

ENVIRONMENTAL LAW AND NATURAL RESOURCES 2A

1st Semester, A.Y. 2024-2025

G.R.P. Bueta

A. Introduction


Environment – The circumstances, objects, or conditions by which one is surrounded. The factors and influences that affect the growth, health, progress, functioning, etc., of someone or something (*Merriam-Webster*).

- No definition in Philippine law.
- But see: **Ecology** – The life-sustaining interrelationships and interactions of organisms with each other and with their physical surroundings (*SEP for Palawan Act [RA 7611]*).
- **Natural resources** – The life-support systems such as the sea, coral reef, soil, lakes, rivers, streams, and forests as well as useful products found therein such as minerals, wildlife, trees and other plants, including the aesthetic attributes of scenic sites that are not man-made (*Id.*).

International environmental law (IEL)– International environmental law comprises those substantive, procedural and institutional rules of international law that have as their primary objective the protection of the environment (*Sands 14*).

Development of IEL

According to Bodansky

1. Conservationist stage (late 1800s–first half of 1900s)
 - a. Focused on the issue of wildlife, particularly migratory species (birds , and commercially exploited species found in common areas such as oceans (fur seals, whales and fishes).
 - b. Convention to Protect Birds Useful to Agriculture (1902) – Widely considered the first multilateral environmental treaty.
2. Pollution-prevention stage (1962–1975)
 - a. Stockholm Conference (1972) – Major catalyst in the emergence of IEL.

- b. Principle 21 emerged, which is now widely regarded as part of IEL.
- c. The Stockholm Conference brought developing countries into the debate; developing countries emerged as a forceful voice.

3. Sustainable development stage (1987–present)

- a. Interest arose as a result of the discovery of the Antarctic ozone hole in 1985.
- b. Montreal Ozone Protocol (1987) – Widely considered to be the most successful environmental agreement to date.
- c. Earth Summit (1992 UN Conference on Environment and Development, Rio de Janeiro).

According to Sands

1. From early fisheries conventions to the creation of the United Nations
 - a. First whaling convention (1931)
 - b. 1902 Birds Convention
 - c. First bilateral treaty to protect migratory birds (1916)
 - d. Train Smelter Case (US v. Canada) – The Tribunal applied the principle under IL that “no state has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence.”
2. From the creation of UN to Stockholm (1945–1972)
 - a. ICJ (1949) confirmed every state’s “obligation not to allow knowingly its territory to be used for acts contrary to the rights of other states.”
 - i. Widely believed to be the progenitor of Principle 21.
 - b. 1972 UN Conference on the Human Environment (Stockholm Conference) adopted the *Declaration of Principles for the Preservation and*

Enhancement of the Human Environment.

- i. Principle 21 (Responsibility to prevent harm) – States have the sovereign right to exploit their own resources but bear the responsibility to ensure their activities do not cause damage to the environment of other states or areas beyond national jurisdiction.
 - ii. Principle 22 (Cooperation on liability laws) – States are required to cooperate in developing international law regarding liability and compensation for pollution damage, rather than accepting automatic strict liability.
 - iii. Principle 23 (National determination of standards) – Environmental standards should be determined nationally, taking into account specific local value systems and social costs, as standards valid in advanced countries may be inappropriate for developing ones.
 - iv. Principle 24 (International cooperation) – Nations and international organizations must cooperate to control, prevent, and reduce environmental risks while respecting the sovereignty and interests of all states.
3. From Stockholm to Rio (1972–92)
 - a. UN Convention on the Law of the Sea (UNCLOS) – Established a comprehensive framework for the establishment of global rules on the protection of the marine environment and marine living resources, including detailed and important institutional arrangements and provisions on environmental assessment,

technology transfer, liability and dispute settlement.

- b. Recognition that issues (e.g., population, food security, energy, industry, etc.) are connected and cannot be isolated from each other.
 - c. Rio Declaration:
 - i. Principle 7 – Principle of common but differentiated responsibility.
 - ii. Principle 15 – Precautionary approach.
4. UNCED (period of integration)

Development of Philippine Environmental Law

On National Territory

1. 1935 Constitution – Merely a description that the Philippine territory is the territory ceded to the US by Spain in the Treaty of Paris.
2. 1972 Constitution – A more specific description of the archipelago, because it mentions air space, subsoil, seabed, insular shelves and submarine area. Notably, mentioned territories “by historic or legal title.”
3. 1987 Constitution – Largely the same, but framers removed the reference to historic claims.

