

THEMATIC PAPER 1

**DEFINING AN ALTERNATIVE DEVELOPMENT PARADIGM:
REDUCING POVERTY AND ENSURING ACCESS TO JUSTICE
THROUGH LEGAL EMPOWERMENT OF THE POOR**

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I. ANALYTICAL FRAMEWORK

This paper assumes that legal exclusion contributes to poverty. Where the rights, context and needs of the poor have been continuously overlooked or ignored in the formulation of laws, programs and policies, the poor becomes poorer. Legal exclusion results in legal disempowerment where the poor is rendered powerless to control his/her life since the system within which he/she acts does not take into account his/her context, condition or status. Legal disempowerment is the product of political disempowerment wherein the poor has no access to the means and mechanisms by which he/she can operationalize his/her rights and needs, not being part of the traditional centers of power.

This paper attempts to offer the alternative of legal empowerment as a goal, strategy and process to address the issue of legal exclusion as contributor to poverty and marginalization. Legal empowerment should be seen as a different paradigm of development from the typical and mainstream model of rule of law development interventions or the rule of law orthodoxy.¹ It is also a paradigm shift from the economic development approaches that have been historically adopted based on perceived needs of the people. Measuring the achievement of this alternative approach to development would entail looking into the impact of said interventions on the poor, i.e., if legal empowerment does reduce poverty. While it is not the only option, solution or alternative, this paper posits the query: without legal empowerment, will the poor ever get out of poverty?

Republic Act No. 8425 (Social Reform and Poverty Alleviation Act) defines the poor as individuals and families whose income falls below the poverty threshold as defined by the government and/or those who cannot afford in a sustained manner to provide their basic food and non-food needs. In 2003, there were about four million families in the Philippines who are poor and where the daily per capita income is only 53 pesos.² In 2007, a family of five should earn a combined earning of PhP6,195.00 in order to meet their basic food and non-food needs for the year.³ The manner by which the poverty threshold is derived has been contested as unreal. The official estimates have been critiqued as an inaccurate guide to ascertaining changes in absolute poverty over time or across regions— or provinces, or between rural and urban areas—of the country.⁴

On the other hand, poverty has been partly viewed as “a deprivation of essential assets and opportunities to which every human is entitled;” and its [reduction] in terms of people being “empowered to participate in making the decisions that shape their lives.”⁵ Poverty, as a function of legal exclusion, results in the deprivation of rights, in vulnerability and marginalization, where the poor is unable to claim and assert what should be due him or her. It is thus safe to refer to the poor

¹ Golub, Beyond Rule of Law Orthodoxy - The Legal Empowerment Alternative, Working Papers, Rule of Law Series, Democracy and Rule of Project, Carnegie Endowment for International Peace, Number 41, October 2003.

² Philippine Inquirer, July 2006, citing the NCSB 2003 FIES survey where the annual per capita poverty threshold in 2003 is Php 12,309.

³ NSCB, FAQs on Poverty Statistics, <http://www.nscb.gov.ph/poverty/FAQs/default.asp>.

⁴ Arsenio M. Balisacan, Why Does Poverty Persist in the Philippines?: Facts, Fancies, and Policies, prepared for presentation at the Whither the Philippines in the 21st Century? Conference on the Philippines, Institute of Southeast Asian Studies, Singapore, 13-14 July 2006.

⁵ ADB, Law and Policy Reform at the Asian Development Bank, p. 38. (cite internet source)

as those who do not have or are deprived of means by which they can secure livelihood to meet their daily basic needs and realize their basic human rights.

This paper will look into the context, rights and needs of the poor who fall within the informal sector. In 2003, it is estimated that there was about 20.9 million members of the informal sector or about 68 percent of the total work force,⁶ and the number is growing to the present day.

1. Functional Definitions

When discussing the three critical concepts in this paper - legal empowerment, access to justice and rule of law (including rule of law orthodoxy), this paper shall be guided by the succeeding definitions.

a. Empowerment

There is no single, widely accepted definition of empowerment. Empowerment has been defined differently by development agencies depending on the tracks, directions and mandates of said institutions. It has been defined in relation to the transfer or redistribution of power centers as well as the recognition of capacities of groups to better control their lives.

This paper shall consider Oakley's identification of the five key uses of the term empowerment in development studies. These are: empowerment as participation, empowerment as democratization, empowerment as capacity building, empowerment through economic improvement and empowerment and the individual.⁷

Empowerment as participation⁸ is the strongest in advocacy and practice. Oakley however refutes the concept of empowerment achieved by mere participation, which is depoliticized and is not concerned with analyzing and addressing the dynamics of oppression.⁹

Empowerment as democratization, which is concerned with macro-level political activity, looks into the bases on which democratic structures and practices can be built. It also looks into strategies of support for civil society and grassroots organizations, which are recognized as important actors in the democratic arena. Affirmative actions to address the special needs of marginalized and vulnerable groups must be undertaken to enable a broader spectrum of the constituency to be democratized. This necessarily includes political empowerment.

Capacity-building, in all its forms and approaches, has been traditionally and generally perceived as empowering.

⁶ ECOP Comments on Security of Tenure Bills, <http://www.ecop.org.ph/news.php?id=39>.

⁷ Oakley 2001, p. 43, cited in Mosedale, Sarah, Towards a framework for assessing empowerment, Paper prepared for the international conference, New Directions in Impact Assessment for Development: Methods and Practice, Manchester UK, 24 and 25 November 2003, <http://www.enterprise-impact.org.uk/pdf/Mosedale.pdf>

⁸ Stages of participation: information sharing, consultation, collaboration and finally, empowerment" (World Bank 1998; 19).

⁹ Supra., Mosedale (Oakley 2001; 43).

Empowerment through economic improvement specifically addresses the powerlessness of a group or sector as a function of poverty with interventions focused on providing entrepreneurial opportunities to the poor. Empowerment in this sense must, however, cover issues of access to resources and other opportunities. This approach is often used in development projects addressing women's poverty and powerlessness.

Empowerment at the individual level includes consciousness raising and the development of a critical faculty.¹⁰

Despite widespread practice, which tries to indicate empowerment, there has never been a rigorous method developed to measure and track changes in levels of empowerment.¹¹

As a process, empowerment can be defined as a dynamic process of shifting the balance of social power from one center to another and/or the creation of one social class or group of classes, which may also imply the transfer in the economic or political importance of one area or region to another, resulting in a different configuration.¹² The shift in power centers and structures presupposes control of one's life or well-being.

b. Legal Empowerment

On the other hand, legal empowerment has been defined as "the process of acquiring critical awareness about rights and the law, the ability to assert rights, and the capacity to mobilize for change." This process helps to impart "critical consciousness"—the ability of women, the poor, and other marginalized groups to understand and think critically about the inequitable power relationships affecting their lives, and to take action to challenge and transform those relationships.¹³ Responsive intervention must take off from an understanding of the legal, historical, cultural, social and political factors that have conditioned and influenced the poor's perception and interaction with the law.

This paper hopes to initiate the process of shifting the paradigms to address the legal exclusion of the poor, particularly the informal sector through legal empowerment. Basically, it will ask the question: How can law be used in order to achieve all the areas of empowerment identified above to improve the situation of the informal sector? As noted earlier, **legal empowerment can be the goal** (actual achievement of increased control of the poor over their lives), **strategy** (use of law to increase the control that disadvantaged populations exercise over their lives¹⁴) **and process** (combination of activities and interventions, not necessarily law-oriented, and involvement of broader constituency to enable the achievement of the specific goals¹⁵).

¹⁰ Freire 1974, cited in Mosedale.

¹¹ Malhotra, A. et al 2002, p. 3, cited in Golub.

¹² Luna 1998, p. 6-7, cited in Tolentino, Ma. Catalina, Sibal, Jorge and Macaranas, Bonifacio, Survey and Assessment of Laws on the Informal Sector, Philippine Journal of Development, Number 51, Volume XXVIII, No. 1, First Semester 2001, p. 109.

¹³ Schuler and Kadirgamar-Rajasingham, cited in ADB, p. 38.

¹⁴ ADB, p. 18.

¹⁵ *Ibid.*

c. Rule of law

More than rules, the law sets the standards of behaviors or conduct established by the accepted power source of the people, i.e., state authority, following a pre-defined procedure. It is not just the sum of courts, legislature, police, prosecution and other formal institutions in direct connection with the law as traditionally perceived. More importantly, it is also a normative system that resides in the minds of the citizens of a society.¹⁶ It connotes acceptance on the part of the constituency for it to form part of the law, as something that will ultimately protect life, liberty and property against undue deprivation thereof. The law sets the limits on the power of the State to act and exercise its authorities. In case of abuses on the part of the State, there must be redress.

Rule of law is a principle of liberal democratic institutions, where the concept is essentially seen as a mechanism to ensure democratic goals that uphold the rule of the people, when the latter agreed to be bound by a government or by the State.¹⁷ The concept defies definition but has been characterized in various ways: i.e., the rule of law prevails where (i) the government itself is bound by the law, (ii) every person in society is treated equally under the law, (iii) the human dignity of each individual is recognized and protected by law, and (iv) justice is accessible to all.¹⁸

Interventions focused on improving or ensuring the rule of law is entirely different from legal empowerment. These initiatives that aim to improve rule of law in a particular context has been described as the “rule of law orthodoxy”, i.e., a set of ideas, activities, and strategies geared toward bringing about the rule of law, often as a means toward ends such as economic growth, good governance, and poverty alleviation.¹⁹ The key features of rule of law orthodoxy include a focus on state institutions, particularly on judiciaries.²⁰ This institutional focus is largely determined by the legal profession, as represented by a nation’s jurists, top legal officials, and attorneys, and by foreign consultants and donor personnel. As a result, there is a tendency to define the legal system’s problems and cures narrowly, in terms of courts, prosecutors, contracts, law reform, and other institutions and processes in which lawyers play central roles. Where civil society engagement occurs, it usually is as a means toward the end of state institutional development: consulting nongovernmental organizations (NGOs) on how to reform the (narrowly defined) legal system, and funding them as vehicles for advocating reform. It also includes a reliance on foreign expertise, initiative, and models, particularly those originating in industrialized societies.

Yet, no study has offered proofs that purely rule of law directions translate into poverty reduction. A study suggests that law (both in the books and in actual practice) is more a dependent than causal variable, asserting that it is “embedded in culture” and that “to be effective, law has to be embedded in the overall economic policy framework.”²¹

¹⁶ Carothers, Thomas, Promoting the Rule of Law Abroad: The Problem of Knowledge, Rule of Law Series, Democracy and Rule of Project, Carnegie Endowment for International Peace, Number 34, January 2003, pp. ____.

¹⁷ A Democratic Audit of the Rule of Law and Access to Justice in the Philippines. Written and presented by the Institute of Human Rights at the Philippine Social Science Center and PROCESS Democratic Audit Series, September 22, 2005, (unpublished)..

¹⁸ *supra.*, Golub: 2003, p. ____.

¹⁹ *Ibid.*, p. ____.

²⁰ *Ibid.*, p. ____.

²¹ Pistor and Wellons, Asian Development Bank, cited in Golub.

More than the formal institutions above mentioned under a strict rule of law interpretation, the cultural context and the perceptions of the poor are critical inputs to the identification of the content and processes of the law itself. Further, the rule of law interventions should at least be in a position to bring about its avowed values and/or societal goals of:²²

1. Making the state abide by law
2. Ensuring equality before the law
3. Supplying law and order
4. Providing efficient and impartial justice
5. Upholding human rights

In contrast, processes and goals of legal empowerment focus directly on the circumstances and needs of the disadvantaged. Having clear rule of law implications, legal empowerment thus bridges the gap between the rule of law and socioeconomic development, integrating the rule of law to meet priorities in other development fields.²³

d. Access to justice

While rule of law may seem to guarantee that the State will work within written, delegated authorities, it does not guarantee justice. The concept of justice is one that is interpersonal, i.e., resolution of conflicts between individuals and only upon breach of a specific law, which shall undergo a procedure that ensures the rights of a person to a fair trial. Social justice is contrary to this liberal concept of rule of law as the achievement of the rights of the society and groups increase State power.²⁴ However, social justice, particularly access to justice by the poor, has been incorporated in rule of law orthodoxy, where the former has been considered as a critical component of the latter.

To guarantee access to justice for the poor, a structural approach must be adopted in looking at the legal problems and needs of the poor. The legal problems of the poor have its roots in the social, political, economic and cultural contexts wherein the poor have been historically and systematically disadvantaged by reasons of societal inequities and unjust distribution of wealth. The law, a product of those who are the traditional power holders, has been used to perpetuate systemic inequities. It contributes to the poor's further oppression and exclusion, thereby rendering them powerless, without any redress.²⁵ Ergo, before one can even have a legally demandable, enforceable or justiciable right, a specific legal basis must be established in the form of a law or policy.

Legal empowerment aims to create an environment that will enable the poor to overcome the constraints that prevent them from accessing the legal system, allow them to gain more control over their lives through laws that consider their context, ensure their rights and address their needs, and place them in a position to push for the law's enforcement. It is grounded in grassroots needs

²² Belton, Rachel Kleinfeld, Competing Definitions of The Rule of Law: Implications for Practitioners, Rule of Law Series, Democracy and Rule of Project, Carnegie Endowment for International Peace, Number 55, January 2005, pp. ____.

²³ *supra.*, ADB, p. 38.

²⁴ *supra.*, UP-IHR, p. ____.

²⁵ Alternative Law Groups, From the Grassroots: The Justice Reform Agenda of the Poor and the Marginalized, 2004, pp. ____.

and activities that can influence national laws and institutions, strengthen civil society and develop their legal capacities. Wherever possible, it should involve cooperation with government.²⁶

2. Methodology of Analysis

This is a descriptive study of the situation of the poor, particularly the informal sector, and how the legal system addresses their access to justice and the rule of law towards reflecting their interests. In understanding and assessing what constitutes legal exclusion and legal disempowerment of the poor, the paper will undertake to identify the context, particularly the unique situation of the informal sector, as well as the historical, cultural, social, legal and political factors that influence the poor’s relationship with the law. It shall also map out how the laws, institutions, and power relations impact on the poor; how these perspectives define the actions of the poor and address their context, rights and needs; and identify gaps that impede the realization of legal empowerment and the constraints that prevent them from realizing his/her rights and needs. Only then can a responsive and relevant regulatory framework for the informal sector be identified. The following figure shall graphically show this analytical method:



Figure 1

The articulated concept of legal empowerment shall define what parameters, standards or indicators would be necessary to address legal exclusion and marginalization. In providing for a road map for operationalization and realization, the issues of access to justice of the poor and the rule of law shall be seen as critical components, without subsuming or subordinating these two concepts in

²⁶ *supra.*, Golub, p. ____.

the paradigm of legal empowerment. Specifically, this paper shall look at these two concepts by addressing the question: How should access to justice and rule of law respond to the issue of legal exclusion, marginalization and vulnerabilities of the poor, towards eventual legal empowerment of the poor, as a vehicle to reduce poverty?

