



Republic of the Philippines
Supreme Court
Manila

A.M. No. 09-6-8-SC

**RULES OF PROCEDURE
FOR ENVIRONMENTAL CASES**

EFFECTIVE APRIL 29, 2010

MANILA, PHILIPPINES
APRIL 2010

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The Rationale and Annotation to the *Rules of Procedure for Environmental Cases* serve as general guidelines for application and understanding. All statements, quotes, text and other content contained therein are not a substitute for future interpretations of said *Rules* by the Supreme Court.



Republic of the Philippines
Supreme Court
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A.M. No. 09-6-8-SC

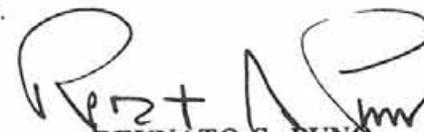
**RULES OF PROCEDURE FOR
ENVIRONMENTAL CASES**

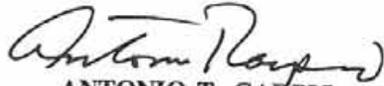
RESOLUTION

Acting on the recommendation of the Chairperson of the Sub-committee on the Rules of Procedure for Environmental Cases submitting for this Court's consideration and approval the proposed Rules of Procedure for Environmental Cases, the Court Resolved to APPROVE the same.

These Rules shall take effect within fifteen (15) days following its publication once in a newspaper of general circulation.

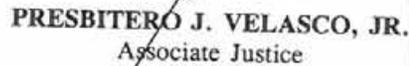
April 13, 2010.


REYNATO S. PUNO
 Chief Justice


ANTONIO T. CARPIO
Associate Justice


RENATO C. CORONA
Associate Justice

(on leave)
CONCHITA CARPIO MORALES
Associate Justice


PRESBITERO J. VELASCO, JR.
Associate Justice


ANTONIO EDUARDO B. NACHURA
Associate Justice

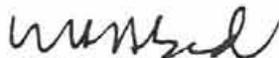

TERESITA J. LEONARDO-DE CASTRO
Associate Justice


ARTURO D. BRION
Associate Justice


DIOSDADO M. PERALTA
Associate Justice

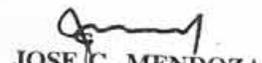

LUCAS P. BERSAMIN
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


ROBERTO A. ABAD
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


JOSE P. PEREZ
Associate Justice


JOSE C. MENDOZA
Associate Justice

RULES OF PROCEDURE FOR ENVIRONMENTAL CASES

PART I

RULE 1

GENERAL PROVISIONS

SECTION 1. *Title.*—These Rules shall be known as “*The Rules of Procedure for Environmental Cases.*”

SEC. 2. *Scope.*—These Rules shall govern the procedure in civil, criminal and special civil actions before the Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts and Municipal Circuit Trial Courts involving enforcement or violations of environmental and other related laws, rules and regulations such as but not limited to the following:

- (a) Act No. 3572, Prohibition Against Cutting of Tindalo, Akli, and Molave Trees;
- (b) P.D. No. 705, Revised Forestry Code;
- (c) P.D. No. 856, Sanitation Code;
- (d) P.D. No. 979, Marine Pollution Decree;
- (e) P.D. No. 1067, Water Code;
- (f) P.D. No. 1151, Philippine Environmental Policy of 1977;
- (g) P.D. No. 1433, Plant Quarantine Law of 1978;
- (h) P.D. No. 1586, Establishing an Environmental Impact Statement System Including Other Environmental Management Related Measures and for Other Purposes;
- (i) R.A. No. 3571, Prohibition Against the Cutting, Destroying or Injuring of Planted or Growing Trees.

- Flowering Plants and Shrubs or Plants of Scenic Value along Public Roads, in Plazas, Parks, School Premises or in any Other Public Ground;
- (j) R.A. No. 4850, Laguna Lake Development Authority Act;
 - (k) R.A. No. 6969, Toxic Substances and Hazardous Waste Act;
 - (l) R.A. No. 7076, People's Small-Scale Mining Act;
 - (m) R.A. No. 7586, National Integrated Protected Areas System Act including all laws, decrees, orders, proclamations and issuances establishing protected areas;
 - (n) R.A. No. 7611, Strategic Environmental Plan for Palawan Act;
 - (o) R.A. No. 7942, Philippine Mining Act;
 - (p) R.A. No. 8371, Indigenous Peoples Rights Act;
 - (q) R.A. No. 8550, Philippine Fisheries Code;
 - (r) R.A. No. 8749, Clean Air Act;
 - (s) R.A. No. 9003, Ecological Solid Waste Management Act;
 - (t) R.A. No. 9072, National Caves and Cave Resource Management Act;
 - (u) R.A. No. 9147, Wildlife Conservation and Protection Act;
 - (v) R.A. No. 9175, Chainsaw Act;
 - (w) R.A. No. 9275, Clean Water Act;
 - (x) R.A. No. 9483, Oil Spill Compensation Act of 2007; and
 - (y) Provisions in C.A. No. 141, The Public Land Act; R.A. No. 6657, Comprehensive Agrarian Reform Law of 1988; R.A. No. 7160, Local Government Code of 1991; R.A. No. 7161, Tax Laws Incorporated in the Revised Forestry Code and Other Environmental Laws (Amending the NIRC); R.A. No. 7308, Seed Industry Development Act of 1992; R.A. No. 7900, High-Value Crops Development

Act; R.A. No. 8048, Coconut Preservation Act; R.A. No. 8435, Agriculture and Fisheries Modernization Act of 1997; R.A. No. 9522, The Philippine Archipelagic Baselines Law; R.A. No. 9593, Renewable Energy Act of 2008; R.A. No. 9637, Philippine Biofuels Act; and other existing laws that relate to the conservation, development, preservation, protection and utilization of the environment and natural resources.

SEC. 3. *Objectives.*—The objectives of these Rules are:

- (a) To protect and advance the constitutional right of the people to a balanced and healthful ecology;
- (b) To provide a simplified, speedy and inexpensive procedure for the enforcement of environmental rights and duties recognized under the Constitution, existing laws, rules and regulations, and international agreements;
- (c) To introduce and adopt innovations and best practices ensuring the effective enforcement of remedies and redress for violation of environmental laws; and
- (d) To enable the courts to monitor and exact compliance with orders and judgments in environmental cases.

SEC. 4. *Definition of Terms.*—

- (a) *By-product or derivatives* means any part taken or substance extracted from wildlife, in raw or in processed form including stuffed animals and herbarium specimens.
- (b) *Consent decree* refers to a judicially-approved settlement between concerned parties based on public interest and public policy to protect and preserve the environment.
- (c) *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.
- (d) *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.

- (e) *Mineral* refers to all naturally occurring inorganic substance in solid, gas, liquid, or any intermediate state excluding energy materials such as coal, petroleum, natural gas, radioactive materials and geothermal energy.
- (f) *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.
- (g) *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.
- (h) *Wildlife* means wild forms and varieties of flora and fauna, in all developmental stages including those which are in captivity or are being bred or propagated.

PART II

CIVIL PROCEDURE

RULE 2

PLEADINGS AND PARTIES

SECTION 1. *Pleadings and motions allowed.*—The pleadings and motions that may be filed are complaint, answer which may include compulsory counterclaim and cross-claim, motion for

intervention, motion for discovery and motion for reconsideration of the judgment.

Motion for postponement, motion for new trial and petition for relief from judgment shall be allowed in highly meritorious cases or to prevent a manifest miscarriage of justice.

SEC. 2. *Prohibited pleadings or motions.*—The following pleadings or motions shall not be allowed:

- (a) Motion to dismiss the complaint;
- (b) Motion for a bill of particulars;
- (c) Motion for extension of time to file pleadings, except to file answer, the extension not to exceed fifteen (15) days;
- (d) Motion to declare the defendant in default;
- (e) Reply and rejoinder; and
- (f) Third party complaint.

SEC. 3. *Verified complaint.*—The verified complaint shall contain the names of the parties, their addresses, the cause of action and the reliefs prayed for.

The plaintiff shall attach to the verified complaint all evidence proving or supporting the cause of action consisting of the affidavits of witnesses, documentary evidence and if possible, object evidence. The affidavits shall be in question and answer form and shall comply with the rules of admissibility of evidence.

The complaint shall state that it is an environmental case and the law involved. The complaint shall also include a certification against forum shopping. If the complaint is not an environmental complaint, the presiding judge shall refer it to the executive judge for re-raffle.

SEC. 4. *Who may file.*—Any real party in interest, including the government and juridical entities authorized by law, may file a civil action involving the enforcement or violation of any environmental law.

SEC. 5. *Citizen 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. Upon the filing of a citizen suit, the court shall issue an order which shall contain a brief description of the cause of action and the reliefs prayed for, requiring all interested parties to manifest their interest to intervene in the case within fifteen (15) days from notice thereof. The plaintiff may publish the order once in a newspaper of a general circulation in the Philippines or furnish all affected barangays copies of said order.

Citizen suits filed under R.A. No. 8749 and R.A. No. 9003 shall be governed by their respective provisions.

SEC. 6. *Service of the complaint on the government or its agencies.*—Upon the filing of the complaint, the plaintiff is required to furnish the government or the appropriate agency, although not a party, a copy of the complaint. Proof of service upon the government or the appropriate agency shall be attached to the complaint.

SEC. 7. *Assignment by raffle.*—If there is only one (1) designated branch in a multiple-sala court, the executive judge shall immediately refer the case to said branch. If there are two (2) or more designated branches, the executive judge shall conduct a special raffle on the day the complaint is filed.

SEC. 8. *Issuance of Temporary Environmental Protection Order (TEPO).*—If it appears from the verified complaint with a prayer for the issuance of an Environmental Protection Order (EPO) that the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of the multiple-sala court before raffle or the presiding judge of a single-sala court as the case may be, may issue *ex parte* a TEPO effective for only seventy-two (72) hours from date of the receipt of the TEPO by the party or person enjoined. Within said period, the court where the case is assigned, shall conduct a summary hearing to determine whether the TEPO may be extended until the termination of the case.

The court where the case is assigned, shall periodically monitor the existence of acts that are the subject matter of the TEPO even if issued by the executive judge, and may lift the same at any time as circumstances may warrant.

The applicant shall be exempted from the posting of a bond for the issuance of a TEPO.

SEC. 9. *Action on motion for dissolution of TEPO.*—The grounds for motion to dissolve a TEPO shall be supported by affidavits of the party or person enjoined which the applicant may oppose, also by affidavits.

The TEPO may be dissolved if it appears after hearing that its issuance or continuance would cause irreparable damage to the party or person enjoined while the applicant may be fully compensated for such damages as he may suffer and subject to the posting of a sufficient bond by the party or person enjoined.

SEC. 10. *Prohibition against temporary restraining order (TRO) and preliminary injunction.*—Except the Supreme Court, no court can issue a TRO or writ of preliminary injunction against lawful actions of government agencies that enforce environmental laws or prevent violations thereof.

SEC. 11. *Report on TEPO, EPO, TRO or preliminary injunction.*—The judge shall report any action taken on a TEPO, EPO, TRO or a preliminary injunction, including its modification and dissolution, to the Supreme Court, through the Office of the Court Administrator, within ten (10) days from the action taken.

SEC. 12. *Payment of filing and other legal fees.*—The payment of filing and other legal fees by the plaintiff shall be deferred until after judgment unless the plaintiff is allowed to litigate as an indigent. It shall constitute a first lien on the judgment award.

For a citizen suit, the court shall defer the payment of filing and other legal fees that shall serve as first lien on the judgment award.

SEC. 13. *Service of summons, orders and other court processes.*—The summons, orders and other court processes may be served by the sheriff, his deputy or other proper court officer or for justifiable reasons, by the counsel or representative of the plaintiff or any suitable person authorized or deputized by the court issuing the summons.

Any private person who is authorized or deputized by the court to serve summons, orders and other court processes shall for that purpose be considered an officer of the court.

The summons shall be served on the defendant, together with a copy of an order informing all parties that they have fifteen (15) days from the filing of an answer, within which to avail of interrogatories to parties under Rule 25 of the Rules of Court and request for admission by adverse party under Rule 26, or at their discretion, make use of depositions under Rule 23 or other measures under Rules 27 and 28.

Should personal and substituted service fail, summons by publication shall be allowed. In the case of juridical entities, summons by publication shall be done by indicating the names of the officers or their duly authorized representatives.

SEC. 14. *Verified answer.*—Within fifteen (15) days from receipt of summons, the defendant shall file a verified answer to the complaint and serve a copy thereof on the plaintiff. The defendant shall attach affidavits of witnesses, reports, studies of experts and all evidence in support of the defense.

Affirmative and special defenses not pleaded shall be deemed waived, except lack of jurisdiction.

Cross-claims and compulsory counterclaims not asserted shall be considered barred. The answer to counterclaims or cross-claims shall be filed and served within ten (10) days from service of the answer in which they are pleaded.

SEC. 15. *Effect of failure to answer.*—Should the defendant fail to answer the complaint within the period provided, the court shall declare defendant in default and upon motion of the plaintiff, shall receive evidence *ex parte* and render judgment based thereon and the reliefs prayed for.

RULE 3

PRE-TRIAL

SECTION 1. *Notice of pre-trial.*—Within two (2) days from the filing of the answer to the counterclaim or cross-claim, if any, the

branch clerk of court shall issue a notice of the pre-trial to be held not later than one (1) month from the filing of the last pleading.

The court shall schedule the pre-trial and set as many pre-trial conferences as may be necessary within a period of two (2) months counted from the date of the first pre-trial conference.

SEC. 2. *Pre-trial brief.*—At least three (3) days before the pre-trial, the parties shall submit pre-trial briefs containing the following:

- (a) A statement of their willingness to enter into an amicable settlement indicating the desired terms thereof or to submit the case to any of the alternative modes of dispute resolution;
- (b) A summary of admitted facts and proposed stipulation of facts;
- (c) The legal and factual issues to be tried or resolved. For each factual issue, the parties shall state all evidence to support their positions thereon. For each legal issue, parties shall state the applicable law and jurisprudence supporting their respective positions thereon;
- (d) The documents or exhibits to be presented, including depositions, answers to interrogatories and answers to written request for admission by adverse party, stating the purpose thereof;
- (e) A manifestation of their having availed of discovery procedures or their intention to avail themselves of referral to a commissioner or panel of experts;
- (f) The number and names of the witnesses and the substance of their affidavits;
- (g) Clarificatory questions from the parties; and
- (h) List of cases arising out of the same facts pending before other courts or administrative agencies.

Failure to comply with the required contents of a pre-trial brief may be a ground for contempt.

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.

SEC. 3. *Referral to mediation.*—At the start of the pre-trial conference, the court shall inquire from the parties if they have settled the dispute; otherwise, the court shall immediately refer the parties or their counsel, if authorized by their clients, to the Philippine Mediation Center (PMC) unit for purposes of mediation. If not available, the court shall refer the case to the clerk of court or legal researcher for mediation.

Mediation must be conducted within a non-extendible period of thirty (30) days from receipt of notice of referral to mediation.

The mediation report must be submitted within ten (10) days from the expiration of the 30-day period.

SEC. 4. *Preliminary conference.*—If mediation fails, the court will schedule the continuance of the pre-trial. Before the scheduled date of continuance, the court may refer the case to the branch clerk of court for a preliminary conference for the following purposes:

- (a) To assist the parties in reaching a settlement;
- (b) To mark the documents or exhibits to be presented by the parties and copies thereof to be attached to the records after comparison with the originals;
- (c) To ascertain from the parties the undisputed facts and admissions on the genuineness and due execution of the documents marked as exhibits;
- (d) To require the parties to submit the depositions taken under Rule 23 of the Rules of Court, the answers to written interrogatories under Rule 25, and the answers to request for admissions by the adverse party under Rule 26;
- (e) To require the production of documents or things requested by a party under Rule 27 and the results of the physical and mental examination of persons under Rule 28;
- (f) To consider such other matters as may aid in its prompt disposition;

- (g) To record the proceedings in the "Minutes of Preliminary Conference" to be signed by both parties or their counsels;
- (h) To mark the affidavits of witnesses which shall be in question and answer form and shall constitute the direct examination of the witnesses; and
- (i) To attach the minutes together with the marked exhibits before the pre-trial proper.

The parties or their counsel must submit to the branch clerk of court the names, addresses and contact numbers of the affiants.

During the preliminary conference, the branch clerk of court shall also require the parties to submit the depositions taken under Rule 23 of the Rules of Court, the answers to written interrogatories under Rule 25 and the answers to request for admissions by the adverse party under Rule 26. The branch clerk of court may also require the production of documents or things requested by a party under Rule 27 and the results of the physical and mental examination of persons under Rule 28.

SEC. 5. *Pre-trial conference; consent decree.*—The judge shall put the parties and their counsels under oath, and they shall remain under oath in all pre-trial conferences.

The judge shall exert best efforts to persuade the parties to arrive at a settlement of the dispute. The judge may issue a consent decree approving the agreement between the parties in accordance with law, morals, public order and public policy to protect the right of the people to a balanced and healthful ecology.

Evidence not presented during the pre-trial, except newly-discovered evidence, shall be deemed waived.

SEC. 6. *Failure to settle.*—If there is no full settlement, the judge shall:

- (a) Adopt the minutes of the preliminary conference as part of the pre-trial proceedings and confirm the markings of exhibits or substituted photocopies and admissions on the genuineness and due execution of documents;
- (b) Determine if there are cases arising out of the same facts pending before other courts and order its consolidation if warranted;

- (c) Determine if the pleadings are in order and if not, order the amendments if necessary;
- (d) Determine if interlocutory issues are involved and resolve the same;
- (e) Consider the adding or dropping of parties;
- (f) Scrutinize every single allegation of the complaint, answer and other pleadings and attachments thereto, and the contents of documents and all other evidence identified and pre-marked during pre-trial in determining further admissions;
- (g) Obtain admissions based on the affidavits of witnesses and evidence attached to the pleadings or submitted during pre-trial;
- (h) Define and simplify the factual and legal issues arising from the pleadings and evidence. Uncontroverted issues and frivolous claims or defenses should be eliminated;
- (i) Discuss the propriety of rendering a summary judgment or a judgment based on the pleadings, evidence and admissions made during pre-trial;
- (j) Observe the Most Important Witness Rule in limiting the number of witnesses, determining the facts to be proved by each witness and fixing the approximate number of hours per witness;
- (k) Encourage referral of the case to a trial by commissioner under Rule 32 of the Rules of Court or to a mediator or arbitrator under any of the alternative modes of dispute resolution governed by the Special Rules of Court on Alternative Dispute Resolution;
- (l) Determine the necessity of engaging the services of a qualified expert as a friend of the court (*amicus curiae*); and
- (m) Ask parties to agree on the specific trial dates for continuous trial, comply with the one-day examination of witness rule, adhere to the case flow chart determined by the court which shall contain the different stages of the

proceedings up to the promulgation of the decision and use the time frame for each stage in setting the trial dates.

SEC. 7. *Effect of failure to appear at pre-trial.*—The court shall not dismiss the complaint, except upon repeated and unjustified failure of the plaintiff to appear. The dismissal shall be without prejudice, and the court may proceed with the counterclaim.

If the defendant fails to appear at the pre-trial, the court shall receive evidence *ex parte*.

SEC. 8. *Minutes of pre-trial.*—The minutes of each pre-trial conference shall contain matters taken up therein, more particularly admissions of facts and exhibits, and shall be signed by the parties and their counsel.

SEC. 9. *Pre-trial order.*—Within ten (10) days after the termination of the pre-trial, the court shall issue a pre-trial order setting forth the actions taken during the pre-trial conference, the facts stipulated, the admissions made, the evidence marked, the number of witnesses to be presented and the schedule of trial. Said order shall bind the parties, limit the trial to matters not disposed of and control the course of action during the trial.

SEC. 10. *Efforts to settle.*—The court shall endeavor to make the parties agree to compromise or settle in accordance with law at any stage of the proceedings before rendition of judgment.

RULE 4

TRIAL

SECTION 1. *Continuous trial.*—The judge shall conduct continuous trial which shall not exceed two (2) months from the date of the issuance of the pre-trial order.

Before the expiration of the two-month period, the judge may ask the Supreme Court for the extension of the trial period for justifiable cause.

SEC. 2. *Affidavits in lieu of direct examination.*—In lieu of direct examination, affidavits marked during the pre-trial shall be presented as direct examination of affiants subject to cross-examination by the adverse party.

SEC. 3. *One-day examination of witness rule.*—The court shall strictly adhere to the rule that a witness has to be fully examined in one (1) day, subject to the court's discretion of extending the examination for justifiable reason. After the presentation of the last witness, only oral offer of evidence shall be allowed, and the opposing party shall immediately interpose his objections. The judge shall forthwith rule on the offer of evidence in open court.

SEC. 4. *Submission of case for decision; filing of memoranda.*—After the last party has rested its case, the court shall issue an order submitting the case for decision.

The court may require the parties to submit their respective memoranda, if possible in electronic form, within a non-extendible period of thirty (30) days from the date the case is submitted for decision.

The court shall have a period of sixty (60) days to decide the case from the date the case is submitted for decision.

SEC. 5. *Period to try and decide.*—The court shall have a period of one (1) year from the filing of the complaint to try and decide the case. Before the expiration of the one-year period, the court may petition the Supreme Court for the extension of the period for justifiable cause.

The court shall prioritize the adjudication of environmental cases.

RULE 5

JUDGMENT AND EXECUTION

SECTION 1. *Reliefs in a citizen suit.*—If warranted, the court may grant to the plaintiff proper reliefs which shall include the protection, preservation or rehabilitation of the environment and the payment of attorney's fees, costs of suit and other litigation expenses. It may also require the violator to submit a program of rehabilitation or restoration of the environment, the costs of which shall be borne by the violator, or to contribute to a special trust fund for that purpose subject to the control of the court.

SEC. 2. *Judgment not stayed by appeal.*—Any judgment directing the performance of acts for the protection, preservation or rehabilitation of the environment shall be executory pending appeal unless restrained by the appellate court.

SEC. 3. *Permanent EPO; writ of continuing mandamus.*—In the judgment, the court may convert the TEPO to a permanent EPO or issue a writ of continuing *mandamus* directing the performance of acts which shall be effective until the judgment is fully satisfied.

The court may, by itself or through the appropriate government agency, monitor the execution of the judgment and require the party concerned to submit written reports on a quarterly basis or sooner as may be necessary, detailing the progress of the execution and satisfaction of the judgment. The other party may, at its option, submit its comments or observations on the execution of the judgment.

SEC. 4. *Monitoring of compliance with judgment and orders of the court by a commissioner.*—The court may *motu proprio*, or upon motion of the prevailing party, order that the enforcement of the judgment or order be referred to a commissioner to be appointed by the court. The commissioner shall file with the court written progress reports on a quarterly basis or more frequently when necessary.

SEC. 5. *Return of writ of execution.*—The process of execution shall terminate upon a sufficient showing that the decision or order has been implemented to the satisfaction of the court in accordance with Section 14, Rule 39 of the Rules of Court.

RULE 6

STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION

SECTION 1. *Strategic lawsuit against public participation (SLAPP).*—A legal action filed to harass, vex, exert undue pressure or stifle any legal recourse that any person, institution or the government has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights shall be treated as a SLAPP and shall be governed by these Rules.

SEC. 2. *SLAPP as a defense; how alleged.*—In a SLAPP filed against a person involved in the enforcement of environmental laws, protection of the environment, or assertion of environmental rights, the defendant may file an answer interposing as a defense that the case is a SLAPP and shall be supported by documents, affidavits, papers and other evidence; and, by way of counterclaim, pray for damages, attorney's fees and costs of suit.

The court shall direct the plaintiff or adverse party to file an opposition showing the suit is not a SLAPP, attaching evidence in support thereof, within a non-extendible period of five (5) days from receipt of notice that an answer has been filed.

The defense of a SLAPP shall be set for hearing by the court after issuance of the order to file an opposition within fifteen (15) days from filing of the comment or the lapse of the period.

SEC. 3. *Summary hearing.*—The hearing on the defense of a SLAPP shall be summary in nature. The parties must submit all available evidence in support of their respective positions. The party seeking the dismissal of the case must prove by substantial evidence that his acts for the enforcement of environmental law is a legitimate action for the protection, preservation and rehabilitation of the environment. The party filing the action assailed as a SLAPP shall prove by preponderance of evidence that the action is not a SLAPP and is a valid claim.

SEC. 4. *Resolution of the defense of a SLAPP.*—The affirmative defense of a SLAPP shall be resolved within thirty (30) days after the summary hearing. If the court dismisses the action, the court may award damages, attorney's fees and costs of suit under a counterclaim if such has been filed. The dismissal shall be with prejudice.

If the court rejects the defense of a SLAPP, the evidence adduced during the summary hearing shall be treated as evidence of the parties on the merits of the case. The action shall proceed in accordance with the Rules of Court.

PART III

SPECIAL CIVIL ACTIONS

RULE 7

WRIT OF KALIKASAN

SECTION 1. *Nature of the writ.*—The writ is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

SEC. 2. *Contents of the petition.*—The verified petition shall contain the following:

- (a) The personal circumstances of the petitioner;
- (b) The name and personal circumstances of the respondent or if the name and personal circumstances are unknown and uncertain, the respondent may be described by an assumed appellation;
- (c) The environmental law, rule or regulation violated or threatened to be violated, the act or omission complained of, and the environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces;
- (d) All relevant and material evidence consisting of the affidavits of witnesses, documentary evidence, scientific or other expert studies, and if possible, object evidence;
- (e) The certification of petitioner under oath that: (1) petitioner has not commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency, and no such other action or claim is pending

therein; (2) if there is such other pending action or claim, a complete statement of its present status; (3) if petitioner should learn that the same or similar action or claim has been filed or is pending, petitioner shall report to the court that fact within five (5) days therefrom; and

- (f) The reliefs prayed for which may include a prayer for the issuance of a TEPO.

SEC. 3. *Where to file.*—The petition shall be filed with the Supreme Court or with any of the stations of the Court of Appeals.

SEC. 4. *No docket fees.*—The petitioner shall be exempt from the payment of docket fees.

SEC. 5. *Issuance of the writ.*—Within three (3) days from the date of filing of the petition, if the petition is sufficient in form and substance, the court shall give an order: (a) issuing the writ; and (b) requiring the respondent to file a verified return as provided in Section 8 of this Rule. The clerk of court shall forthwith issue the writ under the seal of the court including the issuance of a cease and desist order and other temporary reliefs effective until further order.

SEC. 6. *How the writ is served.*—The writ shall be served upon the respondent by a court officer or any person deputized by the court, who shall retain a copy on which to make a return of service. In case the writ cannot be served personally, the rule on substituted service shall apply.

SEC. 7. *Penalty for refusing to issue or serve the writ.*—A clerk of court who unduly delays or refuses to issue the writ after its allowance or a court officer or deputized person who unduly delays or refuses to serve the same shall be punished by the court for contempt without prejudice to other civil, criminal or administrative actions.

SEC. 8. *Return of respondent; contents.*—Within a non-extendible period of ten (10) days after service of the writ, the respondent shall file a verified return which shall contain all defenses to show that respondent did not violate or threaten to violate, or allow the violation of any environmental law, rule or regulation or commit any act resulting to environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

All defenses not raised in the return shall be deemed waived.

The return shall include affidavits of witnesses, documentary evidence, scientific or other expert studies, and if possible, object evidence, in support of the defense of the respondent.

A general denial of allegations in the petition shall be considered as an admission thereof.

SEC. 9. *Prohibited pleadings and motions.*—The following pleadings and motions are prohibited:

- (a) Motion to dismiss;
- (b) Motion for extension of time to file return;
- (c) Motion for postponement;
- (d) Motion for a bill of particulars;
- (e) Counterclaim or cross-claim;
- (f) Third-party complaint;
- (g) Reply; and
- (h) Motion to declare respondent in default.

SEC. 10. *Effect of failure to file return.*—In case the respondent fails to file a return, the court shall proceed to hear the petition *ex parte*.

SEC. 11. *Hearing.*—Upon receipt of the return of the respondent, the court may call a preliminary conference to simplify the issues, determine the possibility of obtaining stipulations or admissions from the parties, and set the petition for hearing.

The hearing including the preliminary conference shall not extend beyond sixty (60) days and shall be given the same priority as petitions for the writs of *habeas corpus*, *amparo* and *habeas data*.

SEC. 12. *Discovery Measures.*—A party may file a verified motion for the following reliefs:

- (a) *Ocular Inspection; order.*—The motion must show that an ocular inspection order is necessary to establish the magnitude of the violation or the threat as to prejudice the

life, health or property of inhabitants in two or more cities or provinces. It shall state in detail the place or places to be inspected. It shall be supported by affidavits of witnesses having personal knowledge of the violation or threatened violation of environmental law.

After hearing, the court may order any person in possession or control of a designated land or other property to permit entry for the purpose of inspecting or photographing the property or any relevant object or operation thereon.

The order shall specify the person or persons authorized to make the inspection and the date, time, place and manner of making the inspection and may prescribe other conditions to protect the constitutional rights of all parties.

- (b) *Production or inspection of documents or things; order.*—The motion must show that a production order is necessary to establish the magnitude of the violation or the threat as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

After hearing, the court may order any person in possession, custody or control of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, or objects in digitized or electronic form, which constitute or contain evidence relevant to the petition or the return, to produce and permit their inspection, copying or photographing by or on behalf of the movant.

The production order shall specify the person or persons authorized to make the production and the date, time, place and manner of making the inspection or production and may prescribe other conditions to protect the constitutional rights of all parties.

SEC. 13. *Contempt.*—The court may after hearing punish the respondent who refuses or unduly delays the filing of a return, or who makes a false return, or any person who disobeys or resists a

lawful process or order of the court for indirect contempt under Rule 71 of the Rules of Court.

