

“Tutulary rules principle” as legal tool for easing economic rights’ access to justice in the Philippines

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ABSTRACT

This paper examines the present condition of access to justice concerning the enforceability of Constitutionally-guaranteed economic rights and to explore the legal possibility of transplanting the principle of tutelage action into the Philippine legal system. For the longest time, the legal debate concerning rule of law has been focused on safeguarding the people’s liberty rights with a consequent implication of placing economic rights in the backburner. The Philippine legal system has given preference on civil and political rights over economic rights.

This paper argues that this present bifurcation of rights should not be the case considering the interdependence principle governing the treatment of these two sets of rights. A recent trend is telling that both of these rights are placed on the same plane when it concerns their justiciable status. Thus, the same access to justice should be granted to these rights. A reading of the present situation in the Philippine legal setting reveals that there is an insufficient access to justice regarding the enforcement of their economic rights.

This paper, further, proposes the application of tutelage action principle in the Philippines. This principle is being observed in Colombia and the same grants the legal standing to an individual in order for them to enforce before their Courts of justice their respective fundamental rights, including economic rights. The transplantation of this principle is no longer novel in the Philippines when it adopted the Mexican concept of *amparo* action. However, as it stands, *amparo* action is limited in application since it only covers extralegal killings and enforced disappearances. Although the expansion of *amparo* rules may be made in order to accommodate economic rights, the same may not be feasible because *amparo* rules, unlike tutulary rules, are more concerned with the protection of rights rather than their enforcement.

Considering that the Supreme Court has the constitutional mandate of protecting and enforcing constitutional rights, there is no legal difficulty for the Court to exercise the same in the form of tutulary rules concerning the enforcement of economic rights.

“Indeed, in countries where the task of maintaining body and soul is getting more and more to be a mission impossible, man’s efforts should be focused in enhancing the socio-economic rights of the vulnerable in our society. For what good is freedom of expression if the only idea you can mumble are words begging for food? What good is freedom to think on the part of the ignorant who is even ignorant of his ignorance? What good is the right to property to him who is shirtless, shoeless, and roofless? What good are political and civil rights to those whose problem is to be human?

“Let me conclude by saying that total human liberation requires not only the preservation of political and civil rights but demands the enjoyment by our people of their socio-economic rights.”¹

1. Introduction

The quest for justice should go beyond promoting liberty rights of the people. For what is the purpose of liberty when people lingers in hunger and poverty? And what do unchained arms mean when people had to use those free arms to beg for food?

People’s prosperity has been sidelined for years in the legal debate on liberty and the rule of law. It seemed that the primordial consideration for a legal system was only puts its emphasis on promoting freedom and not for the betterment of people’s economic status. Despite that economic rights are enshrined in none other than the Philippine Constitution, and yet the Supreme Court had taken the conservative stance in granting most of these provisions the status as non-justiciable.

The legal development in the Philippines, especially with the pronouncements made by the Court, had focused on the freedom of the people enshrined under the Constitution’s bill of rights. Obviously, this has been in line with the Court’s constitutional mandate of promulgating rules concerning the protection and

¹ Chief Justice Reynato Puno, Philippine Supreme Court, Socioeconomic Rights and Globalization (May 4, 2007), available at http://sc.judiciary.gov.ph/speech/Socio-economic.htm#_ftn1

enforcement of constitutional rights. The Court had taken, in some instances, bold steps in the exercise of its Constitutional mandate to create rules for the protection and/or enforcement of Constitutional rights on areas covering the liberty, privacy and environmental rights.

This does not mean, however, that economic rights hold lesser importance than other rights, or the otherwise. The Court had merely shied itself away from promulgating any rules of procedure primarily because said rights are not all self-executory in order to call upon the exercise of said action.

Time and again, the Court upheld its governing pronouncement that not all economic rights enshrined under the Constitution are self-executory or are justiciable. This means that an enabling law should first be enacted by the Congress for the Court to act upon these rights. Consequently, the Court is constrained not to promulgate rules of procedure for its protection and/or enforcement lest it would be suspect of judicial legislation or worse the political legitimacy of the action would be placed into question.

There are some opinions and recommendations placed forth by some legal luminaries that economic rights may well be included in the coverage of the extraordinary writ of *amparo*.² These may be far from realization if not the following challenges are not addressed: first, the Writ of *Amparo* as it applies today is specific as to its coverage, that is, the protection of a person against violation or threats of violations of his right to life, liberty or security including extralegal killings and enforced disappearances;³ second, not all economic rights are justiciable rights, thereby prohibiting the Court from enforcing them in the absence of any enabling laws; third, if the Court would promulgate rules concerning the right, then such action would be suspect of judicial legislation and the action's political legitimacy would be placed into doubt.

Despite these challenges, the Court had in some occasions took the bold step in declaring some economic rights provisions of the Constitution as enforceable, thus

² Gener M. Gito, *Hurdling their Non-Justiciability: An Initial Step Towards the Inclusion of Socio-Economic Rights in the Philippine Writ of Amparo*, 1 PUP L. J. 23, 28 (2015). Although, here the author looked into the issue of economic right's justiciability as an issue to be reckoned in order to include them under the scope of the Writ of *Amparo*.

³ Section 1, A.M. No. 07-9-12-SC, Rules of Writ of Amparo.

legitimizing its actions of awarding reliefs based on these rights. The Court, however, failed to clearly draw the line as to the standards in judging whether other provisions enjoy the same justiciable status. It is since the rule remains that economic right provisions are generally unenforceable unless otherwise the contrary clearly appears. This then creates a void in the ongoing legal debate on the justiciability of these rights.

In line with such, this paper would look into other recourses available in order to determine the access to justice concerning said rights. In so doing, an analysis will be provided whether such recourses provide sufficient access to justice to the people. This would analyze the present system in which economic rights may be enforced without challenging the question on their justiciability and legitimizing court's actions on the matter. In conclusion, recommendations would be provided to better address any challenges concerning the issue of access to justice relative to economic rights.

