

HUNGER FOR JUSTICIABILITY AND JUDICIAL EXIGIBILITY: CLAIMING THE HUMAN RIGHT TO ADEQUATE FOOD BEFORE PHILIPPINE COURTS*

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ABSTRACT

Can a human right without textual basis in the 1987 Constitution be demandable and actionable before Philippine courts of justice? The human right to adequate food is not provided in the 1987 Constitution, and the Philippine legislature has yet to enact specific legislation to institutionalize a framework for such right. The Philippines, however, is a state-party to a number of international human rights treaties and conventions that recognize the right to adequate food. As such, the Philippines is duty-bound to apply these international instruments domestically and to observe the obligations created under such multilateral agreements. The present legal architecture brings to light the challenge of judicial enforceability of the right to adequate food in case infractions are committed or obligations are neglected. Grounded on the premise that a human right, to be complete and fully realized, must have the capacity to be claimed by right-holders and the capacity to hold duty-bearers accountable, this paper attempts to determine whether the unwritten human right to adequate food is justiciable and judicially exigible, and more importantly, how it can be legally actionable before domestic courts.

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'Rights' backed up by no mechanisms to generate remedies may be fine goals to which good people express fervent dedication, but they are essentially useless for anything beyond inspiration, since their owners lack the ability to deploy the coercive force of the state to protect themselves.

— Steven M. Schneebaum¹

I. INTRODUCTION

A “paradox” often describes the human right to adequate food² situation in the global context. Rightly so, because it is an inherent human right, yet it is also the most violated.³ The incongruity arises from the persistence of chronic hunger and massive malnutrition in a world of plenty. Recent estimates point to a rising trend in the number of undernourished people globally, reaching nearly 821 million in 2017, or around one in every nine people,⁴ despite increased agricultural production and food availability per capita.⁵

In the domestic context, food—possibly the most pledged need due to its salience in human survival and sustenance—is simultaneously overlooked in public policy discourses and neglected in human rights dialogues. Most campaigns pledge “*pagkain sa bawat mesa*” (“food for every table”), but the promise is swiftly hushed from political consciousnesses and

¹ Steven Schneebaum, *Ubi Jus, Ibi Remedium*, 9 HUM. RTS. & HUM. WELFARE 103-116 (2009), reviewing JEFFREY DAVIS, JUSTICE ACROSS BORDERS: THE STRUGGLE FOR HUMAN RIGHTS IN U.S. COURTS (2008).

² For editorial reasons, the terms “human right to adequate food,” “right to adequate food,” and “right to food” are used alternately throughout this Article, but these refer to the human right to adequate food. According to the Food and Agriculture Organization of the United Nations [hereinafter “FAO”], “[t]he shorter term ‘right to food’ rather than ‘right to adequate food’ is acceptable for convenience, but should never distract from the need for nutritional adequacy of food as well as the interdependence with other human rights.”

³ Philip Alston, *International Law and the Human Right to Food*, in THE RIGHT TO FOOD (1984).

⁴ FAO, *The State of Food Security and Nutrition in the World 2018*, FOOD & AGRI. ORG. (2018), available at <http://www.fao.org/3/I9553EN/i9553en.pdf>

⁵ *Hunger in Times of Plenty*, GLOBAL AGRICULTURE, available at <https://www.globalagriculture.org/report-topics/hunger-in-times-of-plenty.html>

development agenda following the elections, only to resurface towards the beginning of the next election cycle.

Neglect of the right to adequate food is likewise evident in the domestic legal structure. The right to adequate food was first recognized in an international instrument in 1948 under the Universal Declaration of Human Rights (UDHR)⁶ as an element of the right to adequate living,⁷ and was the first of the economic, social, and cultural (“ESC”) rights to be studied by the United Nations (UN) human rights system.⁸ The Philippines, however, did not mirror this international development. Post-UDHR Philippine constitutions failed to expressly affirm any right to food, while Congress failed to legislate a national food policy for more than 70 years after the UDHR’s promulgation.

Worse, the Philippine legal context permits the above domestic paradoxes to meld into a graver contradiction: a right to food does apparently exist and is in fact legally recognized, but is ultimately left with no redress for its pervasive violation. In other words, while the surge in the incidence of involuntary hunger and malnutrition continues to be the norm, the neglected legal backbone governing said human right has left victims with neither legal remedies to enforce such right nor methods to exact accountability from duty-bearers even after repeated offenses.

For decades, the primary place of the right to adequate food in protecting liberty and nurturing prosperity under the rule of law has been overshadowed by questions of justiciability and challenges of exigibility in the political, social, and judicial realms. The right has often been “treated simply as an unenforceable, symbolic gesture.”⁹

How can the human right to adequate food safeguard liberty and prosperity if it cannot be enforced and demanded under the rule of law? If a human rights principle is not exigible before administrative, judicial, and

⁶ Universal Declaration of Human Rights [hereinafter “UDHR”], Dec. 10, 1948, G.A. Res. 217 A(III).

⁷ “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including *food*.”

⁸ Rolf Künemann, *Module 12: The Right to Adequate Food, Circle of Rights, Economic, Social & Cultural Rights Activism: A Training Resource*, UNIVERSITY OF MINNESOTA, 2000, available at http://hrlibrary.umn.edu/edumat/IHRIP/circle/modules/module12.htm#_edn1

⁹ Michael McDermott, *Constitutionalizing an Enforceable Right to Food: A Tool for Combating Hunger*, 35 B.C. INT’L & COMP. L. REV. 543 (2012).

quasi-judicial bodies, what redress is available to those whose rights are violated? What is the substance of such right if it can be set aside by non-inclusion in the fundamental law, or diminished by inefficiencies and gridlocks in the legislative process?

On the one hand, it can be argued that as a logical implication of the absence of an explicit constitutional pronouncement and the lack of an enabling law, the right to adequate food cannot be the subject of judicial adjudication, and thus, cannot be claimed before Philippine courts due to lack of cause of action. In other words, it is but a mere rhetorical state commitment that is not actionable in the present justice system.

On the other hand, it can also be argued that the lack of a direct constitutional guarantee or of a statutory recognition is inconsequential to the enforcement of the said right, for the plain reason that the right to adequate food is a universal human right available to all. As forthrightly pointed out by the late Senator Jose Wright Diokno, “[h]uman rights are more than legal concepts: they are the essence of man. They are what makes man human: deny them and you deny man’s humanity.”¹⁰

The crux of the human right to adequate food is as common, yet as profound, as the right to live in dignity. A human right, however, is nothing but an empty motherhood statement if right-holders cannot claim it and duty-bearers cannot be held accountable. A right is not really a right if individuals are not empowered to claim it.¹¹ As Justice Holmes noted, “[l]egal obligations that exist but cannot be enforced are ghosts that are seen in the law but are elusive to the grasp.”¹²

The trident state obligation to respect, to protect, and to fulfill the human right to adequate food does not only lie within the province of the political branches of government. The role of the judiciary is as essential as the role of the legislative and executive departments in realizing the right to adequate food. The establishment of judicial remedies to make a right actionable before courts of justice is one of the most effective means to articulate the human right to adequate food into the development agenda as an active, cross-sectoral, and multidimensional strategy for protecting liberty

¹⁰ Jose Wright Diokno, *Human Rights Make Man Human*, in SOURCE BOOK ON HUMAN RIGHTS (2006).

¹¹ BART WERNAART, *THE ENFORCEABILITY OF THE HUMAN RIGHT TO ADEQUATE FOOD, A COMPARATIVE STUDY* (2013).

¹² *The Western Maid*, 257 U.S. 419 (1922).

and nurturing prosperity, beyond passive legal motherhood statements and rhetorical state obligations.

Although there has been a gradual recognition of ESC rights, including the right to adequate food, as theoretically justiciable and judicially exigible, such rights are still not largely recognized as legally enforceable rights in practice. In recent years, the persistent question has progressively shifted from “Is it justiciable and legally exigible?” to “How is it justiciable and legally exigible?”¹³ with the answer remaining vague and elusive.

This research will be working from the liberal context that ESC rights, particularly the right to adequate food, are justiciable. It is from this perspective that this study seeks to determine the legal exigibility of the human right to adequate food within the present Philippine legal framework and to suggest possible approaches for the consistent adjudication and enforcement of an inherent right not found in the Constitution.

This paper thus seeks to answer this primary inquiry: Sans an explicit constitutional guarantee, is the human right to adequate food a judicially exigible right in the Philippines or is it a mere rhetorical state commitment? It attempts to determine the legal exigibility of the human right to adequate food within the present Philippine legal framework and to explore possible judicial mechanisms for the consistent adjudication and enforcement of an inherent right not found in the Constitution.

II. THE RIGHT TO ADEQUATE FOOD

A. Definition and Content

The UN Special Rapporteur on the right to food, Jean Zeigler, defines the right to adequate food as the—

[H]uman right, inherent in all people, “to have regular, permanent[,] and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of people to which the consumer belongs, and which ensures a

¹³ Florentin Weibel, *The Justiciability of Economic, Social and Cultural Rights in Switzerland*, FIAN SWITZERLAND, 2016, available at https://fian-ch.org/content/uploads/Justiciability-of-ESC-rights-in-Switzerland_FW.pdf

physical and mental, individual and collective fulfilling and dignified life free of fear.¹⁴

Briefly, it is “the right to be able to feed oneself in dignity,”¹⁵ including the right to have access to resources and means to ensure and produce one’s own subsistence.¹⁶

General Comment No. 12 of the Committee on Economic, Social and Cultural Rights (CESCR) further clarifies—

The right to adequate food is realized when every man, woman and child, alone or in community with others, [has] physical and economic access at all times to adequate[, sufficient, and culturally accepted] food or means for its procurement [for both present and future generations]. The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense[,] which equates it with a minimum package of calories, proteins[,] and other specific nutrients.¹⁷

As with all human rights, the right to adequate food imposes a trinity of state obligations: to respect, to protect, and to fulfill-facilitate and to fulfill-provide. The obligation to respect requires states to refrain from interfering, directly or indirectly, with the ability of the people to meet their food needs; the obligation to protect, to provide guarantees against threats and risks stemming from private actors or societal forces that are controllable by state action; the obligation to fulfill-facilitate, to establish an enabling environment to strengthen access to and utilization of resources for enabling people to freely and regularly exercise such right; and the obligation to fulfill-provide, to directly provide food aid when situations beyond peoples’ control make them unable to provide for themselves.¹⁸

¹⁴ Jean Ziegler, Report by the Special Rapporteur on the Right to Food, E/CN.4/2001/53 (July 2, 2001); *See also FAO Term Portal*, FOOD & AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, available at <http://www.fao.org/faoterm>.

¹⁵ Jean Ziegler, Preliminary report to the drafting group of the Human Rights Council Advisory Committee on the Right to Food, A/HRC/AC/2/CRP.2 (Jan. 19, 2009).

¹⁶ *Id.*

¹⁷ CESCR, General Comment No. 12 [hereinafter “General Comment 12”], E/C.12/1999/5 (May 12, 1999); *See* Olivier de Schutter, Final report: The transformative potential of the right to food, A/HRC/25/57 (Jan. 24, 2014).

¹⁸ *General Comment 12*, *supra* note 17, ¶ 15.

B. Violations

Under international law, a state-party's failure to comply with a treaty obligation concerning ESC rights constitutes a breach of an international agreement.¹⁹ Violations of the right to adequate food transpire when a state-party fails to ensure the satisfaction of, at the very least, the minimum essential level required to be free from hunger.²⁰ The instances of violations are outlined as follows:

Violations [may] occur either through the direct action of the State, or through the action of other entities insufficiently regulated by the State. These include: the formal repeal or suspension of legislation necessary for the continued enjoyment of the right to food; denial of access to food to particular individuals or groups, whether the discrimination is based on legislation or is proactive; the prevention of access to humanitarian food aid in internal conflicts or other emergency situations; adoption of legislation or policies which are manifestly incompatible with pre-existing legal obligations relating to the right to food; and failure to regulate activities of individuals or groups so as to prevent them from violating the right to food of others, or the failure of a State to take into account its international legal obligations regarding the right to food when entering into agreements with other States or with international organizations.²¹

In addition, any form of discrimination in the access to food and the means and entitlements for its procurement, with the purpose of impairing the equal exercise of rights, constitutes a violation.²²

A state's inability to comply with its treaty obligations is distinct, however, from sheer unwillingness.²³ A state-party claiming resource constraints for its inability to secure and provide access to food is obligated to demonstrate that every effort has been made to use all the resources at its disposal to satisfy, as a matter of priority, its minimum obligations.²⁴

¹⁹ International Commission of Jurists, *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights* [hereinafter "Maastricht Guidelines"], at ¶ 5, Jan. 26, 1997.

²⁰ *General Comment 12*, *supra* note 17, ¶ 17.

²¹ *Id.*, ¶ 19 (Emphasis supplied.)

²² *Id.*, ¶ 18.

²³ *Id.*, ¶ 17; *See also Maastricht Guidelines*, *supra* note 19, ¶ 13.

²⁴ *General Comment 12*, *supra* note 17, ¶ 17.

