

Social Justice: Strengthening the Heart of the 1987 Constitution for Those at the Margins of Philippine Society

*Sedfrey M. Candelaria**

*Jason L. Sy***

I. INTRODUCTION	1412
II. THE HEART OF THE 1987 CONSTITUTION	1417
A. <i>The Social Justice Provisions of the Constitution: Origins and Overview</i>	
B. <i>Social Justice and Social Realities</i>	
C. <i>The Crux of the Matter</i>	
III. STRENGTHENING THE HEART OF THE CONSTITUTION.....	1439
A. <i>The Supreme Court’s Attitude Towards the Social Justice Provisions of Article XIII</i>	
B. <i>Jurisprudential Distinction of “Self-Executing” Constitutional Provisions</i>	
C. <i>Social Justice Provisions of Article XIII: Self-Executing?</i>	
D. <i>In Search for a Solution: Filling in the Gap Between Law and Practice</i>	
IV. CONCLUSION	1469

I. INTRODUCTION

[E]vil is overcome only by good, hate by love, egoism by generosity. It is thus that we must sow justice in our world. To be just, it is not enough to refrain from injustice. One must go further and refuse to play its game, substituting love for self-interest as the driving force of society.

— Pedro Arrupe, S.J.¹

* '90 LL.M., University of British Columbia; '84 LL.B., Ateneo de Manila University School of Law. The Author was the Dean of the Ateneo de Manila University School of Law from 2012 to 2018 and is a professorial lecturer on Constitutional Law, Public International Law, Political Law Review, International Economic Law, Children’s Rights Law, Indigenous Peoples’ Rights Law, and Peace Process at the same university. He is currently the Chief of the Research, Publications and Linkages Office of the Philippine Judicial Academy of the Supreme

Court of the Philippines. The Author was the Bar Examiner for Political Law in the 2010 & 2019 Bar Examinations. He is a former member of the Government of the Republic of the Philippines (GRP) Negotiating Panel for talks with the Communist Party of the Philippines/New People's Army/National Democratic Front; former Chief Legal Consultant to the GRP Negotiating Panel for talks with the Moro Islamic Liberation Front; former head of the Indigenous Peoples' Desk of the Ateneo Human Rights Center; and former President of the Court Appointed Special Advocates for Children/Guardians Ad Litem Foundation of the Philippines, Inc. The Author's previous works in the *Journal* include *Justice on Trial: Consolidation of Powers, Judicial Independence, and Public Accountability in the Philippine Judiciary*, 63 ATENEO L.J. 23 (2018); *Testing Constitutional Waters X: Minding the Gaps: Philippine Style Federalism*, in TESTING CONSTITUTIONAL WATERS 350 (2018); *Testing Constitutional Waters IX: The Constitutional Parameters of the Exercise of Executive Powers in Non-International Armed Conflict Situation*, 62 ATENEO L.J. 352 (2017); *Testing Constitutional Waters VIII: Coming Full Circle: Executive Power and Judicial Consistency as Applied to Marcos v. Manglapus and Ocampo v. Enriquez*, 62 ATENEO L.J. 1 (2017); *Testing Constitutional Waters VII: Nationality, Citizenship, and Foundlings as Pronounced in Poe-Llamanzares v. Commission on Elections*, 61 ATENEO L.J. 29 (2016); *Testing Constitutional Waters VI: Developments in Treaty-Making and the Enhanced Defense Cooperation Agreement*, 61 ATENEO L.J. 1 (2016); *Testing Constitutional Waters V: The Proposed Bangsamoro Basic Law and the Primacy of the Sovereign Power of the State*, 59 ATENEO L.J. 1027 (2015); *Testing Constitutional Waters IV: Power of the Purse in Light of the Araullo and Belgica Rulings*, 59 ATENEO L.J. 317 (2014); *Walking the Line: The Philippine Approach to Church-State Conflict*, 58 ATENEO L.J. 842 (2014); *Testing Constitutional Waters III: Areas for Constitutional Reform in the System of Checks and Balances — Making Sense of P-Noy's Tuwid Na Landas*, 57 ATENEO L.J. 1 (2012); *A Review of Legal Education in the Philippines*, 55 ATENEO L.J. 567 (2010); *Testing Constitutional Waters II: Political and Social Legitimacy of Judicial Decisions*, 55 ATENEO L.J. 1 (2010); *Postscript to the Supreme Court MOA-AD Judgment: No Other Way but to Move Forward*, 54 ATENEO L.J. 269 (2009); *Consultation and the Courts: Reconfiguring the Philippine Peace Process*, 54 ATENEO L.J. 59 (2009); *An Overview of the International Legal Concept of Peace Agreements as Applied to Current Philippine Peace Processes*, 53 ATENEO L.J. 263 (2008); *The Juvenile Justice and Welfare Act of 2006: Changing Patterns and Responses for Juvenile Offending*, 52 ATENEO L.J. 293 (2007); *Legal Concept of Terrorism Under International Law and Its Application to Philippine Municipal Law*, 51 ATENEO L.J. 823 (2007); *Testing Constitutional Waters: Balancing State Power, Economic Development, and Respect for Human Rights*, 51 ATENEO L.J. 1 (2006); *Courts and Social Context Theory; Philippine Judicial Reform as Applied to Vulnerable Sectors*, 50 ATENEO L.J. 823 (2006); *The Philippines and the Convention on the Rights of a Child: Evaluating Compliance with Respect to International Standards for Procedural Rules Involving Children*, 49 ATENEO L.J. 1016 (2004); *Introducing the Indigenous Peoples' Rights Act*, 47 ATENEO L.J. 571 (2002); *The Rights of Indigenous Communities in International Law*, 46 ATENEO L.J. 273 (2001); *The Legal Characterization of the Asia-Pacific Economic Conference (APEC) and the Individual Action Plans in International Law*, 44 ATENEO L.J.

Human rights law has come a long way since the adoption of the Universal Declaration of Human Rights; human rights have now been understood as more than civil and political rights.² At the dawn of the 20th century, attention has shifted from civil and political rights to other facets or bundles of rights that every human being, bestowed and treated with dignity, must

405 (2000); & *The IMF and the Philippines: Anatomy of a Third World Debt*, 36 ATENEO L.J. 18 (1992). The Author also wrote *Dissents in Context: Claudio Teehankee's Legacy to Philippine Democracy* in the *Journal's* April 2019 Special Issue entitled *Claudio Teehankee: A Pillar of the Rule of Law*.

★★ '20 J.D., with honors, Ateneo de Manila University School of Law. The Author was a member of the Board of Editors of the *Ateneo Law Journal*. He joined the Board of Editors of the *Journal* for its 61st Volume. He was the Lead Editor for the *Journal's* April 2019 Special Issue entitled *Claudio Teehankee: A Pillar of the Rule of Law* and was an Associate Lead Editor for the third Issue of the 61st Volume. He was a member of the Executive Committee of the *Journal's* 63d Volume. The Author's previous works for the *Journal* include *Achieving Climate Justice Through Tort Law: Issues and Challenges*, 63 ATENEO L.J. 1042 (2019) with Antonio G.M. La Viña; *Discovery of Trade Secrets: A Procedural Quagmire*, 62 ATENEO L.J. 1218 (2018) with Jayme A. Sy, Jr.; & *Gone Without a Trace: A Re-examination of Bank Secrecy Laws and Anti-Money Laundering Laws in Light of the 2016 Bangladesh Bank Heist*, 62 ATENEO L.J. 90 (2017) with Jose Maria G. Hofileña.

Cite as 64 ATENEO L.J. 1412 (2020).

1. Pedro Arrupe, S.J., Superior General, Society of Jesus, Address at Tenth International Congress of Jesuit Alumni of Europe in Valencia, Spain (July 31, 1973) (transcript available at https://jesuitportal.bc.edu/research/documents/1973_arrupemenforothers (last accessed Aug. 15, 2020)).
2. See Universal Declaration of Human Rights, G.A. Res 217A (III), arts. 22–27 (Dec. 10, 1948) [hereinafter UDHR]. Civil and political rights were previously known as “first generation human rights.” Council of Europe, The Evolution of Human Rights, available at <https://www.coe.int/en/web/compass/the-evolution-of-human-rights> (last accessed Aug. 15, 2020). As a caveat,

[t]he term ‘generation’ does not imply any chronological difference or hierarchy of human rights. It was simply a political, legal conceptual categorization. The idea and use of the term ‘generation’ has come into disuse, and the terms first, second, and third generation should no longer be used because they breed conceptual confusion.

H. VICTOR CONDĂ, A HANDBOOK OF INTERNATIONAL HUMAN RIGHTS TERMINOLOGY 236 (2004).

possess; these include social rights.³ As aptly pointed out by Fr. Joaquin G. Bernas, S.J., social rights are “latecomers in the development of law and came about through the efforts of social philosophers and through social teachings of [p]opes.”⁴

On a global level, the United Nations Millennium Development Goals and the Sustainable Development Goals which followed reflect this shift.⁵ Nations have taken great strides in international law towards developing and meeting their international obligation of “progressive realization,” best reflected by Article 2 (1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which the Philippines ratified on 7 June 1974, alongside 183 other States.⁶

-
3. David Marquand, *Civic Republics and Liberal Individualists: The Case of Britain*, in *CITIZENSHIP: CRITICAL CONCEPTS* 241 (Bryan S. Turner & Peter Hamilton eds., 1994).
 4. JOAQUIN G. BERNAS, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 1238 (2009 ed.).
 5. See generally Jeffrey D. Sachs, *From Millennium Development Goals to Sustainable Development Goals*, 379 *THE LANCET* 2206 (2012) & U.N. Secretary General, *Special Edition: Progress Towards the Sustainable Development Goals*, 2019 Session of the Economic and Social Council, U.N. Doc. E/2019/68 (May 8, 2019).
 6. International Covenant on Economic, Social and Cultural Rights art. 2 (1), *adopted* Dec. 16, 1996, 993 U.N.T.S. 3 [hereinafter ICESCR] & United Nations Treaty Collection, International Covenant on Economic, Social and Cultural Rights, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4 (last accessed Aug. 15, 2020). See also Convention on the Rights of a Child art. 4, *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3 & Convention on the Rights of Persons with Disabilities art. 4 (2), *adopted* Dec. 13, 2006, 2515 U.N.T.S. 3 (these cited provisions from other human rights-related treaties relate to the concept of progressive realization). Article 2 (1) of the ICESCR provides that

[e]ach State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

 ICESCR, *supra* note 6, art. 2 (1). See also U.N. Committee on Economic, Social and Cultural Rights, *CESCR General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, ¶ 9, U.N. Doc. E/1991/23 (Dec. 14, 1990). CESCR General Comment No. 3 states —

With these developments in the global arena, the Philippine Constitution in the domestic plane has sought to address deeply entrenched social inequalities that have plagued this nation since the Spanish occupation.⁷ One way the 1987 Constitution manifests this is through the inclusion of new social justice provisions which were not present in the 1935 and 1973 Constitutions.⁸ The social justice provisions contained in the 1987 Constitution, specifically in Article XIII, have been described by former Supreme Court Justice and President of the 1986 Constitutional Commission, Cecilia Muñoz-Palma, as the “heart of the new Constitution.”⁹ These provisions of “the highest law of the land”¹⁰ reflect the goals on the part of the State to uphold and protect these social rights.¹¹ Implicit in the inclusion of these provisions is the recognition that the State needs to afford proper

The concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social[,] and cultural rights will generally not be able to be achieved in a short period of time. ... Nevertheless, the fact that realization over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social[,] and cultural rights. On the other hand, the phrase must be read in the light of the overall objective, indeed the *raison d'être*, of the Covenant which is to establish clear obligations for States parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.

Id. ¶ 9.

7. See Omar Shahabudin McDoom, et al., *Inequality Between Whom? Patterns, Trends, and Implications of Horizontal Inequality in the Philippines*, 145 SOC. INDIC. RES. 923, 927-28 (2019).
8. Compare 1935 PHIL. CONST. (superseded 1973) and 1973 PHIL. CONST. (superseded 1987), with PHIL. CONST. See generally CARMELO V. SISON, THE 1987, 1973, AND 1935 PHILIPPINE CONSTITUTIONS: A COMPARATIVE TABLE (1999).
9. 5 RECORD OF THE CONSTITUTIONAL COMMISSION, NO. 109, at 1010 (1986).
10. Republic v. Quasha, 46 SCRA 160, 177 (1972).
11. See PHIL. CONST. art. XIII, §§ 1-16.

protection to the marginalized sectors of society, consistent with the vision of the Filipino people “to build a just and humane society.”¹²

Despite the inclusion of a wholly-separate article in the Constitution dedicated, in part, to social justice,¹³ social justice remains far from realized more than three decades since the 1987 Constitution was promulgated.¹⁴ This Article seeks to find solutions, from the perspective of and through the use of the Constitution, towards achieving the objectives laid down in these social justice provisions.¹⁵

II. THE HEART OF THE 1987 CONSTITUTION

My colleagues, the Article on Social Justice which we have framed is the heart of the new Constitution.

When Pope [John] Paul II came to the Philippines and visited the slums of Tondo, he indicated the obligations of justice that confront society and all who have power, whether economic, cultural[,] or political. He called attention to the intolerable situations that perpetuate the poverty and misery of the many who are constantly hungry and deprived of their rightful changes to grow and develop their human potential, who lack decent housing and sufficient clothing, who suffer illness for want of employment and protection against poverty and disease.

The Article on Social Justice answers these challenges and addresses itself to specified areas of concern [—] labor, agrarian and urban land reform, health, working women, indigenous cultural communities, and people’s organizations. The agrarian reform program is founded on the right of farmers and farmworkers who are landless to own directly or collectively the lands they till or to receive a just share of the fruits of the land.

— Commissioner Cecilia Muñoz-Palma¹⁶

12. PHIL. CONST. pmb1.

13. Article XIII of the Constitution is primarily composed of two parts: the social justice provisions, as found in Sections 1 to 16, and the human rights provisions as found in Sections 17 to 19. PHIL. CONST. art. XIII. Article XIII was a result of the decision of the 1986 Constitutional Commission to merge the provisions on Social Justice and the provisions on the Commission on Human Rights into a single Article. See 5 RECORD, PHIL. CONST., NO. 104, at 756.

14. See generally ASIAN DEVELOPMENT BANK, POVERTY IN THE PHILIPPINES: CAUSES, CONSTRAINTS, AND OPPORTUNITIES 39-40 (2009).

15. While the Authors acknowledge other various means to further the aims of Article XIII, including the enactment of legislation by Congress, among others, this Article aims to utilize the mostly-untapped potential for the Constitution to strengthen its own provisions from within.

16. 5 RECORD, PHIL. CONST., NO. 109, at 1010.

A. The Social Justice Provisions of the Constitution: Origins and Overview

As early as 1940, the Supreme Court, speaking through Justice Jose P. Laurel in *Calalang v. Williams et al.*,¹⁷ emphatically elucidated on the concept of social justice, to wit —

Social justice is ‘neither communism, nor despotism, nor atomism, nor anarchy,’ but the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated. Social justice means the promotion of the welfare of all the people, the adoption by the Government of measures calculated to insure economic stability of all the competent elements of society, through the maintenance of a proper economic and social equilibrium in the interrelations of the members of the community, constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally, through the exercise of powers underlying the existence of all governments on the time-honored principle of *salus populi est suprema lex*.

Social justice, therefore, must be founded on the recognition of the necessity of interdependence among diverse units of a society and of the protection that should be equally and evenly extended to all groups as a combined force in our social and economic life, consistent with the fundamental and paramount objective of the [S]tate of promoting the health, comfort, and quiet of all persons, and of bringing about ‘the greatest good to the greatest number.’¹⁸

In more recent times, Senator Jose “Ka Pepe” W. Diokno proposes a definition of social justice in the Philippine context, in this wise —

Social justice, for us Filipinos, means a coherent intelligible system of law, made known to us, enacted by a legitimate government freely chosen by us, and enforced fairly and equitably by a courageous, honest, impartial, and competent police force, legal profession[,] and judiciary, that *first*, respects our rights and our freedoms both as individuals and as a people; *second*, seeks to repair the injustices that society has inflicted on the poor by eliminating poverty as our resources and our ingenuity permit; *third*, develops a self-directed and self-sustaining economy that distributes its benefits to meet, at first, the basic material needs of all, then to provide an

17. *Calalang v. Williams et al.*, 70 Phil. 726 (1940).

