# WRIT OF KALUSUGAN: INVOKING THE POWER OF THE COURT TO PROTECT THE RIGHT OF THE PEOPLE TO THE HIGHEST ATTAINABLE STANDARD OF HEALTH

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**ABSTRACT**

International Covenants for the right to health imposes the highest attainable standard of health but it leaves to the State the determination of the standards. Currently, there is no available remedy for the People should the Legislative as the standard-setter or the Executive as the standard-implementer renege on their duties to protect the right of the People to the highest attainable standard of health. Existing potential remedies such as the exhaustion of administrative remedies, enacting laws either in the form of Republic Acts or Municipal Ordinances, praying for the issuance of writs of mandamus, or filing a petition for certiorari for grave abuse of discretion amounting to lack or excess of jurisdiction do not provide the speed and efficiency required in disposing issues and cases relating to the right of the people to the highest attainable standard of health. This paper seeks to examine the Judiciary's role as the final arbiter and the last frontier in safeguarding the rights of the people in laying down new rules allowing ordinary people to avail of a speedy remedy in a form of a new prerogative writ — the Writ of Kalusugan.

Keywords: right to health, state obligation, judicial remedy, human rights, prerogative writ.

## A. BACKGROUND OF THE STUDY

Right to health is a fundamental, basic right, inimical to the enjoyment of other basic right such as the right to life.[1] Legal scholars and foreign jurisprudence even pronounce that there is no right to life if there is no right to health.[2] As a basic human right, it is inalienable, indivisible, and interdependent from other basic human rights and the State has the duty under international law to respect, fulfill, and protect it.[3]

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[1] Office of the United Nations High Commissioner for Human Rights, *Fact Sheet No. 31*, at 1, (Jun. 1, 2008)
[2] Zahara Nampewo, Jennifer Heaven Mike, & Jonathan Wolf, *Respecting, protecting and fulfilling the human right to health,* Int J Equity Health 21, 36, 2022, at 1-2
[3] *Id.*

The right to health was first mentioned in 1946 during the promulgation of the Constitution of the World Health Organization. In its preamble, it expressly states that the "enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being".[4] A few years later, the Universal Declaration of Human Rights mentioned the right to health as one of the universal rightful entitlements of every human being. In both instruments, the intention of the drafters to designate health as a fundamental right is clear.

In 1966, with the ratification of the International Covenant of Economic, Social and Cultural Rights (ICESCR), wherein the Philippines is a signatory, the right of everyone to the enjoyment of the highest attainable standard of physical and mental health is not only upheld but it also created an obligation to the State Parties to fulfill it.[5] This right, along with other rights created by the Convention, is subject to the principle of progressive realization, which means that States are required to take some immediate steps to fulfill the right and must not take any retrogressive measure.[6]

According to scholars, the principles of the right to health are often complex and difficult to translate but what the scholars agree on is that States have obligations that they must fulfil to realize the right to health.[7] These obligations consist of the core minimum of the right to health and international cooperation. These obligations cannot be derogated from for economic reasons.[8] According to Montel et. al,[9] these obligations include among other things:

(a) adoption of national health strategy based on epidemiological evidence or the prevention, treatment, and control of endemic and epidemic diseases;
(b) training of health personnel;
(c) access to information on health; and
(d) adoption of a national health strategy, and monitoring of health policies.

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[4] Constitution of the World Health Organization pmbl.
[5] International Covenant on Economic, Social and Cultural Rights art. 12 *opened for signature* Dec. 19, 1966, 993 U.N.T.S.3. *hereinafter* UN ICESCR
[6] Id. at art. 2.1
[7] Lisa Montel, Naomi Ssenyonga, Michael P. Coleman, and Claudia Alemania. *How should implementation of the human right to health be assessed? A scoping review of the public health literature from 2001 to 2021,* Int J Equity Health., 21,26, (2022)
[8] *Id.*
[9] *Id.*

As to the core obligations on international cooperation, scholars have mentioned that it is imperative that poorer States must seek legal aid if they do not have the resources to fulfil the right to health of their population while richer States must provide financial and material resources to help those poorer states.[10]

In the Philippines, the right to health is protected under the 1987 Philippine Constitution as an express policy of the State.[11] The State is likewise mandated to instill consciousness on the right to health among the people by virtue of the doctrine of incorporation of general principles of international law and transformation of international treaties and conventions to constitutional provisions.[12] Despite Constitutional provisions and the accession to international treatises and conventions upholding this right to health, the Constitution and domestic laws of the Philippines are silent on the obligations of the State to respect, fulfill, and protect the people's right to health.

In the set-up of the Philippine government, which is divided in three co-equal branches, the promulgation of policies relating to health and its implementation is dependent upon the executive and legislative branch. The legislative branch, with the rule-making mandate granted by the Constitution, operates as the standard setter with the power to make laws and general state policies. The executive branch, on the other hand, operates as the implementer of the standard. In addition, with the technical expertise of the executive branch and the administrative agencies under its wing, technical rules and policies are usually delegated to them by Congress.[13]

Under the law and the Rules of Court, the judiciary usually takes a conservative approach in hearing petitions where the right to health is invoked. Under the political question doctrine, the Court cannot decide questions about which full discretionary authority has been delegated to the legislative or executive branch of the government.[14] The Court is inclined to dismiss cases filed urging the court either to issue a Writ of Mandamus or Writ of Continuing Mandamus to enjoin government agencies to act or to stay policies or programs that in their opinion are in violation of their right to health.[15] In recent cases decided by the Supreme

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[10] Id.
[11] *See* PHIL. CONST. art. II § 16.
[12] Id. *See also* PHIL. CONST. art. II § 2. *See also* Neil Jason P. Mendoza, Protecting the Right to Life and Health through the Rule-Making Power of the Supreme Court, 1 U. ASIA & PAC. L.J. 199, 200-209 (2018)
[13] *See.* Abines v. Duque III, G.R. No. 235891, September 20, 2022
[14] Tañada vs. Cuenco 103 Phil.1068
[15] *See.* Abines v. Duque III, G.R. No. 235891, September 20, 2022

Court, the Court is inclined to respect the broad privilege of the executive branch and the presumption of regularity in passing legislation in overturning policies and law that infringe the right of the people to the highest attainable standard of health.[16]

Essentially, available remedies for the people in cases wherein their right to health is being violated by the State are the following:

(a) Petition for the issuance of writ of mandamus or continuing mandamus;
(b) Petition for certiorari under Rule 65; or
(c) Petition for the issuance of writ of kalikasan.

In the above-mentioned remedies available to the public, the standard is high and the chances that the Court would overturn policies and legislation is extremely steep.[17] There is, therefore, no available speedy remedy available to the people when their right to health is being infringed.

Internationally, foreign courts have stepped in and invoked their judicial power to overturn policies and legislation that infringes the right of the people to the highest attainable standard of health. In these decisions, foreign courts have cited both domestic and international law — specifically the ICESR — as legal basis for assuming jurisdiction and overturning policies and legislations that are in violation of the people's right to health.[18]

Being so, it is high time for the Supreme Court to issue additional rules that would allow itself to assume jurisdiction on cases that would infringe one's right to health.

## B. STATEMENT OF THE PROBLEM

As of writing of this paper, there exist no speedy remedy available to the People in case their right to health is infringed upon or if the State reneges on its duty to respect, fulfil, and protect the right to health.

[16] *Id*.
[17] The standards for each petition as well as the requisites required under the Rules of Court would be discussed in detail in the succeeding chapters.
[18] *See* Soobramoney v Minister of Health (Kwazulu-Natal), CCT32/97 (1997]) ZACC 17; 1998 (1) SA 765 (CC); 1997 (12) BCLR 1696, November 27,1997, South Africa.

Under Article 12 of the ICESCR, the State Parties recognize the right of everyone to the enjoyment of the highest attainable standard of physical health.[19] Under this treaty, the State has the legal obligation to respect, fulfil, and protect the right to health.[20] Relevant to this obligation is the right of the people to seek redress and speedy remedy in case the State is in breach of this duty.[21]

Remedies that are currently available to the people are not designed to provide the necessary relief that the people requires in terms of right to health nor does it provide the necessary protection to stay, overturn, or otherwise repeal a policy, plan, or standard being implemented or being set by the Government that would retrogress the standards of health being delivered to the people or otherwise unlawfully discriminate against a certain person or sector from receiving the highest attainable standard of health.

Current available remedies to the people are not designed to provide the speedy remedy or is not the proper remedy at all for cases involving the breach of the State of its obligation to respect, fulfil, and protect the right to health. It is incumbent therefore for the Supreme Court to issue new rules for the issuance of a new prerogative writ.

### C. PHILOSOPHICAL DISCUSSION OF RIGHT TO HEALTH

To fully understand and grasp the concept of the Right to Health and the universally accepted freedoms, entitlements, and State obligations associated with the protection and promotion of the said rights through exploration into its philosophical origins becomes imperative. Establishing the philosophical bedrock of the Right to Health is a prerequisite for comprehending the genesis of entitlements, freedoms, and obligations intrinsic in human rights discourse. This foundational discourse unveils the roots of human rights and their progressive evolution towards the realm of health-related entitlements.

Human rights have evolved from the idea espoused by philosophers since the time of Ancient Greeks, who debated the existence of certain inherent rights held by individuals.[22] The origins of these rights diverge across philosophical perspectives, and these variances provide the scaffolding for the subsequent

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[19] UN ICESCR, *supra note* 5

[20] *Id.*

[21] *Id.*

[22] Robert M. Sade, *Concept of Rights: Philosophy and Application to Health Care,* The Lincare Quarterly: Vol. 46, No.4, Article 6, 330, 344, (1979), at 332

discussion on freedoms, entitlements, and obligations.[23] Philosophical viewpoints encompass three distinct categories: the positivist theory, the social good theory, and the natural theory.[24]

Positivist theorists such as Thomas Hobbes, Spinoza, and Oliver Wendell Holmes argue that human rights are shaped solely by the laws established by society, rendering them contingent on legal frameworks.[25]

Social good theorists such as Jeremy Bentham, David Hume, and John Rawls, maintain that rights are grounded in communal well-being, predating individual entitlements.

