Writ of Kalikasan and the right to environment

Joefer G. Maninang
College of Arts and Sciences Education, University of Mindanao, Davao City
Corresponding author:
jgmaninang@gmail.com

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ABSTRACT

What is the Writ of Kalikasan? By virtue of the Philippine constitutional provision which mandates 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*, the Writ of Kalikasan is a Special Civil Action under the Rules of Procedure for Environmental Cases that was innovated by the Supreme Court. The writ is a legal remedy when such constitutional right or any environmental policy or law is violated. The writ is a laudable self-executing provision since it protects the Filipino right to a healthy environment. Employing the lens of social ethics, this article therefore explores the writ and surveys some of its generic cases "involving environmental damage of such magnitude as to prejudice the life, health or property" of affected inhabitants. It informs about the recently written writ which relevantly empowers Filipinos to legally assert their "right to environment" in order to obligate their own government to act. The article discusses some perspectives, criticisms and limitations on the writ as revealed by cases of violations by foreign nationals within Philippine territory and in "contested areas" of the West Philippine Sea. Such areas are 'contested' but then the said violations are in fact committed within the Exclusive Economic Zone. The past government administration won an international legal case it brought before an international tribunal, but this didn't stop the alleged violations while the present administration renewed its diplomatic ties with the country of the foreign perpetrators.

Keywords: *social ethics; right to environment; Writ of Kalikasan.*

INTRODUCTION

People of the contemporary world is facing an environmental crisis (Claudio & Abinales, 2018). While there are natural environmental problems like volcanic eruptions releasing toxins in the atmosphere and lowering the world's temperature and earthquakes deform the land surface, man-made environmental problems in air, water, and land have created the crisis. Concretely, these problems are the destruction of marine ecosystems or coral reefs, emission of carbon gases in the sky, dumping of garbage, etc. To date, social media newsfeeds contain the 'burning Amazon rainforest' dubbed as the 'lungs of the earth' and the Indonesian forest fires haze that have reached neighboring countries. The fires are due to 'industrialization' (Poirier, 2018) and 'slash-and-burn' practices. Forests fires may be natural, but some are caused by man; they were intended by leaders who were expected to think and decide for the betterment of their constituents. Here, human irresponsibility is to be blamed. Some humans themselves in their irresponsibility have created the crisis and the problems that they in turn suffer from.

But the scenario is not hopeless since at the institutional level, international and regional intergovernmental organizations such as the United Nations (UN) and Association of Southeast Asian Nations (ASEAN) have begun to address and curb the environmental problems. The UN held its United Nations Conference on the Human Environment in 1972 and its United Nations Conference on Environment and Development in 1992 which produced policies such as the Action Plan for the Human Environment and Agenda 21 that according to the UN Office of Legal Affairs (2019) "represent major milestones in the evolution of international environmental law." Treaties were then created for member states to ratify as parties. The ASEAN on the other hand, in its 1981 Manila Declaration on ASEAN Environment according to the Secretariat in its website, adopted policy guidelines, one of which is to *Foster a common awareness among the people of the ASEAN countries of the biological, physical and social environment and its vital significance for sustained development.* Years later, the ASEAN charter's first article provides one of the purposes: *To promote sustainable development so as to ensure the protection of the region's environment, the sustainability of its natural resources, the preservation of its cultural heritage and the high quality of life of its peoples.*

There are also environmental non-government organizations with headquarters all over the world like Greenpeace which "(Focuses) on great global forests and oceans we aim to preserve, protect and restore the most valuable ecosystems for the climate and for biodiversity" (Greenpeace, 2019). One of Greenpeace's activities was stopping Shell from its oil drilling plans in the Arctic because "Arctic ice and tricky weather conditions make a spill more likely" and "(n)o oil company has ever successfully cleaned a major oil spill" which destroys the Arctic environment and for the fact that if there's oil then there's the continued dependence on burning of fossil fuels.

