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The Writ of Kalikasan in strengthening Sustainable Development and Environmental Rights

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ABSTRACT OF THESIS submitted by:
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The unprecedented environmental degradation brought by urbanization and climate-change affects the quality of environment humans live in but at the same time, raise a collective awareness in the internationally for its protection amidst development. In the past few decades, the constitutional enshrinement of environmental rights has grown across domestic States. But in order for the people to assert it, supporting statutory laws must be present. In the case of environmental harm, remedies for environmental protection has long existed but its timeliness in delivery remains in question. The research aimed to look at one domestic environmental remedy elevated to the status of a Writ – the Writ of Kalikasan if it is successful in upholding the principles of sustainable development and environmental right. Context analysis was employed in two cases filed for the petition. The results affirm that the courts are strengthening both narratives in their rulings but since the data sample is limited, more research has to be done.

Keywords: environmental remedy, environmental constitutionalism, Philippines

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1. Introduction

Preservation of human life and dignity is anchored on long established legal instruments. A core component in the realization of human rights is access to a healthy and clean environment. However, this component of human rights still needs to be actively defended since environmental issues in general, were only brought to international attention in the last few decades.

Boer (2015) identified this slow albeit steady convergence of certain aspects of environmental law and human rights beginning from the Universal Declaration on Human Rights in 1948. Shifts in paradigm in understanding environmental problems from something discrete and local to something that warrants a multidisciplinary and international cooperation first culminated in the UN Conference of the Human Environment in 1972. This was followed by the emergence of the Sustainable Development Agenda in the 1987 Brundtland Report, which was recognized as the primary pathway in which humanity could survive – economically, socially, and environmentally. At present, all United Nation Member states adopted the 2030 Agenda for Sustainable Development as the pathway for peace and prosperity for people living at present and into the future of the planet.

The imperative that environmental rights are central to the human quality of life have been included in the constitutions of 155 countries (UNEP, 2019). This moral imperative although recognized in international law as substantive principles, can only do so much as these policies and protocols have yet to translate into enforceable national laws and policies to attain efficacy. Burns (2017) described a problem in translating environmental protection or rights into enforcement, stating that constitutional provisions are inherently problematic because it is made not to be a justiciable right even if it instructs the legislative to take action without a remedy prescribed.

And environmental legislation, although plenty, requires a certain amount of urgency in enforcing that often gets lost in bureaucratic processes. The translation of international environmental law to individual nation and states requires a certain amount of flexibility and speed in the legislative, executive, and judicial branches of the government.

I am interested to understand how the constitutional enshrinement of environmental rights are upheld through remedies, with respect to sustainable development. Procedural laws concerning the environment are often discrete and seeks to address one or two particular issue (e.g. clean air act and its corresponding laws) but if an activity or entity impacts the environment and endangers the life of a population – can they assert their right to a healthy environment efficiently from a the roster of existing laws?

One such environmental remedy elevated to a status of a writ is found in the Philippine Judiciary. . For a country whose status is both among the top ten megadiverse and biodiversity hotspots in the world, the environmental pressure for development and its impact to its population of 109 million people is immense. The writ is part of the 2010 *Rules and Procedures for Environmental Cases* penned by the Supreme Court of the Republic of the Philippines. It was purportedly to support the constitutional provision to a *rightful and balanced ecology* in Article 2 Section 16 of the 1987 Philippine Constitution If an environmental remedy is given a status of a writ, will it be able to enforce constitutional enshrined environmental rights better? As such, the aim of my research is to determine if the Writ of Kalikasan [Nature] as an established remedy in promoting environmental rights is congruent with the sustainable development and environmental rights narrative

At present, there are many environmental laws, rules, and regulations that are supporting constitutional provisions, albeit discretely. But in the case of the Philippines, the assertion of environmental rights were elevated and given the status of a *writ* which is said to be radical and a first of its kind. A writ as defined by Black's Law Dictionary (2019) is "a court's written order, in the name of a state or other competent legal authority, commanding the addressee to do or refrain from doing some specified act". Specifically, its nature being the ff.:

> 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.

Hence, in theory, any legal entity can assert their environmental rights and go through the procedures to file for a Petition for Writ of Kalikasan if they deem that their constitutional right to a healthful and balanced ecology is being threatened under the specified conditions. This study seeks to determine if the said remedy is successful in strengthening both the sustainable development and environmental rights principles through content analysis of completed court cases, the 1987 Brundtland Report, and the 2018 Framework Principles on Human Rights and the Environment.

In particular, the objectives of this study are the ff:

1. To create a framework of analysis derived from a section of the Brundtland Report and the Framework Principles on Human Rights and the Environment, for reading Writ of Kalikasan;
2. To evaluate both the Writ of Kalikasan as a legal instrument and its completed cases in terms of their success in upholding and strengthening Sustainable Development and Environmental Rights principles in the Philippines
3. To compare and analyze the position of recurring Writ of Kalikasan themes with respect to the Brundtland Report and the Framework Principles on Human Right and the Environment

2. Literature Review

This chapter provides contextualization of the study in the wider breadth of the international environmental law (IEL) and environmental constitutionalism literature. Since the scope of IEL is wide, its discussion will be divided into the linkages of IEL to environmental constitutionalism, the significance of constitutionalizing environmental principles, and environmental remedies. Another section is dedicated to give background for the Writ of Kalikasan [Nature], which is the focus of this research.

Despite the plethora of both substantive and procedural laws in IEL, its enforceability in terms of both environmental protection and environmental rights remain questionable. It is my aim to contextualize the procedural nuances for supporting these substantive environmental principles through exploration of the aforementioned literature.

