

Participation Principle Indicators under Environmental Law:
Towards Establishing International Collaboration in Pursuit of
Environmental Justice

March 9-10, 2015

Osaka University



The Right to Public Participation in
Decision-Making in the Implementation of
Fisheries and other Environmental Laws and
their Amendments in the Philippines

Gloria Estenzo Ramos, MPA, LLB

Oceana Philippines International

- * Introduction - Political and Ecological Profile of the Philippines
- * I. State of Environment
- * II. Legal Framework and Challenges in Protecting Access Rights and Promoting Green Justice
- * III. Conclusion



* Outline

Profile: PHILIPPINES



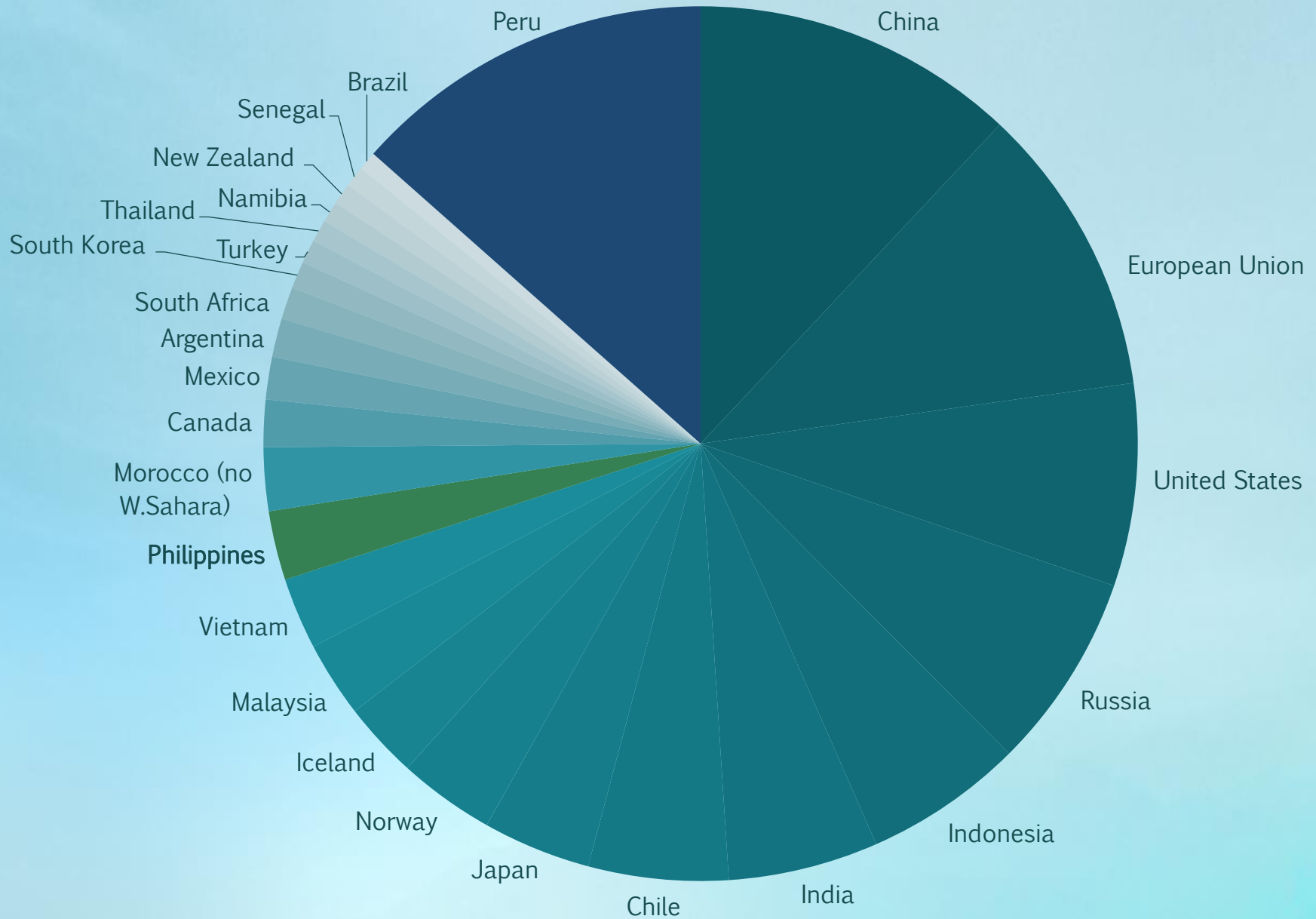
- Government
- Presidential form
- Three co-equal and separate departments
- Decentralized form of government, but not federal
- Local autonomy and devolved powers and functions of local government units
- Rule of Law – 1987 Constitution
- People and Environment
- Population: 100 Million and still growing
- Poverty level – over 30%
- 7,100 islands
- Christianity is the main religion
- Natural laboratory for disasters
- Patronage politics and political dynasties are still prevalent
- Strong Spanish and American influence because of colonial rule

Center of the center...



Scientists have described the Philippines as the center of the center of marine shore fish diversity with the “richest concentration of marine life on the entire planet.” (Carpenter and Springer, 2005)

14th major fishing country



Source: FAO Catch Data 2000-2006 Average

Our seas, our life...Filipinos are fish-eating people



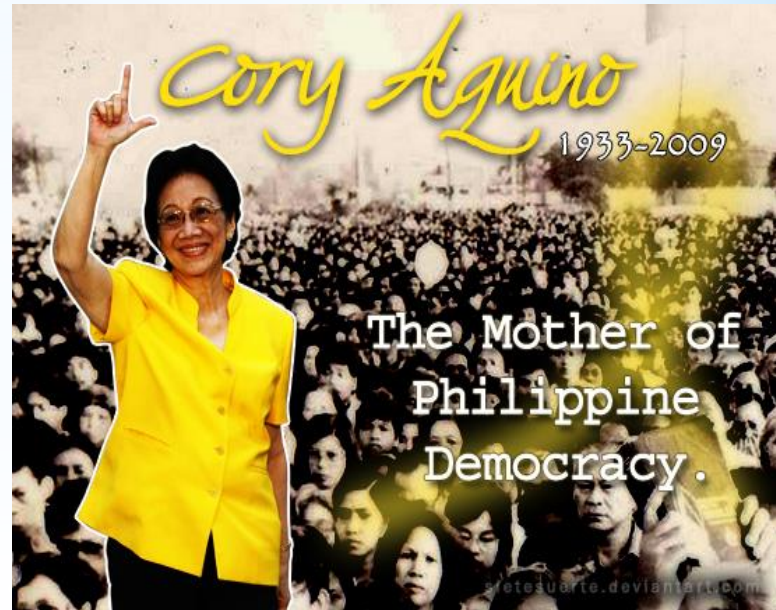
- IRONICALLY, THE POOREST OF THE POOR LIVE IN COASTAL COMMUNITIES.
- THE HIGHEST CONCENTRATION OF MALNOURISHED CHILDREN IS FOUND IN FISHING VILLAGES.
- FISHERFOLK ARE BEING DISPLACED BY ILLEGAL FISHING IN ALREADY OVERFISHED MUNICIPAL WATERS AND UNPLANNED COASTAL DEVELOPMENTS, IN ADDITION TO THE CLIMATE CRISIS