2. The birth of economic rights and its adoption in the Philippine legal system

Economic rights refer to sets of rights which recognize, protect and guarantee the person's right to education, housing, adequate standard of living, and health.⁴ The birth of this right may be traced back to the formation of the International Labor Organization (ILO). The ILO first recognized the promotion of the rights of the labor to "fair and humane" conditions of work,⁵ which would later on develop into the concept of economic rights.⁶ These would then be formally textualized in the United Nations Charter (UN Charter) wherein socio-economic rights are enshrined. In the charter, the UN pledges to promote "higher standard of living, full employment, and conditions of economic and social progress and development"⁷ as well as "solutions of international economic (...) related problems".⁸

⁴ Karen Andrea D. Torres, *The Justiciability of the Right to Food Before Philippine Courts*, 87 *Phil. L. J.* 619, 628 (2013).

⁵ David Kelley, "A Life of One's Own: Individual Rights and the Welfare State", in Steiner, H and Alston, P: "International Human Rights in Context: Law, Politics, Morals", p 257.

⁶ Karin Kjell, *Socio-Economic Rights, What Relevance in an Era of Globalization?* Master Thesis International Law, Department of Law, Stockholm University, November 2007.

⁷ Article 55 (a), UN Charter.

⁸ Article 55 (b), UN Charter.

The existence and recognition of economic rights were further crystallized upon the creation by the Human Rights Council of the Universal Declaration of Human Rights (UDHR).⁹ This document, although falling shortly of attaining the status of a legally binding document, became the framework for the adoption of two important covenants. These covenants are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹⁰ The first enshrines civil and political rights while the latter provides for economic, social and cultural rights.

The creation of these two separate covenants reveals the disparate treatment, much less a bifurcation, by the international community of the two sets of rights. Civil and political rights are treated as negative rights which means that the states are readily directed not to interfere with the freedom of the people. On the other hand, economic rights are treated as positive rights considering that the states are required to perform some actions to fulfill its international obligations. This treatment would then spring into more complicated issues relating to the justiciability of these rights.

Nevertheless, the development of economic rights in the international legal system flourished with the adoption of subsequent covenants. These covenants include the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Rights of Persons with Disabilities.

Correlative with the adoption of the foregoing instruments is the inclusion of economic rights under the Philippine Constitution. The present Constitution contains a scattered provision on economic rights, particularly Article II on the Declaration of Principles and State Policies, Article XIII on Social Justice and Human Rights, Article XIV on Education, Science and Technology, Arts, Culture and Sports, and Article XV on the Family.

⁹ The UDHR is not a convention but was adopted by the United Nations General Assembly on December 10, 1948. This makes the UDHR a generally accepted principle of international law.

¹⁰ The ICESCR was ratified by the Philippines on June 7, 1974 and was entered into force on January 3, 1976.

2.1. Issues concerning economic rights

Although economic rights are textualized both in the international and domestic legal instruments, it remains to be generally regarded as a non-justiciable right under the Philippine legal system.¹¹ Many are of the view that the rights enshrined under these instruments are too general thereby making it difficult for the court to single out any specific violations.¹² Without the Court's capacity to determine such violation, then logically it cannot grant any reliefs prayed for by the claimant.

This problem has its roots from the time when economic rights were introduced and recognized in the international legal settings. As discussed, the ICESCR is the primordial international legal instrument which promotes economic rights. However, as may be gleaned from its texts, the ICESCR only directs the states to "respect and ensure" and to "recognize" economic rights. Hence, this does not create a concrete and mandatory state obligation. In effect, the wordings only create a policy or a framework from which the state has the option whether it should take action or not.

This has legal implications in the Philippines. The present jurisprudential trend in the domestic sphere leans toward declaring these economic rights provisions in the Consitution as non-self-executing. This is despite the rule promulgated in *Manila Prince Hotel v. Government Service Insurance System*¹³, that:

“(I)n case of doubt, the Constitution should be considered self executing rather than non-self-executing . . . Unless the contrary is clearly intended, the provisions of the Constitution should be considered self-executing, as a contrary rule would give the legislature discretion to determine when, or whether, they shall be effective. These provisions would be subordinated to the will of the lawmaking body, which could make them entirely meaningless by

¹¹ Jean Ziegler, *Report by the Special Rapporteur on the Right to Food* at 26 ¶14, U. N. Doc. E/CN.4/2001/53 (July 2, 2001).

¹² Christian Curtis. *The Right to Food as a Justiciable Right: Challenges and Strategies*. 11 Max Planck Yearbook of United Nations Law 317, 344 (2007).

¹³ *Manila Prince Hotel v. Government Service Insurance System*, G.R. No. 122156, S.C. Feb. 3, 1997

simply refusing to pass the needed implementing statute.”

In effect, in the absence of any enabling laws, these provisions are considered mere declarations of policies, hence not immediately actionable by the courts.¹⁴

The non-justiciable character of economic rights further sprung to another problem: the reluctance by the Court to assume its Constitutional mandate of protecting and enforcing the fundamental rights of the people. This will be discussed in the succeeding part of this paper.

3. Access to justice and its relation with economic rights

Access to justice relates to available recourses within the legal system in which the people may utilize for the purpose of enforcing or protecting their rights.¹⁵ This entails that the people should have available remedies before the courts where they may have the ability to prosecute or defend themselves for or against any claim based on such legal right.¹⁶

In the Philippine legal system, considering that not all economic rights are considered to be wholly justiciable, the legal recourse for the bearers of this right is limited, if not lacking. For an instance, in *Tapuz et al., v. Del Rosario*,¹⁷ the claimants who are facing an imminent eviction and demolition of their houses sought recourse before the Court through a petition for the *Writ of Amparo*. The Court in denying the claimant of the petition ruled that:

“To start off with the basics, the writ of amparo was originally conceived as a response to the extraordinary rise in the number of killings and

¹⁴Tanada v. Angara, G.R. No. 118295 May 2, 1997, available at http://www.lawphil.net/judjuris/juri1997/may1997/gr_118295_1997.html (last accessed 24 September 2016). Here, the Court declared that economic rights provisions in the Constitution “do not embody judicially enforceable rights, but (mere) guidelines for legislation”.

