rule II, § 2.

<sup>257</sup> *Sanggacala*, G.R. No. 209538.

### iii. Jurisdiction

#### 1. Of Courts

In the Philippines, the general rule is that jurisdiction is conferred by law.<sup>258</sup> In this context, law refers to the Constitution, or an instrument that was enacted by a legislative power like the Congress of the Philippines or the President, at a time when the executive also had legislative power.<sup>259</sup>

Various laws in different areas would provide for or confer jurisdiction over courts in different levels of the judicial system. The general law on jurisdiction is Batas Pambansa Blg. 129 (“BP 129”) which organizes the judicial system or courts other than the Supreme Court, and defines their respective jurisdictions. Notable is the general jurisdiction of the Regional Trial Courts (“RTC”).<sup>260</sup>

BP 129 empowers the Supreme Court to designate certain branches of the first level courts like Metropolitan Trial Courts (“MeTC”) and Municipal Trial Courts (“MTC”) and the RTC to try special cases.

Pursuant to this provision and those in environmental statutes, the Supreme Court issued Administrative Order No. 23-2008 designating certain first and second level courts as Special Courts to try and decide violations of environmental laws committed within their respective territorial jurisdictions.<sup>261</sup> These designated environmental courts will have special competence to resolve environmental cases, including those which involve climate change issues, and provide the venue (as opposed to jurisdiction) in those cases.

This means that the RPEC will apply to the cases before these courts, as the issuance does in fact provide that the RPEC “shall govern the procedure in civil, criminal and special civil actions before the Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts and Municipal Circuit Trial Courts involving enforcement or violations of environmental and other related laws, rules and regulations.”<sup>262</sup>

Thus, as long as there is a specific law invoked or the violation of the right to a balanced and healthful ecology is clearly presented, a court will take cognizance of a case as properly within its jurisdiction. Further, this presupposes that administrative remedies in competent administrative agencies have been exhausted<sup>263</sup> or that such a rule of exhaustion does not apply.<sup>264</sup>

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<sup>258</sup> Non v. Ombudsman, G.R. No. 251177 (2020).

<sup>259</sup> See CONST. (1973); Tañada v. Tuvera, G.R. No. L-63915 (1985, 1986).

<sup>260</sup> Batas Blg. 129, § 19.

<sup>261</sup> Supreme Court Administrative Order No. 23-2008.

<sup>262</sup> Rule 2, Sec. 1 of the RPEC.

<sup>263</sup> Marichu G. Ejera v. Beau Henry L. Metro, et. al., G.R. No. 163109, January 22, 2014.

<sup>264</sup> Samar II Electric Cooperative, Inc., et. al. v. Ananias D. Seludo, Jr., G.R. No. 173840, April 25, 2012.

## 2. Of the CHR

It is more challenging when one considers the situation of the CHR. This challenge presented itself in the NICC. To be clear, while the CHR is an organ of constitutional creation, the Supreme Court has declared in *Hon. Isidro Cariño, et. al. v. Commission on Human Rights et. al.*<sup>265</sup> that the CHR does not have quasi-judicial power.<sup>266</sup>

This is the reason why in the NICC Report, the CHR made it clear that in admitting the petition, it “does not exercise adjudicative or enforcement jurisdiction, but merely fulfills its broad mandate to promote and protect human rights, which requires inquiring into the issues raised therein.”<sup>267</sup> Early on in its NICC Report, the CHR expressed its awareness that since it cannot compel parties or impose any punitive or financial judgments, its inquiry proceeded based on its power to persuade.<sup>268</sup> This limitation, among others, explains the CHR’s appreciation of the evidence before it.

On subject matter jurisdiction, the CHR also had to contend with the ruling of the Supreme Court in *Brigido R. Simon, Jr., et. al. v. Commission on Human Rights, et. al.*<sup>269</sup> seemingly limiting the scope of human rights violations that the CHR can investigate.<sup>270</sup> The Supreme Court had limited the scope of the CHR’s investigative power to civil and political rights, in the traditional sense, without regard to their relationship to economic, social, and cultural rights. In the NICC Report, the CHR had overcome this hurdle in its straightforward, but innovative, circling back to the core principles of international human rights law - those of universality, interdependence, and indivisibility of human rights.<sup>271</sup> It then employed an integrated powers approach to justify taking of jurisdiction over the case.<sup>272</sup>

This approach comports with the general theory of jurisdiction on the justification of the CHR’s authority to hear a particular case, but its novelty comes from its integrated construction of independent and separate powers that revolve around the core idea of human dignity and bound by basic international human rights principles of interdependence and indivisibility of rights..

### iv. Group litigation

Group litigation is allowed. In the Philippines, it is primarily governed by the Rules on Civil Procedure. The basic rule is that parties may be joined permissively, subject to the showing of certain the conditions.<sup>273</sup> However, this situation still contemplates

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<sup>265</sup> G.R. No. 96681, December 2, 1991.

<sup>266</sup> *Id.* Citations omitted, emphases and underscoring supplied.

<sup>267</sup> *Supra* note 80.

<sup>268</sup> *Id.*

<sup>269</sup> G.R. No. 100150, January 5, 1994.

<sup>270</sup> Citations omitted; emphases and underscoring supplied.

<sup>271</sup> *Supra* note 80, p. 3.

<sup>272</sup> *Supra* note 80.

<sup>273</sup> Rule 3, Sec. 6 of the Rules of Civil Procedure.

independent parties joined in one suit. The framework that fits more neatly is that of a class suit:

Section 12. *Class suit*. - When 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.<sup>274</sup>

Case law spells out the elements for the maintenance of a class suit: 1) the subject matter of controversy is one of common or general interest to many persons; 2) the parties affected are so numerous that it is impracticable to bring them all to court; and 3) the parties bringing the class suit are sufficiently numerous or representative of the class and can fully protect the interests of all concerned.<sup>275</sup>

While there are cases that strictly construed the requirements for the constitution of a class,<sup>276</sup> in environmental cases, *Oposa* again, is instructive the courts' openness to mold its procedures to assertions of the rights to a balanced and healthful ecology:

The complaint was instituted as a taxpayers' class suit and alleges that the plaintiffs "are all citizens of the Republic of the Philippines, taxpayers, and entitled to the full benefit, use and enjoyment of the natural resource treasure that is the country's virgin tropical forests." The same was filed for themselves and others who are equally concerned about the preservation of said resource but are "so numerous that it is impracticable to bring them all before the Court." The minors further asseverate that they "represent their generation as well as generations yet unborn."

...

We hereby rule that the said civil case is indeed a class suit. The subject matter of the complaint is of common and general interest not just to several, but to all citizens of the Philippines. Consequently, since the parties are so numerous, it becomes impracticable, if not totally impossible, to bring all of them before the court. We likewise declare that the plaintiffs therein are numerous and representative enough to ensure the full protection of all concerned interests. Hence, all the requisites for the filing of a valid class suit under Section 12, Rule 3 of the Revised Rules of Court are present both in the said civil case and in the instant petition, the latter being but an incident to the former.

This case, however, has a special and novel element. 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 generation and for the succeeding

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<sup>274</sup> Rule 3, Section 2 of the Rules of Civil Procedure.

<sup>275</sup> *Juana Complex I Homeowners Association, Inc., et. al. v. Fil-Estate Land, Inc., et. al.*, G.R. No. 152272, March 5, 2012.