This paper utilizes the following methods of research:

- Review of related literature on the context of access to justice in the Philippines from both local and international sources, and work done in the country related to informal sector issues.
- Interview and collection of experiences from key people in the field of access to justice that represent constituencies and specific vulnerable groups (including women and indigenous peoples) in the informal economy.
- Comments from the panel of advisers.
- Focus groups discussions where broad participation shall be ensured.

II. DEMYSTIFYING THE LEGAL SYSTEM AND EXPOSING A LEGALLY DISEMPOWERED POOR

1. Identifying Barriers to Legal Empowerment in the Philippine Social, Cultural and Legal Milieu

The judiciary's response to the poor, particularly on access to justice, is critical in holistically addressing the issue of the informal sector. The following sections show some barriers to proper access to justice by the informal sector in the country.

a. Institutional Problems

As mentioned earlier, focus on access to justice and rule of law has always been “institutions-oriented.” State-orientation is necessary but not complete and responsive. In trying to resolve the issue of a faulty judicial system, the Supreme Court undertook a massive reform program in 2001 to address major institutional problems in the judiciary, known as the Action Plan for Judicial Reform (APJR).²⁷ The APJR is so far the only government document that squarely addresses the need for judicial reform mainly, and access to justice, incidentally. Judicial reform is viewed as a public administration matter, where the judiciary must function within the rule of law and its ultimate role is to resolve disputes and controversies.

The APJR, utilizing the “institution” approach, provides the typical menu of legal problems that beset the Philippine legal system, namely:²⁸

- Case Congestion and Delay

On the average, there are about 1,479 cases per judge; the heavy case load affects efficiency and effectiveness in administering justice. The heavy caseload is a function of the increase in population; inadequacies of judges and trial lawyers; deficient case management systems; loopholes in the law and procedural rules that invite delay and conduce the influx of cases in the court system; inefficient oversight administrative systems of national government that impinge upon judicial administrative operations; and scarcity of resources to effectively respond to the situation.

- Budget Deficiencies

The Judiciary receives only about one percent of the total national budget, which is not sufficient to address its operational needs. Judicial services as an important component of uplifting the situation of the poor and providing access to justice is not a priority of the State. This is mainly due to the latter's lack of appreciation of the concept of access to justice, rule of law and legal empowerment of the poor.

- Politicized System of Judicial Appointments

The issue of who shall occupy judicial positions is more a function of political imperatives rather than of merit. In the Philippines, the mechanism known as the Judicial and Bar

²⁷ Supreme Court, Action Plan for Judicial Reform (with Supplement), 2001.

²⁸ *Ibid.*, pp. ____.

Council (JBC), which has been institutionalized by the Constitution as a way of insulating the judiciary from political influences, has failed in its experimentation.²⁹

- Lack of Judicial Autonomy

The program views judicial autonomy in two aspects. First, judicial actions and decisions must be free of any political interference. Second, the Judiciary must be allowed self-governance or self-administration. The APJR focused more on the latter aspect, where projects are heavy on institutional support, infrastructure and increase in salaries of its judges. It believes that “the preservation of its independence as a self-governing organization is key to the independence of its judicial decision making function.”

- Need for Reengineering the Human Resources Development System to Support Continuing Capacity Improvement of Human Resources Involved in the Provision of Legal and Judicial Services

The Judiciary recognized the existing capacity of its human resource as beset with the following issues: a) Predominance of administrative and clerical positions, poor skills mix at court and oversight levels, lack of legal research capacity in the lower courts, rigid and fragmented position descriptions, and obsolete, hierarchical and inflexible staffing structure; b) Uneven levels of capacity and quality of legal education institutions; c) Uncompetitive judicial remuneration; d) Need to enhance the capacity of the Philippine Judicial Academy to provide continuing professional education to members of the Bench, court employees, aspirants to judicial positions and members and hearing officers of quasi-judicial bodies; e) Lack of an attractive and effective judicial career development program for judges and Justices; and f) Deficient career pathing and continuing training and capacity building program for non-judicial employees of the Judiciary. The program seeks to resolve these issues by addressing professionalism, proficiency, efficiency and integrity of all court personnel.

- Dysfunctional Administrative Structure and Operating Systems Accompanied by Deficient Court Technologies and Facilities

This aspect brings to the fore the issues of: a) Centralized administrative decision making; b) Inadequate administrative authority, responsibility and accountability of judges; c) Deficient operating systems and coordinative mechanism that are necessary to support administrative, financial management, planning and performance management functions; d) Inadequate court and operating technologies, such as information technology, court transcription equipment, and other hardware that support an integrated and cohesive implementation and management of operations. Improved court infrastructure, streamlined administration and support, and installation of efficient information systems will lead to a more efficient administration of justice and enable the assessment of the judiciary’s performance.

- Need to Improve Public Information and Collaboration with Civil Society

There is a need for the public to be informed of the judiciary and its processes. A system of public information, education and communication (IEC) needs to be created to facilitate

²⁹ Not an original quote. The description was lifted from an article of Joaquin Bernas in the Philippine Daily Inquirer.

people empowerment, and serve as a feedback mechanism to assist in mobilizing community support for judicial programs.

b. Hindrances to access to justice by basic sectors

The APJR, aside from providing the menu of legal problems that beset the Philippine legal system, also gives a definition of access to justice, in recognizing its relation to the poor and marginalized. It defines access as:

“Convenience (level of ease in physically reaching the starting point of the service, and level of ease and speed in receiving the necessary service), availability (presence of the service and geographical proximity and accessibility), and affordability of certain services in the justice system. Such services cover judicial services provided by the courts; alternative dispute resolution (ADR) mechanisms, such as mediation or the katarungang barangay; investigative, prosecutorial, and legal assistance services rendered by the Department of Justice and the Department of the Interior and Local Government; legal or quasi-legal services provided by other national government agencies, particularly to marginalized sectors; and other related services that improve the capacity of individuals to access the justice system, such as information and education”

On the basis of the above definition, the APJR identified the following as the major factors that hinder access to quality judicial services by the basic sectors³⁰ and which shall be addressed to improve institutional mechanisms and capacities within the Supreme Court:

- Delays in judicial proceedings

Delays are attributed to case congestion, intricate court procedures that allow extensive postponements and continuance, and insufficient capacity of the courts to manage caseloads. The latter can be further traced to factors like, severe budgetary constraints; deficient skills mix; lack of judges; geographical inaccessibility of some courts; insufficient training for judges, lawyers and court personnel; deficient case management system; and insufficient technologies and physical facilities — basic factors to support efficient court operations.

Delays also occur because the poor do not have adequate resources to hire lawyers. This condition protracts the litigation process as only a handful of government defenders can service the swelling ranks of the poor. While there are several agencies in the national government providing legal services to the poor, there is a need to consolidate or coordinate their activities to avoid duplication and maximize their benefits. It must be emphasized, however, that the costs of delay to the poor are many and profound. They translate to prolonged unemployment and income foregone due to detention, and to further erosion of the social and economic condition of the accused or aggrieved party and his family.

- Erroneous decisions rendered by lower courts

Decisions rendered by the lower courts are not always accurate, and, therefore, not always just or fair. Upon review on appeal, the Supreme Court has the opportunity to correct

³⁰ Buendia, Enhancing Access of the Basic Sectors to the Judiciary, United Nations Development Programme Report, 2000, cited in APJR.

inadequacies in lower court decisions. By this time, however, a poor party may have already suffered from the penalties imposed by the lower courts.

- Prohibitive costs of litigation³¹

The costs of litigation to the poor are many. Litigation involves the hiring of competent lawyer who must be paid for every hearing attended. The poor, on the other hand, will be deprived of income for each day of hearing, and poor persons accused of crimes lose income during their detention.

- Inadequacy or lack of information about the judicial system

The state of the basic sectors is aggravated by their ignorance of the law. This might be considered as a result of their deficient appreciation of the law, their low educational status, and the inability of the judicial system, agencies of the government and even NGOs to provide information and improve the basic sectors' levels of understanding of their rights and the intricacies of the court system.

The Philippines archipelagic terrain has access implications in relation to the formal court system especially since the legislated number of courts to serve the population has proven to be insufficient, coupled with the high vacancy rate, limited legal services available in the rural areas, and expensive litigation. The unavailability of judicial services is felt more in Mindanao and Shari'a courts.

c. Social Context Issues

The legal empowerment approach, on the other hand, looks into the societal context of the problem, particularly understanding the culture and integrating the perceptions of the poor in understanding the legal problems. The following sections show some societal issues that present problems to access to justice by the informal sector.

- Legal environment

The Philippine legal environment is historically an oligarchy. Patrimonialism and extreme personalism have consistently characterized public service, where public office has been accessed to secure personal interests and close personal relations factor in any human interaction with the government. Patronage politics is also prevalent; if this is unavailing, then bribery is an alternative. The judicial processes have been perceived to be inefficient to deliver justice, which then influence the clients to look for patrons to secure justice. These elements without a doubt engender graft and corruption, thereby undermining due process and justice particularly for the poor and marginalized.

³¹ During the implementation of the APJR, the SC issued the Revised Rule 141 which effectively increased judicial costs more than three-folds.

- Limited opportunities to ensure access to justice

Most Filipinos don't have the opportunities to ensure access to justice. It has been generally perceived that only those with sufficient resources and personal connections can protect their rights in any venue. In addition, recent events have shown that a culture of impunity has slowly crept into the legal fiber of the nation, where violations against the rights of the poor has not been duly dealt with and granted redress.

- Weak Philippine State

The Philippine State has been described as a "weak state" that "has failed to evolve the bureaucratic capacity to make good rules and enforce them uniformly and well," and in which policy formulation and implementation is captive to narrow, vested interests.³² In essence, it has lacked the political will to reform. Most of its institutions have resisted reform, particularly in the areas of realizing the rights of women. This continues to be the status quo and shall continue to be so since the policy arena remains inaccessible to the poor.

- Poverty

Poverty is essentially the absence of economic independence, where the poor are largely dependent on the decisions of those who provide for their subsistence. They are not in a position to bargain or even assert their rights. Settlement of disputes arising from relations of power imbalance will not resolve the context of the dependents without addressing the issue of this skewed relationship. Gender relations continue to place Filipino women in a position of vulnerability on top of economic dependence and poverty. It is in this context that access to justice should address issues of equity and look into the need to institutionalize affirmative actions and mechanisms to meet special needs, thereby addressing the issue of equality.

In 2004, while the Philippines ranked 77th out of 173 countries in terms of human development (translated to high life expectancy at birth, high literacy rate, and medium levels of income) and 63rd out of 146 countries in terms of Gender-Related Development, income growth lagged behind because of the country's erratic economic growth and high poverty incidence.³³ A study conducted by Balisacan in 2006³⁴ found the lack of direct response of CARP on poverty reduction, although it has a direct effect on income growth. This finding has to be seriously considered in the light of the fact that CARL has been crafted as an equity measure for the poor, thereby necessitating a revisiting, and probably reengineering, of CARL and its implementation, as a measure of poverty reduction. One interpretation of this result is that the implementation of such programs has actually been poorly targeted. There is evidence to support this proposition as regards many of the country's direct anti-

³² Ford Foundation, Many Roads to Justice: The Law Related Work of Ford Foundation Grantees Around the World, 2000, p. ____.

³³ (ADB, 2004), FAO Fact Sheet: Philippines, ____.

³⁴ In his model, these other factors affect the speed of poverty reduction *directly* by changing the distribution of a given economic pie, or *indirectly* by expanding the economic pie for each person in society (i.e., by way of economic growth). Cited in Arsenio M. Balisacan, Why Does Poverty Persist in the Philippines?: Facts, Fancies, and Policies, Prepared for presentation at the Whither the Philippines in the 21st Century? Conference on the Philippines, Institute of Southeast Asian Studies, Singapore, 13-14 July 2006.

poverty programs such as food subsidies, credit subsidies, irrigation and seed subsidies, and housing and schooling subsidies. It has been shown though that CARP is implemented more vigorously in areas with high growth potentials.³⁵

The Philippines has very low “growth elasticity”³⁶ compared to international standards, which implies two situations: the Philippines has very low income growth rate, and even the modest of income growth did not bring about reduction in poverty. :

- The poor’s perception of the legal system

Given the above context, how does the poor or the vulnerable or marginalized perceive the legal system and access to justice? They continue to perceive the law as mainly for the rich, recognizing the undemocratic reality that the law is the expression of the ideology of the dominant elite.³⁷ The poor has expressed a general distrust in the justice system.³⁸ When laws are enacted to advance the rights of the poor, enforcement becomes a problem. Even if the 1987 Constitution places a high premium on human rights, the poor still believes that there is not much stride in realizing the same.

The legal and judicial system is seen by the poor and marginalized as a justice system that is beyond reach, mainly due to the following characteristics:³⁹

- Lack of access to legal education by the poor and marginalized groups who are generally not aware of their rights and the procedure for redress for violations of rights, resulting in their disempowerment to assert the rights and actively participate in the process of prosecuting or defending their cases.
- Lack of information on the part of the judges and other administrators of the justice system about the issues concerning the poor and the marginalized groups and the special laws governing them. Laws affecting the poor and marginalized cannot be applied without understanding the social context and the problems that face them.
- Lack of adequate representation before the courts and the tribunals due to the lack of lawyers that handle their cases. The costs of litigation are also prohibitive. Even access to legal advice is unavailing especially in the rural communities since the practice of paralegalism has not been accepted as a means by which this deficiency can be addressed.
- Lack of support mechanisms for the poor and members of the marginalized groups who are involved in cases. There is absence of or insufficient mechanism existing to support the poor in vindicating or defending their rights, e.g., child protection,

³⁵ Edillon and Velarde 2004.

³⁶ The extent by which poverty responds to overall income, after taking into account the influences of other factors noted above.

³⁷ Alternative Law Groups, 1st Alternative Law Conference : Lawyering for the Public Interest, Conference Proceedings, 2000, p. ____.

³⁸ *supra.*, ALG, 2004, pp. ____.

³⁹ *Ibid.*, pp. ____.

exercise of protective custody, support for women victims/survivors, witness protection, bail assistance.

