

Access to Justice: Human Rights Abuses Involving Corporations

PHILIPPINES



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Access to justice and effective legal remedies are crucial elements in the protection of human rights in the context of business activities. It is also relevant to the work of judges and lawyers who promote the rule of law and human rights. Despite its importance, access to justice is hindered by a number of obstacles unique to corporate human rights abuses. The study of state practices in providing access to justice reveals the potential of existing instruments to ensure this right. Scrutiny of state practices in this area will help the international community in its quest for new answers to the challenge of transnational corporate human rights abuse.

This study surveys the international and domestic legal framework applicable in engaging the liability of business enterprises for human rights and environmental abuses occurring in the Philippines. The domestic law of the Philippines does provide, substantively and procedurally, for some measure of judicial and/or administrative remedy for victims of human rights abuse by corporations and other business enterprises. Nonetheless, as the study illustrates, access to justice for such victims remains highly limited. Major obstacles include the murky or impenetrable corporate structures of alleged abusive companies; prohibitive fees imposed on claimants, and disincentives for pursuing remedies, which may arise from incidence or threats of violence, reprisals, or counter-litigation. Despite their prevalence, these obstacles are not always insurmountable. By reducing fees and processing times of human rights claims, providing training on technical elements of human rights law to the judiciary, and reforming law to enforce corporate transparency, the study suggests that the Filipino justice system can be modified to more effectively provide for adequate remedies in cases of corporate human rights abuse.



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Philippines

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TABLE OF CONTENTS

Introduction	1
1. Legal Liability for Corporations under National Law	3
1.1 International Conventions	3
1.2 Constitution	5
1.3 Statutes	6
1.3.1 Civil liability	6
1.3.1.1 Civil Code	6
1.3.1.2 Other Laws	9
1.3.2 Criminal liability	9
2. Legal Remedies for Corporate Human Rights Abuses	12
2.1 Judicial remedies	12
2.1.1 Initiating Civil Cases	13
2.1.2 Initiating Criminal Cases	13
2.1.3 Pauper Litigants, exception to filing fees	14
2.1.4 New Rules of Procedure For Environmental Cases	15
2.2 Administrative Remedies	17
2.2.1 Environment	17
2.2.2 Labour	19
2.2.3 Agrarian Laws	23
2.3 The Commission on Human Rights	25
2.4 Executive Agencies	26
3. Obstacles to Accessing Justice	27
3.1 Corporate personality; piercing the corporate veil and complex corporate structures	27

3.2 Jurisdiction Over Foreign Corporation as Respondent	31
3.3 <i>Forum Non Conveniens</i>	33
3.4 Prescription	34
3.5 Legal standing	35
3.6 Legal Fees and Legal Representation	36
3.7 Protracted length of proceedings	40
3.8 Equality of arms and evidentiary problems	41
3.9 Other obstacles	42
3.9.1 Violence	42
3.10 Harassment of victims and their lawyers	43
Conclusions and Recommendations	45
Bibliography	50
Annex I. Bill Of Rights	59
Annex II. Social Justice And Human Rights	62

Introduction

The present country study discusses Philippine laws relevant to the question of human rights abuse involving corporations. It focuses on remedies available to affected persons, identifies obstacles surrounding access to justice, and makes recommendations on how to overcome these obstacles. The study results from a process that started with a comprehensive review of Philippine law, policy, and cases decided by the Philippine Supreme Court. An initial draft was prepared and then presented for discussion by various experts and stakeholders in a workshop held in Manila on April 20 and 21, 2010.¹ The discussions at the workshop led to the final and present form of the study.

Access to justice and effective legal remedies are crucial elements in the protection of human rights in the context of business activities. They are specially relevant to the work of judges and lawyers who promote the rule of law and human rights. Despite its importance, access to justice is hindered by a number of obstacles unique to corporate human rights abuses. The study of state practices in providing access to justice reveals the potential of existing instruments to ensure this right. Scrutiny of state practices in this area will help the international community in its quest for new answers to the challenge of transnational corporate human rights abuse.

To contribute to the understanding of the problem and to assist in the formulation of a new agenda to strengthen access to legal remedies in the context of business abuse, the International Commission of Jurists (ICJ) has carried out a project addressing Access to Justice for victims of corporate human rights abuse. This project comprises a series of country studies (Brazil, Colombia, People's Republic of China, Democratic Republic of the Congo, India, The Netherlands, Nigeria, the Philippines, Poland and South Africa) and questionnaires for additional countries. The present study is one of the country studies.

The study follows the definitions and methodology adopted by the broader ICJ Access to Justice Project. The present study is based on in-country research, consultation with a number of experts and a national workshop held in Manila on April 20 and 21 April 2010 jointly organized by the ICJ and SALIGAN, where some 40 judges, lawyers, academics and civil society and National Human Rights Commission representatives were in attendance.

The study begins with the survey of human rights treaties to which the Philippines is a party and goes on to discuss Philippine laws and cases relating and relevant to corporations with a focus on the norm of conduct, penalties for wrongdoing,

1. Workshop on Access to Justice For Human Rights Abuse Involving Corporations: Gaps and Recommendations (The Philippine Workshop), April 20-21, 2010, Century Park Hotel Manila.

and remedies available to affected persons. The following section discusses the principal obstacles to access to justice in the Philippines in relation to corporate abuse of human rights. Conclusions are offered next, followed by recommendations to address major obstacles to access to justice.

1. Legal Liability for Corporations under National Law

This section provides an overview of the legal framework relevant to the liability of corporations for human rights abuses and assesses the Philippine Constitution and statutes, both general and specific in application. Where relevant, rulings of the Philippine Supreme Court are also discussed.²

1.1 International Conventions

The Philippines is party to a significant number of international human rights treaties. It has likewise signed other significant international human rights instruments. Both the direct observance and the protection from abuse by third parties, including corporations, of the rights contained in these instruments is incumbent upon the Philippines.

In particular, the Philippines signed and ratified the International Covenant on Civil and Political Rights (ICCPR), the First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP1), the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP2) aimed at the abolition of the death penalty, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Abolition of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Racial Discrimination Against Women (CEDAW), the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW-OP), the Convention on the Rights of the Child (CRC) and the Optional Protocol to the Convention on the Rights of the Child (CRC-OP-AC) on the involvement of children in armed conflict, the First Optional Protocol to the Convention on the Rights of the Child (CRC-OP-SC) on the sale of children, child prostitution and child pornography, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Convention on the Protection of All Migrant Workers and Members of their Families (CMW), and the Convention on the Rights of Persons with Disabilities (CRDP).

The Philippines is also a party in a number of other treaties containing normative standards relevant to human rights. These instrument include the, the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on the Destruction (Mine Ban Treaty), the United Nations Convention against Corruption (with qualification), the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the

2. Republic Act No. 386, The New Civil Code of the Philippines of 1950 (Civil Code), Article 8.

Prostitution of Others, the Convention Relating to the Status of Refugees, the Convention Relating to the Status of Stateless Persons, the Slavery Convention of 1926, as amended, the Convention on the Non-Applicability of Statutory War Crimes Against Humanity, the Convention on the Political Rights of Women, the Convention on the Nationality of Married Woman, the Kyoto Protocol to the United Nations Framework Convention on Climate Change, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the International Convention for the Prevention of Pollution of the Sea by Oil, the Convention on Biological Diversity (CBD), the United Nations Framework Convention on Climate Change (UNFCCC), the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention and the Vienna Convention on Civil Liability for Nuclear Damage.

Philippines is party to a substantial number of International Labour Organization (ILO) Conventions, including Convention No. 29 and No. 105 on forced labor, Convention No. 87 on freedom of association and protection of the right to organise, Convention No. 89 on night work by women, Convention No. 90 on night work of young persons, Convention No. 94 on labour clauses, Convention No. 95 on protection of wages, Convention No. 97 on migration of employment, Convention No. 98 on the right to organise and collective bargaining, Convention No. 99 on minimum wage fixing, Convention No. 100 on equal remuneration, Convention No. 111 on discrimination (employment and occupation), Convention No. 118 on equality of treatment on social security, Convention No. 138 on minimum age, Convention No. 141 on rural workers' organisations, Convention No. 143 on migrant workers, Convention No. 144 on international labour standards, Convention No. 165 on social security for seafarers, Convention No. 176 on safety and health

in mines, Convention No. 179 on recruitment and placement of seafarers and Convention No. 182 on the worst forms of child labour.

1.2 Constitution

In the Philippines, Constitutional provisions are generally not self-executing and need legislative action, usually through enactment of national laws, i.e. Republic Acts, to be invoked in specific cases. This is true for rights listed under the Bill of Rights³ as well as the lengthy list of guarantees under the title Social Justice and Human Rights.⁴

However, the Supreme Court has identified a handful of rights as “self-executory” or actionable even absent an enabling law. These may be invoked in the course of court proceedings which typically involve the question of constitutionality of State action that may or may not eventually affect conduct of private actors. A leading example where private conduct is affected is the holding in *Oposa et al. v Fulgencio S. Factoran Jr. et al.*⁵ (*Oposa*), which states that the Constitutional right to a “balanced and healthful ecology” is fundamental, self-executing, and judicially enforceable, and consequently imposes upon the State the correlative duty to refrain from impairing the environment. Even as *Oposa* involved an action against a government agency, specifically the Department of Environment and Natural Resources (DENR), to compel it to cancel certain timber license agreements, the resolution of the case ultimately affected corporations conducting logging activities under such agreements. The ruling in *Oposa* established for the first time that Constitutional provisions on the environment may be directly invoked and, as will be further discussed below, also laid foundations for a new set of rules of procedure governing environmental cases.⁶ Thus, while provisions of the Constitution may properly be invoked where acts of State are involved, the Supreme Court has applied them in rare cases involving private individuals⁷ and, indirectly, private corporations similar to *Oposa*.⁸

3. See Annex I.

4. See Annex II.

5. G.R. No. 101083, July 30, 1993 (G.R. No. 101083).

6. *Infra*, Section 3.3.1.3.

7. *Zulueta v Court of Appeals*, G.R. No. 107383, February 20, 1996 involves a wife obtaining photographs and love letters kept by her husband in his private clinic without the husband’s knowledge. The Supreme Court held that the items were inadmissible as evidence of the infidelity of the husband for being obtained in violation of the husband’s privacy of communication and correspondence. In *Zulueta*, the Supreme Court held that:

The intimacies between husband and wife do not justify anyone of them breaking the drawers and cabinet of the other and ransacking them for any telltale evidence of marital infidelity. A person, by contracting marriage, does not shed his or her integrity or his right to privacy as an individual and the constitutional protection is available to him or her.

8. *Social Justice Society et al., v Atienza*, G.R. No. 156052, February 13, 2008, involves a city ordinance of Manila which would have the effect of ceasing the operations of oil depots of the country’s large petroleum companies Chevron, Petron and Shell, in designated areas of the city. In *Social Justice Society*, the

1.3 Statutes

This section discusses various statutes of the Philippines relevant to civil, criminal and administrative liability of corporations for human rights abuse.

1.3.1 Civil liability

Philippines' statutes govern the organization and conduct of corporations:

“Any foreign corporation lawfully doing business in the Philippines shall be bound by all laws, rules and regulations applicable to domestic corporations of the same class, except those which pertain to the creation, formation, organization or dissolution of corporations or those which fix the relations, liabilities, responsibilities, or duties of stockholders, members, or officers of corporations to each other or to the corporation.”⁹

As in many other jurisdictions, under the Philippine Corporation Code, corporations acquire corporate existence and a juridical personality separately from their shareholders, and officers.¹⁰ Necessarily, complaints alleging wrongful acts of a corporation or demanding payment or performance of corporate debts or obligations are generally directed against the corporation itself instead of its officers or stockholders. However, directors or trustees are personally and solidarily (jointly and severally) liable under the Corporation Code for damages suffered by any person, including the corporation itself, its stockholders, or members, for acts which are patently unlawful or grossly negligent or for acquiring conflicting interests.¹¹

1.3.1.1 Civil Code

Civil liability of corporations is provided for primarily in the Civil Code, which allows the recovery of damages in cases of violations of provisions on human relations and on quasi-delicts (torts),¹² and nuisance.

Under Chapter 2 on Human Relations, Article 32 of the Civil Code allows for a wide range of claims for damages against natural and juridical persons where there is

Supreme Court upheld the constitutionality of the ordinance in the face of the attacks by the oil companies and concluded that:

Essentially, the oil companies are fighting for their right to property. They allege that they stand to lose billions of pesos if forced to relocate. However, based on the hierarchy of constitutionally protected rights, the right to life enjoys precedence over the right to property. The reason is obvious: life is irreplaceable, property is not. When the state or LGU's exercise of police power clashes with a few individuals' right to property, the former should prevail.

9. Batas Pambansa Blg. 68, The Corporation Code of the Philippines, 1980 (Corporation Code), Section 129.

10. *Ibid.*, Section 19.

11. *Ibid.*, Section 31.

12. While Philippine statute does not use the term “tort,” it is usually used interchangeably with concepts under the human relations and quasi-delict provisions of the Civil Code.

a violation of any right in a list mirroring that of the Constitution's Bill of Rights. These rights include freedom of religion, speech, equal protection, freedom from unreasonable searches and seizures, and right of membership in associations and participation in peaceful assemblies.¹³ However, despite the wide-ranging list of rights and freedoms the violation of which may support a complaint for damages under Article 32, experts note that parties to actual cases have yet to invoke or rely on it in any significant manner.¹⁴

Another provision of the Civil Code on human relations, Article 19, offers an even broader basis for damage claims by requiring that every person, in the exercise of rights, must "act with justice, give everyone his or her due, and observe honesty and good faith."¹⁵ This catch-all provision justifies claims for damages in many types of injuries and is usually cited by parties in conjunction with the equally broad Article 21 which holds liable for damages any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs, or public policy.

The Civil Code provisions on human relations, according to the Supreme Court, are designed to provide legal remedy for the "untold number of moral wrongs that are impossible for human foresight to specifically provide in the statutes."¹⁶

Apart from these provisions on human relations, the Civil Code also contains a chapter on quasi-delicts¹⁷ or obligations which do not arise from statute contracts, quasi-contracts, or criminal acts but are made legally actionable to enforce payment of damages¹⁸ through the appropriate civil case. To be actionable as a quasi-delict, a wrong need only be either an act or an omission resulting from fault or negligence that damages or causes injury to another provided that there is no pre-existing contractual relation between the parties. Actions based on personal injury or quasi-delict expire after four years.¹⁹

13. In *Waterous Drug Corp. v National Labor Relations Commission*, G.R. No. 113271, October 16, 1997, the Supreme Court noted that while Constitutional guarantees do not generally apply in cases involving acts by private actors, civil actions may still be available to persons whose rights were violated.

14. The Philippine Workshop, *op. cit.* note 1. Among others, Professor Raul C. Pangalangan observes how parties to cases which have the potential of resulting in large awards in damages usually settle for relatively small amounts out of court.

