

Taking Another Green Step Forward: An Analysis of the Rules of Procedure for Environmental Cases

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I. INTRODUCTION.....	521
II. THE JUSTICE SYSTEM’S ROLE IN ENVIRONMENTAL PROTECTION.....	523
A. <i>The Concepts of Environmental Justice and Access to Justice</i>	
B. <i>The Greening of the Justice System Around the World</i>	
C. <i>The Greening of the Philippine Judiciary</i>	
III. THE RULES OF PROCEDURE FOR ENVIRONMENTAL CASES.....	532
A. <i>Philippine Environmental Policy as the Basis for the Rules</i>	
B. <i>Significant Provisions in the Rules of Procedure for Environmental Cases</i>	
C. <i>Application of the Precautionary Principle and Use of Other Evidence</i>	
IV. ANALYSIS OF THE NEW RULES OF PROCEDURE	551
V. RECOMMENDATIONS AND CONCLUSION.....	553

I. INTRODUCTION

The destruction and deterioration of the environment has continued at an increasing and alarming rate, despite the growing awareness and international recognition of this threat to mankind.¹ Industrialization of the developing

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1. National Geographic, Effects of Global Warming, available at <http://environment.nationalgeographic.com/environment/global-warming/gw-effects/#> (last accessed Nov. 15, 2011).

world and the increasing reliance on fossil fuels and dirty technologies have worsened the effects of recent phenomena such as climate change and global warming, which are caused by the increase in greenhouse gas emissions in the atmosphere.² If global warming continues at its current pace, the world could experience more severe storms and typhoons, extreme weather conditions such as *El Niño* and *La Niña*, the growing threat of famine, droughts, and even new and deadly diseases within this century.³

The threat of climate change and global warming has been primarily caused by human actions.⁴ Man's impact on the environment is not a new phenomenon; human beings are a part of the environment and human actions by necessity have an impact on the environment.⁵ In fact, "virtually all of the Earth's ecosystems have been significantly transformed through human actions, causing widespread degradation of ecosystems,"⁶ and have not improved even with the adoption of the Rio Declaration⁷ and the concept of sustainable development in 1992.⁸

The Philippines has not been spared from the ill-effects of the destruction and deterioration of the environment. Despite being included in

2. See ANDREW E. DESSLER & EDWARD A. PARSON, *THE SCIENCE AND POLITICS OF GLOBAL CLIMATE CHANGE: A GUIDE TO THE DEBATE* (2d ed. 2010). In the Book, the Authors state that:

[c]limate change will be harder to address because the activities causing it — mainly burning fossil fuels for energy — are a more essential foundation of world economies, and are less amenable to any simple technological correctives, than the causes of other environmental problems.

Id. at 2.

3. National Geographic, *supra* note 1.

4. JONAS EBBESSON, *COMPATIBILITY OF INTERNATIONAL AND NATIONAL ENVIRONMENTAL LAW* 7 (1996).

5. *Id.*

6. Benjamin J. Richardson & Stepan Wood, *Environmental Law for Sustainability*, in *ENVIRONMENTAL LAW FOR SUSTAINABILITY: A READER 1* (Benjamin J. Richardson & Stepan Wood eds., 2006) (citing *MILLENNIUM ECOSYSTEMS ASSESSMENT, ECOSYSTEMS AND HUMAN WELL-BEING: SYNTHESIS* (2005 ed.)).

7. United Nations 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*].

8. Richardson & Wood, *supra* note 6, at 1. The Author goes on to state that, "[f]ar from improving since the 1992 Rio Earth Summit made 'sustainable development' the centerpiece of international and domestic environmental policy, most indicators of environmental quality have continued to deteriorate in most parts of the world." *Id.*

an elite list as one of the 17 mega-diversity countries in the world,⁹ the Philippines has a host of environmental problems that it has to face, which:

include deforestation and loss of natural habitat due to illegal logging and expanding agricultural settlements; upland soil degradation and sedimentation of rivers due to hillside farming and intensified slash and burn cultivation; fishery depletion due to over-fishing and use of destructive fishing methods; urban air pollution largely from the transport sector which uses cheap fuels and second-hand engines; and water pollution due mainly to untreated domestic effluents.¹⁰

What is worse is that when disaster and tragedy strike because of the destruction and deterioration of the environment, it is the poor and the marginalized in society who are hit the hardest.

II. THE JUSTICE SYSTEM'S ROLE IN ENVIRONMENTAL PROTECTION

The justice system is most commonly associated with criminal law and the system of penal sanctions and punishment, and, at times, with civil law litigation cases. It is not usually associated with environmental protection and the role which its five pillars¹¹ play in ensuring a balanced and healthful

9. Perry S. Ong, *The State of the Philippine Environment: Biodiversity Crisis and the Role of the Judiciary*, PHILJA JUD. J., Apr.-June 2004, at 41.

10. JOSEFO B. TUYOR, ET AL., *THE PHILIPPINE ENVIRONMENTAL IMPACT STATEMENT SYSTEM: FRAMEWORK, IMPLEMENTATION, PERFORMANCE AND CHALLENGES* 22 (2007 ed.). See ASIAN DEVELOPMENT BANK, *COUNTRY ENVIRONMENTAL ANALYSIS 2008: PHILIPPINES* (2009). The Asian Development Bank states that:

environmental issues with cumulative impacts include loss of watershed integrity, inappropriate and unsustainable land use and agricultural practices in upland areas, degradation of forest land, and extensive road building; rapid population increase and rapid industrialization, causing increased congestion and pollution particularly in urban areas[;] environmental degradation of near shore areas due to sedimentation from upstream sources; overexploitation of fisheries and permanent loss of ecosystems from changes in land use due to urbanization and industrialization, including aquaculture.

ASIAN DEVELOPMENT BANK, *supra* note 10, at xvi.

11. PABLO F. NARAG, *NOTES ON THE PHILIPPINE CRIMINAL JUSTICE SYSTEM* 10 (2008 ed.). The five pillars of the Justice System include: the law enforcement agencies, the prosecution service, the courts, the penal institutions, and the community. See CPRM Consultants, Inc., *Conduct of Further Study on Operations and Linkages of the Five Pillars of Justice* (A Report Submitted to the United Nations Development Programme Governance Portfolio and the Program Management Office of the Supreme Court) 2-3, available at <http://apji.judiciary.gov.ph/pubreports/Conduct%20of%20Further%20Study%20of%20Pillars%20of%20Justice.pdf> (last accessed Nov. 15, 2011).

ecology. There is, however, a growing international recognition that the courts have a crucial role to play in the environmental movement, as recognized in the concept of environmental justice and access to justice.¹² Hence, the importance of the Judiciary in the promotion and implementation of environmental laws cannot be underestimated.¹³ In the Philippines, the court system is an integral part of environmental enforcement and has made many important contributions to the field.¹⁴

A. The Concepts of Environmental Justice and Access to Justice

The term “environmental justice” first rose to prominence through the environmental justice movement in the United States (U.S.), which began in the 1970s.¹⁵ No standard definition of the term exists,¹⁶ but certain recurring themes and principles do.¹⁷ First, it has been described as “the goal of achieving adequate protection from the harmful effects of environmental agents for everyone, regardless of age, culture, ethnicity, gender, race, or socioeconomic status.”¹⁸ As regards its focus, it is primarily “on the unjust

12. See generally Catherine Redgwell, *National Implementation*, in THE OXFORD HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW (Daniel Bodansky, et al. eds., 2007).

13. Renato C. Corona, Chief Justice of the Supreme Court, *The Judiciary’s New Way Forward on Environmental Protection*, Closing Remarks at the Pilot Multi-Sectoral Capacity Building on Environmental Laws and Rules of Procedure for Environmental Cases at Puerto Princesa City, Palawan (June 23-25, 2010).

14. Dominic Nardi, *Issues, Concerns and Challenges in Environmental Adjudication in the Philippine Court System*, VA. REV. ASIAN STUD., Summer 2007, at 2.

15. Klaus Bosselman, *Ecological Justice and the Law*, in ENVIRONMENTAL LAW FOR SUSTAINABILITY, *supra* note 6, at 131 (citing THE STRUGGLE FOR ECOLOGICAL DEMOCRACY: ENVIRONMENTAL JUSTICE MOVEMENT IN THE UNITED STATES (D. Faber ed., 1998)).

16. Renato C. Corona, Chief Justice of the Supreme Court, *To Everyone His Due: The Philippine Judiciary at the Forefront of Environmental Justice*, Lecture at the Graduate School of the University of Santo Tomas, Manila (Nov. 20, 2010), in PHILIPPINE JUDICIAL ACADEMY, ACCESS TO ENVIRONMENTAL JUSTICE: A SOURCEBOOK ON ENVIRONMENTAL RIGHTS AND LEGAL REMEDIES xxii (2011) [hereinafter PHILIPPINE JUDICIAL ACADEMY].