<sup>276</sup> *Re: Request of the Plaintiffs, Heirs of the Passengers of the Doña Paz to Set Aside the Order Dated January 4, 1988 of Judge B.D. Chingcuangco, A.M.* No. 88-1-646-0, March 3, 1988.

generations, file a class suit. Their personality to sue [o]n 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.<sup>277</sup>

#### v. Apportionment

Most of the cases on climate change litigation (and there are only a few) involve complaints to hold corporations liable for damages under tort law. Thus, while the general rule in the Civil Code is that solidary obligation is not presumed and that obligations shall be apportioned jointly, the rule applicable in the tort of negligence or quasi-delict is the one which states that the responsibility of two or more persons who are liable for quasi-delict is solidary.<sup>278</sup>

In *Ruks Konsult and Construction v. Adworld Sign and Advertising Corporation, et. al.*,<sup>279</sup> the Supreme Court explained the concept of solidary obligation and how it operates in apportioning liability in the area of torts:

As joint tortfeasors, therefore, they are solidarily liable to Adworld. Verily, “[j]oint tortfeasors are those who command, instigate, promote, encourage, advise, countenance, cooperate in, aid or abet the commission of a tort, or approve of it after it is done, if done for their benefit. They are also referred to as those who act together in committing wrong or whose acts, if independent of each other, unite in causing a single injury. Under Article 2194 of the Civil Code, joint tortfeasors are solidarily liable for the resulting damage. In other words, joint tortfeasors are each liable as principals, to the same extent and in the same manner as if they had performed the wrongful act themselves.” The Court’s pronouncement in *People v. Velasco* is instructive on this matter, to wit:

Where several causes producing an injury are concurrent and each is an efficient cause without which the injury would not have happened, the injury may be attributed to all or any of the causes and recovery may be had against any or all of the responsible persons although under the circumstances of the case, it may appear that one of them was more culpable, and that the duty owed by them to the injured person was not same. No actor’s negligence ceases to be a proximate cause merely because it does not exceed the negligence of other actors. Each wrongdoer is responsible for the entire result and is liable as though his acts were the sole cause of the injury.

There is no contribution between joint [tortfeasors] whose liability is solidary since both of them are liable for the total damage. Where the concurrent or successive negligent acts or omissions of two or more persons, although acting independently, are in combination the direct and proximate cause of a single injury to a third person, it is impossible to determine in what proportion each contributed to the injury and either of them is responsible for the whole injury.<sup>280</sup>

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<sup>277</sup> Supra note 4. Citations omitted.

<sup>278</sup> Article 2194 of the Civil Code.

<sup>279</sup> G.R. No. 204866, January 21, 2015.

<sup>280</sup> Id.

A specific provision in the Clean Water Act applies this rule:

SEC. 9. Joint and Several Liability. - When an Incident involving two or more Ships occurs and Pollution Damage results therefrom, the Owners of all the Ships concerned, unless exonerated under Section 7 hereof, shall be jointly and severally liable for all such damage which is not reasonably separable, without prejudice, however, to the right of recourse of any of such Owners to proceed against each other or third parties.<sup>281</sup>

In criminal actions based on environmental protection statutes, where the corporate agent liability rule could apply, the apportionment of civil liability amongst principals and accomplices is explained in the case of *People of the Philippines v. Jalil Gamba, et. al.*:<sup>282</sup>

The ruling of this Court in *People v. Montesclaros* is instructive on the apportionment of civil liabilities among all the accused-appellants. The entire amount of the civil liabilities should be apportioned among all those who cooperated in the commission of the crime according to the degrees of their liability, respective responsibilities and actual participation. Hence, each principal accused-appellant should shoulder a greater share in the total amount of indemnity and damages than Perpenian who was adjudged as only an accomplice.<sup>283</sup>

It is notable also that the RPEC provides for subsidiary liability on the part of a corporation for the acts of its agents:

#### RULE 18 SUBSIDIARY LIABILITY

Section 1. *Subsidiary liability.* - In case of conviction of the accused and subsidiary liability is allowed by law, the court may, by motion of the person entitled to recover under judgment, enforce such subsidiary liability against a person or corporation subsidiary liable under Article 102 and Article 103 of the Revised Penal Code.

#### vi. Costs

As a general rule, costs of suit are allowed and awarded to the prevailing party unless another rule provides otherwise. Rule 142 of the Rules of Court provides as follows:

**Section 1.** *Cost ordinarily follow results of suit.* — Unless otherwise provided in these rules, cost shall be allowed to the prevailing party as a matter of course, but the court shall have power, for special reasons, to adjudge that either party shall pay the costs of an action, or that the same be divided, as may be equitable. No costs shall be allowed against the Republic of the Philippines unless otherwise provided by law.

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<sup>281</sup> Supra note 35.

<sup>282</sup> G.R. No. 172707, October 1, 2013.

<sup>283</sup> Id.



The special provisions in the Rules of Procedure for Environmental Cases, with specific reference to the plaintiff, also provide for the award of costs in a general manner:

#### RULE 5

#### JUDGMENT AND EXECUTION

SECTION 1. *Reliefs in a citizen suit.*—If warranted, the court may grant to the plaintiff proper reliefs which shall include the protection, preservation or rehabilitation of the environment and the payment of attorney’s fees, costs of suit and other litigation expenses. It may also require the violator to submit a program of rehabilitation or restoration of the environment, the costs of which shall be borne by the violator, or to contribute to a special trust fund for that purpose subject to the control of the court.<sup>284</sup>

The court has discretion in assessing when an award of costs is warranted. It will consider a myriad of factors, including the gravity of the offense and the possible obstruction committed by the defendant during the litigation.

In case retaliatory action against a party bringing suit is commenced, as in one recognized as a Strategic Lawsuit Against Public Participation (“SLAPP”), the Rules of Procedure for Environmental Cases also envision an award of costs of suit against the instituting party to deter such suits:

SEC. 2. *SLAPP as a defense; how alleged.*—In a SLAPP filed against a person involved in the enforcement of environmental laws, protection of the environment, or assertion of environmental rights, the defendant may file an answer interposing as a defense that the case is a SLAPP and shall be supported by documents, affidavits, papers and other evidence; and, by way of counterclaim, **pray for damages, attorney’s fees and costs of suit.**

...

SEC. 4. *Resolution of the defense of a SLAPP.*—The affirmative defense of a SLAPP shall be resolved within thirty (30) days after the summary hearing. If the court dismisses the action, **the court may award damages, attorney’s fees and costs of suit under a counterclaim if such has been filed.** The dismissal shall be with prejudice.<sup>285</sup>

#### vii. Disclosures

Most of the disclosure rules relating to corporations relate to their financial conditions and matters that have bearing on public information and fraud. However, matters subject of litigation may be elicited and should be disclosed by a corporation sued when the discovery procedures are invoked. Rule 23 of the Rules of Court provides for the general mechanism in discovery:

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<sup>284</sup> Emphasis supplied.

<sup>285</sup> Emphases supplied.

## Rule 23

SECTION 1. *Depositions pending action, when may be taken.*— By leave of court after jurisdiction has been obtained over any defendant or over property which is the subject of the action, or without such leave after an answer has been served, the testimony of any person, whether a party or not, may be taken, at the instance of any party, by deposition upon oral examination or written interrogatories. The attendance of witnesses may be compelled by the use of a subpoena as provided in Rule 21. Depositions shall be taken only in accordance with these Rules. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

It is noteworthy that the scope of the examination is wide provided the matter is not privileged as in the case of trade secrets:

SEC. 2. *Scope of examination.*— Unless otherwise ordered by the court as provided by section 16 or 18 of this Rule, the deponent may be examined regarding any matter, not privileged, which is relevant to the subject of the pending action, whether relating to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts.

