



## ACCESS TO JUSTICE IN EIA MATTERS: RECENT DEVELOPMENT IN THE PHILIPPINES

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# OUTLINE OF PRESENTATION

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- Rationale
  - The Environmental Impact Statement System in the Philippines
  - Environmental Courts and the Rules of Procedure for Environmental Cases
  - Challenges and Opportunities
  - Conclusions
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# RATIONALE

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- 1998 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (commonly known as the “Aarhus Convention”) established rules for public participation, appeals, and access to justice measures.
  - The access to justice pillar of the Aarhus Convention seeks to ensure the implementation of the State’s policies of full public disclosure and transparency with respect to the fundamental right to information on matters of public concern and the right to a balanced and healthful ecology.
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# ENVIRONMENTAL IMPACT STATEMENT SYSTEM (PRESIDENTIAL DECREE 1586)

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- The EIS System was established by Presidential Decree 1586 in 1978 to institutionalize environmental impact assessment as a planning tool for sustainable development that seeks to reconcile the exigencies of socioeconomic undertaking with environmental quality.
  - Presidential Decree 1586 applies to all proposed projects and undertakings which significantly affects the quality of the environment.
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# PRESIDENTIAL PROCLAMATION 2146 - COVERAGE OF EIA

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- Environmentally critical projects or areas which have been declared pursuant to a Presidential Proclamation No. 2146.
  - These include, in general, heavy industries, resource extractive industries, infrastructure projects as environmentally critical projects. Important enterprises, such as nuclear power plants, reclamation projects, mining and quarrying projects, among others
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# GREEN BENCHES

## (A.M. NO. 07-11-12-SC)

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- The Supreme Court designated **117 environmental courts**, comprising first and second level courts, to handle all types of environmental cases arising from at least fourteen environmental laws (Revised Forestry Code, Marine Pollution Law, Toxic Substances and Hazardous Waste Act, People's Small-Scale Mining Act, National Integrated Protected Areas Act, Philippine Mining Act, Indigenous People's Rights Act, Philippine Fisheries Code, Clean Air Act, Ecological Solid Waste Management Act, National Caves and Cave Resources Management Act, Wildlife Conservation and Protection Act, Chainsaw Act, and Clean Water Act).
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# RULES OF PROCEDURE FOR ENVIRONMENTAL CASES (A.M. 09-6-8-SC)

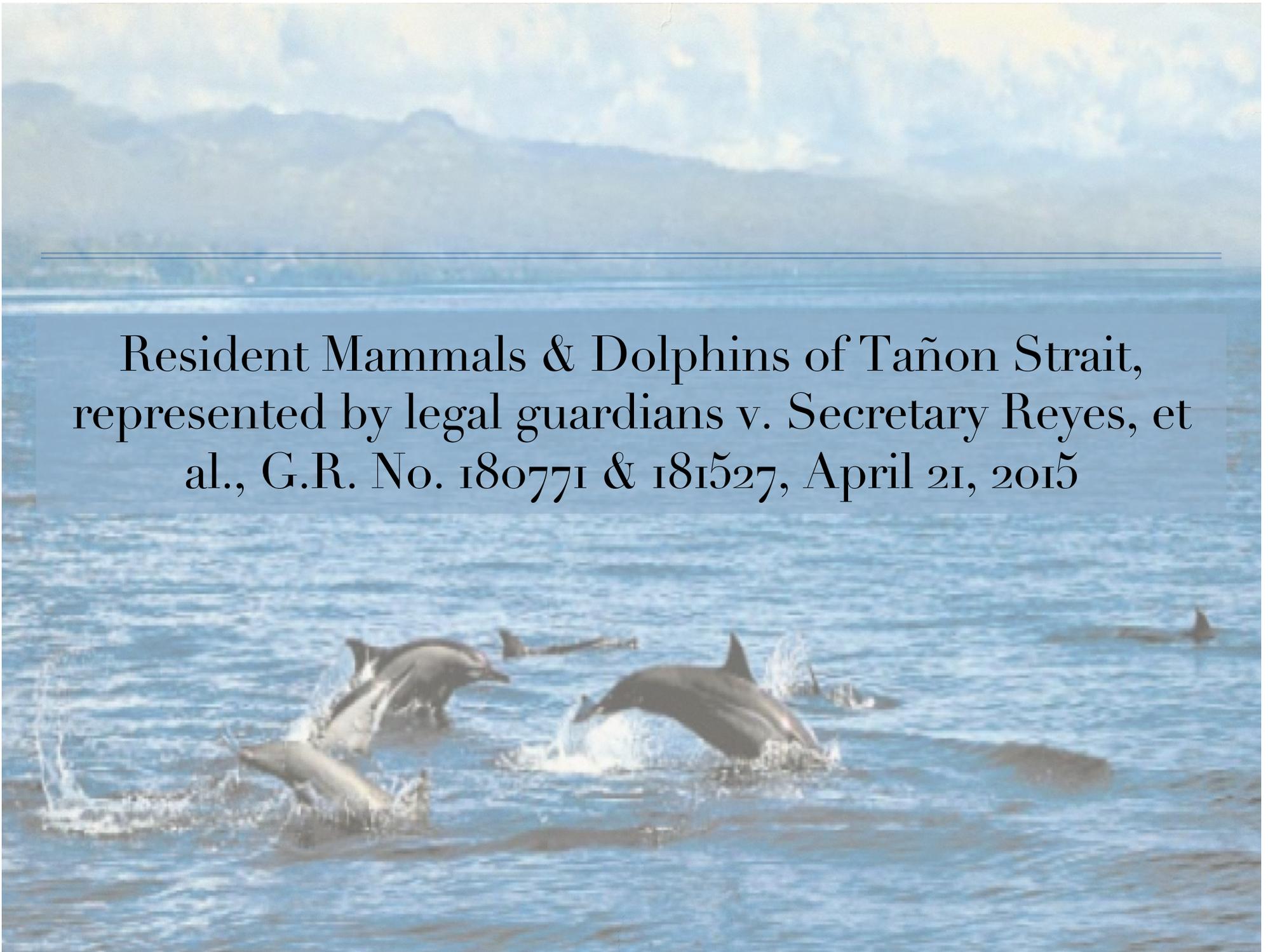
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- The Rules govern civil, criminal and special civil actions involving enforcement or violation of environmental rules and other related laws, rules and regulations.
  - The new Rules of Procedure for Environmental Cases allow for a "**citizen suit**".
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Resident Mammals & Dolphins of Tañon Strait,  
represented by legal guardians v. Secretary Reyes, et  
al., G.R. No. 180771 & 181527, April 21, 2015



