

THE INTERNATIONAL PROTECTION OF SOCIAL RIGHTS: A PHILIPPINE PERSPECTIVE*

La protección internacional de los derechos sociales: una perspectiva internacional

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Resumen

Este artículo tiene dos objetivos fundamentales: (a) estudiar la relación existente entre el marco internacional de protección de los derechos sociales y el mecanismo nacional previsto en Filipinas; y (b) analizar el modo en que la Corte Suprema de Filipinas ha aplicado dicho marco internacional en algunos de sus casos más significativos.

A lo largo del artículo, el escritor se encargará de fijar los principios constitucionales a partir de los cuales los tratados y normas internacionales sobre protección de derechos sociales son aplicados en Filipinas. Se afirmará que la doctrina se ha vuelto especialmente instructiva a la hora de abordar la preocupación de los derechos sociales a nivel nacional. La postura de los magistradores filipinos respecto a la aplicación de esta doctrina será citada mediante las decisiones más relevantes de la Corte Suprema.

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El escritor llevará a cabo un estudio de las respuestas dadas por el Gobierno de Filipinas al catálogo de problemas presentado por el Comité de Derechos económicos, sociales y culturales el 18 de agosto de 2016 para demostrar cómo los acuerdos sobre protección de los derechos sociales sirven como instrumento de fiscalización para garantizar el cumplimiento por parte de los Estados Miembros de las Naciones Unidas de los compromisos contraídos en materia de Derechos Humanos, en particular, el Pacto Internacional de Derechos Económicos, Sociales y Culturales. También se hará referencia a los desafíos a los que debe enfrentarse un país en vía de desarrollo como Filipinas a la hora de cumplir estos parámetros.

Una parte del trabajo se centrará en dos casos significativos que muestran la creatividad de la Corte Suprema filipina a la hora de aplicar las normas internacionales sobre protección de derechos sociales.

Finalmente, se concluirá afirmando que el cumplimiento del marco internacional de protección de los derechos sociales por parte de un país en vía de desarrollo requiere una especial sinergia por parte de los principales ejecutores del Gobierno. Así, el origen de la pobreza y el subdesarrollo en un país como Filipinas debe ser directamente confrontado a través de un paradigma de reformas más intensas, como procesos pacíficos que conduzcan a un cambio constitucional, si fuese necesario.

Palabras clave

Derechos sociales; Derecho de Filipinas; instrumentos fiscales.

Abstract

The purpose of this paper is two-fold: (a) to inquire into the relationship between an international framework of protection for social rights and the domestic mechanism in place in the Philippines; and, (b) to analyze how the Philippine Supreme Court had applied the international framework of protection for social rights to some significant cases.

In the course of addressing the discourse of this paper, the present writer will lay down the constitutional parameters by which the international human rights treaties, norms and principles find application under Philippine law. It will be maintained that the doctrine of incorporation has become instructive in addressing human rights concerns at the domestic level. The attitude of Philippine magistrates on the effective application of this doctrine will be cited using landmark decisions of the Supreme Court.

The writer will proceed to review the responses of the Philippine Government to the list of issues provided by the Committee on Economic, Social and Cultural Rights as of 18 August 2016 to demonstrate how treaty-based rules protecting social rights serve as fiscalizing tools to effectively monitor compliance by the member-States of the United Nations with human rights commitments, particularly the International Covenant on Economic, Social and Cultural Rights. References to the challenges confronting a developing country, like the Philippines, in complying with protection schemes for social rights shall be highlighted.

A portion of the paper will focus on two significant cases which depict the creativity of the Philippine Supreme Court in availing of international social rights protection norms to concrete situations.

It will be concluded that compliance with the international social protection framework on the part of a developing country would require functional synergy among the key implementers of the government. The underlying root causes of poverty and underdevelopment in a country, like the Philippines, must be directly confronted with bolder paradigm of reforms, such as, peace processes leading to constitutional change, if necessary.

Keywords

Social rights; Philippine law; effective application and fiscalizing tools.

SUMARIO: I. INTRODUCCION: THE DOCTRINE OF INCORPORATION UNDER PHILIPPINE LAW. II. PHILIPPINE RESPONSE TO THE COMMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS. III. PHILIPPINE CASE LAW APPLYING THE ICESCR. IV. CONCLUSION. *BIBLIOGRAPY.*

I. INTRODUCTION: THE DOCTRINE OF INCORPORATION UNDER PHILIPPINE LAW

The Philippines has a consistent record of adhering to international law instruments and conventions, more so in the context of international human rights. This policy is even reinforced by the constitutional principle often referred to as the “doctrine of incorporation.”

