Access to Environmental Justice: A Closer Look at the Rules of Procedure for Environmental Cases

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I. INTRODUCTION

Today, "[h]umanity and [,]with it[,] all life on earth stand at a crossroads."[1] With the world facing a series of environmental crises that have reached epic proportions and seeped into "every corner of the globe,"[2] it is apparent that the Philippines needs to take more aggressive measures to stop the rapid decline and degradation of our biological resources. As seen from news

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1. Jan Oosthoek & Barry K. Gills, *Humanity at the Crossroads: The Globalization of Environmental Crisis*, in THE GLOBALIZATION OF ENVIRONMENTAL CRISIS 1 (Jan Oosthoek & Barry K. Gills eds., 2008).
2. *Id.*

reports and various studies, the country's rich biological resources are under a serious threat of decline and degradation.[3] This wanton destruction of the environment has resulted in dire repercussions for the country, namely: the devastation left behind by typhoons, such as Typhoon *Ondoy*,[4] flashfloods, earthquakes, and more. Given the circumstances, much has been done by the Legislature to identify the causes of these destructive environmental phenomena and enact the necessary laws to prosecute environmental violations. The problem, however, lies in the fact that there is poor enforcement of the law and failure to prosecute environmental violations.

In 2010, the Supreme Court took a step forward and deemed it essential to breathe life to the constitutionally provided mandate to "advance the right of the people to a balanced and healthful environment."[5] On 29 April 2010, the Court promulgated the Rules of Procedure for Environmental Cases (the Rules)[6] to hasten the prosecution of environmental cases and ensure that the environmental rights of people are protected. The Court saw the necessity of strengthening the role of the Judiciary in handling environmental cases and for providing a legal framework for prosecuting environmental cases through establishing a procedure to "speedily address issues posed in environmental cases, taking into account the requirements of due process."[7] The Rules are intended to act as a supplement to the regular rules of procedure under the Rules of Court when it comes to prosecuting and adjudicating environmental cases. Much has been said about its provisions because it introduced innovative procedures and recognized legal concepts and remedies to the Philippine legal system, such as the Consent Decree, the Continuing *Mandamus*,[8] the Environmental Protection Order (EPO), the

3. *Id.* at 284.

4. Katherine Evangelista, *73 dead, more than 300,000 displaced by Ondoy*, PHIL. DAILY INQ., Sep. 27, 2009, *available at* http://newsinfo.inquirer.net/breakingnews/nation/view/20090927-227130/51-dead-280000-displaced-by-Ondoy (last accessed Feb. 25, 2011).

5. PHIL. CONST. art. II, § 16.

6. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, A.M. No. 09-6-8-SC, Apr. 29, 2010, rule 1, § 3.

7. *Id.* ratio., at 71.

8. *Id.* rule 8, § 1. Continuing Mandamus has been defined as "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 satisfied." *Id.* rule 1, § 4 (c). *See* Juan Arturo C. De Castro, *Cleaning Up Manila Bay: Mandamus as a Tool for Environmental Protection*, 37 ECOLOGY L.Q. 797 (2010). This principle was adopted from Vineet Narain v. Union of India, an Indian Supreme Court case, where "continuing mandamus was used to enforce the cleanup of the Ganges River from industrial and municipal pollution." *Id.* at 801. *See also* Metro Manila Development Authority v. Concerned Residents of Manila Bay, 574

Temporary Environmental Protection Order (TEPO),[9] and the Strategic Lawsuit Against Public Participation (SLAPP).[10] It also created a new remedy known as the Writ of *Kalikasan*,[11] which is the first writ of its kind in the Philippines.

Despite the warm welcome,[12] the Rules have received from all sectors, it is, nevertheless, not without its flaws, such as confusion regarding the application of some of its concepts and its implications for the five pillars of the criminal justice system (community, enforcement, prosecution, courts, and corrections).[13] It is also apparent that with the introduction of these remedies and reliefs, questions on legal issues surrounding these concepts, as well as the limitations, standards, and legal basis for these rules are sure to be raised.

SCRA 661, 688 (2008) (citing Vineet Narain v. Union of India, (1998) 1 S.C.C. 226 (India)).

9. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 2, § 8.

10. *Id.* rule 6, § 1. This Section provides:

> 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.

Id.

11. *Id.* rule 7, § 1. This Section provides:

> 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.

Id.

12. *See* Perfecto T. Raymundo, Jr., SC unveils rules of procedure for environmental cases, *available at* http://bayanihan.org/2010/04/14/sc-unveils-rules-of-procedure-for-environmental-cases/ (last accessed Feb. 25, 2011) & Marjun A. Baguio, *SC bares rules of procedure for environment-related cases*, PHIL. STAR, Apr. 16, 2010, *available at* http://www.philstar.com/Article.aspx?articleId=566978&publication SubCategoryId=107 (last accessed Feb. 25, 2011).

13. PHILIPPINE JUDICIAL ACADEMY, ACCESS TO ENVIRONMENTAL JUSTICE: A SOURCEBOOK ON ENVIRONMENTAL RIGHTS AND LEGAL REMEDIES 30 (on file with the Philippine Judicial Academy).

Given the numerous legal issues surrounding the Rules, this Essay shall take a closer look at its drafting and promulgation. It shall also discuss four of the more salient features of the Rules and the legal issues that may arise from their implementation. This Essay presents a discussion on the possible deterrents and challenges that may be encountered in the future when these remedies and reliefs are availed. It shall also explore the Rules' impact on the judicial process as well as its significance and effect on environmental cases in the future. Taking time to better understand the concepts behind the Rules will provide the public, those in the legal profession, and the Judiciary with a better understanding of how the Rules are to be successfully implemented if access to environmental justice is to become possible in the country.

II. LEGAL FRAMEWORK AND IMPETUS FOR THE RULES OF PROCEDURE FOR ENVIRONMENTAL CASES

A. Legal Framework

Contrary to common perception, environmental legislation in the Philippines has actually been around for a long time. In fact, the development of environmental legislation in the country may be divided into three periods: the colonial period, the period from independence to 1972, and the period from 1972 to the present.[14] In recognition of the country's long history of environmental legislation, the framers of the 1987 Constitution understood the need to protect the country's rich biological resources.[15] As a result, they incorporated among the provisions of the Constitution a framework to guide government action with regard to the protection of environmental rights.[16] This right is clearly embodied in Section 16, Article II of the 1987 Constitution which provides that, "[t]he State shall protect and advance the right of the people to a balanced and

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14. *See* Justice Oswaldo D. Agcaoili, Role of the Philippine Judicial Academy in Environmental Law Dissemination, Enforcement, and Adjudication, *available at* http://sc.judiciary.gov.ph/publications/ejforum/day2/presentations/agcaoili.pdf (last accessed Feb. 25, 2011).