17. *Id.* (citing Michael Foard Heagerty, *Crime and the Environment: Expanding the Boundaries of Environmental Justice*, 23 TUL. ENVTL. L.J. 517 (Summer 2010)).

18. FENG LIU, ENVIRONMENTAL JUSTICE ANALYSIS: THEORIES, METHODS, AND PRACTICE 12 (2000) (citing PERLIN, ET AL. 69 (1994)). See Andrew Harding, *Access to Environmental Justice: Some Introductory Perspectives*, in ACCESS TO ENVIRONMENTAL JUSTICE: A COMPARATIVE STUDY 4 (Andrew Harding ed., 2007). Harding states that the definition of environmental justice is elastic:

distribution of benefits and burdens in the context of environmental use and protection,”¹⁹ and on how the burdens of environmental harms and regulations are allocated among individual groups within our society.²⁰ It champions democratic decision making as a way to ensure social equity in the distribution of the environmental costs and benefits of policy decisions.²¹

The U.S. Environmental Protection Agency defines environmental justice as “the fair treatment of all people, no matter what their race, color, national origin, or income level, in the development, implementation[,] and enforcement of environmental laws, regulations, and policies.”²² The concept has also been defined as “the pursuit of equal justice and equal protection under the law for all environmental statutes and regulations without discrimination based in race, ethnicity, and/or socioeconomic status.”²³ Dr. Howard Frumkin, a scholar on environmental law, defines the

This book ... involves an elastic definition of environmental justice, but since the principal concerns are the use of ‘legal gateways’ for ‘access[,]’ in practice the definition is procedural rather than substantive; in the same way ‘access to justice’ is usually concerned with issues surrounding how disadvantaged people are enabled to use the legal system, rather than issues surrounding the substantive justice of the results obtained. ‘Access to environmental justice’ can thus be interpreted in two slightly different ways, viz., as a means of entering the legal process for raising and resolving environmental disputes; or as the securing of environmental decisions that are made equitably as between different interests or communities.

Harding, *supra* note 18, at 4.

19. Bosselman, *supra* note 15, at 131.

20. JAMES SALZMAN & BARTON H. THOMPSON, JR., ENVIRONMENTAL LAW AND POLICY 38 (2d ed. 2007).

21. Benjamin J. Richardson & Jona Razzaque, *Public Participation in Environmental Decision Making*, in ENVIRONMENTAL LAW FOR SUSTAINABILITY, *supra* note 4, at 173 (Benjamin J. Richardson and Stepan Wood eds., 2006) (citing KS SHRADER-FRECHETTE, ENVIRONMENTAL JUSTICE: CREATING EQUALITY, RECLAIMING DEMOCRACY (2002)).

22. PHILIPPINE JUDICIAL ACADEMY, *supra* note 16, at xxii (citing United States Environmental Protection Agency, available at <http://www.epa.gov/environmentaljustice/> (last accessed Nov. 15, 2011)).

23. Miranda Welbourne, *The Environmental Justice Movement's Response to Hurricane Katrina, A Critique: Problems Faced, Successes, Failures, and the State of the Movement One Year Later*, 32 T. MARSHALL L. REV. 125, 128 (2006) (citing Environmental Justice Resource Center, Principles of Environmental Justice, available at <http://www/ejrc.cau.edu/princej.html> last accessed Nov. 15, 2011)).

term as embodying the idea that individuals should be able to “interact with confidence that [their] environment is safe, nurturing, and productive.”²⁴

Closely related to environmental justice is the concept of access to justice. Principle 10 of the 1992 Rio Declaration²⁵ makes reference to the importance of providing access to justice, stating that, “[e]ffective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”²⁶ Access to justice has been understood to mean “that court practice and procedure promote, rather than impede, the use of the courts by all.”²⁷ It has three main elements: “standing, or *locus standi*, which determines who has formal rights to go to court; more practical questions as to the resources needed to bring an action; and the remedies (‘justice’) actually provided.”²⁸ Another set of crucial elements for access to justice has also been enumerated, namely: (1) legal standing, (2) effective remedies, and (3) reasonable costs.²⁹

In the Philippines, a study done by Alternative Law Groups (ALGs) and Social Weather Stations suggests that access to justice is a quantitative problem for the affected poor and marginalized; it is a question of how many of the poor and marginalized are able to obtain justice when they need to, yet are prevented from doing so.³⁰ The ALGs further define access to justice from the perspective of developmental legal assistance, adopting a structural approach in looking at the legal problems and needs of the people, particularly the poor and the marginalized.³¹

24. Charles Lee, *Warren County's Legacy for the Quest to Eliminate Health Disparities*, 1 GOLDEN GATE U. ENVTL. L.J. 51, 56 (2007) (citing BUNYAN BRYANT, ENVIRONMENTAL ADVOCACY: WORKING FOR ECONOMIC AND ENVIRONMENTAL JUSTICE 17 (2d ed. 2002)).

25. *Rio Declaration*, *supra* note 7, principle 10.

26. *Id.*

27. TUN LIN, ET AL., GREEN BENCHES: WHAT CAN THE PEOPLE'S REPUBLIC OF CHINA LEARN FROM ENVIRONMENT COURTS OF OTHER COUNTRIES? 11 (2009).

28. JANE HOLDER & MARIA LEE, ENVIRONMENTAL PROTECTION, LAW AND POLICY 116 (2007).

29. Thomas Ormond, *Access to Justice for Environmental NGOs in the EU*, in ENVIRONMENTAL RIGHTS: LAW LITIGATION AND ACCESS TO JUSTICE 74 (Sven Deimann & Bernard Dyssli eds., 1995).

30. ALTERNATIVE LAW GROUPS & THE SOCIAL WEATHER STATIONS, RESEARCH ON THE POOR ACCESSING JUSTICE AND THE ALG AS A JUSTICE REFORM ADVOCATE 4 (2008).

31. ALTERNATIVE LAW GROUPS, RESEARCH ON THE CONSISTENCY OF NATIONAL LEGISLATION ON WOMEN AND CHILDREN WITH MAJOR

B. The Greening of the Justice System Around the World

Developments in the international sphere have made the courts and the justice system a key player in addressing the problems of environmental degradation, global warming, and climate change.³² Administrative regulations and technology have been the chief weapons in the effort to stop environmental degradation.³³ In the late 1980s, however, the procedures and perspectives of criminal justice have been applied to the environmental crisis; and people are witnessing for the first time the criminalization of environmental wrongdoing.³⁴ In International Law, the liability rules for environmental damage are still evolving and in need of further development.³⁵ In determining state responsibility, the International Law Commission's Articles of State Responsibility³⁶ "brings together the rules of general International Law, and they are applicable (to the extent that they reflect Customary International Law) [to] environmental rules established by treaties and other internationally applicable rules."³⁷

As regards the Judiciary, its role "in the implementation and enforcement of International Environmental Law was also recognized in the United Nations Environment Program's Montevideo Programme III, which was adopted in 2001, and which identifies the [J]udiciary as one of the key target groups for capacity building."³⁸ In addition, the Johannesburg Principles on the Role of Law and Sustainable Development³⁹ affirm "that an independent [J]udiciary and judicial process [are] vital for the implementation, development, and enforcement of international environmental law."⁴⁰

As for other environmentally concerned persons, they can participate "by way of court action to challenge the legality of administrative decisions

INTERNATIONAL HUMAN RIGHTS COVENANTS SIGNED BY THE PHILIPPINE GOVERNMENT 13 (2008).

32. See generally Redgwell, *supra* note 12.

33. YINGYI SITU & DAVIDS EMMONS, ENVIRONMENTAL CRIME 1 (2000).

34. *Id.*

35. PHILIPPE SANDS, PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW 869 (2003).

36. International Law Commission, *Report on the work of its fifty-third session*, U.N. Doc. A/56/10 (Oct. 12, 2001).

37. SANDS, *supra* note 35, at 873.

38. Redgwell, *supra* note 12, at 931.

39. These Principles were adopted at the Global Judges Symposium on Sustainable Development and the Role of the Law held in Johannesburg, South Africa from Aug. 18-20 and hosted by the country's Chief Justice.