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# THE COURT'S RULING: LIBERALIZED STANDING TO SUE

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- While developments in Philippine legal theory and jurisprudence have not progressed as far as Justice Douglas's paradigm of legal standing for inanimate objects, **the current trend moves towards simplification of procedures and facilitating court access in environmental cases.**
  - *Locus standi* in environmental cases has been given a more liberalized approach. Human stewards who have joined as real parties in interest and not only just in representation of the marine mammals have legal standing as well.
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# CITIZEN SUIT

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- Any citizen in representation of others, including minors or generations yet unborn, may file an appropriate civil, criminal or administrative action in the proper courts/bodies an action to enforce rights or obligations under environmental laws against any violators of environmental law, rules and regulations.
  - Citizen Suit is limited to Filipino citizens and one that is filed in the public interest, hence, **NO PROOF OF PERSONAL INJURY IS REQUIRED.**
  - The “citizen suit” provision liberalizes standing for all cases filed enforcing environmental laws and collapses the traditional rule on personal and direct interest, on the principle that humans are stewards of nature.
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# NOTICE TO SUE

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- Prior to initiating an action in court, a NOTICE TO SUE is an important remedy against any violator or appropriate government agency or public officer.
  - The Notice indicates the action required:
    - Access to official documents (e.g., EIS, ECC, Monitoring Reports, etc.)
    - Specific performance of actions, such as, issuance of CDO or compliance with environmental laws
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# FREEDOM OF INFORMATION ACT

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- Executive Order 2, 2016 - OPERATIONALIZING IN THE EXECUTIVE BRANCH THE PEOPLE'S CONSTITUTIONAL RIGHT TO INFORMATION AND THE STATE POLICIES TO FULL PUBLIC DISCLOSURE AND TRANSPARENCY IN THE PUBLIC SERVICE AND PROVIDING GUIDELINES THEREFOR
  - SECTION 3. Access to information. Every Filipino shall have access to information, official records, public 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.
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# CHALLENGES

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- Pursuant to the issuance of Executive Order 2 (2016), DENR FOI Manual (DAO 2016-29) was issued and became effective on 1 Feb 2017. BUT instead of fully serving its purpose of ensuring proper disclosure of information, it provided a list of exception which includes, among others, “any data in the course of applying for an Environmental Compliance Certificate (ECC) pursuant to PD 1586.” This is inconsistent with and runs counter to the Memorandum of the Executive Order from the Executive Secretary that provided the inventory of exceptions to Executive Order 2.
  - Incoherent and inconsistent policies have limited access to official or public records, which denigrates the rights to information and challenges full public disclosure and transparency.
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# CHALLENGES

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- The designated environmental courts do not necessarily lose jurisdiction over other types of cases. These courts will continue to be courts of general jurisdiction. While this addresses concerns of advancement of judges in the judicial ladder, however, this places environmental cases at the same level of priority as any other cases. Likewise, while this presents an opportunity for the filing of more environmental cases, regular courts still tend to prioritize criminal and civil cases over cases involving violations of environmental laws.
  - Adherence to the strict rules imposed under the present rules of procedure for environmental cases remain a challenge. Delay in the resolution of environmental cases because of clogged court dockets as well as limited awareness and capacity of court personnel especially on the new rules of procedure are some of these challenges.
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# CHALLENGES

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- In 2008, data from the Philippine Judicial Academy show that 3120 cases were filed in the various lower courts in relation to violations of environmental laws.\*
- The Rules of Procedure provides that the judge shall conduct continuous trial which shall not exceed two (2) months from the date of the issuance of the pre-trial order. Further, the court shall have a period of sixty (60) days to decide the case from the date the case is submitted for decision. In total, the court shall have a period of one (1) year from the filing of the complaint to try and decide the case

\*<https://www.philstar.com/headlines/2008/01/14/38593/sc-approves-creation-117-environmental-courts>

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# IN SUM

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- The Philippines have created environmental courts with specialized functions and the rules of procedure for litigating environmental cases. Likewise, rules for legal standing have been liberalized allowing for citizens suits; and various remedies are now available to hold government and violators responsible for causing environmental harm.
  - Although legal and institutional frameworks are in place, the implementation of laws is replete with many challenges.
  - Government should review and come up with policies to ensure full public disclosure, and strict adherence to the rules of procedure to ensure access to justice in EIA matters.
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