WRIT OF PROSPERITY

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> "THE PROTECTION OF THE ECONOMIC RIGHTS OF THE POOR AND THE POWERLESS IS OF GREATER IMPORTANCE TO THEM FOR THEY ARE CONCERNED MORE WITH THE ESOTERICS OF LIVING AND LESS WITH THE ESOTERICS OF LIBERTY."
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> Tatad v. Sec. of the Dept. of Energy,
> GR No. 124360, 5 November 1997, En Banc

Retired Chief Justice Artemio V. Panganiban, Chairman and founder of the Foundation for Liberty and Prosperity (FLP), Madam Evelyn T. Dumdum, President of FLP, Mdm. Susana N. Gavino, Executive Dirrector of FLP, members of the judiciary headed by Associate Justice of the Court of Appeals, Hon. Edward B. Contreras, honored guests from the Metrobank Foundation, members of the academe headed by our University President, Fr. Dionisio M. Miranda, SVD, members of the legal profession headed by the officers of the Integrated Bar of the Philippines Cebu City and Cebu Chapters, everyone gathered here in Buttenbruch Hall of University of San Carlos—

It has only been three days since my return from a learning visit in the United States. There, I was exposed to how the poor, in a country of the rich, grappled with the notion of justice. One thing is certain—the road to justice is paved by the access to justice of the powerless. It is on this note that I wish to start this conversation this afternoon.

We have a constitution that champions human rights. The 1987 Constitution (the "Constitution") was even described by its framers as "a pro-poor Constitution [with] whole article devoted to social justice, something that was not done in the previous constitutions."[1]

In today's conversation, we wish to examine the provisions of our constitution dealing with subsistence rights, better known as the economic rights. We will then seek to see how these provisions are applied in Philippine cases. It may then be noted that there is a nebulous approach to the justiciability of these rights. We will explore the reasons and the justifications for this reticence to consider economic rights justiciable, and will show how, in certain instances, the Philippine Supreme Court boldly considered the rights enforceable without feeling the need to point the litigants to some enabling piece of legislation. We will then proceed to show why it is beneficial to consider economic rights justiciable, just as they are. We will then draw lessons from the experiences of South Africa, Colombia and Argentina, because in the wise words of a South African magistrate, "[it is] unduly parochial to consider that no guidance, whether positive or negative, could be drawn from other legal systems' grappling with issues

[1] RECORDS OF THE CONSTITUTIONAL COMMISSION (hereinafter "RECORDS"), No. 106 (12 October 1986), Commissioner Bacani explaining his vote.

similar to those with which we are confronted".[2]

With the philosophical guideposts in place, we shall then proceed to explore the possibility of having a Writ of Prosperity in the Philippines: a first in Asia, when that happens. We will consider the important facets of the rule covering the Writ, from the constitutionality of having one to the details and the indispensables, when we decide to have one. In one of his many landmark rulings, the founder and Chairman of the Foundation for Liberty and Prosperity quipped, "law — as an instrument of social justice — must favor the weak.[3] Now, we dare to say that court can also be an instrument of social justice when it favors the weak.

Let me please begin.

In the Philippines, economic rights are embedded not only in the various international instruments to which the Philippines is a signatory, such as the Universal Declaration of Human Rights ("UDHR") and the International Convention on Economic, Social and Cultural Rights ("ICESCR");[4] these economic rights are also expressly woven into the various parts and provisions of its Constitution. Economic rights are found in the general statement in Article II, Section 9,[5] and in the more specific provisions in Article II, Sections 15[6] (right to health), 17[7] (right to education) and 18[8] (protection of labor).

Ethos and Enforceability

These economic rights were then categorized by our courts as either self-executing or ones that still need enabling legislative and executive actions for enforceability. For instance, the Court in *Tondo Medical Center Employees Association v. Court of Appeals*,[9] said:

> "xxx Sections 11, 12, and 13 of Article II; Section 13 of Article XIII; and Section 2 of Article XIV of the 1987 Constitution are not self-executing provisions. In Tolentino v. Secretary of Finance, the Court referred to Section 1 of Article XIII and Section 2 of Article XIV of the Constitution as moral incentives to legislation, not as judicially enforceable rights. These 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.

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[2] K v Minister of Safety and Security 2005 6 SA 419 (CC), ¶35.

[3] Philippine National Bank v. Office of the President, G.R. No. 104528 (Resolution), January 18, 1996).

[4] *See* the concurring opinion of CJ Puno *in* Ang Ladlad LGBT Party v. Comelec, G.R. No. 190582 (8 April 2010) on the treatment of these human rights instruments in the Philippines.

[5] Section 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.

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

[7] Section 17. The State shall give priority to education, science and technology, arts, culture, and sports to foster patriotism and nationalism, accelerate social progress, and promote total human liberation and development.

[8] Section 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

[9] G.R. No. 167324 (17 July 2007).

> Some of the constitutional provisions invoked in the present case were taken from Article II of the Constitution — specifically, Sections 5, 9, 10, 11, 13, 15 and 18 — the provisions of which the Court categorically ruled to be non self-executing …"

For the non self-executing provisions, the constitutional edicts are but statements of principles and policies.[10] They "do not embody judicially enforceable constitutional rights", and the "legislative failure to pursue such policies cannot give rise to a cause of action in courts."[11]

Following the declaration of our Supreme Court that social justice provisions are non self-executing, recourse to courts have been denied upon the finding of absence of any enabling legislation. For instance, the plea of subsistence fishermen in *Magallona v. Ermita* were not granted in part because "our present state of jurisprudence considers the provisions in Article II as mere legislative guides, which, absent enabling legislation, "do not embody judicially enforceable constitutional rights…."[12] In the same vein, the invocation of right to heritage conservation was rejected in *Knights of Rizal v. DMCI Homes, Inc.* after it was noted that there is no law governing conservation of cultural property.[13]

If one considers General Comment No. 3, however, the Committee on Economic, Social and Cultural Rights asserts that "among the measures which might be considered appropriate, in addition to legislation, is the provision of judicial remedies with respect to the rights which may, in accordance with the national legal system, be justiciable".