15. The Philippine Workshop, *op. cit.* note 1, Atty. Arnold F. de Vera.

16. *Globe Mackay Cable and Radio Corp., et al., v C.A. et al.*, 176 SCRA 778 (1989); Antonio A. Oposa, Jr., "A Legal Arsenal for the Philippine Environment," *Batas Kalikasan, The Philippine Islands*, 2002, p. 50. The wide application of the provisions of the Civil Code has prompted a prominent environmentalist lawyer, Atty. Antonio A. Oposa, Jr. to caution against losing sight of them in view of special laws such as those on the environment which also provide ground for liabilities, civil and otherwise.

17. Civil Code, Book IV, Title XVII, Chapter 2.

18. Civil Code, Article 2176 provides that "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."

19. Civil Code, Article 1146.

It is the natural person whose acts cause damage who is generally held liable, although a corporation may be held vicariously liable for the tortious acts of its managers or employees.²⁰ It is on the basis of such vicarious liability that many complaints against corporations involving quasi-delicts are based.

As for direct liability arising from “corporate negligence,” the Supreme Court in *Professional Services v Agana*²¹ initially appeared prepared to declare a corporation liable for a tortious act and omission. In that case, pieces of gauze were negligently left inside the body of a patient, causing pain, discomfort, and eventually, death. After finding fault on the part of one of the physicians parties in the case, the Supreme Court also found the corporation that owns the hospital employing the physician solidarily liable to pay damages due to its own negligence.²² However, the Supreme Court subsequently reconsidered its ruling, imposing the liability arising from corporate negligence *pro hac vice*, thus preventing its application to subsequent cases as precedent.²³

Beyond quasi-delicts, the Civil Code also contains provisions on nuisance that may be used to abate the eventual negative impact of corporations on the environment or to the health of persons. Experts and judges however note that provisions on nuisance are not widely used in actual cases.²⁴ Nuisance is specifically defined in the Civil Code 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; (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.²⁵

As to the persons affected, nuisance may be public or private. A public nuisance is one that affects a community or neighbourhood or any considerable number

20. Civil Code, Article 218o provides in part that “The obligation imposed by Article 2176 is demandable not only for one’s own acts or omissions, but also for those of persons for whom one is responsible. The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions. Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.”

21. G.R. No. 126297, January 31, 2007.

22. In *Professional Services v Agana*, the Supreme Court noted that “[R]ecent years have seen the doctrine of corporate negligence as the judicial answer to the problem of allocating hospital’s liability for the negligent acts of health practitioners, absent facts to support the application of *respondet superior* or apparent authority. Its formulation proceeds from the judiciary’s acknowledgment that in these modern times, the duty of providing quality medical service is no longer the sole prerogative and responsibility of the physician. The modern hospitals have changed structure. Hospitals now tend to organize a highly professional medical staff whose competence and performance need to be monitored by the hospitals commensurate with their inherent responsibility to provide quality medical care.”

23. Resolution of the Philippine Supreme Court on the Motion for Reconsideration in *Professional Services v Agana*, G.R. No. 126297, promulgated February 2, 2010.

24. The Philippine Workshop, *op. cit.* note 1.

25. Civil Code, Article 694.

of persons while a private nuisance is any nuisance that does not fall under the description of a public nuisance.²⁶

Mere lapse of time does not legalize a nuisance, and the abatement of a nuisance does not absolve the guilty party from paying damages for injuries that may have been caused in the past.²⁷

1.3.1.2 Other Laws

Civil liability is also imposed by laws other than the Civil Code. For instance, in labour law, corporate employers are liable for damages for such acts as illegal termination of employment,²⁸ discriminating against women,²⁹ unfair labour practice,³⁰ and illegally locking workers out from their jobs.³¹ Corporate officers themselves may be held solidarily liable with the corporate employer where there is proof that they acted with bad faith or malice.³² Complaints against corporations for violation of labour regulations on termination and labour standards are prevalent, with thousands of cases being filed every year. Consequently, employers, including corporations and corporate officers, have routinely been made to compensate persons whose rights have been violated.

1.3.2 Criminal liability

The Philippine Revised Penal Code³³ identifies crimes and imposes various gradations of terms of imprisonment and fines as penalties for criminal conduct. The penalty of imprisonment is of course imposed only on natural persons. When a corporation is held liable for crimes, it may be sentenced to pay a fine. The Supreme Court has clarified that when a penal statute does not expressly apply to corporations, there is no offence for which a corporation may be punished. But where a statute defines a crime which may be committed by a corporation and prescribes penalties to be imposed on managers or employees of such a corporation or other persons responsible for the offence, only such individuals, and not the company itself, will suffer such penalty. Corporate officers or employees,

26. *Ibid.*, Article 695.

27. *Ibid.*, Article 698.

28. In *Garcia v NLRC*, G.R. 110518, August 1, 1994, the Supreme Court clarified that “[M]oral damages are recoverable only where the dismissal of the employee was attended by bad faith or fraud or constituted an act oppressive to labor or was done in a manner contrary to morals, good customs or public policy. Exemplary damages may be awarded only if the dismissal was effected in a wanton, oppressive or malevolent manner.” In *Agabon v NLRC*, G.R. No. 158693, November 17, 2004 and *Jaka Food Processing Corporation v Pacot*, G.R. No. 151378, March 28, 2005, nominal damages were awarded when workers were terminated absent the required procedure.

29. Presidential Decree No. 442, The Labor Code of the Philippines (Labor Code) (1974), Article 135.

30. *Ibid.*, Article 247.

31. *Ibid.*, Article 263 (g).

32. *MAM Realty Development Corporation v NLRC*, G.R. No. 114787, June 2, 1995.

33. Act No. 3815 (1930).

through whose acts, defaults or omissions the corporation commits a crime, are themselves individually responsible for the crime.³⁴

Apart from the Revised Penal Code, the Philippines has other laws providing criminal liability for specified conduct. One example is the Mining Act³⁵ which imposes criminal penalties for a host of acts ranging from presentation of false information,³⁶ conducting mining related acts without permits³⁷ or in violation of compliance certificates,³⁸ to theft of minerals³⁹ and destruction of mining structures.⁴⁰ Other examples of special penal laws include the Fisheries Code⁴¹ on the utilization of fisheries and marine resources that forbids foreign corporations from fishing or operating any fishing vessel in Philippine waters.⁴² If the corporation is found guilty under the Fisheries Code, the penalty shall be imposed on the chief executive officer of the corporation.⁴³ It is highly doubtful whether this can be done where a foreign corporation without any other presence in the Philippines is involved. Under the Forestry Code,⁴⁴ criminal penalties are imposed on corporate officers who order the commission of acts declared illegal such as cutting, gathering, or possession of logs without permit.⁴⁵ The president or manager of the corporation answers for the acts of his/her employees or labourers for violations involving illegal occupation of the national parks system.⁴⁶ Under the Clean Air Act,⁴⁷ criminal liability may be imposed upon the president, manager, directors, trustees, pollution control officer, or officials directly in charge of corporate operations that led to violations under the law.⁴⁸

34. *Ching v Secretary of Justice, et al.*, G. R. No. 164317, February 6, 2006.

35. Republic Act No. 7942, The Mining Act of 1995 (Mining Act).

36. *Ibid.*, Section 101.

37. *Ibid.*, Section 102.

38. *Ibid.*, Section 108.

39. *Ibid.*, Section 103.

40. *Ibid.*, Sections 104-5.

41. Republic Act No. 8550, The Philippine Fisheries Code of 1998 (Fisheries Code).

42. *Ibid.* It also prohibits the following acts: unauthorized fishing or engaging in unauthorized fisheries activities, poaching in Philippine waters, fishing through explosives, noxious or poisonous substance, and/or electricity, *muro-ami* (defined as the physical or mechanical acts to pound the coral reefs and other habitat to entrap, gather or catch fish and other fishery species), aquatic pollution, gathering, selling or exporting white sand, silica, pebbles and any other substances which make up any marine habitat and other fishing methods that tend to kill marine life or threaten endangered species. These violations may be prosecuted before the Regional Trial Courts.

43. *Ibid.*, Section 90.

44. Presidential Decree No. 705, Philippine Forestry Code, 1975 (Forestry Code).

45. *Ibid.*, Section 78 in relation to Section 81.

46. *Ibid.*, Section 81.

47. Republic Act No. 8749, The Clean Air Act of 1999.

48. *Ibid.*, Section 47.

In the area of agrarian law, in 2009, the country's agrarian reform program was extended through the Comprehensive Agrarian Reform Extension with Reforms (CARPER)⁴⁹ which gives five additional years to the implementation of the Comprehensive Agrarian Reform Law of 1988 (CARL).⁵⁰ Under CARPER, a corporation may be held criminally liable for acts such as owning lands in excess of the statutory maximum, converting lands into non-agricultural use with the intent to avoid agrarian reform, as well as the prevention of or neglect in implementing CARPER under certain conditions.⁵¹ A criminal complaint may be filed by any individual to the public prosecutor against a corporation for committing any prohibited act under CARPER.

With regards to labour law, criminal liability is imposed upon employers, including corporations, in violation of any provision of the Labor Code characterized as "unlawful" or penal by law,⁵² such as those on unfair labour practice.⁵³ In cases of corporate employers, the penalty shall be imposed on the guilty officer or officers of such corporation, trust, firm, partnership, association or entity.⁵⁴

Despite the country's list of penal laws, criminal complaints against corporations and corporate officers remain rare. More rare are actual convictions where corporate officers have been imprisoned or fined.

49. Republic Act No. 9700 (CARPER) (2009).

50. Republic Act No. 6657 (1988).

51. CARPER, Section 24.

52. Labor Code, Article 288.

53. *Ibid.*, Article 247.

54. *Ibid.*, Article 289.

2. Legal Remedies for Corporate Human Rights Abuses

2.1 Judicial remedies

Redress through the Philippine court system is the primary remedy available for corporate human rights violations, with the fifteen judge Philippine Supreme Court serving as the court of last resort. Cases which find their way to the Supreme Court may originate from any of the first level Municipal or Metropolitan Trial Courts (MTC), Municipal Circuit Trial Courts (MCTCs), or the Regional Trial Courts (RTC) distributed among thirteen “judicial regions” throughout the country. These courts, collectively called “regular courts,”⁵⁵ render decisions that parties may take on appeal to the Court of Appeal, which are decided by three sitting judges. Decisions of the Court of Appeal may be reviewed by the Supreme Court, usually with a quorum of five judges sitting or, in exceptional cases, *en banc*.⁵⁶

Cases which make their way through the entire appellate process up to the Supreme Court typically take more than seven years until finally resolved, with cases lasting more than 10 years not considered unusual.⁵⁷ It is likely that the long-standing problems of the judiciary identified by the Supreme Court of increasing number of cases, a “staggering” judge to population ration of one judge for every 52,077 Filipinos, inadequate facilities, and limited financial resources⁵⁸ contribute in no small measure to the slow pace of case resolution.⁵⁹

55. These courts are typically located in capitals of provinces, cities, or municipalities. Jurisdiction of MTC and MCTCs generally differ from that of RTCs in the amount involved in civil cases and gravity of penalty in criminal cases, with the latter given jurisdiction over cases involving higher amounts and graver penalties.

56. Constitution, Article VIII.

57. The Philippine Workshop, *op. cit.* note 1.

58. Supreme Court, 2008 Annual Report (SC Report), p. 40, available at <http://sc.judiciary.gov.ph/publications/reports/index.php>, last viewed July 15, 2010.

59. The U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, “Country Reports on Human Rights Practices 2009: Philippines,” (2010), (US Country Report) available at <http://www.state.gov/g/drl/rls/hrrpt/2009/eap/136006.htm>, last viewed July 15, 2010. The report notes several problems of the country’s judicial system:

“The law provides for an independent judiciary; however, the judicial system suffered from corruption and inefficiency. Personal ties and sometimes bribery resulted in impunity for some wealthy or influential offenders and contributed to widespread skepticism that the judicial process could ensure due process and equal justice. The Supreme Court continued efforts to ensure speedier trials, sanction judicial malfeasance, increase judicial branch efficiency, and raise public confidence in the judiciary. The Supreme Court dismissed or disciplined several judges during the year for various crimes and infractions.”

2.1.1 Initiating Civil Cases

Civil cases are brought by affected persons directly to the regular court of appropriate jurisdiction, either MTC / MCTC or RTC, usually determined by the cause of action and the amount sought to be recovered. The amount claimed also fixes the amount of filing fees to be paid at the time when the complaint is filed. The filing fees required by an initiatory complaint start from a low of Php 1,000.00 to any higher sum determined by the amount which is the subject of the claim.⁶⁰

Parties usually go through institutionalized mediation processes, which are conducted for a fee of about Php 500.00, before going through a trial process that allows parties to present respective evidence to substantiate or refute claims. There is no jury; a judge will render judgment based on the evidence presented.

Interlocutory and final decisions of a judge may be brought through several levels of appeal, each one requiring the payment of fees of approximately Php 3,000.00, excluding practical expenses.⁶¹

2.1.2 Initiating Criminal Cases

A criminal action is usually commenced either by a complaint, a sworn statement by the offended party, witness, or police officer, or by “information.”⁶² Information consists of a written accusation filed with the court by a public prosecutor.⁶³ No information can be filed unless investigation by a judge or public prosecutor establishes the existence of probable cause that a crime has been committed and that the accused committed it.

When a complaint is filed, “legal fees” are paid according to a schedule fixed by the Department of Justice.⁶⁴ The fees range from a minimum of Php 150.00 to a

60. The Revised Rules of Court, Rule 141 (as revised 2004) (Rules of Court), Section 4. Claims involving sums of Php 350,000.00 to Php 400,000.00 are assessed filing fees of Php 4,500.00. Claims in excess of Php 400,000.00 are assessed Php 4,500.00 plus Php 20.00 for each Php 1,000.00 in excess of Php 400,000.00.

61. *Ibid.*

62. The Revised Rules of Criminal Procedure, Rule 110, Sections 3 and 4.

63. *Ibid.*, Section 5.

64. Department of Justice, Department Circular No. 42 (2004), Subject: Collection Of Legal Fees By The National Prosecution Service.

maximum of Php 2,000.00.⁶⁵ Significantly, fees are also charged when the prosecutor considers, begins work on, or actually files specific pleadings.⁶⁶

Generally, only judges of courts of law may issue warrants of arrest. Warrantless arrests by a police officer may be made only under extraordinary circumstances defined by the rules of procedure.⁶⁷ The accused may be released on bail or, on occasion, on recognizance of a trusted person determined by the court.⁶⁸

In general, criminal court procedure consists of arraignment, trial, and the court's judgment and sentencing. There is no jury and a judge determines all questions of law and fact in order to arrive at a decision. Interlocutory as well as final decisions may be brought on appeal to the Court of Appeals and ultimately to the Supreme Court.⁶⁹ Each stage of appeal or review requires the payment of fees of approximately Php 3,000.00.⁷⁰

Similar to civil cases, criminal cases usually last for more than seven years from the filing of the complaint to the final decision of the Supreme Court.⁷¹

2.1.3 Pauper Litigants, exception to filing fees

The Rules of Court exempt "indigent litigants" from payment of legal fees, including filing fees. To be declared indigent, a person has to execute an affidavit that (1) s/he and his/her immediate family do not earn a gross income double the monthly minimum wage of an employee⁷² and s/he does not own real property with a fair market value (as stated in the current tax declaration) of more than Php 300,000.00. Alternatively, a person may be exempt from paying legal fees upon a showing at a hearing that s/he has no money or property sufficient and available for food, shelter and basic necessities for himself and his family.⁷³ Indigent

65. *Ibid.* The list includes a fee prescribed for complaints relating to violations of the country's mandatory welfare laws for workers which is fixed at 5% of the collectible amount which may be more than Php 2,000.00. There are two main contributory welfare funds in the Philippines managed by respective agencies, one for private sector employees and another for government employees. Both are sources of funds for retirement, separation from employment due to disability, as well as some loan facilities. Even as contribution by the employer is mandatory, there are many reported cases of employers refusing to remit to the appropriate agency amounts it had withheld from its employees. Such non remittance is one example of a possible criminal offense by the employer.