15. 4 RECORD OF THE 1986 CONSTITUTIONAL COMMISSION 913 (1986). The Records provide that:

    > 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 environment necessarily carries with it the correlative duty of not impairing the same, and therefore, sanctions may be provided for impairment of environmental balance.

    Id.

16. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, ratio., at 59.

healthful ecology in accord with the rhythm and harmony of nature."[17] This Constitutional provision is framed as "a state policy and [does] not form part of the Bill of Rights," giving credence to the belief that it is the State that must exercise its powers in relation to environmental rights and must lay down the framework for authoritative governance.[18] It is this mandate to protect environmental rights that gave rise to a series of environmental laws which seek to protect the environmental rights of the people, such as the Philippine Clean Air Act,[19] the Philippine Clean Water Act,[20] the Philippine Fisheries Code,[21] and the Revised Forestry Code.[22] All these laws aim to protect and rehabilitate the country's natural resources in order to prevent the further decline of the environment. It is not only the legislative department, however, that has taken strides to address various environmental issues.

The Supreme Court itself has long shown an appreciation of environmental issues as reflected in the country's evolving environmental jurisprudence and the promulgation of rules such as Administrative Order (A.O.) No. 23-2008,[23] which established environmental courts or "green benches" around the Philippines to handle environmental cases. In the landmark case of *Oposa v. Factoran, Jr.*,[24] the Court recognized the legal standing of "minors ... [and] generations yet unborn"[25] and the concept of "inter-generational responsibility." It also emphasized that the right to a balanced and healthful ecology as a basic right "need not even be written in the Constitution."[26] The Case was instituted by minors along with their

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17. PHIL. CONST. art. II, § 16.

18. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, ratio., at 59.

19. An Act Providing for a Comprehensive Air Pollution Control Policy and For Other Purposes [Philippine Clean Air Act of 1999], Republic Act No. 8749 (1999).

20. An Act Providing for a Comprehensive Water Quality Management and For Other Purposes [Clean Water Act of 2004], Republic Act No. 9275 (2004).

21. An Act Providing for the Development, Management and Conservation of the Fisheries and Aquatic Resources, Integrating All Laws Pertinent Thereto, and For Other Purposes [PHILIPPINE FISHERIES CODE OF 1998], Republic Act No. 8550 (1998).

22. Revising Presidential Decree No. 389, Otherwise Known as The Forestry Reform Code of the Philippines [REVISED FORESTRY CODE OF THE PHILIPPINES], Presidential Decree No. 705 (1975).

23. Supreme Court, Re: Designation of Special Courts to Hear, Try, and Decide Environmental Cases, Administrative Order No. 23-2008 [SC A.O. No. 141] (Jan. 28, 2008).

24. Oposa v. Factoran, Jr., 224 SCRA 792 (1993).

25. *Id.* at 802-03.

26. *Id.* at 805.

parents[27] alleging that then Secretary of Environment and Natural Resources Fulgencio Factoran acted with grave abuse of discretion in issuing Timber License Agreements (TLAs) to cover more areas.[28] Respondents alleged that the minors, who invoked the right to a balanced and healthful ecology, had no valid cause of action.[29] The Court eventually held that these basic rights 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 which stand to inherit nothing but parched earth incapable of sustaining life.[30]

Another landmark decision is *Metropolitan Manila Development Authority [MMDA] v. Concerned Residents of Manila Bay*.[31] In this Case, the Court held that the maintenance of Manila Bay was a ministerial duty that the varying government agencies were required to perform and issued a Continuing *Mandamus*, which allowed the Court to retain judicial oversight over the implementation of its judicial decision.[32] The significance of this Case will be further discussed in this Essay.

B. Principles of International Environmental Law

A closer look at the drafting of the Rules shows that the Sub-Committee for the Rules incorporated principles of international environmental law. These are: the Obligation not to Cause Harm, the Prevention Principle, the Precautionary Principle, Sustainable Development, and Inter-generational Equity. These principles lay the groundwork for the remedies and reliefs incorporated in the Rules, and provide the rationale for why certain concepts were adopted and deemed applicable in the Philippine jurisdiction. Unbeknownst to many, some of these principles have long been adopted in

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27. *Id.* at 796.

28. *Id.* at 798-800.

29. *Id.* at 800.

30. *Oposa*, 224 SCRA at 805.

31. Metro Manila Development Authority v. Concerned Residents of Manila Bay, 574 SCRA 661 (2008).

32. *See Concerned Residents of Manila Bay*, 574 SCRA at 670-71 & 688 (citing M. C. Mehta v. Union of India (1987) 4 S.C.C. 463 (India)).

a number of the nation's laws, thereby giving a sounder basis for the legal groundwork set down in the drafting of the Rules.

One of the principles recognized by the Rules is the Obligation not to Cause Harm. This Principle is reflected in Principle 21 of the Stockholm Declaration, which is the foundation of International Environmental Law.[33] It provides that

> States have, in accordance with the Charter of the United Nations [U.N.] and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.[34]

The Obligation not to Cause Harm is comprised of two intertwined elements: (1) "the sovereign right of states to exploit their own natural resources;" and (2) "the responsibility, or obligation, not to cause damage to the environment of other states or of areas beyond the limits of national jurisdiction."[35] Under the first element, the right of each State to exploit its own natural resources in accordance with their environmental policy is acknowledged, with each state "free from external interference."[36] This, however, recognizes certain limitations as embodied in the second element of this principle. Principle 21 provides that "the state has the responsibility not to cause harm beyond the limits of its national jurisdiction."[37] This recognizes the fact that in today's times, the activities of each state may be transboundary in nature; hence, the need for each state to take responsibility for its own actions, whose effects may significantly cause environmental damage to shared resources.[38]

The second Principle is the Prevention Principle, which aims to "stop environmental damage even before it occurs or when it is critical and

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33. PHILIPPE SANDS, PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW 236 (2d ed. 2003).

34. United Nations Environment Programme [UNEP], United Nations Conference on the Human Environment, *Report of the United Nations Conference on the Human Environment*, Principle 21, U.N. Doc. A/Conf.48/14/Rev.1 (June 5-16, 1972).

35. SANDS, *supra* note 33, at 236.

36. *Id.* at 237.

37. PHILIPPINE JUDICIAL ACADEMY, *supra* note 13, at 24 (citing Trail Smelter Arbitration (*United States v. Canada*) 3 R.I.A.A. 1905 (1938-1941)).