Beyond the institutional level, some individuals in their own capacity went the extra mile to respond to the cause of saving the environment. They exemplify the understanding of everyone's place in nature simply because it is where s/he truly is. The likes of the American former Vice-President Al Gore who became popular for his documentary film titled "An Inconvenient Truth" (Kakutani, 2006); the Filipino senator Loren Legarda who authored the Climate Change Act (Senate of the Philippines, 2019) and the late Department of Environment and Natural Resources appointee Gina Lopez whose revocation of certificates of mining firms due to violations of environmental laws were criticized by big businesses and pro-mining lawmakers; and the very young Swedish climate activist Greta Thunberg who addressed the 2018 UN climate change conference and became a cover of Time magazine's May 2019 issue, and many others flash in mind.

There is indeed an environmental crisis and the problems are a real threat to mankind, both to the present and future generations. But they are addressed or acted upon by intergovernmental and non-governmental organizations, individuals and other 'unsung heroes of the environment.'

Realistically, however, the international institutional initiatives and personal efforts of noted individuals will only be meaningful at the national level, that is, if the sovereign states (of which individuals as citizens are under) sign and ratify international environmental treaties (conventions and protocols) to become parties to the agreement and implement the same as national policies or laws in their respective territories. This guarantees environmental protection and promotion as it builds an intracultural awareness of the 'good of the environment' and empowers private citizens to act by asserting their right to environment as a natural human right.

The Philippines for its part has been responding to the crisis and problems since it became an original UN member state and ASEAN founding member to the extent that its present constitution provides 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*, referred to in this article as the "right to environment" (or simply the right). This provision is the sole provision on the environment under the constitution's Article II with the

title "Declaration of Principles and State Policies," Section 16, from which other Philippine environmental laws ensued. But the natural environment pertained to by section sixteen is the environment within the Philippine territory as defined in Article I (National Territory) as comprising the archipelago, *with all the islands and waters embraced therein…consisting of its terrestrial, fluvial and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas.* The Philippines claims an Exclusive Economic Zone (EEZ) of 200 nautical miles (370 km) from its shores following the United Nations Convention on the Law of the Sea (UNCLOS, 2019) which the Philippines signed and ratified that made itself a state party to the convention or agreement. As a state party, the Philippines has the obligation to protect, promote, and fulfill the UNCLOS.

The Philippine constitutional environmental policy is "inviolable" (Sarmiento, 2014). The subsequent environmental laws are likewise inviolable. Such laws are inviolable as all the other human rights are. They can't be violated by an unlawful act of any private individual or entity and can't also be violated by the state through the government officials and/or employees. Thus, if in the event when the right to environment and/or any related law is violated, then this is the time that the Writ of Kalikasan (the writ) can be availed as a legal remedy.

However, in the generic and exemplifying cases reported, wherein environmental laws were violated or are allegedly being violated by foreign nationals, the limitations of the writ, the rules of procedure and right to environment are revealed which is when the *realpolitik* of diplomacy comes as an option for the past and present administrations.

METHOD

Inspired by logic, epistemology, and philosophy of language,[1] the paper explored using the category 'environmental issues in the Philippines' which yielded an online literature containing the environmental issues in the country, Article II (State Policies) Section 16 of the 1987 Philippine Constitution, national laws and international treaties, news, and the Rules of Procedure for Environmental Cases[2] where in its third part (Special Civil Actions) and seventh rule, the Writ of Kalikasan was located. The literature also contains local and global news that reported the destruction of nature within the Philippine territory.

In what follows, is a description of the writ in relation to the 'right to environment,' a survey of the generic cases and laws and treaties violated, and an interpretation of their socio-ethical implications. By doing so, this paper sincerely informs especially the Filipinos of their right to environment and the writ that they can avail of. The author identified among the Philippine constitutional rights that the right to environment is a "third generation human right" (Sarmiento, 2014) – different from civil and political rights, and economic, social, and cultural rights (first and second generations of human rights).

