2. Liability for Income Tax or Capital Gains Tax

The just compensation received by the owner of the property expropriated is subject to income tax or capital gains tax. The expropriation of the property is a sale, although the sale is involuntary.[345] Hence, the proceeds from the sale constitute income to the owner.

XI. CONCLUSION

Because of the growing complexity of society, the social demands upon the government to promote the general welfare are expanding. Since eminent domain is one of the inherent powers of the government, its use as a tool for the advancement of the common good is also increasing. That is why the concept of public use is no longer confined to the traditional view. While the courts must recognize the broadening concept of public use, they must remain vigilant in seeing to it that the exercise of the power of eminent domain strictly adheres to the Constitution. The courts should especially remain alert in reviewing the public purpose of the expropriation, the necessity of the taking, the choice of the property to be expropriated, and the determination of the just compensation.

345 Gutierrez v. Court of Tax Appeals, 101 Phil. 713, 721 (1957).

THE SOCIAL SECURITY LAW OF 1997: CONTEXT, RAMIFICATIONS, POSSIBILITIES*

HANS LEO J. CACDAC*

INTRODUCTION

The Philippine law on the social security system establishes the program of government which relieves financial want by restoring income lost through inability to work due to death, old age, sickness, pregnancy, or disability, up to a minimum level.[1]

Mandatory social security system membership requires the shared payment of contributions between employee and employer, with self-employed members paying their premiums fully. Contributions are pooled to pay for benefits and operating costs, while excess funds are invested to meet pension and benefit payments in the future.[2] Thus, the social security program administered by the Philippine government could just as well be classified as a social insurance scheme.[3]

Prior to the initiation of this formal program, there were various ways of providing some form of social security. The most obvious was through private savings and investments. Unfortunately, habits of thrift were not widespread,[4] since

* *Cite as* 45 ATENEO L.J. 87 (2001).

* A.B. Philosophy, Ateneo de Manila University (1989); *Juris Doctor* 1993, Ateneo de Manila University School of Law (1993); Master of Comparative Law, Cumberland School of Law, Samford University (1998); Urban Poor Coordinator, Sentro ng Alternatibong Lingap Panligal (SALIGAN). Presented at the Second Asia Regional Conference on Social Security, 24-26 January 2000, Hong Kong.

1 HUGO E. GUTIERREZ, JR., PHILIPPINE SOCIAL SECURITY LAW AND PRACTICE 1 (1971).

2 Social Security System President and Chief Executive Officer Carlos A. Arellano, Address at the World Bank Asia Pension Conference, Hong Kong (October 12, 1999).

3 The principal elements of social insurance have been set out as follows: a) social insurance is financed by contributions which are normally shared between employers and workers, with, perhaps, state participation in the form of a supplementary contribution or other subsidy from the general revenue; b) participation is compulsory, with few exceptions; c) contributions are accumulated in special funds out of which benefits are paid; d) surplus funds not needed to pay current benefits are invested to earn further income; e) a person's right to benefit is secured by his contribution record without any test of need or means; f) contribution and benefit rates are often related to what the person is or has been earning; and g) employment injury schemes are usually financed wholly by employers, with the possibility of state help from general revenue. INTERNATIONAL LABOUR ORGANIZATION, INTRODUCTION TO SOCIAL SECURITY 4 (1984).

4 Froilan M. Bacuñgan, *Non-Government Social Security Measures*, 3 PHIL. SOCIAL SECURITY BULL. 11-13 (1961).

the close-knit Filipino family and community traditionally served the purposes of social security. When a person became ill, died, or was too old to work, custom decreed that his relatives and the entire neighborhood should render some form of assistance. This practice has declined in urban areas, where growth and industrialization have caused resultant social changes.[5] The assistance of relatives and neighbors has become uncertain and unreliable.

The Philippines has the advantage of diversity in public and privately-run institutions of social security. The system is dominated by the Social Security System (SSS) and the Government Service Insurance System (GSIS), officially classified as government financial institutions.[6]

Enactment of social security law is a legitimate exercise of the state's police power. It affords protection to labor, especially to working women and minors, and is in full accord with the constitutional provisions on the promotion of social justice, to insure the well-being and economic security of all the people.[7] Membership in this institution is not the result of a bilateral, consensual agreement where the rights and obligations of the parties are defined by and subject to their will. Notably, the social security law prevailed in one case over a constitutional challenge hinged upon the non-impairment of contracts clause.[8]

The roots of social security can be traced to the industrialization of the world economy. In the absence of wages customarily paid out of the capitalist system, workers lacked the traditional social shield which helped to protect them and their families from the excesses of deprivation.[9] With the advent of social security, workers are protected from anxieties arising out of contingencies. But another economic phenomenon has aroused a deep anxiety for the working class. Under the steady pressure of globalization, employers have been adopting cost-cutting and productivity enhancement measures to get ahead of the competition. Very often, such efforts lead to the downsizing of personnel, the *en masse* resignation of those who cannot cope with the skills demanded by new technology, or the termination of jobs in businesses which are no longer viable in the new economic era. Indeed, labor insecurities have multiplied.[10]

PURPOSE AND DELIMITATION

5 GUTIERREZ, *supra* note 1, at 4.

6 Maragtas S.V. Amante, Melisa R. Serrano, Ina A. Ortiz, *Social Security and Labor Insecurities Under Globalization*, *in* SOCIAL SECURITY AND LABOR INSECURITIES UNDER GLOBALIZATION 6 (Rene E. Ofreneo & Melisa R. Serrano, eds. 1999).

7 Roman Catholic Archbishop of Manila v. Social Security Commission, 1 SCRA 10, 15 (1961).

8 Philippine Blooming Mills v. Social Security System, 17 SCRA 1077, 1080 (1966).

9 INTERNATIONAL LABOUR OFFICE, SOCIAL SECURITY: WORKERS' EDUCATION GUIDE 6 (1992).

10 Ofreneo & Serrano, Foreword, *supra* note 6, at 1.

This paper looks into the legal aspects of Philippine social security, as well as how it has coped with the challenges of globalization, through the framework of the Social Security Law of 1997, Republic Act No. 8282. To provide the backdrop of the social security system, a section will be devoted to the legal history of the enabling law enacted in 1954, Republic Act No. 1161, as amended by Republic Act No. 1792 in 1957. Possibilities and challenges faced by the system will be presented in the concluding section.

This paper only discusses Republic Act No. 8282, which focuses on social security for self-employed and private sector workers. The law dealing with social security for government employees, Republic Act No. 8291, or the Government Service Insurance System Act of 1997, will not be discussed. Likewise Republic Act No. 7875, the law creating an integrated and comprehensive approach to health development, or the National Health Insurance Act of 1995 will not be tackled, considering that under the Philippine legal framework, health insurance is administered by a separate institution called the Philippine Health Insurance Corporation.

I. LEGAL HISTORY

A. Early Social Security Laws

The earliest social security law was the Employers' Liability Act.[11] The law was passed due to the efforts of American authorities who chosed to indulge in legal experimentation.[12] A workmen's compensation law was also passed in 1927.[13] Both laws required employers to pay compensation benefits in case of injury, sickness, or death of employees, though proof of some connection between the employment and the contingency covered were required to be shown.

The first government effort in social welfare work was made in 1915 with the creation of the Public Welfare Board.[14] In 1921, the functions of this Board were expanded and transferred to the newly-created Office of the Public Welfare Commissioner.[15] Through successive amendatory laws and executive orders, the social welfare agency grew and expanded until it assumed its present status as the full-fledged executive Department of Social Welfare and Development.[16]

11 Act No. 1874 (1908).

12 GUTIERREZ, *supra* note 1, at 8.

13 Act No. 3428 (1927).

14 Act No. 2510 (1915).

15 Act No. 2988 (1921).

16 Republic Act No. 5416 (1968) & The Revised Administrative Code, Executive Order No. 292, (1987).

It is important to note, however, that in the Philippine legal framework, health services have never been identified and placed in the same category as social security. The first formal government program related to social security was a compulsory insurance scheme for government employees, through the Government Service Insurance System.[17] The law creating the GSIS provided death, limited disability, and old age protection for workers employed by the Philippine government or its instrumentalities.

B. Convention No. 102

In 1952, the International Labour Organization approved the Convention on Minimum Standards for Social Security. The aim of the Convention was to establish minimum standards for benefits in the main branches of social security, given the wide variety of conditions obtaining in different countries.

In a single instrument, the Convention dealt with the nine main branches of social security, namely: medical care; sickness benefit; unemployment benefit; old-age benefit; employment injury benefit; family benefit; maternity benefit; invalidity benefit; and survivors' benefit. Acceptance of three of these nine branches was sufficient for ratification. At least one of the three branches accepted should be unemployment benefit; employment injury benefit; old-age benefit; invalidity benefit; or survivors' benefit. A State could subsequently accept obligations arising out of other parts of the Convention.

The scope of coverage, the choice of which rested with the ratifying State, was generally determined in three ways: (a) classes of employees; (b) classes of the economically active population; or (c) means of residents.In the case of periodic payments, the rate of benefit was determined by the level of wages in the country concerned.

Thus, the Convention provided three formulas for the calculation of benefits, intended to adapt to a variety of schemes: (a) proportional, or partially proportional benefits linked to the beneficiary's previous earnings or family support commitments; (b) benefits set at uniform rates, or benefits comprising at least a minimum rate based on the wage of an adult male laborer; (c) benefits linked to the means of the beneficiary concerned, the amount of which was determined in the same way as in the previous category, where the beneficiary concerned had no other means to justify a reduction in benefit.

17 Commonwealth Act No. 186 (1937).

18 The summary that follows was lifted from INTERNATIONAL LABOUR ORGANIZATION, SUMMARIES OF INTERNATIONAL LABOUR STANDARDS 77-78 (1988).

The Convention had provisions regarding the financing of benefits, and obligating the ratifying State to accept general responsibility for the due provision of the benefits and the proper administration of the institutions and services concerned. It also provided that representatives of protected persons should participate in the management of social security institutions, or be associated with them in a consultative capacity where the administration was not entrusted to an institution regulated by the public authorities or to a government department.

The Philippines has not ratified this Convention, but recent exhortations by the ILO[19] may pave the way towards ratification. However, the Philippines has ratified two other landmark ILO conventions on social security, namely Convention No. 118 on Equality of Treatment (1962) and Convention No. 157 on Maintenance of Social Security Rights (1982). Philippine ratification of both conventions were duly registered on 26 April 1994.

