

RECOGNIZING THE POOR*

by

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I commend the UP Alpha Phi Beta Fraternity on its 70th anniversary for putting together this forum which recognizes the role of the law in strengthening the right of the poor to a dignified life -- *Viva Digna*. Your theme is timely, given the economic crisis that grips the world today and its fallout effects on the Philippines.

Justice Anthony Kennedy of the United States Supreme Court has said that the law is meant to be a liberator, not an oppressive force.¹ Unfortunately, for the poor, the law has failed to become the liberator it ought to be. For in some instances, it is the law enacted by vested interests that exploits the poor. As unthinkable as it may be, the poor have to be protected from law. They are strangers to the law, and laws are strange to them.

Indeed, there is a need for law to recognize the poor, to re-engineer our legal system in order that the poor will get greater rights and receive better protection. Law will never reign if they who rule are too few and rule to serve their own interest. The many who are neglected will resort to illegal measures in order to survive. They will resist their treatment as nuisances that government can abate. Paradoxically, they become informal settlers to

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¹ *Legal Empowerment of the Poor: Justice Anthony Kennedy* (Legal 2008), (Internet Broadcast) available at http://www.youtube.com/watch?v=pRGYpE5DiLM&feature=channel_page.

provide shelter for their families, who have a right to life. A balance, then, must be struck between the right of government to abate nuisances and the right of informal settlers to a decent life.

In the Philippines, the number of informal settlers has been marked at 675,000 families.² Micro-enterprises and small businesses that do not have access to credit in our banking institutions sum up to 99.3% of all businesses in our nation.³ A total of around 65% of all homes and business are unregistered.⁴ These numbers are soberingly significant, for they represent those who live outside the protection of the law in our country, who do not have access to justice. They remain part of our informal economy and vulnerable to the political and economic predators of society, who misuse the law to trump the socio-economic rights of the poor.

The United Nations Development Program (UNDP) formed the Commission on Legal Empowerment of the Poor, whose noble mission was to “make legal protection and economic opportunity not the privilege of the few but the right of all.”⁵ In the pursuit of its mission, it studied the theory of Hernando de Soto, a Peruvian economist, about dead wealth.⁶ De Soto’s thesis was that because the poor have no legal means to control their assets, their assets could not bring them economic security and stability to move

² United Nations Development Program, *The Millennium Development Goals -- Goal 7: Ensure Environmental Sustainability*, http://www.undp.org.ph/?link=goal_7.

³ Vice President Noli de Castro’s speech, Opening of the United Nations Development Program Workshop (Makati, Philippines, April 21, 2005). Copy published by Manila Bulletin.

⁴ Madeleine Albright and Hernando de Soto, *supra*.

⁵ Commission on Legal Empowerment of the Poor, *Making the Law Work for Everyone: Volume II Working Group Reports* (2008).

⁶ Madeleine Albright and Hernando de Soto, *Out from the Underground*, Time Magazine (July 16, 2007).

forward in life.⁷ He warned that not only do the poor remain where they are, but often they are forced to resort to means that make them “socially condemned criminals.”⁸ In other words, not only do they stay outside the law, but circumstances will later compel them to defy the law. Unless they find law a friend, they will later treat law as their enemy. They will resist law if all they experience is its lawlessness.

Legal empowerment of the poor is the key. The four pillars of legal empowerment of the poor are acquisition of property rights, business rights, labor rights, and access to justice. These will enable the poor to fight for equality and help them gain significance in society. If the poor remain powerless, they cannot be part of the sovereign people; and if they are the multitude in a democracy, that democracy should be denounced as synthetic.

It is also important to note that legal empowerment of the poor is not throwing occasional crumbs of charity to the poor. Legal empowerment is about endowing the poor with rights, arming them with the tools to enforce these rights in our judicial system. There is an adage that says we should not just give the hungry some fish, but rather we should teach them how to fish. In a sense, legal empowerment is teaching the poor how to fish, because law grants them opportunities to cease living the life of a beggar. The law ought to be the great equalizer. It must pull up the poor without pulling down the rich.

⁷ Id.

⁸ Artemio V. Panganiban, *With Due Respect: Legal Empowerment of the Poor*, Philippine Daily Inquirer (July 29, 2007).