On Natural Resources

1. 1935 Constitution – Espoused the Regalian Doctrine (*jura regalia*). While art. XIII mentions “conservation,” no codal provision talks about conservation.
2. 1972 Constitution – Retained *jura regalia*, but provided that the Legislature must take account “conservation, ecological, and developmental requirements of natural resources” (art. XIV, § 11).
3. 1987 Constitution – There is an explicit recognition of environmental rights (art. II, § 16).

SECTION 16. The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

Basic environmental law rules and principles

Rules	Principles
Practical and binding	Expresses a general truth or theoretical basis
Applicable in an all-or-nothing fashion.	Serves as a consideration inclining in one way or another.
Specifies particular actions	Embodies legal standards but is more general; does not specify actions
Necessitates a particular decision	States a reason or argument for a direction but does not force a specific decision

Basic environmental principles

1. Sovereignty over natural resources and obligation not to cause harm
2. Principle of prevention
3. Principle of cooperation
4. Sustainable development
5. Precautionary principle
6. Polluter pays
7. Common but differentiated responsibility

(1) Sovereignty over natural resources and the responsibility not to cause damage to the environment of other states or to areas beyond national jurisdiction

Two elements:

1. Sovereign rights – The principle of state sovereignty allows states within limits established by international law to conduct or authorise such activities as they choose within their territories, including activities that may have adverse effects on their own environment.
2. Not to cause damage – States are subject to environmental limits in the exercise of their rights under the principle of permanent sovereignty over natural resources.

(2) Principle of preventive action

- It is a recognized principle of general international law that requires states to

reduce, limit, or control activities that might cause or risk damage to the environment, applicable to both autonomous activities and those done under specific treaties (*Iron Rhine case*).

- The principle is closely linked to the customary rule of due diligence, which requires states to take appropriate rules and measures, maintain a certain level of vigilance in enforcement, and exercise administrative control over public and private operators.
- Action must be taken at an early stage and, *if possible, before damage has occurred*, especially given the often irreversible nature of environmental harm.
- Requires states to minimize damage to the environment within its own jurisdiction as an objective in itself, in addition to preventing transboundary harm.
- Supported by procedural obligations, such as the requirement to carry out Environmental Impact Assessments (EIA).

(3) Principle of cooperation

- Rooted in UN Charter, art. 74 (principle of good neighbourliness) – “use your own property so as not to injure that of another.”
- A core commitment affirmed in virtually all international environmental agreements, bilateral, regional and global.
- Serves as the basis for procedural rules, requiring states to establish suitable common regimes and engage in information sharing, consultation, and notification regarding potential transboundary harm.

(4) Sustainable development

Four recurring principles:

1. Intergenerational equity – To preserve natural resources for the benefit of future generations (see *Oposa v. Factoran*).
2. Sustainable use – The rational, wise, sound, and appropriate use of resources now.
3. Equitable use or intragenerational equity – This implies that, when exploiting natural resources, states must consider others (equity!).

4. Integration – Environmental considerations are integrated into economic and development plans; that the environment is taken into account in development.

(5) Precautionary principle

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation (Principle 15, Rio Declaration).

Precautionary principle 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 (RPEC, rule I, § 4).

2 approaches:

1. *Traditional approach* – The burden of proof currently lies with the person opposing an activity to prove that it does or is likely to cause environmental damage (*plaintiff*).
2. *Alternative approach* – Tends to shift the burden of proof and require the person who wishes to carry out an activity to prove that it will not cause harm to the environment (*defendant*).
 - a. This interpretation would require polluters, and polluting states, to establish that their activities and the discharge of certain substances would not adversely or significantly affect the environment before they were granted the right to release the potentially polluting substances or carry out the proposed activity.

In the context of the RPEC

- The precautionary principle is part of the rules on evidence of the RPEC (rule 20, §§ 1-2).
- Applicability – When there is a lack of full scientific certainty in establishing a **causal link** between human activity and environmental effect, the court shall apply the

precautionary principle in resolving the case before it. The constitutional right of the people to a balanced and healthful ecology shall be given the benefit of the doubt.

- RPEC focuses on the causal link between human activity and environmental effect.
- Standards for application:
 - threats to human life or health
 - inequity to present or future generations
 - prejudice to the environment without legal consideration of the environmental rights of those affected

(6) Polluter pays

- The costs associated with preventing or controlling pollution should be borne by the person or entity responsible for causing it, rather than by the public.
- However, exceptions exist, such as when strict implementation would lead to severe socio-economic consequences or when temporary derogations or financial support are necessary, *provided* they do not significantly distort international trade and investment.