Notably, the denial of remedies to ESC rights is also a breach of treaty obligations.²⁵ Thus, the absence of remedies available for those who face deprivations and infringements is in itself a form of human rights violation.

C. A *Sui Generis* Right

Chief Justice Artemio Panganiban succinctly describes the dynamics of the universality, indivisibility, interdependence, and interrelatedness²⁶ of rights: “[H]umans need both justice and jobs; freedom and food; ethics and economics; peace and development; liberty and prosperity; these twin beacons must always go together; one is useless without the other.”²⁷

The preambular paragraphs of the twin covenants constituting the International Bill of Human Rights²⁸—the International Covenant on Civil and Political Rights (ICCPR)²⁹ and the International Covenant on Economic, Social and Cultural Rights (ICESCR)³⁰—refer to the ideal of free human beings enjoying *both* classes of rights derived from the inherent dignity of the human person.

The bridging of the rights dichotomy—civil and political (“CP”) rights pertaining to liberty on the one hand, and ESC rights pertaining to prosperity on the other—is especially apposite to the human right to adequate food because of its distinctive position in relation to the enjoyment of all other rights. The want of the fundamental ability to satisfy basic

²⁵ Bruce Porter, *Justiciability of ESC Rights and the Right to Effective Remedies: Historic Challenges and Opportunities*, 2008, available at <http://dx.doi.org/10.2139/ssrn.2470383>

²⁶ UNGA, Vienna Declaration and Programme of Action, A/Conf.157/23 (July 12, 1993).

²⁷ Artemio Panganiban, *Unleashing Entrepreneurial Ingenuity*, PERSONAL WEBSITE OF RETIRED CHIEF JUSTICE ARTEMIO V. PANGANIBAN, Feb. 26, 2015 (Speech before the 12th General Assembly of the ASEAN Law Association), available at <https://cjpanganiban.com/2015/02/26/unleashing-entrepreneurial-ingenuity/>

²⁸ Note verbale dated Dec. 5, 1986 from the Permanent Mission of the Netherlands to the United Nations Office at Geneva addressed to the Centre for Human Rights, E/CN.4/1987/17 (Jan. 8, 1987).

²⁹ International Covenant on Civil and Political Rights [hereinafter “ICCPR”], Dec. 16, 1966, 999 UNTS 171.

³⁰ International Covenant on Economic, Social and Cultural Rights [hereinafter “ICESCR”], Dec. 16, 1966, 993 UNTS 3.

human needs, such as food, renders self-fulfillment, political aspirations, and legal rights and responsibilities into hollow concepts.³¹

Given the multidimensional nature of the right to adequate food that cuts across sectors and transcends through territorial boundaries, this paper proposes that this indispensable existential right is *sui generis* in the sense that it simultaneously pertains to both equality and liberty, and socioeconomic growth and prosperity. As an inclusive right,³² it champions both the dual causes of ensuring freedom from starvation and malnutrition, and of sustaining development through food security. In this context, the expanded notion of liberty as espoused by Chief Justice Enrique Fernando is fitting: “[L]iberty to be meaningful should not be limited to the absence of governmental interference with man’s intellectual and physical freedom, but [should include] the obligation to assure a life of dignity of all. [N]ecessitous men are not free men.”³³

Although the unanimity in the indivisibility and interdependence of the human right to adequate food and all other rights is evident, some rights are admittedly more interlinked with the right to adequate food than others. For instance, the enjoyment of the right to adequate food is inextricably linked and contingent upon the realization of other ESC rights, such as the rights to health, to water, to education, to work, and to information.

While only mentioned in the ICESCR, the right to adequate food is impliedly referenced in some articles of the ICCPR, such as the right to life and right to self-determination. Clearly, the enjoyment of the right to life depends on one’s access to adequate and safe food. The deprivation of the latter renders the enjoyment of the former an utter impossibility.

There are also mutual implications present between the right to adequate food and other CP rights, such as the rights to fair trial, to participate in political life, and to self-organization.³⁴ The struggle to claim

³¹ Donald Buckingham, *A Recipe for Change: Towards an Integrated Approach to Food under International Law*, 6 PACE INT’L L. REV. 285 (1994).

³² Office of the High Commissioner of Human Rights (OHCHR), *Fact Sheet No. 34, Right to Adequate Food*, 2010, available at <https://www.ohchr.org/Documents/Publications/FactSheet34en.pdf>.

³³ Enrique Fernando, *Human Rights According to Pacem in Terris and the Constitution of the Philippines: A Life of Dignity for All*, 2 ATENEO L. J. 1 (1980).

³⁴ Rolf Künemann & Sandra Epal-Ratjen, *The Right to Food: A Resource Manual for NGOs*, AAAS SCIENCE AND HUMAN RIGHTS PROGRAM, 2004, available at https://www.aaas.org/sites/default/files/RT_Food.pdf

and enforce the right to adequate food is one pursued in futility without an independent judiciary and fair trials, inclusive political participation and citizen engagement, and collective political action through associations.

With food being necessary for the dignified existence and survival of every human being, the right to adequate food is an integral prerequisite for the exercise of all other human rights, particularly the rights to prosperity and liberty. It influences other human rights in the same way that other rights influence it.

Hence, the rigid categorization of the right to adequate food under a single set of rights is shortsighted and contradicts the principle of indivisibility and interdependence of rights.

III. JUSTICIABILITY AND JUDICIAL EXIGIBILITY

A. Intertwined Concepts

Exigibility is derived from the Spanish term *exigibilidad* and the Portuguese term *exigibilidade*.³⁵ The Latin American doctrine covers the right to claim fulfillment of state obligations³⁶ and the right to have timely responses and adequate state actions.³⁷ It refers to social, political, and legal processes and mechanisms that allow the enforcement of human rights before competent public institutions—administrative, political, or judicial—to demand redress for violations.³⁸ Thus, it can be exercised in different spheres, not only at the political level but also at the judicial stage.³⁹ Judicial

³⁵ Valéria Burity et. al., *Exigibilidade: Mechanisms to claim the human right to adequate food in Brazil*, FOOD & AGRI. ORG., 2011, available at <https://hrbaportal.org/wp-content/files/ap555e.pdf>

³⁶ Flavio Luiz Schieck Valente & Nathalie Beghin, *Realization of the Human Right to Adequate Food and the Brazilian Experience*, FOOD AND AGRI. ORG., 2006, available at http://www.fao.org/docs/eims/upload/217329/DOC_ING_final.pdf

³⁷ Burity, *supra* note 35.

³⁸ Ana María Suarez Franco, *How to Promote the Justiciability of the Human Right to Food*, FIAN INTERNATIONAL, 2008, available at http://www.fao.org/eims/secretariat/right_to_food/eims_search/details.asp?lang=en&pub_id=276588

³⁹ *Id.*

exigibility particularly includes adequate redress for breaches of recognized rights.⁴⁰

Exigibility necessarily includes, but is not limited to, justiciability,⁴¹ or the capacity of a human right, recognized in general and abstract terms, to be enforced and become subject to a dispute before a judicial or quasi-judicial organ that is authorized to determine whether there was a violation of the right in question and to decide on the remedies for such violation.⁴²

Justiciability and exigibility are closely intertwined. The need to ensure justiciability is relevant when deciding the best way to give effect to the human right to adequate food.⁴³ However, without the more full-fledged concept of exigibility, a strategy to foster justiciability will be ineffective.⁴⁴ Without access to the required procedural mechanisms, effective judicial protection is lost, and justiciability becomes meaningless.⁴⁵ Judicial decisions are of no practical effect⁴⁶ if they are not executed or effectively complied with within a reasonable time frame.⁴⁷

B. Challenges and Constraints

Despite the importance of justiciability and exigibility in creating an actionable legal position rather than a mere expectancy or wish,⁴⁸ governments are still reluctant in recognizing the right to food as a basic right with justiciable effect, much less in textualizing it into their constitutions.⁴⁹

⁴⁰ FAO, *Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security*, FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, 2005, available at <http://www.fao.org/3/a-y7937e.pdf>

⁴¹ FAO Term Portal, FOOD & AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, available at <http://www.fao.org/faoterm>.

⁴² Jean Ziegler, Information provided by the Special Rapporteur on the Right to Food, Mr. Jean Ziegler, E/CN.4/2004/WG.23/CRP.7 (2004).

⁴³ FAO Term Portal, *supra* note 41.

⁴⁴ Franco, *supra* note 38.

⁴⁵ *Id.*

⁴⁶ Tracy Thomas, *Ubi Jus, Ibi Remedium: The Fundamental Right to a Remedy Under Due Process*, 41 SAN DIEGO L. REV. 1633 (2004).

⁴⁷ Franco, *supra* note 38.

⁴⁸ *Id.*

⁴⁹ UN Human Rights Council, Report of the Special Rapporteur on the right to food, Access to justice and the right to food: the way forward, A/HRC/28/65 (Jan. 12, 2014) *citing* Civil Society Synthesis Report, *10 Years of the Right to Adequate Food Guidelines*.

UN Special Rapporteur on the right to food, Hilal Elver, identified three broad obstacles that hamper progress on justiciability and exigibility: (1) resistance from some states and lack of political will, which is manifested by the minimal number of states that ratified the Optional Protocol to the ICESCR (OP-ICESCR), a significant international agreement towards justiciability and legal exigibility; (2) the lack of awareness of legal rights and entitlements available to right-holders, which can be observed from the severe lack of general knowledge and understanding of judicial and adjudicatory mechanisms to file actionable grievances as a means of enforcing basic rights; and (3) institutional and structural barriers, which hinder right-holders from accessing justice, such as the logistical and monetary burden for those living in rural and remote areas, lack of affordable and dedicated legal assistance, judicial corruption, complex and inflexible court systems, and little knowledge of human rights law by judges.⁵⁰

These limitations stem from the lack of an interpretative tradition classifying the right to food as an autonomous right.⁵¹ The infancy of case law on the right to food, the lack of constitutional basis for such right, and its nominal recognition as an individual or collective right⁵² reinforce these barriers.

Although these issues pose certain difficulties in the identification of a firm legal anchor to adjudicate right to food cases, these issues are not insurmountable and can be addressed as the right develops.⁵³

C. Justiciability of Right to Adequate Food Obligations

Regional tribunals and foreign courts have confirmed the full justiciability of the right to adequate food obligations to respect, protect, fulfill, and guarantee its realization without discrimination.⁵⁴

⁵⁰ UN Human Rights Council, Report of the Special Rapporteur on the right to food, Access to justice and the right to food: the way forward, A/HRC/28/65 (Jan. 12, 2014)

⁵¹ Christian Courtis, *The Right to Food as a Justiciable Right: Challenges and Strategies*, 11 MAX PLANCK Y.B. OF U.N. L. 317 (2007).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Christophe Golay, *The Right to Food and Access to Justice: Examples at the national, regional and international levels*, FOOD & AGRIC. ORG. (2009), available at <http://www.fao.org/3/a-k7286e.pdf>

Non-discrimination has been recognized as a justiciable obligation because of its immediate applicability and self-executing nature.⁵⁵ In a Swiss case⁵⁶ initiated by three Czechs illegally residing in Switzerland, the Federal Court ruled that the implied constitutional right to social assistance which ensures minimum level of subsistence,⁵⁷ including basic human needs such as food,⁵⁸ applies to all persons within the territorial boundaries of Switzerland, regardless of their legal status,⁵⁹ to prevent a situation where people “are reduced to beggars, a condition unworthy of being called human.”⁶⁰

The obligation to respect is likewise immediately and fully applicable⁶¹ without need for public spending, thus making its justiciability difficult to challenge.⁶² In a South African case,⁶³ traditional fishing communities who have lost their access to the sea following the enactment of a marine resources law alleged that the government violated its obligation to respect the right to food.⁶⁴ The South African court eventually ordered that the communities be immediately restored access and that the government draft a new law, this time with the communities’ participation, to ensure that respect for the right to food is properly accorded.⁶⁵

Although the obligation to protect, unlike the two preceding obligations, is a positive obligation, it is also likewise considered justiciable.⁶⁶

⁵⁵ *Id.*

⁵⁶ *V. v. Einwohnergemeinde X. und Regierungsrat des Kantons Bern*, BGE/ATF 121 I 367, Oct. 27, 1995.

⁵⁷ *Id.*

⁵⁸ Golay, *supra* note 54.

⁵⁹ International Development Law Organization (IDLO), *Realizing the Right to Food: Legal Strategies and Approaches*, IDLO WEBSITE, 2015, available at <https://www.idlo.int/publications/realizing-right-food-legal-strategies-and-approaches>

⁶⁰ FAO, *The Right to Food Guidelines Information Papers and Case Studies*, FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, 2006, available at <http://www.fao.org/3/a-a0511e.pdf>

⁶¹ *Guide: ESCR Litigation, 2.3.1 State obligations stemming from international law*, INTERNATIONAL COMMISSION OF JURISTS WEBSITE, available at <https://www.icj.org/chapter-2-esc-rights-under-international-law-and-the-role-of-judicial-and-quasi-judicial-bodies-2/2-3-identifying-breaches-of-international-obligations-of-states-pertaining-to-esc-rights/2-3-1-state-obligations-stemming-from-international-law/>

⁶² Golay, *supra* note 54.

