

Commentary on the Rules of Procedure for Environmental Cases in Manila, Philippines

Introduction

The Rules of Procedure for Environmental Cases¹ produced by the Supreme Court of the Republic of the Philippines was adopted on April 29th, 2010 and contains five parts which are divided into General Provisions, Civil Procedure, Special Civil Actions, Criminal Procedure, and Evidence. Within these five parts are contained twenty rules which are described herein.

Part I Rule 1 commences with General Provisions. Next, Part II on Civil Procedure contains Rule 2 which deals with Pleadings and Parties. Then, Rule 3 which has information about the Pre-Trial procedures. Rule 4 focuses on the Trial. Next, Rule 5 is on Judgment and Execution. Then, Rule 6 on a Strategic Lawsuit Against Public Participation. Part III on Special Civil Actions contains Rules 7 and 8. Rule 7 contains the famous the Writ of Kalikasan Rule 8 illuminates on the Writ of Continuing Mandamus. Following Parts I through III, Part IV on Criminal Procedure contains Rules 9 through 19. Rule 9 focuses on the Prosecution of Offenses. Rule 10 concentrates Prosecution of Civil Actions, Rule 11 deals with Arrest, Rule 12 discusses the Custody and Disposition of Seized Items, Equipment, Paraphernalia, Conveyances and Instruments, Rule 13 explains Provisional Remedies, Rule 14 navigates through the issue of Bail, Rule 15 explains Arraignment and Plea, Rule 16 is on Pre-Trial, and Rule 17 concentrates on Trial. Rule 18 focus on Subsidiary Liability, and Rule 19 focuses on Strategic Lawsuit Against Public Participation in Criminal Cases. Part V on Evidence contains Rule 20 on the Precautionary Principle, Rule 21 on Documentary Evidence, and to conclude, Rule 22 contains Final Provisions.

¹ *Rules of Procedure for Environmental Cases*, Republic of the Philippines Supreme Court Manila, <http://sc.judiciary.gov.ph/Rules%20of%20Procedure%20for%20Environmental%20Cases.pdf> (last visited May 17 2011)

Access to the Courts/Standing to Sue

The first issue this commentary will address is whether or not the legislation creating the environmental courts in the Philippines will enhance access to the courts (and justice).

In the document “Rules of Procedure for Environmental Cases²”, in Part II on Civil Procedure and under Rule 2 on Pleadings and Parties, Sections 4 and 5 deal with who may file and citizen suits, respectively. Section 4 states, “any real party in interest, including the government and judicial entities authorized by law, may file a civil action involving the enforcement or violation of any environmental law.” Section 5 expresses that “any Filipino citizen in representation of others, including minors or generations yet unborn, may file an action to enforce rights or obligations under environmental laws. Upon the filing of a citizen suit, the court shall issue an order which shall contain a brief description of the cause of action and the reliefs prayed for, requiring all interested parties to manifest their interest to intervene in the case within fifteen (15) days from notice thereof. The plaintiff may publish the order once in a newspaper of a general circulation in the Philippines or furnish all affected barangays copies of said order.”³

The rules provide wide access by granting standing to any real party in interest. It would be helpful, however, for this phrase, “any real party in interest”, to be defined in further detail. Of particular interest and unique to Philippines is the temporal nature and extent of the level of

² Rules of Procedure for Environmental Cases, Republic of the Philippines Supreme Court Manila, <http://sc.judiciary.gov.ph/Rules%20of%20Procedure%20for%20Environmental%20Cases.pdf> (last visited May 17 2011)

³ Rules of Procedure for Environmental Cases, Republic of the Philippines Supreme Court Manila, <http://sc.judiciary.gov.ph/Rules%20of%20Procedure%20for%20Environmental%20Cases.pdf> (last visited May 17 2011)

representation. The rules allow parties to represent not only minors but unborn generations.

This is extremely progressive and is appropriate for environmental suits since the consequences of environmental problems can affect multiple generations, including those not yet born.

The first clause of Principle 10⁴ of the Rio Declaration on Environment and Development states that: "Environmental issues are best handled with participation of all concerned citizens, at the relevant level." The Rules of Procedure for Environmental Cases addresses this by providing that "any real party in interest, including the government and judicial entities authorized by law, may file a civil action involving the enforcement or violation of any environmental law"⁵ and that 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..."⁶ The only issue of concern is whether non-citizens who live in the country will have a right to enforce environmental laws. The phrase "all concerned citizens" referred to in Principle 10 of the Rio Declaration could potentially refer to those who are not technically citizens but who still live in the country and are affected by its problems. It would be helpful if these rules could be amended to provide more clarification on whether "any real party" includes non-citizens.