[1] Logic, epistemology, and philosophy of language are philosophy courses or studies which includes the discussion of the nature of concept, of knowledge, and of language – these being interrelated topics that can be utilized for developing research methods. Two of the emerging philosophical research methods is linguistic analysis and hermeneutics which are practices of grammatical description and interpretation of meaning of "a certain language" (broadly construed) as can be discerned in the works of the philosophers of language such as Ludwig Wittgenstein and Hans-Georg Gadamer. Such methods are assumed or indirectly used in the article for practical purposes.

[2] Defined as 'a comprehensive set of rules promulgated by the Supreme Court governing proceedings for the civil and criminal enforcement of all environmental laws' by Fermin Nestor A. Gadrinab in his journal article *Due Process and the Writ of Kalikasan* (Ateneo Law Journal: 55, 983-998, 2011). Such definition is derived from Section 1, Part 1, Rule 1 of the Rules of Procedure for Environmental Cases.

DISCUSSION

Writ of Kalikasan

Generally, 'Kalikasan' in the Writ of Kalikasan is a Filipino vernacular word for 'Nature.' But no provision in the rules of procedure legally defines or describes what 'kalikasan' is for the Filipinos. Nevertheless, the use of the word complements the writ's place of origin, the Philippines. Chief Justice Reynato Puno said that "the writ of kalikasan is proudly Philippine-made to deal with cases in the realm of ecology" (Philippine Daily Inquirer, 2014). Before the effectivity of the writ, the Supreme Court held a forum on environmental protection in 2009 in Baguio City then came out with the writ.

The writ is only less than a decade old as of this time. It was signed by then Chief Justice Reynato Puno on April 13, 2010 which took effect within fifteen (15) days following its publication in a newspaper of general circulation. Because of this, it can be expected that, aside from the cases reported by the news media, only a few scholarly articles on the writ and/or the right to environment like Fermin Gadrinab's essay journal article *Due Process and the Writ of Kalikasan* (2011) were written and can be accessed. Emil Javier's (2018) *Do environmental rights have a place in the Bill of Rights?* which was "a reaction to a press release from the Consultative Committee (Con-Com) tasked by President Duterte to review the 1987 Philippine Constitution" could be discussed in so far as its points relate to the writ and the protected right. Gadrinab's points find support in Javier's news article especially on the right to due process of the respondents. But before discussing the articles which offer legal and scientific perspectives and criticisms on the writ, let us briefly see first where the writ can be located and what technically (legally) it is all about.

In Rule 7 of Part III (Special Civil Actions) of the Rules of Procedure for Environmental Cases (or hereby referred to as *rules of procedure*) the Writ of Kalikasan is described, to wit

> *Section 1. Nature of the writ. - The writ is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces (Supreme Court of the Republic of the Philippines, 2010).*

The writ is consistent with the environmental right in the Philippine constitution which provides 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* since as per the 'Nature of writ,' the writ is available if such right is violated by a wrongful or illegal act "involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants." So, once the legal 'right to environment' is violated then the writ can be availed. The violation of such right is a violation of any of the Philippine environmental laws, rules, and regulations enumerated in Part 1, Rule 1, Section 2 (Scope) of the Rules.

The writ must be understood in relation to the other parts and sections of the rules of procedure as well as in the context of Philippine law and procedure. The writ has seventeen (17) sections. Aside from the first (section quoted above) which describes the nature of the writ, some other sections appear to be procedural but not all are. The second section contains the "Contents of the petition" which add to the writ's nature such as the personal circumstances of the petitioner and of the respondent, 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, evidence consisting of the affidavits of

witnesses, documentary evidence, scientific or other expert studies, and object evidence, reliefs, prayer for the issuance of a Temporary Environmental Protection Order (TEPO).

