

# Greening the Philippine Courts: the Rules of Procedure for Environmental Cases and Judicial Capacity Building

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# Outline of Presentation

- Philippine Environmental Scenario and Legal Framework
- Greening of the Philippine Judiciary
- Highlights of the Rules of Procedures for Environmental Cases
- Judicial Capacity Building
- The Asian Judges Network on Environment



# Philippine Environmental Scenario and Legal Framework



# The Philippines' Environmental Scenario

- One of 17 mega-diversity countries (which includes Malaysia)
- Over 7,000 islands, 300,000 km<sup>2</sup> total area; 2.2 million km<sup>2</sup> of contiguous territorial waters and exclusive economic zone
- **Flora and Fauna**: 50,000 documented species; approximately 65% of the 50,000 species of flora and fauna in the world; 128 biodiversity areas (20% of land area)
- **Marine resources**: Ranked 8<sup>th</sup> top fish producer, 9<sup>th</sup> in aquaculture production and 3<sup>rd</sup> largest producer of seaweed; 500 of 800 known coral reef species, 2,000 marine fish species, more than 40 mangrove species and 16 sea grass species.
- **Mineral resources**: 5<sup>th</sup> richest reserves, 30% of land area mineralized.



# But: Environmental Challenges Abound...







# Legal Framework

- Article II, Section 16 of the Constitution
  - *“The State shall protect the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature”*
- Environment and climate change laws
  - Notable: Climate Change Act
  - Recent: People’s Survival Fund; Green Jobs Act
- State-party to all major environmental treaties and conventions



# Green Step Forward

The Greening of the Philippine Judiciary





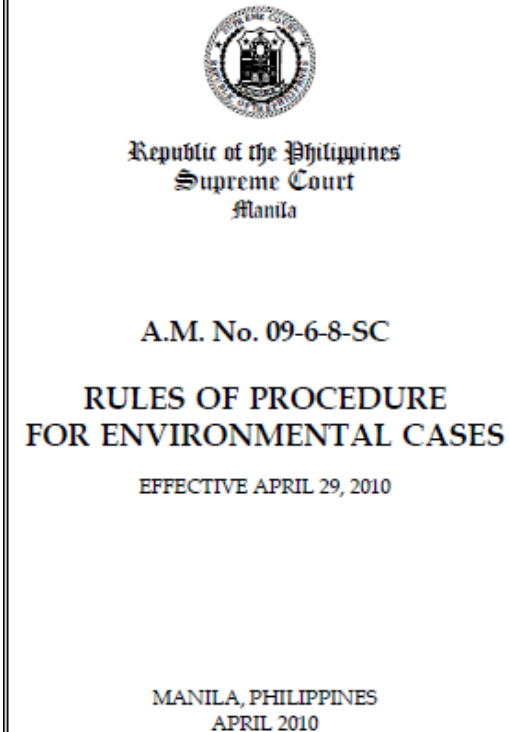
# Judicial Leadership for the Environment

- 2008 – designation of 117 Environmental Courts (first and second level)
- April 2009 – Forum on Environmental Justice
- April 2010 – promulgation of the Rules of Procedure for Environmental Cases
- Judicial capacity building activities and initiatives
  - Publications and Multi-sectoral Trainings



# The Rules of Procedure: Significant Provisions

- Liberalized standing
- Summary Proceedings
- Special Remedies
  - Strategic Lawsuits Against Public Participation
  - Temporary Environmental Protection Orders (TEPO) and Environmental Protection Orders (EPO)
  - Writ of *Kalikasan*
  - Writ of Continuing Mandamus
- Precautionary Principle and Use of Evidence



# Liberalized Standing

- “any real party in interest”
- Need not be directly injured or affected by the environmental violation
- Citizen’s Suit
  - “Any Filipino citizen in representation of others, including minors and generations yet unborn...”
  - Echoes the early *Oposa Case*
- *But:* NGOs and People’s Organizations need to present proof accreditation or registration
  - To protect against bogus groups and fraud