Aquino Assassination Awakened the Nation



Assassination of Sen. Aquino at the tarmac,
Aug 21, 1983, Photo: AP

1987 Constitution is a Product of
the People Power Revolution



President Cory Aquino
Photo: Siete Suerte

Ironically, the EIA Assessment System Act was
enacted during Martial Law

* Social Contract with the People



President Benigno S. Aquino III

SECTION 2. *Key Result Areas of our Social Contract.*

- a. **Transparent, accountable, and participatory governance** – to institutionalize open, transparent, accountable, and inclusive governance;
- b. **Poverty reduction and empowerment of the poor and vulnerable** – to translate the gains from good governance into direct, immediate and substantial benefits for the poor;
- c. **Rapid, inclusive, and sustained economic growth** – to achieve rapid economic expansion that generates jobs and livelihood for and increase the income of the poor while moving away from the boom-and-bust cycle of the economic performance of the past;
- d. **Just and lasting peace and the rule of law** – to attain a just, comprehensive, and lasting peace within the bounds of our law; and
- e. **Integrity of the environment and climate change adaptation and mitigation** – to promote sustainable natural resource utilization and climate change adaptation and mitigation strategies and measures among national government agencies, the local government units (LGUs) and their respective communities, the general public, and other stakeholders.

To achieve focus and optimal impact given the available resources of Government, all departments and agencies shall orient their programs, projects, and activities towards the pursuit of these five (5) key result areas.

Furthermore, the government shall engage key stakeholders such as the LGUs, the legislative and judicial branches of government, and the private sector, particularly the business and civil society, in pursuit of our Social Contract with the Filipino People.

*The Philippines: Now

20



14

OPEN GOVERNMENT AWARDS

3rd
PLACE

33 submissions

65 OGP member
countries

PHILIPPINES

for the

*"GRASSROOTS PARTICIPATORY
BUDGETING PROGRAM"*

24 September 2014
New York City



FROM RIDGE TO REEF...



**THE REAL STATE OF
OUR ENVIRONMENT**

* Our country will continue to be what Dr. Kent Carpenter describes as ‘the center of the center of marine biodiversity adversity’ if citizens allow the almost nil implementation of laws, the pervasive state of ignorance of rights and responsibilities to protect Nature and the people by public officials and citizens, the appalling apathy by those vested with the knowledge of law, science, economics and other fields, and the worsening anthropogenic impacts inflicted upon our home planet, and of course, the shameless avarice by those who worship money and the self above anything else.

* **Challenges**

Update on EU yellow card status

PHILIPPINES

EU extends PH warning card vs illegal fishing

The Philippines has another 6 months before the EU decides whether or not to ban the country's fish products from entering its market



BOUNTY TO WASTE. The Philippines exports billions of pesos worth of fish products to the EU, one of its biggest markets. Photo courtesy of Oceana

Rappler, February 17, 2015

* Legal Framework and Challenges in Promoting Green Justice in the Philippines

* CONSTITUTION

HUMAN RIGHTS to LIFE, HEALTH AND ENVIRONMENT
RIGHT TO ACCESS INFORMATION
RIGHT TO PARTICIPATE IN DECISION-MAKING PROCESS

* NATIONAL LAWS

- * SPECIFIC STATUTES TO PROTECT AND CONSERVE THE ENVIRONMENT
- * ANTI-POLLUTION LAWS
- * INTERNATIONAL CONVENTIONS - DOCTINE OF INCORPORATION

* SUPREME COURT RULINGS

- * OPOSA V. FACTORAN
- * PROV. OF RIZAL V. EXEC. SEC.
- * ALVAREZ V. PICOP
- * MMDA V. CONCERNED RESIDENTS OF MLA BAY
- * BORACAY FOUNDATION V PROVINCE OF AKLAN
- * SC RULES OF PROCEDURE FOR ENVIRONMENTAL CASES

* LOCAL ORDINANCES

* ADMINISTRATIVE REGULATIONS



* The Right to Access Information under 1987 Constitution

* Art. II, Section 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest

* Art III, Section 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

Supreme Court Rulings affirming the right to access information

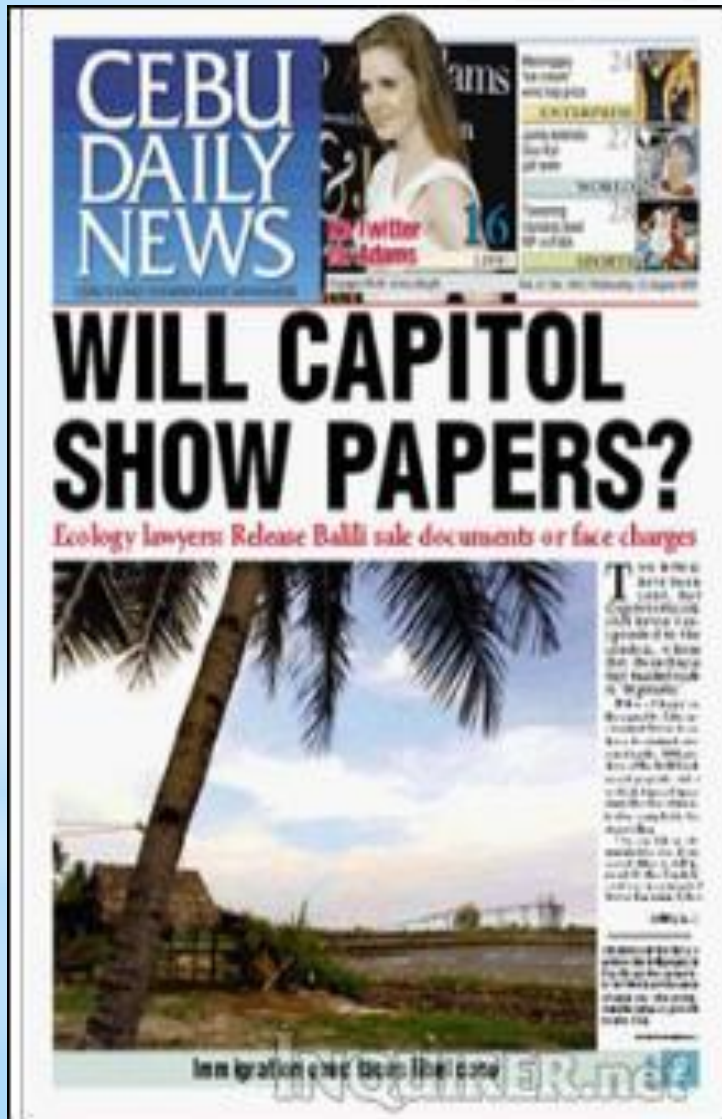
Tañada v. Tuvera, G.R. No. 63915, April 24, 1985

Legaspi v. Civil Service Commission, G.R. No. 72119, May 29, 1987

Valmonte v. Belmonte, G.R. No. 74930, February 13, 1989

Rationale: “An informed citizenry with access to the diverse currents in political, moral and artistic thought and data relative to them, and the free exchange of ideas and discussion of issues thereon, is vital to the democratic government envisioned under our Constitution.”

