

Environmental Justice in Philippine Courts: The Story in Trial Courts and the Court of Appeals

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By:

Justice Marilyn B. Lagura-Yap

Court of Appeals

Mindanao Station

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Enforcing environmental laws

lawmakers

enforcer

complying
party

affected
party

judges

Courts

- Interpret laws
- Determine if the executive has enforced laws correctly
- Determine if implementing rules promulgated by executive departments within delegated authority

CASE NO. 1

Bantayan Group of Islands, Petitioner



- Northwestern portion of Cebu in the Visayas
- Joined by residents, taxpayers and citizens
- with an enforceable “right to a healthful and balanced ecology for the protection of the natural and national patrimony”.

Proclamation No. 2151

- Issued on December 29, 1981
- “Declaring Certain Islands and/or Parts of the Country as Wilderness Area”
- Includes the Island of Bantayan located at the Visayan Sea in the Province of Cebu

Proclamation No. 1234

- Issued on May 27, 1998
- “Declaring the Tanon Strait Situated in the Provinces of Cebu, Negros Occidental and Negros Oriental as a Protected Area Pursuant to RA 7586 (NIPAS Act of 1992) and Shall be Known as Tanon Strait Protected Seascape”

Department of Environment and Natural Resources (DENR) and Officers, Respondents

- Patrimonial malpractice
- Failure to enforce the National Integrated Protected Areas System Act of 1992 (NIPAS Law), Water Code (PD 1067)
- Failure to promulgate Management Plan
- Filing fees of P 10,885.00

APPLICATION FOR TRO

- To prohibit DENR from issuing Environmental Compliance Certificates (ECCs)
- To order DENR to remove all structures located in the easement zones.

The ocular inspection on May 18, 2009

- Santa Fe, Bantayan Island
- List of Individuals/Companies With Structures Within the Easement Zone
- Inspected sites were beach resorts



PD 1067 - The Water Code of the Philippines

The banks of rivers and streams and the shores . . . throughout their entire length and within a zone of 3 meters in urban areas, 20 meters in agricultural areas and 40 meters in forest areas, along their margins subject to the easement of public use . . . of recreation, navigation, floatage, fishing and salvage. . . Or to build structures of any kind”

Reasons for the prohibition

- Public use for recreation, salvage and navigation
- Access to the shoreline
- Protection from scouring
- Protection from storm surges

Penalty under the Water Code

- Act of erecting structures on the zones reserved by law for public recreation and salvage punished with imprisonment of up to six years (Section 91-B, PD 1067)
- If area is protected, additional imprisonment of six years (Section 20 (g), RA 7586)m

Preliminary mandatory injunction granted.

- No Rules of Procedure for Environmental Cases yet.
- Public respondents enjoined from processing and approving applications for ECCS to constructions and projects in Bantayan Island.