Under Article II, Section 2 of the 1987 Philippine Constitution, it is expressed that

“The Philippines renounces war as an instrument of national policy, *adopts the generally accepted principles of international law as part of the law of the land* and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.” (Emphasis mine)

Judicial interpretation of this provision has applied it in the context of adherence to internationally recognized norms, such as, human rights,¹ humanitarian law,² immunity from suit of a foreign state,³ *pacta sunt servanda*⁴ and protection of foreign embassies.⁵

¹ *Mejoff v. Director of Prisons*, 90 Phil. 70 (1951).

² *Kuroda v. Jalandoni*, 83 Phil. 171 (1949).

³ *Raquiza v. Bradford*, 75 Phil. 50 (1945).

⁴ *Agustin v. Edu*, 88 SCRA 195 (1979).

⁵ *J.B.L. Reyes v. Bagatsing*, G.R. No. 65366, October 25, 1983.

The incorporation doctrine has been traditionally distinguished from the transformation theory which applies to adherence to treaties. Under the Philippine Constitution, this is reflected in Article VII, Section 21 on the process of entry into international agreements subject to concurrence by the Philippine Senate. Special types of international agreements, such as, those pertaining to military bases, troops or facilities, as mentioned in Article XVIII, Section 25, also require concurrence by the Senate and, if Congress so requires, a referendum may be called for such purpose.

While it is true that there is judicial consistency today in applying the incorporation doctrine under Philippine municipal law, a review of case law on the matter reveals that the Court is ready to apply it to principles of self-executing character and not to provisions of international law instrument which may require implementation mechanisms, for example, budgetary allocation or resource-based programs to realize the commitments assumed by a member State.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) to which the Philippines is a State Party poses fundamental challenges in terms of compliance by a developing country like the Philippines. It is arguable that the ICESCR is a mirror image of Article XIII of the Constitution on Social Justice and Human Rights insofar as sectoral rights and concerns are concerned, such as, labor, farmers, indigenous peoples, urban or poor dwellers, women's rights, health standards, elderly care, persons with disability and child protection. Realizing the full implementation of these rights, however, requires creative ways of prioritizing certain programs as can be gleaned from the next section of this paper.

II. PHILIPPINE RESPONSE TO THE COMMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

On 18 August 2016 the Permanent Mission of the Philippines to the United Nations and Other International Organizations in Geneva submitted the Philippines' written response to the list of issues provided by the Committee on Economic, Social and Cultural Rights before the United Nations High Commissioner for Human Rights.⁶

This section of the paper highlights the principal points of the Response.

⁶ Permanent Mission of the Republic of the Philippines to the United Nations and Other International Organizations, Geneva, Switzerland, Response to the Committee on Economic, Social and Cultural Rights, No. 0486-CBR-2016, 18 August 2016 (hereinafter cite as "Response").

(a) General Information

The Response cited measures to ensure direct application of the ICESCR, among which were Supreme Court decisions, rules, proposed laws, training programs for judicial officers, administrative issuances, and monitoring of cases affecting vulnerable sectors. Of particular interest is the update on incidence of extrajudicial killings, enforced or involuntary disappearances as these affect the sectors mentioned.

(a) Article 1(2) – Right to freely dispose of natural wealth and resources

Indigenous peoples' rights have been given sufficient treatment under this provision, particularly on the impact of environmentally-sensitive operations of mining companies and logging concessionaires on ancestral domains and ancestral lands. An assessment of the effectiveness of the Indigenous Peoples' Rights Act (IPRA) of 1997 showed how the National Commission on Indigenous Peoples had been coping with complaints on alleged violations of indigenous peoples' rights under IPRA in relation to the ICESCR.

(a) Article 2(1) – Maximum available resources

In this portion of the Response, the Philippine government focused on actions taken to combat corruption which extensively undermine the effective use of government funds and resources. Reform measures were cited to cut down on red tape and transparency in the conduct of official transactions with government offices. The allocation of government funds for social services was explained and emphasized the considerable increase on spending in this regard.

(a) Non-discrimination

A survey on anti-discrimination laws and measures affecting the most vulnerable sectors of Philippine society was discussed, assuring the Committee that this policy cuts across a broad-range of individuals and groups in various settings, including LGBT, women, foreign and domestic workers, Filipino-Muslims, indigenous peoples, among others.

