Legal Perspectives on a Human Rights-Based Approach to Energy Access in the Philippines

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I. INTRODUCTION

Access to modern energy services,¹ that is, electricity and clean cooking facilities,² is indispensable to providing basic needs, eradicating poverty, and

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meeting sustainable development goals. This is because access to modern energy services affects a variety of critical outcomes involving “productivity,

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1. “The term ‘energy services’ refers to the benefits derived from the use of efficient energy sources, over and above that derived from basic biomass, which is the fuel of the poor in developing countries.” Yinka Omorogbe, Policy, Law, and the Actualization of the Right to Access to Energy Services, in RESEARCH HANDBOOK ON INTERNATIONAL ENERGY LAW 371 (Kim Talus ed., 2014). On the other hand, the International Energy Agency defines “modern energy access” as “a household having reliable and affordable access to clean cooking facilities, a first connection to electricity[,] and then an increasing level of electricity consumption over time to reach the regional average.” International Energy Agency, World Energy Outlook 2011 at 473, available at https://www.iea.org/publications/freepublications/publication/WEO2011_WEB.pdf (last accessed Jan. 26, 2018).


(1) [D]evelopment that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts:

(a) the concept of ‘needs[,]’ in particular the essential needs of the world’s poor, to which overriding priority should be given; and

(b) the idea of limitations imposed by the state of technology and social organization on the environment’s ability to meet present and future needs.

health, education, safe water[,] and communication services[,]”4 among others. Yet 1.6 billion people remain without access to electricity5 and 2.5 billion people are still using traditional biomass fuels6 — firewood, charcoal, crop residues, and animal dung — for their cooking needs with deleterious health consequences.7 In the Philippines, there are still 21 million people without access to electricity and 53 million still rely on traditional biomass fuels for cooking.8 Unfortunately, these twin deficits add another significant dimension to poverty called “energy poverty,” which refers to the “inability to cook with modern cooking fuels and the lack of a bare minimum of electric lighting [for reading] or for other household and productive activities at sunset.”9 In its expanded version, however, energy poverty encompasses “lack of access to resources [and] denial of opportunities and choice[s] in energy that [are] adequate, safe, and reliable for economic and human development.”10

While the legal response is still being formulated, the lack of universal access to affordable, reliable, and modern energy services continues to drive the widening gap between the haves and have-nots, resulting in the

7. Id. at 6-7.
marginalization of a significant segment of society such as the rural poor. With this marginalization, the human rights dimension of poverty due to the lack of universal access to modern energy services comes into the fore in view of revealing findings that such a situation amounts to deprivation of basic needs, entails disempowerment, and gives rise to inequities. Intuitively, these are matters that typically fall within the purview of human rights conversations, thus, the compelling reason to revisit the human rights-based approach as a framework for analysis.

While the International Bill of Human Rights has received global assent, Jack Donnelly asserts that its “implementation, however, remains almost exclusively national.” This strongly applies in the sphere of socioeconomic rights and development where the “need for an active [S]tate has always been especially clear” with its emergence “as both the principal threat to the enjoyment of human rights and the essential institution for their effective implementation and enforcement.” In essence, a human rights-based approach operates with both result and procedure orientations in which the State and its organs — the executive, legislative, and judiciary — play a central role. Along this line, the guarantee of access to affordable, reliable, sustainable, and modern energy services for all, which is Goal 7 under the

13. UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, CLAIMING THE MILLENNIUM DEVELOPMENT GOALS: A HUMAN RIGHTS APPROACH, at 2 (2008). In the World Bank’s “Voices of the Poor” interviews, the poor defined poverty as disempowerment. Id.
15. Jack Donnelly is professor of human rights and international relations. He has a Ph.D. in Political Science from the University of California, Berkley, and is currently teaching at the University of Denver. University of Denver, Faculty, available at https://www.du.edu/korbel/politicaltheory/faculty/index.html (last accessed Jan. 26, 2018).
17. Id. at 36.
18. Id. at 35.
Sustainable Development Goals (SDG),\textsuperscript{19} represents the result aspect of the human rights-based approach; while the legal, policy, and regulatory framework under which State action occurs embodies the procedural part.\textsuperscript{20} In turn, a human rights-based approach looks into the State’s implementation — through its constitution or national legislation, or both — of its international human rights regime commitments, particularly those relating to socioeconomic rights,\textsuperscript{21} in order to examine the challenge and the nature of the change sought to achieve universal access to affordable, reliable, and modern energy services in the domestic context. This also entails an examination of institutions, practices, and norms as targets for change, including the key role that the judiciary plays, to achieve the SDGs. As Patricia W. Birnie\textsuperscript{22} and Alan E. Boyle\textsuperscript{23} write, “the degree and form of national implementation will largely determine how successful the treaty [or international agreement] is as an instrument of change, assuming its objectives are realistic, and [ ] the parties intend to make more than symbolic gestures, which is not always the case.”\textsuperscript{24}

\begin{itemize}
\item \textsuperscript{22} The late Patricia W. Birne was one of the premiere international environmental law experts of her time. She taught international law in different law schools in the United Kingdom before becoming the founding director of the International Maritime Law Institute in 1988. Alan Boyle, \textit{Patricia Birne obituary}, \textit{Guardian}, Mar. 14, 2013, available at https://www.theguardian.com/law/2013/mar/14/patricia-birnie (last accessed Jan. 26, 2018).
\item \textsuperscript{23} Alan Boyle is a Professor Emeritus of public international law at the University of Edinburgh. He specializes in international law, international environmental law, and the international law of the sea. Edinburgh Law School, Professor Alan Boyle, available at http://www.law.ed.ac.uk/people/alanboyle (last accessed Jan. 26, 2018).
\item \textsuperscript{24} Patricia W. Birnie \& Alan E. Boyle, \textit{International Law and the Environment} 8 (2d ed. 2002).
\end{itemize}
Having this in mind, this Article embarks with a brief description of the legal, policy, and institutional framework in the Philippines that pertains to the implementation of socioeconomic rights relevant to universal access to affordable, reliable, and modern energy services. In doing so, this Article will be able to identify the legal, regulatory, and policy opportunities and challenges in relation to the attainment of SDG 7 in the Philippines. Next, it examines the practical implications of a human rights-based approach to achieving universal access to affordable, reliable, and modern energy services, in order to demonstrate the transition from theory to practice in the domestic legal regime. Accordingly, the proposition of couching universal access to affordable, reliable, and modern energy services in the human rights language is analyzed in the Philippines for the first time as a scholarly exercise. It argues that as long as energy poverty and inequality persist, a human rights-based approach to access affordable, reliable, and modern energy services remains significant and relevant where the highest domestic court, the Supreme Court, is envisioned to play a vital role in catalyzing legal reforms for a better Philippines.