¹⁵ United States Institute for Peace, *Necessary Condition: Access to Justice* available at <https://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/rule-law/access-justice> (last accessed 3 January 2018).

¹⁶ *Id.*

¹⁷ Tapuz et al., v. Del Rosario, G. R. No. G.R. No. 182484, June 17, 2008

enforced disappearances, and to the perceived lack of available and effective remedies to address these extraordinary concerns. It is intended to address violations of or threats to the rights to life, liberty or security, as an extraordinary and independent remedy beyond those available under the prevailing Rules, or as a remedy supplemental to these Rules. **What it is not, is a writ to protect concerns that are purely property or commercial. Neither is it a writ that we shall issue on amorphous and uncertain grounds.** Consequently, the Rule on the Writ of Amparo in line with the extraordinary character of the writ and the reasonable certainty that its issuance demands requires that every petition for the issuance of the writ must be supported by justifying allegations of fact, to wit:

- (a) The personal circumstances of the petitioner;
- (b) The name and personal circumstances of the respondent responsible for the threat, act or omission, or, if the name is unknown or uncertain, the respondent may be described by an assumed appellation;
- (c) The right to life, liberty and security of the aggrieved party violated or threatened with violation by an unlawful act or omission of the respondent, and how such threat or violation is committed with the attendant circumstances detailed in supporting affidavits;*
- (d) The investigation conducted, if any, specifying the names, personal circumstances, and addresses of the investigating authority or individuals, as well as the manner and conduct of the investigation, together with any report;*
- (e) The actions and recourses taken by the petitioner to determine the fate or whereabouts of the aggrieved party and the identity of the person responsible for the threat, act or omission; and
- (f) The relief prayed for.

The petition may include a general prayer for other just and equitable reliefs.” (*emphasis in the original*).

Then, it may be gleaned from the foregoing that a dispute involving the right to dwelling,¹⁸ clearly an economic right, cannot be acted upon by the Court. Aside from the glaring reason that the *Writ of Amparo* is only limited in application to cases involving enforced disappearances and extralegal killings as may be reflected in the proceedings breathing life to this remedy. The Supreme Court has deliberately crafted the *Amparo* rules in such a way as to only provide a solution on the prevalent disappearances at that time.¹⁹ Resulting from this myopic view is a more limited *Amparo* as compared to its Mexican counterpart.

This legal vacuum would boil down to the traditional argument that the justiciability of all economic rights provisions in the Constitution is not recognized by the Court. Consequently, there is an ongoing confusion with the Court when it comes to legal controversies involving economic rights. The inception of this vacuum may be traced back to the Constitution itself. For an instance, the right of the people to education was formulated by the framers as an actionable right. A reading of the proceedings of the Constitutional Commission would readily reveal this, to wit:

“MR. SUAREZ: I have been handling a number of cases in behalf of student demonstrators who were demanding quality education in the form of good teacher, good books, academic freedom, improved facilities. **Will this statement “The State shall protect and promote the right of citizens to quality education at all levels”, be a license or permission for them to go before our courts and demand the protection which is provided under this provision?**

“FR. BERNAS: **The answer would have to be in the affirmative, with proper**

¹⁸ Related to this is the case of *Canlas v. Napico Homeowners Association*, G.R. No. 182795, June 5, 2008.

¹⁹ Annotation to the Rule on Amparo.

explanation. If the school involved is a state school, then I think the state can easily answer that. But if the school involved is a private school, which is precisely in such situation because the State is not allowing a private school to collect the tuition that is necessary to raise its quality, then the private school would have a proper defense. x x x x x”²⁰
(*emphasis supplied*)

However, when the state’s duty concerning the protection of the right of the mother and the unborn, the framers posed a stance that the same is not legally demandable.²¹ This determination may be inferred in the following proceedings:

“MR. MAAMBONG: **Mr. Presiding Officer, I just want to be clarified on whether this is really a demandable right in the legal sense of the word or it is merely an aspiration.** Because if we say it is a demandable right, I fear for the government because as of now, as pointed out by the Commissioner, there are so many pregnant women in our countryside who can ill afford to go to the hospital and they are dying every day. (...) **And if this is a demandable right as stated by the Commissioner, how can the government absorb this burden of all these pregnant women who are not taken care of will go to court and file a case on the basis not of an ordinary law but of constitutional precept?**

“MR. SARMIENTO: Considering the situation of our country, what we can say is that at this point in time, **that principle is an aspiration.** It is a goal that we wish to achieve.”²² (*emphasis supplied*)

²⁰ 2 RECORDS OF THE CONSTITUTIONAL COMMISSION, (Florida Ruth P. Romero ed. 1986) (Phil.) available at https://archive.org/stream/record-of-constitutional-commission-volume-1/fullRecordOfTheConstitutionalCommissionVolumeI_djvu.txt (*last accessed* 10 February 2018).

²¹ Diane A. Desierto, *Justiciability of Socio-Economic Rights: Comparative Powers, Roles, and Practices in the Philippines and South Africa*, 11.1 Asian Pac L. & Pol. J. 114, 141.

²² *Id.*

It is clear from the previous discussion that not all economic rights provisions of the constitution are legally demandable. As an effect, this has brought confusions to the present legal rules considering that the Court has not sufficiently rendered any guiding principles from which their judgment should tread upon.²³ Accordingly, pertinent to the discussion on access to justice, there is a need to categorize economic rights as to those which have a justiciable status from those which do not possess this.

3.1. Justiciable economic rights and their access to justice

Considering the prevailing legal norm, what is more worthy of interest is the access to justice of those legally demandable economic rights. Assuming that a particular economic right is legally enforceable and demandable, what then is the appropriate recourse for the right-bearer in order for him to have such right be enforced and be heard before the courts of justice?

