EN BANC

[G.R. No. 211010. March 7, 2017]

VICTORIA SEGOVIA, RUEL LAGO, CLARIESSE JAMI CHAN, REPRESENTING THE CARLESS PEOPLE OF THE PHILIPPINES; GABRIEL ANASTACIO, REPRESENTED BY HIS MOTHER GRACE ANASTACIO, DENNIS ORLANDO SANGALANG, REPRESENTED BY HIS MOTHER MAY ALILI SANGALANG, MARIA PAULINA CASTAÑEDA, REPRESENTED BY HER MOTHER ATRICIA ANN CASTAÑEDA, REPRESENTING THE CHILDREN OF THE PHILIPPINES AND CHILDREN OF THE FUTURE; AND RENATO PINEDA JR., ARON KERR MENGUITO, MAY ALILI SANGALANG, AND GLYNDA BATHAN BATERINA, REPRESENTING CAR–OWNERS WHO WOULD RATHER NOT HAVE CARS IF GOOD PUBLIC TRANSPORTATION WERE SAFE, CONVENIENT, ACCESSIBLE AND RELIABLE, *petitioners, vs.* **THE CLIMATE CHANGE COMMISSION, REPRESENTED BY ITS CHAIRMAN, HIS EXCELLENCY BENIGNO S. AQUINO III, AND ITS COMMISSIONERS MARY ANN LUCILLE SERING. HEHERSON ALVAREZ AND NADAREV SANO; DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS (*DOTC*) REPRESENTED BY ITS SECRETARY, HONORABLE JOSEPH ABAYA; DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (*DPWH*) AND THE ROAD BOARD, REPRESENTED BY ITS SECRETARY, HONORABLE ROGELIO SINGSON; DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT (*DILG*), REPRESENTED BY ITS SECRETARY, HONORABLE MANUEL ROXAS; DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (*DENR*), REPRESENTED BY ITS SECRETARY, HONORABLE RAMON PAJE; DEPARTMENT OF BUDGET AND MANAGEMENT (*DBM*),**

REPRESENTED BY ITS SECRETARY, HONORABLE FLORENCIO ABAD; METROPOLITAN MANILA DEVELOPMENT AUTHORITY (*MMDA*), REPRESENTED BY ITS CHAIRMAN, FRANCIS TOLENTINO; DEPARTMENT OF AGRICULTURE (*DA*) REPRESENTED BY ITS SECRETARY, HONORABLE PROCESO ALCALA; 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, *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE FOR ENVIRONMENTAL CASES (RPEC); WRIT OF *KALIKASAN*; THE WRIT IS AN EXTRAORDINARY REMEDY COVERING ENVIRONMENTAL DAMAGE OF SUCH MAGNITUDE THAT WILL PREJUDICE THE LIFE, HEALTH OR PROPERTY OF INHABITANTS IN TWO OR MORE CITIES OR PROVINCES.— The RPEC did liberalize the requirements on standing, allowing the filing of citizen's suit for the enforcement of rights and obligations under environmental laws. This has been confirmed by this Court's rulings in *Arigo v. Swift*, and *International Service for the Acquisition of Agri-BioTech Applications, Inc. v. Greenpeace Southeast Asia (Philippines)*. However, it bears noting that there is a difference between a petition for the issuance of a writ of *kalikasan*, wherein it is sufficient that the person filing represents the inhabitants prejudiced by the environmental damage subject of the writ; and a petition for the issuance of a writ of continuing *mandamus*, which is only available to one who is personally aggrieved by the unlawful act or omission. x x x Under the RPEC, the writ of *kalikasan* is an extraordinary remedy covering environmental damage of such magnitude that will prejudice the life, health or property of inhabitants in two or more cities

or provinces. It is designed for a narrow but special purpose: to accord a stronger protection for environmental rights, aiming, among others, to provide a speedy and effective resolution of a case involving the violation of one's constitutional right to a healthful and balanced ecology that transcends political and territorial boundaries, and to address the potentially exponential nature of large-scale ecological threats. At the very least, the magnitude of the ecological problems contemplated under the RPEC satisfies at least one of the exceptions to the rule on hierarchy of courts, as when direct resort is allowed where it is dictated by public welfare. Given that the RPEC allows direct resort to this Court, it is ultimately within the Court's discretion whether or not to accept petitions brought directly before it.

2. ID.; ID.; ID.; A PARTY CLAIMING THE PRIVILEGE FOR THE ISSUANCE OF A WRIT OF *KALIKASAN* HAS TO SHOW THAT A LAW, RULE OR REGULATION WAS VIOLATED OR WOULD BE VIOLATED; REQUISITES.— For a writ of *kalikasan* to issue, the following requisites must concur: 1. there is an actual or threatened violation of the constitutional right to a balanced and healthful ecology; 2. the actual or threatened violation arises from an unlawful act or omission of a public official or employee, or private individual or entity; and 3. the actual or threatened violation involves or will lead to an environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces. It is well-settled that a party claiming the privilege for the issuance of a writ of *kalikasan* has to show that a law, rule or regulation was violated or would be violated. In this case, apart from repeated invocation of the constitutional right to health and to a balanced and healthful ecology and bare allegations that their right was violated, the petitioners failed to show that public respondents are guilty of any unlawful act or omission that constitutes a violation of the petitioners' right to a balanced and healthful ecology.

3. ID.; ID.; WRIT OF CONTINUING *MANDAMUS*; ABSENT A SHOWING THAT THE EXECUTIVE IS GUILTY OF GROSS ABUSE OF DISCRETION, MANIFEST INJUSTICE OR PALPABLE EXCESS OF AUTHORITY, THE GENERAL RULE APPLIES THAT DISCRETION CANNOT BE CHECKED *VIA* A PETITION FOR CONTINUING

***MANDAMUS*; CASE AT BAR.—** Rule 8, Section 1 of the RPEC lays down the requirements for a petition for continuing *mandamus* x x x First, the petitioners failed to prove direct or personal injury arising from acts attributable to the respondents to be entitled to the writ. While the requirements of standing had been liberalized in environmental cases, the general rule of real party-in-interest applies to a petition for continuing *mandamus*. Second, the Road Sharing Principle is precisely as it is denominated a principle. It cannot be considered an absolute imposition to encroach upon the province of public respondents to determine the manner by which this principle is applied or considered in their policy decisions. *Mandamus* lies to compel the performance of duties that are purely ministerial in nature, not those that are discretionary, and the official can only be directed by *mandamus* to act but not to act one way or the other. The duty being enjoined in *mandamus* must be one according to the terms provided in the law itself. Thus, the recognized rule is that, in the performance of an official duty or act involving discretion, the corresponding official can only be directed by *mandamus* to act, but not to act one way or the other. x x x At its core, what the petitioners are seeking to compel is not the performance of a ministerial act, but a discretionary act — the manner of implementation of the Road Sharing Principle. 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. Clearly, the determination of the means to be taken by the executive in implementing or actualizing any stated legislative or executive policy relating to the environment requires the use of discretion. Absent a showing that the executive is guilty of "gross abuse of discretion, manifest injustice or palpable excess of authority," the general rule applies that discretion cannot be checked via this petition for continuing *mandamus*. Hence, the continuing *mandamus* cannot issue.