II. LEGAL, POLICY, AND INSTITUTIONAL FRAMEWORK

As previously mentioned, the socioeconomic rights enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR) can be institutionalized within the State through its basic law or constitution. This law can be directive in nature; that is, expressed as policy goals or as “an actual listing of enforceable rights.” This constitutionalization of socioeconomic rights is not new, as demonstrated by the incorporation of such rights into the basic law of a number of countries, albeit varied in expression, interpretation, and effect. Such rights can also be implemented through the acts of the legislature as part of a State’s legal and regulatory framework. Whether the implementation route is through the constitutional or legislative approach, Virginia B. Dandan remarks that

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27. See WIKTOR OSIATYŃSKI, HUMAN RIGHTS AND THEIR LIMITS 121–25 (2009). These countries include Italy, Ireland, India, Portugal, Spain, and South Africa, among others. Id.

“renewed and [vigorous] efforts to integrate [economic, social, and cultural] rights into laws and policies at the national and international levels” are needed.\textsuperscript{30}

\textbf{A. The 1987 Philippine Constitution}

After over a decade of martial rule, the Philippines adopted a new fundamental law in 1987 as a product of the people’s democratic struggle and their quest for deep-seated good governance reforms.\textsuperscript{31} Against this backdrop, the 1987 Philippine Constitution features progressive policies and provisions designed to strengthen the various pillars of democracy, promote social justice, and protect the basic rights of the citizenry.\textsuperscript{32} Under Section 2, Article II on the Declaration of Principles and State Policies, the Philippines adopts generally accepted principles of international law as part of the law of the land.\textsuperscript{33} Also, the State is mandated to “promote a just and dynamic social order [...] and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.”\textsuperscript{34} Moreover, it provides that the State shall “promote social justice in all phases of national development.”\textsuperscript{35} Further, the State “values the dignity of every human

\begin{itemize}
  \item \textsuperscript{30} Virginia B. Dandan, \textit{Foreword} to \textit{ECONOMIC, SOCIAL, AND CULTURAL RIGHTS: A LEGAL RESOURCE GUIDE x} (Scott Leckie & Anne Gallagher eds., 2006).
  \item \textsuperscript{32} \textit{See PHIL. CONST.} arts. II, III, V, XIII, & XIV.
  \item \textsuperscript{33} \textit{PHIL. CONST.} art. II, § 2.
  \item \textsuperscript{34} \textit{PHIL. CONST.} art. II, § 9.
  \item \textsuperscript{35} \textit{PHIL. CONST.} art. II, § 10.
\end{itemize}
person and guarantees full respect for human rights[.]”\textsuperscript{36} and is mandated to “promote comprehensive rural development[.]”\textsuperscript{37}

The 1987 Philippine Constitution places such a high premium on social justice and human rights that it devotes one whole article on the subject matter.\textsuperscript{38} To reduce economic, social, and political inequalities, the fundamental law mandates the legislature to give the highest priority to enacting measures that “protect and enhance the right of all the people to human dignity,”\textsuperscript{39} and a commitment on the part of the State “to create economic opportunities based on freedom of initiative and self-reliance.”\textsuperscript{40} Moreover, the State “shall endeavor to make essential goods, health[,] and other social services available to all the people at affordable cost”\textsuperscript{41} and give “priority for the needs of the underprivileged[,] sick, elderly, disabled, women, and children.”\textsuperscript{42} Other constitutional provisions on education, women, and labor, among others, are provided in the fundamental law.\textsuperscript{43} Clearly, the 1987 Philippine Constitution echoes and reiterates the socioeconomic rights enshrined in the ICESCR.

\textbf{B. National Legislation}

To implement the above constitutional statements and policies, however, subsequent legislative action is needed to give flesh to many of these constitutional provisions.\textsuperscript{44} As the Supreme Court elucidates, “the provisions of Article II of the 1987 Philippine Constitution, the declarations of principles and [S]tate policies[,] are not self-executing.”\textsuperscript{45} It adds that “[l]egislative failure to pursue such policies cannot give rise to a cause of action in the courts.”\textsuperscript{46} Similarly, the social justice provisions of the 1987

\begin{itemize}
\item \textsuperscript{36} Phil. Const. art. II, § 11.
\item \textsuperscript{37} Phil. Const. art. II, § 21.
\item \textsuperscript{38} See Phil. Const. art. XIII.
\item \textsuperscript{39} Phil. Const. art. XIII, § 1.
\item \textsuperscript{40} Phil. Const. art. XIII, § 2.
\item \textsuperscript{41} Phil. Const. art. XIII, § 11.
\item \textsuperscript{42} Phil. Const. art. XIII, § 11.
\item \textsuperscript{43} See Phil. Const. arts. XIII-XIV.
\item \textsuperscript{44} Basco v. Phil. Amusements and Gaming Corporation, 197 SCRA 52, 68 (1991).
\item \textsuperscript{45} Espina v. Zamora, Jr., 631 SCRA 17, 26 (2010) (citing Tañada v. Angara, 272 SCRA 18, 54 (1997)).
\item \textsuperscript{46} Id.
\end{itemize}
Philippine Constitution “are not self-executing principles ready for enforcement through the courts[,]”\(^47\) and, therefore, “legislative enactment is required.”\(^48\) In brief, these constitutional provisions are “but guidelines for legislation.”\(^49\) The critical role of the Supreme Court in relation to the interpretation of Article II and related constitutional provisions will be further discussed in the next part of this Article.

Essentially, universal access to affordable, reliable, and modern energy services is embedded in legislative measures on climate change, environmental protection, renewable energy, and rural electrification, among others. Specifically, the institutions mandated to oversee the electricity sector also pursue the achievement of these goals. It must be noted that achieving universal access to affordable, reliable, and modern energy services requires “a powerful political consensus and [must be] supported by legal institutions.”\(^50\) Pertinently, the Energy Regulatory Commission (ERC), as the independent regulator for the electricity industry in the Philippines, promulgated the Magna Carta for Residential Electricity Consumers (Magna Carta) in 2004, which expressly recognizes that a residential consumer has the right to electricity service.\(^51\) In addition, a residential consumer has the following basic rights:

(a) To have quality, reliable, affordable, safe, and regular supply of electric power;

(b) To be accorded courteous, prompt[,] and non-discriminatory service by the electric service provider;

(c) To be given a transparent, non-discriminatory[,] and reasonable price of electricity consistent with the provisions of [Republic Act] No. 9136;

(d) To be an informed electric consumer and given adequate access to information on matters affecting the electric service of the consumer concerned;

\(^{47}\) Bureau of Fisheries and Aquatic Resources (BFAR) Employees Union, Regional Office No. VII, Cebu City v. Commission on Audit, 562 SCRA 134, 138 (2008).

