



Innovative Procedural Rules on Environmental Cases in the Philippines: Ushering In a Golden Era for Environmental Rights Protection

Gloria Estenzo Ramos*

Introduction

A study conducted by Kent Carpenter and 100 foremost marine experts points to Central Philippines as having the richest concentration of marine life on the entire plane¹. In his 2010 Cebu presentation, 'Scientific Discovery and the Urgent Need for Conservation at the Philippine Epicenter of Marine Biodiversity', Carpenter described the Philippines as 'the global epicenter of marine biodiversity'.² He furthermore reiterated the urgent calls for conservation as the country is likewise a 'center of marine conservation adversity' with rapid biodiversity loss taking place due to sedimentation from deforestation and poor land use, coastal development, pollution and overfishing.³

International recognition of its megadiversity but severely threatened status, a pro-environment and pro-people Constitution, numerous environmental laws, the signatory of several international agreements, a dynamic civil society and the

* Environmental Law Professor, University of Cebu College of Law, Cebu City, Philippines.
Email: ucmcle@gmail.com.

¹ Carpenter and Springer (2004).

² Shingila Mactan's Go Green Cebu Fair, October 9, 2010, Cebu, Philippines.

³ Ibid.

globally-heralded *Oposa v. Factoran* case⁴ (*Oposa* case) on the trust doctrine of intergenerational responsibility and another trail-blazing ruling in the form of *MMDA v. Concerned Residents of Manila Bay* case⁵ (*MMDA* case), are no magic wands for stopping the wanton destruction and loss of the country's dwindling natural resources. Unsustainable programs and the absence of much-needed political will to implement the laws and protect human rights and the environment compound the enormous challenges facing the Philippines.

While acknowledging the sad state of the environment in the country's *Medium Term Development Plan* (2004-2010)⁶, the former administration focused not on conservation and integrated ecosystem management. It instead prioritized extractive activities that further ravaged the already degraded life support system. Mining, offshore drilling and coal power plant operations were promoted even though less than six per cent of the country's original forest cover remains, 418 of the country's species appear in the *IUCN Red List of Threatened Species* (2000)⁷ and its coral reefs are regarded as the most threatened in the world.⁸ In the face of overwhelming scientific data evidencing the current environmental disaster in this climate hot spot, the extent of biodiversity loss was so alarming that some international experts proposed writing the Philippines off as a global biodiversity disaster area.⁹

Financial and cultural constraints in filing cases, the slow grind of the justice system, widespread poverty and the people's lack of knowledge of the laws and their rights are among the reasons why only a handful of constituents have claimed and asserted their rights to a healthy environment through environmental adjudication.

Amid the lethargy of institutions and inhabitants, the Philippine Supreme Court emerged as the staunchest ally and defender of the people's rights to life and a healthy environment. Its unwavering determination to perform its constitutionally mandated judicial¹⁰ and rule-making powers¹¹ to protect human rights and the fragile

⁴ G.R. No. 101083, 30 July 1993, 224 SCRA 792.

⁵ GR No.171-947-48, 18 December 2008, 574 SCRA 661.

⁶ Available at: <http://www.neda.gov.ph/>.

⁷ *Philippine Biodiversity Conservation Priorities*, Final Report (2002).

⁸ Roberts et al (2002); and Carpenter (supra note 1).

⁹ Terborgh (1999) and Linden (1998) in *Philippine Biodiversity Conservation Priorities* (supra note 7).

¹⁰ *Constitution*, Article VIII, section 1.

¹¹ *Constitution*, Art VIII, section 5 (5).

ecosystems were brought to light by the landmark *Oposa and MMDA* cases, among others. These efforts were further buttressed by ground-breaking initiatives undertaken by the Supreme Court under the leadership of then Chief Justice Reynato S. Puno (the 'Puno Court').

Innovative Sustainability Initiatives under the Puno Court

Chief Justice Puno, who retired in May 2010, left behind a sterling legacy in the advancement of human rights, participatory governance and environmental sustainability. These lie in stark contrast to the disheartening low prioritization afforded to the environment by the Executive Department, including the local government units and the Department of Environment and Natural Resources.

