SUPREME COURT OF THE PHILIPPINES
PHILIPPINE JUDICIAL ACADEMY
with the assistance of
UNITED NATIONS DEVELOPMENT PROGRAMME
(UNDP)
in cooperation with the
OFFICE OF THE UN HIGH COMMISSIONER FOR. HUMAN RIGHTS

Philippine Judiciary Workshop

on

"REALIZING, ECONOMIC, SOCIAL AND CULTURAL RIGHTS"

PHILJA 225 SF HR/UNDP (1)'01

September 12 to 14, 2001

PHILIPPINE JUDICIAL ACADEMY
TAGAYTAY CITY

SUPREME COURT OF THE PHILIPPINES

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Presiding Officer

Schedule of Sessions

*First Day -W*ednesday, September 12, 2001
Morning Session

Chair: **DR. PURIFICACION VALERA QUISUMBING**
Professor and Chair, PHILJA Dept. of International Law and Human Rigths

Rapporteur: Commissioner **LINDA MALENAB-HORNILLA**
Professor II, PHILJA Commissioner, National Police Commission

7:30	**Registration**
9:00	**Opening Ceremonies** **Philippine National Anthem Centennial Prayer for the Courts** (to be led by at least two participants of different creeds) **Opening Remarks** Justice AMEURFINA A. CELENCIO HERRERA *Chancellor, Philippine Judicial Academy* **Greetings:** Chief Justice P.N. BHAGWATI *Regional Adviser of the High Commissioner for Human Rights for the* *Asia Pacific Region and former Chief Justice of India* *Office of the UN High Commissioner for Human Rights* **Introduction of the Keynote Speaker** Justice AMEURFINA A. MELENCIO HERRERA **Keynote Address** His Excellency TEOFISTO T. GUINGONA, JR. *Vice- President and Secretary of Foreign Affairs* *Republic of the Philippines*
9:45	**Break** **Statement of Purpose, Orientation and Seminar Rules** Dr. PURIFICACION VALERA QUISUMBING Dr. CLARENCE DIAS *President, International Institute of Law and*

	Development
10:00	*Substantive Session* The International Covenant on Economic, Social and Cultural Rights (ICESCR) and Jurisprudence Emanating from the International Committee on Economic, Social and Cultural Rights. *Speakers:* Justice P N. BHAGWATI Dean VIRGINIA B. DANDAN *Chairperson, International Committee on Economic, Social and Cultural rights* Dr. CLARENCE DIAS Objective: Understanding of the substance, the process and the applicability of international norms on economic, social and cultural rights.
11:00	**Open Forum**
11:30	**Synthesis by the Chair, assisted by the Rapporteur**
12 :30	**Lunch**

First Day - Wednesday, September 12, 2001
Afternoon Session

Chair: **DR. CLARENCE DIAS**

Rapporteur: Professor **SEDFREY M. CANDELARIA**
Professor II, PHILJA Dept. of Special Areas and Concern
Associate Dean for Student Affairs Ateneo Law School

1:30	**Registration**
2:00	*Substantive Session* Justiciability of Economic, Social and Cultural Rights *Speakers:* Fr. JOAQUIN G. BERNAS, S.J. *Dean, Ateneo Law School* Chief Justice P.N. BHAGWATI Fr. RANHILIO C. AQUINO, PhD, JurDr.

	Professor and Chair. PHILJA Dept. of Jurisprudence and Legal Philosophy Objective: A conceptual understanding of the notion of " *justiciability," how it is* applied to economic, social and cultural rights and the means it *intitutionalize these* rights justiciability of *esc rights* in the Philippines and experiences of other courts.
3:30	**Break**
3:45	**Open Forum**
5:45	**Synthesis by the Chair, assisted by the Rapporteur**
6:30	**Dinner**
7:30	**The UN Human Rights System: An Overview** *Dialogue with:* Chief Justice P.N. BHAGWATI Dr. CLARENCE RIAS Dr. PURIFICACION VALERA QUISUMBING Dean VIRGINIA B. DANDAN

*Second Day - T*hursday, September 13, 2001
Morning Session

Chair. Justice **AMEURFINA A. MELENCIO HERRERA**

Rapporteur: Dean **EULOGIA M. CUEVA**
Professor II, PHILJA College of Law, Lyceum of the Philippines

7:30	**Registration**
8:00	*Substantive Session* Role of the Judiciary in the Application of ESC Rights and the Constitution: Experiences in India and in the Philippines *Speakers:* Chief Justice P.N. BHAGWATI Justice LEONARDO A. QUISUMBING *Supreme Court of the Philippines* Objective: Understanding the role of the Judiciary in

	the application of treaty obligations on esc rights within the context of the national Constitution.
9:00	**Open Forum**
10:15	**Break**
10:30	*Practical Excersise* *Resource Persons:* Dean VIRGINIA B. DANDAN Presiding Justice ALICIA AUSTRIA MARTINEZ Court *of Appeals, Philippines* Dr. CLARENCE DIAS *Facilitators:* Judge NIMFA C. VILCHES Professor SEDFREY M. CANDELARIA Professor LINDA MALENAB-HORNILLA *Objective*: Work on Hypotheticals
11:30	**Plenary: Workshop Reports**
12:15	**Synthesis by the Chair, assisted by the Repporteur**
12:30	**Lunch**

Second Day - Thursday, September 13, 2001
Afternoon Session

Chair: Judge **AURORA NAVARRETTE-RECINA**
Chairman, Philippine Commission on Human Rights

Rapporteur: Attorney **MARY GRACE C. AGCAOILI**
*Training Officer, UNI*CEF

1:30	**Registration**
2:00	*Judicial Application Session* Jurisprudence on Economic, Social and Cultural Rights: European Court and Inter-American Court; Experiences from India and South Africa *Speakers:* Chief Justice P.N. BHAGWATI Dr. CLARENCE DIAS

	Objective: Comparative examination on international experiences in developing national jurisprudence on economic, social and cultural rights.
3:00	**Open Forum**
3:45	**Break**
4:00	*Administrative and Judicial Application Session* Development of Administrative Law Relative to Economic, Social and Cultural Rights *Speakers:* Dr. PACIFICO AGABIN *Chair, PHILJA Department of Constitutional Law* Chief Justice P.N. BHAGWATI Objective: Review of administrative remedies in agencies where relief against violation of *esc* rights is possible; examination of experiences of India and of the Philippines on the issue.
4:45	**Open Forum**
5:30	**Synthesis by the Chair, assisted by the Repporteur**

Third Day - Friday, September 14, 2001
Morning Session

Chair: Deputy Court, Administrator **ZENAIDA N. ELEPANO**
Supreme Court

Rapporteur: Atty. MARIA LOURDES SERENO
Professional Lecturer, PHILJA Dept. of International Law and Human Rights

7:30	**Registration**
8:00	*Judicial Application Session* Access to Justice: Transparency, Accountability and Affordability *Speakers:* Chief Justice P.N. BHAGWATI Processor MARVIC F. LEONEN *University of the Philippines College of Law*

	Professional Lecturer, PHILJA Dept. of Constitutional Law Objectives: Discuss the fundamental question: How can the beneficiaries of economic, social and cultural rights obtain justice within the context of developing societies especially taking into account the impact of globalization?
9:00	**Open Forum**
9:45	**Break**
10:00	*Judicial Application Session* Rights, Obligations and Remedies: International and Domestic Experiences *Speakers:* Chief Justice P.N. BHAGWATI Dean VIRGINIA B. DANDAN Attorney RENE V. SARMIENTO *Member: Government Panel for Talks with CPP-NPA-NDF* Objective: Examination of practical examples of enforceable *esc* rights and the availability of remedies in and outside the Courts
12:00	**Synthesis be the Chair, assisted by the Rapporteur**
12:30	**Lunch**

Third Day - Friday, September 14, 2001
Afternoon Session

Chair: ATTORNEY OFELIA CALCETAS SAN TOS
Former UN Special Rapporteur on Sale of Children, Child Trafficking and Prostitution
*Rapporteur: ATT*ORNEY ALBERTO MUYOT
Program Officer, UNICEF

1:30	**Registration**
2:00	*Judicial Application Session*

	Non-Discrimination and Participation: Gender and Children Issues *Speakers:* Professor MYRNA S. FELICIANO *Chair, PHILJA Dept. of Legal Method and Research* *Associate Dean, College of Law University of the Philippines Commissioner, National Commission on the Rate of Filipino Women* Dr. CLARENCE DIAS Objective: Examination of administrative and judicial processes in the light of basic principles of human rights including stare responsibility under *CEDAW* and CRC: specific cases to be discussed.
3:00	**Open Forum**
3:45	**Break**
4:00	*Judicial Technique Session* Social Action Litigation: The Indian Experience A Philippine Case Study *Speakers:* Chief Justice P.N. BHAGWATI Dr. PURIFICACION VALERA QUISUMBING Objective: Discussion of basic elements of effective social action litigation using illustrative cases involving *esc* rights
5:00	**Open Forum**
5:45	**Synthesis be the Chair, assisted by the Rapporteur**

Third Day - Friday, September 14, 2001

6:00 - **CLOSING CEREMONIES**

Highlights of the Workshop proceedings

Justice **AMEURFINA A.MELENCIO HERRERA**

Message

Mr. TERENCE D. JONES
UNDP *Representative*

Inspirational Message

Chief Justice **HILARIO G. DAVIDE, JR.**

Distribution of Certificates of Completion

Chief Justice **HILARIO G. DAVIDE, JR.**

Assisted By: Justice **AMEURFINA A. MELENCIO HERRERA**
Chancellor, Philippine Judicial Academy

Chief Justice **P.N. BHAGWATI**
Office of the UN High Commissioner for Human Rights

Mr. TERENCE D. JONES
UNDP Representative

PROFILES

Dr. PACIFICO AGABIN

Dean Agabin became a member of the Philippine Bar in 1960 after having placed thirteenth in the Bar Examinations of that year. He then went on to graduate school and in 1965 earned his Master of Laws degree with specialization in Constitutional Law from Yale Law School. The same institution granted him the Doctor of Science of Jurisprudence degree two years later, again in constitutional law. He has been in private practice as lie has been in the academe. From 1989 to 1995 lie was Dean of the U.P. College of Law. He was Editor of tile Republic of the Philippines Digest in 17 volumes and of Philippine Annotated Laws in 4 volumes. He has written extensively besides for different law publications. He chairs PHILJA's Department of Constitutional Law.

Atty. MARY GRACE C. AGCAOILI

Atty. *Mary* Grace Agcaoili is the Juvenile Justice Training Officer of UNICEF-Manila. She obtained the degree of *Juris Doctor* from the Ateneo de Manila School of Law where she was given the St. Thomas More Most Distinguished Award. She also took Masteral Studies in International Cooperation for Development at the *Universidad Complutense de Madrid.* She finished her undergraduate studies, *Cum Laude,* at the Ateneo de Manila University where she obtained a BS Legal Management degree and a minor in AB Hispanic Studies. In 1994, she was cited as one of the Ten Outstanding Students of the Philippines (TOSP). Before joining UNICEF and while in law school, she was a volunteer in an international non-governmental organization which works with and on behalf of urban poor children and families. She is also a product of the Ateneo Human Rights Center-Adhikain Para sa Karapatang Pambata (AHRC-AKAP).

Fr. RANHILIO C. AQUINO, PhD, JunDr.

Fr. Aquino is a priest of the Archdiocese of Tuguegarao. He holds a *Doctor of Philosophy,* major in Philosophy degree and was awarded a Post-Doctoral Research Fellowship by the *Superior Institute of Ph-ilosophy* of the Catholic University of Louvain in Belgium. He also holds a *Doctor of Jurisprudence* degree, major in *International Law* from the Columbia Pacific University at California. He was Vice-Dean of the Graduate School of the University of Santo Tomas and coordinator of its graduate law program. He authored several books such as *A Philosophy of Education, Man at Worship: A Philosophy of Religion, Philosophy of Law, Intellectual Property* Law, besides papers and lectures in philosophy and in law delivered locally and

abroad. He has likewise regularly written for *the Lawyer's Review* and has annotated for *Supreme Court Reports Annotated.* He is presently a professor of law at the Cagayan Colleges Tuguegarao, College of Law, and the graduate program for philosophy, De La Salle University. He is Head of the Academic Affairs Office of the Philippine Judicial Academy and Chair of its Department of Jurisprudence and Legal Philosophy.

Fr. JOAQUIN G. BERNAS, S.J.

Fr. Bernas is a Jesuit priest and a lawyer by vocation. At present he is Rector of the Jesuit Residence of the Ateneo de Manila University and Dean of the Ateneo Law School. He writes a column twice a week for the newspaper TODAY. A graduate of the Ateneo Law School, he also holds the degree of Doctor of Juridical Science from New York University and an M.A. in Philosophy and Licentiate in Sacred Theology. He was Dean of the School of Arts and Sciences of tike Ateneo; President of the Ateneo; Provincial Superior of the Jesuits in the Philippines: Delegate to two General Congregations of the Society of Jesus, the highest law-making body of the Order; and Member of the 1986 Constitutional Commission. He has written numerous books on Constitutional Law which are in use in schools and by the Bench and Bar.

Chief Justice P.N. BHAGWATI

Chief Justice Bhagwati is rare of the most distinguished jurists of India since the independence of that country. He presided over the Supreme Court of India as its Chief Justice in 1985 until his retirement ill next year. Under his leadership. the Indian Supreme Court developed comprehensive human right Jurisprudence for India. Through creative interpretation. he expanded the reach and context of human rights embodied in the Constitution. He developed the strategy of Public Interest Litigation with a view that making human rights meaningful for the large masses of poor and disadvantaged people, which won admiration in many common law jurisdictions. Justice Bhagwati is closely connected with a large number of NGOs, both in India and outside, and has been motivating and inspiring grassroots human rights an development NGOs. He is presently Chairman of the Human Rights Committee under the International Covenant of Civil and Political Highs of the United Nations; Regional Adviser to the High Commissioner for Human Rights for the entire Asia and Pacific Region Vice Chairman of El Taller. in International Hume Rights Development Organization located in Tunis; Member of the Committee of Experts of the ILO for over 15 years; Member of the International Advisory Council of the World Bank for Legal and Judicial Reforms Honorary Fellow of the American Academy of Arts and Sciences; and Chancellor of the Hyderabac University.

Professor SEDFREY M. CANDELARIA

Upon completion of his by course at the Ateneo Law School in 1984 and passing the Bar examination given that year, Prof. Candelaria pursued a masteral degree in law at the University of British Columbia Vancouver, Canada, specializing in Public International Law, Human Rights Law, and International Economic Law. He is presently the Assistant Dean of the Ateneo Law School, the Director of the Adhikain Para sa Karapatang Pambata - Ateneo Human Rights Center, and Deputy Secretary of the LAWASIA Human Rights Stand in Committee. He has authored several articles on human rights, refugees, children's rights, debt crisis, international humanitarian law, rights of indigenous people and adoption, and has edited and conducted researches for UNICEF on the Convention on the Rights of the Child and Juvenile Justice.

Dean EULOGIA M. CUEVA

Dean Cueva is presently the Dean of the College of Law of the Lyceum of the Philippines. She took her Bachelor of Laws at the University of the Philippines as a college scholar and is a member of the Order of the Purple Feather Honor Society. After passing the Bar in 1977, she pursued further legal studies and tool her Master of Laws at the University of Michigan where she was a De Witt Fellow. She also took Masters in International Law and Comparative Law at the University of Brussels, Belgium where she graduated *Cum Laude.* She has held various positions such as Senior Legal Research Attorney, Court of Appeals; Solicitor I to V, Office of the Solicitor General; State Counsel II, State Prosecutor, Senior State Prosecutor, Department of Justice; Vice President for Legal Services, Philippine Deposit Insurance Corporation; National Executive Director, Integrated Bar of the Philippines; Consultant, World Bank, among others. She recently joined PHILJA as Professor 11.

Dean VIRGINIA B. DANDAN

Dean Virginia Duncan of the University of the Philippines College of Fine Arts is also the Chairperson of the United Nations Committee on Economic, Social and Cultural Rights (CESCR) for the past three years. She is the first woman to head the UP College of Fine Arts and also the first woman and first Asian to chair the UN Committee on ESCR. A member of the CESCR for 10 years, she has read papers for numerous conferences and meetings on human rights, and has conducted extensive research on cultural rights. She has traveled to a number of countries to observe firsthand the implementation of the International Covenant on ESCR. Aside from her activities in the field of human rights, she continues to be a productive artist and holds regular exhibitions of her art.

Chief Justice HILARIO G. DAVIDE, Jr.

Chief Justice Davide assumed stewardship of the Judiciary on November 30, 1998. He is one of seven eminent leaders who joined the Supreme Court and became Chief Justice without any prior judicial experience. His distinguished career include serving as: Chairman of The Fact Finding Commission created pursuant to R.A. No. 6832; Chairman of the Commission on Elections (COMELEC) and the principal sponsor of its Rules of Procedure; Commissioner of the Constitutional Commission (CONCOM) of 1986 which drafted the 1987 Constitution; Assemblyman, Interim Batasang Pambansa representing Region VII, its first Minority Floor Leader and Delegate, Constitutional Convention (CONCON) representing the 4th District of Cebu. As CONCON Commissioner, he was the principal author and sponsor of the Article on the Legislative of the 1987 Constitution of the Philippines. He authored innumerable amendments to the draft of the Constitution and submitted the most number of resolutions. He was among the three delegates of the CONCON who introduced the most number of reform proposals. As Assemblyman, lie filed the most number of bills of national significance and resolutions to lift martial law. He sought legislative investigations, especially of cases involving graft and corruption and irregularities in the government, as well as violations of human rights. He authored bills that were subsequently enacted into law, such as those increasing be penalties for white slavery, for corruption of minors, and limiting the periods of preventive detention and restraining orders: Bills to repeal oppressive and unjust decrees such as *Presidential Decree* Nos. *1735, 1034, 1835, 1836* and *1877*. He authored major substantial amendments to the 1984 Election Law, to provide safeguards for the election process and preserve the sanctity of the ballot and various amendments to the Dangerous Drugs Act.

Dr. CLARENCE J. DIAS

Dr. Clarence Dias is the President of the International Center for Law in Development, a Third World NGO concerned with human rights in the development process. He holds doctoral degrees in law from Bombay University and Cornell University and practiced law before the High Court of Bombay. He was consultant to various UN agencies: Resource Person at the Informal Experts Workshop on Human Rights in Development Assistance convened by the Development Advisory Committee of OECD in Paris in February 1996: and Chair of the Meeting of Experts on Economic, Social and Cultural Rights. For the past six years, he has been the UN expert from the Office of the High Commissioner on Human Rights to the annual Asia-Pacific Intergovernmental Workshop on Regional Human Rights Arrangements. He is also presently Consultant to UNDP on the implementation of its policy on integrating Human Rights with Sustainable Human Development.

Deputy Court Administrator ZENAIDA N. ELEPANO

Deputy Court Administrator Zenaida Elepano completed her A. B. in Political Science *Summa Cum Laude* at the University of Santo Tomas and went on to top the graduating class as Valedictorian in the Faculty of Civil Law at the same university in 1967. She was Regional Trial Court judge prior to her appointment to the Supreme Court and was Executive Judge at Kalookan City. She is an acknowledged expert in court management and has given many seminars nationwide to different judges on total quality management for the courts. A regular member of the U.P. National Association for Court Management, she was also the 1994 Cayetano Arellano Awardee for Judicial Excellence as outstanding RTC Judge of the Philippines conferred by the Foundation for Judicial Excellence.

Commissioner MYRNA S. FELICIANO

Newly appointed as Commissioner of the National Commission on the Role of Filipino Women (NCRFW), and presently the Associate Dean of the University of the Philippines College of Law as well as concurrent Director of the Institute of Judicial Administration of the U.P. Law Complex. Commissioner Feliciano is well known in legal and judicial circles. Aside from a law degree, Commissioner Feliciano holds *a Master of Library Science* degree from the University of Washington and did specialized studios in legal research. She also holds a Master of Laws degree from Harvard University. She has been consultant to several groups both governmental and non-governmental, foremost among which are the Senate Policy and Studies Group of Congress, the Department of Foreign Affairs Sub-committee on Legal Issues, and the Committee on Legal and Political Issues of the National Preparatory Committee for the World Conference on Women, as well as to various projects of the United Nations on women and gender issues. She chairs the Department of Research and Legal Method of the Philippine Judicial Academy.

Justice AMEURFINA A. MELENCIO HERRERA

Justice Ameurfina A. Melencio Herrera has been the indomitable Chancellor of the Philippine Judicial Academy (PHILJA), the education arm of the Supreme Court of the Philippines, since March 1996, four years after her retirement. She was Associate Justice of the Supreme Court from 1979 to 1992, where she chaired the Second Division from 1988 and *Associate* Justice of the Court of Appeals chairing the Eighth Division front 1971 to 1979. At the Academy, Justice Herrera also holds the following positions:

Chairperson of the Academic Council, Presiding Officer of the Judicial Reforms Office, and Member of the Board of Trustees. Currently, at the Supreme Court, she chairs the Committee on the Special Study Group on liar Examination Reforms Soil the Committee on the Revision of the Manual for Clerks of Court. As a Member of the Executive Committee of the Centenary Celebrations of the Supreme Court, she is in charge of the monthly Centenary Lecture Series. Justice Herrera graduated *Valedictorian* and Cum *Laude at* the University of the Philippines College of Law, where she obtained her Bachelor of Laws degree. She became Bar Topnotcher when she took her Bar Examinations ranking first with a score of 93.85%.

Commissioner LINDA MALENAB-HORNILLA

Commissioner Hornilla of NAPOLCOM is currently PHILJA Professor I at the Academy. She previously served as Deputy Commissioner at the Bureau of Immigration from 1999 to 2001; State Prosecutor at the Department of Justice from 1991 to 1999; Solicitor at the Office of the Solicitor General; National Consultant to the UN Development Program of the Department of Tourism; Head, Review arid Assessment Division as well as the Registration and Licensing Division of the Housing and Land Use Regulatory Board, formerly the Human Settlements Regulatory Commission. As State Prosecutor, she successfully prosecuted for Rp. vs. Whisenhunt case where the accused was convicted and sentenced to *reclusion perpetua* and successfully petitioned for the re-trial of Rp. vs. Florentino after the accused was acquitted by the Regional Court. She gained two consecutive awards as Outstanding Prosecutor of the Year, one in 1996 by the Foundation For Judicial Excellence and another in 1997 by the Crusade Against Violence.

Mr. TERENCE D. JONES

Mr. Terence Jones, UNDP Asia Resident Representative and Resident Coordinator here in the Philippines since 1999, has over 30 years of experience in increasingly senior management positions in the UN system, both its headquarters and country offices. He has proven training capacity in programme design, considerable analytical experience especially in NDC and excellent human resource management meet experience. He had led UN country teams at various levels in coordinating and organizing system capacities for specific purposes, including management of natural disasters and joint programming. He has an extensive experience in supporting aid management and coordination processes with governments and a wide variety of national and international partners. His management of budgetary and programme resources has been always at an excellent level of integrity and technical accomplishment,

Prof. MARVIC F. LEONEN

Prof. Leonen graduated *Magna Cum Laude* from the University of the Philippines School of Economics and was on the Dean List when he finished at the College of Law. He is an Assistant Professor at the University of the Philippines College of Law. He is an officer of several cause-oriented groups and has acted as counsel to various indigenous people's groups, farmers' organization, human rights victims and non-governmental organizations. His interest lies in natural resources law and in constitutional law.

Presiding Justice ALICIA AUSTRIA MARTINEZ

Presiding Justice Austria-Martinez of the Court of Appeals (CA) was appointed to this position only last July 200I. Currently, she is also the Supervising Justice *of the* CA Judicial Records Division and Raffle S*taff* and Member of the Committee on the Formulation of Rules of Procedure in Family Courts. She was previously CA Associate Justice from March 5, 1992 to July 26, 2001: CA Division Clerk of Court from 1976 to 1983: Presiding Judge of Branch CLIX, NCJR RTC, Pasig City from 1986 to 1992; first Vice Executive Judge of RTC *Pasig* from 1989 to I990 and Executive Judge of RTC Pasig from 1990 to 1992. She obtained her Bachelor of Laws degree at the University of the Philippines and Master of National Security Administration (MNSA) at the National Defense College of the Philippines. She also attended the 31st Program of Instruction on Lawyers at Harvard Law School in 1999.

Atty. ALBERTO T. MUYOT

Atty. Alberto Muyot holds a Maste*r of Laws degr*ee from the University of Michigan and graduated C*um Laude* from the University of the Philippines College of Law. He served as Consultant to the Government Panel for the Peace Talks with the CPP-NPA NDF. His special interest is International Human Rights Law. He is at present the Director of the Institute of Human Rights at the University of the Philippines Law Center.

Justice LEONARDO A. QUISUMBING

Appointed as Associate Justice of the Supreme Court on January I5, 1998, Justice Leonardo Quisumbing received his A.B. degree from MLQU, *Magna* Cum *Laude,* and his LLB degree from the University the Philippines. He placed 12th in the Bar Examinations of I966. Justice Quisumbing is an ardent labor advocate. While a Professional Lecturer at the U.P. College of Law, he was Counsel and later President of a national alliance of teachers and workers. Later, he became Secretary-General of the Lakas Manggagawa Labor Center and Chairman of the Confederation of Industry Unions of the Philippines. Several times he represented the country in labor conferences held in Moscow, Geneva, Bangkok, Hanoi, Washington, Seoul and Tokyo. After the EDSA Revolution in 1986. he served briefly as Senior Executive Assistant in the Department of National Defense before he was appointed Undersecretary of National Defense, with stints as acting Secretary. In mid-1993, he returned to Malacañang as Senior Deputy Executive Secretary. He also served briefly as Acting Executive Secretary. In 1996, he was appointed as Secretary of Labor and Employment. For his work as public administrator, he was awarded the Presidential Medal of Merit. The Polytechnic University of the Philippines and the University of Pangasinan conferred on him doctorate degrees, *honoris causa*. He also used to be Dean of the College of Law of Northwestern University.

Dr. PURIFICACION VALERA QUISUMBING

Admitted to the Philippine Bar in 1965, Dr. Quisumbing holds the degrees of M*aster of Philosophy* and *Doctor of Philosophy in Political* Science from Columbia University. She became Director of the Academy at ASEAN Law and Jurisprudence of the University of the Philippines College of Law. In 1989, she was appointed Assistant Secretary for Human Rights and Humanitarian Affairs of the Department of Foreign Affairs and was member of the Philippine delegation to the United Nations General Assembly. She was Head of the Philippine Delegation to the UN Commission on Human Rights in its 46th session at Geneva Switzerland and was Chairperson of the session. She was Senior Regional Adviser for External Relation and Social Mobilization for East Asia and the Pacific of the UNICEF and was the Representative of the United Nations High Commissioner for Human Rights and Director of the United Nations Centre for Human Rights. She was an Outstanding Fulbright Alumni Fellow and a grantee of the International Institute for Human Rights and the Hague Academy of International Law. She heads the Publications and Research Office of PHILJA and is Chair of the Department of International Law and Human Rights.

Chairperson AURORA P. NAVARRETE RECIÑA

Hon. Reciña has been the Chairperson of the Commission on Human Rights since 1996. She took her degrees of Bachelor of Arts and Bachelor of Laws at the Silliman University. She holds the distinction of being the first Woman Lawyer of Sulu and the First Lady Provincial Sheriff of the Philippines, a position she held for 15 years. She was also Hearing Commissioner of the Juvenile and Domestic Relations Court (JDRC) in Quezon City; Assistant City Fiscal of Manila for ten years; Trial Fiscal in the Criminal Circuit Court of Manila; Trial Fiscal in JDRC, Manila; and Presiding Judge of Pasay City RTC for ten years. Recent awards she received include: one of the Outstanding Women of the Millennium given by the National Council of Women; Ulirang Ina Awardee for Government Service 2000; Outstanding Sulaw Award 2000 by the Silliman University Law Alumni; Outstanding Human Rights Advocate 1997; and the 1992 Judicial Excellence Award by the Pasay City Lawyers Association.

Atty. OFELIA CALCETAS SANTOS

Atty. Calcetas-Santos is a Former UN Special Rapporteur on sale of children, child trafficking and prostitution. She now practices at the Benjamin C. Santos and 0felia Calcetas-Santos Law Offices.

Atty. RENE V. SARMIENTO

Atty. Rene Sarmiento, a highly-sought speaker on human rights, served as Member of the following government committees: the Constitutional Commission of 1986 that draped the 1987 Constitution of the Philippines; Select Committee to Screen Judges and Justices of the Court of Appeals; Department of Justice (1985-1587); Presidential Human Rights Commutes Government of the Republic of the Philippines (GRP) Panel for Talks with the CPP/NPA/NDF. He later became Chairman of the GRP's Reciprocal Working Committee on Human Rights and International Humanitarian Law (1996-1999). Atty. Sarmiento obtained his Bachelor of Laws degree at the University of the Philippines and his A.B. degree in Political Science at the San Beda College, with a Magna *Cum Laude* honor and a Rector's Award for his overall academic excellence and outstanding leadership in campus activities especially in the field of Catholic and Social Action.

Atty. MARIA LOURDES A. SERENO

Atty. Sereno, whose areas of specialization are Law and Economics and International Trade Law, has Masteral degrees both in Law from the University of Michigan Law School, and in Economics from the University of the Philippines School of Economics. After a brief stint in law practice as Junior Associate at the Sycip, Salazar, et al. Law Offices, she was appointed to various positions in several agencies. Since 1986 to the present, she is an Associate Professor of Law at the University of the Philippines. She is presently a member of the Department of International Law and Human Rights of the Philippine Judicial Academy.

Judge NIMFA C. VILCHES

Judge Nimfa C. Vilches is a graduate of the Ateneo de Manila University and the Ateneo Law School. She was appointed to the Bench in 1989 and worked as a Supreme Court Attorney in the Offices of Justices Hermogenes Concepcion, Jr., Jose Y. Feria, and Teodoro Padilla. Thereafter she was assigned to the Municipal Trial Court of Barugo, Leyte; Branch 2, City Court of Tacloban; Metropolitan Trial Court of Manila, Makati and Kalookan until her appointment as Regional Trial Court judge of Branch 48, Manila, a juvenile and family court in 1999. She received training on "Children's Rights" at Oxford, England; "Evidence in Family Court" and "The Role of the Judge" at the University of Nevada, USA; on DNA technology in California, USA; and on "Crimes Against Children" by the US Federal Bureau of Investigation (FBI), She recently started a program in the Philippines called CASA/CAL, which comprise trained community volunteers tasked to represent the best interests of children in court.

Instructions to participants

1. All participants must be at the lecture hall fifteen (15) minutes before the sessions begin.
2. All participants must sign the attendance roll upon initial registration on September 12, 2001 and at the start of each daily session in the morning and in the afternoon.
3. This is a live-in seminar. Attendance in all the sessions is obligatory. Absence in any lecture, or interrupted attendance, will disqualify a participant from receiving

the Certificate of Completion and will be entered as a demerit in the participant's official records.

4. Undivided attention during Lectures and Open Forum is enjoined.
5. The participants should wear their IDs visibly all the time.
6. Formal business attire is required.

Inspirational Speaker

The Honorable **Hilario G. Davide, Jr**.
Chief Justice, Supreme Court of the Philippines

Keynote Speaker

His Excellency **Teofisto T. Guingona, Jr.**
Vice President of the Philippines and
Secretary of Foreign Affairs

Speakers

Chief **Justice P.N. Bhagwati**
Justice **Leonardo A. Quisumbing**
Dean **Virginia B. Dandan**
Dr. **Clarence Dias**
Presiding Justice **Alicia Austria Martinez**
Dr. **Pacifico A. Agabin**
Dr. **Purificacion V. Quisumbing**
Professor **Myrna S. Feliciano**
Fr. **Joaquin G. Bernas, S.J.**
Fr. **Ranhilio C. Aquino, PhD**, JurDr.
Professor **Marvic F. Leonen**
Atty. **Rene V. Sarmiento**

Chairs

Justice **Ameurfina A. Melencio Herrera**
Dr. **Clarence Dias**
Deputy Court Administrator **Zenaida N. Elepano**
Judge **Aurora Navarrette-Reciña**
Dr. **Purificacion Valera Quisumbing**
Atty. **Ofelia Calcetas-Santos**

Rapporteurs

Professor **Sedfrey M. Candelaria**
Commissioner **Linda L. Malenab-Hornilla**
Dean **Eulogia M. Cueva**
Atty. **Maria Lourdes Sereno**
Atty. **Alberto T. Muyot**
Atty. **Mary Grace C. Agcaoili**

Facilitators

Judge **Nimfa C. Vilches**
Professor **Sedfrey M. Candelaria**
Commissioner **Linda L. Malenab-Hornilla**

"REALIZING ECONOMIC, SOCIAL AND CULTURAL RIGHTS"

***(Philippine Judiciary* Workshop)**

CONCEPT PAPER: FOR THE GUIDANCE OF SPEAKERS, RESOURCE PERSONS AND PARTICIPANTS

Rationale, Purpose and Methodology

One of the more problematic areas in the field of human rights law is the implementation of economic, social and cultural rights, particularly in developing societies. The inadequacy of resources has often been cited by the governments as a serious obstacle to the full realization of economic, social and cultural rights of their citizens.

The theory of progressive realization of economic, social and cultural rights, however, should not excuse governments from complying with the standards set forth in the International Covenant on Economic. Social and Cultural Rights, instead, State Parties should be challenged to find ways to creatively realize these rights based on available resources. Responsibility for implementation of the rights should also be shared by developed societies and international organizations.

Responsibility for the realization of economic, social and cultural rights is shared by the Courts. In this regard, this workshop has a three-fold purpose,

(a) To apprise the participants (Judges) concerning the international standards on economic, social and cultural rights as these relate, or should relate, to Philippine laws and jurisprudence;

(b) To provide the participants with insights on the role of the courts in the process of realizing economic, social and cultural rights; and

(c) To discuss/demonstrate judicial application and techniques in the resolution of legal controversies involving the application of ' economic, social and cultural rights.

The methodology to be employed in the workshop consists of lectures, panel presentations and reactions, group work and comparative studies.

Guidelines for Speakers, Resource Persons and Participants

There are twelve (12) sessions for the entire workshop. Each session will be `governed by a set of guidelines listed as follows:

Session One (1) - **"The International Covenant on Economic, Social and Cultural Rights (ICESCR) and Jurisprudence emanating from the Committee on Economic, Social and Cultural Rights (Cescr) and other treaty bodies."**

This session aims to provide the participants with a basic working knowledge of the rights and obligations contained in the ICESCR, including the jurisprudence arising from the practice of the Committee on ESCR and other treaty bodies implementing these rights. Emphasis may be made on the theory of the state responsibility as it relates to the different actors and stakeholders within a State. More specifically, the session should be able to define the responsibility and role of the courts in the general duty of a State Party to comply with the standards of the ICESCR.

Session Two (2) - **Workshop**

The workshop is intended to apply the inputs in Session 1.

Session Three (3) - **"Justiciability of Economic, Social and Cultural Rights (escr)."**

The panel session aims to inquire into the notion of justiciability of escr. As a judicial application session, the panel presenters shall endeavor to provide the participants with some tools, guides or standards in resolving disputes involving the application of escr. These standards may be derived from a philosophical, constitutional or international perspective. It will be useful to cite case law at the domestic and international levels to illustrate these standards. The problem of justiciability of escr as distinguished from civil and political rights may be explored to emphasize the attitude of the courts and other agencies of government toward the immediate realization of these rights. Have courts and other agencies of government been more inclined to grant immediate relief in regard to one category of rights? If so, what are the reasons for this trend? What principles should govern?"

Session Four (4) - **"Role of the Judiciary in the Application of escr Standards and the Constitution: Experiences in India and in the Philippines"**

Courts have a strategic role in the realization of escr at the domestic level. This session focuses on concrete cases and experiences in India and in the Philippines on how the Judiciary appreciates and

applies escr norms within the context of their fundamental law. Specifically it will be highly instructive to discuss the process of judicial thought and analysis on leading cases on the issue of escr. Whenever applicable, the presenter may discuss how IESCR norms have been relied upon by the Judiciary in specific cases either to supplement national escr standards or fill-in gaps in domestic law.

Session Five (5) - **Practical Exercise**

The participants will be given a group work exercise on hypothetical cases designed by the facilitators. This exercise shall serve as a practical application of the escr norms to similar cases that nay arise before the courts, The cases have been designed to assist the participants in resorting to creative means in resolving controversies or disputes affecting escr of the litigants. Guides on (a) how to identify escr issues; and (b) the determination of appropriate relief and remedies will be provided.

Session Six (6) - **Plenary: Workshop Results**

The different groups will report the results of the exercise to the whole body.

Session Seven (7) - ***Jurisprudence*** **on Economic, Social and Cultural Rights: European Court and Inter-American Court, Experiences from India and South Africa**

This session shall provide participants with an understanding of how international human rights courts (e.g. European and Inter-American) have applied and interpreted escr norms within the context of their regional experience. The information to be generated from this discussion should help the participants in realizing the universality of escr norms, on one hand, and the need to consider the specific socio-political and economic milieu within which these norms may be applied. It is crucial to identify both the similarities and marked differences/difficulties in the appreciation, interpretation or application of escr norms. What is the extent that jurisprudence on escr at the regional or international level has influenced judicial thinking among judges of domestic courts?

A sharing of experiences from India and South Africa will contribute to the identification of judicial trends in other regions.