Section 15 (Judgment) expresses that the "court shall render judgment granting or denying the privilege of the writ of kalikasan" with the following reliefs "that may be granted under the writ":

> *(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; (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.*

Features of the Writ, Oposa vs. Factoran and the Right, and Gadrinab's Question of Procedural Fairness
In his article *Due Process and the Writ of Kalikasan* (2011), Fermin Gadrinab, who was the Assistant Secretary of the Sub-Committee that drafted the rules,[3] offered a legal perspective which focused on the writ he describes as the rules of procedures' "most radical and prominent innovation." He adds that the writ is a proceeding *sui generis*, "which means of its own kind or class; unique or peculiar."

Atty. Gadrinab discusses that the writ is patterned with the Writ of Amparo and Writ of Habeas Data and shares some ground with the Writ of Habeas Corpus. In the writ, the procedure for the issuance (of the writ) is inherently summary in character. This means that with respect to the concept of "standing," anyone may file a petition for the issuance of the writ which commences with the filing of the petition. The TEPO translates into an immediate order of restraint or action, depending on the allegations in the petition and to the determination of the court. The petitioner is exempted from the payment of docket fees. The writ prohibits the filing of certain pleadings and motions. But the respondent may file a return which is an answer that controverts the allegations. A distinct aspect of the writ is the presentation and evaluation of evidence. The proceedings are adversarial, but this occurs in the context of environmental rights wherein the "precautionary principle" guides the court.

Interestingly, 'standing,' 'environmental protection orders,' and the 'precautionary principle' are innovative features of the rules of procedure which are integrated in the writ.

As introduced by Gadrinab in his article, "liberalized standing" is a restatement of environmental protection as laid out in *Oposa v. Factoran, Jr.* (*Oposa*) – the legal case that eliminated the requirement of standing (or status) of the petitioner with respect to matters pertaining to the environment.

In *Oposa*, the petitioners are all minors represented by their parents. The case was a class suit against Fulgencio S. Factoran, then Secretary of the Department of Environment and Natural Resources, which urges him "to cancel all existing timber agreements in the country and to desist from approving new ones."

[3] In a footnote in his article, Gadrinab is introduced as Assistant Secretary of the Sub-Committee that drafted Supreme Court Administrative Matter (A.M.) No. 09-6-8-SC, otherwise known as the Rules of Procedure for Environmental Cases.

More importantly in relation to the right, the Supreme Court in Oposa, stated that petitioners-minors assert that they represent their generation and that of others and finds no difficulty for them to file a class suit. Their personality to sue is based on the concept of intergenerational responsibility insofar as the 'right to a balanced and healthful ecology' is concerned. Such right considers the 'rhythm and harmony of nature.'

'Nature' means the created world in its entirety while 'rhythm and harmony,' include 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 the future generations.

Every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology. The minors' assertion of their right to a sound environment constitutes the performance of their obligation to ensure the protection of that right for the future generations to come.
And with regards to the protection orders, there are two: the TEPO and the Environment Protection Order (EPO). The EPO is an auxiliary but immediate remedy issued by the court directing any person or government agency to perform or desist from performing an act to protect, preserve or rehabilitate the environment. The EPO awards relief at the commencement of the proceedings, hence the TEPO.

The precautionary principle explains 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." Gadrinab interprets 'threats of serious irreversible damage' as referring to any form of human activity which is a bias against human activity that tends to cause the changes in the environment. Such principle permeates the proceedings governed by the rules of procedure for environmental cases which includes the writ as a special civil action.

For Gadrinab, the writ is a summary proceeding which intersects with the precautionary principle that informs the decision-making process which necessitates a bias against human activity. This suggestion is emphasized in the section The Question of Procedural Fairness wherein Gadrinab criticizes the "(rules of) procedural fairness" of the writ by pointing the summary character of the proceedings which complements the application of the precautionary principle that presents complex scenarios against whom the writ is served.