The more specific rule on interrogatories also provides for how answers, which are technically disclosures, may be had:

## Rule 25

SECTION 1. *Interrogatories to parties; service thereof.*— Under the same conditions specified in section 1 of Rule 23, any party desiring to elicit material and relevant facts from any adverse parties shall file and serve upon the latter written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer thereof competent to testify in its behalf. (1a)

SEC. 2. *Answer to interrogatories.*— The interrogatories shall be answered fully in writing and shall be signed and sworn to by the person making them. The party upon whom the interrogatories have been served shall file and serve a copy of the answers on the party submitting the interrogatories within fifteen (15) days after service thereof, unless the court, on motion and for good cause shown, extends or shortens the time. (2a)<sup>286</sup>

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<sup>286</sup> Emphasis supplied.

Potentially useful for securing documentary evidence that may support company policies and knowledge of risks and consequences, a party may also move to produce documents which would not have been accessible or disclosed otherwise:

## RULE 27

### PRODUCTION OR INSPECTION OF DOCUMENTS OR THINGS

SECTION 1. *Motion for production or inspection order* — Upon motion of any party showing good cause therefor the court in which an action is pending may (a) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books accounts, letters, photographs, objects or tangible things, not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody or control; or (b) order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting measuring, surveying, or photographing the property or any designated relevant object or operation thereon. The order shall specify the time, place and manner of making the inspection and taking copies and photographs, and may prescribe such terms and conditions as are just. (1a)<sup>287</sup>

## C. Types of Arguments and Defences, and court responses

### i. Mootness

One of the more effective defenses used so far is the position of mootness, either due to the commitment to stop the harmful activity or because the parties had entered into negotiations or a compromise.

In *Arigo*, the Supreme Court appreciated both aspects in declaring the case moot:

We agree with respondents (Philippine officials) in asserting that this petition has become moot in the sense that the salvage operation sought to be enjoined or restrained had already been accomplished when petitioners sought recourse from this Court. But insofar as the directives to Philippine respondents to protect and rehabilitate the coral reef structure and marine habitat adversely affected by the grounding incident are concerned, petitioners are entitled to these reliefs notwithstanding the completion of the removal of the USS Guardian from the coral reef. However, we are mindful of the fact that the US and Philippine governments both expressed readiness to negotiate and discuss the matter of compensation for the damage caused by the USS Guardian. The US Embassy has also declared it is closely coordinating with local scientists and experts in assessing the extent of the damage and appropriate methods of rehabilitation.

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<sup>287</sup> Emphasis supplied.

Exploring avenues for settlement of environmental cases is not proscribed by the Rules. As can be gleaned from the following provisions, mediation and settlement are available for the consideration of the parties, and which dispute resolution methods are encouraged by the court, to wit:

...

SEC. 10. Efforts to settle.- The court shall endeavor to make the parties to agree to compromise or settle in accordance with law at any stage of the proceedings before rendition of judgment.

The Court takes judicial notice of a similar incident in 2009 when a guided-missile cruiser, the USS Port Royal, ran aground about half a mile off the Honolulu Airport Reef Runway and remained stuck for four days. After spending \$6.5 million restoring the coral reef, the US government was reported to have paid the State of Hawaii \$8.5 million in settlement over coral reef damage caused by the grounding.

To underscore that the US government is prepared to pay appropriate compensation for the damage caused by the USS Guardian grounding, the US Embassy in the Philippines has announced the formation of a US interdisciplinary scientific team which will “initiate discussions with the Government of the Philippines to review coral reef rehabilitation options in Tubbataha, based on assessments by Philippine-based marine scientists.” The US team intends to “help assess damage and remediation options, in coordination with the Tubbataha Management Office, appropriate Philippine government entities, non-governmental organizations, and scientific experts from Philippine universities.”

A rehabilitation or restoration program to be implemented at the cost of the violator is also a major relief that may be obtained under a judgment rendered in a citizens' suit under the Rules, *viz*:

...

In the light of the foregoing, the Court defers to the Executive Branch on the matter of compensation and rehabilitation measures through diplomatic channels.<sup>288</sup>

Noticeably, in the latter part of the discussion, the Supreme Court also recognized the idea of redressability, although it was not explicitly assessed. Mootness based on redressability and a compromise agreement was also the reason the *GLACC* case had been terminated.<sup>289</sup>

Mootness was also acknowledged in *Resident Marine Mammals* as it was alleged that JAPEX had already stopped exploration activities in the Tañon Strait years before the case was decided.<sup>290</sup> Nevertheless, the Supreme Court deemed it proper to resolve the

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<sup>288</sup> Supra note 164. Citations omitted.

<sup>289</sup> See <http://climatecasechart.com/non-us-case/global-legal-action-on-climate-change-v-the-philippines-government/>

<sup>290</sup> Supra note 177.

issues despite the mootness as it fell under these doctrinal exceptions to the effect of mootness:

- 1) There is a grave violation of the Constitution;
- 2) The exceptional character of the situation and the paramount public interest is involved;
- 3) The constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and
- 4) The case is capable of repetition yet evading review.<sup>291</sup>

## ii. No Violation of Law and Performance of Duty

In *Segovia*, the Supreme Court did not issue the writ of *kalikasan* because the officials were not found to have violated the environmental and climate change laws invoked:

It is well-settled that a party claiming the privilege for the issuance of a writ of *kalikasan* has to show that a law, rule or regulation was violated or would be violated.

In this case, apart from repeated invocation of the constitutional right to health and to a balanced and healthful ecology and bare allegations that their right was violated, the petitioners failed to show that public respondents are guilty of any unlawful act or omission that constitutes a violation of the petitioners' right to a balanced and healthful ecology.

While there can be no disagreement with the general propositions put forth by the petitioners on the correlation of air quality and public health, petitioners have not been able to show that respondents are guilty of violation or neglect of environmental laws that causes or contributes to bad air quality.

...

On the other hand, public respondents sufficiently showed that they did not unlawfully refuse to implement or neglect the laws, executive and administrative orders as claimed by the petitioners. Projects and programs that seek to improve air quality were undertaken by the respondents, jointly and in coordination with stakeholders, such as: priority tagging of expenditures for climate change adaptation and mitigation, the Integrated Transport System which is aimed to decongest major thoroughfares, Truck Ban, Anti-Smoke Belching Campaign, Anti-Colorum, Mobile Bike Service Programs, and Urban Re-Greening Programs.<sup>292</sup>

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<sup>291</sup> Id., The Court stated: "In this case, despite the termination of SC-46, this Court deems it necessary to resolve these consolidated petitions as almost all of the foregoing exceptions are present in this case. Both petitioners allege that SC-46 is violative of the Constitution, the environmental and livelihood issues raised undoubtedly affect the public's interest, and the respondents' contested actions are capable of repetition."

<sup>292</sup> Supra note 26.

### iii. No Binding Rule

Further, in *Segovia*, the Supreme Court agreed that the “Road Sharing Principle” is just that - a principle. It is not a binding rule the violation of which will result in liability:

[T]he Road Sharing Principle is precisely as it is denominated - a principle. It cannot be considered an absolute imposition to encroach upon the province of public respondents to determine the manner by which this principle is applied or considered in their policy decisions. *Mandamus* lies to compel the performance of duties that are purely ministerial in nature, not those that are discretionary, and the official can only be directed by *mandamus* to act but not to act one way or the other.

...