C. The Original Social Security Act

After the termination of the Japanese occupation in 1945, both of Congress passed a resolution creating a commission to study the social security laws of the United States and other countries. Nothing resulted from this resolution, though legislators continued to introduce social security bills from 1945 to 1954, to no avail.[20]

President Elpidio Quirino created a Social Security Study Commission. He directed the Commission in 1948, to undertake a thorough investigation of the social and economic problems of the working class, and conduct research on advanced social security schemes.[21] The Commission's report was submitted on 3 February 1949 to the President. Acting on the recommendations, the President sent the report to Congress, together with recommendations for the enactment of a law to establish the Social Security Administration.[22]

In 1949, Maurice Stack, an ILO expert on social security, proposed that the social insurance program be inaugurated on a small scale, on a "pilot plan" basis. He reasoned that resources were limited, since the Philippines was preoccupied with economic and moral recovery from the ravages of war.

19 UNDP-ILO, SOCIAL PROTECTION IN THE PHILIPPINES: OPTIONS FOR REFORM AND DEVELOPMENT 21 (1996).

20 *See infra* note 21.

21 The members of the Commission were Dr. Jorge Bocobo, educator, lawyer, University President and Filipinist as Chairperson; Mrs. Asuncion Perez, Commissioner of Social Welfare as Vice-Chair; educators; labor leaders; management figures; a labor priest; and representatives of the medical profession to comprise the 17-member body. Maurice Stack, chief of the social security section of the International Labour Organization, was invited to provide technical assistance. GUTIERREZ, *supra* note 1, 9-11.

22 *Id.*

The social insurance system should require only a highly specialized administration. The costs of various benefits, in the absence of existing statistics, must be discovered by experience. The public must become accustomed to and acquire confidence in the system.[23]

A review of the legislative history shows that some members of Congress did not agree with the pilot plan proposal. There were eight bills on social security introduced in 1954, and only one embodied this idea.[24] However, it was the bill embodying the concept that received senate approval. In the legislative give-and-take between the Senate and the House of Representatives, the latter agreed to the former's proposal.[25] Republic Act No. 1161 or the Social Security Act, was approved on 22 June 1954.

The law was not to be immediately applicable to all parts of the country. Instead, it was effective only in experimental areas selected by the Social Security Commission, taking into account the nature and number of establishments, type of industries, number of employees to be covered, and such other factors as the Commission might find relevant to the choice of the most suitable areas for the initiation of the social insurance program in the Philippines.[26]

As is readily evident, the effect of the above provisions on the coverage of the original Social Security Act could be severely restrictive if, in the implementation of these provisions, the Commission would take them as a directive to proceed with utmost caution in determining what areas and industries of the Philippines it would include in the social insurance program that was to be established.[27]

---

23 FROILAN M. BACUÑGAN, AN ANALYSIS OF THE LEGISLATIVE DEVELOPMENT OF THE SOCIAL SECURITY ACT OF 1954 (1963).

24 These bills were inspired by previous social security proposals such as Senate Bill No. 92, introduced in 6 September 1946 which created a Social Security Division in the Department of Labor; Senate Bill No. 218, introduced on 13 May 1947 which provided for both compulsory accident insurance and a minimum wage for laborers; House Bill No. 1976, introduced on 16 June 1948, was a rehash of earlier bills; Senate Bill No. 373, introduced on 4 February 1949 and which sought to provide for unemployment, sickness, maternity and disability benefits, old age pensions, family and widow's assistance, and public assistance to needy persons; Senate Bill No. 438, introduced on 17 May 1949 which created the Bureau of Public Assistance and Child Welfare and the Department of Social Welfare, respectively. A reading of these bills shows that they suffered from poor draftsmanship and from an absence of careful study of the various economic and other implications that their enactment into law would bring about. No actuarial study, for instance, supported any of the foregoing bills. GUTIERREZ, *supra* note 1, at 10.

25 BACUÑGAN, *supra* note 23.

26 *Id*; The Social Security Act of 1954, R.A.1161, § 4 (1954).

27 *Id.*

The list of contingencies in the original Security Act involved death, disability, sickness, old age, and unemployment. It provided for rates of contributions to be required of employers and employees to sustain the benefits. The law also aimed for universal coverage; but while Section 9 called for universal coverage, another provision itemized certain types of employment as exempt from compulsory coverage. A notable exception pertained to the self-employed.

The pilot plan provision was ignored by the Social Security Commission. When the Commission decided to implement the law in 1955, they did so on a nationwide basis.[28]

There was opposition from all fronts. Among the outspoken groups who opposed the social security scheme was the American Chamber of Commerce. The chamber asked for a deferment to implementation, to allow Congress to re-examine the law and to make it responsive to the needs and capabilities of Philippine social and economic life. Philippine businessmen joined foreign business in the call for deferment.[29]

The most unlikely opposition came from the ranks of organized labor. At the same time businessmen and management representatives were presenting memorials and manifestos, the presidents of the biggest labor groups argued against implementation. Their main objection was the Act's treatment of private benefit plans. Labor feared that the benefits which had been secured through years of collective bargaining struggles and which were incorporated in existing private benefit plans would be jeopardized by meager social security benefits intended for both organized and unorganized workers. The media was also highly critical of implementation.[30]

President Ramon Magsaysay eventually heeded the opposition and denied the program's implementation. While the President could not validly suspend statute implementation, the powers given to the Commission to determine where pilot areas could be developed did not provide for a clear timetable. Therefore, until the amendatory law was passed in 1957, the Commission continued to function, but not one firm or worker was actually covered.[31]

D. Republic Act No. 1792

On 15 May 1957, Representative Angel M. Castaño from the First District of Manila delivered his sponsorship speech of what was then House Bill No.

---

28 Social Security Commission Res. 62 (1955).

29 GUTIERREZ, *supra* note 1, at 12.

30 *Id.* at 13.

31 *Id.* at 13 n. 45.

6047.[32] The proposed measure sought to delete the pilot plan under Section 4 of the original Social Security Law. In addition, the Explanatory Note to H.R. 6047 sought to limit coverage to death, old age, and disability. Insofar as unemployment benefits were concerned, Rep. Castaño explained that the absence of adequate public employment offices to be coordinated with other employment agencies of the government was such that they were not enough for the Commission to implement the benefit.[33] What eventually became Republic Act No. 1792,[34] however, provided for a saving clause, which read:

> ... After the first two years of operation, an actuarial and financial valuation of the funds and operation of the System shall be made and, based on the results thereof, the President of the Philippines shall determine and recommend to Congress *whether additional benefits, such as unemployment,* may be included in the System's coverage, and the additional premiums to be imposed commensurate with the additional benefits.[35]

Incidentally, the original House proposal provided for a six-year period prior to an executive determination of the need for unemployment benefits.[36] Other notable benefits not included were sickness and maternity benefits.

The original Act provided that only those from 18 to 60 years of age and who have been in the service of a covered employer for at least six months were to be covered. Under the 1957 amendments, the minimum age requirement was reduced to 16 years. Likewise, Republic Act No. 1762 reduced the requisite number of employees for a covered employer to 50, from 200 employees in the original law.

Similarly, the concept of integration was introduced. This meant the integration of any existing private benefit plan set up by the employer was allowed, so as not to penalize firms which have already shown the greatest social consciousness by providing benefit plans for their employees prior to the enactment of the law.[37]

32 H.R. 6047, 3rd Cong., 4th Sess. (1954). Introduced on 26 January 1954. The Senate version was Senate Bill No. 148.

33 IV (PART III) Record of the Congress, 2848 (1954).

34 The Senate version was Senate Bill No. 625, introduced on 11 April 1957.

35 An Act to Amend Republic Act Numbered Eleven Hundred and Sixty-one Known as "The Social Security Act of 1954", and For Other Purposes, R.A. 1792, § 21 (1957).

36 H.R. 6047, § 12

37 R.A. 1792, § 5.

Schemes for contributions from employers and employees were maintained.[38] In addition, government contributions were to be appropriated annually by Congress, in order to meet the estimated expenses of the Social Security System for each ensuing year.[39] An initial amount of one million pesos was appropriated.[40] The Republic of the Philippines likewise accepted general responsibility for the solvency of the System.[41]

The System was to be administered by a Social Security Commission composed of the Secretary of Labor, the Secretary of Health, the Social Welfare Administrator, the General Manager of the Government Service Insurance System and three other members, one of whom shall represent the labor group and another the management group, both to be appointed by the President.[42]

The penal clauses[43] of the original law were maintained.

E. The Ensuing Years

On 1 September 1957, the Social Security System began implementation of the Social Security Act. On 1 September 1959, the System granted retirement checks to the first qualified retirees.

The subsequent pieces of amendatory legislation were as follows:

1. Republic Act No. 2658, enacted on 18 June 1960, provided for the coverage of all private enterprises with at least one employee, and liberalized and increased amounts of benefits.

2. Republic Act No. 3839, enacted on 22 June 1963, increased the amount of retirement benefits and provided for coverage of employees of foreign governments or international organizations, or their wholly-owned instrumentalities in the Philippines, upon agreement with the Philippine government.

3. Republic Act No. 4482, enacted on 19 June 1965, added sickness benefits.

4. Republic Act No. 4857, enacted on 1 September 1966, brought about the following: a 60 percent average increase in retirement benefits; 25 percent

38 R.A. 1792, §§ 10 & 11.

39 R.A. 1792, § 12.

40 R.A. 1792, § 22.

41 R.A. 1792, § 13.

42 R.A. 1792, § 2.

43 R.A. 1161, *as amended*, § 25.

increase in death benefits for part time and seasonal workers; increase in sickness benefits, including an increase in the daily allowance from P7 to P8; replacement of the lump sum benefit for permanently and totally disabled employees who have paid at least 36 monthly contributions by monthly pension equivalent to the proposed old-age retirement pension (new disability pension amounts to about 200 percent of the lump sum benefit in terms of percentage increase in value).

5. Republic Act No. 6111, enacted on 4 August 1969, marked the passage of the Philippine Medical Care Act.

6. Presidential Decree No. 24, enacted on 19 October 1972, increased retirement benefits by 50 percent. The composition of the Social Security Commission was also altered to the Secretary of Labor, SSS Administrator, and six appointive members from labor, management, and the general public. The general conduct of operations and management functions was vested in an Administrator who served serve as chief executive officer immediately responsible for carrying out the program of the SSS and the policies of the Commission.

   It created reserve funds, which consisted of all revenue of the SSS not needed to meet current administrative and operational expenses incidental to carrying out the purpose of the law. The fund was used exclusively for the payment of benefits. Such portions of the reserve fund that were not needed to meet the current benefit obligations were invested to earn an average annual income of at least seven percent. Five percent was to be invested in bank deposits to be known as the "contingency reserve fund," to meet and cover contingent and extraordinary disbursements for death, sickness and disability claims, and the remaining balance was credited to a fund to be known as the "investment reserve fund," to be invested by the Commission in any of the expressly enumerated ways.

7. Presidential Decree No. 65, enacted on 20 November 1972, instituted a Mortgagors' Insurance Account, to establish a separate account in connection with the operation of the Social Security System as an insurer of its interest on the lives and/or properties of its mortgagors.