In the same section, Gadrinab has two points. His first point is that the liberalization of the process in obtaining the writ translates into the possibility of multiple successive filings which come with the issuance of cease and desist orders, remedies, which are intrusive. Whereas the second point is that, for the part of the respondent, s/he will be called upon to present counterarguments and evidence which are a product of laborious research and investigation within ten (10) days only to be evaluated. In this sense, the writ functions as an ordinary fact-finding proceeding akin to a trial but without the procedural features such as the right to cross-examine witnesses and to impeach evidence. The evidence (including scientific evidence recommended by an *amici curiae* or an expert on the subject matter) is evaluated by the court immediately after presentation. But as guided by the precautionary principle, judgment is tilted against respondents engaging in human activity. This means that such judgment in favor of the petitioner/s is predictable.

Although the writ provides for a procedural safeguard, that is in the form of an appeal to the Supreme Court, the rules provide for a review of factual questions which is an exception to the jurisprudential precept that the court is not a trier of facts. But then the rules with the precautionary principle still apply which constrains any further inquiry into factual matters.

Gadrinab concluded insisting that while the judiciary took an active stand on environmental protection by promulgating the rules, it must be balanced with existing safeguards for the protection of rights. The proceedings must be handled with great exercise of judicial wisdom for there are certain questions which the court must approach so as not to derogate pre-existing rights. Simply put, Gadrinab questions the process in obtaining the writ. There's therefore no due process observed.

A Further Discourse on the Writ and the Right: Javier's Scientific Perspective

In his article *Do environmental rights have a place in the Bill of Rights*, Emil Javier's points in his scientific perspective are as interesting as Gadrinab's. Javier earned his doctorate in plant breeding and genetics abroad and was just conferred the Order of National Scientist through President Duterte's Proclamation No. 781 (Corrales, 2019). As stated in this proclamation, Emil's works in the field of agriculture which 'popularized high-yielding crops and disease-resistant varieties' displays his outstanding contributions to the progress of science and technology in the country and the world.

In his article, Javier believes that Justice Puno's recommendation that environmental rights be included in the Bill of the new (federal Philippine) constitution is "unnecessary, scientifically naïve, counterproductive and potentially chaotic." He argues that the rights in the Bill, which are civil and political, are "specific, immutable and precise" while "environmental rights are relative and dynamic" in that "(t)heir protection and enforcement are progressively enhanced by improvements in science and technology, changes in the environment and evolving needs of society and therefore have to move with the times."

Dr. Javier explains that the problem begins when one analyzes "balanced and healthful ecology" in its components and try to operationalize or define them. Javier cites a writ case against a genetically-modified organism (GMO) on the eggplant wherein the "introduction of naturally occurring bacterial toxins into a variety of eggplant bred by genetic engineering deprived the poor eggplant fruit worm of food with which to exist and thereby upset the balance of nature." For Javier, this was a naïve interpretation which makes the whole of scientific practice of agriculture and medicine guilty of upsetting the balance of nature, whose only intention was to tilt the balance in favor of man's needs, to "provide for man's food, fiber and shelter needs, except for altering the landscape and the balance among organisms inhabiting them." Also, "as newer, more efficient and cleaner technologies and machines are invented, the standards need to periodically upgrade" and this can't be accommodated if the right to environment is placed within the Bill of Rights (Bill).

Javier in his article concludes that the right is too broad to be self-executory and enforceable although this complication has been cured by the writ. But he elevated Justice Feliciano's (in Oposa vs. Factoran) disagreement on the definition of the right as specific through the writ because this is a "grave abuse of discretion amounting to lack or excess of jurisdiction" and that the executive and legislative branches must be given the opportunity to promulgate norms and standards before the courts could intervene. Javier recommends that the right is better to be kept as a state policy and reinforced by legislation rather than placing it within the Bill.

Javier stressed that the concepts of a 'balanced and healthful ecology' are dynamic, moving targets and are heavily influenced by science and technology, changes in the environment, and evolving needs of the society. Freezing them in the Bill will make them out of date. He and the Coalition for Agricultural Modernization of the Philippines proposes that the constitutional right to environment be rephrased, adding in the end of the environmental right provision "as guided and protected by advances in science and technology."