38. SANDS, *supra* note 33, at 238.

potential damage may already be irreversible."[39] Under this Principle, "a state may be under the obligation to prevent damage within its own jurisdiction."[40] Its primary concern is to address activities that may cause significant environmental damage within the state's own territorial jurisdiction,[41] unlike in the Obligation not to Cause Harm, where the focus is more on the responsibility of the state for the environmental damage caused to another state's territory.[42] In applying this Principle, actions involving the reduction of pollution should be taken at an early stage rather than waiting for the irreversible effects to occur. The rationale behind this Principle is that it is better to stop the cause of pollution and prevent permanent harm rather than commence efforts to clean the contaminated areas later in the day.[43] It is based on the idea that prevention is the better choice over the belated employment of restorative measures.

In the Philippines, one example of the application of the Prevention Principle is the conduct of the Environmental Impact Assessments (EIA), which is a planning tool done at the "earliest possible stage of a project cycle."[44] The governing law in the conduct of EIA is Presidential Decree (P.D.) No. 1586 entitled, "Establishing an Environmental Impact Statement System, Including Other Environmental Management Related Measures and for Other Purposes."[45] Under Philippine law, EIA is defined as a "process that involves predicting and evaluating likely impacts of a project (including cumulative impacts) on the environment during construction, commissioning, operation, and abandonment ... [and] includes designing appropriate preventive, mitigating[,] and enhancement measures addressing those consequences to protect the environment and the community's welfare."[46] Under this Law, an Environmental Compliance Certificate

39. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, ratio., at 44 (citing NICHOLAS DE SADELEER, ENVIRONMENTAL PRINCIPLES — FROM POLITICAL SLOGANS TO LEGAL RULES 61 (2002)).

40. Max Valverde Soto, *General Principles of Environmental Law*, 3 ILSA J. INT'L & COMP. L. 193, 199-200 (1996).

41. *Id.*

42. *Id.*

43. *Id.*

44. The Global Development Research Center, Sustainability Concepts: Environmental Impact Assessment, *available at* http://www.gdrc.org/sustdev/concepts/08-eia.html (last accessed Feb. 25, 2011).

45. Establishing an Environmental Impact Statement System, Including Other Environmental Management Related Measures and for Other Purposes, Presidential Decree No. 1586 (1978).

46. Department of Environment and Natural Resources, Implementing Rules and Regulations (IRR) for the Philippine Environmental Impact Statement (EIS)

(ECC) is required before projects specifically enumerated under the law may be undertaken by any entity, whether by a private corporation or the local government,[47] to ascertain the potentially significant impacts of the project to the environment in that community.

The third Principle is the Precautionary Principle, which has been a much debated and criticized concept because of the difficulty in determining standards and addressing issues as to its evolving application. It first found its way into international law and policy as a result of several proposals from environmentalists, governments, and even treaties such as the 1982 U.N. World Charter for Nature,[48] the 1985 Vienna Convention for the Protection of the Ozone Layer,[49] and the 1987 Second International Conference on the Protection of the North Sea.[50] It was not until the U.N. Conference on Environment and Development in Rio de Janeiro, Brazil that the Precautionary Principle became a formal part of international environmental law lingo and was given a universal definition. Under Principle 15 of the Rio Declaration,[51] the Precautionary Principle is stated in the following wise:

> 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.[52]

This Principle advocates that the "potential harm should be [addressed] even with minimal predictability at hand."[53] The Precautionary Principle requires a high degree of prudence as decision-makers must not only "account for scientific uncertainty" but also take positive action (that is,

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System, DENR Administrative Order No. 2003-30 [DENR A.O. No. 2003-03] (June 30, 2003).

47. P.D. No. 1856, § 4. *See* Republic of the Philippines v. City of Davao, 388 SCRA 691 (2002).

48. G.A. Res. 37/7, U.N. Doc. A/Res/37/7, Oct. 28, 1982.

49. The Vienna Convention for the Protection of the Ozone Layer, Mar. 22, 1985, 1513 U.N.T.S. 293.

50. Second International Conference on the Protection of the North Sea, Nov. 24-25, 1987, 27 I.L.M. 835. *See generally* Rabbi Elamparo Deloso, *The Precautionary Principle: Relevance in International Law and Climate Change*, 80 PHIL. L.J. 642, 660 (2006).

51. U.N. Conference on Environment and Development [UNCED], *Rio Declaration on Environment and Development*, Principle 15, U.N. Doc. A/CONF.151/26 (June 3-14, 1992).

52. *Id.*

53. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, ratio., at 44 (citing DE SADELEER, *supra* note 39, at 18).

"restrict product or activity") even when there is no scientific certainty.[54] This principle has often been utilized as a planning and regulatory tool around the world to better ascertain the harm done to the environment; nonetheless, it remains somewhat ambiguous in its application as there exists no specific measures to establish the requirements of this Principle and formulations around the world vary.[55]

The fourth Principle is Sustainable Development, which was first defined in the 1987 Brundtland Report as "a development that meets the needs (in particular, the essential needs of the world's poor) of the present without compromising the ability of future generations to meet their own needs."[56] It places the "primary focus of environmental protection efforts … to [improving] the quality of human condition" and impresses the idea of the existence of limits on the environment's capacity to meet present and future needs.[57] This Principle is embodied in the Philippine Agenda 21,[58] which was formulated as a response to the country's commitments in the 1992 Earth Summit in Rio de Janeiro, Brazil. The concept of Sustainable Development carries two key concepts: the first is the existence of needs with particular focus on the needs of the poor, and the second is that the environment has limitations in meeting the needs of present and future generations.[59] This Principle addresses the need to "balance environmental and developmental considerations"[60] and recognizes that development requires economic exploitation to satisfy the needs of the growing population while, at the same time, protecting the environment for future generations. The concept of Sustainable Development seeks to achieve exploitation of resources while leaving the environment intact for the use of

54. Lesley K. McAllister, *Judging GMOS: Judicial Application of the Precautionary Principle in Brazil*, 32 ECOLOGY L.Q. 149, 157-58 (2005).

55. Soto, *supra* note 40, at 201.

56. *Id.* at 205-06 (citing U.N. World Commission on Environment and Development [WCED], Development and International Economic Co-operation: Environment, *Report of the World Commission on Environment and Development: Our Common Future*, U.N. Doc. A/42/25 (Aug. 4, 1987)).

57. *Id.* at 206.

58. Office of the President, Directing the Operationalization of Philippine Agenda 21 and Monitoring its Implementation, Memorandum Order No. 399 (Sep. 26, 1996).

