

ACCESS TO ENVIRONMENTAL JUSTICE: A Sourcebook on Environmental Rights and Legal Remedies



ERRATA
Access to Environmental Justice:
A Sourcebook on Environmental Rights and Legal Remedies

On page 100

- “Below is a flowchart showing the basic procedure for the prosecution of criminal cases at the judicial level.”

Should read as: *Below is a flowchart showing the basic procedure for the prosecution of criminal cases at the prosecutorial level.*

- On Figure 5.1 Basic Procedure for Prosecution with question box: Is there sufficient admissible evidence?

Should read as: *Is there probable cause?*

On page 104

- “c. Persons Authorized to Conduct a Preliminary Investigation
Based on Section 2, Rule 112 of the Revised Rules of Criminal Procedure, a preliminary investigation can only be conducted by the following:
a. Provincial or City Prosecutors and their assistants;
b. Judges of Municipal Trial Courts and Municipal Circuit Trial Courts;
c. National and Regional State Prosecutors;
d. Other officers as may be authorized by law.”

Should read as:

- a. *Provincial or City Prosecutors and their assistants;*
 - b. *National and Regional State Prosecutors; and*
 - c. *Other officers as may be authorized by law.*
- (As amended by AM No. 05-08-26-SC, August 30, 2005, Removing the Conduct of Preliminary Investigation from Judges of the First Level Courts).*

On page 106 Figure 5.3 Procedure for Inquest Investigation with box:

- “Prosecutor files the information if recommendation is approved.”

Should read as:

Prosecutor files the information if recommendation is not approved.

- “Prosecutor orders the release of detained person if recommendation is not approved.”

Should read as:

Prosecutor orders the release of detained person if recommendation is approved.

On page 111 under 4th paragraph,

- “In order to prove that a crime has been committed, it is imperative that sufficient evidence be presented.”

Should read as:

In order to prove that a crime has been committed, it is imperative that there be proof beyond reasonable doubt.

On page 127 under 4th paragraph after the enumeration,

- “The resolution or decision of the MAB may be reviewed by filing a petition for review on certiorari with the Court of Appeals.”

Should read as:

The resolution or decision of the MAB may be reviewed by filing a petition for review with the Court of Appeals.

On Page 128

- “B. Civil Procedure
 3. All other cases in which the demand, exclusive of interest, damages of whatever kind, attorney’s fees, litigation expenses, costs or the value of the property in controversy exceeds Two Hundred Thousand Pesos (P200,000) x x x.”

Should read as:

Three Hundred Thousand Pesos (P300,000) x x x.

“4. Environmental civil actions which are under the jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts are those where the value of the personal property or amount of the demand does not exceed One Hundred Thousand Pesos (P100,000) or, in Metro Manila where such personal property or amount of the demand does not exceed Two Hundred Thousand Pesos (P200,000) x x x.”

Should read as:

Three Hundred Thousand Pesos (P300,000) and Four Hundred Thousand Pesos (P400,000) respectively.

On Page 128

- Footnote No. 734

Should read as:

An Act Reorganizing the Judiciary, Appropriating Funds Therefor and for Other Purposes [Judiciary Reorganization Act of 1980], Batas Pambansa Blg. 129 (1981), as amended by OCA Circular No. 65-2004 (Further Increasing the Jurisdictional Amounts Prescribed by Certain Provisions of Batas Pambansa Blg. # 129), dated May 13, 2004.

On page 222

- “BF Northwest Homeowner’s Association, Inc. v. Intermediate Appellate Court, G.R. No. 72370, May 29, 1987, 234 Phil. 537”

In addition, see new ruling:

NRWB v. A.L. Ang Network, GR No. 186450, April 8, 2010, stating that x x x certiorari and appellate jurisdiction over adjudications of petitioner (National Water Resources Board) properly belongs to the Court of Appeals.



Acknowledgment

The creation of the Sourcebook was conducted in conjunction with a Capacity Assessment Report on Environmental Justice, both of which are the products of the project entitled “Development of Framework and Capacity Assessment on Environmental Justice.” The Sourcebook outline was presented to the participants of the various focus group discussions consisting of representatives from the government agencies, non-governmental organizations and peoples’ organizations. The draft was subsequently subjected to consultation with a panel of editors. In this light, the Research, Publications and Linkages Office of the Philippine Judicial Academy and the Program Management Office of the Supreme Court would like to thank the following persons/agencies for their invaluable contribution to the creation of the Sourcebook:

The principal researcher Atty. Joan Michelle M. Legaspi and her team Tanya Justine R. Baldovino, Gregorio Rafael P. Bueta, Maria Cristina T. Munding, and Marychelle T. Mendoza and the other law students who assisted the team with the preparation of the outline and proofreading of the Sourcebook: Gerald Enrico P. Bautista, Mikaela Francine D. Lagarde and Agatha Grace A. Sarines.

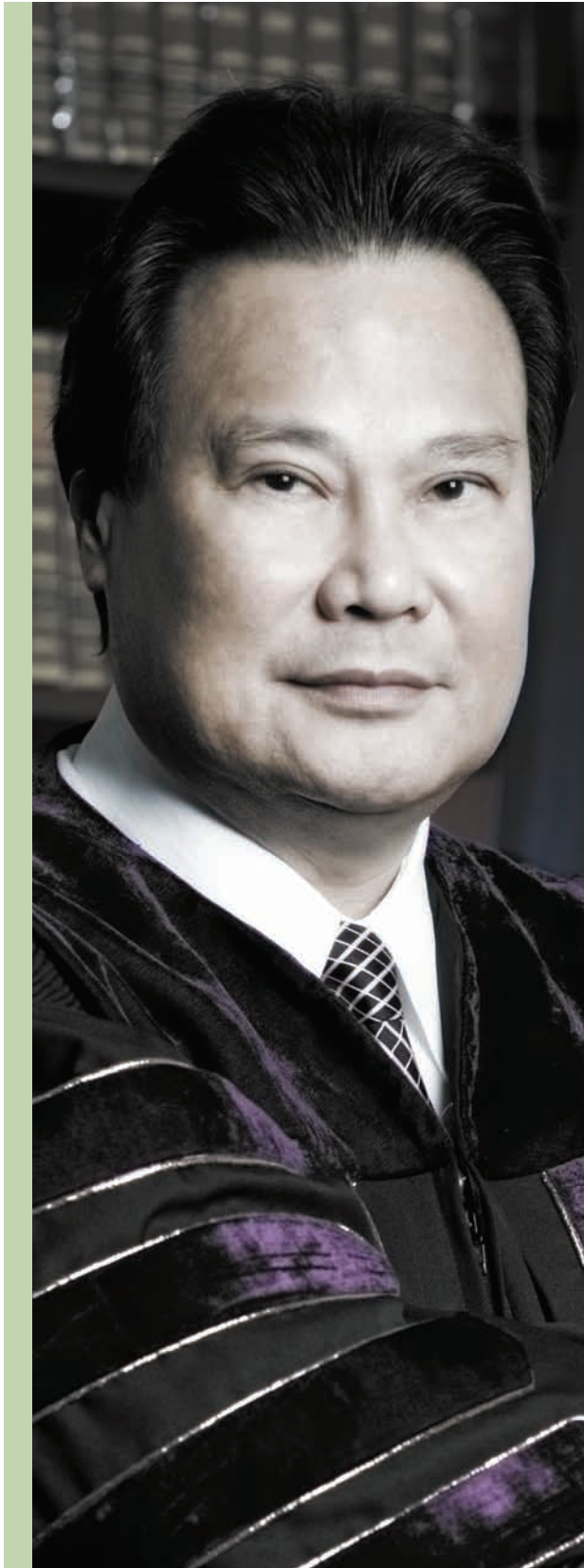
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Foreword

In today's era of modernization and global competition, pressures are great to set aside environment at the altar of economic growth. For 150 years, industrialization and urbanization – all fossil-fuel based – and their wastes led to environmental destruction and exploitation.

Scientists of the United Nations Intergovernmental Panel on Climate Change (UN-IPCC) now agree that the abrupt change in temperature is anthropogenic or caused by man-made actions, and this change in climate has made many countries such as the Philippines more vulnerable to Mother Nature's fury. Corollary to this, the Philippines shows the highest level of concern about climate change in a survey of 54 countries conducted by the Nielsen Company and the Oxford University Institute of Climate Change in 2009.

Our people have good reason to feel that way considering that two tropical storms of historic scale, Ketsana and Parma, locally known as Ondoy and Pepeng, caused damage and loss equivalent to 2.7 percent of our total economic output. Ketsana made history in the Philippines on September 26, 2009 in unleashing the highest rainfall at 17.9 inches, meaning, a foot-and-a-half in just 24 hours. Such extreme weather events cut across other sectors. The agriculture sector, for one, is most affected. The highest ratio of tropical cyclone damage to agricultural output was 4.21 percent in 1990, followed in 1988 by 4.05 percent.



In all this, the poor, the disadvantaged and the marginalized become the most vulnerable. There is therefore no higher and no more urgent calling than the protection of the environment. As we enjoy the earth's beauty and bounty, it is time that we owned up to our collective responsibilities. Improving the quality of environmental adjudication is our humble contribution to maintaining our sacred relationship with Mother Earth.

Access to Environmental Justice: A Sourcebook on Environmental Rights and Legal Remedies is a recognition of the urgency of environmental justice as our common concern, the fundamental character of environmental rights and the necessity of environmental remedies. It outlines the pioneering efforts of the Supreme Court and the entire judiciary to translate into concrete programs the vision of our Constitution for a balanced and healthful ecology.

As comprehensive as it is detailed, this Sourcebook presents the remarkable array of environmental laws and principles which enshrine the rights of this generation and its posterity to a more livable and sustainable corner on Earth. It likewise provides the remedies available to ordinary Filipinos seeking redress for actual damage arising from an environmental hazard as well as the immediate recourse available to those seeking to prevent environmental catastrophe on any species of life. For a country endowed by nature with every imaginable bounty, this Sourcebook is but a small token of our gratitude. Nevertheless, we are constantly aware that, to fill the cup of environmental justice, every little effort counts.

We are responsible for what we do today, what we did yesterday, and what we shall do tomorrow. The future of this planet is truly in our hands. As Marshall McLuhan said, "There are no passengers on Spaceship Earth, we are all crew."

May we continue keeping our environment clean and making the preservation of this beautiful planet our lasting legacy.


RENATO C. CORONA
Chief Justice



The State shall promote and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

– PHILIPPINE CONSTITUTION, Art. II, Sec. 16

As a member of the 1986 Constitutional Commission, I emphasized that “the right to a 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.”¹

Since then, several laws for the protection of our environment have been promulgated. Thereafter, in 2007, the Supreme Court, under the helm of Chief Justice Reynato S. Puno, designated 117 environmental courts² to handle all types of environmental cases. Then, in 2010, the Court, with its rule-making power, promulgated A.M. No. 09-6-8-SC or the Rules of Procedure for Environmental Cases. Now, all courts are green courts.

With the establishment of these specialized green benches and rules of procedure, it is expected that there will be a qualitative increase in environmental cases in the country.



Hence, this ***Access to Environmental Justice: A Sourcebook on Environmental Rights and Legal Remedies*** is very timely and significant. It will surely be a useful tool to all stakeholders of the environment. Its chapters are outlined to show the respective participation of the pillars of the justice system throughout the progress of an environmental case. It adopts a multi-sectoral approach in discussing the Rules of Procedure on Environmental Cases and comprehensively compiled all laws, rules, and important guidelines pertaining to environmental rights and legal remedies.

This Sourcebook was prepared by the Philippine Judicial Academy (PHILJA), in coordination with the Program Management Office (PMO) of the Philippine Supreme Court, under the Development of Framework and Capacity Assessment on Environmental Justice Project of the United Nations Development Programme (UNDP).


ADOLFO S. AZCUNA
Chancellor

¹ Record of the Constitutional Commission, Vol. 4, 913.

² A.M. No. 07-11-12-SC, November 20, 2007, as amended on January 22, 2008.



Environment and natural resources play a critical role in the development of the Philippines. While the country is blessed with one of the richest biodiversity in the world, over the last five decades, development has accelerated and the country is now confronted with challenges that can threaten its natural endowment. Moreover, natural disasters are a real and recurring danger made worse by the negative impact of climate change. Typhoons Ondoy and Pepeng were sharp reminders of the high exposure and vulnerability of the country to the devastation of natural disasters and impacts of a changing climate.

These stresses on the environment have negatively impacted many Filipinos, a great majority of whom are dependent on the environment for their livelihood and sustenance. With a population close to 94 million and continuously growing and environment-dependent, there is great compelling argument to ensure that the environment and the sustainable management of natural resources are placed at the center of the development agenda of the country.

Protecting the environment is not just about quality of life, it is a question of survival for the poor. It is therefore critical that the governance system, in general, and the justice sector in particular, acknowledge this reality. UNDP is very pleased that the Supreme Court has adopted this perspective and has started addressing environmental justice issues more substantially. Its recent



promulgation of the Rules of Procedure for Environmental Cases is a concrete bold step toward this direction. It is a welcome and much-needed development especially for poor and vulnerable communities and those who are powerless to defend themselves against large-scale environmental and development aggression.

Furthermore, with only five years to go, the race against time to achieve the Millennium Development Goals (MDGs) by 2015, namely eradicating extreme poverty and hunger, achieving universal primary education, promoting gender equality, reducing child mortality, improving maternal health, combating HIV/AIDS, malaria and other diseases, ensuring environmental sustainability, and promoting a global partnership for development, require, now more than ever, a deeper consideration on the crucial role that environmental justice plays to reduce poverty and strengthen democratic governance.

Indeed, the Rules are pro-environment, pro-poor and, if implemented well, will not only foster environmental justice in the Philippines, but also contribute to reducing poverty.

But first and foremost, the successful development of a powerful environmental justice requires that its own stakeholders are themselves outspoken environmental advocates. We need a process by which judges, clerks of court, lawyers, prosecutors, law enforcers and all other justice professionals become champions of environmental protection, in their work and in their lives.

UNDP hopes that through continuing capacity development and the preparation of tools like this Sourcebook, the justice system and its stakeholders will be empowered to take on and dispense environmental justice cases in a fair and timely manner.

I would like to extend my deepest appreciation to the Supreme Court, civil society and the Philippine Government, for their dedication to this important issue. UNDP is one with all of you in supporting judicial reform initiatives towards the achievement of greater access to justice for the poor.


RENAUD MEYER
Country Director



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TO EVERY ONE HIS DUE: THE PHILIPPINE JUDICIARY AT THE FOREFRONT OF PROMOTING ENVIRONMENTAL JUSTICE*

Chief Justice Renato C. Corona, D.C.L.

Supreme Court of the Republic of the Philippines

*Honeste vivere, neminem laedere et suum cuique tribuere.*¹ Live honestly, injure no one and give everyone his due. This classic formula in Roman law by Ulpian and Justinian is the basic principle of justice. It is enshrined in our laws, particularly in the provision on human relations of our Civil Code. Article 18 thereof provides:

Every person must, in the exercise of his rights and performance of his duties, act with justice, give everyone his due and observe honesty and good faith.

Unfortunately, we have been less mindful in the observance of this basic principle of justice not only in the way we relate to each other but also in the way we treat our natural environment. We have, it seems, forgotten the prophet's admonition that "he who sows the wind shall reap the whirlwind."

Not too infrequently in recent years, Mother Earth has reminded us that, sooner or later, if we continue to destroy nature, humanity will feel its wrath. Through the years, environmental degradation has worsened rapidly. Its effects have been felt in many devastating natural disasters such as the killer flashfloods in various parts of the world. Closer to home, the havoc and destruction wreaked by *Ondoy* and *Pepeng* remain fresh in our memory.

Unfortunately, efforts and measures to stop environmental degradation are apparently lagging behind.

This afternoon, I shall discuss the more important issues and developments in environmental justice confronting us today and the efforts of the Philippine judiciary to address those concerns.

The first part of this lecture is a brief discussion of the concept of environmental justice and environmental rights.

The next is an overview of environmental law as a part of our legal system. We shall look at significant international commitments of the Philippines relating to the environment and the environmental laws passed by Congress. We shall also survey cases decided by the Supreme Court which have had a significant impact on the national environmental agenda.

Finally, I will share with you the role of the Philippine judiciary in promoting environmental justice. We shall look at the specific and significant ways of how the Supreme Court of the Philippines has dealt with this challenge.

* A public lecture on environmental law and protection by Chief Justice Renato C. Corona at the Graduate School of the University of Santo Tomas, Manila, November 20, 2010.

¹ Ulpian, Dig.1.1.10, Libro Primo Regularum; Justinian, Institutes I, i, 3.

I. THE CONCEPT, ORIGIN AND DEVELOPMENT OF ENVIRONMENTAL JUSTICE IN OTHER COUNTRIES

History is a witness to the power of thought. Ideas have spurred movements. And movements advocating the acceptance of ideas have created paradigm shifts, shaken institutions, toppled governments, and reconfigured the world. Martin Luther's "Ninety-Five Theses"² is widely regarded as the catalyst of the Protestant Reformation (to which the Roman Catholic Church responded with a Counter-Reformation). "Liberte," "egalite" and "fraternite" fanned the flames of the French Revolution. In the Philippines, the writings of the Propaganda Movement, Rizal's *Noli* and *Fili*, and the Katipunan were all fruits of the rage against Spain and the push for autonomy, representation, and, subsequently, independence. "*Tama na! Sobra na! Palitan na!*," a response to the Marcos dictatorship, animated the 1986 EDSA Revolution and the drafting of our present Constitution.

Clearly, ideas can change the world. As a world view-altering concept, can environmental justice do the same?

A. What Is Environmental Justice?

No standard definition of "environmental justice" exists. Absolute definitions of the phrase have eluded scholarly consensus, but certain recurring themes and principles exist.³

For the Environmental Protection Agency (EPA) of the United States, environmental justice is "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."⁴ Fair treatment means that "no group of people, including racial, ethnic, or socioeconomic groups should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of x x x programs and policies."⁵

On the other hand, the federal Department of Energy of the United States of America describes environmental justice as "the fair treatment and meaningful involvement of all people – regardless of race, ethnicity, income or education level – in environmental decision making."⁶ A scholar on environmental law defines the term as embodying the idea that individuals should be able to "interact with confidence that [their] environment is safe, nurturing, and productive."⁷

² Ninety-Five Theses on the Power and Efficacy of Indulgences.

³ Michael Foard Heagerty, *Crime and the Environment: Expanding the Boundaries of Environmental Justice*, 23 TULANE ENVIRONMENTAL LAW JOURNAL 517 (Summer 2010).

⁴ This is the definition provided by the Environmental Protection Agency (EPA) of the United States <www.epa.gov/environmental_justice/>.

⁵ Robert D. Bullard, *Environmental Justice: Strategies for Creating Healthy and Sustainable Communities* <<http://www.law.mercer.edu/elaw/rbullard.htm#trans>>.

⁶ US Department of Energy, *Definition of Environmental Justice* <http://www.lm.doe.gov/Office_of_the_Director/Environmental_Justice/EJ_Definition_and_Policy.aspx> (last visited Sept. 15, 2009).

⁷ Charles Lee, *Warrant County's Legacy for the Quest to Eliminate Health Disparities*, 1 GOLDEN GATE UNIVERSITY ENVIRONMENTAL LAW JOURNAL 56 (2007).

Semantic differences between various characterizations notwithstanding, a concise and workable definition of environmental justice may simply be stated as follows:

Everyone has the right to a clean, safe and healthy environment.⁸

The relevant provision of our fundamental law describes it as the “right of the people to a balanced and healthful ecology”⁹ and “the correlative duty to refrain from impairing the environment.”¹⁰

Environmental justice is therefore the fusion of environmental law and social justice.

B. Environmental Justice in the U.S. and Elsewhere

“[E]nvironmental issues have been in the public eye for some time.”¹¹ However, it was only during the birth of the environmental justice movement when “the ‘who’ and the ‘why’ behind decisions impacting the environment”¹² were brought to light.

The concept of environmental justice emerged in 1982, in the U.S. case of *Bean v. Southwestern*.¹³ The case involved a decision of North Carolina to choose Afton, an impoverished and predominantly black community in Warren County, North Carolina, as the dumpsite for toxic waste landfill for over 32,000 cubic yards of polychlorinated biphenyl (PCB).

A massive protest against it was led by Reverend Ben Chavis who coined the term “environmental racism.” This concept was incorporated into the 1991 National People of Color Environmental Summit where the 17 Principles of Environmental Justice was adopted.¹⁴

As a result of the protest, two major studies (by the Government Accounting Office and the United Church of Christ Commission on Racial Justice [UCCCRJ]) on the distribution of environmental hazards were conducted. The studies showed that the location of hazardous waste sites in the United States were in predominantly African American communities.¹⁵

Another principal player in the advent of the environmental justice movement was the sociologist Robert Bullard. His book, *Dumping in Dixie: Race, Class, and Environmental Quality*,¹⁶ added further empirical support to the two studies abovementioned.

⁸ See Shijuade Kadree, *It's Getting Harder to Breathe: Addressing the Disproportionate Impact of Asthma Among Minority Children Through Environmental Justice Litigation*, 3 REGIONAL BLACK LAW STUDENTS ASSOCIATION LAW JOURNAL 45 (2009).

⁹ PHILIPPINE CONSTITUTION, Art. II, Sec. 16.

¹⁰ *Oposa v. Factoran, Jr.*, G.R. No. 101083, July 30, 1993, 224 SCRA 792.

¹¹ Alice Kaswan, *Environmental Justice: Bridging the Gap Between Environmental Laws and “Justice,”* 47 AMERICAN UNIVERSITY LAW REVIEW 221 (December 1997).

¹² *Id.*

¹³ 482 F. Supp. 673.

¹⁴ Karen Smith, *How the Legal System Has Failed the Environmental Justice Movement*, 12 JOURNAL OF NATURAL RESOURCES AND ENVIRONMENTAL LAW 325 (1996-1997); Gerald Torres, *Environmental Justice: The Legal Meaning of a Social Movement*, 15 JOURNAL OF LAW AND COMMERCE 597 (1996).

¹⁵ *Id.*

In the early 1990s, the federal government of the United States began taking action on the issue. The EPA established the Environmental Equity Workgroup to examine the distributional issues raised by environmental policies and enforcement.¹⁶ In 1992, the EPA also created the Office of Environmental Justice.¹⁷

In 1994, U.S. President Bill Clinton issued Executive Order No. 12,898, entitled “Federal Actions to Address Environmental Justice in Minority and Low-Income Populations.” It directed government agencies to make environmental justice a vital part of their mission by reviewing their programs, policies and activities. It also directed them to ensure that all portions of the population have a meaningful opportunity to participate in the development of, compliance with, and enforcement of federal laws, regulations and policies.¹⁸

From a movement that started in the United States, environmental justice has become a worldwide concern with researchers examining the same issue in other countries.

While the environmental justice movement in the United States predominantly dealt with race, inequality, and the environment, globally, the concept has evolved and shifted in focus.

Throughout the world, it is said that disadvantaged communities typically suffer the highest burdens of environmental degradation. Countries find that environmental justice “can apply to communities where those at a perceived disadvantage – whether due to their race, ethnicity, socioeconomic status, immigration status, lack of land ownership, geographic isolation, formal education, occupational characteristics, political power, gender or other characteristics – put them at a disproportionate risk for being exposed to environmental hazards.”¹⁹

The issue of fairness and equitable access to the resources of the earth has been brought to international awareness.²⁰ Themes of environmental equity are now contained in emerging principles of international environmental law.

Equity concerns were already apparent in the 1992 *Rio Declaration on the Environment and Development* (adopted in the 1992 United Nations Conference on Environment and Development). Principle 3 thereof, in particular, states that “the right to development must be fulfilled so as to equitably meet developmental and environmental needs of the present and future generations.”

The 2002 *Johannesburg Principles on the Role of Law and Sustainable Development* (adopted in the 2002 World Summit on Sustainable Development organized by the United Nations Environment Programme held in Johannesburg, South Africa) recognized that “the people most affected by environmental degradation are the poor, and that, therefore, there is an urgent need to strengthen the

¹⁶ *Supra* note 1.

¹⁷ Robert D. Bullard, *Environmental Justice for All* <<http://nationalhumanitiescenter.org/tserve/nattrans/ntuseland/essays/envjust.htm>>.

¹⁸ Tom Stephens, *An Overview of Environmental Justice*, 20 THOMAS M. COOLEY LAW REVIEW 229 (2003).

¹⁹ Luz Claudio, *Standing on Principle: The Global Push for Environmental Justice*, 115 ENVIRONMENTAL HEALTH PERSPECTIVES 10, A500-A503, (Oct. 2007) <<http://ehp03.niehs.nih.gov/article/action?articleURI=info:doi/10.1289/ehp.115-a500>>.

²⁰ Gerald Torres, *Environmental Justice: The Legal Meaning of a Social Movement*, 15 JOURNAL OF LAW AND COMMERCE, 597 (1996).

capacity of the poor and their representatives to defend environmental rights, so as to ensure that the weaker sections of society are not prejudiced by environmental degradation and are able to enjoy their right to live in a social and physical environment that respects and promotes their dignity.”

C. Environmental Rights as a Component of Human Rights

In more ways than one, environmental rights grew out of human rights, a development which resulted from the genocide and atrocities committed in World War II. In 1948, the UN General Assembly adopted the Universal Declaration of Human Rights, Article 25 of which speaks of “the right to a standard of living adequate for the health and well-being” of an individual and his family.

Because of this Universal Declaration and the covenants that came after it, the idea of environmental protection filtered down to the constitutions of many different countries around the world. As of last year, about 120 out of 193 countries including the Philippines have written environmental protection provisions into their fundamental charters.

In the Philippine Constitution, environmental protection is stated not in the Bill of Rights under Article III but in the Declaration of State Policies under Article II. Nevertheless, the right to a healthful ecology is recognized as iron-clad and no less demandable than those specifically enumerated in the Bill of Rights.

Be that as it may, an environmental protection provision in the Constitution without a mechanism for its enforcement would amount to nothing. This is the void which the recently promulgated Rules of Procedure for Environmental Cases (which I will discuss shortly) sought to fill so that today, the avenues of redress for the degradation or protection of the environment can be pursued either administratively or judicially.

The need for mechanisms to protect the environment has never become as critical as they have become today. The tug-of-war between environmental protection and economic development is causing no mean amount of tension. The need of the moment is to find a middle ground which can strike the delicate balance between economic exploitation and environmental protection.

II. THE DEVELOPMENT OF ENVIRONMENTAL JUSTICE IN THE PHILIPPINE LEGAL SYSTEM

The concept of environmental justice cannot be regarded as foreign or alien to Philippine experience. Indeed, the Philippines is said to have one of the world’s most developed approaches to environmental protection and preservation.²¹ It is enshrined as a fundamental State policy under Section 16, Article II of the Constitution:

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.

The Constitution also provides that the Philippines “adopts the generally accepted principles of international law as part of the law of the land.”²² Thus, customary international environmental laws are deemed incorporated or transposed into our national laws.

²¹ Francis Tolentino, *An Environmental Writ: The Philippines’ Avatar*, 35 IBP JOURNAL 1, 119 (August 2010).

²² PHILIPPINE CONSTITUTION, Art. II, Sec. 2.

International environmental law is law adopted by sovereign states to define standards at the international level. It prescribes obligations and regulates behavior in international relations in matters affecting the environment.²³ There are several sources of international environmental law but of special interest to the Philippine judiciary are multilateral environmental agreements (MEAs) and generally accepted principles of environmental protection.

The very first international environmental instrument was the 1921 *Geneva Convention Concerning the Use of White Lead in Painting*. Since then, 283 other international instruments in the field of the environment have been adopted.²⁴ Our focus for purposes of this lecture is on six multilateral environmental agreements and their protocols:

1. United Nations Convention on the Law of the Sea²⁵ (UNCLOS)

The UNCLOS was ratified by the Philippines on May 8, 1984.²⁶ Of particular importance is Article 194 which obliges parties to take measures to prevent pollution of the marine environment from *any source*, including “land-based sources” and “installations and devices used in exploration or exploitation of the natural resources of the seabed and subsoil.”²⁷

2. 1985 Vienna Convention for the Protection of the Ozone Layer

The 1985 *Vienna Convention for the Protection of the Ozone Layer* and its 1987 *Montreal Protocol on Substances that Deplete the Ozone Layer*²⁸ were both ratified by the Philippines on July 17, 1991.²⁹ These international instruments oblige parties to phase out substances that deplete the ozone layer such as chlorofluorocarbons (CFCs) and hydro-chlorofluorocarbons (HCFCs) which are used in the air-conditioning systems of many of our older cars, offices and houses.

3. 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal

The 1989 *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal*³⁰ was ratified by the Philippines on October 21, 1993.³¹ It declares illegal the transboundary shipment and disposal of hazardous wastes, such as your spent cellphone batteries

²³ Lal Kurukulasuriya and Nicholas A. Robinson (Eds.), *Training Manual on International Environmental Law*, UN Environmental Programme (2006) <http://www.unep.org/law/PDF/law_training_Manual.pdf> (Retrieved Sept. 4, 2010).

²⁴ As of Dec. 2009. See United Nations Environment Programme, *Register of International Treaties and Other Agreements in the Field of the Environment* (2009) <http://www.unep.org/law/PDF/INTRODUCTION_advance.pdf> (Retrieved Sept. 4, 2010.)

²⁵ It entered into force on Sept. 22, 1988. See <<http://treaties.un.org/>>.

²⁶ http://www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm.

²⁷ Art. 194.

²⁸ It came into force on Jan. 1, 1989. See <<http://treaties.un.org/>>.

²⁹ <http://ozone.unep.org/>.

³⁰ It came into force on May 5, 1992. See <<http://treaties.un.org/>>.

³¹ <http://www.basel.int/ratif/convention.htm>.

and old computer units, except for recycling. However, in 1994, an amendment to the Basel Convention proposed a total ban on the transboundary movement of hazardous waste from developed countries to developing countries. It is to be noted that the Philippines has not ratified this amendment. Neither has Japan nor Australia.³²

4. 1992 Convention on Biological Diversity

The *1992 Convention on Biological Diversity*³³ was ratified by the Philippines on October 8, 1993³⁴ while the *1979 Bonn Convention on the Conservation of Migratory Species of Wild Animals* was ratified by the Philippines only on January 2, 1994.³⁵ The Bonn Convention is a framework convention under which parties may enter into agreements and memoranda of understanding for the conservation of certain species. It is significant that the Philippines is a signatory to the Memoranda of Understanding (MOU) on the conservation of marine turtles, dugongs and sharks. However, it is not a signatory to the MOU on Pacific Island cetaceans.³⁶

5. 1998 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade

The *1998 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade*³⁷ was ratified by the Philippines on July 31, 2006.³⁸ The convention requires exporters trading in specific harmful chemicals such as asbestos³⁹ and endosulfan⁴⁰ to provide information on their potential health and environmental effects so that the importing country can decide on trade measures affecting such chemicals.

6. 2001 Stockholm Convention on Persistent Organic Pollutants

The *2001 Stockholm Convention on Persistent Organic Pollutants*⁴¹ was ratified by the Philippines on February 27, 2004.⁴² It binds parties to immediately ban the production and use of certain pesticides such as aldrin and to eventually phase out other pesticides such as DDT as these can adversely affect human health and the environment around the world. These dangerous substances are transportable by wind and water.

³² <http://www.basel.int/ratif/ban-alpha.htm>.

³³ It came into force on Dec. 29, 1993. See <<http://treaties.un.org/>>.

³⁴ <http://www.cbd.int/doc/legal/cbd-un-en.pdf>.

³⁵ <http://www.cms.int/>.

³⁶ http://www.cms.int/about/part_1st.htm.

³⁷ It entered into force on Feb. 24, 2004. See <<http://treaties.un.org/>>.

³⁸ <http://www.pic.int/>.

³⁹ On Jan. 6, 2000, the DENR issued Administrative Order No. 2 imposing stringent requirements on the importation, manufacture and use of asbestos.

⁴⁰ On Feb. 26, 2009, the DENR issued Memorandum Circular No. 2009-2 temporarily banning the importation and use of endosulfan.

⁴¹ It entered into force on May 17, 2004. See <<http://treaties.un.org/>>.

⁴² <http://chm.pops.int/>.

Another important source of international environmental law is the generally accepted principles of environmental protection.

The 1972 *United Nations Conference on the Human Environment in Stockholm* and the 1992 *United Nations Conference on Environment and Development* in Rio de Janeiro produced several principles and concepts of environmental protection which, although not expressed in international legal instruments, have nevertheless informed national policies and actions. The *Judicial Handbook on Environmental Law*⁴³ published by the United Nations Environmental Programme (UNEP) identified four principles but I will discuss only three as these are relevant to pending cases:⁴⁴

1. The “precautionary principle” is premised on “the notion that environmental regulators often have to act on the frontiers of knowledge and in the absence of full scientific certainty.” Thus, “scientific uncertainty should not be used as a reason not to take action with respect to a particular environmental concern and those engaging in a potentially damaging activity should have the burden of establishing the absence of environmental harm.”⁴⁵ This principle is expressed in the Rio Declaration as well as the *UN Framework Convention on Climate Change*. It is stated as well in the *European Commission Treaty* and adopted by the European Commission.⁴⁶ It has also been applied by the European Court of Justice⁴⁷ and by the courts

⁴³ Retrieved from <http://www.unep.org/law/PDF/JUDICIAL_HBOOK_ENV_LAW.pdf>.

⁴⁴ The other two are:

- (1) environmental justice which “seeks to ensure that authorities fairly allocate and regulate scarce resources to ensure that the benefits of environmental resources, the costs associated with protecting them, and any degradation that occurs (i.e., all the benefits and burdens) are equitably shared by all members of society. Environmental justice goes beyond traditional environmental protection objectives to consider the equitable distribution of pollution, and, more broadly, the often disproportionate burden borne by the poor and minority groups in respect to environmental harm; and
- (2) prevention is premised on the fact that “in some instances it can be impossible to remedy environmental injury once it has occurred: the extinction of a species of fauna or flora, erosion, and the dumping of persistent pollutants into the sea create intractable, even irreversible situations. Even when harm is remediable, the cost of rehabilitation is often very high. In many instances it is impossible to prevent all risk of harm. In such instances, it may be judged that measures should be taken to make the risk “as small as practically possible” in order to allow necessary activities to proceed while protecting the environment and the rights of others.” (*Id.*)

⁴⁵ *Id.* The handbook added two more norms:

- (1) action should affirmatively be taken with respect to a particular environmental concern; and
- (2) a State may restrict imports based on a standard involving less than full certainty of environmental harm.

⁴⁶ See Communication of the Commission on the Precautionary Principle <http://ec.europa.eu/dgs/health_consumer/library/pub/pub07_en.pdf> (Retrieved Sept. 21, 2010).

⁴⁷ Case C-444/00, R. (on the application of Mayer Parry Recycling Limited) v. Environment Agency, [2004] Env. L.R. 6 (Eur. Ct. of Justice, June 19, 2003).

in the United Kingdom, Canada, Australia, New Zealand and India.⁴⁸ More importantly, this principle is officially recognized in the Philippine jurisdiction as it is found in Rule 20,⁴⁹ Part V of the Rules of Procedure for Environmental Cases.

2. The “polluter-pays” principle states that national public authorities should refrain from subsidizing the pollution control costs of private enterprises; instead, these private enterprises should bear the cost of controlling the pollution that they cause. This principle has been applied by the courts in the U.S., Japan, Colombia and India in cases requiring toxic cleanup. It has in fact been adopted in the European Union to rationalize the imposition of stiff taxes on tobacco.
3. The UNEP *Training Manual on Environmental Law*⁵⁰ cites the “principle of intergenerational and intragenerational equity” which means that, while “the present generation has a right to use and enjoy the resources of the Earth, x x x it is under an obligation to take into account the long-term impact of its activities and to sustain the resource base and the global environment for the benefit of future generations of humankind.” This principle has been applied in the Philippines⁵¹ and India. It is the underpinning logic of the *UN Framework Convention on Climate Change* and the *Kyoto Protocol*.

Bearing in mind the six representative multilateral environmental agreements and the three general principles of environmental protection we discussed, what is their status in the Philippine jurisdiction? Can they be applied by Philippine courts? Can non-state litigants invoke their provisions before Philippine courts?

Under Section 2, Rule 1 of the Rules of Procedure for Environmental Cases, the “environmental cases” cognizable by Philippine courts include civil, criminal, and special civil actions involving enforcement or violation of environmental and other related laws, rules and regulations enumerated therein. Note that the enumeration does not include international environmental law. Does this mean that Philippine courts cannot apply international environmental law?

I submit that Philippine courts have jurisdiction over cases involving enforcement or violation of international environmental laws committed within the territorial boundaries of the Philippines. Our courts can interpret and apply the provisions of such laws.

⁴⁸ Elizabeth Fisher, *Is the Precautionary Principle Justiciable?*, Oxford University Press (2001) <<http://eprints.ouls.ox.ac.uk/archive/00000157/01/130315.pdf>> (Retrieved Sept. 5, 2010).

⁴⁹ **Sec. 1. Applicability.** – When there is a lack of full scientific certainty in establishing a causal link between human activity and environmental effect, the court shall apply the precautionary principle in resolving the case before it. The constitutional right of the people to a balanced and healthful ecology shall be given the benefit of the doubt.

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

⁵⁰ Retrieved from http://www.unep.org/law/PDF/training_Manual.pdf on Sept. 5, 2010.

⁵¹ *Oposa v. Factoran, Jr.*, G.R. No. 101083, July 30, 1993, 224 SCRA 792.



To begin with, Rule 1 itself states that the enumeration of environmental laws in Section 2 is not exclusive. Philippine courts can extrapolate from the list to consider other sources of environmental law.

Moreover, through ratification, local legislation or Constitutional fiat, multilateral environmental agreements and other international environmental agreements become part of our national law and thus have the force and effect of law in the Philippines.⁵² Not only have the six multilateral environmental agreements been ratified by the Philippines, they have also been transformed into local legislation such as Republic Act No. 6969⁵³ or the *Toxic Substances and Hazardous and Nuclear Wastes Act of 1990*, Republic Act No. 9147⁵⁴ or the *Wildlife Resources Conservation and Protection Act* and Republic Act No. 8749 or the *Philippine Clean Air Act of 1999*.⁵⁵

Clearly, Philippine courts can interpret and apply international environmental law in environmental cases. They may even refer to the provisions of international environmental law to shed light on or supply gaps, if any, in the provisions of national environmental laws.

An interesting question is: in case of conflict between our laws and international environmental laws, which shall prevail? The answer lies in the rules of *pacta sunt servanda* and state responsibility

⁵² See *Pharmaceutical and Health Care Association of the Philippines v. Health Secretary*, G.R. No. 173034, October 9, 2007.

⁵³ The following provision is significant:

Sec. 13. Prohibited Acts. – The following acts and omissions shall be considered unlawful:

- a. Knowingly use a chemical substance or mixture which is imported, manufactured, processed or distributed in violation of this Act or implementing rules and regulations or orders;
- b. Failure or refusal to submit reports, notices or other information, access to records as required by this Act, or permit inspection of establishment where chemicals are manufactured, processed, stored or otherwise held;
- c. Failure or refusal to comply with the pre-manufacture and pre-importation requirements; and
- d. Cause, aid or facilitate, directly or indirectly, in the storage, importation, or bringing into Philippine territory, including its maritime economic zones, even in transit, either by means of land, air or sea transportation or otherwise keeping in storage any amount of hazardous and nuclear wastes in any part of the Philippines.

⁵⁴ The following provision is significant:

Sec. 27. Illegal Acts. – Unless otherwise allowed in accordance with this Act, it shall be unlawful for any person to x x x undertake the following acts: x x x x (c) effecting any of the following acts in critical habitat(s): (i) dumping of waste products detrimental to wildlife; (ii) squatting or otherwise occupying any portion of the critical habitat; (iii) mineral exploration and/or extraction; (iv) burning; (v) logging; and (vi) quarrying. x x x x

⁵⁵ While it banned incineration and smoking in public places, the law merely regulated the level of other pollutants and signified the intention of the Philippines to phase out ozone depleting substances.

under Article 27 of the Vienna Convention on the Law of Treaties⁵⁶ which states that a party must perform its treaty obligations with good faith; thus, it “may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”

No doubt, the duty of Philippine courts is to give force and effect to the prohibitions, regulations, and obligations found in multilateral environmental agreements, whether or not they have been transposed into local laws.

What about the general principles of environmental protection? How are they to be considered in the Philippine jurisdiction?

As I noted earlier, the Supreme Court has adopted and applied the “precautionary principle” and the “intergenerational and intragenerational equity principle.”

Congress has adopted the “polluter-pays principle.” Republic Act No. 9275 or the *Philippine Clean Water Act of 2004* declared as illegal certain acts such as the “discharging, depositing or causing to be deposited material of any kind directly or indirectly into the water bodies or along the margins of any surface water where the same shall be liable to be washed into such surface water, either by tide action or by storm, floods or otherwise, which could cause water pollution or impede natural flow in the water body.”⁵⁷ At the same time, violators are penalized with a stiff fine and, if they fail to undertake cleanup operations willfully or through gross negligence, they shall be punished by imprisonment and a fine of P50,000 to P500,000 per day for each day of violation.

It is true that in *Metropolitan Manila Development Authority, et al. v. Concerned Residents of Manila Bay*⁵⁸ the Court held certain government agencies primarily responsible for the cleanup of Manila Bay. As no private enterprise was impleaded as a polluter, none was charged for the cost of the cleanup. However, it must be borne in mind that the Court held the government agencies liable under a “continuing mandamus” to undertake clean-up activities to implement the decision. The activities which they are compelled to undertake may include tracing the pollutants to whatever source, whether public or private, and cracking the whip on them.

To summarize, multilateral environmental agreements as well as general principles of environmental protection are enforceable in the Philippine jurisdiction.

But there is another interesting question: May international environmental law be invoked by a non-state party such as the ordinary man on the street or even by a public interest group on behalf of a whale or a dolphin in the Tañon Strait?

Without doubt, a non-state party may sue to enforce the provisions of local legislations incorporating the provisions of multilateral environmental agreements. However, may the same party directly invoke the provisions of multilateral environmental agreements which have not been transposed into local legislation?

The environmental regulatory measures imposed by multilateral environmental agreements are mostly trade measures. In fact, the disputes that have arisen over the implementation of international

⁵⁶ http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

⁵⁷ Republic Act No. 9275, Sec. 27.

⁵⁸ G.R. Nos. 171947-48, Dec. 18, 2008, 574 SCRA 661.

environmental measures usually involve conflicts in international trade agreements.⁵⁹ In that context, an actor in an international trade transaction involving goods and materials regulated by international environmental laws (whether as a producer, manufacturer, exporter/importer or even as an ordinary consumer) has to establish sufficient legal interest to gain *locus standi*.⁶⁰

As to whether a dolphin or whale is entitled to *locus standi*, I express no opinion. Suffice it to say that, under Section 30⁶¹ of the *Wildlife Resources Conservation and Protection Act*, in relation to Section 16, Article II of the Constitution, non-state and non-government parties may or may not, depending on how you look at it, qualify as guardians or stewards of the wildlife. This provision is a useful tool in assessing the validity of our liberalized concept of *locus standi* in the Rules of Procedure for Environmental Cases.

A. Environmental Law Cases in the Philippines

The Supreme Court has decided landmark environmental cases which have been internationally hailed as groundbreaking. These cases have in fact put the country on the world map with respect to innovative judicial thinking on environmental protection. They also demonstrate that Philippine courts are, more often than not, disposed to rule in favor of protecting the environment.

1. Oposa v. Factoran⁶²

Probably the most well-known and authoritative Philippine case involving the environment is *Oposa v. Factoran* promulgated by the Supreme Court in 1993. In this case, several minors, represented and joined by their parents, filed a class suit for themselves, for others of their generation, and for the succeeding generations. Aiming to stop deforestation, they asserted that the permits granted by the Secretary of Environment and Natural Resources to Timber License Agreement (TLA) holders to cut trees in the country's remaining forests was violative of their constitutional right to a balanced and healthful ecology.⁶³ Hence, they prayed that the Secretary be ordered to cancel all existing TLAs in the country and to desist from granting and renewing new ones.

⁵⁹ Cris Wold, *Multilateral Environmental Agreements and the GATT: Conflict and Resolution?*, 26 ENVIRONMENTAL LAW 3 (1996), 84; *Trade Measures in Multilateral Environmental Agreements, Synthesis Report of Three Case Studies*, OECD-Joint Working Party on Trade and Environment. Retrieved from <<http://www.oecd.org>>.

⁶⁰ *Id.*

⁶¹ **SEC. 30. Deputation of Wildlife Enforcement Officers.** – The Secretary shall deputize wildlife enforcement officers from non-government organizations, citizens groups, community organizations and other volunteers who have undergone necessary training for this purpose. The Philippine National Police (PNP), the Armed Forces of the Philippines (AFP), the National Bureau of Investigation (NBI) and other law enforcement agencies shall designate wildlife enforcement officers. As such, the wildlife enforcement officers shall have the full authority to seize illegally traded wildlife and to arrest violators of this Act subject to existing laws, rules and regulations on arrest and detention.

⁶² G.R. No. 101083, July 30, 1993, 224 SCRA 792, 802-803.

⁶³ PHILIPPINE CONSTITUTION, Art. II, Sec. 16 provides:

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.

The Court ruled that minors could, for themselves and for others of their generation and for the succeeding generations yet unborn, file a class suit. Their personality to sue in behalf of the succeeding generations is based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned. This right carries with it the obligation to preserve the environment for future generations.

Oposa has been cited not only in the Philippines but also in many other countries. It has contributed to, and even enriched, international jurisprudence on environmental law.

2. *Metro Manila Development Authority v. Concerned Residents of Manila Bay*⁶⁴

Another famous and heralded case is *MMDA v. Concerned Residents of Manila Bay*. In 1999, the Concerned Residents of Manila Bay filed a complaint against several government agencies for the cleanup, rehabilitation, and protection of the historic waters of Manila Bay. They alleged that the continued neglect by these agencies of their legal duty to abate the pollution in Manila Bay constituted a violation of several laws, including the Environment Code, Pollution Control Law, and the Water Code, among others. They presented proof that the waters of the Bay were unsafe for bathing and other contact recreational activities. They prayed that these government agencies be ordered to cleanup Manila Bay and submit a concrete plan of action for the purpose. The Regional Trial Court, Court of Appeals and the Supreme Court all unanimously ordered the government agencies to coordinate for the cleanup of Manila Bay and its restoration to its healthy state. The Supreme Court held that, under numerous laws, the cleanup of the Bay is the ministerial duty of the concerned agencies and they have no discretion to do otherwise. In a nutshell, the Court ordered the agencies to immediately enforce the laws and perform their duty to protect the environment.

Of particular interest in this case was the issuance by the Supreme Court of an order of continuing mandamus – the first ever in the country. This novel legal instrument compelled the agencies to perform their respective tasks for the cleanup and it continues indefinitely. The Court likewise required the formation of an advisory committee to ensure compliance with the order. This highlights the Court's abounding interest in safeguarding the environment. We are hopeful that these judicial actions will help bring about the successful cleanup of the Bay.

3. *Resident Marine Mammals of the Tañon Strait Protected Seascape v. Reyes*⁶⁵

Another intriguing case is that of the *Resident Marine Mammals* which is still in judicial limbo. Petitioners named were the resident marine mammals of the protected seascape Tañon Strait which is located between the islands of Negros and Cebu. They are the "toothed whales, dolphins, porpoises and other cetacean species."⁶⁶ Through their "human representatives," these mammals filed a case for certiorari, mandamus and injunction to enjoin the Department of Energy, et al., from implementing a service contract involving the exploration, development, and exploitation of the country's petroleum resources in and around the Tañon Strait. Among the activities allowed in 2005 were the conduct of a seismic survey and oil drilling.

⁶⁴ G.R. Nos. 171947-48, Dec. 18, 2008, 574 SCRA 661.

⁶⁵ G.R. No. 180771.

⁶⁶ These are marine mammals which have a very large head, a tapering body like a fish and nearly devoid of hair, a large brain and a complex stomach, among others. (Third Webster's New International Unabridged Dictionary, 1993).

Petitioners claim that the marine mammals possess legal standing to sue since they have sustained and will sustain direct injury by reason of the oil exploration and resulting pollution in their habitat. They claim that the effect of underwater noise to marine mammals is fatal. They also maintain that the service contract violates the Constitution, the *National Integrated Protected Areas (NIPAS) Act* and the *Wildlife Conservation and Protection Act*, among others.

Respondents, on the other hand, claim that marine mammals which are neither natural nor juridical persons, cannot be parties in a civil action and that, contrary to petitioners' allegations, the service contract is allowed under Section 2, Article XII of the Constitution.⁶⁷ Although I express no opinion, I am sure that environmentalists are eagerly waiting for a definitive ruling on these novel issues.

4. *Mosquedo v. Pilipino Banana Growers and Exporters Association, Inc.*⁶⁸

The last case I want to bring up has also captured the national interest. It involves the ban on aerial spraying of pesticides on banana plantations in Davao City. In 2007, the *Sangguniang Panlungsod* of Davao enacted an ordinance banning aerial spraying as an agricultural practice in the City. This prompted the Pilipino Banana Growers and Exporters Association, Inc. to file a petition assailing the constitutionality of the ordinance. The City of Davao was impleaded as lone respondent but Mosquedo, et al., residents of Davao City where aerial spraying had been conducted, intervened invoking their right to a healthful and balanced ecology. The trial court ruled that the ordinance was valid and constitutional. However, the appellate court reversed and held that the ordinance was unconstitutional.

Mosquedo, et al., elevated the case to the Supreme Court with the following arguments:

- (1) that the ordinance is a valid police power measure to protect the health of the inhabitants of Davao City and its ecology from the unwanted aerial spray;
- (2) that there is proof that people are hit and adversely affected by the substances sprayed aerially;
- (3) that the banana growers' interests are amply protected because other agricultural means of spraying are still allowed;
- (4) that there is no violation of the equal protection clause because there is a rational basis for the classification considering that aerial spraying (that is, by means of aircraft) is susceptible to drift and wind turbulence which is not true for the other methods of agricultural spraying; and

⁶⁷ PHILIPPINE CONSTITUTION, Art. XII, Sec. 2:

x x x x

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance of large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils x x x."

x x x x

Private respondent Japan Petroleum Exploration, Ltd. had announced its withdrawal from the project. However, petitioners continued with the petition stating that the Department of Energy was still interested in pushing through with the contract and intended to rebid it to interested parties.

⁶⁸ G.R. No. 189185. Other related cases are G.R. Nos. 183624 and 183778 (involving the injunction on the ordinance).

- (5) that the property rights of the banana growers should not be placed above the rights of persons to life, health and a balanced and healthful ecology.

Respondents, on the other hand, claim:

- (1) that the ordinance constitutes an unreasonable and oppressive exercise of police power;
- (2) that the ordinance imposes a ban instead of a mere regulation on aerial spraying; and
- (3) that there is no scientific basis for the ban or that aerial spraying produces adverse effects on people and the environment.

I venture no opinion on what the ruling will be. I mention the facts, as reported in the newspapers, only because it appears that this is the test case for the application of the “precautionary principle” which the Court recognized in its recently promulgated Rules of Procedure for Environmental Cases.⁶⁹

A survey of these landmark and potentially precedent-setting environmental cases underscores the role of the Court as the protector of the rights of the people, including those involving the environment and healthful living.

B. Environmental Initiatives of the Supreme Court

Many activities which cause great damage to our environment, such as mining and logging, take place in remote parts of the country where the inhabitants are poor, unemployed, and lacking in education. They are, thus, at a disadvantage from the standpoint of environmental justice. Their situation prevents them from being aware of the potential environmental damage that surrounds them, from being heard, and from seeking redress for their environmental problems.

Although Congress has enacted about a dozen new environmental laws in the last decade or so, and despite the existence of a number of government agencies tasked under these laws, the effective enforcement of these laws is yet to be seen. Cognizant of this situation, the Supreme Court of the Philippines took it upon itself to wield its rule-making power under the Constitution, thus the promulgation of the Rules of Procedure for Environmental Cases which I will talk about later.

III. THE ROLE OF THE JUDICIARY

The attainment of environmental justice depends on the commitment and involvement of all branches of the government, as well as all the stakeholders.

The Judiciary, in particular, has a significant role to play.

⁶⁹ A.M. No. 09-6-8-SC, Part V, Rule 20:

SECTION. 1. Applicability. – When there is a lack of full scientific certainty in establishing a causal link between human activity and environmental effect, the court shall apply the precautionary principle in resolving the case before it. The constitutional right of the people to a balanced and healthful ecology shall be given the benefit of the doubt.

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



In 2002, the United Nations Environment Programme (UNEP) organized the Global Judges Symposium where the *Johannesburg Principles on the Role of Law and Sustainable Development* was adopted. *The Johannesburg Principles* recognized that, “the fragile state of the global environment requires the Judiciary, as the guardian of the Rule of Law, to boldly and fearlessly implement and enforce applicable international and national laws x x x.”

The Asian Development Bank has noted that, while developing member countries (DMCs) began adopting environmental policy and regulatory frameworks beginning in the early 1970s, many environmental challenges still have not been sufficiently addressed in policy and regulatory frameworks. In particular, according to the ADB, “even where DMCs have appropriate policy, legal and regulatory frameworks, the effective implementation, enforcement and compliance continue to pose challenges. The judiciary plays an important role in meeting these environmental enforcement and compliance challenges.”⁷⁰

On July 28-29, 2010, the *Asian Judges Symposium on Environmental Decision Making, the Rule of Law, and Environmental Justice* was organized by the ADB in partnership with the Supreme Court of the Philippines. The objective of the Symposium was to achieve a collective consensus on the implementation challenges in promoting effective environmental enforcement by the judiciary, and how to achieve more effective environmental decision making, implementation of the rule of law, and access to justice.⁷¹

Indeed, the Supreme Court of the Philippines today faces more challenges than ever before. We are called upon to remove barriers in the current judicial system and increase access to courts for those seeking to enforce their environmental rights.

All of us are by now intimately familiar with the “three generations of human rights”: the first generation consisting of civil and political rights, the second generation referring to social, economic and cultural rights, and the third generation focusing on collective and environmental rights.

The judicial activism of the Court in addressing environmental justice invokes an authority beyond its ordinary adjudicative powers. Using its “peculiar form of authority”⁷² bestowed upon it by the 1987 Constitution to enact rules to enforce constitutional rights (which power is typically lodged in the legislative bodies or branches in other jurisdictions⁷³), the Court enacted the Rules of Procedure for Environmental Cases.

⁷⁰ Kala Mulqueeny, *Asian Judges: Green Courts and Tribunals, and Environmental Justice*, Law and Policy Reform Brief No. 1, April 2010.

⁷¹ Kala Mulqueeny, et al., Background Paper for discussion at the Asian Judges Symposium on Environmental Decision Making, the Rule of Law, and Environmental Justice held at the Asian Development Bank Headquarters, Manila on July 28-29, 2010.

⁷² Rationale for the RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, p. 7.

⁷³ See PHILIPPINE CONSTITUTION, Art. VIII, Sec. 5(5):

The Supreme Court shall have the following powers:

x x x x

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts x x x.

x x x x

On April 16-17, 2009, the Court held the *Forum on Environmental Justice: Upholding the Right to Balanced and Healthful Ecology* simultaneously in Baguio City, Iloilo City, and Davao City. The forum was organized to recommend to the Supreme Court actions it may take to protect and preserve the environment as well as to validate the draft Rules of Procedure for Environmental Cases, among other things.⁷⁴ On April 13, 2010, the Court *En Banc* approved the new Rules of Procedure for Environmental Cases.

Since then, we have been continuously training our judges, clerks of court, prosecutors, NGOs, and law enforcement officials in the handling of environmental cases. Furthermore, the Supreme Court, in 2008, had already designated 117 trial courts, in addition to a few hundred single sala courts, as “green” courts where environmental cases can be heard. The green courts are supposed to represent jurisdictions that historically have, or are expected to have, significant caseloads of environmental cases, including mining, fishing, and logging issues. Although the designations were made two years ago, we have yet to assess their effectiveness in the post-promulgation period of the new Rules of Procedure for Environmental Cases.⁷⁵

A. Important Features of the New Rules

I would now like to discuss the main features of the Rules of Procedure for Environmental Cases.

At the outset, let me state that the Rules have liberalized the doctrine of legal standing to file suit. In the United States, courts generally adhere to the “injury in fact” standard before a plaintiff is allowed to file suit. This simply means no injury, no suit. In the Philippines, although the Supreme Court recognizes the injury aspect of legal standing, it has given the doctrine a more liberal interpretation. This is the reason why, in *Oposa*, the Court allowed parents to file suit on behalf of “their children and generations yet unborn.”

The environmental cases that are filed pursuant to the Rules generally fall into three (3) categories: civil cases, criminal cases, and special civil actions.

Civil Cases

Under a relaxed rule on admissibility, a complaint must be accompanied by all evidence supporting the cause of action. This can be in the form of affidavits, photographs, video clips, recordings, and the like. There is a prohibition against certain pleadings which experience has identified as sources of delay, although there are very strict and limited exceptions.

There is an extensive use of pre-trial to explore the possibility of settlement, to simplify issues, to gather evidence through depositions, and generally to handle the administrative side of exhibits. Affidavits take the place of direct examination to save time. The resolution period is limited to one year.

Criminal Cases

As in civil cases, there is an extensive use of pre-trial to clarify and simplify issues, etc., and an extensive use of affidavits in lieu of direct examination. In order to remedy the numerous instances where the accused jumps bail prior to arraignment, the execution of an undertaking authorizing the judge to enter

⁷⁴ *Supra* note 72, at 45.

⁷⁵ *Supra* note 72.

a plea of not guilty if the accused fails to appear at arraignment is required to avail of bail. Again, as in civil cases, the period to resolve is limited to one year.

Special Civil Actions: Kalikasan and Continuing Mandamus

As a general statement, the two writs fashioned by the Supreme Court as special civil actions, the Writ of Kalikasan and the Writ of Continuing Mandamus, proceeded from the expanded power of the Supreme Court under Article VIII of the 1987 Constitution “to promulgate rules concerning the protection and enforcement of Constitutional rights, pleading, practice and procedure in all Courts x x x.”

Writ of Kalikasan

The petition for a Writ of Kalikasan is an extraordinary remedy because the damage or threatened damage is of such magnitude (that is, it covers such a wide area) as to prejudice the ecology in two or more cities or provinces. Since the affected area is not limited geographically to one particular city or province, the complainant/petitioner has to go to the Court of Appeals or the Supreme Court whose jurisdiction is nationwide.

A petition for an issuance of a Writ of Kalikasan may be accompanied by a prayer for the issuance of a Temporary Environmental Protection Order (TEPO).

This petition fills in the gaps in the law which enable violators to escape liability by using unclear or grey areas in jurisdiction, venue, etc. This petition, moreover, bridges the gap between allegation and proof by compelling the production of information regarding the environmental complaint, such as information related to the issuance of a government permit or license, or information contained in the ECC or in government records.⁷⁶ In this sense, the Writ of Kalikasan, like the Writ of Habeas Data, becomes functionally a mode of discovery; it is subject to the usual safeguards against mere “fishing expeditions.”

A decision on this petition, furthermore, may or may not also provide for the other new environmental writ, the Writ of Continuing Mandamus.

Writ of Continuing Mandamus

On the other hand, a petition for the issuance of a Writ of Continuing Mandamus is directed primarily at a government agency with respect to the performance of a legal duty, as in the duty of MMDA to clean up Manila Bay and continuously report to the Court the steps it is taking in that direction (*MMDA v. Concerned Residents of Manila Bay*).

The formulation of this remedy was influenced by two decisions of the Supreme Court of India, the first on the duty of concerned government agencies to report to the Court on the progress of compliance, and the other, on the spillage of untreated leather effluents into the Ganges River.

(As an aside, when this case was being discussed in the Court, there was a big debate among us on whether it is right at all for the Supreme Court to get involved in the compliance aspect of its decisions on orders.)

⁷⁶ *Id.* at 32.

A petition for the issuance of a Writ of Continuing Mandamus can be accompanied by a prayer for the issuance of a Temporary Environmental Protection Order (TEPO).

Note, at this point, that a TEPO may be issued during the proceedings for the issuance of a Writ of Continuing Mandamus. (This is akin to the issuance of a Temporary Restraining Order [TRO] or Status Quo Ante Order [SQA] in ordinary proceedings.) The issuance of the TEPO underscores the sense of immediacy and is used for immediate relief. Furthermore, just as a TRO or preliminary injunction can later on be converted to a permanent injunction, a TEPO may also be converted, upon termination of the proceedings, to a Permanent Environmental Protection Order.

In the same way that disputes involved in ordinary civil proceedings can be amicably settled, the Rules of Procedure for Environmental Cases provide a similar remedy. It is called a “consent decree.” When parties to an environmental controversy come to an amicable settlement regarding their dispute, they can agree on a consent decree which is judicially approved and enforceable. The settlement may provide for reimbursement for the cost of cleanup or an undertaking of response activities by potentially responsible parties or some other acceptable relief.

The advantages of having an amicable settlement, evidenced by a consent decree, are the following: being voluntary, they are mutually acceptable and thus, the possibility of faithful compliance is higher; furthermore, the settlement is open to public scrutiny and can be enforced by court order.⁷⁷

SLAPP: A Harassment Suit

What is a SLAPP? SLAPP stands for Strategic Lawsuit Against Public Participation and is a strategy to thwart or “slap down” past or anticipated opposition to an action with possible environmental implications. It can be viewed as a harassment suit and is calculated to stifle opposition to a proposed course of action affecting the environment. It draws attention away from the real environmental issues and delays the resolution of an otherwise valid environmental complaint.⁷⁸ Persons instituting SLAPP are generally more well-funded and thus have the capability to financially burden well-meaning environmentalists with useless litigation.⁷⁹ SLAPP can come in different forms such as libel suits, an action for torts and damages, claim for a sum of money, counterclaim, or cross-claim. A SLAPP must be dismissed by the Court upon a showing that it is a “sham petition.”

A SLAPP is violative of the constitutional right of the people to seek redress for their environmental grievances.

CONCLUSION

The cause of environmental justice is something that is of common concern to all of us. The problems that environmental justice seeks to address are borderless and imminent. While those problems immediately affect the underprivileged, they are not exclusive to socioeconomically disadvantaged and

⁷⁷ *Id.* at 26. Citations omitted.

⁷⁸ *Id.* at 38. Citations omitted.



minority communities. To put it rather bluntly, we are all in the same sinking boat; it is just that the poor and marginalized are the closest to the hole. Since environmental problems are problems that we all share in common, we must work together in a collective and concerted fashion.

Environmental justice is an aspect of justice in its general sense. Justice in its general conception requires that one should not commit acts that injure another and that one should give everyone one's due. *Sic utere tuo ut alienum non laedas*. "Use your property so as not to injure another" is a basic principle of Roman law that has acquired relevance to international legal protection of the environment.⁸⁰ Our natural environment forms a major part of our national patrimony. We are stewards and trustees for the present and the future generations. This is the essence of the public trust doctrine, that the State is a trustee of common resources and preserves its common use for the public. This imposes upon the State the responsibility to protect what is considered as a public right.⁸¹ It "mandates affirmative state action for effective management of resources and empowers citizens to question ineffective management of natural resources."⁸²

Because environmental justice is a concern of the public in general, cases concerning the environment are in the nature of public interest litigation which impacts on present and future generations.⁸³ This is what makes judicial decisions on the environment all the more important.⁸⁴ Courts must administer environmental justice with the goal of giving what is due to each and every Filipino, even those who are yet unborn. That is what each and every one of us, as well as each and every one of our children and of our children's children, deserves. That is the commitment of the Supreme Court to you.

Thank you and a pleasant good afternoon to all.

⁷⁹ *Id.*

⁸⁰ Merlin Magallona, *FUNDAMENTALS OF PUBLIC INTERNATIONAL LAW* (2005), 369.

⁸¹ Tolentino, *supra* note 21, at 120 citing Black's Law Dictionary (8th ed., 1999).

⁸² *Id.* citing California State Lands Commission, The Public Trust Doctrine <http://www.slc.ca.gov/policy_statements/public_trust/public_trust_doctrine.pdf>.

⁸³ *Id.* at 138-139.

⁸⁴ *Id.*



CHAPTER 1

INTRODUCTION

Environmental Justice has no single universally accepted definition. Some countries define the concept 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 socioeconomic status.”¹ Others define 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.”² However the concept is defined, what one must realize is that at the heart of Environmental Justice lies the idea that brings together environmental protection and social justice.³ By analyzing environmental issues 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.⁴

With the promulgation of the Rules of Procedure for Environmental Cases, the Judiciary aims to enhance the mechanisms for accessing justice by the victims of environmental violations and at the same time uphold the people’s constitutional right to a balanced and healthful ecology. Indeed, beyond the procedures and the technical jargon of the Rules of Procedure for Environmental Cases lies the social component of Environmental Justice. It is apparent in our country that the effects of environmental violations have been mostly felt by those in the marginalized sectors. These people suffer a gradual decline in health and in their quality of living because of pollution and environmental damage. 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. The Rules of Procedure for Environmental Cases is a way for the victims to empower themselves by availing of the remedies afforded by law.

There is a dire need to address the environmental problems in our country in order to prevent the harsh effects of environmental damage, most notably water and air pollution, deforestation, and loss of terrestrial and marine biodiversity. Perhaps the most dangerous of all these effects is the imminent threat of climate change and global warming because the country is significantly at risk, where “about half of the total area and more than 80 percent of the population are vulnerable to natural disasters.”⁵

¹ 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* <<http://www.ejrc.cau.edu/princej.html>> [last accessed Nov. 25, 2010]).

² Environmental Protection Agency, *Environmental Justice* <<http://www.epa.gov/environmentaljustice>> (last accessed Nov. 25, 2010).

³ ESRC Global Environmental Change Programme, *Environmental Justice: Rights and means to a healthy environment for all, Introduction* <http://www.foe.co.uk/resource/reports/environmental_justice.pdf> (last accessed Nov. 25, 2010).

⁴ *Id.*

⁵ World Bank Sustainable Development Department, *The Philippines: Country Environmental Analysis*, 16 <http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/04/01/000334955_20100401020431/Rendered/PDF/523890PH0white101OFFICIAL0USE0ONLY1.pdf> (last accessed Nov. 25, 2010).

Unfortunately, when flash floods, typhoons, and changing weather patterns occur, the marginalized sectors are especially affected and are the hardest hit.

This chapter intends to give a broad introduction on the environmental problems in the Philippines, highlighting the areas where major problems exist and providing a brief overview of their adverse impact on the country. This chapter also tackles the constitutional framework and other environmental laws in the country, as well as supplemental laws often used to file civil actions and claim damages for environmental violations. It is important to explore these laws and present their legal framework, not just to provide a basic legal understanding of our laws concerning the environment, but to also emphasize the fact that access to Environmental Justice is possible in our country.

A. Philippine Environmental Problems in Perspective

1. Philippine Environmental Landscape

The Philippines is blessed with one of the world's richest natural resources. In fact, it belongs to an elite list as one of the 17 megadiversity countries.⁶ The country's landscape is packed with numerous species of flora and fauna and a rich concentration of marine life.⁷ As an archipelago comprising 7,107 islands and a land area of 300,000 square kilometers,⁸ the Philippines is home to numerous and diverse life forms. It is replete with mountains and extensive coastal areas. The country is bound in the east by the Pacific Ocean, in the west by the South China Sea, in the north by the Bashi Channel, and in the south by the Sulu and Celebes Seas.⁹ The biggest island group is Luzon with a land area of 141,395 square kilometers. This is followed by Mindanao with 101,999 square kilometers land area, then Visayas with 56,606 square kilometers land area. Manila, which is located in the island of Luzon, is the capital city.¹⁰

As for its climate, the Philippines is known to have a tropical and monsoonal climate dominated by a dry and wet season.¹¹ The dry season occurs from December to May and the wet season occurs from June to November.¹² With regard to its land area, 15.8 million hectares of the country is classified as public forestlands.¹³ The country's coastlines extend to about 36,000 kilometers and have a total of

⁶ Megadiversity countries collectively claim more than two-thirds of the Earth's biological resources: (1) Australia, (2) Brazil, (3) China, (4) Colombia, (5) Democratic Republic of Congo, (6) Ecuador, (7) India, (8) Indonesia, (9) Madagascar, (10) Malaysia, (11) Mexico, (12) Papua New Guinea, (13) Peru, (14) Philippines, (15) South Africa, (16) United States, and (17) Venezuela, cited in Perry Ong, *The State of the Philippine Environment: Biodiversity Crisis and the Role of the Judiciary*, 6 *PHILJA JUDICIAL JOURNAL* 31, 41 (2004).

⁷ Antonio G.M. La Viña, Rethinking Philippine Environmental Institutions: Do We Need to Reallocate Mandates, Powers, and Functions? <<http://siteresources.worldbank.org/INTPHILIPPINES/Resources/WBCEAInstitutionalAnalysisFINAL.pdf>> (last accessed Nov. 25, 2010) [hereinafter La Viña, Rethinking Institutions].

⁸ World Health Organization, Philippine Environmental Health Country Profile, 1 <http://www.wpro.who.int/NR/rdonlyres/FA5CA9AA-B230-4863-837D-A0709ECAA514/0/philippines_ehcp_18Nov2004.pdf> (last accessed Nov. 25, 2010).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ 2008 Philippine Forestry Statistics, Forest Resources 1.01 Land Classification 1978-2008 <<http://forestry.denr.gov.ph/stat2008.htm>> (last accessed Nov. 25, 2010).

68 million hectares of territorial waters with around 2.6 million hectares of coral reefs. Furthermore, more than half of the 1,130 terrestrial wildlife in the Philippines are endemic or can only be found in the country.¹⁴ Approximately 65 percent of the 50,000 species of flora and fauna known in the world can also be found in the country.¹⁵ In addition, nestled within the Philippine waters are 500 of 800 known coral reef species, 2,000 marine fish species, more than 40 mangrove species and 16 seagrass species.¹⁶

This staggering wealth of natural resources should be protected and preserved for future generations to come.

2. Present Environmental Problems

The Philippine environment is presently in crisis. The country's rich landscape is experiencing a drastic decline on account of human activities. Most of the country's forest cover is already depleted and about 23 percent of the endemic species are threatened with extinction.¹⁷ Furthermore, poor environmental quality has adversely affected human health and welfare by lowering the quality of life and resulting in productivity loss.¹⁸

The onset of industrialization played a critical role in the increase of environmental problems in the country.¹⁹ The growing need of Filipinos to sustain themselves has clearly taken its toll on the environment. Effluent²⁰ from both commercial and domestic activities led to increasing levels of water pollution and frequent bouts of water scarcity. Human migration resulted in the conversion of forest lands to residential and industrial areas, and the demand for transportation services and the increase in the number of factories and industrial plants have all contributed to the worsening air pollution.

Recent tragedies brought about by natural disasters merely highlight the country's need to enhance its efforts to protect and rehabilitate the environment. These concerns must be brought to the forefront of the country's concerns before the effects of human activities on the environment become irreversible.

The following are the most serious environmental problems which the country is presently experiencing. It is worth noting that the problems encompass all kinds of natural resources.

a. Environmental Problems in Philippine Waters

The primary environmental problem in our country's waters is water pollution. The current state

¹⁴ Perry Ong, *The Philippine Biodiversity Crisis: A Time Bomb Waiting To Explode*, 6 PHILJA JUDICIAL JOURNAL 22, 26 (2004) [hereinafter Ong, Biodiversity Crisis].

¹⁵ La Viña, *Rethinking Institutions*, *supra* note 7, at 4.

¹⁶ *Id.*

¹⁷ Perry Ong, *The State of the Philippine Environment: Biodiversity Crisis and the Role of the Judiciary*, 6 PHILJA JUDICIAL JOURNAL 20, 51 (2004).

¹⁸ Agustin L. Arcenas, *Environmental Health: Economic Cost of Environmental Damage and Suggested Priority Interventions* <<http://siteresources.worldbank.org/INTPHILIPPINES/Resources/WBCEAEnvironmentalHealthArcenas.pdf>> (last accessed Nov. 25, 2010), at 10-11.

¹⁹ Ong, *Biodiversity Crisis*, *supra* note 14, at 49-50.

²⁰ Effluent is defined as the discharge from known sources which is passed into a body of water or land, or wastewater flowing out of a manufacturing plant, industrial plant including domestic, commercial and recreational facilities (Source: Philippine Clean Water Act of 2004 §2[m]).

of water in the country has shown a rapid decline in quality due to poor water management. The increasing number of pollutants in the bodies of water has led to the destruction of the country's groundwater, lakes, rivers, and other coastal areas. In monetary terms, the adverse impact of water pollution costs the economy an estimated P67 billion annually.²¹

One example of the decline in water quality is the Pasig River. Before the 1930s, the Pasig River was rich in marine life and sustained the community living along its banks.²² As decades passed, the Pasig River became a dumping ground for nearby factories and villages. In 1990, it was declared biologically dead.²³ To address this problem and ensure the rehabilitation of the river, the Pasig River Rehabilitation Commission (PRRC) was created in 1999 through Executive Order No. 54.²⁴ More than 10 years later, rehabilitation efforts continue as the PRRC endeavors to bring back the pristine condition of Pasig River for the benefit of the public.²⁵

The decline in the water quality of the Pasig River is a prime example of how pollution can ruin the Philippine waters. The Laguna Lake is another example, reaching a crisis point because of agricultural, industrial, and even domestic effluents.²⁶ An LLDA survey shows that 700 factories have waste water treatment equipment, but waste water from such equipment is still thought to contribute significantly to water pollution in Laguna Lake.²⁷ Meanwhile, approximately 60 percent of the people living in the surrounding area discharge unprocessed waste water and garbage straight into Laguna Lake.²⁸

In the National Capital Region, major rivers are heavily polluted with both industrial and domestic effluent.²⁹ The effluent is in the form of raw sewage, detergents, fertilizer, heavy metals, chemical products, oils, and even solid waste.³⁰ Another glaring example of water pollution is the river system of Meycauyan City and Marilao in the province of Bulacan, which are sources of drinking water and agricultural water supply for the 250,000 people living in the

²¹ World Bank, Philippine Environment: Water Pollution <[http:// web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/EXTEAPREGTOPEMVIROENMENT/0,,contentMDK:20266328~menuPK:3558267~pagePK:34004173~piPK:34003707~theSitePK:502886,00.html](http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/EXTEAPREGTOPEMVIROENMENT/0,,contentMDK:20266328~menuPK:3558267~pagePK:34004173~piPK:34003707~theSitePK:502886,00.html)> (last accessed Nov. 25, 2010)[hereinafter Water Pollution].

²² Philippines Green Movement, Philippines Environmental Issues: How Did the Pasig River Get Polluted? <<http://www.thegreentheory.com/philippines-environmental-issues-how-did-the-pasig-river-get-polluted/>> (last accessed Nov. 25, 2010).

²³ Pasig River Rehabilitation Commission, About Us <<http://www.prrc.com.ph/index.php?page=about-us>> (last accessed Nov. 25, 2010).

²⁴ Office of the President, Creating the Pasig River Rehabilitation Commission, Executive Order No. 54 (1999).

²⁵ Menchit R. Santelices, A dying river comes back to life <<http://www.pia.gov.ph/philtoday/pt01/pt0103.htm>>.

²⁶ Environmental Problems and Their Legislative Control in the Philippines Today <www.env.go.jp/earth/coop/oemjc/phil/e/philie1.pdf> (last accessed Nov. 25, 2010)[hereinafter Environmental Problems].


²⁷ *Id.* at 6.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Water Pollution, *supra* note 21.

surrounding areas.³¹ A 2007 Study conducted by the Blacksmith Institute revealed that the rivers in these two areas are the most polluted in the whole of Southeast Asia.³² This is primarily due to the dumping of industrial wastes, such as wastes from tanneries, gold and precious metal refineries, lead smelting wastes, and municipal dumpsites in the river systems. The dumping of wastes and other hazardous materials contaminated the local fishing areas and severely affected the health of the people living in the surrounding area.³³ Rural areas are also plagued with the same concerns. The agricultural chemicals, chemical fertilizers and effluent from mining operations all contaminate the bodies of water surrounding the areas.




Case Study: Guimaras Oil Spill

On August 9, 2006, M/T Solar I containing 2,203,629 cubic meters of bunker oil left from the Petron Bataan refinery for Zamboanga City. On August 11, 2006, M/T Solar I arrived at the anchorage area of Iloilo City where it went through a series of inspections before leaving for Zamboanga City. After passing through the Guimaras Strait, the tanker encountered very rough seas and started tilting from 15 to 25 degrees to the starboard side. When the condition became worse, the crew of M/T Solar I abandoned ship. The tanker eventually sank.

On August 13, 2006, an undetermined large quantity of oil slick was found in the Guimaras Strait.

Source: SBMI, Re: sinking of MT Solar Southwest Off Guimaras, SMBI Case No 936-06, Marine Accident Inquiry Report.



Water pollution, however, does not only occur in our internal waters. Our oceans and marine resources are at great risk because of water pollution in the form of oil spills or discharges from shipping vessels.³⁴ There are domestic and international ships that navigate through the waters everyday. Because of its strategic location, Philippine waters have become favorite passageways for ships moving between the Pacific and Indian Oceans. Even ships passing through the South China Sea contribute to the pollution of Philippine waters.

One infamous example of water pollution in the country's waters is the Guimaras Oil Spill which occurred on August 11, 2006 at the Guimaras Strait in Visayas. The Guimaras Oil Spill is considered to be the worst oil spill in the history of the Philippines.³⁵ A reported 2.1 million liters of bunker fuel poured into the strait, resulting in the destruction of the rich fishing grounds in the surrounding areas and adversely affecting the sanctuaries and mangrove reserves in the Guimaras Islands.³⁶

³¹ Blacksmith Institute, The World's Most Polluted Places <www.blacksmithinstitute.org/wwpp2007/finalReport2007.pdf> (last accessed Nov. 25, 2010).

³² *Id.*

³³ *Id.*

³⁴ Environmental Problems, *supra* note 26.

³⁵ Guimaras oil spill felt after 3 years, PHIL. GLOBAL NATION, Aug. 18, 2009 <<http://globalnation.inquirer.net/cebudailynews/visayas/view/20090818-220855/Guimaras-oil-spill-felt-after-3-years>> (last accessed Nov. 25, 2010) [hereinafter Guimaras Oil Spill].

³⁶ Alcuin Papa, Guimaras fishers live not by fishing, PHILIPPINE DAILY INQUIRER, May 4, 2009 <<http://www.inquirer.net/specialfeatures/visayasoilspill/view.php?db=1&article=20090504-202884>> (last accessed Nov. 25, 2010).

Three years later, the destruction wrought is still apparent, not just in Guimaras, but also in nearby provinces.³⁷

Perhaps most disquieting is the fact that water pollution affects freshwater availability. Despite being composed mostly of water, the Philippines is experiencing episodes of water scarcity and depletion. As a result, the available freshwater is insufficient to meet the demands of the increasing population. Both the over extraction of available ground water and the pollution of potential freshwater sources contribute to a decrease in the available amount of freshwater in the country.

Research shows that if nothing is done to remedy both the population pressure and pollution of freshwater sources, the Philippines could experience a water crisis in less than 20 years and the amount of freshwater available per person by 2025 will decrease by 65 percent of the current per capita availability.³⁸ This is without considering the fact that, industrial demand for freshwater is expected to increase to 13,000 million cubic meters (MCM) by 2025, while agricultural water usage is expected to require between 50,000 and 73,000 MCM by 2025.³⁹ The current freshwater availability per capita in the Philippines is only 1,907 cubic meters which is very low compared to Asian (3,669 cubic meters/person) and world averages (7,045 cubic meters/person) thereby making the country's per capita availability of renewable freshwater source the lowest in Southeast Asia.⁴⁰

The growing problem of water pollution can be ascribed to poor governance. In particular, there is poor planning, fragmented water management, and weak enforcement of environmental laws.⁴¹ To address these issues, it is suggested that stricter effluent standards should be imposed on companies and all those concerned.⁴² In the domestic sphere, changes must be made in people's lifestyles in order to place domestic effluent under control.⁴³ Most importantly, violations of environmental laws involving the quality of the country's water resources must be addressed.

b. Environmental Problems in Forest Lands

Deforestation in the Philippines has reached alarming new heights. The country's forest cover has dropped from 270,000 square kilometers at the end of 1898 to only about 8,000 square kilometers in 2006.⁴⁴ Increasing urbanization, commercial logging, *kaingin* or slash and burn

³⁷ Guimaras Oil Spill.

³⁸ Greenpeace, Impact and Vulnerabilities in the Philippines <<http://www.greenpeace.org/raw/content/seasia/en/press/reports/climate-change-water-impacts-philippines.pdf>> (last accessed Nov. 25, 2010).

³⁹ Philippine Chamber of Commerce and Industry, Promoting Water Stewardship among Industry <http://www.philippinechamber.com/index.php?option=com_content&view=article&id=768:promoting-water-stewardship-among-industry&catid=32:environment&Itemid=79> (last accessed Nov. 25, 2010).

⁴⁰ UNDP Philippines, Editorial: War on Water, March 29, 2010 <http://www.undp.org.ph/?link=news&news_id=416&fa=2> (last accessed Nov. 25, 2010).

⁴¹ Water Pollution, *supra* note 21.

⁴² Environmental Problems, *supra* note 26.

⁴³ *Id.*

⁴⁴ Kalikasan: People's Network for the Environment, Philippine Environmental Situation 2009 <<http://www.kalikasan.org/cms/?q=node/302>> (last accessed Nov. 25, 2010).

agriculture, and forest fires all contribute to the country's deforestation problem.⁴⁵ There is also a rapid conversion of forest lands and grass lands to urban use prompted by the needs of the growing population.⁴⁶ This leads to severe soil erosion and water pollution (e.g., river siltation).

The deforestation problem is another issue that urgently needs to be addressed. Inconsistent laws, inadequate regulations, weak enforcement, and lack of adequate funding play significant roles in the rapid decline of the country's forest lands.⁴⁷ There are low tree survival rates and protected areas still suffer from destruction and habitat conversion.⁴⁸ Thus, more needs to be done in terms of environmental protection and proper implementation of environmental laws in order to stop the degradation of the country's forest lands and prevent the loss of biodiversity.

One of the most deforested areas in the Philippines is the Calabarzon Region, which is composed of five provinces, namely Cavite, Laguna, Batangas, Rizal, and Quezon Provinces. It has one of the most varied landscapes in the country, consisting of flat coastal areas and upland interior areas of plains, rolling hills, and mountains.⁴⁹ Calabarzon has 55 percent of its area covered in forest and is very rich in biodiversity. It is home to endemic animals such as the tamaraw, Visayan spotted deer, Visayan warty pig, and more.⁵⁰ Unfortunately, the whole region is under serious threat of deforestation as illegal logging remains unabated.

c. Environmental Problem of Loss of Biodiversity

Loss of biodiversity is a prevailing problem in the country. It does not only occur in terrestrial areas but also in our coastal waters. The deforestation problem of our forest lands contributes to the loss of biodiversity in our land.⁵¹ Many of the Philippines' species, a lot of which are endemic and depend on the forests, are gradually becoming extinct. The reason for this is that

⁴⁵ THE ROOT CAUSES OF BIODIVERSITY LOSS IN THE PHILIPPINES 283 (Alexander Wood, et al., Eds., 2000).

⁴⁶ World Bank, Philippine Environment: Natural Resources Degradation <<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/EXTEAPREGTOPENVIRONMENT/0,,contentMDK:20266328~menuPK:3558267~pagePK:34004173~piPK:34003707~theSitePK:502886,00.html>> (last accessed Nov. 25, 2010).

⁴⁷ WorldWildLife Fund, Environmental Problems in the Philippines <http://wwf.panda.org/who_we_are/wwf_offices/philippines/environmental_problems_in_philippines/> (last accessed Nov. 25, 2010).

⁴⁸ Natural Resources Degradation, *supra* note 46.

⁴⁹ Clarinda Lusterio-Borja & Lisa Colson, Population, Health, and Environment Issues in the Philippines: A Profile of Calabarzon (Region 4-A) 3 (2008) <http://www.prb.org/pdf08/pheregionalprofiles_calabarzon.pdf>.

⁵⁰ *Id.*

⁵¹ The Convention on Biological Diversity, June 5, 1992, Art. 2, 1760 U.N.T.S. 79, 31 I.L.M. 818 (Biological Diversity is defined as "the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and ecosystems.").

forest lands that were once occupied by these species are grazed and converted into residential or agricultural areas. The loss or alteration of their critical habitats gravely affects the resident species' chance for survival. They are not only driven out of their habitat but are also deprived of their food source. The scarcity of their food supply eventually leads to their extinction.

Furthermore, loss of habitat threatens to destroy the ecological balance of whole communities and ecosystems. One example of the alarming effect of such loss of habitat is the critically endangered Philippine Eagle, the king of eagles that once proudly soared in the skies.

Case Study: The Philippine Eagle

The Philippine Eagle (Pithecophaga jefferyi) is a giant forest raptor endemic to the Philippines. It is considered to be one of the largest and most powerful eagles in the world. Unfortunately, it is also one of the world's rarest and critically endangered species. The eagle is known to be geographically restricted to the islands of Luzon, Samar, Leyte and Mindanao.

Studies have shown that deforestation is the major reason for the rapid decline in numbers of the Philippine Eagle today. When their habitat disappeared due to illegal logging and rampant deforestation, so did the eagles.

Source: Philippine Eagle Foundation <<http://www.philippineeagle.org> and <http://www.dvrconline.org/phileagle.html>> (last accessed Nov. 25, 2010).

