

GREEN RULES: GRAY AREAS AND RED FLAGS*

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I. Introduction

Environmental litigation has gained some traction in recent years with the *Manila Bay* case¹ and the case involving SM Baguio.² While the jury is still out on whether litigation is an effective means of protecting the environment, greater activism on the part of the courts on environmental issues is an intriguing concept.

This paper aims to give environmental litigation a closer scrutiny by providing an analysis of the Rules of Procedure for Environmental Cases (hereinafter, the “Green Rules”). Specifically, this analysis involves identifying what is referred to in the paper as the “gray areas” and “red flags” of the Green Rules. By “gray areas” this paper refers to the provisions of the Green Rules that seem to be unclear and may be subject of questions later on. “Red flags” on the other hand are the provisions of the Green Rules that raise some serious concerns.

Litigation in real life, whether environmental or otherwise, is more than just the rules. But this paper does not go into the aspects of litigation outside of the rules and is therefore in that sense limited. However, any serious study of law must begin with the rules.

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¹ Metro Manila Development Authority v. Concerned Residents of Manila Bay, G.R. No. 171947, 574 SCRA 661, December 18, 2008 (hereinafter “Manila Bay Case”).

² See <http://www.gmanetwork.com/news/story/254454/news/regions/court-saves-trees-from-sm-baguio-expansion-for-now>.

II. Background of the Green Rules

The promulgation of the Green Rules was a necessary consequence of the establishment of the “Green Courts” on January 28, 2008, via Supreme Court Administrative Circular No. 23-2008 which designated special courts to hear, try and decide environmental cases. One can surmise the rationale behind the designation of these Green Courts to be:

- speeding up the progress of environmental cases; and
- enhancing the level of expertise of judges to deal with the technical matters of environmental litigation.

Once the Green Courts were established, it was simply a matter of time before it became necessary to have Green Rules.

A Technical Working Group (“TWG”) was formed and given the task of drafting the Green Rules. The TWG³ worked on the draft Green Rules from January 28, 2009 to June 19, 2009.

Judges, lawyers, NGOs and other concerned individuals and groups first evaluated the final draft of the TWG during the *Forum on Environmental Justice: Upholding the Right to a Balanced and Healthful Ecology* (“Forum”) held on April 16-17, 2009. This unique forum was held simultaneously in three cities: Baguio, Iloilo, and Davao through videoconferencing. The Forum itself had a broader objective than merely evaluating the Green Rules. It was intended:

- to recommend to the Supreme Court actions it can take to protect and preserve the environment;
- to validate the draft Rule[s] of Procedure for Environmental Cases;
- to discuss the need for a mechanism/structure that will address the need to monitor environmental cases or issues and monitor compliance therewith; and
- to identify best practices of some agencies/units and replicate [these practices] in particular situation[s].⁴

³ Dean Marvic M.V.F. Leonen was an original member of the Technical Working Group while Prof. Rommel J. Casis was his representative in the meetings. Thus, this author was fortunate to have been part of this TWG and witnessed the evolution of the Green Rules from the very first meeting until its completion.

During the Forum, commitments were made by various government agencies, civil society and academia to help support the efforts to protect the environment. This underscores the fact that the Green Rules was merely part of a broader undertaking and that the rules mean nothing without the will to enforce environmental laws.

Participants of the Forum were able to ask questions and provide feedback on the draft Green Rules. The product of these exchanges were collated and brought again to the TWG for consideration, which thereafter incorporated it to the draft before finally submitting the Green Rules to the Sub-Committee on Rules of Procedure for Environmental Cases. The Court *en banc* approved the Green Rules on April 13, 2010, and became effective on April 29, 2010.⁵

III. Importance of the Green Rules

Internationally, it is recognized that the judiciary plays a crucial role in protecting the environment. In 2002, the Global Judges Symposium on Sustainable Development and the Role of Law was held in Johannesburg, South Africa, which gathered Chief Justices and senior judges from about 60 countries and several Judges from International Courts and Tribunals.⁶ At this symposium, the *Johannesburg Principles* were adopted. It states in part:

We affirm that an independent Judiciary and judicial process are vital for the implementation, development, and enforcement of environmental law, and that members of the Judiciary, as well as those contributing to the judicial process at the national, regional, and global levels, are crucial partners for promoting compliance with, and the implementation and enforcement of, international and national environmental law...

We express our conviction that the Judiciary, well informed of the rapidly expanding boundaries of environmental law and aware of its role and

⁴ Program for the Forum on Environmental Justice: Upholding the Right to a Balanced and Healthful Ecology, April 16-17, 2009.

⁵ RATIONALE TO THE RULES OF PROCEDURE ON ENVIRONMENTAL CASES 97 [hereinafter "RATIONALE"], available at http://sc.judiciary.gov.ph/Environmental_Rationale.pdf.

⁶ Global Judges Symposium on Sustainable Development and the Role of Law, at http://www.unep.org/law/symposium/Judges_symposium.htm.

responsibilities in promoting the implementation, development, and enforcement of laws, regulations, and international agreements relating to sustainable development, *plays a critical role in the enhancement of the public interest in a healthy and secure environment...*⁷ (emphases supplied)

The purpose of the Green Rules was to provide effective judicial remedies for environmental protection. It recognizes that the nature of environmental cases makes traditional methodologies ineffective at times. It has been said that:

The rules recognize that the nature environmental cases requires innovative and swift action considering the magnitude and irreversibility of environmental threats. Thus, the innovations offered by the Green Rules correspond to the gravity of the threat and the need for decisive action.