VELASCO, JR., *J.*, *concurring opinion*:

1. **REMEDIAL LAW; RULES OF PROCEDURE FOR ENVIRONMENTAL CASES (RPEC); WRIT OF *KALIKASAN*; THE MAGNITUDE OF THE ECOLOGICAL PROBLEMS CONTEMPLATED UNDER THE RPEC SATISFIES AT LEAST ONE OF THE EXCEPTIONS TO THE RULE ON HEIRARCHY OF COURTS, THAT IS, DIRECT RESORT TO THIS COURT ALLOWED WHERE IT IS "DICTATED BY THE PUBLIC WELFARE."—** The omission of the trial courts with limited jurisdiction in Section 3, Rule 7, Part III of the RPEC was not by mere oversight. Rather, the limitation of the venues to this Court and the CA, whose jurisdiction is national in scope, is the intended solution to controversies involving environmental damage of such magnitude as to affect the "inhabitants in [at least] two or more cities or provinces." Surely, the scale of impact of the ecological problems sought to be addressed by a writ of *kalikasan* sets it apart from the other special civil actions under the other rules issued by this Court. Thus, to insist on the application of the technical principle on hierarchy of courts will only negate the emphasis given to this difference and the acknowledgement that environmental challenges deserve the immediate attention by the highest court of the land, even at the first instance. At the very least, the magnitude of the ecological problems contemplated under the RPEC satisfies at least one of the exceptions to the rule on hierarchy of courts, i.e., direct resort to this court is allowed where it is "dictated by the public welfare." In environmental cases, this Court cannot afford to be self-important and promptly deny petitions on the cliched ground that Ours is the "court of last resort" that cannot be "burdened with the task of dealing with cases in the first instance." We must take stock and bear to recall that the rule on hierarchy of courts was created simply because this Court is not a trier of facts. Accordingly, in cases involving warring factual allegations, we applied this rule to require litigants to "repair to the trial courts at the first instance to determine the truth or falsity of these contending allegations on the basis of the evidence of the parties." Under the RPEC, however, this Court burdened itself to resolve factual questions so that the rule finds no application.

2. ID.; ID.; WRIT OF CONTINUING *MANDAMUS*; THE IMPLEMENTATION OF ROAD SHARING PRINCIPLE ITSELF, AS OPPOSED TO THE BIFURCATION OF THE ROADS, IS AN ACT THAT CAN BE THE SUBJECT OF CONTINUING *MANDAMUS* UNDER THE RPEC; CASE AT BAR.— On the issue for the issuance of a continuing *mandamus* thus prayed in the petition, I concur with the *ponencia* that mandamus does not indeed lie to compel a discretionary act. It cannot be issued to require a course of conduct. Thus, I cannot endorse the issuance of a continuing *mandamus* to compel the enforcement of the bifurcation of roads. As the *ponencia* has stated, such action amounts to requiring the respondents to act in a particular way in the implementation of the Road Sharing Principle adopted in EO 774 and AO 254. While a continuing *mandamus* cannot, however, be used to oblige the respondents to act one way or the other, it can be used to compel the respondents to act and implement the Road Sharing Principle in whatever manner they deem best. In other words, the implementation of the Road Sharing Principle itself, as opposed to the bifurcation of the roads, is an act that can be the subject of continuing *mandamus* under the RPEC. On this point, I digress from the *ponencia*.

LEONEN, *J.*, *concurring opinion*:

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; REAL PARTY IN INTEREST; THE RULES OF COURT PROVIDES THAT EVERY ACTION MUST BE PROSECUTED OR DEFENDED IN THE NAME OF THE PERSON WHO WOULD BENEFIT OR BE INJURED BY THE COURT'S JUDGMENT.— Locus standi or the standing to sue cannot be easily brushed aside for it is demanded by the Constitution. x x x Fundamentally, only parties who have sustained direct injury are allowed to bring the suit in court. Rule 3, Section of the Rules of Court provides that every action must be prosecuted or defended in the name of the person who would benefit or be injured by the court's judgment. This person is known as the real party in interest. In environmental cases, this rule is in Rule 2 Section 4 of the Rules of Procedure for Environmental Cases.

2. ID.; ID.; ID.; THREE INSTANCES WHEN A PERSON WHO IS NOT A REAL PARTY IN INTEREST CAN FILE ON BEHALF OF THE REAL PARTY.— There are three instances when person who is not real party in interest can file case on behalf of the real party: One, is representative suit under Rule 3 Section 3 of the Rules of Court where representative files the case on behalf of his principal: x x x A class suit is a specie of a representative suit insofar as the persons who institute it represent the entire class of persons who have the same interest or who suffered the same injury. However, unlike representative suits, the persons instituting class suit are themselves real parties in interest and are not suing merely as representatives. Lastly, there is citizen suit where Filipino can invoke environmental laws on behalf of other citizens including those yet to be born. This is found under Rule 2 Section 5 of the Rules of Procedure for Environmental Cases.

3. ID.; ID.; ID.; ID.; REQUIREMENTS WHEN A CLASS SUIT CAN PROSPER, ENUMERATED.— A class suit can prosper only: (a) when the subject matter of the controversy is of common or general interest to many persons; (b) when such persons are so numerous that it is impracticable to join them all as parties; and (c) when such persons are sufficiently numerous as to represent and protect fully the interests of all concerned. These requirements are found in Rule 3, Section 12 of the Rules of Court, x x x.

APPEARANCES OF COUNSEL

Vanessa J. Gumban for petitioners.
The Solicitor General for respondents.

D E C I S I O N

CAGUIOA, *J.*:

This is a petition for the issuance of writs of *kalikasan* and continuing *mandamus* to compel the implementation of the following environmental laws and executive issuances —

Republic Act No. (RA) 9729[1] (Climate Change Act), and RA 8749[2] (Clean Air Act); Executive Order No. 774[3] (EO 774); AO 254, s. 2009[4] (AO 254); and Administrative Order No. 171, s. 2007[5] (AO 171).

Accordingly, the Petitioners seek to compel: *(a)* the public respondents to: *(1)* implement the Road Sharing Principle in all roads; *(2)* divide all roads lengthwise, one-half (½) 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.[6]

The Facts

To address the clamor for a more tangible response to climate change, Former President Gloria Macapagal-Arroyo issued AO 171 which created the Presidential Task Force on Climate Change (PTFCC) on February 20, 2007. This body was reorganized through EO 774, which designated the President as Chairperson,

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[1] An Act Mainstreaming Climate Change into Government Policy Formulations, Establishing the Framework Strategy and Program on Climate Change, Creating for this Purpose the Climate Change Commission, and for Other Purposes, otherwise known as the "Climate Change Act of 2009.

[2] An Act Providing for a Comprehensive Air Pollution Control Policy and for Other Purposes otherwise known as the "Philippine Clean Air Act of 1999".

[3] Reorganizing the Presidential Task Force on Climate Change.