At its core, what the petitioners are seeking to compel is not the performance of a ministerial act, but a discretionary act - the manner of implementation of the Road Sharing Principle. **Clearly, petitioners’ preferred specific course of action (i.e. the bifurcation of roads to devote for all-weather sidewalk and bicycling and Filipino-made transport vehicles) to implement the Road Sharing Principle finds no textual basis in law or executive issuances for it to be considered an act enjoined by law as a duty,** leading to the necessary conclusion that the continuing *mandamus* prayed for seeks not the implementation of an environmental law, rule or regulation, but to control the exercise of discretion of the executive as to how the principle enunciated in an executive issuance relating to the environment is best implemented.<sup>293</sup>

### iv. Due Diligence

In *Rayo*, the NPC argued that it exercised due care, diligence and prudence in the operation and maintenance of the hydroelectric plant.<sup>294</sup> However, as discussed in the section on causes of action, the Supreme Court agreed with the finding of the Court of Appeals that NPC had been negligent in ensuring that the release of the water was early and gradual, and that the residents had meaningful notice and opportunity to act on such notice.

### v. Negligence of the Other Party is the Cause

In the *2005 NPC Case*, the Supreme Court did not give credence to NPC’s attempt to shift the blame to the plaintiffs:

NPC further attempts to dodge its burden by turning the tables against private respondents. Petitioner would entice this Court to believe that private respondents brought the catastrophe upon themselves by constructing their fishponds **below** the 702-meter level in defiance of Memorandum Order No. 398. Yet, petitioner failed to demonstrate that the subject fishponds were situated at an area below the 702-meter level yardstick. Allegation is one thing; proof is another. Save for its bare claim, NPC was

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<sup>293</sup> Id.

<sup>294</sup> Supra note 120.

unable to indicate the position of the fishponds *vis-à-vis* its benchmarks. But, how can it do so when it cannot show its own benchmarks as they were submerged in water?

This brings us to the second duty of NPC under Memorandum Order No. 398 - to build and maintain benchmarks to warn the inhabitants in the area that cultivation of land below the 702-meter elevation is forbidden.

Notably, despite the clear mandate of Memorandum Order No. 398, petitioner's own witness, Principal Hydrologist Mama Manongguiring, testified that **although the dam was built in 1978, the benchmarks were installed only in July and August of 1984 and that apparently, many had already worn-out, to be replaced only in October of 1986.** As adroitly observed by the Court of Appeals, it was only after many years from the time it was built that NPC installed said benchmarks. At that time, many farms and houses were already swamped and many fishponds, including those of the private respondents, damaged.

Consequently, even assuming that the fishponds were erected below the 702-meter level, NPC must, nonetheless, bear the brunt for such damages inasmuch as it has the duty to **erect** and **maintain** the benchmarks precisely to warn the owners of the neighboring properties not to build fishponds below these marks. Such benchmarks, likewise, serve the evidentiary purpose of extricating NPC from liability in cases of overflowing in the neighboring estates because all NPC would have to do is point out that such constructions are below the 702-meter allowable elevation. Without such points of reference, the inhabitants in said areas are clueless whether or not their improvements are within the prohibited area. Conversely, without such benchmarks, NPC has no way of telling if the fishponds, subject matter of the present controversy, are indeed below the prescribed maximum level of elevation.<sup>295</sup>

#### vi. Force Majeure

Also in the case of *Rayo*, NPC argued that it should not be held liable as the typhoon and the flooding were acts of God. The Supreme Court disagreed and explained, using *Juan F. Nakpil & Sons vs. Court of Appeals*<sup>296</sup> that:

To exempt the obligor from liability under Article 1174 of the Civil Code, for a breach of an obligation due to an "act of God," the following must concur: (a) the cause of the breach of the obligation must be independent of the will of the debtor; (b) the event must be either unforeseeable or unavoidable; (c) the event must be such as to render it impossible for the debtor to fulfill his obligation in a moral manner; and (d) the debtor must be free from any participation in, or aggravation of the injury to the creditor. ...

Thus, if upon the happening of a fortuitous event or an act of God, there concurs a corresponding fraud, negligence, delay or violation or contravention in any manner of the tenor of the obligation as provided for in Article 1170 of the Civil Code, which results in loss or damage, the obligor cannot escape liability.

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<sup>295</sup> Supra note 142.

<sup>296</sup> G.R. No. L-47851, October 3, 1986.

...

Accordingly, petitioners cannot be heard to invoke the act of God or *force majeure* to escape liability for the loss or damage sustained by private respondents since they, the petitioners, were guilty of negligence. The event then was not occasioned exclusively by an act of God or *force majeure*; a human factor — negligence or imprudence — had intervened. The effect then of the *force majeure* in question may be deemed to have, even if only partly, resulted from the participation of man. Thus, the whole occurrence was thereby humanized, as it were, and removed from the laws applicable to acts of God.<sup>297</sup>

## D. Relevant sources of evidence and tests of causation

### i. Evidence

The foremost rule in the Philippines is that whoever makes an affirmative allegation or whoever initiates a case has the burden of proving their allegations. It is rare that this burden is transferred, and in the few instances that a burden is shifted (as in the case of *res ipsa loquitur*), it is only the burden of moving forward with the evidence which shifts.

Even then, it is useful to state at the outset that the RPEC provides a useful, and fairly accommodating, set of evidentiary rules in environmental cases. For one, it is explicit in the use of the precautionary principle with a view to easing the burden of proof of plaintiffs:

#### PART V EVIDENCE

#### RULE 20 PRECAUTIONARY PRINCIPLE

Section 1. *Applicability.* - When there is a lack of full scientific certainty in establishing a causal link between human activity and environmental effect, the court shall apply the precautionary principle in resolving the case before it.

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

Section 2. *Standards for application.* - In applying the precautionary principle, the following factors, among others, may be considered: (1) threats to human life or health; (2) inequity to present or future generations; or (3) prejudice to the environment without legal consideration of the environmental rights of those affected.

The ease, breadth, and facility of this evidentiary rule has been explained by the Supreme Court in its Annotations to the RPEC (“RPEC Annotations”). Its explanation

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<sup>297</sup> Supra note 120.



recognized the exceptional nature of environmental cases, and this is likely to be applicable to the singular but encompassing threat of climate change.<sup>298</sup>

The rules also take advantage of technology by allowing the use of their processes as evidence:

RULE 21  
DOCUMENTARY EVIDENCE

Section 1. *Photographic, video and similar evidence.* - Photographs, videos and similar evidence of events, acts, transactions of wildlife, wildlife by-products or derivatives, forest products or mineral resources subject of a case shall be admissible when authenticated by the person who took the same, by some other person present when said evidence was taken, or by any other person competent to testify on the accuracy thereof.

Aspects of the cases discussed in this Report illustrate that these rules simply reflect the history of liberality that this area of law applies in allowing the kind of evidence used and appreciating their probative value.

In the *1992 NPC Case*, the court gave credence to the testimonial evidence of the expert witness from the state weather agency, corroborated by the testimonies of private respondents, most of whom have lived in the area all their lives, but had never before experienced such flooding as would have placed them on alert, even during previous stronger typhoons.<sup>299</sup>

In finding NPC negligent, the Supreme Court also agreed that newspaper reports can show that early knowledge on the part of the defendants which should have prompted them to act accordingly.<sup>300</sup>

In the *2005 NPC Case*, the Supreme Court also agreed with the trial court in appreciating pieces of evidence such as government issuances and a reading of the duties in those issuances vis-a-vis the situation on the ground or the actual affairs in the area.<sup>301</sup> In the same case, the courts also appreciated the admissions and company records of the NPC against the corporation's position.<sup>302</sup>

In *Sanggacala*, findings in the earlier NPC cases as well as these pieces of evidence like company resolutions as contextualized by the testimony and experiences of the farmers and residents (similar to the what occurred in CHR's NICC) were considered.<sup>303</sup>

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<sup>298</sup> Supreme Court in its Annotations to the RPEC. Citations omitted; emphasis and underscoring supplied.

