

# JUSTICIABILITY OF THE RIGHT TO FOOD BEFORE PHILIPPINE COURTS\*

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## I. INTRODUCTION

The paper seeks to establish that the violation of the right to food is justiciable before Philippine courts. Its demandability as a legal right, which violation is cognizable by the courts, has its basis on international law, the Philippine Constitution, and legislative enactments recognizing the right to food. The paper proposes that the right to food is not an abstract concept; rather it is a defined right that is entitled to protection and enforcement. The Philippine legislature has already enacted laws recognizing, protecting, and fulfilling the right to food. It is urged that the Philippine judiciary play a more active role in its enforcement in actual cases and in anticipated violations of this inherent human right. The interpretation, incorporation, and advancement of the right to food in the Philippine legal system require progressive and creative thinking.

The right to food is recognized and enforced through various international treaties to which the Philippines is a party state, the most prominent of which is the International Covenant on Economic, Social, and Cultural Rights (“ICESCR”).<sup>1</sup> The ICESCR recognizes the right of everyone to an adequate standard of living for himself and his family, including a right to *adequate food*. The right to food is likewise recognized by the Philippine Constitution. The right to food is arguably inherent in the right to life and the Philippine Constitution provides that no one may be deprived of life without due process. Hence, the right to food may not be arbitrarily denied by the State. Likewise, the right to food is included in the right to health and social

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<sup>1</sup> International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), U.N. GAOR, U.N. Doc. A/6316 (Dec. 16, 1966) (hereinafter “ICESCR”).

justice provisions of the Philippine Constitution. The right to health is enumerated as one of the Principles and State Policies in the Philippine Constitution. This does not mean, however, that it is merely a guideline that needs legislation for implementation. The right to health (and consequently the right to food) may be considered as self-executing following the arguments in the case of *Oposa v. Factoran*<sup>2</sup> with respect to the right to a balanced and healthful ecology, which is also enumerated as another of the Principles and State Policies in the Philippine Constitution.

On their face, the agrarian reform laws are faithful to the policy of redistribution of agricultural land to landless farmers for income and sustenance; however, exemptions to its coverage, conversion, and reclassification of land usage enable circumvention of agrarian laws. These circumventions are palpable violations of the right to food as they deprive farmers of access to means of producing and cultivating food, and of their livelihood that enables them to feed their families. These violations of the right to food may be redressed through actions before Philippine courts.

Chapter Two lays the foundation. It discusses the nature, origin, and development of the right to food as an internationally recognized human right. The evolution of economic, social and cultural (“ESC”) rights is crucial in the understanding of the challenges these rights face in its recognition and enforcement. It also tackles the obligations of states with respect to the right to food. Chapter Three gives the Philippine context. It establishes the importance of enforcement by and justiciability of the right to food before domestic courts. Chapter Four is an exposition on the justiciability of the right to food. The right to a remedy has often been considered one of the most fundamental and essential rights for the effective protection of all other human rights. Chapter Five focuses on the approaches in enforcing the justiciability of the right to food before Philippine courts. Chapter Six shows a discussion of the agrarian reform in the Philippines and how its improper implementation could be violative of the right to food. Such violations may be brought before domestic courts as violation of international commitments, the Philippine Constitution, and of domestic agrarian laws. Lastly, Chapter Seven recommends the adoption of procedural measures by the Philippine judiciary to ensure the justiciability of the right to food.

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<sup>2</sup> G.R. No. 101083, Jul. 30, 1993.

## II. NATURE AND DEVELOPMENT OF THE RIGHT TO FOOD

### *A. Definition and Scope of the Right to Food*

The right to food is “the right to have *regular, permanent and free access*, either directly or by means of financial purchases, to *quantitatively and qualitatively adequate and sufficient food* corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.”<sup>3</sup> The right to adequate food “is realized when every man, woman and child, alone or in a community with others, has physical and economic access at all times to adequate food or means for its procurement.”<sup>4</sup> From this definition, it is apparent that the full realization of the right to food will only be attained if there is access at all times not only to adequate food, but more importantly to means for its procurement, whether in monetary form or in production resources. Clearly, the right to food does not demand that states hand over food to the people just as in a full welfare state, but instead demands that the state ensures and provides access to the means by which food can be availed of by the people.

The role states play in the recognition, protection, and enforcement of the right to food cannot be underplayed. The three areas of state responsibility are: (1) the obligation to respect, (2) the obligation to protect, and (3) the obligation to fulfill.<sup>5</sup>

The first obligation refers to the state's duty *not to interfere in the livelihood* of its subjects in their abilities to provide for themselves. This is the easiest to fulfill as the state need only play the role of a passive observer. Action need not be taken; rather, it is a negative duty not to interfere.

The second obligation entails the creation of a regulatory environment conducive to the protection of the right to food. This is primarily achieved

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<sup>3</sup> Jean Ziegler, *Report by the Special Rapporteur on the Right to Food* at 26 ¶ 14, U.N. Doc. E/CN.4/2001/53 (Jul. 2, 2001), emphasis supplied.

<sup>4</sup> General Comments: The right to adequate food (Art.11), U.N. Doc. E/C.12/1999/5 at 6 (May 12, 1999), available at <http://www.unhchr.ch/tbs/doc.nsf/0/3d02758c707031d58025677f003b73b9> (last visited Oct. 18, 2012).

<sup>5</sup> Raghav Gaiha, *Does the Right to Food Matter?* ECON. & POL. WKLY., Oct. 2003, at 4269, 4271.

through legislation. In the Philippines, it will be noted that the executive department has likewise played an active role in regulation of access to food. The executive branch frequently issues orders monitoring and providing for food access to vulnerable sectors. The duty to protect is not confined to physical restraint but also encompasses the design of the laws and institutions that would *discourage the deprivation of subsistence*. Legislation is impliedly an acknowledgment of the enforceability of the right to food before courts of law.

The third obligation requires *positive action* by the state in identifying vulnerable groups and in *facilitating their access to food-producing resources or income generation*. The third obligation may take the form of duties required to avoid depriving people of means of subsistence. It is noteworthy that the Philippine legislature is in active fulfillment of this third obligation. In the *Magna Carta for Women*,<sup>6</sup> the women sector has been identified as a vulnerable group. It is explicit in its provisions of the guarantee of access to means of food production. This is the first piece of Philippine legislation that explicitly recognizes, protects, and attempts to fulfill the right to food.

It should be emphasized that the right to food does not involve the common notion of provision of food, as in a purely welfare state. The right to food does not entail the handing out of food stubs or the distribution of warm meals, other than in the most exceptional and necessary situations. Food provision is only demanded under special circumstances of failure to perform the duty to avoid and protect, and in cases of natural disasters where there is lack or inadequacy of food sources.<sup>7</sup> Duties to fulfill, requiring the direct provision of food by state authorities, typically arise in cases of acute market failures – failures in the supply side, and failures in the possibilities of purchase by deprived segments of the population.<sup>8</sup>

In the past decades, the Philippines has been performing its duty by directly providing food in short-term feeding programs at public schools and by establishing anti-hunger task forces.<sup>9</sup> These were done solely through

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<sup>6</sup> Rep. Act No. 9710 (2009), available at <http://www.gov.ph/2009/08/14/republic-act-no-9710> (last visited Mar. 24, 2013).

<sup>7</sup> Gaiha, *supra* note 5 at 4271.

<sup>8</sup> Christian Courtis, *The Right to Food as a Justiciable Right: Challenges and Strategies*, II, MAX PLANCK Y.B. OF U.N. L., 2007, 317-337, 324.

<sup>9</sup> See Accelerated Hunger-Mitigation Program at <http://www.nnc.gov.ph/plans-and-programs/ahmp> (last visited Mar. 24, 2013).

executive enactments and were usually of limited scope and for a short time, often with political undertones. Such forms of assistance are simply band-aid solutions that fail to address the root cause of the problems concerning the right to food. It provided for temporary relief that neither alleviated the conditions of the vulnerable sectors nor gave them the resources to be self-sufficient. Fortunately, the Philippine legislature, slowly and progressively, has been enacting laws that not only recognize the right to food, but also fulfill the right to food by capacity-building and ensuring access to tangible technological resources.<sup>10</sup> This will be further discussed in the succeeding chapters.

*B. History, Development, and Challenges in Enforcing the Right to Food*

It has been observed that:

The historical and political background of the right to food is much more than the history and politics of malnutrition. It concerns the *development of the notion of access to food as a right*. As a right, it sets obligations on the state and community of states. These obligations have been established as “enforceable” through *centuries of social struggle* for a democratic state in the service of the people. Traditionally people had no remedy other than revolt against a king or state that failed to meet its obligations. *The idea of the human right to food is to establish procedural and legal means for seeking remedies against authorities when they fail to guarantee access to food*. This idea is barely 200 years old and not yet legally implemented in most states even today.<sup>11</sup> (Emphasis supplied)

The human right to food has its contemporary origin within the United Nations (“UN”) Universal Human Rights framework. The main reference point is found in the Universal Declaration of Human Rights (“UDHR”), Article 25, which states that “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and his family,

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<sup>10</sup> Virgilio de los Reyes & Maria Socorro Diokno, *Right to Food Assessment, Philippines: An Assessment of the Philippine Legal Framework Governing the Right to Food*, FOOD & AGRI. ORG. (2010), available at <http://www.fao.org/docrep/016/ap598e/ap598e.pdf> (last visited Mar. 24, 2013).

<sup>11</sup> Circle of Rights, *Module 12: The Right to Adequate Food*, ECONOMIC, SOCIAL & CULTURAL RIGHTS ACTIVISM: A TRAINING RESOURCE, available at <http://www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module12.htm> (last visited Jul. 14, 2013).

including food.” In 1987, a report entitled, *The Right to Food as a Human Right*, became the starting point for a series of investigations of the rights contained in the ICESCR.<sup>12</sup> The crucial role of the right to food was reconfirmed almost 10 years later when the 1996 World Food Summit requested the High Commissioner for Human Rights to define its legal content.<sup>13</sup> Another consequence of the World Food Summit was the Draft Code of Conduct on the Right to Adequate Food.<sup>14</sup>

The right to food is now enshrined in several international human rights and other treaties such as the ICESCR, Convention on the Rights of the Child,<sup>15</sup> the Additional Protocol to the Geneva Conventions and Relating to the Protection of Victims of International and Non-International Armed Conflicts,<sup>16</sup> and the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”).<sup>17</sup>

Despite these developments, there is still no coherent body of legal authority on the enforcement of the right to food. As noted by Christian Courtis:

The absence of a sufficiently coherent body of legal regulations, case law or jurisprudence in the area of ESC rights is *not because of any fundamental concern relating to their non-justiciable nature, but rather due to ideology*. It is clear that during the eighteenth to and nineteenth centuries, law, as now understood, developed principally to give a legal underpinning to the capitalist market structure . . . A consequence is that ESC rights are considered to be “programmatic” rights<sup>18</sup> -- as opposed to directly enforceable rights. The criteria, therefore, for designing and implementing social policies is left to the complete discretion of political branches. Even

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Convention on the Rights of the Child, G.A. Res. 44/25, annex, U.N. GAOR, U.N. Doc. A/44/49 at 167 (1989).

<sup>16</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 UNTS 3.