59. New World Encyclopedia, Environmental Law: Key Principles, *available at* http://www.newworldencyclopedia.org/entry/Environmental_law (last accessed Feb. 25, 2011).

60. ELLI LOUKA, INTERNATIONAL ENVIRONMENTAL LAW: FAIRNESS, EFFECTIVENESS, AND WORLD ORDER 52 (2006).

future generations.[61] This implies the need for the efficient use of non-renewable resources;[62] thus, the "optimal management" of natural resources becomes imperative.[63]

The last Principle is known as Inter-generational Equity, which is defined as "each generation's responsibility to leave an inheritance of wealth no less than what they themselves have inherited."[64] This concept supports the Principle of Sustainable Development with respect to "[holding] the natural resources in trust for future generations"[65] and was first introduced in the landmark case of *Oposa*, where the Supreme Court had the occasion to discuss the concept of Inter-generational Responsibility, which was used as the basis for upholding the standing of the minors to bring their suit. The Supreme Court, through Justice Hilario G. Davide, Jr., explained:

> This [C]ase, however, has a special and novel element. Petitioners minors assert that they represent their generation as well as generations yet unborn. We find no difficulty in ruling that they can, for themselves, for others of their generation and for the succeeding generations, file a class suit. Their personality to sue in behalf of the succeeding generations can only be based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned. Such a right, as hereinafter expounded, considers the 'rhythm and harmony of nature.' Nature means the created world in its entirety. Such rhythm and harmony indispensably include, *inter alia*, the judicious disposition, utilization, management, renewal and conservation of the country's forest, mineral, land, waters, fisheries, wildlife, off-shore areas and other natural resources to the end that their exploration, development and utilization be equitably accessible to the present as well as future generations. Needless to say, every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology. Put a little differently, the minors' assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come.[66]

The incorporation of all of these international environmental principles into the Rules reflects the complex nature of environmental cases. Knowledge of these Principles therefore enables people to gain a clearer

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61. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, ratio., at 42 (citing HARALD HOHMANN, PRECAUTIONARY LEGAL DUTIES AND PRINCIPLES OF MODERN INTERNATIONAL ENVIRONMENTAL LAW 2-3 (1994)).

62. *Id.*

63. *Id.* at 47.

64. Soto, *supra* note 40, at 206 (citing E. Brown Weiss, *Our Rights and Obligations to Future Generations for the Environment*, 84 AM. J. INT'L L. 198 (1990)).

65. *Id.*

66. *Id.* at 803.

understanding of the approach taken by the Court when it promulgated the Rules and helps them wade through the intricacies of its provisions.

C. Impetus for the Rules of Procedure for Environmental Cases

In 2009, the Court conducted the Forum on Environmental Justice: Upholding the Right to Balanced and Healthful Ecology, which enabled the Court to receive input from different stakeholders of the environmental justice system, namely, non-government organizations (NGOs), environmental lawyers, members of the academe, and prosecutors, in order to arrive at recommendations and mechanisms to address and resolve issues arising from environmental cases.[67] The result was the much anticipated Rules of Procedure for Environmental Cases.

The Rules were designed to enhance the judicial process for upholding the people's constitutional right to a balanced and healthful ecology, while at the same time making it easier to administer justice to victims of environmental violations. Moreover, it has been said that "the concept of environmental protection is in of itself a quagmire of grand proportions,"[68] hence, the need to formulate a set of rules that will guide the courts in handling environmental cases, where the rights involved are not as apparent and definite as traditional human rights, in order to achieve environmental justice.

The concept of environmental justice has long been debated as it is not as straightforward as environmental advocates would like it to be since it has no single, universally-accepted definition. In some jurisdictions, environmental justice is defined as "the pursuit of equal justice and equal protection under the law for all environmental statutes and regulations without discrimination based on race, ethnicity, and/or socio-economic status."[69] The Environmental Protection Agency (EPA) defines it as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin[,] or income with respect to the development, implementation[,] and enforcement of environmental laws, regulations and policies."[70] Despite the various definitions of environmental justice, what one must understand is that at its core is the idea that brings together

67. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, ratio., at 96-97.

68. *Id.* at 40.

69. Environmental Justice Advocates of Minnesota, Principles on Environmental Justice, *available at* http://www.ejamn.org/environmental-justice (last accessed Feb. 25, 2011).

70. Environmental Protection Agency, Environmental Justice, *available at* http://www.epa.gov/environmentaljustice/ (last accessed Feb. 25, 2011).

environmental protection and social justice.[71] These two concepts are not identical, but in the area of environment, these two concepts form the basis for environmental justice. Indeed, "by analyzing environmental issues more clearly in terms of social justice and in turn, by seeing the path to achieving social justice with an environmental perspective, a more effective and efficient way of dealing with environmental challenges can be achieved."[72]

It is evident that in the Philippines, the effects of violations of environmental laws are mostly felt by those in the marginalized sectors, namely, the fisherfolk, farmers, urban and rural poor, and communities of indigenous peoples. Their underprivileged circumstances make it quite difficult for them to cope with the devastating effects of pollution and environmental damage to their health and quality of life. They are the ones whose voices are left unheard because they do not have the resources to show the public their tragic plight. Neither do they have the resources to fight back against those who caused their tragic circumstances. In the end, "the adverse effects of environmental violations are silent killers whose victims are those who do not have the means to protect themselves."[73] That the Court recognized this is evident in the way the Rules were crafted, which makes it easier for victims to empower themselves and to avail of the remedies and reliefs afforded to them by the law.

Now, more than ever, solutions must be found to address the rampant environmental problems in the country. Unfortunately, the country's environmental laws are rendered ineffectual as they stand today because they are not properly enforced by those mandated by the law to do so. Further, there is failure on the part of the Judiciary to efficiently adjudicate environmental cases. The insufficiency of general legal procedures to provide guidelines as to the filing of environmental suits has resulted in a dearth of prosecution of environmental cases and lack of jurisprudence to base decisions on. As things currently stand, ordinary rules of procedure actually "impede efforts to protect and conserve the environment."[74] With the promulgation of the Rules, the Judiciary is emboldened to act on environmental cases without being severely restricted by the technicalities and strict nuances called for by the ordinary rules of procedure. The Rules also provide judges with more alternatives in adjudicating the cases before

71. ESRC Global Environmental Change Programme, Environmental Justice: Rights and means to a healthy environment for all, *available at* http://www.foe.co.uk/resource/reports/environmental_justice.pdf (last accessed Feb. 25, 2011) [hereinafter ESRC].