<sup>299</sup> Supra note 130.

<sup>300</sup> Id.

<sup>301</sup> Supra note 142.

<sup>302</sup> Id.

<sup>303</sup> Supra note 133.

Quite significantly, in the NPC cases, the Supreme Court did not even need evidence to find negligence. It relied on inferences afforded by the procedural device of *res ipsa loquitur*. Thus, in *Sanggacala*, the Supreme Court applied the doctrine:

The doctrine of *res ipsa loquitur*, the thing speaks for itself, also finds application, such that:

...Where the thing which causes injury is shown to be under the management of the defendant, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of an explanation by the defendant, that the accident arose from want of care.<sup>304</sup>

In *Segovia*, however, the petitioner's own evidence, which was an air quality report, was appreciated by the Supreme Court to find that the environmental laws were not violated.<sup>305</sup> This also supports the assessment that courts readily accept, in fact defer to experts and scientific evidence in issues that require scientific expertise and examination. In *Arigo*, for example, the discussion on the formation of scientific expert teams to determine the extent of the damage and the appropriate compensation was discussed by the Supreme Court with openness.

Further, laws like the Clean Air Act lay the basis for the appreciation of evidence generated through today's technology. For example, reports by citizens of violations of vehicle emissions standards (which could also be made applicable to emissions from activities of corporations) may be done by submitting a picture or a video accompanied by an affidavit of the person who can authenticate the photo or video.<sup>306</sup>

Going back to the framework of the RPEC, specific remedies like a petition for a writ of *kalikasan* require the presentation of "[a]ll relevant and material evidence consisting of the affidavits of witnesses, documentary evidence, scientific or other expert studies, and if possible, object evidence."<sup>307</sup>

In the CHR NICC Report, conclusions were drawn from testimonial evidence, both from experts and the narratives of witnesses who experienced climate change impacts. It is clear from the discussion that those narratives were compelling, as the CHR repeatedly quoted them to show the impact on the rights. The CHR considered evidence submitted by petitioners: (a) copies of internal documents from the fossil fuel industry, including the Carbon Majors; (b) publications compiling these and similar internal documents; (c) a peer-reviewed study analyzing the internal communications of one particular

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<sup>304</sup> *Id.*

<sup>305</sup> *Supra* note 26.

<sup>306</sup> *See* note 8.

<sup>307</sup> *See* RPEC on writ of *kalikasan*.

carbon major; and (d) early scientific publications on carbon dioxide and a publication on the fossil industry's early knowledge.<sup>308</sup>

Further, the CHR, finding that the Carbon Majors had knowledge of the risks and obfuscated climate science, used various government reports and internal documents of the corporations to find that they had actively campaigned to muddle public perception of the gravity of the problem, all the while doing their business as usual.<sup>309</sup>

The NICC report also considered testimonies and correspondences from the corporations to various constituencies that showed an aggressive lobbying campaign against laws that addressed climate change. The CHR found that not only were the corporations unflinching in doing their business, they also actively campaigned to block climate change mitigation. The NICC Report elucidated that these campaigns were done not only in the United States, but also on a global scale.<sup>310</sup>

The CHR, using the variety of testimonial, documentary evidence like reports and internal documents, concluded that "the Carbon Majors, directly by themselves or indirectly through others, singly and/or through concerted action, engaged in willful obfuscation of climate science, which has prejudiced the right of the public to make informed decisions about their products, concealing that their products posed significant harms to the environment and the climate system."<sup>311</sup> According to the CHR, these activities of the Carbon Majors "served to obfuscate scientific findings and delay meaningful environmental and climate action."<sup>312</sup>

It is remarkable that the CHR was able to use evidence, the admissibility and probative value of which would have been heavily contested in court proceedings. The reason for this approach lies in the fact that the CHR is not hampered by the technical rules on evidence because it is not a court, and therefore could admit and appreciate more kinds of evidence.<sup>313</sup>

## ii. Causation

As discussed under tort law, the element required to establish liability is proximate causation.

A proximate cause has been defined in the case of *Salud Villanueva Vda. de Bataclan, et. al. v. Mariano Medina*<sup>314</sup> as:

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<sup>308</sup> Supra note 80.

<sup>309</sup> Id.

<sup>310</sup> Id.

<sup>311</sup> Id.

<sup>312</sup> Id.

<sup>313</sup> Commission of Internal Revenue v. Hantex Trading Co., Inc. G.R. No. 136975, March 31, 2005.

<sup>314</sup> Vda. de Bataclan v. Medina, G.R. No. L-10126, October 22, 1957.

... 'that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.' And more comprehensively, 'the proximate legal cause is that acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor, the final event in the chain immediately effecting the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinary prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom.

Case law describes this test as the *but for* test:

To be considered the proximate cause of the injury, the negligence need not be the event closest in time to the injury; a cause is still proximate, although farther in time in relation to the injury, if the happening of it set other foreseeable events into motion resulting ultimately in the damage. According to an authority on civil law: "*A prior and remote cause cannot be made the basis of an action, if such remote cause did nothing more than furnish the condition or give rise to the occasion by which the injury was made possible, **if there intervened between such prior or remote cause and the injury a distinct, successive, unrelated and efficient cause, even though such injury would not have happened but for such condition or occasion.** If no damage exists in the condition except because of the independent cause, such condition was not the proximate cause. And if an independent negligent act or defective condition sets into operation the circumstances which result in injury because of the prior defective condition, such act or condition is the proximate cause.*"<sup>315</sup>

Like in most jurisdictions, this test would be difficult to pass in climate change litigation due to the nature of the problem and its contributing factors. Under the *but for* test, attribution of the harm will be challenging, particularly since impact will not necessarily be localized. In *Segovia*, the court recognized this problem:

While there can be no disagreement with the general propositions put forth by the petitioners on the correlation of air quality and public health, petitioners have not been able to show that respondents are guilty of violation or neglect of environmental laws that causes or contributes to bad air quality. Notably, apart from bare allegations, petitioners were not able to show that respondents failed to execute any of the laws petitioners cited. In fact, apart from adducing expert testimony on the adverse effects of air pollution on public health, **the petitioners did not go beyond mere allegation in establishing the unlawful acts or omissions on the part of the public respondents that have a causal link or reasonable connection** to the actual or threatened violation of the constitutional

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<sup>315</sup> Romulo Abrogar and Erlina Abrogar v. Cosmos Bottling Company and Intergames, Inc., G.R. No. 164749, MArch 15, 2017.

right to a balanced and healthful ecology of the magnitude contemplated under the Rules, as required of petitions of this nature.<sup>316</sup>

However, it must be noted that while the *Segovia* found that the causal link was not established, it also offered a more manageable way to understand the causation required. The Supreme Court opened the door to the formulation of a “reasonable connection” test to establish liability in climate change litigation. Given the acceptance of scientific evidence and the openness to different kinds of evidence in environmental cases, this test would be easier to pass.

This is not entirely unprecedented in the area of torts and quasi-delict. The earlier case of *Dy Teban Trading, Inc. v. Jose Ching, et. al.*<sup>317</sup> already offered the use of a “sufficient links” test and of mixed considerations in analyzing proximate cause.