66. *Ibid.*

67. The Revised Rules of Criminal Procedure, Section 7.

68. *Ibid.*, Section 15.

69. *People of the Philippines v Nelson Abon*, G.R. No. 169245, February 15, 2008.

70. Rules of Court, Rule 141, Section 4.

71. The Philippine Workshop, *op. cit.* note 1.

72. As of May 2010, the daily minimum wage of a worker ranges from a low of Php 210.00 to a high of Php 382.00.

73. *Spouses Antonio and Lorencita Algura v City of Naga, et al.*, G.R. No. 150135, October 30, 2006.

litigants are likewise exempt from paying fees by the Department of Justice with respect to filing and maintaining criminal complaints.

Lawyers assisting poor litigants have struggled with having their clients declared “indigent” due to the extremely low income and property threshold as well as by the vague and awkward procedure required for such declaration. A “which comes first” dilemma is typical, with lack of uniform practice as to which should come first: a declaration of indigency or the actual filing of an action. At the same time, acquisition of the status to litigate as an indigent does not exempt a party from payment of other necessary amounts arising from litigation such as photocopying, mailing, notarization, and transportation expenses.⁷⁴

2.1.4 New Rules of Procedure For Environmental Cases

An innovation of note adopted by the Supreme Court in 2008 is the designation of 117 regular courts as “green courts”⁷⁵ across the country with jurisdiction over violations of environmental laws.⁷⁶ According to Chief Justice Reynato S. Puno, who spearheaded many reforms in Philippine legal procedure to protect human rights, these green courts will have “skillful judges who not only master environmental laws, but also understand the philosophy of environmentalism and ecologism.”⁷⁷

Subsequently, in 2010, the Supreme Court issued a set of New Rules of Procedure For Environmental Cases (New Environmental Rules),⁷⁸ and effectively placed the courts near the frontlines of environmental protection. Among the innovations introduced by the New Environmental Rules are availability of the writ of

74. A typical case requires the photocopying of various documents and pleadings, especially in stages of appeal where the required number of copies for initiatory pleadings and attached documents reach 11 (at the Court of Appeals) and 17 (at the Supreme Court).

75. Philippine Supreme Court Administrative Order No. 23, series of 2008. This is the latest class of “special courts” created by law or administrative order. In 1994, courts with jurisdiction to try “cases of heinous crimes” were created after Republic Act No. 7659 (1993) imposed the death penalty on select crimes. Family Courts were created in 1997 under Republic Act No. 8369. In 2000, “Commercial Courts” were created to try and decide cases formerly cognizable by the Securities and Exchange Commission. Then in 2007, the Supreme Court designated special courts in Metro Manila and other key judicial regions of the country to handle cases of killings where the victims are political activists and members of the media.

76. These include the Forestry Code (Presidential Decree No. 705), Marine Pollution (Presidential Decree No. 979), Toxic Substances and Hazardous Waste Act (Republic Act No. 6969), People’s Small-Scale Mining Act (Republic Act No. 7076), National Integrated Protected Areas System Act (Republic Act No. 7586), Philippine Mining Act (Republic Act No. 7942), Indigenous People’s Rights Act (Republic Act No. 8371), Philippine Fisheries Code (Republic Act No. 8550); Clean Air Act (Republic Act No. 8749), Ecological Solid Waste Management Act (Republic Act No. 9003), National Caves & Cave Resources Management Act (Republic Act No. 9072), Wildlife Conservation & Protection Act (Republic Act No. 9147), Chainsaw Act (Republic Act No. 9175), and Clean Water Act (Republic Act No. 9275). According to the “Annotation To The Rules Of Procedure For Environmental Cases” (Annotations), 2010 published by the Supreme Court, this list is not exhaustive, p 100.

77. USAID, “Philippines’ Green Benches To Deliver Environmental Justice,” 2008, available at www.usaid.gov/.../RDMA_SS_AECEN_Green_Benches082608.pdf, last viewed July 10, 2010.

78. A.M. No. 09-6-8-SC, The New Rule on Environmental Cases (New Environmental Rules) may be downloaded at <http://sc.judiciary.gov.ph/index.php>, last viewed June 10, 2010.

continuing mandamus,⁷⁹ the environmental protection order (EPO)⁸⁰ and the explicit recognition of the precautionary principle.⁸¹ Deserving further discussion are three other innovations, namely the availability of citizen suits, provisions to address “strategic lawsuit against public participation” (SLAPP) suits, and the new writ of *Kalikasan* (Environment).

Citizen Suits: The New Environmental Rules relax the rules on standing with respect to environmental cases by allowing any Filipino in representation of others to file an action to enforce rights or obligations under environmental laws.⁸² Groups such as Non-Government Organizations (NGO) and people’s organizations (PO) are allowed to bring citizen suits, subject to proof of their juridical personality.⁸³ Further, the new rules also provide a simplified, expeditious, and inexpensive procedure by exempting or deferring payment of legal fees, and by limiting the period of time for adjudication.⁸⁴

Strategic lawsuit against public participation (SLAPP) suits:⁸⁵ Designed to address the prevalent practice of filing harassment suits against those who enforce laws to protect the environment, the provisions of the New Environment Rules on SLAPP provide specific steps for courts to identify and order their dismissals as expeditiously as possible.⁸⁶

79. New Environmental Rules, Rule 1, Section 4 (c) defines “[c] ontinuing mandamus” as “a writ issued by a court in an environmental case directing any agency or instrumentality of the government or officer thereof to perform an act or series of acts decreed by final judgment which shall remain effective until judgment is fully satisfied.” According to the Annotations, p. 103-4, continuing mandamus traces its origin to cases decided by the Supreme Court of India and was originally enunciated in the Philippine case of *Concerned Residents of Manila Bay v MMDA*, G.R. Nos. 171947-98, December 18, 2008.

80. New Environmental Rules, Rule 1, Section 4 (d) provides that an Environmental Protection Order “refers to 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.”

81. *Ibid.*, Section 4 (f) provides that Precautionary Principles “states that 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 or diminish that threat.” According to the Supreme Court’s “Annotations” p.104, the inclusion of the precautionary principle eases the burden of proof on the part of plaintiffs in environmental cases to prove their cause of action.

82. *Ibid.*, Rule 2, Section 5. The Annotations recalls that the phrase “including minors and generations yet unborn” who are allowed to be represented in citizen suits is taken from the doctrine in *Oposa*.

83. Annotations, p. 111.

84. New Environmental Rules, Rule 2, Section 12.

85. *Ibid.*, Rule 1, Section 4 (g) defines SLAPP suits as “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.”

86. *Ibid.*, Rule 6.

The Writ of Kalikasan (Environment):⁸⁷ The Supreme Court says that the new extraordinary writ of *Kailkasan* (Environment) may be sought to deal with environmental damage of such magnitude that it threatens life, health, or property of inhabitants in two or more cities or provinces. Standing to seek the issuance of this writ is quite open, as the rules allow natural and juridical persons, including NGOs and POs to file a petition on behalf of persons whose constitutional right to a balanced and healthful ecology is violated.⁸⁸ Such petitioners are exempt from payment of docket fees.⁸⁹

The Environmental Rules have been widely welcomed as “progressive, even revolutionary”⁹⁰ with Chief Justice Puno himself describing them “as a significant catalyst in support of sweeping and far-reaching reforms in environmental litigation and protection.”⁹¹ Environmental advocates wait with guarded optimism on how the innovations will operate in actual cases.⁹²

2.2 Administrative Remedies

2.2.1 Environment

The Department of Environment and Natural Resources (DENR) is the primary government agency responsible for the implementation of Philippine policies involving the environment along with the control and supervision of the exploration, development, utilization, and conservation of the country’s natural resources.

Where Philippine environment laws are violated, DENR, either directly or through any of its offices and bureaus, has the authority to investigate, impose administrative penalties such as fines, cancel permits⁹³ as well as issue cease and desist

87. *Ibid.*, Rule 7, Section 1 provides,

SEC. 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.

88. *Ibid.*

89. *Ibid.*, Section 4.

90. Antonio G.M. La Viña, “Good news for environmental justice,” Manila Standard Today (2010) available at <http://www.manilastandardtoday.com/insideOpinion.htm?f=2010/april/27/tonylavina.isx&d=2010/april/27>

91. <http://www.manilastandardtoday.com/insideNews.htm?f=2010/april/15/news1.isx&d=2010/april/15> last viewed June 5, 2010.

92. The Philippine Workshop, *op. cit.* note 1.

93. Under Executive Order No. 292, The Administrative Code of 1987, Article XIV, Chapter 1, Section 2, primary among the powers and functions of the DENR is its power to cancel privileges and arrangement upon failure, non-compliance, or violations of any regulations or orders which are in furtherance of the

orders. For instance, the Secretary of the DENR is authorized to impose administrative fines on persons and entities in violation of laws such as P.D. No. 1586⁹⁴ establishing the requirement for an Environmental Compliance Certificate (ECC) and R.A. No. 6969⁹⁵ on hazardous wastes. It is interesting to note that in R.A. No. 6969, the public is expressly given access to records, reports or notifications containing information concerning chemical substances and mixtures except when tending to divulge trade and similar secrets.⁹⁶ Such access has yet to be maximized in actual practice however.⁹⁷

With regard to pollution, the Pollution and Adjudication Board (PAB) conducts public hearings in pertinent cases such as those arising from the enforcement of the Pollution Control Law (R.A. No. 3931), the Clean Air Act (R.A. No. 8749), and the Clean Water Act (R.A. No. 9275). The PAB can impose administrative fines and order the closure of an establishment. The PAB can also issue cease and desist orders *ex parte* to an entity when it causes pollution and there is eminent danger. Under the Clean Water Act, the PAB can order the payment of clean-up costs.⁹⁸ Decisions of the PAB may be appealed to the Court of Appeals the decisions of which may in turn be reviewed by the Supreme Court.⁹⁹

Regarding mining disputes, the three-member Panel of Arbitrators, a quasi-judicial body in regional DENR offices, has exclusive and original jurisdiction over matters such as rights to mining areas and mineral agreements or permits.¹⁰⁰ Decisions of the Panel of Arbitrators may be appealed to the Mines Adjudicatory Board (MAB) that is also composed of three members.¹⁰¹ In turn, decisions of the MAB may be appealed to the Court of Appeals, whose decisions are reviewable by the Supreme Court.

conservation of natural resources and supportive of the national interest. In *Celestial Nickel Mining v MacroAsia Corporation*, G.R. No. 169080, December 19, 2007, the Supreme Court declared that the power to approve agreements and, necessarily, to cancel or cause to cancel said agreements is derived from the broad and explicit powers of the DENR and its Secretary under the Administrative Code of 1987.

94. Under this law, all government agencies and instrumentalities, including government-owned and controlled corporations as well as private corporations, firms, and entities are required to prepare an environmental impact statement for every proposed project or undertaking that significantly affects the quality of the environment. Thus, no person, partnership, or corporation can undertake or operate any environmentally critical projects or areas without first securing an Environmental Compliance Certificate (ECC).
95. The Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990, Section 15.
96. *Ibid.*, Section 12.
97. The Philippine Workshop, *op. cit.* note 1.
98. Republic Act No. 9275, Section 28.
99. A flowchart of the PAB procedure is available at http://www.emb.gov.ph/pab/template/PAB_Flowchart_2008.htm.
100. The Mining Act, Section 77.
101. *Ibid.*, Section 78.

As for small-scale mining, the Provincial/City Mining Regulatory Board (PMRB) has jurisdiction to settle disputes over conflicting claims within a people's small-scale mining area.¹⁰² Decisions of the PMRB may be appealed to the Secretary of the DENR whose decision in turn may be appealed to the Office of the President of the Philippines. Decisions of the Office of the President may be reviewed by the Supreme Court.

Proceedings in the agencies above are exceedingly slow, with parties typically spending years before the dispute is resolved by the Supreme Court.¹⁰³

In contrast to laws on pollution that allow any person to file a complaint,¹⁰⁴ the enforcement of mining laws is restricted to "proper parties" referring to parties of mining rights, surface owners, occupants or claimholders. It remains to be seen whether "citizen suits" which are now allowed in regular courts by the New Environmental Rules will make their way into the procedure before administrative tribunals as well.

2.2.2 Labour

There is a complex web of agencies and jurisdictions designated to resolve disputes involving workers' issues. This web is best depicted as constituting distinct but intersecting strands, each with its own responsible agency and jurisdiction.

The first strand represents the compulsory arbitration process that is for the most part lodged with the National Labour Relations Commission (NLRC). Most remedies for violation of labour rights can be filed only with the NLRC where they are heard by one of about 171 labour arbiters in 15 Regional Arbitration Branches (RAB)

102. Republic Act No. 7076, Section 24 (e).

103. The Philippine Workshop, *op. cit.* note 1.

104. Republic Act No. 8749 (Clean Air Act), Section 41 allows any citizen to file citizen suits. Republic Act No. 9275 (Clean Water Act), Section 30 allows any person to file a verified complaint to cause the DENR to institute administrative proceedings against violators.

nationwide.¹⁰⁵ Complaints filed are free from payment of fees.¹⁰⁶ Generally, disputants before labour arbiters are called to three mandatory conciliation hearings where the labour arbiter, or more often her assistant, helps them settle amicably. If the parties fail to settle, they submit pleadings in support of their respective arguments and thereafter, the dispute is considered submitted for decision by the labour arbiter.¹⁰⁷

Any party disputing the decision of the labour arbiter may file an appeal with the NLRC “Commission-level” where it is resolved by three Commissioners constituting one of the eight divisions of the NLRC.¹⁰⁸

Decisions rendered by a division of the Commission may be subject to a motion for reconsideration and thereafter, to a petition for certiorari filed with the Court of Appeals.¹⁰⁹ Case law dictates that all strands converge in the Court of Appeals whose decisions may thereafter be brought to the Supreme Court by a petition for review on *certiorari*.¹¹⁰ However, there are instances where disputes may be brought to the Commission level without passing through the first level labour arbiters.¹¹¹ In these exceptional cases, decisions of the Commission may be brought to the Court of Appeals and thereafter to the Supreme Court. Experts and

105. Labor Code, Article 217, Labor Arbiters shall have original and exclusive jurisdiction to hear and decide the following cases involving all workers, whether agricultural or non-agricultural:

- (1) Unfair labor practice cases;
- (2) Termination disputes;
- (3) If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;
- (4) Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;
- (5) Cases arising from any violation of Article 264 of the Labor Code, including questions involving the legality of strikes and lockouts; and
- (6) Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (P5,000.00) regardless of whether accompanied with a claim for reinstatement.

