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# **The role of constitutional courts in determining the scope of the right to environment A comparative approach**

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*"Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations."*<sup>1</sup>

This is the very innovative way at that time that principle 1 of the 1972 Stockholm Declaration tied standards of environmental protection and human rights.

Gradually, though many international instruments<sup>2</sup> have recognized this right, they rarely planned binding mechanisms, enabling the development of "soft law", although a number of issues in this area, as we know, have a transnational or even global character, and require mandatory solutions.

Therefore, in order to overcome the deficiencies of international law, the assertion of rights related to the environment has blossomed into a significant number of declarations of constitutional rights. Thus, it appears that the majority of constitutions adopted or revised since the Stockholm Declaration assert such rights, even though the terminology differs from one country to another: the right to a healthy<sup>3</sup>, respectful of health<sup>4</sup>, clean<sup>5</sup>, decent<sup>6</sup>, pleasant<sup>7</sup>, balanced<sup>8</sup> or without pollution environment<sup>9</sup> ...

Indeed, many states have now recognized a constitutional right to environment, either drafted in the Constitution itself or as a recognition by the courts. These states are very diverse in their geographical origin (Africa, Middle East, Western and Eastern Europe, Latin America, Asia and Oceania), their legal system (common law, civil law, Islamic law

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<sup>1</sup> *Stockholm Declaration (Declaration of the United Nations Conference on the Human Environment), 1972, UN Doc. A/Conf.48/14/Rev.1.*

<sup>2</sup> Maguelonne Déjeant-Pons/Marc Pallemarts, *Human Rights and the Environment : Compendium of Instruments and Other International Texts on Individual and Collective Rights Relating to the Environment in the International and European Framework*, European Council, Strasbourg, 2002, 344 p.

<sup>3</sup> See constitutions of Hungary, South Africa, Nicaragua, South Korea.

<sup>4</sup> See French Constitution.

<sup>5</sup> See constitution of Ethiopia.

<sup>6</sup> See for example the constitution of Gambia, Uganda or Malawi.

<sup>7</sup> See constitutions of South Korea.

<sup>8</sup> See constitutions of Peru, Philippines or Portugal.

<sup>9</sup> See Constitution of Chile for example.

countries) or their cultural tradition (presence of indigenous peoples, traditional societies or not).

However, if it is clear that more and more states recognize the right to environment in their constitutional rules, only some of them recognize it as an enforceable right. It appears that the effectiveness of such a right does not simply depend on the wording of the provision itself and that courts have demonstrated their ability to give specific content to the provisions, even though when they are defined in vague terms<sup>10</sup>.

If we want to develop a typology<sup>11</sup> of constitutional recognition of the right to environment, it is possible to distinguish four categories of states:

- States in which the right to environment is absent from the constitutional text and no recognition by courts exist;<sup>12</sup>
- States in which the principle of the right to environment is enshrined in the Constitution as a general principle for public policy. In this case, it is often not seen as a subjective right<sup>13</sup>, but it, in general, influences (although it varies from one country to another) the activity of the legislative or the judiciary production.
- States in which the right to environment is recognized as involving procedural rights (access to information, a right to participation, impact studies ...) or as imposing duties, most often to the state.
- Finally, the states in which the right to the environment is seen as leading to the recognition of an individual right, express or implied. In fact, about ninety Constitutions contain explicit provisions recognizing a right to environment at constitutional level, which can be invoked by litigants. In other states, the recognition has been made by Constitutional Courts, which inferred the right to environment from another fundamental right (such as right to life) explicitly recognized by the Constitution<sup>14</sup>.

The study of states belonging to the latter category shows that the constitutional judge may give more or less legal validity to the right to environment by operating a number of levers. He may first act with regard to the scope of the right recognized (I). He can otherwise act at the effectiveness that it is granted to this right in terms of enforceability and reparation of environmental damages (II).

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<sup>10</sup> Philippe Cullet, « Definition of an Environmental Right in a Human Rights Context », *Netherland Quaterly Human Rights*, n° 40, 1995, p. 35 or [www.ielrc.org/content/a9502.pdf](http://www.ielrc.org/content/a9502.pdf)

<sup>11</sup> As a typology for educational purposes, it is not absolute.

<sup>12</sup> As Australia or United States, even if some federated states recognized this right, with more or less intensity.

<sup>13</sup> Joshua Bruckerhoff, « Giving nature constitutional protection : a less anthropocentric interpretation of environmental rights », *Texas Law Review*, vol. 86, 2008, p. 621-622

<sup>14</sup> As India, Pakistan or Bangladesh.