In quasi-delicts, and given the attitude of the legal system towards environmental problems, these alternatives in determining attribution and causation may be used by the courts.

The CHR’s NICC Report, also offers an alternative to the courts in testing causation. It purposely recommends a change in the analytical framework, but the NICC itself did not expressly state that this was the process that it used:

There is a distinction between the science of event attribution and the establishment of legal causation. Event attribution is not a direct reconstruction of how each carbon contribution of an individual caused damage through climate change. Instead, it seeks to establish: (a) whether the likelihood or strength of a natural event has changed in the observational record, and (b) whether this change is consistent with the anthropogenic influence as found in one or more climate models.

Assessment of the “Fraction of Attributable Risk” is often misunderstood and misapplied in the context of legal causation where a clear unbroken chain of events leading up to the injury or damage is necessary to establish liability.

In many jurisdictions, courts evaluate evidence linking actors to climate-related losses using the stringent standards of legal causation. This disregards the work of climate and attribution science, and causes more climate injustice.

The Commission therefore recommends that the judiciary take notice of developments in the science of attribution when considering legal causality in assessing climate change impacts and damages.<sup>318</sup>

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<sup>316</sup> *Supra* note 26. Emphasis and underscoring supplied.

<sup>317</sup> G.R. No. 161803, February 4, 2008.

<sup>318</sup> *Supra* note 80. Citations omitted.

In this area, strict liability rules will also be helpful. Apart from strict liability in products, Republic Act No. 9483 or the Oil Pollution Compensation Act of 2007 (“Oil Pollution Act”) works in tandem with the Clean Water Act when it provides for a strict liability rule for oil pollution damage.<sup>319</sup>

## E. Limitation Periods

There is no particular limitation period applicable only to climate change cases. The prescriptive periods will depend on the nature of the cause of action, such as four (4) years for quasi-delicts or torts. The Civil Code provides these prescriptive periods for the corresponding causes of action. The limitation period for causes of action relevant to climate change claims may be fall under the broad categories of obligations created by law or those which arise from a judgment:

ARTICLE 1144. The following actions must be brought within ten years from the time the right of action accrues:

- (1) Upon a written contract;
- (2) Upon an obligation created by law;
- (3) Upon a judgment. (n)<sup>320</sup>

It may also be based on injuries caused to a person, which might cover injuries arising from climate change-related activities. In this provision, apart from a quasi-delict or a tort, the first category of claims which speaks of an injury to the rights of the plaintiff is broad enough to encompass such claims:<sup>321</sup>

ARTICLE 1146. The following actions must be instituted within four years:

- (1) Upon an injury to the rights of the plaintiff;**
- (2) Upon a quasi-delict;

However, when the action arises from or out of any act, activity, or conduct of any public officer involving the exercise of powers or authority arising from Martial Law including the arrest, detention and/or trial of the plaintiff, the same must be brought within one (1) year.<sup>322</sup>

In any case, should a new cause of action be framed and accepted, it would fall under this catch-all provision that anticipates the development of the nature of claims. Claims

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<sup>319</sup> See exemptions, however, in Section 7 of the Oil Pollution Act.

<sup>320</sup> Article 1144, Civil Code.

<sup>321</sup> This only works if a right had already been granted in law.

<sup>322</sup> Article 1146, Civil Code. Emphasis supplied.

related to climate change harms may be brought within the time the right of action accrues:

ARTICLE 1149. All other actions whose periods are not fixed in this Code or in other laws must be brought within five years from the time the right of action accrues. (n)<sup>323</sup>

The Civil Code defines when a right of action accrues. The limitation period shall begin to run from the day the action may be brought.<sup>324</sup> For torts and quasi-delicts, the right of action accrues from the time the injury is caused to the aggrieved party. The case of *Ernesto Kramer, Jr. et. al. v. Court of Appeals, et. al.* discusses this point:

The petition is devoid of merit. Under Article 1146 of the Civil Code, an action based upon a quasi-delict must be instituted within four (4) years. The prescriptive period begins from the day the quasi-delict is committed. In *Paulan v. Sarabia*, this Court ruled that in an action for damages arising from the collision of two (2) trucks, the action being based on a quasi-delict, the four (4) year prescriptive period must be counted from the day of the collision.

In *Español v. Chairman, Philippine Veterans Administration*, this Court held as follows

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“The right of action accrues when there exists a cause of action, which consists of 3 elements, namely: a) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; b) an obligation on the part of defendant to respect such right; and c) an act or omission on the part of such defendant violative of the right of the plaintiff . . . It is only when the last element occurs or takes place that it can be said in law that a cause of action has arisen . . .”

From the foregoing ruling, it is clear that the prescriptive period must be counted when the last element occurs or takes place, that is, the time of the commission of an act or omission violative of the right of the plaintiff, which is the time when the cause of action arises.<sup>325</sup>

The accrual of a right of action, for limitation period purposes, contemplates specific and singular causes of action that does not preclude the existence of a distinct cause of action based on the same event under the a continuing harm or violation. The concept of a continuing violation is accepted and provided for in various sources of law in the Philippines. One law that could be related is the NIPAS Act which provides for the following penalty:

(d) A fine of Fifty thousand pesos (P50,000) daily shall be imposed on the owner of existing facilities within a protected area under Section 24 of this Act, if the existence of the same and its future plans and operations will be detrimental to the protected area. **For**

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<sup>323</sup> Article 1149, Civil Code.

<sup>324</sup> Article 1150, Civil Code.

<sup>325</sup> G.R. No. 83524, 13 October 1989. Citations omitted.

**every continuing violation, or if the violation continues to be committed** for thirty (30) days and upon reaching a total fine of Five hundred thousand pesos (P500,000), the PAMB through the PASU and other deputized government entities shall cause the cessation of operation and either forfeit in favor of the PAMO or demolish the facility at the cost of its owner. If the facility is government-owned, the agency in charge shall submit a plan for a substitute facility that complies with the protected area standards and, within one (1) year, execute the approved protected area management plan; ...<sup>326</sup>

In a more general sense, the Supreme Court also acknowledged the viability of the “continuing harm theory” vis-à-vis limitation periods when it ruled, although in a vastly different context, as follows:

In fine, manifest injustice will result if we rule that prescription bars all claims of claimants, past, present and future. As discussed above, it is more in accord with law and the spirit of fairness and equity to rule that every act of violation of the non-compete agreement is a distinct cause of action and violations after 2009 are not yet covered by the 10[-] year prescriptive period.<sup>327</sup>

For criminal cases, prescriptive periods are found in the RPC or special laws that define the offenses.

The action to abate a nuisance, however, does not prescribe.<sup>328</sup> Thus, this would be useful in abating a source of GHG emissions, if framed as a nuisance.

In any case, since the limitation period is provided by law, and outside of a continuing harm argument, a claimant would not be allowed to seek for an extension of a limitation period.

Outside of causes of action, and in case there had already been a judgment, the remedy of a continuing mandamus that contemplates continuous non-performance of duty is also available, thus:

Section 7. *Judgment.* - If warranted, the court shall grant the privilege of the writ of continuing mandamus requiring respondent to perform an act or series of acts until the judgment is fully satisfied and to grant such other reliefs as may be warranted resulting from the wrongful or illegal acts of the respondent. The court shall require the respondent to submit periodic reports detailing the progress and execution of the judgment, and the court may, by itself or through a commissioner or the appropriate government agency, evaluate and monitor compliance. The petitioner may submit its comments or observations on the execution of the judgment.<sup>329</sup>

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<sup>326</sup> Section 19, Republic Act No. 11038. Emphasis supplied.