18. *Id.* at 734-35. Though ironically, social justice was invoked by the Supreme Court in this case to rule in favor of the government, affirming the legality of a governmental measure to ban animal-drawn vehicles from certain thoroughfares in Manila during specific hours in order to promote the common good — effectively ruling against a Filipino citizen, Maximo Calalang, who questioned such governmental action. *Id.*

improving standard of living for all, but particularly for the lower income groups, with time enough and space to allow them to take part in and to enjoy our cultures; *fourth*, changes our institutions and structures, our ways of doing things and relating to each other, so that whatever inequalities remain are not caused by those institutions or structures, unless inequality is needed temporarily to favor the least favored among us and its cost is borne by the most favored; and *fifth*, adopts means and processes that are capable of attaining these objectives.¹⁹

Guided by these notions of social justice,²⁰ the 1986 Constitutional Commission, after impassioned debates and deliberation since its inaugural session on 2 June 1986, approved the final text of the draft Constitution on 15 October 1986.²¹ The inclusion of an entirely separate article in the 1987 Constitution dedicated to social justice was primarily the result of the untiring efforts of Professor Ponciano L. Bennagen, one of the members of the 1986 Constitutional Commission.²² For Commissioner Ma. Teresa F. Nieva of the 1986 Constitutional Commission, who chaired the Committee on Social Justice,²³ the inclusion of these 16 sections as social justice provisions under Article XIII was “ground-breaking,” as she firmly believed that these provisions reflect the “pro-people spirit that pervades the entire Constitution” as it likewise gave meaning and substance to the pledge enshrined in the Preamble “to build a just and humane society.”²⁴

These 16 social justice provisions were indeed “ground-breaking”; the 1987 Constitution was unprecedented considering that earlier Philippine Constitutions did not tackle social justice as extensively as the 1987 version did.²⁵ In the 1935 Constitution, there were only two provisions related to

19. Mani Thess Q. Pena, *People Power in a Regime of Constitutionalism and the Rule of Law*, 76 PHIL. L.J. 1, 29-30 (2001) (citing Ponciano Bennagen, *People's Power Toward a Just and Democratic Philippine Society*, in ISSUES IN SOCIO-POLITICAL TRANSFORMATION IN ASIA AND THE PACIFIC: THE RECENT PHILIPPINE POLITICAL EXPERIENCE: PAPERS AND PROCEEDINGS 101 (Carolina Hernandez, et al. eds., 1987)).

20. See 2 RECORD OF THE CONSTITUTIONAL COMMISSION, NO. 46, at 620, 627, & 699 (1986).

21. See 1 RECORD OF THE CONSTITUTIONAL COMMISSION, NO. 1, at 1 (1986) & 5 RECORD, PHIL. CONST., NO. 109, at 1001-14.

22. 5 RECORD, PHIL. CONST., NO. 109, at 1011.

23. *Id.* at 1012.

24. *Id.* at 834.

25. *Id.*

social justice.²⁶ One provision in the 1935 Constitution is found in Section 5 of Article II on Declaration of Principles which explicitly mentions “social justice”²⁷ while the other provision found in Section 6, Article XIV on General Provisions speaks of the sectors which the State must protect consistent with the dictates of social justice.²⁸

Meanwhile, the 1973 Constitution provided for social justice in three provisions under Article II on Declaration of Principles and State Policies, introducing a new provision under Section 7²⁹ therein while modifying the two aforesaid provisions of the 1935 Constitution which were now placed under Sections 6³⁰ and 9³¹ of Article II of the 1973 Constitution.³²

26. *Id.*

27. 1935 PHIL. CONST. art. II, § 5 (superseded 1973).

28. 1935 PHIL. CONST. art. XIV, § 6 (superseded 1973).

29. 1973 PHIL. CONST. art. II, § 7 (superseded 1987) (“The State shall establish, maintain, and ensure adequate social services in the field of education, health, housing, employment, welfare, and social security to guarantee the enjoyment by the people of a decent standard of living.”).

30. *Compare* 1973 PHIL. CONST. art. II, § 6 (superseded 1987) (“The State shall promote social justice to ensure the dignity, welfare, and security of all the people. Towards this end, the State shall regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits.”), *with* 1935 PHIL. CONST. art. II, § 5 (superseded 1973) (“The promotion of social justice to insure the well-being and economic security of all the people should be the concern of the State.”).

31. *Compare* 1973 PHIL. CONST. art. II, § 9 (superseded 1987) (“The State shall afford protection to labor, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. The State may provide for compulsory arbitration.”), *with* 1935 PHIL. CONST. art. XIV, § 6 (superseded 1973) (“The State shall afford protection to labor, especially to working women and minors, and shall regulate the relations between landowner and tenant, and between labor and capital in industry and in agriculture. The State may provide for compulsory arbitration.”).

32. 1973 PHIL. CONST. art. II, §§ 6, 7, & 9 (superseded 1987). *See* 5 RECORD, PHIL. CONST., NO. 105, at 834.

From only two and three provisions under the 1935 and 1973 Constitutions, respectively,³³ the 1987 Constitution has devoted, in addition to social justice-related provisions contained in Article II, a whole article composed of 19 provisions dedicated to social justice and human rights, 16 of which relate to social justice.³⁴ In the words of the Supreme Court, the 1987 Constitution “adopted one whole and separate Article XIII on Social Justice and Human Rights, containing grandiose but undoubtedly sincere provisions for the uplift[ment] of the common people.”³⁵ The approved draft of the Constitution was ratified through a national plebiscite held on 2 February 1987,³⁶ which included the social justice provisions, as found in Sections 9,³⁷ 10,³⁸ 11,³⁹ 14,⁴⁰ 18,⁴¹ and 21⁴² of Article II, and Sections 1 to 16 of Article XIII.⁴³

33. See 1935 PHIL. CONST. art. II, § 5 & art. XIV, § 6 (superseded 1973) & 1973 PHIL. CONST. art. II, §§ 6, 7, & 9 (superseded 1987).

34. See PHIL. CONST. arts. II & XIII.

35. *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, 175 SCRA 343, 353 (1989).

36. Office of the President, *Proclaiming the Ratification of the Constitution of the Republic of the Philippines Adopted by the Constitutional Commission of 1986, Including the Ordinance Appended Thereto*, Proclamation No. 58, s. 1987 (Feb. 11, 1987).

37. PHIL. CONST. art. II, § 9 (“The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.”).

38. PHIL. CONST. art. II, § 10 (“The State shall promote social justice in all phases of national development.”).

39. PHIL. CONST. art. II, § 11 (“The State values the dignity of every human person and guarantees full respect for human rights.”).

40. PHIL. CONST. art. II, § 14 (“The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.”).

41. PHIL. CONST. art. II, § 18 (“The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.”).

42. PHIL. CONST. art. II, § 21 (“The State shall promote comprehensive rural development and agrarian reform.”).

43. PHIL. CONST. art. II, §§ 9, 10, 11, 14, 18, & 21, & art. XIII, §§ 1-16. See 2 CARLO L. CRUZ, *NOTES ON THE CONSTITUTION*, at 738-39 (2016).

The social justice provisions under Article XIII begin with Sections 1 and 2 therein which speak broadly about social justice.⁴⁴ Section 1 of Article XIII directs Congress to give the “highest priority” to enacting measures “that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.”⁴⁵ In pursuing that goal, the Constitution mandates that “the State shall regulate the acquisition, ownership, use, and disposition of property and its increments”⁴⁶ while, at the same time, emphasizing that “[t]he promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance.”⁴⁷ Subsequent social justice provisions under Article XIII tackle various sectors and groups: labor, agrarian and natural resources reform, urban land reform and housing, health, women, and people’s organizations.⁴⁸

Labor, under Section 3 of Article XIII, elaborates on what Section 18 of Article II has stated.⁴⁹ The first Paragraph of Section 3 of Article XIII directs

44. See PHIL. CONST. art. XIII, §§ 1-2. These provisions of the Constitution read as follows —

SECTION 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.

SECTION 2. The promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance.

PHIL. CONST. art. XIII, §§ 1-2.

45. PHIL. CONST. art. XIII, § 1.

46. PHIL. CONST. art. XIII, § 1.

47. PHIL. CONST. art. XIII, § 2.

48. PHIL. CONST. art. XIII, §§ 3-16.

49. BERNAS, *supra* note 4, at 1240. Section 3 of Article XIII states —

SECTION 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted

the State to “afford full protection of labor” and “promote full employment and equality of employment opportunities for all.”⁵⁰ The next Paragraph provides for Constitutional guarantees for workers: the right to “self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law[,]” their entitlement to security of tenure, humane working conditions, and a living wage, and their participation “in policy and decision-making processes affecting their rights and benefits as may be provided by law.”⁵¹ The third Paragraph directs the State to “promote the principle of shared responsibility between workers and employers” as well as the preferential use of various voluntary modes of dispute resolution, including conciliation, and to “enforce their mutual compliance therewith to foster industrial peace.”⁵² In the fourth and final Paragraph of the Section, the duty towards regulating the relations between the workers and their employers is addressed to the State which shall, in the course of regulating such relations, “recogniz[e] the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.”⁵³

Under Section 4 of Article XIII, the State is directed to, “by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of

activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

PHIL. CONST. art. XIII, § 3.

50. PHIL. CONST. art. XIII, § 3, par. 1.

51. PHIL. CONST. art. XIII, § 3, par. 2.

52. PHIL. CONST. art. XIII, § 3, par. 3.

53. PHIL. CONST. art. XIII, § 3, par. 4.

the fruits thereof.”⁵⁴ In pursuing such goal, the State shall “encourage and undertake just distribution of all agricultural lands, subject to such priorities and reasonable retention limits” as Congress may prescribe.⁵⁵ In addition, incentives are to be provided by the State for voluntary land-sharing.⁵⁶ The different aspects concerning land and natural resources reform are discussed in detail in the subsequent four Sections (i.e., Sections 5 to 8 of Article XIII).⁵⁷

54. PHIL. CONST. art. XIII, § 4. The full text of Section 4 of Article XIII states —

SECTION 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.

PHIL. CONST. art. XIII, § 4.

55. PHIL. CONST. art. XIII, § 4.

56. PHIL. CONST. art. XIII, § 4.

57. BERNAS, *supra* note 4, at 1245. Sections 5 to 8 of Article XIII provide, *viz.* —

SECTION 5. The State shall recognize the right of farmers, farmworkers, and landowners, as well as cooperatives, and other independent farmers’ organizations to participate in the planning, organization, and management of the program, and shall provide support to agriculture through appropriate technology and research, and adequate financial, production, marketing, and other support services.

SECTION 6. The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain under lease or concession suitable to agriculture, subject to prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands.

The State may resettle landless farmers and farmworkers in its own agricultural estates which shall be distributed to them in the manner provided by law.

SECTION 7. The State shall protect the rights of subsistence fishermen, especially of local communities, to the preferential use of

Section 5 of Article XIII instructs the State to recognize the right of farmers, farmworkers, landowners, cooperatives, and other independent farmers' organizations "to participate in the planning, organization, and management of the program[.]"⁵⁸ The State is likewise directed under the same Section to provide adequate support services to agriculture.⁵⁹ Meanwhile, Section 6, as Fr. Bernas explains, extends the principles concerning agrarian reform "to the disposition of other natural resources. At the heart of agrarian reform is the principle capsulated in the phrase 'land to the tiller.' It is this which must be applied, *mutatis mutandis*, to the utilization of natural resources. Thus[,] one may speak of 'natural resources reform.'"⁶⁰ Moreover, according to Section 6, "the State may resettle landless farmers and farmworkers in its own agricultural estates which shall be distributed to them in the manner provided by law."⁶¹ Section 7 affords subsistence fishermen and fish workers special rights to "the preferential use of the communal marine and fishing resources, both inland and offshore[.]" and specifies, among others, that the State shall ensure protection, development, and conservation of such resources, with the said protection "extend[ing] to offshore fishing grounds of subsistence fishermen against foreign intrusion."⁶² The inclusion of the said Section is a "first in [the history of] Philippine constitution-making."⁶³ Section 8 of Article XIII provides that

local marine and fishing resources, both inland and offshore. It shall provide support to such fishermen through appropriate technology and research, adequate financial, production, and marketing assistance, and other services. The State shall also protect, develop, and conserve such resources. The protection shall extend to offshore fishing grounds of subsistence fishermen against foreign intrusion. Fishworkers shall receive a just share from their labor in the utilization of marine and fishing resources.

SECTION 8. The State shall provide incentives to landowners to invest the proceeds of the agrarian reform program to promote industrialization, employment creation, and privatization of public sector enterprises. Financial instruments used as payment for their lands shall be honored as equity in enterprises of their choice.

PHIL. CONST. art. XIII, §§ 5-8.

58. PHIL. CONST. art. XIII, § 5.

59. PHIL. CONST. art. XIII, § 5.

60. BERNAS, *supra* note 4, at 1258.

61. PHIL. CONST. art. XIII, § 6.

62. PHIL. CONST. art. XIII, § 7.

63. BERNAS, *supra* note 4, at 1260.

incentives shall be provided by the State to landowners “to invest the proceeds of the agrarian reform program to promote industrialization, employment creation, and privatization of public sector enterprises.”⁶⁴ Furthermore, the same Section clarifies that the financial instruments which may be used as payment for their lands “shall be honored as equity in enterprises of their choice.”⁶⁵ The said Section views agrarian reform “as a unique instrument for releasing capital locked up in land for use in industrialization in particular and economic development in general.”⁶⁶

Sections 9 and 10 of Article XIII explain in detail how social justice may be achieved in urban land reform and housing.⁶⁷ According to Section 9 of Article XIII, the State, through legislation and in the interest of the common good, “shall ... undertake, in cooperation with the private sector a continuing program of urban land reform and housing” in order to “make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlement areas.”⁶⁸ The same Section explains that the State “shall also promote adequate employment opportunities to such citizens” and “shall respect the rights of small property owners” in implementing such program.⁶⁹ Informal

64. PHIL. CONST. art. XIII, § 8.

65. PHIL. CONST. art. XIII, § 8.

66. BERNAS, *supra* note 4, at 1263.

67. PHIL. CONST. art. XIII, §§ 9 & 10. Sections 9 and 10 of Article XIII of the Constitution state —

SECTION 9. The State shall, by law, and for the common good, undertake, in cooperation with the public sector, a continuing program of urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlements areas. It shall also promote adequate employment opportunities to such citizens. In the implementation of such program the State shall respect the rights of small property owners.

SECTION 10. Urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner.

No resettlement of urban or rural dwellers shall be undertaken without adequate consultation with them and the communities where they are to be relocated.

PHIL. CONST. art. XIII, §§ 9 & 10.

68. PHIL. CONST. art. XIII, § 9.

69. PHIL. CONST. art. XIII, § 9.

settlers are primarily dealt with in Section 10,⁷⁰ which emphasizes that “[u]rban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner[.]” and that the resettlement of the said dwellers must be undertaken with “adequate consultation with them and the communities where they are to be relocated.”⁷¹

Health is squarely tackled in Sections 11 to 13 of Article XIII.⁷² Section 11 provides, among others, that the State “shall adopt an integrated and comprehensive approach to health development[.]” wherein “the needs of the underprivileged sick, elderly, disabled, women, and children” are prioritized.⁷³ The State is also instructed under the same Section to “endeavor to provide free medical care to paupers.”⁷⁴ Meanwhile, Sections 12 and 13 further the aims set forth in Section 11.⁷⁵ Section 12 mandates the State to “establish and maintain an effective food and drug regulatory system and undertake appropriate health manpower development and research, responsive to the country’s health needs and problems[.]” while Section 13 instructs the State to “establish a special agency for disabled persons for

70. BERNAS, *supra* note 4, at 1267.

71. PHIL. CONST. art. XIII, § 10.

72. PHIL. CONST. art. XIII, §§ 11-13. Sections 11 to 13 of Article XIII instruct the State, in this wise —

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

SECTION 12. The State shall establish and maintain an effective food and drug regulatory system and undertake appropriate health manpower development and research, responsive to the country’s health needs and problems.

SECTION 13. The State shall establish a special agency for disabled persons for rehabilitation, self-development and self-reliance, and their integration into the mainstream of society.

