

EMPOWERING THE POOR THROUGH HUMAN RIGHTS- BASED ACCESS TO JUSTICE

*Asian Regional Consortium for
Human Rights-Based Access to
Justice*

Marc Titus D. Cebreros (Facilitator), and
Institute of Human Rights-University of the
Philippines Law Center (Secretariat)

Overview

- I. Powerless, excluded and vulnerable: what it means to be poor in today's society
- II. Empowering the poor through human rights-based access to justice
- III. The role of the Asian hrba/a2j Consortium
- IV. Human rights-based strategies and some concrete examples

Poverty and Powerlessness



No legal status given

- Deliberately not recognized, or
- Simply forgotten



No permit granted

- Trade, business or activity unregulated, hence unprotected
- Vulnerable to serious disruptions



Not worth the attention

- Plight seen as insignificant, or
- Formal procedures accessed at a loss

The Poor as a Vulnerable Group

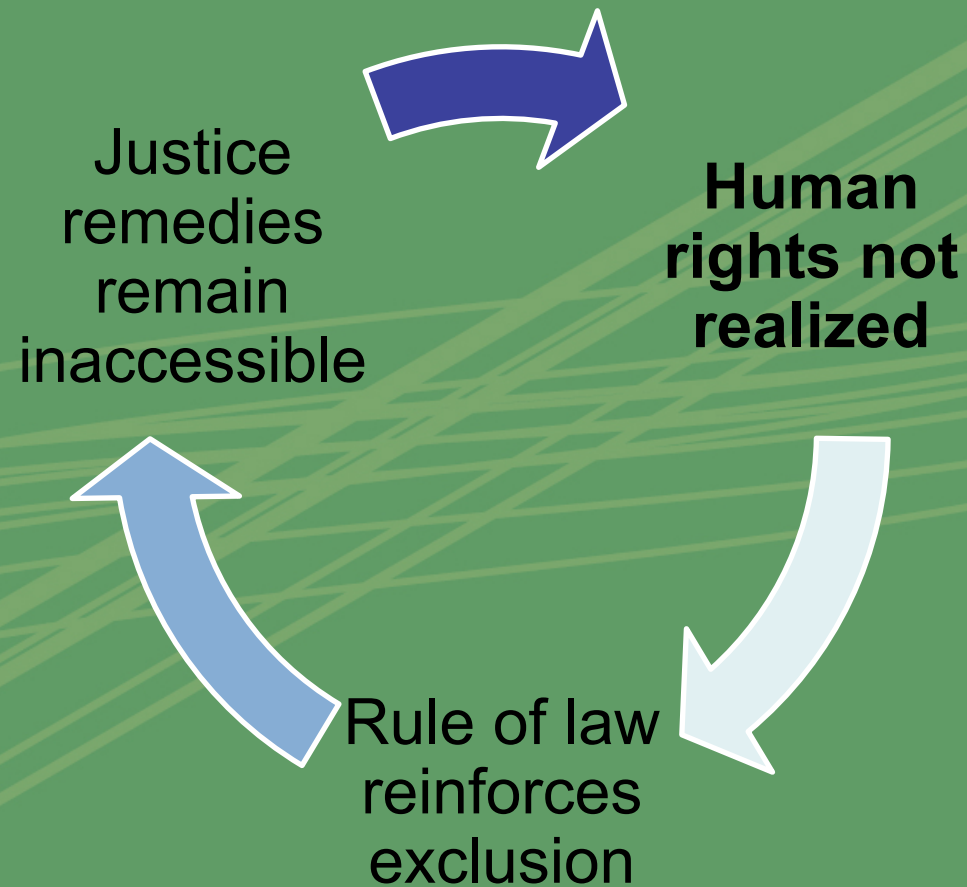
- refers to the reality that the economically marginalized are more likely to encounter discrimination or violation of human rights than the economically well-off
- some groups experience greater vulnerability than others within the same class
- WHAT ARE THESE REALITIES?