8. Presidential Decree No. 177, enacted on 23 April 1973, provided for an increase in retirement benefits and coverage of Filipinos recruited in the Philippines by foreign-based employers for employment abroad on a voluntary basis, in accordance with the rules and regulations of the Social Security Commission. Furthermore, it provided for the inclusion of illegitimate children among the beneficiaries that a member may designate, and deletion of brothers and sisters as beneficiaries. Criminal prosecution of employers who failed or refused to register employees, or to deduct contributions and remit the same to the SSS was added.

9. Presidential Decree No. 347, enacted on 22 December 1973, provided for a P750 funeral benefit to be paid immediately upon the death of SSS members, including retirees, and the payment of survivors' pension to legitimate children of deceased SSS members not exceeding five.

10. Presidential Decree No. 626, enacted on 1 January 1975, provided for the implementation of the Employees' Compensation Law and the State Insurance Fund to replace Workmen's Compensation. The EC Program paid for medical services, including rehabilitative services, and provided cash benefits to SSS members who suffered work-related sickness, disability and death.

11. Presidential Decree No. 735, enacted on 27 June 1975, provided for an across-the-board increase in old age pension by 15 percent; monthly pension for each dependent child not to exceed five, beginning with the youngest and without substitution; an increase in sickness benefits from 70 percent to 85 percent of the average daily wage; monthly pension of each dependent child not to exceed five, beginning with the youngest without substitution in the event of death of a disability pensioner; and monthly pension for a permanently and partially disabled member who has paid 36 monthly contributions. Beneficiaries were divided into two categories — primary and secondary beneficiaries.

12. Presidential Decree No. 932, enacted on 7 June 1976, provided for the "Study-Now-Pay-Later Plan." The SSS, together with other government financing institutions (GFIs) extended loans to poor but deserving students to finance their college education payable upon employment after graduation.

13. Presidential Decree No. 1202, enacted on 27 September 1977, provided for the grant of maternity benefits; an across-the-board increase in disability and death benefits by 15 percent; a graduated increase in old age, disability and death pensions; an increased minimum monthly pension for retirement and permanent total disability and death; and an increased minimum lump sum for permanent total disability and death benefits.

14. Presidential Decree No. 1368, enacted on 1 May 1978, provided for the implementation of conversion of EC disability and death benefits into lifetime pensions, and increased EC maximum daily sickness allowance.

15. Presidential Decree No. 1519, enacted on 1 October 1978, provided for the implementation of various increases in medicare benefits as well as an increase in medicare contributions for selected employees.

16. Presidential Decree No. 1636, enacted on 7 September 1979, provided for an increase in pension benefits for retirement, disability, and death by

20 percent; an increased minimum monthly pension for retirement, disability, and death; an increase duration of the monthly pension for permanent partial disability; an increase minimum and maximum daily sickness allowance; and a compulsory social security coverage of certain groups of self-employed persons not yet 61 years of age and earning at least P1,800 per annum.

17. Presidential Decree No. 1641, enacted on 7 September 1979, provided for the implementation of an across-the-board increase in the monthly pension of EC surviving pensioners, and an increased minimum and maximum EC daily sickness allowance.

18. Executive Order No. 28, enacted on 16 July 1986 increased minimum monthly pensions for retirement, funeral expense, and sickness benefits.

19. Executive Order No. 102, enacted on 24 December 1986 granted a 20 percent across-the-board increase in retirement, disability, and death pensions. It also increased funeral benefits and the maximum amount of maternity benefits. It further provided for the inclusion of the mandated cost-of-living allowance in the monthly compensation subject to SSS contributions. Finally, it allowed for the investment of portions of the reserve funds not need to meet the current benefit obligations in any of the following: group housing projects giving priority to low-income groups; bonds, debentures or other evidence of indebtedness of any solvent corporation or institution created or existing under the laws of the Philippines; preferred stocks of any solvent corporation or institution created or existing under the laws of the Philippines; common stocks of any solvent corporation or institution created or existing under the laws of the Philippines listed in the stock exchange with proven track record of profitability and payment of dividends over the last three years.

20. Republic Act No. 7192, the Women in Development and Nation Building Act, enacted on February 1992, provided for the voluntary coverage of non-working spouses of SSS members under the SSS.

21. Republic Act No. 7322, enacted on 30 March 1992, increased daily maternity benefits from 45 to 60 days for normal delivery, abortion or miscarriage and from 60 to 78 days for caesarean delivery.

22. Republic Act No. 7641, enacted on June 1993, amended the Labor Code and required a minimum retirement benefit for optional and compulsory retirees.

23. Republic Act No. 7655, enacted on 1 September 1993, provided compulsory coverage of househelpers earning at least P1,000 a month.

24. Republic Act No. 7688, enacted on 3 March 1994, gave representation to women in the Social Security Commission.

There were areas of investment which coincided with the concept of income redistribution. Under the third piece of legislation [Republic Act No. 2658 (1960)] which sought to amend the Social Security Law, for instance, the Commission was empowered to invest in direct housing loans to members of the System. Through a Commission Resolution,[44] the grant of salary loans was mandated. Another form of loan, the education loan, was made effective by the System.[45] Likewise, when Republic Act No. 4857 (1966) empowered the Commission to invest funds in projects which redound to the public welfare, community hospital loans were developed. On 22 January 1969, the System created the investment incentives loan program to encourage capital formation for the country's sound economic development and to help bring about a planned, economically feasible and practical dispersal of industries throughout the Philippines.[46] While still in line with the social justice objectives of the System, the projected interest income out of such loans were part and parcel of its investment prerogatives.

II. THE SOCIAL SECURITY LAW OF 1997

A. Backdrop

On 28 August 1996, Quezon Rep. Wilfrido L. Enverga, Chairman of the House of Representatives Committee on Government Enterprises and Privatization, delivered his sponsorship speech on then House Bill No. 7758, a bill proposing to expand the coverage and benefits of and institute reforms in the Social Security System. The full text of his speech outlines the context and intent of the bill:

> Thirty-five years ago the Social Security System or the SSS was established to provide social security protection to the private sector and its family. But after all this time, the question still asked is: "Has the system lived up to its members' expectations or can it still be improved to make its services more relevant to the needs of our people?"
>
> In response to that query, Mr. Speaker, our colleagues in this august body have introduced certain measures to amend the SSS charter after an in-depth study and review of 25 House bills and 3 House resolutions, your Committee on Government Enterprises and Privatization is therefore pleased to report to this august Chamber Committee Report No. 527 on House Bill No. 7758.

44 Social Security Commission, Res. 391 (1961).

45 Social Security System Circ. 63.

46 GUTIERREZ, *supra* note 1, at 158.

House Bill No. 7758 seeks to widen the scope of coverage in order to afford social security protection to a greater number of workers, give more teeth to the law, rationalize the benefits and contribution structures, broaden investment alternatives not only to ensure higher return of investment, but also in order to maximize the system's contribution to the socio-economic development of our country, and also rationalize SSS' organization for more efficient and effective operations.

Mr. Speaker, allow me to enumerate some of the provisions of the bill as follows: (a) Expanding the SSS coverage to include agricultural workers, minors, employed by parents and parents employed by children, domestic helpers and all self-employed persons earning at least one thousand pesos a month; (b) Setting the minimum monthly pension from one thousand pesos to one thousand two hundred pesos for members with at least ten credited years of service and from one thousand two hundred pesos to two thousand pesos for those with twenty credited years of service; (c) Granting the retirees lump-sum pension equivalent to six months; (d) Increasing the minimum dependent's pension from one hundred fifty to two hundred fifty pesos for each dependent child, but not exceeding five; (e) Increasing the funeral benefit from ten thousand pesos to twelve thousand pesos which may be paid in cash or in kind; (f) Designating illegitimate children as primary beneficiaries who shall be entitled to fifty (50%) percent of the share of each legitimate, legitimated or legally adopted children, or one hundred (100%) percent of the benefits in the absence of the latter; and (g) Requiring the SSS to establish branches in provinces and highly urbanized cities, representative offices in every congressional district and if necessary offshore offices in highly selected countries.

Mr. Speaker, I therefore call on this august body to immediately approve Committee Report No. 527 on House Bill No. 7758. We cannot afford to waste time on vital issues affecting the social welfare of our people. It is therefore imperative that we amend the SSS Charter for the purpose of making it relevant and responsive to the needs of the millions of SSS members and their dependents.[47]

With Senate Bill No. 1663 consolidating the various Senate measures seeking to amend the Social Security System Charter, Chairman of the Committee on Government Corporations and Public Enterprises, Marcelo B. Fernan reported the approval of the Bicameral Conference Committee Report on 30 April 1997, merging both measures from the two houses of the Philippine Congress.

47 CONG. REC. OF DEB. 1-3 (Aug. 28, 1996).

Republic Act No. 8282, the Social Security Law of 1997, took effect on 24 May 1997.

All told, the new law enabled the SSS to undertake the following: expand membership coverage to other non-covered sectors; enhance and rationalize the benefits for its members; broaden investment alternatives and improve the management of its reserve fund; administer stiffer penalties for violators of the social security law; condone penalties on delinquent contributions; and establish a voluntary provident fund for members.