72. PHILIPPINE JUDICIAL ACADEMY, *supra* note 13, at 1 (citing ESRC, *supra* note 71)).

73. *Id.*

74. Ronald R. Gutierrez, *Improving Environmental Access to Justice: Going Beyond Environmental Courts,* 53 ATENEO L.J. 916, 917 (2009).

them and give them a framework for granting remedies and reliefs not previously contemplated by law or by jurisprudence.

III. SALIENT FEATURES OF THE RULES

A. *Writ of Kalikasan*

The 1987 Constitution provides that 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."[75] In recognition of this fundamental right, the Judiciary deemed it imperative to take further steps to ensure that this constitutional mandate is upheld by promulgating the Rules. One of these new concepts is the Writ of *Kalikasan*, the creation of which heralds the age of "judicial activism" of the Philippine Supreme Court.[76] By promulgating the Rules and introducing an innovative writ, the Court has "manifested its unique expanded judicial power under the Constitution."[77] The purpose and objective of the Writ is explained as "[intending] 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 the potentially exponential nature of large-scale ecological threats." Similar to other writs, 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."[78] It was also "fashioned to address the concern of magnitude and questions of jurisdiction arising from the environmental damage occurring in wide areas by allowing the petition for the issuance of the writ."[79] The creation of the Writ is, therefore, a piece of revolutionary judicial reform designed to address the necessity of prosecuting environmental cases and penalizing offenders.

Today, the Writ of *Kalikasan* is considered a radically new remedy. Both lawyers and judges alike are still grappling with the idea as to how this Writ should be implemented, given the grounds upon which such Writ can be issued. First, there must be a violation of the constitutional right to a balanced and healthful ecology. Second, there must be environmental damage of such magnitude as to prejudice the life, health, or property of inhabitants in two or more cities or provinces.

One problem that can be seen with the Writ of *Kalikasan* is its strict application of the second requirement which involves "environmental damage of such magnitude as to prejudice the life, health or property of

75. PHIL. CONST. art. II, § 16.

76. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, ratio., at 78.

77. *Id.*

78. *Id.* at 79.

79. *Id.*

inhabitants in *two or more cities or provinces*."[80] One does understand that the purpose of requiring the element of two or more cities or provinces is that the damage is of such magnitude as to affect a greater land area and a much larger number of people. The Philippines, however, is an archipelagic country. This requirement seems to automatically eliminate the chance of issuing a Writ of *Kalikasan* for grave threats or environmental damages done in isolated islands or large provinces, regardless of their harmful effects on the ecosystem of that particular island or province. Take for instance the province of Palawan, which is one of the largest island provinces in the country. What can the local government or the inhabitants of Palawan avail of as a speedy remedy in lieu of the Writ of *Kalikasan*? There are other remedies provided in the Rules, but, they too can be availed of only under certain circumstances. For instance, an EPO or a TEPO can be availed of by the parties, but they may only be "employed to perform the rules of prohibitory injunction and … mandatory injunction;"[81] whereas, the Writ of *Kalikasan* enables the courts to "take positive steps to preserve, *rehabilitate*, or restore the environment."[82] The Rules are therefore rendered ineffectual for the inhabitants of isolated islands. In the end, they may be forced to resort to the usual civil remedies available to their cause, thus prolonging their dire situation.

Another problem that may arise from the Writ of *Kalikasan* is the "low evidence threshold" required for its issuance.[83] The intent of the Writ of *Kalikasan* is to provide a speedy remedy to stop environmental violations since the designated "green courts" are required to hear all petitions under the Writ of *Kalikasan* within 60 days,[84] and a restraining order lasting 72 hours can be imposed for what are considered extreme cases.[85] The problem, however, is that the low evidence threshold for its issuance may be easily abused by people. They may file a petition for the issuance of a Writ of *Kalikasan* simply to stall large-scale development projects in communities in

80. *Id.* rule 7, § 1 (emphasis supplied).

81. *Id.* ratio., at 75.

82. Justice Oswaldo D. Agcaoili, Lecture given during the Multi-sectoral Capacity-Building on Environmental Laws and the Rules of Procedure for Environmental Cases at the Legend Hotel, entitled, *Alternative Dispute Resolution (ADR) in Environmental Litigation: Mediation and Consent Decree*, held at Puerto Princesa City, Palawan (June 25, 2010) (emphasis supplied) [hereinafter Agcaoili Lecture].

83. CLC Asia, Philippines mining — huge potential hampered by political and country risk, *available at* http://www.clc-asia.com/analysis /philippines-mining-%E2%80%93-huge-potential-hampered-by-political-and-country-risk/ (last accessed Feb. 25, 2011) [hereinafter Philippines mining].

84. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 7, § 11.

85. *Id.* rule 2, § 8.

the guise of protecting the environment.[86] For instance, there is trepidation in the mining industry as to how the Writ of *Kalikasan* may affect their operations in the country. Anti-mining advocates can easily avail of the Writ of *Kalikasan* to shut down mining operations, regardless of the benefits they would bring to the community and despite meeting the requirements for the issuance of an ECC, which is mandatory under the EIA process.[87] This may easily deter the influx of mining investments in the country. The same goes for other large-scale development projects, which may be held in abeyance because of the issuance of a Writ of *Kalikasan*.

The strength of the Writ of *Kalikasan* has recently been tested. On 19 November 2010, the Court issued a Writ of *Kalikasan* and a TEPO, ordering First Philippine Industrial Corp. (FPIC) to "'cease and desist' from operating a pipeline until further orders from the Court."[88] The case stemmed from a leaking pipeline owned by FPIC which "passes through Osmeña Highway and covers Manila, Makati, Pasay[,] and South Luzon Expressway, which includes Muntinlupa City and several towns in Laguna and Batangas."[89] The leak posed considerable health and environmental problems for the residents of West Tower Condominium, Barangay Bangkal, Makati City. The leak in the 43-year-old pipeline was due to the failure of FPIC to ensure the pipeline's structural integrity, resulting in groundwater contamination in the area and even causing health problems such as respiratory problems.[90] A separate action for liability for damages of the FPIC to the residents in the area is under *sub judice*, while clean-up of the area is currently underway. It remains to be seen how courts in the future will tackle these issues arising from the enforcement of a Writ of *Kalikasan*.

B. Continuing Mandamus

The Rules define Continuing *Mandamus* as "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."[91]

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86. Philippines mining, *supra* note 83.

87. *Id.*

88. Edu Punay, *Writ of Kalikasan Issued v. pipeline*, PHIL. STAR, Nov. 20, 2011, *available at* http://www.philstar.com/Article.aspx?Articleid=631751 (last accessed Feb. 25, 2011).