On the other hand, philosophers, including Thomas Aquinas, John Locke, and Augustine, assert that human rights are inalienable and emanate from the inherent nature of humanity, with both societal structures and positive laws existing to serve the welfare of individuals, a perspective aligned with the Natural Theory.[26]

Contemporary philosophers would later introduce variations and deviations. While these nuances and deviations have emerged within these philosophical frameworks, they collectively represent the core paradigms that guide discussions on human rights' origins.[27] Despite disparities regarding the root and primacy of these rights, a shared consensus endures positive law is indispensable, society forms the bedrock of human existence, and individuals inherently possess rights.[28]

The concept of human rights immanently encapsulates the latitude of action and the prerogative to partake in the benefits they entail.[29] This premise underscores the assertion that "all men have rights" and individuals possess autonomy to exercise these rights and inherent entitlements.[30]

These principles, encapsulated in the modern context as human rights, encompass the fundamental and unassailable entitlements necessary for human life. They are defined as the fundamental and inalienable rights which are

[23] *Id*.
[24] *Id.*
[25] *Id*.
[26] Sade *supra note 22* at 333
[27] Id.
[28] Id.
[29] Id.
[30] Id.

essential for life as a human being.[31] They encompass the liberties, immunities, and advantages which, by virtue of accepted contemporary human values, every individual should be capable of asserting within the society in which they live. [32]

In 1979, Robert Sade articulated the essentiality of the right to life, asserting that this right underpins all others, conferring the freedom to pursue actions that sustain one's existence. This life-affirming pursuit includes the attainment of both material and intellectual values, to wit:

> *Because man is above all else a living creature, his primary right is the right to life. This right is not a guarantee of life itself because accidents, diseases, or old age will eventually remove it. The right to life defines the freedom to act in support of one's own life. The goal of this life-sustaining action is the creation or acquisition of material values, such as food and clothing, and intellectual values, such as self-esteem and integrity.* [33]

Sade briefly discussed the corollaries implied with the right to life, *viz:*

> *The right to life implies three corollaries: the right to select the values that one deems necessary to sustain one's own life; the right to exercise one's own judgment of the best course of action to achieve the chosen value; and the right to dispose of those values, once gained, in any way one chooses, without coercion by other men. The denial of anyone of these corollaries severely compromises or destroys the right to life itself. The man who is not allowed to choose his own goals is prevented from setting his own course in achieving those goals and is not free to dispose of the values he earned is no less than a slave to those who usurped those rights. His life is in their hands.*[34]

A comprehensive overview of the libertarian approach provides a good and illuminating framework for understanding socio-economic rights, including the right to health care, and their implications for society and governance. By construing rights as primarily protective mechanisms, libertarians classify only "negative" rights as true rights, dismissing claims of "positive" rights. Within this perspective, health care claims are dissected through an economic lens, emphasizing individual autonomy, and minimizing interference. [35]

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[31] Rebecca Wallace, *International Law,* 2002, p. 210

[32] Louis Henkin, *Encyclopedia of Public International Law,* Vol. 2, Rudolph Bernhardt (ed.), 1995

[33] Sade *supra note 22* at 333

[34] Sade *supra note 22* at 334

[35] Tamara Friesen, The Right to Health Care, 9 HEALTH L.J. 205 (2001).

Meanwhile, Thomas Scanlon stated that rights are practically separable from partisan political issues and therefore ideologically neutral leading to the conclusion that rights give way only when particular reasons obtain.[36] Both in the context of domestic rights and in the contest of international law, the language of rights evokes this special character of rights. One is bound by them irrespective of domestic political position or cultural background and economic achievement. This is why they are human and universal, i.e., reasons that can be accepted with peremptory force by all.[37]

K. Selick explains the classical liberal understanding of positive and negative rights as follows:

> *Over the past four centuries, western liberal democracies have viewed rights primarily as protective mechanisms. A right is like an invisible wall keeping us safe from the interference of others.... The right to life, for example, simply meant the right not to have one's life taken away-the right not to be killed-by others. It did not mean the right to require others to give one the means of sustenance.*[38]

The United Nations Office of the High Commissioner on Human Rights (UNOHCHR) and the World Health Organization (WHO) jointly affirm the right to health as an integral facet of human rights, woven into the fabric of human dignity. In a joint Fact Sheet, UNOCHR and the WHO have stated that the *right to health is a fundamental part of our human rights and our understanding of a life in dignity*.[39] This confluence of human rights and the right to health underscores their symbiotic evolution, with the latter emanating as a vital component of the broader human rights discourse. This statement is aimed to shed a light on the right on the right to health in international human rights law as it currently stands, amidst the plethora of initiatives as to what the right to health may or should be. It then explained what the right to health is and illustrated the implications for specific individuals and groups and elaborated upon the State's obligations with respect to the right.

A juxtaposition of viewpoints emerges from scholars such as R. A. Epstein, who seeks a libertarian stance on health care, championing market-driven solutions

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[36] Pavlos Eleftheriadis, A Right to Health Care, 40 J.L. MED. & Ethics 268 (2012)
[37] Id.
[38] Friesen *supra note 35citing* "Rights and Wrongs in the Canadian Charter" in A.A. Peacock, ed., Rethinking the Constitution: Perspectives on Canadian Constitutional Reform, Interpretation, and Theory (Don Mills, Ontario: Oxford University Press, 1996) 103 at 104.
[39] Office of the High Commissioner on Human Rights and World Health Organization. *Factsheet No. 31 The Right to Health,* 1, (2008)

for accessibility and affordability. R. A. Epstein posed the view that the market consists of voluntary "win-win" transactions in the form of contracts freely entered into between doctors and patients. His view is that the market forces will work their magic to increase access, quality, and affordability of health care as the market for health care services grew, so is the income for these health providers who would in turn would trickle down to increased capacity of health providers to provide voluntary charity account for hard cases.[40]

Leary would then cite the theories of R. Dworkin defining rights as trumps which generally, but not unfailingly, prevail over other societal considerations and create a presumption of special protection. This special protection, according to him, afforded rights in a democratic society which enables the public to exert some kind of influence beyond just electing the government of the day but exert influence as to how the government is run to respond to those rights. He then concluded that it is not enough to classify health care as a common good.[41]

There is also an interest-based approach to the right to health proposed by Hessler and Buchanan. In this approach, health is a moral interest, which are more complex ideas than harm or utility. These interests are satisfied when there are state of affairs that promote it in the right way. According to their account, it is primarily the State that bears the core duties to respect and protect human rights. Failing that, the burden falls on other States or international bodies.[42]

Hessler and Buchanan have rejected the view that the right to health is a basic need because admitting the same would depend on social and cultural contexts, which at a rapidly globalizing world would be hard to contextualize and standardize.[43]

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[40] Friesen *supra note 35 See more: Mortal Peril: Our Inalienable Right to Health Care,* offers a somewhat softer libertarian approach to the issue of a right to health care by appealing to economic principles. In his view, the market-as it consists of voluntary "win/win" transactions in the form of freely entered into contracts between doctors and patients-is the only truly trustworthy foundation upon which to build a health care system. Let the market forces work their magic in order to increase access, quality and affordability of health care for the majority of society, Epstein says, and let voluntary charity account for the "hard cases"

[41] Friesen *supra note 35* at 211

[42]Eleftheriadis *supra note 36* at 274 *citing* K. Hessler and A. Buchanan, "Specifying the Content of the Human Right to Health Care,'" in R. Rhodes, M. P. Battin, and A. Silvers, eds., Medicine and Social Justice: Essays on the Distribution of Health Care (Oxford: Oxford University Press, 2002): 84-96. The essay is now reprinted in A. Buchanan, Justice and Health Care: Selected Essays (Oxford: Oxford University Press, 2009): at 203.

[43] Id.

As revolutionary as the rights-based approach would sound, Eleftheriadis pointed out that this approach lacks the punch which is inherent in a human rights claim by failing to recognize the power that democratic nations afford to rights.[44] It failed to specify the content of the rights as it does not explain which interests of well-being have paramount importance.[45] It failed to see how the appropriate balancing of interests is distinct from distributive concerns that are part of the ordinary political process and fails to show that rights are separable from public policy.[46] Finally, Eleftheriadis points out that Buchanan's approach fails to account for the peremptory force of human rights.[47] As a final result, this approach produced an unfamiliar account of rights which took away their most essential moral features.[48]

In conclusion, the philosophical bedrock of the Right to Health traces its origins to the musings of ancient philosophers, fostering the evolution of human rights discourse. This discourse is marked by diverse perspectives, encompassing positivist, social good, and natural theories. As human rights intertwine with the right to health, contemporary elucidations by UNOHCHR and WHO reinforce its centrality within the human rights framework. Amidst varying viewpoints on health care, the juxtaposition of libertarian and rights-based approaches highlights the complexities of health as a human right. In this context, theories of justice offer a promising avenue for comprehending and upholding the dynamic interplay between individual entitlements, societal obligations, and the right to health within democratic societies.

### D. HISTORY OF THE RIGHT TO HEALTH

After World War II, Western Countries built legal systems to face the barbarities of modern societies. Under the directive of the United Nations (UN), they have established legal frameworks that elevated the rights of life and human dignity in constitutions, followed by rights of freedom.[49]

[44] Eleftheriadis *supra note 36* at 274-275
[45] Eleftheriadis *supra note 36* at 275
[46] Eleftheriadis *supra note 36* at 275-276
[47] Id.
[48] Eleftheriadis *supra note 36* at 276
[49] José Luiz Gondim Dos Santos, Paulo André Stein Messetti, Fernando Adami,, Italla Maria Pinheiro Bezerra, Paula Christianne G G Souto Maia, Elisa Tristan-Cheever, and Luiz Carlos de Abreu. *Collision of Fundamental Human Rights and the Right to Health Access During the Novel Coronavirus Pandemic,* Front Public Health. (2021)

The right to health was first mentioned in the preamble of the Constitution of World Health Organization (WHO), adopted in 1946 and came into force in 1948. [50]

In general, preambles are statements of the motivations and objectives that inform the legal document they introduce.[51] However, the entire World Health Organization Constitution is a treaty. According to Article 2 of the Vienna Convention on the Law of Treaties a treaty is defined as an *international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.*[52] Article 5 of the same convention also provides that the rules on treaties established by the Vienna Convention *applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization.*[53]

The establishment of the right to health was further solidified in 1948 with the Universal Declaration of Human Rights (UDHR).[54] Unlike the WHO Constitution, the UDHR is not a treaty. It has not been signed or ratified by states.[55] The UDHR was drafted by representatives with different legal and cultural backgrounds from all regions of the world.[56] It set out, for the first time, fundamental human rights to be universally protected.[57] Despite the UDHR not being legally binding, its principles have been widely incorporated into numerous international and regional agreements, national constitutions, and domestic legal frameworks.