<sup>17</sup> Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, U.N. GAOR Supp. (No. 46), U.N. Doc. A/34/46 at 193 (1980).

<sup>18</sup> According to this doctrine, “programmatic” rights are those that require the political branches of the state to take action, but do not offer right-holders an entitlement to claim them before courts. Even if enshrined in Constitutions and human rights treaties, ESC rights are still often considered in this way, i.e. as incomplete or imperfect rights.

in jurisdictions where a legal basis for the welfare state has been nurtured, there is still often no distinct legal discipline of ESC rights.<sup>19</sup> (Emphasis supplied)

There is another noted historical factor, which helps explain why, although ESC rights are recognized in many Constitutions, there has not been a coherent conceptual development of their content.

The recognition and enforcement of ESC rights was primarily through the protection of labor. Even those countries, both developed and developing, which were committed to establishing a welfare state during the twentieth century, did so mainly through a redistributive model centered on labor relations. The strong and organized position of workers in the labor market ensured the distribution of entitlements, income transfers and access to other socially-oriented services such as housing, consumer credit, social insurance or health care services. *There was little space, however, for the separate development, outside of the labor market, of rights such as the right to health, the right to food or the right to adequate housing, partly because they were seen as supplementary to workers' entitlements or ancillary to the workers' position.* ESC rights were therefore subsumed within the labor movement and did not form part of a distinct and justiciable set of rights in and of themselves<sup>20</sup> (Emphasis supplied)

Furthermore, it has been noted that there was a “common assumption during the so-called 'golden years' of the welfare state that ensuring access to decent salaries and working conditions was the main strategy for indirectly satisfying the basic needs of the population.”<sup>21</sup> Hence, ESC rights were subsumed in the narrower labor rights, leading to its stunted development as a separate and broader body of rights.

The same phenomenon can be observed in the development of the right to food in the Philippines. The focus has likewise been in ensuring that labor rights are protected, in the hope that all other rights such as to food, health, and adequate housing will be addressed. The Philippine legal system's

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<sup>19</sup> Courtis, *supra* note 8 at 13.

<sup>20</sup> CHRISTIAN COURTIS, INT'L. COMM'N. OF JURISTS, COURTS AND THE LEGAL ENFORCEMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS: COMPARATIVE EXPERIENCES OF JUSTICIABILITY 13-14 (2008), available at [http://www.humanrights.ch/upload/pdf/080819\\_justiziabilit\\_esc.pdf](http://www.humanrights.ch/upload/pdf/080819_justiziabilit_esc.pdf) (last visited Sept. 7, 2013).

<sup>21</sup> *Id.*, at 14.

approach to right to food was developed with capitalist underpinnings. The solution to social welfare concerns has been deemed to be the provision of employment with entitlement to security of tenure, humane conditions of work, and a living wage.

It is crucial in the understanding of the challenges facing ESC rights to take into account its history and evolution. Unlike civil and political rights, which have grown through centuries of struggle and legal evolution, with international law eventually reflecting the evolved national laws protecting these rights, the process with ESC rights has been the reverse. International law literature concerning the right to food is far more developed than local legal literature. It has been the international community that has been pushing for the fulfillment and realization of the right to food at the local level, rather than states pushing for the right to food attaining a status of an international legal norm. As a result, there is an observed phenomenon of many of the ESC rights first being established in international law, then slowly working their way to becoming part of domestic legal systems as positive obligations and enforceable rights. However, these rights have yet to be translated in a meaningful way into national laws, and have yet to be taken to heart by the people.<sup>22</sup>

The order of development of the right to food may be attributed to misguided notions of its nature. Supporters of the traditional school of thought usually argue that ESC rights are too vague to recognize and implement. Thus, there is a preconceived notion of great difficulty in setting the demarcation line for violations. Some scholars also argue that courts lack both the democratic legitimacy to intervene in decisions of social policy and the ability to fully understand and adjudicate the complex issues involved. The role of the judiciary has been confined to resolving cases and interpreting black letter law. The judiciary is deemed to have no role in affairs involving policy-making, which is believed to be in the realm of politics. As a result, many governments, scholars, and international organizations have rejected the possibility that victims could invoke these “second-class” rights in the courts, given the impracticability of adjudicating rights both amorphous and expensive to implement.<sup>23</sup> The failure to attribute to the right to food the status of a

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<sup>22</sup> Robert Robertson, *Measuring State Compliance with the Obligation to Devote the “Maximum Available Resources” to Realizing Economic, Social, and Cultural Rights*, 16 HUM. RTS. Q. 693-714 (1994).

<sup>23</sup> Note, *What Price for the Priceless?: Implementing the Justiciability of the Right to Water*, 120 HARV. L. REV. 1067 (2007).



social standard and a legal obligation is often rationalized on the grounds that it would be prohibitively expensive to states; that it is extremely difficult to define it in legally enforceable terms; that it would involve redistribution of privately held resources; and that it may be misused by repressive governments.<sup>24</sup>

Thus, it seems that the lack of common pain and struggle in the birthing of ESC rights makes it harder for states and domestic policy-makers to appreciate it as equals of civil and political rights. Since the right to food is, more often than not, a concern of an individual rather than of an entire community, it is not a shared hardship and undertaking. In a way, the right to food is viewed not as an urgent concern and not as sensational a right that demands immediate attention and enforcement. Capitalist underpinnings further entrench the notion that the right to food is not a right demandable against the state, but a responsibility of individuals to fend for themselves. It is viewed that the responsibility of the state is to regulate the capitalist market and employment through ensuring a living wage. With that, it is assumed that employees would be able to responsibly provide for their own necessities. The Philippine reality is far from this, as will be established in the succeeding chapter.

It is important to emphasize at this juncture that the question of content and scope of a right is not an exclusive problem of ESC rights. The determination of the content of every right, whether ESC or civil or political, is vulnerable of being labeled as insufficiently precise. This is necessarily because many legal rules are expressed in broad terms, and to a certain extent, unavoidably, general wording. This is to give law the flexibility of interpretation when inevitably applied to different fact patterns. The generality of wording is brought about by the reality that it would be impossible for the legislature to foresee every scenario to which a corresponding rule of law shall govern. As such, those considered as “classic” rights (such as the right to property, freedom of expression, equal treatment or due process) face this hurdle to the same extent as ESC rights. Yet, this has never led to the conclusion that these “classic” rights are not rights, or that they are not judicially enforceable. On the contrary, it has resulted in ongoing efforts to specify the content and limits of these rights, through a series of mechanisms aimed at defining their meaning,<sup>25</sup> which should likewise be the case for ESC rights.

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<sup>24</sup> Gaiha, *supra* note 5.

<sup>25</sup> Courtis, *supra* note 8 at 15.

In identifying the scope of the ESC rights and their content, the International Convention of Jurists set out the following in the Bangalore Declaration and Plan of Action:

Specifying those aspects of ESC rights which are readily susceptible to legal enforcements requires legal skills and imagination. It is necessary to define legal obligations with precision, to define clearly what constitutes a violation, to specify the conditions to be taken as complaints, to develop strategies for dealing with abuses and failures, and to provide legal vehicles, in appropriate cases, for securing the attainment of objectives deemed desirable.<sup>26</sup>

The status of ESC rights as “second class” is brought about by the failure to develop its literature, oddly because it is considered as insufficiently precise for enforcement. What then needs to be done is to institute a series of mechanisms precisely designed to define its meaning, just as what has been the approach and natural course of development of civil and political rights. As pointed out by Christian Courtis:

The consequence of this long-term standing notion that ESC rights are non-enforceable has been an absence of any effort on the part of the judiciary in many countries to define the principles for their construction. Due to the purely rhetorical value ascribed to these rights, and to the lack of attention paid to their interpretation by the judiciary and legal academics, fewer concepts have been developed that would help to understand rights such as the right to food. However, the lack of practical elaboration of many of these rights does not justify the claim that because of some essential or hidden trait, ESC rights, as a whole category, cannot be defined at all.<sup>27</sup>

Moreover, the indivisibility and interdependence of rights have already been explicitly recognized multiple times sufficient to do away with the misconceptions of the lower status of ESC rights vis-à-vis civil and political rights. At the 1993 World Conference on Human Rights, states adopted the Vienna Declaration and Plan of Action in which they agreed that: “*All human rights are universal, indivisible and interdependent and interrelated.*” The international

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<sup>26</sup> Courtis, *supra* note 20 at 16.

<sup>27</sup> *Id.*

community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.”<sup>28</sup> This is a reiteration of the Limburg Principles, which provided that “human rights and fundamental freedoms are *indivisible and interdependent*, [therefore] *equal attention and urgent consideration should be given* to the implementation, promotion and protection of both civil and political, and economic, social and cultural rights.”<sup>29</sup>

This clearly means that ESC rights must be treated as equal in necessity and importance to civil and political rights. It also means that they must be considered the same in nature, enforceability, and justiciability. Therefore, the enforcement mechanisms put in place to protect ESC rights should be just as strong as the enforcement mechanisms that protect civil and political rights.<sup>30</sup>

### *C. Obligations with Respect to Right to Food*

Under the ICESCR, the right to food is recognized as one of the rights *derived from the inherent dignity of the human person*. Article 11 of the ICESCR provides:

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including *adequate food*, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the *fundamental right* of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

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<sup>28</sup> Vienna Declaration and Programme of Action, *available at* <http://www2.ohchr.org/english/law/vienna.htm> (last visited Oct. 18, 2012) (hereinafter “Vienna Declaration”), emphasis supplied.

<sup>29</sup> U.N. Commission on Human Rights, Note Verbale, *The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, (Jan. 8 1987) (hereinafter “Limburg Principles”), emphasis supplied.

<sup>30</sup> Ziegler, *supra* note 3 at 33.

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need. (Emphasis supplied)

Each state party has the obligation to “take steps, individually and through international assistance and cooperation, especially economic and technical, *to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.*”<sup>31</sup> The obligation under the ICESCR towards the progressive realization of the right to food is consonant with the recognition that it is an inherent human right. Under the Charter of the UN, it is the obligation of states to promote universal respect and observance of human rights and freedoms.

The term “progressive realization” is often used to describe the intention of the aforesaid phrase. It is a recognition of the fact that full realization of all ESC rights is generally incapable of being achieved in a short span of time.<sup>32</sup> It should not be construed as authorizing states to renege on their obligations. As Christian Courtis observes:

It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of ESC rights. On the other hand, the phrase must be read in the light of the overall objective, indeed the *raison d'être*, of the Covenant which is to establish clear obligations for States parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum

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<sup>31</sup> ICESCR, *supra* note 1, emphasis supplied.

<sup>32</sup> Ziegler, *supra* note 3 at 9.

available resources.<sup>33</sup>

Indeed, all states have an obligation to immediately begin to take steps towards full realization of the rights contained in the ICESCR.<sup>34</sup> It is required that state parties “move as expeditiously as possible towards the realization of the rights.” Under no circumstances shall this be interpreted as implying for states the right to defer indefinitely efforts to ensure full realization.<sup>35</sup> The term “progressively” may not be interpreted to exempt a state from immediately providing, at the minimum, subsistence to its population under all circumstances.<sup>36</sup> Under the Limburg Principles on the Implementation of the ICESCR, “[s]tate parties are obliged regardless of the level of economic development, to ensure respect for minimum subsistence rights for all.”