[4] Mandating the Department of Transportation and Communications to Lead in Formulating a National Environmentally Sustainable Transport (EST) for the Philippines.

[5] Creating the Presidential Task Force on Climate Change.

[6] See *rollo*, pp. 30-31.

and cabinet secretaries as members of the Task Force. EO 774 expressed what is now referred to by the petitioners as the "Road Sharing Principle." Its Section 9(a) reads:

> Section 9. *Task Group on Fossil Fuels*. – (a) To reduce the consumption of fossil fuels, the Department of Transportation and Communications (DOTC) shall lead a Task Group to reform the transportation sector. The new paradigm in the movement of men and things must follow a simple principle: "Those who have less in wheels must have more in road." For this purpose, the system shall favor nonmotorized locomotion and collective transportation system (walking, bicycling, and the man-powered mini-train).

In 2009, AO 254 was issued, mandating the DOTC (as lead agency for the Task Group on Fossil Fuels or *TGFF*) to formulate a national Environmentally Sustainable Transport Strategy (*EST*) for the Philippines. The Road Sharing Principle is similarly mentioned, thus:

> **SECTION 4.** *Functions of the TGFF* — In addition to the functions provided in EO 774, the TGFF shall initiate and pursue the formulation of the National EST Strategy for the Philippines.
>
> Specifically, the TGFF shall perform the following functions:
>
> (a) Reform the transport sector to reduce the consumption of fossil fuels. The new paradigm in the movement of men and things must follow a simple principle: "Those who have less in wheels must have more in road." For this purpose, the system shall favor non-motorized locomotion and collective transportation system (walking, bicycling, and the man-powered mini-train).
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> x x x x x x x x x

Later that same year, Congress passed the Climate Change Act. It created the Climate Change Commission which absorbed the functions of the PTFCC and became the lead policy-making body of the government which shall be tasked to coordinate, monitor and evaluate the programs and action plans of the government relating to climate change.[7]

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[7] Republic Act No. 9729 (2009), Sec. 4.

Herein petitioners wrote respondents regarding their pleas for implementation of the Road Sharing Principle, demanding the reform of the road and transportation system in the whole country within thirty (30) days from receipt of the said letter — foremost, through the bifurcation of roads and the reduction of official and government fuel consumption by fifty percent (50%).[8] Claiming to have not received a response, they filed this petition.

The Petition

Petitioners are Carless People of the Philippines, parents, representing their children, who in turn represent "Children of the Future, and Car-owners who would rather not have cars if good public transportation were safe, convenient, accessible, available, and reliable". They claim that they are entitled to the issuance of the extraordinary writs due to the alleged failure and refusal of respondents to perform an act mandated by environmental laws, and violation of environmental laws resulting in environmental damage of such magnitude as to prejudice the life, health and property of all Filipinos.[9]

These identified violations[10] include: *(a)* The government's violation of "atmospheric trust" as provided under Article XI, Section 1 of the Constitution, and thoughtless extravagance in the midst of acute public want under Article 25 of the Civil Code for failure to reduce personal and official consumption of fossil fuels by at least fifty percent (50%); *(b)* DOTC and DPWH's failure to implement the Road Sharing Principle under EO 774; *(c)* DA's failure to devote public open spaces along sidewalks, roads and parking lots to sustainable urban farming as mandated by Section 12(b)[11] of EO 774; *(d)* DILG's failure

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[8] *Rollo*, pp. 214-215.

[9] See *id*. at 3, 5 and 20.

[10] See *id*. at 23-29.

[11] Section 12. *Task Group on Agriculture*. – x x x

(b) Public open places space along sidewalks and portions of roads and parking lots, which shall be rendered irrelevant by the mind-shift to nonmotorized and collective transportation systems, shall be devoted to

to coordinate with local government units (LGUs) to guide them on the Road Sharing Principle under Section 9(g)[12] of EO 774; *(e)* DENR's failure to reduce air pollutant emissions; and lastly, *(f)* DBM's failure to make available Road Users' Tax for purposes stated in Section 9(e)[13]of EO 774.

In gist, petitioners contend that respondents' failure to implement the foregoing laws and executive issuances resulted in the continued degradation of air quality, particularly in Metro Manila, in violation of the petitioners' constitutional right to a balanced and healthful ecology,[14] and may even be tantamount to deprivation of life, and of life sources or "land, water, and air" by the government without due process of law.[15] They also decry the "unequal" protection of laws in the prevailing scheme, claiming that ninety-eight percent (98%) of Filipinos are discriminated against by the law when the car-owning two percent (2%) is given almost all of the road space and while large budgets are allocated for construction and maintenance

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productive use through sustainable urban farming. These spaces shall be planted with, among others, nutritious fruit crops, vegetables, spices and medicinal herbs. All persons who live in the city who wish to care for a plot of arable land to plant their vegetables shall be provided a stewardship agreement. This agreement shall bind the holder to sustainably use the land plant it with food and other plants like nutritious vegetables, fruits, flowers, spices, etc. and receive benefit from its produce.

[12] Section 9. *Task Group on Fossil Fuels.* –

x x x x x x x x x

(g) The Department of the Interior and Local Government (DILG) shall coordinate with local government units and guide them on the plan to transform the locomotion and transportation system to favor parties who have no motorized vehicles.

[13] Section 9. *Task Group on Fossil Fuels.* –

x x x x x x x x x

(e) The Department of Budget and Management (DBM) shall immediately make available funds from Road Users' Tax for the purposes stated in this Section.

[14] *Rollo*, p. 8.

[15] *Id.* at 27-28.

of roads, hardly any budget is given for sidewalks, bike lanes and non-motorized transportation systems.[16]

Respondents, through the Office of the Solicitor General, filed their *Comment* seeking the outright dismissal of the petition for lack of standing and failure to adhere to the doctrine of hierarchy of courts.[17] Moreover, respondents argue that petitioners are not entitled to the reliefs prayed for.

Specifically, respondents assert that petitioners are not entitled to a writ of *kalikasan* because they failed to show that the public respondents are guilty of an unlawful act or omission; state the environmental law/s violated; show environmental damage of such magnitude as to prejudice the life, health or property of inhabitants of two or more cities; and prove that non-implementation of Road Sharing Principle will cause environmental damage. Respondents likewise assert that petitioners are similarly not entitled to a Continuing *Mandamus* because: *(a)* 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 Board.[18]

In any event, 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

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[16] *Id*. at 26.

[17] *Id.* at 329-332.

[18] *Id*. at 338-347.

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.[19] Contrary to petitioners' claims, public respondents assert that they consider the impact of the transport sector on the environment, as shown in the Philippine National Implementation Plan on Environment Improvement in the Transport Sector which targets air pollution improvement actions, greenhouse gases emission mitigation, and updating of noise pollution standards for the transport sector.

In response, petitioner filed their *Reply*, substantially reiterating the arguments they raised in the Petition.

ISSUES

From the foregoing submissions, the main issues for resolution are:

1. Whether or not the petitioners have standing to file the petition;
2. Whether or not the petition should be dismissed for failing to adhere to the doctrine of hierarchy of courts; and
3. Whether or not a writ of *Kalikasan* and/or Continuing *Mandamus* should issue.