It should be self-evident that the most important pillar of legal empowerment is access to justice. It is most important, because the property rights, business rights, and labor rights of the poor will be mere paper rights if they cannot be vindicated in our courts when violated by the unscrupulous. This was the reason why the Supreme Court sponsored the **Forum on Increasing Access to Justice by the Poor: Bridging Gaps, Removing Roadblocks** last year. The Forum examined the humps and the bumps to access to justice by the poor, such as lack of knowledge of substantive laws, ignorance of remedies, snail's pace of justice, ineffective legal representation, corruption of the judicial process, etc. After the forum, the High Court immediately launched the Enhanced Justice on Wheels program and the Small Claims Court, and promulgated the rule on the mandatory legal aid requirement of the Integrated Bar of the Philippines (IBP), in order to dilate the apertures of justice for the disadvantaged sectors of our society.

The purpose of the Enhanced Justice on Wheels program of the Court is to bring justice right to the doorsteps of the poor and to provide them fast and free resolution of their conflicts with the law. This vision is translated into reality through conciliation, mediation, and quick adjudication. These mobile courts go to our provincial and city jails to fast-track the resolution of cases of poor inmates who are detained, as they cannot post bail. Free legal services are given to them. Free medical and dental services are also extended to all the inmates.

After seven months of the Enhanced Justice on Wheels program to meet the needs of the poor involved in criminal cases, 991 inmates have

been released; 5,956 inmates have been given medical aid and dental services; 85%-100% of their 3,523 cases have been successfully mediated; 745 indigents have been beneficiaries of free legal aid; and 8,300 *barangay* officials, indigenous peoples, farmers and fisherfolk have been educated on their rights. And this is only the beginning.

We also launched the Small Claims Courts in October of 2008 to serve the needs of the poor involved in small civil cases. Studies reveal that a great number of the poor are involved in civil litigation, in which the amount involved is not more than ₱100,000. Again, our objective is to improve the velocity of these civil cases involving the poor and cut the cost of litigation. The procedure in the cases in Small Claims Courts has been simplified. Lawyers are not allowed to appear at the hearings of any of these cases, except when they themselves are a party to the case. Ready-made forms they are user friendly are available to litigants. These cases are not governed by the complicated rules of evidence, which confuse even the cerebral. The judges are trained to intervene and help the parties, while staying as impartial referees of the dispute. And to avoid further delay of justice, small claims are decided within 24 hours, and these decisions are deemed final and unappealable; that is, except when there is grave abuse of discretion on the part of the judge, in which case a petition for certiorari can be filed -- but only in the Supreme Court. Before, these decisions were appealable to the RTC, the CA and then the SC. We are aware that what kills justice for the poor is slow-motion justice.

These 22 pilot Small Claims Courts have reaped huge successes. In four months, a total of 1,750 cases were filed in these 22 pilot courts. Of these cases, 44% were resolved immediately. The average lifetime of a case, from filing to judgment, was only one to two months. The poor litigants gave the pilot courts a 90% satisfaction rate.

And finally, just this month, on January 27, 2009, the Supreme Court approved the rule on the mandatory legal aid requirement. The rule requires all practicing lawyers to render a minimum of sixty hours of free legal aid services to indigent litigants each year. Each lawyer is to coordinate with the Clerk of Court in determining cases which he or she may render free legal aid service. The lawyer is then required to report compliance with the rule within the first ten days of the last month of each quarter of the year. These lawyers will be given Mandatory Continuing Legal Education (MCLE) credit for their free legal services to the poor. This rule is a response to the need of the poor for effective legal representation. In an adversarial system of justice, the scales of justice depend usually on the comparative skills of the contending lawyers. Often the high-priced lawyers win their cases, and expensive lawyers are beyond the pocketbooks of the poor. The result is that the poor get so-so lawyers, and they lose their cases despite their merits. Hopefully, this problem of the poor of lack of effective legal representation will be a thing of the past.

The next pillar of legal empowerment of the poor is helping them acquire property rights. Harvard President Larry Summers, who was also the former US Secretary for treasury, has been quoted as saying the following:

“The poor should be able to borrow money so that they could own something where they and their children could live. I don’t think there is any single thing that would do more than to create strong families and I don’t think there is anything more than strong families that would contribute to the development of the next generation. And that goes back to legal rights and legal empowerment.”⁹ In his view, the poor are empowered when they hold the bundle of rights that comes with owning a home. For example, one could borrow money from a bank against one’s home to start a business. The home is thus a valuable asset of the poor, as wealth could be regenerated from it. As mentioned above, however, 65% of homes in our country are not registered. Those who live in them do not hold any legal title to their homes and thus could not take advantage of them. Their homes, therefore, become part of what Hernando de Soto has defined as “dead wealth” – assets that cannot be used to improve the lives of the poor.

