



# FIGHT AT THE FRONTLINES

Monitoring the  
Environmental  
Defense Program



Forest  
Foundation  
Philippines

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PHILIPPINE  
ENVIRONMENT

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Environmental  
Defense Program




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## **Monitoring the Environmental Defense Program**

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# INTRODUCTION

**T**he Philippines is composed of 7,107 islands and islets. With its geographic location and in combination with favorable climatic conditions, the country is bequeathed of rich in natural resources, which includes wide array of biological diversity. The country holds more than 50 per cent of the known flora and fauna which are found nowhere else and evidently the reason why it belongs to one of the 17 megadiverse countries in the world.<sup>1</sup>

Since the Spanish colonial era, the country, however, is experiencing rapid decline of terrestrial and marine habitats as a result of massive land conversions, industrial greed resource use, and incessant environmental law violations among others. These are exacerbated by natural and man-made disasters brought by climate change and anthropogenic activities. In forest ecosystem, the Forest Management Bureau (2013) reported that the current forest cover of the country has gone to 22.7 percent. Other scientists argued that it has only 18 per cent forest cover with annual deforestation rate of two percent.<sup>2</sup>

It has been observed that the State has not effectively performed its mandate<sup>3</sup> as environmental stewards especially with regard to the disposition and utilization of natural resources. This has manifested in the various conflicts and issues that are caused by overlapping tenurial instruments issued by different government agencies on the same areas of land. State policies and laws remains to be focused on resource extraction rather than on environmental conservation and protection.

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<sup>1</sup>Catibog-Sinha, C. and Heaney, L. (2006). *Philippine Biodiversity: Principles and Practice*. Quezon City: Haribon Foundation for the Conservation of Natural Resources, Inc.

<sup>2</sup>Tacio, H. (2009). Rate of Deforestation in Philippines Erodes Topsoil, Kills Wildlife. Retrieved from <https://www.gaiadiscovery.com/agriculture-industry/rate-of-deforestation-in-philippines-erodes-topsoil-kills-wi.html>

<sup>3</sup>Art XIII, 1987 Philippine Constitution § 6 provides. 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.

To illustrate, the grant of mining tenements and coal operating contracts is still on the rise despite the State's development strategy towards renewable energy. In addition, other development projects such as dams and plantations threaten the ancestral domains of indigenous peoples and areas of rural poor communities.

It is the community that bears the brunt of these issues and conflicts, particularly the marginalized peoples such as the rural poor communities and marginalized sectors.

The right to a balanced and healthful ecology, as elucidated by the Supreme Court in the case of *Oposa vs. Factoran* imposes upon the State a solemn obligation to protect the environment for present and future generations, with the correlative duty to refrain from impairing the environment. The right likewise implies the judicious management and conservation of the country's forests because without forests, the ecological or environmental balance would be irreversibly disrupted.<sup>4</sup> ■

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<sup>4</sup> *Oposa vs. Factoran*, G.R. No. 101083, July 30, 1993; See §16, Art II, 1987 Philippine Constitution; A.M. No. 09-6-8-SC, Rules of Procedure for Environmental cases, April 29, 2010.



# THE ENVIRONMENTAL DEFENSE PROGRAM

**T**he Environmental Defense Program (then called Environmental Legal Defense) began in 1993, with support from the Foundation for the Philippine Environment (hereinafter referred to as FPE) and operationalized by three environmental organizations, namely, Tanggol Kalikasan, Inc. (TK) for Luzon, Environmental Legal Assistance Center, Inc. (ELAC) for Visayas, and Paglilingkod Batas Pangkapatiran Foundation (PBPF) for Mindanao. It was envisioned to defend the defenders of the environment and aid the empowerment of communities.

Developments in the program led FPE and Forest Foundation Philippines (formerly known as Philippine Tropical Forest Conservation Foundation, hereinafter referred to as Forest Foundation) to enter into a Memorandum of Understanding (Memorandum) where the two organizations agreed, among others, to facilitate collaboration between them and their partners in areas of mutual interest in the Philippines, and to make available resources for projects that they will co-finance. Pursuant to such Memorandum, FPE and Forest Foundation agreed to collaborate in executing the Environmental Defense Program (hereinafter referred to as EnDefense Program or the Program). The EnDefense Program was, in its new form, envisioned as a funding mechanism for litigation and related legal actions that seek to protect the country's environment and natural resources. Both FPE and Forest Foundation agreed to contribute Two Million Pesos (PhP2,000,000.00) each to initially fund the Program. Because of this, it was found necessary to have an administrator that will receive community requests, refer lawyers, review case strategies, and evaluate case activities.

In 2008, after a series of discussions between the different stakeholder-organizations, the Alternative Law Groups, Inc. (ALG) proposed to be the Administrator of the EnDefense Program. ALG is a coalition of 20 non-governmental organizations (NGOs) in the Philippines that adhere to the principles and values of alternative or social development-oriented law practice which provides legal assistance in judicial and quasi-judicial proceedings. As Administrator, it was committed to formulate a criteria for cases that will be referred to the Program; receive, review and approve proposals for legal assistance from community-based groups; refer lawyers; review case strategies by conducting monitoring and evaluation of approved cases. ALG was also tasked to organize the launch of the Program.

The EnDefense Program was officially launched through a series of Regional Launching Sessions (Sessions) that culminated in a National Launching Forum held on 23 July 2008 at the Sulu Hotel in Quezon City.

