

Title: Colmenares, et al. v. Duterte, et al.: The Constitutionality of the Chico River Pump and Kaliwa Dam Loan Agreements

Facts:

Petitioners, including legislators and various leaders of civil society organizations, questioned the constitutionality of two loan agreements entered into by the Government of the Republic of the Philippines (GRP), represented by the Department of Finance (DOF), and the Chinese government-owned Export-Import Bank of China (EXIM Bank) concerning the Chico River Pump Irrigation Project (CRPIP) and the New Centennial Water Source-Kaliwa Dam Project (NCWS).

On October 20, 2016, the GRP-DOF and the EXIM Bank signed a Memorandum of Understanding on Financing Cooperation, setting the stage for binding loan agreements in relation to identified infrastructure projects. Subsequent communications between the GRP and the EXIM Bank, including multiple Note Verbales and a mutually agreed upon Clarificatory Procedures document, established the protocols and criteria for the loan negotiations, as well as the procurement processes related to the projects.

Following these foundational agreements, the National Irrigation Administration and the Metropolitan Waterworks and Sewerage System, as implementing agencies, followed a Limited Competitive Bidding process among Chinese contractors as stipulated by these collaborative documents. The Monetary Board of Bangko Sentral ng Pilipinas provided an Approval-in-Principle and later Final Approval for the loans configurations. The Loan Agreements themselves were finalized with provisions including the conditions, disbursement, repayment, governing law, and arbitration.

Petitioners filed petitions for prohibition with applications for injunctive relief, asserting constitutional violations stemming from the agreements such as a deficiency in prior concurrence from the Monetary Board, circumvention of procurement laws, stipulations undermining Filipino preference, and clauses encroaching upon the pursuit of an independent foreign policy.

Issues:

1. Procedural considerations including the presuppositions of judicial review, observance of the doctrine of hierarchy of courts, and the availability of the remedy of prohibition.
2. The obligation of respondents to release documents sought by petitioners.
3. The constitutionality of the Loan Agreements with particular focus on:

- a. The requisite prior concurrence from the Monetary Board.
- b. The conditions precedent usurping the constitutional preference for qualified Filipinos.
- c. The perceived partiality of arbitration clauses vis-à-vis the pursuit of an independent foreign policy.
- d. The alleged waiver of sovereign immunity.

Court's Decision:

The Philippine Supreme Court dismissed the consolidated petitions, upholding the validity of the Loan Agreements. It ruled that the Loan Agreements and their stipulations did not violate the Constitution, procurement laws, or the policy preferences stated within.

According to the Court, the GRP did secure the prior concurrence of the Monetary Board through a structured process, comprising an initial "Approval-in-Principle" followed by "Final Approval" after the terms of the loans were agreed on. Furthermore, the stipulated procurement process, while distinct from domestic laws due to its international nature and the integration of certain GPRA provisions, was not in contravention of established legal requirements.

The arbitration clauses were acknowledged as a valid expression of party autonomy in contracts, and the Court did not find the identified clauses to be detrimental or inequitable to the GRP. Critically, the majority opinion did not completely foreclose the possibility that qualified Filipinos should be favored in future transactions. It also underpinned that the Confidentiality Clauses of the Loan Agreements, whilst deficient, could not conceal information on foreign loans from public view.

Doctrine:

The Court reiterated the principle of *pacta sunt servanda*, which obligates parties to abide by agreements entered into freely. Furthermore, principles of party autonomy in contracts, including the stipulation of governing law and arbitration frameworks, were upheld unless shown to be contrary to law, morals, or public policy.

Class Notes:

1. Judicial Review: Courts must have an actual controversy and parties with standing; the constitutionality issue must be the *lis mota* of the case.
2. Party Autonomy: Parties may establish terms and conditions in contracts, including choice of law, subject to the confines of law, morals, public policy, or public order.
3. Right to Information: Citizens have the right to access information on matters of public

concern, which includes foreign loans incurred by the government subject to certain limitations.

4. Prior Concurrence: The President, with prior concurrence from the Monetary Board and subject to limitations by law, may contract or guarantee foreign loans.

5. Filipino First Policy: Preference to qualified Filipinos in matters concerning the national economy and patrimony, unless specific arrangements are in place due to international agreements.

6. Arbitration: An arbitration agreement within a contract is enforceable, including setting the venue for arbitration and choice of applicable law unless in violation of the Constitution, morals, or public policy.

Historical Background:

The contested Loan Agreements between the GRP and EXIM Bank of China represent a modern sampling of the Philippines' engagement with foreign entities in large-scale infrastructure projects. This case echoes historical tensions between ensuring transparency, honoring international agreements, and upholding nationalistic policies embedded in the 1987 Philippine Constitution. The Court's resolution serves as a continued delineation of the executive's powers in foreign relations against constitutional safeguards, amidst contemporary geopolitical dynamics and fiscal policies.