Another area which is of grave concern is the loss of biodiversity in our coastal and marine waters and inland water resources such as lakes, rivers, and reservoirs. Similar to the cause of water pollution, effluents from agricultural, industrial, and domestic areas all contribute to the deterioration and pollution of our inland water sources. As a result, water quality in these water resources have deteriorated, causing habitat loss and degradation.⁵² Hundreds of freshwater species and even species other than fish, such as amphibians, are all in danger of extinction.⁵³ Furthermore, the diversion of rivers for irrigation and dam construction has affected the movement of migratory fish species and drastically changed river habitat.⁵⁴

d. Environmental Problems in Aerial Territory

Air pollution is a serious and pressing problem in the Philippines. The World Health Organization rates Manila, as the fourth largest air polluted capital in the world next to Mexico City, Shanghai, and New Delhi. Reports have shown that every year, around 5,000 premature deaths which occur in the Philippines are caused by respiratory diseases such as acute bronchitis, pneumonia, lung cancer, cardiovascular disease, and more.⁵⁵ As

⁵² Philippine Clearing House Mechanism for Biodiversity, Inland Waters Biodiversity: Overview <http://www.chm.ph/index.php?option=com_content&view=article&id=80&Itemid=127> (last accessed Nov. 25, 2010).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Air Pollution Kills Nearly 5,000 Metro Residents Yearly, PHILIPPINE DAILY INQUIRER, Sept. 4, 2007 <http://newsinfo.inquirer.net/breakingnews/nation/view/20070904-86654/Air_pollution_kills_nearly_5%> (last accessed Nov. 25, 2010).

much as 1.5 million Filipinos suffer from respiratory sickness due to outdoor pollution in urban areas, and a third of that number suffers from various illnesses due to indoor air pollution.⁵⁶ These deaths and illnesses have cost the country more than P950 million in productivity loss and health care expenses.⁵⁷ Clearly, air pollution not only affects the human health of millions of Filipinos, but it also has dire repercussions for the economy.

Air pollution is caused by two types of sources: outdoor and indoor pollution. Outdoor air pollution is large-scale pollution that occurs outside of people's homes and involves external pollutants, such as industrial and vehicle emissions. Indoor air pollution, on the other hand, involves proximity to indoor air pollutants such as cigarette smoking and cooking with solid fuels.⁵⁸ What greatly contributes to the rise of these two types of pollution are the rapid urbanization and industrialization of the country, most of which occur in Metro Manila. The increasing number of people migrating from rural areas to urban areas has significantly increased the demand for services and transport, resulting in a negative impact on the air quality in the cities and other urban areas.⁵⁹ With 1,768,033 million registered vehicles traversing the roads of Metro Manila in 2009,⁶⁰ the level of air pollution in the city has exceeded the established safety limit threefold.

e. Environmental Problems in the Mining Sector

Mining is a major industry in the Philippines and is believed to play a vital part in determining the success of the country's economy. Besides generating employment, which amounted to more than 192,000 jobs at the start of 2010,⁶¹ the taxes on mining companies are major sources of revenue for the local government in the area. On a national level, these mining activities also contribute to the country's export earnings, amounting to US \$1,469 Million in 2009 and US \$391 Million in the first half of 2010 alone.⁶² The industry has accounted for almost a fourth of the country's total export earnings and contributed significantly to the Gross Domestic Product during its peak in the early 1980s.⁶³

Unfortunately, the long-term effects of mining operations have resulted in significant damage to the environment, such as deforestation and loss of wildlife habitat, decrease in the quantity and quality of water supply, decrease in agricultural production, erosion and flash floods,

⁵⁶ UNDP Philippines, Air Pollution <http://www.undp.org.ph/?link=news&news_id=303&fa=>> (last accessed Nov. 25, 2010).

⁵⁷ *Id.*

⁵⁸ Arcenas, *supra* note 18.

⁵⁹ *Id.*

⁶⁰ Land Transportation Office, Number of Motor Vehicles Registered <http://www.lto.gov.ph/Statistics/Stats2009/no_of_MV_Registered_LTO2009.html> (last accessed Nov. 25, 2010).

⁶¹ Legal Rights Center and Natural Resources Center-Kasama Sa Kalikasan, Research and Policy Report 5 (2010) (unpublished manuscript).

⁶² *Id.*

⁶³ Tetra Tech EM, Inc., Executive Site Summary: Preliminary Site Assessment of Abandoned Mines in the Philippines 1 (2009)(unpublished manuscript).

water and air pollution,⁶⁴ and threat to the marine environment brought by erosion and effluents.⁶⁵ In fact, the Philippines today is considered as one of the worst countries in the world when it comes to tailings dam failures.⁶⁶ Toxic wastes from the mining sites are not properly disposed of, which has led to disastrous consequences for the local people and the environment.⁶⁷ Surprisingly, mining applications are considered for watershed areas.⁶⁸

Mining in the Philippines typically consists of open pit mining which involves the flattening of mountaintops and the creation of huge craters. This form of mining creates huge amounts of toxic wastes. Large-scale gold mining also results in huge amounts of toxic wastes as cyanide is used to separate the gold from the ore thereby releasing potential harmful toxic metals.⁶⁹

The negative effects of mining are very much apparent in the infamous Marcopper Mining Disaster of 1996. The mine tailings of the mining site, consisting of more than 400 million metric tons of waste, caused widespread flooding and damage to farmlands and property. The Boac River, where the mine tailings escaped to, was subsequently declared dead.⁷⁰

Mining also results in a reduction of the forest cover as it is targeted for many upland areas. Oftentimes, mining is conducted within the ancestral domain of Indigenous Peoples.⁷¹ Under RA No. 8371 or the Indigenous Peoples Rights Act of 1997,⁷² the mining operators must be able to secure the Free Prior and Informed Consent of the Indigenous Peoples over whose territory the mining will be conducted.⁷³ Unfortunately, despite this requirement, mining operations still result in the displacement of the Indigenous Peoples.⁷⁴

Small-scale mining activities are just as destructive to the environment. The reason for this is that the monitoring of these mining activities is not lodged with the Department of Environment and Natural Resources (DENR); but with the Governor-led Provincial Mining

⁶⁴ Atty. Grizelda Mayo-Anda & Katherine Mana-Galido, Case Study: The Costs and Benefits of Three Decades of Mining in Rio Tuba, Bataraza, Palawan 28-29 (2006).

⁶⁵ Mining in the Philippines Concerns and Conflicts: Report of a Fact-Finding Trip to the Philippines, July-August 2006, 10 (2007) [hereinafter Mining in the Philippines].

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Philippine Indigenous People's Link, Justice to Mining Disaster Victims in the Philippines <<http://www.piplinks.org/Marinduque+Island+mining+disaster>> (last accessed Nov. 25, 2010).

⁷¹ Mining in the Philippines, *supra* note 65, at 1.

⁷² An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/Indigenous People, Creating a National Commission of Indigenous People, Establishing Implementing Mechanisms, Appropriating Funds Therefor, and for Other Purposes [Indigenous Peoples Rights Act], Republic Act No. 8371 (1997).

⁷³ Indigenous Peoples Rights Act of 1997, § 46(a).

⁷⁴ Cordillera Peoples Alliance, Case Study on the Effects of Mining and Dams on the Environment <www.un.org/esa/socdev/unpfii/.../workshop_IPPE_cpp.doc> (last accessed Nov. 25, 2010).

Case Study: Marcopper Mining Disaster

The Marcopper Mining Corporation started its mining operations at the Mt. Tapian Ore to extract copper deposits. After its reserves were depleted in 1990, Marcopper transferred its operations to the San Antonio copper orebody. It was later on agreed that the mine tailings of the San Antonio operations would be dumped at the Mt. Tapian open pit. There was no environmental risk assessment carried out in the use of the pit to hold the mine tailings.

On March 24, 1996, mine tailings began escaping from the Tapian Pit into the Makalupnit and Boac Rivers. The discharge into the rivers ranges from 5-10 cubic meters per second during the first 4-5 days after the initial discharge. Eventually, the flow of mine tailings from the drainage tunnel was reduced without intervention and as a result of undetermined cause. In late April 1996, the flow rate was estimated to be not less than 0.2 cubic meters per second and possibly higher.

Source: United Nations Department of Humanitarian Affairs, Relief Coordination Branch, Joint UNEP OCHA Environment Unit <http://www.reliefweb.int/ocha_ol/programs/response/unep/unep4.html> (last accessed Nov. 25, 2010).

Regulatory Board. There may be difficulty in the regulation and monitoring of the damaging effects of these activities because the problems are not easily addressed by the DENR.⁷⁵

With the foregoing review of the Philippine landscape and the pressing environmental concerns, let us now look at the Philippine legal framework to see how the current environmental laws address these problems.

B. Environmental Law

Environmental Law as a field of law is slowly gaining recognition on account of the realization that there is an urgent need to regulate human activities because of their impact on the environment. Environmental Law is generally defined as “the body of law which contains elements to control human impact on the earth.”⁷⁶ It is a relatively new field which deals with the “maintenance and protection of the environment, including preventive measures such as the requirement of environmental-impact statements, as well as measures to assign liability and provide cleanup for incidents that harm the environment.”⁷⁷

Environmental Law ultimately recognizes that human activities affect, impact, and if left unattended, endanger the natural environment.⁷⁸ Thus, rules with corresponding sanctions are implemented in order to ensure that human activities are regulated with the end goal of ensuring that the environment is adequately protected.

⁷⁵ Social Watch Philippines, *Winning the Numbers, Losing the War: The Other MDG Report*, 143-44 <http://asiapacific.endpoverty2015.org/files/the-other-mdg-report_internal-copy.pdf> (last accessed Nov. 25, 2010).

⁷⁶ ASIAN DEVELOPMENT BANK, *CAPACITY BUILDING FOR ENVIRONMENTAL LAW IN THE ASIAN AND PACIFIC REGION: APPROACHES AND RESOURCES* 8 (Donna G. Craig, et al., Eds., 2002).

⁷⁷ BLACK’S LAW DICTIONARY 614 (Bryan A. Garner, Ed., 9th ed., 2009).

⁷⁸ NANCY K. KUBASEK & GARY S. SILVERMAN, *ENVIRONMENTAL LAW* 64 (6th ed., 2008).

1. Constitutional Policy and Framework on Environmental Protection

The 1987 Philippine Constitution bears the framework of the Philippine Environmental Policy. In fact, the Preamble of the Constitution itself already lays down the foundation for the environmental provisions in the 1987 Constitution. The Preamble reads as:

We, the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society, and establish a Government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity, the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution.⁷⁹

Our fundamental right to a healthy environment, however, is primarily embodied in Section 16, Article II of the Constitution which states, “[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.”⁸⁰ This provision is self-executing in nature and deemed as the source of the citizen’s basic environmental rights.⁸¹ The duty of the state to protect and promote the health of its citizens is also an adjunct to the right of the Filipinos to a healthy environment. Other constitutional provisions also serve as basis for several environmental laws. Section 15, Article II of the Constitution states that, “[t]he State shall protect and promote the right to health of the people and instill health consciousness among them.”⁸² Most of the provisions of Article XII also highlight the State’s primary objective of protecting the environmental resources of the country. Sections 2,⁸³

⁷⁹ PHILIPPINE CONSTITUTION, Preamble.

⁸⁰ PHILIPPINE CONSTITUTION, Art. II, § 16.

⁸¹ *Oposa v. Factoran, Jr.*, G.R. No. 101083, July 30, 1993, 224 SCRA 792, 805.

⁸² PHILIPPINE CONSTITUTION, Art. II, § 15.

⁸³ PHILIPPINE CONSTITUTION, Art. XII, § 2. This section provides:

Sec. 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least 60 per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of waterpower, beneficial use may be the measure and limit of the grant.

The State shall protect the nations marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fish workers in rivers, lakes, bays, and lagoons.

3,⁸⁴ 4,⁸⁵ and 5⁸⁶ all seek to protect the country's land from abuse and exploitation and ensure that the development of the country's natural resources will benefit the Filipino people.

Even prior to the 1987 Constitution, Presidential Decree No. 1151⁸⁷ or the Philippine Environmental Policy declares as a continuing policy of the state:

- 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 Filipino; and
- c. to ensure the attainment of an environmental quality that is conducive to a life of dignity and well-being.⁸⁸

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty (30) days from its execution.

⁸⁴ PHILIPPINE CONSTITUTION, Art. XII, § 3. This section provides:

Sec. 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof, by purchase, homestead, or grant.

Taking into account the requirements of conservation, ecology, and development, and subject to the requirements of agrarian reform, the Congress shall determine, by law, the size of lands of the public domain which may be acquired, developed, held, or leased and the conditions therefor.

⁸⁵ PHILIPPINE CONSTITUTION, Art. XII, § 4. This section provides:

Sec. 4. The Congress shall, as soon as possible, determine, by law, the specific limits of forest lands and national parks, marking clearly their boundaries on the ground. Thereafter, such forest lands and national parks shall be conserved and may not be increased nor diminished, except by law. The Congress shall provide for such period as it may determine, measures to prohibit logging in endangered forests and watershed areas.

⁸⁶ PHILIPPINE CONSTITUTION, Art. XII, § 5. This section provides:

Sec. 5. The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.

⁸⁷ Philippine Environmental Policy, Presidential Decree No. 1151 (1977).

⁸⁸ *Id.* § 1.

Presidential Decree No. 1151 recognizes that the environment is a matter of government responsibility. Aiming to launch a comprehensive program of environmental protection and management, the law covered the following areas of concern: air quality management, water management, land use management, natural resources management and conservation and waste management.

At present, Philippine Environmental Law seeks to address a wide array of environmental concerns ranging from forest degradation, loss of biodiversity, water pollution, air pollution, and hazardous waste management among others. The following laws, which are enumerated in the Rules of Procedure for Environmental Cases,⁸⁹ are classified into four groups: (1) terrestrial; (2) marine and aquatic resources; (3) aerial; and (4) others. Terrestrial laws refer to the protection and preservation of forests and biodiversity. Marine and aquatic resources laws pertain to the protection of the waters and preservation of marine life. Aerial laws deal with preventing air pollution, while other laws refer to those that involve hazardous wastes and other environmental concerns.

2. Terrestrial Laws

Act No. 3572	An Act to Prohibit the Cutting of Tindalo, Akle, or Molave Trees, under Certain Conditions, and to Penalize Violations Thereof
PD No. 705	Revised Forestry Code of the Philippines
PD No. 1433	Plant Quarantine Decree of 1978
RA No. 3571	An Act to Prohibit the Cutting, Destroying or Injuring of Planted or Growing Trees, Flowering Plants and Shrubs or Plants of Scenic Value along Public Roads, in Plazas, Parks, School Premises or in any Other Public Ground
RA No. 7076	People's Small-Scale Mining Act of 1991
RA No. 7586	National Integrated Protected Areas System Act of 1992
RA No. 7611	Strategic Environmental Plan (SEP) for Palawan Act
RA No. 7942	Philippine Mining Act of 1995
RA No. 9072	National Caves and Cave Resource Management and Protection Act
RA No. 9147	Wildlife Resources Conservation and Protection Act
RA No. 9175	Chain Saw Act of 2002

⁸⁹ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, A.M. No. 09-6-8-SC, April 29, 2010.

Act No. 3572⁹⁰ is a law enacted by Congress in 1929 specifically addressing the need to preserve certain types of trees, namely Tindalao, Akle, and Molave, which were fast disappearing during the Spanish Era. This law criminalizes the act of cutting down these types of trees.

Presidential Decree No. 705 or the Revised Forestry Code of the Philippines⁹¹ is the law most often violated in environmental cases before the courts. This law regulates the management, development, and utilization of forest lands. It establishes the boundaries of forest lands and lays down the guidelines for licenses and permits for the occupation and utilization of forest lands and operation of wood or forest processing plant. It also introduces the concept of reforestation in order to preserve the country's forest lands.

Presidential Decree No. 1433 or the Plant Quarantine Decree of 1978⁹² was promulgated to prevent the spread of plant pests by regulating the international and domestic movements of plants and plant products. It therefore serves as a preventive measure against the introduction or incursion of plant pests into our country that may result in the destruction of the country's agricultural crops.

Republic Act No. 3571⁹³ was enacted by Congress to promote and conserve the trees, shrubs, flowering plants, and plants of scenic value which are planted in public areas such as parks and public schools or along public roads. Its primary objective is to preserve the cool, fresh, and healthful climate of public spaces and to ensure that the plants in these areas are not cut down, injured, or destroyed.

Republic Act No. 7076 or the People's Small-Scale Mining Act of 1991⁹⁴ was promulgated to promote and develop viable small-scale mining activities in the country in order to generate more employment opportunities. It recognizes the need to lay down guidelines for a systematic and orderly implementation of small-scale mining activities and utilization of mineral resources such as: the recognition of easement and ownership rights, the formation of regulatory boards, and the protection of land areas.

Republic Act No. 7586 or the National Integrated Protected Areas System Act of 1992⁹⁵ was enacted to establish integrated protected areas in recognition of the critical importance of protecting the country's diverse natural resources in the environment from an increasing population. The areas

⁹⁰ An Act to Prohibit the Cutting of Tindalo, Akle, or Molave Trees, under Certain Conditions, and to Penalize Violations Thereof, Act No. 3572 (1929).

⁹¹ 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, § 89(A) (1975).

⁹² Promulgating the Plant Quarantine Law of 1978, Thereby Revising and Consolidating Existing Plant Quarantine Laws to Further Improve and Strengthen the Plant Quarantine Service of the Bureau of Plant Industry [Plant Quarantine Decree of 1978], Presidential Decree No. 1433.

⁹³ An Act to Prohibit the Cutting, Destroying or Injuring of Planted or Growing Trees, Flowering Plants and Shrubs or Plants of Scenic Value along Public Roads, in Plazas, Parks, School Premises or in any Other Public Ground, Republic Act No. 3571 (1963).

⁹⁴ An Act Creating a People's Small-scale Mining Program and For Other Purposes [People's Small-scale Mining Act of 1991], Republic Act No. 7076.

⁹⁵ An Act Providing for the Establishment and Management of National Integrated Protected Areas System, Defining its Scope and Coverage, and for Other Purposes [National Integrated Protected Areas System Act of 1992], Republic Act No. 7586.

established are notable for their biological uniqueness and significance. These protected areas are classified as strict nature reserve, natural park, natural monument, wildlife sanctuary, protected landscapes and seascapes, resource reserve, natural biotic areas, and other categories that may be established under international agreements. As of this time, there are 12 republic acts involving the creation of protected areas in the country. These are:

- a. RA No. 8978 or the Mt. Kitanglad Range Protected Area Act of 2000;
- b. RA No. 8991 or the Batanes Protected Area Act of 2000;
- c. RA No. 9106 or the Sagay Marine Reserve Law;
- d. RA No. 9125 or the Northern Sierra Madre Natural Park Act of 2001;
- e. RA No. 9154 or the Mt. Kanla-on Natural Park Act of 2001;
- f. RA No. 9237 or the Mt. Apo Protected Area Act of 2003;
- g. RA No. 9303 or the Mt. Hamiguitan Range Wildlife Sanctuary Act of 2004;
- h. RA No. 9304 or the Mt. Malindang Range Natural Park Act of 2004;
- i. RA No. 9486 or the Central Cebu Protected Landscape Act of 2007;
- j. RA No. 9494 or the Mimbilisan Protected Landscape Act;
- k. RA No. 9847 or the Mts. Banahaw-San Cristobal Protected Landscape Act of 2009; and
- l. RA No. 10067 or the Tubbataha Reefs Natural Park Act of 2009.

The Tubbataha Reefs Natural Park Act of 2009⁹⁶ was promulgated to ensure the protection and conservation of the globally significant value of the Tubbataha Reefs in Palawan. This is achieved by implementing a no-take policy in the area and ensuring sustainable and participatory management. In addition, widespread awareness of the preservation and conservation efforts of the Tubbatahan Reefs is promoted by the law.

Republic Act No. 7611 or the Strategic Environmental Plan (SEP) for Palawan Act,⁹⁷ primarily focuses on the implementation of environmental programs for Palawan. In recognition of Palawan's unique landscape and richness of its natural resources, it has become the policy of the State to specifically protect, preserve, and develop its natural resources. The SEP provides a comprehensive framework for the sustainable development of Palawan.

⁹⁶ An Act Establishing the Tubbataha Reefs Natural Park in the Province of Palawan as a Protected Area under the NIPAS Act (RA No. 7586) and the Strategic Environmental Plan (SEP) for Palawan Act (RA No. 7611), Providing for its Management and for Other Purposes [Tubbataha Reefs Natural Park (TRNP) Act of 2009], Republic Act No. 10067 (2010).

⁹⁷ An Act Adopting the Strategic Environment Plan for Palawan, Creating the Administrative Machinery to its Implementation, Converting the Palawan Integrated Area Development Project Office to its Support Staff, Providing Funds Therefor, and for Other Purposes [Strategic Environmental Plan (SEP) for Palawan Act], Republic Act No. 7611 (1992).

Republic Act No. 7942 or the Philippine Mining Act of 1995⁹⁸ is often cited in environmental cases. Its primary objective is to regulate the exploration, development, utilization, and conservation of all mineral resources in both public and private lands. It lays down safeguards and regulations in order to ensure the preservation of the environment and the protection of the rights of affected communities where mining activities are present.

Republic Act No. 9072 or the National Caves and Cave Resource Management⁹⁹ and Protection Act was enacted to conserve, protect, and manage caves and cave resources as part of the country's natural wealth. It aims to strengthen cooperation and exchange of information between governmental authorities and people who utilize caves and cave resources for scientific, educational, recreational, tourism, and other purposes.

Republic Act No. 9147 or the Wildlife Resources Conservation and Protection Act¹⁰⁰ was promulgated to conserve and protect wildlife species and their habitats to promote ecological balance and enhance biological diversity. It also lays down the framework for the regulation of the collection and trade of wildlife and the initiation or support of scientific studies involving the conservation of biological resources. It therefore strengthens the Philippine's commitment to the protection of the country's wildlife and their habitats.

Republic Act No. 9175 or the Chain Saw Act of 2002¹⁰¹ specifically addresses the need to eliminate illegal logging and other forms of forest destruction which are often facilitated by the use of chain saws. It therefore regulates the ownership, possession, sale, transfer, importation and/or use of chain saws to prevent them from being used in illegal logging or unauthorized clearing of forests.

3. Marine and Aquatic Resources Laws

PD No. 979	Marine Pollution Decree of 1976
PD No. 1067	Water Code of the Philippines
RA No. 4850	Laguna Lake Development Authority Act
RA No. 8550	Philippine Fisheries Code of 1998
RA No. 9275	Philippine Clean Water Act of 2004
RA No. 9483	Oil Pollution Compensation Act of 2007

⁹⁸ An Act Instituting a New System of Mineral Resources Exploration, Development, Utilization, and Conservation [Philippine Mining Act of 1995], Republic Act No. 7942.

⁹⁹ An Act to Manage and Protect Caves and Cave Resources and for Other Purposes [National Caves and Cave Resources Management and Protection Act] Republic Act No. 9072 (2001).

¹⁰⁰ An Act Providing for the Conservation and Protection of Wildlife Resources and their Habitats, Appropriating Funds Therefor and for Other Purposes [Wildlife Resources Conservation and Protection Act], Republic Act No. 9147 (2001).

¹⁰¹ An Act Regulating the Ownership, Possession, Sale, Importation and Use of Chain Saws, Penalizing Violations Thereof and for Other Purposes [Chain Saw Act of 2002], Republic Act No. 9175.

Presidential Decree No. 979 or the Marine Pollution Decree of 1976¹⁰² was issued in recognition of the vital importance of the marine environment and the need to address the growing marine pollution in the country. The law prevents the further destruction of the marine environment by penalizing certain acts that cause marine pollution, such as dumping and discharging to rivers, brooks, and springs.

Presidential Decree No. 1067 or the Water Code of the Philippines¹⁰³ was promulgated in 1976 in order to consolidate the various water legislations. It establishes the framework for the appropriation, utilization, control, and conservation of water resources in the country in recognition of the increasing scarcity of water supply and resources. The law therefore seeks to provide proper management of the country's water resources to sufficiently meet future developments and needs.

Republic Act No. 4850 or the Laguna Lake Development Authority Act¹⁰⁴ was specifically created to establish a government body tasked with the protection and development of the Laguna Lake area. This law enumerates the powers and functions of such governing body in recognition of the need to properly manage the growth and development of the surrounding cities, provinces, and towns in the Laguna Lake area.

Republic Act No. 8550 or the Philippine Fisheries Code of 1998¹⁰⁵ was enacted by Congress to protect and conserve the fishing grounds in the country. It aims to achieve food security by limiting access to the fishery and aquatic resources of the Philippines, managing and developing the fishing areas in the country, supporting the fishery sector, and protecting the rights of fisherfolk. It strictly penalizes specific acts to ensure that environmental damage to fishing and aquatic areas are minimized, if not, eliminated.

Republic Act No. 9275 or the Philippine Clean Water Act of 2004¹⁰⁶ aims to preserve, and revive the quality of the country's fresh, brackish, and marine waters by promoting environmental strategies geared towards the protection of water resources. It also formulates an integrated water quality management framework for the utilization and development of the country's water supply and for the prevention of water pollution.

¹⁰² Providing for the Revision of Presidential Decree No. 600 Governing Marine Pollution [Marine Pollution Decree of 1976], Presidential Decree No. 979.

¹⁰³ A Decree Instituting a Water Code, Thereby Revising and Consolidating the Laws Governing the Ownership, Appropriation, Utilization, Exploitation, Development, Conservation and Protection of Water Resources [WATER CODE OF THE PHILIPPINES], Presidential Decree No. 1067 (1976).

¹⁰⁴ An Act Creating the Laguna Lake Development Authority, Prescribing its Powers, Function and Duties, Providing Funds Therefor, and for Other Purposes [Laguna Lake Development Authority Act], Republic Act No. 4850 (1966).

¹⁰⁵ 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.

¹⁰⁶ An Act Providing for a Comprehensive Water Quality Management, and for Other Purposes [Philippine Clean Water Act 9275], Republic Act No. 9275 (2004).

Republic Act No. 9483 or the Oil Pollution Compensation Act of 2007¹⁰⁷ was enacted by Congress to bring to life the provisions of the 1992 International Convention on Civil Liability for Oil Pollution Damage and the 1992 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage. This law recognizes the need to protect the country's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone. It adopts internationally accepted measures which impose strict liability for oil pollution damage and provides for a system of accessing an international fund which was established to compensate those who suffer damage caused by a tanker spill of cargo oil.

4. Aerial Law

RA No. 8749	Philippine Clean Air Act of 1999
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Republic Act No. 8749 or the Philippine Clean Air Act of 1999¹⁰⁸ espouses the constitutional right of the people to a balanced and healthful ecology. In recognition of the dangers of air pollution and the need for a clean habitat and environment, the law provides for an integrated air quality improvement framework designed to implement a management and control program to reduce emissions and prevent air pollution. It also provides for an air quality control action plan that shall be implemented to enforce appropriate devices, methods, systems, and measures to ensure air quality control.

5. Other Laws

PD No. 856	Code on Sanitation of the Philippines
RA No. 6969	Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990
RA No. 8371	Indigenous Peoples Rights Act of 1997
RA No. 9003	Ecological Solid Waste Management Act of 2000
RA No. 9729	Philippine Climate Change Act of 2009

Presidential Decree No. 856 or the Code on Sanitation of the Philippines¹⁰⁹ recognizes that the health of the people is of paramount importance; therefore, there is a need to improve public services that are directed towards the protection and promotion of health. The law provides guidelines for sanitary

¹⁰⁷ An Act Providing for the Implementation of the Provisions of the 1992 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, Providing Penalties for Violations Thereof, and for Other Purposes [Oil Pollution Compensation Act of 2007], Republic Act No. 9483.

¹⁰⁸ Philippine Clean Air Act [Philippine Clean Air Act of 1999], Republic Act No. 8749.

¹⁰⁹ Code on Sanitation of the Philippines [CODE ON SANITATION OF THE PHILIPPINES], Presidential Decree No. 856 (1975).

conditions of food establishments, public laundry, schools, public swimming or bathing places, bus stations, and more. The Department of Health (DOH) is tasked to regulate the proper sanitation conditions and monitor the covered premises for violations of sanitary conditions as provided for in this law.

Republic Act No. 6969 or the Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990¹¹⁰ was enacted by Congress to regulate, restrict, or prohibit the importation, manufacture, processing, sale, distribution, use and disposal of chemical substances and mixtures that present unreasonable risk and/or injury to health or the environment. It also prohibits the entry of hazardous materials and nuclear wastes into the country.

Republic Act No. 8371 or the Indigenous Peoples Rights Act of 1997¹¹¹ is also treated as an Environmental Law by virtue of its provisions protecting the ancestral domains and imposing the requirement upon project proponents to secure the Free Prior and Informed Consent of the affected Indigenous Peoples before the utilization of natural resources over their ancestral domains can be made.

Republic Act No. 9003 or the Ecological Solid Waste Management Act of 2000¹¹² recognizes the State's crucial responsibility to adopt a systematic, comprehensive and ecological solid waste management program. This is to ensure the protection of public health and the environment. The law sets guidelines and targets for solid waste avoidance and volume reduction and aims to ensure the proper segregation, collection, transport, storage, treatment and disposal of solid waste.

Republic Act No. 9729 or the Philippine Climate Change Act of 2009¹¹³ is a new development in Environmental Law. It declares as a policy of the State to "systematically integrate the concept of climate change in various phases of policy formulation, development plans, poverty reduction strategies and other developmental tools and techniques by all agencies and instrumentalities of the government."¹¹⁴

6. Provisions in Other Laws

Some laws contain provisions which are within the ambit of Environmental Law. Similar to the other laws previously cited, the applicable provisions of the following laws are also governed by the Rules of Procedure for Environmental Cases:¹¹⁵

¹¹⁰ An Act to Control Toxic Substances and Hazardous and Nuclear Wastes Providing Penalties for Violations Thereof, and for Other Purposes [Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990], Republic Act No. 6969.

¹¹¹ An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/Indigenous People, Creating a National Commission of Indigenous People, Establishing Implementing Mechanisms, Appropriating Funds Therefor, and for Other Purposes [Indigenous Peoples Rights Act], Republic Act No. 8371 (1997).

¹¹² 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.

¹¹³ 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.

¹¹⁴ *Id.* § 2.

¹¹⁵ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 1, §2(v).

- a. Commonwealth Act No. 141, The Public Land Act¹¹⁶
- b. Republic Act No. 6657, Comprehensive Agrarian Reform Law of 1988¹¹⁷
- c. Republic Act No. 7160, The Local Government Code¹¹⁸
- d. Republic Act No. 7161, Tax laws incorporated in the Revised Forestry Code and other environmental laws¹¹⁹
- e. Republic Act No. 7308, Seed Industry Development Act of 1992¹²⁰
- f. Republic Act No. 7900, High Value Crops Development Act¹²¹
- g. Republic Act No. 8048, Coconut Preservation Act¹²²
- h. Republic Act No. 8435, Agriculture and Fisheries Modernization Act of 1997¹²³
- i. Republic Act No. 9522, The Philippine Archipelagic Baselines Law¹²⁴
- j. Republic Act No. 9513, Renewable Energy Act of 2008¹²⁵
- k. Republic Act No. 9367, Biofuels Act of 2006¹²⁶

¹¹⁶ An Act to Amend and Compile the Laws Relative to Lands of Public Domain, [The Public Land Act], Commonwealth Act No. 141 (1936).

¹¹⁷ An Act Instituting a Comprehensive Agrarian Reform Program to Promote Social Justice and Industrialization, Providing the Mechanism for Its Implementation, and for Other Purposes, [Comprehensive Agrarian Reform Law of 1988], Republic Act No. 6657.

¹¹⁸ An Act Providing for a Local Government Code of 1991 [LOCAL GOVERNMENT CODE OF 1991], Republic Act No. 7160.

¹¹⁹ An Act Incorporating Certain Sections of the National Internal Revenue Code of 1977, as Amended, to Presidential Decree No. 705, as Amended, Otherwise Known as the "Revised Forestry Code of the Philippines," and Providing Amendments Thereto by Increasing the Forest Charges on Timber and Other Forest Products, Republic Act No. 7161 (1991).

¹²⁰ An Act to Promote and Develop the Seed Industry in the Philippines and Create a National Seed Industry Council and for Other Purposes, [Seed Industry Development Act of 1992], Republic Act No. 7308.

¹²¹ An Act to Promote the Production, Processing, Marketing and Distribution of High-Valued Crops, Providing Funds Therefor, and for Other Purposes, [High-Value Crops Development Act of 1995], Republic Act No. 7900.

¹²² An Act Providing for the Regulation of the Cutting of Coconut Trees, Its Replenishment, Providing Penalties Therefor and for Other Purposes, [Coconut Preservation Act of 1995], Republic Act No. 8048.

¹²³ An Act Prescribing Urgent Related Measures to Modernize the Agriculture and Fisheries Sectors of the Country in Order to Enhance Their Profitability and Prepare said Sectors for the Challenges of the Globalization Through an Adequate, Focused and Rational Delivery of Necessary Support Services, Appropriating Funds Therefor and for Other Purposes, [Agriculture and Fisheries Modernization Act of 1997], Republic Act No. 8435.

¹²⁴ An Act to Amend Certain Provisions of Republic Act No. 3046, As Amended by Republic Act No. 5446, to Define the Archipelagic Baselines of the Philippines and for Other Purposes, Republic Act No. 9522 (2009).

¹²⁵ An Act Promoting the Development, Utilization and Commercialization of Renewable Energy Resources and for Other Purposes, [Renewable Energy Act of 2008], Republic Act No. 9513.

¹²⁶ An Act to Direct the Use of Biofuels, Establishing for this Purpose the Biofuel Program, Appropriating Funds Therefor, and for Other Purposes, [Biofuels Act of 2006], Republic Act No. 9367 (2007).

7. Supplemental Laws

Apart from the general environmental laws, the Civil Code provisions on the abuse of rights, abatement of nuisance, easements and torts may also be used as a supplement to the general environmental laws in claiming damages.¹²⁷

a. Chapter Two on Human Relations

The Civil Code provisions on human relations seek to protect the rights and dignity of every person. It lays down the general basis for recovery of damages when there is bad faith or malice or if injury is inflicted upon a party, whether intentional or not, in ordinary contractual relationships between persons. In the absence of specific environmental laws to support one's claims for damages, the provisions on human relations can act as a supplement and serve as a legal basis. This covers Articles 19 to 28 of the Civil Code of the Philippines.

b. Abatement of Nuisance

Nuisance is defined as an "unreasonable activity or condition on the defendant's land which substantially or unreasonably interferes with the plaintiff's use and enjoyment of his property."¹²⁸ The provisions on nuisance may be used by plaintiffs to recover damages for environmental harm in the absence of or in addition to the applicable provisions in our environmental laws.¹²⁹

The application of the Civil Code provisions on the abatement of nuisance does not require a physical invasion of property.¹³⁰ Among the typical nuisance-causing agents are noise, dust, smoke, odors, airborne, or water-borne contaminants, and vermin and insects. Accordingly, plaintiffs may recover damages for injury caused by noise, dust, hazardous particles released by incinerators or oil refineries or those arising from groundwater contamination.¹³¹

Nuisance has two distinct branches: private and public. Private nuisance stems from interference on an individual's rights. Public nuisance stems from violations of public rights and causes pervasive and widespread harm.¹³² The Civil Code provisions on nuisance are found in Articles 694 to 707 of Title VIII of the Civil Code of the Philippines.

c. Easements

Easement is defined as "an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner."¹³³ In terms of use, an easement may either be continuous or discontinuous; and by its creation, an easement is established either by law (legal

¹²⁷ See ANTONIO A. OPOSA, *A LEGAL ARSENAL FOR THE PHILIPPINE ENVIRONMENT* (2009), at 86, 97, and 101.

¹²⁸ FRONA M. POWELL, *LAW AND THE ENVIRONMENT* 80 (1998).

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.* at 83.

¹³³ *Bicol Agro-Industrial Producers v. Obias*, G.R. No. 172077, Oct. 9, 2009, 603 SCRA 173, 186.

easement) or by the will of the parties (voluntary easement).¹³⁴ Easements are in the nature of an encumbrance on the servient estate or the estate on which the easement is made, thus constituting a limitation on the dominical right of the owner of the subjected property. They can be acquired only by title and by prescription.¹³⁵

The Civil Code provisions on easements may serve as legal basis for the recovery of environmental damages when flow of water, right of way, light and view, and drainage are disrupted. The general provisions on easements are found in Articles 634 to 636. Provisions on easements relating to waters are from Articles 637 to 648. Provisions on easement of right of way are from Articles 649 to 652. Provisions on easement of light and view are from Articles 667 to 673. Provisions on drainage of buildings are from Articles 674 to 676. Lastly, provisions on intermediate distances and works for certain constructions and plantings are from Articles 677 to 681.

d. Torts/Quasi-Delict

Where the act complained of does not fall under a specific violation of Environmental Law and there is evidence of recklessness or negligence resulting in harm to the environment, the Civil Code provisions on quasi-delict may apply. There is negligence when a person's conduct lacks the diligence required by the nature of the obligation.¹³⁶ Recklessness is conduct by a defendant which demonstrates a conscious disregard for a known risk of probable harm to others.¹³⁷

Under the rules on quasi-delict, the basic legal duty is to act with reasonable care.¹³⁸ A party may be held liable for activities which result in harm to others even though he did not act intentionally in causing the harm.¹³⁹ In environmental litigation, negligence is one of the arguments raised by those whose environmental rights are violated.¹⁴⁰ The Civil Code provisions on quasi-delicts are found in Articles 2176 to 2194.

¹³⁴ *Id.*

¹³⁵ *Cid v. Javier*, et al., G.R. No. L-14116, June 30, 1960, 108 Phil. 850, 852-53.

¹³⁶ CIVIL CODE, Art. 1173.

¹³⁷ POWELL, *supra* note 128, at 76.

¹³⁸ *Id.* at 84.

¹³⁹ *Id.* at 76.

¹⁴⁰ *Id.* at 84.



CHAPTER 2

PRINCIPLES ON THE RIGHT TO THE ENVIRONMENT AND THE DEVELOPMENT OF ENVIRONMENTAL JUSTICE

The Right to the Environment is a fundamental right of each person and need not even be written in the Constitution, for this right has existed since the inception of humankind.¹⁴¹ It is only now explicitly incorporated in the Constitution in order to highlight its continuing importance.¹⁴² Environmental Justice, meanwhile, is an evolving idea as there is no single universal definition for this simple yet powerful concept.

To better understand the concepts of the Right to the Environment and Environmental Justice, this chapter provides a general discussion on the basic principles on the Right to the Environment that underline the Rules of Procedure for Environmental Cases. These principles include: (1) Sovereignty over Natural Resources and the Obligation Not to Cause Harm; (2) Principle of Prevention; (3) Precautionary Principle; (4) Sustainable Development; and (5) Inter-generational Equity. A discussion of these principles is important for a better understanding of what Environmental Law and Environmental Justice are. It also provides an insight as to the very foundation of some of the concepts found in the Rules of Procedure for Environmental Cases. In addition to the discussion of these principles, this chapter also explores the concept of a Rights-based Approach and the development of Environmental Justice in the Philippines.

A. *Basic Principles on the Right to the Environment*

1. **Sovereignty Over Natural Resources and the Obligation Not to Cause Harm**

Since the 1970s, state sovereignty over natural resources is always read with the obligation not to cause harm.¹⁴³ Principle 21 of the Stockholm Declaration, which is the cornerstone of International Environmental Law,¹⁴⁴ reflects these principles:

States have, in accordance with the Charter of the United Nations 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.¹⁴⁵

The sovereign right over natural resources includes the right of the states to be free from external interference.¹⁴⁶ The exercise of state sovereignty, however, has its limits. Principle 21 provides that the

¹⁴¹ *Oposa*, 224 SCRA at 805.

¹⁴² *Id.*

¹⁴³ PHILIPPE SANDS, *PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW* 236 (2nd ed., 2003).

¹⁴⁴ *Id.*

¹⁴⁵ Declaration of the United Nations Conference on the Human Environment, Principle 21, June 16, 1972, U.N. Doc. A/Conf.48/14/Rev. 1(1973), 11 ILM 1416 (1972) [hereinafter Stockholm Declaration].

¹⁴⁶ SANDS, at 237-238.

state has the responsibility not to cause harm beyond the limits of its national jurisdiction.¹⁴⁷ The No-Harm Principle recognizes that a state's activities may be transboundary in nature and is also meant to balance the sovereign principle of states and require them to take responsibility for their actions which cause harm outside their own territory.

2. Principle of Prevention

The Principle of Prevention aims to stop environmental damage even before it occurs or when it is critical and potential damage may already be irreversible.¹⁴⁸

The Principle of Prevention should be differentiated from the Obligation Not to Cause Harm. The Obligation Not to Cause Harm deals with the effects of a state's activities outside its own territory without regard to activities that cause environmental harm within the state. The Principle of Prevention encompasses environmental harm within a state's own territory.¹⁴⁹

In applying this principle, action should be taken at an early stage to reduce pollution rather than wait for the irreversible effects to occur. For instance, the discharge of toxic substances in amounts which exceed the capacity that the environment can handle must be halted in order to ensure that no irreversible damage is inflicted. This is done to prevent irreversible harm for it is better to stop the pollution rather than commence efforts to clean the contaminated areas later in the day.¹⁵⁰

One of the methods by which this principle is carried out is through the issuance of permits or authorizations that set out the conditions of administrative controls and criminal penalties.¹⁵¹ Another application of this principle is the conduct of an Environmental Impact Assessment (EIA).¹⁵² In the Philippines, the governing law in the conduct of an EIA is PD No. 1586 entitled "Establishing An Environmental Impact Statement System, Including Other Environmental Management Related Measures and for Other Purposes."¹⁵³

The Principle of Prevention is based on the idea that it is better to prevent than employ measures, after harm has occurred, in order to restore the environment. This principle has been expanded by a relatively new principle – the Precautionary Principle.

¹⁴⁷ *Id.* at 235-236.

¹⁴⁸ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, *ratio.*, at 44 (citing Nicholas De Sadeleer, Environmental Principles: From Political Slogans to Legal Rules 61 [2002]).

¹⁴⁹ Max Valverde Soto, *General Principles of Environmental Law*, 3 ILSA J. INT'L & COMP. L. 193, 199-200 (1996).

¹⁵⁰ *Id.*

¹⁵¹ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, *ratio.*, at 45 (citing Nicholas De Sadeleer, Environmental Principles: From Political Slogans to Legal Rules 21, 72 [2002]).

¹⁵² Soto, *supra* note 149, at 200.

¹⁵³ Establishing an Environmental Impact Statement System, Including Other Environmental Management Related Measures and for Other Purposes, Presidential Decree No. 1586 (1978).

Leatch v. Natural Parks and Wildlife Service, 81 LGERA 270 (1993)

Facts: Section 92 of the National Parks and Wildlife Act 1974 (NSW) appoints a scientific committee to review and continuously examine the list of endangered fauna. The endangered fauna may be categorized under “threatened” or “vulnerable and rare.” Since the Director-General of the National Parks and Wildlife Service was appointed as the authority for the care and protection of fauna, the Director-General is the only person authorized to issue licenses to take or kill endangered fauna. The Director-General’s decision will take into consideration the fauna impact statement, submissions received, factors under Section 92(A)(5) and (6), and the reasons under Section 92(A)(3)(d). The Shoalhaven City Council applied for a license to take or kill endangered fauna, but this was not granted by the Director-General.

Issue: Whether the Shoalhaven City Council should be granted the license to take or kill endangered fauna.

Ruling: In applying the Precautionary Principle, the Court said that the Precautionary Principle is not an extraneous matter. “While there is no express provision requiring consideration of the ‘Precautionary Principle,’ consideration of the state of knowledge or uncertainty regarding a species, the potential for serious or irreversible harm to an endangered fauna and the adoption of a cautious approach in protection of endangered fauna is clearly consistent with the subject matter, scope and purpose of the Act.”

3. Precautionary Principle

Principle 15 of the Rio Declaration, commonly known as the Precautionary Principle states:

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.¹⁵⁴

This principle advocates that the potential harm should be addressed even with minimal predictability at hand.¹⁵⁵ The Precautionary Principle requires a high degree of prudence on the part of the stakeholders. Decision makers are not only mandated to account for scientific uncertainty but can also take positive action, e.g., restrict a product or activity even when there is scientific uncertainty.¹⁵⁶

Under Rule 20 of the Rules of Procedure for Environmental Cases, the Precautionary Principle is adopted as a rule of evidence. The Supreme Court’s adoption of the Precautionary Principle in the newly promulgated Rules of Procedure for Environmental Cases affords plaintiffs a better chance of proving their cases where the risks of environmental harm are not easy to prove.¹⁵⁷

¹⁵⁴ U.N. Conference on Environment and Development, Rio de Janeiro, Brazil, Rio Declaration on Environment and Development, Principle 15, June 3-14, 1992, U.N. Doc. A/CONF.151/26 (1992), 31 I.L.M. 874, 879 (1992) [hereinafter Rio Declaration].

¹⁵⁵ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, ratio., at 46 (citing Nicholas De Sadeleer, *supra* note 151, at 18).

¹⁵⁶ Lesley K. McAllister, *Judging GMOS: Judicial Application of the Precautionary Principle in Brazil*, 32 *ECOLOGY L.Q.* 149, 157-58 (2005).

¹⁵⁷ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 20.

4. Sustainable Development

Sustainable Development is the process of developing land, cities, businesses, communities, and so forth that “meets the needs of the present without compromising the ability of future generations to meet their own needs.”¹⁵⁸ The concept of Sustainable Development carries two key concepts. First, is the existence of needs with particular focus to the needs of the poor. Second, is that the environment has limitations in meeting the needs of present and future generations.¹⁵⁹

The Principle of Sustainable Development addresses the need to reconcile issues of development and environmental protection.¹⁶⁰ It 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 future generations.¹⁶¹ Non-renewable resources must be used as efficiently as possible.¹⁶² According to this principle, there must be optimal management of natural resources.¹⁶³

The Principle of Sustainable Development is embodied in the Philippine Agenda 21 which was formulated as a response to the country’s commitments in the 1992 Earth Summit in Rio de Janeiro, Brazil.

5. Intergenerational Equity

The concept of Intergenerational Equity supports the Principle of Sustainable Development with respect to holding the natural resources in trust for future generations.¹⁶⁴ Nevertheless, this principle does not stop there. Inter-generational Equity is defined as “each generation’s responsibility to leave an inheritance of wealth no less than what they themselves have inherited.”¹⁶⁵

In the landmark case of *Oposa v. Factoran*,¹⁶⁶ the Supreme Court had the occasion to discuss the concept of Intergenerational Responsibility. The case was instituted by minors along with their parents alleging that then Secretary of Natural Resources Fulgencio Factoran acted with grave abuse of discretion in issuing Timber License Agreements (TLAs) to cover more areas. Respondents alleged that the minors,

¹⁵⁸ Report of the World Commission on Environment and Development, U.N. Doc. A/RES/42/187 (Dec. 11, 1987).

¹⁵⁹ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, *ratio.*, at 42-43.

¹⁶⁰ ELLI LOUKA, INTERNATIONAL ENVIRONMENTAL LAW: FAIRNESS, EFFECTIVENESS, AND WORLD ORDER 52 (2006).

¹⁶¹ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, *ratio.*, at 42 (citing HARALD HOHMANN, PRECAUTIONARY LEGAL DUTIES AND PRINCIPLES OF MODERN INTERNATIONAL ENVIRONMENTAL LAW 2 [1994]).

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ Soto, *supra* note 149, at 206 (1996) (citing E. Brown Weiss, *Our Rights and Obligations to Future Generations for the Environment*, 84 AM. J. INT’L L. 198 [1990]).

¹⁶⁵ *Id.*

¹⁶⁶ *Oposa*, 224 SCRA 792 (1993).

who invoked the right to a balanced and healthful ecology, had no valid cause of action. On the issue of petitioner's standing, the Honorable Court held that the minors were entitled to sue on the basis of Inter-generational Responsibility. The Supreme Court through Justice Davide explained:

This case, 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.¹⁶⁷

B. Rights-based Approach

Environmental Justice stems from a growing recognition that the Right to the Environment is a fundamental human right which ought to be protected. The Rights-based Approach in Environmental Justice is reflected in various international instruments. The Universal Declaration of Human Rights provides for the "right to a standard of living adequate for health and well-being."¹⁶⁸ The right carries with it the Right to the Environment. Later on, the Stockholm Declaration, which is the primary document in International Environmental Law, would state in clear and express terms the Right to the Environment. Principle 1 of the Stockholm Declaration states:

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.¹⁶⁹

Subsequently, the Rio Declaration¹⁷⁰ contained 27 principles with a goal of ensuring the protection of the environment and promoting Sustainable Development. Principle 1 recognizes that human beings

¹⁶⁷ *Id.* at 802-803.

¹⁶⁸ Universal Declaration of Human Rights, G.A. Res. 217A (III) A, U.N. Doc. A/RES/217 (III), Art. 25 (1) (Dec. 10, 1948).

¹⁶⁹ Stockholm Declaration, *supra* note 145, Principle 1.

¹⁷⁰ Rio Declaration, *supra* note 154, Principle 1.

are “the center of concerns for sustainable development.”¹⁷¹ The Rio Declaration underlines the obligations of states not to cause harm beyond their jurisdiction,¹⁷² to meet the environmental needs of present and future generations,¹⁷³ and to consider environmental protection as an integral part of development.¹⁷⁴ The Rio Declaration also mandates states to eradicate poverty¹⁷⁵ and to give special attention to the least developed and environmentally vulnerable countries¹⁷⁶ emphasizing that in the cooperative process, states have common but differentiated responsibilities.¹⁷⁷ The Rio Declaration recognizes the importance of enjoining the citizens in addressing environmental issues¹⁷⁸ with particular emphasis on the role of women,¹⁷⁹ youth¹⁸⁰ and Indigenous Peoples¹⁸¹ in achieving sustainable development.

Under the Rights-based Approach, the right of persons to environmental protection has the same level as basic human rights.¹⁸² The adoption of this approach plays a crucial role in litigation because persons would be allowed to litigate on the basis of their right to a healthy environment in the same way that they can litigate for violations of their civil and socio-economic rights.¹⁸³

In line with the Rights-based Approach, there is a growing trend towards achieving Environmental Justice. Presently, the concept of Environmental Justice varies among groups. Some define Environmental Justice 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.”¹⁸⁴ Others view Environmental Justice as “the equitable distribution of burdens of the environmental harms among various groups.”¹⁸⁵ One author suggests that there are two fundamental principles of Environmental Justice namely: distributive and procedural justice.¹⁸⁶ In Environmental Justice, distributive justice refers

¹⁷¹ *Id.*

¹⁷² *Id.* Principle 2.

¹⁷³ *Id.* Principle 3.

¹⁷⁴ *Id.* Principle 4.

¹⁷⁵ *Id.* Principle 5.

¹⁷⁶ Rio Declaration, *supra* note 154, Principle 6.

¹⁷⁷ *Id.* Principle 7.

¹⁷⁸ *Id.* Principle 10.

¹⁷⁹ *Id.* Principle 20.

¹⁸⁰ *Id.* Principle 21.

¹⁸¹ *Id.* Principle 22.

¹⁸² RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, *ratio.*, at 49.

¹⁸³ *Id.* (citing Special Rapporteur’s Final Report, U.N. Doc. E/CN.4/Sub.2/1994/9 [July 6, 1994]).

¹⁸⁴ FENG LIU, ENVIRONMENTAL JUSTICE ANALYSIS: THEORIES, METHODS, AND PRACTICE 12 (2000) (citing Perlin, et al., 69 [1994]).

¹⁸⁵ JAMES SALZMAN & BARTON THOMPSON, JR., ENVIRONMENTAL LAW AND POLICY 38 (2nd ed., 2007).

¹⁸⁶ Manjula Amerasinghe, et al., *Enabling Environmental Justice: Assessment of Participatory Tools* (Environmental Department of the United Nations Institute for Training and Research) <<http://web.mit.edu/jcarmin/www/carmin/EnablingEJ.pdf>> (last accessed Nov. 25, 2010).

to the equitable distribution of environmental risks and harms.¹⁸⁷ Procedural justice, on the other hand, focuses on the right of the stakeholders to participate in decision-making processes concerning the environment and enabling them to access relevant information.¹⁸⁸

While the concept of Environmental Justice differs depending on the perspective of the individual or entity, the ultimate goal is to enhance the involvement of the people and to ensure access to justice. As a means of addressing these concerns, there is heavy emphasis on the policies, laws, and legal procedures.¹⁸⁹ In the context of the judicial system, Environmental Justice is tested in the light of the existence of adequate laws and policies, the quality of its enforcement, and the existence of available remedies for those affected by violations of the environmental laws and regulations.

C. Development of Environmental Justice in the Philippines

The Right to a Balanced and Healthful Ecology is oftentimes seen as a state policy having been placed under Article II of the 1987 Constitution or the Declaration of State Policies and Principles. The Right to the Environment, however, re-emerges under other constitutional provisions on social justice and human rights both of which are treasured concepts as early as the 1935 Constitution.¹⁹⁰

The Right to the Environment also falls under the complete concept of human rights which is sought to be protected by Section 1, Article III of the Constitution.¹⁹¹ Section 1, Article III of the Constitution states that “No person shall be deprived of life, liberty and property without due process of law x x x.”¹⁹² The right to life means the right to a good life,¹⁹³ which in turn requires a sound environment.

The Supreme Court affirmed the right to a healthy environment as an enforceable right in *Oposa v. Factoran*. Addressing the issue on whether the right to the environment constitutes a valid cause of action, the Supreme Court stated that the right to a balanced and healthful ecology carries with it the correlative duty to refrain from impairing the environment. The Honorable Court cited the plenary session of the 1986 Constitutional Commission in order to show the intent of the framers of the Constitution. Commissioner Azcuna, the proponent of Section 16, Article II answered Commissioner Villacorta’s query in this wise: “[t]he right to healthful (*sic*) environment necessarily carries with it the correlative duty of not impairing the same and, therefore, sanctions may be provided for impairment of environmental balance.”¹⁹⁴

¹⁸⁷ *Id.* (citing David Schlosberg, *Moral and Political Reasoning in Environmental Practice*, THE JUSTICE OF ENVIRONMENTAL JUSTICE: RECONCILING EQUITY, RECOGNITION AND PARTICIPATION IN A POLITICAL MOVEMENT 77-106 (A. Light & A. De-Shalit, Eds., 2003).

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, *ratio.*, at 60.

¹⁹¹ *Id.* (citing 4 RECORD CONSTITUTIONAL COMMISSION 688 [1986]).

¹⁹² PHILIPPINE CONSTITUTION, Art. III, § 1.

¹⁹³ JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 110 (2009) [hereinafter BERNAS, S.J., A COMMENTARY].

¹⁹⁴ *Oposa*, 224 SCRA at 805 (citing 4 RECORD OF THE CONSTITUTIONAL COMMISSION 913).

On the basis of the Right to the Environment, the Supreme Court proceeded to explain the state's correlative duty of protecting the same. Under Section 4 of EO No. 192,¹⁹⁵ the Department of Environment and Natural Resources (DENR) was tasked as the "primary government agency responsible for the conservation, management, development and proper use of the country's environment and natural resources, specifically forest and grazing lands of the public domain, as well as the licensing and regulation of all natural resources as may be provided for by law in order to ensure equitable sharing of the benefits derived therefrom for the welfare of the present and future generations of Filipinos."¹⁹⁶

While the DENR is designated the lead agency responsible for the conservation, management, development and proper use of the country's natural resources, this does not mean that the other agencies of the government do not have their corresponding obligations as regards environmental management and protection.

In the justice system, the promotion of Environmental Justice is couched in more specific terms. The five pillars of the justice system,¹⁹⁷ namely: the community, enforcement, prosecution, judiciary and penology have their respective roles in promoting Environmental Justice. The community is tasked to take an active participation in the promotion and enforcement of environmental laws and in the prevention of environmental damage. The enforcement pillar ensures the prompt and proper enforcement of environmental laws by the arrest of offenders and the seizure and disposition of the prohibited goods or paraphernalia, among other things. The prosecution is tasked with the determination of probable cause for the filing of an information for Environmental Law violations which are criminal in nature and the exercise of other prosecutorial functions. The judiciary is tasked to promulgate rules concerning the judicial remedies available for violations of environmental laws as well as resolve environmental cases filed before the courts. Finally, penology is tasked with the commitment of violators of environmental laws and the adoption of alternative means of sentencing offenders.

The Supreme Court plays a crucial role in Environmental Justice. Pursuant to Section 5, Article VIII of the Constitution, the Supreme Court is vested with the power to:

- (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the under-privileged. Such rule shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.¹⁹⁸

¹⁹⁵ Office of the President, Providing for the Reorganization of the Department of Environment, Energy and Natural Resources, Renaming It as the Department of Environment and Natural Resources, and for Other Purposes [Reorganization Act of the Department of Environment and Natural Resources], Executive Order No. 192, (1987).

¹⁹⁶ *Id.* § 4.

¹⁹⁷ The concept of the five pillars of justice was introduced by Atty. Sedfrey M. Candelaria, the current head of the Philippine Judicial Academy's Research, Publications and Linkages Office and Associate Dean of the Ateneo de Manila School of Law.

¹⁹⁸ PHILIPPINE CONSTITUTION, Art. VIII, § 5.

The authority to promulgate rules gives the Supreme Court the totality of administration of justice.¹⁹⁹ In 2009, the Supreme Court focused on the Right to a Healthy Environment by conducting a Forum on Environmental Justice in Baguio City, Iloilo City and Davao City. The forum aimed to address issues on the high cost of litigation, adopting innovative rules and ensuring compliance with the decisions of courts.²⁰⁰ The Supreme Court has also taken steps to hasten the process of resolving environmental cases by designating 117 green benches.²⁰¹ Through the Philippine Judicial Academy, the Supreme Court has established a long term capacity building program for the judges of the designated green benches.²⁰²

On April 13, 2010, the Supreme Court promulgated the Rules of Procedure for Environmental Cases. The Rules of Procedure for Environmental Cases is established with the following objectives:

- a. To protect and advance the constitutional right of the people to a balanced and healthful ecology;
- b. To provide a simplified, speedy and inexpensive procedure for the enforcement of environmental rights and duties recognized under the Constitution, existing laws, rules and regulations, and international agreements;
- c. To introduce and adopt innovations and best practices ensuring 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.²⁰³

In line with these objectives, the Rules of Procedure for Environmental Cases incorporate the following strategies:

- a. Liberalized legal standing and citizen's suit;
- b. Speedy Disposition of Cases;
- c. Special Remedies in the form of the Writ of Kalikasan, Writ of Continuing Mandamus, Environmental Protection Orders;
- d. Consent decree;
- e. Adoption of Strategic Lawsuit Against Public Participation (SLAPP).

Clearly recognizing the need to adopt a multi-sectoral framework in addressing environmental issues, the Supreme Court's next step is the greening of the other pillars of the judicial system namely: the community, enforcement, prosecution, and penology. The participation of these pillars within the framework of Environmental Justice shall be discussed in the succeeding chapters.

¹⁹⁹ BERNAS, S.J., A COMMENTARY, *supra* note 193, at 1002 (2009).

²⁰⁰ 2009 Supreme Court Annual Report.

²⁰¹ Supreme Court of the Philippines, Supreme Court Administrative Circular No. 23-2008 (Jan. 28, 2008).

²⁰² Justice Oswaldo D. Agcaoili, Role of the Philippine Judicial Academy in Environmental Law Dissemination, Enforcement, and Adjudication, Presentation delivered during the Forum of Environmental Justice: Upholding the Right to a Balanced and Healthful Ecology at the University of Cordilleras, Baguio City (April 16-17, 2009).

²⁰³ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 1, § 3.



CHAPTER 3

COMMUNITY

The community plays a vital role in the promotion of Environmental Justice as one of the pillars of the justice system. It includes citizens, corporations, non-governmental organizations and people's organizations, local government units and government agencies which do not form part of the traditional pillars of the justice system. This chapter will discuss the roles, rights and responsibilities of each stakeholder as well as the processes that can be undertaken at the community level. It is important to discuss their respective roles, rights and responsibilities because the disadvantaged groups of the community are the ones primarily affected by the effects of environmental degradation. This discussion also aims to uphold community empowerment in enforcing environmental laws.

The processes that may be undertaken by the members of this pillar are citizen suits, environmental impact assessments and Alternative Dispute Resolution (ADR). Each of these processes are discussed accordingly in this chapter.

A. Stakeholders

1. Citizens

A citizen is "a person who, by either birth or naturalization, is a member of a political community, owing allegiance to the community and being entitled to enjoy all its civil rights and protections."²⁰⁴ The 1987 Constitution of the Philippines provides that the citizens of the Philippines are:²⁰⁵

- (1) Those who are citizens of the country at the time of the adoption of this Constitution;
- (2) Those whose fathers or mothers are citizens of this country;
- (3) Those who were born before January 17, 1973, of Filipino mothers, and who elect Philippine citizenship upon reaching the age of majority, and;
- (4) Those who are naturalized according to law.

a. Roles of a Citizen

Citizens are the stewards of the environment and there is an inherent obligation in each and every citizen to preserve and care for the environment. Moreover, this obligation lies primarily with them because they are the ones who would greatly benefit from the utilization of the country's resources.

Pursuant to this, citizens are expected to participate and cooperate in the development and implementation of environmental laws. Some specific instances where the law stipulates that citizens or the private sector should participate in the implementation of environmental laws are in the Philippine Fisheries Code and in the National Caves and Cave Resources

²⁰⁴ BLACK'S LAW DICTIONARY 261 (Bryan A. Garner, Ed., 8th ed., 2007).

²⁰⁵ PHILIPPINE CONSTITUTION, Art. IV, § 1.

Management and Protection Act. The Philippine Fisheries Code provides that the private sector should coordinate with local government units (LGUs), Fisheries and Aquatic Resources Management Councils (FARMCs) and other concerned agencies for the establishment of a monitoring, control and surveillance system to ensure that the fisheries and aquatic resources in the Philippines are wisely utilized and managed on a sustainable basis, for the exclusive benefit and enjoyment of Filipino citizens.²⁰⁶ The National Caves and Cave Resources Management and Protection Act requires the scientific community and the academe to assess the archaeological, cultural, ecological, historical and scientific value of potentially significant caves.²⁰⁷

b. Rights of a Citizen

In terms of promoting access to justice in the field of Environmental Law, the following are the rights of citizens stated in the 1987 Philippine Constitution and Supreme Court decisions:

i. Right to the Environment

Citizens have the right to a balanced and healthful ecology in accord with the rhythm and harmony of nature.²⁰⁸ Simply stated, citizens enjoy the right to have the environment preserved, protected and advanced.²⁰⁹

ii. Right to Health

The Constitution provides that “the State shall protect and promote the right to health of the people and instill health consciousness among them.”²¹⁰ The Supreme Court in *Oposa v. Factoran* recognized that this right and the right to a balanced and healthful ecology need not even be written in the Constitution in order for citizens to have such rights because it is “assumed to exist from the inception of humankind.”²¹¹

iii. Right to Information

The Constitution expressly provides that the State shall recognize “the right of the people to information on matters of public concern and this includes access to official records and documents pertaining to official acts, transactions or decisions, subject to limitations prescribed by law.”²¹² This means that government agencies cannot exercise discretion in refusing disclosure of, or access to, information of public concern. While government agencies can impose reasonable regulations on the manner by which the Right to Information may be exercised by the public,²¹³

²⁰⁶ PHILIPPINE FISHERIES CODE, § 14.

²⁰⁷ NATIONAL CAVES AND CAVE RESOURCES MANAGEMENT AND PROTECTION ACT, § 6.

²⁰⁸ PHILIPPINE CONSTITUTION, Art. II, § 16.

²⁰⁹ *Oposa*, 224 SCRA at 802-03.

²¹⁰ PHILIPPINE CONSTITUTION, Art. II, § 15.

²¹¹ *Oposa*, 224 SCRA at 805.

²¹² PHILIPPINE CONSTITUTION, Art. III, § 7.

²¹³ *Legaspi v. CSC*, G.R. No. L-72119, May 29, 1987, 150 SCRA 530, 538.

this authority to regulate does not mean that government agencies have the power to prohibit. The Supreme Court ruled in *Legaspi v. CSC*,²¹⁴ to wit:

A distinction has to be made between the discretion to refuse outright the disclosure of or access to a particular information and the authority to regulate the manner in which the access is to be afforded. The first is a limitation upon the availability of access to the information sought, which only the Legislature may impose (Article III, Section 6, 1987 Constitution). The second pertains to the government agency charged with the custody of public records. Its authority to regulate access is to be exercised solely to the end that damage to, or loss of, public records may be avoided, undue interference with the duties of said agencies may be prevented, and more importantly, that the exercise of the same constitutional right by other persons shall be assured.²¹⁵

iv. Right to Represent Future Generations (Intergenerational Responsibility)

This right is anchored on the right of everyone, including future generations, to a balanced and healthful ecology. In the *Oposa* case, this principle was used to give legal standing to minors who “represent their generation as well as generations yet unborn”²¹⁶ in a case praying for the cancellation of the Timber License Agreements (TLAs) issued by the DENR.²¹⁷ Pursuant to this right, citizens have the legal standing to file actions against the government and other persons for violations of environmental laws.²¹⁸

v. Other Rights According to Law

Under the Chain Saw Act of 2000, citizens are entitled to an informer’s reward. A reward is given to any person who voluntarily gives information leading to the recovery or confiscation of an unregistered chain saw and the conviction of such persons charged with the possession thereof. The reward is equivalent to 20 percent of the value of the chain saw unit/s. Since the law used the word “any person,” the informer’s reward is not limited to Filipino citizens.²¹⁹

Similarly, the Revised Forestry Code provides for an informer’s reward equivalent to 20 percent of the proceeds of the confiscated forest products. Section 77-B of the law states that “[any] person who shall provide any information leading to the apprehension and conviction of any offender for any violation of this Code, or other forest laws, rules and regulations, or confiscation of forest products, shall be given a reward in the amount of 20 percent of the proceeds of the confiscated forest products.”²²⁰

²¹⁴ *Id.*

²¹⁵ *Id.* at 539.

²¹⁶ *Oposa*, 224 SCRA at 796.

²¹⁷ *Id.*

²¹⁸ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 2, § 5.

²¹⁹ Chain Saw Act of 2002, § 8.

²²⁰ REVISED FORESTRY CODE OF THE PHILIPPINES, § 78(B).

Corollary to the aforementioned rights, citizens as stewards of the environment have the duty to protect and refrain from impairing it.²²¹ Citizens may be deputized by the proper government agencies to enforce environmental laws. For instance, the Revised Forestry Code states that the Department Head may deputize any qualified person to protect the forest and to conduct a citizen's arrest.²²² When effecting arrests for violation of environmental laws, citizens are also afforded the presumption of regularity in the performance of their functions.²²³

2. Private Enterprises and Corporations

a. Roles of Private Enterprises and Corporations

Private enterprises and corporations also take part in promoting Environmental Justice. These entities have the resources and machinery to preserve and protect the environment. While corporations are essentially a business medium whose primary purpose is to generate income, they have the duty to take into consideration the effects of their activities on the environment.²²⁴ The role of private enterprises and corporations in protecting the environment is gaining recognition. In fact, the Code of Corporate Governance Score Card provides an item that gauges the corporation's activities towards environmental protection.²²⁵

The Ecological Solid Waste Management Act of 2000 also provides that private organizations and entities are entitled to rewards, monetary or otherwise, for undertaking "outstanding and innovative projects, technologies, processes and techniques or activities in re-use, recycling and reduction."²²⁶

b. Rights and Duties of Private Enterprises and Corporations

Although private enterprises and corporations are composed of natural persons, their rights and duties are not the same as citizens because a corporation has a separate juridical personality.²²⁷ Hence, a corporation cannot file a case asserting the right to a balanced and healthful ecology in representation of the natural persons comprising the corporation. Furthermore, while the corporation's primary purpose is to profit from its undertakings or ventures, it also has a corollary duty to ensure compliance with Environmental Laws and to comply with the Environmental Impact Statement (EIS) process which will be discussed at length later in this chapter.

²²¹ See *Oposa*, 224 SCRA at 805.

²²² REVISED FORESTRY CODE OF THE PHILIPPINES, § 89.

²²³ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 11, § 1(b).

²²⁴ See JILL SOLOMON & ARIS SOLOMON, *CORPORATE GOVERNANCE AND ACCOUNTABILITY* 24 (2004).

²²⁵ The 2007 Corporate Governance Scorecard for Publicly-listed Companies <<http://www.sec.gov.ph/notices/CGSc%20Questionnaire%20FINAL.pdf>> (last accessed Nov. 25, 2010).

²²⁶ Solid Waste Management Act of 2000, § 45.

²²⁷ CESAR L. VILLANUEVA, *PHILIPPINE CORPORATE LAW* 20 (2001).

3. Non-governmental Organizations and People's Organizations

Non-governmental organizations (NGOs) are “private, non-profit voluntary organizations that are committed to the task of socio-economic development and established primarily for service.”²²⁸ For purposes of this book, NGOs are limited to environmental NGOs.

On the other hand, people's organizations (POs) are “bona fide association[s] of citizens with demonstrated capacity to promote the public interest and with identifiable leadership, membership and structure.”²²⁹ The members of POs are part of a sector who group themselves voluntarily to work for their own upliftment, development and greater good.

a. Roles of NGOs and POs

NGOs and POs have the same roles as citizens. In fact, they have strong roles in preserving and protecting the environment since they take concrete action against environmental violations.

Aside from pursuing environmental rights, they also participate in the development and implementation of environmental laws. The Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990 provides that a representative from a non-governmental organization on health and safety shall be appointed by the President to become a member of the Inter-Agency Technical Advisory Council.²³⁰ The Philippine Fisheries Code requires FARMCs to include NGOs as members.²³¹ The Solid Waste Management Act also engages the participation of NGOs by requiring a representative from an NGO, which has the principal purpose of promoting recycling and ensuring air and water quality, to be part of the National Solid Waste Management Commission.²³² The Philippine Clean Air Act requires NGOs and POs to participate and coordinate with the DENR for the purpose of determining whether or not to revise the designation of non-attainment areas and/or to expand its coverage.²³³

b. Rights and Duties of NGOs and POs

Basically, the rights and duties of NGOs and POs are the same as those of citizens except with respect to the right to file citizen suits. Their right to file an action before the courts against environmental violations stems from their juridical personality, which gives them the attributes of an individual including the right to sue and be sued, provided that they are duly registered with the Securities and Exchange Commission (SEC).²³⁴ In relation to these rights, they have the duty to represent the voiceless in the community in which they are based.

²²⁸ Jeni Esther R. Tugade, *Non-government Organizations, People's Organizations and the Legal System* (1992) (unpublished J.D. thesis, Ateneo de Manila University) (on file with the Professional Schools Library, Ateneo de Manila University), at 11.

²²⁹ PHILIPPINE FISHERIES CODE OF 1998, § 4(62).

²³⁰ Toxic Substances and Hazardous and Nuclear Wastes Control Act, § 7.

²³¹ PHILIPPINE FISHERIES CODE OF 1998, § 69.

²³² Solid Waste Management Act of 2000, § 4.

²³³ Philippine Clean Air Act of 1999, § 10.

²³⁴ VILLANUEVA, *supra* note 227, at 19.

4. Indigenous Cultural Communities and Indigenous Peoples

The Indigenous Peoples Rights Act of 1997 (IPRA) defines Indigenous Cultural Communities and Indigenous Peoples (ICCs/IPs) as:

A group of people or homogenous societies identified by self-ascription and ascription by other, who have continuously lived as an organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed customs, tradition and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and culture, became historically differentiated from the majority of Filipinos. ICCs/IPs shall likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains.²³⁵

a. Roles of the ICCs/IPs

The ICCs/IPs are stewards of their ancestral domain. They are tasked with the responsibility to maintain, develop, protect and conserve their ancestral domains or portions thereof.²³⁶

b. Rights and Duties of the ICCs/IPs

The ICCs/IPs have the following rights:

i. Right to Participate in Decision Making

The ICCs/IPs have the right to fully participate at all levels of decision making on matters affecting their rights, lives and destinies, through procedures determined by them.²³⁷ Although they have this right, they are not spared from the power of the State to pursue programs and policies for the ICCs/IPs. Nevertheless, ICCs/IPs are entitled to participate through consultations with the government prior to the implementation of these programs and policies even if such programs and policies are for their benefit.²³⁸ Furthermore, it is also mandatory for ICCs/IPs to be represented in policy-making bodies and local legislative councils.²³⁹

In relation to their Right to Participate in Decision Making, ICCs/IPs are entitled to the right to determine and decide their priorities for development which affects their lives, beliefs, institutions, spiritual well-being, and the lands they own, occupy or use.²⁴⁰

²³⁵ Indigenous Peoples Rights Act of 1997, § 3(h).

²³⁶ *Id.* § 9 and § 58.

²³⁷ *Id.* §16.

²³⁸ SEDFREY M. CANDELARIA, ET AL., *INDIGENOUS PEOPLES AND THE LAW: A COMMENTARY ON THE INDIGENOUS PEOPLES RIGHTS ACT OF 1997 (RA No. 8371)* 202 (2008).

²³⁹ Indigenous Peoples Rights Act of 1997, § 16.

²⁴⁰ *Id.* § 17.

ii. Right to Make a Free Prior and Informed Consent

Pursuant to their right to participate in decision making, ICCs/IPs also have the right to give a Free Prior and Informed Consent. This is defined as “the consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community.”²⁴¹

In order for their consent to fall under this definition, “it should be based on reliable and comprehensive information on the different options available and the consequences of the decision to be made.”²⁴² Furthermore, in relation to Contract Law concepts, the consent of ICCs/IPs must not be vitiated by mistake, violence, intimidation, undue influence or fraud, otherwise the contract will be voidable.²⁴³ ICCs/IPs must also be capacitated to give consent in order for their consent to be valid.²⁴⁴

iii. Right Against Any Form of Discrimination and the Right to Equal Opportunity and Treatment

The Constitution provides that everyone will be accorded equal protection of the laws.²⁴⁵ Pursuant to this, ICCs/IPs should be free from any form of discrimination and unequal treatment by virtue of their identities. The State is mandated to accord the ICCs/IPs with the same rights, protections and privileges enjoyed by everyone and these include employment rights,²⁴⁶ opportunities, basic services, educational and other rights and privileges.²⁴⁷

iv. Right to Their Ancestral Domain

The rights of ICCs/IPs to their ancestral domain are now given recognition and respect by law.²⁴⁸ In line with their rights of ownership and possession over their ancestral domain, they are also entitled to the following rights: the right to develop lands and natural resources, the right to stay in the territories, the right to be resettled by the State in case of displacement, the right to regulate the entry of migrants within their domains, the right to safe and clean air and water, the right to claim parts of reservations or areas within their ancestral domains which have been set aside for various purposes, and the right to resolve land conflicts according to their customary laws.²⁴⁹

²⁴¹ *Id.* § 3(g).

²⁴² U.N. Department of Economic and Social Affairs, *International Workshop of Methodologies Regarding Free Prior and Informed Consent and Indigenous Peoples*, U.N. Doc. PFII/2005/WS.2/12 (Jan. 17-19, 2005).

²⁴³ CIVIL CODE, Art. 1330.

²⁴⁴ CANDELARIA, ET AL., *supra* note 238, at 202.

²⁴⁵ PHILIPPINE CONSTITUTION, Art. III, § 1.

²⁴⁶ Indigenous Peoples Rights Act, § 23.

²⁴⁷ *Id.* § 21.

²⁴⁸ *Id.* § 11.

²⁴⁹ *Id.* § 7.

In addition to these rights, they are also entitled to the right to transfer land or property, and the right to redeem property when land or property has been transferred to a non-member of the particular ICCs/IPs. The right to redeem can be availed of when the consent of the ICCs/IPs is vitiated or obtained through fraud or if the transfer is for an unconscionable consideration.²⁵⁰

v. Right to Have Existing Property Rights Respected

This right is similar to the right of the ICCs/IPs to their ancestral domains. It says that ICCs/IPs who have existing and/or vested property rights within the ancestral domains will be respected.²⁵¹

vi. Priority Rights in the Harvesting, Extraction, Development or Exploitation of Any Natural Resources Within the Ancestral Domains

ICCs/IPs are entitled to priority rights in harvesting, extracting, developing or exploiting any natural resource within their ancestral domains.²⁵²

vii. Right to Maintain, Protect, and Have Access to Their Religious and Cultural Sites

The State is mandated to take effective measures in preserving, respecting, and protecting the burial sites of ICCs/IPs.²⁵³ It has therefore been declared by law unlawful to:

- a. Explore, excavate or make diggings on archeological sites of the ICCs/IPs for the purpose of obtaining materials of cultural values without the free and prior informed consent of the community concerned; and
- b. Deface, remove or otherwise destroy artifacts which are of great importance to the ICCs/IPs for the preservation of their cultural heritage.²⁵⁴

viii. Right to Have an Indigenous Justice System

ICCs/IPs are entitled “to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices within their respective communities and as may be compatible with the national legal system and with internationally recognized human rights.”²⁵⁵

As stewards of the environment, the ICCs/IPs have the duty to maintain ecological balance using their own practices and to initiate, undertake and participate in the reforestation of denuded areas and other development programs and projects, as well as to comply with the provisions of the IPRA.²⁵⁶

²⁵⁰ *Id.* § 8.

²⁵¹ *Id.* § 56.

²⁵² Indigenous Peoples Rights Act, § 57.

²⁵³ *Id.* § 33.

²⁵⁴ *Id.*

²⁵⁵ *Id.* § 15.

²⁵⁶ *Id.* § 9.

c. Indigenous Justice System

As previously mentioned, one of the rights of ICCs/IPs is the right to have their own justice system, conflict resolution institutions and peace building processes.²⁵⁷ The Indigenous Justice System is an alternative method of settling disputes which gives primary importance to the customs and practices of the Indigenous Peoples. It must be noted however that the right of ICCs/IPs to use their customary justice systems is not absolute because what the law speaks of is only primacy of its use.²⁵⁸

The Implementing Rules and Regulations (IRR) of the IPRA provides for the primacy of customary law over all conflicts related to ancestral domains and lands involving ICCs/IPs, such as but not limited, to conflicting claims and boundary disputes.²⁵⁹ For conflicts related to the ancestral domains or lands where one of the parties is a non-ICC/IP or where the dispute could not be resolved through customary law, it shall be heard and adjudicated in accordance with the Rules on Pleadings, Practice and Procedures adopted by the National Commission on Indigenous Peoples (NCIP).²⁶⁰

The justice systems of the ICCs/IPs within the Philippines differ from one another. In order for the practices of ICCs/IPs to be considered as their customary in settling disputes, two requirements must be present: (1) normativeness and (2) enforcement.²⁶¹

Examples of indigenous justice systems are the customary dispute settlement procedures of the *Tinoc-Kalanguya* tribe, an indigenous community located in Ifugao, Benguet, Pangasinan, Nueva Vizcaya and Nueva Ecija, and that of the *Dap'ai* in Western Bondoc.

The justice system of the *Tinoc-Kalanguya* tribe involves the presence of *lallakays*, recognized leaders in the tribe who are called to arbitrate disputes within the community or among themselves. Matters such as age, impartiality, experience, and the family and economic status of a person are considered in determining these leaders. The *lallakays* form a group, called the *tongtong* or *tongtongan*, and this group is considered as the highest arbitration body of the tribe.²⁶² The *tongtongan* is the arbiter over civil and criminal disputes within the tribe and their object is “to restore the cordial relationships among individuals or among communities.”²⁶³ Outsiders can also be subjected to the justice system of the tribe provided the former manifests his willingness to it.²⁶⁴

²⁵⁷ Indigenous Peoples Rights Act, § 15.

²⁵⁸ CANDELARIA, ET AL., *supra* note 238, at 192.

²⁵⁹ IPRA, IRR, Rule IX, § 1.

²⁶⁰ *Id.*

²⁶¹ Jennifer P. Humiding, *Interfacing National Law and Customary Law at the Barangay Level: Limitations of the State-Imposed Barangay Justice System Indigenous Communities (1998)* (citing PERFECTO V. FERNANDEZ, *CUSTOM LAW IN PRE-CONQUEST PHILIPPINES [1976]*) (unpublished J.D. thesis, Ateneo de Manila University) (on file with the Professional Schools Library, Ateneo de Manila University), at 48.

²⁶² *Id.* at 54.

²⁶³ *Id.*

²⁶⁴ *Id.*

As for the justice system of the *Dap'ai* in Western Bondoc, there is a set of elders which functions similar to a *Pangkat ng Tagapagkasundo*. The *Pangkat* listens to the truthful statements of the involved parties instead of hearing evidence. The parties who represent the litigants have to tell the truth, otherwise, they would lose their following.²⁶⁵

5. Government Agencies

The Community Pillar also involves government agencies the functions of which are not part of the traditional justice system. The following agencies which will be discussed play a key role in the implementation of environmental laws.

a. Department of Environment and Natural Resources

The lead agency tasked with the implementation of environmental laws is the DENR.²⁶⁶ The DENR consists of the Department Proper, Staff Offices, Staff Bureaus, and the regional/provincial/community natural resource offices.²⁶⁷ The Department Proper of the DENR includes the Office of the Secretary, Offices of the Undersecretaries, Offices of the Assistant Secretaries, Public Affairs Office, Special Concerns Office and the Pollution Adjudication Board (PAB).²⁶⁸

The PAB assumed the power of the defunct National Water and Air Pollution Control Commission with respect to the adjudication of pollution cases under RA No. 3931 and PD No. 984.²⁶⁹ The PAB exercises the following functions under PD No. 984:

SEC. 5. Powers and Functions.

X X X X

- (e) Issue orders or decisions to compel compliance with the provisions of this Decree and its implementing rules and regulations only after proper notice and hearing.
- (f) Make, alter or modify orders requiring the discontinuance of pollution specifying the conditions and the time within which such discontinuance must be accomplished.
- (g) Issue, renew, or deny permits, under such conditions as it may determine to be reasonable, for the prevention and abatement of pollution, for the discharge of sewage, industrial waste, or for the installation or operation of sewage works and industrial disposal system or parts thereof: *Provided, however,* That the Commission, by rules and regulations, may require subdivisions, condominiums, hospitals, public buildings and other similar human settlements

²⁶⁵ CANDELARIA, ET AL., *supra* note 238, at 193.

²⁶⁶ Office of the President, Providing for the Reorganization of the Department of Environment, Energy and Natural Resources, Renaming it as the Department of Environment and Natural Resources, and for Other Purposes, Executive Order No. 192, § 4 (1987).

²⁶⁷ *Id.* § 6.

²⁶⁸ *Id.*

²⁶⁹ *Id.* § 19.

to put up appropriate central sewerage system and sewage treatment works, except that no permits shall be required of any new sewage works or changes to or extensions of existing works that discharge only domestic or sanitary wastes from a single residential building provided with septic tanks or their equivalent. The Commission may impose reasonable fees and charges for the issuance or renewal of all permits herein required.

x x x x

- (j) Serve as arbitrator for the determination of reparations, or restitution of the damages and losses resulting from pollution.
- (k) Deputize in writing or request assistance of appropriate government agencies or instrumentalities for the purpose of enforcing this Decree and its implementing rules and regulations and the orders and decisions of the Commission.

x x x x

- (p) Exercise such powers and perform such other functions as may be necessary to carry out its duties and responsibilities under this Decree.²⁷⁰

Staff bureaus of the DENR have primary responsibility over their respective areas of expertise. They include the:

1. Forest Management Bureau (FMB);
2. Land Management Bureau (LMB);
3. Mines and Geosciences Bureau (MGB);
4. Environmental Management Bureau (EMB);
5. Ecosystems Research and Development Bureau (ERDB); and
6. Protected Areas and Wildlife Bureau (PAWB).

The general functions of the bureaus are listed herein for easier reference.

<i>Table 3.1 DENR Bureaus</i>	
Bureau	General Functions
Forest Management Bureau	Support the effective protection, development, occupancy management, and conservation of forest lands and watersheds ²⁷¹

²⁷⁰ Providing for the Revision of Republic Act No. 3931, commonly known as the Pollution Control Law, and for Other Purposes, [Pollution Control Decree] Presidential Decree No. 984, § 6 (1976).

²⁷¹ Forest Management Bureau, Mandate of the Forest Management Bureau <<http://forestry.denr.gov.ph/mandate1.htm>> (last accessed Nov. 25, 2010).

Continuation: Table 3.1 DENR Bureaus

Bureau	General Functions
Land Management Bureau	Administer, survey, manage, and dispose Alienable and Disposable lands and other government lands not placed under the jurisdiction of other government agencies ²⁷²
Mines and Geosciences Bureau	Administer and dispose minerals and mineral lands ²⁷³
Environmental Management Bureau	In charge of air, ²⁷⁴ water ²⁷⁵ and toxic and hazardous chemicals management, ²⁷⁶ environmental impact assessment system implementation, solid waste management ²⁷⁷ and secretariat assistance to the PAB, and environmental compliance and organizational performance ²⁷⁸
Ecosystems Research and Development Bureau	Principal research and development unit of the DENR ²⁷⁹
Protected Areas and Wildlife Bureau	Establish and manage protected areas, conserve wildlife, promote and institutionalize ecotourism, manage coastal biodiversity and wetlands ecosystems, conserve caves and cave resources, and inform and educate on biodiversity and nature conversation, among others ²⁸⁰

²⁷² Land Management Bureau, Mandate of the Land Management Bureau <<http://lmb.denr.gov.ph/history.html>> (last accessed Nov. 25, 2010).

²⁷³ Mines and Geosciences Bureau, Brief History of the Mines and Geosciences Bureau <<http://www.mgb.gov.ph/aboutus.aspx>> (last accessed Nov. 25, 2010).

²⁷⁴ Philippine Clean Air Act of 1999, § 34.

²⁷⁵ Philippine Clean Water Act of 2004, § 19.

²⁷⁶ Toxic Substances and Hazardous and Nuclear Wastes Control Act, § 6.

²⁷⁷ Solid Waste Management Act, § 8.

²⁷⁸ Environmental Management Bureau, Mandate of the EMB <<http://www.emb.gov.ph/plans&programs.htm>> (last accessed Nov. 25, 2010).