Although the UDHR is not a treaty and may not have been originally intended to have legal binding force, the Court, speaking through Associate Justice

[50] Constitution of the World Health Organization pmbl.

[51] Max Hulme. Preamble in Treaty Interpretation. University of Pennsylvania Law Review Vol. 164: 1281, (2016)

[52] Vienna Convention on the Law of Treaties art. 2., *signed* May 23, 1969

[53] Vienna Convention on the Law of Treatis, *supra note* 53 art. 5

[54] Universal Declaration of Human Rights art. 25

[55] United Nations Dag Hammarskjöld Library, *Universal Declaration of Human Rights, available at https://research.un.org/en/docs/humanrights/undhr#:~:text=Unlike%20the%20covenants%2C%20the%20UDHR,human%20rights%20topics%20since%201948.*(last accessed October 23, 2023) [https://perma.cc/M755-CPGS]

[56] United Nations, *Universal Declaration of Human Rights, available at https://www.un.org/en/about-us/universal-declaration-of-human rights. (*last accessed October 23, 2023) [https://perma.cc/CVX5-EQES]

[57] United Nations Office of the High Commissioner on Human Rights, *Universal Declaration of Human Rights, available at* https://www.ohchr.org/en/universal-declaration-of-human-rights (last accessed October 23, 2023) [https://perma.cc/37ME-6XS2]

Antonio T. Kho, Jr, established that the UDHR as part of the generally accepted principles of international law, and therefore, binding on the State.[58]

The rationale for this is that UDHR is the implied acceptance of UDHR as part of international customs and the provision of the constitution incorporating generally accepted principles of international law as part of the law of the land. In the decision penned by Associate Justice Kho in *Macalintal v. Commission on Elections,*[59] the Supreme Court cited two previous cases to explain how the UDHR, albeit not being a treaty and not been originally intended to have a legal binding force, became legally binding on the Philippines.

The first case is the case of *Pangilinan v. Cayetano* wherein the Court explained that the term "generally accepted principles of international law" found in Article II, Section 2 of the 1987 Constitution includes both "international custom" and "general principles of law". They form part of the Philippine laws even if they are not derived from treaty obligations of the Philippines.[60]

The second case citied is *Razon, Jr. vs. Tagitis,* where the Court explained that international customs pertains to customary rules accepted as binding and result from the combination of an established, widespread, and consistent practice on the part of the States, and a psychological element known as *opinion juris sive necessitates* or *opinion as to law or necessity.*[61] According to the Court, it is implicit in the second element that there is a belief that the practice in question is rendered obligatory by the existence of a rule of law requiring it.[62]

The right to health was included in the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Convention sets out and defines the obligations and the steps that States should take to realize progressively with maximum available resources the highest attainable standard of health.[63] The language of progressive realization and maximal available resources suggests different standards for different countries.[64]

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[58] Macalintal v. COMELEC, G.R. Nos. 263590 & 263673, June 27, 2023
[59] Id.
[60] Macalintal v. COMELEC *supra note 59 citing* Pangilinan vs. Cayetano, G.R. No. 238875, [March 16, 2021]
[61] Macalintal v. COMELEC *supra note 59 citing* Razon, Jr. v. Tagitis, 621 Phil. 536, 600 (2009)
[62] Id.
[63] United Nations Office of the High Commissioner on Human Rights and World Health Organization *supra note 39* at 22
[64] Id.

Building upon the ICESCR, Scott Leckie, a representative of Habitat International Coalition (HIC), articulated five essential legal obligations that States should fulfill in relation to the right to health. According to Leckie, the State should at least:

(a) ensure equality of treatment, non-discrimination and full access to the rights found in the Covenant to all persons irrespective of one's health status;

(b) initiate preventative approaches to health;

(c) confer legal security of tenure to all dwellers;

(d) prove to the Committee that the maximum of available resources have been devoted towards facilitating improved health, and

(e) ensure that otherwise progressive moves will not inevitably result in the non-enjoyment of other rights.[65]

## E. RIGHT TO HEALTH IN THE PHILIPPINES

The Right to Health in the Philippines is generally from two sources, namely (1) domestic law; and (2) international treaties and instruments.[66] As for domestic law the Right to Health is espoused expressly in the 1987 Constitution, Republic Acts or local legislations, as well as in various municipal and city ordinances which are implemented in accordance with the Constitution and national laws. As for international treaties and instruments, the Right to Health is espoused in various international treaties and conventions which the Philippines is a party to and espoused in auxiliary instruments that may not be legally binding but is authoritative in the interpretation and implementation of the international treaties and conventions.[67]

In the 1987 Constitution, the Right to Health is both expressly mentioned under the declaration of State policies and found impliedly under the incorporation and transformation of international law and treaties.

This is a clear expansion of the previous provisions in the 1973 and the 1935 Constitution which only provides that *the State shall establish, maintain, and ensure*

[65] Aart Hendriks, *The Right to Health*, 1 EUR. J. HEALTH L. 187 (1994).
[66] *See* Abines v. Duque *supra note 15*
[67] *See* Rommel J. Casis. *Dualism and the Incongruence between Objective International Law and the Philippine Practice of International Law,* Philippine Yearbook on International Law, 41, 59, (2020)

*adequate social services in the field of education, health, housing, employment, welfare, and social security to guarantee the enjoyment by the people of a decent standard of living.*[68] The provision in the 1973 Constitution is a direct lift and reference to the UDHR.

The rationale for the expansion under State Policies or Article II in 1987 Constitution is elucidated in the records of the proceedings of the 1986 Constitutional Commission. According to the records, the expansion is a manifestation of the intent of the framers of the rebirth of the nation and a reflection of the ideals and aspirations of the Filipino people that are not only genuine but inherent in them. Records show that the intent of the framers is that these provisions, along with other provisions on social justice, labor, and education, are aimed towards the full and total development of man.

Whether or not Article II Sections 15 and 16 may be judicially enforced as a right and cause of action in the courts of the Philippines would depend on a determination if these provisions were self-executing. According to the Supreme Court, as a general rule, the provisions of the Constitution are considered self-executing, and do not require future legislation.[69]

Domestically, the right to health have been incorporated in local legislations upholding the recognition of the State of the right to health. As of date, since 1987, there has been 288 Republic Acts and 64 Executive Orders that mentioned the right to health.[70]

In Republic Acts, the state policy on the right to health is usually expanded by adding specific strategies. In Executive Orders, there is a direct citation of Sections 15 and16 of Article II and most of the time, both provisions are placed in the whereas clause such as Executive Order No.3, Series of 2022 Allowing Voluntary Wearing of Facemasks in Outdoor Settings and Reiterating the Continued Implementation of Minimum Public Health Standards during the State of Public Health Emergency Relative to the COVID-19 Pandemic, signed by President Ferdinand Marcos, Jr last September 12, 2022.

The Right to Health is part of the law of the land under the incorporation doctrine since right to health is established under a covenant or a treaty to which the Philippines is a party.[71]In the hierarchy of rules in the Philippine legal system,

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[68] 1973 PHIL. CONST. art. II § 7 (superseded in 1987)

[69] Manila Prince Hotel v. Government Service Insurance System, G.R. No. 122156, 267 SCRA 408, February 3, 1997

[70] The author utilized the search function of CD Asia to search for Republic Acts and Executive Orders containing the keyword "right to health".

[71] *See* Abines v. Duque *supra note 13, see also* Casis *supra note 67*

a treaty, once it becomes part of the 'law of the land', has equal status to Acts of Congress. A treaty may be invalidated if it conflicts with the Constitution or an Act of Congress.[72]

Treaties, according to the Court, is an exercise of executive power and legislative power. Under our Constitution, executive power is vested in the President and that no treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate.[73] It is this very concurrence requirement that transform the treaty as a municipal law of the land. The requirement therefore for a treaty to be considered as a transformed municipal law according to the ruling in *Bayan vs. Zamora* is (1) the treaty must be executed with the authority of the President, and that (2) the treaty must be concurred by no less than two-thirds of all Members of the Senate. [74]

## F. RIGHT TO HEALTH UNDER INTERNATIONAL LAW

Right to health has been expressed in various international treatises and conventions as well as the auxiliary instruments that aimed to either interpret the intent of a specific treaty or is authoritative in terms of the implementation of the same.