A minimum core obligation to ensure the satisfaction of, at the very least, essential levels of each of the rights is incumbent upon every state party. In order for a state party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources, it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.<sup>37</sup> Even where the available resources are demonstrably inadequate, the obligation remains for a state party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances.<sup>38</sup> The resources that may be employed by the state may involve the intrusion “without limit into both private and state resources previously used for other purposes, in order to ensure its population receives 'core' entitlements.”<sup>39</sup>

The ESC rights are only subject to the limitations that are “determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.”<sup>40</sup> The means which should be used in order to satisfy the obligation are defined in Article 2 (1) of the ICESCR as “*all appropriate means, including*

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<sup>33</sup> *Id.*

<sup>34</sup> Vienna Declaration, *supra* note 28 at 16.

<sup>35</sup> Limburg Principles, *supra* note 29 at 21.

<sup>36</sup> Robertson, *supra* note 22 at 701.

<sup>37</sup> Ziegler, *supra* note 3 at 10.

<sup>38</sup> *Id.*, at 11.

<sup>39</sup> Robertson, *supra* note 22 at 702.

<sup>40</sup> ICESCR, *supra* note 1.

*particularly the adoption of legislative measures.*"<sup>41</sup> At the national level, state-parties shall use all appropriate means, including legislative, administrative, judicial, economic, social and educational measures, consistent with the nature of the rights.<sup>42</sup>

The Committee recognizes that, in many instances, legislation is highly desirable and in some cases even indispensable.<sup>43</sup> However, legislative measures alone are not sufficient to fulfil the obligations of the Covenant.<sup>44</sup> The judiciary plays a crucial role in defining the right to food. Still, judicial adjudication is not, and cannot be, the main means to fully realize ESC rights. The development and implementation of services necessary to make these rights a reality are the kinds of tasks that mainly (but not exclusively) correspond to the political branches of governments, and not to the judiciary.<sup>45</sup> It may be argued that justiciability should be considered as *another or as additional means of enforcement and implementation* of ESC rights, as is the case with civil and political rights.<sup>46</sup> While litigation should not be seen as the only means in the realization of ESC rights, the complete lack of any recourse to the courts of law clearly downgrades the span of mechanisms available to victims of rights violations, and thus makes state accountability weaker, erodes deterrence, and fosters impunity.<sup>47</sup>

Part and parcel of the state's obligation to enact laws is to ensure compliance and enforcement of these laws and of the covenant itself through executive and judicial action. After all, it is explicitly provided in the Limburg Principles that "States parties shall provide for effective remedies including, where appropriate, judicial remedies."<sup>48</sup> Among the measures which might be considered appropriate, in addition to legislation, is the provision of judicial remedies with respect to rights which may, in accordance with the national legal system, be considered justiciable.<sup>49</sup> The enactment of laws is a direct and cogent recognition of its justiciability.

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<sup>41</sup> Emphasis supplied.

<sup>42</sup> Limburg Principles *supra* note 29 at 17.

<sup>43</sup> Ziegler, *supra* note 3 at 3.

<sup>44</sup> Limburg Principles, *supra* note 29 at 18.

<sup>45</sup> Courtis, *supra* note 8 at 319.

<sup>46</sup> *Id.*, at 320.

<sup>47</sup> *Id.*, at 320.

<sup>48</sup> Limburg Principles, *supra* note 29 at 19.

<sup>49</sup> Ziegler, *supra* note 3 at 5.

Though the ICESCR makes no reference, as does the International Covenant on Civil and Political Right (“ICCPR”),<sup>50</sup> to any obligation to “develop the possibilities of judicial remedy,” the specific reference to adoption of “legislative measures” presumably encourage provisions for legal remedies for ESC rights as well.<sup>51</sup> The Committee on ESC rights has repeatedly rejected the suggestion that Article 2 undermines enforceability. It has taken several important steps in insisting that a number of the rights are justiciable.<sup>52</sup> Therefore, a key mechanism of justiciability is government enforcement: the ability of the courts, once the right is recognized, to enforce and adjudicate it. Justiciability enables individuals to seek remedies and hold their governments accountable if the right is violated.<sup>53</sup>

The literature on the right to water is instructive as to the justiciability and the need thereof for the enforcement of the right to food:

Putting the justiciability of the right to water into practice at the national, continental and international level represents the ultimate goal of the mobilisation around this plan of action that we hope to achieve. We will really be able to say that the right to water has been effectively implemented once *individuals are able to assert the application of this right before the courts of their countries or before continental or international jurisdictions that will be authorised to issue compulsory verdicts*.<sup>54</sup> (Emphasis supplied)

### III. THE RIGHT TO FOOD IN THE PHILIPPINE CONTEXT

The Philippines has ratified quite a number of international treaties enforcing the right to food such as the ICESCR, ICCPR, Convention on the Rights of the Child, and CEDAW. As earlier pointed out, the Philippine

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<sup>50</sup> International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. Doc. A/6316, art. 2, 22 (Dec. 16, 1996).

<sup>51</sup> Bruce Porter, The Domestic Implementation of the ICESCR: The Right to Effective Remedies, the Role of Courts and the Place of the Claimant of ESC Rights, lecture delivered at the Workshop for Judges and Lawyers in North East Asia hosted by the Office of the United Nations High Commissioner for Human Rights and the International Commission of Jurists in Ulaan Bataar, Mongolia (Jan. 26-28, 2004).

<sup>52</sup> SHIVANI VERMA INT’L COUNCIL ON HUM. RTS. POL’Y., JUSTICIABILITY OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS, RELEVANT CASE LAW 9 (2005).

<sup>53</sup> HARV. L. REV., *supra* note 23 at 1072.

<sup>54</sup> *Id.*

government has been fulfilling its obligations of respect and protection principally through executive and legislative enactments. Yet, statistics belie the progress that these enactments should have brought forth.

The country's total land area is more than 30 million hectares. Forestland covers 15.84 million, while the alienable & disposable land covers 14.17 million hectares and about 13 million hectares of land are devoted to agriculture. According to the Department of Agriculture, 4.01 million hectares or 31% of the 13 million hectares of agricultural land is devoted to food grains (rice and corn); 8.33 million hectares or 52% is for food crops and 2.2 million hectares or 17% for non-food crops.<sup>55</sup> Despite the vastness of land devoted for agriculture, the Philippines has a relatively high and increasing incidence of hunger. The proportion of households with *per capita* calorie intake below 100% dietary energy requirement increased from 57.0% in 2003 to 66.9% in 2008. In 2008, the proportion that experienced hunger but did not eat was 16.1% among mothers and 11.1% among children. Contributing to the worsening statistics is price inflation. The required daily income for a family of five to meet its food needs increased from P104 in 2003 to P127 in 2006 to P160 in 2009.<sup>56</sup>

Former Chief Justice Reynato Puno of the Philippine Supreme Court, made a scathing remark that "[t]he root cause of this problem is well-known. It is the relentless greed of a few families who, from the beginning of time, have always controlled the wealth of our country."<sup>57</sup> The country's resources (land, water, public land, capital), wealth and income continue to be owned and/or controlled by only a number of families. This is a basic reason why many people, especially in the rural areas, are poor, hungry and cannot afford to buy adequate and nutritious food. On the Negros Island, for instance, only 1,761 sugar planters out of the 20,425 planters own more than 25 hectares. These 1,761 planters control 119,100 hectares while 14,952 small sugarcane planters, on the other hand, whose land does not exceed five hectares, only control 32,274 hectares. Data from the Philippine Coconut Authority showed that in

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<sup>55</sup> FIAN PHILIPPINES, PARALLEL REPORT: THE RIGHT TO ADEQUATE FOOD IN THE PHILIPPINES 8 (2008), available at [http://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/FIAN\\_Philippines41.pdf](http://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/FIAN_Philippines41.pdf) (last visited Jul. 14, 2013).

<sup>56</sup> Romulo Virola, *Hungry for Hunger Statistics?* NATIONAL STATISTICAL COORDINATION BOARD, available at [http://www.nscb.gov.ph/headlines/StatsSpeak/2011/050911\\_rav.asp](http://www.nscb.gov.ph/headlines/StatsSpeak/2011/050911_rav.asp) (last visited Jan. 2, 2013).

<sup>57</sup> Reynato Puno, *Survey: Rich-Poor Gap Widens*, PHIL. DAILY INQUIRER, Jan. 13, 2008 (speech before the Philippine Bible Society).



the coconut areas, 16,905 owners whose land totals 20 hectares or more control 1.485 million hectares. Those owning less than five hectares, on the other hand, total 777,587 but they control only 1.089 million hectares.<sup>58</sup>

Access to sources of food is protected by the right to food. The deprivation of access to farmers does not only result in their inability to grow their own foods, but also affects their very livelihood which gives them the financial means to procure food for their families. It should be made clear that farming is a way of life in most rural areas, and until and unless they decide to abandon this vocation, they cannot be deprived of their means to their livelihood. It is not a matter of giving them employment. A major sector of our farming economy is composed of marginalized subsistence farmers, who by definition are farmers that depend primarily on farming for their subsistence and till their own land with the help of members of their household.<sup>59</sup> Agriculture is the primary and often only source of income for poor rural people, most of whom depend on subsistence farming and fishing for their livelihoods. Among the causes of rural poverty are a decline in the productivity and profitability of farming, smaller farm sizes, and unsustainable practices that have led to deforestation and depleted fishing waters.<sup>60</sup>

The role of agrarian reform vis-à-vis the recognition, enforcement, and justiciability of the right to food is tackled in the succeeding chapters.

#### IV. JUSTICIABILITY OF THE RIGHT TO FOOD

Human rights obligations would have little meaning if the duty bearers could not be held accountable to right-holders and to society at large.<sup>61</sup> Judicial and quasi-judicial accountability are established through legislation, its implementation, and, in the final instance, the ability of a free and independent judicial or quasi-judicial body to uphold the law through the effective

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<sup>58</sup> FIAN PHILIPPINES, *supra* note 55 at 13.

<sup>59</sup> Republic Act No. 8175, § 2 (1995).

<sup>60</sup> *Rural poverty in Philippines*, RURAL POVERTY PORTAL, at <http://www.ruralpovertyportal.org/country/home/tags/philippines> (last visited Jan. 4, 2013).

<sup>61</sup> Intergovernmental Working Group for the Elaboration of a Set of Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security on its 2nd Sess., Oct. 27-29, 2003 (hereinafter “Intergovernmental Working Group”).

enforcement of judicial pronouncements, thus supporting both the separation and balance of powers.<sup>62</sup>

Essentially, justiciable rights are rights that are capable of being adjudicated by a court of law. The victim of a violation shall be able to bring his case before the judiciary and avail of an effective remedy for the damage that he has suffered.<sup>63</sup> Justiciability involves the possibility for alleged victims of violations of ESC rights to file complaints before an impartial body, and to pray for adequate reliefs if a violation is deemed to have occurred.<sup>64</sup> Such legal remedies are particularly important when the matter at stake is the violation of human rights, which are, by definition, rights inherent to the human being's condition and identity. It is for this reason that a number of human rights instruments expressly provide for a right to a remedy in case of violations of human rights. The right to a remedy has often been considered as one of the most fundamental and essential rights for the effective protection of all other human rights. Similar provisions regarding the protection of constitutional and fundamental rights can be found in many Constitutions around the world.<sup>65</sup>

The UN Committee on ESC rights reflects this notion in its General Comment No. 9:<sup>66</sup>

[T]his flexibility co-exists with the obligation upon each State party to use all the means at its disposal to give effect to the rights recognized in the Covenant. In this respect, the fundamental requirements of international human rights law must be borne in mind. *Thus the covenant norms must be recognized in appropriate ways within the domestic legal order, appropriate means of redress, or remedies, must be available to any aggrieved individual or group, and appropriate means of ensuring governmental accountability must be put in place.* (Emphasis supplied)

Justiciability is essential in the fight for the right to food. If governments are to be properly held accountable for not meeting their obligations under international and domestic laws, then justiciability of the

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<sup>62</sup> *Id.*, at 3.