⁴ Principle 10 of the Rio Declaration on Environment and Development states the following: "Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy shall be provided.", Rio Declaration on Environment and Development, <http://www.unep.org/Documents/Multilingual/Default.asp?DocumentID=78&ArticleID=1163> (last visited May 16, 2011)

⁵ Rules of Procedure for Environmental Cases, Republic of the Philippines Supreme Court Manila, <http://sc.judiciary.gov.ph/Rules%20of%20Procedure%20for%20Environmental%20Cases.pdf> (last visited May 17 2011)

⁶ Rules of Procedure for Environmental Cases, Republic of the Philippines Supreme Court Manila, <http://sc.judiciary.gov.ph/Rules%20of%20Procedure%20for%20Environmental%20Cases.pdf> (last visited May 17 2011)

The most innovative provision found within the new rules, designated as a “Special Civil Action”, is the writ of Kalikasan, or the writ of nature. The rules state:

“The writ is a remedy available to a natural or judicial person, entity authorized by law, people’s organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice life, health, or property of inhabitants in two or more cities or provinces.”⁷

Scientific Knowledge

The next inquiry addresses the question of whether the Rules of Procedure for Environmental Cases facilitates the application of environmental science to decision-making.

Part V on Evidence and Rule 20, entitled “Precautionary Principle”, addresses the application of science to decisions. Section 1 on Applicability states, “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.” Section 2 extends this notion by identifying the 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; and 3) prejudice to the environment without legal consideration of the environmental rights of those affected.

⁷ Phil. S.C., Rules of Procedure for Environmental Cases, A.M. No. 09-6-8-SC Pt. 3, R.7 as cited in Honorable Hilario G. Davide Jr. and Sara Vinson, Green Courts Initiative in the Philippines, JOURNAL OF COURT INNOVATION 128 (2010) , http://www.courts.state.ny.us/court-innovation/Winter-2010/JCI_Winter10a.pdf (last visited May 18 2011)

With respect to application of environmental science, there is too little information provided within the Rules of Procedure to know whether science is applied or not. The sentence mandating that the precautionary principle should be applied starts off by conditioning the phrase on instances where there is a lack of full scientific certainty. This implies that the starting point should be full scientific certainty. The inclusion of the words, "full scientific certainty", demonstrates the importance of scientific inquiry and that scientific analysis should be incorporated. However, I think that the language can be stronger with respect to a greater connection between decision making and the application of environmental science.

Effectiveness

The next factor that must be evaluated is the extent to which the legal process protects nature and improves the environment, instead of simply determining that one particular party prevails and the other party does not. The fourth clause of Principle 10 of the Rio Declaration states that, "effective access to judicial and administrative proceedings, including redress and remedy, shall be provided." Rule 5, entitled "Judgment and Execution", contains language on reliefs in a citizen suit in its first section. Section 1 provides, "if warranted, the court may grant to the plaintiff proper reliefs which shall include the protection, preservation, or rehabilitation of the environment and the payment of attorney's fees, costs of suit and other litigation expenses. It may also require the violator to submit a program of rehabilitation or restoration of the environment, the costs of which shall be borne by the violator, or to contribute to a special trust fund for that purpose subject to the control of the court."⁸ The fourth clause of the Rio Declaration addressing access to judicial and administrative proceedings including redress and

⁸ Rules of Procedure for Environmental Cases, Republic of the Philippines Supreme Court Manila, <http://sc.judiciary.gov.ph/Rules%20of%20Procedure%20for%20Environmental%20Cases.pdf> (last visited May 17 2011)

remedy is definitely satisfied by Section 1 of Rule 5. The extension beyond financial/monetary compensation into programs of rehabilitation or restoration of the environment are well thought out and provide a creative alternative to extending commonly applied notions of relief. Rule 5, dealing with "Judgment and Execution", outlines the monitoring of compliance with judgment and orders of the court by a commissioner in Section 4. Specifically, this section states that "[t]he court may motu proprio, or upon motion of the prevailing party, order that the enforcement of the judgment or order be referred to a commissioner to be appointed by the court. The commissioner shall file with the court written progress reports on a quarterly basis or more frequently when necessary."⁹ The fact that there is a mechanism for regular progress reports indicates that there is a desire to make sure that the environment is well taken care of and improved well beyond the time of the adjudication of particular decisions.