89. *Supreme Court issues first writ of kalikasan*, SUN.STAR MANILA, Nov. 19, 2010, *available at* http://www.sunstar.com.ph/manila/local-news/supreme-court-issues-first-writ-kalikasan (last accessed Feb. 25, 2011).

90. Punay, *supra* note 88.

91. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 1, § 4 (c).

In the Philippine legal system, the Continuing *Mandamus* has its origins in the landmark case of *Concerned Residents of Manila Bay*.[92] In this Case, the Court played a large role in the urgent call for the clean-up of Manila Bay. The examination of Manila Bay revealed that it had "fecal coliform content in the amounts ranging from 50,000 to 80,000 most probable number (MPN)/1 ml," which is above the prescribed safe level of 200 MPN per 100 ml.[93] The Regional Trial Court (RTC) ordered several executive agencies to clean up the Bay and perform their mandates with respect to the rehabilitation of the Bay. Among these agencies were the Department of Environment and Natural Resources (DENR), the Philippine Ports Authority (PPA), the MMDA, the Philippine Coast Guard, and the Philippine National Police (PNP) Maritime Group.[94]

From the RTC's decision, the Petitioners appealed to the Court of Appeals (CA) contending, among other things: (1) that there are no funds allocated for the cleaning of Manila Bay; (2) that there should be a specific pollution incident, instead of a general one, before they are required to act; and (3) that the order of the RTC to rehabilitate the Bay is not compellable by *mandamus*.[95] Nonetheless, the RTC decision was sustained by the CA[96] and later on by the Supreme Court.[97]

In *Concerned Residents of Manila Bay*, the Court gave recognition to the fact that bureaucracy poses a major obstacle in the implementation of Environmental Laws.[98] The Court called upon the concerned executive agencies to fulfill their mandates and to give priority to the resolution of environmental problems, not only in Manila Bay, but in all instances.[99] The Court, through Associate Justice Presbitero Velasco, Jr., said:

> The era of delays, procrastination, and *ad hoc* measures is over. Petitioners must transcend their limitations, real or imaginary, and buckle down to work before the problem at hand becomes unmanageable. Thus, we must reiterate that different government agencies and instrumentalities cannot shirk from their mandates; they must perform their basic functions in

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92. *See Concerned Residents of Manila Bay*, 574 SCRA at 688.
93. *Id.* at 667. *See also* Department of Environment and Natural Resources, Revised Water Usage and Classification/Water Quality Criteria Amending Section Nos. 68 And 69, Chapter III of the 1978 NPCC Rules and Regulations, Administrative Order No. 34 [NPCC A.O. No. 34], Series of 1990 (Mar. 20, 1990).
94. *Concerned Residents of Manila Bay*, 574 SCRA at 667-69.
95. *Id.* at 669.
96. *Id.*
97. *Id.* at 692-97.
98. *Id.* at 665.
99. *Id.* at 691.

> cleaning up and rehabilitating the Manila Bay. We are disturbed by petitioners' hiding behind two untenable claims: (1) that there ought to be a specific pollution incident before they are required to act; and (2) that the cleanup of the bay is a discretionary duty.
>
> [R.A. No. 9003] is a sweeping piece of legislation enacted to radically transform and improve waste management. It implements [Section] 16, [Article] II of the 1987 Constitution, which explicitly provides that 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.[100]

Concerned Residents of Manila Bay also cited two Indian cases, namely *Vineet*[101] and *M.C. Mehta*.[102] The former involved a case against the Central Bureau of Investigation (CBI) of India and other concerned government agencies which allegedly did not fulfill their public duty to investigate the offenses of highly positioned public officials in relation to receiving monetary sources from a terrorist group. The Petitioners filed a Petition for a Writ of *Mandamus* in order to compel the CBI and the rest of the respondents to investigate these offenses. The Supreme Court of India thus issued a Writ of Continuing *Mandamus* in order to monitor the CBI's compliance with its order to investigate the said offenses, and to ensure that the investigation is done with impartiality and objectivity. *M.C. Mehta* sought the closure of tanneries to prevent the pollution of the Ganges River.[103] Another Indian case from which the Supreme Court derived the Writ of Continuing *Mandamus* is *T.N. Godavarman v. Union of India & Ors.*[104] Here, the Supreme Court of India issued the Writ of Continuing *Mandamus* in order to monitor compliance with its order to preserve and rehabilitate an Indian forest.[105]

The problem with the adoption of the Continuing *Mandamus* is that it grants the courts the power to oversee the administrative implementation of the courts' decisions. This power of judicial oversight may result into two things: (1) it may encroach upon the discretion of administrative agencies; and (2) the lack of a time limit for the judicial oversight allows it to take control over administrative actions to a certain degree. Both of these results flagrantly violate the separation of powers of the different branches of the government. In issuing a Continuing *Mandamus*, courts may impose such terms and conditions that are best left to the discretion of administrative

100. *Concerned Residents of Manila Bay*, 574 SCRA at 692.

101. *Vineet Narain*, 1 S.C.C. 226.

102. *M.C. Mehta*, 4 S.C.C. 463.

103. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, ratio., at 77 (citing *M.C. Mehta*, 4 S.C.C. 463).

104. *Id.* annot., at 103 (citing T.N. Godavarman v. Union of India, (1997) 2 S.C.C. 267 (India)).

105. *Id.*

agencies. Such terms may severely restrict their prerogative as to the most efficient way of executing the judicial decision, given that it is they who have the technical expertise and knowledge of environmental issues. Moreover, the lack of a time limit for such judicial oversight makes it difficult for successive administrations of the concerned agencies as they are bound to perform an act or a series of acts that the previous administrations were ordered to do. It may take years, even decades, before a judgment is deemed fully satisfied, depending on the area and the environmental damage to be addressed.

C. Precautionary Principle

Under Rule 20 of the Rules, the Precautionary Principle was uniquely adopted as a rule of evidence. The Supreme Court's adoption of the Precautionary Principle in the newly promulgated Rules affords plaintiffs a better chance of proving their cases where the risks of environmental harm are not easy to prove.[106] The Rules also provide standards for applying the Precautionary Principle, namely: "(1) threats to human life or health; (2) inequity to present or future generations; and (3) prejudice to the environment without legal consideration of the environmental rights of those affected."[107]

The application of the Precautionary Principle would allow the issuance of the Writ of *Kalikasan* even for potential harm or when a definitive scientific finding on the matter is lacking.[108] In this regard, the issuance of a Writ of *Kalikasan* "encroaches upon the primary jurisdiction of administrative agencies already tasked to provide remedies in case of alleged/possible environmental damage and would violate the recognized rule of exhaustion of administrative remedies."[109] How then can jurisdictional issues be reconciled?

