

**THE WAY FORWARD: LEGAL EMPOWERMENT OF
THE POOR IN THE PHILIPPINES
(The Integration of Four Thematic Papers)**

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INTRODUCTION

In 2005, ESCR-Asia, Inc., upon invitation by FIAN-Norway and other Norwegian NGOs, sent its Vice-Chair for External Affairs to present a paper on the situation of the informal sector (IS) in the Philippines. Varied reactions but mainly disbelief first greeted the presentation for the simple reason that there is no counterpart of an informal economy such as that seen in the Philippines, in advanced industrialized countries like Norway.

Two instances in that trip changed the perception on the informal sector in particular and poverty in general in a country like ours. First, ESCR's representative vividly shared her own experience a few days before leaving for Oslo when she nearly got caught in a dispersal raid done by the MetroManila Development Authority (MMDA) on street vendors along Commonwealth Avenue in her home city of Quezon City. The second instance was when members of FIAN-Norway's board watched "Between the Cracks" – video presentation, thought-provoking yet deeply reflective, of the plight of the informal sector in the Philippines.

The above anecdote is but a brief glimpse into the work currently being done to bring to the attention of authorities not only the plight of members of the informal sector but the reality of a sector of society and how it copes daily and valiantly, with poverty in spite of government. This conferenceⁱⁱⁱ is but another step, albeit a very important one, in the journey towards that goal as well as to assert and affirm that legally empowering the poor must begin with the poor themselves as well as respecting and protecting their dignity and rights as human beings.

This short integrative paper comes at the end of a long process of consultation and research that began with initial studies on four themes laid down by the UN High Commission on the Legal Empowerment of the Poor. These papers underwent further refining through various consultations both with people from the sectors affected as well as from government, the academe and the NGO world.

At the outset, let it be said that all four papers acknowledge that government is to be credited with addressing the problem of poverty with relevant laws, policies and programs such as: Republic Act^{iv} (RA) 6657, the Comprehensive Agrarian Reform Law, the most important piece of social justice legislation which created the Comprehensive Agrarian Reform Program (CARP), and RA 8425, the Social Reform and Poverty Alleviation Act of 1997 which is the only piece of legislation that recognizes the existence of the informal sector, and the corresponding creation of the National Anti-Poverty Commission.^v Indeed, at least, during the time of the last five administrations, several important pieces of legislation that impact on the situation of the poor have been enacted.

Having acknowledged this, however, all four papers point to common trends that call for serious consideration vis-à-vis these laws and programs regarding the poor and the informal sector where economic and political factors interplay.

COMMON ISSUES

As Dr. Mendoza pointed out in his presentation of the paper on Property Rights, two kinds of reform are needed: **POLICY REFORM** and **IMPLEMENTATION REFORM**. This twin phrase term, we believe, captures what the four thematic papers say. While there may be many laws that address various aspects of the poverty situation, national and local government policies outlining concretely what must be done need reform. One of the weakest, if not the weakest, link, is the problem of implementation which even line officials in government acknowledge.

Among the common issues that cut across some, if not all of, the papers are:

1. The need for substantial review of existent laws (including those laws where there are conflicts), from the Philippine Labor Code to the latest law that affects the informal sector. This in turn must lead to a re-analysis and reformulation of related existing policies.
2. The inevitably significant role of the local government units (LGUs), which are the first line of engagement between IS and government line agencies.
3. The strengthening of **PARTNERSHIP** of **ALL** actors involved in development: government, the public sector, civil society, NGOs, peoples' organizations, basic sectors, IS.
4. The call for a major shift in attitudes on the part of government regarding the IS and vice-versa.
5. Good governance imperative.
6. The disaggregation of statistics esp. where vulnerable sectors are concerned, as well as where no-growth and small growth informal businesses can be helped. This will help remove the veil of homogeneity over the very different realities of the women's, children's, indigenous peoples' and other disadvantaged sectors' situations.
7. Gender issues and concerns: access to justice, property rights, labor rights, informal businesses. While affecting both genders, poverty increasingly becomes the double, triple burden of the women poor.
8. The imperative of active **PARTICIPATION** of the IS in all **DECISION-MAKING** processes, beyond mere consultation and dialogues. This issue runs through all papers and is of major concern if we are to address and look for solutions to poverty.
9. The need for massive information drives regarding laws, policies and programs, and available mechanisms especially on the LGU level that can help the poor help themselves.
10. The inevitable political component found in each of the thematic paper: active participation, decision-making, implementation. This cannot be stressed enough