2.1 The linkages of International Environmental Law in Environmental Constitutionalism

Modern international environmental law is attributed to the 1972 United Nations Conference in Stockholm (Sand 2008). It overlaps with a wide array of other law disciplines such as international, public, and private laws that are directed towards environmental problems (Birnie *et al.* 2009). Its development is attributed to the evolution of comprehensive, highly dynamic multilateral treaty systems (Gehring 2008). Treaties could either be legally or non-legally binding, each a case-to-case basis, in which participation is voluntary that is targeted for the resolution of specific environmental issues. In order to resolve international environmental problems, application of international law is required. This makes addressing most of the legal issues imposed by environmental problems impossible without considering the law of treaties, state responsibility, jurisdiction, the law of the sea, natural resources law, dispute settlement law,

private international law, humans right law, international criminal law, and international trade law among others (Birnie *et al.* 2009).

The existence economic incentives or disincentives in treaties affect the willingness of a state to participate in it. Among the instruments used to combat environmental problems are trade sanctions for three universally subscribed Multilateral Environmental Agreements (MEA) such as the Convention on International Trade and in Endangered Species of Wild Fauna and Flora (CITES) for endangered species, the Montreal Protocol for substances depleting the ozone layer, and the Basel Convention for hazardous wastes (OECD 2000). Signifying intent by signing a treaty does not always result to its eventual ratification and or immediate legislation for compliance in local laws. An example this is the Kyoto Protocol of the UN Framework Convention of Climate Change in 1997. It entered into force on 16 February 2005 and at present, have 192 parties that have committed (UNCC 2021). However, the United States have not yet ratified it and Canada withdrew in 20212. Despite the imperfection in fostering a seamless resolution of environmental problems in an international level, a new level of cooperation nevertheless, emerged among states. Gnas (2014) identified the protocol to establish the climate change regime which eventually catalyzed new levels of cooperation among states through formations of party groupings and coalitions, in the society through various non-governmental organizations, and in the business levels.

A present, there is a lacking governing body to manage existing multitude of treaties and international regimes to resolve environmental problems. Although there are attempts to do so in the almost 50-year of existence of modern international environmental law. One is an on-going proposal for an international treaty, the 2017 Global Pact for the Environment (GPE) that seeks enshrinement of individual and court-enforceable environmental rights and duties (Aguila 2020). However, Ruiz (2020) observed that most states expressed skepticism on how the structural deficiencies of the international environmental law and governance system would be remedied by the Global Pact for the Environment. A certain amount of flexibility in the nature, content, and

articulation is needed for it to complement existing international instruments and flexibility for states with different political realities and legal systems to implement (Aguila & Viñuales 2019).

When it comes to protecting the environment, international environmental law falls short and relies on domestic laws for enforceability and adaptation. Cramer (2009) notes that 'the multilateral or regional agreements that do exist are also largely lacking in enforcement mechanisms and rely on signatory states to enact their own internal legislation, which has only occurred in some countries' he further remarked that 'some components of environmental human rights activism have found their way into national statutes and constitutions' .

In fact, amendments to constitutions in the last 25 years have incorporated a degree of environmentalism. The past decades are characterized by inclusion of socio-economic and environmental rights in constitutional revisions, aside from civil and political rights (Chilton and Versteeg 2020). Factors that affecting environmental constitutional enshrinement and amendment for 148 out of 196 constitutions were studied by O'Gorman (2017). He identified external influences resulting to the introduction of environmental provisions such as coercion where political ideas are diffused due to power asymmetries, citing the European Union, World Trade Organization, and International Monetary Fund; competition that results to improved higher environmental standards among states; learning and persuasion where the role influential bodies such as the UN, a world power or Non-Governmental Organizations; and through acculturation and emulation where external environmental ideologies of acceptable good practices are adapted.

2.2 Sustainable Development and Environmental Rights in domestic constitutionalism

For this subsection, a background on environmental principles and domestic constitutionalism will be discussed. Although a broader overview on constitutionalizing environmental principles will be provided, the main focus will be on the adaptation of sustainable development and environmental rights on domestic constitutionalism.

A constitution as defined by Black (1891) is "the organic and fundamental law of a nation or state, which may be written or unwritten, establishing the character and conception of its government, laying the basic principles to which its internal life is to be conformed, organizing the government, and regulating, distributing, and limiting the functions of its different departments, and prescribing the extent and manner of the exercise of sovereign powers". It is recognized as the supreme law of the land which not only encapsulates the values and norms but also delineates order for its functioning society. The effectivity of a constitutional law however, relies not only on the terms in the constitution themselves but also in the implementation of its constitutional courts (Daly 2018).

But there could be environmental constitutionalism even without a national constitutionalism. The existence of environmental provisions in national constitutions however, is not prerequisite for environmental policymaking and subnational constitutionalism in example, for Federal States. Federal states like the United States, Canada, and Australia have yet to realize environmental rights at the federal level but in fact, have led in promoting it in both substantively and procedurally in the subnational level (May 2017). Environmental protection can exist independent of national or federal constitutional enshrinement both substantive and procedural in nature.