\(^{48}\) Id. at 138–39.

\(^{49}\) Id. at 139.


\(^{51}\) Energy Regulatory Commission, Magna Carta for Residential Electricity Consumers, art. 4 (June 17, 2004).
(e) To be accorded prompt and speedy resolution of complaints by both the distribution utility and/or the ERC;

(f) To know and choose the electric service retailer upon the implementation of Retail Competition; and[,

(g) To organize themselves as a consumer organization in the franchise area where they belong and where they are served by the distribution utility or as a network of organizations.52

Notably, any violation of any of the basic rights recognized under the Magna Carta carries a corresponding penalty, which the ERC may impose in accordance with law.53 This means that a residential consumer has an actionable or operable right that can be redressed before the ERC.

Other socioeconomic rights are expressed and pursued through various pieces of legislation and government programs, including, but not limited to, the implementation of mass housing projects,54 the establishment of financial schemes that “will make available, at affordable cost, decent housing and basic services to underprivileged and homeless citizens[,]”55 and continuous support to “the government’s programs for urban and rural housing, resettlement, [and] the development of sites and services[.]”56 Undeniably, there is manifest legislative intent to give effect to the socioeconomic rights and human rights standards enshrined in the 1987 Philippine Constitution, such rights acting as overarching themes to the initiatives from which coherence and consistency can be drawn. Also, this intent is reflected in the “provisioning role” of the legislature with respect to the allocation of public

52. Id.

53. Id. at 14.

54. See Creating the National Housing Authority and Dissolving the Existing Housing Agencies, Defining its Powers and Functions, Providing Funds Therefor, and for Other Purposes, Presidential Decree No. 757 (1975).


56. Id. § 3 (a).
funds or resources as captured in the national budget process. At times, such provisioning comes in the form of government subsidies to accelerate household electrification in off-grid areas, or to support rural electrification programs using solar power systems implemented by public agencies such as the Department of Energy. However, this kind of provisioning is vulnerable to the politics and dynamics of the national budget process. As Andrew Norton and Diane Elson aptly describe, “[t]he process of allocation of resources to different institutions and purposes is essentially a political, rather than purely technocratic one.” Therefore, how to insulate key policy and development priorities from “politicized attack” and “creat[ing] safeguards for the weakest” members of society poses significant challenges in giving effect to socioeconomic rights in the domestic realm, including access to affordable, reliable, and modern energy services, especially in the countryside.

57. Hertel & Minkler, supra note 21, at 26.
62. NORTON & ELSON, supra note 59, at 6.
63. Hertel & Minkler, supra note 21, at 26.
C. The Supreme Court, Environmental Constitutionalism, and Energy Access

So far, the vital role of the executive and legislative branches of government can readily be seen in the promotion of socioeconomic rights, including those actions and measures undertaken that have implications on access to affordable, reliable, and modern energy services. While notionally described as taking a passive role, the Supreme Court plays an equally significant function in giving effect to the various constitutional provisions for the promotion, protection, and fulfillment of human rights, particularly socioeconomic rights. As mentioned earlier, the Supreme Court has reaffirmed in numerous instances the directive nature of the Declaration of Principles and State Policies and the social justice provisions of the 1987 Philippine Constitution. However, the idea that the 1987 Philippine Constitution may immediately protect socioeconomic rights, including the guarantee of access to affordable, reliable, and modern energy services, has its genesis in one landmark case — *Oposa v. Factoran, Jr.* In this case, which was a taxpayers’ class suit seeking the cancellation of all timber license agreements in the Philippines, the Supreme Court pronounced the following legal precedent —

> While the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation — aptly and fittingly stressed by the petitioners — the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind. If they are now explicitly mentioned in the fundamental charter, it is because of the well-founded fear of its framers that unless the rights to a balanced and healthful ecology and to health are mandated as [S]tate policies by the Constitution itself, thereby highlighting their continuing importance and imposing upon the [S]tate a solemn obligation to preserve the first and protect and advance the second, the day would not be too far when all else would be lost not only for the present generation,

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64. *Bernas*, *supra* note 31, at 35-38.
68. *Id.* at 796 (citing 1997 *RULES OF CIVIL PROCEDURE*, rule 3, § 12).
but also for those to come [—] generations which stand to inherit nothing but parched earth incapable of sustaining life.69

In arriving at this conclusion, the Supreme Court cited the duty of a government agency to protect and advance the right to a balanced and healthful ecology pursuant to its statutory mandate under various legislative enactments.70 In a separate concurring opinion, however, Justice Florentino P. Feliciano cautioned that the “result will [...] propel courts into the uncharted ocean of social and economic policy[...]making[,]”71 considering that “no specific, operable norms and standards are shown to exist[.]”72 In effect, concerns are raised regarding the application of the doctrine of separation of powers entrenched in the 1987 Philippine Constitution, that is, “the policy[...]making departments [—] the legislative and executive departments [—] must be given a real and effective opportunity to fashion and promulgate those norms and standards, and to implement them before the courts should intervene.”73 As Richard A. Posner, former chief judge of the United States Court of Appeals for the Seventh Circuit, observes, “[t]he more [courts are] seen as preoccupied with ‘hot-button’ constitutional cases, the more it looks like a political body exercising discretion comparable in breadth to that of a legislature.”74

Dante B. Gatmaytan 75 expresses some other reservations and shortcomings about the case76 and, with a tinge of sarcasm, opines that there is still occasion to “celebrate Oposa”77 for holding that “the constitutional provision on the right to a balanced and healthful ecology is an actionable

69. Oposa, 224 SCRA at 804-05 (emphases supplied).
70. Id. at 808.
71. Oposa, 224 SCRA at 818 (J. Feliciano, concurring opinion).
72. Id.
73. Id.
74. RICHARD A. POSNER, HOW JUDGES THINK 271 (2008).
77. Id. at 480.
right that is superior to the Bill of Rights.” 78 On the other hand, Ma. Socorro Z. Manguiat and Vicente Paolo B. Yu, III 79 contend that the ultimate value of this case “lies in the extent to which the decision advances the state of the law in pursuit of the public welfare[,]” 80 even “where the law itself is unclear or ambiguous so as to arrive at a decision and thereby clarify the meaning of the law as enacted by the legislature.” 81 This resonates in Duncan Kennedy’s 82 observation regarding adjudication —

At a minimum, judges often have the job of resolving gaps, conflicts, or ambiguities in the system of legal norms. In some cases, no amount of reformulation based on the underlying definitions of the words composing the arguably applicable rules produces a deductively valid resolution. When it is agreed there is a gap, conflict, or ambiguity in this sense, then it is also

78. Id. at 460.


81. Id.

82. Duncan Kennedy is the Carter Professor of General Jurisprudence at Harvard Law School, and regularly publishes on topics such as legal theory, legal thought, and legal history, among others. Harvard Law School, Duncan Kennedy, available at http://hls.harvard.edu/faculty/directory/10469/Kennedy (last accessed Jan. 26, 2018).
agreed that the judge who resolves it ‘makes’ a new rule and then applies it
to the facts, rather than merely applying a pre[-]existing rule.83

Thus, the judiciary is expected to fill the gap, especially when the law is
ambiguous and when conflicts need to be resolved.

