

**HUMAN RIGHTS, POLITICS, INTERNATIONAL LAW AND TRADE  
ARRANGEMENT AND ECONOMIC PROSPERITY:  
A READING OF THE PHILIPPINE SITUATION**

By Melencio Sta. Maria  
Dean, Far Eastern University Institute of Law

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When it comes to human rights and economic prosperity, the present Philippine situation is a good study. But before anything else, let me just explain the terms. And I do not intend to complicate.

When I say human rights, I mean that bundle of rights which, when exercised, nurtures the dignity of our species in terms of his/her individual-self in relation to the community which, in turn, elevates, the moral compass of that community. Respecting them allows us to see the intrinsic worth of people and society, with all their imperfections, as positive contributors to the march of civilization. Economics or business, on the other hand, is that which aids in the enhancement of that human dignity in terms of making available for useful appropriation the very limited material resources this world and all the relationships in them can provide. It may even include making available “financial surplus” of rich countries in favor of the poor ones.

There is that belief that economics or business and human rights cannot work together. Human rights deal with a particular process emphasizing concepts such as non-discrimination, due process, right to life, equity and equality. It believes that poverty is more an issue of justice. Economics and business on the other hand, deal with negotiations, compromise, disparity and, in a way, inequality in the distribution of available goods and services. There will be people who can be rich because they are just smarter than others. Poverty is a matter of efficiency. Take the Philippines for example, there may be some indication of rapid economic growth but it has no dramatic impact on poverty reduction. The wealthy 10% in the economic strata still enjoys the benefit of such growth.

It has actually been posited that economic globalization can threaten human rights<sup>1</sup>. Accordingly, structural adjustment conditions imposed by the World Bank and the International Monetary Fund “have resulted in the cutting of public expenditure on health and education, increased income disparity, greater unemployment and the marginalization of the poor, and rural populations.” Also, “the practice of imposing conditions that increase poverty, food scarcity, unemployment and insecurity, while failing to recommend cuts to military budgets, is a recipe for human rights abuses.”<sup>2</sup>

Further, the expansive coverage of international trade agreements has limited people’s participation in key decisions affecting their right to food and health – two of the most essential human rights articulated in the International Covenant on Economic, Social and Cultural Rights (ICESCR). For instance, the World Trade Organization (WTO) “has exercised its powers to strip nation-states of the power to address deeply domestic issues such as whether genetically modified crops can be offered for sale to a nation's citizens--so long as the issue has some link to trade issues.”<sup>3</sup>

Likewise, Free Trade Agreements (FTAs) have been a cause for concern for many, for instance on the issue of “data exclusivity” which enables big pharmaceutical companies to hold on to their “test data” for a long period of time, thus preventing generics companies from using the same in order to manufacture the more affordable generic drugs for people from the developing countries. Of special concern are medicines for the management of HIV/AIDS and cancer.<sup>4</sup>

Having said all of these, there is also another aspect or view to the relation between human rights and economic globalization. This is the view that economic globalization enhances human rights because the latter “leads to economic benefits resulting from trade and financial liberalization, and to benefits in the fields of human rights and political freedom by creating the economic conditions that allow

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<sup>1</sup> Anne Orford, *The Subject of Globalization: Economics, Identity and Human Rights*, 94 *Am. Soc'y Int'l L. Proc.* 146, 148 (2000)

<sup>2</sup> *Id.*

<sup>3</sup> Steven A. Ramirez, *Taking Economic Human Rights Seriously After the Debt Crisis*, 42 *Loy. U. Chi. L.J.* 713

<sup>4</sup> See Patricia Sta. Maria, *Life, Death, and Data: Examining the Human Rights Implications of Introducing Data Exclusivity to India’s Pharmaceutical System, in light of the Global Situation of Diseases such as HIV/AIDS in the Philippines and Other Developing Countries*, 61 *Ateneo L.J.* 1128 (2017) and INTELLECTUAL PROPERTY WATCH, *What To Watch Out For In The EU-Mercosur FTA Negotiations: Consequences For Access To Medicines*, available online at <https://www.ip-watch.org/2017/03/22/watch-eu-mercosur-fta-negotiations-consequences-access-medicines/>

these freedoms to flourish.”<sup>5</sup>

The connection is best framed by a World Bank study which said that “human rights standards, principles and doctrines can complement mainstream economics by informing the value judgment that underpin the objectives of development.”<sup>6</sup>

That study also stated that:

Economic and social development policies, which engages women and men in a more equal manner, can improve economic development as well as rights outcomes; lack of equitable treatment between groups can lead to disenfranchisement and conflict. Equity and non-discrimination are used as principles to improve social cohesion; educational outcomes; and thereby the economic prospects of children.<sup>7</sup>

And this thrust of blending human rights principles and business appears to be gaining ground, especially between countries of the north and of the south, including the Philippines. And as you know, the north provides aids, grants, loans and preferential trade treatments to the south.

## CONSTITUTION

Our Constitution is quite explicit. And when I refer to the Constitution, I mean that law embodying our ideals and aspirations --- that law which is supreme over all other laws.

In its Declaration of Principles and State Policies, it provides in Section 11 that “the State values the dignity of every human person and guarantees full respect for human rights”. Section 10 provides that “the State shall promote social justice in all phases of national development.” And connecting our Constitution with the international legal arena, it enunciates that the Philippines “adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom , cooperation, and amity with all nations.”

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<sup>5</sup> Anne Orford, *The Subject of Globalization: Economics, Identity and Human Rights*, 94 *Am. Soc'y Int'l L. Proc.* 146, 148 (2000)

<sup>6</sup>[http://siteresources.worldbank.org/PROJECTS/Resources/409401331068268558/Report\\_Development\\_Fragility\\_Human\\_Rights.pdf](http://siteresources.worldbank.org/PROJECTS/Resources/409401331068268558/Report_Development_Fragility_Human_Rights.pdf)

<sup>7</sup>*Id.*

We have those constitutional provisions not only because we, as a people, believe that they are important but also because, human rights are a concern of the world. It is a good thing and we must be a part of it. And we have been a part of this progress.