(7) Common but differentiated responsibility

- States shall co-operate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem.
- The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.

Two elements:

1. Common responsibility – Describes the shared obligations of two or more states towards the protection of a particular environmental resource, taking into account its relevant characteristics and nature,

physical location, and historic usage associated with it.

- a. Likely applies when a resource is under the control of a single state.
2. Differentiated responsibility – Differentiated environmental standards set on the basis of a range of factors, including special needs and circumstances, future economic development of developing countries, and historic contributions to causing an environmental problem.

B. Overall legal framework

The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature (CONST. art. II, § 16).

- A self-executing provision, despite being in art. II.
- *Oposa v. Factoran* espoused the principle of intergenerational equity—recognizing the right of generations yet unborn to a clean, healthy, and safe environment.
 - “Rights to a balanced and healthful ecology are basic rights which predate all governments and constitutions and need not even be written in the Constitution for they are assumed to exist from the inception of humankind.”
- In *LLDA v. CA*, the court held that art. II, § 16 is a constitutionally guaranteed right of every person, but it carries with it the correlative duty of nonimpairment. Thus, the LLDA’s immediate response to the demands of the necessities of protecting vital public interests gives vitality to this constitutional provision.
- Cleaning-up Manila Bay is a *ministerial function* by various government agencies, said the court in *MMDA v. Concerned Residents*.
 - Alluding to the concept of intergenerational equity, the court wrote, “even assuming the absence of a categorical legal provision specifically prodding petitioners to clean up the bay, they and the men

and women representing them cannot escape their obligation to future generations of Filipinos to keep the waters of the Manila Bay clean and clear as humanly as possible. Anything less would be a betrayal of the trust reposed in them.”

- On the question of whether animals can sue to enforce environmental rights, the court held that the issue has been rendered moot by the RPEC (*Resident Marine Mammals v. Reyes*).
 - The primary reason animal rights advocates and environmentalists seek to give animals and inanimate objects standing is due to the need to comply with the strict requirements in bringing a suit to court.
- While art. II, § 16 does not contain a specific act required by the State, it certainly mandates the sensitivity of both the Department of Environment and Natural Resources and our courts to acquire a standpoint that is protective of our ecology.
 - Shortcuts into the process through which the State assures minimal impact on the environment, weighed against the profits to be generated by businesses, must not be tolerated (*Cordillera Global Network v. Paje*).

On RPEC

- Requisites to avail the privilege of the writ of kalikasan:
 1. Actual or threatened violation of the right to BHE
 2. It arises from an unlawful act or omission of a public official or employee, or private individual or entity
 3. It involves or will lead to an environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces (*Paje v. Casiño*).
- A party who invokes the writ based on alleged defects or irregularities in the issuance of an ECC must not only allege and prove such

defects or irregularities, but must also provide a causal link or, at least, a reasonable connection between the defects or irregularities in the issuance of an ECC and the actual or threatened violation of the constitutional right to a balanced and healthful ecology of the magnitude contemplated under the RPEC (*Id.*).

- In any case, the privilege of the writ will *not* be granted if there is no unlawful act or omission in the first place.
 - Thus, if the tree-cutter complied with the Forestry Code, the writ is inapplicable (*LNL Archipelago v. Agham*).
- The plaintiff has the burden of proving the requirements for the issuance of a writ of kalikasan. It has the burden to prove the requisites.
 - Necessarily, the party seeking the issuance of a writ of kalikasan must demonstrate that a particular law, rule or regulation was or would be violated by the respondent (*AGHAM v. JTI*).

On precautionary principle

- The principle of precaution originated as a social planning principle in Germany. In the 1980s, the Federal Republic of Germany used the Vorsorgeprinzip ("foresight principle") to justify the implementation of vigorous policies to tackle acid rain, global warming and pollution of the North Sea (*Mosqueda v. PBGEA*).
- The principle only applies when the link between the cause, that is the human activity sought to be inhibited, and the effect, that is the damage to the environment, cannot be established with full scientific certainty (*West Tower v. FPIC*).
- For purposes of evidence, the precautionary principle should be treated as a principle of last resort, where application of the regular Rules of Evidence would cause in an inequitable result for the environmental plaintiff:
 - (a) settings in which the risks of harm are uncertain;

- (b) settings in which harm might be irreversible and what is lost is irreplaceable; and
- (c) settings in which the harm that might result would be serious (*ISAAA v. Greenpeace [2015]*).

