

# PRIMER



## ON CRIMINAL PROCEDURE FOR ENVIRONMENTAL CASES

## **PRIMER On Criminal Procedure For Environmental Cases**

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PROCEDURE FOR  
ENVIRONMENTAL  
CASES



## INTRODUCTION:

Existence and passage of environmental laws are not enough to solve the country's environmental woes. Had this been otherwise, the country would have enjoyed the water during the rainy season and the sun during the dry season. Unfortunately, this seldom happened for most of the rainy seasons that came, devastating floods, landslides and mudslides accompanied the water, wreaking havoc on major parts of the country. During the dry season, farmers cried in vain as they watched their crops die due to insufficient water to irrigate their farms. The country's more than two hundred environmental laws, or even just the major ones, need to be effectively enforced for us to reach that condition that each Filipino aspires for the environment, as signified in every letter of the words written in the state policy and objectives of these laws.

Existence of environmental laws resolves only a part of the misery that we now experience. The other part deals with ensuring that these laws are enforced by putting in place the proper and appropriate mechanisms and institutional structures that will set in motion the much needed action.

The Supreme Court, as its contribution to address the clamor for a strengthened environmental law enforcement, promulgated the new Rules of Procedure for Environmental Cases. These took effect on April 29, 2010.

In order for the law enforcers, one of the important pillars in the quest for environmental justice, to fully maximize the power of these Rules, it is necessary that they understand their key provisions. Hence the preparation of this primer.

The primer is intended as a simple guide to law enforcers as they strive to enforce our environmental laws.

The primer is divided into two major parts. First part is the introductory part which contains a short description of the Rules of Procedure in general, their salient features and novel provisions. The second part deals with the criminal procedure for environmental cases. This part highlights the things that each law enforcer must know from the filing of the complaint, evidence gathering, documentation and preparation, arrest, bail, arraignment, plea bargaining, pre-trial, trial and judgement.

The primer is in question and answer form. Each question tries to address the possible concern that a law enforcer may experience during enforcement operation.

It is hoped that this primer will facilitate understanding of the new Rules to better equip our law enforcers. A fully equipped cavalry of law enforcers is one of the keys in reaching our goal to clean our water and air and to bring back life to our forests and coasts, for the ultimate purpose of ensuring survival of the human race.

## ACKNOWLEDGEMENT:

Preparation of this primer would not be possible without the strong support of the secretaries of the three key agencies of the government on environmental protection. Recognition is due to Secretary Ramon J. Paje of the Department of Environment and Natural Resources (DENR), Secretary Jesse M. Robredo of the Department of Interior and Local Government (DILG) and Secretary Proceso J. Alcalá of the Department of Agriculture to which is attached the Bureau of Fisheries and Aquatic Resources (BFAR). Their strong desire to equip their law enforcement personnel with the armory of knowledge and skills in enforcing environmental laws is commendable. A primer on the Rules of Procedure for Environmental Cases will surely guide their respective law enforcement personnel to an effective and efficient performance of their functions.

Acknowledgement is likewise due to concerned officers of the DENR for their unceasing effort to facilitate and ensure that the heads of the three departments be informed and updated on the ongoing efforts to strengthen environmental law enforcement, to which is included the promulgation of the new Rules of Procedure for Environmental Cases. They are Undersecretary for Field Operations, Atty. Ernesto Adobo, Jr, Assistant Secretary for Field Operations for Luzon, Regidor De Leon, Assistant Secretary for Foreign Assisted and Special Projects and concurrently the Chief of Staff of the Office of the Secretary, Atty. Analiza Teh, Atty. Cristina Hernandez of the Legal Office of the DENR Central, and the Head of the NALECC-SCENR secretariat Engr. Roberto Aguda. The role of the head of the Office of the Chief of Staff, Atty. Teh, assisted by For. Kathlyn A. Umali is likewise critical in ensuring that the necessary logistical support is available for the preparation of the primer.

Additionally, preparation and completion of this primer will not be possible without the assistance from the In Country Representative of the U.S. Department of Interior, Atty. Asis G. Perez. The latter did the much needed technical review, having been a member of the Supreme Court sub-committee that finalized the Rules. The review has ensured that the correct legal interpretation of the rules be the ones included in the primer and therefore be disseminated to our environmental law enforcers.

Finally, acknowledgment is due to the United States Assistance for International Development (USAID), whose partnership with the US DOI has ensured the continuous assistance to the Government of the Republic of the Philippines.