SEC. 14. *Submission of case for decision; filing of memoranda.*—After hearing, the court shall issue an order submitting the case for decision. The court may require the filing of memoranda and if possible, in its electronic form, within a non-extendible period of thirty (30) days from the date the petition is submitted for decision.

SEC. 15. *Judgment.*—Within sixty (60) days from the time the petition is submitted for decision, the court shall render judgment granting or denying the privilege of the writ of *kalikasan*.

The reliefs that may be granted under the writ are the following:

- (a) Directing respondent to permanently cease and desist from committing acts or neglecting the performance of a duty in violation of environmental laws resulting in environmental destruction or damage;
- (b) Directing the respondent public official, government agency, private person or entity to protect, preserve, rehabilitate or restore the environment;
- (c) Directing the respondent public official, government agency, private person or entity to monitor strict compliance with the decision and orders of the court;
- (d) Directing the respondent public official, government agency, or private person or entity to make periodic reports on the execution of the final judgment; and
- (e) Such other reliefs which relate to the right of the people to a balanced and healthful ecology or to the protection, preservation, rehabilitation or restoration of the environment, except the award of damages to individual petitioners.

SEC. 16. *Appeal.*—Within fifteen (15) days from the date of notice of the adverse judgment or denial of motion for reconsideration, any party may appeal to the Supreme Court under Rule 45 of the Rules of Court. The appeal may raise questions of fact.

SEC. 17. *Institution of separate actions.*—The filing of a petition for the issuance of the writ of *kalikasan* shall not preclude the filing of separate civil, criminal or administrative actions.

RULE 8

WRIT OF CONTINUING MANDAMUS

SECTION 1. *Petition for 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.

SEC. 2. *Where to file the petition.*—The petition shall be filed with the Regional Trial Court exercising jurisdiction over the territory where the actionable neglect or omission occurred or with the Court of Appeals or the Supreme Court.

SEC. 3. *No docket fees.*—The petitioner shall be exempt from the payment of docket fees.

SEC. 4. *Order to comment.*—If the petition is sufficient in form and substance, the court shall issue the writ and require the respondent to comment on the petition within ten (10) days from receipt of a copy thereof. Such order shall be served on the respondents in such manner as the court may direct, together with a copy of the petition and any annexes thereto.

SEC. 5. *Expediting proceedings; TEPO.*—The court in which the petition is filed may issue such orders to expedite the proceedings, and it may also grant a TEPO for the preservation of the rights of the parties pending such proceedings.

SEC. 6. *Proceedings after comment is filed.*—After the comment is filed or the time for the filing thereof has expired, the court may hear the case which shall be summary in nature or require the parties to submit memoranda. The petition shall be resolved without delay within sixty (60) days from the date of the submission of the petition for resolution.

SEC. 7. *Judgment.*—If warranted, the court shall grant the privilege of the writ of continuing *mandamus* requiring respondent to perform an act or series of acts until the judgment is fully satisfied and to grant such other reliefs as may be warranted resulting from the wrongful or illegal acts of the respondent. The court shall require the respondent to submit periodic reports detailing the progress and execution of the judgment, and the court may, by itself or through a commissioner or the appropriate government agency, evaluate and monitor compliance. The petitioner may submit its comments or observations on the execution of the judgment.

SEC. 8. *Return of the writ.*—The periodic reports submitted by the respondent detailing compliance with the judgment shall be contained in partial returns of the writ.

Upon full satisfaction of the judgment, a final return of the writ shall be made to the court by the respondent. If the court finds that the judgment has been fully implemented, the satisfaction of judgment shall be entered in the court docket.

PART IV

CRIMINAL PROCEDURE

RULE 9

PROSECUTION OF OFFENSES

SECTION 1. *Who may file.*—Any offended party, peace officer or any public officer charged with the enforcement of an environmental law may file a complaint before the proper officer in accordance with the Rules of Court.

SEC. 2. *Filing of the information.*—An information, charging a person with a violation of an environmental law and subscribed by the prosecutor, shall be filed with the court.

SEC. 3. *Special prosecutor.*—In criminal cases, where there is no private offended party, a counsel whose services are offered by any person or organization may be allowed by the court as special prosecutor, with the consent of and subject to the control and supervision of the public prosecutor.

RULE 10

PROSECUTION OF CIVIL ACTIONS

SECTION 1. *Institution of criminal and civil actions.*—When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged, shall be deemed instituted with the criminal action unless the complainant waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.

Unless the civil action has been instituted prior to the criminal action, the reservation of the right to institute separately the civil action shall be made during arraignment.

In case civil liability is imposed or damages are awarded, the filing and other legal fees shall be imposed on said award in accordance with Rule 141 of the Rules of Court, and the fees shall constitute a first lien on the judgment award. The damages awarded in cases where there is no private offended party, less the filing fees, shall accrue to the funds of the agency charged with the implementation of the environmental law violated. The award shall be used for the restoration and rehabilitation of the environment adversely affected.

RULE 11

ARREST

SECTION 1. *Arrest without warrant; when lawful.*—A peace officer or an individual deputized by the proper government agency may, without a warrant, arrest a person:

- (a) When, in his presence, the person to be arrested has committed, is actually committing or is attempting to commit an offense; or
- (b) When an offense has just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it.

Individuals deputized by the proper government agency who are enforcing environmental laws shall enjoy the presumption of regularity under Section 3(m), Rule 131 of the Rules of Court when effecting arrests for violations of environmental laws.

SEC. 2. *Warrant of arrest.*—All warrants of arrest issued by the court shall be accompanied by a certified true copy of the information filed with the issuing court.

RULE 12

CUSTODY AND DISPOSITION OF SEIZED ITEMS, EQUIPMENT, PARAPHERNALIA, CONVEYANCES AND INSTRUMENTS

SECTION 1. *Custody and disposition of seized items.*—The custody and disposition of seized items shall be in accordance with the applicable laws or rules promulgated by the concerned government agency.

SEC. 2. *Procedure.*—In the absence of applicable laws or rules promulgated by the concerned government agency, the following procedure shall be observed:

- (a) The apprehending officer having initial custody and control of the seized items, equipment, paraphernalia, conveyances and instruments shall physically inventory and whenever practicable, photograph the same in the presence of the person from whom such items were seized.
- (b) Thereafter, the apprehending officer shall submit to the issuing court the return of the search warrant within five (5) days from date of seizure or in case of warrantless

arrest, submit within five (5) days from date of seizure, the inventory report, compliance report, photographs, representative samples and other pertinent documents to the public prosecutor for appropriate action.

- (c) Upon motion by any interested party, the court may direct the auction sale of seized items, equipment, paraphernalia, tools or instruments of the crime. The court shall, after hearing, fix the minimum bid price based on the recommendation of the concerned government agency. The sheriff shall conduct the auction.
- (d) The auction sale shall be with notice to the accused, the person from whom the items were seized, or the owner thereof and the concerned government agency.
- (e) The notice of auction shall be posted in three conspicuous places in the city or municipality where the items, equipment, paraphernalia, tools or instruments of the crime were seized.
- (f) The proceeds shall be held in trust and deposited with the government depository bank for disposition according to the judgment.

RULE 13

PROVISIONAL REMEDIES

SECTION 1. *Attachment in environmental cases.*—The provisional remedy of attachment under Rule 127 of the Rules of Court may be availed of in environmental cases.

SEC. 2. *Environmental Protection Order (EPO); Temporary Environmental Protection Order (TEPO) in criminal cases.*—The procedure for and issuance of EPO and TEPO shall be governed by Rule 2 of these Rules.

RULE 14

BAIL

SECTION 1. *Bail, where filed.*—Bail in the amount fixed may be filed with the court where the case is pending, or in the absence

or unavailability of the judge thereof, with any regional trial judge, metropolitan trial judge, municipal trial judge or municipal circuit trial judge in the province, city or municipality. If the accused is arrested in a province, city or municipality other than where the case is pending, bail may also be filed with any Regional Trial Court of said place, or if no judge thereof is available, with any metropolitan trial judge, municipal trial judge or municipal circuit trial judge therein. If the court grants bail, the court may issue a hold-departure order in appropriate cases.

SEC. 2. *Duties of the court.*—Before granting the application for bail, the judge must read the information in a language known to and understood by the accused and require the accused to sign a written undertaking, as follows:

- (a) To appear before the court that issued the warrant of arrest for arraignment purposes on the date scheduled, and if the accused fails to appear without justification on the date of arraignment, accused waives the reading of the information and authorizes the court to enter a plea of not guilty on behalf of the accused and to set the case for trial;
- (b) To appear whenever required by the court where the case is pending; and
- (c) To waive the right of the accused to be present at the trial, and upon failure of the accused to appear without justification and despite due notice, the trial may proceed *in absentia*.

RULE 15

ARRAIGNMENT AND PLEA

SECTION 1. *Arraignment.*—The court shall set the arraignment of the accused within fifteen (15) days from the time it acquires jurisdiction over the accused, with notice to the public prosecutor and offended party or concerned government agency that it will entertain plea-bargaining on the date of the arraignment.

SEC. 2. *Plea-bargaining*.—On the scheduled date of arraignment, the court shall consider plea-bargaining arrangements. Where the prosecution and offended party or concerned government agency agree to the plea offered by the accused, the court shall:

- (a) Issue an order which contains the plea-bargaining arrived at;
- (b) Proceed to receive evidence on the civil aspect of the case, if any; and
- (c) Render and promulgate judgment of conviction, including the civil liability for damages.

RULE 16

PRE-TRIAL

SECTION 1. *Setting of pre-trial conference*.—After the arraignment, the court shall set the pre-trial conference within thirty (30) days. It may refer the case to the branch clerk of court, if warranted, for a preliminary conference to be set at least three (3) days prior to the pre-trial.

SEC. 2. *Preliminary conference*.—The preliminary conference shall be for the following purposes:

- (a) To assist the parties in reaching a settlement of the civil aspect of the case;
- (b) To mark the documents to be presented as exhibits;
- (c) To attach copies thereof to the records after comparison with the originals;
- (d) To ascertain from the parties the undisputed facts and admissions on the genuineness and due execution of documents marked as exhibits;
- (e) To consider such other matters as may aid in the prompt disposition of the case;
- (f) To record the proceedings during the preliminary conference in the Minutes of Preliminary Conference to be signed by the parties and counsel;

- (g) To mark the affidavits of witnesses which shall be in question and answer form and shall constitute the direct examination of the witnesses; and
- (h) To attach the Minutes and marked exhibits to the case record before the pre-trial proper.

The parties or their counsel must submit to the branch clerk of court the names, addresses and contact numbers of the affiants.

SEC. 3. *Pre-trial duty of the judge*.—During the pre-trial, the court shall:

- (a) Place the parties and their counsels under oath;
- (b) Adopt the minutes of the preliminary conference as part of the pre-trial proceedings, confirm markings of exhibits or substituted photocopies and admissions on the genuineness and due execution of documents, and list object and testimonial evidence;
- (c) Scrutinize the information and the statements in the affidavits and other documents which form part of the record of the preliminary investigation together with other documents identified and marked as exhibits to determine further admissions of facts as to:
 - i. The court's territorial jurisdiction relative to the offense(s) charged;
 - ii. Qualification of expert witnesses; and
 - iii. Amount of damages;
- (d) Define factual and legal issues;
- (e) Ask parties to agree on the specific trial dates and adhere to the flow chart determined by the court which shall contain the time frames for the different stages of the proceeding up to promulgation of decision;
- (f) Require the parties to submit to the branch clerk of court the names, addresses and contact numbers of witnesses that need to be summoned by subpoena; and

- (g) Consider modification of order of trial if the accused admits the charge but interposes a lawful defense.

SEC. 4. *Manner of questioning.*—All questions or statements must be directed to the court.

SEC. 5. *Agreements or admissions.*—All agreements or admissions made or entered during the pre-trial conference shall be reduced in writing and signed by the accused and counsel; otherwise, they cannot be used against the accused. The agreements covering the matters referred to in Section 1, Rule 118 of the Rules of Court shall be approved by the court.

SEC. 6. *Record of proceedings.*—All proceedings during the pre-trial shall be recorded, the transcripts prepared and the minutes signed by the parties or their counsels.

SEC. 7. *Pre-trial order.*—The court shall issue a pre-trial order within ten (10) days after the termination of the pre-trial, setting forth the actions taken during the pre-trial conference, the facts stipulated, the admissions made, evidence marked, the number of witnesses to be presented and the schedule of trial. The order shall bind the parties and control the course of action during the trial.

RULE 17

TRIAL

SECTION 1. *Continuous trial.*—The court shall endeavor to conduct continuous trial which shall not exceed three (3) months from the date of the issuance of the pre-trial order.

SEC. 2. *Affidavit in lieu of direct examination.*—Affidavit in lieu of direct examination shall be used, subject to cross-examination and the right to object to inadmissible portions of the affidavit.

SEC. 3. *Submission of memoranda.*—The court may require the parties to submit their respective memoranda and if possible, in electronic form, within a non-extendible period of thirty (30) days from the date the case is submitted for decision.

With or without any memoranda filed, the court shall have a period of sixty (60) days to decide the case counted from the last day of the 30-day period to file the memoranda.

SEC. 4. *Disposition period.*—The court shall dispose the case within a period of ten (10) months from the date of arraignment.

SEC. 5. *Pro bono lawyers.*—If the accused cannot afford the services of counsel or there is no available public attorney, the court shall require the Integrated Bar of the Philippines to provide *pro bono* lawyers for the accused.

RULE 18

SUBSIDIARY LIABILITY

SECTION 1. *Subsidiary liability.*—In case of conviction of the accused and subsidiary liability is allowed by law, the court may, by motion of the person entitled to recover under judgment, enforce such subsidiary liability against a person or corporation subsidiarily liable under Article 102 and Article 103 of the Revised Penal Code.

RULE 19

STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION IN CRIMINAL CASES

SECTION 1. *Motion to dismiss.*—Upon the filing of an information in court and before arraignment, the accused may file a motion to dismiss on the ground that the criminal action is a SLAPP.

SEC. 2. *Summary hearing.*—The hearing on the defense of a SLAPP shall be summary in nature. The parties must submit all the available evidence in support of their respective positions. The party seeking the dismissal of the case must prove by substantial evidence that his acts for the enforcement of environmental law is a legitimate action for the protection, preservation and rehabilitation of the environment. The party filing the action assailed as a SLAPP shall prove by preponderance of evidence that the action is not a SLAPP.

SEC. 3. *Resolution.*—The court shall grant the motion if the accused establishes in the summary hearing that the criminal case has been filed with intent to harass, vex, exert undue pressure or

stifle any legal recourse that any person, institution or the government has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights.

If the court denies the motion, the court shall immediately proceed with the arraignment of the accused.

PART V

EVIDENCE

RULE 20

PRECAUTIONARY PRINCIPLE

SECTION 1. *Applicability*.—When there is a lack of full scientific certainty in establishing a causal link between human activity and environmental effect, the court shall apply the precautionary principle in resolving the case before it.

The constitutional right of the people to a balanced and healthful ecology shall be given the benefit of the doubt.

SEC. 2. *Standards for application*.—In applying the precautionary principle, the following factors, among others, may be considered: (1) threats to human life or health; (2) inequity to present or future generations; or (3) prejudice to the environment without legal consideration of the environmental rights of those affected.

RULE 21

DOCUMENTARY EVIDENCE

SECTION 1. *Photographic, video and similar evidence*.—Photographs, videos and similar evidence of events, acts, transactions of wildlife, wildlife by-products or derivatives, forest products or mineral resources subject of a case shall be admissible when authenticated by the person who took the same, by some other person present when said evidence was taken, or by any other person competent to testify on the accuracy thereof.

SEC. 2. *Entries in official records*.—Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated.

RULE 22

FINAL PROVISIONS

SECTION 1. *Effectivity*.—These Rules shall take effect within fifteen (15) days following publication once in a newspaper of general circulation.

SEC. 2. *Application of the Rules of Court*.—The Rules of Court shall apply in a suppletory manner, except as otherwise provided herein.

RATIONALE TO THE RULES OF PROCEDURE FOR ENVIRONMENTAL CASES

I. INTRODUCTION: THE RIGHTS-BASED APPROACH TO ENVIRONMENTAL JUSTICE

A. BASIC PARADIGMS OF ENVIRONMENTAL PROTECTION

While the gradual, yet ominous and potentially cataclysmic degradation of our environment is undeniable, the concept of environmental protection is in of itself a quagmire of grand proportions. Unlike more traditionally defined human rights (and other categories of rights as well, such as civil rights), the question of whether environmental rights should be enforced depends on where the assessor's paradigm is plotted along a spectrum of competing interests. In the contrasting example of genocide, for instance, assuming the elements of this international crime have been established, there is no general grey area in which one can question and argue whether rights have been violated. Generally, either it is genocide or it is not. In addition, the subject of genocide is sensitive, and pointedly strikes at the nerve of human dignity because of the crime's gruesome and inhumane nature. The protection of the environment, on the other hand, does not boast of such clear polar ends of interpretation. One can argue that less environmental protection maximizes the exploitation of resources for the benefit of the people's consumption.¹ This traditional dichotomy of economic interests as against environmental interests has suffused the discourse on environmental protection, as well as other areas such as economic and social development. The dynamic between sociology, economics and science (and not merely ecology) is now taken into consideration when discussing the subject of environmental protection.

¹ See HARALD HOHMANN, PRECAUTIONARY LEGAL DUTIES AND PRINCIPLES OF MODERN INTERNATIONAL ENVIRONMENTAL LAW 1-2 (1994).

Given these commonly competing interests, several schools of thought have arisen in seeking to address this perpetual tug of war. The seemingly boundless and multifaceted nature of environmental rights has spawned different basic approaches to its enforcement.² Taken together, an amorphous pool of theoretical and practical legal principles materialized, giving way for an evolving environmental legal movement recognized all over the world, but applied in varying degrees, often producing contradictory stances.³

The first is the anthropocentric approach to environmental protection. Under this approach, the goal of preserving the environment is to satisfy the health, aesthetic and economic interests of man.⁴ Man's primary interest is that there are sufficient resources to exploit for consumption. Thus, at the breaking point of realizing the limit of resources, man is forced to consider preserving nature to the extent that it could provide for enough resources to last his lifetime.⁵ The glaring repercussion of this approach is that the subsistence of our ecosystems would be endangered.⁶ In all likelihood, the rate of exploitation would far exceed the rate of protection, and indifference to protection is exacerbated by the presence of sufficient resources for the time being. Accordingly, along the abovementioned spectrum of competing interests, the anthropocentric approach would lie on the end favoring economic interests.

Whether based on scientific evidence or mere observation, environmental destruction has slowly gained worldwide attention. Prerogatives to slow down the effects of an anthropocentric approach resulted in more ecologically-favorable approaches to environmental protection.⁷ The discipline of ecology is based on the interconnectivity and interdependence between organisms and the

² *Id.*

³ *Id.* (The anthropocentric approach calls for the preservation of nature to the extent that it may continue to satisfy the needs of man, whereas the sustainability principle claims that nature must also be maintained for its own sake and sustainable indefinitely spanning future generations.).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 2.

elements of the environment.⁸ An appreciation of this link between all elements of living things and nature would naturally instill a sense of urgency to protect our ecosystems. Without such protection, the endangerment of the ecosystems would correlate to the endangerment of humankind. Conversely, its protection would benefit man and his ability to survive and sustain in the world. An extreme manifestation of ecological protection is an ecocentric approach, the obvious antithesis of anthropocentricity, where economic and environmental interests are at odds. Under the ecocentric approach, plants and animals themselves have legal rights.⁹ The obvious trouble with strictly applying this approach is that man may be impeded from exploiting natural resources for his survival. As with the anthropocentric approach, heavily favoring one interest over another, in this case environment over economy, could produce absurd results for social and economic development.¹⁰

Thus, the more nuanced principle of sustainability came into fruition. The sustainability principle seeks to strike a delicate balance between the competing interests of economic exploitation (and thus economic development) and environmental protection. It espouses a system in which man can exploit resources for his benefit without destroying the environment in such a way that future generations cannot meet their own needs.¹¹ In other words, sustainability seeks to protect posterity, or inter-generational equity.¹² Sustainability requires that renewable resources be exploited at a rate that allows for its continuing usage and availability in the future without decline.¹³ Sustainability also requires non-renewable resources be used as efficiently as possible.¹⁴ In sum, the aim of this principle is to demand optimal management of environmental resources.¹⁵ Taking the main elements of other approaches and disciplines such as ecology,

⁸ *Id.*

⁹ *Id.* at 3.

¹⁰ *Id.* at 2-3.

¹¹ *Id.* at 2.

¹² *Id.* at 1.

¹³ *Id.* at 2.

¹⁴ *Id.*

¹⁵ *Id.*

sustainability appears to be the ideal principle upon which legal regimes protecting the environment should be based.

Implementing sustainability, however, is an entirely different challenge. There is a lingering question on how to develop environmental laws, both internationally and domestically, which properly reflect the balanced approach to environmental protection. Several factors make this development extremely difficult. For instance, certain jurisdictions have different economic needs than others. The mere difference in degree of economic interests alone can hamper political will to protect the environment. Moreover, such nuances also challenge the development of international environmental norms where consensus among jurisdictions with different economic and environmental needs would be difficult to conceive. Yet, despite these potential issues, the push for the enactment and enforcement of environmental laws comes with the hope that they become authoritative through international norms, or at least influential through best domestic practices.

B. THREE MAIN PRINCIPLES

The aforementioned paradigms revolve around the basic focal points of man and nature, and use the same to shape an approach to environmental protection. The study of the environment is complicated because of its multi-disciplinary character and the scientific uncertainty that is associated with many environmental problems. Hence, the development of solutions for environmental problems is also tedious and complex. Protection based on empirical data (what we know) and on reasonable calculations or expectations (what we know will happen) appears to be the logical framework for solution-building. More recently, a newer principle emerged wherein precaution must be exercised. Under the precautionary principle, bodies exercise precaution against grave risks of environmental harm where there is lack of full scientific evidence available to prove its inevitable occurrence.¹⁶

¹⁶ See e.g., Principle 15, U.N. Conference on Environment and Development, Rio de Janeiro, Braz., June 3-14, 1992, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26 (Vol. I) (Aug. 12, 1992) [hereinafter *Rio Declaration*].

The first of these principles is the polluter-pays principle. It requires the polluter to internalize the costs associated with causing pollution.¹⁷ Based on an economic theory of externalities, polluters can produce goods or services while causing harm to the environment, but the prices of such goods and services do not reflect the environmental costs.¹⁸ When the polluter is made to pay, the polluter takes responsibility for all the costs arising from pollution, but is considered incomplete when part of the cost is shifted to the community as a whole.¹⁹ Implementation of this principle occurs in two main methods: taxation that corresponds to the estimated economic value of the environmental damage, and regulatory standards to prohibit or limit the damage associated with an economic activity.²⁰ These methods ensure that the price of products and services more accurately reflect the total cost for producing the same, where the effect on the environment is also factored into the equation.

The Organization for Economic Co-Operation and Development (OECD) and the European Community (EC) have adopted the polluter-pays principle. Additionally, versions of the polluter-pays principle can be found in the preambles and functional provisions of multilateral conventions. The language laying out the principle in preambles is non-binding,²¹ while language in operative provisions is binding as a matter of international law.²² The polluter-pays

¹⁷ NICHOLAS DE SADELEER, ENVIRONMENTAL PRINCIPLES - FROM POLITICAL SLOGANS TO LEGAL RULES 21 (2002).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 23 (enumerating the conventions where the principle is found in the preamble and are thus non-binding insofar as the principle is concerned: 1980 Athens Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities (as amended in Syracuse on 7 March 1996); the 1990 OPRC Convention; the 1992 Helsinki Convention on the Transboundary Effects of Industrial Accidents; the 1993 Lugano Convention on Civil Liability Damage Resulting From Activities Dangerous to the Environment; and the 2000 London Protocol on Preparedness, Response, and Co-Operation to Pollution Incidents by Hazardous and Noxious Substances).

²² *Id.* (enumerating the conventions where the principle is found in operative provisions: the 1985 ASEAN Agreement on the Conservation of Nature and Natural Resources; the 1991 Convention on the Protection of the Alps; the 1992 Porto Agreement to establish the European

principle had evolved from one of economic objectives (i.e. to harmonize markets and prevent distortion of competition) to prevention of environmental harm, mainly because the purely economic approach would seem to allow for polluters to continue causing damage to the environment as long as such costs have been internalized.²³ Although the prevention aspect of the polluter-pays principle is moderate, its character as a curative measure is evident.²⁴

Curative measures by regulatory or legal bodies reflect recognition of the urgency to address environmental harm. Yet, curative measures are only stopgap solutions to already existing environmental damage.²⁵ The prevention principle looks to stop environmental damage before it occurs and is critical where such potential damage may be irreversible.²⁶ There are several methods in implementing the prevention principle. One common way is through the issuance of permits or authorizations that set out the conditions for administrative controls and criminal penalties where appropriate.²⁷ The permits are highly specific and set standards that dictate the means of operation, quantities and concentrations of pollutants that may be discharged, as well as what type of security measures must be put in place by the permit holder for the duration of the permit.²⁸ Prevention can also be linked to areas which are not directly related to environmental protection, such as civil liability, environmental taxation and criminal law.²⁹

Economic Area (EEA); the 1992 OSPAR Convention; the 1992 Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes; the 1992 Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area; the 1994 Agreements concerning the Protection of the Scheldt and Meuse Rivers; the 1994 Convention on Co-Operation for the Protection and Sustainable Use of the Danube River; the 1976 Barcelona Convention for the Protection of the Mediterranean Sea against Pollution (as amended in 1995); the 1996 London Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter; and the 1998 Rotterdam Convention on the Protection of the Rhine).

²³ *Id.* at 33-36.

²⁴ *Id.*

²⁵ *Id.* at 61.

²⁶ *Id.*

²⁷ *Id.* at 72.

²⁸ *Id.* at 73.

²⁹ *Id.*

Since the operation of the prevention principle comes in many forms and touches upon several realms unrelated to the environment, the parameters of its enforcement are not quite clear.³⁰ Nonetheless, the prevention principle finds its roots in the prevention of transboundary pollution.³¹ It eventually spawned into a more general and encompassing principle that is reflected in several environmental protection measures mentioned above.

The third principle is the precautionary principle. Given the general sphere of uncertainty encompassing environmental science, protection and regulation, the newer approach of precaution looks to transcend the standards of prevention and instead address potential harm even with minimal predictability at hand.³² To adopt the precautionary principle is to accede to the notion that taking action before the risk becomes known is the more prudent approach to environmental protection today.³³

As explained in a subsequent section, the Supreme Court has adopted the precautionary principle recognizing that the consideration of scientific uncertainty plays a crucial role in environmental litigation. To do so would be to give environmental plaintiffs a better chance of proving their cases, where the risks of environmental harm may not easily be proven.

C. ENVIRONMENTAL LAW AND THE EMERGENCE OF THE RIGHTS-BASED APPROACH

The approaches to and principles of environmental protection must necessarily be subsumed in environmental law. Environmental law is associated with two main approaches: the traditional approach, and the modern resource-economical and ecological approach.³⁴

³⁰ *Id.* at 63.

³¹ *Id.* at 62 (describing the *Trail Smelter* case, wherein the Dominion of Canada was held liable for a foundry's causing of pollutants to be discharged in the atmosphere, and that it had a duty to protect other states against injurious acts caused by individuals within its jurisdiction).

³² *Id.* at 18.

³³ *Id.*

³⁴ *Id.* at 3-4.

There are three main purposes for environmental law under the traditional approach:

1. protecting the safety and health of human beings from harm and the risk of potential or impending harm;
2. assuring the general welfare of man (protection against nuisance, fulfillment of recreational and esthetic needs, etc.); and
3. protecting economic interests (especially in the fields of agriculture, forestry, fish farming, energy production and drinking water supply) from detrimental effects of pollution.³⁵

These purposes reflect important qualities: protecting man from environmental harm and protecting the environment in such a way that man's interests (e.g. economic, esthetic) are not impeded. The qualities reveal shades of the anthropocentric approach.

The more progressive paradigm is the modern resource-economical and ecological approach. Under this approach, the economic and esthetic interests of man are protected, but also tempered with the protection of the environment through sustainable use and optimal management of resources.³⁶ In contrast to the traditional approach, the modern resource-economical and ecological approach reflects the sustainability principle. In this regard, the survival of future generations is vital, demanding that environmental protection be done in such a manner that guarantees sustainable use of natural resources.³⁷

Taking sustainability a step further, environmental law received a boost from components of the international community. Yet another, newer angle took into account the now recognized intersection between environmental rights and human rights, which aptly reflects the interdependent relationship of man and nature. In 1994, Fatma Zohra Ksentini, Special Rapporteur on Human Rights and Environment finalized a seminal report entitled "Human Rights

³⁵ *Id.* at 3.

³⁶ *Id.* at 4.

³⁷ *Id.*

and the Environment.”³⁸ The Ksentini Report is known for imploring the international community to recognize a human rights approach to solving environmental issues. It generally posits that subsumed in the nexus between human rights and the environment are several other disciplinary elements such as the global economy, democracy and cultural development among others.³⁹ All of these elements together constitute a more comprehensive human dimension to environmental justice. In this regard, the Ksentini Report outlined the following principles:

Part I

1. Human rights, an ecologically sound environment, sustainable development and peace are interdependent and indivisible.
2. All persons have the right to a secure, healthy and ecologically sound environment. This right and other human rights, including civil, cultural, economic, political and social rights, are universal, interdependent and indivisible.
3. All persons shall be free from any form of discrimination in regard to actions and decisions that affect the environment.
4. All persons have the right to an environment adequate to meet equitably the needs of present generations and that does not impair the rights of future generations to meet equitably their needs.⁴⁰

Similar to the traditional approach of environmental law, these principles revolve around persons. It differs from the traditional approach insofar as it integrates the element of sustainability with the person-oriented right to a healthy environment.⁴¹ Even more compelling is the human rights aspect to the rights-based approach.