Constitutionalizing an environmental concern is to elevate it among the basic human rights and norms of the society protected in all levels of law. It is akin to framing environmental harms as public assault, and in the words of Brooks (1992), "the fundamental purpose of a constitutional right to a healthy environment is to frame the description of the pollution event in terms of a public assault upon an individual's substantive right to life and health". Environmental constitutionalism for Kotze (2012) is when both domestic environmental concerns and protective measures are phrased into constitutional language. He also elucidated that the realization of environmental obligations is not only the role of environmental constitutionalism but also setting a framework of good governance which is upheld dutifully by

both the implementing government agencies and the society. But which is more effective in terms of environmental protection – substantive rights or procedural rights? Hayward (2020) asserts that both substantive and procedural rights stand together in constitutionalizing, and posed a more important question of what weight are environmental interests given when conflicted with private property and economic interests which are more established. The corollary beneficial relationship between substantive and procedural environmental rights is also recognized by Boyd in 2012. He differentiated substantive from procedural environmental rights being the former tied to pre-existing statutory laws – " the right to have one's private property protected from environmental damage caused by others; and the right of the environment to be protected for its own sake"; whereas procedural environmental rights are inextricable with human rights instruments. The linkages between human rights and environmental protection as legal frameworks has been identified by Shelton in 1991 as first, recognition of human rights is prerequisite to the advancement of environmental rights, access to information and participatory rights as procedural guarantees promotes environmental protection and lastly, the inclusion of a 'right to environment' to the human rights catalogue.

Sustainable Development as part of substantive environmental constitutionalism

Sustainable development as we know today, is defined by the World Commission on Environment and Development (WCED) in 1987 as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". But its impact on international environmental law culminated in the 1992 Rio Conference where it is elaborated substantively in principles 3-8 and procedurally on principles 10-17 (Birnie *et al.* 2009). The substantive elements in the Rio Declaration instilled protection of the environment as a key consideration in pursuing development. Economic overhauls for poverty eradication with the goal to promote intergenerational and intra-generational equity but with common differentiated responsibilities, depending on the economic and environmental status of states. Principles 10-17

on the other hand, promoted crafting of environmental laws and policies such as Environmental Impact Assessments (EIAs), international cooperation for environmental protection and economic development, and polluters pay and precautionary principles. The key components of sustainable development in the judicial realm as summarized by Ramlogan (2011) are the ff.: the right to a healthy environment, inter-generational equity, intra-generational equity, public participation in development process, proper assessment of economic activities, need for proper information, the Precautionary Principle, the Polluter-Pays-Principle, and access to justice.

Intergenerational equity with respect to sustainable development as it appeared in the Rio Declaration on Environment and Development in 1992 are embodied in Principles 3 being " The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations" and Principle 21" The creativity, ideals and courage of the youth of the world should be mobilized to forge a global partnership in order to achieve sustainable development and ensure a better future for all". The rapid environmental degradation brought by urbanization and unprecedented climate change pose such uncertainty for all

It is worth looking at how the principle and its components are being utilized in different legal systems. Barral (2012) noted that the liberty granted by the principle on the hands of judges can be used to resolve conflicting socio-economic norms or redefinition of existing treaties, in the case of ICJ's stand on the *Gabc̆íkovo-Nagymaros* dispute where Hungary was driven by ecological concerns and Slovakia on economic pursuits . The treaty was signed in 1977 and the case was in Brussels in 1993. She further states that the applicability of international norm is still in the hands of the states themselves.

Environmental Rights as part of substantive environmental constitutionalism

The United Nations Commission on Human Rights (UN CHR) released in 2018 the *Framework Principles on Human Rights and the Environment* where it sets out "..basic obligations of the States under human rights law as they relate to the enjoyment of a safe, clean, healthy, and sustainable environment" from a broad collection of which although non-binding for States, is a culmination of a converging trend of framing the right to a healthy environment as a human right (Knox 2018). In fact, Boyd (2012) recognized that the right to a healthy environment possesses all the attributes of human rights such as being universally applicable, having a moral basis, and an intent to ensure dignity for humanity.

When utilized in the face of policy choices, value judgments to 'what is important' in Policy choices to what constitutes a 'decent' environment' is asserted by Boyle (2015) but the question is deeply legal as it is political. Justiciability of environmental rights in constitutional provisions must have both unequivocal clarity and enforceability, with the latter varying on constitutional technicalities (Hayward 2004).

Ecuador is among the countries with constitutional environmental rights. In its 2008 Constitution, it has enshrined both anthropocentric and ecocentric environmental rights in the Rights of Nature, granting legal status to Nature or *Pacha Mama.* It is recognizing that Nature has rights for restoration and imposing preventive and restrictions for activities 'that might lead to the extinction of species, the destruction of ecosystems and the permanent alteration of natural cycles' (Ecuadorian Constitution 2018). Normative conflict and ambiguity and the lack of normative hierarchy were cited by Kotze and Villavicencio Calzadilla (2017) as among its criticisms to the Constitution. They noted that the entrenchment and legitimization in the Constitution of both anthropocentric and ecocentric claims is inclined to both normative and ethical conflicts as both are considered as enforceable on its own right and subsequently, questioned the inclusion of indigenous, animistic worldviews if not for revolutionizing the society or for garnering political support. The question of whose interest will still prevail when the two claims are pitted in reality

2.3 Environmental Remedies and the Writ of Kalikasan

Remediating environmental harm is intrinsically tied to and limited by statutory and case laws as enforced by domestic courts. The power of a court is a balancing act between enforcing of a Constitutional right to a healthy environment, if existing, with what is available from a roster of existing laws. The United Nations Environment Programme in 2019 released the Environmental Rule of Law: First Global Report where it is considers effective legal cause of actions as crucial in protecting the environment and reinforcing substantive rights. A case study provided for by UNEP (2019) regarding illustrates how the right to clean water (substantive right) is at risk due to contamination by an acid mine drainage. For this to be addressed , the community must have access to justice, existing environmental laws and statutes must be available for courts to implicate the mine and a remedy to be directed to the mine owner. Ultimately, the access to clean water must be served. The range of most common environmental remedies as identified by May and Daly (2014) are the ff: preventing environmental harm, injunctions where environmental degradation is halted and remediated, damages, compliance order which is something like the writ of mandamus for government entities, and imprisonment.