## INTERNATIONAL LAW

We adhere to customary international law and the most prominent of which are the tenets enunciated in the Universal Declaration of Human Rights. Also, the Philippines is a signatory to many human rights treaties.

And if only to emphasize this point, let me enumerate some international conventions which are parts of the law of our land (And bear with me for some seconds or so in this enumeration because this will be significant later in the discussion): Convention on the Prevention and Punishment of the Crime against Genocide, International Convention on the Elimination of all Forms of Racial Discrimination, International Covenant on Civil and Political Rights and its Optional Protocol 2 abolishing the Death Penalty, International Covenant on Economic, Social and Cultural Rights, International Convention on the Elimination of all forms of Discrimination Against Women, Convention on the Rights of the Child, Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Rights of Persons with Disabilities, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Convention Concerning Forced or Compulsory Labour, Convention concerning Freedom of Association and Protection of the Right to Organize, Convention concerning the Application of the Principles of the Right to Organize and to Bargain Effectively, Convention concerning Equal Remuneration of Men and Women workers for Work Equal Value, Convention for the Abolition of Forced Labour, Convention concerning Discrimination in Respect of Employment and Occupation, Convention Concerning Minimum Age for Admission to Employment, Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.<sup>8</sup>

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<sup>8</sup> Other treaties: International Convention against Apartheid in Sports, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Convention on the Rights of Persons with Disabilities, Convention relating to Status of Refugees, Convention relating to the Status of Stateless Persons, Convention for the Suppression of the Traffic in Women and Children, Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Convention on the Political Rights of Women, Convention on the Abolition of Slavery, the Slave Trade, and the Institutions and Practices Similar to Slavery.

AND generally, we also ratified and signed significant protocols relating to these treaties.

In recent years, we have seen that trade arrangements between and among countries or group of countries have factored in the observance by a state-party or state-grantee of human rights core values. And this has been done not only to provide economic policies with a great measure of moral, ethical and just underpinnings, but also, to, compel countries to effect social change or eradicate perceived governmental abuse. And, as Dr. Emilie Marie Hafner Burton of the University of California San Diego School of Global Policy and Strategy observed, the original intention of policymakers may not have even been authentically motivated by principled human-rights /labor rights advocacies but, in reality, was prompted by pressing domestic or regional concerns. She also observed that repressive regimes, though averse to attaching human rights or labor rights conditionalities in trade agreements, nevertheless enter into the same if only to have access to global market opportunities.<sup>9</sup>

And, in international affairs, even if one is a rogue state, at the very least, that state can make it appear through rhetorics that human rights are, at least ostensibly, special concerns. But of course, talk is cheap. Actions speak louder than words. And in certain cases, both words and actions complement even though hesitatingly and irresolutely. But the thing is, if they complement in a bad way intentionally, trouble might just be around the corner.

## INTERNATIONAL TRADE

One of the most prominent trade arrangements that factored in observance of human rights and also labor rights values is the Generalized System of Preferential Plus (GSPP). In terms of benefits, this is a unilateral arrangement where a first world country provides a non-reciprocal trade benefit in favor of a developing country by eliminating tariff charges or providing enormous rebates on the same in relation to goods coming from such developing country. European Countries collectively known as the EU, the United States, Japan, Canada, are among the prominent countries which provide GSPP.

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<sup>9</sup> Emilie M. Hafner-Burton, "Forced to be Good, Why Trade Agreements Boost Human Rights" Cornell University Press, 2009

For purposes of our discussion let us talk about the EU. It is composed of 28 countries: Germany, France, United Kingdom, Italy, Spain, the Netherlands, Belgium, Sweden, Finland, Greece, Denmark, Portugal, Ireland, Austria, Luxembourg, Cyprus, Poland, Hungary, Czech Republic, Slovakia, Lithuania, Latvia, Slovenia, Estonia, Bulgaria, Croatia, Romania and Malta. As you know, the United Kingdom just elected to get out of EU and is still in the process of officially severing its membership.

In May 2015, the Philippine Statistics Authority reported that the EU has overtaken the United States and Japan as the largest destination of Philippine exports. The Philippine Star<sup>10</sup> reported that

With \$901 million of total exports, this makes the EU the biggest and fastest growing export market for Philippine goods.

The country's exports to the EU were 15.5 percent of its total exports over the first quarter of the year, a growth of 48.3 percent.

Such growth was triggered by factors including the growth of and demand in the EU economy (+1.9 percent) and an uptake of exports of the agri-food sector (overall growth of exports of 33.6 percent. This is supported by the economic bloc's GSP+ trade benefits.

"This seems to confirm messages I hear in the country of increasing production and EU demand in manufacturing and agri-food products," EU Ambassador to the Philippines Franz Jessen said in a statement.

Jessen added that the EU's trade agenda is one of fair trade and "of leaving nobody behind."

"And even though statistics are indications, these figures surely help the Philippines achieving its inclusive growth agenda," the ambassador said.

The GSP+ or the Generalized System of Preferences Plus mean full removal of tariffs on two-thirds of all product categories.

The European Parliament earlier warned of a possible removal of the GSP+ if the Philippines will not put a stop to the extrajudicial killings related to the anti-drug campaign.

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<sup>10</sup> PSA: EU: Largest Export Partner of the Philippines, May 15, 2017, Philstar Global, Business page <http://www.philstar.com/business/2017/05/15/1700198/psa-eu-largest-export-partner-philippines>

"In the absence of any substantive improvements in the next few months, procedural steps with a view to the possible removal of GSP+ preferences," the European Parliament said in a resolution adopted last March.