The right to health was first mentioned in Article 25.1 of the Universal Declaration of Human Rights which reads:

> *"Everyone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and medical care and necessary social service."*[75]

Accordingly, the declaration is generally accepted as a legally non-binding instrument, but it does contain a series of principles and rights that are based on human rights standards. In turn, these principles and standards are then enshrined in other legally binding instruments which would later contain the right to health.[76]

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[72] *Gonzales v Hechanova*. 9 SCRA 230 (1963)
[73] Bayan v. Romulo *supra note* ***Error! Bookmark not defined.***
[74] Id.
[75] Universal Declaration of Human Rights art. 25.1
[76] United Nations Office of the High Commissioner on Human Rights, Declaration on Human Rights Defenders; Special Rapporteur on Human Rights Defenders, *available at:* https://www.ohchr.org/en/special-

Unlike, UDHR, the International Covenant on Economic, Social and Cultural Rights is a treaty signed and ratified by the Philippines. It recognizes that health is a fundamental human right indispensable for the exercise of other human rights and that every human being is entitled to the enjoyment of the highest attainable standard of health.[77]

The Right to Health is also mentioned in Article 5(e)(iv) of the International Convention on Racial Discrimination of 1965. States are obligated to guarantee the enjoyment of the right of everyone, which includes in this specific instance the right to public health, medical care, and social security services.[78]

The Right to Health is also mentioned in Article 11.1(f) of the Convention on the Elimination of All Forms of Discrimination against Women of 1979.[79] Specifically, this Article expressly mentions the obligation of the state to protect women from harm that would endanger their function of reproduction.[80]Article 12 of the CEDAW also provides legal obligation among State Parties to eliminate discrimination against women in the field of health care.[81]

Lastly, Article 24 of the Convention of the Rights of the Child provides that in the full implementation of the rights of the child, States are obligated to take appropriate measures:

(a) To diminish infant and child mortality;[82]

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;[83]

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean

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procedures/sr-human-rights-defenders/declaration-human-rights-defenders (last accessed Oct. 23, 2023) [https://perma.cc/YUR3-ZR6F]

[77] Office of the High Commissioner on Human Rights, *General Comment No. 14,* E/C.12/2000/4 (2000) ¶ 1 *hereinafter* General Comment No. 14

[78] International Convention on the Elimination of All Forms of Racial Discrimination art. 5 § e §§ iv, *adopted* Dec. 21, 1965, *hereinafter* ICEAFRD

[79] Convention on the Elimination of All Forms of Discrimination against Women art. 11.1 § f, *adopted* Dec. 18, 1979 *hereinafter* CEDAW

[80] CEDAW *supra note* 137

[81] CEDAW *supra note 137* art. 12

[82] Convention on the Rights of the Child art. 24 § 2 §§ a, *adopted* November 20, 1989 *hereinafter* CRC

[83] CRC *supra note 82* at art. 24 § 2 §§ b

drinking-water, taking into consideration the dangers and risks of environmental pollution;[84]

(d) To ensure appropriate pre-natal and post-natal health care for mothers;[85]

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;[86]

(f) To develop preventive health care, guidance for parents and family planning education and services.[87]

This Article also provides that State Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.[88]

The ICESCR provides minimum core obligations of every state which are considered to be of immediate effect to meet the minimum essential requirement of each of the rights.[89] According to the UN, if a State fails to meet the said minimum core obligations it must demonstrate that it has made every effort to use all available resources to satisfy, as a matter of priority at its disposal and the Government must still introduce low-cost and targeted programmes to assist those most in need so that its limited resources are used efficiently and effectively.[90]

With respect to the further analysis of the right to health in this thesis, the rights and obligations enumerated in the ICESCR will be taken into primary consideration and the rights and obligations enumerated in other treatises will be taken into secondary consideration. It is to the opinion of the author that the right to health is generally constituted in the ICESCR and that the constitution of right to health in other treatises are only incidental to the primary purpose of which each respective treaty seeks to achieve.

[84] CRC *supra note 82* at art. 24 § 2 §§ c
[85] CRC *supra note 82* at art. 24 § 2 §§ d
[86] CRC *supra note 82* at art. 24 § 2 §§ e
[87] CRC *supra note 82* at art. 24 § 2 §§ f
[88] CRC *supra note 82* at art. 24 § 3
[89] Factsheet No. 33 *supra note* **Error! Bookmark not defined.**
[90] General Comment No. 14 *supra note 77* at 47

In August 11, 2000, the UN Committee on International Economic, Social and Cultural Rights which is a treaty body responsible for implementing and monitoring ICESCR published General Comment No. 14 which outlined the States parties' obligations to the ICESCR in relation to the recognition of the right to the highest attainable standard of health. [91]

On its face, the General Comment is not a treaty. It is a treaty body's interpretation of human rights treaty provisions, thematic issues, or its methods ow work. They often seek to clarify the reporting duties of State parties with respect to certain provisions and suggest approaches to implementing treaty provisions.[92]

Unlike other treaties in international law, human rights treaties are not concluded to accomplish a reciprocal exchange of rights for the mutual benefit of the parties to a convention' s but are geared toward third-party beneficiaries.[93] This special characteristic requires that these treaties are interpreted in a manner sufficiently favorable to the effective protection of individual rights[94]

As established in the preceding sections, ICESCR and other international conventions are treaties that defined the right to health and the obligations of the States towards these rights. Subsequent interpretation for implementation for each of these instruments would show that these treatises have also established the obligation for States to provide legal remedies available to the people in enforcing or protecting their rights. A question remains as to whether these rights may be enforced by citizens against the State to force its compliance.

### G. OBLIGATIONS OF THE STATE IN RIGHT TO HEALTH

As interpreted in General Comment No. 14, the States parties' obligation are mainly categorized into three (3) namely, (1) general legal obligation; (2) specific legal obligation; and (3) international legal obligations.[95]

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[91] General Comment No. 14 *supra note 77*

[92] Office of the United Nations High Commissioner for Human Rights. *Human Rights Treaty Bodies: Glossart of treaty body terminology. Available at: https://www2.ohchr.org/english/bodies/treaty/glossary.htm* (last accessed: October 23, 2023) [https://perma.cc/8UJY-WKEU]

[93] Kerstin Mechlem, Treaty Bodies and the Interpretation of Human Rights, 42 Vanderbilt Law Review 905 (2021)

[94] Id.

[95] General Comment No. 14

As to its general legal obligation, General Comment No. 14 expressly provides that the right to health, like any other fundamental and basic human rights, imposes three types or levels of obligations on the State parties which are the following:

(1) **Obligation to respect** - the obligation to respect requires States to refrain from interfering directly or indirectly with the enjoyment of the right to health.

(2) **Obligation to protect** - the obligation to protect requires States to take measures that prevent third parties from interfering with article 12 guarantees.

(3) **Obligation to fulfil** - obligation to fulfil requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional, and other measures towards the full realization of the right to health. It also contains obligations to facilitate, provide and promote.

As to international obligations, General Comment No. 14 referred to the General Comment No. 3 wherein the Committee underscored the *obligation of all States parties to take steps, individually and through international assistance and cooperation, especially economic and technical, towards the full realization of the rights recognized in the Covenant, such as the right to health.*

## H. VIOLATIONS OF A STATE IN RIGHT TO HEALTH

According to the General Comment No. 14, in determining violations constituting an act or omission of the State with respect to the right to health, it is important to distinguish between the inability from the unwillingness of State Party to comply with the obligations under Article 12.[96] As a general rule, a State which is unwilling to use the maximum of its available resources is in violation of obligations under Article 12.[97] As an exception, non-use of the maximum of its available resources is excused when such resource constraints would render it impossible for a State to comply fully comply with its obligations.[98]

Violations may be in a form of an act of commission or an act of omission. The right to health may be violations if the State adopts any retrogressive measure

[96] General Comment No. 14 *supra note 77* at 47
[97] General Comment No. 14 *supra note 77* at 32
[98] General Comment No. 14 *supra note 77* at 18

incompatible with the core obligations under the right to health.[99] They also include the the formal repeal or suspension of legislation necessary for the continued enjoyment of the right to health or the adoption of legislation or policies which are manifestly incompatible with pre-existing domestic or international legal obligations in relation to the right to health.[100]

Violation of the right through omission is when the State parties fail to take necessary measures to arising from legal obligations.[101] It includes the failure to take appropriate measures or steps towards s the full realization of everyone's right to the enjoyment of the highest attainable standard of physical and mental health,[102] the failure to have a national policy on occupational safety and health as well as occupational health services, and the failure to enforce relevant laws.[103]

## I. Right to a Remedy

General Comment No. 14 provides that *any person or group victim of a violation of the right to health should have access to effective judicial or other appropriate remedies at both national and international levels.*[104] The document in the interpretation of the treaty provisions of the ICESCR has also provided recommendations on how the State could ensure the access of the right of the people to remedy in case there is a violation of their right to health.

General Comment No. 14 highlights the need of incorporating the obligations in the treaty provisions into the domestic legal systems.[105] Accordingly, the document states that incorporation would enable the local courts to adjudicate violations of the right to health or at least its core obligation by direct reference to the Covenant.[106]

General Comment No. 14 also provides that it is the obligation of the Member States to encourage judges and members of the legal profession to pay greater attention to violations of the right to health.[107]

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[99] General Comment No. 14 *supra note 77* at 32
[100] General Comment No. 14 *supra note 77* at 48
[101] General Comment No. 14 *supra note 77* at 14-27
[102] General Comment No. 14 *supra note 77* at 17
[103] General Comment No. 14 *supra note 77* at 11
[104] General Comment No. 14 *supra note 77* at 59
[105] General Comment No. 14 *supra note 77* at 36
[106] General Comment No. 14 *supra note 77* at 60
[107] General Comment No. 14 *supra note 77* at 61

As of writing this study, the ICESCR only obligates State members to recognize the right of everyone to the highest attainable standard of health and further obligates them to take both positive and negative acts (either to do or not to do) to respect, protect, and fulfil the right to health. There is a growing movement to expand such obligations to non-state parties such as private individuals, families, and corporations but as of date from the text of the treaty itself, such obligations of non-state parties are not expressly provided for in the ICESCR or the General Comments.

Hence, in the discussion of judicial and extrajudicial remedies for violations of right to health a common presumption is the offender is the state or any of its branches, subdivisions, instrumentality, and agency and the offended party may either be a single person, a family, or a group of persons with or without defined geographical or cultural identity.

### J. ROLE OF THE COURT IN SAFEGUARDING THE RIGHT TO HEALTH

The Supreme Court has the power to promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. This power is the exclusive domain of the Supreme Court.[108] It has the sole prerogative to amend, repeal, or even establish new rules for a more simplified and inexpensive process, and the speedy disposition of cases.[109]

Such exclusive domain of the Supreme Court to promulgate rules provides that if any of the other branches of government would enact laws or issue orders that effectively repeal, alter, or modify any of the procedural rules promulgated by the Supreme Court, they would be trespassing upon the rule-making power of the Supreme Court.[110] Such as in In *Carpio Morales vs. Court of Appeals,* the Supreme Court declared the first paragraph of Section 14 of R.A. 6770 which provides that no writ of injunction shall be issued by any court to delay an investigation being conducted by the Ombudsman under this Act, unless there is a prima facie evidence that the subject matter of the investigation is outside the jurisdiction of the Office of the Ombudsman, as ineffective. The Supreme Court reasoned that a law prohibiting the issuance of a writ of injunction contravenes the rule-making authority of the Court.