In addition, Section 10 of Republic Act No. 8042 (1995) added to the exclusive jurisdiction of the labor arbiters money claims of Overseas Filipino Workers arising from violations of their employment contract against foreign employers through their local recruitment agency.

106. 2005 Revised Rules of Procedure of the National Labor Relations Commission (NLRC Rules), Rule VI, section 5. Appeals in labour cases require an appeal fee of Php 150.00.
107. NLRC Rules, Rule V, Sections 4 and 7.
108. Republic Act No. 9347, An Act Rationalizing the Composition and Functions of the National Labor Relations Commission, Amending for this Purpose Articles 213, 214, 215 and 216 of Presidential Decree No. 442, as Amended, Otherwise Known as the Labor Code of the Philippines, Section 1.
109. Revised Rules of Civil Procedure (1997), Rule 65.
110. *Ibid.*, Rule 45.
111. There are three instances:
 - (1) Under Article 129 of the Labor Code, the Regional Director or a hearing officer of the Department of Labor and Employment hear and decide disputes involving the recovery of wages for as long as the aggregate claim does not exceed Php5,000 and reinstatement is not sought. Designed to

practitioners have commented on the length of time before labour cases are finally resolved. Typically labour cases filed with the NLRC may last upwards of five years from filing to disposition by the Supreme Court. Workers are often told of the slow pace of process and of the difficulty of sustaining cases in an attempt to convince them to accept early settlement of their claims, usually at very reduced terms.¹¹²

The second strand represents the voluntary arbitration machinery that has authority over unresolved grievances arising from the interpretation or implementation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies.¹¹³ Unresolved grievances involving distortion of wages¹¹⁴ and the productivity and incentive programmes¹¹⁵ are likewise resolved through voluntary arbitration. Other labour disputes, including those involving strikes, may be referred to voluntary arbitration by agreement of the parties concerned.¹¹⁶

In 1998, the Supreme Court ruled that termination of employment is generally not to be brought to the grievance procedures/voluntary arbitration laid down in the CBA. Consequently, even if the parties agree to it, Voluntary Arbitrators cannot exercise jurisdiction over termination disputes.¹¹⁷ This was affirmed in later cases.¹¹⁸ Nevertheless, confusing jurisdictions of voluntary arbitration and the NLRC continue to thwart workers seeking to enforce their rights. There are cases where years of litigation have to be endured by the parties before they are able to identify which agency has jurisdiction to resolve their dispute.¹¹⁹

expedite enforcement of “simple money claims”, hearings are summary in nature and decisions may be appealed to the Commission-level of the NLRC.

- (2) Under Article 263 (g) of the Labor Code, disputes certified by the Secretary of Labor and Employment under her authority to assume jurisdiction are brought directly to the Commission level. Disputes under this strand usually involves cases of unfair labor practices of employer or corporation.
- (3) Article 218 (e) Petitions for injunctions are likewise initially brought to and decided at the Commission level.

112. The Philippine Workshop, *op. cit.* note 1.

113. Labor Code, Article 261.

114. *Ibid.*, Article 124.

115. R.A. No. 6971 (1990), Productivity Incentives Act of 1990, Sections 4 (b) and 9.

116. Labor Code, Article 263 (h).

117. *Maneja v Court of Appeals*, G.R. No. 124013, June 5, 1998.

118. *Vivero v Court of Appeals*, G.R. No. 138938, October 24, 2000, *Atlas Farms, Inc. v National Labor Relations Commission*, G.R. No. G. R. No. 142244, November 18, 2002.

119. In *Sanyo Philippines Workers-Union PSSLU v Canizares*, G.R. No. 101619, July 8, 1992, the Supreme Court held that an agreement between the employer and the union for the dismissal of certain workers implied that there was in fact no grievance which could be brought to the grievance machinery and that “only disputes involving the union and the company shall be referred to the grievance machinery or voluntary arbitrators.” It was only after years through the appeals procedure that the complainants discovered that the dispute, arising as it does from the actual dismissal of employees, falls within the jurisdiction of the Labor Arbiter, not of the Voluntary Arbitrator.

The third strand represents the inspection machinery of the Department of Labour and Employment (DOLE), which is designed to expedite the enforcement of statutory labour standards. To save workers from protracted processes, Article 128 (b) of the Labour Code allows the Secretary of Labour and Employment, usually through an authorized representative, to inspect places of employment and, if necessary, issue compliance orders and writs of execution to enforce “labour standards provisions” of labour laws.¹²⁰ Orders issued under Article 128 (b) by representatives of the Secretary of Labour and Employment may be appealed to the Secretary of Labour and Employment.¹²¹ Decisions of the Secretary may then be brought before the Court of Appeals and thereafter, to the Supreme Court.¹²²

Since 2004, the inspection system has been substantially reduced, as establishments employing 200 or more unionized workers are encouraged to voluntarily conduct self-assessment of compliance with labour laws. Only establishments with 10 to 199 workers are subject to routine inspection by an extremely small number of labour inspectors who are hardly able to keep up with the number of establishments.¹²³

The fourth strand of dispute settlement procedure involves inter and intra-union disputes¹²⁴ which are generally heard by Med-Arbiters.¹²⁵ Decisions of the Med-Arbiters may be appealed to the Bureau of Labour Relations (BLR). A motion for reconsideration is allowed after which the decision of the Bureau Director or the Secretary of Labour and Employment will become final and enforceable without prejudice to a petition for *certiorari* with the Court of Appeals.¹²⁶ Decisions of the Court of Appeals may thereafter be brought to the Supreme Court by petition for review on *certiorari*.¹²⁷

The fifth strand of dispute settlement relates to representation issues under Article 256 and related articles of the Labour Code that are heard and resolved by the Med-Arbiters of the appropriate regional office. Decisions of the Med-Arbiters may be appealed to the Secretary of Labour and Employment whose decisions in turn

120. Department of Labor and Employment Department Order No. 57-04 (2004).

121. Labor Code, Article 128 (b).

122. Josephus Jimenez, “The Court of Appeals as an Integral Component of the Philippine Labor Dispute Adjudication System (A Critical Analysis of Three Landmark Decisions by the Supreme Court on Labor Jurisdiction),” 25 IBP Journal 153 (1999)

123. US Country Report comments that “[t]he DOLE acknowledged that the shortage of inspectors made it difficult to enforce the law.”; Philippine Star, “DOLE lacks wage law inspectors,” 2010, available at <http://www.philstar.com/Article.aspx?articleid=568432>, last viewed July 15, 2010 which reports that in highly populous Cebu, there are only 4 inspectors for the entire province.

124. Department of Labor and Employment Department Order No. 40-03, as amended (2002), Rule XI, Sections 1 and 2.

125. *Ibid.*, Section 5.

126. *National Federation of Labor v Bienvenido Laguesma*, G.R. No. 123426, March 10, 1999.

127. *Ibid.*

may be questioned before the Court of Appeals. Thereafter, the dispute may be brought by any party to the Supreme Court.

The sixth and last strand represents the mediation process provided by the National Conciliation and Mediation Board (NCMB) involving notices of strike or lockout arising from collective bargaining deadlocks or allegations of unfair labour practices. The NCMB represents the lone agency where Alternative Dispute Resolution techniques (ADR) are systematically employed by full time mediators with any significant or relevant training in ADR. Hearings are non-adversarial and are facilitated by these conciliators-mediators. Inasmuch as mediators have no authority to decide disputes and merely assist parties in reaching settlements, the NCMB strand naturally ties in with the other strands of the dispute settlement system. Excepting instances where the Secretary of Labour and Employment exercises her authority under Article 263 (g) of the Labour Code to assume jurisdiction over labour disputes, disputes brought to the NCMB are resolved by agreement of the parties. In the event that mediation fails, any of the parties concerned may opt to bring the dispute to the courts.

Experts and practitioners have observed that of all the agencies in charge of resolving labour disputes, only the National Conciliation and Mediation Board (NCMB) is staffed with trained mediators who, having no authority to decide in any of the cases before them, are able to elicit and explore many options for amicable settlement. Mediation is not maximized in proceedings before the other agencies and is conducted in a casual and largely ineffective way. In particular, the mandatory mediation at the National Labour Relations Commission (NLRC) is usually conducted by the arbiter or commissioner, who will also decide the case should the parties fail to reach an agreement. Apart from the typical lack of mediation training and skills by the arbiter or commissioner, the parties are hardly candid and forthcoming at exploring options for compromise when the person before them is likely to use whatever they say against them in a subsequent decision.

Any of the procedures described above typically entail five or more years until the dispute is finally resolved by the Supreme Court. And even then, there are instances when a second round of labour litigation is triggered when an issue comes up in the course of executing a decision in favour of workers.¹²⁸

2.2.3 Agrarian Laws

The determination as to which body or entity within the Department of Agrarian Reform (DAR) has authority to adjudicate depends on the nature of the case. Adjudicators determine the existence of landowner-tenant, boundary disputes, various transactions of lands covered by the Comprehensive Agrarian

128. The Philippine Workshop, *op. cit.* note 1. It was related that computations relating to monetary awards have been questioned in the execution stage to start another set of appeals through the various labor tribunals through to the Supreme Court.

Reform Program (CARP), as well as cases involving the issuance and correction of Certificate of Land Ownership Awards (CLOA). The DAR Adjudication Board (DARAB) for its part reviews decisions of adjudicators and has original jurisdiction to adjudicate all agrarian cases not entrusted to other tribunals. Thus, if a corporation commits any of the acts prohibited by the CARPER law, an administrative complaint may be filed against it before the DARAB or the Office of the DAR Secretary, depending on the nature of the complaint.

Experts and stakeholders have observed the exceedingly slow pace of adjudication of agrarian disputes as well as the abuse of rules of procedure that often puts poorer parties at a disadvantage. This has led to innovative popular concerted action by farmers and farmers' groups to achieve ends that the legal process effectively denies them. A good example of just such an action involves that done by farmers in what is referred to as the *Sumilao* case.

At the heart of the *Sumilao* case is the claim of *Higaonon* farmers¹²⁹ to 144 hectares of land in Bukidnon, Mindanao. When the government began implementing the Comprehensive Agrarian Reform Law (CARL) in the late 1980s, the 144-hectare land was identified for distribution to some 137 farmers, all members of the local organization *Mapadayonong Panaghiusasamga Lumad Alangsa Damlag* (MAPALAD) and all of whom were *Higaonon*. Certificates of Land Ownership Award (CLOA) were issued to them in recognition of their ownership of respective portions of the 144-hectare land. However, the provincial board exempted the land from agrarian reform by converting its use to agro-industrial. This conversion was regarded as illegal, and in 1997 about seventeen of the farmer-beneficiaries staged a 28-day hunger strike in the capital Manila and Cagayan de Oro to press their claim to the 144-hectare land. This attracted wide media coverage and generated public support. Bowing to snowballing public sentiment in favour of the farmers, then President Fidel V. Ramos issued a so-called "Win-Win Resolution" which awarded 100 hectares of the contested land to the farmer-beneficiaries and 44 hectares to a private landowner. The landowner questioned the president's decision before the Supreme Court which overturned the compromise solution, effectively approving the conversion of the land to agro-industrial and its consequent exemption from agrarian reform. Significantly, in its decision, the Supreme Court denied the farmers' legal standing, stating that they were merely "recommendee farmer beneficiaries" who had no real interest over the land.¹³⁰

Subsequent to the farmers' loss before the Supreme Court, the land was sold to San Miguel Corporation, one of the country's largest corporations, which eventually started to build a piggery complex on the property, prompting farmers to publicly question the prioritization of pigs over people. When the farmers'

129. The *Higaonon* Indigenous Cultural Communities were the early settlers of a piece of ancestral land in Sumilao, Bukidnon situated on the island of Mindanao in the southern part of the Philippines.

130. *Fortich, et al. v Corona, et al.*, G.R. No. 131457, April 24, 1998

demands were endorsed by many sectors of the Philippines, including the church, President Gloria Macapagal-Arroyo revoked the earlier conversion order on the land, making it available for agrarian reform. However, the Department of Agrarian Reform (DAR) was painfully slow to install the farmer beneficiaries on the land.

Thus, in 2007, 10 years after the hunger strike, 55 *Sumilao* farmers embarked upon another concerted campaign, this time walking 1,700 kilometers from Bukidnon to Manila to enforce their rights to their land. The walk, called “Walk for Justice,” again attracted wide media attention and overwhelming support from different members of civil society including students, various churches, and local communities, throughout the two months of its duration. This march successfully led to a compromise agreement between San Miguel Corporation and the farmers that finally recognizes the rights of the farmers to their land.

The *Sumilao* case typifies the long and arduous struggle of farmers enforcing their rights under Philippine agrarian laws. The campaign is now regarded by many as a model of how grassroots concerted actions – spanning years – can complement actions in courts and quasi-judicial agencies. It has inspired subsequent marches by farmers calling for the implementation of law or resolution of cases.

2.3 The Commission on Human Rights

There is a constitutionally-created body called the Commission on Human Rights (CHR), which has taken a lead role in investigating, receiving evidence, and making findings of fact on cases of human rights violations. Apart from its investigative role, the CHR is also mandated to prescribe, monitor, and evaluate human rights protection standards in relation to proposed and existing national and local laws, pending legislation, and government policies and performance.¹³¹ It is also tasked to mobilize research, provide human rights standards, and train and educate non-governmental organizations (NGOs), academics, human resource organizations, the general public, and vulnerable groups. The CHR is also supposed to mobilize civil society and provide direct assistance to victims of human rights abuses.¹³² Despite its many functions however, the CHR does not have the competency to prosecute nor adjudicate any case or claim.¹³³

131. Constitution, Article XIII, Section 18.

132. <http://www.chr.gov.ph>, last viewed, June 10, 2010.

133. To draw the scope and limits of the authority of the CHR, the Supreme Court, in *Cariño v Commission on Human Rights*, G.R. No. 96681, December 2, 1991 clarified that:

“Fact finding is not adjudication, and cannot be likened to the judicial function of a court of justice, or even a quasi-judicial agency or official. The function of receiving evidence and ascertaining therefrom the facts of a controversy is not a judicial function, properly speaking. To be considered such, the faculty of receiving evidence and making factual conclusions in a controversy must be accompanied by the authority of applying the law to those factual conclusions to the end that the controversy may be decided or determined authoritatively, finally and definitively, subject to such appeals or modes of review as may be provided by law. This function, to repeat, the Commission (on Human Rights) does not have.”

