

Due Process and the Writ of *Kalikasan*

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I. INTRODUCTION

The Rules of Procedure for Environmental Cases¹ (Rules) refer to a comprehensive set of rules promulgated by the Supreme Court governing proceedings for the civil and criminal enforcement of all environmental laws.² The Rules incorporate innovations in judicial procedure, encompassing such important issues as standing, burden of proof, and periods to resolve.³

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1. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, A.M. No. 09-6-8-SC, Apr. 29, 2010.
2. *Id.* rule 1, § 2. This Section provides that the 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[.]” *Id.*
3. See Myrna V. Lim-Verano, The Rules of Procedure for Environmental Cases, Address at the International Association of Women Judges 2010 10th Biennial International Conference at Seoul, South Korea (May 11-15, 2010), transcript available at <http://www.iawj.org/what/seouldocs/7averano.pdf> (last accessed Feb. 25, 2011).

Embedded in the Rules, however, is a key innovation that addresses environmental problems of great magnitude.⁴ Hence, for purposes of this Essay, focus shall be given to the Rules' most radical⁵ and prominent innovation: the Writ of *Kalikasan*. The Writ shall be studied in the context of the other provisions of the Rules, with the intent to give the same a more nuanced and balanced assessment in the context of Philippine law and procedure.

4. See generally Antonio G.M. La Viña, *Good news for environmental justice*, MANILA STAND. TODAY, Apr. 27, 2010, available at <http://www.manilastandardtoday.com/insideOpinion.htm?f=2010/april/27//tonylavina.isx&d=2010/april/27/> (last accessed Feb. 25, 2011).

5. See RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, ratio., at 78-80. According to the Sub-Committee on the Rules, two fundamental concerns are present in the effective enforcement of environmental laws: (1) questions of jurisdiction arising from the fact that environmental damage may span wide areas, and (2) questions of competence and admissibility of evidence, which are crucial to the successful prosecution of a claim for enforcement of environmental rights. As such, the Writ of *Kalikasan*

is intended to provide a stronger defense for environmental rights through judicial efforts where institutional arrangements of enforcement, implementation and legislation have fallen short. It seeks to address the potentially exponential nature of large-scale ecological threats.

...

Environmental problems ... have a widespread dimension of destruction. It is with this concern that the [W]rit was fashioned to address the concern of magnitude and the questions of jurisdiction arising from the environmental damage occurring in wide areas by allowing the petition for the issuance of the [W]rit to be filed in the Supreme Court or any stations of the Court of Appeals because of their nationwide jurisdiction.

...

[T]he [W]rit of [*K*]alikasan was refashioned as a tool to bridge the gap between allegation and proof by providing a remedy for would-be environmental litigants to compel the production of information within the custody of the government. The [W]rit would effectively serve as a remedy for the enforcement of the right to information about the environment.

RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, ratio., at 78-80.

The Writ of *Kalikasan* has also been described by the media to be a radical innovation. See La Viña, *supra* note 4 & Abigail Kwok, *Green groups welcome 'writ of kalikasan'*, PHIL. DAILY INQ., Feb. 09, 2010, available at <http://newsinfo.inquirer.net/breakingnews/nation/view/20100209252201/Green-groups-welcome-writ-of-kalikasan> (last accessed Feb. 25, 2011).

The Writ marries the summary proceedings presently available under procedural rules in relation to existing writs with the evidentiary process accompanying ordinary procedure.⁶ From these qualities, it appears that the Writ of *Kalikasan* is a proceeding *sui generis*,⁷ a classification hitherto associated only with disbarment proceedings.⁸

A. The Rules

The Rules of Procedure for Environmental Cases are divided into three main parts, following the fundamental structure of the Rules of Court. Specific rules for environmental proceedings have been laid out within its contents in the areas of Civil Procedure, Criminal Procedure, and Evidence.⁹ In addition, an extraordinary¹⁰ writ, the Writ of *Kalikasan*, has been added as a key feature.¹¹

6. See generally RULES OF PROCEDURE FOR ENVIRONMENTAL CASES.

7. *Sui generis* refers to a Latin term which means of its own kind or class; unique or peculiar. BLACK'S LAW DICTIONARY 1572 (9th ed. 2009).

8. It has been held that disbarment proceedings are a class of their own:

Disbarment proceedings are undertaken solely for public welfare. The sole question for determination is whether a member of the bar is fit to be allowed the privileges as such or not. The complainant or the person who called the attention of the Court to the attorney's alleged misconduct is in no sense a party, and generally has no interest in the outcome except as all good citizens may have in the proper administration of justice. For this reason, laws dealing with double jeopardy or prescription or with procedure like verification of pleadings and prejudicial questions have no application to disbarment proceedings.