Session Eight (8) - **"Development of Administrative Law Relative to Economic, Social and Cultural Rights"**

Administrative agencies of government have often been responsible for implementing policies affecting escr. Notable examples of these agencies are those relating to social security, labor, agrarian, housing, education, health. etc. The immediate impact of these agencies on the lives of beneficiaries of escr demands a closer examination of the mechanisms and reliefs available in the event of violations of escr. Some illustrative cases from India and the Philippines will be discussed in order to assess the effectiveness of administrative processes in promoting and protecting escr.

Session Nine (9) - ***"Access* to Justice: Transparency, Accountability and Affordability"**

In an era of global interdependence. particularly in the realm of economic relations_ issues have arisen in regard to the effects of economic development policies on the poor and marginalized communities (e.g. fisherfolk. peasants, indigenous people, urban poor. labor. women and children, elderly, disabled, etc.). This concern is more pronounced in developing societies where members of the communities often do not have effective access to the economic resources made available by their governments. While social justice principles have been used to justify legislations and policies to address this concern, certain conditions or factors contribute to or tend to perpetrate marainalization of these communities. What technique and strategies may be applied to maximize access of the poor to justice? It will be emphasized that non-government organizations and peoples organizations could be catalysts for genuine social reforms.

Session Ten (10) - **"Rights, Obligations and Remedies: International and Domestic Experiences"**

This session will deal with specific examples or cases wherein escr have been successfully proposed within and outside the courts. A comparative approach will be employed in the conduct of the session. For the guidance of practitioners in this field, the resource persons will provide insights on how these issues have been advocated and pursued successfully. Whenever applicable, specific legal and non-legal actions before and outside the courts will be shared with the participants. The role of national institutions of human rights will also be discussed in the context of the Paris Principles.

Session Eleven (11) , - **"Non-discrimination and Participation: Gender and Children's *Issues"***

The right against discrimination and the right of participation are essential normative tools in understanding and addressing gender and children's issues. This session will focus on the legal framework and mechanisms (administrative and judicial) that have been most effective in engaging the responsibility of states under Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and Convention on the Rights of the Child (CRC). Illustrative cases will be utilized to demonstrate the use of these U.N. instruments in relation to domestic law.

Session Twelve (12) - **"Social Action Litigation: Indian and Philippine Case Study"**

The phenomenon of test case litigation is not new. However, conditions in most developing societies demand more creative and progressive- even "activist," modes of accessing the judicial system, particularly on behalf of the poor, disadvantaged and marginalized communities or sectors. Public interest or alternative lawyering.; may come under the rubric of "social action litigation" as distinguished from traditional forms of legal practice or legal aid. The resource persons will demonstrate how social, economic and other collective rights may be pursued using meta-legal and even traditional legal strategies to achieve these rights.

Republic of the Philippines

Supreme Court

Philippine Judicial Academy

CERTIFICATION

THIS IS TO CERTIFY THAT the following attended the **Philippine Judiciary Workshop on "Realizing Economic, Social and Cultural Rights"** [PHILJA 225 SF HR/UNDP (1) '01] held on **September 12 to 14, 2001** at the Philippine Judicial Academy, Tagaytay City.

Court of Appeals

I .	Presiding Justice Alicia	
2.	A. Martinez	
3.	Justice Marina L. Buzon	
	Justice Bennie A. Adefuin-de la Cruz	

National Capital Judicial Region

1.	Hon. Caridad G. Cuerdo	RTC 113, Pasay City
2.	Hon. Reuben. P. De La Cruz	RTC 272, Marikina City
3.	Hon. Marissa M. Guillen	RTC 60, Makati City
4.	Hon. Emmanuel D. Laurea	RTC 169, Malabon
5.	Hon. Lilia C. Lopez	RTC 109, Pasay City
6.	Hon. Norma C. Perello	RTC 276, Muntinlupa City
7.	Hon. Rosalina L. Luna Pison	RTC 107, Quezon City
8.	Hon, Edwin D. Sorongon	RTC 214, Mandaluyong City
9.	Hon. Myrna D. Vidal	RTC 127, Kalookan City
10.	Hon. Nimfa C. Vilches	RTC 48, Manila

11.	Resurreccione Lao-Manalo	Observer

Luzon

1.	I¯Ion. Virgilio C. Alpajora	RTC 59, Lucena City
2.	Hon. Orlando D. Beltran	RTC Tuao, Cagayan
3.	Hon. Iluminada C. Cortes	MTCC 4, Baguio City
4.	Hon. Bernardita G. Erum	RTC 61, Angeles City, Pampanga
5.	Hon. Fernando F. Flor, Jr.	RTC 14, Lagawe, Ifugao
6.	Hon. Charito B. Gonzales	RTC 1, Bangued, Abra
7.	Hon. Antonio N. Laggui	RTC 10, Aparri, Cagayan
8.	Hon. Aurora S. Lagman	RTC 77, Malolos, Bulacan
9.	Hon. Manuel C. Luna, Jr.	RTC 42, Pinamalayan, Oriental Mindoro
10.	Hon. Manuel A. Mayo	RTC 16, Cavite City
11.	Hon. Jose C. Reyes, Jr.	RTC 76, San Mateo, Rizal
12.	Hon. Manuel M. Tan	RTC 2, Balanga, Bataan
13.	Hon. Corazon A. Tordilla	RTC 24, Naga City
14.	Hon. Salvador P, Vedana	RTC 68. Lingayen, Pangasinan

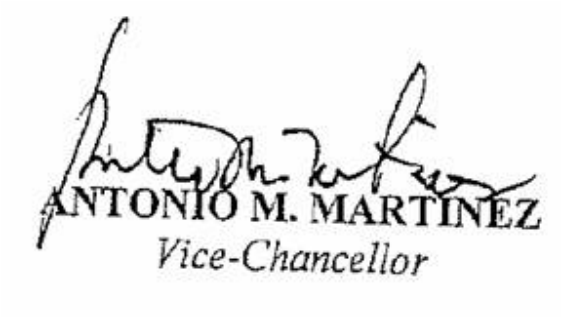
Visayas

1.	Hon. Pampio A. Abarintos	FRTC 22, Cebu City
2.	Hon. Araceli S. Alafriz	RTC 41, Dumaguete City, Negros Oriental
3.	Hon. Leonilo B. Apita	RTC 7, Tacloban City, Leyte
4.	Hon. Roberto S. Chiongson	RTC 50, bacolod City, Negros Occidental
5.	Hon. Nery G. Duremdes	RTC 11, San Jose, Antique
6.	Hon. Danilo P. Galvez	RTC 24, Iloilo City
7.	Hon. Meinrado P. Paredes	RTC 13, Cebu City

Mindanao

1.	Hon. Cipriano B. Alvizo, Jr.	RTC 45, Butuan City, Agusan del Norte
2.	Hon. Bensaudi L. Arabani, Sr.	Shari'a District Court, Jolo, Sulu
3.	Hon. Adoracion C. Avisado	RTC 9, Davao City
4,	Hon. Danilo M. Bucoy	RTC 2, Isabela, Basilan
5,	Hon. Vicente L. Cabatingan	RTC 15, Zamboanga City
6.	Hon. Dan R. Calderon	MTC 1, Cagayan de Oro City
7.	Hon. Virginia H. Europa	RTC 11, Davao City
8.	Hon. Guilljie D. Lim	MTC 1, Zamboanga City
9.	Hon. Valerio M. Salazar	RTC 6, Iligan City, Lanao del Norte
10.	Hon. Nimfa P. Sitaca	RTC 13, Oroquieta City, Misarnis Occ.

September 19, 2001.



Republic of the Philippines

Supreme Court

Philippine Judicial Academy

Opening Remarks *

Philippine Judiciary Workshop
On
"Realizing Economic, Social, and Cultural Rights"

Not withstanding the pall of gloom over the whole world today due to the heart-rending tragedies *in New York* and Washington, D.C., it is my distinct privilege to greet you all a very pleasant Good Morning, and to welcome you very warmly to the Philippine Judicial Academy, or PHILJA.

This is a historic activity in that it is our first on Economic, Social, and Cultural Rights. For this, we must thank the United Nations Development Programme (UNDP), headed by Mr. Terence Jones, and the Office of the UN High Commissioner for Human Rights, represented here by its Regional Adviser for Asia and *the Pacific* Region, former Chief Justice Bhagwati of India, for their invaluable assistance and cooperation. Their active involvement and that of Dr. Clarence Dias, President of the International Center for Law in Development, provided us with incentive and encouragement.

I must make mention, too, of our very own Dr. Purificacion V. Quisumbing, our Project Director, and Ms. Amparo Tomas, the UNDP Programme Officer, who designed the program distinctively and innovatively. They did that in consultation with Prof. Virginia Dandan, Dean of the U.P. College of

Fine Arts, and Chairperson of the International Committee on Economic, Social and Cultural Rights. It is her beautiful painting picturesquely entitled "Purple Earth and Skies" that adorns the cover page of our program.

Acknowledgement is also due our high-caliber Chairpersons, Lecturers, Resource Persons, Rapporteurs, and Facilitators, for lending us their expertise in order to make our next three days an unforgettable learning experience.

And to all our participants, specially our three lady Justices of the Court of Appeals led by its Presiding Justice, the Honorable Alice Austria Martinez, and our hand-picked Trial Court Judges from the courts of the National Capital Region, Luzon, Visayas, and Mindanao, many thanks as well for joining us in the challenging field of economic, social and cultural rights.

In many ways the international legal order has never been the same again to, after the *Universal Declaration of Human Rights on* December 10, 1948. Not that this seminal document announced doctrines never before heard, for in it will be found the central, the humane, and humanizing precepts of Christianity and of other religions, and of civilization's greatest teachers of moral living. With its promulgation, however, nations and peoples had a succinct summary of the rights and freedoms that from thenceforth legal and juridical orders would safeguard and hold inviolate. Although clearly at first a non-binding proclamation of the signatory states, its ideals and values, its prescriptions and proscriptions have found their way into treaty law and into customary law, some of them attaining even the status of peremptory norms of international law.

The International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights, are the progeny of the Declaration,

and although they may have the same status in paper, and all human rights are generally indivisible, yet, civil and political rights have received considerably more attention in this jurisdiction, and in other jurisdictions as well, than economic, social, and cultural rights.

Indeed, law school has drilled into us the intricate jurisprudence that has sprung from our Bill of Rights that resonates with the prescriptions and injunctions of the Covenant on Civil and Political Rights. But the rather novel provisions of the Philippine Constitution of 1987 that embody the State's concern with economic, social and cultural rights as well do not seem to have been met with equal enthusiasm and interest.

We have heard of civil and political rights advocates but not specifically of economic and social rights advocates. But should not the right to shelter, right to health, right to food, right to education, right to environment, be also given as much attention and meaning? These rights belong to a different category of rights altogether because they concern nothing less than self-preservation and self-perpetuation. This is specially so when we `dunk of the plight of the world's poorest countries, where civil and political rights may be quite beside the point, according to their national leaders. In fact, the gains in civil and political rights may even be lost in case of losses in economic and social rights. Now, it is realized that economic, social and cultural rights have a crucial bearing on the exercise of civil and political rights, and *vice-versa.*

We also hear of tensions between dynamic elements: globalization and individualization; globalization and sovereignty; .individual *liberty* and communitarian values; individual rights and the rights *of society* and the common good; and what Justice Reynato S. Puno of our Supreme Court has insightfully referred to as the "esoterics of living and the esoterics of liberty."

There is very good reason, therefore, for this Judiciary Workshop. The past has had its shortfalls. The present is now focusing on awareness and consciousness. The future can eventually lead to a progressive realization of the justiciability and enforceability of economic, social and cultural rights.

No argument is needed to establish the truth of the proposition that economic and social rights are the necessary ingredients for social progress and development. Besides a democratically elected government and laws that are substantively and procedurally fair and administered by competent and credible courts, what else does human development presuppose? This Judiciary Workshop will answer that question by highlighting economic, social, and cultural rights; and the relationship of interdependence and correlation between ESCR, the right to development, and respect for civil and political rights.

We, members of the Judiciary, must ceaselessly advocate the rule of law because we desire what the Preamble of our Constitution holds forth to be the fruit of adherence to law: a regime of justice, peace and love. Hardly anyone else enunciated the relation between *peace* and social development with more brevity and unparalelled clarity than Pope Paul VI when he delcared: "Development is the new name of peace!"

A warm Welcome then to what could well be a conference on human development. A warmer Welcome then to an assembly for peace!

***** *Delivered by Justice* ***Ameurfina A. Melencio Herrera*** *(ret.), Chancellor of he Philippine Judicial Academy, at the Philippine Judiciary Workshop on "Realizing Economic, Social and Cultural Rights" [PHILJA 225 SF HFJUNDP (1) `011, September 12 to 14, 2001; at the Philippine Judicial Academy, Tagaytay City.*

The ICESCR and the Work of the Committee on Economic, Social and Cultural Rights

by

Virginia B. Dandan

Chairperson, UN Committee on Economic, Social and Cultural Rights

(A paper presented at the Philippine Judiciary Workshop, 12-14 September 2001 in Tagaytay City.)

Introduction

International human rights law is a relatively new legal system, having come into its own only since the end of World War II. This legal regime has evolved dynamically since the adoption of the United Nations Charter in 1945 and some of the more important legal philosophies are codified within this. legal regime. International human rights law consists of a code of laws enshrined: in diverse legal, texts, some of which create legally, binding obligations while others are more symbolic in nature. Treaties, covenants and conventions are generally considered to be legally binding instruments possessing the force of law. For a treaty to become legally binding upon governments, states must go through certain procedures beginning with the signing the treaty and ultimately its ratification by the Parliament of the state concerned.

In effect, when a state ratifies an international treaty such as the International Covenant on Economic, Social and Cultural Rights, the state makes a solemn vow to its citizens (including non-nationals residing within its territories), to other states that have also ratified the treaty, and to the international community at large that the provisions of the treaty will be

promoted, respected, protected and fulfilled. Consequently, when the provisions of the treaty are violated or are not fulfilled, the State party cannot argue that concerns about the infringements of rights protected by the treaty are strictly internal affairs.

A basic question arises at this point -------- to whom do these legal documents apply and who is liable for ¯implementation? International law addresses itself to actions between states while human rights law refers to the relationship of citizens to the state. Human rights are not states rights. Human rights are rights of individuals and their communities within states. Human rights laws create various levels of legal obligations for states while at the same time generating a series of entitlements for the beneficiaries of these rights. Under human rights law all individuals and groups are to be protected against the violation or infringements of their rights. The entity ultimately responsible for doing so is the state. The state makes laws, has the power and capability of enforcing them and, under the norm of international human rights law, the duty to do so.

One of the weaknesses of this legal system is its enforcement at the national level. While it might be difficult for a government to not act in accordance with the terms of its national Constitution, it is comparatively simple for States to avoid complying with their international legal obligations. Thus, the role of good faith in carrying out human rights duties, by governments remains central. Most people have idea that their governments possess binding human rights obligations, and fewer still know of the availability of procedures designed for the redress of human rights violations.

Another weakness is apparent in the fact that in the field of international human rights law as well as its application at the national level, civil and political rights have in almost every respect received more

attention, legal-codification and judicial interpretation They have also been instilled in public consciousness to a far greater degree than economic, social and cultural rights. Inspite of the repeated reaffirmation of the fundamental notion that civil and political rights and economic, social and cultural rights are indivisible and interdependent, economic, social and cultural rights have until recently been often seen as `second class' rights, unenforceable, non justiciable, only to be fulfilled ‘progressively' over time.

It is important to note however that in the years immediately past, it has become evident that greater attention is being paid to economic, social and cultural rights. The UN Commission on Human Rights has in fact passed a number of resolutions on the rights enshrined in the International Covenant on Economic, Social and Cultural Rights and on the work of the Committee on Economic, Social and Cultural Rights. , For example, in the light of issues arising from the impact of liberalization, markets and globalization on human rights, civil society has become more sensitized to economic, social and cultural rights;: A global network has beer formed into an alliance of non -governmental organizations working in that field of economic, social and cultural rights. Even Amnesty International which has traditionally focused its efforts on civil and political rights has formally embraced economic, social and cultural rights. An even more significant development is the increasing general acceptance of the precise legal nature of economic, social and cultural rights. It is within this landscape that we situate our focus and concern on the implementation of the ICESCR at the national level.

The International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights entered into force in 1976. It is divided into five `Parts'. Part I (like Part I of ICCPR) recognizes the right of peoples to self-determination; Part II

defines the general nature of states parties obligations; Part III enumerates the specific substantive rights; Part IV deals with international implementation; Part V contains, typical final provisions of a human rights treaty.

Part I consists of article 1, which provides for the realization of the right to self determination, a right that is fundamental to the effective guarantee of individual human rights. Self-determination has both external and internal dimensions which have recently become controversial. The right to self-determination is now being asserted by groups within countries and not just by ex-colonies.

Part II defines the general nature of States parties' obligations: The principle of non-discrimination is provided for in article 2 paragraph 2 of the Covenant which guarantees the exercise of the rights in the Covenant without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 3 guarantees that men and women have the same legal entitlements to the rights provided for in the Covenant. In effect, both articles 2 and 3 provide significant legal protection against all forms of discrimination in the pursuit of economic, social and cultural rights. Articles 4 and 5 are provisions pertaining to limitations, restrictions and derogation. The provisions under Part II are deemed to be immediately applicable no matter what the economic status may be of the State party.

Part III of the Covenant articulates the right to work, the right to fair wages and to just working conditions, the right to strike and to freedom of association, the right to social security, the protection of the family, the right to an adequate standard of living and which includes the right to adequate housing and to freedom from hunger, the right to physical and mental health, the right to education, the right to take part in cultural life

and to enjoy the benefits of scientific progress and the protection of moral and material interests derived from his or her artistic endeavors. [2]

Towards the objective of protection and promotion of economic, social and cultural rights, States parties are required to submit periodic reports regarding their compliance with their obligations under the Covenant. The reporting presently in place requires each State party to submit an initial report within two years following ratification, and thereafter to submit periodic reports in five-year intervals.

The Covenant also addresses the important task of governments and the United Nations in the field of human rights and that is-implementation. To that end, the Covenant provides not only for monitoring the implementation of its provisions through a system of State reporting but also through reporting by UN specialized agencies such as ILO, UNESCO, WHO, FAO and UNHCR on the effects of policies and programmes on economic, social. and cultural rights and on the progress-made in the enjoyment of these-rights. There are 145 States parties to the Covenant to date, the most recent members of which are Thailand and China.

The Work of the Committee on Economic, Social and Cultural Rights

The Committee on Economic, Social and Cultural Rights was established in 1985 by the UN Economic and Social Council primarily to monitor the implementation of the Covenant. The Committee is composed of eighteen independent experts who serve in their individual capacities and although nominated by their governments, are not themselves government representatives. They are elected into office by the ECOSOC based on the candidates' qualifications while at the same time bearing in mind the equitable geographic representation as prescribed by the UN.

The Committee draws on the expertise of its members in providing assistance to governments in fulfilling their obligations under the Covenant through suggestions and recommendations towards ensuring the realization of economic, social and cultural rights.[3]

Periodic reports of States Parties are prepared according to the Committee's general guidelines for reporting which are intended to facilitate the preparation of reports and ensure that the issues of principal concern are dealt with in a methodical and informative manner.[4] When a State party's report is received by the UN, it is translated by the Secretariat into the UN working languages after which. the report is reviewed by the Committees five-member pre-sessional working group meeting six months prior to its consideration by the Committee at its succeeding session.

Representatives of the State party formally present the report during a Committee session and engage in an extensive dialogue with Committee members who may comment and ask further questions in relation to the report and other information received by the Committee from other sources. At the end of the dialogue, the Committee concludes its consideration of the report by adopting a set of concluding observations regarding the compliance of the State party to the Covenant. The Committee bases its concluding observations on all the relevant materials available to it, including its dialogue with representatives of the reporting State party. In accordance with its methods of work, the Committee focuses on four aspects in its concluding observations-factors and difficulties which impede the implementation of the Covenant, positive factors, principal subjects of concern and suggestions and recommendations. Concluding observations comprise part of the annual Committee report to the ECOSOC and are sent to the, reporting State party's permanent mission during the last afternoon of the Committee session.

The Reporting Mechanism

The Committee attaches great value to the reporting process not only because it is in fulfillment of an obligation on the part of the State party, but also, because it fulflls, other, functions the initial review monitoring, policy formulation, public scrutiny, evaluation, acknowledging problems and information exchange.[5] General Comment No.1 adopted by the Committee during its third session in 1989 sets out seven objectives of its reporting system. The following are excerpts from these seven objectives which elaborate on the functions of the reporting process.[6]

- A first objective which is of particular relevance to the initial report required to be submitted within two years of the Covenant's entry into force for the State party concerned, is to ensure that a comprehensive review is undertaken with respect to national legislation, administrative rules and procedures and practices in an effort to ensure the fullest possible conformity with the Covenant.
- *A second objective is to ensure that the State party monitors the actual situation with respect to each of the rights on a regular basis and is thus aware of the extent to which the various rights are or are not being enjoyed boy all individuals within its territory or under its jurisdiction. While monitoring is designed to give a detailed overview of the existing situation, the principal value of such an overview is to provide the basis for the elaboration of clearly stated and carefully targeted policies, including the establishment of priorities which reflect the provisions of the Covenant. Therefore a third objective of the reporting process is to enable the Government to demonstrate that such principled policy making has in fact been undertaken.*
- *A fourth objective of the reporting process is to facilitate public scrutiny of government policies with respect to economic, social and cultural rights and to encourage the involvement of the various economic,*

social and cultural rights sectors of society in the formulation, implementation and review of relevant policies.

- *A fifth objective is to provide a basis on which the State party itself as well as the, Committee, can effectively evaluate the extent to which progress as been made towards the realization of the obligations contained in the Covenant.*
- *A sixth objective is to enable the State party itself to develop a better understanding of the problems and shortcomings encountered in efforts to realize progressively the full range of economic, social and cultural rights. A seventh objective is to enable the Committee and the States parties as a whole, to facilitate the exchange of information among States and to develop a better understanding of the common problems faced by State and a fuller appreciation of the type of measure which might be taken to promote effective realization of each of the rights contained in the Covenant.*

The Committee on Economic, Social and Cultural Rights and its Jurisprudence

The year 2001 marks the twenty-fifth year since the entry into force of the ICESCR and sixteen years since the Committee was first established. At present it is not yet possible to submit formal complaints to the Committee regarding violations by States parties of the Covenant. The preparation of an optional protocol was being discussed in the Committee as early as 1990. In the Vienna Declaration and Programme of Action the World Conference on Human Rights in' 1993 encouraged "the Commission on Human Rights, in cooperation with the Committee on Economic, Social and Cultural Rights, to continue the examination of optional protocols to the International Covenant on Economic, Social and Cultural Rights" (Part 11, para. 75). The Committee went through a process of drafting an optional protocol over a period of five years and in

December 1996, it submitted to the Commission on Human Rights its Draft Optional Protocol to the ICESCR which grants the right of individuals or groups to submit communications concerning noncompliance with the Covenant. Today, five years later after the submission, fierce discussions among States and outright resistance by some that are seeking to block other States from opening the instrument for signature, have delayed the adoption of the optional protocol. The resistance within the Commission on Human Rights is led by States from the north, foremost among them the USA which has not even ratified the Covenant. The very same States that repeatedly and loudly invoke the indivisibility and interdependence of human rights, are at the forefront of the resistance to an optional protocol that would correct the neglect of economic, social and cultural rights as. well as the imbalance presently obtaining between civil and political rights on the one hand and economic social and cultural rights on the other. The latest development is that of the appointment by the Commission of an independent expert to study the draft optional protocol. This independent expert has been asked to submit his report in December of this year.

The continued absence of an optional protocol has not deterred the Committee from proceeding with its normative work of elaborating general comments, statements and revising its guidelines for reporting by States. General comments are a crucial means of generating the Committee's jurisprudence, providing a method by which members of the Committee come to an agreement regarding the interpretation of norms embodied in the Covenant. Over the years, the Committee has gained an extensive experience through its examination of a large and still growing number States parties' reports. These reports have disclosed gaps and insufficiencies in the interpretation by States parties of the provisions of the Covenant. These reports have also validated the practices of some States towards the fulfillment of their obligations according to the Covenant.

The Committee has so far elaborated two types of general comments. There are general comments that deal with specific themes. Reporting by states parties, forced evictions, persons with disabilities, the economic, social and cultural rights of older persons, the relationship between economic sanctions and respect for economic, social and cultural rights the domestic application of the Covenant and the role of national human rights institutions in the protection of economic, social and cultural rights have so far been the themes dealt with by the Committee in its general comments. The other general comments deal with specific provisions of the Covenant

the right to adequate housing (art.11(1)), plans of action for primary education (art. 14), the right to adequate food (art. 11), the right to education (art.13), and the most recent of all, the right to the highest attainable standard of health (art.12).

On the basis of its consideration of States' reports and of its own deliberations as it drafts general comments, the Committee seeks to attain three principal objectives ---- developing the normative content of the provisions of the Covenant; acting as catalyst to state action in developing national benchmarks and devising appropriate mechanisms for establishing accountability and providing means of vindication to aggrieved individuals and groups at the national level and holding states accountable at the international level through the examination of reports.

It will be recalled earlier in this paper that the Committee adopts concluding observations at the end of its consideration of States' parties reports. In these concluding observations, there is an abundance of references made by the Committee to its general comments when drawing the attention of States parties to its obligations under the Covenant. To illustrate, in its concluding observations on the initial report of Cameroon

during its 21st session, the Committee made the following recommendations to the State party.

"(Para.) 355: The Committee urges the state party to implement laws and policies to combat the problem of forced evictions; in accordance with General Comments No. 4 (1991) and No. 7 (1997) concerning the right to adequate housing (art. 11, para. 1 of the Covenant).

Para. 357. The Committee recommends that the Government take effective measures to end all forms of compulsory parental contribution for primary education. In this regards, the Committee urges the State party to allocate increased resources to education, in particular for infrastructure and human resources, especially in rural areas. In this connection, the Committee draws the attention of the State party to its General Comment No. 11 (1999) on plans of action for primary education (art. 14 of the Covenant)."[7]

Similarly, in its concluding observations on the initial report of the Philippines on articles 10 to 12 of the Covenant, the Committee made the following recommendations.

"(Para.)31. The Government should ensure that forced evictions are not carried out except in truly exceptional circumstances, following consideration of all possible alternatives and in full respect of the rights of all persons affected. The Committee urges the Government to extend indefinitely the moratorium on summary and illegal forced evictions and demolitions and to ensure that all those under threat in these contexts are entitled to due process. The Government should promote greater security of tenure in relation to housing in accordance with the principles outlined in the Committee's General Comment No. 4 and should take the necessary

measures, including prosecutions wherever appropriate, to stop violations of laws such as RA. 7279. In general, the Committee urges that consideration be given to the repeal of PD 772 and PD 1818, and recommends that all existing legislation relevant to the practice of forced evictions should be reviewed so as to ensure its compatibility with the provisions of the Covenant…."[8]

From time to time the Committee adopts statements to address current and compelling issues that impact on the enjoyment of economic, social and cultural rights in general and on the capacity of States parties to comply with their obligations under the Covenant. Through these statements, the Committee has signaled in concrete terms that it is closely examining these critical issues through the lens of the Covenant. The most recent statements issued by the Committee are its Statement to the Third Ministerial Conference of the World Trade Organization in Seattle in 1999 and its statement "Poverty and the International Covenant on Economic, Social and Cultural Rights" which it adopted in time for the World Conference for Least Developed Countries.

The statement to WTO underlined the Committee's concern about the social impacts of economic liberalization programmes, policies and laws and the negative consequences of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) particularly on food security, indigenous knowledge, bio-safety and access to health care-major concerns of the Committee as reflected in articles 11 to 15 of the Covenant. The last paragraph of the statement urges "... *WTO members to ensure that their international human rights obligations are considered as a matter of priority in their negotiations which will be an important testing ground for the commitment of States to the full range of their international obligations."*[9]

The Committee's statement on poverty adopted in May 2001 is historic in that it is the first time that a UN body has formally identified a conceptual link between poverty and human rights. The Committee concludes its statement with the following paragraphs.

"Para. 19. The Committee strongly recommends the integration of international human rights norms into participatory, multi-sectoral national poverty eradication or reduction plans. Such anti-poverty plans have an indispensable role to play in all States, no matter what their stage of economic development.[9]

Para. 20. Non-State actors, including international organizations, national human rights institutions, civil society organizations and private businesses, also have heavy responsibilities in the struggle against poverty. Each should clearly identify how it can contribute to poverty eradication, keeping in mind the human rights dimensions of poverty as outlined in this statement.

Para. 21. The Committee is deeply aware that there are structural obstacles to the eradication of poverty in developing countries. Through its various activities, including the reporting process and the adoption of general comments, the Committee attempts to assist developing States by identifying measures that they can and should take to address these obstacles. However, some of the structural obstacles confronting developing States anti-poverty strategies lie beyond their control in the contemporary international order. In the Committee's view iris imperative that measures be urgently taken to remove these global structural obstacles, such as unsustainable foreign debt, the widening gap between rich and poor, and the absence of an equitable multilateral trade, investment and financial system, otherwise the national anti-poverty strategies of some States have limited chance of sustainable success. In

this regard, the Committee notes article 28 of the Universal Declaration of Human Rights, as well as the Declaration on the Right to Development, in particular article3.3."[10]

The Committee is presently reviewing its revised guidelines for reporting with a view to updating its content in order to integrate its general comments and statements. The Committee's guidelines for reporting is designed to provide States with a blueprint in preparing their reports on how they implement the treaty provisions of the Covenant in their territories. The guidelines also reveal the Committee's view as to which elements comprise each provision of the Covenant and from which derive an important source of its jurisprudence.

It is also evident upon a closer scrutiny of the guidelines that the Committee takes the work of specialized agencies with care and attention. As such, the Committee constantly seeks updates on the development of their policies. The Committee looks upon the ratification of ILO Conventions as an important indicator of how seriously a State takes its obligations under the work-related rights in the Covenant. Similarly, the work of UNESCO particularly in the field of education is a very important component in the Committee's consideration of States 'parties' fulfillment of the right to education. The Committee drafted its general comment on the right to food with FAO as its working partner. Similarly when the Committee was drafting its general comment on the right to education and the right to health, it did so with UNESCO and WHO by its side. As the Committee begins its work of crafting a general comment on the right to take part in cultural life, it has invited UNESCO once again to be its working partner.

In spite of the mounting evidence that economic, social and cultural rights are justiciable, questions in this regard have not been laid to rest.

The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights" states that although the fulfillment of Covenant rights is to be attained progressively, ".... *the application of some rights can be made justiciable immediately while other rights can become justiciable over time."*[12]

In other words, justiciability of the ICESCR is an obligation of State party. At the national level, it: is the duty of States parties "....*to use all appropriate means, including legislative, administrative, judicial, economic, social and education measures consistent with the nature of the rights, in order to fulfill their obligations under the Covenant." 13*

Endnotes

1. T. Meron,.ed.:(1984) **Human Rights in International Law: Legal and Policy Issues.** *Clarendon Press,.* Oxford; and Newman and Weissbrodt (1990) **International Human Rights.** Anderson Publishing: Co: Cincinnati referred to in Scott Leckie, *When Push Comes to Shove* (Habitat International Coalition, 1997), p.33.

2. United Nations Fact Sheet No. 16 Rev. *1(1996). The* ***Committee on Economic, Social and Cultural Rights****, p.24.* Geneva

3. *Ibid.*

4. United Nations Economic and Social Council E/C12/1991/1 (17 June 1991). **Revised General Guidelines Regarding the Form and Contents of Reports to be Submitted by States Parties under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights**

5. Alston, Philip. "The Purposes of Reporting" in **Manual for Human Rights Reporting** (1997). United Nations Centre *for* Human Rights/United Nations Training and Research. pp. 14-16.

6. United Nations International Human Rights Instruments HRI/GEN/1/Rev.3 (1997) **General Comment 1 Reporting by States Parties.** Pp. 56-58.

7. Economic and Social Council Official Records 2000 Supplement No. 2. ***Committee on Economic, Social and Cultural Rights Report on the Twentieth and Twenty-First Sessions.*** United Nations (1999) p. 61.

8. Economic-and. Social Counc'1: *E/C12/1995/7.*

9. Economic and Social Council. *E/C.I2/1999/9.para.8.*

10. Economic and Social Council. ***Poverty and the International Covenant on Economic, Social and Cultural Rights.*** *E/C.12/2001/10/2001.*

11. A group of distinguished experts in international law, convened by the International Commission of Jurists, the Faculty of Law of University of Limburg (Maastricht, the Netherlands) nad the Urban Morgan Institute for Human Rights, University of Cincinnati (Ohio, USA), met in Maastricht on 2-6 June 1986 to consider the nature and scope of the obligations of States parties to the ICESCR, the consideration of States parties reports by the ECOSOC CESCR, and international cooperation under part IV of the Covenant. The participants agreed unanimously upon what was henceforth known as the Limburg Principles on the Implementation of the ICESCR which they believed reflected the state at that time of international law.

12. International Commission of Jurists.***Economic, Social and Cultural Rights. A Compilation of Essential Docurnenfs. ICJ*** *(1997) p. 66*

13. *Ibid. p. 67.*

JUSTICIABILITY OF SOCIO-ECONOMIC AND CULTURAL RIGHTS

by

Joaquin G. Bernas, S. j.

The subject of my brief comments is the justiciability of socio-economic and cultural rights. I propose to approach it from the viewpoint of Philippine constitutional law. Necessarily therefore my discussion will have to touch on separation of powers, albeit briefly, on the scope of judicial power, and on the language of our Constitution when it speaks of socio-economic rights.

We are all familiar with separation of powers, both with its strengths

and its limitations. I always like to refer to separation of powers as an aspect of a document which is a covenant of both trust and distrust. We allocate the tremendous powers of government among various official we have a modicum of trust in them. But deep down within us we know that we cannot trust them absolutely. For that reason we have engrafted into the Constitution various devices through which we can rein in government officials when they show signs of betraying our trust. These devices are both structural and doctrinal. Separation of powers is the principal structural device.

A major argument usually used against separation of powers is that the system is inefficient and wasteful. Criticism of separation of powers as inefficient is legitimate criticism. But it must be remembered that separation of powers was not invented as an instrument for efficiency. It was invented as a bulwark against tyranny whether of the legislature, of the executive or even of the judiciary. It is in this context that I propose to comment on justiciability. I must say that, with the memory of the martial law Supreme Court still fresh, I believe we should maintain a modicum of distrust even of thee judiciary.

Within the context of separation of powers, what is given to the judiciary is only judicial power. Our Constitution defines judicial power thus: "Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government." The first part of this definition sets down the familiar "case" and "controversy" parameter of judicial power applicable to all disputes, and the second part 'focuses on grave abuse of discretion which has special relevance to what are traditionally called "political questions."

I believe in discussing justiciablility, we must begin with the limitation that arises from the case and controversy requirement. Out of these two words jurisprudence has woven an entire body of doctrine setting down the conditions when the courts may exercise, power, The literature on 'case and controversy embodies two complementary limitations. First, it confines courts to playing a limited role within a tripartite system of government and ensures that courts will not intrude into the areas assigned to the two departments. The confinement is principally effected through the “political questions” doctrine but it is also supported by the prohibition of "advisory opinions." Second, the case and controversy doctrine limits the business of courts to questions presented in an adversary context and in a form capable of judicial determination. This excludes questions that have become moot as well as collusive suits. "Justiciability is the term of art employed to give expression to this dual limitation placed upon courts by this case and controversy doctrine."[1]

The case and controversy doctrine is peculiarly self-regarding. It tells us how the judiciary views its own role. It is a manifestation of the judiciary's institutional psychology. It is a psychology that is conservative and that forces the judiciary to assert that in order for a claim to be justiciable, it must first "present a real and substantial controversy which unequivocally calls for adjudication of the rights" asserted.[2] Two things are involved here first, the court looks for a demandable legal right and, second, it looks for a violation of that legal right which calls for correction.

The existence of a demandable right is not something that is created by courts. Demandable rights are either constitutional or statutory creations or prescriptions of equity. It is noteworthy, for instance, that in the grant of rulemaking authority to the Supreme Court, it is specifically stated that the rules shall not "diminish, increase; or modify substantive

rights." The first step in the justiciability process, therefore, is the search for and of demandable right. When none is found, the courts are unable to offer a remedy.

The second step is the determination of whether there has been a violation that calls for redress. This involves the issue of *locus standi* - that is, whether the party-seeking redress has a sufficient stake in an otherwise justiciable controversy or judicial resolution of that controversy.

The analysis of standing issues involve two inquiries. The first inquiry is whether the challenged action has caused the complainant an injury in fact, whether economic or otherwise. In order to show injury in fact the complainant must show "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the Court so largely depends for illumination of different . . questions."[4]

The second inquiry is whether the interest sought to be protected is covered by the statutory or constitutional guarantee being appealed to. This involves the question whether the statutory or constitutional provision being appealed to is judicially enforceable. This inquiry focuses on the limits of judicial competency. This inquiry, it should be noted, has been much affected by the new provision which says that judicial power includes the power "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."[5]

Are these requirements of justiciability applicable to issues involving socioeconomic and cultural rights? Unquestionably, they are. What I propose to do is to examine what methodology our Supreme Court uses in determining the justiciability of socio-economic and cultural rights. For this

purpose I shall limit my discussion to two cases: *Oposa* vs. *Fatoran, Jr*[6], a case involving environmental rights, and *Cruz v. Flavier,*[7] a case involving the economic and cultural rights of indigenous communities.

Oposa vs.Fatoran, Jr

Oposa vs. Fatoran, Jr was a petition filed by a group of minors asking that logging licenses be repealed. Specifically the petition touched upon the isssue of whether the petitioners had a cause of action to prevent the misappropriation or impairment of Philippine rainforests and arrest the unabated hemorrhage of the country's vital life-support systems and continued rape of Mother Earth." The petition was predicated on two constitutional provisions found in Article 11 of the Constitution, Section 15 and Section 16.