RULING

The petition must be dismissed.

Procedural Issues

Citing Section 1, Rule 7 of the Rules of Procedure for Environmental Cases[20] (RPEC), respondents argue that the

[19] *Id*. at 332-338.

[20] 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,

petitioners failed to show that they have the requisite standing to file the petition, being representatives of a rather amorphous sector of society and without a concrete interest or injury.[21] Petitioners counter that they filed the suit as citizens, taxpayers, and representatives; that the rules on standing had been relaxed following the decision in *Oposa v. Factoran*;[22] and that, in any event, legal standing is a procedural technicality which the Court may set aside in its discretion.[23]

The Court agrees with the petitioners' position. The RPEC did liberalize the requirements on standing, allowing the filing of citizen's suit for the enforcement of rights and obligations under environmental laws.[24] This has been confirmed by this Court's rulings in *Arigo v. Swift,*[25] and *International Service for the Acquisition of Agri-BioTech Applications, Inc. v. Greenpeace Southeast Asia (Philippines)*.[26] However, it bears noting that there is a difference between a petition for the issuance of a writ of *kalikasan*, wherein it is sufficient that the person filing represents the inhabitants prejudiced by the environmental damage subject of the writ;[27] and a petition for the issuance of

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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.

[21] *Rollo*, p. 330.

[22] 296 Phil. 694 (1993).

[23] *Rollo*, pp. 580-581.

[24] RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Part II, Rule 2, Section 5.

[25] G.R. No. 206510, September 16, 2014, 735 SCRA 102, 127-129.

[26] G.R. Nos. 209271, 209276, 209301 & 209430, December 8, 2015, pp. 36-38.

[27] ANNOTATION TO THE RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Part III, Rule 7, Section 1.

a writ of continuing *mandamus*, which is only available to one who is personally aggrieved by the unlawful act or omission.[28]

Respondents also seek the dismissal of the petition on the ground that the petitioners failed to adhere to the doctrine of hierarchy of courts, reasoning that since a petition for the issuance of a writ of *kalikasan* must be filed with the Supreme Court or with any of the stations of the Court of Appeals,[29] then the doctrine of hierarchy of courts is applicable.[30] Petitioners, on the other hand, cite the same provision and argue that direct recourse to this Court is available, and that the provision shows that the remedy to environmental damage should not be limited to the territorial jurisdiction of the lower courts.[31]

The respondents' argument does not persuade. Under the RPEC, the writ of *kalikasan* is an extraordinary remedy covering environmental damage of such magnitude that will prejudice the life, health or property of inhabitants in two or more cities or provinces. It is designed for a narrow but special purpose: to accord a stronger protection for environmental rights, aiming, among others, to provide a speedy and effective resolution of a case involving the violation of one's constitutional right to a healthful and balanced ecology that transcends political and territorial boundaries, and to address the potentially exponential nature of large-scale ecological threats.[32] At the very least, the magnitude of the ecological problems contemplated under the RPEC satisfies at least one of the exceptions to the rule on hierarchy of courts, as when direct resort is allowed where it is dictated by public welfare. Given that the RPEC allows direct resort to this Court,[33] it is ultimately within the Court's discretion whether or not to accept petitions brought directly before it.

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[28] *Id*., Part III, Rule 8.

[29] *Id.*, Part III, Rule 7, Section 3.

[30] *Rollo*, p. 330.

[31] *Id.* at 581.

[32] *Paje v. Casiño*, G.R. Nos. 207257, 207276, 207282 & 207366, February 3, 2015, 749 SCRA 39, 81.

[33] RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Part III, Rule 7, Section 3.

Requisites for issuance of Writs of *Kalikasan* and Continuing *Mandamus*

We find that the petitioners failed to establish the requisites for the issuance of the writs prayed for.

For a writ of *kalikasan* to issue, the following requisites must concur:

1. there is an actual or threatened violation of the constitutional right to a balanced and healthful ecology;
2. the actual or threatened violation arises from an unlawful act or omission of a public official or employee, or private individual or entity; and
3. the actual or threatened violation involves or will lead to an environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.[34]

It is well-settled that a party claiming the privilege for the issuance of a writ of *kalikasan* has to show that a law, rule or regulation was violated or would be violated.[35]

In this case, apart from repeated invocation of the constitutional right to health and to a balanced and healthful ecology and bare allegations that their right was violated, the petitioners failed to show that public respondents are guilty of any unlawful act or omission that constitutes a violation of the petitioners' right to a balanced and healthful ecology.

While there can be no disagreement with the general propositions put forth by the petitioners on the correlation of air quality and public health, petitioners have not been able to show that respondents are guilty of violation or neglect of

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[34] *LNL Archipelago Minerals, Inc. v. Agham Party List*, G.R. No. 209165, April 12, 2016, pp. 10-11.

[35] *Id.* at 13.

environmental laws that causes or contributes to bad air quality. Notably, apart from bare allegations, petitioners were not able to show that respondents failed to execute any of the laws petitioners cited. In fact, apart from adducing expert testimony on the adverse effects of air pollution on public health, the petitioners did not go beyond mere allegation in establishing the unlawful acts or omissions on the part of the public respondents that have a causal link or reasonable connection to the actual or threatened violation of the constitutional right to a balanced and healthful ecology of the magnitude contemplated under the Rules, as required of petitions of this nature.[36]

Moreover, the National Air Quality Status Report for 2005-2007 (NAQSR) submitted by the petitioners belies their claim that the DENR failed to reduce air pollutant emissions — in fact, the NAQSR shows that the National Ambient Total Suspended Particulates (TSP) value used to determine air quality has steadily declined from 2004 to 2007,[37] and while the values still exceed the air quality guideline value, it has remained on this same downward trend until as recently as 2011.[38]

On the other hand, public respondents sufficiently showed that they did not unlawfully refuse to implement or neglect the laws, executive and administrative orders as claimed by the petitioners. Projects and programs that seek to improve air quality were undertaken by the respondents, jointly and in coordination with stakeholders, 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.

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[36] See *Paje v. Casiño, supra* note 32 at 84-85.

[37] *Rollo,* p. 56.

[38] National Air Quality Status Report, 2010-2011. <http://air.emb.gov.ph/wp-content/uploads/2016/04/DenrAirQualityStatReport10-11.pdf.> (last accessed on March 3, 2017).

In fact, the same NAQSR submitted by the petitioners show that the DENR was, and is, taking concrete steps to improve national air quality, such as information campaigns, free emission testing to complement the anti-smoke-belching program and other programs to reduce emissions from industrial smokestacks and from open burning of waste.[39] The efforts of local governments and administrative regions in conjunction with other executive agencies and stakeholders are also outlined.[40]

Similarly, the writ of continuing *mandamus* cannot issue.