³⁸ Special Rapporteur's Final Report, U.N. Doc. E/CN.4/Sub.2/1994/9 (July 6, 1994) [hereinafter Ksentini Report].

³⁹ *Id.*

⁴⁰ *Id.* at 74.

⁴¹ HOHMANN, *supra* note 1, at 2-4.

Under this approach, the right of persons to environmental protection would possess the same degree of authority of fundamental rights that are backed by international norms.⁴² The aim is that this new wave of environmental protection would be treated with the same respect as international norms so as to allow domestic jurisdictions to take necessary action in protecting the environment. Assuming that the conventions reflecting the rights-based approach are binding international law (or have risen to the level of customary international law), environmental rights as human rights can enjoy ascendancy in law that, by its fundamental nature, cannot be restrained or altered by states.⁴³ At the least, the familiar construct of a human rights regime is mainly characterized by the enforceability by the people (holders of the rights), and therefore serves as an ideal framework within which environmental rights can be enforced and exercised.

D. ADOPTING A RIGHTS-BASED APPROACH

This crucial implication to the rights-based approach of who can enforce environmental rights is most relevant in the topic of litigation. The language of the Ksentini Report focusing on the right of persons lends to the suggestion that it is such persons who can enforce his or her right to a healthy environment in the same way persons can seek judicial relief for the violation of their civil or socioeconomic rights.⁴⁴ This particular aspect of the rights-based approach is one of the more important considerations for formulating solutions to environmental protection in the Philippines. Accordingly, the Supreme Court adopted the rights-based approach as the most appropriate paradigm for facilitating the administration of environmental justice.

The Constitution bestows upon the Supreme Court of the Philippines a peculiar form of authority. Specifically, the Court can enact rules to enforce constitutional rights, the power of which may

⁴² See e.g., Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (1948) (Although the Declaration itself is non-binding in nature, some international law scholars believe that at least some of its principles have risen to the level of binding customary international law.).

⁴³ *Id.*

⁴⁴ Ksentini Report, *supra* note 38, at 74.

be typically lodged in the legislative bodies or branches of other jurisdictions.⁴⁵ The Court also determines the procedures and rules of the judiciary which are necessary to facilitate the administration of justice and address the obstacles that come with specific legal issues.⁴⁶ The complexity of environmental laws and their enforcement requires the Court to rethink its procedures in order to facilitate the administration of environmental justice. Of the many guiding principles in formulating such solutions, the participation of the people in enforcing environmental rights is key. It is with this general framework, that the Court has adopted the rights-based approach and effectuated the Rules of Procedure for Environmental Cases.

II. SOURCES OF ENVIRONMENTAL RIGHTS

A. INTRODUCTION: THE NEXUS BETWEEN HUMAN RIGHTS AND ENVIRONMENTAL RIGHTS

A growing number of international instruments as well as national constitutions, domestic legislations and academic literature have recognized the inextricable link between human rights and environmental rights.⁴⁷ It is significant to note that a fair amount of literature on the origins of environmental rights documents in parallel that the “right to an adequate environment” or what is collectively known as “environmental rights” grew out of a human rights framework.⁴⁸

⁴⁵ CONSTITUTION, Art. VIII, Sec. 5, par. (5) (“The Supreme Court shall have the following powers...Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts...”).

⁴⁶ *Id.*

⁴⁷ The United Nations Environmental Program (UNEP) has a database of environmental law instruments that date back to 1933 available at http://www.unep.org/Law/Law_instruments/index.asp.

⁴⁸ Sumudu Atapattu, *The Right to a Healthy Life or the Right to Die Polluted?: The Emergence of a Human Right to a Healthy Environment Under International Law*, 16 TUL. ENVTL. L.J. 66 (2002) (Another way of framing this theory is acknowledging the reality that signs, values and attitudes towards human rights helped endorsed the environmental rights movement.).

The human rights movement came to fore shortly after the international community was recovering from the aftermath of World War II.⁴⁹ In many ways, human rights emerged as new kind of periphery for political and economic development in a period of very great uncertainty. The atrocities committed during the Second World War riveted public attention to the urgency for the community of nations to adopt an internationally-recognized policy that would foster and protect basic human dignity, peace, respect, and tolerance. In 1948, this common aspiration of according the highest respect for human dignity was soon crystallized by the United Nations General Assembly in its adoption of the “Universal Declaration of Human Rights.”⁵⁰ For the first time in history, the 1948 Universal Declaration of Human Rights sets out fundamental human rights to be universally protected.

This milestone document includes specific human rights such as the right to life, liberty, security of person, right against arbitrary arrest and detention, right to property, freedom of expression and peaceful assembly.⁵¹ The political and legal significance of this instrument is of such import that despite its status as a mere non-binding declaration it has influenced national constitutions, serves as the foundation for a growing number of international and regional covenants and treaties, including national legislation, and is recognized by many international law scholars as part of customary international law. In fact, the declaration also served as the foundation for two binding United Nations’ documents – the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESC).

Paramount to environmental rights advocates is Article 25 of the Declaration which sets out in its first paragraph, “the right to a standard of living adequate for the health and well-being” of an individual and his family. Although neither the Declaration nor any

⁴⁹ Franz Perrez, *Key Questions Concerning the Human rights and Environment Debate – An Introduction*, in HUMAN RIGHTS AND THE ENVIRONMENT: PROCEEDINGS OF A GENEVA ENVIRONMENT NETWORK ROUNDTABLE 4, (2004) [hereinafter Geneva Roundtable].

⁵⁰ Universal Declaration of Human Rights.

⁵¹ *Id.*

of its articles made specific reference to environmental protection, the adoption of the Declaration makes a strong case for the position that a human rights lens is a helpful way of viewing environmental issues. This Declaration captured the critical thesis that the enjoyment of all human rights – not only the rights to life and health – but also other social, economic, cultural, as well as civil and political rights, depended greatly on a sound environment.⁵²

It must be noted however, that at that point in environmental legal history, the right to a safe and adequate environment was recognized alongside other substantive human rights such as the right to life, the right to health, the right to adequate housing, the right to water, the right to food, the right to culture, the right to participate in public life and the right to freedom of speech.⁵³ An *independent* right to a healthy environment had yet to emerge and a deliberate plan by environmental rights advocates to sketch out a massive grassroots political campaign for environmental rights was in the offing. The brief inattention given to environment issues after the Second World War (with the pre-occupation of most world leaders and policymakers on human rights) would soon be short-lived as environmental rights advocates pressed on with the environment agenda more deliberately in the 1960s with the publication of Rachel Carson's seminal work, *Silent Spring*,⁵⁴ on the ecologically-unsound pattern of usage by man of pesticides.

⁵² Vid Vukasovic, *Human Rights and Environmental Issues* in HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENT (1990) (A good number of human rights instruments guarantee a human right to a healthy and safe environment, some of these are:

- a. Universal Declaration of Human Rights: Articles 22, 25, and 27.
- b. ICESCR: Articles 1, 6, 7, 11, 12, 13, and 15.
- c. Convention on the Elimination of All Forms of Discrimination Against Women Articles 11 and 14.
- d. Convention on the Elimination of All Forms of Racial Discrimination: Articles 2 and 5.
- e. Convention on the Rights of the Child: Articles 24 and 27.
- f. ILO Indigenous and Tribal Peoples Convention (No. 169): Article 7.).

⁵³ See generally *The National Human Rights Consultation – Engaging in the Debate* (2009), available at <http://www.hrlrc.org.au/content/topics/national-human-rights-consultation/a-human-rights-act-for-all-australians/> (last accessed on 5 February 2010).

⁵⁴ No less than U.S. Supreme Court Associate Justice William O. Douglas commended Carson's work as "the most important chronicle of this century for the human race."

Carson's work not only created more awareness regarding the debilitating effects of environmentally hazardous practices, it also gave more legitimacy to the troubled crusade of the environmental rights movement.

The first signs of an impending environmental crisis had already been felt by the time of the extremely tumultuous decade of the 1970's.⁵⁵ As a response to this clarion call for more precautionary measures in dealing with the environment, the United Nations convened the first major international environmental conference in Stockholm, Sweden⁵⁶ which gave rise to the Stockholm Declaration of 1972, known world-over as the first international document which recognized the right to a healthy environment. Principle 1 of the Stockholm Declaration linked environmental protection to human rights, stating:

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.

Two decades after the adoption of the Stockholm Declaration, a second major international environmental conference was held in Rio de Janeiro, Brazil,⁵⁷ which focused on strategies to reverse the effects of environmental degradation alongside efforts to promote international and national sustainable development. A key result area of the conference was the adoption of the Rio Declaration of 1992 which identifies 27 principles concerning a number of issues related to the environment – environmental protection, eradication of poverty, precautionary principle, polluter-pays principle, right to development, right to information and right to public participation

⁵⁵ The Vietnam War exacted a huge toll on the economies of the world (as the US suspended the convertibility of the dollar to gold in 1971), two massive oil shocks caused LDC trade deficits to balloon, cracks in the welfare system first began to show in the West, and mass marketing in cities, along with the break-up of the traditional family structure, produced widespread alienation. Protests were rife – against the North-South divide, against the indifference and cruelty of the 'Establishment,' against the conservatism of previous decades.

⁵⁶ The United Nations Conference on the Human Environment, June 5-16, 1972.

⁵⁷ The United Nations Conference on Environment and Development (UNCED) June 3-14, 1992.

in environmental decision-making processes. Principle 1 of the Rio Declaration states that "human beings are at the centre of concerns for sustainable development." Though the statement falls short of recognizing a healthy environment as a basic human right, it certainly points to that direction.

B. GENERAL SOURCES OF ENVIRONMENTAL RIGHTS

1. NON-BINDING INTERNATIONAL SOURCES

International documents of a non-binding nature play an important role in all fields of international relations, and the human rights problematique is not an exception. In many cases they can regulate international relations in a specific field de facto, although they are not formally binding. Notably, they often lead to a higher level of regulation (i.e. international treaties, institutional arrangements, etc.). The Universal Declaration on Human Rights was followed, for instance, by the Covenants, and similar developments occurred in other fields. From that point of view the proposed Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind⁵⁸ could be seen as an important step towards better protection and promotion of human rights. It seems that such a declaration should contain, more or less, what has already been proposed by the group of experts convened by the United Nations in Geneva in September 1975, but that an additional effort should be made to link it more closely to development and the environment.

Naturally, one must always have in mind the other side of the coin. Moreover, so-called soft law does not automatically mean more regulation and further progress in the field. In some cases, it leads to a proliferation of documents with very little or no importance at all, and it could even hinder the process of legal regulation. In other cases, however, including the fields of science, technology, the environment and some other cognate domains, non-

⁵⁸ G.A. Res. 3384, 10 November 1975 available at <http://www2.ohchr.org/english/law/mankind.htm>.

binding norms can be, if functionally well-designed, very important and almost universally accepted and applied in such a way as to influence human rights beneficially. Good examples of such norms are formally non-binding ecological standards which are accepted by all or most interested states and other subjects of international law because it is in their interest to do so. The sanction for those who do not apply the standard becomes functional. That means that the mere fact of not applying them can cause impairment of the environment, loss of profit, health problems, loss of life or lessening of political prestige. If adequately set, they could represent an optimal mode of behavior. In that way, although formally non-binding, they contribute to the protection of the environment, having a directly or indirectly positive impact on the protection and promotion of human rights.

There are a number of other international instruments that specifically refer to environmental human rights but are not legally binding on the Philippines because they are draft texts, are not intended to be legally binding on parties, or are conventions to which the Philippines is not a party. Some of these instruments are environmental instruments that note human rights linkages, while others are human rights instruments that note the importance of environmental rights. Although they are not binding on the Philippines, they are evidence of a strong global recognition of the importance of environmental rights, and they indicate the path that the Philippines can follow.

As noted above, the Stockholm Declaration was the first international instrument that specifically recognized the indivisible link between the environment and human rights. It states at Principle 1:

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.

Similarly the 1992 Rio Declaration on Environment and Development recognizes the right of humans to a healthy and productive life in harmony with nature.

The most comprehensive of all the international texts on environmental rights is the 1994 Draft Principles on Human Rights and the Environment, which was derived from the Ksentini Report.⁵⁹ It contains a number of articles which outline the importance of environmental rights in the human rights context. The document was drafted by a group of international experts on human rights and environment protection on behalf of the UN Special Rapporteur for Human Rights and the Environment. It was never formalized as an international instrument and is not binding, but it is perhaps one of the most important texts in terms of setting a framework for recognizing the link between human rights and environmental rights. Some of the key articles in the Draft Principles state:

- Human rights, an ecologically sound environment, sustainable development and peace are interdependent and indivisible.
- All persons have the right to a secure, healthy and ecologically sound environment. This right and other human rights, including civil, cultural, economic, political and social rights, are universal, interdependent and indivisible.

x x x x

- All persons have the right to an environment adequate to meet equitably the needs of present generations and that does not impair the rights of future generations to meet equitably their needs.

The Draft Principles highlight the indivisibility of human rights and environmental rights. A clean, healthy environment is integral to the enjoyment of many other human rights such as the right to life, the right to health and food, and the right to adequate housing. The Draft Principles are often quoted by human rights experts and international human rights bodies as a model text of environmental rights protection.

As can be seen from the above statements there is considerable support at the international level of the importance and indivisibility of environmental rights within human rights protections. It is neither a new nor radical concept. This recognition continues to grow

⁵⁹ Draft Principles On Human Rights And The Environment, E/CN.4/Sub.2/1994/9, Annex I (1994) available at <http://www1.umn.edu/humanrts/instree/1994-dec.htm> on 19 May 2009.

through many international bodies and provides a strong foundation for the Philippines to include environmental rights within human rights protections.

2. ENVIRONMENTAL RIGHTS WITHIN DOMESTIC HUMAN RIGHTS INSTRUMENTS

The protection of environmental rights in a human rights context at a domestic level is not a new concept. Many countries around the world provide some protection of environmental rights within their human rights charters.

The following is a summary of the constitutional recognition of environmental rights worldwide, which was submitted to the UN Commission on Human Rights:

Numerous constitutions of the nations of the world guarantee a right to a clean and healthy environment or a related right. Of the approximately 193 countries of the world, there are now 117 whose national constitutions mention the protection of the environment or natural resources. One hundred and nine of them recognize the right to a clean and healthy environment and/or the state's obligation to prevent environmental harm. Of these, 56 constitutions explicitly recognize the right to a clean and healthy environment, and 97 constitutions make it the duty of the national government to prevent harm to the environment. Fifty-six constitutions recognize a responsibility of citizens or residents to protect the environment, while 14 prohibit the use of property in a manner that harms the environment or encourage land use planning to prevent such harm. Twenty constitutions explicitly make those who harm the environment liable for compensation and/or remediation of the harm, or establish a right to compensation for those suffering environmental injury. Sixteen constitutions provide an explicit right to information concerning the health of the environment or activities that may affect the environment.⁶⁰

For example, South Africa has specifically protected environmental rights in its Constitution:

⁶⁰ Earthjustice, *Environmental Rights Report on Human Rights and the Environment* available at http://www.earthjustice.org/our_work/issues/international/human_rights/ (May 19, 2009).

Everyone has the right (a) to an environment that is not harmful to their health or well being; and (b) to have the environment protected, for the benefit of present and future generations, through reasonable and other legislative measures that (i) prevent pollution and degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.⁶¹

In 2005, France amended its Constitution to include environmental provisions, known as the Environment Charter. The Charter contains 10 articles covering rights and responsibilities of its citizens in relation to the Environment. As it is incorporated into the Constitution, it is legally binding and gives environmental rights and responsibilities the same status as other rights such as the right to life and universal suffrage. Article 1 of the Charter states:

Everyone has the right to live in a balanced environment which shows due respect for health.⁶²

Even small developing countries such as East Timor have provided protection of environmental rights in their constitutions. Section 61 of the East Timor Constitution states:

1. Everyone has the right to a humane, healthy, and ecologically balanced environment and the duty to protect it and improve it for the benefit of the future generations.
2. The State shall recognize the need to preserve and rationalize natural resources.
3. The State should promote actions aimed at protecting the environment and safeguarding the sustainable development of the economy.⁶³

C. THE RIGHT TO A BALANCED AND HEALTHFUL ECOLOGY IN THE PHILIPPINES – A FUNDAMENTAL AND ENFORCEABLE RIGHT

⁶¹ Commonwealth Constitution, Chapter 2 section 24.

⁶² Constitution of October 4, 1958 available at <http://www.assemblee-nationale.fr/english/8ab.asp>.

⁶³ Constitution of the Democratic Republic of Timor-Leste August 2001 available at <http://www.timor-lesle.gov.tl/constitution/constitution.htm>.

1. THE CONSTITUTION AND JURISPRUDENCE ON ENVIRONMENTAL RIGHTS

A leading commentator on environmental law posits that there is diversity of approaches to structuring environmental rights in domestic constitutions: (1) as a policy statement; (2) as a procedural right or duty; or (3) as a substantive right.⁶⁴

The Philippine Constitution contains a basic design for environmental rights protection and policy. The environmental provisions of the Constitution are located within a larger legal framework of constitutionally-guaranteed rights. This legal framework primarily establishes first principles⁶⁵ by which government ought to exercise its powers in relation to environmental rights and provides for institutional arrangements and structures⁶⁶ for authoritative governance.

The developmental construct of environmental rights under the Constitution is framed in such a way that these rights are shaped as state policies and do not form part of the Bill of Rights.⁶⁷ Section 16, Article II⁶⁸ of the Constitution is the flagship provision for environmental rights and is complemented by Section 15, Article II⁶⁹ which provides the state policy on the right to health. This uproot from Article III of the Bill of Rights however, does not in anyway make it less of a human right compared to other freedoms

⁶⁴ James R. May & Erin Daly, *Vindicating Fundamental Environmental Rights Worldwide*, 11 OREGON REV. INT'L LAW 373 (2009).

⁶⁵ CONSTITUTION, ART. II.

⁶⁶ CONSTITUTION ARTS. VI, VII and VIII.

⁶⁷ See generally James R. May, *Constituting Fundamental Environmental Rights Worldwide*, 23 PACE ENVIRONMENTAL LAW REVIEW 173 (2005-2006) (listing countries whose constitutions contained some reference to environmental protection treating environmental rights as fundamental rights and referring to environmental rights as policy statements).

⁶⁸ This section states:

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.

⁶⁹ This section states:

The state shall protect and promote the right to health of the people and instill health consciousness among them.

protected by the Constitution, because it also reemerges as part of, and is interdependent of other fundamental rights as carved out (directly and indirectly) in other constitutional provisions, the state policies on peace and order and general welfare,⁷⁰ on social justice,⁷¹ on personal dignity and human rights.⁷² The constitutional provisions on social justice and human rights⁷³ are treasured concepts since the enactment of the 1935 Constitution. Furthermore, fleshed out in greater detail, the right to life under Section 1, Article III,⁷⁴ does not only pertain to the protection of the right to be alive but also means the right to a good life.⁷⁵ The exchange between Commissioners Bennagen and Nolleto during the deliberations of the 1986 Constitutional Convention also supports the general idea that environmental rights are included in the complete concept of human rights.⁷⁶

As much as the right to a balanced and healthful ecology is ordained in our constitution, there is also the question of enforceability. Many legal scholars who correlate fundamental environmental rights with enforceability either through administrative agencies or courts of law have managed to demonstrate that constitutionalizing commitments without the muscle of enforcement do not translate to real improvements in environmental conditions. Viewed as a whole, enforcement is seen as a barometer of how confident people are about environmental justice. Even as nations around the world have increasingly incorporated the principle of environmental protection in their fundamental laws, many of their courts have not found the occasion to interpret these textually-demonstrable constitutional provisions.

⁷⁰ CONSTITUTION, Art. II, Sec. 5.

⁷¹ CONSTITUTION, Art. II, Sec. 10.

⁷² CONSTITUTION, Art. II, Sec. 11.

⁷³ CONSTITUTION, Art. XIII.

⁷⁴ CONSTITUTION, Art. III, Sec. 1.

⁷⁵ JOAQUIN G. BERNAS, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* (2003).

⁷⁶ IV RECORD, CONSTITUTIONAL COMMISSION 688 (In response to the question of Commissioner Bennagen if the state should make a conscious effort to enhance social, economic, and political conditions in relation to human rights, Commissioner Nolleto replied, "...when we talk of human rights, we talk of the whole gamut of human rights.").

In 1993, the Supreme Court of the Philippines found the occasion to clarify and recast the notion of fundamental right to a healthy environment when minors, represented by their parents, filed a complaint to compel the Secretary of Environment and Natural Resources (DENR) to cancel all existing Timber License Agreements (TLA) and prevent the Secretary from issuing or renewing licenses. The landmark case of *Oposa v. Factoran, Jr.*⁷⁷ offered an angle of vision for viewing environmental rights as constitutionally-guaranteed and fundamental human rights which are enforceable in a court of law.⁷⁸ Through then Chief Justice Hilario Davide, the Court pronounced that the right to a balanced and healthful ecology was not just an empty incantation found in the Constitution:

While the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation, aptly and fittingly stressed by the petitioners. The advancement of which may even be said to predate all governments and constitutions.

The Court went further and even maintained that environmental rights "are enforceable notwithstanding whether they are constitutionally expressed because of their inception before humankind:"

As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind. If they are now explicitly mentioned in the fundamental charter, it is because of the well-founded fear of its framers that unless the rights to a balanced and healthful ecology and to health are mandated as state policies by the Constitution itself, thereby highlighting their continuing importance and imposing upon the state a solemn obligation to preserve the first and protect and advance the second, the day would not be too far when all else would be lost not only for the present generation, but also for those to come - generations

⁷⁷ G.R. No. 101083, July 30, 1993, 224 SCRA 792.

⁷⁸ *Id.*

which stand to inherit nothing but parched earth incapable of sustaining life.⁷⁹

Oposa is one of the best known jurisprudential triumphs in the history of the Court and not long after this case was decided, the Court found itself continually securing for current and future generations the wealth of the environment, among others — *Laguna Lake Development Authority (LLDA) v. C.A., et. al.*,⁸⁰ *Henares, et al. v. Land Transportation and Franchising Regulatory Board (LTFRB)*,⁸¹ and *Social Justice Society, et al. v. Atienza, Jr.*⁸²

The key insights pronounced by the Court in *Oposa* provided powerful arguments for recognizing that not only were there fundamental environmental rights in the Philippine Constitution, but more importantly, ethical obligations were due to the entire community of life. *Oposa* was a cause célèbre for the entire environmental rights community because it declared that a correlative duty to protect the environment could be exacted on each and every individual:

The right to a balanced and healthful ecology carries with it the correlative duty to refrain from impairing the environment. During the debates on this right in one of the plenary sessions

⁷⁹ *Id.* at 187.

⁸⁰ G.R. No. 110120, March 16, 1994, 231 SCRA 292 (Balancing between the responsibility of the city government to take care of its garbage and the right of the people living near the dumpsite to a pollution-free environment, the Court ruled that the right to health is a constitutionally enshrined right over which no impairment can be made. The Court further said that the Philippines is a party to international instruments which recognizes the right to health as a fundamental right.)

⁸¹ G.R. No. 158290, October 23, 2006, 505 SCRA 104 (This petition focuses on one fundamental legal right of petitioners, their right to clean air. While the Court recognized the right of the petitioner, it ruled, however, that the lack of legislation on the matter served as a restriction on the prayer to grant *mandamus*.)

⁸² G.R. No. 156052, March 7, 2007, 545 SCRA 92 (The petitioners filed with the Court an original action for *mandamus* praying to compel Manila Mayor Atienza to enforce Ordinance No. 8027 which reclassifies certain portions of Pandacan and Sta. Ana from industrial to commercial and directs businesses not falling under the following classifications to “cease and desist from their operations” or relocate to another area. Among the businesses affected were the oil terminals of Caltex, Petron, and Shell. The Supreme Court granted the petition and ordered the immediate removal of the terminals of the said oil companies. The Court held that “there is nothing that legally hinders [Mayor Atienza] from enforcing Ordinance No. 8027.”)

of the 1986 Constitutional Commission, the following exchange transpired between Commissioner Wilfrido Villacorta and Commissioner Adolfo Azcuna who sponsored the section in question:

“MR. VILLACORTA:

Does this section mandate the State to provide sanctions against all forms of pollution ? air, water and noise pollution?

MR. AZCUNA:

Yes, Madam President. The right to healthful (sic) environment necessarily carries with it the correlative duty of not impairing the same and, therefore, sanctions may be provided for impairment of environmental balance.” The said right implies, among many other things, the judicious management and conservation of the country’s forests. Without such forests, the ecological or environmental balance would be irreversibly disrupted.⁸³

Perhaps the second most eponymous decision of the Supreme Court of the Philippines after *Oposa*, that inspired countless of people working in the field of environmental law to enforce the right to a balanced and healthful ecology is the case of *Metropolitan Manila Development Authority (MMDA) et al. v. Concerned Residents of Manila Bay*.⁸⁴ The case upheld a request for a multi-faceted injunctive relief to prevent pollution discharges from choking Manila Bay and exacting compliance on various government agencies to clean and protect it for future generations.⁸⁵ The Court held:

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.⁸⁶

⁸³ *Oposa v. Factoran, Jr.*, *supra* note 77.

⁸⁴ G.R. Nos. 171947-48, December 18, 2008, 574 SCRA 661.

⁸⁵ *Id.*

⁸⁶ *Id.*

Justice Presbitero J. Velasco, Jr., the *ponente* of the decision, explains that the *Manila Bay* case was the first in a series of decisions that affirms the constitutional environmental rights of citizens to push government agencies that skirt their obligation to provide for institutional environmental protection arrangements.⁸⁷ Opportunity for reform frequently beckons in the wake of a disaster and the decision produced a lot of pressure points for these agencies to clean up Manila Bay. Justice Velasco observed:

Those who have read the Court's disposition in *Manila Bay* would at once notice the all-encompassing thrust of the ruling. Consider: It ordered any and all government agencies whose official functions and statutory duties have a connective bearing, however remote, to the cleaning and rehabilitation of the Manila Bay to spare no effort, at the implied risk of contempt of court, to perform these functions and duties, so as to achieve the desired purpose. It tried to address all possible causes, direct or contributory, of the pollution and decay of the bay. In essence, the Court's directives revolved around, and may be broken into, three main areas: (1) prevention, control and protection; (2) prosecution and sanctions; and (3) rehabilitation.⁸⁸

2. ENFORCEMENT OF ENVIRONMENTAL RIGHTS IN THE PHILIPPINES

The DENR is the lead national agency to look into environmental concerns of the country. In addition, special governmental agencies have been created to look into specific areas of concern such as the Pollution Adjudication Board, the Laguna Lake Development Authority, the Land Transportation and Franchising Regulatory Board and the National Pollution Commission. Further, the local government units have the power to issue ordinances for the protection of the environment and regulate the projects and activities of transnational corporations for instance. First, the authority to grant license to these transnational corporations lies with the State. In

⁸⁷ Justice Presbitero J. Velasco, Jr., Speech at the 3rd Annual Symposium on the Confluence of Human Rights and the Environment: Manila Bay: A Daunting Challenge in Environmental Rehabilitation and Protection (February 20, 2009).

⁸⁸ *Id.*

some Supreme Court decisions, licenses and/or registrations were withheld in instances where it was found that the corporation has violated the environment and has failed in protecting and caring for the same.⁸⁹ Second, the State has the power to issue restraining orders and/or injunctions for those found violating the Environmental Code. In addition, closure of violating corporations and payment of damages may also be ordered.⁹⁰ Third, heads or officers of these corporations may likewise be found criminally liable for negligence in their operation and violations of environmental laws.⁹¹ Fourth, the local government units may issue ordinances protecting the environment. In some Supreme Court decisions, the constitutionality of these ordinances insofar as they were made in furtherance of the right to a healthful ecology was sustained.⁹² Fifth, the legislature can enact laws to regulate projects and activities of industries in order to protect the environment and promote health. Further, the legislature can enact laws protecting the environment.⁹³ In fact the Philippines has enacted legislation to protect the rights of life and health against environmental harms arising from various activities. Some of these laws include the Revised Forestry Code of the Philippines, the National Integrated Protected Areas System Act of 1992, the Ecological Solid Waste Management Act of 2000, the Philippine Mining Act of 2005 and the Biofuels Act of 2006. Lastly, efforts towards education of the people in the area of environment are being conducted by the state agencies as well as non-governmental organizations.

⁸⁹ *Ysmael vs. Deputy Executive Secretary*, G.R. No. 79538, October 18, 1990.

⁹⁰ *Republic vs. Marcopper*, G.R. No. 137174, July 10, 2000; *Laguna Lake Development Authority vs. Court of Appeals*, G.R. Nos. 120865-71, December 7, 1995; *Pollution Adjudication Board, vs. Court of Appeals*, G.R. No. 93891, March 11, 1991; *Technology Developers, Inc. vs. Court of Appeals*, G.R. No. 94759, January 21, 1991.

⁹¹ *Loney vs. People*, G.R. No. 152644, February 10, 2006; *Mustang Lumber, Inc. vs. Court of Appeals*, G.R. No. 104988, June 18, 1996 (The Court boldly stated that, "The Government must not tire in its vigilance to protect the environment by prosecuting without fear or favor any person who dares to violate our laws for the utilization and protection of our forests.").

⁹² *Social Justice Society, et al. vs. Atienza, Jr.*, G.R. No. 156052, March 7, 2007; *Taño vs. Socrates*, G.R. No. 110249, August 21, 1997).

⁹³ *Province of Rizal vs. Executive Secretary*, G.R. No. 129546, December 13, 2005.