> "SEC. 16. The 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."

This right unites with the right to health which is provided for in the preceding section of the same article:

> "SEC. 15. The State shall protect and promote the right to health of the people and instill health consciousness among them."

The claim of the petitioners was that they possessed a right to a balanced and healthful ecology. They dramatically associated this right with the twin concepts of "inter-generational responsibility" and "inter-generational justice." To this, the response of the Secretary of Natural

Resources was that the petitioners had no cause of action.

The first question that must be answered, therefore, for purposes of justiciability analysis is whether the petitioners were raising a demandable right. Justice Davide, the *ponente* in the *case,* was categorical in saying that there was and that it was a fundamental right. He wrote:

> The complaint focuses on one specific fundamental legal right -- the right to a balanced and healthful ecology which, for the first time in our nation's constitutional history, is solemnly incorporated in the fundamental law. Section 16, Article II of the 1987 Constitution explicitly provides:
>
> "SEC. 16. The 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."
>
> This right unites with the right to health which is provided for in the preceding section of the same article:
>
> "SEC. 15. The State shall protect and promote the right to health of the people and instill health consciousness among them."

While the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated ire fee latter. Such, a right belongs to a different category of rights altogether for it concerns nothing less than self--preservation and self-perpetuation - aptly and fittingly stressed by the petitioners -- the advancement of which may even be said to predate all

governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind. If they are now explicitly mentioned in the fundamental charter, it is because of the well-founded fear of its framers that unless the rights to a balanced and healthful ecology and to health are mandated as state policies by the Constitution itself, thereby highlighting their continuing importance and imposing upon the state a solemn obligation to preserve the first and protect and advance the second the day would not be too far when all else would be lost not only for the present generation, but also for those to come -- generations which stand to inherit nothing but parched earth incapable of sustaining life.

The right to a balanced and healthful ecology carries with it the correlative duty to refrain from impairing the environment....

But is the constitutional text found in Sections 15 and 16 sufficient to anchor justiciability? Justice Feliciano, although he concurred in the result, was not satisfied and wanted to see something more specific. He said:

> There is no question that "the right to a balanced and healthful ecology" is "fundamental" and that, accordingly, it has been "constitutionalized." But although it is fundamental in character, I suggest, with very great respect, that it cannot be characterized as "specific," without doing excessive violence to language. It is in fact very difficult to fashion language more comprehensive in scope and generalized in character than a right to "a balanced. and healthful ecology." The list of particular claims which can be subsumed under this rubric appears to be entirely open-ended: prevention and control of emission of toxic fumes and smoke from factories and motor vehicles; of

> discharge of oil, chemical effluents, garbage and raw sewage into rivers, inland and coastal waters by vessels, oil rigs, factories, mines and whole communities of dumping of organic and inorganic wastes on open land streets and thoroughfares; failure to rehabilitate land after strip mining or open pit mining, kaingin or slash and burn farming, destruction of fisheries, coral reefs and other living sea resources through the use of dynamite or cyanide and other chemicals; contamination of ground water resources; loss of certain species of fauna and flora; and so on.

Apparently Justice Davide himself did not find the constitutional text specific enough. Hence, he found it necessary to point to implementing statutory texts. He elaborated:

> Conformably with, the enunciated right to a balanced and healthful ecology and the right to health, as well as the other related provisions of the Constitution concerning the conservation, development and utilization of the country's natural resources, 13 then President Corazon C. Aquino promulgated on 10 June 1987 E.O. No. 192, 14 Section 4 of which expressly mandates that the Department of Environment and Natural Resources "shall be the primary government agency responsible for the conservation, management, development and proper use of the country's environment and natural resources, specifically forest and grazing lands, rnin:.ral resources, including those in reservation and watershed areas, and lands of the public domain, as

> well as the licensing and regulation of all natural resources as may be provided for by law in order to ensure equitable sharing of the benefits derived therefrom for the welfare of the present and future generations of Filipinos."

This policy declaration is substantially re-stated in Title XIV, Book IV of the Administrative Code of 1987... ,

Still not satisfied with these, Davide next pointed to laws that anteceded the Constitution, specifically P.D. 1151 and 1152. He said: "It may, however, be recalled that even before the ratification of the 1987 Constitution, specific statutes already paid special attention. to the 'environmental right' of the present and future generations." He concluded:

> Thus, the right of the petitioners (and all those they represent) to a balanced and healthful ecology is as clear as the DENT 's duty --- under its mandate and by virtue of its powers and functions under E.O. No. 192 and .the Administrative Code of 1987 -- to protect and advance the said right.

But Feliciano was unconvinced. He said:

The other statements pointed out by the Court: Section 3, Executive Order No. 192 dated 10 June 1987, Section I, Title XIV, Book IV of the 1987 Administrative Code; and P.D. No. 1151, dated 6 June 1977 --- all appear to be formulations of policy, as general and abstract as the constitutional statements of basic policy in Article II, Sections 16 ("the right --- to a balance and healthful ecology") and 15 ("the right to health"*).*

P.D. No. 1152, also dated 6 June 1977, entitled "The Philippine Environment Code," is, upon the other hand, a compendious collection of

more "specific environment management policies" and "environment quality standards" (fourth "Whereas" clause, Preamble) relating to an extremely wide range of topics:

(a.) air quality management;
(b.) water quality management;
(c.) land use management;
(d.) natural resources management and conservation embracing:

(i.) fisheries and aquatic resources;
(ii.) wild life;
(iii.) forestry and soil conservation;
(iv.) flood control and natural calamities;
(v.) energy development;
(vi.) conservation and utilization of surface and ground water;
(vii.) mineral resources

Feliciano next noted that "neither petitioners nor the Court [had] identified the particular provision or provisions (if any) of the Philippine Environment Code which [gave] rise to a specific legal right which petitioners [were] seeking to enforce." He continued: "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."

Why then did justice Feliciano concur. He concurred merely in the result, and he did so in the expectation that the lower court, to which the case was being remanded, would compel the petitioners to "show a more

specific legal right - a right cast in language of a significantly lower order of generality than Article II (15) of the Constitution ---- that is or may be violated by the actions or failures to act, imputed to the public respondent by petitioners so that the trial court can validly render judgment granting all or part of the relief prayed for. To my mind, the Court should be understood as simply saying that such a more specific legal right or rights may well exist in our corpus of law, considering the general policy principles found in the Constitution and the existence of the Philippine Environment Code, and that the trial court should have given petitioners an effective opportunity so to demonstrate, instead of aborting the proceedings on a motion to dismiss."

The next point to consider is that standing of the petitioners. Standing is closely linked with the specificity of the legal right that is being asserted

I again begin with Justice Davide who found no problem in finding *locus standi.* He said:

> Petitioners minors assert that they represent their generation as well as generations yet unborn. We find no difficulty in ruling that they can, for themselves, for others of their generation and for the succeeding generations, file a class suit. Their personality to sue in behalf of the succeeding generations can only be based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned. Such a right, as hereinafter expounded, considers the "rhythm and harmony of nature." Nature means the created world in its entirety. Such rhythm and harmony indispensably include, inter alia, the judicious disposition, utilization, management, renewal and

> conservation of the country's forest, mineral, land, waters, fisheries, wildlife, off-shore areas and other natural resources to the end that their exploration, development and utilization be equitably accessible to the present as well as future generations. Needless to say, every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology. Put a little differently, the minors' assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come.

This passage from Davide brings to my mind the issue in American jurisprudence whether citizenship alone is enough to anchor *locus standi* in constitutional challenges. In *Schlesinger v. Committee to Stop the War* [8], the U.S. Court held that individuals acting in their capacity as United States citizens lacked standing to raise the claim that the "incompatibility clause" of the Federal Constitution rendered a member of Congress ineligible to hold a commission in the Armed Forces. And in *Ex Parte Levitt* [9], the Court ruled that a citizen lacked standing to rause the claim that Justice Black, because of his vote as Senator for the increase of retirement benefits, had been improperly appointed to the Supreme Court. The Court ruled that to entitle a private individual to invoke judicial power "he must show …. a direct injury ..... and it is not sufficient that he has merely a general interest common to all members of the public." As the *Schlesinger* decision put it, since "every provision of the Constitution [is] meant to serve the interests of all," recognition of citizen standing "has no boundaries" and would "distort the role of the judiciary in relation to the Executive and Legislature and open the judiciary to the charge of government by injunction."

I believe that our Constitution also believes that citizenship alone cannot anchor standing. For that reason, Article VII, Section 18 makes an exception by allowing any citizen to challenge the factual foundation of the imposition of martial law or the suspension of the privilege of the write. For Davide, however, the interest of the petitioner minors, speaking for their generation and generations to follow; was enough to anchor standing. In effect he was anchoring standing on citizenship or mere membership in the Philippine community. (Incidentally, if the Oposa decision had followed the first Kilosbayan decision, also penned by Davide, Davide might have used "transcendental importance" of the issue as his anchor for standing.)

Again, however Justice Feliciano found Davide's position too loose for comfort, Feliciano argued:

> The Court explicitly states that petitioners have the locus standi necessary to sustain the bringing and maintenance of this suit (Decision, pp. 11-12). Locus standi is not a function of petitioners' claim that their suit is properly regarded as a class suit. I understand locus standi to refer to the legal interest which a plaintiff must have in the subject matter of the suit. Because of the very broadness of the concept of "class" here involved - membership in this "class" appears to embrace everyone living in the country whether now or in the future --- it appears to me that everyone who may be expected to benefit from the course of action petitioners seek to require public respondents to take, is vested with the necessary locus standi. The Court may be seen therefore to be recognizing a beneficiaries' right of action in the field of environmental protection, as against both the public

> administrative agency directly concerned and the private persons or entities operating in the field or sector of activity involved. Whether such a beneficiaries' right of action maybe found under any and all circumstances, or whether some failure to act, in the first instance, on the part of the governmental agency concerned must be shown ... is not discussed in the decision ...

But again Feliciano found comfort in the expectation that this would be attended Lo in the lower court or in a future appropriate case. For this reason he concurred in the result.

I suggest , therefore, that in reading *Oposa v. Factoran, Jr,* it is important to note that the case did not dispose of the substantive constitutional issue with finality. It found the lower court's dismissal of the case precipitious and ordered that the case be remanded with the instruction that the petitioners amend their petition including the impleading as defendants of the holders of timber licenses. The case, however, is seminal in that it clearly asserts that litigation about socio-economic and cultural rights is not excused from the justiciability requirements of demandable right and *locus standi*. Moreover, I agree with the more precise essay of Justice Feliciano who requires that the demandable right be not abstract but concrete, not generalized but specific, which in turn can lead to the determination of the existence of *locus standi* on the basis of direct injury.

Cruz v. Flavier

There are in the 1987 Constitution, at lest eight provisions intended to

protect cultural communities:

> "The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development." II, 22.
>
> "The party-list representatives shall constitute *twenty per centum* of the total number of Representatives including those under the party list. For three consecutive: terms after the ratification of this Constitution, one-half of the seats allocated to party list representatives shall be filled, as provided by law, by selection or election h˙om me labor, peasant, urban poor, indigenous cultural communities, women, youth; and surd other sectors as may be provided by law, except the religious sector," VI,5(2).
>
> "The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.
>
> The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain."XII,5
>
> "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." XIII,6

"The State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plates and policies." XIV,17,

"The Congress may create a consultative body to advise the President on policies affecting indigenous cultural communities, the majority of the members of which shall come from such communities." XVI,12

"There shall be created autonomous regions in Muslim Mindanao and in the Cordilleras consisting of provinces, cities, municipalities, and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics within the framework of this Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines." X,15

"Within its territorial jurisdiction and subject to the provisions of this Constitution and national laws, the organic act of autonomous regions shall provide for legislative powers over:

1) administrative organization;
2) creation of sources of revenues;
3) ancestral domain and natural resources;
4) personal, family, and property relations;
5) regional, urban, and rural planning development;
6) economic, social, and tourism development;
7) educational policies;
8) preservation and development of cultural heritage; and
9) such other matters as may be authorized by law for the promotion of the general welfare of the people of the region

Because of this the Aquino administration signified a shift from integration of the cultural communities to preservation of their distinctive culture. Thus she created the Office of Muslim Affairs, Office for Northern Cultural Communities and Office for Southern Cultural Communities. For its part, Congress took a major step towards protecting cultural communities by enacting the Indigenous People's Rights Act, R.A. 8371. But when the constitutional of the Act was challenged before the Supreme Court, the fourteen sitting justices divided evenly voting 7 to 7. The principal bone of contention were the provisions of the Republic Act implementing Article XII, Section 5 which says: "The State, subject to the

provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being. The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain." The right enunciated in the constitutional provision as implemented by IPRA was challenged as a violation of the regalian doctrine.

The bulk of the IPRA debate was on the existence *of* a. legal right to ancestral domain and ancestral land. The affirmative side asserted that the indigenous peoples were private owners of ancestral domain and ancestral land on the basis of "native title." Native title is defined by IPRA as referring "to pre-conquest rights to land and domains which, as far back as memory reaches, have been held under private ownership by ICCs/IPs, have never been public lands and are thus indiputably presumed to have been held that way since before the Spanish conquest." (Section 3[1]). The title, however, is a limited title. It does not include the right to alienate. Nor does it include title to minerals found in the land. Nor indeed does it exclude the state from disposing of the natural resources.

As far as justiciability, therefore, it is clear that *Cruz v. Flavier* also require the existence of concrete legal right in the effort to protect the interests of indigenous cultural communities.

Cruz v. Flavier also involved the issue of standing. But the issue was raised not against those on the side of indigenous peoples but against the petitioners challenging the constitutionality of IPRA. The separate opinion of Justice Mendoza, who also voted for dismissal of the case, was all about the lack of standing of the petitioners, one of whom was former Justice Isagani Cruz. Mendoza saw no direct injury threatening the

petitioners. Following the strict doctrine on standing, Mendoza said:

> The judicial power vested in this Court by Art. VIII, S1 extends only to cases and controversies for the determination of such proceedings as are established by law for the protection or enforcement of rights, or the prevention, redress or punishment of wrongs. In this case, the purpose the suit is not to enforce a property right of petitioners against the government and other respondents or to demand compensation for inyuries suffered by them as a result of the enforcement of the law, but only to settle what they believe to b e the. doubtful chrcter of the law in question. Any judgment that we render in this case will thus not conclude or bind real parties in the future, when actual litigation will bring to the Court the question of the, constitutionality of such legislation. Such judgment cannot be executed as it amounts to no more than an expression of opinion upon the validity of the provision of the law in question.
>
> I do not conceive it to be the function of the Court under Art. VIII, §1 of the Constitution to determine in the abstract whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the art of the legislative and executive departments in enacting IPRA. Our jurisdiction is confined to cases or controversies. No one reading Art. VIII, §5 can fail to note that, in enumerating the matters placed in the keeping of the Court, it uniformly begins with the phrase "all cases ..."

> The statement that the judicial power includes the duty to determine whether there has been a grave abuse of discretion was inserted in Art. VIII, §1 not really to give the judiciary a roving commission to right any wrong it perceives but to preclude courts from invoking the political question doctrine in order to evade the decision of certain cases even where violations of civil liberties are alleged.

For his part, Justice Kapunan, although he voted for the dismissal of the case, anchored anding, as Justice Vitug did, on the transcendental importance of the issue, a basis which the Court more and more readily uses these days. Justice Mendoza on the other hand, adheres to the strict view that a personal stake enables a complainant authoritatively to present to a court a complete perspective upon the adverse consequences flowing from the specific set of facts undergirding his grievance."

To summarize then, what are the requirements for the justiciability of a claim based on socio-economic or cultural rights? The requirements are not different from those for the justiciability of other claims. First, there must be legal right that is concrete and specific. Second, there must be a violation of that right. Third, there must be a person claiming direct injury, except in those instances where the matter in issue is of transcendental importance.

REFLECTING ON THE CONCEPT OF JUSTICIABILITY

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The Loop and the Concern

1. There is a very interesting loop that *Baker v. Carr,* 369 U.S. 186 (1962) suggests. I shall quote the U.S. Supreme Court: "Deciding whether a matter has in any measure been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution." Put more directly, whether a matter is for the court to pass upon or not is something that the Court must first pass upon!

2. Justiciability on the one hand limits the reach of judicial power. What is not justificable is beyond the province of the courts. On the other hand, it enhances it, for whether or not an issue is justiciable or political (to use its classic antonym) is itself a jusiticable question,

3. Justiciability is a legitimate theoretical and juridical concern when one deals with economic, social and cultural rights. Thomas Buergenthal deftly characterizes the differences between the civil and political rights covenant engendered by the Universal Declaration on Human Rights, and the that dealing with economic, social and cultural rights.

4. “The obligations which a State Party assumes by ratifying this Covenant (on Economic, Social and Cultural Rights) differ very significantly from the requirement of immediate implementation found in the Civil and Political Covenant xxx As this language (the language of Article 2,1) indicates, by ratifying the Covenant, a state does not undertake to give immediate effect to the rights it enumerates. Instead, the state obligates itself merely to take steps `to the maximum of its available resources' in order to achieve 'progressively the full realization' of these rights." *(International Human Rights,* Nutshell, 44)

The Act *of Judging and Human* Cooperation

5. I will assume as non-controversial the rather unpretentious thesis that justiciability is "amenability to the act of judging" by the institution of the courts. I shall, however, draw from the insight of Paul Ricoeur on "The Act of Judging" which, with characteristic freshness of perspective, he offers in one of his latest books, *The Just (Le Juste).*

6. The act of judging has its context in that social effort to arrive at a rational consensus through the institution or phenomenon of society called the court. "Rational" and "consensus" are the two terms to which 1 wish to invite more than just passing attention. "Justiciability" submits an issue to that kind of resolution mediated by courts that apply laws, Of late, there has been much whining about the technicalities in which courts, it is complained, allow themselves to be enmeshed. This, of course, is to miss the whole point to "justiciability". When an issue is within the province of the judicial power of state, it is to dealt with and resolved by reference to the specific set of norms - or technical precepts - called laws. In this sense, "justiciability" is circumscribing and confining.

7. Ricoeur finds four conditions for the act of judging in its judicial form - in other words, for justiciability. These are:

7.1. the existence of written laws:
7.2. the presence of an institutional framework: courts, appeal courts, etc.
7.3. the intervention of qualified, competent, independent persons, who
are charged with judging;
7.4. a course of action constituted by the trial or judicial process, where
the pronouncement of judgment constitutes the endpoint.

8. There seems to be expert agreement that the rights set forth in the Covenant on Economic, Social and Cultural Rights are "programmatic and promotional" (Brownlie, *Principles of Public International Law, 4th* Ed., 572), and that therefore an "evolving programme is envisaged depending upon the goodwill and resources of states rather than an immediate binding legal obligation with regard to the rights in question" (Shaw, *International Law, 3rd* Ed., 198). This makes it specially challenging to introduce justiciability in this context. What is incontestable is that justiciability will depend in large measure on the degree of specificity, consequent to treaty obligations, with which municipal law provides the standards by which courts can adjudge claims. Justiciability before the International Court of Justice, on the basis of *Article* 38 of the Statute of the Court, will be co-extensive with the executory character of treaty provisions, with the evolution of international custom recognizing binding law, or even the emergence of peremptory norms in the sphere of social, economic and cultural rights.

Again, however, there is a loop here, for the more resolutely our courts address themselves to social, economic and cultural rights, the more certainly usable judicial standards evolve, for every act of judging, Ricoeur reflects, seeks the rule for a new case, and states the law in terms of a singular situation, while opening the way for a whole new course of jurisprudence. Re-thinking our notion of standing, and with it maturing in our concepts of enforceable or demandable
rights are two ways of being more resolute.

9, Justiciability at the same time must be that salutary reminder to judge and community alike that it is the "force of the law" that brings the debate between contending parties (the exchange of briefs and memoranda, pleadings and rejoinders) to an end, an exchange and a debate that could very well go on
indefinitely. Justiciability, if it must be a preferable alternative to the brute force the law was crafted to evade, must be the heightened practice of discourse and of the rationality it presupposes.

10. The act of judging can also be considered as the institutionalization of *distributive justice. To submit* the justiciability of an issue is to assert that the goods with which it is concerned are susceptible of distribution, i.e., delimiting the goods of one from the goods of another, or of correction when there is something askew about the distribution.

11. While on the one hand, the provisions of the *International Covenant on Economic, Social and Cultural Rights do not allow* for definite standards or measures of compliance as do the provisions of the Civil and Political Rights Covenant, it is not too difficult to see that such rights as the right to dispose of natural wealth and resources, the right to work and to favorable working conditions, the right to form labor associations, the right to social security, the right to education and other rights as are guaranteed by the

Covenant are justiciable, i.e., they are subject to` the institutionally framed distributive determination of the courts.

12. As regards economic and social rights, one can distinguish two levels of justiciability: there are rights that one state may claim against another, obviously calling for the intervention of international courts and tribunals administering and applying international law, there are also rights that an individual in a state may claim against other individuals, or even against his own government.

13. The litigation process --- adjudication, in other words - is actually a structured, stylized form of a more elementary social phenomenon: conflict. One
transfers to the court room and subjects to the ritual of judicial process the conflict that would otherwise express itself in other forms, violence primordial among them. Considering an issue justiciable is therefore expressing the preference for discourse over violence. At the same time, that there is something precarious about the option for adjudication is clear, for where citizens and states despair over the unreliability or incompetence of adjudication, then the attractiveness of the speedier outcome of violent confrontation becomes more difficult to resist.

14. Significantly, many times, more pressing than what may seem to be elemental civil and political rights are economic and social rights. More Filipinos now are more concerned about the right to work than the right to vote, and a right to their share of whatever prosperity our society may enjoy than the complexities of the Miranda warnings. But justiciability does not have to do directly with an ideal order where all share according to their needs and contribute according to their capacity? Rather, justiciability addresses injustice -- where one of the parties cries "Unfair". Justiciability therefore is the pursuit of justice through the protest against injustice.

15. Justiciability however places a heavy burden on the court and on the judge for its finality is "recognition" Let us, for now, leave out of the picture sore losers and unreasonable contenders. When a court decides as it out to decide, however, the end result should be that winning and losing party alike recognize the rule by which the outcome is reached. The usefulness of the concept of justiciability is closely linked with the integrity of the judge, the rationality of the legal system and the competence and credibility of the judicial institutions.

16. But the distribution that justiciability effects makes sense only if all share in common goods, if all share in common values. Ultimately, then, justiciability leas institutional procedure to social cooperation, to the formation of a community, be it a national community or a world community, not only in postponing the terrible hour of bloodshed, but also in drawing all to that common treasury that consists also of social, economic and cultural rights.

17. The act of judging that justiciability makes possible is maintaining that delicate balance between too close an encounter, such as one has in disorderly and violent conflict, or too *distant a* dealing which one has in ignorance, hate, and scorn.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN THE COURTS

by ***L.*** **A. QUISUMBING**

INTRODUCTION

Thank you for inviting me to your workshop on human rights - those rights that are inherently ours simply because we are human *(Homo Sapiens).*

Some say constitutional rights and civil rights are what happen in rich countries. What happens in poor or developing economies we call human rights.

Many observe that human rights are empty talk in a verbose legal system supported by weak pillars of a thin constitutional court and a fat police force. I reply that such is not our view of human rights because ours is an activist court inspired by the "Davide Watch" and committed to judicial reforms and respect for human rights.

There is, however, a folk saying that th[e] purpose of a rabbit snare is to catch rabbits, and when they are caught, the snare is forgotten. Similarly the purpose of *Words is to* convey ideas, and when the ideas are grasped, the words are forgotten. So one oriental teacher (Chung-Tzu) asked: "Where can I find a man who has forgotten words? He is the one I like to talk to." My answer to him is, "Here in Tagaytay; the hone of PhilJa. They are ready to grapple with ideas and not just words concerning human. dignity and human rights."

Coming here, I'm reminded of a comic scene. In an age of artificial intelligence, this scenario may become commonplace. At the breakfast table Mother-robot is feeding Baby-robot electronically while Father-robot tinkers with his televideo remote to enhance reception. Suddenly Baby-robot shoots a question:

"Mommy, what are humans?"

Mother is startled, recovers, and turns. "Ah," she says, "ask your Dad. He knows."

Quite distractedly, Daddy responds above the static. '"What, humans? Are we running out of power cells again?"

Now, you know. Humans, particularly farmed embryos according to the movie Matrix, would be the ultimate sources of electro-dynamic energy. But, even in that distant future, human or their clones wouldn't be

trouble-free.

RESPECT FOR HUMAN RIGHTS

Way back in the not so distant past when Martial Rule held sway, the U.P. Law Center conducted a symposium on human rights and bravely asked:

"What must be done in order to encourage respect for and ensure observance of human rights in the Philippines?"

Our neighbor, a lady professor, had a quick answer:

"Create a new international economic order, transform the domestic social structure, lift Martial Law."

A labor official and research scholar. since co-opted by the international bureaucracy, had a longer reply:

> "[Priority should go to a genuine reform of our socio-economic structure to insure that everyone has equal opportunity to a decent livelihood.. .to focus attention on improving the conditions of our lowest-income groups. There is no sense in preaching human rights if the bulk of the population are living below the subsistence levels."

A dean of Islamic studies, now retired and abroad, sounded cautious:

> While progressively putting into Philippine law, as much as it can accommodate, those rights stated in the Declaration and the Covenants...it should do best to educate the people on the meaning of such rights, provide the conditions to make them viable, and protect them. It is to be added that it is wise for Philippine society to emphasize more the duties or obligations of citizens. The fact that

there are claims to individual human rights should not allow people to forget that there must also be correlative rights of society - rights Which in the final analysis, will guarantee or make it more possible for individuals to enjoy human rights."

A senator (on exile?) had a longer response, with an acidic comment:

> "It is naive to think that those in power will respect human rights after listening to an eloquent lecture or sermon on the subject. They violate human rights because their curtailment is viewed as indispensable to their stay in power. The best Constitution, with the most elaborate guarantees of human rights, will be a mockery in the hands of a privileged few who lust after power and (of) a people who do not have the intelligence, the will, and the courage to fight for their basic rights."

Only one respondent (a bishop) indirectly referred to the role of the courts, when he replied:

> "Every citizen must be encouraged to report to the authorities any violation of human rights, especially the obstruction and miscarriage of justice. On the other hand. the authorities must see to it that proper corrections be made at the soonest possible time. If we do not, we can almost expect that the citizen will unite to insist on their rights at all costs."

Hardly ten years later, People Power toppled the martial law-oriented regime and restored a semblance of constitutional democracy.

But barely 15 years passed when People Power II forced another President to resign (?) or cop out of the palace by the Pasig, despite his purported charismatic hold on the movie-going masses. The Supreme Court by a vote of 13-0 decided to dismiss his petition which impugned the legitimacy of his successor in office.

As the Red Queen would say to Alice in Wonderland, we are in a fast moving country. It took us all of 15 years running to remain in place. And here we are again, led by a lady (economist as mid-term) President, hoping to find the magic formula that will ensure, despite coup rumors, the realization of human rights, particularly economic, social and cultural rights. Obviously, I can speak only of my own experiences and observations regarding our topic on the application of ESCR standards by the Philippine courts. But I hasten to add, what I state here does not reflect necessarily the views of the Supreme Court much less those of our generous sponsors today.

EARLY JURISPRUDENCE

One thing I learned from our researcher *before coming* here, Velayo's Digest. now out of print, had no entry on human rights. But she found entries for deportation *habeas corpus,* and stateless persons. SCRA QUICK INDEXDIGEST has entry on our subject. That shows somehow that our annotators are progressing even if we have no Shephard's, and Paras' citator had been discontinued. I shall assume, however, that as members of the bench and/or the bar, we are all up to date on the jurisprudence of human rights. And if I cite cases, they are only as background or by way of example. Or, in case you get bored, to bring our discussion back to earth.

Among the early substantive applications of the provisions of the

Universal Declaration of Human rights by our Court that we could find involve cases of foreigners: an alleged spy, an alleged subversive, an alleged Hukbalahap sympathize, an alleged threat to national security, and some jobless but allegedly habitual drunkards. They were brought into the country to work, to practice a profession, to engage in business, or to spy - for a foreign power during the second \V orld war while the Philippines was under enemy occupation, or earlier. They filed petitions *for habeas corpus* on grounds that they were detained for long periods by the Commission of Immigration but their deportation were long delayed or virtually impossible as they were already "stateless.

In the leading case of Mejoff vs. Director of Prisons, 90 Phil. 70 (1951), the Supreme Court Granted the petition for habeas corpus of Boris Mejoff, an alien of Russian descent brought in b the Japanese as a secret operative but who was captured by the US CIC and handed over to the government for proper disposition under our laws after the liberation of Manila. He was ordered deported to Russia by the Deportation Board but no vessel would take him aboard so lie was confined first in Cebu and then in Bilibid Prison at Muntinlupa while awaiting arrangements for his departure to be made. His first petition was denied. But the second was granted after two years of further incarceration. Earlier the Court warned that "wider established precedents, too long a detention may justify the issuance of a writ of habeas corpus," where the detainees' deportation could not be effected through "no fault of their own." In granting the writ, Justice Tuason opined:

> The protection against deprivation of liberty without due process of law and except for crimes committed against the laws of the land is not limited to Philippine citizens but extends to all residents, except enemy aliens, regardless of nationality. Whether an alien who entered the country in violation of its immigration laws may be detained for as long

as the Government is unable to deport hire, is a point we need not decide. The petitioner's entry into the Philippines was not unlawful: he was brought by the armed and belligerent forces of a de facto government whose decrees were law during the occupation.

Moreover, by its Constitution (Art. II, Sec. 3) the Philippines ``adopts the generally accepted principles of international law as part of the law of Nation.'' And in a resolution entitled "Universal Declaration of Human Rights" and approved by the General Assembly of the United Nations of which the Philippines is a member, at is plenary meeting on December 10, 1948, the right to life and liberty and all other fundamental rights as applied to all human beings Were proclaimed. It was there resolved that "All human beings are horn free and equal in degree and rights" (Art. 1); that "Everyone is entitled to all the rights and freedom set forth in this Declaration, without distinction of any kind. such as race, colour, sex, language, religion, political or other opinion, nationality or social origin, property, birth or other status" (Art 2), that "Every one has the right to an effective remedy by the competent national tribunals for acts violating the fimndamental rights granted him by the Constitution or by law" (Art. 8); that "No one shall be subjected to arbitrary arrest, detention or exile" (Art. 9); etc.

In U.S. vs. Nichols. 47 Fed. Supp., 201, it was said that the court "has the power to release from custody an alien who has been detained an unreasonably long period of time by the Department of Justice after it has become apparent that although a warrant for his deportation has

> been issued. the warrant can not be effectuated:" that "the theory on which the court is given the power to act is that the warrant of deportation, not having been able to be executed is *functus officio* and the alien is being held without any authority of law.˙ The decision cited several cases which it said, settled the matter definitely in that jurisdiction, adding that the same result had been reached in innumerable cases elsewhere. The case referred to were United States *ex rel. Ross vs. Wallis, 2 Cir. 279 F. 401, 404; Caranica vs. Nagle, 9 Cir.. 28 F. 2d 955; Saksagansky vs. Weeding, 9 cir., 53 F. 2d 13, 16* last paragraph; Ex parte Matthews, D.C.W.D. Wash., 277 F. *857; Moraitis vs, Delany,* D.C. Md. Aug. 28, 1942, 46 F. Supp. 425.

If you had in constitutional law or criminal procedure these cases of Mejoff, Borovsky, Chriskoff and Andreau, you might wonder how these petitioners were so lucky compared to petitioner in Tan Seng Pao vs. Commissioner of 107 Phil. 742 (1960). Tan had been under detention for 8 years since he was ordered deported but the order was yet to be implemented, In contrast, Mejoff and companv were under detention for only 2 to 4 years. Whv? As found by the Court. Tan unlike Mejoff, et al. was not stateless: he was a Chinese citizen and Formosa (now Taiwan) was nearby. Moreover, Tan through counsel and after a long wait had moved for reconsideration of the respondent's order. Pending resolution of his motion, he could still file and petition for bail. Clearly, he did not exhaust administrative remedies yet. And since neither fault for the delay in his deportation nor negligence could be attributed to the government for his detention, the Court on April 27. 1960, decided that the "warrant for his deportation should stand in all its force and vigor." All these despite the fact that Tan had been arrested and detained since October 12, 1949, and his deportation was already ordered since February 2, 1950. It mattered

not that his petition for habeas corpus was based on gross violations of law and of the Constitution as well as the Universal Declaration of Human Rights. If like you, I'm wondering at this result; it is only because perhaps my practice in CID was shorter than at COMELEC.

But I have very positive impressions of the ponencias in Mejoff, Borovsky, et al. The decisions were brief, to the point. The sentences were clipped. No word had a hyphen. The cases cited in the footnotes were few. Citations of foreign cases were clear. The dissents of Justice Pablo were in Spanish, without translation, but mercifully brief. I must stress, however, that the ponencias of Justice Tuason were squarely based on Philippine Law and our Constitution. He cited our adoption of the generally accepted principles of international law as part of the law of the nation. And though the ink on the Universal Declaration of Human Rights dated December 10. 1948, was hardly dry, the Court, found it worth quoting to support the issuance of the great writ of liberty in favor of, among others, alleged spies, subserves, and "un borracho." That should tell us that the Declaration is indeed universal - for all human beings.

EARLY APPLICATION

The free (or almost free) flow of goods, capital, services and ideas which appears commonplace these days easily makes us forget that protectionism in the economic sense was all too entrenched fifty years ago. Economic nationalism was the flavor of that period, and as a student I remember an essay contest sponsored by NEPA. With the prize money came a gold medal from then President Carlos P. Garcia, the exponent of Filipino First policy. The winning piece bewailed alien dominance of our economy while Filipinos remained hewers of wood and drawers of water,

or worse, houseboys and housemaids of foreigners. Now, I have imbibed a little bit more economic sense. At the department, I was told that our economy might suffer if our domestics and other workers abroad suddenly stopped remitting dollars home. More important, learned our economy might collapse without continued infusion of foreign investments. We could be anti-IMF WB, and AID, but where would that leave our skilled workers, managers; engineers and lawyers? Sa Kankongan! So we have joined ASEAN, APEC, AFTA, and WTO aside from ILO in order that we are not left alone helpless, isolated, and stranded in an ocean of economic sharks, crocodiles and piranhas. And yet, in practice and in Court. I learn that economic and social security are set in a global culture of risks: no nation is ever safe from tigers east and west, north and south.

But way back in 1957, when the peso-dollar parity hovered just above 2 to 1; with our population just *about 25* million instead of 78.5 million:, when the minimum wage was only 124 pesos a day compared to *42250* today; *when our* foreign debt was way way below $90 billion; when Magsaysay had routed the Huks, and our economy ranked second only to Japan in Asia; when we had loggers but not drug Lords; when life was simpler and many could afford amahs and achoys at home, it was all right to be patriotic, nationalistic, and protectionist. Or so it seemed, not only in the media and in the campus, but even in the halls of the judiciary.

Faced *with a petition* to declare the Retail Trade Nationalization *Law* (Rep. *Act 1* 180) invalid and unconstitutional, the Court saw its task as quite delicate. In the words of the *ponente,* Justice Labrador, *in Lao Ichong vs. Hernandez, 101 Phil.* 1155 (1957):

> "Admittedly springing from a deep, militant, and positive nationalistic impulse, the law purports to protect citizen and country from the foreign retailer. Through it, and

> within the field of economy it regulates; Congress attempts to translate national aspirations for economic independence and national security, rooted in the drive and urge for national survival and welfare, into concrete and tangible measures designed to free the national retailer from the competing dominance of the alien, so that the country and the nation may be free from. a supposed economic dependence and bondage."

Disposing of arguments that the nationalization by Congress of the retail trade was in violation of due process and equal protection clauses of the Constitution.. as well as deprivation of private property without just compensation, the Court vent on to reject the petitioner's argument that the act of Congress violated international and treaty obligations of the Philippines.

Said the near-unanimous Court thru Justice Labrador:

> Another subordinate argument against the validity of the law is the supposed violation thereby of the Charter of the United Nations and of the Declaration of Human Rights adopted by the United Nations General Assembly. We find no merit in the above contention. The United Nations Charter imposes no strict or legal obligations regarding the rights and freedom of their subjects (Hans Kelsen. The Law of the United Nations. 1951, ed. pp. 29-32), and the Declaration of Human Rights contains nothing more than a mere recommendation, or a common standard of achievement for all peoples and all nations *(Id. p. 39.)* That such is the import of the United Nations Charter and of the Declaration of Human Rights can be inferred from the fact that members of

the United Nations Organization, such as Norway and Denmark, prohibit foreigners from engaging in retail trade, and in most nations of the world laves against foreigners engaged in domestic trade are adopted.

The Treaty of Amity between the Republic of the Philippines and Republic of China of April 18, 1947 is also claimed to be violated by the law in question. All that the treaty guarantees is equality of treatment to the Chinese nationals "upon the same terms as the nationals of any other country." But the nationals of China are not discri minated against because nationals of all other countries, except those of the United States, who are granted special rights by the Constitution, are all prohibited from engaging, in the retail trade. But even supposing that the law infringes upon the said treaty, the treat's is always subject to qualification of amendment by a subsequent law (U.S vs Thompson. 258. Fe. 257, 260). and the same may never curtail or restrict the scope of the police power of the State (Palston) vs. Pennsylvania, 58 L. ed. 539.)

APPLICATION ABROAD

in our selected reading references, Prof C. McCrudden of Oxford University asks about a. common law on human rights. According to him, it is now commonplace in man jurisdictions to refer to decisions of foreign jurisdictions when interpreting domestic human rights guarantees. With his comments in mind, l now wish to call attention to an early application of the UN Charter and the Declaration of Human Rights provision abroad.