People have resorted to filing complaints with the CHR involving violations of prescribed human rights standards as it is widely regarded as independent and credible in conducting investigations in even politically sensitive cases of human rights abuse.¹³⁴ While the CHR generally investigates complaints against State actors, it has started to be involved in complaints against non-state conduct such as in respect of its recent investigations into reported human rights abuses allegedly committed by OceanaGold against the indigenous residents of Barangay Didipio, Kasibu, Nueva Vizcaya. OceanaGold Corporation, a large gold producer listed on the Toronto, Australian, and New Zealand Stock Exchanges, acquired the Didipio Gold and Copper Project along with a rich portfolio of exploration assets in 2006. It is reported that OceanaGold, since December of 2007, has been forcibly evicting indigenous residents in the community who have been residing there since the 1950's. The demolition of more than 180 houses of indigenous peoples was said to have been carried out by OceanaGold without sufficient relocation or compensation and without due process.¹³⁵ In particular, the CHR investigated the shooting of an individual, Emilio Pumihic, who was reportedly shot at close range by a security guard for the mining area of OceanaGold.¹³⁶

2.4 Executive Agencies

Aside from the CHR, there exist several other government agencies that serve either as monitors or otherwise exercise jurisdiction over cases involving human rights abuses including those committed by private corporations.

Among these is the Presidential Human Rights Committee (PHRC),¹³⁷ composed of agencies in the executive branch and answers directly to the President of the Philippines and is the primary advisory body to the President of the Philippines on the matter of addressing all human rights issues in the country. In line with their specialized areas of focus, other executive agencies monitor and report on the country's compliance with international conventions and agreements on human rights. These agencies are assisted by the Department of Foreign Affairs (DFA) on the matter of reporting compliance, particularly with international treaties on human rights.

134. The Philippine Workshop, *op. cit.* note 1.

135. Ronald A. Gregorio, "CHR Chairperson Leila de Lima visits Didipio, Confirms OceanaGold's human rights violations," (2009), available at <http://www.minesandcommunities.org/article.php?a=9637> last viewed July 15, 2010.

136. Philippine Daily Inquirer, "Shooting Mars Lent in Mining Village," (2008) available at <http://newsinfo.inquirer.net/inquirerheadlines/regions/view/20080324-126059/Shooting-mars-Lent-in-mining-village>, last viewed July 15, 2010.

137. Created by Administrative Order No. 29, January 27, 2002.

3. Obstacles to Accessing Justice

The preceding survey depicts a legal system with a host of liabilities facing corporations which violate human rights. The range of remedies under Philippine law aims to provide fair and public hearing by impartial courts and tribunals to allow parties affected by corporate conduct to enforce these liabilities, compensate victims and impose penalties. The present section discusses that in practice, culpability, especially that of corporations, remains extremely difficult to establish in the Philippine setting due to a variety of factors such as the nature of corporations as distinct juridical entities and limitations on the performance of judicial authority.¹³⁸ This section also discusses that in cases where culpability is established, problems besetting the Philippine judicial system such as clogged dockets, delay, and corruption prevents the timely imposition of consequent penalties.

3.1 Corporate personality; piercing the corporate veil and complex corporate structures

There are a number of ways in which corporations may escape liability for violating human rights. One way is for shareholders and managers to abandon the corporation and leave a shell, empty of any valuable property or asset. Claimants will have no way to enforce awards, particularly monetary ones. A more extreme way is to cease existence altogether, usually done through closure, sometimes complemented by a withdrawal to a foreign country. Business operations could be resumed through a subsequent incorporation of a new corporation or by acting through a local agent who could be a natural or juridical person. Through all this, corporate officials, the people actually behind corporate conduct, hide behind the corporation's separate juridical personality, thus evading personal liability. Ultimately, claims are unsuccessful and those who are ultimately responsible for human rights abuses are not held to account for their actions and arguably, remain undeterred from committing future harm.

It is therefore critical for claimants to be able to pierce the corporation's legal personality so as to reach the persons who act through them. Were this not possible, rights granted by law may be thwarted by the legal fiction that corporations exist separate from the actors behind them. Under Philippine case law, piercing the so-called veil of corporate existence has long been recognized and, formally stated, is done by courts only in exceptional cases, namely when (1) a corporation has used a cloak to cover fraud or wrongdoing, (2) a corporate entity is merely an

138. The Philippine Workshop, *op. cit.* note 1. Of the participants in the Philippine Workshop on Access to Justice, only the trial court judge and the representative of the Integrated Bar of the Philippines expressed strong confidence in the ability of parties to regularly achieve justice through the country's justice system. Participants with direct experience of being parties to cases were not so positive about the judicial system, with particular comments being made on delay, corruption, and inefficiency.

alter ego, business conduit, or instrument of a person or another corporation, or (3) doing so is necessary to achieve justice. In applying the doctrine of piercing the veil of corporate fiction, the following requisites must be established: (1) actual control, not merely majority or complete stock control, (2) such control must have been used to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest acts in contravention of someone's legal rights; and (3) the aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.¹³⁹ Establishing control is not easy, as mere ownership by a single stockholder of even all or nearly all of the capital stocks of a corporation is not *by itself* a sufficient ground to disregard the separate corporate personality.¹⁴⁰

Parties urging courts to reach through the corporation's distinct personality thus face at least two hurdles. The first one involves convincing courts that it is necessary to pierce the veil of corporate fiction to address fraud, wrongdoing, or crime. The burden is placed upon claimants to convince the court to disregard its default attitude of respecting the juridical personality of corporations. The second difficulty involves proof of control by corporate officers and a causal link between the officers, the action done, and the resulting damage. This causal link is extremely difficult to establish with sufficient proof that courts will accept. A principal reason for this is the secrecy and confidentiality which typically characterizes decisions made by corporate officers, especially in delicate matters.¹⁴¹ As the risks far outweigh the benefits for whistle-blowers, the Philippines has yet to encourage corporate insiders to successfully and effectively provide evidence linking corporate officers to wrongdoing.¹⁴² The difficulties presented are compounded further in situations where juridical entities, not natural persons, lie behind a corporation.

An example is the Marinduque tragedy in 1996, the worst case of tail spill in the Philippines, where about 4 million metric tons of mine wastes from Marcopper Mining Company (Marcopper) were dumped into the Boac River in the island of Marinduque, displacing thousands of residents and killing the ecosystem which

139. *Velarde v Lopez, Inc.* G.R. 153886, January 14, 2004.

140. *Ryuichi Yamamoto v Nishino Leather Industries, Inc.*, G.R. No. 150283, April 16, 2008.

141. It is very rare for claimants to be able to present first hand information from corporate insiders to justify piercing the veil of corporate fiction. What they usually present is information from documents submitted by corporations to government agencies. In *De Leon v NLRC*, G.R. No. 112661, May 30, 2001, a group of security guards needed to establish a relation of employment to justify their claim that they were illegally dismissed. To do that, they presented evidence that the security agency through which they worked and the corporation where they actually worked have the same owners and business address, and further, that the security agency have no other clients. Significantly, these information did not call for insider testimony as they are readily seen in documents submitted by corporations to government agencies. The guards were fortunate that the facts they established were enough to convince the Supreme Court to pierce the corporate personality which was being used as a shield against liability to them. It remains very difficult however to convince courts and agencies to pierce the veil of corporate fiction.

142. The Philippine Workshop, *op. cit.* note 1, Professor Virgilio R. delos Reyes.

sustained whole communities.¹⁴³ At the time of the incident, Marcopper was partly owned by a Canadian company, Placer Dome, which sold its shares after the dumping incident thereby dimming prospects of directly bringing it before Philippine courts.¹⁴⁴

In 2005, the Provincial Government of Marinduque sued Placer Dome Corporation in the United States in Nevada state court to claim damages arising from harm to human health, the ecology, and economy caused by the company's 30 year mining operations in Marinduque, including the disaster of 1996. Placer Dome removed the case to the US federal district court which subsequently dismissed the matter on *forum non conveniens*. However, in 2009, the Ninth Circuit Appeals Court reversed the dismissal and remanded the case to the District court.¹⁴⁵ Thus, by simply disposing of its stake in Marcopper, Placer Dome has allegedly been able to forestall efforts to make it liable. In the period after selling its shares in Marcopper, Placer Dome left affected communities struggling to find ways to bring it before Philippine Courts.¹⁴⁶ Presently, or five years after the suit was filed in the US and 14 years after the 1996 incident, the affected communities are still in the dark whether anyone will ultimately be held accountable for the damage done to them and their environment. Needless to say, it takes substantial resources, not to mention endurance, to support such protracted processes, especially when conducted in different foreign or domestic venues. The affected communities continue to persevere, determined to have their environment cleaned up, obtaining compensation and an assurance that a disaster will not happen again. This latter desire seems difficult to obtain considering that the DENR's cease and desist orders were not implemented, Marcopper reportedly having resumed operations as early as 1998.¹⁴⁷

Going further, if the experience of the victims of human rights abuse under martial law in enforcing a favourable award by US courts in Philippine courts gives any indication of the difficulty in enforcing awards of foreign courts, a victory in US courts against Placer Dome, in order to be enforced, likely will require many further

143. Maria Soccoro I. Diokno, "Human Rights Concerns Arising From Corporate Activities in the Philippines", 2000, commissioned by the International Council On Human Rights Policy, p.5; <http://pcij.org/stories/canadian-transnational-dumps-waste-responsibility-in-marinduque/>, last viewed June 5, 2010. The tragedy was also discussed by Professor H. Harry L. Roque, Jr. and Atty. Ma. Luz G. Luna at the Philippine Workshop.

144. The Philippine Workshop, *op. cit.* note 1, Professor H. Harry L. Roque, Jr.; Maria Soccoro I. Diokno, "Human Rights Concerns Arising From Corporate Activities in the Philippines", 2000, commissioned by the International Council On Human Rights Policy, p.5; Melizel F. Asuncion, "Righting the Wrongs," Legal Rights and Natural Resources Center Kasama sa Kalikasan, Friends of the Earth-Philippines, 2005. In her paper, Atty. Asuncion writes that Placer Dome appeared to leave in its stead in the Philippines the corporation Placer Dome Technical Services (Phils.), Limited to oversee rehabilitation and payment of compensation. In an interview, Atty. Asuncion said that neither rehabilitation nor compensation was achieved through this corporation or otherwise.

145. *Marinduque v Placer Dome, Inc.*, 582 F.3d 1083 (2009).

146. Interview with Atty. Melizel F. Asuncion, one of the lawyers who assisted the communities in Marinduque.

147. Diokno, *op. cit.* note 144.

years of litigation. As related by one of the thousands of claimants who went through the experience,¹⁴⁸ a case filed in 1986 in the US resulting in a favourable award in 1995 has yet to be enforced to date, 2010, by Philippine courts. Thus, should the claim against Placer Dome follow a similar pace, a resulting award may be too late to address meaningfully the damages to life, environment, and ecology caused by its mining activities.¹⁴⁹

The traumatic experience in Marinduque is not lost on other communities facing continued threats by mining activities, especially now that foreign owned corporations (to even 100%) have been allowed to enter into Financial or Technical Assistance Agreements (FTAA) for the large-scale exploration, development and utilization of minerals such as gold, copper, nickel, chromite, lead, and zinc.¹⁵⁰

One current example is the Tampakan Copper-Gold Project in Mindanao. According to Ms. Lolita Sionosa of the Social Action Center, Marbel, North Cotabato,¹⁵¹ serious concerns have been raised about the Tampakan Copper-Gold Project by members of affected communities in Tampakan, Columbio, Sultan Kudarat and Kiblawan in Davao del Sur. In addition to enduring alleged violations of laws on required consent and due process in the level of the local governments, the communities have been unable to identify any person they may hold accountable for harmful consequences of the mining projects. It does not help that ownership of the project is the subject of continued transactions among foreign corporations. Published information reveals that the Tampakan project has shares owned by Australia based Indophil Resources NL and by Sagittarius Mines Inc. Majority stake of Sagittarius Mines Inc. (62.5%) is owned by Swiss based Xstrata PLC through its Australia-based subsidiary Xstrata Queensland Ltd.¹⁵² It is reported that the rest is owned by Filipino conglomerate Alsons Corporation, which has also expressed the intent to dispose of its shares.¹⁵³ At the same time, China's biggest gold producer, Zijin Mining Corp., until recently was in the process of closing its takeover of Indophil Resources; the takeover reportedly carries with it the interests held by Alsons as well.¹⁵⁴

On one level, the continued transactions involving the ownership, control, and management of the entities involved in the Tampakan project creates difficulty among the local communities to identify who among the layers of corporations

148. The Philippine Workshop, *op. cit.* note 1, Hon. Loretta Ann Rosales.

149. Interview with Atty. Melizel F. Asuncion, one of the lawyers who assisted the communities in Marinduque. Atty. Asuncion says that at present, toxic substances continue to spill into Marinduque's water systems.

150. The Mining Act.

151. The Philippine Workshop, *op. cit.* note 1.

152. <http://www.indophil.com/tampakan.asp> last viewed June 5, 2010.

153. http://www.mindanews.com/index.php?option=com_content&task=view&id=7138 last viewed June 5, 2010.

154. <http://www.sunstar.com.ph/davao/australian-firm-acquires-alsons-stake-tampakan-project> last viewed June 5, 2010.

may be held accountable for mining activities in their areas. Issues are raised as to whether, as with Placer Dome, evasion of responsibility will be abetted by the complex structure behind the mining activities. On another level, as the mining activities are carried out, the affected communities are unable to determine whether commitments made regarding safety, environmental protection and preservation by persons on the field will be enforced by the power-holders they do not know and have never met.¹⁵⁵ The concern is so pervasive that the province of South Cotabato, which may be affected by the activities in Tampakan, has resorted to a ban against open pit mining, apparently as a pre-emptive step against harm to its communities arising from the Tampakan project.¹⁵⁶

3.2 Jurisdiction Over Foreign Corporation as Respondent

As seen in the Marcopper dispute, corporate structure can influence the ability to successfully bring a corporation within the jurisdiction of Philippine courts. Anyone seeking to bring a foreign corporation before Philippine courts has to contend with the law and rules on acquiring jurisdiction over the subject matter and the person of such foreign corporation. The difficulties posed are substantial, especially if the plaintiff lacks resources, financial and otherwise, to maintain a drawn out pursuit of a claim.

Philippine law provides that a foreign corporation may be subject to legal cause of action in the Philippines (1) if it is transacting or doing business in the Philippines with a license or (2) if it is doing so without a licence.¹⁵⁷ However, if it is not transacting or doing business in the Philippines and does not have any licence to so transact or do business in the Philippines, it cannot be sued in the Philippines for lack of jurisdiction. According to the Supreme Court, “if a foreign corporation does not do business here, there would be no reason for it to be subject to the State’s regulation. As we have observed, in so far as the State is concerned, such foreign corporation has no legal existence. Therefore, to subject such corporation to the courts’ jurisdiction would violate the essence of sovereignty.”¹⁵⁸ By sovereignty, the Supreme Court is likely referring to that of the State in which the corporation is created, as it noted that “corporations have no legal status beyond the bounds of the sovereignty by which they are created.”¹⁵⁹

While the meaning of “doing business” is defined by law in broad terms, there are significant items which are excluded from its coverage. Among the exclusions

155. The Philippine Workshop, *op. cit.* note 1, Ms. Lolita Sionosa.

156. <http://newsinfo.inquirer.net/breakingnews/regions/view/20100629-278231/South-Cotabato-governor-signs-ban-on-open-pit-mining>, last viewed July 20, 2010.