The Green Rules were written for the purpose of removing three main roadblocks in environmental litigation. The first roadblock is the ability of individuals and groups to commence environmental litigation. This goes into the *locus standi* issue in environmental cases. This also goes into the challenges faced by the poor and marginalized groups to commence and sustain environmental litigation. The second roadblock is the inherent delays in the judicial process. While due process must be protected, technicalities have been known to make remedies useless because of the time it takes for the judicial process to move forward. The third roadblock is the difficulty in applying traditional rules on obtaining, storing and presenting evidence for environmental cases. The quantum and nature of evidence required for proving causality through traditional means may prove to be too daunting for victims of environmental degradation...

Thus, the Green Rules intend to make the judicial process a partner in obtaining environmental justice.⁸

⁷ Johannesburg Principles on the Role of Law and Sustainable Development, adopted at the Global Judges Symposium held in Johannesburg, South Africa, August 18-20, 2002, available at <http://www.unep.org/law/symposium/Principles.htm>.

⁸ LEONEN & CASIS, THE GREEN RULE BOOK: NOTES AND CASES ON THE RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, ENVIRONMENTAL LAWS AND PROVISIONS iv (2010) (unpublished manuscript) [hereinafter "GREEN RULE BOOK"].

IV. Salient Features of the Green Rules

A. The Scope

Rule 1, Section 2 of the Green Rules provides:

SEC. 2. *Scope*.—These Rules shall govern the procedure in civil, criminal and special civil actions before the Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts and Municipal Circuit Trial Courts involving enforcement or violations of environmental and other related laws, rules and regulations such as but not limited to the following:

... ..

The Green Rules apply to all actions involving enforcement or violations of environmental and other related laws, rules and regulations. It should be noted that the laws listed under Section 2 are more than those listed under SC Administrative Circular No. 23-2008.⁹ But because both lists are not intended to be exhaustive, then there is no expansion of coverage because of the Green Rules.

B. The Objectives

Rule 1 Section 3 provides:

⁹ SC Administrative Circular No. 23-2008 enumerates the following laws:

1. Revised Forestry Code (P.D. No. 705)
2. Marine Pollution (P.D. No. 979)
3. Toxic Substances and Hazardous Waste Act (R.A. No. 6969)
4. People's Small-Scale Mining Act (R.A. No. 7076)
5. National Integrated Protected Areas System Act (R.A. No. 7586)
6. Philippine Mining Act (R.A. No. 7942)
7. Indigenous People's Rights Act (R.A. No. 8371)
8. Philippine Fisheries Code (R.A. No. 8550)
9. Clean Air Act (R.A. No. 8749)
10. Ecological Solid Waste Management Act (R.A. No. 9003)
11. National Caves & Cave Resources Management Act (R.A. No. 9072)
12. Wildlife Conservation & Protection Act (R.A. No. 9147)
13. Chainsaw Act (R.A. No. 9175)
14. Clean Water Act (R.A. No. 9275)

For laws covered by the Green Rules under Rule 1, §2, see discussion *infra*, pages 791-794.

SEC. 3. *Objectives.*—The objectives of these Rules are:

- (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 the 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.

It can be said that the foundation of the Green Rules is the constitutional right of the people to a balanced and healthful ecology. Therefore, the Green Rules do not purport to protect nature for its inherent value but because of its value to human beings.

The second and third objectives justify the bulk of the provisions of the Green Rules. Many of the provisions are intended to speed up the conclusion of environmental cases or provide immediate remedies. For instance, Rule 2, Sections 1 and 2 identify the pleadings and motions allowed as well as prohibited pleadings and motions as follows:

SEC. 1. *Pleadings and motions allowed.*—The pleadings and motions that may be filed are complaint, answer which may include compulsory counterclaim and cross-claim, motion for intervention, motion for discovery and motion for reconsideration of the judgment.

Motion for postponement, motion for new trial and petition for relief from judgment shall be allowed in highly meritorious cases or to prevent a manifest miscarriage of justice.

SEC. 2. *Prohibited pleadings or motions.*—The following pleadings or motions shall not be allowed:

- (a) Motion to dismiss the complaint;
- (b) Motion for a bill of particulars;
- (c) Motion for extension of time to file pleadings, except to file 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.

Section 1 is said to be an exhaustive list.¹⁰ If so, then Section 2 is redundant because everything not in Section 1 is deemed prohibited and there is no need for a separate listing for prohibited pleadings. Perhaps Section 2 is merely intended to reiterate the prohibited pleadings and motions.¹¹

The other provisions, which are intended to expedite the process, are the provisions on:

1. continuous trial;¹²
2. affidavits in lieu of direct examination;¹³
3. one day examination of witness rule;¹⁴
4. 60-day period for decision;¹⁵

¹⁰ ANNOTATION TO THE RULES OF PROCEDURE FOR ENVIRONMENTAL CASES 107, available at http://sc.judiciary.gov.ph/Environmental_Annotation.pdf [hereinafter "ANNOTATION"].

¹¹ But this may be problematic later on if a litigant files a pleading not in § 1 but also not in § 2. In such a case, the court should rule that the pleading is prohibited.

¹² Rule 4, § 1 states:

SEC. 1. *Continuous trial*.—The judge shall conduct continuous trial which shall not exceed two (2) months from the date of the issuance of the pre-trial order.

Before the expiration of the two-month period, the judge may ask the Supreme Court for the extension of the trial period for justifiable cause.

¹³ Rule 4, § 2 states:

SEC. 2. *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.