By July 2017, the Philippines posted the lowest trading deficit of \$1.65 billion since February 2016. Our exports increased: China by 7.9 %, US by 1.7%, ASEAN Countries by 10.4 % and EU by 19.7 %. <sup>11</sup>

A removal of the EU GSPP will impact our economy negatively.

This means that 6,200 Philippine products (processed fruit, coconut oil, footwear, fish, textiles, to name a few) will enter Europe subject to huge amounts of tariffs, whereas with the GSPP status, tariffs are ELIMINATED and, if not eliminated, greatly reduced.

Consequently, this may entail increased expense on the part of Philippine exporters. They will pay entry-charges and taxes collectively amounting to millions of dollars. Money previously available and used to answer for salaries, employee-benefits, government mandated contributions, supplier-bills, overseas-transport expenses, local taxes, and other costs of production will be considerably reduced. Also, exporters may be constrained not to fill up orders, depriving local suppliers of much-needed business. This will mean less exports and thus, less income for the exporters and the country. Worse, affected companies may resort to employee lay-offs in order to survive the adverse economic impact of the reduction in business. The children and spouses of these laid-off employees will ultimately suffer a period of economic hardship – debts may not be paid, mortgages may be foreclosed, loans with high interest incurred, assets sold to meet obligations, and schooling on the part of children momentarily stopped, among others.

In the meantime, the other ASEAN countries (Brunei, Indonesia, Malaysia, Thailand, Vietnam) which followed the Philippine's lead in getting GSPP status from EU will maintain and enjoy such status. The exports of their processed rambutans, mangoes and coconuts, to name a few, will be free from tariff while ours will be charged. Consequently, they can export considerably more than we can and at a cheaper price– obtaining a great competitive edge over the Philippines.

The EU GSPP will expire in 2023 but, at any time, it may be suspended or even terminated by the EU if grantee-countries, like the Philippines, fail to comply

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<sup>11</sup> <https://tradingeconomics.com/philippines/balance-of-trade>

with any of the following criteria: good governance and regulatory administration for trade, observance of labour rights; and compliance with conventions providing adherence and implementation of core human rights values and the environment.

The EU regulation provided for the 27 Conventions which are relevant<sup>12</sup>: Fifteen (15) of the conventions deal with core human and labour rights values of the United Nations/ International Labor Organization. These are the conventions I mentioned earlier.

And twelve (12) conventions deal with the environment and governance principles. They include United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances AND the Convention against Corruption.

So let us look at what is happening in our country. Is the Philippines a compliant State-Party?

## **The President, Politics and Unilateral Declaration Doctrine**

I start with the President. He is important because he is the head of state. He said emphatically “I don’t care about human rights, you better believe me.”<sup>13</sup> And he was not even joking. That statement appears to have set the tone. This pronouncement and subsequent numerous declarations of the same tenor may be within the penumbra of the well-entrenched rule in international law known as the doctrine of "unilateral binding statement of state."<sup>14</sup> It includes the oral or written declarations of the President or Prime Minister of a state which can be the basis of international accountability or liability of that state or the state's government even in the absence of any treaty or bilateral/multilateral agreement regarding the pronouncements.

It is well recognized that declarations made by way of unilateral acts, concerning legal and factual situations may have the effect of creating legal obligations. Declarations of this kind may be, and often are, very specific. When it is the intention of the state making the declaration that it should become bound according

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<sup>12</sup> Article 9 Chapter 3 of the Regulation (EU) No 978/2012 of the European Parliament and of the Council

<sup>13</sup> <http://thediplomat.com/2017/07/one-year-later-duterte-remains-a-human-rights-nightmare/>

<sup>14</sup> Legal Status of Eastern Greenland (Norway vs. Denmark), Permanent International Court of Justice 1933, P.C.I.J. Ser. A/B, No. 53, 71; Nuclear Test Case (Australia and New Zealand vs. France), International Court of Justice, 1974, ICJ 253, 457; Case Concerning Sections 301-310 of the Trade Act of 1974, WTO (European Union vs. USA)

to its terms, that intention confers on the declaration the character of a legal undertaking, the State being thenceforth legally required to follow a course of conduct consistent with the declaration. An undertaking of this kind, if given publicly, and with the intent to be bound, even though not made in the context of international negotiation, is binding. In these circumstances, nothing in the nature of a *quid pro quo* nor any subsequent acceptance of the declaration, nor even any reply or reaction from other States, is required for the declaration to take effect, since such requirement would be inconsistent with the strictly unilateral nature of the juridical act by which the pronouncement of the State was made.<sup>15</sup>

## **UDHR and ICCPR**

In the Philippines, death as punishment cannot be meted out by human beings on human beings. Republic Act No. 9346 prohibits the death penalty. This is the societal imperative all must observe. The legal command all must follow. No one is above the law. Not even the Supreme Court can order death as punishment; neither can the President. For the death penalty to be imposed, the law must be amended to allow it. But even if an amendment is done, the President still has no power to order the killing of people because only the judiciary can impose punishment. That is the rule of law in our country.

Any death sentence ordered by any other entity or person outside of the courts is extra-judicial. And if the order is carried out, it is EJK, short for extrajudicial-killing - the commission of murder no less. This is in violation of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

And though it is not yet technically a legal term used in our statute like parricide (murder of a relative), infanticide (murder of a baby), or abortion (killing of a fetus), EJK is now specially used to highlight its gravitas over and above the other types of murder - that it is the brutal extermination of ordinary people, especially the poor and the young, caused or executed usually by state agents.