III. HIGHLIGHTS OF THE RULES OF PROCEDURE FOR ENVIRONMENTAL CASES

The Rules of Procedure for Environmental Cases aim to achieve the following objectives:

- a) To protect and advance the constitutional right of the people to a balanced and healthful ecology;
- b) To provide a simplified, speedy and inexpensive procedure for the enforcement of environmental rights and duties recognized under the Constitution, existing laws, rules and regulations, and international agreements;
- c) To introduce and adopt innovations and best practices ensuring the effective enforcement of remedies and redress for violation of environmental laws; and
- d) To enable the courts to monitor and exact compliance with orders and judgments in environmental cases.⁹⁴

In meeting these objectives, the following guidelines are vital: (1) the Rules must reflect the constitutional and jurisprudential concepts of liberalized standing requirements for plaintiffs in environmental suits; (2) the Rules will facilitate access to courts by providing for litigation tools such as citizen's suits, and anti-SLAPP provisions; (3) the Rules should shape procedural elements of environmental litigation to implement the basic tenets of the precautionary principle; and (4) the Rules must provide other innovations deemed necessary for the proper administration of environmental justice.

The following elements of the Rules of Procedure for Environmental Cases highlight the unique nuances created for the accomplishment of the abovementioned goals.

A. LIBERALIZED *LOCUS STANDI* AND CITIZEN'S SUIT

The doctrine of standing under the constitutional law of the United States (U.S.) presents interesting implications for environmental litigation. In *Lujan v. Defenders of Wildlife*, Justice

⁹⁴ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 1, Sec. 3.

Scalia described the doctrine of standing as a landmark, "still less uncertain...setting apart the 'Cases' and 'Controversies' that are of the justiciable sort...serving to identify those disputes which are appropriately resolved through the judicial process."⁹⁵ Much of the debate on whether a party has standing revolves around the question of whether that party had suffered an injury in fact.⁹⁶ In *Sierra Club v. Morton*, the U.S. Supreme Court reviewed the issue of whether an environmental group was injured in fact by the development of a recreational skiing development in the Mineral King Valley.⁹⁷ It concluded that the organization did not suffer an injury in fact by the recreational development of the subject land and therefore did not have standing, but suggested that individual members could have standing if such persons show the court that they have suffered personal harm. Such environmental cases in American jurisprudence underscore a persistent commitment to a stricter reading of injury in fact. Generally, the persistence of the injury in fact requirement can be seen as a relatively conservative doctrinal approach.⁹⁸

The Supreme Court of the Philippines recognizes the injury element of standing, but has given it a more liberal interpretation with regard to environmental claims. This was established by the Court in *Oposa*.⁹⁹ The Court held that representatives suing in behalf of succeeding generations had standing based on an "intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned."¹⁰⁰ In this case, petitioners sought to prevent the Secretary of the DENR from further issuing timber licensing agreements, and to cancel those already issued.¹⁰¹ The petitioners were parents representing their children and "generations yet unborn."¹⁰²

⁹⁵ *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).

⁹⁶ See e.g., *Sierra Club v. Morton*, 405 U.S. 727 (1972).

⁹⁷ *Id.*

⁹⁸ See generally, *Lujan v. Defenders of Wildlife*, *supra* note 94.

⁹⁹ *Oposa v. Factoran, Jr.*, *supra* note 77.

¹⁰⁰ *Id.* at 802-803; See also *Henares, et al. v. LTRFB*, *supra* note 81.

¹⁰¹ *Oposa v. Factoran, Jr.*, *supra* note 77, at 792-803.

¹⁰² *Id.*

Oposa represents a progressive approach to environmental justice. The Court has shown that it is not restrained by artificial doctrinal barriers, which would result in absurdity. In this case, the idea of injury in fact as strictly applied might have prevented the petitioners in *Oposa* from pursuing this case.

The doctrine of standing in Philippine jurisprudence, although groundbreaking, is merely the catalyst of a greater concept: public participation in environmental enforcement. If indeed the people have enforceable environmental rights, then the legal system must give the people a venue to protect these rights. One such mechanism is through the use of citizen suits. Certain environmental statutes have already recognized the importance of public participation in environmental cases.

The citizen suit provisions in Section 41 of Republic Act (R.A.) No. 8749 or the Clean Air Act¹⁰³ and Section 52 of R.A. No. 9003 or the Ecological Solid Waste Management Act¹⁰⁴ focus on the

¹⁰³ This section provides:

SECTION 41. Citizen Suits. — For purposes of enforcing the provisions of this Act or its implementing rules and regulations, any citizen may file an appropriate civil, criminal or administrative action in the proper courts against:

- (a) Any person who violates or fails to comply with the provisions of this Act or its implementing rules and regulations; or
- (b) The Department or other implementing agencies with respect to orders, rules and regulations issued inconsistent with this Act; and/or
- (c) Any public officer who willfully or grossly neglects the performance of an act specifically enjoined as a duty by this Act or its implementing rules and regulations; or abuses his authority in the performance of his duty; or, in any manner, improperly performs his duties under this Act or its implementing rules and regulations: Provided, however, That no suit can be filed until after thirty-day (30) notice has been given to the public officer and the alleged violator concerned and no appropriate action has been taken thereon.

The court shall exempt such action from the payment of filing fees, except fees for actions not capable of pecuniary estimations, and shall, likewise, upon prima facie showing of the non-enforcement or violation complained of, exempt the plaintiff from the filing of an injunction bond for the issuance of a preliminary injunction.

Within thirty (30) days, the court shall make a determination if the complaint herein is malicious and/or baseless and shall accordingly dismiss the action and award attorney's fees and damages.

¹⁰⁴ This section provides:

SECTION 52. Citizen Suits. — For purposes of enforcing the provisions of this Act or its implementing rules and regulations, any citizen may file an appropriate civil, criminal or administrative action in the proper courts/bodies against:

violative conduct of the polluter or regulating government agency as opposed to the specific nature of the injury sustained. Both R.A. No. 8749 and R.A. No. 9003 require the citizen to notify the public officer and alleged violator concerned before filing a complaint. They also prohibit citizen suits where an appropriate action has been taken prior to the filing of a complaint.

The general structure of these citizen suit provisions is similar to the citizen suit provisions in U.S. environmental statutes. The U.S. Clean Air Act of 1970, a good representation of analogous provisions in other U.S. environmental statutes, requires potential plaintiffs to provide the violator as well as the federal agency with jurisdiction and, in some cases, a state agency with jurisdiction, notice before commencing a suit.¹⁰⁵ The notice requirement "preserves the government's role as the primary enforcer of environmental laws," presenting federal and state government agencies the opportunity to take enforcement action.¹⁰⁶

The legislative history of the U.S. citizen provisions reveal that their enactment was in the same period where "capture" theories were predominant, suggesting that regulatory agencies "were sometimes subject to sustained political pressure from regulated

- (a) Any person who violates or fails to comply with the provisions of this Act or its implementing rules and regulations; or
- (b) The Department or other implementing agencies with respect to orders, rules and regulations issued inconsistent with this Act; and/or
- (c) Any public officer who willfully or grossly neglects the performance of an act specifically enjoined as a duty by this Act or its implementing rules and regulations; or abuses his authority in the performance of his duty; or, in any manner, improperly performs his duties under this Act or its implementing rules and regulations: Provided, however, That no suit can be filed until after thirty-day (30) notice has been given to the public officer and the alleged violator concerned and no appropriate action has been taken thereon.

The Court shall exempt such action from the payment of filing fees and shall, likewise, upon prima facie showing of the non-enforcement or violation complained of, exempt the plaintiff from the filing of an injunction bond for the issuance of a preliminary injunction.

In the event that the citizen should prevail, the Court shall award reasonable attorney's fees, moral damages and litigation costs as appropriate.

¹⁰⁵ Trent A. Dougherty, et al., *Environmental Enforcement and the Limits of Cooperative Federalism: Will Courts Allow Citizen Suits to Pick up the Slack?* 20 DUKE ENVTL. L. & POL'Y F. 1, 10 (2010).

¹⁰⁶ *Id.* at 11.

industries."¹⁰⁷ Regulatory agencies were thought to be "unduly sympathetic to the interests of the regulated industries," because they had the resources to be heard in the regulatory process of decision-making.¹⁰⁸ Citizen suits, designed to close the "resource gap between industry and public interest groups," provided the opportunity for oversight of the regulatory enforcement process.¹⁰⁹ Citizen suit provisions were intended to encourage public vigilance and to allow the government to benefit from technical work of information gathering and litigation by citizens.¹¹⁰ More importantly, the nature of the rights involved in environmental protection justified the unprecedented power given to citizens.¹¹¹

While citizen suits appear to be a relatively new mechanism for the enforcement of regulatory statutes, the concept of shared public and private enforcement is rooted in the history of Anglo-American law. A water pollution statute enacted in 1388 provided for a dual system of enforcement at the instance of either public officials or private individuals.¹¹² The difference was often in the remedy sought. Public authorities were generally interested in the punishment and deterrence of violations as well as the imposition of fines as a result thereof, while private individuals "were generally more interested in getting compensation for the injuries they had suffered and in preventing future injuries."¹¹³

That private enforcement appeared to be common through the nineteenth century may be attributed to the absence of a developed distinction between public and private functions. A violation of

¹⁰⁷ Cass R. Sunstein, *What's Standing After Lujan? Of Citizen Suits, "Injuries," and Article III*, 91 MICH. L. REV. 163, 183-184 (1992); See also Matthew D. Zinn, *Policing Environmental Regulatory Enforcement: Cooperation, Capture, and Citizen Suits* 21 STAN. ENVTL. L.J. 81, 83 (2002).

¹⁰⁸ Barry Boyer & Errol Meidinger, *Privatizing Regulatory Enforcement: A Preliminary Assessment of Citizen Suits under Federal Environmental Laws*, 34 BUFF. L. REV. 833, 843-844 (1985).

¹⁰⁹ *Id.*

¹¹⁰ Dougherty, et al., *supra* note 105, at 15.

¹¹¹ *Id.*

¹¹² Boyer & Meidinger, *supra* note 108 at 946-947.

¹¹³ *Id.* at 949.

community rules affected the entire community and its members so that it may be reasonably inferred that the encouragement of private individuals to prosecute wrongs increased their "investment in and commitment to the existing order."¹¹⁴ By the industrial revolution, the shift in the basis of private enforcement appeared in numerous common informer statutes passed in England.¹¹⁵ These statutes provided "that parties aiding in the apprehension and conviction of violators would share in the fines collected as a result."¹¹⁶ Similarly, the U.S. Supreme Court in the early decades of the last century, referred to *qui tam* actions providing private enforcers with a share of criminal fines.¹¹⁷ Private prosecution of criminal cases, without the financial incentive of the *qui tam* actions, was also a practice extensively used.¹¹⁸ The monopoly of the bureaucracy of public prosecution eventually took over private prosecutions.

B. SPEEDY DISPOSITION OF CASES

Justice delayed is justice denied. It is a truism that has been both a criticism and an exhortation to action. Delay has been attributed to a host of factors, ranging from the case load of the courts, the efforts of litigants to create it and downright neglect on both the part of the courts and the litigants.

The Rules of Procedure for Environmental Cases tackle the question of delay by identifying and addressing key areas of delay to speedily address issues posed in environmental cases, taking into account the requirements of due process at every stage.

1. CIVIL CASES

In civil cases filed under the Rules, procedural innovations are introduced at filing. The Rules require the submission of all evidence supporting the cause of action.¹¹⁹ This entails a relative relaxation

¹¹⁴ *Id.* at 952.

¹¹⁵ *Id.* at 953.

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 954.

¹¹⁸ *Id.*, at 955.

¹¹⁹ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 2, Sec. 3.

on the rules of admissibility to facilitate the early evaluation of the merits of the controversy.

A number of pleadings which have been identified as sources of delay¹²⁰ are prohibited. Nevertheless, in recognition of the fact that some controversies involving the environment may raise complex issues of fact and law, certain pleadings which have hitherto been prohibited under Summary Procedure have been allowed as well.¹²¹

The next stage entails the extensive use of pre-trial as a procedural device. The Rules specify in detail stages of interaction between the court and the litigants where the possibility of settlement is explored, the issues between the parties simplified and the evidence procured through depositions and properly identified and marked.¹²²

At trial, a significant procedural innovation is the use of affidavits in lieu of direct examination. This is in recognition of the fact that direct examination of witnesses have traditionally consumed the greatest amount of time in civil litigation, and this procedural innovation seeks to simplify the process by focusing the scope of inquiry during direct examination to matters covered within the affidavit.¹²³

The overall duration of the trial has been abbreviated to one (1) year, subject to extension for justifiable cause.¹²⁴

2. CRIMINAL CASES

Some procedural innovations for civil cases have likewise been adopted for criminal cases. These include the extensive use of pre-trial to clarify and simplify the issues,¹²⁵ the use of affidavits in

¹²⁰ RULE ON SUMMARY PROCEDURE.

¹²¹ These include the motions for postponement and new trial and petition for relief from judgment.

¹²² RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 3.

¹²³ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 4, Sec. 2.

¹²⁴ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 4, Sec. 5.

¹²⁵ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 16.

direct examination¹²⁶ and the abbreviation of the period to resolve to one (1) year.¹²⁷

Additional innovations in stages which are unique to criminal cases have been added as well, to address areas of concern in terms of delay. The most prominent of these are placed in the provisions on bail.¹²⁸ Here the execution of an undertaking, authorizing the judge to enter a plea of not guilty in instances where the accused fails to appear at arraignment, is made a requisite for the availment of bail.¹²⁹ This seeks to address the numerous instances where the accused has jumped bail prior to arraignment, foreclosing the possibility of proceeding with litigation and ultimately leading to the archiving of the case.

3. SPECIAL CIVIL ACTIONS

Two special writs, which are of themselves speedy remedies, have been added into the Rules: The writs of *kalikasan* and continuing *mandamus*.

The proceedings for the application, issuance and resolution of the writ of *kalikasan* are all conducted within very short periods. The Writ issues after three (3) days, if the petition is sufficient in form and substance.¹³⁰ The hearing for the writ must be set within sixty (60) days from filing,¹³¹ and the entire proceeding must terminate within sixty (60) days from submission for resolution.¹³²

In addition, the writ of *kalikasan* incorporates the prohibition of certain pleadings¹³³ and is given the same level of priority as the writs of *habeas corpus*, *amparo* and *habeas data*.¹³⁴

¹²⁶ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 17, Sec. 2.

¹²⁷ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 17, Sec. 4.

¹²⁸ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 14.

¹²⁹ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 14, Sec. 2.

¹³⁰ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7, Sec. 5.

¹³¹ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7, Sec. 11.

¹³² RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7, Sec. 15.

¹³³ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7, Sec. 9.

¹³⁴ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7, Sec. 11.

Summary proceedings have been adopted for the writ of continuing *mandamus* in order to facilitate speedy resolution.¹³⁵

C. CONSENT DECREE

In the settlement of environmental litigation, there may be a shift in focus from the issue of liability to relief. The primordial consideration then becomes a question of the action necessary for compliance. In such cases, the benefits of negotiating a settlement include the preservation of litigation resources and prevention of any further delay in the implementation of regulatory programs.¹³⁶ Thus, the complexity of environmental disputes has paved the way for the increasing use of consent decrees in their settlement.¹³⁷

In the U.S., the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) was enacted to insure the cleanup of hazardous waste sites.¹³⁸ It identifies settlements, including consent decrees, that may be negotiated in governmental actions pursuant to this federal hazardous waste cleanup legislation.¹³⁹ A consent decree may provide for reimbursement to reallocate the costs of the cleanup, or the undertaking of response activities by potentially responsible parties.¹⁴⁰ Upon the conclusion of the settlement, the settling potentially responsible party is protected from liability to other potentially responsible parties, "while retaining the right to seek contribution against nonsettlers."¹⁴¹

By facilitating the settlement of complex environmental litigation, the model of the U.S. Environmental Protection Agency

¹³⁵ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 8, Sec. 5.

¹³⁶ Robert V. Percival, *The Bounds of Consent: Consent Decrees, Settlements and Federal Environmental Policy Making*, 1987 U. CHI. LEGAL F. 327, 331 (1987).

¹³⁷ David L. Callies, *The Use of Consent Decrees in Settling Land Use and Environmental Disputes*, 21 STETSON L. REV. 871, 873 (1992) (citing settlement through consent decrees of several cases in the United States).

¹³⁸ William B. Johnson, *Propriety of Negotiated Settlements in Government Cleanup Actions under Federal Hazardous Waste Statutes*, 114 A.L.R. Fed. 1.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

illustrates the advantages of a consent decree: (1) it encourages the parties to come up with comprehensive, mutually-acceptable solutions to the environmental problem, and since the agreement was arrived at voluntarily, there is a greater possibility of actual compliance; (2) it is open to public scrutiny; (3) it allows the parties to address issues other than those presented to the court; and (4) it is still subject to judicial approval and can be enforced through a court order.¹⁴² The component of judicial approval allows the court to foster cooperation between two previously adverse parties.¹⁴³ Moreover, in supervising its terms, the court may take an active role in the enforcement of the settlement, particularly in complicated settlements to be worked out over a certain period.¹⁴⁴

D. REMEDIAL MEASURES

1. ENVIRONMENTAL PROTECTION ORDER (TEMPORARY AND PERMANENT)

Cases affecting the environment have a fundamental sense of immediacy. Environmental threats, as well as existing environmental damage, necessitate an immediate relief, if further damage is to be averted. For this purpose, the Rules provide for the issuance of an Environmental Protection Order (EPO), which is defined under its provisions as:

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.¹⁴⁵

From the foregoing definition, it is clear that the EPO may be employed to perform the rules of a prohibitory injunction and a

¹⁴² See Justice Consuelo Ynares-Santiago, *Framework for Strengthening Environmental Adjudication in the Philippines*, 52 ATENEO L.J. 744 (2008); See, e.g. *U.S. v. The Boc Group, Inc.*, 2007 EPA Consent LEXIS 35 (W.D.W. 2007); *U.S. v. Davis, et al.* 1998 EPA Consent LEXIS 80 (D.R.I. 1998).

¹⁴³ Judge Harry Pregerson, *The Freeway with a Heart: My Life as a Consent Decree Judge in the Century Freeway Case*, 36 SW. U. L. REV. 291 (2007).

¹⁴⁴ Callies, *supra* note 137, at 872.

¹⁴⁵ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7, Rule 1, Sec. 4 par. e.

mandatory injunction, empowering the court with ample discretion and means to appropriately address the environmental case before it.

The EPO may be issued as an ancillary remedy in environmental cases, as a Temporary Environmental Protection Order (TEPO). Procedurally, the application for and the issuance of a TEPO is similar to that of that of a TRO.¹⁴⁶ As with a TRO, the TEPO must, as a general rule, issue with notice and hearing. In exceptional circumstances, a TEPO may be issued *ex parte*. As an additional procedural safeguard, a summary hearing is required to determine whether to extend the TEPO.¹⁴⁷

Both the EPO and TEPO are available as remedies in criminal cases filed under the Rules.¹⁴⁸

2. WRIT OF CONTINUING *MANDAMUS*

Environmental law highlights the shift in the focal-point from the initiation of regulation by Congress to the implementation of regulatory programs by the appropriate government agencies.¹⁴⁹ Thus, a government agency's inaction, if any, has serious implications on the future of environmental law enforcement. Private individuals, to the extent that they seek to change the scope of the regulatory process, will have to rely on such agencies to take the initial incentives, which may require a judicial component. Accordingly, questions regarding the propriety of an agency's action or inaction will need to be analyzed.

This point is emphasized in the availability of the remedy of the writ of *mandamus*, which allows for the enforcement of the conduct of the tasks to which the writ pertains: the performance of a legal duty.¹⁵⁰ *MMDA v. Concerned Residents of Manila Bay*,¹⁵¹

¹⁴⁶ RULES OF COURT, Rule 58, Sec. 5.

¹⁴⁷ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 2, Sec. 8.

¹⁴⁸ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 13, Sec. 2.

¹⁴⁹ Eric Biber, *Two Sides of the Same Coin: Judicial Review of Administrative Agency Action and Inaction*, 26 VA. ENVTL. L.J. 461, 462 (2008).

¹⁵⁰ RULES OF COURT, Rule 65, Sec. 3.

¹⁵¹ *MMDA v. Concerned Residents of Manila Bay*, *supra* note 84.

introduces continuing *mandamus* and cited two cases decided by the Supreme Court of India as examples of its issuance. In the first case,¹⁵² the Supreme Court of India held an investigating body accountable to it through continuing *mandamus*.¹⁵³ The second case involved a petition for the issuance in the nature of a writ of *mandamus* to restrain tanneries along the Ganges River from releasing trade effluents into the river which have not undergone treatment due to the absence of the necessary treatment plants.¹⁵⁴ In India, continuing *mandamus* was used to require the government "to take specific actions and report progress on a regular basis."¹⁵⁵

Continuing *mandamus*, as illustrated in the *Manila Bay* case, is an exercise of the Court's power to carry its jurisdiction into effect pursuant to Section 6, Rule 135 of the Rules of Court. The same section provides that even in the absence of the procedure to be followed in the exercise of this jurisdiction by the law or the Rules of Court, "any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of said law or rules." For instance, *Social Justice v. Atienza*,¹⁵⁶ cited in the *Manila Bay* case as an example of the Court's issuance of a writ of *mandamus* to compel the enforcement of a city ordinance, ordered the submission of plan with regard to the enforcement of the Court's resolution. In the *Manila Bay* case, the Court ordered several government agencies to submit progress reports of the activities undertaken in accordance with its decision.¹⁵⁷ The Court also created an Advisory Committee to verify these reports.

¹⁵² *Vineet Narain v. Union of India*, 1 SCC 226 (1998).

¹⁵³ See also S.P. Sathe, *Judicial Activism in India*, 6 WASH. U. J. L. POL'Y 29 (2001).

¹⁵⁴ *M.C. Mehta v. Union of India*, 4 SCC 463 (1987).

¹⁵⁵ Deepa Badrinarayana, *The Emerging Constitutional Challenge of Climate Change: India in Perspective*, 19 FORDHAM ENVTL. L. REV. 1, 24 (2009); See also D. Y. Chandrachud, *Constitutional and Administrative Law in India* 36 INT'L J. LEGAL INFO. 332 (2008) and Avani Mehta Sood, *Gender Justice through Public Interest Litigation: Case Studies from India*, 41 VAND. J. TRANSNAT'L L. 833 (2008).

¹⁵⁶ G.R. No. 156052, February 13, 2008, 545 SCRA 92.

¹⁵⁷ *MMDA v. Concerned Residents of Manila Bay*, *supra* note 84, at 693-697.

3. WRIT OF *KALIKASAN*

Many commentators and scholars remarked that the Philippine Supreme Court has entered an age of judicial activism, and this is more than just judicial fortuity since the Court has manifested its unique expanded judicial power under the Constitution: "...promulgate rules concerning the protection and enforcement of constitutional rights."¹⁵⁸ The Court's treatment of the issue of human rights protection is emblematic of its attitude towards safeguarding human rights. Given the inadequacies of our laws and the inutility of our system of justice, the "judiciary, on its part, has decided to unsheathe its unused power to enact rules to protect the constitutional rights of the people."¹⁵⁹

On the issue of environmental justice, the Supreme Court has certainly not taken a retreat in judicial activism. After 2007's *National Consultative Summit Seeking Solutions to the Problem of Extralegal Killings and Enforced Disappearances* that constitute a violation of our people's civil and political rights, and 2008's *Forum on Increasing Access to justice by the Poor and Marginalized Groups*, the Court focused its attention to what has been termed as "third generation" rights, particularly, environmental rights. The *Forum* enabled the Court to receive input directly from the different stakeholders in the justice system, particularly the sectors that are most vulnerable. The output from the *Forum* enabled the Court to draft rules of procedure which will govern environmental cases.

In the drafting of the Rules, the Supreme Court has fashioned an environmental writ, more aptly known as the writ of *kalikasan*, the parameters of which this *Rationale* and the *Annotation to the Rules* proceed to document thoroughly. The writ is intended to provide a stronger defense for environmental rights through judicial efforts where institutional arrangements of enforcement, implementation and legislation have fallen short. It seeks to address

¹⁵⁸ CONSTITUTION, Art. VIII, Sec. 5, par. 5.

¹⁵⁹ Chief Justice Reynato S. Puno, Speech at the University Convocation and Presentation of the 2007 Outstanding Silliman University Law Alumni Association (SULAW) Award to Prof. Rolando V. del Carmen and 19th SULAW General Assembly and Alumni Homecoming: No Turning Back on Human Rights (August 25, 2007).

the potentially exponential nature of large-scale ecological threats. Similar to the writs of *habeas corpus*, *amparo*, and *habeas data*, the writ of *kalikasan* was recast as a different and unique legal device drawing as models available writs in the country and practices in other jurisdictions.

One important challenge faced in the implementation of effective environmental laws is the regulation of the interplay between ecological transformation and human activities.¹⁶⁰ It is not simply the complex and dynamic nature of ecological transformation that contributes to this challenge but also the spatial dimensions of environmental harms.¹⁶¹ Environmental harms occur in spatial scales and the notoriety of environmental effects across borders is well-documented.¹⁶² Certain environmental effects could either be localized or far removed from a particular area both spatially and temporally. The effects have caused significant problems for many governments because of the increased awareness that vulnerability to environmentally harmful activities is not only confined to a nation's own borders but have "reciprocal externalities" of an international dimension.¹⁶³ Environmental problems such as acid rain and the pollution of many bodies of water have a widespread dimension of destruction. It is with this concern that the writ was fashioned to address the concern of magnitude and the questions of jurisdiction arising from the environmental damage occurring in wide areas by allowing the petition for the issuance of the writ to be filed in the Supreme Court or any stations of the Court of Appeals because of their nationwide jurisdiction.¹⁶⁴

¹⁶⁰ RICHARD J. LAZARUS, *THE MAKING OF ENVIRONMENTAL LAW* 8 (2004).

¹⁶¹ *Id.*

¹⁶² The foundation of the doctrine on transboundary environmental harm first received international attention in the *Trail Smelter* case. According to Stephen Wood, "*Trail Smelter* is revered in that young field as the germ from which the entire law of transboundary environmental harm sprang. It is remembered as the earliest articulation of two core principles of international environmental law: that states have a duty to prevent transboundary environmental harm, and that they have an obligation to pay compensation for the harm they cause."

¹⁶³ *See generally*, HENK FOLMER & IGNAZIO MUZU, *ENVIRONMENTAL AND RESOURCES ECONOMICS* 102-116 (1992).

¹⁶⁴ *RULES OF PROCEDURE FOR ENVIRONMENTAL CASES*, Rule 7, Sec. 3.

Another important concern for any party seeking to enforce environmental rights are the evidentiary matters which supports such a claim, apart from affidavits and other documents which he could procure independently for himself. A key component of any case is the competence and admissibility of evidence accompanying the complaint. In environmental cases, the presence or absence of such evidence is crucial: it may lead to the successful prosecution of the claim for enforcement of environmental rights or it may lead to the dismissal of the case. The latter brings with it the bar of finality, *res judicata*, even when the initial claim is a valid one.

It is in this regard that the writ of *kalikasan* was refashioned as a tool to bridge the gap between allegation and proof by providing a remedy for would-be environmental litigants to compel the production of information within the custody of the government. The writ would effectively serve as a remedy for the enforcement of the right to information about the environment. The scope of the fact-finding power could be: (1) anything related to the issuance, grant of a government permit issued or information controlled by the government or private entity and (2) Information contained in documents such as environmental compliance certificate (ECC) and other government records. In addition, the Writ may also be employed to compel the production of information, subject to constitutional limitations. This function is analogous to a discovery measure, and may be availed of upon the application for the writ.

Procedural safeguards have also been considered in the drafting of the writ to prevent its use as a mechanism for "fishing" this includes a clear showing of a violation of a law, rule or regulation in the verified petition. This effectively narrows the instance in which the writ may be applied for against private entities. Judicial discretion also comes into play in this aspect. Notably, the Court has already provided for the remedy of Civil Searches and Seizures (the English "Anton Piller" Order) as a remedy in alleged violations of the Intellectual Property Code. To compel the production of evidence is a considerably tempered and restrained exercise of judicial power.

Clearly, through the enactment of the writ of *kalikasan*, the Supreme Court has fortified the long standing conceptual link between substantive and procedural environmental rights. The addition of

the writ adds weight to the operative provisions for the implementation of the procedural environmental rights of access to information, participation in decision-making and access to justice and indicates that such procedural rights are not ends in themselves, but are meaningful precisely as means towards the end of protecting the individual's substantive right to live in a healthy environment.

IV. APPLICATION OF THE PRECAUTIONARY PRINCIPLE

Common to the aforementioned features, the key nuances of the Rules of Procedure for Environmental Cases have been developed to address the practical and procedural obstacles linked to environmental litigation. The formulation of evidence-related provisions were made with the guidance of the precautionary principle in order to facilitate access to courts in environmental cases and create a more relevant form of court procedure tailored to the unique and complex characteristics of environmental science.

The precautionary principle is linked to a paradigm shift from a model of risk theory in the context of the twentieth century to the emergence of post-industrial risks.¹⁶⁵ In the former context, "risk... gave rise to a 'right' to compensation within the framework of [compensation mechanisms] that ally solidarity with insurance."¹⁶⁶ Thus, insurability relied on risks that were "regular, foreseeable, and calculable," or those "based entirely on knowledge."¹⁶⁷ The emergence of post-industrial risks characteristic of a globalized economy and the development of technology complicate the ability to calculate risks. While in the former context, risk primarily concerned individuals or specific groups, post-industrial risks deal with issues that are multi-dimensional.¹⁶⁸ Moreover, post-industrial risks may cause damage that depends on a variety of factors, thus permeating its evaluation with uncertainty. These factors may include time of latency between the first exposure and the actual impact of damage, frequency, duration, extent, nature and scale.¹⁶⁹

¹⁶⁵ DE SADELEER, *supra* note 17, at 150.