B. Coverage

Coverage in the Social Security System is compulsory upon all employees not over sixty (60) years of age and their employers. Domestic helpers are also covered, provided their monthly income is not less than P1,000 a month.[48] Compulsory coverage also includes self-employed persons, including, but not limited to, all self-employed professionals, partners and single proprietors of businesses, actors and actresses, professional athletes, coaches, trainers, individual farmers and fishermen. In 1980, the above-enumerated groups were required to contribute to the social security fund from which benefits are paid upon the occurrence of any of the protected contingencies. Self-employed farmers and fisherfolk were included in 1992, while workers in the informal sector earning at least P1,000 a month, such as ambulant vendors and watch-your-car boys were included in 1995.[49]

Voluntary coverage pertains to spouses who devote full time work to managing the household and family affairs[50] and to Filipinos recruited by foreign-based employers for employment abroad.[51] Likewise, a covered employee who is separated from employment and would like to continue paying his/her contributions may do so on a voluntary basis.[52] An employee of foreign governments, international or governmental organizations such as embassies based in the Philippines, may be covered on a voluntary basis if the foreign employer enters into a memorandum of agreement with the System, signifying the employer's willingness to have Filipinos in their employ covered by the SSS.[53]

48 R.A. 8282, § 9 (a).

49 SOCIAL SECURITY SYSTEM, GUIDEBOOK FOR SSS MEMBERS 8 (1996).

50 R.A. 8282, § 9 (b).

51 R.A. 8282, § 9 (c).

52 R.A. 8282, §11.

53 R.A. 8282, § 8 (j) (4).

Employment services excluded under the System are the following: casual employment; services performed on or in connection with an alien vessel by an employee if he/she is employed when such vessel is outside the Philippines; services performed in the employ of the Philippine government; and such other temporary services performed by temporary employees which may be excluded by regulation.[54] Also excluded are services performed in the employ of a foreign government or international organization, if not within the scope of voluntary coverage.[55]

As of December 1999, membership with the SSS stood at 572,131 employers; 18,390,315 employees; and 2,826,745 self-employed persons.[56]

In 1998, the SSS registered a total of 1.2 million new members and 44,496 new employers. Compared to 1997 figures, there was a 14 percent decrease in the number of newly registered members and a 23 percent decrease in the number of newly registered employers. The System, however, saw positive signs in these figures for despite the slowdown in economic activity and the high unemployment rate caused by the Asian currency crisis, the System was able to expand its membership as a result of intensified coverage efforts which include coverage drives, regional information seminars, and the setting-up of the employer/self-employed online business clearance system.[57]

Including government workers registered under the GSIS, the combined membership of both the SSS and GSIS was 20.65 million as of 1997, which comprised 65.3 percent of the labor force, which stood at 31.63 million that same year. This simply means that around 34.7 percent or 10.98 million workers are without social protection.[58]

In terms of membership by age group, of the 3.93 million total contributing SSS members in 1995 (about 27% of the 14.2 million total membership), the age groups of 15 to 35 comprised 63.9 percent, 28.9 percent for age groups 36 to 50, and 7.2 percent for 51 to 64. The average age of contributing members was set at 34, while that of non-contributing members was 40.[59]

54 R.A. 8282, § 8 (j) (1) (2) (3).

55 R.A. 8282, § 8 (j) (4).

56 SOCIAL SECURITY SYSTEM, FACTS AND FIGURES (Dec. 1999).

57 Social Security System, *Facts and Figures 1998 Annual Report* <www.sss.gov.ph/fact/1998ar/opns03.htm>.

58 Amante, Serano, and Ortiz, *supra* note 6, at 8.

59 *Id.* at 30.

C. Benefits

As stated, the contingencies protected by the law are old age, death, disability, pregnancy and childbirth, and sickness.

The retirement benefit consisting of a lifetime monthly pension[60] is given to a member who has paid at least one hundred twenty (120) monthly contributions prior to the semester of retirement. The member may have reached the age of sixty (60) and is separated from employment, or has ceased to be self-employed, or may have reached the age of sixty-five (65) years. The entitled member shall have the option to receive his first eighteen (18) monthly pensions in lump sum discounted at a preferential rate of interest to be determined.[61] The retiree is also entitled to a 13th month pension payable every December.[62]

Death benefits shall be paid to the primary beneficiaries of a member who has paid at least thirty-six (36) monthly contributions prior to the semester of death. The benefit shall be a lump sum equivalent to thirty-six (36) times the monthly pension.[63]

Upon the permanent total disability of a member who has paid at least thirty-six (36) monthly contributions prior to the semester of disability, a member shall be entitled to a monthly pension. If the member has not paid the required thirty-six (36) monthly contributions, he or she shall be entitled to a lump sum benefit equivalent to either the monthly pension times the number of monthly contributions paid to the SSS, or twelve (12) times the monthly pension, of whichever is higher.[64]

In case of permanent partial disability, and such disability occurs after thirty-six (36) monthly contributions have been paid prior to the semester of disability, the benefit shall be the monthly pension for permanent total disability payable not longer than the period designated in a set schedule. If disability occurs before thirty-six (36) monthly contributions have been paid prior to the semester of disability, the benefit shall be the percentage of the lump sum benefit

60 The monthly pension shall be the highest of the following amounts: (1) The sum of the following: i) three hundred pesos (P300.00) plus (ii) twenty percent (20%) of the average monthly salary credit; plus (iii) two percent (2%) of the average monthly salary credit for each credited year of service in excess of ten (10) years; or (2) forty percent (40%) of the average monthly salary credit; or (3) one thousand pesos (P1,000). But the monthly pension shall in no case be paid for an aggregate amount of less than sixty (60) months. R.A. 8282, § 12 (a).

61 R.A. 8282, § 12-A (a).

62 GUIDEBOOK, *supra* note 49, at 41.

63 R.A. 8282, § 13.

64 R.A. 8282, § 13-A (a).

described in the preceding paragraph with due regard to the degree of disability as the Commission may determine.[65]

A funeral grant equivalent to twelve thousand pesos (P12,000.00) shall be paid, in cash or in kind, to help defray the cost of funeral expenses upon the death of a member, including the permanently and totally disabled member or retiree.[66]

A member who has paid at least three (3) monthly contributions in the twelve-month period immediately preceding the semester of sickness or injury and is confined for more than three (3) days in a hospital or elsewhere with the approval of the System shall, for each day of compensable confinement or fraction thereof, be paid by his/her employer or the SSS, if such person is unemployed or self-employed, a daily sickness benefit equivalent to ninety percent (90%) of his/her average daily salary credit, subject to certain conditions.[67]

A female employee who has paid at least three (3) monthly contributions in the twelve-month period immediately preceding the semester of childbirth or miscarriage shall be paid a daily maternity benefit equivalent to one hundred percent (100%) of her average salary credit for sixty (60) days or seventy-eight (78) days in case of caesarean delivery, subject to certain conditions.[68]

Benefits are not indexed to inflation. Instead, the SSS adjusts the minimum monthly pension and implements ad-hoc across-the-board increases from time to time. The inflationary path of the economy is one of the considerations, although the capability of the fund to absorb the increases is the major factor.[69] Since 1990, across-the-board pension increases were made nine times, at an average annual increase of 11.9 percent. Since the average inflation rate during the period is ten percent, the purchasing power of pensions has been maintained. In fact, the increases have raised the average monthly pension by 160 percent to P1,890 in April 1998 from P726 in 1990.[70] But the data provided by the SSS Investments and Finance and Information System Group clearly show that pension rates are not automatically increased yearly to cope with inflation. For example, for the year 1994, pension rates were increased by 5 percent while the inflation rate was 9 percent.[71]

65 R.A. 8282, § 13-A (e) (f).

66 R.A. 8282, § 13-B.

67 R.A. 8282, § 14.

68 R.A. 8282, § 14-A.

69 Amante, Serrano, and Ortiz, *supra* note 6, at 14.

70 *Id.* at 15.

71 *Id.* at 25.

With regard to the replacement value of benefits, the ratio between the percentage of pre-retirement income to basic pension is estimated at 89 percent, based on 1997 data on contingencies for social security, including employees' compensation. For retirement, the replacement ratio is 94%; death, 86%; total disability, 147%; and partial disability, 88%.[72]

It has been established that the replacement ratio in the Philippines and five other Southeast Asian countries remain substantially below international norms. Along with low coverage and no or very limited protection against longevity and inflation, the low replacement rate strongly suggests a deficiency in providing socially adequate levels of income security in old age.[73] The SSS Corporate Planning Department's data shows that as of July 1998, nominal pension rates amounted to an average of P2,069 from 1990 to 1997, with an average growth rate of 10.64%.

Erstwhile SSS Chairman Renato C. Valencia posited that since benefits are related to earnings, benefits maintain their real value whenever the workers' earnings keep pace with inflation. Considering that workers' earnings do not always keep pace with inflation, the real value of benefits is eroded.[74]

D. Contributions

Employee contributions amount to 3.36 percent of his/her average monthly compensation, while a self-employed person pays 8.4 percent of his/her monthly earnings. The employer pays 5.04 percent based on his/her employee's average monthly compensation.

Beginning the last day of the calendar month when an employee's compulsory coverage takes effect and every month thereafter during his employment, the employer shall deduct and withhold from such employee's monthly salary, wage, compensation or earnings, the employee's contribution in an amount corresponding to his/her salary, wage, compensation, or earnings during the month in accordance with a prescribed schedule.[75] The employer's contributions plus employee's contributions shall be remitted to the System and supported by a quarterly collection list at the end of each calendar quarter.[76] Self-employed members contribute in accordance with the system of contribution pertaining to employees.[77]

72 *Id.* at 16.

73 *Id.* at 24.

74 *Id.*

75 R.A. 8282, § 18 (a).

76 R.A. 8282, § 19 (a).

77 R.A. 8282, § 19-A.

As a contribution of the government to the operations of the System, Congress shall annually appropriate out of any funds in the National Treasury not otherwise appropriated, the necessary sum or sums to meet the estimated expenses of the System for each ensuing year. In addition to this contribution, Congress shall appropriate from time to time such sums as may be an adequate working balance of the funds of the SSS as disclosed by suitable periodic actuarial studies to be made by the SSS.[78]

Based on data provided by the SSS Corporate Planning Department, under a full funding system, contributions would exceed benefits and operating expenses, thus producing surplus and investible reserves. From 1993 to 1994, the amount of benefits paid by SSS was more than the collected contributions. In the following years through 1998, contributions exceeded benefits due to higher wages, better collection efficiency and moderate benefit enhancements.[79] In 1999, however, social security and employees' compensation contributions amounted to P26,689,420, while benefits added up to P28,269,160.[80]

E. Funds of the System

Not more than twelve percent of the total yearly contributions plus three percent of other revenue shall be disbursed for administrative and operational expenses such as salaries and wages, supplies and materials, depreciation, and the maintenance of regional offices of the System.[81]

The remaining Reserve Fund and Investment Reserve Fund concepts first emerged in the amendments made by Presidential Decree No. 24 in 19 October 1972. To reiterate, all revenue of the SSS that are not needed to meet current, administrative, and operational expenses shall be accumulated in a fund to be known as the Reserve Fund. Such portions of the Reserve Fund as are not needed to meet current benefit obligations shall be known as the Investment Reserve Fund which the Commission shall manage and invest with the skill, care, prudence, and diligence necessary under the circumstances then prevailing that a prudent man, acting in like capacity and familiar with such matters, would exercise in the conduct of an enterprise of a like character and with similar aims.[82]

78 R.A. 8282, § 20.

79 Amante, Serrano and Ortiz, *supra* note 6, at 19.

80 FACTS AND FIGURES 1999, *supra* note 56.

81 R.A. 8282, § 25.

82 R.A. 8282, § 26.

F. Investments

The investment philosophy of the System is anchored on the basic principles of safety, liquidity, and high yield.[83]

Since the reserves are funds entrusted to the System by the members, the SSS considers the safety of its investments. These funds must, therefore, be invested only in prime securities or investments and not in speculative issues or projects.

The liquidity of the fund relates to the management of the cash flows. The fund must have enough cash or liquid assets to meet current obligations on a year-to-year basis.