²⁷⁹ Ecosystems Research and Development Bureau, Profile of the Ecosystems Research and Development Bureau <http://erdb.denr.gov.ph/abt_prof.php> (last accessed Nov. 25, 2010).

²⁸⁰ Environmental Management Bureau, Mandate of the Protected Areas and Wildlife Bureau <http://www.pawb.gov.ph/index.php?option=com_content&view=article&id=41&Itemid=134> (last accessed Nov. 25, 2010).

b. Department of Agriculture

The Department of Agriculture (DA) is another government agency that plays a key role in Environmental Law. The functions of the DA, among others, are to promulgate and enforce all laws, rules and regulations governing the conservation and proper utilization of agricultural resources, and to provide integrated services to farmers and fishermen and other food producers on the production, utilization, conservation and disposition of agricultural and fishery resources.²⁸¹ Under the DA is the Bureau of Fisheries and Aquatic Resources (BFAR). The BFAR is tasked with the preparation and implementation of a Comprehensive National Fisheries Industry Development Plan, the issuance of licenses for the operation of commercial fishing vessels, and the issuance of identification cards to fishworkers engaged in commercial fishing, among others.²⁸²

Another bureau under the DA tasked with the implementation of environmental laws is the Bureau of Plant Industry. The Bureau is in charge of implementing and enforcing the provisions of the Plant Quarantine Decree of 1978. Pursuant to the said law, the Director of Plant Industry designates plant quarantine officers²⁸³ who shall have policy power and authority to carry out the following duties:

- (a) Inspect all carriers, crew/passenger luggage and incoming mails, in order to determine the presence of plants, plant products, and other materials capable of harboring plant pests, as well as, potential animal pests.
- (b) Enter into the [and] inspect any and all areas where plants, plant products, and other materials capable of harboring plant pests are landed, stored, and/or grown.
- (c) Examine imported plants, plant products, and other materials capable of harboring plant pests as well as potential animal pests and to administer necessary measures to ensure effective implementation of the provisions of [the Plant Quarantine Decree].
- (d) Inspect, administer treatment, if necessary; and issue phytosanitary certificates on plants, plant products, and other related materials intended for export, if the importing country so requires.
- (e) Confiscate and destroy or refuse entry of plants, plant products and potential animal pests involved in prohibited importations, as well as prohibited plants and plant products which exportation is, likewise, prohibited.
- (f) Perform such other duties as may be assigned to them.²⁸⁴

²⁸¹ Office of the President, Renaming the Ministry of Agriculture and Food as Ministry of Agriculture, Reorganizing its Units; Integrating All Offices and Agencies Whose Functions Relate to Agriculture and Fishery into the Ministry and for Other Purposes, Executive Order No. 116, § 5 (1987).

²⁸² PHILIPPINE FISHERIES CODE OF 1998, § 65.

²⁸³ Plant Quarantine Decree of 1978, § 9.

²⁸⁴ *Id.* § 10.

c. Department of Health

The Department of Health (DOH) is primarily responsible for the promulgation, revision, and enforcement of drinking water quality standards.²⁸⁵ In addition to his functions, the Secretary of Health as a member of the Inter-Agency Technical Advisory Council, shall also assist in the promulgation of rules and regulations for the enforcement and implementation of the Toxic Substances and Hazardous and Nuclear Wastes Control Act.²⁸⁶

d. Land Transportation Office

The mandate and main functions of the Land Transportation Office (LTO) involves the inspection and registration of motor vehicles and the issuance of licenses and permits, among others.²⁸⁷ Pursuant to these functions, they are tasked under the Philippine Clean Air Act to ensure that all motor vehicles and engines should first comply with the emission standards set in the said Act.²⁸⁸

e. Philippine Ports Authority

Pursuant to the declared policy of the State “to implement an integrated program of port development for the entire country,”²⁸⁹ the Philippine Port Authority (PPA) was created and has “general jurisdiction and control over all persons, corporations, firms or entities, existing, proposed or otherwise to be established within the different port districts in the Philippines and shall supervise, regulate and exercise its powers in accordance with the provisions of [PD No. 505].”²⁹⁰ Its powers and functions include the exercise of “over-all supervision over the port facilities of the large foreign petroleum companies in matters pertaining to safety, pollution and conservation in the harbors,”²⁹¹ and “regulatory and supervisory powers over the marine aspect of the administration and operation of port zones such as the Bataan Export Processing Zone, the proposed Jolo free port, Zamboanga, Parang in South Cotabato, and others.”²⁹²

f. Other Government Agencies

Other government agencies which are tasked to implement the main environmental laws listed in the Rules of Procedure for Environmental Cases are the Department of Transportation and Communication (DOTC), the Department of Education (DepED), the Department of Interior and Local Government (DILG), the Department of Foreign Affairs (DFA) and the Philippine Information Agency (PIA).

²⁸⁵ Philippine Clean Water Act of 2004, § 22(d).

²⁸⁶ Toxic Substances and Hazardous and Nuclear Wastes Control Act, § 7.

²⁸⁷ Land Transportation Office, Mandate and Main Functions of the Land Transportation Office <<http://www.lto.gov.ph/org.aspx>> (last accessed Nov. 25, 2010).

²⁸⁸ Philippine Clean Air Act, § 21(b).

²⁸⁹ Providing for the Reorganization of Port Administration and Operation Functions in the Country, Creating the Philippine Port Authority, Paving the Way for the Establishment of Individual, Autonomous Port/Industrial Zone Authorities in the Different Port Districts, and for Other Purposes, Presidential Decree No. 505, § 2 (1974).

²⁹⁰ *Id.* § 3.

²⁹¹ *Id.* § 5(l).

²⁹² *Id.* § 5(m).

The DOTC is the lead agency tasked with the implementation of the Oil Pollution Compensation Act of 2007;²⁹³ whereas, the other agencies mentioned above are tasked to implement the objectives of the Climate Change Act. In particular, the Climate Change Act provides that the DepEd should integrate climate change principles and concepts into the primary and secondary education subjects.²⁹⁴ With regard to the duty of the DILG, the Climate Change Act mandates the Department to facilitate the development of a training program dealing with climate change for LGUs.²⁹⁵ The DFA is tasked with the duty to review international agreements related to climate change and to make recommendations to the government for its ratification or compliance.²⁹⁶ Lastly, the PIA is charged with information dissemination on climate change matters.²⁹⁷

6. Environmental Entities Created by Law

Other environmental entities created by law are the following: (a) the Fisheries and Aquatic Resource Management Councils (FARMCs), (b) Inter-Agency Technical Advisory Council, (c) Laguna Lake Development Authority (LLDA), (d) National Commission on Indigenous Peoples (NCIP), (e) National Museum, (f) National Solid Waste Management Commission (NSWMC), (g) National Water Resources Board (NWRB), (h) Palawan Council for Sustainable Development (PCSD), (i) Pasig River Rehabilitation Commission (PRRC), (j) Philippine Coconut Authority and (k) Tubbataha Protected Area Management Board (TPAMB).

a. Fisheries and Aquatic Resource Management Councils

The Fisheries and Aquatic Resource Management Councils (FARMCs) were created “to institutionalize the major role of the local fisherfolks and other resource users in the community-based planning and implementation of policies and programs for the management, conservation, development and protection of fisheries and aquatic resources of the municipal waters.”²⁹⁸ There are FARMCs established on the national level and in all municipalities and cities abutting municipal waters, which are called NFARMCs and M/CFARMCs, respectively. Local governments can also create FARMCs on the barangay level called BFARMCs. Lake-wide FARMCs can also be established.²⁹⁹

b. Inter-Agency Technical Advisory Council

This Council was created under the Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990 and is attached to the DENR. The functions of the Council include, among others, assisting the DENR in the formulation of rules and regulations for the implementation of the said law.³⁰⁰

²⁹³ Oil Pollution Compensation Act of 2007, § 21.

²⁹⁴ Climate Change Act of 2009, § 15.

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ Office of the President, Creating Fisheries and Aquatic Resource Management Councils (FARMCs) in Barangays, Cities and Municipalities, Their Composition and Functions, Executive Order No. 240, § 1 (1995).

²⁹⁹ See PHILIPPINE FISHERIES CODE OF 1998, §§ 68-75.

³⁰⁰ Toxic Substances and Hazardous and Nuclear Wastes Control Act, § 7.

Laguna Lake Development Authority v. Court of Appeals, et al., G.R. No. 110120, March 16, 1994, 231 SCRA 292

Facts: On March 8, 1991, the Task Force Camarin Dumpsite of Our Lady of Lourdes Parish, Barangay Camarin, Caloocan City, filed a letter-complaint with the Laguna Lake Development Authority (LLDA) seeking to stop the operation of the garbage dumpsite in Tala Estate, Barangay Camarin, Caloocan City. After an onsite investigation and a public hearing, the LLDA issued a Cease and Desist Order ordering the City Government of Caloocan, Metropolitan Manila Authority, their contractors, and other entities, to stop dumping any form or kind of garbage and other waste matter at the Camarin dumpsite. The dumping operations was stopped by the City Government but was continued later on after a failed settlement. The LLDA issued another Alias Cease and Desist Order enjoining the City Government of Caloocan from continuing its dumping operations at the Camarin area. With the assistance of the Philippine National Police, LLDA enforced its Alias Cease and Desist Order by prohibiting the entry of all garbage dump trucks into the area. The Caloocan City Government filed with the Regional Trial Court (RTC) of Caloocan City an action for the declaration of nullity of the Cease and Desist Order, averring that it is the sole authority empowered to promote the health and safety and enhance the right of the people in Caloocan City to a balanced ecology within its territorial jurisdiction. The RTC issued a temporary restraining order enjoining the LLDA from enforcing its Cease and Desist Order. The LLDA contends that the complaint is reviewable both

c. Laguna Lake Development Authority

The Laguna Lake Development Authority (LLDA) was created pursuant to “the national policy to promote, and accelerate the development and balanced growth of the Laguna Lake area x x x and to carry out the development of the Laguna Lake region with due regard and adequate provisions for environmental management and control, preservation of the quality of human life and ecological systems, and the prevention of undue ecological disturbances, deterioration, and pollution.”³⁰¹ Moreover, as the lead agency tasked to regulate and monitor activities within and affecting the Laguna Lake region, it has the power to approve or disapprove all plans, programs and projects within the region and is empowered to institute the necessary legal proceedings in the event that the person or entity continues with the project without clearance from the authority.³⁰² For effective monitoring of the activities in Laguna de Bay, the LLDA has exclusive jurisdiction to issue permits.³⁰³

d. National Commission on Indigenous Peoples

The National Commission on Indigenous Peoples (NCIP) is the primary agency responsible for “the formulation and implementation of policies, plans and programs to promote and protect the rights and well-being of the ICCs/IPs and the recognition of their ancestral domains as well as their rights thereto.”³⁰⁴ The NCIP is an independent agency under the Office of the President.³⁰⁵ It is tasked to issue the appropriate certification to any individual, corporate entity, government agency, corporation or subdivision thereof for

³⁰¹ Laguna Lake Development Authority Act, § 1.

³⁰² *Id.* § 4(d).

³⁰³ *Id.* § 4(k).

³⁰⁴ Indigenous Peoples Rights Act, § 38.

³⁰⁵ *Id.* § 40.

Continuation: LLDA v. CA

upon the law and the facts of the case by the Court of Appeals and not by the RTC. The CA ruled that the LLDA had no power to issue a Cease and Desist Order.

Issue: *Whether the Laguna Lake Development Authority has the power to issue a Cease and Desist Order.*

Ruling: *Yes, the LLDA has the power to issue a Cease and Desist Order. It is specifically mandated under RA No. 4850 and its amendatory laws to carry out and make effective the declared national policy of promoting and accelerating the development and balanced growth of the Laguna Lake area and the surrounding provinces of Rizal and Laguna and the cities of San Pablo, Manila, Pasay, Quezon and Caloocan with **due regard and adequate provisions for environmental management and control, preservation of the quality of human life and ecological systems, and the prevention of undue ecological disturbances, deterioration and pollution.** Aside from the powers conferred upon it by law, an administrative agency has also such powers as are necessarily implied in the exercise of its express powers. In the exercise, therefore, of its express powers under its charter as a regulatory and quasi-judicial body with respect to pollution cases in the Laguna Lake region, the authority of the LLDA to issue a Cease and Desist Order is implied.*

the disposition, utilization, management and appropriation of a portion of the ICCs/IPs ancestral domain once the concerned ICCs/IPs have signified their consent.³⁰⁶

e. National Museum

The National Museum was created pursuant to the policy of the State “to pursue and support the cultural development of the Filipino people, through the preservation, enrichment and dynamic evolution of Filipino national culture, based on the principle of unity in diversity in a climate of free artistic and intellectual expression.”³⁰⁷ It is a trust of the government and is detached from the Department of Education, Culture and Sports (DECS) and from the National Commission of Culture and the Arts (NCCA).³⁰⁸

Some of its duties and functions are to “supervise restoration, preservation, reconstruction, demolition, alteration, relocation and remodeling of immovable properties and archaeological landmarks and sites,”³⁰⁹ and to “maintain, preserve, interpret and exhibit to the public the artifacts in sites of the Paleolithic habitation site of the possible earliest man to the Philippines, the Neolithic habitation of the ancient Filipino at the Tabon Caves, and other important archaeological sites.”³¹⁰

In connection with their duties and functions, the National Museum is authorized to deputize the Philippine National Police (PNP) and the Armed Forces of the Philippines (AFP) with respect to the: protection of newly discovered sites from illegal exploitation; reporting of discovery of archaeological sites; and preservation of important archaeological sites in danger of destruction.³¹¹

³⁰⁶ *Id.* § 44(m).

³⁰⁷ An Act Establishing a National Museum System, Providing for Its Permanent Home and for Other Purposes [National Museum Act of 1998], Republic Act No. 8492, § 2.

³⁰⁸ *Id.* § 3.

³⁰⁹ *Id.* § 7.18.

³¹⁰ *Id.* § 7.20.

³¹¹ *Id.* § 20.

f. National Solid Waste Management Commission

The National Solid Waste Management Commission (NSWMC) is primarily tasked to oversee the implementation of plans and policies aimed to achieve the objectives of the Ecological Solid Waste Management Act.³¹² In line with this, the NSWMC is tasked to prepare a national solid waste management framework.³¹³ It shall approve local solid waste management plans and review the implementation thereof.³¹⁴ In exercising its duties, the NSWMC is mandated to coordinate with the local government units.³¹⁵ The EMB provides secretariat support to the NSWMC. The Commission is under the Office of the President.³¹⁶

g. National Water Resources Board

The National Water Resources Board (NWRB) (formerly National Water Resources Council) is tasked with the control and regulation of the utilization, exploitation, development, conservation and protection of water resources.³¹⁷ It is the lead agency in the Philippine water sector the responsibilities of which include the formulation of policies, programs and standards, management and regulation of water-relative activities and the regulation and monitoring of water utilities.³¹⁸ It also has the authority to regulate the water tariffs of water districts. Upon the effectivity of EO No. 123, the authority to regulate water tariffs was transferred from the Local Water Utilities Administration to the NWRB.³¹⁹

The NWRB which was formerly under the DOTC is now under the administrative supervision of the DENR as an attached agency.³²⁰ The NWRB has policy-making, regulatory and quasi-judicial functions.³²¹

h. Palawan Council for Sustainable Development

The Palawan Council for Sustainable Development (PCSD) was created under the Strategic Environmental Plan (SEP) for Palawan Act and is charged with the governance, implementation and policy direction of the SEP, which is provided in the law.³²² The PCSD formulates plans and policies and coordinates with other government agencies in carrying out the provisions of the

³¹² Solid Waste Management Act, § 5.

³¹³ *Id.* § 5(a).

³¹⁴ *Id.* § 5(b) and (c).

³¹⁵ *Id.* § 5(d).

³¹⁶ *Id.* § 4.

³¹⁷ WATER CODE OF THE PHILIPPINES, Art. 3(d).

³¹⁸ National Water Resources Board <<http://www.nwr.gov.ph/>> (last accessed Nov. 25, 2010).

³¹⁹ Office of the President, Reconstituting the National Water Resources Board, Executive Order No. 123, § 6 (2002).

³²⁰ *Id.* § 4.

³²¹ National Water Resources Board <<http://www.nwr.gov.ph/>> (last accessed Nov. 25, 2010).

³²² Strategic Environmental Plan (SEP) for Palawan Act, § 16.

Act. It may call on any department, bureau or officer to assist it in its functions; enforce the provisions of the Act and perform such other functions as may be necessary among other things.³²³

The PCSD is under the Office of the President.³²⁴

i. Pasig River Rehabilitation Commission

The Pasig River Rehabilitation Commission (PRRC) was created to rehabilitate the Pasig River “to its historically pristine condition conducive to transport, recreation and tourism.”³²⁵ Its functions include, among others, the “[drawing] up of an updated and integrated Master Plan on the Rehabilitation of the Pasig River taking into account its potential for transportation, recreation and tourism, [abating] the dumping of untreated industrial wastewater and sewerage into the river including all acts and omissions in violation of the Pollution Control Law and other related laws, and [relocating] settlers, squatters and other unauthorized or unlawful occupants along its banks.”³²⁶

The PRRC replaced the Presidential Task Force on Pasig River Rehabilitation (PTFPRR), River Rehabilitation Secretariat (RSS) and the Pasig River Development Council (PRDC) and assumed all their functions, equipment and logistics.³²⁷

j. Philippine Coconut Authority

The Philippine Coconut Authority (PCA) replaced the defunct Coconut Coordinating Council, the Philippine Coconut Administration and the Philippine Coconut Research Institute.³²⁸ The PCA is in charge of formulating a general program for the development of the coconut and palm oil industry.³²⁹ It has the power to issue subpoenas to summon witnesses or require the production of documents in any investigation conducted pursuant to its powers and may impose punishment for contempt.³³⁰ The officer or agents of the PCA are authorized to “enter any house, building, or place where subsidized products are stored or kept, or when there are reasonable grounds to believe that said products are stored or kept thereat, so far as may be necessary to examine the same; to seize such products as are found to be unlawfully possessed or kept; and to stop and search any vehicle or other means of transportation when there are reasonable grounds to believe that the same unlawfully carries any subsidized coconut-based products.”³³¹ The PCA is the lead agency in implementing the provisions of the Coconut Preservation Act of 1995.³³²

³²³ *Id.* § 19.

³²⁴ *Id.* § 16.

³²⁵ EO No. 54, § 1.

³²⁶ *Id.* § 3.

³²⁷ *Id.* § 5.

³²⁸ Creating a Philippine Coconut Authority, Presidential Decree No. 232, § 6 (1973).

³²⁹ *Id.* § 3.

³³⁰ Revised Coconut Industry Code, Presidential Decree No. 1468, Art. II, § 3(n) (1978).

³³¹ *Id.* at Art. II, § 3(o).

³³² An Act Providing for the Regulation of the Cutting of Coconut Trees, Its Replenishment, Providing Penalties Therefor and for Other Purposes [Coconut Preservation Act of 1995], Republic Act No. 8048, § 7.



Cutting of coconut trees not under the Revised Forestry Code

The cutting of coconut trees is governed by a special law – Republic Act No. 8048 entitled “An Act Providing for the Regulation of the Cutting of Coconut Trees, Its Replenishment, Providing Penalties Therefor and for Other Purposes.” Under the said law, the PCA has the exclusive authority to grant permits for the cutting of coconut trees and may at its discretion delegate the power to issue permit to the city or municipal mayors. The cutting of coconut trees is allowed only when a permit is issued and solely under the instances enumerated in Section 4 of RA No. 8048.

As defined by Section 3(a) of RA No. 8048, a coconut tree is a “tall pinnate-leaved palm bearing a large edible fruit called the coconut.”

k. Tubbataha Protected Area Management Board

The Tubbataha Protected Area Management Board (TPAMB) is tasked with the management and administration of the Tubbataha Reefs Natural Park (TRNP).³³³ It is also the “sole policy-making and permit-granting body of the TRNP.”³³⁴ Some of its powers and functions are: “[deciding] matters relating to planning, resource use and protection, and general administration of the area in accordance with the management plan, [approving] budget allocations, proposals, work plans, action plans, guidelines for management of the TRNP in accordance with the management plan and its policies, and [establishing] productive partnership, with national and local agencies, local government units, local communities, the academe, non-governmental organizations, and such other institutions to ensure the conservation and management of the TRNP.”³³⁵

7. Local Government Units

Local government units (LGUs) are defined as “political subdivision[s] of a nation or state which [are] constituted by law and [have] substantial control of local affairs.”³³⁶ The political subdivisions of the country consist of provinces, cities, municipalities, barangays, and the autonomous regions in Muslim Mindanao and the Cordilleras.³³⁷

³³³ Tubbataha Reefs Natural Park (TRNP) Act of 2009, § 6.

³³⁴ *Id.* § 10.

³³⁵ *Id.* § 13.

³³⁶ BERNAS, S.J., A COMMENTARY, *supra* note 193, at 1074 (citing UP LAW CENTER CONSTITUTION REVISION PROJECT, Part II, 712 [1970]).

³³⁷ PHILIPPINE CONSTITUTION, Art. X, § 1.

The Constitution provides that “the State shall ensure the autonomy of local governments”³³⁸ and that “the territorial and political subdivisions shall enjoy local autonomy.”³³⁹ This means that local governments are “free to chart its own destiny and shape its future with minimum intervention from central government authorities.”³⁴⁰ The purpose of local autonomy is “to make local governments more responsive and accountable, and ensure their fullest development as self-reliant communities and make them more effective partners in the pursuit of national development and progress.”³⁴¹

a. Roles of LGUs

The role of LGUs is to aid the national government in enforcing environmental laws. Various environmental laws engage the participation of the LGUs or even task the LGUs with the primary responsibility for their implementation and enforcement.

In the field of forest management, the DENR’s forest management functions have been given to the LGUs.³⁴² The provinces and municipalities now have the power to enforce forestry laws, rules and regulations in community based forestry project areas, community watersheds and communal forests. Although there is no forest management function assigned to barangays,³⁴³ they may be designated or deputized by the DENR upon prior consultation with the local chief executives.³⁴⁴

The Philippine Fisheries Code also vests upon municipal and city governments jurisdiction over municipal waters defined by the Code as those bodies of water which “include not only streams, lakes, inland bodies of water and tidal waters within the municipality which are not included within the protected areas as defined under RA No. 7586 (The NIPAS Law), public forest, timber lands, forest reserves or fishery reserves, but also marine waters included between two lines drawn perpendicular to the general coastline from points where the boundary lines of the municipality touch the sea at low tide and a third line parallel with the general coastline including offshore islands and 15 kilometers from such coastline.”³⁴⁵ Accordingly, the LGU has the duty to enforce all fishery laws within its jurisdiction.

In addition, the Philippine Fisheries Code also contains provisions requiring the participation of LGUs such as the granting of demarcated fishery rights,³⁴⁶ the prohibition or

³³⁸ PHILIPPINE CONSTITUTION, Art. II, § 25.

³³⁹ PHILIPPINE CONSTITUTION, Art. X, § 2.

³⁴⁰ BERNAS, S.J., A COMMENTARY, *supra* note 193, at 1077 (citing *Limbona v. Mangelin*, G.R. No. 80391, Feb. 29, 1989, 170 SCRA 786, 794-95).

³⁴¹ *Id.*

³⁴² See RA No. 7160, Department of Environment and Natural Resources, Administrative Order No. 30 (1992); Department of Environment and Natural Resources and Department of the Interior and Local Government, Manual of Procedures for DENR-DILG-LGU Partnership on Devolved and Other Forest Management Functions, Joint Memorandum Circular No. 98-01 (1998) [hereinafter DENR JMC No. 98-01].

³⁴³ See LOCAL GOVERNMENT CODE OF 1991, §§ 389-390; DENR JMC No. 98-01, 5.4.

³⁴⁴ DENR JMC No. 98-01, 5.4.

³⁴⁵ PHILIPPINE FISHERIES CODE OF 1998, §§ 16 and 4(58).

³⁴⁶ *Id.* § 22.

Tano v. Socrates, G.R. No. 110249, Aug. 21, 1997, 278 SCRA 154

Facts: *The petitioners filed a petition for certiorari and prohibition praying that certain ordinances, orders and resolutions passed by the province of Palawan and the city of Puerto Princesa relating to the banning of shipments of live fish and lobster outside Puerto Princesa and the protection of marine coral dwelling, be declared as unconstitutional on the ground that the said ordinances deprive them of their right to due process of law and of their only means of livelihood.*

The respondents defended the validity of the ordinances by arguing that their issuance was a valid exercise of the Provincial Government's power under the general welfare clause of the Local Government Code of 1991 (LGC).

Issue: *Whether the ordinances are unconstitutional.*

Ruling: *No. The Supreme Court upheld the constitutionality of the ordinances. The Supreme Court held that LGUs are directed by the LGC to enact ordinances for the general welfare of the municipality and its inhabitants, which shall include, inter alia, ordinances that "[p]rotect the environment and impose appropriate penalties for acts which endanger the environment such*

limitation of fishery activities,³⁴⁷ and the registration of fish hatcheries, fish breeding facilities and private fishponds. In addition to the provisions of the Philippine Fisheries Code, law enforcement officers of LGUs are also authorized to enforce the said law and other fishery laws, rules and regulations.³⁴⁸

LGUs also have the primary responsibility to implement the provisions of the Ecological Solid Waste Management Act.³⁴⁹

Corollary to their role of aiding the national government in enforcing environmental laws, LGUs may promulgate ordinances geared towards environmental management and protection.³⁵⁰ The power of LGUs to promulgate these ordinances is based on their police power.³⁵¹

In relation to the Philippine Environmental Impact Assessment Statement System (PEISS), LGUs are given greater participation particularly with environmentally critical projects. The Planning and Development Officer (PDO) or Environment Natural Resources Officer (ENRO) of city or municipal governments directly affected by proposed environmentally critical projects are invited as Resource Persons of the EIA Review Committee, who will participate in deciding whether to issue an Environmental Compliance Certificate (ECC).³⁵² Furthermore, prior to the issuance of the ECC, the result of the EIA Study and the draft ECC are presented to the concerned LGUs for their inputs.³⁵³ Aspects of social acceptability in the

³⁴⁷ *Id.* § 23.

³⁴⁸ *Id.* § 124.

³⁴⁹ Ecological Solid Waste Management Act, § 10.

³⁵⁰ See LOCAL GOVERNMENT CODE OF 1991, § 16.

³⁵¹ *Tano v. Socrates, G.R. No. 110249, Aug. 21, 1997, 278 SCRA 154.*

³⁵² Environmental Impact Assessment Memorandum Circular No. 2010-14, 5.1.

³⁵³ *Id.* 5.2.

**Continuation:
Tano v. Socrates**

as dynamite fishing and other forms of destructive fishing xxx and such other activities which result in pollution, acceleration of eutrophication of rivers and lakes or of ecological imbalance.”

Furthermore, the centerpiece of LGC is the system of decentralization as expressly mandated by the Constitution. Indispensable thereto is devolution and the LGC expressly provides that “[a]ny provision on a power of a local government unit shall be liberally interpreted in its favor, and in case of doubt, any question thereon shall be resolved in favor of devolution of powers and of the lower local government unit. Any fair and reasonable doubt as to the existence of the power shall be interpreted in favor of the local government unit concerned.” Devolution refers to the act by which the National Government confers power and authority upon the various local government units to perform specific functions and responsibilities.

proposed project other than environmental aspects also fall within the jurisdiction of the LGUs. For this purpose, social acceptability is defined as the “acceptability of a project by affected communities based on timely and informed participation in the EIA process particularly with regard to environmental impacts that are of concern to them.”³⁵⁴

b. LGUs and the Enforcement of Environmental Laws in General

As mentioned earlier, LGUs are tasked to aid the national government in enforcing environmental laws. When LGUs fail to perform this duty however, the question arises on whether local governments can be prosecuted for non-enforcement of environmental laws.

As a general rule, the State cannot be sued without its consent.³⁵⁵ By way of an exception, the State can be sued if it waives its immunity from suit, that is, when the State gives an express or implied consent to be sued.³⁵⁶ The charter of LGUs or municipal corporations provides that they can sue and be sued and this serves as their general consent.³⁵⁷ Nonetheless, while the charters of LGUs empower them to sue and be sued, municipal corporations “do

share in the immunity of the sovereign. This is manifested in the principle that a municipal corporation cannot be made liable for the torts of its officers in their performance of governmental functions except in those instances where the law expressly makes them so liable.”³⁵⁸

In determining the suability of municipal corporations, it is important to determine whether they are performing governmental or proprietary functions. On the one hand, municipal corporations, or public officers acting in their behalf, are immune from suit when they are performing governmental functions. This is so because “municipal corporations, for example, like provinces and cities, are agencies of the State when they are engaged in governmental functions and therefore should enjoy the sovereign

³⁵⁴ Implementing Rules and Regulations (IRR) for the Philippine Environmental Impact Statement (EIS) System, DENR Administrative Order No. 2003-30, § 3(ff) (2003).

³⁵⁵ PHILIPPINE CONSTITUTION, Art. XVI, § 3.

³⁵⁶ See BERNAS, S.J., A COMMENTARY, *supra* note 193, at 1278-80.

³⁵⁷ LOCAL GOVERNMENT CODE OF 1991, § 22.

³⁵⁸ BERNAS, S.J., A COMMENTARY, *supra* note 193, at 1279.

immunity from suit.”³⁵⁹ On the other hand, they do not have immunity when they perform proprietary functions.³⁶⁰ LGUs or its public officers are exercising proprietary functions when they enter into commercial transactions. In such case, they “may be said to have descended to the level of an individual and can thus be deemed to have tacitly given [their] consent to be sued only when it enters into business contracts.”³⁶¹ Nevertheless, LGUs may still be immune from suit even if it is performing proprietary functions if such functions are incident to their government functions.³⁶²

Public officers can also be sued if the ultimate liability falls against them and not against the State.³⁶³ Public officers are those who, by direct provision of the law, popular election, or appointment by competent authority, take part in the performance of public functions in the Philippines, or perform public duties as an employee, agent or subordinate official of any rank or class.³⁶⁴ In such case, the suit is not against the State but one against the public officer in his personal capacity. Furthermore, “when a public officer goes outside the scope of his duty, particularly when acting tortiously, he is not entitled to protection on account of his office, but is liable for his acts like any private individual.”³⁶⁵

Aside from filing an action before the courts, a complaint may also be filed against public officers before the Office of the Ombudsman. This is a less costly alternative because one can file a complaint before the Ombudsman in any form or manner.³⁶⁶ The Office of the Ombudsman has the power to investigate any act or omission of any public official or agency when such act or omission appears to be illegal, unjust, improper or inefficient, to direct any public official to perform and expedite any act or duty required by law, and to stop, prevent and correct any abuse or impropriety in the performance of the public official’s duties.³⁶⁷ The Office of the Ombudsman also has the power to direct the officer concerned to take appropriate action against a public official, to recommend the latter’s removal, suspension, demotion, fine, censure or prosecution, and to ensure compliance thereof.³⁶⁸

B. Citizen Suits

The Rules of Procedure for Environmental Cases empower the community, in particular the citizens, by relaxing the rules on legal standing and allowing citizen suits. The Rules of Procedure for Environmental

³⁵⁹ *Municipality of San Fernando v. Judge Firme*, G.R. No. L-52179, April 8, 1991, 195 SCRA 692, 697.

³⁶⁰ *Id.*

³⁶¹ *U.S. v. Ruiz*, G.R. No. L-35645, May 22, 1985, 136 SCRA 487, 491.

³⁶² BERNAS, S.J., A COMMENTARY, *supra* note 193, at 1271. See *Bureau of Printing v. Bureau of Printing Employees Association*, G.R. No. L-15751, Jan. 28, 1961, 1 SCRA 340. See also *Mobil Philippines v. Customs Arrastre Service*, G.R. No. L-23139, Dec. 17, 1966, 18 SCRA 1120.

³⁶³ See BERNAS, S.J., A COMMENTARY, *supra* note 193, at 1272-73.

³⁶⁴ REVISED PENAL CODE, Art. 203.

³⁶⁵ *Palma v. Graciano*, G.R. No. L-7240, May 16, 1956, 99 Phil. 72, 75.

³⁶⁶ BERNAS, S.J., A COMMENTARY, *supra* note 193, at 1122.

³⁶⁷ PHILIPPINE CONSTITUTION, Art. XI, § 13.

³⁶⁸ *Id.*

Cases define citizen suits as actions which any Filipino citizen, in representation of others, including minors or generations yet unborn, may file in court to enforce rights or obligations under environmental laws. Except for violations of the Clean Air Act and the Solid Waste Management Act which have their own respective provisions, citizen suits shall be covered by the Rules of Procedure for Environmental Cases.³⁶⁹

Citizen suits under the Rules of Procedure for Environmental Cases enjoy the benefit of liberality on legal standing as well as the payment of legal fees. The payment of filing and other legal fees by the plaintiff is deferred until after the judgment is rendered and such shall be considered as the first lien on the judgment award.³⁷⁰ Similarly, under the Clean Air Act and the Ecological Solid Waste Management Act, the plaintiff is exempt from the payment of filing fees and the filing of an injunction bond for the issuance of a preliminary injunction.³⁷¹

The filing of a citizen suit usually involves the participation of NGOs and POs. Though the NGOs and POs can file the suits themselves, issues on legal standing may be better addressed if the members of the locality affected by the violation of environmental law are included.³⁷² In addition, the cause of action must be genuine and capable of being proven.³⁷³

One of the most important aspects of a citizen suit is evidence gathering.³⁷⁴ The Rules of Procedure for Environmental Cases address this problem by allowing the use of videos and pictures as evidence of the alleged violation of an environmental law.³⁷⁵ In cases when securing records from government agencies prove to be difficult, the remedy is to invoke the citizen's Right to Information in a separate proceeding to obtain the release of the information asked for.

In preparing the pleading, it is essential to state the defendant's continuous non-compliance or violation of the Environmental Law.³⁷⁶ The history of plaintiff's resort to other available legal remedies must also be explained in order to satisfy the rule on exhaustion of administrative remedies before recourse to the courts is made.³⁷⁷ [See Chapter VI-B for the procedure on filing citizen suits]

It must be noted that the plaintiff may opt to settle and terminate the proceedings of the case at any stage.³⁷⁸ This is allowed by the Rules of Procedure for Environmental Cases and is deemed as an alternative means of resolving disputes. [See Part D of this Chapter]

³⁶⁹ See *infra* Chapter VI-A.

³⁷⁰ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 2, § 12.

³⁷¹ Philippine Clean Air Act of 1999, § 41; Ecological Solid Waste Management Act of 2000, § 52.

³⁷² JEFFREY G. MILLER, CITIZEN SUITS: PRIVATE ENFORCEMENT OF FEDERAL POLLUTION CONTROL LAWS 132-37 (1987).

³⁷³ *Id.*

³⁷⁴ Atty. Rhia Muhi, Head of LRC-KSK Research Department, Statement made during the NGO Focus Group Discussion, Environmental Studies Institute of Miriam College (Oct. 25, 2010).

³⁷⁵ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 21, § 1.

³⁷⁶ See MICHAEL D. AXLINE, ENVIRONMENTAL CITIZEN SUITS 9-4 – 9-10 (1991).

³⁷⁷ *Id.*

³⁷⁸ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 3, § 10.

C. *Philippine Environmental Impact Statement System*

Stakeholder participation in the field of environmental management and protection is best displayed in the objectives for establishing the Philippine Environmental Impact Statement System (PEISS). The main objective of the PEISS is to require every project proponent to take the environment into consideration in the implementation of its project in order to provide adequate protection to the environment or at least minimize the project's potential negative impacts.

1. Background of the PEISS

Pursuant to the national environmental protection program of the country, PD No. 1151 was passed in 1979 which required all agencies and instrumentalities of the national government, including government-owned or controlled corporations, as well as private corporations, firms, and entities, to prepare, file and include an Environmental Impact Statement (EIS) in every action, project or undertaking which significantly affects the quality of the environment.³⁷⁹ The EIS contains the environmental impact of the proposed action, project or undertaking, its potential adverse environmental effect and alternatives to the proposed activity.³⁸⁰

Thereafter, PD No. 1586 was promulgated to give more teeth to this requirement. PD No. 1586 established the EIS System, which provided a systems-oriented and integrated approach to the filing of the EIS in coordination with the whole environmental protection program of the State.³⁸¹ This system was eventually called the PEISS. The PEISS was derived from the Environment Impact Assessment System of the United States which was embodied in the National Environmental Policy Act of 1969.³⁸²

2. Environmental Impact Assessment Process

a. Overview of the EIA Process

The PEISS consists of the Environmental Impact Assessment (EIA) process. It is defined as a “process of identifying and predicting the potential environmental impacts (including bio-physical, socio-economic and cultural) of proposed actions, policies, programmes and projects and communicating this information to decision-makers before they make their decisions on the proposed actions.”³⁸³

The EIA Process is a proponent-driven process wherein the Proponent applies for an Environmental Compliance Certificate (ECC) by submitting an EIS. The ECC is a “document issued by the DENR-EMB after a positive review of an ECC application, certifying that the Proponent has complied with all the requirements of the EIS System and has committed to implement its

³⁷⁹ PD No. 1151, § 4.

³⁸⁰ *Id.*

³⁸¹ Establishing An Environmental Impact Statement System, Including Other Environmental Management Related Measures and for Other Purposes [Act Establishing an Environmental Statement System], Presidential Decree No. 1586 (1963).

³⁸² ELY ANTHONY OUANO, COMMENTARIES ON THE ENVIRONMENTAL IMPACT ASSESSMENT PRACTICES 15 (2010).

³⁸³ *Id.* at 1 (citing NICK HARVEY, ENVIRONMENTAL IMPACT ASSESSMENT PROCEDURES, PRACTICE AND PROSPECTS IN AUSTRALIA 15 [1998]).

approved Environmental Management Plan.”³⁸⁴ The ECC contains a “summary of the information on the type, size and location of the project, environmental impacts, the mitigating measures and environmental management plan for the various government agencies to consider in their decision-making process.”³⁸⁵ This document is one of the requirements a Proponent must obtain before it can begin or continue a project. Without the ECC, the Proponent would not be able to acquire the necessary approval from other government agencies and LGUs,³⁸⁶ thereby effectively preventing it from proceeding with its project.

Republic of the Philippines v. City of Davao, G.R. No. 148622, Sept. 12, 2002, 388 SCRA 691

Facts: *The City of Davao filed an application with the Environmental Management Bureau (EMB) for a Certificate of Non-Coverage (CNC) for its proposed project, the Davao City Artica Sports Dome. The EMB denied the application on the ground that the proposed project was within an environmentally critical area and thus, the City of Davao should secure an Environmental Compliance Certificate (ECC) instead of a CNC. The City of Davao filed a petition for mandamus and injunction alleging that “its proposed project was neither an environmentally critical project nor within an environmentally critical area, thus, it was outside the scope of the [Environmental Impact Assessment] system.” The City of Davao argued that it was the ministerial duty of the EMB to issue the CNC after the submission of the required documents. The trial court granted the petition and issued a writ of mandamus compelling the EMB to issue a CNC. The trial court also ruled that a local government unit (LGU) is not covered under the EIS system. “The petitioners in this case filed a motion for reconsideration, which was denied. Hence, they filed a petition for review.*

Issue: *Whether local governments are covered under the EIS system.*

Ruling: *Yes, local governments are within the scope of the EIS system. Although the petition has been rendered moot and academic by virtue of a change of administration which filed a manifestation agreeing with the petitioner, the Court continued to decide the case. The Court ruled that local governments are within the scope of the EIS System. Section 16 of the Local Government Code provides that it is the duty of the LGUs to promote the peoples’ right to a balanced ecology. “Pursuant to this, an LGU, like the City of Davao, can not claim exemption from the coverage of [the EIS system]. As a body politic endowed with governmental functions, an*

³⁸⁴ Department of Environment and Natural Resources, Revised Procedural Manual for DENR Administrative Order No. 2003-30, Memorandum Circular No. 2007-02, 41 [Revised Procedural Manual for DAO No. 03-30] (Aug. 21, 2007) DENR MC No. 2007-02 states:

The attached Revised Procedural Manual for DAO 2003-30 is hereby being adopted, superseding the Procedural Manual (First Edition) for DAO 2003-30 issued as MC 2005-01 on January 5, 2005. This revised Manual integrates DENR MC 2007-08 issued on July 13, 2007 segregating from the EIA process the practice of prior submission of permits, clearances, licenses and other similar government approvals outside the EMB mandate. This revised Manual also integrates other EMB MCs issued in 2006 which provide for (a) clarifications in the PEISS implementation guidelines (MC 005 issued on December 19, 2006), (b) improvement in the ECC format/content for more timely and substantive advice of EIA Recommendations to other government entities for their consideration in their decision-making process (MC issued December 22, 2006) and (c) a manual on guidelines for focusing EIA Review to the most significant issues (EMB MC 2007-01 issued on March 9, 2007). x x x

³⁸⁵ OUANO, *supra* note 377, at 9.

³⁸⁶ Environmental Impact Assessment, Overview: Philippine EIA System <http://202.57.47.172/index.php?option=com_content&task=view&id=54&Itemid=69> (last accessed Nov. 25, 2010).

Continuation: Republic of the Philippines v. City of Davao

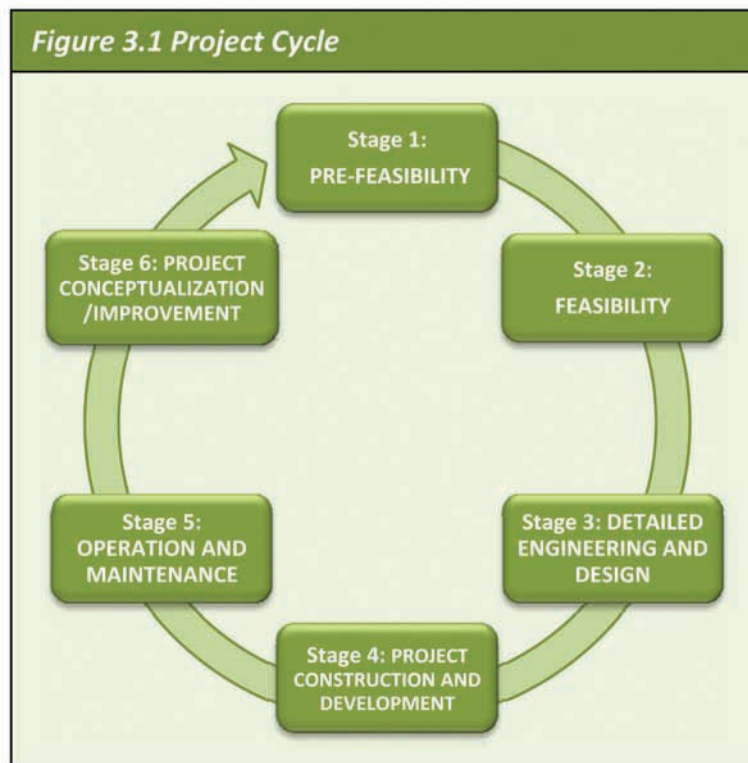
LGU has the duty to ensure the quality of the environment, which is the very same objective of [the EIS system].”

Furthermore, Section 4 of PD No. 1586 provides that “no person, partnership or corporation shall undertake or operate any such declared environmentally critical project or area without first securing an Environmental Compliance Certificate issued by the President or his duly authorized representative. The Civil Code defines a person as either natural or juridical. The State and its political subdivisions, i.e., the local government units are juridical persons. Undoubtedly therefore, local government units are not excluded from the coverage of PD No. 1586.”

Note that the EIS is different from the EIA since the EIS is a document, while the EIA is a process.³⁸⁷ The EIS must be filed by a Proponent in order to obtain an ECC. It is part of the EIA process.

Only projects covered by the EIA process are required to obtain an ECC. Projects which are not covered have to obtain a Certificate of Non-Coverage (CNC), instead of an ECC. These projects can apply for a CNC by completing and submitting a CNC application form to the DENR-EMB. These projects will be identified accordingly. The types of project which require an ECC or CNC will also be identified later on.

i. The EIA Process and the Project Cycle



³⁸⁷ OUANO, *supra* note 377, at 61.

The Project Cycle consists of the following stages:³⁸⁸

1. Pre-feasibility,
2. Feasibility,
3. Detailed Engineering and Design,
4. Project Construction and Development,
5. Operation and Maintenance,
6. Project Conceptualization/Improvement.

The EIA Process is designed to coincide with the Project Cycle at every stage beginning from Pre-feasibility to Project Conceptualization/Improvement. Hence, the environmental impacts of the project shall be determined and recommendations and guidance will be provided at various stages of the project cycle.

The most crucial stage in the EIA process is the Pre-feasibility Stage. In fact, Malacañang Administrative Order No. 42 directs Project Proponents to simultaneously conduct the environmental impact study, required by the ECC application, and the feasibility study of the proposed project.³⁸⁹ The reason for this is that “it is during the feasibility study when a Proponent defines its range of actions and considers the project alternatives, thus, it is the most ideal stage in the project cycle wherein the EIA study will have its most added value.”³⁹⁰

ii. The EIA Process and the Enforcement of Other Environmental Laws

The EIA Process is only part of the country’s environmental protection program. It supplements and complements other existing environmental laws by filling the gaps in certain environmental laws that lack precise definitions. By way of illustration, “the planting of greenbelts is not a requirement under any environmental law but is included in the ECC as a contractual obligation and commitment of the project Proponent to the DENR.”³⁹¹

³⁸⁸ Revised Procedural Manual for DAO No. 03-30, at 3.

³⁸⁹ Office of the President, Malacañang Administrative Order No. 42, Rationalizing the Implementation of the Philippine Environmental Impact Statement (EIS) System and Giving Authority in Addition to the Secretary of the Department of Environment and Natural Resources, to the Director and Regional Directors of the Environmental Management Bureau to Grant or Deny the Issuance of Environmental Compliance Certificates, § 2 (Nov. 2, 2002).

³⁹⁰ Revised Procedural Manual for DAO No. 03-30, at 2.

³⁹¹ *Id.* at 3.

iii. The EIA Process and Other Agencies' Requirements

As mentioned earlier, the EIA Process acts as a support system to the enforcement of other Environmental Laws. The findings in the EIA study will provide agencies with guidance and recommendations which can prove useful in evaluating the Proponent's project.³⁹² Therefore, the issuance of the ECC comes ahead of the issuance of permits by other pertinent government agencies. For this reason, no permit or clearance issued by any other government agency is required in processing ECC and CNC applications.³⁹³

b. Scope of the EIA Process

The EIA Process applies to projects which have been originally declared as Environmentally Critical Projects (ECPs) or projects in Environmentally Critical Areas (ECAs). In addition to these two, the DENR is authorized by law to expand the scope of the EIA process to include Non-Environmentally Critical Projects (NECPs) located in ECAs which may have significant impact on the environment.³⁹⁴ The Proponents of these projects are required to obtain an ECC. For those outside the coverage, they must acquire a Certificate of Non-Coverage (CNC) from the DENR.³⁹⁵

i. Environmentally Critical Projects and Environmentally Critical Areas

Presidential Decree No. 1586 states that the President, by proclamation, may declare certain projects, undertakings or areas in the country as environmentally critical.³⁹⁶ Pursuant to this, PD No. 2146 and PD No. 803 were issued establishing a list of ECP types and ECA categories. These are summarized in Table 3.2 on page 63.

The National Environmental Protection Council (NEPC) Secretariat issued in 1982 Office Circular No. 3 providing further clarifications in the list of ECPs and ECAs as stated in PD No. 2146. The aforesaid circular, however, overrode some of the provisions listed in the Presidential Decree. The legality of such circular has also been questioned on the ground that the NEPC Secretariat had no authority to issue it. Nevertheless, its legality has not been passed upon as of today.³⁹⁷

³⁹² *Id.*

³⁹³ Department of Environment and Natural Resources, Simplifying the Requirements for Environmental Compliance Certificate or Certificate of Non-Coverage Applications, DENR Memorandum Circular 2007-08.

³⁹⁴ PD No. 1586, § 4.

³⁹⁵ Revised Procedural Manual for DAO No. 03-30, at 41.

³⁹⁶ PD No. 1586, § 4.

³⁹⁷ OUANO, *supra* note 377, at 100.

Table 3.2 List of ECP Types and ECA Categories³⁹⁸

ECPs		ECA Categories
1. Heavy Industries	Non-ferrous Metal Industries, Iron and Steel Mills, Petroleum and Petrochemical Industries including Oil and Gas, Smelting Plants.	<ol style="list-style-type: none"> 1. All areas declared by law as national parks, watershed reserves, wildlife preserves, sanctuaries. 2. Areas set aside as aesthetic potential tourist spots. 3. Areas which constitute the habitat of any endangered or threatened species of wildlife (flora and fauna).
2. Resource Extractive Industries	Major Mining and Quarrying Projects, Forestry Projects (logging, major wood processing projects, introduction of fauna (exotic animals) in public and private forests, forest occupancy, extraction of mangrove products, grazing), Fishery Projects (dikes for/and fishpond development projects).	<ol style="list-style-type: none"> 4. Areas of unique historic, archaeological, or scientific interests. 5. Areas which are traditionally occupied by cultural communities or tribes. 6. Areas frequently visited and/or hard-hit by natural calamities (geologic hazards, floods, typhoons, volcanic activity, etc.). 7. Areas with critical slopes. 8. Areas classified as prime agricultural lands. 9. Recharged areas of aquifers. 10. Water bodies characterized by one or any combination of the following conditions: (a) tapped for domestic purposes; (b) within the controlled and/or protected areas declared by appropriate authorities; (c) which support wildlife and fishery activities. 11. Mangrove areas characterized by one or any combination of the following conditions: (a) with primary pristine and dense young growth; (b) adjoining mouth of major river systems; (c) near or adjacent to traditional productive fry or fishing grounds; (d) areas which act as natural buffers against shore erosion, strong winds and storm floods; (e) on which people are dependent for their livelihood.
3. Infrastructure Projects	Major Dams, Major Power Plants (fossil-fueled, nuclear fueled, hydroelectric or geothermal), Major Reclamation Projects, Major Roads and Bridges.	<ol style="list-style-type: none"> 12. Coral reefs characterized by one or any combination of the following conditions: (a)

³⁹⁸ Revised Procedural Manual for DAO No. 03-30, at 5 (citing Proclamation No. 2146 [1981] and Proclamation No. 803 [1996]).

ii. Types of Covered Projects

The projects covered by the EIA process are ECPs, projects in ECAs, and NECPs located in ECA's which the DENR-EMB deem to have a potential significant negative impact on the environment. These covered projects are categorized into five groups, each group having its own subgroup. It is important to know which group and subgroup a project falls under in order to determine the particular requirements a Proponent will have to submit in applying for an ECC. Figure 3.2 gives a quick visualization of the categorization of the covered projects.

Group 1 – Environmentally Critical Projects in either Environmentally Critical Areas or Non-Environmentally Critical Areas

Projects falling under the Group 1 category include: “All Golf Course projects; Heavy Industries, Fishery, Logging and Grazing projects with EIS requirement (with highest potential level of significance of impact); All projects introducing exotic fauna”

³⁹⁹ Revised Procedural Manual for DAO No. 03-30, at 6.

Group 2 – Non-Environmentally Critical Projects in Environmentally Critical Areas

This group includes: “Heavy Industries, Fishery, and Logging projects with IEE as the highest documentary requirement (with moderate to nil significance of impact); **Minor** wood processing projects, **Minor** mining and quarrying projects, **Minor** infrastructure projects in the same project types as listed in Proclamation No. 2146.”⁴⁰⁰ It also includes the 16 additional project types which are enumerated below may be located in any of the 12 ECAs.

Additional Project Types:

1. Agriculture industry
2. Buildings, storage facilities and other structures
3. Chemical industries
4. Demonstration and pilot projects
5. Environmental enhancement and mitigation projects
6. Food and related industries
7. Packaging materials and miscellaneous products industries
8. Pipeline projects
9. Textile, wood and rubber industries
10. Tourism industry
11. Transport terminal facilities
12. Waste management projects
13. Water supply, irrigation or flood control projects
14. Treasure hunting in NIPAS areas
15. Wildlife farming or any related project as defined by the Protected Areas and Wildlife Bureau.⁴⁰¹

Group 3 – Non-Environmentally Critical Projects in Non-Environmentally Critical Areas

All Group 2 project types which are outside ECAs fall under this group.⁴⁰²

Group 4 – Co-located projects in either Environmentally Critical Areas or Non-Environmentally Critical Areas

A co-located project is a group of single projects, under one or more proponents/locators, which are located in a contiguous area and managed by one administrator, who is also the ECC applicant.

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.*

⁴⁰² *Id.*

The co-located project may be an economic zone or industrial park, or a mix of projects within a catchment, watershed or river basin, or any other geographical, political or economic unit of area. Since the location or threshold of specific projects within the contiguous area will yet be derived from the EIA process based on the carrying capacity of the project environment, the nature of the project is called programmatic.⁴⁰³

Group 5 – Unclassified Projects

Projects which are not listed in any of the groups fall under this category. An example is a project using a new process or technology with uncertain impacts. This is merely an interim category and projects falling under this group will eventually be classified accordingly after EMB evaluation.⁴⁰⁴

Project Subgroups

Aside from Groups 3 and 5, each of the aforementioned groups has the following subgroups:

- a. New projects
- b. Existing projects with ECC with proposal for modification or resumption of operation
- c. Operating Projects without ECC – These are “currently operating projects [that] preceded the implementation of the PEISS (i.e., projects that were operational or implemented prior to 1982) are not covered by the EIS System unless these apply for modification or expansion falling within thresholds of covered projects under Groups [1] and [2].”⁴⁰⁵

As for Group 3, its subgroups include Enhancement and Mitigation Projects and all other Group 2 project types or sub types in NECA. Group 5 only includes new projects.

c. Documentary Requirements

As mentioned earlier, it is important to know which group a project falls under in order to determine the appropriate documentary requirements to submit. Below is a list of documents required from the proponent in conducting an EIA.

i. Environment Impact Statement

The Environment Impact Statement (EIS) is a “document, prepared and submitted by the project Proponent and/or EIA Consultant that serves as an application for an ECC. It is a comprehensive study of the significant impacts of a project on the environment. It includes an Environmental

⁴⁰³ *Id.*

⁴⁰⁴ *Id.* at 7.

⁴⁰⁵ Revised Procedural Manual for DAO No. 03-30, at 7.

Management Plan/Program that the Proponent will fund and implement to protect the environment.”⁴⁰⁶

ii. Initial Environmental Examination Report

The Initial Environmental Examination (IEE) Report is “a document similar to an EIS, but with reduced details and depth of assessment and discussion.”⁴⁰⁷

iii. Programmatic Environmental Impact Statement

The Programmatic Environmental Impact Statement (PEIS) is a “documentation of comprehensive studies on environmental baseline conditions of a contiguous area. It includes an assessment of the carrying capacity of the area to absorb impacts from co-located projects such as those in industrial estates or economic zones (ecozones).”⁴⁰⁸

iv. Programmatic Environmental Performance Report and Management Plan

The Programmatic Environmental Performance Report and Management Plan (PEPRMP) is a “documentation of actual cumulative environmental impacts of co-located projects with proposals for expansion. The PEPRMP should describe the effectiveness of current environmental mitigation measures and plans for performance improvement.”⁴⁰⁹

v. Environmental Performance Report and Management Plan

The Environmental Performance Report and Management Plan (EPRMP) is a “documentation of the actual cumulative environmental impacts and effectiveness of current measures for single projects that are already operating but without ECCs.”⁴¹⁰

3. Stages of the EIA Process/Procedure for ECC Application

The EIA Process has six consecutive stages:

1. Screening;
2. Scoping;
3. EIA Study and Report Preparation;
4. EIA Report Review and Evaluation;
5. Decision Making, and Monitoring; and
6. Validation and Evaluation/Audit.

⁴⁰⁶ *Id.* at 42.

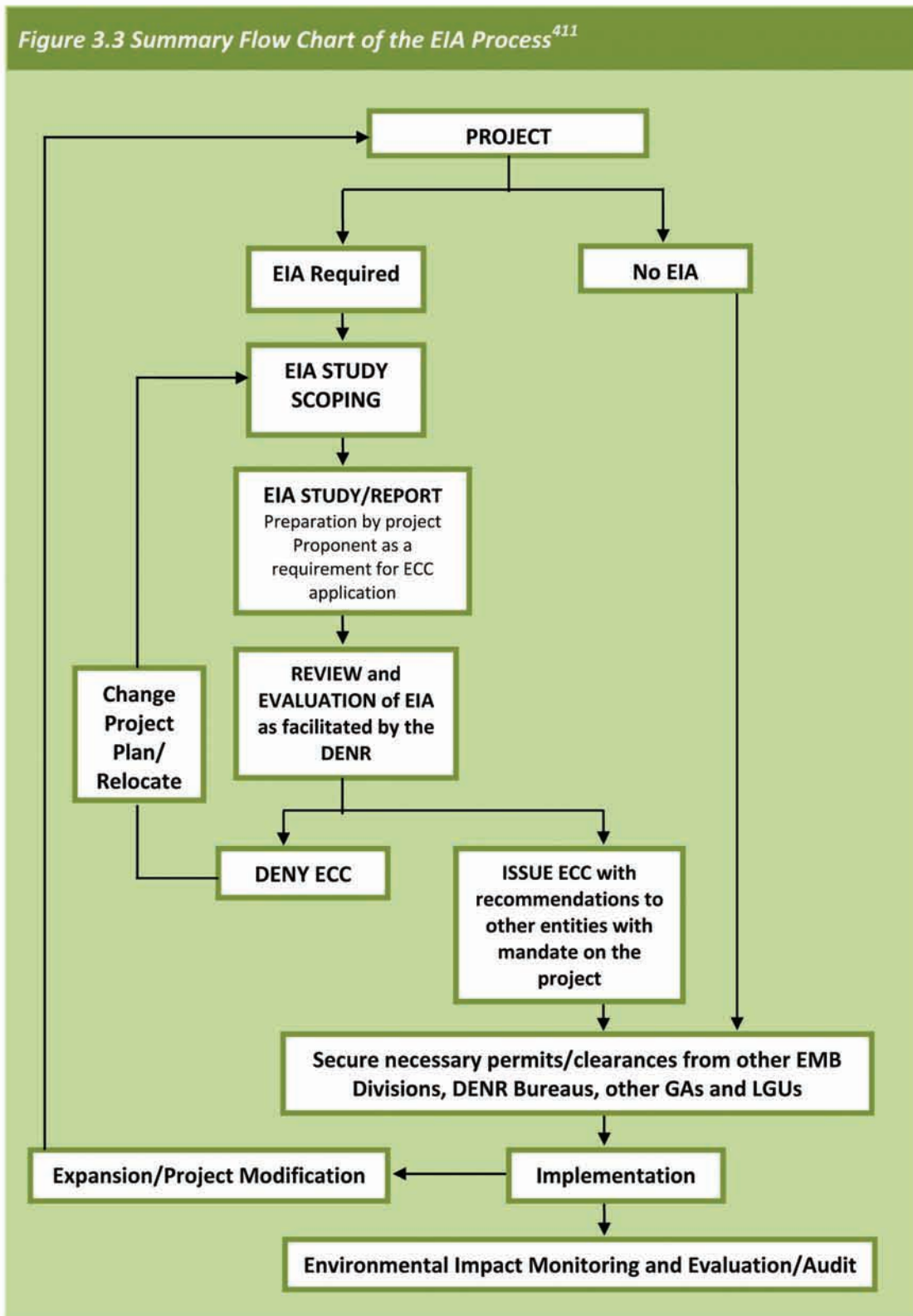
⁴⁰⁷ *Id.*

⁴⁰⁸ *Id.*

⁴⁰⁹ *Id.*

⁴¹⁰ *Id.*

Figure 3.3 Summary Flow Chart of the EIA Process⁴¹¹



⁴¹¹ Revised Procedural Manual for DAO No. 03-30, at 14.

Stages 1-3 are Proponent-driven while stages 4 and 5 are EMB-driven. Stage 6 is both initiated by the Proponent and the EMB.⁴¹²

Stage 1: Screening

The Screening stage is uniform in all ECC applications regardless of whether the project is single, co-located, new and existing, with or without ECCs, or proposing for resumption of operation or project expansion/modification. In this stage, it is determined whether a project is covered or not through the EIA Coverage and Requirements Screening Checklist (ECRSC).⁴¹³ The ECRSC is a self-screening tool for the Proponent to determine coverage under the PEISS and the corresponding requirements to comply with the system. In addition to this, the checklist also serves as a Site Inspection Report Form of the EMB for ECC/CNC application.⁴¹⁴

There is a slight variation in the stages depending on the type of document requirements to be submitted. The procedure shall be discussed per type of report required.

For ECC Applications Requiring a PEIS/EIS/PEPRMP/EPRMP

The following is the procedure to be used for ECC applications where the report type required is either a PEIS, EIS, PEPRMP or EPRMP.

Stage 2: Scoping

There are three levels of scoping activity: (1) Project Briefing meeting with review team; (2) Public Scoping with community; and (3) Technical Scoping with review team. Before going through the three levels, social preparation or information, education and communication of LGUs with jurisdiction over the project area shall be done first.⁴¹⁵ The Proponent initiates this activity, the result of which is used as a basis for the identification of stakeholders and issues in preparation for Public Scoping.

After the information, education and communication of LGUs, the Proponent shall request for public scoping with the EMB by submitting five sets of Pro-forma Letters of Request for Scoping with an attached Pro-forma Description for Scoping. These letters must also include a filled-out EIA Scoping/Procedural Screening Checklist (SPSC). However, SPSC is not required for projects in national waters outside LGU jurisdiction.⁴¹⁶

Within five (5) working days from receipt of the letter-requests, the EMB shall form the prospective Review Team which shall consist of an EMB Case Handler, third party EIARC members and/or Resource Persons. In coordination with the Proponent, the EMB shall confirm the date and venue of the Three-Level Scoping Activity.⁴¹⁷

⁴¹² Revised Procedural Manual for DAO No. 03-30, at 14.

⁴¹³ *Id.* at 16.

⁴¹⁴ *Id.*

⁴¹⁵ *Id.* at 18.

⁴¹⁶ *Id.*

⁴¹⁷ *Id.*

During the first level which is the Project Briefing with the Review Team, the Proponent shall present a project overview, key issues, proposed terms of reference of the EIA Study and the SPSC.⁴¹⁸ The second level, Public Scoping, is with project stakeholders. In this level, the community sector will raise their issues which shall be addressed in the EIA Study.⁴¹⁹ This level is not required for projects requiring PEPRMP, EPRMP Report Types and for projects in national waters that are outside of the jurisdiction of any LGU. In the third level, the SPSC presented by the Proponent during Project Briefing shall be reviewed, finalized and signed by the Review Team and the Proponent.⁴²⁰

After the Three-Level Scoping Activity, the EMB Case Handler shall review and approve the EIA SPSC, making official the final terms of reference of the EIA Study.⁴²¹

Stage 3: EIA Study and Report Preparation

In this stage, the Proponent shall undertake an EIA Study with the assistance of its EIA Preparer Team. This stage is wholly within the control of the proponent. The DENR-EMB is not allowed to take part in the EIA Study or in the preparation of the report.⁴²²

Stage 4: EIA Report Review and Evaluation

After conducting and preparing the EIA Study and EIA Report, the Proponent will submit a copy of the report and the filled-out Procedural Screening portion of the SPSC to the EMB for screening and evaluation. Within three (3) days from receipt of the EIA Report, the Screening Officer will validate the procedural screening done by the Proponent. If the document conforms to the rules provided, a copy of the validated SPSC shall be given to the Proponent, who will then be instructed to pay the filing fee, set up a Review Fund, and thereafter show the receipt to the EMB Case Handler for the processing of the application. Otherwise, the SPSC shall be returned.⁴²³

Once the aforementioned requirements have been fulfilled, the Proponent will submit the appropriate number of EIA Reports to the EMB Case Handler. Below is a table of the number of EIA Report copies required to be submitted.⁴²⁴

PEIS	EIS	PEPRMP	EPRMP
10 Hard + 1 CD	7 Hard + 1 CD	5 Hard + 1 CD	5 Hard + 1 CD

⁴¹⁸ Revised Procedural Manual for DAO No. 03-30, at 18.

⁴¹⁹ *Id.*

⁴²⁰ *Id.*

⁴²¹ *Id.* at 19.

⁴²² *Id.*

⁴²³ *Id.*

⁴²⁴ Revised Procedural Manual for DAO No. 03-30, at 19.

⁴²⁵ *Id.*

Stage 5: Decision Making

Once the Proponent submits the appropriate number of EIA Reports, the EMB-controlled review process shall begin. A Review Team composed of the EMB Case Handler, EIARC, and Resource Persons shall conduct the substantive review of the report. The review shall consist of a maximum of three meetings.

During the review, the Review Team is allowed only two additional information requests from the Proponent. If the Proponent fails to submit the Additional Information within the period prescribed by the Review Team, the review process would be terminated and the EIA Report would be automatically returned to the Proponent. The Proponent will be given one (1) year to resubmit without having to pay processing and other fees.⁴²⁶

The Review Team can also conduct site visits, public consultations, or public hearings depending on the Report Type required to be submitted.⁴²⁷ The options of the Review Team are summarized in Table 3.4 below.

Table 3.4 Options of the Review Team⁴²⁸

	PEIS	EIS	PEPRMP	EPRMP
Site Visit	Must	Must*	Optional	Optional
Public Hearing	Must	Must*	None	None
Public Consultation	[Not Applicable]	Will be required if Public Hearing is waived due to absence of: 1) significant mounting opposition, and 2) written request for Public Hearing, both based on valid concerns within the DENR/EMB mandate.	None	None

* Offshore projects are not covered by SV/PC/PH if there are no residents on site, no communities deriving livelihood from the site and project area is outside LGU jurisdiction.

After the meetings, the EIARC Chair shall submit the EIARC Report within five (5) days from the last EIARC meeting. When applicable, concerned EIARC members shall submit inputs to the EIARC Report within two (2) days, at the latest, from the last EIARC meeting.⁴²⁹

⁴²⁶ *Id.* at 20.

⁴²⁷ *Id.*

⁴²⁸ *Id.*

⁴²⁹ *Id.* at 21.

Within five (5) days from the receipt of the EIARC Report, the EMB Case Handler shall prepare and submit the Review Process Report (RPR)/Recommendation Document to the EIAMD Review Section Chief or EIAM Division Chief. Afterwards, the EMB Chief or EMB Director will endorse the recommendation and then issue the decision document which can either be an ECC or a letter of denial.⁴³⁰

If an ECC is issued, the EIARC Chair must sign Annex B of the ECC. This portion is mandatory because it contains the relevant EIA Findings and Recommendations to the Proponent on issues both within the DENR-EMB mandate and those within the jurisdiction of other concerned government agencies or LGUs.⁴³¹

If a denial letter is issued, an explanation of the reason for the disapproval of the application shall be given together with a guidance on how the application can be improved.⁴³²

After the issuance of the ECC, the EMB will transmit the ECC to the concerned government agencies and LGUs with a mandate on the project for the integration of recommendations into their decision-making process.⁴³³

The following table shows the time frame within which the EMB shall issue the decision on the ECC Application as well as the approving authority. The period begins once the application documents and the payment of the required processing and review fees are received by the EMB.⁴³⁴

Table 3.5 Period to Decide ECC Applications Requiring PEIS/EIS/PEPRMP/EPRMP⁴³⁵

Type of ECC Applications		Approving Authority	Maximum Processing Time Frame
ECP	Co-located applying for Programmatic ECC	DENR Secretary/ EMBDirector	40 working days
	Mining Projects		
	Forestry Projects		
	Other Types		
	EIS or PEPRMP-based	EMB Regional Director	20 working days
	IEE or EPRMP-based	EMB Regional Director	20 working days

⁴³⁰ Revised Procedural Manual for DAO No. 03-30, at 21.

⁴³¹ *Id.*

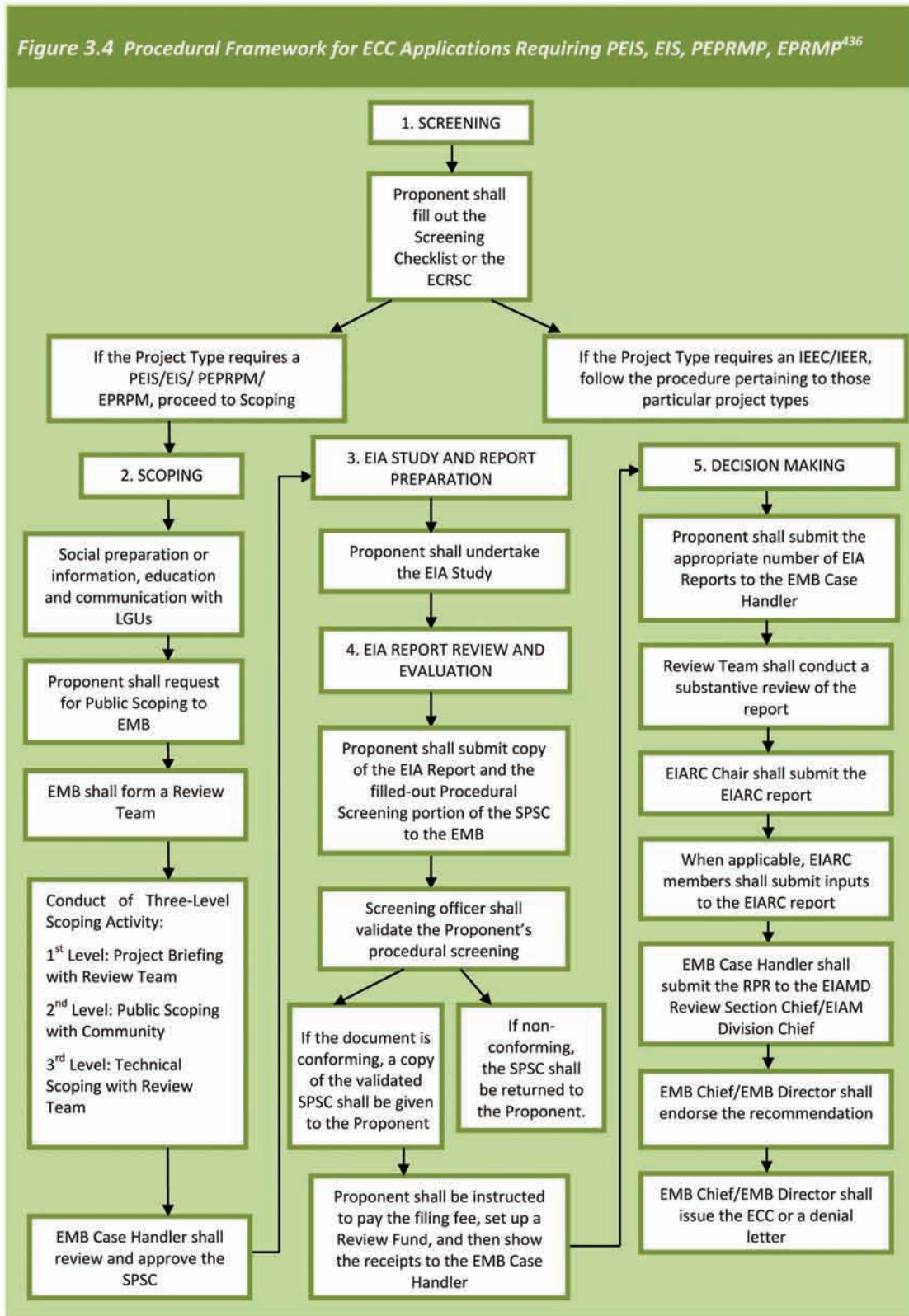
⁴³² *Id.*

⁴³³ *Id.*

⁴³⁴ Department of Environment and Natural Resources, Standardization of Requirements and Enhancement of Public Participation in the Streamlined Implementation of the Philippine EIS System, Memorandum Circular No. 2010-14, 6.2 (2010).

⁴³⁵ Revised Procedural Manual for DAO No. 03-30, at 22.

Figure 3.4 Procedural Framework for ECC Applications Requiring PEIS, EIS, PEPRMP, EPRMP⁴³⁶



⁴³⁶ *Id.* at 18-21.

For ECC Applications Requiring IEER/IEEC

The following are the procedures to be used for ECC applications where the Report Type required is either an IEER or IEEC.

Stage 2: Informal Scoping

This stage is optional and the choice is given to the Proponent. If the Proponent decides to undertake the Scoping process, a request shall be filed with the EMB. The Proponent and the EMB shall jointly fill out and sign the EIA Scoping/Procedural Screening Checklist (SPSC) at the Scoping meeting, and shall also be signed by both of them. This will serve as the official terms of reference of the IEER.⁴³⁷

Stage 3: EIA Study and Report Preparation

This stage is within the control of the Proponent since it is the Proponent who undertakes the IEE Study. The DENR-EMB is not allowed to take part in the study or in the preparation of the report.⁴³⁸

Stage 4: EIA Report Review and Evaluation

After conducting the study, the Proponent shall submit a copy of the IEER or IEEC and a filled-out Procedural Screening portion of the SPSC to the EMB for screening and evaluation.

If the report required to be filed is an IEER, the Screening Officer will validate the procedural screening done by the Proponent within three (3) days from receipt by the EMB of the IEER. If the report is an IEEC, the Screening Officer will validate the completeness of the IEEC, within one (1) day from receipt of the report, to ensure that the information is sufficient to make a decision on the application.⁴³⁹

If the document does not conform with the prescribed requirements, the same shall be returned. If the document is in conformity with the rules, the proponent will be instructed to pay the filing fee, set up a Review Fund, and then show the receipt to the EMB Case Handler to initiate the substantive review of the document.⁴⁴⁰

After complying with the aforementioned requirements, the Proponent will submit the appropriate number of reports. The following table⁴⁴¹ shows the number of copies required to be submitted.

IEER	IEEC
5 Hard + 1 CD	5 Hard + 1 CD

⁴³⁷ *Id.* at 22.

⁴³⁸ *Id.*

⁴³⁹ *Id.*

⁴⁴⁰ *Id.*

⁴⁴¹ Revised Procedural Manual for DAO No. 03-30, at 22.

⁴⁴² *Id.*

Stage 5: Decision Making

After submitting the reports, the EMB-controlled review process shall begin. As opposed to the procedure for PEIS/EIS/PEPRMP/EPRMP Report Types, the Case Handler may conduct the substantive review of the report alone. Should the Case Handler decide to review the IEER with a team, the Case Handler may invite EMB or DENR personnel with mandates on the key issues of the applications as reviewers. If the Report Type is an IEER, the Case Handler may also invite an additional external expert depending on the nature of the issue involved and the absence of internal expertise.⁴⁴³

The Case Handler alone or together with EMB or DENR Reviewers are allowed a maximum of two additional information requests from the Proponent for the duration of the review and a maximum of three Review Team meetings. They are allowed to conduct site visits or public consultations although these activities are always at the option of the EMB for both IEER and IEEC. A public hearing is not required for these Report Types.⁴⁴⁴

If the Proponent does not submit the additional information requested within the prescribed period, the review process will be terminated and the IEER or IEEC of the proponent will be automatically returned. In such a case, the Proponent has six (6) months to resubmit without having to pay for processing and other fees.⁴⁴⁵

After the meetings or after consideration by the Case Handler of the report, the Case Handler will submit the Review Report or the Draft Recommendation Document to the EIAMD Review Section Chief or the EIAM Division Chief.⁴⁴⁶ The EMB Chief or EMB Director will then endorse the recommendation and thereafter issue the decision document.

Upon the issuance of the ECC, the EMB will transmit the same to the concerned government agencies and LGUs that have a mandate on the project for the integration of recommendations into their decision-making process.⁴⁴⁷

The following table shows the time frame within which the EMB shall issue the decision on the ECC Application as well as the approving authority. The period begins once the application documents and the payment of the required processing and review fees are received by the EMB.⁴⁴⁸

⁴⁴³ *Id.* at 23.

⁴⁴⁴ *Id.*

⁴⁴⁵ *Id.* at 24.

⁴⁴⁶ *Id.*

⁴⁴⁷ Revised Procedural Manual for DAO No. 03-30, at 24.

⁴⁴⁸ Memorandum Circular No. 2010-14, 6.2.

Table 3.7 Period to Decide ECC Applications Requiring IEER/IEEC⁴⁴⁹

Type of ECC Applications		Approving Authority	Maximum Processing Time Frame
ECP	Co-located applying for Programmatic ECC	DENR Secretary/ EMB Director	40 working days
	Mining Projects		
	Forestry Projects		
	Other Types		
Non-ECPs	EIS or PEPRMP-based	EMB Regional Director	20 working days
	IEE or EPRMP-based	EMB Regional Director	20 working days

Stage 6: Monitoring, Validation and Evaluation/Audit

Although the Monitoring, Validation and Evaluation/Audit stage is not part of the issuing process of the ECC, it still forms part of the stages of the EIA process and is applicable to all types of ECC applications because it is concerned with the following:

- a. Project compliance with the conditions set in the ECC;
- b. Project compliance with the Environmental Management Plan (EMP);
- c. Effectiveness of environmental measures on prevention or mitigation of actual project impacts vis-à-vis the predicted impacts used as basis for the EMP design; and
- d. Continual updating of the EMP for sustained responsiveness to project operations and project impacts.⁴⁵⁰

The parties responsible for Monitoring, Validation and Evaluation/Audit of the ECC are the Proponent, the EMB, and Multi-partite Monitoring Teams (MMTs).⁴⁵¹

4. Fines, Penalties and Sanctions

Presidential Decree No. 1586 provides that “any person, corporation or partnership found violating Section 4 of this Decree, or the terms and conditions in the issuance of the Environmental Compliance Certificate, or of the standards, rules and regulations issued by the National Environmental Protection Council pursuant to this Decree shall be punished with [*sic*] suspension or cancellation of his/its certificate

⁴⁴⁹ *Id.*

⁴⁵⁰ Revised Procedural Manual for DAO 03-30, at 29.

⁴⁵¹ *Id.*

and/or a fine in an amount not to exceed Fifty Thousand Pesos (P50,000) for every violation thereof, at the discretion of the National Environmental Protection Council.”⁴⁵²

An ECC may also be suspended if the Proponent violates or fails to comply with the conditions of the ECC. However, despite the suspension of the ECC, this does not necessarily mean that the Proponent is absolved from implementing its approved EMP. The DENR may require the Proponent to institute environmental safeguards or measures to prevent further threat or actual damage to the environment.⁴⁵³

D. Alternative Dispute Resolution, Empowering Dispute Management, and Primary Dispute Resolution Processes

1. Definition of the Alternative Dispute Resolution System

The Alternative Dispute Resolution (ADR) System involves any process or procedure used to resolve a dispute or controversy with means other than by the adjudication of a presiding judge or an officer of a government agency and in which a neutral third party assists in the resolution of issues.⁴⁵⁴

It has become a recognized fact that one of the reasons which hamper environmental justice is the slow development of cases before the courts and the hefty costs of litigation.⁴⁵⁵ The ADR system aims to address these problems by providing a method which speeds up the disposition of cases and reduces the total costs of litigation by terminating the case at an early stage.⁴⁵⁶

The ADR processes include arbitration and mediation. The rules for each one will be discussed accordingly. The Rules of Procedure for Environmental Cases also provides variations of these ADR processes which are already incorporated within the Rules.

2. ADR in the Rules of Procedure for Environmental Cases

The ADR system, as incorporated in the Rules, begins in the pre-trial stage. The Rules stipulate that the court shall schedule the pre-trial and set as many pre-trial conferences as may be necessary.⁴⁵⁷ The holding of a pre-trial and referral to mediation is mandatory.⁴⁵⁸ The pre-trial is a procedural device whereby the court requires the parties and the lawyers to appear and negotiate before the court for the purpose of arriving at a settlement, if possible.⁴⁵⁹

⁴⁵² PD No. 1586, § 9.

⁴⁵³ See Revised Procedural Manual for DAO No. 03-30, at 36-37.

⁴⁵⁴ An Act to Institutionalize the Use of an Alternative Dispute Resolution System in the Philippines and to Establish the Office for Alternative Dispute Resolution, and for Other Purposes [Alternative Dispute Resolution Act of 2004], Republic Act No. 9285, § 3(a).

⁴⁵⁵ Input from NGOs and POs during the NGO Focus Group Discussion held on Oct. 22, 2010.

⁴⁵⁶ Justice Oswaldo D. Agcaoili, Alternative Dispute Resolution in Environmental (ADR) Litigation: Mediation and Consent Decree, Lecture delivered at the Philippine Judicial Academy Seminar in Puerto Princesa City, Palawan (June 24, 2010)[hereinafter Agcaoili, ADR].

⁴⁵⁷ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 3, § 1.

⁴⁵⁸ Agcaoili, ADR, *supra* note 456.

⁴⁵⁹ *Id.*

Before the date of the pre-trial, the parties are mandated to file pre-trial briefs which shall contain, among others, the following:

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

x x x x

- (e) A manifestation of their having availed of discovery procedures or their intention to avail themselves of referral to a commissioner or panel of experts.⁴⁶⁰

This provision provides the parties with an alternative avenue to settle the dispute and to prevent a protracted litigation.⁴⁶¹ It also encourages them to pursue any of the alternative modes of dispute resolution which shall be discussed later on.

After the filing of the pre-trial briefs and at the start of the pre-trial conference, Section 3, Rule 3 of the Rules of Procedure for Environmental Cases requires the court to inquire from the parties if they have settled the dispute. If not, then the court shall immediately refer them to the Philippine Mediation Center unit for purposes of mediation. If such recourse is not available, then the parties shall be referred to the clerk of court or legal researcher for mediation.⁴⁶²

3. The Philippine Mediation Center

The Philippine Mediation Center (PMC), which is under the direction and management of the Philippine Judicial Academy (PHILJA), was established to streamline court-referred, court-related mediation cases and other alternative dispute resolution mechanisms.⁴⁶³ One of its functions is to establish PMC units in courthouses and in other places as may be necessary. There shall be mediators and supervisors in each unit who will render mediation services to parties in court-referred, court-related mediation cases.⁴⁶⁴

4. Alternative Modes of Dispute Resolution

a. Court-Annexed Mediation

The Court-Annexed Mediation (CAM) is an “enhanced pre-trial procedure that involves settling cases with the assistance of a mediator, [who is] an authorized officer of the court who helps the parties identify the issues and develop a proposal to resolve disputes.”⁴⁶⁵ This process is mandatory since it is part of the pre-trial stage.

⁴⁶⁰ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 3, § 2.

⁴⁶¹ Agcaoili, ADR, *supra* note 456.

⁴⁶² RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 3, § 3.

⁴⁶³ Supreme Court of the Philippines, Designating the Philippine Judicial Academy (PHILJA) as the Component Unit of the Supreme Court on Court-Referred, Court-Related Mediation Cases and Other Alternative Dispute Resolution Mechanisms, and Establishing the Philippine Mediation Center for the Purpose, Administrative Matter No. 01-10-5-SC-PHILJA (2001).

⁴⁶⁴ *Id.*

⁴⁶⁵ Agcaoili, ADR, *supra* note 456.

The procedure for the CAM begins on the date set by the court for mediation wherein the parties select a mutually acceptable mediator from a list of accredited mediators. The mediator would then explain to the parties the mediation process. Afterwards, the mediator has a period not exceeding thirty (30) days to complete the process. Such period may be extended to another thirty (30) days by the court upon motion of the mediator with the consent of the parties. Note that the period of extension is discretionary. Once the settlement is reached, the parties, with the assistance of their counsels, will draft the compromise agreement. The compromise agreement is then submitted to the court for appropriate action wherein the latter can either approve the compromise agreement or hold the case for trial.⁴⁶⁶

If after CAM no settlement has yet been reached, the case will be returned to the referring court for another ADR process which is the JDR.⁴⁶⁷

b. Mobile Court-Annexed Mediation

The Mobile Court-Annexed Mediation (MCAM) is a form of CAM whereby “mediation proceedings are conducted in a mobile court deployed to an area for a certain period.”⁴⁶⁸ This is part of the Enhanced Justice on Wheels (E-JOW) program of the Supreme Court.⁴⁶⁹

c. Appellate Court Mediation

The Appellate Court Mediation (ACM) is CAM in the Court of Appeals. Through this, the CA shifts from a rights-based process to an interest-based process in the resolution of disputes.⁴⁷⁰

d. Judicial Dispute Resolution

If the CAM or MCAM is unsuccessful in making the parties reach a settlement, the case will be subjected to a Judicial Dispute Resolution (JDR). The JDR is a “mechanism whereby a JDR judge, acting sequentially as conciliator, neutral evaluator, and mediator, or a combination of the three, attempts to convince the parties to settle their case amicably.”⁴⁷¹

The judge to whom the case was originally raffled shall be the JDR judge.⁴⁷² The JDR judge will issue an order requiring the parties to appear before him on a specified date. The JDR judge would then act as the conciliator, neutral evaluator and mediator.⁴⁷³ As a conciliator, the

⁴⁶⁶ *Id.*

⁴⁶⁷ *Id.*

⁴⁶⁸ Philippine Judicial Academy, 2009 Philippine Judicial Academy Annual Report <<http://philja.judiciary.gov.ph/spublication/PDF/PHILJA%20Annual%20Report%202009.pdf>> (last accessed Nov. 25, 2010) [hereinafter 2009 PHILJA Report].

⁴⁶⁹ *Id.*

⁴⁷⁰ Agcaoili, ADR, *supra* note 456.

⁴⁷¹ 2009 PHILJA Report, *supra* note 468.

⁴⁷² Revised Guidelines Amending A.M. No. 04-1-12-SC for the Implementation of an Enhanced Pre-trial Proceeding Under the Justice Reform Initiatives Support (JURIS) Project, Administrative Matter No. 04-1-12-SC-PHILJA (2006).

⁴⁷³ Guidelines for the Implementation of an Enhanced Pre-trial Proceeding Through Conciliation and Neutral Evaluation, Administrative Matter No. 04-1-12-SC (2004) [Guidelines A.M. No. 04-1-12-SC](Jan. 20, 2004).

