

**DESIGNATION OF “GREEN BENCHES” IN THE PHILIPPINES:
Regional Exchange in Support of Improved Judicial Institutions and Capacity**
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SUMMARY

Courts have characteristically been viewed as conservative and cautious in approaching new developments in law. With rapid economic growth in Asia, environmental problems have increased and become more complex, further challenging sitting judges as they consider innovative solutions to complex environmental cases. Efforts to address these challenges have been undertaken by judiciaries in India, Thailand, and the Philippines, among others. Various approaches to empowering judges through judicial education, coupled with institutional reform, are promoting more effective adjudication of environmental cases in the region.

In the Philippines, the judiciary undertook a series of initiatives to establish so-called “green benches” that would handle environmental cases in a step to improve effective resolution of environmental disputes in the country. Together with development partners and input from stakeholders, the Philippine Supreme Court considered options and defined strategies to address the challenges of environmental adjudication. In January 2008, the Supreme Court designated 117 municipal and regional trial courts across the country as environmental courts. Together with the planned capacity building of judges within these benches, the Philippines is moving toward a more environmentally-responsive judiciary, promoting improved environmental compliance and enforcement in the country and within the region.

1. THE LEGACY OF “OPOSA V. FACTORAN, JR.”

In 1993, the Philippine Supreme Court promulgated a decision in the test case of *Oposa v. Factoran, Jr.*, G.R. No. 101083, July 30, 1993 (224 SCRA 792), on the legal standing of minors to sue in an environmental case. The children asserted their right to a balanced and healthful ecology under Article 2, Section 16 of the 1987 Philippine Constitution. They initially sought injunctive relief from the lower court against the issuance of timber license agreements by the Secretary of the Department of Environment and Natural Resources covering more areas for logging than what was available.

The Court, in an unprecedented ruling, declared that, “*the right to a balanced and healthful ecology...belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation – the advancement of which may even be said to predate all governments and constitutions.*” It did not have difficulty in concluding that the petitioner minors had standing to sue even on behalf of succeeding generations based on the concept of intergenerational responsibility.

This decision led to increasing calls to strengthen environmental adjudication in the Philippines, including promoting environmental advocacy before judicial and quasi-judicial bodies.

Judges, however, continue to face challenges in adjudicating environmental cases. For example, on legal standing and establishment of a cause of action, a more liberalized framework could reinforce judicial interpretation. Prescription for filing of environmental actions in court may require special rules. Appreciation of highly technical and scientific evidence presented by experts is still limited and requires training and orientation on the part of judges. Some sanctions and penalties are not significant enough to deter violators, and the numerous environmental laws in place need to be fully understood to promote consistency in rendering judgments. Finally, creative approaches to the handling or disposition of evidence, including the imposition of sanctions, could provide judges with new insights.

2. JUDICIAL EDUCATION AND THE ENVIRONMENTAL AGENDA FOR THE COURTS

Enforcement of environmental laws in the Philippines has been largely confined to administrative bodies with quasi-judicial mandates. Awareness among prosecutors and judges with regard to environmental concerns has been limited to specific legislation (e.g., forestry).

As early as 1993, the Supreme Court issued *Administrative Order No. 15-13-93* designating special courts to handle violations of the Forestry Code. This was prompted by the growing number of cases involving violations of forestry laws. The courts were located in areas where violations were rampant. A regular monitoring of these cases has since been adopted through the Court Administration Management Information System.

Still, there was a perceived need to provide a more deliberate framework for engaging the court system and the other components of the administration of justice in order to complement the function of environmental agencies. Resort to court action, especially with regard to criminal violations of environmental laws, would create more teeth in the enforcement of these laws. Often, adjudication before administrative bodies does not fully realize the maximum impact of enforcement unless reinforced by effective judicial enforcement.

One strategy undertaken to enhance judicial capacity to address environmental concerns is through judicial education. In 1998, the Philippine Judicial Academy (PHILJA) was created through Republic Act 8557 to serve as a training school for justices, judges, court personnel, lawyers and aspirants to judicial posts.

PHILJA provides the following trainings programs related to Environmental Law:

- a. *Orientation Program for New Judges* – A two-hour course on Introduction to Environmental Law; and,
- b. *Specialized Training* – A three-day intensive training using case studies on environmental issues and involving other sectors (prosecutors, environmental law groups, environmental agencies and scientists)

In partnership with development organizations such as the United States Agency for International Development (USAID), the United Nations Development Program (UNDP), the Asia Foundation, and the Haribon Foundation, PHILJA has enhanced its curriculum content and developed training manuals and interactive tools. Legal topics cover basic environmental laws, provisional remedies, abatement of nuisance, tort action, damages, evidence, international environmental law, problem areas in prosecution or enforcement, environmental economics, and climate change. Non-governmental organizations specializing in public interest or environmental litigation and advocacy have been invited to the multi-sectoral training programs

either as resource persons or participants. PHILJA likewise engaged academics to render expertise in training the judges and legal practitioners.