Rule 8, Section 1 of the RPEC lays down the requirements for a petition for continuing *mandamus* as follows:

RULE 8

WRIT OF CONTINUING *MANDAMUS*

SECTION 1. *Petition for continuing mandamus*.—When any agency or instrumentality of the government or officer thereof unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station in connection with the enforcement or violation of an environmental law rule or regulation or a right therein, or unlawfully excludes another from the use or enjoyment of such right and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty, attaching thereto supporting evidence, specifying that the petition concerns an environmental law, rule or regulation, and praying that judgment be rendered commanding the respondent to do an act or series of acts until the judgment is fully satisfied, and to pay damages sustained by the petitioner by reason of the malicious neglect to perform the duties of the respondent, under the law, rules or regulations. The petition shall also contain a sworn certification of non-forum shopping.

First, the petitioners failed to prove direct or personal injury arising from acts attributable to the respondents to be entitled to the writ. While the requirements of standing had been

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[39] *Rollo,* p. 96.

[40] *Id*. at 97-100.

liberalized in environmental cases, the general rule of real party-in-interest applies to a petition for continuing *mandamus*.[41]

Second, the Road Sharing Principle is precisely as it is denominated — a principle. It cannot be considered an absolute imposition to encroach upon the province of public respondents to determine the manner by which this principle is applied or considered in their policy decisions. *Mandamus* lies to compel the performance of duties that are purely ministerial in nature, not those that are discretionary,[42] and the official can only be directed by *mandamus* to act but not to act one way or the other. The duty being enjoined in *mandamus* must be one according to the terms provided in the law itself. Thus, the recognized rule is that, in the performance of an official duty or act involving discretion, the corresponding official can only be directed by *mandamus* to act, but not to act one way or the other.[43]

This Court cannot but note that this is precisely the thrust of the petition — to compel the respondents to act one way to implement the Road Sharing Principle — to bifurcate all roads in the country to devote half to sidewalk and bicycling, and the other to Filipino-made transport — when there is nothing in EO 774, AO 254 and allied issuances that require that specific course of action in order to implement the same. Their good intentions notwithstanding, the petitioners cannot supplant the executive department's discretion with their own through this petition for the issuance of writs of *kalikasan* and continuing *mandamus*.

In this case, there is no showing of unlawful neglect on the part of the respondents to perform any act that the law specifically enjoins as a duty —there being nothing in the executive issuances

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[41] See ANNOTATION TO THE RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Part III, Rule 8.

[42] *Special People, Inc. Foundation v. Canda*, 701 Phil. 365, 387 (2013).

[43] See Sereno, Diss. Op. in *MMDA v. Concerned Residents of Manila Bay,* 658 Phil. 223, 268 (2011).

relied upon by the petitioners that specifically enjoins the bifurcation of roads to implement the Road Sharing Principle. To the opposite, the respondents were able to show that they were and are actively implementing projects and programs that seek to improve air quality.

At its core, what the petitioners are seeking to compel is not the performance of a ministerial act, but a discretionary act — the manner of implementation of the Road Sharing Principle. 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. Clearly, the determination of the means to be taken by the executive in implementing or actualizing any stated legislative or executive policy relating to the environment requires the use of discretion. Absent a showing that the executive is guilty of "gross abuse of discretion, manifest injustice or palpable excess of authority,"[44] the general rule applies that discretion cannot be checked via this petition for continuing *mandamus*. Hence, the continuing *mandamus* cannot issue.

Road Users' Tax

Finally, petitioners seek to compel DBM to release the Road Users' Tax to fund the reform of the road and transportation system and the implementation of the Road Sharing Principle.

It bears clarifying that the Road Users' Tax mentioned in Section 9(e) of EO 774, apparently reiterated in Section 5 of AO 254 is the Special Vehicle Pollution Control Fund component

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[44] See *First Philippine Holdings Corporation v. Sandiganbayan,* 323 Phil. 36, 55 (1996)*; Kant Kwong v. Presidential Commission on Good Government,* 240 Phil. 219, 230 (1987).

of the Motor Vehicle Users' Charge ("***MVUC***") imposed on owners of motor vehicles in RA 8794, otherwise known as the Road Users' Tax Law. By the express provisions of the aforementioned law, the amounts in the special trust accounts of the MVUC are earmarked solely and used exclusively (1) for road maintenance and the improvement of the road drainage, (2) for the installation of adequate and efficient traffic lights and road safety devices, and (3) for the air pollution control, and their utilization are subject to the management of the Road Board.[45] Verily, the petitioners' demand for the immediate and ***unilateral release of the Road Users' Tax by the DBM*** to support the petitioners' operationalization of this Road Sharing Principle has no basis in law. The executive issuances relied upon by the petitioner do not rise to the level of law that can supplant the provisions of RA 8794 that require the approval of the Road Board for the use of the monies in the trust fund. In other words, the provisions on the release of funds by the DBM as provided in EO 774 and AO 254 are necessarily subject to the conditions set forth in RA 8794. Notably, RA 9729, as amended by RA 10174, provides for the establishment for the People's Survival Fund[46] that may be tapped for adaptation activities, which similarly require approval from the PSF Board.[47]

That notwithstanding, the claim made by the petitioners that hardly any budget is allotted to mitigating environmental pollution is belied by the priority given to programs aimed at addressing and mitigating climate change that the DBM and the CCC had been tagging and tracking as priority expenditures since 2013.[48] With the coordination of the DILG, this priority tagging and tracking is cascaded down to the local budget management of local government units.[49]

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[45] Republic Act No. 8794 (2000), Sec. 7.

[46] Republic Act No. 9729 (2009) Sec. 18, as amended.

[47] *Id*. at Sections 23 and 24, as amended.

[48] *Rollo*, p. 333.

[49] Pursuant to DBM-CCC-DILG Joint Memorandum Circular (JMC) No. 2014-01 dated August 7, 2014.

Other causes of action

As previously discussed, the petitioners' failure to show any violation on the part of the respondents renders it unnecessary to rule on other allegations of violation that the petitioners rely upon as causes of action against the public respondents.

In fine, the allegations and supporting evidence in the petition fall short in showing an actual or threatened violation of the petitioners' constitutional right to a balanced and healthful ecology arising from an unlawful act or omission by, or any unlawful neglect on the part of, the respondents that would warrant the issuance of the writs prayed for.

WHEREFORE, the petition is **DISMISSED**.

SO ORDERED.

Sereno, C.J., Carpio, Leonardo-de Castro, Peralta, Bersamin, del Castillo, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Velasco, Jr. and *Leonen, JJ.,* see separate concurring opinions.

Jardeleza, J., no part, prior OSG action.

CONCURRING OPINION

VELASCO, JR., *J.*:

The present case involves the extraordinary remedy of a Writ of *Kalikasan*. Under the Rules of Procedure for Environmental Cases (RPEC), the writ is an extraordinary remedy covering **environmental damage of such magnitude that will prejudice the life, health or property of inhabitants in two or more cities or provinces**.[1] As distinguished from other available remedies in the ordinary rules of court, the Writ of *Kalikasan* is designed for a narrow but special purpose: to accord a stronger

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[1] *LNL Archipelago Minerals, Inc. v. Agham Party List*, G.R. No. 209165, April 12, 2016.

protection for environmental rights, aiming, among others, to provide a speedy and effective resolution of a case involving the violation of one's constitutional right to a healthful and balanced ecology[2] that transcends political and territorial boundaries;[3] to provide a stronger defense for environmental rights through judicial efforts where institutional arrangements of enforcement, implementation and legislation have fallen short;[4] and to address the potentially exponential nature of large-scale ecological threats.[5] Thus, Section 1, Rule 7, Part III of the RPEC provides:

> 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.