¹⁴ Rule 4, § 3 states:

SEC. 3. *One-day examination of witness rule*.—The court shall strictly adhere to the rule that a witness has to be fully examined in one (1) day, subject to the court's discretion of extending the examination for justifiable reason. After the presentation of the last witness, only oral offer of evidence shall be allowed, and the opposing party shall immediately interpose his objections. The judge shall forthwith rule on the offer of evidence in open court.

¹⁵ Rule 4, § 4 states:

SEC. 4. *Submission of case for decision; filing of memoranda*.— After the last party has rested its case, the court shall issue an order submitting the case for decision.

The court may require the parties to submit their respective memoranda, if possible in electronic form, within a non-extendible period of thirty (30) days from the date the case is submitted for decision.

5. one-year period for trial.¹⁶

As to providing an inexpensive procedure, Rule 2, Section 12 provides:

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.

Thus, the payment of filing fees is deferred. But if the litigant is an indigent he is exempted altogether.

As to the fourth objective, it can be noted that even without the Green Rules the Supreme Court has exercised a similar power in the *Manila Bay* case.¹⁷

The value of these objectives is that they may aid in the interpretation of the Green Rules in case there is a dispute as to how a particular rule is to be applied.

C. The Consent Decree

Rule 1, Section 4 (b) defines a "consent decree" as "a judicially-approved settlement between concerned parties based on public interest and public policy to protect and preserve the environment."

The term is not entirely absent from Philippine jurisprudence. It appears that there are four Philippine cases that refer to a "consent decree."¹⁸

The court shall have a period of sixty (60) days to decide the case from the date the case is submitted for decision.

¹⁶ Rule 4, § 5 states:

SEC. 5. *Period to try and decide.*—The court shall have a period of one (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.

¹⁷ *Supra* note 1.

Of these, one in particular,¹⁹ the Court impliedly defined a consent decree as an agreement or stipulation made by the parties to a case which has been put in the form of a judgment, in an effort to give it the force and effect of a judgment. None of these cases however discuss the concept in depth. As far as Philippine laws are concerned, there appears to be no mention of the concept in our statute books.

In the Green Rules, a consent decree is a means to expedite environmental litigation. Rule 3, Section 5 provides:

SEC. 5. *Pre-trial conference; consent decree.*—The judge shall put the parties and their counsels under oath, and they shall remain under oath in all pre-trial conferences.

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... (emphasis supplied)

D. The Continuing Mandamus

Rule 1, Section 4 (c) defines a continuing mandamus as “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.”

A *continuing mandamus* was first used by the Court in the *Metro Manila Development Authority v. Concerned Residents of Manila Bay*²⁰ where the Court held that “the Court may, under extraordinary circumstances, issue directives with the end in view of ensuring that its decision would not be set to naught by administrative inaction or indifference.”²¹ In this case, the Court ordered:

¹⁸ Pardo de Tavera v. Roman Catholic Church, G.R. No. L-469, March 13, 1908; City of Manila v. Tarlac Development Corp., G.R. No. L-24557, July 31, 1968; Favis v. Municipality of Sabangan, G.R. No. L-26522, February 27, 1969; Lichauco de Leon v. Court of Appeals, G.R. No. 80965, June 6, 1990.

¹⁹ City of Manila v. Tarlac Development Corp., G.R. No. L-24557, July 31, 1968.

²⁰ Manila Bay Case, *supra* note 1.

²¹ *Id.* at 688.

The heads of petitioners-agencies MMDA, DENR, DepEd, DOH, DA, DPWH, DBM, PCG, PNP Maritime Group, DILG, and also of MWSS, LWUA, and PPA, in line with the principle of “continuing mandamus”, shall, from finality of this Decision, each submit to the Court a quarterly progressive report of the activities undertaken in accordance with this Decision.²²

1. Grounds for the Petition

Rule 8, Section 1 provides:

SEC. 1. *Petition for continuing mandamus*.—When any agency or instrumentality of the government or officer thereof 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 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 thereby may file a verified petition in the proper court, alleging the facts with certainty, attaching thereto supporting evidence, specifying that the petition concerns an environmental law, rule or regulation, and praying 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. The petition shall also contain a sworn certification of non-forum shopping.

Thus the requisites are:

- a. When an agency or instrumentality of the government or officer thereof:
 - i. 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 therein; or

²² *Id.* at 697.

- ii. unlawfully excludes another from the use or enjoyment of such right; and

b. There is no other plain, speedy and adequate remedy in the ordinary course of law.

2. Filing the Petition

The petition may be filed in any of the following:

- a. Regional Trial Court exercising jurisdiction over the territory where the actionable neglect or omission occurred; or
- b. Court of Appeals; or
- c. Supreme Court.²³

The petitioner is exempt from filing docket fees.²⁴

3. Proceedings

Upon receipt of a petition sufficient in form and in substance, the court shall issue the writ and require the respondent to comment on the petition within 10 days from receipt of a copy thereof.²⁵ Upon receipt of the comment or the expiration of the time for the filing the same, the court may hear the case which shall be summary in nature or require the parties to submit memoranda.²⁶ The court has 60 days to issue a decision from the date of the submission of the petition for resolution.²⁷

4. Judgment

The remedies that the court may grant include:²⁸

- a. 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

²³ Rule 8, § 2.

²⁴ Rule 8, § 3.

²⁵ Rule 8, § 4.

²⁶ Rule 8, § 6.

²⁷ *Id.*

²⁸ Rule 8, § 7.

- b. such other reliefs as may be warranted resulting from the wrongful or illegal acts of the respondent.