*THE CEBU COAL ASH CASE



JULY, 2009



View Bandera's Digital Edition
See the exact copy of the printed
paper

13th Anniversary Special



Photo Categories

MS. MANDAUE (28)

ONE VISAYAS (27)

PHOTO EXHIBIT (7)

FOUR CORNERS (22)

NEWS (712)

UP CEBU CENTENNIAL (24)

EDITORIAL

Living with Kepco and coal



Because Cebu can't live with brownouts, rotating or not, the province will have to manage its growth with a wary eye for the danger of coal ash pollution and acid rain.

When President Benigno Aquino III inaugurated the 220-megawatt power plant of the Korean Electric Company-SPC in Naga last Monday, his presence was more than ceremonial.

He gave coal-fired plants, the bane of environmental crusaders with their emissions of sulfur dioxide, greenhouse gases and deposits of coal combustion waste, his imprimatur.

How sad, and how dangerous.

We would have been more impressed if Aquino had thundered a challenge to the plant's Korean investors. He could have threatened the full force of the law, even closure, if the company fails to deliver on its promise of "clean coal technology" and abide by emission and waste disposal standards.

Not that Filipinos don't make gracious hosts.

But from previous months' experience with secret truck haulings of coal ash residue in Naga and Toledo cities by parties unwilling to identify their industrial source, and the ordeal of Naga residents who found specks of coal dust flying into their homes and gardens from an open stockyard of delivered coal, which prompted Gov. Gwendolyn Garcia and Naga Mayor Val Chiong to temporarily pull back Kepco's business permit, we have reason to be wary.

Coal-fired power plants will keep Cebuanos in a cat-and-mouse game of enforcement of environment standards for the lifetime of these facilities.

2011

* EXACT ACCOUNTABILITY FROM
GOVERNMENT AGENCIES - LGU, DENR,
CHR



* AVAIL OF REMEDIES UNDER R.A. 9485,
ANTI-RED TAPE ACT LAW

GOVPH
About
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Official Gazette

HOME
FREEDOM OF INFORMATION BILL
Link
Attach File
File Scanner
Record Record
Date Time
Date & Time
Equation Symbol
Time Stamp
Symbols

Freedom of Information Bill

The proposed Freedom of Information (FOI) Act aims to mandate the disclosure of public documents. The proposed bill also outlines the exceptions for public disclosure and the procedures for accessing public documents.

UPDATES

Senate

On Monday, March 10, 2014, the Senate passed the FOI bill on third and final reading, with 22 affirmative votes, no abstention, and no negative votes.

House of Representatives

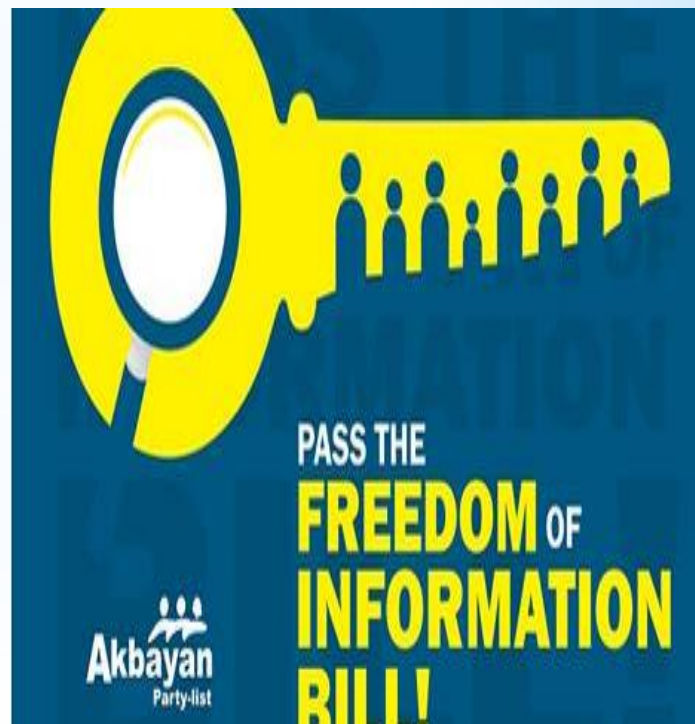
LATEST: On March 4, 2015, the bill passed the Committee on Appropriations; as of this date, it is awaiting 2nd reading.

The Committee of Public Information of the House of Representatives has formed a technical working group (TWG) to expedite the passage of the house version. The TWG has conducted regular meetings to discuss the provisions last February to June. Resource persons from the different offices from the executive participated in the meetings. The Office of the President was represented by Undersecretary Manuel L. Quezon III.

On October 23, 2013, Camarines Sur Third District Representative Maria Leonor G. Robredo and Batanes Representative Henedina R. Abad filed House Bill No. 3237, otherwise known as "An Act to Strengthen the Right of Citizens to Information held by the Government."

Administration

Both the above bills follow the proposed FOI bill approved by President Benigno S. Aquino III, which was transmitted to the previous Congress by the Secretary of Budget and Management, Florencio Abad. Secretary Abad resubmitted the bill to the current Congress as well.



Good News! FOI Bill is now Moving in Congress



Constitution, Article XIII: ROLE AND RIGHTS OF PEOPLE'S ORGANIZATIONS

Section 16. The right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making shall not be abridged. The State shall, by law, facilitate the establishment of adequate consultation mechanisms.

*** The Right to Effective and Reasonable Participation**

- * **Local Government Code** - devolved environmental protection as a service to be delivered by local government units (LGUs)
- * Public consultation is required for projects that impact the environment or cause climate change
- * Any permit or license is invalidated due to failure to comply with the requirement of public consultation
 - Supreme Court rulings (Cruz vs. Exec. Secretary, Boracay Foundation vs. Province of Aklan (June 26, 2012))

* Environmental Laws and Mechanisms for Participatory Governance

* Under various environmental laws, multi-sectoral bodies are constituted as policy-making bodies - Solid Waste Management Board under RA 9003 (Ecological Solid Waste Management Law), Air Shed Board under RA 8749 (Clean Air Act), Protected Area Management Body under RA 7586, the National Integrated Protected Area System Act), Fisheries and Aquatic Resources Management Council under RA 8550, the Fisheries Code

*** Multi-sectoral Policy-making Body**



Republic of the Philippines
Supreme Court
Manila

A.M. No. 09-6-8-SC

RULES OF PROCEDURE FOR ENVIRONMENTAL CASES

EFFECTIVE APRIL 29, 2010

MANILA, PHILIPPINES
APRIL 2010

Section 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.