Administrative agencies are already granted broad powers to remedy threats or damage to the environment. The argument is that these agencies are better equipped to hear factual and evidentiary matters, as well as provide technical analyses of the scientific evidence presented.[110] Further, the actions and decisions of these agencies are subject to the power of judicial review in cases where they abuse their discretion.[111] Nevertheless, courts do not

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106. *Id.* rule 20, § 1.

107. *Id.* § 2.

108. *Id.* § 1.

109. Patricia Bunye, *Rules of Procedure for Environmental Cases*, BUSINESS MIRROR, June 22, 2010, at A6.

110. HECTOR S. DE LEON & HECTOR M. DE LEON, JR., ADMINISTRATIVE LAW: TEXT AND CASES 27-28 (6th ed. 2010).

111. *Id.* at 236.

attempt to encroach on the power and discretion of administrative agencies.[112] What is intended by the Rules is that judges, when determining the existence of an environmental violation and its resulting damage, must appreciate the weight of evidence before them despite the lack of full scientific certainty. To do otherwise defeats the purpose of ensuring efficient and speedy access to environmental justice, especially for poorer victims of society. Courts, however, do tread a thin line between using their discretion in assessing the evidence before them and usurping a role that was meant for administrative agencies. Judges must possess the right amount of training in order to avoid the dangers of abuse of discretion when it comes to considering the weight and admissibility of the evidence that, by its very nature in environmental cases, often requires scientific certainty.

Another issue that needs to be addressed is the application of the Precautionary Principle itself. The Precautionary Principle has always been perceived as a regulatory tool, often utilized in determining the feasibility of promulgating laws and determining its impact on the surrounding environment. It is only now that its use has evolved to this level, going beyond the traditional concept of how the Precautionary Principle works. Under the Rules, it is considered a tool for assessing evidence in civil and criminal cases involving violations of environmental laws.[113] The Rules do provide for the standards of application, but these do not clearly help judges in determining the weight of the evidence before them. This is especially problematic if judges do not have adequate or sufficient training on how to adjudicate environmental cases and on how the Precautionary Principle works. All they have as a guideline are the three standards of application enumerated under the Rules, which, when read, sound amorphous. For instance, how does one determine the existence of threat? What would be considered inequity to future generations?

There are still numerous questions that can be raised when it comes to determining the application of the Precautionary Principle as a rule of evidence. As of now, the courts can only proceed using their own discretion, and therein lies the problem since the lack of the proper technical knowledge of addressing environmental damages can lead to abuse of discretion by the courts. Only time will tell how environmental courts will adjudicate the environmental cases before them, utilizing a concept that is quite difficult to standardize in the first place.

D. Consent Decree

Under the Rules, the Consent Decree is defined as "a judicially-approved settlement between concerned parties based on public interest and public

112. *Id.*

113. *See* RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 20.

policy to protect and preserve the environment."[114] It is to be availed of during the pre-trial stage where settlement between the parties is to be encouraged.[115] Nothing in the Rules, however, expounds on this concept that has never been adopted before in the Philippine jurisdiction. This, perhaps, is a substantial omission as the seemingly insignificant decree introduced in the Rules, when applied and issued properly, may have a greater impact on environmental cases than any other remedy introduced in the Rules.

To better understand what a Consent Decree is, it is often described as a "hybrid of a judicial order and a contract."[116] It is a judicial order because the courts issue it as an order and can "enforce the agreement between parties" and even has the power to "[maintain] long-established, broad, and flexible equitable powers to modify the decree."[117] The courts also have the power to modify and terminate it even beyond the parties' intent.[118] Most importantly, it has the same force and effect as a litigated judgment.[119] It resembles a contract because it is a product of a "pretrial agreement signed by the parties."[120] In fact, it is better understood as a compromise between two parties in a civil suit, the exact terms of which are fixed by the negotiation of both parties.[121] The parties come together to settle the issue by agreeing to certain terms, conditions, and obligations that will be carried out by both parties.[122] The most significant aspect of a Consent Decree, however, is that the courts maintain supervision over the case for an indefinite period of time and retain the power to enforce the decree if a party does not comply with its terms.

In summary, the distinct advantages of a Consent Decree are:

(a) it encourages the parties to come up with comprehensive, mutually-acceptable solutions to the environment problem, and since the agreement was arrived at voluntarily, there is a greater possibility of actual compliance;

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114. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 1, § 4 (b).

115. *Id.* rule 3, § 5.

116. Shima Baradaran-Robison, *Kaleidoscopic Consent Decrees: School Desegregation and Prison Reform Consent Decrees After the Prison Litigation Reform Act and Freeman-Dowell*, BYU L. REV. 1333, 1337 (2003).

117. *Id.*

118. *Id.* at 1337-38.

119. MILTON S. GOLDBERG, THE CONSENT DECREE: ITS FORMULATION AND USE 1-2 (1962).

120. Baradaran-Robison, *supra* note 116, at 1338.

121. GOLDBERG, *supra* note 119, at 1.

122. Baradaran-Robison, *supra* note 116, at 1338.

(b) it is open to public scrutiny;

(c) it allows the parties to address issues other than those presented to the court; and

(d) it is still subject to judicial approval and can be enforced through a court order.[123]

The dilemma with the Consent Decree is that hardly anyone is knowledgeable as to how it really works. It is a concept that was adopted from the U.S., specifically from the EPA. It has not been previously introduced in the country, either by jurisprudence or by a law enacted by Congress. How then can courts encourage the use of the Consent Decree to provide for a speedier and, in some ways, a more effective solution to damage caused by environmental violations if one is unclear as to its application? Judges also do not have any jurisprudence to use as basis for framing the Consent Decree for environmental cases as it is more popularly known in the area of anti-trust litigation. It is only in the past decade that it has evolved as a tool for institutional reform litigation as it was only used in environmental cases when the EPA in the U.S. was created by Congress and mandated to issue Consent Decrees. Given the scope of duties required of judges in issuing a Consent Decree, there is an obvious danger of going beyond what is a constitutionally appropriate role for judges. Once judges are handed the power to oversee and manage the implementation of a Consent Decree, then judges "assume a role and range of discretion that belongs to the legislative and the executive branches of government."[124] It seems that the Consent Decree is a double-edged sword, one that serves its purpose of speedily addressing environmental issues and providing long-term solutions to environmental damage, but at the expense of potentially usurping the prerogatives of the legislative and administrative branches of the government.

