

CHR MANDATE OVER ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)

ISSUE:

I. GENERAL FRAMEWORK WITHIN WHICH THE COVENANT IS IMPLEMENTED

2. Whether the Covenant is regarded as a “generally accepted principle of international law” in accordance with Section 2, Article II of the Constitution.
 - ⇒ Whether Covenant provisions have been invoked before, directly or enforced by, the courts.
 - ⇒ Does the protection and promotion of ESC rights fall within the mandate of the CHRP vis-à-vis the decision in Simon vs. CHR. Provide concrete examples, if any.

CHR RESPONSE:

Whether the Covenant is regarded as a “generally accepted principle of international law” in accordance with Section 2, Article II of the Constitution.

Under the 1987 Constitution, it is a declared State Principle that the Philippines “adopts the generally accepted principles of international law as part of the law of the land.”¹ This is known as the *principle of incorporation*. Hence, in theory, there should be no issue as to the application of international human rights instruments in the country as an accepted law.

However, practical constraints prevent the Philippines from directly applying provisions of international human rights instruments without relevant domestic legislations translating the same considering that there is adherence to the principle that “there is no crime when there is no law punishing it” or “*nullum crimen sine poena lege*.”

¹ The 1987 Constitution, Article II, Section 2, “Principles and Policies on Foreign Relations.”

In November 2004, the Commission on Human Rights hosted a “*Conference-Workshop for Judges and Lawyers on the Justiciability of Economic, Social and Cultural Rights in Southeast Asia.*”

Atty. Marvic Leonen, the current Dean of the University of the Philippines College of Law, citing *Simon vs. CHR*, has the following to say on the issue:

“The problem is not only how to make remedies for violations of ESCR plain, speedy and adequate BUT whether or not there is an available remedy. Not only is there no court or tribunal in the Philippines mandated to try on an exclusive basis, cases involving ESCR, the justiciability of ESCR is not quite settled. For one, unless there is a statute providing sanctions and penalties for violations of each provision touching upon an ESCR, it would appear that one cannot just go to court, invoke an ESCR demand that he be accorded the benefits, or recover damages, for a violation of such right.”

Whether Covenant provisions have been invoked before, directly or enforced by, the courts.

Indeed, Philippine jurisprudence is scant in acknowledging and invoking provisions of the international covenants. However, the Commission can cite one case wherein the Supreme Court raised the provisions of the International Covenant on Economic, Social and Cultural Rights in its arguments in favor of the petitioners.

The case is *International School Alliance of Educators (ISAE), petitioner, vs. Hon. Leonardo B. Quisumbing in his capacity as the Secretary of Labor and Employment; Hon. Cresenciano B. Trajano in his capacity as the Acting Secretary of Labor and Employment; Dr. Brian Maccauley in his capacity as the Superintendent of International School-Manila; and International School, Inc., respondents.*²

Basically, the petitioners in the case raised the issue of grant of higher pay to foreign-hired teachers as compared to their local-hired counterparts in international schools in the country.

In resolving in favor of the local-hired teachers, the Supreme Court ruled that:

That public policy abhors inequality and discrimination is beyond contention. Our Constitution and laws reflect the policy against these evils. The

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." The very broad Article 19 of the Civil Code requires every person, "in the exercise of his rights and in the performance of his duties, [to] act with justice, give everyone his due, and observe honesty and good faith."

International law, which springs from general principles of law, likewise proscribes discrimination. General principles of law include principles of equity, i.e., the general principles of fairness and justice, based on the test of what is reasonable. The Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Discrimination in Education, the Convention (No. 111) Concerning Discrimination in Respect of Employment and Occupation - all embody the general principle against discrimination, the very antithesis of fairness and justice. The Philippines, through its Constitution, has incorporated this principle as part of its national laws.

In the workplace, where the relations between capital and labor are often skewed in favor of capital, inequality and discrimination by the employer are all the more reprehensible.

The 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.

The Constitution also directs the State to promote "equality of employment opportunities for all." Similarly, the Labor Code provides that the State shall "ensure equal work opportunities regardless of sex, race or creed." It would be an affront to both the spirit and letter of these provisions if the State, in spite of its primordial obligation to promote and ensure equal employment opportunities, closes its eyes to unequal and discriminatory terms and conditions of employment.

Discrimination, particularly in terms of wages, is

compensation to a female employee as against a male employee for work of equal value. Article 248 declares it an unfair labor practice for an employer to discriminate in regard to wages in order to encourage or discourage membership in any labor organization.

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;

X X X.

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.

Though an isolated decision, there is hope that such kinds of decisions coming from the highest court of the land is not far from reality considering the adeptness in human rights of some of the current Supreme Court Justices, including the Chief Justice himself.

Does the protection and promotion of ESC rights fall within the mandate of the CHRP vis-à-vis the decision in Simon vs. CHR. Provide concrete examples, if any.

Under the 1987 Philippine Constitution, the Commission on Human Rights was created independent³ with the following functions/mandates⁴.

1. Investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights;
2. Adopt its operational guidelines and rules of procedure, and cite for contempt for violations thereof in accordance with the Rules of Court;
3. Provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection;
4. Exercise visitorial powers over jails, prisons, or detention facilities;
5. Establish a continuing program of research, education, and information to enhance respect for the primacy of human rights;
6. Recommend to the Congress effective measures to promote human rights and to provide for compensation to victims of violations of human rights, or their families;
7. Monitor the Philippine Government's compliance with international treaty obligations on human rights;
8. Grant immunity from prosecution to any person whose testimony or whose possession of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by it or under its authority;
9. Request the assistance of any department, bureau, office, or agency in the performance of its functions;
10. Appoint its officers and employees in accordance with law; and
11. Perform such other duties and functions as may be provided by law.

SECTION 19. The Congress may provide for other cases of violations of human rights that should fall within the authority of the Commission, taking into account its recommendations.

Under the quoted provisions of the 1987 Constitution, and as reflected under Executive Order No. 163,⁵ the Commission was given a total of eleven (11) powers and functions. The first mandate given by the Constitution is “to investigate, on its own or on complaint by any party, all forms of human rights violations involving *civil and political rights*.”⁶

Why limited to civil and political rights? It is well to remember that the Commission was an off-spring of the 1987 Constitution which was drafted right after the end of the twenty-year martial rule under the Marcos

Regime. Hence, priority was given to violations of civil and political rights. Deliberations of the Constitutional Commissions further show that focus was to be made on the following: (1) protection of rights of political detainees; (2) treatment of prisoners and the prevention of tortures; (3) fair and public trials; (4) cases of disappearances; (5) salvagings and hamlettings; and (6) other crimes committed against the religious.⁷

While a very important mandate of the Commission, this bias made to civil and political rights had a debilitating effect on the Commission's *investigatorial powers*.

In the landmark case of Simon vs. CHR⁸ decided in 1994, the Commission tried to intervene on behalf of stall owners whose stalls, stores and carinderias were demolished, the Supreme Court said that the issue does **not** fall within the ambit of "human rights violations involving civil and political rights." Simply put, the Supreme Court decision was saying that the Commission has no business investigating ESC rights.

Refusing to have its hands tied and with the cognition of the universality, indivisibility and interdependence of human rights, the Commission, on December 1995, issued **CHR Resolution No. A95-069**, where it declared as one of its operational priorities,

*"investigative monitoring of incidents and/or conditions obtaining in the country which are violative of concerns in both areas of civil and political rights **and** economic, social and cultural rights."*

Not meaning to defy the delimitation set forth in the Constitution, the Commission, in the said resolution, invoked the international principles that *"human rights is concerned with issues in both areas of civil and political rights and economic, social and cultural rights founded on internationally accepted human rights obligations* to which the Philippine Government is a state party."⁹

The Commission also invoked in the resolution the following international declarations:

First, the Manila Declaration adopted by thirty (30) countries which participated in the Third International Workshop of National Human Rights Institutions conducted by the United Nations in the Philippines in April 1995 which cited the role of national institutions as that of "promoting enhanced respect for the *universality and indivisibility of civil and political and economic, social and cultural rights* particularly by ensuring that national

legislation conforms to international obligations and that concrete measures are taken to ensure the enjoyment of rights in a non-discriminatory basis.”¹⁰

Second, the Vienna Declaration confirmed during the World Conference on Human Rights held on June 1993 in Vienna Austria that “*all human rights are universal, indivisible and inter-dependent and inter-related*. The International community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect **all** human rights and fundamental freedoms.”¹¹

Further, the Commission used its other mandates under the Constitution as justification¹², to wit:

- ✍ to monitor Philippine Government’s compliance with international treaty obligations on human rights;¹³
- ✍ to provide appropriate legal measures and services to the underprivileged whose human rights have been violated or need protection;¹⁴
- ✍ to establish a continuing program of research, education and information to enhance respect for human rights, or their families;¹⁵ and
- ✍ to recommend to Congress effective measures to protect human rights.¹⁶

Suffice it to say, the said CHR Resolution paved the way for the so-called “***investigative monitoring***” function which the Commission applies when it deals with human rights complaints involving ESC rights.

Records of the Commission since 2000 to present, especially those coming from the regional offices, show various investigations and legal interventions conducted to promote and protect ESC rights. The records reveal an assortment of ESCR violations such as right to education, right to health, right to ecology, right to housing, right to just and favorable conditions of work, right to social security, domestic violence, violence against women and children and violations of the rights of indigenous peoples, among others.

One case in point is the investigative monitoring conducted by the Commission, through the Assistance and Visitorial Office and the CHR

¹⁰ 3rd whereas clause, *ibid.*

¹¹ 4th whereas clause, *ibid.*

¹²

Region III Office, on the complaints filed involving environmental rights. Specifically, this pertains to the problem of toxic wastes within the Clark Air Base area when the United States Bases left the Philippines in 1992 which affected the water system and caused health problems to the residents due to contaminations of drinking water by heavy metals such as mercury and nitrates. The Commission conducted investigations over the said complaints, prepared the reports and referred the matter to the appropriate agencies for