PHIL. CONST. art. XIII, §§ 11-13.

73. PHIL. CONST. art. XIII, § 11.

74. PHIL. CONST. art. XIII, § 11.

75. *See* PHIL. CONST. art. XIII, §§ 11-13.

rehabilitation, self-development[,] and self-reliance, and their integration into the mainstream of society.”⁷⁶

Section 14 of Article XIII is intended to protect working women by directing the State to “provid[e] [them with] safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation.”⁷⁷

People’s organizations are the main focus of Sections 15 and 16 of Article XIII, which sets forth the role and rights of such organizations.⁷⁸ Section 15 defines “people’s organizations” as “*bona fide* associations of citizens with demonstrated capacity to promote the public interest and with identifiable leadership, membership, and structure.”⁷⁹ Under the same Section, the State is mandated to “respect the role of independent people’s organizations to enable the people to pursue and protect, within the

76. PHIL. CONST. art. XIII, §§ 12 & 13.

77. PHIL. CONST. art. XIII, § 14. The whole text of Section 14 of Article XIII reads —

SECTION 14. The State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation.

PHIL. CONST. art. XIII, § 14.

78. See PHIL. CONST. art. XIII, §§ 15 & 16. Sections 15 and 16 of Article XIII provide —

SECTION 15. The State shall respect the role of independent people’s organizations to enable the people to pursue and protect, within the democratic framework, their legitimate and collective interests and aspirations through peaceful and lawful means.

People’s organizations are *bona fide* associations of citizens with demonstrated capacity to promote the public interest and with identifiable leadership, membership, and structure.

SECTION 16. The right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making shall not be abridged. The State shall, by law, facilitate the establishment of adequate consultation mechanisms.

PHIL. CONST. art. XIII, §§ 15 & 16.

79. PHIL. CONST. art. XIII, § 15.

democratic framework, their legitimate and collective interests and aspirations through peaceful and lawful means.”⁸⁰ Section 16 meanwhile states that “[t]he right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making shall not be abridged.”⁸¹ In connection with such right, Section 16 likewise provides that “[t]he State shall, by law, facilitate the establishment of adequate consultation mechanisms.”⁸²

B. Social Justice and Social Realities

Despite the stellar ideals set out by the Constitution with the inclusion of these social justice provisions, there is much work to be done three decades since the promulgation of the 1987 Constitution. A study in 2011 noted that the Philippines ranked first in income inequality in the Association of Southeast Asian Nations region.⁸³ Eight years later, in 2017, another study concluded that “[t]he gap between the rich and the poor in the Philippines may have been wider in the past 25 years.”⁸⁴ Poverty and inequality in the country “have been widely perceived to be political problems largely caused by the inequitable distribution of resources and persistence of semi-feudal [or] oligarchic politics.”⁸⁵ According to the World Bank, in a report

80. PHIL. CONST. art. XIII, § 15.

81. PHIL. CONST. art. XIII, § 16.

82. PHIL. CONST. art. XIII, § 16.

83. Abigail L. Ho, *Philippines Leads in Income Inequality in Asean, Says Study*, PHIL. DAILY INQ., July 22, 2011, available at <https://business.inquirer.net/8377/philippines-leads-in-income-inequality-in-asean-says-study> (last accessed Aug. 15, 2020).

84. Cai Ordinario, *Gap between rich and poor in PHL widening—report*, BUS. MIRROR, Feb. 19, 2017, available at <https://businessmirror.com.ph/2017/02/19/gap-between-rich-and-poor-in-phl-widening-report/> (last accessed Aug. 15, 2020) (citing Laurence Chandy & Brina Seidel, *How Much Do We Really Know About Inequality Within Countries Around the World? Adjusting Gini Coefficients for Missing Top Incomes*, BROOKINGS INSTITUTION, Feb. 17, 2017, available at <https://www.brookings.edu/opinions/how-much-do-we-really-know-about-inequality-within-countries-around-the-world/> (last accessed Aug. 15, 2020)).

85. Tanya Karina A. Lat, *Philippine Democracy and Its Discontents: The Failed Promise of Social Justice Under the 1987 People Power Constitution*, 66 ESTUDIOS DE DEUSTO 133, 147 (2018) (citing Gerarde Clarke & Marites Sison, *Voices from the Top of the Pile: Elite Perceptions of Poverty and the Poor in the Philippines*, in ELITE

published in 2018, “[d]espite the generally good economic performance, poverty remains high and the pace of poverty reduction has been slow compared with other East Asian countries.”⁸⁶ The economic growth of the country has been observed to “only look[] great on paper,” as “[t]he economic boom appears to have only benefited a tiny minority of elite families” while “a huge segment of citizens remain vulnerable to poverty, malnutrition, and other grim development indicators that belie the country’s apparent growth.”⁸⁷

A brief survey of the various sectors and groups sought to be protected by the social justice provisions of Article XIII (i.e., labor, agrarian and natural resources reform, urban land reform and housing, health, women, and the role and rights of people’s organizations) also expose injustices that remain plaguing Philippine society at present.

In terms of labor protection, a 2015 report by the Center for Trade Union and Human Rights submitted to the United Nations Committee on Economic, Social and Cultural Right, states that around 2.3 million Filipinos are unemployed while estimating that 58% of the population aged 15 to 60 years old are excluded from the labor force.⁸⁸ From 2017 to 2019, the Philippines has consistently been part of the annual worldwide list of the 10 worst nations for workers, based on the International Trade Union Confederation’s Global Rights Index.⁸⁹ Although there have been

PERCEPTIONS OF POVERTY AND INEQUALITY 57-90 (Elisa Reis & Mick Moore eds., 2005)).

86. THE WORLD BANK, MAKING GROWTH WORK FOR THE POOR: A POVERTY ASSESSMENT FOR THE PHILIPPINES 2 (2018).
87. Jillian Keenan, *The Grim Reality Behind the Philippines’ Economic Growth*, ATLANTIC, May 7, 2013, available at <https://www.theatlantic.com/international/archive/2013/05/the-grim-reality-behind-the-philippines-economic-growth/275597> (last accessed Aug. 15, 2020).
88. Center for Trade Union and Human Rights, Inc., Submission to the UN Committee on Economic, Social and Cultural Rights Concerning the Review of the Implementation of the ICESCR in the Philippines, available at https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/PHL/INT_CESCR_CSS_PHL_25185_E.pdf (last accessed Aug. 15, 2020).
89. THE INTERNATIONAL TRADE UNION CONFEDERATION, 2017 ITUC GLOBAL RIGHTS INDEX: THE WORLD’S WORST COUNTRIES FOR WORKERS 10 (2017); THE INTERNATIONAL TRADE UNION CONFEDERATION, 2018 ITUC GLOBAL RIGHTS INDEX: THE WORLD’S WORST COUNTRIES FOR WORKERS 4 (2018) [hereinafter ITUC, 2018 ITUC GLOBAL RIGHTS INDEX: THE

“collective efforts to achieve better wages and working conditions,” workers in the Philippines still remain “struggl[ing] to assert their basic right to associate freely and [face] the violent opposition of employers.”⁹⁰

In terms of agrarian reform, the Philippines has yet to fully realize the goals set forth in Article XIII. As early as 2000, it was said that the agrarian reform program “ha[s] failed to give land to the landless” as worsened by “the reconcentration of land in the hands of the landlords and corporations.”⁹¹ A decade later, one scholar in 2011 posited that —

The national level political dynamics, dominated by the landed oligarchy behind the legislation of [the Comprehensive Agrarian Reform Program (CARP)] in 1988, have been a constant feature of the Philippine politics when it comes to land reform legislation of the various regimes in the past. As a consequence, the CARP has [not done] much to improve the lives of those people in the countryside. Given the failure of governance for effective land reform, the end results have been far from the goals after more than two decades of implementation.⁹²

The government’s program was marred by “inherent loopholes in the law, strong landowner resistance, weak farmers’ [organizations],” among others.⁹³ In more recent times, a 2018 study reports of evidence that the

WORLD’S WORST COUNTRIES FOR WORKERS]; & THE INTERNATIONAL TRADE UNION CONFEDERATION, 2019 ITUC GLOBAL RIGHTS INDEX: THE WORLD’S WORST COUNTRIES FOR WORKERS 5 (2019). See Aika Rey, *PH Still Among World’s ‘Worst’ Countries to Work in - Report*, RAPPLER, June 9, 2018, available at <https://rappler.com/nation/philippines-rank-global-workers-rights-index-2018-ituc> (last accessed Aug. 15, 2020).

90. ITUC, 2018 ITUC GLOBAL RIGHTS INDEX: THE WORLD’S WORST COUNTRIES FOR WORKERS, *supra* note 89, at 5.
91. U.N. Econ. & Soc. Council, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, *Written Statement Submitted by Europe-Third World Centre, A Non-Governmental Organization in General Consultative Status*, at 4, U.N. Doc. E/CN.4/Sub.2/2000/NGO/5 (July 21, 2000).
92. Jose Elvinia, *Is Land Reform A Failure in the Philippines? An Assessment on CARP*, in *LIMITS OF GOOD GOVERNANCE IN DEVELOPING COUNTRIES* 333 (Hirotune Kimura, et al. eds., 2011).
93. Danilo T. Carranza, *Agrarian Reform and the Difficult Road to Peace in the Philippine Countryside* (Norwegian Peacebuilding Resource Centre December 2015 Report) at 1, available at https://reliefweb.int/sites/reliefweb.int/files/resources/Carranza_NOREF_Agrarian%20reform%20and%20the%20difficult%20

government's agrarian reform program, "considered the longest-running land reform program in Asia and, possibly, the world[.]" "had been poorly targeted in terms of areas covered and beneficiaries."⁹⁴

In sum, the state of agrarian reform in the country in a 2020 study is succinctly evaluated by several authors, in this wise —

[A]lthough several laws were passed to breathe life into the agrarian reform provisions in the Constitution, the impact of land reform on alleviating poverty has been only modest because of, among others, imperfect targeting and under-targeting of the poorest agrarian reform beneficiaries. Some even contend that the [CARP] has made agrarian reform beneficiaries worse off and created an altogether new class of 'landed poor[.]' Many farmers are pushed to sell or mortgage their lands to commercial farms or other beneficiaries. There is thin compliance given that land reform legislations were passed in pursuit of the constitutional mandate. However, these laws are detached from economic realities, especially in the rural areas where people have shifted their attention from farm ownership to overseas Filipino workers' remittances as a vector of upwards social and economic mobility.⁹⁵

road%20to%20peace%20in%20the%20Philippine%20countryside_Dec2015_FI
NAL.pdf (last accessed Aug. 15, 2020).

94. Marife M. Ballesteros, et al., *The Comprehensive Agrarian Reform Program After 30 Years: Accomplishments and Forward Options* (Philippine Institute for Development Studies Research Paper Series No. 2018-03) at 85 & 83, *available at* <https://pidswebs.pids.gov.ph/CDN/PUBLICATIONS/pidsrp1803.pdf> (last accessed Aug. 15, 2020).
95. MARIA ELA L. ATIENZA, ET AL., *CONSTITUTIONAL PERFORMANCE ASSESSMENT OF THE 1987 PHILIPPINE CONSTITUTION 46* (Maria Ela L. Atienza & Amanda Cats-Baril eds., 2020). In their work, the authors of the 2020 study explained "thin compliance" and "thick compliance" as follows —

The constitutional performance assessment methodology requires an examination of compliance with the Constitution in a thin and thick sense. 'Thin compliance' simply refers to whether government branches and institutions responded to their mandate in the Constitution to pass legislation, form policy[,] or perform other specific actions. This is a more factual and quantitative inquiry. On the other hand, assessing 'thick compliance' is more complex and requires a qualitative assessment of whether the Constitution has, for example, created a stable system of governance or equality between citizens, deepened democracy[,] and transformed conflict.

Id. at 21.

Meanwhile, for urban land reform and housing, the road ahead towards an optimistic and hopeful future also remains elusive, as a report by the World Bank describes —

As cities fail to keep pace with rapid urbanization, the number of informal settlements and informal settler families (ISFs) have grown especially in Metro Manila, widening and deepening urban poverty. While it is difficult to capture the accurate number of ISFs, estimates range from more than 250,000 to 600,000 in Metro Manila alone. The latter estimate translates to three million individuals, which means about one in four people in Metro Manila resides in an informal settlement and has no security of tenure. ... ISFs suffer from lack of security of tenure, access to basic services, and access to productive formal jobs. They struggle with chronic poverty, difficult living conditions, and high exposure to natural disasters, especially flooding. They are seldom integrated into the broader communities and face higher than average incidence of crime and violence. The Philippines cannot achieve inclusive growth without addressing the precarious situation of ISFs and providing solutions to lift them out of poverty.⁹⁶

Between 2001 to 2015, the government's housing backlog has been estimated to be over 6 million units, which is projected to reach 12 million by the next decade if not properly addressed.⁹⁷

Likewise, a 2015 paper, after analyzing the program since 1987, discusses the state of the agrarian reform program, to wit —

Originally meant to restore the dignity and improve the lives of the then 10 million-strong rural labor force by transforming them into owner-cultivators and productive citizens, the watered-down [agrarian reform law] and its skewed implementation have instead aggravated rural inequalities and brought about stagnation in the countryside. It is estimated that 75 percent of the country's poor live in the rural areas.

Eduardo Climaco Tadem, *Philippine Agrarian Reform in the 21st Century* (Land Grabbing, Conflict and Agrarian-Environmental Transformations: Perspectives from East and Southeast Asia, Discussion Note No. 2, May 2015) at 7, *available at* https://www.iss.nl/sites/corporate/files/CMCP_D2-Tadem.pdf (last accessed Aug. 15, 2020).

96. The World Bank, *Closing the Gap in Affordable Housing in the Philippines* (Policy Paper for the National Summit on Housing and Urban Development, July 2016) at 1-2, *available at* documents1.worldbank.org/curated/en/547171468059364837/pdf/AUS13470-REVISED-PUBLIC-WBNationalHousingSummitFinalReport.pdf (last accessed Aug. 15, 2020).
97. *Angara: Action Must Be Taken to Avert Housing Crisis* (Senate of the Philippines Press Release, March 31, 2019), *available at* <https://www.senate.gov.ph/>

In terms of healthcare, implementing legislation has been put in place to safeguard the health of Filipinos.⁹⁸ Currently, however, there is still much to be done in the development of the Philippine's health infrastructure which entails, among others, formulating programs, managing medicine inventories, and building healthcare facilities.⁹⁹

press_release/2019/0331_angara1.asp (last accessed Aug. 15, 2020) & Jamela Alindogan, *Philippine Housing Crisis: Filipinos Need Affordable Homes*, AL JAZEERA, Mar. 31, 2019, available at <https://www.aljazeera.com/news/2019/03/philippines-housing-crisis-filipinos-affordable-homes-190331112948291.html> (last accessed Aug. 15, 2020).

98. Legislation in this regard includes “the establishment of the Philippine Health Insurance Corporation (PhilHealth) and the enactment of the Magna Carta for Disabled Persons of 1992 ... and the Universal Health Care Act of 2019[.]” ATIENZA, ET AL., *supra* note 95, at 24. See An Act Instituting a National Health Insurance Program for All Filipinos and Establishing the Philippine Health Insurance Corporation for the Purpose [National Health Insurance Act of 1995], Republic Act No. 7875 (1995); An Act Amending Republic Act No. 7875, Otherwise Known as “An Act Instituting a National Health Insurance Program for All Filipinos and Establishing the Philippine Health Insurance Corporation for the Purpose”, Republic Act No. 9241 (2004); An Act Amending Republic Act No. 7875, Otherwise Known as the “National Health Insurance Act of 1995”, as Amended, and for Other Purposes, Republic Act No. 10606 (2013); An Act Providing for the Rehabilitation, Self-Development and Self-Reliance of Disabled Persons and Their Integration into the Mainstream of Society and for Other Purposes [Magna Carta for Disabled Persons], Republic Act No. 7277 (1992); & An Act Instituting Universal Health Care for all Filipinos, Prescribing Reforms in the Health Care System, and Appropriating Funds Therefor [Universal Health Care Act], Republic Act No. 11223 (2019).
99. See Lian Buan, *Expiring Meds, Lack of Infra Derail Duterte’s Universal Health Care Law*, RAPPLER, July 26, 2019, available at <https://rappler.com/nation/expiring-medicines-lack-infrastructure-derail-universal-health-care-law> (last accessed Aug. 15, 2020); 3 Out of 10 Health Care Facilities in the Philippines Lack Access to Clean Toilets (Joint World Health Organization and United Nations Children’s Fund News Release, Apr. 4, 2019), available at <https://www.who.int/philippines/news/detail/04-04-2019-3-out-of-10-health-care-facilities-in-the-philippines-lack-access-to-clean-toilets> (last accessed Aug. 15, 2020); & Elijah Felice Rosales, *PHL Competitiveness Falls on Poor Health, Infrastructure*, BUS. MIRROR, Oct. 9, 2019, available at <https://businessmirror.com.ph/2019/10/09/phl-competitiveness-falls-on-poor-health-infrastructure> (last accessed Aug. 15, 2020).