## **I - The scope of the right to environment**

Constitutional provisions relating to the protection of environment are often written in fairly general and ambiguous terms, allowing wide discretion for the interpretation of courts, sometimes even leading to judicial activism.

To start with, the court may decide to give a definition of environment itself that has more or less to do with men and their needs (A). The result of such an approach which is either anthropocentric or biocentric, then logically affects the determination of standing (B).

### ***A - The judiciary understanding of "environment"***

Unlike most other constitutional rights, the right to environment may be perceived as not being limited to the protection of the human being. It is up to the court to determine whether the constitutional protection refers to the human environment or, more broadly, to the natural environment, including humans.

While an increasing number of constitutions explicitly recognize a right to environment, they are often evasive about the definition of "environment".

It also appears that when the Constitution is silent on the position to hold, and it is most often the case, courts adopt an anthropocentric position<sup>15</sup>. A number of indications can thus guide the litigant in the reading of the nature of the right recognized before going to courts. The recognition of a right to a "healthy" environment, "health-friendly", "clean" or "of quality" reveal a trend towards an anthropocentric vision and therefore focused on the utility of the environment.

We may find useful here Joshua Bruckerhoff<sup>16</sup> distinction between strongly or weakly anthropocentric provisions. The former are characterized by a basic formulation with few details on the meaning of the right, while the latter are characterized by a more elaborate and detailed drafting. Weakly anthropocentric provisions favor a broader interpretation of Courts.

Such an affirmation can be illustrated by the Philippine case law. Article II § 16 of the 1987 Constitution provides an extensive stipulation on the right to environment by providing that: "*The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and the harmony of nature.*" The Constituent wanted to focus specifically on the protection of biodiversity using the words "ecology" and "nature" rather than "environment".

In the case *Minors Oposa v. Factoran*<sup>17</sup>, the Supreme Court of the Philippines has favored this biocentric perception of environmental rights. It decided that: "*The list of particular claims which can be subsumed under this rubric appears to be entirely open-ended:*

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<sup>15</sup> James R. May/William Romanowicz, Environmental rights in State constitutions, in *From principles of constitutional environmental law*, American Bar Association, USA, 2011, p. 308.

<sup>16</sup> Joshua Bruckerhoff, « Giving nature constitutional protection : a less anthropocentric interpretation of environmental rights », *Texas Law Review*, vol. 86, 2008.

<sup>17</sup> *Minor Oposa v. Factoran Jr.*, GR N°10183, 224 S.C.R.A. 792, 30 juillet 1993 (Supreme Court - Philippines).

*prevention and control of emission of toxic fumes and smoke from factories and motor vehicles; of discharge of oil, chemical effluents, garbage and raw sewage into rivers, inland and coastal waters by vessels, oil rigs, factories, mines and whole communities; of dumping of organic and inorganic wastes on open land, streets and thoroughfares; failure to rehabilitate land after strip-mining or open-pit mining; kaingin or slash-and-burn farming; destruction of fisheries, coral reefs and other living sea resources through the use of dynamite or cyanide and other chemicals; contamination of ground water resources; loss of certain species of fauna and flora; and so on".* Unlike other courts, the Philippine Supreme Court did not limit its interpretation of the right to environment to human health issues<sup>18</sup>.

On the other hand, the tendency to a strict interpretation of constitutional courts in the presence of strongly anthropocentric provisions may be illustrated by the Colombian courts. As the Colombian Constitution proclaim a right to a healthy environment, the constitutional court stated that such a right *"cannot be separated from the right to life and health of human beings. In fact, factors that are deleterious to the environment cause irreparable harm to human beings. If this is so we can state that the right to the environment is a right fundamental to the existence of humanity"*<sup>19</sup>. As a result, the courts have found very few public actions unconstitutional.

In this respect, the counter-example of India is remarkable. Articles 48A and 51A (g) of the Indian Constitution, introduced in 1976 following the Stockholm Conference, require from the State and citizens a fundamental duty to protect environment. The right to environment is designed as a guiding principle of public policy, non-justiciable in the courts. However, the Indian Supreme Court has embedded that right on the basis of the constitutional right to life, giving it a far reaching impact<sup>20</sup>. A similar trend can be find in the case law of the supreme courts of Bangladesh<sup>21</sup>, Pakistan<sup>22</sup> or Nepal that has decided that the principles laid down in the Constitution could ground an action despite the fact that the wording used in the constitutional text could suggest otherwise<sup>23</sup>.