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## PART I. INTRODUCTORY PROVISIONS

### What is the title of the Rules?

The Rules shall be known as "The Rules of Procedure for Environmental Cases."<sup>1</sup>

### When did the Rules take effect?

The Rules of Procedure for Environmental Cases took effect on April 29, 2010.

### What is the scope of the Rules?

The Rules 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.<sup>2</sup>

### What are the objectives of the Rules?

- A. To protect and advance the right of people to health and balanced ecology.
- B. To simplify and make procedure inexpensive for the implementation of precautionary principle
- C. To ensure just and equitable administration of remedies and redress of violation of environmental laws
- D. To enable courts to manage and monitor environmental cases<sup>3</sup>



## What are the salient features of the Rules?

### A. Liberalized standing.

- Any real party in interest including the government, and juridical entities authorized by law may file a civil action involving the enforcement and violation of environmental law.<sup>4</sup>
- Any Filipino citizen in representation of others, including minors or generations yet unborn, may file an action to enforce rights and obligations under environmental law.<sup>5</sup>



### B. Proceedings are summary in nature.

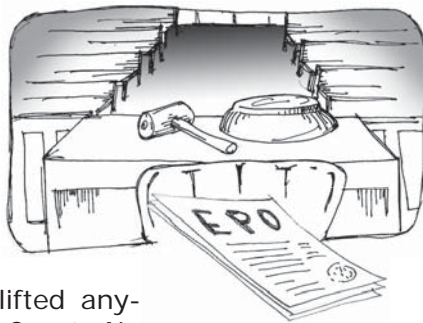
- Both complaint and answer must include affidavits of witnesses and material evidence.<sup>6</sup>

### C. Rules allow the application of precautionary principle. Said principle states that in cases where human activities may lead to threats of serious and irreversible damage to the environment that is scientifically plausible but uncertain, precautionary principle shall be applied. In such case, actions shall be taken to avoid or diminish that threat.<sup>7</sup>

## What are the novel provisions of the Rules?

- ### A. Availability of Environmental Protection Order (EPO). An EPO is an order issued by the court directing or enjoining a person or government agency to perform or desist from performing an act in order to

protect, preserve or rehabilitate the environment. This is effective for 72 hours from notice to the party enjoined. Summary hearing shall be conducted afterwards. It may be lifted any-time by the issuing Court. No bond is required from the applicant.<sup>8</sup>



- B. Prohibition against temporary restraining order (TRO) and preliminary injunction. The Rules provide that 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.<sup>9</sup>
- C. Recognition of rules of the concerned government agencies on the custody and disposition of seized items, equipment, paraphernalia, conveyances and instruments.<sup>10</sup>
- D. Requirement of consent by concerned government agencies in case of plea bargaining.<sup>11</sup>
- E. Provision on Strategic Legal Action Against Public Participation (SLAPP).<sup>12</sup>
- F. Availability of Writ of Kalikasan. The writ is a remedy available to a natural or juridical person, 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.<sup>13</sup>

## PART II. CRIMINAL PROCEDURE

### A. PROSECUTION OF OFFENSES

#### How is a criminal action for violation of an environmental law instituted?

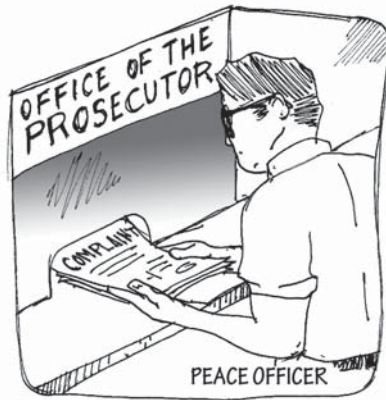
By filing of a complaint with the Office of the Prosecutor of the place where the crime is committed.<sup>14</sup>

#### What is a complaint?

A complaint is a sworn written statement, in question and answer form, charging a person with an offense, subscribed by the offended party, any peace officer or other public officer charged with the enforcement of the environmental law violated.<sup>15</sup>

#### Who can file a complaint?

Any offended party, peace officer or any public officer charged with the enforcement of an environmental law can file a complaint.<sup>16</sup> Examples of the latter are: 1. the Protected Area Superintendents for violation of NIPAS Act inside their respective protected areas; 2. DENR Community Environment and Natural Resource Officers (CENRO), Provincial Environment and Natural Resource Officers (PENRO) and Deputized Environment and Natural Resource Officers (DENRO) for violation of forestry laws and other environmental laws; 3. Wildlife Enforcement Officers for violation of the Wildlife Resources Conservation and Protection Act.