RUBEN E. AGPALO, COMMENTS ON THE CODE OF PROFESSIONAL RESPONSIBILITY AND THE CODE OF JUDICIAL CONDUCT 485-86 (2009 ed.) (citing *Pimentel, Jr. v. Llorente*, 339 SCRA 154, 158-59 (2000)).

9. See generally RULES OF PROCEDURE FOR ENVIRONMENTAL CASES.

10. See RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, annot., at 133. As an extraordinary remedy,

[t]he underlying emphasis in the Writ of *Kalikasan* is magnitude as it deals with damage that transcends political and territorial boundaries. Magnitude is thus measured according to the qualification set forth in the Rule — when there is environmental damage that prejudices the life, health or property of inhabitants in two or more provinces.

RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, annot., at 133.

11. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 7.

The Rules expressly indicate applicability to the judicial enforcement of environmental laws, which the same enumerate extensively.¹² The final

12. *Id.* rule 7, § 2. The following are the laws enumerated in (but not limited to) Section 2 of the Rules of Procedure for Environmental Cases:

- (a) Act No. 3572, Prohibition Against Cutting of Tindalo, Akli, and Molave Trees;
- (b) Presidential Decree (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) Republic Act (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; and
- (y) Provisions in Commonwealth Act 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

proviso of the provision on the scope of the Rules extends the applicability of the Rules to laws yet to be promulgated.¹³

Some key innovative features of the Rules are discussed in the subsequent sections.

I. Liberalized Standing

The Rules, under the title on Civil Procedure,¹⁴ provide for two different modes of filing:

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 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 Republic Act (R.A.) No. 8749¹⁵ and R.A. No. 9003¹⁶ shall be governed by their respective provisions.¹⁷

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. 9593, Renewable Energy Act of 2008; [and] R.A. No. 9637, Philippine Biofuels Act[.]

Id.

13. *Id.* rule 7, § 2 (y). The last part of Rule 1, Section 2 (y) makes the Rules applicable to “other [] laws that relate to the conservation, development, preservation, protection and utilization of the environment and natural resources.” *Id.*
14. *Id.* pt. II.
15. An Act Providing for a Comprehensive Air Pollution Control Policy and for Other Purposes [Philippine Clean Air Act of 1999], Republic Act No. 8749 (1999).
16. An Act Providing for an Ecological Solid Waste Management Program, Creating the Necessary Institutional Mechanisms and Incentives, Declaring Certain Acts Prohibited and Providing Penalties, Appropriating Funds Therefor, and for Other Purposes [Ecological Solid Waste Management Act of 2000], Republic Act No. 9003 (2001).

These provisions, with extensive modifications, are a restatement of the principle on standing *viz* environmental protection as laid out in *Oposa v. Factoran, Jr.*¹⁸ It may be recalled that *Oposa* set the bar for the elimination of the requirement of standing with respect to matters pertaining to the environment.¹⁹

2. Temporary Environmental Protection Order

One remedy encapsulates the reliefs provided under the Writ of *Kalikasan*. This is the Environmental Protection Order (EPO). As an auxiliary remedy, it incorporates the essential features of a preliminary injunction and a preliminary mandatory injunction.²⁰ It is defined by the Rules as “an order

17. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 2, §§ 4 & 5.

18. *Oposa v. Factoran, Jr.*, 224 SCRA 792 (1993). This is a landmark Case discussing the standing of the Petitioners to file an environmental suit. The Petitioners in this case are all minors, duly represented by their parents. They filed a class suit against Fulgencio S. Factoran, then Secretary of the Department of Environment and Natural Resources (DENR), urging the latter to cancel all existing timber license agreements in the country and to desist from approving new ones. Ruling in favor of the Petitioners’ standing to file the class suit, the Supreme Court stated, thus:

This Case, however, has a special and novel element. Petitioners minors assert that they represent their generation as well as generations yet unborn. 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 in 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. Such a right, as hereinafter expounded, considers the ‘rhythm and harmony of nature.’ Nature means the created world in its entirety. Such rhythm and harmony indispensably include, *inter alia*, the judicious disposition, utilization, management, renewal and conservation of the country’s forest, mineral, land, waters, fisheries, wildlife, off-shore areas[,] and other natural resources to the end that their exploration, development[,] and utilization be equitably accessible to the present as well as future generations. Needless to say, every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology. Put a little differently, the minors’ assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come.