Every time President Duterte says " I will kill you"<sup>16</sup> or when he said, referring to 3,000,000 drug addicts, " I'd be happy to slaughter them"<sup>17</sup>, he, the head of state, conveys a deadly message discordant with the rule of law. He even threatened to

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<sup>15</sup>Nuclear Test Case (Australia and New Zealand vs. France), International Court of Justice, 1974, ICJ 253, 457

<sup>16</sup> <http://newsinfo.inquirer.net/848238/duterte-to-drug-users-stay-home-or-ill-kill-you-if-i-see-you>

<sup>17</sup> <http://news.abs-cbn.com/news/09/30/16/duterte-cites-hitler-id-be-happy-to-slaughter-3-million>

include human rights advocates: “I will include you because you are the reason why their numbers swell.”<sup>18</sup> Misinterpreted to their extreme, the declarations may be taken as words of encouragement, especially for people in authority like the Philippine National Police (PNP) officers, to have the same motivation and objective. Put into action and ultimate fruition, it is EJK.

President Duterte’s subsequent assurance that he will pardon law enforcers who kill suspected criminals involved in drugs conveys a message of impunity. Simply put, impunity is crime without accountability. He even said in a meeting with his law school batch mates in Malacañang that he will have many “pre-signed” forms for pardon which can be shown upon arraignment. And even if he stated that he will pardon only those who are wrongly accused, misinterpretations can happen with deadly consequences. Under our law, presidential pardon is only granted to guilty persons. The message of the presidential-killing-utterances may be taken wrongly as a subtle directive to exterminate people involved in drugs, whether pushers or users, because, in the end, the President will forgive these killers anyway.

The killings in the Philippines have become so alarming that even international bodies have already warned the Philippines about its consequences.

Because of the EJKs, the EU tried to remind the Philippines of its concern on its human rights situation. President Duterte, instead of taking this constructively, cursed EU with a middle finger sign to boot. Up to now, the bad-mouthing continues. There is a danger of losing GSPP status if EJKs continue. Undoubtedly, EJKs are serious violations of human rights and have negative implications on proper governance.

On 13 October 2016, the International Criminal Court (ICC) Prosecutor Fatou Bensouda issued an official press release which, referring to the reported 3,000 EJKs, included the following warnings:

*I am deeply concerned about these alleged killings and the fact that public statements of high officials of the Republic of the Philippines seem to condone such killings and further seem to encourage State forces and civilians alike to continue targeting these individuals with lethal force.....*

*Let me be clear: any person in the Philippines who incites or engages in acts of*

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<sup>18</sup><http://newsinfo.inquirer.net/848933/duterte-threatens-to-kill-human-rights-activists-if-drug-problem-worsens>

*mass violence including by ordering, requesting, encouraging or contributing, in any other manner, to the commission of crimes within the jurisdiction of the ICC is potentially liable to prosecution before the Court.*<sup>19</sup>

Another international body took notice of the “deadly” situation in the Philippines.

*The United Nations Committee on Economic, Social and Cultural Rights had a similar observation as the ICC prosecutor. In an unedited version of its concluding observations dated October 7 (2016), the UN panel said high-ranking officials are making declarations that could be interpreted as license to commit violence against drug suspects.*

*"The Committee is deeply concerned that declarations made by high ranking officials in the context of the 'war on drugs' may be seen to encourage and legitimize violence against drug users, including extrajudicial killings," the UN body said in the report.*<sup>20</sup>

These are serious matters. The Philippines is a signatory to the Rome Statute, the international treaty, creating the International Criminal Court (ICC) and therefore is bound by its mandate. Under the convention, persons who incite or commit crimes against humanity such as genocide and mass-killing may be haled to the ICC, prosecuted and punished.

And then you have Congress, or at least the leaders of the House of Representative, spearheading the revival of the death penalty as proposed by the President. Success on this one will outright violate Protocol No. 2 -- elimination of the death penalty as a core human rights mandate among states ---- of the ICCPR which is one of the 27 conventions which the Philippines is required to observed under the EU GSPP.

## ICESCR

Since my paper deals with human rights and economic prosperity, I would say that although the discussions on human rights violations have overwhelmingly been focused on EJKs, our commitment to the rights under the **International Covenant on Economic, Social and Cultural Rights** (ICESCR) is equally important and deserves equal attention and concern.

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<sup>19</sup><http://www.philstar.com/headlines/2016/10/14/1633540/icc-prosecutor-issues-warning-vs-killings-philippines>

<sup>20</sup><http://www.philstar.com/headlines/2016/10/14/1633540/icc-prosecutor-issues-warning-vs-killings-philippines>

It has been posited, and I agree that

“Nations that economically empower and exploit the talents of their people to the fullest extent possible will maximize their economic growth. Unleashing human capital and human potential keys economic growth. In contrast, nations that permit their people to suffer mass economic marginalization will stagnate.

“xxx The very idea that greater inequality is somehow economically beneficial has been shown to be false; xxx”<sup>21</sup>

The ICESCR includes the right to work, the right to housing, the right to education, health, food, water and the right to an adequate standard of living. In its Concluding Observations on the Combined Fifth and Sixth Periodic Reports of the Philippines<sup>22</sup>, the Committee on Economic, Social and Cultural Rights made the following observations, among others:

#### On the right to work

“The Committee is concerned that about 75 per cent of the workforce, for the most part women, are working in the informal economy or in non-standard forms of employment without legal protection, support and safeguards.” It thus recommended that the Philippines “[i]ncrease employment opportunities in the formal economy and facilitate the transition of workers and economic units from the informal to the formal economy.”

The Committee also expressed concern on the economic exploitation of children that

“ xxx an estimated 1.5 million children between the ages of 5 and 14 are engaged in child labour and that half of them are working in hazardous or dangerous conditions and are exposed to various forms of sexual and economic exploitation. xxx most of those children are out of school and are engaged in the mining and agricultural sectors, putting their lives and health at great risk.”