SC RULES OF PROCEDURE FOR ENVIRONMENTAL CASES

Promulgation Date: APRIL 13,
2010



Republic of the Philippines
Supreme Court
Manila

A.M. No. 09-6-8-SC

RULES OF PROCEDURE FOR ENVIRONMENTAL CASES

EFFECTIVE APRIL 29, 2010

MANILA, PHILIPPINES
APRIL 2010

FEATURES

- * Filing fees waived or imposed as a judgment lien
- * Citizen suit
- * Precautionary principle, formally adopted
- * Anti-SLAPP provision
- * New remedies: writ of kalikasan, (temporary) environmental protection order, continuing mandamus
- * Trial by affidavit (in lieu of direct examination) subject to cross-examination



SC RULES OF PROCEDURE FOR ENVIRONMENTAL CASES

Promulgation Date:
APRIL 13, 2010

Citizen Suit (Rules of Procedure for Environmental Cases)

- **Section 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.
- **Section 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.

Citizen Suit under the Rules



Indiscriminate dumping of coal ash in Toledo City

Photo: Primo, Toledo City

28/06/2012 19:44

RA 8749, the Clean Air Act

- * Section 41. Citizen Suits. - For purposes of enforcing the provisions of this Act or its implementing rules and regulations, any citizen may file an appropriate civil, criminal or administrative action in the proper courts against:
- * (a) Any person who violates or fails to comply with the provisions of this Act or its implementing rules and regulations; or
- * (b) The Department or other implementing agencies with respect to orders, rules and regulations issued inconsistent with this Act; and/or
- * (c) Any public officer who willfully or grossly neglects the performance of an act specifically enjoined as a duty by this Act or its implementing rules and regulations; or abuses his authority in the performance of his duty; or, in any manner, improperly performs his duties under this Act or its implementing rules and regulations: Provided, however, That no suit can be filed until thirty-day (30) notice has been taken thereon.
- * The court shall exempt such action from the payment of filing fees, except fees for actions not capable of pecuniary estimations, and shall likewise, upon prima facie showing of the non-enforcement or violation complained of, exempt the plaintiff from the filing of an injunction bond for the issuance of a preliminary injunction.
- * Within thirty (30) days, the court shall make a determination if the complaint herein is malicious and/or baseless and shall accordingly dismiss the action and award attorney's fees and damages.

* Citizen Suits

RA 9003, the ESWM Law

- * Section 52. Citizens Suits - For the purposes of enforcing the provisions of this Act or its implementing rules and regulations, any citizen may file an appropriate civil, criminal or administrative action in the proper courts/bodies against:
- * (a) Any person who violates or fails to comply with the provisions of this Act its implementing rules and regulations; or
- * (b) The Department or other implementing agencies with respect to orders, rules and regulations issued inconsistent with this Act; and/or
- * (c) Any public officer who willfully or grossly neglects the performance of an act specifically enjoined as a duty by this Act or its implementing rules and regulations; or abuses his authority in the performance of his duty; or, in any many improperly performs his duties under this Act or its implementing rules and regulations; Provided, however, That no suit can be filed until after thirty-day (30) notice has been given to the public officer and the alleged violator concerned and no appropriate action has been taken thereon.
- * The Court shall exempt such action from the payment of filing fees and statements likewise, upon prima facie showing of the non-enforcement or violation complained of, exempt the plaintiff from the filing of an injunction bond for the issuance of preliminary injunction.
- * In the event that the citizen should prevail, the Court shall award reasonable attorney's fees, moral damages and litigation costs as appropriate.

Violation of Solid Waste Management Law, RA 9003



GLOBAL LEGAL ACTION ON CLIMATE CHANGE (GLACC-CEBU): An Inter-generational Eco-Revolution

Cabrero Law Office, Paseo Aznar, G/F Pueblo Aznar I Building
M. J. Cuenco cor. Maxilom Avenue, Cebu City, Philippines
Email: glacccebu@gmail.com Phone: (63)(32) 3439464
Website: <http://glaccier-ph.ning.com>

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Dr. Angel Alcala
Ms. Odette Alcantara
Atty. Gertie Anda
Ms. Lisa Antonio
Atty. Raul Barbarona
Atty. Glynda Baterina
Atty. Ben Cabrero
Ms. Leonarda Camacho
Ms. Tess Cayton
Arch. Chris De la Cruz
Atty. Martin Delgra III
Atty. Belle Demaisip
Atty. Jean Feliciano
Dr. Nina Galang
Dr. Ed Gomez
Sec. Bebet Gozun
Mayor Ed Hagedorn
Atty. Julius Herrera
Atty. Linda Jimeno
Atty. Nick Jimeno
Atty. Francine Longid
Atty. Vigor Mendoza
Mr. Mark Mulingbayan
Atty. Tony Oposa

NOTICE TO SUE

July 7, 2009

Hon. Benjamin Lobetana
Mayor
Alcantara, Cebu

Hon. Cynthia G. Moreno
Mayor
Aloguinsan, Cebu

Hon. Edsel A. Galeos
Mayor
Argao, Cebu

Hon. Alan L. Adlawan
Mayor
Asturias, Cebu

Hon. Alex Bingham
Mayor
Balamban, Cebu



We are borrowing heavily from our children's future - an ecological debt that we can never repay.

This Notice to Sue is sent pursuant to the Citizens' Suit provision of the Solid Waste Management Act (Sec. 52). To recall, this provision states that to ensure enforcement of the Law,

"Any citizen may file an appropriate civil, criminal, or administrative action in the proper courts/bodies against,

- (a) any person who violates or fails to comply with the (law)**
- (b) the DENR and other (government agencies)**
- (c) any public officer who wilfully or grossly neglects the performance of an act specifically enjoined as a duty by the law or in any manner improperly performs his duties."**

As you are well aware of, your Local Government has the primary responsibility and authority to implement the aforesaid law.³ This Law has been in effect since 2001, or for the last eight years. Yet, compliance therewith by your local government is wanting.

Thus, formal demand is hereby made upon you to take the necessary corrective and compliance measures within 30 days from receipt of this letter.⁴ If, despite this Notice, there is continued failure and/or refusal to take corrective actions, we will not hesitate to file any appropriate charges against all concerned, including the government officials and agencies, who fail to exercise their power over the LGUs.