⁶³ *Minister of Environmental Affairs and Tourism v. George & Others*, 2007 (3) SA 62 (SCA 2006).

⁶⁴ *Id.*

⁶⁵ Golay, *supra* note 54.

⁶⁶ *Id.*

In a case against the government of Nigeria,⁶⁷ the regional tribunal found that the destruction and contamination of crops by a state-permitted private oil company consortium violated the obligation to protect the implied right to food of the people of Ogoniland.⁶⁸ The tribunal ruled that the Nigerian Government should not allow private entities to destroy or contaminate food sources and prevent peoples' efforts to feed themselves.⁶⁹ It also ordered the suspension of illicit activities, including attacks on the Ogoni people,⁷⁰ which posed significant obstacles to Ogoni communities trying to feed themselves.⁷¹

While the obligations to fulfill-facilitate and fulfill-provide face the greatest challenge of justiciability among these obligations because they require budgetary outlays and prioritization of funding allocations, jurisprudence has shown that this challenge can be overcome in practice.⁷²

In four successive cases⁷³ initiated on behalf of five children suffering from chronic and acute malnutrition,⁷⁴ a Guatemalan juvenile court, after finding the government responsible for neglecting its obligation to fulfill-facilitate,⁷⁵ ordered the latter to deliver food aid as a palliative measure and to distribute seeds and necessary technical support to empower the affected families to grow their own food as a long-term solution.⁷⁶

⁶⁷ African Commission on Human and People's Rights, *SERAC & CESR v. Nigeria*, Communication N^o. 155/96, Oct. 13, 2001.

⁶⁸ *Id.*

⁶⁹ Golay, *supra* note 54.

⁷⁰ Communication N^o 155/96, *supra* note 72.

⁷¹ Golay, *supra* note 54.

⁷² *Id.*

⁷³ Department of Zacapa Court for the Protection of Children and Adolescents, *Case No. 19003-2011-00638-Of.1^a* (Apr. 3, 2013); *Case No. 19003-2011-00639-Of.2^a* (Apr. 12, 2013); *Case No. 19003-2011-00637-Of.3^a* (May 10, 2013); and *Case No. 19003-2011-00641-Of.1* (May 31, 2013).

⁷⁴ *Cases No. 19003-2011-00638-Of.1a; No. 19003-2011-00639-Of.2a; No. 19003-2011-00637-Of.3a; No. 19003-2011-00641-Of.1*, INTERNATIONAL COMMISSION OF JURISTS (2013), available at https://www.icj.org/escr_litigation/cases-no-19003-2011-00638-of-1a-no-19003-2011-00639-of-2a-no-19003-2011-00637-of-3a-no-19003-2011-00641-of-1/

⁷⁵ *Ten Years of the Right to Food Guidelines: Gains, Concerns and Struggles*, FIAN INTERNATIONAL, 2014, available at https://www.righttofoodandnutrition.org/files/R_t_F_a_N_Watch_2014_eng.pdf

⁷⁶ *Cases No. 19003-2011-00638-Of.1a*, *supra* note 74.

A public interest case⁷⁷ decided by the Supreme Court of Nepal sustained the justiciability of several ESC rights by reaffirming the state's obligation to fulfill-provide in ensuring access to adequate food for the enjoyment of a dignified life. The petition claimed that food scarcity coupled with the mismanagement of food distribution by the national food agency has resulted to mass starvation and outbreak of diseases in several districts.⁷⁸ In settling the controversy, the Nepalese Supreme Court recognized the fundamental right to live in dignity and ordered the government to immediately supply and distribute food in the affected areas.⁷⁹

In referring to other regional jurisprudence,⁸⁰ one author concluded that there are three ways to fulfill the right to adequate food without encroaching on the competencies of the political branches of government:

First, a judicial or quasi-judicial body has legitimate authority to protect the core principle of the right to food, that is, the realization of the fundamental right to be free from hunger, irrespective of available resources and the behavior of the political branches of government. Second, if the political branches of government themselves adopt measures to fulfil the right to food, the respective bodies exercise legitimate authority to enforce its implementation. Third, judicial or quasi-judicial bodies have authority to oversee the appropriate/reasonable character of these measures, insofar as in adopting the ICESCR the political branches of government undertook a commitment to put in place measures to fulfil the right to food.⁸¹

D. Approaches to Judicial Exigibility

As earlier established, the paradigm has gradually shifted from the determination of justiciability to the identification of means to make rights judicially exigible, and “how they can be consistently adjudicated with [some]

⁷⁷ Prakash Mani Sharma and others on behalf of Forum for Protection of Public Interest (Pro Public) v. Government of Nepal, Writ No. 065-w0-149 of 2065 BS (2008).

⁷⁸ *Claiming Human Rights: The Accountability Challenge*, FIAN INTERNATIONAL (2011), available at https://www.righttofoodandnutrition.org/files/Watch_2011_ENG.pdf

⁷⁹ Malcolm Langford & Ananda Mohan Bhattarai, *Constitutional Rights and Social Exclusion in Nepal*, 18(3) INT'L J. ON MINORITY & GRP. RTS. 387-411 (2011).

⁸⁰ *Akkoç v. Turquie*, 22947/93 et 22948/93, (Eur. Ct. of Hum. Rts., Oct. 10, 2000).

⁸¹ *Golay*, *supra* note 54.

measure of integrity, respecting the institutional nature of adjudicatory bodies and the call for justice inherent in human rights.”⁸²

Courts have employed various approaches for the legal exigibility of ESC rights. These experiential approaches are broadly categorized into direct and indirect approaches.

Direct approaches, on the one hand, back the notion that ESC rights are directly enforceable before adjudicatory organs.⁸³ Courts either identify duties from the concept of the “right to a vital minimum;”⁸⁴ review the reasonableness of a state’s conduct in light of its obligation relating to ESC rights;⁸⁵ protect relevant means and resources of procuring food, such as income, land, and traditional methods of obtaining or producing food;⁸⁶ or implement a combination of the said methods. These are applied in systems where the rights are expressly protected as justiciable substantive norms.⁸⁷ In practice, however, an ideal environment for justiciable ESC rights is not always the case.

Indirect or interdependence approaches, on the other hand, support the indivisibility and interrelatedness of human rights, and are applied in systems where rights are not clearly protected under legal instruments.⁸⁸ Relying on procedural rights and principles that are shared by both categories of rights, such as non-discrimination and equal protection, these methods commonly involve “resembling a defen[s]e of civil and political rights”⁸⁹ by framing right to food obligations in relation to the violation of CP rights. Thus, indirect approaches disregard the artificial classification of rights to form an integrated human rights norm system.⁹⁰

⁸² Malcolm Langford, *The Justiciability of Social Rights: From Practice to Theory*, in SOCIAL RIGHTS JURISPRUDENCE: EMERGING TRENDS IN INTERNATIONAL AND COMPARATIVE LAW (2009).

⁸³ Sisay Alemahu Yeshanew, *Approaches to the justiciability of economic, social and cultural rights in the jurisprudence of the African Commission on Human and Peoples’ Rights: Progress and Perspective*, 11 AFR. HUM. RTS. L. J. 317 (2011).

⁸⁴ Courtis, *supra* note 51.

⁸⁵ Yeshanew, *supra* note 83.

⁸⁶ Courtis, *supra* note 51.

⁸⁷ Yeshanew, *supra* note 83.

⁸⁸ *Id.*

⁸⁹ Malcolm Langford, *Litigating Economic, Social and Cultural Rights: Achievements, Challenges and Strategies*, CENTRE ON HOUSING RIGHTS & EVICTIONS, 2003, available at <http://globalinitiative-escr.org/wp-content/uploads/2012/06/Litigating-ESCR-Report.pdf>

⁹⁰ Yeshanew, *supra* note 83.

The direct and indirect approaches, however, are neither separate nor self-standing, as both may be employed in the same legal setting.⁹¹ For example, the Swiss Federal Supreme Court's varied stance on the direct enforceability of ESC rights led to the application of interdependence approaches, including the interpretation of CP rights as umbrella provisions for the protection of ESC rights; use of CP rights as procedural devices for ensuring fairness in the enforcement, distribution, or coverage of ESC rights; prohibition of discrimination; and use of ESC rights as interpretative guides.⁹²

Foreign jurisprudence confirms that obligations relating to the right to adequate food are justiciable. To establish this, courts have commonly relied on the well-established principle that all human rights are interdependent and indivisible. Foreign case law also demonstrate the courts' "long tradition of indirectly guaranteeing ESC rights, by interpreting civil and political rights as encompassing certain aspects of ESC rights."⁹³

These indirect approaches, however, are insufficient substitutes for the non-recognition of the direct justiciability of ESC rights.⁹⁴ The translation of ESC rights to CP rights, to establish the former's justiciability, must be pursued cautiously. The method, while being limited only to those aspects of ESC rights capable of being framed in terms of CP rights, reveals itself as a double-edged sword: it builds a strong case for justiciability, but simultaneously increases the probability of ESC rights being "devalued within the legal hierarchy."⁹⁵

Hence, the availability of these approaches does not entirely address the question of justiciability because it is neither the outcome nor the degree of justiciability and legal exigibility that this paper endeavors to establish. This study proposes that ESC rights, specifically the right to adequate food, can be invoked directly and are actionable independently and in their own nature without the need to transform them into CP rights, at the risk of widening the perceived gap between the two categories of rights.

⁹¹ *Id.*

⁹² Weibel, *supra* note 13.

⁹³ Christian Courtis, *Courts and the Legal Enforcement of Economic, Social and Cultural Rights*, 2008, available at <https://www.refworld.org/pdfid/4a7840562.pdf>.

⁹⁴ Weibel, *supra* note 13.

⁹⁵ *Id.*

Nonetheless, these experience-based approaches may be instructive to Philippine courts in adjudicating ESC rights, particularly the right to adequate food.

IV. LEGAL ARCHITECTURE OF THE RIGHT TO ADEQUATE FOOD

The cornerstones of the legal architecture governing the right to adequate food in the Philippines are comprised of international human rights instruments, the Constitution, domestic statutes, as well as judicial decisions.

A. International Consensus

1. *Binding International Instruments*

The Philippines is a treaty participant, without reservations, to several core international human rights instruments⁹⁶ that include the right to adequate food provisions.

While such right is enshrined in several international human rights instruments, no other instrument deals more comprehensively with this right than the ICESCR.⁹⁷ The said instrument obligates states to work towards the fulfillment of the right to an adequate standard of living, including adequate food, and to the continuous improvement of living conditions.⁹⁸ It also affirms the fundamental right to be free from hunger and malnutrition.⁹⁹

⁹⁶ [1] International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); [2] International Covenant on Civil and Political Rights (ICCPR); [3] International Covenant on Economic, Social and Cultural Rights (ICESCR); [4] Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); [5] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); [6] Convention on the Rights of the Child (CRC); [7] International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW); [8] International Convention for the Protection of All Persons from Enforced Disappearance (CPED); and [9] Convention on the Rights of Persons with Disabilities (CRPD). See *The Core International Human Rights Instruments and their monitoring bodies*, OHCHR, available at <https://www.ohchr.org>.

⁹⁷ *General Comment 12*, *supra* note 17, ¶ 1.

⁹⁸ ICESCR, art. 11.1.

⁹⁹ Art. 11.2.

Apart from the ICESCR, there are also other human rights treaties containing provisions explicitly related to the right to adequate food of specific vulnerable sectors such as women,¹⁰⁰ children,¹⁰¹ persons with disabilities,¹⁰² migrant workers and their families,¹⁰³ victims of armed¹⁰⁴ and non-armed conflicts,¹⁰⁵ refugees,¹⁰⁶ and stateless persons.¹⁰⁷

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) endeavors to eliminate discrimination against women by ensuring equal access by rural women to food security measures and adequate living conditions,¹⁰⁸ as well as to adequate nutrition for pregnant and lactating women.¹⁰⁹

The Convention on the Rights of the Child (CRC) articulates the right of the child to enjoy the highest attainable standard of health,¹¹⁰ including access to adequate nutritious food and clean drinking water.¹¹¹ It likewise enunciates the right of the child to an adequate standard of living for the child's physical, mental, spiritual, moral, and social development.¹¹²

The Convention on the Rights of Persons with Disabilities (CRPD) acknowledges the right of persons with disabilities to an adequate standard

¹⁰⁰ Convention on the Elimination of All Forms of Discrimination Against Women [hereinafter "CEDAW"] art. 12(2), 14(2)(h), Dec. 18 1979, 1249 UNTS 13.

¹⁰¹ Convention on Rights of the Child [hereinafter "CRC"], art. 24(1), 24(2)(c), 27(1), Nov. 20, 1989, 1577 UNTS 3.

¹⁰² Convention on Rights of Persons with Disabilities [hereinafter "CRPD"], art. 28(1), 28(2)(a), Jan. 24, 2007, A/RES/61/106.

¹⁰³ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families [hereinafter "CMW"], art. 70, Dec. 18, 1990, A/Res/45/158.

¹⁰⁴ Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts [hereinafter "Protocol I"], art. 54, June 8, 1977, 1125 UNTS 3.

¹⁰⁵ Art. 5(1)(b), 14.