The Indian case also demonstrates that the consecration of a right to environment based on the fundamental right to life does not necessarily imply an anthropocentric vision.

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<sup>18</sup> Joshua Bruckerhoff, op. cit., p. 634.

<sup>19</sup> Antonio Mauricio Monroy Cespedes, n° T-92/93, Cour Constitutionnelle, 19 février 1993 (Colombie), cité in Adriana Fabra/Eva Arnal, Review of jurisprudence on human rights and the environment in Latin America, Joint UNEP-OHCHR Expert Seminar on Human Rights & the Environment, Background paper n° 6, Genève, 2002.

<sup>20</sup> See Subhash Kumar v. State of Bihar case (AIR 1991 SC 420) where the Supreme Court linked for the first time environmental rights and right to life. The Court observed that « right to life guaranteed by article 21 includes the right of enjoyment of pollution-free water and air for full enjoyment of life».

<sup>21</sup> Dr M. Farooque v. Secretary, Ministry of Communication, Government of the People's Republic of Bangladesh and 12 others, cité in Jona Razzaque, Human rights and the environment : the national experience in South Asia and Africa, Joint UNEP-OHCHR Expert Seminar on Human Rights and the Environment, Background paper n° 4, Genève, 2002, note 26.

<sup>22</sup> Case General Secretary, West Pakistan Salt Miners Labour Union (CBA) Khewara, Jhelum v. The Director, Industries and Mineral Development, Punjab, Lahore, 1994, SCMR 2061, cité in "Human rights and the environment : the national experience in South Asia and Africa", op. cit., note 36.

<sup>23</sup> Joshua Bruckerhoff, op. cit., p. 626, note 63.

Indeed, the Indian Supreme Court has gone beyond by validating a biocentric view of environment, particularly in the case of *Rural Litigation Entitlement Kendra v. State of U.P.*<sup>24</sup>, in which the Supreme Court ruled that natural assets are permanent assets of mankind and should not be exhausted by a generation. Throughout its consistent jurisprudence, the fundamental right to life of Article 21 of the Constitution has been used as a basis to recognize a wide variety of environmental rights such as the protection of wildlife, forests, lakes, ancient monuments, flora, clean air, protection against noise, against water pollution, preservation of the ecological balance<sup>25</sup>. The Court also stated that the right to a healthy environment can prevail over economic interests of society<sup>26</sup>.

In conclusion, while some Latin American countries (Ecuador and Bolivia), or more recently and more narrowly, New Zealand, have pushed to its highpoint the biocentric perception of environment, by recognizing rights directly to nature<sup>27</sup>, allowing anyone to assert the rights of nature, most other states have not gone that far, although some have established a biocentric view of nature.

### ***B - The standing***

As in any type of application to courts, the recognition of standing is an essential element of the litigation. In this regard, the judge has considerable flexibility, constitutions being rarely very directive on this aspect.

With regard to standing, a few states deserve special mention: among them, we will focus on the case of India and the Philippines.

#### *1) The activist jurisprudence of the Supreme Court of India*

The Supreme Court of India has promoted a particularly easy and inexpensive access to justice.

The Court has optimized the process of public interest litigation to protect the fundamental rights and particularly the right to environment. The public interest litigation is designed by the Supreme Court of India to guarantee the fundamental human rights of the most vulnerable and poorest members of the community. As a result, letters or telegrams of individuals or interest groups are admissible to the court, which may even decide on its own initiative on the basis of a newspaper article. In this

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<sup>24</sup> *Rural Litigation Entitlement Kendra v. State of U.P.*, AIR 1999 SC 2187.

<sup>25</sup> Mahendra P. Singh, V. N. Shukla's Constitution of India, Eastern Book Company, Lucknow (India), 2008, 11ème éd., 1160p., p. 194.

<sup>26</sup> M. C. Metha v. Union of India, (2004) 125CC 118 : AIR 2004 SC 4016.

<sup>27</sup> Victor David, « Le monde est-il enfin Stone ? La lente consécration des droits de la nature », *Revue Juridique de l'Environnement*, n° 3/2012, p. 469.

regard, the activism of the Supreme Court of India has been often criticized, as the court shows great zeal to overcome the shortcomings of the legislative and executive powers, afflicted by corruption.

In this context, any citizen can go to court in order to represent people who do not have effective access to justice, without having to show any connection with the on-going dispute. It is also possible to act in case of inaction or abuse of power by authorities.