Speaking of the value and potential of jurisprudential pronouncements,
the words of Albert Louis “Albie” Sachs, former judge of the Constitutional
Court of South Africa, come to mind. Regarding fundamental rights, the
role of the Constitutional Court of South Africa, and what is needed in
jurisprudence for the implementation of socioeconomic rights in South
Africa in light of the cases of The Government of the Republic of South Africa v.
Grootboom,84 Soobramoney v. Minister of Health (Kwazulu-Natal),85 and Minister
of Health v. Treatment Action Campaign86 —

The fact that we are not up for election is an advantage. We are not
running for office; we are not doling money to people who are going to
vote for us, or trying to be seen to do that. We are simply sticking to the
principles, the deep principles of what makes a society basically decent and
politically moral, when attempting to adhere to fundamental rights. The
fact that we are not up for election is a strength, not a weakness.

Each of the fundamental rights [—] the dignity rights, material rights, bread
rights, litigation rights, voting rights, [and] freedom rights [—] might in a
particular case come to the fore, but they are interrelated. They are all part
and parcel of the character of the society in which we live […] The phrase
that all human rights are universal, interrelated, and indivisible[ ] sounds
good, but it does not only sound good, it is actually needed in
jurisprudence.87

Similar to human rights, many of the rights under the 1987 Philippine
Constitution require access to affordable, reliable, and modern energy
services in order to be respected, protected, and fulfilled. At the very least,

83. DUNCAN KENNEDY, A CRITIQUE OF ADJUDICATION (FIN DE SIÈCLE) 28
(1997).
84. The Government of the Republic of South Africa v. Grootboom, 2001 (1) SA 46 (CC)
(2001) (S. Afr.).
(S. Afr.).
Afr.).
673, 694 (2007).
access to these services (e.g., electricity) is arguably part of Philippine society’s constitutive commitment, which Cass R. Sunstein and Randy E. Barnett\(^{88}\) describe as helping “to create, or to constitute, a society’s basic values[.]”\(^{89}\) the denial of which “would amount to a kind of breach [—] a violation of a trust.”\(^{90}\) For this reason, it is very tempting to analogize and explore the approach taken in Oposa in considering whether access to affordable, reliable, and modern energy services is guaranteed, by way of derivation and centrality,\(^{91}\) under the various laws enacted by the legislature which seek to implement the socioeconomic provisions of the 1987 Philippine Constitution and the Philippines’ international human rights commitments. Accordingly, universal access to affordable, reliable, and modern energy services as a “judicialized matter”\(^{92}\) is a fascinating but controversial proposition that adds scope for further research. As Michael D. Kirby, former Justice of the High Court of Australia, remarks, the challenge to the modern judiciary “is to find where the line lies in a particular case, at a particular time and place.”\(^{93}\) To find where this line falls in the context of

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90. Id.

91. This pertains to the use of analytical and interpretative techniques that seek to derive an implied right from existing rights, including indispensability considerations in realizing other rights. See Salman M.A. Salman, *The Human Right to Water–Challenges of Implementation*, 106 AM. SOC’Y INT’L L. 44 (2012).

92. PAUL O. CARRESE, THE CLOAKING OF POWER: MONTESQUIEU, BLACKSTONE, AND THE RISE OF JUDICIAL ACTIVISM 261 (2003). Paul O. Carrese refers to the tendency to “[judicialize] matters that, while in need of moral principle and order, nonetheless properly lie either largely or completely outside the competence of courts of law, in the domains of legislative and executive power.” *Id.*

achieving universal access to modern energy services in the Philippines today is a scholarly exercise worthy of exploration.

D. The Commission on Human Rights

The Philippines has constitutionally mandated the creation of an independent constitutional commission on human rights, as a significant inroad to institutionalizing human rights into the legal, policy, and regulatory framework of the country. 94 To carry out its mandate, the Commission on Human Rights (CHR) is empowered by the 1987 Philippine Constitution to do the following, among others:

(1) “Investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights;” 96

(2) “Provide 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 underprivileged whose human rights have been violated or need protection;” 97

(3) “Recommend to the Congress effective measures to promote human rights and to provide for compensation to victims of violations of human rights, or their families;” 98

(4) “Monitor the Philippine government’s compliance with international treaty obligations on human rights;” 99 and

(5) “Grant immunity from prosecution to any person whose testimony or whose possession of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by it or under its authority[.]” 100

94. PHIL. CONST. art. XIII, § 17.
95. PHIL. CONST. art. XIII, § 18. This can include socioeconomic and cultural rights under the ICESCR.
96. PHIL. CONST. art. XIII, § 18, ¶ 1.
97. PHIL. CONST. art. XIII, § 18, ¶ 3.
98. PHIL. CONST. art. XIII, § 18, ¶ 6.
99. PHIL. CONST. art. XIII, § 18, ¶ 7.
100. PHIL. CONST. art. XIII, § 18, ¶ 8.
By virtue of Executive Order No. 163, Series of 1987, the CHR was formally constituted. In 1991, the Supreme Court elucidated in the case of Cariño v. Commission on Human Rights that the CHR primarily exercises only investigatory power; that is, the power to “receive evidence and make findings of fact as regards claimed human rights violations involving civil and political rights.” It does not, however, possess adjudicatory power similar to a court of justice or a quasi-judicial agency that calls for “applying the law to those factual conclusions to the end that the controversy may be decided or determined authoritatively, finally[,] and definitively, subject to such appeals or modes of review as may be provided by law.”

However, Congress has the prerogative to expand the mandate and authority of the CHR. In 2011, some legislators initiated bills to empower the CHR, not only to investigate all forms of human rights violations, including economic, social, and cultural rights violations, but also to prosecute such violations and provide corresponding legal and preventive measures for the protection of human rights. Unfortunately, the legislative process can be very slow and tedious. Lacking political pressure and urgency, the bills were not enacted into law, although they can be re-filed depending on the legislative priorities of current and future administrations.