¹⁰⁶ Convention relating to the Status of Refugees, art. 20, 23, July 28, 1951, 189 UNTS 137.

¹⁰⁷ Convention relating to the Status of Stateless Persons, art. 20, 23, Sept. 28, 1954, 360 UNTS 117.

¹⁰⁸ CEDAW, art. 14(2)(h).

¹⁰⁹ Art. 12(2).

¹¹⁰ CRC, art. 24(1).

¹¹¹ Art. 24(2)(c).

¹¹² Art. 27(1).

of living, including access to adequate food¹¹³ and equal access to clean water services¹¹⁴ without discrimination on the basis of disability.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) ensures that working and living conditions of migrant workers and members of their families are in keeping with the standards of fitness, safety, health, and principles of human dignity.¹¹⁵

The Convention relating to the Status of Stateless Persons confirms the equal treatment of stateless persons and nationals with respect to the distribution of rations,¹¹⁶ public relief, and assistance.¹¹⁷

The Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I) prohibits the starvation of civilians as a method of warfare, and further protects objects indispensable to the survival of the civilian population, such as food-stuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying sustenance to the civilian population.¹¹⁸

The Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) affirms the right to food and drinking water of persons whose liberty has been restricted for reasons related to armed conflict.¹¹⁹ Similar to Protocol I, it likewise prohibits starvation as a method of combat and provides for the protection of objects indispensable to the survival of the civilian population.¹²⁰

Having been ratified by the Philippine Senate, these instruments are legally binding and directly applicable in the country's jurisdiction by virtue

¹¹³ CRPD, art. 28(1).

¹¹⁴ Art. 28(2)(a).

¹¹⁵ CMW, art. 70.

¹¹⁶ Convention relating to the Status of Stateless Persons, art. 20.

¹¹⁷ Art. 23.

¹¹⁸ Protocol I, art. 54.

¹¹⁹ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts [hereinafter "Protocol II"], art. 5(1)(b), June 8, 1977, 1125 UNTS 609.

¹²⁰ Protocol II, art. 14.

of the doctrine of transformation.¹²¹ The Philippines, however, has to yet ratify certain international human rights agreements likewise related to the right to adequate food. These agreements, if ratified, would undoubtedly operate to strengthen its place in the domestic human rights regime.

These agreements include: (1) the OP-ICESCR,¹²² which enforces redress mechanisms for ESC rights in the international level by providing for a complaints procedure,¹²³ an inquiry procedure,¹²⁴ and an opt-in inter-State complaints procedure¹²⁵; (2) the Indigenous and Tribal Peoples Convention,¹²⁶ which recognizes the right of indigenous and tribal peoples to own and possess the lands that they traditionally occupy for their subsistence¹²⁷ and secures their inclusion in national agrarian programs to help provide for the essentials of a normal existence¹²⁸; and (3) the Convention relating to the Status of Refugees, which warrants the same treatment of refugees as nationals in a rationing system¹²⁹ and public relief and assistance.¹³⁰

2. Customary international law

The UDHR is the first international instrument to directly recognize the right to food: *first*, as a vital component of the right to an adequate standard of living; and *second*, in reference to the right to life,¹³¹ the realization of ESC rights through national efforts and international cooperation,¹³² the entitlement to social and international order,¹³³ and the duty to the community.¹³⁴

¹²¹ See CONST. art. VII, §21.

¹²² Optional Protocol to the International Covenant on Economic, Social and Cultural Rights [hereinafter "OP-ICESCR"], Mar. 5, 2009, A/Res/63/117.

¹²³ OP-ICESCR, art. 1.

¹²⁴ Art. 11.

¹²⁵ Art. 10.

¹²⁶ International Labor Organization C169: Indigenous and Tribal Peoples Convention [hereinafter "C169"], June 27, 1989, available at <https://www.refworld.org/docid/3ddb6d514.htm>

¹²⁷ C169, art. 14.

¹²⁸ Art. 19.

¹²⁹ Convention relating to the Status of Refugees, art. 20.

¹³⁰ Art. 23.

¹³¹ UDHR, art. 3.

¹³² Art. 22.

¹³³ Art. 28.

¹³⁴ Art. 29(1).

Although intended to be a non-binding international document, the UDHR is customarily binding¹³⁵ in the Philippines and is considered domestically operative even without an implementing law in place.¹³⁶

Other sources of customary international law are declarations and resolutions which enunciate the inalienable right of everyone to be free from hunger and malnutrition;¹³⁷ relate to the right of a child to adequate nutrition;¹³⁸ pronounce the right to food of women and children in emergency and armed conflict situations;¹³⁹ articulate the right of consumers to safe, sound, and wholesome food;¹⁴⁰ guarantee equality of opportunity for all in their access to basic resources, including food;¹⁴¹ and ensure the provision of food of nutritional value and drinking water of every prisoner.¹⁴²

Significantly, these customary international laws have likewise been incorporated into the Philippine legal system.¹⁴³

3. *Interpretative aids*

Interpretative aids are critical in shaping the content and scope of the human right to adequate food. The most notable is General Comment No. 12 on the right to adequate food, which clarifies the normative content of the right and the corresponding obligations of state-parties. It affirms the indivisible link of the right to adequate food to the inherent dignity of the human person and its indispensability in the realization of other human rights.

¹³⁵ *Government of Hong Kong v. Olalia*, G.R. No. 153675, 521 SCRA 470, Apr. 19, 2007.

¹³⁶ *Republic v. Sandiganbayan*, G.R. No. 104768, 407 SCRA 10, July 21, 2003.

¹³⁷ Universal Declaration on the Eradication of Hunger and Malnutrition ¶ 1, Dec. 17, 1973, A/Res 3180 (XXVIII).

¹³⁸ Declaration of the Rights of the Child princ. 4, Nov. 20, 1959, A/Res/14/1386.

¹³⁹ Declaration on the Protection of Women and Children in Emergency and Armed Conflicts no. 6, Dec. 14, 1974, A/Res/29/3318.

¹⁴⁰ Codex Alimentarius Commission, *Code of Ethics for International Trade in Food including Concessional and Food Aid Transactions*, at art. 4.1, CAC/RCP 20-1979 (Rev. 1-1985) (July 1985)

¹⁴¹ Declaration on the Right to Development art. 8, Dec. 4, 1986, A/Res/41/128.

¹⁴² UNGA, UN Standard Minimum Rules for the Treatment of Prisoners, at r. 22, A/Res/70/175 (Jan. 8, 2016).

¹⁴³ See CONST. art. II, §2.

The Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (Voluntary Guidelines) provides practical guidance in the implementation of the progressive realization of the right. It covers a full range of actions to be considered by national governments in building an enabling environment to empower their people to feed themselves with dignity and to establish appropriate safety nets for those who are unable to do so.¹⁴⁴

Other “soft laws” lay down guidelines and principles that impose moral obligations on states. These documents reaffirm the right to have access to safe, sufficient, and nutritious food, and also prohibit the use of food as an instrument for political and economic pressure.¹⁴⁵ The 17 global goals¹⁴⁶ targeting to end poverty and hunger by 2030 has adequate food as a priority agenda.

B. Constitutional Foundation

The Philippines has made significant strides in upholding the human right to adequate food before the global stage through its accession to and ratification of key international human rights instruments. This notwithstanding, progress is poorly reflected at the domestic level. For one, the internationally defined human right to adequate food has no counterpart in the 1987 Constitution. There is neither an express constitutional recognition nor a constitutional principle or objective that relates to said right. All the more, constitutional protection of this right is also lacking.

“Food” is cited only once in the 1987 Philippine Constitution. This is in Section 12 of Article XIII, which mandates the establishment and maintenance of an effective food and drug regulatory system.¹⁴⁷ Evidently, not only does the mention fail to impose an obligation, whether positive or

¹⁴⁴ Jacques Diouf, *Foreword*, in Voluntary Guidelines, *supra* note 40.

¹⁴⁵ See Rome Declaration on World Food Security, FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, available at <http://www.fao.org/3/w3613e/w3613e00.htm>; World Food Summit Plan of Action, FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, available at <http://www.fao.org/3/w3613e/w3613e00.htm>; The Future We Want Declaration, UNITED NATIONS SUSTAINABLE DEVELOPMENT, available at <https://sustainabledevelopment.un.org/content/documents/733FutureWeWant.pdf>.

¹⁴⁶ UNGA, Transforming our world: The 2030 Agenda for Sustainable Development, A/Res/70/1 (Oct. 21, 2015).

¹⁴⁷ Virgilio de los Reyes & Maria Socorro Diokno, *The Filipinos' Right to Food, An Assessment of the Philippine Legal Framework Governing the Right to Food*, FOOD & AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, 2010, available at <http://www.fao.org/3/ap598e/ap598e.pdf>

negative, on the state relating to adequate and accessible food, but it does not even come close to according it the status of a human right in itself.

A survey of national constitutions conducted by the Food and Agriculture Organization (“FAO”) Legal Office classified the 1987 Philippine Constitution under charters with a “medium level of constitutional protection of the right to food” – a status which may have been raised due to the direct applicability of the ICESCR in the country despite the lack of a constitutional provision directly mentioning a right to food applicable to the whole population.¹⁴⁸

However, while the Constitution does not distinctly guarantee the human right to adequate food, it nevertheless implicitly recognizes such right through the explicit recognition of broader rights¹⁴⁹ such as the right to life,¹⁵⁰ and other correlated constitutional rights.

The right to life is enshrined under the Bill of Rights, which is only limited to CP rights, while the correlated rights are ESC rights scattered in various articles of the charter, such as the right to health, adequate social services, promotion of social justice, value for human dignity and full respect to human rights, rural development and agrarian reform, rights of subsistence fishermen, protection of resources, effective food and drug regulatory system, and full protection to labor.

The Supreme Court has declared some of these ESC rights¹⁵¹ as non-self-executing and are more accurately mere statements of principles and policies.¹⁵² Being aspirational, they serve as moral incentives to legislation, but they do not embody judicially enforceable constitutional rights.¹⁵³ Thus, the disregard of these rights does not give rise to any cause

¹⁴⁸ Margret Vidar, *State Recognition of the Right to Food at the National Level*, UNU-WORLD INSTITUTE FOR DEVELOPMENT ECONOMICS RESEARCH, 2006, available at http://archive.unu.edu/hq/library/Collection/PDF_files/WIDER/WRP/WRP196.pdf

¹⁴⁹ De los Reyes & Diokno, *supra* note 147.

¹⁵⁰ CONST. art. III, §1.

¹⁵¹ Art. II, §11-13; art. XIII, §§1, 11-14; art. XIV, §2; art. XV, §1,3.

¹⁵² Basco v. Phil. Amusements and Gaming Corp. (PAGCOR), G.R. No. 91649, 197 SCRA 52, May 14, 1991.

¹⁵³ Tolentino v. Sec’y of Finance, G.R. No. 115455, 235 SCRA 630, Aug. 25, 1994.

of action before the courts.¹⁵⁴ If unheeded, the remedy lies not with the courts, but with the electorate's displeasure.¹⁵⁵

In several instances, however, the Supreme Court has declared some ESC rights textualized in the Constitution as self-executing, and therefore actionable even without an enabling law, such as the right to health and the right to a balanced and healthful ecology,¹⁵⁶ as well as the Filipino First Policy.¹⁵⁷

These jurisprudential pronouncements reinforce a particular concern of the right to food legal framework: "If the right to food is inferred from various constitutional provisions, a Supreme Court decision weakens the right by ruling that some human rights are 'not judicially enforceable rights.'"¹⁵⁸

De los Reyes and Diokno attribute the weaknesses of the legal framework to "the lack of explicit recognition of the right to food by the [1987 Constitution], and to the lack of a national food policy that should serve as the overarching framework to address hunger."¹⁵⁹ They underscore, however, that the right to food may be inferred, not only from other provisions such as the right to human dignity, but also from the intent of the framers of the 1987 Constitution to address mass poverty.¹⁶⁰

They conclude that while there was no discussion of hunger, starvation, or malnutrition in the deliberations of the Constitutional Commission, the focus on the eradication of mass poverty may be interpreted to include these issues.¹⁶¹ Additionally, a perusal of the records of the Constitutional Commission reveals that the "whole gamut of rights pertinent to the existence of the human person"¹⁶² in which the right to adequate food may be inferred and correlated were intended to be more than promises on paper of "a rising standard of living and an improved quality of life."¹⁶³

¹⁵⁴ Pamatong v. COMELEC, G.R. No. 161872, 427 SCRA 96, Apr. 13, 2004.

¹⁵⁵ Tondo Med. Ctr. Emp. Ass'n v. CA, G.R. No. 167324, 527 SCRA 746, July 17, 2007.

¹⁵⁶ Oposa v. Factoran, G.R. No. 101083, 224 SCRA 792, July 30, 1993.

¹⁵⁷ Manila Prince Hotel v. GSIS, G.R. No. 122156, 267 SCRA 408, Feb. 3, 1997.

¹⁵⁸ De los Reyes & Diokno, *supra* note 147.

¹⁵⁹ *Id.* (Emphasis omitted.)

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² RECORD CONST. COMM'N 4 (Sept. 16, 1986).