In any case, 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.²⁹

E. The Environmental Protection Order

Rule 1, Section 4 (d) of the Green Rules defines an *environmental protection order* (hereinafter “EPO”) as “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 idea behind the EPO was to provide for a remedy similar to the protection orders under the Anti-Violence Against Women and Their Children Act of 2004.³⁰

Rule 2, Section 8 provides:

SEC. 8. *Issuance of Temporary Environmental Protection Order (TEPO).*—If it appears from the verified complaint with a prayer for the issuance of an Environmental Protection Order (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 raffle or the presiding judge of a single-sala court as the case may be, may issue ex parte a TEPO effective for only seventy-two (72) hours from date of the receipt of the TEPO by the party or person enjoined. Within said period, the court where the case is assigned, shall conduct a summary hearing to determine whether the TEPO may be extended until the termination of the case.

The court where the case is assigned, shall periodically monitor the existence of acts that are the subject matter of the TEPO even if issued by the executive judge, and may lift the same at any time as circumstances may warrant.

²⁹ *Id.*

³⁰ Rep. Act No. 9262, Anti-Violence Against Women and Their Children Act (2004).

The applicant shall be exempted from the posting of a bond for the issuance of a TEPO.

The court in civil or criminal case³¹ covered by the Green Rules may issue a TEPO effective for 72 hours on the ground that the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury. The TEPO may be extended by the Court until the termination of the case. However, 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 and subject to the posting of a sufficient bond by the party or person enjoined.

Therefore, it is not sufficient for the person enjoined to simply allege damage. He must prove that such damage is irreparable and the nature of the damage suffered or to be suffered by applicant is of a nature that can be compensated monetarily.

F. The SLAPP

Rule 1, Section 4 (g) of the Green Rules defines SLAPP as follows:

(g) Strategic lawsuit against public participation (SLAPP) refers to an 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.

The civil and criminal procedure portions of the Green Rules each have their own SLAPP provisions.

In the Civil Procedure portion, a SLAPP is re-defined as follows:

SEC. 1. *Strategic lawsuit against public participation (SLAPP).*—A legal action filed to harass, vex, exert undue pressure or stifle any legal

³¹ Rule 13, § 2.

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 and shall be governed by these Rules.

To illustrate, a corporation, which has been charged for violating an environmental law, may file a suit for damages against the person who filed the case against it. In that civil suit for damages, the defendant may raise the defense that the action filed against him is a SLAPP and should be governed by the Green Rules. The defendant may do so by filing an answer interposing as a defense that the case is a SLAPP.³² Documents, affidavits, papers and other evidence must support this defense.³³ Thereafter, the court in that case will direct the other party to file an opposition showing the suit is not a SLAPP.³⁴ Such opposition must include the evidence in support of its allegations and must be filed within a non-extendible period of five (5) days from receipt of notice that an answer has been filed.³⁵

The court will then set a hearing within fifteen (15) days from filing of the comment or the lapse of the period.³⁶ The hearing will be summary in nature.³⁷ The party alleging that the civil suit is a SLAPP must prove by

³² Rule 6, § 2 states:

SEC. 2. *SLAPP as a defense; how alleged.*—In a SLAPP filed against a person involved in the enforcement of environmental laws, protection of the environment, or assertion of environmental rights, the defendant may file an answer interposing as a defense that the case is a SLAPP and shall be supported by documents, affidavits, papers and other evidence; and, by way of counterclaim, pray for damages, attorney's fees and costs of suit.

The court shall direct the plaintiff or adverse party to file an opposition showing the suit is not a SLAPP, attaching evidence in support thereof, within a non-extendible period of five (5) days from receipt of notice that an answer has been filed.

The defense of a SLAPP shall be set for hearing by the court after issuance of the order to file an opposition within fifteen (15) days from filing of the comment or the lapse of the period.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Rule 6, § 3 states:

SEC. 3. *Summary hearing.*—The hearing on the defense of a SLAPP shall be summary in nature. The parties must submit all available evidence in support of their respective positions. 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

substantial evidence that his environmental action is a legitimate action while the other party must prove by preponderance of evidence that the civil suit is not a SLAPP. The court has 30 days from the date of the hearing to resolve the SLAPP defense.

In case a criminal action is filed against the person filing an environmental case, the accused may file a motion to dismiss on the ground that the criminal action is a SLAPP.³⁸ The summary nature of the hearing and quantum of evidence required of each party follows that of civil suits.³⁹ The only difference is that the person filing the criminal action is not required to file an opposition and no time frame is given for setting the hearing or the resolution of the defense.

The idea behind these provisions is to protect individuals and groups who have filed or intend to file actions to protect the environment. SLAPP suits are “meritless suits aimed at silencing a plaintiff’s opponents, or at least at diverting their resources.”⁴⁰ Therefore, they are mere harassment suits. However, what distinguishes SLAPP from other harassment suits is that they may have a political dimension in the sense that citizen participation is affected, or the right to petition the government for redress of grievances is restrained.⁴¹

G. The Writ of Kalikasan

When the first complete draft of the Green Rules was nearing completion, the idea was presented to include the rules’ own version of the *writ of amparo*. There was some debate on the name to be given to the writ, but the TWG finally settled on the current name, *writ of kalikasan*.

assailed as a SLAPP shall prove by preponderance of evidence that the action is not a SLAPP and is a valid claim.

³⁸ Rule 19, § 1 states:

SEC. 1. *Motion to dismiss*.—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.

³⁹ Rule 19, § 2.