For these two aforementioned social services (i.e., access to healthcare and housing), it has been said that —

Although several institutions have been established to address inequalities in the delivery of housing and healthcare services, problems still exist in implementation (e.g.,] budgetary constraints and lack of coordination with affiliated agencies and local governments). As a result, the targeted beneficiaries of these institutions face difficulties in accessing these services, indicating only thin compliance with respect to constitutional provisions on the right to healthcare and housing.¹⁰⁰

Meanwhile, Congress has passed numerous laws promoting and protecting women's rights, consistent with the Constitutional edict related thereto.¹⁰¹ Despite the presence of these laws protecting women and their

100. ATIENZA, ET AL., *supra* note 95, at 42.

101. The constitutional provision paved the way for various pieces of landmark legislation enacted by Congress since the 1990s, including The Magna Carta of Women passed in 2009 and the Safe Spaces Act passed in 2019. *Id.* at 24. *See, e.g.,* An Act Strengthening the Prohibition on Discrimination Against Women with Respect to Terms and Conditions of Employment, Amending for the Purpose Article One Hundred Thirty-Five of the Labor Code, as Amended, Republic Act No. 6725 (1989); An Act to Declare March Eight of Every Year as a Working Special Holiday to be Known as National Women's Day, Republic Act No. 6949 (1990); An Act Promoting the Integration of Women as Full and Equal Partners of Men in Development and Nation Building and for Other Purposes [Women in Development and Nation Building Act], Republic Act No. 7192 (1992); An Act Declaring Sexual Harassment Unlawful in the Employment, Education or Training Environment, and for Other Purposes [Anti-Sexual Harassment Act of 1995], Republic Act No. 7877 (1995); An Act Providing Assistance to Women Engaging in Micro and Cottage Business Enterprises, and for Other Purposes, Republic Act No. 7882 (1995); An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime Against Persons, Amending for the Purpose Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code, and for Other Purposes [The Anti-Rape Law of 1997], Republic Act No. 8353 (1997); An Act Providing Assistance and Protection for Rape Victims, Establishing for the Purpose a Rape Crisis Center in Every Province and City, Authorizing the Appropriation of Funds Therefor, and for Other Purposes [Rape Victim Assistance and Protection Act of 1998], Republic Act No. 8505 (1998); An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes [Anti-Violence Against Women and Their Children Act of 2004], Republic Act No. 9262 (2004); An Act Providing for the Magna Carta of Women [The Magna Carta of Women], Republic Act No. 9710 (2009); & An Act Increasing

rights, insofar as the Constitution is concerned, “[t]here is [] thin compliance in the advancement of women’s rights” considering that “they remain one of the vulnerable sectors in the country.”¹⁰² In addition, a 2018 publication by the Philippine Institute for Development Studies observes that, even if there are these landmark laws, “women still have to hurdle numerous challenges, such as gendered division of labor, violence, and human trafficking[.]”¹⁰³

Insofar as peoples’ organizations are concerned, several pieces of legislation have been enacted to promote the rights and roles of these organizations.¹⁰⁴ In particular, the Local Government Code currently provides for peoples’ organizations as well as non-governmental organizations to be represented in the regional and local councils while the

the Maternity Leave Period to One Hundred Five (105) Days for Female Workers With an Option to Extend for an Additional Thirty (30) Days Without Pay, and Granting an Additional Fifteen (15) Days for Solo Mothers, and for Other Purposes [105-Day Expanded Maternity Leave Law], Republic Act No. 11210 (2019); & An Act Defining Gender-Based Sexual Harassment in Streets, Public Spaces, Online, Workplaces, and Educational or Training Institutions, Providing Protective Measures and Prescribing Penalties Therefor [Safe Spaces Act], Republic Act No. 11313 (2019).

102. ATIENZA, ET AL., *supra* note 95, at 42.

103. *PH Laws on Women Lack Teeth*, PHIL. INST. FOR DEV. STUD.: DEV. RESEARCH NEWS, Jan.–Mar. 2018, available at <https://think-asia.org/bitstream/handle/11540/8410/pidsdm18-1.pdf> (last accessed Aug. 15, 2020).

104. According to a 2016 report, noteworthy pieces of legislation that institutionalize the role and participation of civil society organizations, which include people’s organizations, are the Local Government Code of 1991 that “mandates the membership of [civil service organizations] in different local government [] special bodies,” and the Social Reform and Poverty Alleviation Act which established the National Anti-Poverty Commission, “with half of its membership coming from [civil service organizations] of [] [14] sectors (e.g.,] farmers, fishers, workers, women).” Caucus of Development NGO Networks, Assessment of the Enabling Environment for Civil Society Organizations in the Philippines (Sept. 2016) at 11, available at https://www.civicus.org/images/EENA_Philippines_En.pdf (last accessed Aug. 15, 2020) (citing An Act Providing for a Local Government Code of 1991 [LOCAL GOV’T CODE], Republic Act No. 7160 (1991) & An Act Institutionalizing the Social Reform and Poverty Alleviation Program, Creating for the Purpose the National Anti-Poverty Commission, Defining its Powers and Functions, and for Other Purposes [Social Reform and Poverty Alleviation Act], Republic Act No. 8425 (1998)).

qualifications for such selection remain unclear; however, “except at the local (provincial and municipal) levels, there is no law providing a clear-cut mechanism for [peoples’ organization] and [non-governmental organization] participation in decision-making.”¹⁰⁵

Overall, according to an independent report by the International Institute for Democracy and Electoral Assistance and the University of the Philippines Center for Integrative and Development Studies published in 2020 —

The implementation of the constitutional provisions on social justice ... is yet to be fully realized. Some provisions require implementing laws, which Congress has yet to legislate. Although there are those that already have implementing laws, the actual implementation by the executive department is wanting, such as those in the area of [labor], agrarian reform, housing and urban settlements, and human rights.

More than 30 years since its adoption, many of the promises of the Constitution have yet to be realized. Partly to blame is the nature of Philippine politics, which are [centered] on families and ties between patron-politicians and client-subjects Equality remains an area of contention, especially in relation to questions of rights and privileges.¹⁰⁶

To say the least, the Constitution’s vision of a Philippine society that upholds social justice remains just that, a vision, three decades after the promulgation of the 1987 Constitution. Certainly, there is still much left to be desired. It is under this backdrop that this Article endeavors to scrutinize these social justice provisions within the confines of the Constitution, a fundamental document whose worth and dynamism are highlighted by decisions of the Supreme Court. Through a constitutional lens, this Article intends to explore the possibility of the social justice provisions of Article XIII becoming self-executory in character, thereby strengthening the “heart” of the Constitution to make social justice a reality.

105. Maria Luisa Canieso-Doronila, *The Philippines*, 42 INT’L REV. EDUC. 109, 110 (1996).

106. ATIENZA, ET AL., *supra* note 95, at 48 (citing Jemma Purdey, et al., *Political Dynasties in the Philippines: Persistent Patterns, Perennial Problems*, 24 S. E. ASIA RESEARCH 328 (2016); Joel Rocamora, *Philippine Political Parties, Electoral System, and Political Reform*, 1 PH. INT’L REV. 1 (1998); & DAVID WURFEL, *FILIPINO POLITICS: DEVELOPMENT AND DECAY* (1988)).

C. *The Crux of the Matter*

The irrefutable fact is that Article XIII, at the outset, entrusts to Congress the constitutional duty of laying down the mechanisms necessary to operationalize Article XIII and to realize its concomitant goals. The first sentence of Section 1 of Article XIII is undoubtedly explicit in this regard —

The *Congress* shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.¹⁰⁷

Section 2 of the same Article expounds on this mandate, stating that “[t]he promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance.”¹⁰⁸ In the subsequent provisions, the Article touches on different sectors and groups: labor,¹⁰⁹ agrarian and natural resources reform,¹¹⁰ urban land reform and housing,¹¹¹ health,¹¹² women,¹¹³ and the role and rights of people’s organizations.¹¹⁴

The imperfection of the Constitution, particularly that of Article XIII, is succinctly summed up by Fr. Bernas, one of the commissioners of the 1986 Constitutional Commission, as he explained his vote for the approval on Third Reading of the draft Constitution, *viz.* —

As to the socio-economic goals we have formulated, what stands out is that necessarily they are not self-executory. To put them into effect, we have to depend on Congress. Unfortunately, however, we have, by a narrow vote of 23 to 22, decided to entrust attainment of these goals to a bicameral Congress structured in a manner that *insulates its membership from direct pressures coming from the masses who are crying for socio-economic relief*. Those who need representation most will be underrepresented. Thus, the road ahead is long, perhaps heavily mined, and barricaded by formidable obstacles. Nevertheless, we must begin. We cannot wait for a perfect constitution. No perfect constitution will ever come. *What we have, aside*

107. PHIL. CONST. art. XIII, § 1 (emphasis supplied).

108. PHIL. CONST. art. XIII, § 2.

109. PHIL. CONST. art. XIII, § 3.

110. PHIL. CONST. art. XIII, §§ 4-8.

111. PHIL. CONST. art. XIII, §§ 9 & 10.

112. PHIL. CONST. art. XIII, §§ 11-13.

113. PHIL. CONST. art. XIII, § 14.

114. PHIL. CONST. art. XIII, §§ 15 & 16.

*from its verbosity, is substantively defective, but it is also outstanding in many ways and satisfactory in others.*¹¹⁵

Fr. Bernas ultimately voted in favor of the approval of the draft Constitution, “especially for the sake of constitutional normalization,” among other reasons.¹¹⁶ With 44 votes in favor and two against¹¹⁷ the approval on Third Reading of the draft Philippine Constitution, the said draft was finally approved by the 1986 Constitutional Commission and later ratified by the Filipino electorate in February the year after.¹¹⁸ Fr. Bernas’ fears for the future then translate to the experience of Filipinos today, more than three decades since this Constitution was ratified in 1987.

Thus, while the inclusion of these social justice provisions are certainly laudable, Article XIII, no matter how much hope and promise it may have offered to those at the margins, will only be as strong or as weak as the legislation passed by Congress to safeguard their rights.

Absent any provision in the Constitution providing a timeframe for Congress to provide for enabling laws for Article XIII to give effect to the said Article’s aims to the fullest extent possible, only time will tell when, or if, Congress will fully understand and faithfully act on its constitutional duty laid down in Section 1 of Article XIII.

Be that as it may, the Authors are of the view that elevating the social justice provisions of Article XIII to the level of being self-executory in character will allow the marginalized and oppressed to possess guaranteed judicially enforceable rights by the Constitution itself.

III. STRENGTHENING THE HEART OF THE CONSTITUTION

[S]ocial justice in the Constitution is principally the embodiment of the principle that those who have less in life should have more in law. It commands a legal bias in favor of those who are underprivileged.

— Fr. Joaquin G. Bernas, S.J.¹¹⁹

115. 5 RECORD, PHIL. CONST., NO. 106, at 914 (emphases supplied).

116. *Id.* at 918.

117. Commissioners Suarez and Tadeo voted against the approval. *Id.* at 934-36 & 938-40.

118. *Id.* at 945-46.

119. BERNAS, *supra* note 4, at 1237.

A. *The Supreme Court's Attitude Towards the Social Justice Provisions of Article XIII*

Since the promulgation of the 1987 Constitution, the Supreme Court has been inclined to use the social justice provisions of Article XIII of the Constitution as one of its many legal bases to justify the Court's assertion that it is the public policy of the State to reduce or even eliminate social inequality and discrimination among marginalized groups. Ultimately, the *ratio decidendi* of the Court's decisions hinged on the statutory legal basis, or the lack thereof, for the rights at issue in the cases.

For instance, in the 1989 case of *Eagle Security Agency v. NLR*,¹²⁰ the Supreme Court cited Section 3 of Article XIII as one of its bases to demonstrate that the protection of workers is guaranteed under the Constitution.¹²¹ At issue was the "liability of the principal and contractor for the payment of the minimum wage[s] and cost of living allowance increases to security guards under [several wage orders.]"¹²² In arriving at its decision finding the principal and contractor solidarily liable, the Court anchored its decision mainly on the Labor Code, the statutory law that chiefly operationalizes Section 3 of Article XIII, thus —

This joint and several liability of the contractor and the principal is mandated by the Labor Code to assure compliance of the provisions therein including the statutory minimum wage [(Article 99 [of the] Labor Code)]. The contractor is made liable by virtue of his status as direct employer. The principal, on the other hand, is made the indirect employer of the contractor's employees for purposes of paying the employees their wages should the contractor be unable to pay them. This joint and several liability facilitates, if not guarantees, payment of the workers' performance of any work, task, job[,] or project, thus giving the workers ample protection as mandated by the 1987 Constitution [(See Article II[,] Sec[ti]on] 18 and Article XIII[,] Sec[ti]on] 3)].¹²³

The case of *Social Security System Employees Association (SSSEA) v. Court of Appeals*¹²⁴ decided months later that same year saw the Court deny the employees of the Social Security System (SSS) their right to strike and point to Congress to enact legislation granting government employees, which

120. *Eagle Security Agency, Inc. v. NLR*, 173 SCRA 479 (1989).

121. *Id.* at 485.

122. *Id.* at 481.

123. *Id.* at 485.

124. *Social Security System Employees Association (SSSEA) v. Court of Appeals*, 175 SCRA 686 (1989).

included employees of SSS as a government-controlled corporation with an original charter, the right to strike,¹²⁵ reasoning, *inter alia*, that

[a]t present, in the absence of any legislation allowing government employees to strike, recognizing their right to do so, or regulating the exercise of the right, they are prohibited from striking, by express provision of Memorandum Circular No. 6 and as implied in [Executive Order] No. 180.¹²⁶

In the 1997 case of *Jacinto v. Court of Appeals*,¹²⁷ the Court, “while [] recogniz[ing] and appreciat[ing] the toil and hardship of [the country’s] public school teachers in fulfilling the [S]tate’s responsibility of educating [the nation’s] children, and realiz[ing] their inadequately addressed plight as compared to other professionals,”¹²⁸ ultimately ruled against the public school teachers who were adjudged to have improperly exercised their right to peaceful assembly and to petition for redress of grievances.¹²⁹ In ruling against the public school teachers and citing, among others, Section 3 of Article XIII,¹³⁰ the Court implied that their mass action actually was tantamount to a strike, observing that

[a]lthough the Constitution vests in them the right to organize, to assemble peaceably[,] and to petition the government for a redress of grievances, there is no like express provision granting them the right to strike. Rather, the constitutional grant of the right to strike is restrained by the proviso that its exercise shall be done *in accordance with law*.¹³¹

In the case of *International School Alliance of Educators v. Quisumbing*¹³² decided in 2000, locally-hired teachers of an international school in the Philippines demanded “equal pay for equal work” upon observing that their foreign-hired counterparts were being paid more.¹³³ In ruling in favor of the locally-hired teachers, the Court cited Section 1 of Article XIII of the Constitution and the Labor Code, among others, to conclude that

125. *Id.* at 696.

126. *Id.*

127. *Jacinto v. Court of Appeals*, 281 SCRA 657 (1997).

128. *Id.* at 661.

129. *Id.*

130. *Id.* at 667.

131. *Id.* at 661 (emphasis supplied).

132. *International School Alliance of Educators v. Quisumbing*, 333 SCRA 13 (2000).

