

Public Interest Environmental Law in Asia

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OPPORTUNITIES



Link between Human Rights and the Environment*

1. 1972 Stockholm Conference on the Human Environment
2. General Assembly Resolution No. 45/94
3. Various country's Constitutional and Legislative provisions on environmental rights
4. Tribunals
5. Human Rights Treaties

* Shelton, D. Human Rights and the Environment: Substantive Rights, 2011.



Human Rights and the Environment

Substantive Rights

- Environmental protection is essential to the enjoyment of the rights to life, health, healthful and balanced ecology and family life
- Separate from but interdependent with the procedural rights in Environmental Law

Procedural Rights

- Right to information
- Right to participation
- Right to access justice
- Procedural matters to ensure that decision-making has the informed input of those potentially affected by policies and projects and for them to have redress for grievances or resulting harm



Substantive Environmental Rights and National Law

- More than 90 national constitutions in the world recognize national government duty to its citizens to prevent harm to the environment. Of these, over 50 recognize the importance of a healthy environment, either as a duty of the state or as a right. (*Kravchenko and Bonine, Human Rights and the Environment*)
- India: 1976 amendment to the Constitution addressed environmental quality, in addition to “right to life” under Article 21.



Substantive Environmental Rights and National Law

- China: Revised Environmental Protection Law in 2015 resulted in an increase in environmental public interest lawsuits
- Philippines: Constitutional provision on “the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature” (Art II, section 16) have been interpreted as a ***duty not to destroy the environment*** (*Oposa vs. Factoran*)



Active Role of the Judiciary

- South Asia: following the lead of the Supreme Court of India, courts in South Asia have been active in public interest litigation
 - Jona Razzaque, Public Interest Environmental Litigation in India, Pakistan and Bangladesh (2004); summaries of hundreds of cases can be found in http://www.elaw.org/resources_regional.asp?region=Asia
- China: Supreme People's Court issuance in 2016 of a "White Paper on Environmental and Natural Resources Adjudication" promoting public interest environmental litigation



Statutory provisions and other tools

- Precautionary Principle
- Polluter Pays Principle
- Environmental Impact Assessment laws in Asia offers potential new tools for raising consciousness and taking into account the environmental impacts of regional trade policies, foreign development projects, and other transnational activity.



PHILIPPINE SUPREME COURT RULES OF PROCEDURE FOR ENVIRONMENTAL CASES



Objectives

1. Protect and advance the constitutional right of the people to a balanced and healthful ecology
2. Provide a simple, speedy and inexpensive procedure for the enforcement of environmental rights and duties
3. Introduce and adopt innovations and best practices ensuring effective enforcement of remedies and redress for violations of environmental laws
4. Enable courts to monitor and exact compliance with orders and judgments in environmental cases



Highlights of the Rules

- (1) Citizen Suits
- (2) Consent Decree
- (3) Environmental Protection Order
- (4) Writ of Kalikasan
- (5) Writ of Continuing Mandamus
- (6) Strategic Lawsuits against Public Participation (SLAPP)
- (7) Precautionary Principle



Challenges

- Inadequate number of public interest environmental lawyers
- Complex and nuanced scientific issues accompanying public interest environmental cases (eg. establishing causation and estimating environmental damages)



Challenges

- Lack of financial resources
- Weak governance (corruption; political intervention)
- Philippines: Citizens' lack of knowledge of the Supreme Court Rules of Procedure for Environmental Cases (RPEC)



INITIATIVES



Greenpeace, et al. v. Environmental Management Bureau of the DENR

Environmental groups led by Greenpeace filed a Writ of Kalikasan and Writ of Continuing Mandamus to seek the stoppage of the field trials of the genetically-modified *Bacillus Thuringiensis* (Bt) eggplants being done in various parts of the country.



Some Issues

- Application of the law on environmental impact statement/assessment on projects involving the introduction and propagation of GMOs in the country
- Evidence of damage or threat of damage to human health and the environment in two or more provinces, as a result of the Bt talong field trials
- Neglect or unlawful omission committed by the public respondents in connection with the processing and evaluation of the applications for Bt talong field testing
- Application of the precautionary principle



Supreme Court Decision

- 1) permanently stopping questioned field tests for Bt talong and issuance of new permits on genetically modified organisms (GMOs)
- 2) declaring null and void the “Rules and Regulations for the Importation and Release into the Environment of Plants and Plant Products Derived from the Use of Modern Biotechnology” otherwise known as the Department of Agriculture Order No. 08, series of 2002 and,
- 3) temporarily stopping any application for contained use, field testing, propagation and commercialization and importation of genetically modified organisms until a new administrative order is promulgated in accordance with the law.



SC Decision on Precautionary Principle

Assessing the evidence on record, as well as the current state of GMO research worldwide, the Court finds all the three conditions present in this case - uncertainty, the possibility of irreversible harm and the possibility of serious harm.

Eggplants (*talong*) are a staple vegetable in the country and grown by small-scale farmers, majority of whom are poor and marginalized. While the goal of increasing crop yields to raise farm incomes is laudable, independent scientific studies revealed uncertainties due to unfulfilled economic benefits from *Bt* crops and plants, adverse effects on the environment associated with use of GE technology in agriculture, and serious health hazards from consumption of GM foods. **For a biodiversity-rich country like the Philippines, the natural and unforeseen consequences of contamination and genetic pollution would be disastrous and irreversible.**



Resident Marine Mammals of Tanon Strait represented by NGOs

- Tañon Strait is a protected seascape between the islands of Negros and Cebu, Philippines
- Resident marine mammals are the “toothed whales, dolphins, porpoises and other cetacean species.”
- Citizen Suit



INITIATIVE: Resident Marine Mammals of Tanon Strait represented by NGOs

- Case for certiorari, mandamus and injunction was filed to enjoin the Department of Energy, et al., from implementing a service contract involving the exploration, development, and exploitation of the country's petroleum resources in and around the Tañon Strait. Among the activities allowed in 2005 were the conduct of a seismic survey and oil drilling.



Resident Marine Mammals of Tañon Strait represented by NGOs

- Violation of the National Integrated Protected Areas System (NIPAS) Act of 1992 because Tañon Strait is, by virtue of Proclamation No. 2146, an environmentally critical area.
- Environmental Compliance Certificate (ECC) must be secured after undergoing an Environmental Impact Assessment (EIA) to determine the effects of such activity on its ecological system



Resident Marine Mammals of Tanon Strait represented by NGOs

- Court noted that Service Contract 46 failed to comply with the safeguards required under Paragraph 4, Section 2, Article XII of the 1987 Constitution which required that the service contract be (a) authorized by a general law; (b) signed by the President, and, (c) reported to Congress.