Despite its limited functions, the CHR has come out with significant findings that touch on the application of international and national laws on human rights in the Philippines. In one instance, the Catholic Bishops’

102. Id. § 1.
104. Id. at 492.
105. Id.
106. See PHIL. CONST. art. XIII, § 19. The said provision states that “[t]he Congress may provide for other cases of violations of human rights that should fall within the authority of the Commission, taking into account its recommendations.” PHIL. CONST. art. XIII, § 19.
108. PHIL. CONST. art. XIII, § 18.
Conference of the Philippines (CBCP), the National Secretariat for Social Action – Justice and Peace (NASSA), and the Caritas Philippines (CP) sought a human rights advisory from the CHR, alleging that the Purchased Power Adjustments (PPA) — a cost adjustment mechanism to reflect changes in the cost of power bought from State-owned and private power producers — imposed by a private power utility company on consumers involved onerous contracts that violated human rights. Specifically, CBCP, NASSA, and CP relied on Section 9, Article II of the 1987 Philippine Constitution. The groups also alleged that the PPA violated Section 25 (1) of the Universal Declaration of Human Rights (UDHR), which emphasizes every individual’s right “to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing[,] [ ] medical care[,] and necessary social services[.]” In responding to the request for advisory, the CHR took into consideration the social implications of the PPA on the lives of the citizenry, including the impact on the government, the private sector, and the general public. The CHR then came out with the following conclusion, which demonstrates the type of rationalization that is expected from applying a human rights-based approach to the matter —

For the past seven [ ] or eight [ ] years of its imposition, the PPA has been the cause of deprivation to Filipinos, not only because they were not consulted in its ordination in the statements of accounts of electric consumption, but more so because the rights enshrined in the Constitution and [the UDHR] have been curtailed when the amount paid for the PPA may have been the same amount that may be utilized to alleviate the lot of the Filipinos for the period past.

These are pressing issues that need to be responded to and revisited by the [g]overnment and the entities charged with the distribution of power supply, since it is a [S]tate obligation to [to] regulate non-[S]tate actors in their impositions that affect the lives of the ordinary people.

110. Id. (citing PHIL. CONST. art. II, § 9).
112. Commission on Human Rights, supra note 109 (citing UDHR, supra note 111, art. 25 (1)).
In the meantime, more deprivation may occur and the long years of PPA imposition may reach to a decade prolonging the Filipino’s sufferance. This should somehow be tempered by the suspension of the PPA imposition in the meantime that other measures are being resorted to ensure sustained and efficient delivery of the electricity.\textsuperscript{114}

Another significant human rights dimension that the CHR had the occasion to explain was the relevance of the Rights-Based Approach (RBA) to development and governance in the Philippines.\textsuperscript{115} The advisory begins by noting that the country is a signatory to at least 23 international human rights instruments under the auspices of the United Nations (UN).\textsuperscript{116} According to the CHR, these instruments contain the human rights standards to be observed in the development process, which can be achieved by purposely “mainstreaming human right standards in development and governance.”\textsuperscript{117} The CHR clarifies that

\begin{quote}
[t]he realization of human rights is the goal of all development efforts. Governance manages development. This brings to the fore the importance of consciously and deliberately mainstreaming human rights standards in development and governance.
\end{quote}

The [RBA] is a mainstreaming process to link human rights to development. As an approach to development, it essentially integrates the norms, standards[,] and principles of the international human rights system into plans, policies[,] and processes of development.

\begin{footnotes}
\item[114] Id.
\item[116] Commission on Human Rights, \textit{supra} note 109.
\item[117] Id.
\end{footnotes}
The RBA is founded on the [UN] Declaration on the Right to Development and on the various international human rights instruments to which the Philippines is a [S]tate party. Being a [S]tate party means that the Philippine government has the primary responsibility, duty[,] or obligation to comply with all the obligations in the ratified or signed treaties/instruments. The Philippine government and all its branches, agencies, instrumentalities[,] and institutions will be able to comply with its obligations as it applies the RBA in governance and development.\textsuperscript{118}

Accordingly, the CHR, as the primary and constitutional authority on human rights matters and issues in the country, has unequivocally affirmed the relevance and applicability of using a human rights-based approach and the need to mainstream human rights standards into the development process and governance framework of the Philippines.\textsuperscript{119}

### III. THE SIGNIFICANCE OF A HUMAN RIGHTS-BASED APPROACH TO ACCESS AFFORDABLE, RELIABLE, AND MODERN ENERGY SERVICES IN THE PHILIPPINES

#### A. Operationalizing the Concept of Equality and Non-Discrimination

The persistent poverty and pronounced socioeconomic inequality that has dogged Philippine society for decades are two of the unwanted by-products of uneven and non-inclusive economic growth in the past.\textsuperscript{120} Additionally, discrimination creeps in as a result, which is incompatible with the ideal of inclusive growth in the country.\textsuperscript{121} The UN’s Committee on Economic, Social and Cultural Rights (CESCR) elucidates that an individual or group’s socioeconomic situation in tandem with poverty may give rise to “pervasive
discrimination, stigmatization[,] and negative stereotyping,”122 which can spawn unequal access to the same quality of basic social services available to others.123 Stephen R. Tully (Tully)124 points to the example of Bolivia, a country that reformed its electric power industry set-up by unbundling generation, transmission, and distribution into separate functions.125 Also, Tully notes that “[a]lthough electricity became more accessible to urban residents, rural households enjoyed no discern[ible] improvement after more than a decade, and coverage for the poor declined.”126 Accordingly, this constrains the government to directly confront issues of discrimination and inequality, including the elimination of the formal and de facto discrimination127 of those who particularly suffer from “historical or persistent prejudice[,]”128 such as the poverty-stricken and off-grid rural populace.

Interestingly, socioeconomic inequality and discrimination is manifested in the phenomena called “regulatory capture,”129 which Michael A. Livermore and Richard L. Revesz130 describe as occurring in “situations


123. Id.

124. Stephen R. Tully is a post doctorate fellow from the London School of Economics, Economic and Social Research Council Centre for Analysis of Risk and Regulation. RESEARCH HANDBOOK ON CORPORATE LEGAL RESPONSIBILITY xi (Stephen R. Tully ed., 2005).


126. Id.

127. General Comment No. 20, supra note 122, ¶ 8.

128. Id.


130. Michael A. Livermore is a professor of law at the University of Virginia School of Law. He specializes in regulatory law and policy, as well as environmental law. University of Virginia School of Law, Michael A. Livermore, available at https://content.law.virginia.edu/faculty/profile/mal5un/2457619 (last accessed Jan. 26, 2018).