JDR judge has a duty to persuade the parties to reconsider their refusal to compromise.⁴⁷⁴ As an early neutral evaluator, the judge would give a “confidential, reasoned oral evaluation but non-binding opinion on the strengths and weaknesses of each party’s case and their chances of success.”⁴⁷⁵ Lastly, as a mediator, the JDR judge facilitates and assists the parties in negotiating a settlement.⁴⁷⁶

If no settlement is reached, the next procedure would apply depending on whether the court is a multiple sala court or a single sala court.⁴⁷⁷ If the court is a multiple sala court, the unsettled case “shall be raffled to another branch where the rest of the judicial proceedings up to judgment shall be held. The judge for that stage shall be called the trial judge.”⁴⁷⁸ In a single sala court, “the case shall be transferred for mediation to the nearest court (or pair court, if any) since only mediation is involved. Whatever the result of the mediation may be, the case is always returned to the originating court for appropriate action – either for the approval of the compromise agreement or for trial, as the case may be.”⁴⁷⁹

Since the JDR judge acts as a conciliator, early neutral evaluator and/or mediator, he receives confidential information from the parties that could affect his neutrality and impartiality in trying the case. Therefore, the JDR judge is prohibited from passing on any information he obtained during the conciliation, early neutral evaluation, or mediation to the trial judge or to any person.⁴⁸⁰

The period for JDR proceedings is thirty (30) days for the MTC, MCTC, MTC in Cities, and MeTC. For the RTC, the period is sixty (60) days. The period can be extended by the JDR judge if the settlement appears highly feasible.⁴⁸¹

e. Court-Annexed Arbitration

The Court-Annexed Arbitration (CAA) is “conducted with the assistance of the court in which one or more arbitrators appointed in accordance with the Arbitration Clause and as agreed upon by the parties, resolve a dispute by rendering an award.”⁴⁸²

5. Consent Decree

If the ADR processes are successful, which means that the parties reach a settlement of the case, the judge will then issue a consent decree “approving the agreement between the parties in accordance

⁴⁷⁴ *Id.* at 3.

⁴⁷⁵ *Id.*

⁴⁷⁶ *Id.*

⁴⁷⁷ *Id.*

⁴⁷⁸ *Id.*

⁴⁷⁹ Guidelines A.M. No. 04-1-12-SC, at 3-4.

⁴⁸⁰ *Id.* at 5.

⁴⁸¹ *Id.* at 2.

⁴⁸² Agcaoili, ADR, *supra* note 456.

with law, morals, public order and public policy to protect the right of the people to a balanced and healthful ecology.”⁴⁸³

The consent decree has the following advantages:

1. It encourages the parties to come up with comprehensive, mutually-acceptable solutions to the environmental problem. Since the agreement was arrived at voluntarily, there is a greater possibility of actual compliance;
2. It is open to public scrutiny;
3. It allows the parties to address issues other than those presented to the court; and
4. It is still subject to judicial approval and can be enforced through a court order.⁴⁸⁴

6. Appeal

A consent decree is appealable if it can be proved that consent was obtained through fraud or other causes that vitiate consent. It may also be appealed if both of the parties agree that they misunderstood the terms of the agreement as stipulated in the consent decree.⁴⁸⁵

⁴⁸³ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 3, § 5.

⁴⁸⁴ Agcaoili, ADR, *supra* note 456 (citing Supreme Court of the Philippines, Rules of Procedure for Environmental Cases, Administrative Matter No.09-6-8-SC, Rationale [citing J. Ynares-Santiago, “Framework for Strengthening Environmental Adjudication in the Philippines.”]).

⁴⁸⁵ *Id.*



CHAPTER 4

ENFORCEMENT

In the traditional Criminal Justice System, the enforcement of law is vested in the following agencies: the Philippine National Police (PNP), the Philippine Coast Guard (PCG), the National Bureau of Investigation (NBI) and the Armed Forces of the Philippines (AFP). They are tasked with the prevention and control of crimes, detention and arrest of violators and rendering of assistance to the prosecution in the investigation and filing of cases. Accordingly, the extent to which these enforcement agencies execute their functions greatly affects the ability of the prosecution to prosecute the case.

In the field of Environmental Law, the list of enforcement agencies is expanded to include those which are not commonly viewed as law enforcers. This Chapter will discuss the agencies tasked by the various environmental laws to enforce its provisions and the procedure for arrests, searches and seizures, and the custody of the seized items. A brief discussion will also be devoted to the role of the Office of the Ombudsman in ensuring that the public officers tasked with the enforcement of Environmental Laws perform their functions.

A. Agencies Tasked with the Enforcement of Environmental Laws

1. Philippine National Police

The primary agency tasked with the enforcement of laws is the Philippine National Police. The agency has the following functions:

- a. Law enforcement;
- b. Maintenance of peace and order;
- c. Prevention and investigation of crimes and bringing offenders to justice;
- d. Exercising the powers vested by the Constitution and pertinent laws;
- e. Detaining an arrested person within the period prescribed by law; and
- f. Implementation of pertinent laws and regulations on firearms and explosives control.⁴⁸⁶

Following its mandate, the PNP is charged with the enforcement of Environmental Laws in general, except for marine environmental laws which are enforced primarily by the Philippine Coast Guard pursuant to RA No. 9993.⁴⁸⁷ The Wildlife Resources Conservation and Protection Act authorizes

⁴⁸⁶ An Act Providing for the Reform and Reorganization of the Philippine National Police and for Other Purposes, Amending Certain Provisions of Republic Act Numbered Sixty-Nine Hundred and Seventy-Five Entitled "An Act Establishing the Philippine National Police Under a Re-Organized Department of the Interior and Local Government, and for Other Purposes." [Philippine National Police Reform and Organization Act of 1998], Republic Act No. 8551, as amended by RA No. 9708.

⁴⁸⁷ An Act Establishing the Philippine Coast Guard as an Armed and Uniform Service Attached to the Department of Transportation and Communications, thereby repealing Republic Act No. 5173, as amended, and for other purposes [Philippine Coast Guard Law of 2009], Republic Act No. 9993, § 3(n).

the PNP to designate wildlife enforcement officers who shall have full authority to seize illegally traded wildlife and to arrest violators of the said law.⁴⁸⁸

The PNP is supported by administrative and operational support units. The administrative support units are the following: the Crime Laboratory, Logistics Unit, Communications Unit, Computer Center, Finance Center and Civil Security Unit. On the other hand, the PNP consist of the following operational support units: the Maritime Police Unit, Police Intelligence Unit, Police Security Unit, Criminal Investigation Unit, Special Action Force, Narcotics Unit, Aviation Security Unit, Traffic Management Unit, the Medical and Dental Centers and the Civil Relations Unit. The Chief of the PNP may constitute such other support units as may be necessary subject to the approval of the National Police Commission: *Provided*, That no support unit headed by a chief superintendent or a higher rank can be created unless provided by law.⁴⁸⁹

2. Philippine Coast Guard

Republic Act No. 9993⁴⁹⁰ lays down the powers and functions of the Philippine Coast Guard, namely:

- (a) To enforce regulations in accordance with all relevant maritime international conventions, treaties or instruments and national laws for the promotion of safety of life and property at sea within the maritime jurisdiction of the Philippines and conduct port state control implementation;
- (b) To conduct inspections on all merchant ships and vessels, including but shall not be limited to inspections prior to departure, to ensure and enforce compliance with safety standards, rules and regulations;
- (c) To detain, stop or prevent a ship or vessel which does not comply with safety standards, rules and regulations from sailing or leaving port;
- (d) To conduct emergency readiness evaluation on merchant marine vessels;
- (e) Subject to the approval of the Secretary of the DOTC, to issue and enforce rules and regulations for the promotion of safety of life and property at sea on all maritime-related activities;
- (f) To coordinate, develop, establish, maintain and operate aids to navigation, vessel traffic system, maritime communications and search and rescue facilities within the maritime jurisdiction of the Philippines;
- (g) To remove, destroy or tow to port, sunken or floating hazards to navigation, including illegal fish traps and vessels, at or close to sea lanes which may cause hazard to the marine environment;

⁴⁸⁸ Wildlife Resources Conservation and Protection Act, § 30.

⁴⁸⁹ An Act Establishing the Philippine National Police Under a Reorganized Department of the Interior and Local Government, and for Other Purposes [Department of the Interior and Local Government Act of 1990], Republic Act No. 6975, § 35.

⁴⁹⁰ Philippine Coast Guard Law of 2009.

- (h) To issue permits for the salvage of vessels and to supervise all marine salvage operations, as well as prescribe and enforce rules and regulations governing the same;
- (i) To render aid to persons and vessels in distress and conduct search and rescue in marine accidents within the maritime jurisdiction of the Philippines, including the high seas, in accordance with applicable international conventions. In the performance of this function, the PCG may enlist the services of other government agencies and the merchant marine fleet;
- (j) To investigate and inquire into the causes of all maritime accidents involving death, casualties and damage to properties;
- (k) To assist in the enforcement and maintenance of maritime security, prevention or suppression of terrorism at sea, and performance of law enforcement functions in accordance with pertinent laws, rules and regulations;
- (l) To assist in the enforcement of laws on fisheries, immigration, tariff and customs, forestry, firearms and explosives, human trafficking, dangerous drugs and controlled chemicals, transnational crimes and other applicable laws within the maritime jurisdiction of the Philippines;
- (m) To board and inspect all types of merchant ships and watercrafts in the performance of its functions;
- (n) To enforce laws and promulgate and administer rules and regulations for the protection of marine environment and resources from offshore sources of pollution within the maritime jurisdiction of the Philippines;
- (o) To develop oil spill response, containment and recovery capabilities against ship-based pollution;
- (p) To grant, within its capabilities and consistent with its mandate, requests for assistance of other government agencies in the performance of their functions;
- (q) To organize, train and supervise the PCG Auxiliary (PCGA) for the purpose of assisting the PCG in carrying out its mandated functions; and
- (r) To perform such other functions that may be necessary in the attainment of the objectives of this Act⁴⁹¹

The PCG also has the primary responsibility of enforcing laws, rules and regulations governing the marine environment.⁴⁹² Specifically, it is mandated to enforce laws and regulations concerning marine pollution.⁴⁹³ On a more particular level, the agency plays a special role in cases of damage caused by oil pollution in Philippine territory. The PCG is also tasked to “conduct inspections of certificates of Ships entering the territory of the Philippines, or in the case of Ships registered in the Philippines

⁴⁹¹ *Id.* § 3.

⁴⁹² *Id.* § 3(n).

⁴⁹³ Providing the Revision of Presidential Decree No. 600, Governing Marine Pollution, Presidential Decree No. 979, § 6 (1976).

voyaging within said territory: *Provided*, That such inspections shall not cause undue delay to the Ships.”⁴⁹⁴ In addition, in an action for compensation on account of pollution damage brought before the Regional Trial Court (RTC), the PCG shall investigate, *motu proprio*, or through a written undertaking of a complainant, any incident, claim for compensation or violation of the Oil Pollution Compensation Act of 2007, and shall forthwith file the appropriate action with the RTC.⁴⁹⁵

In order to carry out its mandate, the Coast Guard Law mandates the organization, training and supervision of PCG auxiliary units (PCGA) for the purpose of assisting the coast guard in its functions, which includes the protection of the marine environment. The PCGA is a civilian volunteer organization which shall assist the PCG in “the promotion of safety of life and property at sea, the preservation of the marine environment and its resources, the conduct of maritime search and rescue, the maintenance of aids to navigation and such other activities that enhance maritime community relations.”⁴⁹⁶

3. National Bureau of Investigation

The National Bureau of Investigation’s (NBI) main objective is “the establishment and maintenance of a modern, effective and efficient investigative service and research agency for the purpose of implementing fully principal functions provided under RA No. 157, as amended.”⁴⁹⁷ Under its enabling law, the NBI is empowered to investigate crimes and other offenses, assist in the investigation and detection of crimes, and provide technical help to law enforcement agencies.⁴⁹⁸ The assistance of the agency may be availed of by any aggrieved person or the NBI may investigate the commission of an offense upon its own initiative. The members of the NBI are considered peace officers and have the following functions:

- (a) To make arrests, searches and seizures in accordance with existing laws and rules;
- (b) To issue subpoena or subpoena *duces tecum* for the appearance, at Government expense, of any person for investigation;
- (c) To take and require sworn truthful statements of any person or persons so summoned in relation to cases under investigation, subject to constitutional restrictions;
- (d) To administer oaths upon cases under investigation;
- (e) To possess suitable and adequate firearms for their personal protection in connection with their duties and for the proper protection of witnesses and persons in custody: *Provided*, That no previous special permit for such possession shall be required;
- (f) To have access to all public records and, upon authority of the President of the Philippines in the exercise of his visitorial powers, to records of private parties and concerns.⁴⁹⁹

⁴⁹⁴ Oil Pollution Compensation Act of 2007, § 14.

⁴⁹⁵ *Id.* § 17(b).

⁴⁹⁶ Philippine Coast Guard Law of 2009, § 11.

⁴⁹⁷ National Bureau of Investigation, About Us: History <http://www.nbi.gov.ph/about_us.htm> (last accessed Nov. 25, 2010).

⁴⁹⁸ *Id.*

⁴⁹⁹ Republic Act No. 157, An Act Directing a Bureau of Investigation Providing Funds Thereof, and for Other Purposes, § 5.

In relation to Environmental Law, the NBI has created the Environmental and Wildlife Protection Investigation Division (EWPID). This division is tasked to conduct operations concerning violations of all Environmental Laws.

4. Armed Forces of the Philippines

The Armed Forces of the Philippines (AFP) are specifically called to enforce forestry laws. Section 89-A of the Revised Forestry Code states that “the Armed Forces of the Philippines shall organize a special force in every region to help enforce the provisions of this act under such rules and regulations as may be agreed upon by the Secretaries of National Defense and Natural Resources.”⁵⁰⁰ In relation to the enforcement of other environmental laws, the AFP may be deputized by the DENR when necessary.

5. Department of Environment and Natural Resources

a. Environmental Management Bureau

Aside from being the lead agency in implementing the Programmatic Environmental Impact Statement System (PEISS),⁵⁰¹ the Environmental Management Bureau (EMB) is also tasked to enforce certain environmental laws, such as the Clean Air Act.⁵⁰² In the exercise of its functions, the EMB has the duty to cooperate with other government agencies, affected NGOs and POs and even private enterprises.⁵⁰³ The Philippine Clean Water Act designates the EMB as the primary government agency responsible for its implementation and enforcement. One of its responsibilities is to gradually devolve to LGUs and to governing boards, the authority to administer some aspects of water quality management and regulation.⁵⁰⁴ The EMB is also tasked with enforcing the provisions of the Toxic Substances and Hazardous Nuclear Wastes Act of 1990.⁵⁰⁵

b. Forest Management Bureau

The Forest Management Bureau (FMB) is responsible for the enforcement of forestry, reforestation, parks, game and wildlife laws, rules and regulations.⁵⁰⁶ In line with its mandate, the Forestry Code expressly provides that a forest officer or employee within the Bureau may conduct a warrantless arrest on any person who, in his presence, has committed or is committing violations of the Code.⁵⁰⁷ The arresting officer is likewise authorized to “seize and confiscate, in favor of the government, tools and equipment used in committing the offense,

⁵⁰⁰ REVISED FORESTRY CODE OF THE PHILIPPINES, § 89(A).

⁵⁰¹ See PD No. 1586, § 3 in relation to <<http://www.emb.gov.ph/plans&programs.htm>> (last accessed March 30, 2011).

⁵⁰² Philippine Clean Air Act of 2004, § 34.

⁵⁰³ *Id.* § 35.

⁵⁰⁴ See Philippine Clean Water Act of 2004, § 19 in relation to <<http://www.emb.gov.ph/plans&programs.htm>> (last accessed March 30, 2011).

⁵⁰⁵ See Toxic Substances and Hazardous Nuclear Wastes Act of 1990, § 6 in relation to <<http://www.emb.gov.ph/plans&programs.htm>> (last accessed March 30, 2011).

⁵⁰⁶ REVISED FORESTRY CODE OF THE PHILIPPINES, § 6.

⁵⁰⁷ *Id.* § 89.

and the forest products cut, gathered or taken by the offender in the process of committing the offense.”⁵⁰⁸

c. Mines and Geosciences Bureau

The Mines and Geosciences Bureau (MGB) is a line bureau directly responsible for the implementation of the provisions of the Philippine Mining Act.⁵⁰⁹ The authority of the Bureau includes, among other things, the confiscation of surety, performance and guaranty bonds after notice of violation, and the deputation of any member or unit of the PNP, duly registered and department-accredited NGO or any qualified person, to police all mining activities.⁵¹⁰ In the enforcement of mining laws, the MGB is empowered to arrest, confiscate and seize in favor of the government such minerals or mineral products that have been mined, extracted or removed without any authority under existing laws, rules and regulations.⁵¹¹ The MGB may also file a complaint for the theft of minerals. The Bureau, in consultation with the EMB, has the power to issue orders to ensure that all mining activities conform to safety and anti-pollution laws and regulations.⁵¹²

d. Protected Areas and Wildlife Bureau

The mandate of the Protected Areas and Wildlife Bureau (PAWB) is to establish and manage protected areas, conserve wildlife, promote and institutionalize ecotourism, manage coastal biodiversity and wetlands ecosystems, conserve caves and cave resources, and inform and educate on biodiversity and nature conservation, among others.⁵¹³

The DENR shall also deputize field officers in protected areas all of whom shall have the authority to “investigate and search the premises and buildings and make arrests in accordance with the rule on criminal procedure for the violation of laws and regulations relating to protected areas.”⁵¹⁴

With respect to protecting wildlife species, Section 4 of the Wildlife Resources Conservation and Protection Act divides the jurisdiction between the DENR and the DA as follows:

⁵⁰⁸ *Id.*

⁵⁰⁹ Philippine Mining Act of 1995, § 3(c) in relation to §§ 9 and 100.

⁵¹⁰ *Id.* § 9.

⁵¹¹ *Id.*

⁵¹² *Id.* § 67.

⁵¹³ Protected Areas and Wildlife Bureau, Mandate of the Protected Areas and Wildlife Bureau <http://www.pawb.gov.ph/index.php?option=com_content&view=article&id=41&Itemid=134> (last accessed Nov. 25, 2010).

⁵¹⁴ NIPAS Act, § 18.

Table 4.1 Jurisdiction under the Wildlife Resources Conservation and Protection Act

Department of Environment and Natural Resources	Department of Agriculture
Shall have jurisdiction over all <ul style="list-style-type: none"> • Terrestrial and plant animal species • Turtles and tortoises • Wetland species including but not limited to crocodiles, waterbirds, all amphibians and dugong 	Shall have jurisdiction over all <ul style="list-style-type: none"> • Declared aquatic critical habitats • All aquatic resources including but not limited to all fishes, aquatic plants, invertebrates and all marine mammals <i>except</i> dugong
<i>The Palawan Council for Sustainable Development shall have jurisdiction over wildlife species found in the Province of Palawan pursuant to the Strategic Environmental Plan (SEP) for Palawan Act.</i>	

6. Department of Agriculture: Bureau of Fisheries and Aquatic Resources

The Bureau of Fisheries and Aquatic Resources (BFAR) is the agency tasked to enforce all rules and regulations governing the conservation and management of fishery resources, except in municipal waters, and to settle conflicts of resource use and allocation in consultation with the National Fisheries and Aquatic Resource Management Councils (NFARMCs), LGUs, and Local FARMCs.⁵¹⁵

The authority of the BFAR in terms of enforcement is limited when it comes to municipal waters. The Philippine Fisheries Code defines municipal waters as to:

[I]nclude not only streams, lakes, inland bodies of water and tidal waters within the municipality which are not included within the protected areas defined under Republic Act No. 7586 (The NIPAS Law), public forest, timber lands, forest reserves or fishery reserves, but also marine waters included between two lines drawn perpendicular to the general coastline from points where the boundary lines of the municipality touch the sea at low tide and a third line parallel with the general coastline including offshore islands and 15 kilometers from such coastline. Where two municipalities are so situated on opposite shores that there is less than 30 kilometers of marine waters between them, the third line shall be equally distant from opposite shore of the respective municipalities.⁵¹⁶

Within the 15 kilometer area, which is considered municipal waters, the entity tasked with the enforcement of the Philippine Fisheries Code is the LGU.⁵¹⁷ The BFAR's participation is to assist and coordinate with the local government unit concerned.⁵¹⁸

⁵¹⁵ PHILIPPINE FISHERIES CODE OF 1998, § 65(n).

⁵¹⁶ *Id.* § 4(58).

⁵¹⁷ *Id.* § 16.

⁵¹⁸ *See* REVISED FISHERIES CODE, § 65.



Municipal Waters without Offshore Islands

On January 14, 2004, the Department of Agriculture released DAO No. 1, Series of 2004 delimiting municipal waters for municipalities and cities without offshore islands. The procedure for the delineation of Municipal Waters adopts both the normal baseline method, which is the baseline described by the coastline of the municipality, and the straight baseline method, which is used in cases where the coastline is deeply indented or cut into.

7. Local Government Units

The environmental laws all recognize the authority of the Local Government Units (LGUs) to enforce laws within their respective jurisdictions. The Philippine Fisheries Code provides that municipalities have the authority to enforce laws within their respective jurisdictions.⁵¹⁹ Both the Clean Air Act⁵²⁰ and the Clean Water Act⁵²¹ recognize the responsibility of the LGUs in the management of air and water within their territorial jurisdiction. Consistently, the DENR has deputized forestry-related functions to the LGUs.⁵²²

The LGUs are also in charge of the implementation and enforcement of the Ecological Solid Waste Management Act. The barangay units have the primary responsibility for the segregation and collection of biodegradable, compostable and reusable wastes;⁵²³ whereas, cities or municipalities are responsible for the collection of solid wastes within their respective jurisdictions, particularly the collection of non-recyclable materials and special wastes.⁵²⁴

8. Department of Transportation and Communications

The Department of Transportation and Communications (DOTC) is one of the agencies tasked by the Clean Air Act to implement its provisions. In particular, the DOTC is in charge of enforcing compliance with the emission standards for motor vehicles set by the DENR.⁵²⁵ Accordingly, the DOTC has the power to inspect and monitor emissions of motor vehicles and prohibit the use of motor

⁵¹⁹ *Id.* § 16.

⁵²⁰ Philippine Clean Air Act of 1999, § 36.

⁵²¹ Philippine Clean Water Act of 2004, § 20.

⁵²² Department of Environment and Natural Resources, Administrative Order No. 30 (1992); Department of Environment and Natural Resources and Department of the Interior and Local Government, Manual of Procedures for DENR-DILG-LGU Partnership on Devolved and Other Forest Management Functions, Joint Memorandum Circular No. 98-01 (1998).

⁵²³ Solid Waste Management Act, § 10.

⁵²⁴ *Id.*

⁵²⁵ Philippine Clean Air Act of 1999, § 21.

vehicles in any area or street at specified times.⁵²⁶ It is also authorized to deputize other law enforcement agencies and the LGUs to ensure compliance with the emission standards.⁵²⁷

9. Department of Health

The Department of Health (DOH) is the lead agency responsible for the implementation and enforcement of the Sanitation Code. Its health officers are responsible for enforcing the provisions of the Code and the rules and regulations that the Secretary of Health may thereafter impose.⁵²⁸

B. Procedure for Law Enforcement

1. Searches and Seizures

The right against unreasonable searches and seizures⁵²⁹ is a constitutionally enshrined right which aims to protect citizens from arbitrary intrusions by state officers. The people's right against unreasonable searches and seizures is directed against government officials who are tasked to enforce the law.⁵³⁰ This includes private citizens who were deputized as officers for the time being. Accordingly, law enforcers must ensure that the proper procedure for searches and seizures are carried out lest the violator be eventually released despite sufficiency of evidence.

The right against unreasonable searches and seizures states:

Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.⁵³¹

As a general rule, law enforcers must secure a search warrant prior to the conduct of a search. The search warrant shall be applied with the court that has jurisdiction over the place where the alleged violation of environmental law is committed.⁵³² The duty of the law enforcer applying for a search warrant is to show that there is probable cause that:

- a. The items are seizable by virtue of being connected to a violation of environmental law; and
- b. Such items are to be found in the place to be searched.⁵³³

⁵²⁶ *Id.* § 21(b).

⁵²⁷ *Id.*

⁵²⁸ CODE ON SANITATION OF THE PHILIPPINES, § 7.

⁵²⁹ PHILIPPINE CONSTITUTION, Art. III, § 2.

⁵³⁰ *People v. Marti*, G.R. No. 78109, Jan. 18, 1991, 193 SCRA 57, 67.

⁵³¹ PHILIPPINE CONSTITUTION, Art. III, § 2.

⁵³² REVISED RULES OF CRIMINAL PROCEDURE, Rule 126, § 2.

⁵³³ See JOAQUIN G. BERNAS, S.J., *THE 1987 PHILIPPINE CONSTITUTION: A COMPREHENSIVE REVIEWER* 39-40 (2006) (citing *Henry v. United States*, 361 US 98, 102 [1959]). The book presents a discussion of the definition of probable cause for searches.

After the application for a search warrant has been made with the proper court, the search warrant shall be issued upon the judge's finding of probable cause. Probable cause means that there are facts and circumstances antecedent to the issuance of a warrant that are in themselves sufficient to induce a cautious man to rely upon them.⁵³⁴

It must be noted that in finding the existence of probable cause, the judge must conduct a personal and searching examination of the witnesses that the applicant for the search warrant may produce.⁵³⁵ Once the warrant is issued, it must particularly describe the place to be searched and the persons or things to be seized.⁵³⁶

Considering the nature of environmental law violations, more often than not, searches are done without a warrant. This is allowed by law but care must always be observed when conducting a warrantless search. The following are the allowable warrantless searches:

a. Search as an Incident to Lawful Arrest

Search as an incident to a lawful arrest applies to both arrests without a warrant and valid warrantless arrests. [See *infra* discussion on arrest] The test for a valid warrantless arrest in this case requires that: (1) the item to be searched was within the custody or area of immediate control of the arrested person;⁵³⁷ and (2) the search was contemporaneous with the arrest.⁵³⁸

b. Search of a Moving Vehicle

This is considered a valid warrantless search for the reason that "[t]he vehicle's inherent mobility reduces expectation of privacy. But there must be a highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity."⁵³⁹

The Supreme Court in several cases sustained warrantless searches of moving vehicles in the enforcement of environmental laws. The Supreme Court in *Mustang Lumber v. Court of Appeals*,⁵⁴⁰ clarified that lumber, as a processed log or timber, needs proper documentation like any forest product under the Forestry Code.⁵⁴¹ The DENR is authorized to confiscate lumber products that lack proper documentation upon the search of a vehicle.

The same rule is applied in fishery laws. In *Tano v. Socrates*, the inspection of cargoes shipped out from the Puerto Princesa City Wharf, and any other port within the jurisdiction of the City is valid, pursuant to a government ordinance banning the shipment of all live fish outside Puerto Princesa City.⁵⁴²

⁵³⁴ *People v. Valdez*, G.R. No. 127801, March 3, 1999, 304 SCRA 140.

⁵³⁵ PHILIPPINE CONSTITUTION, Art. III, § 2.

⁵³⁶ PHILIPPINE CONSTITUTION, Art. III, § 2.

⁵³⁷ JOAQUIN G. BERNAS, S.J., *THE 1987 PHILIPPINE CONSTITUTION: A COMPREHENSIVE REVIEWER* 47 (2006) (citing *United States v. Tarazon*, 989 F2d 1045, 1051 [1993]).

⁵³⁸ *Id.* at 47 (citing *Shibley v. California*, 395 U.S. 818, 819 [1969]).

⁵³⁹ *Id.* at 47.

⁵⁴⁰ *Mustang Lumber v. Court of Appeals*, G.R. No. 104988, June 18, 1996, 257 SCRA 430.

⁵⁴¹ *Id.* at 450.

⁵⁴² *Tano*, 278 SCRA at 163-164.

The search of a moving vehicle as a form of a valid warrantless search gains significance in the enforcement of fishery laws considering the inherent mobility of the watercrafts used. When impelled by a probable cause, law enforcers may halt vessels in order to ascertain compliance with environmental laws.

c. Seizure of Evidence in Plain View

This form of warrantless search requires that the enforcement officer had a right to be in the place where he found the evidence in plain view. The requirements to be considered a valid warrantless search are the following:

1. Prior valid intrusion into a place by the enforcement officer who has a right to be where he is;
2. The enforcement officer inadvertently discovers the evidence;
3. The illegality of the evidence must be immediately apparent; and
4. The evidence is found without need of further search.⁵⁴³

d. Waiver of Right

Waiver is defined as the intentional relinquishment of a known right.⁵⁴⁴ For this exception to apply, *first*, a right must exist; *second*, the person involved has knowledge, either actual or constructive, of the existence of such right; *lastly*, said person had an actual intention to relinquish the right.⁵⁴⁵

e. Stop and Frisk

Under this rule, the law enforcer may conduct a warrantless search when he is impelled by a genuine reason that the person to be searched is engaged in a criminal activity. A genuine reason, and not merely a hunch or a suspicion, must exist to warrant stop and frisk.⁵⁴⁶

f. Exigent and Emergency Circumstances

Warrantless searches may be justified under the exigent circumstances rule. In *Hizon v. Court of Appeals*,⁵⁴⁷ the warrantless search of a fishing vessel was allowed because of the inherent mobility of the craft and the likelihood of escape before a warrant can be secured.

⁵⁴³ BERNAS, S.J., COMPREHENSIVE REVIEWER, at 47 (citing *People v. Evaristo*, G.R. No. 93828, Dec. 11, 1992, 216 SCRA 413, 435-37).

⁵⁴⁴ *D.M. Consunji, Inc. v. Court of Appeals*, G.R. No. 137873, April 20, 2001, 357 SCRA 249, 266 (citing *Castro v. Del Rosario, et al.*, 19 SCRA 196 [1967]).

⁵⁴⁵ *Id.* at 266-67.

⁵⁴⁶ BERNAS, S.J., COMPREHENSIVE REVIEWER, at 49 (citing *Malacat v. Court of Appeals*, G.R. No. 123595, Dec. 12, 1997, 283 SCRA 159, 177).

⁵⁴⁷ *Hizon v. Court of Appeals*, G.R. No. 119619, Dec. 13, 1996, 265 SCRA 517, 527-28.

2. Custody and Disposition of Seized Items, Equipment, Paraphernalia, Conveyances and Instruments

As a general rule, the custody and disposition of seized items shall be in accordance with applicable laws or rules promulgated by the concerned government agency.⁵⁴⁸ For instance, the custody and disposition of minerals/mineral products/tools/equipment are governed by DAO No. 96-40 Series of 1996.

In the absence of rules promulgated by the agency concerned, the Rules of Procedure provide for the procedure that must be observed for the custody and disposition of seized items.



Step 1: Physical Inventory

The apprehending officer having initial custody and control of the seized items shall conduct a physical inventory and if practicable, photograph the items in the presence of the person from whom such items were seized.⁵⁴⁹ In cases of searches conducted with a warrant, the apprehending officer shall submit to the court the return of the search warrant within five (5) days from the date of the seizure.⁵⁵⁰ In cases of warrantless arrests, the apprehending officer shall deliver to the public prosecutor the following: (1) inventory report, (2) compliance report, (3) photographs, (4) representative samples and (5) other pertinent documents.⁵⁵¹

Reminder: Observe the Chain of Custody Rule

In the seizure and custody of items, the observance of the proper chain of custody is extremely important. It is essential that from the seizure of the evidence up to the time it is offered in evidence, everyone who touches or takes the evidence into custody would be able to describe how the evidence was received and its condition at the time it is delivered to the next person in the chain. (Cacao v. People, G.R. No. 180870, Jan. 22, 2010, 610 SCRA 636).

The apprehending officer must ensure that the seizure of the item is properly documented and marked for identification. If the material requires scientific analysis, then it must be taken to the laboratory at the soonest possible time to preserve the integrity of the evidence.

Seized items must be stored appropriately based on their nature. For instance, hazardous chemicals should be stored in well-ventilated areas and away from heat or sunlight.

⁵⁴⁸ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 12, § 2.

⁵⁴⁹ *Id.* Rule 12, § 2(a).

⁵⁵⁰ *Id.* Rule 12, § 2(b).

⁵⁵¹ *Id.*

Step 2: Auction Sale

The disposition of the seized items may be made upon motion by any interested party.⁵⁵² In these cases, the court may direct the sheriff to conduct an auction sale of the seized items.⁵⁵³ The courts shall notify the person from whom the items were seized and the concerned government agency.⁵⁵⁴ [See list of government agencies in Chapter III of this book] The court shall then fix the minimum amount of the bid price after conducting a hearing thereon and upon recommendation by the concerned government agency.⁵⁵⁵ A notice of auction shall be posted in three conspicuous places in the city or municipality where the items were seized.⁵⁵⁶

Step 3: Disposition of the Proceeds

The proceeds of the auction sale shall be held in trust and deposited with a government depository bank.⁵⁵⁷ The disposition of the proceeds shall be made in accordance with the judgment of the court.⁵⁵⁸

The Rules of Procedure for Environmental Cases also allow for the provisional remedy of attachment.⁵⁵⁹ It must be noted however that the provisional remedy of replevin cannot be used to recover property which is the subject of an administrative forfeiture proceeding with the DENR pursuant to the Revised Forestry Code.⁵⁶⁰

3. Arrests

As a general rule, the law enforcer must secure a warrant of arrest prior to the apprehension of the violator of environmental law. The following are the requirements for a warrant of arrest:

- a. Issued upon probable cause,⁵⁶¹
- b. Personally examined by the judge,⁵⁶² who conducts an independent evaluation of the existence of probable cause,⁵⁶³

⁵⁵² *Id.* Rule 12, § 2(c).

⁵⁵³ *Id.*

⁵⁵⁴ *Id.* Rule 12, § 2(d).

⁵⁵⁵ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 12, § 2(c).

⁵⁵⁶ *Id.* Rule 12, § 2(e).

⁵⁵⁷ *Id.* Rule 12, § 2(f).

⁵⁵⁸ *Id.*

⁵⁵⁹ *Id.* Rule 13, § 1.

⁵⁶⁰ *Paat v. Court of Appeals*, G.R. No. 111107, Jan. 10, 1997, 266 SCRA 167, 184-87; *See also Mamanteo v. Magumun*, A.M. No. P-98-1264, July 28, 1999, 311 SCRA 259; *Factoran v. Court of Appeals*, G.R. No. 93540, Dec. 13, 1999, 320 SCRA 530; *Calub v. Court of Appeals*, G.R. No. 115634, April 27, 2000, 331 SCRA 55; *Tabao v. Lilagan*, A.M. No. RTJ-01-1651, Sept. 4, 2001, 364 SCRA 322 (2001); *Dagudag v. Paderanga*, A.M. No. RTJ-06-2017, June 19, 2008, 555 SCRA 217. [See Annex B for the digests of these cases].

⁵⁶¹ PHILIPPINE CONSTITUTION, Art. III, § 2.

⁵⁶² PHILIPPINE CONSTITUTION, Art. III, § 2.

⁵⁶³ 4 OSCAR M. HERRERA, REMEDIAL LAW: REVISED RULES OF CRIMINAL PROCEDURE 278 (2001).

- c. Complainant and the witnesses must be examined under oath or affirmation,⁵⁶⁴
- d. Particularity of description of the warrant.⁵⁶⁵

All warrants of arrest issued by the court shall be accompanied by a certified true copy of the information filed with the issuing court.⁵⁶⁶ Individuals deputized by the proper government agency to enforce environmental laws shall enjoy the presumption of regularity under Section 3(m), Rule 131 of the Rules of Court when effecting arrests for violations of environmental laws.⁵⁶⁷

Although a warrant of arrest does not expire until served,⁵⁶⁸ the law officer assigned is tasked to execute the warrant within ten (10) days after which the said officer shall make a report to the judge.⁵⁶⁹ In case the warrant is not served, the officer shall state the reasons therefore.⁵⁷⁰

In certain cases, warrantless arrests may be deemed valid. A peace officer or an individual deputized by the proper government agency may, without a warrant, arrest a person:

- a. When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense.⁵⁷¹ "An offense is committed in the presence or within the view of an officer x x x when the officer *sees* the offense, although at a distance, or *hears* the disturbances created thereby and *proceeds at once* to the scene thereof."⁵⁷²

In *Republic v. Cansino, Jr.*,⁵⁷³ the Supreme Court held that possession of illegally-caught fish is an offense and the mere possession is, in itself, a crime and the possessor may be arrested without a warrant as he would then be "in the act of committing a crime" (*in flagrante delicto*). This similarly applies to the possession of illegally-cut/illegally-sourced forestry products.⁵⁷⁴

- b. When an offense has been committed and the arresting officer has probable cause to believe based on personal knowledge of facts and circumstances that the person to be arrested has committed it.⁵⁷⁵

⁵⁶⁴ PHILIPPINE CONSTITUTION, Art. III, § 2.

⁵⁶⁵ PHILIPPINE CONSTITUTION, Art. III, § 2.

⁵⁶⁶ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 11, § 2.

⁵⁶⁷ *Id.* Rule 11, § 1.

⁵⁶⁸ 4 OSCAR M. HERRERA, *supra* note 563, at 302 (citing *Manangan v. CFI*, G.R. No. 82760, Aug. 30, 1990, 189 SCRA 217).

⁵⁶⁹ 2000 REVISED RULES OF CRIMINAL PROCEDURE, Rule 113, § 4.

⁵⁷⁰ *Id.*

⁵⁷¹ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 11, § 1(a).

⁵⁷² *United States v. Samonte*, G.R. No. 5649, Sept. 6, 1910, 16 Phil 516 (citing 3 *Cyc.*, 886; *Ramsey v. State*, 17 S. E., 613; *Dilger v. Com.*, 11 S. W., 651; *State v. McAfee*, 12 S. E., 435; *State v. Williams*, 15 S. E., 554; and *Hawkins v. Lutton*, 70 N. W., 483).

⁵⁷³ *Republic v. Cansino, Jr.*, G.R. No. L-17923, May 26, 1962, 5 SCRA 103.

⁵⁷⁴ *Id.* at 107.

⁵⁷⁵ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 11, § 1(b).

In warrantless arrests, the arresting officer has the obligation to immediately deliver the violator to the judicial authorities, particularly to the public prosecutor who shall conduct the inquest investigation. It is therefore necessary to have close coordination with the prosecutor's office in order to ensure that the delivery of the violator shall be made at the soonest possible time otherwise, the apprehending officer may be held liable for arbitrary detention particularly, delay in the delivery of detained persons to the proper judicial authorities under Article 125 of the Revised Penal Code. The following are the time periods within which to deliver a person apprehended:

Nature of Offense	Penalty Imposed	Time within which to deliver the person
Crimes punishable by light penalties or their equivalent	Imprisonment is from one (1) day to thirty (30) days ⁵⁷⁶ and/or is less than P200 ⁵⁷⁷	12 hours
Crimes punishable by correctional penalties or their equivalent	Imprisonment is at least one (1) month until six (6) years ⁵⁷⁸ and/or fine is not less than P200 and more than P6,000 ⁵⁷⁹	18 hours
Crimes punishable by afflictive or capital penalties or their equivalent	Imprisonment is at least six (6) years and one (1) day ⁵⁸⁰ and/or fine is more than P6,000 ⁵⁸¹	36 hours

A common problem of law enforcers is the strict time constraint provided by law. This is not a hard and fast rule. A reasonable delay in the delivery of the person apprehended is permitted depending on the circumstances. Moreover, the time period does not run "when the courts are not open to receive the complaint or information being filed."⁵⁸²

⁵⁷⁶ REVISED PENAL CODE, Art. 27.

⁵⁷⁷ *Id.* Art. 26.

⁵⁷⁸ *Id.* Art. 27.

⁵⁷⁹ *Id.* Art. 26.

⁵⁸⁰ *Id.* Art. 27.

⁵⁸¹ *Id.* Art. 26.

⁵⁸² LEONOR D. BOADO, NOTES AND CASES ON THE REVISED PENAL CODE (BOOKS 1 & 2) AND SPECIAL PENAL LAWS 364 (2004).

It must be noted, however, that PD No. 705 or the Revised Forestry Code provides for a smaller time frame in the delivery of the person apprehended. Section 89 of the law requires the arresting officer to deliver the person apprehended and items seized to the judicial authorities within six (6) hours from the time of arrest and seizure.⁵⁸³ Nevertheless, the law recognizes the possibility of delay where the seizure was made in the forest or far from judicial authorities. In that case, the delivery shall be made within a reasonable time.⁵⁸⁴

C. Environmental Ombudsman

As a way of addressing the growing concern on access to justice in the protection of the environment and the enforcement of environmental laws, the Office of the Deputy Ombudsman for the Environment was created. As part of the Ombudsman's investigative and prosecutorial powers, complaints against public officials which mainly or partly involve failure to implement or enforce environmental laws are given special concern.

With respect to cases filed against DENR officials, the DENR promulgated AO No. 15, Series of 2008 providing for the guidelines in the referral of cases with the Office of the Ombudsman. The Order provides that the Office of the Ombudsman shall have primary jurisdiction in complaints against DENR officials filed both with the Office of the Ombudsman and the DENR. With respect to new administrative complaints filed with the DENR, the same shall be subjected to initial valuation and/or fact finding investigation by the legal service. Subsequently, the case will be referred to the Environmental Ombudsman with recommendations from the legal service department.

⁵⁸³ REVISED FORESTRY CODE OF THE PHILIPPINES, § 89. This section reads:

Sec. 89. x x x The arresting forest officer or employee shall thereafter deliver within six (6) hours from the time of arrest and seizure, the offender and confiscated forest products, tools and equipment to, and file the proper complaint with, the appropriate official designated by law to conduct preliminary investigation and file information in Court.

⁵⁸⁴ *Id.* § 89.



CHAPTER 5

PROSECUTION

For the year 2009, only a few environmental cases were filed before the courts. There were only 355 new cases filed with the Regional Trial Courts with the most number in Region 3 (e.g., Bataan, Zambales, Pampanga, Bulacan). For the previous year, no new cases were filed before the Metropolitan Trial Courts; whereas, 27 new cases were filed both before the Municipal Trial Court in Cities and the Municipal Trial Court, and 15 cases were filed before the Municipal Circuit Trial Court.⁵⁸⁵ During the first half of 2010, meanwhile, only a total of 140 environmental cases were filed.⁵⁸⁶ Similarly, only a handful of cases were filed before the Metropolitan Trial Courts, Municipal Trial Court in Cities, Municipal Trial Courts, and Municipal Circuit Trial Courts. These numbers show that only a few environmental cases are being filed before the courts.

One of the reasons for the few number of environmental cases filed before the courts is the unsuccessful attempts to prosecute environmental violations. The unsuccessful attempts are often due to lack of evidence and inability to prove the commission of the offense. This chapter will therefore provide a basic overview of the role of the prosecutor and will outline the procedures in court pursuant to the Rules of Court. In addition, there is a discussion on the different kinds of evidence and the recommended evidence for certain environmental violations that can be presented to the court in an environmental case.

A. Role of the Prosecutor

1. Entertain Complaints/Commence Investigation

The prosecutor plays an important role in the judicial process. His first task is to entertain the complaints filed and commence an investigation to determine if probable cause exists so as to justify the filing of information before the proper court. The prosecutor determines on the basis of the complaint and the evidence presented whether or not the case should proceed. Simply stated, the prosecutor begins the process of determining whether a violation of an environmental law has been committed and who the responsible parties are.

It is important that the prosecutor work with law enforcement agencies and agencies such as the DENR which are tasked to implement the law. This is to ensure that there is sufficient evidence to prosecute the accused. Participation of these agencies, however, is not required before the prosecutor entertains a complaint or commences an investigation. What is important is the existence of a probable cause to file a case before the courts.

2. Conduct Preliminary Investigation or Inquest Investigation

The prosecutor is an officer tasked to conduct a preliminary investigation or inquest investigation in order to determine whether an offense has been committed. The process followed by the

⁵⁸⁵ Statistical data from the Court Management Office of the Supreme Court as of June 30, 2010.

⁵⁸⁶ *Id.*

prosecutor in conducting a preliminary investigation or inquest investigation is outlined in *Figure 5.2* and *Figure 5.3* respectively. This step is necessary in order to ascertain the sufficiency of evidence and determine whether a crime has indeed been committed.

3. Investigate Strategic Lawsuit Against Public Participation

It is the task of the prosecutor to investigate the existence of a SLAPP suit in environmental cases. The Rules of Procedure for Environmental Cases define Strategic Lawsuit Against Public Participation (SLAPP) as “any action whether civil, criminal or administrative, brought against any person, institution or any government agency or local government unit or its officials and employees, with the intent to harass, vex, exert undue pressure or stifle any legal recourse that such person, institution or government agency has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights.”⁵⁸⁷

SLAPP refers to a civil lawsuit for monetary damages filed against non-governmental individuals and groups as retaliation for the latter’s petitioning or communication to the government on an issue of public concern or to enforce a right or law such as environmental rights or statutes.⁵⁸⁸ It may come in the form of a legal action or a claim, counterclaim or a cross-claim.⁵⁸⁹ [See Chapter 7 on Special Remedies for details on the SLAPP procedure]

Prosecutors, however, may be able to identify already the existence of SLAPP as early as the preliminary investigation stage. This may be achieved if the following indicators are present:

- a. Politically active defendants are involved;
- b. The issue involves environmental protection and human rights;
- c. Claims for an exorbitant amount of money, usually disproportionate to the actual loss;
- d. Inclusion of “Doe” defendants or unnamed parties.⁵⁹⁰

These indicators are not exclusive; they merely serve as a warning that the prosecutor should be put on guard and take the time to carefully check past activities of the complaining party or group. This is to ensure that the courts only take cognizance of environmental cases that truly seek to protect the constitutional right of people to a balanced and healthful ecology.

4. File Information before the Proper Court

If probable cause is determined based on the evidence gathered, the prosecutor shall file the information before the proper court. An information is defined as “an accusation in writing charging a person with an offense, subscribed by the prosecutor and filed with the court.”⁵⁹¹ If no probable cause is determined, on the other hand, the prosecutor shall recommend the dismissal of the charge. Once a criminal case is

⁵⁸⁷ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 1, § 4(g).

⁵⁸⁸ *Id. ratio.*, at 87 (citing Edward W. McBride, *The Empire State SLAPPs Back: New York’s Legislative Response to SLAPP Suits*, 17 VT. L. REV. 925 [1993]).

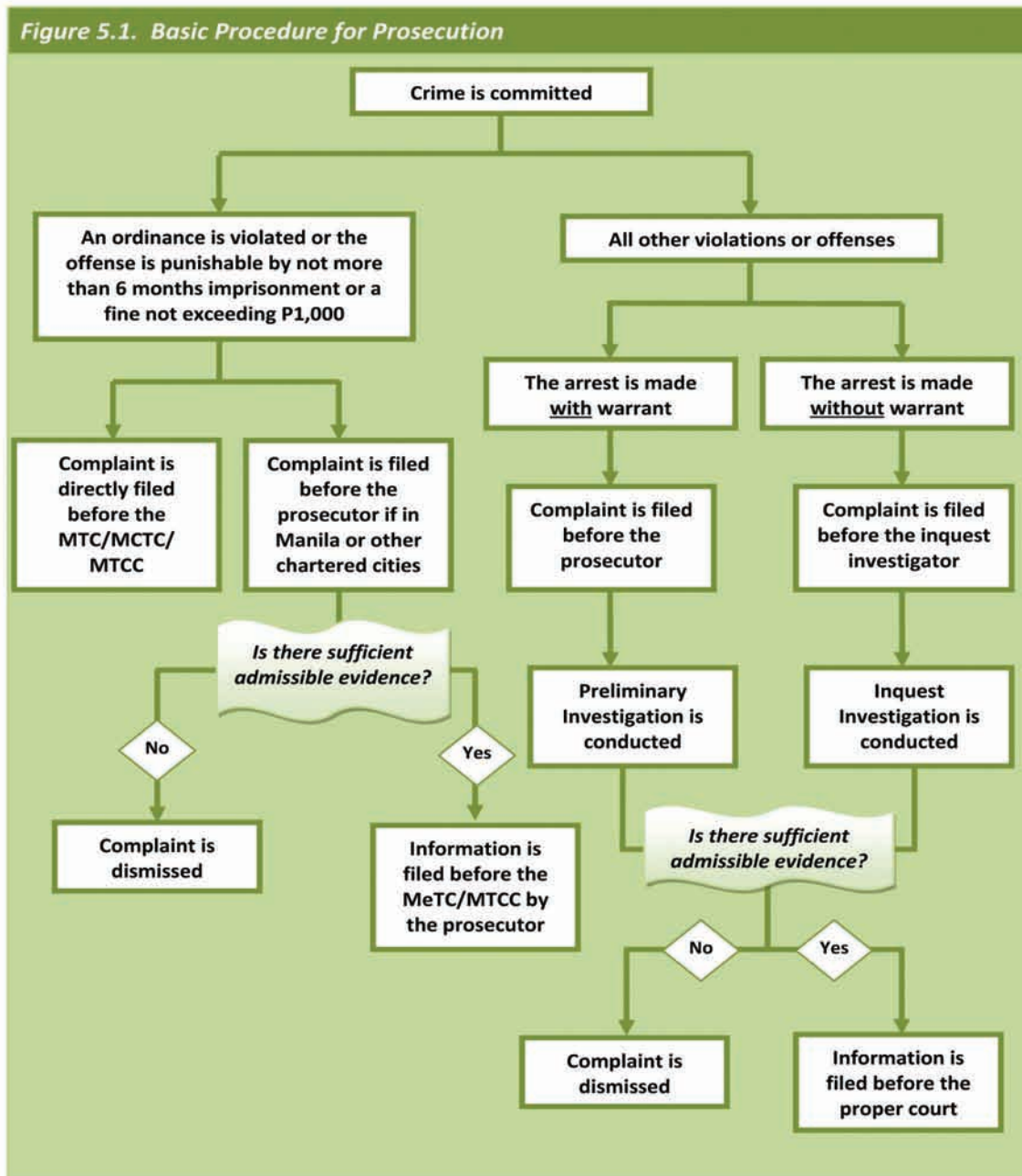
⁵⁸⁹ *Id.* at 89.

⁵⁹⁰ Penelope Canan, “*Strategic Lawsuit Against Public Participation*”: An Introduction for Bench, Bar and Bystanders, 12 BRIDGEPORT L. REV. 937, 950 (1992).

⁵⁹¹ 2000 REVISED RULES OF CRIMINAL PROCEDURE, Rule 110, § 4.

filed before the court, the Rules of Criminal Procedure will apply. The Rules of Procedure for Environmental Cases is merely supplementary to the regular Rules of Procedure.⁵⁹²

Below is a flowchart showing the basic procedure for the prosecution of criminal cases at the judicial level.



⁵⁹² Justice Lucas P. Bersamin, Civil Procedure, Presentation during 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) [hereinafter Bersamin, CIVIL PROCEDURE].

B. Institution of a Criminal Action

1. Parties Who May File a Complaint

According to Section 3, Rule 110 of the Rules of Court, a complaint may be filed by the offended party, which may include a private citizen, a group of citizens acting as one in a citizen suit, or a public agency. It may also be filed by any peace officer or any other public officer charged with the enforcement of the law violated.⁵⁹³

- a. Offended parties
 - Private citizen
 - Citizen suit
 - Public agency
- b. Any peace officer
- c. Any other public officer charged with the enforcement of the law violated.

Public officers authorized to file:

- a. Law enforcement officers designated by local government units
- b. Philippine Navy
- c. Philippine Coast Guard
- d. Philippine National Police
- e. Other government enforcement agencies
- f. Entities specifically mandated by law to enforce environmental laws

2. Contents of a Complaint

A complaint must contain the following information:

- a. Name of the accused;⁵⁹⁴
- b. Designation of the offense given by the statute;⁵⁹⁵
- c. Acts or omissions complained of as constituting the offense;⁵⁹⁶
- d. Place where the offense was committed;⁵⁹⁷

⁵⁹³ 2000 REVISED RULES OF CRIMINAL PROCEDURE, Rule 110, § 3.

⁵⁹⁴ *Id.* Rule 110, § 7.

⁵⁹⁵ *Id.* Rule 110, § 8.

⁵⁹⁶ *Id.* Rule 110, § 9.

⁵⁹⁷ *Id.* Rule 110, § 10.

- e. Date of the commission of the offense;⁵⁹⁸ and
- f. Name of the offended party.⁵⁹⁹

In order to avoid duplicity of offenses, it must be borne in mind that each complaint must only charge one offense.⁶⁰⁰ The purpose for this rule is to give the accused the necessary knowledge of the charge against him so that he is able to prepare for his defense.⁶⁰¹

3. Prescriptive Period for the Offenses

Criminal actions must be filed within their respective prescriptive periods. A prescriptive period is the period set by law within which the offended parties, any peace officer, or other public officer charged with the enforcement of the law violated may institute an action. The State therefore loses its right to prosecute offenders once the prescriptive period lapses.⁶⁰²

The purpose of the law on prescription is to protect the person who is diligent and vigilant in asserting his rights, and conversely to punish the person who sleeps on his rights.⁶⁰³ The period begins to run from the “discovery of the crime by the offended [party, authorities,] or their agents.”⁶⁰⁴

Type of Offense	Prescriptive Period
Offenses punishable by a fine or imprisonment of not more than one (1) month or both	1 year
Offenses punishable by imprisonment of more than one (1) month but less than two (2) years	4 years
Offenses punishable by imprisonment of more than two (2) years but less than six (6) years	8 years
Offenses punishable by imprisonment of six (6) years or more	12 years
Violations of municipal ordinances ⁶⁰⁵	2 months

⁵⁹⁸ *Id.* Rule 110, § 11.

⁵⁹⁹ 2000 REVISED RULES OF CRIMINAL PROCEDURE, Rule 110, § 12.

⁶⁰⁰ *Id.* Rule 110, § 13.

⁶⁰¹ *People v. Ferrer*, G.R. L-8752, April 29, 1957, 101 Phil. 234, 239.

⁶⁰² *BOADO*, *supra* note 573, at 325.

⁶⁰³ *Fernandez v. Cuerva*, G.R. No. L-21114, Nov. 28, 1967, 21 SCRA 1095, 1101.

⁶⁰⁴ *BOADO*, *supra* note 573, at 325.

⁶⁰⁵ An Act to Establish Periods of Prescription for Violations Penalized by Special Acts and Municipal Ordinances and to Provide When Prescription Shall Begin to Run, Act No. 3326, as amended (1926).

C. Preliminary Investigation and Inquest Investigation

1. Preliminary Investigation

a. Definition of a Preliminary Investigation

Preliminary Investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof and should be held for trial.⁶⁰⁶ It is not a trial but merely an investigation. It is required for offenses that have an imposable penalty of at least four (4) years, two (2) months and one (1) day, without regard to fine.⁶⁰⁷

It is purely a statutory right as it is not a part of the due process clause of the Constitution.⁶⁰⁸ It may therefore be denied by law. If the law, however, expressly provides for a preliminary investigation, denial of it when such right is claimed by the accused is tantamount to a denial of due process.⁶⁰⁹

b. Purpose of a Preliminary Investigation

The purpose of a preliminary investigation is to ascertain the existence of a crime and to find out whether the accused is probably guilty of its commission and should be held for trial.⁶¹⁰ Another purpose of a preliminary investigation is to preserve evidence and keep witnesses within the territorial jurisdiction of the State.⁶¹¹ If the offense is bailable, a preliminary investigation also helps determine the amount of bail to be given to the court.⁶¹²

The Court held in *Salonga v. Cruz Paño*:

The purpose of a preliminary investigation is to secure the innocent against hasty, malicious, and oppressive prosecution, and to protect him from an open and public accusation of a crime, from the trouble, expense and anxiety of a public trial, and also to protect the state from useless and expensive trials. The right to a preliminary investigation is a statutory grant, and to withhold it would be to transgress constitutional due process. However, in order to satisfy the due process clause it is not enough that the preliminary investigation serves not only the purposes of the State. More important, it is a part of the guarantees of freedom and fair play which are birthrights of all who live in our country. It is, therefore, imperative upon the fiscal or the judge as the case may be, to relieve the accused from the pain of going through a trial once it is ascertained that the evidence is insufficient to sustain a *prima facie* case or that no probable cause exists to form a sufficient belief as to

⁶⁰⁶ 2000 REVISED RULES OF CRIMINAL PROCEDURE, Rule 112, § 1.

⁶⁰⁷ *Id.*

⁶⁰⁸ 2 FLORENZ D. REGALADO, REMEDIAL LAW COMPENDIUM 382 (2008).

⁶⁰⁹ *Id.*

⁶¹⁰ RUBEN E. AGPALO, HANDBOOK ON CRIMINAL PROCEDURE 143 (2004) (citing *Drilon v. CA*, 21 SCAD 712, 258 SCRA 280 [1996]; *Paderanga v. Drilon*, 196 SCRA 86 [1991]).

⁶¹¹ *Id.*

⁶¹² *Id.* (citing *Arula v. Espino*, 28 SCRA 540 [1969]).

the guilt of the accused x x x. The judge or fiscal, therefore, should not go on with the prosecution in the hope that some credible evidence might later turn up during trial for this would be in flagrant violation of a basic right which the courts are created to uphold.⁶¹³

c. Persons Authorized to Conduct a Preliminary Investigation

Based on Section 2, Rule 112 of the Revised Rules of Criminal Procedure, a preliminary investigation can only be conducted by the following:

- a. Provincial or City Prosecutors and their assistants;
- b. Judges of Municipal Trial Courts and Municipal Circuit Trial Courts
- c. National and Regional State Prosecutors;
- d. Other officers as may be authorized by law.⁶¹⁴

Under Section 37 of BP Blg. 129 and the Interim Rules and Guidelines, the Metropolitan Trial Courts in the National Capital Judicial Region and municipal trial courts in chartered cities cannot conduct preliminary investigations.⁶¹⁵



Reminders:

1. *The number of copies of the complaint must be equal to the number of respondents, plus two copies for the official file. It shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or in their absence or unavailability, before a notary public.*⁶¹⁶
2. *If the respondent cannot be subpoenaed or, if subpoenaed, does not submit counter-affidavits, the investigating officer shall resolve the complaint based on the affidavits and documents presented by the complainant.*⁶¹⁷
3. *The complainant must always be furnished with copies of the documents.*

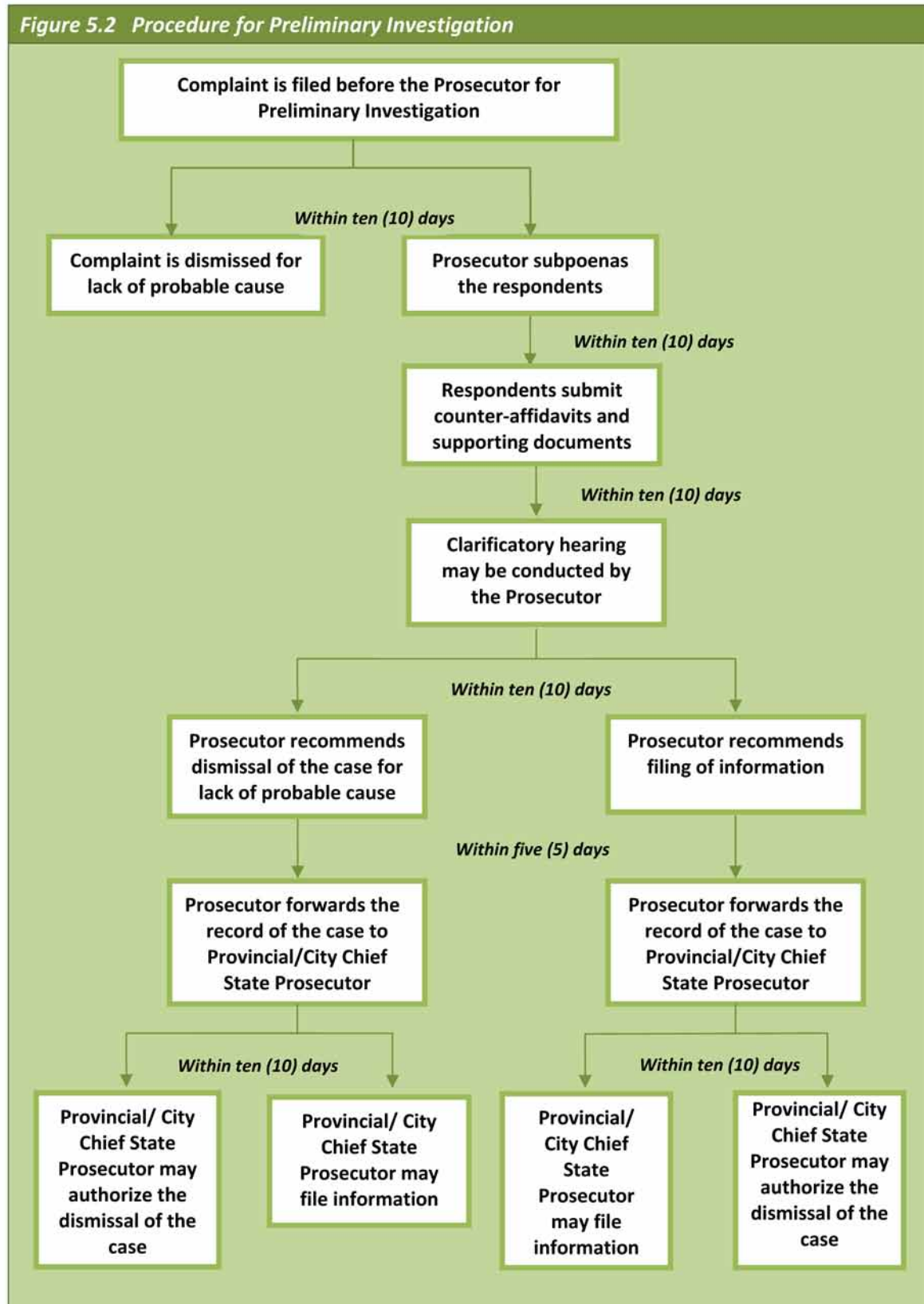
⁶¹³ *Salonga v. Cruz Paño*, G.R. L-59524, Feb. 18, 1985, 134 SCRA 438, 461-62.

⁶¹⁴ 2000 REVISED RULES OF CRIMINAL PROCEDURE, Rule 112, § 2.

⁶¹⁵ 2 REGALADO, *supra* note 599, at 386.

⁶¹⁶ 2000 REVISED RULES OF CRIMINAL PROCEDURE, Rule 112, § 3(a).

⁶¹⁷ *Id.* Rule 112, § 3(d).



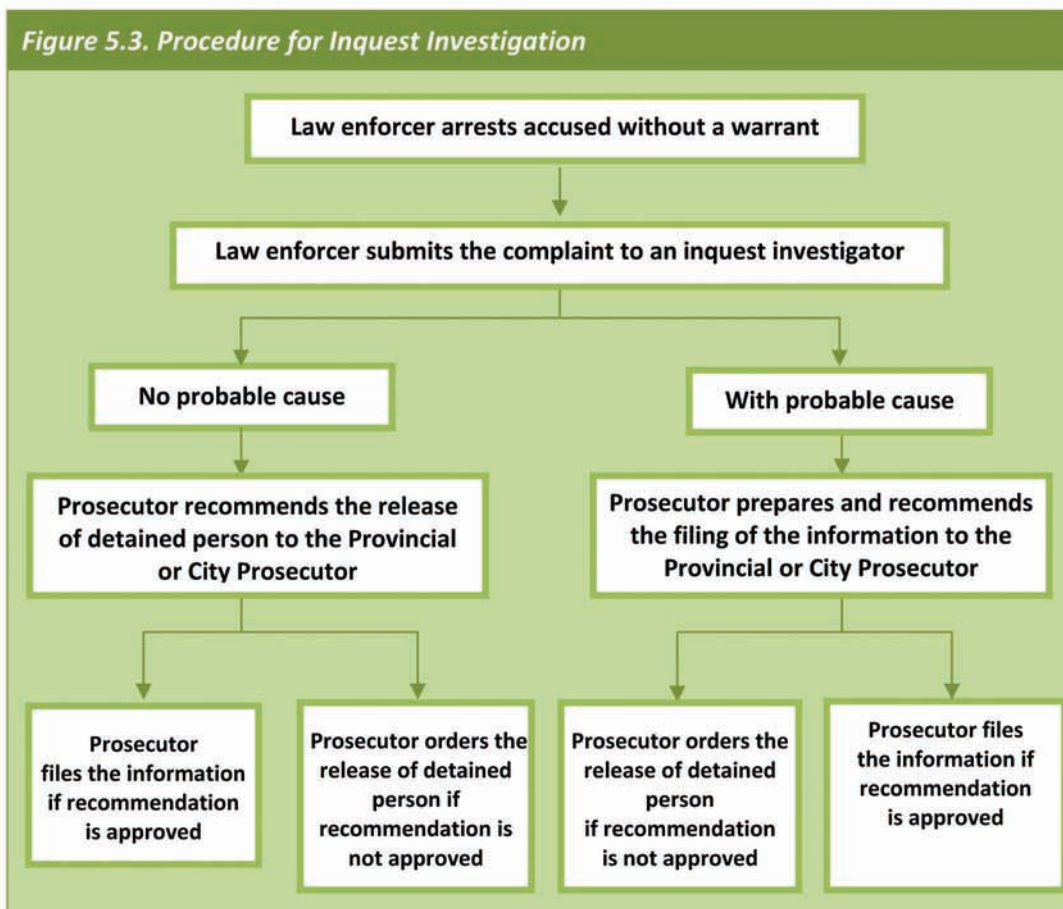
2. Inquest Investigation

a. Definition of Inquest Investigation

An inquest investigation is an inquiry conducted by a prosecutor to determine the validity of a person's arrest when there is no arrest order or warrant, or if the person was caught in the act of committing a crime.⁶¹⁸ An arrest without warrant may be done by a peace officer or a private person as long as it falls under any of the conditions set out in Section 5, Rule 113 of the 2000 Revised Rules of Criminal Procedure.⁶¹⁹ [See Chapter IV on warrantless arrests]

Pending an inquest investigation, the accused may request for a preliminary investigation, provided he signs a waiver of his rights under Article 125 of the Revised Penal Code and he signs it with the assistance of his counsel.⁶²⁰ The request must be made within five (5) days from the time he learns of the filing of the case in court against him.⁶²¹

b. Procedure for Conducting an Inquest Investigation



⁶¹⁸ Danilo Reyes, Prosecution in the Philippines <<http://www.article2.org/mainfile.php/0701/307/>> (last accessed Nov. 25, 2010).

⁶¹⁹ 2000 REVISED RULES OF CRIMINAL PROCEDURE, Rule 113, § 5.

⁶²⁰ *Id.* Rule 112, § 6.

⁶²¹ *Id.*



Reminders:

1. *If the detained person wishes to obtain a preliminary investigation, he must execute a waiver of his rights under Article 125 of the Revised Penal Code.⁶²² This must be done in the presence of counsel.*
2. *The detained person may still apply for bail in spite of executing the waiver.⁶²³*
3. *A Complaint must always be accompanied by:*
 - a. *Affidavit of arrest*
 - b. *Investigation report*
 - c. *Affidavits of Complainant and Witnesses*
 - d. *Other supporting documents gathered by the law enforcer during the course of the investigation.*
4. *Recommendation for release must be accompanied by a brief memorandum. The memorandum must indicate the reason for the action taken, and it must be forwarded together with the records of the case to the City or Provincial Prosecutor.⁶²⁴*

3. Determination of Probable Cause

a. Definition of Probable Cause

Probable cause is considered to be based on “the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on such facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.”⁶²⁵

The existence of probable cause does not signify absolute certainty as it is merely based on opinion and reasonable belief.⁶²⁶ A finding of probable cause, therefore, does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. The Court holds a trial for the reception of evidence of the prosecution in support of the charge.⁶²⁷

⁶²² *In the Matter of the Petition for Habeas Corpus of Marmolito Catelo v. Chief of City Jail*, G.R. No. L-26703, Sept. 5, 1967. See ENVIRONMENTAL LEGAL ASSISTANCE, MENDING NETS: A HANDBOOK ON THE PROSECUTION OF FISHERY AND COASTAL LAW VIOLATION 101 (2nd ed., 2008).

⁶²³ See 2000 REVISED RULES OF CRIMINAL PROCEDURE, Rule 114, § 17(c).

⁶²⁴ See MENDING NETS, *supra* note 613, at 101.

⁶²⁵ AGPALO, CRIMINAL PROCEDURE, *supra* note 601, at 179 (citing *Cruz v. People*, 233 SCRA 439 [1994]).

⁶²⁶ *Id.* at 179.

⁶²⁷ *Baytan v. Commission on Elections*, G.R. No. 153945, Feb. 4, 2003, 396 SCRA 703.

b. Persons Authorized to Determine the Existence of Probable Cause

The investigating prosecutor determines the existence of probable cause based on the circumstances of the case. It is his responsibility to ensure that the act or omission complained of constitutes the offense charged before filing a criminal action before the proper Court for violation of an environmental law. There is no general formula or fixed rule for the determination of probable cause as its existence must be decided based on the facts and conditions of the case at hand, and its existence depends largely upon the finding or opinion of the one authorized by law to conduct such examination.⁶²⁸

The courts generally do not interfere with the determination of the existence of a probable cause so long as there is no grave abuse of discretion on the part of the prosecutor. If the courts fail to respect the investigatory powers of the prosecutor, then courts will be swamped with countless petitions requesting for the dismissal of investigatory proceedings.⁶²⁹

4. Establishing Criminal Liability

Establishing the criminal liability of a person arrested requires a determination of the particular elements of the offense committed. Proving the existence of these elements also requires an assessment of the sufficiency of the evidence. The admissibility of such evidence is further explored later on.

A multi-sectoral approach, which involves the community, enforcement agencies and the prosecution, is the most effective means of prosecuting environmental cases. Below is a list of commonly violated environmental laws, their elements and the sectors or agencies which may be involved:

<i>Table 5.2. Table of Violations</i>		
Philippine Fisheries Code (RA No. 8550)		
Violation	Elements	Sectors and Roles
Section 88 of RA No. 8550 Use of Explosives or Other Noxious or Poisonous Substances and/or Electricity for Illegal Fishing.	<ol style="list-style-type: none"> 1. Use of explosives such as dynamites. 2. Use of noxious or poisonous substances such as sodium cyanide. 3. Use of such noxious or poisonous substances is not for scientific purposes and was not approved by DENR and the LGU. 	<ol style="list-style-type: none"> 1. Members of Bantay-Dagat (to gather evidence and coordinate with the fisherfolk) 2. Barangay Captain or representative of the local government 3. PNP-Maritime Group (to investigate and prosecute the offense) 4. PCG (to apprehend violators)

⁶²⁸ AGPALO, *CRIMINAL PROCEDURE*, *supra* note 601, at 180 (citing *Ortiz v. Palaypayon*, 234 SCRA 391 [1994]).

⁶²⁹ *Id.* at 182 (citing *Rodrigo, Jr. v. Sandiganbayan*, 303 SCRA 309 [1999]).

Continuation: Table 5.2. Table of Violations**Philippine Fisheries Code (RA No. 8550)**

Violation	Elements	Sectors and Roles
Section 97 of RA No. 8550 Fishing or taking of rare, threatened, or endangered species.	<ol style="list-style-type: none"> 1. Fishing or taking of aquatic resources and fishery species. 2. The aquatic resources or fishery are classified as rare, threatened, or endangered. 3. The classification is based on the listing of Convention on International Trade in Endangered Species (CITES) as determined by the Department of Agriculture. 	<ol style="list-style-type: none"> 1. Fisherfolk 2. Members of Bantay-Dagat 3. Barangay Captain or representative of the local government 4. PNP-Maritime Group (but jurisdiction only starts 15 km from the shoreline) 5. Task forces such as Taal Lake Task Force 6. PCG

Philippine Clean Water Act of 2004 (RA No. 9275)

Violation	Elements	Sectors and Roles
Section 27 of RA No. 9275 Prohibited Acts such as dumping of waste and discharging of water pollutants.	<ol style="list-style-type: none"> 1. Waste is dumped into the water source. 2. Water pollutants are discharged into the water source. 3. Water pollutant is verified to harm the water source. 	<ol style="list-style-type: none"> 1. Local government unit 2. DENR-Field Office 3. NBI (laboratory testing) 4. PCG (if the dumping/ discharge is from offshore sources)

Revised Forestry Code of the Philippines (PD No. 705)

Violation	Elements	Sectors and Roles
Section 68 of PD No. 705 Cutting, gathering, or cutting timber without license.	<ol style="list-style-type: none"> 1. Timber is cut, gathered, and removed from any forest land, public land, or private land without authority. 2. There is no valid permit, lease agreement, or license to cut the timber. 	<ol style="list-style-type: none"> 1. Local community 2. Task forces such as Task force Sierra Madre 3. Coast Guard (to prevent transport via water route) 4. DENR-Field Office (to verify documents) 5. Forest Management Bureau (FMB)

Continuation: Table 5.2. Table of Violations**Philippine Clean Air Act of 1999 (RA No. 8749)**

Violation	Elements	Sectors and Roles
Section 19 of RA No. 8749 Pollution from stationary sources such as industrial plants.	<ol style="list-style-type: none"> 1. The emission exceeds the allowable standards set by DENR. 2. Gas emitted is classified as hazardous to health. 3. Hazardous to the health of people living in the area and/or the employees of the business itself. 	<ol style="list-style-type: none"> 1. Local Government Unit 2. DENR-Field Office 3. PCG (if from offshore sources)

Wildlife Resources Conservation and Protection Act (RA No. 9147)

Violation	Elements	Sectors and Roles
Section 27 of RA No. 9147 Illegal Acts such as trade and transport of wildlife.	<ol style="list-style-type: none"> 1. Reason for trade and transport does not fall under any of the excepting circumstances; 2. Possession of such wildlife. 3. The wildlife is included in the list of endangered and threatened species. 	<ol style="list-style-type: none"> 1. National Bureau of Investigation-Environmental and Wildlife Protection Investigation Division (NBI-EWPID) 2. DENR-Field Office (to identify the wildlife species concerned) 3. NGOs and representative of the local government 4. PCG (if transported in water)

Ecological Solid Waste Management Act of 2000 (RA No. 9003)

Violation	Elements	Sectors and Roles
Section 48 of RA No. 9003 Prohibited Acts such as dumping of waste matters in public places and establishment of open dumps.	<ol style="list-style-type: none"> 1. Actual dumping of waste matter or causing or permitting the same. 2. Operation or closure of open dumps without permit or authority. 3. Dump site does not meet the standards. 	<ol style="list-style-type: none"> 1. Local community (Citizen suits apply) 2. City or Municipal Solid Waste Management Board 3. National Solid Waste Management Commission 4. DENR-Field Office

The lists enumerated are by no means exclusive. During the investigation, some line agencies have overlapping or concurrent jurisdiction. There are also other taskforces and government agencies that can be utilized to apprehend violators and gather evidence. It must be noted that adopting a multi-sectoral approach has proven to be effective in the prosecution of environmental cases, whether civil or criminal in nature as common problems on lack of personnel and government resources to monitor and protect the areas concerned are remedied.

D. Evaluation of Evidence

Evidence is considered to be “the means, sanctioned by the [Rules of Court], of ascertaining in a judicial proceeding the truth respecting a matter of fact.”⁶³⁰ It is also “the mode and manner of proving competent facts and circumstances on which a party relies to establish the fact in dispute in judicial proceedings.”⁶³¹

The basic rule in Philippine law is that the evidence presented must be relevant to the issue as to give rise to the belief of the existence or non-existence of the issue. As to collateral evidence, it is only admitted when it establishes the probability or improbability of the fact in issue to a reasonable degree.⁶³² Under the Rules of Procedure for Environmental Cases, evidence must be ready and is required to be included in the complaint through affidavits, documents and other means admissible that would support the claim that there was an environmental violation.⁶³³

In order to prove that a crime has been committed, it is imperative that sufficient evidence be presented. The burden of proof for presenting such evidence is on the party making the claim. Burden of proof is defined as “the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.”⁶³⁴ It belongs to the party alleging that an offense has been committed or an environmental law has been violated. It is therefore his responsibility to provide evidence to establish his claim or defense by the amount of evidence required by law, which is proof beyond reasonable doubt in criminal actions.⁶³⁵ In civil cases, however, only preponderance of evidence is required,⁶³⁶ whereas in administrative cases, only substantial evidence is required.⁶³⁷

1. Kinds of Evidence

a. Object or Real Evidence

Object or real evidence refers to “the thing or fact or material or corporate object or human body or parts thereof, which can be viewed or inspected by the court and which a party may present in evidence.”⁶³⁸ It is also defined as those addressed to the senses of the court and is

⁶³⁰ REVISED RULES ON EVIDENCE, Rule 128, § 1.

⁶³¹ RUBEN E. AGPALO, HANDBOOK ON EVIDENCE 1 (2003).

⁶³² REVISED RULES ON EVIDENCE, Rule 128, § 4.

⁶³³ Bersamin, CIVIL PROCEDURE, *supra* note 592.

⁶³⁴ REVISED RULES ON EVIDENCE, Rule 131, § 1.

⁶³⁵ *Id.* Rule 133, § 2 .

⁶³⁶ *Id.* Rule 133, § 1.

⁶³⁷ *Id.* Rule 133, § 5.

⁶³⁸ AGPALO, EVIDENCE, *supra* note 622, at 52.

also known as autoptic evidence.⁶³⁹ When an object is relevant to the fact in issue, it may be exhibited to, examined, or viewed by the court⁶⁴⁰ (e.g., fish sample, trash sample, water sample where toxic waste was dumped, etc.).

The presentation of object or real evidence may be done as part of the testimony of the person who seized the evidence, or who has custody of it. This kind of evidence must be authenticated, either by identification by witnesses, or by admission of the parties.⁶⁴¹

b. Documentary Evidence

Documentary evidence is evidence that “may consist of writings or any material containing letters, words, numbers, figures, symbols, or other modes of written expressions offered as proof of their contents”⁶⁴² (e.g., permits and licenses, records, photographs, videos, etc.). It is a deed, instrument, or other paper by which something is proved, evidenced or set forth.⁶⁴³

Documents such as public and private documents may be presented as evidence to establish the commission of an offense. Public documents may include notarized documents such as affidavits and public records of official acts of sovereign authority or official bodies and tribunals.⁶⁴⁴ All other writings are considered private.⁶⁴⁵

Under Section 1, Rule 21 of the Rules of Procedure for Environmental Cases, “photographs, videos, and similar evidence of events, acts, and 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.”⁶⁴⁶

Photographs, on the other hand, must meet the following requisites in order to constitute as evidence:

- a. Production of the photograph and the circumstances under which it was produced must be identified by the photographer.
- b. It must be accurate in portraying the scene at the time the offense was committed.
- c. The correctness of the photograph must be proved either by the testimony of the person who made it or by other competent witnesses.⁶⁴⁷

⁶³⁹ *Id.* at 4.

⁶⁴⁰ REVISED RULES ON EVIDENCE, Rule 130, § 1.

⁶⁴¹ AGPALO, EVIDENCE, *supra* note 631, at 57 and 332-333.

⁶⁴² REVISED RULES ON EVIDENCE, Rule 130, § 2.

⁶⁴³ AGPALO, EVIDENCE, *supra* note 622, at 58 (2003).

⁶⁴⁴ REVISED RULES ON EVIDENCE, Rule 133, § 19.

⁶⁴⁵ *Id.*

⁶⁴⁶ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 21, § 1.

⁶⁴⁷ *Id.* See *Sison v. People*, G.R. Nos. 108280-83, Nov. 16, 1995, 250 SCRA 58, 75-76.

Photographs, therefore, must be identified by the photographer or by any other competent witness who can testify as to its exactness and accuracy.⁶⁴⁸ This is useful as evidence if the item is too large or it is highly improbable to place the evidence under the custody of the enforcement agency.

c. Testimonial or Oral Evidence

Testimonial or oral evidence refers to evidence “which a witness testifies in court.”⁶⁴⁹ It may include both oral and written evidence, such as depositions and affidavits. Testimony of an expert witness falls under this type of evidence.

As a general rule, a witness may testify only on matters that are confined to personal knowledge.⁶⁵⁰ Testimony is considered hearsay if it is given on matters not directly observed by a witness. Hearsay evidence is excluded and carries no probative value.⁶⁵¹ There are, however, exceptions to this rule.

The exceptions to the hearsay rule under Rule 130 of the Revised Rules on Evidence are the following:

1. The declaration of a dying person, made under the consciousness of an impending death, may be received in any case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death.⁶⁵²
2. The declaration made by a person deceased, or unable to testify, against the interest of the declarant, if the fact asserted in the declaration was at the time it was made so far contrary to declarant’s own interest, that a reasonable man in his position would not have made the declaration unless he believed it to be true, may be received in evidence against himself or his successors in interest and against third persons.⁶⁵³
3. The act or declaration of a person deceased, or unable to testify, in respect to the pedigree of another person related to him by birth or marriage, may be received in evidence where it occurred before the controversy, and the relationship between the two persons is shown by evidence other than such act or declaration. The word “pedigree” includes relationship, family genealogy, birth, marriage, death, the dates when and the places where these facts occurred, and the names of the relatives. It embraces also facts of family history intimately connected with pedigree.⁶⁵⁴

⁶⁴⁸ *Sison v. People*, 250 SCRA at 76.

⁶⁴⁹ AGPALO, EVIDENCE, *supra* note 622, at 4.

⁶⁵⁰ REVISED RULES ON EVIDENCE, Rule 130, § 36.

⁶⁵¹ *SCC Chemicals Corp. v. Court of Appeals*, G.R. No. 128538, Feb. 28, 2001, 353 SCRA 70, 76.

⁶⁵² REVISED RULES ON EVIDENCE, Rule 130, § 37.

⁶⁵³ *Id.* Rule 130, § 38.

⁶⁵⁴ *Id.* Rule 130, § 39.

4. The reputation or tradition existing in a family previous to the controversy, in respect to the pedigree of any one of its members, may be received in evidence if the witness testifying thereon be also a member of the family, either by consanguinity or affinity. Entries in family bibles or other family books or charts, engravings on rings, family portraits and the like, may be received as evidence of pedigree.⁶⁵⁵
5. Common reputation existing previous to the controversy, respecting facts of public or general interest more than thirty years old, or respecting marriage or moral character, may be given in evidence. Monuments and inscriptions in public places may be received as evidence of common reputation.⁶⁵⁶
6. Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of *res gestae*. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the *res gestae*.⁶⁵⁷
7. Entries made at, or near the time of transactions to which they refer, by a person deceased, or unable to testify, who was in a position to know the facts therein stated, may be received as *prima facie* evidence, if such person made the entries in his professional capacity or in the performance of duty and in the ordinary or regular course of business or duty.⁶⁵⁸
8. Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated.⁶⁵⁹
9. Evidence of statements of matters of interest to persons engaged in an occupation contained in a list, register, periodical, or other published compilation is admissible as tending to prove the truth of any relevant matter so stated if that compilation is published for use by persons engaged in that occupation and is generally used and relied upon by them therein.⁶⁶⁰
10. A published treatise, periodical or pamphlet on a subject of history, law, science, or art is admissible as tending to prove the truth of a matter stated therein if the court takes judicial notice, or a witness expert in the subject testifies, that the writer of the statement in the treatise, periodical or pamphlet is recognized in his profession or calling as expert in the subject.⁶⁶¹

⁶⁵⁵ *Id.* Rule 130, § 40.

⁶⁵⁶ *Id.* Rule 130, § 41.

⁶⁵⁷ *Id.* Rule 130, § 42.

⁶⁵⁸ REVISED RULES ON EVIDENCE, Rule 130, § 43.

⁶⁵⁹ *Id.* Rule 130, § 44.

⁶⁶⁰ *Id.* Rule 130, § 45.

⁶⁶¹ *Id.* Rule 130, § 46.

11. The testimony or deposition of a witness deceased or unable to testify, given in a former case or proceeding, judicial or administrative, involving the same parties and subject matter, may be given in evidence against the adverse party who had the opportunity to cross-examine him.⁶⁶²

2. Weight of Evidence

a. Direct Evidence

Direct evidence is that evidence “which proves a fact or issue directly without any reasoning or inference being drawn on the part of the fact-finder, as distinguished from circumstantial evidence.”⁶⁶³

b. Circumstantial or Indirect Evidence

Circumstantial or indirect evidence is evidence “which indirectly proves a fact in issue.”⁶⁶⁴ It primarily includes inferences made based on facts and those facts taken under well-defined circumstances.⁶⁶⁵

Philippine jurisprudence also recognizes circumstantial evidence as that “which indirectly proves a fact in issue through an inference which the fact-finder draws from the evidence established. Such evidence is founded on experience and observed facts and coincidences establishing a connection between the known and proven facts and the facts sought to be proved.”⁶⁶⁶ Under Section 4, Rule 133 of the Revised Rules on Evidence, circumstantial evidence is deemed sufficient when:

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven; and
- (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.⁶⁶⁷

3. Admissibility of Evidence

Evidence is admissible when it is relevant to the issue and is not excluded by law or the Rules of Court.⁶⁶⁸ The rules of admissibility of evidence are governed by Rule 130 of the Rules of Court.⁶⁶⁹

⁶⁶² *Id.* Rule 130, § 47.

⁶⁶³ AGPALO, EVIDENCE, *supra* note 631, at 5.

⁶⁶⁴ *Id.* at 4.

⁶⁶⁵ ANTONIO R. BAUTISTA, Basic Evidence 296 (2004).

⁶⁶⁶ *People v. Osianas*, G.R. No. 182548, Sept. 30, 2008, 567 SCRA 319, 328-30.

⁶⁶⁷ REVISED RULES ON EVIDENCE, Rule 133, § 4.

⁶⁶⁸ *Id.* Rule 128, § 3.

⁶⁶⁹ *Id.* Rule 130, §§ 1-51.