In the Philippines, there are two (2) sources of law – statutory law and case law. Santos-Ong (2015) differentiated the two being statutes are those written by the legislative branches of the government such as the Constitution and other legislative enactments whereas case law or jurisprudence are those cases written court opinions or those persons who are performing judicial functions.

The Writ of Kalikasan is part of the *Rules and Procedures for Environmental Cases* which is written by the Supreme Court of the Philippines, taking effect on April 10, 2010. It is part of the statutory laws of the Philippines. It is said to govern procedures for civil, criminal, and special civil actions in various court levels for the enforcement or violations of environmental and other related laws.

The writ is under the special civil actions of the Rules and Procedures for Environmental Cases (RPEC) and is described as the ff under Section 1 Rule 7 .

> 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.

Among issues addressed by the Writ of Kalikasan in judicial procedure are standing, burden of proof, and time to resolve with notable features such as provision for liberalized standing, a relief for temporary protection order, and the exercise of the Precautionary Principle (Gadrinab 2011). He calls it a 'judicial innovation', something which Gatmaytan (2005) called for hearing environmental cases such as issuance of injunctions and reducing burden of proof.

The petition to file for a Writ of Kalikasan requires attachment of documentary evidences and affidavits pertaining to the conditions as described in Section 1, Rule 7. Petitioners can indicate the environmental laws, regulations, and rules violated. The procedures was crafted to be expeditious, the respondent be it a private or public entity only has ten (10) days to return a verified report disproving the petitioner's claims after which, a hearing will commence. If the court grants the petition, reliefs such as permanent cessation of harmful environmental activity, directive to rehabilitate and restore the environment, monitoring and continuous reporting after the execution of the final judgment (Supreme Court of the Philippines 2010).

3. Theoretical Framework

The theoretical framework used was specifically constructed for this research because I have struggled in finding an applicable framework that is both normative and descriptive as it would impact my choice in methodology and data analysis later on. Although at first glance, it appears to be a legal research dealing with constitutional law, it is not so. Taekama (2018) elucidated this concern " In legal research, doing empirical work, in the sense of gathering data about social reality, is not the common approach. What complicates matters further is that the research questions addressed in legal research may vary considerably. While social science research attempts to answer descriptive and explanatory questions, aiming to explain features of human behavior and society, legal research also attempts to answer evaluative and normative questions. Such questions have a need for a different kind of framework, not one that can explain why law is what it is, but a framework that can provide arguments for a judgment that the law is good or bad". Figure 1 illustrates the framework created for this research. Concepts from the sustainable development and environmental rights narrative will be juxtaposed to discern the position of the Writ of Kalikasan both as a legal remedy and its completed cases.

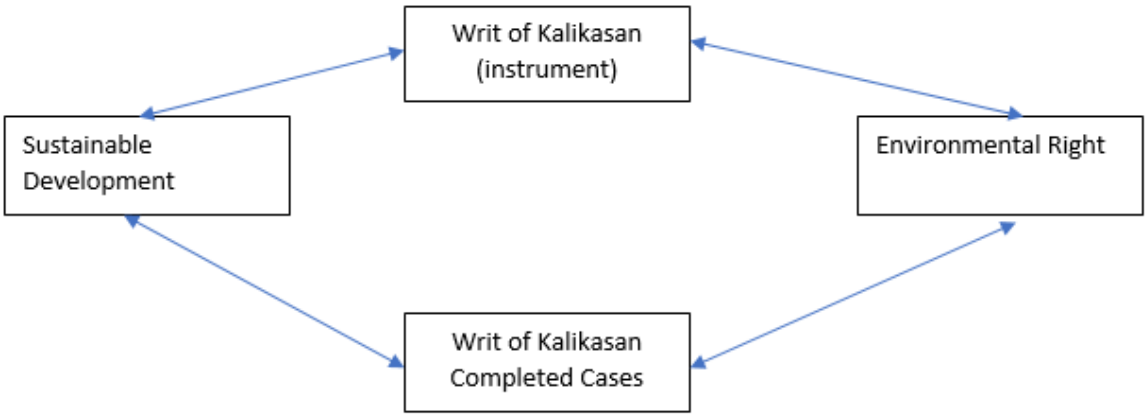

Figure 1 WOK-SD-ER Framework

In Article 2, Section 16 of the 1987 Philippine Constitution Section, it is stated that "The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature". This is the constitutional provision the writ is supporting which is herculean to evaluate both normatively and descriptively as it has both anthropocentric and ecocentric elements. For purpose of this research, it will be referred to as the anthropocentric 'right to a healthy environment'.

4. Methodology

Qualitative content analysis will be employed to answer the research question and subsequently, to achieve the specific objectives. As described by Krippendorff (2004), the technique is utilized for replicable and valid inferences from texts. The effectivity of the Writ of Kalikasan as an environmental remedy in promoting sustainable development and environmental right will be evaluated based on coded themes from the Brundtland Report and Framework Principles on Human Right and the Environment.

Comparative analyses will be done between the two sets of Writ of Kalikasan documents – first being as the legal instrument found in the Rules and Procedures for Environmental Cases where it was published and second, among the court rulings of its completed cases.