<sup>63</sup> Ziegler, *supra* note 3 at 30.

<sup>64</sup> Courtis, *supra* note 8 at 317.

<sup>65</sup> *Id.*, at 7.

<sup>66</sup> General Comment No. 9: The domestic application of the Covenant, U.N. Doc. E/C.12/1998/24.

right to food must be fully established.<sup>67</sup> Enforcement mechanisms must also be made stronger.<sup>68</sup>

Arguments have been used in the past to suggest that the right to food could not be justiciable. It was argued that ESC rights were different by their very nature and, hence, non-justiciable for four reasons: (1) the right to food was imprecise; (2) the right to food was subject to the limit of progressive realization; (3) the right to food required resources to be provided; and (4) that, in the absence of precise national legislation on the right to food, it was difficult for the judiciary to fill the gap that properly belonged to the legislative branch of the state.<sup>69</sup>

Jean Ziegler, in the *Report by the Special Rapporteur on the Right to Food*,<sup>70</sup> raises the main argument against ESC rights: that in contrast to civil and political rights, ESC rights need resources to enforce. Civil and political rights are effectively “negative obligations.” The state must simply refrain from taking actions that stop people from exercising their civil and political rights. It implies that the state should not do anything, thus inexpensive to implement. ESC rights, on the other hand, are viewed as “positive obligations” as they require the state to take positive actions to improve the living conditions of people. This necessarily entails expenditure of resources. Even when ESC rights are laid down in national Constitutions, these rights are often considered as “directives” or “guidelines” for governments, rather than as individual rights that are enforceable in courts. This is because, it is suggested, the judiciary should neither have the power to adjudicate the right to food nor to control policies and resources that are the responsibility of the executive branch of the government.<sup>71</sup>

However, the Committee on ESC rights has pointed out that to put ESC rights beyond the reach of courts is arbitrary and incompatible with the Vienna principle that these rights are indivisible and interdependent.<sup>72</sup> As noted, it would be extremely difficult, in light of overlaps and convergence of ESC and civil and political rights, to justify different means for giving domestic effect to ESC rights than for civil and political rights. The Committee states

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<sup>67</sup> Ziegler, *supra* note 3 at 29.

<sup>68</sup> *Id.*, at 29.

<sup>69</sup> *Id.*, at 35.

<sup>70</sup> Ziegler, *supra* note 3.

<sup>71</sup> *Id.*, at 36.

<sup>72</sup> *Id.*, at 37.

that to declare this one category of rights to be beyond the reach of courts would be “arbitrary and incompatible with the principle that two sets of rights are indivisible and interdependent.” The indivisibility of the two categories of rights “makes it a practical impossibility to institutionalize a bifurcation with respect to the appropriate roles of courts.”<sup>73</sup>

The justiciability of ESC rights has been recognized in the Limburg Principles. Although the full realization of the rights recognized in the Covenant is to be attained progressively, the application of some rights can be made justiciable immediately.<sup>74</sup> Further, accountability in compliance with the ESC rights is directed to both the international community and to citizens.<sup>75</sup> In adjudicating ESC rights, courts are not expected to do anything very different from what they do when they adjudicate civil and political rights; as in many cases, issues may be considered as both pertaining to ESC as well as civil and political rights. Since violations of ESC rights invariably affect the most vulnerable and marginalized in society, it will be rare that ESC rights claims could not also be framed as a violation of the right to equality – particularly if poverty, economic status, or social conditions are recognized as a ground for discrimination.<sup>76</sup>

The South African Constitutional Court has affirmed that, “at the very minimum, socio-economic rights can be negatively protected from improper invasion.”<sup>77</sup> This type of protection would be easily justiciable in most jurisdictions.<sup>78</sup> On the other hand, positive obligations to ensure that individuals have access to food in all circumstances have been increasingly viewed as justiciable.<sup>79</sup>

The idea that civil and political rights are justiciable rights has only become clear through legal developments and jurisprudence. Thus, the role of courts in not only providing relief but also in setting guidelines and in affirming the status of the right to food as an enforceable right cannot be understated. The Philippine Supreme Court’s enlightened decision in the

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<sup>73</sup> Porter, *supra* note 51 at 8.

<sup>74</sup> Limburg Principles, *supra* note 29 at 8.

<sup>75</sup> *Id.*, at 10.

<sup>76</sup> Porter, *supra* note 51 at 8.

<sup>77</sup> Intergovernmental Working Group, *supra* note 61 at 3.

<sup>78</sup> *Id.*, at 4.

<sup>79</sup> *Id.*

landmark case of *Oposa v. Factoran*,<sup>80</sup> can be used as a framework in enforcing the right to food.

One of the concerns in the realization of ESC rights is the extent to which the judiciary can discharge its constitutional mandate without overstepping its authority and impinging on the functions of the other branches of the government. It has often been raised that adjudicating ESC rights is not an appropriate or legitimate role for the judiciary since such adjudication will inevitably involve policy decision-making, which is properly the function of the political branches of government. This argument, however, fails to acknowledge that courts routinely adjudicate on matters of public policy anyway. This in no way implies that courts will or should take over policy-making from governments. Rather, in adjudicating ECS rights just as civil and political rights, courts can shape policy formulated by the executive branch of the government and thus influence the realization of economic and social rights.<sup>81</sup>

#### V. APPROACHES TO ENFORCING THE JUSTICIABILITY OF THE RIGHT TO FOOD BEFORE PHILIPPINE COURTS

In establishing the justiciability of the right to food before Philippine courts, there must be either: (1) an actual controversy involving rights which are legally demandable and enforceable, or (2) that there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.<sup>82</sup>

The justiciability of the right to food before domestic courts receives support in the UDHR, which provides: “[e]veryone has the right to an effective remedy by the competent national tribunal for acts violating the fundamental rights granted him by the Constitution or by law.”<sup>83</sup> The UN Committee on ESC rights has advised that: “[t]he Covenant norms must be recognized in appropriate ways, within the domestic legal order; appropriate means of redress, or remedies must be available to any aggrieved individual or group and appropriate means of ensuring governmental accountability must be put in

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<sup>80</sup> *Oposa*, *supra* note 2.

<sup>81</sup> Vienna Declaration, *supra* note 28 at 11.

<sup>82</sup> CONST., art. VII, § 1.

<sup>83</sup> Intergovernmental Working Group, *supra* note 61 at 7.

place.”<sup>84</sup>

Clearly, what must first be established is whether or not the right to food is legally demandable and enforceable before Philippine Courts. As will be discussed, the right to food is a demandable legal right. However, its nature, scope, and history bring to fore the challenges the right to food faces in seeking reliefs before domestic courts.

The right to food may be established through three modes: (1) the right to food as part of international law, which forms part of the law of the land through the incorporation clause; (2) the right to food as encompassed by the rights to life and to health as provided in the 1987 Philippine Constitution; and (3) legislative enactments recognizing, protecting, and fulfilling the State's obligation towards the progressive realization of the right to food.

#### *A. Right to Food as Part of International Law*

The right to food is explicitly recognized in the ICESCR and in the UDHR. The Philippines ratified the ICESCR on 7 June 1974.<sup>85</sup> The UDHR, on the other hand, has been considered as part of Philippine law even if it is a mere declaration.<sup>86</sup>

The Philippine Constitution “adopts the generally accepted principles of international law as part of the law of the land.”<sup>87</sup> Monist legal systems, where international law is incorporated into the domestic legal system, allow

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<sup>84</sup> General Comment 9, *supra* note 66.

<sup>85</sup> See U.N. Treaty Series (Vol. 993), *Depositary Notification, available at* [http://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&lang=en&mtdsg\\_no=IV-3&src=TREATY](http://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&lang=en&mtdsg_no=IV-3&src=TREATY) (last visited Oct. 18, 2012).

<sup>86</sup> In *Mejoff v. Director of Prisons* (G.R. No. L-4254, Sep. 26, 1951), a Russian citizen who was detained in the Philippines pending execution of the order for his deportation was ordered to be released on bail when after two years the deportation order could not be carried out because no ship or country would take the alien. The Philippine Supreme Court held that: “[m]oreover, by its Constitution . . . the Philippines ‘adopts the generally accepted principles of international law as part of the law of the Nation.’ And in a resolution entitled the ‘Universal Declaration of Human Rights’ and approved by the General Assembly of the United Nations of which the Philippines is a member, at its plenary meeting on December 10, 1948, the right to life and liberty and all other fundamental rights as applied to all human beings were proclaimed.”

<sup>87</sup> CONST., art. II, § 2.

for the immediate domestic application of international treaties.<sup>88</sup> The incorporation clause in the Philippine Constitution makes the Philippines one of the states that have a specific declaration on the binding force of international law in the same way as domestic laws.<sup>89</sup> International law, therefore, can be invoked in Philippine courts to settle domestic disputes in much the same way that they would use the Civil Code or the Penal Code and other laws passed by Congress.<sup>90</sup>

Moreover, even when the ESC rights are not incorporated into domestic laws, courts must assume that the domestic law is in conformity with the ICESCR and with the requirement of effective remedies. Otherwise, as the UN Committee on ESC rights points out in its General Comment No. 9, the treaty would have been ratified in bad faith. Where a treaty requires that it be given legal effect in the domestic order and the state ratifies the treaty but does not modify any law, courts must presume that the state, interpreting its treaty obligation in good faith, views its law as already conforming to its international obligations. Courts must therefore actively strive to achieve interpretations of domestic law and to exercise decision-making in a manner that conforms with the recognition of the ESC rights as fundamental rights, which, in turn, give rise to effective remedies rather than policy objectives.<sup>91</sup>

Domestic law must be interpreted and applied to provide, wherever possible, effective remedies to ESC rights. The other constitutional and human rights provisions such as the guaranty of equality should be interpreted as to provide, “to the greatest extent possible” the full protection of ESC rights.<sup>92</sup> As noted in General Comment No. 9, “[n]eglect by any courts of this responsibility is incompatible with the principle of rule of law, which must always be taken to include respect for international human rights obligations.” Under the Bangalore Principles of Judicial Conduct,<sup>93</sup> even in domestic legal systems in which international law cannot be directly applied by courts unless incorporated through domestic legislation, it was agreed that if a domestic statute is ambiguous or uncertain, the ambiguity should be resolved in favor of

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<sup>88</sup> Courtis, *supra* note 8 at 19.