Further, a closer look at the welter of cases decided by our courts will show that there are in fact some that present a window into a different mindset of the Court. In *Tatad v. Secretary of the Department of Energy,*[14] the Court made a bold exposition on the role and function of courts vis-à-vis these economic rights in saying that "[t]he Constitution mandates this Court to be the guardian not only of the people's political rights but their economic rights as well." Heralding the importance of economic rights, *Tatad* made the concluding observation that "[t]he protection of the economic rights of the poor and the powerless is of greater importance to them for they are concerned more with the esoterics of living and less with the esoterics of liberty. "

> *"The Constitution mandates this Court to be the guardian not only of the people's political rights but their economic rights as well."*

In *Republic v. Manila Electric Company,*[15] the Supreme Court reversed the ruling of the Energy Regulatory Board authorizing increase of 21 centavos per kilowatt hour by MERALCO and instead authorized MERALCO to adopt a rate adjustment in the amount of P0.017 per kilowatt hour. Noting the economic rights of the public to electricity, the Court declared, "[i]n third world countries like the Philippines, equal justice will have a synthetic ring unless the economic rights of the people, especially the poor, are protected with the same resoluteness as their right to liberty. The cases at bar are of utmost significance

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[10] BFAR Employees Union v. COA GR No. 169815 (13 August 2008); Espina v. Zamora, Jr., G.R. No. 143855 (21 September 2010).
[11] Kilosbayan, Incorporated v. Morato GR No. 118910 (17 July 1995).
[12] Magallona vs Ermita, G.R. No. 187167 (16 August 2011).
[13] Knights of Rizal v. DMCI Homes, Inc., G.R. No. 213948 (25 April 2017).
[14] G.R. No. 124360 (5 November 1997).
[15] G.R. No. 141314 (15 November 2002).

for they concern the right of our people to electricity and to be reasonably charged for their consumption. In configuring the contours of this economic right to a basic necessity of life, the Court shall define the limits of the power of respondent MERALCO, a giant public utility and a monopoly, to charge our people for their electric consumption."

Further, the classification of a particular economic provision as non-self-executing has not prevented the Supreme Court in making the widely-cited declaration of enforceability and justiciability of economic right to a balanced and healthful ecology in the groundbreaking case of *Oposa v. Factoran*.[16]

Hence, it can be said that even if the enforceability of economic rights is clear where there is an enabling legislation, its justiciability before our courts of justice as a direct, standalone right is one that is open to a spirited discussion.

The Clashing Views on Justiciability of Economic Rights

The nebulous state of justiciability is one that is shared with most jurisdictions. As scholars would put it, "[V]exing questions of content, criteria, and measurement lie at the heart of the debate over 'justiciability,' yet are seldom raised or addressed with any degree of precision."[17]

Those who espouse that economic rights are not justiciable often give the reasoning that the proper enforcement of socio-economic rights requires significant government resources that can only be adequately assessed and balanced by the legislature. Courts allegedly lack the political legitimacy and institutional competence to decide such matters.[18]

On political legitimacy, critics of justiciability of economic rights consider it an unwarranted encroachment by a non-elected judiciary into the domain of policy making, which is the province of the elected branches of the government. Added to this conundrum is the fact that by their nature, courts cannot but rely on the evidence presented by parties, and can grant only the relief prayed for by them.

This limitation goes into and is tied with issue on the institutional competence of the court. Economic rights require data and pieces of vital information that may not be known to the court because they were not introduced in evidence by the litigant. Further, the parties may well be asking for relief personal to them. The limited scope of the problem before the court in a sense creates an impact on the universality of the problem. As observed by one academic, "courts typically review specific controversies concerning individual claimants, a procedure that is inappropriate for social rights adjudication because limited deliberation and focused remedies cannot easily account for all similarly situated individuals. The deciding judge is exposed to a single snapshot (e.g., a particular homeless individual as a plaintiff) of the larger issue (inadequate housing) and has only the information presented by the parties upon which to

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[16] G.R. No. 101083 (30 July 1993).

[17] Michael J. Dennis and David P. Steward, *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 American J. of Int'l L. 462 (2004).

[18] Eric C. Christiansen, *Adjudicating Non-justiciable Rights: Socio-economic Rights and the South African Constitutional Court*, 38 Columbia Human Rights L. Rev. 321 (2007).

adjudicate."[19]

Further, there is the acknowledged difficulty in measuring how government would be able to demonstrate its levels of achievement (or failure) in response to individual complaints. Critics of justiciability warn of the dangers and perils of judicial legislation.

Indeed, there are only very few countries in the world that consider economic rights justiciable, with South Africa being uniquely situated in that not only are the economic rights expressly provided for in the South African Constitution, they are also fully and directly justiciable in their South African Constitutional Court.[20]

Amidst these thoughts, the ESCR Committee stresses that economic, social and cultural rights are justiciable. In General Comment No. 9, the Committee states, "the need to ensure justiciability is relevant when determining the best way to give domestic legal effect to the Covenant rights."[21] In General Comment No. 3, the Committee posits that "among the measures which might be considered appropriate, in addition to legislation, is the provision of judicial remedies with respect to the rights which may, in accordance with the national legal system, be justiciable".

The Justiciability of Economic Rights under the 1987 Constitution

In the Philippines, there are several yardsticks that can be used to gauge the justiciability of rights. *First*, there is the place and value of the international covenants that embody these economic rights, and *second*, the provisions of our domestic law that pertain to these economic rights.

By reason of our treaty obligation as signatory to the UDHR and the CESCR, economic rights can be seen as rights that are capable of being invoked in our courts. Aside from being a signatory to these international instruments, the Philippines adopts the generally accepted principles of international law as part of the law of the land.[22] In the words of Justice Jose C. Vitug, "[t]his incorporation clause exhibits a remarkable textual commitment towards 'internalizing' international law.[23]

Further, these economic rights are specifically and expressly embodied in the 1987 Constitution itself. Whether considered self-executing or otherwise, the provisions remain to be *legal standards* by which the constitutionality of the measures taken by the government may be gauged and measured.