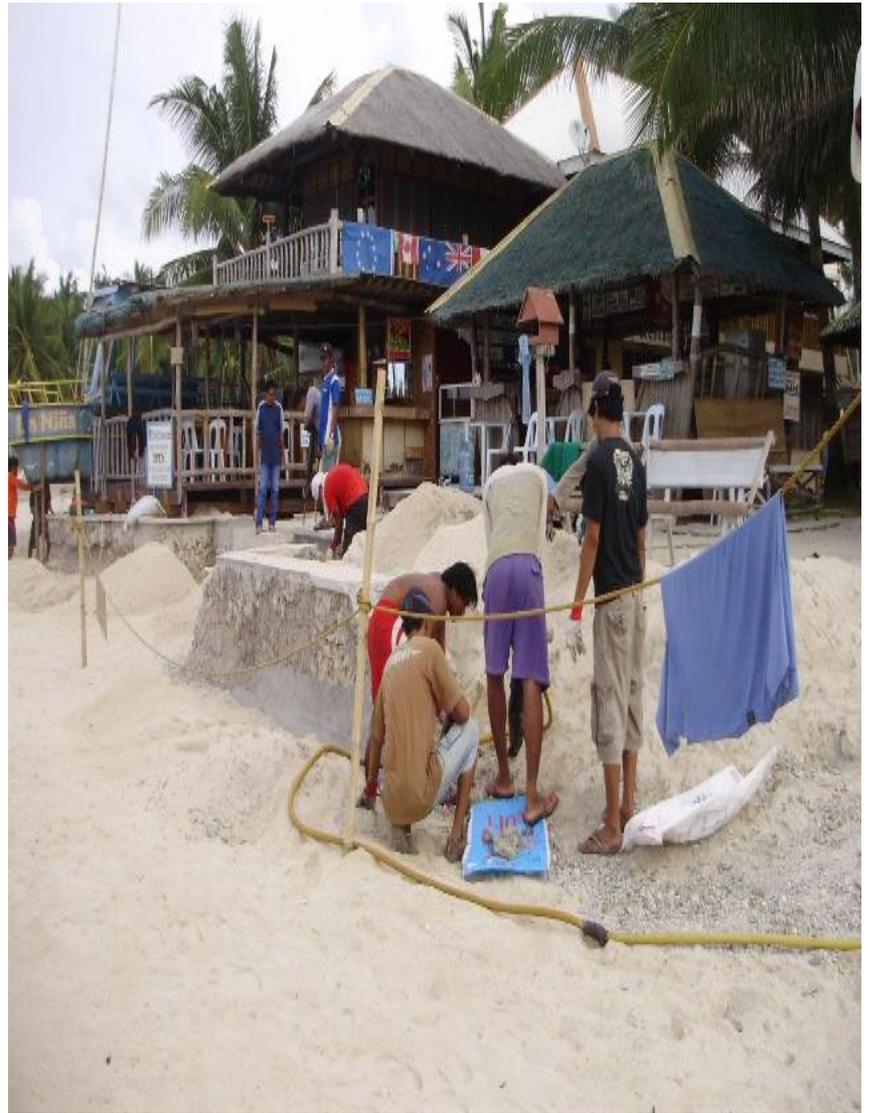
Partial judgment dated August 25, 2009

- To clear 20-meter margin of the seashores in the beach resorts in 60 days
- To conduct inspection sites of the shores
- To document structures or constructions that violate easement zone
- To submit Report

Order became final.

- Department of Environment and Natural Resources did not question order
- Readiness to fulfill responsibility
- Writ of execution was issued







House Bill -02419 filed on August 11, 2010

An Act Declaring Certain Lands of the Public Domain, Located in the Municipalities of Bantayan, Daanbantayan, Madridejos and Sta. Fe, Province of Cebu, as Agricultural Land for Agricultural, Commercial, Residential, Tourism and other Similar Productive Purposes, Amending for the Purpose Presidential Proclamation No. 2151 “Declaring Certain Islands and/or Parts of the Country Wilderness Areas

Issues

- Whether there can ever be a Protected Area Management Plan;
- Whether the gains achieved in the enforcement of environmental laws in the Island will prove futile;
- Whether development plans for the Island can be translated to sustainable development if such law is passed.

Case No. 2

PHIL. EARTH JUSTICE CENTER, INC., represented by Atty. Gloria E. Ramos; et. al. versus Secretary, DENR; Secretary, DOE; DENR, REGION VII, represented by Mr. Leonardo Sabalucca, Director, EMB REGION VII, represented by Mr. Allan Arranguez, et. al.

- Environmental Protection Order w/
Temporary Environmental Protection Order &
Writ of Continuing Mandamus
- Filed August 12, 2110
- Exempt from payment of filing fee
- One of those earlier filed after the Rules took
effect