In a stunning departure of the long-held tradition for courts to await suits before jurisdiction is acquired and judicial pronouncements made, the Puno Court actively championed the right of the constituents to participate in the decision-making process¹² in fulfilling its mandate as the ultimate bulwark of democracy. The Puno Court became an active policy-maker in protecting human and environmental rights. It reached out to stakeholders, spear-heading the beginning of three unprecedented nationwide consultations dealing with the imperilled constitutionally protected rights, with unparalleled achievements.

In 2007, it organized a *Summit on Extra Legal Killings and Enforced Disappearances*. In the following year, it convened a *Forum on Increasing Access to Justice*. These meetings paved the way for the Puno Court to craft the rules for the issuance of the writs of *amparo* and *habeas data*, and to roll out the *Enhanced Justice on Wheels Programme*, among others.

In 2008, the Supreme Court designated 117 special courts to handle environmental cases (the "green courts"). This marked the beginning of the pioneering initiatives of the Puno Court in the journey towards attainment of environmental justice. Prior to the end of 2008, the Supreme Court, in the *MMDA* case compelled government agencies under a co-equal branch (the Executive Department), to clean up the historic but severely polluted Manila Bay. For the first time, the Supreme Court

¹² *Constitution*, Article XIII, section 16.

unleashed the tool called the *writ of continuing mandamus*, where respondent executive agencies were required to submit quarterly progress reports of compliance with the Court's order until judgment is fully satisfied. In its decision, the Court referred to rulings rendered by the Supreme Court of India and noted that 'In India, the doctrine of continuing mandamus was used to enforce directives of the court to clean up the length of the Ganges River from industrial and municipal pollution'.

In 2009, the Supreme Court led the way for another nationwide summit to consider specifically the barriers to and solutions for attaining environmental justice and hopefully reversing the worsening tide of ecological destruction. Simultaneously convened in Baguio City (Luzon), Iloilo City (Visayas) and Davao City (Mindanao), the *Forum on Environmental Justice* brought together key stakeholders with the objective of 'giving more meaning to our right to a healthful and balanced ecology'.¹³ At this forum, a draft of the proposed *Procedural Rules for Environmental Cases* (the *Rules*) were circulated for comment by participants and stakeholders, which included the country's environmental law practitioners. These *Rules*¹⁴, which integrate a rights-based approach to environmental justice, were adopted by the Supreme Court on 13 April 2010 and became effective 29 April 2010.

An Overview of the Procedural Rules for Environmental Cases (2010)

Objectives of the Rules

The objectives of the *Rules*, set out in Rule 1 (section 3), are:

To protect and advance the constitutional right of the people to a balanced and healthful ecology;

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;

To introduce and adopt innovations and best practices ensuring the effective enforcement of remedies and redress for violation of environmental laws; and

¹³ Speech of Chief Justice Puno, 'Environmental Justice: Establishing a Judicious Judicial Framework', 16 April 2009.

¹⁴ Available at:

<http://sc.judiciary.gov.ph/Rules%20of%20Procedure%20for%20Environmental%20Cases.pdf>.

To enable the courts to monitor and exact compliance with orders and judgments in environmental cases.

Liberalized Locus Standi and Citizen's Suit

The *Oposa* case set the stage for liberalized standing to sue in environmental cases in Philippine jurisprudence, based on the principle of intergenerational responsibility. The ruling in this case is amplified by Rule 2 (section 5), which provides 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'. The provision limits filing of suits to Filipino citizens and corporations, with out need to present proof of injury. Filing fees and other legal fees are deferred, which shall serve as first lien on the judgment award.¹⁵

Citizen suit provisions are found in two statutes, namely: the *Philippine Clean Air Act*¹⁶ and the *Ecological Solid Waste Management Law*.¹⁷ These are similar to the US environmental laws. The requirements relating to filing fees and/or the payment of a security bonds are dispensed with.