<sup>89</sup> JOAQUIN BERNAS, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 61 (2009).

<sup>90</sup> *Id.*

<sup>91</sup> Porter, *supra* note 51 at 8-9.

<sup>92</sup> *Id.*, at 9.

<sup>93</sup> U.N. ECON. & SOC. COUNCIL, *BANGALORE PRINCIPLE OF JUDICIAL CONDUCT* (2006).

compliance with international law.<sup>94</sup>

Moreover, while state parties, in implementing the ICESCR, do not have a strict obligation to make ESC rights directly enforceable by courts, they do have the obligation to implement the rights of the Covenant as fundamental human rights, subject to the rule of law and the right to an effective remedy. This establishes a strong “interpretative presumption” through which courts can assume, *if legislatures have not stated anything to the contrary*, that statutes are to be interpreted as providing effective remedies of violations of ESC rights.<sup>95</sup>

It is but rational to conclude that a state party to the ICESCR has accepted ESC rights as subject to effective remedies. An interpretation of domestic law that downgrades ESC rights to mere policy objectives, effectively depriving affected constituencies of an effective remedy, is clearly incompatible with the ICESCR.<sup>96</sup> Governments act in bad faith if they appear in domestic courts to argue that the ICESCR ought to be interpreted as only a list of aspirational goals.<sup>97</sup>

#### *B. Right to Food as a Constitutional Right*

The Constitution is one of the most important sources of enforceable rights.<sup>98</sup> The 1987 Philippine Constitution has several provisions on the justiciability of human rights violations, *to wit*:

Article II, Section 10. The State shall promote social justice in all phases of national development.

Article III, Section 1. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.

Article III, Section 11. Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.

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<sup>94</sup> Porter, *supra* note 51 at 9.

<sup>95</sup> *Id.*, at 9.

<sup>96</sup> *Id.*, at 10.

<sup>97</sup> *Id.*

<sup>98</sup> S.E.A. COUNCIL FOR FOOD SECURITY AND FAIR TRADE, JUSTICIABILITY OF THE RIGHT TO FOOD FOR FARMERS IN SOUTHEAST ASIA (JUL. 2008).



The issue of justiciability of a violation presupposes the existence of a legal right. Instructive at this point are the two models of India and South Africa. Both states are aggressive in fulfilling its obligations with respect to right to food.

ESC rights in India have been defined through judicial interpretation of the right to life, rather than by any direct guaranty in the Indian Constitution. The expanded notion of the right to life has enabled the courts, in its public interest jurisdiction, to overcome objections on grounds of justiciability to its adjudicating the enforceability of ESC rights. Subsequently, rights to work, health, shelter, education, water, and food are regularly litigated. The related rights of dignity, living conditions, and health, which in their manifestation as Directive Principle of State Policy are considered non-enforceable, have been read into the ambit of right to life.<sup>99</sup>

More illustrative is the circumstance of South Africa. Notwithstanding the fact that it has yet to ratify the ICESCR, its Constitution includes key ESC rights including the right of access to adequate housing, health care, food and water, and social security.<sup>100</sup> In the *Government of RSA v. Grootboom* case, Judge Yaccod said the following with respect to the role of the courts in ensuring state fulfillment of these rights:<sup>101</sup>

I am conscious that it is an extremely difficult task for the State to meet these obligations in the conditions that prevail in our country. This is recognized by the Constitution which expressly provides that the State is not obliged to go beyond available resources or to realize these rights immediately. *I stress however, that despite all the qualifications, these are rights, and the Constitution obliges the State to give effect to them. This is an obligation that the Courts can, and in*

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<sup>99</sup> Intergovernmental Working Group, *supra* note 61 at 3. In the case of *Olga Tellis v. Bombay Municipal Corporation* (1985, 3S CC 545), the judgment expanded the right of life guaranteed under the Indian Constitution to include within its scope, the right to livelihood, which translated into the right to be allowed to remain on the pavements. The Indian Supreme Court held that “[a]n equally important facet of the right to life is the right to livelihood because no person can live without the means of livelihood. If the right to livelihood is not treated as a part of the Constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation.”

<sup>100</sup> Intergovernmental Working Group, *supra* note 61 at 5.

<sup>101</sup> 2001 (1) SA 46 (CC).

*appropriate circumstances, must enforce.* (Emphasis supplied)

The right to life is recognized in the Bill of Rights and in the Declaration of Principles and Policies of the Philippine Constitution. The Bill of Rights, in Article III, Section 1 of the 1987 Constitution, provides that: “[n]o person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.” Following the Indian model, the right to life encompasses the right to food. A broader interpretation of the right to life, as a right to a dignified life, or a life according to human dignity, may encompass a wider variety of aspects of the right to food. In legal systems where the right to health is considered to be a justiciable right, similar connections could be made between food and health.<sup>102</sup>

The constitutional protection of the right to life is not just a protection of the right to be alive or to security of one's limb against physical harm. The right to life is also the right to a good life.<sup>103</sup> It cannot be denied that fundamental to life is sustenance, and basic to sustenance is food. As Christian Courtis observes:

There is just no way of discussing the right to life without paying due attention to the right to food. In more extreme cases, such as in India, the State's failure to implement food schemes and distribution in cases of starvation, even when there were grain stocks available, amounted to a violation of the right to life. The Indian Court issued a number of interim measures prompting the State to implement the Famine Code and detailing a number of measures to be complied with, especially in relation to vulnerable groups.<sup>104</sup>

A similar strategy consists in deriving duties regarding the right to food from a “right to a vital minimum” or “existential minimum,” considered to stem from the constitutional formula of the social or welfare state, and sometimes from the notion of human dignity. The goal of the social or welfare state is to achieve at least the material conditions necessary to honor its commitment to human dignity. Access to food is therefore considered to be one of these material conditions.<sup>105</sup>

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<sup>102</sup> Courtis, *supra* note 8 at 329.

<sup>103</sup> BERNAS, *supra* note 89 at 110.

<sup>104</sup> Courtis, *supra* note 8 at 329.

<sup>105</sup> *Id.* at 330.

In the Philippines, ESC rights are likewise embodied in its Declaration of Principles and State Policies, in Article II of the 1987 Constitution. Pertinent to the right to food is the provision on the right to health:

Section 15. The State shall protect and promote the right to health of the people and instill health consciousness among them.

Curiously, the Philippine Constitution, in Article XIII, provides for an additional provision on the right to health as part of its social justice and human rights provisions:

#### HEALTH

Section 11. The State shall adopt an integrated and comprehensive approach to health development which shall *endeavor to make essential goods, health and other social services available to all the people at affordable cost*. There shall be priority for the needs of the underprivileged, sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers. (Emphasis supplied)

The Philippines is a party to the UDHR<sup>106</sup> and the ICESCR which both recognize health as a fundamental human right. Health is defined as the *state of complete physical, mental and social well-being*, and not merely the absence of disease or infirmity.<sup>107</sup> The right to health is an inclusive right. The right to health is frequently associated with access to health care and the building of hospitals. It also includes a wide range of factors that the UN Committee on ESC rights calls the “underlying determinants of health.” They include: (1) safe drinking water and adequate sanitation (2) safe food (3) adequate nutrition and housing (4) healthy working and environmental conditions (5) health-related education and information, and (6) gender equality.<sup>108</sup>

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<sup>106</sup> Universal Declaration of Human Rights, GA Res. 217A (III), U.N. Doc. A/810 (1948) (hereinafter “UDHR”).

<sup>107</sup> The UDHR considers as an essential component of the right to health the right to food: “Article 25. (1) [e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

<sup>108</sup> Office of the UN High Commissioner for Human Rights and The World Health Organization, *The Right to Health, Fact Sheet No. 31*, available at

In order to effectuate the enforceability of the right to food, the Philippine legal framework may be modified by combining the various modes used in the Indian and South African models. The Philippine textual commitment to the right to health can arguably cover the right to food. At the same time, the right to food can be considered inherent in the right to life, which cannot be deprived without due process. The difficulty is in arguing that these constitutional provisions give the right to food the status of an enforceable right.

In the UN Economic and Social Council's General Comment No. 14, it states that:

Reference in article 12.1 of the ICESCR to "the highest attainable standard of physical and mental health" is not confined to the right to health care. On the contrary, the drafting history and the express wording of article 12.2 acknowledge that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and *extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.*<sup>109</sup> (Emphasis supplied)

Moreover, the same Comment states that the ICESCR espouses a core obligation "*to ensure access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone.*"<sup>110</sup>

Traditional Philippine jurisprudence has regarded the Declaration of Principles and State Policies as a mere statement of general ideological principles and policies. As such, it is not considered a source of enforceable rights.<sup>111</sup> Likewise, the social justice provisions of the Constitution are regarded as not self-executing principles ready for enforcement through the

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<http://www.ohchr.org/Documents/Publications/Factsheet31.pdf> (last visited Jul. 14, 2013).

<sup>109</sup> General Comments: The Right to the Highest Attainable Standard of Health, U.N. Doc. E/C.12/2000/4 at 4 (Aug. 11, 2000), *available at* [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En) (last visited Oct. 19, 2012).

<sup>110</sup> *Id.*, at 43, emphasis supplied.

<sup>111</sup> *Bases Conversion & Development Authority v. Comm'n. on Audit*, G.R. No. 178160, Feb. 26 2009.

courts. They are considered as statements of principles and policies such that in order to give them effect, legislative enactment is still required. These Principles and State Policies are not self-executing provisions; they do not embody judicially enforceable constitutional rights but merely guidelines for legislation.<sup>112</sup>

In the landmark case of *Tanada v. Angara*,<sup>113</sup> the Supreme Court made this statement:

*These principles in Article II are not intended to be self-executing principles ready for enforcement through the courts. They are used by the judiciary as aids or as guides in the exercise of its power of judicial review, and by the legislature in its enactment of laws. As held in the leading case of Kilosbayan, Incorporated vs. Morato, the principles and state policies enumerated in Article II and some sections of Article XII are not self-executing provisions, the disregard of which can give rise to a cause of action in the courts. They do not embody judicially enforceable Constitutional rights but guidelines for legislation. (Emphasis supplied)*

The Philippine Supreme Court has been conservative in its rulings, but there are exceptions as in the case of *Oposa v. Factoran*.<sup>114</sup> In the said case, plaintiffs were minors who claimed to "represent their generation as well as generations yet unborn."

The plaintiffs maintained that:

13. [T]he adverse effects, disastrous consequences, serious injury and irreparable damage of [the] continued trend of deforestation . . . are evident and incontrovertible . . .

14. The continued allowance by defendant of Timber License Agreement holders to cut and deforest the remaining forest lands will work great damage and irreparable injury to plaintiffs — especially plaintiff minors and their successors — who may never see, use, benefit from and enjoy this rare and unique natural resource treasure.

This act of defendant constitutes a misappropriation and/or

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<sup>112</sup> Bureau of Fisheries v. Comm'n. on Audit, G.R. No. 169815, Aug. 13, 2008.

<sup>113</sup> G.R. No. 118295, May 2, 1997.

<sup>114</sup> *Oposa*, *supra* note 2.

impairment of the natural resource property he holds in trust for the benefit of plaintiff minors and succeeding generations.