¹⁶⁶ *Id.* at 151.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 152.

¹⁶⁹ *Id.* at 153.

Precaution is an approach that espouses prudence where risk is uncertain, but plausible. It is an addition to two basic tenets of problem-solving: curing problems and preventing them. Under a curative approach, the harm has already been realized, and measures are created to reverse the harm, or require compensation for the costs associated with harm.¹⁷⁰ Under the preventive approach, measures are taken to prevent known risks from materializing into actual harm.¹⁷¹ Precaution requires even greater diligence than prevention, by calling for measures to safeguard the environment even if the occurrence of harm is uncertain.¹⁷² The precautionary principle affirms the need for urgent measures given the unpredictable patterns of the environment, and the harm resulting from its abuse.

A. WEAK AND STRONG VERSIONS OF THE PRECAUTIONARY PRINCIPLE

The Supreme Court has recognized the varying degrees to which the precautionary principle is applied. Without academic consensus, the Court found it best to consider all versions of the precautionary principle in order to determine which elements are most compatible for purposes of the Rules of Procedure on Environmental Cases.

The varying versions of the precautionary principle have different implications. For instance, the most cautious and weak versions suggest that a lack of decisive evidence of harm should not be grounds for refusing to regulate.¹⁷³ The presence of an attenuated link between the health of the people and generally known but not fully scientifically proven risks will at times justify such regulation.¹⁷⁴ This principle can be seen in the Rio Declaration, which states, “[w]here there are threats of serious or irreversible damage, lack of

¹⁷⁰ *Id.* at 23.

¹⁷¹ *Id.* at 61.

¹⁷² *Id.* at 150-153.

¹⁷³ Cass R. Sunstein, *Irreversible and Catastrophic*, John M. Olin Law & Economics Working Paper No. 242, 2d series at 8 (2005).

¹⁷⁴ *Id.*

full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”¹⁷⁵ The Ministerial Declaration of the Second International Conference on the Protection of the North Sea, held in London in 1987, states in the same vein: “Accepting that in order to protect the North Sea from possibly damaging effects of the most dangerous substances, a precautionary approach is necessary which may require action to control inputs of such substances even before a causal link has been established by absolutely clear scientific evidence.”¹⁷⁶ Similarly, the United Nations Framework Convention on Climate Change offers cautious language:

“Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing . . . [regulatory] measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost.”¹⁷⁷

The *Wingspread Consensus Statement on the Precautionary Principle* goes further: “When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause-and-effect relationships are not fully established scientifically. In this context the proponent of an activity, rather than the public, should bear the burden of proof.”¹⁷⁸ The first sentence of this quote is a mildly more aggressive version of the statement from the Rio Declaration; it is more aggressive because it is not limited to threats of serious or irreversible damage.¹⁷⁹ But the component of reversing the burden of proof, as stated in the second sentence adds to the strong favorability of the environment, further depending on what is being required of the proponent holding the burden of proof.¹⁸⁰

¹⁷⁵ Principle 15, Rio Declaration.

¹⁷⁶ No. VII., Ministerial Declaration, Second International Conference on the Protection of the North Sea.

¹⁷⁷ Article 3, No. 3, U.N. Framework Convention on Climate Change.

¹⁷⁸ The *Wingspread Consensus Statement on the Precautionary Principle*.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

Stronger versions exist in which precaution must factor in “a margin of safety into all decision making.”¹⁸¹ Such expectations would require a higher level of responsiveness to the precautionary approach. Other stronger versions have been articulated to shift the burden of evidence in light of scientific uncertainty: “when there is a risk of significant health or environmental damage to others or to future generations, and when there is scientific uncertainty as to the nature of that damage or the likelihood of the risk, then decisions should be made so as to prevent such activities from being conducted unless and until scientific evidence shows that the damage will not occur.”¹⁸² Some versions accentuate the minimal margin of risk needed to trigger protection. The Final Declaration of the First European Seas at Risk Conference provides that if the worst case scenario for a certain activity is serious enough, then even a small amount of doubt as to the safety of that activity is sufficient to stop it.¹⁸³

This account shows that the precautionary principle might be described both in terms of the level of uncertainty that triggers a regulatory response and in terms of the tool that will be chosen in the face of uncertainty (as in the case of technological requirements or prohibitions). In its strongest and most distinctive forms, the principle imposes a burden of proof on those who create potential risks, and it requires regulation of activities even if it cannot be shown that those activities are likely to produce significant harms.

For purposes of developing special rules of procedure, the Court considered the varying versions of the precautionary principle and the implications of adopting some elements over others. Further, the Court explored the role of court procedure in addressing cases that involve serious and irreversible environmental harm.

¹⁸¹ Sunstein, *supra* note 183 at 8 (citing BJORN LOMBERG, *THE SKEPTICAL ENVIRONMENTALIST* 348 (2001)).

¹⁸² *Id.* (quoting the testimony of Dr. Brent Blackwelder, President, Friends of the Earth, before the Senate Appropriations Committee, Subcommittee on Labor, Health and Human Services (Jan. 24, 2002)).

¹⁸³ *Id.* at 9.

B. VARIOUS DEFINITIONS OF THE PRECAUTIONARY PRINCIPLE

The different degrees of the precaution sought to be instilled is perhaps best reflected in the several definitions created by organizations or found in conventions. One of the most practically compelling (yet ethic-laden) definitions is the version created by the United Nations Educational, Scientific and Cultural Organization (UNESCO) World Commission on the Ethics of Scientific Knowledge and Technology (COMEST). It states:

[W]hen human activities may lead to morally unacceptable harm that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that harm. Morally unacceptable harm refers to harm to humans or the environment that is (1) threatening to human life or health; (2) serious and effectively irreversible; (3) inequitable to present or future generations; or (4) imposed without adequate consideration of the human rights of those affected.¹⁸⁴

Under this definition, specific parameters are placed to qualify the use of precaution, which in turn acts as a buffer against an unbridled use of the principle. Notably, the definition adds a different dimension to environmental protection by branding such behavior as “morally unacceptable.”

Another popular definition can be found in the Rio Declaration of 1992. Specifically, Principle 15 of the Rio Declaration states:

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.

Similar to the COMEST definition, there is an important qualification of “serious or irreversible” damage. Following a finding of the qualification, lack of full scientific certainty is not an impediment to environmental regulation or enforcement.

¹⁸⁴ United Nations Educational, Scientific and Cultural Organization (UNESCO) World Commission on the Ethics of Scientific Knowledge and Technology (COMEST) published March 2005.

The Final Declaration of the First European Seas at Risk Conference of 1994 also contained references to the precautionary principle within the context of marine environment. It states:

Preamble, ...to ensure that appropriate preventative measures are taken when there is reason to believe that substances or energy introduced into the marine environment or activities taking place in the marine environment are likely to cause harm even when there is no conclusive evidence to prove a causal relationship between inputs/activities and effects; this applies to the entire spectrum of environmental policy making and to all types of human impact on the environment.¹⁸⁵

Annex I, Principle 1¹⁸⁶, Lack of scientific certainty regarding cause and effect is not used as a reason for deferring measures to prevent harm to the environment. Science, while important in providing evidence of effect, is no longer required to provide proof of a causal link between pollutant/disturbing activity and effect, and where no clear evidence is available one way or the other the environment must be given the "benefit of the doubt."

x x x x x

Annex I, Principle 4, If the "worst case scenario" for a certain activity is serious enough then even a small amount of doubt as to the safety of that activity is sufficient to stop it taking place;

In another example, a state government had declared its commitment to the precautionary principle within the text of a law. Under the 1999 Canadian Environmental Protection Act (CEPA 1999), the pertinent text provides:

Whereas the Government of Canada is committed to implementing the precautionary principle that, 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.

¹⁸⁵ Notably, the definition also lays down the scope of the principle.

¹⁸⁶ Annex I enumerates five principles of precautionary action. Principle 3 is equally important because it shifts the burden of proof from the "regulator to the person responsible for the harmful activity." Principle 3. "the "burden of proof" is shifted from the regulator to the person or persons responsible for the potentially harmful activity, who will now have to demonstrate that their actions are not/will not cause harm to the environment."

The common theme of these definitions should be incorporated into the Rules of Procedure for Environmental Cases. It is cognizant of the fact that the complexities associated with environmental cases will present difficulties under the regular rules of procedure. Overall, the precautionary principle would essentially aid plaintiffs in establishing cases that would be, under most circumstances, difficult if not impossible to prove.

V. STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION (SLAPP)

A Strategic Lawsuit Against Public Participation or Strategic Legal Action Against Public Participation (SLAPP) is a phenomenon that finds its roots in U.S. litigation. It generally refers to a civil lawsuit for monetary damages filed against non-governmental individuals and groups as retaliation for the latter's petitioning or communication to the government (or other relevant body) on an issue of public concern, or to enforce a right or law such as environmental rights or statutes.¹⁸⁷ These suits are typically reactions to past or anticipated opposition to such issues, and are usually instituted not to vindicate any cognizable interest. Instead, a SLAPP is brought to court to chill opposition.¹⁸⁸ Many of these SLAPP actions are brought within the context of environmental litigation, and thus deserve consideration in formulating the Rules of Procedure for Environmental Cases.¹⁸⁹

A SLAPP can be effective because it diverts attention away from the petitioning party and can delay resolution of the original or real issue. In addition, persons instituting a SLAPP typically have more resources to sustain litigation against smaller petitioning parties.¹⁹⁰ In this regard, a SLAPP suit is used to financially burden

¹⁸⁷ See Edward W. McBride, *The Empire State SLAPPs Back: New York's Legislative Response to SLAPP Suits*, 17 VT. L. REV. 925 (1993) (SLAPP was initially analyzed by Penelope Canan and George W. Pring of the University of Denver).

¹⁸⁸ *Id.* at 926.

¹⁸⁹ See Sheri Coover, *The 2nd Annual Goddard Forum Symposium: Global Warming: Causes, Effects and Mitigation Strategies for States and Localities*, 12 PENN. ST. ENTL. L. REV. 263, 264 (2004).

¹⁹⁰ *Id.* at 263.

a petitioning party with frivolous litigation. In the realm of environmental law where public participation is central, chilling litigation serves as a serious obstacle to the enforcement of environmental rights.

A. CONSTITUTIONAL BASIS FOR PROTECTION AGAINST A SLAPP

The original basis for measures against SLAPP can be found in the U.S. Constitution. First Amendment of the U.S. Constitution (and several state constitutions in their own manner) provides citizens with the right to free speech and the right to petition the government to redress grievances of public matter.¹⁹¹ It is from this superior law that states have enacted Anti-SLAPP legislation.¹⁹²

Moreover, under the Noerr-Pennington doctrine, a citizen's right to petition the government should be protected regardless of whether the motivation for doing so is to advance their own interests.¹⁹³ Typically, in order for a person to avail of the protection of an Anti-SLAPP law, he or she must have communicated the complaint or information regarding the public matter to the branch or agency of government instituting the SLAPP.¹⁹⁴

Given the constitutional basis for Anti-SLAPP laws, one would logically think that the protection afforded persons in such situations applies only when a government body institutes a SLAPP. Such is the case in the state of Florida.¹⁹⁵ This limitation, however, is the exception to the general practice.¹⁹⁶ Other jurisdictions, such as the state of Oregon, are broader in application, and have thus formulated

¹⁹¹ See First Amendment, The Constitution of the United States of America.

¹⁹² See McBride, *supra* note 197, at 925.

¹⁹³ See Coover, *supra* note 199, at 267-68 (Footnote 23 states: "The Noerr-Pennington doctrine is based on two Supreme Court cases - *Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961) and *United Mine Workers v. Pennington*, 381 U.S. 657 (1965). Although both of these cases dealt with anti-trust litigation, the Noerr-Pennington doctrine has been extended to protect other action in which a citizen or organization petitions the government. *Barnes Found v. Township of Lower Merion*, 927 F. Supp 874 at 876 (E.D. Pa. 1996).")

¹⁹⁴ See McBride, *supra* note 197, at 927.

¹⁹⁵ Coover, *supra* note 199, at 277.

¹⁹⁶ *Id.*

Anti-SLAPP legislation to protect persons from SLAPPs instituted by private parties as well.¹⁹⁷

For purposes of the Rules of Procedure for Environmental Cases that promote access to justice, the Oregon view that SLAPP protection should also cover protection against private parties such as polluting corporations was adopted. The web of players in environmental issues includes several private and public entities or persons. The Court recognizes the simple reality that private corporations threaten the exercise of environmental rights as much as government agencies that fail to fulfill their duties. In the Philippines, assessing methods to uphold the constitutional right to a balanced and healthful ecology cannot be done in the abstract and without regard for the real obstacles to enforcement. Other aspects of environmental protection under the Rules of Procedure, such as speedy disposition of the case and the precautionary principle only accentuate the urgency to establish measures against vexatious behavior and harassment. Thus, the Court recognizes the need for innovative and groundbreaking legal solutions such as prohibiting SLAPP cases, regardless of whether SLAPP plaintiffs are public or private persons.

B. FORMS OF SLAPP

SLAPP suits can come in many seemingly valid forms of action such as defamation suits,¹⁹⁸ and tortious interference with contractual relations¹⁹⁹ as they have been filed in the U.S. Some Anti-SLAPP laws recognize that a SLAPP can be brought before a court as a claim (instituted as a lawsuit in the first instance), a counterclaim (brought within litigation instituted against the SLAPP party)²⁰⁰, and a cross-claim.²⁰¹ This broad approach is in line with

¹⁹⁷ See Oregon Anti-SLAPP Law - Title 3. Remedies and Special Actions and Proceedings, Chapter 31. Tort Actions, Special Motion to Strike, ORS § 31.150 (2007).

¹⁹⁸ *Northon v. Rule*, 494 F. Supp. 2d 1183, 2007 U.S. Dist. LEXIS 51537 (D. Or. 2007) (Oregon - motion to strike applied to defamation suit).

¹⁹⁹ *Hometown Properties, Inc. v. Fleming*, 680 A.2d 56 (R.I. 1996) (Rhode Island - anti-SLAPP applied to tortious interference with contractual relations claim).

²⁰⁰ See Note under Washington Anti-SLAPP law, ARCW § 4.24.510 (2009), citing history at 2002 c 232 §2.

²⁰¹ Florida Citizen Participation in Government Act - Strategic Lawsuits Against Public Participation (SLAPP) suits by governmental entities prohibited, Fla. Stat. §768.295 (2009).

a comprehensive approach to environmental enforcement, especially since there is more than one way for alleged environmental violators to institute a SLAPP.

C. MODES OF ANTI-SLAPP MEASURES

Given the different aforementioned forms of SLAPP, Anti-SLAPP legislation executes protection against SLAPP typically in a form of a defense. Some U.S. state jurisdictions refer to this as qualified or conditional immunity from civil liability.²⁰² If a person falls under the requirements mentioned above, he or she can avail of qualified immunity.

Some jurisdictions provide this immunity through a Special Motion to Strike,²⁰³ Motion to dismiss, and/or Motion for Summary Judgment.²⁰⁴ In most of these motions, the court sets hearings on the matter and relies on affidavits and pleadings in making their determination.²⁰⁵

In the state of Maine, filing a motion to dismiss under an Anti-SLAPP provision can be done within a 60-day period following the service of the complaint, or at the court's discretion, at any later time upon terms the court determines proper.²⁰⁶ Given the potentially complex and tedious concerns of establishing that a claim or counterclaim is a SLAPP, this provision might be ideal because it gives parties a "soft" period to resolve the matter, and the judge the discretion to do the same at a later time.²⁰⁷ Moreover, after the court has decided that a SLAPP exists, it must dismiss the SLAPP claim unless the non-moving party shows that the SLAPP target initiated a "sham petition" (described below in greater detail), which

²⁰² See e.g., Title 9. Courts and Civil Procedure Generally, Chapter 33. Limits on Strategic Litigation Against Public Participation, R.I. Gen. Laws §9-33-2 (2009).

²⁰³ See Oregon Anti-SLAPP Law.

²⁰⁴ See Coover, *supra* note 199, at 277-78.

²⁰⁵ See Oregon Anti-SLAPP Law, at par. (4).

²⁰⁶ Osborn and Thaler, *Feature: Maine's Anti-SLAPP Law: Special Protection Against Improper Lawsuits Targeting Free Speech and Petitioning*, 23 MAINE BAR J. 32, 34 (2008).

²⁰⁷ *Id.*

action was made in bad faith or intended to harass a passive enforcer or alleged violator of the original issue.²⁰⁸

Other jurisdictions provide SLAPP protection in a more preventative manner. The state of Georgia, for example, requires that a party initiating a suit also submit a special verification with its pleading.²⁰⁹ The party initiating the claim and his or her counsel must sign the verification.²¹⁰ The signed verification guarantees, among other things, that the "claim is not interposed for any improper purpose such as to suppress a person's or entity's right of free speech or right to petition government, or to harass, or to cause unnecessary delay or needless increase in the cost of litigation."²¹¹

If the claim does not have with it a verification that meets these requirements, the claim shall be stricken unless the party makes the corrections within ten days after the omission is called to its attention.²¹² If claim is verified, but violates the Anti-SLAPP law, the court upon motion or its own initiative, shall impose upon the persons who signed the verification, sanctions which may include dismissal of the claim and an order to pay to the other party reasonable expenses plus attorney's fees.²¹³

In Oregon, the defendant has the initial burden to establish that the SLAPP claim arises out of an act protected by the constitution.²¹⁴ If the defendant meets this, the burden then shifts to the plaintiff to produce evidence to support a prima facie case that the lawsuit is not a SLAPP.²¹⁵ If the plaintiff is successful, then the courts deny the motion to strike.²¹⁶ Rhode Island's Anti-SLAPP law is different

²⁰⁸ *Id.*

²⁰⁹ See Exercise of rights of freedom of speech and right to petition government for redress of grievances; legislative findings; verification of claims; definitions; procedure on motions; exception; attorney's fees and expenses, §O.C.G.A. 9-11-11.1 (2009).

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

²¹⁴ Oregon Anti-SLAPP Law, at par. (3).

²¹⁵ *Id.*

²¹⁶ *Id.*

insofar as the SLAPP plaintiff has the burden of proving that the defendant's petition was a sham petition and thus did not qualify for immunity.²¹⁷ In both these examples, the burden-shifting aspect is that which makes the Anti-SLAPP motion to dismiss different from the motion to dismiss falling under the normal rules of civil procedure.

The Washington Anti-SLAPP law provides for a more definitive burden of proof for the SLAPP plaintiff in a defamation suit. It states that the defamed party must show by clear and convincing evidence that the defendant did not act in good faith when alleging a SLAPP.²¹⁸ In contrast, the Anti-SLAPP law in Georgia suggests that neither party has the burden of proof on a motion to dismiss or strike under its Anti-SLAPP law "because this issue is a matter of law for the trial court's determination based upon the pleadings rather than upon evidence presented by either party."²¹⁹

A "SLAPP-back" is a method for a party targeted by an alleged SLAPP, to counter that SLAPP by instituting his or her own SLAPP. Some jurisdictions such as Oregon, California, and Rhode Island have Anti-SLAPP-back provisions that provide for damages to be awarded to a plaintiff who successfully debunks the assertion that his or her claim was a SLAPP action.²²⁰ In Oregon, the court can direct a defendant found to have brought a frivolous Anti-SLAPP motion to strike to pay reasonable costs and attorney fees to the plaintiff defending against the motion.²²¹ In California, the court is authorized to direct costs against a defendant if it is found that the motion to strike was merely made to cause delay.²²² Other jurisdictions, such as Pennsylvania do not have such provisions.

As a matter of policy, Rhode Island does not allow SLAPP-Backs, as they find the ruling on a motion to dismiss (with its

²¹⁷ Coover, *supra* note 199, at 278.

²¹⁸ See *Giltman v. MacDonald*, 74 Wn. App. 733, 875 P.2d 697, review denied, 125 Wn.2d 1010, 889 P.2d 498 (1994); *Right-Price Recreation, LLC v. Connells Prairie Cmty. Council*, 146 Wn.2d 370, 46 P.3d 789 (2002).

²¹⁹ *Browns Mill Dev. Co. v. Denton*, 247 Ga. App. 232, 543 S.E.2d 65 (2000), *aff'd*, 275 Ga. 2, 561 S.E.2d 431 (2002).

²²⁰ Coover, *supra* note 199, at 280.

²²¹ *Id.*

²²² *Id.*

corresponding potential damages, costs, and fees awarded) based on an Anti-SLAPP legislation to be sufficient in resolving the matter.²²³

Other jurisdictions allow, though not explicitly, the use of SLAPP-backs to battle SLAPPs.²²⁴ The targets of original SLAPPs are attracted to using SLAPP backs because of potential damages to be awarded in their favor.²²⁵ The disadvantage of using this strategy is that it would entail more costly litigation and further delay the already chilled original action seeking to enforce environmental rights.²²⁶

For purposes of the Rules of Procedure for Environmental Cases, these modes of anti-SLAPP measures were considered in developing rules that are best suited for environmental litigants in this jurisdiction. Due process for all parties of the case is a primary consideration in these decisions.

D. PROHIBITION AGAINST SHAM PETITIONS

As mentioned above, courts in several jurisdictions must dismiss a claim that is found to be a SLAPP unless the SLAPP plaintiff establishes that the SLAPP target originally engaged in a sham petition against the SLAPP plaintiff (e.g. a citizen's group puts forth a sham petition against a government agency intended only to harass that agency). This made way for the doctrine of "sham exception" to SLAPP suits.

The U.S. Supreme Court developed a two-part test to determine if an action that is filed with the government falls under the sham exception.²²⁷ First, the Court identified that a "sham" petition is baseless in that "no reasonable litigant could realistically expect success on the merits."²²⁸ Second, a "sham" petition is directed at

²²³ See *Palazzo v. Alves*, 944 A.2d 144, 2008 R.I. LEXIS 33 (R.I. 2008).

²²⁴ See Stetson, Mamie, *Reforming SLAPP Reform: New York's Anti-SLAPP Statute*, 70 N.Y.U.L. REV. 1324, 1351-1353 (1995).

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ Coover, *supra* note 199, at 268 (citing *Prof'l Real Estate Investors, Inc. v. Columbia Pictures Indus., Inc.*, 508 U.S. 49, 60-62 (1993)).

²²⁸ *Id.*

injuring the opposition through the use of government process, as opposed to the outcome of the process.²²⁹

E. COMPENSATORY AND PUNITIVE DAMAGES, REASONABLE COSTS AND ATTORNEY'S FEES

To further the policy of providing disincentives to instituting SLAPPs, Anti-SLAPP legislation provides courts with the authority to award compensatory and punitive damages, reasonable costs, and attorney's fees to successful movants against SLAPPs.²³⁰ Delaware, Minnesota and Rhode Island provide for punitive damages for cases where it is established that the suit was brought for the purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of petition, speech or assembly.²³¹ In Hawaii, a court should direct a plaintiff found instituting a SLAPP the greater amount of \$5,000 or actual damages incurred by the defendant, plus costs, attorney's fees, and any additional sanctions it may deem necessary.²³²

Conversely, in Oregon, if the court determines that a SLAPP-back was instituted (meaning the defendant responded with a SLAPP of his/her own in violation of the law), then the defendant should pay reasonable costs and attorney fees.²³³

Georgia provides that attorney's fees and expenses may be requested by motion at any time during the course of the action but not later than 45 days after final disposition, including but not limited to dismissal by the plaintiff of the action.²³⁴ Notably, failure to request for damages in the original adjudication of SLAPP issues may bar a party from requesting for such damages on appeal.²³⁵

²²⁹ *Id.*

²³⁰ *Id.* at 279-280.

²³¹ *Id.* at 279.

²³² *Id.* at 279-280.

²³³ *Id.* at 280.

²³⁴ Georgia Anti-SLAPP Law, at par. (f).

²³⁵ See Palazzo, at 33.

The Philippine Supreme Court has taken into consideration the importance of awarding damages, litigation costs and attorney's fees to the successful party in a SLAPP determination. It recognized that the aim is to not only defray the costs of excess litigation, but also to establish a disincentive for parties to institute a SLAPP.

F. THE ROLE OF GOVERNMENT IN SLAPP CASES

Some U.S. jurisdictions, such as Washington, Nevada and Pennsylvania, provide that a government agency may intervene or participate in the lawsuit.²³⁶ In some of these states, the agency to which the communication was made has the option of providing the defense against a lawsuit that pertains to the exercise of the defendant's free speech.²³⁷ In Nevada, the Attorney General may replace the government agency to which the communication was made in defending a SLAPP action.²³⁸

In Florida, the governmental entity that is found to violate this section shall report such a ruling to Attorney General no later than 30 days after order is final.²³⁹ The Attorney General shall then report to Cabinet, Senate president and Speaker of the House.²⁴⁰

Given these practices, in the Philippines, the Supreme Court assessed the role of appropriate government agencies and the Department of Justice in the Rules of Procedure for Environmental Cases.

G. VOLUNTARY DISMISSAL OF A LAWSUIT BY A PLAINTIFF

In cases where the SLAPP is in the form of an initial claim, Georgia provides that a voluntary dismissal of such lawsuit by plaintiff does not preclude imposition of a sanction under the law.²⁴¹

²³⁶ Coover, *supra* note 199, at 280.

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ Florida Anti-SLAPP Law, at par. (6).

²⁴⁰ *Id.*

²⁴¹ See *Hagemann v. Berkman Wynhaven Assoc., L.P.*, 290 Ga. App. 677, 660 S.E.2d 449 (2008).

Other jurisdictions are more lenient. The Anti-SLAPP law in New York for example, contains a safe-harbor provision that gives the SLAPP plaintiff a period in which he or she may voluntarily withdraw the SLAPP without fear of being penalized for the same.²⁴² In this regard, a sanctions motion cannot be filed at least twenty-one days after being served, and the original filer of the lawsuit may withdraw the suit during the twenty-one days without impunity.²⁴³ This creates an effective incentive to withdraw a SLAPP, but also allows the SLAPP filer to enjoy the chilling effect of his or her lawsuit for twenty-one days without sanction.²⁴⁴

H. ADMISSION OF EVIDENCE

Oregon has a provision states that if the plaintiff (the party accused of instituting a SLAPP) wins the SLAPP motion, the fact that the determination has been made and the substance of the same may not be admitted into evidence at any later stage of the case.²⁴⁵ The determination also does not affect the burden of proof standard applied to the proceeding.²⁴⁶ The Philippine Supreme Court has taken into account the implications of allowing evidence submitted during a SLAPP hearing, to be admitted in the subsequent trial.

VI. CONCLUSION

In early 2009, the Technical Working Group (TWG) convened to draft the Rules of Procedure for Environmental Cases. The composition of the TWG included esteemed members of the academe and legal profession, who provided input relating to procedural issues in environmental cases, and how to best address them.

On April 16-17, 2009, the Supreme Court held the *Forum on Environmental Justice: Upholding the Right to Balanced and Healthful Ecology* simultaneously in Baguio City, Iloilo City and Davao City.

²⁴² Stetson, *supra* note 234 at 1345.

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ See Oregon Anti-SLAPP Law, at par. (5) (a).

²⁴⁶ *Id.*, at par. (5)(b).

The objectives of the Forum included the following: (1) to recommend to the Supreme Court actions it may take to protect and preserve the environment; (2) to validate the draft Rules of Procedure for Environmental Cases; (3) to discuss the need for a mechanism/structure that will address the need to monitor environmental cases or issues and monitor compliance therewith; and (4) to identify best practices of some agencies/units and replicate in a particular situation.²⁴⁷ In the Forum, the TWG presented to the participants the draft Rules of Procedure for Environmental Cases. From thereon, the participants were divided into workshop groups, and provided further input and recommendations regarding the draft Rules based on their own experiences. The participants came from different sectors and organizations, including the academe, prosecutors, environmental lawyers and NGOs, in addition to members of the judicial, legislative, and the executive branches of government.

Following the Forum, the draft Rules were submitted to the Sub-committee on Rules of Procedure for Environmental Cases for further review. On April 13, 2010, the Court *En Banc* approved the Rules. The Rules were published in the Philippine Star on April 14, 2010 and takes effect on April 29, 2010.

²⁴⁷ Forum Bulletin, Day 1, Public Information Office, Supreme Court of the Philippines.

ANNOTATION TO THE RULES OF PROCEDURE FOR ENVIRONMENTAL CASES

The Rules of Procedure for Environmental Cases. The effort to formulate this separate set of rules is a response to the long felt need for more specific rules that can sufficiently address the procedural concerns that are peculiar to environmental cases. Most of the provisions included here are therefore remedies that are directed to the actual difficulties encountered at present by concerned government agencies, corporations, practitioners, people's organizations, non-governmental organizations, and public-interest groups handling environmental cases.

In order to shed light on specific provisions of these Rules, the Secretariat of the Sub-committee on these Rules developed this Annotation to the Rules to serve as guidelines for better understanding and application of the same.

PART I

RULE 1

GENERAL PROVISIONS

SECTION 1. Title. – These Rules shall be known as “*The Rules of Procedure for Environmental Cases.*”

Environmental cases. These refer to those cases covered by Sec. 2 of these Rules, *infra*.