A piece of evidence is said to be relevant to an alleged fact when it tends to prove or disprove the fact in issue. It becomes admissible in court when it is both competent and material to the fact in issue. Evidence is competent when it is not excluded by the Rules on Evidence, statutes, or the Constitution. It is material when it is directed to prove the fact in issue, as determined by the rules on substantive law and proceedings.⁶⁷⁰

Admissible evidence is evidence received by the court to help the judge determine the merits of a case. It is discretionary upon the judge whether to admit all admissible evidence as he may exclude cumulative evidence. He may also exclude what is otherwise admissible evidence if the court determines that the probative value of such evidence is rendered unimportant by circumstances such as prejudice, confusion of issues, or undue consumption of time.⁶⁷¹

4. Table of Evidence

Table 5.3. Recommended Evidence			
Philippine Fisheries Code of 1998 (RA No. 8550)			
Actor	Issue	Recommended Evidence	Agency Involved
Fisherfolk/NGO	Fishing through explosive, noxious or poisonous substance, and/or electricity.	<ol style="list-style-type: none"> 1. Photographs of the place before and after the incident occurred. 2. Fish sample and/or results of fish examination. 3. Possession of dynamite or poisonous substance is <i>prima facie</i> evidence already. 4. Affidavit indicating the use of explosives or harmful substance or possession of such. 	PNP-Maritime Group/PCG

⁶⁷⁰ *Id.* Rule 130.

⁶⁷¹ NARCISO M. AGUILAR, REVISED RULES ON EVIDENCE ANNOTATED 3-5 (2nd ed., 2008) (citing Steven H. Gifis, Law Dictionary).

Continuation: Table 5.3 Recommended Evidence			
Philippine Clean Water Act of 2004 (RA No. 9274)			
Actor	Issue	Recommended Evidence	Agency Involved
Complainant/Offended Party	Dumping of waste and discharge of water pollutants.	<ol style="list-style-type: none"> 1. Water sample 2. Waste sample 3. Water pollutant Sample 4. Results of the examination or analysis of the sample. 	<ul style="list-style-type: none"> • DENR (lead agency); • Laguna Lake Development Authority (if applicable); • PCG (offshore source)
Revised Forestry Code of the Philippines (PD No. 705)			
Actor	Issue	Recommended Evidence	Agency Involved
Taskforce on Illegal Logging	Illegal cutting and transport of logs.	<ol style="list-style-type: none"> 1. Certificate of Timber Origin 2. Auxiliary Invoices Sales or Commercial Invoices 3. Log Supply Contract 4. Forest Officer Markings 5. Certificate of Transportation Agreement 	Forest Management Bureau (FMB); DENR-Field Office
Philippine Clean Air Act of 1999 (RA No. 8749)			
Actor	Issue	Recommended Evidence	Agency Involved
Offended Party/Interest groups	Pollution from Stationary Sources such as Industrial Plants.	<ol style="list-style-type: none"> 1. Photograph of the stationary source or industrial plant. 2. Measurement of the amount of gas emitted in the atmosphere. 	<ul style="list-style-type: none"> • DENR-Field Office • PCG (offshore source)

Continuation: Table 5.3 Recommended Evidence			
Wildlife Resources Conservation and Protection Act (RA No. 9147)			
Actor	Issue	Recommended Evidence	Agency Involved
Complainant/Offended Party; DENR-Regional Office	Illegal trade or transportation of wildlife.	1. Mere possession of the animal is enough evidence.	National Bureau of Investigation-Environmental and Wildlife Protection Investigation Division (NBI-EWPID); DENR-Regional Office
Ecological Solid Waste Management Act of 2000 (RA No. 9003)			
Actor	Issue	Recommended Evidence	Agency Involved
Local Community in a Citizen suit action/private party	Dumping of waste matters in public places and establishment of open dumps.	1. Waste sample 2. Photographs of the dump site 3. Result of waste sample analysis	<ul style="list-style-type: none"> • DENR-Field Office • National Solid Waste Management Commission

These tables are merely examples. The lists enumerated are by no means exclusive. In some environmental violations, mere possession of the object is already *prima facie* evidence of violation of the law. For instance, in the Philippine Fisheries Code, mere possession of the dynamite and other noxious or harmful substances is already *prima facie* evidence. Another example is found in the Revised Forestry Code. Under this Code, mere possession of illegally cut forest products and logs is already *prima facie* evidence of violation of the law.

Monge v. People of the Philippines,
G.R. No. 170308 March 7, 2008, 548 SCRA 42.

Facts: The barangay tanods in Iriga City found petitioner Monge and Potencio in possession of and transporting three pieces of mahogany lumber. When asked for the necessary permit from DENR, Monge and Potencio were not able to give one. Monge was able to escape but Potencio was brought to the police station first, and later to the DENR-CENRO. The DENR-CENRO seized the lumber. Subsequently, Monge was arrested. Both of them were charged with violation of Section 68 of the Revised Forestry Code of the Philippines providing for the criminal offense of cutting, gathering and/or collecting timber or other products without




**Continuation: *Monge v. People of the Philippines***

license. Both Monge and Potencio pleaded not guilty during the arraignment. During trial, Potencio was discharged as state witness testifying that it was Monge who owned the lumber, and that the latter merely asked him to help him transport it from the mountain. The trial court found Monge guilty. The Court of Appeals dismissed the appeal.

Issue: *Whether Monge and Potencio were guilty of violating the Revised Forestry Code.*

Ruling: *Yes, they are guilty. The mere possession of Monge and Potencio of the lumber without the required permit had already consummated their criminal liability under Section 68 of the Revised Forestry Code. The Revised Forestry Code "is a special penal statute that punishes acts essentially malum prohibitum." Regardless of the good faith of Monge, the commission of the prohibited act consummated his criminal liability. Good faith, the absence of malice or criminal intent, is not a defense. It is also immaterial as to whether Potencio or Monge owned the lumber as mere possession thereof without the proper documents is unlawful and punishable.*



Gathering evidence is often a difficult task as investigating agencies/officers and prosecutors are often faced with seemingly insurmountable obstacles such as killing of witnesses and investigators, lack of support from the local government unit, non-receptiveness of the local community, contaminated evidence, forged documents, disappearance of evidence, and more. Furthermore, some evidence are too large or by their very nature are too dangerous or easily destroyed to be taken into custody and presented before the prosecutor or judge. Such evidence may include the vessel itself, trawl, logs, the whole catch of fish, large wildlife, and more. The Rules of Procedure for Environmental Cases recognize the efficiency and effectiveness of procuring photographs, videos, documents, or other materials that can easily prove the existence of the evidence. Close coordination between enforcement agencies and prosecutors is important to maintain the integrity of the evidence.



CHAPTER 6

PROCEEDINGS IN COURT ON ENVIRONMENTAL LAW CASES

The Rules of Procedure aim to: (a) protect and advance the constitutional right of the people to a balanced and healthful ecology; (b) provide a simplified, speedy and inexpensive procedure for the enforcement of environmental rights; (c) introduce and adopt innovations and best practices ensuring the effective enforcement of remedies and redress for violation of environmental laws; and (d) enable the courts to monitor and exact compliance with order and judgments in environmental cases.⁶⁷²

In the prosecution of cases concerning Environmental Laws, the Rules of Procedure presented innovations on the rules on legal standing and the collection of legal fees. Pursuant to its objective to provide for the speedy disposition of cases, the Rules simplify the submission of evidence and limit the trial to a period of two months reckoned from the date of the issuance of the pre-trial order.⁶⁷³ The Rules of Procedure also aim to address issues on securing technical expertise.⁶⁷⁴ It allows for a trial by a panel of experts in civil cases.⁶⁷⁵ Rule 3, Section 6 provides that the judge shall “[e]ncourage referral of the case to a trial by commissioner under Rule 32 of the Rules of Court x x x.” The inclusion of a trial by a panel of experts recognizes the highly technical nature of environmental cases thereby requiring the assistance of experts in the field in the resolution of the case.

To further its goal of speedy disposition of cases, the Rules of Procedure for Environmental Cases give emphasis to the use of the Modes of Discovery namely: Interrogatories to Parties (Rule 25), Request for admission by adverse party (Rule 26), Depositions (Rule 23) and Rules 27-28 in order to aid the speedy disposition of environmental cases.⁶⁷⁶

The Rules also adopt innovations and best practices in the form of the application of the Precautionary Principle in the resolution of environmental cases,⁶⁷⁷ Strategic Lawsuits Against Public

⁶⁷² RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 1, § 3.

⁶⁷³ *Id.* Rule 4, § 1.

⁶⁷⁴ Atty. Grizelda Mayo-Anda, Environmental Issues Faced by Civil Society Groups, Lecture delivered during the Forum on Environmental Justice: Upholding the Right to a Balanced and Healthful Ecology at the University of Cordilleras, Baguio City (April 16-17, 2009) [hereinafter Mayo-Anda Lecture].

⁶⁷⁵ Atty. Antonio G.M. La Viña, Rules of Procedure for Environmental Cases, Lecture delivered during the Forum on Environmental Justice: Upholding the Right to a Balanced and Healthful Ecology at the University of Cordilleras, Baguio City (April 16-17, 2009) [hereinafter La Viña Lecture].

⁶⁷⁶ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 2, § 13 and Rule 3, § 4.

⁶⁷⁷ *Id.* Rule 20, §§ 1-2.

Participation (SLAPP),⁶⁷⁸ Consent Decree,⁶⁷⁹ the issuance of a Temporary Environmental Protection Order (TEPO)⁶⁸⁰ and Special Civil Actions such as the Writ of Kalikasan and the Writ of Continuing Mandamus.

Pursuant to its objective, the Rules of Procedure for Environmental Cases include provisions requiring the submission of progress reports⁶⁸¹ and the creation of a trust fund⁶⁸² to ensure and monitor compliance with the orders of the court.

The Rules of Procedure for Environmental Cases should not be seen to be in conflict with administrative remedies which may be availed of by the aggrieved party. Resort to the courts must be made only after exhausting administrative remedies. Where the law provides for a mode of settling disputes, the same should be followed prior to asking relief from the courts. Accordingly, a brief discussion will be devoted to the procedure before the Pollution Adjudication Board (PAB) and the Mines Adjudication Board (MAB). Thereafter, a discussion shall be made on the procedure in civil and criminal cases outlined by the Rules of Procedure for Environmental Cases.

A. Remedies from Quasi-Judicial Bodies

1. Pollution Adjudication Board (PAB)

As a general rule, the adjudication of pollution cases is under the primary jurisdiction of the PAB who assumed the powers of the National Pollution Control Commission.⁶⁸³ Pollution refers to:

[Any] alteration of the physical, chemical or biological properties of any water, air and/or land resources of the Philippines or any discharge thereto of any liquid, gaseous or solid wastes as will be likely to create or to render such water, air and land resources harmful, detrimental or injurious to public health, safety or welfare or which will adversely affect their utilization for domestic, commercial, industrial, agricultural, recreational or other legitimate purposes.⁶⁸⁴

An exception to this rule is when the law provides for the specific forum. For example, the LLDA law states that the LLDA has jurisdiction over pollution cases affecting the Laguna Lake Region.⁶⁸⁵ Similarly, claims for compensation for pollution damage under the Oil Pollution Compensation Act of 2007 shall be brought directly to the Regional Trial Courts.⁶⁸⁶

⁶⁷⁸ See *infra* Chapter VII on Special Remedies.

⁶⁷⁹ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 3, § 5.

⁶⁸⁰ *Id.* Rule 2, §§ 8-11.

⁶⁸¹ *Id.* Rule 5, §§ 3-5.

⁶⁸² *Id.* Rule 5, § 1.

⁶⁸³ Providing for the Revision of Republic Act No. 3931, commonly known as the Pollution Control Law, and for Other Purposes [Pollution Control Law] Presidential Decree No. 984, §6(j); See also Revised Rules of the Pollution Adjudication Board on Pleading, Practice and Procedure in Pollution Cases, PAB Resolution No. 1-C series of 1997, Rule 3, § 1.

⁶⁸⁴ Pollution Control Law, § 2(a).

⁶⁸⁵ *Public Hearing Committee of the Laguna Lake Development Authority v. SM Prime Holdings, Inc.*, G.R. No. 170599, Sept. 22, 2010. See Other cases concerning the jurisdiction of the LLDA, Annex A(C)(2).

⁶⁸⁶ Oil Pollution Compensation Act of 2007, § 11.

Shell Philippines Exploration B.V. et al. v. Efren Jalos et al., G.R. No. 179918, Sept. 8, 2010.

Facts: After discovering natural gas in the Camago-Malampaya area, Shell Philippines Exploration B.V. commenced the construction and installation of a pipeline from its platform in Northwestern Palawan to its gas processing plant in Batangas. The pipeline crossed the Oriental Mindoro Sea. On May 19, 2003, respondents filed a complaint with Branch 41 of the Regional Trial Court of Pinamalayan, Oriental Mindoro, for damages on the ground that their livelihood was affected by the construction and operation of Shell's pipeline. The respondents claimed "the pipeline greatly affected biogenically hard-structured communities such as coral reefs and led [to] stress to the marine life in the Mindoro Sea." Their fish catch was reduced; as a result, the respondent's income declined significantly.

Shell moved for the dismissal of the complaint on the ground that being a pollution case, the PAB has primary jurisdiction over the case. The RTC dismissed the complaint on the ground that the action was actually pollution related although denominated as an action for damages. The CA reversed the RTC's decision on the ground that Shell was not being sued for committing pollution but for constructing the pipeline that caused fish decline and a reduction of the respondent's income. The CA considered the case as a quasi-delict which should have been taken cognizance by the trial court.

a. Institution of Proceedings

An action is deemed commenced by the filing of a complaint with the PAB, DENR Regional Office, Provincial Environment and Natural Resources Officer (PENRO) or Community Environment and Natural Resources Officer (CENRO) or by the issuance of a Notice of Violation by the DENR Regional Office, PENRO or CENRO.⁶⁸⁷

The complaint shall contain a detailed statement of the ultimate facts constituting the cause of action of the party, the information necessary to establish the complainant's claim and the remedy sought by the party. If the action is commenced by a Notice of Violation, the Notice of Violation shall have similar contents.⁶⁸⁸

If the complaint is filed with the PENRO, CENRO and the PAB, the same shall be endorsed to the Regional Office. Within three (3) days, the Regional Executive Director (RED) shall order the investigation of the complaint. The investigation report shall be submitted to the RED within fifteen (15) days.⁶⁸⁹

If after the investigation it is found that there is *prima facie* evidence of a violation, the RED shall notify the respondent of the date for the Technical Conference. The RED may also issue an interim Cease and Desist Order (CDO) effective for five (5) days if it finds that there is *prima facie* evidence that the emission or discharge of pollutants constitutes an immediate threat to life public health, safety and welfare.⁶⁹⁰

Where a Notice of Violation is filed, the RED shall set a date for a Technical Conference which shall be held within fifteen (15) days from

⁶⁸⁷ Revised Rules of the Pollution Adjudication Board on Pleading, Practice and Procedure in Pollution Cases, Rule 4, § 2.

⁶⁸⁸ *Id.* Rule 4, § 3.

⁶⁸⁹ *Id.* Rule 4, § 7.

⁶⁹⁰ *Id.*

Continuation:
Shell Philippines Exploration
B.V. et al. v. Efren Jalos et al.

Issue: *Whether or not the complaint is a pollution case within the primary jurisdiction of the PAB.*

Ruling: *Yes. The complaint for damages instituted by respondents is a pollution case within the primary jurisdiction of PAB. The Supreme Court dismissed the case without prejudice to refiling the same with the PAB.*

While the complaint did not specifically mentioned that Shell committed pollution its allegations that “the pipeline greatly affected biogenically hard-structured communities such as coral reefs and led [to] stress to the marine life in the Mindoro Sea.” constitutes pollution under Section 2 (a) of PD No. 984. Clearly, the stress to marine life is caused by pollution emanating from Shell’s natural gas pipeline. Resolving the issue entails determining whether or not the operation of the pipeline altered the coastal waters. PAB, as the agency equipped with the specialized knowledge and skills concerning pollution cases, has primary jurisdiction over the said case.

the Notice of Violation.⁶⁹¹ The RED shall designate a hearing officer who will preside over the said conference.⁶⁹²

b. Proceedings before the Hearing Officers

The conduct of the Technical Conference, which shall be presided by the hearing officer, shall be for the following purposes:

- a. Simplification of issues
- b. Stipulation of facts
- c. Tentative computation of fines
- d. Execution of a commitment from the respondent to abate or mitigate the pollution complained of within a period agreed upon by the parties which shall not be more than ninety (90) days.⁶⁹³

The parties shall be required to submit their respective position papers with all of the supporting documents and affidavits of witnesses, furnishing a copy to the adverse party, within ten (10) days from receipt of the Notice from the hearing officer ordering its submission.⁶⁹⁴

The respondent shall be considered in default if he fails to appear in the Technical Conference or fails to file his position paper despite due notice.⁶⁹⁵ The non-appearance of

respondent’s pollution control officer during the Technical Conference shall also be deemed as an admission that he has no accredited pollution control officer.⁶⁹⁶

Upon the expiration of the Period of Commitment agreed upon during the Technical Conference, a follow up inspection shall be conducted. If the respondent fails to comply with his commitment in the conference, the Regional Office shall elevate the case to the PAB within fifteen (15) days with a

⁶⁹¹ *Id.*

⁶⁹² *Id.* Rule 5, § 1.

⁶⁹³ Revised Rules of the Pollution Adjudication Board on Pleading, Practice and Procedure in Pollution Cases, Rule 6, § 1.

⁶⁹⁴ *Id.* Rule 6, § 2.

⁶⁹⁵ *Id.* Rule 6, § 5.

⁶⁹⁶ *Id.* Rule 6, § 3.

recommendation for the issuance of a Cease and Desist Order and the fines to be imposed. If respondent complies with his commitment, the case shall be elevated to the PAB with only a recommendation of the fines to be imposed.⁶⁹⁷

c. Proceedings before the PAB

Similar to the proceedings before the hearing officers, technical rules of procedure are not binding before the PAB.⁶⁹⁸ As a general rule, the board decides the case on the basis of the pleadings submitted and the record of the case except when the board requires the conduct of oral arguments or the presentation of additional evidence.⁶⁹⁹

The board may issue an *ex parte* Cease and Desist Order if it finds that there is *prima facie* evidence that the emission or discharge constitutes an immediate threat to life, public health, safety or welfare, or to animal or plant life, or exceeds the allowable DENR standards.⁷⁰⁰ Respondent may contest said order by filing a motion to lift the order.⁷⁰¹ Under the Rules promulgated by the PAB, respondents may request the temporary lifting of the Cease and Desist Order for the purpose of implementing pollution control programs⁷⁰² or for sampling purposes.⁷⁰³ If respondent had a previous case with the PAB, the TLO shall not be issued unless respondent fully pays all of the fines imposed by the board.⁷⁰⁴ The respondent may request for an extension of the TLO provided that it files a motion for extension at least fifteen (15) days before the expiration of the TLO and the board is satisfied that respondent has substantially instituted the remedial measures approved by the board in granting the TLO or there is a substantial improvement in respondent's effluents or emissions.⁷⁰⁵

The decision of the board becomes final after fifteen (15) days from the parties' receipt of the decision.⁷⁰⁶ The aggrieved party may file a Motion for Reconsideration within fifteen (15) days from receipt of the decision.⁷⁰⁷ If an MR is filed, the board shall decide the case within

⁶⁹⁷ *Id.* Rule 6, § 7.

⁶⁹⁸ *Id.* Rule 7, § 4.

⁶⁹⁹ Revised Rules of the Pollution Adjudication Board on Pleading, Practice and Procedure in Pollution Cases, Rule 8, § 5 (as amended by PAB Resolution No. 1, Series of 2001).

⁷⁰⁰ *Id.* Rule 9, § 1.

⁷⁰¹ *Id.*

⁷⁰² *Id.* Rule 9, § 3.

⁷⁰³ *Id.* Rule 9, § 4.

⁷⁰⁴ *Id.* Rule 9, § 5.

⁷⁰⁵ Revised Rules of the Pollution Adjudication Board on Pleading, Practice and Procedure in Pollution Cases, Rule 9, § 6.

⁷⁰⁶ *Id.* Rule 11, § 1, (as amended by PAB Resolution No. 1, Series of 2001).

⁷⁰⁷ *Id.* Rule 10, § 1, (as amended by PAB Resolution No. 1, Series of 2001).

thirty (30) days from its submission.⁷⁰⁸ The mere filing of an appeal shall not stay the decision of the board unless stayed by the Court of Appeals or the Supreme Court.⁷⁰⁹

2. Mines Adjudication Board (MAB)

Section 77 of the Philippine Mining Act provides for a Panel of Arbitrators who shall have jurisdiction to hear and decide disputes involving rights to mining areas; disputes involving mineral agreements or permits (i.e., validity of issuance of a mining permit within a protected area); and disputes involving surface owners, occupants and claimholders/concessionaires.

The nature of proceedings before the Panel of Arbitrators shall be summary in nature.⁷¹⁰ The panel and the board are not bound by technical procedures in resolving the case before them.⁷¹¹

a. Institution of Proceedings

An action is commenced upon the filing of a *verified* adverse claim, protest or opposition before any of the following offices:

- a. Directly with the Panel of arbitrators;
- b. To the Regional Office for endorsement to the appropriate panel; or
- c. With any concerned Provincial Environment and Natural Resources Officer of Community Environment and Natural Resources Officer for endorsement to the appropriate panel.⁷¹²

The adverse claim, protest or opposition shall contain a detailed statement of the ultimate facts relied upon by the party, the grounds for filing the complaint, an explanation of the issues and arguments and the remedy sought by the party. The pleading must be filed together with all supporting documents such as documentary evidence and affidavits of witnesses.⁷¹³

It must be remembered that the filing of the claim must be accompanied with payment of the docket fees and proof of service on the respondents. The requirement of payment of docket fees shall not be imposed on a pauper litigant.⁷¹⁴

b. Proceedings before the Panel of Arbitrators

Within seven (7) days from receipt of the case, which is either filed directly or endorsed, the Panel shall call the parties for a mandatory conference for the purpose of settling the dispute amicably.⁷¹⁵

⁷⁰⁸ *Id.*

⁷⁰⁹ *Id.* Rule 11, § 1 (as amended by PAB Resolution No. 1, Series of 2001).

⁷¹⁰ Rules on Pleading, Practice and Procedure before the Panel of Arbitrators and the Mines Adjudication Board, Resolution (May 22, 1997).

⁷¹¹ *Id.* Rule 1, § 4.

⁷¹² *Id.* Rule 3, § 6.

⁷¹³ *Id.* Rule 3, § 7.

⁷¹⁴ *Id.*

⁷¹⁵ *Id.* Rule 3, § 15.

On or before the date set for the conference, the respondent may file a motion to dismiss on the following grounds: (1) lack of jurisdiction; (2) improper venue; or (3) the cause of action is barred by prior judgment or prescription. Opposition to the said motion must be filed within five (5) days from receipt of the same. Afterwards, the matter shall be summarily decided by the Panel whose findings are not subject to appeal.⁷¹⁶

The number of conferences shall not exceed three settings and shall be terminated within thirty (30) days from the first setting of the conference. If the parties arrive at a settlement, the terms of the settlement shall be reduced into writing and the same shall be approved by the Panel.⁷¹⁷

If the parties fail to arrive at a settlement, either in whole or in part, the Panel shall require the parties to submit their respective position papers with all of their supporting documents.⁷¹⁸ The Panel, at its own discretion, shall determine the necessity of conducting a hearing.⁷¹⁹

If the Panel determines that there is no need to conduct a hearing, it shall require the parties to submit their draft decision within ten (10) days from receipt of the said order.⁷²⁰ If the Panel determines that there is a need for a hearing, it shall set the dates thereof which shall be terminated within ninety (90) days from the initial hearing. Subsequently, the parties will be required to submit their respective draft decisions.⁷²¹

The Panel of Arbitrators shall issue its Decision within thirty (30) days from the time the parties submitted their draft decisions and the case is deemed submitted for resolution.⁷²² The aggrieved party may file a Motion for Reconsideration within fifteen (15) days from receipt of the Decision.⁷²³

c. Proceedings before the MAB

The Decision or Order of the Panel of Arbitrators may be appealed to the MAB within fifteen (15) days from receipt of the same.⁷²⁴ An appeal to the MAB may only be entertained on the following grounds:

⁷¹⁶ Rules on Pleading, Practice and Procedure before the Panel of Arbitrators and the Mines Adjudication Board, Rule 3, § 26.

⁷¹⁷ *Id.* Rule 3, § 15.

⁷¹⁸ *Id.* Rule 3, § 16.

⁷¹⁹ *Id.* Rule 3, § 17.

⁷²⁰ *Id.* Rule 3, § 18(b).

⁷²¹ *Id.* Rule 3, § 18(a).

⁷²² Rules on Pleading, Practice and Procedure before the Panel of Arbitrators and the Mines Adjudication Board, Rule 3, § 18.

⁷²³ *Id.* Rule 3, § 28.

⁷²⁴ Philippine Mining Act of 1995, § 78.

- (a) If there is *prima facie* abuse of discretion on the part of the Panel;
- (b) If the Decision, Order or Award was secured through fraud, coercion, graft and corruption and the appellant has the necessary evidence to support such allegation;
- (c) If made on purely questions of law; and
- (d) If serious errors on findings of fact are raised which if not corrected would cause grave and irreparable injury to the appellant.⁷²⁵

It must be remembered that the appeal must be under oath stating the date of receipt of the order appealed from, with payment of the appeal fee and proof of service upon the adverse party.⁷²⁶ If the decision of the Panel involves a monetary award, the party appealing must post a cash or surety bond, issued by a reputable bonding company duly accredited by the MAB or the Supreme Court, in an amount equivalent to the monetary award.⁷²⁷

Similar to the proceedings before the Panel of Arbitrators, technical rules of procedure are not binding before the MAB.⁷²⁸ The deliberation of cases by the Board shall be conducted at the main office of the Department.⁷²⁹ The Board may require the parties to submit their memoranda. The parties shall file their respective draft decisions within thirty (30) days from the receipt of the order requiring the same.⁷³⁰

The decision of the Board becomes final after thirty (30) days from the parties' receipt of the decision.⁷³¹ The aggrieved party may file a Motion for Reconsideration, on the ground of palpable or patent error, within ten (10) days from receipt of the decision.⁷³² If an MR has been filed, the decision shall become final and executory after thirty (30) days from receipt of the resolution on such motion.⁷³³

The resolution or decision of the MAB may be reviewed by filing a petition for review on *certiorari* with the Court of Appeals.

Generally, recourse to courts must be made after the complainant has exhausted all administrative remedies. Thus, the list of administrative agencies in Chapter 3 is important to determine which agency generally has jurisdiction over the matter in issue. It is only after the complainant has sought recourse to the administrative agency should resort to courts be made.

⁷²⁵ Rules on Pleading, Practice and Procedure before the Panel of Arbitrators and the Mines Adjudication Board, Rule 4, § 2.

⁷²⁶ *Id.* Rule 4, § 3.

⁷²⁷ *Id.* Rule 4, § 5.

⁷²⁸ *Id.* Rule 5, § 7.

⁷²⁹ *Id.* Rule 5, § 3.

⁷³⁰ *Id.* Rule 5, § 8.

⁷³¹ Rules on Pleading, Practice and Procedure before the Panel of Arbitrators and the Mines Adjudication Board, Resolution, Rule 5, § 10.

⁷³² *Id.* Rule 5, § 11.

⁷³³ *Id.* Rule 5, § 12.

B. Civil Procedure

In relation to the environmental laws indicated in the Rules of Procedure for Environmental Cases, the following are the types of civil cases which are under the jurisdiction of the Regional Trial Courts:

1. All civil actions in which the subject of the litigation is incapable of pecuniary estimation.⁷³⁴
2. All cases not within the exclusive jurisdiction of any court, tribunal, person or body exercising judicial or quasi-judicial functions.⁷³⁵
3. All other cases in which the demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs or the value of the property in controversy exceeds Two Hundred Thousand Pesos (P200,000) or, in such other cases in Metro Manila, where the demand exclusive of the abovementioned items exceeds Four Hundred Thousand Pesos (P400,000).⁷³⁶
4. Environmental civil actions which are under the jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts are those where the value of the personal property or amount of the demand does not exceed One Hundred Thousand Pesos (P100,000) or, in Metro Manila where such personal property or amount of the demand does not exceed Two Hundred Thousand Pesos (P200,000), exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs, the amount of which must be specifically alleged: *Provided*, That interest, damages of whatever kind, attorney's fees, litigation expenses, and costs shall be included in the determination of the filing fees: *Provided, further*, That where there are several claims or causes of actions between the same or different parties, embodied in the same complaint, the amount of the demand shall be the totality of the claims in all the causes of action, irrespective of whether the causes of action arose out of the same or different transactions.⁷³⁷

1. Institution of Proceedings

A civil action is instituted by the filing of a verified complaint. Rule 2, Section 3 of the Rules of Procedure provides that the verified complaint shall contain the following:

- a. Names of the parties
- b. Addresses of the parties
- c. Cause of action
- d. Reliefs prayed for
- e. Verification

⁷³⁴ An Act Reorganizing the Judiciary, Appropriating Funds Therefor and for Other Purposes [Judiciary Reorganization Act of 1980], Batas Pambansa Blg. 129 (1981).

⁷³⁵ *Id.*

⁷³⁶ *Id.*

⁷³⁷ *Id.*

- f. Certification against forum shopping
- g. Attachments which consist of all evidence supporting the cause of the parties⁷³⁸

In stating the cause of action, the complainant must state that the same is an “environmental case” and the applicable environmental law. Otherwise, the presiding judge shall refer the complaint to the executive judge for re-raffle.⁷³⁹

The verification in the complaint is mandatory. The verification, which by way of an affidavit, states that (a) the affiant has read the pleading and (b) the allegations therein are true and correct of his own personal knowledge or based on authentic records.⁷⁴⁰ The verification signifies that the complaint has been made in good faith and the allegations therein are not speculative in nature. If the pleading lacks the proper verification, it shall be treated as an unsigned pleading and produces no legal effect.⁷⁴¹ Nevertheless, this can be remedied by requiring the plaintiff to affirm the pleading under oath. The remedy is in line with the principle that “x x x the rules of procedure are established to secure substantial justice and that technical requirements may be dispensed with in meritorious cases.”⁷⁴²

The certification against forum shopping is a sworn statement which states that the plaintiff:

- (a) x x x has not commenced any action or filed a claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein;
- (b) if there is such other pending action or claim, a complete statement of the present status thereof; and
- (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report the fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.⁷⁴³

The certification against forum shopping, similar to the verification, must be signed by the plaintiff himself as he is in the best position to know whether he actually filed or caused the filing of a petition.⁷⁴⁴ Where the certification is signed by counsel, the certification is deemed defective and the absence thereof is a valid cause for dismissal.⁷⁴⁵

⁷³⁸ WILLARD B. RIANO, CIVIL PROCEDURE (A RESTATEMENT FOR THE BAR) 51 (2007) (citing *Sarmiento v. Zaratan*, G.R. No. 167471, Feb. 15, 2007).

⁷³⁹ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 2, § 3 ¶ 3.

⁷⁴⁰ 1997 RULES OF CIVIL PROCEDURE, Rule 7, § 4, as amended by A.M. No. 00-2-10, May 1, 2000.

⁷⁴¹ *Id.* Rule 7, § 4 ¶ 3.

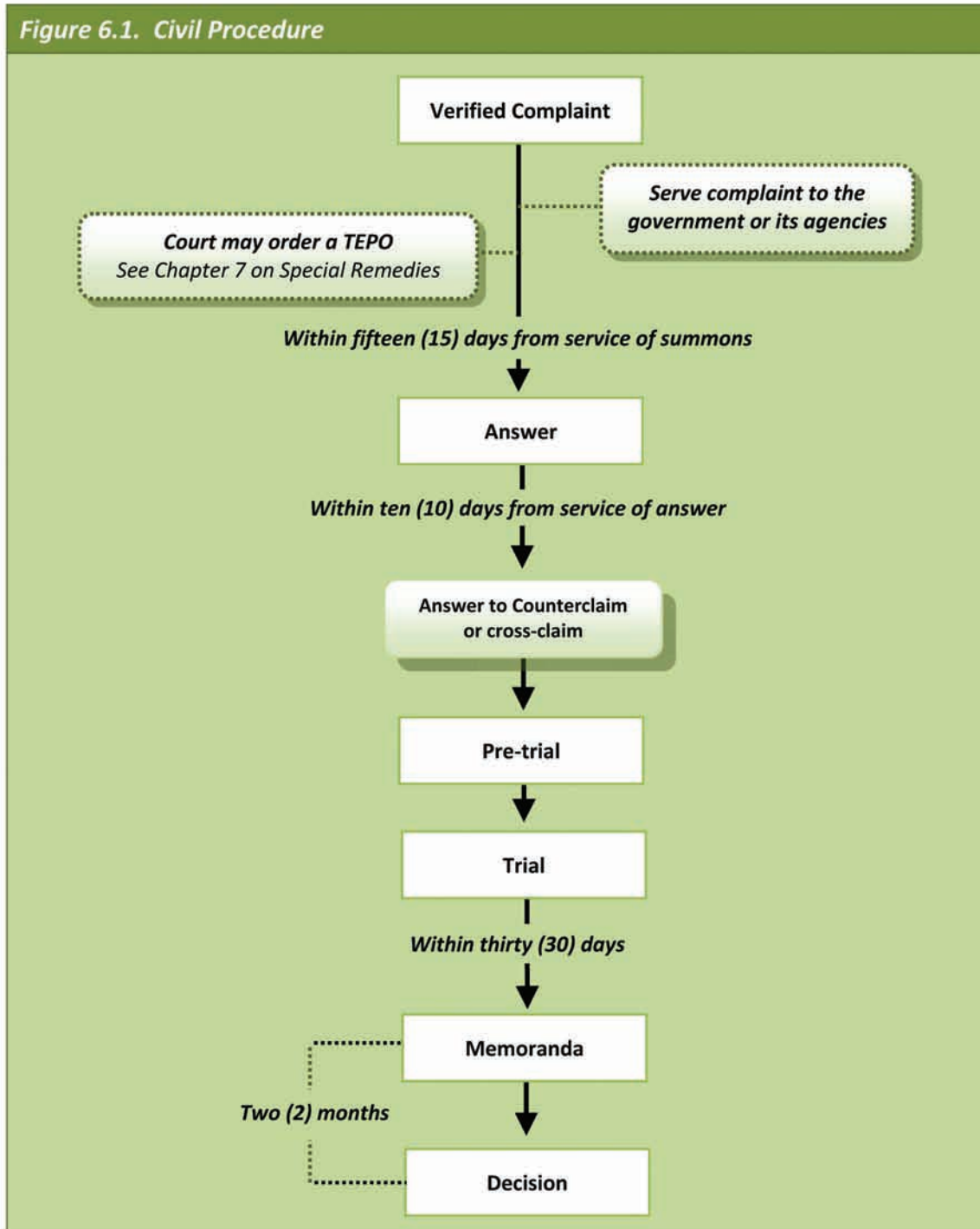
⁷⁴² RIANO, *supra* note 738, at 52 (citing *Pampanga Development Sugar Company, Inc. v. NLRC*, 272 SCRA 737 [1997]).

⁷⁴³ 1997 RULES OF CIVIL PROCEDURE, Rule 7, § 5.

⁷⁴⁴ RIANO, *supra* note 738, at 56.

⁷⁴⁵ *Id.* at 56 (citing *Far Eastern Shipping Company v. Court of Appeals*, 297 SCRA 30 [1998]).

The attachments referred to may consist of affidavits of witnesses, documentary evidence and object evidence. The affidavits shall be in question and answer form and shall comply with the rules of admissibility of evidence.⁷⁴⁶



⁷⁴⁶ See discussion on evidence (part) *infra*.

a. Filing of a Verified Complaint

The institution of civil case, which may involve the enforcement or violation of any environmental law or an action to enforce rights or obligations under environmental laws, may be done by: (1) any real party in interest⁷⁴⁷ or a (2) Filipino citizen in representation of others, including minors or generations yet unborn.⁷⁴⁸

A “real party in interest” may be a natural person, a government entity, or a juridical entity authorized by law.⁷⁴⁹ A real party in interest is a party “who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.”⁷⁵⁰ As a general rule, the prosecution of cases must be done in the name of a real party in interest.⁷⁵¹ As a way of addressing problems in legal standing in environmental cases, the Rules of Procedure adopted the use of citizen’s suit to enforce rights and obligations under all environmental laws indicated in Rule 1 Section 2 of the Rules of Procedure for Environmental Cases.

The Rules of Procedure give emphasis to the pronouncements of the Supreme Court in *Oposa v. Factoran*. Prior to the Rules, citizen suits were merely applied in violations of RA No. 8749 or the Clean Air Act and RA No. 9003 or the Ecological Solid Waste Management Act, both of which provide for specific provisions on citizen suits. For violations of other environmental cases, the allowance of citizen suits is discretionary on the part of the judge, as there are judges who believe that the application of the *Oposa* doctrine is limited to civil cases.⁷⁵²

The Rules of Procedure for Environmental Cases, in allowing for citizen suits, expressly provide that such suits under the Clean Air Act and the Ecological Solid Waste Management Act are to be governed by the said laws. Rule 2, Section 5 shall govern the rest of the environmental laws. The Rule states:

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 general circulation in the Philippines or furnish all affected barangays copies of said order.

Citizen suits under the Philippine Clean Air Act shall be governed by the following provision:

⁷⁴⁷ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 2, § 4.

⁷⁴⁸ *Id.* Rule 2, § 5.

⁷⁴⁹ *Id.* Rule 2, § 4.

⁷⁵⁰ 1997 RULES OF CIVIL PROCEDURE, Rule 3, § 2.

⁷⁵¹ *Id.*

⁷⁵² Mayo-Anda Lecture, *supra* note 674.

Sec. 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 wilfully 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 30-day notice has been given to the public officer and alleged violator concerned and no appropriate action has been taken thereon. x x x

The same section also provides that the court shall exempt the plaintiff from the payment of filing fees except in cases where the action is not capable of pecuniary estimation. In cases involving an application for the issuance of a preliminary injunction, the court may exempt the plaintiff from the filing of an injunction bond upon *prima facie* showing of the non-enforcement or violation complained of.

In the Ecological Solid Waste Management Act, the institution of a citizen's suit is as follows:

Sec. 52. Citizen Suits. – For the purpose 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 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 wilfully or grossly neglects the performance of an act specifically enjoined as a duty by this Act or its implementing rules and regulations; or abuses his authority in the performance of his duty; or, in any manner, improperly performs his duties under this Act or its implementing rules and regulations: *Provided, however,* That no suit can be filed until after the 30-day notice has been given to the public officer and the alleged violator concerned and no appropriate action had been taken thereon. x x x

Similar to the Clean Air Act, the Ecological Solid Waste Management Act also exempts the plaintiff from the payment of filing fees and injunction bond upon *prima facie* showing of the non-enforcement or violation complained of. In addition, the Solid Waste Management Act states that the court shall award reasonable attorney's fees, moral damages and litigation costs in the event that the citizen's suit prevails.

b. Service of Verified Complaint

A copy of the verified complaint shall be served to the government or the appropriate agency although not a party to the case. Proof of service with the mentioned parties shall be attached to the complaint.⁷⁵³

In order to determine to whom the verified complaint shall be served, see discussion on the government agencies and their mandates in Chapter 3.

c. Payment of Filing Fees

The payment of filing fees upon the institution of the complaint is not necessary under the Rules of Procedure for Environmental Cases. Rule 2, Section 12 of the Rules addresses the problem of costly filing of suits which hinders access to justice in the field of Environmental Law. As a clear recognition of the need to dispense with the necessity to pay filing fees upon the institution of the complaint, the Rules of Procedure allow for the deferment of the payment of the filing fees. The pertinent rule states:

Rule 2

Sec. 12. Payment of filing and other legal fees. – The payment of filing and other legal fees by the plaintiff shall be deferred until after judgment unless the plaintiff is allowed to litigate as an indigent.

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

The deferment of the payment of filing fees does not apply to a plaintiff who is allowed to litigate as an indigent. An “indigent litigant” is exempt from the payment of docket fees, other lawful fees, and transcripts of stenographic notes which the court may order to be furnished to him.⁷⁵⁴ Nevertheless, before an indigent litigant may be considered as such, he must first file an *ex parte* application to be declared an indigent litigant. The court shall then conduct a hearing to determine whether or not the party is “one who has no money or property sufficient and available for food, shelter and basic necessities for himself and his family.”⁷⁵⁵ Once a litigant has been declared an indigent litigant, he will be able to avail of the exemptions from the payment of fees.

2. Summons and Responsive Pleadings

a. Service of Summons

Service of summons is effected by personal service, substituted service, and in case both fail, summons by publication.⁷⁵⁶ In the case of juridical entities, the published summons must indicate the names of its officers or its duly authorized representative.⁷⁵⁷

⁷⁵³ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 2, § 6.

⁷⁵⁴ 1997 RULES OF CIVIL PROCEDURE, Rule 3, § 21.

⁷⁵⁵ *Id.* Rule 3, § 21.

⁷⁵⁶ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 2, § 13, ¶ 4.

⁷⁵⁷ *Id.*

Generally, summons, orders, and other court processes may be served by the sheriff, his deputy, or other proper court officer. The Rules of Procedure added that the counsel or representative of the plaintiff or any suitable person authorized or deputized by the court issuing the summons, may serve summons, orders, and other court processes for justifiable reasons.⁷⁵⁸ “Private persons who are authorized and deputized by the court to serve summons, orders, and other court processes shall for that purpose be considered an officer of the court.”⁷⁵⁹

b. Requirements in Filing an Answer

From the date of receipt of the summons, the defendant has fifteen (15) days to file a verified answer with a copy thereof served on the plaintiff.⁷⁶⁰ If defendant fails to file his answer within the period provided, defendant shall be declared in default and plaintiff, upon his motion, may be allowed to present his evidence *ex parte* and the court shall render judgment based thereon.⁷⁶¹

The defendant shall attach all evidence to support his defense including but not limited to affidavits of witnesses, reports, and studies of experts.⁷⁶²

Defendant must state all affirmative and special defenses. Except for lack of jurisdiction, defenses which are not included in the answer are deemed waived.⁷⁶³ Similarly, cross-claims and compulsory counterclaims which are not stated in the answer are considered barred.⁷⁶⁴

The plaintiff shall file his answer to the counterclaims or cross-claims contained in the defendant’s answer within ten (10) days from receipt of the answer.⁷⁶⁵

Within fifteen (15) days from filing of the answer, all parties may avail of discovery procedures namely: interrogatories to parties,⁷⁶⁶ request for admission by adverse party,⁷⁶⁷ or at their discretion, they may avail of depositions pending action,⁷⁶⁸ production and inspection of documents and things,⁷⁶⁹ and the physical and mental examination of persons.⁷⁷⁰

⁷⁵⁸ *Id.* Rule 2, § 13 ¶ 1.

⁷⁵⁹ *Id.* Rule 2, § 13 ¶ 2.

⁷⁶⁰ *Id.* Rule 2, § 14.

⁷⁶¹ *Id.* Rule 2, § 15.

⁷⁶² RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 2, § 14.

⁷⁶³ 1997 RULES OF CIVIL PROCEDURE, Rule 9, § 1.

⁷⁶⁴ *Id.* Rule 9, § 2.

⁷⁶⁵ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 2, § 14.

⁷⁶⁶ *Id.* Rule 25.

⁷⁶⁷ *Id.* Rule 26.

⁷⁶⁸ *Id.* Rule 23.

⁷⁶⁹ 1997 RULES OF CIVIL PROCEDURE, Rule 27.

⁷⁷⁰ *Id.* Rule 28.

The use of the discovery procedures allows parties to obtain information on relevant matters during the pre-trial stage to obtain the fullest possible facts and issues before proceeding to pre-trial.⁷⁷¹

3. Speedy Disposition of the Case

As a means of ensuring the speedy disposition of cases, the Rules of Procedure for Environmental Cases specify the pleadings which may be filed and those which cannot be filed.

A motion to declare defendant in default is not allowed. Nevertheless, in the event that the defendant fails to file an answer within the given period, the court shall declare him in default. Upon plaintiff's motion, the court may allow plaintiff to present evidence and render judgment on the basis thereof.⁷⁷²

Allowable Pleadings (Rule 2, § 1)	Prohibited Pleadings (Rule 2, § 2)
<ul style="list-style-type: none"> ■ Complaint ■ Answer (may include compulsory counterclaim or cross claim) ■ Motion for intervention ■ Motion for discovery ■ Motion for reconsideration of judgment. ■ Allowed in highly meritorious cases or to prevent a manifest miscarriage of justice: <ul style="list-style-type: none"> ■ Motion for postponement ■ Motion for new trial ■ Petition for relief from judgment 	<ul style="list-style-type: none"> ■ Motion to dismiss the complaint ■ Motion for a bill of particulars ■ Motion for extension of time, to file pleadings, except to file an answer, the extension not to exceed fifteen (15) days ■ Motion to declare defendant in default. ■ Reply and rejoinder ■ Third party complaint.

4. Pre-trial Proceedings

The Rules of Procedure provide that the parties may enter into a compromise or arrive at a settlement at any stage of the proceedings before rendition of judgment.⁷⁷³ The judge has the duty to exert best efforts to persuade the parties to arrive at a settlement and may issue a Consent Decree approving the agreement between the parties.⁷⁷⁴ In the event of a failure to settle, the judge is required to perform several tasks before proceeding with the trial of the case.⁷⁷⁵

⁷⁷¹ RIANO, *supra* note 738, at 310 (citing *Tinio v. Manzano*, 307 SCRA 460 [1999]).

⁷⁷² RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 2, §15.

⁷⁷³ *Id.* Rule 3, § 10.

⁷⁷⁴ La Viña Lecture, *supra* note 675.

⁷⁷⁵ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 3, § 6.

The failure of the complaint to appear during the pre-trial shall not be a ground for the dismissal of the complaint unless the plaintiff repeatedly and unjustifiably fails to appear during the pre-trial conferences. In that case, the dismissal of the case shall be without prejudice to defendant's counterclaim. On the other hand, if defendant fails to appear during pre-trial, the court shall receive plaintiff's evidence *ex parte*.⁷⁷⁶

a. Notice of Pre-trial

The notice of pre-trial shall be issued by the branch clerk of court within two (2) days from the filing of the answer to the counter-claim or cross-claim.⁷⁷⁷ The pre-trial shall be held not later than one (1) month from the filing of the last pleading. From the date of the first pre-trial conference, the court may schedule as many pre-trial conferences as may be necessary within a period of two (2) months counted from the date of the first conference.⁷⁷⁸

b. Submission of Pre-trial Briefs

The pre-trial briefs of the parties must be filed and served on the other party at least three (3) days before the pre-trial date.⁷⁷⁹ The Rules of Procedure for Environmental Cases enumerate the subject matter which shall be included in the pre-trial brief, namely:

- (a) A statement of their willingness to enter into an amicable settlement indicating the desired terms thereof or to submit the case to any of the alternative modes of dispute resolution;
- (b) A summary of admitted facts and proposed stipulation of facts;
- (c) The legal and factual issues to be tried or resolved. For each factual issue, the parties shall state all evidence to support their positions thereon. For each legal issue, parties shall state the applicable law and jurisprudence supporting their respective positions thereon;
- (d) The documents or exhibits to be presented, including depositions, answers to interrogatories and answers to written request for admission by adverse party, stating the purpose thereof;
- (e) A manifestation of their having availed of discovery procedures or their intention to avail themselves of referral to a commissioner or panel of experts;
- (f) The number and names of the witnesses and the substance of their affidavits;
- (g) Clarificatory questions from the parties; and
- (h) List of cases arising out of the same facts pending before other courts or administrative agencies.⁷⁸⁰

⁷⁷⁶ *Id.* Rule 3, § 7.

⁷⁷⁷ *Id.* Rule 3, § 1.

⁷⁷⁸ *Id.*

⁷⁷⁹ *Id.* Rule 3, § 2.

⁷⁸⁰ *Id.*

Non-compliance with the required contents of a pre-trial brief may be a ground for a party to be declared in contempt. In addition, the failure of the parties to file the pre-trial brief within the period provided by the Rules shall have the same effect as failure to appear in the pre-trial.⁷⁸¹

c. Referral to Mediation

If the parties fail to settle their dispute at the start of the pre-trial conference, the court shall immediately refer the same to the Philippine Mediation Center unit for mediation. If none is available, the court shall refer the case to the clerk of court or legal researcher for mediation.⁷⁸²

The Rules of Procedure limit the mediation to a non-extendible period of thirty (30) days from receipt of notice of referral to mediation.⁷⁸³ During mediation, the parties may meet as many times as possible within the 30-day period provided by the court. After the expiration of the 30-day period, the mediation report must be submitted to the court within ten (10) days thereof.

d. Referral to Pre-trial Conference

Before pre-trial shall continue, the court may refer the case to the branch clerk of court for a preliminary conference for the following purposes:

- a. Assist the parties to settle;
- b. Mark the documents, exhibits or affidavits of witnesses which shall be in question and answer format and shall be considered as their testimony;
- c. Require depositions, answers to written interrogatories or answers to request for admissions;
- d. Require the production of documents or the results of the examination of persons;
- e. To consider matters as may aid in the proper disposition of the case.⁷⁸⁴

The preliminary conference shall be recorded in the “Minutes of Preliminary Conference” to be signed by the parties or their counsels. All marked exhibits shall be attached to the Minutes of the Preliminary Conference.⁷⁸⁵ Except for newly-discovered evidence, evidence not presented during pre-trial shall be deemed waived.⁷⁸⁶

During the pre-trial conference, the judge shall place the parties and their counsels under oath and they shall remain under oath in all pre-trial conferences.⁷⁸⁷

⁷⁸¹ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 3, § 2.

⁷⁸² *Id.* Rule 3, § 3.

⁷⁸³ *Id.*

⁷⁸⁴ *Id.* Rule 3, § 4.

⁷⁸⁵ *Id.*

⁷⁸⁶ *Id.* Rule 3, § 5.

⁷⁸⁷ *Id.*

e. Effect of Failure to Settle During Pre-trial

If the parties fail to arrive at a full settlement, the judge is required by the Rules to conduct the following tasks:

- a. Adopt the minutes of the preliminary conference as part of the pre-trial proceedings and confirm the markings of exhibits or substituted photocopies and admissions on the genuineness and due execution of documents;
- b. Determine if there are cases arising out of the same facts pending before other courts and order their consolidation if warranted;
- c. Determine if the pleadings are in order and if not, direct their amendments if necessary;
- d. Determine if interlocutory issues are involved and resolve the same;
- e. Consider the adding or dropping of parties;
- f. Obtain admissions;
- g. Define and simplify the factual and legal issues;
- h. Discuss the propriety of rendering a summary judgment or a judgment based on the pleadings, evidence and admissions made during pre-trial.⁷⁸⁸

The parties are also mandated to observe the most important witness rule in limiting the number of witnesses. As a means of expediting the disposition of the environmental case, the parties shall be required to agree on specific trial dates for continuous trial, comply with the one-day examination of witness rule and adhere to the case flow chart determined by the court.⁷⁸⁹

Moreover, the Rules of Procedure encourage the referral of the case to commissioners.⁷⁹⁰ This is in recognition of the fact that environmental cases are highly technical in nature and thus referral to commissioners or engaging the services of an *amicus curiae* or friend of the court may be necessary for the resolution of the case.

Matters taken up during the pre-trial conferences shall be recorded in the Minutes of the pre-trial conference which shall be signed by the parties and their counsel.⁷⁹¹

f. Issuance of Pre-trial Order

The Rules of Procedure provide that the court where the case is pending shall issue a pre-trial order within ten (10) days after the termination of pre-trial. The following matters shall be contained in the pre-trial order:

⁷⁸⁸ *Id.* Rule 3, § 6.

⁷⁸⁹ *Id.*

⁷⁹⁰ *Id.* Rule 3, § 6.

⁷⁹¹ *Id.* Rule 3, § 8.

- a. Actions taken during pre-trial conference;
- b. Stipulation of facts and admissions;
- c. Evidence marked;
- d. Number of witnesses to be presented;
- e. Schedule of trial.⁷⁹²

As previously discussed, the court shall endeavor to adhere to the most important witness rule and the one-day examination of witness rule in the schedule of the trial.

5. Continuous Trial of Environmental Law Cases

a. Features of the New Rules

In consonance with its objective of speedy disposition of cases, the trial of environmental cases shall not exceed two (2) months from the date of the issuance of the pre-trial order.⁷⁹³ For justifiable causes, the judge may ask the Supreme Court for an extension of the trial prior to the expiration of the two-month period. Continuous trial under the Rules adopts the use of affidavits, which were presented and marked during pre-trial, *in lieu* of direct examination.⁷⁹⁴ The court shall strictly adhere to the one-day examination of witness rule. After the presentation of the last witness, only an oral offer of evidence is allowed and the opposing party shall also interpose his objections orally. The judge shall rule on the oral offer of evidence in open court.⁷⁹⁵

After trial, particularly when the last party has rested its case, the court shall issue an order submitting the case for decision.⁷⁹⁶ The court may order the parties to submit their respective memoranda within thirty (30) days. The Rules of Procedure encourage the submission of the parties' memoranda in electronic form.⁷⁹⁷

After submission of the parties' memoranda, the court shall have a period of sixty (60) days to decide the case.⁷⁹⁸

b. Mandatory Period

The Rules of Procedure provide that the courts shall give priority to the adjudication of environmental cases and limit the period to try and decide the case to one (1) year counted from the filing of the complaint. For justifiable cause, the period is extendible upon approval by the Supreme Court. The court may petition the Supreme Court for an extension of the period prior to its expiration.⁷⁹⁹

⁷⁹² *Id.* Rule 3, § 9.

⁷⁹³ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 4, § 1.

⁷⁹⁴ *Id.* Rule 4, § 2.

⁷⁹⁵ *Id.* Rule 4, § 3.

⁷⁹⁶ *Id.* Rule 4, § 4.

⁷⁹⁷ *Id.*

⁷⁹⁸ *Id.*

⁷⁹⁹ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 4, § 5.

6. Evidence

The Rules of Procedure address the current problems in the gathering and preservation of evidence by allowing in 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. The presentation of the foregoing evidence shall be admitted provided that it was authenticated by the following persons:

- a. the person who took the photograph, video or similar evidence; or
- b. any person who was present when the photograph, video of similar evidence was taken; or
- c. any person competent to testify on the accuracy of the photograph, video or similar evidence.⁸⁰⁰

Moreover, “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.”⁸⁰¹

Where sufficient evidence is available, the Revised Rules on Evidence apply. However, in cases where there is lack of full scientific certainty, the precautionary principle shall be applied by the judge in resolving the case before it.⁸⁰² The following are the factors which may be considered in the application of the precautionary principle:

- a. The existence of threats to human life or health;
- b. Inequity to present or future generations;
- c. Prejudice to the environment without legal consideration of the environmental rights of those affected.⁸⁰³

7. Judgment and Execution

If a case is resolved in favor of the plaintiff in a citizen suit, the court may grant the following reliefs: the protection, preservation, or rehabilitation of the environment, and the payment of attorney’s fees, costs of suit, and other litigation expenses. The court may also require the violator to submit a program of rehabilitation or restoration of the environment, the costs of which shall be borne by the violator. The violator may be required further to contribute to a trust fund for the purpose.⁸⁰⁴ Since public interest is involved in a citizen’s suit, damages are not available.⁸⁰⁵

a. Executory Nature of the Judgment

The Rules of Procedure for Environmental Cases provide for the immediate execution of judgments directing the performance of acts for the protection, preservation or rehabilitation of the environment. Section 2 of Rule 5 provides that the judgment shall be executory pending appeal unless restrained by the appellate court.

⁸⁰⁰ *Id.* Rule 21, § 1.

⁸⁰¹ *Id.* Rule 21, § 2.

⁸⁰² *Id.* Rule 20, § 1.

⁸⁰³ *Id.* Rule 20, § 2.

⁸⁰⁴ *Id.* Rule 5, § 1.

⁸⁰⁵ Bersamin, CIVIL PROCEDURE, *supra* note 592.

b. Monitoring of Compliance with Court Orders

The court may *motu proprio*, or upon motion of the prevailing party, order that the enforcement of the judgment or order be referred to a commissioner to be appointed by the court. The commissioner shall be in charge of monitoring compliance and filing with the court of written progress reports on a quarterly basis or more frequently when necessary.⁸⁰⁶

The execution shall only terminate upon sufficient showing that the decision has been implemented to the satisfaction of the court.⁸⁰⁷ Section 14 of Rule 39 provides:

SEC. 14. Return of writ of execution. – The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reasons therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

C. Criminal Procedure

A criminal action is one by which the State prosecutes a person for an act or omission punishable by law.⁸⁰⁸ In the prosecution of crimes, the following are the requirements that must be complied with:

- a. The crime must be prosecuted in a court with competent jurisdiction to hear and determine the case;
- b. Jurisdiction must be lawfully acquired over the person of the defendant or property which is the subject of the proceeding – either voluntary appearance or upon his arrest [See Chapter 4 on Arrests];
- c. The defendant must be given an opportunity to be heard; and
- d. Judgment must be rendered upon lawful hearing.⁸⁰⁹

Prosecuting the case in the court of competent jurisdiction is important otherwise, the case shall be dismissed for lack of jurisdiction. The jurisdiction of the court is determined from the allegations in the complaint or information.⁸¹⁰ Jurisdiction is determined by the law at the time of the institution of the complaint and not at its commission.

⁸⁰⁶ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 5, § 4.

⁸⁰⁷ *Id.* Rule 5, § 5.

⁸⁰⁸ AGPALO, CRIMINAL PROCEDURE, *supra* note 610, at 1 (citing Sec. 3(b), Rule 1 of the Rules of Court).

⁸⁰⁹ *Id.* (citing *Aguirre v. People*, G.R. No. 144142, 153 SCAD 653 [Aug. 23, 2001]).

⁸¹⁰ *Macasaet v. People*, G.R. No. 156747, Feb. 23, 2005, 452 SCRA 255.

In criminal cases, the principle of adherence of jurisdiction applies. This means that once the court acquires jurisdiction over the case, its jurisdiction shall continue until the final determination of the case even when there is a new statute giving the jurisdiction to another tribunal.⁸¹¹ By way of an exception, the principle of adherence does not apply when a new statute specifically provides for the transfer of jurisdiction even to the cases pending at the time of the law's enactment.⁸¹²

It is important to note that jurisdiction is conferred by law and not by waiver. Notwithstanding the waiver of the accused which seeks to confer jurisdiction upon a court which has not been given jurisdiction by law, the same is not valid.⁸¹³ The court is still deemed without jurisdiction to try the case.

Similarly, jurisdiction over the subject matter in a judicial proceeding is conferred by law which cannot be subject to waiver by the accused.⁸¹⁴ The court's jurisdiction may be questioned at any stage of the criminal proceedings.⁸¹⁵ Nonetheless, jurisdiction cannot be questioned for the first time on appeal.⁸¹⁶

1. Institution of a Criminal Case

The filing of an information, charging a person with violation of an environmental law and subscribed by the prosecutor,⁸¹⁷ initiates the criminal action. As explained in Chapter 5, the fiscal conducts a preliminary or inquest investigation to determine whether probable cause exists to warrant the prosecution of the case. Once it is in court, the fiscal's role is limited to the prosecution of the case. The court becomes the sole judge on what to do with the case before it.⁸¹⁸ However, if the offended party or complainant desires to dismiss the criminal case, even if without the objection of the accused, the fiscal should be consulted. The court should only exercise its authority to dismiss the case after hearing the fiscal's view.⁸¹⁹

The Rules of Procedure for Environmental Cases provide that the court may appoint a special prosecutor in criminal cases where there is no private offended party. The special prosecutor may be a counsel "whose services are offered by any person or organization."⁸²⁰ The appointment of a special prosecutor must be under the control and supervision of the public prosecutor.⁸²¹

⁸¹¹ AGPALO, CRIMINAL PROCEDURE, *supra* note 610, at 2.

⁸¹² *Id.* (citing *Binay v. Sandiganbayan*, G.R. No. 120011, Oct. 1, 1999).

⁸¹³ *United States v. De La Santa*, 9 Phil 22, 24-26 (1907).

⁸¹⁴ *Id.* at 26.

⁸¹⁵ AGPALO, CRIMINAL PROCEDURE, *supra* note 610, at 4.

⁸¹⁶ *Id.*

⁸¹⁷ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 9, § 2.

⁸¹⁸ *Republic v. Sunga*, G.R. No. L-38634, June 29, 1998, 162 SCRA 191, 195.

⁸¹⁹ *Id.*

⁸²⁰ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 9, § 3.

⁸²¹ *Id.*

It is important to note that when a criminal action is instituted, the civil action for the recovery of civil liability from the offense charged is instituted along with the criminal action.⁸²² This is subject to the following exceptions:

- a. Complainant waives the action;
- b. Complainant reserves the right to institute the action – the reservation must be made during arraignment;
- c. Complainant institutes the civil action prior to the institution of the criminal action.⁸²³

One of the important features of the Rules of Procedure is the deferment of filing fees and the creation of a special fund for the implementation of the judgment. Section 1 of Rule 10 provides that in case civil liability is imposed and damages are awarded, the filing and other legal fees shall constitute as a first lien on the judgment award. If there is no private offended party, the judgment award, after deducting the amount of the filing and other legal fees, shall be given to the agency charged with the implementation of the law violated to be used for the restoration and rehabilitation of the affected areas.

2. Bail

The Rules of Procedure for Environmental Cases provide that the defendant shall be allowed bail⁸²⁴ in the amount fixed by the court.⁸²⁵ As a supplement to the Rules of Procedure, the Rules of Court provides for the following guidelines in the determination of the amount of bail:

Sec. 9. Amount of bail; guidelines. – The judge who issued the warrant or granted the application shall fix a reasonable amount of bail considering primarily, but not limited to, the following factors:

- (a) Financial liability of the accused to give bail;
- (b) Nature and circumstance of the offense;
- (c) Penalty for the offense charged;
- (d) Character and reputation of the accused;
- (e) Age and health of the accused;
- (f) Weight of the evidence against the accused;
- (g) Probability of the accused appearing at the trial;
- (h) Forfeiture of other bail;

⁸²² *Id.* Rule 10, § 1.

⁸²³ *Id.*

⁸²⁴ 2000 REVISED RULES OF CRIMINAL PROCEDURE, Rule 114, § 1:

Bail is the security given for the release of a person in custody of the law, furnished by him or a bondsman, to guarantee his appearance before any court as required under the conditions hereinafter specified. Bail may be given in the form of corporate surety, property bond, cash deposit, or recognizance.

⁸²⁵ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 14, § 1.

- (i) The fact that the accused was a fugitive from justice when arrested; and
- (j) Pendency of other cases where the accused is on bail.

Excessive bail shall not be required.⁸²⁶

The purpose of the bail provision is to prevent long periods of detention of the defendant.⁸²⁷ In appropriate cases, the court may issue a hold departure order for the defendant.⁸²⁸

As a general rule, the application for bail is filed with the court where the case is pending. In the absence or unavailability of the judge of the said court, the application for bail may be filed with the following:

- a. Any regional trial judge, metropolitan trial judge, municipal trial judge in the province, city or municipality where the case is pending.
- b. The regional trial court of the place where the accused was arrested if it is different from the place where the case is pending. If there is no regional trial court judge available, the application may be filed with the metropolitan trial judge, municipal trial judge and municipal circuit trial judge of the place where the accused was arrested.⁸²⁹

When an application for bail is filed, the judge has the duty to read the information to the accused in a language known and understood by him and require the accused to sign a written undertaking. The undertaking shall state that the accused shall appear in court during arraignment and whenever required by the court where the case is pending and to waive the right of the accused to be present during trial.⁸³⁰

3. Arraignment

During the arraignment, the accused enters a plea of guilty or not guilty to the charge for violation of environmental law as contained in the information. A key innovation adopted by the Rules is empowering the judge to enter a plea of not guilty on behalf of the accused who was granted bail and did not appear during the arraignment.⁸³¹ The same undertaking also allows the trial to proceed even without the presence of the accused.⁸³² The innovation presented by the Rules allows for the continuance of the case despite the absence of the accused and the failure of the court to arraign him.⁸³³

During the arraignment, the accused and the other parties may enter into plea bargaining. The purpose of the Rules of Procedure for Environmental Cases in allowing plea-bargaining during arraignment is to avoid the situation where the initial plea is changed during the trial itself.⁸³⁴ It is important to note

⁸²⁶ 2000 REVISED RULES OF CRIMINAL PROCEDURE, Rule 114, § 9.

⁸²⁷ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, annot., at 150.

⁸²⁸ *Id.* Rule 14, §1.

⁸²⁹ *Id.*

⁸³⁰ *Id.* Rule 14, §2.

⁸³¹ *Id.*

⁸³² *Id.*

⁸³³ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, annot., at 151.

⁸³⁴ *Id.* at 152.

that the prosecution must consent to the change of plea. The concerned government agency is also notified of the arraignment of the accused to allow the latter to intervene in plea-bargaining. This is consistent with the public interest inherent in environmental cases thus, the government agency concerned is involved.⁸³⁵

If the prosecution, the offended party and the concerned government agency all agree to the plea offered by the accused, the court shall:

- (a) Issue an order which contains the plea-bargaining arrived at;
- (b) Proceed to receive evidence on the civil aspect of the case, if any; and
- (c) Render and promulgate the judgment of conviction, including the civil liability for damages.⁸³⁶

4. Pre-trial Proceedings

a. Setting of Preliminary Conference

The court shall set the pre-trial within thirty (30) days after the arraignment.⁸³⁷ If warranted, the judge may refer the case to the branch clerk of court for a preliminary conference which must be held at least three (3) days before the trial.⁸³⁸ The preliminary conference is for the following purposes:

- a. Assist the parties to settle the civil aspect of the case;
- b. Mark the documents to be presented as exhibits;
- c. Obtain stipulations of facts and admissions on the due execution and genuineness of the documents marked as exhibits;
- d. Mark the affidavits of witnesses;
- e. Consider such other matters as may aid in the prompt disposition of the case.⁸³⁹

The affidavits of the witness must be in question and answer format and they shall serve as the direct testimony of the witnesses. The Rules of Procedure for Environmental Cases require parties to submit to the branch clerk of court the names, addresses and contact numbers of the affiants.⁸⁴⁰

After the conference, the parties and their respective counsel shall all sign the Minutes of the Preliminary Conference. The Minutes together with the marked exhibits shall be attached to the record of the case.⁸⁴¹

⁸³⁵ *Id.* at 151.

⁸³⁶ *Id.* Rule 15, § 2.

⁸³⁷ *Id.* Rule 16, § 1.

⁸³⁸ *Id.*

⁸³⁹ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 16, § 2.

⁸⁴⁰ *Id.*

⁸⁴¹ *Id.*

b. Pre-trial Proper

The Rationale of the Rules of Procedure for Environmental Cases provides that pre-trial is given importance in the resolution of cases in order to facilitate the organization of trial and to simplify the issues to be resolved. Ultimately, the Rules adopt all means of expediting the case prior to trial in consonance with its objective for the speedy disposition of cases. Similar to civil cases, the parties and their counsels shall be placed under oath⁸⁴² and shall remain as such in all pre-trial conferences. This is to avoid false and misleading statements during trial.⁸⁴³

As a means of expediting the disposition of an environmental case, the parties shall be required to agree on specific trial dates for continuous trial, comply with the one-day examination of witness rule and adhere to the case flow chart determined by the court.

c. Issuance of Pre-trial Order

The Rules of Procedure provide that the court where the case is pending shall issue a pre-trial order within ten (10) days after the termination of pre-trial. The following matters shall be contained in the pre-trial order:

- a. Actions taken during pre-trial conference;
- b. Stipulation of facts and admissions;
- c. Evidence marked;
- d. Number of witnesses to be presented;
- e. Schedule of trial.⁸⁴⁴

As previously discussed, the court shall endeavor to adhere with the most important witness rule and the one-day examination of witness rule in the schedule of the trial.

5. Continuous Trial of Environmental Law Cases

a. Features of the Rules

As previously mentioned, the Rules of Procedure for Environmental Cases empower the judge to enter a plea of not guilty in the event of non-appearance by the accused during arraignment. This rule was placed in line with the court's objective of promoting the speedy resolution of cases. Pursuant to the same objective, the Rules provide that affidavits shall be filed in lieu of direct examination.⁸⁴⁵ Accordingly, the affidavits are in question and answer format and the same must be presented during the pre-trial conference.⁸⁴⁶ The scope of the direct examination is limited to the matters covered by the affidavit. The affidavit shall be subject to cross examination and the right to object to inadmissible parts of the affidavit.⁸⁴⁷

⁸⁴² *Id.* Rule 16, § 3(a).

⁸⁴³ *Id.* annot., at 154.

⁸⁴⁴ *Id.* Rule 16, § 7.

⁸⁴⁵ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 17, § 2.

⁸⁴⁶ *Id.* Rule 16, § 1(g).

⁸⁴⁷ *Id.* Rule 17, § 2.

Similar to the rules in civil cases, the parties may submit their memoranda to the court in electronic form.⁸⁴⁸ After both parties have rested their case, the court may order the parties to submit their memoranda within a non-extendible period of thirty (30) days from the time the case is submitted for decision.⁸⁴⁹

Rule 17 of the Rules of Procedure for Environmental Cases also requires that the Integrated Bar of the Philippines provide *pro bono* lawyers for an indigent accused. In including this provision, the Rules take into account and address the possibility of having an accused who may not have the financial capacity to defend himself.⁸⁵⁰ As a means of addressing the common issue of lack of funds in access to justice, the Rules of Procedure allow the deferment of filing fees.

b. Mandatory Period

Under the Rules, the court shall dispose of the case within ten (10) months from the time of the date of arraignment of the accused, which is the time within which the judiciary takes cognizance of the case.

Other periods included in the rules are: a non-extendible period of thirty (30) days within which the parties shall submit their memoranda,⁸⁵¹ and a period of sixty (60) days from the last day of filing the memoranda within which the court is tasked to dispose of the case.⁸⁵²

6. Evidence

The Rules of Procedure for Environmental Cases supplement the Rules on Evidence which remain fully applicable to environmental cases.⁸⁵³ The Rules aim to address the current problems in the gathering and preservation of evidence by allowing in 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. The presentation of the evidence shall be admitted provided that it is authenticated by the following persons:

- a. the person who took the photograph, video or similar evidence; or
- b. any person who was present when the photograph, video or similar evidence was taken; or
- c. any person competent to testify on the accuracy of the photograph, video or similar evidence.⁸⁵⁴

⁸⁴⁸ *Id.* Rule 17, § 3.

⁸⁴⁹ *Id.*

⁸⁵⁰ *Id.* annot., at 156.

⁸⁵¹ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 17, § 3.

⁸⁵² *Id.*

⁸⁵³ *Id.* annot., at 160.

⁸⁵⁴ *Id.* Rule 21, § 1.

Moreover, “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.”⁸⁵⁵

Where sufficient evidence is available, the Revised Rules on Evidence apply. However, in cases where there is lack of full scientific certainty or there is doubt with the evidence available, the precautionary principle shall be applied by the judge in resolving the case before it.⁸⁵⁶ The following are the factors which may be considered in the application of the precautionary principle:

- a. The existence of threats to human life or health;
- b. Inequity to present or future generations;
- c. Prejudice to the environment without legal consideration of the environmental rights of those affected.⁸⁵⁷

It should be noted that in the application of the precautionary principle, the Rules of Procedure for Environmental Cases give emphasis to the right to a balanced and healthful ecology. In effect, this shifts the burden away from the complainants from proving with certainty that harm occurred.⁸⁵⁸

7. Execution

The Rules of Procedure for Environmental Cases provide that in case the accused is convicted for violation of an environmental law or the commission of prohibited acts under it and subsidiary liability is found under the law, a person entitled to recover under the judgment may by motion enforce such subsidiary liability against a person or corporation subsidiary liable under Articles 102 and 103 of the Revised Penal Code.⁸⁵⁹ The following is a list of persons with subsidiary liability under the abovementioned provisions of the Revised Penal Code:

Who are subsidiarily liable?	Where is the crime committed?	When does it apply?
Innkeepers, tavernkeepers and other persons or corporations	In their establishment by their employees	In all cases where a violation of municipal ordinances or some general or special police regulations
Employers, teachers, persons, and corporations engaged in any kind of industry	Anywhere, as long as committed in the discharge of duty	Felony is committed in the discharge of the servants, pupils, workmen, apprentices, employee’s duty

⁸⁵⁵ *Id.* Rule 21, § 2.

⁸⁵⁶ *Id.* Rule 20, § 1.

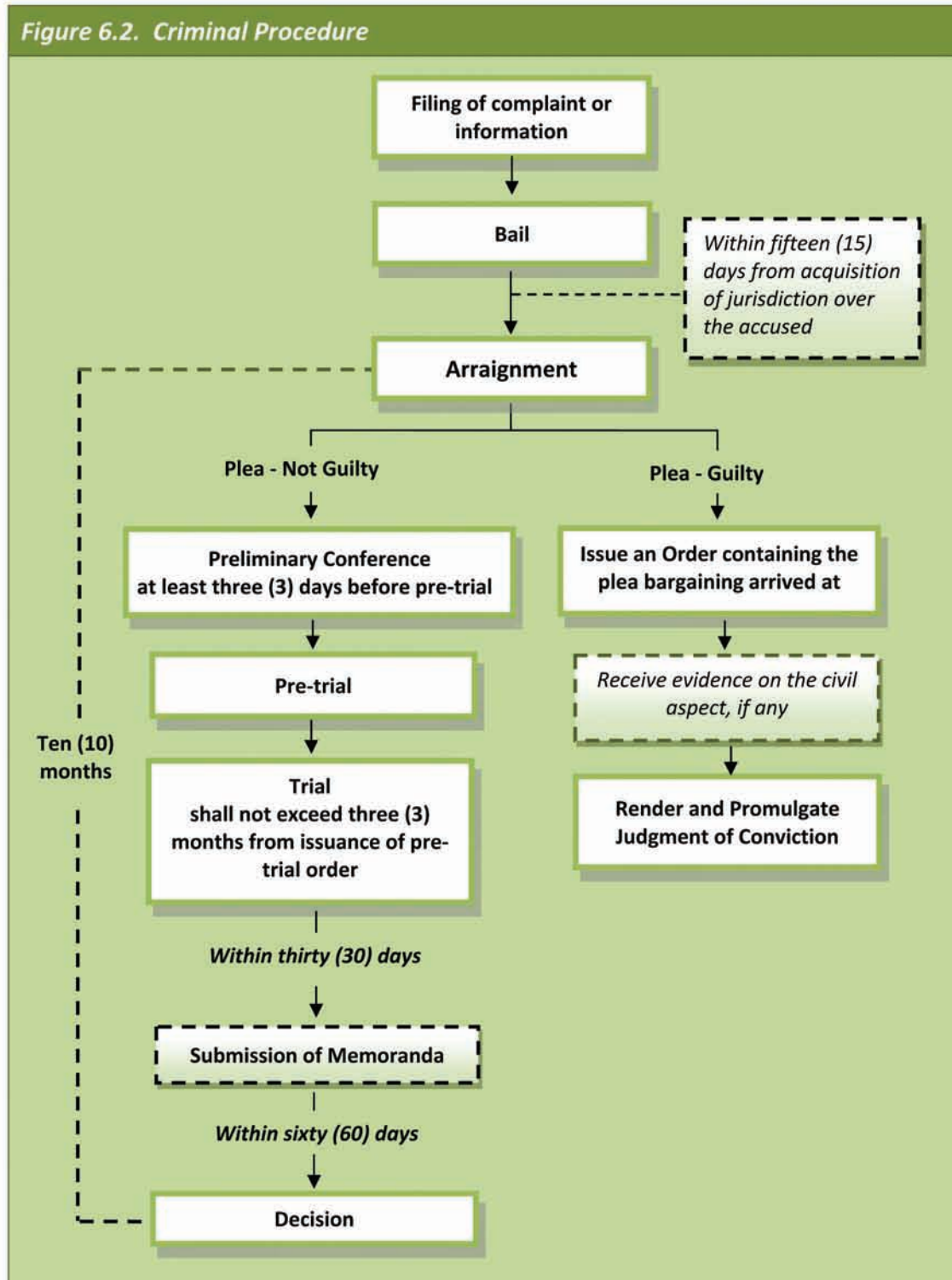
⁸⁵⁷ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 20, § 2.

⁸⁵⁸ *Id.* annot., at 158.

⁸⁵⁹ *Id.* Rule 18, § 1.

It is important to note that the person entitled to recover under Section 1 of Rule 18 is not limited to the party in the suit. The subsidiary liability under the Rules was placed in order to facilitate the recovery of damages should the accused be or become insolvent.

Figure 6.2. Criminal Procedure



CHAPTER 7

SPECIAL REMEDIES

One of the primary objectives of the recently promulgated Rules of Procedure for Environmental Cases is “to protect and advance the constitutional right of the people to a balanced and healthful ecology.”⁸⁶⁰ Thus, the said Rules seek to provide special remedies which are peculiar to environmental cases, given the unique nature of these cases. The remedies are intended to address the problems encountered by both the government and the private individuals or entities who handle environmental cases.⁸⁶¹ This chapter will discuss the novel judicial remedies provided for under the Rules of Procedure for Environmental Cases. A brief background will precede each discussion, followed by a step-by-step guide in pursuing each special remedy.

A. Strategic Lawsuit Against Public Participation**1. Brief Overview**

Strategic Lawsuit Against Public Participation (SLAPP) cases are instituted to claim damages from non-governmental individuals or groups as an obstacle to the speedy resolution of the cases instituted by these entities to enforce a right or to vindicate a wrong.⁸⁶² It also has the purpose of augmenting litigation costs and expenses to the prejudice of the petitioning party.⁸⁶³

The special remedy against SLAPP suits was originally based on the United States 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.⁸⁶⁴ The cases of *Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc.*⁸⁶⁵ and *United Mine Workers v. Pennington*⁸⁶⁶ laid down the doctrine that the right to petition the government “cannot properly be made to depend upon their intent in doing so.”⁸⁶⁷ This doctrine was eventually known as the *Noerr-Pennington* doctrine which applies not only to anti-trust cases but also to actions petitioning the government for redress of grievances.⁸⁶⁸ As a result, regardless of the intent of the petitioning party, whether or not

⁸⁶⁰ *Id.* Rule 1, § 3(A).

⁸⁶¹ *Id.* annot., at 98.

⁸⁶² *Id.* ratio., at 87.

⁸⁶³ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, ratio., at 87-88.

⁸⁶⁴ *Id.* at 88.

⁸⁶⁵ *Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961).

⁸⁶⁶ *United Mine Workers v. Pennington*, 381 U.S. 657 (1965).

⁸⁶⁷ *Eastern R.R. Presidents Conference*, 365 U.S. at 139.

⁸⁶⁸ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, ratio., at 88 (2010) (citing Sheri Coover, *The 2nd Annual Goddard Forum Symposium: Global Warming: Causes, Effects and Mitigation Strategies for States and Localities*, 12 PENN ST. ENTL. L. REV. 263, 267- 68 [2004]).

to serve its own interests, the right to petition the government is an enforceable right and must be protected by the government.⁸⁶⁹

The First Amendment can be found in Section 4, Article III of the 1987 Philippine Constitution which states: “No law shall be passed abridging the freedom of speech, of expression, or the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.”⁸⁷⁰

Prior to the promulgation of the Rules of Procedure for Environmental Cases, two laws have been issued containing provisions against SLAPP cases. The first one is the Philippine Clean Air Act which was passed into law on June 23, 1999. Section 43 of the said law provides:

SEC. 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.”⁸⁷¹ (*Emphasis supplied*)

More than two years later, the Ecological Solid Waste Management Act was passed on January 26, 2001. Section 53 of the said law is similarly worded:

SEC. 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 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.⁸⁷² (*Emphasis supplied*)

⁸⁶⁹ *Id.*

⁸⁷⁰ PHILIPPINE CONSTITUTION, Art. III, § 4.

⁸⁷¹ Philippine Clean Air Act of 1999, § 43.

⁸⁷² Ecological Solid Waste Management Act, § 53.

At present, Bayan Muna Representative Satur C. Ocampo authored the Anti-SLAPP Act of 2009⁸⁷³ in response to the increasing number of SLAPP cases.⁸⁷⁴ The said House Bill has a number of purposes one of which is to “[p]romote and protect the constitutional rights of freedom of speech, expression, and of the press, and the right of the people peaceably to assembly, and petition the government for redress of grievances and to [e]ncourage and strengthen the participation of individuals in matters of public concern.”⁸⁷⁵ It recognized the danger that SLAPP cases pose against a normal citizen who wishes to seek redress for his grievances, regardless of whether it is an environmental right.⁸⁷⁶ According to the explanatory note of the House Bill, a SLAPP is not instituted with the purpose of obtaining a favorable judgment against the other party; rather, it is for the purpose of intimidating, and exhausting the petitioning party until the latter voluntarily abandons the public advocacy.⁸⁷⁷

2. SLAPP Defined

As defined in the Rules of Procedure for Environmental Cases, a SLAPP refers to any “action whether civil, criminal or administrative, brought against any person, institution or any government agency or local government unit or its officials and employees, *with the intent to harass, vex, exert undue pressure or stifle any legal recourse that such person, institution or government agency has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights.*”⁸⁷⁸ A SLAPP suit may come in a variety of forms either as a legal action or a claim, counterclaim or a cross-claim.⁸⁷⁹

3. Using SLAPP as a Defense

SLAPP can be used as a defense in an environmental case when a person, institution or government agency has taken or may take any legal recourse for the following purposes:

- a. Enforcement of environmental laws;
- b. Protection of the environment; or
- c. Assertion of environmental rights.⁸⁸⁰

4. Procedure for Using SLAPP as a Defense in a Civil Case

The first step to defeat a SLAPP in an environmental case is to file an answer and interpose as a defense the ground that the case is a SLAPP. The answer must contain the following:

- a. Supporting documents, affidavits, papers, and other evidence establishing that the case filed is a SLAPP suit; and

⁸⁷³ H.B. 5840, 14th Congress, 2nd Session, (2009).

⁸⁷⁴ *Isagani Yambot, Jr., Bayan Muna wants filing of lawsuits v. militants prohibited* <<http://www.congress.gov.ph/press/details.php?pressid=3332>> (last accessed Nov. 25, 2010).

⁸⁷⁵ H.B. 5840, 14th Congress, 2nd Session, § 3 (2009).

⁸⁷⁶ *Id.* Explanatory Note (2009).

⁸⁷⁷ *Id.*

⁸⁷⁸ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 1, § 4(g).

⁸⁷⁹ *Id.* ratio., at 89.

⁸⁸⁰ *Id.* Rule 6, § 1.

- b. Prayer for damages, attorney's fees, and costs of suit, by way of counterclaim.⁸⁸¹

The other party will then be directed to file an opposition, within five (5) days from receipt of notice that an answer has been filed, showing:

- a. The suit is not a SLAPP; and
b. Supporting evidence.⁸⁸²

The period within which the opposition should be filed is non-extendible.⁸⁸³

After the issuance of an order to file an opposition, the court shall set the defense of SLAPP for a *summary hearing* within fifteen (15) days from the filing of the comment, or the lapse of the period to do so.⁸⁸⁴ Both parties shall submit evidence supporting their respective positions:

	Party seeking the dismissal of the case	Party filing the action assailed as SLAPP
What to prove	That the party's act for the enforcement of environmental law is a <i>legitimate action</i> for the protection, preservation, and rehabilitation of the environment.	That the action is not a SLAPP, but a valid claim.
Quantum of Evidence	Substantial evidence	Preponderance of evidence

The defense shall be resolved within thirty (30) days after summary hearing. The court may either dismiss the action, or reject the defense of SLAPP.⁸⁸⁶ The following are the effects of the court's actions:

Dismiss the Action	Reject Defense of SLAPP
Dismissal with prejudice. The court may award damages, attorney's fees and costs of suit under a counterclaim if such has been filed.	Action shall proceed. Evidence adduced during the summary hearing shall be considered as evidence of the parties on the merits of the case. [See Chapter VI-A]

⁸⁸¹ *Id.* Rule 6, § 2.

⁸⁸² *Id.*

⁸⁸³ *Id.*

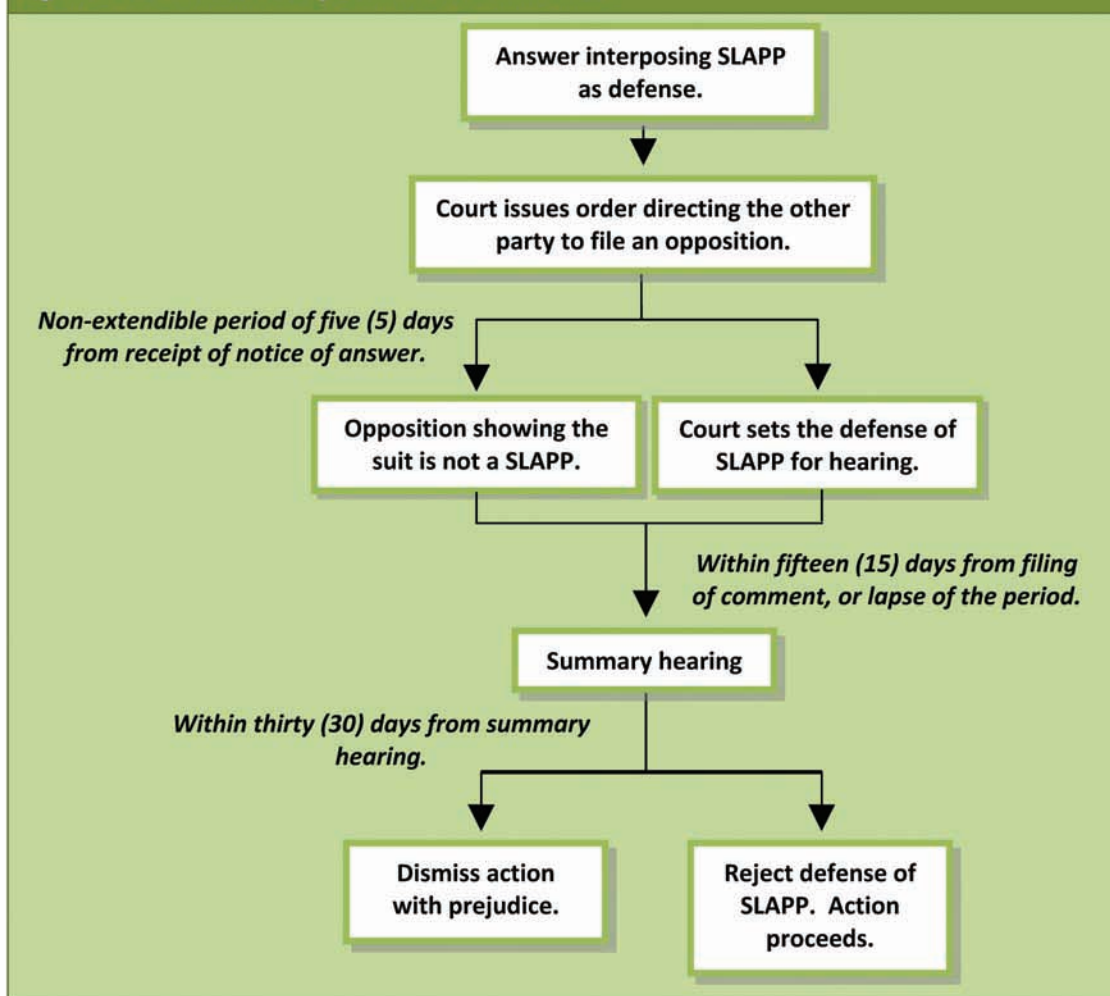
⁸⁸⁴ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 6, § 2.