⁴⁰ John C. Barker, *Common-law and Statutory Solutions to the Problem of SLAPPS*, 26 LOY. L.A. L. REV. 395 (1993).

⁴¹ *Id.*

1. To Whom Available

Rule 7, Section of the Green Rules provides:

SEC. 1. *Nature of the writ.*—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.

Thus, the *writ* is available to any 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 other persons.

2. When Available

The persons represented must have their right to a balanced and healthful ecology violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity. Such violation must involve environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

3. Filing the Writ

Rule 7, Sections 3 and 4 provide:

SEC. 3. *Where to file.*—The petition shall be filed with the Supreme Court or with any of the stations of the Court of Appeals.

SEC. 4. *No docket fees.*—The petitioner shall be exempt from the payment of docket fees.

The *writ* may only be filed with the Court of Appeals or Supreme Court. There are no docket fees paid.

4. Writ of Kalikasan v. Continuing Mandamus

The table below⁴² highlights the differences between the *writ of kalikasan* and the continuing mandamus:

| | Kalikasan | Continuing Mandamus |
|-----------------------|--|--|
| <i>Who may file</i> | 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 | Person aggrieved |
| <i>When available</i> | <ul style="list-style-type: none"> ▪ Constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission; ▪ Involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces. | <p>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, or unlawful exclusion of another from the use or enjoyment of such right; and</p> <ul style="list-style-type: none"> ▪ There is no other plain, speedy and adequate remedy in the ordinary course of law, |
| <i>Against whom</i> | Public official or employee, or private individual or entity | Agency or instrumentality of the government or officer thereof |

⁴² This table is from GREEN RULE BOOK, *supra* note 8, at 41-43.

| | Kalikasan | Continuing Mandamus |
|----------------------------|---|--|
| <i>Where to file</i> | Supreme Court or with any of the stations of the Court of Appeals | 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 |
| <i>Discovery Measures</i> | Ocular inspection; Production and inspection of documents and things | None |
| <i>Relief(s) available</i> | <p>Direct 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;</p> <p>Direct the respondent public official, government agency, private person or entity to protect, preserve, rehabilitate or restore the environment;</p> <p>Direct the respondent public official, government agency, private person or entity to monitor strict compliance with the decision and orders of the court;</p> <p>Direct the respondent public official, government agency, or private person or</p> | Judgment 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. |

| | Kalikasan | Continuing Mandamus |
|--|--|----------------------------|
| | <p>entity to make periodic reports on the execution of the final judgment; and</p> <ul style="list-style-type: none"> ▪ 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. | |

V. Gray Areas

A. Prohibition against TRO and Preliminary Injunction

Rule 2, Section 10 provides:

SEC. 10. *Prohibition against temporary restraining order (TRO) and 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.

During the TWG meeting, it was brought to the group's attention that one obstacle faced by some environmental groups is the prohibition against TROs under Philippine law. In particular, what was referred to were Presidential Decrees No. 605 ("P.D. No. 605") and 1818 ("P.D. No. 1818").

P.D. No. 605 sought to prevent the practice of courts to issue preliminary injunctions and/or preliminary mandatory injunctions in disputes involving or growing out of the issuance, suspension, revocation, approval or disapproval of any concession, license, permit, patent or public

grant of any kind for the disposition, exploitation, utilization, exploration and development of the natural resources of the country.⁴³ Section 1 of P.D. No. 605 provides:

No court of the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction or preliminary mandatory injunction in any case involving or growing out of the issuance, approval or disapproval, revocation or suspension of, or any action whatsoever by the proper administrative official or body on concessions, licenses, permits, patents, or public grants of any kind in connection with the disposition, exploitation, utilization, exploration and/or development of the natural resources of the Philippines.

Thus, what P.D. No. 605 prohibits is the issuance of a TRO, preliminary injunction or preliminary mandatory injunction in cases involving:

- the issuance, approval or disapproval, revocation or suspension of, or any action whatsoever;
- by the proper administrative official or body;
- regarding concessions, licenses, permits, patents, or public grants of any kind; and
- in connection with the disposition, exploitation, utilization, exploration and/or development of the natural resources of the Philippines.

On the other hand, P.D. No. 1818⁴⁴ was based on the policy that it is in the public interest to adopt a similar prohibition⁴⁵ “against issuance of such restraining orders or injunctions in other areas of activity equally critical to the economic development effort of the nation, in order not to

⁴³ Pres. Dec. No. 605, Banning the Issuance by Courts of Preliminary Injunctions in Cases Involving Concessions, Licenses, and Other Permits Issued by Public Administrative Officials or Bodies for the Exploitation of Natural Resources (1974).

⁴⁴ Pres. Dec. No. 1818, Prohibiting Courts from Issuing Restraining Orders or Preliminary Injunction in Cases Involving Infrastructure and Natural Resource Development Projects of, and Public Utilities Operated by the Government (1981).

⁴⁵ Referring to P.D. No. 605.

disrupt or hamper the pursuit of essential government projects.”⁴⁶ Thus, Section 1 of P.D. No. 1818 provides:

SEC. 1. No court in the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction, or preliminary mandatory injunction in any case, dispute, or controversy involving an infrastructure project, or a mining, fishery, forest or other natural resource development project of the government, or any public utility operated by the government, including among others public utilities for the transport of the goods or commodities, stevedoring and arrastre contracts, to prohibit any person or persons, entity or governmental official from proceeding with, or continuing the execution or implementation of any such project, or the operation of such public utility, or pursuing any lawful activity necessary for such execution, implementation or operation.