- Issuance and implementation of anti-poor policies and decisions. Most of the supposed responses to the plight of the poor are used to thwart their rights. The courts still assume cases which are not within their jurisdictions like agrarian disputes, conflicting laws relating to tenurial rights, issuance of TROs in agrarian awards and labor cases.
- General discrimination against the poor and marginalized groups within the judiciary and the justice system. The processes in the courts, investigation and corrections are not sensitive to and oftentimes discriminate against the vulnerable groups like children in conflict with law, women, indigenous peoples, informal sector and people living with HIV/AIDS.
- Structural and systemic problems within the judiciary and justice system that impedes the poor and marginalized groups' access to justice, like the hostile atmosphere in the justice agencies, absence of community participation in the appointment of judges and justices, lack of prosecutors and courts, clogged dockets, non-recognition of indigenous legal system, English as medium of communication in courts. Of particular note is the court appointment system where the voices of the poor in the selection of their judges are not taken into account.
- Gender insensitivity and bias of the courts and other government offices involved in the administration of justice. Laws are still inadequate to address the gender issues that face women and girl-children in relation to their rights to access justice.

Even if the barangay (village) justice system⁴⁰ facilitates justice at the community level, its processes and structures do not particularly make the redress mechanism accessible for women. Gender is not a consideration in the selection of the members who will comprise the panel of mediators or conciliators. The structure and processes of the system do not ensure the needed sensitivity and understanding of women's context and gender.

d. Alternative Dispute Resolution Mechanisms

The present condition of the formal justice system insofar as they address the interests of the poor and marginalized necessitated reliance on alternative dispute resolution (ADR) mechanisms. The barangay justice system is considered under this category. In one community, people view justice not only in terms of legal justice but as something that provides peace for the individual and within the family and the community.⁴¹ A study reveals that a larger percentage of purok members

⁴⁰ Conciliation or mediation is the main mode of settling a controversy, through the Lupon Tagapamayapa, composed of local leaders.

⁴¹ Women's Legal Bureau (WLB), Engendering the Barangay Justice System, 2004, p. 30.

(those who comprise the panel before which the conciliation or mediation will be conducted) view their position more as a political office rather than as a channel to help more people.⁴²

Current efforts of the judiciary focus more on court-attached mediation which is mandatory in specified cases. There is also an Arbitration Law, which defines alternative dispute resolution system as “any process or procedure used to resolve a dispute or controversy, other than by adjudication of a presiding judge of a court or an officer of a government agency, in which a neutral third party participates to assist in the resolution of issues, which includes arbitration, mediation, conciliation, early neutral evaluation, mini-trial, or any combination thereof.”⁴³

However, insofar as violations committed against the poor and marginalized are concerned, issues have been raised as to the appropriateness of applying ADR. Mediation, arbitration and conciliation are basically systems that look more into interests served by resolving the case, rather than on the rights violated. In particular, the following have been found to be the limitations of ADR:⁴⁴

- It does not set precedent, refine legal norms, or establish community or national standards, nor do they promote a consistent application of legal rules.
- It cannot correct systemic injustice, discrimination, or violations of human rights
- It does not work well in the context of extreme power imbalance between parties
- It does not have any educational, punitive or deterrent effect on the population
- It is inappropriate to use ADR to resolve multi-party cases in which some of the parties or stakeholders do not participate
- It may undermine other judicial reform efforts.

Despite the recognition of the above issues relating to access to justice, the crux of the problem really is the detachment of the law from its societal coordinates. A strictly rule of law orthodoxy intervention or needs-based response to the legal problems of the poor and marginalized would not bring about the desired equality before the law and in fact.

e. Focus on the Vulnerable Identities

- Women

Women do not enjoy substantive equality and continue to be discriminated against. The Philippine government has failed to undertake concrete actions toward defining discrimination against women, coming up with legislation that will eradicate it and creating an environment of gender equality. The multiple burdens experienced by women are based on historical disempowerment and the roles imposed by cultural stereotypes. These burdens are not taken into account in the formulation of laws or in the redress mechanisms available to them, which in turn deprives them access to justice. Poverty has forced women to take on more tasks and burdens of coping with the situations and ensuring the well-being of her family, without any thought to their own. Violence against women has also continued,

⁴² *Ibid.*

⁴³ Rep. Act No. 9285, section 3 (a).

⁴⁴ Alternative Dispute Resolution: A Practitioner’s Guide (Center for Democracy and Governance Study, 1998), cited in WLB, 2004, p. 20.

despite the existence of a law criminalizing it, and has prevented women to seek redress for fear of deeper poverty.

- **Indigenous Peoples**

Indigenous peoples (IPs) have been generally excluded from the mainstream formal justice system as manifested by how the legal system has historically viewed them. Based on current standards, jurisprudence involving and affecting IPs have reflected a policy of segregation of and discrimination against them, resulting in unequal justice, and ultimately, exclusion from the protection of the laws. Their rights cannot be secured before the courts, for which reasons, IPs tend to resist government interventions. This is so despite the recognition of their rights under the 1987 Constitution which ensures protection of their rights and equal treatment under the law, and the passage the Indigenous Peoples Rights Act (IPRA).⁴⁵

The IPRA upholds the primacy of customary laws and practices in resolving disputes between parties belonging to the same indigenous community.⁴⁶ This system of settlement presents a dilemma; it does not address disputes involving parties who are members of different indigenous communities, since the law assumes that indigenous culture is homogenous. In this case, the case has to be resolved by the NCIP, which shall have to deal with the issue of what law to apply. It may be argued that the parties or the NCIP has the option to choose the law. Justice then becomes a function of which venue can provide a more acceptable judgment. In cases where the sanction imposed by their customary law is of a criminal nature pursuant to the national law, the same can still be questioned outside of the indigenous community.

The status of IPs is dependent on the recognition of the NCIP through the list of ethnolinguistic communities, which is not even complete. Being an indigenous people does not necessarily translate to recognition before the courts since identity, more than the issues involved, would define which adjudicatory body will have jurisdiction over the disputes. Generally, courts will automatically refer them to NCIP hence, a denial of access to justice, even if not purely an IP dispute. On the other hand, status as indigenous people needs to be identified to highlight the imbalance, as a strategy in advocacy for special measures and to do something about the imbalance.

The problem is that the customs and traditions of indigenous peoples are diverse and mostly unwritten. The general lack of understanding of indigenous culture reflects the general perception that customary laws are shallow or inferior to the national law. This is also influenced by the long history of practice of segregating indigenous peoples. In practice therefore, access to justice by the indigenous peoples is still tenuous.

f. Extralegal redress

It can be said that the best indicator of a vibrant and real democracy is access to justice where the courts will ensure that violation of rights shall be remedied. The inaccessibility of the formal justice system and the non-recognition of the informal justice systems and other dispute

⁴⁵ RA 8371.

⁴⁶ Section 62, 63 and 65, RA 8371.

resolution mechanisms leave the poor without any choice but to resort to extralegal mechanisms like joining rebel and insurgent groups, as when the “NPA continued to subject military personnel, police, local politicians, and other persons to its so-called courts for "crimes against the people.”⁴⁷

2. The Context of the Philippine Informal Sector

The above situation provides the general backdrop of the relationship of the poor and the marginalized, including the informal sector, with the legal system. However, to understand the context of the informal sector, one critical area that needs to be looked into is the family. The existing Philippine context place much stress and pressure upon the family system. The inability of the government to generate jobs constrains the poor to seek livelihood on their own. When the family becomes economically burdened, the pressure or stress is more often than not consolidated in the woman. It has been noticed that women in the country are most vulnerable to criminal suits for violation of the bouncing checks law. An explanation to this phenomenon is the burden imposed on women to seek additional funds in order to meet the subsistence demands of their families. They take out loans and issue checks as a required collateral, without understanding the implications of such actions. The impact of economic policies, particularly, export orientation, has also negatively affected women. Women are the first to go if there is retrenchment or downsizing of employment.

A culture of continuing violence against women contributes to women’s marginalization, especially for those who are economically dependent on their abusive spouses. The abused woman may desist from pursuing redress since she would not be in a position to sustain and pursue litigation for fear of plunging into deeper poverty. If they do indeed get out of a marriage, women are forced to carry on the duty of providing for support for their children, without much help from the men especially since it is expensive for them to pursue a legal action to insist on this obligation. This pushes the women to join the informal sector. Low literacy, particularly in the legal aspect, and lack of understanding of their context make it difficult for women to adjust in this economic arena. Therefore, understanding the context of the informal sector necessitates an understanding of the context of women and its gender dimensions.

a. Current legal and regulatory framework of the informal sector

The Philippines is not wanting in laws that seek to empower the poor and address economic deprivation. The dilemma however lies in the fact that despite interventions, the poor continues to be poor and the gap between the rich and the poor continues to widen. Furthermore, the poor continues to be politically disempowered despite gains in terms of people’s participation expressed in the Constitution and some laws. For these reasons, it begs a review of the existing policy framework affecting the poor and informal sector. The following are the general laws governing the informal sector. In this section, a brief overview of the law will be presented, to be followed by the gaps, limitations and the issues surrounding each of the law discussed.

⁴⁷ Bureau of Democracy, Human Rights and Labor (US), US Philippine Country Reports on Human Rights Practices – 2003, 2004, <http://US%20Phil%20Country%20Report%202003.htm>.

- Republic Act 8425: Social Reform and Poverty Alleviation Act of 1997

Overview

The only law to date that expressly recognizes the existence of the informal sector is RA 8425. The law is focused on farmers and landless rural workers, fisherfolk, indigenous peoples and indigenous cultural communities, the informal sector, urban poor, other disadvantaged groups like women and children, among others. The law defines workers in the **informal sector** as, “poor individuals who operate businesses that are very small in scale and are not registered with any national government agency, and to the workers in such enterprises who sell their services in exchange for subsistence level wages or other forms of compensation.”

One important feature of RA 8425 is the creation of the National Anti-Poverty Commission (NAPC), which has the primary responsibility of implementing the poverty alleviation program of the government. In addition to this, local government units (LGUs) are given the authority to implement and supplement the policies of the National Anti-Poverty Action Agenda. The participation of non-governmental organizations and peoples’ organizations are likewise institutionalized especially in the aspects of planning, decision-making, implementation, monitoring and evaluation of the Social Reform Agenda at all levels.

The historical root of RA 8425 is the Social Reform Agenda (SRA) of the Ramos administration. The SRA was the main instrument of the Ramos administration to effect reforms as key to bridging the social gaps and structural inefficiencies of the economy. It supposes that the people is at the center of development, rationalizes the structures of delivery of social reform initiatives towards greater synergy and envisions social equity, just sharing of the benefits of growth and the effective participation of people in the mainstream of economic and political life at the local level. The structures are supposed to ensure the role of people’s organizations side by side with government and the private sector in shaping the economic directions of the country.

Under RA 8425, the SRA continues to be the framework legislation insofar as poverty reduction is concerned. It provides for the following as its approach to empowerment:⁴⁸

1. Social dimension - access to quality basic services;
2. Economic dimension - asset reform and access to economic opportunities;
3. Ecological dimension - sustainable development of productive resources; and;
4. Governance dimension - democratizing the decision-making and management processes.

In essence, the SRA and RA 8425 are designed to reduce the vulnerabilities of the poor which is necessary to reduce poverty, where more will have enough to eat, adequate shelter, access to education and health, protection against violence and a voice in the decision-making processes. Both instruments aim to create that environment which would ensure social equity and redistribution of gains and benefits derived from economic progress.⁴⁹

⁴⁸ RA 8425, sec. 4 (1-4).

⁴⁹ NAPC 2004 Annual Report.

To reach these goals, the programs are undertaken through the principle of convergence, which goes beyond the confines of individual agency capabilities and moving towards uniformity.⁵⁰ The convergence framework does away with direct management of institutions, to make delivery of services more efficient. RA 8425 established the National Anti-Poverty Commission (NAPC), which is mandated to coordinate and monitor the poverty alleviation program of the country. On top of the implementation of the National Anti-Poverty Action Agenda is the President of the Philippines, who chairs the NAPC, while the national agencies act as lead facilitators in ensuring the implementation of the agenda concerning their respective areas of service. The LGUs, on the other hand, are the centers of coordination in the delivery of basic services and operationalization of other nationally instituted mandates like the Gender and Development budget. Local implementation is generally led by the provincial governor, assisted by the representatives of national government agencies at the local level and the private sector including NGOs and POs.

The components of the poverty alleviation package depend on the existing leadership. The Estrada administration addresses poverty alleviation through (1) Food security, (2) Modernization of agriculture in the context of sustainable development, (3) Low cost mass housing, and (4) Protection of the poor against crime and violence. The Macapagal-Arroyo administration's poverty reduction strategy, known as KALAHI-CIDSS, focuses on (1) Asset reform, (2) Human development services, (3) Employment and livelihood, (4) Social protection and (5) Increased participation of the poor.

Increased participation of the poor is touted to be the milestone of RA 8425 since the regulatory mechanism institutionalized the representation of the 14 basic sectors, appointed by the President, as members of the NAPC and to participate in the planning, decision-making, implementation, monitoring and evaluation of the SRA at all levels. Sectoral councils for each sector were created which nominates their representative in the Council.

RA 8425 also provided for support services to enable the entrepreneur within the member of the informal sector through the People's Development Trust Fund and the microfinance program.

Issues

Under this law, the definition of the informal sector categorized everyone under it as workers., and characterized the sector based on the absence of formal registration. This definition connotes a single categorization of the informal sector, which does not provide for nuances of the many sub-groups within the sector, as earlier noted, thereby offering a simplified and generalized formulation of interventions. This implies the difficulty of purposive and sub-group-based interventions. Second, the characterization of the informal sector as un-registered is mistaken since some, if not most, of informal sector activities are not even regulated or recognized under the law, such that they cannot fall under any registration mechanism. It is a characterization based on

⁵⁰ Javier, Aser B., *The Poverty Alleviation Policy and Local Governance in the Philippines: A Review of Issues and Ironies*, delivered during the occasion of An International Seminar on the Local Government Capacity Building and Poverty Alleviation Policies Within the Framework of Decentralization: The Case of the Philippines and Indonesia, October 22-23, 2001, at Auditorium (8F) GSID Building, Nagoya University JOINT RESEARCH of Three Universities Faculty of Social and Political Sciences, Gadjah Mada University (UGM) Graduate School of International Development, Nagoya University .;Institute of Development Management and Governance, Faculty of Public Affairs, University of the Philippines Los Banos (UPLB)

exclusion by the law and is not based on the peculiarities of the activities being undertaken by the sector. Also, while not strictly the registration contemplated by law, most, if not all, of the members of the informal sector has paid some kind of fee or permit to be able to exercise their livelihood. Third, the second part of the definition is not a characterization of the sector but more of an effect of the operation of law governing the situation of workers in micro-enterprises. Under RA 9178 (Barangay Micro-enterprise Businesses Acts), BME's are expressly excluded from the operation of minimum wage law for which reason, workers in micro-enterprises were automatically deprived of security of tenure and all the benefits guaranteed by law to regular workers. Hence, this cannot be made a basis for characterization of workers who are members of the informal sector.