15. Plaintiffs have a clear and Constitutional right to a balanced and healthful ecology and are entitled to protection by the State in its capacity as the *parens patriae* . . . .

...

18. The continued failure and refusal by defendant to cancel the timber license agreements is an act violative of the rights of plaintiffs, especially plaintiff minors who may be left with a country that is desertified [sic], bare, barren and devoid of the wonderful flora, fauna and indigenous cultures which the Philippines had been abundantly blessed with.

The Philippine Supreme Court ruled in favor of the plaintiffs. As to the cause of action, the Supreme Court held that “[t]he complaint focuses on one specific fundamental legal right — *the right to a balanced and healthful ecology which, for the first time in our nation’s Constitutional history, is solemnly incorporated in the fundamental law.*”<sup>115</sup>

Section 16, Article II of the Constitution explicitly provides that “[t]he State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.” This right unites with the right to health which is provided for in the preceding section of the same article providing that “[t]he State shall protect and promote the right to health of the people and instill health consciousness among them.”

The Supreme Court then made the pronouncement and departed from the traditional interpretation of the constitutional provisions written under the Declaration of Principles and State Policies:

While the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation — aptly and fittingly stressed by the petitioners — the advancement of which may even be said to predate all governments and

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<sup>115</sup> Emphasis supplied.

Constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind. If they are now explicitly mentioned in the fundamental charter, it is because of the well-founded fear of its framers that unless the rights to a balanced and healthful ecology and to health are mandated as state policies by the Constitution itself, thereby highlighting their continuing importance and imposing upon the state a solemn obligation to preserve the first and protect and advance the second, the day would not be too far when all else would be lost not only for the present generation, but also for those to come — generations which stand to inherit nothing but parched earth incapable of sustaining life.

The right to a balanced and healthful ecology carries with it the correlative duty to refrain from impairing the environment.  
(Emphasis supplied)

The framework used in the case of *Oposa v. Factoran* can be used in arguing for the enforceability of the right to food. The right to food is necessarily part of the inclusive right to health, as earlier established. The fact that it is not included in the Bill of Rights does not detract from its being a natural and inherent right that needs enforcement and protection, and as with the right to a balanced ecology. As affirmatively ruled in the case, the right to health is a *basic right that “need not even be written in the Constitution for it is assumed to exist from the inception of humankind.”* It is written into the Constitution only to highlight its importance.

*C. Right to Food as Recognized and Protected in Legislative and Executive Enactments*

The creation of anti-hunger task forces through Executive Orders (“E.O.”) only highlight the pressing concern to fight the unresolved problem of hunger. These E.O.s comply with the obligation of fulfillment and are resorted to in circumstances when government fails to provide access to or means by which its inhabitants may secure food through their own resources.

The right to food also encompasses the obligation of capacity-building, which may be done through the development and deployment of new technologies that will improve agricultural yield. Executive Order No.

710 <sup>116</sup> has been issued to empower marginalized farmers with scientific knowledge of farming to produce more than enough corn for food with a surplus for sale, along with their production of vegetable, fruits, and livestock, resulting in increased income by more than 100 percent, thereby benefiting not only their families but also their communities and local governments.

The most notable recent piece of legislation concerning the right to food is Republic Act No. 9710, *An Act Providing for the Magna Carta of Women*, which explicitly recognizes women's right to food.<sup>117</sup>

Intertwined with the right to food is the agrarian program of the government. In Module 12: Right to Adequate Food,<sup>118</sup> it has been observed that:

For a considerable number of countries, hardly any serious expert believes that these countries will be able to implement the right to feed oneself for the rural masses in the foreseeable future without agrarian reform. Evading agrarian reform measures under

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<sup>116</sup> This is the Order directing the Nationwide Adoption of Corn-Based Farmer-Scientists Research, Development and Extension Training Program for Sustainable Agricultural Development to Liberate Poor Farmers From the Bondage of Poverty and Hunger.

<sup>117</sup> "Section 20. Food Security and Productive Resources. - The State recognizes the contribution of women to food production and shall ensure its sustainability and sufficiency with the active participation of women. Towards this end, the State shall guarantee, at all times, the availability in the market of safe and health-giving food to satisfy the dietary needs of the population, giving particular attention to the specific needs of poor girl-children and marginalized women, especially pregnant and lactating mothers and their young children. To further address this, the State shall ensure:

(a) Right to Food. - The State shall guarantee the availability of food in quantity and quality sufficient to satisfy the dietary needs of individuals, the physical and economic accessibility for everyone to adequate food that is culturally acceptable and free from unsafe substances and culturally accepted, and the accurate and substantial information to the availability of food, including the right to full, accurate, and truthful information about safe and health-giving foods and how to produce and have regular and easy access to them;

(b) Right to Resources for Food Production. - The State shall guarantee women a vital role in food production by giving priority to their rights to land, credit, and infrastructure support, technical training, and technological and marketing assistance. The State shall promote women-friendly technology as a high priority activity in agriculture and shall promote the right to adequate food by proactively engaging in activities intended to strengthen access to, utilization of, and receipt of accurate and substantial information on resources and means to ensure women's livelihood, including food security."

<sup>118</sup> Circle of Rights, *supra* note 11.



such circumstances violates the right to feed oneself. Such evasion may take different forms. Obviously, the crudest form is the simple absence of agrarian reform legislation or agrarian reform programs. The most common form, however, is that of deficient agrarian reform programs/laws with loopholes that prevent the distribution of land to landless peasants. Agrarian reform that meets the obligation to fulfill access to adequate food may require more than merely the distribution of productive resources (land, water, technology, etc.).<sup>119</sup>

As noted in Chapter Three, the Philippines' resources (land, water, public land, capital), wealth, and income continue to be owned and/or controlled by only a number of families. This is a basic reason why many, especially in the rural areas, are poor, hungry, and cannot afford to buy adequate and nutritious food.

Section 4 of Article 13 of the Philippine Constitution deals with agrarian reform and stipulates that "[t]he State shall, by *law*, undertake an agrarian reform program founded on the right of farmers and regular farm workers, who are landless, to own directly or collectively the lands they till or in the case of other farm workers, to receive a just share of the fruits thereof." This constitutional mandate to realize agrarian reform by enactment of law was carried out in Republic Act No. 6657<sup>120</sup> ("R.A. No. 6657") or the Comprehensive Agrarian Reform Law ("CARL"). It provides that:

The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets: Provided, That the conversion of agricultural lands into industrial, commercial or residential lands shall take into account, tillers' rights and *national food security*. Further, the State shall protect Filipino enterprises against unfair foreign competition and trade practices. (Emphasis supplied)

Under Section 3 (a):

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<sup>119</sup> *Id.*

<sup>120</sup> This is the Comprehensive Agrarian Reform Law of 1988 or An Act Instituting a Comprehensive Agrarian Reform Program to Promote Social Justice and Industrialization, Providing the Mechanism for its Implementation, and for Other Purposes.

Agrarian reform means redistribution of lands, regardless of crops or fruits produced, to farmers and regular farm workers who are landless, irrespective of tenurial arrangement, to include the totality of factors and support services designed to lift the economic status of the beneficiaries and all other arrangements alternative to the physical redistribution of lands, such as production or profit-sharing, labor administration, and the distribution of shares of stocks, which will allow beneficiaries to receive a just share of the fruits of the lands they work.

The CARL provides for retention limits, as follows:

Except as otherwise provided in this Act, no person may own or retain, directly or indirectly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-size farm, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, but in no case shall retention by the landowner exceed [five] hectares. [Three] hectares may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least [15] years of age; and (2) that he is actually tilling the land or directly managing the farm . . . .<sup>121</sup>

Under the CARL, there are two schemes for land redistribution. The Compulsory Acquisition Scheme and the Voluntary Offer to Sell Scheme. In the Compulsory Acquisition scheme, the landowner shall exercise his right of retention within 60 days from receipt of the Notice of Coverage. In the Voluntary Offer to Sell scheme, the right of retention shall be exercised at the time the land is offered for sale. The offer should specify and segregate the portion covered by Voluntary Offer to Sell scheme and the portion applied for retention; otherwise, the landowner shall be deemed to have waived his right of retention over the subject property.

The lands covered by the CARL shall be distributed as much as possible to landless residents of the same barangay, or in the absence thereof, landless residents of the same municipality in the following order of priority:

- (a) agricultural lessees and share tenants;
- (b) regular farmworkers;

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<sup>121</sup> Republic Act No. 6657, § 6 (1988) (hereinafter “R.A. No. 6657”).

- (c) seasonal farmworkers;
- (d) other farmworkers;
- (e) actual tillers or occupants of public lands;
- (f) collectives or cooperatives of the above beneficiaries; and
- (g) others directly working on the land.

A basic qualification of a beneficiary shall be his willingness, aptitude, and ability to cultivate and make the land as productive as possible. The Department of Agrarian Reform (“DAR”) shall adopt a system of monitoring the record or performance of each beneficiary, so that any beneficiary guilty of negligence or misuse of the land or any support extended to him shall forfeit his right to continue as such beneficiary.<sup>122</sup> No qualified beneficiary may own more than three hectares of agricultural land.<sup>123</sup>

Despite the existence of the Comprehensive Agrarian Reform Plan (“CARP”) (under the CARL), which aims to redistribute agricultural land for the benefit of the farmers, and to fulfill the State's obligation with respect to right to food, Congress has granted authority to a number of government agencies to effect a secondary classification of agricultural lands into residential, commercial, or industrial, or other urban uses, effectively removing them from the coverage of agrarian reform. To recall, the ESC rights are only subject to the limitations that are “determined by law *only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.*”<sup>124</sup> As will be shown, certain reclassifications have been in derogation of the right to food.

The classification of lands of the public domain is of two types: primary classification and secondary classification. The primary classification consists of agricultural, forest or timber, mineral lands, and national parks. These are lands specifically mentioned in Section 3, Article XII of the Constitution. The same provision of the Constitution, however, states that “*agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted.*”<sup>125</sup> This further classification of agricultural lands is referred to as the secondary classification.

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<sup>122</sup> R.A. No. 6657, § 22.

<sup>123</sup> § 23.

<sup>124</sup> ICESCR, *supra* note 1, emphasis supplied.

<sup>125</sup> Emphasis supplied.

*Land use conversion* refers to the act or process of changing the current use of a piece of agricultural land into some other use as approved by DAR. In contrast, *reclassification of agricultural lands* refers to the act of specifying how agricultural lands shall be utilized for non-agricultural uses such as residential, industrial, commercial, as embodied in the land use plan, subject to the requirements and procedure for land use conversion. It also includes the reversion of non-agricultural lands to agricultural use. On the other hand, *zoning* is the delineation or division by a city or municipality into functional zones where only specific land uses are allowed, thereby regulating the use of all lands in the community in accordance with an approved or adopted land use plan.