Following the principle of social utility, it is the System's view that any transaction it finances must generate new jobs, create new wealth, increase individual income, improve education and health care, develop infrastructure and generally contribute to a better quality of life for its members.[84]

Based on the law, SSS areas of investment and investment ceilings are the following:[85]

AREAS OF INVESTMENT	CEILING
Private securities	40%
Housing	35%
Real estate-related investments	30%
Short- and medium-term member loans	10%
GFIs and corporations	30%
Infrastructure projects	30%
Any particular industry	15%
Foreign-currency denominated investments	7.5%

Also, the Commission should invest the funds to earn an annual income not less than the average rates of treasury bills or any other acceptable market yield in any or all of the above enumerated areas of investment.[86] As part of its investment operations, the System may appoint local or foreign fund managers to manage the Investment Reserve Fund, as it may deem appropriate.[87]

83 Arellano, *supra* note 2.

84 *Id.*

85 R.A. 8282, § 26 (a-m).

86 R.A. 8282, § 26 (a).

87 R.A. 8282, § 26-A.

As part of its investment operations, the SSS shall also act as insurer of all or part of its interest on SSS properties mortgaged to the SSS, or lives of mortgagors whose properties are mortgaged to the SSS. For this purpose, the SSS shall establish a separate account known since the enactment of Presidential Decree No. 65 (1972) as the Mortgagors' Insurance Account.[88]

G. Administration

The System shall be directed and controlled by a Social Security Commission, composed of the Secretary of Labor and Employment or his/her duly designated undersecretary, the SSS president and seven (7) appointive members, three (3) of whom shall represent the workers' group, and at least one (1) of whom shall be a woman; three (3) of whom shall represent the employers' group, and at least one (1) of whom shall be a woman; and one (1) from the general public, whose representative shall have adequate knowledge and experience regarding social security, to be appointed by the President.[89]

The powers of the Commission are as follows: to adopt necessary rules and regulations; to establish a provident fund form the members to consist of voluntary contributions; to maintain a provident fund which consists of contributions by both the SSS and its officials and employees and their earnings; to approve restructuring proposals for the payment of due but unremitted contributions and unpaid loan amortizations; to authorize cooperatives registered with the Cooperative Development Authority to act as collecting agents of the SSS with respect to their members; to compromise or release any interest, penalty or civil liability to the SSS in connection with authorized investments; and to approve or pass upon any and all actions of the SSS in the proper and necessary exercise of its powers.[90]

H. Settlement of Disputes

Any dispute arising under the provisions of the Social Security Law with respect to coverage, benefits, contributions, and penalties thereon, shall be cognizable by the Commission, and any case filed with respect thereto shall be heard by the Commission, or by duly authorized hearing officers.[91]

Any decision of the Commission upon any disputed matter may be reviewed by the Court of Appeals. The Commission has the power to issue writs of execution to enforce any of its final and executory decisions or awards.[92] Criminal offenses

88 R.A. 8282, § 26-B (a).

89 R.A. 8282, § 3 (a).

90 R.A. 8282, §4 (a).

91 R.A. 8282, § 5 (a).

92 R.A. 8282, § (b) (c) (d).

for violations of the law, on the other hand, are within the jurisdiction of the regular courts.

III. EMPLOYEES' COMPENSATION

The Workmen's Compensation Law was replaced by the Employees' Compensation Law[93] in 1974, and subsequently incorporated into the Labor Code of the Philippines. Under the Employee's Compensation Program, all covered employers are required to remit to a common fund a monthly contribution equivalent to one percent of the monthly salary credit of every covered employee. The employee pays no contribution to the fund. The employer's contributions make up what is called the State Insurance Fund. From the State Insurance Fund comes the compensation to be paid to the claimant employee or the employee's dependents in case the employee suffers from a work-connected injury or disease.[94]

The claim goes to the SSS for private sector employees and the GSIS for public sector employees, which decides on the claim. The SSS and the GSIS serve as administering agencies of the Employees' Compensation Commission, the policy-making body of the program.[95]

The compensation comes in the form of medical supplies and services and/or cash income if the employee is unable to earn because of the injury or disease. Death benefits and funeral benefits are also given.[96]

Under the Employees' Compensation scheme, the presumption of compensability and the rule on aggravation of illness caused by the nature of employment has been abolished. This restores a sensible equilibrium between the employer's obligation to pay workmen's compensation and the employee's right to receive reparation for work-connected death or disability. Because the employee's claim is directed against the State Insurance Fund, the employer does not have to controvert the claim. In order for the employee to be entitled to sickness or death benefits, the sickness or death resulting therefrom must be, or must have resulted from, either (a) any illness definitely accepted as an occupational disease listed by the Commission, or (b) any illness caused by employment subject to proof that the risk of contracting the same is increased by working conditions.[97]

93 P.D. 608 & 626 (1974).

94 I CESARIO A. AZUCENA, THE LABOR CODE THE PHILIPPINES: COMMENTS AND CASES 339 (1999).

95 *Id.*

96 The Labor Code of the Philippines, P.D. 442, arts. 185-94 (1974).

97 Dabatian v. Government Service Insurance System, 149 SCRA 123 (1987).

IV. Policy Thrusts

In a paper submitted to the World Bank Asia Pension Conference in Hong Kong dated 12 October 1999, current SSS Chairman, President, and Chief Executive Officer, Hon. Carlos A. Arellano, laid down the three key roles of the System, namely: (a) an instrument of social justice; (b) a vehicle for income redistribution; and (c) a catalyst for growth.[98] He elaborated:

> As an instrument of social justice, SSS provides a safety net for its members and their families so that they will not be a burden to society. As a vehicle for income distribution, SSS benefit and investment programs are designed to provide opportunities to the members to help them maintain a good quality of life. Aware that economic growth generally brings about prosperity and higher income, SSS channels its reserves to investments that help spur economic growth.[99]

The mission statement of the System reads:

> To provide meaningful protection to the members and their families against contingencies resulting in loss of income or financial burden and to contribute to the socioeconomic development of the country through a viable social insurance program.[100]

The vision statement reads:

> By the year 2000, SSS aims to achieve Quality Service and Coverage.
>
> Quality Service means world-class and able to compete with the best in the world.
>
> Quality Coverage means that social security protection is universal, uniform and meaningful.[101]

While the mission and vision statements are geared towards the System's fealty to its members, Chairman Arellano still underscores the System's contribution to the Philippine economy. Hence, his reference to the System as "a catalyst for growth." The SSS must still assume its place among the family of government financial institutions.

[98] Arellano, *supra* note 2.

[99] *Id.*

[100] GUIDEBOOK, *supra* note 49, at 1.

[101] *Id.*

At the outset, the investments program of the SSS was considered only from the viewpoint of the income that would be earned and which would bolster the benefit paying capacity of the System. But suddenly, economic development became a national preoccupation. Economists started talking about capital formation. Inevitably, the role of the System in economic development would be discovered and propagandized.[102]

As early as 1971, chief of the SSS Research and Publications Division and Associate Justice of the Philippine Supreme Court Hugo E. Gutierrez, Jr. said:

> It is not a far-fetched vision nor an idle dream to view the Social Security System as the country's biggest potential source of development capital. The System seeks to have universal coverage. When all or almost all of the members of the nation's labor force come under social security coverage, the volume of savings which are generated will assume tremendous proportions.[103]

V. Program Sustainability

A. Basics

Chairman Arellano avers that for the Social Security Program and Employees' Compensation Program to be sustained, contributions plus investment earnings must at least equal benefits and operating expenses for the desired period of actuarial balance. Thus, a simple formula:

CONTRIBUTIONS + EARNINGS = BENEFITS + OPERATING EXPENSES[104]

A major aspect of the left side of the equation would be the so-called Reserve and Investment Reserve Funds. The former is defined as that which form part of SSS revenues that are not needed to meet the current administrative and operational expenses. The latter is defined as that part of the reserve fund which are not needed to meet current benefit obligations.[105]

Chairman Arellano enumerated the objectives in the management of the reserve fund:

a. Ensure actuarial viability. The reserves must be invested in safe and high-yielding instruments to ensure SSS' continued actuarial viability and enable it to meet future obligations.

[102] GUTIERREZ, *supra* note 1, at 103.

[103] *Id.* at 120.

[104] Arellano, *supra* note 2.

[105] R.A. 8282, § 26.

b. Maintain the real value of benefits. Any social security system whose benefits are eroded to meaningless levels by inflation will become irrelevant over time. For this reason, SSS regularly reviews and adjusts its benefits, while it tries to achieve better return on its investments.
c. Redistribute income. The System's investment programs must help the System achieve its role as a vehicle for income redistribution. Thus, SSS continues to substantially finance, at slightly lower than market rates, low-cost housing, as well as livelihood projects for small and medium-sized enterprises, cooperatives, farmers and fishermen, and individual members engaged in micro-industries.
d. Catalyze economic growth. The System's investment programs must help it achieve its role as a catalyst for economic growth. The System's housing program has a multiplier effect that creates demand for jobs and material while providing decent shelter for its members. It also has lending programs for infrastructure, exports, countryside development, tourism, etc., designed to stimulate economic activities in certain sectors.[106]

B. Contributions[107]

From January-December 1999, total contributions from social security and employees' compensation amounted to P26,689,420,000 an increase from P24B in 1998 and P22B in 1997.

C. Earnings[108]

Earnings in 1999 added up to P20,428,330,000, an increase from roughly P18B in 1998 and P17.5B in 1997.

D. Benefits[109]

In 1999, total benefits amounted to P28,269,160,000. Payments were made to 1,682,289 members. Retirement benefits and pensions topped the list of payments made, amounting to roughly 45 percent of all benefits paid. In 1998, benefits were pegged at P24.8B, and in 1997 the figure was P22.9B.

[106] Arellano, *supra* note 2.

[107] FACTS AND FIGURES 1999 and 1998, *supra* notes 56-57.

[108] *Id.*

[109] *Id.*

E. Operating Expenses[110]

In 1999, operating expenses totalled P3,921,880,000. In 1998, operating expenses amounted to P3.2B, and in 1997 it was at P2.3B.

F. Investments and Assets[111]

As of December 1999, System investments were apportioned as follows:

INVESTMENTS	% SHARE
Marketable securities	28.6%
Housing loans	27.5%
Government sector	19.7%
Member loans	12.2%
Business loans	8.2%
Real Estate	3.8%

Total investments were placed at P161,953,520,000, up from P151B in 1998 and P140B in 1997.

Assets totalled P172,703,060 in 1999, significantly higher than P158M in 1998 and P143.8M in 1997.