Even at the level of labeling, it seems that informal sector activities are not recognized and understood. This implies the difficulty of purposive, responsive, relevant and sector-based interventions. It also connotes negativity and sometimes, illegality, which only shows insensitivity to the members of the informal sector.

Approaching poverty reduction through the mechanisms provided by RA 8425 and the current programs to fulfill the said goal has elicited comments from some studies and sectors meant to be constructive and improve the system as it is currently operating. Some of these inputs are:

1. To improve the system, there is a need to develop and build local capacity into planning, budgeting and spending to improve local governance.⁵¹

2. There is a need to identify the causes and manifestations of inefficiencies of implementing poverty alleviation programs and defining appropriate responses thereto, both at the local and national levels. In addition, the convergence framework requires an understanding of the dynamics of central-local relations. This understanding would necessarily explain, define and address any factor that impede the execution of poverty alleviation program by taking into account the dynamics of governance, particularly the issues of politics and power.

3. The definition of empowerment under RA 8425, which is key to the governance dimension of poverty alleviation program, is limited to "gaining of strength in the various ways necessary to be able to move out of poverty and is measurable by effective participation in governance through membership in local organizations and representation in local bodies."⁵²

It has been shown however that the execution of poverty alleviation programs has been to a great extent through inter-governmental agency coordination and implementation, where private sector participation is almost nil and NGO and PO involvement is largely through local development councils.⁵³ At the level of NAPC, it is done through the sectoral councils. While it can be said that the poor are heard through the processes, it cannot be said that they participate in making major decisions, especially budget allocation.⁵⁴

⁵¹ Ibid.

⁵² Check the law.

⁵³ Javier.

⁵⁴ Serrano.

Representation to the NAPC and the local councils continue to be subject to the dynamics of Philippine politics. Appointment to the sectoral and local councils largely relies on the discretion of the political motivations of the appointing power. In view of this, it is not unheard of that local executives appoint sectoral representatives who have either supported them during elections or are not antagonistic to their leadership.

Empowerment under RA 8425 does not recognize political empowerment as a means by which poverty can be eradicated.

4. Javier also pointed out that while the LGUs are assigned as the main executioners of poverty alleviation programs, RA 8425 does not give much attention to coming up with a system that would enable administrative adjustments or streamlining of bureaucratic processes and “red tape” to ensure efficient management by the LGUs of the programs, especially towards ensuring a role for the LGUs as stewards of the resources of the locality.

5. With all the programs developed and formulated, a monitoring system is yet to be formulated towards a determination of its impact on the well being of the Filipinos.

- Republic Act 6938: Cooperative Code

Overview/Explanation

Another law that empowers the members of the informal sector is the RA 6938. The law defines a cooperative as a “duly registered association of persons, with a common bond of interest, who have voluntarily joined together to achieve a lawful common social or economic end, making equitable contributions to the capital required and accepting a fair share of the risks and benefits of the undertaking in accordance with universally accepted cooperative principles.” Membership is voluntary and available to all individuals regardless of their social, political, racial or religious background or beliefs.

The use of cooperatives for the aid and mutual benefit of its members strengthens the members of the informal sector as a group. It gives them an arena to voice out their concerns and participate in endeavors that can alleviate their situation. Cooperatives give an opportunity for the informal sector to meet and organize with others of the same situation. Organizing them for other legitimate purposes, such as for assertion of their rights before the appropriate government agency, is made easier. As a group, the informal sector can gain more recognition before the government and the community.

b. Laws Affecting Vulnerabilities in the Informal Sector

Other laws that also affect certain sub-groupings of the informal sector are laws governing vulnerable groups like women, children and indigenous peoples. Although these sub-groupings (women and children in particular) are already generally covered by the Labor Code, it bears emphasis that the Labor Code is not applicable to the informal sector. The applicability of the law is premised on the existence of employer-employee relationship, the absence of which characterizes the work of the informal sector. Thus, provisions on wages, leaves, extra pay, overtime and rest periods are not applicable to the informal sector. The lack of formal contractual relationship

between the employer and the informal sector in this case leaves the latter susceptible to exploitative conditions of work.

- **Children**

Because of their vulnerability, child workers are often subjected to exploitative conditions of work. Largely invisible to the eyes of society, the reality of child labor has always been present. Today, there are over three million child workers in the Philippines.⁵⁵ They can be found in various sectors – agricultural, service and industrial sector.

Republic Act 7610: Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act⁵⁶

Overview

Under RA 7610, children are allowed to work only under the supervision of their parents or guardians, provided that his/her work neither endangers his/her life, safety, health, and morals, nor impairs his/her normal development. The parent/guardian has the duty to ensure that the child receives primary and/or secondary education despite their work.

Issues

The provisions of law however discount the fact that child labor is a result of poverty, forcing children to work in order to augment family income. The income of the child pertains exclusively to the family for their day-to-day needs. Often times, employers using children as part of their work force do not possess any permit from the DOLE. This is particularly true in the industrial sector where the children are hidden from the view of the public, their work largely confined in dark rooms of the factory; pay is very minimal, work conditions are very dismal.⁵⁷

Children are also engaged in agricultural work, helping their parents in the plantations. Mostly, these children are considered as family workers, without a separate income of their own helping their parents meet the demands of the landowners. Their education is affected as they are forced to absent themselves from school during the harvest season.⁵⁸ Children too are exploited and prostituted, sometimes even by the people they trust. They are forced to sell their bodies in order to bring income to their families. Hardly working alone, these children are also exploited by their pimps who take a large cut out of their earnings and drive them hard into the exploitative business.

The law proscribes these exploitative acts, imposing heavy penalties on employers, pimps, customers, and owners of establishments where child prostitution is encouraged. The language of the law however reveals its reactionary nature. It seeks to punish, not prevent. And because the law does not recognize the reality of work for children, they are not given any voice nor conferred any benefits. Their rights may be exercised only through their parents/guardians, and only when these people assert it for them. Their voices are not heard at all. The law overlooks the fact that child work is resorted to because the family is poor

⁵⁵ Apit, A. 1998. *Child Labor*. Quezon City: Kamalayan Development Foundation.

⁵⁶ (as amended by RA 9231)

⁵⁷ www.cwa.tnet.co.th

⁵⁸

and the parents are unable to provide for their children. Thus, the legal exclusion experienced by the parents, is felt too by the child, in multitudes, suffering also their own exclusion before the law.

- **Women**

Women comprise half of the informal sector in the Philippines. Women belonging to poor families are expected not only to attend to the needs of their families, but also to contribute to the income of the family. The work that the women undertake forms a critical source of income that enables poor families to meet their needs. In the Philippines, the work of women in the informal sector comprise mostly of (although not limited to) homework in the garments, food, footwear and manufacturing industries either as subcontracted or piece-rate workers or as self-employed.⁵⁹ Women can also be found in the service sector, engaged usually in the domestic household work as *katulong*, *labandera*, *plantsadora*, etc., and also as beauty parlor attendants, manicurists, masseuse, etc.

The Food and Agriculture Organization (FAO) provided data on women's participation in agriculture.⁶⁰ Women represent 13.4 million of the labor force in the rural area, particularly in agriculture.⁶¹ In 2002, 51.4 percent of women's work is unpaid, 30 percent is own-account while only 18.6 is paid. Women wage earners received lower pay for similar work done by men. In terms of employment in agriculture, hunting and forestry, women comprise only of 27.3 percent of the 10.4 million workers employed therein.⁶² The statistics show that women's work as part of the agricultural labor force, despite the fact that they work as hard as their male counterparts, has remained undervalued if not invisible.

In forestry, more men are employed than women. Women's participation in forestry, environment and natural resources has been limited to implementing special activities related to forestry like nursery.

In fishing, women consisted of only 6.3 percent in 2002, where they are engaged in pre and post fishing activities.

On top of the invisibility of women in agriculture and management of natural resources, gender considerations come into play, where their work is looked as extensions of their reproductive and domestic functions. These factors result in rural women having less access to productive resources, access to land, technology, extension services, capital, and infrastructure than rural men.⁶³ Studies have shown that rural women exceed rural men in accessing credit as well as capital needed for farm production. The access to credit must however be viewed in light of gender concerns relating to their role in supplementing family incomes. Also, many of these women engage in off-farm activities that can help augment

⁵⁹ empowering Filipino women

⁶⁰ FAO Fact Sheet of the Philippines: Women in Agriculture, Environment and Rural Production.

⁶¹ *supra.*, NSO: 2004 figures.

⁶² *Ibid.*

⁶³ *supra.*, WAGI, 2003.

household income.⁶⁴ Given the above statistics and gender roles, poverty alleviation programs benefit more the men than women.

Violence against rural women is also a concern, as poverty has forced them to ignore the issue in view of the need to source food and other basic needs. Furthermore, it has not been shown yet whether the new law protecting women against violence⁶⁵ has made an impact on women, more particularly those in the rural and agricultural areas considering their heightened vulnerabilities.

Republic Act 6725: An Act Prohibiting Discrimination of Women in the Workplace

Overview

The law confers certain rights, benefits, opportunities and provides for areas of protection specifically for women. RA 6725 proscribes the discrimination of women in the workplace, such as payment of lower wages to women and favoring promotion of male workers over women on account of sex alone.

Issues

A reading of the law however would reveal that the law is not applicable to women in the informal sector. Protection is accorded only to those with an existing employer-employee relationship, something that is lacking in the informal sector. Considering the largely informal and unregulated work poor women engage in, the law is hardly applicable in their regard.

Republic Act 7882: Women in Micro and Cottage Business Enterprises Act

Overview

Women engaged in micro or cottage businesses, which include sari-sari stores and the like, are accorded special benefits under RA 7882. Women who have been engaged in micro or cottage businesses for at least a year, with a daily inventory of not more than P25,000 is given priority in obtaining loans at a low interest rate. The law gives the woman entrepreneurs a chance to expand her small business, and thus economically empower her.

Issues

The law however merely provides for an opportunity to improve the current business, and not an opportunity to start her own small business.

Republic Act 7192: Women in Nation Building Act

Overview

Probably the most important piece of legislation to date concerning the empowerment of women is RA 7192. The law seeks to achieve the equality of women before the law and society by mandating that equal opportunities be granted to them as have been granted to men, even if they previously were not granted such. The law likewise abolishes some social precepts embodied in other laws that limit a woman's capacity to contract.

⁶⁴ *supra.*, PPI, 2002.

⁶⁵ Republic Act 9296, Anti-Violence Against Women and Their Children Act.

Issues

Despite the existence of these laws supposedly raising the status of women, a more strategic assessment and interventions on situations of women must be undertaken since they bear the greater burden of poverty. It is not clear in all of these laws how programs and projects towards their empowerment would strike at the core of their marginalization, i.e., the continuing gender inequality and non-realization of women's rights.

- **Indigenous Peoples**

As early as the case of *Rubi v Provincial Board of Mindoro*,⁶⁶ indigenous peoples have been castigated by society, for allegedly being uneducated and unproductive members of society. Their different culture is a cause for their exclusion in society and in the eyes of the law. The case set this perspective where the Supreme Court upheld the legislative classification of indigenous peoples, particularly the Manguianes, as non-Christians whose community can be forcibly placed in reservations. The labeling has been justified as resting “on real or substantial, not merely imaginary or whimsical, distinctions. It is not based upon accident of birth or parentage, but upon the degree of civilization and culture” referring to natives of the Philippine Islands of a low grade of civilization. It further stated that “(s)egregation really constitutes protection for the Manguianes” who are viewed as “citizens of a low degree of intelligence, and Filipinos who are a drag upon the progress of the State.”⁶⁷ The latest and more controversial case of *La Bugal B'laan v. Ramos*⁶⁸ affirms this mindset and perspective of the judiciary about the indigenous peoples, which is clearly a retrogression from the gains brought about by the IPRA, especially in the arena of economic policy and decision-making particularly relating to natural resource utilization and development.

Republic Act 7942: Philippine Mining Act

Overview

Issues

The passage of the RA 7942 created problems with indigenous communities as to their ancestral domains. In *La Bugal B'laan vs. Ramos*, petitioners who were members of an indigenous group assailed the validity of the Mining Act for the infringement of the property rights over their ancestral domain as they are being removed from their land so that it may be developed into a mine. The Supreme Court, in upholding the constitutionality of the said Act, has this to say with regard to the local tribes:

“ ... We fully sympathize with the plight of Petitioner *La Bugal B'laan* and other tribal groups, and commend their efforts to uplift their communities. However, we cannot

⁶⁶ G.R. No. 14078. March 7, 1919.

⁶⁷ Reiterated in *Pp. v. Cayat*, 68 Phil 12, 18 (1939).

⁶⁸ G.R. No. 127882. December 1, 2004. On Motion for Reconsideration, the Court overturned its initial ruling declaring the Mining Act to be unconstitutional.

justify the invalidation of an otherwise constitutional statute along with its implementing rules, or the nullification of an otherwise legal and binding FTAA contract.”

“We must never forget that it is not only our less privileged brethren in tribal and cultural communities who deserve the attention of this Court; rather, all parties concerned — including the State itself, the contractor (whether Filipino or foreign), and the vast majority of our citizens — equally deserve the protection of the law and of this Court. To stress, the benefits to be derived by the State from mining activities must ultimately serve the great majority of our fellow citizens. They have as much right and interest in the proper and well-ordered development and utilization of the country's mineral resources as the petitioners.”

The Court emphasized the minority of the indigenous communities by saying that their interests must give way to the interests of the majority. Considering however that their marginalization precisely stems from being a minority not only in numbers, but also in culture, the emphasis placed here by the Court has more so disempowered them in the face of society. IPRA recognizes that their land is one of their most important assets as it bears a cultural imprint of how they have lived their lives. By removing their land, they are ultimately forced to accept the culture of the majority and lose their identities. The Mining Act and the decision of the Court then have further reinforced their legal and social exclusion. The IPs has raised concern on the obvious prioritization of foreign investors over their interests, which further pushes them to poverty.⁶⁹

Republic Act No. 8471: The Indigenous People’s Rights Act (IPRA)

Overview

Indigenous peoples have more difficulties in obtaining suitable employment which provide for decent wages and security of tenure. Employment opportunities do not take into account their particular needs. Their unique culture, often misunderstood by mainstream society, is a source of their discrimination in the workplace or their place of livelihood. It’s either they adapt to the current times or else they wont be accommodated. The IPRA mandates the equal protection and non-discrimination of indigenous peoples or indigenous cultural communities. Special measures are to be immediately instituted for the effective and continuing improvement of economic and social conditions, including employment, vocational training, housing, sanitation, health and social security for indigenous peoples.