40. Redgwell, *supra* note 12, at 931.

made pursuant to legislation,”⁴¹ or to “check that a decision of a public body has been made in a correct manner.”⁴² Environmental courts, as well as tribunals with expertise in environmental matters, have been increasingly recognized for their accomplishments and potential in promoting ecologically sustainable development.⁴³ The different environmental courts around the world have been focusing on resolving environmental, natural resource, land use and development, and other related issues.⁴⁴ This is a testimony to the growing trend of establishing specialized judicial and quasi-judicial institutions to provide access to justice in environmental matters.⁴⁵

The rationale for special environmental courts is that, because many environmental issues are assumed to be highly complex and technical, they require specialized institutions for evaluation of claims and evidence.⁴⁶ It is being increasingly recognized that a court with special expertise in environmental matters is best placed to perform this role [of the interpretation, explanation, and enforcement of laws and regulations] in the achievement of ecologically sustainable development.⁴⁷ It would also enhance the role of specialist judges in developing consistent environmental jurisprudence.⁴⁸

One study noted the following benefits of a specialized environmental court:⁴⁹

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41. Richardson & Razzaque, *supra* note 21, at 182.
 42. DAVID WILKINSON, ENVIRONMENT AND LAW 158 (2002).
 43. TUN LIN, ET AL., *supra* note 27, at 1 (citing Brian J. Preston, Chief Judge, Land and Environment Court of New South Wales, Operating an Environment Court: The Experience of the Land and Environment Court of New South Wales, Inaugural Distinguished Lecture on Environmental Law for the Environmental Commission of Trinidad and Tobago at the Port of Spain, Trinidad and Tobago (July 23, 2008) (transcript available at <http://www.tt.environmentalcommission.org/lectureseries/2008/JusticePrestonSpeech.pdf> (last accessed Nov. 15, 2011))).
 44. GEORGE PRING & CATHERINE PRING, GREENING JUSTICE: CREATING AND IMPROVING ENVIRONMENTAL COURTS AND TRIBUNALS 1 (2009).
 45. *Id.* at xi.
 46. Richardson & Razzaque, *supra* note 21, at 187 (citing Robert Carnwath, *Environmental Enforcement: The Need for a Specialist Court*, J. ENV'T & PLAN. LAW 798 (1992)).
 47. PRING & PRING, *supra* note 44, at 14 (citing Brian J. Preston, *Operating an Environment Court: The Experience of the Land and Environment Court of New South Wales*, 25 ENV'T & PLAN. L.J. 385, 386 (2008)).
 48. Richardson & Razzaque, *supra* note 21, at 187.
 49. TUN LIN, ET AL., *supra* note 27, at 3 (citing Preston, *supra* note 47).

- (1) Creating a comprehensive, integrated jurisdiction that deals with a range of environmental matters — a ‘one-stop shop’ for merit appeals, judicial reviews, and criminal and civil enforcement;
- (2) Providing a forum for experts in environmental law where they can engage in a free and beneficial exchange of ideas and information;
- (3) Enabling the formation of panels of officers with expertise for the purpose of interdisciplinary decision making;
- (4) Facilitating the development of specialized knowledge of environmental law and issues;
- (5) Allowing the adoption of a holistic approach to the resolution of environmental matters, through comprehensive jurisdictions and interdisciplinary decision making;
- (6) Furthering the use of innovative practices and procedures, such as public interest litigation, to broaden access to justice;
- (7) Encouraging innovative solutions to environmental problems;
- (8) Fostering the growth of a coherent and consistent body of environmental precedents and jurisprudence;
- (9) Making possible the quick progress of complex environmental cases, thereby boosting the efficiency and reducing the cost of litigation;
- (10) Relieving other courts of some of their backlogs by taking over cases involving environmental issues and resolving them more efficiently; and
- (11) Appealing to the conscience of the public, thereby encouraging adherence to environmental laws and greater participation in programs to protect the environment.⁵⁰

C. The Greening of the Philippine Judiciary

The concepts of environmental justice and access to justice, taken together, and the trends and developments in the international sphere, point to a growing international trend of identifying the role of the justice system and the courts in promoting the protection, rehabilitation, and preservation of the environment. As one study notes, “the number of environmental courts and tribunals around the world has grown from only a handful in the 1970s to over 350 in 41 different countries today,”⁵¹ with “over half [of] these having been created since 2004.”⁵² They attribute this dramatic growth in environmental courts and tribunals to “the growth in the complexity of environmental laws, in public awareness of environmental problems, and in

50. *Id.*

51. PRING & PRING, *supra* note 44, at xiii.

52. *Id.*

the pressure on governments to provide access to information, access to public participation, and access to justice in protecting the environment for today's and future generations."⁵³

In the Philippines, the Supreme Court (SC) has taken innovative and revolutionary steps in ensuring the capacity of the justice system to deal with environmental matters. Many commentators and scholars remarked that the SC has entered an age of judicial activism.⁵⁴ The celebrated case of *Oposa v. Factoran, Jr.*⁵⁵ has been the first to recognize the rights of future generations to a healthy and livable environment.⁵⁶ As early as 1998, the Philippine courts have been described as "progressive," in relation to other countries, in their recognition of environmental rights.⁵⁷

The efforts to green the Philippine courts took a major step with the designation of 117 "green courts" nationwide.⁵⁸ This act was cited as an indication of the importance being placed by the Judiciary on the issue of the environment.⁵⁹ This was followed by a landmark SC decision *Metropolitan Manila Development Authority [MMDA] v. Concerned Residents of Manila Bay*,⁶⁰ where the Court ordered government authorities to coordinate for the clean-up and rehabilitation of Manila Bay and to restore it to its healthy

53. *Id.*

54. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, A.M. No. 09-6-8-SC, Apr. 29, 2010, ratio., at 78.

55. *Oposa v. Factoran, Jr.*, 224 SCRA 792 (1993). Here, the right to a balanced and healthful ecology is described as one which:

belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation ... the advancement of which predate all governments and constitutions. As a matter of fact, these basic rights need not be written in the Constitution for they are presumed to exist from the inception of humankind.

Id. at 804-05.

56. *Id.*

57. Tan A.K.J., *Environmental Laws of the Southeast Asian Countries: A Preliminary Assessment*, in CAPACITY BUILDING FOR ENVIRONMENTAL LAW IN THE ASIAN AND PACIFIC REGION; APPROACHES AND RESOURCES (VOLUME 1) 76 (Craig, et al. eds., 2002).

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

59. Ronaldo R. Gutierrez, *Improving Environmental Access to Justice: Going Beyond Environmental Courts*, 53 ATENEO L.J. 916, 918 (2009).

60. *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*, 574 SCRA 661 (2008).

state.⁶¹ This was also the case where the Court issued a Writ of Continuing *Mandamus*, a first in the country.⁶² There are several other significant cases with the potential to become landmark decisions which are pending with the courts that will hopefully show the continuing trend of the SC ruling in favor of the environment.⁶³

In April 2009, under the leadership of former Chief Justice Reynato S. Puno, the Forum on Environmental Justice was held.⁶⁴ This was attended by various stakeholders from around the country, ranging from members of the Court to government officials, from the members of the academe to the community representatives of farmers, indigenous peoples, and fisher folk. In the opening speech of Chief Justice Puno, he said that:

[t]he objective [of the forum] is to give more meaning to our Right to a Balanced and Healthful Ecology. This [R]ight forms the third generation of human rights, rights that are communal in character. With this forum, we hope that your Judiciary shall be able to complete its task of safeguarding the circle of human rights of our people.⁶⁵

The other objectives of the forum included the following:

- (1) To recommend to the [SC] actions it can take to protect and preserve the environment;
- (2) To validate the draft of the 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 thereat; and

61. *Id.* at 693.

62. *Id.* at 697.

63. Two of the pending cases are *Resident Marine Mammals of the Tañon Strait Protected Seascape v. Reyes* and *Mosqueda v. Pilipino Banana Growers and Exporters Association, Inc.*

64. See Erika T. Dy and Abigail T. Sze, Chief Justice, United States Ambassador Among the Speakers High Court Convenes Forum on Environmental Justice, available at <http://sc.judiciary.gov.ph/publications/benchmark/2009/03/030901.php> (last accessed Nov. 15, 2011).

65. Reynato S. Puno, Chief Justice of the Supreme Court, Environmental Justice: Establishing A Judicious Judicial Framework, Keynote Speech at Forum on Environmental Justice at University of the Cordilleras (Apr. 16-17, 2009) (transcript available at <http://sc.judiciary.gov.ph/speech/04-16-09-speech.pdf> (last accessed Nov. 15, 2011)).

- (4) To identify best practices of some agencies/units and replicate in a particular situation.⁶⁶

The Forum ended with the signing of a Memorandum of Agreement (MOA) to commit to the protection of the environment. This paved the way for the enactment of the Rules of Procedure for Environmental Cases (Rules).⁶⁷ In April 2010, the Rules were promulgated to aid in the efforts to green the courts. The said Rules include the following remedies: Consent Decree,⁶⁸ Environmental Protection Orders,⁶⁹ the Writ of *Kalikasan*,⁷⁰ and the Writ of Continuing *Mandamus*.⁷¹ These instruments have given Filipinos additional tools and remedies to enable them to better protect the environment and to ensure that their right to the environment is upheld and promoted.⁷² When the Rules were drafted, the SC began to adopt a rights-based approach to make sure that human rights are protected.⁷³

This Article seeks to present a summary, discussion, and analysis of the significant provisions of the Rules and to contribute to its continuing development and understanding. First, there will be a discussion of the key and unique provisions of the Rules, including comparisons with existing rules of procedure as promulgated by the SC. Second, there will be an analysis of the Rules, identifying its advantages and disadvantages. Lastly, recommendations and possible areas for reform and improvement of the Rules will be discussed, with a look at how the Rules will be able to contribute to the protection and preservation of the environment.