VI. THE GLOBALIZTION PICTURE AND ECONOMIC CRISIS

As an economic and political event,[112] globalization has shaped the Philippine labor market for the last few years. Indeed, as barriers to trade, investment, financial flows, and technology transfer fall, and expansion of markets for goods, services, financial, capital, and intellectual property to transnational, regional, and global dimensions occurs, winners and losers emerge. And bleak scenarios for workers have been articulated since the phenomenon emerged with full force:

> The global economy is leaving millions of disaffected workers in its train. Inequality, unemployment, and endemic poverty have become its handmaidens. Rapid technological change and heightening international competition are fraying the job markets of the major industrialized countries. At the same time systemic pressures are curtailing every government's ability to respond with

[110] *Id.*

[111] *Id.*

[112] *See* Alex Y. Seita, *Globalization and the Convergence of Values*, 30 CORNELL INT'L L.J. 429 (1997).

new spending. Just when working people most need the nation-state as a buffer from the world economy, it is abandoning them.[113]

In 1995, Dean Rene E. Ofreneo of the University of the Philippines School of Industrial Relations had already outlined the negative impact of globalization upon the Filipino masses, i.e., jobless growth, growing inequality, deepening poverty, informalization of the labor market, cutbacks in social services, worsening situation for women workers, and frequent human rights violations.[114] What preachers of the so-called globalized Asian economic miracle dismissed as doomsday scenarios became reality when the financial crisis which began in Thailand in July 1997 and spread to other countries in Southeast Asia had a devastating impact on employment and labor incomes.

> The severity of the impact of the crisis on labor depends on two major factors. One is the flexibility of wages and employment in the industries directly affected by the crisis. Greater wage flexibility allows firms the option of cutting costs and minimizing the employment effects. More flexible employment systems, especially the employment of large numbers of casual workers, means adjustment of wage costs may be relatively easy: while the burden is felt unevenly among wage earners, firms are more likely to survive in the short to medium term. The second is the structure of the economy. The newly-industrialized economies, with their small agricultural and informal sectors, are less likely to be able to absorb displaced workers into any gainful employment, and open unemployment is more likely to rise more steeply. Government assistance in the form of unemployment subsidies (given the lack of insurance systems) is critical for the welfare of the unemployed. Countries like Thailand and Indonesia, where displaced workers may find work in the large agricultural sector and more opportunities for self-employment (albeit at low wages), may appear to have suffered less unemployment, relatively, than the more advanced NIEs.[115]

Based on the labor force survey (LFS) of the National Statistics Office (NSO), the country's economically active population expanded by 3.1 percent from 30.236 million in January 1998 to 31.168 million in January 1999. The labor force

[113] Ethan B. Kapstein, *Workers and the World Economy*, FOREIGN AFFAIRS 16 (May-June 1996).

[114] Rene E. Ofreneo, 6th Annual Lecture of the Civil Liberties Union, San Juan, Metro Manila (November 30, 1995).

[115] Chris Manning, *Labour markets in the ASEAN-4 and the NIEs*, 13 ASIAN PACIFIC ECON. LITERATURE 50, 60 (1999). But Mr. Manning points out that of all ASEAN-4 nations, the Philippine economy and labor market was least affected by the crisis.

participation rate edged up slightly by 0.3 percentage points from 65.0 percent to 65.3 percent in the comparative period.[116]

The employment level in January increased by 2.4 percent from 27.691 million in January 1998 to 28.368 million this year, representing an employment gain of 677,000.

The Philippines has a reserve army of unemployed. The level of unemployment averaged 8.8 percent from 1990 to 1994 (around 2 million workers). Unemployment averaged 8.9% from 1995 to 1997. With the Asian economic turmoil, the unemployment rate worsened to 13.3 percent (4.5 million unemployed) in 1998. The Philippine unemployment rate is said to be the worst in Asia. In addition, the underemployed continue to be a major problem — they constituted around 20% of the workforce in 1997.[117]

A total of 2,786 establishments either shut down or reduced their workforces from January to November 1998 for various economic reasons arising from the regional financial crisis. As a result, a total of 142,918 workers were adversely affected. Fifty percent of these workers were permanently laid-off while 46,223 were temporarily cut from employment. The remaining 25,142 workers suffered a reduction in their working hours.[118] The large establishments or those with 100 or more employees registered the biggest share of affected workers at 109,768 or 76.8 percent. The rest of the workers, accounting for 23.2 percent, came from establishments with less than a hundred workers.[119] The manufacturing sector was hardest hit, accounting for 62.2% or 88,780 laid-off workers as of November 1998. Wholesale and retail, construction, transportation, and financial services accounted for approximately 11,000 workers each.[120]

By region, the National Capital Region registered 45,247 displaced workers, with the Southern Tagalog Region (bastion of many export-processing zones) at far second.[121]

[116] DEPT. OF LABOR AND EMPLOYMENT, CURRENT LABOR STATISTICS ii (First Quarter 1999).

[117] Amante, Serrano and Ortiz, *supra* note 6, at 8. Lifted from the labor force survey conducted by the National Statistics Office.

[118] URBAN MISSIONARIES, QUARTERLY LABOR UPDATE 10 (Oct. 1998-Jan. 1999). A report by the Manila Times dated 21 Jan. 1999 on Department of Labor retrenchment statistics was cited.

[119] *Id.* at 11.

[120] *Id.* at 9. A Philippine Daily Inquirer report dated 5 Oct. 1998 and a Manila Times report dated 23 Dec. 1998 are cited.

[121] *Id.*

Needless to state, rising incidents of retrenchment stirred unrest among workers, though it has been reported that workers were generally restive in the first quarter of 1999, as the number of actual strikes plunged to 11 as compared to 31 actual strikes in 1998. But the disparity between strike notices filed in 1998 and 1999 is not as significant. In the first quarter of 1998 there were 235 notices of strike filed, compared to 194 in the first quarter of 1999.[122] President Joseph E. Estrada has appealed to workers to refrain from mounting strikes, saying such an action will only disrupt economic growth. He has received severe criticism for his support of a bill in Congress that will enforce a strike moratorium, and for his Department of Labor's handling of the Philippine Airlines labor dispute. The PAL dispute was resolved through an 10-year "CBA-free" accord between labor and management.[123]

Based on 1998 figures, Manila-based minimum wage earners who work five days a week fulfill only 32 percent of food and non-food requirements in one week. The P198 minimum wage in Metro Manila[124] has a real value of P140.58, using 1994 as a base year. On the other hand, minimum wages outside Metro Manila have real values ranging from P93.01 to P133.48.[125] The inflation rate was recorded at 10.1 percent, or 2.2 percentage points greater than the 1998 figure of 7.9 percent.[126]

Concerns have also been raised about labor flexibilization, which has resulted in non-traditional forms of employment, such as casual or temporary employment and those arising out of subcontracting arrangements, which severely undermine the workers' security of tenure. Even child labor is on the rise. The Department of Labor has defended non-regular employment schemes because it helps establishments adapt in their efforts to cope with the increasing competition and uncertainties in the market for their products.[127]

[122] DEPT. OF LABOR 1ST QUARTER STATISTICS, *supra* note 116, at 72.

[123] Christine A. Gaylican, *Labor loses leverage as Asian flu worsens*, PHIL. DAILY INQUIRER, Oct. 5, 1998, at B9.

[124] This was the prevailing rate prior to the recent round of Metro Manila increases as of January 2000. As per Wage Order No. NCR-07, the Metro Manila minimum wage is now pegged at P223.50.

[125] URBAN MISSIONARIES, *supra* note 118, at 11-12.

[126] DEPT. OF LABOR 1ST QUARTER STATISTICS, *supra* note 116, at iii.

[127] Gaylican, *supra* note 123, at B9.

VII. ADJUSTMENTS AND POSSIBILITIES

A. Coverage

1. INFORMAL SECTOR

A labor force survey conducted by the National Statistics Office in 1995 estimated that, combining own account and unpaid family workers, the informal sector numbered around 12,912,000 individuals, accounting for 54 percent of the entire Philippine workforce. By January 1999, the same survey reports that 14.4 million belong to the informal sector, representing roughly 51 percent of the total workforce. As of December 1999, the number of self-employed members of the SSS totaled 2,826,745. Percentages are not in favor of SSS coverage for the informal sector.

The informal sector has been a haven for disguised unemployment. An official of the National Economic Development Authority (NEDA) observed, in a study commissioned by the United Nations Economic and Social Commission for Asia and the Pacific, that unregulated transport operations, hawking, peddling and other home-based activities formed to generate subsistence for the unemployed workers comprise the informal sector.[128] The ILO country director added that while the informal sector is absorbing the jobless and easing unemployment, those who rely upon it are exposed to abuses and exploitation and lacked access to social security.[129]

In 1997, a study by the Institute on Labor Studies of the Department of Labor and Employment assessed the need for the informal sector to have their own social security. The study concluded that there should be an in-depth review of the feasibility of providing direct assistance and possible mechanisms for provision of social security to the informal sector.[130]

No less than International Social Security Association (ISSA) Vice-President Viviane Zunon Kipré expressed the hope that in the face of a lack of social protection to the informal sector, the ILO and the ISSA will make it possible to come up with social security provisions of an appropriate nature that would ensure the coverage of this vulnerable sector.[131]

[128] Christine A. Gaylican, *Employment Prospects to Remain Bleak*, PHIL. DAILY INQUIRER, Oct. 6, 1998, at B1.

[129] *Id.*

[130] Esther C. Tanquintic, *Informal Sector Needs Own Social Security – DOLE agency's study*, BUSINESS WORLD, April 16, 1997, at 9.

[131] Regional Office for Asia and the Pacific of the International Social Security Association *Vice-President Zunon Kupré highlights ILO's resolve to strengthen ties with ISSA*, ISSA ASIA & PACIFIC LINK , June 1999, at 1-2.

A problem, however, may lie in the fact that the benefit schemes for the informal sector may not be as attractive.

> The low-income, self-employed groups, considering their minimal, piecemeal and irregular income, might as well use the amount needed for SSS premiums to suffice the amount needed for their more basic day-to-day consumption needs – food, water, power, transit fares, soap, house rental, clothing, etc. This is understandable as the most natural thing to do for a typical income earner is to spend for the day-to-day basic necessities before setting aside for near or distant future contingencies; and simply rely on kinship, community, or religion-based social security arrangements and practices when actual contingencies set in.[132]

There is a need to entice the informal sector to seek SSS coverage. If the SSS cannot convince the increasing number of self-employed workers, it will compound the problem of high percentage non-contributory members against the low percentage of contributory members.[133]

In December 1998, the informal meeting of ASEAN ministers on rural development and poverty eradication approved an ASEAN Action Plan on Safety Nets. The then newly-organized ASEAN Task Force on Social Safety Nets was tasked to consider developing projects to share experience and best practice on the design and implementation of social security systems for persons working in the informal sector.