¹⁶³ CONST. art. II, §9.

C. Statutory Protection

Despite the lack of a national food policy and framework law, there is a broad range of laws that touches upon the right to adequate food and assures some of its components, such as the equitable distribution of resources, agrarian reform and productivity of land,¹⁶⁴ agriculture and fisheries development,¹⁶⁵ nutrition and dietary needs,¹⁶⁶ minimum wage,¹⁶⁷ and food prices.¹⁶⁸

The Magna Carta of Women (“MCW”)¹⁶⁹ and the Magna Carta of the Poor (“MCP”)¹⁷⁰ are conceivably the most groundbreaking pieces of legislation in recent history that tackle the right to adequate food, albeit only for a specific sector of society.

The MCW, passed into law in 2009, emphasized women’s right to food. This includes the right to full, accurate, and truthful information about safe and health-giving foods and how to produce and have regular access to them.¹⁷¹ It also asserts women’s right to resources for food production by giving priority to their rights to land, credit, and infrastructure support, technical training, and technological and marketing assistance.¹⁷²

To ensure the fulfillment of these recognized rights, MCW obligates the state to guarantee, at all times, the availability 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.¹⁷³

¹⁶⁴ Rep. Act No. 6657 (1988). Comprehensive Agrarian Reform Law; Rep Act. No. 9700 Comprehensive Agrarian Reform Program Extension with Reforms.

¹⁶⁵ Rep. Act No. 8435 (1997). Agriculture and Fisheries Modernization Act (AFMA); Rep Act. No. 8550 (1998). Philippine Fisheries Code; Rep. Act No. 7607 (1992). Magna Carta for Small Farmers; Rep. Act No. 7884 (1995). National Dairy Act; Rep. Act No. 7308 (1992). Seed Industry Development Act; Rep. Act No. 9168 (2002). Plant Variety Protection Act; Rep. Act No. 7900 (1995): High Value Crops Development Act

¹⁶⁶ Exec. Order No. 51 (1986). Milk Code; Rep. Act No. 8976 (2000): Philippine Food Fortification Act; Rep. Act. No. 7600 (1992). Breastfeeding Act.

¹⁶⁷ Pres. Dec. No. 442 (1974). Labor Code of the Philippines, as amended

¹⁶⁸ Rep. Act No. 7581 (1992). Price Act; Rep. Act. No. 71 (1946). Price Tag Law.

¹⁶⁹ Rep. Act No. 9710 (2009).

¹⁷⁰ Rep. Act No. 11291 (2019).

¹⁷¹ Rep Act. No. 9170 (2009), §20(a).

¹⁷² §20(b).

¹⁷³ §20.

Still, the integration of an explicit right to adequate food into local legislation has been few and far between. It took a decade after the passage of the MCW for the enactment of another statute adopting the right to adequate food. The MCP, a charter of rights of the poor,¹⁷⁴ mandates the establishment of a system of progressive realization of the right to adequate food,¹⁷⁵ among other rights. Towards this end, it directs the Department of Social Welfare and Development, the Department of Agriculture, and other concerned agencies to ensure the physical and economic access to adequate and healthy food, or the means to procure it¹⁷⁶ through hunger mitigation initiatives,¹⁷⁷ supplementary feeding programs,¹⁷⁸ efforts to ensure food supply availability, accessibility, and sustainability,¹⁷⁹ and promotion of food self-sufficiency among the poor.¹⁸⁰

A 2010 assessment of existing domestic laws reveals that despite the plentitude of well-formulated and well-intended domestic laws, the overall legal framework is weak because it is incoherent, non-complementary, and does not sufficiently address the state obligations arising from the right to adequate food. Only the obligation to protect is well incorporated within the legal framework.

On the other hand, the obligation to respect and the duty of international cooperation are virtually absent, while the obligation to fulfill was insufficiently imposed so as to create an environment necessary to address the hunger situation in the country. Moreover, the legal framework falls short of the imperatives for the progressive realization of the right and is incompatible with the Voluntary Guidelines.¹⁸¹

¹⁷⁴ Defined under §4(f) of Rep. Act No. 11291 as – (f) Poor shall refer to individuals or families whose income falls below the poverty threshold as defined by the National Economic and Development Authority (NEDA) and/or who cannot afford in a sustained manner to provide their minimum basic needs of food, health, education, housing, or other essential amenities of life, as defined under Republic Act No. 8425, otherwise known as the “Social Reform and Poverty Alleviation Act”. In determining who constitute the poor, the Multidimensional Poverty Index determined by the Philippine Statistics Authority (PSA) shall be considered.

¹⁷⁵ Rep. Act No. 11291 (2019), §20(a).

¹⁷⁶ §20(a).

¹⁷⁷ §20(a)(1).

¹⁷⁸ §20(a)(2).

¹⁷⁹ §20(a)(3).

¹⁸⁰ §20(a)(4).

¹⁸¹ De los Reyes & Diokno, *supra* note 147.

In relation to access to land, agricultural productivity, and trade that ensure supply of food, food availability laws indicate a clear bias towards ensuring the welfare of food consumers, but they are limited in scope. There is also an apparent gap between these food policies and the degree and quality of their implementation.¹⁸²

In relation to the physical and economic accessibility of food, food accessibility laws which pertain to physical accessibility are limited to enhancing the mobility of persons with disabilities (PWDs) and not to enhancing the general access of people to food. Those that govern economic accessibility are hounded by various issues: food price laws do not significantly contribute to hunger mitigation; income-related laws influence the hunger situation in a variety of ways, both good and bad; laws governing wages and employment are insufficient to systematically uplift workers on a large-scale basis; laws relating to income generating opportunities are generally flawed; and special laws for those most vulnerable (i.e., children, elderly, PWDs, and persons with HIV/AIDS) do not sufficiently recognize the specific obstacles they face.¹⁸³

Meanwhile, in relation to the nutritive quality of food, safety standards and regulation, and sanitation, while food safety laws fully recognize the importance of safe food that meets dietary needs, there is only one law that deals with sanitation.¹⁸⁴

D. Judicial Affirmation

As early as 1951, three years after the promulgation of the UDHR and almost four decades before the ratification of the 1987 Constitution, the Supreme Court had already declared the adoption of the UDHR, a generally accepted principle of international law, as part of the law of the land.¹⁸⁵

Since then, the Supreme Court has consistently affirmed the full protection of human rights by giving due deference to pertinent international human rights instruments. It has anchored some of its

¹⁸² *Id.*

¹⁸³ Hilal Elver, Report of the Special Rapporteur on the right to food on her mission to Philippines, A/HRC/31/51 (Dec. 29, 2015).

¹⁸⁴ De los Reyes & Diokno, *supra* note 147.

¹⁸⁵ *See* Mejoff v. Dir. of Prisons, G.R. No. 4254, 90 Phil. 70, Sept. 26, 1951; Borovksy v. Comm’r of Immigration, G.R. No. 4352, 90 Phil. 107, Sept. 28, 1951.

decisions on the UDHR,¹⁸⁶ the ICESCR,¹⁸⁷ the CEDAW,¹⁸⁸ and the CRC.¹⁸⁹ As a result, these instruments effectively formed part of the Philippine legal system, not only through the processes of transformation and incorporation, but also through their judicial affirmation in the domestic jurisprudence.¹⁹⁰

In the 2003 case of *Republic v. Sandiganbayan*,¹⁹¹ the Supreme Court had the opportunity to explicate the obligatory and legal effect of the UDHR and ICCPR during the interregnum¹⁹² when the government in power was a revolutionary government bound by no constitution. Speaking through Justice Antonio Carpio, the Supreme Court unequivocally declared that although no constitution was in place, and consequently, no Bill of Rights was in operation, the protection accorded to individuals under the UDHR and the ICCPR remained in effect during the interregnum.

Although the signatories of the UDHR, a mere declaration, did not intend for it to become a legally binding document, the Court has nevertheless interpreted it as part of customary international law, and therefore, binding within the Philippine jurisdiction. Thus, the revolutionary government was obligated under international law to observe the rights of individuals under the UDHR.¹⁹³ This is also in keeping with the fundamental precept of international law that a domestic law does not constitute a valid defense for non-compliance with international law obligations, whether of conventional or customary provenance.¹⁹⁴

Following the argument of the majority, the right to adequate food under UDHR and ICESCR binds and operates in the Philippines even

¹⁸⁶ See *Government of Hong Kong v. Olalia*, G.R. No. 153675, 521 SCRA 470, April 19, 2007.

¹⁸⁷ See *International Sch. All. of Educators v. Quisumbing*, G.R. No. 128845, 333 SCRA 13, June 1, 2000.

¹⁸⁸ See *Garcia v. Dylon*, G.R. No. 179267, 699 SCRA 352, June 25, 2013.

¹⁸⁹ See *Central Bank Emp. Ass'n, Inc. v. BSP*, G.R. No. 148208, 446 SCRA 299, Dec. 15, 2004.

¹⁹⁰ CIVIL CODE, art. 8.

¹⁹¹ See *Republic v. Sandiganbayan*, G.R. No. 104768, 407 SCRA 10, July 21, 2003.

¹⁹² The period after the actual and effective take-over of power by the revolutionary government following the cessation of resistance by loyalist forces, and before the adoption of the 1986 Provisional Constitution.

¹⁹³ See *Republic v. Sandiganbayan*, G.R. No. 104768, 407 SCRA 10, July 21, 2003.

¹⁹⁴ *Ranhilio Aquino, A Constitution without a bill of rights*, MANILA STANDARD, Jan. 8, 2018, available at <http://www.manilastandard.net/opinion/columns/pens-es-by-fr-ranhilio-aquino/255744/a-constitution-without-a-bill-of-rights.html>

without a constitution in place, or even without an express constitutional guarantee that recognizes it.

Chief Justice Reynato Puno, in his separate opinion, posited that fundamental and natural rights under natural law precede the constitution, and do not depend on positive law.¹⁹⁵ Thus, even without a constitution, “the rights that reason discerns to be inherent in human personhood”¹⁹⁶ must still be upheld.

In the same vein, the right to adequate food holds sway even absent an explicit constitutional recognition because it is an inherent right that precedes the Constitution. The presence of an implied right to adequate food calls for the application of the equitable principle of *ubi jus, ibi remedium* (“where there is a right, there is a remedy”), to which the Philippine Supreme Court declared—

And when our Constitution declares that a right exists in certain specified circumstances an action may be maintained to enforce such right notwithstanding the absence of any legislation on the subject; consequently, if there is no statute especially enacted to enforce such constitutional right, such right enforces itself by its own inherent potency and puissance, and from which all legislations must take their bearings. Where there is a right there is a remedy. *Ubi jus[,] ibi remedium*.¹⁹⁷

E. Legislative Proposal: The Zero-Hunger Bills

The Philippines is under obligation to take steps to progressively realize the right to adequate food by all appropriate means, including the adoption of national legislation.¹⁹⁸ Towards this end, the CESCR recommends the adoption of a framework law as a major instrument in the implementation of a national strategy for the right to food.¹⁹⁹

¹⁹⁵ See *Republic v. Sandiganbayan*, G.R. No. 104768, 407 SCRA 10, July 21, 2003 (Puno, J., *separate*).

¹⁹⁶ Aquino, *supra* note 194.

¹⁹⁷ See *Manila Prince Hotel v. GSIS*, G.R. No. 122156, 267 SCRA 408, Feb. 3, 1997.

¹⁹⁸ ICESCR, art. 2(1).

¹⁹⁹ *General Comment 12*, *supra* note 17, ¶ 29.

A framework law, a legislative technique used to address cross-sectoral issues,²⁰⁰ defines the scope and provides the content of the right to adequate food, sets out obligations for duty-bearers, establishes necessary institutional mechanisms, and lays down the legal basis for supplementary legislations.²⁰¹ More significantly, it sanctions administrative, judicial, and quasi-judicial means of enforcing such right.²⁰² The advantages of implementing the right to food through a framework law include—

[E]nhanced accountability of the government for its actions or inactions affecting the realization of the right to food (since the framework law clearly sets out the obligations of the various government actors). Given sufficient awareness, an adequate legislative framework can also assist public officials in avoiding possible infringements of the right to food in the first place. The framework law can also establish or provide the basis for the establishment of the institution that will take the lead in the coordination of its enforcement. It can play a key role in defining the entitlement to the minimum amount of food that persons have and that the state is required to provide immediately. Furthermore, a framework law can provide a legal basis for adopting special measures needed to correct the existing inequalities within society with respect to access to food or to means for its procurement. Finally, specific legislation implementing the right to food can stipulate the financial arrangements needed for its realization in practice.²⁰³

Initial attempts to legislate a framework law in the Philippines can be traced from the filing of two legislative measures,²⁰⁴ dubbed as the Zero-Hunger Bills, drafted by more than 50 non-governmental organizations²⁰⁵ in 2014. Both bills, however, remained at the committee-level of each chamber until the closure of the Sixteenth Congress.

²⁰⁰ DUBRAVKA BOJIC BULTRINI, GUIDE ON LEGISLATING FOR THE RIGHT TO FOOD (2009)

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ See H. No. 3795, 16th Cong., 1st Sess. (2014); S. No. 2137, 16th Cong., 1st Sess. (2014).