III. THE RULES OF PROCEDURE FOR ENVIRONMENTAL CASES

The Rules were promulgated by the SC as “a response to the long felt need for more specific rules that can sufficiently address the procedural concerns that are peculiar to environmental cases.”⁷⁴ Consequently, “[m]ost of the

66. Presbitero J. Velasco, Associate Justice of the Supreme Court, Opening Remarks at Forum on Environmental Justice at University of the Cordilleras (Apr. 16-17, 2009).

67. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES.

68. *Id.* rule 3, § 5, ¶ 2.

69. *Id.* rule 13, § 2.

70. *Id.* rule 7.

71. *Id.* rule 8.

72. *Id.* annot., at 98.

73. Asis G. Perez, Rules of Procedure for Environmental Cases: Reducing Obstacles in Environmental Law Enforcement Implementation, Presentation at the Pilot Multi-Sectoral Capacity-Building on Environmental Laws and the Rules of Procedure for Environmental Cases at Puerto Princesa City, Palawan (June 25, 2010).

74. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, annot., at 98.

provisions included are remedies 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.⁷⁵ Specifically, the objectives of the Rules are the following:

- (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.⁷⁶

The Rules thus signify another step taken by the Judiciary to green the Philippine court system and do its share in the preservation and protection of the environment. The Rules also signify how it, through its implementation and enforcement, can contribute to the development of law, jurisprudence, and the promotion of justice in the Philippines. It has been hailed as “good news” coming from the SC, especially at a time when the High Court has been mired in many controversies and criticisms.⁷⁷ The Rules have been described as progressive, even revolutionary, in its protection of the environment and in ensuring effective access to environmental justice.⁷⁸ The new Rules strengthen the role of the courts as arbiters of environmental justice and send positive signals to the environmental movement to continue their vigilance in stopping and preventing environmental offenses.⁷⁹ An international agency has also said that the new Rules will speed up the resolution of environmental cases and provide a means for the Philippine government to fulfill its mandate to fully implement environmental laws and

75. *Id.*

76. *Id.* rule 1, § 3.

77. Antonio G.M. La Viña, *Good news for environmental justice*, MANILA STAND. TODAY, Apr. 27, 2010, available at <http://www.manilastandardtoday.com/insideOpinion.htm?f=2010/april/27/tonylavina.isx&d=2010/april/27> (last accessed Nov. 15, 2011).

78. *Id.*

79. Greenpeace Press Release, Greenpeace statement on the promulgation of the Writ of Kalikasan, available at <http://www.greenpeace.org/seasia/ph/press/releases/greenpeace-statement-on-the-pr/> (last accessed Nov. 15, 2011).

uphold the right of the Philippine citizen to a balanced and healthful ecology.⁸⁰

A. Philippine Environmental Policy as the Basis for the Rules

The Rules find its roots in the Constitution and in other environmental laws of the Philippines. The 1987 Philippine Constitution provides the basic framework by which the environmental policy of the country grounds its direction. First of this is Article II, Section 16, which states that, “[t]he 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,”⁸¹ which the SC deemed as a provision that is self-executing in nature and that is a source of the citizen’s basic environmental rights.⁸² An author on environmental policy in the Asia-Pacific notes that this declaration recognizes the importance given to the environment and the change in emphasis with respect to it.⁸³ Also found in Article II is Section 15, which states that, “[t]he State shall protect and promote the right to health of the people and instill health consciousness among them.”⁸⁴

Other provisions in the Constitution that deal with the environment and environmental protection include Article I on National Territory,⁸⁵ Sections 2,⁸⁶ 3,⁸⁷ 4,⁸⁸ 5⁸⁹ of Article 12, and Section 7⁹⁰ of Article 13 of the 1987 Constitution.

The environmental policy of the Philippines can also be found in its various laws. The Philippine Environmental Policy (Presidential Decree (P.D.) No. 1151),⁹¹ the Philippine Environmental Code (P.D. No. 1152),⁹²

80. Roger Carlson, USAID Acting Director, Suggested Talking Points at the Launch of the Rules of Procedure for Environmental Cases at the Supreme Court (Apr. 29, 2010) (transcript available at http://usaid.mozcom.com/usaid_phils/sites/default/files/resources/speeches/ap12010speech_04.pdf). (last accessed Nov. 15, 2011).

81. PHIL. CONST. art. II, § 16.

82. See *Oposa*, 224 SCRA at 805 (1993).

83. Enrico G. Valdez, *Philippines*, in ENVIRONMENTAL LAW AND ENFORCEMENT IN THE ASIA-PACIFIC RIM 371 (Terri Mottershead ed., 2002).

84. PHIL. CONST. art. II, § 15.

85. PHIL. CONST. art. I.

86. PHIL. CONST. art. XII, § 2.

87. PHIL. CONST. art. XII, § 3.

88. PHIL. CONST. art. XII, § 4.

89. PHIL. CONST. art. XII, § 5.

90. PHIL. CONST. art. XIII, § 7.

91. Philippine Environmental Policy, Presidential Decree No. 1151 (1977).

the Philippine National Strategy for Sustainable Development,⁹³ National Action Plan for Sustainable Development (Philippine Agenda 21),⁹⁴ the Climate Change Act of 2009,⁹⁵ and the Disaster Risk Reduction and Management Act of 2010⁹⁶ guide the government's activities in environmental and natural resources management. In particular, P.D. No. 1151 declares as a continuing policy of the state, the following:

- (a) To create, develop, maintain, and improve conditions under which man and nature can thrive in productive and enjoyable harmony with each other;
- (b) To fulfill the social, economic[,] and other requirements of present and future generations of Filipinos, and
- (c) To insure the attainment of an environmental quality that is conducive to a life of dignity and well-being.⁹⁷

B. Significant Provisions in the Rules of Procedure for Environmental Cases

The Rules govern the procedure before all courts in civil, criminal, and special civil actions which involve the enforcement or violations of environmental and other related laws, rules, and regulations,⁹⁸ and that relate to the conservation, development, preservation, protection, and utilization of the environment and natural resources.⁹⁹ The Rules provide a list of

92. Philippine Environmental Code, Presidential Decree No. 1152 (1977).

93. Philippine Sustainable Development Network, Philippine National Strategy for Sustainable Development, *available at* <http://www.psdn.org.ph/agenda21/pssd.htm> (last accessed Nov. 15, 2011).

94. The Philippine Agenda 21, *available at* <http://www.psdn.org.ph/agenda21/start.htm> (last accessed Nov. 15, 2011).

95. An Act Mainstreaming Climate Change Into Government Policy Formulations, Establishing the Framework Strategy and Program on Climate Change, Creating for this Purpose the Climate Change Commission, and for Other Purposes [Climate Change Act of 2009], Republic Act No. 9729 (2009).

96. An Act Strengthening the Philippine Disaster Risk Reduction and Management System, Providing for the National Disaster Risk Reduction and Management Framework and Institutionalizing the National Disaster Risk Reduction and Management Plan [Philippine Disaster Risk Reduction and Management Act of 2010], Republic Act No. 10121 (2010).

97. P.D. 1151, § 1.

98. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 1, § 2.

99. Marlon J. Manuel, Presentation on the Rules of Procedure for Environmental Cases, Alternative Law Groups, *available at* <http://fperacs.webstarts.com/uploads/EnviRulesPresentation.pdf> (last accessed Nov. 15, 2011).

environmental laws it covers. This list is not meant to be exhaustive and may include other statutes and rules that deal with the environment.¹⁰⁰

As will be seen below, the Rules provide for both new and innovative remedies and improvements and additions to existing procedural and remedial provisions. The Rules also seek to ensure that proper and effective rules of procedure are followed in the 117 environmental courts designated in 2008.

1. Liberalized Rules on Standing

Given the nature of environmental cases where numerous individuals are affected and that specific damage or harm to each individual may be difficult to ascertain, ecological groups and environmentalists have advocated for a liberalization of the rules on standing for environmental cases.¹⁰¹ Environmental rights are enjoyed in general by all individuals.¹⁰² In recent years, courts in many jurisdictions have become willing to hear arguments from environmental groups and concerned individuals who have no direct economic or other ostensibly concrete interest at stake.¹⁰³ To address this concern, the Rules provide that, “[a]ny real party in interest, including the government and juridical entities authorized by law, may file a civil action involving the enforcement and violation of any environmental law.”¹⁰⁴ It is significant to note that the Rules do not require the party-plaintiff to have been directly injured or affected by the environmental violation complained of, although the definition of a real party in interest has to be understood based on its definition in the Rules of Court.¹⁰⁵

100. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, annot., at 100. Conversations with the members of the working group which drafted the Rules reveal that the group was surprised at the number of environmental laws in the Philippines. They were initially thinking of a list of 15 laws, which was expanded to the current 25. However, they admit that they still discover environmental laws, or laws which may relate to environmental matters, which were not included in the list.