- for ultimately poverty programs are dependent on the political will of both governing and governed entities to jointly work towards poverty reduction.
11. The need for human rights itself as the basis for addressing the many issues. Much lip-service is still done viz. a rights-based approach and yet many even those in government service, not to mention the basic sectors themselves and the citizenry at large, **don't know much** about their rights.
 12. Gender issues and concerns vis-à-vis the informal sector which still have to be expounded upon. While related to the seventh issue above, in the specific realm of the informal sector, these issues and concerns need to be explicated more.

There can never be an easy way out of the quagmire of poverty. The way forward expectedly, must build upon the successes particularly of programs and policies^{vi} that have arisen out of laws promulgated. However, reading through the thematic papers presented for this national policy conference, to say that much needs to be done will be an understatement, given the complexity and diversity of the myriad aspects of the poverty situation in the country. As the thematic papers are continuing works in progress, the papers prepared for this conference just the latest drafts, so must this short paper which attempts to weave the common as well as divergent but significant recommendations found in said papers.^{vii}

The WAY FORWARD

According to the first paper,

"[t]he 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." (Litong: 8)^{viii}

This is re-echoed in all four papers as well as gleaned from the sharing sessions during the two main focused group discussions, and from the comments of the advisory panel.

Such a complex, historically rooted condition demands **a comprehensive and integrated approach** that will include, dovetail with, interface and/or link up with the following:

1. Start with the Poor and their situation.
2. Call for a comprehensive study and analysis of all laws that affect their lives:
 - all relevant laws and the impact they have on the poor
 - all laws that have sections that conflict with other laws
3. Added legislation needed.
4. Good governance imperative.
5. Multi-dimensional approach to social partnership.
6. Multi-pronged strategy to address concepts/understanding of property rights
7. Addressing the plight of vulnerable sectors
8. The significant role of the LGUs
9. Review of Labor Laws viz. labor rights of informal workers
10. Microfinance Initiatives
11. Monitoring system for all programs.
12. Funding.

I. Start with the Poor and their situation:

Basic to everything is the situation of the poor themselves: how they see themselves vis-à-vis human beings with rights, as citizens involved in decision-making processes, as partners in development. Starting with how the poor of the informal sector see themselves can be a good first step in a thousand-mile journey.

Legally empowering the poor^{ix} is just part of the larger picture of empowering them, taking into consideration the socio-economic and cultural complexities of their current contexts.

“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.” (Litong: 16)

II. Comprehensive Analysis of ALL LAWS

Despite the preponderance of laws and relevant policies and programs that impinge and impact upon the poor (see the Tables of Laws, Policies and Programs), much indeed still has to be done.

- A study of these laws and the concrete impact these have had on the poor needs to be done

Example I:

“A study conducted by Balisacan in 2006¹, 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.*” (Litong:17)

Republic Act 6725: An Act Prohibiting Discrimination of Women in the Workplace
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.
(litong: 31)

¹ 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.

Example 2:

“Of significance is the BMBE Law (RA 9178) of 2002. Enacted to “*flush out micro enterprises ... from the underground into the mainstream economy*”^x... *it is still not widely used by its purported beneficiaries.*”

- A study of laws that contradict each other (e.g. the IPRA and the Mining Act, Fisheries Act and Agricultural Fisheries Management Act) needs to be undertaken

Example:

“The passage of the RA 7942 (Philippine Mining Act) 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 [upheld] the constitutionality of the said Act.” (Litong: 32)

Republic Act No. 8371: The Indigenous People’s Rights Act (IPRA)
Prior to IPRA, the laws had a mixed treatment of indigenous peoples.

“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. (Litong: 33)

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. (Litong: Ibid)

III. Added Legislation needed:

Added legislation is also needed such as: the Magna Carta for the Informal Sector, agrarian reform policy for seasonal farm workers, the creation of a construction workers law, the ratification of the ILO Convention 177 regarding home-based workers, and amendments to the BMBE Act especially the provision regarding exemption from the minimum wage. (Mendoza, ppt, July 18, 2007).^{x1}

IV. GOOD Governance imperative

Good governance on both national and local levels is a major factor in seriously addressing the situation of the poor in general and the informal sector in particular. This demands that while national government sets the general directions, local government units should have more leeway, and should be encouraged to undertake their own initiatives and make these operational, given their particular priorities and resources.