SEC. 2. Scope. – These Rules shall govern the procedure in civil, criminal and special civil actions before the Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts and Municipal Circuit Trial Courts involving enforcement or violations of environmental and other related laws, rules and regulations such as but not limited to the following:

- (a) Act No. 3572, Prohibition Against Cutting of Tindalo, Akli, and Molave Trees;
- (b) P.D. No. 705, Revised Forestry Code;

- (c) P.D. No. 856, Sanitation Code;
- (d) P.D. No. 979, Marine Pollution Decree;
- (e) P.D. No. 1067, Water Code;
- (f) P.D. No. 1151, Philippine Environmental Policy of 1977;
- (g) P.D. No. 1433, Plant Quarantine Law of 1978;
- (h) P.D. No. 1586, Establishing an Environmental Impact Statement System Including Other Environmental Management Related Measures and for Other Purposes;
- (i) R.A. No. 3571, Prohibition Against the Cutting, Destroying or Injuring of Planted or Growing Trees, Flowering Plants and Shrubs or Plants of Scenic Value along Public Roads, in Plazas, Parks, School Premises or in any Other Public Ground;
- (j) R.A. No. 4850, Laguna Lake Development Authority Act;
- (k) R.A. No. 6969, Toxic Substances and Hazardous Waste Act;
- (l) R.A. No. 7076, People's Small-Scale Mining Act;
- (m) R.A. No. 7586, National Integrated Protected Areas System Act including all laws, decrees, orders, proclamations and issuances establishing protected areas;
- (n) R.A. No. 7611, Strategic Environmental Plan for Palawan Act;
- (o) R.A. No. 7942, Philippine Mining Act;
- (p) R.A. No. 8371, Indigenous Peoples Rights Act;
- (q) R.A. No. 8550, Philippine Fisheries Code;
- (r) R.A. No. 8749, Clean Air Act;
- (s) R.A. No. 9003, Ecological Solid Waste Management Act;
- (t) R.A. No. 9072, National Caves and Cave Resource Management Act;
- (u) R.A. No. 9147, Wildlife Conservation and Protection Act;

- (v) R.A. No. 9175, Chainsaw Act;
- (w) R.A. No. 9275, Clean Water Act;
- (x) R.A. No. 9483, Oil Spill Compensation Act of 2007; and
- (y) Provisions in C.A. No. 141, The Public Land Act; R.A. No. 6657, Comprehensive Agrarian Reform Law of 1988; R.A. No. 7160, Local Government Code of 1991; R.A. No. 7161, Tax Laws Incorporated in the Revised Forestry Code and Other Environmental Laws (Amending the NIRC); R.A. No. 7308, Seed Industry Development Act of 1992; R.A. No. 7900, High-Value Crops Development Act; R.A. No. 8048, Coconut Preservation Act; R.A. No. 8435, Agriculture and Fisheries Modernization Act of 1997; R.A. No. 9522, The Philippine Archipelagic Baselines Law; R.A. No. 9593, Renewable Energy Act of 2008; R.A. No. 9637, Philippine Biofuels Act; and other existing laws that relate to the conservation, development, preservation, protection and utilization of the environment and natural resources.

Scope versus jurisdiction. It must be noted that the Rules remain consistent with prevailing jurisprudence regarding the doctrine of exhaustion of administrative remedies and primary jurisdiction.

Laws, rules and regulations. These Rules apply to environmental cases arising from laws that relate to the conservation, development, preservation, protection and utilization of the environment and natural resources. These may include environmental laws and those laws that may contain provisions that relate to the environment but are not environmental laws *per se* (e.g. C.A. No. 141, "The Public Land Act"; R.A. No. 7160, "The Local Government Code of 1990", etc...). While this section includes a list of such applicable laws, it is not meant to be exhaustive.

In addition, since this section covers "civil, criminal and special civil actions...*involving enforcement* or violations of environmental and other related laws" (emphasis added), these Rules may apply in other suits not necessarily based on environmental laws or laws containing environmental provisions. Specifically, for example, if

a defendant in a civil damages or defamation suit (the case of which is governed by the regular rules of civil/criminal procedure) invokes a SLAPP defense (see Rule 6 and 19 *infra.*), then these Rules shall apply insofar as the SLAPP defense is concerned.

The courts referred to in this section are those designated as special courts to try hear, try and decide environmental cases under Administrative Order No. 23-2008¹ and those that may be designated as such thereafter.

SEC. 3. Objectives. – The objectives of these Rules are:

- (a) To protect and advance the constitutional right of the people to a balanced and healthful ecology;
- (b) To provide a simplified, speedy and inexpensive procedure for the enforcement of environmental rights and duties recognized under the Constitution, existing laws, rules and regulations, and international agreements;
- (c) To introduce and adopt innovations and best practices ensuring the effective enforcement of remedies and redress for violation of environmental laws; and
- (d) To enable the courts to monitor and exact compliance with orders and judgments in environmental cases.

Objectives. This section contains the principal objectives of the Rules and is not meant to be an exhaustive listing of objectives. This section states in very broad terms the basic principles and objectives animating the rules. They are likewise intended to be guideposts in construing the Rules. It re-affirms the Court's recognition of environmental rights and provides a backdrop for the construction of the provisions of contained herein.

Subparagraph (a) recognizes the right to "a balanced and healthful ecology" pursuant to Section 16, Article II of the Constitution.²

¹ A.O. No. 23-2008, *Re: Designation of Special Courts to Hear, Try and Decide Environmental Cases*, January 28, 2008.

² CONSTITUTION, Article II, § 16 (emphasis supplied). 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.

Subparagraph (b) promotes access to justice by supporting the adoption of procedural mechanisms to ensure a simplified, speedy and inexpensive procedure for the enforcement of environmental rights. This subparagraph also enumerates the various sources for such rights.

Subparagraph (c) refers to innovative provisions of these Rules regarding the defense against strategic lawsuits against public participation (SLAPP) and the precautionary principle.

Finally, Subparagraph (d) gives emphasis to the means by which the courts carry their jurisdiction to effect. It pertains to the adoption of the writs of *kalikasan* and continuing *mandamus*, as well as the issuance of an Environmental Protection Order (EPO) and Temporary Environmental Protection Order (TEPO) to ensure the enforcement of court orders and judgments in environmental cases.

SEC. 4. Definition of Terms. -

- (a) **By-product or derivatives means any part taken or substance extracted from wildlife, in raw or in processed form including stuffed animals and herbarium specimens.**

By-product or derivatives. This definition was taken from Sec. 5 (b) of R.A. No. 9147, "The Wildlife Resources Conservation and Protection Act."

- (b) **Consent decree refers to a judicially-approved settlement between concerned parties based on public interest and public policy to protect and preserve the environment.**

Consent decree. The designation of a consent decree as a mode of settlement gives emphasis to the public interest aspect in environmental cases and encourages the parties to expedite the resolution of litigation.

A consent decree derives its contractual nature from the fact of their being entered into by the parties themselves through which they arrive at a certain compromise with respect to the issues involved in the case, whereas their judicial feature is acquired through the approval of the

court. It has a number of advantages:³

- (1) It encourages the parties (the government and the violators) to come up with comprehensive, mutually-acceptable solutions to the environmental problem, and since the agreement was arrived at voluntarily, there is a greater possibility of actual compliance;
 - (2) It is open to public scrutiny;
 - (3) It allows the parties to address issues other than those presented to the court; and
 - (4) It is still subject to judicial approval and can be enforced through a court order.
- (c) **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.**

Continuing mandamus. The Philippine concept of a continuing mandamus traces its origin to the cases of *T.N. Godavarman v. Union of India & Ors*, 2 SCC 267 (1997), and *Vineet Narain v. Union of India*, 1 SCC 266 (1998). In the *Godavarman* case, the Supreme Court of India in the former case issued this novel writ to save the country's forests from rapid deterioration due to illegal logging, and in view of the nature of the case which requires the court to continuously monitor compliance with its orders. In the *Narain* case, the writ was issued for the enforcement of the court order to clean up the Ganges River. Comments made regarding such issuances harp upon how the judiciary took upon itself policy making functions, and as in any other jurisdiction where the principle of separation of powers is recognized, such judicial move received accolades as well as criticisms.

³ See Justice Consuelo Ynares-Santiago, *Framework for Strengthening Environmental Adjudication in the Philippines*, 52 ATENEO L.J. 744 (2008).

In Philippine jurisprudence, the concept of continuing *mandamus* was originally enunciated in the case of *Concerned Residents of Manila Bay v. MMDA*.⁴ The Rules now codify the Writ of Continuing *Mandamus* as one of the principal remedies which may be availed of in environmental cases.

- (d) ***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.**

EPO. The EPO is one of the remedial measures adopted to ensure the effective enforcement of environmental laws.

- (e) ***Mineral* refers to all naturally occurring inorganic substance in solid, gas, liquid, or any intermediate state excluding energy materials such as coal, petroleum, natural gas, radioactive materials and geothermal energy.**

Minerals. This definition was taken from Sec. 3 (aa) of R.A. No. 7942, "The Philippine Mining Act of 1995."

- (f) ***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.**

Precautionary principle. The adoption of the precautionary principle as part of these Rules, specifically relating to evidence, recognizes that exceptional cases may require its application. The inclusion of a definition of this principle is an integral part of Part V, Rule on Evidence (*infra.*) in environmental cases in order to ease the burden on the part of ordinary plaintiffs to prove their cause of action.

⁴ G. R. Nos. 171947-98, December 18, 2008.

In its essence, the precautionary principle calls for the exercise of caution in the face of risk and uncertainty. While the principle can be applied in any setting in which risk and uncertainty are found, it has evolved predominantly in and today remains most closely associated with the environmental arena.

The Rules acknowledge the peculiar circumstances surrounding environmental cases in that "scientific evidence is usually insufficient, inconclusive or uncertain and preliminary scientific evaluation indicates that there are reasonable grounds for concern" that there are potentially dangerous effects on the environment, human, animal, or planet health. For this reason, principle requires those who have the means, knowledge, power, and resources to take action to prevent or mitigate the harm to the environment or to act when conclusively ascertained understanding by science is not yet available. In effect, the quantum of evidence to prove potentially hazardous effects on the environment is relaxed and the burden is shifted to proponents of an activity that may cause damage to the environment.

There are numerous formulations⁵ of the precautionary principle and it is recited in many international declarations and treaties, so much so that "while not all scholars agree to its status as that of customary international law, many respected scholars do."⁶

In formulating the definition of the precautionary principle in the Rules, the definitions found in the Rio Declaration of 1992,⁷ the 1999 Canadian Protection Act

⁵ Noted legal scholar Cass Sunstein has listed more than twenty definitions of this principle. See generally, Cass R. Sunstein, *Irreversible and Catastrophic*, *Cornell L. Rev.* 841 (2006).

⁶ John O. McGinnis, *The Appropriate Hierarchy of Global Multilateralism and Customary International Law: The Example of the WTO*, 44 *Va. J. Int'l L.* 269 (2008), cited in Jonathan Remy Nash, *Essay: Standing and the Precautionary Principle*, 108 *Colum. L. Rev.* 494 (2003).

⁷ Principle 15. 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

(CEPA 1999),⁸ and the World Commission on the Ethics of Scientific Knowledge and Technology (COMEST) 2005⁹ were considered.

(g) *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.

SLAPP. The SLAPP provisions under these Rules are innovations of the doctrine first introduced by Dr. George W. Pring,¹⁰ as well as doctrines and practices in other jurisdictions. The main purpose of a SLAPP suit is to harass, vex, exert undue pressure or stifle any legal recourse on any person, including the government from enforcing environmental laws or protecting or asserting environmental rights.

irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

⁸ The precautionary principle has been incorporated into CEPA 1999 in the "Preamble", "Administrative Duties" section and in the provisions with respect to controlling toxic substances. The principle is stated thus:

Whereas the Government of Canada is committed to implementing the precautionary principle that, 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.

⁹ Precautionary principle, a working definition. When human activities may lead to morally unacceptable harm that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that harm. Morally unacceptable harm refers to harm to humans or the environment that is (1) threatening to human life or health; (2) serious and effectively irreversible; (3) inequitable to present or future generations; or (4) imposed without adequate consideration of the human rights of those affected. See The Precautionary Principle, World Commission on the Ethics of Scientific Knowledge and Technology (COMEST), United Nations Educational, Scientific and Cultural Organizations (UNESCO) [2005], available at <http://unesdoc.unesco.org/images/0013/001395/139578e.pdf> (last accessed on July 11, 2009).

¹⁰ George Pring and Penelope Canan, *SLAPPS: Getting Sued and Speaking Out* (1996).

This provision applies not only to suits that have been filed in the form of a countersuit, but also to suits that are about to be filed with the intention of discouraging the aggrieved person from bringing a valid environmental complaint before the court. Specific SLAPP provisions in these Rules are directed separately, against civil and criminal actions.¹¹ The Rules pertaining to each, however, are interrelated.

- (h) **Wildlife means wild forms and varieties of flora and fauna, in all developmental stages including those which are in captivity or are being bred or propagated.**

Wildlife. This definition was taken from Sec. 5 (x) of R.A. No. 9147, the "Wildlife Resources Conservation and Protection Act."

PART II CIVIL PROCEDURE

RULE 2 PLEADINGS AND PARTIES

SEC. 1. Pleadings and motions allowed. – The pleadings and motions that may be filed are complaint, answer which may include compulsory counterclaim and cross-claim, motion for intervention, motion for discovery and motion for reconsideration of the judgment.

Motion for postponement, motion for new trial and petition for relief from judgment shall be allowed in highly meritorious cases or to prevent a manifest miscarriage of justice.

Exclusive list. The enumeration in this section is exclusive and must be read in conjunction with the succeeding provision, *infra*.

SEC. 2. Prohibited pleadings or motions. – The following pleadings or motions shall not be allowed:

¹¹ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rules 6 and 19.

- (a) Motion to dismiss the complaint;
- (b) Motion for a bill of particulars;
- (c) Motion for extension of time to file pleadings, except to file answer, the extension not to exceed fifteen (15) days;
- (d) Motion to declare the defendant in default;
- (e) Reply and rejoinder; and
- (f) Third party complaint.

Prohibited pleadings. While the enumeration of prohibited pleadings have been adopted in part from the Rule on Summary Procedure¹² in response to the question of delay which often accompanies regular cases, summary procedure is not adopted in its entirety given the complex and wide range of environmental cases. Procedural safeguards have been introduced for truly complex cases which may necessitate further evaluation from the court. Among these are the exclusion of the motions for postponement, new trial and reconsideration, as well as the petition for relief from the prohibition.

Motion for postponement, motion for new trial and petition for relief from judgment shall only be allowed in certain conditions -

¹² Revised Rules on Summary Procedure, Sec. 19. This provision states:

Sec. 19. Prohibited pleadings and motions. — The following pleadings, motions or petitions shall not be allowed in the cases covered by this Rule:

- (a) Motion to dismiss the complaint or to quash the complaint or information except on the ground of lack of jurisdiction over the subject matter, or failure to comply with the preceding section;
- (b) Motion for a bill of particulars;
- (c) Motion for new trial, or for reconsideration of a judgment, or for opening of trial;
- (d) Petition for relief from judgment;
- (e) Motion for extension of time to file pleadings, affidavits or any other paper;
- (f) Memoranda;
- (g) Petition for certiorari, mandamus, or prohibition against any interlocutory order issued by the court;
- (h) Motion to declare the defendant in default;
- (i) Dilatory motions for postponement;
- (j) Reply;
- (k) Third party complaints; and
- (l) Interventions.

highly meritorious cases or to prevent a manifest miscarriage of justice. The satisfaction of these conditions is required since these motions are prone to abuse during litigation.

Motion for intervention is permitted in order to allow the public to participate in the filing and prosecution of environmental cases, which are imbued with public interest.

Petitions for *certiorari* are likewise permitted since these raise fundamentally questions of jurisdiction. Under the Constitution, the Supreme Court may not be deprived of its certiorari jurisdiction.¹³

SEC. 3. Verified complaint. — The verified complaint shall contain the names of the parties, their addresses, the cause of action and the reliefs prayed for.

The plaintiff shall attach to the verified complaint all evidence proving or supporting the cause of action consisting of the affidavits of witnesses, documentary evidence and if possible, object evidence. The affidavits shall be in question and answer form and shall comply with the rules of admissibility of evidence.

The complaint shall state that it is an environmental case and the law involved. The complaint shall also include a certification against forum shopping. If the complaint is not an environmental complaint, the presiding judge shall refer it to the executive judge for re-affle.

¹³ CONSTITUTION, Article VIII, § 5(2). The Supreme Court shall have the following powers:

x x x

(2) Review, revise, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

- (a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.
- (b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.
- (c) All cases in which the jurisdiction of any lower court is in issue.
- (d) All criminal cases in which the penalty imposed is reclusion perpetua or higher.
- (e) All cases in which only an error or question of law is involved.

Evidence all in; complaint misfiled as an environmental complaint. The provision requires the attachment of all evidence then available. This is to facilitate complete presentation of facts by the parties. This likewise entails a relaxation of the technical rules on admissibility.

The appropriate action to be taken by the presiding judge if a complaint is misfiled as an environmental complaint is to refer the complaint to the executive judge for re-raffle, the complaint should not be dismissed.

SEC. 4. Who may file. – Any real party in interest, including the government and juridical entities authorized by law, may file a civil action involving the enforcement or violation of any environmental law.

Real party in interest. The phrase “real party in interest” in this provision retains the same meaning under the Rules of Civil Procedure¹⁴ and jurisprudence. It must be understood, however, in conjunction with the nature of environmental rights, which are enjoyed in general by all individuals. Under this section, both a Filipino citizen and an alien can file a suit so long as they are able to show direct and personal injury. This provision on real party in interest must be read in conjunction with citizen suit provisions — Sec. 5 of this Rule¹⁵ and Sec. 1, Rule 5.¹⁶

A person who suffers damage or injury arising from an environmental prejudice which is also the same subject of a citizen suit can file a separate action under this section to recover for his personal injury. In this instance, a citizen suit can take place simultaneously with the filing of an individual complaint.

SEC. 5. Citizen 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

¹⁴ Rules of Court, Rule 3, Sec. 2. *Parties in interest.* — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

¹⁵ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 2, Sec. 5.

¹⁶ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 5, Sec. 1.

laws. Upon the filing of a citizen suit, the court shall issue an order which shall contain a brief description of the cause of action and the reliefs prayed for, requiring all interested parties to manifest their interest to intervene in the case within fifteen (15) days from notice thereof. The plaintiff may publish the order once in a newspaper of a general circulation in the Philippines or furnish all affected barangays copies of said order.

Citizen suits filed under R.A. No. 8749 and R.A. No. 9003 shall be governed by their respective provisions.

Citizen suit. To further encourage the protection of the environment, the Rules enable litigants enforcing environmental rights to file their cases as citizen suits. This 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. The terminology of the text reflects the doctrine first enunciated in *Oposa v. Factoran*,¹⁷ insofar as it refers to minors and generations yet unborn.

While the Rules liberalize the requirements for standing, in the case of non-government organizations (NGOs) and people’s organizations (POs), proof of their juridical personality (i.e. accreditation, recognition or registration) given the relative ease by which a number of groups can loosely organize and label themselves as NGOs or POs. The same proof of juridical personality is also required in a petition for a writ of *kalikasan*.¹⁸

Unlike the previous section on real party in interest, Sec. 5 is a suit limited to Filipino citizens and one that is filed in the public interest hence, no proof of personal injury is required. A Filipino citizen may be an individual or a corporation so long as the requirements of Philippine citizenship are complied with. The reliefs that may be awarded in a citizen suit are discussed in Rule 5, Sec. 1, *infra*.

As a procedural device, citizen suits permit deferment of payment of filing fees until after the judgment.¹⁹

¹⁷ G.R. 101083, July 30, 1993.

¹⁸ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7, Sec. 1.

¹⁹ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 2, Sec. 12.

The provision permits the plaintiff to publish the order containing a brief description of the action in order to allow other persons to join as co-plaintiffs and to sufficiently apprise the judge of persons interested to join as such, consistent with the public character of the citizen suit. This adopts the features of the general rule on publication found in cases in *rem*, and is meant to reflect the distinct nature of environmental cases. In this Rule, however, publication is permissive and non-jurisdictional and is meant only to encourage public participation.

Citizen suits may be filed for all types of environmental cases. In deference to the legislature, however, the provision adds as a caveat that citizen suits under the Clean Air Act of 1999) and the Ecological Solid Waste Management Act of 2000 shall be governed by their respective provisions.

SEC. 6. *Service of the complaint on the government or its agencies.* – Upon the filing of the complaint, the plaintiff is required to furnish the government or the appropriate agency, although not a party, a copy of the complaint. Proof of service upon the government or the appropriate agency shall be attached to the complaint.

Service of complaint upon government or its agencies. This provision makes it mandatory for plaintiffs to notify the concerned branch of government. Two agencies have been noted in particular: the Department of Environment and Natural Resources (DENR) and the Office of the Solicitor General (OSG). If their participation should prove unwarranted, they may file a manifestation to that effect.

The service of the complaint would apprise the government of the pendency of the case and the agencies may intervene if warranted. The government agency may thus employ its resources, as well as expertise, to successfully pursue the case.

SEC. 7. *Assignment by raffle.* – If there is only one (1) designated branch in a multiple-sala court, the executive judge shall immediately refer the case to said branch. If there are two (2) or more designated branches, the executive judge shall conduct a special raffle on the day the complaint is filed.

SEC. 8. *Issuance of Temporary Environmental Protection Order (TEPO).* – If it appears from the verified complaint with a prayer for the issuance of an Environmental Protection Order (EPO) that the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of the multiple-sala court before raffle or the presiding judge of a single-sala court as the case may be, may issue *ex parte* a TEPO effective for only seventy-two (72) hours from date of the receipt of the TEPO by the party or person enjoined. Within said period, the court where the case is assigned, shall conduct a summary hearing to determine whether the TEPO may be extended until the termination of the case.

The court where the case is assigned, shall periodically monitor the existence of acts that are the subject matter of the TEPO even if issued by the executive judge, and may lift the same at any time as circumstances may warrant.

The applicant shall be exempted from the posting of a bond for the issuance of a TEPO.

TEPO. The temporary environmental protection order (TEPO) integrates both prohibitive and mandatory reliefs in order to appropriately address the factual circumstances surrounding the case. This is derived from the nature of an EPO, which, as defined, is 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.”²⁰

The procedure for the issuance of the TEPO stems from the same procedure for the issuance of a Temporary Restraining Order, as it appears in Sections 5²¹ and 6²² of Rule 58 of the Rules of Court.

²⁰ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 1, Sec. 4 (d).

²¹ Sec. 5. Preliminary injunction not granted without notice; exception. — No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue *ex parte* a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and

The Rules provide that an applicant who files for the issuance of a TEPO is exempt from the posting of a bond, but the Rules also provide for safeguards for the possible pernicious effects upon the party or person sought to be enjoined by the TEPO:

1. A TEPO may only be issued in matters of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the TEPO effective for only seventy-two (72) hours; and
2. The court should periodically monitor the existence of acts which are the subject matter of the TEPO, the TEPO

place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

However, and subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single-sala court may issue *ex parte* a temporary restraining order effective for only seventy-two (72) hours from issuance but he shall immediately comply with the provisions of the next preceding section as to service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two hours provided herein.

In the event that the application for preliminary injunction is denied or not resolved within the said period, the temporary restraining order is deemed automatically vacated. The effectivity of a temporary restraining order is not extendible without need of any judicial declaration to that effect and no court shall have authority to extend or renew the same on the same ground for which it was issued. However, if issued by the Court of Appeals or a member thereof, the temporary restraining order shall be effective for sixty (60) days from service on the party or person sought to be enjoined. A restraining order issued by the Supreme Court or a member thereof shall be effective until further orders.

²² SEC. 6. Grounds for objection to, or for motion of dissolution of, injunction or restraining order. — The application for injunction or restraining order may be denied, upon a showing of its insufficiency. The injunction or restraining order may also be denied, or, if granted, may be dissolved, on other grounds upon affidavits of the party or person enjoined, which may be opposed by the applicant also by affidavits. It may further be denied, or, if granted, may be dissolved, if it appears after hearing that although the applicant is entitled to the injunction or restraining order, the issuance or continuance thereof, as the case may be, would cause irreparable damage to the party or person enjoined while the applicant can be fully compensated for such damages as he may suffer, and the former files a bond in an amount fixed by the court conditioned that he will pay all damages which the applicant may suffer by the denial or the dissolution of the injunction or restraining order. If it appears that the extent of the preliminary injunction or restraining order granted is too great, it may be modified.

can being lifted anytime as the circumstances may warrant.

While the TEPO may be issued *ex parte*, this is more of the exception. The general rule on the conduct of a hearing, pursuant to due process, remains.

SEC. 9. Action on motion for dissolution of TEPO. — The grounds for motion to dissolve a TEPO shall be supported by affidavits of the party or person enjoined which the applicant may oppose, also by affidavits.

The TEPO may be dissolved if it appears after hearing that its issuance or continuance would cause irreparable damage to the party or person enjoined while the applicant may be fully compensated for such damages as he may suffer and subject to the posting of a sufficient bond by the party or person enjoined.

SEC. 10. Prohibition against temporary restraining order (TRO) and preliminary injunction. — Except the Supreme Court, no court can issue a TRO or writ of preliminary injunction against lawful actions of government agencies that enforce environmental laws or prevent violations thereof.

Prohibition against TRO and preliminary injunction. The formulation of this section is derived from the provisions of P.D. 605²³ and likewise covers the provisions of P.D. 1818.²⁴ To obviate

²³ *Banning the Issuance by Courts of Preliminary Injunctions in Cases Involving Concessions, Licenses and Other Permits Issued by Public Administrative Officials or Bodies for the Exploitation of Natural Resources:*

Section 1. No court of the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction or preliminary mandatory injunction in any case involving or growing out of the issuance, approval or disapproval, revocation or suspension of, or any action whatsoever by the proper administrative official or body on concessions, licenses, permits, patents, or public grants of any kind in connection with the disposition, exploitation, utilization, exploration, and/or development of the natural resources of the Philippines.

²⁴ *Prohibiting Courts From Issuing Restraining Orders or Preliminary Injunctions in Cases Involving Infrastructure and Natural Resources Development Projects Of and Public Utilities Operated by the Government:*

Section 1. No court in the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction, or preliminary mandatory injunction in any case, dispute, or controversy involving an infrastructure project, or a mining, fishery, forest or other natural resource development project of the government, or any public utility operated by the government,

future conflict between the present provision and these two laws, the prohibition on the issuance of a TRO remains the general rule while its issuance is the exception. In availing of the exception, the movant must overcome the presumption of regularity in the performance of a duty by the respondent government agency or official. The judge must then require a higher standard and heavier burden of proof.

R.A. No. 8975 amended P.D. 605 and P.D. 1818.²⁵ Pursuant to the mandate of R.A. No. 8975,²⁶ only the Supreme Court has the authority to issue a temporary restraining order, preliminary injunction and preliminary mandatory injunction against the Government or any of its instrumentalities, officials and agencies in cases such as those filed by bidders or those claiming to have rights through such bidders involving such contract or project. R.A. No. 8975 prohibits lower courts from issuing injunctive orders in connection with the implementation of government infrastructure projects unless the case pertains to matters of extreme urgency involving constitutional issues such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise.²⁷

This provision is distinct from the previous section on the issuance of a TEPO²⁸ where the latter is premised on the violation

including among others public utilities for the transport of the goods or commodities, stevedoring and arrastre contracts, to prohibit any person or persons, entity or governmental official from proceeding with, or continuing the execution or implementation of any such project, or the operation of such public utility, or pursuing any lawful activity necessary for such execution, implementation or operation.

²⁵ R.A. 8975, *An Act to Ensure the Expedient Implementation and Completion of Government Infrastructure Projects by Prohibiting Lower Courts from Issuing Temporary Restraining Orders, Preliminary Injunctions or Preliminary Mandatory Injunctions, Providing Penalties for Violations thereof, and for Other Purposes*, November 7, 2000. The provision states:

Section 9. *Repealing Clause.* - All laws, decrees, including Presidential Decree No. 605, 1818 and Republic Act No. 7160, as amended, orders, rules and regulations or parts thereof inconsistent with this Act are hereby repealed or amended accordingly.

²⁶ Section 3. Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Mandatory Injunctions.

²⁷ *WT Construction, Inc. vs. Department of Public Works and Highways*, G.R. 163352, July 31, 2007.

²⁸ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 2, Sec. 8.

of an environmental law or a threatened damage or injury to the environment by any person, even the government and its agencies, the prohibition against the issuance of a TRO or preliminary injunction is premised on the presumption of regularity on the government and its agencies in enforcing environmental laws and protecting the environment. This section is formulated to support government and its agencies in their responsibilities and tasks. Therefore, in the absence of evidence overcoming this presumption of regularity, no court can issue a TRO or injunctive writ. It is only the Supreme Court which can issue a TRO or an injunctive writ in exceptional cases.

SEC. 11. Report on TEPO, EPO, TRO or preliminary injunction. - The judge shall report any action taken on a TEPO, EPO, TRO or a preliminary injunction, including its modification and dissolution, to the Supreme Court, through the Office of the Court Administrator, within ten (10) days from the action taken.

Report on action taken. As an additional measure to ensure the proper issuance of such court orders, the Rules provide a requirement for the issuing judge to report any action taken on such court issuances. The report shall be submitted to the High Court through the Office of the Court Administrator within ten (10) days from the action taken.

SEC. 12. Payment of filing and other legal fees. - The payment of filing and other legal fees by the plaintiff shall be deferred until after judgment unless the plaintiff is allowed to litigate as an indigent. It shall constitute a first lien on the judgment award.

For a citizen suit, the court shall defer the payment of filing and other legal fees that shall serve as first lien on the judgment award.

SEC. 13. Service of summons, orders and other court processes. - The summons, orders and other court processes may be served by the sheriff, his deputy or other proper court officer or for justifiable reasons, by the counsel or representative of the plaintiff or any suitable person authorized or deputized by the court issuing the summons.

Any private person who is authorized or deputized by the court to serve summons, orders and other court processes shall for that purpose be considered an officer of the court.

The summons shall be served on the defendant, together with a copy of an order informing all parties that they have fifteen (15) days from the filing of an answer, within which to avail of interrogatories to parties under Rule 25 of the Rules of Court and request for admission by adverse party under Rule 26, or at their discretion, make use of depositions under Rule 23 or other measures under Rules 27 and 28.