Therefore, in P.D. No. 1818, courts are prohibited from issuing restraining orders, preliminary injunctions and preliminary mandatory injunctions in cases, disputes or controversies involving:

- a. an infrastructure project, or a mining, fishery, forest or other natural resource development project of the government, or any public utility operated by the government, including among others public utilities for the transport of the goods or commodities, stevedoring and arrastre contracts; and
- b. prohibition of any person or persons, entity or governmental official from proceeding with, or continuing the execution or implementation of any such project, or the operation of such public utility, or pursuing any lawful activity necessary for such execution, implementation or operation.

Rule 1, Section 10 of the Green Rules exempts the Supreme Court from the prohibition, but the two substantive laws explicitly cover all courts. It is submitted that this conflict is resolved by Republic Act No. 8975:⁴⁷

⁴⁶ Pres. Dec. No. 1818, 2nd whereas clause.

⁴⁷ Rep. Act No. 8975, An Act to Ensure the Expeditious Implementation and Completion of Government Infrastructure Projects by Prohibiting Lower Courts from Issuing Temporary Restraining Orders, Preliminary Injunctions or Preliminary Mandatory Injunctions, Providing Penalties for Violations Thereof, and for Other Purposes (2000).

Pursuant to the mandate of R.A. No. 8975, only the Supreme Court has the authority to issue a temporary restraining order, preliminary injunction and preliminary mandatory injunction against the Government or any of its instrumentalities, officials and agencies in cases such as those filed by bidders or those claiming to have rights through such bidders involving such contract or project.⁴⁸

The specific provision referred to must be Section 3 of R.A. 8975, which states:

SEC. 3. *Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions.*— No court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private, acting under the government's direction, to restrain, prohibit or compel the following acts:

- (a) Acquisition, clearance and development of the right-of-way and/or site or location of any national government project;
- (b) Bidding or awarding of contract/project of the national government as defined under Section 2 hereof;
- (c) Commencement, prosecution, execution, implementation, operation of any such contract or project;
- (d) Termination or rescission of any such contract/project; and
- (e) The undertaking or authorization of any other lawful activity necessary for such contract/project...

It may be noted that the coverage of Section 3 of R.A. 8975 is narrower than that of P.D. 605 and P.D. 1818. Thus, it only amends P.D. 605 and P.D. 1818 to the extent of its narrower coverage.

Another question that may be raised is whether the TEPO is covered by these prohibitions, considering that, although not called a restraining order, a TEPO is in the nature of a restraining order or

⁴⁸ ANNOTATION, *supra* note 10, at 116.

injunction. The *Annotation* explains that Section 10 is distinct from Section 8 on the issuance of the TEPO, because of the different premises on which the sections are based.⁴⁹ Thus, the prohibition does not apply to the TEPO. But can't this be considered as case where a procedural rule circumvents a substantive law provision?

B. Limits of the Writ of Kalikasan

There is a view that the writ may only be filed in representation of those whose constitutional rights are injured. This appears to be the position of the *Annotation* as well.⁵⁰ As this author has argued elsewhere:

However, there seems to be no reason why the natural persons directly injured or threatened by the violation may not seek the remedy directly and not through others on their behalf. *Persons who directly suffer from environmental damage should not have to wait for others to act for them.* This would be contrary to the stated objectives of the Green Rules. Thus, Section 1 should be interpreted to mean that the following may file for a writ of *kalikasan*:

- a. Natural persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation; or
- b. 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.⁵¹ (emphasis supplied)

Another limitation is that the writ will not be available if the environmental damage only affects one city or province.⁵² Like the limitation on *locus standi* adverted to above, there seems to be no reason for this rule as well.

⁴⁹ *Id.* at 116-117.

⁵⁰ *Id.* at 133.

⁵¹ GREEN RULE BOOK *supra* note 8, at 34.

⁵² Rule 7, § 1 of the Green Rules expressly provides that the writ of *kalikasan* "is a remedy available...[in cases] involving environmental damage of such magnitude as to prejudice the life, health or property of *inhabitants in two or more cities or provinces.*" (emphasis, alteration supplied)

C. Precautionary Principle

Rule 1, Section 4 (f) defines the precautionary principle as a principle which states “that 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.”

However, the only place where the principle is used is in Rule 20, Sections 1 and 2, which state:

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.

Thus, the precautionary principle is to be applied when there is a lack of scientific certainty in establishing a causal link between human activity and environmental effect. But the application is not automatic. The court must first consider three things before applying the principle:

- (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.

But these provisions do not indicate how the principle is to be applied. The definition cited earlier also does not provide any guidance, for all it says is that “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.”

Rule 20, Section 1 uses the precautionary principle in the context of appreciation of evidence or the quantum of evidence required while the definition deals with the principle as a justification for action. There appears to be a ‘disconnect’ between the definition and the application.

During the early meetings of the TWG it was suggested that certain presumptions be included in the rules so that the burden of proof is shifted to the alleged cause of the environmental damage. The reason for this was because normally, the cost of providing scientific proof for causality is beyond the reach of the poor who are often the victim of environmental harm. However, eventually these presumptions were considered too radical and removed from the draft.

VI. Red Flags

A. *Locus standi*

Rule 2, Sections 4 and 5 provide:

SEC. 4. *Who may file*.—Any real party in interest, including the government and juridical entities authorized by law, may file a civil action involving the enforcement or violation of any environmental law.

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 a general circulation in the Philippines or furnish all affected barangays copies of said order.