In Sei Fujii v. State, 97 A.C.A. 154,.P. 2d 481 (1950), the California District Court of Appeals reversed the lower court's escheat of the land of plaintiff who was born in Japan *and* ineligible for naturalization as US citizen. Said Judge Wilson on appeal:

> On December 10, 1948, the General Assembly of the United Nations passed and proclaimed and called upon all member countries to publicize, disseminate and expound in schools and elsewhere, a "Universal Declaration of Human Rights" affirming among other things that "All human beings are born free and equal in dignity and rights. They ... should act toward one another in a spirit of brotherhood. [Art. 1] Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin. property, birth of other status. [Art. 2.] ... Everyone has the right to own property alone as well as in association with others." [Art. 17.] This Declaration implements and emphasizes the purposes and aims of the United Nations and its Charter.
>
> Democracy provides a way of life that is helpful; however its promises of human betterment are but vain expressions of hope unless ideals of justice and equity are put into practice among governments, and as well between government and citizen, and are held to be paramount. The integrity and vitality of the Charter and the confidence which it inspires would and eventually be brought to naught by failure to act according to its announced purposes. Its survival is contingent upon the degree of reverence shown for it by the contracting nations, their governmental subdivisions and their citizens as well.

This nation can be true to its pledge to the other signatories to the charter only by cooperating in the purposes that are so plainly expressed in it and by removing every obstacle to the fulfillment of such proposes.

A perusal of the Charter renders it manifest that restrictions contained in the Alien Land Law are in direct conflict with the plain terms of the Charter above quoted and with the purposes announced therein by its framers. It is incompatible with Article 17 of the Declaration of Human Rights which proclaims the right of everyone to own property. We have shown that the expansion by the Congress of the classes of nationals eligible to citizenship has correspondingly shrunk the group ineligible under the provisions of the Alien Land Law to own or lease land in California until the latter now consists in reality of a very small number of Japanese. *The* other Asiatics who still remain on the proscribed list are so few that they need riot be considered.

Clearly such a discrimination against a people of one race is contrary both to the letter and to the spirit of the Charter which, as a treaty, is paramount to every law of every state in conflict with it. The Alien Land Law must therefore yield to the treaty as the superior authority. The restrictions of the statute based on eligibility to citizenship, but which ultimately and actually are referable to race or color- must be and are therefore declared untenable and unenforceable.

Judgement reversed with directions to enter a decree in favor of plaintiff in accord with the prayer of his complaint.

So far, so good. But it was not the end of the controversy. International law experts and other scholars like Judge Hudson were critical of Judge Wilson's *ponencia* invalidating the escheat of Sei Fujii's land by the State. The California Supreme Court heard the State's further appeal. *In Sei Fujii v. State, 38 Cal. 2d* 731, 242 *P.* 2d 617 (1952), *C J.* Gibson differed from Judge Wilson's views and revel˙sed him in regard to the application of the UN Charter. Said *C. .I* Gibson:

> ….[T]he sole question presented on this appeal is the validity of the California alien land law.
>
> It is first contended that the land law has been invalidated and superseded by the provision of the United Nations Charter pledging the member nations to promote the observance of human rights and fundamental freedoms without distinction as to race. Plaintiff relies on statements in the preamble and in Articles 1, 55, and 56 of the Charter, 59 Stat. 1035.
>
> It is not disputed that the charter is a treaty, and our federal Constitution provides that treaties made under the authority of the United States are part of the supreme law of the land and that the judges in every state are bound thereby. U.S. Const., Art. Vl. A treaty, however, does not automatically supersede local laws which are inconsistent with it unless the treaty provisions are self-executing. In the words of Chief Justice Marshall: A treaty is "to be regarded in courts of justice as equivalent to an act of the Legislature, whenever it operates of itself, without the aid of any legislative provision. But when the terms of the stipulation import a contract - when either of the parties engages to

perform a particular act, the treaty addresses itself to the political not the judicial department; and the Legislature must execute the contract, before it can become a rule for the court." Foster v. Neilson, 1829, 2 Pet. 253, 314, 7 L. Ed. 415.

X X X

The provisions in the charter pledging cooperation in promoting observance or" fundamental freedoms lack the mandatory quality and definiteness which would indicate an intent to create justiciable rights in private persons immediately upon ratification. Instead, they are framed as a promise of future action by the member nations. Secretary of State Stettinius, Chairman of the United States delegation at the San Francisco Conference where the charter was drafted, stated in his report to President Truman that Article 56 "pledges the various countries to cooperate with the organization by joint and separate action in the achievement of the economic and social objectives of the organization without infringing upon their- right to order their national affairs according to their own best ability, in their own way, and in accordance with their own political and economic institutions and processes-" Report to the President on the Results of the San Francisco Conference by the Chairman of the United States Delegation, the Secretary of State, Department of State Publication 2349, Conference Series 7I, p. 1I5; Hearings before the Committee on Foreign Relations, United States Senate (Revised) July 9-13, 1945, p. 106. The same view eras repeatedly expressed by delegates of other nations in the debates attending the drafting of article 56. See U.N,C.I.O. Doc. 699 1113/40, May 30, 1945, pp. I-3; U.N.C.I.O, Doe, 684, 11/3/38. May 29, 1945, p. 4; Kelsen, The Law of the United Nations (1950), footnote 9, pp. 1.00-

> The humane and enlightened objectives of the United Nations Charter are, of course, entitled to respectful consideration by the courts, and Legislatures of every member nation, since that document expresses the universal desire of thinking men for peace and for equality of rights and opportunities. The charter represents a moral commitment of foremost importance, and we must not permit the spirit of our pledge to be compromised or disparaged in either our domestic or foreign affairs. We are satisfied, however, that the charter provisions relied on by plaintiff were not intended to supersede existing domestic legislation, and we cannot hold that they operate to invalidate the alien land law...
>
> [Having thus disposed of the issues relating to the UN Charter, the court proceeded to hold the Alien Land Law invalid on the ground that it violated the equal protection clause of the Fourteenth Amendment.]

Lest we get a negative impression of the US courts' record, however, more recent cases like Hilao v. Estate of Marcos and Trajano v. Marcos regarding damages for alien tort claims because of torture and other violations of human rights, have shown American adherence to *jus cogens*, or that class of human rights from which no derogation is allowed.

COMPARATIVE LEGISLATION

At about the same time that the Universal Declaration of Human Rights was adopted, the drafting of the Civil Code of the Philippines was

also finished. Completed late I947, the Code was submitted in January I948 to Congress and approved on June 18, 1949 as Republic Act No. 386. The Code contained a chapter (2) specifically devoted to "Human Relations" which has a detailed provision in Art. 32 protecting in I9 sections the basic rights and freedoms of the individual, particularly of religion, speech, press, suffrage, due process, just compensation in the taking of private property, equal protection of the laws, freedom from arbitrary or illegal detention, security of one's person, house, papers, and effects against unreasonable searches and seizure, liberty of abode, privacy of communication, freedom of association, peaceful assembly to petition for redress of grievances, freedom from involuntary servitude (or slavery). right against excessive bail, right to counsel, speedy trial, confrontation, compulsory process, attendance of witnesses for the accused. right against self-incrimination, freedom from excessive fines or cruel and unusual punishment, and freedom of access to the courts.

Art. 32 includes a provision for independent civil action for damages, distinct from criminal prosecution. But it grants civil immunity to the judge as an exception the rule therein that (Art. 32) "Any public officer or employee, or anv private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or is pairs any of the (mentioned) rights and liberties of another person shall be liable for damages."

Significantly the Civil Code incorporates the fairly modern view of "abuse of rights," in contrast to the classical theory that "he who uses a right injures no one. For it says in Art. 19: "Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

Also noteworthy insofar as the role of the courts is concerned, the

Code provides in Art. 9 that: "No judge or court shall decline to render judgment by reason of the silence, obscurity of insufficiency of the laws." And it further provides in Art. 10 that: "In case of doubt in the interpretation or application of laws., it is presumed that the law-making body intended right and justice to prevail." . It particularly directs the Court, in Art. to be solicitous of the weak-minded, the young, the aged, the illiterate, and the disadvantaged in general.

Now, let me just dwell for a moment on an issue involving the right of free access to the court. If this right is guaranteed in the Constitution, may an amendment to the Constitution do away with this guarantee? We all know that in our jurisdiction, for example, the right of appeal to a second-level court is deemed statutory and such appeal may be removed by repeal or amendment of the enabling statute. But since free access to the court is provided for by the Constitution. Congress by law, may not derogate from the right. The problem, however; arises when the Constitution is amended to remove a certain class of cases from judicial cognizance, Such was the situation in regard to agrarian reform, for example, in India.

At about the same time that the American court in Berman v. Parker' narrowed down the justiciability of public purpose, the Indian court was losing its power to pass upon compensation questions. Moreover, the broad concept of taking in the American sense was negated by the Indian constitutional amendment [2], No. IV, Sec. 2. It provided that the law shall not be deemed as providing for compulsory acquisition or requisition, notwithstanding it deprives any person of his property, if there is no transfer to the state or state corporation.[3] Thus in those cases of regulation or of indirect takings,[4] the court could not entertain the issue of compensability. [5]

The fourth amendment of the Constitution of India helped quicken

the pace of land reform, even as critics[6] lamented the drift from American concepts of property to that of socialism as having eaten into the vitals of constitutional guarantees. However, to the pessimistic prognosis that the spectre of confiscation had entered India,[7] it was contended that the amendment did nothing more than return from the American doctrine of judicial review to the English doctrine of parliamentary supremacy.[8] Moreover, the amendment did not bar all instances of resort to the court.[9] When the ceilings on holding, after the abolition of zamindari, became part of land reform legislation an avenue of renewed attack on land reform

1 348 US. 26 (1954). What follows is part of my early research on land reform in India.

2 INDIA CONST Amend. IV, sec. 2.

3 INDIA CONST. Art. S I (2A).

4 In West Bengal V Subodh Goapl. XV11 S. Ct. J. 127. 144 Sastri C.J. tool, acquisition to mean " withheld " physically

5 2 Basu. Commertar, 239-240 (5th Ed)

6 Banerjee, *op. cit.* 2 Basu. Commentary: Munikanniah. *op. cit*

7 Douglas. *op. cit. 225.*

8 Sajjan Singh v Rajasthan. I S.C.R. 932 (1965). In re the Delhi Laws Act (1951) S.C.R 747. S83-SP: 2 Basu. Commentary, 230.

laws was found in the distinction *between "estate"* and ryotwari."[10] In the leading case of *Karimbil Kunhikoman vs. Kerala State."* the court voided the compensation provisions of the Kerala Acts which, the court found, were not shielded by constitutional amendments because the land involved was a "rvot" and not an "estate" as constitutionally defined.[12] In 1964 the *Karirnbil* ruling was relied on to invalidate the Madras land reform act of 1961.[13]

To save the Kerala and Madras measures and those in equally

vulnerable position, Parliament again resorted to constitutional amendment, the seventeeth.[14] This time forty-four land reform laws were removed from court review.[15] The term estate now included *ryotwari* settlement,[16] specific grants, [17] and "any land held or let for purpose of agriculture or for purposes ancillary thereto." More irnpotant,[18] it made possible the acquisition by the state of any land "held by a person under his personal cultivation" "within the ceiling applicable to him under any law for the time being in force" so long as the acquisition law provides for compensation at “not less than the market value thereof." [19] It is fair to say that the target of legislative attack has fanned out to include not only the zamindars but also small-holders. [20]

[9] Basu. *op. cit*., 231-32

[10] Karimbil Kundhikoman v. Kerala. 1 S.C R. 829 Supp. I (1962). P. Nambudiri v. Kerala. I Supp. S.C.R. 753 (1962).

[11] Supp. I S.C.R. 829 (962 .

[12] INDIA CONST. Art. 3 I A (2) (a) refers the meaning of estate" to focal usage.

[13] Krishnaswami Naidu v. Madras. l S C.R. 83 (1964).

[14] Passed June 20. 1964.

[15] INDIA CONST. amend. seventeenth. Sec.3

[16] INDIA CONST Art. 31A (2j (a) (ii): amend. seventeenth sec. 2 (ii) (a).

[17] Jagir. Inam, muafi or similar grants. INDIA CONST., art. 31A (2) (a) (I): amend. Seventeenth, sec. 2 (ii) (a) (i).

[18] INDIA CONST. Art. 3IA (2) (a) (iii): amend. seventeenth. sec. (ii} (a) (iii).

[11] INDIA CONST. Art. 3IA (I). amend. seventeenth sec. 2 (1)

[11] Cf. Munikanniah. *op. cit.,* at 214.

The constitutionality of the seventeenth amendment was challenged in *Sajjan Singh v. Rajasthan State* [21] on the ground that the power to amend does not include the power to take away the fundamental rights, including the right to challenge the validity of acts listed as exempt from challenge in court. [22] Petitioners contended that the effect of the amendment was a "very serious and substantial inroad on the powers of the High Courts."[23] Gajenkadkar, C.J., writing for the majority of three, found the amendment valid, for the reason among others that the effect on the powers of the court was indirect, incidental and otherwise insignificant.[24] The "pith and substance"[25] of the amendment was the removal of possible obstacles "to the fulfillment of the socio-economic policy in which the part,, in power believes."[26] If petitioners prevailed in having the amendment invalidated, and the ruling in *Sankari Prasad* reversed,[27] past amendments "would be rendered invalid and a large number of decisions dealing with the validity" of land reform acts listed by those amendments "would also be exposed to serious jeopardy."[28]

There were two separate opinions concurring in the result [29] (dismissal of petitions) that nevertheless aired doubts about the validity of the seventeenth amendment. The Indian legislature, argued Mudholkar J., is not "a sovereign Parliament on the British model" and like other state organs could function only within the limit of powers conferred by the constitution; whether an amendment must comply with the requirements of constitution,"[30] and it is both the duty and power of the court to examine the challenge that an amendment was not validly made.[31] Hidayatullah J. remarked that he would require stronger reasons that those given in *Sankari Prasad* [32] to accept "the view that Fundamental Rights were not really fundamental but were intended to be within the powers of amendment in common with other parts of the constitution and without concurrence of the States."[33]

[21] I S.C.R. 932 (1965)

[22] The Rajasthan Tenancy Act (Act 11 of 1955), and the Rajasthan Zamindari Abolition Act (Act V111 of 1959) were listed as nos. 55 and 56, in the Ninth Schedule, art. 31B.

[23] I S.C.R 932. 941 (1965).

[24] *Id,.* at 944.

[25] According to the "pith and substance" test, the court must ascertain the true nature and character of the act and not the form alone of the statute. Citing Atty. Gen. for Ontario *v.* Reciprocal Insurers (1924 A.C. 328).

[26] I S.C.R. 932. 941 (1965). But see 2 Basu. Commentarv at 218 (5th Ed.). "Implementation of a Directive Principle of State policy is a public purpose but not a mere policy of the party in power."

[27] I SCR 932. 949 (1965).

[28] The same argument was offered in golaknath v. Punjab, 2 S.C.R. 762 (1967). but *Sunkari Prasad* was nevertheless reversed, although Subbao Rao's opinion sought to avoid this jeopardy by the doctrine of prospective overruling.

[21] Hidayatullah and Mudholkar's.

These expressions of doubt crystallized into a contrary opinion in *Golaknath v. Puniab State.* [34] Herein questioned were the validity of the Punjab Security of Tenures Act [35] and the Mysore Land Reforms Act,[36] both of which were listed in the seventeenth amendment that shielded them from court action. The fact situation involved the estate of Golaknath on whose death several hundred acres of land were declared surplus, *viz*, above the ceiling imposed by the Punjab Act, and therefore had to be distributed to the tenants. [37] Golaknath's children as heirs claimed the Act infringed their right to proper-t_y.'s The Mvsore Act, which also fixed a ceilinu on holdings and conferred ownership of the surplus on tenants, was contested by the landowners who claimed that the Act

amounted to a denial of equal protection; an impairment of their right to property and a deprivation of property without authority of law and without compensation.[39] Since both acts were listed in the seventeenth amendment, the validity of that amendment was put at issue as the threshold question.[40] But at the bottom of the conflict was the question of whether Parliament had the power to pass an amendment (to the constitution) alleged to contravene fundamental rights, including the right to move the court for encorcement of those constitutional guarantees [41]

[30] I S.C.R. 932. 965 *(1965).*

[31] Id. at 964. At 968. Mudhokar refers to three modes of attending the Constitution under art. 368.

[32] S.C.R. 89 (1952)

[33] I S.C R. 932. 961 (1965).

[34] 2 S C.R 762 (1967).

[35] Punjab. Act X of 1953.

[36] Mysore. Act X of 1962.

[37] The excess found was 418 standard acres and 9 ¼ units. 2 S.C.R. 762, 780 (1967).

[38] Id.. 780-32, The rights allegedly injured are the rights of property, equal protections of the law and the guarantee of access to the courts. India Const. Art. 19. 14. and 32.

[39] Id.. 78I.

Divided as the special bench of eleven Justices were, five-one-five., no court opinion could be written.[42] However, Hidayatullah voted with the five Justices led by *Subba Rao C.J.* who*,* in his opinion, reached the following result:

"(5) We declare that the Parliament will have no power

from the date of this decision to amend any of the provisions of Part III of the Constitution so as to take away or abridge the fundamental rights enshrined therein."[43]

The other five Justices dissented in three separate opinions but all refused to circumscribe the powers of the legislature. [44] Wanchoo J., writing for three members, stated that they had no doubt that Article 68 does confer power oil Parliament subject to the procedure provided therein for amendment of *crl7y provision* of the Constitution. [45] Rasmawani J. found it "difficult to accept... that fundamental rights enshrined in Part III are immutably settled and determined once and for all these rights are beyond the ambit of the future amendment." [46] if the lower of amending "this Constitution" means "any provision thereof," then it was not intended. J. Bachawat argued, "that defects in Part III could not be cured or that possible errors in judicial interpretation of Part III could not be rectified by constitutional amendment." [47] If basic features of the Constitution could not be amended, Wanchoo declared, and only the court could define what was basic, "every amendment would provide a harvest of legal wrangles so much so that

Parliament may never know what provisions can be amended and what cannot." [48]

[40] The seventeenth amendment intended to override the court's decision in Karimba Kunhikoman v. Kerala. Supp. I. S.C.R. 829 (I96-1) that ¯ryotwari" holding can be taken in the process of land reform. See Subba Rao opinion. 2 S.C.R. 762. S02-07 (1967).

[41] *Id*. at 781-82. The validity of the first and fourth amendments were also put in issue.

[42] There are thirteen members of the India Supreme Court. India Ministry, of Law. *The constitution at* 65 n. I.

[43] 2 S.C.R. 762. 815 (1967).

[44] The dissenters were Wanchoo. Bachawat. Ramswari. Bhargava and Mitter. JJ.

[45] 2 S. C. R. 752. 836 (1967)

[46] *Id.,* at 937.

Holding the decisive vote on the seventeenth amendment's validity, Hidayatullah J. [49] found that (1) "the sum total of this amendment is that except for land within the ceiling, all other land can be acquired or extinguished or modified without compensation [50] and no challenge to the law can be made under Articles 14, 19, o 31 of the Constitution;" [51] (2) deprivation of private property of any person is snot to be regarded as acquisition or requisition unless the benefit of the transfer or ownership goes to the state or state-owned or controlled corporation [52] (3) the ceiling on holding, applicable for the time being, may be lowered by legislation and the state "may leave the person an owner in name and acquire all his other rights." [53] All these he considered inroads on fundamental rights; but he would sustain the constitutional amendment because the "amendment is a law and Article 31 (1) permits the deprivation of property by authority of law." [54]

[47] *Id*. at 913.

[48] *Id. at* 836.

[49] Hidavatullah J. concurred in the result it Sajjan Singh v. Rajasthan. but had reserved his opinion on the relation of art. 13 (2). India Const. and the power of amendment. I S.C. R. 930. 959 (965).

[50] 2 S.C.R. 762. 896 (1967)

[51] *Id*. 897.

[52] See India Const. Art. 3l (2A)

[53] 2 S.C.R. 762. 898 (1967).

However., concerning the third part of the amendment, which added forty-four state statutes concerning land reform to the list saving them from judicial decision of nullity, past or future; Hidayatullah J. found one aspect gravely wrong; the list or Schedule "is being used to give

advance protection to legislation which is I own or apprehended to derogate from Fundamental Rights."' Because this holding tilted the balance, it is worthwhile quoting:

> "The power under Article 368, whatever it may be, was given to amend the Constitution. Giving protection to statutes of State Legislatures which offend the Constitution in its most fundamental part. can hardly merit the description amendment of the Constitution.... If these Acts were not included in the Schedule they would have to face the Fundamental Rights and rely on Articles 31 and 31-A to save them. By this device protection far in excess of these articles is afforded to them. This in my judgment is not a matter of amendment at all ... Ours is the only Constitution in the world which carries a long list of ordinary laws which it protects itself. In the result I declare s. 3 to be *ultra vires* the amending process." [56]

Hidayatullah J, was therefore of the opinion "that an attempt to abridge or take away Fundamental Rights by a constituted Parliament even though by an amendment of the Constitution can be declared void." The Court, according to him, had the power and jurisdiction to make the declaration.[57]

Whether this narrow victory for fundamental rights escaped the inroads of changing times, I have no recent news. More citation analysis is needed, a luxury I cannot now afford.

Let's take a little time to stress that the rights of the individual human being that are enshrined in the Bill of Rights of our Constitution, are derived mainly from the first ten Amendments to the U.S. Constitution. But they are not limited to political and civil rights. They also contain

economic, social and cultural rights.

[54] *Id*. at 899.

[55] *Id*. at 899-900.

[56] *Id*. India Const. Amend, seventeen, sec. 3 carried 44 laws related to tenancy, land taxes, and village offices, but its main purpose w*as* to save state laws on ceilings of holdings as part of the land reform program.

Moreover, although showing slight variations, these fundamental and protective guarantees of individual rights have a constant resonance since the Malolos Constitution of 1898, and the Organic Law of 1916 and the Independence Act of 1935. Basic rights and fundamental freedoms of the individual in our basic laws offer protection in law not just to Filipinos but also to foreigners in the Philippines, not just to Christians but also non-Christians, not only to the well-heeled but even the so-called lepers of society as well.

In the off-quoted decision of Justice George Malcolm in *Villavicencio vs, Lukban*, 19 Phil. 778, Supreme Court granted the privilege of the writ of *hobeas corpus* to 170 women of ill repute who were forcibly taken from their homes in Manila and involuntarily shipped to Davao City, away from their clientele. According to Malcolm, the forcible taking of these women to have them deposited in a distant region deprived them of their freedom of locomotion just as effectively as if they had been imprisoned. It goes without saying that some of them did improve their lives in Davao City, but that is another story. The same revered Justice Malcolm, however in *Rubi vs. Mindoro*, 39 Phil. 661, just a few days earlier than *Villavicencio vs. Lukban*, sustained a restrictive ordinance passed by the provincial board of Mindoro and directed at a cultural minority. That measure, pursuant to Section 2145 of the Administrative Code of 1917 with approval of the Secretary of Interior, authorized the Provincial

Governor to direct non-Christian inhabitants, namely Mangyans like Rubi, to take up habitation in reservations (`sites on unoccupied public lands") selected by the Governor and the Provincial Board, similar to reservations for Indians in some American states. According to Justice Malcolm, confinement in reservations in accordance with the Administrative Code did not constitute slavery and involuntary servitude. Instead, he pointed out that it was intended to begin the process of civilization of the indigenous tribe of Mangyans; to promote education of their children, to improve health and morals, and develop the resources as well as protect the settlers of that great island. J. Malcolm rejected the doctrines of laissez faire and unrestricted freedom of the individual as axioms of politics and economics that are passe. He did mention the U.S. policy of "pupilage ' of American Indians as wards under the US Congress with the US govt serving as their guardians. I wonder though how this policy squares with the Bill of Rights and other human rights documents today, and how the decision by Justice Malcolm will stand the test of time .

RECENT DECISIONS

Taking a look at current decision of the Court, we find that judicial protection has been extended, upon the invocation of human rights and fundamental freedom protected by our Constitution, our laws, and treaties or international conventions. In G.R. No. 123810, January 20, 1999, Consolidated Rural Bank v. NLRC and Sanchez, an employee was ordered reinstated to her position with full back wages, under Art 279 of the Labor Code, as well as allowances and other benefits or their monetary equivalent, and 10% of the total award as attorney's fees. Or in *lieu* of reinstatement if such is no longer possible, with the payment of full back wages and other monetary benefits, and Php 500,000 as moral damages, on the ground that her alleged dismissal was attended by bad faith ail constitute an act contrary to labor, or done in a manner contrary to

morals, good customs or public policy. *In Llorente v. Sandiganbayan,* petitioner were found guilty of unjust discrimination against an employee who for that reason was an aided damages of Php 90.000. And in Asuncion v. Judge Asuncion, respondent was fined Php10, 000 for violating the human rights of petitioners when he ordered jailed without informing them the charges against them.

RULE MAKING POWER

Before I close, may I just cite the impact of the rule-making power of the Court on cases involving human rights and socio-economic issues. Please note that even the Commission on Human Rights created by the Constitution must "adopt its operational guidelines and rules of procedure, and cite for contempt for violations thereof in accordance with the Rules of Court." [Const., Art. XIII. sec. I8; (2)]. In turn, the Constitution [Art. VIII, sec. 5 (5)] vested in the Supreme Court the power to:

> "Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, procedure in all courts... Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court."

Its rule-snaking powers encompass the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. "Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be Lini otnil for all courts of the same grade, and shall not diminish, increase, or modify substantive rights." (ibid) Coupled with its power to appoint all administrative officials and employees of the Judiciary and its power of administrative supervision over all courts and the personal thereof, the rule-making authority of the Supreme Court

greatly enhances its independence in a system of separation of powers with checks and balances among the 3 branches of government. Further, such autonomous rule-making authority vested in the Court appreciably facilitates its exercise of traditional judicial power to resolve actual cases and controversies but also of its newly vested power "`to determine whether or not there has been a grave discretion amounting to lack or excess of jurisdictionon the part of any branch or instrumentality of the Government." [Art. VIII, Sec. I (2)].

In the exercise of its rule-making power, the Court has very recently adopted new rules or amendments to the Rules of Court. Among them is the Rule on Electronic Evidence. effective Aug. 1, 2001, intended to implement requirements of the E-Commerce Law. Earlier, it promulgated the Rule on Examination of a Child Witness, effective December 15, 2000, as well as the (amended) Rules for the transfer of SEC cases to the Regional Trial Courts which must henceforth decide those cases pursuant to changes in the SEC law. In regard to BP # 22 (The Bouncing Checks Law), the Court has issued and Administrative Circulars (No. 12-2000 and No. 13-2001) adopting the policy of awarding fines rather than imposing imprisonment as penalty for violations of said law, considering among others, the constitutional guarantee against imprisonment for non-payment of debt. Even more important, the Court has promulgated effective December 1, 2000, the Revised Rules of Criminal Procedure as amended (Rules 110-127, Rules of Court). Shortly, the court will promulgate the approval revisions of Rule 140 of the Rules of Court on administrative cases affecting the discipline of judges, hopefully to meet critical observations of the affected judges themselves.

If you have second thoughts on the impact of these changes in the Rules, then let me just point out the amendment of Section 8 of Rule 1 10. As amended, it now reads:

"Sec. 8. Designations of the offense. - The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing.(8a)"

Pursuant to this revised rule, in People vs. Melecio Sagarino @ Kalamransi, G.R. Nos. 135356-58, the accused-appellant was saved from two sentences of death for rapes he committed because no aggravating circumstances were specified the information filed against him. Before you rejoice that a young life was saved from lethal injection, let me tell you the victim was his own mother, aged 57 years old.

In closing, let me stress that under the Davide Watch, we remain vigilant in order that fundamental freedom and human rights are protected and promoted. Equal justice and access to justice are not idle expressions. But in our jurisdictions, we have to beware let it be said, "there can be no equal justice where the kind of trial a man gets depends on the amount of money he has" *(Griffin v. Illinois,* 351 U.S. 12, 1956). Our Bill of Rights include only "negative" rights. As observed by Mary Becker (LXIX No.-5, Ap. 2001, Fordhan Law Review: Progressive Politics, Progressive Constitution, p. 2052), "A Constitution with only negative rights will better protect the powerful against government action harmful to their interests than the less powerful, who need protection against the powerful as well as against the government." The Universal Declaration of Human Rights as well as the two Covenants contain positive rights that may be more aspirational rather than self-executing. But, in our time positive guarantees of economic, social and cultural rights (as much as if

not more than political and civil rights) could no longer be ignored or left unrealized. The hour is late, and Minerva's owl will fly at dusk.

THE DEVELOPMENT OF ADMINISTRATIVE LAW IN THE PHILIPPINES RELATIVE TO ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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I. ESC rights and the administrative process

Some time in 1936, a laborer was riding a raft of logs which was being transported to Manila Bay by floating these down the Pasig River when one of the lobs broke away. His immediate boss, who was riding with him, ordered the laborer to jump into the ramp aging river to salvage the breakaway log. As if by reflex, the laborer jumped into the flooded river but as he swam towards the log, he drowned. When his heirs claimed for workmen's compensation, the trial court denied compensation based on traditional tort principles, the court citing assumption of risk and contributory negligence in denying compensation. The decision was affirmed by the Court of Appeals.' When the decision was made public, the President of the Philippines assailed the judges for their "sixteenth century minds" and "for safeguarding the interests of the wealthy.[2] The President also blamed the lawyers for "trampling down on human rights in defending property interests".[3] The President's tirades against the bar and the bench was met with counter criticism from the bar and the public[4] but from the more enlightened section of the legal profession came a call for judicial statesmanship on the part of the judiciary and for a new look at the outmoded techniques of judicial reasoning. The President of the University of the Philippines, forge Bocobo, called for a "socialization of the law" and

urged the courts to respond to the throb of present-day society what he called "the tremendous struggles for readjustment and' the restless longings of the masses for a decent living".[5] The President of the constitutional convention, Sen. Claro M. Recto, observed that the protection of property rights has been made subordinate to the supreme interests and well being of the nation, at d he urged the implementation in concrete cases of this principle. But it tits Pres. Quezon himself who pointed out the way for judicial statesmanship if the principle of social justice is to be given substance. He said:

> *... social justice cannot be achieved by constitutional enactments alone. 147e must radically revise our concept of private property by emphasizing the social responsibilities of wealth. We must indoctrinate every citizen with the ethical principle that he is his brother's keeper.'*

[1] Philippines Herald, Sept. 22, 1937.
[2] Ibid.
[3] Ibid.
[4] Manila Daily Bulletin, Sept. 24. 1937.
[5] Bocobo, "Unfettering the Judiciary, 6 Lawyers Journal 97 (1938) 98.
[6] Recto. "The Philippine Constitution", 6 Lawyers Journal 255 (1938) 256.

Despite these admonitions, the shift in judicial thought on property rights was imperceptible. Gripped by the clutches of stare decisis, the judiciary persisted in its old habits of thought and failed to disengage itself from the moorings of orthodox legal doctrines. Notwithstanding the radical provisions of the 1935 Constitution on social justice and protection of labor,[8] the courts did not use the approach advocated in the new Constitution. They used the same approach and the same arguments in traditional civil law claims and thus defeated the spirit behind the social

justice provisions of the Constitution. If the claim, however, had been filed with an administrative agency, the Workmen's Compensation Commission, then it could have been decided under the Workmen's Compensation Act, Act 3428, which made compensable all accidental injury "arising out and in the course of employment".

The Workmen's Compensation Act is but an illustration of how the administrative process has been used as an instrument not only for redesigning the economic system but also to effect a shift in decisional technique from the judicial passive method to the administrative active method. This change of administering workmen's compensation from the courts to an administrative commission brought about a change in the technique of making decisions to enforce the economic rights of the weaker party in an economic relationship where the status quo is tilted in favor of the dominant party. Administrative commissions are different from the regular courts in the sense that the latter are bodies of general jurisdiction with the breadth of vision and general impartiality of a broad-minded liberal, while the former have specialized knowledge, sympathy, and the potential intolerance of a narrow-minded expert. While judges are passive, laid-back characters who would wait for the lawyers to introduce evidence favorable to their clients, administrative commissioners are active, evidence-seeking advocates who are highly-specialized in a given field who can give meaning and substance to economic and social rights guaranteed by the constitution. Adjudication is just a secondary function of administrative agencies. Their principal function is regulation and administration. This is done through licensing, rule-snaking, investigation and prosecution, taxation, eminent domain, and other provisional 'And summary powers. It has been said that the lifeblood of the administrative process is the flow of fact, the gathering, the organization and the analysis of evidence out of which relevant material may be draw for purposes of recommendation for regulation, or of formulation of a policy for

administration or adjudication.

[7] Quezon, Speech at die University of the Philippines, April 1, 1939, in 7 Lawyers Journal 341 (1939).

[8] The 1935 Constitution provided that "the promotion of social justice to insure the well-being of and economic security of all people should be the concern of the state" (Art. II, sec. 5). It also empowered the state to "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 agriculture" (Art. XIV, sec. 6).

The preservation and protection of economic, social, and cultural rights in a positive way has been achieved largely through the creation of administrative agencies. It is necessary that these specialized agencies be created because economic, social and cultural rights are unlike political and civil rights. While the latter category of rights require only restraint on the part of the state, ESC rights can be enforced only through immediate state action or only aster economic and social programs had been carried out by governmental bodies or agencies. In short, ESC rights are "programmatic" in character; to be enforceable, they require expenditure of state resources as well as positive programs to be pursued by highly specialized administrative agencies. The institutionalization of ESC rights by means of legislation, by establishment of administrative agencies, the expenditure of state resources. and the regulation of private economic power and adjudication of demandable rights and obligations, constitute the core of what we now know as administrative law. While there are ESC rights which do not necessarily require state action or creation of administrative agencies, these are the exceptions rather than the rule.

That is why the enforcement of ESC rights in a developing country like the Philippines is a big problem; because most of these rights require

the attainment of a particular stage of economic and social development. The right to take part in the cultural life of a community, the right to a decent living wage, the sight to partake of the benefits of scientific and technological advancement, the right to benefit from any literary or artistic production of which one is the author, require a developed economy, a cultural life that is common to the community, and a highly integrated social existence in the body politic. In Third World countries like the Philippines, where state resources are so limited, where the ruling class i s a tiny oligarchy set up by the colonial administrators and which sits atop a mass of poverty-stricken and teeming humanity, the immediate enforcement of ES C rights enumerated in the Constitution is much more than legal fiction. It is, to use Justice Jackson's metaphor, a "munificent bequest in a pauper's will".

We will undertake a case study of how economic rights which have been bequeathed to our masses have been enforced, first, through the passage of social welfare legislation through police power and, later, through the creation of administrative agencies which gave substance to such economic sights. Needless to say, this has been achieved through t o the political power of mass democracy and the confluence of social. political, and economic developments.

II. Political power and the welfare state

The advent of the welfare state, like that in other countries of the world, came in the wake of the economic crisis in the US in the early 1930s. It came from a realization of the fact that the dominant philosophy of laissez faire may not, after all, be the panacea to all the economic ills of the country. Thus, when the US underwent the economic crisis in the early thirties, the people's faith in the free market system and in the dynamism of the entrepreneurial class declined to such an extent that, by the time

the framers of the Philippine Constitution of 1935 convened, they were totally disillusioned with the free market philosophy.

Earlier, the Filipinos, on the eve of the American promise of independence, tried to free themselves from the grip of judicial precedents imposed by the American-dominated Supreme Court. There was a perceptible movement in the country to release the law from the clutches of the common law doctrine of stare decisis as interpreted by the American jurists, who were still entranced with the substantive aspects of due process as laid down in the Lochner case.[10] During the American colonial period, the Philippine legislature attempted to place the American-dominated Supreme Court under Filipino control. So, in 1932, the Filipino legislature passed a law" increasing the membership of the Supreme Court from 11 to 15, and it nominated four Filipinos to the new positions. However, the US Senate, which under the Federal Law had retained the power to confirm nominations to the Philippine judiciary, aborted the attempt by refusing confirmation of the nominees.[12] Undaunted, the Philippine legislature passed another "reorganization act"[13] which reduced the size of the Court back to 11, but provided that in declaring an act of the legislature invalid, 7 out of the 11 justices should concur. This legislation was inspired by the events then taking place in the US, where the US Supreme Court invalidated 11 major New Deal legislation by a narrow margin of one or two Votes.[14] This piece of legislation was later incorporated in the 1935 Constitution, which the delegates to the constitutional convention considered as a "decided advantage over the American constitution".[15] This somewhat tilted political power in favor the legislature, for it made it difficult for the Supreme Court to declare a law passed by the legislature unconstitutional.

It was the 1935 Constitution which laid the foundations of a welfare state in the Philippines. The constitution, in the eyes of the Americans,

was more socialistic rather than capitalistic in orientation. According to Joseph Ralston Hayden, a serious student of Philippine affairs and the then Vice-governor of the Philippines, there are four reasons for the socialistic tendency of the constitution: first, the great influence of Roosevelt's New Deal spread to the Philippines; second, there was a feeling that unless the lot of the masses would be improved by direct and sweeping governmental action the new state may sooner or later be faced with serious social and political unrest, third, there was a widespread belief that a state--directed economic system is essential to the economic survival of the country from the shock of separation from the US; and last, the leading totalitarian states of the world somehow influenced Filipino thought and action." In expounding on the philosophy of the 1935 Constitution, President Quezon announced that "under our constitution it is provided that one of the main duties of the state is to look after the interests of the largest number".[17] This can be seen from a provision in the declaration of principles that "the promotion of social justice to insure the well-being and economic security of all the people should be the concern of the State."[18]

[9] Jaffe and Nathanson, Administrative Law; Cases and Materials (4th ed.) p.26.