The Brundtland Report will serve as a stand-in document for sustainable development and the Framework Principles on Human Right and the Environment for Environmental Right, from which core concepts serving as categories will be used for reading the Writ of Kalikasan documents. I specifically considered the temporal aspect in choosing these documents. Both the Philippine Constitution with its provision for the right and balanced ecology and the Brundtland Report spearheading the Sustainable Development Agenda was released in 1987. Although there are now plenty of developments in the latter's narrative, I am considering it as the baseline document for the purpose of this research. However, I will be focusing on the twelfth chapter of the report – Towards Common Action: Proposals for Institutional and Legal Change, and not on the entire 300-page document.

The Framework Principles on Human Right and the Environment on the other hand, was released in 2018, about eight years since the inception of the Writ of Kalikasan. Although the framework principles claim that it is not all encompassing, its substantiality and compactness echoes the development of the human-environmental right narrative.

Arguably, environmental right is a subset of sustainable development. But I chose to give equal weight to Sustainable Development and Environmental Right in assessing the Writ of Kalikasan since the remedy was penned to execute the *right to a balanced and healthful ecology*.

The initial plan was to have a pre-set categories for both Sustainable Development and Environmental Rights from the aforementioned documents but in reading the actual cases, emerging themes that will impact analysis and data presentation necessitates flexibility and appropriate adjustments were employed.

4.1 Data Collection

In the duration of the research, I found myself looking for more legal terms that are appearing in order to ascertain its utility to the objectives of the study. Aside from the international environmental law books and journals, legal articles and definitions were also skimmed but in a deductive approach, from an international perspective to what is in practice in the Philippines which is the context of the study.

The collected Philippine cases or were all sourced online. A simple database was built from an initial internet browser query of 'Writ of Kalikasan' cases. Results range from news articles and links to repository of docketed cases. This provided a reference of how many cases were filed for it. Each docketed case has its own *General Register* number (G.R. No.). Noting the G.R. no. of each case was helpful especially for chronologically distinguishing and tracking cases with multiple hearings.

Most of the docketed cases are found online in the website of the Supreme Court of the Philippines but 2 other repositories were cross-checked. Online sources for cases or Philippine Jurisprudence are the Supreme Court of the Philippines website <https://sc.judiciary.gov.ph/>, Chan Robles Virtual Law Library <https://www.chanrobles.com/scdecisions/>, the LAWPhiL Project of the Arellano Law Foundation <https://lawphil.net/judjuris/judjuris.html>. The same internet sites also carry the statutory laws in the country from which other parts of the

research were consulted on. Some of the cases in the browser-query are not available in the repositories.

4.2 Coding

There are two types of coding techniques as described by Stemler (2001) - a priori where categories are fixed and established beforehand based on a theory and emergent coding where codes are determined upon examination of the data. Keeping in mind the framework that was devised for the research and the objectives, I initially employed *a priori coding* from the section of the Brundtland Report and Human Rights Framework for the environment. Among the challenges encountered in deciding categories is the entrenchment of legal concepts in cases upon inspection of the cases to be read, flexibility in both coding techniques and interpretation is warranted to accommodate emerging themes. The literature review done prior helped streamlined the categories used.

Two sets of categories were made for sustainable development and environmental rights, eight (8) for sustainable development and eleven (11) for environmental rights. It was mentioned earlier in the earlier parts of the research that environmental right can be a subset of sustainable development but instead, giving it an equal weight whose categories is anchored in the human rights narrative. This will be utilized to read the Writ of Kalikasan as an instrument and the chosen cases for the study.

4.3 Limitations of the Study

The study is a hybrid of a humanities and legal research, something which is not usually done and my narrow knowledge of the latter makes a lot of room for further improvement. Additionally, being the only person to code made it cumbersome to finalize the categories. There is no one to replicate the coding process with or to attest the soundness of the codes especially for the legal part. I had to consult not only the Brundtland Report and the Framework Principles for Human Rights and the Environment, but also the vast literature pertaining to it and back to ensure that the codes I will be using is representative of both sustainable development and environmental rights.

The study originally is aimed to look at all cases on-hand but since the distribution of cases in favour and not in favour for the Writ of Kalikasan is so disproportionate, it was resolved to take just one from each.

5. Data Analysis

This chapter will present the data collected and its analysis. It is divided into four parts – Data mining where a tabulation of the data collected is briefly discussed, content analysis for Writ of Kalikasan as a legal remedy, cases part where the content analysis for the chosen cases are presented, and conclusions.

5.1 Data Mining

A total of nine (9) unique cases were collected as unavailable and on-going cases were excluded in the research. A caveat that the last column 'decision in favour of Writ of Kalikasan' was directly from the court's ruling with no other reading or analysis applied yet. At this point it could be inferred that only one case was in favour of the legal remedy where the Writ of Kalikasan was awarded. Since the datasets appear to be disproportionate, only two cases are considered for the conduct of content analysis - G.R. 231164 and G.R. 211010, both of which will be discussed in the succeeding sections.