Given the substantially grand intentions underlying the RPEC, it would be a disappointment to rely on the technical principle of the hierarchy of courts to justify the refusal to issue the writ of *kalikasan*. Though there are grounds to deny the instant petition praying for the issuance of the writ, I agree with the *ponencia* that the alleged violation of the principle on hierarchy of courts is not one of them. And as one who was privy to the preparation of the Rules, I deem it best to write my own opinion on the issue.

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[2] *Paje v. Casiño*, G.R. Nos. 207257, 207276, 207282 & 207366, February 3, 2015, Velasco, Jr., concurring.

[3] *Id*.

[4] *Id.*

[5] *Id.*

Section 3, Rule 7, Part III of the RPEC provides the venue where petitions for the issuance of a Writ of Kalikasan may be filed. It plainly states, viz.:

> SEC. 3 *Where to file.* – The petition shall be filed with the Supreme Court **or** with any of the stations of the Court of Appeals.[6]

It is clear that Section 3 uses the word "or," which is a disjunctive article indicating an **alternative**,[7] not successive, character of the right or duty given. The use of "or" in the RPEC indicates that the petitioner/s are given "the **choice** of either, which means that the various members of the enumeration are to be taken separately, with the term signifying disassociation and independence of one thing from each of the other things enumerated."[8] Thus, under Section 3 of the RPEC, the **petitioner/s are given the right to freely choose between this Court and the different stations of the appellate court** in filing their petitions. Claiming otherwise based on the nebulous procedural principle of the hierarchy of courts is a deviation from the basic text of the adverted section. Such departure from the ordinary meaning of the text deprives ordinary citizens of the fair expectation that the procedural rules issued by this Court mean what they say and say what they mean.

Further, the absence of any mention of the first level courts—the municipal trial courts, metropolitan trial courts, and the regional trial courts—is indicative of the exceptional nature of a writ of *kalikasan* and the non-application of the principle to petitions for its issuance. This palpable absence marks the difference from the other special civil actions available under the other rules where this Court is given concurrent jurisdiction not only with the Court of Appeals (CA) but also with the trial courts.

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[6] Emphasis and underscoring supplied.

[7] *Vargas v. Cajucom*, G.R. No. 171095, June 22, 2015, citing *Hacienda Luisita, Inc. v. Presidential Agrarian Reform Council*, G.R. No. 171101, November 22, 2011, 660 SCRA 525, 550-551, quoting *PCI Leasing and Finance, Inc. v. Giraffe-X Creative Imaging, Inc.*, 554 Phil. 288, 302 (2007).

[8] *Id*.

For instance, Section 4, Rule 65 of the Rules of Court[9] specifically identifies the RTC as one of the courts where the petitions for *certiorari*, prohibition, and *mandamus* may be filed. Section 2 of Rule 102 on *Habeas Corpus*[10] likewise names the trial court as a venue where the petition therefor may be filed. In a similar manner, Section 3 of The Rule on Habeas Data[11] lays down at the outset that the Regional Trial Court has jurisdiction over petitions for Habeas Data and states that this Court only has jurisdiction over petitions concerning public data files of government offices. Notable too is Section 3 of the Rule on the Writ of Amparo,[12] which includes the Regional

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[9] SECTION 4. Where Petition Filed. — The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals. Emphasis supplied.

[10] SECTION 2. Who may grant the writ. — The writ of habeas corpus may be granted by the Supreme Court, or any member thereof, on any day and at any time, or by the Court of Appeals or any member thereof in the instances authorized by law, and if so granted it shall be enforceable anywhere in the Philippines, and may be made returnable before the court or any member thereof, or before a Court of First Instance, or any judge thereof for hearing and decision on the merits. It may also be granted by a Court of First Instance, or a judge thereof, on any day and at any time, and returnable before himself, enforceable only within his judicial district.

[11] A.M. No. 08-1-16-SC, February 2, 2008; SECTION 3. Where to File. — The petition may be filed with the Regional Trial Court where the petitioner or respondent resides, or that which has jurisdiction over the place where the data or information is gathered, collected or stored, at the option of the petitioner. The petition may also be filed with the Supreme Court or the Court of Appeals or the Sandiganbayan when the action concerns public data files of government offices.

[12] A.M. No. 07-9-12-SC, September 25, 2007; SECTION 3. Where to File. — The petition may be filed on any day and at any time with the Regional Trial Court of the place where the threat, act or omission was

Trial Court, the Sandiganbayan, and the Court of Appeals in the list of fora with jurisdiction over petitions for the writ of *amparo*.

The omission of the trial courts with limited jurisdiction in Section 3, Rule 7, Part III of the RPEC was not by mere oversight. Rather, the limitation of the venues to this Court and the CA, whose jurisdiction is national in scope, is the intended solution to controversies involving environmental damage of such magnitude as to affect the "inhabitants in [at least] two or more cities or provinces."

Surely, the scale of impact of the ecological problems sought to be addressed by a writ of *kalikasan* sets it apart from the other special civil actions under the other rules issued by this Court. Thus, to insist on the application of the technical principle on hierarchy of courts will only negate the emphasis given to this difference and the acknowledgement that environmental challenges deserve the immediate attention by the highest court of the land, even at the first instance. At the very least, the magnitude of the ecological problems contemplated under the RPEC satisfies at least one of the exceptions to the rule on hierarchy of courts, i.e., direct resort to this court is allowed where it is "dictated by the public welfare."

In environmental cases, this Court cannot afford to be self-important and promptly deny petitions on the clichéd ground

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committed or any of its elements occurred, or with the Sandiganbayan, the Court of Appeals, the Supreme Court, or any justice of such courts. The writ shall be enforceable anywhere in the Philippines.

When issued by a Regional Trial Court or any judge thereof, the writ shall be returnable before such court or judge.

When issued by the Sandiganbayan or the Court of Appeals or any of their justices, it may be returnable before such court or any justice thereof, or to any Regional Trial Court of the place where the threat, act or omission was committed or any of its elements occurred.

When issued by the Supreme Court or any of its justices , it may be returnable before such Court or any justice thereof, or before the Sandiganbayan or the Court of Appeals or any of their justices, or to any Regional Trial Court of the place where the threat, act or omission was committed or any of its elements occurred.

that Ours is the "court of last resort" that cannot be "burdened with the task of dealing with cases in the first instance." We must take stock and bear to recall that the rule on hierarchy of courts was created simply because this Court is not a trier of facts. Accordingly, in cases involving warring factual allegations, we applied this rule to require litigants to "repair to the trial courts at the first instance to determine the truth or falsity of these contending allegations on the basis of the evidence of the parties."[13] Under the RPEC, however, this Court burdened itself to resolve factual questions so that the rule finds no application.