This procedure led to extraordinary progress in the defense of citizens' rights, particularly the right to environment. An interesting illustration of this process of public interest litigation in environmental matters can be found in the case of *T. N. Godavarman Thirumalpad v. Union of India & Others*<sup>28</sup>. Commercial companies hung huge billboards on rocks in a valley of the Himalayas, in the state of Himachal Pradesh. On the basis of an alarming newspaper article, the Supreme Court seized itself of the matter on the basis of public interest litigation, condemning the company to repair the damage and to pay a fine<sup>29</sup>.

## *2) The right of standing on behalf of future generations*

The Constitutional Court of the Philippines, in the case of *Minor Oposa v. Factoran* recognized an intergenerational standing, that is to say the right of an individual to sue on behalf of future generations, because of the long-term effects of the action at issue.

The Chilean Supreme Court has also recognize such a standing in the case *Comunidad de ChaNaral v. Codeco Division el Saldor*. The Supreme Court held that a farmer has standing to enjoin drainage of a lake, recognizing that with environmental damage "*future generations would claim the lack of prevision of their predecessors if the environment would be polluted and nature destroyed*".

## **II - The effectiveness of the right to environment**

Once the obstacle of standing is overcome, the constitutional courts still have to show an unwavering will to recognize the enforceability of the right to environment (A), leading to a sentence, that must be effective, to repair the harm to the environment (B).

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<sup>28</sup> *T. N. Godavarman Tirumalpad v. Union of India*, AIR 1999 SC 43.

<sup>29</sup> Anoussamy David, *Chronique Droit constitutionnel étranger, L'actualité constitutionnelle dans les pays de common law et de droit mixte* (juillet-décembre 2002), RFDC 2003, p. 843

## ***A - The enforceability of the right to environment***

The enforceability of the right to environment depends on several factors: direct and horizontal effects and absolute nature of the right to environment are most often elements left to the discretion of the judge, who will then determine the degree of legal validity of this right.

### *1) The direct effect of the right to environment*

A constitutional provision with direct effect is a rule on the basis of which it is possible to enjoy the rights granted and to protect them in case of infringement, or if it is a duty, to enforce it. It is not the case where the provision sets out a principle without setting rules to make it binding. In other words, the constitutional provision must be self-sufficient.

Once again, one of the difficulties lies in the vagueness of many constitutional provisions regarding the enforceability that the Constituent intended to grant to provisions.

Therefore, it is often the constitutional or supreme courts who decide whether or not the provisions have a direct effect, sometimes against the wishes of the constituent. In this respect, the position of the French Constitutional Council under Article 1 of the constitutional environment charter, enacted in 2005, is interesting. Indeed, in a decision of 8<sup>th</sup> April 2011, the French constitutional court recognized the provision on the right to a healthful environment to be of direct effect even though the preparatory work stated that it shall not be considered as a personal right of individuals towards the state, but shall be seen as a constitutional objective<sup>30</sup>.

### *2) The horizontal effect of environmental rights*

Recognizing a horizontal effect to the right to environment can expose not only the government but also any private person or entity, involved in an environmental damage.

Very few Constitutions are clear-cut on this issue. For example, it is the case of the Hawaiian and Illinois constitutions that state that a case to protect the environment may be brought against "any person, public or private, by means of an appropriate procedure."<sup>31</sup>

On the other hand, other constitutions remain elusive and it is then up to the judge to determine the effect of the right to environment. While most constitutional courts refuse any horizontal effect to the provisions establishing a right to environment, especially

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<sup>30</sup> Report n° 1595, Assemblée nationale, 12 may 2004, p. 71.

<sup>31</sup> Article XI § 9 of the Constitution of Hawaii and article § 2 of the Constitution of Illinois.



when it is designed as a guiding principle of public policy, other courts are audacious, maximizing protection of environment.

This is for example the case of Costa Rica, where the Constitutional Court has agreed to consider the implication of a multinational having pruned more than 700 acres along the Tortuguero National Park, thereby putting at risk the habitat of the Great Green Macaw, an endangered species listed on the IUCN Red List. Although the case eventually resulted in a settlement agreement, the multinational agreeing to pay approximately U.S. \$ 1,500 per hectare of bank cleared and all charges of expertise, it has allowed the Constitutional Court to change decisively its jurisprudence. Indeed, in addition to the recognition of the standing of the NGO who brought the action, on the basis of the Costa Rican public interest, the Court agreed to examine the liability of a private legal entity<sup>32</sup>.