133. *Id.* at 16.

public policy abhors inequality and discrimination ... [considering that the] Constitution and laws reflect the policy against these evils. The Constitution in the Article on Social Justice and Human Rights exhorts Congress to ‘give highest priority to the enactment of measures that protect and enhance the right of all people to human dignity, reduce social, economic, and political inequalities.’¹³⁴

In arriving at its conclusion, the Court likewise cited Section 3 of Article XIII in its decision, emphasizing that “[t]he Constitution specifically provides that labor is entitled to ‘humane conditions of work.’ These conditions are not restricted to the physical workplace — the factory, the office[,] or the field — but include as well the manner by which employers treat their employees.”¹³⁵ Considering the various pieces of domestic and international legislation, the Court ultimately ruled,

the point-of-hire classification employed by respondent [International School, Inc.] to justify the distinction in the salary rates of foreign-hires and local hires [is] an invalid classification. There is no reasonable distinction between the services rendered by foreign-hires and local-hires. The practice of the [respondent International School, Inc.] of according higher salaries to foreign-hires contravenes *public policy* and, certainly, does not deserve the sympathy of this Court.¹³⁶

Meanwhile, in *Standard Chartered Bank Employees Union (NUBE) v. Confesor*¹³⁷ decided in 2004, the Court cited, by way of footnote, Section 3 of Article XIII to emphasize the “mandate [of] afford[ing] protection to labor,”¹³⁸ and ruled, primarily on the basis of the Labor Code, that the “[unfair labor practice] charge was merely an afterthought.”¹³⁹

Subsequent court decisions pertaining to labor have likewise used Section 3 of Article XIII to simply advance the argument that the Constitution guarantees protection to labor, but nevertheless definitively ruled on the cases based on statutes passed by Congress. The landmark ruling in the case of *Agabon v. National Labor Relations Commission*¹⁴⁰ likewise

134. *Id.* at 19–20 (citing PHIL. CONST. art. XIII, § 1) (emphasis supplied).

135. *International School Alliance of Educators*, 333 SCRA at 21 (citing PHIL. CONST. art. XIII, § 3).

136. *International School Alliance of Educators*, 333 SCRA at 25 (emphasis supplied).

137. *Standard Chartered Bank Employees Union (NUBE) v. Confesor*, 432 SCRA 308 (2004).

138. *Id.* at 322 n. 47.

139. *Id.* at 324.

140. *Agabon v. National Labor Relations Commission*, 442 SCRA 573 (2004).

promulgated in 2004 saw the Court implicitly alluding to Section 3, Article XIII when it held that

[t]he constitutional *policy* to provide full protection to labor is not meant to be a sword to oppress employers. The commitment of this Court to the cause of labor does not prevent us from sustaining the employer when it is in the right, as in this case. Certainly, an employer should not be compelled to pay employees for work not actually performed and[,] in fact[,] abandoned.¹⁴¹

The Court in that case laid down the so-called *Agabon* doctrine which provides that in case the dismissal of an employee was for just cause, but procedural due process was not observed, the dismissal should nevertheless be upheld with the employer still being held liable for his or her failure to comply with procedural due process.¹⁴²

A decade later in the 2014 case of *Diamond Taxi v. Llamas, Jr.*,¹⁴³ the Court cited Section 3 of Article XIII, together with Section 18 of Article II, of the Constitution and the Labor Code to explain that it is the State's policy to protect labor¹⁴⁴ — “the State is bound to protect labor and assure the rights of workers to security of tenure — tenurial security being a preferred constitutional right that, under these fundamental guidelines, technical infirmities in labor pleadings cannot defeat.”¹⁴⁵

The case involved Felipe Llamas, Jr., a taxi driver of Diamond Taxi, who filed a complaint for illegal dismissal against his employer.¹⁴⁶ The Court ruled that the National Labor Relations Commission committed grave abuse of discretion when it dismissed Llamas, Jr.'s appeal on a mere technicality,

141. *Id.* at 614 (citing *Capili v. National Labor Relations Commission*, 270 SCRA 488, 495 (1997)) (emphasis supplied).

142. *Agabon*, 442 SCRA at 616.

143. *Diamond Taxi v. Llamas, Jr.* 719 SCRA 10 (2014).

144. *Id.* at 25 n. 29.

145. *Id.* (citing PHIL. CONST. art. II, § 18 & art. XIII, § 3; 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 Ensure Industrial Peace Based on Social Justice [LABOR CODE], Presidential Decree No. 442, art. 4 (1974) (as amended); & *Spic N' Span Services Corporation v. Paje*, 629 SCRA 261, 270 (2010)).

146. *Diamond Taxi*, 719 SCRA at 14.

which was his failure to attach the required certificate of non-forum shopping.¹⁴⁷

As for agrarian reform cases, the Supreme Court has ruled in the same way in that the primary legal basis that settles a case is a statutory one. In the 1989 case of *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*,¹⁴⁸ the Court stated —

The argument of some of the petitioners that [Proclamation] No. 131 and [Executive Order] No. 229 should be invalidated because they do not provide for retention limits as required by Article XIII, Section 4 of the Constitution is no longer tenable. [Republic Act] No. 6657 does provide for such limits now in Section 6 of the law, which in fact is one of its most controversial provisions.¹⁴⁹

In the 1990 case of *Luz Farms v. Secretary of the Department of Agrarian Reform*,¹⁵⁰ at issue was the constitutionality of certain provisions of Republic Act No. 6657 or the Comprehensive Agrarian Reform Law of 1998.¹⁵¹ In this case, since constitutionality of a law was at issue, the Court, resorting to constitutional construction, looked into the deliberations of the 1986 Constitutional Commission to ascertain the meaning of the word “agricultural”¹⁵² to conclude that

[i]t is evident from the foregoing discussion that Section [2] of [Republic Act No.] 6657 which includes ‘private agricultural lands devoted to commercial livestock, poultry[,] and swine raising’ in the definition of ‘commercial farms’ is invalid, to the extent that the aforementioned agro-industrial activities are made to be covered by the agrarian reform program of the State. There is simply no reason to include livestock and poultry lands in the coverage of agrarian reform.¹⁵³

In *Daez v. Court of Appeals*¹⁵⁴ promulgated in 2000, the Court ruled that the heirs of Eudosa Daez “may exercise their right of retention over the

147. *Id.* at 22-26.

148. *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, 175 SCRA 343 (1989).

149. *Id.* at 368.

150. *Luz Farms v. Secretary of the Department of Agrarian Reform*, 192 SCRA 51 (1990).

151. *Id.* at 54.

152. *Id.* at 54-58.

153. *Id.* at 58.

154. *Daez v. Court of Appeals*, 325 SCRA 856 (2000).

subject [] riceland [measuring around four hectares.]”¹⁵⁵ The Court primarily based such ruling on the nature and incidents of the landowner’s right of retention as defined under Section 6 of Republic Act No. 6657 and, by way of footnote,¹⁵⁶ cited Section 4 of Article XIII when it explained —

The right of retention is a constitutionally guaranteed right, which is subject to qualification by the legislature. It serves to mitigate the effects of compulsory land acquisition by balancing the rights of the landowner and the tenant and by implementing the doctrine that social justice was not meant to perpetrate an injustice against the landowner. A retained area, as its name denotes, is land which is not supposed to anymore leave the landowner’s dominion, thus sparing the government from the inconvenience of taking land only to return it to the landowner afterwards, which would be a pointless process.¹⁵⁷

Noteworthy is the 2011 landmark case of *Hacienda Luisita, Incorporated v. Presidential Agrarian Reform Council*¹⁵⁸ where the Court did not explicitly cite Article XIII, but nevertheless cited the case of *Perez-Rosario v. Court of Appeals*¹⁵⁹ to emphasize the value of social justice —

It is an established social and economic fact that the escalation of poverty is the driving force behind the political disturbances that have in the past compromised the peace and security of the people as well as the continuity of the national order. To subdue these acute disturbances, the legislature over the course of the history of the nation passed a series of laws calculated to accelerate agrarian reform, ultimately to raise the material standards of living and eliminate discontent. Agrarian reform is a perceived solution to social instability. *The edicts of social justice found in the Constitution and the public policies that underwrite them, the extraordinary national experience, and the prevailing national consciousness, all command the great departments of government to tilt the balance in favor of the poor and underprivileged whenever reasonable doubt arises in the interpretation of the law.*¹⁶⁰

155. *Id.* at 863.

156. *Id.* at 863 n. 21.

157. *Id.* at 863–64 (citing PHIL. CONST. art. XIII, § 4; *Cabatan v. Court of Appeals*, 95 SCRA 323, 357 (1980); & *Dequito v. Llamas*, 66 SCRA 504, 510 (1975)).

158. *Hacienda Luisita, Incorporated v. Presidential Agrarian Reform Council*, 660 SCRA 525 (2011).

159. *Perez-Rosario v. Court of Appeals*, 494 SCRA 66 (2006).

160. *Hacienda Luisita, Incorporated*, 660 SCRA at 572 (citing *Perez-Rosario*, 494 SCRA at 92–93).

Such quoted statement, no matter how impassioned and convincing, unfortunately cannot serve as legal justification to resolve the matter at hand in that case.

In relation to urban land reform and housing, the case of *Reyes v. National Housing Authority*¹⁶¹ in 2003 involved petitioners who were landowners of sugarcane plantations which were expropriated by the National Housing Authority (NHA).¹⁶² They contended that the NHA violated its stated public purpose for such expropriation (i.e., for the expansion of the Dasmariñas Resettlement Project), “when it failed to relocate the squatters from the Metro Manila area, as borne out by the ocular inspection conducted by the trial court which showed that most of the expropriated properties remain unoccupied.”¹⁶³ In ruling in favor of NHA, the Court, explaining that public use “is no longer limited to traditional purposes[,]”¹⁶⁴ cited Section 9 of Article XIII to provide supplementary support to its decision, *viz.* —

[T]he Constitution itself allows the State to undertake, for the common good and in cooperation with the private sector, *a continuing program of urban land reform and housing* which will make at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centers and *resettlement areas*.¹⁶⁵

Based on the foregoing survey of the implementation of Article XIII, the trend clearly shows that the Court always resorts to statutory law as its primary legal basis for cases involving the areas of concern relating to the said Article. As a consequence, Article XIII has been repeatedly used to provide supplementary or even tangential support for the Court’s decisions. In other words, Article XIII is generally used by the Court as a mere hortatory invocation that neither adds much weight nor serves as a deciding factor upon which the Court’s decisions hinge on, save, of course, for when constitutionality of a statute is at issue.¹⁶⁶ Arguably, without the invocation of Article XIII, the Court’s decisions can still stand on their own and be adequately supported by the other legal bases.

161. *Reyes v. National Housing Authority*, 395 SCRA 494 (2003).

162. *Id.* at 497.

163. *Id.* at 500.

164. *Id.* at 501.

165. *Reyes*, 395 SCRA at 502 (citing PHIL. CONST. art. XIII, § 9).

166. *See, e.g., Luz Farms*, 192 SCRA.

In fact, there have been many Supreme Court cases over the years, involving the sectors and groups referred to in Article XIII which, nonetheless, fail to mention any provision of the same Article in such decisions, not even as *obiter dicta*.¹⁶⁷ While this may be an indication that the implementing laws, such as the Labor Code, are in place in the country's legal system to operationalize the goals set forth in Article XIII, it also shows how vastly dependent the Constitution is on the implementing statutory

¹⁶⁷ Many cases involving labor, the subject covered particularly by Section 3 of Article XIII of the Constitution, do not even cite Article XIII of the Constitution. *See, e.g.*, Republic v. Court of Appeals, 180 SCRA 428 (1989) (on the right to strike of government workers); Union of Filipino Employees v. Nestlé Philippines, Inc., 192 SCRA 396 (1990) (on the right to strike); Manila Public School Teachers Asso. v. Laguio, Jr., 200 SCRA 323 (1991) (on the right to strike); De Vera v. NLRC, 200 SCRA 439 (1991) (on illegal dismissal); Provincial Government of Camarines Norte v. Gonzales, 701 SCRA 635 (2013) (on security of tenure); & Abbott Laboratories, Philippines v. Alcaraz, 701 SCRA 682 (2013) (on security of tenure).

In addition, a line of cases involving agrarian and natural resources reform, touched upon by Sections 4 to 8 of Article XIII, has likewise failed to mention Article XIII. *See, e.g.*, Natalia Realty, Inc. v. Department of Agrarian Reform, 225 SCRA 278 (1993) (on the classification of lands and the coverage of the Comprehensive Agrarian Reform Law of 1989 or Republic Act No. 6657); Philippine Veterans Bank v. Court of Appeals, 322 SCRA 139 (2000) (on the jurisdiction of the Department of Agrarian Reform for agrarian reform cases); Bautista v. Araneta, 326 SCRA 234 (2000) (on a tenancy agreement in relation to the agrarian reform program); Corpuz v. Grospe, 333 SCRA 425 (2000) (on the transfer of land reform rights); Heirs of the Late Herman Rey Santos v. Court of Appeals, 327 SCRA 293 (2000) (on the jurisdiction of the Department of Agrarian Reform Adjudication Board); & Padunan v. Department of Agrarian Reform Adjudication Board, 396 SCRA 196 (2003) (on the jurisdiction and authority of Department of Agrarian Reform Adjudication Board and the Secretary of the Department of Agrarian Reform).

On urban land reform and housing, as found in Sections 9 and 10 of Article XIII, many cases related thereto do not cite the said Article of the Constitution. *See, e.g.*, Macasiano v. National Housing Authority, 224 SCRA 236 (1993) (on the alleged unconstitutionality of the Urban Development and Housing Act of 1992 or Republic Act No. 7279); Jumawan v. Eviota, 234 SCRA 524 (1994) (on the Anti-Squatting Law or Presidential Decree No. 772 which was still effective at that time); Filstream International Incorporated v. Court of Appeals, 284 SCRA 716 (1998) (on expropriation for urban land reform and housing); & Dee v. Court of Appeals, 325 SCRA 466 (2000) (on land tenancy and urban land reform).

law, or the lack thereof, with the buck stopping with Congress to craft these laws.

Thus, what is seemingly apparent is that the social justice provisions of Article XIII of the Constitution are, at best, provisions which the Supreme Court may conveniently cite, if the Court so desires. Otherwise stated, the Court's invocation of social justice provisions will not definitively settle a case considering that the outcome primarily hinges on statutory laws, except of course when constitutionality is at issue.

B. Jurisprudential Distinction of "Self-Executing" Constitutional Provisions

With the Supreme Court being the "final interpreter of the meaning and intent of the Constitution,"¹⁶⁸ the Court has laid down the doctrine characterizing the distinction between self-executing provisions of the Constitution from those which are not self-executing in the 1997 case of *Manila Prince Hotel v. Government Service Insurance System*.¹⁶⁹

Manila Prince Hotel provided the jurisprudential test to determine if a constitutional provision is self-executory, i.e., "if the nature and extent of the right conferred and the liability imposed are fixed by the [C]onstitution itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action."¹⁷⁰ In addition, the same case qualified such pronouncement, stating that "[a] constitutional provision may be self-executing in one part and non-self-executing in another."¹⁷¹ Elaborating on the implications of self-executing provisions, the Court explained —

In self-executing constitutional provisions, the legislature may still enact legislation to facilitate the exercise of powers directly granted by the [C]onstitution, further the operation of such a provision, prescribe a practice to be used for its enforcement, provide a convenient remedy for the protection of the rights secured or the determination thereof, or place reasonable safeguards around the exercise of the right. The mere fact that legislation may supplement and add to or prescribe a penalty for the violation of a self-executing constitutional provision does not render such a

168. *Manila Electric Company v. Quisumbing*, 302 SCRA 173, 191 (1999).

169. *Manila Prince Hotel v. Government Service Insurance System*, 267 SCRA 408 (1997).

170. *Manila Prince Hotel*, 267 SCRA at 431 (citing 16 AM. JUR. 2D *Constitutional Law* § 281).