²⁰⁵ Nadia Lambek & Priscilla Claeys, *Institutionalizing a Fully Realized Right to Food*, 40 VERMONT L. REV. 743 (2016).

Significant strides have been made in the subsequent Congress with the passage of House Bill (HB) No. 7193²⁰⁶ on its third and final reading, the farthest a framework bill has reached in the legislative mill. HB No. 7193, a consolidation of four bills²⁰⁷, adopts a rights-based approach, makes food a legal right, and creates a legal framework within which hunger may be addressed progressively. It broadly aims:

[1] To guarantee the right to adequate food by making it a State obligation and responsibility to ensure and facilitate access to food, its availability and adequacy, consistent with the principles enshrined in the Constitution, as well as the provisions of the various international instruments to which the Philippines is a State Party; and]

[2] To provide a comprehensive legal framework which will harmonize all relevant Philippine laws on the right to adequate food, clarify its normative content and compliance standards, define its progressive realization[,] and prohibit violations on the right to adequate food.²⁰⁸

Unfortunately, the progress made with HB No. 7193 was not sustained due to the lack of material time to act on the five counterpart bills²⁰⁹ filed in the Upper Chamber, and to subsequently enact them into law.

Similar bills were re-filed in the Eighteenth Congress, but these will have to go through the legislative cycle again. To date, these bills are still pending before the House Committee on Human Rights and the Senate Committee on Justice and Human Rights. Largely adapted from the FAO Guide on Legislating for the Right to Food, the Right to Adequate Food Framework Bills (“Zero-Hunger Bills”)²¹⁰ currently pending in Congress share common salient provisions, including the following:

²⁰⁶ H. No. 7193, 17th Cong., 2nd Sess. (2018).

²⁰⁷ H. No. 61, 17th Cong., 1st Sess. (2016); H. No. 256 17th Cong., 1st Sess. (2016); H. No. 1645 17th Cong., 1st Sess. (2016); H. No. 3938 17th Cong., 1st Sess. (2016).

²⁰⁸ H. Rpt. 614, 17th Cong., 2nd Sess. (2018). Committee on Human Rights.

²⁰⁹ S. No. 111, 17th Cong., 1st Sess. (2016); S. No. 712, 17th Cong., 1st Sess. (2016); S. No. 1624, 17th Cong., 2nd Sess. (2017); S. No. 1707, 17th Cong., 2nd Sess. (2018); S. No. 1928, 17th Cong., 3rd Sess. (2018).

²¹⁰ H. No. 486, 18th Cong., 1st Sess. (2019); H. No. 1532, 18th Cong., 1st Sess. (2019); H. No. 4649, 18th Cong., 1st Sess. (2019); H. No. 5279, 18th Cong., 1st Sess. (2019); S. No. 122, 18th Cong., 1st Sess. (2019); S. No. 138, 18th Cong., 1st Sess. (2019); S. No. 559, 18th Cong., 1st Sess. (2019).

- (a) Explicit guarantee of the right to adequate food, and the declaration that adequate food is not a matter of charity, but a legal entitlement;
- (b) Reiteration of the scope and normative content of the right to adequate food;
- (c) Designation of the State as the primary duty-bearer and the elaboration of the responsibilities of different government agencies;
- (d) Laying down of targets to achieve zero-hunger within a specified timeframe and the establishment of a monitoring and assessment mechanism;
- (e) Creation of a policy coordinating and implementing body;
- (f) Establishment of accessible recourse procedures and appropriate remedies;
- (g) Fixing the standards on the amount of food; and
- (h) Rationalization of existing food policies.²¹¹

These legislative measures seek to establish an actionable legal position for victims by crafting recourse procedures and setting penalties for violations, thus effectively clothing the right to adequate food with justiciability and legal exigibility in the domestic human rights system.

Although the 1987 Constitution makes no specific reference to the right to adequate food, either as a fundamental right or a state policy, and no legislation explicitly refers to its protection, the right to adequate food is considered an element of broader basic rights assured by the fundamental law and is inferred from the constitutional intent to improve the quality of life.

Notably, the right to adequate food is acknowledged at the national level under several international human rights instruments that the Philippine Senate has ratified, or that the Philippine Judiciary has recognized as customary international law. Thus, even absent a clear-cut constitutional guarantee or a statutory recognition, such right is deemed incorporated in our municipal laws, and is thus legally binding. These treaties, along with other interpretative aids, add legitimacy to submissions that the right to adequate food is legal, justiciable, and judicially exigible.²¹²

²¹¹ See H. No. 486, 18th Cong., 1st Sess. (2019); H. No. 1532, 18th Cong., 1st Sess. (2019); H. No. 4649, 18th Cong., 1st Sess. (2019); H. No. 5279, 18th Cong., 1st Sess. (2019); S. No. 122, 18th Cong., 1st Sess. (2019); S. No. 138, 18th Cong., 1st Sess. (2019); S. No. 559, 18th Cong., 1st Sess. (2019).

²¹² Langford, *supra* note 89.

Additionally, most of the domestic food-related statutes create positive and negative obligations, the commission or omission of which gives rise to infringements. Under most of these special laws, right-holders may seek judicial redress for the arbitrary abridgment of the individual elements of the right to food. While this is not the ideal legal situation, these piecemeal legislations and remedies are incremental steps to ensure the realization of the right to adequate food, lacking a national food policy and framework law. The adoption of the right to adequate food in domestic law makes it operational at the national level as victims are empowered to utilize the law to seek remedy and demand accountability.²¹³

Court decisions, particularly those that support the local application of the international human rights standards, are also solid bases in claiming and enforcing human rights in the domestic level.

Indeed, there are enough recognized sources of law to anchor the position of the right to adequate food as an independent enforceable right within the present legal framework and to demand the enforcement and realization of such right before domestic courts.

V. THE JUDICIARY AS THE VANGUARD OF HUMAN RIGHTS

A. The Right to Effective Remedy

Remedies serve dual functions in the law: (1) to define abstract rights by making the value real and tangible, and (2) to enforce otherwise intangible rights by providing specificity and concreteness.²¹⁴

Without remedies, rights are simply expressions of social values.²¹⁵ The omission of the fundamental right to an effective remedy negates the possibility of adjudicating infractions of other basic human rights. Stated differently, the justiciability and judicial exigibility of human rights are

²¹³ Abdullah Al Faruque, *From Basic Need to Basic Right: Right to Food in Context*, NATIONAL HUMAN RIGHTS COMMISSION OF BANGLADESH, 2014, available at http://nhrc.portal.gov.bd/sites/default/files/files/nhrc.portal.gov.bd/page/348ec5eb_22f8_4754_bb62_6a0d15ba1513/From%20Basic%20Need%20to%20Basic%20Right_%20Right%20to%20Food%20in%20Context.pdf

²¹⁴ Thomas, *supra* note 46.

²¹⁵ *Id.*

directly related to the right to an effective remedy²¹⁶ as the latter is a crucial element for the enforcement of human rights²¹⁷ and is fundamental to the rule of law.²¹⁸

The right to effective remedy is most notably recognized under Article 8 of the UDHR: “Everyone 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.”²¹⁹

General Comment No. 12 supports the obligation of the State to provide victims of food deprivation with “access to effective judicial or other appropriate remedies at both national and international levels. All victims of such violations are entitled to adequate reparation[.]”²²⁰ In 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.”²²¹

State parties to the International Bill of Human Rights should “provide for effective remedies including, where appropriate, judicial remedies.”²²² While the right to an effective remedy need not always be equated with judicial remedy, “[a]n ultimate right of judicial appeal from administrative procedures” should be an essential part of the remedial process. Judicial remedies are necessary whenever rights “cannot be made fully effective without some role for the judiciary.”²²³

It is therefore undisputed that enforceable judicial remedies are critical to fully realize the human right to adequate food as they empower right-holders and make duty-bearers accountable. An international human rights organization notes how “[n]ot only must a legal framework protect and promote human rights, but rights-holders must have access to competent, impartial, and independent processes that can adjudicate

²¹⁶ Avitus Agbor, *Pursuing the Right to an Effective Remedy for Human Rights Violation(s) in Cameroon: The Need for Legislative Reform*, 20 AFR. J. ONLINE (2017).

²¹⁷ Weibel, *supra* note 13.

²¹⁸ Porter, *supra* note 25.

²¹⁹ UDHR, art. 8.

²²⁰ *General Comment 12*, *supra* note 17, ¶ 32-34.

²²¹ CESCR, General Comment No. 9 [hereinafter “General Comment 9”] ¶ 2, E/C.12/1998/24 (Dec. 3, 1998)

²²² Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, ¶ 19, E/CN.4/1987/17 (Jan 8, 1987).

²²³ *General Comment 9*, *supra* note 220, ¶ 9.

disputes and rule on claims. Put simply, meaningful rights must be enforceable.”²²⁴

B. Domestic ESC Rights Jurisprudence

In the domestic setting, recourse to enforceable judicial remedies is evidently wanting, due partly to the lack of an established judicial claim mechanism and partly to the Supreme Court’s characterization of constitutionally recognized ESC rights as aspirational and non-self-executing principles which are mere “directives addressed to the executive and the legislature.”²²⁵

The 1991 case of *Basco v. PAGCOR* referred to Sections 11 (Personal Dignity and Human Rights), 12 (Family), and 13 (Role of Youth) of Article II; Section 13 (Social Justice) of Article XIII; and Section 2 (Educational Values) of Article XIV of the 1987 Constitution as mere statements of principles and policies. These provisions are “not self-executing, meaning a law should be passed by Congress to clearly define and effectuate such principles.”²²⁶ Absent an enabling law, these constitutional rights cannot be presented before the courts for judicial adjudication and enforcement.

The Supreme Court, in *Tolentino v. Secretary of Finance*,²²⁷ articulated that the directive to Congress to give priority to the enactment of laws for the enhancement of human dignity and the reduction of social, economic, and political inequalities under Section 1 of Article XII, and the promotion of the right to quality education under Section 2 of Article XIV are only “moral incentives to legislation, [and] not [...] judicially enforceable rights.”

However, in the landmark environmental case of *Oposa v. Factoran*,²²⁸ the Supreme Court affirmed the rights to health and to a balanced and

²²⁴ *Promotional of Justiciability for Adequate Right to Food*, FIAN NEPAL, Dec. 2, 2014, available at <http://fiannepal.org/promotional-of-justiciability-for-adequate-right-to-food/?lang=en>

²²⁵ See *Basco v. Phil. Amusements and Gaming Corp. (PAGCOR)*, G.R. No. 91649, 197 SCRA 52, May 14, 1991.

²²⁶ *Id.*

²²⁷ See *Tolentino v. Sec’y of Finance*, G.R. No. 115455, 235 SCRA 630, Aug. 25, 1994.

²²⁸ See *Oposa v. Factoran*, G.R. No. 101083, 224 SCRA 792, July 30, 1993.

healthful ecology, which are enshrined under Article II of the 1987 Constitution, as legally demandable rights capable of being the subject of judicial review—

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—aply and fittingly stressed by the petitioners—the advancement of which may even be said to predate all governments and 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.²²⁹

This departure from the conservative interpretation of ESC rights under Article II, however, pertains only to Sections 15 and 16. Particular provisions of Article II—Sections 5, 12, 13, and 17—were set apart in *Kilosbayan v. Morato*²³⁰ as not self-executing. In other words, “[t]hey do not confer rights which can be enforced in the courts but only provide guidelines for legislative or executive action.”²³¹

Four years after the *Oposa* ruling, the Supreme Court described the nature of Article II as non-self-executing, and explained how the judiciary employs these principles and policies—

By its very title, Article II of the Constitution is a “declaration of principles and state policies.” The counterpart of this article in the 1935 Constitution is called the “basic political creed of the nation”

²²⁹ *Id.* (Emphasis supplied.)

²³⁰ *Kilosbayan v. Morato*, G.R. No. 118910, 246 SCRA 540 (1995).

²³¹ *Id.* (Emphasis in the original.)

by Dean Vicente Sinco. *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 v. 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.”²³²

The 2007 case of *Tondo Medical Center Employees Association v. Court of Appeals* is no different from the earlier cases of *Basco*, *Toentino*, and *Kilosbayan* in that the Supreme declared that several provisions²³³ of the 1987 Constitution upholding the rights to health, education, work, and rights of the family, youth, workers, and persons with disabilities were not judicially enforceable rights. It stated that “[t]hese provisions, which merely lay down a general principle, are distinguished from other constitutional provisions as non-self-executing and, therefore, cannot give rise to a cause of action in the courts; they do not embody judicially enforceable constitutional rights.”²³⁴

These jurisprudential developments not only underscore the absence of a “clear and consistent methodology for differentiating justiciable [ESC] rights from non-justiciable or aspirational [ones.]”²³⁵ but also reflect the propensity of the Supreme Court to reject constitutional scrutiny of ESC rights. The rationale behind this judicial tendency is laid down in *Tañada v. Angara*,²³⁶ echoing the concurring opinion of Justice Feliciano in the *Oposa* case—

The reasons for denying a cause of action to an alleged infringement of broad constitutional principles are sourced from basic considerations of due process

²³² *Tañada v. Angara*, 333 Phil. 546 (1997). (Emphasis supplied.)