101. See generally *Oposa*, 224 SCRA 792.

102. *Id.* at 111.

103. Richardson & Razzaque, *supra* note 21, at 185.

104. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 2, § 4.

105. 1997 RULES OF CIVIL PROCEDURE, rule 3, § 2. This Section provides:

SEC. 2. *Parties in Interest.* — A real party in interest is a party who stands to be benefitted 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 and defended in the name of the real party in interest.

Id.

The liberalized rules on standing are echoed in other provisions of the Rules, specifically, in the Writ of *Kalikasan*,¹⁰⁶ in the Writ of Continuing *Mandamus*,¹⁰⁷ and in the prosecution of offenses.¹⁰⁸

This Section has to be read in conjunction with the provisions providing for citizen suits.¹⁰⁹ Recognizing that public authorities in many countries may not be able to ensure compliance, because of lack of resources or commitment, and that individuals, groups, and businesses can play a role in ensuring compliance, increasing numbers of States are encouraging private enforcement of national environmental obligations, which are sometimes referred to as citizen suits. These allow citizens (and businesses) to enforce national environmental obligations in the public interest.¹¹⁰

The Rules provide a definition of citizen suits,¹¹¹ with similar cases filed under the Clean Air Act¹¹² and the Ecological Solid Waste Management Act

See also RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, annot., at 110. It states:

The phrase “real party in interest” in the provision retains the same meaning under the Rules of Civil Procedure and jurisprudence. It must, however, be understood in conjunction with the nature of environmental rights, which are enjoyed in general by all individuals. Under this [S]ection, both a Filipino Citizen and an alien can file a suit so long as they are able to show direct and personal injury.

Id.

106. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 7, § 1.

107. *Id.* rule 8, § 1.

108. *Id.* rule 9, § 1.

109. *Id.* rule 2, § 5.

110. SANDS, *supra* note 35, at 176-77.

111. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 2, § 5. This Section provides:

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.

Id.

of 2000¹¹³ to be governed by their respective provisions. There exists a similar provision in 1997 Rules of Civil Procedure on class suits.¹¹⁴

112. 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), § 41. 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 thirty-day (30) notice 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 compliant herein is malicious and/or baseless and shall accordingly dismiss the action and award attorney's fees and damages.

Id.

113. An Act Providing for an Ecological Solid Waste Management Program, Creating the Necessary Institutional Mechanisms and Incentives, Declaring Certain Acts Prohibited and Providing Penalties, Appropriating Funds Therefor and for Other Purposes, [Ecological Solid Waste Management Act of 2000], Republic Act No. 9003, § 52. This Section provides:

Sec. 52. *Citizens Suits*. — For the 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:

- (a) Any person who violates or fails to comply with the provisions of this Act its implementing rules and regulations; or

Moreover, this Section 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.¹¹⁵ This echoes the terminology first stated in *Oposa*¹¹⁶ insofar as it refers to minors and generations yet unborn. It is also interesting to note that Section 5 requires non-government organizations (NGOs) and peoples organizations (POs) to present proof of their accreditation, recognition, or registration,¹¹⁷ given the relative ease by which groups can loosely organize and label themselves as NGOs and POs¹¹⁸ and take advantage of others who may rely on them for help with an environmental case or incident.¹¹⁹ In addition, only Filipino

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- (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 many 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 statements 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 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.

Id.

114. RULES OF CIVIL PROCEDURE, rule 3, § 12. This Section provides:

SEC. 12. *Class suit*. — When the subject matter of the controversy is one of common or general interest to many persons so numerous that it is impracticable to join all as parties, a number of them which the court finds to be sufficiently numerous and representative as to fully protect the interests of all concerned may sue or defend for the benefit of all. Any party in interest shall have the right to intervene to protect his individual interest.

Id.

115. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, annot., at 111.

116. *Id.* (citing *Oposa*, 224 SCRA at 796).

117. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, annot., at 111.

118. *Id.*

119. *Id.*

citizens are allowed to file a citizen suit,¹²⁰ in contrast to Section 3 of the same Rules.¹²¹

Other measures which liberalize the rules on standing include the deferred payment of filing and legal fees after judgment,¹²² exemption from docket fees for a petition for a Writ of *Kalikasan*¹²³ and a Writ of Continuing *Mandamus*,¹²⁴ and exemption from posting a bond for the issuance of a Temporary Environmental Protection Order (TEPO).¹²⁵

2. Summary Nature of Proceedings

Litigation in the Philippines is perceived as long, tedious, and costly. Not only will a party litigant have to spend for lawyers, legal and court fees, and expenses of trial, he or she will also have to wait for years before the outcome of the case, which may not even be certain at the outset. The time it takes to file a case and the expenses that go with it serve as a deterrent to the indigents and less privileged in society, who are, more often than not, the ones who need the courts to defend their rights; and in the context of environmental degradation and the effects of climate change, they are indeed the ones who are most vulnerable and at risk.¹²⁶ Delay has been attributed to a host of factors, ranging from the case load of the courts, efforts of the litigants to create it, and downright neglect on the part of both the courts and the litigants.¹²⁷

To address these concerns, the Rules contain a variety of provisions and procedural measures which help speed up the litigation and court process, given the nature of environmental cases which oftentimes would require quick and speedy action and remedies in order to avoid serious or irreparable harm to life, property, and the environment. The proceedings provided by the Rules are generally summary in nature. First, the Rules require the presentation of all evidence supporting the cause of action.¹²⁸ Pleadings

120. *Id.* rule 2, § 4.

121. *Id.* rule 2, § 3. This Section states that any real party in interest may file a civil action involving the enforcement or violation of any environmental law. *Id.*

122. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 2, § 12.

123. *Id.* rule 7, § 4.

124. *Id.* rule 8, § 3.

125. *Id.* rule 2, § 8, ¶ 3.

126. See PHILIPPINE JUDICIAL ACADEMY, ACCESS TO ENVIRONMENTAL JUSTICE: A CAPACITY ASSESSMENT ON THE PILLARS OF THE JUSTICE SYSTEM 77-94 (2011).

127. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, *ratio.*, at 71.

128. *Id.* rule 2, §§ 3 & 14.

which have been identified as sources of delay¹²⁹ have also been prohibited.¹³⁰ The extensive use of pre-trial procedures has also been mandated to help simplify the issues and to explore the possibility of coming to an amicable settlement of the case.¹³¹ This is in line with an earlier pronouncement of the High Court on the use of pre-trial and deposition-discovery measures.¹³² Another significant procedural innovation is the use of affidavits in lieu of direct examination¹³³ and the application of the one-day examination of witness rule,¹³⁴ which will help remove the time-consuming examination of witnesses and legal maneuverings experienced in criminal and civil litigation. Continuous trial which shall not exceed two months has also been mandated,¹³⁵ with the judge being given a period of one year from the filing of the case to try and decide the case, subject to extension by the SC for justifiable reasons.¹³⁶

Other features of the Rules which seek to expedite the proceedings of environmental cases include the summary hearings for Strategic Lawsuits Against Public Participation (SLAPP) cases,¹³⁷ priority to be given to Writ of

129. 1991 REVISED RULES ON SUMMARY PROCEDURE, § 19.

130. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 2, § 2. This Section provides:

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.

Id.

131. *Id.* rule 3.

132. See Supreme Court, Re: Guidelines to Be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures, Administrative Matter No. 03-1-09-SC [SC A.M. No. 03-1-09-SC] (Aug. 16, 2004).

133. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 4, § 2.

134. *Id.* rule 4, § 3.

135. *Id.* rule 4, § 1.

136. *Id.* rule 4, § 5.

137. *Id.* rule 6, § 3.

Kalikasan cases¹³⁸ and use of discovery measures in the same,¹³⁹ authority of the court to issue orders to expedite proceedings in petitions for Writ of Continuing *Mandamus*,¹⁴⁰ and use of discovery measures and alternative dispute resolution methods.¹⁴¹

3. Special Remedies and Novel Provisions

i. Strategic Lawsuits Against Public Participation (SLAPP) Suits

A SLAPP refers to “a phenomenon that finds its roots in U.S. litigation,”¹⁴² and was originally based on the U.S. Constitution’s First Amendment, which provides for the right of freedom of speech and the right to petition the government to redress grievances of a public matter.¹⁴³ An author describes a SLAPP as one that:

generally refers to a civil law suit 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.¹⁴⁴

SLAPP suits are considered environmental in character mainly due to the reality that underlies such disputes which is a conflict over natural resources, the exploitation of which requires consultations with the community to be affected, particularly where some proponents opt for the SLAPP route especially when community opposition is strong.¹⁴⁵

As regards SLAPP suits, the Rules “recognize that formidable challenges may be mounted against those who seek to enforce environmental law, or to

138. *Id.* rule 7, § 11. It will be given priority similar to those accorded to the Petitions for Writs of *Habeas Corpus*, *Amparo*, and *Habeas Data*.

139. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 7, § 12.

140. *Id.* rule 8, §§ 5 & 6.

141. *Id.* rule 3, § 3. See Supreme Court, Re: Consolidated and Revised Guidelines to Implement the Expanded Coverage of Court Annexed Mediation and Judicial Dispute Resolution, Administrative Matter No. 11-1-6-SC-PHILJA [SC A.M. No. 11-1-6-SC-PHILJA] (Jan. 11, 2011).

142. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, ratio., at 87.

143. *Id.* at 88-89.

144. *Id.* at 89 (citing Edward W. McBride, *The Empire State SLAPP’s Back: New York’s Legislative Response to SLAPP Suits*, 17 VR. L. REV. 925 (1993)).

145. Gutierrez, *supra* note 59, at 928.

assert environmental rights.”¹⁴⁶ Hence, “[a] SLAPP suit is used to financially burden a petitioning party with frivolous litigation.”¹⁴⁷

As defined in the Rules, “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.”¹⁴⁸ The person or persons “SLAPPed” may file an answer interposing the defense of SLAPP, supported by the necessary evidence.¹⁴⁹ A summary hearing on the defense of SLAPP shall be held by the court.¹⁵⁰ If the court rules that the action filed is indeed a SLAPP, it shall dismiss the case with prejudice and may award damages, attorney’s fees, and costs under a counterclaim if one has been filed.¹⁵¹

Two earlier Philippine laws have provided for similar SLAPP provisions, namely, Section 43 of the Philippine Clean Air Act¹⁵² and Section 53 of the Ecological Solid Waste Management Act.¹⁵³

146. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, annot., at 130.

147. *Id.* ratio., at 88.

148. *Id.* rule 6, § 1.

149. *Id.* rule 6, § 2.

150. *Id.* rule 6, § 3.

151. *Id.* rule 6, § 4.

152. Philippine Clean Air Act of 1999, § 43. This Section provides:

Section 43. *Suits and Strategic Legal Actions Against Public Participation and the Enforcement of this Act.* — Where a suit is brought against a person who filed an action as provided in section 41 of this Act, or against any person, institution or government agency that implements this Act, it shall be the duty of the investigating prosecutor or the court, as the case may be, to immediately make a determination not exceeding thirty (30) days whether said legal action has been filed to harass, vex, exert undue pressure or stifle such legal recourses of the person complaining or enforcing the provisions of this Act. Upon determination thereof, evidence warranting the same, the court shall dismiss the case and award attorney’s fees and double damages.

This provision shall also apply and benefit public officers who are sued for acts committed in their official capacity, there being no grave abuse of authority, and done in the course of enforcing this act.

Id.

153. Ecological Solid Waste Management Act of 2000, § 53. This Section provides:

Section 53. *Suits and Strategic Legal Action Against Public Participation (SLAPP) and the Enforcement of this Act.* — Where a suit is brought against a person who filed an action as provided in section 52 of this Act, or against any person, institution[,] or government agency that

ii. Writ of Kalikasan

The Writ of *Kalikasan* is one of the unique remedies provided for in the Rules. It is considered the first of its kind in the world,¹⁵⁴ and will protect Filipinos and the environment from egregious environmental harm.¹⁵⁵ Compared to other legal writs, “[i]t is similar in concept to the Writ of *Amparo*¹⁵⁶ (used to prevent human rights abuses) but with a focus on environmental protection.”¹⁵⁷ The SC says that 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 the potentially exponential nature of large-scale ecological threats.¹⁵⁸

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 SC or any stations of the Court of Appeals (CA) because of their nationwide jurisdiction.¹⁵⁹ The Writ was also 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.¹⁶⁰ Consequently, “[i]t is heaven-sent especially for poor and vulnerable communities and individuals, such as farmers, indigenous peoples, women

implements this Act, it shall be the duty of the investigating prosecutor or the Court, as the case may be, to immediately make a determination not exceeding thirty (30) days whether said legal action has been filed to harass, vex, exert undue pressure[,] or stifle such legal recourses of the person complaining or enforcing the provisions of this Act. Upon determination thereof, evidence warranting the same, the Court shall dismiss the case and award the attorney’s fees and double damages.

This provision shall also apply and benefit public officers who are sued for acts committed in their official capacity, there being no grave abuse of authority, and done in the course of enforcing this Act.

Id.

154. Renaud Meyer, Speech at the Pilot Multi-Sectoral Capacity Building on Environmental Laws and Rules of Procedure for Environmental Cases at Puerto Princesa City, Palawan (June 23-25, 2010).

155. See Carlson, *supra* note 80.

156. THE RULE ON THE WRIT OF AMPARO, A.M. No. 07-9-12-SC, Sep. 25, 2007.

157. La Viña, *supra* note 77.

158. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, *ratio.*, at 78-79.

159. *Id.* at 79.

160. *Id.* at 80.

and children, and those who have been powerless to defend themselves against large-scale environmental and development aggression.”¹⁶¹

The Rules define the Writ as a remedy available to any person, natural or juridical, whose constitutional right to a balanced and healthful ecology is violated or threatened to be violated by an unlawful act or omission by any person, including the government, involving environmental damage of such magnitude as to prejudice the life, health, or property of inhabitants of two or more cities and municipalities.¹⁶² Of note in this Rule is the magnitude of the environmental harm or damage that is required for the issuance of the Writ, which should be particularly alleged and stated in the contents of the petition.¹⁶³ In contrast to other provisions of the Rules, and given the complex character of environmental cases, the hearing to be conducted is not summary,¹⁶⁴ but the time frame required (60 days) insures that proceedings are expedited.¹⁶⁵

The reliefs that may be granted by the court in a petition for the issuance of the Writ include:

- (a) Directing the respondent to permanently cease and desist from committing the acts complained of;
- (b) Directing the respondent to protect, preserve, rehabilitate, or restore the environment;
- (c) Directing the respondent to monitor strict compliance with the decision and orders of the court;
- (d) Directing the respondent to make periodic reports on the execution of the 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 the individual petitioners.¹⁶⁶

It should be noted, however, that the reliefs that may be granted by the court are broad, comprehensive, and non-exclusive.¹⁶⁷

161. La Viña, *supra* note 77.

162. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 7, § 1.

163. *Id.* rule 7, § 2.

164. *Id.* rule 7, § 11.

165. *Id.* annot., at 40.

166. *Id.* rule 7, § 15.

167. *Id.* annot., at 139.

iii. *Writ of Continuing Mandamus*

As “[e]nvironmental law highlights the shift in the focal point from the initiation of regulation by Congress to the implementation of regulatory programs by appropriate government agencies,”¹⁶⁸ making “a government agency’s inaction, if any, have serious [implications] on the future of environmental law enforcement;”¹⁶⁹ thus, there is a need to compel the performance of a legal duty, oftentimes on the part of government authorities, in order to ensure the protection and preservation of the environment. As a response, the Writ of Continuing *Mandamus* was promulgated by the Court.

This Writ was first introduced in *Concerned Residents of Manila Bay*.¹⁷⁰ The SC cited two decided cases by the Supreme Court of India as examples of its issuance.¹⁷¹ Regarding the Writ’s nature, the Rules state that, “Continuing *Mandamus*, as illustrated in [*Concerned Residents of Manila Bay*], is an exercise of the Court’s power to carry its jurisdiction into effect pursuant to Rule 135, Section 6 of the Rules of Court.”¹⁷² Of note is the High Court’s statement in the said Case, to wit:

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 cleaning up and rehabilitating the Manila Bay.¹⁷³

The Rules define the Writ 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.¹⁷⁴ Procedurally, its filing before the courts is similar to the filing of

168. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, ratio., at 76 (citing Eric Biber, *Two Sides of the Same Coin: Judicial Review of Administrative Agency Action and Inaction*, 26 VA. ENVTL. L.J. 461, 462 (2008)).

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

170. *Id.* at 76-77.

171. *Concerned Residents of Manila Bay*, 574 SCRA at 688 (citing *Vineet Narain v. Union of India*, 1 SCC 226 (1998) and *M.C. Metha v. Union of India*, 4 SCC 463 (1987)). *M.C. Metha* sought 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.

172. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, ratio., at 77.