<sup>327</sup> *Dr. Benjamin D. Adapon, et. al. v. Medical Doctors, Inc.,* G.R. No. 229956, 14 June 2021.

<sup>328</sup> Article 1143, Civil Code.

<sup>329</sup> Sec. 7, Rule 9 of the Rules of Procedure for Environmental Cases.



# 3. Remedies

## A. Pecuniary Remedies

### i. Damages

#### a. Under the Civil Code

An award for damages is one of the most common remedies for causes of action that result in the finding of liability. Some laws have general provisions on the availability of this remedy while others provide detailed guidance on what damages may cover. A complaint based on a tort or quasi-delict will necessarily seek the relief of damages, which can be in the form of actual damages, moral damages, and exemplary damages. Of particular note are the concepts of temperate damages or nominal damages which might be relevant given the nature of claims in climate change cases.<sup>330</sup>

Further, in nuisance, the Civil Code provides that the abatement of a nuisance does not preclude the right of any person injured to recover damages for its past existence.<sup>331</sup>

#### b. Under Environmental Protection Statutes

The Oil Pollution Act provides that a claim for any pollution damage caused by a ship may cover:

- (a) Reasonable expenses actually incurred in clean-up operations at sea or on shore;
- (b) Reasonable expenses of Preventive Measures and further loss or damage caused by preventive measures;
- (c) Consequential loss or loss of earnings suffered by Owners or users of property contaminated or damaged as a direct result of an Incident;
- (d) Pure economic loss or loss of earnings sustained by persons although the property contaminated or damaged as a direct result of an Incident does not belong to them;
- (e) Damage to human health or loss of life as a direct result of the Incident, including expenses for rehabilitation and recuperation: Provided, That costs of studies or diagnoses to determine the long-term damage shall also be included; and
- (f) Environmental damages and other reasonable measures of environmental restoration.<sup>332</sup>

This provision is significant in its reinforcement of the liability of the corporation, as it specifically prevents scapegoating of individuals for the culpability of the corporation.

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<sup>330</sup> See Title XVIII of the Civil Code.

<sup>331</sup> Article 697, Civil Code.

<sup>332</sup> Section 6, Oil Pollution Act.

The IRR of the Clean Air Act also has a rule on the award of damages:

**SECTION 5. Damages.—**

Damages arising from illness, physical injury or damage to property as a result of air pollution may be included in the action filed against the government official concerned and the polluting establishment. In addition, failure to take action within the prescribed 30-day period may also be ground for the initiation of an administrative or criminal action against the government official concerned before the Office of the Ombudsman.

**c. Under the RPEC**

A relief in a citizen suit can consist in the payment of attorney's fees, costs of suit and other litigation expenses.<sup>333</sup>

**ii. Fines**

Most of the laws relating to the protection of the environment provide for the imposition and payment of fines, specifically stating that if the offender is a juridical person or a corporation, the penalties shall be suffered president, manager, directors, trustees, the pollution control officer or the officials directly in charge of the operations.

## **B. Non-Pecuniary Remedies**

The RPEC is replete with remedies which may be relevant to climate change litigation and other environmental cases related to climate change.

**i. Reliefs in a Citizen Suit**

In a citizen suit, the court may grant to the plaintiff proper reliefs which shall include the protection, preservation or rehabilitation of the environment and the payment of attorney's fees, costs of suit and other litigation expenses.<sup>334</sup> The violator may also be required to submit a program of rehabilitation or restoration of the environment, the costs of which shall be borne by the violator, or to contribute to a special trust fund for that purpose subject to the control of the court.<sup>335</sup>

An injunction-like device called a Temporary Environmental Protection Order ("TEPO") may also be granted. When judgment is rendered in a citizen suit, one of the reliefs may make the TEPO a permanent one.

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<sup>333</sup> Rule 5, Section 1 of the RPEC.

<sup>334</sup> Rule 5, Section 1 of the RPEC.

<sup>335</sup> Id.

## ii. Writ of Kalikasan

One of the key novelties in the RPEC is the creation of the writ of *kalikasan*. Its nature is described as follows:

SECTION 1. Nature of the Writ. — The writ is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

*Segovia* stated that for a writ of *kalikasan* to issue, the following requisites must concur:

1. there is an actual or threatened violation of the constitutional right to a balanced and healthful ecology;
2. the actual or threatened violation arises from an unlawful act or omission of a public official or employee, or private individual or entity; and
3. the actual or threatened violation involves or will lead to an environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.<sup>336</sup>

The RPEC provides for the reliefs when the writ is granted:

Section 15. *Judgment.* - Within sixty (60) days from the time the petition is submitted for decision, the court shall render judgment granting or denying the privilege of the writ of *kalikasan*.

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

- (a) Directing respondent to permanently cease and desist from committing acts or neglecting the performance of a duty in violation of environmental laws resulting in environmental destruction or damage;
- (b) Directing the respondent public official, government agency, private person or entity to protect, preserve, rehabilitate or restore the environment;
- (c) Directing the respondent public official, government agency, private person or entity to monitor strict compliance with the decision and orders of the court;
- (d) Directing the respondent public official, government agency, or private person or entity to make periodic reports on the execution of the final judgment; and

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<sup>336</sup> Supra note 26.

(e) Such other reliefs which relate to the right of the people to a balanced and healthful ecology or to the protection, preservation, rehabilitation or restoration of the environment, except the award of damages to individual petitioners.

### iii. Writ of Continuing Mandamus

The RPEC innovates on the writ of mandamus by infusing a continuing enforcement nature until the objective of the acts required is satisfied. This is particularly significant in environmental cases where damage may become entrenched or would be continuing. There requirements are set out in the RPEC:

Section 1. *Petition for continuing mandamus.* - When any agency or instrumentality of the government or officer thereof unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station in connection with the enforcement or violation of an environmental law rule or regulation or a right therein, or unlawfully excludes another from the use or enjoyment of such right and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty, attaching thereto supporting evidence, specifying that the petition concerns an environmental law, rule or regulation, and praying that judgment be rendered commanding the respondent to do an act or series of acts until the judgment is fully satisfied, and to pay damages sustained by the petitioner by reason of the malicious neglect to perform the duties of the respondent, under the law, rules or regulations. The petition shall also contain a sworn certification of non-forum shopping.

In *Metro Manila Development Authority, et. al. v. Concerned Citizens of Manila Bay, et. al.*,<sup>337</sup> a case about the clean-up of the pollution in Manila Bay, the Supreme Court had occasion to grant and explain this relief:

The cleanup and/or restoration of the Manila Bay is only an aspect and the initial stage of the long-term solution. The preservation of the water quality of the bay after the rehabilitation process is as important as the cleaning phase. It is imperative then that the wastes and contaminants found in the rivers, inland bays, and other bodies of water be stopped from reaching the Manila Bay. Otherwise, any cleanup effort would just be a futile, cosmetic exercise, for, in no time at all, the Manila Bay water quality would again deteriorate below the ideal minimum standards set by PD 1152, RA 9275, and other relevant laws. It thus behooves the Court to put the heads of the petitioner-department-agencies and the bureaus and offices under them on continuing notice about, and to enjoin them to perform, their mandates and duties towards cleaning up the Manila Bay and preserving the quality of its water to the ideal level. **Under what other judicial discipline describes as “continuing mandamus,” the Court may, under extraordinary circumstances, issue directives with the end in view of ensuring that its decision would not be set to naught by administrative inaction or indifference. In India, the**

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<sup>337</sup> G.R. Nos. 171947-48, December 18, 2008.