Issues

Prior to IPRA, the laws have a mixed treatment of indigenous peoples. Under the Comprehensive Agrarian Reform Law (CARL), the ancestral domain of indigenous peoples or indigenous cultural communities is exempted from the coverage of the program in recognition of the importance of their homes and culture. Yet, in RA 7610, the mere fact of being a member of an indigenous cultural community is considered as a circumstance which gravely threatens or endangers the survival and normal development of children.⁷⁰ Thus, the

⁶⁹ FGD Cebu.

⁷⁰ Section 3c-4, RA 7610

law itself can create or reinforce the discrimination of the IPs, treating it as a disease that needs to be cured.

Particular attention should be given to the rights and special needs of indigenous women, elderly, youth, children and differently-abled persons. Under the law, women should be accorded equal rights and opportunities with men, as regards the social, economic, political and cultural spheres of life. Full access to education, maternal and child care, health and nutrition, and housing services should also be given to indigenous women.

Normally, disputes involving the indigenous peoples concern the priority use of natural resources within the locale, like in the La Bugal case. Most indigenous peoples are dependent on the natural resources within their recognized ancestral domain for their livelihood (water, timber and non-timber forest products, minerals, farming). Further, use of the natural resource gives rise to issues relating to management particularly those being promoted by the government like agri-business concerns, without regard to the cultural identity of the indigenous peoples.⁷¹

In the context of the informal sector, legal exclusion is manifested in cases where there is a third party involved, like a mining company. It has also been characterized as development aggression where the large scale development activities are undertaken in small communities without consideration of their welfare, and are mostly profit-oriented. The latter, having been granted permission by government to undertake exploration, will use the national legal system, while indigenous peoples will use their customary laws. Hence, a real clash of justice systems, where the third party will perceive them as rebels.

In addition, the use of natural resources even within ancestral domain is still reserved for the State under the Regalian doctrine. For indigenous peoples, this principle is basically anti-poor and anti-indigenous peoples. Even with the recognition of ancestral land and ancestral domain concepts, IPRA actually strengthened State power over indigenous tenurial practices as one that is communal for all the indigenous peoples and communities.⁷² It essentially “bureaucratized” indigenous tenure practices by prescribing a single, simplified and universalizing construction contrary to the diversified, complex and varied practices of the Philippine indigenous peoples.⁷³ This process of homogenization makes it easier for the State to manage and have control over the indigenous peoples. Up to this time, the IPs look at IPRA as a law that is not clear and without guarantees that would be beneficial to them.⁷⁴

c. Laws Governing Sub-Groups of the Informal Sector

- **Farmers and Fisherfolks**

⁷¹ Based on the interview of Atty. Francis Ballesteros, Legal Office of LRC-KSK/FoE, Luzon Regional Office.

⁷² Section 5 & 55 of the IPRA.

⁷³ Gatmaytan, Augusto, *Constructions in Conflict: Manobo Tenure as Critique of Law*, Chapter III of *Control and Conflict in the Uplands: Ethnic Communities, Resources and the State in Indonesia, the Philippines, and Vietnam*, Institute of Philippine Culture, 2005, p. 83.

⁷⁴ FGD Cebu.

The vast natural resources of the country make agriculture and fisheries a major industry. Despite this, farmers and fisherfolks remain marginalized sectors. The informality of their work rests on the fact that they work for a subsistence income, without enjoying any of the benefits provided by the law for regular workers and with minimal government assistance.

Republic Act 7607 – Magna Carta for Small Farmers

Overview

RA 7607 seeks to empower small farmers by providing for the equitable distribution of benefits and opportunities to them. It provides for a mechanism of representation in the local legislative councils and concerned administrative agencies. It also provides credit facilities at minimal interest rates to help farmers finance their livelihood. The law also confers certain privileges to farmers' organizations in that benefits are handed down through these organizations, which then effectively encourages the farmers to organize themselves. Other support mechanisms granted by the Magna Carta are Infrastructure Support Inputs and Services in the form of transportation, market, communications and post-harvest facilities. Education and skills development for farmers, and technical assistance for agricultural projects are likewise provided by the Magna Carta. The law further prioritizes the produce of the small farmers, prohibiting the importation of goods when they are able to meet the demands of the consumers.

Republic Act 6657 – Comprehensive Agrarian Reform Law

Overview

Perhaps the most important piece of social justice legislation is RA 6657, which seeks to address the social and income disparities between the landed gentry and the farmers. This law particularly benefits landless farmers who are tilling the land of another for a simple fee and/or small part of the harvest. More often than not, the tenancy arrangement between the farmers and their landlords reinforce the dependence of the farmers on the landowner. Thus, by giving them land which they can call their own, they are first and foremost socially empowered as they are now recognized as property owners. Economic empowerment is said to follow, as one of the goals of this law is to make them self-sufficient, removing them from the all too dependent relationship that they used to be in.

Issues

The problem with this law however is in the definition of farmworkers (the main beneficiary of the law), which connotes the existence of an employer-employee relationship, in that they are, "employee or laborer in an agricultural enterprise" be they regular or seasonal workers. The core of the informality of the sector is the non-existence of an employer-employee relationship which labor law standard prioritizes. Thus, the definition impliedly excludes those informal agricultural workers. Informal workers can be included in "other workers" but they are not prioritized by the law.

In the case of *Fortich v. Corona*,⁷⁵ the Court denied the Motion for Intervention of the supposed farmer-beneficiaries of the Del Monte plantation in Bukidnon brought under compulsory acquisition of the DAR, on the ground that they did not have sufficient legal interest to intervene being seasonal workers. The Court, quoting eminent jurist Father

⁷⁵ GR No. 131457, November 17, 1998. Opinion of the Court

Joaquin Bernas, said that “under the agrarian reform program the equitable distribution of the land is a right given to the landless farmers and regular farm workers to own the land they till, while the other or seasonal farm workers are only entitled to a just share of the fruits of the land.” This severely limits the application of the law to regular farm workers, which the law implies to have an existing employer-employee relationship with the landowner.

Another limitation on the right of farm workers to own the land they till on is the power of the LGU to convert land from an agricultural to a non-agricultural even without the approval of the DAR thereby excluding it from the coverage of CARL.⁷⁶ This is what happened to the Del Monte Plantation in Bukidnon, wherein compulsory acquisition under the CARL has been avoided by NQSR Corporation when the province of Bukidnon, declared the conversion of the land from an agricultural to an agro-industrial land. Landowners however, are particularly prohibited from converting their lands from agricultural to non-agricultural use so as to avoid the application of the law. They can only convert for a valid reason although what constitutes as valid is not really defined by the law. Actual practice however would tell us that landowners have successfully evaded the law for a number of reasons, through the conversion of their land to non-agricultural use.⁷⁷ Further, the documents granted to the farmers for awards under the CARL called Emancipation Patent and Certificate of Land Ownership Award have the weight of a title,⁷⁸ which should therefore secure the farmers tenure to the land. However, the cancellation of these instruments continues upon the initiative of the landowner. Farmers who are recipients of the said titles are not immediately installed in their lands.

The CARL created the Special Agrarian Court to determine just compensation due to the landowner and to prosecute criminal offenses under the law. At the same time, the Department of Agrarian Reform Adjudicatory Board (DARAB) has primary jurisdiction to determine and adjudicate issues and conflicts arising from the application of the law. Redress under the CARL, however, primarily deals with the rights of the landowner, particularly on just compensation. In the case of *Association of Small Landowners vs. DAR*,⁷⁹ the Court held that the authority of DAR to determine just compensation is merely provisional, and would attain finality only if no one contests such determination in the proper courts. In effect, the courts are not divested of its authority to determine just compensation; only, another resort is given to the parties prior to the courts. It is believed that since it is DAR who has the expertise and know-how with such matters, they would be in a better position to determine the compensation due. The import of this ruling however is that the usually long and tedious court process of determining just compensation is further extended by providing for another body which could initially determine it. Notice is to be taken on the fact of excessive delays in our courts. By providing for another body to determine compensation, the acquisition of land by the government for the landless farmers is further put off.

⁷⁶ Province of Camarines Sur v. CA, 222 SCRA 173 (1993).

⁷⁷ Taken from the Proceedings of “Farmers’ Rights as Human Rights, Human Rights as Farmers Rights.” A Round-Table Discussion conducted by the Institute of Human Rights and South East Asia Regional Initiatives for Community Empowerment (IHR & SEARICE: 2004?)

⁷⁸ Hacienda Maria... (get citation)

⁷⁹ G.R. No. 78742, July 14, 1989.

Similarly, judicial interventions in agrarian-related disputes have become a major obstacle in securing the farmers their land. Farmers who assert their right to the land are harassed by the landowners with criminal suits; they cannot afford bail for their provisional release, which essentially becomes an effective deterrent for the farmers to fight for their rights. The absence of understanding on the part of the judges on the social context of farmers contributes to further disempowerment of the farmers. The DARAB has the expertise to understand conflicts and controversies arising out of agrarian relationship which the courts do not have, and the cognizance by the courts of cases of this nature impedes the rights of the farmers. With respect to legal representation, the dearth of representation necessitates the recognition of farmer paralegals to appear before courts. Paralegals are not allowed to appear before courts because said act is limited to lawyers.

In both the Magna Carta and the CARL, what is severely lacking are specific provisions concerning the disposal and sale of the produce of agricultural workers. In a dialogue with farm workers,⁸⁰ farmers reveal the practice employed by traders or landowners (in tenancy arrangements) of buying their produce for a very cheap price, only to sell them to the market at a much higher price. It is these traders/landowners who reap the profits of their hard work while they are left with a subsistence level income, barely enough to meet the needs of their families. Although this concern maybe addressed by market and infrastructure support provided for in the given laws, such is not enough to enunciate the concerns of the farmers. A specific issuance or law is needed to specifically regulate such trade relations. It was further suggested that mechanisms be set up to enable the farmers to directly sell their produce to the consumers. If there is really a need for a middleman, the LGU, cooperative or a NGO/peoples' organization should instead facilitate the transaction so as to ensure the protection of the farmers.

Farmers continue to lament that the law has been interpreted and implemented in ways that do not really favor them. They are not consulted in policy and decision making processes. They have been the subject of harassment by the landowners. It is not unusual for farmers being shot at by the blue guards of the landowners. There is a big gap in land distribution and acquisition in favor of the farmers. A big part of the farmers continue to be unorganized. Despite organization of some, sugar farmers organizations have not been able to secure accreditation in national organizations like the New Sugar Planters Association because the latter follows the dictates of big sugar barons. Illegal transactions concerning the sale of land subject of CARL continue.⁸¹ Hence, the law has not resolved the structural obstacles that have brought the iniquitous context of farmers.

Republic Act 9168, Plant Variety Protection Act of 2002.

Overview

Although not included in this study, it is important at this point to look at RA 9168. The said law limits the usage of seeds by farmers; usage is regulated by the multinational corporations who own the rights of the seeds. The farmer cannot reuse the seeds already

⁸⁰ *supra.*, IHR & SEARICE: 2004?, p. ____

⁸¹ FGD, Cebu.

used in the previous planting season (although they are still usable) as it is punishable under the law.

Issues

This is another concern of farmers since it affects the availability of seeds which they use for their livelihood. Since RA 9168 imposes punishment on the reuse of seeds, farmers have to again buy from the multi-national companies. Such a practice imposes added financial burdens on the small farmer who barely has enough to make ends meet.

Yet another problem is now faced by the farmers. The 20-year period of the CARL is set to expire this year (2007) without any major changes having been made. The distribution of public agricultural lands has also not been completed pursuant to the law. Lastly, continuing efforts to thwart or circumscribe the intents of the law are being undertaken like the Farmers Collateral Bill, where farmers can use the land awarded to them as collaterals. Given the existing and historical relationship between landlord and tiller and the absence of support mechanisms that fully enable the farmers to be self-sufficient, the bill will make it easier for the farmers to part with their land and thereby defeat the social justice intentions of the CARL.

Republic Act 8435 – Agriculture and Fisheries Modernization Act of 1997

Overview

To adapt to the changing times and to meet the ever-expanding needs of farmers, RA 8435 was enacted in 1997. AFMA is said to be the cornerstone of the government's poverty alleviation program.⁸² The Agriculture and Fisheries Modernization Plan is focused on food security, poverty alleviation and income enhancement of the farmers and fisherfolks, as well as the global competitiveness and sustainability of the industry. It gives special focus on the women, rural youth, indigenous peoples, handicapped persons and senior citizens of the agricultural community. It further complements the CARL in that it provides for assistance to its beneficiaries.

Like the other laws concerning the agricultural sector, the law provides for credit facilities, marketing services and infrastructure support to the farmers and fisherfolks. In addition to this, the law seeks to promote people empowerment through strengthening of peoples' organizations, cooperatives and NGOs. These groups would be able to address the needs of their members and communicate them better with the proper authorities. Empowerment, under the law, also involves providing authority, responsibility and information to people directly engaged in agriculture and fishery production, primarily at the level of the farmers, fisher folk and those engaged in food and non-food production and processing, in order to give them wider choices and enable them to take advantage of the benefits of the agriculture and fishery industries. It is not clear however, how the fisherfolks and farmers are institutionalized in the structures meant to enable them to benefit from the plans.

⁸² Dasig-Salazar, Amiella Marie and Dasig, Sheila Marie, Looking for Women in Fisheries Policies and Programs: A Review of Literature on Women and the Fisheries Sector in the Philippines, PALIHAN Journal, Vol. 1, no. 1, NFR, 2006, p. 11.

Issues

However, the law is highly focused on the economic aspect of the sector and its main objective is to produce more agriculture and fisheries products.⁸³ Implementation of the above law is hampered at the local level due to the absence of ordinances that fully protect the fishing grounds from illegal fishing activities like the use of compressors. The resources of the Bureau of Fisheries and Aquatic Resources are not sufficient to police the fishery grounds, and there are no programs to capacitate deputized fish wardens and “bantay-dagat” (sea watchers). Titles are also issued to cover mangrove areas. Commercial fishing in municipal waters continues to be unabated and no legal and financial support is given for prosecution thereof. Judges, prosecutors and other concerned officials are not familiar with fishery laws. Oftentimes, there are conflicting interpretations of the fishery laws, particularly clarifying the rules on delineation of municipal waters and its applications to bays, since the rules affect the ability of the fisherfolks to fish and exercise their livelihood.

Republic Act 8550: The Fisheries Code

Overview

Issues

The law is very problematic. Fisherfolks are not familiar with RA 8550. Hence, it is not difficult to assume that they did not participate in the formulation of said law. Per the experience of some fisherfolks, the law conflicts with the National Integrated Protected Areas System law or Republic Act 7586 and the Local Government Code (RA 7160), relating to the management of the sea to ensure subsistence to the fisherfolks. In addition, the fisherfolks were being displaced in view of tourism directed policies as well as development of economic zones. Also, 216,000 hectares of protected mangrove area under NIPAS in the Saranggani area are being bidded out by the municipal government to fry concessionaires. Two government agencies conflict in their views regarding the economic activities where DENR believes that economic activity can be undertaken while BFAR believes not.⁸⁴

Protected areas in the country like the Danajon Reef in Bohol have been subjected to rampant illegal fishing and commercial fishing. The government has not been able to protect these areas, to the detriment of local and subsistence fisherfolks.