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[108] Estipona, Jr. vs. Lobrigo, G.R. No. 22679, August 15, 2017

[109] Neypes vs. Court of Appeals, G.R. No. 141524, September 14, 2005

[110] Estipona, Jr. vs. Lobrigo, *supra note* 233

Compared with previous constitutions, the 1987 Constitution expanded the rule-making power of the Supreme Court. In addition to its authority to promulgate rules as mentioned above, the Supreme Court is also given the power to disapprove the rules of special procedure of special courts and quasi-judicial bodies. The Constitution also took away the power of Congress to repeal, alter, or supplement rules concerning pleading, practice, and procedure. The only limitation in the rule-making power of the Supreme Court are the following conditions also found in the 1987 Constitution, to wit:

(1) The rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases.[111]

(2) The rules shall be uniform for courts of the same grade; and[112]

(3) The rules shall not diminish, increase, or modify substantive rights.[113]

### K. Power of Judicial Review vis-à-vis Violation to the Right to Health

Most often than not, when right to health is invoked, it would be because of an act or omission of the State. State can act through engaging in treaties, signing international agreements, passing, and implementing a law, giving presidential decrees, proclamation, order, instruction, ordinance, or passing regulations. The power to declare such acts as unconstitutional is called the power of *judicial review*.

The power of judicial review is vested in the Supreme Court and all other lower courts as may be established by law as provided for in Section 1 Article VIII of the Constitution.[114]

As a general rule, political questions are outside the scope of judicial review.[115] Political questions are those that raises questions of policy and refers to questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of government and concerned with issued dependent upon wisdom and not the legality of a particular measure.[116]

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[111] PHIL. CONST. art. VIII § 5
[112] PHIL. CONST. art. VIII § 5
[113] *Id.*
[114] PHIL. CONST. art. VIII § 1
[115] Abines vs. Duque *supra note 13*
[116] Abines vs. Duque *supra note 13*

Raising an issue based on a the violation of the right to health or putting forth a petition that would compel the Philippines or the government to take a particular action, sustain a particular standard, or deliver a specific type of service to the people is a question of policy that are to be decided by the people in their sovereign capacity or in regard to full discretionary authority which has been delegated to the legislative or executive branch. This is also in conformity with the long-standing rule that Judiciary cannot take part in the execution of laws and that the Courts cannot claim superiority on matters involving another agency's technical expertise.[117]

In other words, the power of the judicial review will not lie against the discretion delegated to the Congress to make laws and the discretion given to the Executive to implement the law.

Does this mean that the right to the highest attainable standard of health may not be successfully invoked before the Court? Not necessarily. The second paragraph of Section 1, Article VIII limited the scope of the political question doctrine. The 1987 Constitution granted the Judiciary the power to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction of any branch or instrumentality of the government.

With respect to the right to health, invoking the right to health in any acts or omission of State actors would be beyond the pale of judicial review for being a political question, except:

(1) If such question is not purely a matter of policy.
(2) If such question is to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction of any branch or instrumentality of the government.

The list abovementioned is not exhaustive and not exclusive. Other examples that falls under the two categories includes actions on the state that purports discrimination in any person or group of persons in their enjoyment of the highest attainable standard of health, failure to take appropriate steps in the normative rights enumerated under Section 12 of the ICESCR such as reducing maternal mortality and malnutrition among children, and refusal or failure on the part of the State aid in humanitarian situation either to seek international aid or extend the same in time of disaster or global emergencies.

[117] Id.

Using the examples for potential violations enumerated under General Comment No. 14, the following violations may be brought against the Government under judicial review:

(1) adoption of any retrogressive measures incompatible with the core obligations under the right to health
(2) formal repeal or suspension of legislation necessary for the continued enjoyment of the right to health
(3) adoption of legislation or policies which are manifestly incompatible with pre-existing domestic or international legal obligations in relation to the right to health.
(4) the failure to take appropriate steps towards the full realization of everyone's right to the enjoyment of the highest attainable standard of physical and mental health.
(5) the failure to have a national framework for health.

In the first three instances, since a law has already been passed Congress has already exercised its discretion. The ICESCR expressly prohibits States from taking deliberately retrogressive measures, enacting any of the three instances is tantamount to grave abuse of discretion from the Congress for deliberately enacting a measure that is expressly prohibited by treaty. It would be within the province of the courts to determine settle the issue as to whether such act is deliberately retrogressive. As to the next two items, the ICESCR especially under Article 12 expressly states that the States are obligated to take appropriate steps towards full realization of everyone's right to the enjoyment of the highest attainable standard of health and to enact a national framework for health. Omission on the part of the Congress or the Executive branch is tantamount to grave abuse of discretion, and it is within the province of the court under the expanded power of judicial review to determine if such omission is violative of the right to health or any vested rights of the people.

However, using the current rules and systems of the Supreme Court, even if these grounds would be raised they may violate at least one of the requisites for judicial review, or otherwise the Court would not overturn or declare the acts or omission as unconstitutional because of the separation of powers. To illustrate:

(1) In raising the first example, depending on the circumstances of the case it could potentially violate the requisite on locus standi.

    To properly illustrate, let us resort to a hypothetical situation. As of writing Republic Act No. 10028 or the Expanded Breastfeeding Promotion Act of

2009 is in effect amending Republic Act 7600. Supposed that after a few years, the Congress decides to enact a law that would codify and standardize the schedule of awareness campaigns in schools and communities. In the new law, it expressly repealed all existing laws that mandates public education and awareness programs in the country including Section 16 of the RA 7600 as amended by RA 10028 which provides August in each every year to be Breastfeeding Awareness Month and prescribes a calendar wherein every health advocacies would be assigned to a month or a week or a day wherein it will be advocated to the public to the exclusion of all other causes. This new law did not provide any new schedule for the Breastfeeding Awareness month and expressly repealed the same. If a group of minors, represented by and assisted by their parents would assail the constitutionality of the statute alleging that it is a retrogressive action violative of the core obligations of the State under the ICESCR and hence violative of their right to the highest attainable standard of health, will it prosper?

Under such hypothetical and illustrative case, there is clearly a retrogression in at least one of the core obligations under the right to health which is to ensure reproductive, maternal and child health care and to provide education and access to information concerning the main health problems in the community, including methods of preventing and controlling them. But if such case would reach the Supreme Court, it would violate at least one of the requisites of judicial review.

Arguably, in this hypothetical case, if the strict construction of the requisites on locus standi is applied, the petitioners are not the proper party. Although the Supreme Court has liberally applied this case when matters of transcendental importance are to be decided, in the strict application of the rules and jurisprudence on locus standi, the Court can dismiss the case for lack of jurisdiction. In *People vs. Vera,* the Court adopted the direct injury test stating that a person who impugns the validity of a statute must have a personal and substantial interest in the case such that he has sustained or will sustain direct injury as result. In this case, the petitioners being minors have no direct injury and arguably will not sustain any substantial injury because an awareness week for breastfeeding was scrapped.

(2) In raising either the second example which is the formal repeal or suspension of legislation necessary for the continued enjoyment of the right to health or the third example which is adoption of legislation or policies

which are manifestly incompatible with pre-existing domestic or international legal obligations in relation to the right to health, as of writing, Republic Act No. 11223 or the Universal Health Care Act of 2018 is in effect. Under this Act, all Filipinos are guaranteed equitable access to quality and affordable health care goods and services, and protected against financial risk. The Act also seeks to progressively realize universal health care in the country through a systemic approach and clear delineation of roles of key agencies and stakeholders towards better performance in the health system. Suppose that the Congress enacted a new law repealing *in toto* the Universal Health Care Act and mandates that as regards to the health financial coverage of Filipinos, the State would revert back to the system mandated under the National Health Insurance Program (NHIP) under Republic Act under Republic Act No. 7875 or the National Health Insurance Act of 1995, can the law be challenged as unconstitutional on the basis that it is a formal repeal of legislation necessary for the continued enjoyment of health?

Under this hypothetical scenario, solely on this ground alone the Court may not overturn this Act under certiorari on the grounds of separation of powers. Asserting grave abuse of discretion amounting to lack or excess of jurisdiction on the part of Congress imposes a strict standard that mere allegations may not be enough to overturn a valid act of legislation. Or even if the Supreme Court would take a liberal approach on this question, the current process of overturing a piece of legislation via petition for certiorari may take months or years and in the interim unless the Court overturns on a final decision or order a law, the law must be implemented. In the implementation of the hypothetical law, countless lives would be at risk.

(3) In raising the fourth example which the failure to take appropriate steps towards the full realization of everyone's right to the enjoyment of the highest attainable standard of physical and mental health, such an instance would most likely occur if the Congress failed to sufficiently fund national programs for health or in its prerogative in deliberating the annual appropriations bills would choose to defund the Department of Health at a level that it would result to withdrawal of access of the people to health facilities, services, and programs, if the local government unit fails to provide adequate funding for health facilities under their respective locality, the Department of Health failed to implement or roll-out a plan, or a facility duly funded by the local government failed to provide services. In other words, such a ground may be asserted in cases where Congress or the LGU

failed to provide adequate funding for healthcare. Can such acts or omissions be subject to judicial review and may it be overturned for being violative of the right to the highest attainable standard of health?

As of writing as such question have not yet reached the Supreme Court. What is clear is that the spending power or the "power of the purse" belongs to the Congress and subject only to the veto power of the President.[118] While it is the President who proposes the budget, still, the final say on the matter of appropriation is lodge in Congress.[119] In terms of general appropriations, the Constitution only prescribes the following under Article VI, Section 25:

a. Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the budget.
b. The form, content, and manner of preparation of the budget shall be prescribed by law.
c. No provision or enactment shall be embraced unless it relates to specifically some particular appropriation therein. Any such provision or enactment shall be limited in its operation to the appropriation to which it relates.
d. Procedure for approving appropriations for Congress shall strictly follow the procedure for approving appropriations for other department and agencies.

Aside from the rules prescribed in Article VI, Section 25, the general appropriations are subject to limitations expressly provided by the Constitution in relation to fiscal autonomy and independence of the Judiciary and Constitutional Commission, and it is limited by the veto power of the President. If the Congress followed all the provisions defined in the Constitution and the fiscal autonomy and independence of Judiciary and Constitutional Commissions, the passage of the appropriations bill as well as the execution of the veto power of the President when such power was utilized, is given the presumption of validity to statues and presumption of regularity as to official acts.