Id. at 802-03.

19. *Id.*

20. The functions of preliminary injunctions and preliminary mandatory injunctions have been described by the Supreme Court in this manner:

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.”²¹

The EPO is a powerful remedy. It effectively awards relief at the commencement of the proceedings. The Rules likewise provide for the immediate remedy of a Temporary Environmental Protection Order (TEPO).²² To prevent abuse, the same procedural safeguards governing Temporary Restraining Orders are applicable to TEPOs.²³ Albeit powerful, the TEPO is limited by the jurisdiction of the court issuing it.²⁴ At this juncture, it is complemented by the Writ of *Kalikasan*.

[T]he sole object of a preliminary injunction, whether prohibitory or mandatory, is to preserve the status quo until the merits of the case can be heard. It is usually granted when it is made to appear that there is a substantial controversy between the parties and one of them is committing an act or threatening the immediate commission of an act that will cause irreparable injury or destroy the status quo of the controversy before a full hearing can be had on the merits of the case.

Ocampo v. Sison Vda. de Fernandez, 525 SCRA 79, 94 (2007) (citing Rava Development Corporation v. Court of Appeals, 211 SCRA 144, 154 (1992)).

21. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 1, § 4 (d).

22. *Id.* rule 2, § 8. This Section 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.

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

Id.

23. *Id.* annot., at 113. The procedure for the issuance of the TEPO “stems from the same procedure for the issuance of a Temporary Restraining Order, as it appears in Sections 5 and 6 of Rule 58 of the [1997 Rules of Civil Procedure].” *Id.*

24. *Id.* rule 2, § 8.

3. The Precautionary Principle

Another aspect of the innovations introduced by the Rules lies in the provisions on Evidence, particularly the adoption of the Precautionary Principle.²⁵ The 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.”²⁶

Under the title on Evidence,²⁷ the Rules provide for the application of the Precautionary Principle:

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.²⁸

While there can be no brief exposition of the Precautionary Principle which would encapsulate its meaning, the formulation of the Principle in the Rules gives a glimpse of how it is to be employed. The definition uses the phrase “threats of serious and irreversible damage,”²⁹ which could refer to any form of human activity. This particular version of the Precautionary

25. The Precautionary Principle has been “articulated in some international covenants like the Rio Declaration and the Kyoto Protocol. It is adopted from Australia, India and Canada.” Lim-Verano, *supra* note 3.

26. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 1, § 4 (f). *Precaution* is explained as

an approach that espouses prudence where risk is uncertain, but plausible. It is an addition to two basic tenets of problem-solving: curing problems and preventing them. Under a curative approach, the harm has already been realized, and measures are created to reverse the harm, or require compensation for the costs associated with harm. Under the preventive approach, measures are taken to prevent known risks from materializing into actual harm. Precaution requires even greater diligence than prevention, by calling for measures to safeguard the environment even if the occurrence of harm is uncertain. The precautionary principle affirms the need for urgent measures given the unpredictable patterns of the environment, and the harm resulting from its abuse.

Id. ratio., at 82 (citing NICHOLAS DE SADELEER, ENVIRONMENTAL PRINCIPLES — FROM POLITICAL SLOGANS TO LEGAL RULES 23, 61, & 150-53 (2002)).

27. *Id.* pt. V.

28. *Id.* rule 20, § 1.

29. *Id.* rule 1, § 4 (f).

Principle urges prudence — a bias against human activity which tends to cause changes in the environment.³⁰

The Precautionary Principle is an overriding concept which permeates the proceedings governed by the Rules, including the Writ of *Kalikasan*. The Writ may thus be seen as an intersection of two streams in procedural thought: the summary, high prerogative proceeding leading to its issuance³¹ and the Precautionary Principle that informs the decision-making process which *necessitates bias against human activity*.³²

And therein lies the rub.

B. The Writ of Kalikasan: Procedure

All of these innovations find their way into the Rules' most prominent feature: the Writ of *Kalikasan*.

Procedurally, the Writ of *Kalikasan* is patterned closely after two recently-issued writs by the Supreme Court: the Writ of *Amparo*³³ and the Writ of *Habeas Data*.³⁴ It likewise shares some ground with the Writ of

30. See RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, ratio., at 82-87, for the different versions of the Precautionary Principle taken into consideration by the Sub-Committee on the Rules.

31. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, ratio., at 73-74.