Should personal and substituted service fail, summons by publication shall be allowed. In the case of juridical entities, summons by publication shall be done by indicating the names of the officers or their duly authorized representatives.

Service by a suitable person. The "suitable person" indicated in the first paragraph of this section is required to perform the duties of a sheriff. The role is also similar to that of a process server. The next paragraph imposes the duties and responsibilities of an officer of the court on a private person authorized or deputized to serve summons.

Under the last paragraph, service by publication is deemed a sufficient compliance with the requirement of due process. The plaintiff, however, must file a motion in order to avail of this mode of service. This mode of service by publication is an innovation to the traditional rule on service of summons and applies to environmental cases.

SEC. 14. Verified answer. – Within fifteen (15) days from receipt of summons, the defendant shall file a verified answer to the complaint and serve a copy thereof on the plaintiff. The defendant shall attach affidavits of witnesses, reports, studies of experts and all evidence in support of the defense.

Affirmative and special defenses not pleaded shall be deemed waived, except lack of jurisdiction.

Cross-claims and compulsory counterclaims not asserted shall be considered barred. The answer to counterclaims or

cross-claims shall be filed and served within ten (10) days from service of the answer in which they are pleaded.

Attachment of all evidence in support of defense. The term "evidence" is used in its broad sense and is meant to be inclusive of all types of evidence peculiar to an environmental case. Evidence attached to the verified answer includes affidavits of witnesses, reports and studies of experts on a particular environmental theory.

SEC. 15. Effect of failure to answer. – Should the defendant fail to answer the complaint within the period provided, the court shall declare defendant in default and upon motion of the plaintiff, shall receive evidence *ex parte* and render judgment based thereon and the reliefs prayed for.

RULE 3

PRE-TRIAL

SEC. 1. Notice of pre-trial. – Within two (2) days from the filing of the answer to the counterclaim or cross-claim, if any, the branch clerk of court shall issue a notice of the pre-trial to be held not later than one (1) month from the filing of the last pleading.

The court shall schedule the pre-trial and set as many pre-trial conferences as may be necessary within a period of two (2) months counted from the date of the first pre-trial conference.

Issuance of notice of pre-trial. A time limit to the issuance of the notice of pre-trial inasmuch as the setting of pre-trial sets the entire proceedings in motion.

SEC. 2. Pre-trial brief. – At least three (3) days before the pre-trial, the parties shall submit pre-trial briefs containing the following:

- (a) A statement of their willingness to enter into an amicable settlement indicating the desired terms thereof or to submit the case to any of the alternative modes of dispute resolution;
- (b) A summary of admitted facts and proposed stipulation of facts;

- (c) **The legal and factual issues to be tried or resolved. For each factual issue, the parties shall state all evidence to support their positions thereon. For each legal issue, parties shall state the applicable law and jurisprudence supporting their respective positions thereon;**
- (d) **The documents or exhibits to be presented, including depositions, answers to interrogatories and answers to written request for admission by adverse party, stating the purpose thereof;**
- (e) **A manifestation of their having availed of discovery procedures or their intention to avail themselves of referral to a commissioner or panel of experts;**
- (f) **The number and names of the witnesses and the substance of their affidavits;**
- (g) **Clarificatory questions from the parties; and**
- (h) **List of cases arising out of the same facts pending before other courts or administrative agencies.**

Failure to comply with the required contents of a pre-trial brief may be a ground for contempt.

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.

Contents of pre-trial brief. The contents of a pre-trial brief was generally taken from A.M. No. 03-1-09-SC, "Rule on Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures" (Guidelines on Pre-trial).²⁹

Sanctions. The last paragraph imposes a sanction on the failure to file a pre-trial brief. Nevertheless, the judge may proceed in setting the pre-trial, to keep the case docketed. A show-cause order may likewise be issued seeking an explanation as to why either or both the parties failed at pre-trial. The Rules provide a more lenient approach to a party who fails to file a pre-trial brief since it is important for evidence to be submitted given the peculiar nature

of an environmental case and the complex character of evidence involved.

SEC. 3. Referral to mediation. – At the start of the pre-trial conference, the court shall inquire from the parties if they have settled the dispute; otherwise, the court shall immediately refer the parties or their counsel, if authorized by their clients, to the Philippine Mediation Center (PMC) unit for purposes of mediation. If not available, the court shall refer the case to the clerk of court or legal researcher for mediation.

Mediation must be conducted within a non-extendible period of thirty (30) days from receipt of notice of referral to mediation.

The mediation report must be submitted within ten (10) days from the expiration of the 30-day period.

Mediation. If the parties have not settled their dispute at this stage, the provision makes it mandatory for the judge to refer the parties to mediation. Another innovation in the provision is the availability of the services of the legal researcher for the conduct of mediation in the absence of the PMC or the clerk of court. This is in recognition of the fact the mediation services by the PMC is not available in some areas and the heavy workload of the clerk of court may not permit the latter's participation in mediation proceedings.

SEC. 4. Preliminary conference. – If mediation fails, the court will schedule the continuance of the pre-trial. Before the scheduled date of continuance, the court may refer the case to the branch clerk of court for a preliminary conference for the following purposes:

- (a) **To assist the parties in reaching a settlement;**
- (b) **To mark the documents or exhibits to be presented by the parties and copies thereof to be attached to the records after comparison with the originals;**
- (c) **To ascertain from the parties the undisputed facts and admissions on the genuineness and due execution of the documents marked as exhibits;**
- (d) **To require the parties to submit the depositions taken under Rule 23 of the Rules of Court, the answers to**

²⁹ August 16, 2004.

written interrogatories under Rule 25, and the answers to request for admissions by the adverse party under Rule 26;

- (e) To require the production of documents or things requested by a party under Rule 27 and the results of the physical and mental examination of persons under Rule 28;
- (f) To consider such other matters as may aid in its prompt disposition;
- (g) To record the proceedings in the "Minutes of Preliminary Conference" to be signed by both parties or their counsels;
- (h) To mark the affidavits of witnesses which shall be in question and answer form and shall constitute the direct examination of the witnesses; and
- (i) To attach the minutes together with the marked exhibits before the pre-trial proper.

The parties or their counsel must submit to the branch clerk of court the names, addresses and contact numbers of the affiants.

During the preliminary conference, the branch clerk of court shall also require the parties to submit the depositions taken under Rule 23 of the Rules of Court, the answers to written interrogatories under Rule 25 and the answers to request for admissions by the adverse party under Rule 26. The branch clerk of court may also require the production of documents or things requested by a party under Rule 27 and the results of the physical and mental examination of persons under Rule 28.

Use of depositions. The sole purpose for the use of depositions at pre-trial is to obtain admissions. This excludes the presentation of evidence.

SEC. 5. Pre-trial conference; consent decree. – The judge shall put the parties and their counsels under oath, and they shall remain under oath in all pre-trial conferences.

The judge shall exert best efforts to persuade the parties to arrive at a settlement of the dispute. The judge may issue a

consent decree approving the agreement between the parties in accordance with law, morals, public order and public policy to protect the right of the people to a balanced and healthful ecology.

Evidence not presented during the pre-trial, except newly-discovered evidence, shall be deemed waived.

Consent decree. This section encourages parties to reach an agreement regarding settlement through a consent decree, which gives emphasis to the public interest aspect in the assertion of the right to a balanced and healthful ecology.

SEC. 6. Failure to settle. – If there is no full settlement, the judge shall:

- (a) Adopt the minutes of the preliminary conference as part of the pre-trial proceedings and confirm the markings of exhibits or substituted photocopies and admissions on the genuineness and due execution of documents;
- (b) Determine if there are cases arising out of the same facts pending before other courts and order its consolidation if warranted;
- (c) Determine if the pleadings are in order and if not, order the amendments if necessary;
- (d) Determine if interlocutory issues are involved and resolve the same;
- (e) Consider the adding or dropping of parties;
- (f) Scrutinize every single allegation of the complaint, answer and other pleadings and attachments thereto, and the contents of documents and all other evidence identified and pre-marked during pre-trial in determining further admissions;
- (g) Obtain admissions based on the affidavits of witnesses and evidence attached to the pleadings or submitted during pre-trial;
- (h) Define and simplify the factual and legal issues arising from the pleadings and evidence. Uncontroverted issues and frivolous claims or defenses should be eliminated;

- (i) Discuss the propriety of rendering a summary judgment or a judgment based on the pleadings, evidence and admissions made during pre-trial;
- (j) Observe the Most Important Witness Rule in limiting the number of witnesses, determining the facts to be proved by each witness and fixing the approximate number of hours per witness;
- (k) Encourage referral of the case to a trial by commissioner under Rule 32 of the Rules of Court or to a mediator or arbitrator under any of the alternative modes of dispute resolution governed by the Special Rules of Court on Alternative Dispute Resolution;
- (l) Determine the necessity of engaging the services of a qualified expert as a friend of the court (*amicus curiae*); and
- (m) Ask parties to agree on the specific trial dates for continuous trial, comply with the one-day examination of witness rule, adhere to the case flow chart determined by the court which shall contain the different stages of the proceedings up to the promulgation of the decision and use the time frame for each stage in setting the trial dates.

Amicus curiae. The engagement of an *amicus curiae* involves a prior determination by the court that the person summoned is an expert. There is no requirement that the *amicus curiae* be qualified as an expert. In selecting an expert, the court may take into consideration, in addition to or in lieu of formal education the expert's skill, experience and other factors. The expert, however, is subject to cross examination.

SEC. 7. Effect of failure to appear at pre-trial. – The court shall not dismiss the complaint, except upon repeated and unjustified failure of the plaintiff to appear. The dismissal shall be without prejudice, and the court may proceed with the counterclaim.

If the defendant fails to appear at the pre-trial, the court shall receive evidence *ex parte*.

Failure to appear at pre-trial. Some leeway is provided for the plaintiff in an environmental case insofar as the complaint is not immediately dismissed on account of a single failure to appear at pre-trial. The dismissal of the case to judicial discretion as to the number of absences involved. In fairness to the defendant, the counterclaim filed shall be allowed to proceed, unless the counterclaim is determined to be a SLAPP.

SEC. 8. Minutes of pre-trial. – The minutes of each pre-trial conference shall contain matters taken up therein, more particularly admissions of facts and exhibits, and shall be signed by the parties and their counsel.

SEC. 9. Pre-trial order. – Within ten (10) days after the termination of the pre-trial, the court shall issue a pre-trial order setting forth the actions taken during the pre-trial conference, the facts stipulated, the admissions made, the evidence marked, the number of witnesses to be presented and the schedule of trial. Said order shall bind the parties, limit the trial to matters not disposed of and control the course of action during the trial.

SEC. 10. Efforts to settle. – The court shall endeavor to make the parties agree to compromise or settle in accordance with law at any stage of the proceedings before rendition of judgment.

Power of the court to impose participation and cooperation in pre-trial. Alternative modes of dispute resolution should be encouraged because of the nature of environment cases which require broader settlements that are more appropriate to negotiation or agency action. In recognition of this, the Rules emphasize the court's role to encourage participation and cooperation between the parties during pre-trial.

RULE 4

TRIAL

SEC. 1. Continuous trial. – The judge shall conduct continuous trial which shall not exceed two (2) months from the date of the issuance of the pre-trial order.

Before the expiration of the two-month period, the judge may ask the Supreme Court for the extension of the trial period for justifiable cause.

Continuous trial. One of the key features of the Rules is the abbreviated timeline available and permitted to the courts in resolving environmental cases. This appears prominently in the provisions on trial, which traditionally occupies the greater amount of time in litigation.

This section provides for the conduct of continuous trial. This, however, does not warrant the conduct of trial on a day-to-day basis. Emphasis is simply made on the timeframe within which the trial must be conducted.

SEC. 2. Affidavits in lieu of direct examination. – In lieu of direct examination, affidavits marked during the pre-trial shall be presented as direct examination of affiants subject to cross-examination by the adverse party.

Affidavits in lieu of direct examination. Affidavits are employed in lieu of direct examination in order to obviate delays in procedure which have been identified and known to accompany direct examinations. The preparation of affidavits narrows the scope of examination, as well as focuses the inquiry on the very merits of the controversy. Prior to their presentation as evidence, this provision presupposes that the admissibility of the affidavits have already been considered at pre-trial.

SEC. 3. One-day examination of witness rule. – The court shall strictly adhere to the rule that a witness has to be fully examined in one (1) day, subject to the court's discretion of extending the examination for justifiable reason. After the presentation of the last witness, only oral offer of evidence shall be allowed, and the opposing party shall immediately interpose his objections. The judge shall forthwith rule on the offer of evidence in open court.

SEC. 4. Submission of case for decision; filing of memoranda. – After the last party has rested its case, the court shall issue an order submitting the case for decision.

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The court may require the parties to submit their respective memoranda, if possible in electronic form, within a non-extendible period of thirty (30) days from the date the case is submitted for decision.

The court shall have a period of sixty (60) days to decide the case from the date the case is submitted for decision.

Submission of memoranda. The section provides for the submission of the memoranda in electronic form. This is in response to developments in information technology and in anticipation of further developments in the legal system with respect to the use of computers and the internet.

The court has a disposition period of sixty (60) days from the date that the case is submitted for decision. The period applies with or without a memorandum being filed.

SEC. 5. Period to try and decide. – The court shall have a period of one (1) year from the filing of the complaint to try and decide the case. Before the expiration of the one-year period, the court may petition the Supreme Court for the extension of the period for justifiable cause.

The court shall prioritize the adjudication of environmental cases.

Prioritization of environmental cases. The designated environmental courts will try and decide environmental cases on top of their other caseload.

RULE 5

JUDGMENT AND EXECUTION

SEC. 1. Reliefs in a citizen suit. – If warranted, the court may grant to the plaintiff proper reliefs which shall include the protection, preservation or rehabilitation of the environment and the payment of attorney's fees, costs of suit and other litigation expenses. It may also require the violator to submit a program of rehabilitation or restoration of the environment, the costs of which shall be borne by the violator, or to contribute to a special trust fund for that purpose subject to the control of the court.

Reliefs in a citizen suit. The Rule provides for a number of broad reliefs in a citizen suit which are not confined to monetary awards, these include the protection, preservation or rehabilitation of the environment and the payment of attorney's fees, costs of suit and other litigation expenses. The broad range of reliefs provided under the Rules is in line with the ruling in the *Manila Bay* case where the respondents were ordered to maintain a fund for the restoration and rehabilitation of Manila Bay. The Court in the *Manila Bay* case did not specify an amount for restoration, but instead ordered the respondents to restore and rehabilitation Manila Bay whatever the costs. The Court's decision in the *Manila Bay* case is also reflected in Article 1167 of the Civil Code, the first paragraph of which states, "If a person obliged to do something fails to do it, the same shall be executed at his cost."³⁰

The phrase "litigation expenses" in this provision encompasses expenses for preparation of witnesses, witness fees and other fees which cannot be paid for under the present rules.

No damages can be awarded in a citizen suit. This measure is in line with the policy that a citizen suit is filed in the public interest, and in effect, it is the environment which is vindicated in the action. Hence, a party or person who suffers damage or injury arising from an environment prejudice which is also the same subject of citizen suit cannot claim for damages in a citizen suit since it is the environment that is vindicated in the action. The only recourse of a party or person who wishes to recover damages for injury suffered is to file a separate action under Sec. 4, Rule 2.

SEC. 2. Judgment not stayed by appeal. – Any judgment directing the performance of acts for the protection, preservation or rehabilitation of the environment shall be executory pending appeal unless restrained by the appellate court.

Judgment immediately executory. A judgment rendered pursuant to these Rules is immediately executory. It may not be

³⁰ Civil Code of the Philippines, Title I. Obligations, Chapter 1, Article 1167. If a person obliged to do something fails to do it, the same shall be executed at his cost.

This same rule shall be observed if he does it in contravention of the tenor of his obligation. Furthermore, it may be decreed that what has been poorly done be undone.

stayed by the posting of a bond under Rule 39 of the Rules of Court and the sole remedy lies with the appellate court. The appellate court can issue a TRO to restrain the execution of the judgment and should the appellate court act with grave abuse of discretion in refusing to act on the application for a TRO, a petition for *certiorari* under Rule 65 can be brought before the Supreme Court.

SEC. 3. Permanent EPO; writ of continuing mandamus. – In the judgment, the court may convert the TEPO to a permanent EPO or issue a writ of continuing *mandamus* directing the performance of acts which shall be effective until the judgment is fully satisfied.

The court may, by itself or through the appropriate government agency, monitor the execution of the judgment and require the party concerned to submit written reports on a quarterly basis or sooner as may be necessary, detailing the progress of the execution and satisfaction of the judgment. The other party may, at its option, submit its comments or observations on the execution of the judgment.

Conversion of a TEPO to a permanent EPO or a writ of continuing mandamus. In this provision, continuing *mandamus* is made available as a final relief. As a remedy, continuing *mandamus* is decidedly an attractive relief. Nevertheless, the monitoring function attached to the writ is decidedly taxing upon the court. Thus, it is meant to be an exceptional remedy. Among others, the nature of the case in which the judgment is issued will be a decisive factor in determining whether to issue a writ of continuing *mandamus*.

A TEPO may be converted into a writ of continuing *mandamus* should the circumstances warrant.

SEC. 4. Monitoring of compliance with judgment and orders of the court by a commissioner. – The court may *motu proprio*, or upon motion of the prevailing party, order that the enforcement of the judgment or order be referred to a commissioner to be appointed by the court. The commissioner shall file with the court written progress reports on a quarterly basis or more frequently when necessary.

SEC. 5. Return of writ of execution. – The process of execution shall terminate upon a sufficient showing that the

decision or order has been implemented to the satisfaction of the court in accordance with Section 14, Rule 39 of the Rules of Court.

RULE 6

STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION

SEC. 1. Strategic lawsuit against public participation (SLAPP). – A legal action filed to harass, vex, exert undue pressure or stifle any legal recourse that any person, institution or the government has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights shall be treated as a SLAPP and shall be governed by these Rules.

SLAPP. These sections on SLAPP are the distillation of existing provisions of Philippine law and analogous provisions from several jurisdictions.

The Rules recognize that formidable legal challenges may be mounted against those who seek to enforce environmental law, or to assert environmental rights. These legal challenges may be pre-emptive in character and may be done in order to “chill” the latter. In light of this, the Rules make available a formidable defense in these provisions.

This section identifies the legal action that constitutes a SLAPP. The constitutional rights to freedom of speech, expression and assembly (and in certain cases, the right to petition the government for redress of grievances) in relation to the right to a balanced and healthful ecology are affected by a SLAPP.

SEC. 2. SLAPP as a defense; how alleged. – In a SLAPP filed against a person involved in the enforcement of environmental laws, protection of the environment, or assertion of environmental rights, the defendant may file an answer interposing as a defense that the case is a SLAPP and shall be supported by documents, affidavits, papers and other evidence; and, by way of counterclaim, pray for damages, attorney’s fees and costs of suit.

The court shall direct the plaintiff or adverse party to file an opposition showing the suit is not a SLAPP, attaching evidence in support thereof, within a non-extendible period of five (5) days from receipt of notice that an answer has been filed.

The defense of a SLAPP shall be set for hearing by the court after issuance of the order to file an opposition within fifteen (15) days from filing of the comment or the lapse of the period.

Countering a SLAPP suit; answer. Once the defense of SLAPP is alleged in an answer for a civil case outside the coverage of these Rules, this Rule will apply insofar as the determination of whether such is a SLAPP is concerned. A SLAPP suit is in every sense a harassment suit and the affront against constitutional rights is the very reason why no pending legal action is required to counter a SLAPP suit. In the context of environmental rights protection, a SLAPP suit may occur in the following scenarios, among others:

1. X files a complaint in an environmental case against A (violin of environmental laws) and the A retaliates by filing a complaint for damages against X;
2. X is a witness in a pending environmental case against A and the latter retaliates by filing a complaint for damages or libel against X; or
3. X is an environmental advocate who rallies for the protection of environmental rights and a complaint for damages is filed against him by A.

Since a motion to dismiss is a prohibited pleading,³¹ SLAPP as an affirmative defense should be raised in an answer along with other defenses that may be raised in the case alleged to be a SLAPP.

SEC. 3. Summary hearing. – The hearing on the defense of a SLAPP shall be summary in nature. The parties must submit all available evidence in support of their respective positions. The party seeking the dismissal of the case must prove by substantial evidence that his acts for the enforcement of environmental law is a legitimate action for the protection,

³¹ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 2, Sec. 2.

preservation and rehabilitation of the environment. The party filing the action assailed as a SLAPP shall prove by preponderance of evidence that the action is not a SLAPP and is a valid claim.

Summary hearing. The hearing for the defense of a SLAPP is summary to expedite the proceedings. The party seeking the dismissal of the case alleged to be a SLAPP may easily assert this defense and prove it only with substantial evidence. If the court finds a SLAPP defense valid, the plaintiff is required to prove the following: (1) that the case is not a SLAPP; and (2) the merits of the case. The quantum of evidence, preponderance of evidence, in proving the two abovementioned remains the same as in other civil cases.

SEC. 4. Resolution of the defense of a SLAPP. – The affirmative defense of a SLAPP shall be resolved within thirty (30) days after the summary hearing. If the court dismisses the action, the court may award damages, attorney’s fees and costs of suit under a counterclaim if such has been filed. The dismissal shall be with prejudice.

If the court rejects the defense of a SLAPP, the evidence adduced during the summary hearing shall be treated as evidence of the parties on the merits of the case. The action shall proceed in accordance with the Rules of Court.

Prioritization on the hearing and resolution of a SLAPP defense. While a SLAPP defense is raised in an answer along with other defenses, the court is required to prioritize the hearing and resolution of a SLAPP defense. The prioritization in hearing a SLAPP defense is another mode of expediting the proceedings.

Effect of the court’s resolution in the hearing. The dismissal of a SLAPP suit constitutes *res judicata* and is a bar to the refile of a similar case. On the other hand, the denial of a SLAPP defense allows the action to proceed in accordance with the Rules of Court. Since the evidence adduced in the hearing of a SLAPP defense remains on record, the plaintiff is not required to offer the evidence already adduced again.

PART III
SPECIAL CIVIL ACTIONS

RULE 7

WRIT OF *KALIKASAN*

SEC. 1. Nature of the writ. – The writ is a remedy available to a natural or juridical person, entity authorized by law, people’s organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

Extraordinary remedy. The underlying emphasis in the Writ of *Kalikasan* is magnitude as it deals with damage that transcends political and territorial boundaries. Magnitude is thus measured according to the qualification set forth in this Rule — when there is environmental damage that prejudices the life, health or property of inhabitants in two or more cities or provinces.

Who may avail of the writ. The petition for the issuance of a Writ of *Kalikasan* can be filed by any of the following: (1) a natural or juridical person; (2) entity authorized by law; or (3) 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... involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.” Those who may file for this remedy must represent the inhabitants prejudiced by the environmental damage subject of the writ. The requirement of accreditation of a group or organization is for the purpose of verifying its existence. The accreditation is a mechanism to prevent “fly by night” groups from abusing the writ.

Acts covered by the writ. The Writ of *Kalikasan* is a special remedy available against 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.

SEC. 2. Contents of the petition. – The verified petition shall contain the following:

- (a) The personal circumstances of the petitioner;
- (b) The name and personal circumstances of the respondent or if the name and personal circumstances are unknown and uncertain, the respondent may be described by an assumed appellation;
- (c) The environmental law, rule or regulation violated or threatened to be violated, the act or omission complained of, and the environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.
- (d) All relevant and material evidence consisting of the affidavits of witnesses, documentary evidence, scientific or other expert studies, and if possible, object evidence;
- (e) The certification of petitioner under oath that: (1) petitioner has not commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency, and no such other action or claim is pending therein; (2) if there is such other pending action or claim, a complete statement of its present status; (3) if petitioner should learn that the same or similar action or claim has been filed or is pending, petitioner shall report to the court that fact within five (5) days therefrom; and
- (f) The reliefs prayed for which may include a prayer for the issuance of a TEPO.

Contents of the petition. The petition is required to allege the extent of the magnitude of the environmental damage. All relevant and material evidence must be attached to the petition to allow the court to determine whether the immediate issuance of the writ is warranted. TEPO is a relief available, as in the Writ of Continuing *Mandamus*.

SEC. 3. Where to file. – The petition shall be filed with the Supreme Court or with any of the stations of the Court of Appeals.

Venue. The magnitude of the environmental damage is the reason for limiting where the writ may be filed, to the Supreme Court or Court of Appeals whose jurisdiction is national in scope.

SEC. 4. No docket fees. – The petitioner shall be exempt from the payment of docket fees.

Exemption from payment of docket fees. The exemption from payment of docket fees is consistent with the character of the reliefs available under the writ, which excludes damages for personal injuries. This exemption also encourages public participation in availing of the remedy.

SEC. 5. Issuance of the writ. – Within three (3) days from the date of filing of the petition, if the petition is sufficient in form and substance, the court shall give an order: (a) issuing the writ; and (b) requiring the respondent to file a verified return as provided in Section 8 of this Rule. The clerk of court shall forthwith issue the writ under the seal of the court including the issuance of a cease and desist order and other temporary reliefs effective until further order.

SEC. 6. How the writ is served. – The writ shall be served upon the respondent by a court officer or any person deputized by the court, who shall retain a copy on which to make a return of service. In case the writ cannot be served personally, the rule on substituted service shall apply.

Manner of service. The writ should be served against the respondent, preferably in person. If personal service cannot be made, the rules on substituted service shall apply.

SEC. 7. Penalty for refusing to issue or serve the writ. – A clerk of court who unduly delays or refuses to issue the writ after its allowance or a court officer or deputized person who unduly delays or refuses to serve the same shall be punished by the court for contempt without prejudice to other civil, criminal or administrative actions.

Penalties. This section is similar to Sec. 7 of the Rule on the Writ of *Amparo*.

SEC. 8. Return of respondent; contents. – Within a non-extendible period of ten (10) days after service of the writ, the respondent shall file a verified return which shall contain all defenses to show that respondent did not violate or threaten to violate, or allow the violation of any environmental law, rule or regulation or commit any act resulting to environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

All defenses not raised in the return shall be deemed waived.

The return shall include affidavits of witnesses, documentary evidence, scientific or other expert studies, and if possible, object evidence, in support of the defense of the respondent.

A general denial of allegations in the petition shall be considered as an admission thereof.

No general denial. This requirement is consistent with the policy to submit all relevant and material evidence.

SEC. 9. Prohibited pleadings and motions. – The following pleadings and motions are prohibited:

- (a) Motion to dismiss;
- (b) Motion for extension of time to file return;
- (c) Motion for postponement;
- (d) Motion for a bill of particulars;
- (e) Counterclaim or cross-claim;
- (f) Third-party complaint;
- (g) Reply; and
- (h) Motion to declare respondent in default.

Prohibited pleadings and motions. The enumerated pleadings and motions are prohibited to expedite the hearing of the petition. A motion for intervention is excluded from this enumeration. Allowing this motion is a reaffirmation of the public participation aspect in the Writ of *Kalikasan* since there may be a large, qualified pool of possible representatives interested in availing of the remedy.

SEC. 10. Effect of failure to file return. – In case the respondent fails to file a return, the court shall proceed to hear the petition *ex parte*.

Failure to file return. Due to the urgency of the need for the issuance of the writ, the failure to file a return is not a bar to the court to hear the petition.

SEC. 11. Hearing. – Upon receipt of the return of the respondent, the court may call a preliminary conference to simplify the issues, determine the possibility of obtaining stipulations or admissions from the parties, and set the petition for hearing.

The hearing including the preliminary conference shall not extend beyond sixty (60) days and shall be given the same priority as petitions for the writs of *habeas corpus*, *amparo* and *habeas data*.

Hearing. The environmental damage subject of the writ may involve issues that are of a complex character, and for this reason, the hearing is not summary. The abbreviated time frame required, however, insures that the proceedings are expedited.

SEC. 12. Discovery Measures. – A party may file a verified motion for the following reliefs:

- (a) *Ocular Inspection; order* – The motion must show that an ocular inspection order is necessary to establish the magnitude of the violation or the threat as to prejudice the life, health or property of inhabitants in two or more cities or provinces. It shall state in detail the place or places to be inspected. It shall be supported by affidavits of witnesses having personal knowledge of the violation or threatened violation of environmental law.

After hearing, the court may order any person in possession or control of a designated land or other property to permit entry for the purpose of inspecting or photographing the property or any relevant object or operation thereon.

The order shall specify the person or persons authorized to make the inspection and the date, time, place and manner of making the inspection and may prescribe other conditions to protect the constitutional rights of all parties.

- (b) *Production or inspection of documents or things; order* – The motion must show that a production order is necessary to establish the magnitude of the violation or the threat as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

After hearing, the court may order any person in possession, custody or control of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, or objects in digitized or electronic form, which constitute or contain evidence relevant to the petition or the return, to produce and permit their inspection, copying or photographing by or on behalf of the movant.

The production order shall specify the person or persons authorized to make the production and the date, time, place and manner of making the inspection or production and may prescribe other conditions to protect the constitutional rights of all parties.

Discovery measures. The discovery measures are available to all parties to the writ. Considering that these measures are invasive, the court may prescribe conditions in any order granting such measures to safeguard constitutional rights.

SEC. 13. Contempt. – The court may after hearing punish the respondent who refuses or unduly delays the filing of a return, or who makes a false return, or any person who disobeys or resists a lawful process or order of the court for indirect contempt under Rule 71 of the Rules of Court.

Contempt. This section is similar to Sec. 16 of the Rule on the Writ of Amparo.

SEC. 14. Submission of case for decision; filing of memoranda. – After hearing, the court shall issue an order submitting the case for decision. The court may require the filing of memoranda and if possible, in its electronic form, within a non-extendible period of thirty (30) days from the date the petition is submitted for decision.

Filing of memoranda. The court's discretion in requiring the filing of memoranda in electronic form if possible is for the purpose of expediting the proceedings.