Citizen suits filed under R.A. No. 8749 and R.A. No. 9003 shall be governed by their respective provisions.

The issue of *locus standi* is very important for environmental cases. The argument is that because everyone is affected by environmental damage,

everyone should have standing to sue. The problem, however, is that the fact that damage to the environment is spread out to many makes it nearly impossible to prove specific damage unique to a specific plaintiff. Objections may also be raised against groups that file cases for environmental concerns if the members of such groups may not be part of the communities directly affected by the environmental damage.

During the first few meetings of the TWG, the members reviewed the paper of Justice Consuelo Ynares-Santiago titled *Framework for Strengthening Environmental Adjudication in the Philippines*.⁵³ In this paper, Justice Ynares-Santiago pointed out that:

In various consultative forums discussing environmental adjudication, the issues of standing to sue and class suits are always raised. Environmental law advocates often suggest that the Court should relax the rules on standing to sue and class actions in order to make it easier for the injured parties to file a case.⁵⁴

Because a cause of action only exists if the petitioners have a right that has been violated *and* the defendant has a duty to protect that right,⁵⁵ in the case of public interest law groups, while the defendant may have the duty to respect a right which has been violated, such groups may not be the injured party. Thus, what is important to these groups is that they are explicitly *allowed* to file suits on behalf of the injured parties.⁵⁶

Is this request granted by the Green Rules?

No, it is not.

Only a real party in interest can file an environmental case. A real party in interest is one “who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.”⁵⁷ An exception is in the case

⁵³ Consuelo Ynares-Santiago, *Framework for Strengthening Adjudication in the Philippines*, 52 ATENEO L.J. 744 (2007).

⁵⁴ *Id.* at 747.

⁵⁵ *Id.* at 748.

⁵⁶ *Id.* at 749.

⁵⁷ RULES OF COURT, Rule 3, § 2.

of a *writ of kalikasan* which explicitly provides that the writ is filed on behalf of others.

A possible solution may be Section 5. Although Section 5 is intended to codify the Court's ruling in *Oposa v. Factoran*,⁵⁸ it may not necessarily provide the requested remedy. The Court in this case characterized it as a "taxpayer's class suit" wherein the minor petitioners alleged that they represented "their generation as well as generations yet unborn." The Court ruled:

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 on 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.⁵⁹

It should be noted however that Section 5 does not contemplate a *class suit* but a *citizen's suit*. Therefore all the requirements for a citizen's suit must be complied with.⁶⁰

B. Environmental laws?

Rule 1, Section 2 provides:

SEC. 2. *Scope*.—These Rules shall govern the procedure in civil, criminal and special civil actions before the Regional Trial Courts,

⁵⁸ G.R. No. 101083, 224 SCRA 792, July 30 1993.

⁵⁹ *Id.* at 802-803.

⁶⁰ It may be remarked that a class suit is different from a citizen's suit. A class suit is defined in Rule 3, § 12 of the Rules of Court which provides "[w]hen the subject matter of the controversy is one of common or general interest to many *persons so numerous that it is impracticable to join all as parties*, a number of them which the court finds to be *sufficiently numerous and representative as to fully protect the interests of all concerned* may sue or defend for the benefit of all. Any party in interest shall have the right to intervene to protect his individual interest." (emphases supplied). *See* *Newsweek, Inc. v. Intermediate Appellate Court*, G.R. No. 63559, 142 SCRA 171, May 30, 1986, *MVRS Publications, Inc. v. Islamic Da'wah Council of the Philippines, Inc.*, G.R. No. 135306, 396 SCRA 210, January 28, 2003 (for elements of a class suit). On the other hand, citizen's suits are provided for in several substantive laws regarding the environment, *see, e.g.*, R.A. No. 8749, § 41, R.A. No. 9003, § 52, and in Rule 2, § 5 of the Green Rules. It may be observed that the requisites for a citizen's suit are more relaxed than those of a class suit.

Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts and Municipal Circuit Trial Courts involving enforcement or violations of environmental and other related laws, rules and regulations *such as but not limited to* the following:

- a. Act No. 3572, Prohibition Against Cutting of Tindalo, Akli, and Molave Trees;
- b. P.D. No. 705, Revised Forestry Code;
- ...
- y. Provisions in C.A. No. 141, The Public Land Act; R.A. No. 6657, Comprehensive Agrarian Reform Law of 1988; R.A. No. 7160, Local Government Code of 1991; R.A. No. 7161, Tax Laws Incorporated in the Revised Forestry Code and Other Environmental Laws (Amending the NIRC); R.A. No. 7308, Seed Industry Development Act of 1992; R.A. No. 7900, High-Value Crops Development Act; R.A. No. 8048, Coconut Preservation Act; R.A. No. 8435, Agriculture and Fisheries Modernization Act of 1997; R.A. No. 9522, The Philippine Archipelagic Baselines Law; R.A. No. [9513], Renewable Energy Act of 2008; R.A. No. [9367], Philippine Biofuels Act; *and other existing laws* that relate to the conservation, development, preservation, protection and utilization of the environment and natural resources. (emphasis supplied)

Section 2 lists what are identified as “environmental laws.” This list includes the following environmental laws:

