

REACTION TO DEAN FESTIN'S PAPER
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Human rights are inalienable and fundamental rights—indivisible, interrelated and interdependent. Whether they are civil and political rights, economic, social and cultural rights, or collective rights, such as the rights to development and self-determination, the improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others.

The Philippines assumes obligations and duties under international law to respect, to protect individuals and groups against human rights abuses, and to fulfil human rights.

The International Covenant on Economic, Social and Cultural Rights, a legally binding treaty for the protection of second generation human rights, relates to equality and fundamentally social, economic, and cultural in nature—those that states must provide to their citizens. The ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights. Let me emphasize, however, that the test for the existence of a right is whether it has a source in international law, and not whether it is justiciable in a court of law.

Respect for human rights requires the establishment of the rule of law at the national and international levels. Through ratification of international human rights treaties, our government undertakes to put into place domestic measures and legislation compatible with its treaty obligations and duties. Our recent legislations are proofs of this: (a) The Responsible Parenthood and Reproductive Health Act of 2012 (No. 10354); (b) The Anti-Enforced Disappearances Act (No. 10353), in 2012; (c) The Act amending the Migrant Workers and Overseas Filipinos Act of 1995 (No. 10022), in 2010; and (d) The Magna Carta of Women (No. 9710), in 2009.

But the principal subject of concern is the domestic application of the covenant. The Bill of Rights contained in our Constitution does not fully or explicitly recognize economic, social and cultural rights. While there are some judgments of the Supreme Court in which reference was made to ICESCR, the direct application of the Covenant by domestic courts remains rare. Thus, even the ICESCR Committee recommends that the Philippines take all appropriate measures to ensure the protection of these rights at the constitutional level, to institutionalize writs of *amparo* concerning the Covenant rights, and to ensure that these rights are protected by the domestic courts at all levels, not to mention the enhancement of training for judges, lawyers and public officials on the Covenant.

And yes, while the Commission on Human Rights promote and protect human rights, it is not explicitly mandated to deal with the second generation rights and is not provided with sufficient financial and human resources. Thus, the need for the adoption of the Commission on Human Rights Charter to ensure full compliance with the Paris principles.

I fully agree with Dean Festin on his proposal for the tutelary rules to be utilized in the enforcement of economic right. This will help particularly the disadvantaged and marginalized individuals and groups, indigenous peoples, persons with disabilities and people living in poverty to finally realize, if not increase, enjoyment of economic rights.

While the government remains steadfast in its stand against corruption, including the adoption of Executive Order No. 2 of 2016 on the right to information, the adoption of the Sandiganbayan Reform Act of 2015 and the important role played by the Philippine Ombudsman in the enforcement of the Anti-Graft and Corrupt Practices Act, the corruption remains pervasive in all branches of Government.

Domestic violence against women remains prevalent and continues to be underreported owing to stigmatization and discrimination against victims. The persistently high incidence of trafficking in women and children is exacerbated by: natural disasters and armed conflicts, minimal number of prosecutions and convictions, insufficient level of specialized services for the victims, insufficient level of understanding of trafficking and the anti-trafficking legal framework among law enforcement officials, particularly at the local level; and allegations of complicity of law enforcement officials.

Despite the 1997 Indigenous Peoples' Rights Act, the indigenous peoples' rights to their lands, territories and resources, their full access to health care, education and other basic services are not fully recognized and protected neither are their free, prior and informed consent obtained in respect of the adoption of any legislation or policy affecting their lands or territories.

The comprehensive anti-discrimination law, as proposed in the Senate, has been awaiting adoption. Despite the presence of the Magna Carta for Persons with Disabilities, PWDs continue to face discrimination in their enjoyment of the economic rights owing to a lack of reasonable accommodation and personal assistance services, and that the accessibility provided for in domestic laws is limited to physical accessibility.

The level of public spending on social protection for the indigent senior citizens and persons with disabilities remains low. The low level of birth registration among indigenous children, Muslim children and children of overseas

Filipino workers has a direct impact on their enjoyment of economic, social and cultural rights. Children between the ages of 5 and 14, out of school, are engaged in child labour and half of them are working in hazardous or dangerous conditions in the mining and agricultural sectors, exposed to various forms of exploitation.

Unemployment rate is high because of shortage of decent job opportunities and a mismatch between supply and demand. Some work in the informal economy without legal protection, support and safeguards. The practice called “contractualization” is rampant across all economic sectors, as well as the precarious working conditions in sweatshops.

The public funding allocated to social housing remains low and the provision of social housing remains insufficient compared to the large proportion of the population living in informal settlements in poor living conditions with limited access to basic services and infrastructure, health care and education and under constant threat of eviction. The Urban Development and Housing Act which legalizes forced evictions and demolitions results to a large number of forced evictions carried out in the name of urban development.

There is a high incidence of absolute poverty among small-scale fishers and landless farmers whose small-scale livelihood has been under threat owing to climate change and the encroachment of commercial fishing vessels on fishing zones. Land-grabbing continues and with the CARP reforms being phased out, many farmers are landless.

Applying the tutelary rules principle can motivate the government to take steps to address persistent hunger and malnutrition, particularly the critical nutritional needs of children, pregnant women and lactating mothers. This may even result to intensified efforts to increase public spending on social services, particularly in the areas of social housing, social security, health care and education, and the adoption of effective measures to secure sufficient level of public funding in those areas, especially for women, LGBTs, PWDs and IPs.

Lastly, with this protective supervision (akin to watching over or safeguarding), the government can even adopt measures necessary to protect human rights defenders (trade union activists, defenders of the urban poor, indigenous activists and peasant activists) from killing and all forms of violence, and ensure a safe and favourable environment supportive of their work to promote and protect economic, social and cultural rights.