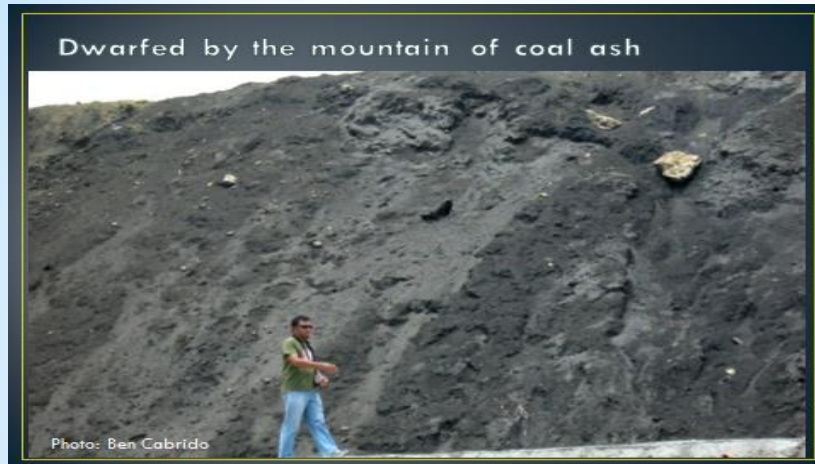
Please be advised that during this 30-day period, the members of the Global Legal Action on Climate Change - in cooperation with other government agencies and non-government organizations - are still willing to help you comply with the law and ready to give the necessary technical, legal, and even logistical assistance. Having said that, any further deliberate delay and/or refusal to take serious efforts will be construed as downright defiance of the Law, and will be dealt with accordingly.


Thank you in anticipation of your kind and expeditious action on the matter.

***Mandatory Service of Notice to Sue**

Indiscriminate Dumping of Coal Ash in Cebu

Notice to Sue sent by Citizens and NGOs





**GLOBAL LEGAL ACTION ON CLIMATE CHANGE
(GLACC-CEBU): An Inter-generational Eco-Revolution**

Cabrido Law Office, Pasao Anzar, G/F Pueblo Anzar 1 Building
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Dr. Nina Galang
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Sec. Bebet Gozun
Mayor Ed Hagedorn
Atty. Julius Herrera
Atty. Linda Jimeno
Atty. Nick Jimeno
Atty. Francine Longid
Atty. Vigor Mendoza
Mr. Mark Mulingbayan
Atty. Tony Ochoa
Atty. Santiago Ortiz, Jr.
Atty. Liza Osena

Notice to Sue

August 26, 2009


Mr. Hoon Kim
President and Chief Executive
Officer
KEPCO SPC Power Corporation
7/F Cebu Holdings Center
Cebu Business Park
Cebu City

DENR Secretary Joselito Atienza
Visayas Avenue, Diliman, 1100
Quezon City

Director Leonardo Sibbaluca
DENR - Region VII
Banilad, Mandaue City


Director Rolando Luego
DENR-EMB Region VII
Banilad, Mandaue City

Mr. Alan Arranguez
DENR- Region VII



02/13/2008

Kids and constituents in the
coal ash dumps in Naga, Cebu



* First case filed in Cebu for Environmental Protection Order (EPO)

**CASE FILED IN MANDAUE CITY GREEN
COURT ON AUGUST 12, 2010**

Republic of the Philippines
7th Judicial Region
**ENVIRONMENTAL COURT
MANDAUE CITY**

PHIL. EARTH JUSTICE CENTER INC.,
represented by Atty. Gloria E. Ramos;
**CENTRAL VISAYAS FARMERS'
DEVELOPMENT CENTER,** represented
by Estrella Catarata; **CENTRAL
VISAYAS FISHERFOLK'S
DEVELOPMENT CENTER,** represented
by Vince Cinches; **CONCERNED
RESIDENTS OF TOLEDO CITY;
CONCERNED RESIDENTS OF NAGA
CITY,**

Petitioners,

- versus -

**SECRETARY, DEPARTMENT OF
ENVIRONMENT AND NATURAL
RESOURCES (DENR); SECRETARY,
DEPARTMENT OF ENERGY (DOE);
DENR REGION VII,** represented by Mr.
Leonardo Sibbaluca; **DIRECTOR,
ENVIRONMENTAL MANAGEMENT
BUREAU (EMB); EMB REGION VII,**
represented by Mr. Alan Arranguez; **DOE
REGION VII,** represented by Mr.

**ENVIRONMENTAL CASE NO. _____
FOR: ENVIRONMENTAL PROTEC-
TION ORDER WITH PRAYER FOR
TEMPORARY ENVIRONMENTAL
PROTECTION ORDER & WRIT OF
CONTINUING MANDAMUS**

- * Environmental protection order (EPO) refers to 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.
- * Akin to applying for Writ of Kalikasan, only that it is filed in lower courts, not with the Supreme Court or the Court of Appeals

* Environmental Protection Order



Lawrence lands
Hunger Games
lead role

Japan's alert level
rises to five

10
WORLD

Seaside
culinary treat

17

KITCHEN STORIES

Smart Gilas logs
fifth straight win

27

SPORTS

Vol. 14, No. 39 | Saturday, 19 March 2011

COURT STOPS COAL ASH DUMPING

Health risks are real, says judge

by Candeze R. Mongaya
REPORTER

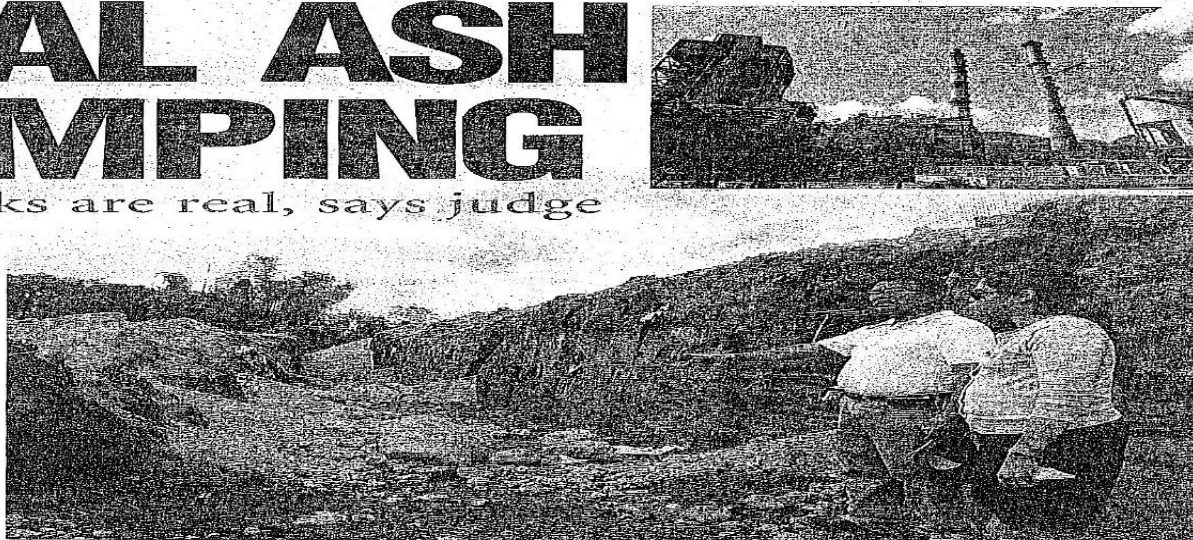
A Cebu environ-
ment court
judge has or-
dered all coal-fired
power plants in Naga
and Toledo Cities to
stop dumping their
coal ash waste outside
their premises.