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

174. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 1, § 4 (c) & rule 8, § 1.

an ordinary Writ of *Mandamus* under Rule 65, Section 3 of the 1997 Rules of Civil Procedure,¹⁷⁵ but the issuance of a TEPO is made available as an auxiliary remedy prior to the issuance of the Writ itself.¹⁷⁶ The petition for the Writ may be filed in the Regional Trial Courts, CA, or SC.¹⁷⁷ If the Writ is granted, the court shall require the respondent to perform an act or series of acts until judgment is fully satisfied, grant other reliefs as deemed necessary, and order the submission of periodic reports detailing the progress and execution of the judgment.¹⁷⁸

iv. Temporary Environmental Protection Orders (TEPOs) and Environmental Protection Orders (EPOs)

The Rules provide for the issuance of an Environmental Protection Order (EPO) given that environmental threats, as well as existing environmental damage, necessitate an immediate relief if further damage is to be averted.¹⁷⁹ The EPO may be employed to perform the roles of a prohibitory injunction and a mandatory injunction, giving the court ample discretion and means to appropriately address environmental cases before it.¹⁸⁰ The procedure for the issuance of an EPO or a TEPO stems from the same procedure for the

175. RULES OF CIVIL PROCEDURE, rule 65, § 3. This Section provides:

SEC. 3. *Petition for mandamus.* — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, 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 and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

The petition shall also contain a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

Id.

176. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, annot., at 142.

177. *Id.* rule 8, § 2.

178. *Id.* rule 8, § 7.

179. *Id.* ratio., at 75.

180. *Id.* at 75-76.

issuance of a Temporary Restraining Order (TRO) under Sections 5¹⁸¹ and 6,¹⁸² Rule 58 of the Rules of Court.¹⁸³

The Rules define an EPO as 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, and rehabilitate the environment.¹⁸⁴ An applicant for a TEPO is exempt from posting a bond, but the Rules provide safeguards for the possible pernicious effects upon the party sought to be enjoined. A TEPO, for instance, may be issued only in cases of extreme urgency and when grave injustice and irreparable injury will be caused, and the court should periodically monitor the existence of acts which are the subject matter of the TEPO.¹⁸⁵ Only the SC can issue a TRO or preliminary injunction against lawful actions of government agencies that enforce environmental laws or prevent violations thereof.¹⁸⁶ Both the EPO and TEPO are also available remedies in the criminal cases filed under the Rules.¹⁸⁷

C. Application of the Precautionary Principle and Use of Other Evidence

The Rules also provide additional evidentiary procedures to aid the disposition of complex environmental cases. 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.¹⁸⁸ 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.¹⁸⁹ Decision-makers are not only mandated to

181. RULES OF CIVIL PROCEDURE, rule 58, § 5.

182. *Id.* rule 58, § 6.

183. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, annot., at 113.

184. *Id.* rule 1, § 4 (d).

185. *Id.* annot., at 114.

186. *Id.* rule 2, § 10.

187. *Id.* rule 13, § 2.

188. *Id.* ratio., at 81.

189. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, ratio., at 46 (citing NICHOLAS DE SADELEER, ENVIRONMENTAL PRINCIPLES — FROM POLITICAL SLOGANS TO LEGAL RULES 18 (2002)).

account for scientific uncertainty but can also take positive action, e.g., restrict a product or activity even when there is scientific uncertainty.¹⁹⁰

At the core of the precautionary principle is Principle 15 of the Rio Declaration,¹⁹¹ which endorses the view that what the principle means is that uncertainties regarding, for example, the capacity of the environment to assimilate pollution, or of living resources to sustain exploitation, or the impact of proposed activities, should be acknowledged and taken into account when determining whether to proceed and that controls are needed.¹⁹² The principle has been defined, thus:

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.¹⁹³

The precautionary principle aims to provide guidance in the development and application of international environmental law where there is scientific uncertainty.¹⁹⁴ It is designed to provide the basis for early international legal action to address serious environmental threats in cases where there is ongoing scientific uncertainty with regard to their causes.¹⁹⁵ As one author puts it, in essence, the principle is about anticipation,

190. PHILIPPINE JUDICIAL ACADEMY, *supra* note 16, at 26 (citing Lesley K. McAllister, *Judging GMOS: Judicial Application of the Precautionary Principle in Brazil*, 32 *ECOLOGY L.Q.* 149, 157-58 (2005)).

191. *Rio Declaration*, *supra* note 7, principle 15. This Principle states that “[i]n 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.” *Id.*

192. PATRICIA BIRNIE & ALAN BOYLE, *INTERNATIONAL LAW AND THE ENVIRONMENT* 117 (2d ed. 2002). See also David A. Wirth, *The Rio Declaration on Environment and Development: Two Steps Forward, and One Back or Vice Versa*, 29 *GA. L. REV.* 599 (1995).

193. *RULES OF PROCEDURE FOR ENVIRONMENTAL CASES*, *ratio.*, at 81 (citing United Nations Educational, Scientific, and Cultural Organization (UNESCO) World Commission on the Ethics of Scientific Knowledge and Technology (COMEST), March 2005)).

194. SANDS, *supra* note 35, at 267.

195. Ulrich Beyerlin, *Different Types of Norms in International Environmental Law: Policies, Principles and Rules*, in *THE OXFORD HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW* 440 (Daniel Bodansky, et al. eds., 2007).

prevention, and mitigation of uncertain risks for which definitive scientific evidence is not available; not acting on a serious threat of harm, even if there is scientific uncertainty, is not acceptable.¹⁹⁶

Notwithstanding the preponderance of support that this principle has gained, its legal status is still evolving.¹⁹⁷ There is sufficient evidence of state practice to support the conclusion that the principle has now received sufficiently broad support¹⁹⁸ to allow a strong argument to be made that it reflects a principle of customary international law, notwithstanding the reluctance of courts and tribunals to accept it as such.¹⁹⁹

The Rules apply the precautionary principle in Rule 20, Section 1, stating that “[w]hen there is a lack of 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.”²⁰⁰ Thus, the precautionary principle bridges the gap in cases where scientific certainty in factual findings cannot be achieved.²⁰¹ In effect, “[t]he principle shifts the burden of evidence of harm away from those likely to suffer harm and onto those desiring to change the status quo.”²⁰² Hence, “[w]hen these features — uncertainty, the possibility of irreversible harm, and the possibility of serious harm — coincide, then the case for the precautionary principle is strongest.”²⁰³ However, the court cautions that this principle should be

196. Antonio G.M. La Viña, *Reducing Uncertainty, Advancing Equity: Precaution, Trade, and Sustainable Development*, 53 ATENEO L.J. 952, 956 (2009).

197. SANDS, *supra* note 35, at 279.

198. See generally Alhaji B.M. Marong, *From Rio to Johannesburg: Reflections on the Role of International Legal Norms in Sustainable Development*, 16 GEO. INT’L ENVTL. L. REV. 21, 64-70 (2000).

199. SANDS, *supra* note 35, at 279. But see A. TROUWBORST, *EVOLUTION AND STATUS OF THE PRECAUTIONARY PRINCIPLE IN INTERNATIONAL LAW* 130 (2002). The precautionary principle is defined in the Book, thus:

[T]he precautionary principle can, firstly, be qualified as a general principle of international environmental law; Secondly, it is a weighty principle of environmental treaty law that has been incorporated in over fifty multilateral agreements. Thirdly, ... precautionary state practice is of such uniformity and generality, and the evidence of *opinio juris sive necessitatis* accompanying it of such persuasiveness, as to support the conclusion that contemporary customary international law also requires states to apply the precautionary principle.

TROUWBORST, *supra* note 199, at 130.

200. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 20, § 1.

201. *Id.* annot., at 158.

202. *Id.*

203. *Id.* at 159.

treated as a principle of last resort, where application of the regular Rules of Evidence²⁰⁴ would result in an inequitable result for the environmental plaintiff.²⁰⁵

The other provisions on evidence under the Rules²⁰⁶ “seek to address specific evidentiary concerns in environmental litigation, where evidence is often difficult to obtain and preserve.”²⁰⁷ They seek to supplement the main Rules on Evidence, which have full applicability to environmental cases.²⁰⁸

IV. ANALYSIS OF THE NEW RULES OF PROCEDURE

The discussion made above shows the significance of the Rules of Procedure for Environmental Cases in the effort to protect and preserve the environment. It is truly a landmark piece of procedural law, worthy of comparison and praise in the international community. The uniqueness of the remedies and concepts that the Rules embody is a model which the judicial systems of other countries can follow and emulate. It also highlights the growing importance the Philippine Judiciary places on the right of the people to a balanced and healthful ecology. It is a recognition that more needs to be done to preserve the ecological balance and the rich biodiversity that the Philippines has to offer; and a recognition of the willingness of the Courts to do its part to protect the environment.

The SC should be commended for the efforts it has taken to green the Philippine courts and the overall justice system as well. The court system is doing its share in protecting, preserving, and restoring the rich environment and natural resources of the country. It is continuously conducting multi-sector capacity building seminars to train judges, court personnel,

204. See REVISED RULES ON EVIDENCE.

205. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, annot., at 159-60.