32. *Id.* at 87. The Rules are “cognizant of the fact that the complexities associated with environmental cases will present difficulties under the regular rules of procedure. Overall, the precautionary principle would essentially aid plaintiffs in establishing cases that would be, under most circumstances, difficult if not impossible to prove.” *Id.*

33. THE RULE ON THE WRIT OF AMPARO, A.M. No. 07-9-12-SC, Oct. 24, 2007, § 1. This Section provides that:

The petition for a [W]rit of [A]mparo is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity. The [W]rit shall cover extralegal killings and enforced disappearances or threats thereof.

Id.

34. THE RULE ON THE WRIT OF HABEAS DATA, A.M. No. 08-1-16-SC, Feb. 2, 2008, § 1. This Section defines the Writ of *Habeas Data* as

a remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party.

Id.

Habeas Corpus,³⁵ whose structure informs both the Writ of *Habeas Data* and the Writ of *Amparo*. With these procedural precedents, it readily appears that the procedure for the issuance of the Writ of *Kalikasan* is inherently summary in character.³⁶

With respect to standing, the Writ of *Kalikasan* adopts the same liberal treatment afforded by the Rules. The Provision on standing reads:

The [W]rit 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.³⁷

The Provision on standing mirrors the liberal treatment afforded by the Rules to the filing of civil cases.³⁸ Thus, under the foregoing definition of standing, virtually anyone may file a petition for the issuance of the Writ.³⁹

The procedure for its issuance is commenced with the filing of a petition. The verified petition should contain the following:

- (a) The personal circumstances of the petitioner;
- (b) The name and personal circumstances of the respondent or if the name and personal circumstances are unknown and uncertain, the respondent may be described by an assumed appellation;

35. SPECIAL PROCEEDINGS, rule 102, § 1. This Section provides:

SEC. 1. *To what habeas corpus extends.* — Except as otherwise expressly provided by law, the [W]rit of [H]abeas [C]orpus shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto.

Id.

36. See RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, ratio., at 73-74. The Writ of *Kalikasan* is accorded a high level of priority, similar to the [W]rits of *Habeas Corpus*, *Habeas Data* and *Amparo*.

37. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 7, § 1.

38. Compare 1997 RULES OF CIVIL PROCEDURE, rule 13 with RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 7, § 1.

39. See RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, ratio., at 68. Although the relaxation of standing in the case of environmental suits is innovative, it is viewed as but a catalyst for an even greater objective: public participation in environmental enforcement. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, ratio., at 68.

- (c) The environmental law, rule or regulation violated or threatened to be violated, the act or omission complained of, and the environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces;
- (d) All relevant and material evidence consisting of the affidavits of witnesses, documentary evidence, scientific or other expert studies, and if possible, object evidence;
- (e) The certification of petitioner under oath that: (1) petitioner has not commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency, and no such other action or claim is pending therein; (2) if there is such other pending action or claim, a complete statement of its present status; (3) if petitioner should learn that the same or similar action or claim has been filed or is pending, petitioner shall report to the court that fact within five (5) days therefrom; and
- (f) The reliefs prayed for which may include a prayer for the issuance of a TEPO.⁴⁰

Notably, the TEPO appears as an auxiliary remedy in the Writ. This theoretically translates into an immediate order of restraint or action, depending on the allegations stated in the petition, and to the determination of the Court of the propriety of their issuance.⁴¹

Consistent with the liberal treatment accorded to standing, the Rules exempt the petitioner in the proceedings from the payment of docket fees.⁴²

Like the provisions on Civil Procedure, the Writ proceedings prohibit the filing of certain pleadings and motions, taking off from the Rule on Summary Procedure.⁴³ The following are prohibited:

40. *Id.* rule 7, § 2.

41. *Id.* rule 2, § 8.

42. *Id.* rule 7, § 4.