Given that the right to health is a judicially enforceable right under the Constitution and the failure of the Congress to pass a law that would enable

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[118] Philippine Constitution Association v. Enriquez, G.R. No. 113105, August 19, 1994
[119] *Id.*

the Executive branch to effectively carry out its functions to deliver health services to the people is a direct affront to such rights, it is submitted that the Court should have the power to review general appropriations act and even the budgets passed by the local government units if such acts would not enable the government to take appropriate steps for the full attainment of the right to health. However, under the current jurisprudence as of writing, such may not be case.

(4) In the fifth example, the failure to have a national framework for health, the drafting and release of the framework is a purely executive function. The power to define the national health policy and formulate and implement a national health plan within the framework of the government's general policies and plans, and present proposals to appropriate authorities on national issues which have health implications resides in the Department of Health.[120] To this end, it can be argued that the definition of the national health policy is a discretionary power of the Department of Health and may not be subjected to *mandamus*. However, since it falls upon the duty of the Department of Health to prepare the national framework and ensure that the national framework provides a progressive non-retrogressive approach to the fulfillment of the people to their right to the highest attainable standard of health, the Court should be able to take cognizance of issues wherein the Department of Health failed to produce a national framework or if the produced framework failed to provide a progressive and non-retrogressive approach in attaining the people's right to the highest attainable standard of health.

## L. COURT OF LAW AND EQUITY

Philippine courts are not just courts of law but courts of equity, and a person whose rights are violated has the right to stand before any court of law. After exploring the constitutional basis for the right to health in the Philippines, it is becoming clear that even though the right exists in our current legal system, our judicial system under its existing rules is not designed to provide speedy, inexpensive, and simple procedures for the people to enforce their right to highest attainable standard of health or at least make the State accountable to its core minimum obligations under international law.

[120] Administrative Code of 1987, Executive Order No. 292 , July 25, 1987

There is therefore the need to address this gap in the legal system which may involve the introduction of a new rule that would allow the courts to issue a novel prerogative writ—the writ of Kalusugan.

Prerogative writs are not new in our current system. As discussed in the previous chapters, prerogative writs are already being utilized by the courts to protect and enforce constitutional rights such as the inviolable right to life and liberty and relatively recently the constitutional right to healthful ecology. On June 2021, during his first appearance to the press after his appointment as the Chief Justice of the Supreme Court of the Philippines, Chief Justice Gesmundo affirms his commitment to utilize the rule-making power of the Supreme Court to ensure that constitutionally-guaranteed rights are protected. In that said interview he said, to wit:

> *To give life to that constitutional mandate given to the Supreme Court under the 1987 Constitution, the Supreme Court will adopt rules as the exigencies require in order that this constitutionally-guaranteed rights are fully protected.*[121]

In the advent of progressive legislation over the past few years reforming the health care system and the introduction of international obligations obliging the State to recognize, protect, promote, respect, and fulfil the right of the people to the highest attainable standard of health, it is incumbent upon the Court to invoke its rule-making to provide a speedy and inexpensive procedure where the State actors will be held accountable and the people would be given an opportunity to seek redress in case their right to health is being jeopardized by the act or omission of the State actors.

Under Section 5 Article VIII of the Constitution, the Supreme Court have the power to promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated bar, and legal assistance to the underserved. Such rule making power is plenary in nature but subject to specific limitations under the Constitution. First, the rules must provide a simplified and inexpensive procedure for the speedy disposition of cases. Second, they must be uniform for all courts of the same grade. Lastly, they must not diminish, increase or modify substantive rights.

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[121] Lian Buan, *Under Gesmundo, Supreme Court will revise rules on warrants and writs,* June 11, 2021, *available at* *https://www.rappler.com/nation/under-gesmundo-supreme-court-revise-rules-warrants-writs/* (last accessed December 5, 2023) [https://perma.cc/39Q2-DFAU]

## M. THE NEED FOR A NOVEL PREROGATIVE WRIT

As a response to the gap in the law and lack of procedures allowing the people to assert their right to the highest attainable standard of health, a new rule allowing the Court to issue a new prerogative writ, the Writ of Kalusugan, will be discussed in detail in this paper.

### 1. GENERAL DESIGN OF THE WRIT

The writ of kalusugan would allow the Court to take cognizance of legal issues involving right to health. Previously, whenever right to health is asserted in the courts to either compel government actions or prohibit certain acts or regulations that would otherwise impair their right to health, the Court would dismiss the same to respect the separation of powers of the three co-equal branches of government. Through this writ, the Supreme Court can decide on real issues brought about by actions or inactions of the legislative and the executive and order the same to rectify their actions to uphold the citizen's right to the highest attainable standard of health.

The writ of kalusugan would also depoliticize health. The descriptive "highest attainable" juxtapose to the right of progressive realization and the right against non-retrogression and right against discrimination regarding health would not be under the whims and caprices of the political forces of the day. As an independent and apolitical body, the judiciary would be the best arbiter on determining what is the meaning of the highest attainable standard and if current political actions are tantamount to retrogression towards attaining the right of the people towards attainable standard of health.

Finally, the writ of kalusugan seeks to promote accountability and community participation in attaining the highest attainable standard of health.

### 2. NATURE OF THE WRIT OF KALUSUGAN

The writ of kalusugan is a prerogative writ issued to any branch, instrumentality, or agency of the Government, including local government

units, and government owned and controlled corporations and their subsidiaries, to either prohibit the enforcement of any act that retrogresses from the current established standard of health or enjoining the same to review, revise, or amend any plan, rule, policy, or standard to determine whether such plan, rule, policy, or standard upholds the highest attainable standard of health. It may also be issued to any branch, instrumentality, or agency of the Government, including local government units, and government owned and controlled corporations including private entities licensed by or operating under a franchise granted by the government or is awarded by any contract or accreditation from any branch, agency, instrumentality, government-owned and controlled corporation, or local government units to provide any vital information that may be necessary for the Court to establish and determine whether any plan, rule, policy, or standard upholds the attainment of the highest attainable standard of health or whether such plan, rule, policy, or standard are retrogressive or discriminatory.

In other words, the writ of kalusugan is an expansion of the powers of the writs of mandamus, prohibition, and certiorari which under the current rules issues arising from the right to health especially if what is invoked is either a transgression on the right against retrogression, right against discrimination, and right to highest attainable standard of health in terms of availability of programs, services, and facilities, such writs will not be applicable or that the respective remedies that they provide will not be available for the common Filipino.

### 3. HOW IT DIFFERS FROM WRIT OF PROHIBITION

Prohibition is a special civil action and an extraordinary remedy used to compel any tribunal, corporation, board or person exercising judicial or ministerial functions, to desist from further proceedings in an action or matter when the proceedings in such tribunal, corporation, board or person are without or in excess of jurisdiction or with grave abuse or discretion, and there is no appeal or any other plain speedy and adequate remedy in the course of law.[122]

According to the Supreme Court, for grave abuse of discretion to prosper as a ground for prohibition, it must first be demonstrated that there was

[122] David Delfin v. Court of Appeals, G.R. No. L-21022. February 27, 1965

such a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or that the lower court has exercised its power in an arbitrary or despotic manner by reason of passion or personal hostility. It must be so patent and gross as to amount to an evasion or virtual refusal to perform the duty enjoined or to act in contemplation of law. [123]

In violations relating to the right to health, especially passing retrogressive or discriminatory measures or grave inaction towards any of the core obligations to health, such acts or omissions of the government agency are done within their jurisdiction. In some cases, such acts were not done in a capricious or whimsical exercise or judgment and may on its face be valid exercises of their discretionary powers. In some cases, they are done in the regular performance of their duties or acts in contemplation of the law.

The prohibition contemplated in the writ of kalusugan is aimed towards any branch, agency, subdivision, instrumentality, government-owned and controlled corporation including their subsidiary, and local government units to desist from enforcing any plan, policy, or standard that directly or indirectly regresses the existing standard of health or unjustly discriminates against any group or sector of the population preventing them from the enjoyment of the highest attainable standard of health.

## 4. HOW IT DIFFERS FROM WRIT OF MANDAMUS

Mandamus is a special civil action brought by an aggrieved party against a tribunal, corporation, board, officer or person unlawfully neglecting the performance of an act which the law specifically requires as a duty resulting from an office, trust or station. As a general rule, mandamus only lies when the act to be enjoined is a ministerial duty provided for under the law and mandamus does not lie if the act sought to be enjoined is discretionary.

What the writ is intended to do is to compel any branch, agency, subdivision, instrumentality, government-owned and controlled corporation including their subsidiary, and local government units to deliver the specific acts in order for the State to comply with its core obligations in securing that all people can enjoy the highest attainable standard of health. Such act includes but are not limited to preparing a

[123] Id.

national and local health agenda, delivering health services, facilities and programs as mandated in the national or local health agenda, and other health services, facilities, and programs that if not performed by the State would retrogress the standard of health of everyone or would unjustly discriminate against any group or sector of the population.

## 5. HOW IT DIFFERS FROM EXPANDED CERTIORARI

The expanded certiorari is the power of the court 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. In contrast to the concept of certiorari under rule 65 wherein the latter is only applicable to inferior courts and quasi-judicial bounds of their jurisdiction. This rule is not absolute and the Supreme Court have established through jurisprudence certain limitations on this expanded power. Among these the hierarchy of court and the exhaustion of administrative remedies.

Simply put, the rule on hierarchy of court provides that even if the petition of certiorari is properly filed with the Supreme Court, it may be denied by the same because it should be filed with the lower court which have concurrent exclusive jurisdiction. This rule is utilized in order to avoid the Supreme Court to be distracted from issues and cases that are within their exclusive original jurisdiction and to prevent the clogging in the dockets of the Supreme Court.

The exhaustion of administrative remedies on the other hand, acknowledges that once an administrative agency has been empowered by Congress to undertake a sovereign function, the agency should be allowed to perform its function to the full extent that the law grants and this includes the authority of superior officers in the administrative agencies to correct the actions of their subordinates or to reconsider their own decisions on a motion for reconsideration. Violation of this rule would lead to a premature judicial intervention and usurpation that violates the separation of powers that underlies the Constitution.