[10] In Lochner v, New York, 19S U.S. 45, die US Supreme Court invalidated the New York law prohibiting employers from allowing employees to work more than 60 hours per week in a bakery, relying on die substantive due process clause to invalidate state welfare legislation. The due process reasoning in Lochner was imported into the Philippines trough the decision in the case of People v.Pomar, 46 Phil. 480 (1924), where the Court invalidated the Maternity Leave Law on grounds of impairment of contract.

[11] Hayden, THE PHILIPPINES:. A STUDY IN NATIONAL DEVELOPMENT 242, fn. 6 (1942).

[12] Ibid.

[13] Act 4023 (1932).

[14] *See wood,* DUE PROCESS OF LAW 68 (1950).

[15] Hayden, supra 44, fn. 130.

These legal foundations for the advent of the welfare state could not have been more timely. At about that time, economic conditions, spawned by the crisis in the US, became worse, and agrarian unrest and labor agitation pervaded the country.[16] The concentration of big landed estates in a few families, coupled with the reprehensible tenancy system that reduced the tenants to penury, began to tell on the peace and order situation. Under this system; the tenant lived on starvation wages, and he became prey to usurers who charged interest from 130% to 300% for a loan of six months.[20] He also had to contend with defrauding landlords who took advantage of his inability to read and write by asking him to sign unconscionable contracts of crop-sharing, or who charged him with high rentals for his small hut, or asked him and his family to render personal services for the landlord's family.[21] The tenant was also deprived of his right to association; he could not join peasant unions because of his fear of being ejected from his landholding. A government survey team found a general sentiment "for a radical change in the present scheme of relations with the all-powerful and moneyed and landowning class" [22]

The economic crisis was complicated by the inability of the country to industrialize, The ranks of unemployed swelled by the hundred thousands, while those in the factories and industries received subsistence level wages. Only less than 4% of the population was employed in the manufacturing industries, while another 2% were employed in the small scale industries. Besides the violent demonstrations of the socialist peasant unions in Central Luzon, labor strikes became common in the big cities.[23]

[16] Hayden, op. cit. supra at 44.

[17] Messages of the President. Vol. 111, Part I, 67-68 (1937).

[18] Art. II, sec. 5, 1935 Constitution.

[19] Id. At 390-393.

[20] See Fact-Finding Survey of Agrarian Problems in the Philippines, Dept. of Labor, 1936, quoted in Special Economic and Technical Mission. U.S., Philippine Land Tenure Reform, Appendix C-20 (1952).

[21] Id. At C-15.

[22] Ibid.

III. Welfare legislation and the upsurge of administrative law

The social justice provisions of the 1935 Constitution laid the groundwork for welfare legislation in the Philippines. This marked the stress placed on the role of the administrative process to solve social and economic problems which were faced by the new commonwealth of the Philippines: Since the government was mandated to play a significant role in promoting the welfare of the people, the administrative process would pave the way for economic and social reforms. For instance, as may be seen above, workmen's compensation, which was administered non-judicially by the Worksmen's Compensation Commission, reformed the traditional law on industrial accidents. But in a developing country like the Philippines, the problems are of a greater magnitude than merely reforming the outdated judicial approach to industrial accidents.

In 1935, in the face of grave economic problems which required Herculean solutions, the legislature embarked on social and welfare legislation to cope with the crisis. In an attempt to effect agrarian reform, the solution was two pronged: the first prong was directed toward the - breaking up of big landed estates to be sold at cost to tenants who occupied the land. The second was to effect a more equitable tenancy sharing system between landlords and tenants. Thus, the first prong was set up by the 1935 Constitution provided for the expropriation of big landed estates and for the sale of the lots to the tenants thereof,[24] For this

purpose, the legislature passed Commonwealth Acts Nos. 20 and 539 and set up an administrative agency, the Rural Program Administration, and later the Landed Estates Division of the Bureau of Lands, to acquire urban and agricultural estates for resale to tenants.[25] Indeed, the Rural Program Administration was sent up to obviate the impairment of public tranquility arising from agrarian conflict which had posed a threat to social order and stability.[26]

[23] Ibid.

[24] Sec. 4 Art. XIII, 1935 Constitution.

[25] See Guido v. Rural Progress Administration. 84 Phil 847.

[26] Ibid.

The Rural Program Administration was later superseded by the Landed Estates of the Bureau of Lands. After the independence of the Philippines, the government set up, through R.A. 1160, the National Agricultural Rehabilitation and Resettlement Administration (NARRA), another administrative body, to acquire a big landed estate in San Pedro, Laguna, and another in Cabanatuan City, which were subdivided and sold to tenants and occupants on installment basis. Later, another administrative body, the Land Authority,. was created under RA 3844 in 1963 headed by a Governor and, later, in 1971, this was replaced by a regular line department under the President, the Department of Agrarian Reform established by RA 6389 and headed by a Secretary of Agrarian Reform.

The second prong was in the form of legislation to improve the lot of the share tenant. This took the form of Act No. 4054, the Rice Share Tenancy Act, approved in 1933, which sought to improve the plight of the rice share tenant by giving him tenure or by resettling him on public land, and Act No. 4113, an act passed also in 1933, prescribing certain provisions concerning tenancy contracts on land planted to sugar cane.

These were followed by the establishment in 1936 of the Court of Industrial Relations under Commonwealth Act No. 103, which was vested not only with the power of compulsory arbitration of disputes between employers and employees, but also that between landlords and tenants, and to regulate relations between them. When the Philippines became independent in 1946, agrarian legislation was accelerated. Republic Act 34 was passed. This Act redefined the concept of "landlord" to include not only the real owner of the farm but also the lessor, a usufructuary, or any legitimate possessor, while the definition of a "tenant" was also expanded to include any person who undertakes to work the land for another or one who furnishes labor with the consent of the landlord. The law also provided an 80-20 sharing for the second crop, and provided for a right of the tenant to construct a dwelling on the land cultivated by him. This was followed by. R.A. 1199 in 1954 which again redefined the concept of “agricultural tenancy” giving security of tenure to the tenant and abolishing the rice share tenancy system. By an administrative order, the President - created an Agricultural Tenancy Commission to enforce and implement the provisions of RA 1199. In 1955, Congress passed a law creating the Court of Agrarian Relations which would take-off from the Court of Industrial Relations and would have exclusive jurisdiction over all tenancy disputes.

IV. A Case Study: Agrarian Reform and the Court of Agrarian Relations

The predecessor of the Court of Agrarian Relations, the Court of Industrial Relations (CIR), was established in 1936 and was such a novelty that the Supreme Court did not know how to characterize it. At first, the CIR was called a court of justice" because, according to the Court, it had the power to settle conflicts.[27] Later, it was deemed an arbitral board because it had the power of compulsory arbitration.[28] One of its judges called it a "court

of equity".[29] As a result, the characterization of the proceedings in the CIR was just as confused: these have been called "judicial",[30] "legislative",[31] "administrative",[32] and "quasi-judicial".[33]

Perhaps, it had never occurred to them that the Court of Industrial Relations then was actually an administrative agency; and that is multifarious proceedings in the matter of arbitrating disputes between labor and management and between landlords and tenants could either be legislative, judicial and quasi-judicial. Those judges who did not look back into the history of the Philippines had never realized that the CIR was an agency set up to equalize the serious imbalance of economic power, between labor and capital, and between tenant and landowner. They did not know that right after the end of the second world war, in Central Luzon the agrarian unrest rose to new proportions as the tenants who fought as a guerilla army during the war and who did not surrender their arms refused to be relegated to serfdom once again. As an impartial foreign scholar observed, at that time the pre-dominance of political power in the country continued to reside in the economically privileged who thwarted the numerical superiority of the peasants with their economic power by dictating political alternatives to the country.[34]

[27] Ang Tibay v. CIR and National Labor Union, 69 Phil. 635 (1940).

[28] Stanvac v. Phil. Labor Organization, G.R. L – 4556, March 21, 1952.

[29] Lanting, "The Court of Industrial Relations", in Castro, Labor and Social Legislation 1062 (1956)

[30] Calderon, From Compulsory Arbitration to Collective Bargaining (Doctoral Thesis submitted to the Yale Law School, 1956), 34.

[31] Pasumil Workers Union v. CIR., 69 Phil. 370 (1940).

[32] Gallego v. Kapisanan Timbulan ng mga Manggagawa, G.R. L-1868, March 17, 1949.

[33] Ang Tibay v. CIR and National Labor Union, supra.

[34] Hardie, Land Tenure in the Philippines, (1952) 212.

Thus it was not surprising that the tenancy laws of the Philippines continued to reflect the interests of the dominant landowning class.[35] "Outwardly conforming to a democratic government," wrote a Japanese observer, “Philippine society is still in the main ruled by an oligarchy" [36]

It was against this backdrop that the CIR was given almost absolute power to decide on all matters affecting labor and agrarian disputes by way of compulsory arbitration. The court was empowered to take cognizance of any "agricultural or industrial dispute causing or likely to cause a strike or lockout, arising from differences as regards wages, shares of compensation, dismissals, lay-offs, or suspension of laborers or employees, hours of labor, or conditions of tenancy or employment, between employers and employees or laborers and between landlords and tenants or farm laborers". Thus, the CIR in the exercise of its compulsory powers of arbitration, fixed minimum wages for laborers and maximum rentals for tenants, ordered wage reductions, converted the payment of salaries from monthly to a daily basis, ordered the payment of overtime, back-wages, vacation and sick leaves. It determined what it considered for itself "fair and just wage", "just or unjust dismissal", decided what were “national interest cases", and even defined the broad concept of "social justice" under the constitution. [37]

When the decisions of the CIR were questioned before the Supreme Court, the latter, abiding by the social justice provisions of the Constitution, upheld the former. Thus, when a federation of landowners challenged the authority of the CIR to annul rice tenancy contracts alleged to have been induced by fraud and deceit, the high court held that the fact that the nullity of the contracts is raised does not take the case out of the

jurisdiction of the CIR.38 When the landlords questioned the capacity of the labor union to sue on behalf of tenants, the high tribunal ruled that labor and tenants' unions were recognized as one of the effective means by which laborers and tenants may obtain protection of their rights.39 In affirming the jurisdiction of the CIR over tenancy contracts and the capacity of labor unions to sue on behalf of tenants, the Supreme Court

[35] See e.g, Starner, Magsaysay and the Philippine Peasantry (1961).

[36] K. Kurihara, Labor in Philippine Society, (1945). 91.

[37] Noriel, Country Report on the Philippines, in Romero, ed., First Asian Congress on Labor Law and Social Security (1982) 153, at 155

[38] Gallego v. Kapisanan, supra.

[39] Ibid.

Knocked out the traditional civil law props used by the landlords in the regular courts. The high court also affirmed the power of the CIR to nullify contracts between landlords and tenants executed through fraud and deceit, even if this did not fall squarely under the direct prohibition of the law.40 It likewise upheld the CIR holding that the refusal of a tenant to sign a tenancy contract containing stipulations prohibited by law is not a cause for dismissal. [41]

It was found by the CIR that one potent weapon of the landlords against the tenants is the threat of ejectment or dismissal. A committee study found that tenants had been indiscriminately dismissed in spite of legal provisions insuring security of tenure for tenants. Indeed, while the law provided that tenants might be dismissed only for cause, the phrase was defined by courts under common law concepts.[42] In 1955, Congress

finally decided to solve the tenants problem of tenure. It passed a law which provided that "the sale or alienation of the land do not of themselves extinguish the tenancy relationship" and that "the purchaser or transferee shall assume the rights and obligations of the former landholder in relation to the tenant".[43] When a landowner challenged the constitutionality of this provision, the Supreme Court dismissed the petition, in light of the constitutional provision on social justice and the power of the state to regulate tenancy contracts. The provision of RA 1199 assailed did not prohibit the landowner from disposing of his property; it only provided that in such eventuality, the tenancy relation should be preserved. In pointing out the reasonableness of the law, the high tribunal said that it was designed to protect the tenant from being unjustly dispossessed by the purchaser of the land.

This rule was reiterated the following year. This time, it was found that it was the lessee who hired the tenant and, upon expiration of the lease, the lessor refused to employ the lessee's tenant, involving liberty of contract. [45] Here, on review of the CAR decision, the Supreme Court delved into the history of the law and found sufficient justification for ruling in favor of its constitutionality.

[40] Sibulo v. Altar, 46 Official Gaz. 5502 (1949).

[41] Japitanan v. Hechanova. G.R. L-4089, Jan. 31, 1952.

[42] See Report. House Comm. On Agragrian Legislation, in 22 Lawyers J. 433 (1955).

[43] Sec. 9, R. A.. 1199.

[44] Primero v. CAR, 55 Official Gaz. 18O.

[45] Joya v, Pareja. G.R. L-13258, Nov. 28, 1959.

In those cases decided by he Court of Agrarian Relations, it lived up to its function of protecting the economic and social rights of tenants by curtailing the rights of property of landowners as well as purchasers of

agricultural farms. Thus, the CAR had somehow mitigated the economic insecurity of farm tenants. Reduced to extreme poverty, the tenants had been benefited by administrative issuances, by social welfare legislation, and by the administrative processes arising from the operations of administrative agencies.

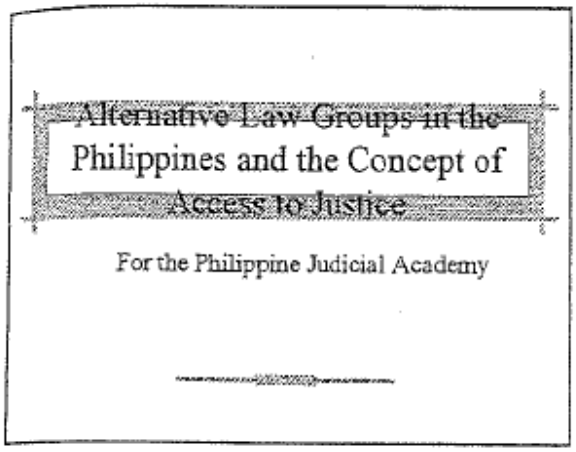
When martial law was declared by Pres. Marcos in 1972, the Court of Agrarian Relations was reorganized under Presidential Decree No. 946 and placed under the jurisdiction of the Supreme Court. According to the preamble of PD. 946. the present organizational and procedural set-up of the CAR was not conducive in the effective and efficient implementation of the objectives of the accelerated agrarian reform program, and that the inferior economic, intellectual. social, political and cultural position of the tenant-tillers required suitable changes in the structure, manner of operation and rules of procedure of the CA R as well as in the orientation of persons having anything to do with agrarian law and.reforrn.[46] However, the presidential decree carved out so many exceptions from the exclusive jurisdiction of the CAR, and placed these under the authority of the Minister of Agrarian Reform, including the classification and identification of landholdings, identification of tenant-farmers and landowners and determination of their tenancy relation, determination of the total production and value of the land to be transfer ed to the tenant, issuance of certificates of land transfer. right of retention of the landowner. right of the tenant to home lot, disposition of the excess area in the tenant's farm - holding, change in crop from rice and corn to any other crop, conversion of tenanted rice land to residential, commercial or industrial uses, transfer or surrender by the tenant of his farm holding, and increase of tillage area by a tenant.[47] The emasculation of the CAR ultimately led to its abolition, and all its functions transferred to the Ministry of Agrarian Reform, up to the present.

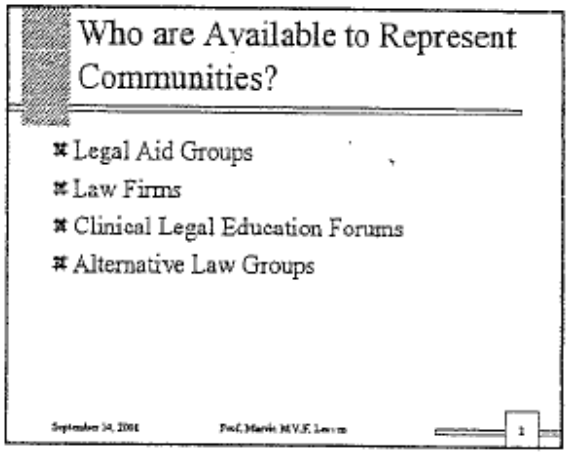
V. Conclusion

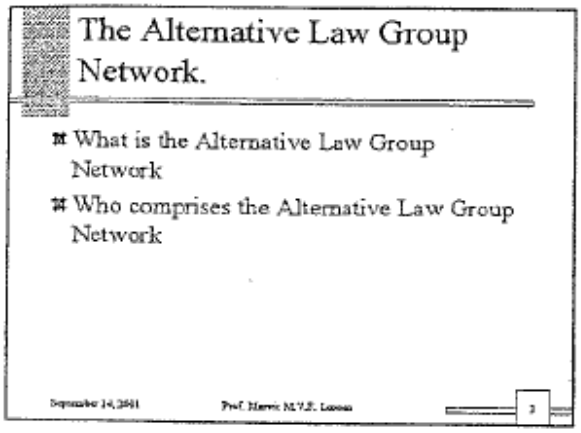
In conclusion, and from, a higher perspective, it can be seen that the agrarian unrest in the Philippines gave rise to an administrative process which initially leaned in favor of giving meaning to the economic, social and cultural rights of a disadvantaged majority: the peasant-farmers in file rural areas. The social justice provisions of the 1935 Constitution caused legislative inroads into the domain of private property, and these were enforced through several administrative agencies created to prosecute agrarian reform towards the achievement of an egalitarian society. Tenancy and employment contracts in agriculture became subject to state supervision and even control. This was aided by legislative and administrative rules which rejected the theoretical equality of the tenant-farmer and the landlord in favor of the sad reality o f actual inequality. T he CAR realized that the equality which had been foisted on the p ai ties to a rice share tenancy contract by means of a wooden interpretation of the constitutional concepts was an illusion. The CAR gave meaning to equality under the lava by a realistic scrutiny of the plight of the tenants under a feudal relationship. This trend in the decisions of the CAR was upheld by the Supreme Court. But when martial law was declared, purportedly to reform Philippine society, agrarian reform was stalled and the administrative bodies that were created to prosecute the reform program fell under the influence of vested groups and abusive landlord-politicians. The CAR was emasculated out of e istence by authoritarian power which was captured by the dontnant landowning class. Even after democratic rule was restored, the cacique class became even more politically powerful, and it hammered the last nail in the coffin of land reform.

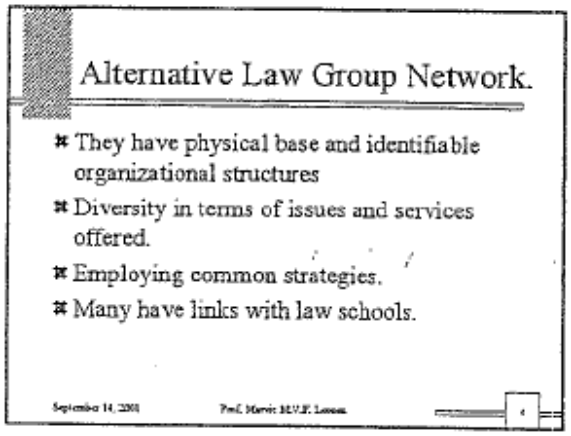
In any program to protect and preserve economic, social and cultural rights, there must be strong political will to assist certain social units or categories of individuals who suffer from economic, social or

cultural discrimination. There must be full commitment to available economic and legal resources by the government, *and this* must be coupled by an effective administrative process that is bent on achieving the full realization of such rights. Legislation coupled with appropriate administrative processes must be put to good use, and that administrative agencies created to achieve reform must resist capture by the regulated interests.









Alternative Law Group Network

- Coalition of law groups whose principal purpose is practicing Alternative Law
  - Alternative Lawyering
  - Developmental Legal Aid
  - Public Interest Litigation
  - Strategic and Progressive Legal Interventions
  - Feminist Lawyering

Alternative Law Group Network

- Use of law encompasses activities such as
  - Litigation
  - Paralegal Training
  - Policy Advocacy
  - Law Reform

Members of the Alternative Law Group Network

- Legal Rights and Natural Resources Center Inc.–Kasama sa Kalikasan (LRC-KSK). Convenor for 1998-1999;
- Alsaro Human Rights Center (AHRC)
- Sentro ng Batas Pantao (BATAS)
- Sentro para sa Tanggol ng Repormang Agraryo (SENTRA)
- Developmental Legal Assistance Center (DLAC)
- Sentro ng Alternatibong Lingap Panlegal (SALIGAN)
- FreeLaws
- Kalusugan Tungo sa Kaunlaran ng Kanayunan at Repormang Pansalusan (KASARAN)
- Legal Assistance Center for Indigenous Filipinos (PANLIPI)
- Pampamayanang Abogado na Nagtatanggol sa Karapatan at Kaunlaran ng Tao Foundation (PANGAT-FOUNDATION) Inc.

Members of the Alternative Law Group Network

- Pagbibigkis Bukas Pangkapatiran Foundation (PBPF)
- ALTERLAW
- Paralegal Training Services Center (PTSC)
- Filipina Legal Resource Center (FILIPINA)
- Participatory Research Organization of Communities and Education Towards Struggle for Self Reliance (PROCESS) Inc.
- Structural Alternative Legal Assistance for the Grassroots (SALAG)
- Tanggol Kalikasan
- Women's Legal Bureau Inc. (WLB).
- Center for Paralegal Education and Training (CPET)
- Federation of Free Workers (FFW)

Common Challenges

- Work with thematic issues and not simply providing assistance to single individual indigents.
- Look at law practice as empowering and not simply a trade or business of interpreting the law.
- Attempts to involve communities and sectors in all aspects of their work. Consistently learns from the communities and sectors they work with.
- Understand the social and political contexts of the law and attempt to work out other solutions to community and individual problems.

Common Challenges

- Master the legal substantive issues and technical requirements of their chosen field.
- Work is pro bono and the ALGs work to find funding for their operations.
- Due to intensive work with the communities or sectors they tend to develop in depth understanding of the issues.
- Are not recognized by the Integrated Bar of the Philippines as a separate sector and is usually lumped together with "free legal assistance" or "human rights groups"

LRC-KSK as an example of an "Alternative Law Group"

- Consistent themes
- Policy Advocacy
- Direct Legal Assistance
- Campaigns and Support Linkages
- Branch Office in the Field
- Internship Programs for Law Students
- Makes use of volunteers, Consistently taps local lawyers and resources
- Gender program
- Staff works under adverse conditions for very low wages
- Have not been recognized by the mainstream legal profession.
- Has earned the trust of local communities and

The Concept of Administration of Justice:

- Quote: "Effective advocates learn basic principles but transcend them so that idle legal discussions take their place within the context of genuine political discourse. Law is really a transient definition of society's interests articulated through imperfect and dominated human structures. There is nothing sacred in its form nor in its contents. The challenge to the advocate is to know when to use it, not so much to maintain the status quo, but to gain leverage for more just and fundamental changes."

Elements

- Result of a complex relation between law and institutions.
- Relations happen within a cultural, economic, social and political context.
- Context, law and institutions have histories
- Context, law and institutions are never neutral or objective
- Communities and the marginalized may become actors in the process
- Judicial and extra-judicial reforms
- Administration of Justice always approaches perfection but may never reach it

Role of the Judiciary

- FIRST: The role of the judiciary in general and the Supreme Court in particular is not simply "to faciliate the speedy resolution of this dispute while applying the relevant laws to the facts as established by evidence."
- SECOND: There are aspects of court procedures that the Supreme Court can address immediately.

Role of the Judiciary

- THIRD: There is a need for the Supreme Court look at the content of the various curricula of law schools and the subjects favored by the bar examinations.
- FOURTH: There is an urgent need to recognize, protect, and motivate all initiatives of lawyers and lawyers groups, to evolve law as an effective empowering articulation of the interests of the historically and politically marginalized.

First, Courts are not machines that simply process disputes.

- There are various schools of thought that grapple with the role of the judiciary.
- Historically, the Court has had moments where it has decided to lay down doctrines which proactively supports some advocacies of the "basic sectors".
- Continuous dialogue between the bench and members of the bar as well as the basic sectors are essential in maintaining cases in context.

The various schools of thought of legal interpretation include:

- Formalism and Conceptualism
- Sociological Jurisprudence
- Legal Realism
- Law and Process Schools
- Law and Economics
- Policy Science
- Critical Legal Studies

The Supreme Court has recognized this in various cases.

- Association of Small Landowners v. Department of Agrarian Reform, 175 SCRA 8 said:
  - "We do not mind admitting that a certain degree of pragmatism has influenced our decision on this issue, but after all this Court is not a cloistered institution removed from the realities and demands of society or oblivious to the need for its enhancement. The Court is acutely conscious as the rest of our people to see the goal of agrarian reform achieved at last after the frustrations and deprivations of our peasant masses during all these disappointing decades. We are aware that invalidation of the said section will result in the nullification of the entire program, killing the farmer's hopes even as they approach realization and restructuring the specter of discontent and dissent in the restless countryside. That is not in our view the intention of the Constitution, and that is not what we shall decree."
  - "The life of the law is not logic, but experience." Oliver Wendell Holmes.

Examples of cases, new doctrines:

- Calalang v. Williams on "Social Justice"
- Cariño v. Insular Government on "Time Immemorial Possession"
- Fianza v. Reavies on priority rights of time immemorial possessors against mining claims.
- Director of Lands v. IAC and Acme Plywood and Veneer
- Republic v. Court of Appeals and Eliza Paran, recognizing the effectivity of the Manahan Amendments or Republic Act No. 3872.
- Republic v. Court of Appeals and Enrique Casalan, recognizing the effectivity of the Manahan Amendments or Republic Act No. 3872 even with the repeal of Pres. Dec. No. 1073.

Examples of cases, new doctrines

- Pit-os v People, recognizing the concept of the "tayan" system
- Oposa v. Factoran, recognizing the standing of representative parties for "generations yet unborn".
- Manila Prince Hotel v. GSIS, clarifying the concept of National Patrimony and reiterating the effectivity of the second paragraph of Section 10, Article XII of the Constitution.
- Association of Small Landowners v. DAR recognizing the concept of "revolutionary taking" and therefore just compensation could be in cash and government securities.
- Cruz v. NCIP, December 6, 2000

Negative examples:

- People v. Cayat in so far as it implied that indigenous peoples have lesser natural abilities than those that have been westernized and hispanicized.
- Rubi v. Provincial Board of Mindoro in so far as it defined non christian tribes as "backward and barbaric".
- Krivenko v. Director of Lands in so far as it clarified that the term "agricultural" is merely a legal concept and not descriptive of the land's actual use.

Cases pending before the Supreme Court

- La Bugal Tribal Association vs. Secretary of the DENR and Western Mining Corporation challenging the constitutionality of the Mining Act
- Cruz v. National Commission on Indigenous Peoples, on the constitutionality of the Indigenous Peoples Rights Act (motion for reconsideration)

Therefore, there must be

- (1) an awareness of the problems of jurisprudence by all members of the bench and the bar;
- (2) a continuing systematic and institutionalized dialogue between the bench and the basic sectors, either directly or represented by their active advocates and lawyers.

SECOND, procedures that can immediately be addressed

- The problem of language.
- The mystification of metaphors.
- The prioritization of cases where communities are represented.
- Encouragement of the use of alternative dispute processing methods by clarifying what these are.

SECOND, procedures that can immediately be addressed

- The removal or reinterpretation of processes that effectively removes judicial redress to marginalized sectors and communities.
  - Examples: Rep. Act No. 8975, 8975
  - SLAPP suits (Summary judgments?)
- Seriously examining the concept and problems of customary law or other systems endogenously evolved.

Challenges: Citizen's Suits

- Section 52, 53 Rep. Act No. 9003, Solid Waste Management Act
- Section 40, 41, 42, 43, Rep. Act No. 8749, Clean Air Act (note independence of administrative suits)

Challenges: Citizen's Suits from SWMA

- Provision. "SECTION 52. Citizen Suits. — For purposes of enforcing the provisions of this Act or its implementing rules and regulations, any citizen may file an appropriate civil, criminal or administrative action in the proper courts/bodies against:
- "(a) Any person who violates or fails to comply with the provisions of this Act or its implementing rules and regulations; or
- "(b) The Department or other implementing agencies with respect to orders, rules and regulations issued inconsistent with this Act; and/or
- "(c) Any public officer who willfully or grossly neglects the performance of an act specifically enjoined as a duty by this Act for its implementing rules and regulations; or abuses his authority in the performance of his duty; or, in any manner, improperly performs his duties under this Act or its implementing rules and regulations: Provided, however, That no suit can be filed until after thirty-day (30) notice has been given to the public officer and the alleged violator concerned and no appropriate action has been taken thereon."

Challenges: Citizen's Suits, Section 52

- "The Court shall exempt such action from the payment of filing fees and shall, likewise, upon prima facie showing of the non-enforcement or violation complained of, exempt the plaintiff from the filing of an injunction bond for the issuance of a preliminary injunction."
- "In the event that the citizen should prevail, the Court shall award reasonable attorney's fees, moral damages and litigation costs as appropriate."

Challenges: SLAPPs

- Section 43, Rep. Act No. 8749 Clean Air Act
- Section 53, Rep. Act No. 9003 (2001) Solid Waste Management Act
- Rule 34, Summary Judgments

Challenges:SLAPPs

- Provision: "SECTION 53. Suits and Strategic Legal Action Against Public Participation (SLAPP) and the Enforcement of this Act. — Where a suit is brought against a person who filed an action as provided in Sec. 52 of this Act, or against any person, institution or government agency that implements this Act, it shall be the duty of the investigating prosecutor or the Court, as the case may be, to immediately make a determination not exceeding thirty (30) days whether said legal action has been filed to harass, vex, exert undue pressure or stifle such legal recourses of the person complaining of or enforcing the provisions of this Act. Upon determination thereof, evidence warranting the same, the Court shall dismiss the case and award attorney's fees and double damages."
- "This provision shall also apply and benefit public officers who are sued for acts committed in their official capacity, there being no grave abuse of authority, and done in the course of enforcing this Act."

Third, Review the Bar and the curricula of law schools.

- The subjects required during the bar examinations determine the curricula of law schools.
  - NOW REQUIRED: Commercial Law, Taxation, Civil Law
  - COULD BE REQUIRED: Agrarian Reform, Environmental Law, Natural Resource Law, Feminist Jurisprudence, Urban Poor Laws, Fisheries Laws
- Examining the distribution of lawyers may reveal among others the training that they receive in law schools.

Fourth, Legal Profession must support ALGs

- Our lawyers suffer cultural marginalization--
  - Lawyers who devote most or all of their time hiking to communities, jumping on overloaded buses, taking the time to understand and be understood as indigenous communities, talking to marginalized urban communities, understanding violence against women occuring in poor and depressed communities are culturally seen as losers, bar flunkers and those who could not "hack it in the real legal profession"
  - These lawyers in the "alternative" profession are not involved in mainstream lawyers professional institutions.

Fourth, Legal Profession must support ALGs

- Our lawyers are economically deprived--
  - Our cases are pro bono but require the same meticulous attention as tax or civil cases.
  - We raise our own funding from private charitable foundations and we compete with each other for scarce resources.
  - We have difficulties keeping body and soul together. Most of our lawyers work several jobs at once or forego some of the necessities of life.

Fourth, Legal Profession must support ALGs

- Our lawyers are physically taxed--
  - On field, we suffer the same indignities and harrassment as the communities that we support.
  - Understaffing of our offices often result to job burnout and mild depression.

Fourth, Legal Profession must support ALGs

- Our lawyers are politically challenged--
  - Our political beliefs are usually not that of the administration or the companies and big interests represented by large and influential law firms.
  - We are branded as communists, sloganeers, leftists, man haters and many other epithets making our lives doubly difficult.

Conference: Lawyering for the Public Interest

- Co organized by the Alternative Law Groups Network and the UP College of Law
- November 8 to 12, 1999
- Keynote: Chief Justice Hilario Davide Jr.
- Venue: Malcolm Hall, College of Law, UP Diliman

Message of the Chief Justice

- Why are the alternative law groups not the mainstream?

RIGHTS, OBLIGATIONS AND REMEDIES: INTERNATIONAL AND DOMESTIC EXPERIENCES

(Speech Delivered Before the Philippine Judiciary Workshop on "Realizing Economic, Social and Cultural Rights," Philippine Judicial Academy, Tagaytay
City, September 14, 2001)

by: **Atty. Rene V. Sarmiento**

May I, at the outset, profoundly thank Dr. Purification V. Quisumbing for inviting me to be a speaker in today's session on "Rights, Obligations and Remedies: International and Domestic Experiences." May I state that I had learned many things about human rights from Dr. Quisumbing. She was my professor on human rights when it was first offered as a subject in the College of Law of the University of the Philippines in 1977. The brilliance and the beauty of Dr. Quisumbing had inspired me to be zealous in my study of human rights in the law school.

It often been said that the judiciary is a mere passive referee of conflicting rights and duties, a mere adjudicator of clashing claims, generally afraid to be innovative when it finds unfenced spaces in the various aspects of law. I most respectfully disagree with this . Judges and their perspectives change. Their thoughts evolve. Let us find out.

In 1981, the International Commission of Jurists in its Conference on Development, Human Rights and the Rule of Law viewed the rule of law in its progressive perspective and said:

> "The rule of Law is a dynamic concept for the expansion and fulfillment of which jurists are primarily responsible and which should be

> employed not only to safeguard and advance the civil and political rights of the individual in a free society, but also to establish social, economic, educational and cultural conditions under which his legitimate aspiration and dignity may be realized."

In 1985, in a workshop held at Eldoret, Kenya, justices, judges, lawyers, legal scholars and social scientists, discussed the theme "The Role of The Judiciary in Plural Societies" and came up with the conclusion that judicial activism can be an important strategy to overcome all forms of oppression, exploitation, impoverishment, unjustifiable on any model of societal development i.n Africa and Asia." The workshop added by saying that "[J]udicial activism, encouraged by social action litigation, inspired by constitutional values, may be regarded as a vital human technology for social change in impoverished society."

Yes, the judiciary can be pro-active in the courageous experiment and life-nourishing exercise of using law to make life worth living for all, with honor and with dignity, and to make real the enforceability of economic, social and cultural rights. Many years ago, Ex-Senator Jose W. Diokno captured this idea and spirit of creatively using law for *the common good* when he, before a meeting of lavi yers, spoke about "waging revolution by law."

In many parts of the globe, the Philippines included, economic, social and cultural rights are being enforced by courts of law in the emerging belief that human rights are indivisible and interdependent. These economic, social and cultural rights encompass the right to a healthful environment, right to education, right to shelter, right to work, right to food, etc,

In Laguna Lake Development Authority vs. Court of Appeals et. al. 231 SCRA 292 (1994), the Supreme Court was called upon to decide a case involving the clash between the responsibility of the Caloocan City Government to dispose of the 350 tons of garbage it collect daily and the growing concern to a pollution- free environment of the residents of Barangay Camarin, Tala Estate, Caloocan City where these tons of garbage are dumped daily. In its decision, the Supreme Court said:

> "The immediate response to the demands of "the necessities of protecting vital public interests "gives vitality to the statement on ecology embodied in the Declaration of Principles and State Policies of the 1987 Constitution ... As a constitutionally guaranteed right of every person, it earns the correlative duty of non-irnpairment. This is but in consonance with the declared policy of the state to protect and promote the right to health of the people and instill health consciousness among them.' It is to be come in mind that the Philippines is a party to the Universal Declaration of Human Rights and the Alma Conference Declaration of 1978 which recognize health as a fundamental human right."

In two other cases, namely, Augustus L. Momongan vs. Rafael B. Omipon, 242 SCRA 332 (1995) and Alfredo Tano, et _ al. vs. Salvador P. Socrates, et.al, 278 SCRA 154 (1997), two cases which come after the landmark case of Oposa vs.Factoran. 224 SCRA 792 (1993), the Supreme Court affirmed the right of the people to a healthful environment or to a balanced and healthful ecology.

Louie Soriao vs. Araceli R. Pineda, G.R. No. 110702, August

10, 1994 is about the right to education. The Court of Appeals, invoking The 1987 Constitution and the Universal Declaration of Human Rights, ordered Araceli R. Pineda, Head Teacher II of Juan C. Angara Memorial High School, Dinalungan, Aurora to allow Louie Soriao to enroll and to study after he was meted out a disciplinary action without due process of law,

In New York City, in the case of Cullahan vs. Carey, Case No. 79-42582 (Sup. Ct. N.Y Country, August 26, 1981), a class action was filed on behalf of homeless men on the Lower East Side of New York City, demanding that the city provide shelter to any man who asked for it based on New York State Constitution, Social Services Law and New York Administrative Code. The New York Supreme court, recognizing a legal right to shelter granted a temporary injunction that required New York *City* to finish a sufficient number of beds to meet the needs of all homeless men applying for shelter.

In Shantistar Builders (AIR 1990 SC 630), the Supreme Court of India took a holistic view of life and wrote that "the right to life is guaranteed in any individual society." "That would take," said the Court, "the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in."

In the inter-State complaint of Cyprus vs. Turkey, 4 EHRR, Report of the Commission, the European Commission on Human Rights addressed mass evictions as a violation of the right to respect for the house. The Commission held that:

> "The evictions of Greek Cypriots from homes., including their houses, which are imputable to Turkey under the Constitution, amount to an

> interference which rights guaranteed under Article 8(1) of the Constitution [European Convention on Human Rights and Fundamental Freedom], namely, the right of these persons to respect for their home, and/ or their right to respect for private life…"

. .