Section 65 of the CARL, explicitly provides:

Conversion of Lands — After the lapse of [five] years from its award, when the land ceases to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes, the DAR, upon application of the beneficiary or the landowner, with due notice to the affected parties, and subject to existing laws, may authorize the reclassification or conversion of the land and its disposition: Provided, That the beneficiary shall have fully paid his obligation. (Emphasis supplied)

As provided in Section 1 of DAR Administrative Order No. 01-02,<sup>126</sup> conversion of agricultural lands to non-agricultural uses shall be strictly regulated and may be allowed only when the conditions prescribed under R.A. No. 6657 and/or Republic Act No. 8435<sup>127</sup> are present. Under the CARL, “[t]he conversion by any landowner of his agricultural land into non-agricultural use with intent to avoid the application of [the] Act to his landholdings and to dispossess his tenant farmers or the land tilled by them” is a prohibited act. This is a clear recognition that conversion contrary to the CARL is violative of the fundamental policy considerations underlying agrarian reform and of the right to food. Moreover, it has been emphasized that conversion of land to non-agricultural use is limited to conditions provided by the laws. As such, premature conversion as well as illegal and unauthorized

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<sup>126</sup> Dep’t. of Agrarian Reform Adm. Order No. 01-02 (2002), *available at* [http://www.lis.dar.gov.ph/home/document\\_view/368](http://www.lis.dar.gov.ph/home/document_view/368) (last visited Jul. 14, 2013) (hereinafter “DAR AO No. 01-02”). These are the 2002 Comprehensive Rules On Land Use Conversion.

<sup>127</sup> This is the Agriculture and Fisheries Modernization Act of 1997.

conversion are penalized. *Premature conversion* refers to:

[T]he undertaking of any development activity, the results of which modify or alter the physical characteristics of the agricultural lands to render them suitable for non-agricultural purposes, without an approved order of conversion from the DAR.<sup>128</sup>

*Illegal conversion* refers to:

[C]onversion by any landowner of his agricultural land into any non-agricultural use with intent to avoid the application of R.A. No. 6657 to his landholding and to dispossess his tenant farmers of the land tilled by them; or the change of the nature of lands outside urban centers and city limits either in whole or in part after the effectivity of [the aforementioned Act]. . . .<sup>129</sup> (Emphasis supplied)

In contrast, *unauthorized conversion* refers to:

[A]ct of changing the current use of the land from agricultural (e.g. riceland) to another agricultural use, the effect of which is to exclude the land from CARP coverage (e.g. livestock) without a Conversion Order from the DAR, or changing the use of the land other than that allowed under the Conversion Order issued by the DAR.<sup>130</sup> (Emphasis supplied)

The following penalties are provided:

Any person found guilty of premature or illegal conversion . . . shall be penalized, in accordance with Section 11 thereof, with imprisonment of [two to six] years, or a fine equivalent to [100%] of the government's investment cost, or both, at the discretion of the court, and an accessory penalty of forfeiture of the land and any improvement thereon.<sup>131</sup>

Additionally:

DAR may impose the following penalties, after determining, in

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<sup>128</sup> DAR AO No. 01-02, § 2.15.

<sup>129</sup> § 2.8.

<sup>130</sup> § 2.24.

<sup>131</sup> DAR AO No. 01-02, § 63.2.

an administrative proceedings [sic], that violation of this law has been committed:

a) Cancellation or withdrawal of the authorization for land use conversion; and

b) Blacklisting, or automatic disapproval of pending and subsequent conversion applications that they may file with the DAR.<sup>132</sup>

Agrarian laws also provide exemptions from coverage. DAR Memorandum Circular 34-97 provides that land can be exempt from the coverage of agrarian reform if “upon investigation/inspection, the whole area or [portion] of the land [is] found unsuitable for agricultural purposes . . . [or] [i]n case [a farmer is] interested to buy the land, it may be acquired through private transactions between the owner and interested [farmer], with the assistance of the DAR.” Also, in DAR Administrative Order No. 03-95, private agricultural lands owned by individuals or entities “actually, directly and exclusively used for prawn farms and fishponds as of [12 March 1995] shall be exempt from the coverage of CARP.” These regulations, though they purport to regulate, actually give much leeway since no specific guidelines have been definitively made. These loose regulations afford evaders the room to remove land from the coverage of agrarian reform.

These evasions were noted by the Supreme Court in the case *Luz Farms v. The Honorable Secretary of the DAR*.<sup>133</sup> While the Supreme Court took notice of the numerous reports that some landowners had taken steps to convert their agricultural lands to lands for livestock, poultry, and swine raising, it held that these were excluded from the coverage of CARL. To address this pressing concern, DAR Memorandum No. 09-93 was issued. This states:

In order to prevent circumvention of the Comprehensive Agrarian Reform Program and to protect the rights of the agrarian reform beneficiaries, specifically against their possible unlawful ejectment due to the unauthorized change or conversion or fraudulent declaration of areas actually, directly, and exclusively used for livestock, poultry and swine raising purposes, the following rules and regulations are hereby prescribed for the guidance of all concerned.

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<sup>132</sup> Republic Act No. 8435, § 11 (1997).

<sup>133</sup> G.R. No. 86889, Dec. 4 1990.

Private agricultural lands or portions thereof exclusively, directly and actually used for livestock, poultry and swine raising as of 15 June 1988 shall be excluded from the coverage of CARP.

Any act of a landowner to change or convert his agricultural land to livestock, poultry and swine raising after, 15 June 1988, with the intent to avoid the application of R.A. No. 6657 to his landholdings, shall be considered invalid and illegal and shall not affect the coverage of his landholding under CARP Conversion of crop lands to livestock, poultry and swine raising after the effectivity of this Administrative Order shall be governed by DAR Administrative Order Nos. 1 and 2, Series of 1990.

DAR Administrative Order No. 13-90, Part II C, provides for another ground for exemption:

Lands which have been classified or proclaimed, and/or actually, directly and exclusively used and found to be necessary for parks, wildlife, forest reserves, fish sanctuaries and breeding grounds, and watersheds and mangroves shall be exempted from the coverage of CARP until Congress, taking into account ecological, developmental and equity considerations, shall have determined by law, the specific limits of public domain, as provided for under Sec. 4 (a) of R.A. 6657, and a reclassification of the said areas or portions thereof as alienable and disposable has been approved.

However, the same Administrative Order warns that the sale, disposition, lease, or transfer of private lands by the original landowner in violation of the CARL shall be *null and void*. Transactions executed prior to the CARL shall be valid only when registered with the Register of Deeds within a period of three months after 15 June 1988 in accordance with Section 6 of the law.

In a study conducted by the UP Law Center, Institute of Human Rights, it was noted that:

According to Maria Socorro I. Diokno "human rights is perhaps the country's best response to the challenge of land use." She described the current Philippine land use policies as market-driven and guided by a minimum basic needs approach to development. These policies, according to Diokno, are not only inadequate and faulty; it is bereft of any consideration for human

rights, thus the need for a revolutionary shift to a human rights perspective to national land use using new rights-consistent criteria to determine land allocation, and resolve land use conflicts.<sup>134</sup>

## VI. CIRCUMVENTION OF AGRARIAN LAWS AS A VIOLATION OF THE RIGHT TO FOOD

Philippine agrarian laws provide for several escape mechanisms. Lands of agricultural use may be converted, reclassified, and zoned out of its use, subject to the restrictions provided by laws. Lands may entirely be excluded from the coverage of CARL. The determination whether such conditions have been met are considered as political in nature, discretionary upon the executive agents, such that it may not be reviewed by the Philippine Courts unless there is a showing of palpable grave abuse of discretion. Clearly, this dilutes the agrarian reform program and subjects the landless farmers to the mercy of the executive agents and landowners who can easily make a case for exclusion, conversion, or reclassification.

As noted by FoodFirst Information and Action Network Philippines (“FIAN Philippines”), there are a number of cases of large private landholdings that are still not covered under the agrarian reform law.

One of these is the 2,800 hectares of coconut land owned by the Matias family in the municipality of San Francisco, Quezon. Share tenancy, which was declared illegal by Republic Act 3844 40 years ago, is still being practiced on this landholding. Another is the 3,500-hectare Uy hacienda in the towns of San Narciso and San Andres where share tenancy still occurs. Between 1998 and 2008, 5 peasant leaders demanding for the distribution of the Uy property have been killed.<sup>135</sup>

FIAN-Philippines also noted that most of the private land distributed by the DAR was not done through the earlier discussed Compulsory Acquisition scheme, in which land is expropriated by the government, but through the questionable Voluntary Land Transfer scheme of the CARL. The

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<sup>134</sup> INSTITUTE OF HUMAN RIGHTS, UNIVERSITY OF THE PHILIPPINES LAW CENTER, REVISITING THE PHILIPPINE COMPREHENSIVE AGRARIAN REFORM PROGRAM: LESSONS FROM EXPERIENCE AND POLICY RECOMMENDATIONS TOWARDS A RIGHTS-BASED APPROACH TO AGRARIAN REFORM (2010).

<sup>135</sup> FIAN PHILIPPINES, *supra* note 55 at 14.



DAR was supposed to distribute 3.093 million hectares of private land from 1988 to 2008. As of 2005, it claimed that it had distributed 2.065 million hectares of private land. In reality, however, 650,910 hectares of private land were distributed by the DAR through the Voluntary Land Transfer Scheme, while only 276,963 hectares of private land were acquired through Compulsory Acquisition.<sup>136</sup>

FIAN-Philippines has called the Voluntary Land Transfer Scheme “problematic” since it is not true agrarian reform:

The Voluntary Land Transfer Scheme is a questionable scheme because under it the landowner and the peasants negotiate the price of the land and the landowner has the right to choose the beneficiaries of the land. In most cases, the landowner selects his/her relatives or farmers who act as dummies or decoys and there is no real transfer of ownership. A good example is the 212 hectares of land owned by Jose de Leon in the village of Tinang, Concepcion Municipality, Tarlac Province. The 77 farmer-beneficiaries chosen and approved by the DAR were children and grandchildren of the landowner who were residing in Metro Manila, nowhere near the land being transferred. This is contrary to the CARL’s provision requiring beneficiaries to directly manage or till the lands awarded to them.<sup>137</sup>

The Philippine Government has also allowed many big landowners to escape the provisions of the agrarian reform law by either allowing them to convert their land for other uses or exempting them from coverage. This is especially true in Regions 3 (Central Luzon region) and 4-A (CALABARZON region<sup>138</sup>), where many industrial estates, residential subdivisions, malls, resorts, and golf courses were built by big real estate corporations. From a farming area of 703,256 hectares in 1991, Region 4-A’s farming area had decreased to 588,516 hectares by 2002 – a net loss of 114,740 hectares.<sup>139</sup>

In a study published by DAR entitled, “An Integration of the First Round of CARP Impact Assessment Studies,” funded by the Food and Agriculture Organization of the UN, it was noted that although selling of

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<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> Region 4-A is composed of the provinces of Cavite, Laguna, Batangas, Rizal, and Quezon.

<sup>139</sup> FIAN PHILIPPINES, *supra* note 55 at 15.

usufruct rights because of debt arrangements and share tenancy is not allowed under CARL, this practice still persists especially in more depressed crop areas. It was observed that:

[S]tudies show evidence of landlord's resistance and lack of cooperation in agrarian reform processes, including not presenting necessary documents, legally combating the processes, using connections in the upper hierarchy of government, and attempting to circumvent law (such as subdivision of land among children or siblings, and land conversion)... Together with dwindling incomes, landlords' resistance and delay of land valuation and land transfer may be the biggest reasons why a significant minority of respondents claim that CARP had failed its implementation . . .<sup>140</sup>

These noted cases violate the farmer-beneficiaries' right to food. They are deprived not only of access to factors in producing food, but also of their livelihood or financial means to acquire food. As noted, the basic reason why many people, especially in the rural areas, are poor, hungry, and cannot afford to buy adequate and nutritious food is because the country's resources are controlled by only a number of families. There is clearly a disproportionate ownership of resources, depriving farmers of the adequate land to support their families' basic needs including food.