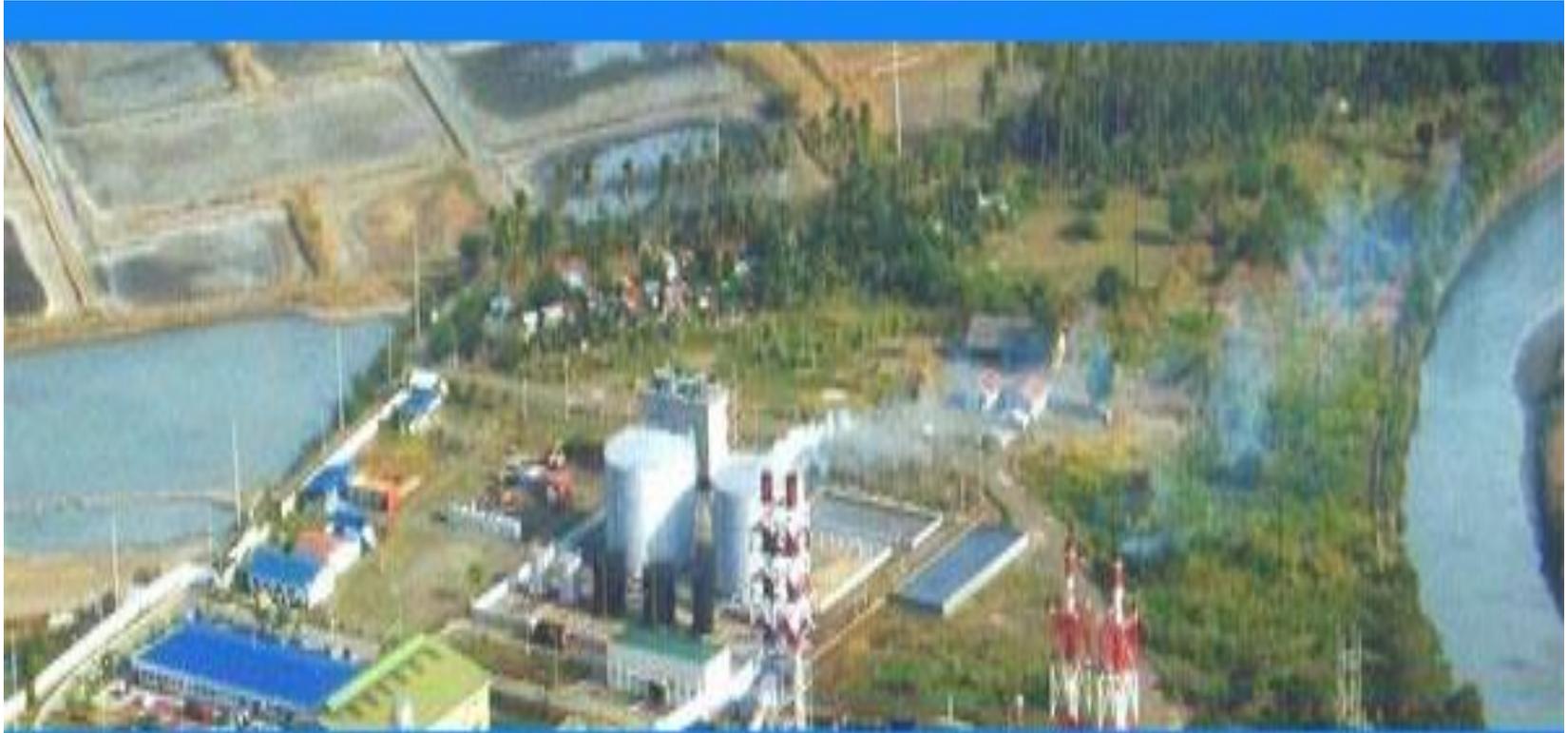
Rules of Procedure for Environmental Cases (A.M. No. 09-6-8-SC)

Took effect on April 29, 2010.

KEPCO POWER PLANT (NAGA CITY)



TOLEDO CITY COAL POWER PLANT



OUR PLANTS

GBPC is the umbrella company of several power plants in the Visayas Region and Mindoro Island.

Application for TEPO

Temporary Environmental Protection Order (TEPO) to restrain the coal power plants from transporting outside premises, coal combustion residuals (CCRs) generated from operation.

Ex-parte TEPO

- Restraining coal power plants from disposing, dumping and transporting coal ash outside their premises
- Effective for 72 hours
- Summary hearing whether to extend TEPO

SECTION 8, RULE 2, PART II
CIVIL PROCEDURE OF THE RULES

“If it appears . . . that the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury . . . may issue ex parte a TEPO effective only for 72 hours from the date of the receipt. . . Within said period, the court where the case is assigned, shall conduct a summary hearing to determine whether the TEPO may be extended until the termination of the case.”