There is in the world today, thanks to progressive judges and justices, the growing acceptability of social, economic and cultural rights as enforceable and justiciable. In the Philippines and various parts of the globe, the enforceability of the kind of rights can be enhanced if Congresses or National Assemblies or Parliaments pass a statute known as law of amparo (in Spanish, amparo means "protection"). This law of arnparo is a device intended to protect social, economic and cultural rights not protected by habeas, corpus. To protect constitutional guarantees, Latin American countries like Mexico, Argentina, Brazil, Costa Rica, El Salvador, Panama, Honduras, Nicaragua, Guatamela, Bolivia, Paraguay and Ecuador have incorporated in their Constitutions "ley de amparo."

The Mexican amparo is a versatile institution. It can be used as a writ of habeas corpus, injunction, declaratory judgment or appeal. The leading Mexican writer, Fix Zumudio, points out that the amparo combines the following five autonomous procedural functions: (1) the protection of life and liberty; (2) challenging unconstitutional laws; (3) resolution of conflicts stemming from administrative acts and decisions; (4) appeal of judicial decisions; and (5) protection of the rights of persons subject to agrarian reform.

In the Philippines, the Supreme Court, without waiting for congressional action or a constitutional amendment, can adopt rules related to the law of amparo. Under Article VIII, Sec. 5(5) of the 1981 Constitution, the Supreme Court can "[P}romulgate rules concerning the

protection and enforcement of constitutional rights ... and legal assistance to the underprivileged." It will be a blow for democracy and good governance should the Supreme Court, consistent with its libertarian tradition and judicial creativity, promulgate rules analogous to "ley de amparo."

The enforceability of social, economic and cultural rights will be further enhanced if an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights will be adopted. Individuals, organizations and States will not be starting from scratch because last January 25,1995, the Utrecht Expert Meeting, drawing inspiration from the principle of indivisibility of human rights embedded in the International Bill of Rights as well as in the Vienna Declaration and Programme of Action adopted by the Second World Conference on Human Rights, prepared a Draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. Once an Optional Protocol comes into force, it will be a potent instrument to protect economic, social and cultural rights throughout the world.

The enforceability/justiciability of economic, social and cultural rights is not without a critic. George Moose, the American Ambassador to the UN Human Rights Commission (UNHRC), explained in April that his country was "concerned" about changes in international law that would "lead in the direction of the creation of legal enforceable entitlements to economic, social and cultural rights." He said "that would mean citizens could sue their governments for enforcement of rights ("Righting Wrongs," The Economist, August 18, 2001).

I now conclude.

Since I am speaking before justices and judges, may I

confess that I have my favorite justices, living and dead. One of them, now deceased, is Chief Justice Roberto Concepcion, Justice J.B.L. Reyes described Chief Justice Roberto Concepcion, a great jurist and perfect gentleman. Chief Justice Claudio Teehankee described him as Champion of the Rule of Law. In a book entitled "Roberto Concepcion, Chief Justice Of The Philippines," Chief Justice Roberto Concepcion wrote about the Supreme Court. The article is entitled "The Supreme Court: Its Responsibilities and Its Membership." To me, the article, though written and spoken in 1973, on the occasion of his retirement from the Supreme Court, is timely and has a bearing on the role of the judiciary for the realization of economic, social and cultural rights. He said:

> "Upon the other hand, the Supreme Court now exercise the power of administrative suspension over all courts and the personnel thereof ... As a consequence, the Supreme Court is now called upon to blaze new trails, and the Philippine Bench, as well as the Bar and the people in general, are looking forward to administrative measures and precedent setting decisions tending to bolster up the independence of the judiciary, expedite the administration of justice and otherwise foster the people's faith in our courts of justice as instrumentalities of their welfare."

Long live the justices and judges! Mabuhay!

NON-DISCRIMINATION AND PARTICIPATION: GENDER AND CHILDREN ISSUES*

by

MYRNA S. FELICIANO

I. INTRODUCTORY

It is said that the discrimination and oppression suffered by women is brought by society's perception of the difference between men and women biologically (sex) and their difference culturally, i.e., roles, position in social structure, etc. (gender), Although women and men have innate biological differences, cultures have interpret and elaborate differences into a set of social expectations about what behaviors and activities are appropriate and what rights, resources and power they possess.' For example, women are given the primary responsibility of child bearing and rearing which have been the cause of her restriction and limitation with regard to employment and other activities. Discrimination against Filipino women can also be brought about by her social class and the society which is intrinsic to the class to which the woman belongs such as women workers, peasant women and professionals.`

Despite considerable advances in gender equality in the recent decades, gender disparities in rights constrain the sets of choices available to women in many aspects of life - often limiting their ability to participate in or benefit from development. Poverty further exacerbates these. gender disparities.

* Philippine Judiciary Workshop on Realizing Economic Social and Cultural, Arts, Philippine Judicial, Academy, Tagavtay City,

September 14, 2001,

[1] ENGENDERING DEVELOPMENT: THROUGH GENDER EQUALIT Y RIGHTS, RESOURCES AND VOICE 2 (World Bank, 200I).

[2] S. Floro and N. Luz, Sourcebook for Philippine Women in Struggle 10 (Center for Women Resources Library)) as cited in M.S. Feliciano and R, Rikken, Sociolegal Status of Women in Selected DMCs -Philippines (1998).

Let us look at the Filipina's situation today:[3]

- The population of women and men is almost equal - 50.4% for men and 49.6'% for women.
- Women are greatly outnumbered in the labor force - 37.9% for women and 62.1°1o for men.
- In agriculture and forestry, women constitute 17.0% of the workforce while men constitute 83.0%.

Women constitute 6.7% of the fishery sector while 93.3% are men.

- In the manufacturing sector, men constitute 55.6% while women constitute 44.4%. Of the 1,104,429 workers, 51,934 are male managers and executives, while females number only 1,576 .
- In the wholesale and retail trade, women constitute 42.8% out of a total of 51,456 workforce.

Women constitute 43.8°/0 of the 165,099 workers in the hotel and restaurant trade, 51.3% of them are managers and executives.

- In the area of health and social work, of the 59,926 workers, women constitute 70.5 °ro.
- Women workers in the informal sector are estimated at 5 million. Contractual workers have more than doubled from 134,000 in 1994 to 401,000 in 1997.
- There have been a marked trend towards the feminization of migration

with women comprising the majority (55.8%) of the new hires for land-based overseas employment, winding up as entertainers, performing artists, domestic helpers, medical workers, care givers and other service workers; more than half of whom are college graduates, showing a high probability of deskilling.

- In 1997, 451 deaths of migrant workers were recorded (148 women); 251 came home physically ill (124 of whom were women); and 122 returned mentally ill (84 of whom were females). There is no existing government services or comprehensive social security packages to assist returning OFWs who have been ill abroad especially women survivors of violence and abuse.
- Since 1997, some 143,611 Filipinas went abroad ostensibly to join their fianc6s but ended up in prostitution houses controlled by syndicates.
- A total of 6,697 gender-based crimes against women and 5,790 child abuse cases have been reported to the Philippine National Police from January to July 2001. Of these cases, 3,878 or 58 % were physical injuries, most of which occurred in the homes. This is higher by 21°'/o compared to the 3,080 cases of the same period last *year.* This is followed by rape with 1,073 (16°,0), which is higher by 37% as compared to the 676 cases of the same period last year.
- On child abuse cases, rape registered a total of 2,164 representing 37% of all crimes committed against children during the first seven months of this year.
- Very few women have benefited from land registration which reveal that only 5,145 women as compared to 23,310 men received Certificates of Land Ownership (CLOAs).
- According to the Commission on Elections, women, last year, held 27 seats or 12.4% of the total seats in the House of Representatives. In 1998, women occupied 15.4% of the executive and legislative levels in

contrast to the 84.6% by men.

- Government reproductive health concerns have expanded beyond maternal and child health to include fertility regulation, sexual health, infertility, motherhood and child survival but these services have been hampered by factors such as meager budget, lack of qualified personnel, religious dictum, poverty and ill-health.

Even if there is a national commitment to gender equality through our laws, systemic obstacles stand in the way of translating such equality into reality. Moreover, the country's capacity for effective implementation and enforcement is often limited because statutes could in part, conflict with more dominant traditional or religious structures within the country and in part, due to absence or weakness of administrative agencies.

II. **CONSTITUTIONAL POLICIES**

The 1987 Philippine Constitution provides that as a policy, the State values the *dignity of every human person and guarantees full respect for human rights.*[4] *Article III* of the Bill of Rights states in Section 1 that, "No person shall be deprived of life, liberty, or property without due process of law, nor any person be denied the equal protection of the laws."

More specific provisions on women are found in Article II, section 14 which provides that "The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men" and in Section 14, Article XII when it mandates that "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."

[3] National Statistics Office.,Gender-Quickstat, as of December 2000. <http://www.census.gov.ph/data/quickstat/asgender.html>

[4] Art. II, sec. 11.

For children, the Constitution mandates their welfare and protection in the following provisions:

Article II, Section 12 declares that State protects the life of the child from the moment of conception and mandates support for the upbringing of the youth -

> "The State recognizes the sanctity of the family as a basic autonomous institution; It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the government."

Article II, Section 13 further states

> "The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual and social well being. It shall inculcate in the youth patriotism and nationalism and encourage their involvement in public and civic affairs."

To this end in Article XIII, Section 11 states -- State

shall adopt:

> "x x x 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 for paupers." (emphasis supplied)

To ensure education in the primary and secondary levels and vocational training for out of school youth, Article XIV, Section 2 states that the State shall:

> (2) Establish and maintain a system of free public education in the elementary and high schools levels. Without limiting the natural right of parents to rear their children, elementary education is compulsory for all children of school age.
>
> (5) Provide adult citizens, the disabled and out of school youth with training in civics, vocational efficiency, and other skills. (emphasis supplied)

The right of the youth to environment conducive to their proper growth is mandated in Article XV; Section 3 which states -

> "The State shall defend:
>
> *(2) The right of children to assistance, including proper care and* nutrition, and special protection from all forms of neglect, abuse, cruelty,

exploitation and other conditions prejudicial to their development."

III. TREATIES AND INTERNATIONAL AGREEMENTS

International law has framed gender equality as part of a larger global concern on basic freedoms and human rights. International standards prescribed by the general human rights instruments by the United Nations commencing with the Universal Declaration of Human Rights in 1948[5] followed by the International Covenant on Civil and Political Rights to the International Covenant on Economic, Social and Cultural Rights, all of which the Philippines is a signatory - - - reiterated the **principle of equality irrespective of sex.**

The International Covenant on Economic, Social and Cultural-- Rights reiterates the guarantees of the Universal Declaration of Human Rights and ILO Instruments respecting the right to work (art. 6), right to fair conditions of work which includes equal remuneration for work of equal value, safe and healthy working conditions and reasonable limitation of working hours (art. 7); right to form trade unions (art, 8); and right to social security (art. 9). It also has provisions on protection and assistance to the family, maternity leave and protection of children from economic and social exploitations (art. 10); right to adequate standard of living (art. 11); right to enjoy highest attainable standard of physical and mental health (art. 12), right to education (arts. 13 & 14); and right to take part in cultural life and enjoy the benefits of science, technology, and intellectual property (art. 15). This is essential because "full economic rights" properly contemplates not only the right to work but also to make proper investment of the returns therefrom, the ultimate, being to empower women in economic activities,

Although the above covenant lays down a comprehensive set of rights to which all persons including women are entitled, it was necessary to have a separate legal instrument for women because the mere fact of their "humanity" has not been sufficient to guarantee women the protection of their rights.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted by the United Nations General Assembly on 23 December 1979[7] and is considered the definitive legal instrument regarding respect for and observance of the human rights of women, Addressing a variety of issues in the public and private spheres, the Convention entered into force on 3 September 1981.[8] As of December, 1999, 165 states including the Philippines, had become parties by ratification or accession.

The basic legal norm of the Convention is the prohibition of ail forms of discrimination against women. This norm cannot be satisfied merely by the enactment of gender neutral laws. It addresses a wide order of women's concerns in the private and public spheres and provides a mechanism for assessing the status of women in the enjoyment and exercise of their fundamental rights.

5 A/RES/217A(111), 10 December 1948.

6 999 UNTs 171, The Philippines signed the Realities on 19 Decernber 1996.

7 A/RES/34/180, 18 December 1979.

8 249 UNTS 13.

Subjects covered by CEDAW are: Appropriate and temporary special measures to combat discrimination (art. 4); Modifying social and cultural patterns (art. 5); Suppressing exploitation of women (art. 6);

Equality in nationality laws (art. 9); Equality in education (art. 10); Equality in employment and labor rights (art. 11); Equality in access to health facilities (art. 12); Finance and social security (art. 13); Rural women (art. 14); Equality in legal and civil matters (art. 15); and Equality in family law (art. 16).

On the other hand, the Convention on the Rights of the Child (CRC) entered into force on September 1990 which the Philippines ratified on July 1990. There are four general principles enshrined in the CRC: (1) non-discrimination (art. 2); (2) best interests of the child (art. 3); (3) Right to life, survival and development (art. 6); and the views of the child (art. 12).

Other provisions of the CRC which deal on ESC rights are: protection of children from physical or mental harm and neglect including sexual abuse or exploitation (art. 19); protection from economic exploitation and from labor (art. 32); protection from the illegal use of drug and drug trafficking (art. 33); eliminate child trafficking (art. 35); and appropriate treatment or training for recovery and rehabilitation of abused children (art. 37).

Section 2., Article II of the 1987 Constitution serves as authority for the inclusion of international conventions, agreements and protocols as part of Philippine law. The provision states that "the Philippines adopts the generally accepted principles of international law as part of the law of the land," Since international law is internalized in our legal system by incorporation, it follows that the Philippines is bound to observe the rules of international conventions it has ratifed,[9] According to the Supreme Court, these treaties have the force and authority of legislative enactments,[10]

IV. NON-DISCRIMINATION

To many people, discrimination connotes "favoritism," "bias" or "prejudice" in simpler terms. However, article 1 of CEDAW explicitly acknowledges the broad-ranging "discrimination against women" by the following definitions as:

> "…any distinction, exclusion or restriction made on the *basis of* sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political economic, social, cultural civil, or any other field.

In contrast to the International Bill of Rights which simply refers to "distinction" of "discrimination" on the basis of sex, this definition gives a detailed explanation of discrimination which encompasses any difference in treatment on the grounds of gender which:

- Intentionally or unintentionally disadvantages women;

- Prevents society as a whole from recognizing women's rights in both the domestic and public spheres; or which

- Prevents women from exercising human tights and fundamental freedoms to which they are entitled.

[9] Agustin v. Edu. G.R, NoL-49112, February 2, 1979, 83 SSCRA 198 (1979); Guerrero's Transport Services, Inc. v. Blaylock Transportation Services Employees Association-KILUSAN, G.R. L-41518, June 1976,71 SCRA 621 (1976).

[10] Singh V. Collector of Customs, G.R. No. 13669, October 25, 1919, 38 Phil. 867 (1918); Abbas Elections v. Commission on Elections. G.R. Nos. 89651 & 89965, November 10, 1989, 179 SCRA 287 (1989); Philip Morris, Inc. V, Court of Appeals, G.R. No. 91332, July 16, 1993, 224 SCRA 576 (1993).

A. JOB DISCRIMINATION

Article 11 of the Women's Convention also states clearly that the right of women to work is basic and inalienable and that State-Parties must guarantee women the same employment rights and opportunities as men, a free choice in selecting a profession, and equality in remuneration and all work-related benefits."

On the other hand, ILO Convention No. 111 as ratified by the Philippines in May, 1960 defines discrimination to include:

> "(a) any distinction, exclusion or preference made on the basis of race, color, sex**,** religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment and occupation; and (b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupations as may be determined by the member concerned after consultation with representative employees' and workers' organizations, where such exist, and with other appropriate bodies." [12]

Note that the ILO Convention No. 111 does not ban discrimination based on "interest" job requirements.[13] It also concludes with a statement that "special measures of protection or assistance" provided for in other ILO Conventions and recommendations "shall not be deemed to be discrimination"[14]

In keeping with its responsibility pursuant to the Women's Convention, the Philippine Government integrated in the Labor Code defining acts of employers that are considered discriminatory to women.

Article 135 thus provides that "it shall be unlawful for any employer to discriminate against any woman employee with respect to terms and conditions of employment solely on account of her sex."

"The following are acts of discrimination"

(a) Payment of a lesser compensation, including wage, salary or other form of remuneration and fringe benefits, to a female employee as against a male employee, for work of equal value.

(b) Favoring a male employee over a female employee with respect to promotion, training opportunities, study and *scholarship grants solely on account of their sexes.*[15]

Under the Implementing Rules dated January 16, 1990, work of equal value refers to "activities, jobs, tasks, duties or services, workers or employee are required or called upon to perform and which are identical or substantially identical. Payment of a lower compensation or benefits to a

female employee does not constitute a failure to comply with. this section, if the difference between the rates of pay is based on length of service or seniority, on location or geographical area of employment, or any factor other than sex and the factors on which the difference is based would normally justify such difference in rates of pay"

[11] Art. I I, Par. I (a-d).

[12] Art. 1, (1).

[13] Art. I. (2).

[14] *Id.,* Art. 6.

[15] Labor Code:, Art. 135, as amended by Rep. Act No. 6725 (1989).

Note that the words of the law imply that if the discrimination is not based solely on account of the woman's sex, it may just be allowed. For example, if the discrimination is based on her sex and her marital status or her sex and her age, or her sex and her residence, etc., the discrimination may escape scrutiny simply because the gender factor is coupled with other grounds, no matter how superficial. The Implementing Rules also reinforces this concept when it states that "when the difference between the rates of pay is based on length of service or seniority, on location or geographical area of employment, or any factor other than sex, the factors on which the difference is based would normally justify such difference in rates of pay."

To be aware of signs pointing to possible discrimination, the Service Employees International Union of Canada prepared *a Pay Equity Bargaining Guide* which provides the following indicators for discrimination.

Start Here

Discrimination exists when:

- Job patterns are segregated on the basis of sex, thereby enabling the employer to follow different pay practices by reason of certain jobs catering specifically to women as there are other jobs predominantly catering to men.

- Women are crowded into a few jobs while men are spread across a wide range of job's,

- An employer assigns different job titles to essentially the same job and then proceeds to fill one job with women primarily and one with men.

- An employer lays off women with more seniority than men in job classifications with the justification that men are "primary breadwinners" and therefore must be laid off last.

- An employer avoids promoting women to higher positions.

- Job descriptions contain sex-specific language,

Under Article 136 of the Code, "employers cannot lawfully require as a condition of employment or for continuation of employment that a woman shall not get married, or to stipulate expressly or tacitly that upon getting married, a woman shall be deemed resigned or separated from employment. Neither can an employer actually dismiss, discharge, discriminate or otherwise prejudice a woman employee merely by reason of her marriage."[16]

Note that under Section 7 of RA 8972 *(The* Solo Parents' Welfare Act of 2000), "no employer shall discriminate against any solo parent employee with respect to terms and conditions of employment."

The following cases deal more on marriage stipulations as a condition of employment :

1. ***Claudine D. Zialcita v, Philippine Air Lines, Case*** N.o, R04-3-3398-76, February 20, 1977 (Office of the President decision)

Plaintiff, an international flight stewardess was dismissed for *getting married because of a company policy that the attendants must be* single and that their employment would be automatically terminated in the event that they subsequently get married. The Secretary of Labor rejected the position of the airline company that pregnancy was an inevitable consequence of marriage and that service would be adversely affected. He stated:

[16] LABORCOE, Art. 136

"This position is based on a tradition-bound but factually inaccurate assumption. To get married does not necessarily mean to get pregnant. On the other hand, getting married or remaining single is not a guarantee against pregnancy. One can get pregnant without being married, in the same way, one can get married without getting pregnant. If married flight attendants become inefficient, a valid basis for dismissal would then be available which is not true in this case."

On appeal, the Office of the President affirmed the Secretary of Labor's decision and stated the incompatibility of the respondent's policy with the coda) provision of law as early as March 13, 1973 when

Presidential Decree No. 148 was promulgated.

As to the respondent's position that its policy of non-marriage was based on Articles 52 and 216 of the Civil Code on the preservation of marriage as an inviolable social institution. According to the office, this was pure conjecture not based on actual conditions, considering that, in this modern world, sophisticated technology has narrowed the distance from one place to another. Moreover, respondent overlooked the fact that married flight attendants can program their lives to adapt to prevailing circumstances and events.

Article 136 was not intended to apply only to women employed in ordinary. occupations or it should have categorically expressed so the sweeping intendment of the law, be it on special or ordinary occupations, is reflected in the whole text and supported by article 135 that speaks on non-discrimination on the employment of women.

However, no award of back wages were made in this case, but simply reinstatement.

2. Olympia Gualberto, et al. v. Marinduque Mining Industrial Corporation, C.A. - G.R. No, 52753-R, June 28, 1978, 23 C.A. 2d 529 (1978).

> Plaintiff, while still single, was employed in 1971 by defendant as company dentist in its Surigao Nickel Project. When she married Roberto Gualberto, an electrical engineer in the same project, the company informed her that they considered her resigne i, invoking a policy of the firm to consider, due to lack of facilities for women at Nonoc Island, Surigao, They further claimed that plaintiff was employed in

the project with the verbal understanding that her services would be terminated when she gets married. Her husband who alleged that he was forced to resign because of his wife's illegal dismissal, claimed moral, exemplary and other damages.

The lower court ordered the Mining Company to pay P12,000 plus P2,000 as attorneys' fees and costs. Hence, this appeal.

The Court of Appeals ruled that the efforts of the defendant to distinguish between a verbal pre-employment agreement of the project engineer and the plaintiff on one hand, and the company on the other hand is not tenable because the pre-employment agreement is void. Also, .the supposed letter of resignation based on the same considerations is equally illegal and thus, void. The agreement is an example of discriminatory chauvinism. Acts which deny equal employment opportunities to women simply because of their sex are inherently odious and must be struck down. Throughout the records of the case that the prohibition against marriage and the resignation letter on account of marriage were only for women employees. Male employees were not enjoined from marriage.

Judgment appealed was affirmed with costs against defendantappellant.

3. Philippine Telegraph and Telephone Company v. National Labor Relations Commissions (NLRC) G. R. No. 118978,

May 23, *1997, 272 SCRA 596 (1997).*

Grace de Guzman was initially hired by petitioner as a supernumerary project worker "for a fixed period, from November 21, 1990 to April 20, 1991 vice Tenorio Who went on .maternity leave. Thereafter, her services as reliever was again engaged by petitioner from July 19 to August 8, 1991. On September 2, 1991, she was asked to join the company as a probationary employee for a period to cover 150 days. In the job application form, she indicated that she was single although she had contracted marriage, a few months earlier, that is on May 26, 1991. Such representation had also been made in the previous two successive reliever agreements. Later, when the company learned about her married status, they required private respondent to explain the discrepancy and reminded her about the company's policy of not accepting married women for employment. De Guzman stated that she was not aware of PT&T's policy regarding non-acceptance of married women for employment at the time and that she had not deliberately hidden her true civil status. Nonetheless, the company dismissed her on January 29, 1992 which she readily contested it by filing a case of illegal dismissal, coupled with a claim for non-payment of cost-of-living allowances (COLA) before the Regional Arbitration Board *of* the National Labor Relations Commission *(NLRC).*

The labor arbiter handed *a* decision that De Guzman had already gained the status of a regular employee and thus, was illegally dismissed. Therefore, her reinstatement, plus payment of the corresponding back

wages and COLA was correspondingly ordered.

On appeal, the NLRC upheld the decision of the labor arbiter with the qualification that De Guzman deserved to be suspended for three months in view of the dishonest nature of her acts, which should not be condoned.

Hence, this petition for certiorari before the Supreme Court, The Court ruled that the petitioner's policy of not accepting married women or considering as disqualified from work any woman worker who contracts marriage runs afoul of the test of, and the right against, discrimination afforded all women workers by our labor laws and by no less than the Constitution. Contrary to the petitioner's assertion that it dismissed private respondent from employment on account of her dishonesty, the record disclosed clearly that her ties with the company were dissolved principally because of the company's policy that married women were not qualified for employment in PT&T and not merely because of her supposed acts of dishonesty. Verily, private respondent's act of concealing the true nature of her status from PT&T could not be properly characterized as willful or in bad faith because she wanted to retain a permanent job in a stable company, While loss of confidence is a just cause for termination of employment, it Should not be simulated or used as a subterfuge for causes, which are improper, illegal or unjustified.

The Supreme Court thru Justice Regalado articulated:

The Constitution, cognizant of the disparity in

rights between men and women in almost all phases of social and political life, provides a gamut of protective provisions. To cite a few of the primordial ones, Section 14, Article II on the Declaration of Principles and State Policies, expressly recognizes the role of women in nation-building and commands the State to ensure, at all times, the fundamental equality before the law of women and men, Corollary thereto, Section 3 of Article XIII (the progenitor whereof dates back to both the 1935 and 1973 Constitution) pointedly requires the State to afford full protection to labor and to promote full employment and equality of employment opportunities for all, including an assurance of entitlement to tenurial security of all workers. Similarly, Section 14 of Article XIII mandates that the State shall protect working women through provisions for opportunities that would enable them to reach their full potential.

Corrective labor and social laws on gender inequality have emerged with more frequency in the years since the Labor Code was enacted on May 1, 1974 as Presidential Decree No. 442, largely due to our country's commitment as a signatory to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)."

The Court observed that De Guzman had gained regular status at the time of her dismissal. That her dismissal would be effected just when

her probationary period was winding down clearly raised the plausible conclusion that it was done in order to prevent her from earning security of tenure. However, as she had undeniably committed an act of dishonesty in concealing her status, the three-month suspension imposed by the NLRC must be upheld to obviate the impression that such act should be condoned. Thus, her entitlement to back wages which shall be computed from the time her compensation was withheld up to the time of her actual reinstatement, shall be reduced by deducting therefrom the amount corresponding to her three month suspension. Petition was dismissed for lack of merit with double costs against petitioner.

B. VIOLENCE AGAINST WOMEN

At its 11th Session in 1992, CEDAW Committee extended the general prohibition on gender-based discrimination to include gender-based violence in General Recommendation No. 19 where it defined in paragraph 6 as:

> "Violence that is directed at a woman because she is a woman or that affects women disproportionately. It includes acts which inflicts physical, mental or sexual harm or suffering, threats of such acts, coercion, and other deprivations of liberty...,"

The Committee affirmed that violence against women constitutes a violence of the internationally recognized human rights - regardless of whether the perpetration is a public official or a private person. The responsibility of State parties under the Convention extends to eliminating gender-based discrimination by any person, organization or enterprise. State responsibility may therefore be involved not only when a

government official is involved in an act of gender-based violence, but also when the State fails to act with due diligence to prevent violation of rights committed by private persons or to investigate and punish such acts of violence, and to provide compensation.

The U.N. Declaration on the Elimination of Violence Against Women affirmed this General Recommendation in 1993.[17]

It defines "violence against women as any act of gender-based violence that results in or is like to result in physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."

Article 2 further elaborates the definition: Violence against women shall be understood to encompass but not limited tot he following:

a) Physical, sexual and psychological "violence occurring in the family, including battery, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence related to exploitation;

b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions, and elsewhere, trafficking in women and forced prostitution; and 17 U.N. Gen. Assembly A/RES/48804, 20 December 1993.

c) Physical, sexual and psychological violence perpetrated/condoned by the State, wherever it Occurs."

To comply with its commitments under CEDAW, the following

laws were passed: Republic Act No. 7877 (1995) makes sexual harassment unlawful in the employment, education and training environment; Republic Act No. 6955 (1990) outlaws the practice of matching Filipino women for marriage to foreign nationals either on a mail order basis or through introduction for a fee; Republic Act No. 7659 (1993) imposes the death penalty on certain heinous crimes such as rape when committed with certain attendant circumstances; Republic Act No. 7610 (1992) provides special protection of children against abuse, exploitation and discrimination; Republic Act No. 7309 (1992) awards compensation not exceeding P10,000 to victims of unjust imprisonment or detention and victims of violent crimes including rape; Republic Act No. 8353 (1997) redefines rape to include sexual assault; Republic Act No. 8505 (1998) provides rape victims assistance and protection and contains a rape shield provision. Still, these laws are inadequate. It necessitates the passage of major laws to address domestic violence and the illegal trafficking of women.

An issue which concerns everybody is the problem of domestic violence. The most endemic forms of domestic violence are wife abuse, more accurately, abuse of women by intimate male partners and child abuse. ;Contrary to the view that the family is a haven of love and support, data around the world tend to confirm that women and children are at risk in their homes than anywhere else. Moreover, domestic violence is a hidden problem and it is difficult to estimate is actual incidence in the household because its admission of its existence is an assault on the integrity of the family.

In a 1997 study of intra-family violence conducted by the University of the Philippines Center for Women's Studies (UP-CWC), a total of 1,000 documented cases of intra-family violence were obtained from files of government, non-governmental organizations, hospitals and shelter

homes located in various parts of the country covering the period from 1994 to the first quarter of 1996.

The study revealed the following: Physical assault of women and children, who were the common victims, occurred most frequently (36,9% or one out of three cases), *sexual* abuse an alarming second (26.7% or one out of four), and third, economic abuse (17.3%). These abuses occurred in various combinations. Physical assault was often accompanied by verbal and economic abuse. The victims experienced violence repeatedly at varying periods of time in the hands of the same or different household members such as the male spouse, the father, who was the most frequent abuser, the mother, the siblings, the in-laws or the employers, in the case of domestic helpers. Almost all victims (98%) were women.[18]

Although repeated physical violence or grossly abusive conduct directed against the spouse or child is one of the grounds by which legal separation may be obtained,[19] the acts constituting domestic violence is not a crime. A survey of Philippine cases would reveal that it is replete with cases concerning child abuse but it is only when we examine cases of parricide do we find cases of wife battery.[20]

[18] BREAKING THE SILENCE; THE REALITIES OF FAMILY VIOLENCE IN THE PHILIPPINE AND RECOMMENDATIONS FOR CHANGE, 8-9 (UNICEF, U.P. Center for Women's Studies Foundation, 1997).

[19] Family Code, art, 55.

[20] People v. Canja. 86 Phil. 522 (1950); People v. Samson, G.R. No. 14110, March 29, 1963, 7 SCR4 478 (1963), People v. Boholst-Caballero, G.R. No. 23249, November 25, 1974, 61 SCRA 180 (1974); People. v. Dimacali, G.R. No. 68036, August 31, 1984, 153 SCRA 454 1987); People v. Lorenzo, G.R. No. 110107, January 26. 1995, 240 SCRA 624 (1995).

Republic Act No. 8369 (1997) mandated the establishment of a family court in evenly province or city in the country. It has exclusive original jurisdiction over cases of domestic violence against:

1) Women - which are acts of gender based violence that result, or are likely to result in physical, sexual or psychological harm or suffering to women; and other forms of physical abuse such as battering or threats and coercion which violate a woman's personhood, integrity and freedom of movement; and

2) Children - which include the commission of all forms of abuse, neglect, cruelty, exploitation, violence, and discrimination and all other conditions prejudicial to their development.

If an act constitutes a criminal offense, the accused shall be subject to criminal proceedings and the corresponding penalties.""

The problem lies in that there is no crime of domestic violence and if the courts apply the provisions of the Revised Penal Code, the different offenses of parricide, physical injuries etc. are all inadequate because there are no specific remedies to protect the victim and to rehabilitate the spouse-perpetrator.

Recently, the Supreme Court, speaking through Justice Artemio V. Panganiban, recognized the "battered woman syndrome" as a viable plea

within the concept of self-defense. In *People v. Genosa,*[22] an urgent omnibus motion was filed in connection with the automatic review of a Regional Trial Court judgment which found the accused wife guilty of parricide aggravated by treachery and sentenced her to death. Since the Court could not properly evaluate her battered-women-syndrome defense absent expert testimony on her mental and emotional state at the time of the killing and the possible psychological cause and effect of her fatal act, the case was remanded to the trial court for the reception of expert psychological and/or psychiatric opinions on the "battered woman syndrome" plea and to forthwith report to the Court with copies of the Transcript of Stenographic Notes and relevant documentary evidence.

[21] Sec. 5 (k)

[22] G.R. No. 135981, September 29, 2000

The family is the linchpin of gender, reproducing it from one generation to the next. As we have seen, family life in a violent environment is not just, either to women or children Moreover, this is not conducive to the rearing of citizens with a strong sense of justice. However, in spite of all the rhetoric about equality between men and women, the traditional views still prevail in the family.

In this connection, the following observations of Prof. Deborah L. Rhode is very relevant to this issue:

> "Family violence is a symptom as well as a cause of women's subordination. As long as women are economically dependent on men, and both sexes are socialized to accept male aggression and female passivity, abuse will remain pervasive. Changing the conditions that foster violence requires changing cultural perspectives and priorities. It demands

sustained challenges to media presentations, educational programs, and social service. In order for women to leave an abusive relationship, they must be able to support themselves and their children. Ensuring opportunities for economic independence will require restructing a vast range of social policies regarding employment, education, divorce, legal services, childcare, housing and welfare. Only as women achieve equality in the public shpere are they likely to break patters of aggression and submission in the private sphere.

Challenging these patterns must be a crucial part of any societal strategy to control violence. Failure to find more effective responses to domestic violence in this generation will intensify our problems in the next. [12]

V. PARTICIPATION

It has been often said that "no women had a voice in the design of the legal institutions that rule the social order under which women, as well as men, live. Nor was

[23] JUSTICE AND GENDER 244(1989).

the interest of women as a sex represented.[24] However, if we consider that women and girls constitute one half of the world's population, one third of its labor force and two-thirds of the world's work hours, how come they are denied even the most basic needs and decencies? When we discuss the world's problems such as war, poverty, disease, overpopulation, ecological deterioration, refugees and the abuse of children and the elderly, we often ignore that those who suffer from these problems are women who are not consulted about their conditions and their possible

solutions.

Legal, social and economic rights provide an enabling environment in which women and men can participate productively in society, attain a basic quality of life and take advantage of the new opportunities that development affords. Greater equalities n rights is also consistently and systematically associated with greater gender equality in education, life expectancy and political participation - effects independent of income.[25]

As far as participation is concerned, Filipino women have the right to suffrage but this has not been translated into a woman's vote or a "united vote for electoral candidates female or male, whom women believe will take up the cause of women. Furthermore, there is a low level of participation of women in decision - making positions in the national or local government.

Republic Act No. 7941 otherwise known as the Party-list Law was signed into law on March 31, 1995 pursuant to Section 5, Article VI of the 1987 Constitution. This enabling law allocates 20°%o of the 250 seats in the House of Representatives for small political parties and twelve sectoral groups which include women, In the 1998 elections, six women organizations and parties were accredited by the Commission on Elections (COMELEC). Only two groups, *Abanse Pinay* and *Akbayan won* one seat each because they did not reach the percentage share of votes required for a seat.

[24] C.C. Machinnion, *Reflections on Sex Equality Under the Law,* 100 YALE L.J. (1991).

[25] ENGENDERING EVELOPMENT, *supra* note 1.

In the 2001 elections, 154 organizations and parties were

accredited by COMELEC but *the Ana Bagong Bayan - OFW Labor Party* [26] filed a petition for the disqualification of 30 organizations arguing mainly that the party-fist system was intended to benefit the marginalized and underrepresented not the mainstream political parties, the non-marginalized or overrepresented. The Supreme Court thru Justice Panganiban, remanded the case to the COMELEC to determine after evidentiary hearings whether they comply with the requirements of the law among which is: "The political party, sector, organization must represent the marginalized and underrepresented groups identified in Section 5 of RA 7941."

Since the parties which were disqualified obtained a substantial percentage of votes, the women organizations lost the election.

It has been observed that the low-level of awareness of the party-list, the loopholes in the law itself, the inexperience and the lack of funds of the party-list groups, as well as the pressure of traditional politics, all accounted for the poor outcome of the election.

The strengthening of regional and local government units (LGUs) was made through the enactment of Republic Act No, 7160 or the Local Government Code of 1991 by devolving to them certain powers hitherto exercised by the national government. It is also significant in terms of ensuring that the concerns of women are considered in the legislative process at the municipal, city, and provincial levels. As provided under Sections 446, 457, and 467 of the Local Government Code, the *Sangguniang Bayan*

[26] G.R. Nos. 147589 & 1476l3, June 26, 2001.

(municipal council)*, Sangguniang Panlungsod* (city council), *Sangguniang Panlalawigan* (provincial council), respectively, shall be composed, among others, of three sectoral representatives each, coming from the women, agricultural/industrial, and other sectors, including the urban poor, indigenous cultural communities, or disabled persons. To date, this law

has not been realized because the COMELEC has reasoned out that there is no law or budget to implement it.

Note that where women are present in only small numbers, they may be marginalized and find it difficult to promote group interests. For this reason alone, it may take time before women articulate their gender interests effectively in the most strategic forums.

VI. **CONCLUSION**

Notwithstanding all these government initiatives, women still encounter *de facto* practices that give rise to hardships. Urgent attention is needed to learn the real causes of women's difficulties. A thorough examination of the inadequacy of some laws as well as the impact of the legislation on gender relations is in order. There is also a need to put in place monitoring mechanisms and indicators in order to measure the effects of government policies and programs.

There has been a growing consensus that sustainable development requires an understanding of the respective roles of women and men within the community and their relations to each other. With the gender and development approach, improving the status of women is no longer considered solely an issue for women but is a goal the attainment of which, requires active participation of both women and men.

Republic of the Philippines

Supreme Court

Philippine Judicial Academy

Highlights of the Workshop Proceedings*

This is the first Judiciary Workshop undertaken by the Philippine Judicial Academy, or PHILJA, on Economic, Social and Cultural Rights, and the first time that the topic is introduced to Philippine Judges. We understand that it is also the first in Asia, and that there is every intention to replicate it in other jurisdictions using the format and training materials introduced in this Workshop.