V. Multi-dimensional APPROACH to Social PARTNERSHIP

The interests of the informal sector can best be sustained in a multi-dimensional approach based on a social partnership⁷ with the government – national and the local government units, civil society and the trade unions. (Lao/Inocian:3)

VI. Multi-pronged STRATEGY to address concepts/understanding of property rights

A multi-pronged strategy that will address comprehensively the concept of property in relation to agrarian reform, ancestral domain, urban land use, fishing grounds, women's rights to property, and vending/other informal work needs to be conceptualized, planned and executed

An interesting strategy put forth in the second paper is named “bibingka”^{xii} – a recipe for successful assertion of property rights of the poor.^{xiii}

VII. Addressing the Plight of Some Vulnerable Sectors with Creative and Concrete Initiatives

Children

Protection of child workers is needed given the manner of many home-based enterprises as well as reality of out-of-school youth.

Today, there are over three million child workers in the Philippines.² They can be found in various sectors – agricultural, service and industrial sector.” (Litong: 28)

Women

As mentioned earlier, poor women bear double even triple burdens: they're poor, they're women, and they're marginalized.

“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.” (litong: 31)

Further, while there are laws that protect women workers, informal women workers are at risk given the very informality of their situation. Hence, protection too is needed.

“ FAO data: Women in agriculture: 13.4 M of labor force in rural area. In 2002, 51.4% unpaid, 30% own account, only 18.6% paid... not shown yet whether new law RA 9296 (Anti Violence against Women & Their Children Act) has made an impact on women esp. in rural & agricultural areas, given their vulnerabilities Litong: 30)

² Apit, A. 1998. *Child Labor*. Quezon City: Kamalayan Development Foundation.

Indigenous Peoples

Interfacing mechanisms that take into consideration indigenous justice systems and the formal justice system is one concrete recommendation. Laws affecting their lives needs to be reviewed (See section on analysis of laws above).

Fisherfolk

A review of conflicting sections of the Fisheries Act and the Agricultural Fisheries Modernization Act is needed.

There are several other vulnerable sectors other than those mentioned here. While their situations are equally significant, more research needs to be done and where already present, needs to be integrated into similar future projects.

VIII. The SIGNIFICANT ROLE OF THE LGUs

The local government units (LGUs) play an important role in poverty alleviation for it is on the local levels that change can be effected. Hence, it is of paramount importance that local officials not only know the laws but that they be well-grounded in human rights principles, open to participation of many sectors in their particular part of the country, willing to try positive and creative ways of encouraging participation of the people, especially the poor in coming up with programs and services.

In the concrete, LGUs are:

- Centers of coordination in the delivery of basic services as well as operationalising other nationally instituted mandates (Litong: 24)
- are where registration and regulation, twin aspects that informal businesses need to be informed about as well as dealt with, are controlled. LGUs can be of important assistance in ensuring that no-growth, and small-growth businesses can be capacitated and yet not be hampered with unnecessary financial burdens. (Indon)
- the concerned entities that should be allowed to plan locally relevant and responsive poverty alleviation programs (Litong: 25, based on a study by Javier)^{xiv}

In particular, the lack of social development goals, particularly MDGs, in local development planning is mainly due to little awareness of MDGs among local authorities.”^{xv} ... The case studies show the need to develop and build local capacity into planning, budgeting and spending to improve local governance.³ (Litong: Ibid)

Litong also points out the issue on so-called administrative commitments to programs as pointed out by Javier as well as the absence of managerial authority and

³ Ibid.

discretion of poverty alleviation funds on the part of the LGUs. Neither are they empowered to enable them to address issues of inefficiency of the bureaucracy. (Litong: 27)

Indon points out that the LGUs have the legal mandate to pursue policies, programs and services for informal businesses as found in the LGC, the SRPA Act, and the BMBE Act among others. (Indon: 29)

IX. Review of Labor Laws vis-à-vis labor rights of informal workers

Traditional concepts of labor practice cannot apply in the situation of informal workers inasmuch as these were formulated with the formal labor force in mind.