# Summary Nature of Proceedings

- Pleadings to delay prohibited (i.e., motions to dismiss, bill of particulars, extension of time to file, declaration of default)
- Use of alternative modes of dispute settlement encouraged
- Use of judicial affidavits in lieu of direct testimonies
  - Now all cases mandated to use judicial affidavits
- One year from filing to try and decide the case





# Special Remedies: SLAPP

- To protect the small and weak against the big and strong
- “A legal action to harrass, vex, exert undue pressure, or stifle any legal recourse that any person has taken or may take in the enforcement of environmental laws”
- Summary hearing on the defense of SLAPP
  - Dismissal w/ prejudice and award of damages



# Special Remedies: Writ of *Kalikasan*

- *Kaliksán* means nature
- First of its kind in the world!
- No filing fees to be paid
- *A remedy available to a natural or juridical person, entity authorized by law, PO, NGO, 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.***



# Special Remedies: Writ of *Kalikasan*

## *Reliefs*

- Permanent Cease & Desist Order
- Rehabilitation or Restoration
- Monitoring for strict compliance
- Periodic reporting
- Such other reliefs (except award of damages to individual petitioners)



# Special Remedies: Writ of Continuing Mandamus

- First introduced in the *Concerned Residents of Manila Bay Case*
  - *Took inspiration from 2 cases from India*
- When any agency or instrumentality of the government or officer unlawfully neglects 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, 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...





# Special Remedies: Writ of Continuing Mandamus

## Reliefs

- Performance of an act or series of acts until judgment is fully satisfied
- Such other reliefs as may be warranted resulting from the wrongful or illegal acts of the respondent
- Submission of periodic reports detailing the progress and execution
- Evaluation and monitoring of compliance by court or commissioner
- Submission of comments or observations by petitioner re execution



# TEPO/EPO

- Similar to a TRO and a permanent injunction
- TEPO used to provide immediate relief and prevent further damage to the environment
  - “cases of extreme urgency and when grave or irreparable injury will be caused
- Courts given ample discretion in issuing TEPO and EPO



# Precautionary Principle and Evidence

- Explicitly mentioned as evidentiary basis
- When there is lack of full scientific certainty in establishing a causal link between human activity and environmental effect, the principle will be applied
- Factors to be applied:
  - Threats to human life or health
  - Inequity to present or future generations
  - Prejudice to the environment
- Photo, video, similar evidence admissible