Human Rights and Poverty

- Human rights violations are both a cause and consequence of poverty



Cycle of Exclusion





Eradicating Poverty: A Human Rights-Based Approach

Turning Rights into Reality

- Human Rights-Based Approach
 - a conceptual framework for studying, describing and improving the process of human development in order to realize the human rights of every human being

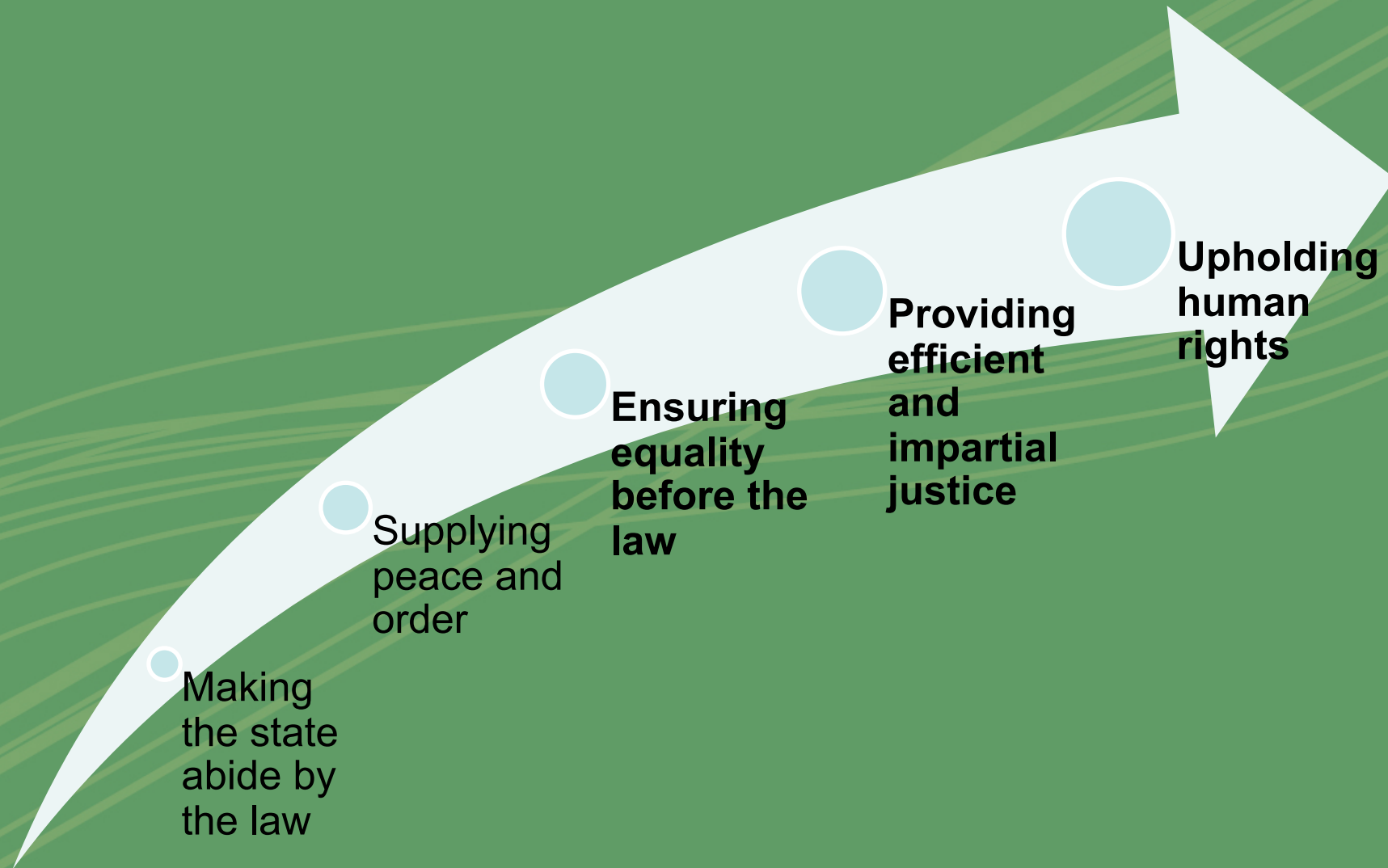
Human Rights-Based Programming

“seeks to analyse inequalities which lie at the heart of development problems, and redress discriminatory practices and unjust distributions of power that impede development progress”

Human Rights Analysis

- Using human rights principles and standards to critically analyze law --
 - whether it addresses/cures/prevents, or perpetuates substantive inequalities that disadvantage the poor; and
 - views Law also as a part of a human development strategy, not just an outcome

Human Rights through Rule of Law



Justice Programming: Access of the Poor

- Comprehensive, multi-pronged approach using human rights principles and standards
 - content, process, outcome
- Recognize, and try to address, substantive inequality
 - universality/equal protection vs. non-discrimination/right to equality
- Avail of equity measures
 - provisional reliefs, special protection measures, affirmative action policies