2. NON-WORKING SPOUSES

Among the amendments introduced by Republic Act No. 8282 (though originally mandated by the Women in Development and Nation-building Act) was the voluntary coverage of spouses who devote themselves full time to managing the household and family affairs. Since the law's enactment in 1995, however only a total of 2,043 non-working spouses nationwide have availed of the program The increase in membership has been measly. Between 1997 and 1998, membership increased by only 1.3 percent, although it is assuring to discover that positive membership increase was posted only in this category.[134] The low turnout, opined the Coverage and Collection Division, can be attributed to the voluntary nature of the coverage.[135]

---

132 Amante, Serrano and Ortiz, *supra* note 6, at 34.

133 *Id.*

134 Jennifer Y. Caspe, *SSS for Housewives*, GOOD HOUSEKEEPING, Jan.-Feb. 2000, at 64.

135 FACTS AND FIGURES 1998, *supra* note 57.

There apparently is a need for the SSS to assure voluntary members that, given the same income bracket and income-based allocable amounts for social insurance premiums, the institution can competitively offer what private insurance or other informal sector arrangements can offer.[136]

3. OTHER VULNERABLE SECTORS

It has been suggested that provisions for clear sources of funding and sharing, as well as the benefit system, should include the following sectors:

- household helpers who earn below P1,000;
- small rural workers in the lowland and upland areas whose meager cash income discourage them from voluntary participation in SSS insurance schemes; and
- undeclared industrial home workers and daily-hired subcontractor workers, especially those in the underground economy, whose continuity of income can hardly be ascertained and is insufficient to cover their most basic needs.[137]

B. Benefits/Loans

1. UNEMPLOYMENT

Unemployment benefits can play a significant role in preventing and mitigating the negative social consequences of the crisis. An ILO study reveals that unemployment insurance schemes should be in place in order to cope with some of the negative social consequences of the next crisis.[138] But the study was quick to add that such schemes are generally inapplicable to low-income countries, where many workers are underemployed and where a large majority of the labor force works in the informal sector. Employment and training policies and programs are needed to help these workers in crisis situations.[139]

This view may have been affirmed by the labor representative in the Social Security Commission, but the concept of unemployment assistance is still welcome. Nonetheless, the viability of the System must be a major consideration.[140]

---

136 Amante, Serrano and Ortiz, *supra* note 6, at 34.

137 *Id.* at 33.

138 ILO GB.276/ESP/4/1, 276th Session (Nov. 1999).

139 *Id.*

140 Interview with Atty. Cecilio T. Seno (Jan. 18, 2000).

Indeed, the 1957 amendments to the original Social Security Law which removed unemployment insurance made provision for its eventual inclusion in the program. The law provided that after the first two years of operation of the program, an actuarial and financial valuation of the funds and operations of the System shall be undertaken.

Sometime in 1960, the Department of Labor and the Social Security System set up a joint committee to study the feasibility of unemployment insurance benefits in the Philippines. Foreign experts were invited to render technical assistance. The Committee came up with positive recommendations and a draft bill.[141]

The features of the 1960 proposal are as follows:

- unemployment insurance shall be based on the same concept of social insurance which underlies existing programs;
- the program shall be characterized by cautious gradualism – initial limitations either in scope or coverage;
- benefits will be payable for an actuarially determined period and not throughout the unemployment period of a qualified beneficiary;
- the program shall be financed by increased contributions, which may be imposed upon both employers and employees; and
- local and efficiently functioning public employment offices will be established.

The 1960 proposal was adopted by the System in 1968, but nothing came out of it. In 1980, the National Tripartite Conference on Wages, Employment and Industrial Relations endorsed a consideration and study on the establishment of unemployment insurance. But nothing came out of it.

In 1998, Rep. Ernesto F. Herrera of Bohol filed House Bill No. 618, which seeks to provide unemployment assistance to private and public sector employees who are separated from employment or service through no fault of their own. The bill provides that unemployment assistance shall be paid to qualified employees and workers in the amount of P1,000 per month for a period of up to 4 months. Entitlement to payment shall cease upon gainful employment.

The first installment of the assistance benefit shall be released by the System only after 30 days from the date of separation from employment, and the succeeding installments every first week of the succeeding months. Fifty percent of the total amount availed of shall be repaid with five percent interest per annum by the concerned employee, within two years after gainful reemployment through compulsory salary deduction under such terms and conditions as the System may prescribe.

141 GUTIERREZ, *supra* note 1, at 234.

The bill also establishes an unemployment assistance fund to be administered by the SSS for the private sector and GSIS for the public sector, with a proposed initial funding of P500M each from the SSS and the GSIS. All funds of the Unemployment Assistance Program that are not needed to meet the current administrative and operational expenses may be invested by the System to earn an average annual income of least twelve percent.

The International Confederation of Free Trade Unions-Asian and Pacific Regional Organization (ICFTU-APRO) strongly recommended social safety nets in the area of unemployment benefits, as a result of a Regional Workshop on Social Safety Nets in Manila from 28 July 1998 to 1 August 1998. In particular, the perceived ideal unemployment scheme should have the following characteristics:

- It should be provided by government.
- Government unemployment benefit schemes should be managed on a tripartite basis, while private unemployment benefit schemes should be managed on a bipartite basis.
- The amount of monthly unemployment benefits should be at least 60% of a person's last drawn monthly wage.
- Unemployment benefits should be paid on a periodic basis for a minimum period of six months, unless the continuous period of unemployment is less than six months.[142]

As matters stand, there is no final word on an unemployment benefit policy within the System. The debate rages on.

The minimum retrenchment or closure benefit of ½ month separation pay per year of service is the source of meager comfort for the displaced worker.[143]

2. EMERGENCY LOANS

To alleviate the condition of workers in the private sector who were separated from employment as a result of the currency crisis, the Employees' Compensation Commission enacted Board Resolution No. 98-01-0046 on 30 January 1998. This effectively granted an emergency loan to separated workers, equivalent to twice the monthly salary credit but not to exceed P12,500.00.

There has been the suggestion to expand windows for member loans, perhaps in the form of livelihood development in order to assist the unemployed. There also needs to be a refinement of the provision of the law on crediting of contributions paid on behalf of a separated worker, which requires members to

142 ICFTU-APRO, SOCIAL SAFETY NETS IN ASIA AND THE PACIFIC FOR A BETTER TOMORROW: STATEMENTS AND RECOMMENDATIONS 14-5 (1998).

143 Labor Code, art. 283.

have at least 36 monthly contributions and 24 months of regular remitted contributions before a salary loan could be approved.[144]

C. Investments

Criticism has been hurled against the present System leadership for aggressive investments in the Philippine stock market. But this has been ably defended by a reported forty-five percent increase in its first half 1999 earnings to P11.5B, largely due to huge returns from its stock market investments which offset declining yields on fixed income securities. An SSS official has asserted the dynamism and the need for the SSS to sell stocks when there is an opportunity to do so.[145]

In addition, Chairman Arellano also underscored the numerous legal parameters surrounding the Commission's investments capabilities, citing the thirty percent cap set by the law, and the guidelines on maximum investments on a per-company basis. Investments are also decided upon on the basis of fundamental investment decisions, and not on relationship-based decisions. A long, in-depth analysis and study are conducted on all companies, after which recommendations go to an investment committee.[146] Also, a Loans and Investments Office was created to handle new lending programs and equities investments. Highly qualified fund managers form part of this team.[147]

A government review of the SSS's stock investment policies cleared the System insofar as its stock market activities are concerned.[148] But Chairman Arellano is not out of the woods yet. Congress is slated to commence its probe on the private placements of both the SSS and the GSIS anytime soon.[149] Rep. Danilo E. Suarez of Quezon filed proposed House Resolution No. 888, which seeks to direct the Committee on Ways and Means to conduct an inquiry, in aid of legislation, into the alleged grants of loans to and/or investments in private companies/entities with impaired capitalization and questionable profitability by the SSS and the GSIS.

144 Amante, Serrano and Ortiz, *supra* note 6, at 33-4, in reference to R.A. 8282 § 22 (b).

145 Gil C. Cabacungan, Jr., *SSS Defends Aggressive Investment Scheme*, PHIL. DAILY INQUIRER, July 6, 1999, at B3.

146 Daxim L. Lucas, *On 'Favored Deals,Brokers & Other 'Relationships'*, BUSINESS WORLD, Aug. 17, 1999, at 13.

147 Arellano, *supra* note 2.

148 Des Ferriols, *SSS Can Go on Playing the Stock Market – Pardo*, PHIL. STAR, July 30, 1999, at 21.

149 Gil C. Cabacungan, Jr., *Probe of SSS, GSIS to be scheduled*, PHIL. DAILY INQUIRER, Oct. 11, 1999, at B1.

Also, the Estrada administration has directed the SSS and the GSIS to study the possibility of establishing a brokerage house that will handle all transactions in the stock market. At present, about 10 brokerage firms handle all the daily transactions of the System. The brokerage house should remove apprehensions surrounding the government financial institutions' movements in the market and at the same time make it easier to be transparent, as all the trades will be handled by only one firm.[150]

Some have also noted the risky nature of equities investments, but Chairman Arellano stated: "It is not risky if you know what to do. It is risky if you don't know enough about the stock market."[151]

One can only share the hope that in expanding the financial base through high-yield investment activities, the System should never lose sight of the fact that financial growth is only secondary to social responsiveness.

> The very concept of social responsiveness is best measured in periods of serious business market reversals when both formal and informal sector employment are unstable and living conditions of workers are vulnerable and these affected members can rely on the system to ease-up their conditions. In such periods, investment strategy of social security institutions should be without prejudice to its formal sector and self-employed/voluntary members who are but small-scale loan borrowers that could obviously guarantee minimal yield for the institution.[152]

D. The Chilean Model

An ILO-UNDP study recommended the development of a long-term strategy and social protection framework within which corrective, development, and new reform measures can be seen to represent progress towards clear national objectives.[153]

Without being too immersed with discussions on benefits, contributions, coverage, and investments, an over all assessment of the concept of social protection in this country is indeed worthwhile. The primary national objective should be to make available adequate, equitable, and affordable social protection for people in the Philippines.