Environmental Protection Order (EPO)

An order issued by the court directing or enjoining any person or government agency to perform or desist from performing an act in order to protect, preserve or rehabilitate the environment.” (Section 4, Rule 1, A.M. No. 09-6-8-C)

“Coal Combustion Residuals or Coal Ash”

- Byproducts of the combustion of coal at power plants, disposed in liquid form at surface impoundments and in solid form at landfills.
- Contain contaminants like mercury, cadmium and arsenic

(<http://www.epa.gov/epawaste/nonhaz/industrial/special/fossil/ccrfac.htm#4>)

PRECAUTIONARY PRINCIPLE

“When human activities may lead to threats of serious and irreversible damage to the environment that is scientifically plausible but uncertain, actions shall be taken to avoid and diminish that threat.” (Section 4f, Rule 1)

Ocular inspection on November 7, 2010





- Land tract of coal ash
- Waste water from coal power plant
- Shallow river with coal deposits



- Coal ash deposits near mangroves in gov't land
- Ash deposits near the sea

Ash ponds and landfill



Chapter III, Section 43 of the Revised Forestry Code (PD 705)

- *Strips of mangrove forest bordering numerous islands which protect the shoreline . . . from the destructive force of the sea during high winds and typhoons, shall be maintained and shall not be alienated.*
- *Must be kept free from artificial obstruction so that flood water will flow unimpeded to the sea to avoid flooding or inundation of cultivated areas in the upstream.*

OPERATION OF TWO COAL POWER PLANTS

- Coal production increasing twice as much as 160 metric tons per day.
- 20 % of coal production is coal ash.
- Existing ash ponds not sufficient.
- No assurance that the coal ash will not be transported and disposed of outside.

AIR POLLUTANT

- *Any matter in the atmosphere other than oxygen, nitrogen, water vapor, carbon dioxide, inert gases in natural or normal concentrations*
- *Detrimental to health and environment*
- *Includes smoke, dust, soot, cinders, fly ash, solid particles of any kind, gases, fumes, chemical mists, steam and radioactive substances*

ELEMENTS ANALYZED (TCLP)

Elements Analyzed (TCLP)	Laboratory Sample No. 10-0752	Laboratory Sample No. 10-0753	Laboratory Sample No. 10-0754	Laboratory Sample No. 10-0755	Laboratory Sample No. 10-0756
Cadmium, mg/L	0.015	0.020	0.040	0.043	0.040
Chromium, mg/L	<0.050	<0.050	<0.050	<0.050	<0.050
Copper, mg/L	<0.010	<0.010	<0.010	<0.010	<0.010
Lead, mg/L	<0.050	<0.050	<0.050	<0.050	<0.050
Mercury, mg/L	<0.020	<0.020	<0.020	<0.020	<0.020

R.A. 9003

- Coal ash is considered solid waste requiring proper disposal
- *“Solid waste shall refer to all discarded household, commercial waste, non-hazardous institutional and industrial wastes . . .”*

COAL ASH AS WASTE

- Not as hazardous waste
- But solid/industrial waste
- Illegal to operate open dumps for solid waste.

TEPO EXTENDED

- Overwhelming evidence of large quantities of coal ash dumped in many places
- During the pendency and until termination of the case.
- Results of the ocular inspection validated the necessity of extending the TEPO.

PRECAUTIONARY PRINCIPLE, RE-STATED

“When reasonable scientific evidence of any kind gives us good reason to believe that an activity, technology or substance may be harmful, we should act to prevent the harm. If we always wait for scientific certainty, people may suffer and die, and damage to the natural world may be irreversible.”

CASE NO. 3

Concerned residents of Iligan City and the Center for Alternative Legal Forum and Injustice Inc., filed against the City Government of Iligan, Mines and Geo Sciences Bureau, the DENR Secretary, the DILG Secretary, the National Defense Secretary, PNP Chief, Chief of Staff of the AFP, Provincial Government of Bukidnon and COA.

Urgent Petition for Continuing Mandamus with
Application for Temporary Environmental
Protection Order

Objectives

- to compel the respondents to take serious action and attention on environmental and safety concerns and
- to prevent “human factors” that aggravated the damage brought by Typhoon Sendong

“human factors” aggravating the damage caused by Sendong

- Complacency of the local government
- Lack of disaster preparedness
- Mining and logging operations

Extremely Urgent Measures

- City government and Anti-Illegal Task Force to confiscate and remove all logs stocked in log ponds in Iligan City and Lanao del Sur
- City government, MGB and DENR to be enjoined from allowing mining and quarrying operations
- Access to transaction involving 2010 and 2011 Calamity Fund