Critical Outcomes

- Empowering the poor means:
 - Critical awareness of their human and other rights
 - Capacity to assert these rights
 - Capacity to use these rights to mobilize for change

Human Rights Standards

- UDHR (1948)
- Core International Human Rights Treaties
 - ICCPR (1966)
 - ICESCR (1966)
 - CERD (1965)
 - CEDAW (1979)
 - CAT (1984)
 - CRC (1989)
 - MWC (1990)
- Comments and recommendations of HR treaty monitoring bodies
 - normative content of human rights and standard
 - monitoring State compliance

Human Rights Principles

- Universality and inalienability
- Indivisibility
- Interdependence and interrelatedness
- Equality and Non-discrimination
- Accountability and the rule of law
- Participation and inclusion

Human Rights, Rule of Law and Access to Justice



Asian Regional Consortium for Human Rights-Based Access to Justice

hrba2j-asia

Our Vision

- “We envision making Asia a region where there is no injustice and every human being has equal access to justice based on all human rights – civil, cultural, economic, political and social.”

Our Mission

- We are an **Asian consortium of institutions** from government and civil society advocating human rights for all in order to eradicate injustices and enable every human being to realize their human rights and gain equal access to justice.
- We work together to **build capacities** in Asia to advocate and promote human rights in all circumstances and make justice accessible for all, especially the poor and otherwise disadvantaged.
- We do this by: **strengthening** institutions and networks for capacity-building initiatives and **coordinating** and **integrating** initiatives and programs to provide access to justice and human rights

Our Mission

- We are an **Asian consortium of institutions** from government and civil society advocating human rights for all in order to eradicate injustices and enable every human being to realize their human rights and gain equal access to justice.
- We work together to **build capacities** in Asia to advocate and promote human rights in all circumstances and make justice accessible for all, especially the poor and otherwise disadvantaged.
- We do this by: **strengthening** institutions and networks for capacity-building initiatives and **coordinating** and **integrating** initiatives and programs to provide access to justice and human rights

Primary Thrusts

- Strengthening and expanding Asian hrb/a2j network
- Developing capacities of institutions and individuals working on access to justice
- Raising HR awareness and standards in human rights practice among justice sector duty bearers and claim holders

Members and Partners

- Organizing Committee (Philippine institutions)
 - Gov't: Commission on Human Rights, Supreme Court-Project Management Office, Supreme Court-Philippine Judicial Academy
 - Civil Society: Alternative Law Groups, ESCR-Asia, Inc., Lawyers League for Liberty
 - Academe: Institute of Human Rights (University of the Philippines), Ateneo Human Rights Center (Ateneo de Manila University)
- Regional Core Group (expansion)
- Partners
 - NEDA, UNDP Philippines, UNDP Regional Center Bangkok etc.

The background is a solid green color with a faint, white, grid-like pattern of lines that curves and overlaps, creating a sense of depth and movement. The text is centered and written in a clean, white, sans-serif font.

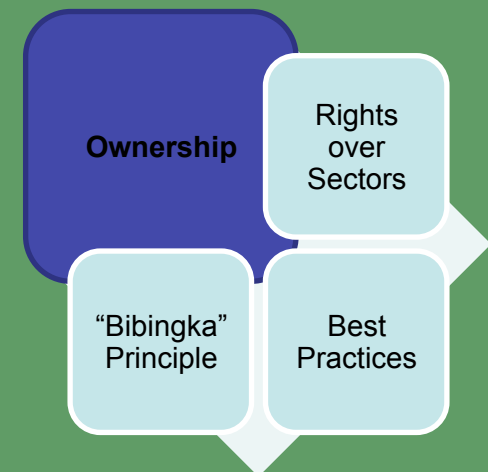
Human Rights-Based
Access to Justice of the Poor:
Strategies and Examples