** Except for subsistence wage informal sector which is a small fraction of the labor force, the relations within and among the informal sector is bereft of the classic line of employer-employees relations. For this reason, traditional concepts of collective bargaining and its attendant concepts on unfair labor practice and strikes and lock-outs cannot apply. (Lao/Inocian: 55)*

Hence, the importance of the cooperative (covered by RA 6938).

The cooperative "As pointed out by Myrna Feliciano, Prof. Sibal and Macaranas, the cooperative is an important vehicle for the informal sector as it is provided with preferential rights in terms of the right to supply government institutions and agencies with agricultural commodities, the management of markets and/or lease of public market facilities, stalls or spaces, exemptions from bidding requirements and access to certain credit and special protection programs." (Lao/Inocian: 55)

Some concrete recommendations are done based on the following:

- Primacy of Political Bargaining for mutual aid and protection over Welfare Rights

Hopefully, these organizations of the informal sector would lead to political representation at the policy-making levels (national government) and the local government units (administrative). (Lao/Inocian:55)

- Voluntary Compliance and Modes of Settlement over Coercive and Compulsory Modes

- Multi-form Actions over Traditional Trade Union form of Organizing

In the first place, the greater number of workers are not union members. An even greater number are not covered by any collective bargaining agreement... As shown by many actions and initiatives by government and civil society, it is instructive that these actions and initiatives towards organizing the informal sector can be done in various forms on the basis of a kind of social partnership with the government – national and the local government units, civil society and the trade unions.^{xvi}

X. MICROFINANCE Initiatives

Microfinance has grown through recent years. There is a need to oversee and monitor this growth but at the same reducing regulatory restrictions so that people are encouraged to become entrepreneurs and eventually go beyond mere survival and thus break out from the cycle of poverty. For after all, the primary goal is to improve quality of life of the poor.

“...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.” (Litong: 17)

While the national government seems to concentrate more on big businesses, it needs pay more attention to improving the profitability of no-growth and small-growth informal businesses as a way of helping micro- and small- business enterprises. There is also a need for greater *physical integration* of these entities into the overall economy landscape.

Expanding and deepening the role of LGUs, establishing and strengthening informal business representation and participation, and sustaining the growth of the microfinance sector (Indon: ppt, July 18, 2007) are other equally important endeavors government has to undertake viz. microfinance initiatives.

XI. NEEDED: A MONITORING SYSTEM!

Atty. Litong emphasizes that “with all the programs developed and formulated, a monitoring system is yet to be formulated towards a determination of the impact [of all laws, policies & programs) on the well being of the Filipinos. “ This is a vital aspect of any policy or program that is to be implemented. But before a monitoring system can be in place, certain standards and indicators need to be formulated. This is a serious undertaking demanding not only participation of all sectors concerned but a courageous act of political will to reduce poverty through appropriate and relevant programs affecting the well-being especially of the poor, marginalized and disenfranchised sectors of Philippine society.

XII. FUNDING

The creation of a CENTRAL FUND to support informal sector concerns ranging from institution capability building to microfinance services is strongly suggested. This is premised on an assumption that there are funds in national and local government budgets, and that these funds indeed get to their beneficiaries intact. Moreso is this imperative if the end goal is not mere survival but more importantly, getting out of the grinding cycle of poverty.

CONCLUSION

To sum up, Access to Justice & the Rule of Law, Property Rights, Labor Rights and Legal Mechanisms are aspects of legal empowerment of the poor that may indeed improve their lives. But the social, political and economic aspects of the community they live in must concomitantly be addressed with their rights respected; and their participation in all decisions that affect them be ensured.

Indeed, there can not be any easy way out of the quagmire of poverty.

Now is the time to act and commit ourselves – those among us who are in government service as well as those in CSOs, NGOs, the academe, and POs and development agencies – to be active partners in the continuing struggle to empower the poor so they (and us) can break out of its clutches and together contribute to the worldwide effort of reducing, if not totally eliminating, poverty in our midst. The poor will lead the way.