On right to health, for instance, a new concept of "integrated and comprehensive approach" was introduced. Perusing the records of the constitutional commission, it is evident

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[19] *Id.*
[20] *Id.*, at 323.
[21] UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 9: The Domestic Application of the Covenant*, E/C.12/1998/24 at ¶7 (3 December 1998).
[22] *See* 1987 Ph. CONST., Article II, ¶2.
[23] *See* Government of the United States of America v. Purganan, G.R. No. 148571 (Resolution) (17 December 2002).

that while these standards were meant as a guide to future legislation, they were also meant to be a directive to the government to take steps to attain their fulfillment.[24]

It may then be argued that because of the presence of these legal standards against which the particular action of the government can be evaluated, the discourse on economic rights has been transformed from what may be question of policy to a question of legality. Political question is a defense that is used by government when "the petition asks this court to nullify certain acts that are exclusively within the domain of their respective competencies".[25] Here, it is submitted that the presence of legal and constitutional standards prevent the issue from becoming the exclusive domain of the legislative and executive branches.

Moreover, the 1987 Constitution envisions these economic rights to be "stronger" and "more comprehensive" than the rights embodied in the previous constitutions. Commissioner Nieva, the chairperson of the Committee on Social Justice, said:

> Our Committee hopes that social justice will be the centerpiece of the 1986 Constitution. The rationale for this is that social justice provides the material and social infrastructure for the realization of basic human rights the enhancement of human dignity and effective participation in democratic processes. Rights, dignity and participation remain illusory without social justice.
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> Our February 1986 Revolution was not merely against the dictatorship nor was it merely a fight for the restoration of human rights; rather, this popular revolution was also a clamor for a more equitable share of the nation's resources and power, a clamor which reverberated in the many public hearings which the Constitutional Commission conducted throughout the country.[26]

Then there is also the consideration that ours is a court that is imbued with the *expanded* jurisdiction to review exercise of discretion by the other branches of the government. With Article VIII, Section 1 (2) expressly authorizing courts to strike down as unconstitutional all grave abuses of discretion, the weakening of political question doctrine has since been declared and acknowledged. As emphatically ruled in *Llamas v. Orbos,*[27]

> While it is true that courts cannot inquire into the manner in which the President's discretionary powers are exercised or into the wisdom for its exercise, it is also a settled rule that when the issue involved concerns the validity of such discretionary powers or whether said powers are within the limits prescribed by the Constitution, We will not decline to exercise our power of judicial review. And such review does not constitute a modification or correction of the act of the President, nor does it constitute interference with the functions of the President.

The present Constitution, with its expanded power being granted unto courts, forbids the

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[24] Commissioner Quesada explaining the provision, RECORDS, No. 052, 9 August 1986.
[25] The Diocese of Bacolod v. Commission on Elections, G.R. No. 205728 (21 January 2015).
[26] RECORDS, No. 046, 2 August 1986.
[27] G.R. No. 99031 (15 October 1991).

court from "doing nothing", as held in *Estrada vs. Desierto*, *viz*:

> "To a great degree, the 1987 Constitution has narrowed the reach of the political question doctrine when it expanded the power of judicial review of this court not only to settle actual controversies involving rights which are legally demandable and enforceable but also 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 government. Heretofore, the judiciary has focused on the "thou shalt not's" of the Constitution directed against the exercise of its jurisdiction. With the new provision, however, courts are given a greater prerogative to determine what it can do to prevent grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government. Clearly, the new provision did not just grant the Court power of doing nothing."

Clearly, the new provision did not just grant the Court power of doing nothing.

The Constitutionality of a Writ of Prosperity

Our courts, then, if they want to, may take the bold step of treating the economic rights detailed in our constitution as fully and directly enforceable before our courts of justice.

In *Republic of South Africa v. Irene Grootboom and Others,*[28] an impoverished mother asked the Constitutional Court of South Africa to direct the South African government to afford her and her child basic housing. Confronted with a case of first impression, the Constitutional Court of South Africa declared that the question is not whether it may pass upon the issue. It declared it could. What was left to be determined was how the court may direct the government to honor its mandate:

> "Socio-economic rights are expressly included in the Bill of Rights; they cannot be said to exist on paper only. Section 7(2) of the Constitution requires the state "to respect, protect, promote and fulfill the rights in the Bill of Rights" and the courts are constitutionally bound to ensure that they are protected and fulfilled. **The question is therefore not whether socio-economic rights are justiciable under our Constitution, but how to enforce them in a given case.**" *(Boldfacing supplied)*

Articulating the interdependence between civil and political rights and the economic rights, the African Court held," [o]ur Constitution entrenches both civil and political rights and social and economic rights. All the rights in our Bill of Rights are inter-related and mutually supporting. There can be no doubt that human dignity, freedom and equality, the foundational values of our society, are denied those who have no food, clothing or shelter. Affording socio-economic rights to all people therefore enables them to enjoy the other rights."

[28] 2001 (1) SA 46 (CC); ILDC 285 (ZA 2000).

Hence, and in resolving the case, the South African court through Justice Yacoob, made this trailblazing pronouncement:

> [96] In the light of the conclusions I have reached, it is **necessary and appropriate to make a declaratory order. The order requires the state to act to meet the obligation imposed upon it by section 26(2) of the Constitution. This includes the obligation to devise, fund, implement and supervise measures to provide relief to those in desperate need.**
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> [97] The Human Rights Commission is an amicus in this case. Section 184 (1) (c) of the Constitution places a duty on the Commission to "monitor and assess the observance of human rights in the Republic." Subsections (2) (a) and (b) give the Commission the power:
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> "(a) to investigate and to report on the observance of human rights; (b) to take steps to secure appropriate redress where human right have been violated."
>
> Counsel for the Commission indicated during argument that the Commission had the duty and was prepared to monitor and report on the compliance by the state of its section 26 obligations. In the circumstances, the Commission will monitor and, if necessary, report in terms of these powers on the efforts made by the state to comply with its section 26 obligations in accordance with this judgment. *(Boldfacing supplied)*

The Court made such directive even as the court is "conscious that it is an extremely difficult task for the state to meet these obligations in the conditions that prevail in our country". This is recognized by the Constitution, which expressly provides that "the state is not obliged to go beyond available resources or to realize these rights immediately." The Court looked into the *reasonableness of the actions taken by the government thus far,* which is the standard enshrined in the fundamental law of South Africa.