IV. SIGNIFICANCE AND IMPACT ON ENVIRONMENTAL CASES

Despite the legal problems and issues that may arise with the provisions in the Rules, its importance must not be underestimated or taken for granted. Its promulgation is very much significant, coming in a time when violations of environmental laws run rampant and at the cost of the lives and health of the Filipino people. Perhaps the foremost impact of the promulgation of the Rules will be in the way environmental cases are adjudicated in the country.

123. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, ratio., at 75 (citing J. Ynares-Santiago, *Framework for Strengthening Environmental Adjudication in the Philippines*). *See* Agcaoili Lecture, *supra* note 83.

124. Anthony N.R. Zamora, *The Century Freeway Consent Decree*, 62 S. CAL. L. Rev. 1805, 1816 (1989).

First, it addresses the challenge of exorbitant costs of prosecuting environmental cases, making it more cost-efficient to file environmental suits. In the Philippines, when an aggrieved party files a case, expenses for filing costs and fees for legal services must be considered. During the period of the case, litigation expenses are expected to increase because of bonds that must be posted by plaintiffs, expenses for obtaining evidence, travel costs, and more. They must also take into consideration instances when financially crushing harassment suits are filed against them and the expenses for feeding and housing witnesses and the amount of money they can lose due to time away from work.[125] Often, this proves too much for the aggrieved parties who are often comprised of poor fisherfolk, farmers, or ordinary citizens, and are pitted against multinational corporations. This often prevents most victims from pursuing a case or after initially filing a case, desist from pursuing it due to the lack of funds to continue the prosecution of the case. Even though the Court has taken steps to alleviate the problem of financial costs for pauper litigants by exempting them from paying docket fees, transcript fees, and other legal fees, and even providing legal aid services through the annual grant to the Integrated Bar of the Philippines, it still does very little to make a significant impact on the prosecution of environmental cases. Given the limited resources available, environmental cases are not prioritized and are often relegated to the back burner. Furthermore, it is often the NGOs that initiate the complaint on behalf of aggrieved parties such as fisherfolk, coastal communities, farmers, and others, because they have the capacity, time, and adequate legal knowledge to pursue these types of cases. They, however, also have limited financial resources and are not able to take advantage of these benefits and services as they are excluded by the law. With the promulgation of the Rules, the remedies and reliefs provided therein allow for speedy remedial action to be taken against the violation and damage done to the environment; thus, the period of time it previously took for environmental cases to prosper is reduced.

Second, it may help remove docket congestion in courts.[126] Courts in the Philippines are overburdened with cases, requiring more than 300 new trial court judges to handle pending cases.[127] These vacancies are mostly found in remote provinces of the country where violations of fishing and

125. Dominic Nardi, Issues, Concerns, and Challenges in Environmental Adjudication in the Philippine Court System, 11, *available at* http://web.me.com/freedom4/Rule_by_Hukum/Publications_files/Va.%20Rev.%20Asian%20Stud.pdf (last accessed Feb. 25, 2011).

126. *Id.* at 14.

127. *Id.* (citing Associate Justice Minita V. Chico-Nazario, Address given before the Asian Justices Workshop on the Environment at Bangkok, Thailand (Apr. 26-27, 2006)).

forestry laws are widespread.[128] As a result, "environmental cases are not given any special treatment on their own merits. Criminal environmental cases may be somewhat more expedited because they involve criminal punishments, but most judges and lawyers show no urgency with regard to environmental cases."[129] Until cases can move through the court system more quickly, the enforcement of environmental law will be delayed. With the promulgation of the Rules, remedies such as the Writ of *Kalikasan* and Continuing *Mandamus* provide for a speedy alternative for victims to be compensated for the damage caused, and clean up of the area to be ordered. The Rules also provide for the issuance of a Consent Decree that allows the parties to settle the terms and conditions of the case, much like a compromise agreement. All three remedies, if availed of by the parties, may drastically reduce the time it takes to dispose of environmental cases, thereby unclogging the dockets of the courts.

Most importantly, the promulgation of the Rules allows ordinary citizens to have the legal standing to sue institutions and other parties for violations of environmental laws. Citizen suits can be instituted by "any Filipino citizen in representation of others, including minors or generations yet unborn."[130] The prospect of going after violators, therefore, does not seem to be as daunting as before because it becomes possible for common folks to assert their right to a balanced and healthful ecology and make institutions, corporations, and even the government itself accountable for their damaging actions or inaction in the face of glaring environmental violations. With more people becoming aware of the repercussions of environmental degradation to the country, much can be accomplished in terms of raising awareness and tackling environmental challenges in the country today.

V. CONCLUSION

Numerous legal issues can be found from the different provisions of the Rules; however, not all of the legal issues arising from its provisions were tackled in this Essay. For instance, questions of conflicting jurisdiction may be raised because the Rules allow for premature resort to judicial remedies when the proper recourse is to avail of administrative remedies, subject to appeal before the proper court. Another issue is how Alternative Dispute Resolution, mediation, and conciliation are utilized in environmental cases, and if these are only applicable to certain environmental cases. Issues such as these would have to be resolved first before courts can effectively implement the Rules.

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128. *Id.*

129. Nardi, *supra* note 125, at 14.

130. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 2, § 5.

Based on the issues raised in this Essay, it is evident that there are still a number of questions and problems not addressed by the Court when it promulgated the Rules; nonetheless, the Rules represent a landmark movement in the country regarding the way courts tackle environmental problems. It is a sign that the country has come a long way in its goal to protect the environment while upholding the constitutional right of Filipinos to a balanced and healthful ecology. The promulgation of the Rules has indeed breathed new life into the environmental rights of Filipinos and paved the way for resurgence in environmental advocacy.

It is apparent that the Supreme Court is actively seeking means and ways to ensure the speedy administration of justice. Indeed, "the importance of the Judiciary in the promotion and implementation of environmental laws cannot be underestimated."[131] It remains to be seen what long-term repercussions the implementation of the Rules of Procedure for Environmental Cases will have on the future of the Philippine environment. One thing, however, is definite — the Rules will have far-reaching effects and broad ramifications not just for those in the legal profession but also for the public, forever leaving an indelible mark on the way environmental justice is attained in the country.

131. Chief Justice Renato C. Corona, Closing remarks delivered on the occasion of the Multi-Sectoral Capacity-Building on Environmental Laws and the Rules of Procedure for Environmental Cases at Legend Hotel, Puerto Princesa City, Palawan (June 25, 2010).