During the life of the EnDefense Program, it became apparent that environmental case litigation is ultimately affected not only by court rules and procedures, but more significantly, by the substantive policies legislated by Congress or issued by the Executive. Hence, the Program continued to work towards the strengthening of the environmental adjudication machinery, through monitoring of the implementation of the Supreme Court rules and advocating for the refinement of laws and rules that affect and enforce environmental protection.

Moreover, it was identified that a major gap in environmental litigation is the dearth of lawyers and legal resource organizations that handle cases concerning environmental issues for local communities. The number of environmental litigation lawyers noticeably dwindled since the Program started. In order to address this, the EnDefense Program prioritized to increase the environmental lawyer pool by developing a fellowship and internship program. ■

However, several cases also under the same remained stalled at the lower courts while environmental destruction and degradation persist.

Hence, the learnings and gains from this program are necessary to be monitored and evaluated to gauge its impacts to the communities and environment and document communities' and partners' experiences so that lessons may be used for policy advocacy and/or negotiation process for the protection and conservation of natural resources in the country. ■



# OVERVIEW OF THE PROGRAM

**T**he EnDefense Program provides funding mechanisms directly accessible to community partners in their quest for quality legal support to pursue lawsuits that will help enhance and maintain a balanced and healthful ecology.

## PROGRAM GOAL

Enhanced accessibility of quality legal assistance and representation to communities that encounter issues concerning forest and environmental destruction, whether actual or threatened, through the efficient management of a strategic funding mechanism for litigation and related legal actions that seek to protect the country's forests and natural resources.

## OBJECTIVES

1. **Litigation Support:** Support cases that have a direct link to, or impact on, forest and environmental conservation and protection
2. **Strengthening the Adjudication Machinery:** Strengthen adjudication of environmental cases, using the Rules of Procedure for Environmental Cases, and environmental laws and policies, as the framework.
3. **Legal Resource Build-Up:** Build and strengthen resource base of lawyers, law students, and paralegals working for the forest and the environment.



# THROUGH THE YEARS

## PHASE ONE

**T**he goal of the EnDefense Program for the first phase was to support local strategies for environmental protection by linking communities and community-based environmental conservation and protection activities to legal support provided by individual practitioners and province-based lawyers and law groups.

A major part of the Program's funds was used, among others, to subsidize attorney's fees, filing fees, costs for bail and other bonds, costs for securing testimonies of witnesses; preparation of affidavits, contracts, and other legal documents; and other actions related to actual case-handling, including legal counseling and conducting legal clinics, case conferences and strategizing sessions.

In line with its objectives, the Program supported cases that have a direct impact on environmental and natural resources conservation and protection. Specifically, cases that pursued legal sanctions against environmental violators were given support, as well as those that sought to question, or defend, the constitutionality or validity of laws and policy issuances, which affect the rights of communities, or which have significant impacts on environmental protection.

The most notable development under this phase happened on 13 April 2010, when the Supreme Court issued Administrative Matter No. 09-6-8-SC, otherwise known as the new Rules of Procedure for Environmental Cases (Rules), which took effect on 29 April 2010.

The first phase resulted to positive developments that opened opportunities for the Program to be more effective in its quest to pursue environmental cases. While these developments are noteworthy, ALG, FPE, and Forest Foundation (collectively referred to as the Program Partners) agreed that there was a necessity to expand its scope in order for the Program to assume a more strategic role. This led to the expansion of the EnDefense Program during the second phase.

## PHASE TWO

In an effort to be more strategic, the EnDefense Program was expanded to include a sub-grant component referred to as the litigation component. This component supported activities for case development, such as preparatory activities that helped communities decide whether or not to pursue a case in court or in another proper tribunal and linked available legal support to communities that faced issues concerning the environment. It became especially significant in view of the issuance of the Rules.

During this phase, the Program Partners wanted to ensure that the general public, including members of the Judiciary, knew that there was a program which uses a different approach to environment and natural resources conservation. The Program was subject of promotional activities, such as the development of information materials and the conduct of consultation activities held in different regions. In addition, community-based groups were educated on case development strategies and important factors to consider in taking legal actions that would best suit their environmental conservation concerns.

It was during this phase where it was realized that there was a need to continuously disseminate information on the Rules, not only among communities and civil society organization, but also, and more

importantly, among judges and court officials. A number of cases had been cited where court personnel have demonstrated lack of knowledge about the Rules, including those related to provisions as basic as the deferment of the payment of filing fees. These experiences highlighted the need for continuing monitoring of the implementation of the Rules, and engagement of the judiciary in ensuring that the rules will be faithfully implemented.

## PHASE THREE

With these emerging challenges, the EnDefense Program's third phase undertook complementary initiatives to strengthen the adjudication of environmental cases, using the Rules as the framework. Combined with the small grants programs of Forest Foundation and FPE, the Program also included a component that tapped law students as interns and volunteers who served as legal service providers for environmental cases. It supported initiatory activities such as the planning of the internship core group, and meetings with law school administrators, professors and students. The Program also supported the island-wide Basic Orientation Seminars (start of the internship) and Evaluation/ Processing Workshops (end of the summer internship) that grouped interns coming from the different areas together.

After three phases, the Program evolved in terms of its components and design. While the litigation support component remained as the main strategy of the Program, modifications on the initial design of the Program since it started in 2008 had been introduced to make the same more holistic and responsive to the evolving needs of the communities. Among the changes recommended were taking advantage of other related extra-legal activities, such as research, training, and advocacy.