### **Can police officers and other law enforcement agents file a complaint for violation of environmental laws?**

Yes, because they are included in the term any peace officer.<sup>17</sup>

### **Can police officers directly file the complaints without involving other government agencies such as the DENR or BFAR?**

Yes, they can file the case directly if technical consideration is not necessary to determine probable cause. However, in cases where technical certifications are necessary, then the corresponding agency must be involved for the case to prosper.

### **What are the examples of cases where technical certifications are needed?**

Examples are blast fishing and cyanide fishing cases where fish examiners from the lead agency need to certify that the fish were caught with the use of explosives and cyanide, respectively.



Another example is pollution case where technical determination of kind of pollutant and pollution levels is needed.

### **What are the examples where technical determinations by environmental agency is not required?**

Example is the possession of dynamite where the technical determination of the presence of explosives is determined not by the environmental agency but by the PNP or NBI crime laboratory.

## Can a complaint be filed directly with the court?

No. A complaint for violation of environmental law can no longer be filed directly with the court. It can only be filed with the concerned Office of the Prosecutor. Only an information charging a person with a violation of an environmental law and subscribed by the prosecutor can be filed with the court.<sup>18</sup>

## What accompanies the complaint when filed with the Office of the Prosecutor?

*The following may accompany the complaint:*

1. Mission order, if any;
2. Sworn statements in question and answer form of the arresting officers and witnesses;
3. Pictures a) logically showing the scene of the crime; b) the object of the offense, such as the illegal logs, wildlife, the hazardous wastes or toxic substances; c) conveyance; d) tools and other paraphernalia used in the commission of the crime.
4. If pictures are submitted, these must be accompanied by sworn statements in question and answer form of a) the person who took the photographs; b) by persons who were present when said pictures were taken; or c) by any competent persons who can testify on the accuracy of the pictures.<sup>19</sup>
5. Seizure receipt.
6. Inventory or tally sheet of the items seized.



7. Turn over receipts, if any, to show the chain of custody of evidence.
8. Endorsement letters, if any, turning over the case from arresting officers to the police investigators;
9. Certifications from DENR, DA-BFAR or other concerned government regulatory offices on the issuance of the permits or the authenticity of the permits, if any were shown by the violators.
10. Referral slip addressed to the concerned Office of the Prosecutor.

### **Can government agencies be stopped from lawfully enforcing environmental laws?**

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.<sup>20</sup>

### **Who is in charge of prosecuting environmental cases?**

The Office of the Public Prosecutor is in charge of prosecuting environmental cases.

### **Can private lawyers help in the prosecution of environmental cases even if there is no private offended party?**

Yes. In criminal cases where there is no private offended party, a counsel whose services are offered by any person or organization may be allowed by the court to appear as special prosecutor, with the consent of and subject to the control and supervision of the public prosecutor.<sup>21</sup>



## B. ARREST

**Is there a difference between the procedure for arresting violators of environmental law and the procedure for arresting offenders for ordinary crimes?**

No. The procedure for arresting violators of environmental crimes is the same as the procedure for arresting violators for ordinary crimes.

**How are duly deputized environmental law enforcers protected when effecting arrest?**

Individuals deputized by the proper government agency enjoy the presumption of regularity in the performance of official duty, when effecting arrests for violations of environmental laws.<sup>22</sup>

## C. CUSTODY AND DISPOSITION OF SEIZED ITEMS

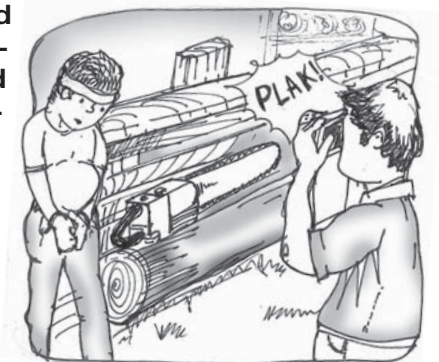
**What rules govern the custody and disposition of seized items, equipment, paraphernalia, conveyances and instruments during the pendency of the case in court?**

If there are rules promulgated by the concerned government agency in the custody and disposition of seized items, these rules shall govern.<sup>23</sup>

**If no rule is promulgated by the concerned government agency, how should the custody and disposition be done?**

*The following procedure shall be observed:*

1. The apprehending officer having initial custody of the





seized items shall conduct the inventory and whenever practicable, photograph the same in the presence of the person from whom such items were seized.

2. If the seizure is by virtue of a search warrant, the apprehending officer shall submit the return to the issuing court within five (5) days from date of seizure. Otherwise, the apprehending officer shall submit within five (5) days from date of seizure the inventory report and other pertinent documents to the public prosecutor for appropriate action.

3. The court may cause the public auction of seized items upon motion by any interested party and after proper notice and publication.