**doctrine of continuing mandamus was used to enforce directives of the court to clean up the length of the Ganges River from industrial and municipal pollution.**<sup>338</sup>

The RPEC particularizes the reliefs which may accompany the grant of a writ of continuing mandamus:

Section 7. *Judgment.* - If warranted, the court shall grant the privilege of the writ of continuing mandamus requiring respondent to perform an act or series of acts until the judgment is fully satisfied and to grant such other reliefs as may be warranted resulting from the wrongful or illegal acts of the respondent. The court shall require the respondent to submit periodic reports detailing the progress and execution of the judgment, and the court may, by itself or through a commissioner or the appropriate government agency, evaluate and monitor compliance. The petitioner may submit its comments or observations on the execution of the judgment.

**iv. Confiscation and Forfeiture**

In some cases, environmental laws penalize the offender by confiscating tools, products, or equipment used to facilitate the violation or those which are fruits of the same. The Forestry Reform Code allows the confiscation in favor of the government of the timber or forest products cut, gathered, collected or removed, and the machinery, equipment, implements and tools used, and the forfeiture of improvements in the area where the violation occurred.<sup>339</sup> The People's Small-Scale Mining Act of 1991 also allows the confiscation and seizure of equipment, tools and instruments.<sup>340</sup>

**v. Eviction and Limitation of Property Rights**

To prevent recurrence of certain violations in the same area, some laws, like the Forestry Reform Code, also provide for the penalty of eviction of the offender.

Others are not as drastic, but still limit the exercise of property rights over materials subject of the environmental law violation or case.

The IRR of the Clean Air Act, for example, provides:

(d) Failure to Respond to the Show Cause Order. Failure to respond to the Show Cause Order within 30 days from receipt of the Show Cause Order shall merit the following actions:

(1) An annotation shall be caused to be placed in the vehicle registration record of the subject vehicle, and registration of the said vehicle shall be allowed only upon securing a clearance from the Investigation Division of the LTO; and,

(2) LTO shall alarm all enforcers of VES of the alleged violation for apprehension of subject vehicle by including the same in the LTO alarm list.

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<sup>338</sup> Id. Citations omitted; emphasis and underscoring supplied.

<sup>339</sup> Forestry Reform Code. See also Section 71.

<sup>340</sup> See Section 27.

(e) Test for Compliance with VES. The LTO or its deputized enforcers who apprehended vehicles pursuant to this Section shall test the same for compliance with the VES.

(f) Complaint against Non-compliant Vehicles. If the apprehended vehicle fails to comply with the VES after a test conducted pursuant to this Section, a complaint shall be filed by the LTO in accordance with Rule LI of the Implementing Rules and Regulations of the Act.

This provision on lien is also found in the same law:

Section 44. Lien Upon Personal and Immovable Properties of Violators, Philippine Clean Air Act of 1999. - Fines and penalties imposed pursuant to this Act shall be liens upon personal or immovable properties of the violator. Such lien shall, in case of insolvency of the respondent violator, enjoy preference to laborer's wages under Articles 2241 and 2242 of Republic Act No. 386, otherwise known as the New Civil Code of the Philippines.

#### **vi. Abatement of Nuisance**

The Civil Code provides for these remedies in relation to both public and private nuisance:

Article 699, Civil Code. The remedies against a public nuisance are:

- (1) A prosecution under the Penal Code or any local ordinance; or
- (2) A civil action; or
- (3) Abatement, without judicial proceedings.<sup>341</sup>

Article 704. Any private person may abate a public nuisance which is specially injurious to him by removing, or if necessary, by destroying the thing which constitutes the same, without committing a breach of the peace, or doing unnecessary injury. But it is necessary:

- (1) That demand be first made upon the owner or possessor of the property to abate the nuisance;
- (2) That such demand has been rejected;
- (3) That the abatement be approved by the district health officer and executed with the assistance of the local police; and
- (4) That the value of the destruction does not exceed three thousand pesos.

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<sup>341</sup> Note that under Article 700 of the Civil Code, the district health officer shall take care that one or all of the remedies against a public nuisance are availed of.

Article 705. The remedies against a private nuisance are:

- (1) A civil action; or
- (2) Abatement, without judicial proceedings.

Article 706. Any person injured by a private nuisance may abate it by removing, or if necessary, by destroying the thing which constitutes the nuisance, without committing a breach of the peace or doing unnecessary injury. However, it is indispensable that the procedure for extrajudicial abatement of a public nuisance by a private person be followed.

### **vii. Cancellation of Permits and Licenses**

Laws like the Forestry Reform Code provide for cancellations of permits as penalties:

The Court shall further order the confiscation in favor of the government of the timber or forest products to cut, gathered, collected or removed, and the machinery, equipment, implements and tools used therein, and the forfeiture of his improvements in the area.

The same penalty plus cancellation of his license agreement, lease, license or permit and perpetual disqualification from acquiring any such privilege shall be imposed upon any licensee, lessee, or permittee who cuts timber from the licensed or leased area of another, without prejudice to whatever civil action the latter may bring against the offender.<sup>342</sup>

### **viii. Arrests and Criminal Action**

As an incident of a criminal action, provisions like this one in the Forestry Reform Code provide for arrest, on top of the Rules of Criminal Procedure:

SECTION 80. Arrest; Institution of Criminal Actions. — A forest officer or employee of the Bureau shall arrest even without warrant any person who has committed or is committing in his presence any of the offenses defined in this Chapter. He shall also seize and confiscate, in favor of the Government, the tools and equipment used in committing the offense, and the forest products cut, gathered or taken by the offender in the process of committing the offense. The arresting forest officer or employee shall thereafter deliver within six (6) hours from the time of arrest and seizure, the offender and the confiscated forest products, tools and equipment to, and file the proper complaint with, the appropriate official designated by law to conduct preliminary investigations and file informations in court.

If the arrest and seizure are made in the forests, far from the authorities designated by law to conduct preliminary investigations, the delivery to, and filing of the complaint with, the latter shall be done within a reasonable time sufficient for ordinary travel from the place of arrest to the place of delivery. The seized products, materials and equipment shall

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<sup>342</sup> Section 68, Forestry Reform Code.

be immediately disposed of in accordance with forestry administrative orders promulgated by the Department Head.

The Department Head may deputize any member or unit of the Philippine Constabulary, police agency, barangay or barrio official, or any qualified person to protect the forest and exercise the power or authority provided for in the preceding paragraph.

Reports and complaints regarding the commission of any of the offenses defined in this Chapter, not committed in the presence of any forest officer or employee, or any of the deputized officers or officials, shall immediately be investigated by the forest officer assigned in the area where the offense was allegedly committed, who shall thereupon receive the evidence supporting the report or complaint.

#### **ix. Suits and Strategic Legal Action Against Public Participation (SLAPP)**

Anticipating resistance and retaliation in environmental cases, some laws created a cause of action called SLAPP. The RPEC defines this as follows:

(g) Strategic lawsuit against public participation (SLAPP) refers to an action whether civil, criminal or administrative, brought against any person, institution or any government agency or local government unit or its officials and employees, with the intent to harass, vex, exert undue pressure or stifle any legal recourse that such person, institution or government agency has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights.

SLAPP may be alleged as a defense in a retaliatory lawsuit, and will be resolved under this particular rule and procedure in the RPEC.



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