⁸⁸⁵ *Id.* Rule 6, § 3.

⁸⁸⁶ *Id.* Rule 6, § 4.

⁸⁸⁷ *Id.*

Figure 7.1 Procedure of SLAPP in a Civil Case



5. Procedure for Using SLAPP as a Defense in a Criminal Case

There is a slight difference in the procedure of using the special remedy of SLAPP in criminal cases vis-à-vis in civil cases. The determining factor on what procedure to use depends on whether the SLAPP is a criminal or civil action.

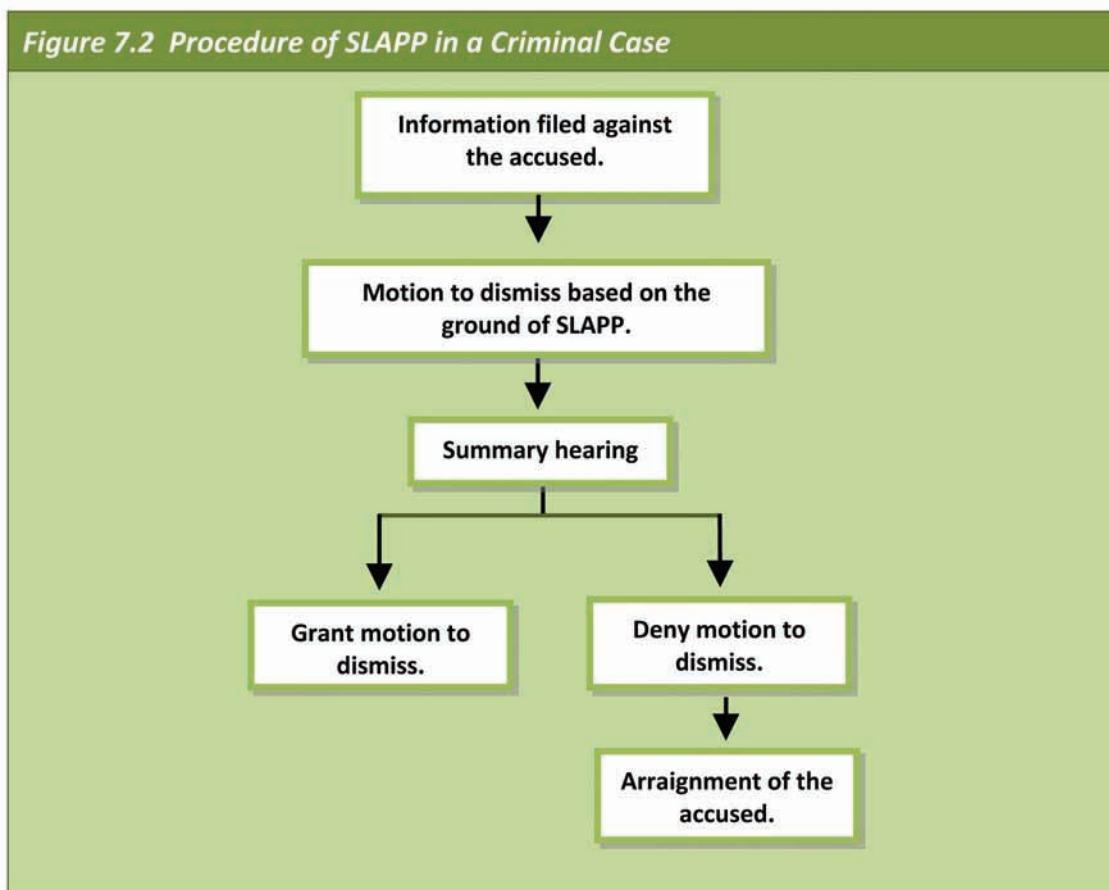
The accused in a SLAPP must file a motion to dismiss based on the ground that the criminal action is a SLAPP after the information has been filed, but prior to his arraignment.⁸⁸⁸ Afterwards, a summary hearing shall be set by the court to resolve the motion to dismiss.⁸⁸⁹ The required degree of evidence shall be the same as that in a summary hearing for the defense of SLAPP in a civil case.⁸⁹⁰

⁸⁸⁸ *Id.* Rule 19, § 1.

⁸⁸⁹ *Id.* Rule 19, § 2.

⁸⁹⁰ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 19, § 2.

The court shall resolve the motion to dismiss by either granting such motion, or denying it. The motion to dismiss shall be granted if the court finds that the criminal case is a SLAPP – that is, it has been filed with intent to harass, vex, exert undue pressure or stifle any legal recourse that is taken, or is to be taken to enforce environmental laws, protect the environment, or to assert environmental rights.⁸⁹¹ If the court finds otherwise, the court shall proceed with the arraignment of the accused.⁸⁹² [See Chapter 6-C]



B. Writ of Kalikasan

1. Brief Overview

There is an increasing awareness of the need to protect the environment and conserve the finite resources of the Earth. In fact, the urgent call for the preservation of the environment was recognized by the international community as early as June 16, 1972 during the Stockholm Declaration. After almost two decades, the Stockholm Declaration was reaffirmed by the Rio Declaration.

⁸⁹¹ *Id.* Rule 19, § 3.

⁸⁹² *Id.*

From Principle 1, it can be inferred that the right to a healthful environment is a recognized principle of international law. This is also reiterated in Principle 1 of the Rio Declaration: “Human beings are at the center of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.”⁸⁹³

Our very own Constitution also considers as a State policy the obligation of the State to protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.⁸⁹⁴ This right was recognized as an enforceable right in the case of *Oposa v. Factoran* wherein the Supreme Court recognized the “Intergenerational Responsibility” of the people over the Earth’s natural resources.⁸⁹⁵ The first issue it resolved was the issue of *locus standi* on the part of the petitioners who claimed to represent their generation, and generations yet unborn. The Court ruled in favor of the petitioners saying that the minor petitioners’ assertion of their right to a sound environment is a performance of their duty to preserve such for the succeeding generations.⁸⁹⁶

More importantly, the case of *Oposa* clarified the fact that although the right to a balanced and healthful ecology is found in the Declaration of Principles of the Constitution, this right is of equal importance with the civil and political rights found in the Bill of Rights.⁸⁹⁷ Thus, in the exercise of the Supreme Court’s power to promulgate rules concerning the protection and enforcement of constitutional rights, an environmental writ was established to further protect a person’s environmental right when the measures taken by the executive and the legislative are insufficient.⁸⁹⁸

2. Nature of the Writ of Kalikasan

The Writ of Kalikasan is an extraordinary remedy which may be issued depending on the magnitude of the environmental damage.⁸⁹⁹ The environmental damage must be one which prejudices the life, health or property of inhabitants in two or more cities or provinces, or that which transcends political and territorial boundaries.⁹⁰⁰

It is also a remedy which enforces the right to information by compelling the government or a private entity to produce information regarding the environment that is within their custody.⁹⁰¹

3. Persons Who May File a Petition for a Writ of Kalikasan

The Writ of Kalikasan may be availed of by any of the following:

- a. Natural or juridical persons;
- b. Entities authorized by law; or

⁸⁹³ Rio Declaration, *supra* note 154, Principle 1.

⁸⁹⁴ PHILIPPINE CONSTITUTION, Art. II, § 16.

⁸⁹⁵ *Oposa*, 224 SCRA at 802-803.

⁸⁹⁶ *Id.*

⁸⁹⁷ *Id.*

⁸⁹⁸ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, *ratio.*, 78 (citing PHILIPPINE CONSTITUTION, Art. VIII, § 5, ¶ 5).

⁸⁹⁹ *Id.* Rule 7, § 1.

⁹⁰⁰ *Id.* annot., at 133.

⁹⁰¹ *Id.* *ratio.*, at 80.

- c. People's organizations, non-governmental organizations, or any public interest group *accredited* by or registered with any government agency.⁹⁰²

The petition must be "on behalf of persons whose constitutional right to a balanced and healthful ecology is violated" and involving environmental damage that injures the life, health or property of inhabitants in two or more cities or provinces.⁹⁰³

4. Persons Against Whom a Petition for a Writ of Kalikasan is Filed

As mentioned in the foregoing paragraphs, the Writ of Kalikasan may be applied against:

- a. The government, as represented by a public official or employee; or
- b. A private individual or entity.⁹⁰⁴

5. Courts Where the Petition for a Writ of Kalikasan is Filed

The petition is filed either with (a) the Supreme Court; or (b) any station of the Court of Appeals.⁹⁰⁵ The rationale for this is that the jurisdiction of both tribunals is national in scope which corresponds with the magnitude of the environmental damage contemplated by the Rules.⁹⁰⁶

6. Procedure for the Issuance of a Writ of Kalikasan

The petitioner shall file his application for a Writ of Kalikasan with the proper tribunal as specified in the preceding paragraph. The filing of a petition for the writ does not preclude the filing of separate civil, criminal or administrative actions, as discussed in the preceding chapter.⁹⁰⁷ The petitioner does not need to pay docket fees.⁹⁰⁸ While this is similar to the rule on filing fees for civil and criminal cases under the Rules, the exemption from payment of docket fees under this remedy is a necessary consequence of the fact that no award of damages to private individuals can be made under the writ. In comparison to civil or criminal cases under the Rules of Procedure, the filing fees need not be paid at the time of filing but the same shall be imputed from the award of damages that may be given to the complainant in the judgment.

The petition shall contain the following:

- a. The personal circumstances of the petitioner;
- b. The name and personal circumstances of the respondent or if the name and personal circumstances are unknown and uncertain, the respondent may be described by an assumed appellation;

⁹⁰² *Id.* Rule 7, § 1.

⁹⁰³ *Id.*

⁹⁰⁴ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7, § 1.

⁹⁰⁵ *Id.* Rule 7, § 3.

⁹⁰⁶ *Id.* annot., at 135.

⁹⁰⁷ *Id.* Rule 7, § 17.

⁹⁰⁸ *Id.* Rule 7, § 4.

- c. The environmental law, rule or regulation violated or threatened to be violated, the act or omission complained of, and the environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces;
- d. All relevant and material evidence consisting of the affidavits of witnesses, documentary evidence, scientific or other expert studies, and if possible, object evidence;
- e. The certification against forum-shopping;
- f. The reliefs prayed for which may include a prayer for the issuance of a TEPO.⁹⁰⁹

If the petition is sufficient in form and substance, the court shall issue an order within three (3) days from the filing of the petition, containing the following: (a) issuing the writ; and (b) requiring the respondent to file a verified return.⁹¹⁰ It may also include such temporary reliefs that the court may deem sufficient.⁹¹¹

The writ shall then be served on the respondent personally, or through substituted service if the former cannot apply.⁹¹² If a clerk of court unduly delays or refuses to issue the Writ of Kalikasan, or a court officer or deputized person unduly delays or refuses to serve the same, the court shall punish the offending persons with contempt.⁹¹³ This is without prejudice to civil, criminal, or administrative actions that may be taken against them.⁹¹⁴

The respondent's verified return must be filed within a non-extendible period of ten (10) days from the service of the writ.⁹¹⁵ It shall contain the following:

- a. All defenses which show that the respondent did not violate, or threaten to violate, or allow the violation of any environmental law, rule or regulation or commit any act resulting to environmental damage of such magnitude that transcends political and territorial boundaries, otherwise, defenses not raised in the return are deemed waived;
- b. Affidavits of witnesses, documentary evidence, scientific or other expert studies, and if possible, object evidence supporting the respondent's defense.⁹¹⁶

The respondent's failure to include a specific denial of the allegations in the petition shall be considered as an admission thereof.⁹¹⁷ Moreover, the respondent's failure to file a verified return will not bar the proceeding and the court shall proceed to hear the petition *ex parte*.⁹¹⁸

⁹⁰⁹ *Id.* Rule 7, § 2.

⁹¹⁰ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7, § 5.

⁹¹¹ *Id.*

⁹¹² *Id.* Rule 7, § 6.

⁹¹³ *Id.* Rule 7, § 7.

⁹¹⁴ *Id.*

⁹¹⁵ *Id.* Rule 7, § 8.

⁹¹⁶ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7, § 8.

⁹¹⁷ *Id.*

⁹¹⁸ *Id.* Rule 7, § 10. See RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, annot., at 137.

Upon receipt of the respondent's return, a preliminary conference may be held by the court in order to (a) simplify the issues; (b) obtain stipulations or admissions from the parties; and (c) set the petition for hearing.⁹¹⁹ Both the hearing and the preliminary conference shall not extend beyond 60 days from the filing of the petition.⁹²⁰

In order to expedite the hearing of the petition, the following are pleadings and motions prohibited in the hearing of the petition:

- a. Motion to dismiss;
- b. Motion for extension of time to file return;
- c. Motion for postponement;
- d. Motion for a bill of particulars;
- e. Counterclaim or cross-claim;
- f. Third-party complaint;
- g. Reply; and
- h. Motion to declare respondent in default.⁹²¹

A Motion for Intervention is not a prohibited pleading since the magnitude of the environmental damage entails a large number of parties that may avail of the Writ of Kalikasan.⁹²²

A party may likewise file a verified motion in order to avail of the following discovery measures:

	Order for Ocular Inspection	Order for the Production or Inspection of Documents or Things.
Purpose	To order any person in possession or control of a designated land or other property to permit entry for the purpose of inspecting or photographing the property or any relevant object or operation thereon.	To order any person in possession, custody or control of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, or objects in digitized form, which constitute or contain evidence relevant to the petition or the return, to produce and permit their inspection, copying, photographing by or on behalf of the movant.

⁹¹⁹ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7, § 11.

⁹²⁰ *Id.*

⁹²¹ *Id.* Rule 7, § 9.

⁹²² *Id.* annot., at 136.

⁹²³ *Id.* Rule 7, § 12.

Continuation: Table 7.3

	Order for Ocular Inspection	Order for the Production or Inspection of Documents or Things.
Contents of the Motion	<ol style="list-style-type: none"> 1. That the order is necessary to establish the magnitude of the violation or the threat as to prejudice the life, health or property of inhabitants in two or more cities or provinces. 2. Description of the place or places to be inspected. 3. The supporting affidavits of witnesses having personal knowledge of the violation or threatened violation of environmental law. 	<ol style="list-style-type: none"> 1. That the order is necessary to establish the magnitude of the violation or the threat as to prejudice the life, health or property of inhabitants in two or more cities or provinces.
Contents of the Order	<ol style="list-style-type: none"> 1. Specify the authorized person or persons to make the inspection. 2. The date, time, place, and manner of making the inspection. 3. Other conditions protecting the constitutional rights of all parties. 	<ol style="list-style-type: none"> 1. Specify the authorized person or persons to make the production. 2. The date, time, place, and manner of making the inspection or production. 3. Other conditions protecting the constitutional rights of all parties.

The case shall be submitted for decision after hearing, and may require the filing of memoranda within a non-extendible period of thirty (30) days from the date the petition is submitted for decision.⁹²⁴ The additional memoranda may be filed in electronic form in order to hasten the resolution of the petition.⁹²⁵

Afterwards, the court shall render judgment within sixty (60) days from the time the petition is submitted for decision.⁹²⁶ The court may either (a) grant the privilege of the Writ of Kalikasan; or (b) deny the same. Should the court grant the petition, the Rules of Procedure for Environmental Cases enumerate a non-exclusive list of the reliefs that may be granted under the Writ of Kalikasan:

⁹²⁴ *Id.* Rule 7, § 14.

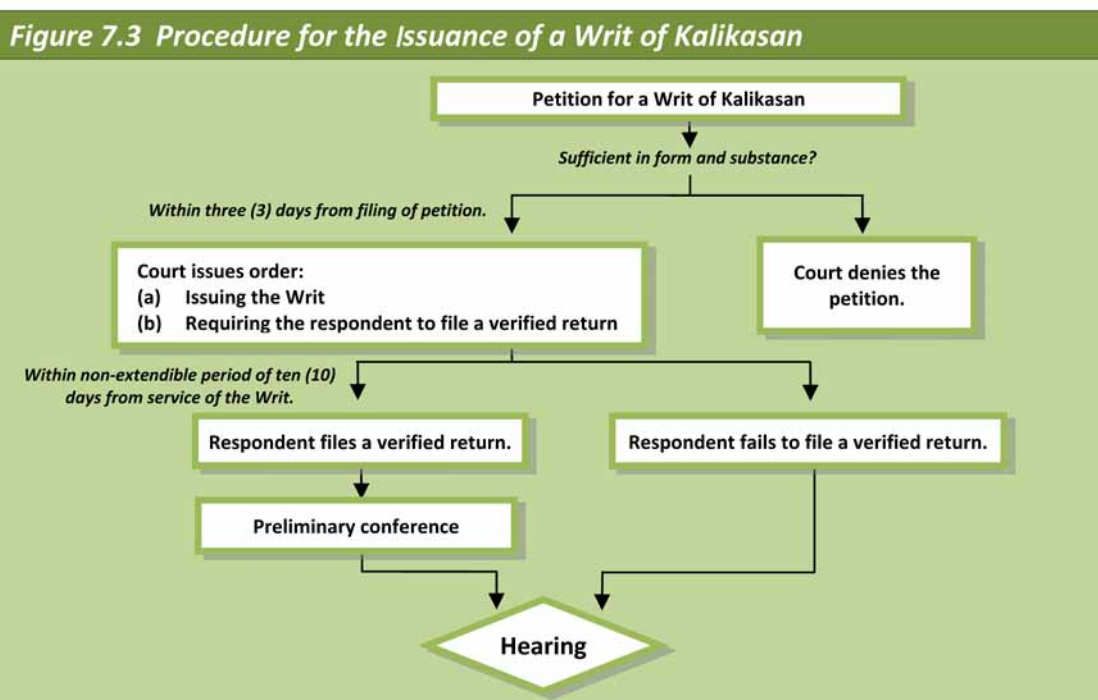
⁹²⁵ *Id.* See RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, annot., at 139.

⁹²⁶ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7, § 15.

- a. Directing respondent to permanently cease and desist from committing acts or neglecting the performance of a duty in violation of environmental laws resulting in environmental destruction or damage;
- b. Directing the respondent 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 final judgment; and
- e. Such other reliefs which relate to the right of the people to a balanced and healthful ecology or to the protection, preservation, rehabilitation or restoration of the environment, *except the award of damages to individual petitioners.*⁹²⁷

The exemption in the payment of docket fees is the necessary consequence of exempting the award of damages in the reliefs that may be granted under the Writ of Kalikasan.⁹²⁸ Nonetheless, the petitioner is not barred from filing a separate action to recover damages.⁹²⁹

Within fifteen (15) days from the date of (a) the notice of the adverse judgment; or (b) the denial of the motion for reconsideration, the parties to the proceedings may appeal to the Supreme Court under Rule 45 of the Rules of Court.⁹³⁰ The appealing party is not limited to raising pure questions of law, but may also include questions of fact or mixed questions of fact and law.⁹³¹



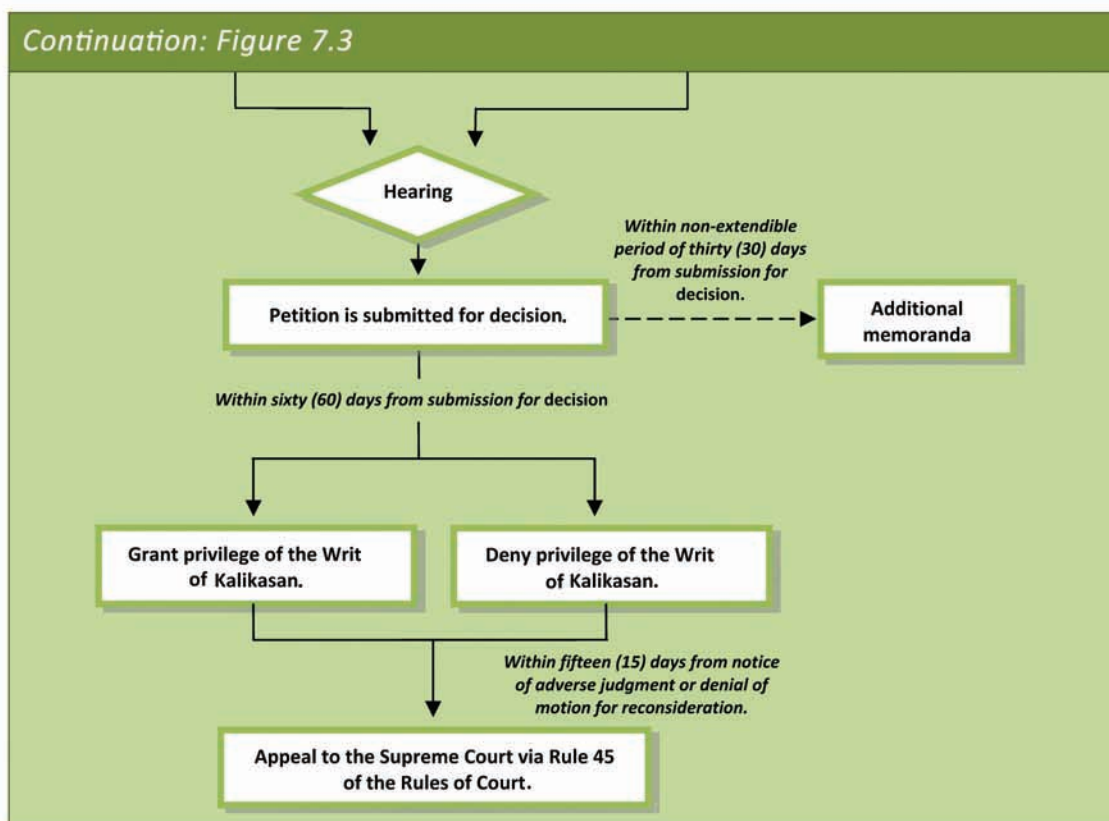
⁹²⁷ *Id.*

⁹²⁸ *Id.* annot., at 135.

⁹²⁹ *Id.* Rule 7, § 17. See RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, annot., at 139.

⁹³⁰ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7, § 16.

⁹³¹ *Id.* annot., at 136.



C. Writ of Continuing Mandamus

1. Brief Overview

On December 18, 2008, the Supreme Court promulgated a landmark decision in the case of *Metropolitan Manila Development Authority v. Residents of Manila Bay*.⁹³² In this case, the Supreme 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 in the amounts ranging from 50,000 to 80,000 most probable number (MPN) per 1 ml, which is way above the prescribed safe level of 200 MPN per 100 ml.⁹³³ 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 Metropolitan Manila Development Authority (MMDA), the Philippine Coast Guard (PCG), and the Philippine National Police (PNP) Maritime Group.⁹³⁴

⁹³² *Metropolitan Manila Development Authority v. Residents of Manila Bay*, G.R. No. 171947-48, Dec. 18, 2008, 574 SCRA 661.

⁹³³ *Id.* See 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, Series of 1990 (March 20, 1990).

⁹³⁴ *Metropolitan Manila Development Authority*, 574 SCRA at 667.

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 the 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.⁹³⁵ Nonetheless, the RTC decision was sustained by the CA and later on by the Supreme Court.⁹³⁶

In *Metropolitan Manila Development Authority v. Residents of Manila Bay*, the Supreme Court gave recognition to the fact that bureaucracy poses a major obstacle in the implementation of environmental laws. The Supreme 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.⁹³⁷ The Supreme Court, through Associate Justice Presbitero Velasco, Jr., said in its decision:

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. 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.

RA 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.

So it was in *Oposa v. Factoran, Jr.* that the Court stated that the right to a balanced and healthful ecology need not even be written in the Constitution for it is assumed, like other civil and political rights guaranteed in the Bill of Rights, to exist from the inception of mankind and it is an issue of transcendental importance with intergenerational implications. Even assuming the absence of a categorical legal provision specifically prodding petitioners to clean up the bay, they and the men and women representing them cannot escape their obligation to future generations of Filipinos to keep the waters of the Manila Bay clean and clear as humanly as possible. Anything less would be a betrayal of the trust reposed in them.⁹³⁸

The *MMDA* case cited two Indian cases, namely *Vineet Narain v. Union of India*⁹³⁹ and *M.C. Mehta v. Union of India*.⁹⁴⁰ 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

⁹³⁵ *Id.* at 669.

⁹³⁶ *Id.*

⁹³⁷ *Id.* at 691.

⁹³⁸ *Id.* at 692.

⁹³⁹ *Vineet Narain v. Union of India*, 1 SCC 226 (1998).

⁹⁴⁰ *M.C. Mehta v. Union of India*, 4 SCC 463 (1987).

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 CBI's compliance with its order to investigate the said offenses, and to ensure that the investigation is done with impartiality and objectivity. On the other hand, the case of *M.C. Mehta v. Union of India* sought the closure of tanneries to prevent the pollution of the Ganges River.⁹⁴¹

Another Indian case from which the Supreme Court derived the Writ of Continuing Mandamus is *T.N. Godavarman v. Union of India & Ors.*⁹⁴² In this case, the Supreme Court of India issued the Writ of Continuing Mandamus in order to monitor compliance with the order to preserve and rehabilitate an Indian forest.⁹⁴³

2. Writ of Continuing Mandamus Defined

According to the Rules of Procedure for Environmental Cases, a Writ of Continuing Mandamus is "a writ issued by a court in an environmental case directing any agency or instrumentality of the government, or officer thereof to perform an act or series of acts decreed by final judgment which shall remain effective until judgment is fully satisfied."⁹⁴⁴

3. Difference between a Writ of Continuing Mandamus and a Writ of Kalikasan

	Writ of Continuing Mandamus	Writ of Kalikasan
Subject matter	<ol style="list-style-type: none"> 1. Unlawful neglect in the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station in connection with the enforcement or violation of an environmental law rule or regulation, or a right therein; 2. The unlawful exclusion of another from the use or enjoyment of such right and in both instances, there is no other plain, speedy and adequate remedy in the ordinary course of law. 	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.

⁹⁴¹ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, ratio., at 77 (citing *M.C. Mehta v. Union of India*, 4 SCC 463 [1987]).

⁹⁴² *Id.* annot., at 103 (citing *T.N. Godavarman v. Union of India*, 2 SCC 267 [1997]).

⁹⁴³ *Id.*

⁹⁴⁴ *Id.* Rule 1, § 4(c).

⁹⁴⁵ *Id.* annot., at 142-44.

Continuation: Table 7.4

	Writ of Continuing Mandamus	Writ of Kalikasan
Who may file	One who is personally aggrieved by the unlawful act or omission.	1. A natural or juridical person; 2. Entity authorized by law; or 3. People's organization, Non-governmental organization, or any public interest group accredited by or registered with any government agency.
Respondent	Government and its officers.	1. Government and its officers; or 2. Private individual or entity.
Exemption from docket fees	Exempted	Exempted
Venue	1. Regional Trial Court that has jurisdiction over the territory where the actionable neglect or omission occurred. 2. Court of Appeals 3. Supreme Court	1. Court of Appeals 2. Supreme Court
Discovery measures	None	1. Ocular inspection order 2. Production order
Damages for personal injury	Allows damages for the malicious neglect of the performance of the legal duty of the respondent.	None may be awarded in a petition for a Writ of Kalikasan. The party must institute a separate action for the recovery of damages.

4. Grounds to Avail of a Writ of Continuing Mandamus

A person may file a verified petition for a Writ of Continuing Mandamus when any of the following instances are present:

- (1) When the respondent either:
 - a. Unlawfully omits to perform a duty specifically enjoined by law, arising from an office, trust or station, in relation to the enforcement or violation of an environmental law, rule or regulation or a right therein; or

- b. Unlawfully excludes another from the use or enjoyment of such right; and
- (2) There is no other plain, speedy and adequate remedy in the ordinary course of law.⁹⁴⁶

5. Person Who May File a Petition for a Writ of Continuing Mandamus

Any person **personally** aggrieved by the unlawful act or omission.⁹⁴⁷

6. Persons Against Whom a Petition for a Writ of Continuing Mandamus is Filed

A petition is filed against any agency, instrumentality of the Government, or an officer thereof.⁹⁴⁸ In comparison to a petition for a Writ of Kalikasan, this special remedy is not available against any private individual or entity.⁹⁴⁹

7. Court Where the Petition for a Writ of Continuing Mandamus is Filed

A petition for a Writ of Continuing Mandamus may be filed with the following courts:

- a. Regional Trial Court that has territorial jurisdiction over the unlawful act or omission;
- b. Court of Appeals; or
- c. Supreme Court.⁹⁵⁰

8. Procedure for the Issuance of a Writ of Continuing Mandamus

The petitioner shall file his application for a Writ of Continuing Mandamus with the proper venue as specified in the preceding paragraph. No docket fees shall be paid.⁹⁵¹

The petition should be verified, and shall include the following:

- a. Allegation of facts;
- b. Supporting evidence;
- c. That the petition concerns environmental law, rule or regulation;
- d. Prayer that the judgment shall direct the respondent to do an act or series of acts until the judgment is fully satisfied;
- e. That damages shall be paid to the petitioner for the injury suffered by reason of the unlawful act or omission of the respondent; and
- f. A sworn certification against non-forum shopping.⁹⁵²

⁹⁴⁶ *Id.* Rule 8, § 1.

⁹⁴⁷ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, annot., at 143.

⁹⁴⁸ *Id.* Rule 8, § 1.

⁹⁴⁹ *Id.* annot., at 143.

⁹⁵⁰ *Id.* Rule 8, § 2.

⁹⁵¹ *Id.* Rule 8, § 3.

⁹⁵² *Id.* Rule 8, § 1.

If the petition is sufficient in form and substance, the court shall (1) issue the Writ of Continuing Mandamus; and (2) require the respondent to comment on the petition within ten (10) days from receipt of a copy thereof.⁹⁵³

The court may also issue a Temporary Environmental Protection Order (TEPO) for two reasons: (1) to expedite the proceedings; and (2) to preserve the rights of the parties pending litigation.⁹⁵⁴ The Environmental Protection Order (EPO) shall be further discussed later on in this chapter.

The court shall set the petition for a summary hearing or require the parties to file their respective memoranda after (1) the respondent files his comment; or (2) the period for the filing of the comment has already expired.⁹⁵⁵

After hearing, judgment shall be rendered within sixty (60) days from the date of submission of the petition for resolution.⁹⁵⁶ The court may either (1) grant the privilege of the Writ of Continuing Mandamus; or (2) deny the petition. Should the court grant it, the respondent shall be required to perform an act or series of acts and to satisfy other reliefs as may be warranted.⁹⁵⁷ To ensure compliance with the judgment, the respondent shall also submit periodic reports that shall describe the manner and progress of the execution of the judgment.⁹⁵⁸ These periodic reports shall be contained in partial returns of the Writ of Continuing Mandamus.⁹⁵⁹ A final return of the Writ of Continuing Mandamus shall be submitted by the respondent once the judgment is fully satisfied.⁹⁶⁰

The court may also evaluate and monitor compliance with the Writ of Continuing Mandamus, and the petitioner may comment on the respondent's satisfaction of the judgment.⁹⁶¹ Upon submission of the final return of the writ, the court shall enter the satisfaction of the judgment on the court dockets.⁹⁶²

⁹⁵³ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 8, § 4.

⁹⁵⁴ *Id.* Rule 8, § 5.

⁹⁵⁵ *Id.* Rule 8, § 6.

⁹⁵⁶ *Id.*

⁹⁵⁷ *Id.* Rule 8, § 7.

⁹⁵⁸ *Id.*

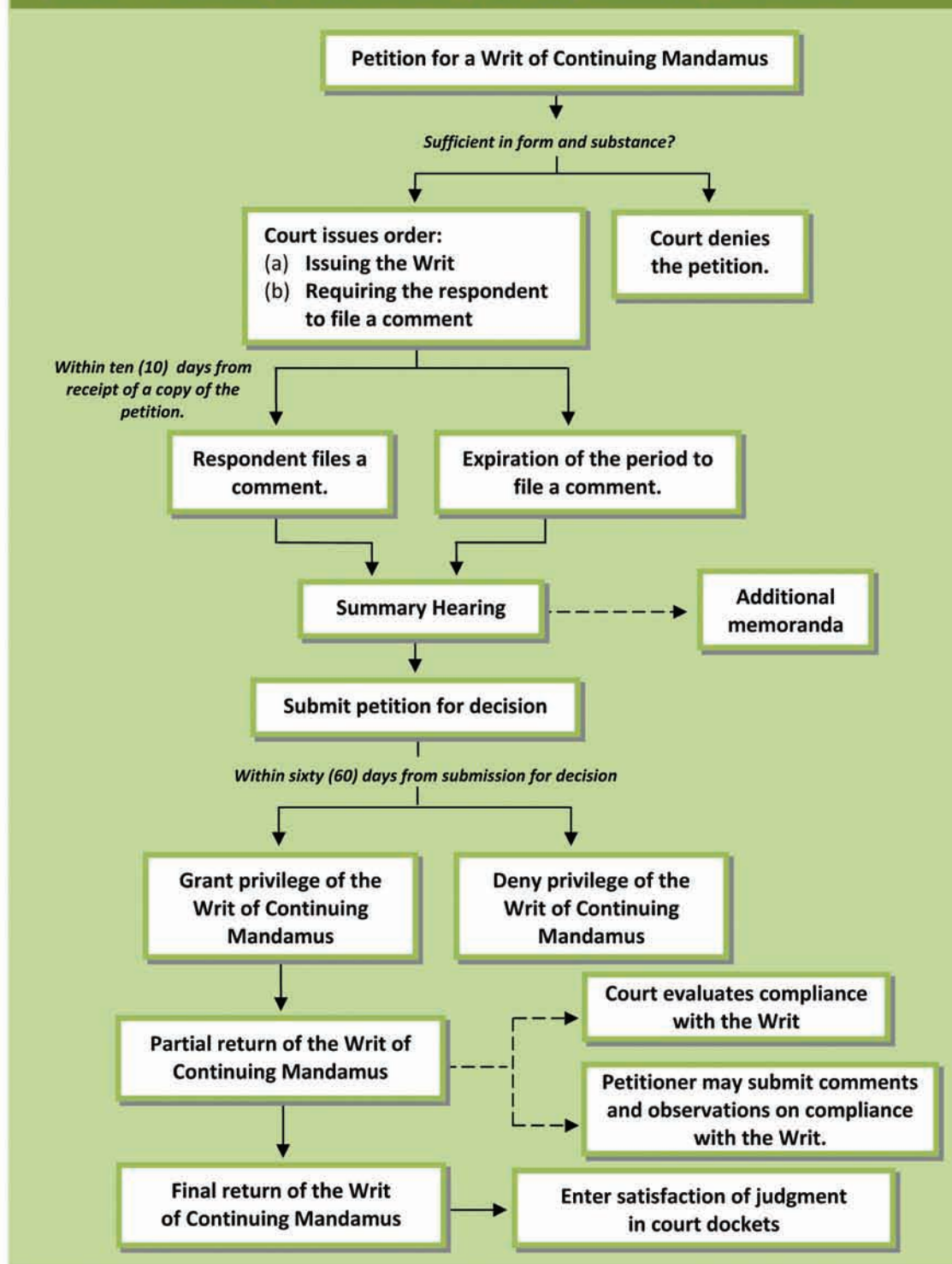
⁹⁵⁹ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 8, § 8.

⁹⁶⁰ *Id.*

⁹⁶¹ *Id.* Rule 8, § 7.

⁹⁶² *Id.* Rule 8, § 8.

Figure 7.4 Procedure for the Issuance of a Writ of Continuing Mandamus



Case Study: First TEPO issued in Surigao

The first TEPO issued in the Philippines involved a mining case in Surigao. The application for the TEPO was filed by civil society groups Anislagan Bantay Kalikasan Task Force, Inc. (Abakataf) and Lower Anislagan Farmers Irrigators Association against three mining firms and the Mines and Geosciences Bureau (MGB) of the DENR.

The application was made on the ground that the DENR issued exploration permits to the three mining companies despite the community's opposition to the application. The action was filed in order to protect the area's water source from the deleterious effects that the exploration permit granted to the three mining companies would entail.

Judge Evangeline Yuipco-Bayana of the Regional Trial Court in Surigao City issued ex parte a 72-hour TEPO on June 22, 2010. This was eventually extended to twenty (20) days after Judge Yuipco-Bayana conducted a hearing.

Sources: Stay Order on Mining Projects Issued <<http://www.piplinks.org/Judge+Evangeline+Yuipco-Bayana+>>; Anti-Mining Community Gets First Taste of Victory <<http://higakitnewsonline.wordpress.com/2010/07/07/anti-mining-community-gets-first-taste-of-victory/>> (last accessed Nov. 25, 2010).

D. Environmental Protection Order

1. Brief Overview

The Supreme Court introduced the Environmental Protection Order (EPO) in the Rules of Procedure for Environmental Cases in order to respond to the peculiar nature of an environmental case⁹⁶³ which often necessitates immediate action in order to avoid further environmental damage, or to prevent an imminent environmental threat.⁹⁶⁴

In other countries, the EPO is a remedy established through a legislative act. The Environmental Protection Act of 1994⁹⁶⁵ in Queensland, Australia was enacted in order to “protect Queensland’s environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends.”⁹⁶⁶ One of the means by which Queensland seeks to achieve this goal is through the issuance of an EPO under the following circumstances:

- (1) When a person fails to conduct and submit an environmental evaluation;
- (2) When a person fails to prepare and submit an environmental management program;
- (3) When a person conducts or carries out an activity which can, or will more likely, damage the environment;
- (4) When compliance is sought from a person with a general environmental duty, an environmental protection policy, or as a condition of a license.⁹⁶⁷

⁹⁶³ *Id.* ratio., at 75.

⁹⁶⁴ *Id.*

⁹⁶⁵ Act No. 62 of 1994, Queensland.

⁹⁶⁶ Environmental Protection Act of 1994, Act No. 62, Part 2, Queensland.

⁹⁶⁷ *Id.* at Part 8.

The Prince Edward Island of Canada also has the same legislation entitled the Environmental Protection Act (EPA) which has the purpose of managing, protecting, and enhancing the environment.⁹⁶⁸ Under the EPA of Canada, an EPO may likewise be issued in order to prevent further threat or damage to the environment.⁹⁶⁹

2. Environmental Protection Order Defined

According to the Rules of Procedure for Environmental Cases, an EPO is “an order issued by the court directing or enjoining any person or government agency to perform or desist from performing an act in order to protect, preserve or rehabilitate the environment.”⁹⁷⁰

The EPO performs a similar function as a prohibitory or mandatory injunction, but the EPO specifically applies to environmental cases.⁹⁷¹

3. Procedure for the Issuance of a Temporary Environmental Protection Order (TEPO)

The TEPO is a remedy available for both civil and criminal environmental cases.⁹⁷² Since the procedure for the issuance of a TEPO in a criminal case is similar to a civil case, the procedure that will hereinafter be discussed shall apply to both civil and criminal cases.⁹⁷³ The TEPO may also be availed of under the Writ of Kalikasan and the Writ of Continuing Mandamus, as a relief or as a means of expediting the proceedings and preserving the rights of the parties.⁹⁷⁴

The TEPO can be availed of when all of the following are present:

- (1) The matter is of extreme urgency; and
- (2) The applicant will suffer grave injustice and irreparable injury.⁹⁷⁵

The first step is for the applicant to file a verified complaint which shall contain the following:

- (1) All the supporting evidence proving his cause of action;
- (2) A statement that it is an environmental case, and the law involved;
- (3) Sworn certification against forum shopping;⁹⁷⁶ and
- (4) A prayer for the issuance of an EPO.⁹⁷⁷

⁹⁶⁸ Environmental Protection Act, R.S.P.E.I. 1988, E-9, Canada.

⁹⁶⁹ *Id.* at 7.

⁹⁷⁰ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 1, § 4(d).

⁹⁷¹ *Id.* ratio., at 75-76.

⁹⁷² *Id.* at 76.

⁹⁷³ *Id.* Rule 13, § 2.

⁹⁷⁴ See RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7, § 2(f) and Rule 8, § 5.

⁹⁷⁵ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 2, § 8.

⁹⁷⁶ *Id.* Rule 2, § 3.

⁹⁷⁷ *Id.* Rule 2, § 8.




Case Study: Second TEPO issued in Cebu

The second TEPO issued was directed against the coal-fired power plants in Toledo City, Cebu, the DENR, Department of Energy, and the local government officials of the concerned cities.

The applicants sought to prevent the private respondents from transporting coal ash and dumping the same outside the power plant premises, and to prevent the public respondents from further tolerating the unlawful activities of the private respondents. The applicants also claimed that their right to a balanced and healthful ecology was violated because the coal ash from the power plants of the private respondents contains hazardous chemicals which will affect the health of the residents in the area.

Judge Marilyn Lagura-Yap issued ex parte a 72-hour TEPO after the applicants presented scientific and medical studies which provided evidence that coal ash has hazardous chemicals that is detrimental to a person's health.

Sources: Protection Order <<http://www.sunstar.com.ph/cebu/protection-order>>; Environmental Protection Order sought vs coal ash <<http://www.philstar.com/Article.aspx?articleid=602288>> (last accessed Nov. 2, 2010).



If the court where the complaint is filed finds that the issuance of the TEPO is warranted, as when the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, a TEPO may be issued *ex parte* which shall be effective for 72 hours from the date of the receipt of the TEPO by the party enjoined.⁹⁷⁸ No bond shall be required for the issuance of TEPO.⁹⁷⁹

Afterwards, a summary hearing shall be conducted in order to determine whether an extension of the TEPO is warranted until the termination of the case.⁹⁸⁰ The court shall also periodically monitor whether the acts which warranted the TEPO still exists, and may lift the TEPO should the circumstances permit.⁹⁸¹

The issuance of a TEPO *ex parte* is an exception to the general requirement of due process which requires the other party to be heard.⁹⁸² For this reason, the Supreme Court laid down the following procedural safeguards: (1) limiting the period of effectivity which is seventy-two (72) hours; and (2) constant monitoring of the existence of acts subject matter of the TEPO.⁹⁸³

After the hearing, the court may dissolve the TEPO when it finds that its "issuance or continuance would cause irreparable damage to the party or person enjoined while the applicant may be fully compensated for such damages as he may suffer."⁹⁸⁴ The person or party enjoined must file a sufficient bond to answer for the damages that the applicant may suffer.⁹⁸⁵

⁹⁷⁸ *Id.*

⁹⁷⁹ *Id.*

⁹⁸⁰ *Id.*

⁹⁸¹ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 2, § 8.

⁹⁸² *Id.* annot., at 115.

⁹⁸³ *Id.* at 114.

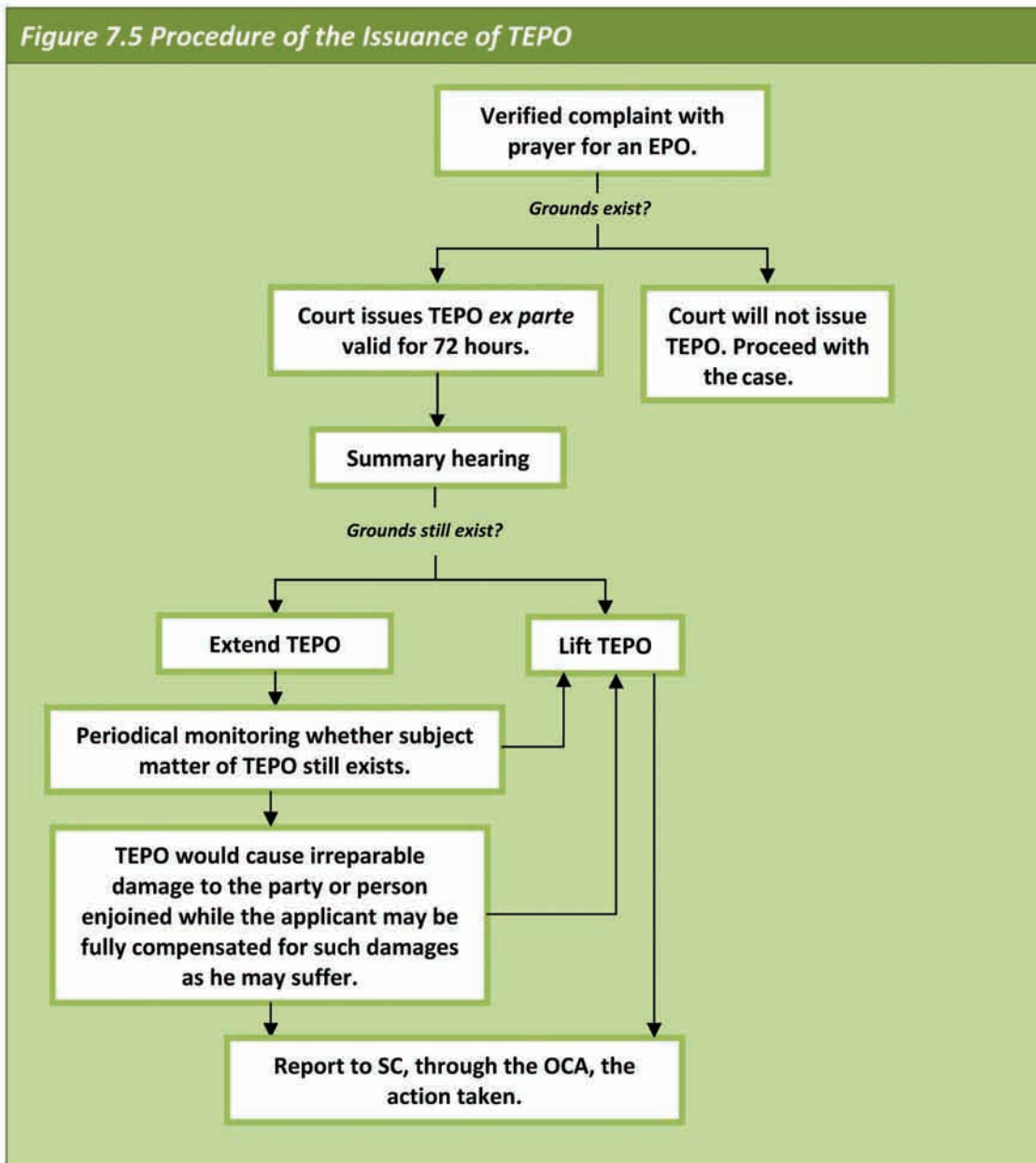
⁹⁸⁴ *Id.* Rule 2, § 9.

⁹⁸⁵ *Id.*

The judge shall thereafter report any action on the TEPO to the Supreme Court within ten (10) days from the action taken. The report shall be made to the Office of the Court Administrator (OCA).⁹⁸⁶

4. Procedure for the Issuance of a Permanent Environmental Protection Order

The TEPO may be converted to a permanent EPO or a Writ of Continuing Mandamus if the court resolving the case deems that the circumstances so warrant.⁹⁸⁷ The procedure for the Writ of Continuing Mandamus is outlined in the preceding sub-chapter.



⁹⁸⁶ *Id.* Rule 2, § 11.

⁹⁸⁷ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 5, § 3.

E. Preliminary Injunction

1. Preliminary Injunction Defined

According to the Rules of Court, a preliminary injunction is an “order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction.”⁹⁸⁸

It is an ancillary remedy for the purpose of preserving the *status quo* or preventing future violations of a right, and protecting and preserving the interests of the parties during the pendency of an action.⁹⁸⁹

2. Grounds for the Issuance of a Preliminary Injunction

The following are the grounds for the issuance of a Preliminary Injunction:

- a. That the applicant is **entitled to the relief demanded**, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;
- b. That the commission, continuance or non-performance of the act or acts complained of during the litigation **would probably work injustice to the applicant**; or
- c. That a party, court, agency or a person is **doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts** probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.⁹⁹⁰

3. Procedure for the Grant of a Preliminary Injunction

A verified application for a Preliminary Injunction must be filed with the court where the action is pending.⁹⁹¹ “If the action or proceeding is pending in the Court of Appeals or in the Supreme Court, it may be issued by said court or any member thereof.”⁹⁹²

The application for the issuance of a Preliminary Injunction or Temporary Restraining Order (TRO) must meet the following requirements:

- a. The application must be verified;
- b. The application must state the facts which entitle the applicant to the relief demanded; and
- c. The application must be accompanied by a bond, in the amount fixed by the court, to answer for any and all damages which the respondent may sustain by reason of the injunction or TRO.⁹⁹³

⁹⁸⁸ 1997 RULES OF CIVIL PROCEDURE, Rule 58, § 1.

⁹⁸⁹ *Cortez-Estrada v. Heirs of Domingo/Antonia Samut*, G.R. No. 154407, Feb. 14, 2005, 451 SCRA 275, 288.

⁹⁹⁰ 1997 RULES OF CIVIL PROCEDURE, Rule 58, § 3.

⁹⁹¹ *Id.* Rule 58, § 2.

⁹⁹² *Id.*

⁹⁹³ *Id.* Rule 58, § 4.

After the payment of the bond, the injunction or TRO shall be issued.⁹⁹⁴ If the application is included in an initiatory pleading, the case shall be raffled after notice to the adverse party and in the adverse party's presence.⁹⁹⁵ The notice shall be preceded or accompanied by the following:

- a. Service of summons, except when any of the following circumstances are present:
 - i. The summons could not be served personally or by substituted service despite diligent efforts; or
 - ii. The adverse party is a Philippine resident temporarily absent therefrom; or
 - iii. The adverse party is a non-resident.
- b. Copy of the complaint or initiatory pleading;
- c. Applicant's affidavit; and
- d. Applicant's bond.⁹⁹⁶

A summary hearing shall be conducted by the court within twenty-four (24) hours after the sheriff's return of service and/or the records are received by the branch selected by raffle.⁹⁹⁷

The requirement of hearing and prior notice to the adverse party is indispensable, unless "it shall appear from [the] facts shown by [the] affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue *ex parte* a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided."⁹⁹⁸

During the 20-day period, the court, through an order, shall give the adverse party the opportunity to be heard to show cause why the injunction should not be granted.⁹⁹⁹ The court shall also determine whether or not the preliminary injunction shall be granted.¹⁰⁰⁰

The executive judge of a multiple-sala court, or a presiding judge of a single-sala court may also issue *ex parte* a TRO effective for seventy-two (72) hours, if the matter is of extreme urgency and the applicant will suffer grave injustice or irreparable injury.¹⁰⁰¹

Within the said 72-hour period, the judge shall conduct a summary hearing in order to determine whether the TRO can be extended until the hearing for the application for preliminary injunction.¹⁰⁰²

⁹⁹⁴ *Id.* Rule 58, § 4(b).

⁹⁹⁵ *Id.* Rule 58, § 4(c).

⁹⁹⁶ 1997 RULES OF CIVIL PROCEDURE, Rule 58, § 4(c).

⁹⁹⁷ *Id.* Rule 58, § 4(d).

⁹⁹⁸ *Id.* Rule 58, § 5.

⁹⁹⁹ *Id.*

¹⁰⁰⁰ *Id.*

¹⁰⁰¹ *Id.*

¹⁰⁰² 1997 RULES OF CIVIL PROCEDURE, Rule 58, § 5.

The total period within which a TRO shall be effective is twenty (20) days, including the first 72-hour period.¹⁰⁰³ In instances where the Court of Appeals issues the TRO, it shall be effective sixty (60) days from service to the adverse party; if the Supreme Court issues the TRO, it shall be effective until further orders.¹⁰⁰⁴ Thus, the following are the non-extendible periods within which the TRO is effective:

- a. Lower court where the action is pending – total of twenty (20) days including the 72-hour period.
- b. Court of Appeals – sixty (60) days from service to the adverse party.
- c. Supreme Court – until further orders.

The TRO shall be deemed automatically vacated when the application for injunction is not resolved within the prescribed periods.¹⁰⁰⁵

The court may resolve the application by either (1) granting the application for Preliminary Injunction; or (2) denying or dissolving the injunction or TRO. The court may deny the application for Preliminary Injunction based on the following grounds:

- a. Upon showing of its insufficiency;
- b. Upon affidavits of the party or person enjoined;
- c. Upon showing that “the issuance or continuance thereof, as the case may be, would cause irreparable damage to the party or person enjoined while the applicant can be fully compensated for such damages as he may suffer, and the former files a bond in an amount fixed by the court conditioned that he will pay all damages which the applicant may suffer by the denial or the dissolution of the injunction or restraining order;”
- d. Upon showing that the extent of the Preliminary Injunction or TRO is too great, it may be modified.¹⁰⁰⁶

4. Final Injunction

A final injunction may be granted when the court finds after trial that the applicant is entitled to have the unlawful act or omission permanently enjoined.¹⁰⁰⁷ It shall perpetually restrain the adverse party from committing the acts complained of.¹⁰⁰⁸

5. Prohibition in Relation to the Enforcement of Environmental Laws

The Rules of Procedure for Environmental Cases provide that “except the Supreme Court, no court can issue a TRO or writ of preliminary injunction against lawful actions of government agencies that enforce environmental laws or prevent violations thereof.”¹⁰⁰⁹ This section is premised on the regularity of

¹⁰⁰³ *Id.*

¹⁰⁰⁴ *Id.*

¹⁰⁰⁵ *Id.*

¹⁰⁰⁶ *Id.* Rule 58, § 6.

¹⁰⁰⁷ *Id.* Rule 58, § 9.

¹⁰⁰⁸ *Id.*

¹⁰⁰⁹ RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 2, §10.

performance of the government agency's functions in fulfilling its mandate to enforce environmental laws, while the issuance of a TEPO is premised on the violation of an environmental law, not only by a government agency, but by a private entity as well.¹⁰¹⁰

This general rule admits of an exception but the applicant must be able to "overcome the presumption of regularity in the performance of a duty" by the public respondent.¹⁰¹¹

6. Case Study

In the case of *Hernandez v. National Power Corporation (NAPOCOR)*,¹⁰¹² the main issue to be resolved was whether the trial court may issue a TRO and Preliminary Injunction to restrain the construction and operation of the 29 steel poles or towers by the NAPOCOR, despite the provision in PD No. 1818 which provides that courts are prohibited from issuing restraining orders or preliminary injunctions in cases involving national infrastructure projects and public utilities operated by the government.¹⁰¹³ The construction of the power lines were sought to be restrained because the petitioners found that exposure to electromagnetic fields would lead to innumerable illnesses and diseases.¹⁰¹⁴

The Supreme Court resolved the issue in favor of the issuance of a Preliminary Injunction citing as legal basis Rule 58, Section 3 of the Rules of Court in relation to the people's right to health.¹⁰¹⁵ The Supreme Court concluded its decision with the following paragraphs:

Not infrequently, the government is tempted to take legal shortcuts to solve urgent problems of the people. But even when government is armed with the best of intention, we cannot allow it to run roughshod over the rule of law. Again, we let the hammer fall and fall hard on the illegal attempt of the MMDA to open for public use a private road in a private subdivision. While we hold that the general welfare should be promoted, we stress that it should not be achieved at the expense of the rule of law.¹⁰¹⁶

In hindsight, if, after trial, it turns out that the health-related fears that petitioners cleave on to have adequate confirmation in fact and in law, the questioned project of NAPOCOR then suffers from a paucity of purpose, no matter how noble the purpose may be. **For what use will modernization serve if it proves to be a scourge on an individual's fundamental right, not just to health and safety, but, ostensibly, to life preservation itself, in all of its desired quality?**¹⁰¹⁷ (*Emphasis supplied*)

¹⁰¹⁰ *Id.* annot., at 116-117.

¹⁰¹¹ *Id.* at 116.

¹⁰¹² *Hernandez v. National Power Corporation (NAPOCOR)*, G.R. No. 145328, March 23, 2006, 485 SCRA 166.

¹⁰¹³ *Id.* at 172.

¹⁰¹⁴ *Id.* at 171.

¹⁰¹⁵ *Id.* at 176-178 (citing PHILIPPINE CONSTITUTION, Art. II § 15).

¹⁰¹⁶ *Id.* at 184 (citing *MMDA v. Bel-Air Village Assoc.*, G.R. No. 135962, March 27, 2000, 328 SCRA 836).

¹⁰¹⁷ *Id.* at 184.

ANNEX A

SUMMARY OF SUPREME COURT CASES

A. Constitutional Provisions on Environmental Law***Oposa v. Factoran*****G.R. No. 101083, July 30, 1993, 224 SCRA 792****Syllabus:**

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.

Facts:

The petitioners are minors represented and joined by their parents, and the Philippine Ecological Network, Inc. (PENI), a domestic, non-stock and non-profit corporation. They instituted a class suit as taxpayers who are all entitled to the enjoyment of the natural resources of the Philippines, specifically, the virgin tropical forests. They pray for the cancellation of all existing timber license agreements (TLAs) and the cessation of the issuance of new TLAs. The petitioners claim that “they represent their generation as well as generations yet unborn.”

The complaint alleges that to maintain a balanced and healthful ecology, “the country’s land area should be utilized on the basis of a ratio of 54 percent for forest cover and 46 percent for agricultural, residential, industrial, commercial and other uses.” Moreover, it alleges that due to the degradation and deforestation of the forests, there are a number of environmental tragedies in the country. The petitioners base their cause of action on scientific evidence of the adverse effects of deforestation as a result of the issuance of the TLAs of the public respondents.

Public respondents assert that there is no cause of action, and that the question raised by the petitioners is a political question that should be directed towards the legislative or executive branches of the government. The lower court granted the motion to dismiss, thus the petitioners were constrained to file a petition for *certiorari* with the Supreme Court.

Issue:

Whether the petitioners have a cause of action to “prevent the misappropriation or impairment” of Philippine rainforests and “arrest the unabated hemorrhage of the country’s vital life support systems and continued rape of Mother Earth.”

Ruling:

Yes. The petitioners have a cause of action.

The complaint of the petitioners is based on the Right to a Balanced and Healthful Ecology as provided in Section 16, Article II of the 1987 Constitution. Although this right falls under the Declaration of Principles and State Policies, the right to a balanced and healthful ecology is not less important than the civil and political rights under the Bill of Rights. “Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation – aptly and fittingly stressed by the petitioners – the advancement of which may even be said to predate all governments and constitutions.” The reason why this right is placed under Article II of the Constitution is to emphasize the importance of the State’s obligation to preserve the Right to a Balanced and Healthful Ecology, and to protect and advance the Right to Health.

The Supreme Court also held that “the right to a balanced and healthful ecology carries with it the correlative duty to refrain from impairing the environment.” Section 3 of EO No. 192 declares as a policy of the State “to ensure the sustainable use, development, management, renewal, and conservation of the country’s forest, mineral, land, off-shore areas and other natural resources, including the protection and enhancement of the quality of the environment, and equitable access of the different segments of the population to the development and the use of the country’s natural resources, not only for the present generation but for future generations as well.” This declaration is affirmed in Title XIV, Book IV of the Administrative Code of 1987 and included as part of the DENR’s responsibility to carry out “the State’s constitutional mandate to control and supervise the exploration, development, utilization, and conservation of the country’s natural resources.”

Therefore, it is definite that the petitioners have the right to a balanced and healthful ecology and the Department of Environment and Natural Resources (DENR) has the duty to protect and advance such right. The violation of the petitioners’ right gives rise to a cause of action. The Supreme Court thus held that the full protection of the environment requires that no further TLAs should be renewed or granted.

B. Terrestrial Laws**1. PD No. 705 – Revised Forestry Code of the Philippines****a. Jurisdiction Matters**

Merida v. People of the Philippines
G.R. No. 158182, June 12, 2008, 554 SCRA 366

Syllabus:

The Revised Rules of Criminal Procedure (Revised Rules) list the cases which must be initiated by a complaint filed by specified individuals the non-compliance of which ousts the trial court of jurisdiction from trying such cases. However, these cases concern only defamation and other crimes against chastity and not to cases concerning Section 68 of PD No. 705, as amended. Further, Section 80 of PD No. 705 does not

prohibit an interested person from filing a complaint before any qualified officer for violation of Section 68 of PD No. 705, as amended.

Facts:

A certain Tansiongco discovered that Sesinando Merida cut a narra tree in his private land, the Mayod Property. Tansiongco reported the matter to the punong barangay who summoned petitioner to a meeting. During that meeting, Merida made extrajudicial admissions that he did cut the tree but claimed that he did so with the permission of one Vicar Calix, who, he alleges, bought the Mayod Property from Tansiongco. Tansiongco again reported the matter, this time with the DENR. Merida made the same extrajudicial admissions.

Tansiongco filed a complaint with the Provincial Prosecutor charging Merida with violation of Section 68 of PD No. 705. The Prosecutor found probable cause and filed the information with the trial court. The trial court found Merida guilty as charged. The Court of Appeals affirmed the trial court's judgment.

Issues:

- (1) Whether the trial court acquired jurisdiction over the case considering that it was filed by a private individual and not by a DENR forest officer.
- (2) Whether Merida is guilty of violating Section 68 of PD No. 705

Ruling:

- (1) Yes. The trial court acquired jurisdiction.

According to the Revised Rules of Criminal Procedure, the list of cases which must be initiated by the complainant does not include cases concerning Section 68 of PD No. 705. Moreover, "Section 80 of PD No. 705 does not prohibit an interested person from filing a complaint before any qualified officer for violation of Section 68 of PD No. 705, as amended."

- (2) Yes. Merida is guilty of violating Section 68 of PD No. 705.

Merida constantly represented to the authorities that he cut a narra tree in the Mayod Property. Therefore, his extrajudicial admissions are binding on him.

Momongan v. Judge Omipon
A.M. No. MTJ-93-874, March 14, 1995, 242 SCRA 332

Syllabus:

The confiscation proceedings under AO No. 59 is different from the confiscation under the Revised Penal Code, which is an additional penalty imposed in the event of conviction. Despite the order of release, the truck can be seized again either by filing a motion for reinvestigation and motion to include the truck owner/driver, as co-accused, which complainant has done as manifested before the lower court or by

enforcing AO No. 59. Section 12 thereof categorically states that “[t]he confiscation of the conveyance under these regulations shall be without prejudice to any criminal action which shall be filed against the owner thereof or any person who used the conveyance in the commission of the offense.”

Facts:

Dionisio Golpe was apprehended by police officers while he was driving his truck loaded with illegally cut lumber. It was later found that a certain Basilio Cabig owned the logs, thus, a complaint was filed against him. Judge Rafael Omipon, the respondent in this case, “found that a *prima facie* case exists against Cabig but he ordered the release of the truck inasmuch as the owner/driver, Golpe, was not charged in the complaint.”

Augustus Momongan, the Regional Director of the DENR, filed the present complaint against Judge Omipon alleging that his order releasing the truck used in the transport of illegally cut forest products violated Section 68 and 68-A of PD No. 705 and AO No. 59, Series of 1990. Momongan further claims that Judge Omipon is devoid of authority to release the truck despite the non-inclusion of Golpe in the complaint.

Issue:

Whether Judge Omipon had authority to release the assailed truck and thus be free from any disciplinary sanction.

Ruling:

Yes. Judge Omipon had the authority to order the release of the truck.

Although the DENR Secretary or his duly authorized representatives have the power to confiscate any illegally obtained or gathered forest products and all conveyances used in the commission of the offense, based on Section 68-A of PD No. 705 and AO No. 59, this power is in relation to the administrative jurisdiction of the DENR. The act of Judge Omipon of releasing the truck did not violate PD No. 705 and AO No. 59 because his act did not render nugatory the administrative authority of the DENR Secretary. “The confiscation proceedings under Administrative Order No. 59 is different from the confiscation under the Revised Penal Code, which is an additional penalty imposed in the event of conviction.”

Momongan assails that Judge Omipon should have turned over the truck to the Community Environment and Natural Resources Office (CENRO). Judge Omipon however had no mandatory duty to do so, and should therefore not be visited with disciplinary action.

Provident Tree Farms, Inc. v. Hon. Demetrio Batario
G.R. No. 92285, March 28, 1994, 231 SCRA 463

Syllabus:

The enforcement of the importation ban under Section 36, par. (1), of the Revised Forestry Code is within the exclusive realm of the Bureau of Customs, and direct recourse of petitioner to the Regional Trial Court to compel the Commissioner of Customs to enforce the ban is devoid of any legal basis. To allow the regular court to direct the Commissioner to impound the imported matches, as petitioner would, is clearly an interference with the exclusive jurisdiction of the Bureau of Customs over seizure and forfeiture cases. An order of a judge to impound, seize or forfeit must inevitably be based on his determination and declaration of the invalidity of the importation, hence, a usurpation of the prerogative and an encroachment on the jurisdiction of the Bureau of Customs. In other words, the reliefs directed against the Bureau of Customs as well as the prayer for injunction against importation of matches by private respondent A.J. International Corporation (AJIC) may not be granted without the court arrogating upon itself the exclusive jurisdiction of the Bureau of Customs.

Facts:

Section 36 of the Revised Forestry Code provides incentives for Philippine corporations engaged in industrial tree planting, like petitioner Provident Tree Farms, Inc. (PTFI). One of these incentives is a qualified ban against importation of wood and wood-derived products.

A.J. International Corporation (AJIC) imported matches from other countries in violation of the said importation ban. Consequently, PTFI filed a complaint for injunction and damages with prayer for a temporary restraining order against the Commissioner of Customs and AJIC to enjoin the latter from making the prohibited importations. AJIC filed a motion to dismiss alleging that the Commissioner of Customs under Section 1207 of the Tariff and Customs Code and not the regular court, has “exclusive jurisdiction to determine the legality of an importation or ascertain whether the conditions prescribed by law for an importation have been complied with...xxx” At first, the motion was denied but upon reconsideration, the trial court granted the motion and dismissed the case on the ground that it had “no jurisdiction to determine what are legal or illegal importations.”

Issue:

Whether the trial court has jurisdiction in the case at bar.

Ruling:

No. The trial court has no jurisdiction.

Since the incentive involves a ban against importation of wood, wood products or wood-derived products, such incentive is to be enforced by the Bureau of Customs which has exclusive and original jurisdiction over seizure and forfeiture cases. “[I]n fact, it is the duty of the Collector of Customs to exercise jurisdiction over prohibited importations.”

“To allow the regular court to direct the Commissioner to impound the imported matches, as petitioner would, is clearly an interference with the exclusive jurisdiction of the Bureau of Customs over seizure and forfeiture cases. An order of a judge to impound, seize or forfeit must inevitably be based on his determination and declaration of the invalidity of the importation, hence, a usurpation of the prerogative and an encroachment on the jurisdiction of the Bureau of Customs. In other words, the reliefs directed against the Bureau of Customs as well as the prayer for injunction against importation of matches by private respondent AJIC may not be granted without the court arrogating upon itself the exclusive jurisdiction of the Bureau of Customs.”

Even though no procedure is outlined for the enforcement of the import ban, this does not diminish the jurisdiction of the Bureau of Customs over the subject matter. “The enforcement of statutory rights is not foreclosed by the absence of a statutory procedure.”

People of the Philippines v. CFI of Quezon, Branch VII
G.R. No. L-46772, February 13, 1992, 206 SCRA 187

Syllabus:

While it is only the state which can grant a license or authority to cut, gather, collect or remove forest products, it does not follow that all forest products belong to the state. Private ownership of forest products grown in private lands is retained under the principle in civil law that ownership of the land includes everything found on its surface.

[Section 80 of PD No. 705] covers two (2) specific instances when a forest officer may commence a prosecution for the violation of the Revised Forestry Code of the Philippines. The first authorizes a forest officer or employee of the Bureau of Forestry to arrest without a warrant, any person who has committed or is committing, in his presence, any of the offenses described in the decree. The second covers a situation when an offense described in the decree is not committed in the presence of the forest officer or employee and the commission is brought to his attention by a report or a complaint. In both cases, however, the forest officer or employee shall investigate the offender and file a complaint with the appropriate official authorized by law to conduct a preliminary investigation and file the necessary information in court.

Facts:

Godofredo Arrozal, Luis Flares and twenty (20) other John Does were charged with the crime of qualified theft of logs, defined and punished under Section 68 of PD No. 705. The accused filed a motion to quash the Information on the following grounds: (1) the facts charged do not constitute an offense; and (2) the Information does not conform substantially to the prescribed form. The motion was granted by the trial court. Consequently, a petition was filed with the Supreme Court questioning the action of the trial court.

Issues:

- (1) Whether the Information charged an offense.
- (2) Whether the trial court had jurisdiction over the case.

Ruling:

(1) Yes. The Information properly charged an offense.

“The sufficiency of the Information hinges on the question of whether the facts alleged, if hypothetically admitted, meet the essential elements of the offense defined in the law. The elements of the crime of qualified theft of logs are: (1) that the accused cut, gathered, collected or removed timber or other forest products; (2) that the timber or other forest products cut, gathered, collected or removed belongs to the government or to any private individual; and (3) that the cutting, gathering, collecting or removing was without authority under a license agreement, lease, license, or permit granted by the state.”

Failure to allege that the logs were owned by the State does not affect the validity of the Information. Ownership is not an essential element of the offense and that the failure to stipulate the fact of ownership of the logs is not material. Furthermore, the logs were taken from a private woodland and not from a public forest. “The fact that only the state can grant a license agreement, license or lease does not make the state the owner of all the logs and timber products produced in the Philippines including those produced in private woodlands.”

(2) Yes. The trial court has jurisdiction over the case.

“The trial court erred in dismissing the case on the ground of lack of jurisdiction over the subject matter because the Information was filed pursuant to the complaint of a forest officer as prescribed in Section 80 of PD No. 705.”

[T]he authority given to the forest officer to investigate reports and complaints regarding the commission of offenses defined in PD No. 705 by the said last and penultimate paragraphs of Section 80 may be considered as covering only such reports and complaints as might be brought to the forest officer assigned to the area by other forest officers or employees of the Bureau of Forest Development, or any of the deputized officers or officials, for violations of forest laws not committed in their presence.

Daylinda A. Laguna, et al. v. Hon. Vicente N. Cusi, et al.
G.R. No. L-44649, April 15, 1988, 160 SCRA 260

Syllabus:

Presidential Decree No. 705, upon which the respondent court based its order, does not vest any power in the Bureau of Forest Development to determine whether the closure of a logging road is legal or illegal and to make such determination a pre-requisite before an action for damages may be maintained.

Facts:

This petition for mandamus originated from a complaint for damages which was instituted by the petitioners against the private respondents for closing a logging road without authority.

The private respondents contended that the acts complained of by the petitioners arose out of the legitimate exercise of respondent Eastcoast Development Enterprises, Inc. of its rights as a timber licensee, more particularly in the use of its logging roads. Therefore, the resolution of this question is properly and legally within the Bureau of Forest Development.

The petitioners maintain that since their action is for damages, the regular courts have jurisdiction over the same. According to them, the respondent court had no basis for holding that the Bureau of Forestry Development must first determine that the closure of a logging road is illegal before an action for damages can be instituted.

Issue:

Whether the trial court has jurisdiction over an action for damages arising from the closure of a logging road.

Ruling:

Yes. The trial court has jurisdiction.

“Presidential Decree No. 705 upon which the respondent court based its order does not vest any power in the Bureau of Forest Development must first determine that the closure of a logging road is illegal and to make such determination a pre-requisite before an action for damages may be maintained. Moreover, the complaint instituted by the petitioners is clearly for damages based on the alleged illegal closure of the logging road. Whether such closure was illegal is a matter to be established on the part of the petitioners and a matter to be disproved by the private respondents. This should appropriately be threshed out in a judicial proceeding. It is beyond the power and authority of the Bureau of Forest Development to determine the unlawful closure of a passage way, much less award or deny the payment of damages based on such closure. Not every activity inside a forest area is subject to the jurisdiction of the Bureau of Forest Development.”

b. Prohibited Acts

Aquino v. People of the Philippines
G.R. No. 165448, July 27, 2009, 594 SCRA 50

Syllabus:

There are two distinct and separate offenses punished under Section 68 of PD No. 705, to wit: (1) the cutting, gathering, collecting and removing of timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land without any authority; and (2) the possession of timber or other forest products without the legal documents required under existing laws and regulations.

The provision clearly punishes anyone who shall cut, gather, collect or remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority. In this case, petitioner was charged by the CENRO to supervise the implementation of the permit. He was not the one who cut, gathered, collected or removed

the pine trees within the contemplation of Section 68 of PD No. 705. He was not in possession of the cut trees because the lumber was used by Teachers' Camp for repairs. Petitioner could not likewise be convicted of conspiracy to commit the offense because all his co-accused were acquitted of the charges against them.

Facts:

Sergio Guzman applied for a permit with the Department of Environment and Natural Resources (DENR) to cut down 14 dead Benguet pine trees within the Teachers' Camp in Baguio City to be used for the repairs in Teachers' Camp. Before the permit was issued, a team composed of members from the Community Environment and Natural Resources Office (CENRO) and Michael Cuteng, a forest ranger, conducted an inspection of the trees to be cut. Afterwards, the DENR issued a permit allowing the cutting of 14 trees.

Sometime after, certain forest rangers received information that unauthorized cutting of pine trees were taking place at the Teachers' Camp. When they visited the site, they found, among others, Ernesto Aquino, Santiago, and Cuteng. Santiago was one of the sawyers and Aquino was the one appointed to supervise the cutting. The forest rangers discovered that the trees cut were beyond the number allowed by the permit. Consequently, the forest rangers filed a case against all those present in the site for violation of Section 68 of PD No. 705. The trial court decided to convict Aquino, Santiago and Cuteng and acquitted the others. When Aquino, Santiago and Cuteng appealed the case, the Court of Appeals affirmed the judgment only as to Aquino. Therefore, Santiago and Cuteng were acquitted from the charge. Aquino appealed with the Supreme Court.

Issue:

Whether petitioner Aquino, who supervised the cutting of the pine trees, is guilty of violating Section 68 of the Revised Forestry Code.

Ruling:

No. Aquino is not guilty of violating Section 68 of the Revised Forestry Code.

Section 68 of the Revised Forestry Code provides two distinct and separate offenses:

- (a) Cutting, gathering, collecting and removing timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land without any authority; and
- (b) Possession of timber or other forest products without the legal documents required under existing forest laws and regulations.

The aforesaid provision clearly states that it "punishes anyone who shall cut, gather, collect or remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority." In the case at bar, Aquino was not the one who cut, gathered, collected or removed the pine trees. He was merely the person charged by the CENRO to supervise the implementation of the permit. He was also not the one in possession of the cut trees because the lumber was used by Teachers' Camp.

Although Aquino may have been remiss in his duties when he failed to restrain the sawyers from cutting trees more than what was covered by the permit, this fact could only make him administratively liable. "It is not enough to convict him under Section 68 of PD No. 705."

Mustang Lumber, Inc. v. Court of Appeals
G.R. No. 104988, June 18, 1996, 257 SCRA 430

Syllabus:

The Revised Forestry Code contains no definition of either timber or lumber. While the former is included in forest products as defined in paragraph (q) of Section 3, the latter is found in paragraph (aa) of the same section in the definition of "Processing plant," which reads:

(aa) Processing plant is any mechanical set-up, machine or combination of machine used for the processing of logs and other forest raw materials into lumber, veneer, plywood, wallbond, blockboard, paper board, pulp, paper or other finished wood products.

This simply means that lumber is a processed log or processed forest raw material. Clearly, the Code uses the term lumber in its ordinary or common usage. In the 1993 copyright edition of Webster's Third New International Dictionary, lumber is defined, inter alia, as "timber or logs after being prepared for the market." Simply put, lumber is processed log or timber.

Facts:

The present suit is a consolidation of three cases, the first case being the one pertinent to environmental law.

An organized team of foresters and policemen apprehended the truck belonging to Mustang Lumber, Inc. which contained lauan and almaciga lumber of assorted sizes and dimensions. The driver was unable to produce the necessary legal documents, thus, the team seized the truck. Afterwards, the team obtained a search warrant to inspect the premises of Mustang Lumber. During the search, the team found more lumber in the lumberyard without the necessary papers. Thus, the lumbers were confiscated. Secretary Factoran ordered the disposal of the confiscated lumber. A complaint against Mustang Lumber's president and general manager was filed in court. Mustang Lumber filed a motion to quash on the ground that "the information does not charge an offense. According to Mustang Lumber, the possession of lumber as opposed to timber is not penalized under Section 68 of PD No. 705.

Issue:

Whether possession of lumber, as opposed to timber, is penalized in Section 68 of PD No. 705.

Ruling:

Yes. The possession of lumber is covered by Section 68 of PD No. 705.

While the Revised Forestry Code does not contain any definition of timber or lumber, it does define forest products. The definition of Processing Plant includes lumber, to wit: "[p]rocessing plant is

any mechanical set-up, machine or combination of machine used for the processing of logs and other forest raw materials into *lumber*, veneer, plywood, wallbond, blockboard (sic), paper board, pulp, paper or other finished wood products.”

“This simply means that *lumber* is a processed log or processed forest raw material. Clearly, the Code uses the term *lumber* in its ordinary or common usage. In the 1993 copyright edition of Webster’s Third New International Dictionary, *lumber* is defined, *inter alia*, as ‘timber or logs after being prepared for the market.’ Simply put, lumber is a *processed* log or timber.”

Tan v. People of the Philippines
G.R. No. 115507, May 19, 1998, 290 SCRA 117

Syllabus:

One of the essential requisites for a successful judicial inquiry into the constitutionality of a law is the existence of an actual case or controversy involving a conflict of legal rights susceptible of judicial determination. As Respondent Court of Appeals correctly pointed out, petitioners were not charged with the [unlawful] possession of firewood, bark, honey, beeswax, and even grass, shrub, the associated water or fish; thus, the inclusion of any of these enumerated items in EO No. 277 is absolutely of no concern to petitioners. They are not asserting a legal right for which they are entitled to a judicial determination at this time. Besides, they did not present any convincing evidence of a clear and unequivocal breach of the Constitution that would justify the nullification of said provision. A statute is always presumed to be constitutional, and one who attacks it on the ground of unconstitutionality must convincingly prove its invalidity.

The question of whether lumber is excluded from the coverage of Section 68 of PD No. 705, as amended, has been settled in Mustang Lumber, Inc. v. Court of Appeals.

Facts:

In two instances, forest guards in the town of Cajidiocan, Sibuyan Island intercepted a dump truck which carried narra and white lauan lumber, in one instance, and tanguile lumber in another. The truck was driven by employees of A & E Construction. In both cases, the drivers failed to show documents showing legal possession of the lumber. As a consequence thereof, the forest guards confiscated the pieces of lumber.

The Provincial Prosecutor charged Alejandro Tan, the owner of A & E Corporation and the trucks, and Fred Moreno, one of the drivers, with violation of Section 68 of PD No. 705. In defense hereof, the accused averred that: (1) Executive Order No. 277 (EO No. 277) was unconstitutional for being violative of substantive due process “because it requires the possession of certain legal documents to justify mere possession of forest products which, under Section 3(q) of PD No. 705, includes, among others, firewood, bark, honey, beeswax, and even grass, shrub, flowering plant, the associated water or fish and penalizes failure to present such required documents”; and (2) they are not liable because what the law punishes is the cutting, gathering, collection and/or possession, without license, of *timber* not *lumber*. The trial court convicted Tan and Moreno and this was affirmed by the Court of Appeals.

Issues:

- (1) Whether Section 68 of EO No. 277 was constitutional.
- (2) Whether lumber and timber should be given a distinction.

Ruling:

- (1) In the first issue, the Supreme Court did not touch upon the constitutionality of the law.
“One of the essential requisites for a successful judicial inquiry into the constitutionality of a law is the existence of an actual case or controversy involving a conflict of legal rights susceptible of judicial determination. As Respondent Court of Appeals correctly pointed out, petitioners were not charged with the [unlawful] possession of firewood, bark, honey, beeswax, and even grass, shrub, the associated water or fish; thus, the inclusion of any of these enumerated items in EO No. 277 is absolutely of no concern to petitioners. They are not asserting a legal right for which they are entitled to a judicial determination at this time.xxx”
- (2) No distinction should be given between lumber and timber. This issue had already been decided in the case of *Mustang Lumber, Inc. v. Court of Appeals*.



See also: Lalican v. Hon. Vergara, G.R. No. 108619, July 31, 1997

c. Possession of Lumber without the Necessary Documents

Taopa v. People of the Philippines
G.R. No. 184098, November 25, 2008, 571 SCRA 610

Syllabus:

Section 68 of PD No. 705, as amended, refers to Articles 309 and 310 of the Revised Penal Code for the penalties to be imposed on violators. Violation of Section 68 of PD No. 705, as amended, is punished as qualified theft. The law treats cutting, gathering, collecting and possessing timber or other forest products without license as an offense as grave as and equivalent to the felony of qualified theft.

Facts:

The Community Environment and Natural Resources Office (CENRO) of Virac apprehended a truck loaded with illegally-cut lumber and arrested its driver. Upon investigation, the driver pointed to Amado Taopa and Rufino Ogalesco as the owners of the seized lumber. Subsequently, Taopa and Ogalesco were charged with violating Section 68 of PD No. 705. The trial court convicted all of them of the charge but only Taopa and the driver appealed the conviction. The Court of Appeals acquitted the driver but affirmed the conviction of Taopa. Taopa filed this petition assailing that “the prosecution failed to prove that he was one of the owners of the seized lumber as he was not in the truck when the lumber was seized.”

Issue:

Whether Taopa is guilty of violating Section 68 of PD No. 705.

Ruling:

Yes. Taopa is guilty because he had constructive possession of the forest products.

The lower court found that “the truck was loaded with the cargo in front of Taopa’s house and that Taopa and Ogalesco were accompanying the truck driven by [the driver] up to where the truck and lumber were seized. These facts proved Taopa’s (and Ogalesco’s) exercise of dominion and control over the lumber loaded in the truck.” Their acts constituted the offense penalized under Section 68 of PD No. 705, which is the possession of timber or other forest products without the required legal documents.

Monge v. People of the Philippines
G.R. No. 170308, March 7, 2008, 548 SCRA 42

Syllabus:

It is thus clear that the fact of possession by petitioner and Potencio of the subject mahogany lumber and their subsequent failure to produce the requisite legal documents, taken together, has already given rise to criminal liability under Section 68 of PD No. 705, particularly the second act punished thereunder.

Facts:

The *barangay tanods* in Iriga City found petitioner Monge and Potencio transporting three pieces of mahogany lumber. When asked for the necessary permit from the DENR, Monge and Potencio were not able to give one. Both of them were charged with violation of Section 68 of the Revised Forestry Code of the Philippines providing for the criminal offense of cutting, gathering and/or collecting timber or other products without license. Both Monge and Potencio pleaded not guilty during the arraignment.

During trial, Potencio was discharged as state witness testifying that it was Monge who owned the lumber, and that the latter merely asked him to help him transport it from the mountain. The trial court found Monge guilty.

On appeal to the Court of Appeals, Monge questioned the discharge of Potencio as state witness since “the latter was not the least guilty of the offense and that there was no absolute necessity for his testimony.” The Court of Appeals dismissed the appeal and affirmed the decision of the trial court. Hence, Monge filed an appeal with the Supreme Court.

Issue:

Whether Monge is guilty of violating Section 68 of the Revised Forestry Code.

Ruling:

Yes. Monge is guilty of violating Section 68 of PD No. 705, as amended by EO No. 277. The mere possession of Monge and Potencio of the lumber without the required permit had already consummated their criminal liability under Section 68 of the Revised Forestry Code.

The Revised Forestry Code “is a special penal statute that punishes acts essentially *malum prohibitum*.” Regardless of the good faith of Monge, the commission of the prohibited act consummated his criminal liability. Good faith, which is the absence of malice or criminal intent, is not a defense. It is also immaterial as to whether Potencio or Monge owned the lumber as the mere possession thereof without the proper documents is unlawful and punishable.

Rodolfo Tigoy v. Court of Appeals
G.R. No. 144640, June 26, 2006, 492 SCRA 539

Syllabus:

In offenses considered as mala prohibita or when the doing of an act is prohibited by a special law such as in the present case, the commission of the prohibited act is the crime itself. It is sufficient that the offender has the intent to perpetrate the act prohibited by the special law, and that it is done knowingly and consciously.

Facts:

On August 3, 1993, Nestor Ong, who was engaged in the trucking business, was introduced to Lolong Bertodazo who rented his trucks for the purpose of transporting construction materials from Laraman, Lanao del Norte to Dipolog City. On October 3, 1993, Ong allegedly ordered Nestor Sumagang and petitioner Rodolfo Tigoy, his truck drivers, to bring the two trucks to Lolong Bertodazo, leave it there for loading, and return to drive the trucks to Dipolog City.

Senior Inspector Tome received a dispatch that there were two trucks that did not stop at the checkpoint. Subsequently, the police were able to force the trucks to stop by blocking their path. When Senior Inspector Tome inquired as to the contents of the truck, the driver replied that there is “S.O.P,” which means grease money in street parlance. This raised the suspicion of Tome and they inspected the truck’s contents. They soon discovered that there were piles of sawn lumber hidden beneath the cement bags. Tome inquired if the drivers had a permit for the lumber but the latter could not produce any. Consequently, the lumber and the vehicles were seized upon the order of the DENR Regional Executive Director.