#### On the right to adequate food and nutrition

“the Committee is concerned that between 13.7 and 15.6 million persons are still undernourished in the Philippines, most of whom live in rural, conflict-affected

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<sup>21</sup> Steven A. Ramirez, Taking Economic Human Rights Seriously After the Debt Crisis, 42 Loy. U. Chi. L.J. 713

<sup>22</sup>[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fPHL%2fCO%2f5-6&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fPHL%2fCO%2f5-6&Lang=en)

and disaster-affected areas. Moreover, almost one fifth of children under 5 years of age are underweight and more than 30 per cent suffer from stunting.”

### On the right to housing

“The Committee remains concerned that public funding allocated to social housing remains low and that the provision of social housing remains insufficient. Persons with disabilities experience particular difficulties in gaining access to social housing.” xxx

“Furthermore, it is concerned that the Urban Development and Housing Act legalizes forced evictions and demolitions and that a large number of forced evictions are carried out in the name of urban development.”

### On the policy towards drug users

“Poor neighbourhoods and individuals have been disproportionately affected in that process. The Committee is also concerned that the criminalization of the possession and use of drugs hinders persons in need of treatment from receiving such treatment, and the Committee regrets the shortage of treatment centres that provide evidence-based health services, such as opioid substitution therapies. Moreover, the Committee is concerned at the high prevalence of HIV/AIDS and hepatitis C among people who inject drugs.”

### On the right to education

“xxx the Committee is concerned at: (a) The insufficient level of resources allocated by the State party to financing school facilities and qualified teachers, and to ensuring the effective enjoyment of the right to free primary and secondary education for all; xxx”

If we are to successfully invest on human capital, the Philippine government has to seriously provide the much-needed resources so that the rights guaranteed in this treaty are progressively realized.

## **CEDAW**

Another one of these treaties the Philippines is bound to observe under the GSP is the International Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). The CEDAW mandates States “to modify the social and cultural pattern of conduct of men and women, with the view of achieving the elimination of prejudices and all other practices which are based

on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”.<sup>23</sup>

Rape has been a usual utterance of the President. And the message is not good. Remember during President Duterte’s meeting on May 26, 2017 with soldiers of the Second Mechanized Brigade of the Philippine Army in Iligan City, he jokingly said that, in the implementation of Martial Law, “kung maka-rape ka ng tatlo, akin na yun.” This is a very bad joke. Under Section 7(1)(g) of the International Criminal Court (ICC) Statute of which the Philippines is a state-party, rape committed during armed-conflict is a crime against humanity. Soldiers must not commit rape during war or at any time. They should be advised not to listen to this kind of talk, whether uttered seriously or by way of a jest. How can the President go so low in his attitude toward women, especially in areas of conflict? These are not joking-matters.

It has already been written that women’s bodies are objectified during armed conflict. Accordingly, the “license to rape” is included in a mercenary soldier’ terms of employment to serve as an incentive for accepting a mission. In this context, a woman is not considered a human being, “but as a mere object, a prize, a trophy of war.”<sup>24</sup>

That is why in 2000, the UN Security Council adopted the first in a series of Resolutions on gender-based violence in armed conflict. UN Resolution 1325 on *Women, Peace and Security*, expressed concern that “civilians, particularly women and children, xxx are targeted by combatants and armed elements.” The Resolution reaffirmed “the need to implement fully international humanitarian and human rights law that protects the rights of women and girls during and after conflicts.” It also emphasized “the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls”. It also stressed “the need to exclude these crimes, where feasible from amnesty provisions.”<sup>25</sup>

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<sup>23</sup> Article 5 (a) of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)

<sup>24</sup> Sta. Maria, Amparita, Gender-Based Violence in International Criminal Law: A Closer Look at the Elements of Rape, 57 *Ateneo L.J.* 343 (2012, citing Christine Chinkin, “Rape and Sexual Abuse of Women in International Law”, Symposium The Yugoslav Crisis: New International Law Issues, <<http://207.57.19.226/journal/Vol5/No3/art2.pdf>>)

<sup>25</sup><https://documents-dds-ny.un.org/doc/UNDOC/GEN/N00/720/18/PDF/N0072018.pdf?OpenElement>

The law on Vagrancy is another example. Republic Act No. 10158 amended Article 202 of the Revised Penal Code. It removed loiterers in public and private places as vagrants but maintained, as vagrant, a prostitute. However, it defines prostitution as committed only by women. It does not apply to males. It is discriminatory, anti-women, and still anachronistic. Why only women? Our Constitution provides that no person shall be denied the equal protection of the law. Even the modern Webster Dictionary already includes "a male who engages in sexual practices for money" in its definition of a prostitute.

And our own Family Code provides explicit discriminatory provisions violating the CEDAW on marital responsibilities, authority over children and administration of properties.<sup>26</sup> Under our present law, in case of disagreement as to matters involving the interest of a legitimate child, both over his person and property, the default mode is that the decision of the father/husband shall prevail over the mother/wife.<sup>27</sup> The wife shall have recourse to go to court within 5 years from the decision. This discrimination is based solely on sex and nothing else. Even the parental consent by a person between 18 and 21 years old who intends to get married has a hierarchy which gives preference to the father.<sup>28</sup>

## CRC

As far as the interest of the child is concerned, there is still discrimination among children. The Convention on the Rights of the Child provides that

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.<sup>29</sup>

The descriptive-names given to a child's classification in the Philippines are legitimate ---- meaning being born inside a valid marriage ----and illegitimate ---- meaning being born outside or in a void marriage. Immediately, a conclusion of law as to legality and illegality attaches. That is pejorative, unduly discriminatory and absurd. How can there be a legal or illegal child? That is nonsense especially considering that the child is faultless as to the circumstances of his or her birth.