A survey of Supreme Court cases provides a narrative anent which remedy best suits the question of enforcing these rights. In *Alita v. Court of Appeals*,²⁴ the Supreme Court held that a certiorari proceeding is a proper remedy in order to enforce the right to agrarian reform, an economic right. This is of course under the premise that the same is directly under the authority of an agrarian reform adjudication board (DARAB), an administrative body exercising quasi-judicial functions.²⁵

It should be bore in mind that the extraordinary writ of *certiorari* is proper only when a board, court, person or agency is exercising a judicial or quasi-judicial function and such entity has no jurisdiction or is guilty of abuse of discretion amounting to lack of jurisdiction.²⁶ Thus, only when a right is under the jurisdiction of a certain judicial and/or quasi-judicial body that it may be subject to a petition for certiorari.

²³ Records of the Constitutional Commission, *supra* note 20.

²⁴ G.R. No. 78517 February 27, 1989.

²⁵ Chapter XII, Republic Act No. 6657, AN ACT INSTITUTING A COMPREHENSIVE AGRARIAN REFORM PROGRAM TO PROMOTE SOCIAL JUSTICE AND INDUSTRIALIZATION, PROVIDING THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES.

²⁶ Section Rule 65, Rules of Court.

In consonance with *Alita* is the seminal case of *St. Martin Funeral Home v. National Labor Relations Commission*.²⁷ In this case, the right to security of tenure was being enforced. The case originated in the Labor Arbiter then was appealed to the National Labor Relations Commission. When the claimant obtained an adverse decision, the case was appealed to the Court of Appeals through a petition for *certiorari*. Noteworthy of this case is the fact that labour's rights, including security of tenure, are being governed by the Labor Code of the Philippines,²⁸ a statute. Under this law, a sufficient remedy was provided.

3.2. Non-justiciable economic rights and their access to justice.

What then is the available remedy for other rights in which no governmental entity exists for their enforcement? Or those which no legal recognition was conferred to by the Congress? This query commands a look into the function of Commission on Human Rights,²⁹ a Constitutional body which has the function of investigating violations of fundamental rights.

A perusal of its mandate enshrined under the Constitution would reveal that it has the duty to “(p)rovide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measures and legal aid services to the under-privileged whose human rights have been violated or needed protection”.³⁰

²⁷ G.R. No. 130866, September 16, 1998.

²⁸ Presidential Decree No. 442, AS AMENDED, A DECREE INSTITUTING A LABOR CODE THEREBY REVISING AND CONSOLIDATING LABOR AND SOCIAL LAWS TO AFFORD PROTECTION TO LABOR, PROMOTE EMPLOYMENT AND HUMAN RESOURCES DEVELOPMENT AND INSURE INDUSTRIAL PEACE BASED ON SOCIAL JUSTICE

²⁹This commission was created under the 1987 Constitution and was formally organized through Executive Order No. 163. This order was issued by then President Corazon Aquino in the exercise of her Legislative Power, said order was otherwise known as DECLARING THE EFFECTIVITY OF THE CREATION OF THE COMMISSION ON HUMAN RIGHTS AS PROVIDED FOR IN THE 1987 CONSTITUTION, PROVIDING GUIDELINES FOR THE OPERATION THEREOF, AND FOR OTHER PURPOSES.

³⁰ Section 18, Article VIII, Philippine Constitution.

It may be argued that since economic rights fall within the ambit of human rights, then said constitutional body can take cognizance over controversies involving the same. However, the Supreme Court, in *Simon, Jr. v. Commission on Human Rights (Simon, Jr.)*³¹ ruled that violations of economic rights do not fall within the jurisdiction of the CHR. In declaring that the CHR was created only to address serious human rights violations, the Court had discussed such argument in this wise:

“Recalling the deliberation of the Constitutional Commission, aforequoted, it is readily apparent that the delegates envisioned a Commission on Human Rights that would focus its attention to the more severe cases of human rights violations. **Delegate Garcia for instance, mentioned such areas as the “(1) protection of rights of political detainees; (2) treatment of prisoners and the prevention of tortures; (3) fair and public trials; (4) cases of disappearances; (5) salvaging and hamletting; and (6) other crimes committed against the religious.” While the enumeration has not likely been meant to have any preclusive effect, more than just expressing a statement of priority, it is, nonetheless significant for the tone it has set.** In any event, the delegates did not apparently take comfort in peremptorily making a conclusive delineation of the CHR’s resolve, instead, that “Congress may provide for other cases of violations of human rights that should fall within the authority of the Commission, taking into account its recommendation”.³² (*emphasis supplied*)

Thus, in *Simon, Jr.*, the Commission on Human Rights was declared to be overstepping its authority when it took cognizance of the complaints by stall, store, carinderia, and shanty owners whose improvements in the area are going to be demolished. The Court in the same case has proceeded by stating that said

³¹ *Simon, Jr. et al., v. Commission on Human Rights*, G. R. No. 100150, January 5, 1994.

³² *Id.*

demolitions “(do) not fall within the compartment of human rights violations involving civil and political rights as intended by the Constitution”.³³

Otherwise stated, the Court dismissed the case by banking its argument on the fact that the CHR was only created for cases involving gross violations of civil and political rights.³⁴ Thus, economic rights are outside of the ambit of the powers of the same commission.³⁵

The Supreme Court, also in another case, held that the CHR is not a court of justice, and that the “legal measures for the protection of human rights” do not include the power to issue legal writs. The power to entertain such remedies is primarily vested to courts of justice. As such, the Supreme Court settled the legal status of CHR as a governmental body – it is merely an administrative agency and not a court to be vested with jurisdiction.³⁶

Since violations of economic rights are outside of CHR’s authority, then what are the other recourses available to the bearers of such right? The Supreme Court emphatically recognized another avenue within the office of the CHR in which said claimants may raise violations of their economic rights. In *Export Processing Zone Authority v. Commission on Human Rights*³⁷, it ruled that: “the preventive measures and legal aid services mentioned in the Constitution refer to extrajudicial and judicial remedies (including a preliminary writ of injunction) which the CHR may seek from the proper courts on behalf of the victims of human rights violations.”