As a result, in 2004, a national housing program focused on providing relief for persons in crisis situations was adopted as a new chapter of the National Housing Code. The policy took as its starting point the obligations imposed on the government in *Grootboom*:

> "Events, such as . . . the landmark judgment of the Constitutional Court in the []*Grootboom* case, led [to] . . . the development of a National Housing Programme to expedite action in order to relieve the plight of persons in emergency situations with exceptional housing needs."[29]

In another case,[30] Soobramoney, a diabetic who suffers from ischaemic heart disease and cerebro-vascular disease, sued the Ministry of Health because the public hospital was not able to provide him with the treatment he requested owing to the hospital's limited facilities. The Court

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[29] Report of Child's Rights International Network *in* The Government of the Republic of South Africa v. Irene Grootboom and Others, [2000] ZACC 19; 2001 1 SA 46.

[30] Soobramoney v. Minister of Health, ZACC 17 (1998).

directed the hospital to explain. In the affidavit of its personnel, the existence of a policy was brought to the court's attention. The hospital personnel, Dr. Naicker, said that the scarcity of hospital resources impelled it to give priority only to patients who suffer from acute renal failure, which can be treated and remedied by renal dialysis. Those patients who suffer from chronic renal failure that is irreversible, like Soobramoney, are not admitted automatically to the renal programme.

Satisfied as to the *reasonableness* of the policy taken, and noting the *existence* of guidelines to guide the government in fulfilling its mandate, the Court ruled that "[t]he state has a constitutional duty to comply with the obligations imposed on it by section 27 of the Constitution. It has not been shown in the present case, however, that the state's failure to provide renal dialysis facilities for all persons suffering from chronic renal failure constitutes a breach of those obligations."

Prominent in Section 5(5), Article VIII of the 1987 Constitution are the enabling words expressly empowering the Supreme Court to "promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts.

The Philippine Supreme Court is vested with the rule-making power, which it can wield to protect fundamental human rights. Prominent in Section 5(5), Article VIII of the 1987 Constitution are the enabling words expressly empowering the Supreme Court to "promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts…"

The direct and full invocation of economic rights, and the possible issuance of rules to make the same possible can be read, therefore, into the express wordings of our fundamental law. **A writ of prosperity is, thus, a legal possibility.**

A writ of prosperity would be compliance of the country's obligation to respect, protect and promote fundamental human rights. This three-fold duty includes the obligation of the State to provide adequate and effective remedy in the event of human rights violation. "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."[31] While "effective remedy" lacks textual definition, examples are not scarce, as what has been elucidated in General Comment No. 3 of the UN Convention Against Torture:

> The obligations of States parties to provide redress under Article 14 are two-fold: procedural and substantive. To satisfy their procedural obligations, States parties shall enact legislation and establish complaints mechanisms, investigation bodies and institutions, including independent judicial bodies, capable of determining the right to and awarding redress for a victim of torture and ill-treatment, and ensure that such mechanisms and bodies are effective and accessible to all victims. At the substantive level, States parties shall ensure that victims of torture or ill-treatment obtain full and effective redress and reparation, including compensation and the means for as full rehabilitation as possible.

Thus, while legislations and executive issuances may correspond to the substantive requirement of effective remedy, it is the judicial writ of prosperity that will answer the

[31] Article 8 of the Universal Declaration of Human Rights.

imperative of having procedural redress for economic rights violation.

The authority to promulgate Writ of Prosperity may even be culled from the obligations of the state to cease violations, guarantee non-repetition and make full reparation, as given flesh in Article 33 of the *ILC Draft Articles on the Responsibility of States for Internationally Wrongful Acts*, which declares that the obligation of the state to provide reparations is "without prejudice to any right, arising from the international responsibility of a State, which may accrue directly to any person or entity other than a State." As stated in the *UN Reparations Principles*[32] adopted by the UN General Assembly on 16 December 2005, satisfaction should include, where applicable, effective measures aimed at the cessation of continuing violation. The UN Reparations Principle is slowly gaining recognition as an emerging customary international norm, binding upon the Philippines as part of the generally accepted principles of international law.

The Advantages of Having a Writ of Prosperity

There is a value in putting to task the elected officials in the enforcement of economic rights. The absence of any enforcement mechanism in court and leaving the enforcement of economic rights to the complete discretion of political branches of government has been seen to "clearly downgrade the span of mechanisms available for victims of rights violations, make state accountability weaker, erode deterrence and foster impunity."[33]

These benefits can be readily seen in the case of *Minister of Health and Others v. Treatment Action Council,*[34] decided by the Constitutional Court of South Africa in 2002.

> In *Minister of Health*, a number of associations and members of civil society concerned with the treatment of people with HIV/AIDS and with the prevention of new infections filed a case against the members of the executive councils responsible for health in all provinces. With Treatment Action Council in the lead, the applicants questioned the policy of the government of making an antiretroviral drug called nevirapine not available to public hospitals, noting that the HIV/AIDS pandemic in South Africa has been described as an "incomprehensible calamity" and "the most important challenge facing South Africa since the birth of our new democracy". The lower court ruled against the government because of perceived shortcomings in its response to an aspect of the HIV/AIDS challenge. The court found that government had not reasonably addressed the need to reduce the risk of HIV-positive mothers transmitting the disease to their babies at birth and had not set out a timeframe for a national programme to prevent mother-to-child transmission of HIV.

On appeal to the Constitutional Court of South Africa, the government raised the argument that the case filed by the Treatment Action Council raises a question of policy, a question which the court cannot take without violating the separation of powers.

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[32] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UNGA Res. 60/147, at Principle 22 (16 December 2005).

[33] Christian Courtis, *The Right to Food as a Justiciable Right: Challenges and Strategies*, *in* 11 MAX PLANCK YEARBOOK OF UNITED NATIONS LAW 317-337 (von Bogdandy and R. Wolfrum (eds.), Koninklijke 2007).

[34] Case CCT 8/02.

Rejecting the argument, the Court instead declared that: "a) Sections 27 (1) and (2) of the Constitution require the government to devise and implement within its available resources a comprehensive and coordinated programme to realise progressively the rights of pregnant women and their newborn children to have access to health services to combat mother-to-child transmission of HIV; b) The programme to be realised progressively within available resources must include reasonable measures for counselling and testing pregnant women for HIV, counselling HIV-positive pregnant women on the options open to them to reduce the risk of mother-to-child transmission of 78 HIV, and making appropriate treatment available to them for such purposes."