Table 1 Writ of Kalikasan Data Mining

CN	G.R. No.	Date	Nature of Petition	Decision in favour of the Writ of Kalikasan
1	191537	14-Sep-16	Petition for Certiorari	No. Dismissed
1	197754		Petition for Writ of Kalikasan and Writ of Continuing Mandamus	
2	231164	20-Mar-18	Petition for Certiorari	Yes
	CA G.R. SP No. 004WK		Petition for Writ of Kalikasan and Writ of Continuing Mandamus	Yes
3	207257	03-Feb-15	Petition for Certiorari	No. Denied
	207257	03-Feb-15	Petition for Certiorari	
	207276	03-Feb-15	Petition for Certiorari	
	207282	03-Feb-15	Petition for Certiorari	
	207366	03-Feb-15	Petition for Certiorari	
4	223076	13-Sep-16	Petition for Writ of Kalikasan and Writ of Continuing Mandamus	No. Denied
5	211010	07-Mar-17	Petition for Writ of Kalikasan and Writ of Continuing Mandamus	No. Dismissed
6	209165	12-Apr-16	Petition for Certiorari	No. Denied
	CA-G.R. SP	23-Nov-12	Petition for Writ of Kalikasan and Writ of Continuing	

	No. 00012		Mandamus	
7	209271	26-Jul-16	Motion for reconsideration	No
	209271	08-Dec-15	Reversal of the May 17, 2013 decision and September 20, 2013 resolution in CA	Yes
		May 17. 2013		Yes
	CA-G.R. SP No. 00013	20-Sep-13		Yes
8	206510	16-Sep-14	Petition for Writ of Kalikasan	No
9	194239	16-Jun-15	Petition for Writ of Kalikasan	No

5.2 Sustainable Development for Writ of Kalikasan (instrument)

Table 2 SD and Writ of Kalikasan (instrument) summarizes the categorizing done. Note that quotation marks are included for items wherein the texts were copied *verbatim* from Rule 7 of the Rules and Procedures for Environmental Cases (RPEC).

Table 2 SD and Writ of Kalikasan (instrument)

Categories for Sustainable Development	Writ of Kalikasan (instrument)
Intergenerational equity	Rule 2, Section 1 "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"
Intragenerational equity	Rule 2, Section 1 "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"
Public participation in development process	Not explicitly stated/ Not Applicable
Assessment of economic activities	Not explicitly stated
Precautionary Principle	Rule 20, Section 1 Benefit of the doubt shall be exercised for lack of full scientific certainty for a causal link between human activity and environmental effect
Polluters Pay Principle	Appearing in Rule 7 Section 7 Judgment c - rehabilitation, protection, and preservation may be directed to the respondent Rule 8 Writ of Continuing Mandamus Respondent may be asked to pay damages sustained by the petitioner

Access to Justice	Anyone or any judicial entity can file the writ, as ascertained in Rule 7, section 1
Availability of proper information	Section 2 outlines the content of the petition - name and circumstances of both petitioner and respondent, the corresponding violated environmental law or regulation that threatens two or more provinces, all pertinent evidences such as scientific studies, affidavit of witnesses Sections 3-15 and section 16 gives a detailed information and corresponding timeline to be followed by the petitioner, respondents, and the court themselves up to serving judgment

The Writ of Kalikasan is nestled in Rule 7 of the RPEC enforced by the Supreme Court of the Philippines in 2010. In attempting to code the instrument, some terminologies confined in Rule 7 are expounded in other parts of the Rules instead. Hence, the whole document was consulted instead of focusing on that specific section, and are differentiated by indicating the specific Rule number from where it was taken.

The Writ of Kalikasan as an environmental remedy as an instrument fulfils the categories pertaining to sustainable development, except for the category "Public participation in development process" which I think is not the purpose of the writ and "Assessment of economic activities" which although not explicitly defined in RPEC, but might come up in jurisprudence for individually filed cases.

What is notable is that it permits to invoke the right to a healthy environment of unborn generation, as represented by a legal person or entity. This is defined in Rule 2 Section 5 of RPEC as a *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.". Petitioners also do not pay for filing the case. However, there is a definite timetable for petitioners, respondents, and even the court themselves has to adhere to failure to. In example, in Rule 7 Section 8 only ten (10) days is permissible for the respondent to file a verified return that

no constitutional violation to a rightful and healthful ecology was committed as described in Rule 7 Section 1 the nature of the writ, failure to do so will be considered as an admission.

The evidences included in the verified petition shall be subjected to the Precaution Principle and will largely depend on the petitioner and the court's discretion.

Environmental Right for Writ of Kalikasan (instrument)

Table 3 ER and Writ of Kalikasan (instrument)

Categories for Environmental Right	Writ of Kalikasan (instrument)
Provision of a safe, and clean environment	Scope of environmental laws are enumerated in Part 1; the Writ is fashioned
Prohibition of discrimination	Yes in filing. Citizen suit
Participatory Rights	Yes in filing. Citizen suit
Public education and awareness on environmental matters	Yes in relation to the Writ; Case to case basis
Making use of EIAs and due process	Yes to due process; EIAs case to case basis
Provision of effective remedies	Yes if evidence and due process is deemed satisfactory
Enforcement of environmental standards for both public and private entities	Case to case basis; Writ of Mandamus can be filed by petitioners
Cooperation of States within International Legal Framework	Rules and procedures only applicable to judicial entities in the Philippines; jurisdiction only for Filipino entities
Protecting the vulnerable	Yes in filing. Citizen suit
Protecting the interests of Indigenous Peoples	Yes in filing. Citizen suit

For the content analysis pertaining to environmental right, yes the Writ of Kalikasan as a legal instrument upholds and strengthens environmental rights narrative except for the category where cooperation in an international legal framework among states. The courts have to have jurisdiction over both petitioners and respondents for the writ to take force.

5.3 G.R. 231164, March 20, 2018 – the Inayawan Landfill Case

The case was a petition for certiorari filed by the then Mayor of the City of Cebu v. Joel Capili Garganera, for and on his behalf, and in representation of the people of the cities of Cebu and Talisay, and the future Generations, including the unborn.