HR-Based Legal Empowerment Strategies



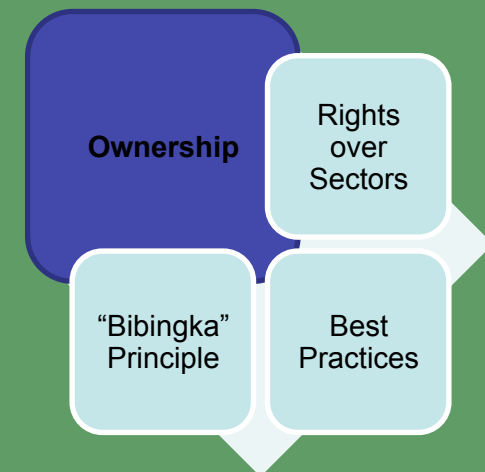
HR-Based Legal Empowerment Strategies

- Promote Ownership
 - issues, solutions and strategies should flow from the evolving needs and preferences of the poor and otherwise disadvantaged
 - discourage predetermined, top-down focus on institutions like judiciaries and judicial systems



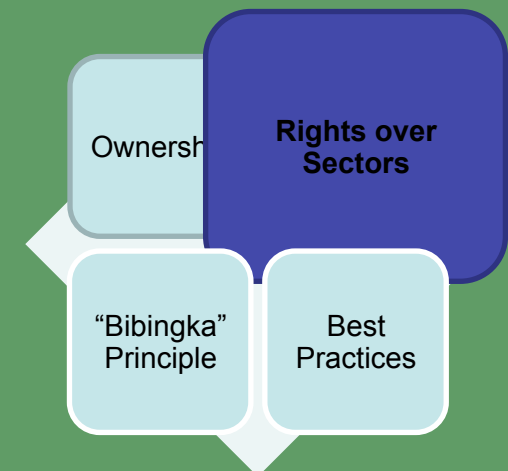
HR-Based Legal Empowerment Strategies

- Promote Ownership
- Active, free and meaningful participation in programming
- Unbundling/disaggregation of statistics
- Provide channels of participation for individuals and groups suffering from a history of exclusion, whether direct or indirect
- Leading to *articulation* (standing up) and *taking charge* (owning up)



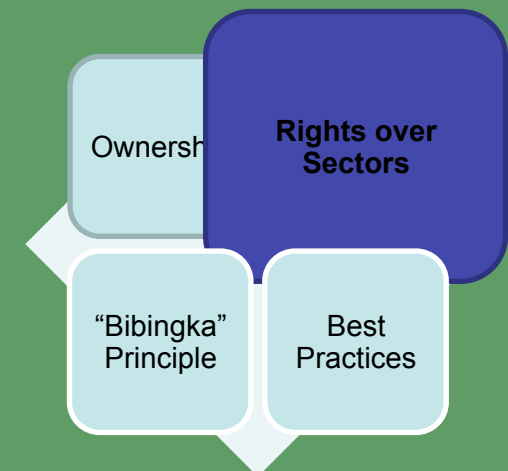
HR-Based Legal Empowerment Strategies

- Focus on Rights not Sectors
 - Pay attention to administrative agencies, local governments, informal justice delivery systems, media, civil society/people's organizations and other formations for processes that can be used to advance the poor's rights and well-being
 - move beyond the constraints of a narrowly defined justice sector



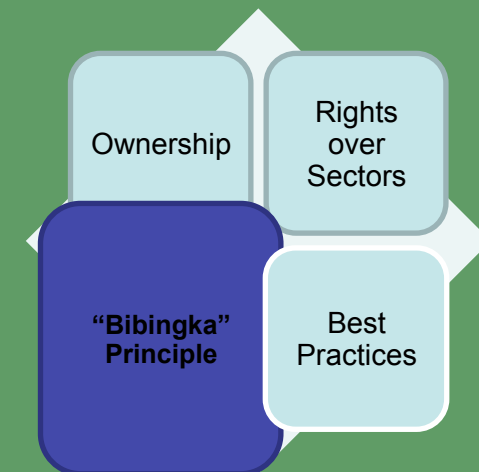
HR-Based Legal Empowerment Strategies

- Focus on Rights not Sectors
 - Strengthen the national normative framework for the protection of rights (Constitutional, statutory and regulatory reform programs)
 - Strengthen the capacity of duty bearers to provide effective remedies efficiently and impartially
 - Strengthen the capacity of claim holders to demand remedies
 - Minimize or eliminate risks