Procedural Elements

Procedural issues with respect to the environmental courts and tribunals can be evaluated in a variety of ways. This includes general accessibility, the costs in creating environmental tribunals, the efficiency or lack thereof when multiple states in one country have to create environmental tribunals, the existence of an appellate system, the issue of transparency, the existence of online electronic filing systems to make access to the courts logistically easier, and global transparency as a whole. The second clause of the Rio Declaration is that at the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous activities in their communities, and the opportunity to participate in the decision-making process.

⁹ Rules of Procedure for Environmental Cases, Republic of the Philippines Supreme Court Manila, <http://sc.judiciary.gov.ph/Rules%20of%20Procedure%20for%20Environmental%20Cases.pdf> (last visited May 17 2011)

With respect to the creation of multiple tribunals, the Rules of Procedure for Environmental cases do not address the creation of multiple tribunals within the country. As far as this factor is concerned, one needs to take into consideration: (1) the actual size of the country being evaluated and whether or not it is logical; and (2) due to the physical space within a country, whether it would be necessary to provide a mechanism to create multiple environmental tribunals or if one is enough. Moreover, the Rules (of Procedure for Environmental Cases) do not address an appellate system. Finally, the Rules of Procedure for Environmental Cases do not address the issue of transparency.

The second and third clauses of Principle 10 of the Rio Declaration on Environment and Development mention access to information (which is discussed in further detail below) and public participation in the process. Public participation with regard to procedural aspects of a law and/or act would be the ability to find information and participate electronically as much as possible. Participating electronically can range from conducting activities such as filing documents online as well as accessing documents and having a comprehensive (and potentially interactive) website with a plethora of information.

Access To Information

The concept of access to information is that whereby the public is given access to information that is being decided by a particular court or jurisdiction.

The third clause of Principle 10 of the Rio Declaration provides that “states shall facilitate and encourage public awareness and participation by making information widely available.” References to access to information do not exist in the Rules of Procedure. The objective of the Aarhus Convention is that in order to contribute to the protection of the right of

every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public-participation in decision making, and access to justice in environmental matters in accordance with the provisions of this Convention.¹⁰

The act does not appear to have any language included within it that relates to access to information held by the public authorities. However, the act does provide in that “Entries in official records made in the performance of his duty to 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.”¹¹ Although this section addresses entries made by a public officer, it would be prudent to include language specifically about access to information in an updated version of these rules.

Traditional measures

How does this legislation/tribunal/court address traditional concerns expressed by courts that litigation is costly and wastes time?

The Rules of Procedure for Environmental Cases pay close attention to the traditional measures of efficiency, both with respect to time and cost-saving measures.

Section 3 of Part I, Rule 1 (General Provisions), which lists the objectives addresses some of these issues. The second objective (listed as b) states that one of the objectives of these rules is to provide for a simplified, speedy, and inexpensive procedure for the enforcement of

¹⁰ Introducing the Aarhus Convention, UNITED NATIONS ECONOMIC COMMISSION OF EUROPE, <http://www.unece.org/env/pp/> (last visited May 16 2011)

¹¹ This can be found in Part V entitled “Evidence”, in Rule 21 on Documentary Evidence and Section 2 on Entries in official records, Rules of Procedure for Environmental Cases, Republic of the Philippines Supreme Court Manila, <http://sc.judiciary.gov.ph/Rules%20of%20Procedure%20for%20Environmental%20Cases.pdf> (last visited May 18 2011)

environmental rights and duties recognized under the Constitution, existing laws, rules and regulations, and international agreements.