This same DAR study recommended that the fast and firm resolution of land conflicts should be prioritized from the grassroots to the national level.

At the grassroots level, injecting new life into Barangay Agrarian Reform Committees (BARC) by expanding its coverage to more areas and revitalizing their functions and operations is essential. This requires more energized and dedicated leadership and membership as well as more efficient procedures and regular meetings to resolve problems and conflicts . . . Although this is dependent on many local players, the role of the local CARP personnel in pursuing meetings and resolution and in involving civil society groups is crucial. Standard procedures and regulations concerning resolution of cases, and the maximum allowable time to resolve or to send to higher authorities pending agrarian conflicts should be set nationally and proposed to all BARCs in the country.

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<sup>140</sup> JOSEPH ANTHONY LIM, AN INTEGRATION OF THE FIRST ROUND OF CARP IMPACT ASSESSMENT STUDIES 7 (2003).

Probably the most contentious provision under CARL is on corporate farms. Under CARL, in general, lands shall be distributed directly to the individual worker-beneficiaries.

In case it is not economically feasible and sound to divide the land, then it shall be owned collectively by the worker-beneficiaries who shall form a workers' cooperative or association which will deal with the corporation or business association. Until a new agreement is entered into by and between the workers' cooperative or association and the corporation or business association, any agreement existing at the time this Act takes effect between the former and the previous landowner shall be respected by both the workers' cooperative or association and the corporation or business association.<sup>141</sup>

Sec. 5 of Republic Act No. 9700 ("R.A. No. 9700"), amending Sec. 7 of R.A. No. 6657, has all but superseded Section 31 thereof with respect to the stock distribution component. R.A. No. 9700 provides: "[t]hat after June 30, 2009, the modes of acquisition shall be limited to voluntary offer to sell and compulsory acquisition."

This issue of corporate farms was tackled in the case of *Hacienda Luisita v. Presidential Agrarian Reform Council*.<sup>142</sup> In 1989, some 93% of the farmworker-beneficiaries of Hacienda Luisita signified their acceptance of the proposed Stock Distribution Option. The agreement was entered into and attested by the DAR Secretary. In 1995, Hacienda Luisita, Inc. applied for conversion of 500 hectares of land of the hacienda from agricultural to industrial use pursuant to Sec. 65 of R.A. No. 6657. The farmer beneficiaries eventually sought the nullification of the agreement on the ground that they did not receive the benefits due them. They argued that their lives had not improved contrary to the promise and rationale for the adoption of the agreement. They prayed for the renegotiation of the agreement, or in the alternative, its revocation. In their second petition, they called for the total revocation and nullification of the agreement. They raised the issue of whether or not the stock distribution, as a modality of CARP compliance, was consistent with the basic concept of agrarian reform in Sec. 4, Art XIII of the Philippine Constitution.

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<sup>141</sup> R.A. No. 6657, § 29.

<sup>142</sup> G.R. No. 171101, Jul. 5, 2011.

At the time the judgment was rendered by the Supreme Court, however, the issue had become moot and academic with the passage of R.A. No. 9700. Though the Court, in some cases, has proceeded to resolve constitutional issues otherwise already moot and academic, the Court refused to do so in this case for several reasons. First, there appeared to be no breach of the fundamental law. The Court stated that the wording of the provision is unequivocal: the farmers and regular farmworkers have a right to own directly or *collectively* the land they till. Second, the Court construed the reference in Sec. 4, Art XIII of the Constitution to a law and to Congress as implication that the provision is not self-executory.

Former Chief Justice of the Supreme Court Renato Corona, in his dissenting opinion, noted that the Constitution has ordained land redistribution as the mechanism of agrarian reform. He explained that first, the Constitution recognizes the right of the farmers and regular landless farmworkers to own directly or collectively the lands they till. Second, the Constitution affirms the primacy of this right, which is enshrined as the centerpiece of agrarian reform, thereby guaranteeing its enforcement. Third, it directs that, to such end, the State shall undertake the just distribution of all agricultural lands subject only to retention limits and compensation. He added that a stock distribution agreement violates the mandate of the Constitution that any agrarian reform must preserve the control over the land in the hands of the tiller. He expounds that agrarian reform means that farmers and regular farmworkers who are landless should be given the direct and collective ownership of the land they till. Unless there is land distribution, there can be no agrarian reform. A program that gives qualified beneficiaries stock certificates instead of land is not agrarian reform. Actual land distribution is the essential characteristic of a constitutional agrarian reform program.

The amendment introduced by R.A. No. 9700 is significant as it is a recognition of the importance of land distribution and inadequacy of stock distribution programs in implementing land reform. The changes in the approach of the legislature in fulfilling its mandate of agrarian reform under the Constitution is what may be referred to as the progressive realization of the right of farmworkers to access to resources necessary in the fulfillment and realization of their right to food.

The assertions of the plaintiffs in *Hacienda Luisita v. Presidential Agrarian Reform Council* may also be applied to farm corporations outside the scope of CARL. The proposition of employment in farm corporations as

remedy reflects capitalist underpinnings that deter the development of the right to food, as discussed in the previous chapters. Employment may not necessarily address the issue of hunger and deprivation as people employed in the urban centers are noted to have also been deprived of their right to food.

#### VII. PROCEDURAL MECHANISMS IN ENFORCING THE RIGHT TO FOOD IN PHILIPPINE COURTS

At this point, it is relevant to recap the aim of this paper: it is to establish that the right to food is justiciable before Philippine courts. The paper does not espouse agrarian reform as the only or best way of addressing the issues and problems regarding the right to food. What is sought to be established is that there is judicial remedy in enforcing the right to food and in redressing violations of it. One way of establishing its justiciability is by concretizing the right to food by reading it into the provisions of relevant laws, among them the agrarian reform laws. The recognition and enforcement of the right to food through legislation is an acknowledgment of its justiciability.

As an illustration, violations of the CARP involving actual controversies may be brought before the DAR for adjudication. Decisions of the DAR may be appealed to the Court of Appeals, but this will not stay their execution. Special Agrarian Courts were also created under CARL. The Special Agrarian Courts have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under CARL.<sup>143</sup> All courts in the Philippines, both trial and appellate, are enjoined to give preferential attention “to all cases arising from or in connection with the implementation of the provisions of [CARL]”.<sup>144</sup>

Laws violative of the internationally recognized and constitutionally enshrined right to food may also be attacked as invalid or unconstitutional through declaratory relief or *certiorari* actions. There is more difficulty in compelling fulfillment of state obligations as this may not be the subject of *mandamus* before domestic courts, but actions violative of the right to food may be questioned in *certiorari* and/or prohibition proceedings as grave abuse of discretion on the part of the executive and/or legislative departments of the

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<sup>143</sup> R.A. No. 6657, § 57.

<sup>144</sup> § 62.

government.

A writ similar to the famous Writ of Kalikasan,<sup>145</sup> a by-product of the *Oposa v. Factoran* ruling, may also be espoused by the judiciary. A writ concerning the right to food shall likewise provide a simplified, speedy, and inexpensive procedure for the enforcement of the right to food recognized under the Constitution, existing laws, rules and regulations, and international agreements.

### VIII. CONCLUSION

Right to food is not a mere “programmatic” right,<sup>146</sup> a rhetoric, a guideline, or a policy. It is an inherent human right that need not actually be recognized by any instrument; its recognition in various legal instruments is an anticipated step forward. The judiciary’s role cannot be discounted. It is called to take a more liberal stance in reading the right to food in interpreting domestic laws and the Constitution.

#### *A. The Right to Food is a Legal Right*

##### **1. It is recognized and protected by international instruments.**

The human right to food has its contemporary origin within the UDHR framework. The right to food is now enshrined in several international human rights and other treaties such as the ICESCR, Convention on the Rights of the Child, the Additional Protocol to the Geneva Conventions and Relating to the Protection of Victims of International and Non-International Armed Conflicts, and CEDAW. The Philippines is a state party to all these instruments. Further, the UDHR has been considered as part of Philippine law even if it is a mere declaration.

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<sup>145</sup> A.M. No. 09-6-8-SC, Apr. 13, 2010, *available at* [http://www.lawphil.net/courts/supreme/am/am\\_09-6-8-sc\\_2010.html](http://www.lawphil.net/courts/supreme/am/am_09-6-8-sc_2010.html) (last visited Feb. 24, 2013).

<sup>146</sup> A right which requires the political branches of the state to take action, but does not offer right-holders an entitlement to claim them before courts.

## **2. It is enshrined in the Philippine Constitution.**

The right to life is recognized in the Bill of Rights and in the Declaration of Principles and Policies of the Philippine Constitution.

The Article III, Section 1 of the 1987 Constitution provides that: “[n]o person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.” Following the Indian model, the right to life encompasses the right to food. A broader interpretation of the right to life, as a right to a dignified life, or a life according to human dignity, may be extended to include the right to food. In legal systems where the right to health is considered to be a justiciable right, similar connections could be made between food and health.<sup>147</sup>

The right to health is an inclusive right. The right to food is necessarily part of the right to health. The fact that it is not included in the Bill of Rights does not detract from its being a natural and inherent right that needs enforcement and protection, and as with the right to a balanced ecology, the right to health is for the first time solemnly incorporated in the fundamental law. As affirmatively ruled in the case of *Oposa v. Factoran*, the right to health is a *basic right that “need not even be written in the Constitution for it is assumed to exist from the inception of humankind;”*<sup>148</sup> that it is written into the Constitution only to highlight its importance.

Moreover, the 1987 Philippine Constitution, in Section 4 of Article XIII, mandates that “[t]he State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farm workers, who are landless, to own directly or collectively the lands they till or in the case of other farm workers, to receive a just share of the fruits thereof.”

## **3. It is enacted into agrarian reform laws.**

The body of agrarian reform laws acknowledges the important role land reform plays in fulfilling the right to food. Evading agrarian reform measures violates the right to feed oneself. As such, the sale, disposition, lease,

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<sup>147</sup> Courtis, *supra* note 8 at 329.

<sup>148</sup> Oposa, *supra* note 2, emphasis supplied.

or transfer of private lands by the original landowner in violation of CARL should be declared null and void.

*B. The Right To Food is Justiciable before Philippine Courts*

The justiciability of the right to food before domestic courts receives support under the UDHR, which provides in Article 8 that: “[e]veryone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” The status of the right to food as a legally demandable right has been established above.

Despite the enactment of the right to food in agrarian laws, it continues to be violated through several escape mechanisms. Lands of agricultural use may be converted, reclassified, and zoned out of its use. Lands may be entirely excluded from the coverage of CARL. As the right to food is protected by international instruments, the Philippine Constitution, and agrarian laws, the matter of its violation and redress may be brought before domestic courts. The fact that agrarian legislation recognizes the need to redistribute land in order to address the problem of poverty and hunger proves further that the human right to food has the status of a legal right enforceable in Philippine courts.