³³ *Id.*

³⁴ Joaquin G. Bernas, S. J., *The 1987 Philippine Constitution: A Comprehensive Reviewer* (2011), p. 506. Here, Bernas does not discount the fact that the scope of the authority of the CHR may later on be expanded: “(n)ote however that the reason for these modest objectives is the desire not to overburden the Commission during its initial years. The limitation does not exclude the possibility of expanding the (CHR)’s scope later – as in fact Section 19 (Article XIII) specifically allows”.

³⁵ However, Justice Padilla dissented in the same case by arguing that: “I would consider the threatened demolition of the stalls, *sari-sari* stores and *carinderias* as well as the temporary shanties owned by the private respondents as posing *prima facie* a case of human rights violation because it involves an impairment of the civil rights of said private respondents, under the definition of civil rights cited by the majority opinion (pp. 20-21) and which the CHR has unquestioned authority to investigate (Section 18, Art. XIII, 1987 Constitution).”

³⁶ *Oroso, Jr. v. Court of Appeals*, G. R. No. 76828-32, January 28, 1991.

³⁷ *Export Processing Zone Authority v. Commission on Human Rights*, G.R. No. 101476 April 14, 1992.

Although the CHR may have the power to espouse claims for violations of human rights before the proper courts, the challenge still remains that there are no other legal remedies available and existing in order to make all economic rights provisions of the Constitution to be proper subject of a direct legal action. Theoretically, should the CHR exercise such power and should it espouse a claim for violation of an economic right, will the Court take cognizance of the same even if it determines that the right subject of the claim is a non-justiciable right

As what the prevailing trend in the jurisprudence would tell, the answer would be in the negative. Firstly, the extraordinary writ of *amparo* would be inapplicable owing to its limited applicability. As previously discussed, the Court has categorically intended a more limited *amparo* rules, that its applicability should be centralized on enforced disappearances and extralegal killings.

Secondly, the writs of *certiorari*, *prohibition* and *mandamus* would also be ineffective as well since these legal remedies require that the subject party be exercising a judicial, quasi-judicial or ministerial functions and that said party would be without jurisdiction in the exercise thereof.³⁸ Since these remedies are only available to the courts, then these would entail the exercise of judicial power. This power has been defined in the Constitution as:

“(…) the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.”³⁹ (*emphasis supplied*)

Thusly, since judicial power requires the existence of a legally demandable and enforceable right, then a non-justiciable economic right cannot be proper subject of

³⁸ Rules of Court, *supra* note 26.

³⁹ Section 1, Article VIII, 1987 Philippine Constitution.

said power. This is attributable to the fact that a non-justiciable right does not constitute an enforceable or demandable right.

Lastly, the authorities of the CHR are likewise inapplicable since its power is limited only to grave violations of civil and political rights.⁴⁰ This has been previously discussed in the earlier part of this paper.

4. Legal justifications in providing remedies on non-justiciable economic rights.

Confronted by the fact that there is no existing sufficient access to justice on non-justiciable economic rights; could there be a possible legal justification in granting an access to justice to the bearers of this right? This question requires a revisiting of the recent developments in the constitutional and institutional role of the Supreme Court concerning the justiciable character of economic rights.

4.1. The Supreme Court as guardian of the rights of the people.

Judicial power is vested in the Supreme Court and to other statutory courts.⁴¹ The present Constitution, born out of the country's recent history, was even vested with an expanded power.⁴² Under this, courts of justice can now settle issues "involving lack of jurisdiction or abuse of discretion amounting to lack or excess of such jurisdiction".⁴³ Additionally, the Constitution granted this same court a rule-making power which was previously given to the Congress.⁴⁴

⁴⁰ Hon. Isidro Carino and Dr. Erlinda Lolarga v. Commission on Human Rights et al., G.R. No. 96681, December 2, 1991.

⁴¹ Section 1, Article VIII, Philippine Constitution.

⁴² Constitution, *supra* note 37.

⁴³ *Id.*

⁴⁴ *Id.*

However, despite being armed with this expanded authority, the Court has chosen not to deviate much from its pre-1987 jurisprudential norm.⁴⁵ It is empirical in a line of decided cases that the Supreme Court has taken a conservative stance whenever it is confronted with issues relating to the self-executory character of economic rights provisions.⁴⁶ This stance may be attributed to the fact that the Court has a long history of self-restraint, with the fear of violating the principle of separation of powers -- of arrogating upon itself the law-making power which rightfully belongs to Congress.⁴⁷

A re-examination of this conservatism, however, is warranted given that the same Court has categorically promulgated in *Manila Prince Hotel v. Government Service Insurance System*⁴⁸ the “executory rule” that:

“ . . . (I)n case of doubt, the Constitution should be considered self executing rather than non-self-executing (...) Unless the contrary is clearly intended, the provisions of the Constitution should be considered self-executing, as a contrary rule would give the legislature discretion to determine when, or whether, they shall be effective. These provisions would be subordinated to the will of the lawmaking body, which could make them entirely meaningless by simply refusing to pass the needed implementing statute.” (*emphasis supplied*)

Stated otherwise, provisions of the Constitution concerning economic rights are self-executory, unless the same expressly provides that a legislative action is needed for its enforcement.

Bearing this guidepost in mind, an examination of the constitutional provisions on economic rights would reveal the contrary.⁴⁹ A test through this lens would tell us

⁴⁵ Desierto supra note 21.

⁴⁶ *Id.*

⁴⁷ Pacifico A. Agabin, *The Politics of Judicial Review over Executive Action: The Supreme Court and Social Change*, in *Unconstitutional Essays* 194, 167-98.