# Judicial Capacity Building



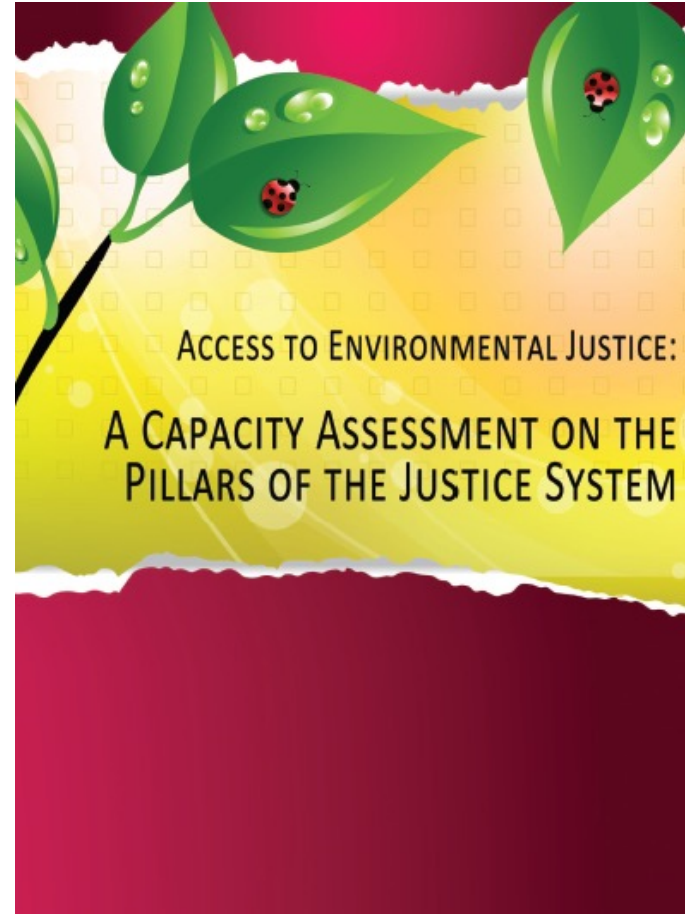


# Judicial Capacity Building Initiatives

- Publications
  - Compendium of all environmental laws
  - Sourcebook and Citizen's Handbook (one for Muslim region)
- Multi-sectoral Trainings
- Judicial training curricula and programs



# Publications

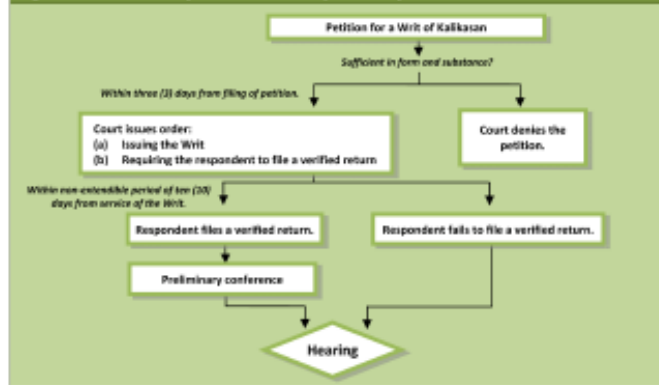


- b. Directing respondent to permanently cease and desist from committing acts or neglecting the performance of a duty in violation of environmental laws resulting in environmental destruction or damage;
- b. Directing the respondent to protect, preserve, rehabilitate or restore the environment;
- c. 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.<sup>627</sup>

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.<sup>628</sup> Nonetheless, the petitioner is not barred from filing a separate action to recover damages.<sup>629</sup>

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.<sup>630</sup> 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.<sup>631</sup>

Figure 7.3 Procedure for the issuance of a Writ of Kalikasan



<sup>627</sup> *Id.*

<sup>628</sup> *Id.* annot., at 133.

<sup>629</sup> *Id.* Rule 7, § 17. See RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, annot., at 139.

<sup>630</sup> RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7, § 16.

<sup>631</sup> *Id.* annot., at 136.