157. Corporation Code, Sections 125 and 133.

158. *Avon Insurance PLC. British Reserve Insurance Co. Ltd., et al. v Court of Appeals, et al.*, G.R. No. 97642, August 29, 1997.

159. *Ibid.*

are “mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor” and “having a nominee director or officer to represent its interests in such corporation.”¹⁶⁰ Also excluded from the term “doing business” is the act of “appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account.”¹⁶¹ Hence, where a foreign corporation buys into a domestic corporation and exercises its rights as shareholder, it cannot be sued in Philippine courts inasmuch as it is not strictly “doing business” in the country. It is the domestic corporation that may be sued even if the foreign corporation(s) that owns its shares subsequently sells, assigns or otherwise disposes of its shares. This is what happened in Marcopper where Placer Dome sold its shares in Marcopper Mining Corporation, leaving no viable recourse directly against it before Philippine courts.¹⁶²

When cases are initiated, it is the plaintiff’s burden to file a complaint that will convince the court that the defendant foreign corporation is “doing business” and is therefore within the court’s jurisdiction. A general allegation that it is “doing business” is insufficient. The allegations in the complaint must demonstrate to the court what acts constituting “doing business” were conducted. This threshold is high enough that in one case, the allegations that (1) the foreign corporation is doing business in the Philippines through an alleged subsidiary, a local company; and (2) the local company is duly authorized to licence, sell and/or distribute the products owned and manufactured by the foreign corporation were deemed insufficient to place the foreign corporation within the jurisdiction of Philippine courts.¹⁶³

Apart from this, there is the matter of acquiring jurisdiction over the person of the defendant, such as a foreign corporation “doing business” in the Philippines, which is acquired by Philippine courts upon a valid service of summons by the court sheriff.¹⁶⁴ When the defendant is a foreign private juridical entity which has

160. Republic Act No. 7042 (1991), the Foreign Investments Act, Section 3(d) defines the phrase “doing business” to include soliciting orders, service contracts, opening offices, whether called “liaison” offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totaling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization: Provided, however, that the phrase “doing business” shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; nor having a nominee director or officer to represent its interests in such corporation; *nor* appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account.

161. *Ibid.*

162. Asuncion.

163. *Avon Insurance PLC. British Reserve Insurance Co. Ltd., et al. v Court of Appeals, et al.*

164. Rules of Civil Procedure, as amended (1997), Rule 14, Section 3.

transacted business in the Philippines, service may be made on its resident agent or if there is no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines.¹⁶⁵

Extraterritorial service of summons may be allowed by the court by personal service, publication in a newspaper of general circulation or any means the court may deem sufficient. The Supreme Court has clarified that extraterritorial service of summons is proper only in four instances, namely: (1) when the action affects the personal status of the plaintiffs; (2) when the action relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent; (3) when the relief demanded in such action consists, wholly or in part, in excluding the defendant from any interest in property located in the Philippines; and (4) when the defendant non-resident's property has been attached within the Philippines.¹⁶⁶

Thus, in cases where the plaintiff successfully discharges the burden of convincing the court that it has jurisdiction over the subject matter, the court will still have to acquire jurisdiction over the person of the defendant. This proves difficult in many cases where the foreign corporation has already left the Philippines or ceased operations without any remaining agent or official in the Philippines and an absence of the circumstances justifying extra territorial service of summons.

3.3 *Forum Non Conveniens*

Philippine case law expressly recognizes *forum non conveniens* and applies it within narrow circumstances.

One case¹⁶⁷ in which *forum non conveniens* was invoked involves a US company sued in the Philippines by a US citizen who was a resident of the Philippines, under contract where the latter was engaged as the company's representative in the country. Ruling on the argument of the US company that the complaint should be dismissed based on *forum non conveniens*, the Supreme Court sustained the trial court which had asserted the jurisdiction of Philippine courts over the dispute, saying that notwithstanding its "foreign elements," the judgment could still be enforced against the respondent company, it being a foreign corporation licensed to do business in the Philippines. This is consistent with the general attitude on *forum non conveniens* as formally stated.

In these and similar cases, the Philippine Supreme Court emphasized that the Rules of Court does not provide for *forum non conveniens* as a ground for dismissal by motion. Rather, it is considered a matter of defence which requires a factual

165. *Ibid.*, Section 12.

166. *Kawasaki Port Service Corp., et al., v Amores*, G.R. No. L-58340, July 16, 1991.

167. *Raytheon International, Inc. v Stockton W. Rouzie, Jr.*, G.R. No. 162894, February 26, 2008.

determination. For Philippine courts to hear a case involving foreign elements, the following requisites have to be proved: (1) that the Philippine Court is one to which the parties may conveniently resort; (2) that the Philippine Court is in a position to make an intelligent decision as to the law and the facts; and (3) that the Philippine Court has or is likely to have the power to enforce its decision.¹⁶⁸

Still, there are cases where *forum non conveniens* is invoked by the courts as ground to dismiss a case. One such case¹⁶⁹ involved a Filipino who was directly hired by a hotel in China and subsequently terminated prior to the expiration of his two-year contract. Even though the first level labour arbiter and the appellate court NLRC both resolved the issues on the merits, the Supreme Court reversed and stated that the NLRC is a inconvenient forum to resolve the dispute. In ruling thus, the Supreme Court pointed out that the employer was a foreign corporation not doing business in the Philippines and that all incidents of the case such as recruitment, employment, and dismissal, occurred outside the Philippines. Apparently, in such cases, the Filipino worker would have to bring suit in China, which is highly unlikely considering the inherent difficulty in bringing and sustaining actions abroad aggravated by the meagre resources at the disposal of most workers. Considering the millions of Filipinos currently working outside the country and the willingness of the Philippine government to send more abroad, not being allowed to enforce workers' rights before Philippine courts would surely prove to be a serious disability.

3.4 Prescription

Philippine laws on prescription¹⁷⁰ have not significantly barred causes of action against corporations given that they typically begin to run only from the time when the potential plaintiff actually or should reasonably have discovered the injury.¹⁷¹ Concern however has been raised in specific instances, namely in labour law particularly regarding the short period of one year in which workers should bring all complaints relating to unfair labour practice. With one party in a labour dispute keeping an eye on the running of the prescriptive period, the parties' efforts to

168. *Ibid.*, citations omitted.

169. *The Manila Hotel Corp, et al., v National Labor Relations Commission, et al.*, G.R. No. 120077, October 13, 2000.

170. The Civil Code provides the rules on prescription in general including:

- Actions upon a written contract: 10 years
- Actions upon an oral contract: 6 years
- All other actions whose periods are not fixed by law: 5 years
- Actions based on personal injury or quasi-delict: 4 years

Prescription in criminal cases vary depending on the possible penalty for the offense ranging from 1 year to 20 years. The term of prescription shall not run when the offender is absent from the Philippine Archipelago.

171. Dominic Nardi, "Issues, Concerns, And Challenges In Environmental Adjudication In The Philippine Court System" (2007), citing to *Sermonia v Court of Appeals*, G.R. No. 109454, June 14, 1994.

settle disputes among themselves may be effectively rushed and perfunctorily conducted.

Concern has also been raised in cases involving harm to the environment, particularly on the point that the cause of action may not be readily apparent or would need evidence consisting of scientific and other technical data, requiring a considerable length of time to amass.¹⁷² For example, in the Marinduque disaster, the issue of prescription arose when it was only after the four-year prescriptive period that affected communities were able to consult with lawyers and were informed of their rights and options under the law.¹⁷³

3.5 Legal standing

The Rules of Court recognizes the legal standing of natural and juridical persons to sue before courts¹⁷⁴ provided that he/she stands to “be benefitted or injured” by the judgment.¹⁷⁵

The Rules of Court also allows “class suits” provided that (1) the subject matter of the suit is one of common or general interest to many persons, (2) the persons affected are so numerous that it is impracticable to bring them all to court, and (3) the parties bringing suit are sufficiently numerous or representative of the class and can fully protect the interests of all concerned.¹⁷⁶ While a range of “class suits” have reportedly been brought against corporations before Philippine courts, such as claims by heirs of deceased passengers against ship owners and operators¹⁷⁷ and claims by consumers against overcharging utility companies¹⁷⁸ or fraudulent company promotions,¹⁷⁹ it is more accurate to depict these cases as not so much brought by groups of people in representation of a class as they are individual complaints filed at the same time and subsequently tried together. In the Philippines, it is the “taxpayer’s suit,” allowed in instances involving misuse or misapplication of public funds,¹⁸⁰ which partakes more closely the representative

172. The Philippine Workshop, *op. cit.* note 1, Atty. Maria Paz G. Luna.

173. Interview with Atty. Melizel F. Asuncion. The argument that toxic substances continue to spill into Marinduque’s water system has been used to prevent the application and operation of prescription.

174. The Revised Rules of Civil Procedure, Rule 3, Section 1.

175. *Ibid.*, Section 2.

176. *Ibid.*, Section 12.

177. GMA News, “6 more civil cases filed vs. Sulpicio Lines,” (2008) <http://www.gmanews.tv/story/112122/6-more-civil-cases-filed-vs-Sulpicio-Lines>, last viewed July 10, 2010.

178. Philippines Today, “P13-B class suit filed vs. Meralco,” (2008) available at <http://www.philippinestoday.net/index.php?module=article&view=1006>, last viewed July 15, 2010.

179. *Mendoza v Pepsi-Cola Products Philippines, Inc.*, G.R. No. 153183, July 24, 2002; *Rodrigo v Pepsi Cola Products (Phils.), Inc. and PepsiCo, Inc.*, G.R. No. 149411, October 1, 2001; and *De Mesa v Pepsi Cola Products Phils., Inc. and PepsiCo Inc.*, G.R. Nos. 153063-70, August 19, 2005.

180. *Pascual v Secretary of Public Works*, G.R. No. L-10405, December 29, 1960.

aspect of class suits. Similar suits in representation of others against private conduct have yet to be developed further through actual practice.¹⁸¹

Confidence in the openness of the Supreme Court to cases brought in representation of others is buoyed by the case of *Oposa*,¹⁸² the seminal case on legal standing in environmental cases. *Oposa* was brought in the name of several minors represented by their parents who also claimed that they represented others of their generation as well as generations yet unborn. On this point of standing, the Supreme Court rendered the now well known rule that the petitioners had standing to file the class suit for others of their generation and for succeeding generations based on the concept of “inter-generational responsibility,” the first time that legal standing to sue on behalf of future generations was recognized. As it held that petitioners’ right to a healthy environment carried with it an obligation to preserve that environment for succeeding generations, environmental advocates far and wide welcomed *Oposa*. In fact, in 2007, a petition was filed in the name of “Resident Marine Mammals of the Tañon Strait Protected Seascape e.g. Toothed Whales, Dolphins, Porpoises, and other Cetacean Species”¹⁸³ by humans “in their capacity as legal guardians of the lesser life forms and as responsible stewards of God’s creations.”¹⁸⁴ This petition filed on behalf of dolphins remains pending before the Supreme Court. Presently, with the recent incorporation of the *Oposa* ruling on standing in the New Environmental Rules, it is expected that more suits brought in representation of others’ rights to a healthful and balanced ecology will find their way before Philippine courts.

3.6 Legal Fees and Legal Representation

Prosecuting and maintaining a case in the Philippines is characterized by substantial expenses and costs, prohibitive to many potential litigants. A party in a litigation in the Philippines may face the following costs: (1) filing fees paid to the court and, in criminal cases, to the Department of Justice (DOJ); (2) attorney’s fees; and (3) incidental expenses to maintain a case including costs of transportation, photocopying, mailing, notarization, and the like.

181. Katrina Legarda, “The Philippines is an unfriendly country to class suits,” (2008) <http://www.abs-cbn-news.com/views-and-analysis/10/15/08/philippines-unfriendly-country-class-suits-katrina-legarda>, last viewed, July 10, 2010. A prominent trial lawyer in the Philippines expresses her doubts about class suits in the country, pointing to the courts’ attitude of awarding measly amounts of damages as well as the high level of evidence needed in such trials.

182. G.R. No. 101083, *op. cit.* note 5.

183. *Ibid.*

184. Documents relating to the petition are available at http://savetanon.multiply.com/journal/item/3/legal_documents, last viewed July 15, 2010.

Filing fees for a complaint depends on the nature of the case, the value of the subject matter involved, or the size of the demand made.¹⁸⁵ The standards of indigence allow only for the poorest persons to be exempted from paying these fees.

To cite an extreme application of the rule on filing fees in civil cases, the victims of abuse under martial law, when enforcing a favourable judgment rendered by a US court involving millions of dollars before Philippine courts, were assessed filing fees amounting to an incredible Php 472 million. It was only after six years that the litigants were allowed to file their claim with a reduced fee of Php 410.¹⁸⁶ Even as the Marcos victims' experience is an exceptional case, filing fees remain to be significant obstacles to filing claims before courts.

Apart from court fees, litigants pay the incidental costs, photocopying, transportation, mailing, etc. To illustrate the amount of photocopying expenses which are required on appeal, no less than seven copies of initiatory petitions filed with the Court of Appeals are required, each bearing annexes comprised of all relevant pleadings previously filed. These petitions should be verified, requiring costs for notarization of typically two or more documents. In addition, a number of copies must be filed with the court, as the adverse party or parties each must be furnished a copy of the petition plus annexes. Petitions filed with the Supreme Court, 17 copies are required and likewise must be verified and each must contain a complete set of any annexes. With all this, litigants typically have to spend about Php 3,500 just for photocopying expenses for filing with the Court of Appeals and more than Php 10,000 for a Supreme Court filing.

Related to the issue of transportation is that of physical accessibility of courts. Litigants in remote areas of the Philippines have recounted the need to endure hours of hard travel just to attend a court hearing.¹⁸⁷ This experience is so common that the Supreme Court launched a programme it called "Justice on Wheels" in late 2004 which involves a number of buses customized to serve as court rooms and mediation chambers.¹⁸⁸ Even as it makes headway as a welcome innovation, especially for persons who have allegedly been unduly imprisoned, the programme has yet to provide a long term and sustained solution to lack of access to courts and judges in many parts of the country.

Regarding costs of legal representation, free legal assistance is available through several sources. One is through the legal aid programme of the Integrated Bar of the Philippines (IBP), which looks at the means of the litigant and the merits of the case to decide whether or not to provide assistance. Applicants in the capital must

185. The Forestry Code, *op cit.*, note 45.

186. The Philippine Workshop, *op. cit.* note 1, Hon. Loretta Ann Rosales.

187. The Philippine Workshop, *op. cit.* note 1.

188. Jose Midas P. Marquez, Bringing Our Courts Closer to Our People (A Yearend Report), 2009 available at sc.judiciary.gov.ph/Bringing.pdf, last viewed June 10, 2010.

earn less than Php 14,000 annually and Php 10,000 in other areas to qualify.¹⁸⁹ These thresholds leave only the very poorest to be qualified for assistance.¹⁹⁰

A second source is the Public Attorney's Office (PAO), a government agency mandated to extend free legal assistance to poor persons. To qualify for assistance, the applicant must be indigent or have monthly net income less than Php 14,000.00 if in the capital and Php 12,000.00 to Php 13,000.00 for the rest of the country. Compared to the IBP, these thresholds are less restrictive and allow the PAO to take in more cases involving poor litigants as a result of which there are acutely large caseloads per lawyer. In 2009, the agency's 1,407 lawyers each had an average of 420 cases or 2,953 clients.¹⁹¹

A third available source of legal assistance are the clinics run by a number of law schools whose senior law students are allowed to appear in court.¹⁹² Different law schools have varying requirements for qualification such as indigence merit, with some requiring cases to have the potential for establishing important precedent.