⁴⁸ *Manila Prince*, supra note 13.

⁴⁹ Desierto, supra note 21.

that the following provisions do not require congressional action, hence justiciable at once before the Courts:⁵⁰

“Article II: right to health; right to balanced and healthful ecology; right of workers; rights of indigenous cultural communities; human rights; parental rights; fundamental equality before the law of women and men; equal access to opportunities for public service;

“Article XIII: full protection to labour; rights of all workers to self-organization; collective bargaining and negotiations; peaceful concerted activities; right to strike; security of tenure; humane conditions of work; living wage; workers’ rights to participate in policy and decision-making processes affecting their rights and benefits; right of farmers, farmworkers, landowners, cooperatives, and other independent farmers’ organization and management of the agrarian reform program; homestead rights of small settlers and the rights of indigenous communities to their ancestral lands; rights of subsistence fishermen to the preferential use of local marine and fishing resources; urban and poor dwellers’ rights against arbitrary, unjust and illegal eviction, and the right to adequate consultation before their relocation; right of the people and their organization to effective and reasonable participation at all levels of social, political, and economic decision-making, under consultation mechanism provided by law;

“Article XIV: Right to quality education at all levels; compulsory elementary education; academic freedom; right of indigenous cultural communities to preserve and develop their cultures, traditions and institutions.

“Article XV: right of espouses to found a family in accordance with their religious convictions and the demands of responsible parenthood; right of children to assistance, including proper care and nutrition, and

special protection from all forms of neglect,, abuse, cruelty, exploitation, and other conditions prejudicial to their exploitation, and other conditions prejudicial to their development; right of the family to family living wage and income; right of families or family associations to participate in the planning and implementation of policies and programs that affect them”.

Considering that these provisions can be subject of a proper court action, judicial remedy before the same institution can be availed of by the aggrieved parties.

On the other hand, assuming that indeed these are non-justiciable rights; can the Court still entertain any recourse before its bench? The answer would be in the positive. A review of the present trend in the courts of other jurisdictions reveals that Philippine Courts can avail of existing domestic constitutional tools as its legal justification in taking up such recourse.

5. The concept of tutelary rules and its relation with economic rights: The Colombian experience

Tutelary rules are legal vehicles by which the Colombian Constitutional Court grants direct relief to people who invoke the enforcement of their economic rights. Through this, the Court has the power to ascertain and issue orders to the government for them to conduct measures which said body sees fit, in consonance with proper legal remedies.⁵¹ This relief is enshrined under the Colombian Constitution itself which thus provides that:

“Every individual may claim legal protection before the judge, at any time or place, through a preferential and summary proceeding, for himself/herself or by whoever acts in his/her name, the immediate protection of his/her fundamental constitutional rights when the individual fears

⁵¹ Christophe Golay, *The Right to Food and Access to Justice: Examples at the national, regional and international levels*, FAO, 2009, p. 51, citing *Defensor del Pueblo, doctor Jaime Cordoba Trivino (en representacion de varias personas integrantes del Grupo Etnico Indigeno UWA) c/ Ministerio del Medio Ambiente y Occidental de Colombia, Inc. s. Accion de Tutela, Sentencia SU-039/1997*.

the latter may be jeopardized or threatened by the action or omission of any public authority.

“The protection will consist of an order so that whoever solicits such protection may receive it by a judge enjoining others to act or refrain from acting. The order, which will have to be implemented immediately, may be challenged before the competent judge, and in any case the latter may send it to the Constitutional Court for possible revision.

“This action will be followed only when the affected party does not have access to other means of judicial defense, except when the former is used as a temporary device to avoid irreversible harm. In no case can more than ten (10) days elapse between the request for protection and its resolution.

“The law will establish the cases in which the order of protection should apply to individuals entrusted with providing a public service or whose conduct may seriously and directly affect the collective interest or in respect of whom the applicant may find himself/herself in a state of insubordination or vulnerability.”⁵²

Special feature of this remedy lies in the fact that individuals are given the legal standing to prosecute before the courts of justice any actions involving their fundamental rights.

This feature is not present in the Philippine legal setting given that an individual person is not being granted with proper legal standing to sue for the protection of his fundamental right. In line with this is the reason that these rights are not granted a justiciable status. As such, legal standing cannot exist if the claimant cannot point out that the person suffered direct injury.

⁵² Article 86, 1991 Colombian Constitution.

5.1 The mechanism of tutelary rules.

Notwithstanding the foregoing, the Court is tasked under the Constitution to create rules for the protection and enforcement of the people's fundamental rights. Considering that economic rights have been previously established as a fundamental right of the people, then the Court is called upon to exercise such constitutional duty. Further, assuming for the sake of argument that economic rights fall short of being qualified as fundamental, the Court being the supreme interpreter of Constitution may well argue that due to the interdependence principle, economic rights is encompassed within the larger sphere of the people's right to life.⁵³

This remedy has been tested through hard cases in which the Constitutional Court exercised such power. The case of *Acción de tutela instaurada por Abel Antonio Jaramillo y otros contra la Red de Solidaridad Social y otros (Abel Antonio Jaramillo case)*⁵⁴ is illustrative as to how the Colombian Constitutional Court exercised its authority under the tutelary rules. In this case, the Court issued order mandating the government to promulgate programs by which the claimant may be allocated the necessary resources within the period of one year, as well as the reprogramming of the government resources to answer for the food needs of these people.⁵⁵ Thus, under tutelary rules, the Court is vested with power to order the government to perform or not to perform an act in the furtherance or protection of economic rights. The same is immediately executory owing to the principle that such should adhere to the principle of "economy, promptness and efficacy".⁵⁶

5.2.1. Economic rights as proper subject of tutelary rules.

The present form of tutelary rules as applied in Colombia covers fundamental rights of the people.⁵⁷ As interpreted, tutelary rules apply to those rights enshrined

⁵³ Constitutional Protection of Human Rights in Latin America, pp. 228-229. Cambridge University Press, United States.