Finally, even if the judge recognizes direct and horizontal effects to the right to environment, he must then decide on the absolute nature of the right.

### *3) The non-absolute nature of the right to environment*

In the case of a conflict with another fundamental right (the right to life, dignity, development ...), the judge must assess whether to uphold the right to environment over another. In this context, the right to environment, like any other constitutional right, may be subject to a proportionality test.

In most cases, the necessary balance between the imperatives of economic development, social consequences and environmental aspects is difficult to find. Whereas it should not depend on the judge, but rather on a clear willingness of public authorities, the silence of the constitutional texts often give a central role to the judge.

Again, the jurisprudence of the Supreme Court of India provides an excellent illustration of a pro-active policy led by the judges. In *Vellore Citizen Welfare Forum v. Union of India & Others* case<sup>33</sup>, the Supreme Court of India decided to give priority to the right to environment on the right to development. In this case, a public interest litigation was brought by a group of citizens to fight against the discharge of untreated effluents from tanneries in a river, which happened to be the main source of water for residents of the region. The Supreme Court, after observing that the leather industry was of vital importance for the country in economic terms, stated that this did not give to industry the right to destroy the ecology and cause environmental degradation, hazardous to health. The Court suspended the pursuit of the activity till the taking of appropriate measures by the industry. It decided that as the "precautionary principle" and "polluter pays principle" were the essential characteristics of "sustainable development", such polluting activities could not be allowed without action taken to remedy them.

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<sup>32</sup> Voir : <http://www.elaw.org/node/866>

<sup>33</sup> Vellore Citizen Welfare Forum Vs Union of India & Ors., W.P.(C ) No. 914/1991

However, this courageous decision of the Indian Supreme Court is fairly isolated<sup>34</sup> since most courts refuse the primacy of the right to environment on the right to development hiding behind the argument that it is not for the judge to make such a political determination. Nonetheless, it seems that more and more supreme courts<sup>35</sup> are willing to make protection of environment prevail on economic interest, especially where public health may be impacted.

### ***B – Repair to environmental damage***

The objective of any action in connection with harm to the environment is to obtain a sentence to repair the damages. However, it is often difficult to provide adequate reparation in environmental matters, especially when the damage is irreversible.

Among the difficulties, there is for example the issue of compensation for future losses or victims not yet identified at the time of judgment.

The judge, for example, has the possibility of asking the state to implement a public policy, but will not always be inclined to do so.

It appears that a first degree conviction may reside in a declaratory judgment without damages. In such a case, the sentence appears as a disapproval in principle but has most of the time no practical consequence.

A second degree conviction lies in the allocation of damages, measures of rehabilitation or of mitigation.

There are also other types of alternatives available to the judge who can also be creative. In this regard, some Supreme Courts, like India, Philippines, but also Argentina, Nepal or Costa Rica, are precursors.

However, in most cases, the courts seem reluctant to get into this kind of considerations because they do not necessarily have the tools and the authority necessary to ensure the implementation of their decisions.

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<sup>34</sup> The supreme court of Nepal decided the same way.

<sup>35</sup> Like in Greece, Finland, Costa Rica, Ecuador, Hungary, Russia, Thailand. See *The Constitutional Right to a Healthy Environment* by David R. Boyd (<http://www.environmentmagazine.org/Archives/Back%20Issues/2012/July-August%202012/constitutional-rights-full.html>)

Greece Council of State 2759/1994, 2760/1994, 3478/2000. T. Koivurova, "The Case of Vuotos: Interplay between International, Community, and National Law," *Review of European Community and International Environmental Law* 13, no. 1 (2004): 47–60. M.M. Levy y Asociacion Ecologista Limonense v. Ministerio del Ambiente y Energia, Decision 2001-13295, Expediente 00-007280-0007-CO, 21/12/2001 (Costa Rica). *Baba Dam Case (2008) Third Chamber, Constitutional Court, 12 December 2008, Case no. 1212-2007-RA (Ecuador)*. T. V. Zlotnikova, K. E. Lebedeva et al., v. Russian Federation (1998), no. GPKI 97-249, Ruling of 17 February 1998 (Russia Supreme Court). K. Boonlai and P. Changplayngam, "Thai Court Halts Many New Plants in Big Industrial Zone," Reuters, 3 December (2009).

For instance, if the order of the judge requires the intervention of the Parliament, how to be certain that the Court will control the process and impose a legislative reform and implementation by the executive authority?