(a) Labor Rights

The section on labor rights is the most expansive in scope. It covered the following: increased opportunities for young people and people with disabilities; coverage of the informal economy workers; incentives for business establishments complying with minimum wage requirements; social protection for domestic workers; narrowing the gender pay gap; access to legal and

consular assistance for Filipino migrant workers; trade union rights, among others.

(a) Social Security

A relatively unique approach to expand coverage and increase the amount of benefit of the social pension for indigent senior citizens has been implemented through monthly cash grants of PhP500 (US \$10). A similar amount is extended to poor households with children 0-18 years old and/or pregnant or lactating women for the health transfer while the education transfer is at PhP300 (US \$6) per month, for 10 months per year for up to a maximum of three children per family.

Senior citizens now enjoy various benefits and privileges under Republic Act No. 7432.

(a) Article 10 – Protection of the Family, Mothers and Children

The fight against trafficking and its accompanying consequences, such as, violence of any form, child labor, dysfunctional family-setting, corruption, among others, had been the subject of capacity-building measures for agencies of the government who are at the forefront of a collective effort, with domestic and international actors, in eradicating the cycle of trafficking.

(a) Article 11 – Rights to an Adequate Standard of Living

An explanation of the Philippines' episode of boom and bust has been proffered in the Response to provide a background on the state of economic growth in the country. A human rights-based approach to development and governance was proposed for implementation to ensure a trickle down effect of policies to the poor. The allocation of fiscal space to 44 provinces based on poverty incidence and vulnerability to natural disasters was indicative of a modest goal.

Special measures to expand access to security of tenure of the poor included a Presidential stoppage of all demolition of illegal settlements in the absence of relocation sites and issuances to comply with international human rights standards.

(a) Article 12 – Rights to Physical and Mental Health

Health care coverage for senior citizens, indigents, persons below 21 years of age, married or single but with a child, as well as female spouses from indigent families have been undertaken.

Access to reproductive health services have been assured through the Responsible Parenthood and Reproductive Health Act of 2012.

Various interventions and strategies have been employed and implemented to improve environmental hygiene.

The capacity of local communities to cope with disasters and other emergency situations had been the subject of programs and trainings nationwide.

j) Articles 13 and 14 – Right to Education

The different levels of education (primary to higher education) were the subject of programs and budgeting by the government on an increasing scale. Particular attention was directed to working children and those living in remote and rural areas and affected by armed conflict. For indigenous children, a culture-based education program has been supported through formal, non-formal and informal modalities.

k) Article 15 – Cultural Rights

In recent years, protection of cultural diversity gained traction. The National Commission for Culture and the Arts had exercised its mandate to protect cultural heritage revealed and expressed in various forms. Important sites and cultural properties have also been preserved or restored with the assistance of international experts on conservation science.

This survey of responses of the Philippines brings to light the concept of margin of appreciation in the implementation of economic, social and cultural rights. It has, in fact, been observed that even in the European setting, economic, social and cultural rights do not enjoy a similar degree of protection as civil and political rights.⁷ Thus, in the manner of implementation of the European Social Charter, the European Committee on Social Rights (ECSR) grants States Parties a broad range of appreciation in determining the steps to be taken to ensure compliance with the Charter.⁸ And, “when faced with budgetary restrictions, States Parties must demonstrate that they have taken measures to achieve the Charter’s objectives ‘within a reasonable time, with measurable progression and to an extent consistent with the maximum use of available resources’”.⁹

III. PHILIPPINE CASE LAW APPLYING THE ICESCR

Two Supreme Court decisions may be cited to demonstrate the extent that the ICESCR principles have shed light on domestic law cases. For advocacy purposes, interest groups may resort to Court pronouncements in advancing causes of marginalized sectors. These could also reinforce laws, rules and

⁷ Lauprecht 1998: 3.

⁸ Besson 2012: 11.

⁹ *Id.*

policies whenever doubts may be raised on the constitutionality of state actions aimed at promoting economic, social and cultural rights.

(a) *International School Alliance of Educators v. Quisumbing* (G.R. No. 128845, June 1 2000)- on the right to just and favorable conditions of work;

The case arose from the complaint filed by the locally hired teaching staff of the petitioner school who claim to be discriminated against by the school's policy in granting more benefits to foreign hires.