- The precautionary principle finds direct application in the evaluation of evidence and bridges the gap in cases where scientific certainty in factual findings cannot be achieved. It does not and should not be made to supply allegations where there are none (*Citizens for a Green and Peaceful Camiguin v. King Energy*).

Environmental tort

- Elements of quasi-delict:
 - Damages suffered by the plaintiff
 - Fault or negligence of the defendant
 - The connection of cause and effect between the fault or negligence of the defendant and the damages incurred by the plaintiff.
- Where an environmental law or action principally furthers corrective justice and deterrence, the underlying principles would appear to support overlap with tort law most fully (*Sanggacala v. NAPOCOR*).

Foreign Cases

Asghar Leghari v. the Federation of Pakistan

- The government's inaction toward the action points in the Framework to Combat Climate Change violated the citizens' fundamental constitutional rights like the right to life (art. 9) which includes the right to a healthy and clean environment and right to human dignity.

Animal Welfare Board of India vs. A. Nagaraja

- Animals have intrinsic rights. The right to life includes the right to a certain *quality of life*:
 - Freedom from hunger, thirst and malnutrition
 - Freedom from fear and distress
 - Freedom from physical and thermal discomfort
 - Freedom from pain, injury and disease

- Freedom to express normal patterns of behavior

Lalit Miglani v. State of Uttarakhand

- Invoking the *parens patriae* doctrine, glaciers, rivers, streams, rivulets, lakes, air, meadows, dales, jungles, forests wetlands, grasslands, springs and waterfalls are legal entities/legal person/juristic person/juridical person/moral person/artificial person having the status of a legal person, with all corresponding rights, duties and liabilities of a living person, in order to preserve and conserve them. They are also accorded rights akin to fundamental or legal rights.

- Article I on the National Territory encapsulates that Philippine territories (and its natural resources) must be protected by the State.

The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.

The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets. However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices.

In the pursuit of these goals, all sectors of the economy and all regions of the country shall be given optimum opportunity to develop. Private enterprises, including corporations, cooperatives, and similar collective organizations, shall be encouraged to broaden the base of their ownership (CONST. art. XII, § 1).

Right to health

The State shall protect and promote the right to health of the people and instill health consciousness among them (CONST. art. II, § 15).

- A self-executing provision (*Imbong v. Ochoa*).
- Intrinsic in the right to a balanced and healthful ecology is the right to health. Therefore, the right to health may be invoked in a petition for issuance of a writ of *kalikasan* so long as the magnitude of environmental damage is sufficiently demonstrated.
 - While the precautionary principle may ensure that no risk of harm to the environment will directly result from the activity being avoided, the costs that come with foregoing the activity—though not obvious, are equally important (*Dela Cruz v. MERALCO*).

Jura regalia

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

National territory

The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial, and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines. (CONST. art. I).

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

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

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution (CONST. art. XII, § 2).

Regalian doctrine

- **General rule:** All natural resources may not be alienated.
 - **Exception:** Agricultural lands of the public domain.
- The mere reclamation of these areas by PEA does not convert these inalienable natural resources of the State into alienable or disposable lands of the public domain. There must be a law or presidential proclamation officially classifying these reclaimed lands as alienable or disposable and open to disposition or concession. Moreover, these reclaimed lands cannot be classified as alienable or disposable if the law has reserved them for some public or quasi-public use (*Chavez v. PEA*).

Exploration, development and utilization (EDU)

- **General rule:** The EDU of natural resources shall be under the full control and supervision of the State, e.g.:
 - Co-production
 - Joint venture

- Production-sharing
 - With Filipinos, or corporations or associations at least 60-percent Filipino-owned
 - Under such terms as may be provided by law
 - For a period not exceeding 25 years

- In *Narra Nickel v. Redmont*, the court held that when there is doubt in the 60-40 equity rule, the grandfather rule must be applied.
- Under the Local Government Code, two requisites must be met before a national project that affects the environmental and ecological balance of local communities can be implemented:
 - Prior consultation with the affected local communities, and
 - Prior approval of the project by the sanggunian (*BFI v. Aklan*).

Water rights

- Beneficial use may be the measure and limit of the grant in
 - Irrigation, water supply, fisheries, or industrial uses *other than the development of water power*

Small-scale utilization of natural resources

- Congress may allow
 - Small-scale utilization of natural resources
 - Cooperative fish farming
 - With priority to subsistence fishermen and fishworkers in rivers, bays and lagoons

Agreements with foreign-owned corporations

- The president may enter into service contracts with foreign-owned corporations on the following conditions:
 - The president himself does so
 - The agreement involves technical or financial assistance
 - The large-scale EDU is limited to:
 - Minerals
 - Petroleum
 - Other mineral oils
 - The agreement must comply with the law
 - The president must notify congress within 30 days from execution

Section 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof by purchase, homestead, or grant.