Indeed, that petitions for the issuance of a writ of *kalikasan* involve factual matters cannot, without more, justify the claim that the petition must first be filed with the CA on the ground that this Court is not a trier of facts. The RPEC deviates from the other rules on this matter. After all, even if the petition has been initially lodged with the appellate court, the appellant may still raise **questions of fact** on appeal. Section 16, Rule 7, Part III of the RPEC explicitly says so:

> SECTION 16. Appeal. — Within fifteen (15) days from the date of notice of the adverse judgment or denial of motion for reconsideration, any party may appeal to the Supreme Court under Rule 45 of the Rules of Court. **The appeal may raise questions of fact**.[14]

Notably, unlike in the other civil actions, ordinary or special, Section 2(d), Rule 7, Part III of the RPEC requires not only the allegations of ultimate facts but the allegations and attachment of all relevant and material **evidence** to convince the court to issue the writ. Consequently, should the factual allegations in the petition be found insufficient, as stated by the *ponencia*, the denial of the petition must not be anchored on the violation of the rule on hierarchy of courts but on non-compliance with the said requirement. Certainly, an insufficient petition cannot

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[13] *Agan v. Philippine International Air Terminals Co., Inc.*, G.R. No. 155001, January 21, 2004.

[14] Emphasis and underscoring supplied.

be granted even when first filed with the appellate court and not this Court.

With that said, let it be stated that in the instances where this Court referred the petition to the CA for hearing and reception of evidence, it did so not because of the insufficiency of the petition[15] as it had, in fact, issued the writs prayed for. Such practice does not impose another level of bureaucracy given the facilitation by this Court in transferring the records with all the evidence and attachments to the CA. On the other hand, arbitrarily enforcing the rule on hierarchy of courts, denying the petition, insisting that it be filed first with the CA, compelling the reprinting of pleadings and the re-attaching of evidence—all at the expense of the petitioner/s—only to entertain the same case on a possible appeal after the filing of yet another petition (this time under Rule 45 of the Rules of Court) can only enliven the bureaucratic spirit.

On the issue for the issuance of a continuing *mandamus* thus prayed in the petition, I concur with the *ponencia* that mandamus does not indeed lie to compel a discretionary act. It cannot be issued to require a course of conduct. Thus, I cannot endorse the issuance of a continuing *mandamus* to compel the enforcement of the bifurcation of roads. As the *ponencia* has stated, such action amounts to requiring the respondents to act in a particular way in the implementation of the Road Sharing Principle adopted in EO 774 and AO 254.

While a continuing *mandamus* cannot, however, be used to oblige the respondents to act one way or the other, it can be used to compel the respondents to act and implement the Road Sharing Principle in whatever manner they deem best. In other words, the implementation of the Road Sharing Principle itself, as opposed to the bifurcation of the roads, is an act that can be the subject of continuing *mandamus* under the RPEC. On this point, I digress from the *ponencia*.

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[15] See *Paje v. Casiño*, *supra* note 2; *Cosalan v. Domogan*, G.R. No. 199486, January 17, 2012; *West Tower Condominium Corp. v. First Phil. Industrial Corp.*, G.R. No. 194239, June 16, 2015.

Nonetheless, the Office of the Solicitor General, on behalf of the respondents, enumerated programs that supposedly serve to implement the Road Sharing Principle,[16] refuting the petitioners' allegation of unlawful neglect on the part of the respondents in the implementation of the principle. Thus, while the sufficiency or wisdom of these programs is not established, I concede that there is no unlawful *neglect* that constrains the issuance of the extraordinary remedy of continuing *mandamus* in the present case.

CONCURRING OPINION

LEONEN, *J.*:

I concur with the *ponencia* of my colleague, Justice Caguioa, that the petition for the issuance of a Writ of Kalikasan should be denied. In addition, I wish to reiterate my view that the parties, who brought this case, have no legal standing, at least as representative parties in a class suit. Petitioners fail to convince that they are representative enough of the interests of the groups they allegedly speak for, some of whom have yet to exist and could therefore have not been consulted.

In their Petition for the issuance of the Writ of Kalikasan and Continuing Mandamus, petitioners declared themselves as the representatives of the following groups:

Victoria Segovia, Ruel Lago, Clariesse Jami Chan represent the CARLESS PEOPLE OF THE PHILIPPINES, who comprise about 98% of the Filipino people.

Gabriel Anastacio represented by his mother Grace Anastacio, Dennis Orlando Sangalang represented by his mother May Alili

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[16] *Rollo*, pp. 334-335. "Respondent MMDA has been implementing various structural and non-structural projects to help alleviate the heavy traffic in Metro Manila while trying to improve the condition of the environment. Its structural projects include: footbridges, rotundas, MMDA Mobile Bike service Program (MMDA Bike-Kadahan), Southwest Integrated Provincial System, MMDA New Traffic Signal System and Command, Control and Communications Center, Revival of the Pasig River Ferry System, Bus Management Dispatch System (Enhanced Bus Route System)."

Sangalang, Maria Paulina Castaneda represented by her mother Atricia Ann Castaneda, stand for the CHILDREN OF THE PHILIPPINES AND CHILDREN OF THE FUTURE (CHILDREN). The children are the persons most vulnerable to air poisoning, vehicular accidents, and assault because of the unsafe and wasteful car-centric transportation policies of respondents.

Renato Pineda, Jr., Aron Kerr Menguito, May Alili Sangalang, and Glynda Bathan Baterina represent CAR-OWNERS who would rather not own, use and maintain a car if only good public transportation and other non-motorized mobility options, such as clean, safe and beautiful sidewalks for walking, bicycle lanes, and waterways, were available.

Petitioners bring this suit as citizens, taxpayers and representatives of many other persons similarly situated but who are too numerous to be brought to this court. All of them stand to be injured by respondents' unlawful neglect of the principle that "Those who have less in wheels must have more in the road" (Road Sharing Principle) as directed by law.[1]

In the *ponencia*, Justice Caguioa noted the respondent's position that petitioners represented an amorphous group, who failed to show they suffered a direct injury. More than failing to show a concrete interest or injury, petitioners also failed to prove that they are true agents of the groups they represent in this action.

Locus standi or the standing to sue cannot be easily brushed aside for it is demanded by the Constitution. *Lozano v. Nograles*[2] reminds us:

The rule on locus standi is not a plain procedural rule but a constitutional requirement derived from Section 1, Article VIII of the Constitution, which mandates courts of justice to settle **only** "actual controversies involving rights which are legally demandable and enforceable."[3] (Emphasis in the original)

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[1] *Rollo*, p. 5.

[2] *Lozano v. Nograles*, 607 Phil. 334 (2009) [Per *J.* Puno, *En Banc*].

[3] *Id.* at 343.

Fundamentally, only parties who have sustained a direct injury are allowed to bring the suit in court. Rule 3, Section 2 of the Rules of Court provides that every action must be prosecuted or defended in the name of the person who would benefit or be injured by the court's judgment. This person is known as the real party in interest.[4] In environmental cases, this rule is in Rule 2, Section 4 of the Rules of Procedure for Environmental Cases, which provides:

Section 4. *Who may file*. — Any real party in interest, including the government and juridical entities authorized by law, may file a civil action involving the enforcement or violation of any environmental law.