Richard L. Revesz is the Lawrence King Professor and Dean Emeritus at New York University School of Law. He is “one of the nation’s leading voices in the
where organized interest groups successfully act to vindicate their goals through government policy at the expense of the public interest.”

Apparently, the massive financial, political, and structural support to conventional power technologies over a substantial period of time had not only distorted electricity markets, but also made the electricity industry vulnerable to regulatory capture. This has spawned inequality and discrimination on who should have access to electricity services, as can be gleaned from the prolonged inability of the government to extend electricity access to the rural poor in remote areas on oft-cited socioeconomic grounds.

With historical support and preference for conventional power technologies, the rural poor will remain at a relative disadvantage and systemically discriminated against, unless all appropriate measures and means are adopted by government to ensure that access to electricity services is available to everyone, regardless of socioeconomic status and location.

The CESCR explains that an active and comprehensive approach is required to overcome systemic discrimination, behavior, attitudes, and practices in relation to vulnerable and disadvantaged individuals and groups such as the rural poor. This entails a range of laws, policies, and programs, including temporary measures, to eliminate inequality and systemic discrimination.

131. Id.


133. Id.

134. General Comment No, 20, supra note 122, ¶ 9. The Committee on Economic, Social and Cultural Rights (CESCR) notes that “systemic discrimination” can be understood in terms of “legal rules, policies, practices[,] or predominant cultural attitudes in either the public or private sector which create relative disadvantages for some groups, and privileges for other groups.” Id. ¶ 12.

135. Id. ¶ 39.

136. Id.
acknowledged as the default technology for less costly\textsuperscript{137} and more environment-friendly electrification of off-grid rural areas,\textsuperscript{138} a human rights-based approach to access to affordable, reliable, and modern energy services opens the door for RE technologies to overcome cost-related and technological impediments consistent with the equality, non-discrimination, and adequacy norms under the international human rights legal regime. This lineal human rights-based approach has what Ellen Wiles (Wiles)\textsuperscript{139} describes as “an ameliorative effect on the process of policy development, by increasing the precision of diagnosing problems and prescribing future developments.”\textsuperscript{140} Also, a human rights-based approach to access affordable, reliable, and modern energy services gives effect to the constitutional mandate of the government to promote a balanced and healthful ecology and rural development, to reduce social and economic inequalities, and to demonstrate a firm commitment on its part to create economic opportunities for all Filipinos.\textsuperscript{141} Therefore, guaranteeing access to affordable, reliable, and modern energy services not only satisfies the fulfilment of the State’s obligation to effectively implement Article 11, Paragraph 1 of the ICESCR in the domestic context,\textsuperscript{142} but also gives life to the constitutional rights, aspirations, and directives enshrined in the 1987 Philippine Constitution.

B. Shifting the Accountability from Private Franchisee/Contractor to the State

While the government remained at the forefront of policy-making, regulating, and monitoring national electrification programs, several modes such as privatization, deregulation, and franchising have been resorted to as the anchor for electricity industry reform in order to attain energy efficiency


\textsuperscript{138}Id. at 14.

\textsuperscript{139}Ellen Wiles practiced law in the United Kingdom for seven years, specializing in human rights law. She helped develop a justice system in a refugee camp in Thailand before focusing on literature, research, and writing. University of Stirling, Ellen Wiles, available at https://www.stir.ac.uk/arts-humanities/research/phdstudents/ellenwiles (last accessed Jan. 26, 2018).


\textsuperscript{141}See PHIL. CONST. art. II, §§ 16 & 21 & art. XIII, §§ 1-2.

\textsuperscript{142}ICESCR, supra note 25, art. 11, ¶ 1.
and complete the electrification of the entire country, among others.\textsuperscript{143} The figures indicate that the number of impoverished families and individuals, mostly in rural areas, who are still without access to electricity services remain alarmingly significant.\textsuperscript{144} While private sector participation was anticipated to provide better electricity service to consumers, it did not necessarily result in the expansion of access to electricity services in rural areas, particularly for the poor.\textsuperscript{145} Aside from systemic discrimination and possible State capture, another plausible explanation that prolongs the total electrification process, especially of off-grid areas, is the inherent compliance weakness of shifting to private contractors or franchisees an obligation that is clearly reposed in the government.\textsuperscript{146} Tully notes that “governments have historically made little effort to improve electricity access, particularly for the poor.”\textsuperscript{147} Under a monopolistic arrangement in the provision of electricity services, the energy sector efficiency and liberalization model had not been equally up to the task in improving electricity access by disadvantaged socioeconomic groups.\textsuperscript{148} Worse, the lack of political commitment at the national level and the overwhelming concern for financial viability seem to ensure that “market reforms would not support greater access” to electricity services by impoverished rural households.\textsuperscript{149}

In the Philippines, a private franchised utility can justify the non-delivery of electricity services to unviable areas and, in turn, exclude such areas from its service coverage.\textsuperscript{150} The current regulatory weakness in

\textsuperscript{143} Heydarian, supra note 132.
\textsuperscript{144} International Energy Agency, supra note 8.
\textsuperscript{145} Tully, supra note 125, at 519.
\textsuperscript{147} Tully, supra note 125, at 518.
\textsuperscript{148} Id. at 518-19.
\textsuperscript{149} Id. at 519.
ensuring access to electricity services by the rural poor is reflected in the remedial measure that seeks to authorize entry by qualified third parties into remote and unviable villages covered by a franchised utility’s obligation. The scheme does not only guarantee that there will be qualified third-party applicants for the declared unviable areas, but also arguably provides a justification to exclude non-profitable areas from a franchisee’s responsibility. In the absence of qualified third parties, the unviable areas are included in the government’s missionary electrification program, thereby effectively shifting back the obligation to provide such service to the government. Until this shift happens, the service vacuum is further prolonged.

From the foregoing, applying a human rights-based approach to access to electricity services becomes an attractive proposition when a weak private party compliance regime is unable to extend access to the basic service, particularly for the rural poor. As David Bilchitz asserts, “[s]ince people live within societies, it is likely that they will be unable to live well, achieve their goals[,] and have positive experiences if they are forced to live below standards that are regarded as acceptable by those communities.”