Aside from these established providers of free legal aid, poor litigants may also approach lawyers in general as they are allowed to render *pro bono* legal service according to their own discretion. There is however no data on the number of cases or clients taken on *pro bono* by lawyers in the Philippines. That a significant number of people still lack affordable legal representation is indicated by Supreme Court action when, in 2009, it attempted to impose upon all trial lawyers a requirement to render mandatory free legal aid to poor litigants.¹⁹³ Because of adverse reactions from lawyers and the inability to provide acceptable guidelines for implementation, the Supreme Court suspended this scheme indefinitely.

The need by poor litigants for legal assistance is the aim of another separate initiative, this time by the legislature, which, in 2010, enacted a new law granting lawyers added tax benefits when they take on cases *pro bono*.¹⁹⁴ There is no data indicating whether lawyers have actually availed themselves of the benefits under the new law or how many poor people have benefitted from this incentive. That the Supreme Court and the legislature have tried to address the lack of available legal aid underscores the need of poor litigants for legal assistance.

In all cases where legal assistance is rendered for free, incidental expenses remain for the account of the litigant. Under a favourable judgment, a litigant may be

189. <http://ibp.ph/lap.html> last viewed June 10, 2010.

190. <http://www.census.gov.ph/data/sectordata/sr09412tx.html>, last viewed July 10, 2010. Available government data shows that average annual family income of Filipino families to be Php 173,000 in 2006.

191. <http://www.pao.gov.ph/78/Accomplishment-Report-2009--Narrative-Report> last viewed on June 10, 2010.

192. Revised Rules of Court, Rule 138-A, as amended.

193. Bar Matter No 2012, 2009.

194. An unofficial copy of the law may be viewed at http://www.lawphil.net/statutes/repacts/ra2010/ra_9999_2010.html, last viewed on June 20, 2010.

awarded a modest amount denominated as “attorney’s fees” which is properly retained by the litigant for costs of maintaining the suit.¹⁹⁵ However, this is not automatic and is a matter left to the discretion of the court. A separate item, “costs of suit,” are occasionally awarded by courts even if there is no settled understanding as to what this concept refers to and what amount will be paid in specific cases. It does not necessarily refer to costs of legal representation, which remain for the account of the represented client.

Apart from the matter of cost of legal representation, there is also the matter of specialized expertise in matters involving violations of human rights. Invariably, lawyers from the IBP and PAO treat human rights violations as they would common criminal and civil actions. The application of law on fact is rather straightforward and other aspects of the dispute such as community education and organizing, sector mobilizations and campaigning, and impact on case law are hardly considered.¹⁹⁶

However, a handful of lawyers and lawyers’ groups in the Philippines calling their practice of law “alternative,” offer their services to marginalized sectors of society, providing specialized expertise on areas of law such as women, indigenous peoples, workers, farmers, and the environment. Their small number, low compensation, and lack of long-term funding prevent them from accepting a larger number of cases. A study by the Alternative Law Groups,¹⁹⁷ a network of Philippine NGOs, identifies the problem of lack of adequate legal representation, particularly for the poor and marginalized groups.¹⁹⁸ The study attributes the problem to (1) the limited number of lawyers willing to handle cases for the poor and marginalized; (2) fees for lawyers’ services that the poor cannot afford; (3) a common general perception that government lawyers are not competent and that they sometimes even favour the opposing parties in cases filed by indigent litigants: and (4) the prohibitive costs of litigation including direct and indirect expenses.

Access to justice in the Philippines may thus be characterized as severely restricted by a fee charging system where litigants typically pay directly for the

195. In labor cases, attorneys fees are limited to only 10% of the award given to the worker.

196. At the Philippine Workshop, a member of a community adversely affected by corporate conduct explained, *“When we seek out a lawyer, we hope that we can afford her services, and more than that, that she can explain our situation to us in terms which we understand. Also, we need for her to understand our situation, our plight, so that in turn she can also make others understand see things from our eyes.”*

This sentiment elicited support from other participants who expressed the importance of empathy in legal assistance.

197. A Philippines-based coalition of non-government organizations with legal program components that adhere to the principles and values of alternative or developmental law. These organizations have distinct programs for developmental legal assistance that is primarily concerned with the pursuit of public interest, respect for human rights and promotion of social justice.

198. Alternative Law Groups, “From the Grassroots: The Justice Reform Agenda of the Poor and Marginalized”, 2004.

services of the judiciary through court and other fees. Public prosecutors also charge fees from litigants in criminal cases. While exemptions are offered to indigent litigants, only the very poorest are saved from the fees and even then, not from expensive incidental costs of maintaining the suit.

3.7 Protracted length of proceedings

A related obstacle to obtaining justice is the sheer length of litigation before Philippine courts. Anecdotal evidence confirms that criminal and civil cases usually last in excess of five years until they reach the Supreme Court where cases may await final resolution for several more years.¹⁹⁹ Usually the trial is not continuous, and hearing dates are usually separated by several months. Schemes to postpone hearings by parties and lawyers abound and include absences of parties, lawyers, or witnesses and filing of dilatory motions and pleadings. Interlocutory orders are also challenged before higher courts simultaneous with a call for the suspension of the proceedings at the lower courts while the challenge is pending.

Beyond the amounts expended in the course of trial and appeal, the cost engendered by the protracted litigation is quite substantial. It is common that parties prefer to enter into a settlement of the claims, regardless of objective merit, to avoid the long drawn out process of litigation.²⁰⁰

Also woven into the fabric of litigation in the Philippines is the corruption widely perceived by practitioners and reflected in indexes and surveys.²⁰¹ Instances of corruption inherently evade documentation. Still, there are a few examples that have come to the public knowledge, giving hints of the true nature and scope of corruption in the Philippines.²⁰²

199. The Philippine Workshop *op. cit.* note 1.

200. The Philippine Workshop, *ibid.*, Prof Raul P. Pangalangan.

201. In Transparency International's corruption index for 2009, the Philippines scored a low 2.4, ranking 139th. This places the country behind most of its co-members in the Association of South East Asian Nations. Its score is equal to that of Pakistan and Bangladesh. Only three of the Philippines' neighbours in the region, Timor-Leste, Cambodia and Burma, have lower scores. Another survey, the world audit report available through www.worldaudit.org ranks the Philippines 111 out of 149 places in terms of corruption; Diokno, *op. cit.* note 144, p. 13-14.

202. *Re: Letter Of Presiding Justice Conrado M. Vasquez, Jr. On CA-G.R. Sp No. 103692 [Antonio Rosete, Et Al. V Securities And Exchange Commission, Et Al.]*, A.M. NO. 08-8-11-CA, October 15, 2008. The case involves allegations of bribery made by a sitting justice of the Court of Appeals, Justice Sabio, who, through a press conference, claimed that an emissary of the Manila Electric Company (MERALCO) attempted to bribe him with Php 10 million just to have a case to which it was a party transferred to another Justice. Despite not having been identified, the emissary came forward and claimed that on the contrary, it was Justice Sabio who asked for Php 50 million pesos in order to favor the electric company. As the scandal grew bigger, it drew into its wake other sitting Justices of the appellate court, at least 3 of whom were clearly shown to have committed irregular acts. When the Supreme Court finally resolved the controversy, only one Justice was dismissed. Justice Sabio was merely suspended for 2 months, while the rest were reprimanded or admonished. While the fact of bribery itself was not confirmed, the circumstances acknowledged to have taken place in the MERALCO bribery case give an idea of the nature and reach of irregularities in the judiciary as well as the consequent penalties which are likely to be imposed; Marites Dañguilan-Vitug, "The

3.8 Equality of arms and evidentiary problems

Before courts, parties are given equal opportunities to present their arguments and evidence, the basic principle being that the party making an allegation must adduce proof in substantiation. Subpoenas to compel the production of testimony or documents are available.²⁰³ At the same time, various modes of discovery²⁰⁴ are available to parties. However, unfamiliarity with or aversion to the various modes of discovery have prevented their widespread use.²⁰⁵ Parties tend to present such evidence as is already in their possession or which may be obtained from government agencies. As noted above, it is rare for corporate insiders to provide proof of wrongdoing either by the corporation or by associated individuals. There are no incentives for whistle-blowers, much less a framework for protecting them in case they do surface.

There are instances where the burden of proof upon the complainant is eased as in cases of employee dismissal where the employer must prove the legality of a worker's termination.²⁰⁶ It is also provided in the Labour Code that "all doubts in the implementation and interpretation of the provisions of [the Labour Code], including its implementing rules and regulations, shall be resolved in favour of labour."²⁰⁷

In environmental cases, the New Environmental Rules expressly adopts the precautionary principle to ease the burden upon those seeking to protect the environment. It provides thus,

"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 healthy ecology shall be given the benefit of the doubt."*²⁰⁸

Shadow of Doubt" (2010), which provides a pioneering look into the country's Supreme Court. Starting at page 87, the author recounts that a Justice was appointed to the Supreme Court despite accusations that he lobbied with other Justices on behalf of litigant friends and voting in decisions in cases involving a former client and golfing friend.

203. Rules of Court, Rule 21; The 2005 Revised Rules Of Procedure Of The National Labor Relations Commission, Rule V, Section 8.

204. Revised Rules of Court, Rules 23 to 29.

205. *Republic of the Philippines vs. Sandiganbayan*, G.R. No. 90478, November 21, 1991. In *Republic of the Philippines vs. Sandiganbayan*, the Supreme Court felt compelled to discuss the rules of discovery after noting lawyers' refusal to maximize their use to expedite litigation.

206. *Lima Land, Inc., Leandro Javier, Sylvia Duque and Premy Ann Beloy v Marlyn Cuavas*, G.R. No. 169523, June 16, 2010.

207. Labor Code, Article 4.

208. New Environmental Rules, Part V, Rule 20.

However, the application of the precautionary principle in actual environmental cases has yet to be tested.

3.9 Other obstacles

3.9.1 Violence

There have been numerous instances of extrajudicial killings, enforced disappearances, torture and other acts of violence, as outlined in the report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, who visited the country in 2007.²⁰⁹ There is a wide range of agents responsible, from “death squads,” private armed groups, to elements of the country’s security forces. Human rights violations in the sector of labour are widely reported.²¹⁰ Potential and actual trade unionists experience violence to discourage and stop union activities. In the area of agrarian reform, it has been noted that private security forces constrain the full implementation of reforms in rural areas.²¹¹ They are engaged by big landowners to suppress tenants and farmers from invoking their rights under agrarian laws. Private armed groups prevent the government from acquiring big *haciendas* for distribution to landless farmers and farm workers. In cases where land has already been awarded to farmer beneficiaries, private armed groups and paramilitary groups are able to prevent the award from being actually enforced.

There are reports that indigenous people and local fishermen in Bugsuk in Southern Palawan, employed by a company in cultivating and harvesting pearls, were driven out by private armed groups.²¹² Similar instances of forcible evictions have taken place in other parts of Mindanao in relation to activities of logging, mining, and large plantations. According to a report made to the US government by a human rights organization in the Philippines, a number of extrajudicial killings took place, belying the Philippine government’s claim that steps have been taken to improve the country’s human rights record.²¹³ These include attacks against leaders of indigenous peoples for opposing mining activities. In another report made by a fact-finding mission to the Philippines,²¹⁴ members of the *Subanon* indigenous peoples revealed that hundreds of armed security guards allegedly hired by a Canadian mining company were in checkpoints blocking access to their

209. See A/HRC/8/3/Add.216 April 2008

210. Center for Trade Union and Human Rights, “Treacherous and Disquieting Industrial Peace, Trade Union And Human Rights Report”, 2008, p. 4ff; Diokno, *op. cit.* note 144, at p.7.

211. Jeffrey M. Riedinger, “Agrarian Reform in the Philippines: Democratic Transitions and Redistributive Reform”, Stanford University, Stanford, California, 1995, p. 135

212. The Philippine Workshop, *op. cit.* note 1.

213. KARAPATAN, “Oplan Bantay Laya, KARAPATAN 2009 Report on the Human Rights Situation in the Philippines” (2009), p. 3ff.

214. Columban Fathers, “Mining in the Philippines: Concerns and Conflict”, 2007, p.19.

ancestral domains. The report refers to the claim that military operations were done jointly with other paramilitary forces and private security firms.

Paramilitary groups, such as the Civilian Armed Forces Geographical Unit (CAFGU), are named in the report of the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, together with the formal military establishment in a significant number of killings.²¹⁵

Apart from the serious human rights abuses, involving denial of the right to life and a prevailing feeling of general insecurity, such violence defeats the claim by people to their rights and entitlements, whether from law or equity. They are also deprived of their ability to seek redress or even freely express themselves. Recourse to formal processes in courts or probe bodies such as the Commission of Human Rights are not readily available and many of these instances have come to light only upon the probing of external fact finding missions or *rapporteurs*.

3.10 Harassment of victims and their lawyers

Apart from serious violent attacks, including in instances of arbitrary killings and enforced disappearances, persons who choose to go up against corporations must also contend with harassment or SLAPP suits. In the Philippines, it is common for advocates, individuals and groups, and their supporters to face complaints in court filed or prompted by parties whose interests are threatened or otherwise affected by their advocacy.

The practice is quite prevalent against environmental activists. For instance, the Centre for Environmental Concerns, a Philippine NGO, had its own Executive Director imposed with a 10 million peso libel suit due to a report the organization published on the effects of mining in Southern Luzon.²¹⁶ The complaint was filed in 2007 and is presently still pending.

Similarly, charges of libel were filed against a member of an environmentalist organization for remarks she made in an interview aired over radio. It took two years before the case was dismissed.²¹⁷ In another case, charges of slander were filed against a leader of the *Kankaney* tribe who had spoken out against mining operations in her village. The charges were enough to cause her arrest and detention overnight in jail.²¹⁸

In another case, the professional licences of a group of 10 doctors and an engineer were threatened after they had conducted a scientific study which found that the

215. Report of the Special *Rapporteur* on Extrajudicial, Summary or Arbitrary Executions, p. 47.

216. Center for Environmental Concerns – Philippines, “SLAPP us not! Engaging Harassment Suits Against Philippine Environmental Defenders,” 2009, p. 7.

217. *Ibid.*, p. 6.

218. *Ibid.*, p. 5-6.

practice of aerial crop spraying had harmful effects on nearby communities. This complaint followed an earlier charge of libel against members of the research team.²¹⁹

These are just a sample of cases filed against advocates and, in the last case, neutral professionals who are perceived to be advocates. Such charges impose substantial burdens on the respondents, who must spend money, time, and effort defending themselves in cases that usually take years to resolve. It is hoped that the New Environmental Rules' expedited procedure in SLAPP cases will not only free the victims from harassment but also deter future filings. However, non-environmental SLAPP cases are still left unaddressed.