150 Des Ferriols, *Admin Orders SSS, GSIS to Set Up One Brokerage House*, PHIL. STAR, Aug. 3, 1999, at 17.

151 Donnabelle L. Gatdula, *How SSS is Treating Public Money*, PHIL. STAR, Aug. 16, 1999, at 44.

152 Amante, Serrano and Ortiz, *supra* note 6, at 35.

153 UNDP-ILO, *supra* note 19, at 58.

With World Bank prodding, the proposal to establish a mandatory, privately managed, regulated, and tax-exempt national pension fund system has been introduced. Based on the Chilean Social Security System model, the advantages of a privatized pension fund system are greater leverage in the maximization of investment income which proceeds from a big funding base, greater efficiency through reduced administrative costs, and increased transparency.[154]

Chilean pension privatization reforms have been touted as a success because from 1981 to 1985, accounts yielded an average annual rate of return of 12.9 percent. But recent returns have been a problem. Private fund managers have invested only a small percentage of the funds in stocks. Thus, high returns were essentially due to high interest rates in government bonds and bank paper.[155]

Based on ILO-UNDP findings, the existing social protection system has:

- a first tier provided by government and financed from taxes – aimed at providing subsistence services and health care to the very poor; and
- a social insurance tier largely covering formal sector workers, financed by insured persons and their employees, providing earnings-related cash benefits in respect of a range of contingencies and assistance towards the cost of medical care.[156]

Upon this analysis, the ILO-UNDP recommended the following:

> (A) strategy related to the restructuring of social protection in the Philippines should include the following three components:
>
> - the Government should accept responsibility for providing the first tier of social protection in the form of services and cash benefits, universal or means tested if necessary and targeted towards the poor and the most vulnerable. This level of protection should be financed on the basis of national solidarity through tax revenues and should be managed by a public institution. It is recommended that the existing first tier arrangements should be reviewed to ensure that the social assistance benefits and welfare provisions continue to be in line with current poverty alleviation policies, and are adequate and accessible;
> - a second tier of protection which should be financed by workers and employers on the basis of group solidarity. This should be mandatory and be based on the existing social insurance schemes. The workers, the retirees and the employers should be fully represented in the tripartite designa nd autonomous management of the programmes. The benefits could either be earnings related as now, or ... could consist of two parts - i.e., a basic but adequate element for all those who can pay a defined minimum contribution for a minimum qualifying period, and, an earnings related element for those who earn more than the minimum; in either case a ceiling should be set on the level of earnings on which contributions are paid;
> - a third tier of protection representing a more specific response to individual needs and circumstances, to be designed and financed accordingly. This would essentially provide for the higher paid (and perhaps their employers) to contribute towards supplementary pensions and other benefits at levels more appropriate to their earnings than the benefits available through the second tier alone. Membership could initially be voluntary, perhaps semi-mandatory for those working for employers with occupational pension schemes, but consideration could also be given in the future to the introduction of mandatory third tier participation ...[157]

In sum, the three-tiered approach recommended by ILO-UNDP consists of:[158]

[154] *Id.* at 18. In 1981, Chile abandoned a theoretically fully-funded plan that had been wiped out by runaway inflation and adopted mandatory individual employee retirement accounts. Workers have contributed twenty percent of earnings to the system – ten percent for investment purposes, three percent for administrative charges and disability insurance, and seven percent for health care. There is no employer contribution. Investment accounts were managed by a handful of government-regulated private companies (Administradoras de Fondos de Pensiónes, or AFPs). Additional backup pensions are funded from general revenue. Active workers who switched to the new system were awarded service credits for past contributions. To ease the transition, Chileans also received an across-the-board eighteen percent wage increase. Richard C. Leone, *Stick with Public Pensions*, FOREIGN AFFAIRS 39, 45-6 (July-Aug. 1997).

[155] Leone, *supra* note 154, at 46.

[156] UNDP-ILO, *supra* note 19, at 59.

[157] *Id.* at 60-1.

[158] Table appears in REGINALD M. INDON, SOCIAL SECURITY IN THE INFORMAL SECTOR, TWO CASE STUDIES (1999).

	AIMED AT	FINANCED BY
FIRST TIER	poverty alleviation programs, social welfare, assistance for the disabled, preventive and primary health care	Financed by taxes and provided directly by government, eg., DSWD, DOH
SECOND TIER	retirement/invalidity/ survivors benefits, life insurance, cash benefits/ medical care relating to employment injury, health care	Financed by social insurance contributions by employers and workers. Provided by public institutions: SSS, GSIS, ECC, PHIC
THIRD TIER	savings and housing loans, occupational pension schemes, commercial insurance	Financed by contributions from employers and workers (eg. HDMF) or by workers or individuals (private/ commercial insurance)

Given the existence of the first and second tiers in the present social security framework, the third tier remains a task to be undertaken. It is interesting to note that a Social Security System study views the World Bank proposal of privatization as a fourth tier.[159]

The idea of a compromise between the second and fourth tiers may have been the motivating factor for the proposed legislation pertaining to the creation of a Mandatory National Provident Fund System. Under the existing law, establishment of a provident fund is purely on a voluntary basis.

House Bill No. 2 was filed by Rep. Erico B. Aumentado in order to establish a Mandatory Provident Fund System. Salient features of the proposed amendatory legislation are:[160]

- mandatory coverage for all private sector workers covered by the SSS;
- all provident fund assets, collections, receivables and increments shall be tax-exempt;
- the fund shall of a defined contribution type, i.e., the periodic contribution is prescribed and the benefit depends on the contribution plus the investment return;
- benefits shall be paid in the form of a monthly pension by the System;
- the fund shall be managed by the System;

[159] SOCIAL SECURITY SYSTEM, ESTABLISHMENT OF NATIONAL PROVIDENT FUND SYSTEM: A PROPOSAL 4 (Sept. 1998).

[160] *Id* at 5.

- existing pension plans may operate, provided they have features superior to fund impositions;
- a sunset review three years after effectivity.

Oppositors of the bill include the National Economic Development Authority (NEDA),[161] and the Employers Confederation of the Philippines (ECOP).[162] Supporters include the System, the labor representative to the Commission,[163] and the Department of Labor and Employment.[164]

A Senate version has been filed by Senator Marcelo B. Fernan.[165]

Chairman Arellano has rallied members of the ASEAN Social Security Association (ASSA) to be united in raising the various contentious issues that go with the World Bank and IMF proposal to allow private fund managers to handle public funds. He has gone as far as to point out that pension funds in the Chilean model have collapsed.[166] Indeed, since 1995, the Chilean system has been experiencing negative real rates of return, the latest being -0.8 percent in the 12-month period to May 1998, further reducing the 12.7 percent average real return over the period to 1995 to 11.5 percent.[167]

It has been opined that regardless of the voluntary or mandatory nature of participation in the fund, the questions of member capacity to contribute and the viability of another layer of pension scheme must be answered. At present the System still encounters difficulty in collecting due remittances under its mandatory, publicly-managed system.[168]

[161] Letter from Hon. Felipe M. Medalla, Secretary of Socio-Economic Planning, to Rep. Aumentado (26 Feb. 1999).

[162] Letter from Miguel B. Varela, President of the ECOP, to Ms. Cora R. Barja-Rigor, Committee Secretary of the House Committee on Government Representatives (Dec. 18, 1998).

[163] Interview with Atty. Seno, *supra* note 140.

[164] DEPT. OF LABOR AND EMPLOYMENT, COMMENTS ON HOUSE BILL NO. 2 (1998).

[165] S.B. 739 (1998).

[166] Press Release, *Asian Nations Must Solidify Their Position on Pension Reforms*, <http:/ www.sss.gov>.

[167] Editorial, *From Reality to Myth?*, ISSA ASIA & PACIFIC LINK (Regional Office for Asia and the Pacific of the International Social Security Association), Mar. 1999, at 1.

[168] Amante, Serrano and Ortiz, *supra* note 6, at 36.

E. Employer Violations

In a study conducted under the Democracy Development Project of the Trade Union Congress of the Philippines (TUCP), the Asian-American Free Labor Institute (AAFLI), and the United States Agency for International Development (USAID), problems arising out of complaints pertaining to remittances of employers' contributions were enumerated as follows:

- lack of information and education on the Social Security System, which left many members with inadequate knowledge of their rights as SSS members;
- procedural delays in remittances, by virtue of branches with ill-equipped or non up-to-date records;
- improved access but limited and slow service, as there are no immediate answers or decisions to queries at branch offices;
- weak monitoring, as not all companies have computerized their SSS reports/data;
- tedious litigation processes, considering workers find it very difficult to pursue their respective complaints at the appropriate courts; and
- workers' lack of financial resources.

VIII. OUTLOOK

As can be perceived from the discussion above, the central issue should delve into an appreciation of the IMF/WB and UNDP/ILO proposals on the nature of the System's pension fund operations and management. At the moment, the tussle is between these two schools of thought.

Issues of coverage, benefit enhancement, income redistribution schemes, and investments priorities are just as important. The labor sector should be prepared for any discussion on the finer points of these matters.

At the end of the day, however, a holistic approach in addressing the problems of the workforce cannot be avoided. At the protest-marred WTO Ministerial Conference in Seattle, ILO Secretary-General Juan Somavia outlined four strategic ILO objectives, namely: the campaign for observance of fundamental principles and rights at work; the promotion of employment; grant of social protection; and the promotion of social dialogue between the three social partners.[169]

[169] Press release, *ILO calls for new multilateral initiative to address social implications of globalization*,ILO 99/42 (visited Dec. 1999) <http:/www.ilo.org>.

PROVISIONAL REMEDIES IN THE WORLD COURT: THE ICJ IN THE 21ST CENTURY*

JOSÉ VICTOR V. CHAN-GONZAGA*

INTRODUCTION

> The Judges of the International Court of Justice sit in the favoured city of The Hague as members of the world's most senior international court, the principal judicial organ of the United Nations, **the Court with the richest history, the broadest material jurisdiction, the most refined jurisdictional jurisprudence**; they sit in a World Court which since 1922 has issued **scores of judgments that have successfully settled international disputes and contributed to the shaping and reshaping of international law**.
>
> - Judge Stephen M Schwebel
> President
> International Court of Justice

The grave responsibility of 'shaping and reshaping international law' is never as vital and vibrant than when the Court is presented with a request to indicate provisional measures. Such request can be made at varying levels of urgency, demonstrated by no less than *Interhandel*[1] and *The Legality of the Use of Force in Yugoslavia*,[2] two cases that stand at opposite extremes of a jurisprudential time-line.

There was *Interhandel*, in 1957, where the Court ruled there was no "urgency" to the request of Switzerland for interim protection, as the United States had assured the Court that it was "not taking action to fix a time schedule for the sale" of the shares in controversy.[3] And then came the case involving the

* *Cite as* 45 ATENEO L.J. 129 (2001).

* A.B. '93, *Juris Doctor* 1997, Ateneo de Manila School of Law. Prof. Chan-Gonzaga teaches the Law on Succession, Legal Profession, and Legal Writing. He is also an officer in the Philippine Foreign Service, although his views are not necessarily the official positions of the Philippine Government. This is the required output for the Professorial Chair granted under the Dr. Manuel Lim Endowment Fund, for school year 1999-2000.

[1] Interhandel (U.S. v. Switz.), 1958 I.C.J. 105 (Order of Oct.24, 1957), *reprinted in* 52 AM. J. INTL. L. 325 (1958).

[2] Legality of the Use of Force (Yugo. v. Belg.), 1999 I.C.J. (Order of June 2).

[3] *Interhandel*, 1958 I.C.J. 105 (Order of Oct.24, 1957).