Comments on Gadrinab and Javier

Gadrinab's and Javier's points are coming from the legal and scientific perspectives which can be assessed based on their own merits. But theirs seem to be against nature. Both question the protection of the environmental right in favor of other human rights. But human rights including the right to environment are "indivisible" (Sarmiento, 2014) which means that other human rights (civil and political – rights to due process and development) may be interpreted in relation to the right in the sense that nature or the environment may be understood as a 'higher reality,' higher than social reality, for what is society if environmental conditions are not met in order for that society to thrive.

From an empirically commonsensical, naturally wholistic point of view, the environmental crisis, problems, and suffering deliver a constant message as if *kalikasan* or nature, the environment or ecosystem is speaking for itself or for everything in it. It says some human beings need to be tamed given their destructive and exploitative nature and irresponsibility. *Kalikasan* acts in life-threatening ways will still behave in the same way especially against those who abused and continue to abuse their environment or the whole of nature on a massive scale. It is just a matter of where one's location is, that may be is prone to the wrath of nature.

But then it is also some other humans themselves who need to do something in behalf of nature. The destruction of nature can be mitigated but if humans don't change their ways in this epoch of an environmental crisis, environmental destruction and of human annihilation will become more imminent. It is important that man becomes consciously attentive and listens to this simple insight/foresight rather than wait and see because the experience of the nature's wrath has been there since time immemorial. Such foresight is the essence of the precautionary principle of the Writ of Kalikasan.

Generic Cases and the Writ's Limits

There are generic or a first set of cases due to the commission and alleged commission of wrongful or illegal acts against the environment. Such cases are 'exemplifying' because they reveal the writ's legal limits: (1) the cases involved non-Filipino citizens or foreign nationals (2) who were and are involved in the destruction of the environment within the Philippine territory, specifically in the Tubbataha Reefs and in some "contested areas" in the West Philippine Sea (WPS). Such areas may be 'contested' but the violations are committed within the Exclusive Economic Zone as defined by the United Nations Convention on Law of the Sea (UNCLOS) of which the Philippines is a state party. More importantly, the destruction of the marine environment had prejudiced the life and health of some Filipino fishermen living nearby and violation of their right to environment.

The Inquirer (2014) and Pia Ranada of Rappler reported the incident at Tubbataha – considered a World Heritage Site by the United Nations Educational, Scientific and Cultural Organization. There on January 17, 2013, what happened was that the Minesweeper ship USS Guardian "ran aground on the south atoll of the Tubbataha Reefs, a delicate ecosystem in the Sulu Sea treasured for its rich marine biodiversity" and "one of the world's most important marine sanctuaries" labelled by the environmentalists as the "crown jewel of Philippine seas" (Ranada, 2014). The unlawful act of grounding which damaged 2,345 square meters of coral on the reefs ("pulverized corals, scarred reefs, and a significant decrease in fish inhabiting the grounding sites" according to Ranada) had the Tubbataha Reefs Natural Park Act of 2009 as legal basis that provides the fine of $600 (PhP 24, 000) per square meter would cost the United States of America $1.4 million (PhP 60 million) said the Tubbataha Management Office.

The Supreme Court (SC) decreed it had no jurisdiction over the case but later, since the Philippines "adopts the generally accepted principles of international law as part of the law of the land" (Article II, Section 2 of the constitution), cited Article 31 (*Responsibility of the flag State for damage caused by a*

warship or other government ship operated for non-commercial purposes) of the United Nations Convention on the Law of the Sea (UNCLOS) which held the Americans liable.

What the Inquirer report relevantly reveals is that the court left the compensation and rehabilitation matter to the executive branch through diplomatic channels like the Department of Foreign Affairs which stated it would continue to pursue talks with the US. The global news company British Broadcasting Corporation reported on February 18, 2015 that the US paid a total of PhP 87 million.

But the fact that the court left the matter to the executive branch to resolve only reveals the writ's limits and inapplicability to American nationals.