⁵⁴ Colombia, Corte Constitucional, *Acción de tutela instaurada por Abel Antonio Jaramillo y otros contra la Red de Solidaridad Social y otros*, Sentencia T-025/2004.

⁵⁵ United Institute for Peace, *supra* note 14, *citing* Abel Antonio Jaramillo case.

⁵⁶ Article 3, Colombia Tutela Law.

⁵⁷ Article 86, 1991 Colombian Constitution.

under Chapter I and II as well as Article 44⁵⁸ of the 1991 Colombian Constitution. Other than these rights, an ordinary judicial action may be utilized by the right-bearer.

However, recent trend would reveal that rights not included in Chapters I and II and Article 44 of the same Constitution may well be accommodated under the coverage of tutelary actions considering the application of connection principle. This principle is anchored under the premise that economic rights are interdependent and interconnected with the bigger sphere of the fundamental right of a person to life.⁵⁹

Furthermore, another test used by the Colombian Constitutional Court is to examine whether these rights, not obviously falling within the purview of tutelary rules principle, are essential as a right for the existence of a person as a human being.⁶⁰

Pursuant to the connection principle, it is proposed that economic rights qualify as part and parcel of the larger sphere of the right of the person to life. Such right has already been established to be interconnected and interdependent with the right of a person to a dignified life. However, even assuming that the first inquiry fails, the second inquiry whether economic right is essential as a right for the existence of a human being would satisfy the qualification of said economic right as a fundamental right of a person. It is owing to the fact that economic rights cover the basic right of a person to health, education, and subsistence.

As succinctly established in the foregoing, tutelary rules may find its full force of application for the enforcement and protection of these rights as well as for the grant of sufficient and sound access to justice.

⁵⁸ This provides that: ““the following are basic rights of children: life, physical integrity, health and social security, a balanced diet, their name and citizenship, to have a family and not be separated from it, care and love, instruction and culture, recreation and the free expression of their opinions. They will be protected against all forms of abandonment, physical or moral violence, sequestration, sale, sexual abuse, work or economic exploitation, and dangerous work. They will also enjoy other rights upheld in the Constitution, the laws, and international treaties ratified by Colombia. The family, society, and the State have the obligation to assist and protect children in order to guarantee their harmonious and integral development and the full exercise of their rights. Any individual may request from the competent authority the enforcement of these rights and the sanctioning of those who violate them. The rights of children take precedence over the rights of others””.

⁵⁹ Manuel Jose Cepeda, *Derecho Constitucional Jurisprudencial. Las grandes decisiones de la Corte Constitucional*.

⁶⁰ Juan Carlos Esguerra Portocarrero, *La Protección Constitucional del Ciudadano* (Legis, Bogotá 2004); Julio César Ortiz Gutierrez, ‘La Acción de Tutela en la Carta Política de 1991: El Derecho de Amparo y su Influencia en el Ordenamiento Constitucional de Colombia’ in Fix-Zamudio and Mac-Gregor (n 1) 13–256.

5.2.2. The legitimacy of Court's promulgation of tutelary rules

The traditional argument concerning the non-justiciability of economic rights is anchored on the assertion that these rights, although enshrined under the 1987 Constitution, are not clear-cut in which the Court may specifically determine their violations.⁶¹ The Court consistently ruled that these are mere guidelines and principles for the legislative body to act upon. This means that these provisions are mere guideposts for the enactment of future statutes. Consequently, without any enabling laws, the Court cannot act upon any recourse to it involving such rights -- lest the Court will be dealing with judicial legislation and of arrogating upon itself actions *sans* political legitimacy.

Granting that these are correct, what the Court fails to consider are the international instruments allowing the validity and direct applicability of these rights. The ICESCR itself provides that the validity of this instrument should be accompanied by its direct applicability in the internal laws.⁶²

Furthermore, considering the adherence by the Philippine Constitution on the international law principle of incorporation, then said instrument should be given the same force and effect in the domestic sphere as that of local statutes. It is because under this, all generally accepted principles of international law form part of the Philippine legal system.

This course of action is no longer novel to the Court. In fact, in *Mejoff v. Director of Prisons*, the rights granted in the Universal Declaration of Human Rights (UDHR) were considered justiciable, despite the fact that this instrument does not find direct application in the Philippines. In said case, the Court said that “the (rights) set forth in the (UDHR) are part of the law of the land”. A subsequent decision in the case of *Government of Hongkong v. Hon. Felixberto T. Olalia, Jr.* crystallized the same assertion

⁶¹ Christian Courtis. The Right to Food as a Justiciable Right: Challenges and Strategies. 11 Max Planck Yearbook of United Nations Law 317, 325 (2007).

⁶² Article 11, ICESCR.

when it ruled that the rights under the UDHR are “generally accepted principles of international law, and thus forming part of the law of the land”.⁶³

Thusly, even if there is no direct application of ICESCR in the Philippines, it may still be recognized, just the same as the UDHR. It is since these are considered as general principles of international law.

What is left then is for the determination by our domestic Courts whether the rights textualized under these international instruments grant reliefs to the bearers of such right.

6. Overcoming the challenge of non-recognition of economic rights.

Even assuming that the Philippines would not recognize the rights enshrined under the ICESCR as directly applicable in the domestic setup, these rights remain to be justiciable given the interdependence of economic rights with other human rights.⁶⁴ This has been recognized as one of the fundamental rights in which the Court has the mandate of promulgating rules and procedures for its enforcement and protection.⁶⁵

Following this line of reasoning, there is no hindrance for the Court to perform its Constitutional mandate of laying down rules of procedure in which the basic economic rights of the people may be fully enforced and protected. The Court may consider creating new rules of procedures in the form of tutelary rules under the more encompassing duty of the state as *parens patriae* or guardian of the people’s welfare.