Taking into account the requirements of conservation, ecology, and development, and subject to the requirements of agrarian reform, the Congress shall determine, by law, the size of lands of the public domain which may be acquired, developed, held, or leased and the conditions therefor.

Section 4. The Congress shall, as soon as possible, determine by law the specific limits of forest lands and national parks, marking clearly their boundaries on the ground. Thereafter, such forest lands and national parks shall be conserved and may not be increased nor diminished, except by law. The Congress shall provide, for such period as it may determine, measures to prohibit logging in endangered forests and watershed areas. (CONST. art. XII, §§ 3-4).

4. Congress must take into account the requirements of conservation, ecology, and development and agrarian reform in determining lands of public domain

Local government

SECTION 4. The President of the Philippines shall exercise general supervision over local governments. Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays shall ensure that the acts of their component units are within the scope of their prescribed powers and functions.

SECTION 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.

SECTION 7. Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, in the manner provided by law, including sharing the same with the inhabitants by way of direct benefits.

SECTION 15. There shall be created autonomous regions in Muslim Mindanao and in the Cordilleras consisting of provinces, cities, municipalities, and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics within the framework of this Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines (CONST. art. X, §§ 4-7, 15).

- LGUs play a critical role in Environmental Law being the frontliners of the government because several environment-related functions and duties have been devolved to local governments (e.g., waste management).
- The following rights and powers of local governments in relation to the national government have likewise been outlined:
 - the right to create its own sources of revenues

Disposition of lands of the public domain

1. Only agricultural lands of the public domain may be alienated.
 - a. Thus, until public land is classified into alienable land, it remains inalienable.
2. Only public corporations and qualified individuals may acquire alienable lands of the public domain.
 - a. Corporations can hold alienable lands of private domain.
 - b. They can lease public domain lands.
3. Size of land:
 - a. Private corporations – Lease of no more than 1,000 ha
 - b. Individuals – Lease of no more than 500 ha.
 - c. Acquisition by individuals – 12 ha.

- the right to an equitable share in the utilization and development of natural resources within their jurisdiction.
- Under the general welfare clause of the Local Government Code (LGC), to enact ordinances to protect the environment and ensure the right to a balanced ecology.
 - One of the devolved powers enumerated in the section of the LGC on devolution is the enforcement of fishery laws in municipal waters including the conservation of mangroves. This necessarily includes enactment of ordinances to effectively carry out such fishery laws within the municipal waters.
 - Thus, the court upheld the ordinance mandating a "closed season" in Puerto Princesa City (*Taño v. Socrates*).
- In *LLDA v. CA*, the court upheld the authority of the LLDA to regulate fishers in the lake.
 - Laguna de Bay cannot be subjected to fragmented concepts of management policies where lakeshore local government units exercise exclusive dominion over specific portions of the lake water.
 - The LGC did not repeal the LLDA's authority.
- Given that the writ of kalikasan is an extraordinary remedy and the RPEC allows direct action to this Court and the CA where it is dictated by public welfare, this Court is of the view that the prior 30-day notice requirement for citizen suits under RA 9003 and RA 8749 is inapplicable. It is ultimately within the Court's discretion whether or not to accept petitions brought directly before it.
 - Thus, the court ordered the Cebu City government to permanently cease and desist from dumping or disposing of garbage or solid waste at the Inayawan landfill and to continue to rehabilitate the same (*Osmeña v. Garganera*).
- Although the precautionary principle allows lack of full scientific certainty in establishing a

connection between the serious or irreversible harm and the human activity, its application is still premised on empirical studies. Scientific analysis is still a necessary basis for effective policy choices under the precautionary principle.

- Thus, the court struck down a Davao City ordinance banning aerial spraying (*Mosqueda, supra*).