It then went on to make very *detailed* orders to the government, *viz*:

"Government is ordered without delay to:

> (a) Remove the restrictions that prevent nevirapine from being made available for the purpose of reducing the risk of mother-to-child transmission of HIV at public hospitals and clinics that are not research and training sites.
>
> xxx xxx xxx
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> (c) Make provision if necessary for counsellors based at public hospitals and clinics other than the research and training sites to be trained for the counselling necessary for the use of nevirapine to reduce the risk of mother-to-child transmission of HIV.
>
> (d) Take reasonable measures to extend the testing and counselling facilities at hospitals and clinics throughout the public health sector to facilitate and expedite the use of nevirapine for the purpose of reducing the risk of mother-to-child transmission of HIV."

Responding to the argument of the government that when court takes on economic issues, it will be intruding into matters of policy thereby breaching the wall of separation of governmental powers, the South African Supreme Constitutional Court ruled:

> "[99] The primary duty of courts is to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice. The Constitution requires the state to "respect, protect, promote, and fulfill the rights in the Bill of Rights". Where state policy is challenged as inconsistent with the Constitution, courts have to consider whether in formulating and implementing such policy the state has given effect to its constitutional obligations. If it should hold in any given case that the state has failed to do so, it is obliged by the Constitution to say so. In so far as that constitutes an intrusion into the domain of the executive, that is an intrusion mandated by the Constitution itself."

In point of fact, South Africa is not the only shining example in the international community.

In Colombia, even if the 1991 Colombian Constitution does not expressly declare

> that economic, social, and cultural rights are justiciable, the Colombian Constitutional Court did not shirk from the task of adjudication when 1,150 families, representing over 4,000 persons, brought a total of 108 *tutelary* procedures. These families were described to have "lived in situations of extreme vulnerability for many years and had unsuccessfully sought assistance from the State agencies". Describing the condition as an "unconstitutional state of things", the Court then went on to declare that there exists an obligation on the part of competent regional and national authorities to adjust their actions in order to ensure there is harmony between their commitments based on constitutional and legal mandates, and the resources allocated to guarantee effective enjoyment of rights by the displaced. Consequently, the Court ordered Consejo Nacional Para la Atención Integral a la Población Desplazada por la Violencia (National Council for Full Assistance of Persons Displaced by Violence) to ensure that resources were effectively allocated to the protection of the rights of the displaced, and that minimum rights were timely and effectively protected.[35]

Argentina, too, has taken an enabling stance.

It was reported that in the case of *Defensor del Pueblo de la Nación c. Estado Nacional y otra,*[36] "Argentina's Ombudsman through an *amparo* action filed against Chaco Province and the national government a case to force the two spheres to provide medical and food assistance to indigenous communities. A total of eleven persons had died as a consequence of substandard living conditions. In his complaint, the mediator invoked the rights, including the right to life and the right to food, enshrined in the Constitution, ACHR, ADRDM, UDHR, ICESCR, and CEDAW."[37]

In these cases before these aforementioned jurisdictions, it was of no moment that these economic rights were sought to be enforced in a country plagued with the harsh reality of scarcity. As one South African magistrate puts it:

> *It is precisely because resources are scarce that the writ of prosperity finds greater relevance and importance.*

> "I am conscious that it is an extremely difficult task for the State to meet these obligations in the conditions that prevail in our country. This is recognized by the Constitution, which expressly provides that the State is not obliged to go beyond available resources or to realise these rights immediately. I stress however, that despite all these qualifications, these are rights, and the Constitution obliges the State to give effect to them." (*Minister of Health vs. Treatment Action Council)*

In fact it may even be said that it is precisely because resources are scarce that the writ of prosperity finds greater relevance and importance.

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[35] Constitutional Court of Columbia, Third Chamber of Appeals, Acción de tutela instaurada por Abel Antonio Jaramillo y otros contra la Red de Solidaridad Social y otros, Sentencia T-025/2004, part. I.1, English case summary, https://www.escr-net.org/caselaw/2006/accion-tutela-instaurada-por-abel-antonio-jaramillo-adela-polania-montano-agripina (last visited: 8 October 2018).

[36] Argentina, Corte Suprema de Justicia de la Nación, *Defensor del Pueblo de la Nación c. Estado Nacional y otra*, ¶1 (2007).

[37] CHRISTOPHE GOLAY, THE RIGHT TO FOOD AND ACCESS TO JUSTICE: EXAMPLES AT THE NATIONAL, REGIONAL AND INTERNATIONAL LEVELS (Food and Agriculture Organization of the United Nations, 2009).

The Writ of Prosperity as Both a Dream and a Promise

The Philippines is a signatory to the CESCR in 1966 and it ratified the said treaty in 1974. By these acts, we have signified the acceptance of both the rights the Covenant recognizes and the obligations relating to them. Further, although the Philippines has not signed the Optional Protocol to the Covenant that would grant individuals and groups the right to submit communications (complaints) concerning non-compliance with the Covenant, it is signatory to the Universal Declaration of Human Rights and declares the said legal covenant as one of generally-accepted principle of international law. The availability of judicial remedies for the enforcement of the economic rights under the Covenant is part of the compliance of the state's obligation under the Article 8 of the Universal Declaration of Human Rights that declares that "[e]veryone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law".[38]

Yet, there is an undeniable asymmetry between civil and political rights on the one hand, and economic rights on the other. At the outset, the civil and political rights are acknowledged without question to be justiciable, while the economic rights—subsistence rights as they are sometimes referred to—are subjected to debates on justiciability.

There is also a varying degree in which these economic rights are acknowledged in Philippine courts. In *Tondo Medical Center Employees Association v. Court of Appeals,*[39] the Supreme Court cited with approval the view of Justice Dante Tinga that to consider the constitutional provisions on socio-economic rights as sufficient in themselves to guarantee their full exercise "would be impractical, if not unrealistic" and "the espousal of such view presents the dangerous tendency of being overbroad and exaggerated". Justice Tinga warns that "without specific and pertinent legislation, judicial bodies will be at a loss, formulating their own conclusion to approximate at least the aims of the Constitution."