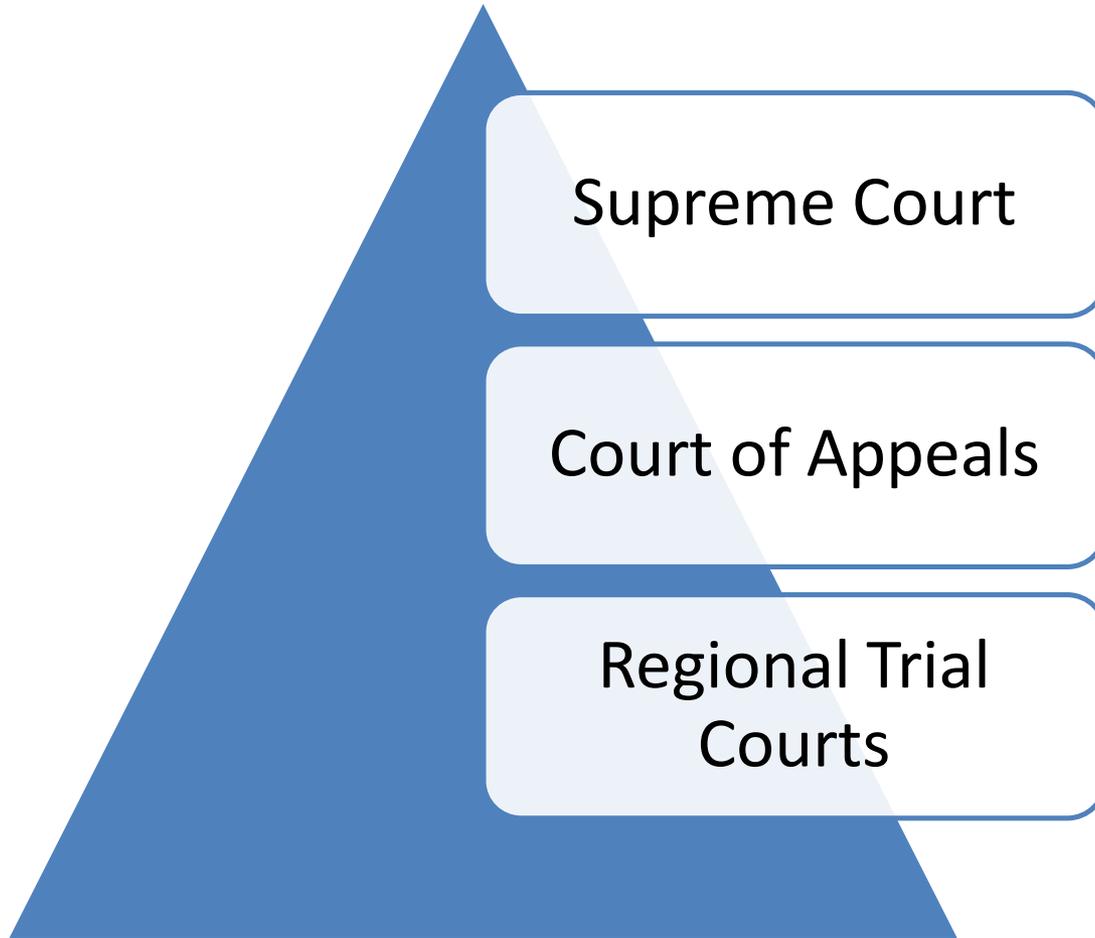
Extremely Urgent Measures

- City government to provide relocation to residents living in danger areas such as river banks and shorelines with access to livelihood opportunities
- City government to formulate a comprehensive City Disaster Risk Reduction and Management Plans and City Climate Change Action Plans

Continuing mandamus

- Writ issued by a court in an environmental case
- Directing any agency or instrumentality of the government or officer
- To perform an act or series of acts decreed by final judgment
- Which shall remain effective until judgment is fully satisfied.(Rule 1, Section 3,c)

Where to file



Deferred action on the prayer for TEPO pending submission of proof

- showing existence of floating logs in ponds/rivers near Iligan City
- barangay, municipality in Lanao del Sur

Compliance

- Affidavit re- presence of timbers floating in the ponds/ riverbanks in Bansayan, Panoroganan, Iligan City
- Website Inquirer News citing report of Task Force Sendong about timbers stockpiled in Kapai-Bayug River junction
- Pictures of timbers dumped along coastline of Iligan City

TEPO Granted

To remove all timbers deposited in ponds and riverbanks

- Bansayan, Panoroganan, Iligan City
- Kappai-Bayug river junction, Lanao del Sur

Confiscate, deposit logs

- City Environment Officer
- DENR

Assist in execution of directives

- Anti-Illegal Logging Task Force



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SOURCES

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