In a case for violation of Section 68 of PD No. 705, the Regional Trial Court found both Nestor Ong and Rodolfo Tigoy guilty. The order was however modified by the Court of Appeals, acquitting Ong on the ground that constructive possession of unlicensed lumber is not within the contemplation of Section 68.

Petitioner maintains that he could not have conspired with Lolong Bertodazo as he did not know about the unlicensed lumber in the trucks. He believed that what he was transporting were bags of cement in view of the contract between Ong and Bertodazo. Also, he was not around when Bertodazo loaded the trucks with the lumber hidden under the bags of cement.

Issue:

Whether or not petitioner Tigoy is guilty of conspiracy in possessing or transporting lumber without the necessary permit in violation of the Revised Forestry Code of the Philippines.

Ruling:

Yes. Tigoy is guilty of violating Section 68 of PD No. 705.

Direct proof of previous agreement to commit an offense is not necessary to prove conspiracy. Conspiracy may be proven by circumstantial evidence. It may be deduced from the mode, method and manner by which the offense is perpetrated, or inferred from the acts of the accused when such acts point to a joint purpose and design, concerted action and community of interest. It should be noted that the evidence of the prosecution established that two drivers refused to stop at a checkpoint. Such actions adequately show that he intentionally participated in the commission of the offense for which he had been charged and found guilty by both the trial court and Court of Appeals.

Perfecto Pallada v. People of the Philippines
G.R. No. 131270, March 17, 2000, 385 Phil. 195

Syllabus:

Different certificates of origin are required for timber, lumber and non-timber forest products. As already noted, the opening paragraph of BFD Circular No. 10-83 expressly states that the issuance of a separate certificate of origin for lumber is required in order to “pinpoint accountability and responsibility for shipment of lumber x x x and to have uniformity in documenting the origin thereof.”

Facts:

In the latter part of 1992, DENR officers assisted by PNP officers, raided the warehouse of Golden Harvest Corporation, a rice milling and trading company, on the basis of reports that illegally cut lumber was being delivered to the warehouse. The officers found a large stockpile of lumber of varying sizes cut by a chain saw. As proof that they acquired the lumber by purchase, petitioner presented Certificates of Timber Origin issued by R.L. Rivero Lumberyard. The DENR officers however did not give credit to the receipt considering that the lumberyard's permit had long been suspended. The pieces of lumber were also cut by chain saw and thus could not have come from a licensed sawmill operator. The DENR served a seizure order on Pallada but he refused to receive it. The lumber was then impounded.

The trial court found petitioner guilty for violating Section 68 of PD No. 705. The Court of Appeals affirmed the trial court's ruling.

Petitioner contends that the term “timber” includes lumber and, therefore, the Certificates of Timber Origin and their attachments should have been considered in establishing the legality of the company's possession of the lumber. In support of his contention, petitioner invokes the Supreme Court's ruling in *Mustang Lumber, Inc. v. Court of Appeals*.

Issue:

Whether separate certificates of origin are required for lumber or timber.

Ruling:

Yes. Different certificates of origin are required for lumber and timber.

The trial court acted correctly in not giving credence to the Certificates of Timber Origin presented by petitioner since the lumber held by the company should be covered by Certificates of Lumber Origin.

The contention of petitioner, that timber includes lumber citing the *Mustang Lumber* case, has no merit. The statement in *Mustang Lumber* that lumber is merely processed timber and, therefore, the word “timber” embraces lumber, was made in answer to the lower court’s ruling in that case that the phrase “possess timber or other forest products” in Section 68 of PD No. 705 means that only those who possess timber and forest products without the documents required by law are criminally liable, while those who possess lumber are not liable.

Different certificates of origin are required for timber, lumber and non-timber forest products. As already noted, the opening paragraph of BFD Circular No. 10-83 expressly states that the issuance of a separate certificate of origin for lumber is required in order to “pinpoint accountability and responsibility for shipment of lumber x x x and to have uniformity in documenting the origin thereof.”

Even assuming that a Certificate of Timber Origin could serve as a substitute for a Certificate of Lumber Origin, the trial court and the Court of Appeals were justified in convicting petitioner, considering the numerous irregularities and defects found in the documents presented by the latter.

People of the Philippines v. Que
G.R. No. 120365, December 17, 1996, 265 SCRA 721

Syllabus:

There are two distinct and separate offenses punished under Section 68 of PD No. 705, to wit:

- (1) Cutting, gathering, collecting and removing timber or other forest products from any forest land, or from alienable or disposable public land, or from private land without any authority; and*
- (2) Possession of timber or other forest products without the legal documents required under existing forest laws and regulations.*

In the first offense, one can raise as a defense the legality of the acts of cutting, gathering, collecting or removing timber or other forest products by presenting the authorization issued by the DENR. In the second offense, however, it is immaterial whether the cutting, gathering, collecting and removal of the forest products are legal or not. Mere possession of forest products without the proper documents

consummates the crime. Whether or not the lumber comes from a legal source is immaterial because EO No. 277 considers the mere possession of timber or other forest products without the proper legal documents as malum prohibitum.

Facts:

Members of the Provincial Task Force on Illegal Logging apprehended a ten-wheeler truck loaded with illegally cut lumber. On board the truck were the driver, the accused Wilson Que, and an unnamed person. The driver identified Que as the owner of the truck and cargo. Que admitted to the members of the Task Force that there were sawn lumber inserted in between the coconut slabs. Upon being informed of this, they asked Que if he had the supporting documents for the cargo. Since he had none, the members of the Task Force charged him for violation of Section 68 of PD No. 705 as amended by EO No. 277. The trial court found him guilty.

Que contended that he is not liable for the charge against him because “EO No. 277 which amended Section 68 to penalize the possession of timber or other forest products without the proper legal documents did not indicate the particular documents necessary to make the possession legal.” The court dismissed this contention because “DENR Administrative Order No. 59 Series of 1993 specifies the documents required for the transport of timber and other forest products.”

Que also alleged that “the law only penalizes possession of illegal forest products and that the possessor cannot be held liable if he proves that the cutting, gathering, collecting or removal of such forest products is legal.”

Issue:

Whether Que is guilty of Section 68 of PD No. 705.

Ruling:

Yes. Que is guilty of Section 68 of PD No. 705.

Section 68 of PD No. 705 involves two distinct and separate offenses. In the first offense, one can raise as a defense the legality of the acts of cutting, gathering, collecting or removing timber or other forest products by presenting the authorization issued by the DENR. In the second offense, however, it is immaterial whether the cutting, gathering, collecting and removal of the forest products is legal or not. Mere possession of forest products without the proper documents consummates the crime. Whether or not the lumber comes from a legal source is immaterial because EO No. 277 considers the mere possession of timber or other forest products without the proper legal documents as *malum prohibitum*.

d. Non-applicability of Replevin on Items Under *Custodia Legis*

Dagudag v. Paderanga
A.M. No. RTJ-06-2017, June 19, 2008, 555 SCRA 217

Syllabus:

Forest products, conveyances and effects which were seized by DENR officials pursuant to PD No. 705 are considered in custodia legis and cannot be the subject of an action for replevin.

Facts:

The Region VII Philippine National Police Regional Maritime Group (PNPRMG) received information that MV General Ricarte of NMC Container Lines, Inc. was shipping container vans containing illegal forest products from Cagayan de Oro to Cebu. The shipments were falsely declared as cassava meal and corn grains to avoid inspection by the DENR. Upon inspection, the crew of MV General Ricarte failed to produce the Certificate of Origin and other pertinent transport documents covering the forest products, as required by DAO No. 07-94. After due notice, the illegal forest products were confiscated in favor of the government.

In a complaint dated March 16, 2005 and filed before Judge Paderanga, a certain Roger Edma (Edma) prayed that a writ of replevin be issued ordering the defendants DENR, CENRO, Gen. Dagudag, and others to deliver the forest products to him and that judgment be rendered ordering the defendants to pay him moral damages, attorney's fees, and litigation expenses. During the hearing for the writ of replevin, Judge Paderanga showed manifest partiality in favor of Edma. Judge Paderanga issued a writ of replevin ordering Sheriff Reynaldo Salceda to take possession of the forest products.

Gen. Dagudag filed with the Office of the Court Administrator an affidavit-complaint charging Judge Paderanga with gross ignorance of the law and conduct unbecoming of a judge.

Issue:

Whether the issuance of the writ of replevin is proper.

Ruling:

No. The issuance of the writ of replevin was improper.

Judge Paderanga should have dismissed the replevin suit outright for three reasons. First, as cited in *Factoran, Jr. v. Court of Appeals*, under the doctrine of exhaustion of administrative remedies, courts cannot take cognizance of cases pending before administrative agencies. Similarly in *Dy v. Court of Appeals* and *Paat vs. Court of Appeals*, the Supreme Court held that a party must exhaust all administrative remedies before he can resort to the courts.

In the instant case, Edma did not resort to, or avail of, *any* administrative remedy. He went straight to court and filed a complaint for replevin and damages. Section 8 of PD No. 705, as amended, states that (1) all actions and decisions of the Bureau of Forest Development Director are subject to

review by the DENR Secretary; (2) the decisions of the DENR Secretary are appealable to the President; and (3) the courts cannot review the decisions of the DENR Secretary except through a special civil action for *certiorari* or prohibition. In *Dy*, the Court held that all actions seeking to recover forest products in the custody of the DENR shall be directed to that agency – not the courts.

Second, under the doctrine of primary jurisdiction, courts cannot take cognizance of cases pending before administrative agencies of special competence. The DENR is the agency responsible for the enforcement of forestry laws. The complaint for replevin itself stated that members of DENR's Task Force *Sagip Kalikasan* took over the forest products and brought them to the DENR Community Environment and Natural Resources Office. This should have alerted Judge Paderanga that the DENR had custody of the forest products.

Third, the forest products are already in *custodia legis* and thus cannot be the subject of replevin. There was a violation of the Revised Forestry Code and the DENR seized the forest products in accordance with law.



**See also: *Cortez v. Judge Agcaoili*, A.M. No. RTJ-98-1414
August 20, 1998, 294 SCRA 423**



***Prosecutor Leo C. Tabao v. Judge Frisco T. Lilagan and Sheriff IV Leonardo V. Aguilar*
A.M. No. RTJ-01-1651 (Formerly A.M. No. 98-551-RTJ), September 4, 2001, 364 SCRA 322**

Syllabus:

*Judge Lilagan's act of taking cognizance of the replevin suit, when the subject matter thereof is under the custody of the DENR, demonstrates gross ignorance of the law. The allegations in the complaint should have alerted the judge that the DENR had custody of the seized items and that administrative proceedings may have already commenced. As the Supreme Court held in *Paat v. Court of Appeals*, " x x x the enforcement of forestry laws, rules and regulations and the protection, development and management of forest lands fall within the primary and special responsibilities of the Department of Environment and Natural Resources. By the very nature of its function, the DENR should be given a free hand unperturbed by judicial intrusion to determine a controversy which is well within its jurisdiction. The assumption by the trial court, therefore, of the replevin suit filed by private respondents constitutes an unjustified encroachment into the domain of the administrative agency's prerogative x x x."*

Facts:

On February 24, 1998, a water craft registered under the name M/L Hadija, from Bongao, Tawi-tawi, was docked at the port area of Tacloban City with a load of around 100 tons of tanbark. Due to previous irregular and illegal shipments of tanbark from Bongao, NBI agents in Region 8 (NBI-EVRO #8) decided to verify the shipment's accompanying documents. The NBI agents found the documents irregular and incomplete. The tanbark, the boat M/L Hadija, and three cargo trucks were seized and impounded.

Regional Director Carlos S. Caabay of NBI-EVRO #8 filed a criminal complaint for violation of Section 68 (now Section 78) of PD No. 705 against the captain and crew of the M/L Hadija, Robert

Hernandez, Tandico Chion, Alejandro K. Bautista, and Marcial A. Dalimot. Bautista and Dalimot were, thus, also charged with violation of Section 3(e) of RA No. 3019 or the Anti-Graft and Corrupt Practices Act, along with Habi A. Alih and Khonrad V. Mohammad of the CENRO-Bongao, Tawi-Tawi.

In an Order dated March 6, 1998, complainant directed the seizure by the DENR of the M/L Hadija, its cargo, and the three trucks pending preliminary investigation of the case. The DENR thus took possession of the aforesaid items on March 10, 1998, with notice to the consignee Robert Hernandez and the NBI Regional Director.

Hernandez filed in the Regional Trial Court of Leyte a case for replevin to recover the items seized by the DENR. Respondent Judge Frisco T. Lilagan granted the writ. Sheriff Aguilar was ordered to take possession of the items seized by the DENR.

Prosecutor Leo C. Tabao filed an administrative complaint against Judge Frisco T. Lilagan for gross ignorance of the law, gross abuse of judicial authority, a willful disobedience to settled jurisprudence. Prosecutor Tabao claims that respondent judge cannot claim ignorance of the proceedings in I.S. No. 98-296 for the following reasons: (1) the defendants in the replevin case were all DENR officers, which should have alerted respondent judge to the possibility that the items sought to be recovered were being held by the defendants in their official capacities; and (2) the complaint for replevin itself states that the items were intercepted by the NBI for verification of supporting documents, which should have made respondent judge suspect that the same were being held by authority of law.

Issue:

Whether the issuance of the writ of replevin is proper.

Ruling:

No. The issuance of the writ of replevin is not proper; the respondent judge should have dismissed the replevin suit.

The complaint for replevin itself states that the shipment of tanbark, as well as the vessel on which it was loaded, were seized by the NBI for verification of supporting documents. It also states that the NBI turned over the seized items to the DENR “for official disposition and appropriate action.” A copy of the document evidencing the turnover to DENR was attached to the complaint as Annex “D.” These allegations would have been sufficient to alert respondent judge that the DENR has custody of the seized items and that administrative proceedings may have already been commenced concerning the shipment. Under the doctrine of primary jurisdiction, courts cannot take cognizance of cases pending before administrative agencies of special competence. It is also worth noting that the plaintiff in the replevin suit who seeks to recover the shipment from the DENR had not exhausted the administrative remedies available to him.

Calub v. Court of Appeals
G.R. No. 115634, April 27, 2000, 331 SCRA 55

Syllabus:

Upon apprehension of the illegally-cut timber while being transported without pertinent documents that could evidence title to or right to possession of said timber, a warrantless seizure of the involved vehicles and their load was allowed under Section 78 and 89 of the Revised Forestry Code.

Since there was a violation of the Revised Forestry Code and the seizure was in accordance with law, the subject vehicles were validly deemed in custodia legis. It could not be subject to an action for replevin. For it is property lawfully taken by virtue of legal process and considered in the custody of the law.

Facts:

Two motor vehicles loaded with illegally-sourced lumber were apprehended by the Forest Protection and Law Enforcement Team (Team) of the DENR-CENRO. The drivers of the said motor vehicles, Abuganda and Gabon, were unable to produce the requisite permits or licenses. Thus, the Team seized the vehicles together with the lumber. Abuganda and Gabon refused to accept the seizure receipts. Calub, the Provincial Environment and Natural Resources Officer (PENRO) filed a criminal complaint against Abuganda for violation of Section 68 of the Revised Forestry Code.

One of the vehicles, loaded with forest products, was again later apprehended by the DENR-CENRO and the Philippine Army. Calub filed another complaint against Abuganda, a certain Abegonia, and several John Does for violation of Section 68 of the Revised Forestry Code.

Babalcon, the vehicle owner, and Abuganda filed an application for replevin to recover the impounded motor vehicles. This was granted by the trial court. Petitioners Calub *et al.* filed a petition under Rule 65 with an application for Preliminary Injunction and TRO against the Regional Trial Court judge in the replevin case. The Supreme Court issued the TRO and referred the petition to the Court of Appeals. The Court of Appeals denied the petition ruling that the seizure of the motor vehicles under the authority of the Revised Forestry Code does not automatically place it under *custodia legis*. Hence, the petitioners appealed to the Supreme Court.

Issue:

Whether or not the DENR-seized motor vehicles are in *custodia legis*.

Ruling:

Yes. The vehicles are in *custodia legis*.

Under the Revised Forestry Code, the DENR is authorized to seize all conveyances used in the commission of an offense in violation of Section 78. Under this provision, mere possession of forest products without the requisite legal documents is unlawful. In this case, the motor vehicles loaded with forest products were not accompanied with the necessary license or permit. "Thus, there was a *prima*

facie violation of Section 68 [78] of the Revised Forestry Code, although as found by the trial court, the persons responsible for said violation were not the ones charged by the public prosecutor.”

The failure of the petitioners to observe the procedure in DAO No. 59-1990 was justified since Gabon and Abuganda forcibly took the motor vehicles from the pound of the DENR. When the second motor vehicle was again apprehended, the procedure was also not followed because of the immediate filing of the private respondents for the writ of replevin.

The Supreme Court held: “[s]ince there was a violation of the Revised Forestry Code and the seizure was in accordance with law, in our view the subject vehicles were validly deemed in *custodia legis*. It could not be subject to an action for replevin. For it is property lawfully taken by virtue of legal process and considered in the custody of the law, and not otherwise.”

Factoran v. Court of Appeals

G.R. No. 93540, December 13, 1999, 320 SCRA 530

Syllabus:

Petitioner Secretary’s authority to confiscate forest products under Section 68-A of PD No. 705 is distinct from and independent of the confiscation of forest products in a criminal action provided for in Section 68 of PD No. 705. Thus, in Paat, we held that: “precisely because of the need to make forestry laws more responsive to present situations and realities and in view of the ‘urgency to conserve the remaining resources of the country,’ that the government opted to add Section 68-A. This amendatory provision is an administrative remedy totally separate and distinct from criminal proceedings.”

Facts:

A six-wheeler truck carrying 4,000 board feet of narra lumber was apprehended and brought to the DENR Office in Quezon City. After investigating the truck, the DENR officials discovered that the lumber did not come with the necessary documents to show legal and authorized possession, in violation of Section 68 of PD No. 705. Consequently, the truck and the lumber were seized and confiscated. Initially, no reconsideration or appeal to the DENR was filed. However, when the lumber was about to be subject to public auction, Jesus Sy and Lily Uy, the truck driver and his employer respectively, filed a complaint with prayer for the issuance of writs of replevin and preliminary injunction for the recovery of the confiscated truck and lumber. The trial court granted both and issued a writ of seizure, but the Secretary of DENR, Fulgencio Factoran, refused to comply therewith. Factoran filed a Petition for Certiorari, Prohibition and/or Mandamus to annul the orders of the trial court. However, the Court of Appeals dismissed the petition and declared that since the requirements of an affidavit and bond were complied with, issuance of the writ of replevin was mandatory.

Issues :

- (1) Whether confiscated lumber can be the subject of replevin.
- (2) Whether the DENR may simply confiscate lumber and forego criminal prosecution.

Ruling:

(1) No. The confiscated lumber cannot be the subject of replevin.

One of the requisites wherein a writ of replevin shall be issued is that the property must be wrongfully detained by the defendant. In the case at bar, the “issuance of the confiscation order by petitioner Secretary was a valid exercise of his power under Section 68-A of PD No. 705. By virtue of said order, the narra lumber and six-wheeler truck of private respondents were held in *custodia legis* and hence, beyond the reach of replevin.”

(2) Yes. The DENR is not compelled to criminally prosecute and can just confiscate lumber.

The Secretary’s authority to confiscate forest products under Section 68 of PD No. 705 is “distinct from and independent of the confiscation of forest products in a criminal action provided for in Section 68 of PD No. 705.” In a former case, the Court has held that “precisely because of the need to make forestry laws ‘more responsive to present situations and realities’ and in view of the ‘urgency of conserve the remaining resources of the country,’ that the government opted to add Section 68-A. This amendatory provision is an administrative remedy totally separate and distinct from criminal proceedings.”

Basilio P. Mamanteo, et al. v. Deputy Sheriff Manuel M. Magumun
A.M. No. P-98-1264, July 28, 1999, 311 SCRA 259

Syllabus:

When a writ is placed in the hands of a sheriff, it is his duty, in the absence of any instructions to the contrary, to execute it according to its mandate. However, the prompt implementation of a warrant of seizure is called for only in instances where there is no question regarding the right of the plaintiff to the property.

Facts:

On April 12, 1996 forestry employees of the DENR intercepted a San Miguel Corporation van with Plate No. PJC-321 loaded with narra flitches wrapped in nylon sacks and covered with empty beer bottles and cartons. The driver of the van could not produce any legal permit authorizing him to transport the narra lumber. Hence, after issuing seizure receipts, the vehicle and its load of narra flitches were confiscated by the DENR forestry employees. Eventually, DENR ordered the confiscation and forfeiture of lumber possessed without permit including its conveyance.

San Miguel Corporation, through its agent, filed a case for recovery of personal property and damages with application for a writ of replevin. The trial court issued a warrant of seizure of personal property directing its sheriff to take hold of the van and its contents.

On August 1, 1996 Deputy Sheriff Manuel Magumun went to the office of the DENR in Tabuk, Kalinga, to enforce the warrant. The forestry employees and officials refused to release the van on the ground that it was now in *custodia legis*. Despite the explanation, Deputy Sheriff Magumun enforced the writ and took the van. After the lapse of the five-day period prescribed by law for filing an opposition to the writ, the vehicle was delivered to an agent of San Miguel Corporation.

The forestry employees of the DENR filed a case for grave misconduct against Deputy Sheriff Magumun for arbitrarily implementing the writ of execution.

Issue:

Whether or not the sheriff has the prerogative to enforce a replevin of forestry items forfeited in favor of the government.

Ruling:

No. Respondent Deputy Sheriff Magumun is found guilty of grave misconduct and is fined P5,000 for arbitrarily implementing the warrant of seizure of personal property and for ignorance of the proper procedure in serving writs of replevin in cases where the personal property to be recovered has already been seized and forfeited in favor of the government for violation of forestry laws.

A sheriff's prerogative does not give him the liberty to determine who among the parties is entitled to the possession of the attached property much less decide which agency has primary jurisdiction and authority over the matter at hand.

When a writ is placed in the hands of a sheriff, it is his duty, in the absence of any instructions to the contrary, to execute it according to its mandate. However, the prompt implementation of a warrant of seizure is called for only in instances where there is no question regarding the right of the plaintiff to the property.

The prudent recourse then for respondent was to desist from executing the warrant and convey the information to his judge and to the plaintiff.

Paat v. Court of Appeals

G.R. No. 111107, January 10, 1997, 266 SCRA 167

Syllabus:

It was easy to perceive then that the private respondents looked up to the Secretary for the review and disposition of their case. By appealing to him, they acknowledged the existence of an adequate and plain remedy still available and open to them in the ordinary course of the law. Thus, they cannot now, without violating the principle of exhaustion of administrative remedies, seek the court's intervention by filing an action for replevin for the grant of their relief during the pendency of an administrative proceeding.

With the introduction of EO No. 277 amending Section 68 of PD No. 705, the act of cutting, gathering, collecting, removing, or possessing forest products without authority constitutes a distinct offense independent now from the crime of theft under Articles 309 and 310 of the Revised Penal Code, but the penalty to be imposed is that provided for under Article 309 and 310 of the Revised Penal Code. This is clear from the language of EO No. 277 when it eliminated the phrase "shall be guilty of qualified theft as defined and punished under Articles 309 and 310 of the Revised Penal Code" and inserted the words "shall be punished with the penalties imposed under Article 309 and 310 of the Revised Penal Code." When the statute is clear and explicit, there is hardly room for any extended court ratiocination or rationalization of the law.

Facts:

Private Respondent Vicente Guzman's trucks were seized by the DENR because the driver could not produce the required documents for the products found in the truck. Consequently, the truck was confiscated and Guzman was given 15 days within which to submit an explanation why the truck should not be forfeited in favor of the DENR. Guzman failed to do so. Thus, the Regional Executive Director of the DENR sustained the confiscation of the truck.

Guzman filed a letter of reconsideration but it was denied. Subsequently, the case was brought to the DENR Secretary pursuant to the stipulation in the letter that if denied, it should be considered as an appeal to the Secretary. Pending resolution of the appeal, Guzman filed a suit for replevin against the petitioners. In turn, the petitioners filed a motion to dismiss assailing that there was no cause of action for Guzman's failure to exhaust administrative remedies. The trial court denied the motion and granted a writ of replevin. Petitioners filed a Petition for Certiorari with the Court of Appeals which sustained the trial court's order. Hence, the petitioners filed this appeal.

Issues:

- (1) Whether there was failure to exhaust administrative remedies.
- (2) Whether the Secretary of DENR and his representatives are empowered to confiscate and forfeit conveyances transporting illegal forest products.
- (3) Whether the seizure of the truck was illegal considering the fact that the Executive Director admitted that the truck was not used in the commission of the crime.

Ruling:

- (1) Yes. Guzman failed to exhaust administrative remedies.

By virtue of Guzman's letter of reconsideration "[i]t was easy to perceive then that the private respondents looked up to the Secretary for the review and disposition of their case. By appealing to him, they acknowledged the existence of an adequate and plain remedy still available and open to them in the ordinary course of the law. Thus, they cannot now, without violating the principle of exhaustion of administrative remedies, seek the court's intervention by filing an action for replevin for the grant of their relief during the pendency of an administrative proceeding."

- (2) Yes. Administrative officers of the DENR have the power and authority to confiscate and forfeit conveyances used in transporting illegal forest products.

Section 68-A of PD No. 705 gives them authority to perform such acts. "The phrase in the law which states 'to dispose of the same' is broad enough to cover the act of forfeiting conveyances in favor of the government in the construction of statutes." The only limitation is that it should be made "in accordance with pertinent laws, regulations or policies on the matter."

- (3) No. The confiscation was legal.

The private respondents misinterpreted the intention of the petitioners. What the petitioners meant when they stated that the truck was not used in the commission of the crime is that it was not used in the commission of the crime of theft. "Petitioners did not eliminate the possibility that the truck was being used in the commission of another crime, that is, the breach of Section 68 of PD No. 705 as

amended by EO No. 277.” EO No. 277 provides that “the act of cutting, gathering, collecting, removing, or possessing forest products without authority constitutes a distinct offense independent now from the crime of theft under Articles 309 and 310 of the Revised Penal Code.”

e. Conversion of TLAs to IFMAs

Alvarez v. PICOP

G.R. No. 162243, November 29, 2006, 508 SCRA 498

Syllabus:

Ancestral domains remain as such even when possession or occupation of the area has been interrupted by causes provided under the law such as voluntary dealings entered into by the government and private individuals/corporation. Therefore, the issuance of TLA No. 43 in 1952 did not cause the Indigenous Cultural Communities or Indigenous Peoples to lose their possession or occupation over the area covered by TLA No. 43.

The issuance of a Certificate of Ancestral Domain Title is merely a formal recognition of the ICC’s/ IPs’ rights of possession and ownership over their ancestral domain identified and delineated in accordance with the Indigenous Peoples Rights Act, and therefore, cannot be considered a condition precedent for the need for a NCIP certification. In the first place, it is manifestly absurd to claim that the subject lands must first be proven to be part of ancestral domains before a certification that they are not part of ancestral domains can be required.

Facts:

PICOP, through Bislig Bay Lumber Company, Inc. (BBLCI), was granted a Timber License Agreement (TLA). Former President Marcos issued a presidential warranty to BBLCI confirming the TLA’s boundary lines of BBLCI’s concession area. The TLA was renewed for another 25 years after its expiration.

When the TLA was about to expire, PICOP applied for an Integrated Forest Management Agreement (IFMA) to convert the said TLA under Section 9, Chapter III of DENR Administrative Order No. 99-53.

In a Report made by the Performance Evaluation Team, it was found that PICOP committed several violations of existing DENR rules and regulations governing the subject TLA, including non-submission of the required 5-year forest protection plan and 7-year reforestation plan. When the Report was forwarded to the Forest Management Bureau (FMB), it was also found that PICOP has unpaid and overdue forest charges under the subject TLA.

In light of this Report, the DENR informed PICOP that there has to be a Technical Working Committee (TWC) to assist in the transition of the conversion from TLA to IFMA, instead of granting the latter outright. PICOP understood such letter to have converted the TLA to an IFMA.

PICOP insisted on the conversion of the TLA into an IFMA and filed a petition for mandamus against DENR Secretary Alvarez. The Regional Trial Court ruled in favor of PICOP. The Court of Appeals affirmed the decision on appeal. The National Commission on Indigenous People (NCIP) sent a letter informing the DENR Secretary that PICOP’s TLA is in conflict with the ancestral domains of the Manobos, and PICOP did not obtain an NCIP certification over the area covered by the TLA. It was recommended that the 1-year permit granted to PICOP be revoked.

Issue:

Whether there was compliance with the requirements for the conversion of TLA into an IFMA.

Ruling:

No. There was no compliance with the requirements for the conversion of the TLA.

Administrative Requirements	Statutory Requirements
<ul style="list-style-type: none"> <li data-bbox="269 667 781 772">✘ PICOP failed to submit the 5-year forest protection plan and its 7-year reforestation plan. <li data-bbox="269 814 781 1182">✘ According to Sections 6 and 6.2 of DAO No. 80, Series of 1987, forest charges are due within thirty (30) days from the removal of the forest products from the cutting area when timber and other forest products are removed from domestic sales. PICOP failed to pay such forest charges, and was late in paying most of its charges. <li data-bbox="269 1224 781 1516">✘ The issuance of an Integrated Annual Operations Plan (IAOP) is not proof that PICOP paid its overdue forest charges. No receipts were presented and the government cannot be estopped from collecting the overdue amounts. 	<ul style="list-style-type: none"> <li data-bbox="850 667 1347 814">✘ The issuance of the TLA did not divest the ICCs/IPs of their ancestral domain over the portion covered by the TLA. <li data-bbox="850 856 1347 1411">✘ The SC held that “[T]he prior approval of LGUs affected by the proposed conversion of a TLA into an IFMA is necessary before any project or program can be implemented by the government authorities that may cause 'depletion of non-renewable resources, loss of crop land, rangeland or forest cover, and extinction of animal or plant species.’” However, several indigenous groups and affected LGUS have readily opposed PICOP’s application.

Alvarez v. PICOP
G.R. No. 162243, December 3, 2009, 606 SCRA 444

Syllabus:

All projects relating to the exploration, development and utilization of natural resources are projects of the State. While the State may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by these citizens, such as PICOP, the projects nevertheless remain as State projects and can never be purely private endeavors.

Despite entering into co-production, joint venture, or production-sharing agreements, the State remains in full control and supervision over such projects. PICOP, thus, cannot limit government participation in the project to being merely its bouncer, whose primary participation is only to “warrant and ensure that the PICOP project shall have peaceful tenure in the permanent forest allocated to provide raw materials for the project.”

Facts:

In its Motion for Reconsideration, PICOP alleged that it already complied with the administrative and statutory requirements for the conversion. PICOP also argued that the requirement of Sanggunian approval under Sections 26 and 27 of the Local Government Code, which refers to projects implemented by government authorities and government-owned and -controlled corporations, do not apply to PICOP as its activity is a purely private endeavour.

Issue:

Whether the writ of mandamus should have been issued.

Ruling:

No. The Supreme Court affirmed and reiterated its findings in the preceding case. First, the 1969 Document, on which PICOP hinges its claim that its TLA should be converted to an IFMA, is not a contract; thus, the provision on non-impairment of contracts do not apply. Timber licenses are privileges granted by the government which may be validly amended, modified, replaced or rescinded when national interest requires.

Second, PICOP still did not comply with the requirements for the conversion of its TLA. As regards acquiring the approval of the Sanggunian concerned, PICOP’s contention that its activities under the TLA are a purely private endeavour, is incorrect. All projects relating to the exploration, development and utilization of natural resources are state projects and can never be a purely private endeavour.

Considering that PICOP failed to comply with the requirements for its conversion, the writ shall not issue.

f. Obligations of the Transferee***Matuguina Integrated Wood Products, Inc., v. Court of Appeals***
G.R. No. 98310, October 24, 1996, 263 SCRA 490**Syllabus:**

The term “obligations” as used in the final clause of the second paragraph of Section 61 of PD No. 705 is construed to mean those obligations incurred by the transferor in the ordinary course of business. It cannot be construed to mean those obligations or liabilities incurred by the transferor as a result of transgressions of the law, as these are personal obligations of the transferor, and could not have been included in the term “obligations” absent any modifying provision to that effect.

Facts:

The Bureau of Forest Development (BFD) issued Provisional Timber License (PTL) No. 30 to Milagros Matuguina. A portion of the area covered by such PTL adjoined the timber concession of Davao Enterprises Corporation, the private respondent in this case. Sometime after, Matuguina Integrated Wood Products, Inc. (MIWPI) was incorporated and Milagros Matuguina became the majority stockholder thereof. She then requested the BFD to transfer the management of PTL No. 30 to MWIP. Pending approval of the request, Milagros Matuguina and MWPI executed a Deed of Transfer which embodied the agreement to transfer PTL No. 30 to the latter.

While the request for the transfer has not yet been decided, DAVENCOR complained that Milagros Matuguina had encroached into and was conducting logging operations in DAVENCOR's timber concessions. Meanwhile, Matuguina's request for the transfer of PTL No. 30 was granted. In answer to DAVENCOR's complaint, the BFD issued an order stating that Matuguina had in fact conducted illegal logging operations with the concession area of DAVENCOR. Matuguina appealed to the Ministry of Natural Resources, however, the Ministry affirmed the order of the BFD. This decision became final and executory, thus, DAVENCOR asked for the issuance of the writ of execution. The Order of Execution was subsequently issued but the order was not only against Matuguina but to MIWPI as well. Hence, MIWPI filed a complaint for prohibition assailing that it should not have been included in the writ because it has a separate personality separate and distinct from Matuguina. The Court of Appeals ruled that MIWPI is liable since it is a transferee of Matuguina's interest with respect to PTL No. 30.

Issue:

Whether MIWPI is a transferee of Matuguina's interest as to make it liable for the latter's illegal logging operations in DAVENCOR's timber concession.

Ruling:

No. MIWPI is not liable.

The transfer of PTL No. 30 from Matuguina to MIWPI never became effective since the PTL remained in the name of Matuguina. Nevertheless, if the transfer was effective, MIWPI still cannot

be held liable. The respondents cited Section 61 of PD No. 705 to impute liability to Matuguina if it were a transferee. The law states that the transferee shall assume all the obligations of the transferor. However, this cannot be taken to mean as absolute. Not all obligations are assumed indiscriminately. "The term 'obligations' as used in the final clause of the second paragraph of Section 61 of P.D. 705 is construed to mean those obligations incurred by the transferor in the ordinary course of business. It cannot be construed to mean those obligations or liabilities incurred by the transferor as a result of transgressions of the law, as these are personal obligations of the transferor, and could not have been included in the term 'obligations' absent any modifying provision to that effect."

Dy v. Court of Appeals

G.R. No. 121587, March 9, 1999, 304 SCRA 331

Syllabus:

The rule is that a party must exhaust all administrative remedies before he can resort to the courts. In a long line of cases, we have consistently held that before a party may be allowed to seek the intervention of the court, it is a pre-condition that he should have availed himself of all the means afforded by the administrative processes. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned even opportunity to decide on a matter that comes within his jurisdiction then such remedy should be exhausted first before a court's judicial power can be sought. The premature invocation is fatal to one's cause of action. Accordingly, absent any finding of waiver or estoppel, the case is susceptible of dismissal for lack of cause of action.

Facts:

On May 31, 1993, the Mayor of Butuan City issued EO No. 93-01 creating Task Force *Kalikasan* to combat "illegal logging, log smuggling or possession of and/or transport of illegally cut or produced logs, lumber, fitches and other forest products" in that city. On July 1, 1993, the members of the task force received confidential information that two truckloads of illegally cut lumber would be brought to Butuan City from the Ampayon-Taguibe-Tiniwisan area. Accordingly, the team set up a checkpoint. They flagged down two trucks loaded with lumber. However, instead of stopping, the trucks accelerated their speed. The task force caught up with the two vehicles at the compound of Young Metalcraft and Peterwood Agro-Forest Industries. The caretaker could not produce any documents as proof of the legality of possession of forest products. DENR issued a temporary seizure order and a seizure receipt for the two vehicles and their cargo consisting of several pieces of lumber of different sizes and dimensions. Later on, the Community Environment and Natural Resources Office (CENRO) issued a notice of confiscation. For lack of claimant, DENR ordered the forfeiture of the lumber and two vehicles.

More than two months later, Soledad Dy filed a replevin suit, claiming that she was the owner of the lumber and vehicles. The trial court issued a writ of replevin. For this reason, respondent filed a petition for *certiorari* in the Court of Appeals. The Court of Appeals set aside the writ of replevin and ruled in favor of the respondent.

Issue:

Whether the Regional Trial Court can take cognizance of the replevin suit, considering that the object was the recovery of lumber seized and forfeited by law enforcement agents of the DENR pursuant to PD No. 705 or the Revised Forestry Code.

Ruling:

No. The Regional Trial Court should not have taken cognizance of the replevin suit.

Petitioner Dy clearly failed to exhaust available administrative remedies. The Court of Appeals therefore correctly set aside the assailed orders of the trial court granting petitioner's application for a writ of replevin and denying private respondent's motion to dismiss. Since the lumber was forfeited pursuant to PD No. 705, as amended, the lumber properly came under the custody of the DENR and all actions seeking to recover possession thereof should be directed to that agency. The appellate court's order to the DENR, to file a counterbond to recover custody of the lumber, should be disregarded as being contrary to its order to dismiss the replevin suit of petitioner.

2. RA No. 7586 – National Integrated Protected Areas System Act of 1992

PICOP Resources v. Base Metals
G.R. No. 163509, December 6, 2006, 510 SCRA 400

Syllabus:

RA No. 7942, recognizing the equiponderance between mining and timber rights, gives a mining contractor the right to enter into a timber concession and cut timber therein provided that the surface owner or concessionaire shall be properly compensated for any damage done to the property as a consequence of mining operations.

*Even granting that the area covered by the MPSA is part of the Agusan-Davao-Surigao Forest Reserve, such does not necessarily signify that the area is absolutely closed to mining activities. Contrary to PICOP's obvious misreading of the Supreme Court's decision in *Apex Mining Co., Inc. v. Garcia, supra*, to the effect that mineral agreements are not allowed in the forest reserve established under Proclamation No. 369, the Court in that case actually ruled that pursuant to PD No. 463 as amended by PD No. 1385, one can acquire mining rights within forest reserves, such as the Agusan-Davao-Surigao Forest Reserve, by initially applying for a permit to prospect with the Bureau of Forest and Development and subsequently for a permit to explore with the Bureau of Mines and Geosciences.*

Facts:

The Central Mindanao Mining and Development Corporation (CMMCI) entered into a Mines Operating Agreement with Banahaw Mining and Development Corporation, wherein the latter will serve as the Mine Operator of CMMCI's 18 mining claims in Agusan del Sur. In accordance with the Agreement, Banahaw Mining applied for Mining Lease Contracts over the mining claims with the Bureau of Mines. It was issued a Mines Temporary Permit to extract and dispose minerals within its mining claims. The permit was renewed thrice.

Banahaw Mining and PICOP entered into a Memorandum of Agreement recognizing each other's right to the area concerned since the mining claims were within the logging concession of PICOP. These mining claims were later converted to Mineral Production Sharing Agreements (MPSA).

During the pendency of the MPSA, Banahaw Mining sold/assigned its rights and interests over 37 mining claims, including those covered with its agreement with CMMCI, in favor of Base Metals. CMMCI approved the assignment and recognized Base Metals as the new operator of the mining claims.

Base Metals amended the pending MPSA applications to substitute itself as applicant. The required area clearances and documents were submitted. However, PICOP filed an opposition to Base Metals' application on the following grounds: (1) the approval will violate the constitutional mandate against impairment of obligations in a contract; and (2) PICOP's rights will be defeated by the approval of the application. Base Metals, on the other hand, contends that PICOP has no rights over the mineral resources in the concession area.

The Panel Arbitrator set aside the MPSA applications because the consent of PICOP was not obtained in the assignment of Banahaw Mining's rights. The Mines Adjudication Board (MAB) reinstated the MPSAs on appeal, and the decision was later upheld by the Court of Appeals. Hence, the present petition.

Issue:

Whether PICOP's logging concession within the Agusan-Surigao-Davao Forest Reserve established under Proclamation No. 369 is closed to mining applications in accordance with Section 19 of RA No. 7942.

Ruling:

No. The mere fact that the area is a government reservation does not necessarily prohibit mining activities in the area.

Assuming *arguendo* that the area of Base Metals' MPSA is a government reservation, this fact does not necessarily prohibit mining activities in the area. DAO 96-40, Section 15(b) allows government reservations to be opened for mining applications with a condition precedent of a prior written clearance issued by the government agency having jurisdiction over the reservation. As provided in Section 6 of RA No. 7942, "[m]ining operations in reserved lands other than mineral reservations may be undertaken by the DENR, subject to certain limitations." RA No. 7942 only prohibits mining applications in areas proclaimed as watershed forest reserves.

In this case, the area covered by the MPSAs were not proclaimed as watershed forest reserves. Assuming that it is, PD No. 463 (as amended by PD No. 1385) provides that mining rights may be acquired over forest reserves, such as the Agusan-Davao-Surigao Forest Reserve by applying for a prospecting permit, and subsequently a permit to explore.

"Section 18 [of] RA No. 7942 allows mining even in timberland or forestry subject to existing rights and reservations. x x x Similarly, Section 47 of PD No. 705 permits mining operations in forest lands

which include the public forest, the permanent forest or forest reserves, and forest reservations,” but there is no requirement of prior consent of existing licensees. Only prior notification before commencing mining activities is required.

The SC also held that DENR Memorandum Order No. 03-98 providing for the guidelines in the issuance of area status and clearance or consent for mining applications pursuant to RA No. 7942, allows government reservations to be open to mining applications subject to area status and clearance. The required clearance and certifications have already been issued to Base Metals and included in its application.

However, the reinstatement of the MPSA does not automatically result in its approval. There should still be compliance with the requirements in DAO No. 96-40, “including the publication/posting/radio announcement of its mineral agreement application.”

3. RA No. 7942 – Philippine Mining Act of 1995

a. Jurisdiction Matters

Asaphil v. Tuason

G.R. No. 134030, April 25, 2006, 488 SCRA 126

Syllabus:

In Gonzales v. Climax Mining Ltd., the Court ruled that: x x x whether the case involves void or voidable contracts is still a judicial question. It may, in some instances, involve questions of fact especially with regard to the determination of the circumstances of the execution of the contracts. But the resolution of the validity or voidness of the contracts remains a legal or judicial question as it requires the exercise of judicial function. It requires the ascertainment of what laws are applicable to the dispute, the interpretation and application of those laws, and the rendering of a judgment based thereon. Clearly, the dispute is not a mining conflict. It is essentially judicial. The complaint was not merely for the determination of rights under the mining contracts since the very validity of those contracts is put in issue.

Facts:

Vicente Tuason entered into a Contract of Sale and Purchase of Perlite Ore with Induplex. Induplex agreed to purchase all the Perlite Ore that may be mined in Tuason’s mining claim in Albay in consideration of Induplex’s assistance to Tuason for the perfection of the latter’s mining claim. Afterwards, Tuason entered into an Agreement to Operate Mining Claims with Asaphil Corporation.

In November 1990, Tuason filed a complaint with the Bureau of Mines against Asaphil and Induplex for the declaration of nullity of the two contracts. Tuason alleged that Induplex violated its JVA with Grefco, Inc. when it formed Ibalon, Inc., an entity that mined, extracted and utilized the perlite ore in Ibalon’s mining claim. Moreover, Induplex acquired the majority stock of Asaphil, and that 95 percent of Ibalon’s shares were transferred to Virgilio Romero, a stockholder of Induplex, Asaphil and Ibalon. Tuason claimed to have been adversely affected by these acts.

Asaphil and Induplex prayed for the dismissal of the complaint on the ground of lack of jurisdiction of the DENR. DENR granted the motion to dismiss. But the MAB reversed the decision on appeal, hence the present petition.

Issue:

Whether or not the DENR has jurisdiction over Tuason's complaint for the annulment of the Contract of Sale and Purchase of Perlite Ore between Tuason and Induplex, and the Agreement to Operate Mining Claims between Tuason and Asaphil.

Ruling:

No. The DENR does not have jurisdiction over the complaint for declaration of nullity of the two contracts.

Presidential Decree No. 1821 vests the Bureau of Mines of the DENR with "jurisdictional supervision and control over all holders of mining claims or applicants for and/or grantees of mining licenses, permits, leases and/or operators thereof, including mining service contracts and service contractors insofar as their mining activities are concerned." Section 7 of PD No. 1281 provides that the Bureau of Mines has quasi-judicial powers over the following cases:

- (a) A mining property subject of different agreements entered into by the claim holder thereof with several mining operators;
- (b) Complaints from claimowners that the mining property subject of an operating agreement has not been placed into actual operations within the period stipulated therein; and
- (c) Cancellation and/or enforcement of mining contracts due to the refusal of the claimowner/operator to abide by the terms and conditions thereof.

Although there is a trend to make the adjudication of mining cases a purely administrative matter, administrative agencies do not have exclusive jurisdiction over mining disputes. There is still a distinction between the primary powers of the DENR Secretary and bureau directors of executive and administrative nature, and disputes between parties that can only be adjudicated by the courts of justice.

Tuason's complaint does not involve a mining dispute or controversy that falls under the jurisdiction of the DENR because the grounds upon which Tuason seeks to annul the contract is an alleged violation of Induplex's JVA with Grefco, Inc. This question can only be resolved by the courts. "A judicial question is raised when the determination of the question involves the exercise of a judicial function that is, the question involves the determination of what the law is and what the legal rights of the parties are with respect to the matter in controversy."

The SC further held that what is being sought is the determination of the validity of the agreements, and the DENR need not exercise its technical knowledge or expertise over any mining operations or dispute. The determination of the validity or nullity of a contract is a judicial question which requires the exercise of a judicial function.

b. Nature of Mining Grants and Licenses***Didipio Earth-Savers' Multi-Purpose Association v. Gozun***
G.R. No. 157882, March 30, 2006, 485 SCRA 586**Syllabus:**

The State possesses the means by which it can have the ultimate word in the operation of the enterprise, set directions and objectives, and detect deviations and noncompliance by the contractor; likewise, it has the capability to enforce compliance and to impose sanctions, should the occasion arise.

The setup under RA No. 7942 and DAO 96-40 hardly relegates the State to the role of a “passive regulator” dependent on submitted plans and reports. On the contrary, the government agencies concerned are empowered to approve or disapprove – hence, to influence, direct and change – the various work programs and the corresponding minimum expenditure commitments for each of the exploration, development and utilization phases of the mining enterprise.

Facts:

Executive Order No. 279 was promulgated in 1987 authorizing the DENR Secretary to accept, consider and evaluate proposals for technical or financial assistance for the exploration, development and utilization of minerals from foreign-owned corporations and investors.

The Philippine Mining Act was signed into law in 1995, and afterwards, DENR AO No. 96-40 was issued implementing the same.

Prior to the enactment of the Philippine Mining Act, Former President Ramos entered into a Financial and Technical Assistance Agreement (FTAA) with Climax-Arimco Mining Corporation (CAMC) covering the provinces of Nueva Vizcaya and Quirino. Ninety-nine percent of the CAMC stockholders are composed of Australian nationals.

Petitioners filed a demand letter with the DENR Secretary, demanding the cancellation of the CAMC FTAA for the reason that both the Philippine Mining Act and its Implementing Rules and Regulations in DAO 96-40 is unconstitutional since it allows entry into private property and allows taking of land without just compensation. The panel of arbitrators of the Mines and Geosciences Bureau (MGB) rejected the demand for the cancellation of the CAMC FTAA. Hence, the present petition for prohibition and mandamus.

Issue:

Whether or not the State, through the Philippine Mining Act and the CAMC FTAA, abdicated its primary responsibility to the full control and supervision over natural resources.

Ruling:

No. The State still has full control and supervision over natural resources. In *La Bugal-B'Laan Tribal Association, Inc. v. Ramos*, the Supreme Court held that the Philippine Mining Act “provides for the state’s control and supervision over mining operations.” Sections 8, 9 and 66 provide for the mechanism of inspection and visitorial rights over mining operations as well as reportorial requirements. The Philippine Mining Act and its Implementing Rules and Regulations provide the stipulations confirming the government’s control over mining enterprises, such as the following:

- For violation of any of its terms and conditions, the government may cancel an FTAA.
- An FTAA contractor is obliged to open its books of accounts and records for inspection by the government.
- MGB is mandated to monitor the contractor’s compliance with the terms and conditions of the FTAA; and to deputize, when necessary, any member or unit of the Philippine National Police, the barangay or a DENR-accredited nongovernmental organization to police mining activities.
- An FTAA cannot be transferred or assigned without prior approval by the President.
- A mining project under an FTAA cannot proceed to the construction/development/utilization stage, unless its Declaration of Mining Project Feasibility has been approved by government.
- The FTAA contractor is obliged to submit reports (on quarterly, semi-annual or annual basis as the case may be; per Section 270, DAO 96-40) pertaining to several matters.
- An FTAA pertaining to areas within government reservations cannot be granted without a written clearance from the government agencies concerned.
- An FTAA contractor is required to post a financial guarantee bond in favor of the government in an amount equivalent to its expenditures obligations for any particular year. This requirement is apart from the representations and warranties of the contractor that it has access to all the financing, managerial and technical expertise and technology necessary to carry out the objectives of the FTAA.

It is readily apparent that the requirements, regulations, restrictions and limitations do not support Petitioners’ contention that the State is a passive regulator of the country’s natural resources. “On the contrary, the government agencies concerned are empowered to approve or disapprove – hence, to influence, direct and change – the various work programs and the corresponding minimum expenditure commitments for each of the exploration, development and utilization phases of the mining enterprise.”

The Philippine Mining Act and its Implementing Rules and Regulations grant the government with sufficient control and supervision on the conduct of mining operations.

Republic v. Rosemoor
G.R. No. 149927, March 30, 2004, 426 SCRA 517

Syllabus:

A mining license that contravenes a mandatory provision of the law under which it is granted is void. Being a mere privilege, a license does not vest absolute rights in the holder. Thus, without offending the due process and the non-impairment clauses of the Constitution, it can be revoked by the State on grounds of public interest.

Facts:

The private respondents were granted permission to prospect for marble deposits in Biak-na-Bato. The private respondents were able to discover high quality marble deposits in commercial quantities. Thus, they applied with the Mines and Geosciences Bureau for a license to exploit the said marble deposits in Mount Mabio at the Biak-na-Bato mountain range. The Bureau granted the application and issued a license.

Minister Maceda cancelled the license after he was appointed. Rosemoor filed a petition with a prayer for injunctive relief as a result of such cancellation. This was granted by the court.

Subsequently, the trial court ruled that the license of the private respondents had already ripened into a property right which was protected by the due process clause of the Constitution. It further held that the cancellation without notice and hearing violated the private respondents' right to due process, and Proclamation No. 84 which confirmed the cancellation of the license, was an *ex post facto* law. The Court of Appeals affirmed the decision.

Issues:

- (1) Whether the license of the respondents was issued in blatant contravention of Section 69 of PD No. 463.
- (2) Whether Proclamation No. 84 issued by then President Corazon Aquino is valid.

Ruling:

- (1) Yes. The license violates PD No. 463.

The license is subject to the terms and conditions of PD No. 463. Proclamation No. 2204, awarding to Rosemoor the right to develop, exploit and utilize the mineral site, was subject to existing laws, rules and regulations.

Presidential Decree No. 463 is clear in mandating that a quarry license, like that of respondents, should cover a maximum of 100 hectares in any given province. There is no exception or reference to the number of applications for a license.

(2) Yes. Proclamation No. 84 is valid.

Respondents' license may be revoked or rescinded by executive action when the national interest so requires. It is not a contract, property or a property right protected by the due process clause of the Constitution.

Moreover, under the Regalian doctrine, the State can validly revoke the license of the respondents in the exercise of its police power. "The exercise of such power through Proclamation No. 84 is clearly in accord with *jura regalia*, which reserves to the State ownership of all natural resources. This Regalian doctrine is an exercise of its sovereign power as owner of lands of the public domain and of the patrimony of the nation, the mineral deposits of which are a valuable asset."

Proclamation No. 84 cannot be stigmatized as a violation of the non-impairment clause because the license is not a contract. It is also not a bill of attainder because the declaration that the license "is a patent nullity is certainly not a declaration of guilt. Neither is the cancellation of the license a punishment within the purview of the constitutional proscription against bills of attainder." Lastly, it is also not an *ex post facto* law since it does not fall under any of the six instances which is considered such. "Proclamation No. 84 restored the area excluded from the Biak-na-Bato national park by canceling respondents' license, is clearly not penal in character."

c. Validity of FTAA's

La Bugal-B'Laan v. Ramos

G.R. No. 127882, January 27, 2004, 421 SCRA 148

Syllabus:

In any case, the constitutional provision, which allows the President to enter into FTAA's with foreign-owned corporations, is an exception to the rule that participation in the nation's natural resources is reserved exclusively to Filipinos. Accordingly, the provision must be construed strictly against their enjoyment by non-Filipinos. As Commissioner Villegas emphasized, the provision is "very restrictive." Commissioner Nollado also remarked that "entering into service contracts is an exception to the rule on protection of natural resources for the interest of the nation and, therefore, being an exception, it should be subject, whenever possible, to stringent rules." Indeed, exceptions should be strictly but reasonably construed; they extend only so far as their language fairly warrants and all doubts should be resolved in favor of the general provision rather than the exception.

Facts:

Former President Aquino issued EO No. 279 which authorized the DENR Secretary to accept and consider proposals from foreign-owned corporations or foreign investors for contracts or agreements involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, which, upon appropriate recommendation, the President may execute with the foreign proponent.

Subsequently, the Philippine Mining Act was approved by Former President Ramos. The said law is “to govern the exploration, development, utilization, and processing of all mineral resources.” It also provides for (1) the procedure for the filing and approval, assignment/transfer and withdrawal, and terms of mineral agreements; (2) financial or technical assistance agreements (FTAA); and (3) that surface owners, occupants, or concessionaires are forbidden from preventing holders of mining rights from entering private lands and concession areas.

Before the effectivity of the Philippine Mining Act, an FTAA was entered into by the President and WMC Philippines covering land in South Cotabato, Sultan Kudarat, Davao del Sur, and North Cotabato. Afterwards, DAO No. 96-40 was enacted providing for the Implementing Rules and Regulations (IRR) of the Philippine Mining Act.

Petitioners demanded in a letter sent to the DENR Secretary the cessation of the implementation of both the Philippine Mining Act and its IRR. Petitioners later filed a petition alleging that 100 FTAA applications had already been filed by fully foreign-owned corporations and mining companies. Petitioners alleged that the FTAA between RP and WMCP is illegal and unconstitutional. Petitioners submit that, in accordance with the text of Section 2, Article XII of the Constitution, FTAA's should be limited to “technical or assistance” only. However, the WMCP FTAA allows WMCP, a fully foreign-owned mining corporation, to extend more than mere financial or technical assistance to the State, for it permits WMCP to manage and operate every aspect of the mining activity.

Issue:

Whether the Philippine Mining Act is constitutional.

Ruling:

Yes. The Philippine Mining Act is constitutional except for the following provisions: Section 3 (aq), Section 23, Section 33 to 41, Section 56, The second and third paragraphs of Section 81, and Section 90.

The Philippine Mining Act is invalid insofar as it authorizes service contracts. By the use of the phrase “financial and technical agreements,” the same is actually treated as a service contract in violation of the Constitution. This is because the “FTAA's” under the said Act grants beneficial ownership to foreign contractors contrary to fundamental law.

The Supreme Court held that: The phrase “management or other forms of assistance” in the 1973 Constitution was deleted in the 1987 Constitution, which allows only “technical or financial assistance.” *Casus omisus pro omisso habendus est*. A person, object or thing omitted from an enumeration must be held to have been omitted intentionally. The management or operation of mining activities by foreign contractors, which is the primary feature of service contracts, was precisely the evil that the drafters of the 1987 Constitution sought to eradicate.

Service contracts were eradicated because it allowed for the circumvention of the constitutionally required 60 percent-40 percent capitalization for corporations or associations engaged in the exploitation, development, and utilization of Philippine natural resources. Under the new

Constitution, foreign investors (fully alien-owned) can NOT participate in Filipino enterprises except to provide: (1) Technical Assistance for highly technical enterprises; and (2) Financial Assistance for large-scale enterprises.

There can be little doubt that the WMCP FTAA itself is a service contract. The contractual stipulations in WMCP FTAA grant WMCP beneficial ownership over natural resources that properly belong to the state.

La Bugal-B'Laan v. Ramos
G.R. No. 127882, December 1, 2004, 445 SCRA 1

Syllabus:

Note that in all the three foregoing mining activities – exploration, development and utilization – the State may undertake such EDU activities by itself or in tandem with Filipinos or Filipino corporations, except in two instances: first, in small-scale utilization of natural resources, which only Filipinos may be allowed by law to undertake; and second, in large-scale EDU of minerals, petroleum and mineral oils, which may be undertaken by the State via “agreements with foreign-owned corporations involving either technical or financial assistance” as provided by law.

From the foregoing, we are impelled to conclude that the phrase agreements involving either technical or financial assistance, referred to in paragraph 4, are in fact service contracts. But unlike those of the 1973 variety, the new ones are between foreign corporations acting as contractors on the one hand; and on the other, the government as principal or “owner” of the works. In the new service contracts, the foreign contractors provide capital, technology and technical know-how, and managerial expertise in the creation and operation of large-scale mining/extractive enterprises; and the government, through its agencies (DENR, MGB), actively exercises control and supervision over the entire operation. Such service contracts may be entered into only with respect to minerals, petroleum and other mineral oils.

While the Constitution mandates the State to exercise full control and supervision over the exploitation of mineral resources, nowhere does it require the government to hold all exploration permits and similar authorizations. In fact, there is no prohibition at all against foreign or local corporations or contractors holding exploration permits. Pursuant to Section 20 of RA No. 7942, an exploration permit merely grants to a qualified person the right to conduct exploration for all minerals in specified areas. Such a permit does not amount to an authorization to extract and carry off the mineral resources that may be discovered. x x x In short, the exploration permit is an authorization for the grantee to spend its own funds on exploration programs that are pre-approved by the government, without any right to recover anything should no minerals in commercial quantities be discovered. The State risks nothing and loses nothing by granting these permits to local or foreign firms; in fact, it stands to gain in the form of data generated by the exploration activities.

Thus, the permit grantee may apply for an MPSA, a joint venture agreement, a co-production agreement, or an FTAA over the permit area, and the application shall be approved if the permit grantee meets the necessary qualifications and the terms and conditions of any such agreement. Therefore, the contractor will be in a position to extract minerals and earn revenues only when the MPSA or another mineral agreement, or an FTAA, is granted. At that point, the contractor’s rights and obligations will be covered by an FTAA or a mineral agreement.

But prior to the issuance of such FTAA or mineral agreement, the exploration permit grantee (or prospective contractor) cannot yet be deemed to have entered into any contract or agreement with the State, and the grantee would definitely need to have some document or instrument as evidence of its right to conduct exploration works within the specified area. This need is met by the exploration permit issued pursuant to Sections 3(aq), 20 and 23 of RA No. 7942.

Facts:

This case is a Motion for Reconsideration of the case of the same title, wherein the Supreme Court declared several provisions of the Philippine Mining Act, and the WMCP FTAA unconstitutional.

Issue:

Whether the Philippine Mining Act and its Implementing Rules enable the government to exercise that degree of control sufficient to direct and regulate the conduct of affairs of individual enterprises and restrain undesirable activities.

Ruling:

Yes, except Sections 7.8 and 7.9 of the FTAA which are invalidated for being contrary to public policy and for being grossly disadvantageous to the government.

The Supreme Court held that the phrase “agreements involving either technical or financial assistance” are service contracts but with proper safeguards. These safeguards are the following:

- (1) The service contract shall be crafted in accordance with a general law that will set standard or uniform terms, conditions and requirements, presumably to attain a certain uniformity in provisions and avoid the possible insertion of terms disadvantageous to the country.
- (2) The President shall be the signatory for the government because, supposedly before an agreement is presented to the President for signature, it will have been studied several times over at different levels to ensure that it conforms to law and can withstand public scrutiny.
- (3) Within thirty days of the executed agreement, the President shall report it to Congress to give that branch of government an opportunity to look over the agreement and interpose timely objections, if any.

The Philippine Mining Act “provides for the State’s control and supervision over mining operations.” Sections 8, 9 and 66 provide for the mechanism of inspection and visitorial rights over mining operations as well as reportorial requirements. It is readily apparent that the requirements, regulations, restrictions and limitations do not relegate the State as a passive regulator of the country’s natural resources. “On the contrary, the government agencies concerned are empowered to approve or disapprove – hence, to influence, direct and change – the various work programs and the corresponding minimum expenditure commitments for each of the exploration, development and utilization phases of the mining enterprise.”

The Philippine Mining Act and its Implementing Rules and Regulations grant the government with sufficient control and supervision on the conduct of mining operations. The contractor is mandated to make its books of account and records available in order to determine if the government share has

been fully paid. The State is also empowered to compel the contractor to provide mine safety, health and environmental protection, and the use of anti-pollution technology and facilities. “Moreover, the contractor is also obligated to assist in the development of the mining community and to pay royalties to the indigenous peoples concerned.”

The FTAA may also be cancelled as penalty for violation of its terms and conditions, or non-compliance with statutes or regulations. The SC found that “the FTAA contractor is not free to do whatever it pleases and get away with it; on the contrary, it will have to follow the government line if it wants to stay in the enterprise. Ineluctably then, [the Philippine Mining Act] and DAO 96-40 vest in the government more than a sufficient degree of control and supervision over the conduct of mining operations.”

There is also no prohibition against foreign or local corporations or contractors holding exploration permits. The exploration permit protects and preserves the rights of the grantee (would-be contractor), whether foreign or local, during the period where the grantee incurs expenditures on exploration works, without yet being able to earn revenues to cover its investments and expenses.

d. Non-impairment of Contracts

Lepanto Consolidated Mining Co. v. WMC Resources
G.R. No. 162331, November 20, 2006, 507 SCRA 315

Syllabus:

By imposing a new condition on the assignment and transfer of rights, which is apart from those already contained in the Columbio FTAA, Section 40 of the Philippine Mining Act of 1995, if made to apply to the Columbio FTAA will effectively modify the terms of the original contract and restrict the exercise of vested rights under the agreement. Such modification is equivalent to an impairment of contracts which is violative of the Constitution.

Facts:

The Philippine Government and WMC Philippines executed a Financial and Technical Assistance Agreement (Columbio FTAA) for the purpose of large scale exploration, development, and commercial exploration of possible mineral resources in South Cotabato, Sultan Kudarat, Davao del Sur, and North Cotabato in accordance with EO No. 279 and DAO No. 63, Series of 1991.

The Columbio FTAA is covered in part by 156 mining claims held by the Tampakan Companies. This was in accordance with the Option Agreement entered into by WMC Philippines and the Tampakan Companies. The Option Agreement granted the right of first refusal to the Tampakan Companies should WMC Philippines desire to dispose of its rights and interests in the said mining claims. Subsequently, WMC Resources sold to Lepanto its entire shareholdings in WMC Philippines, subject to the right of first refusal of the Tampakan Companies.

Afterwards, Tampakan Companies sought to exercise its right of first refusal. Lepanto refused, contending that Tampakan Companies failed to match the terms and conditions set forth in the Agreement.

Another Sale and Purchase Agreement was executed between WMC Resources and Tampakan Companies, wherein Sagittarius Mines was designated “assignee and corporate vehicle which would acquire the shareholdings and undertake the Columbio FTAA activities.” WMC Resources also sold to Sagittarius Mines its shares of stock. The DENR eventually approved the transfer of the Columbio FTAA from WMC Philippines to Sagittarius Mines.

“Aggrieved by the transfer of the Columbio FTAA in favor of Sagittarius Mines, [Lepanto] filed a Petition for Review of the Order of the DENR Secretary with the Office of the President (OP). Petitioner assails the validity on the ground that: 1) it violates the constitutional right of Lepanto to due process; 2) it preempts the resolution of very crucial legal issues pending with the regular courts; and 3) it blatantly violates Section 40 of the Mining Act.” The OP dismissed the petition. The Court of Appeals also dismissed petitioner’s appeal. Hence, the instant petition with the SC.

Issue:

Whether Section 40 of the Philippine Mining Act of 1995, requiring the approval of the President of the assignment or transfer of financial or technical assistance agreements, applies to the Columbio FTAA.

Ruling:

No. Section 40 of the Philippine Mining Act does not apply to the Columbio FTAA. The Columbio FTAA was entered into before the Philippine Mining Act took effect. A statute is construed to be prospective in operation, unless the contrary is stated. The Philippine Mining Act is devoid of any provision which states that it shall apply retroactively. Thus, it shall apply prospectively.

If the said provision, which requires the approval of the President with respect to assignment or transfer of FTAA, is made applicable retroactively to the Columbio FTAA, it would violate the Constitutional prohibition against the impairment of the obligations of contracts since it “would effectively restrict the right of the parties thereto to assign or transfer their interests in the said FTAA.”

The Supreme Court further held that, assuming that the said provision applies, “the lack of presidential approval will not be fatal as to render the transfer illegal, especially since, as in the instant case, the alleged lack of presidential approval has been remedied when petitioner appealed the matter to the Office of the President which approved the Order of the DENR Secretary granting the application for transfer of the Columbio FTAA to Sagittarius Mines, Inc.” As held in the case of *La Bugal-B’Laan Tribal Association, Inc. v. Ramos*, “[W]hen the transferee of the FTAA happens to be a Filipino corporation, the need for such safeguard is not critical; hence, the lack of prior approval and notification may not be deemed fatal as to render the transfer invalid.”

e. Resort to the Mines Adjudication Board

Benguet Corp. v. DENR
G.R. No. 163101, February 13, 2008, 545 SCRA 196

Syllabus:

J.G. Realty's contention, that prior resort to arbitration is unavailing in the instant case because the POA's mandate is to arbitrate disputes involving mineral agreements, is misplaced. A distinction must be made between voluntary and compulsory arbitration. In Ludo and Luym Corporation v. Saordino, the Court had the occasion to distinguish between the two types of arbitrations:

Comparatively, in Reformist Union of R.B. Liner, Inc. v. NLRC, compulsory arbitration has been defined both as the process of settlement of labor disputes by a government agency which has the authority to investigate and to make an award which is binding on all the parties, and as a mode of arbitration where the parties are compelled to accept the resolution of their dispute through arbitration by a third party. While a voluntary arbitrator is not part of the governmental unit or labor department's personnel, said arbitrator renders arbitration services provided for under labor laws.

Facts:

Benguet and J.G. Realty entered into a Royalty Agreement with Option to Purchase (RAWOP) with a stipulation of prior resort to voluntary arbitration.

When Benguet issued a letter informing J.G. Realty of its intention to develop the mining claims, J.G. Realty responded that the RAWOP is terminated since Benguet failed to undertake development within two years from its execution in accordance with their Royalty Agreement.

Benguet replied that it complied with its obligation and the commercial operation was hampered by the non-issuance of a Mines Temporary Permit by the Mines and Geosciences Bureau (MGB) which must be considered as *force majeure*.

J.G. Realty filed a Petition for Declaration of Nullity/Cancellation of the RAWOP with the Legaspi City Panel of Arbitrators (POA). The POA granted the petition and excluded Benguet from the joint MPSA Application. The Mines Adjudication Board (MAB) upheld the POA decision. Hence, Benguet filed the instant petition.

Issue:

Whether the controversy should have first been submitted to arbitration before the POA took cognizance of the case?

Ruling:

Yes. The controversy should have first been submitted to arbitration pursuant to the RAWOP; however, Benguet is estopped from questioning POA's jurisdiction.

A stipulation in the contract which provides for the requirement of prior resort to voluntary arbitration before the parties can go to court is not illegal; it is a valid stipulation that must be adhered to by the parties.

J.G. Realty failed to distinguish between compulsory and voluntary arbitration. Although POA's mandate is to arbitrate disputes involving mineral agreements, such is compulsory arbitration. The nature of the arbitration provision in the RAWOP is voluntary and does not involve any government agency.

Thus, the SC held that "POA has no jurisdiction over the dispute which is governed by RA No. 876, the arbitration law." However, Benguet is estopped from questioning POA's jurisdiction. Aside from the fact that Benguet filed an answer and participated in the POA proceedings, when the POA decision was rendered, Benguet filed an appeal with the MAB and also actively participated in the proceedings therein.

"In this factual milieu, the Court rules that the jurisdiction of POA and that of MAB can no longer be questioned by Benguet at this late hour. What Benguet should have done was to immediately challenge the POA's jurisdiction by a special civil action for certiorari when POA ruled that it has jurisdiction over the dispute. To redo the proceedings fully participated in by the parties after the lapse of seven years from date of institution of the original action with the POA would be anathema to the speedy and efficient administration of justice."

C. Marine Laws

1. PD No. 1067 – Water Code of the Philippines

a. Jurisdiction Matters

Metro Iloilo Water District v. Court of Appeals
G.R. No. 122855, March 31, 2005, 454 SCRA 249

Syllabus:

The instant case certainly calls for the application and interpretation of pertinent laws and jurisprudence in order to determine whether private respondents' actions violate petitioner's rights as a water district and justify an injunction. This issue does not so much provide occasion to invoke the special knowledge and expertise of the Water Council as it necessitates judicial intervention. While initially it may appear that there is a dimension to the petitions which pertains to the sphere of the Water Council, i.e., the appropriation of water which the Water Code defines as "the acquisition of rights over any purpose allowed by law," in reality the matter is at most merely collateral to the main thrust of the petitions.

Facts:

In 1993, Metro Iloilo Water District filed nine individual yet identical petitions for injunction with prayer for preliminary injunction and/or temporary restraining order against herein Emma Nava, et al. One of the grounds for the suit is that the extraction or withdrawal of ground water without a Water Permit violates Article XIII of PD No. 1067 of the Water Code of the Philippines. Unless such act is restrained, it will definitely cause great loss upon the petitioner as a Water District. The trial court dismissed the

petitions, ruling that the controversy was within the original jurisdiction of the Water Council, involving, as it did, the appropriation, exploitation, and utilization of water, and factual issues which were within the Water Council's competence. The Court of Appeals affirmed the trial court's decision.

Issue:

Whether the Regional Trial Court has jurisdiction over the subject matter.

Ruling:

Yes. It is the Regional Trial Court and not the Water Council that has jurisdiction.

The petitions raised a judicial question. It therefore follows that the doctrine of exhaustion of administrative remedies, on the basis of which the petitions were dismissed by the trial court and the Court of Appeals, does not even come to play. Furthermore, the case necessitated judicial intervention as it deals with the application and interpretation of pertinent laws and jurisprudence in order to determine whether private respondents' actions violate petitioner's rights as a water district. While initially it may appear that there is a dimension to the petitions which pertains to the sphere of the Water Council, in reality the matter is at most merely collateral to the main thrust of the petitions. The trial court's jurisdiction must be upheld where the issue involved is not the settlement of a water rights dispute, but the enjoyment of a right to water use for which a permit was already granted.

BF Northwest Homeowner's Association, Inc. v. Intermediate Appellate Court
G.R. No. 72370, May 29, 1987, 234 Phil. 537

Syllabus:

Considering the specificity with which PD No. 1067, a special law, treats appeals from the NWRC, there is no room to apply Section 9[3] of BP Blg. 129, a general law, which confers exclusive appellate jurisdiction to the Court of Appeals over decisions of quasi-judicial agencies. The fact that one is special and the other is general creates a presumption that the special law (PD No. 1067) is to be considered as remaining an exception to the general one (BP Blg. 129, Section a[3]). x x x Neither would Section 9[2] of the same law, giving the Court of Appeals exclusive original jurisdiction over actions for annulment of judgments of Regional Trial Courts, find applicability since the NWRC is not on equal footing with the Regional Trial Court.

Facts:

There are three consolidated cases.

The first case involves the filing of Petition for Certiorari, Prohibition, and Mandamus of BF Northwest Homeowners Association, Inc. before the Regional Trial Court in Makati to enjoin BF Homes, Inc. from collecting adjusted water rates from Association members. The trial court Judge Zoilo Aguinaldo denied the Motion to Dismiss filed by BF Homes, Inc. and upheld his jurisdiction to entertain the suit. However, the Court of Appeals reversed and held that the trial court was without jurisdiction to entertain the case.

The second case, meanwhile, was filed by one Antonio Pedro, President of the Association, against BF Homes, Inc. asking the Court to declare the decision of the National Water Resources Council (NWRC) null and void because it was rendered without hearing and, therefore, without due process of law. The judge dismissed the Complaint on the ground of lack of jurisdiction.

The third case involves a civil suit filed against BF Homeowners Association, Inc., involving the annulment of the decision or order of the NWRC which granted BF Homes, Inc. the authority to charge increased water rates. The trial court dismissed the suit.

Issue:

Whether or not the Regional Trial Court has jurisdiction to annul orders of the NWRC.

Ruling:

Yes. The Regional Trial Court has jurisdiction over the orders of the NWRC.

The National Water Resources Council (NWRC) was created by PD No. 424 on March 28, 1974 and was vested with the general power to coordinate and integrate water resources development, and among others, to formulate and promulgate rules and regulations for the exploitation and optimum utilization of water resources, including the imposition on water appropriators of such fees or charges as may be deemed necessary by the Council for water resources development.

PD No. 1067, which enacted the Water Code of the Philippines, identified the NWRC as the administrative agency for the enforcement of its provisions and was “authorized to impose and collect reasonable fees or charges for water resources development from water appropriators.” Jurisdiction over actions for annulment of NWRC decisions lies with the Regional Trial Courts, particularly, when we take note of the fact that the appellate jurisdiction of the Regional Trial Court over NWRC decisions covers such broad and all embracing grounds as grave abuse of discretion, questions of law, and questions of fact and law.

Amistoso v. Ong

G.R. No. L-60219, June 29, 1984, 130 SCRA 228

Syllabus:

The water rights grant partakes the nature of a document known as a water permit recognized under Article 13 of PD No. 1067. The provision governing the validity of a water rights grant is found in the Transitory and Final Provisions of PD No. 1067. In the instant case, a grant indubitably exists in favor of the petitioner. It is the enjoyment of the right emanating from that grant that is in litigation. Violation of the grantee’s right, who in this case is the petitioner, by the closure of the irrigation canal, does not bring the case anew within the jurisdiction of the National Water Resources Council.

Facts:

On July 27, 1981, Bienvenida Amistoso filed a complaint for Recognition of Easement with Preliminary Injunction and Damages before the Court of First Instance of Camarines Sur. Senecio Ong and Epifania Neri are owners of adjoining parcels of agricultural land situated in Cauayanan, Tinambac, Camarines Sur. An irrigation canal traverses the land of defendant Neri through which irrigation water from the Silmod River passes and flows to the land of Ong for the latter's beneficial use. Despite repeated demands, Neri and Ong refused to recognize the rights and title of the petitioner to the beneficial use of the water passing through the aforesaid irrigation canal and to have petitioner's rights and/or claims annotated on the Certificate of Title of respondent Neri.

Amistoso filed a suit against Neri, however, Neri filed a motion to dismiss on the ground that since the instant case involves the development, exploitation, conservation and utilization of water resources, the case falls within the exclusive jurisdiction of the National Water Resources Council pursuant to PD No. 424. Hon. Presiding Judge Esteban M. Lising granted the Motion and dismissed the petition of Amistoso.

Issue:

Whether the National Water Resource Council (NWRC) is the proper authority to determine such a controversy.

Ruling:

No. The regular courts, not the NWRC, has jurisdiction over the controversy.

The NWRC is not the proper authority to determine the controversy because it is not within its exclusive jurisdiction. Private respondents admit that petitioner Amistoso has an approved Water Rights Grant issued by the authorized Department. Aside from this admission, the record clearly discloses an approved Water Rights Grant in favor of petitioner. The grant was made three years before the promulgation of PD No. 1067 or the Water Code of the Philippines, thereby repealing among others, the provisions of the Spanish Law of Water of August 3, 1866, the Civil Code of Spain of 1889, and the Civil Code of the Philippines on ownership of water, easement relating to water and of public water and acquisitive prescription on the use of water which are inconsistent with the provisions of said Code (Article 10, PD No. 1067). The grant contradicts the erroneous findings of the respondent Judge, and incontrovertibly entitles petitioner to the beneficial use of water from Silmod River. The interruption of the free flow of water caused by the refusal to re-open the closed irrigation canal constituted petitioner's cause of action in the court below, which decidedly does not fall within the domain of the authority of the National Water Resources Council. In the case at bar, however, a grant indubitably exists in favor of the petitioner. It is the enjoyment of the right emanating from that grant that is in litigation. Violation of the grantee's right, who in this case is the petitioner, by the closure of the irrigation canal, does not bring the case anew within the jurisdiction of the National Water Resources Council.

b. Prosecution for Multiple Violations

Loney, et al. v. People of the Philippines
G.R. No. 152644, February 10, 2006, 482 SCRA 194

Syllabus:

It is a well-settled rule that a single act or incident might offend against two or more entirely distinct and unrelated provisions of law thus justifying the prosecution of the accused for more than one offense. The only limit to this rule is the Constitutional prohibition that no person shall be twice put in jeopardy of punishment for "the same offense."

Facts:

Petitioners John Eric Loney, Steven Paul Reid, and Pedro Hernandez are officers of Marcopper Mining Corporation, a corporation engaged in mining in the province of Marinduque. Marcopper had been storing tailings from its operations in a pit in Mt. Tapian, Marinduque. At the base of the pit ran a drainage tunnel leading to the Boac and Makalupnit rivers. It appears that Marcopper had placed a concrete plug at the tunnel's end. On March 24, 1994, tailings gushed out of or near the tunnel's end. In a few days, the Mt. Tapian pit had discharged millions of tons of tailings into the Boac and Makalupnit rivers.

In August 1996, the Department of Justice separately charged petitioners in the Municipal Trial Court of Boac, Marinduque with violation of Article 91(B), subparagraphs 5 and 6 of PD No. 1067 or the Water Code of the Philippines, Section 8 of Presidential Decree No. 984 or the National Pollution Control Decree of 1976 (PD No. 984), Section 108 of RA No. 7942 or the Philippine Mining Act of 1995, and Article 365 of the Revised Penal Code (RPC) for Reckless Imprudence Resulting in Damage to Property.

Issue:

Whether or not there was violation of the Philippine Mining Act, Water Code, and Pollution Control Law.

Ruling:

Yes. There was a violation of the three laws.

In PD No. 1067 (Philippine Water Code), the additional element to be established is the dumping of mine tailings into the Makalupnit River and the entire Boac River System without prior permit from the authorities concerned. The gravamen of the offense here is the absence of the proper permit to dump said mine tailings. This element is not indispensable in the prosecution for violation of PD No. 984 (Anti-Pollution Law), RA No. 7942 (Philippine Mining Act), and Article 365 of the Revised Penal Code. One can be validly prosecuted for violating the Water Code even in the absence of actual pollution, or even if it has complied with the terms of its Environmental Compliance Certificate, or further, even if it did take the necessary precautions to prevent damage to property.

In PD No. 984 (Anti-Pollution Law), the additional fact that must be proved is the existence of actual pollution. The gravamen is the pollution itself. In the absence of any pollution, the accused must

be exonerated under this law although there was unauthorized dumping of mine tailings or lack of precaution on its part to prevent damage to property.

In RA No. 7942 (Philippine Mining Act), the additional fact that must be established is the willful violation and gross neglect on the part of the accused to abide by the terms and conditions of the Environmental Compliance Certificate, particularly that the Marcopper should ensure the containment of run-off and silt materials from reaching the Mogpog and Boac Rivers. If there was no violation or neglect, and that the accused satisfactorily proved that Marcopper had done everything to ensure containment of the run-off and silt materials, they will not be liable. It does not follow, however, that they cannot be prosecuted under the Water Code, Anti-Pollution Law and the Revised Penal Code because violation of the Environmental Compliance Certificate is not an essential element of these laws.

c. Writ of Continuing Mandamus

Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay
G.R. Nos. 171947-48, December 18, 2008, 574 SCRA 661

Syllabus:

The writ of mandamus lies to require the execution of a ministerial duty. A ministerial duty is one that “requires neither the exercise of official discretion nor judgment.” It connotes an act in which nothing is left to the discretion of the person executing it. It is a “simple, definite duty arising under conditions admitted or proved to exist and imposed by law.” Mandamus is available to compel action, when refused, on matters involving discretion, but not to direct the exercise of judgment or discretion one way or the other.

*RA 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. So it was in *Oposa v. Factoran, Jr.* that the Court stated that the right to a balanced and healthful ecology need not even be written in the Constitution for it is assumed, like other civil and political rights guaranteed in the Bill of Rights, to exist from the inception of mankind and it is an issue of transcendental importance with intergenerational implications.*

Facts:

The government agencies namely, MWSS, LWUA, DENR, PPA, MMDA, DA, DBM, DPWH, DOH, DECS, and PNP did not take notice of the present danger to public health and the depletion and contamination of the marine life of Manila Bay. According to the Concerned Citizens, the respondents in this case, the water quality of the Manila Bay had fallen way below the standard of water quality in a manner that makes swimming unallowable. Thus, the Regional Trial Court ordered the government agencies to participate in cleaning the Bay.

The Regional Trial Court involved in this case conducted hearings and ocular inspections of the Manila Bay. Authorities from DENR and MWSS testified in favor of the petitioners that the bay is in safe-level bathing and that they are doing their function in reducing pollution. However, the Regional Trial Court decided in favor of the respondents and ordered the government agencies in violation of PD No.

1152 to rehabilitate the bay. The petitioners went to the Court of Appeals and argued that PD No. 1152's provisions only pertain to the cleaning of specific pollution incidents and do not cover cleaning in general. However, the Court of Appeals affirmed the Regional Trial Court decision.

Issues:

- (1) Whether the cleaning of Manila Bay is a ministerial act that can be induced by *mandamus*.
- (2) Whether Sections 17 and 20 of PD No. 1152 only pertain to the cleaning of the polluted areas.

Ruling:

- (1) Yes. The cleaning of Manila Bay is a ministerial act which may be compelled by *mandamus*.

The cleaning and rehabilitation of Manila Bay can be compelled by *mandamus*. The MMDA is duty-bound to comply with Section 41 of the Ecological Solid Waste Management Act (RA No. 9003) which prescribes the minimum criteria for the establishment of sanitary landfills and Section 42 which provides the minimum operating requirements that each site operator shall maintain in the operation of a sanitary landfill. Based on their charters, it is clear that these government agencies are also mandated to perform certain functions relating directly or indirectly to the cleanup, rehabilitation, protection, and preservation of the Manila Bay.

- (2) No. Sections 17 and 20 also include general cleaning.

Section 17 provides that in case the water quality has deteriorated, the government agencies concerned shall act on it to bring back the standard quality of water. Section 20, on the other hand, mandates the government agencies concerned to take action in cleaning up in case the polluters failed to do their part. The succeeding Section 62(g) and (h) of the same Code which provides that oil-spilling is the cause of pollution that should be corrected in cleanup operations, actually expanded the coverage of Section 20 because it included oil-spilling as one of the causes of pollution that need to be cleaned up by the government agencies concerned. Moreover, Section 17 emphasizes that government agencies should clean that water for the sake of meeting and maintaining the right quality standard. This presupposes that the government agencies concerned have the duty of cleaning the water in general and not only at times when there is a specific pollution incident.

2. RA No. 4850 – Laguna Lake Development Authority Act

Public Hearing Committee of the Laguna Lake Development Authority v. SM Prime Holdings, Inc.
G.R. No. 170599, September 22, 2010

Syllabus:

Under the doctrine of exhaustion of administrative remedies, before a party is allowed to seek the intervention of the court, he or she should have availed himself or herself of all the means of administrative processes afforded him or her. Hence, if resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his or her jurisdiction, then such remedy should be exhausted first before the court's judicial

power can be sought. The premature invocation of the intervention of the court is fatal to one's cause of action. x x x The courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been completed and complied with, so as to give the administrative agency concerned every opportunity to correct its error and dispose of the case.

Facts:

After an inspection conducted, the Pollution Control Division of the LLDA informed SM City Manila of its violation, directing the same to perform corrective measures to abate or control the pollution caused by the said company and ordering the latter to pay a penalty of One Thousand Pesos (P1,000) per day of discharging pollutive wastewater to be computed from February 4, 2002, the date of inspection, until full cessation of discharging pollutive wastewater. The LLDA directed SM City Manila to perform corrective measures to abate or control the pollution caused by the said company and ordering the latter to pay.

Issues:

- (1) Whether administrative remedies should have been first exhausted before resorting to the courts.
- (2) Whether the Laguna Lake Development Authority is conferred by law the power to impose fines and collect the same.

Ruling:

- (1) Yes. There must be exhaustion of administrative remedies first before going to courts.

Since the instant case raised matters that involve factual issues, the questioned Orders of the LLDA should have been brought first before the DENR which has administrative supervision of the LLDA pursuant to EO No. 149. In addition, based on jurisprudence, the LLDA has the power to impose fines in the exercise of its function as a regulatory and quasi-judicial body with respect to pollution cases in the Laguna Lake region. The Court also held that the adjudication of pollution cases generally pertains to the Pollution Adjudication Board (PAB), except where a special law, such as the LLDA Charter, provides for another forum. The Court further ruled that although the PAB assumed the powers and functions of the National Pollution Control Commission with respect to adjudication of pollution cases, this does not preclude the LLDA from assuming jurisdiction of pollution cases.

- (2) Yes. The LLDA has the power to impose and collect fines.

The intention of the law is to grant the LLDA not only with the express powers granted to it, but also those which are implied or incidental but necessary or essential for the full and proper implementation of its purposes and functions.