By applying such an approach, the obligation is imposed on the government, not only in light of its commitments under the ICESCR, but also pursuant to positive declarations embodied in the 1987 Philippine Constitution — without going through the bureaucratic rigmarole of the qualified third-party scheme. Dinah L. Shelton explains that a human

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152. See DOE Department Circular No. 2005-12-011, § 3, ¶ e.
153. Id.
154. David Bilchitz is a professor of law at the University of Johannesburg. He is also the Director of the South African Institute for Advanced Constitutional, Public, Human Rights and International Law and Secretary-General of the International Association of Constitutional Law.
156. Dinah L. Shelton was a professor of international law and international human rights law in Notre Dame Law School before becoming Professor Emeritus for international law at George Washington University Law School. She was also President of the Inter-American Commission on Human Rights and legal counsel to several other international bodies concerned with human rights and
The rights-based approach is preferable over a legal approach that puts a premium on responsibility, since “human rights are maximum claims on society” which enhance the “compliance pull.” The existing emphasis on contractual responsibility in the Philippines, where a franchisee commits to deliver electricity services within its coverage areas until the concern on financial viability overtakes such a commitment, demonstrates the shortcoming of a private sector-driven and responsibility-focused approach. Moreover, a human rights-based approach elevates the provision of electricity services, particularly in off-grid areas, to a direct government obligation under international and national law, instead of being relegated to the level of a changeable policy choice or program for the government, or left to the “genius” of the market when the same is failing in the first place. This allows room to argue for more lenient rules on legal standing when seeking redress from the courts. As the Supreme Court explains in the case of *Land Bank of the Philippines v. Rivera* by reiterating and quoting an earlier decision —

> Justice Isagani A. Cruz avers[,] ‘[I]t is now obligatory upon the State itself to promote social justice, to provide adequate social services[,] to promote a rising standard of living, to afford protection to labor[, and] to formulate and implement urban and agrarian reform programs [...] These functions, while traditionally regarded as merely ministrant and optional, have been made compulsory by the Constitution.’

It is important to stress that the direct obligation of government to ensure access to affordable, reliable, and modern energy services to everyone the environment. She specializes in international law, human rights, and international environmental law, among others. George Washington University Law School, Dinah L. Shelton, *available at* https://www.law.gwu.edu/dinah-l-shelton (last accessed Jan. 26, 2018).


158. *Id.*


160. *Id.* at 296 (citing Badillo v. Tayag, 400 SCRA 494, 502-03 (2003)) (emphasis supplied).
admittedly cannot be realized in a short period of time. For this reason, the concept of progressive realization is recognized under the ICESCR.\textsuperscript{161} Although progressive realization is considered a flexibility device for compliance to reflect realities and difficulties involved in ensuring the full realization of the rights under the ICESCR, it remains incumbent upon governments to ensure that “minimum core obligation[s]” are satisfied even at “minimum essential levels[.]”\textsuperscript{162} This is interpreted by the CESCR as the exertion of every effort using all available resources by the government to satisfy its minimum core obligations.\textsuperscript{163} In effect, the presumption is that the government cannot easily excuse itself from failing to discharge its obligations on the convenient ground of resource constraints. As Karin Lehmann\textsuperscript{164} contends, “[u]rgent interests need to be prioritized.”\textsuperscript{165} Also, there must be a sense of urgency to “address those in a condition where their minimal interests cannot be satisfied[,]”\textsuperscript{166} such as those still anachronistically lacking access to affordable, reliable, and modern energy services.

Significantly, the CESCR underscores the importance of ensuring that vulnerable and disadvantaged groups in society are protected by espousing “relatively low-cost targeted [programs,]”\textsuperscript{167} even under trying “times of severe resources constraints[,]” whether caused by a process of adjustment, of economic recession, or by other factors[.]”\textsuperscript{168} Clearly, accountability

\begin{footnotes}
\footnote{162. Id. ¶¶ 9-10.}
\footnote{163. Id. ¶ 10.}
\footnote{164. Karin Lehmann is a professor of business law and international economic law at the University of Cape Town. She is a regular contributor to the fields of indigenous rights, socio-economic rights, and environmental law, among others. University of Cape Town Department of Commercial Law, Karin Lehmann, \textit{available at} http://www.commerciallaw.uct.ac.za/claw/staff/academic/klehmann (last accessed Jan. 26, 2018).}
\footnote{166. \textit{Bilchitz, supra} note 155, at 208.}
\footnote{167. General Comment No. 3, \textit{supra} note 161, ¶ 12.}
\footnote{168. \textit{Id.}}
\end{footnotes}
squarely falls upon the Philippine government’s shoulders to ensure that access to affordable, reliable, and modern energy services is available to all Filipinos by whatever means and resources at its disposal in meeting minimum core obligations under the ICESCR and the 1987 Philippine Constitution. This is a legal mechanism that is preferable to attain total electrification, particularly in off-grid areas, given the inadequacy of the existing franchising scheme that is primarily reliant on market-driven private sector initiatives.

C. Ensuring the Availability of Effective Legal Redress and Judicial Review

A key feature that works in favor of a human rights-based approach to access to affordable, reliable, and modern services in the Philippines is the creation of the CHR to give effect to the provisions of the 1987 Philippine Constitution on social justice and human rights. This explicitly institutionalizes the role of legal remedies in the implementation of the fundamental law, including the international legal framework on human rights in the country. The CECSR explains that an effective legal remedy is not necessarily one that is equated with judicial remedy or requires the involvement of the courts at the first instance. It also emphasizes that an administrative remedy is adequate as long as there is “a legitimate expectation, based on the principle of good faith, that all administrative authorities will take account of the requirements of the [ICESCR] in their decision-making.” However, ultimate resort to the courts from administrative decisions may be proper especially if judicial review is indispensable in giving full effect to a right recognized or recognizable under the ICESCR.

Judicial remedy to effectively vindicate economic, social, and cultural rights raises one important benchmark — “justiciability,” or the ability of courts to provide effective relief or remedy to a claimed violation of rights under the ICESCR, which observers contend as ultimately defining what a “real” human right is. The ICESCR has been receiving mixed treatment

170. Id.
171. Id.
in the domestic courts of various jurisdictions, ranging from directly applying the ICESCR, to using it as an interpretative standard, to refusing to give it legal effect at all.\textsuperscript{173}

In the Philippines, the CHR was established as an investigatory and fact-finding body without the power of adjudication.\textsuperscript{174} This lessens the efficacy of its workings to being persuasive, in contrast to being binding or authoritative. As a result, it falls short of the standard that the administrative remedy must be “effective” in the sense that it satisfies the requirements of the ICESCR, including accessibility, affordability, and timeliness.\textsuperscript{175} Nevertheless, while this may be the prevailing situation, the CHR’s power to monitor, report, and recommend measures to promote human rights and to ensure compliance with international human rights obligations remains compelling and relevant. As an example, the CHR showed a glimpse of what could have been when it issued edifying advisories on the domestic interplay of the constitutional directives, the international human rights framework on the delivery of electricity services, and the application of a human rights-based approach to governance and development. It is, thus, as Aryeh Neier\textsuperscript{176} describes, a national human rights body that can be the “trustworthy and knowledgeable” link between national and “global efforts to promote human rights[,]”\textsuperscript{177} In the alternative, as pointed out earlier, the availability of seeking redress before the ERC for violations of the Magna Carta is an interesting pathway for ultimately seeking judicial pronouncement and clarification all the way to the Supreme Court, particularly on the meaning and extent of the right to electricity service recognized in it the same.\textsuperscript{178}