However, a bolder view was taken by the Court in *Republic v. Manila Electric Co.*[40] There, the Court directed the reduction of MERALCO's rate and further directed MERALCO to credit the excess average amount to its customers, citing the people's right to electricity. Rejecting the arguments of MERALCO on motion for reconsideration, the Supreme Court, through the pen of Chief Justice Reynato S. Puno, looked into the *reasonableness* of the rates and concluded that "what is reasonable or unreasonable depends on a calculus of changing circumstances that ebb and flow with time. Yesterday cannot govern today, no more than today can determine tomorrow."[41]

The Court also tested the economic policy of the government in terms of its compliance with the standards set forth in the Constitution on deregulation of oil industry. In the case of

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[38] UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 9: The Domestic Application of the Covenant*, E/C.12/1998/24 at ¶3 (3 December 1998). (CESCR notes that "the International Covenant on Economic, Social and Cultural Rights contains no direct counterpart to article 2, paragraph 3 (b), of the International Covenant on Civil and Political Rights, which obligates States parties to, inter alia, "develop the possibilities of judicial remedy". Nevertheless… the Committee considers that, in many cases, the other means used could be rendered ineffective if they are not reinforced or complemented by judicial remedies).

[39] G.R. No. 167324 (July 17, 2007).

[40] Republic v. Manila Electric Co., G.R. Nos. 141314 & 141369 (Resolution) (9 April 2003).

[41] *Id.*

Tatad v. Secretary of the Department of Energy,[42] the Supreme Court declared, "[t]here is no reason why the Court cannot strike down R.A. No. 8180 that violates the economic rights of our people even if it has to bridle the liberty of big business within reasonable bounds."[43]

Finally, there can perhaps be no better proof that economic rights are *directly and fully enforceable* in courts even in the absence of specific legislations than the oft-cited case of *Oposa v. Factoran*.[44] The said case conferred legal standing upon the minor-petitioners on the strength of the constitutional right to balanced and healthful ecology enshrined in Section 16, Article II,[45] which is related to the plaintiffs' right to health embodied in the neighboring provision, Section 15, Article II [46] of the Constitution.

In his separate concurring opinion, Justice Feliciano noted that neither petitioners nor the Court has identified the particular provision or provisions (if any) of the Philippine Environment Code which give rise to a specific legal right which petitioners are seeking to enforce. He observed that while the petitioners have invoked the right to a balanced and healthful ecology, a right that is "fundamental" and, accordingly, has been "constitutionalized", the right can hardly be considered "specific, without doing excessive violence to language".

Justice Feliciano highlighted the importance that 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:

> "[U]nless 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."

Hence, Justice Tinga suggested 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.

This observation notwithstanding, *Oposa* was decided on the platform of the petitioners' right to a balanced and healthful ecology standing in and of itself. The Court rejected the argument that the petition raises a political question:

> "[P]olicy formulation or determination by the executive or legislative branches of Government is not squarely put in issue. What is principally involved is the enforcement of a right vis-à-vis policies already formulated and expressed in legislation. It must, nonetheless, be emphasized that the political question doctrine is no longer the insurmountable obstacle to the exercise of judicial

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[42] G.R. No. 124360 (5 November 1997).
[43] *Id.*
[44] G.R. No. 101083 (30 July 1993).
[45] 1987 CONSTITUTION, article II, §16. (The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.)
[46] 1987 CONSTITUTION, article II, §15. (The State shall protect and promote the right to health of the people and instill health consciousness among them.)

> power or the impenetrable shield that protects executive and legislative actions from judicial inquiry or review."

Years later, Justice Mendoza clarified in *Kilosbayan v Morato*[47] that: "[In] the case of *Oposa v. Factoran, Jr.*, [c]itizens' standing to bring a suit seeking the cancellation of timber licenses was sustained ... because the Court considered Art. II, §16 a **right-conferring provision** which can be enforced in the courts."

The key, then, is in finding in these various provisions of our constitution "right-conferring declarations" so that a full and direct enforcement in courts of the economic rights may become a reality.

For instance, the right to health is elaborated in Article XIII, Section 11:

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

and the right to education is expounded in Article XIV, which states:

> Section 1. The State shall protect and promote the right of all citizens to quality education at all levels, and shall take appropriate steps to make such education accessible to all.

Right to health and right to a balanced and healthful ecology are, thus, two of the economic rights that were already considered justiciable, even in the absence of a specific legislation.

On the other hand, Article XIII contains protection to labor, local or overseas,[48] as well as mandate for provision on urban land reform and housing where it is clear that the right may be accomplished through legislation. Thus:

> Section 9. The State shall*, by law*, and for the common good, undertake, in cooperation with the private sector, a continuing program of urban land reform and housing which will make available at affordable cost, decent housing and basic services to under- privileged and homeless citizens in urban centers and resettlement areas. It shall also promote adequate employment opportunities to such citizens. In the implementation of such program the State shall respect the rights of small property owners. *(Emphasis supplied)*

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[47] G.R. No. 118910 (Resolution), 16 November 1995.

[48] Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

> Section 10. Urban or rural poor dwellers shall not be evicted nor their dwelling demolished, **except in accordance with law** and in a just and humane manner. *(Boldfacing supplied)*
>
> No resettlement of urban or rural dwellers shall be undertaken without adequate consultation with them and the communities where they are to be relocated.

The Essentials of A Writ of Prosperity

In the enforcement of the human rights, it may be important to note what the Office of the United Nations High Commissioner for Human Rights has firmly stated. The Office recommended that domestic rules hew closely to the following essential principles of enforceability:

(a) The right to effective remedies must be real, practical and non-illusory;
(b) The progressive enhancement of domestic legal protections of economic, social and cultural rights should be seen as a component of the progressive realization of these rights;
(c) Regressive measures with respect to domestic legal protections are not permitted except under extreme circumstances;
(d) The judicial duty to interpret consistently extends to legislative omission and is not satisfied by a formal reliance on the ambiguity rule; and
(e) Domestic remedies for violations of certain economic, social and cultural rights are implicit in domestic protections of civil and political rights.

Undoubtedly, there are several difficult questions that need to be addressed in sketching the rough look of the rules on writ of prosperity. The details of the Rules on Writ of Prosperity that will have to be closely looked into include the following:

(a) Will the "right to petition" be broadly available to any individuals or will it be open to groups who themselves claim to be victims of a violation or who act on behalf of alleged victims with their knowledge and agreement?

(b) Will there be mediation, exhaustion of administrative remedies requirement?

(c) May interim measures be granted?

(d) Given how data-driven the decision needs to be, how may the court equip itself with relevant information? How may vital data reach the court, independent of the efforts and initiative of the litigant?

(e) What range of remedies should be available for justified complaints?