171. *Manila Prince Hotel*, 267 SCRA at 434 (citing *State ex rel. Miller v. O'Malley*, 117 S.W.2d 319, 323 (1938) (U.S.)).

provision ineffective in the absence of such legislation. The omission from a constitution of any express provision for a remedy for enforcing a right or liability is not necessarily an indication that it was not intended to be self-executing. The rule is that a self-executing provision of the [C]onstitution does not necessarily exhaust legislative power on the subject, but any legislation must be in harmony with the [C]onstitution, further the exercise of constitutional right[,] and make it more available. Subsequent legislation[,] however[,] does not necessarily mean that the subject constitutional provision is not, by itself, fully enforceable.¹⁷²

Likewise, Justice Reynato S. Puno, who dissented in *Manila Prince Hotel*, nonetheless agreed that the provisions contained in the Constitution are, as a general rule, “self-executing [and do not require] future legislation for their enforcement. ... For if they are not treated as self-executing, the mandate of the fundamental law ... can be easily nullified by the inaction of Congress.”¹⁷³ Carving exceptions to such general rule, the Supreme Court has categorically declared certain constitutional provisions as not self-executory in character.¹⁷⁴ As a consequence, implementing legislation is necessary in order to fully realize the aims of the constitutional provisions which are not self-executory.¹⁷⁵

In addition, the *ponencia* in *Manila Prince Hotel* expounded on the rule, even, at one point, borrowing the words of Justice Isagani A. Cruz who reflected on the dire consequences when one rejects the general rule that the provisions of the Constitution are self-executing, thus —

[U]nless it is expressly provided that a legislative act is necessary to enforce a constitutional mandate, the presumption now is that all provisions of the [C]onstitution are self-executing. If the constitutional provisions are treated as requiring legislation instead of self-executing, the legislature would have the power to ignore and practically nullify the mandate of the fundamental law. This can be cataclysmic. That is why the prevailing view is, as it has always been, that —

172. *Manila Prince Hotel*, 267 SCRA at 433 (citing 16 AM. JUR. 2D *Constitutional Law* §§ 283-284).

173. *Id.* at 473 (J. Puno, dissenting opinion). The same portion of Justice Reynato S. Puno’s dissenting opinion was subsequently cited in the main opinions of the Court in *Tondo Medical Center Employees Association v. Court of Appeals* and *Gamboa v. Teves*. *Tondo Medical Center Employees Association v. Court of Appeals*, 527 SCRA 746, 763-64 (2007) & *Gamboa v. Teves*, 652 SCRA 690, 739-40 (2011).

174. *Tondo Medical Center Employees Association*, 527 SCRA at 762.

175. *Id.* at 764.

[“in 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.”]¹⁷⁶

In ruling that petitioner Manila Prince Hotel Corporation, a Filipino corporation, should be allowed to match the winning bid of Renong Berhad, a Malaysian company, for the sale of shares of Manila Hotel Corporation,¹⁷⁷ the Court declared the second Paragraph of Section 10 of Article XII to be self-executory —

Quite apparently, Sec[ti]on 10, second [paragraph], of Art[icle] XII is couched in such a way as not to make it appear that it is non[-]self-executing but simply for purposes of style. But, certainly, the legislature is not precluded from enacting further laws to enforce the constitutional provision so long as the contemplated statute squares with the Constitution. Minor details may be left to the legislature without impairing the self[-]executing nature of constitutional provisions.¹⁷⁸

In a subsequent case, the second Paragraph in Section 2 of Article XVII, which reads, “[t]he Congress shall provide for the implementation of the exercise of this right[.]”¹⁷⁹ made the Court in *Santiago v. Commission on Elections*¹⁸⁰ conclude, consistent with the doctrine in *Manila Prince Hotel*, that the said Paragraph providing for a system of initiative is not self-executory.¹⁸¹ In that case, the Court quoted constitutionalist Fr. Bernas and thus held —

‘Without implementing legislation Section 2 cannot operate. Thus, although this mode of amending the Constitution is a mode of amendment which bypasses congressional action, in the last analysis it still is dependent on congressional action.’

176. *Manila Prince Hotel*, 267 SCRA at 431-32 (citing 16 AM. JUR. 2D *Constitutional Law* § 281 & ISAGANI A. CRUZ, CONSTITUTIONAL LAW 8-10 (1993)).

177. *Manila Prince Hotel*, 267 SCRA at 444-45.

178. *Id.* at 433.

179. PHIL. CONST. art. XVII, § 2, para. 2.

180. *Santiago v. Commission on Elections*, 270 SCRA 106 (1997).

181. *Id.* at 136.

Bluntly stated, the right of the people to directly propose amendments to the Constitution through the system of initiative would remain entombed in the cold niche of the Constitution until Congress provides for its implementation. Stated otherwise, while the Constitution has recognized or granted that right, the people cannot exercise it if Congress, for whatever reason, does not provide for its implementation.¹⁸²

The case of *Bagong Bayani-OFW Labor Party v. Commission on Elections*¹⁸³ decided in 2001 is likewise instructive when it ruled that Section 5, Article VI of the Constitution is not self-executory. The Court observed that provisions “interspersed with phrases like ‘in accordance with law’ or ‘as may be provided by law[] [means that] it was thus up to Congress to sculpt in granite the lofty objective of the Constitution. Hence, [Republic Act No.] 7941 [or the Party-List System Act] was enacted.”¹⁸⁴ Thus, essentially, a constitutional provision, or a part thereof,¹⁸⁵ which has phrases such as “in accordance with law,” “as may be provided by law,” or others of similar import certainly indicate that such a provision is not self-executory and requires implementing legislation.

To date, various constitutional provisions which are not self-executory still have no enabling law.¹⁸⁶ For instance, there is still no enabling law enacted by Congress properly ensuring the people’s access to information as part of their right to information laid down under Section 7 of Article II.¹⁸⁷

182. *Id.* (citing JOAQUIN G. BERNAS, S.J., *THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 571 (1988)).

183. *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*, 359 SCRA 698 (2001).

184. *Id.* at 718.

185. *Manila Prince Hotel*, 267 SCRA at 434 (citing *State ex rel. Miller*, 117 S.W.2d at 323) (“A constitutional provision may be self-executing in one part and non-self-executing in another.”).

186. In 2011, for instance, it was reported that a total of 82 of the 130 provisions of the Constitution have no enabling law. Marya Salamat, Groups say Constitution needs enabling laws, not amendments, *available at* <https://www.bulatlat.com/2011/10/13/groups-say-constitution-needs-enabling-laws-not-amendments> (last accessed Aug. 15, 2020).

187. Although there is still no law enacted by Congress, notably, Executive Order No. 2, Series of 2016 was issued in 23 July 2016 laying down a policy of transparency and accountability under the Executive branch and setting guidelines for seeking information on the part of citizens. Office of the President, Operationalizing in the Executive Branch the People’s Constitutional Right to Information and the State Policies to Full Public Disclosure and

Moreover, a law defining and prohibiting political dynasties implementing the State policy set forth in Section 26 of Article II remains inexistence.¹⁸⁸ In addition, to fully operationalize Section 9 of Article X, there is no law providing for the manner of electing local sectoral representatives, except for indigenous cultural minorities whose sector has an enabling law.¹⁸⁹ As discussed previously, there is likewise no implementing law covering the system of people's initiative to amend the Constitution, contrary to the clear duty of Congress categorically spelled out in Section 2 of Article XVII.¹⁹⁰

Moreover, as it stands, there seems to be no legal remedy to compel Congress to pass enabling legislation. In the case of *Aleandrino v. Quezon*¹⁹¹ decided about a century ago, the Court hinted that it cannot dictate Congress to pass laws by way of a petition for mandamus —

Mandamus will not lie against the legislative body, its members, or its officers, to compel the performance of duties purely legislative in their character which therefore pertain to their legislative functions and over which they have exclusive control. The courts cannot dictate action in this respect without a gross usurpation of power.¹⁹²

More than half a century after the *Aleandrino* case, the Court in 2002 in *Montesclaros v. Commission on Elections*,¹⁹³ dismissed a petition for mandamus seeking to enact a law to allow petitioners regardless of age to participate in

Transparency in the Public Service and Providing Guidelines Therefor, Executive Order No. 2, Series of 2016 [E.O. No. 2, s. 2016] (July 23, 2016).

188. See Louis 'Barok' C. Biraogo v. Commission on Elections, G.R. No. 203603 (Notice), Jan. 8, 2013; An Act Prohibiting the Establishment of Political Dynasties, H.B. No. 3149, explan. n., 18th Cong., 1st Reg. Sess. (2019); & Loreben Tuquero, *What are the IATF's proposed amendments to the 1987 Constitution?*, RAPPLER, Feb. 19, 2020, available at <https://www.rappler.com/newsbreak/iq/252122-iatf-proposed-amendments-1987-philippine-constitution> (last accessed Aug. 15, 2020).

189. Department of Interior and Local Government, Legal Opinion No. 18, Series of 2016 [DILG Legal Opinion No. 18, s. 2016] (Apr. 27, 2016) & An Act Providing for the Manner and Date of Election of Sectoral Representatives to the Local Sanggunians and for Other Purposes, H.B. No. 279, explan. n., 16th Cong., 1st Reg. Sess. (2013).

190. *Santiago*, 270 SCRA at 145-54. See also *Lambino v. Commission on Elections*, 505 SCRA 160, 322-23 (2006) (J. Puno, dissenting opinion).

191. *Aleandrino v. Quezon*, 46 Phil. 83 (1924).

192. *Id.* at 88-89.

193. *Montesclaros v. Commission on Elections*, 384 SCRA 269 (2002).

the Sangguniang Kabataan (SK) elections.¹⁹⁴ In dismissing the petition, the Court, through Justice Antonio T. Carpio, ratiocinated —

Under the separation of powers, the Court cannot restrain Congress from passing any law, or from setting into motion the legislative mill according to its internal rules. Thus, the following acts of Congress in the exercise of its legislative powers are not subject to judicial restraint: the filing of bills by members of Congress, the approval of bills by each chamber of Congress, the reconciliation by the Bicameral Committee of approved bills, and the eventual approval into law of the reconciled bills by each chamber of Congress. Absent a clear violation of specific constitutional limitations or of constitutional rights of private parties, the Court cannot exercise its power of judicial review over the internal processes or procedures of Congress.

*The Court has also no power to dictate to Congress the object or subject of bills that Congress should enact into law. The judicial power to review the constitutionality of laws does not include the power to prescribe to Congress what laws to enact. The Court has no power to compel Congress by mandamus to enact a law allowing petitioners, regardless of their age, to vote and be voted for in the [15 July 2002] SK elections. To do so would destroy the delicate system of checks and balances finely crafted by the Constitution for the three co-equal, coordinate[,] and independent branches of government.*¹⁹⁵

Moreover, the Court in 2013 has previously dismissed a petition for mandamus to implement the ban on political dynasties as Section 26, Article II of the Constitution, reasoning that such provision “is simply a statement of a general principle which further requires a law passed by Congress to define and give effect thereto.”¹⁹⁶ Two more petitions for mandamus asking the Supreme Court to compel Congress to pass a law prohibiting political dynasties were likewise denied by the Court.¹⁹⁷

194. *Id.* at 287.

195. *Id.* at 281–82 (citing *Santiago v. Guingona*, 298 SCRA 756 (1998); *Arroyo v. De Venecia*, 277 SCRA 268 (1997); & *Tolentino v. Secretary of Finance*, 249 SCRA 628 (1995)) (emphases supplied).

196. *Biraogo*, G.R. No. 203603 (Notice) (citing *Basco v. Phil. Amusements and Gaming Corporation*, 274 Phil. 323, 343 (1991)). See Christine O. Avendaño, *SC dismisses petition to ban political dynasties*, PHIL. DAILY INQ., Jan. 9, 2013, available at <https://newsinfo.inquirer.net/337689/sc-dismisses-petition-to-ban-political-dynasties> (last accessed Aug. 15, 2020).

197. Mark Merueñas, *It's final: SC won't compel Congress to enact anti-political dynasty law*, GMA NEWS, Mar. 5, 2013, available at <https://www.gmanetwork.com/news/news/nation/297800/it-s-final-sc-won-t-compel-congress-to-enact-anti-political-dynasty-law/story> (last accessed Aug. 15, 2020).

Thus, considering the foregoing, a petition for mandamus compelling Congress to enact an enabling law for a non-self-executing provision of the Constitution does not seem to be a valid remedy as the Supreme Court currently sees it.

In sum, what these indicate is that provisions in the Constitution which are not self-executing, in conformity with the doctrine laid down in *Manila Prince Hotel* are, in the final analysis, wholly dependent on Congress for such provisions to be given effect. More than 30 years since the promulgation of the 1987 Constitution, Congress has been displaying an utter lack of urgency in this regard. This highlights the risk that constitutional provisions, which have been adjudged by the Supreme Court as not self-executing or will be adjudged as such in the future, may not even be given life at all if Congress perpetually does not pass any legislation.

C. Social Justice Provisions of Article XIII: Self-Executing?

As early as the 1935 Constitution, the Supreme Court has referred to it as a “living constitution.”¹⁹⁸ Calling a constitution of a State a “living constitution” entails, as one legal scholar puts it, that the “rights and freedoms set out ... are not ‘frozen’ in content[] [but] must [rather] ‘remain susceptible to evolve in the future.’”¹⁹⁹ Thus, it is in this context that this Article endeavors to strengthen the social justice provisions of Article XIII, within the confines of the current constitutional framework and in light of these changing times. The Authors opine that Article XIII provides an opportunity to truly achieve the noble aims of social justice contained therein by revisiting its origins, reconsidering its legal significance, and reinforcing its potential within the constitutional framework.

Consistent with the doctrine in *Manila Prince Hotel*, Article II of the 1987 Constitution, by its very title “Declaration of Principles and State Policies,” has been held by the Court in the 1997 case of *Tañada v. Angara*²⁰⁰ as “not intended to be self-executing principles ready for enforcement through the courts. They are used by the judiciary as aids or as guides in the exercise of its power of judicial review, and by the legislature in its enactment of

198. *Poe-Llamanzares v. Commission on Elections*, 786 SCRA 1, 281 (2016) (C.J. Sereno, concurring opinion) (citing *Angara v. Electoral Commission*, 63 Phil. 139, 157 (1936)).

199. Aileen Kavanaugh, *The Idea of a Living Constitution*, 16 CAN. J. L. & JURISPRUDENCE 55, 55 (2003) (citing *Manitoba (A.G.) v. Metropolitan Stores Ltd.*, 1 SCR 110, 124 (1987) (Can.)).

200. *Tañada v. Angara*, 272 SCRA 18 (1997).

laws.”²⁰¹ In addition, Sections 11, 12, and 13 of Article II;²⁰² Section 13 of Article XIII;²⁰³ and Section 2 of Article XIV²⁰⁴ have been adjudged as not self-executing in *Basco v. Philippine Amusements and Gaming Corporation*.²⁰⁵ Section 1 of Article XIII²⁰⁶ and Section 1 of Article XIV²⁰⁷ have likewise been adjudged as not self-executing in *Tolentino v. Secretary of Finance*²⁰⁸ as both provisions were merely characterized as “moral incentives to legislation, not as judicially enforceable rights.”²⁰⁹ Sections 11 and 14 of Article XIII²¹⁰ and Sections 1 and 3 of Article XV²¹¹ are also not self-executory as enunciated by the Court in *Tondo Medical Center Employees*

201. *Id.* at 54 (citing BERNAS, *supra* note 182, at 2 & *Manila Prince Hotel*, 267 SCRA at 431)).

Sections 5, 12, 13, and 17 of Article II have been considered as not self-executing provisions in the earlier case of *Kilosbayan, Incorporated v. Morato* decided in 1995. *Kilosbayan, Incorporated v. Morato*, 246 SCRA 540, 564 (1995).

Notably, the Court in the 2007 case of *Tondo Medical Center Employees Association v. Court of Appeals* explicitly affirmed that Sections 5, 9, 10, 11, 13, 15 and 18 of Article II are not self-executory, citing its earlier ruling in *Tañada v. Angara. Tondo Medical Center Employees Association*, 527 SCRA at 765.

The ruling that Sections 5 and 18 of Article II of the Constitution are not self-executory has likewise been reaffirmed in the 2009 case of *Bases Conversion and Development Authority v. Commission on Audit*. *Bases Conversion and Development Authority v. Commission on Audit*, 580 SCRA 295, 303 (2009).