## PHASE FOUR

For the fourth phase of the EnDefense Program, the litigation component continued to be the main thrust of the Program. As in the past phases, it covered both activities related to actual cases filed in court or in other venues, and preparatory activities for case development.

The policy reform component was also continued to complement the litigation component. Notably, the Program successfully acted as catalyst in coordinating key policy advocacies for the environment, in partnership with the three networks involved in the advocacy for the Green Bills, namely, FRB Network for Forest Resources Bill, SOS Yamang Bayan for the Alternative Minerals Management Bill, and CLUP Now for the National Land Use Bill. The Program effectively facilitated the coordination and integration of policy campaign plans and initiatives of the abovementioned networks, working on priority legislative proposals for the environment.

In an effort to augment the lack of lawyers practicing environmental litigation, the Program initiated an intensive three-day paralegal training on environmental litigation. The paralegal training course was offered primarily to staff members on non-government organizations engaged in work for environmental protection and was intended to equip participants with relevant knowledge on environmental strategies to serve as paralegals for the environment. The paralegal training course was followed up with a skills upgrading and sharing session which was intended to strengthen the core group of environmental paralegals and their link to the EnDefense Program. The follow-up activity provided the participants a venue to discuss their experiences on the field and to update their knowledge and skills on environmental practice. ■



# MONITORING AND DOCUMENTATION

## RATIONALE

**S**ince 2008, the EnDefense Program has supported at least 50 environmental litigations and legal interventions in relation to the following issues, among others: (i) mining and land management, (ii) ancestral domains and indigenous peoples right, (iii) people's health and environment, and (iv) harassment. These cases usually occur within and around key biodiversity areas, critical watersheds, ancestral domains and indigenous cultural communities, to name a few, across the country. It must be noted that some of these cases have already gained significant results, milestones and/or landmark victories, contributing to the success of the Program. These successes are evidenced by the issuance of Temporary Environmental Protection Orders (TEPO) and Writs of Kalikasan, promulgation of the Rules, cancellation of mineral production sharing agreements (MPSA), and termination of mangrove conversion into fishponds. These have proven to make significant impacts both to the community and the environment.

Unfortunately, several cases pursued under the Program remained stalled at the lower courts while environmental destruction and degradation persist. Hence, it was found necessary to monitor and evaluate the learnings and gains from this Program to gauge its impacts on the communities and environment. It was also important to document communities' and partners' experiences so that lessons may be used for policy advocacy and/or in the process of negotiation to further protection and conservation of the natural resources in the country.

## EMERGING CONCERN

During the 2014 Fora on the Supreme Court Rules of Procedure for Environmental Cases and in the discussions among Supreme Court Officials, monitoring and documentation related to environmental cases remained to be a major gap. Although there were efforts in the past collating and organizing available data on cases involving environmental law violations, the existing database still needs to be updated. The conduct of monitoring and documentation is also deemed necessary.

These emerging needs are also true with the EnDefense Program. Although its contribution cannot be directly correlated to the total environmental cases in the country due to Supreme Court's data gap, nevertheless, the Program's activities and success from the litigation component need to be monitored and evaluated to determine the extent of its impact on the communities and the immediate environment beyond just the raw numbers. ■



# METHODOLOGY

**M**embers of ALG, Forest Foundation, and FPE were organized and tasked to conduct the monitoring and evaluation of the concluded phases. The study commenced with the formulation of the research design and the identification of the framework, protocols and methodologies to be used, as well as the selection of cases for purposes of the study.

The primary data was gathered by conducting a series of focus group discussions (FGDs) with the concerned community and key informant interviews (KIIs) with the handling lawyers and assisting partners of the environmental cases. The participants of the FGDs were a mix of paralegals, selected community leaders and key persons from the community. Actual site visits were done whenever necessary.

A total of 27 cases comprised the monitoring and documentation study. All 27 cases were covered in the field visits, except for one, that is, the Sibuyan Island case. For that, an interview with the Sibuyan-ISLE representative was conducted. ■



## SCOPE AND LIMITATIONS

**T**he monitoring and documentation only focused on the litigation component, including case build up, of the EnDefense Program under the previous three phases. It did not cover all cases supported by the Program.

The team identified at least three sites each per island group of Luzon, Visayas, and Mindanao, keeping in mind the geographic location and proximity of each area to the others. The following criteria was used to identify which areas were to be monitored, documented and assessed: **1)** frequency of cases; **2)** nature of cases; **3)** diversity of issues; and **4)** security and accessibility of the area.

As mentioned, out of all the cases and projects supported by the EnDefense Program, only twenty-seven (27) cases were monitored and documented. The twenty-seven (27) cases is divided as follows:

- (1) From Phase 1:** seven out of 18 project grants were monitored and documented;
- (2) From Phase 2:** 13 out of 15 project grants were monitored and documented;
- (3) From Phase 3:** six out of eight project grants were monitored and documented; and
- (4)** One covered by *emergency fund*.