Under Rule 2 (section 4) and Rule 9 (section 1), citizens, foreigners, government officials mandated enforce environmental laws and juridical entities can file environmental cases, provided there is direct damage or prejudice from an act or omission of the defendant. 'A person suffering damage or injury arising from an environmental prejudice, which is also the same subject of a citizen suit', may choose to file a separate action under Rule 2 (section 4) for personal indemnification. Thus, 'a citizen suit can take place simultaneously with the filing of an individual complaint.'¹⁸

¹⁵ Rule 2 (section 12).

¹⁶ Republic Act No. 8749.

¹⁷ Republic Act No. 9003.

¹⁸ Annotation on the Rules of Procedure for Environmental Cases, Supreme Court, April 2010.

Speedy Disposition of Cases

In civil cases, Rule 2 (section 3) requires the submission of all evidence supporting the case upon filing. In lieu of direct examination, the affidavit in question and answer form is provided for. Certain pleadings are prohibited to assure early resolution of the cases. Pre-trial is extensively used to simplify issues. Trials are shortened to one year, subject to extension upon prior approval of the Supreme Court (Rule 4 (section 5)).

In criminal cases, the same features are present. In addition, to avail bail, the innovative requirement is the defendant's undertaking authorizing the judge to enter a plea of not guilty. (Rule 14 (section 2)). This guarantees that the criminal proceedings continue even if the defendant jumps bail.

Special Civil Actions

The writ of kalikasan (nature) and the writ of continuing mandamus are among the remedies granted to petitioners of environmental cases.

Writ of Kalikasan (nature) – If environmental damage is of such magnitude that 'prejudices the life, health or property of inhabitants in two or more cities or provinces', and if the petition is sufficient in form and substance, the writ is issued by either the Supreme Court or the Court of Appeals within three days of filing the application. Hearing of the matter is set within sixty days. There is no docket fee. The proceedings terminate within sixty days from submission of the original application (Rule 7).

Writ of Continuing Mandamus – Rule 8 integrates the ruling in the *MMDA* case into existing court rules on the issuance of the writ of mandamus. This writ may be used to compel the performance of a ministerial duty especially enjoined by law. The court retains jurisdiction after the judgment to ensure its implementation through submission of reports and other methods to monitor compliance with its ruling.

Consent Decrees

Rule 3 (section 5) of the *Rules* encourages parties to go through alternative dispute resolution and reach an amicable settlement through the issuance of a consent decree by the court. The content of a consent decree must comply with 'law, morals, public order and policy to protect the right of the people to a balanced and healthful ecology'.

Ancillary Remedies

An Environmental Protection Order 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. The issuance of such an order is provided for in Rule 1 (section 4(d)).

Application of the Precautionary Principle

Rule 20 (section 1) provides that '(w)hen there is 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 rule furthermore adds that '(t)he constitutional right of the people to a balanced and healthful ecology shall be given the benefit of the doubt'.

Anti-Strategic Lawsuit Against Public Participation (SLAPP) Proviso

Rule 6 provides that '(l)egal action to harass, vex, exert undue pressure or stifle any legal recourse that any person, institution or the government has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights shall be treated as a SLAPP' suit. Hearing is summary in nature and if the court dismisses the action, it may award damages, attorney's fees and costs of suit under a counterclaim if one is filed (Rule 6 (section 4)).

A Critical Consideration of the Procedural Rules for Environmental Cases Rules

The *Rules* usher in a new era of human rights and environmental rights protection. Dormant substantive rights are actualized through providing citizens (including government agencies, corporations and non-government organizations) distinct procedural rights.

It is important to stress that the significant features contained in the *Rules*, as highlighted above, were inspired by the statutes and case law of foreign jurisdictions and the provisions of international instruments such as the *Rio Declaration*.