In addition, the non-self-executing character of Article II, Section 26 has been upheld in *Pamatong v. Commission on Elections* in 2004. *Pamatong v. Commission on Elections*, 427 SCRA 96, 100-01 (2004). *See also* *Espina v. Zamora, Jr.*, 631 SCRA 17, 26 (2010) (citing *Tañada*, 272 SCRA at 54). The case of *Espina* reiterated the ruling in *Tañada* that the provisions of Article II of the Constitution are generally not self-executory. *Id.*

202. PHIL. CONST. art. II, §§ 11-13.

203. PHIL. CONST. art. XIII, § 13.

204. PHIL. CONST. art. XIV, § 2.

205. *Basco v. Phil. Amusements and Gaming Corporation*, 197 SCRA 52, 68 (1991).

206. PHIL. CONST. art. XIII, § 1.

207. PHIL. CONST. art. XIV, § 1.

208. *Tolentino v. Secretary of Finance*, 235 SCRA 630 (1994).

209. *Id.* at 685.

210. PHIL. CONST. art. XIII, §§ 11 & 14.

211. PHIL. CONST. art. XV, §§ 1 & 3.

Association v. Court of Appeals.²¹² The non-self-executing character of these provisions have likewise been reiterated in succeeding cases.

Nonetheless, despite these pronouncements as regards these provisions not being self-executory, a small window of opportunity has been opened by two cases to perhaps serve as bases for carving “exceptions to the exception” in relation to the rule on self-executory constitutional provisions. The cases in particular of *Basco* in relation to Section 13 of Article XIII²¹³ and *Tañada* in relation to Article II²¹⁴ provisions are seemingly in conflict with the pronouncements of the Court in *Imbong v. Ochoa, Jr.*²¹⁵ and *Oposa v. Factoran, Jr.*,²¹⁶ respectively. It is worthy to note that all of these four cases were decided by the Supreme Court *en banc*.²¹⁷

In the landmark ruling of *Oposa* decided in 1993, four years earlier than the *Tañada* decision, the Supreme Court *en banc*, in ruling that the petitioners have a cause of action based on their fundamental right “to a balanced and healthful ecology,”²¹⁸ essentially implied that the two related provisions of Article II being referred to by the petitioners are self-executory and, therefore, judicially enforceable, as explained by Justice Florentino Feliciano in his concurring opinion, to wit —

As a matter of logic, by finding petitioners’ cause of action as anchored on a legal right comprised in the constitutional statements above noted, the Court is in effect saying that Section 15 (and Section 16) of Article II of the Constitution are self-executing and judicially enforceable even in their present form. The implications of this doctrine will have to be explored in future cases; those implications are too large and far-reaching in nature even to be hinted at here.²¹⁹

212. *Tondo Medical Center Employees Association v. Court of Appeals*, 527 SCRA 746, 765 (2007).

213. PHIL. CONST. art. XIII, § 13.

214. PHIL. CONST. art. II.

215. *Imbong v. Ochoa, Jr.*, 721 SCRA 146 (2014).

216. *Oposa v. Factoran, Jr.*, 224 SCRA 792 (1993).

217. *Basco*, 197 SCRA at 52 & 69; *Tañada*, 272 SCRA at 18 & 82; *Imbong*, 721 SCRA at 146 & 375-77; & *Oposa*, 224 SCRA at 792 & 814.

218. *Oposa*, 224 SCRA at 804 & PHIL. CONST. art. II, § 15. The constitutional provision relied upon provides that “[t]he State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.” PHIL. CONST. art. II, § 16.

219. *Oposa*, 224 SCRA at 816-17 (J. Feliciano, concurring opinion).

In *Imbong*, decided in 2014, the Supreme Court *en banc* quoted Section 15 of Article II;²²⁰ Sections 11, 12, and 13 of Article XIII;²²¹ and Section 9 of Article XVI²²² of the Constitution and subsequently concluded that “[c]ontrary to the respondent’s notion, however, these provisions are *self-executing*. Unless the provisions clearly express the contrary, the provisions of the Constitution should be considered self-executory. There is no need for legislation to implement these self-executing provisions.”²²³ The Court then justified the said conclusion by citing the doctrine laid down in *Manila Prince Hotel*.²²⁴

Thus, as it stands now, it can be said that while Article II is generally not self-executory, *Imbong* and *Oposa* may serve as legal bases or jurisprudential support to say that Sections 15 and 16 of Article II²²⁵ of the Constitution are self-executory and may be a source of judicially enforceable rights. Moreover, *Imbong* seems to indicate the Court’s willingness to carve out certain exceptions for Article II, although there was no express discussion in the case reconciling the Court’s earlier ruling in *Tañada* insofar as self-executory provisions of Article II are concerned.

In any case, in the event the Court is faced with interpreting constitutional provisions in the future, it will, as it always has, resort to constitutional construction when the plain meaning of the text is ambiguous. In understanding the Constitution, fundamental principles of constitutional construction have been enunciated by the Court in a line of cases and have been synthesized in *Francisco, Jr. v. House of Representatives*,²²⁶ to wit —

First, *verba legis*, that is, wherever possible, the words used in the Constitution must be given their ordinary meaning except where technical terms are employed. ...

...

Second, where there is ambiguity, *ratio legis est anima*. The words of the Constitution should be interpreted in accordance with the intent of its framers. ...

220. PHIL. CONST. art. II, § 15.

221. PHIL. CONST. art. XIII, §§ 11-13.

222. PHIL. CONST. art. XVI, § 9.

223. *Imbong*, 721 SCRA at 314 (citing *Gamboa*, 652 SCRA at 738-39) (emphasis supplied).

224. *Imbong*, 721 SCRA at 314-15 (citing *Manila Prince Hotel*, 267 SCRA at 431-32).

225. PHIL. CONST. art. II, §§ 15 & 16.

226. *Francisco, Jr. v. House of Representatives*, 415 SCRA 44 (2003).

...

Finally, *ut magis valeat quam pereat*. The Constitution is to be interpreted as a whole.²²⁷

The Court has previously weighed in on the value of debates held during the drafting of the Constitution, viz —

While it is permissible in this jurisdiction to consult the debates and proceedings of the constitutional convention in order to arrive at the reason and purpose of the resulting Constitution, resort thereto may be had only when other guides fail as said proceedings are powerless to vary the terms of the Constitution when the meaning is clear. Debates in the constitutional convention ‘are of value as showing the views of the individual members, and as indicating the reasons for their votes, but they give us no light as to the views of the large majority who did not talk, much less of the mass of our fellow citizens whose votes at the polls gave that instrument the force of fundamental law. We think it safer to construe the [C]onstitution from what appears upon its face.’ The proper interpretation therefore depends more on how it was understood by the people adopting it than in the framers’[] understanding thereof.²²⁸

Insofar as the social justice provisions of Article XIII are concerned, the import of the foregoing jurisprudential pronouncements are as follows:

First, while the Court has adjudged certain constitutional provisions as non-self-executory in its previous decisions, there is a possibility that the Court may overturn such pronouncements as seen in the cases of *Basco* and *Tañada* in relation to *Imbong* and *Oposa*, while still justifying the determination as to whether such provision is self-executory or not based on *Manila Prince Hotel*. The landmark rulings of *Oposa* and *Imbong* illustrate that it is not impossible for the Court to confirm that certain constitutional provisions, including those supposedly perceived to be mere declarations or principles, as judicially enforceable in themselves, without the need for enabling legislation. This is a necessary consequence of the Court employing

227. *Id.* at 126-27 (emphases omitted). *Chavez v. Judicial and Bar Council* succinctly reiterates the principles of constitutional construction summarized in *Francisco, Jr. v. House of Representatives*. *Chavez v. Judicial and Bar Council*, 676 SCRA 579, 598 (2012) (citing *Francisco, Jr.*, 415 SCRA at 126).

228. *Civil Liberties Union v. Executive Secretary*, 194 SCRA 317, 337-38 (1991) (citing 16 C.J.S. *Constitutional Law* § 231 (2003); *Commonwealth v. Ralph*, 3 Atl. 220, 232 (1886) (U.S.); & *Household Finance Corporation v. Shaffner*, 203 S.W.2d 734, 737 (1947) (U.S.)). See also *Francisco, Jr.*, 415 SCRA at 128 (citing *Civil Liberties Union*, 194 SCRA at 337-38).

Constitutional construction which is employed when a legal text admits of varying interpretations.²²⁹

Second, Sections 1, 11, 13, and 14 of Article XIII of the Constitution²³⁰ have previously been adjudged by the Supreme Court as not self-executory.²³¹ Thus, there is a need for an enabling law passed by Congress to give flesh to such provisions and to afford Filipinos “judicially enforceable rights.”²³² Despite having made such determination, the Court in *Imbong* declared, without citing or reconciling its pronouncement therein with the Court’s previously decided cases, that Sections 11, 12, and 13 of Article XIII are self-executory.²³³ Given these contradictory interpretations, it remains to be seen how the Court will particularly treat Sections 11 and 13 of Article XIII in the future.

Third, as a logical consequence following the Court’s rulings, especially in *Manila Prince Hotel* and *Bagong Bayani-OFW Labor Party*, Sections 3,²³⁴ 4,²³⁵ 6,²³⁶ 9,²³⁷ 10,²³⁸ and 16²³⁹ of Article XIII may also be considered not

229. See generally RICARDO M. PILARES III, STATUTORY CONSTRUCTION: CONCEPTS AND CASES (2019).

230. PHIL. CONST. art. XIII, §§ 1, 11, 13, & 14.

231. *Tondo Medical Center Employees Association*, 527 SCRA at 765.

232. *Id.* at 764 (citing *Tolentino*, 235 SCRA at 685).

233. *Imbong*, 721 SCRA at 314.

234. PHIL. CONST. art. XIII, § 3, para. 2 (“They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.”).

235. PHIL. CONST. art. XIII, § 4 (“The State shall, by law, undertake an agrarian reform program ...”).

236. PHIL. CONST. art. XIII, § 6, para. 1 (“The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources ...”) & PHIL. CONST. art. XIII, § 6, para. 2 (“The State may resettle landless farmers and farmworkers in its own agricultural estates which shall be distributed to them in the manner provided by law.”).

237. PHIL. CONST. art. XIII, § 9 (“The State shall, by law, and for the common good, undertake, in cooperation with the private sector, a continuing program of urban land reform and housing ...”).

238. PHIL. CONST. art. XIII, § 10, para. 1 (“Urban or rural poor dwellers shall not be evicted nor their dwelling demolished, except in accordance with law and in a just and humane manner.”).

self-executory as these provisions have phrases like “as may be provided by law” or those of similar import implying that there exists a directive addressed to the legislature. Alternatively, at the very least, the sentence or paragraph which contains “as may be provided by law” phrases or those similar thereto are not self-executory.²⁴⁰

Notably, Sections 2, 5, 7, 8, and 15 of Article XIII have not been particularly ruled upon by the Court as to their self-executing character or lack thereof. Thus, they may possibly be either self-executory or not as the doctrines do not seem to have a well-defined standard in assessing the self-executing character of a provision. They may arguably be self-executory following the general rule that constitutional provisions are self-executory as held in *Manila Prince Hotel*.²⁴¹ While the general rule in the said case may arguably prevail, an interpretation of which constitutional provisions are self-executory by any citizen’s reading of the Constitution carries with it not much significance, absent any imprimatur by the Supreme Court. Hence, an equally acceptable alternative conclusion may be that these provisions are arguably not self-executory, consistent with the pronouncement also in the same case of *Manila Prince Hotel* that, based on the wording of such provisions, they are “not judicially enforceable constitutional rights but merely guidelines for legislation.”²⁴²

Fourth, Sections 11, 12, and 13 of Article XIII and Sections 15 and 16 of Article II may be utilized as sources of judicially enforceable rights, following the Court’s pronouncements in *Oposa* and *Imbong*. This is a welcome development insofar as advancing social justice in the health sector is concerned.

239. PHIL. CONST. art. XIII, § 16 (“The right of the people and their organizations to effective and reasonable participation ... shall not be abridged. The State shall, by law, facilitate the establishment of adequate consultation mechanisms.”).

240. See *Manila Prince Hotel*, 267 SCRA at 434 (citing *State ex rel. Miller*, 117 S.W.2d at 323). *Manila Prince* explains that “[a] constitutional provision may be self-executing in one part and non-self-executing in another.” *Id.* at 434.

241. *Manila Prince Hotel*, 267 SCRA at 431. *Manila Prince Hotel* holds that “unless it is expressly provided that a legislative act is necessary to enforce a constitutional mandate, the presumption now is that all provisions of the [C]onstitution are self-executing.” *Id.*

242. *Id.* at 436. The case enunciated that “[t]he very terms of the provisions manifest that they are only principles upon which the legislations must be based.” *Id.*

Meanwhile, for other sectors and groups mentioned in Article XIII (i.e., labor, agrarian and natural resources reform, urban land reform and housing, women, role and rights of people's organizations), it may be argued, following *Oposa* and *Imbong*, that the other pertinent Article II provisions are likewise self-executing and, consequently, judicially enforceable in themselves. This will, in turn, allow Article II provisions to complement the social justice provisions in Article XIII. Particularly, provisions of Article II (i.e., Section 9 on labor, Section 10 on social justice vis-à-vis national development, Section 11 on human dignity, Section 14 on women, Section 18 on labor, and Section 21 on agrarian reform), may arguably serve as legal bases for judicially enforceable rights that may be invoked where cases involving labor, agrarian and natural resources reform, urban land reform and housing, women, role and rights of people's organizations are at issue. While this argument runs counter to the Court's pronouncement in *Tañada*, the Court's decisions as to whether a provision of the Constitution is self-executing have been fluctuating over the years, as discussed previously. In any case, however, as jurisprudence currently stands, the argument in favor of recognizing and graduating these Article II provisions into the level where they are self-executory in character can only be categorically settled once and for all by the Supreme Court in the future.

D. In Search for a Solution: Filling in the Gap Between Law and Practice

We live in a society where there is poverty, extreme inequality, and social injustice rendered invisible by an ethic of excess, a desiderata of comfort, and the false allure of wealth in monetary terms. ... It is tempting to simply exist in the protected comfort of our lives, succumb to the status quo, just get rich, do our thing, and allow our existence to be full of material possessions, but meaningless.

But we have a choice. We have the option to discover our courage, live with the discomfort, critically examine our society, and use our profession for a greater purpose that humanity not only survives but thrives with social justice.

It is true that law, as part of culture, and as it is now, constitutes us but we can redefine it. The legal profession can choose to help craft, interpret, and apply the law so that it provides solutions.

— Justice Marvic Mario Victor F. Leonen²⁴³

243. Marvic Mario Victor F. Leonen, Justice, Supreme Court, *Address to the New Lawyers*, Address at the Supreme Court Special *En Banc* Session (June 25, 2020). In his address delivered to the passers of the 2019 Bar Examination during their oath-taking ceremony, Justice Marvic Mario F. Leonen likewise said —

1. Pursuing Public Interest Lawyering

Based on the existing body of jurisprudence, there are still several social justice provisions in Article XIII that have not been categorically determined by the Court as self-executory or otherwise. With these gaps present, legal solutions are definitely needed and it befalls upon the government of this nation and its people to mobilize their efforts toward truly achieving social justice.

Justice Carpio once observed that, apart from government itself, the legal profession plays a crucial role in fixing societal gaps and inequities, *viz.*

Wide gaps between the rule of law and the rule of justice occasionally arise, and it is the duty not only of the judiciary, the legislature, and the executive branches, but also of the law profession, to work in closing these gaps. It is in closing these gaps that we refine and improve the law, a never-ending process as we seek and aspire for the rule of justice.²⁴⁴

In order to bridge the gap between the “rule of law” and the “rule of justice,” social justice in particular, the Authors think that *public interest lawyering*, otherwise known as *cause lawyering*, may possibly be strategically employed with the view of clarifying the nature of such social justice provisions of Article XIII as well as the Article II provisions related

Silence about corruption and abuse of power is not only in itself unjust; our silence when we have the ability to speak is in itself a cause of injustice. ... When you find that your situation is too difficult as you follow the noble path, remember these words which I also keep repeating, which I first heard from Lean Alejandro, a good friend and activist in the 1980s. It has become one of my favorite lines nowadays [—] ‘The line of fire is always a place of honor.’ ... Do not temper principle with pragmatism. Do not hide behind comfortable acquiescence. Do not use comfort in lieu of integrity. At critical times, do not disguise your complicity. Instead, be at the frontlines. As a lawyer, resist injustice. Make it your passion to resist injustice.

Id.