PHILJA undertook this activity with the assistance of the UNDP and in cooperation with the UN High Commissioner for Human Rights. PHILJA was fortunate to have had the guidance and close collaboration of former Chief Justice P.N. Bhagwati of India and Regional Adviser for the Asia and Pacific Region, as well as Dr. Clarence Dins, President of the International Center for Law and Development. They participated actively in all sessions contributing greatly to their substantive position. Dean Virgina B. Dandan, Chairperson, of the International Committee on Economic, Social and Cultural Rights added to the wealth of information shared with the participating judges.

Chief Justice Hilario G. Davide, Jr., authorized the attendance of three (3) Justices from the Court of Appeals, led by its recently appointed Presiding Justice; fifteen (15) from the National Capital Judicial Region; thirteen (13) from Luzon; ten (10) from the Visayas; and ten (10) from Mindanao.

Central to the Workshop was a human rights approach to development tied in to the key role of the Judiciary in achieving this new approach and, promoting and protecting: human rights through the justice system*. A* given was that all human rights are indivisible, and of equal importance for human dignity, and that economic, social and cultural rights are of crucial relevance for the effective exercise of civil and political rights, and *vice versa.*

* Given by Justice Ameurfina A. Melencio Herrera (Ret.) Chancellor of the Philippine Judicial Academy (PHTLJA), at the Closing Ceremonies of the Philippine Judiciary Workshop on Realizing Economic, Social and

Cultural Rights" [PHILJA 225 SF HR UNDP (1) `01] conducted by PHILJA with the assistance of the UNDP and in cooperation with the Office of the UN Commissioner for Human Rights, on *September* 12 - 14, 2001, at the Philippine Judicial Academy;', Tagaytay City.

Admittedly, in the past more attention has been given to civil and political rights, on the one hand, than to economic, social and cultural rights on the other. It has been realized, however, that not only are they indivisible but that they need and complement each other.

If we consider as the success indicator the enhancement of the participant's conceptual and practical understanding and ability to address economic, social and cultural rights and willingness to apply them in the work of judging, the rating would be that the Workshop was a real success. Reacting to the practical exercises with hypothetical given on the second day, Chief Justice Bhagwati complimented the participating judges highly when he said that they can be considered as among the best its Asia.

The Workshop started with basics - an understanding of the substance, the process and the applicability of international norms on economic, social and cultural rights, particularly, the International Covenant on ESCR (IESCR), and the jurisprudence emanating from the International Committee on Economic, Social and Cultural Rights. An overview of the UN Human Rights System was also given.

Justiciability

The Workshop met the issue of justiciability of economic, social and cultural rights squarely.

Fr. Bernas summarized the requisites for justiciability of ESCR as (1) a demandable legal right, (2) a violation of that right, and (3) a person injured except if the matter happens to be one of transcendental importance.

Chief Justice Bhagwati stressed that India has a Bill of Rights and a Declaration of Policies, which are not necessarily *per se* enforceable, but that its Supreme Court has interpreted the constitutional "right to life" to cover even food; housing, health, and environment. This he said, emphasizes the creative, and the activist function of a judge, guided by social justice and human rights.

Fr. Aquino, for his part, explained that the matter of "justiciability" limits the reach of judicial power but at the same time enhances judicial power because to determine justiciability is part of judicial power. He cited the Supreme Court Decision in "Harvey v. Defensor Santiago," which resorted

to the Declaration of Principles in the Philippine Constitution in the absence of a specific law on *pedophilia*.

Role of the Judiciary in the application of ESC rights and the Constitution: experiences in India and in the Philippines

In discussing the experience in India, Chief Justice Bhagwati mentioned that through judicial creativeness and judicial activism, India has been able to bring ESCR within the fold of Hunman Rights. He mentioned, among, others, the cases of (1) Sonia Gandhi, which held that the right to travel cannot be curtailed; (2) the "women's shelter case," brought by two professors, where the Supreme Court of India ordered the improvement of the abominable conditions in the protective home; the "blinding case" brought by an NGO, where the Supreme Court ordered that the people blinded by the police should be sent to a school for the blind.

He concluded by saying that the judiciary must be fearless in the discharge of its functions; build up jurisprudence by incorporating human rights norms that have received broad acceptance by the international community; and that human rights should be meaningful to people and to the vulnerable in society. Thus, the Supreme Court of India has been referred to, not so much as such, but as the Supreme Court for Indians.

In expounding on ESCR in Philippine Courts, Justice Leonardo A. Quisumbing started with Article II of the Philippine Constitution on the Declaration of Principles and State Policies, section 2 of which "adopts the generally accepted principles of international law as part of the law of the land." He stressed that human rights are inherently ours simply because we are human.

Justice Quisumbing cited the early case of Villaviciencio v. Lukban penned by Justice Malcolm which upheld the freedom of locomotion and granted the writ of habeas corpus; although in Rubi v, Mindoro, Justice Malcolm sustained an ordinance aimed at a cultural minority. Also, the cases of (1) Asuncion v. MeTC which fined a judge P10.000.00 for having violated human rights; (2) Mejoff v. Director of Prisons, which held that the right to liberty applies to Filipino citizens and foreigners alike; the (3) Borovsky case which quoted the Universal Declaration of Human Rights even if the ink thereon had hardly dried and its universal application to all, including “un borracho"; and (4) Hilao v. Marcos, which granted damages for wrongful death against the family of a former head of State. He also stressed the rule-making power of the Philippine Supreme Court and its impact on the protection and enforcement of constitutional rights.

He, however, also cited early cases where the provisions of the Universal Declaration of Human Rights were not applied in a case involving the

validity of the Retail Trade Nationalization Law (Lao Ichong v. Hernandez).

In closing, he stressed that under the Davide Watch, the Judiciary remains vigilant in order that fundamental freedoms and human rights are protected and promoted; and that "in our time, positive guarantees of ESCR (as much if not more than political and civil rights) could no longer be ignored or left unrealized. The hour is late...," he emphasized.

Judicial Application Session

This touched on a comparative examination of international experiences in developing national jurisprudence on economic, social and cultural rights covering the European Court, the Inter-American Court, including the experiences from India and South Africa. The speakers were Chief Justice Bhagwati, and Dr. Clarence Dias who brought his thorough knowledge and expertise to bear and discoursed breezily from one court to another.

Administrative and Judicial Application Session

This traced the development of Administrative Law relative to ESCR with the objective of reviewing administrative remddies in agencies where relief against violation of ESC rights is possible. Again, there was an examination of experiences of India and of the Philippines on the issue.

Dean Pacifico Agabin, stressed the need for the judiciary to shift technique in so far as Human Rights are concerned. He cited the Workmen's Compensation Act as illustrative of how an administrative process has been used as an instrument not only for redesigning the economic system but also to effect a shift in decisional technique from the judicial passive method to the administrative active method. He mentioned that while civil and Political rights require only restraint on the part of the State, ECOSOC rights are programmatic requiring a law and the establishment of administrative agencies.

Chief Justice Bhagwati advanced a novel concept when he recommended that legal aid be considered as a basic human right. He also mentioned the three A's that are necessary, namely, awareness, assertiveness, and availability of resources.

He also mentioned that the principle behind administrative law is natural justice and that no one should be condemned unless given an opportunity to be heard; that one must keep an open mind because "to err is human, but to perpetuate an error is no heroism." He further emphasized that discretion by administrative agencies must not be unfettered and unregulated because it is a ruthless tyrant; referring to Shakespeare's Macbeth and the line that it should be "curbed, cabined and confined."

Access to Justice: Transparency, Accountability and Affordability

Professor Marvic Leonen spoke of the Alternative Law Groups and various concepts of justice; the challenges they face; the consideration of law practice as empowering and not simply as a trade or business; the formulation of judicial and extra judicial reforms. He has also recommended a continuing systematic and institutionalized dialogue between the Bar and basic sectors. So also did he ask for the reinterpretation of processes that effectively remove judicial redress to marginalized sectors and communities. He went further to suggest the review of Bar subjects including the elimination of Taxation and the inclusion of Agrarian Reform, Environmental Law, Feminist Jurisprudence and Urban Poor Laws. He then asked for opening consciousness to alternative law groups and accommodating social issues so that courts are not lured to the "slot machine" process of deciding cases.

Chief Justice Bhagwati spoke of the Indian experience along parallel lines. He related that after the stark native poverty in some areas of his country and seeing so many deprived of access to justice for long years, it led him to a change of thinking and providing access to justice to this poor specimen of humanity.

Accordingly he worked to provide them v, with legal aid and the formation of a commission for the purpose to be more dynamic. He advocated Preventive Legal Aid Program that will not be confined to litigation alone, The components of his program were alternative dispute resolution mechanisms; legal aid clinics in universities; para-legal training; public involvement and research. The whole process was revolutionized, he said.

He even brought people's courts to resolve disputes in different rural areas with the help of many others.

He then spoke of the need for *transparency:* how judges are behaving, their conduct in and out of the courtroom, since all these affect the people's perception of the administration of justice.

Accountability is also very important he said, accountability to conscience and the law, to the people of the country whom we are expected to serve, and not to government.

He also raised the problems of media who sometimes overstep limits with unfounded allegations. Truth, he said is no defense for contempt of court.

Rights, Obligations & Remedies: International and Domestic Experiences

On this topic, Chief Justice Bhagwati invoked social action litigation, reiterating that poor people lack resources to approach the courts. He mentioned that *locus standi* stands on the way of people's approach to courts, and that we should give way to a larger doctrine. The problem would he how to get the evidence since NGOs have limited resources. Social action litigation is a national remedy in India; he added. It has spread to Bangladesh, Nepal, and other countries as well.

He also spoke of public interest litigation in public interest cases brought by public-spirited individuals. Judicial aberrations exist, he warned, but the strategy should not be discarded for those reasons alone where there is violation of basic rights.

Dean Dandan vented her frustration since, despite seven years of work, the dra*ft* Optional Protocol on ESCR has not yet been adopted because of lack of appreciation by the States.

Atty. Rene Sarmiento advanced the view that the judiciary should not be merely passive and a mere adjudicator of clashing claims but that it should be innovative. Judicial activism, he said can be an important strategy to overcome all forms of oppression, and exploitation which is unjustifiable in any model of social development.

He suggested the adoption of the "ley de amparo," which is a versatile instrument covering habeas corpus, injunction, declaratory judgment and even appeal.

Non-Discrimination and Participation: Gender and Children Issues

This session focused on the examination of administrative and judicial processes in the light of basic principles of human rights including state responsibility under CEDAW and CRC, especially considering that the latter contains all kinds of rights including the right to participation, through its guiding concept on "the best interests of the child." E.SCR is also very strong in CRC, Dr. Dias stated.

Professor Feliciano, a sought-after speaker on Women and Children, discoursed on the subject and the imbalance in the participation of women and children. She stressed the limitation of their ability to participate in or benefit from development, with poverty exacerbating gender disparities. She also spoke on job discrimination, citing leading cases, and violence against women. She emphasized that legal, social and economic rights provide an

enabling environment in which women and men can participate productively in society, attain a basic quality of life and take advantage of the new opportunities that development affords. Gains have been achieved, she said, but women still encounter *de facto* practices that give rise to hardships.

Dr. Dias pointed out that the right to participation is a most, fundamental human right and is key to the realization of several other human rights. He cited that the human right to participation is crucial to any human rights based approach to sustainable human development; and that the CEDAW contains the most detailed provisions of the right to participation. The judiciary, he said, can help promote, protect, and fulfill the right to participation. He challenged all to total commitment to the right to participation.

Social Action Litigation

There was a change in schedule for the last session. The participants were divided into three teams: (I) the Social Action Team; (2) the Domestic Remedy Team; and (3) the International Remedy/Relief Team. They were given three hypothetical problems to solve. The solutions were reported out by rapporteurs and critiqued by Resource Persons, all of whom congratulated the teams for their outputs. The reports showed a working knowledge of basic rights, the remedies to seek from the Philippine Commission on Human Rights, or administrative agencies, or the Courts.

Conclusion

In this Judiciary Workshop, we have been toured through the landscapes of Civil and Political Rights, Economic, Social and Cultural Rights, the experiences in India and the Philippines and European countries as well.

It has been a hectic three-day activity but we trust that it has been found fruitful and fulfilling, specially in the realization of rights through development.

We reiterate our appreciation to the UNDP, through Mr. Terence Jones, its able representative, who is here with us tonight; the Office of the High Commissioner of Human Rights, former Chief Justice Bhagwati, Dr. Clarence Dias, Professor Dandan, all experts in Human Rights, for having guided us through and withstanding the intense schedule. I just hope that they did not feel "exploited."

We thank Chief Justice Davide for coming over to inspire us all, and specially for having given his blessings to this landmark undertaking and for

his indispensable support.

The first step in training has been undertaken by PHILJA. The next step will be in the Court of Appeals, with the permission of its Presiding Justice. And hopefully, we will be able to take the seminars to different judicial regions. Of course, a great deal will also depend on the Evaluations still to be submitted.

The role of the Judges is clear, in the Philippines, in India, and in other countries as well --- to call on their inner resources of mind and spirit to achieve a Judiciary that is independent, efficient, effective, and protective of liberties and of citizens' rights.

Analysis of Philippine Report To CEDAW re: ESC Rights

The fourth Philippine report on the implementation of the provisions of the UN Convention on the Elimination on All Forms of Discrimination Against Women covers the period December 1992 to November 1995. The report has two parts: Information on the country's current social, economic, political situation including data on the status of women and specific information regarding the country's implementation of articles 2 to 16 of the Convention.

A. **SITUATIONER:**

Since "people power" surfaced in 1986, the mushrooming of people's organizations as well as the vibrant non-governmental community has intensified the movement towards popular participation. Moreover, decentralization as authorized by the Local Government Code provided the devolution of powers to local government units in order for them to acquire the capability for selfgovernance.

In 1991, the estimate was that 39.2 percent of Filipino families lived below the poverty threshold (placed at P8,969 for a family of 6). The lack of distribution social justice or inequity in the access of productive resources, employment opportunities and basic services continue to be the main reasons for poverty. Moreover, the poverty situation was exacerbated by negative growth rate between 1989 and 1993, the several disasters and calamities that the country experienced. This was aggravated by the internal armed conflict posed by communist insurgency and Muslim secessionist movements. With the equality provision of the Constitution, a number of significant laws have been passed for the advancement of women. Although there is a relatively strong State machinery for women and the women's movement has started to be felt as a strong force, so much more remains to be done before the *do facto* equality of women is actualized.

The 1992 Labor Force Survey showed that only 46.8 percent of females are employed compared with 85.7 percent of males. Women compensated for this by working in the informal sector but majority of their productive contribution to family subsistence is invisible in national income accounts. A critical phenomenon of the decade is the feminization of overseas employment. Around 52 percent of the total overseas contract workers deployed in 1991 were women. Women domestic helpers deployed in neighboring South East Asian countries comprised 57 percent of such workers in the service sector and entertainers and nurses represented 34

percent of the professional sector. Issues such as non-payment of wages, discrimination and sexual abuse abound. Inadequacy of protective mechanisms to deal with abusive employees in host countries was a major concern of the government.

Beginning in the late 1994, women's issues, such as rape, domestic violence and reproductive rights, became a focus of public debate. As a result a number of legislators filed bills on these issues. The Philippine Plan for Gender-Responsive Development, 1995-2025 was approved by Executive Order No. 273 became the 30 year perspective framework for pursuing full equality and development for men and women and the government's blueprint for gender mainstreaming. It also became the vehicle for the implementing the action commitments made by the Philippines during the Fourth World Conference on Women in Beijing. This led to the inclusion of a provision on gender-responsive projects in the 1995 Appropriation Act and later on. The preparation of a Women's Budget, 1995-1996 which assessed the resources of the Philippine government through its various agencies on how much money was spent for the advancement of women.

Even as significant strides have been taken to effectively address the gender-based inequalities which the Convention seeks to eliminate, a number of issues and obstacles in the promotion of women's interest and welfare remain to be resolved:

1. Inadequate tools and methodologies for gender mainstreaming
2. Lack of a critical mass of women in top-level and decision-making positions
3. Need to enhance the level of awareness and skills on women in development/gender and development concerns among government officials and staff
4. Absence of a comprehensive indication system with clear standards for gender-responsiveness per sector
5. Absence of political wild and lack of commitment by implementing agencies accorded to women's gender concerns.
6. Women in poverty situation
7. Lack of concerted and massive public education on women's gender concerns
8. Lack of concerted and massive education gender issues and concerns
9. Stereotyping in schools
10. Negative influence of media

entertainers and nurses represented 34 percent of the professional sector. Issues such as non-payment of wages, discrimination and sexual abuse abound. Inadequacy of protective mechanisms to deal with abusive employees in host countries was a major concern of the government.

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B. PROGRESS REPORT ON ARTICLES OF THE CONVENTION COMPLIANCE

Arts. 2 -- 4. The period saw the passage of laws and the Philippines' adherence to the Convention's policy of non-discrimination and adoption of positive measures for the advancement of women. The passage of Republic Act (RA) 7192 or the Women in Development Nation-Building Act in 1992

ushered in more legislative initiatives, among which were: RA 8042 known as the Migrant Workers and Overseas Filipinos Act of 1995; RA 7882 provides credit assistance to women in micro and cottage business enterprises; RA 7877 declares sexual harassment to be unlawful in employment, education or training environment; RA 7655 increases the minimum wage of domestic helpers; RA 7600 promotes breast-feeding by requiring public and private health institutions with obstetrical services to adapt a policy of rooming-in; RA 7322 increases maternity benefits of women workers in the private sector; RA 7305 or the Magna Carta for Public Health Workers; RA 7160 or the Local Government Code which provides women representation in local legislative assemblies; RA 6972 mandates the establishment of day-care centers in every barangay; RA 6955 bans marriage for a fee; and RA 6809 lowers the age of women from 21 to 18 years, thus equalizing it with that for men.

Art. 5. Women's oppression is created and reinforced by a host of institutions: socialization process in the family, educational system; portrayal of women in media; blindness of government programmes and legal system to women's needs, religious teachings on women, all contribute to further discrimination against them. The Philippine government, through the National Commission on the Role of Filipino Women (NCRFW) adopted the gender mainstreaming approach to eliminate gender discrimination and to ensure that gender concerns are fully integrated by the rest of the government in their planning and programming. Two vehicles were used in this approach: separate plan for women (Philippine Development Plan for Women, 1989-1992 followed by the Philippine Plan for Gender-1 responsive Development, 1995-2.025) and the main economic plan of the country (Medium-Term Development Plan) which carries general and sectoral policies on women/gender and development.

Art. 6. After 15 years of fighting against the trafficking and exploitation of women, prostitution and sexual exploitation in different forms are still very much around, Women NGOs have pointed out that "development prostitution" has flourished in port areas, industrial estates, regional capitals and tourist resorts that provide transients with women for sex.

The Department of Tourism has issued statements to the effect that the promotion of tourism should not be taken at the expense of women and children, indigenous cultures and the environment. Thus, the Fiesta Island campaigns focus on Philippine culture and traditions, domestic tourism and people to people encounters, It has called on the improvement of networking and information with law enforcement agencies on the strict implementation of the ban against "organized sex tours."

The Women Governmental and Non-Governmental Network on

Violence Against Women was establishing in 1993 holding fora and workshops mainly or policy issues. The Third World Movement Against Exploitation of Women runs a chain of drop-in centres and homes which respond to these women's economic, educational, physical, spiritual, psychological and cultural needs. The DSWD developed Substitute Home Care for Women in Especially Difficult Circumstances, which served 2,852 cases from 1991 to 1994 in 4 centers. Some 7,802 women were taken care of by senior social workers in their own home or community.

The Commission on Filipino Overseas (CFO) provides counseling to prospective brides of foreigners, including those who have been propositioned via mail order and other arrangements. Complementing these is the National AIDs Control Program of the Department of Health and NGO efforts such as the Remedios Aids Information and Kabalikat. Meanwhile, Stop Trafficking of Pilipinas (STOP) concentrates on a program called "stopping at the source" *and* engages in prevention activities. Law enforcement officers, beginning with women, are undergoing training to ensure better handling of victims of rape, battered wives and prostitution.

Art. 10. Female literacy has been increasing, from 75.9 per cent in 1970 to 93.34 per cent in 1990. To reduce gender disparity in literacy rates in the 6 most depressed provinces. The Female Functional Literacy Programme was pilot tested in Maguindanao, Lanao del Sur, Basilan, Tawi-Tawi and Ifugao. The Alternative Non-Formal Education Delivery Scheme was also developed and implemented for selected cultural communities. From 1982 to 1990. Female enrollment increased by 59 per cent. In 1994, 49.5 per cent were in the elementary level, 51.5 per cent in the secondary level and 56.2 per cent in the tertiary level. Policy developments included enactments such as: Executive Order 117 provided equality of access to education and enjoyment of benefits to be derived from it to all citizens; RA 7323 (1992) encourages poor students to pursue their education through job opportunities during vacations; RA 6728 (1989) grants government assistance to students and teachers in private education and as a result of RA 7192, women may now enroll in the Philippine Military Academy.

For poor and deserving students, Department of Science and Technology offers 100 scholarship every year to students belonging to low-income families; Department of Education, Culture and Sports has a Study-Now-Pay Later Plan for financially disadvantaged students while the University of the Philippines has democratized its admission and offer subsidized tuition fees.

Art. 11. A survey of trade unions covering 4,290 establishments showed that women accounted only for 35 per cent of the total membership of 233,338 unions and only 14 per cent of the 1,260 union presidents.

Civil Service Commission Resolution 84.463 provided for the policy (Equality Advocates or EQUADS) programme on equal opportunities and equal treatment for women and men. They attend to complaints of discrimination such as gender, political and sexual harassment in 14 regional centers. RA 6725 prohibits discriminatory practices such as payment of lesser compensation to a female employee against the male employee for work of equal value and favoring men in promotions, training opportunities, etc. In compliance with RA 6972 or the Barangay Day Care Law which provides supportive social services to enable parents to combine family obligations with work responsibilities, a total of 27,540 day-care centers were established in 23,538 barangays by the DSWD with local government units and NGOs.

Department of Labor and Employment (DOLE) adopted the following policy issuances: AO No. 28, s. 1994 prescribed guidelines to improve the effectiveness of labor standards enforcement and specified women's concerns as a priority; DO No. 3, s. 1994 sets guidelines for the training, testing and deployment of performing artists and entertainers; DO No. 13, s. 1994 revised measures to further protect overseas household workers by developing welfare programmes for household workers to be coordinated by the Philippine Overseas Labor Officers Corps in overseas centres; DO No. 35, s. 1994 provided for a comprehensive welfare programme for Filipino performing artists overseas. Though the Department of Foreign Affairs, the Philippines has signed social security systems agreements with France, Italy, United Kingdom and Spain in order to provide protection and greater benefits for women workers who are especially vulnerable to exploitation and abuse.

Art. 12. While the overall health status was improving, a continuing problem is the rural women's poor access to health care and services, It was further aggravated by the implementation of the Local Government Code by which health services were devolved to local government units, which were apparently not ready to assume the function. Other factors which contributed to the poor delivery of basic health services were: (a) inadequate funds of LGUs and (b) incapability of the local health personnel to take full responsibility for the health needs of their constituents.

As of 1993, 206 females were infected with HIV of which, 146 were in the productive age (15-29). The Department acknowledged the role of NGOs as partners in development which included the Women Health, Pro-Life Philippines, Women's Health Care Foundation, Institute for Social Studies and Action and Health Action Information Network. At the beneficiary level, a comprehensive package of preventive, promotive and curative care to ensure safe pregnancy and delivery was available through the Maternal Health Care Program. In 1993, the programme was able to extend prenatal service to 80 per cent of pregnant women. Project HAVEN

(Hospital Assistance to Woman Victims/Survivors of Violent Environment was a pilot project conceptualized by tie-up among the Woman's Crisis Center (an NGO), the Department of Health and the NCRFW which seek to provide assistance to women victims of violence and to train caregivers of the beneficiaries. It is located in the East Avenue Medical Center and the undertaking is to document and come up with guidelines on how to replicate it in other regional government hospitals. Likewise, the DSWD and the Congressional Spouses Foundation inaugurated the halfway house and sanctuary for women victims of violent circumstances.

Art. 13. Since 1992, three institutions had been established to study the multifaceted poverty situation in the country and to design a holistic and integrated strategy to address the problem. They were the Presidential Commission to Fight Poverty; the Presidential Council for Countryside Development and the Presidential Commission for the Urban Poor, In line with, the Medium Term Development Plan, 1995 -- 1998, the Social Reform Agenda was launched which provided among others, avenues for intervention for women's needs in terms of capability-building for productivity skills and livelihood, services for women in especially difficult circumstances, and information and services for family planning, responsible parenthood and reproductive health.

Recently, the Minimum Basic Needs Approach was initiated focusing on needs related to survival (health, nutrition, sanitation and water), security (shelter, income, peace and order) and empowerment (basic education, literacy and participation. It allowed the development managers to use other multi-sectoral and multidisciplinary approaches towards economic empowerment.

Other laws enacted to protect specific groups RA 7432, the Seminar Citizens Law and RA 7377, The Magna Carta for Disabled Persons.

Art. 14. Within the framework of RA 7192, the Department of Agrarian Reform (DAR) adopted policies and guidelines for the effective implementation of the Comprehensive Agrarian Reform Program. Through Administrative Order No. 2, s. 1993, rules and regulations for the identification, delineation and recognition of ancestral domains were designed. This order provided that all farm workers who are married to each other may be entitled to 3 hectares each, provided that their vested rights to the land have been duly established. A separate certificate of land ownership agreement must be issued to each of the spouses. An Agrarian Reform Communities Strategic Development Intervention Framework was developed which detailed the gender-based organizing and development process including the generation of gender-specific data. DAR established also women in development focal points from national to local levels to

ensure implementation of the plan.

The Department of Environmental and Natural Resources, through AO No. 4, s. 1991 grants the Integrated Social Forestry Program's certificate of standardization contracts to both spouses.

RA 7884 or the National Dairy Authority encourages the participation of women in dairy and dairy-related polices including animal health care, village nutrition schemes, community based processing and marketing of milk. The Social Reform Agenda provided capacity-building for productivity skills and livelihood services for women in especially difficult circumstances and information services for family planning, reproductive health and responsible parenthood.

The DAR adapted the Grameen Bank Scheme by providing credit access to rural women and by 1995 membership totalled 13,528 with 12,357 members having availed of loans to provide extension services. The Department of Agriculture, has fielded 21,000 agricultural technicians in farming livestock and poultry-raising and home management to rural folk.

The Land Bank and the Development Bank of the Philippines are now providing loans for rural women payable within five years with minimal interest and no collateral. The "Tulong sa Tao" NGO Micro-Credit Program of the Department of Trade and Industry addressed the credit needs of existing and potential micro-entrepreneurs through use of NGOs as conduits. RA 7882 upgraded the loanable amount from P1.5 million to P5 million.

Art. 15. While the Philippines is said to have basic rights entrenched in its laws, women are not able to exercise these rights fulfy as indicated by their relatively lower status in sectors such as education, business and employment.

Art. 16. Although the Philippine laws comply with the Convention's provisions on equality between women and men with respect to marriage and family, there are remaining discriminatory provisions in the Family Code, Civil Code and especially the Muslim Code of Personal Laws as well as the Revised Penal Code. Moreover, one of the biggest obstacles is the difficulty of breaking down the patriarchal traditional power structures in the family. Thus, there is a need for continuing information and legal literacy campaigns.

C. CEDAW CONCLUDING COMMENTS ON THE 3RD AND 4TH REPORTS

Principal Areas of Concern

1. The Committee expressed its grave concern about the economic reforms which had resulted in a positive growth in the gross national product (GNP), on the one hand but in an increasing gap in the rates of employment of women and men and the economic marginalization of women on the other. Such damages, even if short-term will be increasingly hard to rectify. It appears that for lack of economic livelihood, rural women migrate to urban areas where unemployment is higher that ever, and this might account for the large number of sex workers in illegal prostitution and for the high proportion of women migrating as overseas contract workers.

2. The Committee commented on the discriminatory application of the laws against prostitution which are enforced against sex workers and not the men involved as traffickers, pimps and clients, and noted further that forced medical examinations of the women without similar attention to the male clients is not effective as a public health measure.

3. The Committee expressed its deep concern about the deficiencies in the legal system with regard to violence against women, in view of the fact that incest and domestic violence are not specifically penalized by law and are surrounded by silence.

4. The Committee regretted the decentralization of population and development services from the national to the local government units, which had apparently resulted in the prohibition of contraceptives in one of the provinces, in contravention of the Convention (Article 12 and 16[e]).

<u>Suggestions and Recommendation</u>

5. The Committee urged the Government of the Philippines to adopt a top priority policy of creating safe and protected jobs for 'women and their participation as subcontractors and in informal sector, as workers in free trade zones or as in commercial sex, or as migrant overseas contract workers,

6. The Committee suggested that the Government re-examine its economic policy in the light of the alarming indicators that economic growth was occurring while women were being widely marginalized and exploited, on the one hand, and encouraged to leave their homes and families for overseas employment, on the other.

7. The Committee strongly recommended that the Government establish a special national focal point to provide information and support services to women before departure for overseas work, as well as in her receiving countries in cases of need.

8. The Committee suggested that appropriate measures for dealing with prostitution should focus on penalizing traffickers and creating alternative job opportunities for the women.

9. The Committee strongly urged the Government to enact appropriate legislation including family planning and contraception, be made available and accessible to all women in all regions.

10. In order to facilitate the implementation of the Convention, the Committee recommended the monitoring mechanisms and indicators be developed to measure the effect of government policies and programs.

Social Action Litigation: A Philippine Case Study

September 12 to 14, 2001
Tagaytay City

Dr. Purificacion V. Quisumbing

HYPOTHETICAL CASE NO. 1

The City of Maharlika wanted to build a "Peoples Park" in a city-owned lot adjoining a busy national highway. After a month's notice, before dawn, City authorities sent a demolition team which immediately proceeded to tear down the stalls, sari-sari stoves and carinderia as well as temporary shanties. A confrontation took place as the shanties' residents tried desperately to defend their homes and meager belongings.

Taking the cudgels for the subjects of ejectment, a social action group. Mamamayan, assisted by Alternative Law Advocates (ALA) urgently reported the situation to the (Philippine) Commission on Human Rights asserting and detailing violations of human rights which needed immediate redress Among the allegations are: children deprived of shelter, food, clothing and medicine, women sexually harassed and manhandled; families' meager belongings destroyed and looted; police brutality, lack of systematic

relocation action plan.

For the Social Action Team

1. What rights are deemed violated?
2. Specifically, what economic, social and cultural rights would you cite?
3. What principles or instruments of human rights would you invoke?
4. What relief/remedy would you seek from the (Philippine) Commission on Human Rights from administrative agencies, and/or the Courts?

Domestic Remedy Team: CHR, Administrative Agencies, Courts

1. What relief/remedy could you grant based on existing rules. laws or treaties?
2. Assume that the CHR conducted an investigation and hearing of the CHR Case no. 2000-01 entitled. "Fermin, et-al vs.Quiambao, et.al. Mayor Norris filed a special civil action for prohibition at the Supreme Court.

You are now the Supreme Court.

How would you rule given the constitutional provision on the powers and functions of the CHR?

International Remedy/Relief Team: International Bodies and Procedures

What international procedure can the social action group invoice?
What relief/remedy, could you grant?
What would you ask the government to do?

HYPOTHETICAL CASE NO.2

The residents of Barangay Lorenzo in the Province of Laguna have petitioned the President urging that she suspend negotiations with the IMF on a loan agreement for $40 billion due to be signed next month and that she convene a public hearing throe hoot the country over the next 3 weeks to ascertain what should be the basis of future negotiations. Four years ago. when the last IMF loan of $3 billion had been made, the government required to undertake a structural adjustment program with serious cuts in public spending. During that period, the Barangay has witnessed the closure of the two state funded hospitals and all of the primary schools in the Barangay have shown various signs of decline.

Malnutrition in the Barangay, and indeed in the Province, has increased seriously. Large areas of land under cultivation of rice have been converted

to an industrial petrochemical park under the successor to the CALABARZON industrial development plans. The water level in the lake has gone down by two feet and this has devastated fish stocks. Ground water is heavily polluted with hazardous effluents from the petrochemical plants and can no longer be used for rice cultivation.

Eviction notices have been served on the communities at the perimeter if the petrochemical industrial zone since there are ' plans for expanding the zone by encouraging other industries to locate there as well.

The residents of Barangay Lorenzo Lave approached the Laguna Human Rights Task Force (a coalition of provincial NGOs) and the U.P. Los Baños for assistance in bringing appropriate judicial, administrative and legislative actions. The Bishop of Laguna has issued a pastoral letter urging province-wide support for the residents of Barangay Lorenzo. The Lorenzo Morning Star newspaper has published a weekly series of articles profiling the problems.

HYPOTHETICAL CASE NO. 3

State of Bernita has lime stone quarries in a hilly part of its territories spread over the slopes of the hills as also over their topmost port on. The State has given these lime stone quarries for quarrying operations to a joint venture company X, formed by a Philippine company and a Japanese enterprise. The hills which contain the limestone deposits are covered partly by forests. There is a law enacted by the State which forbids culturing of trees without the formation of forest officials of the State. Company X has not obtained such permission. X has started cutting, trees and decimating the forests for clearing the site of quarrying. Co. X is carrying on quarrying operations in an indiscriminate and reckless manner so that underground water springs are drying up and a lot of debris is failing oil the ground affecting the fertility of the soil of the fields at the foot of the hills. X is employing indigenous workers including women who are paid salaries far below the minimum wage prescribed by law but the workers have no choice because otherwise they would be jobless and starve. The workers have to work long hours exceeding 8 hours which is the maximum prescribed by law. Workers, particularly women have to carry heavy loads of stone which is quarried. There is no living accommodation provided to the workers who have to live in small impoverished hutnuts without any proper toilet facilities. They are not provided with clean drinking water and they are required to work and live in abominable conditions. There are instances of rape and sexual harassment of women workers by Supervisory staff. They have to use explosives for carrying out quarrying operations, some workers are injured and some are even killed. There are not allowed to join any trade unions and are engaged only as temporary workers- They are exploited and they want to leave but they can not do so because Co. X has kept armed

guards with a view to preventing then from leaving and extracting work from them.

What are the rights of the workers which are violated and what is their remedy since they are not in the position to pursue any remedy on account of their helpless situation?

Can any action be taken on their behalf?

Can the community whose water resources are drying up and the farmers whose laws are rendered infertile complain of violation of any of their human rights and if so, what remedies they can pursue?

ECONOMIC, SOCIAL AND CULTURAL RIGHTS FROM THE PERSPECTIVE OF HOPE *

My colleague, Mr. Justice Quisumbing; Chief Justice Bhagwati; Mr. Jones; Our beloved Madame Chancellor Herrera; Dr. Dias; Madame Presiding Justice Alicia Martinez; Professor Dandan; The resource persons and panelists; workshop participants; ladies and gentlemen:

Thank you Dr. PV Quisumbing for your kind words of introduction.

As we bring to a close this three-day workshop on economic, social and cultural rights, or ESCR, with recognized experts on the subject as resource speakers, three conclusions can immediately be drawn. First, the hectic schedule and the spartan discipline under which you were placed may have violated your ESC rights. Second, You now know more how to value these rights for yourselves and for others. Third, you now may have more questions than you expected about human rights, one of the more engaging subjects of International Law. Of course, International Law is just as complex. It deals primarily with the rights and obligations of States, although recent trends have conferred on individual persons legal standing, particularly, the right to seek redress of grievances. The latter development bodes well in our quest for a better future, especially in the aftermath of controversies surrounding the subject of human rights. Imagine: individuals are given legal personality to stand before nations on the strength of human rights.

*Speech delivered by Chief Justice Hilario G. Davide, Jr, during the Philippine Judiciary Workshop on Realizing Economic , Social and Cultural Rights held at the Ridge Resort and Convention Center, Silang Crossing, Tagavtay City, at 6p,m. on , Friday, *14* September 2001

The recognition by the international community of the entire spectrum of human

rights through the Universal Declaration of Human Rights, or UDHR, gives us greater hope. This instrument was adopted by the UN General Assembly on 10 December 1948 as a plea for humanity after the atrocities of World War II.

My studies on the matter disclose that debates over the two main components of the UDHR, namely, civil and political rights, or CPR, and ESCR, however, persisted, Even the dichotomy was not spared from controversy as advocates maintained that the same was either deliberate or inadvertent. To cure this divergence, the UDHR was split into two, producing two covenants, namely the International Covenant on Civil and Political Rights and the International Convention on Economic, Social and Cultural Rights.

Nearly three decades later, the Vienna Declaration and Programme of Action was adopted by member states at the 1993 World Conference on Human Rights held in Vienna, Austria. This instrument, pronouncing all human rights as "universal, indivisible and interdependent and interrelated," validated the unity, harmony and synthesis of all human rights. Because of the Vienna declaration, we now understand human rights to include both civil and political rights and the broad range of ESCR, as well as the right to development.

The Vienna Declaration was a monumental achievement for humankind. It is a testament to hope, to the triumpn of the human spirit over seemingly insurmountable obstacles that attempted to stunt its growth. There is no gainsaying that while the conference attained global acceptance of and support for the principles embodied in the declaration, the rampant violations of human rights taking place at the time provided a grim counterpoint. Such was -and still is -- the reality.

But as long as governments and peoples of the world believe in equality unaffected by gender, language, religion or race; as long as you and I act on and work for that belief, hope will soar and ensure a future where our aspirations will be realized.