The above laws affecting farmers and fisherfolks also take into account vulnerable sectors as outlined by the SRA. CARL, in particular, excludes ancestral lands from the coverage of the laws so as not to deprive indigenous peoples and indigenous cultural communities their home land. This guarantee however remain to be realized in light of the fact that conflicts arise in the determination of who has prior rights in property in terms of agrarian reform, ancestral domain, environment, mining, and others.

The CARL also mandates that equal opportunities be given to women in acquiring land under the program. The Agriculture and Fisheries Modernization Act also places special

⁸³ Ibid., p. 12.

⁸⁴ FGD Cebu.

focus on women, the rural youth and indigenous peoples by providing special training opportunities for them. However, as mentioned earlier, it is the men who benefits more from the effect of these laws more than the women in view of the absence of knowledge in women's rights and gender, as well as the capacity to purposively integrate the same into development planning and implementation down to the level of the smallest political unit, which is the barangay.

- **Small Businesses and Vendors**

The increasing cost of everyday living and Filipino ingenuity gave rise to small businesses, which, more often than not, concentrates on retail trade. This entrepreneurial activity is often engaged in due to lack of available and/or sustainable employment opportunities to the majority of the population.

Republic Act 6977: Magna Carta for Small Enterprises

Overview

There are laws that encourage the formation of small businesses to make members of the informal sector self-sufficient. In particular, RA 6977⁸⁵ is one such particular law. Usually, the informal sector is classified under the micro-enterprises with a capital or assets worth less than P1,500,001. Micro-enterprises are usually the sari-sari stores that proliferate in our neighborhoods. To encourage the proliferation and development of these businesses, a mandatory allocation of credit resources for small enterprises are provided by the law. Assistance, counseling, incentives and promotion services are also available to the enterprises covered under the law.

Republic Act 9178: Barangay Microbusiness Enterprises Act

Overview

In 2002, RA 9178 was passed to encourage the formation and growth of barangay micro-business enterprises (BMEs) which also seeks to integrate the informal sector into the mainstream economy. Under the said law, those with capital of P3,000,000.00 or less are considered as BMEs who may enjoy the benefits like exemption from income taxes and the application of the minimum wage law among its employees. The registration of the BME in the appropriate government agency is likewise simplified.

Issues

While the law encourages the proliferation of small businesses at the grassroots level, which in turn also contributes to the economic empowerment of the informal sector, the P3,000,000 capital requirement provided by the law also effectively excludes some members of the informal sector. The capital requirement presupposes that the business already has a capability not otherwise available to the entrepreneurial member of the informal sector. In fact, entities seeking to be incorporated usually submit a subscribed capital requirement with

⁸⁵ Amended by Republic Act 8289

the SEC at less than P3,000,000. Most businesses then can avail of the benefits under the law, particularly the exemption from the minimum wage law. Their employees, most of which are also members of the informal sector are not entitled to the minimum wages set by law.

Republic Act 7393: Quedan and Rural Guarantee Act

Overview

Similarly, to support the efforts of small entrepreneurs, as well as to extend opportunities for them to improve their current economic status, RA 7393 provides for credit-support mechanisms to small businesses and also to farmers and fisherfolks. Incentives are to be given to banks that would extend credit facilities to the concerned sectors. The law especially provides financial support to the CARP beneficiaries.

Executive Order No. 452:

Overview

In 1997, EO 452 was passed to encourage vendors to register for their security. The said Order provided for the designation of a workplace for vending in the local communities of the vendors. The workplaces are to be determined through a consultation with the registered vendors, ambulant vendors, peddlers, market vendors, as well as the local police and the affected inhabitants. Empowerment of vendors can be further achieved by encouraging them to organize for their mutual aid, benefit and protection.

Issues

Registration for acquisition of status

All business endeavors, regardless of its size are encouraged by law to be registered in the proper government agencies, particularly in the LGU where they are located. For members of the informal sector, registration may mean protection of their interests and freedom from harassment committed by enforcement agencies. The tedious and costly requirements of registration however deter the informal sector from registration. The difficulties however do not really deter the vendors from registering, even if they know that the main purpose of registration was to tax them. The laws or policies in place are the ones that effectively deter them from doing so. One example is the case of SANAMAY, which follows:⁸⁶

In 1997, SANAMAY, an organized group of Intramuros vendors, talked to the Manila city hall officials regarding their recognition. Intramuros is a historical site which does not allow vending within its walls. The officials informed them that their situation presented no problem since they can register as businesses. The vendors then collectively decided to apply for the business permits instead of paying the “kotong” (illegal exaction) to the syndicates protected by the police. The vendors paid the corresponding fees; however they were not granted hawkers/business permit since the regulation requires that they show proof of ownership or right to possess their

⁸⁶ Based on the interview of Atty. Marlon J. Manuel, Executive Director of SALIGAN.

workplace or workspace. The hawkers permit division governs only ambulant and stall vendors, not those who vend along the sidewalks.

Clearly, the vendors are willing to be governed by the regulatory powers of the LGU and that it is not deliberate on their part to avoid it. It is clear to them that a consequence of regulation is the obligation to pay taxes. Registration in this case did not materialize because the regulatory system does not accept or recognize street vending itself as a legitimate livelihood. Being productive individuals, the informal sector is in a position to pay the fees imposed. That they are not recognized and that they are productive places them in a situation of vulnerability, subjected to exploitation by some public servants.

In the case of street vending, legal exclusion occurs since it is treated as an illegal activity. Vending itself is not an anti-social or illegal activity.⁸⁷ The place where the activity is being conducted renders it illegal. Street vending has become acceptable to the public for many reasons. Public markets are diminishing with the consistent trend towards privatization of the markets and preference for the establishment of malls in the localities. This being the case, the poor cannot afford the spaces in the private markets and the malls, thereby, forcing them to vend in the streets. Consumers also patronize the street vendors since they are more accessible than the malls and private markets.

While the streets are not open for vending, the same has been regulated for parking slots. Hence, the argument that streets are not objects of commerce fails in this respect, and clearly shows a discriminatory attitude towards the poor.

On one hand, street vendors are placed at the mercy of different local government authorities. Some cities allow the streets to be used for vending at given periods (e.g. night markets, organized vending program) while most prohibit street vending. In Manila, the street vendors were organized and granted the authority to manage the street where they vend. Correspondingly, the organized street vendors have the responsibility to ensure that the street shall be clean and clear enough for traffic to flow.⁸⁸

Demolitions of the implements of the street vendors are normally undertaken by the MMDA on the ground that they are traffic obstructions. However, in LGUs where there are clear regulations allowing street vending, the MMDA do not intervene. Mayors will not expressly prohibit it in their localities, since the poor constitute a large part of the voting population, but it can be validly surmised that the absence of regulations translates into demolitions by the MMDA and the police. Nothing in the city or municipality happens without the knowledge of the local officials.

On the other hand, market stall vendors do not enjoy a definite contractual arrangement for the use of the stall, with fees collected on a daily basis by the LGU. The regulations in place are not for legal recognition or security of tenure of the vendors but as a source of income for the national and local governments. They are mapped for taxing by the tax agency but the same does not translate into legal recognition or security of tenure. There is, thus, no

⁸⁷ As prohibited by Presidential Decree No. 825 and 79-B?

⁸⁸ Based on the interview with Mr. Ignacio Diaz Santos, Head, People's Employment Service Office, Quezon City.

clear intention to guarantee security despite their contribution to the coffers of the local government.

(insert santos interview)

Nuisance per se

Under MMDA Resolution 02-28 (2002), the MMDA has authority to remove any obstruction in the streets, avenues, alleys, sidewalks, bridges, parks and other public places in Metro Manila in order to utilize the roads fully. Sidewalk vendors are considered nuisance which the MMDA can summarily abate under the said resolution. Their goods are to be confiscated and thrown out as garbage. This leaves the sidewalk vendor at an even worse position.

The MMDA Resolution partakes of police power legislation, depriving the vendors of their stalls and the goods they sell. The Supreme Court has repeatedly held that the MMDA is a mere coordinating agency without authority to pass any police power legislation or even implement them unless it has been expressly delegated by the local government unit.⁸⁹ Furthermore, the said resolution has the effect of reclassifying property by decreeing that anything confiscated by virtue of the resolution shall be “treated as common or ordinary garbage and shall be disposed of as such;” thus, the government shall not be liable for any damages. Private property then, in the form of the goods of the vendors is reclassified into garbage, which is *res nullius*. Assuming that the MMDA exercises valid powers to abate such nuisance, abatement can only be undertaken up to the extent of removing the nuisance. Even then, the property is considered private. Once the property ceases to be a nuisance, the MMDA no longer has the right to dispose of them; doing so amounts to confiscation of private property without just cause, which no government agency can justifiably do.⁹⁰

In this regard, it is the actions of the government which perpetuates the legal exclusion of the poor and the informal sector. Gaining wide approval ratings from members of the classes A, B and C, it is likely that the MMDA will continue its concerted efforts against sidewalk vendors; viewing them simply as a nuisance, devoid of any personality before the law.

- **Small Transport**

The situation of the Intramuros vendors is also availing in the case of another subgroup, the pedi-cab (manual, non-mechanized side cars) drivers. Small transports are regulated by the municipal or city government. It is the LGU that necessarily provides for recognition and regulation.

- **The informal sector and the Labor Code**

⁸⁹ MMDA v. Garin, GR No. 130230, April 15, 2005.

⁹⁰ Based on an interview with Atty. Ibarra M. Gutierrez, III, Director of UP-IHR.

Presidential Decree 442: Labor Code of the Philippines

Overview

The PD 442 is the primary legislation concerning the rights of the workers. The law is a police power enactment with the view of regulating the businesses of the employer to protect the workers. The aim, reason and the justification of the labor law is social justice which is, “the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated.”⁹¹

Issues

The Labor Code is not applicable to the informal sector. It merely governs work relationships between an employer and his/her employee. Some sub-sectors of the informal sector that are now governed by the labor code are the household helpers and home workers. This then implies that members of the two sub-groups are no longer part of the informal sector, and are now integrated into the formal system.

It is important to note however that not all members of these two sub-groups are covered by the labor code. For household helpers, only full time, stay-in helpers are covered by the Code as there is an employer-employee relationship. Helpers who come in only on notice like *labandera*, *plantsadora*, etc. are not accorded the benefits of the law. The same is true for industrial home workers without any formal contract with their employers. Mostly women, these home-based workers work on an informal basis depending on the demands of their contractors.

Despite coverage of the regular home workers and household workers by the labor code, they still continue to be a marginalized group. House helpers are not governed by the minimum wage requirements set forth by Congress. The wage schedule provided for in the law is much smaller compared to the regular or formal workers, although the Code prohibits reduction of their salaries. House helpers are also not covered by the provisions on overtime pay, service incentive pay, holiday pay and the like.

On the other hand, home workers are hard to regulate, the work being confined at home, the benefits provided for by the law are sometimes not observed. Moreover, women home workers belonging to the poor take whatever form of work they could get even if the pay is very minimal. The employer/contractor also deducts damaged goods from their compensation although such may not be attributable to the home workers' fault.

A related issue concerning home-based workers is security of tenure to their homes, which constitute their workplace or workspace. The policies relating to social housing and addressing the housing needs of the informal settlers are critical to ensuring security of work for the informal sectors.

Other provisions of the Code which has a detrimental effect to other sub-groups of the informal sector are the provisions granting exemptions from labor standards. In particular, service or retail establishments regularly employing not more than five (or ten in other cases)

⁹¹ Calalang v Williams. G.R. No. 47800. December 2, 1940.

employees are exempt from granting certain benefits conferred by the law such as night shift differential, holidays with pay, service incentive leave, etc. Similarly, new investments and businesses are granted similar exemptions by the Board of Investments.

- **Laws on Social Development and Protection Available to the Informal Sector**

In recognition of the rights of workers, laws have been enacted conferring in them benefits, protection and assistance for their personal development.

Republic Act 7796: Technical Education and Skills Development Act

Overview

Skills acquisition is the main concern of the Republic Act 7796, which created the Technical Education and Skills Development Agency, a government body to assist and promote the development of middle level manpower through skills training. Middle-level manpower has been defined under the Act as persons who have acquired practical skills and knowledge through formal or non-formal education and training equivalent to at least a secondary education but preferably at post-secondary education with a corresponding degree of diploma; or skilled workers who have become highly competent in their trade or craft as attested by industry. Such a definition includes informal workers who have been engaged in technical jobs even in the absence of a formal employer.

Republic Act 7875: National Health Insurance Act

Overview

Health Insurance Coverage is provided for by RA 7875 to every citizen of the country regardless of their status in life. This necessarily includes the informal worker who is conferred no such benefit by their employers. Contributions for indigent members are to be partially subsidized by LGU where the member resides. But as will be discussed later on, proving residence of the poor informal worker is easier said than done, which reduces their chances of getting the benefits conferred by law.

Republic Act 8282: Social Security Act

Overview

Under the Social Security Act of 1997, employees are to be compulsorily covered by the SSS, including individual farmers, fishermen and self-employed persons. Certain members of the informal sector fall under this compulsory coverage. Others may voluntarily opt to be covered, as in the case of house helpers with an income of more than a P1,000, whose contributions can be deducted from their wages.

Issues

There is however an issue as to the social security of the members of the informal sector. Considering the uncertainty of work for most, it is unlikely that they would be able to afford the monthly contributions. In sum, the benefits of the law are focused primarily on workers within the formal line of work.

LGUs can ensure access of the informal sector to social protection by establishing linkages between them and relevant government entities just like in the case of Quezon City where the Public Employment Sector Office by brings the SSS to the barangay level.

Republic Act 6846: Social Housing Support Fund Act

Probably one of the most important issues concerning the informal sector is the issue of housing. Because they are largely poor, one of the foremost needs of the informal sector is secure housing facilities.