Violations to the right to health is critically time sensitive and especially cases wherein the entire national government is involved. Violations to the right of health if not immediately rectified may result in severe and irreparable injury to individuals, families, and communities which warrant

an immediate intervention by the court. If the rule on exhaustion of administrative remedies is not relaxed, the people seeking immediate redress for violations on their right to health would have to endeavor months if not years of petitions, hearings, and appeals before administrative agencies before plans, policies, and standards are rectified. In that period, severe and irreparable damages to individuals and families who is banking on the repeal of a policy or an update in the standard might have incurred which might be in the form of prolonged illness, disability, amputation, or worse—death.

The writ of kalusugan proposes a speedy and inexpensive remedy by allowing the court to be a fair and unbiased arbiter and forum to determine issues and settle disputes between the people and the government and part of it is relaxing the rule on exhaustion of administrative remedy by allowing direct filing to the court any disputes alleging a violation on the right to health. In order to prevent a downpour of cases, the proposed rules on the writ of kalusugan would enact gatekeeping measures to prevent clogging the dockets of the Supreme Court.

## 6. SIMILARITY WITH THE WRIT OF AMPARO

As mentioned, drafting a novel rule on the issuance of a new prerogative writ is not unique to the Supreme Court under the 1987 Constitution. On 2007, the Supreme Court under then Chief Justice Puno drafted and deliberated on the proposed draft rules on the *writ of amparo*.

Former Chief Justice Puno referred to how other countries would implement the *writ of amparo* stating the comparison that in other countries it is only utilized to correct judicial errors. He has emphasized that the intention of the rule is to provide a remedy in the particular area of extrajudicial killings which according to him is an area where current judicial remedies would be inadequate.[124]

The Committee also decided that it should not be limited by domestic laws in the protection of human rights. Chief Justice Puno gave a compelling speech discussing the trend towards internationalization of human rights. In  his speech, he cited that in 166 the UN adopted two international covenants namely the ICCPCR and the ICESCR. He cites

[124] Felipe Enrique M. Gozon, Jr and Theoben Jerdan C. Orosa *supra note* 259

that the ICCPCR contains a duty binding to the Phjilippines to adopt the necessary laws to give effect to the rights enumerated in the covenant.[125]

From this, one can draw a parallel between the drafting of writ of amparo vis-à-vis the right to life and be protected against extralegal killings and the drafting of the new writ of kalusugan vis-à-vis the right to highest attainable standard of health.

Similar to the resolution of the Commission on the first issue, the scope and application of the new writ should be limited in order that its powers and applicability would not be too broad to lose its potency and effectiveness. Coming from the discussion of the previous chapters, the most prevalent and most hard-pressed issue relating to the right to highest attainable standard of health is retrogression and the failure of the State to progressively realize the right of everyone to the highest attainable standard of health.

Since the Commission did not rely on any statute or law in defining the scope of *extralegal killings*. The Court may also define the scope and limitation of the right to highest attainable standard of health, retrogression, and failure to meet the core obligations to the right. In doing so, it can consider the literature as defined in this study as well as literature from the interpretation of the treaty. In doing so, it would not be violating any right and as mentioned in the previous chapters States may adopt the interpretation of any treaty bodies or make their own interpretations. Such acts are covered and valid under the existing Vienna Convention on interpretation of treaties.

Finally, the Court can choose to implement the obligations as stated under ICESCR as the basis for defining the rules governing the *writ of kalusugan*.

## 7. Balancing with Executive and Legislative Prerogatives

The writ operates between the interplay of prerogatives between the judiciary on one hand and the executive and the legislative on the other. This intricate interplay of constitutional roles and responsibilities between co-equal branches which precipitates into an intricate dance between the

[125] *Id.*

these three co-equal branches is necessary to safeguard the right of the people to the highest attainable standard of health.

The courts and the judiciary are the bastion of constitutional rights and its role is primarily to safeguard the people from abuses and potential encroachments by the executive and the legislative branch. The writ is a potent instrument allowing the judiciary to scrutinize the actions or inactions of both branches, ensuring compliance both with constitutional mandates. But the said writ does not replaces or interferes with the discretion of the said branches in implementing and setting standards, essentially the writ holds the government into account ensuring that all its actions are in line with the progressive realization of the right to health and is not discriminatory against any particular person, group, or community.

The powers and discretions of the legislative and the executive would still be intact. They would be able to pass laws and implement programs and standards without the interference or intervention of the judiciary. It is when these programs and standards are retrogressive, discriminatory or when these branches themselves are not acting on the said standards, policy, or plan that the Court would step in to adjudicate.

Empowering the judiciary to adjudicate on health-related issues seeks to depoliticize the determination of what constitutes as the "highest attainable standard". The court, as an apolitical entity, steps in as the impartial arbiter in determining the nuanced interplay between political actions and retrogression vis-à-vis the right to health.

Essentially, the writ not only functions as a legal remedy but also as a mechanism fostering accountability and community participation. By invoking the writ, individuals gain access to judicial redress, thereby elevating the discourse on health rights beyond the ephemeral contours of political forces and towards a realm governed by constitutional principles and the pursuit of the highest attainable standard of health for the Filipino people.

## N. ESSENTIAL FEATURES OF THE WRIT

The proposed rule prescribes the venue of the filing of the petition for the Writ of Kalusugan to be in either the Court of Appeals or in the Regional Trial Court where either the main applicant is residing or in cases of class filing where majority of its members are residing.

Like the Rules on Writ of Amparo, the petition for the Writ of Kalusugan may be issued outright upon application. The Writ of Kalusugan, however, poses an additional limitation which is the proposed two (2) year bar. The proposed rule acknowledges that the operation of the Government cannot be hampered while acknowledging that the right to health may be violated if such acts of the government will be left unchecked. To strike a balance between the two interests, the proposed rule imposes the two-year bar period wherein no plan, policy strategy, administrative issuance, ordinance, resolution, or legislation may be subjected more than once to the petition for Writ of Kalusugan within a period of two (2) years.

Another import of the proposed rule is allowing the Secretary of Health to give its opinion to the court in the form of *amicus curiae*. This is to acknowledge that the Secretary of Health may have substantial input to aid the court in determining whether the petition for the application of the writ has merits. However, if the Secretary is impleaded as one of the Respondents, he is barred from providing this opinion to the court in the form of *amicus curiae* and his input or position would be taken cognizance upon submission of his defenses. The proposed rule also allows the court, justice, or judge to allow the submission of other technical experts in lieu of or along with the opinion submitted by the Secretary of Health.

The proposed rule also acknowledges the possibility that the petition for the application of the Writ of Kalusugan is in reality a petition for certiorari aimed to overturn a law for being unconstitutional. In this instance, the proposed rule allows for the conversion of the petition for writ of kalusugan to be converted *motu proprio* or upon motion of any of the respond to a petition for certiorari. This procedure provides an expedited avenue for any individual to question the legality or constitutionality of any statute that affects their right to health without being required to exhaust all administrative proceedings available and without violating the doctrine of the hierarchy of the courts.

The proposed rule also provides for interim reliefs that are available for the petitioner in the form of temporary injunction and status quo ante order and the form of temporary relief. Such interim reliefs allows the court to provide

assistance expeditiously especially in cases wherein the petitioner faces grave, serious, and imminent injury to the health and life of the applicant or to any person that the applicant is representing.

The burden of proof required is substantial evidence which is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.[126] This burden of proof is significantly lower than what is required if the route is through a petition for certiorari which the petitioner has to prove grave abuse of discretion and overcome the presumption of validity as to statutes and regularity as to official acts. Since the right to health includes the right to be protected from any retrogressive acts by the government, imposing such a high burden on the people before any retrogressive act to be overturned is per se a retrogressive act on the part of judiciary. To strike a balance between this, the proposed rule lowers the burden of proof to the level similar to what is required to an administrative proceedings.

## O. CONCLUSION

The *writ of kalusugan* is a novel and initiative invention that the Court may consider in order to protect individual rights to the highest attainable standard of health. This study has established that the right to health is part of the constitutional guarantees on individual liberties that must be protected from State intrusions. The Philippines, as a signatory to the ICESCR, obliged itself to uphold such rights and to guarantee to every citizen equitable and quality access to the highest attainable standard of health.

The writ of kalusugan, if promulgated by the Supreme Court, would stand as a testament to the judiciary's unwavering commitment to safeguarding the most fundamental aspects of individual well-being. By acknowledging and addressing the unique complexities surrounding the right to health, this innovative legal instrument would transcend conventional remedies and elevate the protection of this constitutional right to a level commensurate with its paramount importance.

In crafting the writ of kalusugan, the Court would be reinforcing the inviolable principle that individual liberties, including the right to health, must be shielded from unwarranted State interference. This new prerogative writ would signify a change in basic assumptions in legal thought, recognizing that health is not

[126] Velasquez v. Hernandez, G.R. NO. 150732, August 31, 2004

merely a matter of personal choice, but an essential element of human dignity enshrined in the Constitution. It would serve as a powerful reminder that the State's duty to protect the right to health is as imperative as its obligation to safeguard other cherished liberties.

The Philippines' commitment to the International Covenant on Economic, Social and Cultural Rights (ICESCR) is an indomitable pledge to ensure that every citizen enjoys access to the highest attainable standard of health. The writ of kalusugan, as an indigenous legal innovation, would serve as a tangible manifestation of the State's dedication to fulfilling its international obligations. By providing a robust mechanism for citizens to assert their right to health, this writ would bridge the divide between constitutional ideals and tangible realities, guaranteeing equitable and quality access to healthcare services for all.

In promulgating the writ of kalusugan, the Supreme Court would be exercising its constitutional prerogative to interpret and enforce the fundamental law of the land. This act would fortify the pillars of constitutionalism, reinforcing the notion that the Constitution is not a static document, but a living, breathing instrument that adapts to the evolving needs of society. It would affirm that the judiciary is not only the guardian of the Constitution but also a proactive agent in shaping a legal landscape that reflects the aspirations and rights of the Filipino people. In doing so, the Court would be contributing significantly to the enduring legacy of constitutional jurisprudence in the Philippines.