Saying the coal ash poses
"health risks to residents,"

COURT | 31

NAGA COAL ASH. Limestone covers
up tons of black coal ash dumped
near the Pangdan River in west
Poblacion, Naga City, where DENR
lawyer Tranne Ferrer and colleague
Nicomedes Armilla inspected in
Sept. 7, 2009. No company would
own up to the deed. (Top, right) A
plant of Korean Electric Power
(Kepco)-Salcon in Naga City.

PHOTO BY PHILIP TO



Gwen on destruction of century trees: 'No way'

PAGE 2

*TEPO EXTENDED
INDEFINITELY

* Writ of Kalikasan (Nature)

RULE 7

WRIT OF KALIKASAN

Section 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.



Photo: Ricardo Rezende

RULE 8 WRIT OF CONTINUING MANDAMUS

Section 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.

* Inspired by two cases in India, the writ was first issued in the case of Metro Manila Development Authority vs. Residents of Manila Bay (G.R. Nos. 171947-48, December 18, 2008)

* **Writ of Continuing Mandamus**

(1) Pursuant to Sec. 4 of EO 192, assigning the DENR as the primary agency responsible for the conservation, management, development, and proper use of the country's environment and natural resources, and Sec. 19 of RA 9275, designating the DENR as the primary government agency responsible for its enforcement and implementation, the DENR is directed to fully implement its Operational Plan for the Manila Bay Coastal Strategy for the rehabilitation, restoration, and conservation of the Manila Bay at the earliest possible time. It is ordered to call regular coordination meetings with concerned government departments and agencies to ensure the successful implementation of the aforesaid plan of action in accordance with its indicated completion schedules.

(2) Pursuant to Title XII (Local Government) of the Administrative Code of 1987 and Sec. 25 of the Local Government Code of 1991, the DILG, in exercising the President's power of general supervision and its duty to promulgate guidelines in establishing waste management programs under Sec. 43 of the Philippine Environment Code (PD 1152), shall direct all LGUs in Metro Manila, Rizal, Laguna, Cavite, Bulacan, Pampanga, and Bataan to inspect all factories, commercial establishments, and private homes along the banks of the major river systems in their respective areas of jurisdiction, such as but not limited to the Pasig-Marikina-San Juan Rivers, the NCR (Parañaque-Zapote, Las Piñas) Rivers, the Navotas-Malabon-Tullahan-Tenejeros Rivers, the Meycauayan-Marilao-Obando (Bulacan) Rivers, the Talisay (Bataan) River, the Imus (Cavite) River, the Laguna De Bay, and other minor rivers and waterways that eventually discharge water into the Manila Bay; and the lands abutting the bay, to determine whether they have wastewater treatment facilities or hygienic septic tanks as prescribed by existing laws, ordinances, and rules and regulations. If none be found, these LGUs shall be ordered to require non-complying establishments and homes to set up said facilities or septic tanks within a reasonable time to prevent industrial wastes, sewage water, and human wastes from flowing into these rivers, waterways, esteros, and the Manila Bay, under pain of closure or imposition of fines and other sanctions.

(3) As mandated by Sec. 8 of RA 9275, the MWSS is directed to provide, install, operate, and maintain the necessary adequate waste water treatment facilities in Metro Manila, Rizal, and Cavite where needed at the earliest possible time.

(4) Pursuant to RA 9275, the LWUA, through the local water districts and in coordination with the DENR, is ordered to provide, install, operate, and maintain sewerage and sanitation facilities and the efficient and safe collection, treatment, and disposal of sewage in the provinces of Laguna, Cavite, Bulacan, Pampanga, and Bataan where needed at the earliest possible time.

(5) Pursuant to Sec. 65 of RA 8550, the DA, through the BFAR, is ordered to improve and restore the marine life of the Manila Bay. It is also directed to assist the LGUs in Metro Manila, Rizal, Cavite, Laguna, Bulacan, Pampanga, and Bataan in developing, using recognized methods, the fisheries and aquatic resources in the Manila Bay.

(6) The PCG, pursuant to Secs. 4 and 6 of PD 979, and the PNP Maritime Group, in accordance with Sec. 124 of RA 8550, in coordination with each other, shall apprehend violators of PD 979, RA 8550, and other existing laws and regulations designed to prevent marine pollution in the Manila Bay.

(7) Pursuant to Secs. 2 and 6-c of EO 513 and the International Convention for the Prevention of Pollution from Ships, the PPA is ordered to immediately adopt such measures to prevent the discharge and dumping of solid and liquid wastes and other ship-generated wastes into the Manila Bay waters from vessels docked at ports and apprehend the violators.



Sunset at Manila Bay

* Anti-SLAPP* Provisions under two national laws

RA 8749, the Clean Air Act

- * Section 43. Suits and Strategic Legal Actions Against Public Participation and the Enforcement of This Act. - Where a suit is brought against a person who filed an action as provided in Sec. 41 of this Act, or against any person, institution or government agency that implements this Act, it shall be the duty of the investigating prosecutor or the court, as the case may be, to immediately make a determination not exceeding thirty (30) days whether said legal action has been filed to harass, vex, exert undue pressure or stifle such legal recourses of the person complaining of or enforcing the provisions of this Act. Upon determination thereof, evidence warranting the same, the court shall dismiss the case and award attorney's fees and double damages.
- * This provision shall also apply and benefit public officers who are sued for acts committed in their official capacity, their being no grave abuse of authority, and done in the course of enforcing this Act.

RA 9003, the ESWM Law

- * Section 53. Suits and Strategic Legal Action Against Public Participation (SLAPP) and the Enforcement of this Act - Where a suit is brought against a person who filed an action as provided in Sec. 52 of this Act, or against any person, institution or government agency that implements this Act, it shall be the duty of the investigating prosecutor or the Court, as the case may be, to immediately make a determination not exceeding thirty (30) days whether said legal action has been filed to harass, vex, exert undue pressure or stifle such legal recourses of the person complaining of or enforcing the provisions of this Act. Upon determination thereof, evidence warranting the same, the Court shall dismiss the complaint and award the attorney's fees and double damages.
- * This provision shall also apply and benefit public officers who are sued for acts committed in their official capacity, there being no grave abuse of authority, and done in the course of enforcing this Act.