SEC. 15. Judgment. – Within sixty (60) days from the time the petition is submitted for decision, the court shall render judgment granting or denying the privilege of the writ of *kalikasan*.

The reliefs that may be granted under the writ are the following:

- (a) Directing respondent to permanently cease and desist from committing acts or neglecting the performance of a duty in violation of environmental laws resulting in environmental destruction or damage;
- (b) Directing the respondent public official, government agency, private person or entity to protect, preserve, rehabilitate or restore the environment;
- (c) Directing the respondent public official, government agency, private person or entity to monitor strict compliance with the decision and orders of the court;
- (d) Directing the respondent public official, government agency, or private person or entity to make periodic reports on the execution of the final judgment; and
- (e) Such other reliefs which relate to the right of the people to a balanced and healthful ecology or to the protection, preservation, rehabilitation or restoration of the environment, except the award of damages to individual petitioners.

Damages for personal injury. A person who avails of the Writ of *Kalikasan* may also file a separate suit for the recovery of damages for injury suffered. This is consistent with Sec. 17, *Institution of separate actions*.

Reliefs. The reliefs that may be granted under the writ are broad, comprehensive and non-exclusive. The reliefs regarding monitoring and periodic reports ensure enforcement of the judgment of the court.

SEC. 16. Appeal. – Within fifteen (15) days from the date of notice of the adverse judgment or denial of motion for reconsideration, any party may appeal to the Supreme Court under Rule 45 of the Rules of Court. The appeal may raise questions of fact.

Appeal may raise questions of fact. Given the extraordinary nature of circumstances surrounding the issuance of a Writ of *Kalikasan*, this section allows an appeal to raise questions of fact and thus constitutes an exception to Rule 45 of the Rules of Court, such as Sec. 19 of the Rule on the Writ of *Amparo*.

SEC. 17. Institution of separate actions. – The filing of a petition for the issuance of the writ of *kalikasan* shall not preclude the filing of separate civil, criminal or administrative actions.

Separate actions. A petitioner in the Writ of *Kalikasan* may subsequently file a separate civil, criminal or administrative action. Civil, criminal or administrative actions are allowed to proceed separately from the petition for the issuance of the writ since they are different actions with different objectives.

RULE 8

WRIT OF CONTINUING MANDAMUS

SEC. 1. Petition for 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.

SEC. 2. Where to file the petition. – The petition shall be filed with the Regional Trial Court exercising jurisdiction over the territory where the actionable neglect or omission occurred or with the Court of Appeals or the Supreme Court.

SEC. 3. No docket fees. – The petitioner shall be exempt from the payment of docket fees.

Sec. 4. Order to comment. – If the petition is sufficient in form and substance, the court shall issue the writ and require the respondent to comment on the petition within ten (10) days from receipt of a copy thereof. Such order shall be served on the respondents in such manner as the court may direct, together with a copy of the petition and any annexes thereto.

Sec. 5. Expediting proceedings; TEPO. – The court in which the petition is filed may issue such orders to expedite the proceedings, and it may also grant a TEPO for the preservation of the rights of the parties pending such proceedings.

Sec. 6. Proceedings after comment is filed. – After the comment is filed or the time for the filing thereof has expired, the court may hear the case which shall be summary in nature or require the parties to submit memoranda. The petition shall be resolved without delay within sixty (60) days from the date of the submission of the petition for resolution.

SEC. 7. Judgment. – If warranted, the court shall grant the privilege of the writ of continuing *mandamus* requiring respondent to perform an act or series of acts until the judgment is fully satisfied and to grant such other reliefs as may be warranted resulting from the wrongful or illegal acts of the respondent. The court shall require the respondent to submit periodic reports detailing the progress and execution of the judgment, and the court may, by itself or through a commissioner or the appropriate government agency, evaluate and monitor compliance. The petitioner may submit its comments or observations on the execution of the judgment.

Sec. 8. Return of the writ. – The periodic reports submitted by the respondent detailing compliance with the judgment shall be contained in partial returns of the writ.

Upon full satisfaction of the judgment, a final return of the writ shall be made to the court by the respondent. If the court finds that the judgment has been fully implemented, the satisfaction of judgment shall be entered in the court docket.

Writ of Continuing Mandamus. This rule integrates the ruling in *Concerned Residents of Manila Bay v. MMDA* and the existing rule on the issuance of the writ of *mandamus*.³² Procedurally, its filing before the courts is similar to the filing of an ordinary writ of *mandamus*. However, the issuance of a Temporary Environmental Protection Order is made available as an auxiliary remedy prior to the issuance of the writ itself.

As a special civil action, the Writ of Continuing *Mandamus* may be availed of to compel the performance of an act specifically enjoined by law. It permits the court to retain jurisdiction after judgment in order to ensure the successful implementation of the reliefs mandated under the court's decision. For this purpose, the court may compel the submission of compliance reports from the respondent government agencies as well as avail of other means to monitor compliance with its decision.

Its availability as a special civil action likewise complements its role as a final relief in environmental civil cases and in the Writ of *Kalikasan*, where continuing *mandamus* may likewise be issued should the facts merit such a relief.

The section on TEPO is similar to Section 7, Rule 65 of the Rules of Court.

Writ of Continuing Mandamus versus Writ of Kalikasan. Some main differences between the Writ of Continuing *Mandamus* and the Writ of *Kalikasan* are:

- (1) *Subject matter.* A Writ of Continuing *Mandamus* is directed against (a) the unlawful neglect in the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station in connection with the

³² Rules of Court, Rule 65.

enforcement or violation of an environmental law rule or regulation or a right therein; or (b) the unlawfully exclusion of another from the use or enjoyment of such right and in both instances, there is no other plain, speedy and adequate remedy in the ordinary course of law.

A Writ of *Kalikasan* is available against 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.³³

In addition, magnitude of environmental damage is a condition *sine qua non* in a petition for the issuance of a Writ of *Kalikasan* and must be contained in the verified petition.³⁴

- (2) *Who may file.* A Writ of Continuing *Mandamus* is available only to one who is personally aggrieved by the unlawful act or omission.

On the other hand, a petition for the issuance of a Writ of *Kalikasan* is available to a broad range of persons such as 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 right to a balanced and healthful ecology is violated or threatened to be violated.

- (3) *Respondent.* The respondent in a petition for continuing *mandamus* is only the government or its officers, unlike in a petition for a Writ of *Kalikasan*, where the respondent may be a private individual or entity.
- (4) *Exemption from docket fees.* The application for either petition is exempted from the payment of docket fees.
- (5) *Venue.* A petition for the issuance of a Writ of Continuing *Mandamus* may be filed in the following: (a) the Regional

³³ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7, Sec. 1.

³⁴ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7, Sec. 2.

Trial Court exercising jurisdiction over the territory where the actionable neglect or omission occurred; (b) the Court of Appeals; or (c) the Supreme Court.

Given the magnitude of the damage, the application for the issuance of a Writ of *Kalikasan* can only be filed in the Supreme Court or any of the stations of the Court of Appeals.³⁵

- (6) *Discovery measures.* The Rule on the Writ of Continuing *Mandamus* does not contain any provision for discovery measures, unlike the Rule on the Writ of *Kalikasan* which incorporates the procedural environmental right of access to information through the use of discovery measures such as ocular inspection order and production order.³⁶
- (7) *Damages for personal injury.* The Writ of Continuing *Mandamus* allows damages for the malicious neglect of the performance of the legal duty of the respondent, identical to Rule 65, Rules of Court.

In contrast, no damages may be awarded in a petition for the issuance of a Writ of *Kalikasan* consistent with the public-interest character of the petition. A party who avails of this petition but who also wishes to be indemnified for injuries suffered may file another suit for the recovery of damages since the Rule on the Writ of *Kalikasan* allows for the institution of separate actions.³⁷

PART IV

CRIMINAL PROCEDURE

RULE 9

PROSECUTION OF OFFENSES

SEC. 1. *Who may file.* – Any offended party, peace officer or any public officer charged with the enforcement of an

³⁵ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7, Sec. 3.

³⁶ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7, Sec. 12.

³⁷ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7, Sec. 17.

environmental law may file a complaint before the proper officer in accordance with the Rules of Court.

Who may file. The following persons may file a criminal complaint for the prosecution of an environmental case: (a) any offended party; (b) peace officer; or (c) any public officer charged with the enforcement of an environmental law.

SEC. 2. *Filing of the information.* – An information, charging a person with a violation of an environmental law and subscribed by the prosecutor, shall be filed with the court.

SEC. 3. *Special prosecutor.* – In criminal cases, where there is no private offended party, a counsel whose services are offered by any person or organization may be allowed by the court as special prosecutor, with the consent of and subject to the control and supervision of the public prosecutor.

Special prosecutor. This provision aims to encourage public participation in criminal litigation by permitting the appearance of a special prosecutor. Unlike the general rule subsisting under the Rules of Criminal Procedure, this provision recognizes the possibility of intervention from a special prosecutor even in the absence of a private offended party. The special prosecutor complements the public prosecutor in advancing public interest in environmental cases.

In deference to the executive department's prerogative to prosecute cases, the intervention by the special prosecutor shall be subject to the consent and control of the public prosecutor.

This provision thus applies to those instances of "victimless offenses," where there is no private offended party who has a direct or material interest to prosecute a criminal action. Most environmental cases involve violations of environmental law or damage to the environment without an injured private person (i.e. dynamite fishing in marine sanctuaries, illegal logging in forests, etc...). These situations are likened to public interest environmental litigation prevalent in foreign jurisdictions where it is usually a concerned people's organization, non-governmental organization or citizen's group that pursues the criminal case.

RULE 10

PROSECUTION OF CIVIL ACTIONS

SEC. 1. Institution of criminal and civil actions. – When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged, shall be deemed instituted with the criminal action unless the complainant waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.

Unless the civil action has been instituted prior to the criminal action, the reservation of the right to institute separately the civil action shall be made during arraignment.

In case civil liability is imposed or damages are awarded, the filing and other legal fees shall be imposed on said award in accordance with Rule 141 of the Rules of Court, and the fees shall constitute a first lien on the judgment award. The damages awarded in cases where there is no private offended party, less the filing fees, shall accrue to the funds of the agency charged with the implementation of the environmental law violated. The award shall be used for the restoration and rehabilitation of the environment adversely affected.

Institution of actions. This provision departs from the traditional rule on institution of civil actions under Rule 111 of the Rules on Criminal Procedure in that it provides for an applicable rule on the disposition of damages where there is no private offended party. The provision likewise codifies the essence of restorative justice when it requires that the award shall be given to the concerned government agency. This is restorative justice transposed into the context of environmental law.

RULE 11

ARREST

SEC. 1. Arrest without warrant; when lawful. – A peace officer or an individual deputized by the proper government agency may, without a warrant, arrest a person:

- (a) When, in his presence, the person to be arrested has committed, is actually committing or is attempting to commit an offense; or

- (b) When an offense has just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it.

Individuals deputized by the proper government agency who are enforcing environmental laws shall enjoy the presumption of regularity under Section 3(m), Rule 131 of the Rules of Court when effecting arrests for violations of environmental laws.

Arrest; hot pursuit. In order to validly effect warrantless arrest, the arrest must be done immediately after the commission of the offense.

Warrantless arrest. Deputized individuals, effecting citizen's arrest, enjoy the presumption of regularity traditionally given to public officers under this provision. The process of deputization shall continue to be governed by the respective laws and regulations promulgated by the appropriate government agency governing deputization. The "proper government agency" is one tasked to enforce environmental laws. To enjoy the presumption of regularity, proper documents pertaining to deputization must be made available, if feasible, to the individual about to be arrested.

A specific reference to the Rules on Evidence in the Rules of Court³⁸ is made to indicate the source of the presumption of regularity attributed to deputized individuals.

SEC. 2. Warrant of arrest. – All warrants of arrest issued by the court shall be accompanied by a certified true copy of the information filed with the issuing court.

Warrant of arrest; bail. The attachment of a certified true copy the information to the warrant of arrest is deemed a notice to the accused of the charges against him. This provision must likewise be read in conjunction with the provisions on Bail, Rule 14, Section 2, *infra*.

³⁸ Section 3(m), Rule 131.

RULE 12

CUSTODY AND DISPOSITION OF SEIZED ITEMS, EQUIPMENT, PARAPHERNALIA, CONVEYANCES AND INSTRUMENTS

SEC. 1. Custody and disposition of seized items. – The custody and disposition of seized items shall be in accordance with the applicable laws or rules promulgated by the concerned government agency.

Custody by administrative agency. Under this provision, the administrative agency which has authority under law to regulate the item subject of seizure likewise retains authority to assume custody over and dispose of seized items, should their existing rules provide for such. This is without prejudice to the applicability of the next succeeding section, *infra*.

SEC. 2. Procedure. – In the absence of applicable laws or rules promulgated by the concerned government agency, the following procedure shall be observed:

- (a) The apprehending officer having initial custody and control of the seized items, equipment, paraphernalia, conveyances and instruments shall physically inventory and whenever practicable, photograph the same in the presence of the person from whom such items were seized.
- (b) Thereafter, the apprehending officer shall submit to the issuing court the return of the search warrant within five (5) days from date of seizure or in case of warrantless arrest, submit within five (5) days from date of seizure, the inventory report, compliance report, photographs, representative samples and other pertinent documents to the public prosecutor for appropriate action.
- (c) Upon motion by any interested party, the court may direct the auction sale of seized items, equipment, paraphernalia, tools or instruments of the crime. The court shall, after hearing, fix the minimum bid price based on the recommendation of the concerned

government agency. The sheriff shall conduct the auction.

- (d) The auction sale shall be with notice to the accused, the person from whom the items were seized, or the owner thereof and the concerned government agency.
- (e) The notice of auction shall be posted in three conspicuous places in the city or municipality where the items, equipment, paraphernalia, tools or instruments of the crime were seized.
- (f) The proceeds shall be held in trust and deposited with the government depository bank for disposition according to the judgment.

Seizure. The foregoing provisions concern two aspects of seizure. The first aspect concerns the chain of custody of the seized items, equipment, paraphernalia, conveyances, and instruments. Subparagraphs (a) and (b) are meant to assure the integrity of the evidence after seizure, for later presentation at the trial.

The second aspect deals with the disposition of the seized materials. This addresses the concern of deterioration of the materials, most of which are perishable, while in *custodia legis*. The provision contains procedural safeguards to assure the preservation of the value of the seized materials, should the case eventually be decided in favor of their owner or possessor.

Subparagraph (b) makes the provision cover both seizures with warrant and warrantless seizures.

The motion to direct the auction sale under subparagraph (c) may be filed by “any interested party” to obviate any oppressive use of seizure to the prejudice of any party.

RULE 13

PROVISIONAL REMEDIES

SEC. 1. Attachment in environmental cases. – The provisional remedy of attachment under Rule 127 of the Rules of Court may be availed of in environmental cases.

SEC. 2. Environmental Protection Order (EPO); Temporary Environmental Protection Order (TEPO) in criminal cases. – The

procedure for and issuance of EPO and TEPO shall be governed by Rule 2 of these Rules.

Applicability of TEPO. This portion of the rule provides for the applicability of TEPO in appropriate situations in criminal prosecution. This procedural remedy is in recognition of the fact that criminal cases, although principally for the prosecution of individuals for criminal liability, may have considerable impact on the environment; thus, necessitating judicial intervention.

RULE 14

BAIL

SEC. 1. Bail, where filed. – Bail in the amount fixed may be filed with the court where the case is pending, or in the absence or unavailability of the judge thereof, with any regional trial judge, metropolitan trial judge, municipal trial judge or municipal circuit trial judge in the province, city or municipality. If the accused is arrested in a province, city or municipality other than where the case is pending, bail may also be filed with any Regional Trial Court of said place, or if no judge thereof is available, with any metropolitan trial judge, municipal trial judge or municipal circuit trial judge therein. If the court grants bail, the court may issue a hold-departure order in appropriate cases.

Bail; hold-departure order. This section makes available to the accused the privilege of bail from any court, within and outside the jurisdiction of the court which issued the warrant of arrest. The immediate availability of bail is intended to obviate long periods of detention.

SEC. 2. Duties of the court. – Before granting the application for bail, the judge must read the information in a language known to and understood by the accused and require the accused to sign a written undertaking, as follows:

- (a) To appear before the court that issued the warrant of arrest for arraignment purposes on the date scheduled, and if the accused fails to appear without justification on the date of arraignment, accused waives the reading of the information and authorizes the court to enter a

plea of not guilty on behalf of the accused and to set the case for trial;

- (b) To appear whenever required by the court where the case is pending; and
- (c) To waive the right of the accused to be present at the trial, and upon failure of the accused to appear without justification and despite due notice, the trial may proceed *in absentia*.

Execution of undertaking by the accused. A key innovation in this section is the execution of an undertaking by the accused and counsel, empowering the judge to enter a plea of not guilty, in the event the accused fails to appear at the arraignment. This authorization permits the court to try the case *in absentia*, within the period provided under these Rules. This addresses a fundamental concern surrounding the prosecution of criminal cases in general, where the accused jumps bail and the court unable to proceed with the disposition of the case in view of the absence of the accused and the failure to arraign the latter.

RULE 15

ARRAIGNMENT AND PLEA

SEC. 1. Arraignment. – The court shall set the arraignment of the accused within fifteen (15) days from the time it acquires jurisdiction over the accused, with notice to the public prosecutor and offended party or concerned government agency that it will entertain plea-bargaining on the date of the arraignment.

Notice. Notice to the concerned government agency is given in this section in order to permit its intervention in plea-bargaining. This is consistent with the public interest inherent in environmental cases, represented by the government agency concerned.

SEC. 2. Plea-bargaining. – On the scheduled date of arraignment, the court shall consider plea-bargaining arrangements. Where the prosecution and offended party or concerned government agency agree to the plea offered by the accused, the court shall:

- (a) Issue an order which contains the plea-bargaining arrived at;

- (b) Proceed to receive evidence on the civil aspect of the case, if any; and
- (c) Render and promulgate judgment of conviction, including the civil liability for damages.

Consent. The provision requires the consent of the prosecutor, the offended party or concerned government agency in order to successfully arrive at a valid plea-bargaining agreement. Plea-bargaining is considered at arraignment in order to avoid the situation where an initial plea is changed in the course of the trial in view of a successful plea bargain.

RULE 16 PRE-TRIAL

SEC. 1. *Setting of pre-trial conference.* - After the arraignment, the court shall set the pre-trial conference within thirty (30) days. It may refer the case to the branch clerk of court, if warranted, for a preliminary conference to be set at least three (3) days prior to the pre-trial.

SEC. 2. *Preliminary conference.* - The preliminary conference shall be for the following purposes:

- (a) To assist the parties in reaching a settlement of the civil aspect of the case;
- (b) To mark the documents to be presented as exhibits;
- (c) To attach copies thereof to the records after comparison with the originals;
- (d) To ascertain from the parties the undisputed facts and admissions on the genuineness and due execution of documents marked as exhibits;
- (e) To consider such other matters as may aid in the prompt disposition of the case;
- (f) To record the proceedings during the preliminary conference in the Minutes of Preliminary Conference to be signed by the parties and counsel;
- (g) To mark the affidavits of witnesses which shall be in question and answer form and shall constitute the direct examination of the witnesses; and

- (h) To attach the Minutes and marked exhibits to the case record before the pre-trial proper.

The parties or their counsel must submit to the branch clerk of court the names, addresses and contact numbers of the affiants.

SEC. 3. *Pre-trial duty of the judge.* - During the pre-trial, the court shall:

- (a) Place the parties and their counsels under oath;
- (b) Adopt the minutes of the preliminary conference as part of the pre-trial proceedings, confirm markings of exhibits or substituted photocopies and admissions on the genuineness and due execution of documents, and list object and testimonial evidence;
- (c) Scrutinize the information and the statements in the affidavits and other documents which form part of the record of the preliminary investigation together with other documents identified and marked as exhibits to determine further admissions of facts as to:
 - i. The court's territorial jurisdiction relative to the offense(s) charged;
 - ii. Qualification of expert witnesses; and
 - iii. Amount of damages;
- (d) Define factual and legal issues;
- (e) Ask parties to agree on the specific trial dates and adhere to the flow chart determined by the court which shall contain the time frames for the different stages of the proceeding up to promulgation of decision;
- (f) Require the parties to submit to the branch clerk of court the names, addresses and contact numbers of witnesses that need to be summoned by subpoena; and
- (g) Consider modification of order of trial if the accused admits the charge but interposes a lawful defense.

SEC. 4. *Manner of questioning.* - All questions or statements must be directed to the court.

SEC. 5. *Agreements or admissions.* - All agreements or

admissions made or entered during the pre-trial conference shall be reduced in writing and signed by the accused and counsel; otherwise, they cannot be used against the accused. The agreements covering the matters referred to in Section 1, Rule 118 of the Rules of Court shall be approved by the court.

SEC. 6. Record of proceedings. – All proceedings during the pre-trial shall be recorded, the transcripts prepared and the minutes signed by the parties or their counsels.

SEC. 7. Pre-trial order. – The court shall issue a pre-trial order within ten (10) days after the termination of the pre-trial, setting forth the actions taken during the pre-trial conference, the facts stipulated, the admissions made, evidence marked, the number of witnesses to be presented and the schedule of trial. The order shall bind the parties and control the course of action during the trial.

Pre-trial in criminal procedure. The rule on pre-trial has been detailed in this portion in order to guide the courts in conducting the same. Pre-trial receives ample attention under these Rules in order to facilitate the organization of the trial and the early identification and simplification of the issues which shall be resolved at trial.

Much emphasis is given on pre-trial in light of the priority assigned to environmental cases. All means for expediting the case must be resorted to prior to trial in order to shorten the period for resolution of the controversy.

Oath. Parties are required to be under oath in pre-trial in order to obviate the use of false or misleading statements at this stage.

RULE 17 TRIAL

SEC. 1. Continuous trial. – The court shall endeavor to conduct continuous trial which shall not exceed three (3) months from the date of the issuance of the pre-trial order.

Continuous trial. The general period for the resolution of cases has been adopted for the portion of the present Rules pertaining to criminal procedure. It is with the qualification, however, that trial

shall be conducted on a continuous basis, consistent with the thrust of the Rules for a speedy resolution of environmental cases and subject to the provisions of Section 4, *infra*.

SEC. 2. Affidavit in lieu of direct examination. – Affidavit in lieu of direct examination shall be used, subject to cross-examination and the right to object to inadmissible portions of the affidavit.

Affidavit in lieu of direct examination. To address the delay posed by the traditional method for eliciting testimonial evidence, the Rules adopt this innovation. It focuses the extent of direct examination only to matters covered by the affidavit, thus narrowing the scope of inquiry only to the most pertinent issues at hand.

Cross-examination. Consistent with the constitutional right of the accused to confront the witnesses against him, the cross-examination shall still be conducted face-to-face.

SEC. 3. Submission of memoranda. – The court may require the parties to submit their respective memoranda and if possible, in electronic form, within a non-extendible period of thirty (30) days from the date the case is submitted for decision.

With or without any memoranda filed, the court shall have a period of sixty (60) days to decide the case counted from the last day of the 30-day period to file the memoranda.

Periods. The foregoing section enumerates 2 specific periods prior to final adjudication of the case. The first period pertains to the submission of memoranda by the parties. In recognition of advances in information technology, the provision permits the submission of memoranda in electronic form, in order to allow the faster evaluation of its contents.

The second period pertains to the period within which the court must decide. Both periods are unextendible, subject to a subsequent request by the judge concerned before the Supreme Court for an extension of the period to resolve the case.

SEC. 4. Disposition period. – The court shall dispose the case within a period of ten (10) months from the date of arraignment.

Time limit for disposition of environmental cases. Consistent with the priority assigned by the Rules for environmental cases, the foregoing section places a time limit to the disposition of cases. For clarity, the time limit is placed from the time the judiciary takes cognizance of the case, i.e. at arraignment.

SEC. 5. Pro bono lawyers. – If the accused cannot afford the services of counsel or there is no available public attorney, the court shall require the Integrated Bar of the Philippines to provide *pro bono* lawyers for the accused.

Indigent accused. This section takes into account the possibility of having an indigent accused who may not have the financial capacity to provide for his own defense.

RULE 18

SUBSIDIARY LIABILITY

SEC. 1. Subsidiary liability. – In case of conviction of the accused and subsidiary liability is allowed by law, the court may, by motion of the person entitled to recover under judgment, enforce such subsidiary liability against a person or corporation subsidiarily liable under Article 102 and Article 103 of the Revised Penal Code.

Annotation. This provision codifies the *ratio decidendi* in *Philippine Rabbit Bus Lines v. Court of Appeals*³⁹ and applies the principle therein to environmental criminal cases, to facilitate recovery of damages and other relief from persons subsidiarily liable in the event of insolvency of the accused.

The phrase “person entitled to recover” was employed in this provision to indicate that other parties apart from the prevailing party may be entitled to recover.

RULE 19

STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION IN CRIMINAL CASES

SEC. 1. Motion to dismiss. – Upon the filing of an information in court and before arraignment, the accused may file a motion

to dismiss on the ground that the criminal action is a SLAPP.

SLAPP as criminal cases; motion to dismiss. This section pertains to SLAPP filed as criminal cases.

The manner by which to allege that a criminal action is a SLAPP is through a motion to dismiss rather than a motion to quash. A motion to dismiss allows the action to be challenged as a SLAPP, while a motion to quash is directed at the Information. Moreover, granting a motion to dismiss bars the refile of a SLAPP in accordance with the law of the case. In contrast, the grant of a motion to quash does not bar the filing of a subsequent Information.

There is no provision on prohibited pleadings under criminal procedure in environmental cases (Part IV) as such the defense of SLAPP can be validly raised in a motion to dismiss. Under Part II, Civil Procedure in environmental cases, a motion to dismiss is a prohibited pleading so the defense of a SLAPP can only be raised through an answer.⁴⁰

A summary hearing has likewise been provided for in order to facilitate the speedy resolution of the case assailed as SLAPP.

SEC. 2. Summary hearing. – The hearing on the defense of a SLAPP shall be summary in nature. The parties must submit all the available evidence in support of their respective positions. The party seeking the dismissal of the case must prove by substantial evidence that his acts for the enforcement of environmental law is a legitimate action for the protection, preservation and rehabilitation of the environment. The party filing the action assailed as a SLAPP shall prove by preponderance of evidence that the action is not a SLAPP.

Summary hearing. This section is identical to Sec. 3, Rule 6 of these Rules.

SEC. 3. Resolution. – The court shall grant the motion if the accused establishes in the summary hearing that the criminal case has been filed with intent to harass, vex, exert undue pressure or stifle any legal recourse that any person, institution

³⁹ G.R. No. 147703, April 14, 2004

⁴⁰ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 2, Sec. 2.

or the government has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights.

If the court denies the motion, the court shall immediately proceed with the arraignment of the accused.

**PART V
EVIDENCE
RULE 20**

PRECAUTIONARY PRINCIPLE

SEC. 1. *Applicability* – When there is a lack of full scientific certainty in establishing a causal link between human activity and environmental effect, the court shall apply the precautionary principle in resolving the case before it.

The constitutional right of the people to a balanced and healthful ecology shall be given the benefit of the doubt.

Margin of safety in all decision-making. The precautionary principle finds application in judicial adjudication under this Rule. More specifically, within this context, the precautionary principle finds direct application in the evaluation of evidence in cases before the courts. The precautionary principle bridges the gap in cases where scientific certainty in factual findings cannot be achieved. By applying the precautionary principle, the court may construe a set of facts as warranting either judicial action or inaction, with the goal of preserving and protecting the environment. This may be further evinced from the second paragraph where bias is created in favor of the constitutional right the people to a balanced and healthful ecology. In effect, the precautionary principle shifts the burden of evidence of harm away from those likely to suffer harm and onto those desiring to change the status quo. An application of the precautionary principle to the rules on evidence will enable courts to tackle future environmental problems before ironclad scientific consensus emerges.

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. When these features — **uncertainty**, the **possibility of irreversible harm**, and the **possibility of serious harm** — coincide, the case for the precautionary principle is strongest. When in doubt, cases must be resolved in favor of the constitutional right to a balanced and healthful ecology.

Parenthetically, judicial adjudication is one of the strongest fora in which the precautionary principle may find applicability.

SEC. 2. *Standards for application* – In applying the precautionary principle, the following factors, among others, may be considered: (1) threats to human life or health; (2) inequity to present or future generations; or (3) prejudice to the environment without legal consideration of the environmental rights of those affected.

Judicial standards for application. Section 2 of this Rule enumerates judicial standards for applying the precautionary principle. While its phraseology is couched in general terms, thus permitting ample judicial discretion in its application, the application of the precautionary principle is **limited in cases where there is truly a doubt in the evidence available.** (*Supra*, Sec. 1)

RULE 21

DOCUMENTARY EVIDENCE

SEC. 1. *Photographic, video and similar evidence.* – Photographs, videos and similar evidence of events, acts, transactions of wildlife, wildlife by-products or derivatives, forest products or mineral resources subject of a case shall be admissible when authenticated by the person who took the same, by some other person present when said evidence was taken, or by any other person competent to testify on the accuracy thereof.

SEC. 2. *Entries in official records.* – Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in performance of a duty

specially enjoined by law, are *prima facie* evidence of the facts therein stated.

Evidentiary matters in environmental cases. These provisions seek to address specific evidentiary concerns in environmental litigation, where evidence is often difficult to obtain and preserve. They supplement the main Rules on Evidence, which have full applicability to environmental cases.

RULE 22

FINAL PROVISIONS

SEC. 1. Effectivity. - These Rules shall take effect within fifteen (15) days following publication once in a newspaper of general circulation.

SEC. 2. Application of the Rules of Court. - The Rules of Court shall apply in a suppletory manner, except as otherwise provided herein.

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THE RULES OF PROCEDURE FOR
ENVIRONMENTAL CASES**

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