The areas visited and cases/projects in the covered areas are presented in in the tables and infographics in the next section. ■



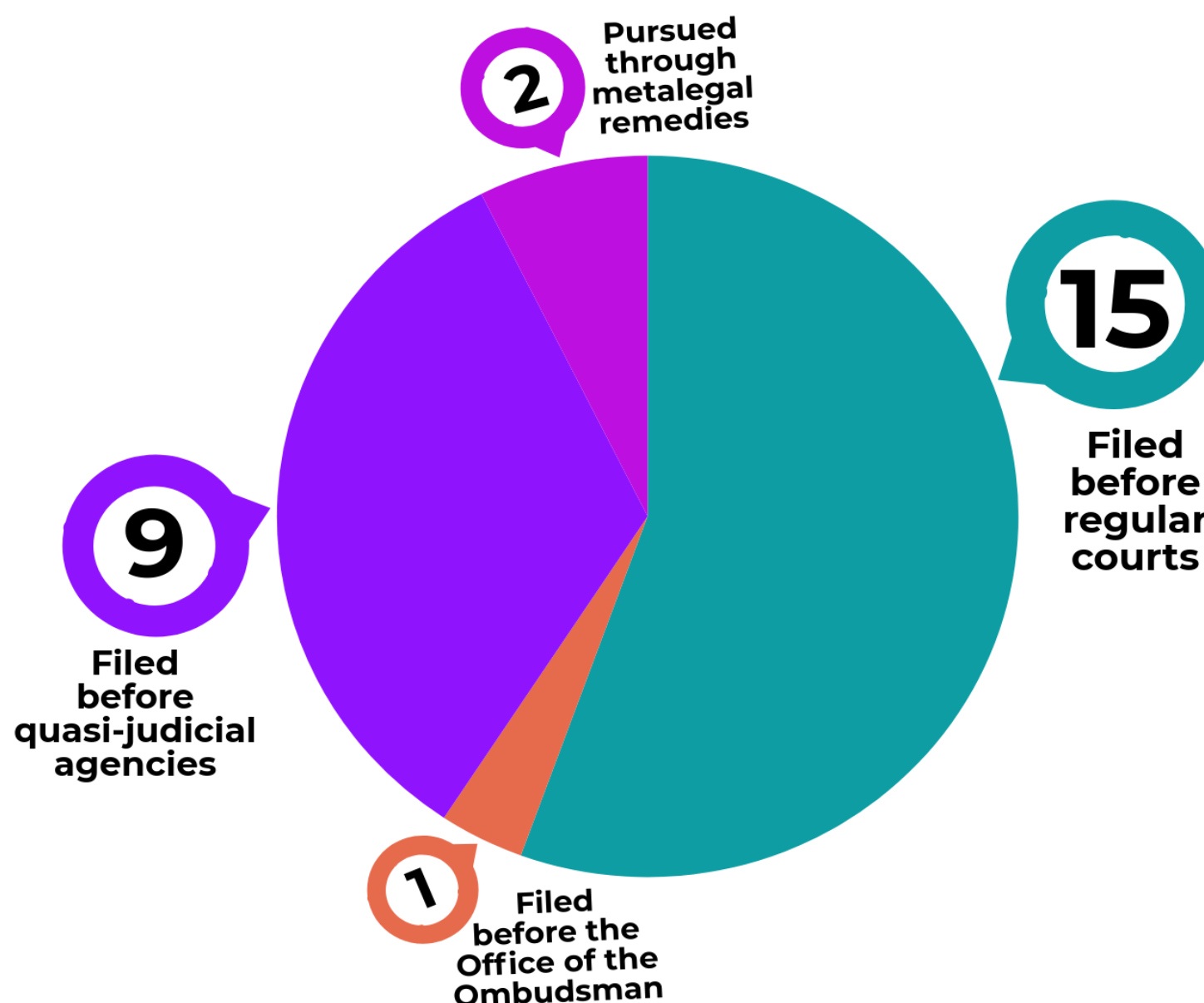
# FINDINGS

The table below shows the list of cases monitored, according to the three island groups:

	PHASE 1	PHASE 2	PHASE 3	
Luzon	4	5	4	13
Visayas	-	1	1	2
Mindanao	3	7	2	12
<b>TOTAL</b>	<b>7</b>	<b>13</b>	<b>6</b> (+1 emergency fund case)	<b>27</b>