219. ABS-CBN News, "Scientist 'harassed' for exposing pesticide harm," (2010) available at <http://www.abs-cbnnews.com/lifestyle/07/19/10/scientist-harassed-exposing-pesticide-harm>, last viewed July 10, 2010.

Conclusions and Recommendations

The survey above outlines a number of remedies in Philippine laws available to victims of human rights abuse, such as resorting to regular courts, quasi-judicial agencies, agencies of the executive branch of government, and the Commission on Human Rights. These are generally designed to provide public hearing by impartial tribunals that have the authority to impose penalties that range from fines to imprisonment in criminal cases and damages in civil cases. Other forms of penalties include deportation of corporate officers and protective, preventive, and restorative orders.

Litigation before courts remains the principal remedy available to affected persons, even as specialized agencies and tribunals have jurisdiction to hear and decide cases involving particular issues. Such remedy is obstructed however by the prohibitive cost of filing and maintaining cases, restricted access to free legal assistance, clogged dockets, delay, and perceptions of lack of competence and corruption.

The following section offers recommendations to address the problems in accessing and obtaining justice in the Philippines. It is hoped that these recommendations, when viewed alongside studies of other countries, will help outline an agenda for both legal and judicial reforms and will lead to a unified effort to put in place practical and appropriate measures to enhance access to justice for as many people as possible.

There are several areas of recommendations to address the obstacles to access to justice in cases of corporate abuse of human rights.

Law Reform

Changes in Philippine law should be introduced to increase access to information about corporations and their activities, encourage corporate insiders to provide information and evidence on wrongful corporate conduct and introduce penalties other than damages, fines, and imprisonment.

On access to corporate information, corporations in the Philippines should comply with submissions to various government agencies such as the Securities and Exchange Commission (SEC), the Bureau of Internal Revenue and, for listed companies, the Philippine Stock Exchange. Information contained in these submissions has been provided by the companies largely on a voluntary basis. Apart from questions about the veracity or quality of the information given, access to these submissions is hampered by bureaucratic procedure and practical obstacles such as location of office, availability of records and the ability to locate specific documents and information. New legislation is needed to establish availability and accessibility of corporate submissions as a rule. Similarly, corporate

submissions should be gathered into a central searchable database, accessible online.

The authority of the Commission on Human Rights (CHR) should be strengthened to investigate corporations in the Philippines, particularly with regard to information independent of corporate submissions. The CHR should be given explicit and enhanced investigative powers including to enforce access to information, personnel, and documents of the corporation.

To help extricate information typically hidden from the public, law should be enacted to encourage and protect corporate insiders to testify and support actions against corporate abuse of human rights. Basic features of this may include protection to the corporate insider from retaliatory acts from the corporation as well as requiring corporations in the Philippines to create procedures accessible to whistleblowers that may include intervention of government agencies.

A related recommendation relates to enacting measures against SLAPP suits. There is a need to penalize parties responsible for harassment suits apart from the provisions under the New Environmental Rules that are designed only to expedite the dismissal of such suits. The filing of SLAPP suits should be deterred by the availability of penalties on parties and lawyers responsible for them.

On penalties, amendments may be made to push consequences of human rights abuses beyond the typical fines, imprisonment, and damages. More recent laws allow for restorative measures²²⁰ including the payment of clean up costs²²¹ in specific cases. Such restorative measures and new ones such as guarantees of non-repetition, public apologies, and mandatory educational programmes may be expanded to other cases of human rights violations.

Easing Access to Courts

Existing law should be more optimally invoked to allow courts and agencies to hold corporations engaging in unlawful conduct accountable for abuses of human rights.

In this light, it is necessary to create new court rules to increase the accessibility of courts in cases of human rights abuse. The innovations included in the rules on the writ of *amparo*²²² and the New Environmental Rules show the possible

220. Republic Act No. 7586, National Integrated Protected Areas System (NIPAS) (1992), Section 21.

221. The Mining Act, Section 16.

222. A.M. No. 07-9-12-SC - The Rule On The Writ Of *Amparo* (2007).

changes in procedural rules relating to cases of corporate action affecting human rights. These include:

- (1) Relaxing the rules on standing so that any party with an interest including government and juridical entities as well as any individual in representation of another may file an appropriate action.
- (2) Exempting the filing of complaints involving human rights abuses before courts from payment of filing and court fees. This includes petitions to enforce foreign awards of damages, appeals and petitions to higher courts. A similar exemption from fees should also be introduced with regard to filings of criminal complaints with the Department of Justice (DOJ).
- (3) Providing for expedited procedure to address and prevent SLAPP or harassment suits.

Apart from these, consideration should be given to the proposal that the filing of complaints and subsequent pleadings, petitions, and appeals involving human rights abuses may be made electronically to avoid costs arising from printing, photocopying, and transportation. By the same token, documents that need to be notarized may simply be scanned and sent electronically as well. Should paper documents still be required, necessary copies should be reduced to one (1) instead of the multiple copies presently required. This should include petitions and appeals before higher-level courts.

Capacity-building for Members of the Judiciary and Civil Society

The capacity of members of the judicial system, particularly judges²²³ and prosecutors to hear and decide human rights cases involving corporate action, is critical. This is particularly true in environmental cases that often need scientific knowledge and analysis.²²⁴

For judges, the current curriculum for judges' training under the Philippine Judicial Academy (PHILJA)²²⁵ may be used to highlight human rights cases particularly those arising from actions of corporations.

223. Opening remarks delivered by Philippine Supreme Court Chief Justice Reynato Puno at the Forum on Environmental Justice, University of the Cordilleras, Baguio City, Philippines (2009). During the Environment Justice Forum organized by the Supreme Court in April 16, 2009, the Philippine Supreme Court Chief Justice recognized that the current rules appear ill-suited to resolve complex and complicated environmental disputes because they are too technical and leave little room for litigants to settle their disputes.

224. The Philippine Workshop, *op. cit.* note 1, Atty. Maria Luz G. Luna.

225. Memo of the Supreme Court re: Conference On "Research Study On The Impact Of The Philippine Judicial Academy On The Administration Of Justice" (2010), prefacing that the Philippine Judicial Academy (PHILJA) was originally created by the Supreme Court on March 12, 1996, through Administrative Order No. 35-96, and finally mandated by Republic Act No. 8557 on February 26, 1998. This law institutionalized PHILJA as a "training school for justices, judges, court personnel, lawyers, and aspirants to judicial posts."

Apart from judges, prosecutors also need specialized and sustained training in handling cases involving corporate human rights abuse. A programme focusing on prosecuting human rights abuses may be designed for prosecutors, which may be run under the Department of Justice with assistance from the Commission on Human Rights. One possibility may be to train a pool of public prosecutors who will have expertise in prosecuting against corporations that violate human rights. Another way is to rely on private lawyers in specific cases to assist in prosecution. The two possibilities are not exclusive and allow for the added suggestion to enable these prosecutors (public and private) to manage cases which need to be brought outside the Philippines, such as when the absence of a foreign corporation has effectively deprived Philippine courts of the authority to hear and decide cases arising from their acts.

Beyond knowledge of and sensitivity to cases involving human rights violations, judges assigned to special courts such as environmental courts and those handling corporate matters should be given specialized training to provide the technical knowledge needed to resolve cases brought to them. To further provide expertise in special cases, the courts should encourage the acceptance and maximize the role of expert resource persons, probably as *amicus curiae*, which, although currently allowed, only occurs in rare cases.

The ability of the Commission on Human Rights in performing its duties to investigate, document, and expose instances of human rights abuses may be further enhanced by providing funding for programmes and facilities, including training and information campaigns.

Also, members of civil society should be trained in monitoring, documenting, and reporting instances of human rights abuse involving corporations. The experience of NGOs and civil society organizations in domestic and international mechanisms accepting reports on human rights abuse provides a good starting point for improvement. Further participation should be encouraged and promoted particularly in engaging (1) government agencies tasked to prepare reports to international bodies and (2) international mechanisms directly through submission of reports and documentation. Specific recommendations include the standardization of documentation forms to facilitate data gathering, reporting, and archiving. It is also recommended to develop skills in data gathering and preservation of evidence.²²⁶

The Philippine Judicial Academy includes in its curricula and programs, courses that address the latest developments in substantive and procedural laws. It also includes updates on technology and their possible application in the courts, as well as lectures on ethics and value formation and other special issues or areas of concern, such as problems of vulnerable and marginalized groups in society. Faculty enhancement and leadership training are also conducted.

226. The Philippine Workshop, *op. cit.* note 1, Dr. Nymia Pimentel-Simbulan

On a more basic level, members of vulnerable groups should be able to know, understand and exercise their rights under Philippine law. Activities on empowerment continue to be done by the Philippine-based groups such as the Alternative Law Groups (ALG)²²⁷ whose member NGOs work on a range of issues among poor sectors of society. These efforts at capacity building by a handful of NGOs could be expanded and scaled up to reach as many people and communities as possible.

ALG members and similar NGOs have also given poor litigants access to lawyers specializing in specific areas of law such as women's rights, environment, workers' rights, and children's rights, who provide legal assistance in bringing and sustaining precedent setting cases before courts and quasi-judicial agencies. The assistance of these organizations should be further supported to make them available to more people and for a longer period.

227. *Op. cit.*, note 197.

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Annex I. Bill Of Rights

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Section 3.

- (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise, as prescribed by law.
- (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

Section 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

Section 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

Section 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.

Section 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

Section 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.

Section 9. Private property shall not be taken for public use without just compensation.

Section 10. No law impairing the obligation of contracts shall be passed.

Section 11. Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.

Section 12.

- (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.
- (2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.
- (3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.
- (4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to the rehabilitation of victims of torture or similar practices, and their families.

Section 13. All persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required.

Section 14.

- (1) No person shall be held to answer for a criminal offense without due process of law.
- (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused: Provided, that he has been duly notified and his failure to appear is unjustifiable.

Section 15. The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion or rebellion, when the public safety requires it.

Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

Section 17. No person shall be compelled to be a witness against himself.

Section 18.

- (1) No person shall be detained solely by reason of his political beliefs and aspirations.
- (2) No involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been duly convicted.

Section 19.

- (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua.
- (2) The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.

Section 20. No person shall be imprisoned for debt or non-payment of a poll tax.

Section 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

Section 22. No *ex post facto* law or bill of attainder shall be enacted.”

Annex II. Social Justice And Human Rights

Section 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.

Section 2. The promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance.

Labour

Section 3. The State shall afford full protection to labour, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labour to its just share in the fruits of production and the right of enterprises to reasonable returns to investments, and to expansion and growth.

Agrarian And Natural Resources Reform

Section 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the

right of small landowners. The State shall further provide incentives for voluntary land-sharing.

Section 5. The State shall recognize the right of farmers, farmworkers, and landowners, as well as cooperatives, and other independent farmers' organizations to participate in the planning, organization, and management of the program, and shall provide support to agriculture through appropriate technology and research, and adequate financial, production, marketing, and other support services.

Section 6. The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain under lease or concession suitable to agriculture, subject to prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands.

The State may resettle landless farmers and farmworkers in its own agricultural estates which shall be distributed to them in the manner provided by law.

Section 7. The State shall protect the rights of subsistence fishermen, especially of local communities, to the preferential use of the communal marine and fishing resources, both inland and offshore. It shall provide support to such fishermen through appropriate technology and research, adequate financial, production, and marketing assistance, and other services. The State shall also protect, develop, and conserve such resources. The protection shall extend to offshore fishing grounds of subsistence fishermen against foreign intrusion. Fishworkers shall receive a just share from their labour in the utilization of marine and fishing resources.

Section 8. The State shall provide incentives to landowners to invest the proceeds of the agrarian reform program to promote industrialization, employment creation, and privatization of public sector enterprises. Financial instruments used as payment for their lands shall be honoured as equity in enterprises of their choice.

Urban Land Reform And Housing

Section 9. The State shall, by law, and for the common good, undertake, in cooperation with the private sector, a continuing program of urban land reform and housing which will make available at affordable cost, decent housing and basic services to under-privileged and homeless citizens in urban centres and resettlement areas. It shall also promote adequate employment opportunities to such citizens. In the implementation of such program the State shall respect the rights of small property owners.

Section 10. Urban or rural poor dwellers shall not be evicted nor their dwelling demolished, except in accordance with law and in a just and humane manner.

No resettlement of urban or rural dwellers shall be undertaken without adequate consultation with them and the communities where they are to be relocated.

Health

Section 11. The State shall adopt an integrated and comprehensive approach to health development which shall endeavour to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the under-privileged, sick, elderly, disabled, women, and children. The State shall endeavour to provide free medical care to paupers.

Section 12. The State shall establish and maintain an effective food and drug regulatory system and undertake appropriate health, manpower development, and research, responsive to the country's health needs and problems.

Section 13. The State shall establish a special agency for disabled person for their rehabilitation, self-development, and self-reliance, and their integration into the mainstream of society.

Women

Section 14. The State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation.

Role And Rights Of People's Organizations

Section 15. The State shall respect the role of independent people's organizations to enable the people to pursue and protect, within the democratic framework, their legitimate and collective interests and aspirations through peaceful and lawful means.

People's organizations are bona fide associations of citizens with demonstrated capacity to promote the public interest and with identifiable leadership, membership, and structure.

Section 16. The right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making shall not be abridged. The State shall, by law, facilitate the establishment of adequate consultation mechanisms.

Human Rights

Section 17.

- (1) There is hereby created an independent office called the Commission on Human Rights.
- (2) The Commission shall be composed of a Chairman and four Members who must be natural-born citizens of the Philippines and a majority of whom shall be members of the Bar. The term of office and other qualifications and disabilities of the Members of the Commission shall be provided by law.
- (3) Until this Commission is constituted, the existing Presidential Committee on Human Rights shall continue to exercise its present functions and powers.
- (4) The approved annual appropriations of the Commission shall be automatically and regularly released.

Section 18. The Commission on Human Rights shall have the following powers and functions:

- (1) Investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights;
- (2) Adopt its operational guidelines and rules of procedure, and cite for contempt for violations thereof in accordance with the Rules of Court;
- (3) Provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection;
- (4) Exercise visitorial powers over jails, prisons, or detention facilities;
- (5) Establish a continuing program of research, education, and information to enhance respect for the primacy of human rights;
- (6) Recommend to Congress effective measures to promote human rights and to provide for compensation to victims of violations of human rights, or their families;
- (7) Monitor the Philippine Government's compliance with international treaty obligations on human rights;
- (8) Grant immunity from prosecution to any person whose testimony or whose possession of documents or other evidence is necessary or convenient

to determine the truth in any investigation conducted by it or under its authority;

- (9) Request the assistance of any department, bureau, office, or agency in the performance of its functions;
- (10) Appoint its officers and employees in accordance with law; and
- (11) Perform such other duties and functions as may be provided by law.

Section 19. The Congress may provide for other cases of violations of human rights that should fall within the authority of the Commission, taking into account its recommendations.