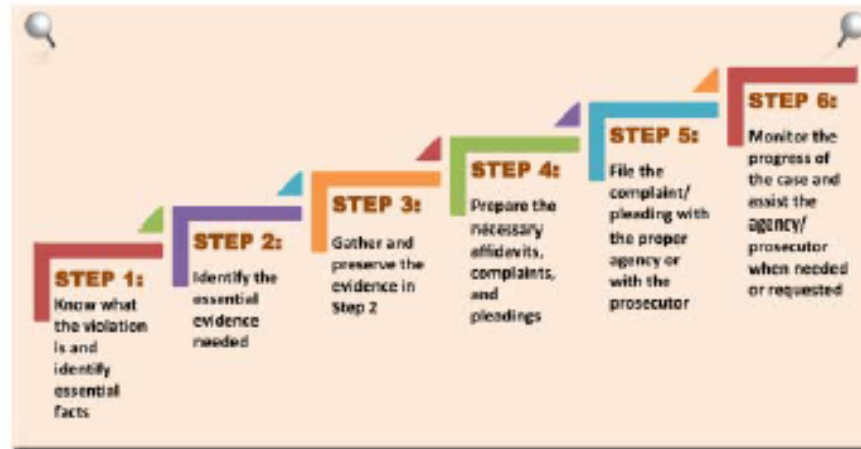


## CASE BUILDUP MEASURES AND PROCEDURES

The previous chapters helped you to understand the various environmental violations we commonly face, and the institutions which can help you in specific cases. The next step in the process is what is commonly called the case buildup stage. Here, the focus is on gathering the needed evidence to beef up the complaints for a violation, and on choosing where to file the said case. Often, the problem with complaints filed in courts against violators apprehended is the lack or insufficiency of evidence, resulting in an acquittal of the accused, or worse, a dismissal of the case. Citizens cannot simply rely on law enforcers and government agencies given the lack of resources and capacity of the latter. Citizens should take the lead in identifying violations and helping law enforcers and prosecutors put violators in jail, thus enabling them to participate in the protection and preservation of the environment.

### A. Gathering Facts and Evidence

Before embarking on your crusade against environmental violators, take note of and remember the following steps to guide you through the process and our discussion:



# Multi-sectoral Trainings

- Done in all regions of the country
- Participants: judges, court staff, prosecutors, law enforcers, other government officials, academe, environmental NGOs
  - 1,497 total participants
- Lectures and interactive training methodologies
- Results:
  - Informal local network between the pillars of the justice system
  - Cooperation and collaboration for environmental law enforcement and environmental protection
  - Each pillar knows their roles for the environment



# Curricula and Training Programs

- Environmental training manuals for judges developed
- Continuous capacity building for judges and court staff on environmental laws and the rules of procedure
- Sample Program:
  - Overview of environmental issues and laws
  - Rule of Procedure
  - Special topics (i.e., biotechnology;



# The Asian Judges Network on Environment



AJNE

Asian Judges Network on  
Environment





# AJNE Asian Judges Network on Environment

## ASEAN Chief Justices roundtable on environment

Brunei Darussalam

Cambodia

Indonesia

Laos PDR

Malaysia

Myanmar

Philippines

Singapore

Thailand

Viet Nam

## Other Asian Countries

PRC

## Observers

Fiji

Australia

New Zealand

USA

United Kingdom

Brazil

## South Asian Judicial roundtable on environment

Afghanistan

Bhutan

Bangladesh

India

Maldives

Nepal

Pakistan

Sri Lanka







## Indonesia

Judicial Certification  
Program on  
**Environment**



ADB



**Philippines**

Rules of Procedure for  
**Environmental**





## Bhutan

Bench Book and  
**Green** Benches



ADB



## Pakistan

- **Green** Benches
- **Environmental** Justice Committee &
- Institutionalization of **Environmental**



ADB



## Sri Lanka

Centre on **Environmental**  
Rule of Law and Sustainable  
Green Development; and  
Judge's Workshop on  
Environment and Writ Laws

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# Impacts of AJNE

- **AJNE** strengthened Judges' capacity
- **AJNE** provided like-minded support group
- **AJNE** provided for exchange of innovative ideas
- **AJNE** is a neutral forum for all stakeholders
- **AJNE** provided technical, scientific & economic information
- **AJNE** encouraged specialized courts and trained judges
- **AJNE** identified champion “green” judges
- **AJNE** better environmental compliance and enforcement
- **AJNE** website: **[www.ajne.org](http://www.ajne.org)**



# Conclusion and Lessons Learned





# The Need for Continued Judicial Leadership

- Important and crucial role of judges in environmental protection cannot be denied
  - More so because of climate change
- The judiciary can bring all stakeholders together
  - For cooperation, collaboration, and mutual learning
- More cases and litigation are coming...
  - Climate refugees, displacement and migration, use of limited/scarce resources, clashing policies and development priorities
- ...so judges need to prepare and be ready
  - Capacity building, continuous learning, work with stakeholders, be innovative and “bold” with decisions;
- Exercise leadership of the legal profession



*Terimah Kasih!*

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**AJNE**

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**Environment**