206. *Id.* rule 21, §§ 1 & 2. These Sections provide:

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.

Id.

207. *Id.* annot., at 160.

208. REVISED RULES ON EVIDENCE, rules 128-134.

prosecutors, law enforcers, and members of the community on the Rules. Environmentalists and the general public alike have actively brought environmental cases to the courts, seeking Writs of *Kalikasan* or *Mandamus*, from issues such as mining to those involving industrial pollution. However, with just a little over a year in effectivity, the true test for the Rules of Procedure is yet to come.

One clear advantage of the Rules is its attempt to make environmental litigation easier and more accessible for the general public. Its various provisions such as liberalized rules on standing, waiver of filing and docket fees, and the kind of evidence that it allows make bringing cases to the courts easier. The liberalized Rules on standing take into account the nature of environmental cases, it is difficult to ascertain who the real party in interest is, given the complexities of environmental science and the effects of environmental incidents. Financial costs have always been a major constraint for litigants especially the poor and marginalized who are more often than not the ones severely affected by environmental harm and damage. The Rules encourage litigants to bring cases to courts by removing the financial barriers of filing and docket fees and bonds for the issuance of a TEPO or EPO. On the side of evidence, photographs and videos are allowed by the court, since most environmental cases happen in remote and far-flung areas, and evidence of the destruction or violation would be difficult if not impossible to bring to the actual premises or chamber of the courts.²⁰⁹

Another advantage of the Rules is its introduction of novel and unique remedies, namely the Writ of *Kalikasan* and the Writ of Continuing *Mandamus*. The Writ of *Kalikasan*, until now the first and only one of its kind in the world, gives credence to the constitutional rights of the people to a balanced and healthful ecology and health. It is a remedy which ensures the protection and preservation of the right of present and future generations of Filipinos to the richness and abundance that the Philippine environment has to offer. On the other hand, the Writ of Continuing *Mandamus* will help in solving the perennial problem of poor, inadequate, and delayed enforcement of laws and action by government agencies. The courts can wield its authority to cite government officials and employees for contempt for failure to perform their duties under the law.

The Rules also help to improve access to environmental justice and public participation in environmental decision making. People are given the opportunity to raise their grievances against those who destroy and pillage the environment. They are given the means to protect both their environmental and other basic rights through the justice system and the courts. They are thus allowed to shape the steps taken by policy-makers and

209. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 12. This Rule talks about the custody and disposition of seized items.

decision-makers, and, in turn, improve their knowledge and raise the public's awareness about the environment and the importance of protecting, preserving, and rehabilitating it for present and future generations alike.

Despite the numerous advantages of the Rules, it is not perfect, and there is indeed room for improvement. One disadvantage of the Rules is its provisions which are still constraints to effective public access to the justice system. These provisions include the need to comply with the magnitude requirement for the issuance of the Writ of *Kalikasan*, the limitation on where one can file the same, and the need for NGOs and POs to be accredited before being given standing before the courts.

Environmental litigants would also have to contend with lack of specialized training on environmental science, laws, rules, and regulations on the part of law enforcers, prosecutors, and judges. NGOs and POs at the grassroots often find it difficult to report violations to law enforcers and file cases with the courts, since these government officials often do not understand the environmental issues involved and would sometimes have to rely on other agencies, which would then delay and impede the process. Similarly, people at the grassroots also do not understand the complexities and intricacies of the law, having to rely on lawyers and paralegals who are, more often than not, absent in their communities. This then deters them from reporting violations and filing cases in courts, even though they have the firsthand knowledge and experience of the environmental violations involved.

Lastly, determining the extent of environmental damage and harm is primarily science-based, which would mean that the poor and marginalized who are most affected by it would need the use of science to prove the harm or damage to them. Because the courts would need clear proof and hard evidence before it can determine if there is an environmental violation involved, in the interest of due process. Environmental litigants would then need to spend for scientific and technical analysis to provide the same. This would deter would-be litigants, since they would rather put their money and finances somewhere else.

V. RECOMMENDATIONS AND CONCLUSION

As pointed out above, more work needs to be done on the part of the courts and the justice system in order for it to do its part in protecting and preserving the environment.²¹⁰ “The increased sophistication in appreciating

210. ALTERNATIVE LAW GROUPS, FROM THE GRASSROOTS: THE JUSTICE REFORM AGENDA FOR THE POOR AND MARGINALIZED 28-29 (2004). The following are identified as areas of reform for the Judiciary for environmental matters and issues:

- (1) There must be special courts for environment-related cases;

the risks to the earth's environment and the irreversible damage which may be caused by human activity, has resulted in a conscious effort, both by governments acting collectively and also by non-governmental organizations, to invoke legal protection of the environment."²¹¹ The role of the courts in the protection and preservation of the environment cannot be denied. As one author puts it, "effective implementation receives a fillip where the enshrined right is clearly defined, with explicit and accessible procedures delineated, and is accompanied by a wide range of flexible and effective remedies."²¹² The courts are institutions that have significant public participation implications.²¹³

The SC and the entire justice system should continue its efforts at greening the Philippine court system and doing its role in protecting the environment, especially in a time when issues such as climate change and global warming are expected to worsen in the coming years.²¹⁴ Given the increasing threat of the destruction and deterioration of the environment, the

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- (2) There should be continuous environmental education for judges and other key players;
 - (3) Administrative penalties must complement the filing of cases in court;
 - (4) Coastal law enforcement must be adopted by local government units within a certain district to address common coastal issues;
 - (5) Environmental crimes must be recognized as affecting private offended parties and this should allow communities to secure the services of counsel to prosecute environmental offenses;
 - (6) There must be deputization of prosecutors for environmental crimes especially for areas that do not have prosecutors;
 - (7) Local government units must allocate a portion of their internal revenue allotment for the prosecution of environmental crimes; and
 - (8) Fines collected for the commission of environmental crimes should form a 'litigation fund' for the use of subsequent prosecution of similar cases.

Id.

211. IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 275 (7th ed. 2008).

212. Michael Anderson, *Human Rights Approaches to Environmental Protection*, in *HUMAN RIGHTS APPROACHES TO ENVIRONMENTAL PROTECTION* 20 (Alan Boyle & Michael Anderson eds., 1996).

213. Richardson & Razzaque, *supra* note 21, at 187.

214. DESSLER & PARSON, *supra* note 2, at 1. The Authors state that "[o]f all the environmental issues that have emerged in the past few decades, global climate change is the most serious, and the most difficult to manage." *Id.*

courts can expect more concerned citizens to utilize tools such as the Rules of Procedure to seek the aid of the courts. The heightened awareness of the people on environmental matters and issues will surely clog the dockets of the courts, and, perhaps, increase the burden and responsibility of our magistrates. Although clogged dockets are a constant problem of courts, having the dockets clogged due to an increasing number of environmental cases would be a welcome development for environmentalists and the environment.

As a response, the SC can continue to expand its efforts in training and increasing the capacity of judges and other court personnel as regards the Rules and other environmental laws and regulations. This would enable the courts to more effectively and efficiently handle and dispose of environmental cases and avoid the problem of long and dragging litigation given the crucial and immediate threat of environmental harm and damage. The courts, in coordination with other government agencies and NGOs and Civil Society Organizations, can also embark on programs to introduce the Rules to the grassroots and local communities, such as indigenous peoples, farmers, and fisher folk, given their role as the front liners in efforts to protect the environment. This would also ensure that those who are the usual victims and most affected by environmental degradation have the capacity to protect their rights and have an effective means of accessing the justice system.

An effective and efficient environmental case monitoring system should also be put in place to ensure the speedy and effective disposition of cases, and not make the provisions in the Rules futile. This monitoring system would enable the SC and the general public to monitor the progress of these cases, and at the same time, cite erring judges and court personnel who do not act swiftly and promptly. Monitoring would also enable the courts to determine which areas of environmental law are most affected, and can, in turn, aid law enforcers and even legislators in developing new policies, techniques, and laws which can improve the government's capacity to protect and preserve the environment. In addition, continuous consultation with all concerned stakeholders to improve the Rules should be undertaken in order to ensure that its provisions are timely, relevant, and effective.

The Rules of Procedure and the enthusiasm that the SC and its justices have shown for environmental law and environmental protection indeed give hope for the rich environment and biodiversity of the Philippines. It renews the people's optimism of having a balanced and healthful ecology for the present and future generations. It restores the people's trust in government and, in particular, the Judiciary, as they find an ally in the fight to protect, preserve, and rehabilitate the damaged environment. It is indeed another green step forward for the environment and the development of Environmental Law in the Philippines. The development of the Rules takes environmental rights and protection to a next level. Perhaps, the next step

that should be taken is not just another green step forward, but a big leap towards changing the people's attitude about the environment, each person doing his or her fair share in protecting and preserving the same.