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<sup>26</sup> Article 16 c, d and h of CEDAW

<sup>27</sup> Articles 96,124,211,225 of the Family Code

<sup>28</sup> Article 14 of the Family Code

<sup>29</sup> Article 2 of the Convention on the Rights of the Child

In other countries ---- for example in some states in Australia --- children are either “nuptial-children” or “ex-nuptial children”. The appellation is a factual-description --- meaning within a marriage or outside of a marriage. It does not involve any conclusion of law --- like “legitimate” which connotes lawful and “illegitimate” which connotes unlawful.

There are other marked differences between a “legitimate” and “illegitimate” child disadvantageous to the latter. I summarized them in my book *Persons and Family Relations*, to wit:

The Family Code, like the Civil Code of 1950 and the Spanish Code of 1889, establishes differences in the rights of children according to the circumstances that surround their conception or birth. The greatest and preferential sum of rights is given to the legitimate children (See *Clemena v. Clemena*, 133 Phil.702).

Thus, a legitimate child has his or her whole lifetime to file an action to claim his or her legitimacy regardless of what type of proofs he or she has as provided for in Article 172, whereas an illegitimate child has his or her lifetime to file an action to claim illegitimacy only if he or she uses the proofs under the first paragraph of Article 172 .If such illegitimate child uses the proofs under the second paragraph of Article 172 (continuous possession, Rules of Court), such child could only bring the action within the lifetime of the parent. The right of the legitimate child to file an action to claim his or her legitimacy may be transmitted to his or her heirs. In the direct line of relationship, the legitimate child is entitled to receive support from any of his or her ascendants and descendants in accordance with the priority set by the law (Articles 195 and 199) but, with respect to the same direct line, an illegitimate child is entitled to receive support only up to his or her grandparents and his or her grandchildren as provided for in Article 195(2) and (3). As to successional rights, the legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child. The legitimate child shall principally bear the surname of the father (Article 364 of the Civil Code) while the illegitimate child shall generally bear the surname of the mother.

But prescinding from all these statutory discriminations, what is worse is what is actually happening in the criminal arena. On September 18, 2017, we read in the news how 13 Caloocan police illegally searched the house of a 51-year old woman and stole cash and watches amounting to P30,000 using a minor to rob the house. This prompted Buhay representative Lito Atienza to say “we cannot have our very own officers of the law exploiting children, just like Akyat Bahay gangs using kids

to break into homes, or drug pushers taking advantage of minors as movers.”<sup>30</sup> When state-agents themselves exploit children, that is just unacceptable. This is clearly a violation of the Convention on the Rights of a Child.

It is fortunate that the then proposal of Congress to lower the age of criminal responsibility to 9 years of age has been scrapped for now. If pursued, this would be contrary to the spirit of the Convention on the Rights of the Child. More alarming though are the apprehension, torture and eventual killings of the youth, like Kian de los Santos, Karl Angelo Arnaiz and Reynaldo De Guzman, without due process. These acts violate not only the Juvenile Justice Act (Republic Act No. 9344) but also the Convention on the Rights of the Child.<sup>31</sup>

## CONVENTION AGAINST TORTURE

Speaking about torture, while, IN FACT, we have Republic Act No. 9745, otherwise known as the “Anti-Torture Act of 2009” which makes it a State policy “to value the dignity of every human person and guarantee full respect for human rights” and “to ensure that the human rights of all persons, including suspects, detainees and prisoners, are respected at all times”, IN EFFECT, the government seems to tolerate certain forms of torture.

Republic Act No. 9745 explicitly prohibits all kinds of torture, whether physical, mental or psychological. These include “shame inflictions, such as stripping the person naked, parading him/her in public places, shaving the victim's head or putting marks on his/her body against his/her will”. These prohibitions apply with greater force to “a person in authority or agent of a person in authority which are calculated to affect or confuse the mind and/or undermine a person's dignity and morale.” (Section 4(b) [10] of R.A. 9745)

But what did we see in Tanauan, Batangas some time ago, we saw a most despicable scene in the news which has been duplicated in a number of areas in the Philippines. We saw suspected thieves demeaningly paraded in a public place--the market. Hanging from their necks was a cardboard with an inscription announcing: “Ako’y Magnanakaw, Huwag tularan.” Another time “Ako ay rapist”. There was also a time when the inscription said “Ako’y Pusher, huwag tularan”. And the “walk of shame” was even titled “Flores de Pusher.” These acts of torture were

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<sup>30</sup> <http://www.interaksyon.com/besides-robbery-calooacan-cops-in-illegal-raid-face-child-abuse-raps-for-using-minor-in-ops/>

<sup>31</sup> Article 37 of the Convention on the Rights of the Child

punishments imposed by government officials. This is torture which violates the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

## **PARIS PRINCIPLES**

The anti-human rights sentiment in the government is highlighted by what House of Representative has initially voted as budget allocation for the Commission of Human Rights (CHR) which was a mere P1,000.00. Had this been the case, it would have effectively destroyed the CHR because it would have rendered practically inexistent a body created by the Constitution mandated to work for the people. There is no question that when the House of Representatives made this vote, it enunciated a lower house official policy which does not augur well for the Philippines. It was internationally embarrassing.

Relevantly, on December 20, 1993, the Principles relating to the Status and Functioning of National Institutions for the Promotion and Protection of Human Rights, known as the Paris Principles, was endorsed by the United Nations General Assembly via Resolution 48/134. Among others, it provides in its “Composition and Guarantees of Independence and Pluralism” the following:

“2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.”