In South Africa, Section 38(d) of its 1996 Constitution institutionalized a generous and liberal recourse to courts with the introduction of public interest standing. Section 38 of the Constitution reads:

> Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief,

including a declaration of rights. The persons who may approach a court are –

(a) anyone acting in their own interest;
(b) anyone acting on behalf of another person who cannot act in their own name;
(c) anyone acting as a member of, or in the interest of, a group or class of persons;
(d) anyone acting in the public interests; and
(e) an association acting in the interest of its members.

This was seen as a means of delivering distributive justice and allows courts to be accessible to everyone in cases where remedies are in fact shared by many.

There, however, is an innate danger in permitting public interest cases in our courts. By doing away with the direct interest requirements, courts face the real possibility of being flooded with vexatious and frivolous suits. While courts may filter public interest standing by limiting access to those who have genuine and sincere intention or by imposing hefty punitive cost orders against *mala fide* litigants, the task of filtering public interest litigation will impose added burden on administration of justice to the already overburdened courts.

Our rules of standing[49] had been an effective gatekeeper for the courts, and the direct injury test remains a viable guard against insincere invocation of justiciability of economic rights before our courts. A writ of prosperity may, thus, only be asked for by one who satisfies the case and controversy requirement of Article VIII, Section 5 of our Constitution, a requirement that "lies at the very heart of the judicial function". As aptly put in *Kilosbayan v. Morato,* the bar on just any party bringing suits before the courts is what "differentiates decision making in the courts from decision making in the political departments."

On the issue of relief, the Constitutional Court of South Africa, for instance, has enumerated a number of reliefs that can be granted by courts, ranging from a declaration of rights, an interdict, a mandamus or such other relief as might be required to ensure that the rights enshrined in the Constitution were protected and enforced. If it was necessary to do so, the courts might even have to fashion new remedies to secure the protection and enforcement of these all-important rights.[50]

There is also the so-called *structural injunction* relief granted by the Supreme Court of the United States in *Brown v. Board of Education*.[51]

Related to the issue of relief and remedy is the acknowledged difficulty in measuring compliance with court orders. As noted by Hatem Kotrane, appointed as an Independent Expert by the Commission of Jurists and by the UN Economic and Social Council, "civil and political

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[49] In *Kilosbayan, Inc. v. Morato, G.R. No. 118910, 17 July 1995*, the Supreme Court highlighted to distinction between the concept of standing and real party-in-interest, saying that "the question in standing is whether such parties have 'alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions' while the question as to "real party-in-interest" is whether he is "the party who would be benefited or injured by the judgment, or the party entitled to the avails of the suit"."

[50] Fose v Minister of Safety and Security, 1997 (3) SA 786 (CC); 1997 (7) BCLR 851 (CC).

[51] 347 U.S. 483 (1954).

rights are said to be 'obligations of result, obligations which are measurable by their very nature, and hence not subject to shades of meaning', as opposed to the obligations under the ICESCR which generally represent "obligations of means".

This difficulty is seen, for instance, in the case of *Philippine Constitution Association v. Enriquez.*[52]

> In *Philippine Constitution Association v. Enriquez*, the petitioners questioned the decision of the executive in ascribing significant amount to debt servicing, arguing that the same contravenes the mandate of the Constitution to give education the highest budgetary allocation. The Court noted that the budget has tripled and the compensation of teachers has doubled. These were seen as "clear compliance with the aforesaid constitutional mandate according highest priority to education." This disposition brings to mind questions as, what did the court use in arriving at the conclusion that there was "clear compliance" with the constitutional requirement?

Nonetheless, these cases illustrate that when the Court considers the case admissible and sees economic questions as issues of legality rather than issues of policy, the Court may, as with the South African Constitutional Court, be simply directing the non-performing elected branches of the government *to act*—not in a particular way, but to at least *act*. Even in those instances when courts direct the government to act in a certain way, it is only to test the reasonableness of the action taken, to ensure that that standards embodied in the constitution are faithfully observed.

As the Constitutional Court of South Africa puts it in *Minister of Health v. Treatment Action Council:*

> [38] Courts are ill-suited to adjudicate upon issues where court orders could have multiple social and economic consequences for the community. The Constitution contemplates rather a restrained and focused role for the courts, namely, **to require the state to *take measures* to meet its constitutional obligations and to subject the *reasonableness* of these measures to evaluation**. Such determinations of reasonableness may in fact have budgetary implications, but are not in themselves directed at rearranging budgets. **In this way the judicial, legislative and executive functions achieve appropriate constitutional balance**." *(Boldfacing supplied)*

> *A plea for justiciability is, in esse, an access to justice plea.*

Concluding Thoughts

The conversation pertaining to the justiciability of economic rights is really a discourse on access to justice of those who are impoverished, and therefore, powerless. A plea for justiciability is, in *esse*, an access to justice plea.

[52] G.R. No. 113105 (19 August 1994).

Economic rights were put in our fundamental law precisely to empower those who are otherwise without any means or voice. It is thus seem counter-intuitive to hold that these rights are not enforceable in the absence of legislative action. The constitution exists precisely to provide a springboard for government to act. Were we to wait for our politicians to act, the vision for the 1987 Constitution to be a pro-poor Constitution may remain a myth. Experience has shown us for times without number that the lower we are in the ladder of our society, the farther we are in the mind of our government. The Judiciary exists precisely so that those who have very little in life will still have powerful voice in law.

> *People's freedom and legal equality would be empty rhetoric as long as they continue to live in destitution and misery, without land, without employment, without hope.*

In the drafting of the fundamental law of our land, the President of the Constitutional Commission, Hon. Cecilia Munoz-Palma, referred to the article on Social Justice as "the heart of the Constitution". Likewise, in his sponsorship speech delivered on the deliberation to approve the whole Constitution, Commissioner Teofisto Guingona showcased the importance of economic rights when he said that "[t]alk of people's freedom and legal equality would be empty rhetoric as long as they continue to live in destitution and misery, without land, without employment, without hope."[53]

Against this backdrop, an argument can then be made that if they want to, the Philippine courts can be as bold and daring as the Constitutional Court of South Africa in enforcing economic rights not only in laws but also in judicial edicts.