There are three instances when a person who is not a real party in interest can file a case on behalf of the real party: One, is a representative suit under Rule 3, Section 3 of the Rules of Court where a representative files the case on behalf of his principal:[5]

Section 3. Representatives as parties. — Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of a case and shall be deemed to be the real party in interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal.

A class suit is a specie of a representative suit insofar as the persons who institute it represent the entire class of persons who have the same interest or who suffered the same injury.

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[4] RULES OF COURT, Rule 3, Sec. 2 provides: Section 2. Parties in interest. — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest. (2a)

[5] RULES OF COURT, Rule 3, Sec. 3 provides:

However, unlike representative suits, the persons instituting a class suit are themselves real parties in interest and are not suing merely as representatives. A class suit can prosper only:

(a) when the subject matter of the controversy is of common or general interest to many persons;

(b) when such persons are so numerous that it is impracticable to join them all as parties; and

(c) when such persons are sufficiently numerous as to represent and protect fully the interests of all concerned.[6]

These requirements are found in Rule 3, Section 12 of the Rules of Court, which provides:

SEC. 12. Class suit. — When the subject matter of the controversy is one of common or general interest to many persons so numerous that it is impracticable to join all as parties, a number of them which the court finds to be sufficiently numerous and representative as to fully protect the interests of all concerned may sue or defend for the benefit of all. Any party in interest shall have the right to protect his individual interest.

Lastly, there is a citizen suit where a Filipino can invoke environmental laws on behalf of other citizens including those yet to be born. This is found under Rule 2 Section 5 of the Rules of Procedure for Environmental Cases, which state:

SEC. 5. *Citizen suit.* — Any Filipino citizen in representation of others, including minors or generations yet unborn may file an action to enforce rights or obligations under environmental laws. Upon the filing of a citizen suit, the court shall issue an order which shall contain a brief description of the cause of action and the reliefs prayed for, requiring all interested parties to manifest their interest to intervene in the case within fifteen (15) days from notice thereof. The plaintiff may publish the order once in a newspaper of a general circulation in the Philippines or furnish all affected *barangays* copies of said order.

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[6] Concurring and Dissenting Opinion of *J.* Leonen in *Paje v. Casiño,* G.R. Nos. 207257, 207276, 207282 & 207366, February 3, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/207257_leonen.pdf> 6 [Per *J.* Del Castillo, *En Banc*].

This rule is derived from *Oposa v. Factoran*,[7] where the Court held that minors have the personality to sue on behalf of generations yet unborn:

> Petitioners minors assert that they represent their generation as well as generations yet unborn. We find no difficulty in ruling that they can, for themselves, for others of their generation and for the succeeding generations, file a class suit. Their personality to sue in behalf of the succeeding generations can only be based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned.[8]

It is my view that the *Oposa* Doctrine is flawed in that it allows a self-proclaimed "representative," via a citizen suit, to speak on behalf of a whole population and legally bind it on matters regardless of whether that group was consulted. As I have discussed in my Concurring Opinion in *Arigo v. Swift,*[9] there are three (3) dangers in continuing to allow the present generation to enforce environmental rights of the future generations:

> First, they run the risk of foreclosing arguments of others who are unable to take part in the suit, putting into question its representativeness. Second, varying interests may potentially result in arguments that are bordering on political issues, the resolutions of which do not fall upon this court. Third, automatically allowing a class or citizen's suit on behalf of minors and generations yet unborn may result in the oversimplification of what may be a complex issue, especially in light of the impossibility of determining future generation's tre interests on the matter.[10]

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[7] *Oposa v. Factoran, Jr.*, 296 Phil. 694 (1993) [Per *J.* Davide, Jr., *En Banc*].

[8] *Id.* at 711.

[9] Concurring Opinion of *J.* Leonen in *Arigo v. Swift*, G.R. No. 206510, September 15, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/september2014/206510_leonen.pdf> [Per *J.* Villarama, Jr., *En Banc*].

[10] *Id*. at 10–11.

This doctrine binds an unborn generation to causes of actions, arguments, and reliefs, which they did not choose.[11] It creates a situation where the Court will decide based on arguments of persons whose legitimacy as a representative is dubious at best. Furthermore, due to the nature of the citizen's suit as a representative suit,[12] *res judicata* will attach and any decision by the Court will bind the entire population. Those who did not consent will be bound by what was arrogated on their behalf by the petitioners.

I submit that the application of the *Oposa* Doctrine should be abandoned or at least limited to situations when:

(1) "There is a clear legal basis for the representative suit;

(2) There are actual concerns based squarely upon an existing legal right;

(3) There is no possibility of any countervailing interests existing within the population represented or those that are yet to be born; and

(4) There is an absolute necessity for such standing because there is a threat or catastrophe so imminent that an immediate protective measure is necessary."[13]

I find objectionable the premise that the present generation is absolutely qualified to dictate what is best for those who will exist at a different time, and living under a different set of circumstances. As noble as the "intergenerational responsibility" principle is, it should not be used to obtain judgments that would

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[11] *Id*. at 2.

[12] Concurring and Dissenting Opinion of *J*. Leonen in *Paje v. Casiño,* G.R. Nos. 207257, 207276, 207282 & 207366, February 3, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/207257_leonen.pdf> 4 [Per *J.* Del Castillo, *En Banc*].

[13] Concurring and Dissenting Opinion of *J*. Leonen in *Paje v. Casiño,* G.R. Nos. 207257, 207276, 207282 & 207366, February 3, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/207257_leonen.pdf> 5–6 [Per *J.* Del Castillo, *En Banc*].

preclude and constrain future generations from crafting their own arguments and defending their own interests.[14]

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.

ACCORDINGLY, I vote to **DISMISS** the petition.

EN BANC

[G.R. No. 216637. March 7, 2017]

AGAPITO J. CARDINO, *petitioner, vs.* **COMMISSION ON ELECTIONS *EN BANC* and ROSALINA G. JALOSJOS *a.k.a.* ROSALINA JALOSJOS JOHNSON,** *respondents.*

SYLLABUS

1. POLITICAL LAW; REPUBLIC ACT NO. 9225 (THE CITIZENSHIP RETENTION AND REACQUISITION ACT OF 2003); THE OATH IS AN ABBREVIATED REPATRIATION PROCESS THAT RESTORES ONE'S FILIPINO CITIZENSHIP AND ALL CIVIL AND POLITICAL RIGHTS AND OBLIGATIONS CONCOMITANT THEREWITH, SUBJECT TO THE CONDITIONS IMPOSED BY LAW; CASE AT BAR.— In *Sobejana-Condon v. Commission on Elections*, the Court explained in detail the requirements that must be complied with under Republic Act

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[14] Concurring Opinion of *J.* Leonen in *Arigo v. Swift*, G.R. No. 206510, September 15, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/september2014/206510_leonen.pdf> 13 [Per *J.* Villarama, Jr., *En Banc*].