²³³ Art. II, §§ 5 (right to protection of life, liberty and property and promotion of the general welfare), 9 (right to just and dynamic social order), 10 (right to social justice in national development), 11 (right to dignity and full respect for human rights), 122 (rights of the family), 13 (rights of the youth), 15 (right to health), 18 (rights of workers); art. XIII, § 1 (right to human dignity and against social, economic, political and cultural inequalities), 13 (rights of persons with disabilities); art. XIV, § 2 (right to education)

²³⁴ See *Tondo Med. Ctr. Emp. Ass’n v. CA*, G.R. No. 167324, 527 SCRA 746, July 17, 2007.

²³⁵ Diane Desierto, *Justiciability of Socio-Economic Rights: Comparative Practices in the Philippines and South Africa*, 11 *ASIAN-PAC. L. & POL’Y J.* 114 (2009).

²³⁶ See *Tañada v. Angara*, 333 Phil. 546 (1997).

and the lack of judicial authority to wade “into the uncharted ocean of social and economic policy making.” Mr. Justice Florentino P. Feliciano in his concurring opinion in *Oposa vs. Factoran, Jr.*, explained these reasons as follows:

My suggestion is simply that petitioners must, before the trial court, show a more specific legal right—a right cast in language of a significantly lower order of generality than Article II (15) of the Constitution—that is or may be violated by the actions, or failures to act, imputed to the public respondent by petitioners so that the trial court can validly render judgment granting all or part of the relief prayed for. To my mind, the court should be understood as simply saying that such a more specific legal right or rights may well exist in our corpus of law, considering the general policy principles found in the Constitution and the existence of the Philippine Environment Code, and that the trial court should have given petitioners an effective opportunity so to demonstrate, instead of aborting the proceedings on a motion to dismiss.

It seems to me important that the legal right which is an essential component of a cause of action be a specific, operable legal right, rather than a constitutional or statutory policy, for at least two (2) reasons. One is that unless the legal right claimed to have been violated or disregarded is given specification in operational terms, defendants may well be unable to defend themselves intelligently and effectively; in other words, there are due process dimensions to this matter.

The second is a broader-gauge consideration—where a specific violation of law or applicable regulation is not alleged or proved, petitioners can be expected to fall back on the expanded conception of judicial power in the second paragraph of Section 1 of Article VIII of the Constitution which reads:

Sec. 1. ...

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not 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.

*When substantive standards as general as “the right to a balanced and healthy ecology” and “the right to health” are combined with remedial standards as broad ranging as “a grave abuse of discretion amounting to lack or excess of jurisdiction,” the result will be, it is respectfully submitted, to propel courts into the uncharted ocean of social and economic policy making. At least in respect of the vast area of environmental protection and management, our courts have no claim to special technical competence and experience and professional qualification. Where no specific, operable norms and standards are shown to exist, then the policy making departments—the legislative and executive department—must be given a real and effective opportunity to fashion and promulgate those norms and standards, and to implement them before the courts should intervene.*²³⁷

Evidently, the Supreme Court’s “archaic position on the justiciability of socio-economic rights”²³⁸ left most ESC rights in the 1987 Constitution “dormant and under-utilized.”²³⁹ This conservative stance poses an even greater challenge for the justiciability of the right to adequate food, a right not expressly recognized in the Constitution. As argued by one author, “[n]eutralizing a right by eliminating its remedy and converting it into a mere description of favored behavior effectively nullifies the attendant right and deprives the courts of the ability to protect our legal rights.”²⁴⁰

C. Judicial Activism and Interpretative Powers of the Court

The lack of a declared constitutional recognition of the right to adequate food in the Philippines is closely similar to that of Canada’s in that “there is no explicit recognition of most ESC rights in the Canadian Charter of Rights and Freedoms. However, the Charter does contain broadly framed rights to equality, and to life, liberty, and security of the person.”²⁴¹

²³⁷ *Id.* (Emphasis supplied.)

²³⁸ Desierto, *supra* note 234.

²³⁹ *Id.*

²⁴⁰ Thomas, *supra* note 46.

²⁴¹ Porter, *supra* note 25.

This, however, did not prevent the Canadian Supreme Court from vesting ESC rights with the force of law and from according them the same status as constitutional entitlements—²⁴²

The [Canadian] Supreme Court has affirmed that “the Charter should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada ratified” and that international human rights law is “critical influence to the interpretation of the scope of the rights included in the Charter.”²⁴³

This deference to international human rights law is employed to enforce a constitutionally unwritten right.

Another instructive model may be gleaned from the revolutionary stance taken by the United States (U.S.) Supreme Court in the seminal case of *Griswold v. State of Connecticut*.²⁴⁴ In invalidating a criminal statute prohibiting the use of contraceptives because it violated the right to privacy of married couples, the seven-to-two decision held that even in the absence of specific language addressing privacy in the US Constitution, the right to privacy is implied throughout the Bill of Rights.

Writing for the majority, Justice William Orville Douglas established the basis of the right to privacy by locating zones of privacy in the penumbras surrounding a number of constitutionally protected rights. He argued that constitutionally protected rights²⁴⁵ “have penumbras, formed by emanations from those guarantees that help give them life and substance.”²⁴⁶

The penumbral rights doctrine brings to light the possibility and the promise of stepping out of the shadows of black-letter law, and into a more innovative reinterpretation of the fundamental law in response to the exigencies of the times. The human right to adequate food may be considered a penumbral right that emanates from the expressly recognized rights in the 1987 Philippine Constitution, given its inimitable place in the

²⁴² See Louise Arbour, “Freedom from want” - from charity to entitlement, Speech delivered at the LaFontaine-Baldwin Lecture (2005).

²⁴³ Porter, *supra* note 25.

²⁴⁴ 381 U.S. 479 (1965).

²⁴⁵ First, Third, Fourth, and Fifth Amendments in relation to the Ninth Amendment.

²⁴⁶ 381 U.S. 479 (1965).

protection and realization of all other rights. This effectively addresses the perceived weakness of the present legal framework.

These North American high courts prove that the lack of an explicit reference to the right to adequate food in the Constitution is not an insurmountable limitation in litigating breaches and providing remedies. In emphasizing the duty of the courts in shaping remedies, the Constitutional Court of South Africa, in a case on “constitutional damages”²⁴⁷ for the infringement of several constitutional rights, declared that—

[A]n appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced. Particularly in a country where so few have the means to enforce their rights through the courts, it is essential that on those occasions when the legal process does establish that an infringement of an entrenched right has occurred, it be effectively vindicated. The courts have a particular responsibility in this regard and are obliged to “*forge new tools*” and *shape innovative remedies*, if needs be, to achieve this goal.²⁴⁸

This power to forge new tools and shape innovative remedies is granted to the Philippine Supreme Court to address the “perpetual neglect of human rights [through] innovative, creative, and extensive solutions.”²⁴⁹ Unlike previous Philippine constitutions, the 1987 charter expanded the scope of judicial power to include—

[T]he duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not 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.²⁵⁰

Parallel to the expansion of the scope of judicial review and certiorari jurisdiction is the expansion of the Supreme Court’s rule-making

²⁴⁷ *Media Summary for Fose v. Minister of Safety and Security*, SOUTHERN AFRICA LEGAL INFORMATION INSTITUTE, June 5, 1997, available at <http://www.saflii.org/za/cases/ZACC/1997/6media.doc>.

²⁴⁸ *Fose v. Minister of Safety and Security*, Case CCT14/96, 1997 (3) SA 786, June 5, 1997. (Emphasis supplied.)

²⁴⁹ JOSE MIDAS MARQUEZ, ET. AL., *COMPLETING THE CIRCLE OF HUMAN RIGHTS: THE PUNO INITIATIVE* 16 (2010).

²⁵⁰ CONST. art. VIII, §1, ¶2.

power to “promulgate rules concerning the protection and enforcement of constitutional rights.”²⁵¹

In calling for the exercise of the “clear and express activist mandate of our fundamental law”²⁵² in the consistent and standardized adjudication of ESC rights, one scholar accurately observed:

The [Philippine Supreme Court] stands unique among other jurisdictions for radically (and repeatedly) ruling that the [UDHR] (an instrument internationally-deemed to be non-binding) as having legal effect in the Philippines. In this sense, the Court appears conscious of its more active adjudicating, rule-making, and gatekeeping roles under the present constitutional system in the Philippines. *There is no conceivable reason why the Court cannot now harness its constitutional authority to overcome the largely self-imposed (and not constitutionally-predicated) restraint of justiciability of socio-economic rights.*²⁵³

D. Remedial Claim Mechanisms

In taking on their role as vanguards of human rights, several foreign judicial bodies have forged new tools for the legal enforcement of ESC rights. These are broadly categorized into: (1) individual remedies, (2) collective and public interests petitions, and (3) *amparo* actions and tutelary procedures.²⁵⁴

1. Individual Remedies

In Switzerland, direct public remedy allows for individual petitions to the Swiss Federal Supreme Court in cases of breaches of their fundamental rights.²⁵⁵ It is, however, limited to victims acting in their personal interest and precludes the possibility of any collective actions.²⁵⁶ Further, the power of the Federal Supreme Court is limited in terms of

²⁵¹ Art. VIII, §5, ¶ (5)

²⁵² Artemio Panganiban, *Judicial Activism in the Philippines*, 79 PHIL. L. J. 265 (2004).

²⁵³ Desierto, *supra* note 234. (Emphasis supplied.)

²⁵⁴ Golay, *supra* note 54.

²⁵⁵ FEDERAL CONSTITUTION OF THE SWISS CONFEDERATION, art. 29a.

²⁵⁶ Golay, *supra* note 54.

determining measures to resolve issues. For example, the court may not void a federal law, even if such action is consistent with the protection of fundamental rights.²⁵⁷

2. *Collective and Public Interest Petitions*

In Brazil, the defense of “diffuse and collective” interests²⁵⁸ may be the object of public civil action (*ação civil pública*), a procedural remedy guaranteed under a statute.²⁵⁹ The public prosecutor and non-government organizations (NGOs) are permitted to file collective complaints on behalf of human rights victims.²⁶⁰

In South Africa and India, courts allow for both individual petitions and collective and public interest petitions before their regional constitutional courts, with an option of appealing to their national constitutional courts.²⁶¹ South Africa allows a member of a group to submit complaints on behalf of the group, while India permits any person to file an action in cases of rights violations.²⁶²

The longest continuing mandamus²⁶³ on the right to food originated from a public interest petition filed by the People’s Union for Civil Liberties (PUCL), a human rights organization in India. A three-year drought and recurrent famines resulted in starvation and deaths in the state of Rajasthan, despite grain surpluses. PUCL, on behalf of the starving population, sought to compel the government to release grains allotted for famine under their Famine Code and to implement a public distribution system.²⁶⁴ The

²⁵⁷ *Id.*

²⁵⁸ Interest of groups or even the entire society such as environmental rights, consumer rights, urban order, and economic rights.

²⁵⁹ Lesley McAllister, *Revisiting a ‘Promising Institution’: Public Law Litigation in the Civil Law World*, 24 GA. ST. U. L. REV. 693-734 (2010).

²⁶⁰ Burity et al., *supra* note 35.

²⁶¹ Golay, *supra* note 54.

²⁶² *Id.*

²⁶³ Lauren Birchfield & Jessica Corsi, *The Right to Life is the Right to Food*, 17(3) HUM. RTS. BRIEF 15 (2010).

²⁶⁴ People’s Union for Civil Liberties v. Union of India, Civil Writ Petition No. 196/2001 (2001).

organization argued, *inter alia*, that since food is essential for survival, the right to food is a necessary implication of the right to life enshrined in the Indian Constitution.²⁶⁵

To immediately address the situation, the Indian Supreme Court issued about 44 interim orders.²⁶⁶ Eventually, the Court expanded the petition's scope to cover the entire country. These interim orders paved the way for the faithful implementation of existing government policies, the introduction of new state interventions,²⁶⁷ and the transformation of government food schemes into legal entitlements²⁶⁸ and beneficiaries into "stakeholders of justiciable rights."²⁶⁹

The three-fold significance of this case includes the recognition of the right to food as a fundamental right within the meaning of the right to life; the definition of the entitlements that consist of the right to food and making the same enforceable; and the creation of a mechanism for the continuous monitoring and reporting of the implementation of the Court's decisions.²⁷⁰

3. *Amparo Actions and Tutelary Procedures*

The Latin American remedies of *amparo* and *tutela* actions allow for both individual and collective remedies²⁷¹ by authorizing civil society organizations or national human rights institutions to file actions on behalf of rights victims.²⁷²

²⁶⁵ Jaishankar Yamini & Jean Drèze, *Supreme Court Orders on the Right to Food: A Tool for Action*, INTER-AMERICAN COURT OF HUMAN RIGHTS (2005), available at <http://www.corteidh.or.cr/tablas/27433.pdf>

²⁶⁶ *Id.*

²⁶⁷ People's Union for Civil Liberties v. Union of India, Civil Writ Petition No. 196/2001 (2001).

²⁶⁸ Birchfield & Corsi, *supra* note 262.