- a. Act No. 3572, Prohibition Against Cutting of Tindalo, Akli, and Molave Trees;
- b. P.D. No. 705, Revised Forestry Code;
- c. P.D. No. 856, Sanitation Code;
- d. P.D. No. 979, Marine Pollution Decree;
- e. P.D. No. 1067, Water Code;
- f. P.D. No. 1151, Philippine Environmental Policy of 1977;
- g. P.D. No. 1433, Plant Quarantine Law of 1978;
- h. P.D. No. 1586, Establishing an Environmental Impact Statement System Including Other Environmental Management Related Measures and for Other Purposes;
- i. R.A. No. 3571, Prohibition Against 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;
- j. R.A. No. 4850, Laguna Lake Development Authority Act;
 - k. R.A. No. 6969, Toxic Substances and Hazardous Waste Act;
 - l. R.A. No. 7076, People's Small-Scale Mining Act;
 - m. R.A. No. 7586, National Integrated Protected Areas System Act including all laws, decrees, orders, proclamations and issuances establishing protected areas;
 - n. R.A. No. 7611, Strategic Environmental Plan for Palawan Act;
 - o. R.A. No. 7942, Philippine Mining Act;
 - p. R.A. No. 8371, Indigenous Peoples Rights Act;
 - q. R.A. No. 8550, Philippine Fisheries Code;
 - r. R.A. No. 8749, Clean Air Act;
 - s. R.A. No. 9003, Ecological Solid Waste Management Act;
 - t. R.A. No. 9072, National Caves and Cave Resource Management Act;
 - u. R.A. No. 9147, Wildlife Conservation and Protection Act;
 - v. R.A. No. 9175, Chainsaw Act;
 - w. R.A. No. 9275, Clean Water Act;
 - x. R.A. No. 9483, Oil Spill Compensation Act of 2007

It can be argued that not all of these laws qualify as environmental laws or can give rise to an action covered by the Green Rules. For example the primary purpose behind R.A. No. 8371, or the Indigenous Peoples Rights Act is the recognition and promotion of all the rights of Indigenous Cultural Communities/Indigenous Peoples. It is difficult to identify specific provisions of this law which can give rise to an action under the Green Rules. The same can be said for R.A. No. 7076 or the People's Small-Scale Mining Act. Inclusion in this list must go beyond the title of the laws but the actual provisions of the laws themselves.

Rule 1 Section 2 (y) provides:

- y. Provisions in C.A. No. 141, The Public Land Act; R.A. No. 6657, Comprehensive Agrarian Reform Law of 1988; R.A. No. 7160, Local Government Code of 1991; R.A. No. 7161, Tax Laws Incorporated in the Revised Forestry Code and Other Environmental Laws (Amending the NIRC); R.A. No. 7308, Seed Industry Development Act of 1992; R.A. No. 7900, High-Value Crops Development Act; R.A. No. 8048, Coconut Preservation Act;

R.A. No. 8435, Agriculture and Fisheries Modernization Act of 1997; R.A. No. 9522, The Philippine Archipelagic Baselines Law; R.A. No. [9513] , Renewable Energy Act of 2008; R.A. No. [9367] , Philippine Biofuels Act; *and other existing laws* that relate to the conservation, development, preservation, protection and utilization of the environment and natural resources. (emphasis supplied)

Originally some of these laws listed here were included in the list of environmental laws. But considering their length and the fact that these laws were not in fact environmental in nature, they were removed. However, because some considered that these laws may contain “environmental” provisions, they were included again in subsection (y), which lists some laws which may have “environmental provisions.”

The Green Rule Book attempted to identify which of the provisions of these laws qualify as possibly being environmental in nature. But these are mere educated guesses and we will never know until an actual case or controversy comes up. Therefore one red flag issue with the Green Rules is the doubtful environmental character of the laws included in the lists in Section 2 of Rule 1.

C. SLAPP Stick?

The SLAPP provisions of the Green Rules have good intentions. It provides those who file environmental cases an expeditious remedy against attempts to harass them. Admittedly, employing a SLAPP defense is easier than countering with a malicious prosecution suit. However, there are some concerns about the application of the SLAPP provisions.

First, it seems that the SLAPP defense is only available after a criminal or civil action is filed against those filing an environmental case. Even if the SLAPP defense is eventually successful, the defendants in the environmental case already succeeded in diverting the time and resources of the original complainants.

Second, it is possible for the SLAPP provisions themselves be an instrument of those causing the environmental harm. For instance, a large polluting corporation may be aware that some individuals injured by their pollution is about to file an environmental case against it. Once the environmental case is filed it raises a SLAPP defense. Under this scenario the

quantum of evidence required is reversed wherein the polluting entity is only required to provide substantial evidence while the injured party is required to provide a preponderance of evidence.

Third, SLAPP defenses will most likely be heard by courts who are not designated as green courts. Therefore courts with less expertise in environmental concerns will rule on the validity of the environmental claim, albeit merely for purposes of the SLAPP defense. If these courts find the SLAPP defense unwarranted, how will such ruling affect the rulings by the green courts themselves in the environmental case?

VII. Conclusion

The Green Rules is a good step towards improving environmental litigation. It may be successful in dealing with some of the difficulties faced by litigants in environmental protection cases. If implemented strictly, the Green Rules not only provides for an inexpensive but also an expeditious remedy to the public. It also eases the burden of proof against those suffering from environmental harm.

However, there are some red flags which must be the subject of serious reconsideration. For example, it does not affect the rule on standing to sue, and environmentalists may argue that it really does not go far enough. A question may also be raised about the wisdom in making it the responsibility of courts to monitor environmental compliance.

A few years from now, perhaps in 2020 or a period of 10 years after its promulgation, it may be necessary to evaluate the effectiveness of the Green Rules in facilitating environmental litigation and promoting the fundamental right to a “balanced and healthful ecology” of the people.