There are numerous legal moorings to anchor this view on. The inclusion of the economic rights in our 1987 Constitution, and our accession to various international covenants foremost of which being the CESCR, have all made economic rights a legal question. In consequence, related considerations such as budgetary and expenditure decisions have ceased to be purely political questions. In the determination of whether economic rights are honored, protected and fulfilled, courts can look into the measures adopted by the government and determine their reasonableness. This determination of reasonableness is seen as a legal question because they gauge whether the government has complied with the mandates of the Constitution on the observance and protection of these fundamental economic rights.

This justiciability is even more pronounced in the Philippine setting where courts are expressly empowered to examine exercise of discretion by both the executive and legislative branches of government to determine if the same has been gravely abused. Questions of reasonableness, even if deemed to be exercises of discretion, may now be looked into. If exercise of discretion has been seen to have been gravely abused, it may now be reversed by courts, as a matter of legal and constitutional duty.

Nowhere else can we find a constitution so humane, and a court so powerful than in the Philippines, making a Writ of Prosperity truly feasible if the Philippine judiciary wants it.

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[53] RECORDS No. 106 (12 October 1986).

> *Nowhere else can we find a constitution so humane, and a court so powerful than in the Philippines, making a Writ of Prosperity truly feasible if the Philippine judiciary wants it.*

Admittedly, there will constantly be a tension between justiciability and non-justiciability. South Africa prides itself as one of the very few, if not the only, court that permits its citizens to make full and direct recourse to courts on violation of economic rights. Even then, in the case of *Soobramoney v. Minister of Health,*[54]the Court acknowledged that "[i]mportant though our review functions are, there are areas where institutional incapacity and appropriate constitutional modesty require us to be especially cautious." It is understandable then if the courts would tread cautiously, and be keenly aware that when it comes to economic rights, there is a very thin line separating the exercise of judicial power to uphold the constitution from the impermissible intrusion into the domain of policy–making.

It needs to be stressed though that justiciability should be considered only as *another* or as *additional* means of enforcement and implementation of economic rights. Economic rights will remain to be enforceable mainly and unquestionably through and in the various pieces of legislation that give subsistence rights the flesh and the teeth of demandability. In the absence of such initiative from the government, however, and in the face of dearth of laws from Congress, one should be able to turn to courts for redress.

> *It is one great irony that scarcity is the one impelling reason for writ of prosperity but scarcity is in fact being used as a legal justification why there cannot be a writ of prosperity.*

Indeed, it is in countries with the scarcest of resources that the writ of prosperity lends itself to greatest relevance and importance. And perhaps, it is one great irony that scarcity is the one impelling reason for writ of prosperity but scarcity is in fact being used as a legal justification why there cannot be a writ of prosperity. As shown by the South African and Colombian experiences, however, when courts issue the writ to enforce economic rights, it does no more than prod the elected branches of the government to comply with the legal standards and mandate embodied in the constitution.

Speaking before a gathering of experts, the Former Justice of the Constitutional Court of Colombia detailed the effects of the court's tutelary procedure that permits the court to require state agencies to perform positive actions in the enforcement of economic rights. Justice Manuel Jose Cepeda Espinoza professed that allowing the individuals to go to court with the knowledge that courts can in fact order government agencies to act on complaints relating to their economic rights "empowers civil society; and it empowers civil society and the concrete interest in a very specific way." He calls it *empowered decisional participation*—"It is decisional participation because the court orders the participation to be focused on the decisions needed to protect the right and thus should be adopted by the competent authorities. And it is empowered decisional participation because the court not only looks at access of the interested organizations to the decisional process, or to the opportunities for these participations so that they are timely and effective, but the court also unleashes a more technical participation…"[55] He notes that as the courts permit citizens to seek enforcement of economic rights and courts go on to direct state agencies *to act*, the court acts with "prudent activism":

> "There is an activism of the intervention, of the judge, but this activism is an activism that has elements of prudence. The court

[54] Case CCT 32/97.

[55] Transcript: Social and Economic Rights and the Colombian Constitutional Court last accessed at http://www.corteidh.or.cr/tablas/r27172.pdf on 7 October 2018.

> does not try to fix the problem, it leaves the fixing of the problem to the competent agencies. It does not go into the details of the remedies. It respects the competence and the processes involved, and it values financial restrictions. And finally, it is aware of the political dynamics derived from the judicial intervention. So there is an element of prudence in this activism.

In the South African experience, as its courts accept direct resorts for the enforcement of economic rights and go on to direct state agencies to perform positive act such as crafting policy to manage the country's scarce resources, this role was seen "as revolutionary and heroic by proponents of justiciability and as irresponsible and doomed by its detractors."[56] In the final analysis, it is a question of whether Philippine courts are ready to wield the authority granted to them by our fundamental law.

In its meeting held on August 27th of this year, our National Heroes' Day, the board of trustees of the Philippine Association of Law Schools embraced the idea of exploring this uncharted path of Writ of Prosperity. At the outset, though, there was a ready acknowledgment of the legal and moral truth that whether the writ of prosperity will prosper or not depends solely on our Supreme Court.

> *"What good is the right to property to him who is shirtless, shoeless, and roofless? What good are political and civil rights to those whose problem is to be human?"*

Dean Gemy Lito Festin of Polytechnic University of the Philippines College of Law started this conversation in the summer of this year. He espoused for the use of tutelary rules principle as legal tool for easing access to justice of economic rights in the country. He calls for the adoption of rules that will allow economic rights to be accessed in courts, and ended his impressive disquisition with a sobering quote from Chief Justice Reynato S. Puno, "What good is the right to property to him who is shirtless, shoeless, and roofless? What good are political and civil rights to those whose problem is to be human?"

A writ of prosperity is textually ingrained in the constitution and in the expanded power of our courts. Is the High Court ready to take on the challenge? Will our Supreme Court take the typical path of time-honored restraint, or will it trailblaze prudent activism?

> *"IN THIRD WORLD COUNTRIES LIKE THE PHILIPPINES, EQUAL JUSTICE WILL HAVE A SYNTHETIC RING UNLESS THE ECONOMIC RIGHTS OF THE PEOPLE, ESPECIALLY THE POOR, ARE PROTECTED WITH THE SAME RESOLUTENESS AS THEIR RIGHT TO LIBERTY."*
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> *Republic v. Manila Electric Co.,*
> *GR No. 141314 & 141369, 15 November 2002*

Thank you all for the time and the indulgence. A prosperous afternoon everyone.

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[56] See note 13, at 323.