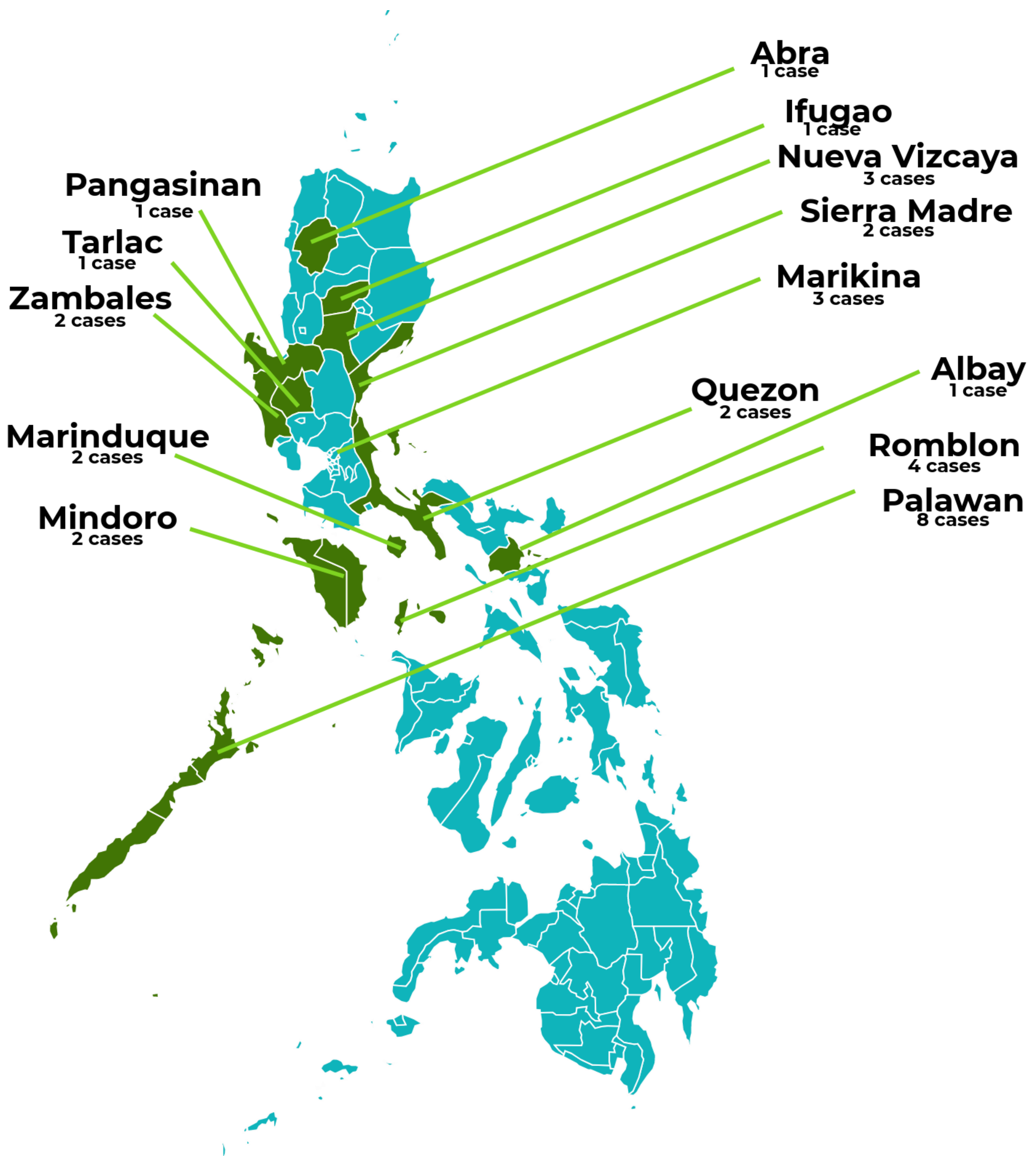
## TYPES OF LEGAL INTERVENTION

Communities have become more creative in strategizing and identifying legal interventions. Instead of filing cases in court, they have filed cases before the Office of the Ombudsman and other administrative agencies, in the hopes that the process will be more expedient than the courts.



## PROJECT GRANTS (BY AREA)

More than half, regular and emergency, of the projects supported by the EnDefense Program is located in Luzon. Thirty-three of the support grants (not necessarily monitored) are found in the following areas, with Palawan declared as Biosphere Reserve by the United National Educational, Scientific and Cultural Organization (UNESCO), receiving the most number of grants in Luzon:



# ENVIRONMENTAL ISSUES RECOGNIZED

The infographic below shows the types of cases handled under the EnDefense Program. Majority of the projects supported with regular grants of the Program involved cases that are mining related.



## BIOPHYSICAL ENVIRONMENT

During the study, an important observation was related to the biophysical environment where the environmental cases or issues need attention.

Notably, majority of the projects supported by the EnDefense Program are within or involve ancestral domains and key biodiversity areas.

ENVIRONMENT	NUMBER OF CASES
1. Ancestral Domain	16
2. Key Biodiversity Areas or Protected Areas	11
3. Watershed	9
4. Fishery and Aquatic Resources	4
5. Forest (including mangrove forests)	2
6. Health and Environment	2
7. Agricultural Lands	2



# LESSONS LEARNED

## IMPORTANCE OF COMMUNITY PARTICIPATION

More than attaining the specific remedies of the environmental cases filed by the communities, legal intervention is a direct way in which partner communities are empowered to assert their rights. Cases are filed by communities in order to pursue environmental law violators, protect their community members and even government enforcers against direct legal harassment, and provide legal remedies to violations of human rights related to environmental protection.

The role of communities is paramount in environmental litigation. Communities referred to in this study both refers to those members of the community that are directly affected by the environmental degradation and also those indirectly affected. It does not only refer to members of the community who are deemed “anti” to a development activity but even to a certain extent those considered “pro,” for as long as they are considered dependent on natural resources in a given locality.

Community, therefore, refers to a group of people in a particularly defined geographical area with a shared vision of environmental protection. In this monitoring research, the presence of a “strong” community cannot be overemphasized. A community’s strength lies not simply on its ability to file cases but its capacity to sustain the advocacy along with the maintenance of cases. A community that consists of different stakeholders contributes to a robust relationship. This should consist of grassroots leaders, Peoples Organizations (POs), support NGOs, local government units (LGUs), church, media, and even research institutions.

## CASE STUDY: LGU SUPPORT IN AERIAL SPRAY BAN ORDINANCE

Since the 1970s, aerial spraying has been used for banana plantations. Due to numerous complaints, aerial spraying has been stopped in certain areas, however, the same continued in others. Various studies have been conducted regarding the adverse effects of exposure to pesticides which created a huge attention on the issue. Several LGUs issued ordinances prohibiting aerial spraying, including Davao City.