But prior going into further details, the conditions for a petition for a certiorari from Section 1 Rule 65 of the 1997 Rules and Procedures of the Philippine Supreme Court are as follows:

> Section 1. Petition for certiorari.
>
> When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
>
> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

To file a petition for certiorari is to ask for a review of a previous decision awarding the Writ of Kalikasan to Joel Capili Garganera, for and on his behalf, and in representation of the people of the cities of Cebu and Talisay, and the future Generations, including the unborn. Since the docketed case (CA G.R. SP No. 004WK) awarding Writ of Kalikasan for this is unavailable online, content analysis was done on G.R. 231664 instead.

Inayawan Landfill was ordered to prepare for cessation operation in 2011 and to undergo preparation for closure and its subsequent rehabilitation. The landfill was officially closed on June 15, 2015. An order to temporarily resume its operation under a new administration in July 2016.

Aside from the categories for sustainable development and environmental rights, three more columns for categorization were added – antecedents, petitioner, respondent and ruling were made to distinguish the characters because the case on-hand is a petition for review of the Writ of Kalikasan case. The final categorization is only what is shown in the analysis done for this case.

Table 4 SD and G.R. 231164

Categories for Sustainable Development	G.R. 231164
Intergenerational equity	Yes. Citizen suit.
Intragenerational equity	Yes. Citizen suit.
Public participation in development process	Yes. Testimonies were sought from witnesses and in cooperation with environmental agencies
Assessment of economic activities	Yes. The foul odor coming from the landfill was said to affect economic activities in neighboring towns including nearby parks and malls (SM Seaside)
Precautionary Principle	N/A. Sufficient evidence was presented.
Polluters Pay Principle	Yes. Permanent cessation of dumping or disposing garbage in the landfill and rehabilitation was ordered.
Access to Justice	Yes
Availability of proper information	Yes. The court instructed to monitor and report the rehabilitation of the landfill

The Inayawan landfill has been operating for seventeen (17) years according to the report of the Department of Health in G.R. 231164 and has already exceeded its project design of 7-years standards.

Table 4 -Table 5 illustrates the data collected with respect to categories pertaining to sustainable development and environmental rights, respectively. The ruling of the court in favour for the respondents was based on the evidences presented in the precursor case of CA G.R. SP No. 004WK whose factual antecedent were also discussed.

Table 5 ER and G.R. 231164

Categories for Environmental Right	G.R. 231164
Provision of a safe, and clean environment	Yes
Prohibition of discrimination	Yes. The Department of Health expressed concern for nearby communities including shanties and scavengers at risk for pollution
Participatory Rights	Yes. The public was consulted and were sought affidavits regarding air quality
Public education and awareness on environmental matters	Implicit.
Making use of EIAs and due process	Yes. Both environmental agencies and the Department of Health issued reports pertaining to the state of the landfill
Provision of effective remedies	Yes. A Writ of Kalikasan to cease operation and an order to monitor the rehabilitation of the landfill were issued
Enforcement of environmental standards for both public and private	Yes. Performance of duties of both environmental agencies and department of health
Cooperation of States within International Legal Framework	N/A
Protecting the vulnerable	Yes. The court, environmental agencies, and department of health acknowledged the health hazard brought by the landfill
Protecting the interests of Indigenous Peoples	N/A

5.4 G.R. 211010, March 07, 2017 – Segovia et. al v Climate Change Commission

The petitioners are praying for a Writ of Kalikasan and a Writ of Mandamus in G.R. 211010 dated March 7, 2017 against the Climate Change Commission of the Philippines (CCC), the Department of Transportation and Communications (DOTC), Department of Public Works and Highways (DPWH), the Road Board, the Department of Interior and Local Government (DILG), Department of Environment and Natural Resources (DENR), Department of Budget and Management, Metropolitan Manila Development Authority as represented by their corresponding chairman and secretaries and "John Does, representing as yet unnamed local

government units and their respective local chief executive, juridical entities, and natural persons who fail or refuse to implement the law or cooperate in the implementation of the law".

A Writ of Mandamus as defined in Section 1 Rule 8 of RPEC 2010 :

> "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."

The petitioners were compelling the respondents for the ff., as indicated in G.R. 211010 dated March 7, 2017: " (*a*) the public respondents to: (*1*) implement the Road Sharing Principle in all roads; (*2*) divide all roads lengthwise, one-half (1/2) for all-weather sidewalk and bicycling, the other half for Filipino-made transport vehicles; (*3*) submit a time-bound action plan to implement the Road Sharing Principle throughout the country; (*b*) the Office of the President, Cabinet officials and public employees of Cabinet members to reduce their fuel consumption by fifty percent (50%) and to take public transportation fifty percent (50%) of the time; (*c*) Public respondent DPWH to demarcate and delineate the road right-of-way in all roads and sidewalks; and (*d*) Public respondent DBM to instantly release funds for Road Users' Tax". The writ of Mandamus was asked for by the petitioners for the respondents in the corresponding offices to purportedly perform their public duty, specifically based from the Road Sharing Principle. The petition for Writ of Kalikasan and Writ of Mandamus however, was dismissed the court.

It is not the objective to discuss the contents of the actual case but instead, of whether it strengthens the sustainable development and environmental rights narrative. The summary of the data with respect to the categories in sustainable development is found in Table 6.

