

On 13 April 2010, the Supreme Court issued the Rules of Procedure for Environmental Cases (A.M. No. 09-6-8-SC) to protect the people's constitutional right to a balanced and healthful ecology. The Rules, which took effect on 29 April 2010, will govern the procedure in civil, criminal and special civil actions involving enforcement or violations of environmental laws such as the Revised Forestry Code, the Water Code, the Philippine Mining Act, the Indigenous Peoples Rights Act, the Ecological Solid Waste Management Act, the Clean Air Act, and the Clean Water Act.

Significant features of these landmark Rules include:

CIVIL CASES

▪ **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. The court will then require all interested parties to manifest their interest to intervene within 15 days from notice.

▪ **Environmental Protection Order (EPO)**

In deciding the case, the Court may grant an EPO which directs or enjoins any person or government agency to perform or desist from performing an act in order to protect, preserve or rehabilitate the environment.

▪ **Temporary Environmental Protection Order (TEPO)**

If it appears from the verified complaint with a prayer for the issuance of an EPO that the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of the multiple-sala court (before the case is raffled) or the presiding judge of a single-sala court, may issue a TEPO *ex parte* (or without notice to hearing from the other party). The TEPO shall be effective for only 72 hours from the date of receipt of the TEPO by the person enjoined. Within this 72-hour period, the court where the case is assigned will conduct a summary hearing to determine whether the TEPO may be extended until the case is terminated.

The TEPO may be dissolved if it appears after hearing 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, subject to the posting of a sufficient bond by the person enjoined.

The court will periodically monitor the existence of acts that are the subject matter of the TEPO and may lift the same at any time as circumstances may warrant.

▪ **No Temporary Restraining Order (TRO) or Preliminary Injunction**

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.

▪ **Filing fees deferred**

Payment of filing and other legal fees by the plaintiff will be deferred until after judgment unless the plaintiff is allowed to litigate as an indigent. Filing fees will constitute a first lien on the judgment award.

- **Parties and counsel under oath during pre-trial**

The judge shall put the parties and their counsel under oath, and they shall remain under oath in all pre-trial conferences.

- **Waiver of evidence not presented at pre-trial**

Evidence not presented during the pre-trial, except newly discovered evidence, shall be deemed waived.

- **Consent Decree**

During the pre-trial, the judge shall exert best efforts to persuade the parties to arrive at a settlement of the dispute. The judge may issue a consent decree approving the agreement between the parties in accordance with law, morals, public order and public policy to protect the right of the people to a balanced and healthful ecology.

- **Effect of failure to appear at pre-trial**

The court shall not dismiss the complaint, except upon repeated and unjustified failure of the *plaintiff* to appear. The dismissal shall be without prejudice, and the court may proceed with the counterclaim.

If the *defendant* fails to appear at the pre-trial, the court shall receive evidence *ex parte*.

- **Affidavits in lieu of direct examination**

In lieu of direct examination, affidavits marked during the pre-trial shall be presented as direct examination of affiants subject to cross examination by the adverse party.

- **Period to decide the case**

The court has 1 year from the filing of the complaint to try and decide the case. Before the expiration of the one-year period, the court may petition the Supreme Court for the extension of the period for justifiable cause. The court shall prioritize the adjudication of environmental cases.

- **Plaintiff's reliefs**

In its judgment, 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.

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, or to contribute to a special trust fund for that purpose subject to the control of the court.

The court may convert the TEPO to a permanent EPO or issue a writ of continuing *mandamus* directing the performance of acts which shall be effective until the judgment is fully satisfied. (Writ of continuing mandamus below is explained below)

- **Monitoring execution of judgment**

The court may, by itself or through the appropriate government agency, monitor the execution of the judgment and require the party concerned to submit written reports on a quarterly basis or sooner as may be necessary, detailing the progress of the execution and satisfaction of the judgment. The other party may, at its option, submit its comments or observations on the execution of the judgment.

The court may, on its own or on 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 then file with the court written progress reports on a quarterly basis or more frequently when necessary.

- **Strategic Lawsuit Against Public Participation (SLAPP)**

SLAPP is a legal action filed to harass, vex, exert undue pressure or stifle any legal recourse that any person, institution or the government has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights. The defendant may interpose as a defense that the case is a SLAPP.

Hearing on the defense of SLAPP shall be summary in nature. The defendant must prove by substantial evidence that his act is a legitimate action for the protection, preservation and rehabilitation of the environment, while the plaintiff must prove by preponderance of evidence that the action is not a SLAPP and is a valid claim.

The defense of SLAPP shall be resolved within 30 days after the summary hearing. If the court dismisses the action, the court may award damages, attorney's fees and costs of suit under a counterclaim if such has been filed. The dismissal shall be with prejudice.

SPECIAL CIVIL ACTIONS

- **Writ of *Kalikasan***

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

The petition for the issuance of the writ is one of 2 special civil actions provided under the Rules, the other being the writ of continuing *mandamus*. The filing of a petition for the

issuance of the writ of *kalikasan* shall not preclude the filing of separate civil, criminal or administrative actions.

The petition for the issuance of the writ shall be filed with the Supreme Court or with any of the stations of the Court of Appeals. It should contain all relevant and material evidence consisting of the affidavits of witnesses, documentary evidence, scientific or other expert studies, and if possible, object evidence. The petitioner shall be exempt from the payment of docket fees.