The Supreme Court in finding that the practice of the respondent school of according foreign-hires higher salaries than local-hires to be discriminatory used the ICESCR, as one of the bases for its decision, to wit:

“Notably, the International Covenant on Economic, Social, and Cultural Rights, *supra*, in Article 7 thereof, provides:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work, which ensure, in particular:

a. Remuneration which provides all workers, as a minimum, with:

i. Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

* * *

The foregoing provisions impregnably institutionalize in this jurisdiction the long honored legal truism of ‘equal pay for equal work.’ Persons who work with substantially equal qualifications, skill, effort and responsibility, under similar conditions, should be paid similar salaries. This rule applies to the School, its ‘international character’ notwithstanding.”

(b) *Central Bank Employees Association v. Bangko Central ng Pilipinas* (446 Supreme Court Reports Annotated 299, 15 December 2004]- on upholding Article 2 of the ICESCR;

Petitioner Central Bank (now BSP) Employees Association, Inc. filed a petition for prohibition against BSP and the Executive Secretary of the Office of the President, to restrain respondents from further implementing the last *proviso* of Section 15(c), Article II of Republic Act No. 7653 (New Central Bank Act), which makes an unconstitutional cut between two classes of employees in the BSP, *viz*: (1) the BSP officers or those exempted from the coverage of the Salary Standardization Law (SSL) (exempt class); and, (2) the rank-and-file (Salary Grade [SG] 19 and below), or those not exempted from the coverage of the SSL (non-exempt class). It is contended that this

classification is a classic case of class legislation, allegedly not based on substantial distinctions which make real differences, but solely on the SG of the BSP personnel position.

According to petitioner, the last *proviso* of Section 15(c), Article II of R.A. No. 7653 is violative of the equal protection clause because after it was enacted, the charters of the GSIS, LBP, DBP and SSS were also amended, but the personnel of the latter were all exempted from the coverage of the SSL. Thus, within the class of rank-and-file personnel of these institutions, the BSP rank-and-file are also discriminated upon.

The Supreme Court in declaring the subject provision as unconstitutional for being discriminatory to the rank and file employees of Central bank, made the following pronouncement:

“The principle of equality has long been recognized under international law. **Article 1 of the Universal Declaration of Human Rights** proclaims that **all human beings are born free and equal in dignity and rights**. Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitutes basic principles in the protection of human rights.

Most, if not all, **international human rights instruments** include some prohibition on discrimination and/or provisions about equality. The general international provisions pertinent to discrimination and/or equality are the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Convention on the Elimination of all Forms of Racial Discrimination (CERD); the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW); and the Convention on the Rights of the Child (CRC).

* * *

In the **employment field**, basic detailed minimum standards ensuring equality and prevention of discrimination, are laid down in the ICESCR and in a very large number of Conventions administered by the International Labour Organisation, a United Nations body. Additionally, many of the other international and regional human rights instruments have specific provisions relating to employment.

* * *

Thus, the two-tier analysis made in the case at bar of the challenged provision, and its conclusion of unconstitutionality by subsequent operation, are in cadence and in consonance with the progressive trend of other jurisdictions and in international law. There should be no hesitation in using the equal protection clause as a major cutting edge to eliminate every conceivable irrational discrimination in our society. Indeed, the social justice imperatives in the Constitution,

coupled with the special status and protection afforded to labor, compel this approach.”

IV. CONCLUSION

This rapid assessment of the status of the ICESCR in the Philippine setting must take into account the on-going peace processes on two fronts in the country: (a) Moro Islamic Liberation Front (MILF); and, (b) Communist Party of the Philippines-New Peoples’ Army-National Democratic Front (CPP-NPA-NDF).

It is instructive to note the weight given by the negotiating panels to an exhaustive treatment of economic, social and cultural rights in the drafting of the peace agreements. The rebel groups have constantly put forward structural economic reforms to address the root causes of the armed conflict. On the other hand, advances in technology and globalization may have added another layer of talking points at the negotiating tables considering the need to re-calibrate the long drawn out economic, social and cultural concerns which these movements have espoused.

It is heartening to note that even in the drafting of peace agreements, international human rights standards have significantly lent guidance to negotiators in shaping their agreements. The ICESCR, in particular, has been a useful tool in this context.

BIBLIOGRAPHY

- BESSION, S. “Evolutions in Antidiscrimination Law in Europe and North America: Evolutions in Non-Discrimination Law within ECHR and the ESC Systems: It takes Two to Tango in the Council of Europe”, *60 American Journal of Comparative Law* (2012): 11.
- LEUPRECHT, P. “Introduction to the Symposium: Innovations in the European System of Human Rights Protection: Is Enlargement Compatible with Enforcement?”, *8 Transnational Law and Contemporary Problems* 313 (1998): 3.