*Strategic Lawsuit Against Public Participation

Remedies against SLAPP

- * Two laws provide for Citizen Suit: RA 8749, the Clean Air Act and RA 9003, the ESWM Law
- * The 2010 Rules of Procedure for Environmental Cases also provide for remedies against SLAPP.

ANTI-SLAPP

- * Section 53. Suits and Strategic Legal Action Against Public Participation (SLAPP) and the Enforcement of this Act - Where a suit is brought against a person who filed an action as provided in Sec. 52 of this Act, or against any person, institution or government agency that implements this Act, it shall be the duty of the investigating prosecutor or the Court, as the case may be, to immediately make a determination not exceeding thirty (30) days whether said legal action has been filed to harass, vex, exert undue pressure or stifle such legal recourses of the person complaining of or enforcing the provisions of this Act. Upon determination thereof, evidence warranting the same, the Court shall dismiss the complaint and award the attorney's fees and double damages.
- * This provision shall also apply and benefit public officers who are sued for acts committed in their official capacity, there being no grave abuse of authority, and done in the course of enforcing this Act.

* Supreme Court's Rules of Procedure for Environmental Cases

*Rules of Procedure for Environmental Cases

RULE 6 **STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION**

Section 1. *Strategic lawsuit against public participation (SLAPP).* - 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 shall be treated as a SLAPP and shall be governed by these Rules.

Section 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.

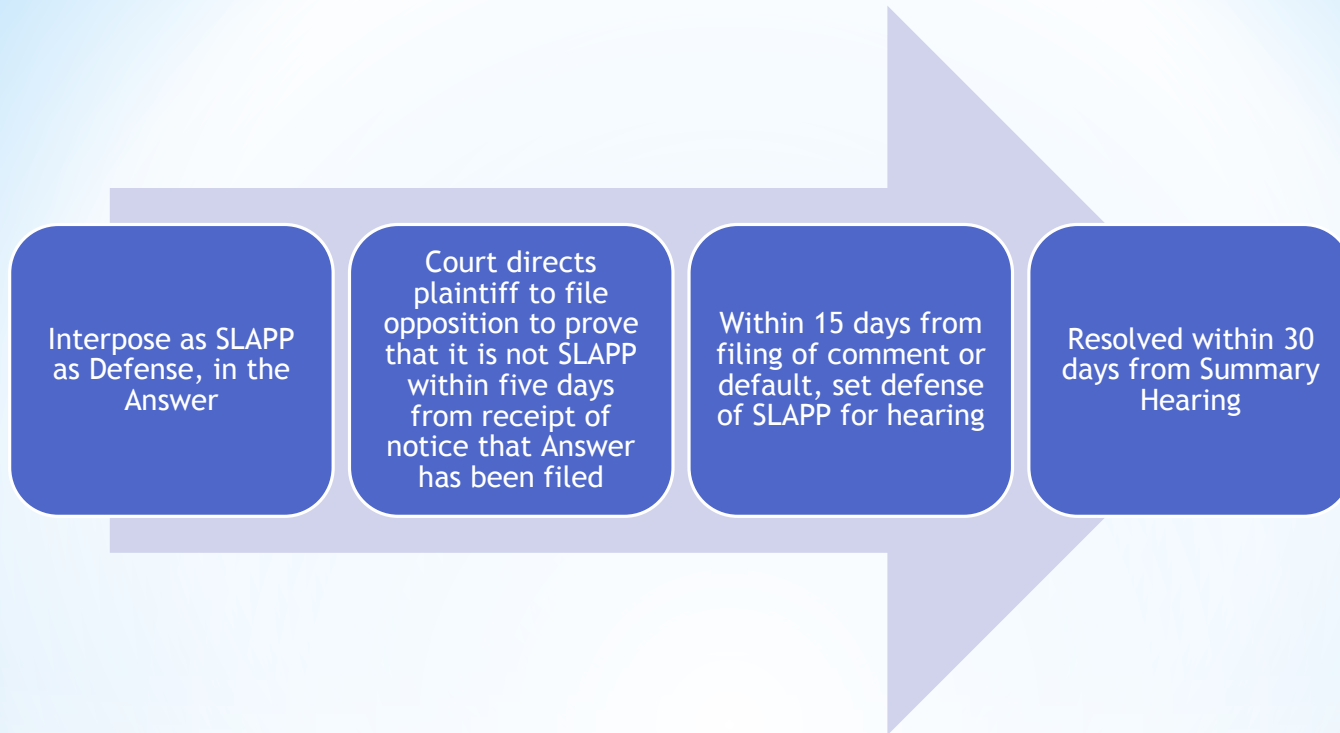
The court shall direct the plaintiff or adverse party to file an opposition showing the suit is not a SLAPP, attaching evidence in support thereof, within a non-extendible period of five (5) days from receipt of notice that an answer has been filed.

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.

Section 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 act 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 and is a valid claim.

Section 4. *Resolution of the defense of a SLAPP.* - The affirmative defense of a SLAPP shall be resolved within thirty (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.

If the court rejects the defense of a SLAPP, the evidence adduced during the summary hearing shall be treated as evidence of the parties on the merits of the case. The action shall proceed in accordance with the Rules of Court.



* **GOAL: MAINSTREAMING
ANTI- SLAPP AWARENESS**

- *Precautionary principle 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.
- *Court applied Precautionary Principle as basis for extending the indefinite ban on coal ash dumping.

*Precautionary Principle

* AVAIL OF THE EXPERTS' ASSISTANCE



Dr. Quijano and the team collecting coal ash samples



Department of Pharmacology and Toxicology
College of Medicine, University of the Philippines Manila
547 Pedro Gil St., Ermita, Manila
Tel/Fax: 63-2-5218251

April 13, 2010

To whom this may concern:

Herewith is my interpretation of the laboratory results of the coal ash samples shown below:

16 January 2010
A-2009-1503-00
Page 2 of 2

RESULTS:

Sample	Receiving Site	Sampling Date	Sampling Time	Lead (ppm)	Cadmium (ppm)	Arsenic (ppm)	Mercury (ppm)
1. Site A-1	Dec. 13, 2009	10:45 a.m.	2.8	ND*	1.1	0.08	
2. Site A-2	Dec. 13, 2009	10:45 a.m.	2.6	ND*	1.1	0.08	
3. Site A-3	Dec. 13, 2009	11:00 a.m.	2.3	ND*	1.1	0.08	
4. Site B-1	Dec. 13, 2009	11:40 a.m.	2.1	ND*	8	0.07	
5. Site B-2	Dec. 13, 2009	11:40 a.m.	2.1	ND*	8	0.06	
6. Site C-1	Dec. 13, 2009	11:40 a.m.	2.1	ND*	12	0.06	
7. Site C-2	Dec. 13, 2009	11:40 a.m.	2.1	ND*	20	0.06	
8. Site C-3	Dec. 13, 2009	11:40 a.m.	2.1	ND*	18	0.06	
9. Site D-1	Dec. 13, 2009	11:40 a.m.	2.1	ND*	10	0.06	
10. Site D-2	Dec. 13, 2009	11:40 a.m.	2.1	ND*	10	0.06	
11. Site D-3	Dec. 13, 2009	11:40 a.m.	2.1	ND*	10	0.06	

REMARKS: ND = None Detected. Arsenic detection amount for Lead is 5 ug/g.