In this regard, the case known as "Manila Bay" in the Philippines is exemplary<sup>36</sup>. This 190 km long rich in biodiversity bay, has grown rapidly with the development of industrial and commercial activities and the construction of residential housing. As a result, pollution experienced exponential growth since the economic growth has not been accompanied by the establishment of the necessary public policies, particularly with regard to waste management and sanitation. Most industrial and domestic waste and wastewater therefore ended up in Manila Bay, far exceeding the capacity of ecological systems. In 1999, a group of young Filipino went to court, accusing a dozen of public authorities for negligence in the protection of the Manila Bay, to the benefit of future generations. The Supreme Court of the Philippines, in addition to the prohibition on any future permits for activities that may pollute the Bay, ordered the government to engage in a policy of prevention, control and fight against pollution, to prosecute and punish harms to environment, and to rehabilitate and restore the bay, all under the threat of a conviction for contempt of court. The directions given by the Court were very specific and included a number of instructions. Among them were set deadlines for the relevant departments to implement waste treatment equipment, for schools for the implementation of educational programs on environmental protection and for the Government to raise funds for cleaning the bay. The Court also established a "continuing jurisdiction", ordering the Government to inform the Court of the progress made, such progress should be confirmed by a committee set up by the Court itself. Since then, the administration has stated its willingness to comply with the decision of the Supreme Court, even if this allegiance is slow.

In the case *Godavarman Thirumalpad v. Union of India & Others* mentioned above, the Supreme Court of India, considering the state of Himachal Pradesh was not very cooperative in a previous pollution case, ordered it to pay a deposit equivalent to about € 150,000 to guarantee that the state would ensure the restoration of environment.

The same court also had the idea to implement preventative measures. The Supreme Court of India indeed imposed to the Government the implementation of enhanced information campaign for a new regulation on the use of fireworks during the festival of Dipavali, to avoid waste, noise pollution, and the many accidents systematically occurring during this feast. This initiative has been very successful since as the population unexpectedly complied with the new regulations.

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<sup>36</sup> *Concerned Residents of Manila Bay et al v. Metropolitan Manila Development Authority, Department of Environment and Natural Resources and others* (2008) G.R. nos. 171947-48 (Supreme Court of the Philippines).

Another interesting case is the Beatriz Mendoza decision of the Supreme Court of Argentina in 2008<sup>37</sup>.

The case was started in 2004 by Beatriz Mendoza, a health care worker living in a poor and heavily polluted area of Buenos Aires. When her own health began to suffer, Mendoza enlisted neighbors and lawyers and filed a lawsuit against the federal, provincial, and municipal governments as well as 44 industrial polluters, asserting violations of her constitutional right to a healthy environment.

In 2006, the Supreme Court of Argentina first ordered public authorities and industry to provide detailed information about the state of the river.

Then, in 2007, the same court ordered the government to draft a cleanup and restoration plan. Scientists were then appointed to analyse the government's plan.

Finally, in 2008, the Supreme Court issued a decision ordering inspections of all polluting enterprises and implementation of wastewater treatment plans, closure of all illegal dumps, redevelopment of landfills, and cleanup of the riverbanks, improvement of the drinking water, sewage treatment, and stormwater discharge systems in the river basin, development of a regional environmental health plan, including contingencies for possible emergencies, supervision, by the federal Auditor General, of the budget allocation for implementation of the restoration plan

The implementation of the judicial plan was supervised by a federal court judge empowered to resolve any disputes related to the court's decision, any violations of the timelines established by the court would result in daily fines against responsible politicians.

However, such decisions raise questions about the role of the judge and how far he can go in his enforcement of the law. For the festival of lights in India, we can only conclude that "the fear of being punished for contempt of court seems stronger than the hierarchical power among officials." Such preventive initiative of the Court, however, poses with a particularly acute manner the issue of judicial activism. If we can, from the point of view of environment, only welcome such an activity, however, it denotes a great deficiency of other government authorities in the implementation of the law.

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<sup>37</sup> *Beatriz Silvia Mendoza and others v. National Government and Others (2008) (Damages stemming from contamination of the Matanza-Riachuelo River)*, M. 1569, 8 July 2008 (Supreme Court of Argentina).

In conclusion, it appears that regardless of the provision on which he can rely, the judge has a range of more or less pro-active solutions and he must choose where he wants to move the cursor by adopting an extensive or a restrictive interpretation of the right to environment. In this regard, he decides either to make political choices overcoming the deficiencies of the political authorities or to resign himself to those deficiencies.