244. Justice Antonio T. Carpio, Retired Justice of the Supreme Court, *Follow the Rule of Law, But Aspire for the Rule of Justice*, Address at the Ateneo Law School 2019 Commencement Exercises (July 14, 2019) (transcript available at <http://www.ateneo.edu/sites/default/files/2019%20Commencement%20Speech%20by%20JUSTICE%20ANTONIO%20CARPIO.pdf> (last accessed Aug. 15, 2020)). See also Oscar Franklin Tan, *Why bar exams ruin legal education*, PHIL. DAILY INQ., Oct. 3, 2014, available at <https://opinion.inquirer.net/78982/why-bar-exams-ruin-legal-education> (last accessed Aug. 15, 2020).

thereto.²⁴⁵ According to Stuart Scheingold and Austin Sarat, cause lawyering entails “using legal skills to pursue ends and ideals that transcend client service — be those ideals social, cultural, political, economic[,] or, indeed, legal.”²⁴⁶ In this regard, two options are proposed: (1) building up a convincing and justiciable ordinary civil action or (2) filing a petition for declaratory relief.²⁴⁷ While both of these options may definitively settle and confirm whether these provisions are self-executory or not, a formidable strategy is crucial and indispensable in the hopes of securing a ruling that strengthens the social justice provisions of Article XIII. While building a case for the Supreme Court to rule upon is an option, it will take a significant amount of time and effort, with numerous legal obstacles to hurdle.²⁴⁸

If the provisions are declared to be self-executory, then such provisions may be the source of judicially enforceable rights, thereby protecting the marginalized, especially those who are not sufficiently afforded rights by

245. See PHIL. CONST. arts. II & XIII.

246. STUART A. SCHEINGOLD & AUSTIN SARAT, SOMETHING TO BELIEVE IN: POLITICS, PROFESSIONALISM, AND CAUSE LAWYERING 3 (2006) (citing DAVID LUBAN, LAWYERS AND JUSTICE: AN ETHICAL STUDY (1988)). See generally Ruth Bader Ginsburg, *In Pursuit of the Public Good: Access to Justice in the United States*, 7 WASH. U. J. L. & POL’Y 1 (2001); PURSUING THE PUBLIC INTEREST: A HANDBOOK FOR LEGAL PROFESSIONALS AND ACTIVISTS (Edwin Rekosh, et al. eds., 2001); & Scott L. Cummings, *The Politics of Pro Bono*, 52 UCLA L. REV. 1 (2004).

247. 1997 RULES OF CIVIL PROCEDURE, rules 2-5 & 63.

248. Certainly, the requisites for judicial review must be complied with for the case to, at the very least, be considered by the Supreme Court. *Francisco, Jr.*, 415 SCRA at 133 (citing *Angara v. Electoral Commission*, 63 Phil. 139 (1936)) (“[T]he courts’ power of judicial review, like almost all powers conferred by the Constitution, is subject to several limitations, namely: (1) an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have ‘standing’ to challenge; he [or she] must have a personal and substantial interest in the case such that he [or she] has sustained or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest possible opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.”) & BERNAS, *supra* note 4, at 968-96. See also Stephen Golub, *Participatory Justice in the Philippines*, in MANY ROADS TO JUSTICE: THE LAW-RELATED WORK OF FORD FOUNDATION GRANTEES AROUND THE WORLD 197-231 (Mary McClymont & Stephen Golub eds., 2000) & David Cote & Jacob Van Garderen, *Challenges to Public Interest Litigation in South Africa: External and Internal Challenges to Determining the Public Interest*, 27 S. AFR. J. HUM. RTS. 167 (2011).

existing statutory legislation. Certainly, this will be one big step towards realizing the aims of Article XIII on social justice.

However, in the event that a Constitutional provision is declared by the Supreme Court to be not self-executory, problems arise in both the judicial front and the legislative front.

On the judicial front, given the uncertainty as to the Supreme Court's treatment of these social justice provisions in Articles II and XIII, the worst case scenario is when the Court rules that these social justice provisions are not self-executory. Moreover, once a provision is declared by the Court not to be self-executory, the marginalized sectors and groups concerned are left with no legal remedy, considering that a petition for mandamus to compel Congress to pass a law protecting their rights proves to be unavailing.

Meanwhile, on the legislative front, insofar as non-self-executory provisions are concerned, the duly-elected members of Congress can always simply turn a blind eye and a deaf ear to the plight of these sectors and groups. Lobbying for new legislation can only go so far and may even be futile, as efforts towards convincing lawmakers may lead to inexistent laws or laws which are too weak to afford adequate protection to the marginalized sectors and groups mentioned in Article XIII. It is a grim reality that, as what Fr. Bernas had observed, Congress is structured in a way that "insulates its membership from direct pressures coming from the masses who are crying for socio-economic relief."²⁴⁹

Social justice must find its roots in legal education, in the formation of the minds and hearts of lawyers in the making. There is much work to be done in legal education as it plays a critical role in promoting and sustaining the aspiration for social justice. Legal education reforms that go into the heart of curricular development should be duly examined, with a view of forming lawyers with a keen sense of social justice. In treading the path towards social justice, proposed reforms in legal education of various esteemed legal luminaries should be considered. These proposals include, among others, honing practical legal skills of students,²⁵⁰ integrating professional ethics into the entire thread of legal education,²⁵¹ adopting an outcomes-based education "to make [] law program[s] relevant and

249. 5 RECORD, PHIL. CONST., NO. 106, at 914.

250. Fides Cordero Tan, *Disturbing the Status Quo of Legal Education in the Philippines*, in SHIFTING PARADIGM: REMODELING LEGAL EDUCATION IN THE PHILIPPINES 10 (2019).

251. *Id.* at 11.

significant,”²⁵² reassessing the bar examinations,²⁵³ and crafting capacity development programs for the administrators and faculty of law schools.²⁵⁴ It is hoped that these reforms will be a crucial step towards attaining of goals set forth in Article XIII of the Constitution.

Notably, the recent promulgation of the Revised Law Student Practice Rule in 2019 by the Supreme Court *en banc* is a much welcome development as it is meant to, “ensure access to justice of the marginalized sectors[,]” among others.²⁵⁵ The Revised Law Student Practice Rule requires law students to undergo a Clinical Legal Education Program as a prerequisite for taking the bar examinations beginning 2023.²⁵⁶ As defined under the said Rule, the Clinical Legal Education Program to be developed and adopted by law schools²⁵⁷ “is an experiential, interactive[,] and reflective credit-earning teaching course” that aims to provide law students “with practical knowledge, skills[,] and values necessary for the application of the law, delivery of legal services and *promotion of social justice* and public interest, *especially to the marginalized*, while inculcating in the students the values of ethical lawyering and public service.”²⁵⁸ In connection thereto, law schools are duty-bound to “[d]evelop and establish at least one law clinic[,]”²⁵⁹ which shall form part of the Clinical Legal Education Program.²⁶⁰ With soon-to-be lawyers being exposed to these law clinics, they will, hopefully,

252. Joan S. Largo, *Toward a Relevant and Significant Law Program*, in SHIFTING PARADIGM: REMODELING LEGAL EDUCATION IN THE PHILIPPINES, *supra* note 250, at 17-27.

253. Cynthia Roxas-Del Castillo, *Examining the Bar Examinations*, in SHIFTING PARADIGM: REMODELING LEGAL EDUCATION IN THE PHILIPPINES, *supra* note 250, at 29-38.

254. Josefe Sorreña-Ty, *Enabling Law School Administration*, in SHIFTING PARADIGM: REMODELING LEGAL EDUCATION IN THE PHILIPPINES, *supra* note 250, at 42-44.

255. REVISED LAW STUDENT PRACTICE RULE, A.M. No. 19-03-24-SC, whereas cl., para. 2 (Aug. 2, 2019). See Office of the Court Administrator, Court En Banc Resolution Dated 25 June 2019 in A.M. No. 19-03-24-SC (Law Student Practice), OCA Circular No. 130-2019, at 1 (July 22, 2019).

256. REVISED LAW STUDENT PRACTICE RULE, § 14.

257. *Id.* § 9 (a).

258. *Id.* § 2 (a) (emphases supplied).

259. *Id.* § 9 (b).

260. *Id.* § 2 (c).

be more sensitive to the call to be of service to the poor and the oppressed as they live out their vocation.

In sum, by adopting the kind of legal education that combines the theoretical aspects with its practical applications and makes students of the law truly understand the nobility of their profession,²⁶¹ they may eventually become sufficiently equipped to practice law and may be so inclined to fight for just and systemic changes in Philippine society. Through their efforts in building the nation, justice may become a reality for the most vulnerable.

2. Reconsidering the Prevailing View

On the other hand, another possible solution to remedy the status quo is by the Supreme Court *en banc* abandoning its prevailing view with regard to its jurisprudential distinctions on self-executing and non-self-executing provisions. Justice Marvic Mario Victor F. Leonen offers a unique perspective in the case of *Knights of Rizal v. DMCI Homes, Inc.*²⁶² In that

261. Justice Leonen, in explaining the importance of the lawyer's oath in his address to the passers of the 2019 Bar Examination during their oath-taking ceremony, said —

Your oath to the rule of law is not an oath of surrender to the unjust and oppressive elements of the status quo. It is not license to further marginalize those who are disadvantaged, those who are poor, those who are abused by power and untruths. *Your oath serves as your power to bring about change that is hopefully just, hopefully systemic.* Your oath is a promise to empower.

That is what is meant by the nobility of our profession. You do not need to look far for these ideals. Your Constitution mentions human dignity and human rights. It emphasizes the intrinsic worth of every human life. It constitutes our people — all our people, and not only the rich and those in power — as sovereign, capable of demanding accountability, disclosure, information, and space for freedom of expression that does not stifle but shapes all opinion.

It acknowledges that property is a human construction, that it has a social function, and that rights to create ownership as well as wealth should not override our very humanity. Remember that being a lawyer is not primarily about you. Your profession is designed to make the problems of others your problem. A lawyer cannot exist without a client or a cause. Every case, whether banal or politically controversial, will interrogate your ability to discover the ideals of justice, equality, and meaningful freedoms.

Leonen, *supra* note 243 (emphases supplied).

262. *Knights of Rizal v. DMCI Homes, Inc.*, 824 SCRA 327 (2017).

case, the Court, in dismissing the petition of the Knights of Rizal seeking to stop the construction of DMCI Home Inc.'s condominium known as Torre de Manila, ruled that there is no law prohibiting the construction of the said condominium.²⁶³ In that case, the petitioner Knights of Rizal, primarily argued that “the sight lines and setting of the Rizal Monument are protected under Sections 15 and 16, Article XIV of the Constitution[.]”²⁶⁴ While agreeing with the majority that Sections 15 and 16 of Article XIV of the Constitution are not legal bases to stop the construction of Torre de Manila, Justice Leonen in his concurring opinion disagreed with regard to the Court's prevailing view of distinguishing between self-executing and non-self-executing, in this wise —

I do not agree, however, in making distinctions between self-executing and non-self-executing provisions.

A self-executing provision of the Constitution is one ‘complete in itself and becomes operative without the aid of supplementary or enabling legislation.’ It ‘supplies [a] sufficient rule by means of which the right it grants may be enjoyed or protected.’ ‘[I]f the nature and extent of the right conferred and the liability imposed are fixed by the [C]onstitution itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action,’ the provision is self-executing.

On the other hand, if the provision ‘lays down a general principle,’ or an enabling legislation is needed to implement the provision, it is not self-executing.

To my mind, the distinction creates false second-order constitutional provisions. It gives the impression that only self-executing provisions are imperative.

All constitutional provisions, even those providing general standards, must be followed. Statements of general principles and policies in the Constitution are frameworks within which branches of the government are to operate. The key is to examine if the provision contains a prestation and to which branch of the government it is directed. If addressed either to the legislature or the executive, the obligation is not for this Court to fulfill.

...

There are no second-order provisions in the Constitution. We create this category when we classify the provisions as ‘self-executing’ and ‘[non-self-

263. *Id.* at 377-81 & 387-94.

264. *Id.* at 462 (J. Leonen, concurring opinion).

executing].’ Rather, the value of each provision is implicit in their normative content.²⁶⁵

As it stands, prevailing jurisprudence seems to imply that non-self-executing constitutional provisions will remain ineffective and dormant, unless otherwise set into motion by a law passed by Congress. In the future, it is proposed that the Court adopt this view advanced by Justice Leonen, which is a logically sound and reasonable interpretation of the Constitution, in order to rid itself of complications hounding the distinction between “self-executing” and “non-self-executing” provisions. Inasmuch as this aforesaid proposal is practically a much desired possibility, a review and overhaul of the doctrinal rulings, at the very least, by the Court as regards the distinction of self-executing constitutional provisions will nevertheless enable the Court to chart the nation and its people hopefully towards the right direction, towards the kind of transformative social justice where no one gets left behind.

3. Advocating for Constitutional Amendments

All things considered, the Authors think that Constitutional amendments to the social provisions of Article XIII, in the proper time, should be carefully considered. Such Constitutional amendments should, in no uncertain terms, make the provisions on social justice self-executory in character. A minimum baseline of the socio-economic rights must be specifically determined and indicated in the proposed Constitutional amendments, perhaps akin to how Sections 15 of Article II²⁶⁶ is worded, as such provision has already withstood judicial scrutiny, with no less than the Supreme Court ruling in two cases adjudging it to be self-executing in character.²⁶⁷ While setting minimum baselines that must be adhered to, if the proposed Constitutional provision further requires minor details to be specified by Congress, the amended constitutional provisions may indicate a time-bound provision setting a deadline for Congress to pass such law filling in the “gaps” or details as regards implementation. Through a time-bound provision, this will address the problem of perpetual Congressional inaction and will allow the possibility of a petition for mandamus against Congress to prosper.

265. *Id.* at 465-66 (J. Leonen, concurring opinion) (citing *Manila Prince Hotel*, 267 SCRA at 431) (emphases supplied).

266. PHIL. CONST. art. II, § 15.

267. See *Oposa*, 224 SCRA at 817 & *Imbong*, 721 SCRA at 314. Section 15 is self-executory as declared in *Imbong* and impliedly expressed in *Oposa*.

As pointed out in this Article, another obstacle towards strengthening the “heart” of the Constitution is that the Supreme Court has seemingly developed an aversion to using the social justice provisions of the Constitution as primary legal bases for ruling on cases. Through the introduction of Constitutional amendments which eliminate all doubt as to whether or not the social justice provisions are self-executory, the Court, now armed with self-executing social justice provisions, can now use the said provisions as primary legal bases which ultimately determine the outcome of cases without running the risk of judicial legislation.

IV. CONCLUSION

In 1987, the Filipinos as one sovereign people promulgated a new Constitution

in order to build a just and humane society and establish a Government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace[.]²⁶⁸

Unfortunately, these lofty goals are far from realized. The aspirations of the Filipino people concretized in the Constitution, particularly in Article XIII, remain unfulfilled. Realigning the social justice provisions of Article XIII with its aims will certainly not be an easy task. Be that as it may, there is an urgent and compelling need to find creative and novel ways of addressing societal inequities and injustices that continue to plague this nation 33 years since the ratification of the 1987 Constitution.

Ironically, despite Commissioner Muñoz-Palma calling Article XIII the “heart of the new Constitution,” the very words and the spirit of the Constitution, initially showing promise to the marginalized in the peripheries, are out of touch with reality as they stay unfulfilled. Within the country’s constitutional system, this is brought about by the conflicting jurisprudential rulings on the self-executing nature of Constitutional provisions, accompanied by the fact that the fate of several social justice provisions is at the mercy of Congress. The status quo, as what the framers of the Constitution intend and according to doctrinal pronouncements of the Supreme Court, is to simply leave the matter of enacting enabling legislation to Congress to protect these sectors and groups, who have been subjected to the vicious and systemic cycle of injustice and who have, to this day, been objects of exploitation by their unscrupulous fellow Filipinos,

268. PHIL. CONST. pmb1.

including the powerful and affluent oligarchs who hold esteemed seats in the government.

Social justice is inextricably linked to the full realization of human rights. In the Philippine socio-economic system, legislation, marred by intense politicking, can only go so far. The Authors hope that this work will serve as an early effort to provoke productive and insightful discussions towards nation-building where no one is left behind. With the current structure standing in the way of meaningful and sustainable social change, reform of the heart of the Constitution may be in order.