Another case was reported by Rachael Bale's National Geographic Wildlife Watch in her article *Critical Reefs Destroyed in Poachers' Quest for World's Biggest Clams* wherein giant clams like *Tridacna gigas* ('Taklobo' in Filipino) were poached or stolen from the South China Sea for their meat (as aphrodisiac), for aquariums, carvings, jewelry, and as protective charms. But clams-poaching-grinding-lifting destroys the marine ecosystem because, as Bale (2016) explains, "Gigas…provide a home for seaweeds, sea sponges, snails, and slugs, and protection for young fish. They also fill a valuable role as filter feeders, cleaning the water of pollutants as they ingest algae or plankton." The clams were poached from some of the South China Sea islands such as the Spratly islands, the Scarborough Shoal, and the Kalayaan and Pag-Asa islands which are also the same islands where China's construction of artificial islands "by smothering shallow reefs with sand to create new land and dredging to create deeper ports" can be witnessed.

Bale adds, "(the Chinese) government helped (the Chinese fishermen) out with a special fuel subsidy to travel more than 500 miles (800 kilometers) south to the Spratly Islands, as well as subsidies for bigger and better boats" because the "Hainan fishermen had overfished their coastal waters."

What can be saida based on Bale's report is that the Chinese who were supposed to be just fishing or taking marine resources outside the WPS were not only fishing or taking resources from WPS but also destroying the marine ecosystem within it by stealing-lifting-grinding the coral-encased clams. As the poaching continues, fishes disappear which leaves the Filipino fishermen with nothing to catch. This means that they would eventually lose their livelihoods. WPS and its islands are protected by Philippine constitutional law's provision on territoriality and the right to environment, that can be enforced through the rules of procedure for environmental cases' writ because poaching prejudices the life and health of the Filipino fishermen living nearby.

But just like in the Tubbataha case, the SC in the "WPS islands cases" may cite a relevant international law like the UNCLOS but may just be adjudicating on a "political question" that only the executive branch with the Philippine president can address. This is because the alleged perpetrators are Chinese nationals whose state government's Nine-Dash Line territorial claim of the South China Sea and the islands and marine resources within means the enforcement of China's sovereignty over them including the WPS islands and the marine resources within it.

The seeming bottom line of the WPS cases is that the SC will only leave such cases to the executive branch thereby making the issuance of the writ order (expected to be served and enforced by any concerned Philippine government agency with the military and the police) inapplicable because alleged perpetrators are Chinese nationals and that the alleged violations committed is 'contestably' within Philippine territory. Meaning to say, they may not be brought before the Philippine courts of justice for trial.

The past Aquino administration diplomatically elevated the political matter at the UNCLOS tribunal and won but without China cooperating in the proceedings even if it (China) is already a state party of the UNCLOS. Whereas, the present Duterte administration has a different diplomatic approach to deal with the alleged environmental right violations committed at some of the WPS islands. President Duterte's approach is indirect since this appears to have an economic nature, not to mention the proposals for a joint oil exploration in the contested areas. But the Duterte administration appears to be 'sandwiched' by two opposing forces: the maintenance of the renewed diplomatic ties with the Chinese and the clamor of Filipinos that the state should assert its sovereign rights including the right to environment.

China as a signatory and a state party of the UNCLOS has the prerogative to respect and observe UNCLOS and the Philippine EEC claim that follows the agreement. China must therefore control its nationals from entering and destroying the environment within Philippine EEC claim. But then and again China's Nine-Dash Line claim.

CONCLUSION

The foregoing presents the Writ of Kalikasan which protects and promote the Filipino right to environment or every Filipino's environmental right especially those who are indirectly affected by acts of others that destroy the environment. The article has discussed this destruction from the legal and scientific perspectives which appeared to be against nature in favor of other human rights like the civil right to due process and human activity or the 'tilting of the balance of nature.' But the generic cases involving foreign nationals who committed environmental right violations within the Philippine territory or EEC claim elaborated a socio-ethical point of view which adopts the precautionary principle that prioritizes the higher reality that is nature or as fondly referred to in Filipino, "Inang Kalikasan."

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