A comparative analysis of the Colombian Constitution from that of the Philippines would support the proposition of adopting said principle in the Philippine domestic sphere. First, both legal systems adhere to the principle of *parens patriae* in which the State acts as the guardian of the welfare of its people⁶⁶; and second, both

⁶³ Government of Hongkong v. Hon. Felixberto T. Olalia, Jr., G.R. No. 153675, April 19, 2007.

⁶⁴ Hillel Steiner and Phillip Alston: “International Human Rights in Context: Law, Politics, Morals”, p 237.

⁶⁵ Section 1, Article VIII, 1987 Constitution.

⁶⁶Proyecto de ley, 55 De 2009 Senado *available at* http://www.imprenta.gov.co/gacetap/gaceta.mostrar_documento?p_tipo=05&p_numero=55&p_consec=23236 (last accessed 2 February 2018).

Courts are granted the Constitutional mandate of promulgating rules of procedure for the protection and enforcement of the fundamental rights of the people.⁶⁷

The system of tutelary rules may be novel in the Philippine legal system, but the principle is not. The Court had actually cited its Constitutional mandate in enforcing and protecting constitutional rights as legal justification when it promulgated the writ of *habeas data*,⁶⁸ *amparo*⁶⁹ and *kalikasan*⁷⁰.

The same has been re-affirmed by no less than the Supreme Court in the following manner:⁷¹

“The 1987 Constitution enhanced the protection of human rights by giving the Supreme Court the power to “promulgate rules concerning the protection and enforcement of Constitutional rights (...)” The 1987 Constitution (...) gave the Supreme Court the additional power to promulgate rules to protect and enforce rights guaranteed by the fundamental law of the land.”(emphasis supplied).

Due to this expanded power, there is no longer a need for the Court to wait for the Congress to enact laws for the protection of these fundamental guarantees. Such power is no longer vested solely with the Congress as what has been the case in the previous Constitutions.⁷²

However, both historically and to applicability, tutelary rules and *amparo* writs differ from each other. *Amparo* rules originated from Mexico which generally covers civil and political rights. On the other hand, tutelary rules cover fundamental rights.

⁶⁷ *Supra* note 56.

⁶⁸ A. M. No. 08-1-16-SC

⁶⁹ A.M. No. 07-9-12-SC

⁷⁰ A.M. No. 09-6-8-SC

⁷¹ Annotation to the Writ of Amparo.

⁷² *Id.*

This, notwithstanding, tutelary rules evolve to include all rights, political, civil, social, economic, and cultural, owing to the fact that all these rights are interdependent with one another and that all of which are necessary for the existence of a person as a human being.⁷³ Further, the Mexican concept of *amparo* rules covers mostly the protection of rights while tutelary rules involve the enforcement and not only protection of this right.⁷⁴ *Amparo* action is more formal than tutelage action; hence the latter is more accessible to the people than the former.⁷⁵ Moreover, *amparo* action can be brought only by qualified representative in behalf of the main party while tutelage action may be instituted even by an informal agent.⁷⁶

It is agreeable that both *amparo* and tutelage actions provide the people an access to justice concerning the protection or enforcement of their constitutional rights. However, a deeper analysis of these two remedies would reveal that tutelage action gives a more comprehensive access than the *amparo* proceeding.

7. Conclusion

Economic rights are enshrined both under the ICESCR and the 1987 Philippine Constitution. This means that the Philippines recognize these rights. However, despite this recognition, these rights were rendered to be a non-justiciable right. This means that the Court cannot act upon any action involving these rights unless the Congress enacts laws providing for their enforceability. In the absence of such, the Court will not act upon any action covering the enforcement of these rights. This judicial conservatism may be attributed to the long history of self-restraint exercised by the Court.

An examination of the recent trend would reveal an insufficient access to justice to the people concerning the enforcement of economic rights. However, there

⁷³ Decision T-406 of 5 June in Manuel José Cepeda, *Derecho Constitucional Jurisprudencial. Las Grandes Decisiones de la Corte Constitucional* (Legis, Bogotá 2001) 55–63.

⁷⁴ Allan R. Brewer-Carias, *The Latin American Amparo Proceeding and the Writ of Amparo in the Philippines*, 1.1 City University of Hongkong Review 74-90.

⁷⁵ Colombia Tutela Law, *supra* note 54.

⁷⁶ Gloria Orrego Hoyos, *The Amparo Context in Latin American Jurisdiction: an approach to an empowering action available at <http://www.nyulawglobal.org/globalex/Amparo.html>* (last accessed 2 February 2018).

are some groups of economic rights which are granted sufficient access to justice. This group includes those rights which the Congress enacted laws covering their enforcement. For instance, right to labour which is primarily governed by the Labor Code is fully enforced under the present legal system. However, another group which includes those rights which no existing laws are enacted for their enforcement does not have sufficient access to justice. Even the Commission on Human Rights, a constitutionally-created body mandated protect human rights from violations cannot entertain any disputes involving violations of economic rights.

Given with this present vacuum in the legal system, it is hereby proposed that the Philippines look into the developments in other jurisdictions concerning the enforcement of economic rights. *Tutelary rules* is a legal tool utilized in Colombia for the enforcement of fundamental rights including economic rights. This tool allows an individual to bring an action before the court for the enforcement of his right or that of another by his representation.

This may be adopted in the Philippines considering that both Colombian and Philippine legal systems adhere to the *parens patriae* principle as well as both have granted the Courts the role as guardian of the people's welfare. The adoption of tutelary rules is not novel. The Philippines had already done the same course of action when it transplanted the Mexican concept of *amparo* action in the Philippines. Further, the Philippine Supreme is granted with the Constitutional mandate of promulgating rules for the enforcement and protection of constitutional rights of the people. The same mandate was cited by the Supreme Court when it justified the adoption of the writs of *Amparo*, *Kalikasan* and *Habeas Data*.

Thus, considering all the foregoing, there remains no legal obstacle for the Philippine Supreme Court to tread the same path, once again, in order to protect and enforce the people's economic rights. After all, this falls well within the constitutional duty of the Court as guardian of the people's rights.