Pacific Steam Laundry v. Laguna Lake Development Authority
G.R. No. 165299, December 18, 2009, 608 SCRA 442

Syllabus:

In previous jurisprudence, the Court has ruled that LLDA, in the exercise of its express powers under its charter, as a regulatory and quasi-judicial body with respect to pollution cases in the Laguna Lake region, has the implied authority to issue a “cease and desist order.” In the same manner, we hold that the LLDA has the power to impose fines in the exercise of its function as a regulatory and quasi-judicial body with respect to pollution cases in the Laguna Lake region.

Facts:

On June 6, 2001, the Environmental Management Bureau of the DENR endorsed to Laguna Lake Development Authority (LLDA) the inspection report on the complaint of black smoke emission from the Pacific Steam Laundry, Inc. plant. The LLDA conducted an investigation and wastewater sampling and found that untreated wastewater generated from petitioner’s laundry washing activities was discharged directly to the San Francisco Del Monte River. Furthermore, it was illegally operating without LLDA clearance and permits. As a result, LLDA issued to petitioner a Notice of Violation. A Pollution Control and Abatement case was later on filed against petitioner before the LLDA. After another wastewater sampling, the tests showed compliance with the effluent standard in all parameters. Pacific Steam Laundry prayed that the Notice of Violation and its corresponding daily penalty be set aside and that the impossible penalty be reckoned from the date of actual hearing. It is respondent’s position that the Notice of Violation and the imposition of the penalty had no legal and factual basis because it had already installed the necessary wastewater treatment to abate the water pollution. The LLDA denied the petition. When it was appealed, the Court of Appeals denied the petition and its motion for reconsideration.

Issue:

Whether the Laguna Lake Development Authority has the power to impose fines.

Ruling:

Yes. The Laguna Lake Development Authority has the power to impose fines as provided for under the law.

Under EO No. 927, LLDA is granted additional powers and functions to effectively perform its role and to enlarge its prerogatives of monitoring, licensing and enforcement. Although the powers of the Pollution Adjudication Board and the LLDA reveal substantial similarities, the difference is that while Section 19 of EO No. 192 vested the Pollution Adjudication Board with the specific power to adjudicate pollution cases in general, the scope of authority of LLDA to adjudicate pollution cases is limited to the Laguna Lake region as defined by RA No. 4850, as amended. Based on jurisprudence, the adjudication of pollution cases generally pertains to the Pollution Adjudication Board, except where a special law, such as the LLDA Charter, provides for another forum. Furthermore, contrary to petitioner’s contention, LLDA’s power to impose fines is not unrestricted. The P1,000 penalty per day is in accordance with the amount of penalty prescribed under PD No. 984.

The Alexandra Condominium Corporation v. Laguna Lake Development Authority
G.R. No. 169228, September 11, 2009, 599 SCRA 452

Syllabus:

The Alexandra Condominium Corporation should have first resorted to an administrative remedy before the DENR Secretary prior to filing a petition for certiorari before the Court of Appeals. The doctrine of exhaustion of administrative remedies requires that resort be first made with the administrative authorities in the resolution of a controversy falling under their jurisdiction before the controversy may be elevated to a court of justice for review. A premature invocation of a court's intervention renders the complaint without cause of action and dismissible.

The LLDA has the power to impose fines because under Section 4-A of RA No. 4850, as amended, LLDA is entitled to compensation for damages resulting from failure to meet established water and effluent quality standards.

Facts:

On June 24 1998, Laguna Lake Development Authority (LLDA) advised The Alexandra Condominium Corporation (TACC) that its wastewater did not meet government effluent standards. LLDA informed TACC that it must put up its own Sewage Treatment Plant (STP) for its effluent discharge to meet government standards. Despite experimenting with a proposed solution from Larutan Resources Development Corporation, the water discharge of TACC still failed to meet the government standards. As a result, the LLDA issued a Notice of Violation and imposed upon TACC a daily fine of One Thousand Pesos (P1,000) from March 26, 1999 until full cessation of pollutive wastewater discharge. In order to comply, TACC entered into an agreement with World Chem Marketing for the construction of the sewage treatment plant. TACC requested LLDA to dismiss the water pollution case against it because of the favorable analysis undertaken by the LLDA's Pollution Control Division. The LLDA denied the request. TACC filed a petition for certiorari before the Court of Appeals, but the Court of Appeals dismissed the petition.

Issues:

- (1) Whether the petition for *certiorari* was prematurely filed for failure to exhaust administrative remedies.
- (2) Whether the Laguna Lake Development Authority has the power to impose fines.

Ruling:

- (1) Yes. The petition was prematurely filed.

First, TACC should have first resorted to an administrative remedy before the DENR Secretary prior to filing a petition for *certiorari* before the Court of Appeals. EO No. 192, which reorganized the DENR, mandates the DENR to promulgate rules and regulations for the control of pollution and to promulgate ambient and effluent standards for water and air quality. The Pollution Adjudication Board was created by EO No. 192 under the Office of the DENR Secretary. It assumed the powers and functions

of the NPCC with respect to the adjudication of pollution cases, including NPCC's function to "[s]erve as arbitrator for the determination of reparation, or restitution of the damages and losses resulting from pollution." Hence, TACC has an administrative recourse before the DENR Secretary which it should have first pursued before filing a petition for certiorari before the Court of Appeals.

(2) Yes. LLDA has the power to impose fines.

Under Section 4-A of RA No. 4850, as amended, LLDA is entitled to compensation for damages resulting from failure to meet established water and effluent standards.

Laguna Lake Development Authority v. Court of Appeals, et al.,
G.R. No. 110120, March 16, 1994, 231 SCRA 292

Syllabus:

The constitutionally guaranteed right of every person to a balanced and healthful ecology carries the correlative duty of non-impairment. This is but in consonance with the declared policy of the state "to protect and promote the right to health of the people and instill health consciousness among them." It is to be borne in mind that the Philippines is party to the Universal Declaration of Human Rights and the Alma Conference Declaration of 1978 which recognize health as a fundamental human right. The issuance, therefore, of the cease and desist order by the LLDA, as a practical matter of procedure under the circumstances of the case, is a proper exercise of its power and authority under its charter and its amendatory laws.

Facts:

On March 8, 1991, the Task Force Camarin Dumpsite of Our Lady of Lourdes Parish, Barangay Camarin, Caloocan City, filed a letter-complaint with the Laguna Lake Development Authority (LLDA) seeking to stop the operation of the garbage dumpsite in Tala Estate, Barangay Camarin, Caloocan City. After an onsite investigation and a public hearing, the LLDA issued a Cease and Desist Order ordering the City Government of Caloocan, Metropolitan Manila Authority, their contractors, and other entities, to stop dumping any form or kind of garbage and other waste matter at the Camarin dumpsite. The dumping operation was stopped by the City Government of Caloocan but was continued later on after a failed settlement. The LLDA issued another Alias Cease and Desist Order enjoining the City Government of Caloocan from continuing its dumping operations at the Camarin area. With the assistance of the Philippine National Police, LLDA enforced its Alias Cease and Desist Order by prohibiting the entry of all garbage dump trucks into the area. The Caloocan City Government filed with the Regional Trial Court of Caloocan City an action for the declaration of nullity of the cease and desist order, averring that it is the sole authority empowered to promote the health and safety and enhance the right of the people in Caloocan City to a balanced ecology within its territorial jurisdiction. The Regional Trial Court issued a temporary restraining order enjoining the LLDA from enforcing its Cease and Desist Order. The LLDA contends that the complaint is reviewable both upon the law and the facts of the case by the Court of Appeals and not by the Regional Trial Court. The Court of Appeals ruled that the LLDA had no power to issue a Cease and Desist Order.

Issue:

Whether the Laguna Lake Development Authority has the power to issue a Cease and Desist Order.

Ruling:

Yes. The LLDA has the power to issue a Cease and Desist Order.

It is specifically mandated under RA No. 4850 and its amendatory laws to carry out and make effective the declared national policy of promoting and accelerating the development and balanced growth of the Laguna Lake area and the surrounding provinces of Rizal and Laguna and the cities of San Pablo, Manila, Pasay, Quezon and Caloocan *with due regard and adequate provisions for environmental management and control, preservation of the quality of human life and ecological systems, and the prevention of undue ecological disturbances, deterioration and pollution*. Aside from the powers conferred upon it by law, an administrative agency has also such powers as are necessarily implied in the exercise of its express powers. In the exercise, therefore, of its express powers under its charter as a regulatory and quasi-judicial body with respect to pollution cases in the Laguna Lake region, the authority of the LLDA to issue a Cease and Desist Order is implied.

Laguna Lake Development Authority v. Court of Appeals, et al.
G.R. Nos. 120865-71, December 7, 1995, 251 SCRA 42

Syllabus:

The provisions of Republic Act No. 7160 or the Local Government Code of 1991 do not necessarily repeal the aforementioned laws creating the Laguna Lake Development Authority and granting the latter water rights authority over Laguna de Bay and the lake region. The Local Government Code of 1991 does not contain any express provision which categorically expressly repeal the charter of the Authority. It has to be conceded that there was no intent on the part of the legislature to repeal Republic Act No. 4850 and its amendments. The repeal of laws should be made clear and expressed. Thus, the Authority has the exclusive jurisdiction to issue permits for the enjoyment of fishery privileges in Laguna de Bay to the exclusion of municipalities situated therein and the authority to exercise such powers as are by its charter vested on it.

Facts:

Republic Act No. 4850 created the Laguna Lake Development Authority (LLDA) and granted it the authority to manage the environmental resources in the area. However, with the promulgation of the Local Government Code of 1991, the municipalities in the Laguna Lake Region interpreted the provisions of this law to mean that the newly passed law gave municipal governments the exclusive jurisdiction to issue fishing privileges and fishpen permits within their municipal waters. Later on, LLDA issued a notice to the general public that illegally constructed fishpens, fish cages, and other aqua-culture structure will be demolished. The affected fishpen owners filed injunction cases against LLDA before various regional trial courts. The LLDA filed motions to dismiss the cases against it on jurisdictional grounds, however, these were denied. The temporary restraining order/writs of preliminary mandatory injunction, meanwhile, were issued enjoining LLDA from demolishing the fishpens and similar structures in question. As a result, LLDA filed a petition for certiorari, prohibition, and injunction.

Issue:

Whether Laguna Lake Development Authority has jurisdiction over the issuance of fishery privileges.

Ruling:

Yes. The Laguna Lake Development Authority has the exclusive jurisdiction to issue permits for the enjoyment of fishery privileges in Laguna de Bay and the authority to exercise such powers as are by its charter vested on it. The provisions of the Local Government Code do not necessarily repeal the aforementioned laws creating the Laguna Lake Development Authority as it does not contain any express provision which categorically and/or expressly repeal the charter of LLDA. It has to be conceded that there was no intent on the part of the legislature to repeal RA No. 4850 and its amendments. The repeal of laws should be made clear and expressed. It is clear that the power of the local government units to issue fishing privileges was granted for revenue purposes. On the other hand, the power of the LLDA to grant permits for fishpens, fishcages and other aqua-culture structures is for the purpose of effectively regulating and monitoring activities in the Laguna de Bay region and for lake quality control and management. It is in the nature of police power. Accordingly, the charter of LLDA which embodies a valid exercise of police power should prevail over the Local Government Code of 1991 on matters affecting Laguna de Bay.

3. RA No. 8550 – Philippine Fisheries Code of 1998**a. Jurisdiction of LGUs*****Tano v. Socrates***

G.R. No. 110249, August 21, 1997, 278 SCRA 154

Syllabus:

It is of course settled that laws (including ordinances enacted by local government units) enjoy the presumption of constitutionality. To overthrow this presumption, there must be a clear and unequivocal breach of the Constitution, not merely a doubtful or argumentative contradiction. In short, the conflict with the Constitution must be shown beyond reasonable doubt. Where doubt exists, even if well-founded, there can be no finding of unconstitutionality. To doubt is to sustain.

Facts:

The petitioners filed a petition for *certiorari* and prohibition assailing the constitutionality of Ordinance 15-92 “An Ordinance Banning the Shipment of All Live Fish and Lobster outside Puerto Princesa City from January 1, 1993 to January 1, 1998 and Providing Exemptions, Penalties, and for Other Purposes Thereof,” and Ordinance 2 “A Resolution Prohibiting the Catching, Gathering, Possessing, Buying, Selling, and Shipment of Live Marine Coral Dwelling Aquatic Organisms.” The petitioners argue that the said Ordinances deprived them of due process of law, their livelihood, and unduly restricted them from the practice of their trade, in violation of Section 2, Article XII and Sections 2 and 7 of Article XIII of the 1987 Constitution.

Issue:

Whether or not the Ordinances in question are unconstitutional

Ruling:

No. The Ordinances are declared constitutional.

Pursuant to the principles of decentralization and devolution enshrined in the Local Government Code and the powers granted therein to local government units in the exercise of police power, the validity of the questioned Ordinances cannot be doubted. It is apparent that both Ordinances have two principal objectives or purposes. The first is to establish a closed season for the species of fish or aquatic animals covered therein for a period of five years. The second is to protect the coral in the marine waters of the City of Puerto Princesa and the Province of Palawan from further destruction due to illegal fishing activities.

b. Prohibited Acts

People of the Philippines v. Vergara
G.R. No. 110286, April 2, 1997, 270 SCRA 624

Syllabus:

Trial courts are tasked to initially rule on the credibility of witnesses for both the prosecution and the defense. Appellate courts seldom would subordinate, with their own, the findings of trial courts which concededly have good vantage points in assessing the credibility of those who take the witness stand. Nevertheless, it is not all too uncommon for appellate courts to peruse through the transcript of proceedings in order to satisfy itself that the records of a case do support the conclusions of trial courts.

Facts:

On July 4, 1992, a team composed of deputized fish warden, the president of the Leyte Fish Warden, and some police officers were on board, *Bantay-Dagat*, a pumpboat, on “preventive patrol” along the municipal waters fronting *barangays* Baras and Candahug of Palo, Leyte, when they chanced upon a fishing boat. The boat had on board the accused. The team saw appellant throw into the sea a bottle known in the locality as *badil* and an explosion occurred. When the accused surfaced, they were caught red-handed with fish catch. The four accused were apprehended and taken by the patrol team to the *Bantay-Dagat* station at Baras, and later to the police station in Palo, Leyte. The fishing boat and its paraphernalia, as well as the two fishnets of *bolinao*, were impounded. The trial court found the accused guilty of violating PD No. 704.

Issue:

Whether the evidence was sufficient to convict the accused.

Ruling:

Yes. The evidence presented was enough to convict the accused.

The first set of evidence were the testimonies, the first of which came from Fish Warden Jesus Bindoy, while the second testimony came from Nestor Aldas, an Agricultural Technologist and Fish Examiner working with the Department of Agriculture, Palo, Leyte, who examined the fish samples taken from the accused, and testified that he was with the team patrolling. The second evidence considered was the possession of explosives. Under Sections 33 and 38 of PD No. 704, as amended by PD No. 1058, mere possession of explosives with intent to use the same for illegal fishing as defined by law is already punishable.

Hizon v. Court of Appeals

G.R. No. 119619, December 13, 1996, 265 SCRA 517

Syllabus:

It is generally conceded that the legislature has the power to provide that proof of certain facts can constitute prima facie evidence of the guilt of the accused and then shift the burden of proof to the accused provided there is a rational connection between the facts proved and the ultimate fact presumed. To avoid any constitutional infirmity, the inference of one from proof of the other must not be arbitrary and unreasonable. In fine, the presumption must be based on facts and these facts must be part of the crime when committed.

Statutory presumption is merely prima facie evidence. It cannot, under the guise of regulating the presentation of evidence, operate to preclude the accused from presenting his defense to rebut the main fact presumed. At no instance can the accused be denied the right to rebut the presumption.

Facts:

In September 1992, the Philippine National Police (PNP) Maritime Command of Puerto Princesa City, Palawan received reports of illegal fishing operations in the coastal waters of the city. In response to these reports, the city mayor organized Task Force Bantay Dagat to assist the police in the detection and apprehension of violators of the laws on fishing. The Task Force Bantay Dagat reported to the PNP Maritime Command that a boat and several small crafts were fishing by *muro ami* within the shoreline of Barangay San Rafael of Puerto Princesa City. The police apprehended the petitioners. In light of these findings, the PNP Maritime Command of Puerto Princesa City commenced the current action/proceedings against the owner and operator of the F/B Robinson, the First Fishermen Fishing Industries, Inc., represented by herein petitioner Richard Hizon, the boat captain, Silverio Gargar, the boat engineer, Ernesto Andaya, two other crew members, the two Hongkong nationals and 28 fishermen of the said boat.

Issue:

Whether or not the plaintiffs were guilty of illegal fishing with the use of obnoxious or poisonous substance.

Ruling:

No. Plaintiffs are not guilty.

The members of the PNP Maritime Command and the Task Force Bantay Dagat were the ones engaged in an illegal fishing expedition. As sharply observed by the Solicitor General, the report received by the Task Force Bantay Dagat was that a fishing boat was fishing illegally through *muro ami* on the waters of San Rafael. This method of fishing needs approximately 200 fishermen to execute. What the apprehending officers instead discovered were 28 fishermen in their sampans fishing by hook and line. The authorities found nothing on the boat that would have indicated any form of illegal fishing. All the documents of the boat and the fishermen were in order. It was only after the fish specimens were tested, albeit under suspicious circumstances, that petitioners were charged with illegal fishing with the use of poisonous substances.

D. Aerial and Other Laws**1. RA No. 8749 – Philippine Clean Air Act of 1999**

***Hilarion M. Henares, et al. v. Land Transportation Franchising and Regulatory Board
and Department of Transportation and Communications***
G.R. No. 158290, October 23, 2006, 505 SCRA 104

Syllabus:

Mandamus is available only to compel the doing of an act specifically enjoined by law as a duty. Here, there is no law that mandates the respondents LTFRB and the DOTC to order owners of motor vehicles to use CNG.

As serious as the statistics are on air pollution, with the present fuels deemed toxic as they are to the environment, as fatal as these pollutants are to the health of the citizens, and urgently requiring resort to drastic measures to reduce air pollutants emitted by motor vehicles, there is no law that imposes an indubitable legal duty on respondents that will justify a grant of the writ of mandamus compelling the use of CNG for public utility vehicles.

Facts:

Petitioners pray from the Supreme Court the issuance of a writ of mandamus commanding respondents Land Transportation Franchising and Regulatory Board (LTFRB) and the Department of Transportation and Communications (DOTC) to require public utility vehicles (PUVs) to use Compressed Natural Gas (CNG) as alternative fuel.

Asserting their right to clean air, petitioners allege that since the LTFRB and the DOTC are the government agencies clothed with power to regulate and control motor vehicles, particularly PUVs, and with the same agencies' awareness and knowledge that the PUVs emit dangerous levels of air pollutants, then, the responsibility to see that these are curbed falls under respondents' functions and a writ of mandamus should issue against them.

The Solicitor General, representing the LTFRB and DOTC, cites Section 3, Rule 65 of the Revised Rules of Court and explains that the writ of mandamus is not the correct remedy since the writ may be issued only to command a tribunal, corporation, board or person to do an act that is required to be done. The Solicitor General notes that nothing in RA No. 8749 prohibits the use of gasoline and diesel by owners of motor vehicles. According to the Solicitor General, RA No. 8749 does not even mention the existence of CNG as alternative fuel and avers that unless this law is amended to provide CNG as alternative fuel for PUVs, the respondents cannot propose that PUVs use CNG as alternative fuel.

According to the Solicitor General, the DOTC and the LTFRB are not in a position to compel the PUVs to use CNG as alternative fuel. The Solicitor General explains that the function of the DOTC is limited to implementing the emission standards set forth in RA No. 8749 and the said law only goes as far as setting the maximum limit for the emission of vehicles, but it does not recognize CNG as an alternative engine fuel. The Solicitor General avers that the petition should be addressed to Congress for it to come up with a policy that would compel the use of CNG as alternative fuel.

Issue:

Whether mandamus is the proper recourse to compel the LTFRB and the DOTC to require PUVs to use CNG.

Ruling:

No. Mandamus is not the proper remedy.

There is no dispute that under the Clean Air Act it is the DENR that is tasked to set the emission standards for fuel use and the task of developing an action plan. As far as motor vehicles are concerned, it devolves upon the DOTC and the line agency whose mandate is to oversee that motor vehicles prepare an action plan and implement the emission standards for motor vehicles, is the LTFRB.

Although both are general mandates that do not specifically enjoin the use of any kind of fuel, particularly the use of CNG, there is an executive order implementing a program on the use of CNG by public vehicles. Executive Order No. 290, entitled *Implementing the Natural Gas Vehicle Program for Public Transport (NGVPPT)*, took effect on February 24, 2004. The program recognized, among others, natural gas as a clean burning alternative fuel for vehicle which has the potential to produce substantially lower pollutants; and the Malampaya Gas-to-Power Project as representing the beginning of the natural gas industry of the Philippines.

The remedy lies with the legislature who should first provide the specific statutory remedy to the complex environmental problems bared by herein petitioners before any judicial recourse by mandamus is taken.

2. RA No. 9003 – Ecological Solid Waste Management Act of 2000

Province of Rizal, et al. v. Executive Secretary, et al.
G.R. No. 129546, December 13, 2005, 477 SCRA 436

Syllabus:

The Administrative Code of 1987 and EO No. 192 entrust the DENR with the guardianship and safekeeping of the Marikina Watershed Reservation and our other natural treasures. Its power, however, is not absolute, but is defined by the declared policies of the state, and is subject to the law and higher authority.

RA No. 9003 or “The Ecological Solid Waste Management Act of 2000” was enacted pursuant to the declared policy of the state “to adopt a systematic, comprehensive and ecological solid waste management system which shall ensure the protection of public health and environment, and utilize environmentally sound methods that maximize the utilization of valuable resources and encourage resource conservation and recovery.” It therefore requires the adherence to a Local Government Solid Waste Management Plan

Facts:

On November 17, 1988, the Secretaries of DPWH and DENR and the Governor of the Metropolitan Manila Commission (MMC) entered into a Memorandum of Agreement (MOA), whereby the land property of MMC in San Mateo, Rizal will be immediately utilized by DPWH and the MMC will oversee the development of the landfill. The *Sangguniang Bayan* of San Mateo wrote the Governor and the Secretaries that it had recently passed a Resolution banning the creation of dumpsites for Metro Manila garbage within its jurisdiction. It turns out that the land subject of the MOA and owned by the DENR was part of the Marikina Watershed Reservation Area. As a result, the Community Environment and Natural Resource Office (CENRO, DENR-IV) recommended that the construction of the landfill and dumping site be stopped. Despite the CENRO Investigative Report, DENR-EMB still granted an Environmental Compliance Certificate to MMC. Less than six months later, DENR suspended it. After a series of investigations, the agency realized that the MOA, entered into on November 17, 1988, was a costly error because the area agreed to be a garbage dumpsite was part of the Marikina Watershed Reservation. Despite the various objections and recommendations raised by the government agencies aforementioned, the Office of the President, through Executive Secretary Ruben Torres, signed and issued Proclamation No. 635 on August 28, 1995, “Excluding from the Marikina Watershed Reservation Certain Parcels of Land Embraced Therein for Use as Sanitary Landfill Sites and Similar Waste Disposal Under the Administration of the Metropolitan Manila Development Authority.” The petitioners filed a petition for *certiorari* with an application for a preliminary injunction. The Court of Appeals denied the petition.

Issue:

Whether or not the permanent closure of the San Mateo Landfill is mandated by RA No. 9003 or the Ecological Solid Waste Management Act of 2000.

Ruling:

Yes. RA No. 9003 mandates the closure of the landfill in order to protect the water supply.

San Mateo Landfill will remain permanently closed. First, the San Mateo site has adversely affected its environs, and second, sources of water should always be protected. Reports have shown that sources of domestic water supply would be adversely affected by the dumping operations and that the use of the areas as dumping site has already greatly affected the ecological balance and environmental factors of the community. In fact, the contaminated water was also found to flow to the Wawa Dam and Boso-boso River, which in turn empties into Laguna de Bay. It is the duty of the DENR to judiciously manage and conserve the country's resources, pursuant to the constitutional right to a balanced and healthful ecology which is a fundamental legal right that carries with it the correlative duty to refrain from impairing the environment.

3. RA No. 8371 – Indigenous Peoples Rights Act of 1997

Baguio City v. Masweng

G.R. No. 180206, February 4, 2009, 578 SCRA 88

Syllabus:

The NCIP is the primary government agency responsible for the formulation and implementation of policies, plans and programs to protect and promote the rights and well-being of indigenous cultural communities/indigenous peoples (ICCs/IPs) and the recognition of their ancestral domains as well as their rights thereto. In order to fully effectuate its mandate, the NCIP is vested with jurisdiction over all claims and disputes involving the rights of ICCs/IPs. The only condition precedent to the NCIP's assumption of jurisdiction over such disputes is that the parties thereto shall have exhausted all remedies provided under their customary laws and have obtained a certification from the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved.

Facts:

The Mayor of Baguio issued three Demolition Orders against the illegal structures constructed by Bawas, Ampaguey, Sr., and Basatan on the portion of the Busol Watershed Reservation at Aurora Hill, Baguio City because it does not have the required building permits in violation of Section 69 of PD No. 705, PD No. 1096, RA No. 7279.

When the demolition advices were issued against the occupants, Gumangan, Basatan, and Bawas, private respondents, filed a petition for injunction with a prayer for the issuance of a TRO or a writ of preliminary injunction against the Public Petitioners. The Private Respondents claimed that the lands "where their residential houses stand are their ancestral lands which they have been occupying and possessing openly and continuously since time immemorial; that their ownership thereof have been expressly recognized in Proclamation No. 15 dated April 27, 1922 and recommended by the Department of Environment and Natural Resources (DENR) for exclusion from the coverage of the Busol Forest Reserve."

The TROs were issued against the petitioners. The NCIP thereafter issued a Resolution granting the Preliminary Injunction. The Court of Appeals upheld the said resolution and held that "Baguio City is not exempt from the coverage of Republic Act No. 8371, otherwise known as the Indigenous Peoples Rights Act of 1997 (IPRA)."

Petitioners are contending that by virtue of Proclamation No. 15, the Busol Forest Reservation is part of their ancestral lands since the said proclamation mentions the names of Molintas and Gumangan as having claims over portions of the Busol Forest Reservation.

Issues:

- (1) Whether private respondents' ancestral land claim was indeed recognized by Proclamation No. 15, in which case, their right thereto may be protected by an injunctive writ.
- (2) Whether the NCIP has jurisdiction over the controversy.

Ruling:

- (1) No. Proclamation No. 15 is not a definitive recognition of the private respondents' ancestral land claim. The Molintas and Gumangan families were merely identified as claimants of a portion of the Busol Forest Reservation but the proclamation does not acknowledge their vested rights over it.
- (2) Yes. The NCIP has jurisdiction over the controversy

"The NCIP is the primary government agency responsible for the formulation and implementation of policies, plans and programs to protect and promote the rights and well-being of indigenous cultural communities/indigenous peoples (ICCs/IPs) and the recognition of their ancestral domains as well as their rights thereto." It has jurisdiction over *all claims and disputes involving the rights of the ICCs/IPs*, with the condition precedent of exhausting all remedies provided by customary laws, and to obtain a certification from the Council of Elders/Leaders.

Since petitioners alleged that by virtue of Proclamation No. 15 they have a claim over the Busol Forest Reservation, the controversy in this case falls under the jurisdiction of the NCIP. The NCIP is also granted the power to issue TROs by virtue of Section 69 of the IPRA, as affirmed by the NCIP Administrative Circular No. 1-03. The IPRA likewise provides for the prohibition against the issuance of a restraining order or preliminary injunction against the NCIP in "any case, dispute or controversy arising from or necessary to the interpretation of the IPRA and other laws relating to ICCs/IPs and ancestral domains."

Although Baguio City is governed by its own charter, the same charter recognizes the prior land rights acquired through any means before its effectivity, including the IPRA.

Province of North Cotabato v. GRP Peace Panel
G.R. No. 183591, October 14, 2008, 568 SCRA 402

Syllabus:

Assuming that the UN DRIP, like the Universal Declaration on Human Rights, must now be regarded as embodying customary international law - a question which the Court need not definitively resolve here – the obligations enumerated therein do not strictly require the Republic to grant the Bangsamoro people, through the instrumentality of the BJE, the particular rights and powers provided for in the MOA-AD. Even the more specific provisions of the UN DRIP are general in scope, allowing for flexibility in its application by the different States.

RA No. 8371 or the Indigenous Peoples Rights Act of 1997 provides for clear-cut procedure for the recognition and delineation of ancestral domain, which entails, among other things, the observance of the free and prior informed consent of the Indigenous Cultural Communities/ Indigenous Peoples. Notably, the statute does not grant the Executive Department or any government agency the power to delineate and recognize an ancestral domain claim by mere agreement or compromise.

Facts:

The Government of the Philippines (GRP) and the MILF, a rebel group, were about to sign the Memorandum of Agreement on the Ancestral Domain (MOA-AD) Aspect of the GRP-MILF Tripoli Agreement on Peace.

The Tripoli Agreement on Peace contained “the basic principles and agenda on the following aspects of the negotiation: Security Aspect, Rehabilitation Aspect, and Ancestral Domain Aspect.” The MOA-AD, according to the Solicitor General, contains “the commitment of the parties to pursue peace negotiations, protect and respect human rights, negotiate with sincerity in the resolution and pacific settlement of the conflict, and refrain from the use of threat or force to attain undue advantage while the peace negotiations on the substantive agenda are on-going.” The MOA-AD also mentions the “Bangsamoro Juridical Entity” (BJE) which has the authority and jurisdiction over the ancestral domain and land of the Bangsamoro, the natural resources, and the internal waters. However, a TRO was issued enjoining the GRP from signing the MOA-AD.

The case involves a petition for *certiorari*, *mandamus* and prohibition which seeks to declare the nullity of the MOA-AD, and to permanently enjoin the GRP from signing the same.

Issue:

Whether the contents of the MOA-AD violate the Constitution and the laws.

Ruling:

Yes. The Supreme Court held that the MOA-AD conflicts with the Constitution and the laws.

The MOA-AD sought to vest the BJE with a status of an associated state, or that which is closely approximating it. This status is used in international practice as a “transitional device of former colonies on their way to full independence.”

The concept of associated state is not recognized in the Constitution. “The Constitution, however, does not contemplate any state in this jurisdiction other than the Philippine State, much less does it provide for a transitory status that aims to prepare any part of Philippine territory for independence.”

The SC further ruled that under the MOA-AD, the BJE is a state, since it meets the qualifications of a state as laid down in the Montevideo Convention. It has a (1) permanent population, (2) defined territory, (3) government, and (4) capacity to enter into relations with other states. Thus, the BJE is in conflict with the national sovereignty and territorial integrity of the Philippines.

The BJE was also given the power “to enter into any economic cooperation and trade relations with foreign countries: provided, however, that such relationships and understandings do not include aggression against the Government of the Republic of the Philippines.” This is contrary to the Philippine Constitution which provides that only the President is granted the said power.

The MOA-AD is also inconsistent with the Organic Act of the ARMM and the IPRA. Firstly, the use of the term Bangsamoro is in conflict with Section 3, Article X of the Organic Act since it distinguished between the Bangsamoro people and the Tribal people instead of grouping them together as “all indigenous peoples of Mindanao.” Secondly, the IPRA’s procedure for the delineation and recognition of the ancestral domains is violated by the manner which the MOA-AD delineated the ancestral domain of the Bangsamoro.

International law recognized the right to self-determination of “peoples,” which may be the entire State population or only a portion thereof. However, this right does not extend to a unilateral right of secession since this right must operate within a framework of respect for the territorial integrity of existing states. There is a distinction between the right to internal and external self-determination. Internal self-determination pertains to the “people’s pursuit of its political, economic, social and cultural development within the framework of an existing state.” External self-determination is the “establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people.”

The SC found that “indigenous peoples situated within states do not have a general right to independence or secession from those states under international law, but they do have rights amounting to what was discussed above as the right to internal self-determination.”

The right of indigenous peoples to self-determination, encompassing the right to autonomy or self-government was recognized in the United Nations Declaration on the Rights of Indigenous Peoples (UN DRIP). However, “the obligations enumerated therein do not strictly require the Republic to grant the Bangsamoro people, through the instrumentality of the BJE, the particular rights and powers provided for in the MOA-AD. Even the more specific provisions of the UN DRIP are general in scope, allowing for flexibility in its application by the different States.”

4. PD No. 1586 – Establishing an Environmental Impact Statement System, Including Other Environmental Management Related Measures and for Other Purposes

Bangus Fry Fisherfolk, et al. v. Hon. Lanzas, et al.
G.R. No. 131442, July 10, 2003, 405 SCRA 530

Syllabus:

The settled rule is before a party may seek the intervention of the courts, he should first avail of all the means afforded by administrative processes. Hence, if a remedy within the administrative machinery is still available, with a procedure prescribed pursuant to law for an administrative officer to decide the controversy, a party should first exhaust such remedy before resorting to the courts. The premature invocation of a court's intervention renders the complaint without cause of action and dismissible on such ground.

Presidential Decree No. 1605 provides that the construction of any commercial structure within the coves and waters embraced by Puerto Galera Bay, as protected by Medio Island, is prohibited. The mooring facility to be constructed by the government of Mindoro is not a commercial structure; commercial or semi-commercial wharf or commercial docking as contemplated in Section 1 of PD No. 1605. Therefore, the issuance of the ECC does not violate PD No. 1605 which applies only to commercial structures like wharves, marinas, hotels and restaurants.

Facts:

On June 30, 1997, Regional Executive Director Antonio G. Principe (RED Principe) of Region IV, DENR issued an Environmental Clearance Certificate (ECC) in favor of National Power Corporation (NAPOCOR). The ECC authorized NAPOCOR to construct a temporary mooring facility in Minolo Cove, Sitio Minolo, Barangay San Isidro, Puerto Galera, Oriental Mindoro, despite the fact that the Sangguniang Bayan of Puerto Galera has declared Minolo Cove, a mangrove area and breeding ground for bangus fry, an eco-tourist zone. Petitioners, who claim to be fisherfolks from the area sought reconsideration of the ECC issuance. This, however, was denied. As a result, petitioners filed a complaint with Manila Regional Trial Court, Branch 7, for the cancellation of the ECC and for the issuance of a writ of injunction to stop the construction of the mooring facility. The trial court issued a temporary restraining order but this was lifted later on. Respondents ORMECO and the provincial officials of Oriental Mindoro moved to dismiss the complaint for failure of the petitioners to exhaust administrative remedies. Petitioners claim that there was no need for exhaustion of remedies and claim that the issuance of the ECC was a violation a DENR DAO No. 96-37 on the documentation of ECC applications.

Issues:

- (1) Whether administrative remedies should have been first exhausted before resorting to the courts.
- (2) Whether the issuance of the Environmental Compliance Certificate violated the DENR DAO No. 96-37.

Ruling:

Yes. Administrative remedies should have been first exhausted and the issuance of the ECC violated DENR DAO No. 96-37.

Petitioners bypassed the DENR Secretary and immediately filed their complaint with the Manila Regional Trial Court, depriving the DENR Secretary the opportunity to review the decision of his subordinate. Under the Procedural Manual for DAO 96-37 and applicable jurisprudence, petitioners' omission renders their complaint dismissible for lack of cause of action. The Manila Regional Trial Court therefore did not err in dismissing petitioners' complaint for lack of cause of action. Furthermore, PD No. 1605 provides that the construction of any commercial structure within the coves and waters embraced by Puerto Galera Bay, as protected by Medio Island, is prohibited. PD No. 1605 does not apply to this case. The mooring facility is obviously a government-owned public infrastructure intended to serve a basic need of the people of Oriental Mindoro. The mooring facility is not a "commercial structure; commercial or semi-commercial wharf or commercial docking" as contemplated in Section 1 of PD No. 1605. Therefore, the issuance of the ECC does not violate PD No. 1605 which applies only to commercial structures like wharves, marinas, hotels and restaurants.

PROHIBITED ACTS IN ENVIRONMENTAL LAWS

A. Terrestrial Laws

PD No. 705 – Revised Forestry Code			
Section	Prohibited Acts	Penalties	
77	Illegal Logging (Act No. 3185, as amended by RA No. 7659).	Value	Imprisonment
		P5 or less	2 years, 4 months and 1 day to 6 years
		More than P5-P6,000	8 years and 1 day to 12 years
		More than P6,000 to P12,000	10 years and 1 day to 12 years
		More than P12,000 to P22,000	14 years, 8 months and 1 day to 20 years
		More than P22,000	18 years, 2 months and 1 day to 20 years (additional 1 year for every P10,000 but not to exceed 20 years)
78	Unlawful occupation or destruction of forest lands and grazing lands.	<p><i>Fine:</i> P500 to P20,000, +10 times the rental fees and other charges which would have accrued had the occupation and use of the land been authorized under a license agreement, lease or permit; and</p> <p><i>Imprisonment:</i> 6 months to 2 years</p> <p>If offender did kaingin:</p> <p><i>Fine:</i> 8 times the regular forest charges due on the forest products destroyed; and</p> <p><i>Imprisonment:</i> 2 to 4 years</p>	

PD No. 705 – Revised Forestry Code		
Section	Prohibited Acts	Penalties
		<p><i>In all cases:</i> eviction and forfeiture to the government of all improvements made and all vehicles, domestic animals, and equipment of any kind used in the commission of the offense.</p> <p>If the offender was a public officer: automatic dismissal from office and permanent disqualification from any elective or appointive position.</p>
79	Pasturing livestock without a permit in forest lands, grazing lands, and alienable and disposable lands not yet disposed of.	<p><i>Fine:</i> 10 times the regular rentals due + confiscation of such livestock and all improvements; and</p> <p><i>Imprisonment:</i> 6 months to 2 years</p>
80	Illegal occupation of National Parks System and recreation areas, and vandalism therein. Also hurting, capturing, and killing any kind of bird, fish or wild animal life within the area of the National Parks System.	<p><i>Fine:</i> P500 to P20,000, exclusive of the value of the thing damaged; and</p> <p>Eviction and forfeiture in favor of natural resources collected or removed, and any construction or improvement made.</p>
81	Destruction of wildlife resources.	<p><i>Fine:</i> P100 per violation + denial of hunting permit for 3 years.</p>
82	Survey by unauthorized person.	<p><i>Imprisonment:</i> 2 to 4 years</p> <p>Confiscation of implements used in the violation and cancellation of license.</p>
83	Misclassification and survey by government official or employee.	<p><i>Fine:</i> Not less than P1,000; and</p> <p><i>Imprisonment:</i> Not less than 1 year</p> <p>Dismissal from service with prejudice to re-employment after appropriate administrative proceedings.</p>

PD No. 705 – Revised Forestry Code		
Section	Prohibited Acts	Penalties
84	Tax declaration on real property.	<i>Imprisonment:</i> 2 to 4 years; and Perpetual disqualification from holding an elective or appointive office.
85	Coercing, influencing, abetting, or persuading public officer or employee to commit violations of Sections 83 and 84.	<i>Fine:</i> Not less than P500/hectare surveyed, classified or released; and <i>Imprisonment:</i> Not less than 1 year
	Coercing, influencing, abetting, or persuading public officer or employee by using power and influence.	<i>Fine:</i> Not more than P5,000; and <i>Imprisonment:</i> Not less than 1 year
86	Failure to pay the amount due under the Revised Forestry Code.	<i>Surcharge:</i> 25% of the amount due.
	Failure or refusal to remit forest charges, or delays, obstructs, or prevents the same; or who orders, causes or effects the transfer or diversion of the funds.	<i>Fine:</i> Not exceeding P100,000; and/or <i>Imprisonment:</i> Not exceeding 6 years If government official or employee: dismissal with prejudice to reinstatement and disqualification from holding any elective or appointive office. If the offender is a corporation, partnership or association, the officers and directors thereof shall be liable.
87	Failure to adhere to established grading rules and standards in the sale of wood products.	Suspension of export, sawmill, or other license or permit for not less than 2 years.
	Failure to issue proper invoice.	<i>Fine:</i> Not less than P200 or the total value of the invoice, whichever is greater; and suspension of dealer's license for not less than 2 years.

RA No. 7076 – Small-Scale Mining Act		
Section	Prohibited Acts	Penalties
27	Violations of the provisions of this Act or the rules and regulations.	Imprisonment of not less than 6 months nor more than 6 years and shall include the confiscation and seizure of equipment, tools and instruments.

RA No. 7586 – NIPAS Act		
Section	Prohibited Acts	Penalties
20(a)	Hunting, destroying, disturbing, or mere possession of any plants or animals or products derived there from without PAMB permit.	<p><i>Fine:</i> P5,000 to P500,000 exclusive of the value of the thing damaged; and/or</p> <p><i>Imprisonment:</i> 1 to 6 years if area requires rehabilitation or restoration, offender shall restore or compensate for the restoration; eviction from the land; forfeiture in favor of the government of all minerals, timber, or any species collected or removed including all equipment, devices, and firearms used in connection therewith, and any construction or improvement made thereon by the offender.</p> <p>If offender is an association or corporation, the president or manager shall be directly responsible for the act of his employees and laborers.</p> <p>The DENR may impose administrative fines and penalties.</p>
20(b)	Dumping of any waste products detrimental to protected area, or to plants and animals or inhabitants therein.	
20(c)	Use of motorized equipment without PAMB permit.	
20(d)	Mutilating, defacing or destroying objects of natural beauty, or objects of interest to cultural communities (of scenic value).	
20(e)	Damaging and leaving roads and trails in a damaged condition.	
20(f)	Squatting, mineral locating, or otherwise occupying any land.	
20(g)	Constructing or maintaining any kind of structure, fences or enclosures, and conducting any business enterprise without a permit.	
20(h)	Leaving in exposed or unsanitary condition refuse or debris, or depositing in ground or in bodies of water.	
20(i)	Altering, removing, destroying, or defacing, boundary marks or signs.	

RA No. 7942 – Philippine Mining Act of 1995		
Section	Prohibited Acts	Penalties
101	Knowingly presenting false application, declaration or evidence to the government.	<i>Fine: P10,000</i>
	Publishing or causing to be published false information relating to mines, mining operations or mineral agreements, FTAA's and permits.	
102	Illegal exploration (without permit).	<i>Fine: P50,000</i>
103	Theft of minerals.	<i>Fine: P10,000 to P20,000; and/or Imprisonment: 6 months to 6 years</i> Damages and compensation for stolen minerals. In the case of associations, partnerships, or corporations, the president and each of the directors thereof shall be responsible for the acts committed by such association, corporation or partnership.
104	Destroying or damaging mining structures.	Imprisonment: Up to 5 years Compensation for damages.
105	Mine arson.	In accordance with the Revised Penal Code.
106	Damaging a mine, unlawfully causing water to run into the mine, obstructing any shaft or passage to mine, rendering useless, damaging or destroying things used in the mine.	<i>Imprisonment: Up to 5 years</i> Compensation for damages.
107	Preventing or obstructing, without reasonable cause, mining operations.	<i>Fine: Up to P5,000; and/or Imprisonment: Up to 1 year</i>

RA No. 7942 – Philippine Mining Act of 1995		
Section	Prohibited Acts	Penalties
108	Willfully violating or grossly neglecting to abide by ECC conditions, thereby causing pollution.	Fine: P50,000 to P200,000; and/or Imprisonment: 6 months to 6 years
109	Preventing or obstructing the DENR Secretary, the MGB Director, or their representatives, in performing their duties under the provisions of this Act.	<i>Fine:</i> Up to P5,000; and/or <i>Imprisonment:</i> Up to 1 year
110	Violating other provisions of this Act and its IRR.	<i>Fine:</i> Up to P5,000
111	Late submission of reports in accordance with the IRR.	The Secretary may impose fines.

RA No. 9072 – National Caves and Cave Resources Management and Protection Act		
Section	Prohibited Acts	Penalties
7(a)	Knowingly, destroying, disturbing, defacing, marring, altering, removing or harming speleogem or speleothem of any cave, or altering the free movement of any animal or plant life into or out of any cave.	<i>Fine:</i> P20,000 to P500,000; and/or <i>Imprisonment:</i> 2 years to 6 years For persons furnishing capital:
7(b)	Gathering, collecting, possessing, consuming, selling, bartering, or exchanging or offering for sale without authority any cave resource.	<i>Fine:</i> P500,000 to P1,000,000; and/or <i>Imprisonment:</i> 6 years and 1 day to 8 years
7(c)	Counseling, procuring, soliciting or employing any other person to violate any provision of this Section.	Rehabilitation, restoration of area or compensation for the damage. <i>Administrative penalty:</i> Confiscation of cave resources, and conveyances and equipment used.

RA No. 9147 – Wildlife Resources Conservation and Protection Act		
Section	Prohibited Acts	Penalties
27(a)	<p>Killing and destroying wildlife species.</p> <p>Exceptions:</p> <ol style="list-style-type: none"> Part of religious rituals of tribal groups; Wildlife afflicted with incurable communicable disease; To put an end to misery suffered by wildlife; To prevent imminent danger to life or limb of a human being; Use in authorized research or experiment. 	<p>If done against species listed as critical <i>Fine:</i> P100,000 to P1,000,000; and/or <i>Imprisonment:</i> 6 years and 1 day to 12 years</p> <p>If done against endangered species <i>Fine:</i> P50,000 to P500,000; and/or <i>Imprisonment:</i> 4 years and 1 day to 6 years</p> <p>If done against vulnerable species <i>Fine:</i> P30,000 to P300,000; and/or <i>Imprisonment:</i> 2 years and 1 day to 4 years</p> <p>If done against threatened species <i>Fine:</i> P20,000 to P200,000; and/or <i>Imprisonment:</i> 1 year and 1 day to 2 years</p> <p>If done against other wildlife species <i>Fine:</i> P10,000 to P100,000; and/or <i>Imprisonment:</i> 6 months and 1 day to 1 year</p>
27(b)	<p>Inflicting injury that cripples/impairs the reproductive system of wildlife species.</p>	<p>If done against species listed as critical <i>Fine:</i> P50,000 to P500,000; and/or <i>Imprisonment:</i> 4 years and 1 day to 6 years</p> <p>If done against endangered species <i>Fine:</i> P30,000 to P300,000; and/or <i>Imprisonment:</i> 2 years and 1 day to 4 years</p> <p>If done against vulnerable species <i>Fine:</i> P20,000 to P200,000; and/or <i>Imprisonment:</i> 1 year and 1 day to 2 years</p> <p>If done against threatened species <i>Fine:</i> P10,000 to P100,000; and/or <i>Imprisonment:</i> 6 months and 1 day to 1 year</p> <p>If done against other wildlife species <i>Fine:</i> P5,000 to P20,000; and/or <i>Imprisonment:</i> 1 month to 6 months</p>

RA No. 9147 – Wildlife Resources Conservation and Protection Act		
Section	Prohibited Acts	Penalties
27(c)	Effecting any of the following acts in critical habitats: <ul style="list-style-type: none"> a. Dumping of waste products b. Squatting c. Mineral exploration/extraction d. Burning e. Logging f. Quarrying 	<i>Fine:</i> P5,000 to P5,000,000; and/or <i>Imprisonment:</i> 1 month to 8 years
27(d)	Introducing, reintroducing, restocking wildlife resources.	
27(e)	Maltreating/inflicting other injuries not covered by the preceding paragraph.	<p>If done against species listed as critical <i>Fine:</i> P5,000 to P300,000; and/or <i>Imprisonment:</i> 2 years and 1 day to 4 years</p> <p>If done against endangered species <i>Fine:</i> P2,000 to P200,000; and/or <i>Imprisonment:</i> 1 year and 1 day to 2 years</p> <p>If done against vulnerable species <i>Fine:</i> P10,000 to P100,000; and/or <i>Imprisonment:</i> 6 months and 1 day to 1 year</p> <p>If done against threatened species <i>Fine:</i> P500 to P50,000; and/or <i>Imprisonment:</i> 1 month and 1 day to 6 months</p> <p>If done against other wildlife species <i>Fine:</i> P200 to P20,000; and/or <i>Imprisonment:</i> 10 days to 1 month</p>

RA No. 9147 – Wildlife Resources Conservation and Protection Act		
Section	Prohibited Acts	Penalties
27(f)	Trading of wildlife.	<p>If done against species listed as critical <i>Fine:</i> P30,000 to P300,000; and <i>Imprisonment:</i> 2 years and 1 day to 4 years</p> <p>If done against endangered species <i>Fine:</i> P20,000 to P200,000; and <i>Imprisonment:</i> 1 year and 1 day to 2 years</p> <p>If done against vulnerable species <i>Fine:</i> P10,000 to P100,000; and <i>Imprisonment:</i> 6 months and 1 day to 1 year</p> <p>If done against threatened species <i>Fine:</i> P5,000 to P20,000; and <i>Imprisonment:</i> 1 month to 6 months</p> <p>If done against other wildlife species <i>Fine:</i> P1,000 to P5,000; and <i>Imprisonment:</i> 10 days to 1 month</p>
27(g)	Collecting, hunting, or possessing wildlife, their by-products, and derivatives.	
27(h)	Gathering or destroying active nests, nest trees, host plants and the like.	<p>If done against species listed as critical <i>Fine:</i> P50,000 to P100,000; and <i>Imprisonment:</i> 6 months and 1 day to 1 year</p> <p>If done against endangered species <i>Fine:</i> P20,000 to P50,000; and <i>Imprisonment:</i> 3 months and 1 day to 6 months</p> <p>If done against vulnerable species <i>Fine:</i> P5,000 to P20,000; and <i>Imprisonment:</i> 1 month and 1 day to 3 months</p> <p>If done against threatened species <i>Fine:</i> P1,000 to P5,000; and <i>Imprisonment:</i> 10 days to 1 month</p> <p>If done against other wildlife species <i>Fine:</i> P200 to P1,000; and <i>Imprisonment:</i> 5 to 10 days</p>
27(i)	Transporting wildlife.	
		<p>Other penalties common to all: <i>Ipso facto</i> forfeiture of wildlife, its derivatives or by-products and all paraphernalia, tools and conveyances used.</p> <p>Deportation after service of sentence, if alien.</p> <p>Note also: Fines are increased every 3 years.</p>

RA No. 9175 – Chain Saw Act		
Section	Prohibited Acts	Penalties
7(1)	Selling, purchasing, reselling, transferring, distributing, possessing of chain saw without proper permit.	<i>Fine:</i> P15,000 to P30,000; and/or <i>Imprisonment:</i> 4 years, 2 months and 1 day to 6 years
7(2)	Unlawful importation or manufacturing of chain saw.	<i>Fine:</i> P1,000 to P4,000; and <i>Imprisonment:</i> 1 month to 6 months
7(3)	Defacing or tampering with original registered engine serial number.	<i>Fine:</i> P1,000 to P4,000; and <i>Imprisonment:</i> 1 month to 6 months
7(4)	Actual unlawful use of chain saw to cut tree or wood without permit.	<i>Fine:</i> P30,000 to P50,000; and/or <i>Imprisonment:</i> 6 years and 1 day to 8 years Confiscation of chain saw.
		Additional penalties: Penalty shall also be imposed on person/corporation who ordered the violation. If violator is a government employee, then penalty is removal from office and perpetual disqualification. Chain saw to be sold in public auction to qualified person; proceeds will go to the DENR.

B. Marine Laws

RA No. 4850 – Creating the Laguna Lake Development Authority <i>Rules and Regulations Implementing the Environmental User Fee System in the Laguna de Bay Region, LLDA Resolution No. 33, Series of 1996.</i>		
Section	Prohibited Acts	Penalties
27	<p>General Prohibitions</p> <ol style="list-style-type: none"> Undertake development and/or project without first securing clearance from the LLDA. Throw, run, drain, or otherwise dispose into any of the waters and/or land resources; or cause, permit, suffer to be thrown, run, drain, allow to seep, or otherwise dispose thereto, any organic or inorganic matter or any substance in liquid form that shall cause pollution. Dispose of toxic and/or hazardous wastes without first securing a written authorization from the LLDA. 	<p><i>Fine:</i> not less than P10,000 nor more than P200,000 for each day during which such violation or default continues</p> <p><i>Imprisonment:</i> 2 to 6 years</p> <p>In addition, person may be enjoined from continuing such violation</p>
28	<p>Specific Prohibitions</p> <p>Perform, cause or undertake any of the following activities without first securing a permit from LLDA:</p> <ol style="list-style-type: none"> The increase in volume or strength of any wastes in excess of the permitted discharge specified under existing permit; The construction or use of any outlet or unauthorized by-pass channels for the discharge of any untreated waste, gaseous, liquid or solid, directly or indirectly, into the water and/or land resources. 	<p>If the violator is a corporation, partnership or association, the President or Chief Executive shall be liable.</p> <p>[as amended by LLDA Resolution No. 404 series of 2011]</p>

RA No. 4850 – Creating the Laguna Lake Development Authority		
Section	Prohibited Acts	Penalties
29	<p>Other Prohibitions</p> <p>a. Willful violation of any order or decision promulgated by the LLDA.</p> <p>b. Refusing, obstructing, or preventing entry of authorized representatives of LLDA into any property devoted to industrial manufacturing, processing, or commercial use for the purpose of inspecting or investigating to determine compliance of the project with LLDA's program and/or the conditions therein relating to pollution or possible or eminent pollution.</p> <p>c. Misconduct in the presence of the General Manager of any duly constituted Public Hearing Committee during inquiries, investigations and proceedings being conducted, or so near them as to seriously interrupt any hearing or session or any proceeding; or willfully fails or refuses, without just cause, to comply with summons, subpoenas, subpoena <i>duces tecum</i> issued by the General Manager or by the duly designated Hearing Committee or, being present at a hearing, session or investigation, refuses to be sworn as a witness or to answer questions when lawfully required to do so.</p>	<p><i>Fine:</i> not less than P10,000 nor more than P200,000 for each day during which such violation or default continues</p> <p><i>Imprisonment:</i> 2 to 6 years</p> <p>In addition, person may be enjoined from continuing such violation</p> <p>If the violator is a corporation, partnership or association, the President or Chief Executive shall be liable.</p> <p>[as amended by LLDA Resolution No. 404 series of 2011]</p>
30	<p>Violation of any order or decision of LLDA or failure to comply with the Rules and Regulations or permits issued.</p>	<p><i>Administrative Fine:</i> not exceeding P5,000 in addition to other sanctions stated in this Rules.</p> <p>This fine shall not preclude the filing of criminal and civil case as the case may warrant.</p>
31	<p>Failure to control or abate pollution.</p>	<p><i>Administrative Fine:</i> not exceeding P5,000 per day for every day during which such violation or default continues.</p>

RA No. 4850 – Creating the Laguna Lake Development Authority		
Section	Prohibited Acts	Penalties
32	Failure to renew discharge permit within the period under Section 13.	<p><i>Fine:</i> not less than P10,000 nor more than P200,000 for each day during which such violation or default continues</p> <p><i>Imprisonment:</i> 2 to 6 years</p> <p>In addition, person may be enjoined from continuing such violation</p> <p>If the violator is a corporation, partnership or association, the President or Chief Executive shall be liable.</p> <p>[as amended by LLDA Resolution No. 404 series of 2011]</p>
33	Refuse, obstruct, or hamper the entry of duly authorized representative of LLDA into any property of public domain or private property devoted to industrial, manufacturing, processing, or commercial use, for the purpose of inspecting or investigating the conditions therein relating to pollution or compliance with the other provisions of this Rules.	<p><i>Fine:</i> not exceeding P5,000 and contempt upon application with the proper courts and/or other actions.</p>
34	Violations of these Rules, failure to perform any condition imposed in a permit or clearance or refusal to obey a duly promulgated order or decision, of LLDA, thereby causing damage to the lakes resources or other surface water.	Pay damages to LLDA and affected parties in an amount to be determined by the LLDA.
35	Non-payment of fines.	Closure or stoppage of the operation.

RA No. 8550 – Fisheries Code		
Section	Prohibited Acts	Penalties
86	Commercial fishing, vessel fishing in bays and other fishery management areas declared as overexploited.	<p>Penalty to be imposed against the commercial fishing boat captain and the 3 highest officers of the boat.</p> <p><i>Fine:</i> equivalent to the value of the catch or P10,000, whichever is higher; and,</p> <p><i>Imprisonment:</i> 6 months</p> <p>Confiscation of catch and gears. Automatic revocation of license.</p>
	Commercial fishing in municipal waters by person not listed in the registry of the municipal fisherfolk.	<p><i>Fine:</i> P500</p> <p>Confiscation of catch.</p>
87	<p>Poaching</p> <p><i>Prima facie</i> evidence of poaching: entry of foreign vessel in Philippine waters.</p>	<p><i>Criminal penalty</i></p> <p><i>Fine:</i> \$100,000</p> <p>Confiscation of catch, fishing equipment and fishing vessel.</p> <p>Administrative Penalty (DA-BFAR)</p> <p><i>Fine:</i> \$50,000 to \$200,000</p>
88	Fishing through explosives, noxious or poisonous substance, and/or electricity.	<p><i>Possession</i></p> <p><i>Imprisonment:</i> 6 months to 2 years</p> <p>Confiscation of explosives, noxious or poisonous substances, electrofishing devices, vessel, catch and fishing equipment.</p>
		<p><i>Actual Use</i></p> <p><i>Imprisonment:</i> 5 to 10 years</p> <p>Confiscation of explosives, noxious or poisonous substances, electrofishing devices, vessel, catch and fishing equipment.</p> <p>Without prejudice to other appropriate cases if resulting in physical injuries or death.</p>
		<p>Dealing in, selling, or in any manner disposing of, for profit, illegally caught/gathered fisheries species.</p> <p><i>Imprisonment:</i> 6 months to 2 years</p> <p>Confiscation of fish.</p>

RA No. 8550 – Fisheries Code		
Section	Prohibited Acts	Penalties
89	Using fine mesh net, except when catching species which, by nature, are small, but already mature, e.g., bangus fry, glass eels, elvers, tabios and <i>alamang</i> .	<p><i>Criminal penalty</i> <i>Fine:</i> P2,000 to P20,000; and/or <i>Imprisonment:</i> 6 months to 2 years</p> <p>If commercial fishing vessel, penalty shall also be imposed on boat captain and master fisherman</p> <p><i>Administrative Penalty</i> Fine Cancellation of Permit.</p>
90	Use of active fishing gear in municipal waters at bays and other fishery management areas.	<p><i>Fine:</i> P2,000 to P20,000 for owner/operator of vessel</p> <p><i>Imprisonment:</i> 2 to 6 years for boat captain and master fisherman.</p> <p>Confiscation of catch.</p>
91	Gathering, possessing, selling, exporting ordinary precious and semi-precious corals, whether raw or processed, except for scientific or research purposes.	<p><i>Fine:</i> P2,000 to P20,000; and/or</p> <p><i>Imprisonment:</i> 6 months to 2 years</p>
92	Fishing with gear, method that destroys coral reefs, seagrass beds, and other fishery marine life habitats as may be determined by DA. <i>Muro-Ami</i> and any of its variations, and such similar gear and methods that require diving, other physical or mechanical acts to pound coral reefs and other habitat to entrap, gather or catch fish and other fishery species.	<p>Penalty to be imposed against operator, boat captain, master fisherman, recruiter or organizer</p> <p><i>Fine:</i> P100,000 to P500,000; and/or</p> <p><i>Imprisonment:</i> 2 to 10 years</p> <p>Confiscation of catch and gear.</p>
	Gathering, selling or exporting white sand, silica, pebbles and other substances that make up any marine habitat.	<p><i>Fine:</i> P100,000 to P500,000; and/or</p> <p><i>Imprisonment:</i> 2 to 10 years</p> <p>Confiscation of substances taken.</p>

RA No. 8550 – Fisheries Code		
Section	Prohibited Acts	Penalties
93	Illegal use of superlight.	<i>Fine:</i> P5,000/superlight; and/or <i>Imprisonment:</i> 6 months to 2 years Without prejudice to confiscation of superlight used, fishing vessel and the gear.
94	Converting mangroves into fishponds or for any other purposes.	<i>Fine:</i> P80,000; and/or <i>Imprisonment:</i> 6 years and 1 day to 12 years Rehabilitation or restoration, or compensation for restoration.
95	Fishing in overfished area and during closed season.	<i>Fine:</i> P6,000; and/or <i>Imprisonment:</i> 6 months and 1 day to 6 years Forfeiture of catch; cancellation of permit/license.
96	Fishing in areas declared by DA as fishery reserves, refuge and sanctuaries.	<i>Fine:</i> P2,000 to P20,000; and/or <i>Imprisonment:</i> 2 to 6 years Forfeiture of catch; cancellation of permit/license.
97	Fishing or taking of rare, threatened or endangered species as listed in the CITES and as determined by the DA See also: FAO 208, series of 2001, Conservation of Rare, Threatened, and Endangered Fishery Species; FAO 185-1, Series of 1997, Amending Sections 1 and 2 of FAO 185 by adding whales and porpoises in the ban on the taking or catching, selling, purchasing and possessing, transporting and exporting of dolphins.	<i>Fine:</i> P120,000; and/or <i>Imprisonment:</i> 12 to 20 years Confiscation of catch; cancellation of permit/license.

RA No. 8550 – Fisheries Code		
Section	Prohibited Acts	Penalties
98	Catching, gathering, capturing or possessing mature milkfish or sabalo, or breeders/spawners of other fishery species, except for scientific or research purposes.	<p><i>Fine:</i> P80,000; and/or</p> <p><i>Imprisonment:</i> 6 months and 1 day to 8 years</p> <p>Confiscation of catch; cancellation of permit/license.</p>
99	Exportation of breeders, spawners, eggs or fry in violation of the Code.	<p><i>Imprisonment:</i> 8 years</p> <p>Confiscation of the same or fine double the value of the same.</p> <p>Revocation of fishing and/or export license/permit.</p>
100	Importation or exportation of fish or fisheries species in violation of the Code.	<p><i>Fine:</i> P80,000; and</p> <p><i>Imprisonment:</i> 8 years</p> <p>Destruction of live fishery species or forfeiture of non-live fishery species in favor of the Department for its proper disposition.</p> <p><i>Provided,</i> That violators of the provision shall be banned from being members of companies currently engaged in fisheries or companies to be created in the future, the guidelines for which shall be promulgated by the Department.</p>
101	Violation of catch ceilings.	<p><i>Fine:</i> P50,000; and/or</p> <p><i>Imprisonment:</i> 6 months and 1 day to 6 years</p> <p>Forfeiture of catch; cancellation of license.</p>

RA No. 8550 – Fisheries Code		
Section	Prohibited Acts	Penalties
102	Aquatic Pollution.	<i>Fine:</i> P80,000, plus P8,000 per day until such violation ceases and the fines paid; and/or <i>Imprisonment:</i> 6 years and 1 day to 12 years
103(a)	Failure to comply with the minimum safety standards upon demand by proper authorities.	Subject to the provisions of subparagraph (b)* of this section: <i>Criminal penalty</i> <i>Fine:</i> P2,000 to P10,000; and/or
103(b)	Failure to conduct a yearly report on all fishponds, fish pens and fish cages.	<i>Imprisonment:</i> 1 month and 1 day to 6 months
103(c)	Taking, selling, transferring or possessing for any purpose any shellfish, which is sexually mature or below the minimum size or above the maximum quantities prescribed for the particular species.	<i>Administrative penalty</i> <i>Fine:</i> up to P10,000; and/or Cancellation of permit or license; forfeiture of the proceeds of such offense and the instruments or tools with which it was committed.
103(d)	Obstruction to navigation or flow and ebb of tide in any stream, river, lake, or bay.	*Subparagraph (b) If the offender be the owner of the fishpond, fish pen, or fish cage, he shall be subjected to the following penalties:
103(e)	Construction and operation of fish corrals/traps, fish pens, and fish cages without a license/permit.	(1) First offense, a fine of P500 per unreported hectare; (2) Subsequent offenses, a fine of P1,000 per unreported hectare.
103, last ¶	Unlawful obstruction or delaying of inspection and/or movement of fish and fishery aquatic products.	<i>Fine:</i> not more than P10,000; and/or <i>Imprisonment:</i> 2 years maximum Forfeiture of the proceeds of such offense and the instruments or tools with which it was committed.

RA No. 8550 – Fisheries Code		
Section	Prohibited Acts	Penalties
104	Commercial fishing vessel employing unlicensed fisherfolk or fishworker.	Penalty to be imposed against the operator or owner. <i>Fine: P500 per month of employment</i>
	Commercial fishing vessel employing unlicensed crew.	Penalty to be imposed against the operator or owner. <i>Fine: P1,000 per month of employment</i>
105	Obstructing defined migration paths of anadromous, catadromous and other migratory species, in areas including, but not limited to river mouths and estuaries within a distance determined by concerned FARMCs.	<i>Fine: P50,000 to P100,000; and/or</i> <i>Imprisonment: 7 to 12 years</i> Cancellation of permit/license; dismantling and confiscation of obstruction.
106	Obstructing, evading, or hindering any fishery law enforcement officer of the DA to perform his/her duty.	Penalty to be imposed against the operator, owner or master. <i>Fine: P10,000</i> Cancellation of registration, permit, or license of vessel. Cancellation of license of master fisher.

RA No. 9275 – Clean Water Act		
Section	Prohibited Acts	Penalties
27(a)	<p>Pollution of water body Discharging, depositing or causing to be deposited material of any kind directly or indirectly into the water bodies or along the margins of any surface water, where the same shall be liable to be washed into such surface water, either by tide action or by storm, floods, or otherwise, which could cause water pollution or impede natural flow of water in the water body.</p>	Any person who commits any of the prohibited acts or violates any of the provision of this Act or its IRR shall be fined by the Secretary, upon the recommendation of PAB.
27(b)	<p>Groundwater pollution Discharging, injecting or allowing to seep into the soil or sub-soil any substance in any form that would pollute the groundwater. In the case of geothermal projects, and subject to the approval of the Department, regulated discharge for short-term activities and deep re-injection of geothermal liquids may be allowed: <i>Provided</i>, That safety measures are adopted to prevent contamination of the groundwater.</p>	<p><i>Fine:</i> P10,000 to P200,000 per day for every day of violation.</p> <p>The fine will increase by 10% every 2 years.</p> <p>The Secretary, upon the recommendation of the PAB, may order the closure, suspension of development, or construction, or cessation of operations, or where appropriate, disconnection of water supply, until such time as proper environmental safeguards are put in place and/or compliance with this Act, or its rules and regulations, are undertaken, without prejudice to the issuance of an <i>ex parte</i> order for such closure, suspension, or cessation of operations during the pendency of the case.</p>
27(c)	<p>Facility discharge without permit Operating facilities that discharge regulated water pollutants without the valid required permits, or after the permit was revoked for any violation of any condition therein.</p>	
27(d)	<p>Disposal of infectious waste from vessel Disposal of potentially infectious medical waste into seawater by vessels (unless the health or safety of individuals on board the vessel is threatened by a great and imminent peril).</p>	
27(e)	<p>Unauthorized transport Unauthorized transport or dumping into sea waters of sewage sludge or solid waste as defined under RA No. 9003.</p>	

RA No. 9275 – Clean Water Act		
Section	Prohibited Acts	Penalties
27(f)	Chemical dumping Transport, dumping or discharge of prohibited chemicals, substances or pollutants listed under RA No. 6969.	<p>Any person who commits any of the prohibited acts or violates any of the provision of this Act or its IRR shall be fined by the Secretary, upon the recommendation of PAB.</p> <p><i>Fine:</i> P10,000 to P200,000 per day for every day of violation.</p> <p>The fine will increase by 10% every 2 years.</p> <p>The Secretary, upon the recommendation of the PAB, may order the closure, suspension of development, or construction, or cessation of operations, or where appropriate, disconnection of water supply, until such time as proper environmental safeguards are put in place and/or compliance with this Act, or its rules and regulations, are undertaken, without prejudice to the issuance of an <i>ex parte</i> order for such closure, suspension, or cessation of operations during the pendency of the case.</p>
27(g)	Illegal facility Operates facilities that discharge or allow to seep, willfully or through gross negligence, prohibited chemicals, substances or pollutants listed under RA No. 6969, into water bodies or wherein the same shall be liable to be washed into such surface, ground, coastal or marine water.	
27(h)	Sewerage Development/Expansion against EIA Undertaking activities or development and expansion of projects in violation of PD No. 1586 and its Implementing Rules and Regulations; or Operating wastewater/sewerage facilities in violation of PD No. 1586 and its Implementing Rules and Regulations.	
27(i)	Illegal discharge Discharging regulated water pollutants without the valid required discharge permit pursuant to this Act, or after the permit was revoked for any violation of any condition therein.	
27(k)	Refusal to allow entry, inspection and monitoring by the Department.	
27(l)	Refusal to allow access by the Department to relevant reports and records.	
27(m)	Refusal or failure to submit reports when required by the Department.	
27(n)	Refusal or failure to designate pollution control officers.	
27(o)	Directly using booster pumps in the distribution system or tampering with the water supply.	

RA No. 9275 – Clean Water Act		
Section	Prohibited Acts	Penalties
28¶2	Failure or refusal to undertake clean-up operations willfully or through gross negligence.	<i>Fine:</i> P50,000 to P100,000 per day for each day of violation; and <i>Imprisonment:</i> 2 to 4 years
	Failure or refusal to undertake clean-up operations, which results in serious injury or loss of life, and/or irreversible water contamination of surface, ground, coastal and marine water.	<i>Fine:</i> P500,000 per day for each day during which the omission and/or contamination continues; and <i>Imprisonment:</i> 6 years and 1 day to 12 years
28¶3-4	Gross violations 1. Deliberate discharge of toxic pollutants identified pursuant to RA No. 6969 in toxic amounts; 2. Five or more violations within a period of 2 years; 3. Blatant disregard of the orders of the PAB, such as non-payment of fines, breaking of seals, or operating despite the existence of an order for closure, discontinuance or cessation of operation.	<i>Fine:</i> P500,000 to P3 million per day for each day of violation; and/or <i>Imprisonment:</i> 6 to 10 years If the offender is a juridical person, the president, manager, and the pollution control officer in charge of the operation shall suffer the penalty.
28¶5	Violations falling under Section 4 of PD No. 979 or its regulations.	For each offense, without prejudice to the civil liability of the offender in accordance with existing laws: <i>Fine:</i> P50,000 to P1 million; and/or <i>Imprisonment:</i> 1 to 6 years If the offender is a juridical entity, then its officers, directors, agents or any person primarily responsible shall be held liable.

RA No. 9275 – Clean Water Act		
Section	Prohibited Acts	Penalties
	Any vessel from which oil or other harmful substances are discharged in violation of Section 4 of PD No. 979.	<p><i>Fine:</i> P500,000 to P3 million per day for each day of violation.</p> <p>Clearance of such vessel from the port of the Philippines may be withheld until the fine is paid and such penalty shall constitute a lien on such vessel which may be recovered in proceedings by libel in <i>rem</i> in the proper court which the vessel may be. The owner or operator of a vessel or facility which discharged the oil or other harmful substances will be liable to pay for clean up costs.</p>
28¶6	Water pollution cases involving acts or omission committed within the Laguna Lake Region.	Cases shall be dealt with in accordance with the procedure under RA No. 4850.
29	Non-compliance of the LGU with the Water Quality Framework and Management Area Action Plan.	Local Government Officials concerned shall be subject to Administrative sanctions in case of failure to comply with their action plan in accordance with the relevant provisions of RA No. 7160.

C. Aerial and Other Laws

PD No. 1586 – Establishing an Environmental Impact Statement System, Including Other Environmental Management Related Measures and for Other Purposes		
Section	Prohibited Acts	Penalties
9	Violation of the EIS requirement, the terms and conditions of the issuance of an ECC, or the standards, rules and regulations issued pursuant to the Decree.	<i>Administrative Fine:</i> Not more than P50,000 for every violation.

RA No. 8371 – Indigenous Peoples Rights Act		
Section	Prohibited Acts	Penalties
72	Violation of any provision of IPRA	<p>Any person who commits violations of any of the provisions of IPRA shall be punished in accordance with the customary laws of the ICCs/IPs concerned, as long as the penalty shall not be cruel, degrading or inhuman punishment, and neither shall the death penalty or excessive fines be imposed.</p> <p>This shall be without prejudice to the right of any ICCs/IPs to avail of the protection of existing laws. In which case, any person who violates any provision of IPRA shall, upon conviction, be punished by imprisonment of not less than 9 months, but not more than 12 years, or a fine not less than One Hundred Thousand Pesos (P100,000) nor more than Five Hundred Thousand Pesos (P500,000), or both such fine and imprisonment upon the discretion of the court.</p>

RA No. 8749 – Philippine Clean Air Act of 1999		
Section	Prohibited Acts	Penalties
45	Violation of standards for Stationary Sources	<p>For actual exceedence of any pollution or air quality standards, DENR through the Pollution Adjudication Board (PAB), shall impose a fine of not more than P100,000 for every day of violation.</p> <p>Fines shall be increased by at least 10% every 3 years.</p> <p>PAB shall order the closure, suspension of development, construction, or operations of the stationary sources until such time that proper environmental safeguards are put in place.</p> <p>An establishment liable for a third offense shall suffer permanent closure immediately.</p> <p>This shall be without prejudice to the immediate issuance of an <i>ex parte</i> order for such closure, suspension of development, construction, or cessation of operations during the pendency of the case upon <i>prima facie</i> evidence that there is imminent threat to life, or whenever there is an exceedence of the emission standards set by the DENR and/or PAB and/or the appropriate LGU.</p>
46	Violation of Standards for Motor Vehicles	<p>No motor vehicle shall be registered with the DOTC unless it meets emission standards.</p> <p>Any vehicle suspected of violation of emission standards through visual signs shall be subjected to an emission test by a duly authorized emission testing center.</p>

RA No. 8749 – Philippine Clean Air Act of 1999		
Section	Prohibited Acts	Penalties
		<p>If the testing result indicates that there is an exceedance of the emission standards, this would warrant the continuing custody of the impounded vehicle, <i>unless</i> the appropriate penalties are fully paid, and the license plate would be surrendered to the DOTC pending the fulfillment of the undertaking by the owner/operator of the motor vehicle to make the necessary repairs so as to comply with the standards. A pass shall herein be issued by the DOTC to authorize the use of the motor vehicle within a specified period that shall not exceed 7 days for the sole purpose of making the necessary repairs on the said vehicle. The owner/operator of the vehicle shall be required to correct its defects and show proof of compliance to the appropriate pollution control office before the vehicle can be allowed to be driven on any public or subdivision roads.</p> <p>In addition, the driver and operator of the apprehended vehicle shall undergo a seminar on pollution control management conducted by the DOTC and shall also suffer the following penalties:</p> <ol style="list-style-type: none"> First offense: a fine not to exceed P2,000; Second offense: a fine not less than P2,000 and not to exceed P4,000; and Third offense: 1 year suspension of motor vehicle registration and a fine of not less than P4,000 and not more than P6,000. <p><i>NB: The first offense and second offense have overlapping fines</i></p>

RA No. 8749 – Philippine Clean Air Act of 1999		
Section	Prohibited Acts	Penalties
	Any violation of the provisions of Section 21 paragraph (d) with regard to national inspection and maintenance program, including technicians and facility compliance.	Fine: P30,000 minimum; and/or Cancellation of license of both the technician and the center, as determined by the DTI.
47	Fines and Penalties for Violations of Other Provisions in the Act.	<i>Fine:</i> P10,000 to P100,000; and/or <i>Imprisonment:</i> 6 months to 6 years If the offender is a juridical person, the president, manager, directors, trustees, the pollution control officer, or the officials directly in charge of the operations shall suffer the penalty.
48	Gross Violation shall mean: a. Three or more specific offenses within a period of 1 year; b. Three or more specific offenses within 3 consecutive years; c. Blatant disregard of the order of the PAB such as but not limited to the breaking of seal, padlocks, and other similar devices, or operation despite the existence of an order for closure, discontinuance or cessation of operation; and d. Irreparable or grave damage to the environment as a consequence of any violation of the provisions of this Act.	<i>Imprisonment:</i> 6 to 10 years The PAB shall recommend to the proper government agencies to file the appropriate criminal charges against the violators. The PAB shall assist the prosecutor in the litigation of the case. If the offender is a juridical person, the president, manager, directors, trustees, the pollution control officer, or the officials directly in charge of the operations shall suffer the penalty.

RA No. 9003 – Ecological Solid Waste Management Act		
Section	Prohibited Acts	Penalties
48(1)	Littering, throwing, dumping of waste matters in public places.	<i>Fine:</i> P300 to P1,000; and/or <i>Community service:</i> 1 to 15 days in LGU where the violation is made.
48(2)	Undertaking activities, or operating, collecting or transporting equipment in violation of sanitation operation and other requirements or permits set forth in or established pursuant to RA No. 9003.	<i>Fine:</i> P300 to P1,000; and/or <i>Imprisonment:</i> 1 to 15 days
48(3)	Open burning of solid waste.	<i>Fine:</i> P300 to P1,000; and/or <i>Imprisonment:</i> 1 to 15 days
48(4)	Causing or permitting collection of non-segregated or unsorted solid waste.	<i>Fine:</i> P1,000 to P3,000; and/or <i>Imprisonment:</i> 1 to 15 days
48(5)	Squatting in open dumps landfills.	<i>Fine:</i> P1,000 to P3,000; and/or <i>Imprisonment:</i> 15 days to 6 months
48(6)	Open dumping, and burying of biodegradable or non-biodegradable materials in flood-prone areas.	<i>Fine:</i> P1,000 to P3,000; and/or <i>Imprisonment:</i> 15 days to 6 months
48(7)	Unauthorized removal of recyclable material intended for collection by authorized persons.	<i>Fine:</i> P1,000 to P3,000; and/or <i>Imprisonment:</i> 15 days to 6 months
48(8)	Mixing of source-separated recyclable material with other solid waste in any vehicle, box, container, or receptacle used in solid waste collection or disposal.	First offense: <i>Fine:</i> P500,000 + 5% to 10% of net income during the previous year.
48(9)	Establishment or operation of open dumps as enjoined in RA No. 9003, or closure of said dumps in violation of Section 37.	First offense: <i>Fine:</i> P500,000 + 5% to 10% of net income during the previous year. Subsequent violations: 1 to 3 years in addition to the fine.

RA No. 9003 – Ecological Solid Waste Management Act		
Section	Prohibited Acts	Penalties
48(10)	Manufacture, distribution, or use of non-environmentally acceptable packaging materials.	First offense: <i>Fine:</i> P500,000 + 5% to 10% of net income during the previous year. Subsequent violations: 1 to 3 years in addition to the fine.
48(11)	Importation of consumer products packaged in non-environmentally acceptable materials.	First offense: <i>Fine:</i> P500,000 + 5% to 10% of net income during the previous year.
48(12)	Importation of toxic wastes misrepresented as “recyclable” or “with recyclable content.”	<i>Fine:</i> P10,000 to P200,000; and/or <i>Imprisonment:</i> 30 days to 3 years
48(13)	Transport and dumping in bulk of collected domestic, industrial, commercial and institutional wastes in areas other than the center or facilities prescribed under RA No. 9003.	<i>Fine:</i> P10,000 to P200,000; and/or <i>Imprisonment:</i> 30 days to 3 years
48(14)	Site preparation, construction, expansion or operation of waste management facilities without ECC and not conforming with the land use plan of the LGU.	<i>Fine:</i> P100,000 to P1 million; and/or <i>Imprisonment:</i> 1 to 6 years
48(15)	Construction of establishment within 200 meters from open dumps or sanitary landfills.	<i>Fine:</i> P100,000 to P1 million; and/or <i>Imprisonment:</i> 1 to 6 years
48(16)	Construction and operation of landfills or any waste disposal facility on any aquifer, groundwater reservoir, or watershed area, and/or any portions thereof.	<i>Fine:</i> P100,000 to P1 million; and/or <i>Imprisonment:</i> 1 to 6 years

Author’s note: The foregoing tables were taken from the PHILJA Publication entitled *Environmental Law Training Manual (2006)*.



A

Alternative Dispute Resolution (ADR) – any process or procedure used to resolve a dispute or controversy with means other than by the adjudication of a presiding judge or an officer of a government agency and in which a neutral third party assists in the resolution of issues.

Appellate Court Mediation (ACM) – refers to Court-Annexed Mediation in the Court of Appeals.

B

Burden of Proof – the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.

C

Court-Annexed Arbitration (CAA) – conducted with the assistance of the court in which one or more arbitrators appointed in accordance with the Arbitration Clause and as agreed upon by the parties, resolve a dispute by rendering an award.

Certificate of Non-Coverage (CNC) – a certification issued by the Environmental Management Bureau (EMB) that, based on the submitted project description, the project is not covered by the Environmental Impact Statement (EIS) System and is not required to secure an Environmental Compliance Certificate (ECC).

Circumstantial Evidence – evidence which indirectly proves a fact in issue; also referred to as indirect evidence.

Citizen Suit – an action filed by any Filipino citizen in representation of others, including minors or generations yet unborn, to enforce rights or obligations under environmental laws.

Co-located Projects/Undertakings – projects or series of similar projects or a project subdivided to several phases and/or stages by the same Proponent, located in contiguous areas.

Court-Annexed Mediation (CAM) – an enhanced pre-trial procedure that involves settling cases with the assistance of a mediator who is an authorized officer of the court who helps the parties identify the issues and develop a proposal to resolve disputes.



Direct Evidence – evidence which proves a fact or issue directly without any reasoning or inference being drawn on the part of the fact-finder, as distinguished from circumstantial evidence.

Documentary Evidence – evidence that may consist of writings or any material containing letters, words, numbers, figures, symbols, or other modes of written expressions offered as proof of their contents.



Environmental Compliance Certificate (ECC) – a certificate of Environmental Compliance Commitment to which the Proponent conforms to, after the DENR-EMB explains the ECC conditions, by signing the sworn undertaking of full responsibility over implementation of specified measures which are necessary to comply with existing environmental regulations or to operate within best environmental practices that are not covered by existing laws.

Environmentally Critical Area (ECA) – an environmentally sensitive area declared through Proclamation No. 2146 wherein significant environmental impacts are expected if certain types/thresholds of proposed projects are located, developed or implemented in.

Environmentally Critical Project (ECP) – projects belonging to project types declared through Proclamation No. 2146 and Proclamation No. 8033 which may pose significant negative environmental impact at certain thresholds of operation regardless of location.

Environmental Impact Assessment (EIA) – a process that involves evaluating and predicting the likely impacts of a project (including cumulative impacts) on the environment during construction, commissioning, operation and abandonment.

Environmental Impact Assessment Review Committee (EIARC) – a body of independent technical experts and professionals of known probity from various fields organized by the EMB to evaluate the EIS and other related documents and to make appropriate recommendations regarding the issuance or non-issuance of an ECC.

Environmental Impact Statement (EIS) – a document prepared and submitted by the project Proponent and/or EIA Consultant that serves as an application for an ECC. It is a comprehensive study of the significant impacts of a project on the environment.

Environmental Performance Report and Management Plan (EPRMP) – a documentation of the actual cumulative but environmental impacts and effectiveness of current measures for single projects that are already operating but without ECCs.

Environmental Protection Order (EPO) – an order issued by the court directing or enjoining any person or government agency to perform or desist from performing an act in order to protect, preserve or rehabilitate the environment.

Evidence - the means, sanctioned by the Rules of Court, of ascertaining in a judicial proceeding the truth respecting a matter of fact.

I

Initial Environmental Examination Checklist Report – a simplified version of an [IEER], prescribed by the DENR, to be filled up by a Proponent to identify and assess a project’s environmental impacts and the mitigation/enhancement measures to address such impacts.

Initial Environmental Examination Report (IEER) – a document similar to an EIS, but with reduced details and depth of assessment and discussion.

Inquest Investigation – an inquiry conducted by a prosecutor to determine the validity of a person’s arrest when there is no arrest order or warrant, or if the person was caught in the act of committing a crime.

Intergenerational Equity – each generation’s responsibility to leave an inheritance of wealth no less than what they themselves have inherited.

J

Judicial Dispute Resolution (JDR) – a mechanism whereby a JDR judge, acting as conciliator, neutral evaluator, and mediator, or a combination of the three, attempts to convince the parties to settle their case amicably.

M

Mobile Court-Annexed Mediation (MCAM) – a form of Court-Annexed Mediation whereby mediation proceedings are conducted in a mobile court deployed in an area for a certain period.

O

Object Evidence – the thing or fact or material or corporate object or human body or parts thereof, which can be viewed or inspected by the court and which a party may present in evidence; also referred to as Real Evidence.

P

Precautionary Principle – principle which states that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

Preliminary Injunction – an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction.

Preliminary Investigation - an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty and should be held for trial.

Principle of Prevention – a principle that aims to stop environmental damage even before it occurs or when its critical and potential damage may already be irreversible.

Probable Cause – a cause based on the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on such facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.

Programmatic Environmental Impact Statement – a documentation of comprehensive studies on environmental baseline conditions of a contiguous area. It also includes an assessment of the carrying capacity of the area to absorb impacts from co-located projects such as those in industrial estates or economic zones (ecozones).

Programmatic Environmental Performance Report and Management Plan (PEPRMP) – a documentation of actual cumulative environmental impacts of co-located projects with proposals for expansion.

Proponent – any natural or juridical person intending to implement a project or undertaking.

S

Strategic Lawsuit Against Public Participation (SLAPP) – refers to any action whether civil, criminal or administrative, brought against any person, institution or any government agency or local government unit or its officials and employees, with the intent to harass, vex, exert undue pressure or stifle any legal recourse that such person, institution or government agency has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights.

T

Temporary Environmental Protection Order (TEPO) – a remedy available for both civil and criminal environmental cases. It may also be availed of under the Writ of Kalikasan and the Writ of Continuing Mandamus, as a relief or as a means of expediting the proceedings and preserving the rights of the parties.

Testimonial Evidence – evidence whereby a witness testifies in court; also referred to as Oral Evidence.

W

Writ of Continuing Mandamus – 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.

Writ of Kalikasan – a remedy which enforces the right to information by compelling the government or a private entity to produce such information regarding the environment that is within their custody.



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