While it is still premature to make conclusions on the impact of the *Rules* on human and environmental rights protection and sustainability, citizens and environmental groups are bolstered by the swift response of the green courts in addressing recent critical environmental challenges. The leak of the gas pipeline that caused the evacuation of residents in a condominium in Makati City resulted in the first writ of kalikasan being issued by the Supreme Court.¹⁹ A Mandaue City green court recently issued a temporary environmental protection order (TEPO) to stop the indiscriminate throwing of hazardous coal ash.²⁰ The TEPO was the first one to be issued in the Visayas and the second in the country. Amid wide media coverage, the green court judge and the parties actually visited the relevant dumpsites and the coal power plants.²¹ The provisions relating to SLAPP suits contained in the *Rules* should ensure that the filing of such suits against environmental crusaders is no longer met with anxiety, sleepless nights and dread.²²

The *Rules* have triggered a renewed sense of hope, especially on the part of the most vulnerable sectors, that the law can work in their favour after all. In the short time since the *Rules* came into force, there is a growing realization that the right to a healthy environment can now be effectively asserted and claimed even against

¹⁹ See further:

<http://www.philstar.com/Article.aspx?articleId=631751&publicationSubCategoryId=63>.

²⁰ See further: <http://www.sunstar.com.ph/cebu/issuance-tepo-partial-victory-environmental-groups>.

²¹ See further: <http://globalnation.inquirer.net/cebudailynews/news/view/20101118-303898/Coal-ash-dumping-sites-found-covered-with-soil>; and <http://www.sunstar.com.ph/cebu/local-news/green-groups-welcome-court-s-inspection>.

²² See further: <http://www.sunstar.com.ph/cebu/local-news/power-firm-seeks-p2m-damages>.

influential stakeholders, through environmental suits. The *Rules* have become the State's response to Principle 10 of the *Rio Declaration*, to the effect that 'effective access to judicial and administrative proceedings, including redress and remedy, shall be provided'. It is not wishful thinking to state at this stage that perhaps, in the future, the trust in the efficacy of the law, institutions and legal processes will be restored. These are essential prerequisites for the rights to life and a healthy environment to be protected.

During the formal launch of the *Rules* on 29 April 2010, Chief Justice Puno shared his observation that the *Rules* will open the floodgates for litigation cases. But, he added, that it is one instance when the suits are welcome since the issue involves the preservation of life.

The consistency with which the judges implement the *Rules*, the widespread dissemination of knowledge of the *Rules* and the citizens' trust in the legal processes prescribed by the *Rules*, will no doubt impact on their implementation. Their implementation will hopefully integrate a mindset of sustainability throughout all sectors of Philippine society. Future development will probably include a growing public demand to attain good governance and for public officers and employees to fulfil their environmental protection mandates efficiently and effectively. The *Rules* might also pave the way for the business sector to realize that it is smart business practice to comply with environmental laws.

With more engaged stakeholders participating in governance, the day will hopefully come when the integration of human rights in all phases of the policy-making process becomes a reality. Such a step will help steer the country towards the path of sustainable development.

The adoption of the *Rules* is a significant feat not just of the Supreme Court, but also for the general crusade towards restoring an authentic rule of law throughout country. The words of the former UNEP Director, Klaus Toepfer, come to mind in this regard:

'We all have a duty to do whatever we can to restore respect for the rule of law, which is the foundation for a fair and sustainable society... Sustainable development cannot

be achieved unless laws governing society, the economy, and our relationship with the Earth connect with our deepest values and are put into practice internationally and domestically. Law must be enforced and complied with by all of society, and all of society must share this obligation.'

Identification of Possible New Research Agenda for the IUCNAEL

The objectives of the *Rules* can only be achieved with the indispensable partnership of and collaboration among local, national and global stakeholders, including the members of the IUCNAEL. Aside from the exchange of information, the expertise of the IUCNAEL's member institutions and environmental law scholars can be of tremendous help in building the capacity of Philippine administrators, lawyers and communities to make the *Rules* an effective means to promote human rights, good governance and in restoring the ecological integrity of the unique but global biodiversity hotspot called the Philippines.