Within 3 days from filing of the petition, if the petition is sufficient in form and substance, the court shall give an order issuing the writ and requiring the respondent to file a verified return. The clerk of court shall forthwith issue the writ under the seal of the court including the issuance of a cease and desist order and other temporary reliefs effective until further order.

Within a non-extendible period of 10 days after service of the writ, the respondent shall file a verified return, which shall include affidavits of witnesses, documentary evidence, scientific or other expert studies, and if possible, object evidence, in support of the defense of the respondent. If the respondent fails to file a return, the court shall hear the petition *ex parte*.

Respondent may not move to dismiss the petition or ask for extension of time to file the return or for a bill of particulars, or file a counterclaim or cross-claim or third-party complaint. Petitioner may not file a reply or move to declare respondent in default. Neither party may ask for postponement.

Upon verified motion by a party and after hearing, the court may order the ocular inspection (including photographing) of a designated land or other property, or the production and inspection (including copying or photographing) of documents or things.

The hearing including the preliminary conference shall not extend beyond sixty (60) days and shall be given the same priority as petitions for the writs of *habeas corpus*, *amparo* and *habeas data*.

The court, in its judgment, may either grant or deny the privilege of the writ of *kalikasan*. Reliefs that may be granted under the writ are:

- (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 public official, government agency, private person or entity to protect, preserve, rehabilitate or restore the environment;
- (c) Directing the respondent public official, government agency, private person or entity to monitor strict compliance with the decision and orders of the court;
- (d) Directing the respondent public official, government agency, or private person or entity 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.

Within 15 days from the date of notice of the adverse judgment or denial of motion for reconsideration, any party may appeal to the Supreme Court under Rule 45 of the Rules of Court. The appeal may raise questions of fact.

- **Writ of Continuing *Mandamus***

When an agency or instrumentality of the government or officer of such agency or instrumentality unlawfully neglects to perform 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, or unlawfully excludes another from the use or enjoyment of such right, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved by such unlawful neglect or exclusion may file a petition for the issuance of writ of continuing *mandamus*.

The petition must be filed with the Regional Trial Court exercising jurisdiction over the territory where the actionable neglect or omission occurred, or with the Court of Appeals or the Supreme Court. Petitioner is exempt from the payment of docket fees.

The petition must be verified and allege the facts with certainty. Petitioner must attach to the petition supporting evidence, specify that the petition concerns an environmental law, rule or regulation, and pray that judgment be rendered commanding the respondent to do an act or series of acts until the judgment is fully satisfied, and to pay damages sustained by the petitioner by reason of the malicious neglect to perform the duties of the respondent, under the law, rules or regulations.

Respondent has 10 days from receipt of the petition to file a comment. The court may grant a TEPO to preserve the rights of the parties while the case is pending. Hearing of the case shall be summary in nature.

If warranted, the court may grant the privilege of the writ of continuing *mandamus* requiring respondent to perform an act or series of acts until the judgment is fully satisfied and to grant such other reliefs as may be warranted resulting from the wrongful or illegal acts of the respondent. The court shall require the respondent to submit periodic reports detailing the progress and execution of the judgment, and the court may, by itself or through a commissioner or the appropriate government agency, evaluate and monitor compliance. The petitioner may submit its comments or observations on the execution of the judgment.

CRIMINAL CASES

- **Arrest without warrant**

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; or
- (b) When an offense has just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it.

- **Auction of seized items** (in the absence of applicable laws/rules of concerned government agency)

Upon motion by any interested party and with notice to the accused/owner of seized items and the concerned government agency, the court may direct the auction sale of seized items, equipment, paraphernalia, tools or instruments of the crime. The court shall, after hearing, fix the minimum bid price based on the recommendation of the concerned government agency. The sheriff shall conduct the auction. The proceeds shall be held in trust and deposited with the government depository bank for disposition according to the judgment.

- **Provisional remedy of attachment available**

The provisional remedy of attachment under Rule 127 of the Rules of Court may be availed of in environmental cases.

- **Parties and counsel under oath during pre-trial**

During the pre-trial, the court shall place the parties and their counsel under oath.

- **Affidavit in lieu of direct examination**

During trial, affidavit in lieu of direct examination shall be used, subject to cross-examination and the right to object to inadmissible portions of the affidavit.

- **Period to decide the case**

The court shall dispose the case within a period of 10 months from the date of arraignment.

- **Strategic Lawsuit Against Public Participation (SLAPP)**

Upon the filing of an information in court and before arraignment, the accused may file a motion to dismiss on the ground that the criminal action is a SLAPP.

The hearing on the defense of a SLAPP shall be summary in nature. The party seeking the dismissal of the case must prove by substantial evidence that his acts for the enforcement of environmental law is a legitimate action for the protection, preservation and rehabilitation of the environment. The party filing the action assailed as a SLAPP shall prove by preponderance of evidence that the action is not a SLAPP.

If the court denies the motion, the court shall immediately proceed with the arraignment of the accused.

EVIDENCE

- **Precautionary Principle**

Under this principle, when human activities may lead to threats of serious and irreversible damage to the environment that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that threat.

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.

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.

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