Overview

The Social Housing Fund created under RA 6846 is meant to provide the means for indigent members of the community to acquire low-cost housing. The indigent informal workers are covered under Level A with a gross monthly income of less than P4,000 or approximately 130/day. A Level A eligible borrower is entitled to a developmental financing loan of not exceeding 80 percent of the entire project cost

Republic Act 7279: Urban Development and Housing Act

Overview

Despite the existence of the social housing fund, informal settlers still proliferate in the urban areas. RA 7279 particularly addresses this point. Under the UDHA, informal settlers are given an opportunity to be relocated and own the house and lot where they are relocated via a Community Mortgage Program. Subdivision developers are also mandated by the law to reserve 20 percent of their development area for housing projects to the informal settlers. Right now, plans in housing are geared towards developing a progress based housing for the poor, where loans will be granted per stage of construction of the low-cost housing.⁹²

Issues

A major criticism against the UDHA is its limited applicability to settlers occupying the land only before the effectivity of the Act. Those who informally settled after 1992 are no longer covered by the Act. Moreover, to come under the law, one must prove residency prior to 1992 in the land s/he is currently occupying. Because of the lack of security of tenure they have over their “residences,” informal settlers cannot adduce any formal proof of such. At most, they can ask for a certification from the barangay attesting to their residence in such place. This leaves them at the mercy of the barangay official who may refuse to issue such a certificate absent any concessions the community or “resident” can give. This issue of residency can likewise be a hindrance for the poor to enjoy the benefits of the health insurance coverage of the government as they need to prove their residency in a particular city or municipality in order for the LGU to subsidize their contributions.

Despite efforts of government to make these welfare and social protection mechanisms available, majority of the informal sector has continued to shun coverage under these systems.

⁹² Input from HUDCC during the FGD ____, held on ___ at ISO, ADMU.

3. General Observations

Poverty denies the poor the status or personality before the law, particularly in the case of the informal sector. The grant of status or legal personality to the poor is dependent on the recognition by the law of their existence and contribution as subjects and objects of development. It is clear from above that very limited recognition is accorded by the law to the informal sector. Where the economic activity is recognized, registration is the primary mode of recognition and is heavily conditioned on their ability to pay the necessary fees. In the case of acquiring legal personality to engage in small business, the informal sector must pay all the fees covering permits and other business requirements. In case of securing justice, they have to pay prohibitive costs to sustain litigation. In the case of social protection, they have to pay the necessary premiums, without the benefit of subsidy from an employer. In the context of the informal sector, where income generation is very low, these obligations are the least of the priorities of the poor since daily survival is primary on their minds. In addition, it is not clear to them why there is a need to pay to acquire the status. Their lack of status or personality before the law is not a choice on their part, but is an effect of their invisibility before the law and the transactional and prohibitive costs of acquiring the same. The absence of laws granting them the rights and enabling them to exercise their rights effectively divests them of access to justice despite the pronounced empowerment programs and judicial reform efforts of the State.

Several sub-groups of the informal sector, like the street vendors and pedicab drivers, continue to be unrecognized and unregulated, hence legally excluded. This stems from a lack of real understanding of their context since a lot of the laws are inappropriate to the kind of livelihood they engage in. It is the mistaken assumption of the State that members of the informal sector and the sub-groups and identities within are homogenous, where a simplified and singular approach to the multi-faceted, and diverse needs of the members is desired for easier regulation and control.

Conflicts in the law in terms of content, interpretation and implementation continue to hamper the poverty alleviation programs. One law can be used to defeat the rights protected under another law, and usually, at the expense of the poor, given that the administrators of services and final adjudicators do not have a deep understanding of the social context of the poor nor a coordinated response to the problems facing the informal sector.

Further, the above interventions are not insulated from political conveniences and machinations, thereby subjecting the situation of the poor to the whims and caprices of the politicians. It must be emphasized that the law is the means of social control, a coercive and control mechanism of the state, hence, its impact on the poor is the manifestation of the kind of relationship desired by the State with its constituents. As mentioned above, while participation is key to understanding the context of the poor, the participatory mechanisms provided do not recognize the existence of the informal sector and has also been subjected to the culture of political patronage and spoils.

It is clear from the laws that rights were already conferred on the informal sector. The laws encourage their organization, participation, education, capacity-building, access to information, and social protection. While the conduct of the State seems to indicate the desire to confer rights, the results tend to show otherwise. There is no full grant of the rights- it is not complete for which reason it can be safely said that the informal sector continue to be objectively prevented from enjoying their full rights. There is no consideration of the interrelatedness of the

laws that impact on the rights such that one law effectively denies the rights of the poor under another related law. It can be said that State interventions merely address a few of the aspects of empowerment – economic empowerment, capacity building, participation and legal empowerment - and not even completely.

Insofar as raising the level of critical consciousness of the poor, the laws and reform efforts fail in this respect. Years of conditioning have left the poor and marginalized powerless and without rights. Members of the informal sector do not have the consciousness that they are workers or entrepreneurs or active agents of economy, hence, most of them believe that their business is illegal. Nor do they have the consciousness that they are both the subject and object of development. It is human nature to seek livelihood, despite the risks, especially since there is demand for their work from the consumers and the formal entrepreneurs which make use of their goods and services.

Clearly, there has been no strategy to effectively address their educational and information rights and needs that would raise their consciousness as effective economic actors. The institutional mechanisms for participation do not enable nor give them real participation as political actors, where they can demand transparent and accountable government services and processes. Neither can they enforce their rights in case of violation unless full recognition of their rights is given teeth through an enabling law and the judicial system fully accommodates the access to justice concerns of the poor. The informal sector must also gain the knowledge of their rights since responsibilities are inherent in rights concepts. As mentioned earlier in this paper, the standards for recognition, regulation and taxation of the informal sector must first and foremost be accepted by the informal sector as part of the law, since the same mechanism is one of the tools to ensure their protection against undue deprivation of their rights towards ensuring their access to justice and the rule of law.

More importantly, democratizing the whole legal system for the poor is not in the agenda of the State. The informal sector has never been recognized beyond being sources of income for the State, its political units as well as abusive officials. In fact, the attitude has been to insist on registration for protection, but not with respect to taxation. Legal interventions fall short of addressing the context of the injustices committed against the poor since the social context inhibits the real participation of the poor in law and policy reform as well as securing justice before formal as well as informal venues. Access to resources, which basically stems from structural and social inequities, has not been squarely addressed as forming part of the rights of the poor, towards their legal empowerment. Clearly, political empowerment is a *sine qua non* to their legal empowerment.

The approach to poverty does not fully take into consideration the human rights of the poor and the corresponding State obligations attached to them. It can be said that most of the above laws were enacted as tools of equity, to ensure that the poor can have better lives. However, these equity tools have been shown as not actually contributing to poverty reduction in the absence of an integrated and comprehensive approach to addressing the rights and well-being of the poor. Reducing poverty is not simply a function of economics. As found in one study, equity tools can provide temporary increases in terms of income and access to resources. But the impact would be individualized and spatial, not collective and general. Hence, the approach should indicate support to basic principles of human rights, where all the aspects of development of the person must be addressed to ensure his/her total well-being. Efforts must ensure that both the content and processes to be undertaken in pursuing a poverty reduction program must result in empowerment, equity, equality, non-discrimination, attention to vulnerable groups, indivisibility, interrelatedness, interdependence and universality of rights, transparency and accountability, good governance,

participation, independent judiciary and capacitated legislature to take on the cause and rights of the poor. Judged from each and every principle, the present responses to poverty reduction and empowerment of the poor fell short in realizing the human rights to the informal sector.

III. STRATEGIES UNDER THE LEGAL EMPOWERMENT FRAMEWORK

The Philippine State has been dubbed as a state which does not have the will to reform. That has to change if the State is sincerely desirous to bring about real change in the lives of the poor, particularly the informal sector.

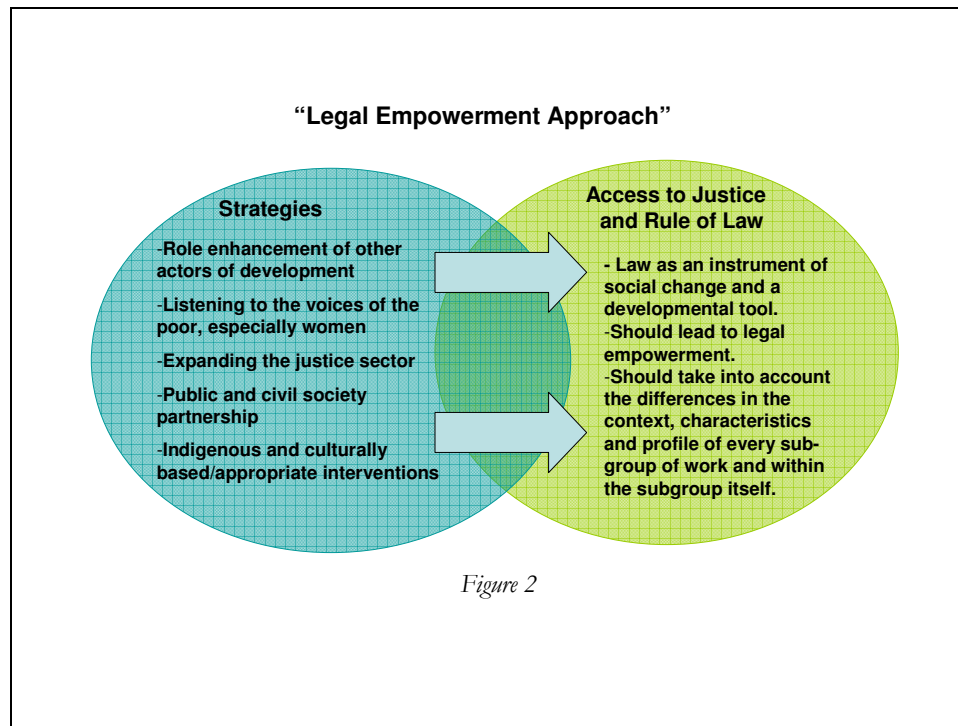
To legally empower the poor, i.e., the informal sector, a framework legislation that articulates the context, causes of disempowerment and rights of the informal sector, with appropriate redress mechanisms, is the ideal. It must spell out a holistic, integrated, comprehensive, non-discriminatory, participatory and bottom-up approach to addressing poverty in the context of the informal sector. It should take up all the difficult issues of inequity, inequality, and unjust distribution of wealth and resources, as well as all the factors that discriminate and emasculate the poor. Failing in this respect would mean indicting the poor to poverty for the rest of their lives.

A Magna Carta for the Informal Sector, which also spells out the uniqueness of the sub-groups, would be a step in the right direction. Again, caution must be undertaken in attaching too much importance on making another law which might end up as another white elephant, in case the “difficult issues” are not addressed and where oppressive laws and policies are not voided.

In coming up with a roadmap, the paper is guided by the strategies of a legal empowerment approach, namely:⁹³

- An emphasis on strengthening the roles, capacities, and power of the disadvantaged and civil society.
- The selection of issues and strategies flowing from the evolving needs and preferences of the poor, rather than starting with a predetermined, top-down focus on judiciaries or other state institutions.
- Attention to administrative agencies, local governments, informal justice systems, media, community organizing, group formation, or other processes and institutions that can be used to advance the poor’s rights and well-being, rather than a focus on a narrowly defined justice sector.
- Civil society partnership with the state where there is genuine openness to reform on the part of governments, agencies, or state personnel, and pressure on the state where that presents an effective alternative for the disadvantaged.
- Great attention to domestic ideas and initiatives, or experience from other developing countries, rather than Western imports.

⁹³ *supra.*, Golub:2003.



The following sections discuss in detail the strategies to enhance access to justice and rule of law, as illustrated in Figure 2 above.

1. Role enhancement of other actors of development

To democratize the development process, a multi-stakeholder approach must be applied to draw know-how with a view to facilitating efficient use of resources. The Constitutionally guaranteed right of the people to participate in local development policy and decision-making processes must be enabled once and for all. This cannot wait. The mechanism for institutionalization must factor in the social context of the informal sector where there must be recognition of its existence, protected from the influences of politics and governance dynamics, broad-based as much as possible, placed in a position as decision-makers, and capacitated to acquire critical consciousness of their context and the society in general.

One must have to accept the fact that the informal sector is the most vibrant, dynamic and resilient economic actor in the country. They must be harnessed as engines of development through capacity-building, not only as a source of income but both as participants and beneficiaries of development. Hence, opportunities for development, individually and collectively, must be provided by poverty alleviation programs.

While a national poverty alleviation program is critical in providing a macro perspective in addressing the context of the poor, the LGUs seem to be the most strategic, logical and community-based mechanism to address the rights, needs and issues of the informal sector. Together with the informal sector, the needed push towards capacitating the LGUs must be undertaken. What is absent in the mindset of local government officials is understanding of the poor and the recognition of informal sector as development partners. Also, LGUs still lack the skills that enable them to

integrate social development goals, including poverty alleviation programs, in their local development plans. Not only should the capacity-building address technical support, but it must enforce changes in attitudes and behaviors in their relationships with the poor and the informal sector as well as emphasizing their role as public servants and not servants of their political lords.

The relationship between the LGU, civil society as well as the private sector must be enhanced and optimized to work towards the economic empowerment of the poor in the local area under an over-all poverty reduction agenda of the local and national governments.

The relationship of the LGU and the national government and its representatives must be fine-tuned to effectively implement poverty reduction and other development programs, where the inefficiencies in the system need to be immediately addressed. Primary in this approach is the release of the internal revenue allotment and other funds in support of the projects in a timely manner, absent of any political motivation. Corruption must be addressed through effective anti-graft and corruption measures.

As mentioned earlier, the key indicators of effective governance must be addressed: locally accountable and transparent governance, availability of technical and financial capabilities to carry out both locally developed and nationally directed projects, real participation from the poor to provide their perspective and immediate feedback on development planning and implementation, local capacity to promulgate ordinances to enable the efficient, effective and responsive delivery of services, compliance with the implementation of national policies, particularly Gender and Development and gender-responsive planning, implementation, monitoring and evaluation processes. All of these aim towards efficient and effective coordination between local units, national agencies and partners.

To integrate gender and ensure women's rights, affirmative actions or temporary measure through appropriate local legislation must be undertaken to ensure women's participation as well as ensuring availability of services to women, like a quota system in terms of participation and targeted budgeting and planning for women.

2. Listening to the voices of the poor, especially women

Laws continue to be interest-based. The lawmakers ensure in the laws that their interests are protected, hence, it is common to find gaps and lapses in the content in the law as well as in the enforcement of supposedly "equity" laws. Even the process of law-making subjects the rights of the poor to the usual travails of politics and procedural inequities, like the processes being undertaken in the Bicameral Committee, where the proceedings are less transparent as the regular legislative processes.

While a deeper understanding of their constituencies can be achieved through research and unwavering reliance on praxis as a basis for knowledge and development/environmental planning,⁹⁴ the voices of the informal sector must be heard, particularly the voices of women, children and indigenous peoples. Not only should mechanisms be established to enable them to speak out, the processes of law and policy making must ensure that they participate in the decisions making processes in a real manner. It is in this light that gains in representation in all the legislative fronts

⁹⁴ *supra.*, IPC:2005, p. 88.

must be protected. In addition, suffrage is an area that needs to be looked into to ensure a highly democratized government and leadership.