\textsuperscript{173} Id.
\textsuperscript{174} BERNAS, supra note 31, at 1275–77.
\textsuperscript{175} General Comment No. 9, supra note 169, ¶ 9.
\textsuperscript{176} Aryeh Neier was a professor of law at the New York University School of Law. He founded and served as executive director of the Human Rights Watch, worked for the American Civil Liberties Union, and is the President Emeritus of the Open Society Institute. Huffington Post, Aryeh Neier, available at https://www.huffingtonpost.com/author/aryeh-neier (last accessed Jan. 26, 2018).
\textsuperscript{177} AARYEH NEIER, THE INTERNATIONAL HUMAN RIGHTS MOVEMENT: A HISTORY 12–13 (2012).
\textsuperscript{178} See Magna Carta for Residential Electricity Consumers, art. 37.
Notably, the 1987 Philippine Constitution expressly grants Congress the prerogative to expand the authority of the CHR.\textsuperscript{179} The impetus for this can be found by importing the salience of the right to adequate housing and standard of living in Article 11, Paragraph 1 of the ICESCR\textsuperscript{180} and giving effect to the constitutional directives of: (1) freeing the people from poverty through policies promoting adequate social services and rising stand of living;\textsuperscript{181} (2) guaranteeing the full protection of human rights;\textsuperscript{182} and, (3) promoting and enhancing the right to human dignity.\textsuperscript{183} Indubitably, there are sound constitutional and international human rights law bases underpinning the proposition for the enactment of national legislation explicitly guaranteeing access to affordable, reliable, and modern energy services in relation to Article 11, Paragraph 1 of the ICESCR and the 1987 Philippine Constitution.

Since access to affordable, reliable, and modern energy services is derivable from the ICESCR, and underpins the enjoyment of other rights embedded in the 1987 Philippine Constitution, coherence and consistency are achievable by incorporating all the innate elements and norms of the ICESCR into a domestic law by way of legislation. To preclude any doubts, a human right to access affordable, reliable, and modern energy services enshrined in legislation makes it legally demandable and enforceable. As Kenneth Roth\textsuperscript{184} asserts, “[i]t is clearly in the interest of those who believe in [economic, social, and cultural] rights that these rights be codified in enforceable national law.”\textsuperscript{185} One meaningful consequence of such recognition is, in the words of Mary Robinson,\textsuperscript{186} where “those who are

\textsuperscript{179}See PHIL. CONST. art. XIII, § 19.
\textsuperscript{180}ICESCR, supra note 25, art. 11, ¶ 1.
\textsuperscript{181}PHIL. CONST. art. II, § 9.
\textsuperscript{182}PHIL. CONST. art. II, § 11.
\textsuperscript{183}PHIL. CONST. art. XIII, § 1.
\textsuperscript{186}Mary Robinson was the President of Ireland for seven years, and the United Nations High Commissioner for Human Rights for five years. She is considered
poor and marginalized are empowered, and their participation rendered effective.”187 This is seen, for instance, in the availability of an effective legal remedy to enforce legal obligations, which the CESC R notes is usually “reinforced or complemented by judicial remedies[,]”188 unless it can be shown that such remedies are not the “appropriate means” contemplated by the ICESCR in the domestic legal order.189

Having that in mind, the CHR’s narrow powers can be expanded to not only investigate, but also to adjudicate, all human rights violations (civil, political, economic, social, and cultural),190 including the power to issue and enforce legal measures appropriate to address such transgressions. Once transformed into a quasi-judicial constitutional body, the CHR will be able to provide the effective legal remedy called for under the ICESCR at the first instance. With experience and expertise on human rights matters institutionally built for over three decades, the CHR is ideally placed to competently adjudicate human rights cases. This extenuates the apprehension that the judiciary is not competent to adjudicate socioeconomic rights.191 In addition, judicial appeal or review becomes available considering that the 1987 Philippine Constitution explicitly grants judicial power to the Supreme Court, including the lower courts, to

188. General Comment No. 9, supra note 169, ¶ 3.
189. Id.
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, which includes a quasi-judicial CHR. This puts a check-and-balance system that seamlessly fits into the constitutional and legal regime availing in the Philippines. As Wiles argues, “unless rights are made legally enforceable, rather than remaining aspirational, they cannot truly be considered to constitute law at all, and will remain a pipe dream for those who need them most.”

IV. CONCLUSION

In this Article, it is shown that the Philippines has constitutionalized and enacted various legislative measures to respect, protect, and fulfill the various human rights embodied under the International Bill of Human Rights, particularly socioeconomic rights. Also, the three branches of government — the executive, legislative, and judiciary — have a critical role in their respective spheres in giving meaning and effect to human rights in the domestic context. Having said this, access to affordable, reliable, and modern energy services is not explicitly guaranteed in, albeit inferred or derived from, the commitments of the Philippines under the ICESCR, the 1987 Philippine Constitution, and the different legislative enactments that give flesh to the aspirations and goals of the country for inclusive growth. To a reasonable degree, there is a manifest and serious intention to pursue the realization of the aforementioned commitments in the domestic context. Unfortunately, these are not enough in the face of millions of Filipinos who are still lacking access to affordable, reliable, and modern energy services deemed so basic for human development and progress in today’s world. For this reason — and to preclude any doubts — a human rights-based approach to access to affordable, reliable, and modern energy services enshrined in various legislation is the preferred implementation path. This Article, thus, highlights the significance of a human rights-based approach to provide universal access to affordable, reliable, and modern energy services in three important areas: (1) operationalizing the concept of equality and non-discrimination; (2) shifting the accountability from private franchisees/contractors to the State in off-grid areas; and, (3) ensuring the availability of effective legal redress to citizens. In all these dimensions, the

192. PHIL. CONST. art. VIII, § 1, para. 2.
193. Wiles, supra note 140, at 64.
Supreme Court plays a vital role in catalyzing reforms in the law, particularly when called upon to exercise its power to adjudicate cases and to interpret the 1987 Philippine Constitution. As long as energy poverty and inequality persist, a human rights-based approach to access to affordable, reliable, and modern energy services remains significant and relevant in seeking changes to national institutions, practices, and norms for a better Philippines, where the struggles, concerns, and basic needs of those who have less — in some instances, none — become the clamor and claim of all.