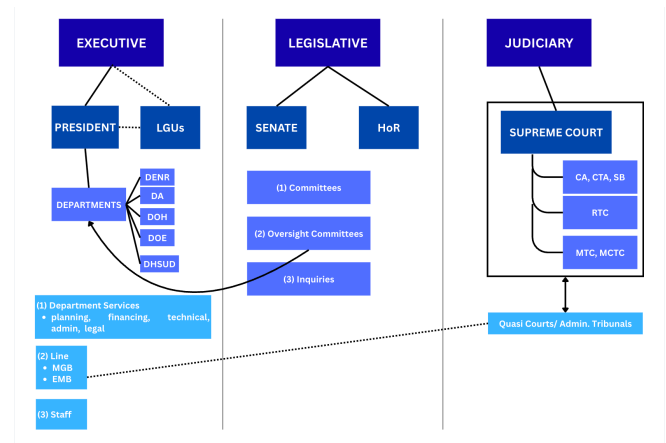
Indigenous peoples

The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development (CONST. art. II, § 22).

The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.

The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain (CONST. art. XII, § 15).

C. Overall institutional framework



Executive branch

1. National government

- The fact that other government agencies are involved in the rehabilitation works does not create the inference that the powers and functions of the LGUs are being encroached upon. The respective roles of each government agency are

particularly defined. It is a valid exercise of police power (*Zabal v. Duterte*).

- i. But see: Assuming that a state of calamity was properly declared, the Proclamation upends the framework of locally-led remediation and rehabilitation efforts mandated by the statutes. By declaring that only the President can lift the declaration, the Proclamation violates DRRM Act (*Leonen, J., dissenting*).

2. Local government

Do the LOCALmotion (Bueta & Pimentel)
65 ATENEO L.J. 1294 (2021)

LGUs can utilize their three core powers for climate action:

1. Police power: Enacting ordinances for public health, safety, and general welfare, such as setting up "green zones," mandating energy-efficient building standards, designating car-free zones, or banning carbon-emitting energy systems (like coal power plants)
2. Eminent domain: Compulsory taking of private property for a justified public purpose (like addressing the climate crisis) to create green spaces, or relocate residents from hazard zones (subject to just compensation).
3. Taxation: Creating local revenue sources (taxes, fees, and charges) to fund climate initiatives, possibly through a carbon tax or special climate assessments added to property taxes.

3. GOCCs and special bodies

Legislative branch

- Congressional oversight committees – To ensure compliance with the law.
 - It's within the core legislative function of Congress.
- Committee work
- Inquiries in aid of legislation

Judicial branch

1. Regular courts

- a. Designation of green benches (SC AO No. 23-2008)
- b. RPEC

2. Quasi-judicial (QJ) bodies

- a. QJ bodies are important because of their specialization. They are more inquisitorial, than adversarial.
- b. Example:.
 - i. Pollution Adjudication Board – Has exclusive jurisdiction over the adjudication of pollution cases, and all other matters related thereto, including the imposition of administrative sanctions.
 - ii. Mines Adjudication Board – Disputes involving rights to mining areas, mining permits, mineral agreements, financial or technical assistance agreement, surface owners, occupants, and claimholders or concessionaires.
 - iii. LLDA – Passes upon and approves or disapprove all plans, programs, and projects proposed by agencies, and private persons or enterprises where such plans, programs and/or projects are related to those of the LLDA.
- c. Before a party may seek the intervention of the courts, he should first avail of all the means afforded by administrative processes. Hence, if a remedy within the administrative machinery is still available, with a procedure prescribed pursuant to law for an administrative officer to decide the controversy, a party should first exhaust such remedy before resorting to the courts (*Bangus Fisherfolk v. Lanzanas*).
- d. Thus, the petitioners should have filed a complaint first before the PAB. The PAB is tasked to determine whether

the effluents comply with or violate anti-pollution regulations (*Estrada v. CA*).

Rules of Procedure for Environmental Cases

A.M. 09-6-8-SC

Effective 29 April 2010

Definitions

- **Continuing mandamus** is 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.
- **Environmental protection order** (EPO) 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.
 - **TEPO** – Has 72-hour effectivity. Issued when the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury.
- **Precautionary principle** 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.
- **Strategic lawsuit against public participation** (SLAPP) refers to an action whether civil, criminal or administrative, brought against any person, institution or any government agency or local government unit or its officials and employees, with the intent to harass, vex, exert undue pressure or stifle any legal recourse that such person, institution or government agency has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights.
- **Citizen's suit** – Any Filipino citizen in representation of others, including minors or generations yet unborn, may file an action to enforce rights or obligations under environmental laws.

Special Civil Action

- **Writ of Kalikasan** – 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.

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

Alternative dispute resolution

- The judge shall encourage referral of the case to a trial by commissioner or to a mediator or arbitrator under any of the alternative modes of dispute resolution.

Three main principles of RPEC

1. Polluter-pays principle
2. Prevention principle
3. Precautionary principle