Enabling the “voices of the poor” would necessarily entail capacity-building on their part towards critical consciousness of the legal system and their rights, raising their awareness of their important roles and means as productive actors, and developing their capacities to encourage organization, access to technology and other infrastructure, education, linkages and advocacy. Economic development must not only define economic growth but must ensure equitable distribution through redistributive measures to be undertaken both nationally and locally. It also means enhancement of people’s capabilities and widening of their choices. In all the aspects of development programming, their voices must be heard.

Law reform must take into account the experiences of the poor. Law reform efforts must always start with an objective and good faith assessment of existing legal, policy and regulatory framework and program that affect the informal sector side by side with national poverty reduction strategies. Legal interventions must address the basic issues of the informal sector, particularly equity, equality, access to justice, utilization, security of tenure and protection of resources by the informal sector (especially women and indigenous peoples), and human rights. In particular, law reform must give attention to the rights and needs of vulnerable groups, especially the poorest sector, and must address increased productivity and income in the agriculture sector, where the needs of small, rural and women workers must be ensured. Perceived violators of the rights of the informal sector must be duly sensitized thereon, and in case of violations, appropriate redress must be given to the informal sector; their right to equal protection to the law and due process must be ensured. Laws must ensure sustainable interventions. Lastly, law reform must be non-discriminatory and inclusive, participatory, transparent and comprehensive. Attached as Annex “B” is a list of laws identified by the informal sector, which affect their development and empowerment.

There is also a need for continuing sensitization and understanding by the State and all its units to the realities of diversity in the informal sector and its sub-groups and identities. For this purpose, national and local policy and planning must always focus on ensuring disaggregation of data, both local and national, that looks into sex, ethnicity, activity, among others of all the sub-groups in the informal sector. On top of ensuring the visibility of the informal sector through national statistics, there must also be a system by which the vulnerabilities of the informal sector can be monitored and addressed at any time, where gender and human rights concerns are also integrated. There is also a need to establish transparent, non-discriminatory eligibility criteria in order to ensure effective targeting of assistance.

3. Expanding the justice sector

Justice must be the goal of each and every sector in society. In administering justice, the social context of the informal sector must be taken into account, which necessitates awareness raising, sensitization and capacity building on the part of the actors in the justice system.

The capacity of the community must be strengthened towards ensuring justice. One has to realize that the judiciary is at the end of any justice-related issue. The barangay justice system must be enabled to provide mediation and conciliation services that are more responsive and effective to the community, where the context and rights of women, children and indigenous peoples are taken into account. For this purpose, existing structures on human rights (like the BCPC and BHRAC)

must be made functional. In addition, mechanisms to monitor and protect violence against women and their children must be institutionalized at the community level as well as gender plans or desks. Continuing sensitization must also target barangay officials towards enhancing their roles as public servants.

Efforts towards sensitizing all the pillars of the justice system working at the community level must be undertaken, particularly law enforcement, to ensure the security of the informal sector in terms of undertaking their livelihood.

The legislative and executive branches are critical actors in the justice sector, being essentially the law and policy makers, and supposedly, the experts in the fields of development affecting the poor and marginalized. The legislature must have the capacity to come with up with laws that provide all the dimensions of access to justice (e.g. economic, social, linguistic, cultural, geographical, and information accessibility), by addressing the causes of inability to seek justice by the informal sector as well as those obstacles that prevent the institutions in ensuring human rights and justice. Structural and institutional support must be provided to ensure access to justice by establishing mechanisms for human rights education, human rights and legal protection, assistance and redress, oversight towards effective implementation of the laws, alternative dispute remedies, recognition of indigenous justice systems, and institutional independence.

The judiciary also has a role in addressing the need for policies that would ensure all the access dimensions. Towards this end, the APJR needs to be enhanced. Critical in ensuring access to justice is the need for an independent judiciary, which can articulate the rights of the informal sector based on a well-grounded understanding of their context, in accordance with law, towards ensuring equality, non-discrimination and equity. While the legal framework needs to posit the rights of the informal sector, the judiciary has the symbolic function of educating the society about democratic principles, rights and responsibilities towards a more human treatment of the informal sector to ensure the latter's life to dignity and integrity.

4. Public and civil society partnership

The Local Government Code, or RA 7160, allows public and civil society partnership wherein the LGUs are authorized to conduct joint ventures with people's organization and NGOs to engage in the "delivery of certain basic services, capability building and livelihood projects and to develop local enterprises designed to improve productivity and income, diversify agriculture and spur rural industrialization." However, insofar as the informal sector is concerned, LGUs have not really viewed the informal sector as people who have rights to participate in the development plans and have thereby failed to undertake interventions that would create an enabling environment for the full recognition of their economic resilience and realization of their rights as human beings. Local authorities must therefore allocate resources to ensure policies towards the end of creating an enabling environment for the informal sector.

Civil society also plays a critical role in the justice sector. More often than not, they serve as the critical actor in checking on the powers and actions of the State as well as innovators that contribute to legal empowerment of the poor. It is thus critical to encourage public and civil society partnership.

How the State and the local actors (LGU, private sector and civil society) relate in terms of formulating and executing poverty alleviation programs are areas that need to be threshed out in finer details. What cannot be done however is minimizing the power of participation of all actors concerned. While market forces need to be respected, the same must be pursued in a situation of power equity and balance. It is clear that market forces should have somehow alleviated the lives of the poor; yet it is also clear that manipulations and machinations of the market are being undertaken by the powerful, which effectively denies the informal sector even access to the very same equity and support services provided them under the laws. Clearly, the market is not really free. The State then must intervene by providing a holistic approach to equalizing power and raising the level of the informal sector in the same footing as the traditionally and historically powerful actors in society and enable market to pursue its natural course.

On top of this task is the provision of services that would minimize the cost of being at work or in business for the informal sector, like the transactional costs, both legit and illegal exactions.

Sustained increases in national income that will lead to economic growth are conditions to reduce poverty. In order to have a quality of growth that will reduce poverty in this country, it was suggested that the “deep determinants” of rural growth and poverty reduction must be looked into: market-friendly institutions, rural infrastructure, and health and education. (see Annex “C”)

In addition, it was also recommended that investments in rural infrastructure and human capital, removal of public-spending biases favoring large farmers and agri-business enterprises, promotion of small-scale enterprises, improved access to land and technology, and macroeconomic, political stability and full implementation of CARL must be ensured to increase agricultural profitability. Broad-based economic development must be undertaken with the informal sector, including promoting investments to improve the livelihoods of the informal sector, enacting policies to promote non-discriminatory access to markets and prevent uncompetitive practices, encourage development of social responsibility and commitment of all market players, among others, with the end in view of ensuring wide distribution of benefits especially to the vulnerable groups. Here lies the value of public-private sector coordination and partnerships, to promote appropriate tools in providing support to the informal sector.

5. Indigenous and culturally based/appropriate interventions

The Philippine culture is rich and it has its unique identity, norms and settling disputes. While the Philippines deserve to enjoy the fruits of technology, the same must always be viewed still from the historical, cultural and societal perspective of the Filipinos, who is not wanting in great ideas and resilience in solving domestic problems. The mechanisms for real participation must be made functional in order to surface these identity and ideas that would be the basis for more responsive and relevant solutions to poverty.

In addition, there is a challenge that faces the “majority” sector of Philippine society, one that relates to accepting the several indigenous justice systems, and finding a mechanism for its interface with the mainstream or formal justice system. The realization of this interface is critical to the identity and integrity of the indigenous peoples. This includes a revisiting of the cases of La Bugal as well as policies that consider the rights of the indigenous peoples as subservient to the interest of the majority. It must not treat customs of the indigenous peoples as merely factual. To

reiterate the points earlier, recognition of cultural diversity, not homogenization, is the key to reaching an interface of the indigenous justice systems and mainstream justice system.

On the part of the indigenous peoples, the challenge lies in interfacing human rights and gender with customary laws. Even if the use of customary laws is recognized in the imposition of penalties, the same is subject to a limitation that is national in perspective, i.e., the penalties must not be cruel, inhuman and degrading, nor excessive fines and that the death penalty cannot be imposed. The conflict is more political, where the impositions of penalties by the indigenous peoples are viewed as illegal rather than human rights violation. Also, IPRA is gender-blind. In this respect, interventions should be educative since culture is, at the same time, not static.⁹⁵

The access to justice of indigenous peoples entails an understanding of their social context. Equal protection of indigenous peoples demands that they have equal opportunity to access justice, not to be viewed as a distinct group but the same as the majority, with the same rights. However, having been at a disadvantage historically, it is critical that special measures and a different perspective be resorted to ensure that indigenous peoples be raised to a level where they are of equal footing as the rest.

The concerns of the indigenous peoples are distinct and separate from finding the legal empowerment solution to the needs of the informal sector. Informal systems to provide redress and mechanisms for dispute settlement may be established in view of the inability of the formal redress structures to provide justice to them, on top of the alternative dispute resolution mechanisms currently available. The process towards formulation of these informal systems must be non-discriminatory, participatory and gender-sensitive.

IV. FINAL NOTE

A revisit and revision of the existing framework legislation governing the informal sector must be undertaken taking into account the above findings. The end goal is to make a difference in the lives of the informal sector from mere subsistence level of living to a situation where there is real increase in income and human development. For years, a Magna Carta for the Informal Sector has been advocated but the same is practically Labor-code inspired which does not embody the uniqueness of the sector and is obviously intended to formalize the sector. The approach and processes must encompass all the critical components of legal empowerment. For starters, the definition of the informal sector must be reviewed and a more positive one be advanced to reflect their contribution in spurring economic survival, and growth. This paper actually reinforces an earlier study that there is no dichotomy between formal and informal activities.⁹⁶ The first step is to make visible the contribution of the informal sector and empower them through a fair and just legal framework that would reduce their vulnerabilities and contribute to a general and equitably distributed increase in economic growth among the people of the country.

⁹⁵ Interview, Atty. Ballesteros.

⁹⁶ UNDP paper.

V. ANNEXES

Annex A

APJR Menu of Available Alternative Dispute Resolution Mechanism⁹⁷

Caseload of Selected Organizations Employing ADR Mechanisms

AGENCY/ ORGANIZATION	CASELOAD PER YEAR (ave)	NUMBER SETTLED/ SETTLEMENT RATE	AVERAGE SETTLEMENT DURATION
1. Katarungang Barangay (Community Justice System)	147,341 cases/ yr	128,416 cases/ yr (87%)	1-30 days, depending on case complexity
2. Cooperative Development Authority	297 (1997) 284 (1998)	Mediation: 155 (1997) 244 (1998) Arbitration: 35 (1997) 40 (1998)	3-4 months
3. Philippine Construction Industry Arbitration Commission (CIAC)	141 cases over 10 years	95 to 10 years	11 months and 12 days
4. Department of Agrarian Reform Adjudication Board (DARAB)	167,525 per year	153,674 (92%)	60-70 days
5. Philippine Dispute Resolution Center, Inc. (PDRCI)	1 (1998) 11(1999)	1 (1998-100%) 0 (1999)	6 months
6. National Conciliation and Mediation Board (NCMB)	438 (1996), 431 (1997), 407 (1998), 323 (1999)	55 (1996); 33 (1997), 31 (1998), 17 (1999)	17 days
7. National Labor Relations Commission (NLRC)	40,000 cases (1999)	Mediation - 9,280 Arbitration - 18,850 Pending - 11, 870	Approximately 5-6 months
8. Bureau of Relations (BLR)	13 cases 117 appeal (1999)	Mediation/ Arbitration 8 (19999) Appealed Cases - 79 (19999)	30-60 days
9. The Commission on the Settlement of Land Problems (COSLAP)	An increasing number of land disputes were referred to the COSLAP since 1996: 76(1996), 222(1997), 364 (1998), 538 (1999)	Settlement rate is on a decline 36 91997 - 16.2%) 105 (1998 - 28.8%) 106 (1999 - 2%)	No exact data but approximately 3 months to 1 year
10. Insurance Commission	60 cases per year	60-70% settled amicably	Variably 6 mos. Depending on case complexity
11. Bureau of Trade Regulation and Consumer Protection (BTRCP)	12,139 cases/ year	11,177/ year (1,421 or 69% by DTI; 9,756 or 97% by business establishments, balance of 962 endorsed to other agencies or in process	Depending on complexity of case, two days to three months

⁹⁷ SC, Action Plan for Judicial Reform.

Annex B
Law Reform Areas Recommended by the Informal Sector: ⁹⁸

Informal Sub-group	Legislative Arena	Executive Policy Making
Vendors	Enactment of Magna Carta for IS and subgroups	<ul style="list-style-type: none"> - LGUs to pass ordinances on IS, implementing EO 452 - DILG to issue directives to issue EO 452 - Development of IS programs, projects and basic services for the IS
Farmers	- Amendments to Mining Act, CARL, RA 7192	<ul style="list-style-type: none"> - Implement sustainable agriculture - Prevent prime agricultural land conversion - Review registration requirements or acquisition of status - Enforce international human rights covenants
Fisherfolks	- Review and amend accordingly conflicting laws like RA 8550, 7160, 7586, PD 705, 704	<ul style="list-style-type: none"> - Implement preferential rights of fisherfolks under RA 8550 and review IRR of section 108 of said law - Full implementation of Integrated Coastal Management
Small Transport	- Need for a new law on micro-business	<ul style="list-style-type: none"> - Only one law to govern transport (LTO or LGC) - Enabling representation in policy making bodies
Others: Home-based, Construction workers, etc.	<ul style="list-style-type: none"> - Need for law on construction worker's levy - Magna Carta for IS integrating human rights - Make DO 13 of DOLE into law - Expansion of social security and health program for IS - Amend Mining Act, RA 8425, RA 9178 (re: exemption from minimum wage law) - Review CMP, classification and zoning laws - Consider one book on IS in the Labor Code 	<ul style="list-style-type: none"> - Ordinance on creating informal workers council in every municipality

⁹⁸ FGD Cebu.

	- Amend Labor Code governing workers in the IS - Ratification of ILO 177 on homework	
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Annex C
Indicative areas for national government spending on a poverty program⁹⁹

<i>Areas to spend more</i>	<i>Areas to spend less</i>
1. Basic education, especially teaching materials; technical education and skills development esp. in rural areas.	Tertiary education: cost-recovery (but with scholarship for the poor)
2. Basic health and family planning services	Tertiary health care: Impost cost-recovery
3. Rural infrastructure, especially transport & power (but w/ coordination)	Public works equipment program (except for short-term disaster relief)
4. Targeted supplementary feeding programs and food stamps	General food price subsidies
5. R&D and small-scale irrigation systems	Post-harvest facilities (private goods)
6. Capacity building for LGUs & microfinance providers	Livelihood programs (except for short-term disaster relief)
7. Impact monitoring & evaluation	

⁹⁹ Balisacan.