The process of educating judges and other court personnel on environmental issues has significantly increased the capacity of judges as well as justices of the higher courts to address the complexity of environmental adjudication. However, further exposure to scientific information and techniques in assessing evidence in environmental damage suits is still needed to realize effective and efficient administration of environmental cases.

3. REGIONAL DEVELOPMENTS AND ESTABLISHMENT OF GREEN BENCHES IN THE PHILIPPINES

The Supreme Court, through a number of champions of environmental issues within the judiciary, envisioned a system of specialized treatment of environmental cases given: (a) the complex nature of environmental cases; (b) the urgency of timely resolution of those cases; (c) the complex process of handling evidence; and (d) the application of creative sentencing.

In February 2005, a roundtable discussion, attended by environmental law practitioners, academics, representatives of the lower court and the Court Administrator, and PHILJA, identified the challenges and concerns confronting environmental adjudication. The participants highlighted the need to strengthen the network of institutions responsible for enforcing environmental laws and the capacity of judges to handle environmental cases.

The following year, in July 2006, PHILJA held another roundtable discussion focused on the concept of green benches. In an effort to improve environmental adjudication in the Philippine context, discussions touched upon the possibility of designating green benches and other needed institutional reform.

In undertaking these efforts, judges and court officials in the Philippines have been mindful of significant judicial reform developments in Asia. As is well-known, the Supreme Court and some High Courts in India have relied on public interest litigation to exercise a strong judicial hand in the implementation and monitoring of environmental laws and international principles. In these cases, courts have issued a number of orders and pioneering decisions to prevent and correct environmental degradation in the country. Based on this experience, and with support from USAID, Thailand moved forward with the establishment of the Environmental Law Division within the Thai Supreme Court and the Appeals Courts. The new division was created to concentrate responsibility for adjudicating cases involving a number of environmental laws. Thailand is also working to build the capacities of judges to handle environmental cases.

At the same time, the Philippine Supreme Court and PHILJA strengthened their linkages with several judiciaries within the region and initiated exchanges on various innovative judicial approaches. These initiatives were undertaken in partnership with the Asian Environmental Compliance and Enforcement Network (AECEN), a regional practitioner network committed to promoting improved environmental governance in the region. With principal funding support from USAID, AECEN works with Asian courts, senior judges and judicial committees to reinforce policies and systems that enable judiciaries to effectively resolve environmental disputes. AECEN organizes the Asian Justices Forum on the Environment, which serves as a platform for regional exchange and provides a venue for discussing specific host-country initiatives. As a notable example, AECEN, through the Asian Justices Forum, assisted the Thai judiciary in the establishment of its environmental court division.

In July 2007, PHILJA, in partnership with USAID, AECEN, the United Nations Environment Programme (UNEP), the Asia Pacific Jurist Association (APJA), the United States Environmental Protection Agency (USEPA) and the Supreme Court Project Management Office (PMO), hosted the Asian Justices Forum on the Environment. In this forum, a framework detailing options on the establishment of green benches in the Philippines was presented for regional input. Senior justices from Indonesia, India, Thailand, Sri Lanka, Australia and the U.S. commented on different approaches. The recommendations of the forum gave impetus to the strengthening of environmental adjudication in the region and the Philippines. With the continued assistance of development partners, a program of action was developed that set out a strategy for the establishment of green benches in the Philippines.

In an effort to accelerate institutional reforms, the following options were identified for Supreme Court consideration: (a) to designate special courts to hear environmental cases using empirical data showing the high incidence of environmental cases; (b) to expand the jurisdiction of forestry courts to cover all environmental cases; and (c) to designate special divisions in the Court of Appeals to handle environmental cases. The expansion of jurisdiction of some designated Forestry Courts was deemed unsatisfactory considering the Court's earlier pronouncement that no special courts be designated in an area if there were only two branches. Of the 101 existing Forestry courts, only 45 could then be designated as environmental courts. In line with the policy on balancing judicial workloads, it was concluded that environmental cases would need to be distributed court-wide and at the appellate level. Thus, the Supreme Court and PHILJA found the option of designating special courts to be more comprehensive in scope.

In the interim, an inventory and assessment of environmental cases pending in the different courts, including court dockets monitoring and classification of environmental cases, had to be undertaken. This process was necessary (a) to identify the type of violations of environmental laws docketed in various courts; (b) to guide the Supreme Court for purposes of locating "designated green benches"; and, (c) to enhance the classification system or data disaggregation of environmental law cases. The data gathered provided needed background information for the committee constituted by the Supreme Court to study the proposal for the establishment of green benches.

A sampling of the relevant information showed that there were a total of 2,353 cases pending in various Philippine courts involving violations of forestry and fisheries laws. With passage of new laws on mining, clean air, solid waste management, wildlife, and indigenous peoples, courts began receiving test cases on many of these issues as well.