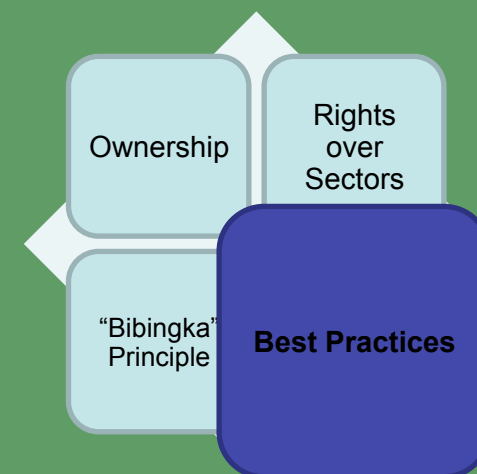
HR-Based Legal Empowerment Strategies

- “Bibingka” Approach
 - promote and strengthen solidarity of State and non-State actors where there is a genuine openness to reform on the part of government
 - protect legitimate efforts of civil society organizations and people’s movements to hold the government accountable for failures and violations of the State



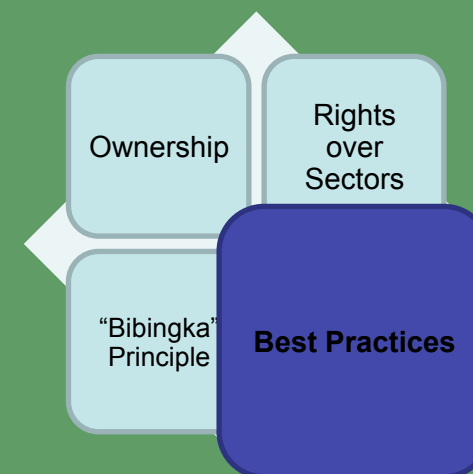
HR-Based Legal Empowerment Strategies

- Sustain “Best” Practices
 - Emulate good practices in other developing countries, less reliance on Western models
 - Incubate and apply indigenous and culturally-appropriate interventions
 - Recognize people as key actors in their own development, rather than passive recipients of commodities and services



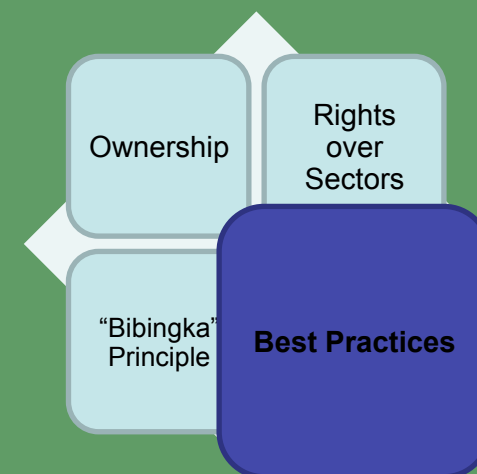
HR-Based Legal Empowerment Strategies

- Sustain “Best” Practices
 - Encourage participation both as a means and as a goal
 - Devise strategies that are empowering, not disempowering
 - Monitor both outcomes and processes
 - Include *all* stakeholders in the analysis
 - Focus on marginalized, disadvantaged and excluded groups
 - Promote local ownership



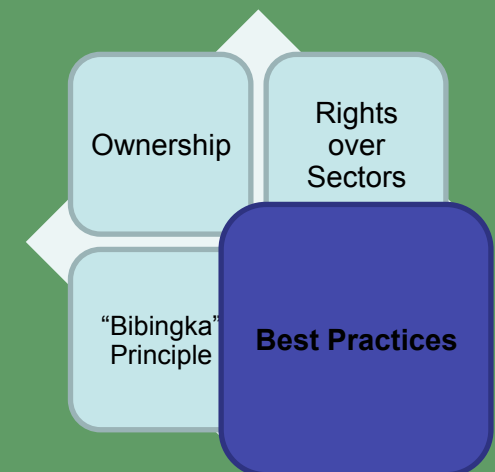
HR-Based Legal Empowerment Strategies

- Sustain “Best” Practices
 - Aim at reducing disparities in capacities, resources and opportunities
 - Use both top-down and bottom-up approaches in synergy
 - Use situation analysis to identify immediate, underlying and structural causes of development problems



HR-Based Legal Empowerment Strategies

- Sustain “Best” Practices
 - Use both qualitative and quantitative terms in setting goals and targets
 - Develop and sustain strategic partnerships
 - Make all programs support accountability to all stakeholders



Legal Empowerment Project of ESCR-Asia (2006-2009)

- “multi-pronged, grassroots-expert” approach to craft a national policy environment that empowers the informal sector
- Phase I: Policy Formulation
 - parallel consultation process: “grassroots” and “experts” leading to a national policy conference participated in by both
 - disaggregated the informal sector: **smalltime transport workers, street vendors, non-commercial fiserfolk, small farmers, home-based workers, non-corporate construction workers**