As the final arbiter and last frontier of constitutional rights, it is imperative before the Supreme Court to invoke its powers to make the State accountable to the constitutional right and guarantee to the highest attainable standard of health of every Filipino.

## ANNEX A – PROPOSED WRIT OF KALUSUGAN

## THE RULE ON THE WRIT OF KALUSUGAN

**SECTION 1. Petition**. The writ of kalusugan is a remedy available to any person seeking relief from any retrogressive or discriminatory act or omission from any branch, subdivision, instrumentality, agency of the government, government owned and controlled corporations and its subsidiaries, and local government units towards their right to the highest attainable standard of health.

**SECTION 2. Who May File**. The petition may be filed by:

(a) any person, either on his/her own behalf or on behalf of any minor ascendant or descendant or any minor collateral relative within the fourth civil degree of consanguinity or affinity

(b) any defined group of persons who may either be living in the same geographical area or belonging to same class, sector, or sub-population who will be similarly affected by the plan, strategy, or policy if not retracted or fully implemented

**SECTION 3. Where to File.** The petition may be filed on any day and at any time with the Regional Trial Court where either the main applicant is residing or in cases of class filing where majority of its members are residing, or with the Court of Appeals when the residents of the class applying for the writ resides in two or more judicial regions and in cases where the applicant is the Chairman of the Commission on Human Rights.

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

When issued by the Court of Appeals or any of their justices, it may returnable before such court or any justice thereof, or to any Regional Trial Court of the place where the applicant is residing, where the principal office of the branch, subdivision, agency, instrumentality, government owned or controlled corporation or its subsidiaries, or local government unit is located.

**SECTION 4. No Docket Fees**. The petitioner shall be exempted from the payment of the docket fees and other lawful fees when filing the petition. The court, justice or judge shall docket the petition and act upon it immediately.

**SECTION 5. Contents of the Petition.** The petition shall be signed and verified and shall allege the following:

(a) The personal circumstance of the petitioner
(b) The name and address of the branch, subdivision, agency, instrumentality, government owned or controlled corporation or its subsidiaries, or local government
(c) The plan, policy, strategy, administrative issuance, ordinance, resolution, or legislation being implemented or about to be implemented that if not retracted would result in retrogression in the attainment of their right to highest attainable standard of health or that is not being implemented or executed in the fullest extent contemplated under the law that is resulting to a retrogression on their right to the highest attainable standard of health.
(d) The previous plans, policy, strategy, administrative issuance, ordinance, resolution, or legislation showing that a higher standard was set and achieved.
(e) The relief prayed for.

**SECTION 6. Issuance of the Writ**. Upon the filing of the petition, the court, justice or judge shall immediately order the issuance of the writ if on its face it ought to issue and if writ has not been previously for a period not less two (2) years issued against the same branch, subdivision, agency, instrumentality, government owned or controlled corporation or its subsidiaries, or local government unit covering the specific plan, policy, strategy, administrative issuance, ordinance, resolution, or legislation.

The clerk of court shall issue the writ under the seal of the court. The writ shall also set the date and time for summary hearing of the petition which shall not be later than fourteen (14) days from the date of its issuance. The issuance of the writ shall enjoin the enforcement of any plan, policy, strategy, administrative issuance, ordinance, resolution or resolution for a period of no less than thirty (30) days upon the same period the Court shall hear defenses from the respondent and shall determine with finality as to whether the subject of the writ is retrogressive or discriminatory towards the right of the people to the highest attainable standard of health.

**SECTION 7. Penalty for Refusing to Issue or Serve the Writ.** A clerk of court who refuses to issue the writ after its allowance, or a deputized person who refuses to serve the same, shall be punished by the court, justice or judge for contempt without prejudice to the other disciplinary actions.

**SECTION 8. How the Writ is Served.** The writ shall be served upon the highest-ranking official approving or implementing the plan, policy, strategy, administrative issuance, ordinance, or resolution. In case the respondent is collegial body it shall be served upon the presiding officer and the Secretary of such body.

A copy of the writ shall be served to the Secretary of Health and the Office of the Solicitor General or the Office of the General Counsel for Government Owned and Control Corporations.

**SECTION 9. Return.** Within fourteen (14) days after the service of the writ, the respondent shall file a verified written return together with supporting affidavits which shall, among other things, contain the following:

(a) The lawful defenses to show that the plan, policy, strategy, administrative issuance, ordinance or resolution is not retrogressive to the highest attainable standard of health

(b) If the measure is prima facie retrogressive, the respondent may attach the reasonable necessity and other supervening factors

(c) If the petition is for the ineffective implementation or execution of any plan, policy, strategy, issuance, ordinance, resolution, or the law, the respondent shall state the reasons for such and shall attach its plans for immediate implementation to rectify its acts or omissions.

**SECTION 10. Amicus curiae**. If the subject of the petition is not directly implemented or executed by the Secretary of Health, the same may be compelled by the court, judge, or justice, to provide its opinion in the form of amicus curiae at any time before it renders it final judgment to aid the court in determining whether the such act or omission or such plans, policies, standards, issuance, ordinance, resolution, or legislation is a retrogressive measure which violates the right of the people to the highest attainable standard of health. Otherwise, the Secretary of Health is barred from providing its opinion.

The court, judge, or justice may also inquire other experts in lieu of or along with the opinion submitted by the Secretary of Health.

**SECTION 11. Conversion to Petition for Certiorari.** The Court may motu proprio or upon motion of the respondent, convert the proceeding to a Special Civil Action on Petition for Certiorari if the application for the writ involves overturning a law for being unconstitutional. Once granted, the application, the return, if already filed, and all other pertinent records of the case shall be treated in toto as initiatory pleading for a petition for certiorari. If the application is lodged before the Court of Appeals, the Court of Appeals may remand the petition to a Regional Trial Court where majority of the applicants are residing or where the principal address of the respondent is located. The Rules on Special Civil Actions on petitions for certiorari shall apply.

**SECTION 12. Prohibited Pleadings and Motions.** The following pleadings and motions are prohibited:

(a) Motion to dismiss;
(b) Motion for extension of time to file return, opposition, affidavit, position paper and other pleadings;
(c) Dilatory motion for postponement;
(d) Motion for a bill of particulars;
(e) Counterclaim or cross-claim;
(f) Third-party complaint;
(g) Reply;
(h) Motion to declare respondent in default;
(i) Intervention, except if filed by the Secretary of Health or the Commission on Human Rights;
(j) Memorandum
(k) Motion for reconsideration of interlocutory orders or interim relief orders; and
(l) Petition for certiorari, mandamus or prohibition against any interlocutory order.

**SECTION 13. Effect of Failure to File Return.** In case the respond fails to file a return, the court, justice or judge shall proceed to hear the petition *ex parte*.

**SECTION 14. Defenses not Pleaded Deemed Waived**. All defenses shall be raised in the return, otherwise, they shall be deemed waived.

**SECTION 15. Summary Hearing.** The hearing on the petition shall be summary, However, the court, justice or judge may call for a preliminary conference to simplify the issues and determine the possibility of obtaining stipulations and admissions from the parties.

**SECTION 16. Interim Reliefs.** Upon filing of the petition, or at anytime before final judgment, the court, justice or judge may grant any of the following reliefs:

a. Temporary Injunction and Status Quo Ante Order. The court, justice or judge, upon motion or motu proprio, may order the temporary injunction of the plan, policy, standard, issuance, resolution, ordinance, or law about to be implemented or executed.
b. Temporary Relief. If the execution of the plan, policy, standard, issuance, resolution, ordinance, or law equates to a withdrawal of access to any health facility, service, or program, the court, justice or judge, upon motion or motu proprio, grant immediate relief ordering the respondent to provide access to the health facility, service, or program that would otherwise be withheld to the applicant provided that there is substantial proof to support that the withholding of such access would lead to severe and irreparable injury to the health and life of the applicant or to any person that the applicant is representing.

**SECTION 17. Contempt**. The court, justice or judge may order the respondent who refuses to make a return, or who makes a false return, or any person who otherwise disobeys or resist a lawful process or order of the court to be punished for contempt. The contemnor may be imprisoned or imposed a fine.

The order of contempt will be issued against the highest ranking official and shall be issued against their personal capacity. For respondents that are collegial bodies, the order of contempt will be issued against all members of the board or the collegial body.

The President of the Philippines shall not be a subject of any contempt charges under these Rules.

**SECTION 18. Burden of Proof and Standard of Diligence Required.** The parties shall establish their claims by substantial evidence.

The respondent must prove that no retrogression to the highest attainable standard of health would result in the implementation or full execution of the plan, policy, standard, issuance, ordinance, or resolution. That if retrogression to the highest attainable standard is unavoidable as a result of prevailing economic conditions, the respondent must show that it has exerted all other efforts and measures to avoid such retrogression.

**SECTION 19. Judgment.** The court shall render judgment within ten (10) days from the time the petition is submitted for decision. If the allegations in the petition are proven by substantial evidence, the court shall grant the privilege of the writ and such reliefs as may be proper and appropriate; otherwise, the privilege shall be denied.

**SECTION 20. Appeal.** Any party may appeal from the final judgment or order to the Supreme Court under Rule 45. The appeal may raise questions of fact or law or both.

The period of appeal shall be fifteen (15) days from the date of notice of the adverse judgment.

**Section 21. Effect of Denial.** The denial of the issuance of the privilege of the writ shall bar the filing of a subsequent petition for the writ of kalusugan by any person over the same plan, policy, standard, issuance, ordinance, or resolution. If the petition for the writ has been converted to a petition for writ of certiorari under Section 11, such conversion shall not bar the application of a subsequent petition.

**SECTION 22. Institution of Separate Action.** This Rule shall not preclude the filing of separate criminal, civil, or administrative action.

**SECTION 23. Substantive Rights**. This Rule shall not diminish, increase or modify substantive rights recognized and protected by the Constitution.

**SECTION 24. Suppletory Application of the Rules of Court.** The Rules of Court shall apply suppletorily insofar as it is not inconsistent with this Rule.

**SECTION 23. Effectivity.** This Rule shall take effect on ____________________, following its publication in three (3) newspapers of general circulation.

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