In the design of the legal remedy, access to justice, the availability of citizen suit or to have a legal standing for unborn children or other members of the population who are also gravely affected by the environmental harm or neglect done is always present (intergenerational and intragenerational equity). However, under 'public participation in development process', the petitioners were specifically asking to divide the roads under the Road Sharing Principle, but the request is not under the procedures of the latter, to quote the Ruling in G.R. 211010:

> " Clearly, petitioners' preferred specific course of action (i.e. the bifurcation of roads to devote for all - weather sidewalk and bicycling and Filipino-made transport vehicles) to implement the Road Sharing Principle finds no textual basis in law or executive issuances for it to be considered an act enjoined by law as a duty, leading to the necessary conclusion that the continuing mandamus prayed for seeks not the implementation of an environmental law, rule or regulation, but to control the exercise of discretion of the executive as to how the principle enunciated in an executive issuance relating to the environment is best implemented."

Table 6 SD and G.R. 211010

Categories for Sustainable Development	G.R. 211010
Intergenerational equity	Yes. A class suit. The court also ruled that the future generations be granted their own autonomy and agency to decide
Intragenerational equity	Yes. A class suit. Petitioners representing carless people or 98% of the population of the Philippines
Public participation in development process	The petitioners are seeking to implement the Road Sharing Principle and subsequently, bifurcation of roads to accommodate 98% of the population with no cars
Assessment of economic activities	N/A
Precautionary Principle	Precautionary Principle was exercised by the court based on the evidences presented and rules of the court
Polluters Pay Principle	N/A
Access to Justice	Yes
Availability of proper information	Yes. Scientific evidences and corresponding laws pertaining to the case were made clear.

At face value, dismission of the petition based on the ruling alone appears to be not promoting sustainable development but upon consideration of other events at play. But in going back to the WCED definition of sustainable development as "development that meets the needs

of the present without compromising the ability of future generations to meet their own needs", The ruling opted to exercise both the precautionary principle, intragenerational equity and therefore, sustainable development. Also to quote the ruling in G.R. 211010:

> "I find objectionable the premise that the present generation is absolutely qualified to dictate what is best for those who will exist at different time, and living under different set of circumstances. As noble as the "intergenerational responsibility" principle is, it should not be used to obtain judgments that would preclude and constrain future generations from crafting their own arguments and defending their own interests. It is enough that this present generation may bring suit on the basis of their own right. It is not entitled to rob future generations of both their agency and their autonomy "

For Environmental Rights and G.R. 211010, as shown in Table 7 evidences presented by the respondents were ascertained by the court to be satisfactory and that no neglect in duty was made. Hence, the dismissal for the Writ of Kalikasan and Writ of Mandamus.

Table 7 ER and G.R. 211010

Categories for Environmental Right	G.R. 211010
Provision of a safe, and clean environment	Active measures done by respondents. Evidences submitted by petitioners actually show air quality improvement
Prohibition of discrimination	Yes. The court asserts that the petitioners do have standing for Writ of Kalikasan.with respect to the claims of the respondents
Participatory Rights	
Public education and awareness on environmental matters	Implicit. That the respondents have projects promoting a cleaner environment
Making use of EIAs and due process	Yes. Corresponding rules and laws invoked by the petitioners were checked
Provision of effective remedies	N/A. Petitioners failed to establish a causal link between their claims to environmental harm to such magnitude as described in the nature of the writ. Air quality evidence submitted by petitioners show improvement and do not support their claim Court also asserts "there is no showing of a direct or personal injury or a clear legal right to the thing demanded; (b) the writ will not compel a discretionary act or anything not in a public officer's duty to do (i.e. the manner by which the Road Sharing Principle will be applied; and to compel DA to exercise jurisdiction over roadside lands); and (c) DBM cannot be compelled to make an instant release of funds as the same requires an appropriation made by law (Article VI, Section 29[1] of the Constitution) and the use of the Road Users' Tax (more appropriately, the Motor Vehicle Users' Charge) requires prior approval of the Road BoardYes. Corresponding rules and laws invoked by the petitioners were checked

Enforcement of envl standards for both public and private	Respondents "respondents denied the specific violations alleged in the petition, stating that they have taken and continue to take measures to improve the traffic situation in Philippine roads and to improve the environment condition - through projects and programs such as: priority tagging of expenditures for climate change adaptation and mitigation, the Integrated Transport System which is aimed to decongest major thoroughfares, Truck Ban, Anti-Smoke Belching Campaign, Anti-Colorum, Mobile Bike Service Programs, and Urban Re-Greening Programs. These projects are individually and jointly implemented by the public respondents to improve the traffic condition and mitigate the effects of motorized vehicles on the environment"
Cooperation of States within International Legal Framework	Implicit. The Climate Change Commission was enforced in 2007 as described in the Facts
Protecting the vulnerable	Implicit, no.
Protecting the interests of Indigenous Peoples	N/A

6. Discussions and Conclusions

In reading the cases, analysis was straightforward for the case where the Writ of Kalikasan using the *a priori* codes for both sustainable development and environmental rights. However, for the case that was dismissed, emergent coding was necessary which brings the question – why was not the environmental reliefs awarded or why was not the Writ of Kalikasan served? The burden of proof is still a deciding factor here but this time, it was magnified for better or for worse, as the process of praying for the writ is strictly time-bound. Gathering of evidences both for petitioners and respondents necessitates the most sound or scientific data available but in most cases, might be circumstantial (Gadrinab 2011).

Invoking environmental laws that prejudices of the writ also required explicit procedures in which the government agency purportedly in-charge of enforcing, to which they will be call on as respondents as in the case of G.R. 211010 and the Road Sharing Principle that lacks defined procedural laws which the courts could assert judgment from. The power of the judiciary rests on the laws that are available to them.

In the two cases, both sustainable development and environmental right was indeed strengthened but not necessarily resulted to the serving of environmental remedies through the Writ of Kalikasan. Value judgments is strictly case-to-case basis and relies heavily on evidences and to what the courts as a collective hold.

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