The purpose of this UN resolution is to strengthen domestic human rights agencies as a “state institution but independent of government.”<sup>32</sup>

The action of the House of Representatives originally defunding the Commission on Human Rights was clearly against this UN General Assembly Resolution. The reported restoration of the House of the budget of the CHR<sup>33</sup>, if done, is a welcome development but this constitutional body has already been betrayed by the kind of shallow mindset of those who voted for the P1,000 budget. It has been said that of all those whom we must be on guard against are those who

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<sup>32</sup> <http://www.ishr.ch/news/paris-principles-after-20-years>

<sup>33</sup> [http://newsinfo.inquirer.net/932148/breaking-budget-chr-erc-ncip-commission-on-human-rights-energy-regulatory-commission-national-commission-on-indigenous-peoples?utm\\_campaign=Echobox&utm\\_medium=Social&utm\\_source=Facebook#link\\_time=1505910743](http://newsinfo.inquirer.net/932148/breaking-budget-chr-erc-ncip-commission-on-human-rights-energy-regulatory-commission-national-commission-on-indigenous-peoples?utm_campaign=Echobox&utm_medium=Social&utm_source=Facebook#link_time=1505910743)

profess to be lawmakers but do not have even any reasonable knowledge of the State policies and principles enunciated by Constitution. They are the more dangerous legislators.

## **UNITED NATIONS CONVENTIONS AGAINST ILLICIT TRAFFIC OF NARCOTIC AND CONVENTION AGAINST CORRUPTION**

Also the present controversy of the entry of huge amounts of shabu valued at no less than P6.4 billion at the very portals of a government agency, the Bureau of Custom, is unbelievable. No doubt, corruption involving huge amounts of “taras”, meaning bribes, changed hands. Illegal narcotics came in so easily. Such entry boggles the mind and smacks of connivance or corrupt collusion, if not gross negligence. And also, what is supposed to be the Philippines’ most secured place – the National Penitentiary in Muntinlupa --- is not impervious to drugs. Trading and corruption inside is rampant, and the government appears helpless to stop it.

All these violate two more conventions: the **United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances** and the **Convention against Corruption**.

And speaking of corruption, by 2016, the Philippines has deteriorated by 6 points in its ranking in the corrupt-country classification made by Transparency International.<sup>34</sup>

This may also violate the other EU conditionality on good governance and regulatory administration with respect to trade.

Let us just look briefly at the United States GSP granted to the Philippines. The Department of Trade and Industry reports<sup>35</sup>:

The United States GSP program was instituted on January 1, 1976, and authorized under the Trade Act of 1974. US Congress renews GSP periodically, and the current authorization of the program expires on December 31, 2017. The Philippines has been a US-GSP beneficiary since the program’s inception.

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<sup>34</sup> Panous Mourdoukoutas “Duterte’s Philippines Is Getting More Corrupt”, FORBES, January 26, 2017, <https://www.forbes.com/sites/panosmourdoukoutas/2017/01/26/dutertes-philippines-is-getting-more-corrupt/#5e5b7a455a7f>

<sup>35</sup><http://dti.gov.ph/e-commerce/27-main-content/emb-news/9754-diversifying-phl-exports-the-us-generalized-system-of-preferences>

Looking at our utilization of US GSP, United States International Trade Commission (USITC) data showed US total imports from the Philippines in 2015 stood at \$10.2 billion, with \$1.3 billion of those imports claimed under the program. The top 10 imports from the Philippines subject to GSP treatment in 2015 were valued at \$504.3 million, which would have been imposed tariffs ranging from 2 percent to 14.9 percent under the Most Favored Nation (MFN) rates.

## IMPOSITION OF SANCTIONS

It remains to be seen if the European Union or the United States would impose sanctions on the Philippines. Past experiences have shown that, in similar situations where violation of rights has been prevalent, these granting-countries can be unwavering in sanctions, as in the Myanmar case –which GSP however has already been reinstated. In some cases, they have been slow in meting out sanctions and, in other cases, only warnings were made without any follow through. These have been the observations of many critics regarding sanctions for violation of core human rights values. For example, Dr. Victoria Ruth Kingsley wrote in her dissertation at the University of California Berkley the following:

Yet not every violation, even the most severe of abuses is punished: The United States maintains trade concessions to China despite its ongoing human rights abuses; Colombia continues to receive military aid from the United States even though it is in breach of the human rights conditionality clause attached to the agreement; and the sale of over US\$50 million of US Armaments to Bahrain looks set to be completed despite congressional concerns over the widespread suppression of anti-government protestors and the “excessive and unnecessary lethal force” used by Bahraini security forces. The European Union has similarly been criticized for its inconsistent approach to human rights violations: an interim preferential trade agreement with Turkmenistan has been approved despite the government’s consistently repressive record that has been labeled as the “worst of the worst” by Freedom House. The EU lifted Uzbekistan’s arms embargo, initiated after the government killed hundreds of protest in 2005, despite continuing criticism of the regime with Amnesty International claiming, “the EU has shown its sanctions [against Uzbekistan] lack teeth.” These are just a few examples how geopolitical considerations and economic issues can often superseded self-professed human rights concerns.<sup>36</sup>

Be that as it may, the incriminating events and institutional set-ups in relation to the Philippine’s compliance or non-compliance of its obligations regarding core-human rights principles, as well as proper governance, give GSPP and foreign aid

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<sup>36</sup> Enforcing Conditionality: Human Rights and Preferential Trade Agreements by Victoria Ruth Kingsley (Fall 2014)in 2014, <http://escholarship.org/uc/item/2jx9p6z4#page-13>

providers with enough standing justification to either suspend the entitlement of the Philippines or straightforwardly withdraw it. They constitute the proverbial “sword of Damocles.” And these providers may be lenient, not-strict or very strict. But the danger of zero-grant will always be there, especially in the Philippines where the government, as exhibited by its leader, appears to be irreverently vocal in its antagonism not only on the notion of human rights but also against the providers themselves.