43. 1991 REVISED RULES ON SUMMARY PROCEDURE, § 19. This Section provides:

SEC. 19. *Prohibited pleadings and motions.* — The following pleadings, motions or petitions shall not be allowed in the cases covered by this Rule:

- (a) Motion to dismiss the complaint or to quash the complaint or information except on the ground of lack of jurisdiction over the subject matter, or failure to comply with the preceding [S]ection;
- (b) Motion for a bill of particulars;
- (c) Motion for new trial, or for reconsideration of a judgment, or for opening of trial;
- (d) Petition for relief from judgment;

SEC. 9. *Prohibited pleadings and motions.* — The following pleadings and motions are prohibited:

- (a) Motion to dismiss;
- (b) Motion for extension of time to file return;
- (c) Motion for postponement;
- (d) Motion for a bill of particulars;
- (e) Counterclaim or cross-claim;
- (f) Third-party complaint;
- (g) Reply; and
- (h) Motion to declare respondent in default.⁴⁴

In the Writ proceedings, the respondent may file a return. The related Provision in the Rules provides:

SEC. 8. *Return of respondent; contents.* — Within a non-extendible period of ten (10) days after service of the [W]rit, the respondent shall file a verified return which shall contain all defenses to show that respondent did not violate or threaten to violate, or allow the violation of any environmental law, rule or regulation or commit any act resulting to environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

All defenses not raised in the return shall be deemed waived.

The return shall include affidavits of witnesses, documentary evidence, scientific or other expert studies, and if possible, object evidence, in support of the defense of the respondent. A general denial of allegations in the petition shall be considered as an admission thereof.⁴⁵

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- (e) Motion for extension of time to file pleadings, affidavits or any other paper;
 - (f) Memoranda;
 - (g) Petition for certiorari, mandamus, or prohibition against any interlocutory order issued by the court;
 - (h) Motion to declare the defendant in default;
 - (i) Dilatory motions for postponement;
 - (j) Reply;
 - (k) Third party complaints; and
 - (l) Interventions.

Id.

44. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 7, § 9.

45. *Id.* rule 7, § 8.

The return takes on the function of an answer,⁴⁶ which controverts the claims stated in the petition. Unlike the other writs, however, a distinct aspect of the Writ of *Kalikasan* is the presentation and evaluation of evidence.⁴⁷

In sum, the proceedings remain fundamentally adversarial in character, where the respondent is given the opportunity to controvert the claims of the petitioner. But this occurs in the context of deciding environmental rights, where the Precautionary Principle guides the Court.

With respect to reliefs available, the reach of the Writ is certainly expansive. Under the Writ of *Kalikasan*, the following reliefs may be granted:

- (a) Directing respondent to permanently cease and desist from committing acts or neglecting the performance of a duty in violation of environmental laws resulting in environmental destruction or damage;
- (b) Directing the respondent public official, government agency, private person or entity to protect, preserve, rehabilitate or restore the environment;

46. See 1997 RULES OF CIVIL PROCEDURE, rule 6, § 4.

47. See RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, ratio., at 80. The Sub-Committee on the Rules explains that

[an] important concern for any party seeking to enforce environmental rights are the evidentiary matters which supports such a claim, apart from affidavits and other documents which he could procure independently for himself. A key component of any case is the competence and admissibility of evidence accompanying the complaint. In environmental cases, the presence or absence of such evidence is crucial: it may lead to the successful prosecution of the claim for enforcement of environmental rights or it may lead to the dismissal of the case. The latter brings with it the bar of finality, *res judicata*, even when the initial claim is a valid one.

...

The [W]rit would effectively serve as a remedy for the enforcement of the right to information about the environment. The scope of the fact-finding power could be: (1) anything related to the issuance, grant of a government permit issued or information controlled by the government or private entity and (2) Information contained in documents such as environmental compliance certificate (ECC) and other government records. In addition, the Writ may also be employed to compel the production of information, subject to constitutional limitations. This function is analogous to a discovery measure, and may be availed of upon the application for the [W]rit.

RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, ratio., at 80.

- (c) Directing the respondent public official, government agency, private person or entity to monitor strict compliance with the decision and orders of the court;
- (d) Directing the respondent public official, government agency, or private person or entity to make periodic reports on the execution of the final judgment; and
- (e) Such other reliefs which relate to the right of the people to a balanced and healthful ecology or to the protection, preservation, rehabilitation or restoration of the environment, except the award of damages to individual petitioners.⁴⁸

II. THE QUESTION OF PROCEDURAL FAIRNESS

Complementing the summary character of the proceedings under the Writ of *Kalikasan* is the application of the Precautionary Principle, which, as pointed out earlier, essentially creates a procedural bias against human activity. This may present some complex scenarios for the individual or entity against whom the Writ is served.

First, the process for obtaining the Writ is liberalized, i.e., it may be secured with relative ease by any individual or entity who seeks its issuance.⁴⁹ This translates into the possibility of multiple and successive filings, all of which come with the issuance of cease and desist orders, remedies which are fundamentally intrusive in character.