Part II, entitled Civil Procedure, explaining Rule 2 on Pleadings and Parties, also addresses issues of efficiency. Section 2 lists prohibited pleadings or motions. The following pleadings or motions shall not be allowed: (a) motions to dismiss the complaint; (b) motion for a bill of particulars, (c) motion for extension of time to file pleadings, except to file an answer, the extension not to exceed fifteen (15) days; (d) motion to declare the defendant in default; (e) reply and rejoinder; and (f) third party complaint. Eliminating these motions alone saves considerable time in that the parties do not have to engage in the preparation of documents that are required to file, and respond to, these motions. Section 12 (also found in this same Part and Rule), entitled “Payment of filing and other legal fees”, addresses costs. Section 12 provides, “[t]he 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.”¹² This section demonstrates that the framers of these rules did not want the costliness of a trial to act as a deterrent to plaintiffs who have valid environmental claims. Section 14, entitled “Verified answer”, provides that “within fifteen (15) days from receipt of summons, the defendant shall file a verified answer to the complaint and serve a copy thereof on the plaintiff.”¹³ The section continues to indicate that cross claims and compulsory counterclaims not asserted shall be considered barred. Additionally, the section

¹² Rules of Procedure for Environmental Cases, Republic of the Philippines Supreme Court Manila, <http://sc.judiciary.gov.ph/Rules%20of%20Procedure%20for%20Environmental%20Cases.pdf> (last visited May 17 2011)

¹³ Rules of Procedure for Environmental Cases, Republic of the Philippines Supreme Court Manila, <http://sc.judiciary.gov.ph/Rules%20of%20Procedure%20for%20Environmental%20Cases.pdf> (last visited May 17 2011)

reads that, “the answer to counterclaims or cross-claims shall be filed and served within ten (10) days from service of the answer in which they are pleaded”¹⁴ This will allow for a very efficient process and ensure that the case is not continuing indefinitely without knowledge as to when other motions will be made.

Rule 3, dealing with the “pre-trial” phase identifies time periods within which the notice of pre-trial must be made, when pre-trial briefs are due, the time within which a mediation process must be initiated and conducted after the date of referral to mediation, etc. A pre-trial order must also occur within an identified time.

The next rule, Rule 4, dealing with the trial itself, specifies that the judge shall conduct a continuous trial which shall not exceed two months from the date of the issuance of the pre-trial order. Furthermore, there is a provision that indicates that the court shall have a period of one year between the filing of the complaint to try and decide the case.

The close attention paid to timelines and ensuring that the processes involved progress from one stage to the other in a timely fashion demonstrate the high degree of importance that is attached to saving time and making sure that the case, and thus the issue at hand, is properly addressed to not delay action on the matter at hand.

History

A final factor one must consider when analyzing environmental acts creating environmental tribunals is that of the rationale which led to the creation of the environmental tribunal.

¹⁴ Rules of Procedure for Environmental Cases, Republic of the Philippines Supreme Court Manila, <http://sc.judiciary.gov.ph/Rules%20of%20Procedure%20for%20Environmental%20Cases.pdf> (last visited May 17 2011)

As early as 1979, the Philippine Environmental Policy mandated the formulation of an intensive, integrated program of environmental protection that will bring about a concerted effort towards the protection of the entire spectrum of the environment through a requirement of environmental impact assessments and statements.¹⁵

The United States Agency for International Development (hereinafter USAID) contributed to the creation of such new courts¹⁶ through USAID's ECO-Asia program, which promotes environmental justice through the Asian Environmental Compliance and Enforcement Network (AECEN), an organization of 12 environmental agencies in 10 countries. AECEN was founded and is supported by USAID and the Asian Development Bank (SDB).

With USAID-AECEN support, the Philippine Supreme Court and the Philippine Judicial Academy (PHILJA) organized the Asian Justices Forum on the Environment in 2007 to share recommendations with judges from Australia, India, Indonesia, Sri Lanka, Thailand, and the U.S. Discussion at the forum centered on strategies for strengthening the Philippine Supreme Court's human and institutional capacity to adjudicate environmental cases. As a result, the Supreme Court established specialized trial-level environmental courts. AECEN leveraged resources from other institutions, including PHILJA, United Nations Environment Programme, U.S. Environmental Protection Agency, United Nations Development Programme-Global Environment Facility Small Grants Programme, Haribon Foundation, and Asia Pacific Jurist Association.

¹⁵ Justice Oswaldo D. Agcaoili, *Role of the Philippine Judicial Academy in Environmental Law Dissemination, Enforcement and Adjudication*, Presented at the Forum on Environmental Justice: Upholding the Right to a Balanced and Healthful Ecology held on April 16th-17th 2009, at the University of Cordilleras, Baguio City.

¹⁶ *Philippines' Green Benches to Deliver Environmental Justice*, USAID ASIA, http://www.usaid.gov/rdma/documents/RDMA_SS_AECEN_Green_Benches082608.pdf (last visited May 17 2011)