Legal Empowerment Project of ESCR-Asia (2006-2009)

- Phase I (cont.)
 - published resource book for policy formulation
“The Way Forward: Legal Empowerment of the Poor in the Philippines”
- Phase II: Popularization and Grassroots Capacity Building
 - LEP caravan, multisectoral dialogues with local government units (LGUs)
 - grassroots-led formulation of proposed “Magna Carta of Workers in the Informal Sector” (amendments to Local Government Code and Social Security Act)

Legal Empowerment Project of ESCR-Asia (2006-2009)

- Phase II (cont.)
 - developed grassroots-friendly, Filipino versions of the thematic papers in policy resource book
 - developed human rights-based manuals for training informal sector leaders
- Phase III: Monitoring and Diversifying Enforcement
 - engaged grassroots in developing templates for documenting informal sector rights violations (encroachment on municipal fishing grounds, forcible displacement; seizure, destruction and divestment of property; inhumane and degrading law enforcement techniques)

Legal Empowerment Project of ESCR-Asia (2006-2009)

- Phase III (cont.)
 - test litigation: illegal fishing structures within municipal waters between Cebu and Bohol islands; discriminatory treatment of small transport group in Cagayan de Oro City
 - engagement of Philippine Judicial Academy (judges), Legal Education Board (law schools) and Association of Schools of Public Administration for progressive and concerted integration of human rights in law and public administration schools
 - statistical report on economic contribution of informal sector in the local economy, “Invincibility beyond Invisibility”

Legal Empowerment Project of ESCR-Asia (2006-2009)

- multi-pronged
 - process: planning, content, implementation and assessment
 - strategies: research, advocacy, capacity-building, legal reform, litigation
- grassroots-expert
 - separate yet parallel consultation processes: channel for effective participation of the poor
 - “experts”: government agencies enlisted as “champions” of the informal sector

Lawyering with the Poor Project, UP Institute of Human Rights

Theoretical foundations --

- Rule of law beyond the written law → rule of law as the rule of/by/for the people → institutionalized exclusion by entrenched economic minority
- Access to justice not only an issue of cost but more importantly, of structural roadblocks
- right to legal representation recognized as a human right, offshoot of right to an effective remedy (Arts. 2,3,14(1), ICCPR)

Lawyering with the Poor Project, UP Institute of Human Rights

Practical recommendations --

- The Judiciary and the Bar should lead the efforts to define the normative content of the right to legal representation and the correlative duties of lawyers
- Use Developmental Legal Assistance (DLA) paradigm/practice to redefine professional ethics
- Sensitize legal profession to the plight of vulnerable subgroups (women, children, indigenous peoples)

Lawyering with the Poor

Practical recommendations --

- The Judiciary and the Bar should lead the efforts to define the normative content of the right to legal representation and the correlative duties of lawyers
- Use Developmental Legal Assistance (DLA) paradigm/practice to redefine professional ethics
- Sensitize legal profession (law schools and the Bar) to the plight of vulnerable subgroups (women, children, indigenous peoples)

Bringing the Courts Closer to the People (Supreme Court of the Philippines)

Parallel efforts to the Action Program for Judicial Reform (APJR)

- Justice on Wheels (mobile courts with social services)
- Court-Annexed Mediation
- Small Claims Courts
- Supreme Court Library Online
- New rules on the judicial enforcement of constitutional rights – *writ of amparo* and *writ of habeas data*
- Proposed rule for mandatory legal aid for the poor (suspended)

Human Rights-Based Statutory/Regulatory Reform

Legislative/executive technical working groups with representation from concerned sector people's/civil society organizations, law groups and "champion" government agencies

- People Living with HIV-AIDS Act (1998)
- Indigenous Peoples Rights Act (1997)
- Magna Carta for PWDs
- Expanded Senior Citizens Act (2003)
- Rape Victim Assistance and Protection Act (1998), Anti-Rape Law (1997), Anti-Violence Against Women and their Children Act (2006)
- Magna Carta for Women (2009)

Integrating Human Rights in State Planning

National and local government planning

- Local Human Rights Action Plans (IHR in coordination with Commission on Human Rights and The Asia Foundation)
- Executive Order mandating National Economic Development Authority (NEDA) to use a human rights approach in developing the medium-term development plan
 - CSO's/NGO's as “observers” not “partners”

End of presentation.

Thank you for paying attention.