4. The proceeds shall be deposited with the government depository bank for disposition according to the judgment.<sup>24</sup>

#### **D. BAIL**

##### **Is right to bail available for the accused under these Rules?**

Yes. Accused for violation of environmental laws can file bail and he may file bail in the same manner as with other criminal cases.



##### **What are the special conditions for the grant of bail under the new Rules?**

1. Before the grant of bail, the judge must read the information in a language known to and understood by the accused;
2. The judge shall require the accused to sign a written undertaking, which contains the following:

- That accuse will appear during arraignment and whenever required by the court;
- That if accused fails to appear without justification, to waive the reading of the information, to authorize the court to enter a plea of not guilty in his behalf and for the court to proceed with the trial in absentia.<sup>25</sup>

## **E. ARRAIGNMENT AND PLEA**

### **What is the role of the concerned government agency in plea bargaining?**

Unlike in ordinary cases, the presense and consent of concerned government agency is required in plea bargaining for environmental cases.<sup>26</sup>

## **F. PRE-TRIAL**

### **What are the next steps after the accused is arraigned?**

The next steps after arraignment are: pre-trial, trial and judgment.

### **What is pre-trial?**

Pre trial conference is a procedural device used prior to trial to narrow issues to be tried, to secure stipulation as to matters and evidence to be heard, and to take all other steps necessary to aid in the disposition of the case.<sup>27</sup>



## When should the pre-trial be scheduled?

Pre-trial is scheduled within thirty (30) days after arraignment.<sup>28</sup>

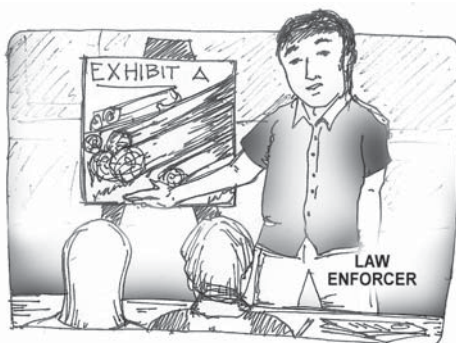
## What happens during pre-trial?

*The following happens during the pre-trial:*

1. Identification of issues
2. Marking of evidence to be presented as exhibits
3. Comparison of copies attached to the records with the original documents
4. Stipulation of facts and admissions
5. Settlement of the civil aspect of the case
6. Other matters that may aid in the prompt disposition of the case

## What is the role of the law enforcer during pre-trial?

The law enforcer should be present during pre-trial and assist in the identification and marking of sworn statements and other exhibits. He/she should also inform the prosecutor on matters related to stipulation of facts and admissions.



## G. TRIAL

### How long will the trial on environmental cases be held?

The court shall endeavor to conduct continuous trial which shall not exceed three (3) months from the date of the issuance of the pre-trial order.<sup>29</sup>

## What happens during the trial proper?

During the trial, the prosecutor presents the evidence and testimonies to prove the guilt of the accused. The defense, on the other hand, present evidence and testimonies to show that the accused is not guilty of the offense charged.

## How is the testimony of the witnesses presented during the trial?

Unlike in ordinary criminal cases, the testimony of the witnesses are presented in the form of judicial affidavits. Thereafter, the opposing party is allowed to cross-examine the witness based on the contents of the affidavit.<sup>30</sup>



## How long should the direct and cross-examination of a witness be conducted?

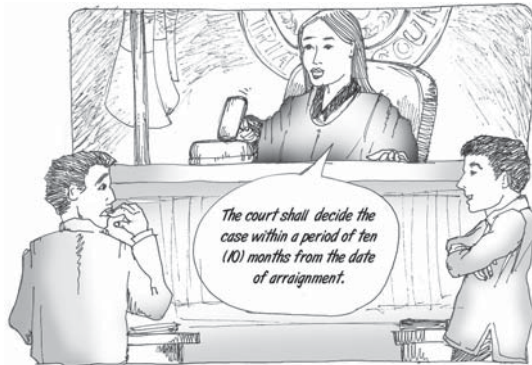
Except for justifiable reasons, the direct and cross-examination of each witness must be conducted in one (1) day.<sup>31</sup>

## What is the importance of this rule to witnesses?

This rule expedites the process, saves time and additional costs to witnesses. It likewise minimizes stress on the part of the witnesses.