But this is not the worst part of not holding title to a home. Lack of title also brings the danger of sudden eviction at any given day of living without a roof on your head. This conflict between the right of government to abate nuisances and the right of informal settlers to decent homes is a hot-botton issue in the Philippines. Often, informal settlers are harassed and thrown out of their homes despite laws that require officials to provide them with adequate relocation sites before they can be evicted. These rights are spelled out under the 1987 Constitution; the Urban Development Housing

⁹ *Legal Empowerment of the Poor: Larry Summers* (Legal 2008, Internet Broadcast) available at <http://www.youtube.com/watch?v=KO8-FbqQKV&feature=Playlist&p=06EC8CAC853722AA&index=1>.

Act; and even under the International Covenant on Economic, Social, and Cultural Rights.

Under Article XXIII of the 1987 Constitution, the right of the urban and rural poor to relocation before eviction is clear:

Sec. 10. Urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner. No resettlement of urban and rural dwellers shall be undertaken without adequate consultation with them and the communities where they are to be relocated.

In the same breath, Section 28 of the Urban Development Housing Act (UDHA), or Republic Act 7279, provides that any eviction and demolition through court orders involving underprivileged and homeless citizens cannot be carried out without first providing adequate relocation to the homeless citizens. Indeed, the International Covenant on Social, Economic, and Cultural Rights provides, under Article 11, that the signatory states recognize the right of everyone to adequate housing.

In the recent case **Metro Manila Development Authority (MMDA) v. Concerned Residents of Manila Bay**, the Supreme Court ordered the cleanup of Manila Bay. It directed the MMDA “to dismantle and remove all structures, constructions, and other encroachments established or built in violation of the UDHA along... the connecting waterways in Metro Manila.” But in carrying out the order, the MMDA should follow the eviction and demolition proceedings provided under the UDHA, which requires adequate relocation first. Informal settlers may be nuisances, but they have a right to life; and that right, the mother of all rights, must be respected.

The third and the fourth pillars of legal empowerment of the poor are acquisition of business and of labor rights. In 1988, the Social Reform and Poverty Alleviation Act defined the informal sector as “poor individuals who operate businesses that are very small in scale and not registered with any national government agency, and to workers in such enterprises who sell their services in exchange for subsistence wages or other forms of compensation...” In plain language, those belonging to this informal sector are again people who live outside the law. They are our sidewalk or street vendors, jeepney drivers, company drivers, tricycle drivers, and home-based workers. With the downturn of the global economy, including ours, the number of our informal sector workers will surely skyrocket. It is not difficult to prophesy that the members of this informal sector would suffer more difficulties, because they are beneath the radar of our labor laws. Our labor laws protect only formal employees. Those who belong to the informal sector are likewise bereft of savings, and when they can no longer keep their skin and soul together, we can expect their clenched fists to rise and defy the legal order that has not alleviated their misery. Again, law should come to their succor. The State should not maltreat, as nuisance, people who are handcuffed by poverty and hence cannot compete on equal terms with the more privileged of society.

The economic crisis gives owners of businesses with bigger capital the chance to completely eliminate informal and small business owners as competitors. Without access to credit, the latter will collapse in due time. The unregistered will be worse situated. For, in addition, corrupt

government regulators who regulate everything except their greed, will suck the blood of these informal and small business owners. We should therefore encourage registration of businesses by setting easy requirements for compliance by the poor, so they could come within the protection of the rule of law. We should cut red tape and make it easier for our poor to be part of the legal system. They should be given more law and wider access to justice.

Our laws must empower the poor, and our legal system must be at their service. Poverty must not be their lot; they cannot be the permanent pariahs of our society. As I close, I leave with you the wisdom of Hernando de Soto:

The law is not something that you invent in a university; the law is something that you discover. Poor people already have agreements among themselves, social contracts, and what you have to do is professionally standardize these contracts to create one legal system that everybody recognizes and respects.

We all have a stake in the empowerment of the poor. They cannot continue to be overlooked and underserved. The choice is between perpetuating the greed of the few or upholding the interest of the many. Our future depends on the correctness of our choice.