²⁶⁹ IDLO, *supra* note 59, citing Golay, *supra* note 54.

²⁷⁰ Poorvi Chitalkar & Varun Gauri, *India: Compliance with Orders on the Right to Food*, in SOCIAL RIGHTS JUDGMENTS AND THE POLITICS OF COMPLIANCE, MAKING IT STICK (2017).

²⁷¹ Golay, *supra* note 54.

²⁷² IDLO, *supra* note 59.

Amparo actions are a common feature of several Latin American constitutions;²⁷³ They allow claimants to request the restraint of an unlawful act by state actors violating a constitutionally protected right.²⁷⁴ For instance, *Constitucion de la Nacion Argentina*²⁷⁵ provides for a collective *amparo* action against any form of discrimination and violation of environmental rights, fair competition, consumers rights, and the rights of general public interest.²⁷⁶

The tutelary rules enshrined in Colombia's *Constitución Política de Colombia*²⁷⁷ grant immediate relief and legal safeguards for the protection of fundamental constitutional rights, including economic rights. *Acción de tutela* addresses the need to prevent irreparable harm and damage.²⁷⁸

Generally, the rights protected by *amparo* actions and tutelary procedures are limited to those rights enshrined in the constitution or to those possessing constitutional status, such as those contained in international treaties.²⁷⁹

Amparo and *tutela* actions, normally in the nature of summary proceedings, involve simple procedures with few formalities, and are decided within a short period of time. Tutelage petition under Article 86 of the Colombian Constitution, for example, can be filed without specific prerequisites (other than the basic facts of the case) and without the aid of a lawyer.²⁸⁰ It allows immediate access to provisional responses, as judges are required to render a resolution of the case within ten days from request of legal protection.²⁸¹

Admittedly, justiciability and legal exigibility are not panaceas²⁸² for the advancement of the right to adequate food. If that is the case, “[i]s there any role for courts in the full reali[z]ation of the right to food?”²⁸³

²⁷³ Argentina, Bolivia, Brazil, Chile, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Venezuela, and Spain, among others.

²⁷⁴ IDLO, *supra* note 59.

²⁷⁵ ARG. CONST.

²⁷⁶ § 43(2).

²⁷⁷ COLOM. CONST.

²⁷⁸ *Guide: ESCR Litigation, 6.1 Various types of remedies*, INTERNATIONAL COMMISSION OF JURISTS, available at <https://www.icj.org/chapter-6-remedies-and-enforcement-of-decisions-2/6-1-various-types-of-remedies/>

²⁷⁹ IDLO, *supra* note 59.

²⁸⁰ *Id.*

²⁸¹ COLOM. CONSTITUTION (1991), art. 86.

²⁸² Courtis, *supra* note 93.

The answer to that lingering question is in the affirmative, with basis in case law which demonstrates how litigation is able to not only empower right-holders, but also highlight the need to recognize the right to adequate food. The possibility of enforcing rights through judicial processes is important in order for rights to not lose their reason to be²⁸⁴ and to move past being a mere expectancy or wish.²⁸⁵ Right-holders must be able to demand redress from violations of their right to adequate food, for there can be no real right to speak of without means of enforcement²⁸⁶ and adequate access to legal remedies.

The trajectory of recent legal developments in various countries illustrates how the judiciary, even under different legal systems, has served as the vanguard of human rights by taking more progressive stances in adjudicating ESC rights. It is thus prudent to conclude that the gaps in the legal backbone of the right to adequate food in the Philippines may be filled and cured by advancing the right to effective remedies and tapping the extraordinary powers of the Supreme Court, particularly, its activist role in interpreting the right to adequate food obligations.

The availability of an array of remedial tools likewise proves that the justiciability and legal exigibility of the right to adequate food is possible, not only in theory, but also in practice, if only accessible and responsive claim mechanisms are in place.

VI. CONCLUSION AND RECOMMENDATIONS

A. From Justiciability and Judicial Exigibility to Justice

It is clear that the domestic legal environment where the right to adequate food operates is not conducive to its promotion and full realization. Its legal framework has been characterized as inadequate and

²⁸³ *Id.*

²⁸⁴ Franco, *supra* note 38.

²⁸⁵ *Id.*

²⁸⁶ Gargi Dutta, *Justiciability of Right to Food*, 5 INT'L J. OF SCIENTIFIC & RES. PUBLICATIONS 1 (2015).

incoherent.²⁸⁷ Nevertheless, the right to adequate food is not a shark without teeth,²⁸⁸ a utopian ideal,²⁸⁹ or a rhetorical state obligation.

Borrowing the rationale of Chief Justice Hilario Davide Jr. in *Oposa v. Factoran*,²⁹⁰ the right to adequate food must be deemed to belong “to a different category of rights [...] for it concerns nothing less than self-preservation and self-perpetuation [...] the advancement of which may even be said to predate all governments and constitutions. [It] need not even be written in the Constitution for [it is] assumed to exist from the inception of humankind.”²⁹¹ Thus, the existence of such right, albeit unwritten in the Constitution, warrants its legal enforceability in the face of possible deprivations.

Despite the weaknesses of the right’s legal structure, a constellation of indicators suggests sufficient bases favorable to the justiciability and judicial exigibility of the right to adequate food, including: (1) the recognition and protection of such right under international human rights instruments; (2) the implicit protection of said right in the 1987 Constitution through the affirmation of the right to life, right to health, and other interrelated rights; (3) the inference from the constitutional intent of improving the quality of life; (4) the statutory protection of some of its components; (5) the judicial affirmation of the legal effects of international human rights instruments in the domestic setting; (6) the justiciability of right to adequate food obligations as affirmed by regional jurisprudence and foreign case law; (7) the fundamental right to effective remedies; and [8] its *sui generis* character and intimate intertwinement with other rights.

Accordingly, the right to adequate food can be presented for litigation and judicial enforcement before Philippine courts by:

1. Invoking treaty obligations which are legally binding in our jurisdiction, without necessarily couching the right to adequate food in terms of civil and political rights;

²⁸⁷ De los Reyes & Diokno, *supra* note 147.

²⁸⁸ Franco, *supra* note 38.

²⁸⁹ Michael Dennis & David Stewart, *Justiciability of Economic, Social, and Cultural Rights: Should There be an International Complaints Mechanism to Adjudicate the Rights to Food, Water, Housing, and Health?* 98 AM. J. INT’L L. 3 (2004).

²⁹⁰ See *Oposa v. Factoran*, G.R. No. 101083, 224 SCRA 792, July 30, 1993.

²⁹¹ *Id.*

2. turning into other broad, correlated rights expressly protected under the Constitution as bases for the claim;
3. asserting the intent of the framers of the Constitution to include the right to adequate food as a means for improving the quality of life;
4. exacting accountability under the provisions of existing food-related statutes;
5. banking on the jurisprudential recognition of international human rights instruments in our jurisdiction;
6. considering the development of foreign jurisprudence as guides for domestic adjudication;
7. demanding the right to effective remedy in seeking redress for infractions;
8. adopting the universality, indivisibility, interdependence, and interrelatedness of rights; and
9. tapping the expanded powers of the Supreme Court and recognizing the greater role of the judiciary in enforcing ESC rights.

B. Serving the Right to Adequate Food at the Public Table: A Menu of Recommendations

Although this study finds that the right to adequate food is justiciable and judicially exigible in the Philippine jurisdiction under the present legal framework, there is an evident lack of procedures and guidelines for claiming such right before the courts of justice. Hence, it is only prudent to propose an affirmative judicial claim mechanism to provide accessible and responsive relief.

Through the extraordinary writ jurisdiction of the Supreme Court as well as its rule-making power, a judicial writ, akin to the first purely Filipino Writ of *Kalikasan* and its corresponding Rules of Procedure for

Environmental Cases,²⁹² may be promulgated to address the procedural concerns in enforcing the right to adequate food. This remedial tool may come in the form of a Writ of Prosperity²⁹³ as proposed by Chief Justice Artemio Panganiban to “arm the least, the last and the lost: the dirt poor, the marginalized and the powerless with a way to compel our government to uplift their plight.”²⁹⁴

The promulgation of rules of procedure for right to adequate food cases and its concomitant judicial writ lends uniformity, consistency, and stability in the judicial enforcement of the said right by setting a standard for adjudication.

Consequently, capacity-building for judges and public interest lawyers is needed to acquaint them with the obligations of the state and non-state actors in relation to the right to adequate food, and to fully maximize the potentials and fulfill the intentions of the proposed judicial writ and rules of procedure dedicated to the adjudication of right to adequate food cases.

While the scope of this study is only limited to judicial exigibility, it is judicious to extend its recommendations beyond the judicial arena in recognition of the multidimensionality and cross-sectoral nature of the right to adequate food.

The legislative department should take a definitive step towards the immediate enactment of a framework law on the right to adequate food, as well as the ratification of the OP-ICESCR. Both legislative actions provide for the establishment of claim mechanisms and remedies.

It is further recommended that all statutes affecting the enjoyment of the right to adequate food be harmonized and rationalized to rid the legal framework of conflicting policies and unstable programs.

The creation of a special joint Congressional oversight committee to monitor compliance with and implementation of various food programs and projects is also necessary to reinforce the system of checks and balances in program implementation.

²⁹² ENVTL. PROC. RULE, effective Apr. 13, 2010.

²⁹³ Artemio Panganiban, *Writ of Prosperity*, PHIL. DAILY INQUIRER, Sept. 23, 2018.

²⁹⁴ Artemio Panganiban, *Way to a Happy, Free and Prosperous Society*, FOUNDATION FOR LIBERTY & PROSPERITY, Oct. 17, 2018, available at <https://libpros.com/2018/10/17/way-to-a-happy-free-and-prosperous-society/>

In light of the recent moves to revise the 1987 Constitution, it is opportune to lobby for the inclusion of an explicit constitutional guarantee on the right to adequate food in the proposal for the new charter. This will not only solidify the legal backbone supporting such right, but more importantly, it will lend permanency and bolster its position in the domestic human rights regime, effectively insulating it from a periodically changing political landscape.

The executive department should ensure the efficient, effective, and responsive implementation of policies and programs affecting the human right to adequate food such as agrarian reform, climate change mitigation, and relief management. Considering the principle that adequate food is not a matter of charity, but of legal entitlement, the thrust of government programs should be geared towards the promotion of access to productive resources such as water and land to empower the people to feed themselves with dignity.

The right to adequate food can be demanded in spheres other than the legal arena; thus, claim mechanisms and procedures before quasi-judicial bodies must be institutionalized. This will provide claimants more fora to enforce their rights and demand accountability, without unduly clogging the courts' dockets.

Corollary to this, the government is duty-bound to not only educate the citizenry of their rights and the remedies available to them, but to also train and retool its agents, especially duty-bearers and frontline service providers, on the obligations of the state in relation to the right to adequate food. Remedies are ineffective unless affected individuals can access key information about their own rights and available reliefs.²⁹⁵ Public awareness plays a unique role in promoting the exigibility of rights. Only by understanding their rights can individuals be empowered to demand the realization of them.

To complement these recommended policy reforms, corresponding institutional change should also be implemented by strengthening the legal mandates of government instrumentalities that support the right to adequate

²⁹⁵ Beth Stephens, *Briefing Paper: Right to Effective Remedies*, INTERNATIONAL NETWORK FOR ECONOMIC, SOCIAL & CULTURAL RIGHTS, 2015, available at https://www.escri-net.org/sites/default/files/effective_remedies-draft_briefing_paper_9-29-15.pdf

food and by enhancing the capacity of national human rights institutions in providing adequate legal aid and assistance to rights claimants.

Although there is no definite recipe for the full realization of the right to adequate food, the “seamless, synchronized, and synergistic action on the part of the political and apolitical branches of government”²⁹⁶ is required to cultivate the growth of the right in the arenas of public policy, human rights, and sustainable development.

The absence of express guarantees and mechanisms to realize the right to adequate food makes it difficult, if not impossible, for human beings to live in dignity. The mere mention of the right in lofty Constitutional preambles and principles as well as in generic laws still leaves much wanting. It could even be said to create a paradox in which the state indeed recognizes the right, yet tolerates the consequences of its pervasive violation.

The right, to be real, must be conferred with justiciability and judicial exigibility. An actionable right allows right-holders to make full use of their civil and political rights to pursue more than just basic survival; they can now aspire for their exponential advancement and prosperity.

This underscores the right to adequate food’s fullness as a primordial ideal, a core prerequisite to the enjoyment of all other rights. It is impossible to conceive economic, social, and cultural growth without freedoms, or to trumpet civil liberties and political rights without basic needs for survival and sustenance being met. In the words of Amartya Sen, “[rights]²⁹⁷ of different kinds can strengthen each other.”²⁹⁸ Thus, enhancing the right to adequate food through justiciability and judicial exigibility is indispensable in expanding fundamental freedoms and improving economic conditions.

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²⁹⁶ Marquez, *supra* note 248.

²⁹⁷ Sen used “freedoms” in his work to refer to political freedoms, social opportunities, and economic facilities as ends and means of development; The author here used “rights” for consistency and coherence.

²⁹⁸ AMARTYA SEN, DEVELOPMENT AS FREEDOM (1999).