### **When should the court decide on the case?**

The court shall decide the case within a period of ten (10) months from the date of arraignment.<sup>32</sup>



## **H. STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION IN CRIMINAL CASES**

### **What protection is provided by the rules for law enforcers subjected to harassment suit?**

The rules adopted the concept and remedy known as Strategic Lawsuit Against Public Participation (SLAPP). This refers to an action filed with the intent to harass, vex, exert undue pressure upon the law enforcer for his acts of enforcing environmental laws or protecting the environment.<sup>33</sup>

### **How do you apply the remedy against the SLAPP suit?**

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.

As a result of the filing of the defense of SLAPP, the proceedings on the main case is deferred. The court is required to rule on the defense of SLAPP.

The court must rule on the defense of SLAPP within sixty (60) days.<sup>34</sup>

## I. EVIDENCE

### DOCUMENTARY EVIDENCE

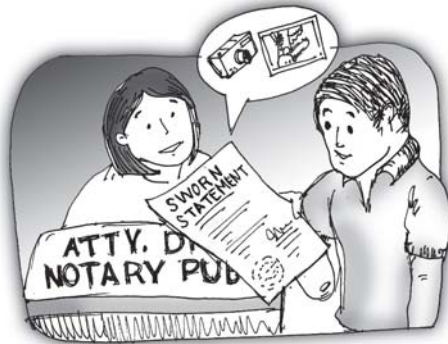
#### How are photographs, videos and similar evidence be made admissible in court?

*Photographs, videos and similar evidence may be made admissible in court when authenticated by:*

- a) the person who took the same;
- b) by some other person present when said evidence was taken; or
- c) by any other person competent to testify on the accuracy thereof.<sup>35</sup>

#### How is authentication done?

Authentication is done by executing a sworn statement, in question and answer, regarding the circumstances surrounding the taking of the photographs, videos and similar evidence and attesting to the accuracy of the same.



## **(Endnotes)**

- <sup>1</sup> Rules of Procedure for Environmental Cases, Part I, Rule 1, Section 1.
- <sup>2</sup> Id. Section 2.
- <sup>3</sup> Id. Section 3.
- <sup>4</sup> Ibid. 1, Part II, Rule 2, Section 4.
- <sup>5</sup> Id. Section 5.
- <sup>6</sup> Id. Sections 3 & 14.
- <sup>7</sup> Ibid 1, Part 1, Rule 1, Section 4(f) & Part V, Rule 20.
- <sup>8</sup> Ibid 1, Part 1, Rule 1, Section 4(d) & Part II, Rule 2, Section 8.
- <sup>9</sup> Ibid 1, Part II, Rule 2, Section 10.
- <sup>10</sup> Ibid 1, Part IV, Rule 12.
- <sup>11</sup> Ibid 1, Part IV, Rule 15.
- <sup>12</sup> Ibid 1, Part II, Rule 6 & Part IV, Rule 19.
- <sup>13</sup> Ibid 1, Part III, Rule 7.
- <sup>14</sup> Ibid 1, Part IV, Rule 9, Sections 1 & 2.
- <sup>15</sup> Rules of Court, Rule 110, Section 3 and Rules of Procedure for Environmental Cases, Part IV, Rule 16, Section 2 (g).
- <sup>16</sup> Rule of Procedure for Environmental Cases, Part IV, Rule 9, Section 1.
- <sup>17</sup> Black's Law Dictionary enumerates the persons included in the term peace officer. It includes sheriffs and their deputies, constables, marshals, members of the police force of cities, and other officers whose duty is to enforce and preserve the public peace. In general, any person who has been given general authority to make arrests.
- <sup>18</sup> Ibid 16, Section 2.
- <sup>19</sup> Rules of Procedure for Environmental Cases, Part V, Rule 21, Section 1.
- <sup>20</sup> Ibid 9.
- <sup>21</sup> Ibid 19, Section 3.
- <sup>22</sup> Ibid 19, Rule 11, Section 1(b).
- <sup>23</sup> Ibid 19, Rule 12, Section 1.
- <sup>24</sup> Ibid 19, Section 2.
- <sup>25</sup> Ibid 19, Rule 14, Section 2.
- <sup>26</sup> Ibid. 11.
- <sup>27</sup> Black's Law Dictionary, West Publishing, St. Paul. Minn, 1979.
- <sup>28</sup> Ibid.19, Rule 16, Section 1.
- <sup>29</sup> Ibid.19, Rule 17, Section 1.
- <sup>30</sup> Id. Section 2.
- <sup>31</sup> Ibid.19, Rule 4, Section 3.
- <sup>32</sup> Ibid.19, Rule 17, Section 4.
- <sup>33</sup> Ibid.12.
- <sup>34</sup> Id.
- <sup>35</sup> Ibid.19, Part V, Rule 21, Section 1.