THEO A. T. PARRAS

DR. ROMEO F. QUIJANO

The values indicate significant amounts of arsenic, cadmium and mercury in all the areas where the samples were taken. Surprisingly, lead was not detected (limit of detection = 5 parts per million) in any of the samples, therefore, lead does not seem to be a significant factor to consider in terms of potential human exposure from the areas sampled. Several samples exceed the average global background values and the limit values recommended by the European Union for arsenic, cadmium and mercury. It has to be considered that the samples were taken from old coal ash dump sites and at a time when the coal-fired power plants are not in "normal" operation. The results, therefore, indicate that the actual values of these toxic metals in fresh coal ash when the coal power plant is in actual operation would be much higher. While the samples taken were very few, the results sufficiently indicate the obvious fact that toxic heavy metals are present in significant amounts that would pose a potential threat to exposed residents within the area. As has been repeatedly reported and proven by scientific studies from many parts of the world, coal-fired power plants emit various kinds of toxic pollutants that harm people's health and the environment. The coal-fired power plant in Cebu is no exception.


Romeo F. Quijano, M.D.
Professor

✦ DR. QUIJANO'S
ASSESSMENT WAS
GIVEN MEDIA MILEAGE

* INVOLVE MEDIA

CEBU NEWS

Advocates collect coal ash samples in Naga

(The Freeman) Updated December 14, 2009 12:00 AM Comments (0)



Environmental advocates stand on top of a mountain of coal ash. **Ferdinand Edralin**

| Zoom

CEBU, Philippines - An environmental group, a toxicologist, and environmental lawyers collected samples of [coal waste](#) from the coal-fired power plants of Korean Electric Power Corporation-Salcon Power Corporation in different land areas in Naga.

The Visayas Climate Action Network, a non-government organization, headed the sampling procedure.

The samples will be tested of mercury, arsenic, lead, chromium, and other toxic elements believed to cause neurological diseases, cancer, skin problems, and other respiratory ailments among the residents of Naga.

Dr. Romy Quijano, a professor of the Department of Pharmacology and Toxicology, College of Medicine, University of the Philippines Manila, said that the samples will be taken to the Philippine Institute of Pure and Applied Chemistry for laboratory tests.

"Coal is the dirtiest pollutant and is the worst kind of energy source," he said.

Quijano added that as a toxicologist, there is no other way to prevent hazards to the health of the people than to "stop this plant from further operating".

Environmental lawyer Gloria Estenzo-Ramos said that their collaborative effort will bring litigation against Naga officials and the Province of Cebu.

She said that Local Government Units are just protecting their political agenda although they know that the operation of these plants lead to a more serious problem which is the health of their constituents.

"Why are these government officials serving their own interest?" she expressed.


Lawyer Dante Ramos, for his part, believes that government officials involved in the implementation of the project will be sued for neglect of duty, violation of the Clean Air Act, and violation of the Ecological Solid Waste Management Act of 2000.

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Environmental protection order sought vs coal ash

(The Freeman) Updated August 13, 2010 12:00 AM Comments (0) 

CEBU, Philippines – A citizen's suit for [environmental protection](#) order was filed yesterday by a group of environmentalist and individuals before the Regional Trial Court in Mandaue City against the Department of Environment and Natural Resources, Department of Energy and the local government officials of Cebu Province and the cities of Naga and Toledo including coal-fired power plants operators for alleged indiscriminate dumping of [coal ash](#).

The Philippine Earth Justice Center represented by its executive director Gloria Ramos, Farmers Development Center, Fisherfolk's Development Center and the concerned residents of the cities of Toledo and Naga have asked for the issuance of a temporary environmental protection order from the court.

The complainants named the secretaries of the DENR and DOE and its regional directors Leonardo Sibbaluca and Antonio Labios, respectively, as well as Environmental Management Bureau chief Allan Aranguez as respondents.

The other respondents include Governor Gwendolyn Garcia and Vice Governor Gregorio Sanchez, Jr. representing the Cebu Province, Toledo City Mayor Aurelio Espino, Naga City Mayor Valdemar Chiong, Toledo Power Corporation, Cebu Energy Development Corporation, Salcon Power Corporation and Korean Power Corporation.

The public respondents are accused of tolerating the alleged "illegal, improper and indiscriminate" disposal of coal ash by the private respondents.


The complainants claimed that the continued indiscriminate disposal of coal ash in Toledo and Naga will cause "grave and irreparable damage to their health as well as their environment."

They claimed that the coal ash contains hazardous chemicals which affect the health and the environment.


"Continued acts of illegal and improper disposal of coal ash by private respondents pose clear and present danger to the life and health of petitioners. They also render inequity to the present and future generation of Filipinos since coal combustion residuals [pollute](#) waterways and bodies, the aquifer, the biosphere and the atmosphere," the petition reads.

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CRITICAL POINTS TO CONSIDER



- LAW IS SUPREME BUT MEANINGLESS WITHOUT IMPLEMENTATION AND VIGILANT CITIZENRY
- ACCESS TO INFORMATION, AND JUSTICE, AND PUBLIC PARTICIPATION PROVIDE FULCRUM FOR FOCUSED CITIZEN ENGAGEMENT AND IN EXACTING ACCOUNTABILITY
- SCIENCE EXPERTS/DATA ARE CRUCIAL. IF NIL, AVAIL OF PRECAUTIONARY PRINCIPLE
- REACH OUT TO AS MANY STATE AGENCIES –Ombudsman, CHR, DILG, OP
- STRENGTHEN PARTNERSHIP AND COLLABORATION WITH NETWORKS
- MEDIA ADVOCACY IS ESSENTIAL
- FEW BUT DETERMINED ADVOCATES DO MAKE THE DIFFERENCE

ELAW Founder Prof. John Bonine sharing his thoughts on Access Rights with students and faculty of the University of Cebu, Philippines

THANKS SO MUCH – FOR CARING!!!!