In 2007, a case was filed questioning the validity and constitutionality of the ban aerial spraying ordinance. A few months after, the Regional Trial Court (RTC) upheld the constitutionality of the ordinance and declared it valid and constitutional. In 2009, the Court of Appeals declared the ordinance unconstitutional, and seven years after, the Supreme Court affirmed the Court of Appeals' decision and declared with finality that the ban aerial spraying ordinance is unconstitutional. The LGU of Davao City provided a crucial role in this battle against aerial spraying. The communities found a champion in one of their Councilors who pushed for the issuance of the ordinance. Even in the pursuit of the litigation, the counsel for the communities worked along with the LGU in defending the ordinance.

Even when the ruling was against the community, the community continued the fight and found other strategies to stop the aerial spraying such as campaign organizing and even legislative lobbying. Crucial to the continuity of the struggle is the active involvement and support of an NGO, which further shared their learnings to other LGUs that are beginning their campaigns and advocacy against aerial spraying.

## CASE STUDY: LGU INITIATIVES IN ROMBLON AGAINST MINING

Several mining companies lobbied for endorsements from the concerned barangay, municipal and provincial councils. In one barangay, the barangay council signed a resolution approving the recommendation, despite results of the public hearing to the contrary. In another barangay, the barangay captain went ahead and recommended the project, which was thereafter retracted through a resolution by the barangay council stating that it was never approved formally according to the requisite parliamentary procedures. These were submitted to the provincial council for further endorsement. The provincial council resolved to approve the project in favor of the mining companies.

After the local elections in 2010, a new set of local officials were elected. Later in the year, two joint resolutions were issued against any large-scale mining applications and to revoke existing mining permits, which were previously approved by three municipal councils. These resolutions were a result of persistent efforts and lobbying of an NGO in the area.

Through further lobbying efforts of two NGOs, the governor imposed a moratorium on mining in the province and in the same year, the new mayor of one city wrote to the Mines and Geosciences Bureau to halt any mining activity in his jurisdiction. Due to these adverse developments, the mining company filed suit against the LGUs and sought to declare the resolutions unconstitutional.

The community worked closely with the LGU providing contacts for legal support, campaign work and networking for solidarity and support. The case was pursued through the different support provided by various stakeholders, particularly with the Local Chief Executive and other local government officials.

When the RTC ruled that the executive order is unconstitutional however, the stakeholders decided to abandon the same. Instead, the provincial council approved a provincial environment and natural resources code, which prohibited mining in watershed areas and within the one-kilometer buffer zone.

### **CASE STUDY: CHURCH SUPPORT IN MARINDUQUE**

In 1996, one of the worst mining incidents in the Philippines occurred. Million cubic meters of murky gray liquid flowed into the river surrounding the community. The murky gray liquid were discovered to be mine tailing from the dam which collapsed. In effect, the villages were flooded, houses and crops destroyed, and livestock killed. To this day, the community still suffers from the impact of the mining disaster.

A case was filed in 2001 and remains to be in the trial stage to date. Prosecution proves to be even more difficult because the mining company left the country like a thief in the night. Many of the plaintiffs of the case have already been substituted because the original plaintiffs have passed on due to old age and sickness. Despite the long road to justice for these families, the community remained steadfast in pursuing the action against the mining company. The driving force behind their continued pursuit is the unconditional support provided by the Bishop and the church-based support organization.

## **SYNTHESIS**

Communities play a large role in legal intervention. Members of the communities are the litigants of the cases and serve as parties and witnesses. As front liners, community members do the ground work and evidence gathering.

It is a reality in the Philippines that a case will take years to litigate, which is true in most cases monitored in this research. Therefore, sustainability of the community and its interventions should always be considered. After the case is filed, the role of the community is needed more than ever. They should be vigilant in ensuring that the case is swiftly resolved by attending the hearings and complying the orders of the court. Furthermore, other strategies such as research, IEC, networking and campaigns should be conducted by the communities as the legal case progresses. Likewise, the welfare of the community itself should be observed especially in terms of depleting resources and weakening will of the people to continue the fight. Organizing of the communities should continue, even further deepening the bond of the different stakeholders. Communities should also be trained into resource mobilization and provision of livelihood opportunities.

## **LEGAL FRAMEWORK: APPLICATION OF THE RULES OF PROCEDURE FOR ENVIRONMENTAL CASES**

The Rules of Procedure for Environmental Cases (Rules) is used by the research team as the legal framework in monitoring cases under the EnDefense Program. Looking at the different provisions of the Rules and determining whether its complied with and its interpretation is consistent with the objective of the Rules to protect and advance the constitutional right of the people to a balanced and healthful ecology. In particular, were the principles, process and form of the Rules followed: (a) Was precautionary principle applied? (b) Was the case resolved upon the expiration of one year? (c) Did parties follow rules on forbidden pleading, and (4) Was SLAPP used to dismiss a case?

## CASE STUDY: UNDERSTANDING THE PRECAUTIONARY PRINCIPLE

The precautionary principle states that when human activities may lead to threats of serious irreversible damage to the environment that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that threat. Simply put, the precautionary principle serves as a guide in considering pieces of evidence in resolving environmental cases. It provides some leeway for plaintiffs in establishing a causal link between human activity and environmental effect when there is lack of scientific certainty. Further to the case study on the ordinance banning aerial spraying, the City of Davao defended the ordinance by using the precautionary principle as basis for the same.