ENDNOTES:

ⁱ In 2006, the UNDP commissioned ESCR-Asia, Inc., to research and prepare one thematic paper for each of the following aspects of the UNCLEP's legal empowerment of the poor study: (1) access to justice and the rule of law; (2) property rights; (3) labor rights; (4) legal mechanisms for informal businesses. The process undertaken was three-pronged: (a) research by selected writers in the four chosen fields, (b) initial findings subjected to focused group discussions, and (c) having the same initial drafts commented upon by an advisory panel. This short essay attempts to synthesize the findings and recommendations of the above papers and draw broader conclusions that could point the way for policy makers to commit even more of resources, time and energy to address the challenges posed by the situation of the informal sector.

ⁱⁱ Vice-Chairperson for External Affairs and Secretary, respectively, of the Board of Trustees of ESCR-Asia, Inc.

ⁱⁱⁱ National Policy Conference of the Legal Empowerment of the Poor in the Philippines held July 25-26, 2007 at the Makati Shangri-la Hotel, Makati City, MetroManila, Philippines.

^{iv} Philippine Laws have different categories: the Philippine Constitution of 1987 is the overall law of the land; republic acts (RA) go through the legislative process before being signed into law by the president of the Philippines; executive orders (EO) emanate from the executive branch signed again by the current Philippine president; and presidential decrees (PD) come from the office of the Philippine president during martial rule (as in the case of the late Ferdinand Marcos) or during emergency rule that may be declared by the president with concurrence of the two other branches of government.

^v Cf. separately produced material entitled: "Some Relevant Laws, Policies and Programs for the Legal Empowerment of the Poor (Pre-Marcos Era until Arroyo Administration)

^{vi} Ibid.

^{vii} A matrix of a Summary of Findings and Recommendations has been prepared separately and can be used together with the Compilation of Laws mentioned in EN iv in tandem with reading this short essay.

^{viii} All embedded sources come from the different papers prepared for the conference mentioned in ENii.

^{ix} Legal empowerment is defined in the first paper, "Access to Justice and the Rule of Law" as: "the process of acquiring critical awareness about rights and the law, the ability to assert rights, and the capacity to mobilize for change" (Cf. Litong, 6). Further, this definition followed a short discussion on "empowerment" *per se* using the parameters set by Oakley: empowerment as participation, empowerment as democratization, empowerment as capacity building, empowerment through economic improvement and empowerment and the individual (CF Litong, 5).

This definition as well as the parameters set by Oakley, provided the framework of the discussion found in all four papers.

^x Cf. *Philippine Daily Inquirer*

^{xi} Towards the end of the national policy conference, at least two sectors: the construction workers and the homebased workers, expressed their desire that there be laws that address their peculiar situations.

^{xii} “Bibingka” is a term given to a Philippine rice-based cake prepared through the application of heat below and above the cake that allows for even cooking.

^{xiii} “*Bibingka*’ strategy: recipe for successful assertion of property rights of the poor

Full recognition and realization of the property rights of poor people in any country is equivalent to a revolution especially given the vast panoply of opponents from incumbent presidents to corporate interests to insurgent groups and movements. The poor often acquire or assert their rights and interests through two principal modes: changes in state policy and government programs and through self-help measures. There is in fact no great wall between the two and an inter-active dialectic exists. Usually, pro-poor changes in public policy and programs are a response or consequence of years of pro-poor organizing and political mobilization. However, even if changes in state policy and programs are achieved, they do not automatically lead to pro-poor results. Opposition by vested interests commences with the policy debate that usually precedes changes on policy. However, their opposition continues even when policy is changed. With their allies within the bureaucracy, they try to block or blunt the implementation of pro-poor government programs. Successful redistribution or assertion of the poor’s property rights appears to require the complementation of initiatives by reformist state actors ‘from above’ and mobilization by autonomous groups ‘from below.’ While this ‘bibingka’ strategy was a metaphor formulated by Borras (1998) regarding land reform, it appears apropos for all pro-poor property rights struggles. The ‘bibingka’ strategy appears to be an effective corrective to the central problem identified by Golub (2003)—that in many developing countries, pro-poor laws exist only on paper but not in practice.” (Mendoza: 22)

^{xiv} Cf Litong: 25, discussion.

^{xv} Litong: Ibid.

^{xvi} Some concrete forms of organizing and other similar recommendations can be found in Lao/Inocian’s paper, p. 56-57.