Acting upon the recommendation of the review committee, the Supreme Court, in its Resolution dated 20 November 2007, as amended on 22 January 2008 (A.M. No. 07-11-12-SC), designated 117 environmental courts, comprising first and second level courts, to handle all types of environmental cases arising from at least fourteen environmental laws (*Revised Forestry Code, Marine Pollution Law, Toxic Substances and Hazardous Waste Act, People's Small-Scale Mining Act, National Integrated Protected Areas Act, Philippine Mining Act, Indigenous People's Rights Act, Philippine Fisheries Code, Clean Air Act, Ecological Solid Waste Management Act, National Caves and Cave Resources Management Act, Wildlife Conservation and Protection Act, Chainsaw Act, and Clean Water Act*).

The designated environmental courts do not necessarily lose jurisdiction over other types of cases. These courts will continue to be courts of general jurisdiction. This is in response to the concern raised by judges that specialized courts may limit the professional

growth and advancement of judges within the judiciary, especially in a system where appellate courts are not themselves specialized.

Likewise, similar to agrarian courts, there are matters of split jurisdiction in the application of environmental laws by quasi-judicial bodies and environmental courts. Questions of rights or privilege to resource use will remain within executive agencies. However, the impact of the process of designation of environmental courts could have a similar effect as what has happened to an earlier establishment of Family Courts in the country. The development of specialized rules in adjudication of environmental cases could be expected.

4. THE NEXT MOVE: A STRATEGY FOR SUPPORT OF ENVIRONMENTAL COURTS

Years of effort on the part of a multi-sectoral team of environmental advocates and practitioners to engage the judiciary through roundtable discussions, research, and judicial education and training generated an effective working relationship to build environmental law capacity in the judiciary.

Immediately after the designation of the environmental courts, the same multi-sectoral team convened a forum to identify a strategy for support to the environmental courts. The Chief Justice of the Supreme Court himself received the recommendations of the forum. Development partners present during the forum committed their assistance to the continuing inventory of environmental cases, training, and drafting of a bench manual on environmental law.

Legal practitioners from grassroots communities offered innovative approaches to sentencing violators of environmental laws, handling and gathering of evidence, facilitating conduct of trials through “Justice on Wheels”, and use of alternative dispute resolution. Revision of court rules has also been suggested in order to make access to justice by the poor more affordable.

Environmental agencies recognized the need to equip their lawyers with investigative and adjudicative skills. PHILJA has been approached by the Department of Environment and Natural Resources to undertake skills-based training programs for these lawyers.

5. LESSONS LEARNED

The successful advocacy for the designation of green courts in the Philippines may be attributed to three important factors:

(a) Judicial leadership

The advocacy for environmental awareness has come from within the ranks of the Supreme Court justices themselves. Through the pronouncement in the case of *Oposa v. Factoran, Jr.*, the Supreme Court has taken a pro-active stance and reinforced the declared policy of the State to promote a healthy environment. In addition, champions of environmental issues among the justices have made the process of revision of rules easily acceptable by the rest of the members of the bench.

The participation of senior justices at the appellate and Supreme Court levels in various training programs, domestic and international, contributed to a broader understanding of the urgency of judicial response to environmental challenges. No

less than the Chief Justice underscored this vision as a result of his direct involvement in strategic forums on environmental issues.

(b) Judicial Education and Training

Skills-based training and curricula in PHILJA enabled trial judges to appreciate the complexity and sensitivity of environmental cases. The multi-sectoral design of the trainings has provided the different stakeholders in environmental cases with a broader perspective of the problems in environmental law enforcement, prosecution, and adjudication.

An NGO-led (Haribon Foundation) series of multi-sectoral trainings nationwide in the past three years with PHILJA gathered judges, prosecutors, environmental agencies, public interest groups and media in skills-based seminars. This approach enabled these stakeholders to develop common strategies for the enforcement of environmental laws.

(c) Strategic Networking

Advocacy groups and public interest lawyers have had an impact on environmental litigation. Their members are highly skilled and trained. They have developed curricular offerings in colleges and universities. Grassroots communities have benefited from paralegal education trainings conducted by these public interest lawyers.

Most of these advocacy groups and public interest lawyers have been listened to by agencies of government, including the Supreme Court, due to their legal expertise and grasp of the environmental setting around the country. In a series of consultative forums conducted by the Supreme Court, PHILJA resorted to the authoritative studies of environmental advocates to provide the Court with hard data and a comprehensive listing of legal challenges. These became inputs for considering the designation of green benches.

The value of regional cooperation to efforts of strengthening environmental adjudication in the Philippines also cannot be overlooked. The sharing of experiences from different countries, with their varying systems and innovative means, and drawing parallels and differences, provided the PHILJA and the Supreme Court with enhanced understanding of ways to improve handling of environmental disputes in the Philippine context.

With the establishment of green benches it is expected that there will be a qualitative increase in handling of environmental cases in the Philippines. There will be a growing demand for environmental law practitioners with the increase in the number of specialized environmental courts. Legal and judicial education on environmental issues will likewise continue to be emphasized in the next few years.