As members of the Judiciary we have a unique role in realizing economic, social and cultural rights in our country in particular, and, because of the universality of these rights, in the world in general. An enhancement of these rights in our country improves them for the whole world. Their violations in the Philippines impair them in the rest of the world, Courts are the last bulwark in the defense of these rights. And while courts are passive policymakers, laying down rules only when cases are filed before them and only with regard to said cases, it does not mean that judges should wait for such cases to come. As citizens who are naturally looked upon as disciples of truth, right and justice, judges must be pro-active in the defense of human rights.

This workshop has taught us to be more conscious of the vast universe of human rights. Each of us has an inherent claim to such basic rights as the right to work, which is necessary for. the material well-being of the individual and the development of his personality; the right to just and favorable conditions of work; the right to participate in trade unions; the right to social security, including social insurance; the right to the protection of and assistance to the family, mothers and children; the right to an adequate standard of living; the right to the highest attainable standard of mental and physical health; the right to education;; and to the promotion and preservation of cultural heritage. Above alt there should be equality in the enjoyment of these rights.

We are not without a legal foundation. Even in the absence of the International Convention on ESCR, the constitutions of various nations contain, to a certain degree, provisions on these rights. The Philippine Constitution, for example, in its Article II, commits the State to value the dignity of every human person and guarantee full respect for human rights. Article XIII on Social Justice and Human Rights contains provisions pertinent to ESCR. I think our Constitution is the only Constitution with a solemn commitment to human rights and an article on Human Rights. I am proud to say that as then Commissioner of the Constitutional Commission of 1.986, I contributed much to the formulation of these constitutional provisions.

Additionally, as we have learned from Justice Mendoza, Chief Justice Bhagwati,

Dr. Quisumbing and Dr. Dias, there is no shortage of decisional authorities on human rights, both of persuasive and binding force.

The protection of ESCR, therefore, relies not only on legislation. As judges, we have our share of responsibility in the promotion of
economic, social and cultural rights. We recognize, however, that the implementation and application of ESCR unavoidably differ among different nations.

A random reading of the Declarations and Reservations of the country-signatories to the covenant on ESCR as of 11 June 2001 proves insightful. For example, Algeria reserved its right to freely organize its educational system despite the provisions of the Covenant on the right to education. Madagascar and Zambia sought to postpone the application of the provisions on primary education because their financial conditions could not as yet guarantee the full application of the advocated principles. The United Kingdom believed that the complete application of ESCR could not be guaranteed at ,present, even as it fully accepted the principle of equal pay to men and women for equal work as enshrined in the Covenant. Sweden, Japan and Denmark entered their reservations as regards the provisions on remuneration for public holidays.

These are merely the practical implications and complications of implementation and enforcement. Our hope, however, lies in the
commitment of individual nations to work for the immediate realization of ESCR. The mammoth task began years ago and continues today. Our hope lies in the full accomplishment of these seemingly Herculean labors to secure a future where there is absolute and irrevocable peace and security among nations. This should be translated at the national and individual perspectives as the indisputable enjoyment of happiness, life and hearth. That being the case, the right to happiness should likewise be global.

Let me slightly digress for a while and relate our longing for global peace and happiness to recent events in America which momentarily overshadowed many global issues, including our domestic concerns. What happened to the World Trade Center and

the Pentagon demonstrate not just physical destruction but much hatred and misunderstanding in the world,. The attack was, indeed, an assault on humanity itself. Reckoning American time, it happened on the day you began this workshop. What a mystiying coincidence, After this insensible attack, I hope that the whole world and all people will realize that if we recognize the human rights that we share with others, if we recognize our common humanity, perhaps we can begin to achieve peace.

Excerpts from the 1992 report to the UN General Assembly by then UN Secretary-General Boutros Boutros-Ghali, are enlightening. The Secretary-General reported, and I quote:

> Respect for human rights is clearly important in order to maintain international peace and security and to achieve social and economic development. In turn without development, long term enjoyment of human rights will prove illusory ... Good governance, democracy, participation, an independent judiciary, the rule of law and civil peace create conditions necessary to economic progress.

Ultimately, man is the centerpiece of these instruments that affirm all human rights and which mandate all nations to respect, honor and observe these rights. But outside any international instrument, apart from any constitution and legislation, man already possesses these rights. It amazes that documents are still necessary assert and fight for, even at the cost of death, what is inherently to proclaim these inalienable rights. It boggles that people have to heirs. It puzzles that people need institutionalized assistance to ensure that their rights are dutifully protected and observed. It is perplexing that people still need to be enjoined so they can directly and actively participate in the economic, social and political activities of a nation to ensure a quality of life consistent with their aspirations.

Under the shadow of these paradoxes, we judges are asked to bring light to

everyone's quest for human rights. We have lit the flame of reason with this three-day workshop. Let us now bear the torch for our countrymen, and, through such service, the world.

This brings to mind the Papal Encyclical *Gaudium et Spes* which Pope Paul VI issued on 1 January 1966, the same year when the *two* Covenants were being completed. The encyclical reminds the world that man is created in the image and likeness of God; man's
dignity and rights as a person are derived from God as his Creator; and human institutions must labor to minister to the dignity and
purpose of man.

I commend the Philippine Judicial Academy, under the leadership of our Chancellor, Madame Justice Ameurfina Melencio Herrera, for pursuing this activity. I thank the United Nations Development Programme, which continues to support judicial reform, and the UN Office of the High Commission for Human Rights, for assisting us in this endeavor. And I thank our speakers and resource persons, especially Chief Justice Bhagwati, for sharing their vast knowledge on human rights.

Lastly, I pray for greater clarity and less confusion, more confidence and less despair, and sustained optimism rather than hopelessness in the future of humanity in the application of economic, social and cultural rights.

Thank you and good night. May we all have a safe trip home.
God bless us all.

DATA ANALYSIS

Forty-five (45) participants attended the workshop but not a 100% of them completed the Evaluation Sheet in all sessions,, plus the General Evaluation Sheet.

All nine (9) sessions were evaluated and for every evaluation, the number of respondents varies. En taking the percentage, the total number of respondents who completed the Evaluation Sheet in each session were considered and not the total number of participants who attended the seminar.

The sessions were divided into four categories. (See TABLE 1)

TABLE 1. Total number of respondents in *each session.*

Category	*Session Title*	*Total No. of*
A. SUBSTANTIVE SESS ON	(ICESCR) and Jurisprudence emanating, from the Committee on *Economic. Social* and Cultural Rights	
(II)	2. Justiciability of Economic, Social,	
(III)	*3. Role of the* Judiciary in the application of ESC Rights and the constitution:	
B. JUDICIAL APPLICATION SESSION	4. Jurisprudence on Economic. Social and Cultural Rights: European Court and *Inter-* American Court:	
(V)	5.Access to Justice : Transparency,	
(VI)	6. Rights, Obligations and Remedies	
(VII)	7 Non-discrimination and Participation:	
C. ADMINISTRATIVE AND	8. Development of Administrative Law	
D. JUDICIAL TECHNIQUE SESSION (IX)	9. Social Action Litigation	33

GENERAL EVALUATION (X)		28

EVALUATION OF INDIVIDUAL SESSION

In each session, the respondents were asked to rate the scope of topics covered by the lectures whether they were highly satisfied, satisfied - or unsatisfied and whether the sessions had enhanced their knowledge on the subject matter very much, to a limited degree or not at all.

The tabulated data in TABLE 2 shows that for all sessions, a positively high percentage of the respondents affirmed that they were highly satisfied with the scope of the topic covered and that their knowledge of the matter was very much enhanced by the session.

Despite the positive feedback, the respondents considered the topic on human rights as still on its developing stage. They think that judges are not yet ready to invoke the LN provisions on Human Rights in their decisions because they view the Philippines as a civil law country, that the court's decisions are based on and supported by direct provisions of the municipal/ domestic laws. unlike the common law country where court's decision are not necessarily based on written laws. however. they consider the seminar as the' first step in the right direction.

One of the particular topics they liked best was on "justiciability" (Substantive Session 11: Justiciability of Economic, Social, and Cultural Rights) - They pointed out the treatment of Fr. Bernas in maintaining as stance of applying "locus standi" strictly.

Justice Bhagwati in recommending a more creative approach to determining justiciability, and Fr. Aquino in choosing, a middle ground in order to allows judges to entertain complaints for violation of ESC rights.

They also gave high regard to the "Judicial Application Session : Access to Justice Transparency. Accountability, and Affordability" particularly that of Prof. Marvic F. Leonen and Prof. Sedfrey Candelaria.

EVALUATION OF SPEAKERS

In the evaluation of speakers (Pls. see TABLE 3), the data shows that a high percentage of the respondents found them articulate_ knowledgeable in their subject of expertise and highly effective in conducting their lectures and that they explained it very clearly. (Please see also TABLE 4)

TABLE 4 indicates the overall rating of the speakers by the participants. From the scale of I to 10, where 10 is the highest rate and 1 is the lowest rate. participants rate all the speakers in each session.

The overall rating of speakers in the scale is `'9" since it garnered the highest percentage on eight sessions except for Judicial Application Session Access to Justice: Transparency. Accountability and Affordability where the speakers got the rating of 10 in the scale (see TABLE 4).

GENERAL RECOMMENDATIONS

(Topics, Method of presentation, Use of teaching devices, etc.):

- One of the remarkable recommendations pointed out that the topic be expanded to treat past jurisprudence and current jurisprudence separately to see how the judiciary's recognition and treatment of ESC rights has evolved.

- Another is to include topics on recent jurisprudence in civil law and special proceedings.
- They also suggested the participation of NGOs in supporting the programs of alternative groups and other legal groups to reach out to less fortunate countrymen.
- Handout should be given in advance, use slides in all presentations. lecturers should wear formal attire.
- Give participants ample break not working break.
- Allot more time for the open forum, for the speakers, esp. the session involving children's cases.

GENERAL EVALUATION:

28 participants completed the general evaluation sheet and a 100% of them found the seminar profitable.

The respondents were asked to indicate what part of the seminar they liked best and what they liked the least. They liked best the lectures, practical exercises, open forum, the speakers, and the session on "Justiciability of Economic, Social and Cultural Rights". They liked least the very hectic schedule, over extension of alotted time frame. and evening sessions.

They were also asked to rate (whether excellent, very good. good, fair, or poor) the different aspects of the seminar-workshop like the schedule, venue, format of lectures, methods/procedures of conducting the seminar workshop, subject matter, choice of lectures, general program, and the secretariat. All aspects were rated very good except for the choice of lecturers which they rated excellent (please see TABLE 5).

The overall rating of the program as an educational experience is very good (see also TABLE 5).

SUGGESTIONS / REMARKS:

Most of then commented about the tight schedule that they suggested it to be a five-day seminar-workshop with more workshops and practical exercises.

A lot of them suggested to include in the seminar representatives from all sectors of the society, different government agencies, and particularly the: law enforcement agencies.

As a whole, the seminar-workshop had a positive impact on the Participants that they suggested it to be one of the major programs of the Judiciary, that Supreme Court Justices will have the same training, and that it should also be conducted in all regions of the Philippines.

TABLE 2. Evaluation of topics for all sessions.

SESSION		WERE THE TOPICS UNDER THE SCOPE SATISFACTORILY COVERED ?			HAS YOUR KNOWLEDGE ON THE SUBJ. MATTER BEEN ENHANCED BY THE SESSION ?		
		HS	***S***	***US***	***VM***	***LD***	***N***
SUBSTANTIVE SESSION (I): The international covenant on Economic, Social, and Cultural Rights (ICESCR) and Jurisprudence emanating from the Committee on Economic, Social and Cultural Rights.	F	25	9	0	30	4	0
	%	73.5	26.5	0	88.2	11.8	0
SUBSTANTIVE SESSION (II): Justiciability of Economic, Social, and Cultural Rights.	F	31	5	0	30	4	0
	%	86.1	13.89	0	91.67	11	0
SUBSTANTIVE SESSION (III): Role of the Judiciary in the application of ESC Rights and the constitution : Experiences in India in the Philippines.	F	28	7	0	30	30	0
	%	80	20	0	85.7	6	0
JUDICIAL APPLICATION SESSION (IV): Jurisprudence on Economic, Social and Cultural Rights: European Court and Inter-American Court; Experiences from India and South America.	F	20	10	0	26	4	0
	%	66.67	33.33	0	86.67	13.33	0
JUDICIAL APPLICATION SESSION (V): Access to Justice: Transparency, Accountability and Affordability.	F	34	4	0	37	1	0
	%	89.47	10.53	0	97.37	2.63	0
JUDICIAL APPLICATION SESSION (VI): Rights, Obligations, and Remedies: International and Domestic Experiences.	F	26	12	0	30	8	0
	%	68.42	31.58	0	78.95	28.05	0
JUDICIAL APPLICATION SESSION (VII): Non-discrimination and Participation: Gender and Children Issues.	F	22	11	0	22	11	0
	%	66.67	33.33	0	66.67	33.33	0
ADMINISTRATIVE AND JUDICIAL APPLICATION SESSION (VIII): Development of Administrative Law Relative to Economic, Social, and Cultural Rights.	F	17	26	0	19	7	26
	%	65.38	34.61	0	73.07	26.92	0
JUDICIAL TECHNIQUE SESSION (IX): Social Action Litigation.	F	21	9	0	26	4	0
	%	70	30	0	86.67	13.33	0

*HS=HIGHLY SATISFIED S=SATISFIED US=UNSATISFIED VM-VERY MUCH LD=LIMITED DEGREE N=NOT AT ALL *

TABLE 3. Evaluation of speakers.

SESSION	*	WAS THE EXPLAINATION CLEAR ?			WAS THE LECTURER EFFECTIVE ?			
		VM	*LD*	*N*	*HE*	*E*	*PE*	*I*
SUBSTANTIVE SESSION (I): The international covenant on Economic, Social, and Cultural Rights (ICESCR) and Jurisprudence emanating from the Committee on Economic, Social and Cultural Rights.	F	30	4	0	20	13	0	0
	%	88.24	11.76	0	58.82	38.24	0	0
SUBSTANTIVE SESSION (II): Justiciability of Economic, Social, and Cultural Rights.	F	33	3	0	31	5	0	0
	%	91.67	8.33	0	86.11	13.89	0	0
SUBSTANTIVE SESSION (III): Role of the Judiciary in the application of ESC Rights and the constitution : Experiences in India in the Philippines.	F	30	5	0	23	12	0	0
	%	85.71	14.29	0	65.71	34.29	0	0
JUDICIAL APPLICATION SESSION (IV): Jurisprudence on Economic, Social and Cultural Rights: European Court and Inter-American Court; Experiences from India and South America.	F	20	10	0	18	12	0	0
	%	66.67	33.33	0	60	40	0	0
JUDICIAL APPLICATION SESSION (V): Access to Justice: Transparency, Accountability and Affordability	F	36	2	0	32	6	0	0
	%	94.74	5.26	0	84.21	15.79	0	0
JUDICIAL APPLICATION SESSION (VI): Rights, Obligations, and Remedies: International and Domestic Experiences.	F	32	6	0	26	12	0	0
	%	84.21	15.79	0	68.42	31.58	0	0
JUDICIAL APPLICATION SESSION (VII): Non-discrimination and Participation: Gender and Children	F	21	12	0	18	12	3	0
	%	63.6	36.3	0	54.5	36.3	9.1	0
ADMINISTRATIVE AND JUDICIAL APPLICATION SESSION (VIII): Development of Administrative Law Relative to Economic, Social, and Cultural Rights.	F	20	6	0	15	11	0	0
	%	76.92	23.08	0	57.69	42.31	0	0
JUDICIAL TECHNIQUE SESSION (IX): Social Action Litigation.	F	26	4	0	22	8	0	0
	%	86.67	13.33	0	73.33	26.63	0	0

VM=VERY MUCH LD=LIMITED DEGREE N=NOT AT ALL HE=HIGHLY EFFECTIVE E=EFFECTIVE
PE=PARTIALLY EFFECTIVE I=INEFFECTIVE *

TABLE 4. Overall rating of speakers.

SESSION		HIGHEST SCALE											LOWEST
		10	*9*	*8.5*	*8*	*7.5*	*7*	*6*	*5*	*4*	*3*	*2*	*1*
SUBSTANTIVE SESSION (I): The international covenant on Economic, Social, and Cultural Rights (ICESCR) and Jurisprudence emanating from the Committee on Economic, Social and Cultural Rights.	F	7	12	0	6	0	3	0	0	0	0	0	0
	%	20.9	35.3	0	17.65	0	8.8	0	0	0	0	0	0
SUBSTANTIVE SESSION (II): Justiciability of Economic, Social, and Cultural Rights	F	12	18	0	5	0	1	0	0	0	0	0	0
	%	33.33	50	0	13.9	0	2.8	0	0	0	0	0	0
SUBSTANTIVE SESSION (III): Role of the Judiciary in the application of ESC Rights and the constitution : Experiences in India in the Philippines.	F	8	16	1	4	0	1	0	0	0	0	0	0
	%	22.9	45.7	2.9	11.43	0	2.9	0	0	0	0	0	0
JUDICIAL APPLICATION SESSION (IV): Jurisprudence on Economic, Social and Cultural Rights: European Court and Inter-American Court; Experiences from India and South America.	F	9	13	0	5	0	2	1	0	0	0	0	0
	%	30	43.3	0	16.7	0	6.7	3.3	0	0	0	0	0
JUDICIAL APPLICATION SESSION (V): Access to Justice: Transparency, Accountability and Affordability	F	19	9	0	8	0	2	0	0	0	0	0	0
	%	50	23.7	0	21.5	0	5.3	0	0	0	0	0	0
JUDICIAL APPLICATION SESSION (VI): Rights, Obligations, and Remedies: International and Domestic Experiences.	F	13	16	0	6	0	2	1	0	0	0	0	0
	%	34.2	42.1	0	15.8	0	5.3	2.6	0	0	0	0	0
JUDICIAL APPLICATION SESSION (VII): Non-discrimination and Participation: Gender and Children	F	6	11	0	9	1	4	2	0	0	0	0	0
	%	18.2	33.3	0	27.3	3	12.1	6.1	0	0	0	0	0
ADMINISTRATIVE AND JUDICIAL APPLICATION SESSION (VIII): Development of Administrative Law Relative to Economic, Social, and Cultural Rights.	F	8	8	1	7	0	2	0	0	0	0	0	0
	%	30.8	30.8	3.8	26.9	0	7.7	0	0	0	0	0	0
JUDICIAL TECHNIQUE SESSION (IX): Social Action Litigation.	F	10	11	1	5	0	2	1	0	0	0	0	0
	%	33.33	36.7	3.3	16.7	0	6.7	3.3	0	0	0	0	0

TABLE 5. General Evaluation: rating of the different aspects of seminar-workshop.

		EXCELLENT	VERY GOOD	GOOD	FAIR	POOR	REMARKS
A. SCHEDULE	F	2	**12**	10	4	0	- too hectic / tight schedule - little time for so many topics
	%	*7.14*	***42.86***	*35.71*	*14.29*	*0*	
B. VENUE	F	7	**16**	4	0	0	
	%	*25*	***57.14***	*14.29*	*0*	*0*	
C. FORMAT	F	6	**15**	6	1	0	- except for the break, the participants have little time to rest
	%	*21.43*	***53.57***	*21.43*	*3.57*	*0*	
D. METHODS OR PROCEDURES	F	5	**15**	7	0	0	
	%	*17.86*	***53.57***	*25*	*0*	*0*	
E. SUBJECT MATTER	F	13	**13**	2	0	0	
	%	*46.43*	***46.43***	*7.14*	*0*	*0*	
F. CHOICE OF LECTURERS	F	**14**	12	2	0	0	
	%	***50***	*42.86*	*7.14*	*0*	*0*	
G. GENERAL PROGRAM	F	6	**15**	7	0	0	- no rest, no time to think of what we have learned
	%	*21.43*	***53.57***	*25*	*0*	*0*	
H. SECRETARIAT	F	9	**14**	5	0	0	
	%	*32.14*	***50***	*17.86*	*0*	*0*	
OVERALL RATE OF THE PROGRAM AS AN EDUCATIONAL EXPERIENCE	F	10	**17**	1	0	0	- give the same training to Supreme Court Justices - we learned a lot
	%	*35.71*	***60.71***	*3.57*	*0*	*0*	

Philippine Judiciary Workshop on

"REALIZING ECONOMIC, SOCIAL AND CULTURAL RIGHTS"

PHILJA 225 SF HR/UNDP (1) '01

September 12 to 14, 2001

Philippine Judicial Academy

Tagaytay City

GENERAL EVALUATION

TWENTY-EIGHT (28) participants responded as follows:

1. DID YOU FIND THIS SEMINAR PROFITABLE?

YES	NO	DID NOT ANSWER
28	0	0

a. WHAT DID YOU LIKE BEST?

- the lectures
- practical exercises
- open forum
- the speakers
- the session on " Justiciability of Economic, Social and Cultural rights

b. WHAT DID YOU LIKE LEAST?

- The schedule/time allotment
- over extending the allotted time frame
- evening sessions
- very hectic schedule

2. HOW WOULD YOU RATE THE FOLLOWING ASPECTS OF THE SEMINAR-WORKSHOP:

a. SCHEDULE

Excellent	Very Good	Good	Fair	Poor
2	2	10	4	0

Remarks:

- Too hectic/Tight schedule
- Little time for so many topics

b. VENUE

Excellent	Very Good	Good	Fair	Poor
7	16	4	0	0

c. FORMAT

Excellent	Very Good	Good	Fair	Poor
6	15	6	1	0

- Except for the break, the participants have little time to rest

d. METHODS/PROCEDURES

Excellent	Very Good	Good	Fair	Poor
5	15	7	0	0

e. SUBJECT MATTER

Excellent	Very Good	Good	Fair	Poor
13	13	2	0	0

f. CHOICE OF LECTURERS

Excellent	Very Good	Good	Fair	Poor
14	12	2	0	0

g. GENERAL PROGRAM

Excellent	Very Good	Good	Fair	Poor
6	15	7	0	0

- No rest, no time to think over what we have learned.

h. SECRETARIAT

Excellent	Very Good	Good	Fair	Poor
9	14	5	0	0

3. HOW WOULD YOU RATE THE OVERALL PROGRAM AS AN EDUCATIONAL EXPERIENCE?

Excellent	Very Good	Good	Fair	Poor
10	17	1	0	0

Remarks:

- It would be great if Supreme Court justices and everyone in the judiciary will have the same training.
- Though we are not all family court judges, we learned a lot from this conference.

OVERALL SUGGESTIONSIREMARKS:

- This should be a five (5) days workshop
- More seminars/workshops should be arranged with the UN and the attendance must include representatives from a1 sectors of the society and different governmental agencies especially agencies involved n law enforcement.
- I am not so keen on the workshop and reporting, although this probably was your way of evaluating if we learned from this studies. I feel this should be presumed.

- There is room for more improvements.
- May we have more of this kind of seminar
- Please make this a major program of the judiciary.
- The same seminar should be conducted in all regions.
- Chief Justice Bhagwati should have been made to rest in the afternoons, I pitied him.
- More workshops and practical exercises.

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Substantive Session: The International Covenant on Economic-, Social and Cultural Rights (ICESCR) and Jurisprudence emanating from the Committee on Economic, Social and Cultural Rights (CESCR)

Speakers: ***Chief Justice P.N. Bhagwati***

Dean *Virginia B. Dandan*

Among 45 participants, only 34 submitted evaluation forms for this session.

(1) **Were the topics under the scope satisfactory covered?**

Highly Satisfactory	Satisfactory	Unsatisfactory

25	9	

(2) **Has your knowledge on the subject matter been enhanced by the session?**

Very Much 29	To a limited degree 5	Not at all

(3) **Was the explanation clear?**

Very Much 30	To a limited degree 4	Not at all

(4) **Was the lecturer effective?**

Highly effective 20	Effective 13	Only partly effective	Ineffective

(5) **On a scale of 1 (minimum) to 10 (maximum), the speakers were rated as follows**:

10 - 7 participants
9 -12
8 -6
7 -3

Comments and Suggestions (Topics, Method of Presentation. Use of Teaching Devices, etc.):

- There should be more seminar materials to enable participants to know more of the course and be able to efficiently and adequately apply them in our work.
- With due respect to the speaker who is articulate and effective in her

lectures

The participants (justices and judges) have been directed to come in formal attire.

Shouldn't the speaker been asked to do the same, rather than appear before us in a

collarless T-shirt (regardless of its cost) to at least give respect to the occasion?

Isn't this discriminatory and therefore a violation of our rights?

- The topics are still in their development stage, though they are in the right direction it seems that the judges are not as yet ready to invoke the UN provisions on Human Rights in their decisions considering that we arc; a civil law country where courts' decision are based and supported by direct provision of the municipal laws, as distinguished from a canon law country. This is, indeed, a first step in the right direction
- Both speakers are highly knowledgeable about the subject.
- More time should be allotted to the open forum portion.

Comments and Suggestions (Topics, Method of Presentation, Use of Teaching Devices, etc.):

- Papers of speakers should be reproduced and distributed to participants.
- All the speakers have accomplished the purpose or topic of their lecture.
- I like the way the topic of justiciability was treated by Fr. Bernas, maintaining a stance of applying locus standi strictly, Justice Bhagwati's recommending a more creative approach to determining justiciability and Fr. Aquino, a middle ground in order to allow judges to entertain complaints for violation of esc rights.
- The topics on human rights are still in their development stage, though they are in the right direction. It seems that the judges are not yet

ready to invoke (justiciable) the UN provisions on human rights in their decisions, considering of course that the Philippines is a civil law country where courts' decisions are based on and supported by direct provisions of the laws (municipal/domestic), as distinguished from common law country where courts' decisions are not necessarily based on written laws. Nonetheless, the seminar could still be said as a first step in the right direction.

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Tagavtay City

Substantive Session: Role of the Judiciary in the application of esc rights and the Constitution: Experiences in India and in the Philippines

Speakers: ***Chief Justice P.N. Bhagwati***

Justice Leonardo A. Quisumbing

Among 45 participants, only 35 submittal evaluation forms for this session.

(1) **Were the topics under the scope satisfactorily covered?**

Highly Satisfactory	Satisfactory	Unsatisfactory
28	7	

(2) **Has your knowledge on the subject matter been enhanced by the session?**

Very Much	To a limited degree	Not at all
31	4	

(3) **Was the explanation clear?**

Very Much	To a limited degree	Not at all
30	5	

(4) **Was the lecturer effective?**

Highly effective	Effective	Only partly effective	Ineffective
23	12		

(5) **On a scale of 1 (minimum) to 10 (maximum), the speakers were rated as follows:**

10 - 8 participants
9 -16
8.5 -1
8 - 4
7 - 1

Comments and Suggestions (Topics, Method of Presentation, Use of Teaching Devices, etc.):

- Recent jurisprudence in civil law and special proceedings should be included.
- For better presentation, slides must be used.
- There should be more seminar materials to enable participants to know more of the course and be able to efficiently and adequately apply them in our work.

- I think the topic must be expanded to treat pest jurisprudence and current jurisprudence

separately to see how the judiciary's recognition and treatment of ESC rights has evolved.

- Both speakers spoke from experience and made a thorough research of the cases they included in their lectures, however, the cited

cases should have included the dates of the decision and the GR No for further reference.

- Well presented. All topics were covered
- The time frame for the lecturers and open forum is constricted.

Philippine Judiciary Workshop on "REALIZING ECONOMIC, SOCIAL AND CULTURAL RIGHTS"

PHILJA 225 SF HR/UNDP (1) '01

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Tagaytay City

Judicial Application Session: Jurisprudence on Economic, Social and Cultural Rights: European Court and Inter-American Court, Experiences from *India* and South America

Speakers: ***Chief Justice P.N.*** **Bhagwati**

Dr. Clarence Dias

Among 45 participants, only 30 submitted evaluation forms for this

session.

(1) **Were the topics under the scope satisfactorily covered?**

Highly Satisfactory	Satisfactory	Unsatisfactory
20	10	

(2) **Has your knowledge on the subject matter been enhanced by the session?**

Very Much	To a limited degree	Not at all
26	4	

(3) **Was the explanation clear?**

Very Much	To a limited degree	Not at all
20	10	

(4) **Was the lecturer effective?**

Highly effective	Effective	Only partly effective	Ineffective
18	12		

(5) On a scale of 1 (minimum) to 10 (maximum), the speakers were rated as follows:

10 - 9 participants
9 -13
8 - 5
7 - 2
6 - 1

Comments and Suggestions (Topics, Method of Presentation, Use of Teaching Devices, etc.)

- Everything is superb except one chair who should not deliver her own

lecture before the speakers leading to lost of precious time.

- Dr. Clarence Dias was more prepared.
- Justice Bhagwati seemed to be lacking in systematic presentation, though there is no doubt he is knowledgeable of topics assigned to him
- Nobody discussed the experience of south Africa as stipulated in the design.
- There should be more seminar materials to enable participants to know more of the course and be able to efficiently and adequately apply them in actualities. a Dr. Digs' method of lecturing should be improved.

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PHILJA 225 SF HRIUNDP (1) '01

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Tagaytay City

Administrative and Judicial Application Session:

Development of Administrative Law relative to Economic, Social and Cultural Rights

Speakers: ***Chief Justice P.N, Bhagwati***

Dr. Pacifico A. Agabin

Among 45 participants, only 26 submitted evaluation forms for this

session.

(1) **Were the topics under the scope satisfactorily covered?**

Highly Satisfactory	Satisfactory	Unsatisfactory
17	9	

(2) **Has your knowledge on the subject matter been enhanced by the session?**

Very Much	To a limited degree	Not at all
19	7	

(3) **Was the explanation clear?**

Very Much	To a limited degree	Not at all
20	6	

(4) **Was the lecturer effective?**

Highly effective	Effective	Only partly effective	Ineffective
15	11		

(5) **On a scale of 1 (minimum) to 10 (maximum), the speakers were rated as follows**:

10 - 8 participants
9 - 8
8.5 -1
8 - 7
7 - 2

Comments and Suggestions (Topics, Method of Presentation, Use of Teaching Devices, etc,):

- More seminar materials to enable the participants to know more of the

course and be able to efficiently and adequately apply them in their work.

- Justice Bhagwati made inspirational points but sounds redundant with the Indian experience.
- Dr Agabin was clear though lacking in examples related to escr.
- All topics were covered.

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Philippine Judicial Academy

Tagaytay City

Judicial Application Session: Access to Justice: Transparency, Accountability and Affordability

Speakers: ***Chief Justice P.N. Bhagwati***
Professor Marvic F. Leonen

Among 45 participants, only 38 submitted evaluation forms for this session.

(1) **Were the topics under the scope satisfactorily covered?**

Highly Satisfactory	Satisfactory	Unsatisfactory
34	4	

(2) **Has your knowledge on the subject matter been enhanced by the session?**

Very Much	To a limited degree	Not at all
37	1	

(3) **Was the explanation clear?**

Very Much	To a limited degree	Not at all
36	2	

(4) **Was the lecturer effective?**

Highly effective	Effective	Only partly effective	Ineffective
32	6		

(5) **On a scale of 1 (minimum) to 10 (maximum), the speakers were rated as follows**:

10 - 19 participants

9 - 9

8 - 8

7 - 2

Comments and Suggestions (Topics, Method of Presentation, Use of Teaching Devices, etc.)

- With deep appreciation of all the good work-, of {he alternative language of this time, I thank the Lord for all of them most especially Atty. Marvic Leonen and Atty. Sedfrey Candelaria and pray that their tribe increase.
- As already suggested in the other evaluation we submitted, the use of visuals is useful to this kind of seminar or seminars of importance.
- Preparation/written paper either in overhead projector is important.

- Require lecturers/speakers to prepare a paper.
- Hope we have more of the caliber of Prof. Leonen. His topic is relevant to Philippine situation.
- Prof. Marvic Leonen is brilliant but we need a copy of his lecture.
- Chief Justice Bhagwati's spirited concern for the poor is exemplary
- Prof. Leonen should be invited always as lecturer, not necessarily only on topics concerning human's economic, social and cultural rights but even on procedural aspects as implemented by the Supreme Court recently. He is an effective lecturer as far as I am concerned.
- I suggest to NGOs to support the programs of alternative groups and other legal groups by way of means so that these groups an each out to our less fortunate countrymen. The methods used in presenting to the participants are effectively made.
- The lecture given by Prof. Leonen and the manner by which it was presented was very comprehensive and informative. I wholly agreed with Judge Salazar's suggestion that we should be furnished with the text of the full lecture.
- I think since Justice Bhagwati has spoken several times in the previous days, I think he should limit his lecture to areas where both Philippines and India have common experiences.
- This is really and excellent session!

Judicial Application Session: Rights, Obligations and Remedies: International and Domestic Experiences

Speakers: ***Chief Justice P.N. Bhagwati***
Dean Virginia B. Dandan
Atty. Rene V. Sarmiento

Among 45 participants, only 38 submitted evaluation forms for this

(1) **Were the topics under the scope satisfactorily covered?**

Highly Satisfactory	Satisfactory	Unsatisfactory
26	12	

(2) **Has your knowledge on the subject matter been enhanced by the session?**

Very Much	To a limited degree	Not at all
30	8	

(3) **Was the explanation clear?**

Very Much	To a limited degree	Not at all
32	6	

(4) **Was the lecturer effective?**

Highly effective	Effective	Only partly effective	Ineffective
26	12		

(5) **On a scale of 1 (minimum) to 10 (maximum), the speakers were rated as follows**:

10 - 13 participants
9 - 16
8 - 6
7 - 2

Comments and Suggestions (Topics, Method of Presentation, Use of Teaching Devices, etc.):

- The discussion about the possibility of applying an AMPARO order to protect ESC rights if the Supreme Court promulgate the necessary rules to make the issuance of such a directive possible who very thought provoking. 1 hope the discussions on establishing an AMPARO, directive be undertaken and followed through by PHILJA.
- Certainly, I will be going back with more spirit and concern for those whose esc rights are being violated. I am inspired.
- Atty. Sarmiento is likewise an effective lecturer because he seems to have studied and researched his topic extensively.
- Get more observers from NGOs but still predominantly judges participants.
- Goodl

Philippine Judiciary. Workshop on

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PHiLJA 225 SF HRIUNDP (1) '01

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Philippine Judicial Academy

Tagaytay City

Judicial Application Session: Non Discrimination and Participation: Gender and Children Issues

Speakers: ***Prof. Myrna S. Feliciano***

Dr. Clarence Dias

Among 45 participants, only 33 submitted evaluation forms for this session.

(1) **Were the topics under the scope satisfactorily covered?**

Highly Satisfactory	Satisfactory	Unsatisfactory
22	11	

(2) **Has your knowledge on the subject matter been enhanced by the session?**

Very Much	To a limited degree	Not at all
22	11	

(3) **Was the explanation clear?**

Very Much	To a limited degree	Not at all
21	12	

(4) **Was the lecturer effective?**

Highly effective	Effective	Only partly effective	Ineffective
18	12	3	

(5) **On a scale of 1 (minimum) to 10 (maximum), the speakers were rated as follows**:

10 - 6 participants

9 - 11

8 - 9

7.5 - 1

7 - 4

6 - 2

Comments and Suggestions (Topics, Method of Presentation, Use of

Teaching Devices, etc.):

- The discussion about the possibility of applying an AMPARO order to protect ESC rights if the Supreme Court promulgate the necessary rules to make the issuance of such a directive
  possible who very thought provoking I hope the discussions on establishing an AMPARO, directive be undertaken and followed through by PHILJA.
- Certainly, I will be going back with more spirit and concern for those whose esc ghts are being violated. I am inspired.
- Atty, Sarmiento is likewise an effective lecturer because he seems to have studied and researched his topic extensively.
- Get more observers from NGOs but still predominantly judges participants.
- Good!

Comments and Suggestions (Topics, Method of Presentation, Use of Teaching Devices, etc.).

- The lecture was delivered too fast and too mechanically that it was difficult to keep up with the lecturer and maintain our interest. Also, I could not take down the important points.
- The lecture was well researched and dramatically presented in so far as Prof. Feliciano is concerned.
- Dr. Dias proved equal to the task of giving us an insight on the esc rights. His presentation is well researched and scholarly.
- There was no extensive discussion regarding children cases.
- Prof. Feliciano must talk a little slow so we can tale notes of what she was talking about.
- More time should be allotted to the lecturers.
- The session was very informative.

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Judicial Technique Session: Social Action Litigation:
The Indian Experience; A Philippine Case Study

Speakers: ***Chief Justice P. N. Bhagwati***
Dr. Purificacion V. Quisumbing

Among 45 participants, only 30 submitted evaluation forms for this session.

(1) **Were the topics under the scope satisfactorily covered?**

Highly Satisfactory	Satisfactory	Unsatisfactory
21	9	

(2) **Has your knowledge on the subject matter been enhanced by the session?**

Very Much	To a limited degree	Not at all
26	4	

(3) **Was the explanation clear?**

Very Much	To a limited degree	Not at all
26	4	

(4) **Was the lecturer effective?**

Highly effective	Effective	Only partly effective	Ineffective
22	8		

(5) **On a scale of 1 (minimum) to 10 (maximum), the speakers were rated as follows**:

10 - 10 participants

9 - 11

8.5 - 1

8 - 5

7 - 2

6 - 1

Comments and Suggestions (Topics, Method of Presentation, Use of Teaching Devices, etc.):

- He should be commended for his stamina and his role as an activist Chief Justice of India thus being able to help the poorest of the poor of his country. He could be mistaken for a young man in so far as his energy and determination to give an insight on the esc rights and his experience as an activist Chief Justice of India.
- This workshop was good though there was limited time in presenting/consolidating the report.
- Instructions of the cas/hypotheticals need to be simplified in the future. For future trainings, the workshop can be done again but with enough time allcttment.
- They are excellent speakers and very knowledgeable on the subject.
- The session is very informative.