The Supreme Court, however, ruled that the precautionary principle shall only be relevant if there is concurrence of three elements, namely: uncertainty, threat of environmental damage, and serious or irreversible harm. The Supreme Court said that there is no presence of all the elements. To begin with, there has been no scientific study. 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. Unfortunately, the Supreme Court ruled that scientific analysis is still a necessary basis for effective policy choices under the precautionary principle.

## **CASE STUDY: USE OF SCIENTIST-COMMISSIONERS IN AN ENVIRONMENTAL CASE**

Several mining companies were able to obtain mining permits over an area covered by a watershed and bird sanctuary, which operations may well endanger the marine sanctuary nearby. In an effort to protect the watershed and the bird sanctuary, groups have filed cases before the Regional Trial Court (RTC) to have the permits cancelled.

As mentioned, the courts are expected to use the precautionary principle as a lens in considering pieces of evidence. Despite the application of the precautionary principle, however, the parties still allowed to continue the trial by commissioners, where the judge appoints scientists-commissioners to evaluate scientific evidence to show the extent of the damage caused by the mining operations.

## **CASE STUDY: EXPIRATION OF THE ONE YEAR PERIOD**

One objective of the Rules is that it will provide a simplified, speedy and inexpensive procedure for the enforcement of environmental rights and duties. The Rules state that the court shall have a period of one year from the filing of the complaint to try and decide the case. Unfortunately, in one case, the one year rule was interpreted to the detriment of the right of the people to a balanced and healthful ecology.

In the said case, an exploration permit was issued in favor of a corporation covering over three hundred hectares for the purpose of developing a mega-dam. Concerned groups and citizens filed an application for an environmental protection order (EPO) before the court. While the case was on-going and at the stage of presentation of evidence, the court simply dismissed the case because the one year period prescribed by the Rules already lapsed.

## **CASE STUDIES: STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION (SLAPP)**

The Rules introduced the concept of Strategic Lawsuits against Public Participation (SLAPP) suits in relation to environmental cases. A SLAPP suit is a case filed to harass, vex, exert undue pressure or stifle any legal recourse that a person, institution or government has taken or may take in the enforcement of environmental laws, protection the environment or assertion of environmental rights. These are cases which are normally filed against environmental defenders in an attempt to prevent them from speaking up and asserting their rights.

In one case, a water permit was issued in favor of a corporation which area covers three rivers in Nueva Vizcaya. The indigenous peoples living in the area were deprived of access and use of the rivers, which are for their household and agricultural needs. Concerned groups facilitated the filing of a protest against the issuance of the water permit and to the application of another one. In that instance, cases were filed against the indigenous peoples and leaders of the people's organization opposed to mining activities in the municipality. A complaint was filed against them as they were "illegal forest occupants." Due to fears of the withdrawal of a support NGO that provides legal services to the community, the leaders sold their lands to the mining company and the cases were eventually dismissed in the Municipal Trial Court (MTC).

Much in the same way, other cases have been determined to be SLAPP suit – cases having been filed as an offshoot of environmental litigation. Due to the strong opposition of the community against the mining operations in their area and the eventual filing of a case against the company, various cases have been filed by companies in different areas of the Philippines against the different stakeholders. Criminal cases such as Libel in Quezon City, Malversation and Falsification of Documents in Davao City, Damages and Attorney's

Fees in Butuan City, among others, have been filed against community leaders or oppositors of the corporation. Contrary to the Rules, the SLAPP suits are not dismissed immediately in a summary hearing.

In another case, a rally of protest against the mining operations and activities in the island was staged by members of a peoples' organization and other pro-environment groups. The mining company then accused some 17 rally participants for arson and robbery. Warrants of arrest were issued against the accused. Counsel for the accused raised, as a defense, that the case is a SLAPP suit and should be dismissed. The cases against the accused were eventually dismissed, being considered as a SLAPP suit.

## **SYNTHESIS**

The Rules of Procedure for Environmental Cases is innovative. It seeks to assist in the State's duty to protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature, as proscribed by the Constitution. Remedies such as the issuance environmental protection orders and the consideration of subsequent suits as SLAPP allow concerned citizens to prosecute cases without fear, making environmental protection more accessible and immediate.

A sampling of the cases show that we have yet to completely grasp the principles of the Rules and what it seeks to achieve. A better appreciation of the Rules by the stakeholders, especially by the courts, is needed to attain maximum impact on the protection of the environment.

## AVAILABILITY OF LAWYERS

In the monitoring and documentation conducted, it was found that many of the cases are handled by the same group of lawyers. In some instances when the support NGO providing the legal support is already unavailable, the community categorically request that alternative lawyers handle their case due to the expertise and mostly out of trust and confidence.

One such example is in reference to a case against a mining company in Marinduque. The said case in Marinduque is handled by a lawyer based in Palawan, who, for each and every hearing has to travel by air from Palawan to Manila, and then travel on land for almost 10 hours to get to Marinduque. Lawyers in the locality are hesitant to handle the case due to a lack of expertise and willingness. Even the notaries in the area are unwilling to assist the plaintiffs. It takes much convincing for the notary to assist the plaintiffs. Hence, communities resort to hiring lawyers from outside Marinduque.

More than ever, this research shows the dearth of environmental lawyers in the country. There is a need for a pool of environmental lawyers who can be easily contacted by communities. Legal resource NGOs that provide full community service such as litigation, research, advocacy, campaigns, and capacity building are ideal to provide support to communities. However, very few NGOs provide such services any more.