## DIRECTION

And we already have initial news accounts on the probable direction the Philippine situation might be going. For example, Inquirer.net reported in March 2017 that

“the Philippines has lost a \$434 million in grants from the United States and 27 trade agreements with the European Union because of what he called wrongful accusations of human right violations against the Duterte administration. Interior Secretary Ismael Sueno shared this information in an interview on the sidelines of the opening here of the 15th meeting of the Senior Officials Responsible for Information (SOMR) of the Association of Southeast Asian Nations (Asean).”<sup>37</sup>

Because of the human rights violations occurring in the Philippines, the European Parliament in March 2017 passed a resolution warning the Philippines “of the possible removal of GSP+ Preferences”<sup>38</sup>. And by May 2017, the Philippine government retaliated in what I consider a strange incomprehensible self-punishing response ---- ending its funding agreement with the EU. This meant the “the loss of about 250 million Euros or 278.73 million worth of grants.”<sup>39</sup> Credible non-profit policy-entities such as the Brookings Institution in Washington DC and the Human Rights Watch based in New York do not paint any rosier picture of the human rights situation in the Philippines. The former released its report in May 2017<sup>40</sup> and the latter only last July 2017<sup>41</sup>. Just recently, Human Rights Watch released a September 9, 2017 report stating: “Philippines: Abusive Drug War Targets Children.”<sup>42</sup>

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<sup>37</sup> Inquirer.net March 22, 2017 report by Carla P. Gomez <http://globalnation.inquirer.net/153759/ph-lost-millions-us-grants-eu-deals-due-rights-issues>

<sup>38</sup> <https://www.rappler.com/nation/165857-eu-human-rights-conventions-trade-philippines>

<sup>39</sup> Philippines ends P13.8 Billion funding from European Union reported by Patricia Lourdes Viray, Philippine Star May 18, 2017 <http://www.philstar.com/headlines/2017/05/18/1701193/philippines-ends-p13.8-b-funding-deal-european-union>

<sup>40</sup> <https://www.brookings.edu/testimonies/the-human-rights-consequences-of-the-war-on-drugs-in-the-philippines/>

<sup>41</sup> <https://www.hrw.org/news/2017/07/20/human-rights-consequences-war-drugs-philippines>

<sup>42</sup> <https://www.hrw.org/news/2017/09/09/philippines-abusive-drug-war-targets-children>

## CHINA AND RUSSIA

Now the Philippines is turning to China and Russia. Undoubtedly, China is a major economic player in the world. It is known for its human rights violations. It does not care about human-rights-protective-provisions in international trade. For as long as it takes in the money, so to speak, it will trade. Neither is Russia known for any strong assertion of human rights.

President Duterte must continue to discern the real intentions of China and act correctly, especially in the light of the Philippine's comprehensive win in the West Philippine Sea. His soft treatment of this international arbitral victory, pronouncements like "I have re-aligned myself to your ideological flow"<sup>43</sup> referring to China of course, and "only China can help us"<sup>44</sup>, and seeking financial arrangements in replacement, perceptively at least, of the EU's and United States' assistance and accommodations, I suggest, do not speak well of a wise diplomatic and economic strategy.

Here in Asia, Vietnam and China, both communist countries, cannot even see eye-to-eye in trade. Also, the Philippines might just follow the tragedy of Venezuela. Through its loud and socialist leaders, Venezuela alienated the west, particularly the US and EU, and followed China's "ideological flow". Venezuela turned to China for huge trade and loan accommodations. The capital and interest payments were huge that there was a time Venezuela paid China with oil, its priced resource, not having enough cash to make settlement. Venezuela is presently indebted to China of about US\$20 billion. And there seems to be no improvement of this situation in the near future.

And then there is Russia. In May 2017, the Philippines and Russia signed a memorandum of agreement concerning business deals worth US\$875 million which will include transactions in "iron and steel, agribusiness, multipurpose vehicles, power, energy, transport and construction."<sup>45</sup> But who provides the investment or makes the purchases? Is it Russia or the Philippines? Which country gets the money and which one gives the money? If the deal worth US\$250 million between SteelAsia, a Philippine company, and Evraz, a Russian company,<sup>46</sup> is any

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<sup>43</sup> <http://edition.cnn.com/2016/10/20/asia/china-philippines-duterte-visit/index.html>

<sup>44</sup> <https://www.nytimes.com/2016/10/18/world/asia/rodrigo-duterte-philippines-china-us.html>

<sup>45</sup> <http://www.philstar.com/business/2017/05/27/1703849/philippines-russia-firms-sign-875-m-business-deals>

<sup>46</sup> <http://www.philstar.com/business/2017/05/27/1703857/steelasia-forges-250-m-russia-deal>

indication, then it looks like the Philippines is in the “giving” end. From this particular purchase, huge amounts of dollars will actually go out from the Philippines straight to a welcoming Russia. Russia must be very happy. And I seriously doubt the existence of any stipulation in the contracts for the observance of key human rights core values as a condition for both parties entering into the contract.

## EMERGING REPUTATION

There is no question about it, the Philippines is becoming an area of international concern for violations of human rights and, more particularly, for mass killing. The fall-out may be that the Philippines will be considered internationally as a “failed state”, both politically and economically.

## DENOUMENT

The country is experiencing some measure of economic growth, but how long will this last? If it will last for some time more, will it just be “business as usual” without any improvements in the Philippines’ observance of core human rights values. Or is the Philippines bringing itself near the precipice of economic hardship?

Frankly, as I was thinking of how to end this talk, I just cannot think of anything except to say: let us hold our breadth.

**Thank You.**