Second, and for the part of the respondent who will be called upon to present countervailing arguments and evidence, there are very tight timelines for its presentation. The return must be filed within 10 days, which is non-extendible, and it must contain virtually all of the respondent's evidence as well as his defenses.⁵⁰

Notably, the key defenses will all lie in the type of evidence presented, including object and scientific evidence. These types of evidence will not necessarily be on hand, being the product, *inter alia*, of laborious research and investigation. The difficulty of mounting any credible defense may be evaluated against the ease by which a Writ may be applied for.

In this regard, the Writ functions as an ordinary fact-finding proceeding akin to a trial, albeit without the procedural features which inhere in the

48. *Id.* rule 7, § 15.

49. *Id.* rule 7, § 1.

50. *Id.* rule 7, § 8.

latter.⁵¹ In particular, this includes the right to cross-examine witnesses and to impeach evidence.⁵²

Under the Writ system, the evidence presented is evaluated by the tribunal immediately after presentation.⁵³ The ready applicability of the Precautionary Principle in all proceedings governed by the Rules presents an intricate question: will the Precautionary Principle apply in favor of the applicant?

A close reading of the Rules reveals that the provision on the Precautionary Principle has been given a broad scope.⁵⁴ The very broadness of the Principle translates into wide judicial discretion as to its application. This judicial discretion is then tilted against human activity via the Precautionary Principle.⁵⁵ The probable result, as against respondents who are engaged in “human activity,” is readily predictable.

This is in the context of deciding environmental cases, where the issues presented are fact-based and heavily dependent upon the presentation of scientific evidence. This evidence will be evaluated further from the lens of the Precautionary Principle, which has an inherent bias against human activity. The Court is confronted with technical questions, which may be better addressed by experts in their technical evaluation of evidence. While the Court may avail of experts in the appointment of *amici curiae*,⁵⁶ this does not answer the question of how the tribunal assesses the evidence before it, the *amici curiae*'s findings being merely recommendatory in character.⁵⁷

As a procedural safeguard, the Writ provides for a remedy in the form of an appeal to the Supreme Court.⁵⁸ In another radical innovation, the Rules expressly provide for a review of factual questions,⁵⁹ a clear exception to the

51. See 1997 RULES OF CIVIL PROCEDURE, rule 30.

52. 1997 RULES OF CIVIL PROCEDURE, rule 30.

53. See RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 7.

54. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 20.

55. *Id.*

56. *Amicus Curiae* literally means “friend of the court.” He is a person who is not a party to a lawsuit but who petitions the court or is requested by the court to file a brief in the action because that person has a strong interest in the subject matter. BLACK’S LAW DICTIONARY 98 (9th ed. 2009). See also 1997 RULES OF COURT ON LEGAL ETHICS, rule 138, § 36.

57. Ruben J. Garcia, *A Democratic Theory of Amicus Advocacy*, 35 FLA. ST. U. L. REV. 315, 315-16 (2008).

58. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 7, § 16.

59. *Id.*

jurisprudential precept that the Supreme Court is not a trier of facts.⁶⁰ The Provision reads thus:

SEC. 16. *Appeal.* — Within fifteen (15) days from the date of notice of the adverse judgment or denial of motion for reconsideration, any party may appeal to the Supreme Court under Rule 45 of the Rules of Court. *The appeal may raise questions of fact.*⁶¹

Yet the same Rules, together with the Precautionary Principle, apply to the Supreme Court. Thus, any further inquiry into factual matters will still be subject to this constraint.

III. EPILOGUE

While environmental protection is now at the forefront of issues confronting modern-day society⁶² and the Judiciary has taken an active stand on the matter by promulgating a separate set of Rules, efforts at reform must be balanced with existing safeguards placed in the protection of rights.

The Writ is a concededly radical innovation and the Judiciary will have to implement it without jurisprudential precedents. The proceedings must therefore be handled cautiously, with great exercise of judicial wisdom, for there are certain questions which the Court must approach with circumspection, lest they be in derogation of pre-existing rights.

60. *Romy's Freight Services v. Castro*, 490 SCRA 160, 165 (2006). The recognized exceptions to the general rule are:

- (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings, the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, will justify a different conclusion.

Leoncio v. De Vera, 546 SCRA 180, 185 (2008).

61. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 7, § 16 (citing 1997 RULES OF CIVIL PROCEDURE, rule 45) (emphasis supplied).

62. RICE ODELL, ENVIRONMENTAL AWAKENING: THE NEW REVOLUTION TO PROTECT THE EARTH 1-2 (1980).