## VENUE OF LEGAL INTERVENTION

Due to the congestion courts' dockets and the certainty of delay of resolution of cases filed before it, litigants find other strategies to attain their remedies. Communities have become more creative in strategizing and identifying legal intervention. Instead of filing cases in court, they have filed cases before the Ombudsman and administrative agencies, in the hopes that the process will not be as long as when filed in the courts.

## **CASE STUDY: NATIONAL HISTORICAL INSTITUTE**

A mega-dam project, imagined to be one hundred twenty-five meters high and can hold million cubic meters of water, was proposed in Bukidnon. Over the same land on which the dam was proposed to be built, is an area which is subject of a pending application for a Certificate of Ancestral Domain Title (CADT).

In its legal strategizing, the stakeholders decided to declare the area as a cultural landmark instead of filing a Writ of Kalikasan. It reached the final level of validation from the National Historical Institute (NHI). The NHI team visited the site for interviews among the indigenous peoples (IPs) near the cultural landmark. It requires a final recommendation of an anthropologist, as well as the NHI, before it can be declared as an Anthropological/Ethno-Landmark.

This action caused tension with the parties that are in favor of building the dam. It filed an opposition to the above-mentioned declaration through a famous anthropologist, commissioned by company to do the anthropological impact of the dam project for the environmental impact assessment (EIA).

## **CASE STUDY: LIABILITY OF LGU OFFICIALS**

A corporation was able to obtain a permit for black sand mining despite non-compliance with the requirements provided by law, such as, an area clearance, local government unit clearance, and environmental compliance certificate (ECC).

Litigants and handling lawyer purposely decided to file an administrative case against the local officials instead of filing a civil case under the Environmental Rules because it is (1) easier and cheaper given that no scientific evidence is required, (2) more

convenient since the filing of the administrative case is in Metro Manila when the handling lawyer is also from Manila, and (3) safer for the litigants given that the respondents in the case is the local chief executive. The case was filed before the Ombudsman in 2012 and was later resolved by the Court of Appeals in favor of the community in 2016.

### **CASE STUDY: ASSERTION OF RIGHT TO WATER**

The National Water Resources Board (NWRB) granted a water permit in favor of a corporation, which covers three rivers in a municipality in Nueva Vizcaya. Because of this, the indigenous people living in the area were deprived of use and access of the rivers. In order to protect their rights, strategy was to file a protest of the water permit applications before the NWRB. Eventually, the Court of Appeals upheld a decision favoring the community in 2016.

### **SYNTHESIS**

In battles concerning the protection of the environment, fights are not always brought before the regular courts. In considering strategies for any action involving the environment, it must be realized that there is a need for immediate action to ensure that our natural resources are kept intact. Because regular court processes tend to take long, legal strategists and communities have to think outside the box and pursue routes that would generate maximum result at, hopefully, the least wasted time possible.

## DELAYS IN THE RESOLUTION OF CASES

Aside from the volume of cases filed and heard by courts, there is another cause for delays in the resolutions of cases. One such cause is the turn-over of judges to whose courts environmental cases have been raffled to, as well as the changes to counsel by either party.

One case, which may be considered as one that has brought catastrophic effects on the community and the environment, has been on-going for almost 17 years already. The case against the mining corporation was filed in 2001, and at the moment, the case is still at the trial stage, particularly where parties are respectively given the opportunity to present their evidence. This particular case has already been handled by at least three different judges because two have passed on and one retired early. A delay was also caused by the change of each party's counsel, specifically, twice by the defendants and once by the plaintiffs.

In another case, the resolution of the case was delayed due to the inhibition of the judges. The first handling judge inhibited from hearing all the cases involving the company because his son was hired by the law firm representing the company. The case was raffled to another court and the judge inhibited from the case citing heavy case load. For a third time, the case was referred to another court and the judge also inhibited from the case citing conflict with interest with the company's counsel. Considering the necessity to expedite proceedings, the plaintiffs wrote at least four letters to the Supreme Court Administrator and Chief Justice regarding the matter. After three years of non-movement, a judge was finally brave enough to handle the case.

### **SYNTHESIS**

This study shows that beyond clogged dockets, other factors affect the speedy disposition of environmental cases in the country. Factors such as changing judges because of inhibition, or otherwise, as well as changing counsels contribute to such delays. Hence, communities and environment defenders consider strategies which do not necessarily have to pass through the judicial system.



# WAYS FORWARD

**S**ince its launch, the EnDefense Program has demonstrated its strategic value in protecting the country's forests and biodiversity, in particular, and the environment and natural resources, in general. With the recent close of the fourth phase, the EnDefense Program has proven its value as a unique and innovative program that has ably supported strategic litigation for the environment. To date, it remains the only program of its kind that provides funding support for filing cases to protect forests, biodiversity areas, environmental defenders, and the country's natural resources, in general. Through the Program, the Program Partners have made a significant contribution to enhance the accessibility of quality legal assistance and representation to communities that encounter issues concerning both actual and threatened environmental destruction.

The strategic value of the Program, however, goes beyond actual support for litigation or legal action. The ability to pursue cases has inspired communities and strengthened their collective resolve to defend the environment against violators and aggressors. Even before favorable decisions are obtained from the courts and other government agencies through the cases, the community defense of the environment is fortified. By enabling communities to take legal action, the EnDefense Program greatly contributed to their empowerment as they protect their own rights and defend the natural resources in their respective areas.



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